

W. 16.a

SUPPLEMENTAL MEMO

DATE OF MEMO: April 8, 2008

TO: Board of County Commissioners

FROM: Jerry Kendall ^{JK}/Land Management Division

RE: ORDER No. 08-4-9-10 -- IN THE MATTER OF ADOPTING SUPPLEMENTAL FINDINGS TO ORDINANCE No. PA 1237, AMENDING THE RURAL COMPREHENSIVE PLAN TO REDESIGNATE LAND FROM "AGRICULTURAL" TO "MARGINAL LAND" AND REZONING THAT LAND FROM "E-40/EXCLUSIVE FARM USE" TO "ML/SR" ("MARGINAL LAND WITH SITE REVIEW") (file PA 05-5985; Ogle).

Scheduled Board date for public hearing is April 9th.

Attached to this memo are materials that were submitted into the record after the production of the Agenda Cover Memo dated March 24th. As mentioned on page 2 of that memo, changes in ownership of portions of the subject property have occurred. The attached documents show that all parties having past or present ownership interests in the subject property consent to and favor completion of this application for a plan amendment/zone change to a Marginal Lands designation on the subject property as enacted by the Board in Ordinance No. PA 1237 on October 18, 2006.

Also attached is a letter of objection from the Goal One Coalition.

Staff's recommendation to adopt the Order as proposed remains unchanged.

Please contact me at x4057 if you have any questions or comments.

Attachments:

1. Submittal from agent Steve Cornacchia, 4-7-08—14pp.
2. Email from Russ Royer, City of Eugene—1p.
3. Letter of objection, Goal One Coalition—2pp

Steve Cornacchia

To: KENDALL Jerry
Subject: Ogle/Childs



Jerry - Today I will deliver the following for your review, and for inclusion in the record if necessary:

- 3/24/08 statement of Mark and Cindi Childs regarding the completion of the application;
- Copies of sale agreement documents between Ogle and Wolfe demonstrating that the transaction depended upon, and was contingent upon, obtaining Marginal Lands designation for the subject property; and
- Copy of Option Agreement and Agreement of Purchase and Sale between Ogle and Wolfe affirming intent of both parties to complete the rezoning of the property to Marginal Lands.

The aforementioned documents clearly demonstrate that, while ownership of part of the property has changed, the intentions of all parties with ownership interests (regarding obtaining Marginal Lands designation) has not changed since the filing of the application in this matter.

Please contact me if you have any questions regarding this matter.

Steve Cornacchia | Attorney
Hershner Hunter, LLP | Attorneys
180 East 11th Avenue | Eugene, Oregon 97401
Phone: 541.686.8511 | Fax: 541.344.2025
www.hershnerhunter.com

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3-24-08

To Whom It May Concern:

Brad Ogle has our permission to pursue the rezoning of our property, located at 3101
Timberline Drive, Eugene, Oregon.

Sincerely,



Mark Childs



Cindi Childs



SELLER'S COUNTER OFFER

The Oregon Real Estate Agency has reviewed this form for compliance with the applicable provisions in ORS.696 and finds that it complies with those provisions.

Re: Real Estate Sale Agreement No. 1310963
Seller: Mad & Julie Ogle
Buyer: Mike Wolfe

Dated 2/4/04
EM contact date 1/27/04

The real property described as: 3103 Juniperline Drive on 55 acres

Seller agrees to sell the real and personal property specified in Buyer's offer on the terms and conditions in Buyer's offer, except as modified below:

- This counter offer extends the expiration of offer dtd 1/27/04 to this dtd
 - Escrow to close 30 days after marginal lands declaration & removal of all encumbrances.
 - Escrow to close with Diane DeBouge at Western Pioneer.
- Buyer will contribute \$13,500 for property tax

For additional provisions, see Addendum

AGREEMENT TO SELL:

All provisions of the Buyer's offer except those modified herein are approved and accepted by Seller. Time is of the essence of this counter offer. This counter offer shall automatically expire on Date 2/6 A.M. 5 P.M., if not accepted within that time. However, Seller may withdraw this counter offer any time prior to written acceptance. This counter offer may be accepted by Buyer only in writing.

If Buyer accepts Seller's counter offer, Seller agrees to pay to the Selling Firm, or if this is a co-op transaction, the Listing Firm, the sum of \$ 42,000 for professional real estate services rendered in this transaction. Seller authorizes Listing Firm to order a preliminary title report and title insurance at Seller's expense and further authorizes escrow to pay out of the cash proceeds of sale the expenses of furnishing title insurance, Seller's recording fees, Seller's closing costs and any encumbrance on the property payable by Seller on or before closing. Seller is a U.S. citizen unless otherwise stated herein (See FIRPTA clause in Real Estate Sale Agreement).

