

BEFORE THE BOARD OF COMMISSIONERS OF LANE COUNTY, OREGON

ORDINANCE NO: PA 1360

IN THE MATTER OF AMENDING THE LANE COUNTY RURAL COMPREHENSIVE PLAN (RCP) TO REDESIGNATE LAND FROM "FOREST (F) LAND" TO "NONRESOURCE (NRES) LAND" AND REZONE THAT LAND FROM "IMPACTED FOREST (F-2, RCP) LAND" TO "RURAL RESIDENTIAL (RR-5/NRES, RCP) LANDS ZONE" FOR A 131.55 ACRE PROPERTY, ALONG WITH A SITE REVIEW (SR) SUFFIX, AND ADOPTING SAVINGS AND SEVERABILITY CLAUSES (FILE NO. 509-PA15-05722; APPLICANT GIMPL HILL LLC.)

WHEREAS, the Board of County Commissioners of Lane County, through enactment of Ordinance PA 1360, has adopted Land Use Designations and Zoning for lands within the planning jurisdiction of the Lane County Rural Comprehensive Plan; and

WHEREAS, Lane Code 16.400 sets forth procedures for amendment of the Rural Comprehensive Plan; and

WHEREAS, application file No. 509-PA15-05722 was made for a minor amendment to redesignate tax lot 2200, Map 18-04-17, from "Forest (F) Land" to "Nonresource (NRES) Land," with a concurrent request to rezone that land from "Impacted Forest (F-2, RCP) Land" to "Rural Residential (RR-5/NRES, RCP) Lands Zone;" and

WHEREAS, the Lane County Planning Commission reviewed the proposal in public hearings on February 7, 2017 and May 16, 2017, and during deliberations on July 18, 2017 voted 5-3 to recommend denial of the request to the Board of Commissioners; and

WHEREAS, in response to the Planning Commission's majority recommendation, the applicant reduced the number of additional lots that could be created and modified the development proposal.

WHEREAS, the evidence in the record indicated that the proposal meets the requirements of Lane Code Chapter 16, and other requirements of state and local law;

WHEREAS, the Board of County Commissioners has conducted a public hearing on June 5, 2018, and is now ready to deliberate on August 21, 2018 and take action.

NOW, THEREFORE, the Board of County Commissioners of Lane County Ordains as follows:

Section 1. The Lane County Rural Comprehensive Plan is amended to redesignate Tax Lot 2200, Map 18-04-17, from "Forest (F) Land" to "Nonresource (NRES) Land." This is depicted on the Official Lane County Plan maps and further identified as Exhibit "A" attached and incorporated herein.

Section 2. The Lane County Official Zoning Map is amended to change the zone of Tax Lot 2200, Map 18-04-17, from "Impacted Forest (F-2, RCP) Land" to "Rural Residential (RR-5/NRES, RCP) Lands Zone" with Site Review." This is depicted on the Official Lane County Zone maps and further identified as Exhibit "B" attached and incorporated herein. The exclusive

purpose of the Site Review suffix is to limit future development to two new residential lots (Lots 11 & 12) for the subject property and to condition the requirement of recorded covenants substantially similar to the applicant's Restrictive Covenant, Open Space Covenant and Vineyard Covenant recorded as part of any owner's subsequent division application enacting this approval.

FURTHER, although not a part of this Ordinance except as described above, the Board of County Commissioners adopts Findings and Conclusions as set forth in Exhibit "C" attached and incorporated here by this reference, in support of this action.

The prior designation status and zone authorizations replaced by this Ordinance remain in full force and effect to authorize prosecution of persons in violation thereof prior to the effective date of this Ordinance.

If any section, subsection, sentence, clause, phrase or portion of this Ordinance is for any reason held invalid or unconstitutional by any court or administrative agency of competent jurisdiction, such portion is deemed a separate, distinct and independent provision, and such holding does not affect the validity of the remaining portions hereof.

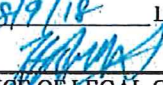
ENACTED this 21st day of August, 2018



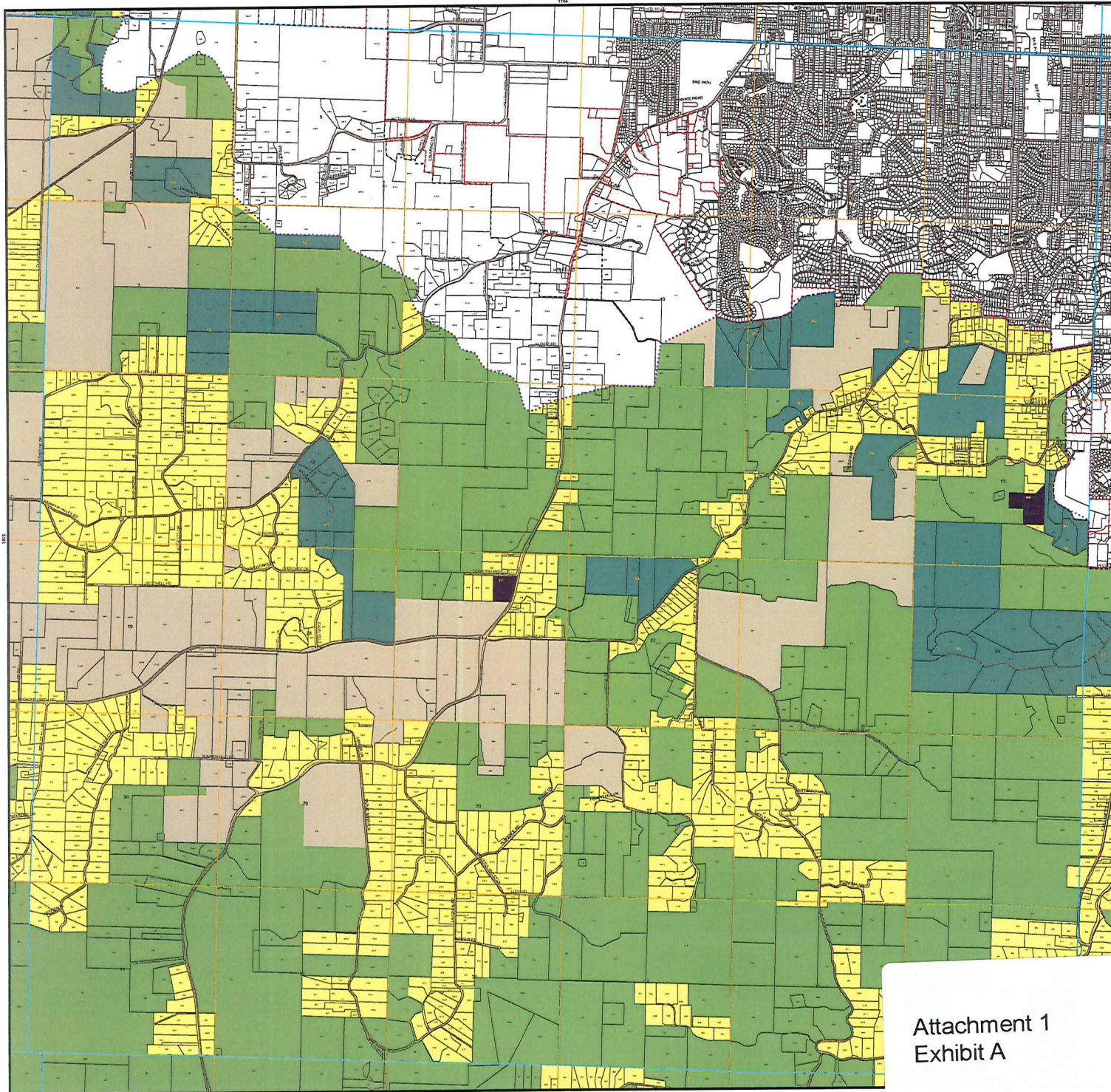
Jay Bozjevich Chair,
Lane County Board of County Commissioners



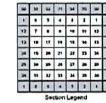
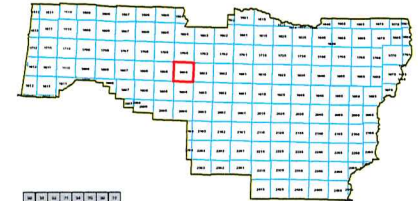
Recording Secretary for this meeting of the Board

APPROVED AS TO FORM
Date 8/9/18 Lane County


OFFICE OF LEGAL COUNSEL



Township 18 South, Range 04 West



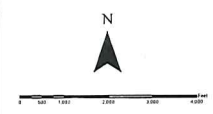
RCP Plan Designations

- F - Forest
- A - Agricultural
- ML - Marginal
- C - Commercial
- I - Industrial
- R - Residential
- NRES - Non Resource
- P - Parks
- AIR - Airport
- NR CA - Natural Resource Conservation Area
- NR M - Natural Resource : Mineral
- NR W - Natural Resource : Wildlife
- E - Estuary
- DR - Destination Resort
- PF - Public Facility

- UGB --- Township Range
- City Limits --- Sections
- Communities --- Metro Plan Boundary
- Rural
- Urban
- Parcels
- Roads
- Surface Water

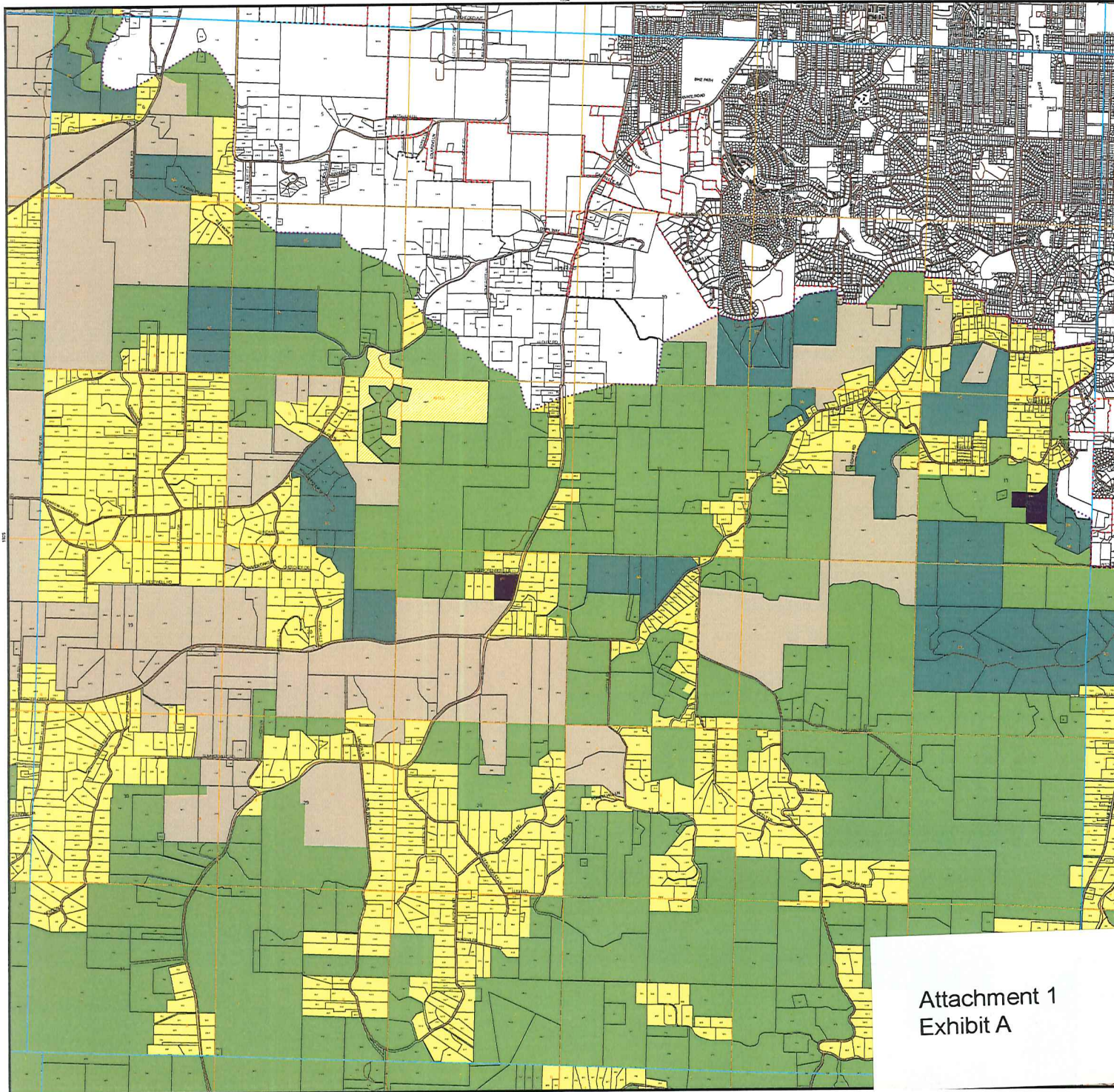
ORIGINAL ADOPTING ORDINANCE NUMBER: ORD.PA1246

Revision	Ordinance or Order Number	Date Effective	Planning Action Number	Revision Description
1	ORD.PA1246	July 11, 2008	NA	Map Adopted
2	ORD.PA 1294	Nov 1, 2013	509-PA 11-0500	REVISION TO MAP 11-0500
3	ORD.PA 1295	Nov 1, 2013	509-PA 11-0501	REVISION TO MAP 11-0501
4	ORD.PA 1296	Oct 15, 2013	509-PA 11-0502	REVISION TO MAP 11-0502
5	ORD.PA 954	Aug 3, 1988	PA 2781-91	REVISION TO MAP 11-0503
6	ORD.PA 1320	March 16, 2016	509-PA14-05607	REVISION TO MAP 11-0504
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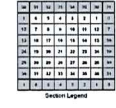


Attachment 1
Exhibit A

**Official Lane County
Plan Map**



Township 18 South, Range 04 West



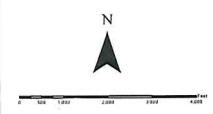
RCP Plan Designations

- F - Forest
- A - Agricultural
- ML - Marginal
- C - Commercial
- I - Industrial
- R - Residential
- NRES - Non Resource
- P - Parks
- AIR - Airport
- NR-CA - Natural Resource Conservation Area
- NR-M - Natural Resource : Mineral
- NR-W - Natural Resource : Wildlife
- E - Estuary
- DR - Destination Resort
- PF - Public Facility

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- Sections
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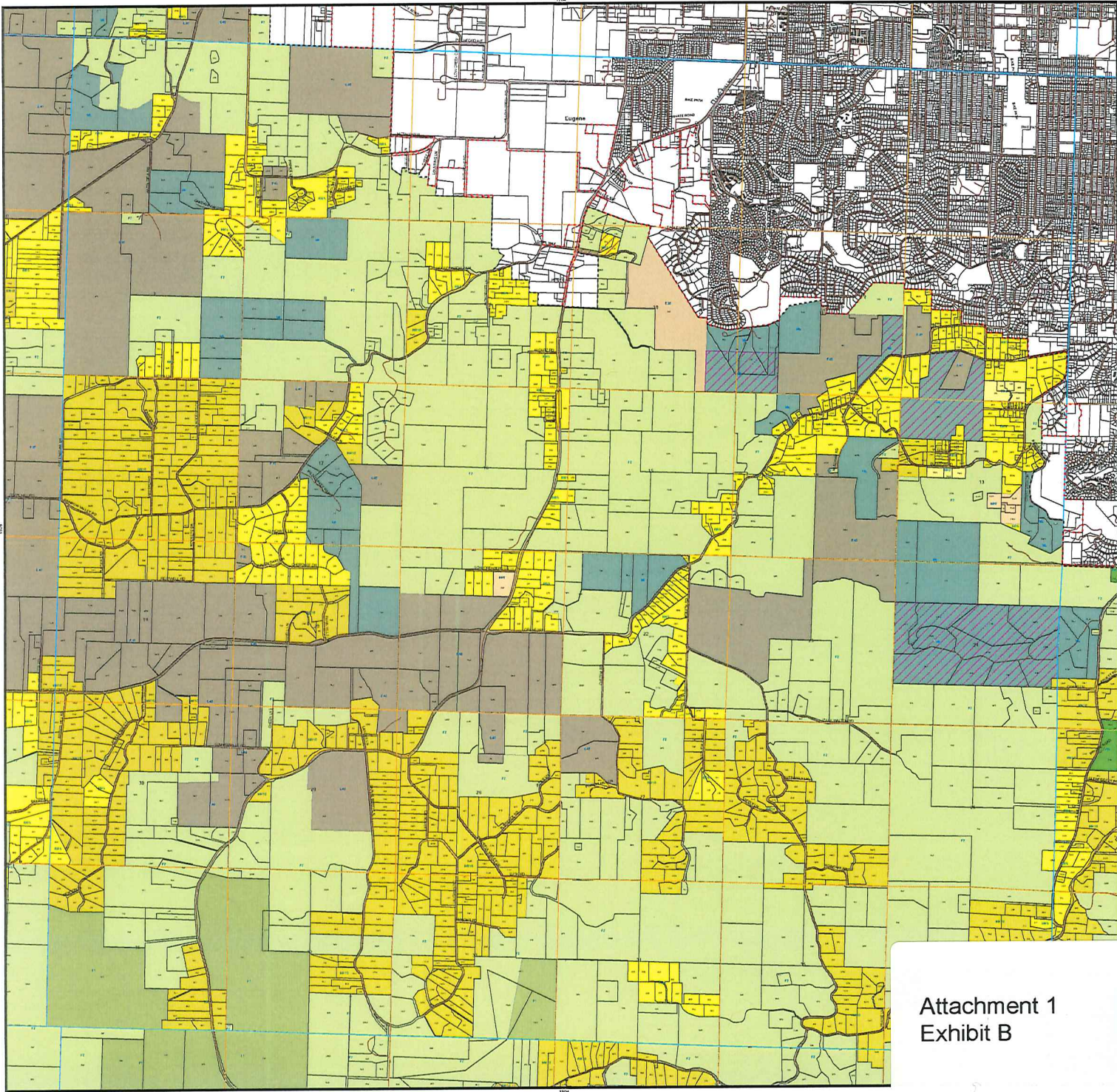
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1	ORD.PA1246	July 11, 2008	NA	Map Adopted
2	ORD.PA 1294	Nov 1, 2013	509-PA 11-5500	Amended to add Forest to Marginal
3	ORD.PA 1295	Nov 1, 2013	509-PA 11-5501	Amended to add Forest to Marginal
4	ORD.PA 1296	Oct 15, 2013	509-PA 11-5502	Amended to add Forest to Marginal
5	ORD.PA 954	Aug 3, 1988	PA 2781-91	Adopted by the Board of Supervisors of Lane County, Oregon, on August 3, 1988. Ordinance 954 of the Board of Supervisors of Lane County, Oregon, on August 3, 1988.
6	ORD.PA 1320	March 15, 2016	509-PA14-05807	Map of the Lane County, Oregon, Planning Action Number 509-PA14-05807, adopted by the Board of Supervisors of Lane County, Oregon, on March 15, 2016.
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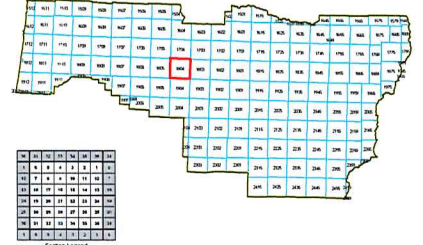


