

W. 15-b.

**SUPPLEMENTAL MEMO  
SUPPLEMENTAL MATERIAL**



Memo Date: November 27, 2006  
Order Date: November 29, 2006

**TO:** Board of County Commissioners

**DEPARTMENT:** Public Works Dept./Land Management Division

**PRESENTED BY:** BILL VANVACTOR, COUNTY ADMINISTRATOR  
KENT HOWE, PLANNING DIRECTOR

**AGENDA ITEM TITLE:** IN THE MATTER OF CONSIDERING A BALLOT MEASURE 37 CLAIM AND DECIDING WHETHER TO MODIFY, REMOVE OR NOT APPLY RESTRICTIVE LAND USE REGULATIONS IN LIEU OF PROVIDING JUST COMPENSATION (PA05-6805/OMLID)

**I. AGENDA ITEM SUMMARY**

Shall the Board of County Commissioners compensate an applicant under Ballot Measure 37 and LC 2.700 through 2.770 for the reduction in fair market value of the affected property interest resulting from enactment or enforcement of restrictive land use regulations or modify, remove, or discontinue application of those land use regulations to the subject property to allow Lee Omlid and the Erling G. Omlid Revocable Living Trust to use the property as allowed at the time they acquired an interest in the property?

**II. BACKGROUND/IMPLICATIONS OF ACTION**

**A. Board Action and Other History**

On November 8, the Board heard this item and additional information from staff regarding the CLWP (Clear Lake Watershed Protection) zone and whether that zone is exempt from a Measure 37 claim. The Board also requested information from the applicant regarding the ownership. As of the date of this memo, the applicant has not submitted any additional information.

**B. Policy Issues**

If the Board determines the CLWP (Clear Lake Watershed Protection) zone is exempt from a M37 claim, Lane County will not process any claim submitted for

land within that zone. As of November '17, there were two claims for land in the CLWP zone.

### **C. Analysis**

There was a moratorium on development in the Clear Lake Watershed until the CLWP (Clear Lake Watershed Protection) zone was adopted by Ord. No. 6-98 and became effective on December 2, 1998. The CLWP zone was the result of the efforts of the land owners in the Clear Lake Watershed, Lane County and the state of Oregon to reach a consensus regarding the appropriate regulations to maintain the watershed as a source of public drinking water. The letter from the Oregon Department of Justice dated July 24, 1996 provides a summary of the concepts contained in the CLWP zone. The findings in support of adoption of that ordinance are included as an attachment to this memo.

The purpose of the CLWP zone is to maintain the water quality of Clear Lake and the Clear Lake Watershed and maintain them as a source of public drinking water. That purpose is contained in LC 16.258(1) and is further outlined in the findings in support of the adoption of Ord. No. 6-98. The minimum lot size in the CLWP zone is 80 acres and new dwellings are allowed on legal lots.

When a land owner makes a M37 claim and demonstrates that a public entity has enforced a restrictive land use regulation that has reduced the fair market value of a property, the public entity may pay just compensation or modify, remove, or not to apply the restrictive land use regulation to allow the owner to use the property for a use permitted at the time the owner acquired the property. There are certain restrictive regulations that are exempt from such a claim. Those exceptions include any regulations that restrict or prohibit "activities for the protection of public health and safety, such as fire and building codes, health and sanitation regulations, solid or hazardous waste regulations, and pollution control regulations". The CLWP zone places limits on new development, land divisions and construction activities to maintain the water quality of Clear Lake and the Clear Lake Watershed as sources of public drinking water. Regulations that protect a source the public drinking water would appear to protect public health and the CLWP zone limitations on erosion appear to be "pollution control regulations".

LC 16.258(1) contains the purpose statement for the CLWP zone. It states:

"The Clear Lake Watershed has been recognized as an area deserving protection in order to maintain high water quality in Clear Lake as a domestic water supply source. The Oregon Environmental Quality Commission has adopted regulations to protect the water quality of Clear Lake. The Clear Lake Watershed is made up of properties, a substantial majority of which are in private ownership. The general purpose of the Clear Lake Watershed Protection Zone is to protect the quality of the Watershed, and at the same time, protect the rights of private property owners to make reasonable use of their land. The specific purposes of the Clear Lake Watershed Protection Zone are:

- (a) To protect the aquifer and surface waters (the Lakes) of the Clear Lake Watershed;
- (b) To help achieve the water quality standards set-forth in OAR 340-41-270 and to ensure that all uses within the Clear Lake Watershed are consistent with the objective of achieving these water quality standards; and
- (c) To provide clear and objective development standards necessary to meet water quality standards and avoid land use litigation.”

There are extensive findings in support of the adoption of Ord. No. 6-98 that identify the purpose of the CLWP zone. All the adopted findings are attached to this memo. The findings listed below are only a sample.

*Finding #2:* “As that stated purpose directs, the CLWP-RCP zone will ensure that the development of property is commensurate with the character and the physical limitations of the land and will be controlled in a manner to promote and protect the public health, safety, convenience and welfare.”

*Finding #5: Compliance with Goal Five.*

“The protection of the purity of the water of the two lakes is one of the primary goals of the CLWP zone. This is accomplished in many forms by provisions of the zone, including restrictions in the range of uses allowed in the zone, prohibition of the removal of riparian vegetation, and limitations on materials and construction methods.”

“Consistent with the policy, the CLWP zone reflects a major concern with protecting the water supply for this area. As has been described above relative to protection of the lakes, the zone as adopted protects that supply.”

*Finding #5: Compliance with Goal Six.*

“The CLWP zone directly addresses several policies in the Water Quality portion of this goal. Among the policies served are the following:

- 4. Lane County shall promote watershed practices which protect and enhance water quality and quantity through land use planning, Public Works projects, and management of county facilities.”

“The CLWP zone is designed to avoid and control soil erosion.”

“The CLWP zone establishes limitations on vegetation removal and requirements for restoration of vegetation. There is also a provision for restricting runoff from impervious surfaces and a provision that reduces potential hazards to water quality created by runoff from new roads or driveways, a site investigation report is required as a result of which conditions can be imposed to specifically preserve the water quality of the lakes.”

*Finding #5: Compliance with Coastal Resources Management Plan.*

“As stated in the CLWP zoning district purpose, the CLWP zoning district is designed to protect the integrity of the aquifer and surface waters of the Clear Lake

Watershed and the achieve the water quality standards set forth in OAR 34-41.270. The zone will achieve the objective of these water quality standards in the Clear Lake Watershed by means of establishing clear and objective development standards rather than application of the CRMP Shoreland Management Units as a means to implement the CRMP policies.”

“The CLWP zone relies on existing County inventories and use requirements, but implements them in a manner different from the CRMP. Where a costal shoreland combining zone requires a Preliminary Investigation within a specified perimeter of a coastal lake to determine whether or not a proposed development is subject to the requirements of the zone, the CLWP zone requires an expert analysis by an engineer, architect or geologist to address the impacts of construction of a dwelling would have on the site and area and apply objective standards of development as set forth in the zone. This requirement occurs within the entirety of the CLWS area, In addition, a Site Investigation Report is require for road or driveway construction in the area if particular hazards exist. Within the CRMP’s MU descriptions applicable to the CLWS, land divisions are regulated; the CLWP zone assumes this regulatory authority and establishes standards for land divisions wish are founded in rules governing land divisions in forested areas.”

“By restricting the uses that can be located in the watershed, the plan area will be used less intensely and specific objective standards can be set forth in the zone precisely limiting the particular uses allowed.”

“Where there is potential hazard to water quality by road or driveway construction, a Site Investigation Report (SIR) is required to be prepared by a qualified person or team of persons having expertise and familiarity with the area and, based upon the information and recommendations provided in this report, the Planning Director may impose conditions on the proposed construction in order to assure preservation of the water quality of the lakes.”

“The primary applicable natural value is water quality maintenance, which is addressed by the standards as discussed above.”

“Water dependent or industrial land uses and water related land uses are not allowed in the CLWP district. The uses allowed in the district are restricted to recreation and resource uses.”

Based on the purpose statement and the findings in support of Ord. No. 6-98, it appears that the CLWP (Clear Lake Watershed Protection) zone is comprised of regulations that protect public health and safety and control pollution. Because of this, the CLWP zone is exempt from a Measure 37 claim.

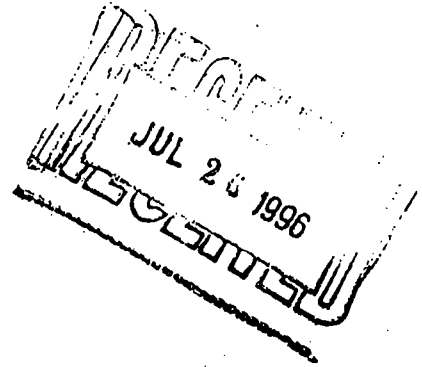
### **III. ATTACHMENT**

- Findings in support of amending Lane Code Chapter 16 to include the CLWP (Clear Lake Watershed Protection) zone.
- Letter from Oregon Department of Justice dated July 24, 1996.



DEPARTMENT OF JUSTICE

TRIAL DIVISION  
1162 Court Street NE  
Justice Building  
Salem, Oregon 97310  
Telephone: (503) 378-6313  
FAX: (503) 378-4968  
TDD: (503) 378-5938



July 24, 1996

William Van Vactor  
County Administrator  
Lane County Courthouse  
125 East Eighth Street  
Eugene, OR 97401

Re: Clear Lake Watershed Protection Zone

Dear Bill:

During the course of settlement negotiations in the Merz v. Heceta Water District litigation, the Department of Environmental Quality has achieved substantial agreement with Dale Riddle, attorney for the plaintiffs, regarding the protective measures needed for the Clear Lake Watershed. We understand that there are many provisions in the regulations which deal with issues which are related only tangentially to environmental protection, such as fire suppression and measures designed to achieve political consensus; however, Mr. Riddle and I felt that it might be helpful to you and your staff to know the position of the parties to the litigation as you prepare to take the watershed regulations before the County Commission.

DEQ and plaintiffs agree that the following concepts are appropriate for the protection of the Watershed. Most of these concepts are contained in the final draft of the Clear Lake Watershed Protection Zone (11-9-94) and the items below generally refer to such provisions:

1. Farming should be restricted to areas more than 300 feet above ordinary high water.
2. Fill or extraction in freshwater lakes and marshes should be prohibited outright.
3. Development should generally be prohibited within 100 feet of ordinary high water.
4. Drainfields should be located a minimum of 100 feet from ordinary high water.

5. Each lot on Collard Lake should be required to hook up to a community sewer system when it becomes available.

6. Provisions regarding the submission of plot plans should be retained, including those provisions regarding submissions by a licensed engineer or architect.

7. The provisions regarding percentage of impervious surfaces and coverage should be replaced with a provision which requires that no run-off from impervious surfaces leave the site. I have drafted proposed language, which is enclosed for your review. This would accomplish the environmental aims of the ordinances and give property owners greater flexibility.

8. Buildings on compressible dunes should be required to have engineered foundations.

9. Site investigation reports should be required as generally set forth in the proposed ordinances.

10. Land division provisions need to <sup>H.B.</sup> be promulgated consistent with the new standards set forth in ~~its~~ 3661, allowing 20 acre parcels are no longer appropriate. It is also appropriate to add a provision that land divisions will not be a basis for siting additional dwellings, or serve as a justification for rezoning or redesignation of the parcel consistent with SB 683.

11. The Watershed Vegetation Regulations appear to be appropriate and should be adopted as proposed.

12. It appears that the proposed Forestry provisions are preempted by the Forest Practices Act. DEQ will likely request that the Oregon Department of Forestry consider the possible impacts of ash in developing smoke management plans for the area.

13. The provisions on use of herbicides and pesticides appear to be preempted by ORS 634.009, adopted by the 1995 Legislature.

14. Boating regulations should be adopted as proposed, with the exception of the provisions regarding approval of only existing launch locations.

15. Construction and erosion control regulations should be adopted generally as proposed, with the exception of the provision requiring on-site retention ponds or drywells. The provision requiring that no off-site run-off occur addresses this concern.

Mr. Riddle, on behalf of the plaintiffs, and representatives of the Department of Environmental Quality intend to appear before the County Commission to voice their support for these protective regulations. The State regards these protections as essential to the long-term viability of Clear Lake as a source of water for the Florence area. We intend to provide whatever assistance we can to you and your staff in accomplishing our mutual goals of water quality protection.

If you have any questions or concerns, please don't hesitate to call me.

Very truly yours,

*for Williams J. Cloran AAG*

Denise G. Fjordbeck  
Assistant Attorney General  
Commercial & Environmental  
Litigation Unit

JTT21CF0/dgf

Enclosure

cc: Dave Williams, County Counsel  
Dale Riddle, Attorney at Law  
Barbara Burton, DEQ

Faxed to Babson,  
Jordan, Fjorvick,  
7/16/96  
sm

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CLERK, U.S. DISTRICT COURT  
DISTRICT OF OREGON  
EUGENE, OREGON

BY     

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF OREGON

ROBERT L. MERZ and SHIRLEY M. )  
MERZ, husband and wife; )  
VINCENT M. HOWARD, JR.; GORDON )  
BRIAN HOWARD; MARCIA LEE SMITH; )  
RICHARD G. SARGENT; RUBY )  
BROEKER; KAREN L. ANDERSON; )  
AARON U. JONES; ERLING G. OMLID; )  
LLOYD F. OMLID, and ELLIS L. )  
RACKLEFF, )

Plaintiffs, )

v. )

HECETA WATER DISTRICT, an )  
Oregon municipal corporation; )  
STATE OF OREGON, by and through )  
its Environmental Quality )  
Commission; FRED HANSON, )  
WILLIAM YOUNG and LANGDON MARSH )  
in their official capacities as )  
directors of the Department of )  
Environmental Quality; WILLIAM )  
P. HUTCHISON, JR., DR. EMERY N. )  
CASTLE, WILLIAM W. WESSINGER, )  
HENRY C. LORENZEN, CAROL A. )  
WHIPPLE, TONY VAN VLIET, and )  
LINDA McMAHAN in their official )  
capacities as commissioners of )  
the Environmental Quality )  
Commission; RICHARD NICHOLS, )  
BARBARA BURTON, LYDIA TAYLOR, )  
and GARY MESSER in their )  
official capacities at the )  
Department of Environmental )  
Quality; WILLIAM B. FINLEY; )  
LARRY STONELAKE; ART KONING; )  
BOB SLEEPER; STEVE OLIENYK; )  
and MICHAEL KEATING, )

Defendants. )

Civil No. 91-817-TC

O R D E R



COFFIN, Magistrate Judge:

This lawsuit emanates from moratoriums on development in the Clear Lake Watershed. Plaintiffs are lot owners and parcel owners in the Watershed, and seek damages related to the loss of the use of their property during the period that the bans on development have been in effect. Plaintiffs and defendants have each filed motions for summary judgment. The court rules as follows as to the motions presented by plaintiffs and defendant State of Oregon:

1) The Environmental Quality Commission (EQC) is a commission appointed by the Governor of the State of Oregon to establish policies for the Department of Environmental Quality (DEQ). It has the authority to regulate water quality and issues regarding on-site waste disposal within the boundaries of defendant Heceta Water District, and has adopted regulations regulating water-quality and on-site waste disposal regarding the Clear Lake Watershed.