SELLER ACKNOWLEDGES RECEIPT OF A COMPLETELY FILLED IN COPY OF BUYER'S OFFER AND SELLER'S COUNTER OFFER, WHICH SELLER HAS FULLY READ AND UNDERSTANDS. Seller acknowledges that Seller has not received or relied on any statement made by any real estate licensee which is not herein expressed. In the event Buyer fails to complete the sale as herein provided, the earnest money shall be distributed as follows after deduction of any title insurance and escrow cancellation charges: (check one) First to the Listing Firm, to the extent of the agreed commission just as if the transaction had been consummated, with residue to Seller; or 100% to seller

Seller Signature [Signature] Date 2/4/04 A.M. P.M.
Seller Signature [Signature] Date 2/4/04 A.M. P.M.

AGREEMENT TO PURCHASE:

Buyer accepts Seller's counter offer. with initials change MW
 Buyer rejects Seller's counter offer; OR Buyer makes the attached counter offer.

Buyer Signature [Signature] Date 2/6/04 730 A.M. P.M.
Buyer Signature _____ Date _____ A.M. P.M.

SELLER'S ACKNOWLEDGMENT:

Seller acknowledges receipt of copies of Buyer's offer and of Seller's counter offer bearing Buyer's signature, which Seller has fully read and understands.

Seller Signature _____ Date _____ A.M. P.M.
Seller Signature _____ Date _____ A.M. P.M.

RECEIPT OF EARNEST MONEY (Use only if earnest money provided in Buyer's offer is changed by Seller's counter offer).

Selling Firm acknowledges receipt of earnest money from Buyer NOT previously received for in the sum of \$ _____ evidenced by cash, check, promissory note payable on or before _____, which Selling Firm agrees to handle as provided in the Agreement. Selling Licensee's signature _____

Listing Licensee _____ Selling Licensee _____
Listing Firm Broker's Initials/Date _____ / _____ Selling Firm Broker's Initials/Date _____ / _____

FILE 2/11/04

50 2/12/04



ADDENDUM TO REAL ESTATE SALE AGREEMENT

The Oregon Real Estate Agency has reviewed this form for compliance with the applicable provisions in ORS.896 and finds that it complies with those provisions.

This is an Addendum to: Real Estate Sale Agreement Seller's Counter Offer Buyer's Counter Offer

Re: Real Estate Sale Agreement No. 1310963 Dated 1/27/04 Addendum No. E

Buyer: Mike Wolfe

Seller: Bob & Julie Ogle

The real property described as: 3103 Timberline

SELLER AND BUYER HEREBY AGREE THE FOLLOWING SHALL BE A PART OF THE REAL ESTATE SALE AGREEMENT REFERENCED ABOVE.

^{mw} ~~Buyer will purchase~~ ^{will} ~~approximately (15) acres, Addendum "D"~~ ^{will} ~~for \$200,000, to be exercised by written,~~ ^{will} ~~mutually agreed contract, prior to the~~ ^{will} ~~close of this escrow.~~
Buyer will purchase approximately (15) acres, Addendum "D" for \$200,000, to be exercised by written, mutually agreed contract, prior to the close of this escrow.

Trusts will be held in escrow to the satisfaction of the plot. (\$200,000)

^{mw} Seller will provide all paving per Addendum "C" at seller's expense.

Buyer Signature Mike Wolfe Date 2/6/04 9:30 A.M. P.M.

Buyer Signature _____ Date _____ A.M. P.M.

Seller Signature Bob Ogle Date 2-4-04 A.M. P.M.

Seller Signature Julie Ogle Date 2-4-04 A.M. P.M.

Listing Licensee _____ Selling Licensee Julie Ogle

Listing Firm Broker Initials/Date _____ Selling Firm Broker Initials/Date _____

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2/12/04



ADDENDUM TO REAL ESTATE SALE AGREEMENT

The Oregon Real Estate Agency has reviewed this form for compliance with the applicable provisions in ORS.696 and finds that it complies with those provisions.

This is an Addendum to: Real Estate Sale Agreement Seller's Counter Offer Buyer's Counter Offer

Re: Real Estate Sale Agreement No. 1310963 Dated _____ Addendum No. A

Buyer: Mike Wolfe

Seller: Brad & Julie Ogle

The real property described as: 3103 Timberline

SELLER AND BUYER HEREBY AGREE THE FOLLOWING SHALL BE A PART OF THE REAL ESTATE SALE AGREEMENT REFERENCED ABOVE.

Sale is contingent upon sellers providing:

1. Necessary marginal lands declaration
2. City Parks acceptance of 35 acres in contact
3. Certified appraisal of 35 acres at \$750,000-
4. 20 acre split approval for (2) 10 acre parcels
5. New well hooked up to house

Sale is contingent upon buyers approval of the above (5) items and approval of boundaries & corners. by licensed surveyor, and removal of potential city use & allocation of gifted park lands.

Sellers will pave existing access road per Addendum "C"

Buyer Signature [Signature] Date 1/27/04 A.M. 4:50 P.M.

Buyer Signature _____ Date _____ A.M. _____ P.M.