Attachment 1
Exhibit A

Proposed Lane County
Plan Map



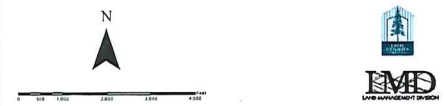
Township 18 South, Range 04 West



- Zoning**
- F1 - Non-timbered Forest
 - F2 - Impeded Forest
 - E20 - Exclusive Farm Use (20 acre minimum)
 - E30 - Exclusive Farm Use (30 acre minimum)
 - E40 - Exclusive Farm Use (40 acre minimum)
 - E50 - Exclusive Farm Use (50 acre minimum)
 - ML - Marginal Lands
 - RC - Rural Commercial
 - RI - Rural Industrial
 - LI - Light Industrial
 - OI - General Industrial
 - RPF - Rural Public Facility
 - RR1 - Rural Residential (1 acre minimum)
 - RR2 - Rural Residential (2 acre minimum)
 - RR2KREC - Non Resource (2 acre minimum)
 - RR5 - Rural Residential (5 acre minimum)
 - RR5KREC - Non Resource (5 acre minimum)
 - RR10 - Rural Residential (10 acre minimum)
 - RR10KREC - Non Resource (10 acre minimum)
 - PR - Park and Recreation
 - RPR - Rural Park and Recreation
 - AD - Airport Operations
 - CLWP - Clear Lake Watershed Protection Area
 - NR - Natural Resource
 - NC - Natural Corridor
 - DR - Designated Resort
 - QM - Quarry and Mining Operations
 - SG - Sand, Gravel and Rock Products
 - SGCP - Sand, Gravel and Rock Products Controlling Processing
 - CR - Rural Commercial
 - C2 - Neighborhood Commercial
 - C3 - Commercial
 - M2 - Light Industrial
 - PF - Public Facility
- UGB Township Range Parcels Surface Water
 City Limits Sections Roads

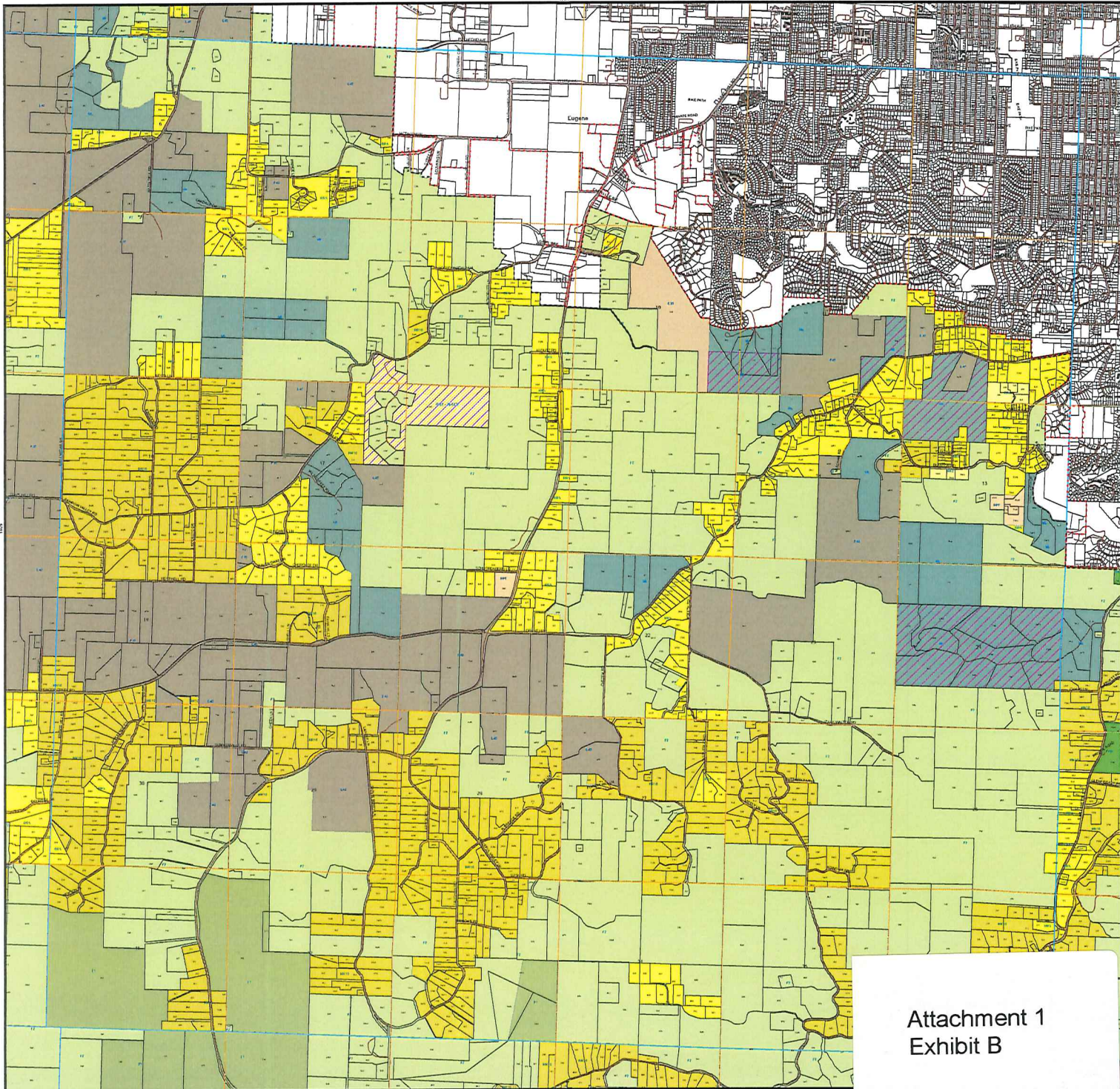
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Revision	Ordinance or Order Number	Date Effective	Planning Action Number	Revision Description
1	ORD.PA1246	July 11, 2008	NA	Map Adopted
2	ORD.PA06-6170	April 29, 2009	PA06-6170	PA06-6170
3	ORD.PA00-6018	Feb 20, 2001	PA00-6018	PA00-6018
4	ORD.PA 1284	Nov 1, 2013	509-PA 11-5500	PA11-5501
5	ORD.PA 1295	Nov 1, 2013	509-PA 11-5501	PA11-5502
6	ORD.PA 1296	Oct 15, 2013	509-PA 11-5502	PA11-5503
7	ORD.PA 954	Aug 3, 1988	PA 2781-91	PA 2781-91
8	ORD.PA 1320	March 15, 2016	509-PA14-05807	PA14-05807
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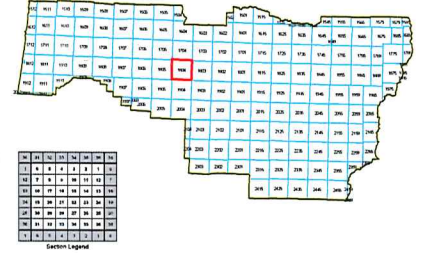


Attachment 1
Exhibit B

Official Lane County
Zoning Map



Township 18 South, Range 04 West



- Zoning**
- F1 - Non-Impacted Forest
 - F2 - Impacted Forest
 - CD5 - Exclusive Farm Use (25 acre minimum)
 - CD3 - Exclusive Farm Use (30 acre minimum)
 - CD4 - Exclusive Farm Use (40 acre minimum)
 - CD6 - Exclusive Farm Use (60 acre minimum)
 - ML - Marginal Lands
 - RC - Rural Commercial
 - RI - Rural Industrial
 - LI - Light Industrial
 - GI - General Industrial
 - RPF - Rural Public Facility
 - RR1 - Rural Residential (1 acre minimum)
 - RR2 - Rural Residential (2 acre minimum)
 - RR3RES - Non Resource (2 acre minimum)
 - RR5 - Rural Residential (5 acre minimum)
 - RR5RES - Non Resource (5 acre minimum)
 - RR10 - Rural Residential (10 acre minimum)
 - RR10RES - Non Resource (10 acre minimum)
 - PR - Park and Recreation
 - RPR - Rural Park and Recreation
 - AD - Airport Operations
 - CLWPA - Clear Lake Watershed Protection Area
 - NR - Natural Resource
 - NE - Natural Estuary
 - DR - Destination Resort
 - DM - Quarry and Mining Operations
 - GG - Sand, Gravel and Rock Products
 - GGCP - Sand, Gravel and Rock Products Containing Processing
 - CR - Rural Commercial
 - C2 - Neighborhood Commercial
 - CD - Commercial
 - MD - Light Industrial
 - PF - Public Facility
- Site Review
 City Limits
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 Roads
 Township Range
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ORIGINAL ADOPTING ORDINANCE NUMBER: ORD.PA1246

Revision	Ordinance or Order Number	Date Effective	Planning Action Number	Revision Description
1	ORD.PA1246	July 11, 2008	NA	Map Adopted
2	ORD.PA06-6170	April 29, 2009	PA06-6170	THE BOARD OF SUPERVISORS HAS REVIEWED AND APPROVED THE PROPOSED ZONING MAP FOR TOWNSHIP 18 SOUTH, RANGE 04 WEST.
3	ORD.PA00-6018	Feb 20, 2001	PA00-6018	THE BOARD OF SUPERVISORS HAS REVIEWED AND APPROVED THE PROPOSED ZONING MAP FOR TOWNSHIP 18 SOUTH, RANGE 04 WEST.
4	ORD.PA 1284	Nov 1, 2013	509-PA 11-5500	ORD. PA 11-5501
5	ORD.PA 1295	Nov 1, 2013	509-PA 11-5501	ORD. PA 11-5502
6	ORD.PA 1296	Oct 15, 2013	509-PA 11-5502	ORD. PA 11-5503
7	ORD.PA 954	Aug 3, 1988	PA 2781-91	
8	ORD.PA 1320	March 15, 2016	509-PA14-05807	
9				
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Attachment 1
Exhibit B

Proposed Lane County
Zoning Map

EXHIBIT _____
ORDINANCE NO. PA _____
FINDINGS OF FACT AND CONCLUSIONS OF LAW

I. PROPOSAL DESCRIPTION

A. Owner/Applicant: Gimpl Hill Properties, LLC.
PO Box 51505
Eugene, OR 97405

Agent: Michael Farthing
Attorney at Law
PO Box 10126
Eugene, OR 97440

B. Proposal

The Applicant seeks an amendment of the Lane County Rural Comprehensive Plan (RCP) Diagram to change the designation of 131.55 acres of land (“Subject Property”) from Forestry to Non-resource. The Applicant also seeks a concurrent rezone of that land from Impacted Forest Land (F2) to Rural Residential (RR5). The Applicant originally submitted an application to develop fourteen (14) new residential lots on the Subject Property. The Applicant has now modified the original application to provide for two new (2) forty (40)-acre residential lots plus the original homesite lot on approximately seven (7) acres. Attached as **Exhibit “A”** is copy of a revised tentative subdivision plan for the Subject Property which identifies the two (2) new forty (40) acre residential lots (Lots 11 and 12) and the one (1) homesite lot of approximately seven (7) acres (Lot 10) (collectively the “Residential Lots”). As described herein, of the remaining five (5) lots shown on the revised tentative subdivision plan, Lots 14-17 will be restricted to open space (collectively the “Open Space Lots”) and Lot 13 will be restricted to vineyard use (the “Vineyard Lot”).

All requests for RCP amendments to a Non-resource designation must comply with the RCP, Lane Code and the Statewide Planning Goals. Non-resource designations are explicitly authorized by both the RCP, Lane Code and by LCDC administrative rules that implement the Goals. Factually supported Non-resource designations are consistent with the essential principles of Oregon's land use system because they help preserve land that is actually resource land in large blocks and maintain the agricultural and forestry economy of the State. See ORS 215.243(2). Providing residential development on rural Non-resource lands helps relieve the pressure to convert quality resource land to urban uses at the fringes of cities and urban growth boundaries. To the extent that residential use can be made of rural Non-resource lands, there will be less demand to extend urban growth boundaries of cities onto quality resource lands.

LCDC rules define “resource land” and “non-resource land”. “Resource land” is any land within the definition of Goal 3 (Agricultural Land), Goal 4 (Forest Land), Goal 16 (Estuarine Resources), Goal 17 (Coastal Shorelands) or Goal 18 (Beaches and Dunes). See OAR 660-004-0005(2). “Non-resource land” is any land that is not within the definition of one of the

Goals listed above. See OAR 660-004-0005(3). The distinction between resource land and non-resource land has long been recognized by the Oregon Supreme Court.¹

RCP policies recognize that some rural lands are appropriately designated as Non-resource. RCP Goal 2, Policy 18 provides that lands that are not Agricultural or Forest Lands may be designated, in concert with other RCP policies, for rural residential use. RCP Goal 2, Policy 19 provides that lands that qualify for a Non-resource designation shall be zoned either RR-5 or RR-10.

We find that this application demonstrates that the Subject Property qualifies for a Non-resource designation and rural residential zoning consistent with all applicable State and County criteria.

II. SITE AND PLANNING PROFILE

A. Location and Neighborhood

The property that is the subject of this application (“the Subject Property”) contains 131 acres and is located southwest of Eugene on the south side of Gimpl Hill Road. It is approximately one (1) mile from the Eugene-Springfield Metropolitan Plan (“Metro Plan”) Urban Growth Boundary. The Subject Property is designated Forest and zoned F-2, Impacted Forest Land. The Subject Property is commonly identified as Tax Lot 2200, Lane County Assessor’s Map No. 18-04-17.

The Subject Property is currently Lot 10 of the existing VINEYARDS AT GIMPL HILL SUBDIVISION (“the Subdivision”) the final plat of which was recorded September 22, 2010, Recorder’s Reception No. 2010-047170 in Lane County Deeds and Records. See Exhibit “B”, Subdivision Final Plat. The Subdivision was authorized by a Ballot Measure 49 Final Order and Home Site Authorization (“M49 Order”) issued by the Department of Land Conservation and Development on May 15, 2009 (Election Number E129699). By reason of the M49 Order and subsequent final platting of the Subdivision, the Subject Property is a legal lot as defined by Lane Code.

The Subject Property is characterized by rolling, undulating hills with slopes ranging from 12% to 35%. The site ranges in topography from 600 feet to over 900 feet and gently slopes to the east into a small valley. There are numerous intermittent drainage-ways running through the property but no year-round Class I streams. There are no areas containing natural hazards or slides. There are no known geological problem areas, unstable subsurface conditions, groundwater or seepage areas, floodplain, inundation, erosion or any other dangerous or unstable conditions. The Subject Property is not on the National Wetlands Inventory.

