



Oregon

Theodore R. Kulongoski, Governor

Department of Land Conservation and Development

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Salem, Oregon 97301-2524

Phone: (503) 373-0050

First Floor/Costal Fax: (503) 378-6033

Second Floor/Director's Office: (503) 378-5518

Web Address: <http://www.oregon.gov/LCD>

NOTICE OF ADOPTED AMENDMENT

March 9, 2006

TO: Subscribers to Notice of Adopted Plan
or Land Use Regulation Amendments

FROM: Mara Ulloa, Plan Amendment Program Specialist

SUBJECT: Clatsop County Plan Amendment
DLCD File Number 003-05



The Department of Land Conservation and Development (DLCD) received the attached notice of adoption. Due to the size of amended material submitted, a complete copy has not been attached. A copy of the adopted plan amendment is available for review at the DLCD office in Salem and the local government office.

Appeal Procedures*

DLCD ACKNOWLEDGMENT or DEADLINE TO APPEAL: March 15, 2006

This amendment was submitted to DLCD for review 45 days prior to adoption. Pursuant to ORS 197.625 (1), 197.830 (2), and 197.830 (9) only persons who participated in the local government proceedings leading to adoption of the amendment are eligible to appeal this decision to the Land Use Board of Appeals (LUBA).

If you wish to appeal, you must file a notice of intent to appeal with the Land Use Board of Appeals (LUBA) no later than 21 days from the date the decision was mailed to you by the local government. If you have questions, check with the local government to determine the appeal deadline. Copies of the notice of intent to appeal must be served upon the local government and others who received written notice of the final decision from the local government. The notice of intent to appeal must be served and filed in the form and manner prescribed by LUBA, (OAR Chapter 661, Division 10). Please call LUBA at 503-373-1265, if you have questions about appeal procedures.

***NOTE: THE APPEAL DEADLINE IS BASED UPON THE DATE THE DECISION WAS ADOPTED BY LOCAL GOVERNMENT. A DECISION MAY HAVE BEEN MAILED TO YOU ON A DIFFERENT DATE THAN IT WAS MAILED TO DLCD.**

Cc: Doug White, DLCD Community Services Specialist
Laren Woolley, DLCD Regional Representative
Paul Klarin, Coastal Policy Analyst
Patrick Wingard, Clatsop County

<paa> ya



FORM 2

DEPT OF

MAR 02 2006

**LAND CONSERVATION
AND DEVELOPMENT**

DEPT OF

MAR 02 2006

**LAND CONSERVATION
AND DEVELOPMENT**

DLCD NOTICE OF ADOPTION

This form must be mailed to DLCD within 5 working days after the final decision
per ORS 197.610, OAR Chapter 660 - Division 18

(See reverse side for submittal requirements)

Jurisdiction: CLATSOP COUNTY

Local File No.: 2005-0246 / ORD.#06-02
(If no number, use none)

Date of Adoption: FEBRUARY 22, 2006
(Must be filled in)

Date Mailed: MARCH 1, 2006
(Date mailed or sent to DLCD)

Date the Notice of Proposed Amendment was mailed to DLCD: MAY 6, 2005

- | | |
|--|--|
| <input type="checkbox"/> Comprehensive Plan Text Amendment | <input checked="" type="checkbox"/> Comprehensive Plan Map Amendment |
| <input type="checkbox"/> Land Use Regulation Amendment | <input checked="" type="checkbox"/> Zoning Map Amendment |
| <input type="checkbox"/> New Land Use Regulation | <input type="checkbox"/> Other: _____ |
- (Please Specify Type of Action)

Summarize the adopted amendment. Do not use technical terms. Do not write "See Attached."

ZONE CHANGE FROM OPEN SPACE PARKS + RECREATION (OP12) TO COASTAL BEACH RESIDENTIAL (CBR); COMPREHENSIVE PLAN MAP CHANGE FROM CONSERVATION - OTHER RESOURCES TO RURAL LANDS FOR AN 8.8-ACRE PORTION OF THE TOTAL 10.9-ACRE PARCEL.

Describe how the adopted amendment differs from the proposed amendment. If it is the same, write "Same." If you did not give notice for the proposed amendment, write "N/A."

THE PROPOSED TEXT AMENDMENTS HAVE NOT BEEN ADOPTED. ONLY THE ZONING MAP / COMPREHENSIVE PLAN MAP AMENDMENTS WERE APPROVED.

Plan Map Changed from: CONSERVATION - OTHER RESOURCES to RURAL LANDS

Zone Map Changed from: OPR to CBR

Location: SURF PINES DEVELOPMENT - LOWER SURF PINES RD Acres Involved: 8.8 (of the total 10.9-

Specify Density: Previous: 1 D.U. / 2 ACRE (on 2.1-acre parcel) New: 1 D.U. / 2 ACRE (acre parcel)

Applicable Statewide Planning Goals: 1, 2, 6, 10, 11, 12, 14, 18

Was an Exception Adopted? Yes: No:

DLCD File No.: 003-05 (14363)

Did the Department of Land Conservation and Development receive a notice of Proposed Amendment **FORTY FIVE (45) days prior to the first evidentiary hearing.** Yes: No:

If no, do the Statewide Planning Goals apply. Yes: No:

If no, did The Emergency Circumstances Require immediate adoption. Yes: No:

Affected State or Federal Agencies, Local Governments or Special Districts: DLCD, DEQ, CLATSOP COUNTY, CITY OF WASHINGTON (WATER PROVIDER), WASHINGTON RURAL FIRE PROTECTION DISTRICT
Local Contact: PATRICK WINGARD Area Code + Phone Number: 503-325-8611
Address: 800 EXCHANGE ST. SUITE 100 City: ASTORIA
Zip Code+4: 97103 Email Address: pwingard@co.clatsop.or.us

ADOPTION SUBMITTAL REQUIREMENTS

This form **must be mailed** to DLCD **within 5 working days after the final decision**
per ORS 197.610, OAR Chapter 660 - Division 18.

1. Send this Form and TWO (2) Copies of the Adopted Amendment to:
ATTENTION: PLAN AMENDMENT SPECIALIST
DEPARTMENT OF LAND CONSERVATION AND DEVELOPMENT
635 CAPITOL STREET NE, SUITE 150
SALEM, OREGON 97301-2540
2. Submit **TWO (2) copies** the adopted material, if copies are bounded please submit **TWO (2) complete copies** of documents and maps.
3. Please Note: Adopted materials must be sent to DLCD not later than **FIVE (5) working days** following the date of the final decision on the amendment.
4. Submittal of this Notice of Adoption must include the text of the amendment plus adopted findings and supplementary information.
5. The deadline to appeal will not be extended if you submit this notice of adoption within five working days of the final decision. Appeals to LUBA may be filed within **TWENTY-ONE (21) days** of the date, the "Notice of Adoption" is sent to DLCD.
6. In addition to sending the "Notice of Adoption" to DLCD, you must notify persons who participated in the local hearing and requested notice of the final decision.
7. **Need More Copies?** You can copy this form on to 8-1/2x11 green paper only; or call the DLCD Office at (503) 373-0050; or Fax your request to: (503) 378-5518; or Email your request to Mara.Ulloa@state.or.us - ATTENTION: PLAN AMENDMENT SPECIALIST.

BEFORE THE CLATSOP COUNTY BOARD OF COMMISSIONERS

IN THE MATTER OF THE BIG BEARS LLC/)
CHARLTON COMPREHENSIVE PLAN/ZONING } NOTICE OF FINAL DECISION
MAP AMENDMENT APPLICATION } ORS 197.615 (2)
 } ORS 215

TO: All persons who participated in the proceedings leading to the final decision in the above captioned matter.

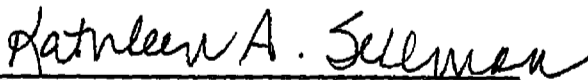
Pursuant to ORS 197.615(2)(a) and ORS 215, notice is hereby given by mail to all persons who participated in the proceedings culminating in the Board of County Commissioners' final decision made at its February 22, 2006 meeting, to approve the application for a comprehensive plan map/zoning map amendment for property identified as: T7N, R10W, Section 16C, Tax Lot 300 (portion of).

The Board's actions occurred at its February 22, 2006 meeting and the Board Chair signed the Ordinance, adopting the Staff Report and Findings of Fact and Conclusions of Law, on February 22, 2006.

The Ordinance, together with the adopted Staff Report, Findings of Fact and Conclusions of Law, and all Exhibits may be reviewed during normal business hours at the Clatsop County Community Development located at 800 Exchange Street, Suite 100, Astoria, Oregon. This office is open from 8:30 a.m. to 5:00 p.m., Monday through Friday.

The requirements for appeal of this decision are set forth at ORS 197.830 to 197.845. In general, the requirements for appeal require a "Notice of Intent to Appeal" the decision, to be filed with the Oregon Land Use Board of Appeals (LUBA), in Salem, Oregon. The Notice of Intent to Appeal the Decision must be filed not later than 21 days after the date the decision sought to be reviewed became final. There are specific and detailed requirements for the filing of the Notice of Appeal, which are set forth at ORS 197.830 to 197.845. Any party wishing to appeal this action is advised to seek qualified legal assistance.

Dated and mailed this 1st day of March, 2006.


Kathleen Sellman AICP, Director
Clatsop County Community Development Department

IN THE BOARD OF COMMISSIONERS
FOR CLATSOP COUNTY, OREGON

AN ORDINANCE AMENDING THE)
CLATSOP COUNTY COMPREHENSIVE)
PLAN MAP/ZONING MAP)

ORDINANCE NO. 06-02

WHEREAS, on April 29, 2005, Richard Charlton, filed an application for a Clatsop County Comprehensive Plan/Zoning Map amendment to change the current zoning of OPR (Open Space, Parks, and Recreation) to CBR (Coastal Beach Residential) and the current plan designation from Conservation – Other Resources to Rural Lands on an 8.8-acre portion of a 10.9-acre property in Clatsop County (the "property") described as:

That portion of T7N, R10W, Section 16C, Tax Lot 300
shown on Tab 12 of Exhibit A, attached hereto

WHEREAS, the application was considered by the Planning Commission at public hearings on July 12, 2005 and August 9, 2005 and subsequently considered by the Planning Commission, on remand from the Board of Commissioners, at a public hearing on December 13, 2005 the Planning Commission unanimously recommended approval, which recommendation is attached as Exhibit A; and

WHEREAS, consideration for this ordinance complies with the Post Acknowledgement rules of the Land Conservation and Development Commission, the County Planning Commission has sought review and comment and has conducted the public hearing process pursuant to the requirements of ORS 215.050 and 215.060, and the Board received and considered the Planning Commission's recommendations on this request and held a public hearing on this ordinance pursuant to law on January 25, 2006; and

WHEREAS, all notices to interested property owners have been provided pursuant to law;
now therefore,

THE BOARD OF COMMISSIONERS OF CLATSOP COUNTY ORDAIN AS FOLLOWS:

SECTION 1. The Board of Commissioners hereby approve the application.

SECTION 2. That portion of the property described above and shown in Tab 12 of Exhibit A (attached) is hereby rezoned from OPR (Open Space, Parks, and Recreation) to CBR (Coastal Beach Residential) and the comprehensive plan designation is changed from Conservation – Other Resources to Rural Lands.

SECTION 3. In support of this ordinance, the Board adopts the February 10, 2006 Staff Report, and the February 8, 2006 Findings of Fact and Conclusions of Law as indicated in Exhibit A (attached).

SECTION 4. This ordinance shall be in full force and effective thirty (30) days from the date the Chair signs the ordinance.

Approved this 22nd day of February, 2006

THE BOARD OF COUNTY COMMISSIONERS
FOR CLATSOP COUNTY, OREGON

By Richard H Lee
Richard Lee, Chair

By Ilena Adams
Recording Secretary



STAFF REPORT

Date: February 10, 2006

Applicant: Richard Charlton
855 SW Spring Lane
Portland, OR 97225

Owner: Big Bears LLC
855 SW Spring Lane
Portland, OR 97225

Requests: Comprehensive Plan/Zoning Map Amendment to Change the Current Zoning of OPR (Open Space, Parks, and Recreation) to CBR (Coastal Beach Residential) and to Change the Current Plan Designation of Conservation – Other Resources to Rural Lands for a Portion of the Subject Property

Hearing Date: January 25, 2006

Hearing Body: Board of Commissioners

Subject Property: A portion of T7N, R10W, Section 16C, Tax Lot 300 described in Exhibit A, Tab 12

Acres: 8.8

Location: Between the Pacific Ocean beach and the west side of Lower Surf Pines Road/Ocean Road in the area of Clatsop County commonly known as the Surf Pines Development.