Seller Signature [Signature] Date 1/30/04 10:01 A.M. _____ P.M.

Seller Signature [Signature] Date 1-30-04 A.M. _____ P.M.

Listing Licensee [Signature] Selling Licensee _____

Listing Firm Broker Initials/Date [Signature] Selling Firm Broker Initials/Date _____



PROFESSIONAL INSPECTION ADDENDUM

Sale Agreement #

1310963

Addendum

"B"

Buyer(s)

Mike Wolfe

Seller(s)

Brad & Julie Oyle

Property Address

3103 Juniperland

PROFESSIONAL INSPECTIONS ARE ADVISABLE

This Addendum does not contain a complete list of all inspections that may be available in your area or that may be desirable. Additional inspections may be included. The land and dwelling shall be inspected as indicated below. The Real Estate Sale Agreement is contingent upon the Buyer's approval of the specified inspections, tests and reports within the time requirements of this Addendum. Buyer shall promptly provide a copy of all reports to Seller if requested by Seller. Unless otherwise indicated, all reports shall be ordered by the party responsible for payment and shall be in writing. Except as modified herein, all provisions of the Real Estate Sale Agreement remain unchanged.

REAL ESTATE LICENSEES ARE NOT QUALIFIED INSPECTORS AND DO NOT PERFORM THE INSPECTIONS

PROPERTY OR DWELLING INSPECTIONS

INSPECTIONS, TESTS AND REPORTS

	Perform Inspection or test	Ordered & paid by		Perform Inspection or test	Ordered & paid by
Professional Home Inspection	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	<input checked="" type="checkbox"/> Buyer <input type="checkbox"/> Seller	Plumbing	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	<input type="checkbox"/> Buyer <input type="checkbox"/> Seller
Asbestos	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	<input checked="" type="checkbox"/> Buyer <input type="checkbox"/> Seller	Radon	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	<input type="checkbox"/> Buyer <input type="checkbox"/> Seller
Electrical	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	<input type="checkbox"/> Buyer <input type="checkbox"/> Seller	Roof	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	<input type="checkbox"/> Buyer <input type="checkbox"/> Seller
Exterior Siding	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	<input type="checkbox"/> Buyer <input type="checkbox"/> Seller	Septic system	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	<input type="checkbox"/> Buyer <input type="checkbox"/> Seller
Fireplace/Chimney	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	<input type="checkbox"/> Buyer <input type="checkbox"/> Seller	Structural	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	<input type="checkbox"/> Buyer <input type="checkbox"/> Seller
Heating/Cooling	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	<input type="checkbox"/> Buyer <input type="checkbox"/> Seller	Toxic/Hazardous Substances	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	<input type="checkbox"/> Buyer <input type="checkbox"/> Seller
Land Survey	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	<input type="checkbox"/> Buyer <input type="checkbox"/> Seller	Underground Sprinklers	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	<input type="checkbox"/> Buyer <input type="checkbox"/> Seller
Mold/Mildew	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	<input type="checkbox"/> Buyer <input type="checkbox"/> Seller	Underground Storage Tank	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	<input type="checkbox"/> Buyer <input type="checkbox"/> Seller
Pest/Dry Rot	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	<input checked="" type="checkbox"/> Buyer <input type="checkbox"/> Seller	Other	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	<input type="checkbox"/> Buyer <input type="checkbox"/> Seller

PRIVATE WELL

If the domestic water is supplied by a well, promptly after Seller's acceptance and pursuant to ORS 448.271, Seller shall have the well tested for nitrates and total coliform bacteria and submit the test results to the Buyer and the Health Division of the State of Oregon.

- Additional well water test(s) shall be completed for Arsenic Lead other
for both wells Yes No Buyer Seller
- Well flow test shall be performed by a licensed well tester to measure the volume of water produced from the well used for domestic purposes. Unless otherwise stated, the test will be a four (4) hour flow test. Yes No Buyer Seller

HOME PROTECTION PLAN

Home protection plans are available that may provide additional benefits to Buyer and Seller. Shall such a plan be purchased? Yes No Buyer Seller

TIME REQUIREMENTS

(Time is of the essence. If Buyer needs additional time, Buyer should immediately attempt to secure Seller's written consent to an extension of time before expiration of any of the time periods described below. All time periods agreed upon below may be shortened or extended only by written agreement between Seller and Buyer. Expiration of any time periods shall occur at Midnight of the final day of that period.)