2) On April 7, 1983, EQC established a moratorium [OAR 340-71-460(6)(f), or the "1983 EQC Moratorium"] on the issuance of sewage construction installation permits or approved site evaluation reports for all properties within the Watershed for the purpose of protecting the water quality of Clear Lake. By its terms, the moratorium expired on July 1, 1985.

3) DEQ continued to enforce the 1983 moratorium after its expiration date.


4) On December 14, 1990, EQC adopted another moratorium on on-site sewage systems within the Watershed, which again had the effect of prohibiting development within the Watershed [OAR 340-41-270, or the "1990 EQC Moratorium"] for an indefinite period.

5) The enforcement of the "1983 EQC Moratorium" by DEQ between July 1, 1985 and December 14, 1990 was arbitrary and capricious and, as such, a violation of plaintiffs' due process rights, in that the moratorium had expired on July 1, 1985. Plaintiffs are entitled to prevail on their § 1983 claims pertaining to this issue. As plaintiffs would each have been entitled to septic permits during this time period, DEQ is hereby ordered to issue the plaintiffs in this action septic permits, providing their lots otherwise qualify for such.

6) The "1990 EQC Moratorium" is a valid exercise of authority by EQC, insofar as the regulation represents a temporary moratorium on development while efforts were to be made to implement permanent protection for the quality of water of Clear Lake. At some point, however, a lengthy moratorium or a moratorium that is indefinite in duration operates as a de facto takings of the property affected, and such takings mandate compensation for the owners of the property subject to the moratorium. Because the EQC and DEQ do not have eminent domain powers, it is the ruling of this court that should the "1990 EQC Moratorium" not be repealed as of October 15, 1996, it shall be invalid and of no force and effect. The continued enforcement of the moratorium thereafter will constitute a takings by EQC and DEQ of all properties within the Watershed affected thereby, for which damages will have to be paid.

So ORDERED.

DATED this 16<sup>th</sup> day of July, 1996.

  
THOMAS M. COFFIN  
United States Magistrate Judge

**FINDINGS AND CONCLUSIONS IN SUPPORT OF ADOPTION OF THE ORDINANCE  
AMENDING LANE CODE CHAPTER 16**

**A. Findings in Support of Amending Lane Code Chapter 16 to include the Clear Lake  
Watershed Protection Zone (CLWP-RCP).**

1. The proposal consists of the addition of the Clear Lake Watershed Protection zone (CLWP-RCP) to Lane Code chapter 16 to allow for the regulation of construction, erosion and the development and use of land within the Clear Lake Watershed. The Board finds that the amendment meets applicable requirements of local and state law in that it is being processed pursuant to Lane Code Chapter 14 requirements and is subject to the approval criteria of LC 16.252. Applicable criteria area as set forth in LC 16.252(2) as follows: *"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."*
2. The Board finds that the CLWP-RCP zone is consistent with the general purpose of the Chapter and is not contrary to the public interest in that the objective requirements of the zone and the review process to which development is subject, are consistent with LC 16.003(1). As that stated purpose directs, the CLWP-RCP zone will ensure that the development of property is commensurate with the character and the physical limitations of the land and will be controlled in a manner to promote and protect the public health, safety, convenience and welfare. Also, because of the safeguards that are part of the zone, it will serve to protect the quality of the air, water and land resources of the County consistent with the purpose stated at LC 16.003(10).
3. The Board finds that the CLWP-RCP zone is not contrary to the public interest since the zone is designed to specifically implement the objectives and the policies of the Lane County Rural Comprehensive Plan (RCP) and the Coastal Resources Management Plan (CRMP) for this particular topographic area and reflect the existence of lots of record and existing statutory and administrative rule standards for forest dwellings and land divisions, so as to accommodate enforceable property rights of landowners while assuring that development will be consistent with the RCP and CRMP.
4. The Board finds that the CLWP-RCP zone is consistent with the applicable RCP and CRMP policies. These plans are acknowledged, therefore, to the extent the CLWP-RCP zone complies with particular policies of the RCP and CRMP, conformance with the Statewide Planning Goals is demonstrated. The findings pertaining to the RCP and CRMP set forth below are incorporated herein by reference.
5. The Board finds that the CLWP-RCP zone is consistent with provisions and policies of the Rural Comprehensive Plan and Coastal Resources Management Plan. Some policies of the RCP have been addressed in the findings addressing consistency with the CRMP which contains the policies of the RCP pertaining to Goals 17 and 18. Those findings are incorporated here by this reference as additional findings in support of the Board action.

Rural Comprehensive Plan Conformity

The following analysis identifies applicable Rural Comprehensive Plan policies and further demonstrates how the revisions are in compliance with the policies of the Rural Comprehensive Plan.

a. Goal One: Citizen Involvement

The public input and hearing processes involved in development of new regulations for the Clear Lake Watershed are described relative to Statewide Planning Goal 1. The extensive hearing process is consistent with Goal 1 of the Lane County General Plan policies, in particular the following:

- “2. Plan implementation shall include participation by the general public through a citizen involvement program and the development, adoption and application of codes and ordinances needed to carry out the County General Plan requirements.
3. Firmly identified public needs and desires shall be responded to by the County planning process, within the parameters of state and local planning requirements.”

The process that has brought the proposed amendments before the Board has included extensive public participation and has involved identification of the public needs and desires of residents of the area and responds to those needs and desires while addressing planning requirements.

Significant informal public input has occurred with respect to resolving water quality and development-related issues in the CLWS area for a decade, which included 1983 a sanitation system moratorium imposed by the Oregon Department of Environmental Quality and a 1991 lawsuit against the moratorium. In 1992, the Board directed staff to prepare a Clear Lake Watershed Protection zone to deal with these issues, which was subject to public hearing before the West Lane Planning Commission in that year. In 1994, the Board adopted an interagency mediation resolution to CLWS issues, which resulted in a proposal to include the CLWS area in the Florence Urban Growth Boundary. This proposal was the subject of a West Lane Planning Commission hearing (with Florence Planning Commission) in 1996. Following settlement of the lawsuit in 1996, the DEQ moratorium was lifted and the CLWP zoning proposal was modified to delete inclusion into the Florence UGB and become once again a County zone, which was subjected to West Lane Planning Commission hearing in June, 1997.

This amendment proposal is subject to the public notification and hearing processes adopted by the County in Lane Code Chapter 14. These processes afford ample opportunity for citizen involvement.

b. Goal Two: Land Use Planning

Consistent with Policy 25 of this goal of the RCP, adoption of the CLWP-RCP zone is evaluated through the County's amendment procedures and approval is based upon fulfillment of the criteria therein. Lane Code 16.252 provisions specify the means by which the zoning regulations may be amended. This proposal, and the process for

reviewing the requested amendment, follow the procedures outlined in Lane Code, thus conforming with the established land use planning process consistent with Goal 2.

The CLWS area receives and will continue to receive the level of public services and facilities set forth in County policies corresponding to this goal. Further, the CLWP zone requires that an enhanced level of sewer service be used by property owners when and if it becomes available.

**c. Goal Three: Agricultural Lands**

There are no lands designated or zoned for agricultural use in the Clear Lake Watershed area. Adoption of the amendment will not inhibit agricultural use since farming is permitted in this CLWP zone provided it is set back 300 feet from the lake surfaces.

**d. Goal Four: Forestlands**

Adoption of the CLWP zone, which includes some impacted forestlands, is consistent with a number of the policies in this goal in the RCP. The zone allows continued use of these forestlands for forest purposes and particularly serves the forest use by restricting the range of uses allowed in the CLWP zone.

The adoption and application of the zone is consistent with the following policy:

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

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

Adoption of the amendment will not impact forestlands in that no redesignation of existing forestland in the CLWS area is a part of this action. Forest operations and forest practices are specifically permitted by the CLWP zone. Dwelling units within lands zoned for forest uses, with fuel breaks, are permitted subject to objective standards set forth in the zone.

The CLWP zone particularly addresses Goal 4 by restricting the uses allowed in the zone to the forestry use, replacement dwelling and dwellings established pursuant to the Oregon Administrative Rules, home occupations, repair of existing improvements, harvesting of wild crops, non-commercial recreation and shore-secured floating moorages and similar structures and "exhibitions" of natural conditions of shorelands. The new zoning district does not allow many of the uses allowed in the F-2 district in OAR 660-006-0025 including, but not limited to, physical alterations to the land that are auxiliary to forest practices such as gravel extraction, recreational facilities, private hunting and fishing operations, exploration for and production of geothermal, gas, oil or other hydrocarbons and destination resorts. Under the administrative rule, many additional uses can be authorized on impacted forestlands including television, microwave and radio

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communication facilities, temporary asphalt and concrete batch plants and private seasonal accommodations for fee hunting operations, as well as private campgrounds. The restrictions on uses allowed in the CLWP zone will maintain the forestland in the zone for forest uses.

The CLWP zone restricts land divisions and siting for dwelling units and establishes fire siting standards commensurate with the administrative rule and the above stated implementation means of the rule. The new zoning district provides for a minimum area requirement of 80 acres for a division of land with only the exceptions allowed under the administrative rule.

For the portion of the Clear Lake Watershed that contains marginal lands, the minimum area required for division of land is 10 acres where the adjacent land qualifies for designation as marginal lands and 20 acres, if the adjacent land does not qualify for that designation, therefore, protecting resource land.

The potential for adverse affects of uses on marginal lands that are adjacent to the impacted forestlands in the CLWP zone is greatly reduced by the significant restriction on allowable uses in the CLWP zone. While the marginal lands zoning district allows uses such as public or private schools, churches, exploration of geothermal resources, community centers and personal use or airports, these uses are not allowed in the CLWP zone, therefore, reducing potential impact on forest uses.

Consistent with the intent of the RCP and statewide goal 4 policies and the administrative rules, the CLWP zone adopts regulations that minimize the amount of forestland that can be used for access roads. The ordinance provides detailed measures including standards calling for use of existing roads. Fire safety design standards are adopted to assure provision of adequate roads for fire control purposes, turnarounds, bridges and culverts. The ordinance requires that dwellings and structures be located within a fire protection district or that owners seek membership in the district. If a fire protection district is not available, a fire suppression system is required. The ordinance also requires a system of fuel breaks, fire retardant roofs and chimneys with spark arresters. Consistent with the administrative rule, a dwelling may not be sited on slope greater than 40 percent.

The proposed zone adopts measures to protect forestlands and permit forest operations on those resources lands, consistent with RCP policies and Goal 4.

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

Clear Lake and the CLWS area are not designated as Goal 5 resources, although the area's environmental quality and the lake's use as a water source are well documented. The proposal will not alter current County regulations or practices with respect to Goal 5 resources, such as wetlands.

The CLWP zone addresses the Goal 5 resources present in the Clear Lake Watershed. Open space will be assured by the limitations on development on forestlands within the watershed area. On both the forestlands and the residential lands, open space will be encouraged by the limitation on the uses that are allowed in either of these underlying zoning districts. The CLWP zone provides for a riparian setback of 100 feet in width for parcels and 50 feet in width for subdivision lots. Within this area, extending from the high water mark of the lake, removal of vegetation is prohibited and no development will

be allowed with the exception of limited pedestrian paths, access to launch sites and maintenance of existing roadways, footpaths, open space, structures and improvements.

The CLWP zone protects the fish and wildlife areas and habitats and historic or archeological sites, Class I streams and significant shoreline and wetland biological habitat by providing that if development includes the construction of new roads or driveways within the Clear Lake Watershed, a determination must be made if there is a possible adverse impact on these resources. If there is found to be such potential impact, a Site Investigation Report must be made and conditions may be imposed.

The protection of the purity of the water of the two lakes is one of the primary goals of the CLWP zone. This is accomplished in many forms by provisions of the zone, including restrictions in the range of uses allowed in the zone, prohibition of the removal of riparian vegetation, and limitations on materials and construction methods.

Water purity of the lake is also served by adoption of the Clear Lake Watershed regulations which will require the sanitization of boats being launched into the lakes, limit boat speeds within 100 feet of the water supply inlet on the southwest corner of Clear Lake, and require motor boat operators to regularly maintain boat motors to prevent harm to the waters in the lakes.

The CLWP zone reflects recognition of the Goal 5 resources within the Clear Lake Watershed area and implements specific restrictions on development and protections for those resources, directly addressing Goal 5.

The Clear Lake Watershed does not have any identified historical sites or mineral and aggregate resources. With regard to historical sites, Policy 6 under the Historical Resources portion of the Goal 5 element states:

"The County shall review proposals for development or changes in land use for possible impacts with designated historical sites. When proposed development or land use changes will cause harm or degradation of a designated site, such effects shall be mitigated in a satisfactory manner."

The CLWP zone specifically provides for consideration to be given where development of a road or driveway would represent a hazard to a historic or archeological site identified in the Lane County Rural Comprehensive Plan. In the event such sites were later identified within the Clear Lake Watershed area, and a road or driveway represented a threat to the site, a Site Investigation Report would be required pursuant to paragraph (9) of the zone.

Policy 1 of the Flora and Fauna portion of this goal states:

"Implement construction, development and other land use activities which significantly alter natural systems only after evaluation of effects on wildlife habitats and natural areas."

The CLWP zone has been designed to avoid altering the natural systems by means of restrictions on removal of vegetation, requiring a site investigation report for construction of a road or driveway that may be a hazard to water quality, fish or wildlife habitat or a Class I stream, and specific prohibitions and regulations pertaining to potential erosion or sedimentation and the storage or use of materials that can harm water quality.

These measures are also consistent with Policies 3 and 4, which provide as follows:

3. Through the use of County regulations including zoning, seek to minimize the adverse impacts of land use changes on sensitive species (those susceptible to significant population declines resulting from habitat modification).
4. Public agencies are encouraged to work with landowners to conserve wildlife habitats."

The CLWP zone will serve these policies.

Open Space and Scenic Areas

The adoption of the CLWP zone are consistent with Policy 1 of this goal of the RCP:

"Lane County has determined that all resource lands in the County are also open space lands. Resource related activities shall predominate on these lands. Where proposals are developed, land uses are made consistent with the Comprehensive Plan and Statewide Goals, development standards shall be applied which minimize loss of open space."

The forest resource lands are retained under the RCP zone, preserving this open space.

Water Resources

Under the Water Resources portion of this goal in the RCP, Policy 3 states:

"Adequacy of water supply, particularly those relying on groundwater sources, shall be of 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."

The action taken here, although not a quasi-judicial action as contemplated by this policy, could be considered a major land use change. Consistent with the policy, the CLWP zone reflects a major concern with protecting the water supply for this area. As has been described above relative to protection of the lakes, the zone, as adopted, protects that supply.

f. Goal Six: Air, Water and Land Resources

The adoption of the CLWP zone directly addresses several policies in the Water Quality portion of this goal. Among the policies served are the following:

1. Avoidance and/or control of soil erosion shall be a major criterion shall be a major criterion to be addressed in all applicable County review procedures and County construction activity.
2. The re-establishment of vegetative cover by standard erosion control practices shall be required as part of the land development process.
- .....
4. Lane County shall promote watershed practices which protect and enhance water quality and quantity through land use planning, Public Works projects and management of County facilities."