There is a BPA power-line and roadway access easement that extends generally east-west through the northern edge of the Subject Property. These easements and the occupying power-lines and towers are relatively common in and around the foothills south of the Metro Area and

¹ See *Perkins v City of Rajneeshpuram*, 300 Or 1, 8 n 12, 706 P2d 949 (1985).

do not pose a risk or impediment to nearby residential development.

There is presently a private, paved road extending south from Gimpl Hill Road that provides access to all ten (10) lots that are platted as the subdivision. One house has been constructed and occupied. Other homes are under construction. The lots that will be created as a result of this plan amendment will use the same primary access and be located within the eastern portion of the Subject Property. The overall development will be subject to the existing declaration of covenants, conditions and restrictions (“CC&Rs”) and all will share in the maintenance of the private road system and other community facilities.

B. Application History

On October 28, 2015, the Applicant filed an application to redesignate the Subject Property from Forest to Non-resource and rezone the Subject Property from F-2 to RR5. The application was deemed incomplete on October 20, 2016 and that notice of incompleteness was supplemented by staff on October 28, 2016. The Applicants’ agent submitted additional information on December 30, 2016 and January 10, 2017 and thereafter the application was deemed complete.

The Lane County Planning Commission held a public hearing to consider the application on February 7, 2017, at which time they heard testimony from the Applicant’s representatives and considerable testimony from neighboring property owners and residents. In response to that testimony, the Planning Commission continued the public hearing to May 16, 2017, but limited it to testimony regarding groundwater quantity and quality. At the same time, the Planning Commission left the record open for any new evidence and responses thereto followed by the Applicant’s final argument on May 4, 2017. After the May 16 public hearing and closing of the record on May 30, the Planning Commission deliberated on July 18, 2017, and by a majority vote recommended that the Board of Commissioners deny the requested plan amendment and zone change. The majority of Commissioners cited concerns about groundwater quantity as the reason for the negative recommendation.

C. Organization, Summary, and Introduction

These findings are organized according to the different standards that apply. Whenever possible, in order to avoid repetition, reference is made back to the goal discussion when addressing the non-goal standards.

1. State and Local Law Authorize Resource Designations.

Goal 3 and the Goal 3 Rule define “Agricultural Land” and require that it be preserved for farm use. Goal 4 and the Goal 4 Rule define “Forest Lands,” and require it to be conserved, and allow it to be put to the limited range of uses stated in the Rule. Both types of lands are “resource lands.” As defined by LCDC, “Resource Land” is any land within the definition of Goal 3 (Agricultural Land), Goal 4 (Forest Land), Goal 16 (Estuarine Resources); Goal 17 (Coastal Shorelands); or Goal 18 (Beaches and Dunes). See OAR 660-004-0005(2). “Non-resource Land” is any land that is not within the definition of one of the goals listed above.

See OAR 660-004-0005(3). The distinction between Resource Land and Non-resource Land has been recognized by the Supreme Court.²

The Lane County Rural Comprehensive Plan Policies (“RCP”) recognize that some lands are appropriate for a Non-resource designation. The plan provisions generally track the authorization in the LCDC Rules. RCP Goal 2, Policy 18 says that lands that are not Agricultural or Forest Lands may be designated for rural residential use. This policy requires that other RCP policies be complied with, and it discourages applying the Non-resource designation to small, isolated tracts. RCP Goal 2, Policy 19 says that lands that qualify for a Non-resource designation shall be zoned either RR-5 or RR-10, based on consideration of a list of factors and other plan policies.

2. Lane County has Consistently Applied the Non-resource Designation to Lands that Meet the Test of Being Neither Agricultural or Forest Lands.

Lane County’s first Non-resource designation was made in 1981, prior to adoption of the current plan and code. The approval was for the McKenzie Ridge PUD on a 385-acre tract in the Camp Creek basin. It adopted zoning to allow 77 units at a 5-acre density. The County approval was appealed by neighbors and affirmed by LUBA.³

McKenzie Ridge was the first Non-resource designation in Lane County, and one of the first in the State as well. The comprehensive challenge mounted at LUBA to the County’s approval was a successful first road-test of the Non-resource theory. The application at issue here is for a much smaller tract of land than was at issue in McKenzie Ridge.

Since McKenzie Ridge, Lane County has approved at least 12 other requests for a Non-resource designation. It is worth noting those approvals here to demonstrate that the Non-resource theory is sound and can be successfully defended on appeal to LUBA or on review by the LCDC.

Most of the Non-resource designations in Lane County are listed and described in Table A, which follows. It shows that the County has consistently implemented the Non-resource designation where it is factually justified. Furthermore, on the whole, the County’s decisions have been acknowledged by the LCDC on review, and generally they have been upheld by LUBA on appeal in those rare occasions when appeals have been filed.

² See *Perkins v. City of Rajneeshpuram*, 300 Or 1, 8 n 12, 706 P2d 949 (1985).

³ See *Osborne v. Lane County*, 5 Or LUBA 172 (1982).

Table A – Non-resource Designations Approved by Lane County

Project File No./Order No	Location/Plan Plot	Year	Acres/ (Lots)	Zoning Density	Outcome of Appeal/Review
McKenzie Ridge CPR 1286	Camp Creek Plot 458	1981	385 ac (79)	5 acre	Affirmed; <i>Osborne v. Lane Co.</i> , 5 Or LUBA 172 (1982); Acknowledged, LCDC Order 84-ACK-201
B. Meltebeke PZC 83-031 CPR 513	Van Duyn Road 16-3-34 Plot 394	1983	400 ac (39)	10 acre	Acknowledged; LCDC Order 84-ACK-201
Agate Creek PUD PZC 82-190 CPR 499	18-02-28, TL 1200 Plot 463	1983	(16)	5 acre	Acknowledged; LCDC Order 84-ACK-201
Dillard Highlands CPR 100	18-03-28 Plot 382, 383`	1983	154 ac (24)	5 acre	Acknowledged; LCDC Order 84-ACK-201
Cerro Gordo CPR 1102	Dorena Reservoir Plot 464	1983	604 ac (60)	10 acre	Acknowledged; LCDC Order 84-ACK-201
Timberline PA 3192-85 Ord. PA 944	52 nd Street 18-04-13 TL 3802	1987	62 ac	5 acre	Remanded, <i>Holland v Lane Co.</i> , 16 Or LUBA 583 (1988)
Or Dunes Golf PA 2962-94 Ord. PA 1074	Munsel Lake Rd 18-12-23, TL-900 Plot 22	1995	40 ac	5 acre	Not appealed
Smith PA 327-96 Ord. PA 1087	Van Duyn Road 16-03-34, TL 107 Plot 394A	1996	20 ac	10 acre	Not appealed
Starr PA 3889-96 Ord. PA 1099	Van Duyn Road 16-03-34, TL 107 Plot 394A	1996	20 ac	10 acre	Not appealed
Cloud Nine PA 0532-97 Ord. PA 1100	Van Duyn Road 16-03-35, TL 102, 103 Plot 408	1997	108 ac (10)	10 acre	Not appealed
Welsh PA 1936-97 Ord. PA 1103	Dillard Road 18-03-16-03, TL 4500 18-03-21, TLS 100, 200 Plot 382	1998	150 ac	5 acre	Appeal dismissed; <i>LandWatch v. Lane Co.</i> , (LUBA No. 98-011, April 4, 1999), <i>aff'd w/o opinion</i> 154 Or App 729, 963 P2d 756 (1998)
R. Meltebeke PA 0096-98 Ord. PA 1119	Van Duyn Road 16-03-27, TL 400 16-03-34, TL 110 Plot 408	1998	40 ac	10 acre	Not appealed
Diamond Ridge PA Ord., PA	Van Duyn Road	2000	289 ac 27 lots	10 acre	Not appealed

The proposal now before the County is well within the range of tracts that have been approved in the past.

III. MORE SPACES COMPLIANCE WITH STATEWIDE PLANNING GOALS.

Amendments to local plans and code must comply with the Statewide Planning Goals

("the Goals"). ORS 197.175(2)(A). For individual applications like this, compliance with relevant Goals must be addressed by the County. This Part addresses each relevant Goal and explains why the proposal complies. This application requires no Goal exceptions.

Goal 1: Citizen Involvement

To ensure the opportunity for citizen involvement in all phases of the planning process.

Chapter Fourteen of the Lane Code provides for a notification and participation process for all quasi-judicial land use matters. Notices of public evidentiary hearings are required to be published in a newspaper of general circulation in the County in conformance with ORS 197.763. We find that by providing the notices required by State law and the Lane Code and the public evidentiary hearings before the Planning Commission and this Board, Lane County satisfies the requirements and intent of Goal 1.

Goal 2: Land Use Planning

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

Goal 2 establishes a land use planning process and policy framework as a basis for all land use decisions, and requires development of an adequate factual base to support those decisions. A minor change is one that does not have significant effects beyond the immediate area of change, and is based on special studies and information directed at the Subject Property. The justification for the specific change must be established by substantial evidence in support of the conclusion that the applicable criteria have been met.

We find that this application complies with Goal 2. The application has been processed pursuant to the requirements of the RCP, Lane Code and State statute. Application approval does not require that an exception be taken to any resource goal. By definition, "Non-resource land" is land that is not subject to Goals 3, 4, 16, 17 or 18. See OAR 660-04-0005(3).

Goal 3 and Goal 4: The Relationship Between Goals 3 and 4.

OAR 660-006-0015(2) states,

When lands satisfy the definition requirements of both agricultural land and forest land, an exception is not required to show why one resource designation is chosen over another. The plan need only document the factors that were used to select an agricultural, forest, agricultural/forest, or other appropriate designation.

The "agricultural land" designation and the "forest land" designation are both resource designations. The designations have equal weight and importance to the State of Oregon.

Goal 3: Agricultural Lands

To preserve and maintain agricultural lands. Agricultural lands shall be preserved and maintained for farm use, consistent with existing and future needs for agricultural products, forest and open space and with the State's agricultural land use policy expressed in ORS 215.243 and 215.700.

Goal 3 defines "Agricultural Land" as follows:

Agricultural Land -- in western Oregon is land of predominantly Class I, II, III and IV soils and in eastern Oregon is land of predominantly Class I, II, III, IV, V and VI soils as identified in the Soil Capability Classification System of the United States Soil Conservation Service, and other lands which are suitable for farm use taking into consideration soil fertility, suitability for grazing, climatic conditions, existing and future availability of water for farm irrigation purposes, existing land-use patterns, technological and energy inputs required, or accepted farming practices. Lands in other classes which are necessary to permit farm practices to be undertaken on adjacent or nearby lands, shall be included as agricultural land in any event.

More detailed soil data to define agricultural land may be utilized by local governments if such data permits achievement of this goal.

LCDC has elaborated on the definition of Agricultural Land in its rules. OAR 660-033-0020. There are four parts to the relevant definition in the rule. Each part of the definition is addressed separately here.

OAR 660-033-0020(1)(a): [Predominant Soil Types] "Agricultural Land" as defined in Goal 3 includes:

(A) Lands classified by the U.S. Soil Conservation Service (SCS) as predominantly Class I-IV soils in Western Oregon and I-VI soils in Eastern Oregon;

Goal 3 also allows published NRCS soils data to be refined by more detailed onsite evaluation. OAR 660-033-0030(6) provides that: "More detailed data on soil capability than is contained in the U.S. Natural Resources Conservation Service (NRCS) soil maps and soil surveys may be used to define agricultural land." The Applicant has retained the services of Cascade Earth Sciences (CES), and CES performed an assessment of the soils on the Subject Property.

In CES's report, dated May 9, 2014, CES provided a detailed soils assessment which described the distinctive geological, hydrological and topographical characteristics of the site as those related to the specific soils located in the Subject Property. CES's soils analysis was based

on four separate visits to the site by CES's principal soil scientist, Brian Rabe, who conducted over 100 spade and auger soil samplings. Based on this comprehensive examination, Mr. Rabe concluded that the soils within the Subject Property are predominantly (58.2%) Class VI Land Capability Classification and therefore fall within the criteria for the Non-resource land use designation.

Mr. Rabe's investigation refined the soils map, the map units and boundaries of the various soils within the site as mapped in the published soil survey. The soils assessment concluded that the soils within the Subject Property did meet the criteria for a Non-resource designation as defined by the Lane County Rural Comprehensive Plan ("the RCP"), by establishing that the Subject Property is predominantly composed of Class VI-VIII soils.

We adopt as findings in support of this conclusion the entire report of Mr. Rabe and Cascade Earth Science. Additionally, that report has been reviewed and approved by the Department of Land Conservation and Development ("DLCD") in accordance with OAR 660-033-0030. DLCD independently retained a third-party consulting soil scientist to review the CES report. The consulting soil scientist concurred with CES methodology, analysis and findings. Subsequently, DLCD released the report and sent it directly to Lane County pursuant to the regulations.

There is no need to repeat the findings and conclusions of the report as set forth in the CES soils analysis. They are clear and based upon an exhaustive, on-site investigation of the Subject Property by a highly qualified soil scientist. The conclusions and accompanying soil map unit summaries and boundary refinements demonstrate and establish that the Subject Property is not Agricultural Land as defined by Goal 3 because less than fifty percent (50%) of the Subject Property is in Class I-IV soil classifications.

OAR 660-033-0020(1)(a): [Other Suitable Lands]:

(B) Land in other soil classes that is suitable for farm use as defined in ORS 215.203(2)(a), taking into consideration soil fertility; suitability for grazing; climatic conditions; existing and future availability of water for farm irrigation purposes; existing land use patterns; technological and energy inputs required; and accepted farming practices;

This part of the definition focuses on lands which have predominantly nonagricultural soils like the Subject Property, and examines whether they are nevertheless suitable for farm use. A list of seven factors must be addressed. The suitability for farm use must consider the potential for use in conjunction with adjacent or nearby land.⁴

The history of farm use on the Subject Property is minimal. The long-time previous owner of the Subject Property, Dr. Wesley Haffner and his wife, lived in their home on the Subject Property. Dr. Haffner was a medical doctor with a family practice in Lane County for more than forty (40) years. He was also a "hobby" farmer breeding cows. Presently, the

⁴ See *DLCD v. Curry County*, 28 Or LUBA 205, 208-209 (1994) aff'd 132 Or App 393 (1995).

Applicant allows a local wine-maker to lease a few acres of land for one dollar (\$1.00) per year for a small vineyard near the subdivision entrance. The developer's motivation was to create a "south-of-France" vineyard theme, hence the subdivision name "The Vineyards at Gimpl Hill". The developer considered the vineyard as decorative landscaping for the subdivision. It has no economic significance or function other than as a marketing feature for The Vineyards at Gimpl Hill subdivision. The vineyard will be located on Lot 13 (the "Vineyard Lot") and a restrictive covenant to be recorded on the Vineyard Lot to restrict its use to a vineyard and related activities.

These seven factors were addressed in detail by Stephen Caruana, a qualified agronomist retained by the Applicant, in two separate reports that we hereby adopt as findings in support of the general conclusion that the Subject Property is not suitable for farm use considering all of the factors set forth in the rule and addressed by Mr. Caruana with regard to the Subject Property.

Soil Fertility: On whole, the CES Report establishes that the majority of the soils on the Subject Property are not capable of sustaining any viable or reasonable agricultural activity because of their specific characteristics (poorly drained, shallow, steep slopes). Mr. Caruana's reports confirm the unsuitability of the soils for commercial agricultural uses. This is why the prior owners of the property did not conduct any commercial agricultural activities on the property.

Suitability for grazing and other crops: The risk/reward situation relative to establishment of improved pasture on these soils is such that the efforts to establish improved pasture would be imprudent. This, together with the low level of feed naturally available, contribute to the unsuitability of the site for farm use. The inability to match livestock grazing to the period of maximum nutrient value of the forage available without being destructive to soil and plant resources, and the inability to use the area as a holding/feeding area for all of the wet season contribute to the lack of suitability for farm use.

Restrictions on the ability of a farm manager to exercise pasture maintenance practices on the property, such as mowing or burning, contribute to the lack of suitability of the property for farm use. Rapid depletion of soil water due to inherent soil characteristics severely limits forage production in the dry season, which also contributes to the lack of suitability for farm use. Lack of adequate drinking water for livestock during the dry season contributes substantially to the unsuitability of the Subject Property for farm use.

The actual grazing history of the property offers solid, practical substantiation for the evaluation of the soil scientist that the soils on the Subject Property are not suitable for farm use. The *SCS Lane County Soil Survey* lists no crops, other than forage, for the soil types generally present on the property. Cultivation and management of field crops and horticultural crops that require annual tillage or irrigation would not be feasible for these soil types. Mr. Caruana's reports provide a detailed analysis of the Subject Property's inability to sustain agricultural uses and practices.