Current Zoning: OPR & CBR

Proposed Zoning: CBR

Current Comprehensive Plan Designation: Conservation-Other Resources & Rural Lands

Proposed Comprehensive Plan Designation: Rural Lands

Overlay Districts: BDO – Beach and Dune Overlay (entire property)
FHO – Flood Hazard Overlay (western edge of property)
SO – Shoreland Overlay (western edge of property)

Exhibits:

A – February 8, 2006 Findings of Fact and Conclusions of Law.

1 – Previous Staff Reports: January 12, 2006; December 6, 2005 with a December 13, 2005 Addendum; October 12, 2005; August 9, 2005; and, July 12, 2005.

2 – Minutes from the February 8, 2006, January 25, 2006, and October 12, 2005 Board of Commissioners Meetings, and Minutes from the December 13, 2005, August 9, 2005, and July 12, 2005 Planning Commission Meetings.

3 – Written Comments Received.

Background:

Application Timeline:

DATE	ACTION
April 29, 2005	Application received.
May 9, 2005	Application deemed complete.
July 12, 2005	Planning Commission public hearing.
August 9, 2005	Planning Commission public hearing (continued from 7/12/05).
October 12, 2005	Board of Commissioners remand.
December 13, 2005	Planning Commission public hearing.
January 25, 2006	Board of Commissioners public hearing.
February 8, 2006	Board of Commissioners approve the application, conduct first reading of ordinance.

Synopsis:

The February 8, 2006 Findings of Fact and Conclusions of Law that justify the proposed comprehensive plan/zoning map amendment are attached as Exhibit A. These Findings reflect amendments that were made to this document by the Planning Commission on December 13, 2005 and the Board of Commissioners on February 8, 2006.

Previous Staff Reports (attached, Exhibit 1) and Meeting Minutes (attached, Exhibit 2) for this matter provide a chronology of events leading up to the Board's approval and provide an overview of staff analyses and action taken by the Planning Commission and Board of Commissioners for this comprehensive plan map/zoning map amendment application.

All written comments received as a function of the public hearings for this land use matter are attached as Exhibit 3.

Physical Characteristics of the Subject Property:

The subject property (APN: 7-10-16C-300) is generally rectangular in shape and contains 10.9 acres. The property is located between the beach of the Pacific Ocean and the west side of Lower Surf Pines Road at the north end of the Surf Pines Development. The land is flat and

consists of low shrubs and some overgrown noxious vegetation. The subject property abuts an 8.23-acre parcel to the west that extends to the ocean beach. The applicant owns this abutting lot.

Neighborhood Characteristics:

North: Properties to the north of the subject property are zoned OPR (Open Space, Parks, and Recreation), RA-5 (Rural-Agricultural 5), and RA-1 (Rural-Agricultural 1). The OPR and RA-5 lands are currently undeveloped. The RA-1 lands are developed with single-family residences.

South: Properties to the south of the subject property are zoned CBR (Coastal Beach Residential) and are developed with single-family residences.

East: Properties to the east of the subject property are zoned SFR-1 (Single-Family Residential-1) and are developed with single-family residences.

West: The Pacific Ocean and beaches lie to the west of the subject property. These lands are zoned OPR (Open Space, Parks, and Recreation).

Access and Utilities:

The subject property is accessed via Lower Surf Pines Road, a privately-maintained, public road. Potable water would be provided by the City of Warrenton. Provisions for sanitary sewer would be provided by DEQ-permitted private on-site sewage disposal systems.

APPLICABLE REVIEW CODES AND POLICIES:

Comprehensive plan/zoning map amendments shall comply with the following criteria of Section 5.412 of the Clatsop County Land and Water Use and Development Ordinance (LWDUO):

The governing body shall approve a non-legislative zone designation change if it finds compliance with Section 1.040, and all of the following criteria:

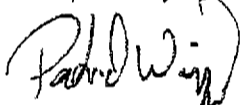
- (1) The proposed change is consistent with the policies of the Clatsop County Comprehensive Plan.
- (2) The proposed change is consistent with the statewide planning goals (ORS 197).
- (3) The property in the affected area will be provided with adequate public facilities and services including, but not limited to:
 - (A) Parks, schools and recreational facilities
 - (B) Police and fire protection and emergency medical service
 - (C) Solid waste collection
 - (D) Water and wastewater facilities

- (4) The proposed change will insure that an adequate and safe transportation network exists to support the proposed zoning and will not cause undue traffic congestion or hazards.
- (5) The proposed change will not result in over-intensive use of the land, will give reasonable consideration to the character of the area, and will be compatible with the overall zoning pattern.
- (6) The proposed change gives reasonable consideration to peculiar suitability of the property for particular uses.
- (7) The proposed change will encourage the most appropriate use of land throughout Clatsop County.
- (8) The proposed change will not be detrimental to the health, safety and general welfare of Clatsop County.

Conclusion:

The February 8, 2006 Findings of Fact and Conclusions of Law (Exhibit A) demonstrate that the comprehensive plan/zoning map amendment application meets the applicable review criteria, LWDUO § 5.412, for approval.

Respectfully submitted,



Patrick Wingard AICP
Community Development Supervisor
February 10, 2006

ORDINANCE #06-02

Exhibit A

- ▶ **February 8, 2006 Findings of Fact and Conclusions of Law**
- ▶ **December 13, 2005 Planning Commission Recommendation / Resolution and Order**
- ▶ **April 29, 2005 Comprehensive Plan/Zoning Map Amendment Application**

**Charlton/Big Bears LLC
Comprehensive Plan/Zoning Map
Amendment**

February 22, 2006

IN THE MATTER OF THE COMPREHENSIVE PLAN AND ZONING MAP
AMENDMENT PROPOSAL OF BIG BEAR LLC & CHARLTON

Findings of Fact and Conclusions of Law
February 8, 2006

I. FINDINGS

A. BACKGROUND, HISTORY AND PLANNING COMMISSION
RECOMMENDATION

1. Property History and Background. The applicant's property consists of a parcel of land located between the beach of the Pacific Ocean and the west side of Lower Surf Pines Road (aka Ocean Drive). (**Map, Tabs 10 and 11**). The property is within and at the north end of Surf Pines Development (Tax Lot 300). Other properties within Surf Pines, including those to the south and east of Tax Lot 300, are platted for residential use and are developed. The County's existing zoning map (on file with the County staff), appears to have been prepared with color pencils in 1980. It shows that Tax Lot 300 is split-zoned, with approximately 8.8 acres located in the OPR Zone and the remaining 2.1 acres in the CBR zone. However, the Clatsop County Land and Water Development and Use Ordinance (the "LWDUO"), §3.247 includes all of Surf Pines within the CBR zone, and §3.248 makes specific reference to Tax Lot 300 (*all of Tax Lot 300*) for lot size requirements within the CBR zone. (**Tab 2**). The subject property is currently split-zoned. This means that while the zoning code is complete, the zoning and planning maps require amendment to be consistent with the zoning code. As requested by the Board of County Commissioners and County staff, the applicant has submitted clean, legible copies of maps to depict the zoning and planning designations. (**Map, Tab 12**).

The land is flat and consists of low shrubs and some overgrown noxious vegetation and abuts another 8.23-acre parcel on the west, also owned by the applicant. (**Aerial Map, Tab 13**). The applicant's property, consisting of the two large parcels, extends to the ocean beach. (**Aerial Map, Tab 13**). The property does not constitute native wildlife habitat, and it does not have any important habitat attributes. As depicted on topographic maps and aerial photographs in the record, the property lies more than 50 feet below the home sites to the east, adjacent to a developed road, on a flat plain extending a great distance to the Pacific Ocean. Properties to the east have been developed with homes 10-feet higher (28 feet) than the maximum height allowed on Tax Lot 300 (18 feet). At the hearing, the applicant will submit a topographic exhibit to demonstrate the dramatic elevation difference between Tax Lot 300 and properties to the east, including the McGowan property. Development of Tax Lot 300 will not negatively impact views of the ocean from any home.

Several property owners within the gated Surf Pines Development oppose this application, and have testified that this privately-owned property should perpetually remain in open space zoning. In a letter dated October 11, 2005, the applicant's attorney specifically responds to each argument made by the opponents, and shows that none of the opposition testimony undermines the legal and factual conclusion that the applicant has satisfied all applicable criteria for approval of the comprehensive plan and zoning map amendments. (**Tab 3**).

2. Dune Line Amendment. In 2003, Clatsop County (the "County") passed the Charlton Active Dune Line Comprehensive Plan Text Amendment, Clatsop County Ordinance No. 02-05 (Jan. 11, 2003), which amended the Clatsop County Comprehensive Plan (the "Comprehensive Plan") and established that Tax Lot 7-10-16C-300 ("Tax Lot 300") are no longer located in the Active Dune Area. Ordinance 02-05 adopted the Horning Study (Sept. 22, 1998) and reinforced Ordinance No. 83-17, which previously established the Surf Pines Construction Setback Line to include Tax Lot 300. As shown on applicant's survey map (**Map, Tab 11**), the Active Dune Line and the construction setback line ("west building line") are coextensive. As is shown on this map (**Map, Tab 11**), for properties to the south, the Active Dune Line remains. However, all of the properties can be developed within this area, by virtue of a previously granted "Goal 18 Exception." For the applicant's property, the Active Dune Line Amendment was necessary for the purpose of enabling the residential development of the property. The amendment was not needed if the County or the applicant intended the property to remain in open space (OPR zoning).

3. Requested Amendments. To align the Clatsop County Land and Water Development and Use Ordinance (the "LWDUO") and the Comprehensive Plan/Zoning Map with Ordinance No. 02-05 and facilitate development of Tax Lot 300, amendments must be made to the LWDUO and County Standards Document and to the Comprehensive Plan/Zoning Map, including:

1. An amendment of the Comprehensive Plan designation of all of Tax Lot 300 from Conservation-Other Resources to Rural Lands, by amending the Comprehensive Plan/Zoning Map, and
2. An amendment of the land-use zone designation of Tax Lot 300 from Open Space, Parks, Recreation Zone ("OPR") to Coastal Beach Residential Zone ("CBR").

The existing and proposed zoning and planning lines are shown on the maps provided to the County (**Maps, Tab 12**)

The proposed map amendments will extend CBR zoning to the entire 10.9-acre parcel and modify the Comprehensive Plan/Zoning map to locate Tax Lot 300 within the Comprehensive Plan's Rural Lands designation. The text of the Comprehensive Plan itself will not be modified.

Pursuant to Section 5.400 of the LWDUO, the boundaries of a base zone or overlay district as delineated on the official Comprehensive Plan/Zoning Map may be made according to the criteria set forth in section 5.412. (The Comprehensive Plan and Zoning Map is a joint map.) This document addresses the criteria of section 5.412 as applied to the above amendments.

4. History of Property Zoning. On July 12, 2005, the Clatsop County Planning Commission held a public hearing to consider amendments to the Clatsop County Comprehensive/Zoning Map and to the text of the Land and Water, Development and Use Ordinance (LWDUO)/Standards Document.

A Staff Report was prepared and submitted to the Planning Commission for review and consideration, which included a recommendation that the Planning Commission recommend

approval of the proposed amendments to the Board of County Commissioners. Public testimony was taken at the meeting, some of which expressed opposition to the proposed map amendments. There was also discussion on how the existing OPR boundary was originally established, questioning the basis for the location of the line on the applicant's property, which is different than the property immediately to the south. Given the questions on mapping and zone district boundaries, the Commission moved to continue the meeting until August 9, 2005 to allow Staff time to research all reports, data and records available and report back to the Commission with findings.

In response to the Planning Commission request, Staff researched all records available, which includes both historic and current maps.

Staff consulted with County Counsel in an effort to determine how the initial OPR Boundary was established, on and adjacent to the applicant's property. The County Counsel's advice is documented in a Memorandum dated July 15, 2005. (Tab 4). The background reports provided for Planning Commission review as part of the original Staff Report (Palmer and Horning reports) were found to be the most complete and accurate information available.

