

BEFORE THE BOARD OF COUNTY COMMISSIONERS OF LANE COUNTY, OREGON

ORDINANCE NO. PA 1356

IN THE MATTER OF AMENDING THE RURAL COMPREHENSIVE PLAN TO REDESIGNATE LAND FROM "FOREST LAND" TO "NONRESOURCE LAND", TO REZONE LAND FROM "IMPACTED FOREST LAND (F-2)" TO "RURAL RESIDENTIAL LAND (RR-10-NRES)", AND ADOPTING SAVINGS AND SEVERABILITY CLAUSES (File No. 509-PA16-05041; Applicant: Sproul)

WHEREAS, the Board of County Commissioners of Lane County, through enactment of Ordinance No. PA 884 has adopted Land Use Designations and Zoning for lands within the planning jurisdiction of the Lane County Rural Comprehensive Plan; and

WHEREAS, Lane Code 16.400 sets forth procedures to amend the Rural Comprehensive Plan, and Lane Code 16.252 sets forth procedures for rezoning lands within the jurisdiction of the Rural Comprehensive Plan; and

WHEREAS, on January 19, 2016, application no. 509-PA16-05041 was made for a minor amendment to redesignate a portion of tax lot 111 and all of tax lot 102, Map 16-03-34, from "Forest" to "Nonresource," with a concurrent request to rezone the property from "Impacted Forest Land (F-2)" to "Rural Residential (RR-10-NRES);" and

WHEREAS, the Lane County Planning Commission reviewed the proposal in a public hearing on April 21, 2017; and

WHEREAS, the Lane County Planning Commission deliberated on June 6, 2017, and forwarded the matter to the Board with a recommendation for approval of the proposed plan amendment and zone change; and

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

WHEREAS, the Board of County Commissioners has conducted a public hearing and is now ready to take action;

NOW, THEREFORE, the Board of County Commissioners of Lane County Ordains as follows:

Section 1. The Official Lane County Rural Comprehensive Plan is amended to redesignate a portion of Tax Lot 111 and the entirety of Tax Lot 102 of Map 16-03-34, from "Forest Land" to "Nonresource." This is depicted on the Official Lane County Plan maps and further identified as Exhibit "A" attached and incorporated herein.

Section 2. The Official Lane County Zoning Map is amended to change the zone for a portion of Tax Lot 111 and the entirety of Tax Lot 102 of Map 16-03-34, from "Impacted Forest Land (F-2)" to "Rural Residential (RR-10-NRES)." This is depicted on the Official Lane County Zone maps and further identified as Exhibit "B" attached and incorporated herein.

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

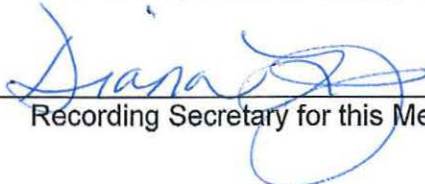
The prior designation and zone repealed by this Ordinance remain in full force and effect to authorize prosecution of persons in violation thereof prior to the effective date of this Ordinance.

If any section, subsection, sentence, clause, phrase or portion of this Ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision, and such holding shall not effect the validity to the remaining portions hereof.

ENACTED this 7th day of November, 2017.



Pat Farr, Chair
Lane County Board of County Commissioners

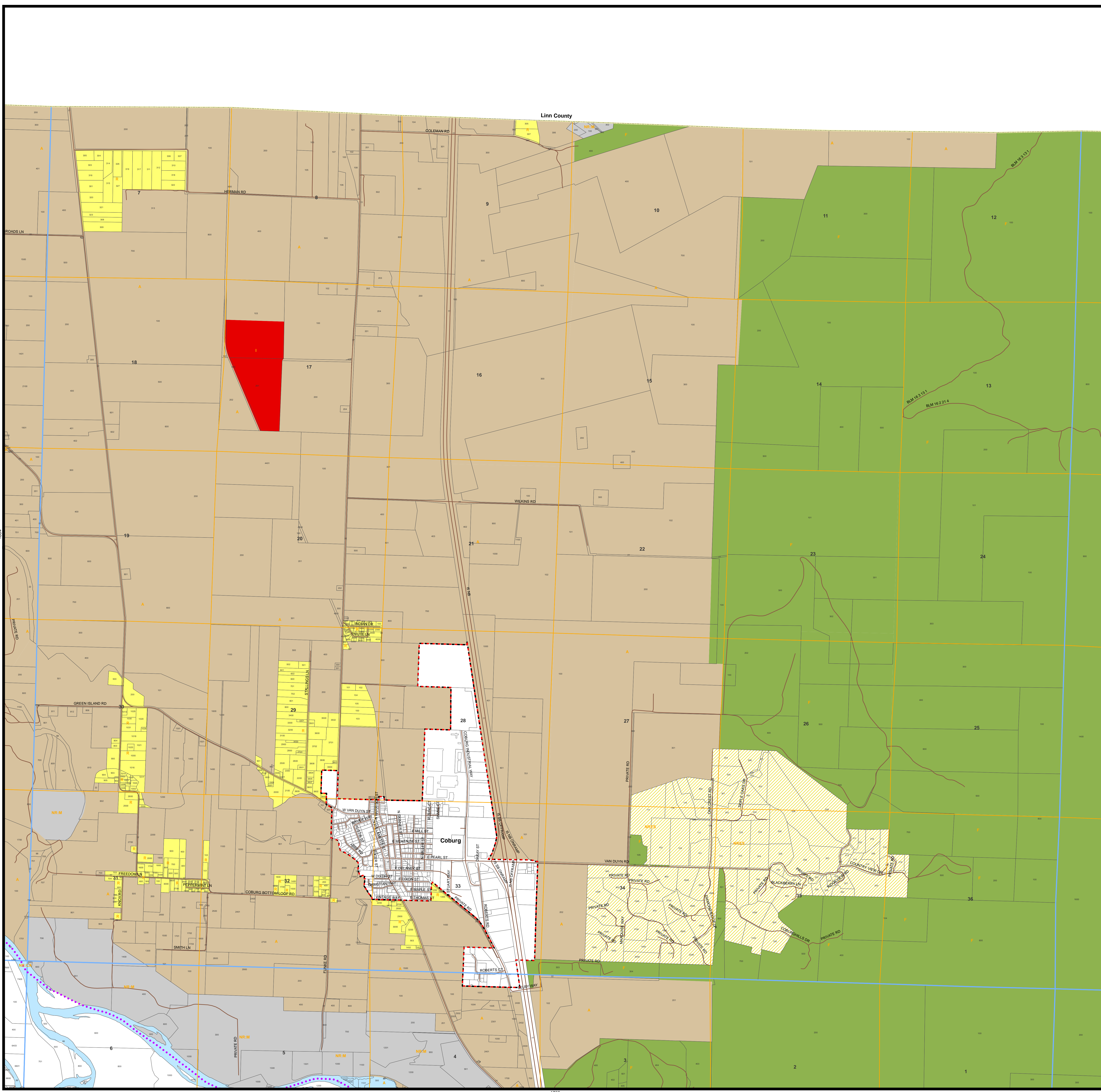


Recording Secretary for this Meeting of the Board

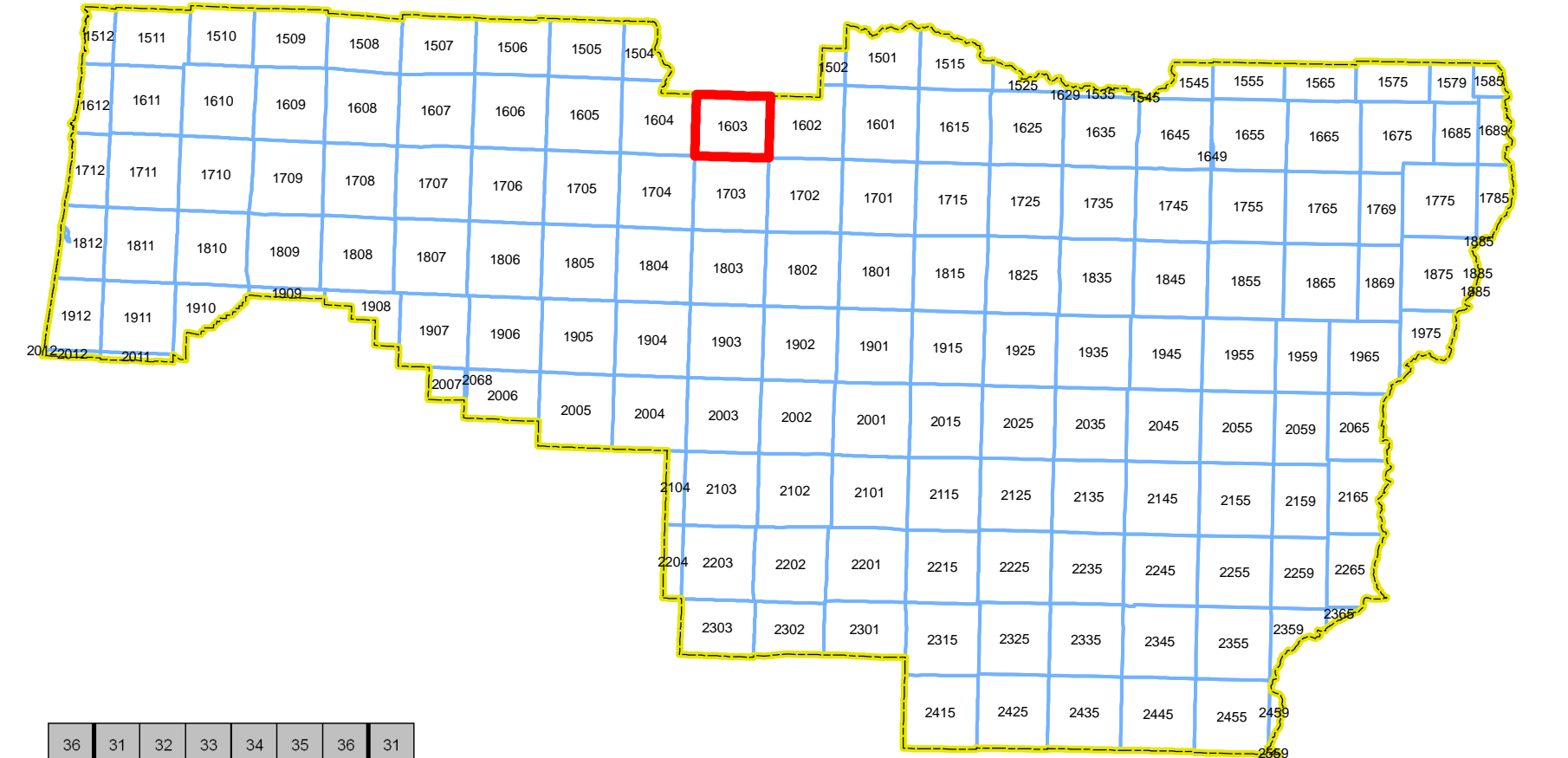
APPROVED AS TO FORM
Date 8-31-17 Lane County



OFFICE OF LEGAL COUNSEL



Township 16 South, Range 03 West



Section Legend

36	31	22	23	24	25	26	31
1	4	5	4	3	2	1	6
12	7	8	9	10	11	12	7
13	14	17	16	15	14	13	18
24	19	20	21	22	23	24	19
25	30	29	28	27	26	25	30
36	31	32	33	34	35	36	31
1	2	3	4	5	6	7	8

Ordinance No. PA 1356
Exhibit A

RCP Plan Designations

- F - Forest
- A - Agricultural
- ML - Marginal
- C - Commercial
- I - Industrial
- R - Residential
- NRES - Non Resource
- P - Parks
- AIR - Airport
- NR:CA - Natural Resource Conservation Area
- NR:M - Natural Resource : Mineral
- NR:W - Natural Resource : Wildlife
- E - Estuary
- DR - Destination Resort
- PF - Public Facility