Climatic Conditions: The average rainfall for properties in the Willamette Valley foothills is over 40 inches per year and falls primarily between November and April. These climatic conditions combined with the poor soil conditions create unsuitable conditions for

grazing. The site must be grazed either earlier in the spring when soils are too wet, causing damage to the forage plants and soil structure, or later in the spring when the land is drier but the plants have reached a stage of maturity that greatly reduces the nutritional value of the forage. Dry summers combined with these soils reduces the summer forage production to virtually nothing. If the ground were to be tilled to improve pasture, the soil types and slopes present would pose high risks of severe erosion due to fall rains. The interaction of climate and soil characteristics contributes to the unsuitability of this site for farm use.

Irrigation Water: No irrigation water exists. Existing wells on the Subject Property are “exempt” wells limited for residential use only.

Existing Land Use Patterns: The surrounding land use pattern is typical of the foothills of the southern edge of the City of Eugene. It is predominantly rural residential along Gimpl Hill Road both to the northeast and southwest of the Subject Property and consists of uncultivated and unmanaged pastures and small woodlots. There are no active farm activities on adjacent or nearby properties other than small gardens and livestock for personal use. Zoning is primarily Rural Residential and F2, Impacted Forest Land. There are larger, forested tracts located to the east and south of the Subject Property but these are located on land with better soil conditions, and less impacts from topography and drainage patterns.

Overall, the surrounding land use pattern is entirely compatible with the rural residential neighborhood that already exists and the minimal development that will be allowed with the approval of this plan amendment. That development pattern extends both east and west of the Subject Property along Gimpl Hill Road.

Technology and Energy Inputs Required: Interaction of soil and climatic conditions contribute heavily to this site being nonagricultural. The very wet Fall, Winter, and Spring and the dry Summer months are givens. The clay texture of most of the soils, the slow permeability on all of the site, the cobbles and rocks on most of the site, and the slopes on much of the site are also givens that cannot be changed. Together, as discussed above, these conditions severely limit grazing potential.

Those areas of the entire site that have the better soils, in comparative terms, cannot be practically fenced for more intensive farm management because the better soils appear in a number of small areas, and these areas themselves are punctuated by areas of nonagricultural soils. Furthermore, the areas with the better soil ratings are entirely composed of the Dixonville-Philomath-Hazelair complex, which itself is a mix of agricultural and nonagricultural soils. The use of fencing on this site would not help overcome the limitations inherent in this soil complex.

The individual and combined effects of soil conditions and climatic conditions are such that no practical application of energy and technology can be expected to overcome the limitations inherent in the soils. Their application would not make the site suitable for farm use. Furthermore, the property is already developed with residences and residential accessory structures and uses, limiting agricultural usefulness.

Accepted Farm Practices: Based upon the CES soil report and the findings set forth previously which establish that the Subject Property is not otherwise “suitable for farm use”, it is

reasonable to conclude that viable and on-going agricultural uses do not exist in the vicinity of the Subject Property. While there are small farm uses in the general vicinity of the Subject Property, including the small vineyard maintained on a small portion of the Subject Property, these uses are isolated, site specific and very dependent on pockets of better soils. They are maintained almost exclusively by the residents of the individual sites. They do not represent the predominant land use pattern in the area and are highly dependent on intensive management practices that are not financially feasible. In the case of the Subject Property, the existing vineyard is only made possible because a nominal rent of one dollar (\$1.00) per year is charged to the operator.

Overall, the Subject Property is not land that is suitable for farm use considering the above-discussed factors. Such use would be impractical, inefficient and economically not possible.

OAR 660-033-0020(1)(a)(C):

Land that is necessary to permit farm practices to be undertaken on adjacent or nearby agricultural lands.

There is a small (less than one acre) backyard vineyard located on the property next door. It was planted years before planting the vineyard on the Subject property and without any connection or link to the Subject Property at the time of planting. More to the point of the regulation, there is no part of the Subject Property that is “necessary for farm practices to be undertaken” on any adjacent or nearby lands. Otherwise there are no adjacent or nearby agricultural lands or uses.

OAR 660-033-0020(1)(b): [Farm unit test]:

Land in capability classes other than I-IV/I-VI that is adjacent to or intermingled with lands in capability classes I-VI/I-VI within a farm unit, shall be inventoried as agricultural lands even though this land may not be cropped or grazed;

This part of the test focuses on lands, such as the Subject Property, which are predominantly nonagricultural soils, and inquires into whether they are adjacent to or intermingled with better lands within a “farm unit.” It is commonly called the “farm unit” test. If the Subject Property is not a part of a “farm unit”, then this test does not apply.

The term “farm unit” is not defined in any statute, goal, or rule. The term first appeared in the LCDC Goal 3 Policy Paper. That policy paper became the basis for the first Goal 3 Rule adopted in 1982.⁵ The most generous reading of the “farm unit” term would include: (1) all lands in same ownership, and (2) lands in different ownership that are jointly managed for farm use. If the Subject Property is not either owned or managed together with other land in farm use, then it is not part of farm unit, and the farm unit test does not apply.

⁵ The first Goal 3 Rule appeared in OAR 660-05(1982). See reference to “farm unit” from the original codification in *DLCD v Coos County*, 117 Or App 400, 844 P2d 907 (1992). review denied (1993). It now appears in OAR 660-033-0020(1)(b).

The Subject Property is not adjacent to any other land in the same ownership. It is not jointly managed for farm use with any adjacent land. The Applicant does not manage, maintain or otherwise have anything to do with any farm operation.

There is not presently nor has there ever been a "farm unit" that includes any portion of the Subject Property. The presence of the vineyards is the result of the Applicant's desire to establish a theme for the subdivision. The vineyards on the Subject Property will remain, not as a "farm unit", but rather as a unique circumstance in which a small portion of a generally unproductive parcel can be maintained as a vineyards/landscaping feature solely because the land costs for the vineyards are subsidized by the Applicant. In fact, this is the type of arrangement that should be encouraged with Non-resource and Marginal Lands that otherwise are not commercially viable. This has been an arrangement of convenience. It does not create "agricultural land" or a "farm unit" where it does not exist. Mr. Caruana's reports confirm this fact.

From a land use perspective, an otherwise generally non-productive, generally poor quality property can be used efficiently for rural residential homesites and, at the same time, the only area of the Subject Property that can be used for agricultural purposes is put to use as a small vineyard. It is important to consider the entire property. *DLCD v Curry County*, 33 Or LUBA 728 (1997).

As noted previously, the Phase I residential development is and continues to be the stimulus for the reciprocal arrangement that resulted in vineyards being planted on the Subject Property. In other words, the plan amendment can be approved in compliance with all applicable standards, including Goal 3 and the definition of "agricultural lands" while, at the same time, a vineyard use can be maintained (with help from the Applicant) on the small portion of the Subject Property that may be suited for limited agricultural use.

This situation is out of the ordinary but it works and, most importantly, does not affect good or prime agricultural land. Further, both such uses of the Subject Property are entirely consistent with the Goals and applicable criteria.

OAR 660-033-0020(2): when a jurisdiction determines the predominant soil capability classification of a lot or parcel it need only look to the land within the lot or parcel being inventoried. However, whether land is "suitable for farm use" requires an inquiry into factors beyond the mere identification of scientific soil classifications. The factors are listed in the definition of agricultural land set forth at OAR 660-033-0020(1)(a)(B). This inquiry requires the consideration of conditions existing outside the lot or parcel being inventoried. Even if a lot or parcel is not predominantly Class I-VI soils or suitable for farm use, Goal nonetheless defines as agricultural "Lands in other classes which are necessary to permit farm practices to be undertaken on adjacent or nearby lands." A determination that a lot or parcel is not agricultural land requires findings supported by substantial evidence that addresses each of the factors set forth in 660-033-0020(1).

Mr. Caruana's Report addressed each of the factors set forth in OAR 660-033-0020(1)(a)(B) and concludes the "property is unsuited for commercial agricultural enterprises",

even with a high level of management. The Subject Property is not suitable for farm use as that term is defined in the statute and Goal 3.

In the previous discussion under OAR 660-033-0020(1)(a)(C), it was pointed out that there are no adjacent or nearby lands that require or need the Subject Property in order to permit farm practices to be undertaken. In fact, there are no adjacent farm uses other than the small (less than one acre) vineyard next door which has only a nominal farm use. Otherwise, the surrounding area is either forested or has neighborhoods of rural residential development. The general neighborhood is not a farming area due to the poor soils and topography.

OAR 660-033-0020(3): Goal 3 attaches no significance to the ownership of a lot or parcel when determining whether it is agricultural land. Nearby or adjacent land, regardless of ownership, shall be examined to the extent that a lot or parcel is either “suitable for farm use” or “necessary to permit farm practices to be undertaken on adjacent or nearby lands” outside the lot or parcel.

To repeat, other than the small (less than one acre) “farm use” next door, there are no adjacent or nearby farm uses. It is a hilly, partially forested area in the foothills surrounding Eugene and poorly suited for farming. It is not a farming area.

Therefore, based on the evidence, including but not limited to that submitted by the Applicant, the CES Soils Assessment and the reports and testimony from Stephen Caruana, we conclude the Subject Property is not agricultural land as defined by statute and regulation and is not otherwise suitable for farm use. Based on these findings, we further conclude the Subject Property is Non-resource land as defined by the RCP and does not require an exception to Goal.

Goal 4: Forest Lands

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

Forest lands are those lands acknowledged as forest lands as of the date of adoption of this goal amendment. Where a plan is not acknowledged or a plan amendment involving forest lands is proposed, forest land shall include lands which are suitable for commercial forest uses including adjacent or nearby lands which are necessary to permit forest operations or practices and other forested lands that maintain soil, air, water and fish and wildlife resources.

Goal 4 defines “Forest Lands.” Because this application requests a plan amendment, the second paragraph of Goal 4 contains the operable definition of that term. The

definition contains three parts: (1) Lands suitable for commercial forest uses; (2) adjacent and nearby lands necessary to permit forest operations or practices; and (3) other forested lands that maintain certain natural resources. Each part of the definition is addressed below.

(1) [F]orest land shall include lands which are suitable for commercial forest uses

“Commercial forest uses” is not defined in any statute, goal or rule. Lane County has adopted a definition for “commercial forest land.” That definition is found in the Forest Lands Working Paper of the RCP. Lane County defines “commercial forest land” as land capable of producing crops of industrial wood in excess of 50 cubic feet per acre of annual growth.

The County's definition of commercial forest land was acknowledged by LCDC in 1984. The definition was adopted during the 1984 LCDC Acknowledgment of Compliance process for the Lane County RCP. In response to Lane County's request for LCDC acknowledgment of the RCP, LCDC required certain amendments to the Lane County RCP Forest Lands Working Paper of 1982 and the Addendum to Working Paper of 1983. One of the requirements was for the County to “Amend the Forest Working Paper Appendix 1—Lane County Forest Soils—to include “all commercial forest soils” in a manner consistent with an appropriate definition of commercial forest lands.” On August 9, 1984, in Ordinance No. PA 889 (In the Matter of Amending Ordinance No. PA 883 Entitled the Lane County General Plan Policies, an Element of the Lane County Rural Comprehensive Plan, And Adopting a Savings and Severability Clause) Lane County amended the Forest Land Working Paper to include the current definition of “commercial forest land.” Lane County adopted additional findings in support of Ordinance No. PA 889 in Order 84-9-12-3 and Order 84-9-12-4.

In the September 13, 1984, Acknowledgment of Compliance, LCDC noted that Lane County had amended its definition of “commercial forest land” to be 50 cubic feet per acre per year and concluded that the County had satisfied the previously-stated requirement of amending the Forest Land Working Paper. LCDC concluded that Lane County, following its adoption of the required amendments, complied with Goal 4 .

Commercial forest types of trees include Douglas fir, hemlock, spruce, cedar, other conifers and deciduous trees. This was recognized by LUBA in *Holland v. Lane County*, 16 Or LUBA (1988). LUBA summarized the relevant provisions of the acknowledged Lane County RCP as follows:

“The county's decision concludes that the subject property is not suitable for commercial forest use ‘because the majority of the soils do not qualify as Commercial Forest Land.’

The county adopted the following definition of “commercial forest land” as part of its “Working Paper: Forest Lands; March, 1982” (Forest Lands Paper) and “Addendum to Working Paper: Forest Lands; November, 1983” (Forest Lands Addendum) documents:

‘Commercial’ forest land [is] land capable of producing

crops of industrial wood in excess of 50 cubic feet per acre of annual growth.'

Ordinance No. 889, Ex. C. The Forest Lands Paper, at 10, contains an inventory of 'Acres of Commercial Forest Land by Cubic Foot Site Class, Forest Type and Ownership'. This table recognizes the following commercial forest types - 'Douglas fir, hemlock/cedar/spruce, other conifers and deciduous'."

16 Or LUBA at 586 [footnotes omitted].

The Applicant retained the services of Marc E. Setchko, Consulting Forester, to evaluate the commercial timber productivity of the Subject Property. Mr. Setchko, with both professional credentials and 27 years of experience, is highly qualified to render analysis and conclusions regarding commercial timber productivity of land.

In his Forest Productivity Analysis of the Subject Property, Mr. Setchko concluded that the Subject Property will not support a merchantable stand of timber, of sufficient production capability, to meet or exceed the County's definition of commercial forest land which is land that is capable of producing industrial timber crops in excess of 50 cubic feet per acre per year.

Specifically, Mr. Setchko found that even assuming the most optimistic realization of growth, the Subject Property is capable of producing only 43.38 cubic feet of merchantable timber volume per acre per year. In his analysis, Mr. Setchko summarized the site's poor timber growing conditions:

"... The majority of the parcel has a southern exposure. Large portions of the parcel are grassland, with thin soils and exposed rock."

Later, he continues:

"... The predominance of poor soils, rocky conditions and shallow effective rooting depths, combined with a southern exposure over most of the parcel, tree growth is slow."

He concludes that based on these site conditions, 51.8 acres of the site is nonstockable. He also determined that because of an existing road and a BPA powerline, another 2.56 acres was nonstockable. Therefore, a total of 56.97 acres is nonstockable and was deducted from the acreage considered for his productivity analysis.

We find Mr. Setchko's analysis to be thorough, complete and consistent with the County's policies and definitions for determining what is "commercial forest land". Mr. Setchko provides a consistent consideration in his calculations: the environmental conditions existing on the Subject Property are not conducive to tree growth.

Based on this analysis, we conclude the Subject Property is not "commercial forest lands" and is

not suitable for commercial forest uses and that, for the purposes of this part of Goal 4, the Subject Property is not forest land.

(2) [A]djacent or nearby lands which are necessary to permit forest operations or practices.

Although there are large parcels that adjoin the Subject Property on the east and south that are forested and actively managed as commercial forest operations, there is no evidence that indicates or even suggests that the Subject Property is necessary for the maintenance of those forest operations. Those lands are oriented toward Bailey Hill Road and there is little, if any, physical interaction between those areas and the Subject Property. They also have much different physical characteristics that make them suitable for forest production. With the modification to the application, there will be only two additional lots, each forty (40) acres created in the eastern extension of the Subject Property and these will be entirely compatible with the adjacent forest uses.

(3) [O]ther forested lands that maintain soil, air, water and fish and wildlife resources.

Based on Mr. Setchko's report and the exhaustive field survey conducted by CES for its soil assessment analysis, we conclude that the Subject Property is not predominantly "forested lands" which this test establishes as the baseline for its application to a particular site. There are, at best, isolated areas that contain evergreen trees but even these areas are constrained and limited by shallow soils, steep slopes and wet conditions.

Beyond this basic test, the identified resources of this criterion (soil, air, water and fish and wildlife resources) are either not present or are not relevant or unique to the Subject Property under this section of the rule. No permanent water feature or fish habitat exists on the property. The soils within the site have been discussed previously as to their unsuitability for forest growth. There is no evidence of any kind of wildlife population most likely because of the extensive rural residential developments that border the property. That same development further demonstrates that air resources will not be affected if this amendment is approved.

Therefore, based on the evidence submitted by the Applicant including, but not limited to the June 10, 2014 report from Marc Setchko, Certified Forester and the CES Soil Assessment, we conclude the Subject Property is not forest land as defined by statute or regulation nor is the Subject Property necessary to permit forest practices or to maintain soil, air, water and 'fish and wildlife resources on adjacent or nearby lands. Based on these findings and conclusions, we further conclude the Subject Property is Non-resource Land as defined by the RCP and does not require an exception to Goal 3.

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

To protect natural resources and conserve scenic and historic areas and open spaces.

A. Goal 5 ESEE Analysis is Required

The Applicant has proposed a Zone Change and Comprehensive Plan amendment for the Subject Property. As part of that application, the Lane County Code criteria requires with all applicable statewide planning goals including compliance with Statewide Planning Goal Five.

