

uses on the subject property and should not alter the use or availability of groundwater, which is currently available from a well on the subject property.

**C. Public Facilities and Services Policy 6.f:**

The appropriate public service levels established by this policy are enumerated in Public Facilities and Services Policy 6.f: schools, on-site or community sewage disposal, individual or community water supply system, electrical service, telephone service, a rural level of fire and police protection, and reasonable access to a solid waste disposal facility. These services are all available to the subject property.

**D. Agricultural Lands, Policy 8: “Provide maximum protection to agricultural activities by minimizing activities, particularly residential, which conflict with such use. Whenever possible planning goals, policies and regulations should be interpreted in favor of agricultural activities.”**

The subject property has already been developed, and the current use has been in continuous operation on the site since 1965. Agricultural parcels are located across Highway 58 to the north of the site. The agricultural activities taking place on this parcel have been able to coexist for many years with activities taking place within the exception area, without any recorded adverse impacts or conflicts.

**E. Forest Lands, Policy 8: “Regard nonforest uses within or adjacent to forest lands as being subject to and normal and accepted forest practices in the locality.”**

The subject property is not directly adjacent to forest lands outside the exception area. Its forty year use for heavy equipment storage and repair has not created any reported conflicts with normal and accepted forest practices in the area.

**F. Flora and Fauna, Policies 1 and 10 “Implement construction, development and other land use activities which significantly alter natural systems only after evaluation of effects on wildlife habits and natural areas.” “Lands with an acknowledged exception as built upon or committed will be treated as Impacted Big Game Range, as identified in the 1982 Lane County Working Paper on Flora and Fauna and as revised and updated in 1983.”**

There are no delineated wetlands on the subject property. The continuation of existing uses on the site should not significantly affect natural systems or wildlife habitat beyond whatever effects that have already taken place.

Therefore, the proposed rezoning is in compliance with these Plan Policies as implemented by the Lane Code protection provisions.

## **Zone Conformity**

Lane Code 16.252(2) requires that a rezoning be consistent with the general purposes of Chapter 16, as set forth in Lane Code 16.003, not be contrary to the public interest, and be consistent with the purposes of the proposed zoning classifications and the Lane County Rural Comprehensive Plan elements. Conformity with the Rural Comprehensive Plan has already been discussed.

**A. Lane Code 16.003.** Lane Code 16.003 describes 14 purposes for Chapter 16. The purposes relevant to this application are as follows:

- (1) Ensure that development of property within the County is commensurate with the character and physical limitation of the land and, in general, to promote and protect the public health, safety, convenience, and welfare.**

The existing heavy equipment storage and repair facility on the subject property has been generally compatible with the character and physical qualities of the immediate area since 1965. During that time period, the public health, convenience and welfare has been maintained, and will continue to be with the ongoing operation of the existing use.

- (2) Protect and diversify the economy of Lane County.**

The proposed zone change address the need for employment opportunities by allowing the existing business to continue providing at least 10 jobs for Lane County residents.

- (4) Conserve farm and forest lands for the production of crops, livestock and timber products.**

The subject property is located within Exception Area #437-2S and is currently zoned Rural Residential (RR5). It is 5.01 acres in size, developed with a rural industrial use, and adjacent to three properties (west, south and east) zoned RR5 that are developed with residences. By Board of Commissioners adopted policy dating back to 1989, a parcel of this size with surrounding residential impacts is impracticable for management as part of a farm or forest unit.

- (7) Provide for the orderly and efficient transition from rural to urban land use.**

The proposed change occurs in an exception area with nearby rural properties already intensely developed with residential and industrial uses. The existing uses are rural uses that utilize a rural level of services.

**(11) Protect life and property in areas subject to floods, landslides and other natural disasters and hazards.**

No natural hazards have been identified on the subject property.

**B. Not Contrary to the Public Interest**

The “public interest” has not been defined as such, but for the purposes of this decision it will be assumed that if the proposed uses will not have an adverse impact on surrounding uses, then they will not be contrary to the public interest.

**C. Lane Code 16.004(4)**

Lane Code 16.004(4) requires, among other things, that an application to rezone land which creates the potential for additional parcelization or water demands demonstrate the adequacy of a long-term water supply, as described in Lane Code 13.050(13)(a)-(d). The water supply system of the subject property has already been examined and found to be adequate to meet the needs of the existing and continued use of the site. The subject property is relatively small in size and would by necessity have to comply with the carrying capacities of soils and groundwater for subsurface waste disposal system requirements.

**D. Lane Code 16.292**

Lane Code 16.292(1) states that the purposes of the Rural Industrial Zone are *to allow industrial uses and development that are consistent with Goal 14 that include areas for small scale industrial uses and for industries that rely on a rural location in order to process rural resources; to allow for the continued operation of existing industries...* The heavy equipment storage and repair use that exists on the subject property (18-02-19, TL 1300) is consistent with these purposes.

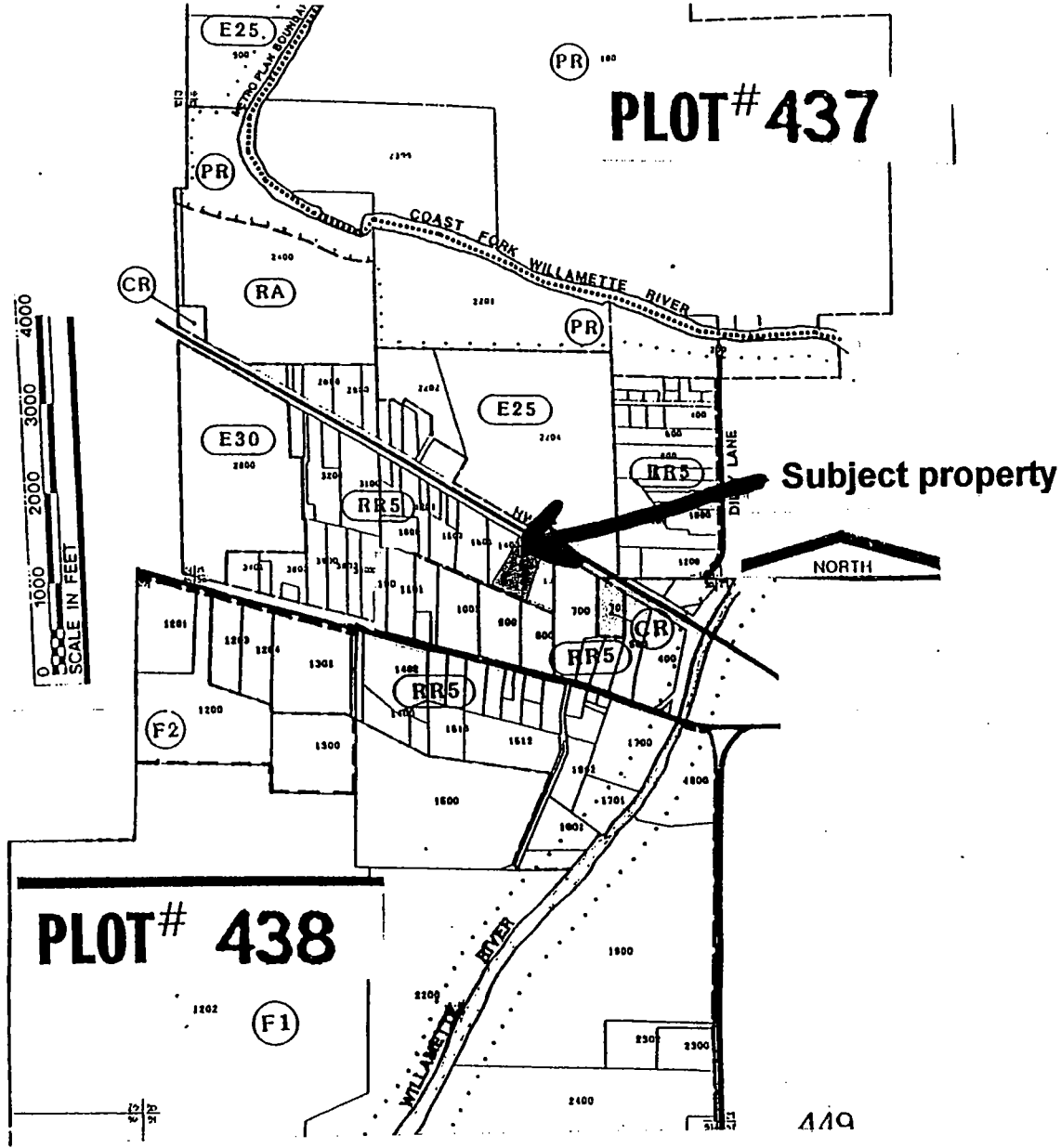
**IV. CONCLUSION**

This application has shown by a preponderance of evidence that the standards and criteria applicable for approval of amendments of Official Plan and Official Zoning Map Plot #437 designations have been met for the subject property (18-02-19, TL 1300). Approval of the application recognizes the existing use which has been in continuous operation on the site since 1965. It has and will not impact surrounding properties and will not require additional levels of public facilities and services. The proposed redesignation and rezoning from RR5 Rural Residential to RI Rural Industrial is consistent with statewide planning goals and Lane Code requirements.

## **V. EXHIBITS**

- Exhibit A Zoning Map, Plots 437 and 438 with proposed zone change for subject property
- Exhibit B Assessor's Maps 18-02-19 and 18-02-30 with proposed zone change depicted
- Exhibit C Site Photograph
- Exhibit D Site Plan
- Exhibit E NRCS Map 104
- Exhibit F Jasper 2 Wetlands map

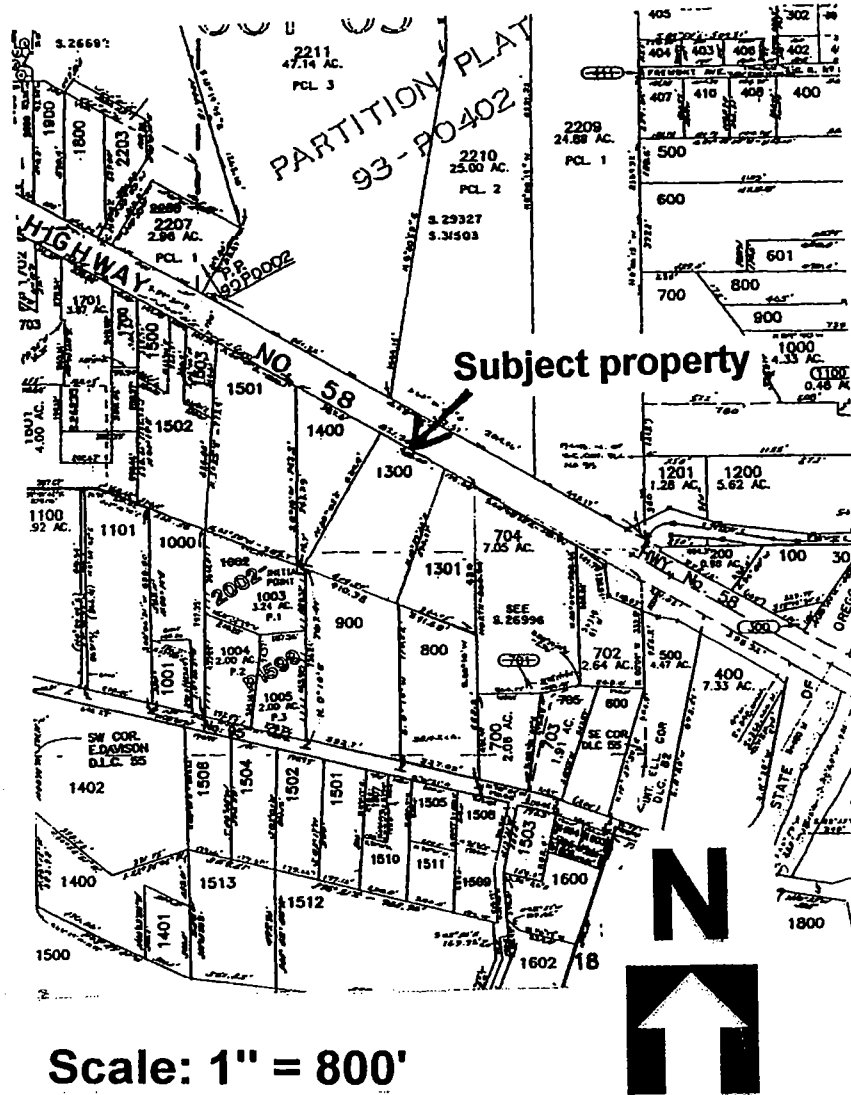
# Exhibit "A" Zoning Map



**Bessett RCP/Zone Change  
Map 18-02-19, TL 1300**

# Exhibit "B"

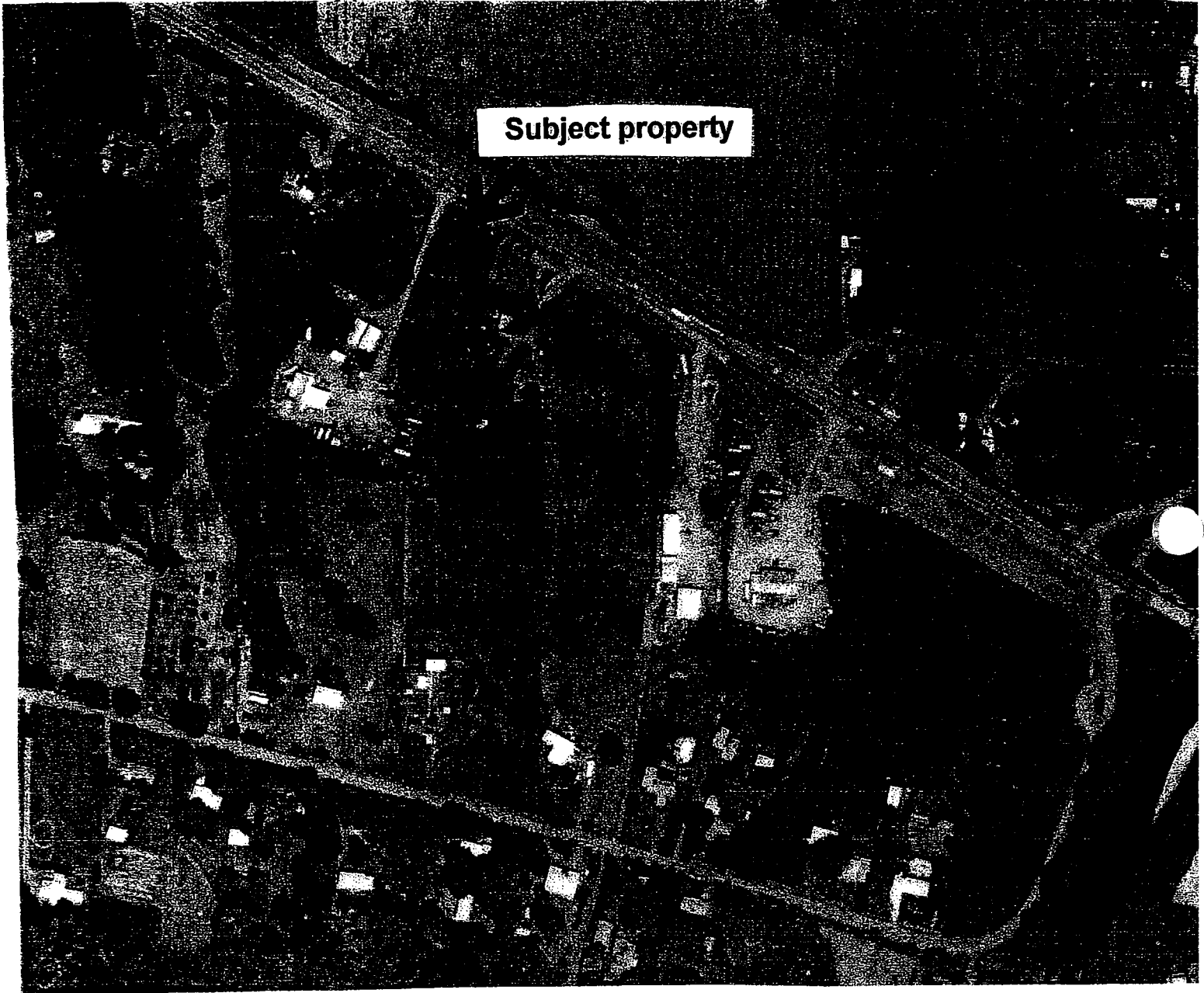
## Assessor's Maps 18-02-19 and 18-02-30 (partial)



Bessett RCP/Zone Change  
Map 18-02-19, TL 1300

# Exhibit "C"

## Site Photo

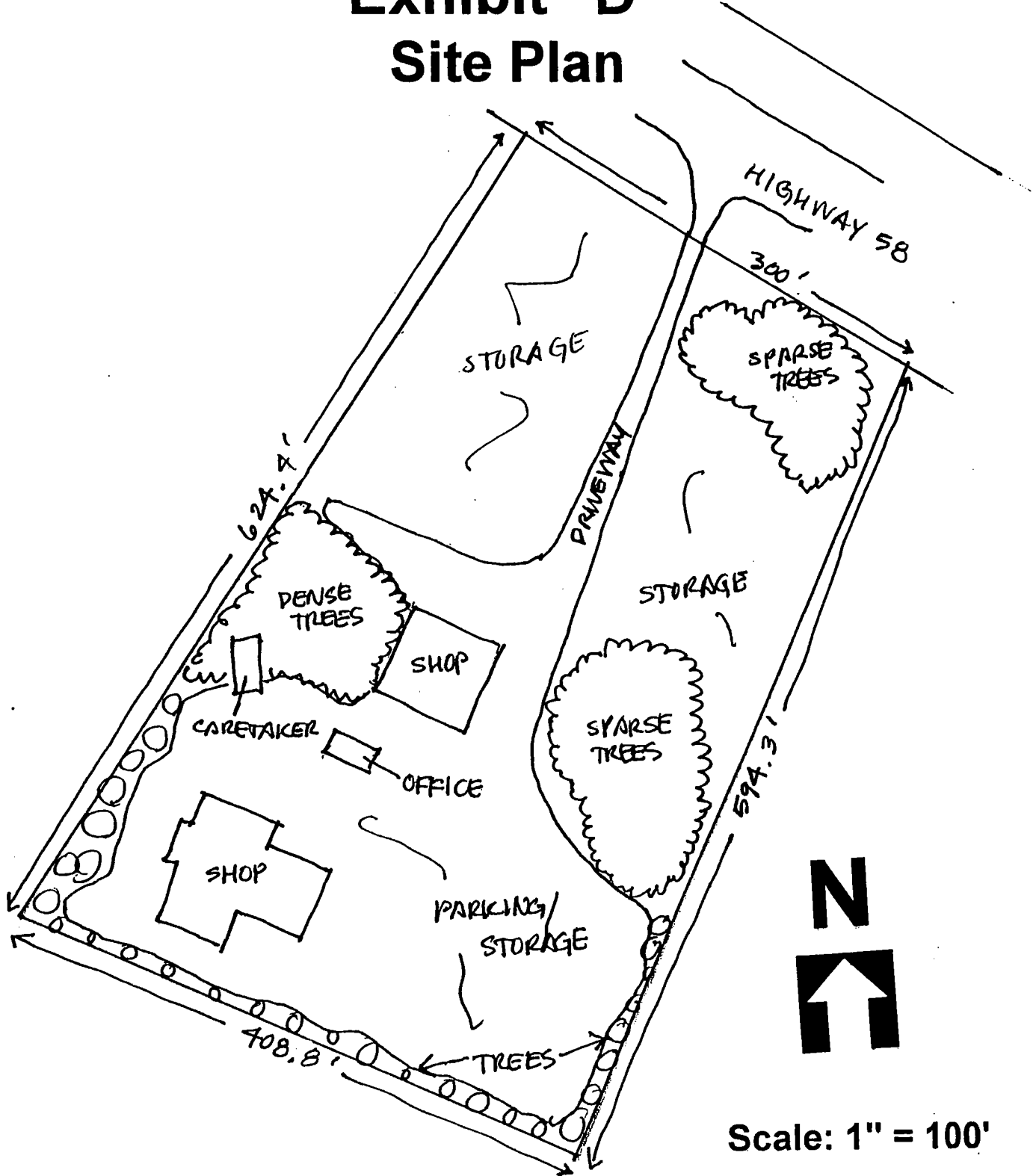


**Bessett RCP/Zone Change**  
Map 18-02-19, TL 1300



No scale

# Exhibit "D" Site Plan

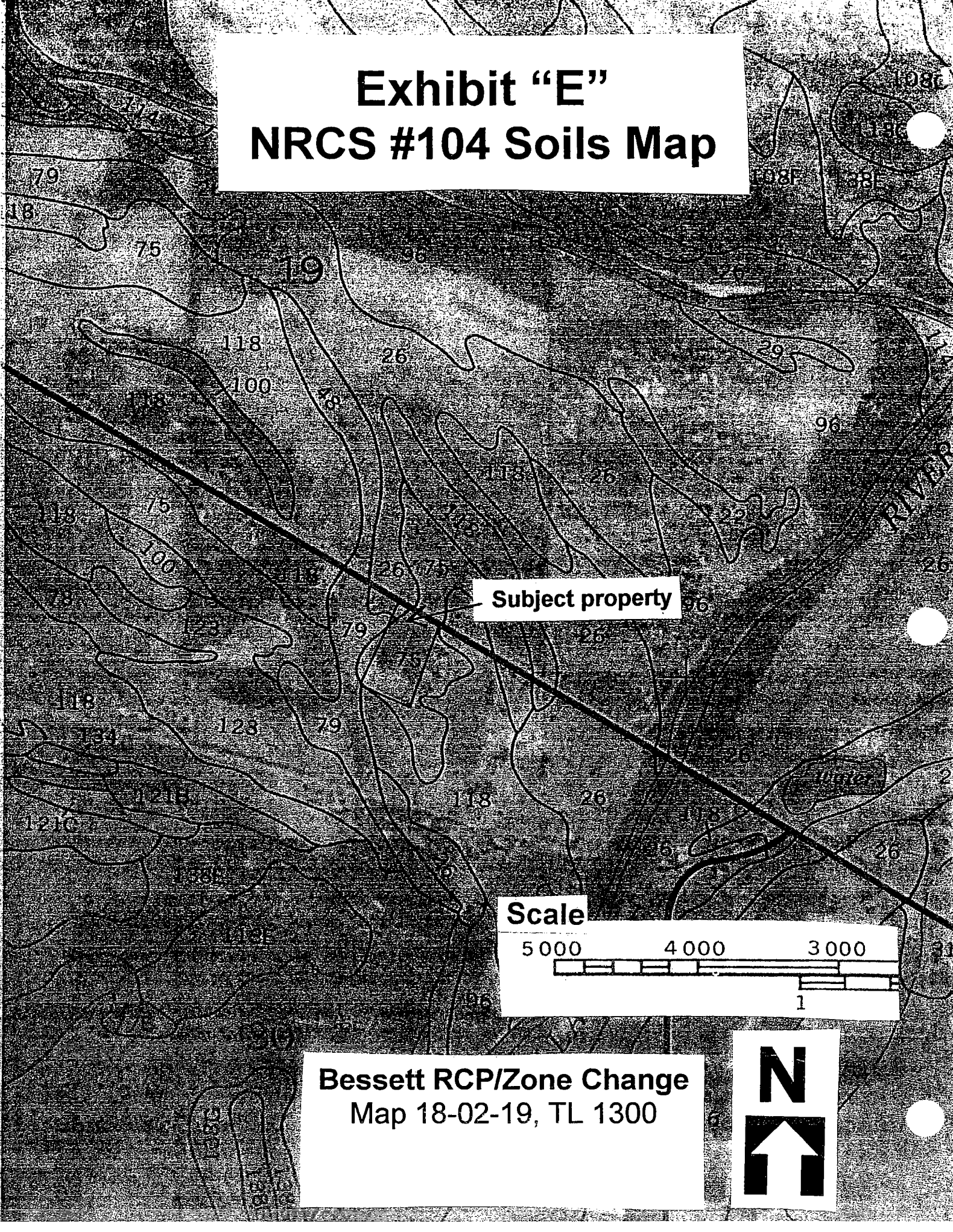


**Bessett RCP/Zone Change**  
Map 18-02-19, TL 1300



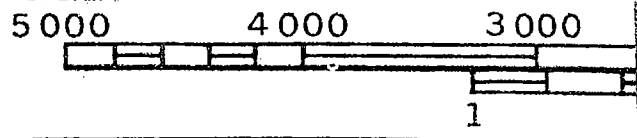
# Exhibit "E"

## NRCS #104 Soils Map

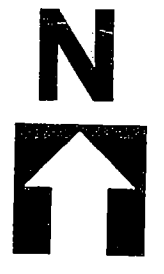


Subject property

Scale

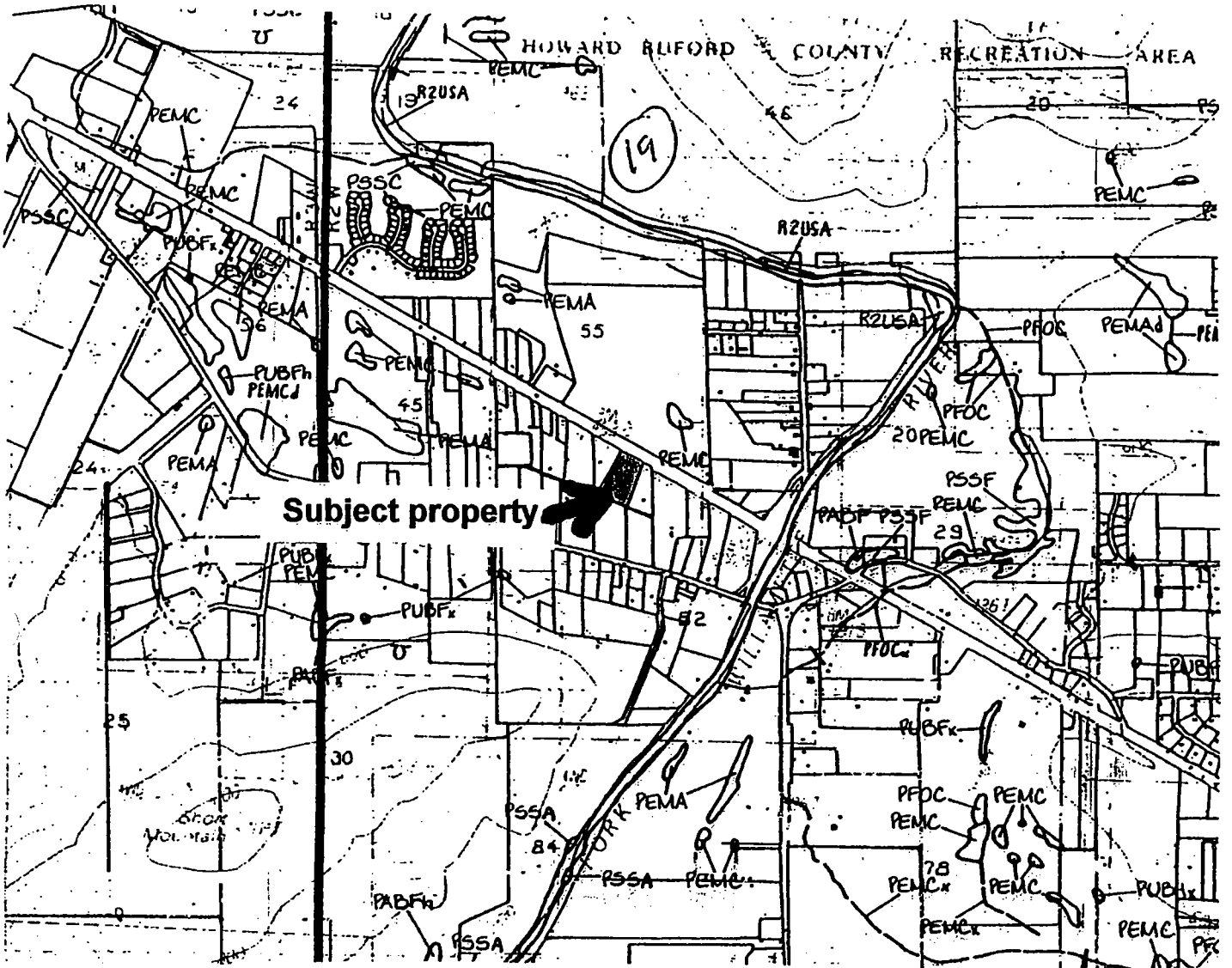


Bessett RCP/Zone Change  
Map 18-02-19, TL 1300

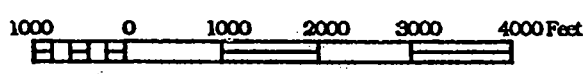


# Exhibit "F"

## Wetlands Map



PARCEL-BASE  
MAPS  
(Use with  
National  
Wetlands  
Inventory)