The CLWP zone is designed to avoid and control soil erosion. The measures include a requirement that hookup to a public sewer system be sought by landowners, restrictions on removal of vegetation, the requirement of a site investigation report where the construction of driveways and roadways may cause erosion and sedimentation and particular provisions that prohibit this activity or a situation that may reasonably cause soil erosion resulting in sediments and materials which pose a significant threat to water quality. Under the provisions, activity can be conditioned where the activity is reasonably likely to cause erosion. These measures specifically address this policy.

The ordinance has provision for restoration of vegetation consistent with Policy 2. All the measures will require watershed practices which protect and enhance water quality consistent with Policy 4.

Any and all future development in the CLWS area will comply with all local, state, and federal standards which apply to the area. The CLWP zoning district establishes setback standards for septic tank installations and requires property owners to connect to a sewer system when it becomes available. Surface water runoff which could impact the lake is specially controlled by the zoning district. The lake itself is the subject of a DEQ administrative rule (OAR 340-41-270) regarding phosphorous loading.

Any and all future development in the CLWS area will comply with all local, state, and federal standards which apply to the area. The CLWP zoning district establishes setback standards for septic tank installations and requires property owners to connect to a sewer system when it becomes available. Surface water runoff which could impact the lake is specially controlled by the zoning district. The lake itself is the subject of a DEQ administrative rule (OAR 340-41-270) regarding phosphorous loading.

The CLWP establishes limitations on vegetation removal and requirements for restoration of vegetation. There is also a provision for restricting runoff from impervious surfaces and a provision that reduces potential hazards to water quality created by runoff from new roads or driveways. A site investigation report is required as a result of which conditions can be imposed to specifically preserve the water quality of the lakes.

The CLWP also prohibits the use or storage of materials in a manner that might pose a significant threat to the water quality of the lakes and will not allow construction in the lakes of any of the permitted structures where the materials used pose a significant threat to water quality of the lakes. The Clear Lake Watershed boating regulations also will assure protection of the water quality in the lakes by requiring sanitation of boats and proper maintenance of boat motors.

The CLWP also prohibits the use or storage of materials in a manner that might pose a significant threat to the water quality of the lakes and will not allow construction in the lakes of any of the permitted structures where the materials used pose a significant threat to water quality of the lakes. The Clear Lake Watershed boating regulations also will assure protection of the water quality in the lakes by requiring sanitation of boats and proper maintenance of boat motors.

**g. Goal Seven: Areas Subject to Natural Disasters and Hazards**

Policy 2 of this goal states:

"Development shall be commensurate with the type and degree of any natural hazard(s) present and appropriate safeguards against flooding, ponding, landslides, land slippage, erosion or other natural hazards applicable shall be assured . . . ."

As indicated above, development will be restricted and regulated in a manner commensurate with the potential hazards present.

The proposal will not alter existing County regulations regarding management of areas subject to natural disasters and hazards, such as floodplain regulations or riparian management standards (which are included in the CLWP zone). Hazards which are a function of coastal goal concerns (e.g., building on dune forms) are also addressed by the zone in the form of a requirement for an expert analysis of the impact of proposed development on the site.

**h. Goal Eight: Recreational Needs**

The dwelling goals are particularly applicable to the development of private recreational homesites allowed by the CLWP zoning district:

4. Increase recreation opportunities, as needed, throughout the County.
5. Encourage private recreational development as an important development component of the County's total supply of recreational facilities and services."

Subject to the safeguards that are part of the ordinance, the development of private recreational homesites are allowed to a limited extent under the ordinance. Non-commercial recreation is a permitted use in the CLWP zone, as are moorages, docks and boat houses. Boating on Clear Lake is to be regulated by a proposed Lane Code Chapter 9 addition establishing boat usage. The regulations do not alter existing County policies or practices with respect to recreational needs or supplies. This is consistent with the above policies.

**i. Goal Seventeen: Coastal Shorelands**

**j. Goal Eighteen: Beaches and Dunes**

Preceding the statements of these goals in the Rural Comprehensive Plan policies element, under the title "Part III: Coastal Resources Management Plan Policies," it is stated:

"The policies listed on the following pages have been excerpted from the Lane County Coastal Resources Management Plan which explains the policies and defines how the policies should be used. Therefore, the Coastal Resources Management Plan must be used in conjunction with any application of the policies."

The policies of those plans are addressed herein and those findings are incorporated herein by reference. The CLWP-RCP zoning district establishes basic land use and development standards and incorporates elements of applicable MU descriptions, policies and priorities.

Coastal Resources Management Plan Conformity

For purposes of these findings, the following discussion relates to contents of the Coastal Resources Management Plan ("CRMP") and policy statements in that plan that are duplicated in the Policies element of the Rural Comprehensive Plan.

The CLWP-RCP zone is designed to specifically implement the objectives and the policies of CRMP for this particular topographic area in order to reflect the existence of lots of record and existing statutory and administrative rule standards for forest dwellings and land divisions, so as to accommodate enforceable property rights of landowners while assuring that development will be consistent with the CRMP.

As stated in the CLWP zoning district purpose, the CLWP zoning district is designed to protect the integrity of the aquifer and surface waters of the Clear Lake Watershed and to achieve the water quality standards set forth in OAR 34-41-270. The zone will achieve the objective of these water quality standards in the Clear Lake Watershed by means of establishing clear and objective development standards rather than application of the CRMP Shoreland Management Units as a means to implement the CRMP policies

The CLWP zone relies on existing County inventories and use requirements, but implements them in a manner different from the CRMP. Where a coastal shoreland combining zone requires a Preliminary Investigation within a specified perimeter of a coastal lake to determine whether or not a proposed development is subject to the requirements of the zone, the CLWP zone requires an expert analysis by an engineer, architect or geologist to address the impacts of construction of a dwelling would have on the site and area and apply objective standards of development as set forth in the zone. This requirement occurs within the entirety of the CLWS area. In addition, a Site Investigation Report is required for road or driveway construction in the area if particular hazards exist. Within the CRMP's MU descriptions applicable to the CLWS, land divisions are regulated; the CLWP zone assumes this regulatory authority and establishes standards for land divisions which are founded in rules governing land divisions in forested areas.

Unlike the approach of the shoreland combining zones, the CLWP's zone greatly restricts the range of uses allowed and the underlying zoning districts uses are limited to dwellings, the maintenance, repair and additions to existing improvements, harvesting wild crops, non-commercial recreation, and moorages, including docks, boathouses, piers and dolphins. Forest operations and practices are allowed. Farming is a permitted use, but is limited to a location more than 300 feet from the lake, nonresidential or agricultural buildings in conjunction with uses allowed in the zoning district and local distribution lines. By restricting the uses that can be located in the watershed, the plan area will be used less intensely and specific objective standards can be set forth in the zone precisely limiting the particular uses allowed.

Shoreland Management Units have been identified in the CRMP for the CLWS area: Significant Natural, Natural Resources Conservation, and Residential Development. The policies for each of these units are set out below and addressed respectively. The same format is followed with respect to the Beaches and Dunes policies set forth in the CRMP.

a. Shoreland Significant Natural MU Policies:

1. *Uses shall fall within Priority 1 of the General Priority Statement (page 51). No use shall be permitted within a Significant Natural Shorelands Management Unit unless that use is determined to be consistent with protection of natural values identified in the Coastal Resources Management Plan's description of the Management Unit.*

Priority 1 of the General Priority Statement reads as follows:

*"Promote uses which maintain the integrity of estuaries and coastal waters . . ."*

The CLWS area is not in an estuary but does involve coastal waters. The CRMP and Goal 17 of the Statewide Goals emphasize the protection and maintenance of water quality. The CLWP zoning district requires property owners to commit to connection to

a sewer system when such a system becomes available and establishes setback standards for septic tank installations prior to that time. The objective standards for dwellings contained in the district requires a certified engineer's, architect's, or geologist's report establishing that runoff from proposed impervious structures not be discharged offsite over the surface of a lot or parcel. New access roads and driveways are to be located and designed to minimize sediment entering the lakes by minimizing the length of any driveway, removal of indigenous vegetation, the disturbance of the natural topography and the number of crossings over drainage courses. Where there is potential hazard to water quality by road or driveway construction, a Site Investigation Report ("SIR") is required to be prepared by a qualified person or team of persons having expertise and familiarity with the area and, based upon the information and recommendations provided in this report, the Planning Director may impose conditions on the proposed contribution in order to assure preservation of the water quality of the lakes.

The CLWP zoning district greatly limits the range of land uses allowed within the Clear Lake Watershed, therefore, limiting development and threats to water quality. (A full discussion of the limited uses allowed in the CLWP zone relative to the General Priority Statement of the CRMP is set forth below and incorporated herein by reference.) The CLWP zone prohibits construction of structures with materials that would pose a threat to water quality. The erosion controls under the ordinance prohibit any person engaging in activity or allowing a situation to exist on property within the watershed that may reasonably cause erosion that would result in sediments and materials being deposited in the lake and posing a significant threat to water quality in the lakes. Conditions can be imposed on a permit for activity within that watershed is reasonably likely to cause erosion. These controls, and those standards and criteria cited above, will limit uses to those which do not endanger the integrity of the coastal waters.

The first shoreline Significant Natural MU policy also requires that any use must be consistent with the protection of natural values identified in the Coastal Resources Management Plan's description of the management unit. The Significant Natural Area Management Unit is described as follows:

"This management unit designates an area which may have a combination of physical, social or biological characteristics requiring protection from intensive human disturbance. These characteristics range from a municipal water shed to the cultural and social value of the sand dunes on the south shore at the mouth of the Siuslaw River. These areas serve multiple purposes, among which are education, preservation of habitat diversity, aid and water quality maintenance, and provision of intangible esthetic benefits. This management unit takes a broader range of possibilities into account than strictly the biological values of an area."

The uses, as restricted by the CLWP zone provisions, are consistent with this language. The primary applicable natural value is water quality maintenance, which is addressed by the standards as discussed above.

2. *Artificial bank stabilization shall be allowed only to protect structures existing as of October 7, 1977 and only after other methods of bank stabilization which are less destructive to the resource have been considered, or unless the unique value of the resource itself is in danger.*

This policy of the CRMP is a more restrictive than the Goal itself. This CRMP policy is directed to the language in Implement Requirement 5 of Goal 17, which states:

"Land-use management practices and non-structural solutions to problems of erosion and flooding shall be preferred to structural solutions. Where shown to be necessary, water and erosion control structures, such as jetties, bulkheads,

seawalls, and similar protective structures, and fill, whether located in waterways or on shorelands above the ordinary high water mark, shall be designed to minimize adverse impacts on water currents, erosion, and secretion patterns."

The CLWP zone addresses this Implementation Requirement 5 directly in a number of ways, while allowing shore stabilization necessary to protect all lawful structures.

The CLWP limits stabilization of existing structures to when it is necessary and will not endanger the water quality and surface, subsurface and aquifer waters in the form of pollution and sedimentation. This use is only allowable pursuant to exercise of the Planning Director's discretion, requiring the finding that this section and LC 16.258(7)(a) are satisfied. Additionally, the CLWP zoning does not allow construction or installation in the lakes of any structure with materials that pose a significant threat to water quality in the lakes and prohibits any activity that will cause erosion resulting in sediments and materials being deposited in the lakes posing a significant threat to the water quality in the lakes.

This CLWP zone will modify the requirements of this policy pertaining to the Clear Lake Watershed in a manner that is consistent with Goal 17.

3. *Dredge spoil disposal appropriate only on the dunes in MU along the estuary, as indicated in the Suislaw Dredged Material Disposal Plan.*

The CLWP zone district does not allow as a use dredge spoil disposal and specifically prohibits fill in the lakes.

4. *Development shall not result in the clearance of natural vegetation in excess of that which is necessary for the actual structure(s), required access fire safety requirements and the required septic or sewage disposal system. Parcels that exhibit vegetation-free areas suitable for development should utilize such areas for the building site where feasible. Areas that experience excessive vegetation removal shall be replanted as soon as possible.*

The policy calls for limitation on clearance of natural vegetation to that only necessary for the actual structure, fire safety requirements, and sewage disposal system and that areas of parcels that are vegetation-free be utilized for a building site where feasible. Goal 17, which the CRMP is designed to address, is directed to maintenance and protection of water quality. The intent of the CRMP is to further the achievement of that goal by particular provisions directed to the preservation of vegetation. Policy 4 of the CRMP is addressed by the CLWP zone by restricting the removal of riparian vegetation, that vegetation which is most significant for purposes of water quality.

The CLWP zone prohibits removal of vegetation within the riparian area with limited exceptions. Where a permit is required due to vegetation removal, there must be a preliminary investigation to identify the areas of vegetation removal and potential impacts of that removal to the water quality in the lakes. This investigation requires identification of vegetation that would serve the function of shading the lakes, stabilizing a bank or shore line, affect habitat or affect water quality of the lakes.

Rather than stating a general standard of only removing necessary vegetation as set forth in the CRMP Policy 4, the CLWP zone prohibits the removal of vegetation in riparian areas and by a preliminary investigation process assures that the significant and important vegetation, including that which shades the lakes or provides habitat for various species is preserved. The provisions also specifically address the potential threats to water quality. This is consistent with Goal 17 and the amendment to the CRMP policies as they would relate to this area is appropriate.

CRMP Policy 4 contains language indicating that vegetation-free areas suitable for development should be utilized for development. This does not state a mandatory standard for the location of development on the site and Goal 17 does not make a requirement of use only of these particular areas of a site. The CLWP zone, as discussed above, adequately addresses the matter of protection of vegetation particularly in relationship to erosion and sedimentation. The manner in which the CLWP zone addresses Goal 17 allows important siting considerations to be addressed in the F-2 zone in order to use existing roads and driveways so as to reduce the possibilities of erosion in locating new access roads and driveways. The flexibility afforded by the new zone makes it possible to minimize sediment entering the lakes by minimizing the length of the road between the public road and the dwelling site, minimizing the removal of indigenous vegetation in forested areas, the disturbance of the natural topography, and the number of crossings over drainage courses, including streams.

The CLWP zone also has specific provision for restoration of vegetation where a restoration plan is required by the Preliminary Investigation. For riparian areas, the restoration plan has, under the CLWP zone, specific requirements pertaining to planting schedule to obtain complete recovery of vegetation, mitigation of effects on wildlife habitat, impacted stream bank or shoreline and any other condition that would have a significant adverse effect on water quality in the lakes.

The provisions of the CLWP zone, pertaining to the restrictions on removal of vegetation and the restoration of vegetation and other erosion controls, appropriately address Goal 17 and are consistent with that goal.

5. *Filling in coastal lakes adjacent to this MU not allowed.*

The CLWP zone does not allow fill of lakes.