Goal Five requires Lane County to inventory the locations, quantity and quality of specific natural resources. Where no conflicting use with the identified Goal Five resource is identified, the County is directed to preserve the resource. Where conflicting use(s) are identified, Goal Five requires that the Economic, Social, Environmental and Energy (ESEE) consequences of the conflicting use be determined and programs developed to achieve the goal of conserving and protecting natural and scenic (Goal 5) resources

Goal 5, implemented by the Goal 5 Rule adopted by the LCDC in 1996 appears in OAR Chapter 660, Division 23: Procedures and Requirements for complying with Goal 5. The rule applies to "Post Acknowledgment Plan Amendments", hereinafter "PAPAS" such as the change to the acknowledged Lane County Rural Comprehensive Plan and zoning map proposed by the Applicant.

When undertaking a PAPA, the local government is obliged to perform a Goal Five analysis for any Goal Five resources that are present on site, provided a conflicting use is proposed. OAR 660-023-00250(3) provides:

- "(3) Local governments are not required to apply Goal 5 in consideration of a PAPA unless the PAPA affects a Goal 5 resource. For purposes of this section, a PAPA would affect a Goal 5 Resource only if:
 - (b) The PAPA allows new uses that could be conflicting uses with a particular significant Goal 5 resource site on an acknowledged resource list"

This proposal to amend the Rural Comprehensive plan proposes uses that conflict with acknowledged Goal 5 resources. As such, Lane County is required to undertake an ESEE analysis for each identified conflict resulting from the PAPA.

B. What Goal 5 Requires

Goal Five requires an ESEE conflicts analysis when a use is proposed that may conflict with an inventoried Goal Five resource.

The steps for performing the ESEE analysis are laid out in OAR 660-023-0040. The provisions of 660-023-0040 explain that there are four steps in the ESEE process and that a jurisdiction has discretion as to how to complete each step. Each step must be completed and the ESEE analysis need not be lengthy or complex in order to satisfy the requirements of Goal Five. While the analysis need not be lengthy or complex, the analysis should provide a clear understanding of the conflicts and consequences of allowing or prohibiting the proposed use.

The four steps in the ESEE process are as set forth in OAR 660-023-0040(1) which provides:

“Local governments shall develop a program to achieve Goal 5 for all significant resource sites based on an analysis of the economic, social, environmental and energy (ESEE) consequences that could result from a decision to allow, limit or prohibit a conflicting use The analysis need not be lengthy or complex, but should enable the reviewers to get a clear idea of the conflicts and consequences to be expected. The steps in the standard ESEE process are as follows:

- (a) Identify conflicting uses;
- (b) Determine the impact area;
- (c) Analyze the ESEE consequences; and
- (d) Develop a Program to Achieve Goal 5.”

This analysis satisfies these requirements.

C. Inventoried and Acknowledged Goal 5 Resources on the Subject Property

In order to perform the required analysis, the Applicant must first identify what Goal Five resources are present on the Subject Property. Consistent with the applicability provisions in OAR 660-023-0250, the Goal 5 process shall be applied only for those Goal 5 resources inventoried in an acknowledged plan and that are present on the Subject Property. The following portion of this ESEE analysis identifies Goal 5 resources present on the Subject Property.

Historic Resources: The Lane County has an acknowledged list of Goal Five historic resources. The Subject Property does not appear on that list. There is no conflict.

Mineral and Aggregate Resources: The significant Mineral and Aggregate sites are listed in several appendices in the Mineral and Aggregate Working Paper. The Subject Property is not listed. There is no conflict.

Energy: The Subject Property is not listed on any inventory of sites designated for protection for the purposes of energy production.

Water Resources: The *Water Resources Working Paper* inventories county wide water resources. The water resource present on this site is groundwater. The plan identifies two potential conflicts with this resource. The first conflict is residential development in groundwater quantity limited aquifers and the second is residential development in groundwater quality limited areas.

The Subject Property is located in an area of the County that is mapped as groundwater quantity limited and is also located in a groundwater quality limited area. The PAPA will make residential uses in these areas more likely. The Applicant resolves both conflicts by following the County process identified and set forth for the resolution of those conflicts.

Riparian Resources: The Flora and Fauna Working Paper and Addendum inventories

riparian resources. Riparian areas are inventoried to include all land within one hundred feet of the banks of a Class I stream. There are no Class I streams on the Subject Property and no riparian resources.

Wetland Resources: At the time the *Working Paper: Flora and Fauna* was prepared, the United States Fish and Wildlife Service had not completed its National Wetlands Inventory (“NWI”) mapping for the entire county. As a result, the Lane County wetlands inventory was limited to five major wetlands areas, none of which include the Subject Property. Consideration of adding other wetland areas to the inventory was deferred by the County to a later date following completion of the NWI mapping.

The NWI mapping for Lane County is completed and it shows three distinct wetland features on the Subject Property:

Feature one: Area classified as PUFh. (Palustrine, Unconsolidated Bottom, Diked-impounded, Semi-Permanently Flooded)

Feature two: Area classified as PUBHh. (Paustrine, Unconsolidated Bottom, Diked-Impounded, Permanently Flooded)

Feature three: Area classified as R4SBC. (Riverine, Intermittent, Streambed, Seasonally-flooded)

In addition, there are wetlands that have been identified and mapped in a report prepared by GeoSources. The Applicant has designed a preliminary subdivision plan that locates building and improvement sites to avoid completely these identified wetlands. We conclude that the Applicant is committed to development of the property without any disturbance to wetlands but further acknowledges that any disturbance that might occur will require permits from appropriate Federal, State and County authorities. Based on these findings, we conclude that adequate protection of life and property from natural hazards has been provided.

Despite the presence of mapped wetland features, the application complies with Goal Five as addressed *infra*.

Sensitive Fish and Waterfowl Areas: The inventory of these sites appears in the *Working Paper: Flora and Fauna*, addendum at pages 1-4. The Subject Property is not included on this inventory.

Natural Areas: The inventory of these sites appears in the *Working Paper: Flora and Fauna*, at 26-32. The Subject Property is not included in the inventory.

Big Game Range: The inventory of this Goal Five resource divides the entire county into three categories of Big Game Range using the ODFW classifications: Major, Peripheral and Impacted. ODFW defines Big Game Range generally as “[a] geographic area occupied by deer, elk, cougar, black bear, mountain sheep, mountain goat, moose, silver gray squirrel or antelope, often on a seasonal basis.” OAR 635-405-0005 (5). The Subject Property appears in the County inventory as Peripheral Big Game Range.

Major Big Game Range “*supports the majority of big game,*” (emphasis supplied) generally on sparsely developed commercial forest land.” *See Working Paper: Flora and Fauna* at 23. “Peripheral Big Game Range generally is in the foothills area” between commercial forest land and the valley floors. *Id.* “Peripheral Range supports substantial big game populations but has existing levels of development that limits big game use and management options. *Id.* Impacted Big Game Range is other areas that “have existing levels of land use which preclude future wildlife management options.” *Id.* “Impacted Big Game Range has essentially been ‘written off’ for big game management.” *Id.* at 24.

The ODFW’s Big Game maps in the plan are generalized. All lands in the county that are committed to Non-resource use, (zoned for Rural Residential use) are considered “Impacted” for the purposes of Big Game, which means that they have been written off for the purposes of big game habitat value and conflicting uses are fully allowed without consideration of the ESEE consequences to big game. *Id.*

For the remaining Big Game Ranges, (Major and Peripheral) the County uses the ODFW’s recommended residential densities as the standard for identifying conflicts. *Id.* The primary conflict with big game is residential use at or above certain densities. The density at which this conflict occurs is dependent upon the Big Game range classification. ODFW has recommended overall residential densities for avoiding conflict in Peripheral Big Game Range as one dwelling unit per 40 acres; and for Major Big Game Range at one dwelling per 80 acres.

The Big Game maps classify the Subject Property as Peripheral Big Game Range. The Applicant has proposed a zoning district that could theoretically result in a density of one dwelling unit per 5 acres. However, the Applicant’s revised development plan limits residential development to 2 additional Residential Lots (Lots 11 and 12) that are each forty (40) acres in size which establishes the overall density of the Subject Property at full development to be less than ODFW’s 40-acre minimum (three Residential Lots on 131 acres).

Thus, there is no conflict with an inventoried Goal Five resource and the County does not need to undertake a Goal Five analysis for Big Game as part of this PAPA application.

D. ESEE Decision Process for Inventoried Goal 5 Resources.

The basic requirements for carrying out a conflicts analysis and developing a program for inventoried and acknowledged resources are set forth in OAR 660-023-0040. The introductory provisions of that rule explain that there are four steps in the ESEE process and further clarify that the County has discretion how it proceeds with these steps as long as each step is completed.

A Goal Five conflicts analysis need be neither lengthy nor complex. The end result of the analysis should create a clear understanding of the consequences of allowing or prohibiting the proposed use demonstrating that the jurisdiction considered and resolved the conflict.

The four steps set forth in OAR 660-023-0040 are:

- (a) Identify conflicting uses;
- (b) Determine the impact area;

- (c) Analyze the ESEE consequences; and
- (d) Develop a program to achieve Goal 5.

The Goal 5 rule provides additional instructions on how to conduct each of the four steps listed above. The approach in this document shall be to address each of the Goal 5 resources inventoried on the site in the acknowledged plan and to conduct the required four step analysis consistent with the requirements of the administrative rule.

The Applicant has identified two conflicts with inventoried Goal Five resources and has performed an ESEE and or/resolved the conflict for each of the identified conflicts.

E. Analysis Demonstrating Compliance with Goal

1. ESEE Analysis for Groundwater Resources

The acknowledged County plan identifies groundwater as a Goal 5 resource. See Water Resources Working Paper (1982) at 10. The Working Paper identifies groundwater as “extremely valuable as a direct resource of drinking water for individuals and communities, a source of irrigation water for livestock and crops, and as a base source of water for lakes and streams.” *Id.* Similar to Big Game Range, the plan inventories this resource as being present throughout the county.

The plan maps the quantity of groundwater into five categories reflecting the different geographic regions of the county. The working paper also notes that groundwater quality is limited by natural and human induced factors.

Groundwater will be the source of one hundred percent of the domestic supply of water to the development. With the modified development, this means that only one (1) additional domestic well (on Lot 11) will be required. There is an existing well on Lot 12 (producing approximately fourteen (14) gallons per minute) and Lot 10 will be served by the subdivision’s existing community water system.

(a) Identify Conflicting Uses

The Water Resources Working paper identifies two groundwater resource conflicts: development in *groundwater quantity limited areas* and development in *groundwater quality limited areas*. An ESEE analysis as per administrative rule regarding Goal 5 is presented by the county for each of these conflicts. *Id.* The county plan conducts a full ESEE analysis for residential development in water quantity and water quality limited aquifers and Lane County has adopted a program that resolves the conflict and achieves the goal, protecting both groundwater quantity and quality.

With respect to quantity, the plan resolves that residential development and other uses requiring groundwater should be allowed if a showing is made that water will be available for the foreseeable future. The program calls for strengthening the standards in the subdivision ordinance and for formally designating groundwater quantity limited areas in order to achieve Goal 5.

Groundwater quantity limited areas have been formally designated and the land division provisions in the zoning code have been amended accordingly. *Id.* at 12-13. The County has resolved its overall groundwater conflict by adopting ordinances requiring certain showings when development is proposed in a groundwater quality limited area.

The Applicant resolves any Goal Five conflict with groundwater quantity resources by demonstrating compliance with the applicable standards that have been adopted in the code specifically for the purpose of resolving the Goal Five groundwater quantity conflict on individual development sites.

The Lane Code sets out standards for demonstrating adequate quantities of potable water in connection with rezoning would that create the potential for land division. See LC 13.050(13)(a-d). Compliance with these standards constitutes compliance with Goal 5 where a groundwater conflict has been identified, thereby avoiding/resolving any conflict with the Goal 5 resource and allowing for the development.

Certain sections in the County have been identified in the Lane Manual as having limited groundwater quantity. See Lane Manual, as referenced in LC 13.050(13)(c)(i). The Subject Property is located in an area identified as having groundwater limited quantity. The Goal Five conflict is resolved by meeting the standards set forth in the Lane Development Code for development in these areas of limited groundwater quantity.

The plan identifies a second conflict related to groundwater, development in areas of groundwater limited quality. With respect to groundwater quality, the plan identifies the conflict as [d]evelopment in an aquifer limited in quality by arsenic, salt, iron, sulfur, landfill leachate or sewage. *Id.* at 13. It resolves the conflict by allowing the potential for development in water quality limited areas but ensuring that information about the nature and extent of the quality limitations is recorded and provided to landowners. *Id.* at 14-15. The Subject Property is located in an area identified as having limited groundwater quality.

The obligation is to identify potential conflicting uses, uses allowed outright or conditionally under the proposed zoning that would conflict with a significant Goal 5 resource. The County plan has identified the scope of the required comparison. The uses allowed by the PAPA are low density residential uses.

According to the *Water Resources Working Paper, (1982)*, the allowed use conflicts if it is proposed in an area identified as having limited groundwater quality or quantity. The Subject Property, the impact area for the purposes of the rule, is identified in the plan and implementing regulations as being in both a groundwater quantity and a groundwater quality limited area. As such, the proposed zoning results in a conflicting use with regard to groundwater quantity and a conflict with regard to groundwater quality.

LC 13.050(13)(c)(i) provides that there is no requirement to provide aquifer tests for proposed lots greater than twenty (20) acres in size. This means that the Applicant must demonstrate that each new residential lot has an adequate supply of potable water. LC 13.050(b). With respect to Lot 10, under the approved Measure 49 application, it was approved to take water from the subdivision's existing community water system.

Notwithstanding that Lot 10 was previously approved under the Measure 49 subdivision approval to take water from the Subdivision's community water system, the Applicant included the groundwater aquifer test submitted with the previously approved Measure 37 (later Measure 49) application for thirty-three (33) lots to determine whether it was adequate to support the residential density proposed by that application. Numerous wells were drilled and tested. These tests were analyzed by EGR and associates who performed an aquifer study on the Subject Property. That analysis determined that the potential dwellings proposed initially would withdraw far less water from the aquifer than water that is recharged to the aquifer on an annual basis. Therefore, EGR concluded that a domestic water supply would be available for the foreseeable future and the Goal Five conflict was resolved in favor of allowing the proposed use. The EGR analysis was used to support the Measure 49 application for ten (10) residential lots and Applicant's initial application to rezone the Subject Property to RR-5 for fourteen (14) additional lots.

Now with the modified plan that limits the development to two additional forty (40) acre residential lots, the EGR Report, while not required under LC 13.050(13)(c)(i), provides substantial additional evidence that the Subject Property has sufficient groundwater resources to support ample water for the Residential Lots. This study supports a finding that the residential development will not be a conflicting use in terms of groundwater resources. The results of the study are analyzed in greater detail infra.

(b) Compliance with Acknowledged Plans and Implementing Regulations

Under the Goal, when no conflicting uses are identified with a significant resource site, compliance with the acknowledged policies and land use regulations is sufficient to constitute compliance with Goal five:

“[I]f no uses conflict with a significant resource site, acknowledged policies and land use regulations may be considered sufficient to protect the resource site.” OAR 660-023-0040(2)(a).

In the instant matter, conflicts to groundwater quality and quantity have been identified and the Applicant must take additional steps to resolve the conflict in favor of the proposed use. Compliance with the following policies and ordinances is the program developed by Lane County achieving the goal of protecting groundwater resources where a conflict has been identified.

Rural Plan Policies, Water Resources Policy 3 makes adequacy of groundwater supply a major issue in plan amendments and zone changes. Water Resources Policy 5, also applicable, requires new land use designations to be commensurate with aquifer capabilities. Lane Code 16.004(4) requires that any rezoning that will allow more [increased] parcelization be preceded by proof of long term water supply as per LC 13.050(13)(a-d). That ordinance, in applicable part, provides that in areas of the County having limited quantity or quality, the Applicant must demonstrate sufficient potable water.

The Applicant commissioned the aquifer test performed by EGR as part of Phase 1 of the development. The purpose of that study was to comply with all plan policies, ordinances and procedures related to groundwater availability and suitability in groundwater quantity and

quality limited areas and to demonstrate adequate potable water to support a 33-lot development as proposed in the initial application. Approval of this application will ultimately result in two (2) additional Residential Lots, in addition to the ten (10) residential lots approved in phase 1. The Open Spaces Lots are permanently preserved as open space and development of residences shall be prohibited on these parcels. Therefore, the availability of water for those parcels is not at issue. Development of a residence will also be prohibited on The Vineyard Lot and there is no water right associated with a farm use on this lot.

The EGR study found there was sufficient potable on-site water to support 33 proposed residences. This is greater than the number of residences proposed by the Applicant for the entirety of the property inclusive of this PAPA application. Based on Lot 10 taking water from the community water system as previously approved under the Measure 49 applications and Lots 11 and 12 each being over twenty (20) acres in size, we conclude that Lane Code 13.050(13)(c)(i) is no longer applicable.

