

W. T. C.

AGENDA COVER MEMO



DATE: November 6, 2006 (Date of Memo)
November 22, 2006 (Date of First Reading)
December 6, 2006 (Date of Second Reading/Public Hearing)

TO: LANE COUNTY BOARD OF COMMISSIONERS

LAND MANAGEMENT DIVISION
http://www.LaneCounty.org/PW_LMD/

DEPT.: Public Works Department/Land Management Division

PRESENTED BY: Thom Lanfear/Land Management Division

AGENDA ITEM TITLE: ORDINANCE NO. PA 1239 / IN THE MATTER OF AMENDING THE RURAL COMPREHENSIVE PLAN TO REDESIGNATE LAND FROM "FOREST" TO "NONRESOURCE" AND REZONING THAT LAND FROM "F-2/IMPACTED FOREST LANDS" TO "RR5/RURAL RESIDENTIAL", AND ADOPTING SAVINGS AND SEVERABILITY CLAUSES (file PA 05-6249; Carver)

I. MOTION

1. NOVEMBER 22, 2006: I MOVE APPROVAL OF THE FIRST READING OF ORDINANCE NO. PA 1239 AND SETTING THE SECOND READING AND PUBLIC HEARING FOR DECEMBER 6, 2006 AT 1:30 P.M. IN HARRIS HALL.
2. DECEMBER 6, 2006: ALTERNATIVE MOTIONS AFTER DELIBERATIONS:
 - A. I MOVE TO APPROVE ORDINANCE NO. PA 1239 WITH THE CURRENT FINDINGS.
 - OR**
 - B. I MOVE TO TENTATIVELY APPROVE ORDINANCE NO. PA 1239 SUBJECT TO REVISED FINDINGS TO BE PREPARED FOR FINAL ACTION.
 - OR**
 - C. I MOVE TO TENTATIVELY DENY THE APPLICATION IN FILE PA 05-6249 AND DIRECT STAFF TO PREPARE AN ORDER WITH APPROPRIATE FINDINGS FOR FINAL ACTION.

II. ISSUE

The Lane County Planning Commission has recommended a privately initiated minor amendment to the RCP, and companion rezoning request, for denial. This Ordinance sets the matter before the Board for adoption or denial.

III. PROCEDURE

The Board of Commissioners has established these hearing procedures:

1. Announce the hearing is de novo and explain the rules of conduct;
2. Disclose any ex parte contacts and call for abstentions;
3. Request the Director or staff to present an introductory report, explain any graphic or pictorial displays which are a part of the report, read findings and recommendations, if any, and provide such information as may be requested by the Board of County Commissioners ("Board", hereinafter);
4. Allow the applicant to be heard first, on his own behalf or by representatives;
5. Allow other persons to be heard;
6. Allow the Director to present any further comments or information in response to testimony and evidence offered by any interested persons.
7. Allow the applicant to rebut, on his own behalf or by representative, any testimony previously presented to the Board.
8. Conclude the hearing of testimony at this time and close the record, unless the Board continues the hearing or leaves the record open.
9. At the conclusion of the public testimony, the Board has several options:
 - a) Continue the hearing to a date and time certain for the purposes of hearing additional testimony before commencing with deliberations; or
 - b) Leave the record open for additional written testimony. The Board must determine and announce reasonable time periods for the record to remain open for the submittal of additional written information by the applicant and opponents; or
 - c) Close the record and set deliberations for a time specified by the Board, and make a decision based on findings of fact and conclusions in response to the record and testimony.
 - d) Close the record and move directly to deliberations, and make a decision based on findings of fact and conclusions in response to the record and testimony.
10. At the conclusion of deliberations, the Board has several options:
 - a) the Board may adopt the Ordinance with the supporting findings of fact prepared by the applicant; or
 - b) the Board may assign the drafting of revised findings of fact and conclusions to the applicant for adoption at a subsequent reading; or
 - c) the Board may assign the drafting of an Order for denial to the Director.

IV. DISCUSSION

A. Background

On August 26, 2005, application was made to redesignate a parcel of land from Forest Land to NonResource and rezone it from F-2/Impacted Forest Lands to RR5/Rural Residential. The Lane County Planning Commission recommended denial of the request, following a public hearing on August 1, 2006 and deliberations on September 5, 2006.

The subject property is identified as Map 18-12-02-20 Taxlot 1900. The property consists of one parcel, approximately 52.17 acres in size, located west of Highway 101 north of the City of Florence.

As evidenced in the attachments, the proposal was contested during Planning Commission review. The applicant has supplemented the record subsequent to the Planning Commission deliberations.

B. Approval Criteria

Applicable criteria for all RCP amendments and rezonings are found in Lane Code 16.400(6) and L.C. 16.252. They are recited in the proposed findings attached as Exhibit "C" to the Ordinance and so are not repeated in this staff report. The NonResource designation is a unique designation which must meet a special set of evaluation criteria, fundamentally proving that the land involved in the proposal has no significant resource value within the definitions of the statewide planning goals.

These criteria, which are not in Lane Code but are found in the County's Marginal Lands Working Paper, require showings of limited or no resource value including such elements as watershed protection and wildlife habitat needs. Information on these criteria is discussed in the proposed findings. It can be added that the NonResource designation does not require adoption of a typical exception to statewide planning goals, since by its nature it obviates goal mandates.

C. Analysis

This application proposes to change a 52.17-acre parcel of Impacted Forest Land property to a zoning density which potentially could result in 10 residentially-developed lots. (A land division is **not** proposed as part of this application.) In justifying the proposal, the applicant has addressed Plan and zoning criteria including RCP policies and NonResource approval standards. Those criteria are not repeated in this Staff Report; please refer to the applicants' proposed findings (attached to the Ordinance as Exhibit "C") for both the criteria and the findings that address them. Staff comments are limited to the soil capabilities component of the requirements.

A key test for NonResource designations is soils productivity for farming and forestry. To demonstrate that the property is not Agricultural Land, the applicant must demonstrate that the property does not consist of predominately Class I – IV soils. To demonstrate that the property is not Forest Land, the applicant must demonstrate that the land is not suitable for the production of 50 cu. ft. / acre / year of wood fiber.

1. Agricultural Soils

Based upon the existing soil mapping by the NRCS and calculations performed by the Lane County Regional Land Information Database, the following soils are present on the subject property:

<u>Map Unit</u>	<u>Name</u>	<u>Percentage</u>	<u>Capability Class</u>
44	Dune Land	2%	Class VIII
131C	Waldport Fine Sand	26%	Class VI
131E	Waldport Fine Sand	4%	Class VII
140	Yaquina Loamy Fine Sand	69%	Class IV

The presence of 69% of Yaquina soils on the property with capability class IV would preclude the approval of the Plan designation change to NonResource Lands. At the Planning Commission level of review, the applicant submitted a report by a soils scientist (Exhibit 1E) that refines the boundaries of the soils map units on the property. The report concludes that there is substantially less of the Yaquina Soil map unit on the property (only

24.93%) and proceeds to identify 19.89 acres of Netarts soils (Class VI) on the property. The refinement of the soils map units in this manner reduces the amount of soils in Classes I – IV to 47.8% and allows consideration of the property as NonResource Land.

The Planning Commission found that the applicant had not met the burden in proof with regards to the soils classifications. The applicant's soils determination that 52% of the soils fall the Class V – VIII category was viewed as insufficient to demonstrate that a predominance of the soils can be considered as non-farm soils. The Planning Commission had concerns with the accuracy of the soils report, the credentials of the soil scientist, and the lack of peer review.

In response to the Planning Commission determination, the applicant has submitted Exhibits 26 & 27 which contain a supplemental soils report (Exhibit 26G) and a letter addressing peer review of the report (Exhibit 26F). The supplemental soils report includes a reclassification of the land area beneath the abandoned wasabi growing facilities. The report revises the soils units to include an Urban Land component in both the Waldport and Yaquina series. The results of the additional analysis demonstrates that 63.6% of the soils on the property fall within Class V – VIII and addresses the Planning Commission concern about the predominance of poor farm soils on the subject property.

An issue was raised by a Planning Commissioner regarding the necessary credentials required of the soil scientist in order to reclassify soils. Reference was made to OAR 603-080-0030(2) which states:

“Beginning January 1, 1997, the only minimally acceptable credentials for a soil scientist under ORS 215.710(5)(b)(A) shall be a soil scientist certified as a soils classifier by ARCPACS (subsection (1)(a) of this rule). Soil scientists who documented their qualifications under subsection (1)(b) of this rule must be certified as a soils classifier on or before January 1, 1997, in order to continue to meet the minimally acceptable credentials for a soil scientist under ORS 215.710(5)(b)(A).”

Staff notes that the OAR specific reference to ORS 215.710(5)(b)(A) means that this requirement governs only when considering an application for a non-farm dwelling and does not govern the soils analysis requirements under review in this application. The applicant's soils scientist is listed in the Certified Professional Soil Scientist (CPSS) Public Registry of the Soil Science Society of America. In response to LCPC questioning during the public hearing, the soil scientist stated that he had 19 years of experience with Cascade Earth Sciences.

The applicant has responded to the issue of peer review by submittal of a letter from Cascade Earth Sciences (CES) that describes the company's internal peer review process (Exhibit 26F).

2. Forest Soils

The applicant has submitted a report by a Consulting Forester (Exhibit 1K) that concludes that the property is capable of producing 37.32 cf. /ac. /yr. of merchantable timber. Page 7 of the report contains a table that identifies a maximum productivity of 48.89 cf. /ac. /yr. when using the most optimistic productivity figures possible, still below the 50 cf. /ac. /yr. threshold that allows the consideration of the property as NonResource Lands.

The Planning Commission found that the applicant had not carried the burden of proof with regards to forest capability of the subject property. The applicant has responded to

this issue by submitting a revised forest productivity analysis (Exhibit 26C), aerial photos (Exhibit 27B), and aerial photo analysis (Exhibit 26D). The revised forest productivity analysis uses the information contained within the supplemental soil classification report (Exhibit 26G) and concludes that the subject property is capable of producing only 9.28 cf./ac./yr. This level of productivity demonstrates that the property does not qualify as forest land. The report also documents review and approval of the study methodology by the Oregon Department of Forestry.