6. *Timber harvesting activities shall be consistent with Forest Practices Act rules. Lane County recommends that timber harvest plans consider both scenic and biologic values of the MU. Where major marshes and significant wildlife habitat or riparian vegetation are identified by the Lane County Coastal Inventory on lands subject to forest operations governed by the Forest Practice Act, the act and forest practice rules administered by the Oregon Department of Forestry will be used to protect the natural values of these resources and to maintain riparian vegetation.*

The CLWP zone does not affect the requirements of law that timber harvesting activities be consistent with the Forest Practices Act rules. The remainder of the criterion does not contain actual standards for uses but references and recommends use of the Forest Practices Act and the forest practice rules administered by the Oregon Department of Forestry relative to natural values of resources and maintaining riparian vegetation.

7. *Land divisions: The development of water-dependent commercial or industrial land uses, water-related land uses, and other similar land uses, shall be allowed only upon a finding by the governing body of the County Approval Authority that such uses satisfy a need, fulfill a substantial public benefit which cannot reasonably be accommodated at upland locations, within rural areas acknowledged as developed or committed to development, or in urban or urbanizable areas and are compatible with identified Shorelands values.*

Water-dependent commercial or industrial land uses and water related land uses are not allowed in the CLWP district. The uses allowed in the district are restricted primarily to recreation and resource uses.

The Goal allows "other uses" upon a finding by the County that such uses satisfy a need which cannot be accommodated on uplands or in urban or urbanizable areas or in committed areas. A finding is made here that residential use on legal lots in proximity to a coastal lake is a use that is not accommodated elsewhere.

- 8. Development on lots less than 10 acres in size shall be prohibited. Where lots less than 10 acres existed on the date of adoption of this report, development may occur if in conformance with the requirements of the parent zone and this Management Unit.

The CLWP zone is consistent with the concept embodied in this policy statement from the CRMP in that development is limited to legally existing lots and lots of record. With regard to the 10-acre size minimum, there is no basis for the limitation in Goal 17 itself except as it might relate to the indication in the goal that nondependent, nonrelated water uses which will cause a permanent or long-term change in the features of the coastal shorelines should be limited. The CLWP zone restricts the type of uses that will be allowed and specifically circumscribes the activity to prevent any impacts that would cause a permanent or long-term change in the futures of the coastal shorelines. The 10-acre restriction is not necessary to comply with Goal 17.

- 9. For any approved development on coastal lake or Estuarine Shoreland in this management unit, a minimum 100' building setback from the shoreline is required wherever practical. Setback requirements on ocean Shorelands in this AdU will vary depending on the rate of erosion at the site and will require a County site review. Furthermore:

- a. A band of natural vegetation no less than one-half the width of the setback shall be left in natural vegetation.
- b. Existing lots which are too small to accommodate both the required management unit setback, the construction of a residence and other development requirements such as septic and replacement fields will be allowed to build in this setback zone following a County site inspection providing clearance of vegetation on the remainder of the lot is kept to an absolute minimum and other County requirements are met and hazard to life and property is minimal and acceptable.
- c. Within the shoreside belt of natural vegetation the following kinds of modifications are allowable:
  - 1) Unsurfaced foot paths;
  - 2) Removal of hazardous vegetation as unstable streambank trees or trees otherwise vulnerable to blowdown may be allowed in unusual circumstances following review by the County or Oregon Department of Fish and Wildlife. Streambank trees, snags and shorefront brush are necessary for wildlife habitat.
  - 3) Replanting of areas modified in "c." above or other areas that have been previously cleared.

Goal 17 does not indicate as necessary or suggest specific requirements as set forth in this policy of the CRMP. It would appear that the intent of this policy of the CRMP is to address Implementation Requirement 4 of Goal 17, which states:

"Because of the importance of the vegetative fringe adjacent to coastal waters to water quality, fish and wildlife habitat, recreational use and esthetic resources, riparian vegetation shall be maintained, and where appropriate, restored and enhanced, consistent with water-dependent uses."

The CLWP zone provides a riparian setback of 100 feet in width for parcels and 50 feet in width for subdivision lots. More importantly, it specifically addresses the manner of investigating, retaining and restoring riparian vegetation and other vegetation and, as

described above, addresses issues of erosion and sedimentation and addresses particularly the matter of vegetative fringe relative to water quality, and fish and wildlife habitat.

In addition to the required Preliminary Investigation pertaining to riparian vegetation, the CLWP zone requires a certified engineer's, architect's, or geologist's report to address issues of runoff, slope and potential hazards caused by construction of roads and driveways. The new zone also requires that if riparian vegetation is removed or a hazard to water quality is caused by a new road or driveway, a restoration plan can be required of the responsible person.

The CLWP zone addresses that which Statewide Goal 17 requires in a manner that allows individualized review of parcels and the existing conditions on parcels, therefore, assuring protection and maintenance of the water quality of the lakes.

10. *Construction or expansion of single-family, single-purpose piers is discouraged in favor of multiple-use, public or commercial piers. Applicants for such single-purpose piers shall be required to demonstrate that no viable alternatives (cooperative use of existing piers, nearby public facilities, mooring buoys, etc.) exist before approval of construction. Docks and piers existing on the date of Plan adoption may be rebuilt (not expanded) if damaged or destroyed.*

Goal 17 permits, and the CLWP allows as uses, shore-secured floating moorages, mooring buoys, docks, boathouses, piers and dolphins. The CLWP assures consistency with Goal 17, in that there are adopted restrictions on materials that can be used to construct such facilities, prohibiting materials that would pose a significant threat to the water quality of the lakes.

11. *New development proposed for this management unit shall blend to the maximum degree feasible with the surrounding vegetation and topography in terms of color, form and location. Design and site shall be reviewed to ensure that visual harmony is achieved consistent with the purposes of the management unit.*

The CLWP zone encourages the retention of existing vegetation and has the above cited provisions pertaining to restoration of vegetation in accordance with appropriate standards. The real import of this policy is that contained in the second sentence pertaining to consistency with the purposes of the management unit. Those purposes including maintaining the municipal watershed, preservation of the habitat diversity and provision of intangible esthetic benefits. These purposes are addressed by the CLWP zone but tempered with the necessary provision for fire safety.

Goal 17 does not contain language that would require the blending of development with the vegetation and topography in terms of the color and particular form and location of the development. The CLWP zone does satisfactorily address the goal in the manner described above and by its restriction of the types of uses that will be allowed in the zone.

12. *The filling in of freshwater marshes within the MU is not allowed. Freshwater marsh areas are found south of Sutton Lake between the two portions (MU 4) and in estuary shoreland's MUs 4 and 27.*

This policy is not applicable.

13. *Improvements to ocean shore areas (as defined in ORS 390.605) are subject to a permit from the Oregon Department of Transportation.*



This policy is not applicable.

b. Shoreland Natural Resources Conservation MU Policies:

1. *Uses shall fall within, and respect, Priorities 1-4 of the General Priority Statement (page 51).*

The uses allowed in the CLWP zone, being subject to the clear and objective development standards that are part of that zone, will all fall within and respect the priorities of the general priorities statement. As discussed above, the uses allowed, with the restrictions on uses that are part of the ordinance, will assure that the integrity of the coastal waters will be maintained. Because the CLWP zone is designed to implement the objective of the CRMP for this particular topographic area, uses allowed will maintain the integrity of the coastal waters.

The uses allowed in the CLWP zone in relationship to the General Priorities Statement are further discussed below and those findings are incorporated herein by reference.

2. *Dredge spoil disposal must provide adequate run-off protection and, wherever possible, maintenance of a riparian strip along the water. Those sites adopted as part of the Suslaw River Dredged Material Disposal Plan are automatically approved.*

This criterion is inapplicable to the adoption of this zone.

3. *Artificial bank stabilization shall be used only to protect public and private roads, bridges or railroads, or when natural erosion processes are threatening a structure which existed on October 7, 1977.*

The CLWP zone specifically prohibits fill in the lakes or fresh water marsh areas located below the ordinary high water mark in the lakes and prohibits development within a riparian area with limited exceptions.

The findings above pertaining to Policy 2 of the Shoreland Significant Natural MU policies are incorporated herein by reference. The provisions of the CLWP zone address Goal 17 by restrictions on activities that would have the potential of causing erosion, sedimentation and pollution of the waters in connection with bank stabilization.

4. *Construction or expansion of single-family, single-purpose piers is discouraged in favor of multiple-use, public or commercial piers. Mooring buoys, floating piers, launching ramps and dryland storage are potential alternatives. If this MU exists adjacent to a natural Estuarine MU, no pier development shall be allowed. Recently destroyed or damaged piers may be replaced if destroyed.*

This policy does not state a criterion for development. It speaks in terms of discouraging individual piers but does not prohibit such structures. The CLWP zone allows such structures but prohibits the use of materials that would pose a significant threat to the natural water quality of the lakes.

5. *Filling in coastal lakes adjacent to this MU shall be allowed only in very rare instances and after a complete study of potential physical or biological impacts upon the lake. The cumulative effects of all such fills shall be considered. Positive benefits must outweigh negative effects.*

The CLWP zone prohibits fill of the lakes.

6. *Forestry and agricultural practices shall take place in such a manner as to retain the flexibility of future shore land uses and to maintain the natural integrity of the estuary. Where major marshes and significant wildlife habitat or riparian vegetation are identified by the Lane County Coastal Inventory on lands subject to forest operations governed by the Forest Practice Act, the act and forest practice rules administered by the Oregon Department of Forestry will be used to protect the natural values of these resources and to maintain riparian vegetation.*

There are no agricultural areas within the zone. To the extent agricultural activity occurs within the area, it is to be set back 300 feet from lake surfaces. Forestry activities will be governed by the forest practices act and administrative rule.

7. *Land divisions: The development of water-dependent commercial or industrial land uses, water-related land uses, and other similar land uses, shall be allowed only upon finding by the governing body of the County Approval Authority that such uses satisfy a need, fulfill a substantial public benefit which cannot reasonably be accommodated at upland locations, within rural areas acknowledged as developed or committed to development, or in urban or urbanizable areas and are compatible with Identified Shoreland values.*

Water-dependent commercial or industrial land uses or water-related uses are not allowed in the CLWP zoning district. The findings set forth at Policy 7 of the Shoreland Significant Natural MU policies are incorporated herein by reference.

8. *For any approved development on coastal lake or Estuarine shoreline in this MU, a minimum 50' building setback from the shoreline is required. Setback requirements on ocean Shorelands in this MU will vary depending on the rate of erosion in the area and will be determined by County site review. Furthermore:*

- a. *Within the 50' setback, 30' adjacent to the shore shall be left in natural vegetation. Brush may be removed from the remaining 20' if revegetated and decks and similar structures may project into this area.*
- b. *Existing lots which are too small to accommodate both the required management unit setback, the construction of a residence and other developed requirements such as septic and replacement fields will be providing clearance of vegetation on the remainder of the lot is kept to an absolute minimum and other County requirements are met and hazard to life and property is minimal and acceptable.*
- c. *Within the 30' of natural vegetation the following kinds of modifications are allowable:*
  - 1) *Unsurfaced foot paths;*
  - 2) *Removal of hazardous vegetation such as unstable streambank trees or trees otherwise vulnerable to blowdown may be allowed in unusual circumstances following review by the County or Oregon Department of Fish and Wildlife. Streambank trees, snags and shorefront brush are necessary for wildlife habitat.*
  - 3) *Replanting of areas modified in "c." above or other areas which have been previously cleared.*

Policy 9 of the Shoreland Significant Natural MU policies is addressed above and incorporates similar language concerning setback and requirements for retention of natural vegetation. The findings therein are incorporated herein by reference. As there pointed out. Goal 17, and particularly Implementation Requirement 4 of that goal, to

which this policy would appear directed, does not require these absolute standards. As previously found, the CLWP zone does address the goal in changing these specific requirements relative to the Clear Lake Watershed.

9. *The District Forester of the Oregon Department of Forestry shall have a 14-day "review and comment" period to evaluate the impact of development proposed on lands zoned for timber production within the management unit. The DOF may make suggestions concerning ways to avoid or mitigate adverse impacts.*

This policy is unaffected by the application of the CLWP zone to a specific area of the CRMP plan area. The Department of Forestry may make suggestions pertaining to any development in the forestry zones.

10. *Only developments and activities which do not pose a threat to life or property from land instability, erosion or other natural hazards shall be allowed. Where the property is zoned for timber production, it is the responsibility of the Forest Practices Act to ensure that timber harvest activities pose no hazard to life or property.*

No developments or activities are permitted under the CLWP zone that would pose a threat to life or property from land instability, erosion or other natural hazards. The uses allowed include residential use, harvesting of wild crops, noncommercial recreation and farming in certain areas. The only activity allowed that poses a possible threat is that involved in forestry practices which are subject to the Forest Practices Act.

11. *Improvements to ocean shore areas (as defined in ORS 390.603) are subject to a permit from the Oregon Department of Transportation.*

There are no ocean shore areas in the CLWP zone.

c. Shoreland Residential Development MU Policies:

1. *Uses shall fall within, and respect, Priorities 1 and 4 of the General Priority Statement (page 51).*

The findings set forth above for Policy 1 of the Shoreland Significant Natural MU policies and the Shoreland Natural Conservation MU policies and below pertaining to the General Priority Statement are incorporated herein by reference.

2. *A minimum building setback of 50' from the shoreline of coastal lakes or estuaries shall be required. The shoreward 30' of this setback area shall be maintained in natural vegetation wherever currently existing. Where not presently existing, it should be encouraged to develop. Setback needs along ocean Shorelands will vary due to rate of erosion in the area and will require a County site review. Furthermore:*

- a. *Existing lots which are too small to accommodate both the required management unit setback, the construction of a residence and other development requirements such as septic and replacement fields will be allowed to build in this setback zone following a County site inspection providing clearance of vegetation on the remainder of the lot is kept to an absolute minimum and other County requirements are met and hazard to life and property is minimal and acceptable.*

- b. *Within the shoreside belt of natural vegetation the following kinds of modifications are allowable:*

- 1) *Unsurfaced foot paths;*

- 2) *Removal of hazardous vegetation such as unstable streambank trees or trees otherwise vulnerable to blowdown may be allowed in unusual circumstances following review by the County or Oregon Department of Fish and Wildlife. Streambank trees, snags and shorefront brush are necessary for wildlife habitat.*
- 3) *Replanting of areas modified in "c" above or other areas which have been previously cleared.*

The findings set forth at Shoreland Natural Resources MU policies No. 8 are incorporated herein by reference.

- 3. *Construction or expansion of single-family, single-purpose piers is discouraged in favor of multiple-purpose, public or commercial piers. If destroyed, existing or previously existing docks or piers may be rebuilt but not expanded.*

The findings at Policy 4 of Shoreland Natural Resources Conservation MU policies are incorporated herein by reference.

- 4. *Dredge spoil disposal sites approved as part of the Siuslaw River Dredged Material Disposal Plan are automatically approved and need no additional review.*

This policy is inapplicable.

- 3. *Filling in coastal lakes adjacent to this MU is not allowed.*

The CLWP zone does not allow filling of the lakes.

- 6. *Land divisions: The development of water-dependent commercial or industrial land uses, water-related land uses, and other similar land uses, shall be allowed only upon finding by the governing body of the County Approval Authority that such uses satisfy a need, fulfill a substantial public benefit which cannot reasonably be accommodated at upland locations, within rural areas acknowledged as developed or committed to development, or in urban or urbanizable areas and are compatible with identified Shoreland values.*

The findings set forth for Policy 7 of the Shoreland Natural Resources Conservation MU policies are incorporated herein by reference.