Additionally, we conclude that even if LC 13.050(13)(c)(i) did apply, the content, findings and text of the EGR study clearly supports the Applicant's proposed development since it is now only proposing two (2) additional residential Lots. The Applicant has proven the proposed zoning is commensurate with the groundwater aquifer capability. The Applicant has established that the aquifer is capable of supporting the proposed zoning. The Applicant also establishes proof of long term water supply as required by LC 16.004(4).

Because the parcel is located in a quality limited area, the plat shall indicate the nature and extent of the quality limitations as required by the Lane Code to resolve the conflict. The water supply is not considered inadequate due to the presence of arsenic. The report notes that arsenic levels are generally below the EPA standard and that higher measurements were the result of turbidity. In any event, the technology to remove these contaminants is readily available. Goal five groundwater quality conflict is achieved by noting the nature of the quality limitation on the plat.

Goal Five has been fully achieved with regard to groundwater. The program to implement the goal is to allow the proposed use. There is no conflict with Goal Five as the Applicant has affirmatively demonstrated the resource shall be adequately protected.

2. ESEE Analysis for Surface Water Resources and Watershed Resources

There is surface water present on the Subject Property. The acknowledged County plan identifies surface water and watersheds as Goal 5 resources. *See Water Resources Working Paper* (1982) at 3-10. The Working Paper states that it will be difficult to separate the discussion of watersheds from that of surface water.

By "watershed," the Working Paper refers to areas of drainage basins that drain to a particular point of use. As defined in the Working Paper, "the area which drains to a domestic water supply is correctly termed a watershed, even if it is much smaller than a basin." *Id* at 3. The Working Paper maps drainage basins in the County but not watersheds since a watershed, per the Working Paper, is a function of where the water is being used. According to the Working Paper, the Subject Property would be in the watershed for any domestic user

downstream of the intermittent streams and pond(s) that occur on the Subject Property. The Working Paper recognizes that “[t]he entire county is within one or more categories of watersheds and, and all ranges of quality may be found.” Id at 5.

The “quality” discussion in the plan recognizes that watersheds play a key role in individual and municipal water supplies, fish and wildlife habitat, water quality, flood protection, etc. Id. The quantity discussion in the plan recognizes that a range of uses , such as soil compaction, removal of vegetation, and increases in impermeable surfaces all impact the amount of water that is retained in a watershed. Id.

Only one conflict is identified by the Plan’s ESEE analysis as a watershed conflict, as opposed to a surface water or groundwater conflict, the “contamination or possible contamination of surface water supplies used for domestic purposes.” Id at 5. The plan found two instances in which that conflict occurs. One instance is from forestry practices on state, federal and private timber land. The other is from residential development in the Clear Lake area. The plan conducts no ESEE analysis for either conflict as the county has limited authority over forestry practices and has inadequate data on the Clear Lake conflict to perform the analysis.

The Working Paper recognizes the quality of surface water throughout the County is affected adversely by a range of factors, few of which are under County control. Id. at 7-8. The discussion of stream water quality is limited to a discussion of flow regulations in rivers and streams by federal agencies with storage and flood control responsibilities. Id. at 8-9. The Working Paper identifies a number of activities that conflict with water quality in streams but states that the impacts of these activities are largely beyond county zoning control. The Working Paper conducts no ESEE analysis of the problems cited above. “[T]hese are not considered conflicts in the Goal 5 sense as they do not arise from County planning or zoning actions and generally cannot be resolved in that manner. Id. at 10.

In short, the potential impacts of low density residential development on watersheds/surface waters are not conflicts identified in the Goal 5 program.

B. Wetlands

There is no conflict with wetlands as based on the Applicant’s ESEE analysis. This is because the provisions of Goal 5 are achieved through adopting protective measures in the subdivision’s development plan and adhering to the referral provisions set forth in Goal 5 by notifying DSL.

The Applicant achieves Goal 5 Wetlands compliance because the County applies a “Safe Harbor” approach for wetlands outside the UGB or the boundary of any UUC that have not already been deemed significant as allowable and set forth in the Oregon administrative rules. Please note well that County Planning Staff and the DSL agree the Applicant has achieved Goal 5 Wetlands compliance.

The new Goal Five, adopted in 1996 rule allows jurisdictions to choose between the standard process and the “safe harbor process”. See generally, OAR 660-023, (emphasis

supplied). Jurisdictions utilizing the “safe harbor” provisions must gather the resource data from specified sources and adopt the protection measures required by the Goal 5 Rule. With regard to wetlands such as these that are outside of any UGB and UUC and that are not on any locally significant map but are on the most recent NWI, Lane County has gathered the required resource data and adopted the appropriate protection measures. All requirements of Goal 5 regarding wetlands have been met by the Applicant and the County.

The applicable division explains the concept of a “safe harbor.” OAR 660-023-20(2) provides:

- (2) “A safe harbor” consists of an optional course of action that satisfies certain requirements under the standard process. Local governments may follow safe harbor requirements rather than addressing certain requirements in the standard Goal 5 process Similarly a jurisdiction can adopt a wetlands ordinance that meets the requirements of OAR 660-023-100(4)(b) in lieu of following the ESEE decision process in OAR 660-023-0040.”

With regard to wetlands outside the UGB or any UUC Lane County utilizes a safe harbor approach, consisting of an optional course of action. Compliance with Goal 5 wetlands requirements is achieved in this “PAPA” through following the procedures and requirements set forth in the applicable Oregon Administrative Rules governing wetlands compliance. Provided a jurisdiction complies with the rules set forth in OAR 660-023 there is no wetlands conflict within the meaning of Goal 5.

In addition to 660-023-020(2), the following provisions are applicable and have all been met: OAR 660-023-0100 states:

- (5) For areas outside of UGBs and UUCs, local governments shall adopt either the statewide wetlands inventory (SWI; See ORS 196.674) as part of the local comprehensive plan or as a land use regulation, or shall use a current version for the purposes of subsection (7) of this rule.

Lane County used the current version of the SWI in evaluating this “PAPA” in compliance with this requirement.

- (6) “For areas outside of UGBs and UUCs, local governments are not required to amend acknowledged plans and land use regulations in order to inventory and protect significant wetlands and complete the Goal 5 process.”

Lane County has not amended any acknowledged comprehensive plans or land use regulations in order to inventory and protect wetlands and is not required to do so.

- (7) All local governments shall adopt land use regulations that require notice to DSL concerning applications for development permits or other land use decisions affecting wetlands on the inventory as per ORS 227.350 and 215.418, or on the SWI as provided in (5) of this rule.

Lane County has adopted notice requirements that require notice to DSL concerning land use decisions that may affect the inventory. Lane County has noticed DSL of this land use decision that may impact the inventory using the appropriate SWI.

For additional discussion and clarification from an objective party as to how the Lane County process has achieved Goal 5 compliance, please See the LCOG document entitled "*Lane County Statewide Planning Goals Compliance for Wetland, Riparian Corridor, and Wildlife Habitat*" supplied by the Applicant.

The minimal conflict identified has been addressed in conformance with the Goal and implementing regulations.

Goal 6: Air, Water and Land Resources Quality.

To maintain and improve the quality of the air, water and land resources of the state.

Goal 6 requires that air, land and water resources of the State be maintained and improved by assuring that future development, in conjunction with existing development, does not violate applicable State and Federal environmental quality standards, and does not exceed the carrying capacity of local airsheds, degrade land resources or threaten the availability of such resources. The State of Oregon and Lane County have sufficient regulatory measures in place so as to ensure that existing land use activities, as well as any future development on the site, will not produce any unanticipated impacts resulting from the proposed amendments.

Therefore, we find that the proposed amendments will not produce results that will be in conflict with or inconsistent with the purpose and intent of Goal 6.

Goal 7: Areas subject to Natural Disasters and Hazards.

To protect life and property from natural disasters and hazards.

The phrase "areas of natural disasters and hazards" means "areas that are subject to natural events that are known to result in death or endanger the works of man, such as stream flood, in ocean flooding, ground water, erosion and deposition, landslides, earthquakes, weak foundation soils and other hazards unique to local or regional areas." OAR 660-015-0000. We find that no such areas are known to exist on the Subject Property.

We find that the proposed amendment is consistent with the purpose and intent of Goal 7.

Goal 8: Recreational Needs.

To satisfy the recreational needs of the citizens of the state.

We find that a legislative determination by Lane County exists pursuant to its comprehensive planning process, as implemented by the RCP diagram, that the Subject Property is not needed for recreational facilities or opportunities. Identified recreational needs have been

provided for on other sites within Lane County. Therefore we find that the proposed amendment is consistent with Goal 8.

Goal 9: Economy of the State.

To diversify and improve the economy of the state.

Goal 9 is primarily focused on commercial and industrial development within urban areas. OAR 660-009-0010(1) specifically limits the application of Goal 9 to comprehensive plans for areas within urban growth boundaries. Goal 9 is not directly applicable to rural residential use in a Non-resource designation.

We find that approval of the application will be consistent with the intent and purpose of Goal 9.

Goal 10: Housing.

To provide for the housing needs of the citizens of the state.

The primary purpose of Goal 10 is to ensure that sufficient buildable land is available to provide for a full range of housing needs within urban areas and to avoid creating shortages of residential land which would artificially restrict market choices in housing type, price range or location. The goal's definition of "buildable land," for example, is limited to lands in urban and urbanizable areas. The Subject Property is outside any urban growth boundary. To the extent that Goal 10 is applicable or relevant to rural areas, we find that application approval will comply with the goal because it will result in the potential for additional dwelling units.

Goal 11: Public Facilities and Services

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

Goal 11 addresses facilities and services in urban and rural areas. The Subject Property is "rural" land and will remain rural after this approval, as discussed in connection with Goal 14.

"Public facilities and services" is defined in the Statewide Planning Goals to include: "[p]rojects, activities and facilities which the planning agency determines to be necessary for the public health, safety and welfare." The Goal 11 Rule defines a "public facility." "A public facility includes water, sewer, and transportation facilities, but does not include buildings, structures or equipment incidental to the direct operation of those facilities." OAR 660-11-005(5).

The *Rural Plan Policies* (Goal 11, Policies 6.e. & k.) describe the minimum level of services for Non-resource areas in rural Lane County. The services are: schools, on-site sewage disposal, individual water supply system, electrical service, telephone service, rural level fire and police protection, and reasonable access to solid waste disposal. The services now available to

the Subject Property, or proposed to be developed, include:

Service	Provider
Fire	Lane County Rural Fire Protection District #1
Police	Lane County Sheriff and State Police
Schools	Eugene School District 4J
Access	Gimpl Hill, a County Minor Collector
Electric	Emerald People's Utility District
Telephone	Cell
Solid Waste	Lane County
Sewer	Individual Septic Systems (Proposed)
Water	Wells or shared wells.

Based on the above we find the minimum level of services are available to the Subject Property and therefore approval of the application will be consistent with the intent and purpose of Goal 11.

Goal 12: Transportation

To provide and encourage a safe, convenient and economic transportation system.

Goal 12 is implemented through the Goal 12 Rule (OAR 660-12) adopted in 1991. The Rule has a section that specifically addresses proposals such as this – amendments to acknowledged comprehensive plans and implementing regulations. OAR 660-12-060(1) provides that any such amendments that “significantly affect a transportation facility shall assure that allowed land uses are consistent with the identified function, capacity, and level of service of the facility.”

The threshold question, therefore, is whether the proposed residential development allowed by this application would significantly affect a transportation facility. The rule spells out clearly what constitutes a “significant affect.” OAR 660-012-0060(1) states:

“A plan or land use regulation amendment significantly affects a transportation facility if it would:

“(a) Change the functional classification of an existing or planned transportation facility (exclusive of correction of map errors in an adopted plan);

(b) Change standards implementing a functional classification system; or

(c) Result in any of the effects listed in paragraphs (A) through (C) of this subsection based on projected conditions measured at the end of the planning period identified in the adopted TSP. As part of evaluating projected conditions, the amount of traffic projected to be generated within the area of the amendment may be reduced if the amendment includes an enforceable, ongoing requirement that would demonstrably limit traffic generation, including, but not limited to, transportation demand management. This reduction may diminish or completely eliminate the significant effect of the amendment.

(A) Types or levels of travel or access that are inconsistent with the functional classification of an existing or planned transportation facility;

(B) Degrade the performance of an existing or planned transportation facility such that it would not meet the performance standards identified in the TSP or comprehensive plan; or

(C) Degrade the performance of an existing or planned transportation facility that is otherwise projected to not meet the performance standards identified in the TSP or comprehensive plan.”

The proposed development of the Subject Property will not trigger this section of the rule. It will not have a significant affect on Gimpl Hill Road as measured by any of the standards listed above. Lane Code 15.697(1) provides that a traffic impact analysis may be required for any plan amendment proposal, unless waived by the County Engineer as specified in Lane Code 15.697(2). Branch Engineering conducted a traffic impact analysis for the M37 development proposed in 2007 (the “Branch Report”). That analysis was based on a 33-lot subdivision that was contemplated at that time. That proposal was substantially modified with the platting of the ten (10) lot subdivision known as The Vineyards at Gimpl Hill. This amendment would result in the creation of two (2) additional residential lots . This total of twelve (12) residential lots is minimal compared to the 33-lot total proposed in 2007 and supported by the Branch Report.

The Branch Report concluded that even with a total of 33 lots, a traffic impact study was not required by Lane Code. However, the Applicant elected to prepare the study in order to dispel any concerns about traffic that would be generated by rural residential development of the entire property. With the reduction of the development to two additional residential lots, there will be minimal impact on the existing roadway system, and particularly with respect to Gimpl Hill Road.

Therefore, we find that approval of the application will not significantly affect any transportation facility and therefore consistent with the intent and purpose of Goal 12.

Goal 13: Energy Conservation

To conserve energy.

Land and uses developed on the land shall be managed and controlled so as to maximize the conservation of all forms of energy, based on sound economic principles.

This goal is not directly applicable to individual land use decisions. Rather, its focus is on the adoption and the amendment of land use regulations.⁶

Goal 14: Urbanization

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

A specific residential development proposal that is allowed as being on land that is neither Agricultural nor Forest Land must also be found to be a “rural” level of development

⁶ See *Brandt v. Marion County*, 22 Or LUBA 473, 484 (1991), aff'd in part, rev'd in part, 112 Or App 30 (1992).

under Goal 14. Goal 14 prohibits urban uses on rural land. By definition, all land outside an acknowledged urban growth boundary and not subject to a Goal 14 exception is rural land.⁷ When a county amends its plan for rural land, it must demonstrate that the new plan and zone designations comply with Goal 14 or adopt an exception to Goal 14.⁸

The Supreme Court has said that the Goal 14 demonstration is not needed for every land use approval – that some uses approved are inherently rural or urban in nature. An example is residences at a density of one unit per ten acres.⁹

This proposal clearly meets the Supreme Court’s description of a density that is per se rural, as it is proposed at a density of one unit per forty-plus acres.

Goal 15: Willamette River Greenway

Goal 16: Estuarine Resources

Goal 17: Coastal Shorelands

Goal 18: Beaches and Dunes

Goal 19: Ocean Resources

These five goals are not applicable as they deal with resources that are not present on the Subject Property.

IV. COMPLIANCE WITH RURAL COMPREHENSIVE PLAN POLICIES

Any plan and zone change must comply with the relevant *Lane County Rural Comprehensive Plan Policies*. This requirement is based in statutes (ORS 197.175(2)), the *Rural Plan Policies* themselves (See e.g. *Rural Plan Policies* at page 6), and the *Lane Code* (See e.g., LC 16.400(6)(h)). This section, therefore, addresses the relevant elements of the *Rural Plan Policies*. It is organized by Goal. Where possible to avoid duplicative discussion, reference is made to the discussion under the Statewide Planning Goals.

Goal Two: Land Use Planning

Policy 18:

Where lands are not farm and forest lands, they may be designated on the plan diagram as rural residential or as parks and recreation, provided:

a. Detailed and factual documentation has been presented indicating

⁷ *1000 Friends of Oregon v. DLCD* (Curry County), 301 Or 447, 498-501, 724 P2d 268 (1986).

⁸ *Churchill v. Tillamook County*, 29 Or LUBA 68, 75 (1995).

⁹ *Curry County*, 301 Or at 501

that the subject lands are not farm and forest lands as defined by Statewide Planning Goals #3 and #4.

Compliance is documented under the relevant Statewide Planning Goals.

- b. An exception to any of the Statewide Planning Goals is not required.**

No goal exception has been taken.

- c. Small isolated non-resource tracts surrounded by farm and forest land shall be discouraged if such non-resource designation would create compatibility problems.**

This is not a small, isolated tract surrounded by farm and forest land. Furthermore, as discussed in connection with Goals 3 and 4, the Non-resource designation would pose no compatibility problems.

- d. The Rural Residential Designation would be consistent with the other Comprehensive Plan Policies.**

See discussion below.