History of Zoning and Other Maps: The applicant has submitted additional maps, aerial photographs, and survey drawings to further clarify the history of development, zoning and mapping in the vicinity. These documents are attached in **Maps, Tabs 10, 11, 12 and 13**. Based upon the maps, history and reports, the record shows the following:

- The OPR Zone was established in the 1980s, based on the vacant characteristic of the property at the time. At that time Surf Pines was primarily developed, but only south of the applicant's property.
- The applicant's property is within the north boundary of Surf Pines Development, but was undeveloped at the time the OPR zoning was assigned to the property.
- Maps available to the County show that the Surf Pines area (including the applicant's property) was changed from R-1 to CBR in 1978. This map also does not identify any OPR zoning in 1978 when the zone was changed.
- Based on County staff's discussions with the County Counsel, it appears the OPR zoning originated in 1979 or 1980. The designation of the property as OPR Zone was given to the areas that were undeveloped at the time, with no apparent policy rationale to justify that action. That is the fundamental reason for a portion of the applicant's property falling within the OPR zoning line.
- Additionally, as the County's zoning map shows, the line dividing the OPR and CBR zones appears to have been drawn with a colored pencil, perhaps with the aid of a straight edge ruler, drawing a straight line from north to south. It cuts through and divides private properties without explanation. Moreover, at the scale of the map, the dimension of the color pencil line itself could be as much as 50 feet wide, giving no reasonable means of judging any "intent" to zone the property OPR.

- There is no evidence in the record showing that the OPR zoning was assigned to the property with any finding or intent that it was needed to conserve open space in an area “uniquely suited to outdoor recreation.” (LWDUO §3.582).
- The aerial photographs and topographic maps and information supplied by the applicant show that Tax Lot 300 lies dozens of feet below the viewsheds of properties to the east, and that the buildable area of Tax Lot 300 is a great distance from the Pacific Ocean. While open space zoning may make sense in unbuildable areas near the Ocean, it does not make sense in the developable areas of Tax Lot 300.

Other areas near Surf Pines, such as Sunset Lake also included some OPR Zoning, but were similarly zoned, likely based on parcel size at the time and undeveloped property similar to the applicant’s property, and done with a straight edge and a colored pencil.

5. Planning Commission Recommendation. Following a properly noticed public hearing, and based upon all testimony and evidence in the record, the Planning Commission unanimously recommended that the Board of County Commissioners approve the requested amendments.

6. Board of County Commissioners Meeting. On October 11, 2005, the application was set for hearing before the Board of County Commissioners (“BOCC”). Upon review of the staff report, the BOCC was concerned that the record was not clear nor was it complete, and remanded the matter to the Planning Commission. In a Resolution adopted at the meeting, the BOCC asked the Planning Commission to do the following: (1) reopen the hearing and record for receipt of additional information that had been submitted by the parties; (2) assure that the record for the BOCC is complete, and (3) assure that all maps in the record are clear and accurate, including showing the Active Dune Lines, consistent with all adopted locations of boundaries. The BOCC was fundamentally concerned with the quality of the photocopies, including the maps, and the clarity of the documents provided. For this purpose, the BOCC wanted to ensure that the record (particularly the maps at issue) would be complete and clear.

The applicant has worked with County staff to present clear maps and supplemental information in order to present a clear record to the Planning Commission and the BOCC.

B. FINDINGS OF COMPLIANCE WITH THE REQUIREMENTS OF SECTION 5.412.

The requested amendment must be objectively considered based upon the County’s adopted criteria. The proposed Findings below show how the applicant has complied with all applicable adopted criteria.

1. Section 5.412. Zone Change Criteria.

Section 5.412 provides that the governing body shall approve a non-legislative zone designation change if it finds compliance with Section 1.040, and all of the other criteria set forth in Section 5.412. LWDO section 1.040 provides:

The provisions of this ordinance apply to all unincorporated areas of Clatsop County, Oregon which are not within the urban growth

boundary of an incorporated city or town. The procedural provisions of this ordinance will continue to be utilized for unincorporated areas within urban growth boundaries. A parcel of land or water area may be used, developed by land division or otherwise and a structure may be used or developed by construction, reconstruction, alteration, occupancy or otherwise only as this Ordinance permits. In addition to complying with the criteria and other provisions within this Ordinance, each development shall comply with the applicable standards set forth in County Development and Use Standards Document. The requirements of this Ordinance apply to the person undertaking a development or the user of a development and the person's successor in interest.

LWDUO § 5.412 requires that a proposed zone change comply with the following criteria:

- (1) The proposed change is consistent with the policies of the Clatsop County Comprehensive Plan.
- (2) The proposed change is consistent with the statewide planning goals (ORS 197).
- (3) The property in the affected area will be provided with adequate public facilities and services including, but not limited to:
 - (A) Parks, schools and recreational facilities
 - (B) Police and fire protection and emergency medical service
 - (C) Solid waste collection
 - (D) Water and wastewater facilities
- (4) The proposed change will insure that an adequate and safe transportation network exists to support the proposed zoning and will not cause undue traffic congestion or hazards.
- (5) The proposed change will not result in over-intensive use of the land, will give reasonable consideration to the character of the area, and will be compatible with the overall zoning pattern.
- (6) The proposed change gives reasonable consideration to peculiar suitability of the property for particular uses.
- (7) The proposed change will encourage the most appropriate use of land throughout Clatsop County.
- (8) The proposed change will not be detrimental to the health, safety and general welfare of Clatsop County.

As discussed below, each of the applicable criteria is met.

Finding. The requirements of § 1.040 are met. The property is located in Clatsop County, outside the urban growth boundary of an incorporated city or town. Therefore the procedures for a zone map and comprehensive plan map amendment apply. The application is subject to all the applicable standards in the code and in the Standards Document. No development is proposed, however, as part of this application.

The additional requirements of LWDO section 5.412 are met as set forth below.

1) *The proposed change is consistent with the policies of the Clatsop County Comprehensive Plan.*

Finding: The proposed amendments are consistent with the Plan because they serve to align the Comprehensive Plan/Zoning Map, Standards Document, and LWDUO with the language of Section 18 of the Comprehensive Plan as amended by Ordinance 02-05. LWDUO §3.240 already includes Tax Lot 300 within the CBR zone. The Comprehensive Plan was amended by Ordinance 02-05 to exclude Tax Lot 300 from the Active Dune area. These amendments to the zoning map, LWDUO, and County Standards Document serve to provide consistency between the Comprehensive Plan and the LWDUO/Standards documents and maps.

No development is proposed as part of this application. Ordinance 02-05 was accompanied by Findings that demonstrated the consistency of the amendment with the elements of the Comprehensive Plan and the Statewide Planning Goals. These findings were approved and adopted with the passage of Ordinance 02-05. As amendments designed to provide consistency with Section 18 as amended by Ordinance 02-05, the proposed map and document amendments incorporate by reference the Findings of Ordinance 02-05. Having found Ordinance 02-05 consistent with the Comprehensive Plan, the County should adopt those findings made in Ordinance 02-05 and conclude the proposed amendments are similarly consistent with the Comprehensive Plan.

There are several comprehensive plan goals and policies that are applicable to this request. The proposed amendments meet the goals and policies, which include the following specific elements:

Goal 1 – Citizen Involvement

Policy 5. Citizens shall be provided the opportunity to be involved in the phases of the planning process as set forth and defined in the goals and guidelines for Land Use Planning, including preparation of plans, and implementation measures, plan content, plan adoption, minor changes and major revisions in the plan and implementation of measures.

Policy 9. Public notices will also be sent to affected residents concerning zone and comprehensive plan changes, conditional uses, subdivisions and planned developments.

Finding: The hearings on these applications were properly noticed and these policies are met.

Goal 2 – Land Use

Policy 6. Rural Lands. A diversity of housing options ranging from high density urban environments to low density farm-forest home sites has been a recognized need in Clatsop County since the first comprehensive plan was adopted in 1969. The County has looked to those lands which are built upon and/or irrevocably committed rural areas which generally have some level of public facilities and services, especially surfaced public roads, fire protection and piped water; a pattern of parcels

generally smaller than 15 acres; existing residential development at a higher density than one dwelling unit per 10 acres; and, natural boundaries such as creeks and roads, separating the exception areas from adjacent resources lands.

Finding: The property is appropriate for zoning to allow low density home sites. Neighboring and surrounding properties are developed with low density single family residential uses and public facilities are available to the site. The property is adjacent to a fully developed residential neighborhood. As discussed further below, the property is fully served by roads and other public and private infrastructure.

Goal 6 – Air, Water and Land Quality

Policy 13. Any development of land or change in designation of use of land shall not occur until it is assured that such change or development complies with applicable State and Federal environmental standards.

Finding: The rezoning and map amendment will not affect state and federal environmental standards.

Goal 7 – Natural Hazards

Goal – to protect life and property from natural disasters and hazards.

Finding: As established in the Horning Report, the property is outside the active dune line. Zoning of property to allow development is appropriate. The record shows that similar to other properties in the vicinity, this property can be developed in a manner to protect life and property. (See, for example, the letter from Dan Golubickas Construction, dated October 6, 2005, **Tab 5**).

Goal 10 – Population and Housing.

Populations Policies.

1. Promote population to locate in established service areas.
2. Utilize current vacant land found between developments or within committed lands.

Housing Policies.

1. Clatsop County shall encourage residential development only in those areas where necessary public facilities and services can be provided and where conflicts with forest and agriculture uses are minimized.
2. Clatsop County shall permit residential development in areas designated when it is demonstrated that:

Water is available

Housing has an approved sewage disposal system

Finding: As discussed below, the subject property is located in the already developed Surf Pines Area and services are already available to the site. Natural gas lines abut the property. Conduit was extended under the pavement to extend other utilities on the other side of the roadway. No forest or agricultural uses are impacted. Residential development of the area will require establishing that adequate septic facilities are available. Evidence in the record verifies that onsite wastewater systems may be developed on the property. (May 16, 2005 letter from DEQ, **Tab 6**).

Goal 11 – Public Facilities and Services

Outside Urbanizable Areas.

Support the provision of needed public facilities for rural areas at levels appropriate for rural densities.

Finding: Tax Lot 300 is adequately served with the required public facilities and services outlined in LWDUO section 5.412(3).

Roads: Public transportation facilities provide access to and from the Surf Pines community, and transportation within Surf Pines is through a private road network. The private road was constructed to serve all properties in the Surf Pines Development. In fact, testimony in the record shows that when the road was installed, conduit was laid under the roadway to serve Tax Lot 300. An adequate and safe transportation network exists to support the addition of five single-family detached dwellings on the north end of Ocean Avenue (lower Surf Pines Road). The network includes Lower Surf Pines Road (Ocean Avenue), Malarkey Lane, Upper Surf Pines Road (Manion Drive), Horizon Lane, Lewis Road, Sunset Beach Road, Surf Pines Road, and Highway 101. The proposed change will not cause undue traffic congestion or hazards on Ocean Avenue or on any of the other streets in the road network serving Tax Lot 300.

Parks and Recreation: Several public and private parks exist in the vicinity of Tax Lot 300. These are listed in Table 1, along with their approximate distance from the site.

Table 1: Parks

Park	Distance from Tax Lot 300
State park land at Sunset Beach	1 mile
Sunset Lake Public Park	1 mile
Del Rey Beach State Wayside	2.7 miles
Cullaby Lake County Park	1.5 miles
Land owned by Surf Pines Association	0.7 mile
Ocean beach	0.1 mile

Source: Clatsop County Assessment and Taxation Department maps

Schools: Tax Lot 300 is in the Seaside School District and the Clatsop Community College District. Gearhart Grade School is about 4.4 miles south, Seaside High School is approximately 6.2 miles south, and Seaside Middle School is about 6.3 miles south of Tax Lot 300. Clatsop Community College's main campus is located in Astoria, about eight miles northeast. The college also maintains a south county campus in Seaside.