- 7. *Improvements to ocean shore areas (as defined in ORS 390.605) are subject to a permit from the Oregon Department of Transportation.*

The zone does not involve areas that include ocean shores.

d. Shoreland General Priority Statement:

The highest priority stated in the CRMP is to promote uses which maintain the integrity of the estuaries and coastal waters. The consistency of the CLWP zone with this statement of priority has been discussed above relative to Policy 1 of both the Shoreland Significant Natural MU and the Shoreland Natural Resources Conservation MU and that discussion is incorporated herein by reference. As stated there, of particular note is that the uses allowed in the CLWP are limited to several, all of which have operating characteristics which, along with the use restrictions in zoning district, will assure the integrity of the coastal waters.

The second and third priorities relate to provision for water-dependent uses and water-related uses. The proposed zone permits, subject to the objective standards, water intake, filtration and/or transmission facility in connection with the domestic water supply system. Also, the CLWP zoning district allows as uses, subject to Planning Director approval, exhibitions of the natural condition of shorelands, dune lands, forested areas, streams and lakes, marsh lands or similar areas of unique value and that vegetation and wildlife supported by such waters, artificial stream, shoreland stabilization or lake level maintenance adjacent to the lakes provided such activities do not endanger water quality or surface, subsurface or aquifer waters that are protected from pollution and sedimentation. The provision for these water-dependent uses is consistent with the statement of general priorities in the CRMP.

Stated as the fifth, or lowest ranking priority, are nonrelated uses which caused a permanent long-term change in the features of the coastal shorelands. These can only be allowed upon a demonstration of public need. The CLWP-RCP zone does not allow such uses.

e. Beaches & Dunes Policies

The CLWS area is subject to the Beaches & Dunes goal. Within Lane County, the program to achieve the goal is within the CRMP, which identifies dune forms and sets forth policies to regulate uses as defined by the goal. These policies are implemented in the County's Beaches and Dunes combining zone.

The CRMP approach was to categorize dunes and set forth particular policies applicable to each type of dune. The CLWP zone does not categorize dunes but limits the type of development that can take place there and requires a particular type of dune be specifically addressed in any development. The ordinance requires that, where dune forms exist, a certification be provided by an engineer, architect or geologist that the development will result in the least topographical modification to the site. The ordinance requires a determination which identifies the type of land form involved and whether compressible subsurface areas exist on the development site. Where those areas exist, foundations must be engineered. Also, where dune forms exist, sand stabilization is required during all phases of construction and post construction. By requiring individual evaluation and resultant specifications for development, the CLWP zone serves, protects and allows the development of the dune areas while reducing hazard to human life and property.

Implementation Requirement 1 of Goal 18 states that local governments should base their decisions on plans, ordinances and land use actions in beach and dune areas on specific findings that include, at least, the type of use proposed and any adverse effects it might have on the site and adjacent areas (Implementation Requirement 1.a.). The ordinance proposed here restricts the possible uses on land in the dune areas and, with its specific objective standards, prohibitions and regulations pertaining to possible impacts of the allowed uses, addresses the possibility of adverse impacts on the site and adjacent areas. Consistent with Implementation Requirement 1.c., the CLWP zone addresses the removal of restoration and vegetation. The requirements of the ordinance also are consistent with Implementation Requirement 1.c. in that it provides methods for protecting the surrounding area from the adverse effects of development and is consistent with Implementation Requirement 1.d. by addressing possible hazards to public and private property in the natural environment that might be caused by the proposed use. The particular provisions of the CLWP zone that address these goal requirements are discussed in detail in the discussion of the policies of the CRMP.

The CLWP zone will not allow residential developments and commercial industrial buildings on active for dunes or on interdune areas (deflation planes) as directed by the Implementation Requirement 2 of the goal.

The CLWP zone, in many manners, addresses Implementation Requirement 3 which calls upon local governments to regulate actions in beach dune areas to "minimize the resulting erosion." Consistent with the implementation requirement, the ordinance limits destruction of desirable vegetation.

**General Policies:**

1. *Ensure the protection and conservation of coastal beach and dune resources.*
2. *Prevent economic loss by encouraging development consistent with the natural capability of beach and dune landforms.*
3. *Provide for clear procedures by which the natural capability of dune landforms can be assessed prior to development.*

The CLWP area does not include coastal beaches but does include open sand dunes on the western shores of the two lakes. The protection and conservation of the dune resources and prevention of economic loss is accomplished by the CLWP zone by specific requirements for development under the zone that will cause development to be consistent with the natural capability of the dune land form. For the establishment of a dwelling unit where dune forms exist, certification is required that the development will result in the least topographical modification to the site as practicable. The ordinance requires a determination identifying the type of land form involved and whether compressible subsurface areas exist on the development site. If compressible subsurface areas exist on the development site, foundations must be engineered. Also, where dune forms exist, sand stabilization is required during all phases of construction and post-construction, as specified by the standards in Land Manual 10.060. With regard to any construction of new roads or driveways, if there is a hazard to water quality, a site investigation report can be required that may result in conditions being imposed for development that will assure preservation of the water quality of the lakes. The ordinance sets clear procedures for assessment of the natural capability of dune land form prior to development.

4. *Prevent cumulative damage to coastal dune resources due to the incremental effects of development.*

The site specific report that is required will make possible the prevention of cumulative damage to the coastal dune resources because each dwelling will be subject to review that can consider previous development in order to prevent cumulative damage.

5. *Protect areas of scenic, scientific or biological importance, significant wildlife habitat, and other critical environmental areas through use of appropriate underlying zoning.*

The CLWP zone requires specific review and a report pertaining to each dwelling constructed. In this manner, the CLWP zone will protect these areas.

6. *When federal lands are converted to nonfederal ownership, plan and zone designations shall become effective.*

This policy is inapplicable.

**Active Dune Forms Policies:**

1. *Because of the highly unstable nature of these landforms, development will be prohibited where they occur.*

The prohibition of this policy in the CRMP is broader than that required by Goal 18. Implementation Requirement 2 of Goal 18 states:

"Local governments and state and federal agencies shall prohibit residential developments and commercial and industrial buildings on beaches, active foredunes and on other foredunes which are conditionally stable and that are subject to ocean undercutting or wave overtopping, and on interdune areas (deflation planes) that are subject to ocean flooding. Other developments in these areas shall be permitted only if the findings required in (1) above are presented and it is demonstrated that the proposed development:

- a. Is adequately protected from any geologic hazards, wind erosion, undercutting, ocean flooding and storm waves; or is of minimal value; and
- b. Is designed to minimize adverse environmental effects."

Contrary to the above CRMP policy, the goal does not contemplate the prohibition of all development on all active dunes. The CLWP zone restricts certain kinds of development consistent with the implementation requirements of the Goal.

The CLWP zone provides that any new dwelling must include a plot plan or statement submitted by an engineer, architect, or geologist showing compliance with the requirement that, where dune forms exist, certification must be made that the development will result in the least topographical modification to the site as practicable. Also, the determination need be made identifying the type of land involved where the compressible subsurface areas exist on the site. If compressible subsurface areas exist, the ordinance requires that foundations be engineered. This provision will have the effect of addressing the intent of this policy by requiring stabilization of any development on these land forms.

2. *Recreational vehicular traffic should be prohibited on any County active sand dune areas north of the Siuslaw River.*

This policy is inapplicable to the subject area.

**Recently Stabilized Dune Forms Policies:**

1. *Development shall result in the least topographic modification of the site as is reasonable and possible.*

The CLWP zone requires that a certified engineer's, architect's or geologist's report be submitted certifying that, where dune forms exist, the development will result in the least topographical modification to the site as practicable, consistent with this policy.

2. *Development shall not result in the clearance of natural vegetation in excess of that which is necessary for the actual structures, required access, fire safety requirements and the required septic or sewage disposal system. Parcels which exhibit vegetation-free areas suitable for development should utilize such areas for the building site where feasible. Areas which exhibit excessive vegetation removal shall be replanted as soon as possible.*

The proposed zone addresses the intent of this policy by prohibiting vegetation removal from riparian areas. The ordinance also requires, consistent with this policy, a restoration plan for vegetation.

3. *Sand stabilization is required of the developer or owner:*

- (1) *using temporary stabilization techniques during all construction phases, and*
- (2) *through an ongoing maintenance program, including preliminary revegetation with beachgrass (or other species recommended by a recognized expert), fertilization and later plantings of appropriate secondary successional species at the appropriate time. Successional species reduce the extreme fire hazard associated with mature beachgrass.*

As discussed above, where dune forms exist, sand stabilization is required under the ordinance during all phases of construction and post-construction, as specified by standards set forth in Lane Manual 10.060. This provision for sand stabilization is in accord with the above policy.

4. *In assessing new development, the cumulative effect of the combination of existing development, along with that proposed, has to be considered in assessing the feasibility of the new development.*

As stated above, the individual review for each dwelling will allow assessment of the cumulative effect of development and provide a means to address potential effects.

5. *All development proposals for recently stabilized sand dune areas, except proposals for minimum development, must be accompanied by a Lane County Sand Dune Hazards Checklist. Results of the completed Checklist will determine any need for a further Site Investigation Report.*

As discussed above, the CLWP zone requires an expert's report on each plan for a dwelling unit which will address the issue of stability of sand dune areas. In the instance of roads and new driveways, similar to the Lane County Sand Dunes Hazards Check List, the ordinance provides that if certain hazards exist, there must be a Site Investigation Report pursuant to which conditions can be imposed addressing any hazards. This ordinance accomplishes the same result as contemplated by this policy's specific reference to the Lane County Sand Dunes Hazards Check List.

6. *Due to the extreme porosity of the sand (and in interdune areas, a high groundwater table), leaks in buried fuel oil or gasoline tanks could present a serious threat to the quality of the groundwater in the dunal aquifer. No new buried fuel tanks shall be permitted without a County inspection to determine proper placement and design standards so that water resources are protected.*

Such tanks are subject to Oregon Department of Environment Quality regulation rather than County inspection and regulation. This particular requirement is not one of Goal 17.

Older Stabilized Dune Forms Policies:

- 1. *Although relatively stabilized, great care must be exercised with any human activity in older stabilized dune areas. The variability and inconsistency of substrate characteristics can lead to a wide variety of hazards if developed, including slumping, reactivation, septic tank failure, subsequent danger of groundwater pollution and uneven settling.*



As discussed above, the CLWP zone contains particular standards to be addressed in a report that is required with development of the parcel with a dwelling. This will address the requirement of care with regard to these dune areas.

2. *Slope is an important factor in respect to septic drainfields, roads, excavations and especially landslides. This factor should be specifically addressed by both the developer and the reviewing body.*

The proposed ordinance provides that where, in the construction of roads and driveways, there are hazards due to geologic instability, a site inspection report is to be required in order to address potential problems. For dwellings, the CLWP requires an expert's report that addresses the restriction that dwellings are limited to slopes of less than 40 percent and determines if foundations should be engineered.

3. *Significant structural loads or structural fills to be placed on dune areas where compressible subsurface areas are suspected should be allowed only after a thorough foundation check and positive findings are reported.*

The ordinance specifically addresses situations where compressible subsurface areas exist, requiring engineered foundations in such an instance.

4. *Development shall result in the least topographic modification of the site as is reasonable and possible and shall avoid the steeper slopes.*

The report that is required for each dwelling must certify that the development will result in the least topographical modification to the site. Dwelling units are restricted to slopes of less than forty percent.

5. *Development shall not result in the clearance of natural vegetation in excess of that which is necessary for the actual structure's, required access, fire safety requirements and the required septic or sewage disposal system. Parcels which exhibit vegetation-free areas suitable for development should utilize such areas for the building site where feasible. Areas which experience excessive vegetation removal shall be replanted as soon as possible.*

The findings set forth under Recently Stabilized Dunes Forms Policy No. 2 are incorporated herein by reference.

6. *Due to the extreme porosity of the sand (and in interdune areas, a high groundwater table), leaks in buried fuel oil or gasoline tanks could present a serious threat to the quality of the groundwater in the dunal aquifer. No new buried fuel tanks shall be permitted without a County inspection to determine proper placement and design standards so that water resources are protected.*

Such tanks are subject to DEQ regulation. Goal 18 does not require the restriction stated on this CRMP policy.

Interdune Forms Policies:

1. *Due to the severe limitations of the near shore deflation plain, and in order to protect the quality of the groundwater and the dunal aquifer, development, except for limited minor development, shall be prohibited.*

This policy of the CRMP is broader than a related implementation requirement of Goal 18. The implementation requirement would prohibit residential development and commercial industrial buildings on deflation planes that are subject to ocean flooding. There are no deflation planes in the geographical area.

2. *Due to the extreme porosity of the sand (and in interdune areas, a high groundwater table) leaks in buried fuel oil or gasoline tanks could present a serious threat to the quality of the groundwater in the dunal aquifer. No new buried fuel tanks shall be permitted without a County inspection to determine proper placement and design standards so that water resources are protected.*

Such tanks are subject to DEQ regulation.

3. *To assure protection of groundwater and the dunal aquifer, nonsewered residential and other development proposed for interdune areas, other than the near shore deflation plain:*
  - a. *Shall require a staff investigation (Sand Dune Hazards Check-List) and, if deemed necessary by the Lane County Planning Department, a Site Investigation Report;*
  - b. *Shall not result in the clearance of existing vegetation in excess of that which is necessary for the dwelling unit, required access, fire safety requirements and the required septic or sewage disposal system. If possible, septic drain lines should be placed among existing vegetation to avoid unnecessary vegetation removal. Parcels which exhibit vegetation-free areas should utilize such areas for the building site where feasible. Sites which experience excessive vegetation removal shall be replanted as soon as possible.*

A staff investigation is required for siting of a dwelling that particularly addresses land where dune forms exist. With respect to vegetation, the findings of Policy 2 of the Recently Stabilized Dune Forms Policy are incorporated herein by reference.

The Board finds, for reasons set forth above, that the proposal is consistent with applicable elements and components of the CRMP.

W-15a

**SUPPLEMENTAL MATERIAL**  
**THIRD ADDENDUM TO AGENDA COVER MEMO**

Third Addendum Date: **November 27, 2006**  
Second Reading/Public Hearing: **November 29, 2006**

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**TO:** Board of County Commissioners  
**DEPARTMENT:** Public Works Department/Land Management Division  
**PRESENTED BY:** Bill Sage, Associate Planner

**AGENDA ITEM TITLE:** **ORDINANCE NO. PA 1226 / IN THE MATTER OF ADOPTING AMENDMENTS TO THE RURAL COMPREHENSIVE PLAN FOR PROPERTIES IN THE COAST FORK WILLAMETTE WATERSHED AND OTHER PORTIONS OF RURAL LANE COUNTY; ADOPTING EXCEPTIONS TO STATEWIDE PLANNING GOALS THREE AND FOUR WHERE NECESSARY; ADOPTING CHANGES IN ZONING DESIGNATIONS TO COMPLY WITH SUCH PLAN AMENDMENTS WHERE NECESSARY; AND ADOPTING A SAVINGS AND SEVERABILITY CLAUSE. (CONTROL NO. 02-18, 20-21)**

**I. ISSUE**

**Control No. 19 – Baldwin**

Land Management Division has received a request from the new legal owner, Marcee N. Murch, of tax lot 100 of Assessor's map TRS 21-01-35.4 and tax lots 1300 and 1500 of Assessor's map TRS 21-01-36.3.3 in the Culp Creek area, to withdraw the Control No. 19 "Baldwin" application from consideration for a plan amendment and zone change. Recorded copies of the conveying documents establishing Ms. Murch as the legal owner are attached as Attachment "C".