UGB



City Limits



Communities



Township Range



Sections



Metro Plan Boundary



Parcels



Roads

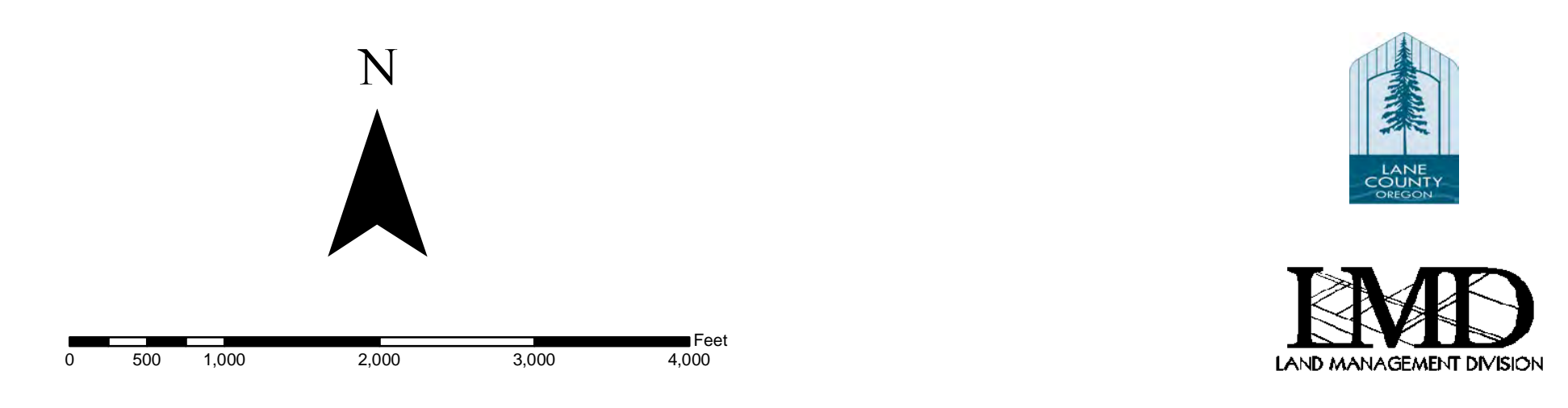


Surface Water



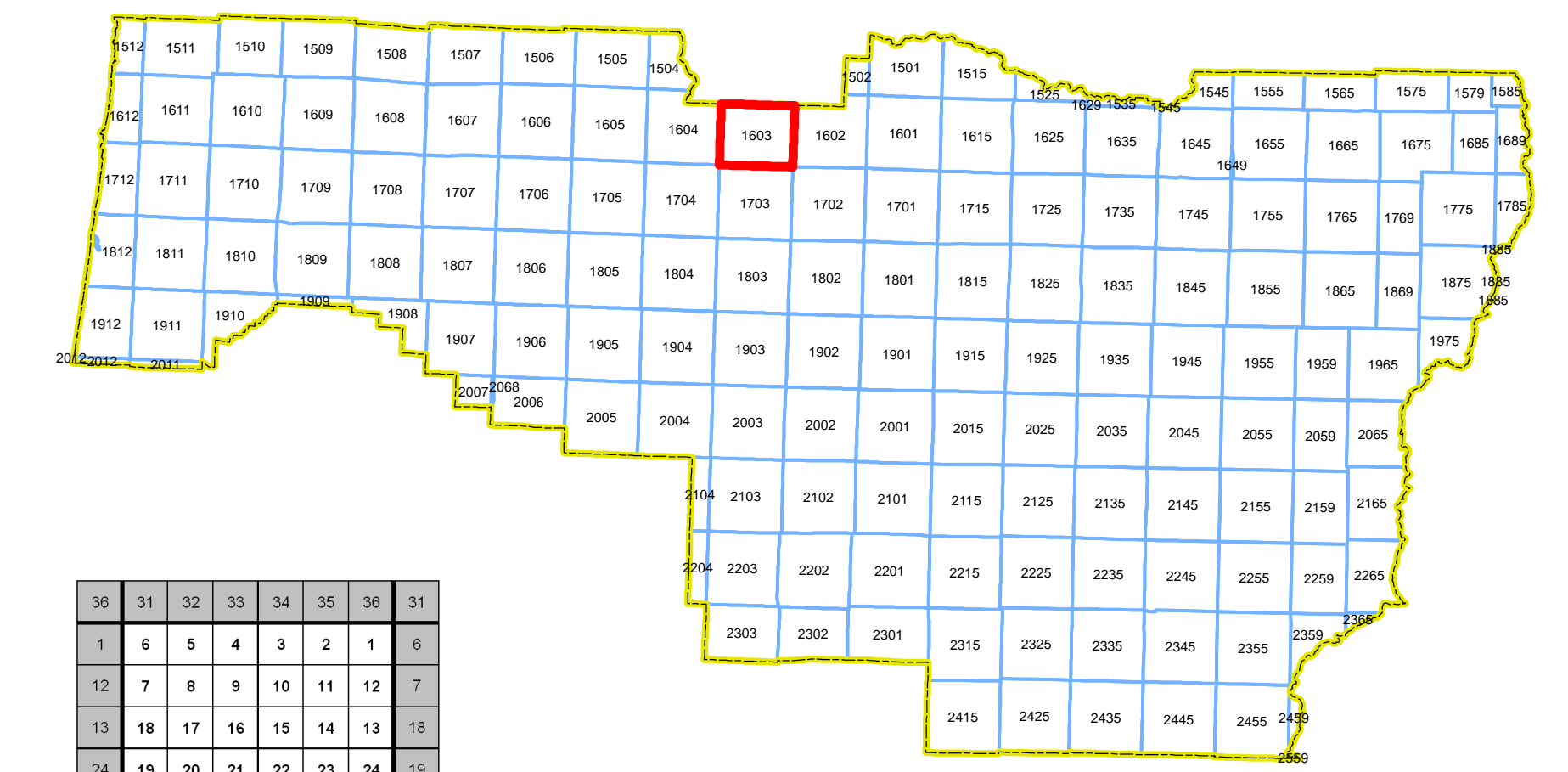
ORIGINAL ADOPTING ORDINANCE NUMBER: **ORD.PA1246**

Revision	Ordinance or Order Number	Date Effective	Planning Action Number	Revision Description
1	ORD.PA1246	July 11, 2008	NA	Map Adopted
2				
3				
4				
5				
6				
7				
8				
9				
10				



**Official Lane County
Plan Map**

Township 16 South, Range 03 West



36	35	34	33	32	31
1	6	5	4	3	2
12	7	8	9	10	11
13	18	17	16	15	14
24	19	20	21	22	23
25	30	29	28	27	26
36	31	32	33	34	35
1	6	5	4	3	2

Section Legend

Ordinance No. PA 1356 Exhibit B

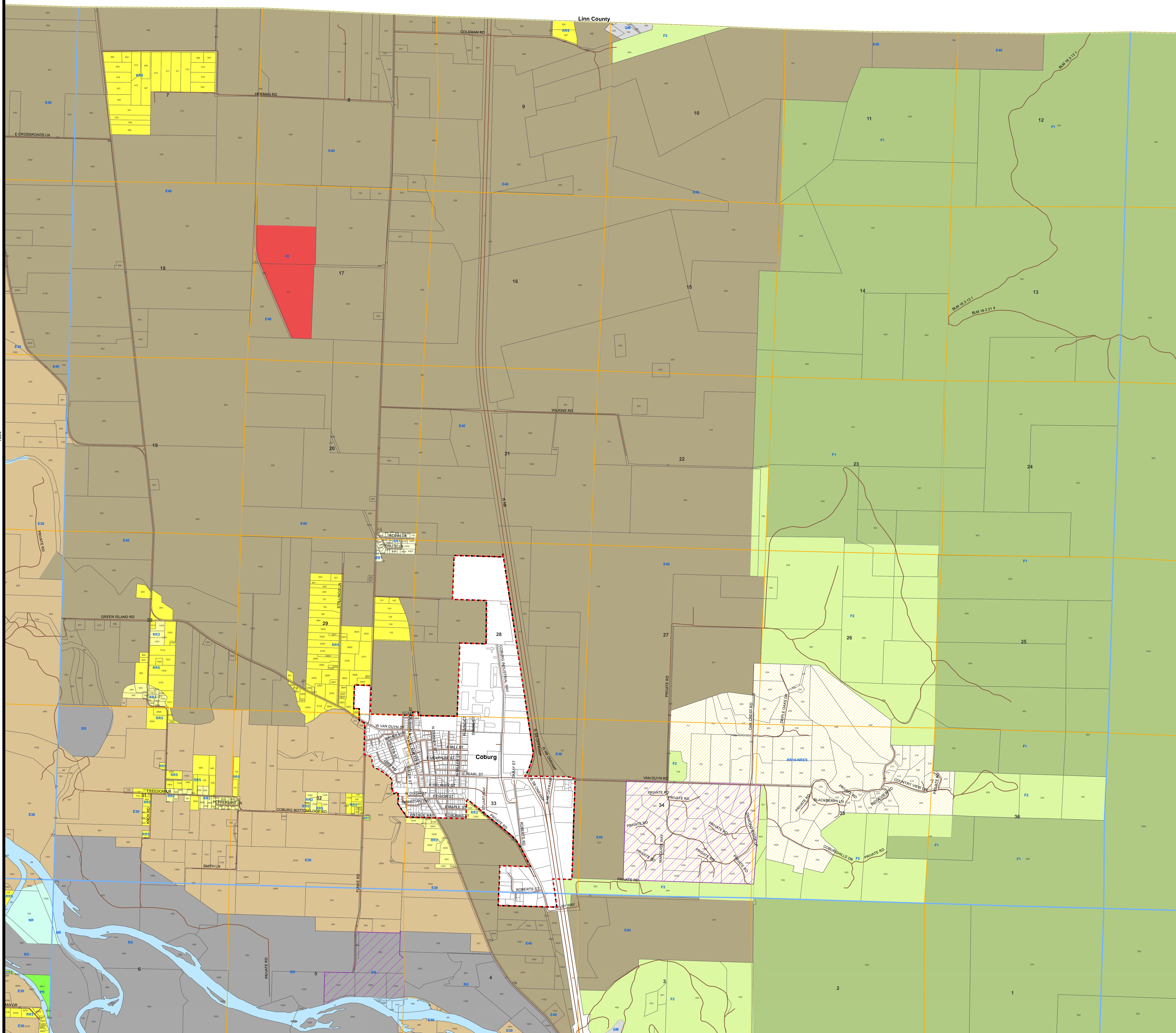
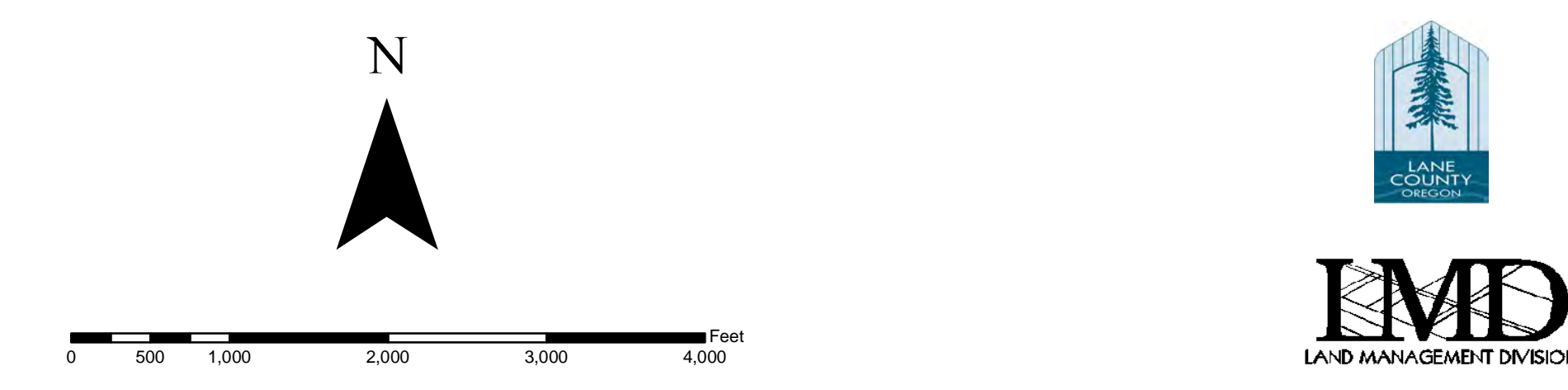
Zoning

- F1 - Non-Impacted Forest
- F2 - Impacted Forest
- E25 - Exclusive Farm Use (25 acre minimum)
- E30 - Exclusive Farm Use (30 acre minimum)
- E40 - Exclusive Farm Use (40 acre minimum)
- E60 - Exclusive Farm Use (60 acre minimum)
- ML - Marginal Lands
- RC - Rural Commercial
- RI - Rural Industrial
- LI - Light Industrial
- GI - General Industrial
- RPF - Rural Public Facility
- RR1 - Rural Residential (1 acre minimum)
- RR2 - Rural Residential (2 acre minimum)
- RR2-NRES - Non Resource (2 acre minimum)
- RR5 - Rural Residential (5 acre minimum)
- RR5-NRES - Non Resource (5 acre minimum)
- RR10 - Rural Residential (10 acre minimum)
- RR10-NRES - Non Resource (10 acre minimum)
- PR - Park and Recreation
- RPR - Rural Park and Recreation
- AO - Airport Operations
- CLWP - Clear Lake Watershed Protection Area
- NR - Natural Resource
- NE - Natural Estuary
- DR - Destination Resort
- QM - Quarry and Mining Operations
- SG - Sand, Gravel and Rock Products
- SG/CP - Sand, Gravel and Rock Products Combining Processing
- CR - Rural Commercial
- C2 - Neighborhood Commercial
- C3 - Commercial
- M2 - Light Industrial
- PF - Public Facility

- UGB
- Township Range
- Parcels
- Surface Water
- City Limits
- Sections
- Roads

ORIGINAL ADOPTING ORDINANCE NUMBER: **ORD.PA1246**

Revision	Ordinance or Order Number	Date Effective	Planning Action Number	Revision Description
1	ORD.PA1246	July 11, 2008	NA	Map Adopted
2	PA 04-5516	July 6, 2009	PA 04-5516	Revisions were collected per LC 163142009
3				
4				
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10				



Official Lane County Zoning Map

EXHIBIT C
 ORDINANCE NO. PA 1356
 FINDINGS OF FACT AND CONCLUSIONS OF LAW

I. PROPOSAL DESCRIPTION

A. Owner/Applicant Agent

Judith Sproul 33495 Van Duyn Road Eugene, OR 97408 Edward and Gladys Schuck 33451 Van Duyn Rd Eugene, OR 97408	Kim O’Dea Law Office of Bill Kloos, PC 375 West 4 th St., Ste. 204 Eugene, OR 97401 (541) 954-0095
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B. Proposal

This application seeks a plan change to Nonresource (from Forest) and a zone change to Rural Residential (RR-10) (from Impacted Forest Land/F-2) for about 32 acres of land in the foothills of the Coburg Hills east of Coburg and I-5. The property is roughly rectangular and lies adjacent to the north of Van Duyn Road.

In six separate decisions since 1984, Lane County redesignated a total of about 878 acres on Van Duyn Road, in the foothills of the Coburg Hills, to a Nonresource plan designation and RR-10 zoning on the theory that the land is so poor in quality that it does not meet the definition of either Agricultural or Forest land. This Application seeks the same designation for an additional 35 acres on the same theory. This is not resource land. If the Application is approved, the subject property will be subdivided into no more than 3 lots of 10 acres or larger.

This property qualifies for a Nonresource plan designation. The Nonresource designation is explicitly authorized by the LCDC rules that implement the goals. It is authorized by the acknowledged comprehensive plan and the zoning code. It has been applied by Lane County in many instances, and only one such designation by the county in the past two decades has been successfully challenged by opponents. In contrast, decisions by the county to convert resource land to rural residential uses on a “developed” or “committed lands” theory have attracted much litigation, and that litigation has resulted in multiple remands of the county decisions.¹

¹ Examples of Lane County decisions that converted Agricultural and Forest Lands to Nonresource uses under “developed or and committed lands” theories but were then remanded on appeal include: Lovinger v. Lane County, 360 Or LUBA 1 (1999), aff’d without opinion 161 Or Page 1 of 46 – **FINDINGS OF FACT AND CONCLUSIONS OF LAW PA 1356**

It makes sense that Nonresource designations made by the county on an adequate factual basis do not attract litigation. A Nonresource designation that is factually supported is fully consistent with the essential principles of Oregon’s land use scheme because it helps preserve land that is “agricultural land” in large blocks and thereby maintain the agricultural economy of the state. See ORS 215.243(2). Locating residential development on Nonresource lands at rural densities helps relieve the pressure to convert Agricultural Land and Forest Land to urban uses at the fringes of cities and urban growth boundaries. To the extent that residential use can be made of rural lands that are Nonresource land, there will be less demand to push urban growth boundaries of cities out into Agricultural and Forest land.

Simply stated, the Nonresource designation recognizes that some rural lands are so poor in quality that they do not meet the definition in the goals of either Agricultural Land or Forest Land. As such, they do not need to be preserved in resource designations in order to fully implement Oregon’s land use scheme for protecting resource lands. Nonresource lands may, therefore, be zoned for Rural Residential uses at densities that remain “rural” in character.

II. SITE AND PLANNING PROFILE

A. Location

Map 16-03-34, TL 102 and portion of TL 111 (F-2 portion), hereafter referred to as the “subject property” or “property.”

The subject property is approximately 33 acres located north of Van Duyn Road east of the City of Coburg. Split zoned properties are allowed in Lane County per the Rural Comprehensive Plan (RCP).