3. Policy Analysis.

Reference is made in the application to Lane County RCP policy 18, Goal 2, which states:

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 that the subject lands are not farm and forest lands as defined by Statewide Planning Goals #3 and #4.**
- b. An exception to any of the Statewide Planning Goals is not required.**
- c. Small isolated non resource tracts surrounded by farm and forest lands shall be discouraged if such non resource designation would create compatibility problems.**
- d. The Rural Residential Designation would be consistent with other Comprehensive Plan Policies.**

Reference is also made in the application to Lane County RCP policy 19, Goal 2, which states:

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.**

Within the proposed findings is a discussion of applicable plan policies as required above; the findings conclude that policy compliance is achieved.

4. Lane Code Requirements.

The remainder of the findings satisfactorily addresses compliance with the code aspects such as: fulfilling the purpose of the RR5 zone as found in LC 16.231(1); the Plan Amendment requirements of LC 16.400; and the rezone requirements of LC 16.252. Staff agrees with the statements as presented.

5. Lane County Planning Commission Action

The issues were presented to the LCPC for its evaluation in a public hearing on August 1, 2006. Deliberations were conducted on September 5, 2006 with the resulting recommendation of denial to the Board of County Commissioners by a 4-2 vote. See attachments 2 & 3 for minutes of the LCPC meetings.

The applicant is expected to be on hand at the Board hearing to present the proposal and respond to questions. Should additional written materials or testimony be produced concerning this item, it will be delivered to the Board in a supplement or delivered at the hearing.

D. Alternatives/Options

Upon conclusion of Board deliberations, a variety of options are available to the Board:

1. If the Board finds that the application meets all applicable criteria for approval:
 - a) Move to adopt the Ordinance as presented with the applicant's findings; OR
 - b) Move to tentatively approve the application and direct the applicant to prepare revised findings corresponding to the Board deliberations for subsequent final adoption.
2. If the Board finds that the application does not meet all applicable criteria for approval, move to tentatively deny the application and direct staff to prepare a Board Order for denial of the application for subsequent final adoption.

E. Recommendations

Staff recommends Option 1(a) above.

F. Timing

The Ordinance does not contain emergency clause.

V. IMPLEMENTATION/FOLLOW-UP

Notice of action will be provided to DLCD, the applicant, and other parties to the proceedings.

VI. ATTACHMENTS

1. Proposed Ordinance PA 1239 with Exhibits "A", "B", and "C"
2. LCPC Minutes of September 5, 2006 Deliberations
3. LCPC Minutes of August 1, 2006 Public Hearing
4. LCPC Staff Report for August 1, 2006 Public Hearing
5. Record Exhibits*
6. File Record Content Sheet

* Includes all substantive materials. Process related exhibits are available for review in the Land Management Division.

BEFORE THE BOARD OF COUNTY COMMISSIONERS OF LANE COUNTY, OREGON

ORDINANCE NO. PA 1239) IN THE MATTER OF AMENDING THE RURAL COMPREHENSIVE PLAN
) TO REDESIGNATE LAND FROM "FOREST" TO "NONRESOURCE" AND
) REZONING THAT LAND FROM "F-2/IMPACTED FOREST LANDS" TO
) "RR5/RURAL RESIDENTIAL", AND ADOPTING SAVINGS AND
) SEVERABILITY CLAUSES (file PA 05-6249; Carver)

WHEREAS, the Board of County Commissioners of Lane County, through enactment of Ordinance PA 884, 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 Lane Code 16.252 sets forth procedures for rezoning lands within the jurisdiction of the Rural Comprehensive Plan; and

WHEREAS, in August 2005, application no. PA 05-6249 was made for a minor amendment to redesignate tax lot 1900 of map 18-12-02-20, from "Forest Land" to "Nonresource Land" and concurrently rezone the property from "F-2/Impacted Forest Lands" to "RR5/Rural Residential"; and

WHEREAS, the Lane County Planning Commission reviewed the proposal in public hearing of August 1, 2006, conducted deliberations on September 5, 2006, and on that date forwarded the matter to the Board with a recommendation for denial; and

WHEREAS, evidence exists within the record indicating that the proposal meets the requirements of Lane Code Chapter 16, and the requirements of applicable state and local law; and

WHEREAS, the Board of County Commissioners has conducted a public hearing and is now ready to 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 by the redesignation of tax lot 1900 of map 18-12-02-20, from "Forest Land" to "Nonresource Land," such territory depicted on Plan Plot 021 and further identified as Exhibit "A" attached and incorporated herein.

Section 2. Tax lot 1900 of map 18-12-02-20, is rezoned from "F-2/Impacted Forest Lands" (Lane Code 16.211) to "RR5/Rural Residential" (Lane Code 16.231), such territory depicted on Rural Zoning Plot 021 and further identified as Exhibit "B" attached and incorporated herein.

FURTHER, although not a part of this Ordinance, the Board of County Commissioners adopts Findings as set forth in Exhibit "C" attached, in support of this action.

The prior designation and zoning repealed 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 of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision, and such holding shall not effect the validity of the remaining portions hereof.

ENACTED this ____ day of _____, 2006.

APPROVED AS TO FORM

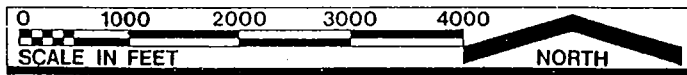
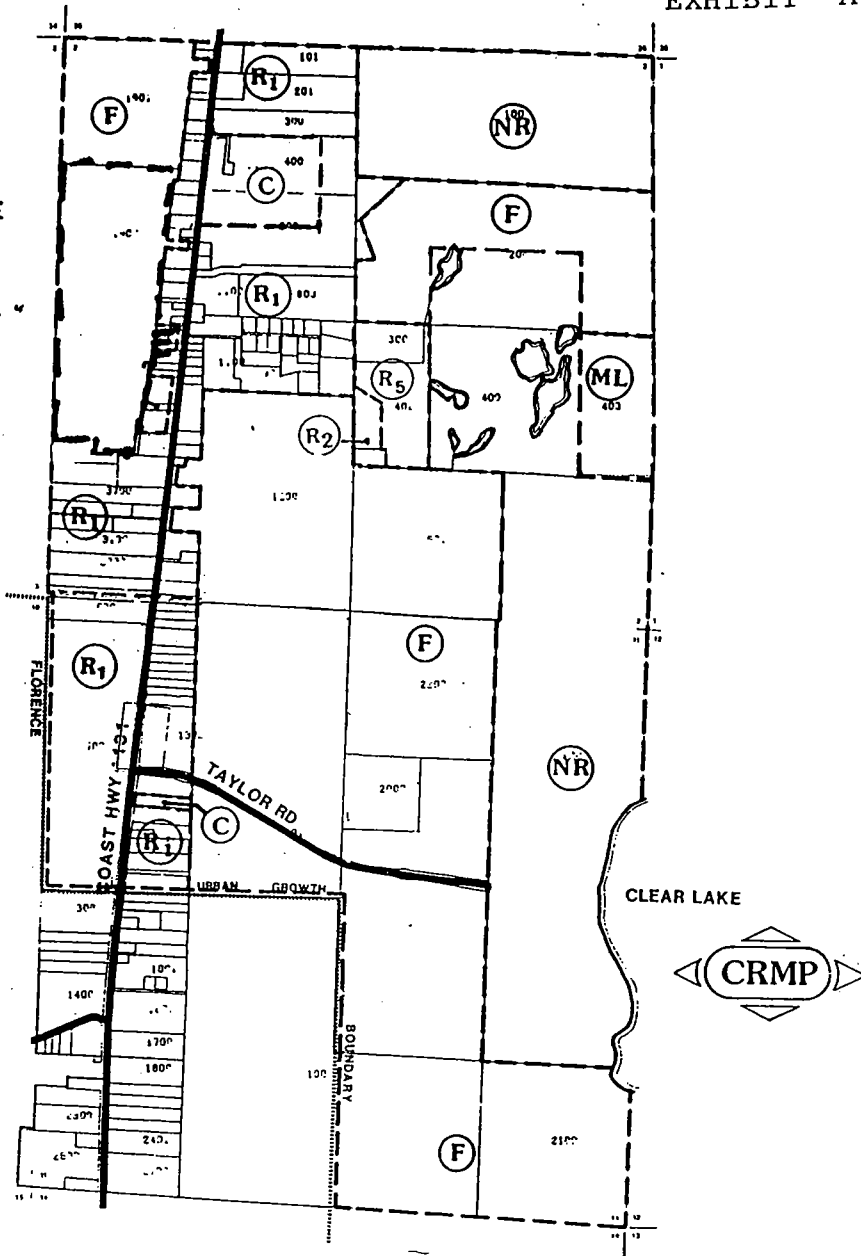
Date 11-15-2006 lane county


OFFICE OF LEGAL COUNSEL

Chair, Lane County Board of County Commissioners

Recording Secretary for this Meeting of the Board

ORDINANCE NO. PA 1239 / IN THE MATTER OF AMENDING THE RURAL COMPREHENSIVE PLAN TO REDESIGNATE LAND FROM "FOREST" TO "NONRESOURCE" AND REZONING THAT LAND FROM "F-2/IMPACTED FOREST LANDS" TO "RR5/RURAL RESIDENTIAL", AND ADOPTING SAVINGS AND SEVERABILITY CLAUSES (file PA 05-63249; Carver)