This action requires amending Ordinance No. PA 1226 by eliminating "Control No. 19" from consideration by the Board of County Commissioners. The attached Attachment "A" -- Ordinance No. PA 1226 (revised November 24, 2006) accomplished this task.

Please **remove** the Ordinance No. PA 1226 included as Attachment "A" to the Second Addendum to the Agenda Cover Memo dated November 13, 2006 and **insert** the attached Ordinance No. PA 1226.

Removals are also necessary from the original Exhibits "A", "B" and "C" to Attachment "A" -- Ordinance No. PA 1226 of the Agenda Cover Memo dated November 13, 2006:

Please **remove** "Exhibit A-19-1" - Proposed amendment to Official Plan Plot # 547, and **remove** "Exhibit A-19-2" - Proposed amendment to Official Plan Plot # 544.

Please **remove** "Exhibit B-19-1" - Proposed amendment to Official Zoning Plot # 547, and **remove** "Exhibit B-19-2" - Proposed amendment to Official Zoning Plot # 544.

Please **remove** "Exhibit C-19" - Proposed Findings of Fact -- Control No. 19 (TRS 21-01-35.4, tax lot 100; TRS 21-01-36.3.3, tax lots 1300 and 1500).

**Control No. 17 – Chrestman**

Land Management Division received written comments from Stacey Marple and Keith Fuller on November 22, 2006. The complete correspondence is attached as Attachment “B”.

Ms. Marple and Mr. Fuller have raised four concerns about the proposed rezoning of the Chrestman parcel from Rural Industrial (RI) to Rural Residential (RR5). The subject parcel is identified as tax lot 8400 of Assessor’s map 20-03-35, 2.27 acres in size, and located on Mosby Creek Road. The parcel is developed with a structure that previously was used as a shingle/shake mill from 1978 to 1981. The structure has been unused as a mill for about 20 years.

The summarized concerns articulated in Attachment “B” and staffs comments follow:

Concern #1. Changing the rural character of the neighborhood through the potential development of the 2.27-acre property with three mobile homes.

Staff comment: The subject property is vacant with the exception of the abandoned mill structure. Lane Code 16.290 implements the Rural Residential designation and limits development of a parcel to one permanent residence. If a single family dwelling was lawfully established on the subject property as a permanent residence, the owner would have the option to request Planning Director approval for a special use permit to site a temporary manufactured home on the property to relieve a medical hardship for the duration of the certified hardship.

The proposed density is RR5 with a minimum division standard of 5-acres. Since the subject property is 2.27 acres, no partitioning of the subject property would be allowable and no new parcels could be created.

Concern #2. Historical (covered bridge on Layng Road – Mosby Creek) and environmental (erosion and stream habitat) aspects in the area.

Staff Comment: The proposed zone change to Rural Residential would provide for the development of the 2.27 acres with one permanent residence and residential accessory structures such as a garage, shop or storage building. The subject property is not listed on the National or State Historical Registry.

The Rural Residential Zone (LC 16.290) includes a 50-foot wide riparian setback area that limits alterations or removals of vegetation within the setback and a Director approved special use permit prior to construction of a structure within the setback area.

A portion of the subject property along Mosby Creek is within a flood hazard area and any fill or removal of materials or construction of a structure within the floodplain area would require prior approval of a Director special use permit.

Concern #3. Potential for pollution from prior mill site.

Staff comment: There is no evidence in the County records of pollution on the subject property.

Concern #4. Protection of Mosby Creek, a Class I stream.

Staff comment: The proposed Rural Residential Zone (LC 16.290) includes a 50-foot wide riparian setback area that limits alterations or removals of vegetation within the setback and a Director approved special use permit prior to construction of a structure within the setback area.

As with all of the subject properties and the 19 Control Numbers, the Board of County Commissioners has several options in considering the written testimony and stated concerns:

1. Approve the proposed plan amendment and zone change;
2. Deny the proposed plan amendment and zone change; or
3. Withdraw Control No. 17 and request additional information from citizens and staff.

Staff recommends the Board approved the proposed plan amendment and zone change for Control No. 17 (Chrestman, Map 20-03-35, tax lot 8400).

## II. ATTACHMENTS

Attachment A – Ordinance No. PA 1226 (revised November 24, 2006)

Attachment B – Correspondence from Stacey Marple and Keith Fuller (Control No. 17).

Attachment C – Recorded deeds: WD 2005-074236; BSD 2006-064551 (Control No. 19).

**BEFORE THE BOARD OF COUNTY COMMISSIONERS OF LANE COUNTY, OREGON**

**ORDINANCE NO. PA 1226 ) IN THE MATTER OF ADOPTING AMENDMENTS TO  
) THE RURAL COMPREHENSIVE PLAN FOR PROPERTIES  
) IN THE COAST FORK WILLAMETTE WATERSHED AND  
) OTHER PORTIONS OF RURAL LANE COUNTY;  
) ADOPTING EXCEPTIONS TO STATEWIDE PLANNING  
) GOALS THREE AND FOUR WHERE NECESSARY;  
) ADOPTING CHANGES IN ZONING DESIGNATIONS TO  
) COMPLY WITH SUCH PLAN AMENDMENTS WHERE  
) NECESSARY; AND ADOPTING A SAVINGS AND  
) SEVERABILITY CLAUSE (CONTROL NO. 2-18, 20-21)**

**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 May 2004, 29 actions were initiated for minor amendments to redesignate properties or portions of properties within developed and committed exception areas or unincorporated rural communities of the Coast Fork Willamette Watershed and other portions of rural Lane County, and concurrently rezone the properties or portions thereof; three actions were initiated for amendments to redesignate properties or portions of properties within resource zones of the Coast Fork Willamette Watershed and other portions of rural Lane County and adopt exceptions to Statewide Planning Goals Three and Four, and concurrently rezone the properties or portions to nonresource zones thereof to comply with such amendments; and three actions were unzoned and initiated for amendments to designate properties as resource land in the Coast Fork Willamette Watershed and concurrently zone the properties to resource designations; and

**WHEREAS**, the Lane County Planning Commission reviewed the proposals in a public hearing on November 1, 2005, and in deliberations on January 10, 2006, forwarded recommendations on the proposed amendments, exceptions, and rezoning to the Board of County Commissioners; and

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

**WHEREAS**, the Board of County Commissioners conducted a public hearing on November 29, 2006, reviewed the record 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 and rezoning of the following properties or portions thereof, as identified in Control Numbers 2-18, 20-21.

(PR Control No. 2 - London Grange).

- a. Redesignation of tax lot 2401 of map 22-03-30.1, from "Rural" to "Public Facility" on Plan Plot 360-1 and further identified as Exhibit "A-2", attached and incorporated herein; and
- b. Rezone tax lot 2401 of map 22-03-30.1, from "RR5/Rural Residential" (Lane Code 16.291) to "RPF/Rural Public Facility" (Lane Code 16.294) such territory depicted on Zoning Plots 360-1, and further identified as Exhibit "B-2" attached and incorporated herein; and,
- c. Although not a part of this Ordinance, Findings as set forth in Exhibit "C-2" (pages 1-9) attached, are adopted in support of this action.

(PR Control No. 3 - Skinner).

- a. Redesignation of a designated 0.28 of-an-acre of tax lot 800 of map 16-04-20, from "Rural" to "Industrial", such territory depicted on Plan Plot 282 and further identified as Exhibit "A-3" attached and incorporated herein; and
- b. Rezone a designated 0.28 of-an-acre of tax lot 800 of map 16-04-20, from "RR5/Rural Residential" (Lane Code 16.290) to "RI/Rural Industrial" (Lane Code 16.292), such territory depicted on Zoning Plot 282 and further identified as Exhibit "B-3" attached and incorporated herein; and
- c. Although not a part of this Ordinance, Findings as set forth in Exhibit "C-3" (pages 1-13) attached, are adopted in support of this action.

(PR Control No. 4 - Maddux).

- a. Redesignation of tax lot 402 of map 20-03-21, from "Rural" to "Commercial", such territory depicted on Plan Plot 388 and further identified as Exhibit "A-4" attached and incorporated herein; and
- b. Rezone tax lot 402 of map 20-03-21, from "RR5/Rural Residential" (Lane Code 16.290) to "RC/Rural Commercial" (Lane Code 16.291), such territory depicted on Zoning Plot 388 and further identified as Exhibit "B-4" attached and incorporated herein; and
- c. Although not a part of this Ordinance, Findings as set forth in Exhibit "C-4" (pages 1-10) attached, are adopted in support of this action.

(PR Control No. 5 – Wagon Wheel/Simons).

- a. Redesignation of tax lot 1500 of map 20-03-03, from "Rural" to "Commercial", such territory depicted on Plan Plot 402 and further identified as Exhibit "A-5" attached and incorporated herein; and
- b. Rezone tax lot 1500 of map 20-03-03, from "RR2/Rural Residential" (Lane Code 16.290) to "RC/Rural Commercial" (Lane Code 16.291), such territory depicted on Zoning Plot 402 and further identified as Exhibit "B-5" attached and incorporated herein; and
- c. Although not a part of this Ordinance, Findings as set forth in Exhibit "C-5" (pages 1-11) attached, are adopted in support of this action.

(PR Control No. 6 – RC Saginaw).

- a. Redesignation of tax lot 902 of map 20-03-15, from "Rural" to "Public Facility", such territory depicted on Plan Plot 403 and further identified as Exhibit "A-6" attached and incorporated herein; and

- b. Redesignation of a designated 0.12-acre of tax lot 700 of map 20-03-15, from "Rural" to "Commercial", such territory depicted on Plan Plot 403 and further identified as Exhibit "A-6" attached and incorporated herein; and
- c. Remove the "Historical" designation "/H" on a portion of tax lot 700 of map 20-03-15, such territory depicted on Plan Plot 403 and further identified as Exhibit "A-6" attached and incorporated herein; and
- d. Add the "Historical" designation "/H" to tax lot 900 of map 20-03-15.2.3, such territory depicted on Plan Plot 403 and further identified as Exhibit "A-6" attached and incorporated herein; and
- e. Rezone tax lot 902 of map 20-03-15, from "RR5/C/Rural Residential" (Lane Code 16.290) to "RPF/C/Rural Public Facility" (Lane Code 16.294), such territory depicted on Plan Plot 403 and further identified as Exhibit "B-6" attached and incorporated herein; and
- f. Rezone a designated 0.12-acre of tax lot 700 of map 20-03-15, from "RR5/C/Rural Residential" (Lane Code 16.290) to "RC/C/Rural Commercial", such territory depicted on Plan Plot 403 and further identified as Exhibit "B-6" attached and incorporated herein; and
- g. Remove the "Historical" designation "/H" on a portion of tax lot 700 of map 20-03-15, such territory depicted on Plan Plot 403 and further identified as Exhibit "B-6" attached and incorporated herein; and
- h. Add the "Historical" designation "/H" to tax lot 900 of map 20-03-15.2.3, such territory depicted on Plan Plot 403 and further identified as Exhibit "B-6" attached and incorporated herein; and
- i. Although not a part of this Ordinance, Findings as set forth in Exhibit "C-6" (pages 1-22) attached, are adopted in support of this action.

(PR Control No. 7 – EPUD).

- a. Redesignation of tax lot 102 of map 18-03-11.3, from "Industrial" to "Public Facility", such territory depicted on Plan Plot 412 and further identified as Exhibit "A-7" attached and incorporated herein; and
- b. Redesignation of tax lot 3800 of map 18-03-11.3, from "Industrial" to "Public Facility", such territory depicted on Plan Plot 412 and further identified as Exhibit "A-7" attached and incorporated herein; and
- c. Redesignation of tax lot 3801 of map 18-03-11.3, from "Industrial" to "Public Facility", such territory depicted on Plan Plot 412 and further identified as Exhibit "A-7" attached and incorporated herein; and
- d. Redesignation of tax lot 3803 of map 18-03-11.3, from "Industrial" to "Public Facility", such territory depicted on Plan Plot 412 and further identified as Exhibit "A-7" attached and incorporated herein; and
- e. Rezone tax lot 102 of map 18-03-11.3, from "RI/Rural Industrial" (Lane Code 16.292) to "RPF/Rural Public Facility" (Lane Code 16.294), such territory depicted on Zoning Plot 412 and further identified as Exhibit "B-7" attached and incorporated herein; and
- f. Rezone tax lot 3800 of map 18-03-11.3, from "RI/Rural Industrial" (Lane Code 16.292) to "RPF/Rural Public Facility" (Lane Code 16.294), such territory depicted on Zoning Plot 412 and further identified as Exhibit "B-7" attached and incorporated herein; and
- g. Rezone tax lot 3801 of map 18-03-11.3, from "RI/Rural Industrial" (Lane Code 16.292) to "RPF/Rural Public Facility" (Lane Code 16.294), such territory depicted on Zoning Plot 412 and further identified as Exhibit "B-7" attached and incorporated herein; and
- h. Rezone tax lot 3803 of map 18-03-11.3, from "RI/Rural Industrial" (Lane Code 16.292) to "RPF/Rural Public Facility" (Lane Code 16.294), such territory depicted on Zoning Plot 412 and further identified as Exhibit "B-7" attached and incorporated herein; and
- i. Although not a part of this Ordinance, Findings as set forth in Exhibit "C-7" (pages 1-14) attached, are adopted in support of this action.



(PR Control No. 8 – Doyle).

- a. Redesignation of a designated 0.09 of-an-acre of tax lot 1300 of map 18-03-14, from “Commercial” to “Industrial” and retaining 0.45 of-an-acre as “Commercial”, such territory depicted on Plan Plot 413 and further identified as Exhibit “A-8” attached and incorporated herein; and
- b. Redesignation of a designated 0.54 of-an-acre of tax lot 1400 of map 18-03-14, from “Commercial” to “Industrial” and retaining 0.04 of-an-acre as “Commercial”, such territory
- c. depicted on Plan Plot 413 and further identified as Exhibit “A-8” attached and incorporated herein; and
- d. Rezone a designated 0.09 of-an-acre of tax lot 1300 of map 18-03-14, from “RC/Rural Commercial” (Lane Code 16.291) to “RI/Rural Industrial” (Lane Code 16.292) and retaining 0.45 of-an-acre as “RC/Rural Commercial” (Lane Code 16.291), such territory depicted on Zoning Plot 413 and further identified as Exhibit “B-8”, attached and incorporated herein; and
- e. Rezone a designated 0.54 of-an-acre of tax lot 1400 of map 18-3-14, from “RC/Rural Commercial” (Lane Code 16.291) to “RI/Rural Industrial” (Lane Code 16.292) and retaining 0.04 of-an-acre as “RC/Rural Commercial”, such territory depicted on Zoning Plot 413 and further identified as Exhibit “B-8”, attached and incorporated herein; and
- f. Adopt an exception to the “3,500-square foot, commercial use floor area requirement” of Lane Code 16.291(4)(a) pursuant to Lane Code 16.291(4)(a)(i)-(iv) criteria, to allow use of 11,407 square feet of floor area for a single commercial use on the “RC/Rural Commercial” designated lands of the consolidated tax lots 1300 and 1400 of map 18-03-14; and
- g. Although not a part of this Ordinance, Findings as set forth in Exhibit “C-8” (pages 1-18) attached, are adopted in support of this action.