The subject property consists of two tax lots: tax lot 102, and the southern portion of TL 111 (roughly 13 acres). TL 102 is 20 acres, zoned F-2, developed with one residence, and owned by Schuck. TL 111 is 33 acres, split zoned RR-10/F-2, developed with one residence, and owned by Sproul. The residence on TL 111 is located on the portion zoned RR-10/NRES.

B. Zoning

The subject property is designated forestland and zoned F-2.

App 198, 984 P2d 958 (1999)(committed lands exception for 19.84 acres zoned E-40); Johnson v. Lane County, 31 Or LUBA 454 (1996)(committed lands exception for 17.3 acres zoned E-30); Coleman v. Lane County, 5 Or LUBA 1 (1982); Clemens v. Lane County, 4 Or LUBA 63 (1981).

C. Site Characteristics/History

On January 19, 2016, the applicant filed a request to redesignate the subject property from Forest to Nonresource and rezone the subject property from F-2 to RR10. The application was deemed incomplete on November 8, 2016. The applicants' agent submitted additional information on January 10, 2017, subsequently the application was deemed complete.

The Lane County Planning Commission held a hearing on the application on March 21, 2017. The public hearing was closed, but the record was held open until April 25, 2017. On June 6, 2017, the Planning Commission deliberated and unanimously recommended approval of the proposal.

In general terms, this area in the foothills of the Coburg has soils that are not suitable for resource uses. The worst of the soils, to the north, northeast, east, south, and southeast of the subject property, have been redesignated for low density Rural Residential development at an average density of about 10 acres per unit. The county's first major redesignation to Nonresource in this area occurred in 1984 with the Country View Estates subdivision. Since that time the county has continued incremental redesignations, ranging from 20 to 108 acres in size, on a case-by-case basis in response to landowner applications.

Thus, there have been a total six redesignations to Nonresource adjacent to Van Duyn Road since 1984, with the most recent being in 2000. The subject property is similar to these other tracts in every material respect, with the exception that it is for a much smaller acreage. None of the acreage on the subject property meets the county's threshold for land suitable for commercial forest uses.

As discussed more fully in connection with Goals 3 and 4, only a minority of the soils on the site are considered as Agricultural Land based on an Agricultural Capability rating of III and IV, as the county currently classifies soils. Based on how the county classified soils until 1997, none of the soils on the site would be considered as Agricultural Land. In addition, none of the soils on the site meet the county's acknowledged definition of lands suitable for commercial forest uses.

Adjacent and Nearby Land:

North:

Immediately to the north of the area being rezoned is land zoned RR-10 and developed. The character and use is rural residential. Farther north is Agriculture zoned land.

East:

To the east of the subject property is more developed RR-10 land and Countryview Estates Subdivision, which is about 150 acres with 14 dwellings on lots of about 10 acres each. This area has been plan designated Nonresource and zoned RR-10 since 1984. The character and use is rural residential, with no commercial farming. Also east is the Country View Estates First Addition, a 258-acre cluster subdivision developed with 25 lots. The average lot size is

about 10 acres. This area, too, has been designated Nonresource and zoned RR-10 since 1984. The character and use is rural residential.

West:

To the west is the Knee Deep Cattle Company, including the home place and ranch office located close to the road. The land is zoned E-40, and the use is Agricultural. Knee Deep Cattle company has about 860 contiguous acres, with about 108 acres being south of Van Duyn Road and the balance to the north.

South:

To the southeast is more developed RR-10 land and the Cloud Nine Ranch subdivision. Cloud Nine has 10 lots on 108 acres. It was redesignated Nonresource and rezoned to RR-10 in 1997. The subdivision is fully improved. There is an existing homestead dwelling, another recently completed dwelling, and another under construction.

To the south and southwest is Diamond Ridge Subdivision, which is 289 acres of land zoned RR-10 and developed with 27 lots. It was redesignated Nonresource and rezoned to RR-10 in 2000. The subdivision is fully improved.

This is an application for a change in zoning and designation from F/F-2 to NR/RR10 for 32 acres of land that is in a sea of RR land. There are 33 parcels within 1500 feet. Of those, 29 are zoned RR (88%) and 25 are developed with a dwelling (76%). This proposal potentially adds 2 dwellings, and results in more of the same.

D. Organization, Summary, and Introduction

These findings are organized according to the kinds of standards that apply. Whenever possible, in order to avoid repetition, reference is made back to the goal discussion when addressing the non-goal standards.

1. State and Local Law Authorize Resource Designations.

Goal 3 and the Goal 3 Rule define “Agricultural Land” and require that it be preserved for farm use. Goal 4 and the Goal 4 Rule define “Forest Lands,” require it to be conserved, and allow it to be put to the limited range of uses stated in the Rule. Both types of lands are “resource lands.” As defined by LDCD, “Resource Land” is any land within the definition of Goal 3 (Agricultural Land), Goal 4 (Forest Land), Goal 16 (Estuarine Resources); Goal 17 (Coastal Shorelands); or Goal 18 (Beaches and Dunes). See OAR 660-004-0005(2). “Nonresource Land” is any land that is not within the definition of one of the goals listed above. See OAR 660-004-0005(3). The distinction between Resource Land and Nonresource Land has been recognized by the Supreme Court.²

² See Perkins v. City of Rajneeshpuram, 300 Or 1, 8 n 12, 706 P2d 949 (1985).

The Lane County Rural Comprehensive Plan Policies (“*Rural Plan Policies*”) recognize that some lands are appropriate for a Nonresource designation. The plan provisions generally track the authorization in the LCDC Rules. RCP Goal 2, Policy 16 says that lands that are not Agricultural or Forest Lands may be designated for rural residential use. This policy requires that other RCP policies be complied with, and it discourages applying the Nonresource designation to small, isolated tracts. RCP Goal 2, Policy 17 says that lands that qualify for a Nonresource designation shall be zoned either RR-5 or RR-10, based on consideration of a list of factors and other plan policies.

2. Lane County has Consistently Applied the Nonresource Designation to Lands that Meet the Test of Being Neither Agricultural or Forest Lands.

Lane County’s first Nonresource designation was made in 1981, prior to adoption of the current plan and code. The approval was for the McKenzie Ridge PUD on a 385-acre tract in the Camp Creek basin. It adopted zoning to allow 77 units at a 5-acre density. The county approval was appealed by neighbors and affirmed by LUBA.³

McKenzie Ridge was the first Nonresource designation in Lane County, and one of the first in the State as well. The comprehensive challenge mounted at LUBA to the county’s approval was a successful first road-test of the Nonresource theory. The application at issue here is for a much smaller tract of land than was at issue in McKenzie Ridge.

Since McKenzie Ridge, Lane County has approved at least 12 other requests for a Nonresource designation. It is worth summarizing those approvals here to demonstrate that the Nonresource theory is sound and can be successfully defended on appeal to LUBA or on review by the LCDC.

Most of the Nonresource designations in Lane County are listed and described in Table A, which follows. It shows that the county has consistently implemented the Nonresource designation where it is factually justified. Furthermore, on the whole, the county’s decisions have been acknowledged by the LCDC on review, and generally they have been upheld by LUBA on appeal in those rare occasions when appeals have been filed.

The proposal now before the county is well within the range of tracts that have been approved in the past.

³ See *Osborne v. Lane County*, 5 Or LUBA 172 (1982).

Table A.
Nonresource Designations Approved by Lane County

Project File No./Ord. No.	Location Plan Plot	Year	Acres/ (Lots)	Zoning Density	Outcome on Appeal/Review
McKenzie Ridge CPR 1286	Camp Creek Plot 458	1981	385ac (79)	5 acre	Affirmed; <u>Osborne v. Lane Co.</u> , 5 Or LUBA 172 (1982); Acknowledged, LCDC Order 84-ACK-201
B. Meltebeke PZC 83-031 CPR 513	Van Duyn Road 16-3-34 Plot 394	1983	400ac (39)	10 acre	Acknowledged; LCDC Order 84-ACK-201
Agate Creek PUD PZC 82-190 CPR 499	18-02-28, TL 1200 Plot 463	1983	(16)	5 acre	Acknowledged; LCDC Order 84-ACK-201
Dillard Highlands CPR 100	18-03-28 Plot 382, 383	1983	154ac (24)	5 acre	Acknowledged; LCDC Order 84-ACK-201
Cerro Gordo CPR 1102	Dorena Reservoir Plot 464	1983	604ac (60)	10 acre	Acknowledged; LCDC Order 84-ACK-201
Timberlane PA 3192-85 Ord. PA 944	52 nd Street 18-04-13, TL 3802 Plot	1987	62ac	5 acre	Remanded, <u>Holland v. Lane Co.</u> , 16 Or LUBA 583 (1988)
OR Dunes Golf PA 2962-94 Ord. PA 1074	Munsel Lake Rd. 18-12-23, TL 900 Plot 22	1995	40ac	5acre	Not appealed
Smith PA 327-96 Ord. PA 1087	Van Duyn Road 16-03-34, TL 107 Plot 394A	1996	20ac	10 acre	Not appealed
Starr PA 3889-96 Ord. PA 1099	Van Duyn Road 16-3-34, TL103 Plot 394A	1997	20ac	10 acre	Not appealed
Cloud Nine PA 0532-97 Ord. PA 1100	Van Duyn Road 16-3-35, portion TL 102,103 Plot 408	1997	108ac (10)	10 acre	Not appealed
Welsh PA 1936-97 Ord. PA 1103	Dillard Road 18-03-16-03, TL 4500 18-03-21, TLs 100, 200 Plot 382	1998	150ac	5 acre	Appeal dismissed; <u>Landwatch v. Lane County</u> , (LUBA No. 98-011, April 4, 1999), <u>aff'd w/o opinion</u> 154 Or App 729, 963 P2d 756 (1998).
R. Meltebeke PA 0096-98 Ord. PA 1119	Van Duyn Road 16-03-27, TL 400 16-03-34, TL 110 Plot 408	1998	40ac	10 acre	Not appealed
Diamond Ridge PA ____ Ord. PA ____	Van Duyn Road	2000	289 ac 27 lots	10 Acre	Not appealed

III. COMPLIANCE WITH STATEWIDE PLANNING GOALS.

Amendments to local plans and code must comply with the Statewide Planning Goals. ORS 197.175(2)(A). For individual applications like this, compliance with relevant goals must be

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addressed by the county. This Part addresses each relevant goal and explains why the proposal complies. This application requires no goal exceptions.

Goal 1: Citizen Involvement

To develop a citizen involvement program that insures the opportunity for citizens to be involved in all phases of the planning process.

Goal 1 is a process goal. This proposal complies with Goal 1 because it will be processed as a quasi-judicial application through the county's acknowledged public process for individual plan and zone changes. This process includes public hearings before the Planning Commission and the County Board.

Goal 2: Land Use Planning

Part I of Goal 2 requires local governments to establish processes and policies for land use decisions.

To establish a land use planning process and policy framework as a basis for all decisions and actions related to use of land and to assure an adequate factual base for such decisions and actions.

Part II of Goal 2 authorizes exceptions to the goals – land use decisions that are not in compliance with the goals under certain circumstances. Statutes also describe when exceptions are authorized. See ORS 197.732.

This application complies with Goal 2 because it is being processed under the county plan and code and because no exception to any resource goal is proposed.

Goal 3 and Goal 4: The Relationship Between Goals 3 and 4.

OAR 660-006-0015(2) states,

When lands satisfy the definition requirements of both agricultural land and forest land, an exception is not required to show why one resource designation is chosen over another. The plan need only document the factors that were used to select an agricultural, forest, agricultural/forest, or other appropriate designation.

The “agricultural land” designation and the “forest land” designation are both resource designations. The designations have equal weight and importance to the State of Oregon.

Goal 3: Agricultural Lands

To preserve and maintain agricultural lands. Agricultural lands shall be preserved and maintained for farm use, consistent with existing and future needs for agricultural products, forest and open space and with the State's agricultural land use policy expressed in ORS 215.243 and 215.700.

Goal 3 defines "Agricultural Land" as follows:

Agricultural Land -- in western Oregon is land of predominantly Class I, II, III and IV soils and in eastern Oregon is land of predominantly Class I, II, III, IV, V and VI soils as identified in the Soil Capability Classification System of the United States Soil Conservation Service, and other lands which are suitable for farm use taking into consideration soil fertility, suitability for grazing, climatic conditions, existing and future availability of water for farm irrigation purposes, existing land-use patterns, technological and energy inputs required, or accepted farming practices. Lands in other classes which are necessary to permit farm practices to be undertaken on adjacent or nearby lands, shall be included as agricultural land in any event.

More detailed soil data to define agricultural land may be utilized by local governments if such data permits achievement of this goal.

The LCDC has elaborated on the definition of Agricultural Land in its rules. OAR 660-033-0020.

There are four parts to the relevant definition in the rule. Each part of the definition is addressed separately here.

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

"Agricultural Land" as defined in Goal 3 includes:

(A) Lands classified by the U.S. Soil Conservation Service (SCS) as predominantly Class I-IV soils in Western Oregon and I-VI soils in Eastern Oregon;

Goal 3 requires that SCS soils data be used to classify the soils, but it allows soils data in the published maps to be refined with more detailed onsite investigation. OAR 660-033-0030(6). This is the method the applicant has followed. The field work done by the applicant shows that only about 46 % of the soils on site are Classes III and IV.

The published SCS soils maps show two kinds of soil for this site. (See SCS soils map excerpt in Soils Report). These are:

- Dixonville-Philomath-Hazelair Complex, 12-35% slope; 43E
- Panther silty clay loam, 2-12% clay; 102C

The published soils maps were refined by onsite investigation by Brian Rabe, CPSS, WWS,

Cascade Earth Sciences. The report was reviewed and approved by LCDC. After refinement, the site contains five soils:

- Dixonville SCL, 3-12% slope; 41C; Class III; .61 acre
- Hazelair SCL, 2-7% slope; 52B; Class III; 4.32 acre
- Hazelair SCL, 7-20% slope; 52D; Class IV; 4.35 acre
- Panther SCL, 2-12% slope; 102C; Class VI; .30 acre
- Philomath CSC, 12-45% slope; 107C; Class VI; 10.48 acre

In summary, the site is not Agricultural Land under this part of the test because only 46% of the soils on the entire site are in soil Classes I-IV.