OFFICIAL PLAN MAP

PLOT# 021

Twnshp Range Section

18 12 02

18 12 11

ORIGINAL ORD. # PA 884 DATE 2/29/1984 FILE #

VISION # _____ ORD. # _____ DATE _____ FILE # _____

BOOK 165 PAGE 1089
020

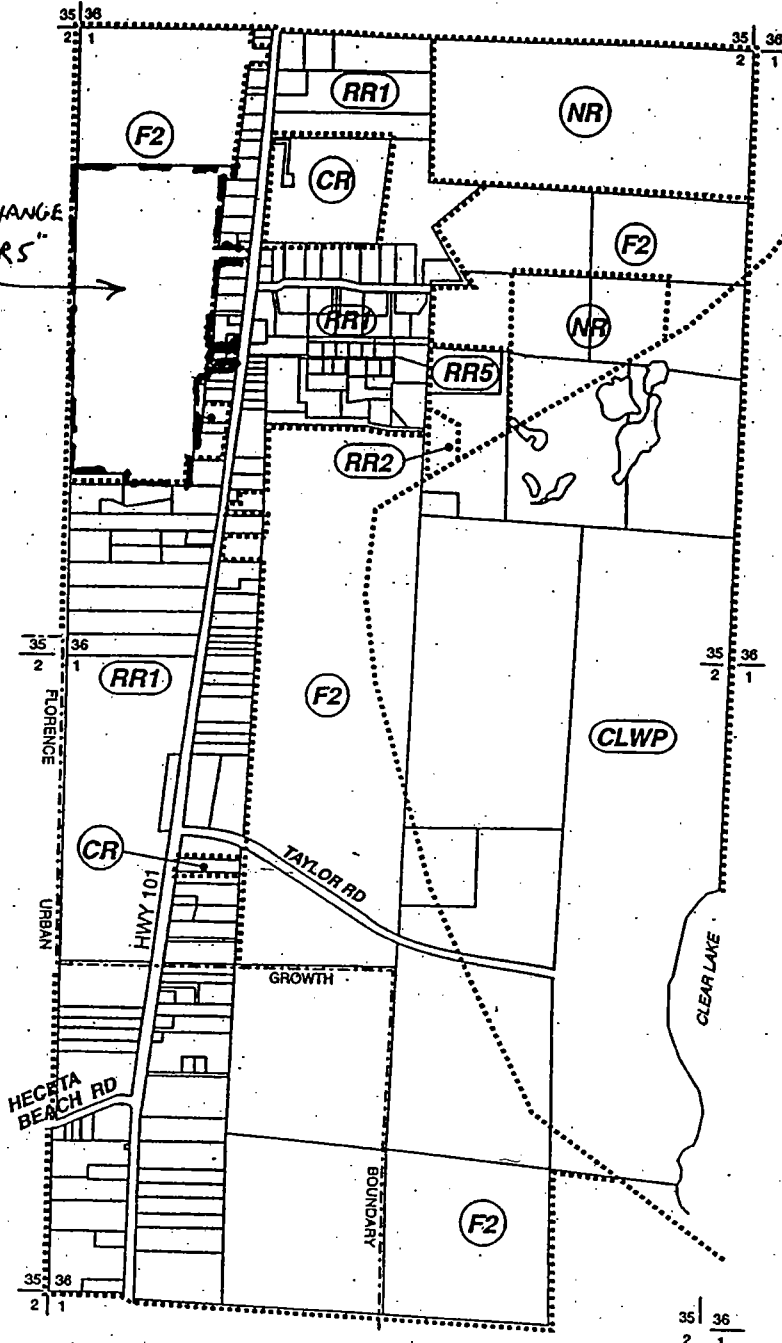
PROPOSED CHANGE
"F-2" TO "RR5"

010

028

029

FLOODPLAIN



The zones on this map are changed as follows:
From: RG, RA To: RR2
From: CR, C1, C2, & C3 To: RC Rural Commercial
From: M1, M2, & M3 To: R1 Rural Industrial
From: PF To: RPF Rural Public Facility
From: PR To: RPR Rural Park & Recreation

022

The RR zones on this map are changed as follows:
FROM: RR LC 16.231 TO: RR LC 16.290
The RR zone parcel size remains the same.

lane county



OFFICIAL ZONING MAP

PLOT #021

Township Range Section

18 12 02

18 12 11

ORIGINAL ORD. # PA 884 DATE 2/29/1984 FILE #
REVISION # ORD# DATE FILE #

FINDINGS OF FACT AND CONCLUSIONS OF LAW

for

A RURAL COMPREHENSIVE PLAN DIAGRAM AMENDMENT

AMENDING THE PLAN DIAGRAM DESIGNATION OF FOREST (F) TO RESIDENTIAL
(RR) AND AMENDING THE ZONING DESIGNATION OF IMPACTED FOREST LAND
(F-2) TO RURAL RESIDENTIAL (RR5)
FOR 52.17 ACRES LOCATED IN LANE COUNTY AND IDENTIFIED AS TAX LOT 1900
OF LANE COUNTY ASSESSOR MAP 18-12-02-20

and

ADOPTING SAVINGS AND SEVERABILITY CLAUSES

APPLICATION NO. PA 05-6249

ORDINANCE NO. PA 1239

Applicant: Julia Carver

Owner : Julia Carver

Applicant's Attorney: Steve Cornacchia
Hershner Hunter, LLP

FINDINGS OF FACT AND CONCLUSIONS OF LAW

In support of our adoption and enactment of Ordinance No. PA 1239, we make the following findings of fact and conclusions of law.

GENERAL FINDINGS AND CONCLUSIONS:

The property subject to this application (the Subject Property) contains 52.17 acres and is located north of the city of Florence on the west side of U.S. Highway 101. The subject property is located outside of and approximately 1200 feet north of the Florence Urban Growth Boundary. The property is zoned Impacted Forest Land (F2). The property is described as Tax Lot 1900 of Lane County Assessor's Map No. 1812022. The subject property has been determined by Lane County to be a legal lot. The property is bounded on the north by a 29.34 acre parcel zoned F-2, on the west by a 200-acre parcel owned by the U.S. Department of the Interior (BLM) and zoned Natural Resource and by a parcel zoned F-2, on the south by small parcels of rural residential land and on the east by myriad small residential parcels and two parcels zoned for industrial use which separate the subject property from U.S. Highway 101.

The site is relatively flat, but includes areas of gently undulating terrace, variably-sized stabilized dunes and a small portion of a large active dune in its extreme northwest corner. Approximately ten acres on the northern portion of the property have been developed as an experimental hydroponic system for the artificial production of wasabi. The system was established on less than 25% of the subject property, did not use the soil of the subject property and was in operation less than 5 years (1994-1998). The experimental system is no longer in operation. Plant cover consists of primarily native vegetation consisting of manzanita, rhododendron, salal, blackberry, huckleberry, grasses and shore pine and cedar trees.

The applicant seeks an amendment of the Lane County Rural Comprehensive Plan (RCP) Diagram to change the designation of 52.17 acres of land from Forestry to Rural Residential. The applicant also seeks a concurrent rezone of that land from Impacted Forest Land (F2) to Rural Residential (RR5).

All requests for RCP amendments to non-resource designations must comply with the RCP, Lane Code and the Statewide Planning Goals. Non-resource designations are explicitly authorized by both the RCP and 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 what "resource land" is and what "non-resource land" is. "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 consistent with all applicable state and county criteria.

COMPLIANCE WITH STATEWIDE PLANNING GOALS

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 its planning commission and board of commissioners, 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 or information. 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 and Lane Code. Application approval does not require that an

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

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 - Agricultural Land

To preserve and maintain agricultural lands.

Goal 3 provides for the protection of agricultural lands as those are defined under the goal. 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 System, 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.

The Land Conservation and Development Commission has adopted rules that further define Agricultural Land. OAR 660-033-0020 provides four parts to the relevant definition. Each part of the definition is addressed as follows.

OAR 660-033-0020(1)(a): [Predominant Soil Types]

"Agricultural Land" as defined in Goal 3 includes:

(A) Lands classified by the U.S. Natural Resources Conservation Service (NRCS) 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 (Cascade), and Cascade performed an assessment of the soils on the subject property. In Cascade's original report filed with the application, Cascade concluded that its field work showed that approximately 48% of the soils on the subject property are Class IV soils. None of the soils are Class I-III soils. Cascade concluded in that report that the subject property contains

approximately 52% Class VI soils. That conclusion was based, in addition to other considerations, upon Cascade's finding that subsurface observation of the northeast portion of the parcel that had been developed for wasabi production was not feasible and that the NRCS soil mapping of that area was not refined by Cascade. That conclusion left the NRCS mapping of a significant portion of that area as Yaquina loamy fine sand (Soil Map Unit Number 140) which is a Class IV soil. Upon questioning by the Lane County Planning Commission as to why the northeast area was not observed and refined and on the narrow division between Class IV soils (48%) and Class VI soils (52%) in the Cascade report, the applicant requested that Cascade conduct further review and observation of that northeast area. Following that review, Cascade concluded that the subject property contained less Class IV soils than concluded by Cascade in its original report.

The published NRCS soil map (Map Sheet 83 of the Soil Survey of Lane County Area, Oregon (USDA/NRCS (SCS)), September 1987 (Soil Survey), which Soil Survey is incorporated herein in its entirety by this reference) shows six soil map units occurring on the subject property and nearby property. A copy of Map Sheet 83 is included as an exhibit to the Cascade report and is incorporated herein by this reference. The soil map units depicted on the exhibit are:

- Dune land, soil map unit 44
- Netarts fine sand, soil map unit 94C
- Netarts fine sand, soil map unit 94E
- Waldport fine sand, soil map unit 131C
- Waldport fine sand, soil map unit 131E
- Yaquina fine sand, soil map unit 140

Cascade refined the published soils map following its onsite investigations. The investigation included the original examination and recording of key characteristics at 18 representative locations on the subject property and the subsequent examination and recording of key characteristics of the northeast portion of the subject property. Those locations included test pits, cut-banks and other pertinent features. Several diagnostic criteria were documented at each location, including slope, landscape position, horizonation and effective depth. Other soil profile characteristics, such as color and texture of the surface horizon, and the presence of iron cementation, were also noted. The approximate location of each original test pit or observation point and the revised delineation boundaries are depicted on Figure 1 of the original Cascade report. No new soil types were identified in the original report.

Boundaries between the mapped soil units were refined by Cascade based upon the results of its investigation. The primary change in the boundaries from the Soil Survey to Figure 1 of the original report is the reduction in the presence of Yaquina soils (and Yaquina soil map units) and the increase in the presence of Netarts soils (and Netarts soil map units). Cascade's refinements were based upon landscape position and slope with the Waldport and Netarts soils being distinguished by the degree of development, as indicated by iron cementation in the subsoil, with each phase identified by slope.