(PR Control No. 9 -- Brooks).

- a. Redesignation of tax lot 2401 of map 18-03-23.1, from “Industrial” to “Commercial”, such territory depicted on Plan Plot 413 and further identified as Exhibit “A-9” attached and incorporated herein; and
- b. Rezone tax lot 2401 of map 18-03-23.1, from “RI-C/Rural Industrial” (Lane Code 16.292) to “RC-C/Rural Commercial” (Lane Code 16.291), such territory depicted on Zoning Plot 413 and further identified as Exhibit “B-9” attached and incorporated herein; and
- c. Although not a part of this Ordinance, Findings as set forth in Exhibit “C-9” (pages 1-14) attached, are adopted in support of this action

(PR Control No. 10 – Jackson-Crawford).

- a. Redesignation of tax lot 1400 of map 19-03-11, from “Rural” to “Commercial”, such territory depicted on Plan Plot 415 and further identified as Exhibit “A-10” attached and incorporated herein; and
- b. Rezone of tax lot 1400 of map 19-03-11, from “RR5/Rural Residential (Lane Code 16.291)” to “RC/Rural Commercial” (Lane Code 16.291), such territory depicted on Zoning Plot 415 and further identified as Exhibit “B-10” attached and incorporated herein; and
- c. Although not a part of this Ordinance, Findings as set forth in Exhibit “C-10” (pages 1-11) attached, are adopted in support of this action.

(PR Control No. 11 – Nash Enterprises).

- a. Redesignation of tax lot 1301 of map 19-03-35, from “Forest” to “Industrial”, such territory depicted on Plan Plot 417-3 and further identified as Exhibit “A-11” attached and incorporated herein; and
- b. Redesignation of a designated 3.03 acres of tax lot 1202 of map 19-03-35, from “Forest” to “Industrial”, such territory depicted on Plan Plot 417-3 and further identified as Exhibit “A-11” attached and incorporated herein; and
- c. Rezone tax lot 1301 of map 19-03-35, from “F2/Impacted Forest Land” (Lane Code 16.211) to “RI/Rural Industrial” (Lane Code 16.292), such territory depicted on Zoning Plot 417-3 and further identified as Exhibit “B-11” attached and incorporated herein; and
- d. Rezone a designated 3.03 acres of tax lot 1202 of map 19-03-35, from “F2/Impacted Forest Land” to “RI/Rural Industrial”, such territory depicted on Plan Plot 417-3 and further identified as Exhibit “B-11” attached and incorporated herein; and
- e. Developed and committed lands exceptions to statewide planning goals 3 and 4 are adopted for tax lot 1301 and a designated 3.03 acres of tax lot 1202 of map 19-03-35 as Exception Area 417-3, based on findings of fact and conclusions of law supporting the exceptions and amendments as set forth in Exhibit “C-11” (pages 1-20), attached and adopted in support of this action.

(PR Control No. 12 – Wilson Revocable Trust).

- a. Redesignation of a designated 0.138 of an acre of tax lot 9300 of map 21-03-35, from “Rural” to “Industrial”, such territory depicted on Plan Plot 420-3 and further identified as Exhibit “A-12-1” attached and incorporated herein; and
- b. Redesignation of tax lot 501 of map 21-03-02.2.1, from “Rural” to “Industrial”, such territory depicted on Plan Plot 421-1 and further identified as Exhibit “A-12-2” attached and incorporated herein; and
- c. Redesignation of a designated 0.065 of an acre of tax lot 200 of map 21-03-02.2.1, from “Rural” to “Industrial”, such territory depicted on Plan Plot 421-1 and further identified as Exhibit “A-12-2” attached and incorporated herein; and
- d. Rezone of a designated 0.138 of an acre of tax lot 9300 of map 21-03-35, from “RR5/Rural Residential” to “RI/Rural Industrial”, such territory depicted on Plan Plot 420-3 and further identified as Exhibit “B-12-1” attached and incorporated herein; and
- e. Rezone of tax lot 501 of map 21-03-02.2.1, from “RR5/Rural Residential” to “RI/Rural Industrial”, such territory depicted on Plan Plot 421-1 and further identified as Exhibit “B-12-2” attached and incorporated herein; and
- f. Rezone of a designated 0.065 of an acre of tax lot 200 of map 21-03-02.2.1, from “RR5/Rural Residential” to “RI/Rural Industrial”, such territory depicted on Plan Plot 421-1 and further identified as Exhibit “B-12-2” attached and incorporated herein; and
- g. Although not a part of this Ordinance, Findings as set forth in Exhibit “C-12” (pages 1-15) attached, are adopted in support of this action.

(PR Control No. 13 – City of Creswell).

- a. Redesignation of tax lot 2901 of map 19-03-13, from “Agricultural” to “Public Facility”, such territory depicted on Plan Plot 429-2 and further identified as Exhibit “A-13” attached and incorporated herein; and
- b. Rezone tax lot 2901 of map 19-03-13 from “E30/Exclusive Farm Use” (Lane Code 16.212) to “RPF/Rural Public Facility” (Lane Code 16.294), such territory depicted on Zoning Plot 429-2 and further identified as Exhibit “B-13” attached and incorporated herein; and

- c. Developed and committed lands exceptions to statewide planning goals 3 and 4 are adopted for tax lot 2901 of map 19-03-13 as Exception Area 429-2, based on findings of fact and conclusions of law supporting the exceptions and amendments as set forth in Exhibit "C-13" (pages 1-17), attached and adopted in support of this action.

(PR Control No. 14 – Lane Electric Cooperative).

- a. Redesignation of tax lot 107 of map 21-02-19, from "Rural" to "Public Facility", such territory depicted on Plan Plot 443-1 and further identified as Exhibit "A-14" attached and incorporated herein; and
- b. Rezone tax lot 107 of map 21-02-19, from "RR5/Rural Residential" (Lane Code 16.290) to "RPF/Rural Public Facility" (Lane Code 16.294), such territory depicted on Zoning Plot 443-1 and further identified as Exhibit "B-14" attached and incorporated herein; and
- c. Although not a part of this Ordinance, Findings as set forth in Exhibit "C-14" (pages 1-9) attached, are adopted in support of this action.

(PR Control No. 15 – Blue Mountain School).

- a. Redesignation of tax lot 900 of map 21-02-19, from "Industrial" to "Public Facility", such territory depicted on Plan Plot 443-2 and further identified as Exhibits "A-15" attached and incorporated herein; and
- b. Rezone tax lot 900 of map 21-02-19, from "RI/Rural Industrial" (Lane Code 16.292) to "RPF/Rural Public Facility" (Lane Code 16.294), such territory depicted on Zoning Plot 443-2 and further identified as Exhibits "B-15", attached and incorporated herein; and
- c. Although not a part of this Ordinance, Findings as set forth in Exhibit "C-15" (pages 1-10) attached, are adopted in support of this action.

(PR Control No. 16 – Culp Creek / Lane Electric Cooperative/ Qwest)

- a. Redesignation of tax lot 4200 of map 21-01-30, from "Rural" to "Public Facility", such territory depicted on Plan Plot 509-2 and further identified as Exhibits "A-16", attached and incorporated herein; and
- b. Redesignation of tax lot 1800 of map 21-01-31.1.2, from "Rural" to "Commercial", such territory depicted on Plan Plot 509-2 and further identified as Exhibits "A-16", attached and incorporated herein; and
- c. Rezone tax lot 4200 of map 21-01-30, from "RR2-C/Rural Residential" (Lane Code 16.290) to "RPF-C/Rural Commercial" (Lane Code 16.294), such territory depicted on Zoning Plot 509-2 and further identified as Exhibits "B-16" attached and incorporated herein; and
- d. Rezone tax lot 1800 of map 21-01-31.1.2, from "RR2/Rural Residential" (Lane Code 16.290) to "RC/Rural Commercial" (Lane Code 16.291), such territory depicted on Zoning Plot 509-2 and further identified as Exhibits "B-16" attached and incorporated herein; and
- e. Although not a part of this Ordinance, Findings as set forth in Exhibit "C-16" (pages 1-15) attached, are adopted in support of this action.

(PR Control No. 17 -- Chrestman).

- a. Redesignation of tax lot 8400 of map 20-03-35, from "Industrial" to "Rural", such territory depicted on Plan Plot 420-3 and further identified as Exhibit "A-17" attached and incorporated herein; and
- b. Rezone tax lot 8400 of map 20-03-35, from "RI/Rural Industrial" (Lane Code 16.292) to "RR5/Rural Residential" (Lane Code 16.290), such territory depicted on Zoning Plot 420-3 and further identified as Exhibit "B-17" attached and incorporated herein; and

- c. Although not a part of this Ordinance, Findings as set forth in Exhibit "C-17" (pages 1-9) and "C-17-1" (pages 1-8) attached, are adopted in support of this action.

(PR Control No. 18 – Sandland).

- a. Designation of tax lot 800 of map 15-04-21, as "Agricultural", such territory depicted on Plan Plot 292 and further identified as Exhibit "A-18" attached and incorporated herein; and
- b. Designation of tax lot 900 of map 15-04-21, as "Agricultural", such territory depicted on Plan Plot 292 and further identified as Exhibit "A-18" attached and incorporated herein; and
- c. Designation of tax lot 1000 of map 15-04-21, as "Agricultural", such territory depicted on Plan Plot 292 and further identified as Exhibit "A-18" attached and incorporated herein; and
- d. Zone tax lot 800 of map 15-04-21, as "E30/Exclusive Farm Use" (Lane Code 16.212), such territory depicted on Zoning Plot 292 and further identified as Exhibit "B-18" attached and incorporated herein; and
- e. Zone tax lot 900 of map 15-04-21, as "E30/Exclusive Farm Use" (Lane Code 16.212), such territory depicted on Zoning Plot 292 and further identified as Exhibit "B-18" attached and incorporated herein; and
- f. Zone tax lot 1000 of map 15-04-21, as "E30/Exclusive Farm Use" (Lane Code 16.212), such territory depicted on Zoning Plot 292 and further identified as Exhibit "B-18" attached and incorporated herein; and
- g. Although not a part of this Ordinance, Findings as set forth in Exhibit "C-18" (pages 1-4) attached, are adopted in support of this action.

(PR Control No. 20 – Bessett)

- a. Redesignation of tax lot 1300 of map 18-02-19, from "Rural" to "Industrial", such territory depicted on Plan Plot 437 and further identified as Exhibit "A-20" attached and incorporated herein; and
- b. Rezone tax lot 1300 of map 18-02-19, from "RR5/Rural Residential" (Lane Code 16.290) to "RI/Rural Industrial" (Lane Code 16.292), such territory depicted on Zoning Plot 437 and further identified as Exhibit "B-20" attached and incorporated herein; and
- c. Although not a part of this Ordinance, Findings as set forth in Exhibit "C-20" (pages 1-9) attached, are adopted in support of this action

(PR Control No. 21 -- Nordahl).

- a. Redesignation of tax lot 2200 of map 18-12-25, from "Industrial" to "Commercial", such territory depicted on Plan Plot 030 and further identified as Exhibit "A-21" attached and incorporated herein; and
- b. Rezone tax lot 2200 of map 18-12-25, from "RI/Rural Industrial" (Lane Code 16.292) to "RC/Rural Commercial" (Lane Code 16.291), such territory depicted on Zoning Plot 030 and further identified as Exhibit "B-21" attached and incorporated herein; and
- c. Although not a part of this Ordinance, Findings as set forth in Exhibit "C-21" (pages 1-13) attached, are adopted in support of this action.

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

The prior designations and zones 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 to the remaining portions hereof.

ENACTED this \_\_\_\_\_ day of \_\_\_\_\_, 2006.

\_\_\_\_\_  
Chair, Lane County Board of County Commissioners

\_\_\_\_\_  
Recording Secretary for this Meeting of the Board

Approved As To Form  
Date \_\_\_\_\_ Lane County

\_\_\_\_\_  
OFFICE OF LEGAL COUNSEL

11/15/2006

REC'D NOV 22 2006

Lane County Land Management Division  
PSB 125 E 8th Avenue  
Eugene, OR 97401-2926

RE: Control No. 17 (Chrestman) Zoning Change *TRS Map Tax Lot: 20-03-35; 8400*

To Whom It May Concern:

Nearly nine months ago we bought our first home just outside the city limits on Mosby Creek Road in Cottage Grove. In doing so we hoped to reside in a rural neighborhood with limited housing and more land per house. It has come to our attention that the owner of the land directly across the road from us, Mr. Chrestman, has petitioned to receive a zoning change for his property from Rural Industrial to Rural Residential. We are very concerned over this zoning change for several reasons.

**Concern #1:** We spent months looking for our first house to buy. We did this because we wanted to make sure we found an area that fit our needs. We found that here on Mosby Creek. It is an area of residents where concern for the land is important to them. Residents are spread apart by this land and have created a community that is safe and connected while maintaining individual privacy. If the proposed amendment to the land is permitted it will change the rural connection that was so appealing to our piece of property. We understand that Mr. Chrestman plans on depositing two more mobile homes onto his property to total three mobile homes within 2.27 acres. It is simply not fair to neighbors for this land owner to change the conditions of their land for their own benefit while sacrificing those around it. We bought our home with the understanding that certain zoning existed around us. This zoning is not there arbitrarily. It is there to sustainably engage the next 20 years and the years following for future generations.

**Concern #2:** The proposed zoning change is directly along a stream edge, Mosby Creek. It is within 100 yards from the water. It has historical as well as recreational uses. Just east of us on Layng Road is Mosby Creek covered bridge, a huge part of the historical heritage of this area. The scenic bridge tour draws in people from all over. According to #6 in Goal 5 of the **Rural Comprehensive Plan**, "The County shall review proposals for development or changes in land use for possible impacts with designated historical sights." We need to be concerned about downstream initiatives that might affect that area. If two more mobile homes are added to this area it will hurt the historical ideas as well as cause concern for erosion and stream dynamics.

Furthermore, there is concern over the current salmon population in Oregon. This property is upstream from this problem. Goal 5 of the **Rural Comprehensive Plan : Flora and Fauna** #2 states, "Recognize existing federal and state programs protecting threatened or endangered fish and wildlife species." It also states in #4, "Public agencies are encouraged to work with landowners to conserve wildlife habitats." Mosby Creek

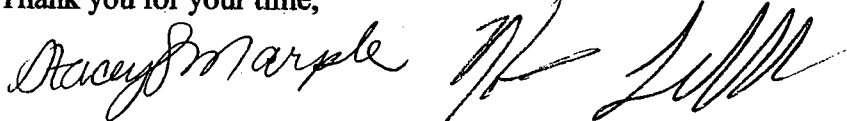
empties into Row River and Row River converges with the Willamette River. These water flows are all connected. It is hard at times to distinguish where problems arise and how many factors are playing a role, but looking upstream and designing preventative measures can encourage a healthier stream way. We also watched Mr. Chrestman down a snag that lay home to nesting birds of prey. Adding additional housing directly along the stream edge is only going to increase possible problems to this issue. There will be more waste, more runoff, possible erosion concerns, and less wildlife habitat that encourages wildlife existence.