Police and Fire Protection: Police and fire protection are available to serve the property, through a combination of Clatsop County Sheriff's Department and the Gearhart Rural Fire Protection District. The subject property is in a Rural Law Enforcement district and receives law enforcement services from the Clatsop County Sheriff's Department. The Gearhart Rural Fire Protection District encompasses the lot, and includes a fire station about 4.4 miles to the south. A fire hydrant is located on the east side of the Ocean Avenue (Lower Surf Pines Road) right-of-way, immediately adjacent to Tax Lot 300. Fire hydrants are located throughout the Surf Pines development. Future development of the subject property will likely require additional fire hydrants to serve additional dwellings per the International Fire Code. This would be addressed at a later date upon submittal of a subdivision plat.

Medical Facilities: Medical facilities that would serve the property include hospitals in both Astoria and Seaside. Both are approximately the same distance from the site. Emergency services provided by Gearhart Rural Fire would also serve the site. Seaside-Providence Hospital is located about 6.5 miles south, and Columbia Memorial Hospital in Astoria is about eight miles northeast.

Water: Water is provided to serve the lots in Surf Pines by City of Warrenton. The City of Warrenton has capacity to extend the water to serve Tax Lot 300. Future development of the property will require verification as to the number of lots that can be served.

Solid Waste: Western Oregon Waste provides solid-waste disposal services to Surf Pines. This service can be extended to Tax Lot 300. Water in Surf Pines is provided by the City of Warrenton, which can extend water services to Tax Lot 300. Wastewater in the Surf Pines area is managed through individual septic tanks and drainfields.

Wastewater: Wastewater would be managed through individual sewage disposal systems. Future subdivision of the property would require verification that the lots meet DEQ standards.

Goal 12 – Transportation

- Goal 1. Mobility
- Goal 2. Livability
- Goal 3. Coordination
- Goal 7. Environment
- Goal 8. System preservation
- Goal 9. Capacity
- Goal 11. Safety

Finding: As previously noted, an adequate and safe transportation network exists to support the addition of five single-family detached dwellings on the north end of Ocean Avenue

(lower Surf Pines Road). The network includes Lower Surf Pines Road (Ocean Avenue), Malarkey Lane, Upper Surf Pines Road (Manion Drive), Horizon Lane, Lewis Road, Sunset Beach Road, Surf Pines Road, and Highway 101. The proposed change will not cause undue traffic congestion or hazards on Ocean Avenue or on any of the other streets in the road network serving Tax Lot 300.

Goal 14 – Urbanization

Goal. Provide an orderly and efficient transition from rural to urban land use.

Finding: The neighboring CBR zoned properties to the south and east have a minimum one acre lot size. The proposed rezoning will allow development of five two acre lots. This is not an urban level of development and CBR is a rural land use designation. The property is within the confines of the Surf Pines Development, abutting one and two acre lots. Under these circumstances, it is illogical to retain privately owned open space zoning.

Goal 18 – Beaches and Dunes

Finding: Goal 18 was amended by Ordinance No. 02-05 to provide consistency between the Statewide Planning Goals and the County's Beaches and Dunes Policies.

Clatsop Plains Community Plan

The subject property is regulated under the Clatsop Plains Community Plan, which provides for planned and orderly growth of the Clatsop Plains planning areas which is in keeping with a majority of its citizens and without unduly depriving landowners and/or residents of reasonable use of their land.

2) *The proposed change is consistent with the statewide planning goals (ORS 197).*

Finding: In 2003 the County amended its Comprehensive Plan to remove Tax Lot 300 from the Active Dune Overlay Zone. This was done by the adoption of Ordinance No. 02-05, which amended the text of Goal 18 Section in the Plan. The text amendment was done to provide consistency with the Statewide Planning Goals and the Clatsop County Comprehensive Plan. The proposed amendments comply with the Statewide Planning Goals because they do not modify or compromise any of the Statewide Planning Goals as established in ORS 197.

- **Statewide Planning Goal 1: Citizen Involvement.** This goal is satisfied because the amendments do not conflict with the state's policies of providing citizen involvement in all phases of the planning process. There have been no procedural errors in the amendment process and the amendments are consistent with Goal 1.
- **Goal 2: Land Use Planning.** This goal is satisfied because the proposed amendments does not compromise the basic policy framework of the goal. The amendments are supported by Ordinance No. 02-05. Additional application procedures are required before development is allowed to occur on the property. Based on these factors, the proposed amendments are consistent with Goal 2.

- **Goal 3: Agricultural Lands; Goal 4: Forest Lands; Goal 5: Open Spaces.** These goals do not apply to the proposed amendments because the subject property is not agricultural land or forest land, and because no protected Goal 5 resources are present on Tax Lot 300. Adoption of the amendments is not anticipated to have any direct effect on nearby Goal 5 resources. Therefore, the amendments comply with Goals 3, 4, and 5.
- **Goal 6: Air, Water, and Land Resources Quality.** The proposed amendments will designate Tax Lot 300 as part of the CBR zone, update the zoning map to include Tax Lot 300 within the Rural Lands designation, and amend the LWDUO/Standards documents to reflect Ordinance 02-05. The amendments will not automatically approve development of the property. Because the proposed amendments do not directly or indirectly impact Goal 6 protected resources, the amendment is consistent with the goal.
- **Goal 7: Areas Subject to Natural Disasters and Hazards.** The proposed amendments will not alter any of the Goal 7 protections required by the state. All standards approved in the Comprehensive Plan and the LWDUO will apply to any future development of Tax Lot 300.
- **Goal 8: Recreational Needs, and OAR 660-034.** Amending the zone designation of Tax Lot 300 will not implicate Goal 8 or the County's Goal 8 inventory. The subject property is private property within a gated community. Consequently, any open space or recreational uses would not be enjoyed by the general public. Numerous parks and open space areas are located in the vicinity of the property, with an abundance of recreational opportunities. The proposed amendments will not undermine the County's ability to implement Goal 8. Therefore, the amendments are consistent with Goal 8.
- **Goal 9: Economy of the State, and OAR 660-009.** Goal 9 is concerned with commercial and industrial land uses. The proposed amendments will not impact the County's inventory of developable commercial or industrial lands, nor will they compromise the County's ability to fulfill the policies of Goal 9. Therefore, Goal 9 does not apply to the amendments.
- **Goal 10: Housing.** Housing will not be adversely impacted by the proposed amendments. Modifying the CBR zone to include Tax Lot 300 will increase the County's inventory of buildable land by only five potential parcels. The site is serviced for rural residential home sites. The amendments will not undermine the County's compliance with Goal 10, but are consistent with the state's housing goals and policies.
- **Goal 11: Public Facilities and Services, and OAR 660-011.** The proposed amendments are consistent with Goal 11 because they will not require amendment of the County's Goal 11 element or undermine the County's compliance with Goal 11.
- **Goal 12: Transportation, and OAR 660-012, OAR 660-013.** The addition of Tax Lot 300 to the CBR zone is consistent with Goal 12 because the adjacent Surf Pines area is fully serviced by existing roads and transportation facilities. The various amendments are consistent with a safe, convenient, and economical transportation system.
- **Goal 13: Energy Conservation.** This goal will not be undermined by the proposed amendments. Any subsequent development of Tax Lot 300 must comply with the Goal 13 implementing policies established by the County.

- **Goal 14: Urbanization.** The County's approval of the amendment will not involve existing or proposed urban growth boundaries. Rezoning Tax Lot 300 would allow the construction of a maximum of five dwelling units. Any development would require compliance with the County's Goal 14 implementing standards and policies; thus the amendment is consistent with Goal 14.
- **Goal 15: Willamette River Greenway; Goal 16: Estuarine Resources.** These goals do not apply to the proposed amendment, because they will not affect the Willamette River Greenway or any estuarine waters or shorelands.
- **Goal 17: Coastal Shorelands.** The County's approval of the zone designation amendment and other proposed amendments will not alter any of the County's Goal 17 implementing measures. Any development of Tax Lot 300 will be required to comply with Goal 17 as implemented by the Comprehensive Plan and the LWDUO. Consequently, the County should find the proposed amendments consistent with Goal 17.
- **Goal 18: Beaches and Dunes.** The proposed amendments do not conflict with Goal 18 because Ordinance No. 02-05 previously amended the Goal 18 element of the County Comprehensive Plan to ensure consistency between the Statewide Planning Goal and the County's beach and dune policies.

In sum, the proposed land-use zone designation amendment and amendments to the LWDUO/Standards documents are consistent with the Statewide Planning Goals because they do not require the County to compromise any of the goals or their implementing measures. Any subsequent development of Tax Lot 300 will be required to comply with the County's policies and goals under each statewide goal.

3) *The property in the affected area will be provided with adequate public facilities and services including, but not limited to:*

- § Parks, schools and recreational facilities
- § Police and fire protection and emergency medical service
- § Solid waste collection
- § Water and wastewater facilities

Finding: As discussed above, the proposed amendment meets this requirement. The subject property is in close proximity to State and County parks, which includes Sunset Beach State Park (Also the terminus of the Fort to Sea Trail), Sunset Lane County Park, which are both approximately one mile from the site; Cullaby Lake County Park, which is approximately 1.5 miles from the site; Del Rey Beach State Wayside, which is slightly farther away at approximately 2.7 miles. There is also the ocean beach, just to the west of the property and adjacent dunes, and the recreational areas provided by the Surf Pines Association that provides areas for residents. Sunset Empire Parks and Recreation District is also located in Seaside, approximately six miles from the site, which serves the Seaside/Gearhart Areas.

Parks and Recreation: Tax Lot 300 is in the Sunset Empire Parks and Recreation District. The district's main facilities are located in Seaside, about 6.3 miles to the south. Other recreational facilities include the boat ramp on Sunset Lake, the Del Rey Beach access, the Sunset Beach access, and recreational facilities at Sunset Lake Park and Sunset Beach Road.

Schools: The property is served by Seaside School District. Gearhart Grade school is to the south and Seaside Middle School and High School to the north. Clatsop Community College also has a Seaside campus, south of the applicant's property, near Gearhart on US Hwy. 101.

Police and Fire Protection: Police and fire protection are available to serve the property, through a combination of Clatsop County Sheriff's Department and the Gearhart Rural Fire Protection District. The subject property is in a Rural Law Enforcement district and receives law enforcement services from the Clatsop County Sheriff's Department. The Gearhart Rural Fire Protection District encompasses the lot, and includes a fire station about 4.4 miles to the south. A fire hydrant is located on the east side of the Ocean Avenue (Lower Surf Pines Road) right-of-way, immediately adjacent to Tax Lot 300. Fire hydrants are located throughout the Surf Pines development. Future development of the subject property will likely require additional fire hydrants to serve additional dwellings per the International Fire Code. This would be addressed at a later date upon submittal of a subdivision plat.

Medical Facilities: Medical facilities that would serve the property include hospitals in both Astoria and Seaside. Both are approximately the same distance from the site. Emergency services provided by Gearhart Rural Fire would also serve the site. Seaside-Providence Hospital is located about 6.5 miles south, and Columbia Memorial Hospital in Astoria is about eight miles northeast.

Water: Water is provided to serve the lots in Surf Pines by City of Warrenton. The City of Warrenton has capacity to extend the water to serve Tax Lot 300. Future development of the property will require verification as to the number of lots that can be served.

Solid Waste: Western Oregon Waste provides solid-waste disposal services to Surf Pines. This service can be extended to Tax Lot 300. Water in Surf Pines is provided by the City of Warrenton, which can extend water services to Tax Lot 300. Wastewater in the Surf Pines area is managed through individual septic tanks and drainfields.

Wastewater: Wastewater would be managed through individual sewage disposal systems. Future subdivision of the property would require verification that the lots meet DEQ standards.

- 4) *The proposed change will insure that an adequate and safe transportation network exists to support the proposed zoning and will not cause undue traffic congestion or hazards.*

Finding: There is currently an adequate roadway system throughout Surf Pines Development. The roadway abutting the property was installed with conduit under it, anticipating serving the property. It is likely the subject property will be subdivided in the future in to five individual lots. Lower Surf Pines Road would serve the subject property directly. This road connects to Malarkey Drive to Manion Drive, ultimately extending to US Hwy. 101. The existing roadway system and intersections with main roadways and the State Highway are adequate to serve the site. With a potential for development of the site with five lots, it is unlikely that traffic congestion or hazards will result from the amendment to allow the development to proceed. The County's Transportation System Plan provides adequate roadways to serve new development in this area.