Cascade examined the northeast portion of the property and concluded that the degree of disturbance that occurred during the preparation and construction of the wasabi growing facilities

was significant enough to preclude a current evaluation of the original soils in that portion of the site and represents conditions that qualify as “urban land” as defined in the soil survey. Cascade provided evidence that “urban land”, as defined by the Lane County soil survey, “consists of areas where the soils are largely covered by concrete, asphalt, buildings or other impervious surfaces that obscure or alter the soils so that identification is not feasible.” Cascade concluded that the northeast portion of the subject property occupied by the wasabi growing facilities contained such impervious surfaces and clearly qualifies as urban land. Cascade provided testimony that both Yaquina and Waldport soils are mapped as part of soil map units that include urban land (Soil Map Unit 133C, Waldport-Urban land complex, 0 to 12 percent slopes and Soil Map Unit 141, Yaquina-Urban land complex). While the Lane County soil survey does not include a capability class designation for either soil map unit 133C or 141, Cascade presented evidence that the more-recent Soil Survey of Lincoln County Area, Oregon (USDA/NRCS, issued July 1997 (and incorporated herein by this reference) assigns a capability class of VIII to those soil map units. Cascade further testified that the Lincoln County soil survey states that “urban land” “consists of areas covered mainly by streets, parking lots, buildings, or other impervious surfaces that obscure or alter soil characteristics so that recognition and interpretation is not feasible.” Because the soil survey of both counties are published by the USDA/NRCS, we find that it is logical and reasonable to conclude that the areas in the northeast portion of the property underneath the wasabi growing facilities are not class IV soils and, furthermore, are not class I-IV soils.

The conclusions and subsequent soil map unit boundary refinements of the original Cascade report, coupled with the subsequent Cascade report on the northeast portion of the subject property, demonstrate that the subject property is not Agricultural Land under this part of the test because only approximately 36.4% of its soils are in soil Classes I-IV and, thus, is not agricultural land as defined in OAR 660-033-0020(1)(a)(A).

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; exiting land use patterns, technological and energy inputs required; and accepted farming practices;

This part of the test focuses on lands which have predominantly nonagricultural soils and inquires into whether they are nevertheless suitable for farm use. A list of seven factors must be considered. The suitability for farm use must consider the potential for use in conjunction with adjacent or nearby land.² The history of farm use on the subject property, such as its partial use

² See DLCD v. Curry County, 28 Or LUBA 205, 208-209 (1994) aff’d 132 Or App 393 (1995).

for the hydroponic production of wasabi, is relevant to its current suitability,³ but is not determinative.⁴

The applicant retained the services of Paul Day, MS, Agricultural Consultant, to analyze the subject property's suitability for farm use. Regarding the soils delineated in the original Cascade report, Mr. Day noted that none of the soils on the subject property is listed by the SCS/NRCS as "Prime Farmland" and determined that pasture is the only crop listed by the SCS/NRCS for any of those soils. His "Agricultural Evaluation" ("Day Report") concludes that, based upon the seven factors stated in this part of the rule, the subject property is not suitable for farm use either alone or in conjunction with adjacent or nearby lands. The Day Report briefly describes the history of the wasabi production, noting that it was accomplished entirely under "artificial or imported" conditions. The production was entirely hydroponic and made no use of the soil of the subject property.

The Day Report supported its conclusion that the subject property was not suitable for farm use (and did not fall within the scope of "other suitable lands") with an examination of each of the seven factors stated in the rule. The Day Report concluded the following with respect to each of the seven factors:

Soil Fertility: The report finds that fertility conditions are not conducive to production of improved forage species because the soils are low in fertility and would be in need of frequent applications of fertilizer. Furthermore, the application of nitrate-nitrogen fertilizer to the Netarts and Waldport soils poses potential conflicts in the North Florence Dunal Aquifer Area between pasture production and groundwater quality because the applied nutrients can be leached from those soils. The North Florence Dunal Aquifer Area is identified in the Onsite Wastewater Treatment System Rules (OAR 340-071-0400) as an area requiring "Geographic Area Considerations." The North Dunal Aquifer Study, dated June 1982 (LCOG), which by this reference is incorporated herein as though fully set forth, recommends that nitrate-nitrogen fertilizer use be minimized within the aquifer. Mr. Day concludes that significant fertilization would be required for the production of forage species which would create the conflict between pasture production and groundwater quality. The report concludes that attempts to correct the fertility problems would have the potential to result in environmental damage.

Suitability for Grazing: The report concludes that "the lack of native vegetation suitable for grazing and the environmental hazards associated with establishing, maintaining and managing an appropriate grazing resource all contribute to the difficulty in maintaining and managing a grazing resource." The most significant hazard associated with establishing pasture on the subject property is wind erosion induced by tillage operations. The report also includes that, even under the best of conditions and results, the subject property has a total combined livestock carrying capacity of less than two head of cattle. Based upon the Day Report conclusions, we find that the subject property is not suitable for grazing.

³ See Clark v. Jackson County, 17 Or LUBA 594, 606 (1990).

⁴ See 1000 Friends of Oregon v. WASCO County Court, 80 Or App 525, 531, 723 P2d 1039 (1986) ("Also, there is no presumption that the land is agricultural land simply because of its previous agricultural use. Previous use is merely one factor for the county to consider in reaching its conclusion about the land's current condition.").

Climatic Conditions: The reports states that the subject property is unprotected from coastal storms and that wind erosion and heightened livestock energy needs are likely to result. The study concludes that those climatic conditions add to the impracticability of the subject soils for agricultural production.

Irrigation Water: The report concludes that sources of irrigation water are impracticable, adding further to the impracticability of the subject soils for agricultural production.

Existing Land Use Patterns: The report concludes that “agriculture is not a factor in existing land use patterns.” It details the surrounding residential and recreational uses and the resultant trespass and dumping of trash that occur on the subject property. The 1987 Lane County Soil Survey provides evidence that land in the vicinity of the subject property contains soil map units that are similar to the subject property’s soil map units, further supporting the conclusion that agricultural use does not exist in the vicinity of the subject property. Noting that no other agricultural uses exist in the nearby area, the report concludes that no agricultural use in the area exists to support the same use on the subject property or be affected by the lack of agricultural use on the subject property.

Technology and Energy Inputs Required: The report concludes that no amount of application of reasonable amounts of technology or energy can overcome the physical impediment to agricultural production on the subject property.

Accepted Farming Practices: The report’s overall conclusion is that soils, plants, location and climatic conditions render the subject property impracticable for agricultural production. It further concludes that attempting agricultural production that has a high potential for heavy soil loss through erosion is not an acceptable farming practice. We find that the applicant has demonstrated that the subject property is not “other suitable land” pursuant to the rule and, thus, is not agricultural land as defined by OAR 660-033-0020(1)(a)(B).

OAR 660-033-0020(1)(a): [Land needed to permit farming practices on adjacent/nearby agricultural lands]:

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

Based upon the testimony of the applicant and of the Day Report, we find that agricultural use does not exist in the vicinity of the subject property. There are no adjacent or nearby agricultural lands, either in designation or use, existing in the vicinity of the subject property. The subject property is not land that is necessary to permit farm practices in the vicinity and, thus, is not agricultural land as defined by OAR 660-033-0020(1)(a)(C).

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-IV/I-VI within a farm unit, shall be inventoried as agricultural lands even though this land may not be cropped or grazed.

The subject property is not adjacent to, or in the vicinity of, any other property with agricultural soils that could be combined with the subject property to constitute a "farm unit." The entire acreage of the subject property is the subject of this application. Consequently the farm unit test is neither relevant nor applicable to this application.

Opponent Goal One Coalition argued that "(T)he fact that the subject property has historically been an active, ongoing agricultural use of the property means that the subject property is a "farm unit" under OAR 660-033-0020(1)(b). We find the opponent's argument as confusing as its sentence and do not believe it, coupled with the opponent's subsequent argument, is supported by Oregon law.

Other than the applicant's five-year experimental wasabi production facility, no evidence exists to demonstrate that any agricultural use of the subject property has occurred in recent history. That fact is further supported by the aerial photography analysis of Westbrook Enterprise, LLC that concludes that the subject property was fully stocked with Shore pine that had not been harvested for at least 50 years prior to the 1993 harvest. We find it reasonable to conclude that land fully stocked with Shore pine has not been used for agricultural purposes at the same time. Furthermore, we do not consider the five-year experimental wasabi production facility a "farm unit" as defined in Lane Code 16.212(2)(d) which requires contiguous and non-contiguous tracts in common ownerships.

The applicant does not own adjacent or nearby land contiguous or non-contiguous to the subject property that has been or could have been historically combined with and/or utilized with the subject property as a "farm unit." Furthermore, evidence in the record supports a finding that no lands adjacent to or nearby the subject property are currently in agricultural designation or agricultural use. That evidence supports a finding that no lands adjacent to or nearby the subject property are currently in agricultural designation or agricultural use. Finally, no evidence has been provided by any party demonstrating that either adjacent or nearby lands have been historically designated as agricultural land or have been used as agricultural lands through farm use. Therefore, we find that the subject property is not, nor has it been, a part of a farm unit consisting of land that includes the subject property and adjacent tracts or lands, as the term "farm unit" is defined by Oregon law.

Goal One Coalition compounds the confusion created by its initial argument by its subsequent argument that "(L)ands that are intermingled with the class IV soils on the subject property must be inventoried as agricultural lands." We find that the Goal One Coalition subsequent argument is not consistent with Oregon law and is not supported by Oregon law. Our finding is based upon the fact that the entire acreage of the subject property is the subject of the application; all of the soil map units of the subject property are included in the Cascade report analysis and conclusions. This application does not involve a request to re-designate a portion of an ownership or historical farm unit that the whole of which is currently designated as agricultural land. The entire acreage of the subject property is included in the applicant's request for re-designation.

Furthermore, the subject property is not a part of a larger tract or ownership or combined agricultural operation covering adjacent or nearby lands in common or third-party ownership. Consequently, no adjacent lands exist which, combined with the subject property, could constitute a "farm unit" to provide soils in capability classes I-IV with which to intermingle with the soils of the subject property. The opponent's argument appears to be that since Class V-VIII

soils exist on the subject property, those soils are intermingled with the Class I-IV soils on the subject property and, therefore, the subject property must be retained in agricultural designation. We find that argument to be without merit.

Accordingly, we find that approval of the application is consistent with OAR 660-033-0020(1)(b).

We further find that approval of the application is consistent with the purpose and intent of Goal 3.

3.4 Goal 4 - Forest Lands.

To preserve 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 the LCDC in 1984. The definition was adopted during the 1984 LCDC Acknowledgement of Compliance process for the Lane County RCP. In response to Lane County's request for LCDC acknowledgement 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 1983.⁵ One of the requirements was for the county to “Amend the Forest Working Paper Appendix 1—Land County Forest Soils—to include “all commercial forest soils” in a manner consistent with an appropriate definition of commercial forest lands.” See Exhibit F (page 16) to the application. 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.”⁶ Lane County adopted additional findings in support of Ordinance No. PA 889 in Order 84-9-12-3 and Order 84-9-12-4. Copies of those orders are included as Exhibits H and I to the application, respectively.