It is worth noting, for example, that in the four other Nonresource designations approved by the county on Van Duyn Road between 1984 and 1998, the county has treated the soils in the Dixonville-Philomath-Hazelair complex as having a capability class of VI and being nonagricultural. (See, for example, the findings supporting the decisions for Meltebeke, Smith, Starr and Cloud Nine)

OAR 660-033-0020(1)(a): [Other Suitable Lands]:

(B) Land in other soil classes that is suitable for farm use as defined in ORS 215.203(2)(a), taking into consideration soil fertility; suitability for grazing; climatic conditions; existing and future availability of water for farm irrigation purposes; existing land use patterns; technological and energy inputs required; and accepted farming practices;

This part of the test focuses on lands, such as the subject property, which have predominantly nonagricultural soils, and inquires into whether they are nevertheless suitable for farm use. It is commonly called the “other suitable lands” test. A list of seven factors must be considered. The suitability for farm use must consider the potential for use in conjunction with adjacent or nearby land.⁴

The following review examines each of the seven factors stated in the rule in support of its conclusion that the property does not fall within the scope of the “other suitable lands” definition. With respect to each of the seven factors listed in the “other suitable lands” rule, the Rabe Report finds the following, in summary:

Soil fertility: The soils on the property are limited in natural fertility and would need supplementary fertilization and liming to maintain a useful level of production. The natural conditions present make it impracticable to provide such supplementation. Limited natural

⁴ See DLCD v. Curry County, 28 Or LUBA 205, 208-09 (1994), aff’d 132 Or App 393 (1995); Kaye/DLCD v. Marion County, supra, 23 Or LUBA at 481-62 (interpreting identically worded previous Goal 3 administrative rule OAR 660-05-005(1)(b)).

fertility and limited ability to correct this condition contribute to this property being unsuitable for farm use. Furthermore, the property is already developed with residences and residential accessory structures and uses, limiting soil fertility usefulness.

Suitability for grazing and other crops: The risk/reward situation relative to establishment of improved pasture on these soils is such that the efforts to establish improved pasture would be imprudent. This, together with the low level of feed naturally available, contribute to the unsuitability of the site for farm use.

The inability to match livestock grazing to the period of maximum nutrient value of the forage available without being destructive to soil and plant resources, and the inability to use the area as a holding/feeding area for all of the wet season contribute to the lack of suitability for farm use.

Restrictions on the ability of a farm manager to exercise pasture maintenance practices on the property, such as mowing or burning, contribute to the lack of suitability of the property for farm use. Rapid depletion of soil water due to inherent soil characteristics severely limits forage production in the dry season, which also contributes to the lack of suitability for farm use. Lack of adequate drinking water for livestock during the dry season contributes substantially to the unsuitability of the subject property for farm use.

The actual grazing history of the property offers solid, practical substantiation for the evaluation of the soil scientist that the soils on the subject property are not suitable for farm use. The *SCS Lane County Soil Survey* lists no crops, other than forage, for the soil types present on the property. Cultivation and management of field crops and horticultural crops that require annual tillage or irrigation would not be feasible for these soil types.

But most importantly, regardless of all the above, the property is small and already already developed with residences and residential accessory structures and uses, substantially limiting the property's usefulness for grazing and crops on any agricultural scale.

Climatic Conditions: Climatic conditions combined with soil conditions create poor conditions for grazing. The site must be grazed either earlier in the spring when soils are too wet, causing damage to the forage plants and soil structure, or later in the spring when the land is drier but the plants have reached a stage of maturity that greatly reduces the nutritional value of the forage. Dry summers combined with these soils reduces the summer forage production to virtually nothing. If the ground were to be tilled to improve pasture, the soil types and slopes present would pose high risks of severe erosion due to fall rains. The interaction of climate and soil characteristics contributes to the unsuitability of this site for farm use.

Irrigation Water: No irrigation water exists. Existing wells are for residential use only.

Existing Land Use Patterns: The Knee Deep Cattle Company operates an 860 acre ranch adjacent to the west, southwest, and northwest. However, the residentially developed portion of the ranch lies adjacent to the subject property, acting as a buffer between the proposal. The ranch does not object to the application and does not find the proposal incompatible with its operation.

Most other adjacent and nearby land can be characterized as being either low density rural residential uses. There are no other adjacent commercial farm uses. The proposed plan and zone designations will not significantly change the existing land use pattern. Furthermore, this site does not need to be kept in a resource designation in order to allow farm practices to continue on nearby lands.

Technical and Energy Requirements: Interaction of soil and climatic conditions contribute heavily to this site being nonagricultural. The very wet Fall, Winter, and Spring and the dry Summer months are givens. The clay texture of most of the soils, the slow permeability on all of the site, the cobbles and rocks on most of the site, and the slopes on much of the site are also givens that can't be changed. Together, as discussed above, these conditions severely limit grazing potential.

Those areas of the entire site that have the better soils, in comparative terms, cannot be practically fenced for more intensive farm management because the better soils appear in a number of small areas, and these areas themselves are punctuated by areas of nonagricultural soils. Furthermore, the areas with the better soil ratings are entirely composed of the Dixonville-Philomath-Hazelair complex, which itself is a mix of agricultural and nonagricultural soils. The use of fencing on this site would not help overcome the limitations inherent in this soil complex.

The individual and combined effects of soil conditions and climatic conditions are such that no practical application of energy and technology can be expected to overcome the limitations inherent in the soils. Their application would not make the site suitable for farm use. Furthermore, the property is already developed with residences and residential accessory structures and uses, limiting agricultural usefulness.

Accepted Farm Practices: The applicants have conducted no commercial-level farming on this site in recent years.

OAR 660-033-0020(1)(a)(C):

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

This part of the test focuses on adjacent and nearby agricultural lands. The adjacent lands zoned for agricultural use include: none. Hereford Road separates the subject property from agricultural land to the west. The nearby lands zoned for agricultural use include: Knee Deep Cattle Company and Bylund-Keiger Farms, LLC.

The subject property is not necessary to permit farm practices to be undertaken on the Knee Deep Cattle Company or Bylund-Keiger Farms. Knee Deep and Bylund-Keiger Farms have operated independently from this property throughout its recent history. In addition, the size, location (roadway interference) and soils of the property would not make this property a valuable addition to nearby and adjacent agricultural lands.

OAR 660-033-0020(1)(b): [Farm unit test]

Land in capability classes other than I-IV/I-VI that is adjacent to or intermingled with lands in capability classes I-IV/I-VI within a farm unit, shall be inventoried as agricultural lands even though this land may not be cropped or grazed;

This part of the test focuses on lands, such as the subject property, which are predominantly nonagricultural soils, and inquires into whether they are adjacent to or intermingled with better lands within a “farm unit.” It is commonly called the “farm unit” test. If the subject property is not a part of a “farm unit,” then this test does not apply.

The term “farm unit” is not defined in any statute, goal, or rule. The term first appeared in the LCDC Goal 3 Policy Paper. That policy paper became the basis for the first Goal 3 Rule adopted in 1982.⁵ The most generous reading of the “farm unit” term would include: (1) all lands in same ownership, and (2) lands in different ownership that are jointly managed for farm use. If the subject property is not either owned or managed together with other land in farm use, then it is not part of farm unit, and the farm unit test does not apply.

The subject property is not adjacent to any other land in the same ownership. It is not jointly managed for farm use with any adjacent land. Hence, it is not a part of a farm unit and is not Agricultural Land under this test.⁶

Goal 4: Forest Lands

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

Forest lands are those lands acknowledged as forest lands as of the date of adoption of this goal amendment. Where a plan is not acknowledged or a plan amendment involving forest lands is proposed, forest land shall include lands which are suitable

⁵ The first Goal 3 Rule appeared in OAR 660-05(1982). See reference to “farm unit” from the original codification in DLCD v. Coos County, 117 Or App 400, 844 P2d 907 (1992), rev denied (1993). It now appears in OAR 660-033.

⁶ It is worth noting, too, that the subject property is not “adjacent to or intermingled with lands in capability classes I-IV” as required by the rule. The published and Revised Soil Maps show that the soils in the Knee Deep acreage adjacent to the subject property’s west line are not in capability classes I-IV. The class I-IV soils on the Knee Deep acreage are farther to the west, beyond the buffer of Nonresource soils. This is a separate reason for concluding the farm unit test does not apply to the subject property.

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

The second paragraph of Goal 4 defines “Forest Lands.” Because a plan amendment is proposed, the second sentence of paragraph two is the operable definition. There are three parts to the definition: (1) Lands suitable for commercial forest uses; (2) adjacent and nearby lands necessary to permit forest operations or practices; and (3) other forested lands that maintain certain natural resources.

(1) [F]orest land shall include lands which are suitable for commercial forest uses.

The term “commercial forest uses” is not defined in any statute, goal, or rule. However, Lane County adopted a definition for the term in its plan, and the plan was acknowledged by the LCDC. Commercial forest land is land that is capable of producing crops of industrial wood in excess of 50 cubic feet per acre of annual growth. Commercial forest types of trees include: Douglas fir, hemlock/cedar/spruce, other conifers, and deciduous trees.⁷

Productivity data for wood fiber is addressed in the soils report, Table 4, page 9. The report, which was approved by LCDC, establishes that the productivity rating is 46.1 cu.ft./acre/year. As

⁷ Lane County’s definition of “commercial forest uses” was the central issue and the subject of extensive discussion in Holland v. Lane County, 16 Or LUBA 583 (1988). LUBA summarized the relevant provisions of the acknowledged county plan as follows:

The county’s decision concludes that the subject property is not suitable for commercial forest use “because the majority of the soils do not qualify as Commercial Forest Land.”

The county adopted the following definition of “commercial forest land” as part of its “Working Paper: Forest Lands; March, 1982” (Forest Lands Paper) and “Addendum to Working Paper: Forest Lands; November, 1983” (Forest Lands Addendum) documents.

“‘Commercial’ forest land [is] land capable of producing crops of industrial wood in excess of 50 cubic feet per acre of annual growth.”

Ordinance No. 889, Ex. C. The Forest Lands Paper, at 10, contains an inventory of “Acres of Commercial Forest Land by Cubic Foot Site Class, Forest Type and Ownership.” This table recognizes the following commercial forest types – “Douglas fir,” “hemlock/cedar/spruce,” “other conifers” and “deciduous.”

such, the tract is not commercial forest land.

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

This part of the test inquires into whether the subject property must be kept in a resource designation in order to allow forest operations or practices to continue on adjacent or nearby lands. The subject property is not such land.

There is one tax lot adjacent to the subject property that is zoned F-2, Impacted Forest. It is roughly 10 acres and developed with a residence. It is devoid of trees and not in forest production.

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

In order for this part of the definition to apply, the subject property must be “forested lands.” “Forested lands” do not include lands that are predominantly open, rather than covered with trees.⁸ The subject tract is developed and largely devoid of trees. Hence, this site is not Forest Land under this part of the definition.

Furthermore, the targeted resources (soil, air, water and fish and wildlife resources) are not present on the subject property. There are no water bodies on site. There is no apparent relationship between the minimal tree cover and air quality. The soil resources on the site have been exhaustively described. The minimal existing tree cover is not necessary to maintain soil on site. The land in the immediate area of the subject property is a mixture of land that is vacant, like the subject property, and land that is developed at a 10-acre Rural Residential density. The wildlife resources are similar throughout the area in terms of range of species and occurrence, without respect to whether the land is vacant or developed. The evidence does not suggest that the limited tree cover on the subject property is necessary to maintain the wildlife population.

Goal 5: Open spaces, scenic and historic areas, and natural resources.

To conserve open space and protect natural and scenic resources.

(1) What Goal 5 requires.

A. What Goal 5 requires.

⁸ See Osborne v. Lane County, 5 Or LUBA 172, 185-86 (1982)(upholding county finding that site is not Goal 4 land under the “other forested lands” part of the test because air photos show the far greater area to be open), citing Ager v. Klamath County, 3 LCDC 157 (LCDC No. 79-030, 1979).

Goal 5 requires the county to inventory the locations, quality, and quantity of certain natural resources. Where no conflicting uses are identified, the inventoried resources shall be preserved. Where conflicting uses are identified, the economic, social, environmental and energy consequences of the conflicting uses shall be determined and programs developed to achieve the goal.

Goal 5 is implemented through the Goal 5 Rule adopted by the LCDRC in 1996. The Rule appears in OAR Chapter 660, Division 23: Procedures and Requirements for Complying with Goal 5. The Rule applies to “post-acknowledgment plan amendments” or “PAPAs,”⁹ such as this application.¹⁰ The Division 23 Rule replaces the Division 16 Rule.¹¹

When a local government undertakes a PAPA, it is not required to do an entire Goal 5 analysis from scratch. The local government’s obligation to do a Goal 5 analysis, and the scope of the Goal 5 analysis that is required, has been the subject of considerable caselaw development, which has been distilled into the applicability provisions of the Goal 5 Rule. Particularly relevant are subsection (3) and (4) of OAR 660-023-0250, which state:

(3) Local governments are not required to apply Goal 5 in consideration of a PAPA unless the PAPA affects a Goal 5 resource. For purposes of this section, a PAPA would affect a Goal 5 resource only if:

(a) The PAPA creates or amends a resource list or a portion of an acknowledged plan or land use regulation adopted in order to protect a significant Goal 5 resource or to address specific requirements of Goal 5;

(b) The PAPA allows new uses that could be conflicting uses with a particular significant Goal 5 resource site on an acknowledged resource list; or

(c) The PAPA amends an acknowledged UGB and factual information is submitted demonstrating that a resource site, or the impact areas of such a site, is included in the amended UGB area.

(4) Consideration of a PAPA regarding a specific resource site, or

⁹ OAR 660-23-0010(5) states:

“PAPA” is a “post-acknowledgment plan amendment.” The term encompasses actions taken in accordance with ORS 197.610 through 197.625, including amendments to an acknowledged comprehensive plan or land use regulation and the adoption of any new plan or land use regulation. The term does not include periodic review actions taken in accordance with ORS 197.628 through 197.650.

¹⁰ OAR 660-023-0250(2) states, in part: “The requirements of this division are applicable to PAPAs initiated on or after September 1, 1996.”

¹¹ See OAR 660-023-0250(1).

regarding a specific provision of a Goal 5 implementing measure, does not require a local government to revise acknowledged inventories or other implementing measures, for the resource site or for other Goal 5 sites, that are not affected by the PAPA, regardless of whether such inventories or provisions were acknowledged under this rule or under OAR 660, Division 16.

The *italicized* language above is particularly applicable here. The provisions above reflect caselaw stating that where a county is amending acknowledged plan and zoning designations, the county must address Goal 5 if any of the area proposed for change encompasses lands included on the county's inventory of Goal 5 resources.¹² The county need not go through the Goal 5 conflict resolution process for alleged Goal 5 resources that are not on the acknowledged Goal 5 inventory.¹³

The initial Goal 5 question, therefore, is whether the subject property includes any Goal 5 resources inventoried in the acknowledged county plan.

B. Inventoried and acknowledged Goal 5 Resources on the Subject Property.

The paragraphs below address the acknowledged Goal 5 resource inventories. Consistent with the "Applicability" provisions in OAR 660-023-0250, the Goal 5 process will be applied only for those Goal 5 resources inventoried in the acknowledged plan that are known to be present on the subject property.

Historic Resources: The acknowledged list of historic resources is listed as "Historic Sites or Sites." The subject property is not on the list.

Mineral and Aggregate Resources: Mineral and aggregate sites are listed in several appendices in the *Mineral and Aggregate Working Paper*. The subject property is not listed in any of the appendices.