Scale 1" = 200'



Jasper 2

Bessett RCP/Zone Change  
Map 18-02-19, TL 1300

FOR ASSESSMENT  
AND TAXATION  
ONLY

SECTION 19 T.18S.R.2W.W.M.  
LANE COUNTY

SCALE 1" = 400' SEE MAP 18 02 18

DATE	BOOK	SHEET
12-22-87	187	12
12-22-87	187	13
12-22-87	187	14
12-22-87	187	15
12-22-87	187	16
12-22-87	187	17
12-22-87	187	18
12-22-87	187	19
12-22-87	187	20

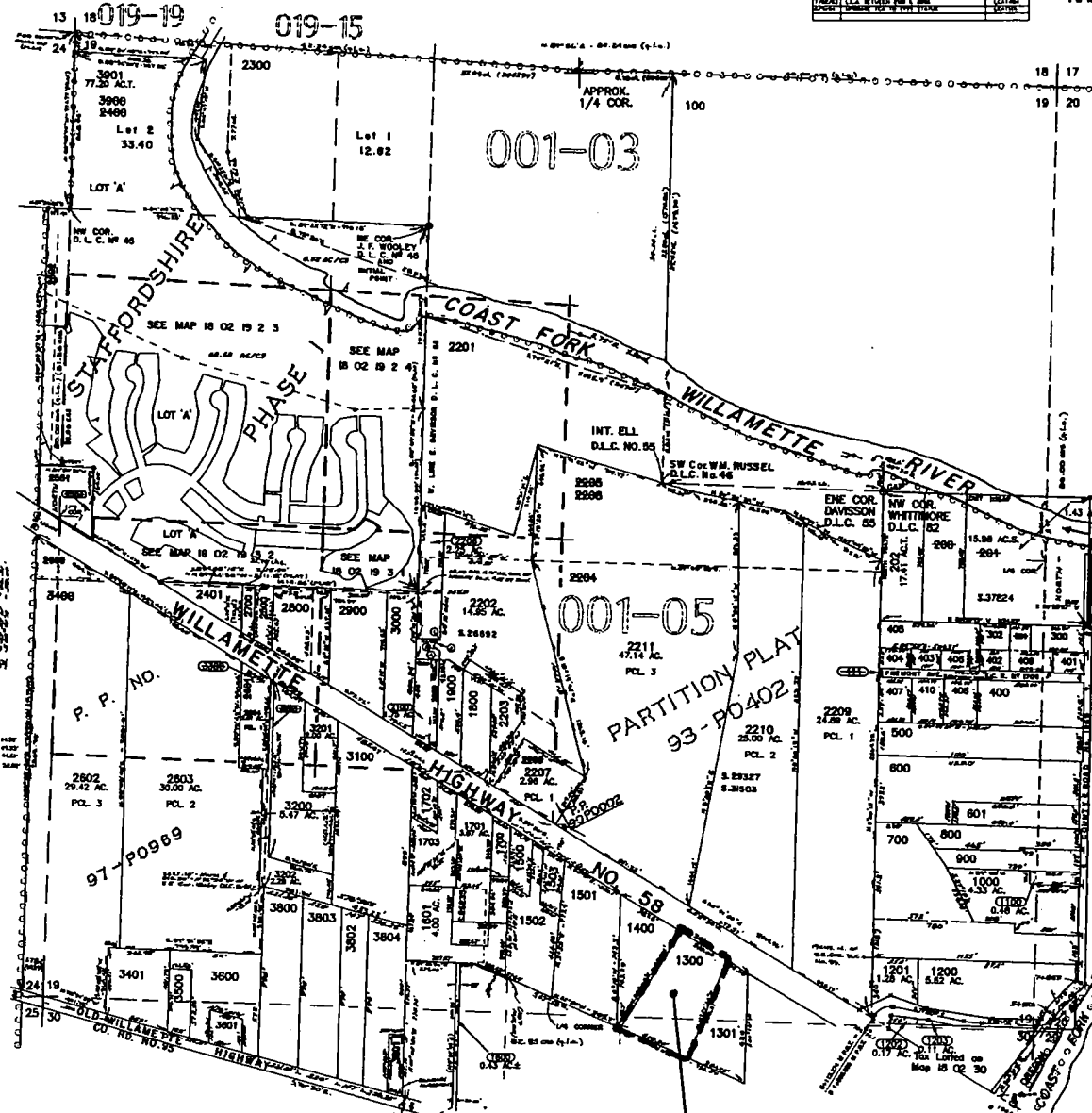
18 02 19

NAD 83/91

CANCELLED  
300  
301  
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2200  
2204  
2205  
2208  
2400  
2501  
2502  
2503  
2800  
2801  
3203  
3300  
3400  
3900

SEE MAP 18 03 24

SEE MAP 18 02 20



SEE MAP 18 02 30

18 02 19

RR5 to RI  
18-02-19, 1300

Exhibit No. C-21

PRZC Control No. 21

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**Lane County -/- Coast Fork Willamette Watershed**  
**Legislative Rezoning Project**

**Developed and Committed Exception Area No. 030-3**

**Plan Amendment and Zone Change for  
Tax Lot 2200 of Assessor's Map 18-12-25**

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<b>Tax lot</b>	<b>Acreage</b>	<b>From</b>	<b>To</b>
<b>2200</b>	<b>10.24</b>	<b>Rural Industrial (RI)</b>	<b>Rural Commercial (RC)</b>

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**Statement of Criteria**

OAR 660-04-018(2) - *Planning & Zoning for Exception Areas*  
OAR 660-22-030(6)-(8) - *Planning and Zoning of Unincorporated Communities*  
Lane County Rural Comprehensive Plan Policies  
Lane Code 16.003 & 16.004 - *Purpose and Scope and Compliance*  
Lane Code 16.292 - *Rural Industrial Zone*  
Lane Code 16.291 - *Rural Commercial Zone*  
Lane Code 16.252(2), (5) - *Procedures for Zoning, Rezoning and Amendments to Requirements*

**I. FINDINGS OF FACT**

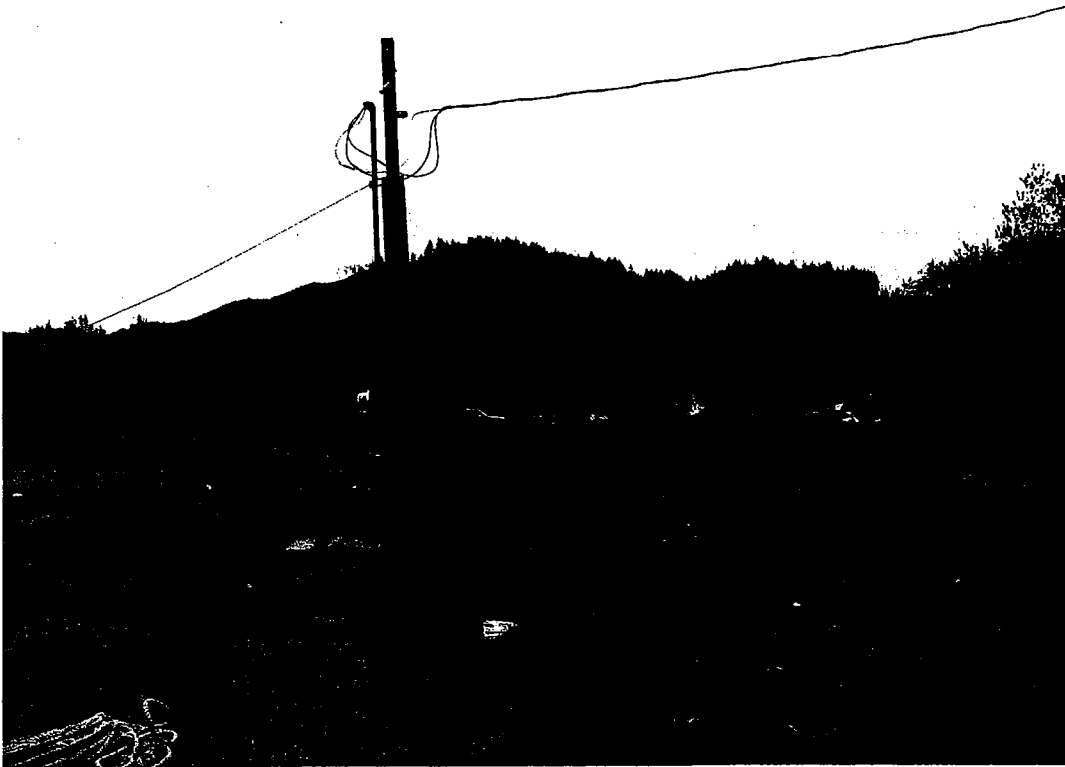
1. The property subject to this request for plan amendment and zone change, hereinafter the “subject property”, can be identified as tax lot 2200 of Lane County Assessor’s Map TRS 18-12-35. The subject property is 10.24 acres and is located south of the right-of-way of Highway 126 and north of the Siuslaw River and approximately 1,500 feet east of the Highway 126 bridge over the North Fork of the Siuslaw River.
2. The subject property is vacant and was designated Heavy Industrial (M3) with the adoption of the Rural Comprehensive Plan in 1984. The subject property was redesignated Rural Industrial (RI) in 2002 as a component of the Lane County Periodic Review Work Program and in compliance with Statewide Goal 14 and the Rural Community Rule (OAR 660-022).
3. Services are provided to the property by:
  - Electricity: Central Lincoln Peoples Utility District
  - Fire: Siuslaw Rural Fire Protection District #1
  - Ambulance: Western Lane Ambulance District
  - School: Siuslaw School District 97J  
Lane Community College  
Lane Education Service District
  - Police: Lane County Sheriff  
Oregon State Police
  - Other: Port of Siuslaw  
Siuslaw Public Library District
4. The applicant has elected to rezone the subject property, tax lot 2200 of Assessor’s Map TRS 18-12-25, from Rural Industrial (RI) to Rural Commercial (RC).
5. The *Purpose* section of LC 16.291(1) states: *The purposes of the Rural Commercial Zone (RC, RCP) are: to implement the policies of the Lane County Rural Comprehensive Plan (RCP), to allow commercial uses and development that are consistent with Goal 14 and that are for the retail trade of products or services needed by rural residents or by persons traveling through the rural area, and to provide protective measures for riparian vegetation along Class I streams designated as significant in the Rural Comprehensive Plan.*
6. The subject property is designated in the Siuslaw River Dredged Material Disposal Plan (Wilsey & Ham, November 1978) as including “Site 22” known as the “Johnson’s Rock Products site” (east of North Fork Bridge), 150’ x 220’ with a capacity of 10,000 cubic yards net at 9-foot depth.”

The designated site is depicted in Exhibit "D" Siuslaw River Dredged Material Disposal Plan Site 22. The designated Site 22 is at the eastern end of the subject property.

The subject property served as a materials disposal site in the 1970s and fill covered the western two-thirds of the property to a depth of approximately 8 to 9 feet as evidenced by the remnants of the ancillary pump pit pictured below. The materials were deposited east of the north-south access road serving the developed industrial site, tax lot 2100, to the west.



Top photo: Looking northeast across 1970s fill site. Bottom photo: Looking across 1970s site to Siuslaw River.



Top: Existing well head (1 of 2).

Bottom: Center of property looking towards Hwy 126.





Top: Existing access point on Highway 126 – Site 22. Bottom: Eastern end of property – Site 22.



7. The subject property is triangular in shape with approximately 1,375 feet of frontage along the Siuslaw River. The western property boundary is about 925 feet from north to south and the eastern property line is about 100 feet from highway right-of-way to the river. The western 1/3 portion of the subject property consists of the 1970s elevated fill of dredged materials in prior tidelands.

Refer to Exhibit "C" – 2004 Aerial Photograph depicting 1970s site and designated Site 22.

The 1970s fill site was recently cleared of low scrub and is open, compacted sandy soils with grasses and low cover. The middle 1/3 of the subject property is sparsely treed with low to medium height shrubs. The eastern 1/3 including Site 22 is developed with an access point, gravel parking area and boat launch at the shoreline. The eastern portion was used as a staging area for concrete and asphalt batch plants during past road construction and repair periods for Highway 126.

8. The opportunity to amend designations, in this case into the Rural Commercial inventory, addresses the aspirations of the property owners for development of their property, which was one of the primary purposes of the Periodic Review Work Program processes in the five Lane County watersheds. Rezoning of the subject property, tax lot 2200, to Rural Commercial as indicated in Findings 4 above, is the applicant's response to Periodic Review Work Program Task 3. 3. in the Siuslaw Watershed: *Complete a survey of the desires and opinions of people in each unincorporated community about what they would like their community to be and look like.*

This proposed rezoning of the designation is the implementation phase of the "desires and opinions" for one property within the Siuslaw Watershed.

10. There is no record of any historical compatibility issues occurring between the prior use of the subject property and the surrounding property owners.
11. The subject property does not lie within an area identified as a "water quantity limited" area in Lane Manual 13.010. The subject property has two existing wells as sources for domestic water.
12. The subject property is within the (AE) 100-year flood hazard area per FIRM panel 1427 of 2975 (June 2, 1999). Any development including fill, removal, or construction of structures shall be required to comply with the regulations of Lane Code 16.244 Floodplain Combining Zone.
13. There are no apparent wetlands on the subject property, per NWI map Florence 2.
14. The Official Coastal Zones – Plot # 030 depicts the subject property within the /DMD Dredged Material Deposit Site Combining Overlay. No other Coast Resource Management Plan combining zones apply to the subject property.

### **III. JUSTIFICATION FOR THE CONCLUSIONS AND RECOMMENDATIONS.**

#### **A. Statewide Planning Goals**

The subject property is within an area subject to the Lane County Rural Comprehensive Plan. This Plan has been acknowledged by the Land Conservation and Development Commission in a series of acknowledgment orders. Acknowledgment indicates that the Plan is generally in compliance with the applicable standards of the statewide planning goals, and that appropriate exceptions have been approved for any matters of noncompliance. *Byrd v. Stringer*, 295 Or. 311, 666 P.2d 1332 (1983). Accordingly, the state statutes, the standards of the Plan, and the Lane Code provisions implementing the Plan, are relevant to this application. The statewide planning goals themselves do not apply to land use decisions in an area subject to an acknowledged Comprehensive Plan.

In implementing Part II of statewide planning Goal 2, Oregon Administrative Rule 660-04-018(2)(c) establishes requirements for zone changes in developed and committed exception areas:

*“Changes to plan or zone designations are allowed consistently with subsections (a) or (b) of this section, or where the uses or zones are identified and authorized by specific related policies contained in the acknowledged plan.”*

Subsection (a) of OAR 660-04-018(2), the relevant requirement for changes in land use, density and public facilities for “physically developed” and “irrevocably committed” exception areas, allows zone changes for:

*(a) Uses which are the same as the existing types of land use on the exception site; or*

The subject property is developed with two well heads, temporary electrical power, and an access point from Highway 126.

The zone change requested by the property owner is intended to provide for future commercial development of the subject property. It has the potential to allow more compatible, water-dependent use of the 10.24 acres than the current Rural Industrial (RI) designation. The change of zoning would eliminate the potential for a more intensive and less-compatible industrial use to be established on the subject property in the future.

Lands to the west are zoned Rural Industrial property, tax lot 2100, which includes boat storage and repair, industrial manufacturing, a weigh station, and staging of barges connected with the driving of pilings and shoreline stabilization.

*(b) Which meet the following requirements:*

*(A) The rural uses, density, and public facilities and services maintain the land as “Rural Land” as defined by the goals and are consistent with all other applicable Goal requirements; and*

The Statewide Planning Goals define “Rural Land” as land located outside of an urban growth boundary that has no or minimal public services and is not necessary or intended for urban use.

The subject property is located within developed & committed exception area No. 030-3, and is not within an urban growth boundary. The property receives a rural level of police and fire protection.

*(B) The rural uses, density, and public facilities and services will not commit adjacent or nearby resource land to nonresource uses as defined in OAR 660-004-0028; and*

The subject property is situated south of Highway 126 and bordered by Rural Industrial properties to the west and east. There are four properties directly across Highway 126 to the north zoned Impacted Forest Land (F2) and developed with six residences.

- TRS 18-12-25 tax lot 200 (northeast), 06171 Highway 126, Florence;
- TRS 18-12-25 tax lot 300 (north), 06061 and 06063 Highway 126, Florence;
- TRS 18-12-25 tax lot 400 (north), 05979 Highway 126, Florence; and
- TRS 18-12-25 tax lot 600 (northwest), 05805 and 05811 Highway 126, Florence

One property, TRS 18-12-25, tax lot 500, to the northwest is zoned Rural Public Facility (RPF) and developed with the Sunset Memorial Park cemetery.

The residential uses within the F2 zone intervene between the forest management practices on lands to the north and the subject property to the south. The nearest Exclusive Farm Use lands are located further to the northwest beyond the F2 lands reference above and are located to the west of the North Fork of the Siuslaw River. Forest lands to the south are located on the southern shoreline of the Siuslaw River. The isolation of the subject property by the public road right-of-way, residential uses, and the two rivers buffer any allowable use in the Rural Commercial Zone from resource management practices on nearby lands. There are no foreseeable impacts from the proposed zone change, or any increased commitment to nonresource uses of nearby forest lands and agricultural lands or practices.

*(C) The rural uses, density, and public facilities and services are compatible with adjacent or nearby resource uses.*

D&C Area No. 030-3 is separated from the urban growth boundary of the City of Florence by a distance of approximately 2,400 feet and the North Fork of the Siuslaw River. The residential development on F2 lands and the public facility and industrial development pattern discussed in (B) above, indicates the rezoning from industrial use to commercial use in the center of the D&C area will be compatible with the resource use of forest and agricultural lands in the adjoining sections.

This proposed zoning change is in accord with the requirements of state law.

#### **B. Plan Conformity**

The subject property is located in "developed and committed" exception area number 030-3 of Lane County. It is proposed to be designated Commercial by the Lane County Rural Comprehensive Plan and zoned Rural Commercial (RC). The policies of the Rural Comprehensive Plan applicable to this request are as follows:

*A. Land Use Planning Policy #12. Changes to Plan designations for developed and committed exception areas outside of a Community designations shall be accomplished through the County's Plan Amendment Procedure.*

*Lane Code 16.252 Procedures for Zoning, Rezoning and amendments to Requirements.*

*LC 16.252, Section (2) Criteria. Zonings, rezonings and changes in the requirements of this chapter shall be enacted to achieve the general purpose of this chapter and shall not be contrary to the public interest, In addition, zonings and rezonings shall be consistent with the specific purposes of the zone classification proposed, applicable Rural Comprehensive Plan elements and components, and Statewide Planning Goals for any portion which has not been acknowledged for compliance with the Statewide Planning Goals by the Land Conservation and Development Commission.*

Applicable criteria from the *Lane Code 16.003 Purpose* subsection include:

- (1) *Insure that the development of property within the County is commensurate with the character and physical limitations of the land and, in general, to promote and protect the public health, safety, convenience and welfare.*

The subject property is relatively flat with no identified hazards due to slope grade or terrain features. The past build-up of the western portion of the subject property as a dredged material disposal site has not contributed any known adverse impacts to the immediate area or resources. Any development or new use on the property will require compliance with the applicable criteria and siting standards of the base zone, Lane Code 16.291 (RC) and all applicable overlay zones. Any proposal for development of structures must comply with load-bearing, compaction specifications and Oregon Specialty Codes for construction.

- (2) *Protect and diversify the economy of the County.*

Re-designation of the subject property will allow marketing and development of the subject property for commercial uses in compliance with the required Lane Code 16.291 permit processes, criteria and standards.

- (8) *Provide for the ultimate development and arrangement of efficient public services and facilities within the County.*

The subject property receives the necessary services from public agencies for commercial development.

b. Water Resources Policies #3 and #5:

These policies state that the adequacy of groundwater supply is a major issue in planning actions and that land use designations shall be commensurate with groundwater aquifer capacities.

The past owners of the subject property developed two onsite wells.

In the event that an intensive commercial use was proposed for the subject property, the property owner shall be required to secure Planning Director approval of the uses and comply with Lane Code 16.291(4)(j) [RC] *“The proposed use and development shall not exceed the carrying capacity of the soil or on the existing water supply resources and sewer service. To address this requirement, factual information shall be provided about any existing or proposed sewer or water systems for the site and the site’s ability to provide on-site sewage disposal and water supply if a community water or sewer system is not available.”*

c. Public Facilities and Services Policy #6.f:

The appropriate public service levels established by this policy are enumerated in Public Facilities and Services Policy #6.f: schools, on-site or community sewage disposal, individual or community water supply system, electrical service, telephone service, a rural level of fire and police protection, and reasonable access to a solid waste disposal facility. These services are all available to the subject property.

- d. Agricultural Lands, Policy # 8: *“Provide maximum protection to agricultural activities by minimizing activities, particularly residential, which conflict with such use. Whenever*

*possible planning goals, policies and regulations should be interpreted in favor of agricultural activities."*

There are no identified farm uses or agricultural lands within 2,000 feet of the subject property. Any development of the subject property with a commercial use would require compliance with Lane Code 16.291(4) siting standards and although the standards do not directly address this policy, new uses are intended to be "compatible with the surrounding vicinity" and to "minimize any adverse effect on existing or contemplated abutting land use".

- e. *Flora and Fauna, Policies 1 and 10 "Implement construction, development and other land use activities which significantly alter natural systems only after evaluation of effects on wildlife habits and natural areas." "Lands with an acknowledged exception as built upon or committed will be treated as Impacted Big Game Range, as identified in the 1982 Lane County Working Paper on Flora and Fauna and as revised and updated in 1983."*

Significant species or wildlife habitat and other natural areas have not been identified on the subject property. There are no wetlands on the subject property identified on the Florence 2 quad of the National Wetlands Inventory. Past deposit of dredged spoils on the subject property in the 1970s has significantly altered the natural flora communities and habitat. The property was overgrown with invasive species including blackberries, scotch broom, and gorse. The majority of the invasive species have been removed mechanically from the western half of the property. The riparian setback standards of LC 16.253(2)(a)-(b) provide protection for the front 50 feet upland from the ordinary high water.

The proposed zone change for the subject property is in compliance with these Rural Comprehensive Plan Policies.

### C. Zone Conformity

Lane Code 16.252(2) requires that a rezoning be consistent with the general purposes of Chapter 16, as set forth in Lane Code 16.003, not be contrary to the public interest, and be consistent with the purposes of the proposed zoning classifications and the Lane County Rural Comprehensive Plan elements. Conformity with the Rural Comprehensive Plan has already been discussed.

- a. *Lane Code 16.003.* Lane Code 16.003 describes 14 purposes for Chapter 16. Purpose statements 1, 2, and 8 were addressed in the **B. Plan Conformity** section above. The other purpose criteria relevant to this application are as follows:

- (4) *Conserve farm and forest lands for the production of crops, livestock and timber products.*

The subject property is 10.24 acres in size and has access to Highway 126 (Route F), a State of Oregon highway. Surrounding lands are developed with residences. Nearby forest lands are buffered from the subject property by road right-of-way, Siuslaw and North Fork-Siuslaw Rivers, and intervening residentially developed properties. Some commercial thinning and forest management practices are evident on lands to the north.

The soils on the subject property are not well suited to propagation of fiber products. Seventy-five percent of the subject property is composed of Brallier Variant Muck (17, 18) with an 8-9 foot covering of dredged materials. The NRCS do not include a site index rating for Brallier and it has an agricultural capability classification of 5. The

disposal site is not considered either as forest or farm land and has little potential for use in either resource category.

(7) *Provide for the orderly and efficient transition from rural to urban land use.*

The proposed change will occur in an acknowledged developed and committed exception area (No. 030-3) consisting of three properties. Two of the properties including the subject property, were zoned M3 Heavy Industrial in 1984 and one was zoned PF Public Facility (Sunset Memorial Park). The existing uses and the proposed rezoning to Rural Commercial RC provide for rural uses that utilize a rural level of facilities.

(11) *Protect life and property in areas subject to floods, landslides and other natural disasters and hazards.*

A majority of the subject property is within the 100-year flood hazard area per Flood Insurance Rate Map Panel 1427F of 2975 (6-2-99). Any development will be required to comply with the standards of LC 16.244 (Floodplain Combining Zone).

b. *Not Contrary to the Public Interest*

The "public interest" has not been defined, as such, but for the purposes of this report it will be assumed that if the anticipated commercial use will not have an adverse impact on surrounding uses, then it will not be contrary to the public interest. Development on the subject property is not, or need not be, contrary to the public health, safety convenience and welfare in that it will be less intensive than the current industrial designation and will not cause an increase in public services.

c. *Lane Code 16.291*

The *Purpose* section of LC 16.291(1) states: *The purposes of the Rural Commercial Zone (RC, RCP) are: to implement the policies of the Lane County Rural Comprehensive Plan (RCP), to allow commercial uses and development that are consistent with Goal 14 and that are for the retail trade of products or services needed by rural residents or by persons traveling through the rural area, and to provide protective measures for riparian vegetation along Class I streams designated as significant in the Rural Comprehensive Plan.*

The proposed rezoning of the subject property, tax lot 2200, is consistent with this purpose.

d. *Lane Code 16.004(4)*

Lane Code 16.004(4) requires, among other things, that an application to rezone land which creates the potential for additional parcelization or water demands demonstrate the adequacy of a long-term water supply, as described in Lane Code 13.050(13)(a)-(d).

The subject property is not located in an area identified as being water quantity limited. It has also been developed with two onsite wells.

Any future partitioning or change of use would by necessity have to comply with the carrying capacities of soils and groundwater for subsurface waste disposal system requirements per LC 16.291(4)(j).

## **V. CONCLUSIONS**

This application has shown by a preponderance of evidence that the standards and criteria applicable for approval of an amendment of Official Plan and Official Zoning designations for TRS 18-12-25, tax lot 2200 (10.24 acres) from Rural Industrial (RI) to Rural Commercial (RC), have been met;

## **VI. RECOMMENDATIONS**

1. Approval of PRZC Control No. 21 of Ordinance No. PA 1226, amending the Official Plan Map No. 030 designation for tax lot 2200 of Assessors Map TRS 18-12-25, from Industrial (I) to Commercial (C); and
2. Approval of PRZC Control No. 21 of Ordinance No. PA 1226, amending the Official Zoning Map No. 030 designation for tax lot 2200 of Assessors Map TRS 18-12-25, from Rural Industrial (RI) to Rural Commercial (RC).

## **VII. EXHIBITS**

- A. Plan Map, Plot No. 030 with proposed plan change depicted.
- B. Zoning Map, Plot No. 030 with proposed zone change depicted.
- C. 2004 Aerial photograph depicting 1970s site and designated Site 22.
- D. 2004 aerial photograph of Florence area.
- E. Siuslaw River Dredged Material Disposal Plan – Site 22 (3 pages).
- F. Assessor's Map TRS 18-12-25 with subject property depicted.



Exhibit C – 2004 Aerial photograph depicting 1970s site and designated Site 22.

Hwy 126  
access  
point

^  
Property  
line

^  
Site 22  
150' x 220'  
(approximate)

^  
1970s  
pump  
pit

^  
1970s  
dredged  
materials  
disposal site

^  
Property  
line












Exhibit D - 2004 aerial photograph of Florence area.