On pages 17 and 18 of the September 13, 1984, Acknowledgement 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. See Exhibit F to the application. On pages 22 and 23 of its acknowledgement document LCDC concluded that Lane County, following its adoption of the required amendments, complies with Goal 4. See Exhibit F to the application.

Commercial forest types of trees include Douglas fir, hemlock, spruce, cedar, other conifers and deciduous trees.

⁵ Exhibit F to the application contains selected pages of the September 13, 1984, LCDC Acknowledgement of Compliance that refer to the particular required Lane County amendments to its Forest Land Working Paper and state LCDC’s acknowledgement of those particular amendments. The county’s amendment of the Forest Land Working Paper definition of commercial forest land to “land capable of producing crops of industrial wood in excess of 50 cubic feet per acre of annual growth” is included in that acknowledgement. See pages 1-2, 15-18 and 22-23. While the entire September 13, 1984, LCDC Acknowledgement of Compliance is incorporated herein by this reference, for the sake of brevity only the selected pages have been included in Exhibit F to the application.

⁶ Exhibit G to the application contains “Exhibit C” and “Exhibit D” of Ordinance No. PA 889. While the entire Ordinance No. PA 889 is incorporated herein by this reference, for the sake of brevity only the two exhibits are included in Exhibit G as provided by the applicant.

⁷ Lane County’s definition of “commercial forest land” was the subject of 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.”

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 (or to meet or exceed the definition of commercial forest land (20 cubic feet per acre per year) proposed by Goal One Coalition--a definition that we find is without evidence to support its use in this proceeding).

Specifically, Mr. Setchko found that, even assuming the most optimistic realization of growth, the subject property is capable of producing only 9.28 cubic feet of merchantable timber volume per acre per year. In his analysis Mr. Setchko summarized the environmental constraints to commercial forest production common to coastal areas within which the subject property is located:

"The above described parcel abuts the unstablized sand dunes along the Oregon Coast. The northwest portion is actually a small sliver of the dunes. The interface between the sand on the coast and the forested ground inland is a narrow band of land that is a particularly harsh growing environment for trees. The constant high winds and the brine contained in the salt air off the ocean is extremely harsh on trees; trees do not grow well in this zone. Therefore a soil type which will support a commercially viable forest just a mile or so inland will barely grow trees within this interface. The constant winds blowing across this parcel leave no protected areas to establish trees. Where natural or artificial reforestation, of species other than shore pine, is attempted seedling mortality is high. For trees that are established, the windthrow hazard is high due to the extremely thin soil layer on top of the sand." Forest Productivity Analysis, page one.

Mr. Setchko provides a consistent consideration in his calculations: the environmental conditions existing on the subject property are not conducive to tree growth.

Based upon Mr. Setchko's report we find that the dominant species on the subject property is shore pine. Mr. Setchko's report states that no site index tables or yield tables exist for shore pine and that productivity of shore pine cannot be determined from NRCS, ODF or USFS resources or publications. Because no shore pine site index tables and productivity tables from accepted sources are available, Mr. Setchko provided an alternative methodology for determining that productivity. Mr. Setchko's alternative methodology is provided in his report. Mr. Setchko's alternative methodology was approved by the Oregon Department of Forestry (ODF) on September 25, 2006, for use on the subject property and for use in this application. ODF conditioned its approval with the caveat that the applicant, through Mr. Setchko, must provide substantial evidence to support each of the nine steps in the alternative methodology and that Lane county is to determine the sufficiency of the evidence to support Mr. Setchko's productivity capability number.

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].

We find that the evidence provided by Mr. Setchko in his report, particularly the testimony of Mr. Chip Westbrook, an Oregon Professional Photogrammetrist, regarding full stocking of shore pine prior to harvest and of the location and extent of the 1993 clearcut of the subject property, is substantial evidence that supports each of the nine steps in the alternative methodology and, therefore, supports the use of his alternative methodology. We further find that substantial evidence has been provided that supports Mr. Setchko's conclusion that the subject property is capable of producing only 9.28 cubic feet of merchantable timber volume per acre per year. Furthermore, we find that Mr. Setchko's alternative methodology provides an appropriate determination of forest site suitability according to potential productivity of the dominant species of shore pine on the subject property. Accordingly, we find that Mr. Setchko has provided sufficient substantial evidence to support his productivity capability number.

Mr. Setchko also analyzes the potential production of other commercial species of trees and concludes that either the particular species is not found in the geographic range of the subject property, will not grow on the subject property or will not grow on the subject property at a level that produces more than 50 cubic feet of merchantable timber per acre per year.

Mr. Setchko concludes that the subject property is "ill suited" to the production of merchantable timber and use of it for forestry purposes. Mr. Setchko's analysis and conclusions demonstrate that the subject property is not suitable for commercial forest uses and should not be considered forest land under the rule. We find that Mr. Setchko has demonstrated that the subject property is not suitable for commercial forest uses and that, for the purposes of this provision, the subject property is not forest land.

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

The majority of adjacent and nearby lands are zoned and used for purposes other than forest uses. Land to the east and south is all under non-resource designations of commercial, industrial and residential. The entire western boundary of the subject property abuts an active sand dune within federal ownership and management. The one property in the vicinity of the subject property that is zoned for forest use abuts it to the north. Although zoned F-2, the northerly parcel is similar in soil and environmental conditions to the subject property. No evidence of forest operations exists on that property and the subject property has not been managed for or used in forest operations in conjunction with that property. The subject property is not necessary to permit forest operations or practices anywhere in its vicinity.

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

The first inquiry of this test requires a finding that the subject property is predominantly forested. All consultant reports included in this application describe the property as primarily covered in vegetation other than trees (manzanita, rhododendron, salal, blackberry, huckleberry, sedges, rushes and grasses). The few trees that do grow on the property are scattered and gnarled shore pine and cedar. The subject property cannot be considered as predominantly forested under the rule. Furthermore, this application has previously demonstrated that the subject property is not forest land as defined and contemplated under Goal 4. Therefore, the subject property is not "forested land" under this section of the rule.

Even if Lane County could find that the subject property is "forested land", the targeted resources of this rule (soil, air, water and fish and wildlife resources) are either not present on the subject property or are not relevant to the subject property under this section of the rule.

No permanent water features or other fish habitat exist on the property. There is no apparent connection between the minimal tree cover and air quality. The soil resources of the property have been previously discussed and are not relevant to this section of the rule. The minimal existing tree cover on the property is not necessary to maintain soil on the site as that function is provided by other vegetative cover. No evidence exists that the minimal tree cover is necessary to maintain wildlife populations.

The preceding discussion, and its supporting documentation, demonstrates that the subject property is not forest land under any definition of that term contained in the administrative rules implementing Goal 4. Accordingly, application approval is consistent with Goal 4.

Goal 5 - Open Space, Scenic and Historic Areas, and Natural Resources.

To conserve open space and protect natural and scenic resources.

We find that Lane County has previously determined legislatively that no Goal 5 resources exist on the subject site except wetlands. The subject property has not been included in any inventory of needed open space or scenic areas defined by Goal 5, nor has it been identified in the RCP as having any historic, cultural or natural resources which need to be preserved and/or protected. Any development of the subject property must occur with the protection of the small areas of wetlands delineated on the subject property. While the applicant believes that the subject property can be developed without disturbance of the small wetland areas, any proposed disturbance of those wetlands will require permits from appropriate federal, state and county agencies. We find that the proposed amendments will not conflict with any Goal 5 resources.

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. Furthermore, the subject property is located within the Lane County Beaches and Dunes Combining Zone. Prior to any development of the property the applicant must apply for a Preliminary Investigation (Development Hazards Checklist) that will determine if any hazard areas exist and if development of the subject property should include regulatory conditions that address development within such hazard areas. See LC 16.243(10)

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 development.

Goal 11 addresses facilities and services in urban and rural areas. The subject property is “rural” land and will remain rural after application approval, as discussed in connection with Goal 14. RCP Policies describe the minimum level of services for non-resource areas in rural Lane County. Those 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. See Goal 11, Policy 6.e., k. The services now available to the subject property, or proposed to be developed, include: Schools - Siuslaw No. 47J; On-site sewage disposal - individual septic systems; Water supply - Heceta Water District or individual wells; electrical system - Central Lincoln PUD; Telephone service - Qwest; Fire protection - Siuslaw RFPD No. 1; Police protection - Lane County Sheriff and Oregon State Police; Solid waste disposal - County Refuse and Transfer Co. We find that the minimum level of services are available to the subject property.

Goal One Coalition makes the argument that, even though the subject property is within the Heceta Water District boundary, increased residential density on the subject property cannot occur due to the presence (or extension) of the district’s water system that serves the subject property. Goal One Coalition cites OAR 660-011-0065(1)(b) and (2) and *Wood v. Crook County*, 49 Or LUBA 682 (2005) as legal authority for its argument. Its reliance upon *Wood* is misplaced. The Oregon Court Appeals, in reversing the LUBA decision in *DLCD v Lincoln County*, 31 Or LUBA 240 (1996), determined just the opposite.

The LUBA decision had held that Goal 11 prohibited local governments from relying on extensions of an established, existing water system to authorize increased residential density, and that the term “extension” as used in Goal 11 could refer to connection of a water system to individual properties within district boundaries as well as extension of a water system outside a water district’s boundaries.

In *DLCD v. Lincoln County*, 144 Or App 9, 17, 925 P2d 135 (1996), the Oregon Court of Appeals reversed LUBA and determined, essentially, that the phrase “establishment or extension” in Goal 11 “is systematic in scope, and that contemplates the new or expanded presence of water systems in areas where none was present before. The corollary is that [Goal 11] does not proscribe local legislation or decisions that base higher densities on existing water systems or new connections to such systems within their existing service areas.” In other words, Goal 11 does not prevent Lane County from increasing the residential density on the subject property following a finding that the subject property is within the Heceta Water District boundary and is capable of receiving residential water from the district.

The applicant also retained the services of EGR & Associates, Inc., of Eugene to analyze the subject property’s ability to provide water through individual wells. The EGR report concluded that the North Florence Dunal Aquifer will yield relatively large volumes of

water from a large reservoir of stored water and that water supply from the dunal aquifer is expected to be plentiful. In summary, the report stated that “there is more water available on this site than would possibly be used by any conceivable development and that the sewage disposal from on-site systems, at the density proposed, will not adversely impact the groundwater aquifer.”