Policy 19:

Rural Residential Designations for non-resource lands shall be one residence per five or ten acres and shall be determined through consistency with other plan policies and the following criteria:

- a. Existing development pattern and density of any adjacent committed areas;**
- b. Subsurface sewage disposal suitability;**
- c. Domestic water supply availability;**
- d. Access;**
- e. Public services;**
- f. Lack of natural hazards;**
- g. Effect on resource lands.**

This policy requires assessment of seven criteria to determine, in part, whether 5 or 10-acre minimum density zoning should be applied. The Applicant has requested Rural Residential (RR-5) zoning and addressed this policy in the Initial Findings and supplemental reports. The Policy 19 criteria are addressed as follows:

“a. Existing development pattern and density of any adjacent committed area;”

The existing development pattern and residential densities in nearby committed areas is described in detail in the Applicant’s Goal 5 ESEE Analysis that evaluated the effect of the plan amendment and zone change together with resulting residential development on Goal 5 resources. As part of that analysis, which included a detailed review of wildlife habitat, groundwater resources and wetlands located on or near the Subject Property, the surrounding area was described in text and with aeriels and maps. Now, with the reduction to two (2) additional residential lots, the impacts of the development have been greatly reduced.

The Subject Property is uniquely located adjacent to and part of the M49 Subdivision known as The Vineyards at Gimpl Hill. It is Lot 10 of that subdivision and completely surrounds this platted subdivision. The lots created by subdivision of the Subject Property will be integrated into that subdivision and be the second phase of that subdivision. As noted in the Introduction to these Findings, the Applicant has prepared a preliminary subdivision plan for Phase 2 of the Subject Property (**Exhibit “A”**). It proposes two (20) additional residential lots for that are each forty (40) acres (Lots 11 and 12). Lot 10 the remainder of residential lot approved under Measure 49. The Open Space Lots (Lots 14-17) will be created as open space with no residences allowed. The Vineyard Lot (Lot 13) will be restricted to the existing vineyard uses with no residence allowed.

Therefore, even though RR-5 zoning is being requested, the actual residential density for the Subject Property will be one dwelling per 43+ acres. The RR-5 zoning allows the smaller Open Space Lots to be owned and maintained by the owners of adjacent lots in the platted subdivision. This density is consistent with not only the adjacent subdivision but also with the committed residential area located on the western edge of the Subject Property. Therefore, the proposed subdivision is consistent with adjacent committed exception areas.

“b. Subsurface sewage disposal suitability;”

The soils identified in the CES Soils Report can all accommodate some form of allowed residential septic system. Also, ten sewage disposal site evaluations have been approved for Lots 1-10 of the Subdivision. Only two additional residential systems will be required, one on each of the forty (40) acre lots. Site evaluations for Lots 1 (SI #076276) and 10 (SI #079285) which bracket the approved site evaluations for each of the platted lots are in the record and all were approved for some type of allowed septic system.

We therefore conclude that the limited development proposed by Applicant’s development plan will be able to accommodate septic systems for each of the two additional forty (40) acre lots.

“c. Domestic water supply suitability;”

The EGR Aquifer Analysis provides a thorough analysis of groundwater resources for the Subject Property including the ten (10) platted lots in the first phase of the subdivision. That report is based on domestic use by as many as 33 total homesites. The first phase of the

Subdivision contains ten (10) platted residential lots (Lots 1-10) that are served by a small community water system. Lot 10 will be served by the community water system. Individual wells will serve Lots 11 and 12. A well producing approximately fourteen (14) gallons per minute already exists on Lot 12. A new domestic well will be developed for Lot 11.

Therefore, based on the EGR Report and its analysis of Lane Code standards (LC 13.050(13)(d)) and the revised development plan the Applicant has proposed (**Exhibit "A"**), we conclude there is an adequate supply of groundwater to allow the additional two (2) forty residential lots to have individual wells without impact to existing wells in the area. The domestic water supply is suitable for the proposed development plan.

"d. access;"

The modified Subdivision plan (**Exhibit "A"**) shows Vineyard Hill Drive which is the primary access to the platted subdivision from Gimpl Hill Road, a County road. It is a private road that is jointly maintained pursuant to a 'DECLARATION OF VARIABLE WIDTH PRIVATE JOINT ACCESS AND UTILITY EASEMENT AND MAINTENANCE AGREEMENT' recorded September 22, 2010, Instrument No. 2010-047173. The stated purpose of the easement is to provide joint access over a common roadway from Gimpl Hill Road to the existing Lots 1-10 of the Subdivision and any future lots. It will provide access to the reconfigured Lot 10 and the two new forty (40) acre residential lots.

Therefore, the access provided is suitable for the additional two residential lots proposed by this plan amendment and zone change.

"e. Public services"

Electricity (EPUD) and public safety (Sheriff and OSP) are the only public services provided to the general area which includes the Subject Property. The RR-5 zoning requested together with the proposed development plan will not impact these services in any identified manner.

"f. Lack of natural hazards;"

We adopt the findings that were made for Goal 7. In addition, the Applicant's multiple Goal 5 ESEE Analyses provide a detailed review of the Goal 5 resources. The density proposed by the Applicant will result in no adverse impacts to those resources or to any natural hazards that might exist on the property.

"g. Effect on resource lands."

The RR-5 zoning together with the proposed development plan will not have any effects, adverse or otherwise, on adjacent forest-zoned properties. This is confirmed by the revised application that limits the number of new residential lots to the two (2) forty (40) acre lots for the entire Subject Property.

Goal Three: Agricultural Lands

Policy 8:

Provide maximum protection to agricultural activities by minimizing activities, particularly residential, that conflict with such use. Whenever possible planning goals, policies and regulations should be interpreted in favor of agricultural activities.

This policy has been interpreted by the Board of Commissioners, and the interpretation has been upheld on appeal. This policy only addresses conflicts that will result in a significant change in or a significant increase in the cost of accepted farming practices. When conflicts of this magnitude might result, the proposed rezoning must be conditioned to reduce the potential conflicts below the level that will result in a significant change or significant increase in the cost of accepted agricultural practices.¹⁰⁾

No conflicts are apparent between the proposed rezoning and any adjacent or nearby agricultural activity. In fact, the only adjacent farming activity is the small (less than one acre) vineyard on the residential lot next door.

Goal Four: Forest Lands

Policy 1:

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

Forest land shall include lands which are suitable for commercial forest uses including adjacent or nearby lands which are necessary to permit forest operations or practices and other forested lands that maintain soil, air, water, and fish and wildlife resources.

This policy implements Statewide Planning Goal 4 by defining "forest lands" and requiring they be used consistent with the goal. The Subject Property is not "forest land." See discussion in connection with Statewide Planning Goal 4 above. The adjacent properties that are managed for forest uses will not be impacted by the proposed two (2) additional forty (40) acre residential lots on the Subject Property. The Applicant has agreed that the residences on Lots 11 and 12 will be set back at least one hundred (100) feet from the F-2 parcels adjoining the subdivision.

**Goal Five: Opens Spaces, Scenic and Historic Areas and Natural Resources
Flora and Fauna**

¹⁰ *Gutoski v. Lane County*, 34 Or LUBA 219, 225 n4 (1998), *aff'd* 155 Or App 369, 963 P.2d 145 (1998).

Policy 7:

Because of incomplete County coverage by, and interpretation of, the National Wetlands Inventory, wetland resources are to be considered "significant" in terms of OAR 660-16-000/025 and placed in "1B" and "1C" categories. Major wetlands designated "1C" resources shall be protected per the "3C" option through a combination of existing County Coastal and Greenway zoning regulations, and federal/state ownership; where these do not occur, an appropriate wetlands zoning district shall be developed and applied. Other wetlands from the National Wetlands Inventory shall be evaluated per "1B" requirements within two years of the date of Plan adoption, and decisions made on the protection or use of the resource. The County shall consider enlarging the list of protected per Goal 5 requirements if it is clearly demonstrated that an unprotected significant wetland(s) is likely to be significantly impacted by a land use action over which the County has jurisdiction.

See discussion of wetlands resources under Statewide Planning Goal 7. The site does contain some wetlands shown on the Applicant's Wetland Report. These are protected by Federal and State law, and are proposed to be protected from development with structures via setbacks from the intermittent stream on site.

Water Resources Policy 3:

Adequacy of water supply, particularly those relying on groundwater sources, shall be a major concern in reviewing major land use changes. For the purpose of applying this policy, major land use change shall be any application reviewed by the Hearings Official or the Planning Commission.

Water Resources Policy 5:

Land use designations in the Comprehensive Plan and implementing zoning shall be commensurate with groundwater aquifer capabilities.

See the discussion of groundwater resources in connection with Statewide Planning Goal 5 above.

Goal Seven: Areas Subject to Natural Disasters and Hazards

Policy 1:

The Natural Hazards Inventory, as contained in the 1982 Natural Hazards Working Paper and associated materials, shall be used as a guide for general land use decisions. Specific land use decisions shall be based upon the inventory and upon on-site or other evaluation as appropriate.

The Subject Property is not inventoried in the *Natural Hazards Working Paper* as a site containing natural hazards.

Goal Eleven: Public Facilities and Services

Policy 1:

Lane County shall provide an orderly and efficient arrangement for the provision of public facilities, services and utilities. Designation of land into any given use category either initially or by subsequent plan amendment, shall be consistent with the minimum level of services established for that category.

Policy 6:

Land designations and service levels:

* * * *

k. Non-resource Lands (NRES)

Description: Lands that are not farm or forest lands as defined by Statewide Planning Goals #3 and #4. (Refer to Goal #2, Policy 16.)

Service Level: Consistent with service levels for Rural Residential outside a Community designation. The service level for cluster subdivisions or non-resource shall be consistent with Goal #2, Policy 24.

These policies are addressed in connection with the discussion of Statewide Planning Goal 11. As documented there, this development will be served consistent with service levels described for rural, non-community areas.

V. COMPLIANCE WITH LANE CODE CRITERIA FOR PLAN CHANGES

LC 16.400(6)(h) sets out the criteria for amending the county plan designation. Each of the criteria is addressed here. Where a criterion incorporates a Statewide Planning Goal, LCDC Rule, or Rural Plan Policy, reference is made to the relevant part of the earlier findings so as to avoid repetition.

LC 16.400(6)(h): Method of Plan Adoption and Amendment.

(iii) The Board may amend or supplement the Rural Comprehensive Plan upon making the following findings:

(aa) For Major and Minor Amendments as defined in LC 16.400(8)(a) below, the Plan component or amendment meets all the applicable requirements of local and state law, including Statewide Planning Goals and Oregon Administrative Rules.

This criterion makes general reference to other sources of standards that apply to plan changes. Those other standards are addressed elsewhere in these findings.

- (bb) **For Major and Minor Amendments as defined in LC 16.400(8)(a) below, the Plan amendment or component is:**
- (i-i) **necessary to correct an identified error in the application of the Plan; OR**
 - (ii-ii) **necessary to fulfill an identified public or community need for the intended result of the component or amendment; OR**
 - (iii-iii) **necessary to comply with the mandate of local, state or federal policy or law; OR**
 - (iv-iv) **necessary to provide for the implementation of adopted Plan policy or elements; OR**
 - (v-v) **otherwise deemed by the Board, for reasons briefly set forth in its decision, to be desirable, appropriate or proper.**

These criteria offer a smorgasbord of policy choices from which the County may select to justify initiating the plan change. At least two are relevant to this application. Item (iv-iv) allows the plan change if it implements the *Rural Plan Policies*. Goal Two, Policy 18 of the *Rural Plan Policies* anticipates that lands that fit neither the Agricultural or Forest Lands definitions may be redesignated as Non-resource Lands. This proposal implements that policy.

Item (v-v) invites the County to make plan changes that are desirable, appropriate or proper. This proposal also meets that criterion. Where lands are not suitable for farm or forest use, and keeping them in a resource zone is not needed to protect natural resources or allow farm or forest uses on adjacent or nearby land, it is appropriate, desirable and proper to allow them to be put to a productive use, such as low density residential development, consistent with other applicable goals and policies.

- (cc) **For Minor Amendments as defined in LC 16.400(8)(a) below, the Plan amendment or component does not conflict with adopted Policies of the Rural Comprehensive Plan, and if possible achieves policy support.**

Compliance with individual policies in the Rural Plan Policies is discussed thoroughly above.

- (dd) **For Minor Amendments as defined in LC 16.400(8)(a) below, the Plan amendment or component is compatible with the existing structure of the Rural Comprehensive Plan, and is consistent with the unamended portions or elements of the Plan.**

The existing structure of the plan anticipates Resource plan designations. As discussed above, this designation is also consistent with relevant policies in the Rural Plan Policies.

LC 16.400(8): Additional Amendment Provisions.

(a) Amendments to the Rural Comprehensive Plan shall be classified according to the following criteria:

(i) Minor Amendment. An amendment limited to the Plan Diagram only and, if requiring an exception to the Statewide Planning Goals, justifies the exception solely on the basis that the resource land is already built upon or is irrevocably committed to other uses not allowed by an applicable goal.

This is a minor amendment to the plan which requests a change to the Plan Diagram for the Subject Property – from Forest to Non-resource. No goal exceptions are requested. This application demonstrates that the Subject Property is not Agricultural or Forest Land, as defined by the goals, and the proposed development will remain “rural” in the meaning of Goal 14.

(c) Minor amendment proposals initiated by an Applicant shall provide adequate documentation to allow complete evaluation of the proposal to determine if the findings required by LC 16.400(6)(h)(iii) above can be affirmatively made. Unless waived in writing by the Planning Director, the Applicant shall supply documentation concerning the following:

(i) A complete description of the proposal and its relationship to the Plan.

This description has been provided throughout this set of findings.

(ii) An analysis responding to each of the required findings of LC 16.400(6)(h)(iii) above.

The required analysis is provided above.

(iii) An assessment of the probable impacts of implementing the proposed amendment, including the following:

(aa) Evaluation of land use and patterns of the area of the amendment;

See detailed discussion in Part I above. To summarize, the Subject Property is in an area that is characterized by low density rural residential uses and other Non-resource and resource uses. Some of these uses are on land planned and zoned for resource use, and others are on land that is planned and zoned for Non-resource uses. The Non-resource uses of the land in the area are determined by the very poor quality soils in the foothills area of the Gimpl Hill neighborhoods of rural residential uses. The closest commercial resource uses are on the Seneca property, which is adjacent to the south and the 80-acre parcel on the eastern boundary. As previously stated, the Applicant has agreed that any residence of Lots 11 and 12 will be set back at least one hundred (100) feet from these F-2 zoned properties to the south and east of the

subdivision.

- (bb) Availability of public and/or private facilities and services to the area of the amendment, including transportation, water supply, and sewage;**

The public facilities and services available to be provided to the site are discussed in detail above. For a discussion of each facility and service, See the Goal 11 discussion above. For a further discussion of transportation facilities, See the Goal 12 discussion above. In summary, this site will be served by individual septic systems and wells. All other facilities and services are available.

- (cc) Impact of the amendment on proximate natural resources, resource lands or resource sites including a Statewide Planning Goal 5 "ESEE" conflict analysis where applicable;**

This discussion appears in detail in other parts of these findings. The proximate natural resources to consider are those that are identified as Goal 5 resources in the comprehensive plan. The impact on these resources is discussed as part of the Goal 5 analysis above, which includes the full ESEE analysis required by the Goal 5 Rule. In addition, the proposal will fully protect the wetlands that have been identified by the Applicant on the Subject Property.

This proposal will have no adverse impact on proximate resource lands. The low density rural residential uses proposed are compatible with the adjacent commercial and noncommercial forest enterprises, as discussed more fully in connection with Goal 3 and Goal 4 in Part II. above.

- (dd) Natural hazards affecting or affected by the proposal;**

As discussed in connection with Goal 7, the Subject Property neither contains nor is threatened by any natural hazards.

- (gg) For a proposed amendment to a Non-resource designation or a Marginal Lands designation, an analysis responding to the criteria for the respective request as cited in the Plan document entitled, "Working Paper: Marginal Lands" (Lane County, 1983).**

The *Marginal Lands Working Paper* contains the eight standards for designation of Non-resource lands. These standards are largely redundant of the substantive parts of Statewide Planning Goals 3 and 4, which are addressed in detail above. The eight standards, therefore, are addressed briefly here, with a general reference to the previous discussion of the Goals.

LANDS MAY BE DESIGNATED AS NON-RESOURCE/NON-EXCEPTION LAND UPON SUBMISSION OF SATISFACTORY FACTUAL INFORMATION TO SUPPORT THE FOLLOWING FINDINGS:

- 1. The land is not composed of existing or potential forest lands which are suitable for the commercial production of wood fiber products.**

As the discussion under Goal 4 shows, none of the subject acreage is comprised of soils that are rated by the Oregon Department of Forestry as having the potential to produce more than fifty (50) cubic feet of wood fiber per acre per year of the identified commercial wood species. The soils on the Subject Property are rated at less fifty (50) cubic feet per acre per year. This site is not suitable for commercial production of wood fiber.