Energy: The subject property is not listed on any county inventory of sites to be protected for energy production.

Water Resources: The *Water Resources Working Paper* (1982) inventories the following water resources which include or potentially include the subject property: Watersheds (specifically the Daniels Creek watershed, a tributary of the Willamette River); and Groundwater.

¹² See Urquhart v. Lane Council of Governments, 80 Or App 176, 721 P2d 870 (1986); Plotkin v. Washington County, 165 Or App 246, 997P2d 226 (2000); Waugh v. Coos County, 26 Or LUBA 300, 310-12 (1993); 1000 Friends of Oregon v. Yamhill County, 27 Or LUBA 508, 522 (1994).

¹³ Davenport v. City of Tigard, 23 Or LUBA 565 (1992).

Riparian Resources: The *Flora & Fauna Working Paper (1982) and Addendum (1983)* inventories Riparian resources. Riparian areas are inventoried to include all land within 100 feet of the banks of a Class 1 stream. There are no Class I streams on the subject property or within 100 feet.

Wetland Resources: At the time the *Flora & Fauna Working Paper* was prepared, the U.S. Fish and Wildlife Service had not completed its National Wetlands Inventory (“NWI”) mapping for the entire county. As a result, the county Goal 5 wetlands inventory was limited to five “major wetlands” areas, which do not include the subject property. Consideration of adding other “minor wetland” areas to the inventory was deferred by the county to a later date, to follow completion of the NWI mapping. County reconsideration has not yet occurred. Thus, the county plan inventory of wetland resources does not include any such resources on the subject property. However, there is a small drainage wetland on the southeast corner of the property.

Sensitive Fish and Waterfowl Areas: The inventory of these sites appears in the *Flora & Fauna Working Paper Addendum (1983)* at 1-4. The subject property is not included on the inventory.

Natural Areas: The inventory of these sites appears in the *Flora & Fauna Working Paper* at 26-32. The subject property is not included on the inventory.

Big Game Range: The plan classifies the entire county into three categories of Big Game Range: Major, Peripheral, and Impacted. See *Flora & Fauna Working Paper* at 23-25, *Addendum* at 14.

The *Working Paper* and *Addendum* discuss conflicts between residential and big game uses in general terms. However, they explicitly decline to simplify the issue of conflict identification to a matter of densities for individual development sites, and instead defer the issue to future work between the county and the ODFW. “The County should continue to work with the ODFW to resolve the issue of Big Game designation and protection in a mutually acceptable manner -- including the involvement of that agency in land use regulation development.” *Addendum* at 14. It appears, therefore, that the County formally deferred applying this part of Goal 5 when adopting its plan.

C. ESEE Decision Process for Inventoried Goal 5 Resources Present.

The basic requirements for conducting the conflicts analysis and developing a program for inventoried and acknowledged resources is spelled out in OAR 660-023-0040. The introductory provisions in OAR 660-023-0040(1) explain that there are four steps in the ESEE process, that the county has discretion in how it proceeds through the process so long as it completes each step, and that the analysis need not be lengthy or complex. 14 The result should create a clear

14 OAR 660-023-0040(1) provides:

understanding of the conflicts and the consequences. The four steps in the ESEE process are:

- (a) Identify conflicting uses;
- (b) Determine the impact area;
- (c) Analyze the ESEE consequences; and
- (d) Develop a program to achieve Goal 5.

The Goal 5 Rule provides additional instructions on how to conduct each of the four steps listed above. The approach taken here will be to address each of the Goal 5 resources inventoried on the site in the acknowledged plan (Big Game Range and two Water Resources and wetland) and conduct the four-step analysis. Big Game Range will be addressed first. The full text of Goal 5 Rule instructions relating to each of the four steps will be quoted in footnotes in connection with the Big Game analysis.

1. ESEE Analysis for Big Game Range

As noted above, the acknowledged county plan inventories Big Game Range as a significant Goal 5 resource. However, the County has not yet completed the Goal 5 process for this resource. The plan documents declined to simplify the issue of conflict identification to a matter of densities for individual development sites, and instead deferred the issue to future work between the county and the ODFW. “The County should continue to work with the ODFW to resolve the issue of Big Game designation and protection in a mutually acceptable manner -- including the involvement of that agency in land use regulation development.” *Flora & Fauna Working Paper Addendum* at 14. Thus, the County has not yet completed the Goal 5 process for Big Game Habitat. At this point, the County has recognized that the resource is significant, it has recognized that there are

on an analysis of the economic, social, environmental, and energy (ESEE) consequences that could result from a decision to allow, limit, or prohibit a conflicting use. This rule describes four steps to be followed in conducting an ESEE analysis, as set out in detail in sections (2) through (5) of this rule. Local governments are not required to follow these steps sequentially, and some steps anticipate a return to a previous step. However, findings shall demonstrate that requirements under each of the steps have been met, regardless of the sequence followed by the local government. The ESEE analysis need not be lengthy or complex, but should enable reviewers to gain a clear understanding of the conflicts and the consequences to be expected. The steps in the standard ESEE process are as follows:

- (a) Identify conflicting uses;
- (b) Determine the impact area;
- (c) Analyze the ESEE consequences; and
- (d) Develop a program to achieve Goal 5.

several degrees of significance (by mapping the entire county into three alternative zones -- Major, Peripheral, and Impacted), and it has deferred the balance of the Goal 5 analysis to a later date.

The ESEE analysis must be conducted for Big Game Range because this is a post-acknowledgment plan amendment that would allow new uses (rural residential) that could conflict with Big Game Range. OAR 660-023-0250(3)(b).

(a) Identify Conflicting Uses

The approach to identifying conflicting uses is stated in OAR 660-023-0040(2).¹⁵ The existing and potential conflicting uses with Big Game Range must be determined. This requires looking at the uses allowed by the proposed RR-10 zoning that are likely to be developed.

1. Residential uses at certain densities conflict with big game management in Peripheral and Major Big Game Range. “Impacted Range has essentially been ‘written off’ for big game management.” *Flora & Fauna Working Paper (1982)* at 24. The plan identifies this conflict when overall residential densities reach certain levels in Peripheral and Major Big Game Range. However, the plan declines to resolve conflicts by setting density limits. *Flora & Fauna Working Paper Addendum (1983)* at 14.

(b) Determine the Impact Area

The approach to determining the impact area is stated in OAR 660-023-0040(3).¹⁶ Here the

15 OAR 660-023-0040(2) states:

Identify conflicting uses. Local governments shall identify conflicting uses that exist, or could occur, with regard to significant Goal 5 resource sites. To identify these uses, local governments shall examine land uses allowed outright or conditionally within the zones applied to the resource site and in its impact area. Local governments are not required to consider allowed uses that would be unlikely to occur in the impact area because existing permanent uses occupy the site. The following shall also apply in the identification of conflicting uses:

(a) If no uses conflict with a significant resource site, acknowledged policies and land use regulations may be considered sufficient to protect the resource site. The determination that there are no conflicting uses must be based on the applicable zoning rather than ownership of the site. (Therefore, public ownership of a site does not by itself support a conclusion that there are no conflicting uses.)

(b) A local government may determine that one or more significant Goal 5 resource sites are conflicting uses with another significant resource site. The local government shall determine the level of protection for each significant site using the ESEE process and/or the requirements in OAR 660-023-0090 through 660-023-0230 (see OAR 660-023-0020(1)).

16 OAR 660-023-0040(3) states:

Determine the impact area. Local governments shall determine an impact area for each significant resource site. The impact area shall be drawn to include only the area in which allowed uses could adversely affect the identified resource. The impact area defines the geographic limits

impact area for the PAPA is the entire area of the subject property itself, since the entire county is mapped as being in one of the three big game areas.

The area mapped as Impacted might arguably be excluded from the Impacted Area since the language of the plan has written off Impacted Areas for big game management. For purposes of this analysis, however, the entire subject property will be considered to be the impact area for the ESEE analysis.

It is worth noting, too, that since the county prepared the Wildlife Habitat Maps in 1980 and had them acknowledged by LCDC with the balance of the plan in the mid-1980's, the county has approved new low density residential development on all sides of the subject property. The conflicting uses adjacent to the subject property are described below. In summary, however, essentially all the rural residential development to the north, west and south of the subject property, has been approved and developed subsequent to the adoption of the maps. This adjacent and nearby development would degrade the value of the habitat on the subject property.

(c) Analyze the ESEE Consequences

The approach to analyzing the ESEE consequences is stated in OAR 660-023-0040(4).¹⁷ “ESEE consequences’ are the positive and negative economic, social, environmental, and energy (ESEE) consequences that could result from a decision to allow, limit, or prohibit a conflicting use.” OAR 660-023-0010(2). The County must analyze the ESEE consequences of allowing, limiting, or prohibiting the conflicting rural residential uses.

The common context for analyzing the alternatives of allowing, limiting or prohibiting the conflicting use (residential development at a 10-acre density) is the existing development pattern on the surrounding property and its impact on big game management. Adjacent to the east is Hereford Road. Across the road is pasture and farm. However, the area closest to the subject property is developed with the residential farmhouse and accessory uses. It is mapped as

within which to conduct an ESEE analysis for the identified significant resource site.

¹⁷ OAR 660-023-0040(4) states:

Analyze the ESEE consequences. Local governments shall analyze the ESEE consequences that could result from decisions to allow, limit, or prohibit a conflicting use. The analysis may address each of the identified conflicting uses, or it may address a group of similar conflicting uses. A local government may conduct a single analysis for two or more resource sites that are within the same area or that are similarly situated and subject to the same zoning. The local government may establish a matrix of commonly occurring conflicting uses and apply the matrix to particular resource sites in order to facilitate the analysis. A local government may conduct a single analysis for a site containing more than one significant Goal 5 resource. The ESEE analysis must consider any applicable statewide goal or acknowledged plan requirements, including the requirements of Goal 5. The analyses of the ESEE consequences shall be adopted either as part of the plan or as a land use regulation.

“Impacted Range,” which means the plan has written it off for big game management.

Adjacent to the north and west is RR10 residential development.

Immediately south, across Van Duyn Road, and further south, is more RR10 development.

The subject property is in a sea of rural residential development. The adjacent and nearby lands have severe limitations for big game range values. All of the immediately adjacent and nearby land is: developed with rural residential densities that match, or come close to matching, the density proposed for the subject property; developed with intensive agricultural uses that negate big game value; or are in the process of being developed for residential uses.

Economic Consequences: Allowing the subject property to be developed with rural residential uses at a 10-acre density would have short term economic impacts in terms of construction activity during the build out of subdivision infrastructure and individual residences. In the long term it would increase the property value at this site with attendant impacts on tax revenues. It is unclear, however, whether there would be a net increase in value countywide.

The impacts of the residential uses on big game resources could be limited by keeping structures setback from the intermittent stream corridors, thus facilitating game access along those corridors. This limitation would have no appreciable economic consequences. Another approach to limiting game impacts would be to allow clustering of the residential lots – some larger and some smaller while keeping the average density. This approach is recognized by the plan as being beneficial for big game management. However, it is precluded by plan policies for a project of this size.

Prohibiting the rural residential use completely would have no economic consequences, as distinct from the status quo. The F-2 portion of the subject property is developed with one residence and not being managed for any agricultural, forest, or other uses.

Social Consequences: Allowing the residential use would mean that this site would be developed with uses and densities that are comparable to the rural residential uses that are adjacent or nearby to the north, northeast, east, and south. This approval would create more of the same in what is the last substantial amount of undeveloped nonresource acreage in this area of the Coburg Hills.

Limiting the residential uses, in terms of how the uses are sited on the property, should not have social consequences. Prohibiting the residential uses would maintain the status quo.

Environmental Consequences: Allowing the residential development would transform the subject property into big game habitat that is comparable in quality to the habitat that surrounds it. The surrounding uses detract from the value of the subject property for big game use. Thus, if big game can make their way through the surrounding development to the site, the site itself should have somewhat more utility than the immediately surrounding lands. Residential development would alter the habitat value by making it similar to the habitat on the adjacent and immediately surrounding lands.

Limiting the residential use by siting structures away from the wetland corridors would maintain the corridor as habitat and facilitate movement of big game through the site. Such a limitation would not seriously limit the utility of the site for low density residential use. Prohibiting the residential use would maintain the status quo.

Energy Consequences: Allowing the residential development, or limiting the residential development by siting structures away from the wetlands, would have essentially the same energy impacts. Either approach would have energy impacts associated low density residential development. These would include, but not be limited to, initial impacts related to construction, and long term impacts arising from commuting and demand for utilities and services. The net impacts on energy consumption countywide might be negligible or zero if this site attracts rural residential development that might otherwise locate elsewhere in the rural county. Prohibiting the residential use would maintain the status quo.

(d) Develop a program to achieve Goal 5 for Big Game Range

The proposed program to achieve the goal is to allow the conflicting residential use because the property has little value for Big Game as it is surrounded by rural residential uses and allowed two more units does not change the character or substantially degrade the range.

The impact area for purposes of Big Game is limited to the subject property, in this case. The property is not located in any sort of corridor. Effects to big game are limited to the subject property. The subject lands are 30 developed acres. Developing the tract with an additional two home sites will not change the character of the travel for big game. If Big Game travels from the north to south, or from the south to the north, it must wade through preexisting RR land and development and will stroll into more preexisting RR land and development upon exiting. If big game travels from east to west, it runs into more RR land and development. Any big game traveling west to east has already been desensitized by the sea of residentially developed RR Land. The entire area is only 3,000 feet from I-5.

2. ESEE Analysis for Groundwater Resources

The acknowledged county plan identifies groundwater as a Goal 5 resource. See *Water Resources Working Paper (1982)* at 10. It identifies groundwater as “extremely valuable as a direct resource of drinking water for individuals and communities, a source of irrigation water for livestock and crops, and as a base source of water for lakes and streams.” *Id.* at 10. As with Big Game Range, the plan inventories this resource as being present throughout the county. It maps the quantity of groundwater available into five general categories which reflect geographic regions. It also notes that groundwater quality is limited by natural and human induced factors.

Groundwater will be the source for domestic water supply for about 2 residential units on the subject property.

(a) Identify Conflicting Uses

The county plan identifies two groundwater resource conflicts – development in quantity limited aquifers and in areas of polluted groundwater. *Id.* at 11 states:

Two groundwater conflicts have been identified – development in quantity limited aquifers and development in areas where groundwater quality may be polluted, either naturally or from human induced means. An ESEE analysis as per administrative rule regarding Goal 5 is presented for each of these conflicts.