**Concern #3:** The proposed zone amendment sight housed an old mill at one time. This needs to be taken into consideration because there is pollution that many times accompanies industrial mill sights.

**Concern #4:** Mosby Creek, which runs directly along the said property (20-03-35, 8400 Chrestman) is considered a Class 1C stream. According to the Rural Comprehensive Plan, Goal 5 "Flora and Fauna" #6, riparian vegetation along class 1C streams is recognized as being of high value. If this land has such considerable value it would not be in the best interest of anyone to alter its refuge.

It seems like it would be very discouraging not being able to visit each and every one of the land use amendment propositions. We understand the job of the county is hard and is pulled in many different directions. We hope this letter only helps to describe the area we live in and what the proposed zoning change would do to this area. There are so many reasons why this zoning change would be harmful and very few where I see it being a benefit. The land is not owner-occupied. It currently has one rental on it.

Thank you for your time,



Stacey Marple  
Keith Fuller  
78092 Mosby Creek Rd.  
Cottage Grove, Oregon 97424



After recording return to:  
Ronald A. Murch and Marcee N.  
Murch  
P.O. Box 22  
Culp Creek, OR 97427

Until a change is requested all tax statements  
shall be sent to the following address:  
Ronald A. Murch and Marcee N. Murch  
P.O. Box 22  
Culp Creek, OR 97427

0921301 21-0135-40-0000

File No.: 7192-656807 (LLS)  
Date: September 08, 2005

Division of Chief Deputy Clerk  
Lane County Deeds and Records

2005-074236



\$41.00

00737978200500742360040042

09/20/2005 02:31:14 PM

RPR-DEED Cnt=1 Stn=5 CASHIER 04  
\$20.00 \$11.00 \$10.00

### STATUTORY WARRANTY DEED

**Ronald F. Baldwin**, Grantor, conveys and warrants to **Ronald A. Murch and Marcee N. Murch**, as **tenants by the entirety**, Grantee, the following described real property free of liens and encumbrances, except as specifically set forth herein:

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

**This property is free from liens and encumbrances, EXCEPT:**

1. The **2005-2006** Taxes, a lien not yet payable.
2. Covenants, conditions, restrictions and/or easements, if any, affecting title, which may appear in the public record, including those shown on any recorded plat or survey.

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.

The true consideration for this conveyance is **\$150,000.00**. (Here comply with requirements of ORS 93.030)

Dated this 8th day of September, 2005.





**EXHIBIT A**

## LEGAL DESCRIPTION:

## PARCEL I:

Beginning at a point on the East line of a private road 16.0 feet in width, said point being 1342.7 feet North and 232.2 feet West of the Southeast corner of Section 35, Township 21 South, Range 1 West of the Willamette Meridian, in Lane County, Oregon; running thence South 277.3 feet along the East line of said 16.0 foot roadway to the North line of the old O.P. & E. Railroad right of way; thence South 42° 32' East along the North line of said right of way 312.0 feet to the East line of said Section 35; thence North along the Section line 422.0 feet to a point that is South 76° 05' East of the point of beginning; thence North 76° 05' West 241.91 feet, more or less, to the point of beginning, in Lane County, Oregon.

## PARCEL II:

Beginning at a point which is the intersection of the West line of Section 36, Township 21 South, Range 1 West, Willamette Meridian, and the Northerly right of way line of the Oregon Pacific and Eastern Railroad, opposite to and 50 feet distant Northerly from centerline station 1027+66.8 of said railroad, said point also being North 0° 29' West, 878.1 feet from the Southwest corner of said Section; thence North 0° 29' West, along said Section line, 409.76 feet; thence South 76° 05' East, 13.83 feet to an iron pin; thence South 0° 31' East, 144.80 feet; thence South 1° 03' East, 275.50 feet to the said Northerly line; thence North 49° 38' West, 21.4 feet to the point of beginning, in Lane County, Oregon.

## PARCEL III:

Beginning at a point 63.0 feet North 40° 22' East from a point 21.4 feet South 49° 38' East from the point of intersection of the Northerly right of way line of the O.P. & E. Railroad and the section line between Sections 35 and 36, Township 21 South, Range 1 West, Willamette Meridian, said point of intersection being North 00° 29' West 878.1 feet from the Southwest corner of said Section 36, said Township and Range; thence North 40° 22' East 81.0 feet; thence North 49° 38' West 127.03 feet; thence South 01° 03' East 83.9 feet; thence South 49° 38' East 26.55 feet; thence South 40° 22' West 18.0 feet; thence South 49° 38' East 44.9 feet to the place of beginning, in Lane County, Oregon.

## ALSO:

Beginning at a point on the Northerly right of way line of the Oregon, Pacific and Eastern Railroad, opposite to and 50 feet distant from centerline station 1027 & 88.2 of said Railroad, said point also being North 864.2 feet and East 8.90 feet from the Southwest corner of Section 36, Township 21 South, Range 1 West, Willamette Meridian; thence North 40° 22' East, at right angles to said right of way, 63.00 feet; thence North 49° 38' West, 44.90 feet; thence North 40° 22' East, 18.00 feet; thence North 49° 38' West, 36.55 feet; thence South 1° 06' East, 108.01 feet to the point of beginning and containing 0.05 acres in said Section, Lane County, Oregon.

## ALSO:

Beginning at a point which is North 01° 03' West 192.0 feet from a point on the Northerly right of way boundary of the O P & E Railroad, said last mentioned point being South 49° 38' East 21.4 feet from a point on the section line between Sections 35 and 36, Township 21 South, Range 1 West, Willamette Meridian; North 00° 29' West 878.1 feet from the Southwest corner of said Section 36, run thence North 40° 22' East 62.0 feet, thence North 49° 3' West 54.7 feet, thence South 01° 08' East 82.6 feet to the point of beginning, in Lane County, Oregon.

**Parcel IV:**

Legal Description TL 21-01-35-40-199

All that part of the SW 1/4, Sect. 35, T21S, R1W, W.M. Lane County, Oregon described as follows:

Beginning at a point which bears 80° 25' 25" E 864 feet, more or less, from the southeast corner of Section 35, T21S, R1W, W.M., said point also being the most southerly point along the railway right-of-way boundary referred to in parcel conveyance as recorded in instrument no. 37076, Reel 43-54 D, Lane County, Oregon, Deed Records by Moses and Viola Moody to School District No. 177; thence N 49° 51' W along the northerly right-of-way boundary 333 feet, more or less, to the SW corner of a 16 foot private road right-of-way; thence at a right angle bearing S 40° 09' W 100 feet to the southerly line of said railroad right-of-way; thence along said right-of-way S 49° 51' E 333 feet, more or less, to a point lying S 40° 09' W 100 feet from the Point of Beginning; thence N 40° 09' E 100 feet to the Point of Beginning.

20  
10  
11

After Recording Return to:  
First American Title  
PO Box 10146  
Eugene, OR 97440  
7199-85703-C

Ronald A Murch Marcee N Murch  
39881 Brice Creek Rd.

Culp Creek Or. 97427

Marcee N. Murch  
39881 Brice Creek Rd.

Culp Creek Or. 97427

After recording, return to (Name, Address, Zip):  
Marcee N Murch  
39881 Brice Creek Rd  
Culp Creek Or. 97427

Until requested otherwise, send all tax statements to (Name, Address, Zip):  
Marcee N Murch  
39881 Brice Creek Rd.

Culp Creek Or. 97427

STATE OF OREGON,  
County of \_\_\_\_\_ } ss.

I certify that the within instrument was received for recording on \_\_\_\_\_, at \_\_\_\_\_ o'clock \_\_\_\_\_ M., and recorded in book/reel/volume No. \_\_\_\_\_ on page \_\_\_\_\_ and/or as fee/file/instrument/microfilm/reception

SPACE RESERVED  
Division of Chief Deputy Clerk  
Lane County Deeds and Records  
2006-064561  
\$41.00  
00841127200600645610040044  
09/05/2006 02:47:19 PM  
RPR-DEED Cnt=1 Stn=6 CASHIER 07  
\$20.00 \$11.00 \$10.00

BARGAIN AND SALE DEED - STATUTORY FORM

Ronald A Murch Marcee N. Murch  
\_\_\_\_\_, Grantor,

conveys to Marcee N. Murch  
\_\_\_\_\_, Grantee,

the following real property situated in Lane County, Oregon, to-wit:  
See Attached.

(IF SPACE INSUFFICIENT, CONTINUE DESCRIPTION ON REVERSE)

The true consideration for this conveyance is \$22500.00. (Here, comply with the requirements of ORS 93.030.)

DATED 9/5/06; if a corporate grantor, it has caused its name to be signed and its seal, if any, affixed by an officer or other person duly authorized to do so by order of its board of directors.

BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON TRANSFERRING FEE TITLE SHOULD INQUIRE ABOUT THE PERSON'S RIGHTS, IF ANY, UNDER CHAPTER 1, OREGON LAWS 2005 (BALLOT MEASURE 37 (2004)). THIS INSTRUMENT DOES 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, TO DETERMINE ANY LIMITS ON LAWSUITS AGAINST FARMING OR FOREST PRACTICES AS DEFINED IN ORS 30.930 AND TO INQUIRE ABOUT THE RIGHTS OF NEIGHBORING PROPERTY OWNERS, IF ANY, UNDER CHAPTER 1, OREGON LAWS 2005 (BALLOT MEASURE 37 (2004)).

Ronald A Murch  
Marcee N. Murch

STATE OF OREGON, County of Lane  
This instrument was acknowledged before me on August 18, 2006  
by Ronald A. Murch  
This instrument was acknowledged before me on \_\_\_\_\_  
by \_\_\_\_\_  
as \_\_\_\_\_  
of \_\_\_\_\_



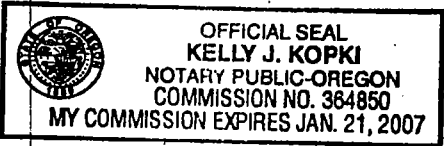
Lacey B Teague  
Notary Public for Oregon  
My commission expires 10-7-07

BARGAIN & SALE DEED DATED 9/5/2006

STATE OF OREGON     )  
                                  ) ss  
COUNTY OF LANE     )

This document was acknowledged before me on SEPTEMBER 5, 2006

by MARCEE N. MURCH



*Kelly J. Kopki*

Notary Public for \_\_\_\_\_  
My commission expires:

## EXHIBIT A

### LEGAL DESCRIPTION:

#### PARCEL I:

Beginning at a point on the East line of a private road 16.0 feet in width, said point being 1342.7 feet North and 232.2 feet West of the Southeast corner of Section 35, Township 21 South, Range 1 West of the Willamette Meridian, in Lane County, Oregon; running thence South 277.3 feet along the East line of said 16.0 foot roadway to the North line of the old O.P. & E. Railroad right of way; thence South 42° 32' East along the North line of said right of way 312.0 feet to the East line of said Section 35; thence North along the Section line 422.0 feet to a point that is South 76° 05' East of the point of beginning; thence North 76° 05' West 241.91 feet, more or less, to the point of beginning, in Lane County, Oregon.

#### PARCEL II:

Beginning at a point which is the intersection of the West line of Section 36, Township 21 South, Range 1 West, Willamette Meridian, and the Northerly right of way line of the Oregon Pacific and Eastern Railroad, opposite to and 50 feet distant Northerly from centerline station 1027+66.8 of said railroad, said point also being North 0° 29' West, 878.1 feet from the Southwest corner of said Section; thence North 0° 29' West, along said Section line, 409.76 feet; thence South 76° 05' East, 13.83 feet to an iron pin; thence South 0° 31' East, 144.80 feet; thence South 1° 03' East, 275.50 feet to the said Northerly line; thence North 49° 38' West, 21.4 feet to the point of beginning, in Lane County, Oregon.

#### PARCEL III:

Beginning at a point 63.0 feet North 40° 22' East from a point 21.4 feet South 49° 38' East from the point of intersection of the Northerly right of way line of the O.P. & E. Railroad and the section line between Sections 35 and 36, Township 21 South, Range 1 West, Willamette Meridian, said point of intersection being North 00° 29' West 878.1 feet from the Southwest corner of said Section 36, said Township and Range; thence North 40° 22' East 81.0 feet; thence North 49° 38' West 127.03 feet; thence South 01° 03' East 83.9 feet; thence South 49° 38' East 26.55 feet; thence South 40° 22' West 18.0 feet; thence South 49° 38' East 44.9 feet to the place of beginning, in Lane County, Oregon.

#### ALSO:

Beginning at a point on the Northerly right of way line of the Oregon, Pacific and Eastern Railroad, opposite to and 50 feet distant from centerline station 1027 & 88.2 of said Railroad, said point also being North 864.2 feet and East 8.90 feet from the Southwest corner of Section 36, Township 21 South, Range 1 West, Willamette Meridian; thence North 40° 22' East, at right angles to said right of way, 63.00 feet; thence North 49° 38' West, 44.90 feet; thence North 40° 22' East, 18.00 feet; thence North 49° 38' West, 36.55 feet; thence South 1° 06' East, 108.01 feet to the point of beginning and containing 0.05 acres in said Section, Lane County, Oregon.

#### ALSO:

beginning at a point which is North 01° 03' West 192.0 feet from a point on the Northerly right of way boundary of the O P & E Railroad, said last mentioned point being South 49° 38' East 21.4 feet from a point on the section line between Sections 35 and 36, Township 21 South, Range 1 West, Willamette Meridian; North 00° 29' West 878.1 feet from the Southwest corner of said Section 36, run thence North 40° 22' East 62.0 feet, thence North 49° 3' West 54.7 feet, thence South 01° 08' East 82.6 feet to the point of beginning, in Lane County, Oregon.

Parcel IV:

Legal Description TL 21-01-35-40-199

All that part of the SW 1/4, Sect. 35, T21S, R1W, W.M. Lane County, Oregon described as follows:

Beginning at a point which bears 80 25' 25" E 864 feet, more or less, from the southeast corner of Section 35, T21S, R1W, W.M., said point also being the most southerly point along the railway right-of-way boundary referred to in parcel conveyance as recorded in instrument no. 37076, Reel 43-54 D, Lane County, Oregon, Deed Records by Moses and Viola Moody to School District No. 177; thence N 49 51' W along the northerly right-of-way boundary 333 feet, more or less, to the SW corner of a 16 foot private road right-of-way; thence at a right angle bearing S 40 09' W 100 feet to the southerly line of said railroad right-of-way; thence along said right-of-way S 49 51' E 333 feet, more or less, to a point lying S 40 09' W 100 feet from the Point of Beginning; thence N 40 09' E 100 feet to the Point of Beginning.