- All inspections, tests, reports and other services selected above shall be **ordered and completed and reports delivered to Buyer** within 30 business days (ten [10] if not filled in) after written acceptance of the Real Estate Sale Agreement by Buyer and Seller ("the Inspection Period"). Immediately following expiration of the Inspection Period or Buyer's receipt of the last of the above-requested reports, whichever first occurs, Buyer and Seller shall have 10 business days (three [3] if not filled in) ("the Negotiation Period"), within which to freely negotiate the correction, repair and/or payment of any items disclosed in the above-requested inspections, tests, reports or other services obtained by Buyer during the Inspection Period. Proposals or offers to negotiate during the Negotiation Period shall not be construed as a termination of this transaction. All agreements between Seller and Buyer regarding corrections, repairs and/or payment, should be in writing and signed by Seller and Buyer within the Negotiation Period (or such other period as agreed upon between the parties in writing). However, Seller is not required to modify any earlier terms of the transaction previously agreed upon in writing between the parties.
- IF BUYER DELIVERS WRITTEN DISAPPROVAL TO SELLER OR SELLER'S LICENSEE** of any requested inspections, tests, reports or other services selected above before expiration of the Negotiation Period (or such other period as agreed upon between the parties in writing), this transaction shall be deemed to be automatically terminated and Buyer's earnest money shall be promptly refunded.
- IF BUYER FAILS TO DELIVER WRITTEN DISAPPROVAL TO SELLER OR SELLER'S LICENSEE** before expiration of the Negotiation Period (or such other period as agreed upon between the parties in writing), Buyer shall be deemed to have approved all requested inspections, tests, reports and services selected above, and this contingency shall be waived by Buyer, and Buyer will be deemed to have accepted the condition of the Property, subject to Section 11 of the Real Estate Sale Agreement between the parties.

For additional provisions see Addendum

Buyer [Signature] Date 1/27/04 Seller [Signature] Date 1-30-04
 Buyer _____ Date _____ Seller [Signature] Date 1-30-04
 Selling Licensee [Signature] Date _____ Listing Licensee _____ Date _____
 Selling Firm [Signature] Listing Firm _____

LINES WITH THIS SYMBOL ← REQUIRE A SIGNATURE & DATE

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OREF 058

Principal Broker's

602/12/04

**OPTION AGREEMENT
AND
AGREEMENT OF PURCHASE AND SALE**

DATE: January 11, 2005 ("Effective Date")
FROM: Michael Lee Wolfe ("Owner")
TO: Brad Ogle ("Optionee")

RECITALS

A. Owner owns fee simple title to the following described real property:

Parcel 1 of Land Partition Plat # 94-P0510 filed May 23, 1994, Lane County
Records

commonly known as 3103 Timberline Drive, Eugene, Oregon 97405, together with all improvements situated on it. The real property and improvements, together with all other rights, hereditaments, and tenements appurtenant to the real property and improvements, are collectively referred to herein as the "Property."

B. Optionee, Brad Ogle, desires to purchase from the owner a portion of the Property consisting of 10 acres of land to be divided from the northeast corner of the Property, hereinafter referred to as the "Option Property".

C. The Property needs to be rezoned and subdivided in order for Owner to maximize the value of the Property either for sale or donation. Optionee is willing to attempt to rezone the Property from the current EFU40 zone to ML (Marginal Lands) and subdivide the Property at his expense so that the Option Property can be partitioned from the Property and sold.

D. Owner has agreed to grant Optionee an exclusive option to subdivide the Option Property from the Property and to purchase the Option Property in return for Optionee's services in obtaining the rezoning, on the terms and conditions herein stated.

The parties therefore agree as follows:

AGREEMENT

Section 1. Grant of Option

Owner, for and in consideration of the above recitals, including Optionee's efforts to rezone the Property on behalf of and for the benefit of Owner, grants to Optionee the sole and exclusive option to purchase the Option Property in the manner and for the price stated in this Agreement.

Section 2. Option Terms

2.1 Term. The initial term of the Option (the "Initial Term") shall commence on the Effective Date and shall continue for a period of eighteen (18) months so long as Optionee is performing services related to the rezoning or subdivision process. Optionee shall have the right to extend the term of the Option for an additional period of eighteen (18) months if the rezoning and/or subdivision has not been completed within the initial option period. This extension period (the "Extension Term") will commence on the date the Initial Term expires. The Initial Term and the Extension Term may be referred to collectively in this Agreement as the "Term." If any land use decision is pending in any agency or court concerning the Property at the expiration of the Initial Term, that fact shall be deemed to constitute an election to extend the Option for the Extension Term. If no action or decision is then pending, but a prior action or decision is appealable at the expiration of the Option Term, Optionee shall notify Owner in writing of his election to extend the term of the Option if he wishes to pursue an appeal, which notice shall constitute an election to extend the option term.

2.2 Exercise of Option. This option shall be exercised, if at all, by Optionee recording the final plat following final approval of the subdivision of the Option Property. Upon exercise of this option, Optionee shall be obligated to purchase the Option Property from Owner, and Owner shall be obligated to sell the Option Property to Optionee, for the price and in the manner herein set forth.