The county plan conducts a full ESEE analysis for development in water quantity and water quality limited aquifers, and it adopts a program that resolves the conflicts and achieves the goal. With respect to quantity, the plan resolves that residential development and other uses requiring groundwater should be allowed if a showing is made that water will be available for a foreseeable period in the future. The program calls for strengthening the standards in the subdivision ordinance and for formally designating groundwater quantity limited areas. The land division provisions in the zoning code have been amended accordingly. *Id.* at 12-13. Standards have been adopted in the code for demonstrating adequate quantities of water in connection with rezoning that would create the potential for land division. See LC 13.050(13)(a)-(d). Certain sections in the county have been identified in the Lane Manual as having limited groundwater quantity. See Lane Manual, as referenced in LC 13.050(13)(c)(i).

With respect to groundwater quality, the plan identifies the conflict as “[d]evelopment in an aquifer limited in quality by arsenic, salt, iron, sulfur, landfill leachate or sewage.” *Id.* at 13. It resolves the conflict by allowing the potential for development in water quality limited area, but ensuring that information about the nature and extent of the quality limitations is recorded and provided to landowners. *Id.* at 14-15. The subject property is not identified as having limited groundwater quality.

The obligation is to identify potential conflicting uses – that is, uses allowed outright under the proposed zoning that would conflict with a significant Goal 5 resource. See OAR 660-023-0040(2), quoted in footnote 7 above. The county’s acknowledged plan has identified the scope of this comparison. The uses allowed are residential uses. According to the *Water Resources Working Paper (1982)*, the allowed use conflicts if it is proposed in an area identified as having limited groundwater quantity or quality. The subject property, which is the impact area for purposes of the rule, is identified in the plan and implementing regulations as being groundwater quantity limited. .

(b) Compliance with Acknowledged Plan and Implementing Regulations

Under the Goal 5 Rule, when no conflicting uses are identified with a significant resource site, compliance with the acknowledged policies and land use regulations is sufficient. “If no uses conflict with a significant resource site, acknowledged policies and land use regulations may be considered sufficient to protect the resource site.” OAR 660-023-0040(2)(a). Both the *Rural Plan Policies* and the *Lane Code* contain policies and standards relevant to water supply.

Rural Plan Policies, Water Resources Policy 3 makes adequacy of groundwater supply a major issue in plan and zone changes. Water Resources Policy 5 requires new land use designations to be commensurate with aquifer capabilities. *Lane Code* 16.004(4) requires that any rezoning that will allow more parcelization be preceded by proof of long term water supply. Proof of adequacy of water can be based on either a pump test or well log data.

The applicant for this plan change proposes to supplying domestic water with onsite wells. Only 3 wells are needed. Submitted with this application are well log reports from surrounding properties showing that water is available. The applicant's well log reports for the surrounding properties shows that the aquifer is adequate to supply three dwellings.

Based on the applicant's proposal, county approval of plan change and zone change request should be accompanied by the following conditions to ensure long term adequacy of the domestic water supply: No more than three wells are allowed.

3. ESEE Analysis for Surface Water Resources and Watershed Resources

The acknowledged county plan identifies surface water and watersheds as Goal 5 resources. See *Water Resources Working Paper (1982)* at 3-10. The working paper states that is difficult to separate the discussion of watersheds from that of surface water. Hence, the two will be addressed together here.

By "watershed," the working paper refers to areas of drainage basins that drain to a particular point of use. As defined in the working paper, "the area which drains to a domestic water supply is correctly termed a watershed, even if it is much smaller than a basin." *Id.* at 3. The working paper maps drainage basins in the county, but not watersheds, since a watershed is a function of where water is being used. The working paper recognizes that "[t]he entire County is within one or more categories of watersheds, and all ranges of quality may be found." *Id.* at 5.

The "quality" discussion in the plan recognizes that watershed play vital roles in individual and municipal water supplies, fish and wildlife habitat, water quality, flood protection, among others. *Id.* at 5. The "quantity" discussion in the plan recognizes that a range of uses, such as soil compaction, removal of vegetation, and increase in impervious surfaces, among others, affect the amount of water that is retained in a watershed and the amount that runs off. *Id.*

Only one conflict is identified by the plan's ESEE analysis as a watershed conflict, as opposed to a surface water or groundwater conflict. That is "contamination or possible contamination of surface water supplies used for domestic purposes." *Id.* at 5. The plan found two places where that conflict exists. One is from forestry related practices on federal, state and private timber lands. The other is from residential development in the Clear Lake area, which is in the watershed of the Heceta Water District. *Id.* at 5-6. The plan conducts no ESSE analysis for forestry practices for the reason that the county has so little control over these practices (regulated by Oregon Department of Forestry). And it conducts no ESEE analysis of the Clear Lake situation due to inadequate data. *Id.* at 5-6.

The working paper maps drainage basins and lists the principal streams in Lane County. The subject property is located in the Muddy Creek basin of the Willamette River Upper Basin, shown on *Id.* at Map 2 and Appendix B. The subject property is remote from Muddy Creek. The intermittent stream on the subject property, are tributary to Daniels Creek, which is tributary to Muddy Creek.

The working paper recognizes that the quality of surface waters throughout the county is affected adversely by a range of factors, only some of which are under county control. *Id.* at 7-8. Its discussion of stream water quantity is limited to a description of flow regulation in rivers and streams by federal agencies with storage and flood control responsibilities. *Id.* at 8-9.

The working paper identifies a number of activities that conflict with water quality in streams, but states that the impacts of these activities are largely beyond county land use control. Examples included in the working paper's discussion include: water release schedules from federal reservoirs, state water rights regulation that contributes to over appropriation, nonpoint pollution from forest practices regulated by the state, nonpoint pollution from agricultural practices, and urban runoff from cities.

The working paper conducts no ESEE analysis of the problems above. “[T]hese are not considered as conflicts in the Goal 5 sense as they do not result from County planning or zoning actions, and generally cannot be resolved in that manner.” *Id.* at 10.

(a) Identify Conflicting Uses

Development of two additional low density rural residences on the subject property is potentially a conflicting use with both watershed resources and surface water resources. However, roads are required and driveways will likely be gravel. Therefore, improvements will result in little impervious surface that increase stormwater runoff. It is unlikely that any stormwater from three dwellings on 10 acres each will leave the properties.

It is worth pointing out in order to keep the minimal conflict stated above in perspective that the county plan working paper does not treat the impact of low density residential development runoff to streams as a conflicting use for either watershed or surface water resources.

(b) Determine the Impact Area

The immediate impact area of the proposed use is the subject property. This is the location where any discharges to surface waters from uses related to low density rural residential development will impact the surface waters and the watershed. From a larger perspective, however, the impact area must be considered to be all the receiving waters downstream from the subject property. Any degradation to or improvement of the surface waters on the subject property will have some impact on the waters in the successively larger downstream drainages of which this drainage is a part.

(c) Analyze the ESEE Consequences

As noted above, allowing the conflicting use would add impervious surface to the subject property and increase the amount of runoff to the streams, as compared with the current vacant status of the property. Runoff could pick up pollutants of various types and convey them to the stream. The pollutants may have some incremental impact on the pollutant loading in these streams and the downstream waters in the basin. However, the proposal and subsequent development of three dwellings is not likely to increase runoff in any measurable manner.

Economic Consequences: As discussed in connection with big game range above, the residential construction would have short term economic impacts related to the construction activity and may increase the tax base in the long run.

The use could be limited in ways that reduce the potential for conveyance of pollutants to the streams by residential development and accessory uses. Simple approaches to limiting the use would: (1) keep structures that collect precipitation away from the wetland channel; (2) prohibit the keeping of any animals near the wetland channel; and (3) maintain channel vegetation to help intercept and retain stormwater headed to the streams.

Limiting the residential uses as described above would affect how the subject property is put to rural residential use, not whether it is so used. Therefore, there should be no appreciable economic impacts associated with such limitations. Prohibiting the proposed rural residential uses would have no economic consequences, as distinct from the status quo, which is vacant land not being managed for any agricultural, forest, or other uses.

Social Consequences: Allowing the residential use would mean that this site would be developed with uses and densities that are comparable to the rural residential uses that are adjacent or nearby to the north, northeast, east, and south. These areas constitute about 600 acres of rural residential uses at densities of 10 acres or more per unit. This approval would create more of the same in what is the last substantial amount of undeveloped nonresource acreage in this area of the Coburg Hills.

Limiting the residential uses, in terms of how the uses are sited on the property relative to the streams, should not have social consequences. Prohibiting the residential uses would maintain the status quo.

Environmental Consequences: Allowing the residential development would transform the subject property into rural residential uses similar in density to the development that surrounds it on all sides but the east. The runoff and potential pollution impacts would be typical of the neighboring development which is on similar topography. This would be a pattern of rural development that the county has not previously determined creates conflicts with watershed and surface water resources of a type or magnitude that warrants any special limitations. It is impossible to determine whether the additional runoff to the streams and attendant pollutant loads would degrade or improve the receiving waters in the intermittent streams. It would depend on the pollutant concentrations in the receiving waters and the pollutant concentrations in the runoff

from the site. However, there are no streams on the subject property except for the small wetland channel to the south.

Limiting the conflicting use, by setting back buildings, and preserving wetland vegetation, would reduce the potential for and volume of stormwater discharged and the concentration of pollutants in the discharge water. Such a limitation would, therefore, reduce any adverse impact the residential uses might have on the water resources. Prohibiting the residential use would preserve the status quo.

Energy Consequences: Allowing the residential development, or limiting the residential development by siting structures away from the wetland, would have essentially the same energy impacts. Either approach would have energy impacts associated low density residential development. These would include, but not be limited to, initial impacts related to construction, and long term impacts arising from commuting and demand for utilities and services. The net impacts on energy consumption countywide might be negligible or zero if this site attracts rural residential development that might otherwise locate elsewhere in the rural county. Prohibiting the residential use would maintain the status quo.

(d) Develop a program to achieve Goal 5 for Watersheds and Surface Water Resources

The proposed program to achieve the goal is to allow the conflicting residential use but to limit the siting of the use in ways that reduce the potential that the use will cause an increase in the stormwater runoff and conveyance of more pollutants to the streams such as leaving the wetland intact, which is required by state law.

Goal 6: Air, Water and Land Resources Quality

To maintain and improve the quality of the air, water and land resources of the State.

All waste and process discharges from future development, when combined with such discharges from existing developments shall not threaten to violate, or violate applicable state or federal environmental quality statutes, rules and standards. With respect to the air, water and land resources of the applicable air sheds and river basins described or included in state environmental quality statutes, rules, standards and implementation plans, such discharges shall not (1) exceed the carrying capacity of such resources, considering long range needs; (2) degrade such resources; or (3) threaten the availability of such resources.

Goal 6 protects the quality of land, air, and water resources. The focus is on discharges from future development in combination with discharges from existing development. State and federal environmental standards are the benchmark for protection. Where there are state or federal standards for quality in air sheds or river basins, then the carrying capacity, non-degradation, and continued availability of the resources are standards.

The subject property is currently developed and has been for many years. Additional residential use will generate septic wastes. A precondition to any residential use, however, will be the development of individual septic systems meeting state standards. The soils on the subject property are suitable for one or more types of septic systems that meet state standards. The soils on the subject property are the same as those on rural residential subdivisions in the immediate area that have developed such systems. The availability of the state standards as a precondition to residential development ensures that the future use will comply with Goal 6.

Goal 7: Areas Subject to Natural Disasters and Hazards.

To protect life and property from natural disasters and hazards.

The phrase “areas of natural disasters and hazards” means “areas that are subject to natural events that are known to result in death or endanger the works of man, such as stream flooding, ocean flooding, ground water, erosion and deposition, landslides, earthquakes, weak foundation soils and other hazards unique to local or regional areas.” There are no such areas known on the subject property. The elevation of the site in the foothills of the Coburg Hills avoids any potential flood hazards. None of the soil types present is described as being prone to landslides in the *SCS Lane County Soil Survey*.

Goal 8: Recreational Needs

To satisfy the recreational needs of the citizens of the state and visitors and, where appropriate, to provide for the siting of necessary recreational facilities including destination resorts.

The overriding purpose of Goal 8 is to address all recreational needs, but its primary focus is on siting and developing destination resorts, defined in Goal 8 as "self-contained development[s] providing visitor-oriented accommodations and developed recreational facilities in a setting with high natural amenities."

Goal is not directly applicable to this proposal. No destination resort is proposed. Furthermore, the subject property is not used for public recreational purposes and is not designated on any county plan as intended for that purpose in the long run.

Goal 9: Economic Development

To provide adequate opportunities throughout the State for a variety of economic activities vital to the health, welfare, and prosperity of Oregon’s citizens.

Goal 9 is focused on commercial and industrial development. The Goal 9 Rule, OAR 660-09, is explicitly limited to areas within urban growth boundaries. This goal is not directly applicable to rural residential use in a Nonresource designation.

Goal 10: Housing

To provide for the housing needs of citizens of the State.

Buildable lands for residential use shall be inventoried and plans shall encourage the availability of adequate numbers of needed housing units at price ranges and rent levels which are commensurate with the financial capabilities of Oregon households and allow for flexibility of housing location, type and density.

Goal 10, like its implementing rule, is geared primarily to housing issues inside urban growth boundaries. The goal's definition of "buildable lands," for example, is limited to lands in urban and urbanizable areas. This site is outside any UGB. To the extent Goal 10 may have some relevance to rural areas, this proposal will comply with the goal because it will result in the potential for about two additional dwelling units.

Goal 11: Public Facilities and Services

To plan and develop a timely, orderly and efficient arrangement of public facilities and services to serve as a framework for urban and rural development.

Urban and rural development shall be guided and supported by types and levels of urban and rural public facilities and services appropriate for, but limited to, the needs and requirements of the urban, urbanizable, and rural areas to be served. A provision for key facilities shall be included in each plan. Cities or counties shall develop and adopt a public facility plan for areas within an urban growth boundary containing a population greater than 2,500 persons. To meet current and long-range needs, a provision for solid waste disposal sites, including sites for inert waste, shall be included in each plan.

In accordance with ORS 197.180 and Goal 2, state agencies that provide funding for transportation, water supply, sewage and solid waste facilities shall identify in their coordination programs how they will coordinate that funding with other state agencies and with the public facility plans of cities and counties.

Goal 11 addresses facilities and services in urban and rural areas. The subject property is "rural" land and will remain rural after this approval, as discussed in connection with Goal 14.

"Public facilities and services" is defined in the Statewide Planning Goals to include: "[p]rojects, activities and facilities which the planning agency determines to be necessary for the public health, safety and welfare." The Goal 11 Rule defines a "public facility." "A public facility includes water, sewer, and transportation facilities, but does not include buildings, structures or equipment incidental to the direct operation of those facilities." OAR 660-11-005(5).

