

W. T. C.

SUPPLEMENTAL MATERIAL
SUPPLEMENTAL MEMO

DATE OF MEMO: September 21, 2006

TO: Board of County Commissioners

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

RE: Order No. 06-_____ / In the Matter of Electing Whether or Not to Hear Arguments on Appeals of the Hearings Official Affirming the Planning Director's Decision and Approving, with modification, an Application for a Special Use Permit for a Dwelling in the Prime Wildlife Shorelands Combining Zone (file PA 05-6026/Peters).

Scheduled board date for action is September 27, 2006.

Please substitute the attached Order for the one originally provided with the packet dated 9-11-06.
It contains two minor edits to findings # 12 and 14.

FINDINGS IN SUPPORT OF THE ORDER

1. Property involved in this action is identified as tax lot 301, map 15-12-27.4, a 1.6 acre parcel located north of Ten Mile Creek and south of Yachats. The property is designated Rural Land by the Rural Comprehensive Plan and is zoned RR-2. The parcel is also within the Prime Wildlife Shorelands Combining Zone.
2. In the form of application PA 05-6026, the property owner in July 2005 requested Planning Director approval of a Special Use Permit for a dwelling and ancillary structures within the Prime Wildlife Shorelands Combining Zone, pursuant to Lane Code 16.38(4)(a) and the criteria found in LC 16.238(6) & (7).
3. The Planning Director conditionally approved the request on March 24, 2006.
4. A timely appeal of the Planning Director decision was filed by adjacent landowners (Keseys) on April 5, 2006.
5. A de-novo hearing before the Lane County Hearings Official was held on May 18, 2006, with the record closing on June 21, 2006.
6. On July 24, 2006, the Hearings Official issued a decision affirming the Planning Director, with modifications. One of the conditions relocated the proposed dwelling slightly eastward.
7. Timely appeals of the Hearings Official decision were filed by both the Applicants (Peters) and original Appellants (Keseys) on August 3, 2006; the appeals were accepted by the Director and forwarded to the Hearings Official.
8. On August 8, 2006, the Hearings Official affirmed his decision.
9. The appeals state that the Approval Authority exceeded his authority and jurisdiction, failed to follow applicable procedure and rendered a decision which misinterpreted Lane Code, state and federal law.
10. In order for the Board to hear arguments on the appeal, Lane Code 14.600(3) requires one or more of the following criteria to be found by the Board to apply to the appeal:
 - *The issue is of Countywide significance.*
 - *The issue will reoccur with frequency and there is a need for policy guidance.*
 - *The issue involves a unique environmental resource.*
 - *The Planning Director or Hearings Official recommends review.*
11. The Board of Commissioners finds that the issues raised in this appeal pertain to a narrow band of beachfront properties in the approximate northern half of the county, and to land adjacent to one or two streams extending a few miles inland, where *Oregon Silverspot Butterfly* habitat is found.

The geographic area to which the issues raised pertain is limited, and the interpretation of law by the Hearings Official can be affirmed by the Board as an appropriate response to them, and could be used in other similar situations.

12. The Board of Commissioners finds that while requests for development proposals along this area of the coast are not infrequent, there is no need for policy guidance because the Board agrees with the manner in which the Hearings Official implemented the Lane Code 16.238, the Comprehensive Plan, Goal 5 policies, and their relation to federal law.
13. The Board of Commissioners finds that the property does contain habitat for a species listed as Threatened under the Endangered Species Act. However, the nectar plant, *Viola adunca*, food source for the *Oregon Silverspot Butterfly*, is not unique. The decision by the Hearings Official prioritized preservation of that habitat, increasing the probability that the habitat will be preserved.
14. Neither the Planning Director nor the Hearings Official recommend review.
15. To meet the requirements of Lane Code 14.600(2)(b), the Board is required to adopt a written decision and order electing to have a hearing on the record for the appeal or declining to further review the appeal.
16. The Board has reviewed this matter at its meeting of September 27, 2006, and finds that the appeals do not comply with the criteria of Lane Code Chapter 16.600(3), and elects to not hold an on the record hearing.
17. The Board expressly agrees with the July 24, 2006 decision of the Lane County Hearings Official interpreting Lane Code 16.238, the Comprehensive Plan, Goal 5 policies, and their relation to federal law, attached here as Exhibit "B". The Hearings Official's decision and interpretations are affirmed and adopted by the Board of County Commissioners as its own interpretation.