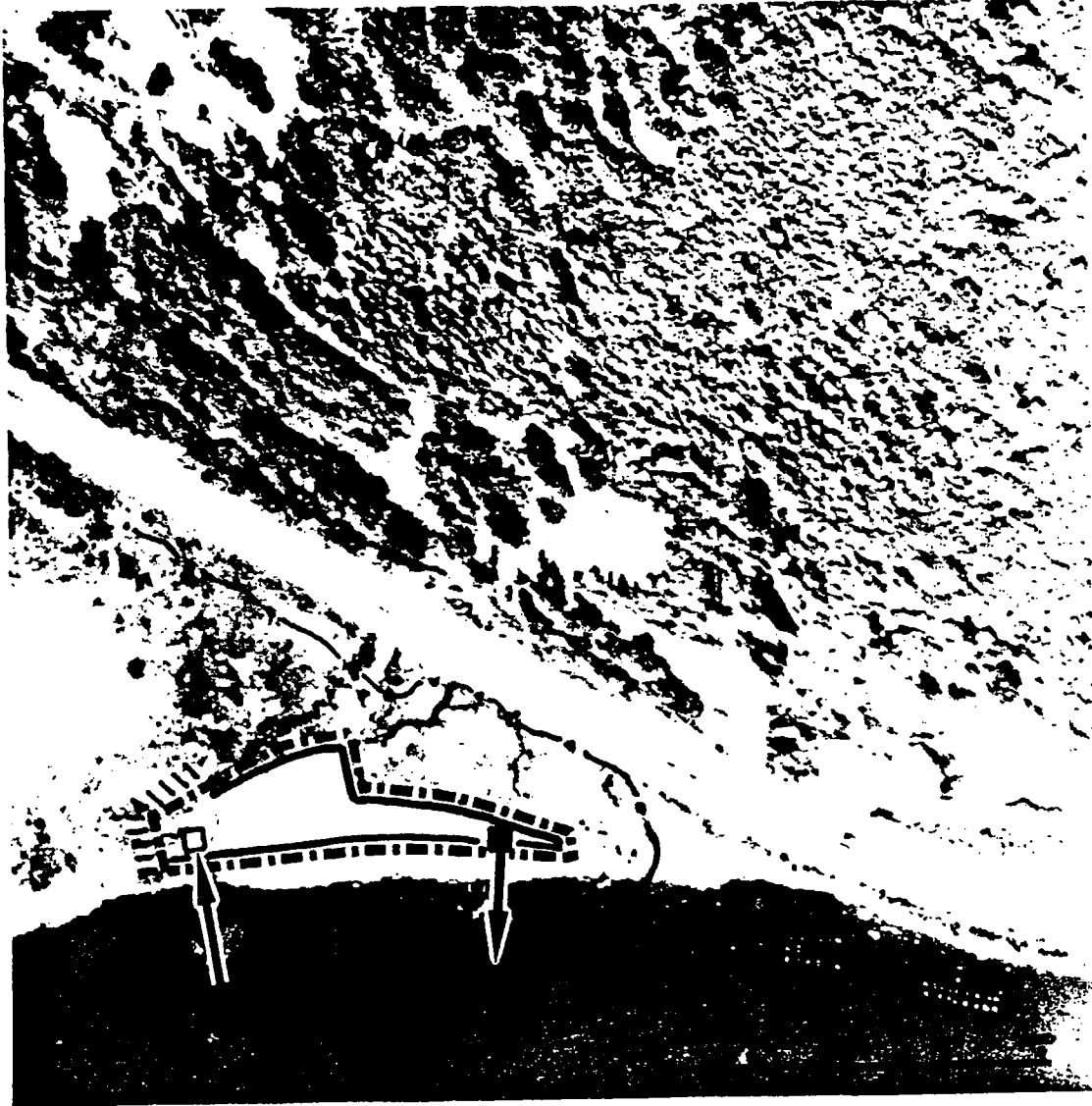
# Legend

# SIUSLAW RIVER DREDGED MATERIAL DISPOSAL PLAN

Exhibit E - Siuslaw River Dredged Material Disposal Plan - Site 22 (3 of 3)

-  Altered disposal site
-  Peripheral diking
-  Interior diking
-  Natural barrier
-  Outfall
-  Discharge
-  Pipe
-  Overflow
-  Surface drainage

## Site 22



WILSEY & HAM

Scale 1" = 200'

## SITE 22

### Site Description

Location: Johnson's Rock Products site (east of North Fork Bridge).

Size: 150' x 220'

Capacity: 10,000 C.Y. net, at 9' depth

Physical Characteristics: This is an old fill site, flat and riprapped on river side. Hard surface, some gravels.

Biological Characteristics: The actual site has no biological character. However, it is bordered by a small salt marsh, small fresh water marsh, and the river.

Comprehensive Plan: Industrial

Ownership: Johnson Rock Products (Sec. 25, Lot 2001, T18S, R12E)

### Engineering Considerations

Method of Dredging: Pipeline 8 to 16 inch, or clamshell

Design Criteria: Temporary dikes constructed from local materials, sloped to prevent slumping into wetlands or river. Provide drop-type outlet with stop-log weir. Retention time must be adequate for settling of solids.

Site Preparation: Protect adjacent drainage channels with diking. Stockpiled materials to be hauled away. Outfall must go to deep water channel.

Site Unit Development Cost: \$0.68/C.Y.

Future Use Constraints: If used for stockpile, site must be preserved as open space. Development of site, except for open storage and other temporary uses, would not be compatible.

### Environmental Considerations

Effects of Disposal: Effects could only occur to either the wetlands or the river, if fill was allowed to spill into them. Wetland areas have been partially destroyed by surrounding land uses, and their future is questionable due to encroachment and refuse disposable.

### Other Considerations

This is a small site that requires substantial berming to prevent slumpage. It has been recommended that the two small marshes existing on the site be filled, to allow for more fill space. If the marshes were to be filled, however, the site should be permanently preserved for dredged materials stockpiling exclusively. Thus, the site could significantly contribute to resolving the dredge disposal needs of the North Fork area. The filling of the marshes was met with negative reactions by the resource agency Task Force. Also, the property owner, Johnson's Rock Products, is not willing to commit the land to permanent stockpiling. The owner has offered the site for disposal use, but wishes to retain his right to develop the land when he so desires. Existing uses of the site appear to be encroaching on the two wetlands. This site is key to the maintenance of the North Fork channel area. Large pipeline work will be capable of pumping materials up river to Site 25. But "spot maintenance" with the 8-16" dredge, which may be required every 3 to 5 years, would require a disposal site within 3,000 - 4,000 feet. This site is the only viable location at this time.

At this time the filling of the wetland areas is unacceptable to the resource agency task force. It is felt that other alternatives must be more fully explored before productive habitat is committed to filling. The site must be retained as a viable stockpile site, with possible expansion in the future into surrounding areas. To the west of the outlined site lies old fill materials of no biological significance, which may be usable if compatible with the surrounding site uses.

Alternatives to this proposal include in-water disposal, or barging of materials to the ocean disposal site. Dredging with clamshell or bucket incur certain added costs and time considerations, but are an option.

FOR ASSESSMENT  
AND TAXATION  
USE ONLY

SECTION 25 T.18S. R.12W. W.M.

LANE COUNTY

SCALE 1" = 400'

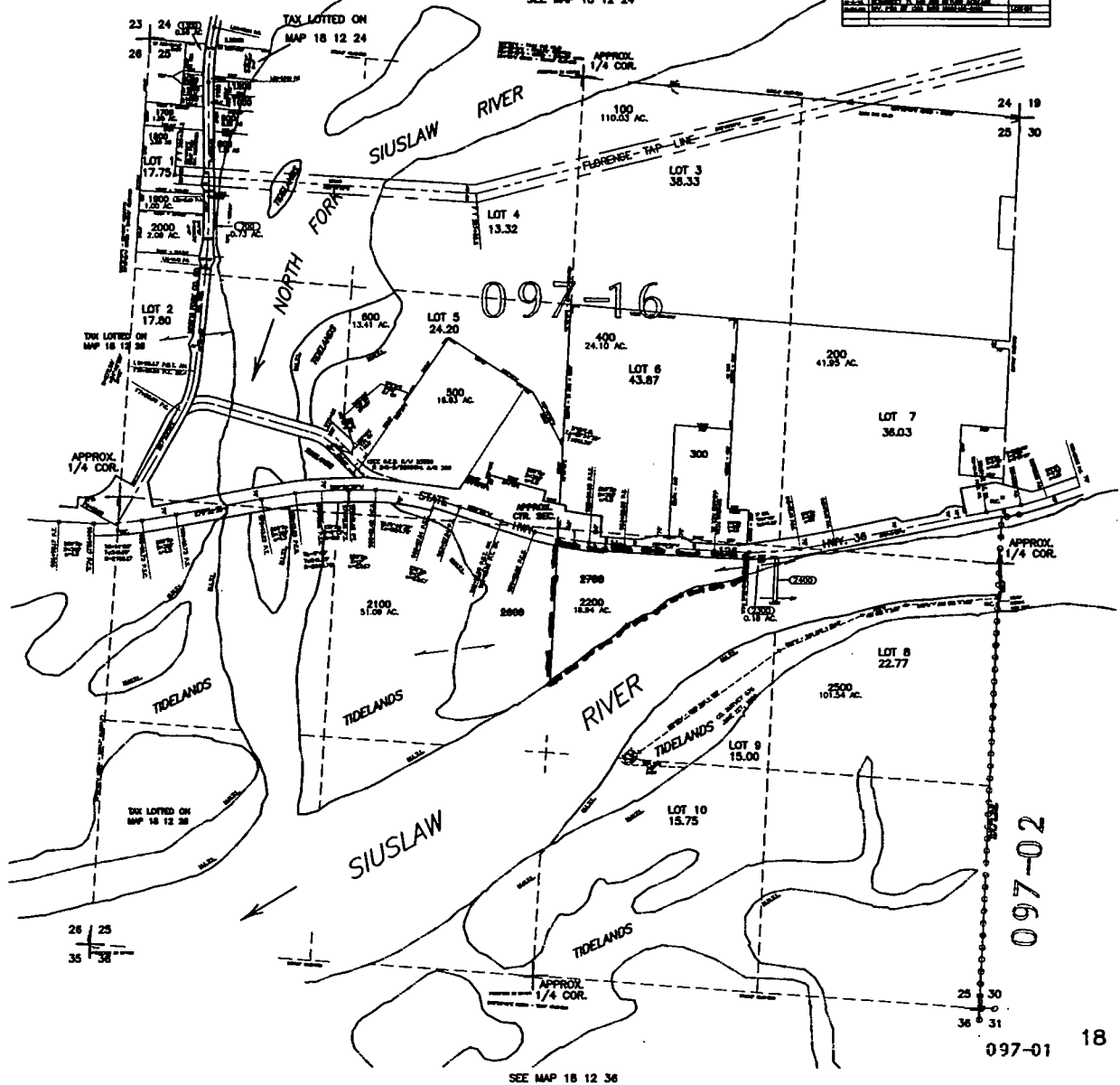
SEE MAP 18 12 24

NO.	OWNER	ACRES
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7	...	...
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35	...	...
36	...	...

18 12 25

NAD 83/91

CANCELLED  
2500  
2700



SEE MAP 18 11 30 20

097-02

18 12 25

SEE MAP 18 12 36

**Ordinance No. PA 1226  
Supplemental Findings of Fact**

Finding 1: The General Plan Policies – Goal Two of the Rural Comprehensive Plan articulate the policies on which the implementing land use regulations within adopted and acknowledged Developed & Committed Exception Areas and Unincorporated Communities of Lane County are based.

General Plan Policies - Goal 2, Policy 11 provides the guidelines for Lane Code 16.290 (Rural Residential RR), LC 16.291 (Rural Commercial RC), LC 16.292 (Rural Industrial RI) and LC 16.294 (Rural Public Facility RPF). When those policies and land use regulations implementing the policies were enacted, that action was designed to address both the Goal 2 Exception Process requirements and the Goal 11 and 14 issues raised by the previous industrial and commercial zoning regulations. Among other things, those actions were designed to establish zones that would assure maintenance of the rural character of land uses outside of urban growth boundaries and address issues of compatibility with any impacts on adjacent resource lands.

Goal 2, Policy 11 provides the policy guidelines for:

- Lane Code 16.290 (Rural Residential RR);
- LC 16.291 (Rural Commercial RC);
- LC 16.292 (Rural Industrial RI); and
- LC 16.294 (Rural Public Facility RPF).

(A) *Goal 2, Policy 11.a.*

- a. A Rural Residential designation shall be applied to developed and committed exception areas which are devoted to rural housing uses as evaluated by the following criteria:*
- i. existing development pattern and density;*
  - ii. on-site sewage disposal suitability, or community sewerage;*
  - iii. domestic water supply availability;*
  - iv. access;*
  - v. public services;*
  - vi. lack of natural hazards; and*
  - vii. effect on resource lands.*

(B) *Goal 2, Policy 11.b.*

*A Rural Commercial designation shall be applied to existing uses and/or tracts presently zoned for commercial activities addressing the same criteria as listed for the Rural Residential designation. The Rural Commercial designation shall encompass all commercial activities in the rural area. The range of limited, medium and medium/heavy commercial zoning shall be applicable in areas with a Community designation until the RCP and zoning for the areas are updated to comply with OAR 660 Division 22, the UC Rule. A single rural commercial zone shall be applied to areas updated to comply with OAR 660 Division 22, the UC Rule or with Goal 14.*

(C) Goal 2, Policy 11.c.

*A Rural Industrial designation shall be applied to existing uses and to tracts presently zoned for industrial activities addressing the same criteria as listed for the rural residential designation. The range of limited, medium and medium/heavy industrial zoning shall be applicable in areas with a Community designation until the RCP and zoning for the areas are updated to comply with OAR 660 Division 22, the UC Rule. A single rural industrial zone shall be applied to areas updated to comply with OAR 660 Division 22, the UC Rule or with Goal 14.*

(D) Goal 2, Policy 11.e.

*A Public Facility designation shall be applied to publicly owned grounds and facilities (i.e., schools, etc.).*

Finding 2. The Lane County Board of Commissioners enacted Ordinance No. 6-02 on April 17<sup>th</sup>, 2002, applying:

- Lane Code 16.290 Rural Residential Zone (RR) as the single rural residential zoning designation;
- Lane Code 16.291 Rural Commercial Zone (RC) as the single rural commercial zoning designation;
- Lane Code 16.292 Rural Industrial Zone (RI) as the single rural industrial zoning designation; and
- Lane Code 16.294 Rural Public Facility Zone (RPF) as the rural public facility zoning designation;

in compliance with OAR 660 – Division 22 inside unincorporated communities, and Goal 14 for developed and committed exception areas outside the unincorporated communities, as the completion of work tasks during the Periodic Review work program.

The four enacted zoning provisions were the result of an analysis of allowable uses in the previous zoning designations of Lane Code Chapter 16, which were itemized in “Attachment 12” to the agenda cover memo to the Board of Commissioners (April 3, 2002) for Ordinance No. 6-02. The analysis resulted in the elimination of old zone designations and implementing land use regulations described below. The four new designations and Lane Code provisions contained sufficient assurances, provided supportive evidence, and included development criteria or standards to ensure that the plan and zone designations changes would comply with OAR 660-004-0018(2) and OAR 660-022.

LC 16.290 (Rural Residential RR) was enacted to supercede the prior LC 16.299 (Suburban Residential Zone RA), LC 16.230 (Garden Apartment Residential Zone RG), and LC 16.231 (Rural Residential Zone RR) regulations. The LC 16.229, LC 16.230 and LC 16.231 regulations were not in compliance with Goal 14 (OAR 660-004-0040) minimum lot sizes or allowed land uses that could be construed as “urban” such as animal hospitals, tourist parks, nursing homes, community centers, sewage treatment plants, solid waste disposal facilities, amusement parks, jail or penal farm, sewage treatment plant, race track, townhouse, multiple dwelling, or a hospital.

LC 16.291 (Rural Commercial RC) was enacted to supercede the prior LC 16.220 (Limited Commercial Zone C-1), LC 16.221 (Neighborhood Commercial Zone C-2), LC 16.222 (Commercial Zone C-3), and LC 16.223 (Rural Commercial Zone CR) regulations. The LC



16.220, LC 16.221, LC 16.222 and LC 16.223 regulations were not in compliance with the floor area limitations for “small scale, low-impact” standards of the Unincorporated Community Rule (OAR 660-022) or Goal 14, and provided for land uses that could be construed as “urban” such as department store, professional playfields including baseball, football, etc., fumigation chambers, stadium, amusement park, carnival or circus.

LC 16.292 (Rural Industrial RI) was enacted to supercede the prior LC 16.224 (Limited Industrial Zone M-1), LC 16.225 (Light Industrial Zone M-2), and LC 16.226 (Heavy Industrial Zone M-3) regulations. The LC 16.224, LC 16.225 and LC 16.226 regulations were not in compliance with the floor area limitations for “small scale, low-impact” standards of the Unincorporated Community Rule (OAR 660-022) or Goal 14, allowed a mixture of commercial and industrial uses, and provided for land uses that could be construed as “urban” such as research and testing laboratories, sewage treatment plants, aggregate excavations with incidental processing, public and private parking areas and garages, and carnival or circus.

LC 16.294 (Rural Public Facility RPF) was enacted to supercede the prior LC 16.219 (Public Facility Zone PF) regulations. The LC 16.219 regulations provided for a mixture of uses that could be construed as “urban” such as fairgrounds which may include a race track, sports assembly such as a stadium, arenas or race tracks, hospital, or sanitarium.

On October 31, 2002, the Oregon Department of Land Conservation and Development (DLCD) notified Lane County in correspondence dated October 31, 2002, that DLCD:

*“ . . . approved the county’s periodic review work task 2 (zoning of rural residential lands) and approved all but one amendment made in task 1 (McKenzie Watershed unincorporated communities) and continued review of the remainder of task (hotels and motels outside unincorporated communities). This letter constitutes the department’s order approving these tasks (Oregon Administrative Rule (OAR) 660-025-150(1)(a)). ”*

*“The department has conducted a review of the above work task pursuant to OAR -025-0140(6) and prepared the attached report. A large majority of the amendments comply with the statewide planning goals and are approved with the exception of Lane Code section 16.291(u)(3) as explained in the attached report. The Lane County Planning Director requested, and we agreed, to delay evaluation of this code section until the county concludes adoption of periodic review work task 3, which addresses unincorporated community issues in the Siuslaw watershed. ”*

On page 1 of the accompanying DLCD report (Partial Approval of Periodic Review Work Task 1 and Approval of Work Task 2 – Order No. 01431), DLCD stated:

*“The actions of Lane County to address work tasks 1 and 2 on the approved work program are, with one exception, found to be in compliance with the statewide planning goals and rules, based on the findings contained in this report. The work tasks are approved with the exception the amended LC 16.291(u)(3) provision for motels and hotels outside unincorporated communities, for which DLCD review is continued. ”*

In the Background subsection on page 1 and 2 (Order No. 01431) DLCD further stated:

*“Lane County has addressed statewide planning Goal 14 in its submittal. In work task 1, the county addressed the requirements of OAR 660, Division 22, the ‘Unincorporated Communities Rule’ (or ‘UC Rule’) and complete coordination agreements under ORS 195.020 and 195.025. Under work task 2, the county updated its comprehensive plan and*

*zoning requirements to address the rural residential rule and statewide planning Goals 11 and 14 county wide for residential, commercial, industrial, and public lands outside communities.”*

*“On July 10, 2001, The Lane County Board of Commissioners adopted Order No. 01-7-10-5 authorizing coordination agreements with each of the special service districts within the McKenzie River watershed. On April 17, 2002 the Board of Commissioners adopted two ordinances. First, Ordinance PA 1173 amended the county comprehensive plan by revising goals, policies, designation descriptions, and the plan map to comply with the UC rule and statewide planning Goal 14 for lands within and outside unincorporated communities. Second, Ordinance 6-02 amended the county zoning code to implement the plan updates in the former ordinance.” Page 1 of the accompanying DLCD report (Partial Approval of Periodic Review Work Task 1 and Approval of Work Task 2 – Order No. 01431, October 31, 2002).*

On February 4, 2003, DLCD issued Work Task Approval Order 02-WKTASK-01467. In the Findings of Fact section of the Order:

*“Finding 7. The commission upheld the department’s decision in Order 01431. The commission adopts the report accompanying this order (attached) as the findings for the decision on appeal.”*

On December 17, 2003, DLCD issued Periodic Review Task 1 Remand (Order 001582) to Lane County. In the order, DLCD states:

*“On October 31, 2002, DLCD issued Order 001431 approving most of Lane County’s Periodic Review Task 1. The only provision not approved was Lane Code (LC) section 16.291(u)(3) regarding rural motels and hotels, for which the department continue review pending completion of a subsequent task on your work program, which will correct the deficiency. However, the Oregon Legislature adopted Senate Bill 920 in 2003, Section 8 of the bill mandates that the Department of Land Conservation and Development make a decision on any task submitted by a local government before July 1, 2003 by December 31, 2003 or the task will become approved, unless there was an objection. Although there were objections to the county’s adoption of this task, the objections did not address LC 291 (u)(3) and the appeal of Order 001431 has been concluded.*

*“In order to ensure that LC 16.291(u)(3) does not become approved, this order remands that portion of Task 1 relating to hotels and motels permitted in Rural Commercial zone, based on the findings contained in the report accompanying Order 001431 (relevant excerpt attached) pursuant to OAR 660-025-150(1)(b). The county shall amend the Lane Code in response to this remand by March 31, 2004.”*

On June 17, 2004, DLCD issued Periodic Review Task 1 Approval Order 001640 to Lane County. In the Order, DLCD states:

*“On December 17, 2003, DLCD issued Order 001582 remanding Lane Code (LC) section 16,291(u)(3) regarding rural motels and hotels, On May 17, 2004, the department received amendments to LC 16.291 in response to the remand (Ordinance 11-04). The revisions to LC 16.291 also included raising the floor limitations for rural commercial uses. The county also submitted Ordinance 12-04, which includes revisions*

*to LC 16.292(3)(o) and (p) and LC 16.400(10) to implement HB 2614 (the 'mill site' bill) and revise the floor area limitation for industrial uses within unincorporated communities (OAR 660-022-0030(3)) and rural industrial uses under Goal 14."*

*"I am pleased to inform you that the department has approved the county's submittal. There were no objections to the county's submittal, so this order is final and can not be appealed. This completes all work related to Task 1."*

Pursuant Senate Bill 920 (2003) and the above cited DLCD orders, Lane Code 16.291 Rural Commercial (RC) and Lane Code 16.292 Rural Industrial (RI) are valid land use provisions under Goal 14 and the Rural Communities Rule throughout rural Lane County.

Finding 3. LC 16.290 (RR), LC 16.291 (RC), LC 16.292 (RI), and LC 16.294 (RPF) were applied to lands by Ordinance No. PA 1173 on April 17, 2002, in all developed & committed exception areas of rural Lane County that were located outside designated unincorporated community boundaries in the McKenzie, Siuslaw, Long Tom, Coast Fork Willamette and Middle Fork Willamette watersheds, and inside the eight unincorporated communities of the McKenzie Watershed (Marcola, Walterville, Leaburg, Vida, Nimrod, Blue River, Rainbow, and McKenzie Bridge).

LC 16.290 (RR), LC 16.291 (RC), LC 16.292 (RI), and LC 16.294 (RPF) were applied to lands by Ordinance No. PA 1194 on February 18, 2004, inside the unincorporated communities of the Siuslaw Watershed (Glenada, Cushman, Mapleton, Swisshome, Deadwood, Greenleaf, Triangle Lake, Blachly and Walton) and Long Tom Watershed (Noti, Elmira, Crow, Lorane, Franklin, Cheshire, Alvadore, and Lancaster).

LC 16.290 (RR), LC 16.291 (RC), LC 16.292 (RI), and LC 16.294 (RPF) were applied to lands by Ordinance No. PA 1222 on June 15, 2005, within the boundaries of unincorporated communities of the Coast Fork Willamette Watershed (Goshen, Saginaw, London, Dorena, and Culp Creek) and the Middle Fork Willamette Watershed (Pleasant Hill, Jasper, Trent, Fall Creek, and Dexter).

Lane County RCP, Goal 2, Policy 25 includes the notation: *\*Note: The "Community" Plan Designation is implemented by various zoning districts as indicated, zones which also implement specific Plan designations other than "Community". A suffix "/C" shall be used in combinations with these zoning abbreviations to denote the zoning inside unincorporated community plans adopted to comply with OAR 660 Division 22, the UC Rule: RR, RC, RI, RPF and RPR..*

Finding 4. Lane County's enactment of the LC 16.291 (Rural Commercial RC) and LC 16.292 (Rural Industrial RI) land use regulations per Ordinance No. 6-02 initially received partial acknowledgement from the Department of Land Conservation and Development for the specific Periodic Review Work Task 1 in Order No. 01431.

Lane County enacted Ordinance No. 11-04 on May 12, 2004, amending LC 16.291(3)(u) in the Rural Commercial Zone (RC) as part of Periodic Review Work Task 3. The final approval Order No. 01640 was granted by the Department of Land Conservation and Development (DLCD) on June 17, 2004, for LC 16.291 achieving compliance with OAR 660-Division 22 and OAR 660-Division 4.

On October 31, 2002, the Department of Land Conservation & Development (DLCD) approved the Ordinance No. 6-02 amendments to LC 16.292 and found them to be in compliance with OAR 660–Division 22 and OAR 660-04 (*Periodic Review Work Task 1 in Order No. 01431*). Lane County enacted Ordinance No. 12-04 on May 12, 2004, amending LC 16.292 Rural Industrial Zone (RI) and LC 16.400 (Comprehensive Plan Amendments) to comply with Land Conservation and Development Commission (LCDC) actions on August 3, 2003 to amend the Unincorporated Community Rule [OAR 660-022-30(3) and (11)]. The LCDC actions implemented House Bill 2691 and House Bill 2614-B pertaining to abandoned or diminished mill sites and extension of sewer services to such sites. Ordinance No. 12-04 amendments to LC 16.292 were acknowledged by Oregon Department of Land Conservation & Development on June 17, 2004, in *Periodic Review Work Task 1 in Order No. 01640*.

Finding 5. The Lane County Board of Commissioners has incorporated into the Periodic Review process an opportunity for the County and private citizens or public agencies to identify properties within each of the five watersheds that were developed with uses that were incompatible with the applied zoning designations dating back to the adoption of Lane Code Chapter 16. Based on Periodic Review work tasks including the compiling of detailed inventories of the uses found within the developed & committed exception areas and the unincorporated communities, the Board has exercised their authority to amend Plan and Zoning designations annually on a watershed basis through the follow-up, post-acknowledge plan amendment process.

On April 17, 2002, the Board of County Commissioners enacted Ordinance PA 1173 which included the *Lane County McKenzie Watershed Community Rule Compliance Issues Report* (May 14, 1999) for the eight unincorporated communities of the McKenzie Watershed in compliance with Periodic Review work tasks. On that same date, the Board of County Commissioners enacted Ordinance No. PA 1168 which adopted amendments to Plan and Zoning designations within the McKenzie Watershed including expansion of the unincorporated community boundaries of Rainbow, 29 additional actions for minor amendments to redesignate properties or portions of properties within developed & committed exception areas or unincorporated communities, and six actions to redesignate properties or portions of properties within resource zones with exceptions to Goal 3 and 4 where necessary. In total, 36 actions were taken that included 71 properties.

On February 18, 2004, the Board of County Commissioners enacted Ordinance No. PA 1194 which included the *Lane County OAR Compliance Report* (December 2003) with analysis and findings for the nine unincorporated communities within the Siuslaw Watershed and the eight unincorporated communities within the Long Tom Watershed in compliance with Periodic Review work tasks. On June 30, 2004, the Board of County Commissioners enacted Ordinance No. PA 1203 which adopted amendments to Plan and Zoning designations within the Siuslaw and Long Tom Watersheds including 52 actions for minor amendments to redesignate properties or portions of properties within developed & committed exception areas or unincorporated communities, and 13 actions to redesignate properties or portions of properties within resource zones with exceptions to Goal 3 and 4 where necessary. In total, the actions would include zone changes for 65 properties.

On June 15, 2005, the Board of County Commissioner enacted Ordinance No. PA 1222 which included the *Lane County Preliminary OAR Compliance Report* (April 2005) with analysis and findings for five unincorporated communities within the Coast Fork Willamette Watershed and five unincorporated communities within the Middle Fork Willamette Watershed in compliance with Periodic Review work tasks. On November 1, 2005, the Lane

County Planning Commission held the initial public hearing on Ordinance No. PA 1226 with proposed amendments to Plan and Zoning designations within the Coast Fork and Middle Fork Watersheds including 18 actions for minor amendments to redesignate properties or portions of properties within developed & committed exception areas or unincorporated communities, and three actions to redesignate properties or portions of properties within resource zones with exceptions to Goal 3 and 4 where necessary. In total, the 21 actions would include zone changes for 36 properties.

- Finding 6. Lane Code 16.400(1) Purpose statement addresses the relationship between the citizens of Lane County and a dynamic plan amendment process.

*Purpose. The Board shall adopt a Rural Comprehensive Plan. The general purpose of the Rural Comprehensive Plan is the guiding of social, economic and physical development of the County to best promote public health, safety, order, convenience, prosperity and general welfare. The Rural Comprehensive Plan shall be considered to be a dynamic policy instrument that can be modified to reflect changing circumstances and conditions as well as to correct errors and oversights. It is recognized that the Rural Comprehensive Plan affects the people of Lane County, and it is, therefore, important that the ability by individuals to propose amendments be free of restraint.*

Mindful of this policy statement and the benefits to private citizens and public agencies, the Board of County Commissioners enacted Ordinance No. PA 1192 on December 17, 2003 and amended the Rural Comprehensive Plan – General Plan Policies, Goal Two to include *Policy 27 -- Errors or Omissions*. Based on the County's previous Periodic Review experiences in the McKenzie, Siuslaw and Long Tom Watersheds, the Board enacted Policy 27 and established eight circumstances (*Policy 27.a.i-viii*) under which a private or public entity could initiate a plan amendment or zone change application for consideration by the Board of County Commissioners.