5) *The proposed change will not result in over-intensive use of the land, will give reasonable consideration to the character of the area, and will be compatible with the overall zoning pattern.*

Finding: Neighborhood Characteristics:

North: The property to the north is currently undeveloped land, lying with the OPR and Rural-Agriculture 5 (RA-5) zoned land and a comprehensive plan designation of Rural Lands. There is also some Lake and Wetland Zones on the property to the north.

South: The property to the south is currently developed with single family residences, lots which are zoned Coastal Beach Residential (CBR) with a comprehensive plan designation of Rural Lands. These fully developed properties abut Tax Lot 300, with homesites situated along the same building and dune line anticipated by the applicant.

East: The property to the east of the subject site, across Lower Surf Pines Road (aka Ocean Drive), is platted and developed with single family dwellings and zoned Single-Family Residential 1 (SFR-1) with a comprehensive plan designation of Rural Lands. These lots are dozens of feet in elevation above Tax Lot 300.

West: To the west is the Pacific Ocean and beaches with an OPR zone designation.

The property is within the confines of the Surf Pines Development. The character of the area is residential. Similar to other properties to the west of Lower Surf Pines Rd/Ocean Drive, if zoned CBR, Tax Lot 300 would be encumbered by an 18-foot height limitation. Home sites to the east are on an elevated area more than 50 feet above the probable home site areas on Tax Lot 300. On these lots, owners are allowed to build homes up to a 28-foot height limitation. Development of Tax Lot 300 will not impair views or otherwise harm the character of these lots. The proposed amendment to the comprehensive plan and zoning map will not result in overintensive use of the subject land, or the abutting properties. The maximum number of residential lots that could be created on the site is five, resulting in each lot approximately two acres in size. Several of the lots in Surf Pines are one acre lots, with an average of 1.5.

The proposed change will allow the development of the subject property consistent with or exceeding the development patterns in the surrounding area. All property developed to the south has used the same building line as that proposed by this amendment. The applicant has agreed to align the building line to the same location as the properties to the south. The proposed change is initiated as a result of the ordinance approved and adopted by the County Commission in 2003, which was based on scientific documentation of the appropriate construction line for development in this area.

The reason for Ordinance No. 02-05 was to recognize the suitability of the property for residential development. It is illogical to assume that in enacting Ordinance No. 02-05, the County intended that this privately owned property would remain in open space. There is no evidence in the record to support the conclusion of any intent by the County that the open space zoning should be imposed, particularly for the private benefit of the residents of this gated community.

The proposed map amendment provides reasonable consideration of the character of the Surf Pines area.

Section 3.240 Coastal Beach Residential Zone (CBR)

Section 3.242. Purpose.

The CBR zone is intended to accommodate the immediately foreseeable demand for low density residential development in the area commonly known as Surf Pines. Surf Pines covers an area of approximately 1-1/2 square miles and is located south of the community of Sunset Beach and west of Neacoxie Lake and Creek. Surf Pines is an area committed to low density rural residential development. This zone is a Goal 14 exceptions area.

Nearly all land in Surf Pines is in the CBR zone. The minimum lot size in this zone is generally one acre, per LWDUO section 3.248(1). The CBR zone permits the development of single-family dwellings, but additional regulation helps define the character of the neighborhood in which Tax Lot 300 is located. Specifically, the CBR zone exists to “accommodate the immediate foreseeable demand for low density residential development” in Surf Pines. LWDUO §3.242. The area is committed to low-density rural residential development. There is a demand for lots of this type. (See October 5, 2005 letter from Windermere Real Estate, **Tab 7**).

If the County approves the zoning map designation amendment, up to five single-family residences on two-acre lots within Tax Lot 300 will be developed in consideration of the character of the Surf Pines neighborhood. The proposed amendment is compatible with the overall zoning pattern in Surf Pines because it simply extends the CBR zone of Surf Pines to include Tax Lot 300, consistent with text in LWDUO §3.240.

The proposed amendment is consistent with the criteria for approval.

6) *The proposed change gives reasonable consideration to the peculiar suitability of the property for particular uses.*

Finding: The proposed amendment is consistent with the criteria. Amending the land use/comprehensive plan map designations for Tax Lot 300 gives reasonable consideration to the suitability of the property for particular uses. Pursuant the County Code, the OPR zone is appropriate to conserve open space and areas “uniquely suited for outdoor recreation.” This property is within a gated community, with private homes adjacent to the south and east. Tax Lot 300 is not appropriate for privately owned open space, particularly since it is not accessible by the general public. The Surf Pines Development already contains private recreational and open space amenities to serve the Surf Pines community. The testimony in the record shows that the owners of Tax Lot 300 have long paid homeowners dues applicable to developed lots, to maintain the private amenities within Surf Pines. Under these circumstances, there is no justification under applicable criteria to impose this restriction and a “no-build” burden on a private property owner, for the exclusive benefit and enjoyment of a handful of residents within an exclusive, gated enclave.

Prior Action of the County Recognizes the Residential Zoning: The LWDUO/Standards Document amendments being proposed in conjunction with the map amendments will align the

documents with Ordinance No. 02-05, which was previously approved and adopted recognizing the suitability for residential development of the property. Tax Lot 300 is specifically referenced in the County's zoning code for CBR zoning. The CBR zoning will facilitate the reasonable use and residential development of the property for single family dwelling use. The applicant's property is suited for this moderate development based on the size of the property, which will adequately accommodate the dwellings in a manner similar to the development patterns now existing within the Surf Pines Development area. The property is of sufficient width to warrant individual access to each lot that could be developed under the guidelines. The flat, easily accessible property allows for development without extensive grading or fill.

No Flooding Risk: The site is not located within an flood zone, floodway or velocity zone, nor are any natural resource features associated with the property that would hamper the development of the property.

Compatible with Existing Development Pattern in the Area: The proposed amendment is consistent with and compatible with the existing development pattern in the area. The proposed amendment also provides for consistency and compliance with the 2003 ordinance passed regulating development of the site.

Suitability for Residential Development: Amending the land-use zoning map designation for Tax Lot 300 gives reasonable consideration to the suitability of the property for particular uses. Similarly, the LWDUO/Standards amendments bring those documents into alignment with Ordinance 02-05, which previously recognized the property's suitability for residential development. CBR zoning will facilitate the reasonable development of the property for five single-family residential dwellings. Tax Lot 300 is peculiarly suited for this moderate development because the site is large enough (10.9 acres) to accommodate these dwellings in a manner similar to development patterns elsewhere in Surf Pines. Moreover, Tax Lot 300 has about 1,000 feet of frontage on Ocean Drive. This is sufficient to accommodate five driveways with adequate separation and sight distance. In addition, the subject property is relatively flat and can be developed without extensive grading or filling.

No Environmentally Sensitive or Habitat Attributes: Dwelling sites on Tax Lot 300 are not in the regulatory floodplain, and the property does not contain any of the natural resource features that conflict with development on other Clatsop Plains lots, such as wetlands or Oregon silverspot butterfly habitat.

Compatibility; Served by Public Services: Finally, the amended zoning map designation is compatible with land use on adjacent properties, which are developed with single-family detached dwellings. These dwellings are serviced with water, electricity, cable, telephone, and natural gas, which are also available to Tax Lot 300. The particular suitability of the property for moderate residential development has been thoroughly considered, and the County should find that the proposed zone amendment complies with this required consideration.

7) The proposed change will encourage the most appropriate use of land throughout Clatsop County.

Finding: The proposed change complies with the criteria. The future development of the property will be limited to single family dwellings, with a two acre minimum lot size. This is compatible with existing development and in fact, provides for larger sized lots that some in close proximity to the site. Low density residential development is the most appropriate use of the land, given the rural nature and existing development pattern. Adequate utilities and roadways are existing to provide adequate services to serve future development of the site. Letters from a realtor and a contractor introduced into the record indicate that there is demand for residential lots on properties like Tax Lot 300 and that building restrictions exist to provide for safe construction on the property. (Tabs 5 and 7).

8) *The proposed change will not be detrimental to the health, safety and general welfare of Clatsop County.*

Finding: It is not anticipated that the proposed change will result in any detrimental impacts to the health, safety and general welfare of the County, or the surrounding residentially developed properties. The risk of waterborne disease will be minimized by relying on DEQ-approved individual wastewater disposal systems and by using treated water from the City of Warrenton. (See May 16, 2005 letter from DEQ, Tab 6). Traffic safety risks will be minimized by building driveways to County standards, providing adequate separation between driveways, and locating driveways where site distances are adequate. These requirements can be met on Lower Surf Pines Road and Tax Lot 300. Future development of the property shall meet all minimum requirements of the County's LWDUO relating to subdivision of land. The proposed amendments will allow future development of the subject property as intended for the area. The previous ordinance revisions were approved and adopted, accepting the scientific data justifying the change in the zone and comprehensive plan designations to allow the best and most appropriate use of the property.

Alleged View Impacts and Property Values: While some opponents have alleged that approval of this application will result in a decrease in their property values or that it was promised at the time of purchase of property that Tax Lot 300 would not be developed, there is no independent evidence to support these claims and in any event, they are not responsive to the approval criteria applicable in this case. (See letter from Stoel Rives, Tab 3). These properties are either dozens of feet in elevation above grade from Tax Lot 300 and/or have, and will continue to have, unobstructed views of the Pacific Ocean. Property value impacts are unproven, and unimaginable. Additionally, as provided in the Affidavit of Rick Charlton (Tab 8), dated October 3, 2005, no promises were ever made to the surrounding landowners that this private property would be preserved in an undeveloped state for their private enjoyment, or for any other purpose. In fact, the sales price history documented in the Charlton Affidavit shows that some of the lots sold for below listed price, including the McGowan lot, demonstrating that the owners did not pay any "premium" to reflect perpetual open space of the property dozens of feet below their view sheds. (See October 11, 2005 Letter from Stoel Rives, Tab 3).

The lots owned by landowners to the east have built homes up to the 28-foot height limitation, compared to the 18-foot limitation imposed on Tax Lot 300. Even assuming that view impacts constituted a relevant inquiry under the applicable criteria (not the case), there is no evidence in the record supplied by any opponent to document any promised restraint on the development of Tax Lot 300, or any conceivable view impacts.

The General Welfare Needs of the Community are Met by Allowing Development: As discussed above, under applicable provisions of the LWDUO, Tax Lot 300 does not meet the public purpose or intent of the OPR zone. Additionally, the applicant has submitted tax assessment records showing that the 10.9-acre Tax Lot 300, in OPR zoning, generates less than \$100 in property taxes each year. In contrast, in 2004, typical 1-plus acre developed lots in the vicinity generated nearly \$6,000 in property tax revenues. (Tab 9). The applicant maintains that depressing the development of the property to benefit a handful of residents within the Surf Pines community is at a significant loss in tax revenues that could benefit the community as a whole, providing much-needed revenues for public purposes.

The Proposal Meets Applicable Criteria: The proposed land-use zone designation and LWDUO/Standards amendments meet each of the criteria outlined in LWDUO §5.412. Modifying the CBR zone to include Tax Lot 300 will facilitate a reasonable use of this property, which has been determined and established through Ordinance No. 02-05 to be located outside the Active Dune Area and thus suitable for development, complementing the existing Surf Pines area. By using existing transportation and utility services and restricting development to five single-family dwellings, subsequent development will comply with all aspects of the County's Comprehensive Plan and the Statewide Planning Goals. The additional proposed amendments incorporate Ordinance 02-05 into the County's zoning and development documents to ensure consistency across the County's Planning materials. As demonstrated, all of the proposed amendments are consistent with the Comprehensive Plan, the Statewide Planning Goals, and the criteria set forth in LWDUO §5.412.

Open Space Zoning Does Not Serve an Appropriate Public Purpose: The OPR Zone is a zone intended to provide for conservation of open space and areas uniquely suited for outdoor recreation. In this case the applicant's property was originally zoned R-1, then changed to CBR, with the intent to allow development of the property. There is adequate open space suitable for recreation to the west of the applicant's property, consistent with the remainder of the property in this area. The property, within a gated, private community, would not provide outdoor recreation available to the general public. Within an exclusive, developed residential community, and bordered by fully developed properties, the property is not uniquely suited for outdoor recreation or open space. Under these circumstances, it is not appropriate to restrict the use of the property.

9) *Tsunami Inundation Zone.*

Some opponents have alleged that construction within an area with a hypothetical risk of tsunami is not appropriate. In a letter dated October 11, 2005, the applicant's legal counsel has responded to these allegations and others made by opponents. (Tab 3).