Therefore, to the extent that Goal 11 is applicable to the application, we find that 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.

The intent of Goal 12 is implemented through the provisions of the State Transportation Planning Rule (TPR) (OAR 660, Division 12), which was adopted by LCDC in 1991. OAR 660-012-0060(1) requires that “amendments to functional plans, acknowledged comprehensive plans, and land use regulations which 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 rule specifies what constitutes a “significant affect.” OAR 660-012-0060(1) provides:

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) As measured at the end of the planning period identified in the adopted transportation system plan:

(A) Allow land uses or levels of development that would result in types or levels of travel or access that are inconsistent with the functional classification of an existing or planned transportation facility;

(B) Reduce the performance of an existing or planned transportation facility below the minimum acceptable performance standard identified in the TSP or comprehensive plan; or

(C) Worsen the performance of an existing or planned transportation facility that is otherwise projected to perform

**below the minimum acceptable performance standard
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 U.S. Highway 101 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). Lane Code 15.697(2) provides that the County Engineer may waive traffic impact analysis requirements specified in LC 15.697(1) when, in the case of a plan amendment, the scale and size of the proposal is insignificant, eliminating the need for detailed traffic analysis of the performance of roadway facilities for the 20-year planning horizon. Lane Code 15.697(2)(b) provides that, generally, a waiver of a Traffic Impact Analysis will be approved when the plan designation or zoning that results will be entirely residential and the allowed density is not likely to result in creation of more than 50 lots and there is adequate information for the County Engineer to determine that a transportation facility is not significantly affected as defined in Lane County Transportation System Plan Policy 20-d.

We find that application approval will result in a rural residential designation and zoning for the subject property that will result in the development of no more than 10 lots (less than 50 lots being created). The Oregon Department of Transportation has preliminarily determined that the proposed development of the subject property will not significantly affect U.S. Highway 101 as provided in the rule.

Therefore, we find that approval of the application is consistent with the intent and purpose of Goal 12.

Goal 13 - Energy Conservation.

To conserve energy

We find that 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.⁸

Goal 14 – Urbanization.

To provide for an orderly and efficient transition from rural to urban land use.

Although OAR 660-004-0040, for the purpose of establishing the applicability of Goal 14, specifically exempts lands located outside of urban growth boundaries and for which an exception to Statewide Planning Goal 3 or 4 has not been taken, Goal 14 may be applicable to this application even though no exceptions to the stated goals are being requested or taken.

⁸ See Brandt v. Marion County, 22 Or LUBA 473, 484 (1991), aff'd in part, rev'd in part, 112 Or App 30 (1992).

We find that, to the extent that Goal 14 is applicable to the application, approval of the application would be consistent with its purpose and intent.

Lane County's Rural Comprehensive Plan (RCP) is acknowledged by the Land Conservation and Development Commission. The RCP contains Policy 19 (previously Policy 17) of Goal 2 which provides:

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 area;**
- b. Subsurface sewage disposal suitability;**
- c. Domestic water supply suitability;**
- d. Access;**
- e. Public services;**
- f. Lack of natural hazards;**
- g. Effect on resource lands.**

We find that, to the extent that Goal 14 is applicable to the application, Goal 2, Policy 19 of the RCP, as acknowledged, is consistent with the purpose and intent of Goal 14 and provides for rural residential densities of five acres on non-resource land. We provide further findings of fact on the consistency of the application with Goal 2, Policy 19 of the RCP hereinbelow.

Under Oregon law, lot sizes of one acre or less are clearly urban, and lot sizes greater than 10 acres are clearly rural. Whether densities between those extremes are urban or rural depends on the types of urban services to be provided to the subject property and depends on the effect of the proposed development on the integrity of an urban growth boundary of the nearest city to the subject property.

The applicant requests that the subject property be designated and zoned to provide for rural residential use on parcels of at least five acres in size, consistent with the RCP. We find that residential use on parcels at least five acres in size on the subject property will not constitute an urban use.

Evidence in the record demonstrates that residential use on five acre parcels on the subject property will not require the extension of any urban services from the City of Florence. The

following services are available to the subject property: 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. In addition, the property is located within the boundary of Heceta Water District and individual parcels may receive water service from the District. Furthermore, the subject property is capable of providing domestic water to all resultant parcels through the establishment and use of individual wells. No community water system or sewage disposal system is needed, contemplated or required to provide that type of service to the subject property. The Florence School District, which is a separate entity from the City of Florence, extends beyond the city limits and encompasses rural properties (and students) in addition to the urban properties within its boundary. We find that specifically, and on the whole, the subject property does not receive urban services and will not be required to obtain and receive urban services for rural residential use on it.

Upon approval of the application the subject property will be zoned Rural Residential. LC 16.231 regulates uses within the Rural Residential and does not allow commercial uses within the zone.

The subject property is located, at its closest point, approximately 1200 feet north of the urban growth boundary of the City of Florence. A considerable number of individual and discrete parcels are located between the urban growth boundary of the city and the subject property. The separation distance between the subject property and the city's urban growth boundary is significant and compelling. We have not seen any evidence that the city has conducted any analysis nor reached any conclusion that the subject property and the land lying between it and the city's urban growth boundary are lawful candidates for inclusion within the boundary. We find that the myriad considerations necessary to support an expansion of the Florence urban growth boundary in a northerly direction over a quarter of a mile from its current location have not been and are not currently topics of coordination between the city and Lane County and are not included in any planning exercises between the two jurisdictions. Taking into account the separation distance between the subject property and the urban growth boundary, the intervening parcels in between the two and the lack of planning exercises or tasks between the two jurisdictions related to urban growth boundary expansion in the vicinity of the subject property, we find that development of the subject property will have no negative effect, if any effect at all, on the integrity of the city's urban growth boundary. Furthermore, we find that if the city ever does extend its urban growth boundary (and city limits) north of its current location to include the subject property, parcel sizes of five acres or more resulting from approval of this application will not prevent subsequent division of those parcels to provide urban-sized parcels consistent with the city's comprehensive plan.

We find that approval of the application is consistent with Goal 2, Policy 19 of the RCP. We further find that approval of the application will not require the extension of urban services to the subject property and will not affect the Florence urban growth boundary. Consequently, we find that approval of the application is consistent with Goal 14.

Goal 15 - Willamette River Greenway.

To protect, conserve, enhance and maintain the natural, scenic, historical, agricultural, economic and recreational qualities of

*lands along the Willamette River as the Willamette River
Greenway.*

The subject property is not located within the Willamette River Greenway. Accordingly, we find that Goal 15 is not applicable.

Goal 16 - Estuarine Resources.

To recognize and protect the unique environmental, economic, and social values of each estuary and associated wetlands; and

To protect, maintain, where appropriate develop, and where appropriate restore the long-term environmental, economic, and social values, diversity and benefits of Oregon's estuaries.

The subject property contains no estuarine resources.

Goal 17 - Coastal Shorelines.

To conserve, protect, where appropriate, develop and where appropriate restore the resources and benefits of all coastal shorelines, recognizing their value for protection and maintenance of water quality, fish and wildlife habitat, water-dependent uses, economic resources and recreation and aesthetics.

The subject property contains no coastal shorelines.

Goal 18 - Beaches and Dunes.

To conserve, protect, where appropriate develop, and where appropriate restore the resources and benefits of coastal beach and dune areas.

Local governments and state and federal agencies shall prohibit residential developments and commercial and industrial buildings on beaches, active foredunes, on other foredunes which are conditionally stable and that are subject to ocean undercutting or wave overtopping, and on interdune areas (deflation plains) that are subject to ocean flooding.

We find that the subject property does not contain beaches and dunes that are described in this goal (other than the small area of active dune in the extreme northwest corner of the property). The subject property does, however, contain stabilized dunes and is located within the Lane County Beaches and Dunes Combining Zone (/BD-RCP Zone). Lane Code provides that all permitted buildings and uses allowed in the respective zones with which the /BD-RCP Zone is

combined are permitted uses, with limited exceptions. See LC 16.243(3). Accordingly, residential structures, as permitted in the Rural Residential Zone, are permitted on the subject property. Furthermore, prior to any development of the subject property, the applicant must apply for a Preliminary Investigation (Development Hazards Checklist) from Lane County that will identify any potential development impacts and Lane County will subsequently condition development to address those impacts.

Furthermore, we find that residential use of the subject property will better conserve and protect Goal 18 resources than will agricultural use with its necessary and attendant soil disruption and fertilizer loading. And, because ORS 527.722(1) specifically prevents the county's application of the provisions of the BD/RCP Zone, we find that residential use, subject to those provisions, better conserves and protects Goal 18 resources.

We find that application approval is consistent with this goal.

Goal 19 - Ocean Resources.

To conserve the long-term values, benefits, and natural resources of the nearshore ocean and the continental shelf.

The subject property contains no ocean resources.

COMPLIANCE WITH RURAL COMPREHENSIVE PLAN POLICIES

All plan amendments and zone changes must comply with the RCP and its relevant policies. We find that approval of the application is consistent with and complies with the relevant RCP policies as follows:

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

Compliance is demonstrated under the previous discussion of Goal 3 and Goal 4.

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

No goal exception is proposed or required in this application.

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

The subject property is not a small, isolated tract surrounded by farm and forest land. Furthermore, as demonstrated under the previous discussion of Goal 3 and Goal 4, the rural residential designation would pose no compatibility issues.

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

See the discussion below.

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:

- f. Existing development pattern and density of any adjacent committed area;**

Residential use of adjacent and nearby property exists in primarily small-acreage parcels, the majority of which are less than one acre in size. The majority of those parcels are well below five acres in size. The development of parcels in sizes of at least five acres on the subject property would be consistent and compatible with the adjacent residential use in the vicinity.

- g. Subsurface sewage disposal suitability;**

Parcels five acres in size can accommodate all types of subsurface sewage facilities. The subject property has previously received septic system approval from Lane County. The ability of each parcel to accommodate the appropriate septic system is determined by Lane County regulatory procedures during the subdivision phase of development. Both EGR and Cascade provided analysis and conclusions that use of individual septic system on five-acre parcels will not produce a nitrate-nitrogen contribution to the aquifer in excess of the 58 pounds per acre per year legal limitation.