On January 19, 2005, the Board of County Commissioners enacted Ordinance No. PA 1219 revising Goal Two, Policy 27.a.ii., criteria.

The Board of County Commissioners has consistently enacted ordinances during the period of 2002 through 2005 to comply with the OAR 660-Division 22, OAR 660-004, and Periodic Review work tasks, and to ensure that the Rural Comprehensive Plan evolves as *a dynamic policy instrument that can be modified to reflect changing circumstances and conditions as well as to correct errors and oversights, and that the ability by individuals to propose amendments be free of restraint.*

- Finding 7. *Oregon Administrative Rule 660 – Division 4 Interpretation of Goal 2 Exception Process* interprets the exception process as it applies to statewide Goals 3 to 19. Two sections of Division 4 are particularly pertinent to the actions proposed in Ordinance No. PA 1226. Those sections are 660-004-0018 and 660-004-0040.

*OAR 660-004-0018 Planning and Zoning for Exception Areas* applies to developed and committed exception areas outside unincorporated community boundaries.

*OAR 660-04-018(2) For "physically developed" and irrevocably committed" exceptions to goals, plan and zone designations shall authorize a single numeric minimum lot size and shall limit uses, density, and public facilities and services to those:*  
*(a) Which are the same as the existing land uses on the exception site;*

- (b) *Which met the following requirements:*
  - (A) *The rural uses, density, and public facilities and services will maintain the land as "Rural Land" as defined by the Goals and are consistent with all other applicable Goal requirements; and*
  - (B) *The rural uses, density, and public facilities and services will not commit adjacent or nearby resource land to non resource use as defined in OAR 660-04-0028; and*
  - (C) *The rural uses, density, and public facilities and services are compatible with adjacent or nearby resource uses; or*

In 1984, Lane County enacted exceptions to Goals 3 (Agriculture) and 4 (Forest) for the developed & committed exception areas which includes the subject properties in Control No. 1-10, 12, 14-17, 19-21. After remand from the Oregon Supreme Court in 1988, Lane County enacted exceptions to the two Goals again for the subject properties in the eighteen developed & committed exception areas in compliance with state law. No additional exceptions are required to enact the zone changes for the 30 nonresource subject properties within the 18 exception areas of Control No. 1-10, 12, 14-17, 19-21.

Exceptions to Goals 3 and 4 are articulated in the findings of fact and conclusions for the six subject properties in Control No. 11, 13, and 18.

New development or expansion of the existing uses on the 36 subject properties will be subject to compliance with "Criteria" of the newly applied zoning designations.

Development in the Rural Commercial (RC) for allowable uses would occur pursuant to compliance with Lane Code 16.291(4) below:

*LC 16.291(4)*

- (4) *Criteria. New uses or development allowed by LC 16.291(3)(a) through (c-c) above, except for telecommunications facilities allowed by LC 16.291(3)(x) above, shall comply with the criteria in LC 16.291(4) below. Telecommunications facilities allowed by LC 16.291(3)(x) above shall comply with the requirements in LC 16.264.*
  - (a) *Floor Area and Lot or Parcel Coverage. If located in an area designated by the RCP as an unincorporated community, no one commercial building or combination of commercial buildings on a lot or parcel shall contain more than 4,000 square feet of floor area for the same commercial use unless the conditions in LC 16.291(4)(a) below are met. If not located in an area designated by the RCP as an unincorporated community, no commercial building or combination of commercial buildings on a lot or parcel shall contain more than 3,000 square feet of floor area for the same commercial use unless the commercial building is used as a country store (a building used primarily for the retail sale of groceries but containing at least 750 square feet of floor area used for other permitted commercial uses). A country store located outside an area designated by the RCP as an unincorporated community may contain a maximum of 3,750 square feet of floor area. An exception to the 4,000 or 3,000 commercial building square feet floor area requirement in LC 16.291(4)(a) above may be allowed if it complies with these requirements:*
    - (i) *The exception shall be adopted by ordinance as part of an amendment to the RCP for a specific lot or parcel.*

- (ii) *The exception shall be for an expansion of up to 50% of the existing square feet building floor area used for commercial uses.*
- (iii) *The existing and proposed commercial uses shall:*
  - (aa) *Provide goods and services to primarily rural residents or persons traveling through the area;*
  - (bb) *Notwithstanding the small-scale commercial building floor area limits in OAR 660-022-0030(10), comply with OAR 660-022 (for commercial uses located inside unincorporated communities) or with the Statewide Planning Goals (for commercial uses located outside unincorporated communities); and*
  - (cc) *Fit within the uses allowed by LC 16.291(2) and/or (3) above.*
- (iv) *No more than one exception pursuant to LC 16.291(4)(a) shall be allowed for the same lot or parcel.*
- (b) *The location, design, size, shape and arrangement of the uses and structures shall be sufficient for the proposed intent and compatible with the surrounding vicinity.*
- (c) *The quantity, location, height and materials of walls, fences, hedges, screen planting and landscape areas shall serve their intended purpose and shall minimize any adverse effect on existing or contemplated abutting land use.*
- (d) *Suitable planting of ground cover or other surfacing shall be provided to prevent erosion and reduce dust, and suitable methods shall be provided for the continued maintenance of the planting or surfacing.*
- (e) *The location, design and size of the uses shall be such that the residents or establishments to be accommodated will be adequately served by community facilities and services or by other facilities suitable for the intend uses.*
- (f) *Based on anticipated traffic generation, adequate additional right-of-way and road improvements shall be provided by the development in order to address any traffic safety or congestion concerns created by the development. Consideration shall be given to the need and feasibility of widening and improving abutting streets to specifications of LC Chapter 15, "Roads," and also to the necessity for such additional requirements as lighting, sidewalks and turn and deceleration/acceleration lanes.*
- (g) *There shall be a safe and efficient circulation pattern within the boundaries of the development. Consideration shall include the layout of the site with respect to the location and dimensions of vehicular and pedestrian entrances, exits, drives, walkways, buildings and other related facilities.*
- (h) *There shall be adequate off street parking and loading/unloading facilities provided in a safe and efficient manner. Consideration shall include the layout of the parking and loading/unloading facilities, and their surfacing, lighting and landscaping.*
- (i) *Hazards and Impacts. The proposed use and development shall not result in public health hazards or adverse environmental impacts that violate state or federal water quality regulations.*
- (j) *The proposed use and development shall not exceed the carrying capacity of the soil or of the existing water supply resources and sewer service. To address this requirement, factual information shall be provided about any existing or proposed sewer or water systems for the site and the site's ability to provide on-site sewage disposal and water supply if a community water or sewer system is not available.*

Development in the Rural Industrial (RI) for allowable uses would occur pursuant to compliance with Lane Code 16.292(4) below:

*LC 16.292(4)*

- (4) *Criteria.* *New uses or development allowed by LC 16.292(3)(a) through (k) and (n) above, except for telecommunications facilities allowed by LC 16.292(3)(h) above, shall comply with the criteria in LC 16.292(4) below. Telecommunications facilities allowed by LC 16.292(3)(h) above shall comply with the requirements in LC 16.264.*
- (a) *The location, design, size, shape and arrangement of the uses and structures shall be sufficient for the proposed intent and compatible with the surrounding vicinity.*
  - (b) *The quantity, location, height and materials of walls, fences, hedges, screen planting and landscape areas shall serve their intended purpose and shall minimize any adverse effect on existing or contemplated abutting land use.*
  - (c) *Suitable planting of ground cover or other surfacing shall be provided to prevent erosion and reduce dust, and suitable methods shall be provided for the continued maintenance of the planting or surfacing.*
  - (d) *The location, design and size of the uses shall be such that the residents or establishments to be accommodated will be adequately served by community facilities and services or by other facilities suitable for the intended uses.*
  - (e) *Based on anticipated traffic generation, adequate additional right-of-way and road improvements shall be provided by the development in order to address any traffic safety or congestion concerns created by the development. Consideration shall be given to the need and feasibility of widening and improving abutting streets to specifications of LC Chapter 15, "Roads," and also to the necessity for such additional requirements as lighting, sidewalks and turn and deceleration/acceleration lanes.*
  - (f) *There shall be a safe and efficient circulation pattern within the boundaries of the development. Consideration shall include the layout of the site with respect to the location and dimensions of vehicular and pedestrian entrances, exits, drives, walkways, buildings and other related facilities.*
  - (g) *There shall be adequate off street parking and loading/unloading facilities provided in a safe and efficient manner. Consideration shall include the layout of the parking and loading/unloading facilities, and their surfacing, lighting and landscaping.*
  - (h) *Hazards and Impacts.* *The proposed use shall not result in public health hazards or adverse environmental impacts that violate state or federal water quality regulations.*
  - (i) *The proposed use and development shall not exceed the carrying capacity of the soil or existing water supply resources. To address this requirement, factual information shall be provided about any existing or proposed sewer or water systems for the site and the site's ability to provide on-site sewage disposal and water supply if a community water or sewer system is not available.*

Development in the Rural Public Facility (RPF) for allowable uses would occur pursuant to compliance with Lane Code 16.294(4) below:

*LC 16.294(4)*

- (4) *Criteria.* *New uses or development allowed by LC 16.294(3)(a) through (u) above, except for telecommunications facilities allowed by LC 16.294(3)(s) above, shall*



*comply with the criteria in LC 16.294(4) below. Telecommunications facilities allowed by LC 16.294(3)(s) above shall comply with the requirements in LC 16.264.*

- (a) The location, design, size, shape and arrangement of the uses and structures shall be sufficient for the proposed intent and compatible with the surrounding vicinity.*
- (b) The quantity, location, height and materials of walls, fences, hedges, screen planting and landscape areas shall serve their intended purpose and shall minimize any adverse effect on existing or contemplated abutting land use.*
- (c) Suitable planting of ground cover or other surfacing shall be provided to prevent erosion and reduce dust, and suitable methods shall be provided for the continued maintenance of the planting or surfacing.*
- (d) The location, design and size of the uses shall be such that the residents or establishments to be accommodated will be adequately served by community facilities and services or by other facilities suitable for the intended uses.*
- (e) Based on anticipated traffic generation, adequate additional right-of-way and road improvements shall be provided by the development in order to address any traffic safety or congestion concerns created by the development. Consideration shall be given to the need and feasibility of widening and improving abutting streets to specifications of LC Chapter 15, "Roads," and also to the necessity for such additional requirements as lighting, sidewalks and turn and deceleration/acceleration lanes.*
- (f) There shall be a safe and efficient circulation pattern within the boundaries of the development. Consideration shall include the layout of the site with respect to the location and dimensions of vehicular and pedestrian entrances, exits, drives, walkways, buildings and other related facilities.*
- (g) There shall be adequate off street parking and loading/unloading facilities provided in a safe and efficient manner. Consideration shall include the layout of the parking and loading/unloading facilities, and their surfacing, lighting and landscaping.*
- (h) Hazards and Impacts. The proposed use and development shall not result in public health hazards or adverse environmental impacts that violate state or federal water quality regulations.*
- (i) The proposed use and development shall not exceed the carrying capacity of the soil or of the existing water supply resources and sewer service. To address this requirement, factual information shall be provided about any existing or proposed sewer or water systems for the site and the site's ability to provide on-site sewage disposal and water supply if a community water or sewer system is not available.*

When these development criteria were enacted, those actions were designed to address both the Goal 2 Exception requirements and the Goal 11 and 14 issues raised by the previous and now superceded C-1, C-2, C-3 and CR commercial land use codes, M1, M2, and M3 industrial and use codes, and PF public facility zoning regulations. Among other things, those actions were designed to establish zones that would assure maintenance of the rural character of land uses outside of urban growth boundaries and address issues of compatibility with any impacts on adjacent resource lands.

The proposed findings for the 36 proposed amendments and zone changes and the above cited zoning provisions contain sufficient assurances that the plan and zone designations changes will address the applicable criteria and comply with OAR 660-004-0018(2).

*OAR 660-004-0040 Application of Goal 14 (Urbanization) to Rural Residential Areas* applies to lands that are not within an urban growth boundary, that are planned and zoned primarily for residential uses, and for which an exception to Statewide Planning Goal 3 (Agricultural Lands), Goal 4 (Forest Lands), or both has been taken. The purpose and applicability of OAR 660-004-0040 is reproduced below:

*OAR 660-004-0040*

- (1) The purpose of this rule is to specify how Statewide Planning Goal 14, Urbanization, applies to rural lands in acknowledged exception areas planned for residential uses.*
- (2) (a) This rule applies to lands that are not within an urban growth boundary, that are planned and zoned primarily for residential uses, and for which an exception to Statewide Planning Goal 3, (Agricultural Lands), Goal 4 (Forest Lands), or both has been taken. Such lands are referred to in this rule as rural residential areas.*
  - (b) Sections (1) to (8) of this rule do not apply to the creation of a lot or parcel, or to the development or use of one single-family home on such lot or parcel, where the application for partition or subdivision was filed with the local government and deemed to be complete in accordance with ORS 215.427(3) before the effective date of Sections (1) to (8) of this rule.*
  - (c) This rule does not apply to types of land listed in (A) through (H) of this subsection:*
    - (A) land inside an acknowledged urban growth boundary;*
    - (B) land inside an acknowledged unincorporated community boundary established pursuant to OAR chapter 660, division 022;*

Per *OAR 660-004-0040(2)(c)(B)* above, this OAR does not apply with the acknowledged unincorporated communities of rural Lane County. Subsection -0040 primarily addresses densities within the developed & committed exception areas outside the 35 unincorporated communities by fixing the minimum lot size to those densities applied by Lane County in 1984. Only one of the subject properties (Control No. 17) in Developed & Committed Exception Area Plot # 420-3 is proposed for a zone change to Rural Residential.

- Finding 8. The Statewide Planning Goals define "Rural Land" as land located outside of an urban growth boundary that has no or minimal public services and is not necessary or intended for urban use.
- A. None of the 36 subject properties proposed for zone changes in Control No. 1-21 are located within a UGB.
  - B. Three of the subject properties (Control No. 11, 13) were resource land (F2, E30) for which exceptions to both Goals 3 and 4 are being taken by the proposed actions and the rezoning to a nonresource designation will result in the three properties being designated within a developed & committed exception area.
  - C. Twenty-four of the subject properties (Control No. 1- 8, 10, 12, 14-15, 17, 19-21) being considered for amendments are within sixteen different developed & committed exception areas and outside unincorporated rural communities. All 24 subject properties are nonresource lands acknowledged by Oregon Land Conservation & Development Commission as qualifying for exceptions to Goal 3 and 4 in 1984 and again in 1988-1990.

- D. Six of the subject properties (Control No. 6, 9, 16) being considered for amendments are within three designated unincorporated rural communities (Saginaw, Goshen and Culp Creek).
- E. Three of the subject properties (Control No. 18) were unzoned and are being designated as Agriculture/E30.
- F. The existing rural uses or activities which have prompted the requests for amendments to conform the uses with appropriate zoning designations are allowable uses provided for in the requested zoning designations of Lane Code Chapter 16;

Given these circumstances, the 36 properties should be "rural lands" under state definition and given the special use permit process in compliance with the criteria and standards of the applicable Lane Code 16 sections, they will remain "rural lands" unless one of the incorporated cities in the Coast Fork Watershed expands their UGB to include them.

**Attachment B – Analysis: Lane County Ordinances/DLCD Acknowledgement Orders.**

<b>DLCD/LCDC Acknowledgement Orders, Periodic Review Grants - Technical Assistance Grants.</b>	<b>Lane County Periodic Review Ordinances - Post-Acknowledgment Plan Amendment Implementing Ordinances</b>										
	<table border="1"> <tr><td align="center"><b>10-Apr-96</b></td></tr> <tr><td align="center"><b>Order No. 96-4-10-1</b></td></tr> <tr><td align="center">Approval of Work Program for the Periodic Review of the Rural Comprehensive Plan.</td></tr> </table>	<b>10-Apr-96</b>	<b>Order No. 96-4-10-1</b>	Approval of Work Program for the Periodic Review of the Rural Comprehensive Plan.							
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**17-Dec-03**  
**DLCD Task 1 Remand**  
**Order No. 001582**  
 RE: Senate Bill 920, Section 8:  
 Lane Code 16.291(3)(u) remanded.

**30-Mar-04**  
**DLCD Order No. 001620**  
 \* Partially approved Work Task 3 (Siuslaw).  
 \* Final approval Work Task 4 (Long Tom).

**17-Jun-04**  
**DLCD Order No. 001640**  
 Final approval of Periodic  
 Review Work Task 1.

**April 1, 2004 - June 30, 2005**  
**DLCD Periodic Review Grant PR-R-05-008**  
 \$35,000 grant to complete Work Task 5.  
 Funded PW GIS Project to digitize the zone  
 designations in Rural and Metro areas.

**19-Jul-05**  
**DLCD Order No. 001672**  
 Final approval of Periodic Review  
 Work Task 5.

**17-Dec-03**  
**Ordinance No. PA 1192**  
 Amendments to RCP Goal 2, Policy 27  
 Reinstated "Errors or Omission" Policy

**18-Feb-04**  
**Ordinance No. PA 1194**  
 1. Applied LC 16.290, LC 16.291, LC 16.292, LC 16.294,  
 LC 16.295 in the unincorporated communities of the  
 Siuslaw Watershed and Long Tom Watershed:  
 \* Siuslaw: Glenada, Cushman, Mapleton, Swisshome,  
 Deadwood, Greenleaf, Triangle Lake, Blachly, Walton.  
 \* Long Tom: Noti, Elmira, Crow, Franklin, Cheshire,  
 Alvadore, Lancaster, Lorane.  
 2. Amended Goal 2, Policies 4, 10, 11, 15, 16, 21, & 27.  
 3. Adopted OAR Compliance Report (Siuslaw-Long Tom).

**12-May-04**  
**Ordinance No. 11-04**  
 1. Amended Lane Code 16.291(3)(u) "Hotels and motels".  
 2. Amended floor area standard to 3,500 sq. ft. for D&C  
 areas outside unincorporated rural community.

**12-May-04**  
**Ordinance No. 12-04**  
 1. Amended LC 16.292 to comply with amendments by  
 LCDC to OAR 660-022-0030(3) and (11).  
 2. Amended LC 16.292 and LC 16.400 to implement  
 House Bill 2691 and House Bill 2614-B addressing  
 "abandoned" or "diminished" mill sites.

**30-Jun-04**  
**Ordinance No. PA 1203**  
 Post-acknowledgement plan amendments  
 23 Control No. - 65 subject properties  
 in the Siuslaw Watershed and Long Tom Watershed.

**19-Jan-05**  
**Ordinance No. PA 1219**  
 Amendment to RCP Goal Two, Policy 27.a.ii.

**15-Jun-05**  
**Ordinance No. PA 1222**  
 1. Applied LC 16.290, LC 16.291, LC 16.292, LC 16.294,  
 LC 16.295 in the unincorporated communities of the  
 Coast Fork - Middle Fork Willamette Watersheds:  
 \* Coast Fork: Goshen, Saginaw, London, Dorena,  
 and Culp Creek.  
 \* Middle Fork: Pleasant Hill, Jasper, Trent, Dexter,

and Fall Creek.  
 2. Amended RCP Goal Two, Policies 10, 11, 15, and 16.  
 3. Adopted OAR Compliance Report for Coast Fork Willamette and Middle Fork Willamette Watersheds.

**BCC work session 2-22-06 — Public Hearing 3-15-06**  
**Ordinance No. PA 1226**  
 Post-acknowledgement plan amendments  
 21 Control No. - 36 subject properties  
 in the Coast Fork - Willamette Watershed.

**LCPC hearing pending - April-May 2006**  
**Ordinance No. PA \_\_\_\_\_**  
 Post-acknowledgement plan amendments  
 26 Control No. - 47 subject properties  
 in the Middle Fork - Willamette Watershed.

**DLCD**  
**Periodic Review Grant PR-R-07-002**  
 \$15,000 grant approved by DLCD pending signatures by Lane County and DLCD.  
 Last task under **Work Task 3 (CRMP)**

**February 1 - September 30, 2006**  
**Ordinance No. PA \_\_\_\_\_**  
 Periodic Review Work Task 3 a. i.-iii. and iv.: Update of Coastal Resource Management Plan - Goals 16, 17, 18.

**DLCD**  
**Technical Assistance Grant TA-R-07-009**  
 \$ 30,000 grant approved by Lane County and DLCD.

**February 1 - September 30, 2006**  
**Ordinance No. PA \_\_\_\_\_**  
 Coordination with US Army Corps of Engineers, Port of Siuslaw, Siuslaw Watershed Council, East Lane Soil & Water Conservation District to revise the Dredge Material Disposal Plan (1978) and affirm or amend the designated materials disposal sites.

ORDINANCE No.  
FILE # PA 1226  
EXHIBIT # 31

## MINUTES

Lane County Planning Commission  
BCC Conference Room - Lane County Courthouse

November 1, 2005  
7 p.m.

PRESENT: Steve Dignam, Chair; James Carmichael, Vice Chair; Lisa Arkin, Ed Becker, Todd Johnston, Juanita Kirkham, Nancy Nichols, John Sullivan, Jozef Siekiel-Zdzienicki, members; Planning Director Kent Howe, Stephanie Schulz, Staff

**I. AMEND FLORENCE COMPREHENSIVE PLAN: 2000/2020 & Lane County Rural Comprehensive Coastal Resources Management Plan (CRMP) to Redesignate 95 Acres of Shoreland Management Unit (MU) 1 within Florence City Limits from "Natural Resources Conservation" to "Residential Development" and to Redesignate 10 acres of Estuary MU C, Known as Sub-area C1 from "Natural" to "Conservation" and to Amend the Comprehensive Plan Text for that area of Management Unit 1 that is Now Located within the Florence City Limits. (PA 05-5506)**

Commission Chair Steve Dignam convened the meeting at 7 pm. He called for declarations of *ex parte* contact or conflict of interest.

Commission Member Todd Johnston noted that he represented Sea Watch Estates in a different matter but noted that Sea Watch could be affected in part by what took place that evening. He said it would not affect his decision making but said there could be a perceived conflict of interest and recused himself from the hearing.

Planning Staff member Stephanie Schulz provided the staff report. She said the City and Shelter Cove Home Owners Association were requesting a change in plan designation to facilitate erosion control measures that were currently not allowed in the designations that applied to the subject properties. She said the proposal was a major amendment to the Coastal Resources Management Plan and the Florence Comprehensive Plan. She said procedures for the change were found in Lane Code 16.040. She said the applicant had met the criteria for changing designations. She said the applicable Statewide Planning Goals were:

- Goal 1. Citizen Involvement
- Goal 2. Land Use Planning
- Goal 5. Open Space, Historic Areas and Natural Resources,
- Goal 6. Air, Water, and Land Resources Quality
- Goal 7. Natural Disasters
- Goal 16. Estuary Resources
- Goal 17. Coastal Shore Lands
- Goal 18. Beaches and Dunes

Ms. Schulz entered an e-mail into the record from the National Oceanic and Atmospheric Administration, (NOAA), and noted they request to leave the written record open for an additional three weeks for NOAA to provide written input about the proposal.

Mr. Dignam opened the public hearing.

**Dave Pedersen**, spoke as the Home Owner's Association representative. He said the homeowners were asking for completion of a land use process that allowed them to protect their property along the river. He said the bank below Shelter Cove is eroding at a rapid rate. He said the City of Florence reviewed the evidence and concluded that it was compelling enough to make the requested changes. He said if the Lane County Planning Commission recommended approval to the Board of County Commissioners and the Board also approved the change then the homeowners in the area had an opportunity and could prepare measures of protection for their property which were currently not allowed. He said it was an unfortunate situation that would require a lot of expense by a lot of people to fix.

Regarding the question in the staff report regarding Tsunami data, Mr. Pedersen submitted a written statement. He said there was a map showing areas of inundation that could be accessed on the City's website. He noted that the river bank proposed for erosion abatement would be impacted by a tsunami but the residential portions of the area were not in an inundation area on the map.

**Linda Sarnoff**, Community Services Director for the city of Florence, said the City of Florence had an adopted Comprehensive Plan. She said the area in question was currently designated low density residential in the city's Comprehensive Plan. In addition to the Comprehensive Plan designation there was also a Coastal Management Plan which was what the City was asking to have modified that evening.

Ms. Sarnoff said the application before the commission was asking two things.

1. Recognize what was already existing (residential development within the City of Florence)
2. Allow a change in the management unit in Shelter Cove from 'natural' to 'conservation' for the city area which would allow for rip rap to be installed to stabilize the bank.

**Mike Brock**, 2785 Sagittarius Drive, Reno, Nevada, provided a PowerPoint presentation on the reasoning behind the application. He reiterated that the application's purpose was to allow home owners to reinforce the banks along the shore near their homes to stop erosion that was affecting their property. He stressed that the erosion would, without a doubt cause the loss of homes, and city infrastructure.

Mr. Brock showed photos of Shelter Cove and its banks in progressive years from the 1940s to the present. He outlined how the erosion was taking place and noted that the inner jetty system had failed and erosion was progressing along the shore. He noted that the absence of vegetation along the shore was not because of clearing but because vegetation was being sloughed off the shore while erosion was taking place. He noted that the Army Corp of Engineers had acknowledged the inner jetty failure he added that yearly dredging also contributed to the erosion. He showed an example of an erosion control system that had been implemented in a nearby cove in the same estuary. He said the same process *could* be used to mitigate erosion in Shelter Cove. He said regulatory agencies would make the ultimate decision as to what measures should be taken to address the erosion problem in Shelter Cove.

Mr. Brock reiterated that rezoning was necessary to allow consideration of installing control measures for erosion in the area.



In response to a question from Ms. Kirkham regarding the erosion control measures in the cove near to Shelter Cove, Mr. Brock said that area already had the zoning that would allow the work to be done.

In response to a question from Commission member John Sullivan regarding whether the application was consistent with what NOAA was recommending, Mr. Pedersen said that originally, all of Area C was proposed to be changed at the City of Florence level. He said NOAA had desired to scale back the change to not include the entire Area C, but just the 10 acre Subarea C-1.

In response to a question from Commission member Nancy Nichols regarding how the example of the mitigation of erosion in South Cove could be judged a success when it had only been installed in 2005, Mr. Brock said the entire river had been rip rapped with a high level of success over time. He said the erosion was occurring because of wave action and not river current action. He said rip rap would stop that wave action. He said the rip rap would only go about two feet into the water and would not affect current activity which could simply push the erosion problem to another portion of the river shore. He stressed that it was lapping waves removing the sand that was causing the erosion.

In response to a question from Ms. Arkin regarding why the inner jetty had never been rebuilt, Mr. Brock said the Corps of Engineers had no plans to rebuild the inner jetty. He said after Shelter Cove was developed the developer had tried to work with the Corp of Engineers but had achieved no action.

Ms. Arkin raised concern that the current erosion controls in the South Cove had not been in place long enough to know whether there had been adverse effects. She cited the example of European beach grass which was an invasive species introduced at the turn of the twentieth century that had spread along much of the Pacific Coast of the United States and had seriously affected the environment and habitat.

Mr. Brock acknowledged the problem of European beach grass but stressed that erosion mitigation plans called for the use of American Dune Grass which was a non invasive natural plant that already existed in the area. He added that there were strict rules for planting only natural non invasive species that were found in the area. He said the final vegetation that would be planted would be trees.

In response to a question from Commission member Ed Becker regarding the validity of saying that there was no river current erosion in the area in question, Mr. Brock said any time there was current there was erosion. He said he was trying to differentiate between channel erosion and wave erosion. He said the cove was deep enough into the land and far enough from the current to say truthfully that the erosion was caused by wave action.

Mr. Becker raised concern that rip rapping would cause problems in other locations along the river.

Mr. Brock said he was confident that there would be no connected erosion problems because the entire jetty system in the estuary was all rock. He said the section in front of Shelter Cove was the only section that was not rock and the only section that had failed. He stressed that the other areas were all rock and had not eroded through time.

Mr. Becker reiterated his concern that rip rapping would cause problems at other locations along the river.

In response to a question from Commission member Jozef Zdzenicki regarding wave action on the sand and what the height of the waves were when they were hitting the shore, Mr. Brock said the height varied but surmised a maximum of four feet.

Mr. Zdzenicki suggested that removing the failed inner jetty would solve the erosion problem since the waves would not bounce up higher into the cove.

Mr. Brock said the waves in the estuary were very small because of the shallow shelf in the cove. He said the waves broke well before getting to the failed jetty.

Mr. Zdzenicki raised concern that rip rap in the cove would reflect waves and cause erosion across the river.

In response to a question from Mr. Dignam regarding whether the Planning Commission was being asked to approve the final design of any kind of rip rap or erosion control system, Ms. Schulz said it was not.