2.3 Voluntary Termination or Failure to Exercise Option.

Prior to exercise of the option, Optionee may, at his sole discretion, terminate this Agreement by giving Owner written notice of his election not to pursue a rezoning or subdivision of the Property or Option Property. If an application for rezoning or subdivision is denied and Optionee fails to pursue an appeal of the decision or take other steps in a timely manner to reverse or mitigate the adverse decision, such inaction shall constitute a failure to exercise the option, and this Agreement shall be terminated. If Optionee elects to terminate the Agreement or fails for any reason to exercise this option in the manner set forth herein, Optionee shall have no further claim against or interest in the Option Property or any of the Property, nor will Optionee have any obligation to continue or complete the land use process described in Section 3. In the event of termination or failure to exercise the Option, Optionee shall provide Owner with any instruments that Owner reasonably may deem necessary for the purpose of removing from the public record any cloud on title to the Option Property which is attributable to the grant or existence of this Option.

Section 3. Rezoning and Subdivision of Property

In consideration for Owner's grant of this Option, Optionee agrees as follows:

3.1 Rezoning of the Property.

3.1.1 The Optionee shall perform and contract all work and pay for all fees and services required to rezone the portion of the Owner's property from the current EFU40 to ML.

3.1.2 The Optionee and the Owner shall agree in writing before starting any process or action to rezone said property in regard to the time time frame required to complete each action so as not to leave any open-ended time frame. The agreement shall state the process or action and the estimated time to complete. This includes any appeals to said process or action.

3.3 Subdivision of Property

3.3.1 If the Optionee successfully obtains the ML (Marginal Lands) zoning on the Property the Optionee may begin the process to subdivide a 10-acre portion from the northeast corner of said property which will constitute the Option Property. Optionee shall pay all costs and expenses incurred in the subdivision and improvement of the Option Property.

3.3.2 If, upon successful rezoning of the Property, the Owner desires to subdivide the remaining Property, the costs and expenses of the subdivision shall be prorated, and Owner shall pay the proportionate share of the expenses attributable to subdividing the remaining Property. If the Owner desires to donate the Property to a public entity or otherwise transfers the Property to a third party by sale or gift, Owner may assign to said donee or transferee the responsibility for all the costs and fees for the subdivision process. Optionee shall provide assistance and contacts to facilitate the payment of these costs and expenses by the donee.

3.3.3 The Optionee and the Owner shall agree on the layout of the subdivided parcels.

3.3.4 The Optionee shall provide assistance and contacts to facilitate the donation of any property or parcel should the Owner decide to donate.

Section 4. Amount of Acreage

Although Owner believes that the Option Property contains approximately 10 acres of land and has so represented to Optionee, neither party considers the precise amount of acreage contained in the Option Property to be material to the purchase or sale of the Option Property except for the limited purpose of determining the purchase price as set forth in Section 5. On exercise of this option, the parties' obligations under this Agreement shall not be avoided due to any determination that the Option Property in fact contains more than 10 acres or fewer than 10 acres, unless the excess or deficiency is material. In no event shall Owner have any right to cancel because of a discrepancy between actual and estimated acreage.

Section 5. Purchase Price

5.1 **Purchase Price.** The purchase price for the Option Property (the "Purchase Price") shall be \$100,000.00.

5.2 **Payment of Purchase Price.** The purchase price for the Option Property shall be payable in cash at closing, without any credits for Optionee's costs and expenditures related to the rezoning and subdivision of the property.

Section 6. Remedies

6.1 Optionee. In the event Owner breaches any term or provision of this Agreement, then Optionee, as its exclusive remedy and in lieu of any other relief, may either (1) terminate this Agreement and obtain reimbursement for all services performed or expenditures made in connection with the rezoning and subdivision of the Property, or (2) tender performance of the obligations of Optionee and specifically enforce all obligations of Owner. Except as noted in Section 6.3 and any specific remedies reserved elsewhere in this Agreement, Optionee waives the right to pursue any remedy in law or equity against Owner other than the remedies specified above, including any action for damages, in the event of a default by Owner.

6.2 Owner. In the event Optionee breaches any term or provision of this Agreement, and regardless of whether the breach occurs before or after Optionee notifies Owner of the exercise of the Option, then Owner, as its exclusive remedy and in lieu of any other relief, shall be entitled to terminate this Agreement by giving Optionee written notice of termination. Owner acknowledges (1) the adequacy of this exclusive remedy and (2) that this limitation of remedies is an essential part of this Agreement from the perspective of Optionee. Except as noted in Section 6.3 and any specific remedies reserved elsewhere in this Agreement, Owner expressly waives the right to pursue any other right or remedy in law or equity other than the remedy specified above, including the right of specific performance and the right to sue for damages, in the event of a default by Optionee. Optionee and Owner have established the foregoing remedy in favor of Owner because of the difficulty and inconvenience of ascertaining the actual damages Owner may suffer as a result of a breach of this Agreement by Optionee.

6.3 Other Remedies. The limitations on remedies set forth in this section shall not preclude either party from seeking or obtaining injunctive relief or from seeking recovery against the other under any contractual indemnity set forth herein or for causing physical damage or injury to persons or property.