- h. Domestic water supply suitability;**

The subject property is within the boundaries of and serviced by Heceta Water District. All domestic water requirements for the parcels, regardless of size, are adequately provided by the District. Furthermore, it has been demonstrated through the testimony of EGR that the North Florence Dunal Aquifer will yield relatively large volumes of water from a large reservoir of stored water and that water supply from the dunal aquifer is expected to be plentiful and adequate to meet domestic water requirements of the proposed development. In addition, EGR testified that the sewage disposal from on-site

systems, at the density proposed, will not adversely impact the groundwater aquifer. Based on the evidence we find that the domestic water supply of the subject property is adequate and suitable for the proposed development.

i. Access;

The subject property has two reserved access points to U.S. Highway 101. Access is not an issue that should determine or limit parcel size.

j. Public services;

Parcel size has no known effect on the availability or provision of public services on the subject property.

k. Lack of natural hazards;

The lack of natural hazards has been addressed in other sections of this application.

l. Effect on resource lands.

Distinguishing between five and ten acre parcels does not result in any known significant negative effects on adjacent resource lands. If anything, the establishment and presence of residential use adjacent to the public recreation area should decrease trespass and vandalism incidents in that area.

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.

The subject property is surrounded by land zoned and used for uses other than agriculture. Application approval will have no affect on agricultural activities in the vicinity of the subject property because such activities do not exist. Furthermore, as demonstrated in other sections of this application, the subject property is not agricultural land.

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 of 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 is consistent with Statewide Planning Goal 4 by defining “forest lands” and requiring that they be used consistent with the goal. The subject property is not “forest land” as demonstrated in the previous discussion of Statewide Planning Goal 4.

Goal Five: Open Spaces, Scenic and Historic Areas and Natural Resources

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.

The availability of public water for domestic purposes has been demonstrated in other sections of these findings. Because the subject property is within the boundary of the Heceta Water District and will receive domestic water service from that District, groundwater aquifer capabilities are not impacted by development of the subject property in residential use.

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 18.)

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

These policies are addressed in connection with the discussion of Statewide Planning Goals 11 and 14. As demonstrated in that discussion, application approval will result in a development that is served consistent with the service levels described for rural, non-community areas.

COMPLIANCE WITH LANE CODE CRITERIA FOR PLAN CHANGES

Lane Code 16.400(6)(h) provides the criteria for amending the RCP designation:

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 criteria references other criteria that apply to plan changes. Those criteria are addressed in other sections of 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.

We find that at least two of the five criteria are relevant to this application. Section (iv-iv) provides for plan change if it implements the RCP policies. Goal Two, Policy 18 of the RCP provides that lands that do not meet the Agricultural or Forest Lands definitions may be designated as Non-resource Lands. We find that application approval would implement that policy.

Section (v-v) allows the county to make plan changes that are desirable, appropriate or proper. We find that application approval complies with that criteria. We further find that in situations where land is not suitable for farm or forest use, and is not needed to protect natural resources or to allow farm or forest use on adjacent or nearby land, it is desirable, appropriate and proper to allow that land to be put to other productive use, including residential use, consistent with other 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.

The compliance of this application with individual RCP policies is addressed earlier in these findings.

(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 RCP provides for non-resource designations. We find that a non-resource designation for the subject property is consistent with the relevant RCP policies as demonstrated throughout this application.

LC 16.400(8): Additional Amendment Provisions.

(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(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.

The proposal has been completely described throughout this application.

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

The required analysis is provided earlier in these findings.

(iii) As assessment of the probable impact of implementing the proposed amendment, including the following:

- (aa) Evaluation of land use and patterns of the area of the amendment;**
- (bb) Availability of public and/or private facilities and services to the area of the amendment, including transportation, water supply, and sewage;**
- (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;**
- (dd) Natural hazards affecting or affected by the proposal;**
- (gg) For a proposed amendment to a nonresource 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 required assessments, except for the Marginal Lands Working Paper criteria, are provided in earlier sections of these findings.

The Marginal Lands Working Paper contains eight standards for nonresource land designations. Those standards are somewhat redundant of Statewide Goals 3 and 4, which are addressed in full earlier in these findings. Those standards are briefly discussed below with general reference to that earlier 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.**

The subject property is not forest land. See the discussion of Goal 4 earlier in these findings.

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

The subject property has not been designated by Lane County as needed for watershed protection.

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

The subject property has not been designated by Lane County, nor is it currently managed, as a site for the management for big game, other wildlife, fish or waterfowl habitat.

- 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.**

See the discussion and findings regarding the Beaches and Dunes Combining District.

- 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 subject property is neither agricultural land nor urban land and is not located in an area of such designation or use.

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

See the discussion of soil capability classifications contained in earlier sections of these findings.

- 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.**

See the discussion of the subject property's lack of suitability for farm or grazing contained in earlier sections of these findings.

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

The subject property is not agricultural land. See the discussion regarding Goal 3 earlier in these findings.

COMPLIANCE WITH LANE CODE CRITERIA FOR ZONE CHANGES

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 affected 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:

We find that LC 16.003 provides 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 the subject property from F2 to RR5 implements the proposed plan amendment to non-resource land. The public interest is served by recognizing that the subject property is neither Agricultural Land nor Forest Land.

Purpose of Rural Residential Zone:

We find that 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 RCP Policies related to non-resource lands. The proposed zoning is consistent with those stated purposes of the zone.

Rural Comprehensive Plan Criteria:

Goal 2, Policy 19:

Residential densities for nonresource 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.**

See discussion of RCP Goal 2 Policy 19 earlier in these findings.

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 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 availability of public water for domestic purposes has been demonstrated in other sections of this application. Because the subject property is within the boundary of the Heceta Water District and will receive domestic water service from that District, we find that groundwater aquifer capabilities are not impacted by development of the subject property in residential use and the adequacy of long-term water supply has been demonstrated. Furthermore, we find that it has been demonstrated that the subject property is located within the North Florence Dunal Aquifer which has adequate water to provide the long-term water supply of the proposed development.

CONCLUSION

We conclude and find that this application to (i) amend the RCP to designate the subject property as non-resource land and (ii) to change the zoning of the property to the Rural Residential zone (RR-5) is consistent with the amended RCP designation, demonstrates that all applicable Lane County criteria have been addressed and met. This application also demonstrates that the proposed amendments are consistent with applicable Statewide Planning Goals and the administrative rules implementing those Goals. Accordingly, the application is approved.

Lane County Planning Commission Minutes
Board of Commissioners Conference Room—125 East 8th Avenue

September 5, 2006
5:30 p.m.

PRESENT: Jim Carmichael, Chair; Ed Becker, Vice-Chair; Lisa Arkin, Steve Dignam, Todd Johnson, Nancy Nichols, Jozef Siekiel-Zdzienicki, John Sullivan; Thom Lanfear Staff.

ABSENT: Juanita Kirkham

Mr. Carmichael convened the meeting of the Lane County Planning Commission at 5:30 p.m.

Mr. Carmichael noted there were no members of the public who wished to make Public Comment.

I. APPROVAL OF FEBRUARY 21, MARCH 21 AND MAY 2, 2006 MINUTES

- **February 21, 2006 Minutes**—Ms. Arkin stated she would abstain from voting on the February 21, 2006 minutes, because it was impossible to evaluate the accuracy of the minutes after seven months. She made a plea to get minutes in a more timely manner.

Mr. Sullivan, seconded by Mr. Dignam, moved to approve the minutes of February 21, 2006. The motion passed 7:0:1, with Ms. Arkin abstaining.

- **March 21, 2006 Minutes**

Mr. Dignam, seconded by Ms. Arkin, moved to approve the minutes of March 21, 2006. The motion passed unanimously, 8:0.

- **May 2, 2006 Minutes**

Mr. Sullivan, seconded by Mr. Dignam, moved to approve the minutes of May 2, 2006. The motion passed unanimously, 8:0.

Mr. Lanfear announced the Oregon Planning Institute would conduct a planning commission training on Saturday, September 16, 2006. He said the County would pay the registration fee for commissioners who wished to attend. He said those who wished to attend should contact Mr. Howe. Mr. Dignam noted he was providing the conference welcome on behalf of the Lane Council of Governments (LCOG).

II. DELIBERATION OF REQUEST FOR A RURAL COMPREHENSIVE PLAN (RCP) DIAGRAM AMENDMENT

Mr. Carmichael stated that the Lane County Planning Commission would conduct deliberations on a Request for Rural Comprehensive Plan (RCP) diagram amendment from "Forest" to "Nonresource", and a zoning map amendment from Impacted Forest Lands (F-2) to Rural Residential (RR-5) for a 52.17 acre site located west of Highway 101 and north of the City of Florence, pursuant to Lane Code (LC) 16.252 and LC 16.400. Map 18-12-02-20 Tax Lot 1900; Location: 88420 Highway 101 North; Applicant: Roy Carver III; Owner: Julia Carver area pursuant to LC 16.217(4)(b)(v)(dd).

Mr. Sullivan stated for the record that he was unable to deliberate the topic. He had read all of the materials but had received the incorrect tapes.

Mr. Johnson stated that he would be unable to participate in the discussion.

Mr. Carmichael noted that the commission had a quorum without the participation of Mr. Sullivan and Mr. Johnson.

Mr. Lanfear said at the close of the August 1, 2006 public hearing, the Planning Commission had left the record open for two weeks at the request of Jim Johnson of the Goal One Coalition in order for Mr. Johnson to submit additional materials into the record. Mr. Lanfear stated that the Planning Commission had received the information last week. He stated that Darald Heer had also submitted information for inclusion in the record during the comment period. He added Mr. Heer had also requested that the record remain open for him to respond to materials submitted by the Goal 1 Coalition. Mr. Lanfear reported that the commission had voted to open the record for an additional week to allow Mr. Heer to reply to the materials that had been submitted. Mr. Lanfear noted a copy of Mr. Heer's letter had been distributed to commissioners.

Mr. Lanfear stated that the record had closed at 5:00 p.m. on September 5, 2006, and nothing else had been submitted for the record.

Mr. Carmichael opened the floor for discussion.

Mr. Siekiel-Zdzienicki stated if the request was approved, the applicant would be getting water from the Heceta Water District. He said the subject project was outside of the Urban Growth Boundary (UGB). He inquired but the source of water for adjoining properties.

Mr. Lanfear stated that the Heceta Water District ran throughout the area in question, and provided water to the existing houses.