Mr. Dignam said most of the discussion was not relevant to the decision of the Commission. He expressed his confusion about why the applicant was submitting so much information about the solution when the decision was about a zone change.

Mr. Pedersen said the applicant was asking for the land use authority to take action against the erosion.

Mr. Dignam called for testimony from those in favor of the application. Providing some context for the hearing, he stressed that the Planning Commission would not make a final decision on the matter but would forward a recommendation to the Board of County Commissioners who would make the final decision.

**Richard Markee**, 55 Shoreline Drive, commented that he was the owner of the house in South Cove where rip rap had recently been installed. He said that in a two year period he had lost 18 feet of a 40 foot setback. He said rip rap had solved his erosion problem and saved his house.

**Russ Borg**, 23 Shoreline Drive, said the existing barrier jetty that had deteriorated caused the water behind it to be calm. He said the erosion was not caused by big waves but smaller wave action was causing the erosion. He raised concern that erosion would continue and eventually affect a County Park that was nearby. He stressed that the neighbors were willing to pay for the work to be done.

**Del Huber**, 31 Shoreline Drive, said he was the most affected of the land owners in the area. He said the erosion was less than 50 feet from his back door. He reiterated that the wave action erosion was caused by small shallow waves. He stressed that the neighbors were willing to pay for the erosion control work but added that the neighbors needed help so they could begin the work.

**Laurie Segel**, 1000 Friends of Oregon, said when Management Units were annexed into a city the Management Unit was not changed. She said the uses allowed in the Management Unit were clearly never intended. She said she objected more to the policy amendments than the planning and zone change amendments. She added that there had not been adequate examination of options for stopping the erosion and suggested that the homeowners could be granted a non conforming use of rip rap. She said the City of Florence let people build with too narrow setbacks. She said she had no confidence that changing the

designation would prevent the same type of problem from reoccurring. She said it made more sense to restrict the intensity of housing and the addition of more housing. She added that the Corps of Engineers should be held more accountable for its past actions.

Ms. Segel asked that the record be left open an additional three weeks because staff had not adequately addressed Goal 17. She said Goal 17 expected that a certain percentage of shore land would be preserved and said the amount of shore land was diminished by the management unit designations established by the City of Florence.

**Sylvia Shaw**, 3824 Colony Oaks Drive, Eugene, spoke as a representative of the Oregon Shores Conservation Coalition who are interested in making sure that ocean and shoreline estuaries were cautiously developed. She said her organization recognized the need of the residents but was also asking to leave the record open to examine the impacts of Goals 16 and 17.

**George Binin**, 30 Shoreline Drive, said his home was 90 feet from the edge of the bank and he had lost 15 feet of bank in the previous two years. He noted that there were a lot of concerns about the solution of the problem. He stressed that the reality was that the residents were operating on a tenuous calendar. He said action would have to take place in a window of time because of the NOAA regulations then it would be 2007 before a solution was implemented. He stressed that the erosion was occurring at a rapid rate.

**Jim Hurst**, 4044 Highway 101, said the Statewide resource Goals referred to Pittock clams in the estuary. He said the clam beds were under seven feet of sand. He said if erosion controls were implemented then the clam beds would restore themselves.

Mr. Dignam called for comments from the commission and staff regarding keeping the record open.

Regarding leaving the record open for three weeks, Mr. Carmichael commented that he thought three weeks was too long a period to keep the record open given the urgency of acting in a timely manner.

Mr. Dignam said he would be comfortable with two weeks.

Ms. Arkin said there had not been adequate biological studies and commented that three weeks would allow more time for those studies.

Mr. Zdzienicki said he was in favor of keeping the record open for three weeks.

Ms. Schulz said three weeks would extend the written record to November 22. She said an additional week for response would extend the date to November 29. She said December 6 would allow another week for applicant rebuttal.

Mr. Dignam closed the hearing for spoken testimony.

Ms. Kirkham, seconded by Ms. Arkin, moved to keep the record open for three weeks with the additional times as specified by staff. The motion passed 8:0:1 with Mr. Johnston abstaining.

**II. ORDINANCE NUMBER 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 Exception to Statewide planning Goals 3 and 4 where necessary ; adopting changes in zoning designations to comply with such plan amendments where necessary and adopting a savings and severability clause.  
(Control No. 01-21)**

Planning Staff member Bill Sage provided the staff report. He said 21 staff reports and 36 individual properties were proposed for Plan and Zoning designation amendments (included in Ordinance No. PA 1226 as Control Numbers 01 through 21). The compiling of the candidate sites were a result of the Periodic Review Work Program effort in the Coast Fork Willamette Watershed in 2004-2005. He said two of the twenty one staff reports (No. 01 and No. 20) were written by one consultant and Land Management Division staff drafted the other 19 staff reports. He said this was the fourth watershed to be reviewed by the LCPC for amendments based on the inventories and citizen input during the Periodic Review effort. He said he would wait to answer questions after the two people who were signed up to testify, had spoken.

Ms. Kirkham noted that she had not received the meeting packet and could not take part in tonight's deliberations.

Mr. Dignam called for declarations of conflicts of interest. None were declared.

Mr. Dignam opened the public hearing.

**Robert Castlebury, 86701 Franklin Boulevard, (Verbatim)** I'm opposed to the rezoning of lot 3200 which is across from EPUD. It's kind of a buffer property between the residential strip along Seavy Loop and the industrial area to the south. Just to the west of the EPUD headquarters building and zoned rural residential. And this, as I say, the buffer between residential and industrial. A brief thing about my personal involvement, I own a house just to the north of this parcel. It was a derelict of a house and I worked for a long time making it habitable and have rented it out for a number of years. Had a relatively low rent and people stayed there for years and years. Also I live on Franklin Boulevard just to the north of the strip behind Bring so this is my neighborhood. I've lived there for 25 years and watched what was going on and been involved in things affecting my local community there. Just give a little context with the EPUD property, when they came to us in the mid 80's they were almost an exemplary case of development involving neighbors in what was going on. They invited us to the table, all the neighbors. We went to meetings with the architects. They took very much to heart all our concerns and they located the structures in a way that really showed great respect for our concerns. For example, their maintenance yard, the entrance is off Franklin Boulevard because we said we don't want all this traffic going by in front of all our houses. And they said "OK, we'll make this work. And the parking lot for their employees, they couldn't figure out any other place to put it. They made a commitment to us that their employees would drive around and come in from the south rather than twice a day driving in front of our houses. That was greatly appreciated. When they were going through zoning changes... we felt like they valued our opinions and were a good neighbor to us and we were accepting of the rezoning. With the Crane Manufacturing, I would hope that they would respect the neighborhood but it seemed like from the beginning it seemed like they bought a rural residential property and the first thing they wanted to do was turn it into industrial. And so the first thing they did...there was a well established stream channel through the property and mature riparian woodlands and they logged that all out of there. There were cotton woods two feet in diameter and ash and creek dogwood and willows and they bulldozed all that out and put a

culvert across it and brought in fill and made it look like bare industrial land which it probably is and you probably have pictures in the applications. Then they also, there were three houses on the property, they demolished two of those. In 1996 we had flooding in the area and the culvert they had put across there was not adequate. And I took some photos of flooding across the property and I want to make those available to you. A good size stream running down the middle where the creek used to be... because this drains quite a sizeable area up along College View and the freeway (I-5) and, I think, probably also up on the other side of the freeway partway towards the Oak Hill School in that direction. So I hope that you won't base rezoning on the owner's success in making what was a residential parcel look like a bare industrial plot because, in a way, I think that is encouraging encroachment and the concern I have, from talking to neighbors, is that we don't know what's going to happen across this whole width of this parcel if it is rezoned. I think the neighbors would be accepting of an expanded parking area on the somewhat elevated portion to the south east of the old stream channel which is furthest removed from the residential area but we have definite concerns about the impact on the neighborhood and we expect that, unless they put in a much bigger culvert that flooding is likely to happen there again.

In response to a question from Mr. Zdzienicki regarding what year the land had been cleared, Mr. Castlebury estimated that the work had been done in 1994.

In response to a question from Mr. Zdzienicki regarding whether any industrial development had happened on the property, Mr. Castlebury said there had not.

In response to a question from Mr. Zdzienicki regarding whether the single house left on the property was occupied, Mr. Castlebury confirmed that it was.

Mr. Becker said he did not know the reason why the property was being rezoned to rural industrial.

In response to a question from Ms. Arkin regarding the stream on the property and whether there were any associated wetlands, Mr. Castlebury said it was a seasonal stream and if there were associated wetlands they were now under land fill.

Mr. Sullivan confirmed that the lot owned by Mr. Castlebury was adjacent to the parcel proposed for rezoning.

Mr. Sage said his recommendation was to pull the Crane Manufacturing (Minnis) property from the Ordinance and give staff an opportunity to coordinate discussions between the neighborhood residents and the owners of Crane Manufacturing and to talk about issues raised. He said that if there was consensus between Crane Manufacturing and the neighborhood residents on resolving the issues then that particular application could be brought back in January/February with the Middle Fork Willamette ordinance. He said he did not desire to have properties that were contested included in the Ordinance. He said under the Periodic Review related applications, when an application proved to be controversial then it should be dealt with in another fashion through discussion and mitigation. He said he would inform the Crane Manufacturing owners and report back to the LCPC on the results.

Laurie Segel, 1000 friends of Oregon, (Verbatim) I haven't had this packet for as long as you and I would like to request a continuance of three weeks so I have time to go over individual properties, but I have some general comments. I want to state first that this is an action that is not pursuant to periodic review. Although, the idea for this arose from periodic review work tasks, this legislative rezoning, which is more

than rezoning because its plan designation and rezoning, is not required by the State. I'm going to pose questions that some of you might have yourselves and then you might be able to ask of staff. I really don't... To me, this looks like a free ticket to intensification of rural Lane County. You have properties that have histories of conditional use permits or legal non-conforming use permits or, maybe in some cases, special use permits and so they have been able to legally, within the parameters of the code, intensify their rural residential uses for the most part, to a higher level than just a residence and a shed on a five acre or two acre rural residential site. Now, many of these properties, and its not clear to me whether in conjunction with some of them, there's actually owners wanting to do something, but that looks to be the case, based on some of the language in the document, so they want a more intense plan designation that will allow further intensification of rural Lane County. So, ... For instance Blue Tower, they had a history, the first property, they had a history of building permits and conditional use permits and they've been allowed to put all these structures, with parameters and compliance with specific criteria onto their site, well now they want to do things that aren't allowed there so Bill is offering them a free zone change. I don't understand it. Lane County planning is dependant on planning and development fees for running its agency, its shop. I do not understand why the County would be giving away zone changes. I feel that, for instance, if Blue Tower wants commercial instead of residential, they come in and they go through the full zone change and plan designation process which requires a full review of the applicable criteria for a zone change. This packet doesn't do that. The other thing I wanted to mention is that, in developed and committed exception areas an exception was already in the early 80's when the comprehensive plan was adopted, to allow uses that were non-resource uses so when you hear developed and committed exception area and you see lots of residential properties, rural residential properties, that action that established this as exception area allowed that higher level of intense use allowed in a rural residential area as compared to in resource areas, farms and forest lands. So in order to go, now, from let's say from a rural residential to a rural industrial or rural commercial that requires another exception. Although staff does address exceptions with...in many of these properties, taking other exceptions, very weak substantive basis for many of these proposals. So...there...I've only had a chance to look at about seven of the 21 or however number of properties there are. Some of them seem generally... they make a lot of sense. Rural public facilities in the City of Creswell for waste water sites that makes a lot of sense, but when you're about going from rural residential to rural industrial or rural residential to rural commercial just because there's been things done on the property such as a industrial type junkyard with heavy equipment material in the F2 zone... lets take that quarter acre or so and make it rural industrial. Well it's in the greenway. Why would we do that. They shouldn't have done what they did so why should we then give them a the...a bonus. I kind of agree with the gentlemen who spoke before me. Its kind of like negative things have been done in some cases and in some cases they have been done legally ... and there so..they maybe...they might be perceived as negative but they've been done legally. But to.. to say that that's not enough I want more ..OK.. we'll just give you a zone change and you don't have to come in and go through a full review of criteria and pay the cost for staff time to really review this properly ... I don't understand it and I do not think it's a good idea. And the last thing I'd like to say..and thank you for allowing me the time to speak, is that, just because this is the fourth time this has been done, in other words this is the fourth watershed, that doesn't mean it's the right thing to do. There's not very many people who can understand this. I'm sure...I cannot believe that many of you sitting around this table tonight fully grasp what this is because I spent many hours on it and I know that all of you have to spend more time than me but its hard to find the time. This is very complex and makes some very significant changes so, again, I'm requesting a continuance. I'd like three extra weeks for the record to remain open. Thank you.

Mr. Dignam closed the hearing for oral testimony.

Mr. Zdzenicki, seconded by Ms. Arkin, moved to extend the record for three weeks.

Mr. Sullivan commented that he wanted to keep things moving forward. He suggested two weeks would be enough time. He said if three weeks were granted it would be two commission meetings before deliberation would take place.

Ms. Nichols added that the issue was not quite as pressing as property owners waiting to see if they would protect their property.

Mr. Dignam said a three week extension would be grinding the wheels of the County administration to a halt. He said he would support a one week extension.

Mr. Zdzenicki said, as of that time, he was only prepared to vote on one of the 21 applications. He said he needed more time to review the applications as well.

In response to a question from Mr. Johnson regarding whether any of the applications were time sensitive, Mr. Sage, acknowledging that he did not know the aspirations or immediate goals of the property owners, said none of the 21 applications were time sensitive. He noted that commission was required to grant a continuance when requested but added that it could set the time it desired. He said, however, that when a time was set, more information would come into the record and a second period of time would be required to address that material and in the case of opposing a particular application then the property owners would have to be notified and a response prepared.

Mr. Dignam said the record could be left open for written comments until November 22, with an opportunity until November 29, for further comment and final rebuttal on December 6.

The motion passed 6:3 with commissioners Johnston, Sullivan and Dignam voting in opposition.

Mr. Sage noted that the first available date for deliberations was December 20.

Ms. Kirkham, seconded by Mr. Zdzenicki, moved to have deliberations on the matter at 5:30 p.m. on December 20, 2005. The motion passed unanimously.

The meeting adjourned at 9:30 pm.

(Recorded by Joe Sams)

ORDINANCE No  
1226

## MINUTES

Lane County Planning Commission  
Harris Hall - Lane County Courthouse

January 10, 2006  
5:30 p.m.

PRESENT: Lisa Arkin, Ed Becker, Todd Johnston, James Carmichael, John Sullivan, Nancy Nichols, Jozeph Zdzienicki, Lane County Planning Commission members; Kent Howe, Bill Sage Staff

ABSENT: Juanita Kirkham, Steve Dignam

Commission Vice Chair James Carmichael convened the work session at 5:35 pm. He called for public comment on issues not on the agenda that evening. Seeing no one wishing to speak he moved on to the first item on the agenda.

**I. Deliberations: 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.**

Associate Planner Bill Sage said he had been having discussions with County Legal Counsel regarding the periodic review process pertaining to the potential for appeal of decisions on subject properties relating to current Lane Code division standards for the Rural Commercial, Rural Industrial, and Rural Public Facility zone. He said the record included a preliminary challenge submitted by the Goal One Coalition based on the Land Use Board of Appeals (LUBA) opinion in 2002 on *Doty vs. Coos County*. He said he had discussed it with Coos County, Oregon Department of Land Conservation and Development (DLCD), and local attorneys who participated in the case at LUBA and the Court of Appeals over the LUBA remarks concerning the need for a "single numeric minimum lot size" for a property proposed for rezoning to "Recreation" in a developed & committed exception area subject to OAR 660-004-0018(2).

Mr. Sage called attention to the written staff report in the meeting packet which contained a chronological listing of all Periodic Review Work Program ordinances adopted by Lane County and acknowledgment orders by DLCD for the five watersheds and implementing Lane Code provision. He said the analysis and accompanying exhibits were assembled to provide a background of information, on the record, in the event that the LCPC and Board's actions included a policy decision to defend the current "Area" division criterion under an appeal.

Mr. Sage outlined the language in OAR 660-04-18(2) Goal Two Exceptions Process and OAR 660-004-022 Unincorporated Community Rule. He said the division standards in the two rules were written in different manners. He noted that OAR 660-004-0018(2) had language requiring a single numeric minimum lot size for division of land in the residential, commercial, industrial, and public facility zones. He outlined legal arguments made by the Goal One Coalition regarding that requirement.



Mr. Sage said the County had two optional policy issues that required review and recommendations from the LCPC to the Board of County Commissioners before the LCPC could deliberate on the merits of 27 of the individual 36 properties contained in Ordinance No. PA 1226:

1. Were the adopted and acknowledged LC 16.291 (Rural Commercial - RC), LC 16.292 (Rural Industrial - RI) and LC 16.294 (Rural Public Facility - RPF) in compliance with Goal 14 and the implementing OARs; and
2. If not, what avenue of review and amendment process for establishing a numeric minimum lot size in the RC, RI and RPF did the Planning Commission support.

Mr. Sage and Mr. Howe outlined the policy choices as:

1. Establish a local work group to make recommendations to the LCPC and Board of Commissioners on the appropriate minimum lot sizes for the three zoning designations and in turn, amend LC 16.291, LC 16.292 and LC 16.294 accordingly. This strategy would require the County to fund staffing of the local task force, pay notification expenses for Ballot Measure 56, and offered some potential exposure for BM 37 claims by current property owners due to more restrictive division standards.
2. Support DLCD in a rulemaking effort to make amendments to OAR 660-004-0018(2) to bring them in line with the policy and language of OAR 660-022 Unincorporated Community Rule, so that there was one standard or criterion for the three land uses both inside and outside unincorporated communities in rural areas of the State. The County would in turn implement the state regulations at the local level and pass BM 56 expenses back to DLCD for reimbursement and have less exposure under BM 37.
3. Do nothing concerning amending the RC, RI and RPF "area" requirements. This could result in two actions under the assumption that an appeal to LUBA would result if amendments were approved in D&C areas:
  - A. Place on hold all pending Ordinance No. PA 1226 plan amendments/zone changes for properties located outside unincorporated communities for rezoning to either RC, RI or RPF within the Coast Fork Willamette Watershed (27 of 36 properties), and cease processing any plan amendments for properties located outside unincorporated communities for rezoning to either RC, RI or RPF within the Middle Fork Willamette Watershed (approximately 35 of 47 properties).

The County could still process amendments for properties within the 35 unincorporated communities of Lane County but not in the other estimated 95 developed & committed exception areas with RC, RI or RPF zoned properties, without the threat of appeal to LUBA.

- B. Result in private property owners being unable to apply for individual plan amendments/zone changes for an individual property to either RC, RI or RPF, if the property was in one of the estimated 95 developed & committed exception areas outside the 35 unincorporated community boundaries, without the threat of appeal to LUBA.
4. Proceed with Ordinance No. PA 1226 and defend the current "Area" criterion in LC 16.291, LC 16.292 and LC 16.294 under appeal to LUBA.

Mr. Sage said the underlying considerations when reviewing the options above, included the requirements of Ballot Measure 56 and the potential for Ballot Measure 37 claims. Ballot Measure 56 required that notice be provided to all property owners with properties in any of the three zoning designations. If Lane County initiated the code amendment process, it would be responsible for the notification expenses. If the State through DLCDC initiated the rule making then the implementation of the rule amendments would be implemented at the local level but the notice expenses would be passed through to DLCDC for reimbursement. He said any decision to change the division criterion from "carrying capacity" to a standard with a specific acreage or square footage standard would potentially affect every commercial, industrial, and public facility property in the rural lands of Lane County. He said the LCPC needed to consider that there could be some exposure for Ballot Measure 37 claims for any of the affected properties if the property owner(s) found the numeric standard to be more restrictive than the prior criterion and limited the division including future land uses.

Mr. Sage said that the current "carrying capacity" criterion in the RC, RI and RPF codes were adopted and acknowledged in 2003 as being in compliance with Goal 14. As such, no revisions were required if the only application of the codes was for existing properties currently in one of the three designations. The issue of compliance with OAR 660-004-0018(2) was only applicable when a property owner sought to amend the plan diagram and zoning diagram for property that was outside an unincorporated community to one of the three new designations. The plan amendment process triggered the need for the implementing code language to be in compliance with OAR 660-004-0018(2). If not, the proposed amendment could be challenged on the basis of the lack of a "single numeric minimum lot size" in the requested designation as was articulated in *Doty vs. Coos County*.

He requested that LCPC forward a recommendation to the Board of Commissioners on the policy options based on the substantive factors in the staff report as a prelude to the individual recommendations on the proposed plan and zoning amendments.

Mr. Sage said the LCPC would be deliberating on the merits of the 21 staff reports addressing a total of 36 properties. He said Exhibit "B" in the supplemental staff report to LCPC contained a list of all the subject properties with acreage, the current plan and zoning designations and the proposed plan and zoning designations. Twenty-seven of the 36 properties were for amendments to one of the three zoning designations (RC, RI, and RPF).

In response to a question from Commission member Lisa Arkin regarding minimum lot sizes, Mr. Sage said determining a minimum lot size was different for a proposed commercial or industrial use than it was for a residential use. Mr. Sage said residential use could be set on an acreage basis to reflect the density, number of residences per acreage (2, 5, 10), that was still rural in nature. He said commercial and industrial uses involved many more considerations including the intensity of the use and the potential impacts to groundwater resources and a soil's capability to absorb waste byproducts. He said dividing a property in an industrial zone was more complicated since there was always a question of what was an economically viable property until the intensity of the proposed use was ultimately identified.

In response to a question from Commission member Jozef Zdzenicki regarding the definition of Measure 56, Mr. Sage said the measure stated that any time an amendment was considered to a land use regulation whether it be locally driven or mandated by a statewide action as in an amendment to an Oregon Administrative Rule, the County is required to give notice to all property owners who could be affected by that action and let them know that the County would be holding public hearings prior to adopting an

amendment at the local level. The specific language of the BM56 notice makes reference to the potential for “limiting the use” or “affecting the value” of privately owned property in the specific designation because of the proposed change in the regulations.

Mr. Zdzenicki noted that the County was the one notifying property owners rather than the State. He said he did not understand why the County was not getting paid by the State for providing the notification. Mr. Sage said the State was only responsible for the costs of notification if the proposed amendment was mandated by the State’s action. In those instances the State reimbursed the local government(s) for the costs. Mr. Sage said the County had received annual grants in 2000 – 2003 from Video Lottery revenue dollars to fund Periodic Review work that paid for the original adoption of the Lane Code provisions.

In response to a question from Mr. Carmichael regarding the specific staff recommendation, Mr. Sage said in light of the challenge based on code language, he was recommending a series of motions to approve or deny the proposed amendments and one LCPC recommendation addressing the more encompassing policy issue.

In response to a question from Mr. Carmichael regarding parcel size and whether there should be a motion recommending minimum parcel sizes and whether those parcel sizes were zone specific, Mr. Sage said if the commission decided that all the amendments could be approved then it would also have to make a recommendation to the Board of County Commissioners regarding how the decision could be defended in the case of an appeal. That could be either to put the affected amendments on hold until the policy issue was settled or to defend the current policy and code language in the anticipated appeal of the individual actions.

In response to a question from Mr. Carmichael regarding what other counties had done to address similar issues, Mr. Sage said he did not know of any other county other than Coos County that had been challenged on this issue. He said the issue would not occur unless another county was processing a post-acknowledgement plan amendment to a zoning designation that did not have a single minimum lot size and a private party or special interest group sought to challenge the underlying code language in an appeal process.

In response to a question from Mr. Carmichael regarding what would happen if the planning commission took no action, Mr. Sage said if the commission did nothing then staff would be obliged to take the ordinance on to the Board without their recommendation.

Commission member John Sullivan said that to take action on each of the individual properties would be an exercise that did not get anything done for citizens of the County. He stressed the importance of the parcel size issue but noted that he needed more information before he could effectively deliberate. He added that not taking any action would stop the next set of amendments that staff wanted to bring before the planning commission.

In response to a question from Mr. Zdzenicki regarding what impacts had happened in Coos County after the adoption of minimum lot sizes, Mr. Sage said Coos County had amended their “Recreation” zone regulations and set a 2-acre minimum lot size in that specific zone and he did not know of any challenge from property owners with lands in that zoning designation because of the minimum lot size established.

Mr. Zdzienicki said he had major objections to some of the zoning amendments on the list provided by staff. He said policy questions would arise from the situations of individual properties.

Commission member Ed Becker questioned the reason the county was bundling a number of zone changes into one action. He said he was more concerned over the staff recommended process than the parcels to be rezoned. He opined that the people owning the parcels should be interested enough to get any flaws in their zoning taken care on their own by filing an application with the County.

Ms. Arkin also questioned the method of bundling a number of zone change amendments together for a single action. She said she had many questions over pre-existing uses. She also questioned why existing uses in some cases were called errors and in other cases were called non-conforming uses that needed a conditional use permit. She said there were some amendments that the commission could come to a decision on that evening but stressed that others needed to be 'put on hold' until more information could be gathered.

Mr. Carmichael said the comments from the Goal One Coalition were that the process should not have been done in the first place. He noted that there had not been a lot of concern from neighbors of the properties with zoning to be amended. He added that that the process of bundling zoning amendments had been done before in three other watersheds. He said he was not ready for writing a policy on minimum lot sizes because many Lane County properties were already a defined size. He said he would need more information from staff before he was ready to write a recommended policy.

In response to a question from Mr. Zdzienicki regarding existing property uses in the County and the reason why a nonconforming use permit could not be used, Mr. Sage said staff had reviewed every developed and committed exception area in each of the five watersheds and determined where industrial, commercial, and public facility uses were located on properties that did not provide for the type or intensity of the use. He said this was accomplished through the required site-by-site inventory in the Periodic Review work tasks and primarily to determine if errors were made in the original zoning of properties in 1984. He said the County Commissioners had embraced the policy in its original rezoning of properties in the McKenzie, Siuslaw and Long Tom watersheds and implemented it through the post-acknowledgement amendment process.

Mr. Becker suggested taking action on the policy issue and then moving forward. He raised concern that, while the County had the best intentions for clearing up past errors in zoning, people would use the amendment process to get rezoning done without filing an application.

Commission member Nancy Nichols suggested that the commission could pass the amendments that did not have any apparent issues and hold the rest for further examination or outright denial.

Planning Director Kent Howe said the commission had the option to take no action, leave the code as it was and place the amendments on hold. He said the pros for that would be that no work program would have to be created, there would be no additional administrative costs, there would be no Measure 37 issues, and DLCDD could be allowed to fix the problem. He said the con was that the process for the final two watersheds would be on hold without any commitment to date from the State to amend the OAR.

Mr. Carmichael called for straw votes on the amendments listed in the staff report to see if commission members had issues or questions that needed to be addressed. He said he had no issues with any of the amendments.

After the straw poll it was established that there were no objections to numbers 2, 3, 5, 6, 8, 9, 12, 13, 14, 16, 17 and 18 on the list of amendments.

Ms. Arkin said her perception was that those numbers were zone changes that could put on hold and be approved after DLCDC had changed the State regulations as mentioned by Mr. Howe.

Mr. Carmichael said his intention was to make a recommendation of passing the items since there were no apparent issues.

Ms. Nichols noted that there were some amendments on the list that the commission would not approve in any event. She said those applicants should be notified as soon as possible and not be 'put on hold.' She said it would not be fair to put them on hold if the commission already knew they would not be approved.

Mr. Carmichael suggested the message to the Board of Commissioners could be that there was a list of amendments that the planning commission had no issues with. He added that the Board of Commissioners could be notified at the same time that the planning commission saw a potential problem with the policy decision that was made. He said he was not in favor of putting the amendments on indefinite hold.

Mr. Sage said he was not certain that LCDC would create a task force to address the issue. He added he was uncertain that the proposed amendments were an issue that LCDC would be willing to undertake. He stressed that the County had no control over what was done at the DLCDC level. He said if no recommendation went forward to the Board of Commissioners to approve then there was no reason for the board to act on the policy issue. He said if there were recommendations of approval/denial sent forward then there would be consideration by the Board of Commissioners. He said something needed to be sent forward so the Board of Commissioners could make a policy decision. He suggested that the Planning Commission forward a recommendation to approve amendments with the caveat that the Board of Commissioners address the policy issue. He said if the Board elected the local option, the County could create its own task force to address the issue.

Ms. Arkin said the Planning Commission could forward a recommendation to deny the amendments or identify those amendments that the commission would approve with the recommendation that the Board of Commissioners address the policy issue.

Mr. Carmichael said he was in favor of sending the Board of Commissioners a list of the amendments that could be approved with an addendum to the motion that gave the Board of Commissioners some recommendations on policy direction.