The *Rural Plan Policies* (Goal 11, Policies 6.e. & k.) describe the minimum level of services for Nonresource areas in rural Lane County. The services are: schools, on-site sewage

disposal, individual water supply system, electrical service, telephone service, rural level fire and police protection, and reasonable access to solid waste disposal. The services now available to the subject property, or proposed to be developed, include:

Table E. Rural Public Facilities, Existing or Proposed	
Service	Provider
Fire	Coburg Rural Fire Protection District
Police	Lane County Sheriff and State Police
Schools	Eugene School District 4J
Access	Van Duyn Road, a County Minor Arterial
Electric	Emerald People’s Utility District
Telephone	Qwest Communications
Solid Waste	Coburg Sanitary Services (uses Linwood Solid Waste Disposal)
Sewer	Individual Septic Systems (Proposed)
Water	Wells or shared wells.

Goal 12: Transportation

To provide and encourage a safe, convenient and economic transportation system.

A transportation plan shall (1) consider all modes of transportation including mass transit, air, water, pipeline, rail, highway, bicycle and pedestrian; (2) be based upon an inventory of local, regional and state transportation needs; (3) consider the differences in social consequences that would result from utilizing differing combinations of transportation modes; (4) avoid principal reliance upon any one mode of transportation; (5) minimize adverse social, economic and environmental impacts and costs; (6) conserve energy; (7) meet the needs of the transportation disadvantaged by improving transportation services, (8) facilitate the flow of goods and services so as to strengthen the local and regional economy; and (9) conform with local and regional comprehensive land use plans. Each plan shall include a provision for transportation as a key facility.

Goal 12 is implemented through the Goal 12 Rule (OAR 660-12) adopted in 1991. The Rule has a section that specifically addresses proposals such this – amendments to acknowledged comprehensive plans and implementing regulations. OAR 660-12-060(1) provides that any such amendments that “significantly affect a transportation facility shall assure that allowed land uses

are consistent with the identified function, capacity, and level of service of the facility.”

The threshold question, therefore, is whether the proposed residential development allowed by this application would significantly affect a transportation facility. The rule spells out clearly what constitutes a “significant affect.” OAR 660-012-0060(1) states:

A plan or land use regulation amendment significantly affects a transportation facility if it would:

“(a) Change the functional classification of an existing or planned transportation facility (exclusive of correction of map errors in an adopted plan);

(b) Change standards implementing a functional classification system; or

(c) Result in any of the effects listed in paragraphs (A) through (C) of this subsection based on projected conditions measured at the end of the planning period identified in the adopted TSP. As part of evaluating projected conditions, the amount of traffic projected to be generated within the area of the amendment may be reduced if the amendment includes an enforceable, ongoing requirement that would demonstrably limit traffic generation, including, but not limited to, transportation demand management. This reduction may diminish or completely eliminate the significant effect of the amendment.

(A) Types or levels of travel or access that are inconsistent with the functional classification of an existing or planned transportation facility;

(B) Degrade the performance of an existing or planned transportation facility such that it would not meet the performance standards identified in the TSP or comprehensive plan; or

(C) Degrade the performance of an existing or planned transportation facility that is otherwise projected to not meet the performance standards identified in the TSP or comprehensive plan.”

The proposed development will not trigger this section of the rule. It will not have a significant effect on Van Duyn Road as measured by any of the RCP standards listed above. Hence the proposed changes comply with Goal 12.

Van Duyn Road is classified by Lane County as a minor arterial. County review of the potential traffic impacts of the Coburg Hills Golf Course and the Cloud Nine subdivision indicate that the road has ample capacity to accommodate traffic from 2 additional units with the current improvements, within its current functional classification, and within the acceptable level of service established by the county.

Goal 13: Energy Conservation

To conserve energy.

Land and uses developed on the land shall be managed and controlled so as to maximize the conservation of all forms of energy, based on sound economic principles.

This goal is not directly applicable to individual land use decisions. Rather, its focus is on the adoption and the amendment of land use regulations.¹⁸

Goal 14: Urbanization

To provide for an orderly and efficient transition from rural to urban land use, to accommodate urban population and urban employment inside urban growth boundaries, to ensure efficient use of land, and to provide for livable communities.

A specific residential development proposal that is allowed as being on land that is neither Agricultural nor Forest Land must also be found to be a “rural” level of development under Goal 14. Goal 14 prohibits urban uses on rural land. By definition, all land outside an acknowledged urban growth boundary and not subject to a Goal 14 exception is rural land.¹⁹ When a county amends its plan for rural land, it must demonstrate that the new plan and zone designations comply with Goal 14 or adopt an exception to Goal 14.²⁰

The Supreme Court has said that the Goal 14 demonstration is not needed for every land use approval – that some uses approved are inherently rural or urban in nature. An example is residences at a density of one unit per ten acres.²¹

This proposal would appear to meet the Supreme Court’s description of a density that is per se rural, as it is proposed at a density of one unit per ten acres. This is the lowest possible Rural Residential density allowed under the county plan and code.

Goal 15: Willamette River Greenway

Goal 16: Estuarine Resources

Goal 17: Coastal Shorelands

Goal 18: Beaches and Dunes

¹⁸ See Brandt v. Marion County, 22 Or LUBA 473, 484 (1991), aff'd in part, rev'd in part, 112 Or App 30 (1992).

¹⁹ 1000 Friends of Oregon v. DLCD (Curry County), 301 Or 447, 498-501, 724 P2d 268 (1986).

²⁰ Churchill v. Tillamook County, 29 Or LUBA 68, 75 (1995).

²¹ Curry County, 301 Or at 501.

Goal 19: Ocean Resources

These five goals are not applicable as they deal with resources that are not present on the subject property.

IV. COMPLIANCE WITH RURAL COMPREHENSIVE PLAN POLICIES

Any plan and zone change must comply with the relevant *Lane County Rural Comprehensive Plan Policies*. This requirement is based in statutes (ORS 197.175(2)), the *Rural Plan Policies* themselves (see, e.g. *Rural Plan Policies* at page 6), and the *Lane Code* (see, e.g., LC 16.400(6)(h)). This section, therefore, addresses the relevant elements of the *Rural Plan Policies*. It is organized by Goal. Where possible to avoid duplicative discussion, reference is made to the discussion under the Statewide Planning Goals.

Goal Two: Land Use Planning

Policy 18:

Where lands are not farm and forest lands, they may be designated on the plan diagram as rural residential or as parks and recreation, provided:

- a. Detailed and factual documentation has been presented indicating that the subject lands are not farm and forest lands as defined by Statewide Planning Goals #3 and #4.**

Compliance is documented under the relevant Statewide Planning Goals.

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

No goal exception has been taken.

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

This is not a small, isolated tract surrounded by farm and forest land. Furthermore, as discussed in connections with Goals 3 and 4, the Nonresource designation would pose no compatibility problems.

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

See discussion below.

Policy 19:

Rural Residential Designations for non-resource lands shall be one residence per five or ten acres and shall be determined through consistency with other plan policies and the following criteria:

- a. Existing development pattern and density of any adjacent committed areas;**
- b. Subsurface sewage disposal suitability;**
- c. Domestic water supply availability;**
- d. Access;**
- e. Public services;**
- f. Lack of natural hazards;**
- g. Effect on resource lands.**

This policy is instructional and does not relate to whether NR designation can be obtained. This policy relates to which zoning is placed on the designation if it is granted. In other words, this policy is related to the rezoning, not the redesignation. In layman's terms, it states, "when applying a Rural Resource Designation, you have two zoning choices: RR5 or RR10. Which one you apply depends on compliance with the criteria below." There is not third choice, and therefore the effect of this policy is to give RR10 the benefit of the doubt when it comes to compliance.

To the extent it is relevant, both tracts have existing dwellings with approved septic systems and function wells. Wells logs from surrounding properties support a finding that water is available. Of the 66 nearby well logs reviewed in the Water Availability Assessment by EGR & Associates, Inc, the average completed depth was 180 feet and the average well yield was 32 gallons per minute. Septic approvals and inspections from surrounding properties support a finding that septic is available. Both properties have frontage. Access will be provided at the time of development and will be via Van Duyn Road and lawful easements, as needed. The availability of public services is addressed under Goal 11. Natural hazards are address under Goal 7.

The subject property is not adjacent to any resource lands. It is virtually surrounding by RR10 land and roads. Hereford Road lies adjacent to the east. Across Hereford Road to the east, there is a farm on E-40 land. However, the area closest to the rezone is developed with a residence and accessory structures. It is the "developed" area of the property. The requested 10 acre zoning is the largest acreage available to NR designation and will result in "more of the same" and the adjacent and nearby area. As such, it has less effect on adjacent resource lands than RR5 zoning and the proposal is consistent.

The applicant's interpretation of Policy 19 is consistent with the plain language. Policy 19 applies to "density," which relates to zoning. The policy provides two choices: five acres or ten acres. No other options are provided or allowed. Whether the applicant gets RR5 or RR10 depends on "consistency with other plan policies and the following criteria ***." Here, the applicant has opted for the larger acreage of RR10, which impacts the listed elements less than RR5 because it

is a lesser density. As such, when asking for RR10, the standard is irrelevant.

Even if applicable, there is sufficient evidence in the record to support the following positive findings:

- a. RR10 fits better because most other lands are zoned RR10
- b. RR10 is better for subsurface sewage disposal suitability because it provides more acreage to accommodate the best site for subsurface sanitation, and the larger lots result in less land divisions, which result in fewer dwellings, which result in fewer subsurface sanitation systems. Thus, less sewage requires processing.
- c. RR10 is better for domestic water supply suitability because it provides more acreage to accommodate the best location for a well, and the larger lots result in less land divisions, which result in fewer dwellings, which result in fewer wells. Thus, less water is drawn.
- d. RR10 is better for access because it provides more acreage to accommodate the best location for access, and the larger lots result in less land divisions, which result in fewer dwellings, which result in fewer access points.
- e. RR10 is better for public services because the larger lots result in less land divisions, which result in fewer dwellings, which result in fewer public service needs and impacts.
- f. There are no natural hazards on site. See findings elsewhere. Even if there were, RR10 is better to address natural hazards because it provides more acreage to accommodate the best location for dwellings outside the hazard, and the larger lots result in less land divisions, which result in fewer dwellings, which result in fewer hazard conflicts.
- g. RR10 results in less impact on resource lands because it provides more acreage to accommodate the best location for dwellings, and the larger lots result in less land divisions, which result in less dwellings and larger setbacks, which result in fewer resource land conflicts.

Goal Three: Agricultural Lands

Policy 8:

Provide maximum protection to agricultural activities by minimizing activities, particularly residential, that conflict with such use. Whenever possible planning goals, policies and regulations should be interpreted in favor of agricultural activities.

This policy has been interpreted by the Board of Commissioners, and the interpretation has been upheld on appeal. This policy only addresses conflicts that will result in a significant change in or a significant increase in the cost of accepted farming practices. When conflicts of this magnitude might result, the proposed rezoning must be conditioned to reduce the potential conflicts below the level that will result in a significant change or significant increase in the cost of accepted agricultural practices.²²

²² Gutoski v. Lane County, 34 Or LUBA 219, 225 n4 (1998), aff'd 155 Or App 369, 963 P.2d 145 (1998).

No conflicts are apparent between the proposed rezoning and any adjacent or nearby agricultural activity. The only adjacent farming activity is the Knee Deep Cattle Company.

Goal Four: Forest Lands

Policy 1:

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

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

This policy implements Statewide Planning Goal 4 by defining "forest lands" and requiring they be used consistent with the goal. The subject property is not "forest land." See discussion in connection with Statewide Planning Goal 4 above.

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

Flora and Fauna Policy 7:

Because of incomplete County coverage by, and interpretation of, the National Wetlands Inventory, wetland resources are to be considered "significant" in terms of OAR 660-16-000/025 and placed in "1B" and "1C" categories. Major wetlands designated "1C" resources shall be protected per the "3C" option through a combination of existing County Coastal and Greenway zoning regulations, and federal/state ownership; where these do not occur, an appropriate wetlands zoning district shall be developed and applied. Other wetlands from the National Wetlands Inventory shall be evaluated per "1B" requirements within two years of the date of Plan adoption, and decisions made on the protection or use of the resource. The County shall consider enlarging the list of protected per Goal 5 requirements if it is clearly demonstrated that an unprotected significant wetland(s) is likely to be significantly impacted by a land use action over which the County has jurisdiction.

See discussion of wetlands resources under Statewide Planning Goal 5. The County has not yet supplemented its inventory of wetlands resources, as anticipated by this policy. The subject property contains no wetland resources inventoried in the county plan. Hence, this policy is not directly applicable to this development proposal. The site does contain some wetlands shown on the National Wetland Inventory maps. These are protected by federal and state law, and

are proposed to be protected from development with structures via setbacks from the intermittent stream on site.

Open Space and Scenic Areas Policy 1:

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

Open Space and Scenic Areas Policy 3:

The 1983 Revision to the 1981 Recreational Resources Working Paper identifies six major areas of outstanding scenic value in Lane County. These areas are to be considered ‘3C’ resources in the terms of OAR 660-16-000/25 (‘Coastal Strip,’ ‘McKenzie Valley,’ ‘Willamette Highway/Salt Creek Corridor’ and ‘Coburg Ridge’), ‘3B’ resources (‘Willamette Greenway’) and ‘2A’ resources (‘ODOT Scenic Areas’). Conflicting uses in ‘3C’ areas shall be regulated by the management activities of the Siuslaw and Willamette National Forests, the Oregon Forest Practices Act and the County’s rural resource and Coastal zones (on private land). Scenic resources beyond those referenced shall be considered ‘1B’ resources until the County can initiate a program to identify areas of outstanding scenic value.

Initiate a program to identify areas of outstanding scenic value, identify and resolve conflicts after consideration of social, economic, energy and environmental consequences and protects sites for which conflict resolution indicates protection is desirable. This program will be initiated prior to the next scheduled Plan update (five years from adoption of revised Plan). The County is encouraged to investigate and utilize fee acquisition, easements, cluster developments, preferential assessment, development rights acquisition, and similar techniques to implement this policy.

Policy 1 applies to resource lands and recognizes them as open space. It does not require preservation and does not prohibit redesignation. It simply states that where development is allowed, development standards shall be applied. This policy is instructional. The applicant will apply the RR10 development standards.

Policy 3 identifies several areas, including the “Coburg Ridge.” It is identified as a 3C resource that will be regulated by the National Forest rules, the OFPA and the county’s rural resource zones and coastal zones. The subject property is near the base of the Coburg hills near Interstate 5 and is not located on a ridge. It is not identified as being within the Coburg Ridge open space and scenic area based the “Recreational Resources” map in the Recreational Resources Working Paper Addendum of the Rural Comprehensive Plan.

Water Resources Policy 3:

Adequacy of water supply, particularly those relying on groundwater sources, shall be a major concern in reviewing major land use changes. For the purpose of applying this policy, major land use change shall be any application reviewed by the Hearings Official or the Planning Commission.

Water Resources Policy 5:

Land use designations in the Comprehensive Plan and implementing zoning shall be commensurate with groundwater aquifer capabilities.

See the discussion of groundwater resources in connection with Statewide Planning Goal 5 above.