Section 7. Conditions Precedent to Closing

In addition to any other conditions contained in this Agreement, set forth below are certain conditions precedent for the benefit of Optionee (the "Conditions"). The Conditions are intended solely for the benefit of Optionee and Optionee shall have the right to waive, by written notice, any of the Conditions, at its sole discretion; exercise of the option shall not constitute such a waiver. In the event any Condition is not satisfied or waived on or before the deadline for satisfaction specified herein, then Optionee shall have the right to terminate this Agreement, at its sole election, by giving Owner notice of termination before the deadline expires and to exercise any remedy available to Optionee in the event that the subject Condition was not satisfied by reason of a breach of this Agreement by Owner. If Optionee does not give Owner notice of termination before the applicable deadline, then Optionee shall be deemed to have waived the termination privilege with respect to the Condition in question. The Conditions specifically delineated in this section are the following:

7.1 On the Closing Date, the Title Company (defined below) shall be ready, willing, and able to issue, and shall issue to Optionee upon recordation of the Owner's deed mentioned below, the title insurance policy required by Section 9.6.

7.2 On or before the Closing Date, Owner shall have performed all of the covenants, conditions, agreements, and promises to be performed by it under this Agreement.

Section 8. Title

Owner shall not cause, permit, or suffer any matter to be recorded with respect to the Property during the Term, except (1) the Memorandum referenced in Section 15, and (2) any other matter that Optionee approves, in writing and at its sole discretion, before recordation.

Section 9. Closing

9.1 **Time and Place.** Closing of the sale and purchase of the Option Property (the "Closing") shall occur on a date (the "Closing Date") selected by Optionee, but in all events the Closing shall occur within 30 days after the plat map for the Option Property is recorded.

9.2 **Closing Obligations.** On the Closing Date, Owner and Optionee shall deposit the following documents and funds in escrow, and the Title Company shall close escrow in accordance with the instructions of Owner and Optionee.

9.2.1 Owner shall deposit the following:

- (1) The conveyance documents described in Section 10, duly executed and acknowledged;
- (2) A duly executed affidavit certifying that Owner is not a foreign person, trust, partnership, or corporation in compliance with the requirements of IRC §1445;
- (3) Original counterparts or legible photocopies of all documents, feasibility studies, surveys, engineering reports, and other items of a similar nature in the possession of Owner that relate to the Option Property;
- (4) Such documents as Optionee or the Title Company may require to evidence the authority of Owner to consummate this transaction; and
- (5) Such other documents and funds, including (without limitation) escrow instructions, as are required of Owner to close the sale in accordance with this Agreement.

9.2.2 Optionee shall deposit the following:

- (1) The cash payment specified in Section 4;
- (2) Such documents as Owner or the Title Company may require to evidence the authority of Optionee to consummate the transaction contemplated; and

(3) Such other documents and funds, including (without limitation) escrow instructions, as are required of Optionee to close the sale and purchase of the Option Property in accordance with this Agreement.

9.3 Costs. Optionee and Owner each shall pay one-half of the escrow fee of the Title Company with respect to the Closing. Owner shall pay the premium for the title insurance policy that Owner is obligated to provide to Optionee, and for all conveyance or excise taxes payable by reason of the purchase and sale of the Option Property. Optionee shall pay the fee (exclusive of any conveyance or excise tax) for recording the conveyance documents referred to herein.

9.4 Prorations. All items of expense incurred by Owner with respect to the Option Property shall be paid by Owner at Closing, without proration. All real property taxes and assessments payable with respect to the tax year in which Closing occurs shall be prorated between Owner and Optionee as of the Closing Date.

9.6 Title Insurance Policies. As soon as practicable after Closing, and in any event no later than 15 days after the Closing Date, Owner shall cause the Title Company to issue its standard form Owners's ALTA Title Insurance Policy, with extended coverage, in the amount of the Purchase Price, insuring fee simple title to the Option Property vested in Optionee, subject only to the Permitted Exceptions.

Section 10. Conveyance

At the Closing, Owner shall execute, acknowledge, and deliver to Optionee a Statutory Warranty Deed conveying the Option Property to Optionee, subject only to the Permitted Exceptions.

Section 12. Access to Property

12.1 Access. Owner grants to Optionee and its agents the right to enter on the Property at any reasonable times before the Closing Date for the purpose of conducting tests, surveys, or studies that Optionee may deem necessary or appropriate in connection with its rezoning or subdivision of the Property or his acquisition of the Option Property. Owner shall cooperate with Optionee in making such tests and studies. No soil tests or drilling shall be undertaken without first obtaining Owner's approval with respect to the agents retained to perform such work and the location and purpose of the tests or drilling. Optionee shall not interfere with or disturb the rights of any tenants of Owner in possession of any portion of the Property. Optionee shall protect, defend, and hold Owner harmless from any loss, liability, or damage to persons or property arising out of or related to Optionee's activities on the Property. If Optionee fails to exercise the Option and purchase the Property, Optionee shall fully compensate Owner for any physical damage to the Property or any lien, encumbrance, or charge on it attributable to Optionee's activities pursuant to this paragraph. In the event Optionee fails to exercise the Option, Optionee shall deliver to Owner a legible copy of any reports, studies, and drawings owned by Optionee that relate to the Property.