Mr. Zdzienicki said there was the option of putting the whole process on hold until LCDC addressed the issue. He said there was also the option of creating a County task force which would also put the process on hold but would address the issue on a local level. He added that if a local task force were created then it would be counter productive to approve any of the amendments since the task force work program could come up with something contrary.

Mr. Sullivan questioned whether the Planning Commission should want to address the proposed zoning amendments that it did not feel should be approved.

Ms. Nichols reiterated that those issues should be addressed since the owners should know if their proposed zone change would not be approved.

Mr. Johnston said the commission had an obligation to process applications and provide answers as quickly as it could but noted that during the public hearing none of the applicants had shown up to testify and there had been almost no opposing testimony. He said there was a risk with doing nothing and having a potential Land Use Board of Appeals case, or taking the time to eliminate the risk of having a decision go to the Land Use Board of Appeals. He said unless there was some sort of obligation to get the amendments done quickly then there was no reason to accept the risk or the cost at the current time.

Mr. Sage said every application should have a timely decision rendered back to the property owner. He said there were a number of applicants who were waiting on a decision and the commission needed to provide them with some answer. He added that there was notice provided to all the surrounding properties about the public hearing that had been held and those property owners were waiting for a decision from the Planning Commission. He said the Board would look at the recommendations for denial or approval of the zoning amendment applications and would review any policy recommendation that the planning commission forwarded to them. He said this would at least give some answer to the applicants regarding whether their applications were approved, on hold or denied. He stressed the importance of giving the applicants some certainty.

Mr. Carmichael suggested going through each of the applications, having a vote and giving any opposing votes a chance to state for the record their reason for voting against the application. He said the process, as a whole, was suspect to him because people were getting plan amendment zone changes for no cost.

In response to a question from Ms. Nichols regarding why C-5 and C-10 zones could be restricted to current use but not the other changes from residential to commercial C-1, C-4, C-9, C-19, C-20, and C-21, Mr. Sage said that a condition could be imposed on each of the zones that they be restricted to current uses if the planning commission directed to do so. He said the properties would then have to file a separate plan amendment to have another use on the property in the future.

Mr. Zdzienicki said he would vote against all of the amendments because he was not in favor of the process being used. He said he would vote for number 18 on the list because it was covered by State law.

1. Blue Tower Art Foundation -

Mr. Sage said multiple uses were being planned for the property. He said the property wanted to have a school on the property but also wanted to have guest artists, dancers, potters, a theater where dance recitals could be held, and public galleries to sell art products produced on the property. He said schools were allowed in a rural commercial zone but commercial activities were not allowed in a rural residential zone. To combine a school with retail sales or public performances, the compatible zone was rural commercial.

Ms. Nichols said she would vote against the amendment because the property would not be restricted to its current use.

Ms. Arkin said she would vote against the amendment because it was proposing new and expanding uses. She said she had no objection to what was desired for the property but stressed that the proposal was for a completely new use and should go through the proper application procedure for a plan amendment. She said she did not know why the proposed amendment was even on the list.

Vote: The proposed plan amendment was denied by a vote of 6:1 with Mr. Carmichael voting in favor.

2. London Grange

Vote: The proposed plan amendment was approved by a vote of 6:1 with Mr. Zdzienicki voting in opposition.

3. Skinner

Vote: The proposed plan amendment was approved 6:1 with Mr. Zdzienicki voting in opposition.

4. Maddox Cabinetry Shop

Vote: The proposed plan amendment passed 6:1 with the caveat that the property was restricted to its current use. Mr. Zdzienicki voted in opposition.

5. Simons – Wagon Wheel Feed and Seed

Vote: The proposed plan amendment passed 6:1 with the property restricted to current use. Mr. Zdzienicki voted in opposition.

6. South Lane RFPD, Mitchell and Rhodes

Mr. Sage noted that the expansion of the rural community of Saginaw was being pulled from the application. (Line Item number One in the application).

Vote: The proposed plan amendments without the change in community boundaries passed 6:1 with Mr. Zdzienicki voting in opposition.

7. Emerald PUD

Vote: The proposed plan amendment passed 6:1 with Mr. Zdzienicki voting in opposition.

8. Doyles (Harley-Davidson)

Vote: The proposed plan amendment passed 6:1 with Mr. Zdzienicki voting in opposition.

9. Brooks (Auto Doctor)

Vote: The proposed plan amendment passed 6:1 with Mr. Zdzienicki voting in opposition.

10. Jackson-Crawford (Sisters View)

Ms. Nichols said she wanted to restrict the land to its current use.

Ms. Arkin commented that the use was residential and not commercial and the applicant wanted to justify the request by saying they wanted to make repairs. She said she did not see the application as legitimate

Vote: The plan amendment passed 4:3 with Mr. Zdzienicki, Ms. Arkin and Ms. Nichols voting in opposition.

11. Nash Enterprises

Ms. Nichols said the proposed plan amendment was a whole new use for the property. She said the property owner could apply for a zone change but there was no error or zoning correction to address.

Ms. Arkin raised concern over dirty water runoff into the nearby river. She said there was truck parking and maintenance equipment on the site and there was nothing on the property to catch oil and other pollutants. She added that the applicant was proposing a new developed and committed and exception area.

Mr. Sullivan said he agreed with the environmental issue. He questioned whether staff had any plan for the property to be regulated.

Mr. Sage said the original use was a forest and farm operation but noted that the use had gradually changed to a wider degree of industrial equipment sales. He said staff had thought it was prudent to change the zoning to industrial since that was the current use.

Ms. Nichols said the property owner should pay for the standard zone change process.

Ms. Arkin agreed and said that would make it possible for County staff to scrutinize potential water runoff issues on the property.

Mr. Becker said a strong statement should be made to the property owner to bring the property into compliance with code. He said he could not understand why the County would knowingly recommend passage of a zone change that had such potential for environmental damage.

Vote: The proposed plan amendment was unanimously denied.

12. Wilson Revocable Trust

Vote: The proposed plan amendment passed 6:1 with Mr. Zdzienicki voting in opposition.

13. City of Creswell

Vote: The proposed plan amendment passed 6:1 with Mr. Zdzienicki voting in opposition.

14. Lane Electric Co-op



Vote: The proposed plan amendment passed 6:1 with Mr. Zdzienicki voting in opposition.

15. Blue Mountain School

Vote: The proposed plan amendment passed 6:1 with Mr. Zdzienicki voting in opposition.

16. Lane Electric Co-op & Qwest Corporation

Vote: The proposed plan amendment passed 6:1 with Mr. Zdzienicki voting in opposition.

17. Chrestman

Vote: The proposed plan amendment passed 6:1 with Mr. Zdzienicki voting in opposition.

18. Sandland, Oregon DSL and McNutt

Vote: The proposed plan amendment passed unanimously.

19. Baldwin

Ms. Nichols said the zoning was not created until 1993 so there was no error created by the initial zoning. She said the proposed plan amendment would be a no cost zone change.

Mr. Johnston noted that all of the surrounding properties were zoned residential.

Mr. Sage said the applicant owned four properties. He said there was one 'strip' parallel to Row River Road that was approximately 70 feet deep that was zoned rural commercial. He said the gymnasium of the old Disston Elementary School facility for District #25 was located north of that strip and the request was to expand the rural commercial zone to include the old, existing school structure.

Vote: The plan amendment was denied 4:3 with Mr. Carmichael, Mr. Sullivan and Mr. Johnston voting in favor.

20. Bessett

Vote: The proposed plan amendment, restricted to current use, passed 6:1 with Mr. Zdzienicki voting in opposition.

21. Nordall

Ms. Nichols questioned why the application was even included in the list. She noted that there was no hint of a pre-existing use, it was not in the watershed being discussed, it adjoined a high value estuary, and was currently under water. She said the matter should not be 'slipped in' under errors and omissions.

Ms. Arkin suggested that the commission recommend that the County should inspect the property for code compliance, environmental issues, and natural resource issues.

Vote: The proposed plan amendment was denied unanimously.

Mr. Carmichael called for a motion to address the policy issues.

Mr. Zdzenicki said he was in favor of creating a County task force to work on the policy issue. He said the policy discussion should be started at the local level. He opined that the matter was beyond the expertise of the planning commission.

In response to a question from Mr. Johnston regarding when a LCDC task force would be created, Mr. Sage said there had been a Commercial and Industrial Lands Task Force that had been mothballed in 2004. He noted that the Counties had not participated on that Task Force and it had been established to address economic development issues. He said there would be an attempt to revive the LCDC task force in February and DLCD staff would discuss whether or not to recommend that the OAR minimum lot size issue in commercial and industrial zones be on the agenda, but noted that the economy would be a factor in whether or not the item was included on a work plan. He said there were a lot of things the state intended to do that did not get done for various reasons including priorities for project funding.

Mr. Johnston said there was no reason to believe that the State would address the issue in February or shortly thereafter.

Mr. Sage agreed but said the preferable method would be for the State to address the issue so all of the counties would have the issue resolved under statewide guidelines.

In response to a question from Mr. Carmichael regarding how a local task force would work, Mr. Sage said if the Planning Commission made the recommendation in its annual report as well as forwarded a recommendation of the issue that evening, then the Board of Commissioners would consider whether a task force would be funded. He said if the Board of Commissioners decided to fund the task force it would direct staff to create a base of information. He said after the task force completed their analysis and recommendations, there would then be a work session at the planning commission level, a public hearing process to solicit public input, and then the LCPC would submit a recommendation to the Board of Commissioners.

Mr. Sullivan stressed that whatever recommendation was made to the Board of Commissioners it should not be tied to periodic review.

In response to a question from Mr. Zdzenicki regarding whether a task force would have any influence on the state process, Mr. Sage said the data could be used by the state to stimulate a policy discussion and guide rule amendments.

Mr. Carmichael said he agreed with Mr. Zdzenicki. He stressed the importance of a recommendation to the Board of Commissioners to budget funding for creating a task force.

Mr. Sullivan suggested a recommendation to the Board of Commissioners to direct the Land Management Division to address the issues regarding the Land Use Board of Appeals interpretation of OAR 600-004-0018(2) and its effect on the Lane County Periodic Review process. He suggested a second motion to recommend that the Board of County Commissioners to direct that a work program be undertaken by the

Land Management Division, with sufficient funding dedicated to the project, to resolve the issues of OAR 600-004-0018(2) as it pertained to Lane County.

Mr. Becker raised concern that there would not be enough funding or time to do the work. He added his concern that there would be potential Ballot Measure 37 issues. He said would rather see the State address the issue so there would be political cover at a higher level. He said a local program would likely be challenged and added that county staff would have limited time to work on the issue.

Mr. Carmichael agreed but commented that the community was better off if it took charge of its own issues. He said he would rather see Lane County take the lead on the issue.

Ms. Sullivan commented that the planning commission had no control over Measure 37, LCDC, or the Land Use Board of Appeals. He said his idea was to hold elected officials accountable for local responsibility on the matter.

Planning Director Howe said he was not certain the Board of Commissioners would not adopt minimum parcel sizes because of Ballot Measure 37 concerns so the work done by a task force may not accomplish anything. He added that DLCD could decide that minimum parcel sizes were not needed.

Mr. Sullivan, seconded by Mr. Johnston, moved to:

1. Recommend that the issue be framed by the Land Management Division.
2. Recommend that Board of Commissioners direct the Land Management Division and the Planning Commission to resolve the issues around the interpretation of OAR 600-004-0018(2)

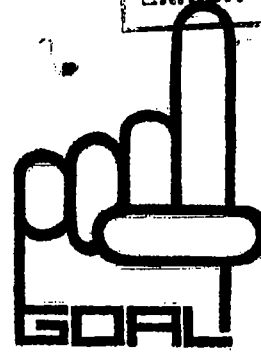
The motion passed 6:1 with Mr. Becker voting in opposition.

The work session adjourned at 8:30 pm.  
(Recorded by Joe Sams)

**GOAL ONE COALITION**

REC'D NOV 21 2005

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November 14, 2005

Lane County Planning Commission  
125 East 8<sup>th</sup> Avenue  
Eugene, OR97401

**RE: Ordinance No. PA 1226, Amendments to the Rural Comprehensive Plan**

Dear Members of the Commission:

The Goal One Coalition (Goal One) is a nonprofit organization whose mission is to provide assistance and support to Oregonians in matters affecting their communities. Goal One is appearing in these proceedings at the request of and on behalf of its membership residing in Lane County. This testimony is presented on behalf of LandWatch Lane County and its membership in Lane County, the Goal One Coalition, and Jim Just as an individual.

**I. INTRODUCTION**

This proposal is for plan amendments and zone changes for 21 properties in the Coast Fork Willamette watershed and other portions of rural Lane County, and exceptions to Statewide Planning Goals 3 and 4 where necessary. The Staff Report states: "This is the fourth watershed to be considered for legislative plan amendments based on the discovery process during the Periodic Review Work Program."

The Staff Report is not correct in categorizing the proposed amendments as "legislative." While the amendments appear to have been initiated by the county without any application fee being assessed to the property owners, and while the 21 amendments are bundled together for processing, those facts do not make the amendments "legislative." There are three factors to be considered in determining whether a decision is "legislative" or "quasi-judicial": 1) whether the decision maker is bound to make a decision; 2) whether the local government is bound to apply pre-existing criteria to concrete facts; and 3) whether the action is directed at a closely circumscribed factual situation or a relatively small number of persons. *Strawberry Hill 4-Wheelers v. Benton Co. Bd. Of Comm.*, 287 Or 591, 601 P2d 769 (1979). All three factors would, in PA 1226, lead to the conclusion that the decision is quasi-judicial. The fact that 21 distinct and separate applications are bundled together does not change the fact that each of them is directed at a closely circumscribed factual situation and a relatively small number of persons. And while it may be true that the applications may be withdrawn, that is true of any application. The fact that it is nominally the county that is the "applicant" in PA

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1226, the fact is that in most of the 21 applications the application has actually been submitted on behalf of and for the benefit of individual applicants rather than the county's population as a whole.

### II. APPLICABLE CRITERIA

LC 16.400(1) authorizes modification of the plan to reflect changing circumstances and conditions as well as to correct errors and oversights. LC 16.400(8)(a) defines minor and major amendments. LC 16.400(8)(b) allows for major or minor amendment proposals to be initiated by the County or by individual application. Only individual applications are subject to a fee.

It appears that the proposed amendments are "minor amendments," which are defined by LC 16.400(8)(a)(i) as:

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

Criteria for minor amendments are established by LC 16.400(6)(h)(iii):

- "(aa) For Major and Minor Amendments as defined in LC 16.400(8)(a) below, the Plan component or amendment meets all applicable requirements of local and state law, including Statewide Planning Goals and Oregon Administrative Rules.
- "(bb) For Major and Minor Amendments as defined in LC 16.400(8)(a) below, the Plan amendment or component is:
  - "(i-i) necessary to correct an identified error in the application of the Plan; or
  - "(ii-ii) necessary to fulfill an identified public or community need for the intended result of the component or amendment; or
  - "(iii-iii) necessary to comply with the mandate of local, state or federal policy or law; or
  - "(iv-iv) necessary to provide for the implementation of adopted Plan policy or elements; or
  - "(v-v) otherwise deemed by the Board, for reasons briefly set forth in its decision, to be desirable, appropriate or proper.
- "(cc) For Minor Amendments as defined in LC 16.400(8)(a) below, the Plan amendment or component does not conflict with adopted Policies of the Rural Comprehensive Plan, and if possible, achieves policy support.
- "(dd) For Minor Amendments as defined in LC 16.400(8)(a) below, the Plan amendment or component is compatible with the existing structure of the Rural Comprehensive Plan, and is consistent with the unamended portions or elements of the Plan."

LC 16.400(6)(i) authorizes concurrent consideration of implementing zone changes:

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"A change of zoning to implement a proposed Plan amendment may be considered concurrently with such amendment. In such case, the Board shall also make the final zone change decision, and the Hearings Official's consideration need not occur."

PA 1226 cannot be approved without careful consideration of each of the 21 separate proposed changes. A determination must be made that each of the 21 proposals complies with the applicable criteria.

### III. REVIEW OF PROPOSED PLAN AMENDMENTS AND ZONE CHANGES

Most of the proposed amendments concern plan amendments and zone changes within existing exception areas. One (C-1) would create a new exception area. Following this general assessment, each individual application will be addressed in turn.

A change in zoning or the uses allowed on land that is already subject to an irrevocably committed or physically developed exception does not require a new exception to goals 3 or 4. *Friends of Yamhill County v. Yamhill County*, 41 Or LUBA 247 (2002). However, the county must apply OAR 660-004-0018. *Doty v. Coos County*, 42 Or LUBA 103 (2002).

OAR 660-004-0018 provides, in relevant part.

(2) For "physically developed" and "irrevocably committed" exceptions to goals, plan and zone designations shall authorize a single numeric minimum lot size and shall limit uses, density, and public facilities and services to those:

(a) Which are the same as the existing land uses on the exception site;

(b) Which meet the following requirements:

(A) The rural uses, density, and public facilities and services will maintain the land as "Rural Land" as defined by the goals and are consistent with all other applicable Goal requirements; and

(B) The rural uses, density, and public facilities and services will not commit adjacent or nearby resource land to nonresource use as defined in OAR 660-004-0028; and

(C) The rural uses, density, and public facilities and services are compatible with adjacent or nearby resource uses; or

(c) The uses, density, and public facilities and services are consistent with OAR 660-022-0030, "Planning and Zoning of Unincorporated Communities", if applicable.

(3) Uses, density, and public facilities and services not meeting section (2) of this rule may be approved only under provisions for a reasons exception as outlined in section (4) of the rule and OAR 660-004-0020 through 660-004-0022.

A common thread of argument can be seen to run through nearly all of the proposed amendments: there is existing development that seeks to grow or expand, that growth or

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expansion is not possible under the existing planning and zoning designations resulting from the previously approved exception, and that the requested planning and zoning designations is compatible with the surrounding area.

The objections to those arguments likewise are similar in nearly all of the proposals:

1. OAR 660-004-0018(2) requires that any zoning designation applied authorize a single numeric minimum lot size. None of the requested zoning designations impose a single numeric minimum lot size. *Doty v. Coos County*, 42 Or LUBA 103, 115 (2002).
2. OAR 660-004-0018(2)(a) allows uses “[w]hich are the same as the existing land uses on the exception site.” The uses which would be allowed by the amendments aren’t the same as the existing land uses on the exception site; otherwise, the amendments wouldn’t be necessary. Therefore compliance with OAR 660-004-0018(2)(a) cannot be established; compliance with OAR 660-004-0018(2)(b) must be established.
3. OAR 660-004-0018(2)(b)(A) requires findings that the allowed uses, densities, and public facilities will maintain the land as “rural land.” The required analysis is not found in the staff reports for C-1 through C-21. Rather, the staff reports conclude that “the land is located outside the urban growth boundary that has no or minimal public services and is not necessary or intended for urban use.” No evidence or analysis is presented. The acknowledgment of a zone as being generally in compliance with the goals does not *ipso facto* mean that all uses that may be approved under that zone are necessarily rural in nature. *Doty v. Coos County*, 42 Or LUBA 103, 115 (2002); *see also DLCD v. Klamath County*, 40 Or LUBA 221, 227 (2001) (that a zone has been applied to rural property and acknowledged does not necessarily mean that zone can be applied to any rural property in the future without allowing an urban use in violation of Goal 14).
4. OAR 660-004-0018(2)(b)(B) requires a finding that the allowed uses, densities, and public facilities and services will not adjacent or nearby resource land to nonresource use. Findings in the staff reports for C-1 through C-21 assert generally that there are no foreseeable impacts from the continuation of the existing use and the proposed zone change, and that the developed uses have co-existed with nearby resource uses for an extended period of time, with no known conflicts. Surrounding and nearby resource uses are not identified. Potential uses allowed under the proposed zoning are not considered, nor are potential impacts arising from uses allowed under the proposed zoning.
5. OAR 660-004-0018(2)(b)(C) requires findings that the uses, densities and public facilities and services “are compatible with adjacent or nearby resource uses.” In the staff reports for C-1 through C-21, adjacent and nearby resource uses are not identified; at best, adjacent and nearby resource zoning is identified. In analyzing “compatibility,” only impacts from existing uses are considered. Other uses allowed under the proposed zoning are not identified, nor are potential impacts from those uses considered.
6. In the absence of a determination of compliance with OAR 660-004-0018(2), it is necessary to address the requirements of OAR 660-004-0018(3) and the “reasons”

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exception criteria of 660-004-0020 through 660-004-0022. No such analysis has been undertaken.



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### A. C-1: DEVELOPED AND COMMITTED EXCEPTION AREA NO. 298-R2

#### 1. Description of proposal

This amendment concerns 18-04-21 TL 224, and would change the designation and zoning of a 5.38-acre parcel from Rural Residential (RR5) to Rural Commercial (RC).

A legally developed private day care and school use has been developed and currently exists on the property. Maximum enrollment is limited to 49 students. The existing use is an allowed use in the RR5 zone under LC 16.290(4)(q).

The amendments would enable the Blue Tower Arts Foundation to operate an arts facility on the property. In addition to classroom space, the arts facility would contain a number of uses which are defined in Lane Code as commercial, including music, photography, ceramics, painting and drawing, and dance/performance studios, a gallery; and a café. These facilities would require the modification or expansion of existing structures or the construction of new structures. A caretaker residence and "bed and breakfast" for visiting faculty and students are also proposed, which would require the addition of up to five bedrooms and two bathrooms, increasing the size of the existing structure from 1500 square feet to 2800 square feet.

#### 2. Applicable criteria

The Staff Report states that the statewide planning goals do not apply to land use decisions in an area subject to an acknowledged comprehensive plan. While this is true, plan and land use regulation amendments are subject to the statewide planning goals. *Residents of Rosemont v. Metro*, 173 Or App 321 (2001); *1000 Friends of Oregon v. Jackson County*, 79 Or App 93, 97, 718 P2d 753 (1986), *rev den* 301 Or 445 (1987); *Opus Development Corp. v. City of Eugene*, 141 Or App 249, 254, 918 P2d 116 (1996). This request is for a plan amendment and zone change, and the statewide planning goals apply directly.

In compliance with OAR 660-004-0018(2), the Rural Residential plan designation and RR5 zoning of D&C 298-2 limited land uses in that exception area. The proposed Rural Commercial plan designation and RC zoning would remove those limitations and allow for additional, more intensive, and commercial uses. The Staff Report argues that the proposed uses are the same as the existing educational uses. This is obviously not so, otherwise no plan amendment and zone change would be necessary. The proposed RC zoning in fact allows for numerous uses not allowed in the RR5 zone. The potential impacts from allowed uses on adjacent and nearby resource uses have not been identified or analyzed.

The RC zone does not authorize or impose a single numeric minimum lot size. LC 16.291(5). The proposed amendments do not comply with OAR 660-004-0018(2).

The staff report addresses the requirements of OAR 660-04-0018(2)(b) in a way that is inadequate or not relevant to this application. It has not been established that the amendments will maintain the land as rural land, that allowed land uses will not commit adjacent or nearby resource land to nonresource use, or that allowed uses will be compatible with adjacent and nearby resource uses.

**GOAL ONE COALITION**

**3. Conclusion: C-1**

The criteria found in OAR 660-004-0018 have not been adequately addressed, nor has compliance been established. The application cannot be approved.

## GOAL ONE COALITION

### B. C-2: DEVELOPED AND COMMITTED EXCEPTION AREA NO. 360-1

#### 1. Description of proposal

This amendment concerns 22-03-30.1 TL 2401, and would change the designation and zoning of a 0.41-acre parcel from Rural Residential (RR5) to Rural Public Facility (RPF).

The proposed plan amendment and zone change is for one property in the ownership of London Grange No. 937 that was designated as Rural Residential (RR5) in 1984. The facility was established in the early 1950s. "Lodges and grange halls" are uses authorized in the RR5 zone under LC 16.290(4)(o). Uses that would be allowed under the proposed RC zoning are described in LC 16.291(2) and (3). This listing of uses is much more extensive, and the uses more intensive, than uses allowed under the existing RR5 zoning.

#### 2. Applicable criteria

The Staff Report states that the statewide planning goals do not apply to land use decisions in an area subject to an acknowledged comprehensive plan. While this is true, plan and land use regulation amendments are subject to the statewide planning goals. *Residents of Rosemont v. Metro*, 173 Or App 321 (2001); *1000 Friends of Oregon v. Jackson County*, 79 Or App 93, 97, 718 P2d 753 (1986), *rev den* 301 Or 445 (1987); *Opus Development Corp. v. City of Eugene*, 141 Or App 249, 254, 918 P2d 116 (1996). This request is for a plan amendment and zone change, and the statewide planning goals apply directly.

In compliance with OAR 660-004-0018(2), the Rural Residential plan designation and RR5 zoning of D&C 360-1 limited land uses in that exception area. The proposed Rural Commercial plan designation and RC zoning would remove those limitations and allow for additional, and more intensive, industrial and commercial uses. The Staff Report argues that the plan amendment and zone change would simply recognize the existing use. However, the plan amendment and zone change would allow for future requests to be submitted for other or additional uses, uses that may be more intensive or have more adverse impacts on surrounding lands than the existing uses. The potential impacts from allowed uses on adjacent and nearby resource uses have not been identified or analyzed.

The RPF zone does not authorize or impose a single numeric minimum lot size. LC 16.294(5). The proposed amendments do not comply with OAR 660-004-0018(2).

The staff report addresses the requirements of OAR 660-04-0018(2)(b) in a way that is inadequate or not relevant to this application. It has not been established that the amendments will maintain the land as rural land, that allowed land uses will not commit adjacent or nearby resource land to nonresource use, or that allowed uses will be compatible with adjacent and nearby resource uses.

#### 3. Conclusion: C-2

The criteria found in OAR 660-004-0018 have not been adequately addressed, nor has compliance been established. The application cannot be approved.

## GOAL ONE COALITION

### C. C-3: DEVELOPED AND COMMITTED EXCEPTION AREA NO. 282-1

#### 1. Description of proposal

This amendment concerns 16-04-20 TL 800, and would change the designation and zoning of 0.28 acres of a 1.73-acre parcel from Rural Residential (RR5) to Rural Industrial (RI).

The subject property is developed with two residences. A third structure, constructed in 1951, containing a metal smith shop and a 12' x 16' gallery known as the Western Art Gallery. The Staff Report indicates that there is a fourth 24' x 24' building used for storage, and that some outside area is also used for storage. The date of construction of the storage building is not noted in the Staff Report. All of the development is located on the east half of the property; the western portion is an open field.

If no other provision applies, the existing uses are allowed pursuant to LC 16.290(2)(o), which allows for "[m]aintenance, repair, or replacement of lawfully (per LC Chapter 16) existing uses and development not authorized elsewhere by LC 16.290." Uses that would be allowed under the proposed RI zoning are described in LC 16.292(2) and (3). The LC 16.292 listing of uses is much more extensive, and the uses more intensive, than uses allowed under the existing RR5 zoning.

#### 2. Applicable criteria

The Staff Report states that the statewide planning goals do not apply to land use decisions in an area subject to an acknowledged comprehensive plan. While this is true, plan and land use regulation amendments are subject to the statewide planning goals. *Residents of Rosemont v. Metro*, 173 Or App 321 (2001); *1000 Friends of Oregon v. Jackson County*, 79 Or App 93, 97, 718 P2d 753 (1986), *rev den* 301 Or 445 (1987); *Opus Development Corp. v. City of Eugene*, 141 Or App 249, 254, 918 P2d 116 (1996). This request is for a plan amendment and zone change, and the statewide planning goals apply directly.

In compliance with OAR 660-004-0018(2), the Rural Residential plan designation and RR5 zoning of D&C 282-1 limited land uses in that exception area. The proposed Rural Industrial plan designation and RI zoning would remove those limitations and allow for additional, and more intensive, industrial and commercial uses. The Staff Report argues that the plan amendment and zone change would simply recognize the existing use. However, the plan amendment and zone change would allow for future requests to be submitted for other or additional uses, uses that may be more intensive or have more adverse impacts on surrounding lands than the existing uses. The potential impacts from allowed uses on adjacent and nearby resource uses have not been identified or analyzed.

The RI zone does not authorize or impose a single numeric minimum lot size. LC 16.294(5). The proposed amendments do not comply with OAR 660-004-0018(2).

The staff report addresses the requirements of OAR 660-04-0018(2)(b) in a way that is inadequate or not relevant to this application. It has not been established that the amendments will maintain the land as rural land, that allowed land uses will not commit adjacent or nearby

## **GOAL ONE COALITION**

resource land to nonresource use, or that allowed uses will be compatible with adjacent and nearby resource uses.

### **3. Conclusion: C-3**

The criteria found in OAR 660-004-0018 have not been adequately addressed, nor has compliance been established. The application cannot be approved.