Goal Seven: Areas Subject to Natural Disasters and Hazards

Policy 1:

The Natural Hazards Inventory, as contained in the 1982 Natural Hazards Working Paper and associated materials, shall be used as a guide for general land use decisions. Specific land use decisions shall be based upon the inventory and upon on-site or other evaluation as appropriate.

The subject property is not inventoried in the *Natural Hazards Working Paper* as a site containing natural hazards.

Goal Eleven: Public Facilities and Services

Policy 1:

Lane County shall provide an orderly and efficient arrangement for the provision of public facilities, services and utilities. Designation of land into any given use category either initially or by subsequent plan amendment, shall be consistent with the minimum level of services established for that category.

Policy 6:

Land designations and service levels:

* * * *

k. Non-resource Lands (NRES)

Description: Lands that are not farm or forest lands as defined by Statewide

Planning Goals #3 and #4. (Refer to Goal #2, Policy 16.)

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

These policies are addressed in connection with the discussion of Statewide Planning Goal 11. As documented there, this development will be served consistent with service levels described for rural, non-community areas.

V. COMPLIANCE WITH LANE CODE CRITERIA FOR PLAN CHANGES

LC 16.400(6)(h) sets out the criteria for amending the county plan designation. Each of the criteria is addressed here. Where a criterion incorporates a Statewide Planning Goal, LCDC Rule, or Rural Plan Policy, reference is made the relevant part of the findings so as to avoid repetition.

LC 16.400(6)(h): Method of Plan Adoption and Amendment.

(iii) The Board may amend or supplement the Rural Comprehensive Plan upon making the following findings”

(aa) For Major and Minor Amendments as defined in LC 16.400(8)(a) below, the Plan component or amendment meets all the applicable requirements of local and state law, including Statewide Planning Goals and Oregon Administrative Rules.

This criterion makes general reference to other sources of standards that apply to plan changes. Those other standards are addressed elsewhere in these findings.

(bb) For Major and Minor Amendments as defined in LC 16.400(8)(a) below, the Plan amendment or component is:

(i-i) necessary to correct an identified error in the application of the Plan; OR

(ii-ii) necessary to fulfill an identified public or community need for the intended result of the component or amendment; OR

(iii-iii) necessary to comply with the mandate of local, state or federal policy or law; OR

(iv-iv) necessary to provide for the implementation of adopted Plan policy or elements; OR

- (v-v) otherwise deemed by the Board, for reasons briefly set forth in its decision, to be desirable, appropriate or proper.**

This criteria offers a smorgasbord of policy choices from which the county may select to justify initiating the plan change. At least two are relevant to this application. Item (iv-iv) allows the plan change if it implements the *Rural Plan Policies*. Goal Two, Policy 16 of the *Rural Plan Policies* anticipates that lands that fit neither the Agricultural or Forest Lands definitions may be redesignated as Nonresource Lands. This proposal implements that policy.

Item (v-v) invites the county to make plan changes that are desirable, appropriate or proper. This proposal also meets that criteria. Where lands are not suitable for farm or forest use, and keeping them in a resource zone is not needed to protect natural resources or allow farm or forest uses on adjacent or nearby land, it is appropriate, desirable and proper to allow them to be put to a productive use, such as low density residential development, consistent with other applicable goals and policies.

- (cc) For Minor Amendments as defined in LC 16.400(8)(a) below, the Plan amendment or component does not conflict with adopted Policies of the Rural Comprehensive Plan, and if possible achieves policy support.**

Compliance with individual policies in the Rural Plan Policies is discussed thoroughly above.

- (dd) For Minor Amendments as defined in LC 16.400(8)(a) below, the Plan amendment or component is compatible with the existing structure of the Rural Comprehensive Plan, and is consistent with the unamended portions or elements of the Plan.**

The existing structure of the plan anticipates Resource plan designations. As discussed above, this designation is also consistent with relevant policies in the Rural Plan Policies.

LC 16.400(8): Additional Amendment Provisions.

- (a) Amendments to the Rural Comprehensive Plan shall be classified according to the following criteria:**
- (i) Minor Amendment. An amendment limited to the Plan Diagram only and, if requiring an exception to the 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.**

This is a minor amendment to the plan which requests a change to the Plan Diagram for the subject property – from Agriculture to Nonresource. No goal exceptions are requested. This application demonstrates that the subject property is not Agricultural or Forest Land, as defined by the goals, and the proposed development will remain “rural” in the meaning of Goal 14.

(c) Minor amendment proposals initiated by an applicant shall provide adequate documentation to allow complete evaluation of the proposal to determine if the findings required by LC 16.400(6)(h)(iii) above can be affirmatively made. Unless waived in writing by the Planning Director, the applicant shall supply documentation concerning the following:

(i) A complete description of the proposal and its relationship to the Plan.

This description has been provided throughout this set of findings.

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

The required analysis is provided above.

(iii) An assessment of the probable impacts of implementing the proposed amendment, including the following:

(aa) Evaluation of land use and patterns of the area of the amendment;

See detailed discussion in Part I above. To summarize, the subject property is in an area that is characterized by low density rural residential uses and other Nonresource uses. Some of these uses are on land planned and zoned for resource use, and others are on land that is planned and zoned for Nonresource uses. The Nonresource uses of the land in the area are determined by the very poor quality soils in the foothills area of the Coburg Hills. The closest commercial resource uses are on the Knee Deep Cattle Company, which is adjacent to the west. The Knee Deep ranch occupies bottom land, not the foothills of the Coburgs.

(bb) Availability of public and/or private facilities and services to the area of the amendment, including transportation, water supply, and sewage;

The public facilities and services available or to be provided to the site are discussed in detail above. For a discussion of each facility and service, see the Goal 11 discussion above. For a further discussion of transportation facilities, see the Goal 12 discussion above. In summary, this site will be served by individual septic systems and a community water system. All other facilities and services are available.

(cc) Impact of the amendment on proximate natural resources, resource lands or resource sites including a Statewide Planning Goal 5 “ESEE” conflict analysis where applicable;

This discussion appears in detail in other parts of these findings. The proximate natural resources to consider are those that are identified as Goal 5 resources in the comprehensive plan. The impact on these resources is discussed as part of the Goal 5 analysis above, which includes the full ESEE analysis required by the Goal 5 Rule. In addition, the proposal will fully protect the

wetlands that are inventoried on the National Wetland Inventory maps, although those wetlands are not formally on the county's Goal 5 inventory.

This proposal will have no adverse impact on proximate resource lands. The low density rural residential uses proposed are compatible with the adjacent commercial and noncommercial farm and forest enterprises, as discussed more fully in connection with Goal 3 and Goal 4 in Part II. above.

(dd) Natural hazards affecting or affected by the proposal;

As discussed in connection with Goal 7, the subject property neither contains nor is threatened by any natural hazards.

(gg) For a proposed amendment to a nonresource designation or a Marginal Lands designation, an analysis responding to the criteria for the respective request as cited in the Plan document entitled, "Working Paper: Marginal Lands" (Lane County, 1983).

The *Marginal Lands Working Paper* contains the eight standards for designation of Nonresource lands. These standards are largely redundant of the substantive parts of Statewide Planning Goals 3 and 4, which are addressed in detail above. The eight standards, therefore, are addressed briefly here, with a general reference to the discussion of the goals.

LANDS MAY BE DESIGNATED AS NON-RESOURCE/NON-EXCEPTION LAND UPON SUBMISSION OF SATISFACTORY FACTUAL INFORMATION TO SUPPORT THE FOLLOWING FINDINGS:

- 1. The land is not composed of existing or potential forest lands which are suitable for the commercial production of wood fiber products.**

As the discussion under Goal 4 shows, none of the subject acreage is comprised of soils that are rated by the Oregon Department of Forestry as having the potential to produce more than 50 cubic feet of wood fiber per acre per year of the identified commercial wood species. The soils are rated at 49 cubic feet per acre per year. This site is not suitable for commercial production of wood fiber.

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

As discussed under Goals 4 and 5, this site does not need to be kept in an Agriculture or Forest designation in order to protect the watershed.

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

habitat.

The site is not managed for big game, other wildlife, fish or waterfowl habitat. See discussion in connection with Goals 3, 4, and 5 above.

- 4. No extreme soil or climatic conditions exist to the extent to require maintenance of existing vegetative cover to a degree not provided by the NON-RESOURCE/NON-EXCEPTION designation.**

The soil and climatic conditions on the site are not so extreme that the vegetative cover must be protected to a degree not provided by the Nonresource plan designation.

- 5. The land is not located in an agricultural or urban area and providing needed urban buffers, wind breaks, wildlife and fisheries habitat, livestock habitat, scenic corridors or recreational uses.**

The comprehensive plan does not inventory the subject property as providing any of the listed functions. It is not needed for any of these listed functions.

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

The site complies with this standard. See discussion and tables under Goal 3, which address the soils analysis by Brian Rabe. Reclassification is allowed. This standard speaks to the soils “classification system.” All findings in the Rabe report use the classification system. This standard does not limit you to any particular book or report.

- 7. The land is not suitable for farm or grazing taking into account soil fertility, climatic conditions, existing land use patterns, technological and energy inputs required, or accepted farming practices.**

The site is not suitable for farm use based on the listed factors. See discussion and tables under Goal 3.

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

See discussion under Goal 3 above. The site is not needed to be kept in an Agricultural designation in order to allow farm practices on adjacent or nearby land. The only adjacent commercial farm operation is the Knee Deep Cattle Company to the west. This operation

will be buffered from the subject property, and the owner has stated it expects no interference.

VI. COMPLIANCE WITH LANE CODE CRITERIA FOR ZONE CHANGES

This proposal requests a change from E-40 zoning to F-2 zoning. LC 16.252 sets out standards for zone changes. The facts relevant to the zone change standards are largely redundant with the facts relevant to plan policies and the Statewide Planning Goals. The LC 16.252 standards are stated here and addressed, with appropriate references to other parts of these findings.

LC 16.252(2): Criteria.

Zonings, rezonings and changes in the requirements of this Chapter shall be enacted to achieve the general purpose of this Chapter and shall not be contrary to the public interest. In addition, zonings and rezonings shall be consistent with the specific purposes of the zone classification proposed, applicable to Rural Comprehensive Plan elements and components, and Statewide Planning Goals for any portion of Lane County which has not been acknowledged by the Land Conservation and Development Commission. Any zoning or rezoning may be effected by Ordinance or Order of the Board of County Commissioners, the Planning Commission or the Hearings Official in accordance with the procedures of this section.

General purposes of Chapter 16:

LC 16.003 sets forth 14 broadly-worded purpose statements that include a provision to ensure that development is commensurate with the character and physical limitations of the land. Rezoning from F-2 to RR-10 implements the proposed plan amendment to Nonresource land. The public interest is served by recognizing that the land is neither Agricultural nor Forest land.

Purpose of Rural Residential Zone:

The Rural Residential zone is intended to provide opportunities for people to live in a rural area, allow primary and accessory residential uses that are compatible with primary residential uses, and implement the *Rural Plan Policies* related to Nonresource lands. The proposed zoning is consistent with these stated purposes of the zone.

Rural Comprehensive Plan Criteria:

The *Rural Plan Policies* provide the policy basis for comprehensive plan and implementing regulations, provide direction for land use decisions, and fulfill LCDC planning requirements. *Rural Plan Policies*, Goal 2, Policy 19 specifically addresses determination of the appropriate zoning district for lands with a Nonresource designation.

Goal 2, Policy 19:

Residential densities for nonresource lands shall be one residence per five or ten

acres and shall be determined through consistency with other plan policies and the following criteria:

- a. Existing development pattern and density of any adjacent committed areas;
- b. Subsurface sewage disposal suitability;
- c. Domestic water supply availability;
- d. Access;
- e. Public service;
- f. Lack of natural hazards;
- g. Effect on resource lands.

This policy identifies two potential zoning densities to accompany a Nonresource plan designation – RR-5 or RR-10. The applicant is proposing an RR-10 zoning district, which is the less dense and matches the existing RR zoning and development pattern in the surrounding area. By definition, therefore, the proposed zoning is consistent with this policy.

Lane Code Criteria:

LC 16.004(4):

Prior to any rezoning, that will result in the potential for additional parcelization, subdivision or water demands or intensification of uses beyond normal single-family residential water usage, all requirements to affirmatively demonstrate adequacy of long-term water supply must be met as described in LC 13.050(13)(a)-(d).

The additional dwellings will not be “beyond normal single family residential water usage.”

LC 16.290 v. LC 16.231

Per the purpose statement of LC 16.290(a)n, LC 16.290 does not apply.

16.290 Residential Zone (RR).

(1) Purpose. The purposes of the Rural Residential Zone (RR) are:

- (a) *** LC 16.290 does not apply to lands designated by the RCP as non-resource lands;**

If any purpose statement applied, it would be the purpose statement of LC 16.231.

16.231 Rural Residential Lands Zone (RR-RCP).

(1) Purpose. The purpose of the Rural Residential Zone (RR-RCP) is:

- (a) To provide opportunities for people to live in a rural area.**
- (b) To allow primary and accessory residential uses, and nonresidential uses which may be compatible with primary residential uses.**
- (c) To implement the policies of the Rural Comprehensive Plan, primarily those policies related to the residential development of areas identified as committed, built upon, or as nonresource land.**

(d) To provide protective measures for riparian vegetation along Class I streams designated as significant in the Rural Comprehensive Plan.

However, purpose statements are not approval criteria unless specifically incorporated as such. This is established law. Regardless, there are no provisions of LC 16.231 that apply to a zone change. LC 16.231 provisions apply after the property is zoned RR-RCP.

Even if the purpose statements were applicable, they are supportive. The rezone: (1)(a) provides opportunities for people to live in rural areas; (1)(b) allows primary and accessory residential uses; and (1)(c) allows residential development of nonresource land. (1)(d) is not applicable. The applicant is asking for RR10 zoning, the largest lot size available under LC 16.231(6), to minimize impacts.

VII. INCORPORATIONS:

Additional findings and material in support of the Board's approval are found in the record, the applicant's narrative, the applicant's ESEE analysis and the applicant's supplemental narratives, incorporated herein by this reference.

VIII. CONCLUSION

Based on the findings above, the post acknowledgement plan amendment to redesignate roughly 32 acres of land from Forestland to Nonresource land, and to rezone the same from Impacted Forestland (F-2) to Rural Residential (RR-10) is APPROVED. The subject property does not qualify as Agricultural land or Forest land based on soils, productivity, and use. As such, they do not need to be preserved in resource designations in order to fully implement Oregon's land use scheme for protecting resource lands and may be designated Nonresource. Nonresource lands may be zoned for Rural Residential uses at densities that remain "rural" in character. In conclusion, because the subject property is neither farm land nor forest land, the proposed redesignation is approved.

There are only two zoning districts available to Nonresource lands: RR5 or RR10. This proposal is for the less intense district to further compatibility of the area. Therefore, the proposed rezone to RR-10 is approved.