Section 13. Covenants of Owner

Owner acknowledges that the covenants of Owner contained in this Agreement, including the covenants contained in this Section 13 (the "Covenants"), are material inducements to Optionee to enter into this Agreement. The Covenants specifically delineated in this Section are the following:

13.2 Maintenance. Before the Closing Date, Owner shall maintain the Property in the same condition as it now exists, ordinary wear and tear excepted, and shall not cause or permit any waste.

13.3 Ownership. During the Term, Owner shall not sell, contract to sell, assign, lease, or otherwise transfer the Option Property or any part of it, nor grant an option to any third party to acquire all or any portion of it.

Section 15. Recording

On the Effective Date, Owner shall execute, acknowledge, and deliver to Optionee a Memorandum in the form attached as Exhibit B. In the event Optionee fails to exercise the Option before the Term expires, Optionee shall execute, acknowledge, and deliver to Owner a statutory quitclaim deed releasing any interest in the Property.

Section 16. Waiver

Failure by Owner or Optionee to enforce any right under this Agreement shall not be deemed to be a waiver of that right or of any other right.

Section 17. Successors and Assigns

Subject to the limitations on Owner's right to convey the Property set forth elsewhere herein, the terms, covenants, and conditions herein contained shall be binding on and inure to the benefit of the heirs, successors, and assigns of Owner and Optionee. Optionee may assign its interest in this Option Agreement and the Property to any person or entity, without the consent of Owner. In the event that an assignee assumes the obligations of Optionee hereunder, then Optionee shall have no further liability with respect to this Agreement.

Section 19. Attorney Fees

If litigation is instituted with respect to this Agreement, the prevailing party shall be entitled to recover from the losing party, in addition to all other sums and allowable costs, its reasonable attorney fees, both in preparation for and at trial and any appeal or review, such amount to be set by the court before which the matter is heard.

Section 21. Risk of Loss

Owner shall bear the risk of all loss or damage to the Property from all causes, through the Closing Date. If, before the Closing Date, and regardless of whether the Exercise Notice has yet been given or is subsequently given, all or part of the Property is damaged by fire or by any other cause of any nature or if all or any portion of the Property is taken by condemnation, or if any such condemnation is threatened, Owner shall give Optionee written notice of such event. Optionee may terminate this Agreement by giving written notice to Owner within 15 days

OPTION AGREEMENT AND

AGREEMENT OF PURCHASE AND SALE – PAGE 7

following receipt by Optionee of written notice from Owner of such casualty or condemnation. If Optionee does not elect to terminate this Agreement, then this Agreement shall continue in force and, if Optionee exercises the Option and the Property is conveyed to Optionee, then all interest of Owner in and to any insurance proceeds or condemnation awards that may be payable to Owner on account of such casualty or condemnation shall be assigned to Optionee at Closing.

Section 22. Integration, Modification, or Amendments

This Agreement contains the entire agreement of the parties with respect to the Property and supersedes all prior written and oral negotiations and agreements with respect to the Property. Any modifications, changes, additions, or deletions to this Agreement must be approved by Owner and Optionee, in writing.

Section 25. Governing Law; Interpretation

This Agreement shall be governed by the laws of Oregon. In the event a court of competent jurisdiction holds any portion of this Agreement to be void or unenforceable as written, Owner and Optionee intend that (1) that portion of this Agreement be enforced to the extent permitted by law, and (2) the balance of this Agreement remain in full force and effect.

Section 26. Time Is of the Essence

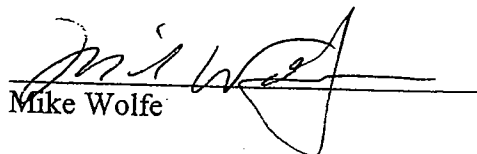
Time is of the essence of this Agreement.

Section 28. Statutory Disclaimer

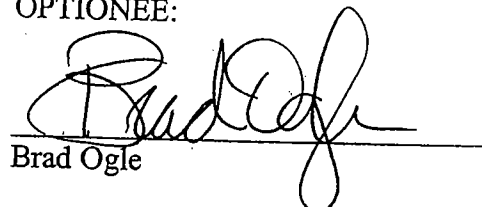
THIS INSTRUMENT WILL NOT ALLOW USE OF THE PROPERTY DESCRIBED IN THIS INSTRUMENT IN VIOLATION OF APPLICABLE LAND USE LAWS AND REGULATIONS. BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON ACQUIRING FEE TITLE TO THE PROPERTY SHOULD CHECK WITH THE APPROPRIATE CITY OR COUNTY PLANNING DEPARTMENT TO VERIFY APPROVED USES AND TO DETERMINE ANY LIMITS ON LAWSUITS AGAINST FARMING OR FOREST PRACTICES AS DEFINED IN ORS 30.930.