The property is within an area mapped by Oregon Department of Geology and Mineral Industries ("DOGAMI") for risk of tsunami inundation. Many areas along the Oregon Coast are similarly mapped, including whole communities, such as Gearhart, portions of Astoria, and Seaside, and even areas to the east of Highway 101. No local, state or federal law restricts the residential development and occupation of lands within tsunami inundation zones.

The Clatsop County Standards Document recognizes that special consideration should be given prior to construction of essential facilities, hazardous facilities, major structures and special occupancy structures in the tsunami inundation zone. Standards Document Section S3.651 provides that:

Pursuant to OAR 632-05-050 Tsunami Inundation Zone, persons proposing new construction of or the conversion to essential facilities, hazardous facilities, major structures, or special occupancy structures are required to contact the Oregon Department of Geology and Mineral Industries (DOGAMI) at the earliest reasonable date for a consultation regarding the requirement of ORS 455.446 and 455.447 that pertain to their proposed facility or structure. As used in this section, "essential facility" means hospitals and other medical facilities having surgery and emergency treatment areas, fire and police stations, tanks or other structures containing housing or supporting water or fire suppression materials or equipment required for the protection of essential or hazardous facilities or special occupancy structures and equipment in government communication centers and others facilities required for emergency response. As used in this section, "hazardous facility" means structures housing supporting or containing sufficient quantities of toxic or explosive substances to be of danger to the safety of the public if released. As used in this section, "special occupancy structure" means covered structures whose primary occupancy is public assembly with a capacity greater than 300 persons, buildings with a capacity greater than 250 individuals for every public, private or parochial school through secondary level or child care centers, buildings for colleges or adult education schools with a capacity greater than 500 persons, medical facilities with 50 or more resident, incapacitated patients not included in facilities mentioned above, jails and detention facilities, and all structures and occupancies with a capacity greater than 5,000 persons.

Through its adoption of this standard, the County has identified the types of uses justifying a heightened review prior to construction in the tsunami inundation zone. Single family residences are not subject to this heightened review. Similar other properties and residences exist all along the Oregon Coast and in the vicinity, including properties owned by opponents. Residential development is not restricted.

III. CONCLUSIONS OF LAW

Based on the findings provided in the Staff Report, the testimony heard and the evidence in the record, the amendments to align the Clatsop County Land and Water Development and Use Ordinance (the "LWDUO") and the Comprehensive Plan/Zoning Map with Ordinance No. 02-05 and facilitate development of Tax Lot 300, specifically:

1. An amendment of the Comprehensive Plan designation of Tax Lot 300 from Conservation-Other Resources to Rural Lands, by amending the Comprehensive Plan/Zoning Map, and
2. An amendment of the land-use zone designation of Tax Lot 300 from Open Space, Parks, Recreation Zone ("OPR") to Coastal Beach Residential Zone ("CBR")

CLATSOP COUNTY LAND & WATER DEVELOPMENT AND USE ORDINANCE EXCERPTS

Coastal Beach Residential (CBR) Zone and the Regarding the Open Space, Parks, and Recreation (OPR) Zone

CBR ZONE:

Section 3.242. Purpose.

The CBR zone is intended to accommodate the immediate foreseeable demand for low density residential development in the area commonly known as Surf Pines. Surf Pines covers an area approximately 1-1/2 square miles and is located south of the community of Sunset Beach and west of Neacoxie Land and Creek. Surf Pines is an area committed to low density rural residential development. This zone is a Goal 14 exception area.

* * *

Section 3.248. Development and Use Standards.

The following standards are applicable to permitted uses in this zone:

- (1) Lot size
 - (A) for residential uses: one (1) acre except for the following parcels which are not exception areas and therefore, require two
 - (2) acres: T.7N., R.10W., Section 16C, *Tax Lot 300* and 301.

* * *

OPR ZONE:

Section 3.480. Purpose.

The OPR zone is intended to provide for the conservation of open space; the protection and development of areas uniquely suited for outdoor recreation and the protection of designated scenic, natural and cultural resource areas.



900 S.W. Fifth Avenue, Suite 2600
Portland, Oregon 97204
main 503.224.3380
fax 503.220.2480
www.stoel.com

October 11, 2005

MICHELLE RUDD
Direct (503) 294-9390
mrudd@stoel.com

Board of Commissioners
Clatsop County
800 Exchange Street
Astoria, OR 97103

Re: Big Bears LLC Request for Comprehensive and Zoning Map Amendment

Dear Commissioners:

This office represents Big Bears LLC and Rick Charlton, owners of the property at issue in this application. With this application, the owners of Tax Lot 300 seek a comprehensive plan and zoning map amendment that will allow the development of five two acre residential lots on the property. Big Bears LLC and Mr. Charlton support the Planning Commission recommendation for approval and the staff reports in support of the requested Comprehensive Plan and Zoning Map Amendments and request that the entire record before the Planning Commission be incorporated into the record before the Board.

This letter is submitted to provide additional background information concerning the applicant and the property ("Tax Lot 300" or the "Property") and to respond to issues raised by opponents. Applicant requests that this letter also be placed in the record.

Background

Tax Lot 300 was previously owned by George Malarkey and Rick Charlton. George Malarkey acquired his interest in the property in 1959. Rick Charlton acquired an interest in the property in 1992. The property is currently owned by Big Bears LLC and the Charlton trust. The members of Big Bears LLC are the children (Gregory, Herbert, Allen and Theresa) of George Malarkey. (The children created Big Bears LLC to hold the interest in the property they acquired after their father's passing in 1999.) Rick Charlton is a trustee of the Charlton trust.

George Malarkey and Rick Charlton developed subdivisions such as Strawberry Hill and planned to develop Tax Lot 300 in a similar manner. For a variety of reasons, however, efforts to develop the property in a manner consistent with its surroundings were unsuccessful during George Malarkey's life. Since his partner's death, Rick Charlton has continued his efforts to develop the property in an appropriate manner.

Oregon
Washington
California
Utah
Idaho



Board of Commissioners
October 11, 2005
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The 10.9-acre Property is currently split-zoned Open Space Parks and Recreation ("OPR") (8.8 acres) and Coastal Beach Residential ("CBR") (2.1 acres). The current Comprehensive Plan designation is Conservation – Other Resources. Following the requested amendment, the entire property will be zoned CBR with a Comprehensive Plan designation of Rural Lands.

The applicable criteria are set forth in Land and Water Development and Use Ordinance ("LWDUO") § 5.412 as follows:

- (1) The proposed change is consistent with the Comprehensive Plan.
- (2) The proposed change is consistent with the Statewide Planning Goals.
- (3) The property in the affected area will be provided with adequate public facilities and services, including but not limited to
 - (a) Parks, schools and recreational facilities
 - (b) Police and fire protection and emergency medical service
 - (c) Solid waste collection
 - (d) Water and wastewater facilities
- (4) The proposed change will insure that an adequate and safe transportation network exists to support the proposed zoning and will not cause undue traffic congestion or hazards.
- (5) The proposed change will not result in over-intensive use of the land, will give reasonable consideration to the character of the area, and will be compatible with the overall zoning pattern.
- (6) The proposed change gives reasonable consideration to peculiar suitability of the property for particular uses.
- (7) The proposed change will encourage the most appropriate use of land throughout Clatsop County.
- (8) The proposed change will not be detrimental to the health, safety and general welfare of Clatsop County.



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As explained in detail in the staff reports and application materials, the proposed amendments meet all of the approval criteria set forth in the code. Big Bear requests that the Commission adopt and incorporate by reference those findings set forth in the Staff Report and in the application.

Response to Issues Raised by Opponents

Big Bears LLC and Mr. Charlton recognize that there has been some local opposition to this request. This opposition is not based upon evidence that the application does not meet the applicable criteria. Rather, the opposition is based upon the desire of certain neighbors to enjoy the property essentially as a park, without purchasing it.

The following table identifies each opponent that submitted an opposition letter to the Planning Commission and addresses the issues raised in each letter. The issues raised in the opposition letters do not provide a legal basis for denial.



Opponent	Comment	Response
<u>John McGowan:</u>	Alleges Mr. Charlton and/or Mr. Malarkey told him the property in question was zoned as an active fore dune and could never be built upon.	This allegation does not relate to the approval criteria. No such assurance was made (See affidavit of Richard Charlton, attached as Ex. A.) Independent evidence suggests no such term was part of the deal. No conservation easement was acquired or CCRs recorded restricting development of the property.
	Alleges he paid a higher price because of alleged assurance property would never be developed.	In fact, McGowan negotiated to pay less than the list price for the property. (See Charlton affidavit.) As a sophisticated buyer, it is reasonable to conclude that McGowan would have obtained the alleged assurances in writing if they had in fact been made.
	Development of the property now would have a major negative impact on the value of his home.	No evidence to support claim Property rezone and comp plan amendment would lower value of his home. In any event, his property value is not an approval criteria
	Alleges any homes built would be at severe risk from a	There is no factual evidence provided supporting this



	tsunami.	allegation. The city can impose building standards appropriate for the location at the building stage. There are construction related regulations that set standards for construction in areas that might experience a tsunami. The Horning report has already been incorporated into the Comprehensive Plan by ordinance adoption and shows the property is behind the active dune line. This reinforced ordinance No. 83-17 which previously established the Surf Pines Construction Setback line to include the Property
	Property should remain as open space for the benefit of all citizens.	Property should be purchased if it is to be used for the benefit of all citizens. Furthermore, the Property is located inside a gated community and is not accessible to all citizens.
<u>Winchester and Suzanne King</u>	Alleges there is no compelling need for development of this parcel other than to enrich developer.	"Compelling need" is not an approval criteria. A letter from a realtor has been submitted, however, establishing that there is demand for waterfront lots in this area.



		<p>The property owner has a right to enjoy the use and economic benefit attendant to property ownership; "enriching" the family LLC that owns the property and allowing them to benefit from their ownership of the property is not wrong.</p>
	<p>Alleges there is no shortage of more suitable land in and around Surf Pines.</p>	<p>The amount of developable land is not an approval criteria.</p> <p>No evidence concerning the amount of developable land was submitted. Applicants submitted a letter from an area realtor testifying to the demand for residential lots of the type Applicant seeks to create.</p>
	<p>Alleges the parcel is in a precarious flood zone and vulnerable to any tsunami wave activity.</p>	<p>This is not responsive to approval criteria.</p> <p>Evidence has not been submitted regarding vulnerability to tsunami wave activity.</p> <p>Construction standards will apply to any future residences developed on the property. Applicants submitted a letter from a builder concerning relevant building requirements.</p>



	<p>Alleges development of this parcel carries potential legal consequences given the common body of knowledge concerning earthquake and wave activity acquired in the past few years.</p>	<p>This is not responsive to approval criteria.</p> <p>This is a general claim without any factual basis or legal analysis provided of mysterious claim described.</p> <p>The Horning report has already been accepted by the Board and incorporated into the Comprehensive Plan. The report supports finding development of the property appropriate.</p>
	<p>Alleges if parcel is rezoned ecologically sensitive 10 acres will be destroyed and the residential development will encroach on still pristine land adjacent to the north.</p>	<p>This allegation has not been linked to any approval criteria.</p> <p>No evidence has been submitted that the area is ecologically sensitive.</p> <p>No evidence has been submitted that any development of the property will destroy ecologically sensitive land.</p>
<p><u>Edward and Ann Berkley</u></p>	<p>States they are opposed to zoning change.</p>	<p>This comment is not related to any approval criteria.</p>
<p><u>Marian Gormley-Pekkola</u></p>	<p>Alleges development will decrease the value of homes in the Surf Pines community.</p>	<p>This allegation is not responsive to approval criteria.</p> <p>No evidence in support of claimed loss of property value</p>