Mr. Siekiel-Zdzienicki opined that the proposed action would not constitute an extension of the UGB and the water district, and that adjacent properties to the east would not be pumping water from the aquifer.

Mr. Dignam said there were a number of comments about the potential impact of this project on the nearby dunes at the public hearing. He expressed difficulty in determining how he should review those comments and use them in his deliberations.

Mr. Lanfear stated that the dunes were protected under separate goals, i.e, Goal 16 through Goal 19, for protected natural resources, adding there was a specific goal for each of the issues. He asserted that the applicant was not taking exception to those goals, noting those goals would still apply to the subject properties, regardless of whether or not the commission approved the applicant's request. He added that the focus of the application was to demonstrate that it was not considered resource land under Goals 3 and 4, and the other goals still applied. He stated that whatever development occurred on the property had to meet the provisions that implemented those goals.

Mr. Lanfear stated that LC 16.243 contained rigorous site specific standards for development that addressed vegetation and opening sand up to erosion, and would be subject to review prior to approval of any development. He added that the current request proposed no change to those goals.

Ms. Arkin asked how the Lane County legal staff viewed Mr. Heer's letter regarding the 50 cubic foot per acre per year (cf./ac./yr.) legal standard.

Mr. Lanfear said there did not appear to be a set standard in the statutes, whether 20 cf./ac./yr. or 50 cf./ac./yr. He added that 20 cf./ac./yr. was used by the State of Oregon Department of Forestry (DOF) to determine when a piece of property needed to be reforested after it had been cut, but it was not specifically stated in statute. Mr. Lanfear said in Lane County, there were working papers adopted by the Lane County Board of Commissioners as part of the comprehensive plan and for original zoning of properties into forest designation, in which a standard of 50 cf./ac./yr. was used as the standard. He added that the standard was adopted in a 1984 board order for inventory of forest lands by the Board of Commissioners.

In response to a question from Ms. Arkin, Mr. Lanfear iterated that the standard was not in ordinance or code, but had been adopted by the Board of Commissioners.

Mr. Carmichael stated he did not attend the initial meeting regarding this request, but had reviewed the tapes and all of the materials, thus felt comfortable in participating in the current deliberation.

Mr. Becker stated that much of the deliberation evolved around soil surveys. He added that the commission was being asked to consider a different soil survey than what the federal Natural Resources Conservation Service (NRCS) had indicated was acceptable. He stated that the applicant had hired a soil scientist to conduct a survey which indicated the soil classification was different from that of the NRCS survey. The applicant's consultant had determined that 52 percent of soils were classified in the "Nonresource" designation.

Mr. Becker noted that the certification stamp was expired on the soil report. It was important to understand the background of the soil scientists to ensure the surveys were conducted accurately and met the NRCS criteria. Mr. Lanfear stated he had conducted an internet search on definitions of soil scientist certification by the Soil Science Society of America which had an online registration in which Mr. Rabe was listed.

Mr. Becker stated that he had also conducted an internet search on the Oregon Department of Agriculture acceptable credentials. Reading from the online text, he said, "Beginning January 1, 1997, the only minimally acceptable credentials for a soils scientist under Oregon Revised

Statutes (ORS) 215.710(5)(b)(a) shall be a soil scientist certified as a soils classifier.”

Mr. Becker asserted that Mr. Rabe had been listed as a soil scientist but not as a certified soil classifier, and he was not convinced that Mr. Rabe had the credentials, background, education, and other requirements to enable the Planning Commission to be convinced that Mr. Rabe’s survey should “trump” the NRCS survey.

Ms. Nichols remarked that her issues were similar to those of Mr. Becker. She stated that Mr. Rabe had acknowledged that he had had only surveyed two-thirds of the site, which caused concern on her part since the reported acceptable soils was minimal.

Mr. Siekiel-Zdzienicki stated Mr. Heer claimed that much of the property had been scraped and trees had been removed. Mr. Siekiel-Zdzienicki had questioned Mr. Rabe about the validity of his measurements, asserting that the margin of error could tip the land designation back to agricultural land. He declared the issue too close to call based upon the information provided by Mr. Rabe.

Mr. Becker iterated the soil survey was an important element of the application, and the commissioners needed to ensure that the survey was conducted with a level of accuracy that was sufficient to change a NRCS survey. He added historically, when the commission had been given NRCS information in support of marginal lands applications, the commission had been “held to the fire” to accept the NRCS report without mediating. Mr. Becker stated in this situation, the NRCS report did not fit the applicant’s needs, thus the applicant hired a paid consultant to do the survey work which demonstrated that the site in question did not meet the requirement for agricultural lands by two percent. He added that the consultant’s figures had not been checked by Lane County or by any independent, peer review. Mr. Becker averred there was not sufficient data to support changing the NRCS survey.

Mr. Lanfear stated that the record was closed.

Mr. Carmichael asserted that this was not information new to the record, but rather a credentials check of the consultant.

Mr. Dignam understood that the Planning Commission was allowed to use data other than that provided by the NRCS if that data was presented as being a more specific analysis.

Mr. Lanfear replied other data could be used particularly when looking at nonresource applications. He added that the marginal lands statute states that NRCS 1987 data must be used. He remarked that the test for this type of application required demonstration that the land was not considered farm or forest land.

Mr. Becker said there were about 300 acres of unstable dunes west of the applicant’s site. He expressed concern that parabola dunes would break through and jeopardize other private property. He asked if the Planning Commission had no interest in that potential, catastrophic event of unstable sand dunes invading private lands.

Mr. Lanfear replied the requirements were to keep the vegetation intact under any development scheme that came before the county. He stated that sand stabilization needed to occur in all phases of development.

In response to Mr. Becker, Mr. Lanfear said there was a regulatory scheme in place to address development in beaches and dunes districts that was aimed at keeping the sand from being opened up, and if it was opened up, requiring immediate replanting and stabilization during all phases of development. Mr. Lanfear added that the county would require a technical geological analysis of any sites during the permitting process on which a house was built to minimize the movement of the dunes to ensure that the structure would not be buried during the expected life of the structure. Mr. Lanfear added that, assuming the request for a diagram amendment from forest to nonresource was approved, the subdivision approval was also required to conduct a hazards check list to address identified hazards.

Ms. Arkin opined that the Planning Commission was obligated to look at parcels in their relationship to the surrounding and adjacent parcels. She said Goal 6 required the commission to ensure and improve the quality of the air, water, and land resources. She added that the commission was not allowed to make decisions that degraded resources, whether or not plans and guidelines were in place to direct development of subdivisions.

In response to Mr. Siekiel-Zdzienicki, Mr. Lanfear had not seen the Land Use Board of Appeals (LUBA) decision related to intermingled land, and was not familiar with the Jackson County or Marion County cases. He was not aware the issue had been raised at the local level.

Mr. Becker stated that he could find nothing in the record about the affect on wildlife, and noted that Florence was going through massive deforestation. He asked if additional information was available.

Mr. Lanfear stated that the Planning Commission had been provided the entire record.

Mr. Dignam, seconded by Mr. Carmichael, moved to approve PA 05-6249, the Carver application.

Mr. Dignam stated that he based the motion on several criteria. The soils and forest analysis was very close to the marks that must be met, i.e., 47 percent versus 50 percent, and 48 cubic feet versus 50 cubic feet, thus meeting the criteria for soils and forest productivity. Based upon the record, he saw no reason to doubt the credibility of the applicant or his soils consultant. Mr. Dignam opined that the soil consultant, contrary to comments by some commissioners, was an independent, third party contractor.

Mr. Dignam said staff had clarified that the commission was allowed to use data other than that provided by NRCS, subject to the commission's analysis of the data. Mr. Dignam said he was comfortable using 50 cubic feet per acre in that Lane County had adopted that criteria, although it differed from the state guideline.

Addressing comments in the record that the property could grow timber, Mr. Dignam asserted that the question was whether the property could grow 50 cubic feet per acre. He said comments regarding the dunes were valid, but staff had informed commissioners that the goals regarding the dunes did not impact this application.

Based upon these considerations, Mr. Dignam said he would vote in favor of the motion.

Ms. Nichols said she would vote against the motion because the soils survey was incomplete thus rendering the assessment too close.

Mr. Siekiel-Zdzienicki stated he would vote for denial of the request. He agreed with Ms. Nichols assessment that the analysis was too close to call. He added that the aerial photographs showed solid trees on the north side of the property, which contradicted claims that the area had been scraped and logged. He thought the property capable of growing trees and did not consider it nonresource land.

Mr. Becker declared that he would not vote for approval of the motion. He had so many questions about the soil survey that began with the consultant's stamp that contained an expired date. He said NRCS conducted very intensive soil surveys, and he was opposed to accepting a paid consultant's soil survey that had not been checked by any peers or county experts over the NRCS survey. He asserted that ORS specifically stated that soil scientists must be certified as soil classifiers, and he could not find that information about the applicant's consultant.

Ms. Arkin stated the applicant had not met the burden of proof.

Mr. Carmichael agreed with Mr. Dignam, noting it was a close call. Ultimately, he asked if the use of the property was better served as forest, which was a marginal call, or to meet housing needs. He disagreed that there was an abundance of housing in Florence. He said he would vote in favor of the motion.

The motion failed 2:4, with Commissioners Carmichael and Dignam voting in favor, and Commissioners Arkin, Becker, Nichols and Siekiel-Zdzienicki voting in opposition.

Mr. Carmichael noted that forwarding a failed motion to the BOARD OF COMMISSIONERS in the past had been problematic, and entertained a motion to reword the motion.

Mr. Siekiel-Zdzienicki, seconded by Mr. Becker, moved to recommend denial of Request for Rural Comprehensive Plan (RCP) diagram amendment from "Forest" to "Nonresource", and a zoning map amendment from Impacted Forest Lands (F-2) to Rural Residential (RR-5) for a 52.17 acre site located west of Highway 101 and north of the City of Florence, pursuant to Lane Code (LC) 16.252 and LC 16.400. Map 18-12-02-20 Tax Lot 1900; Location: 88420 Highway 101 North; Applicant: Roy Carver III; Owner: Julia Carver area pursuant to LC 16.217(4)(b)(v)(dd). The motion passed 4:2, with Commissioners Arkin, Becker, Nichols and Siekiel-Zdzienicki voting in favor, and Commissioners Carmichael and Dignam voting in opposition.

Mr. Carmichael adjourned the Lane County Planning Commission at 6:10 p.m.

(Recorded by Linda Henry)

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