Executed on the day and year first above written.

OWNER:


Mike Wolfe

OPTIONEE:


Brad Ogle

KENDALL Jerry

From: ROYER Russ C [Russ.C.ROYER@ci.eugene.or.us]
Sent: Wednesday, April 02, 2008 2:15 PM
To: KENDALL Jerry
Cc: MEDLIN Johnny R
Subject: Concurrence of File PA 05-5985 - Ogle/Wolfe

Jerry, there have been numerous communications regarding the County's pending Amendment to the Rural Comprehensive Plan and the rezone of the subject property of this file from E-40 to ML/SR. In November of 2007 the City acquired ownership of approximately 30 acres of the subject property for parks and open space. As the City is now owner of part of subject property, the question was raised if the City would concur to the completion of PA 05-5985 resulting in the zoning being changed to ML/SR. This memo is to inform you, and ask you to include in the public record, the City's acquisition was under the understanding the zoning of the subject property had been, or soon would be, changed to ML/SR. If you have questions or need further clarification, please do not hesitate to email or call me at 682-5264. Thank you. Russ Royer

GOAL ONE COALITION



Goal One is Citizen Involvement

Lane County Board of Commissioners
c/o Jerry Kendall, Land Management Division
125 E. 8th Avenue
Eugene, OR 97401

March 25, 2008

RE: Ogle-Childs marginal lands remand, PA 05-5985

Dear Commissioners,

The Goal One Coalition (Goal One) is a nonprofit organization whose mission is to provide assistance and support to Oregonians in matters affecting their communities. Goal One is appearing in these proceedings at the request of and on behalf of its membership residing in Lane County. This testimony is presented on behalf of Goal One and its membership; LandWatch Lane County, 642 Charnelton, Eugene OR 97401; LandWatch's membership in Lane County, specifically to include LandWatch President Robert Emmons, 40093 Little Fall Creek Road, Fall Creek OR 97438, as an individual.

This proposal to redesignate 73.74 acres of land owned by Ogle and Childs to "marginal land" was originally approved by the Board of Commissioners on October 18, 2006. That decision was appealed, eventually to the Court of Appeals (*Herring v. Lane County*, 216 Or App __ (A136155, 1/07/07) and subsequently remanded.

Goal One has received notice that a hearing on remand will be held before the Board of Commissioners on April 9, 2008.

LC 16.400(8)(b) authorizes plan amendments to be initiated by an applicant subject to the provisions of LC 14.050.

LC 14.050(1)(a) requires that an application "subject to any of the review procedures of this chapter" be "[b]e submitted by any person with a legal interest in the property."

The portion of the property owned by Ogle was transferred to Michael L. Wolf at some time in 2004. Applicant Ogle therefore never had power or authority under Lane Code to submit an application concerning any portion of the proposed marginal lands.

An approximately 30-acre portion of the Wolf ownership was subsequently transferred to the City of Eugene by a property line adjustment deed, signed and dated October 23, 2007.

As applicant Ogle no longer has any legal interest in the subject property, an application under that name may no longer be considered or approved by Lane County.

ORS 215.435(2) provides that the county's 90-day clock to take action following remand does not begin until the applicant requests in writing that the county proceed with the application on

Eugene office: 642 Charnelton Suite 100 · Eugene OR 97401 · 541-484-4448 · Fax 541-431-7078
Lebanon office: 39625 Almen Drive · Lebanon OR 97355 · 541-258-6074 · Fax 541-258-6810
www.goal1.org

ATTACH # 3 - 2008

GOAL ONE COALITION

remand. Goal One is not aware of any written request by the current owners of the former Ogle property – either Wolf or the City of Eugene – that the county proceed with the application on remand. Until proof is presented that the county has been authorized by the current owner(s) of the former Ogle property to proceed, the county has no authority to proceed with the application as it regards the former Ogle property.

If the county is to proceed with the application as it regards the Childs ownership, the productivity analysis required by ORS 197.247(1)(b)(C) must be redone to consider only the Childs ownership.

Similarly, if authorization to proceed with the application on remand is not obtained from any current owner of the property, the productivity analysis required by ORS 197.247(1)(b)(C) must be redone to consider only that portion of the properties for which the county has received authorization to proceed.

CONCLUSION

If this matter is to receive further consideration by Lane County, authorization to proceed with this application must be received from the current owners of the subject property or a new application must be submitted by the new owners. If authorization from any of the current owners is not obtained, the analysis required by ORS 197.247(1)(b)(C) must be redone to consider only that portion of the properties for which the county has received authorization to proceed.

Goal One and other parties whose addresses appear in the first paragraph of this letter request notice and a copy of any decision and findings regarding this matter.

Respectfully submitted,

Lauri Segel
Community Planner