		<p>has been submitted.</p> <p>Any development of new homes anywhere in community potentially decreases property value by increasing the housing stock.</p> <p>Development will not adversely affect views from the Surf Pines community. The western oceanside boundary of surf pines is not affected by the requested amendments and will not be affected by subsequent development of the property.</p>
	<p>Alleges development will negatively impact the enjoyment derived from the open space.</p>	<p>This allegation is not relevant to approval criteria.</p> <p>Taking property for public use requires just compensation.</p>
	<p>Alleges the property was sold to prior owners with assurance open space would not be destroyed.</p>	<p>The alleged assurance was not given (see affidavit). There is no evidence of such assurance. No easement, deed restrictions, CCRs prohibiting development of the property have been submitted.</p> <p>The allegation is not relevant to approval criteria.</p>
	<p>Alleges development should not be considered in light of tsunami conditions and</p>	<p>Horning report which is already part of the Comprehensive Plan provides</p>



	stability issues.	scientific basis for conclusion that development of the land is appropriate.
	Alleges development not in the interests of the community and its livability.	Protection of the community and its livability is part of the Comprehensive Plan. As set forth in the staff report, the proposed amendments are consistent with the Comprehensive Plan. This is part of the Surf Pines area identified as appropriate for low density residential. The requested rezone will only allow two acre lots. This is a lower density that found in adjacent neighborhoods.
<u>Barbara Kent Damon</u>	Alleges that the zone change request does not seem to be in line with the Comprehensive Plan.	The Staff Report explains in detail why the proposed change is consistent with the Comprehensive Plan. The Damon letter does not provide any specifics as to elements of the plan with which the application is allegedly inconsistent.
	Alleges there must have been a good reason the 10+ acres were zoned "Open Space, Parks and Recreation."	Less than 10 acres was zoned OPR. Over 2 of the 10.89 acres are already zoned CBR. Staff reviewed the zoning history at the request of the Planning Commission and concluded that in all likelihood, the property was zoned OPR because it was



		<p>open at the time zoning was applied and not because of any long-range planning or studied determination that the property should perpetually be zoned Open Space. Further, the zoning ordinance provides for amendments because circumstances change. Here, the science of the Horning Report has been reviewed and incorporated into the county planning and zoning to allow development with single family uses is appropriate.</p> <p>Lastly, the OPR zoning does not bar development of the property. Potential use of the property under current zoning is an RV park with up to 100 spaces. The proposed use is less intense than the RV use already permitted in the zone.</p>
	<p>Alleges they are not aware of any reason residential use is now okay.</p>	<p>Horning Report provides the scientific basis for conclusion development is appropriate.</p>
	<p>Alleges homeowners have believed the zoning would not change and no homes would be built on the open space.</p>	<p>Again, this is not relevant to approval criteria. Such an agreement is not evidenced by any easements, deed restrictions or CCRs applicable to the property and is contradicted by the Charlton affidavit.</p>



	Alleges it "doesn't seem right" to benefit one landowner when the change could be detrimental to the existing homeowners.	Big Bear LLC is a family corporation created by the children of Mr. Malarkey. They acquired their interest after he passed away and left the property to them. Rezoning the property will potentially provide financial benefit to the Malarkey and Charlton families. It will also potentially provide a benefit to would-be homeowners that would like to have the same opportunity the opponents already enjoy to live at the coast on property geologically suitable for such development. The County may also benefit from increased tax revenue. What would be wrong is to require the property be a perpetual park or visual open space in perpetuity without the city or neighbors buying the property to benefit a few neighbors.
<u>L. Phaen and Patricia Gambee</u>	Alleges that this is a dunes area that should not be altered.	The Horning Report, previously accepted by the commission, establishes the correct location of the active dunes line and development of the property is appropriate.
<u>Russell Keizer</u>	Alleges opposed to annexing new lots to an area that has not been completely developed.	No annexation is proposed.



	<p>Alleges opposition is based on inadequate relief areas and exit roads in the case of tsunami.</p>	<p>Specific development concerns are appropriately addressed at the subdivision design stage and not as part of this application.</p> <p>The staff report to the Planning Commission found the existing road system sufficient.</p>
	<p>Alleges people who bought paid a premium price with the knowledge that no large development would be built to the west of them.</p>	<p>As noted above, no such agreements were entered or representations made.</p> <p>No evidence has been submitted that premium prices were paid. In fact, evidence in the record indicates in Mr. McGowan's case a discounted price was paid.</p> <p>Five 2-acre lots is not a "large" development.</p>
	<p>Views would be permanently destroyed. Those who built new homes on the ocean front would never have a view due to the seawall which is increasing rapidly over time.</p>	<p>No view easement exists over the property. The elevation of the Property is less than the elevation of Strawberry Pines and views will not be adversely affected. Surf Pines is to the south of the Property and western views will not be adversely affected.</p>
	<p>Alleges homes to the west of this Ocean Avenue property have a lot restriction on the</p>	<p>Such restrictions are not part of the property at issue here. The existence of such</p>



	deed of 14 feet but the height restriction on any new development would be 18 feet.	restrictions, however, supports the conclusion that if such agreements are made, the parties memorialize those agreement in writing. No such writing exists here.
	Alleges the land was designated to be a conservation resource and should be protected and not hastily developed.	As noted above, the staff review indicates the area was zoned for an open space only because it was undeveloped at the time. The property was not developed at the time of the Strawberry Hill development because the Planning Director at the time suggested the owner's delay (see Charlton Affidavit). Current owners should not be prevented from pursuing five 2-acre lots now because ten 1-acre lots were not developed.
	Alleges the property is proximate to National Park and should be preserved as long as possible. Development should be careful and methodical and not hasty. Development was defeated previously.	Efforts to develop the property have not been hasty but rather very slow, spanning 25 years. Proposed rezone would allow development of just five 2-acre lots. The proposal previously defeated, despite staff support, was for ten 1-acre lots.
<u>Susan Holloway</u>	Alleges the land has always been considered unbuildable and Mr. Charlton purchased the property with that designation.	Mr. Malarkey, Mr. Charlton's business partner, acquired the property in 1959, well before the restrictions were placed on the property. Big Bear LLC is



	designation.	<p>comprised of the children of Mr. Malarkey. In 1979 the State of Oregon changed the coastal vegetation line to its current location, the Western boundary of the Property.</p> <p>Further, the Horning Report, based on scientific rather than unsupported allegations, indicate the property is appropriate for development.</p>
	<p>Alleges that when Holloway purchased her home in 2003 she asked for a copy of the conditions on the property and it was shown to have a tax value of only \$6,000 and was not zoned for residential. It was a major consideration in the purchase of her house.</p>	<p>Holloway states she asked for a copy of the "conditions" on the property. She does not report having received a copy of any conditions on the property. There are none.</p> <p>Part of the property was zoned for residential use in 2003.</p> <p>Rezoning of the property such that 5 residences might be developed at some later time will increase the value of the property and likely the tax revenue received.</p>
	<p>Alleges owner has not lost actual value on the property due to the designation as Open Parks and Recreation.</p>	<p>George Malarkey acquired his interest in the property in the 1950s. The property was fully developable at that time. Actual, reasonable, investment-backed expectations have been unrealized on the property.</p>



		Applicant has submitted evidence concerning the listing prices of homes within Surf Pines currently listed for sale and tax statements for these properties. These materials illustrate that residentially zoned properties in the area are taxed at a significant higher rate.
	Alleges the property is home to wonderful wildlife.	There is no evidence in the record that rezoning will displace any wildlife.
	Holloway alleges she would offer to purchase the property (for the same increase in value that she realized on her property in Arcadia) and donate it to an entity to be preserved as parkland.	In light of the applicable criteria, the property is properly rezoned. Big Bear has no way of knowing if the "Arcadia" property is comparable or if the increase in value Ms. Holloway enjoyed on her sale of that property represents the fair market value of the Big Bear property, appropriately rezoned. If, however, Ms. Holloway wants to preserve the property as a park she should in fact coordinate its purchase at a fair market price. It is patently unfair to require the Malarkey and Charlton families to provide a park without fair and full compensation.



Board of Commissioners
October 11, 2005
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Conclusion

Opponents have stated that their enjoyment of open space will be diminished. However, the opponents acknowledge they have no contractual or legal right to the open space.

Opponents have argued their property values will decrease. They have not acknowledged the property rights of the family members that make up Big Bears LLC or the interests of the Charlton trust.

Opponents have claimed there is tsunami and other danger. They have chosen to live in the area, others have the right to choose to live in the area, the scientific evidence supports allowing development in the area, and appropriate construction conditions will apply to the property at the time building plans are submitted.

The requested amendments are consistent with the Comprehensive Plan and should be approved.

Very truly yours,

Michelle Rudd

MR:cle

Cc: Mr. Richard Charlton
Mr. Mark Barnes
Mr. Tim McMahan

MEMORANDUM

July 15, 2005

TO: CLATSOP COUNTY PLANNING COMMISSION
FROM: BLAIR HENNINGSGAARD, COUNTY COUNSEL
SUBJECT: PUBLIC HEARING PROCEDURES



800 Exchange St., Suite 310
Astoria, Oregon 97103

Unfortunately I was unable to attend the Planning Commission meeting on July 12, 2005, in which the Commission held a public hearing to consider a request by Richard Charlton for a comprehensive plan and zoning map amendment for a 10.9-acre parcel at the north end of the Surf Pines Development. I would like to provide some clarity in the decision-making process relating to land use actions and provide the Commission with some guidelines in which to apply toward making its decision.

Amendments to the zoning map and comprehensive plan require a type IV procedure. This type of an application is "legislative" because County ordinances must be amended. The application is also "quasi-judicial" because your decision will affect the rights of a particular property owner. In a type IV proceeding two public hearings may be held, the first in front of the Planning Commission and the second in front of the County Commission. After the Planning Commission holds its hearing it must make a decision and prepare an order containing detailed findings of facts and conclusions of law supporting its decision. If the Planning Commission does not recommend approval, the County Commission may, but is not obligated to, hold a second hearing. The same evidence can be presented at each hearing but typically the County Commission places great weight on the decision of the Planning Commission.

Our land use ordinance (affectionately called LWDUO 80-14) provides that staff, the applicant, and interested persons may present testimony and other evidence relevant to the proposal at the hearing. Testimony or evidence is relevant if it tends to show that the application does or does not meet appropriate criteria and standards for approval. In order to recommend a zone change, LWDUO §5.412 requires that you make findings on the following criteria:

- 1) The proposed change is consistent with the policies of the Clatsop County Comprehensive Plan.
- 2) The proposed change is consistent with the statewide planning goals (ORS 197).
- 3) The property in the affected area will be provided with adequate public facilities and services including, but not

County Administrator's
Office

Phone (503) 325-1000
Fax (503) 325-8325

limited to:

- (A) Parks, schools and recreational facilities
 - (B) Police and fire protection and emergency medical service
 - (C) Solid waste collection
 - (D) Water and wastewater facilities
- 4) The proposed change will insure that an adequate and safe transportation network exists to support the proposed zoning and will not cause undue traffic congestion or hazards.
 - 5) The proposed change will not result in over-intensive use of the land, will give reasonable consideration to the character of the area, and will be compatible with the overall zoning pattern.
 - 6) The proposed change gives reasonable consideration to peculiar suitability of the property for particular uses.
 - 7) The proposed change will encourage the most appropriate use of land throughout Clatsop County.
 - 8) The proposed change will not be detrimental to the health, safety and general welfare of Clatsop County.

The Planning Commission must make a finding for each of these criteria. If the Commission finds that all of the criteria have been met, the Commission should recommend approval if not the Commission should recommend denial. A written report and recommendation is then submitted to the Board of Commissioners.

I understand there was some confusion in the decision making process for the Charlton application. A decision to approve or deny the request should be based only on the evidence presented at the hearing as it applies to the criteria described in §5.412. Any evidence related to the property, its past or future development should be considered only if you can find that it is relevant these criteria. When considering the evidence you should ask yourself, staff and other presenters how the evidence shows that a particular criterion is or is not met.

This is not always an easy task. Conditions, our comprehensive plan, land use ordinances and the land itself are constantly changing. Your task is to apply the current plan and ordinance criteria to the property as it sits today.

Please let staff or me know if you ever have questions or concerns.

FROM : CHARLTON

FAX NO. : 503 644-2166

Oct. 07 2005 08:06AM P2

OCT-06-2005 06:35 AM

5037387936

P. 02

Dan Golubickas Construction

P.O. Box 2748
Gearhart, OR 97136
Phone call 503-440-0890
Fax 503-738-7936
Home Phone 503-738-8025

October 06, 2005

Richard T. Charlton
855 SW Spring Lane
Portland, OR 97225

RE: SURF PINES PROPERTY

Dear Richard,

After viewing the "Surf Pines" property I can not foresee any problems with building homes on these sites. In following the regulations and required permits already set forth for building in Clatsop County I feel homes on these sites would be a valued asset to the neighborhood and Clatsop Counties tax rolls. Good Luck with your project, I look forward to having the opportunity to build on these home sites.