- 2. The land is not needed for watershed protection.**

As discussed under Goals 4 and 5, this site does not need to be kept in an Agriculture or Forest designation in order to protect the watershed.

- 3. Designation of the land as NON-RESOURCE/NON-EXCEPTION LAND will not adversely effect management of the land for big game range or other wildlife, fish or waterfowl habitat.**

The site is not managed for big game, other wildlife, fish or waterfowl habitat. The proposed residential density exceeds the ODFW density recommendation. See discussion in connection with Goals 3, 4, and 5 above.

- 4. No extreme soil or climatic conditions exist to the extent to require maintenance of existing vegetative cover to a degree not provided by the NON-RESOURCE/NON-EXCEPTION designation.**

The soil and climatic conditions on the site are not so extreme that the vegetative cover must be protected to a degree not provided by the Non-resource plan designation.

- 5. The land is not located in an agricultural or urban area and providing needed urban buffers, wind breaks, wildlife and fisheries habitat, livestock habitat, scenic corridors or recreational uses.**

The comprehensive plan does not inventory the Subject Property as providing any of the listed functions. It is not needed for any of these listed functions.

- 6. The land is predominantly Class V-VIII soils as identified in the Soil Capability Classification system of the U.S. Soil Conservation Service.**

The site complies with this standard. See discussion and tables under Goal 3, which address the soils analysis by Brian Rabe. Reclassification is allowed. This standard speaks to the soils "classification system." All findings in the Rabe report use the classification system. This

standard does not limit one to any particular book or report.

7. **The land is not suitable for farm or grazing taking into account soil fertility, climatic conditions, existing land use patterns, technological and energy inputs required, or accepted farming practices.**

The site is not suitable for farm use based on the listed factors. See discussion under Goal 3.

8. **Designation of the land as AGRICULTURAL LAND is not necessary to permit farm practices to be undertaken on land adjacent or nearby lands.**

See discussion under Goal 3 above. The site is not needed to be kept in an Agricultural designation in order to allow farm practices on adjacent or nearby land. There is only a small (less than one acre) vineyard on the adjacent property. This operation will be buffered from the Subject Property by the existing vineyards on the Subject Property.

VI. COMPLIANCE WITH LANE CODE CRITERIA FOR ZONE CHANGES

This proposal requests a change from F-2 zoning to RR-5 zoning. LC 16.252 sets out standards for zone changes. The facts relevant to the zone change standards are largely redundant with the facts relevant to plan policies and the Statewide Planning Goals. The LC 16.252 standards are stated here and addressed, with appropriate references to other parts of these findings.

LC 16.252(2): Criteria.

Zonings, rezonings and changes in the requirements of this Chapter shall be enacted to achieve the general purpose of this Chapter and shall not be contrary to the public interest. In addition, zonings and rezonings shall be consistent with the specific purposes of the zone classification proposed, applicable to Rural Comprehensive Plan elements and components, and Statewide Planning Goals for any portion of Lane County which has not been acknowledged by the Land Conservation and Development Commission. Any zoning or rezoning may be effected by Ordinance or Order of the Board of County Commissioners, the Planning Commission or the Hearings Official in accordance with the procedures of this section.

General purposes of Chapter 16:

LC 16.003 sets forth 14 broadly-worded purpose statements that include a provision to ensure that development is commensurate with the character and physical limitations of the land. Rezoning from F-2 to RR-5 implements the proposed plan amendment to Non-resource land. The public interest is served by recognizing that the land is neither Agricultural nor Forest land.

Purpose of Rural Residential Zone:

The Rural Residential zone is intended to provide opportunities for people to live in a rural area, allow primary and accessory residential uses that are compatible with primary residential uses, and implement the *Rural Plan Policies* related to Non-resource lands. The proposed zoning is consistent with these stated purposes of the zone.

Rural Comprehensive Plan Criteria:

The *Rural Plan Policies* provide the policy basis for comprehensive plan and implementing regulations, provide direction for land use decisions, and fulfill LCDC planning requirements. *Rural Plan Policies*, Goal 2, Policy 19 specifically addresses determination of the appropriate zoning district for lands with a Non-resource designation.

Goal 2, Policy 19:

Residential densities for Non-resource lands shall be one residence per five or ten acres and shall be determined through consistency with other plan policies and the following criteria:

- a. Existing development pattern and density of any adjacent committed areas;
- b. Subsurface sewage disposal suitability;
- c. Domestic water supply availability;
- d. Access;
- e. Public service;
- f. Lack of natural hazards;
- g. Effect on resource lands.

This policy identifies two potential zoning densities to accompany a Non-resource plan designation – RR-5 or RR-10. Although the Applicant is proposing an RR-5 zoning district, which is the less dense and matches the existing RR zoning and development pattern in the surrounding area, the actual residential density (1unit/43+acres) is far less than the density of surrounding rural residential areas. By definition, therefore, the proposed zoning is consistent with this policy.

Lane Code Criteria:

LC 16.004(4):

Prior to any rezoning that will result in the potential for additional parcelization, subdivision or water demands or intensification of uses beyond normal single-family residential water usage, all requirements to affirmatively demonstrate adequacy of long-term water supply must be met as described in LC 13.050(13)(a)-(d).

The additional two dwellings will not be “beyond normal single family residential water

usage.”

LC 16.290 v. LC 16.231

Per the purpose statement of LC 16.290(a)n, LC 16.290 does not apply.

16.290 Residential Zone (RR).

- (1) Purpose. The purposes of the Rural Residential Zone (RR) are:**
 - (a) *** LC 16.290 does not apply to lands designated by the RCP as non-resource lands;**

If any purpose statement applied, it would be the purpose statement of LC 16.231.

16.231 Rural Residential Lands Zone (RR-RCP).

- (1) Purpose. The purpose of the Rural Residential Zone (RR-RCP) is:**
 - (a) To provide opportunities for people to live in a rural area.**
 - (b) To allow primary and accessory residential uses, and nonresidential uses which may be compatible with primary residential uses.**
 - (c) To implement the policies of the Rural Comprehensive Plan, primarily those policies related to the residential development of areas identified as committed, built upon, or as Non-resource land.**
 - (d) To provide protective measures for riparian vegetation along Class I streams designated as significant in the Rural Comprehensive Plan.**

However, purpose statements are not approval criteria unless specifically incorporated as such. This is established law. Regardless, there are no provisions of LC 16.231 that apply to a zone change. LC 16.231 provisions apply after the property is zoned RR-RCP.

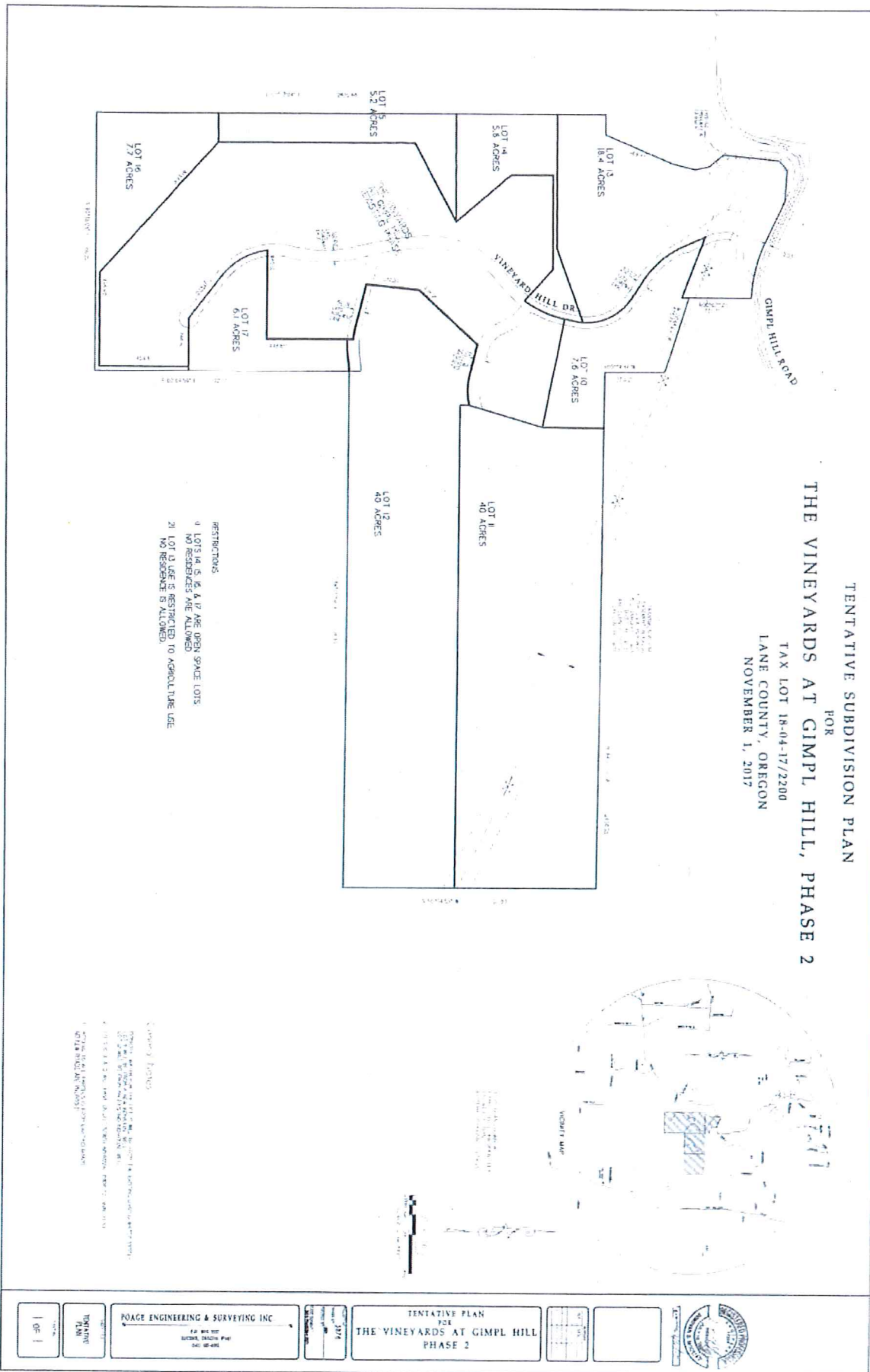
Even if the purpose statements were applicable, they are supportive. The rezone: (1)(a) provides opportunities for people to live in rural areas; (1)(b) allows primary and accessory residential uses; and (1)(c) allows residential development of Non-resource land. (1)(d) is not applicable. The Applicant is asking for RR5 zoning, in order to create smaller lots restricted to open space and owned and maintained by the adjacent Subdivision lot owner.

VII. INCORPORATIONS:

Additional findings and material in support of the Board's approval are found in the record, the Applicant's narrative, the Applicant's ESEE analysis, the Applicant's supplemental narratives and reports from qualified professionals, incorporated herein by this reference.

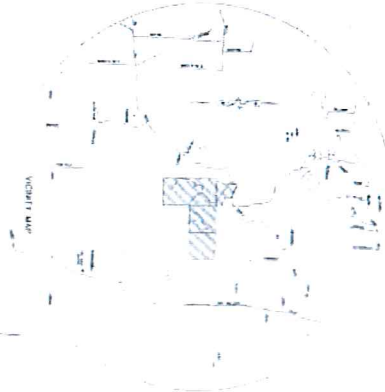
VIII. CONCLUSION

Based on the findings above, the post acknowledgement plan amendment to redesignate roughly 131 acres of land from Forest land to Non-resource land, and to rezone the same from Impacted Forestland (F-2) to Rural Residential (RR-5) is APPROVED. The Subject Property does not qualify as Agricultural land or Forest land based on soils, productivity, and use. As such, they do not need to be preserved in resource designations in order to fully implement Oregon's land use scheme for protecting resource lands and may be designated Non-resource. Non-resource lands may be zoned for Rural Residential uses at densities that remain "rural" in character. In conclusion, because the Subject Property is neither farm land nor forest land, the proposed plan amendment and zone change is approved with the development plan described herein (**Exhibit "A"**).



TENTATIVE SUBDIVISION PLAN
 FOR
THE VINEYARDS AT GIMPL HILL, PHASE 2
 TAX LOT 18-04-17//2200
 LANE COUNTY, OREGON
 NOVEMBER 1, 2017

RESTRICTIONS
 1) LOTS 1, 2, 3, 4, 5, 6, 7, 8, 9, 10 ARE OPEN SPACE LOTS
 NO RESIDENCES ARE ALLOWED
 2) LOT 10 USE IS RESTRICTED TO AGRICULTURE USE
 NO RESIDENCE IS ALLOWED.



PROPERTY LINES
 THE PROPERTY LINES SHOWN ON THIS PLAN ARE BASED ON THE RECORDS OF THE CLERK OF THE COUNTY OF LANE, OREGON, AND THE RECORDS OF THE CLERK OF THE COUNTY OF CLATSOP, OREGON. THE PROPERTY LINES SHOWN ON THIS PLAN ARE SUBJECT TO ANY CHANGES THAT MAY BE MADE BY THE CLERK OF THE COUNTY OF LANE, OREGON, OR THE CLERK OF THE COUNTY OF CLATSOP, OREGON.

	<p>POAGE ENGINEERING & SURVEYING INC. 420 NW 100th Street, Suite 100 Astoria, Oregon 97103 Phone: 503-325-1111 Fax: 503-325-1112 Website: www.poage.com</p>	<p>DATE: 11/01/17 DRAWN BY: JRM CHECKED BY: JRM</p>	<p>TENTATIVE PLAN FOR THE VINEYARDS AT GIMPL HILL PHASE 2</p>			
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THE VINEYARDS AT GIMPHILL HILL

A MEASURE-49 SUBDIVISION PURSUANT TO
MEASURE 49 FINAL ORDER AND HOME SITE

AUTHORIZATION #B129659
SE 1/4 SEC. 8, T 18 S, R 4 W, W.M.
NE 1/4 SEC. 17, T 18 S, R 4 W, W.M.
NW 1/4 SEC. 16, T 18 S, R 4 W, W.M.
LANE COUNTY, OREGON
AUGUST, 2010

DATE 22 SEP 10
RECORDED
BY COUNTY CLERK

LANE COUNTY SURVEYS OF RECORD
C/S FILE NO 41995
FILE DATE 22 SEP 10
Division of State Dept. of Clerk
Lane County Data and Records
09/22/2010 09:07:25 AM
PPP-CSD 0-11 5100 CREDIT 02
\$3.00 \$120.00 \$10.00 \$11.00 \$16.00

NOTE
B TO 5/8" RIBBON 5/8" X 4003' E. 6.81 (N115.3)

SCALE 1" = 300'

LEGEND
● FOUND 5/8" ALUMINUM UNLESS OTHERWISE NOTED
● FOUND BRASS CAP AS NOTED
○ SET 3/4" x 10" RIBBON WITH A YELLOW PLASTIC
○ TO CAP STAMPED "TODAY END & SURE BE"
○ SETTING NAIL WITH ALUMINUM WASHER
○ STAMPED "PAGE END & SURE BE"
○ SET 3/4" x 10" RIBBON WITH A RED PLASTIC
○ TO CAP STAMPED "TODAY END REFERENCE COR
○ CORRUPTED POINT AND POINTMENT FOUND ON SET
--- FENCE LINE
--- BENCH MARKS (NOT SHOWN TO SCALE)
--- DEPICTS A LINE NOT DRAWN TO SCALE
--- DATA BY RECORD WITH AN ERRORTH
--- CORRESPONDING TO A REFERENCE
--- PREVIOUS SURVEY EQUAL RECORD
--- PREVIOUS SURVEY EQUAL RECORD
--- PREVIOUS SURVEY EQUAL RECORD

REFERENCES
1 C/SF NO 25343 BANGKILL 1987
2 C/SF NO 14870 SH FORD 1967
3 C/SF NO 8779 SH FORD 1961
4 C/SF NO 1692 SX FORD 1965
5 C/SF NO 10034 V THOMAS 1965
6 C/SF NO 4829 M JACKSON 2000
7 C/SF NO 22233 O CASSELL 1978
8 C/SF NO 40091 O CPD# 2006
9 WEST HILLS
10 BORE 48 PAGE 22
11 WEST HILLS FIRST ADDITION
12 WEST HILLS FIRST ADDITION
13 LANE COUNTY OREGON PLAT RECORDS
14 LANE COUNTY OREGON PLAT RECORDS
15 C/SF NO 20860 JYB# 0 CASSELL 1905

FOUR ENGINEERING & SURVEYING, INC.
108 N. 37th St. - DMN BY: JAD/DRP/DC/D - 318
TOLSON 2127 - ENGINEER, OREGON #182 - JAD/DRP/DC/D

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JONATHAN A. OAKES
2005
PAGE 2 OF 6