## GOAL ONE COALITION

### D. C-4: DEVELOPED AND COMMITTED EXCEPTION AREA NO. 388-R2

#### 1. Description of proposal

This amendment concerns 20-03-21 TL 402, and would change the designation and zoning of a 1.73-acre parcel from Rural Residential (RR5) to Rural Commercial (RC).

The subject property is developed with a single-family dwelling. Two other accessory structures, a 980 square foot shop and a 900 square foot storage shed, were operated as a cabinet shop. All structures were existing as of 1967. The cabinet shop has been operated by several different cabinet makers over past years.

If no other provision applies, the existing uses are allowed pursuant to LC 16.290(2)(o), which allows for “[m]aintenance, repair, or replacement of lawfully (per LC Chapter 16) existing uses and development not authorized elsewhere by LC 16.290.” Uses that would be allowed under the proposed RC zoning are described in LC 16.291(2) and (3). This listing of uses is much more extensive, and the uses more intensive, than uses allowed under the existing RR5 zoning.

#### 2. Applicable criteria

The Staff Report states that the statewide planning goals do not apply to land use decisions in an area subject to an acknowledged comprehensive plan. While this is true, plan and land use regulation amendments are subject to the statewide planning goals. *Residents of Rosemont v. Metro*, 173 Or App 321 (2001); *1000 Friends of Oregon v. Jackson County*, 79 Or App 93, 97, 718 P2d 753 (1986), *rev den* 301 Or 445 (1987); *Opus Development Corp. v. City of Eugene*, 141 Or App 249, 254, 918 P2d 116 (1996). This request is for a plan amendment and zone change, and the statewide planning goals apply directly.

In compliance with OAR 660-004-0018(2), the Rural Residential plan designation and RR5 zoning of D&C 388-R2 limited land uses in that exception area. The proposed Rural Commercial plan designation and RC zoning would remove those limitations and allow for additional and more intensive commercial uses. The Staff Report argues that the plan amendment and zone change would simply recognize the existing use. However, the plan amendment and zone change would allow for future requests to be submitted for other or additional uses, uses that may be more intensive or have more adverse impacts on surrounding lands than the existing uses. The potential impacts from allowed uses on adjacent and nearby resource uses have not been identified or analyzed.

The RC zone does not authorize or impose a single numeric minimum lot size. LC 16.291(5). The proposed amendments do not comply with OAR 660-004-0018(2).

The staff report addresses the requirements of OAR 660-04-0018(2)(b) in a way that is inadequate or not relevant to this application. It has not been established that the amendments will maintain the land as rural land, that allowed land uses will not commit adjacent or nearby resource land to nonresource use, or that allowed uses will be compatible with adjacent and nearby resource uses.

## **GOAL ONE COALITION**

### **3. Conclusion: C-4**

The criteria found in OAR 660-004-0018 have not been adequately addressed, nor has compliance been established. The application cannot be approved.

## GOAL ONE COALITION

### E. C-5: DEVELOPED AND COMMITTED EXCEPTION AREA NO. 402-1

#### 1. Description of proposal

This amendment concerns 20-03-03 TL 1500, and would change the designation and zoning of a 3.73-acre parcel from Rural Residential (RR5) to Rural Commercial (RC).

The subject property is developed with a 1997 Marlette manufactured home. Commercial development includes the Wagon Wheel Feed and Grain, established in 1973-74, with two structures and several storage areas. Approximately 0.15 acre is developed with the commercial use. If no other provision applies, the existing uses are allowed pursuant to LC 16.290(2)(o), which allows for "[m]aintenance, repair, or replacement of lawfully (per LC Chapter 16) existing uses and development not authorized elsewhere by LC 16.290."

The staff report explains:

"The change of zone would allow the applicants, William and Eloise Simon, to continue with the existing Wagon Wheel Feed and Grain *and proceed with the anticipated development of the subject property.*" (Emphasis added.)

#### 2. Applicable criteria

The Staff Report states that the statewide planning goals do not apply to land use decisions in an area subject to an acknowledged comprehensive plan. While this is true, plan and land use regulation amendments are subject to the statewide planning goals. *Residents of Rosemont v. Metro*, 173 Or App 321 (2001); *1000 Friends of Oregon v. Jackson County*, 79 Or App 93, 97, 718 P2d 753 (1986), *rev den* 301 Or 445 (1987); *Opus Development Corp. v. City of Eugene*, 141 Or App 249, 254, 918 P2d 116 (1996). This request is for a plan amendment and zone change, and the statewide planning goals apply directly.

In compliance with OAR 660-004-0018(2), the Rural Residential plan designation and RR5 zoning of D&C 402-1 limited land uses in that exception area. The proposed Rural Commercial plan designation and RC zoning would remove those limitations and allow for additional and more intensive commercial uses, over the entirety of the 3.73-acre property. The Staff Report argues that the plan amendment and zone change would simply recognize the existing use. However, the plan amendment and zone change would allow for future requests to be submitted for additional development on the subject property, and for uses that may be more intensive or have more adverse impacts on surrounding lands than the existing uses. The potential impacts from allowed uses on adjacent and nearby resource uses have not been identified or analyzed.

The RC zone does not authorize or impose a single numeric minimum lot size. LC 16.291(5). The proposed amendments do not comply with OAR 660-004-0018(2).

The staff report addresses the requirements of OAR 660-04-0018(2)(b) in a way that is inadequate or not relevant to this application. It has not been established that the amendments will maintain the land as rural land, that allowed land uses will not commit adjacent or nearby



## **GOAL ONE COALITION**

resource land to nonresource use, or that allowed uses will be compatible with adjacent and nearby resource uses.

### **3. Conclusion: C-5**

The criteria found in OAR 660-004-0018 have not been adequately addressed, nor has compliance been established. The application cannot be approved.

## **GOAL ONE COALITION**

### **F. C-6: DEVELOPED AND COMMITTED EXCEPTION AREAS NO. 403-1 & 403-2**

This amendment concerns 20-03-15 TL 902, 3.82 acres; and 20-03-15.2.3 TLs 700, 0.52 acres; and 900, 0.65 acres. The amendment would expand the boundary of the unincorporated rural community of Saginaw to include the D&C Area No. 403-2. The amendment would change the designation and zoning of TL 902 from RR5 to RPF; would change the designation and zoning of a 0.12 acre (5400 square feet) portion of TL 700 from RR5 to RC; would remove the "Historical" (/H) suffix from TL 700; and would add the /H suffix to TL 900.<sup>1</sup>

#### **1. Description of proposal**

Saginaw, D&C Area No. 403-1, lies along Highway 99 west of the Coast Fork Willamette. It was acknowledged in 1989 as Rural Community of 127.58 acres consisting of 21 parcels. 1.6 acres were commercial, 74 acres were industrial, and 29 acres with 35 residences were rural residential. The adopted boundaries of Saginaw include two properties that are the subject of two proposed amendments and that contain commercial uses: the Saginaw Market which includes a limited grocery store and a US Post Office, and Mitchell Mercantile, a small convenience store. The lumber mill site east of Hwy 99 is currently operated by Weyerhaeuser. The mill site to the west of Hwy 99 was closed in 1988 and was recently purchased by new owners. These two mill sites comprise the 74 acres of industrial land in the community.

D&C Area No. 403-2 lies east of the Coast Fork Willamette. Three parcels are developed with the following public uses: Delight Valley Elementary School (K-5); Delight Valley Church of Christ, constructed 1981; and Cottage Grove-South Lane Fire District – Saginaw Substation (2000). In addition, Area 403-2 contains 37 parcels designated RR5, 32 of which are developed with residences. LC 16.290(2)(n) allows fire stations as a use allowed outright in the RR5 zone. LC 16.290(4)(m) allows churches and 16.290(4)(q) allows schools in the RR5 zone, subject to Director approval.

County Road No. 380 crosses the river and connects the two areas.

#### **2. Expansion of the unincorporated community boundaries**

OAR 660 Division 22 interprets and applies Goals 11 and 14 concerning urban and rural development outside urban growth boundaries and applies to unincorporated communities as defined in OAR 660-022-0010. Saginaw is identified as a "Rural Community" in the Lane County Rural Comprehensive Plan prior to 1994 and is listed in DLCD's January 30, 1997 "Survey of Oregon's Unincorporated Communities." Saginaw is an unincorporated community subject to OAR 660 Division 22.

OARb 660-022-0020(3) provides, in relevant part:

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<sup>1</sup> The Staff Report adds the suffix /C to the zoning designations. This is presumably to indicate that the zones apply within unincorporated community boundaries. However, LC 16.012 does not provide for any /C suffix.

## **GOAL ONE COALITION**

“Only land meeting the following criteria may be included within an unincorporated community boundary:

“(a) Land which has been acknowledged as a Goal 3 or 4 exception area and historically considered to be part of the community provided the land only includes existing, contiguous concentrations of:

“(A) Commercial, industrial, or public uses; and/or

“(B) Dwelling units and associated residential lots at a greater density than exception lands outside rural communities.

Staff Report Finding of Fact 14 at p. 5 states:

“The 1984 designation of the eastern community boundary for Saginaw was drawn along the west bank of the Cost Fork Willamette River. It included the industrial mill sites and the two small commercial stores and approximately 32 residential properties. The designated boundary did not include the residential core of the community east of the river consisting of approximately 114 residential properties, the community church of the Delight Valley Elementary School. It also did not include the property that would eventually become the Saginaw fire station in 2000. Thus, 78% of the residential uses and all of the public facilities normally associated with rural communities were omitted from the designation.”

The Staff Report has not addressed the required inquiry. It must be established that:

1. The area to the east of the river was historically considered to be part of the community of Saginaw. That area may have not been associated with Saginaw, or may have been considered to be part of another community, i.e., Delight Valley.
2. That the density of residential lots within area proposed for inclusion is greater than the density in exception areas outside of rural community boundaries. While the total acreage of D&C Area 403-2 is stated to be 120.02 acres, that acreage includes three non-residential uses. The acreage containing those non-residential uses must be determined and subtracted from the total acreage to determine the acreage devoted to residential uses, then the density of the residential uses computed. The density of residential development and lots in Lane County outside of rural communities must be determined. Finally, only if the density of Area 403-2 is found to be greater than that within exception areas outside of rural communities may Area 403-2 be included within the Saginaw unincorporated community boundary.

### **Conclusion: expansion of the unincorporated community boundaries**

There is not information in the record adequate to make the required determinations. The proposed expansion of the unincorporated community boundary cannot be approved unless and until compliance with OAR 660-022-0020(3)(a) is established.

## GOAL ONE COALITION

### 3. Plan and zoning map amendments

The Staff Report states that the statewide planning goals do not apply to land use decisions in an area subject to an acknowledged comprehensive plan. While this is true, plan and land use regulation amendments are subject to the statewide planning goals. *Residents of Rosemont v. Metro*, 173 Or App 321 (2001); *1000 Friends of Oregon v. Jackson County*, 79 Or App 93, 97, 718 P2d 753 (1986), *rev den* 301 Or 445 (1987); *Opus Development Corp. v. City of Eugene*, 141 Or App 249, 254, 918 P2d 116 (1996). This request is for a plan amendment and zone change, and the statewide planning goals apply directly.

#### a. 20-03-15 TL 902

This 3.82-acre property was developed in 2000 with the South Lane Rural Fire Department – Saginaw Substation. LC 16.290(2)(n) allows fire stations as a use allowed outright in the RR5 zone. The amendment would replace the Rural Residential designation and RR5 zoning with the Rural Public Facility designation and RPF zoning. As previously explained, the expansion of the Saginaw unincorporated boundary to include this property has not been adequately justified.

In compliance with OAR 660-004-0018(2), the Rural Residential plan designation and RR5 zoning of D&C Area 403-2 limited land uses in that exception area. The proposed designation and zoning would remove those limitations and allow for the additional and more intensive uses listed in LC 16.294(2) and (3). The Staff Report argues that the plan amendment and zone change would simply recognize the existing use and allow that use to continue. However, the plan amendment and zone change would allow for future requests to be submitted for other or additional uses, uses that may be more intensive or have more adverse impacts on surrounding lands than the existing uses. The potential impacts from allowed uses on adjacent and nearby resource uses have not been identified or analyzed. The existing use was and is allowed and may continue under the existing RR5 zoning.

The RPF zone does not authorize or impose a single numeric minimum lot size. LC 16.294(5). The proposed amendments do not comply with OAR 660-004-0018(2).

The staff report addresses the requirements of OAR 660-04-0018(2)(b) in a way that is inadequate or not relevant to this application. It has not been established that the amendments will maintain the land as rural land, that allowed land uses will not commit adjacent or nearby resource land to nonresource use, or that allowed uses will be compatible with adjacent and nearby resource uses.

#### **Conclusion: C-6 as it pertains to TL 902**

The criteria found in OAR 660-004-0018 have not been adequately addressed, nor has compliance been established. The application cannot be approved.

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### **b. 20-03-15.2.3 TL 700 (northern portion totaling 5,400 square feet)**

The amendment would change the planning and zoning of this portion of the 0.52-acre TL 700 from Rural Residential and RR5 to Rural Commercial and RC.

On April 23, 1996, a property line adjustment moved the boundary of TL 700 90 feet to the north. This area comprises the 5,400 square feet that is proposed to be redesignated and rezoned from Rural Residential, RR5 to Rural Commercial, RC. The adjusted area has been utilized by the owner as a gravel parking lot for Mitchell's Mercantile since that time.

The Staff Report explains:

"Rezoning the 60-foot by 90-foot adjusted area of the subject property to Rural Commercial (RC/C) will allow the property owner the right to continue the existing use of the land and an opportunity to expand or diversify commercial uses or services provided for in Lane Code 16.291."

The proposed amendments are governed by OAR 660-022-0030(6) – (8):

"(6) County plans and land use regulations shall ensure that new or expanded uses authorized within unincorporated communities do not adversely affect agricultural or forestry uses.

"(7) County plans and land use regulations shall allow only those uses which are consistent with the identified function, capacity and level of service of transportation facilities serving the community, pursuant to OAR 660-012-0060(1)(a) through (c).

"(8) Zoning applied to lands within unincorporated communities shall ensure that the cumulative development:

"(A) Will not result in public health hazards or adverse environmental impacts that violate state or federal water quality regulations; and

"(B) Will not exceed the carrying capacity of the soil or of existing water supply resources and sewer services."

These criteria appear to be met.

**Conclusion: C-6 as it pertains to the northern 5,400 square foot area of TL 700**

The criteria found in OAR 660-022-0030 appear to be met. This element of the application should be approved.

### **c. 20-03-15.2.3 TL 700 (southern portion 150 ft x 150 ft = 22,500 sq ft)**

The Staff Report states that this property was given an "/H" suffix in error in 1984, and that the actual location of the historical designation should have been placed on a commercial

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property approximately 100 feet to the south. The subject property does not include any sites or buildings identified in the Oregon State Historical Preservation Office records.

Correction of the erroneous application of the “/H” designation on this portion of TL 700 is authorized by LC 16.400(6)(h)(iii)(bb)(i-i), which allows for amendments to correct identified errors.

**Conclusion:** C-6 as it pertains to the southern 22,500 square foot area of TL 700 should be approved.

### d. 20-03-15.2.3 TL 900

This 0.62-acre property contains is located west of and adjacent to Old Highway 99 and contains the Saginaw Market. When Saginaw was designated as a “rural community” in 1984 this property was designated Rural Commercial. The building was constructed circa 1900-1910 and was originally known as the Booth-Kelly Lumber Company Store. The original two-story, wood frame structure with a gable roof and false front has had alterations, including two added porches. The building was listed as an historical building in 1976 by the Oregon State Historic Preservation Office on Map No. 52.

In 1984, the historical suffix “/H” for this building and tax lot was erroneously applied to TL 700, a commercial property 100 feet to the north.

Application of the “/H” designation on TL 900 to correct the 1984 error is authorized by LC 16.400(6)(h)(iii)(bb)(i-i), which allows for amendments to correct identified errors.

**Conclusion:** C-6 as it pertains to TL 900 should be approved.

### 4. Conclusion: C-6

Regarding expansion of the unincorporated community boundaries, there is not information in the record adequate to make the required determinations. The proposed expansion of the unincorporated community boundary cannot be approved unless and until compliance with OAR 660-022-0020(3)(a) is established. This element of C-6 should be denied as presented.

C-6 as it pertains to TL 902 does not comply with the criteria of OAR 660-004-0018. This element of C-6 should be denied.

C-6 as it pertains to the northern 5,400 square foot area of TL 700 should be approved.

C-6 as it pertains to removing the “/H” suffix from the southern 22,500 square foot area of TL 700 should be approved.

C-6 as it pertains to adding the “/H” suffix to TL 900 should be approved.

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### G. C-7: DEVELOPED AND COMMITTED EXCEPTION AREA NO. 412-1

This amendment concerns five tax lots on Assessor's Map 18-03-11.3.

The Staff Report states that the statewide planning goals do not apply to land use decisions in an area subject to an acknowledged comprehensive plan. While this is true, plan and land use regulation amendments are subject to the statewide planning goals. *Residents of Rosemont v. Metro*, 173 Or App 321 (2001); *1000 Friends of Oregon v. Jackson County*, 79 Or App 93, 97, 718 P2d 753 (1986), *rev den* 301 Or 445 (1987); *Opus Development Corp. v. City of Eugene*, 141 Or App 249, 254, 918 P2d 116 (1996). This request is for a plan amendment and zone change, and the statewide planning goals apply directly.

#### 1. EPUD properties

##### a. Site description and background

TLs 102, 1.41 acres; 3800, 5.74 acres; 3801, 1.03 acres; and 3801, 4.10 acres, would be redesignated and rezoned from Rural Industrial (RI) to Rural Public Facility (RPF). These contiguous properties are owned by Emerald People's Utility District (EPUD). They were designated Rural Residential (RR5) in 1984 and rezoned Light Industrial (M2) in 1986. Development of the properties as the EPUD headquarters and main offices followed in 1987. In May 2002 the properties were legislatively rezoned from M-2 to RI to bring the zoning into compliance with the Unincorporated Communities rule and Goal 14.

These properties currently contain EPUD headquarters offices, warehouses, vehicle maintenance shops and parking, and pole/equipment storage yards. The existing use is a use allowed outright in the RI zone pursuant to LC 16.292(2)a) and (c). Expansion of the existing uses, if not allowed elsewhere, is authorized by LC 16.292(3)(j).

##### b. Applicable criteria

In compliance with OAR 660-004-0018(2), the Rural Industrial plan designation and RI zoning of the EPUD properties limits land uses on those properties. The proposed Rural Public Facility plan designation and RPF zoning would remove those limitations and allow for additional and more intensive industrial, commercial, and other uses. The Staff Report argues that the plan amendment and zone change would simply recognize the existing use. However, the plan amendment and zone change would allow for future requests to be submitted for other or additional uses, uses that may be more intensive or have more adverse impacts on surrounding lands than the existing uses. The potential impacts from allowed uses on adjacent and nearby resource uses have not been identified or analyzed.

The RPF zone does not authorize or impose a single numeric minimum lot size. LC 16.294(5). The proposed amendments do not comply with OAR 660-004-0018(2).

The staff report addresses the requirements of OAR 660-04-0018(2)(b) in a way that is inadequate or not relevant to this application. It has not been established that the amendments will maintain the land as rural land, that allowed land uses will not commit adjacent or nearby

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resource land to nonresource use, or that allowed uses will be compatible with adjacent and nearby resource uses.

### **c. Conclusion: C-7, EPUD properties**

The criteria found in OAR 660-004-0018 have not been adequately addressed, nor has compliance been established. The application cannot be approved.

## **2. TL 3200**

### **a. site description and history**

TL 3200, 1.53 acres, would be redesignated and rezoned from Rural Residential (RR5) to Rural Industrial (RI). This property is in common ownership with an abutting property that is designated Rural Industrial (RI).

Prior to June 1994 the subject property was developed with three dwellings. Only one structure remains today. The adjoining TL 3300 to the south, zoned RI, is developed with the Crane Equipment Manufacturing Corporation business, which has manufactured logging equipment since 1983.

The Staff Report, addressing the purpose of the proposed amendment, explains that “[t]he owner and operator of an industrial use on the RI property seeks to expand the industrial use on the adjacent property to the north[.]” The manufacturing use is not an allowed use in the RR5 zone.

### **b. Applicable criteria**

In compliance with OAR 660-004-0018(2), the Rural Residential plan designation and RR5 zoning of the subject property limits land uses on that property. The proposed Rural Industrial plan designation and RI zoning would remove those limitations and allow for additional and more intensive industrial, commercial, and other uses. Those may be more intensive and have more adverse impacts on surrounding lands than uses allowed under the existing RR5 zoning. The potential impacts from allowed uses on adjacent and nearby resource uses have not been identified or analyzed.

The RI zone does not authorize or impose a single numeric minimum lot size. LC 16.292(5). The proposed amendments do not comply with OAR 660-004-0018(2).

The staff report addresses the requirements of OAR 660-04-0018(2)(b) in a way that is inadequate or not relevant to this application. It has not been established that the amendments will maintain the land as rural land, that allowed land uses will not commit adjacent or nearby resource land to nonresource use, or that allowed uses will be compatible with adjacent and nearby resource uses.



**GOAL ONE COALITION**

**c. Conclusion: C-7, TL 3200**

The criteria found in OAR 660-004-0018 have not been adequately addressed, nor has compliance been established. The application cannot be approved.

## GOAL ONE COALITION

### H. C-8: DEVELOPED AND COMMITTED EXCEPTION AREA NO. 413-2

#### 1. Description of proposal

This amendment concerns 18-03-14 TLs 1300 and 1400, of 0.54 and 0.58 acres respectively, totaling 1.12 acres. Those properties are currently designated Rural Commercial and zoned RC. The amendment would change the designation of 0.58 acres of the combined 1.12 acres from Rural Residential (RC) to Rural Industrial (RI). TL 1300 would be split-zoned, with 0.45 acres retaining the Rural Commercial (RC) designations and 0.09 acres being redesignated Rural Industrial (RI). TL 1400 would retain 0.0475 acres in the Rural Commercial (RC) designations; 0.4925 acres would be redesignated Rural Industrial (RI). The property line between TLs 1300 and 1400 would be vacated. As a result, a rectangular-shaped RC zoned area would be created in the northwestern corner of the combined parcel. The owners of TLs 1300 and 1400 also own a third contiguous property, TL 1500, which is zoned RI and contains an asphalt parking lot.

The owners currently operate Doyle's Harley Davidson on TL 1200, which lies north of the tract consisting of TLs 1300, 1400 and 1500. The owners' intent is to construct a new building and move the dealership to their ownership.

The amendment would allow for construction of a building across the zoning boundaries and provide for retail sales in the RC zoned land and industrial warehousing and assembly in the RI zoned land. TL 1400 contains a 7,606 square foot building that previously housed Irwin Marine Center and which is currently used for storage.

In 2002 the zoning of the commercial properties was changed from C-3 to RC and that of the industrial properties changed from M-1 to RI to comply with Goal 14 and the Unincorporated Communities rule.

#### 2. Applicable criteria

The Staff Report states that the statewide planning goals do not apply to land use decisions in an area subject to an acknowledged comprehensive plan. While this is true, plan and land use regulation amendments are subject to the statewide planning goals. *Residents of Rosemont v. Metro*, 173 Or App 321 (2001); *1000 Friends of Oregon v. Jackson County*, 79 Or App 93, 97, 718 P2d 753 (1986), *rev den* 301 Or 445 (1987); *Opus Development Corp. v. City of Eugene*, 141 Or App 249, 254, 918 P2d 116 (1996). This request is for a plan amendment and zone change, and the statewide planning goals apply directly.

In compliance with OAR 660-004-0018(2), the Rural Commercial plan designation and RC zoning of the subject properties limited land uses on those properties. The proposed Rural Industrial plan designation and RI zoning would remove those limitations and allow for additional and more intensive industrial, commercial and other uses. The Staff Report argues that the amendments are required to alleviate a hardship experienced by the owners of the motorcycle dealership. Even if a hardship were to exist, that is not an approval criteria for a plan amendment and zone change. The potential impacts from allowed uses on adjacent and nearby resource uses have not been identified or analyzed.

## **GOAL ONE COALITION**

The RI zone does not authorize or impose a single numeric minimum lot size. LC 16.292(5). The proposed amendments do not comply with OAR 660-004-0018(2).

The staff report addresses the requirements of OAR 660-04-0018(2)(b) in a way that is inadequate or not relevant to this application. It has not been established that the amendments will maintain the land as rural land, that allowed land uses will not commit adjacent or nearby resource land to nonresource use, or that allowed uses will be compatible with adjacent and nearby resource uses.

### **3. Conclusion: C-8**

The criteria found in OAR 660-004-0018 have not been adequately addressed, nor has compliance been established. The application cannot be approved.

## GOAL ONE COALITION

### I. C-9: DEVELOPED AND COMMITTED EXCEPTION AREA NO. 413-1

#### 1. Description of proposal

This amendment concerns 18-03-23.1 TL 2401, and would change the planning and zoning designations of the 0.28 acre parcel from Rural Industrial (RI) to Rural Commercial (RC).

TL 2401 is located in the unincorporated community of Goshen, south and west of I-5 and along Highway 99 approximately four miles north of Creswell and three miles southeast of Eugene. The subject property is rectangular parcel with direct access to "B" street along its southern boundary. TL 2401 is developed with The Auto Doctor, an auto repair shop housed in a building that, prior to 1983, was the Goshen Rural Fire Protection District fire station.

Goshen appears on DLCD's January 30, 1997 Survey of Oregon Unincorporated Communities and was designated as an "unincorporated rural community" by the Board of Commissioners on June 15, 2005. The application of goals 11 and 14 to the area is governed by the Unincorporated Communities Rule, OAR 660 Division 22.

#### 2. Applicable criteria

The Staff Report states that the statewide planning goals do not apply to land use decisions in an area subject to an acknowledged comprehensive plan. While this is true, plan and land use regulation amendments are subject to the statewide planning goals. *Residents of Rosemont v. Metro*, 173 Or App 321 (2001); *1000 Friends of Oregon v. Jackson County*, 79 Or App 93, 97, 718 P2d 753 (1986), *rev den* 301 Or 445 (1987); *Opus Development Corp. v. City of Eugene*, 141 Or App 249, 254, 918 P2d 116 (1996). This request is for a plan amendment and zone change, and the statewide planning goals apply directly.

In compliance with OAR 660-004-0018(2), the Rural Industrial plan designation and RI zoning of the subject properties limited land uses on those properties. The proposed Rural Commercial plan designation and RC zoning would allow for different uses than those allowed in the RI zone. The potential impacts of the potential uses have not been identified or analyzed.

The RC zone does not authorize or impose a single numeric minimum lot size. LC 16.291(5). The proposed amendments do not comply with OAR 660-004-0018(2).

The staff report addresses the requirements of OAR 660-04-0018(2)(b) in a way that is inadequate or not relevant to this application. It has not been established that the amendments will maintain the land as rural land, that allowed land uses will not commit adjacent or nearby resource land to nonresource use, or that allowed uses will be compatible with adjacent and nearby resource uses.

#### 3. Conclusion: C-9

The criteria found in OAR 660-004-0018 have not been adequately addressed, nor has compliance been established. The application cannot be approved.

## GOAL ONE COALITION

### J. C-10: DEVELOPED AND COMMITTED EXCEPTION AREA NO. 415-1

#### 1. Description of proposal

This amendment concerns 19-03-11 TL 1400, and would redesignate the 3.12 acre parcel from Rural Residential (RR5) to Rural Commercial (RC).

TL 1400 is located west of Highway 99 approximately 530 feet south of Harvey Lane and approximately 1,250 feet north of the urban growth boundary of the City of Creswell. The subject property is developed with eighteen extended-stay residential units currently known as Sisters View Apartments. This complex is a lawful nonconforming use in the RR5 zone.

#### 2. Applicable criteria

The Staff Report states that the statewide planning goals do not apply to land use decisions in an area subject to an acknowledged comprehensive plan. While this is true, plan and land use regulation amendments are subject to the statewide planning goals. *Residents of Rosemont v. Metro*, 173 Or App 321 (2001); *1000 Friends of Oregon v. Jackson County*, 79 Or App 93, 97, 718 P2d 753 (1986), *rev den* 301 Or 445 (1987); *Opus Development Corp. v. City of Eugene*, 141 Or App 249, 254, 918 P2d 116 (1996). This request is for a plan amendment and zone change, and the statewide planning goals apply directly.

In compliance with OAR 660-004-0018(2), the Rural Residential plan designation and RR5 zoning of the subject properties limited land uses on those properties. The proposed Rural Commercial plan designation and RC zoning would remove those limitations and allow for additional and more intensive commercial and other uses. The Staff Report argues that "replacements or repairs are hampered by a repetitive process of verifications per action. The burden on the property owner and residents would be relieved and the public better served if the property were rezoned to Rural Commercial wherein the existing use is recognized as commercial use." Even if a burden were to exist, that is not an approval criteria for a plan amendment and zone change. The potential impacts from allowed uses on adjacent and nearby resource uses have not been identified or analyzed.

The RC zone does not authorize or impose a single numeric minimum lot size. LC 16.291(5). The proposed amendments do not comply with OAR 660-004-0018(2).

The staff report addresses the requirements of OAR 660-04-0018(2)(b) in a way that is inadequate or not relevant to this application. It has not been established that the amendments will maintain the land as rural land, that allowed land uses will not commit adjacent or nearby resource land to nonresource use, or that allowed uses will be compatible with adjacent and nearby resource uses.

#### 3. Conclusion: C-10

The criteria found in OAR 660-004-0018 have not been adequately addressed, nor has compliance been established. The application cannot be approved.

## GOAL ONE COALITION

### K. C-11: DEVELOPED AND COMMITTED EXCEPTION AREA NO. 417-3

#### 1. Description of proposal

This amendment concerns 19-03-11 TLs 11301, 4.10 acres; and a 3.03 acre portion of TL 1202. The amendment would redesignate a total of 7.13 acres from Impacted Forest Land (F2) to Rural Industrial (RI). The amendment would take a "physically developed" exception to goals 3 and 4.

The subject properties are part of a three property tract that includes TL 1300 (5.43 acres) to the north, TL 1301 (4.1 acres) in the middle, and TL 1202 (19.15 acres) to the west and south. All three properties are bordered on the east by Sears Road; I-5 borders TL 1202 along its western boundary. The tract is about two miles north of the Saginaw/I-5 interchange and 1.5 miles south of the City of Creswell. The Coast Fork Willamette is located north of the north-northwest boundary of the tract.

The subject property is developed with a 1978 manufactured home, a 20' x 32' storage building, a five-acre graveled vehicle storage area, a manufactured office, graveled roads, a sanitation drainfield, and a well. These improvements occupy approximately five acres of the proposed 7.13 acre exception area. The subject properties have been used as a heavy equipment and storage and sales yard since 1998 for logging, construction and farm equipment.

To the north is TL 1300, a vacant 5.43 acre property zoned F2. Further to the north and to the east across Sears Road, the land is zoned Nonimpacted Forest Land (F1). To the southeast there is an existing quarry operation in the Quarry and Mine Operations (QM) zone. I-5 is to the west.

#### 2. Applicable criteria

"Physically developed" exceptions are governed by OAR 660-004-0025, which provides, in relevant part:

(2) Whether land has been physically developed with uses not allowed by an applicable Goal, will depend on the situation at the site of the exception. The exact nature and extent of the areas found to be physically developed shall be clearly set forth in the justification for the exception. The specific area(s) must be shown on a map or otherwise described and keyed to the appropriate findings of fact. The findings of fact shall identify the extent and location of the existing physical development on the land and can include information on structures, roads, sewer and water facilities, and utility facilities. *Uses allowed by the applicable goal(s) to which an exception is being taken shall not be used to justify a physically developed exception. (Emphasis added.)*

The industrial uses existing on the subject property were developed beginning in 1998. Those uses were perforce allowed by the applicable goals 3 and 4. The existing uses cannot be used to justify the requested physically developed exception. To the extent that the existing uses

## **GOAL ONE COALITION**

are uses not allowed by LC 16.211, those uses were developed in violation of LC 16.005 and 16.006 and are not lawful uses. Unlawfully establishes uses may not be used to justify a physically developed exception.

The RI zone does not authorize or impose a single numeric minimum lot size. LC 16.292(5). The proposed amendments do not comply with OAR 660-004-0018(2).

### **3. Conclusion: C-11**

The criteria found in OAR 660-004-0018 have not been adequately addressed, nor has compliance been established. The application cannot be approved.

## GOAL ONE COALITION

### L. C-12: DEVELOPED AND COMMITTED EXCEPTION AREAS NOS. 420-R3 AND 421-R1

#### 1. Description of proposal

This amendment concerns 21-03-02.2.1 TL 501, 0.55 acres; a 0.065 acre portion of 21-03-02.2.1 TL 200; and a 0.138 acre portion of 21-03-35 TL 9300, for a total of 0.753 acres. The amendment would redesignate the 0.753 acres from Rural Residential (RR5) to Rural Industrial (RI).

The subject properties are located south of Mosby Creek Road approximately  $\frac{3}{4}$  mile southeast of the Cottage Grove UGB. The larger part of TL 200 is immediately to the south of the subject properties and contains a sawmill. The RR5 zoned subject properties apparently provide legal access to the RI zoned portion of TL 200. All of the subject properties are part of a contiguous ownership of Wilson Revocable Living Trust, a family trust. The sawmill dates back to the 1940s, has continued to operate for several decades, and is now operated as the John W. Wilson & Son mill, specializing in contract wood products. The amendment would recognize the past and continuing use of the RR5 designated lands in conjunction with the industrial uses on the RI zoned portion of TL 200. The Staff Report states that the purpose of the amendments is to have all industrial uses on the contiguously owned land in one compatible and appropriate Rural Industrial (RI) designation.

#### 2. Applicable criteria

The Staff Report states that the statewide planning goals do not apply to land use decisions in an area subject to an acknowledged comprehensive plan. While this is true, plan and land use regulation amendments are subject to the statewide planning goals. *Residents of Rosemont v. Metro*, 173 Or App 321 (2001); *1000 Friends of Oregon v. Jackson County*, 79 Or App 93, 97, 718 P2d 753 (1986), *rev den* 301 Or 445 (1987); *Opus Development Corp. v. City of Eugene*, 141 Or App 249, 254, 918 P2d 116 (1996). This request is for a plan amendment and zone change, and the statewide planning goals apply directly.

In compliance with OAR 660-004-0018(2), the Rural Residential plan designation and RR5 zoning of the subject properties limited land uses on those properties. The proposed Rural Industrial plan designation and RI zoning would remove those limitations and allow for additional and more intensive commercial and other uses. The potential impacts from allowed uses on adjacent and nearby resource uses have not been identified or analyzed.

The RI zone does not authorize or impose a single numeric minimum lot size. LC 16.292(5). The proposed amendments do not comply with OAR 660-004-0018(2). A "physically developed" exception would otherwise appear to be justified.

#### 3. Conclusion: C-12

The criteria found in OAR 660-004-0018 have not been adequately addressed nor has compliance been established. The application cannot be approved.



## GOAL ONE COALITION

### M. C-13: DEVELOPED AND COMMITTED EXCEPTION AREA NO. 429-2

#### 1. Description of proposal

This amendment concerns 19-03-13 TL 2901, and would redesignate the 1.98 acre parcel from Agriculture and Exclusive Farm Use (E30) to Public Facility and RPF Rural Public Facility. A “physically developed” exception to statewide planning goals 3 and 4 is requested.

TL 2901 is a triangular shaped property located south of Cloverdale Road, east of the intersection of Cloverdale and Dale Kuni Road, north of River Drive and northwest of the Coast Fork Willamette. TL 2901 is part of a two-acre tract that includes TL 2402 (2.98 acres) to the west. TL 2901 is developed with a 40' x 60' water treatment building, settling ponds, and a graveled parking area. These improvements occupy approximately 0.6 acres of TL 2901. The remainder of the property is stated to be not suitable for development. The contiguous property to the west is developed with holding ponds and the subsurface sewage disposal system for the water treatment facility. The use has existed on TL 2901 since 1989.

#### 2. Applicable criteria

“Physically developed” exceptions are governed by OAR 660-004-0025, which provides, in relevant part:

(2) Whether land has been physically developed with uses not allowed by an applicable Goal, will depend on the situation at the site of the exception. The exact nature and extent of the areas found to be physically developed shall be clearly set forth in the justification for the exception. The specific area(s) must be shown on a map or otherwise described and keyed to the appropriate findings of fact. The findings of fact shall identify the extent and location of the existing physical development on the land and can include information on structures, roads, sewer and water facilities, and utility facilities. *Uses allowed by the applicable goal(s) to which an exception is being taken shall not be used to justify a physically developed exception.* (Emphasis added.)

The existing use is a use allowed by the applicable goals as a “facility necessary for public service.” ORS 215.213(1)(d) allows the use outright, as does LC 16.212(4)(i). The existing use may not be used to justify a “physically developed” exception. If the amendments are to be approved, a “reasons” exception pursuant to OAR 660-004-0018, 660-004-0020, and 660-004-0022 is required.

The RPF zone does not authorize or impose a single numeric minimum lot size. LC 16.294(5). The proposed amendments do not comply with OAR 660-004-0018(2).

#### 3. Conclusion: C-13

The criteria found in OAR 660-004-0018 have not been adequately addressed, nor has compliance been established. The application cannot be approved.

## GOAL ONE COALITION

### N. C-14: DEVELOPED AND COMMITTED EXCEPTION AREA NO. 443-1

#### 1. Description of proposal

This amendment concerns 21-02-19 TL 107, and would redesignate the 0.45 acre parcel from Rural Residential (RR5) to Rural Public Facility (RPC).

TL 107 is located north of the intersection of Mosby Creek Road and Perkins Creek Road. It is owned by Lane Electric Cooperative and is developed with a substation. It was designated as RR5 in 1984 and was developed with the substation at that time.

#### 2. Applicable criteria

The Public Facilities plan designation and RPF zoning would allow for more intensive uses than those allowed in the RR5 zone. "Physically developed" exceptions are governed by OAR 660-004-0025, which provides, in relevant part:

(2) Whether land has been physically developed with uses not allowed by an applicable Goal, will depend on the situation at the site of the exception. The exact nature and extent of the areas found to be physically developed shall be clearly set forth in the justification for the exception. The specific area(s) must be shown on a map or otherwise described and keyed to the appropriate findings of fact. The findings of fact shall identify the extent and location of the existing physical development on the land and can include information on structures, roads, sewer and water facilities, and utility facilities. *Uses allowed by the applicable goal(s) to which an exception is being taken shall not be used to justify a physically developed exception.* (Emphasis added.)

The existing use is a use allowed by the applicable goals as a "facility necessary for public service." ORS 215.213(1)(d) allows the use outright, as does LC 16.212(4)(i). The existing use may not be used to justify a "physically developed" exception. If the amendments are to be approved, a "reasons" exception pursuant to OAR 660-004-0018, 660-004-0020, and 660-004-0022 is required.

The RPF zone does not authorize or impose a single numeric minimum lot size. LC 16.294(5). The proposed amendments do not comply with OAR 660-004-0018(2).

#### 3. Conclusion: C-14

The criteria found in OAR 660-004-0018 have not been adequately addressed, nor has compliance been established. The application cannot be approved.

## GOAL ONE COALITION

### 0. C-15: DEVELOPED AND COMMITTED EXCEPTION AREAS NO. 443-2

#### 1. Description of proposal

This amendment concerns 21-02-19 TL 900. The amendment would redesignate the 5.41 acre parcel from Rural Industrial (RI) to Rural Public Facility (RPF).

The subject property is located west of Blue Mountain School Road approximately 2,700 feet south of the intersection of Allen Road. TL 900 is developed with the Blue Mountain School. The school was constructed in 1955 by the South Lane School District #45. TL 900 was designated PF in February, 1984. That zoning was changed to M-1 in June 1984 to allow the school district to lease the facility to Abel Computers as a research center. The zoning was amended from MI to RI as part of a periodic review work task on June 15, 2005.

A temporary use permit was issued to allow the operation of a school within the M-1 zone in 1998. The facility is currently operated as the Blue Mountain School, a private elementary school.

#### 2. Applicable criteria

The Staff Report states that the statewide planning goals do not apply to land use decisions in an area subject to an acknowledged comprehensive plan. While this is true, plan and land use regulation amendments are subject to the statewide planning goals. *Residents of Rosemont v. Metro*, 173 Or App 321 (2001); *1000 Friends of Oregon v. Jackson County*, 79 Or App 93, 97, 718 P2d 753 (1986), *rev den* 301 Or 445 (1987); *Opus Development Corp. v. City of Eugene*, 141 Or App 249, 254, 918 P2d 116 (1996). This request is for a plan amendment and zone change, and the statewide planning goals apply directly.

In compliance with OAR 660-004-0018(2), the Rural Industrial plan designation and RI zoning of the subject properties limited land uses on those properties. The proposed Rural Public Facilities plan designation and RPF zoning would remove those limitations and allow for additional and more intensive commercial and other uses. The potential impacts from allowed uses on adjacent and nearby resource uses have not been identified or analyzed.

The RPF zone does not authorize or impose a single numeric minimum lot size. LC 16.292(5). The proposed amendments do not comply with OAR 660-004-0018(2).

#### 3. Conclusion: C-15

The criteria found in OAR 660-004-0018 have not been adequately addressed, nor has compliance been established. The application cannot be approved as submitted.

Goal One recommends that a plan amendment and zone change to Rural Residential (RR5) be considered. The existing school is an allowed use in the RR5 zone. LC 16.291(3)(f).

## GOAL ONE COALITION

### P. C-16: DEVELOPED AND COMMITTED EXCEPTION AREAS NO. 509-2

#### 1. Description of proposal

This amendment concerns 21-01 30 TL 4200 and 21-01-31.1.2 TL 1800. The amendment would redesignate the 0.78 acre TL 4200 from Rural Residential (RR2) to Rural Public Facility (RPF) and the 0.24 acre TL 1800 from Rural Residential (RR2) to Rural Commercial (RC).

The Staff Report asserts that the subject properties are within the rural community boundaries of Culp Creek. Culp Creek is listed as a rural unincorporated community on DLCD's January 30, 1997 Survey of Oregon Unincorporated Communities.

TL 4200 is located east of Row River Road. It is owned by Lane Electric Cooperative. It was designated Rural Residential (R2) in 1984. TL 4200 was developed with the Culp Creek Substation at that time and continues in that use. The existing use is an allowed use in the RR2 under LC 16(2)(n).

TL 1800 is located south of Row River Road. It is owned by Qwest Corporation and is developed with a telephone exchange facility that was first established in 1980 and expanded in 2001. TL 1800 was designated Rural Residential (R2) in 1984. The existing use is an allowed use in the RR2 under LC 16(2)(n).

#### 2. Applicable criteria

The proposed amendments are governed by OAR 660-022-0030(6) – (8):

“(6) County plans and land use regulations shall ensure that new or expanded uses authorized within unincorporated communities do not adversely affect agricultural or forestry uses.

“(7) County plans and land use regulations shall allow only those uses which are consistent with the identified function, capacity and level of service of transportation facilities serving the community, pursuant to OAR 660-012-0060(1)(a) through (c).

“(8) Zoning applied to lands within unincorporated communities shall ensure that the cumulative development:

“(A) Will not result in public health hazards or adverse environmental impacts that violate state or federal water quality regulations; and

“(B) Will not exceed the carrying capacity of the soil or of existing water supply resources and sewer services.”

These criteria appear to be met.

#### 3. Conclusion: C-16

The criteria found in OAR 660-022-0030 appear to be met. This element of the application should be approved.

## GOAL ONE COALITION

### Q. C-17: DEVELOPED AND COMMITTED EXCEPTION AREAS NO. 420-3

#### 1. Description of proposal

This amendment concerns 20-03-35 TL 8400. The amendment would redesignate the 2.27 acre parcel from Rural Industrial (RI) to Rural Residential (RR5).

The subject property is located north of Mosby Creek Road and south of the Row River. TL 8400 abuts the right-of-way of the old Oregon Pacific-Electric Railroad that has been converted to an asphalt bicycle path running parallel to Mosby Creek Road. The property contains the skeletal remains of an old shake mill dating back to 1978. TL 8400 was designated Heavy Industrial (M3) in 1984 and rezoned RI in 2002.

#### 2. Applicable criteria

The Staff Report states that the statewide planning goals do not apply to land use decisions in an area subject to an acknowledged comprehensive plan. While this is true, plan and land use regulation amendments are subject to the statewide planning goals. *Residents of Rosemont v. Metro*, 173 Or App 321 (2001); *1000 Friends of Oregon v. Jackson County*, 79 Or App 93, 97, 718 P2d 753 (1986), *rev den* 301 Or 445 (1987); *Opus Development Corp. v. City of Eugene*, 141 Or App 249, 254, 918 P2d 116 (1996). This request is for a plan amendment and zone change, and the statewide planning goals apply directly.

Approval of the request requires findings of compliance with OAR 660-004-0018(2)(b). The Staff Report contains only a cursory analysis of potential impacts from the amendments on adjacent and nearby resource uses. However, it appears probable that the amendment would retain the land as rural land and that impacts from the single residence which could be sited as a result of the amendments would in all probability be no greater than impacts from potential industrial and other uses allowed under the current zoning.

OAR 660-004-0040 (7)(i) requires that either a minimum lot size of 10 acres be established or that an exception to Goal 14 be taken. In the absence of a Goal 14 exception, C-17 may be approved only with the RR-10 zoning designation.

#### 3. Conclusion: C-17

The plan amendment from RI to Rural Residential may be approved. The requested RR% zoning must be **denied**. However, RR10 zoning may be **approved**.

## **GOAL ONE COALITION**

### **R. C-18: PLOT NO. 92**

#### **1. Description of proposal**

This amendment concerns 15-04-21 TLs 800, 900, and 1000. The subject lands currently carry Linn County planning and zoning designations, presumably Agricultural Resource and EFU. The amendments would assign the Exclusive Farm Use plan designation and the E30 zoning designation to 171.08 acres of TL 800, 4.18 acres of TL 900, and 1.80 acres of TL 1000.

TL 800 contains a residence constructed in 1946 with a Junction City address. It is managed for farm crops. TL 900 is undeveloped woodland owned by Oregon Department of State Lands. TL 1000 has portions owned by the Estate of Ronald E. McNutt and portions owned by the State Land Board of Oregon.

The Willamette River serves as the boundary between Lane County and Linn County in this area. The Willamette River has meandered to the east, isolating the subject properties from Linn County. ORS 201.200(2) authorizes Lane County to assume jurisdiction over the subject properties.

#### **2. Applicable criteria**

Criteria are established by LC 16.252(2). The requested planning and zoning designations appear to be consistent with those of adjacent and nearby lands and with the historical and existing uses of the property.

#### **3. Conclusion: C-18**

The request Exclusive Farm Use planning designations and E30 zoning should be **approved**.

## GOAL ONE COALITION

### S. C-19: DEVELOPED AND COMMITTED EXCEPTION AREA NOS. 547-1 AND 554-1

#### 1. Description of proposal

This amendment concerns 21-01-35.4 TL 100, 2.39 acres; 21-01-36.3.3 TL 1300, 0.21 acres; and 21-01-36.3.3 TL 1500, 0.14 acres. The amendments would redesignate the subject properties from Rural Residential (RR5) to Rural Commercial (RC).

The subject properties are located northeast of Brice Creek Road, approximately 500 feet southwest of the intersection with Lower Brice Creek Road. The three subject properties are part of the contiguous ownership of Ronald F. Baldwin. Baldwin also owns a fourth contiguous property, 21-01-35.4 TL 199. The intent of the amendments is to create a four-property contiguous ownership with RC zoning.

TL 100 is developed with three structures, one of which is a manufactured home and another which is utilized as an automotive repair shop. The subject properties are completely surrounded by properties designated RR5.

#### 2. Applicable criteria

The Staff Report states that the statewide planning goals do not apply to land use decisions in an area subject to an acknowledged comprehensive plan. While this is true, plan and land use regulation amendments are subject to the statewide planning goals. *Residents of Rosemont v. Metro*, 173 Or App 321 (2001); *1000 Friends of Oregon v. Jackson County*, 79 Or App 93, 97, 718 P2d 753 (1986), *rev den* 301 Or 445 (1987); *Opus Development Corp. v. City of Eugene*, 141 Or App 249, 254, 918 P2d 116 (1996). This request is for a plan amendment and zone change, and the statewide planning goals apply directly.

In compliance with OAR 660-004-0018(2), the Rural Residential plan designation and RR5 zoning of the subject properties limited land uses on those properties. The proposed Rural Commercial plan designation and RC zoning would remove those limitations and allow for additional and more intensive commercial and other uses. The potential impacts from allowed uses on adjacent and nearby resource uses have not been identified or analyzed.

The RC zone does not authorize or impose a single numeric minimum lot size. LC 16.291(5). The proposed amendments do not comply with OAR 660-004-0018(2).

The staff report addresses the requirements of OAR 660-04-0018(2)(b) in a way that is inadequate or not relevant to this application. It has not been established that the amendments will maintain the land as rural land, that allowed land uses will not commit adjacent or nearby resource land to nonresource use, or that allowed uses will be compatible with adjacent and nearby resource uses.

#### 3. Conclusion: C-19

The criteria found in OAR 660-004-0018 have not been adequately addressed, nor has compliance been established. The application cannot be approved.

## GOAL ONE COALITION

### T. C-20: DEVELOPED AND COMMITTED EXCEPTION AREA NO. 437-1

#### 1. Description of proposal

This amendment concerns 18-02-19 TL 1300. The amendments would redesignate the 5.22 acre subject property from Rural Residential (RR5) to Rural Industrial (RI).<sup>2</sup>

TL 1300 is adjacent to Highway 58 east of Goshen. TL 1300 has been used for heavy equipment storage and repair, a use which has been in continuous operation since 1965. The use has been authorized under conditional use permits. Improvements on the site include a number of buildings housing two shops, an office, a caretaker mobile home, a shed, parking and outside storage, a well, a septic system, and a fence.

#### 2. Applicable criteria

The application material states that the statewide planning goals do not apply to land use decisions in an area subject to an acknowledged comprehensive plan. While this is true, plan and land use regulation amendments are subject to the statewide planning goals. *Residents of Rosemont v. Metro*, 173 Or App 321 (2001); *1000 Friends of Oregon v. Jackson County*, 79 Or App 93, 97, 718 P2d 753 (1986), *rev den* 301 Or 445 (1987); *Opus Development Corp. v. City of Eugene*, 141 Or App 249, 254, 918 P2d 116 (1996). This request is for a plan amendment and zone change, and the statewide planning goals apply directly.

In compliance with OAR 660-004-0018(2), the Rural Residential plan designation and RR5 zoning of the subject properties limited land uses on those properties. The proposed Rural Commercial plan designation and RC zoning would remove those limitations and allow for additional and more intensive commercial and other uses. The potential impacts from allowed uses on adjacent and nearby resource uses have not been identified or analyzed.

The RC zone does not authorize or impose a single numeric minimum lot size. LC 16.291(5). The proposed amendments do not comply with OAR 660-004-0018(2).

The applicant's material addresses the requirements of OAR 660-04-0018(2)(b) in a way that is inadequate or not relevant to this application. It has not been established that the amendments will maintain the land as rural land, that allowed land uses will not commit adjacent or nearby resource land to nonresource use, or that allowed uses will be compatible with adjacent and nearby resource uses.

#### 3. Conclusion: C-20

The criteria found in OAR 660-004-0018 have not been adequately addressed, nor has compliance been established. The application cannot be approved.

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<sup>2</sup> The Staff Report states that the acreage of 18-02-19 TL 1300 is 5.22 acres. The applicant's consultant indicates that TL 1300 is 11.15 acres. The Assessor's property information on the Lane County website indicates that TL 1300 is 5.01 acres in size.



## **GOAL ONE COALITION**

### **U. C-21: DEVELOPED AND COMMITTED EXCEPTION AREA NO. 030-3**

#### **1. Description of proposal**

This amendment concerns 18-12-25 TL 2200. The amendments would redesignate the 10.24 acre subject property from Rural I (RI) to Rural Commercial (RC).

TL 1300 is located south of Highway 126 and north of the Siuslaw River approximately 1,500 feet east of the Highway 126 bridge over the North Fork of the Siuslaw River. TL 2200 is vacant. It was designated M3 with the adoption of the Rural Comprehensive Plan in 1984 and was redesignated RI in 2002. The eastern end of TL 2200 contains an area designated in the 1978 Siuslaw River Dredged Material Disposal Plan as "Site 22", also known as the "Johnson's Rock Products site." TL 2200 served as a materials disposal site in the 1970s.

#### **2. Applicable criteria**

The Staff Report states that the statewide planning goals do not apply to land use decisions in an area subject to an acknowledged comprehensive plan. While this is true, plan and land use regulation amendments are subject to the statewide planning goals. *Residents of Rosemont v. Metro*, 173 Or App 321 (2001); *1000 Friends of Oregon v. Jackson County*, 79 Or App 93, 97, 718 P2d 753 (1986), *rev den* 301 Or 445 (1987); *Opus Development Corp. v. City of Eugene*, 141 Or App 249, 254, 918 P2d 116 (1996). This request is for a plan amendment and zone change, and the statewide planning goals apply directly.

In compliance with OAR 660-004-0018(2), the Rural Residential plan designation and RR5 zoning of the subject properties limited land uses on those properties. The proposed Rural Commercial plan designation and RC zoning would remove those limitations and allow for additional and more intensive commercial and other uses. The potential impacts from allowed uses on adjacent and nearby resource uses have not been identified or analyzed.

The RC zone does not authorize or impose a single numeric minimum lot size. LC 16.291(5). The proposed amendments do not comply with OAR 660-004-0018(2).

The Staff Report addresses the requirements of OAR 660-04-0018(2)(b) in a way that is inadequate or not relevant to this application. It has not been established that the amendments will maintain the land as rural land, that allowed land uses will not commit adjacent or nearby resource land to nonresource use, or that allowed uses will be compatible with adjacent and nearby resource uses.

#### **3. Conclusion: C-21**

The criteria found in OAR 660-004-0018 have not been adequately addressed, nor has compliance been established. The application cannot be approved.

## GOAL ONE COALITION

### IV. CONCLUSIONS

#### 1. C-6

- a. The element of C-6 regarding expansion of the unincorporated community boundaries requires compliance with OAR 660-022-0020(3)(a). Compliance has not been established. This element of C-6 should be **denied**.
- b. C-6 as it pertains to TL 902 does not comply with the criteria of OAR 660-004-0018. The request for Rural Public Facilities (RPF) designations for this property should be **denied**.
- c. The request for Rural Commercial (RC) designations for the northern 5,400 square foot area of TL 700 should be **approved**.
- d. C-6 as it pertains to adding the “/H” suffix to TL 900 should be **approved**.
- e. C-6: as it pertains to removing the “/H” suffix from the southern 22,500 square foot area of TL 700 should be **approved**.

#### 2. C-15

- a. The request for RPF zoning for the subject property should be **denied**
- b. Goal One recommends that the Rural Residential (RR5) designation be considered. It appears that approval could readily be justified and that a request for RR5 zoning, if presented, should be **approved**. Schools for primary and secondary education are an allowed use in the RR5 zone. LC 16.291(3)(f).

#### 3. C-16

The criteria found in OAR 660-022-0030 appear to be met. The redesignation of 21-01-30 TL 4200 to Rural Public Facility (RPF) and 21-01-31.1.2 TL 1800 to Rural Commercial (RC) should be **approved**. Goal One observes that neither redesignation is necessary, as both existing uses are allowed uses under the current planning and zoning designations.

#### 4. C-17

The plan amendment from RI to Rural Residential may be approved. The requested RR5 zoning must be **denied**. However, RR10 zoning may be **approved**.

#### 5. C-18

The request Exclusive Farm Use planning designations and E30 zoning should be **approved**.

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**6. All of the other remaining elements of PA 1226 should be denied.**

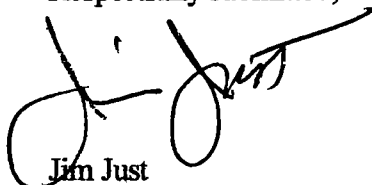
The analysis of whether the amendments would maintain the lands as rural lands has not been undertaken. Potential densities and intensities of allowed uses has not been considered.

Potential impacts from uses that would be allowed under the new zoning have not been considered. At best, information in the record concerns only impacts from historical uses at historical levels of intensity. Surrounding resource uses have not been identified or described. Potential impacts from uses allowed by the new zoning on those resource uses have not been considered.

If for no other reason, the requests for RC, RI, or RPF zoning outside of unincorporated community boundaries must be denied because those zones do not authorize or require any single numerical lot size as required by OAR 660-004-0018(2). *Doty v. Coos County*, 42 Or LUBA 103, 115 (2002). Application of the RC, RI and RPF zones can be accomplished only by taking a "reasons" exception pursuant to OAR 600-004-0018(3) and (4), 660-004-0020, and 660-004-0022. The "reasons" exception criteria have not been addressed or complied with.

Goal One and Mr. Just request notice and a copy of any decision and findings regarding this matter.

Respectfully submitted,



Jim Just  
Executive Director