Sincerely,


Dan Golubickas



Oregon

Theodore R. Kulengoski, Governor

Department of Environmental Quality
Northwest Region North Coast Branch Office
65 N Highway 101, Suite G
Warrenton, OR 97146
(503) 861-3280
FAX (503) 861-3259

May 16, 2005

Big Bears LLC
c/o Richard T. Charlton
855 SW Spring Lane
Portland, OR 97225

IMPORTANT DOCUMENT – PLEASE READ CAREFULLY
-This is not a construction permit-

RE: **Site Evaluation Results – Site Approvals With Conditions**
Malarkey Pines Subdivision, Proposed Lots 1 - 5
T7N, R10W, S16C; Tax Lot No. 300, Clatsop County

Dear Richard T. Charlton:

The above-described property was evaluated for suitability of on-site sewage disposal systems on the following date(s): May 4, 2005. Based on the evaluation, the following on-site sewage disposal systems are approved for Lots 1, 2, 3, 4 & 5:

Initial system: Standard, 150 feet of disposal trenches
Replacement system: Standard, 150 feet of disposal trenches

Details of the site evaluation are included in the Site Evaluation Report that is enclosed. The Site Evaluation Report includes more specific information and further conditions of site approval.

Next Step – Applying for a Construction/Installation Permit

When you are ready to proceed with system construction, contact this office to get a permit application package. The permit must be issued by DEQ before you can start construction.

Request for Site Evaluation Report Review or Request for Variance

If you believe that an error was made in the evaluation of your property, you may apply for a site evaluation report review within 30 days of the site evaluation report issue date at a cost of \$440. If you would like to apply for a Variance from one or more of the On-Site Sewage Disposal rules, you may apply for a Variance at a cost of \$1340. If you are interested in either of these actions, please contact the undersigned for more details before you proceed.

Best wishes on a successful project. If you have any other questions about this report, please feel free to call me at (503) 861-3280.

Sincerely,

Connie M. Schrandt

Connie M. Schrandt
Natural Resource Specialist

Enc: Site Evaluation Report

cc: Karl F. Foeste, P.O. Box 807, Warrenton, OR 97146

STOEL RIVES LLP

MAY 19 2005

RECEIVED

cc: Kathleen Doll, STEVE Abel

**Site Evaluation Report
For On-Site Sewage Disposal System Suitability**

Site Location: T7N, R10W, S16C; Tax Lot No. 300, Malarkey Pines Subdivision
Lots 1-5, Clatsop County

Applicant: Kari F. Foeste

Date(s) of Site Evaluation: May 4, 2005

DEQ Onsite Specialist: Connie M. Schrandt

Date of Report: May 16, 2005

General Description of Site Evaluations

Sewage contains disease-causing organisms and other pollutants that can cause adverse impacts to human health and the environment. An on-site sewage disposal system must treat and dispose of sewage in a way that will not cause a public health hazard, contaminate drinking water supplies, or pollute public waters.

Proper treatment in an on-site system begins with primary treatment in the septic tank. The septic tank separates the solid particles in sewage from the liquid. The liquid that comes out of the septic tank is called effluent. The effluent may then be dispersed in the soil for further treatment or discharged into a secondary treatment device such as a sand filter or aerobic treatment unit prior to dispersal in the soil. For proper treatment, the effluent must slowly infiltrate into the underlying soil. Dissolved wastes and bacteria in the effluent are trapped or adsorbed to soil particles or decomposed by microorganisms. This process removes disease-causing organisms, organic matter, and most nutrients. Effluent that comes to the ground surface (through poor soils or other problems with the system) can be a possible health hazard because it may still contain some disease-causing organisms. Soil that drains too quickly may not give the effluent enough treatment and may result in groundwater contamination.

The purpose of the evaluation was to locate suitable soils in an area that is large enough for both the initial drainfield area and the replacement drainfield area. The criteria used for this site evaluation can be found in Oregon Administrative Rules (OAR) 340-071.

Soil test pits and other site features were evaluated during the site visit on May 4, 2005. For each lot, the following features were evaluated:

- Soil types - how well they drain and other evidence of good soil structure for treatment
- Depth to groundwater
- Wells located on the site or adjacent sites.
- Slopes, escarpments, ground surface variations, topography
- Creeks or springs on the site or adjacent properties
- Whether the soils have been disturbed
- Setbacks from property lines, buildings, water lines, and other utilities
- Other site features that could affect the placement of the on-site system.



Approved Systems

Based on the evaluation of the site and soil conditions, the following on-site sewage disposal systems are approved for Lots 1, 2, 3, 4 & 5:

Initial System: System Type: Standard
Minimum Septic Tank Size: 1000 gallons
Total linear feet of disposal trenches: 150
Distribution Method: Serial
Trench Depths: Maximum - 30" and Minimum - 24"

Replacement System: Same as for Initial System

Attached are the Field Worksheets and Plot Plans that show the approved areas and other details of the site evaluation.

Additional Conditions of Site Approval

1. Each of the 5 proposed lots are approved for the type of on-site sewage disposal systems described above. Peak sewage flow into each system is limited to a maximum of 450 gallons per day, with an average sewage flow of not more than approximately half of the peak sewage flow. This is normally sufficient to serve a single-family dwelling with a maximum of four bedrooms. Premature failure of the treatment system may occur if either of these flow limits are exceeded. If for some reason domestic household water use is expected to exceed these flows, it may be advisable to increase the size of the treatment system.
2. Any alteration of natural soil conditions (i.e. cutting or filling) in the initial and replacement on-site sewage disposal areas may void these approvals. Disposal areas shall maintain a 25-foot setback to any cut banks that result from excavations for house placement and other building site preparation.
3. Both the initial and replacement disposal areas are to be protected from traffic, cover, development or other potential disturbance of natural soil conditions.
4. The disposal areas must not be subjected to excessive saturation due to, but not limited to, artificial drainage of ground surfaces, roads, driveways and building down spouts.
5. These approvals are given on the basis that each lot described above will not be further partitioned or subdivided.
6. A physical stake-out of both the initial and replacement disposal areas may be required prior to issuance of a permit to construct the approved systems.

These site approvals are valid until each system is constructed in accordance with a DEQ construction permit. Technical rule changes shall not invalidate the approvals, but may require use of a different kind of system. If there is a technical rule change affecting any of these site approvals, the Department will attempt to notify in writing the current property owner as identified by the county assessor's records. The site approvals run with the land and will automatically benefit subsequent owners.

Attachment: Field Worksheet & Plot Plans



Township: 7N Range: 10W Section: 116C Tax Reference: 300 Parcel Size: 10.9 acres
 Owner/Applicant: Big Bears LLC / Karl Foerster Evaluator: CMS (see plot plans for individual lot sites)
 Inspection Date(s): 5-4-05 Application Number: —
Maloney Pines Subdivision - Proposed lots 1, 2, 3, 4 & 5

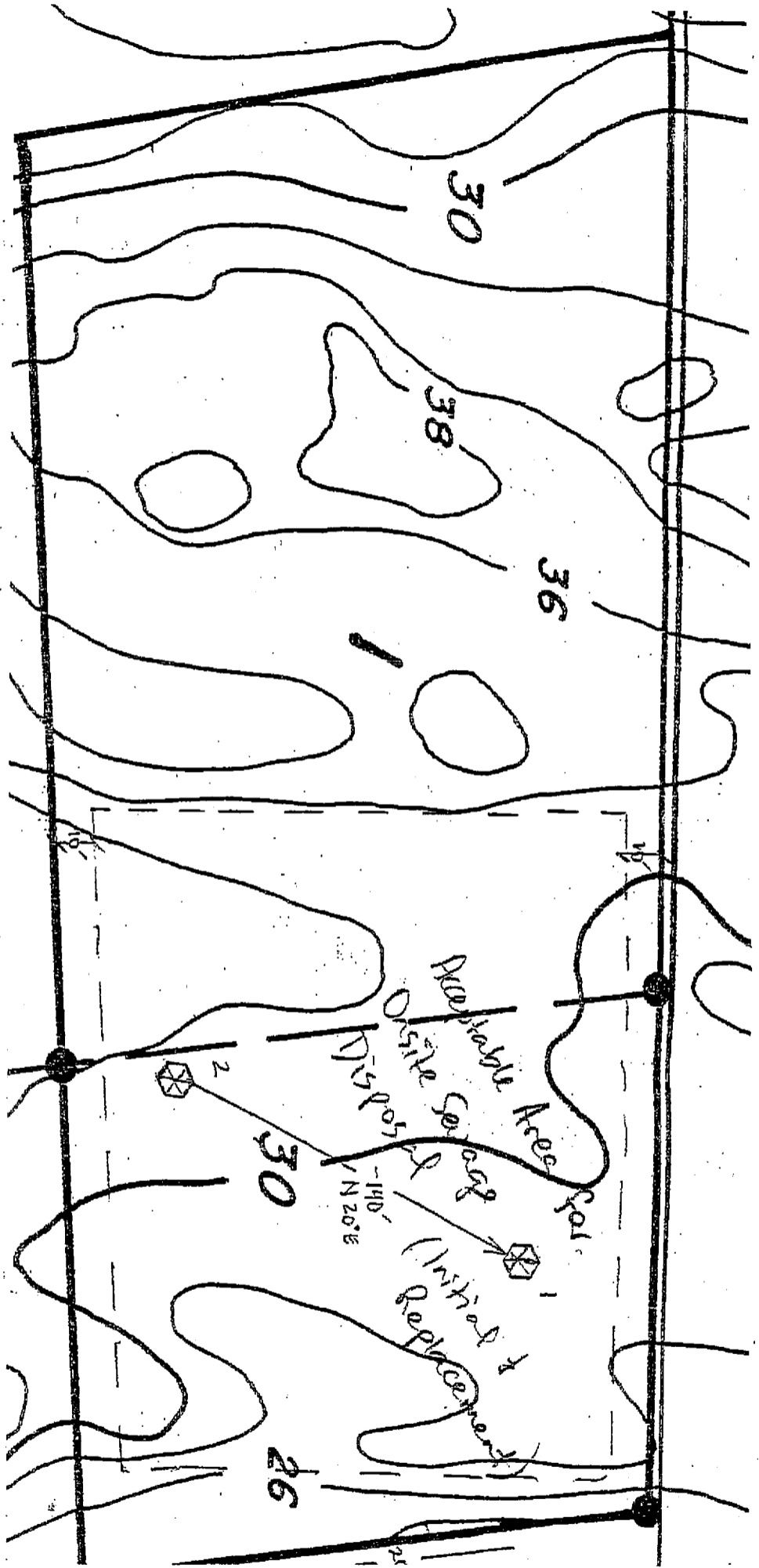
	DEPTH	TEXTURE	SOIL MATRIX COLOR AND CONDITIONS ASSOCIATED WITH SATURATION, ROOTS, STRUCTURE, EFFECTIVE SOIL DEPTH, ETC...
Pit 1	0-4	duff/lc	2.5 Y 4/3-2; loose, sq → 1SBK; v many of f d m roots
	4-60	s	2.5 Y 5/3-2; " " ; many of d f roots
Pit 2	0-2		} similar to Pit 1
	2-60		
Pit 3			
Pit 4			

Landscape Notes: Stabilized Dunes - surf pines
 Slope: Variable Aspect: Complex Groundwater Type: Permanent (no evidence)
 Other Site Notes: * Typical soil profile descriptions for pits 1 & 2 on lot 1 - all other test pits on lots 2, 3, 4 & 5 similar

SYSTEM SPECIFICATIONS

Design Flow: 450 gpd
 Initial System: Standard - serial distribution ATT Treatment Standard: 2
 Disposal Facility: 150 linear feet/square feet Maximum Depth: 30 inches Minimum Depth: 24 inches
 Replacement System: Same as Initial Systems ATT Treatment Standard: —
 Disposal Facility: — linear feet/square feet Maximum Depth: — inches Minimum Depth: — inches
 Special Conditions: Physical staking of initial & replacement disposal areas may be required for review & approval prior to permit issuance

PLOT PLANS ATTACHED

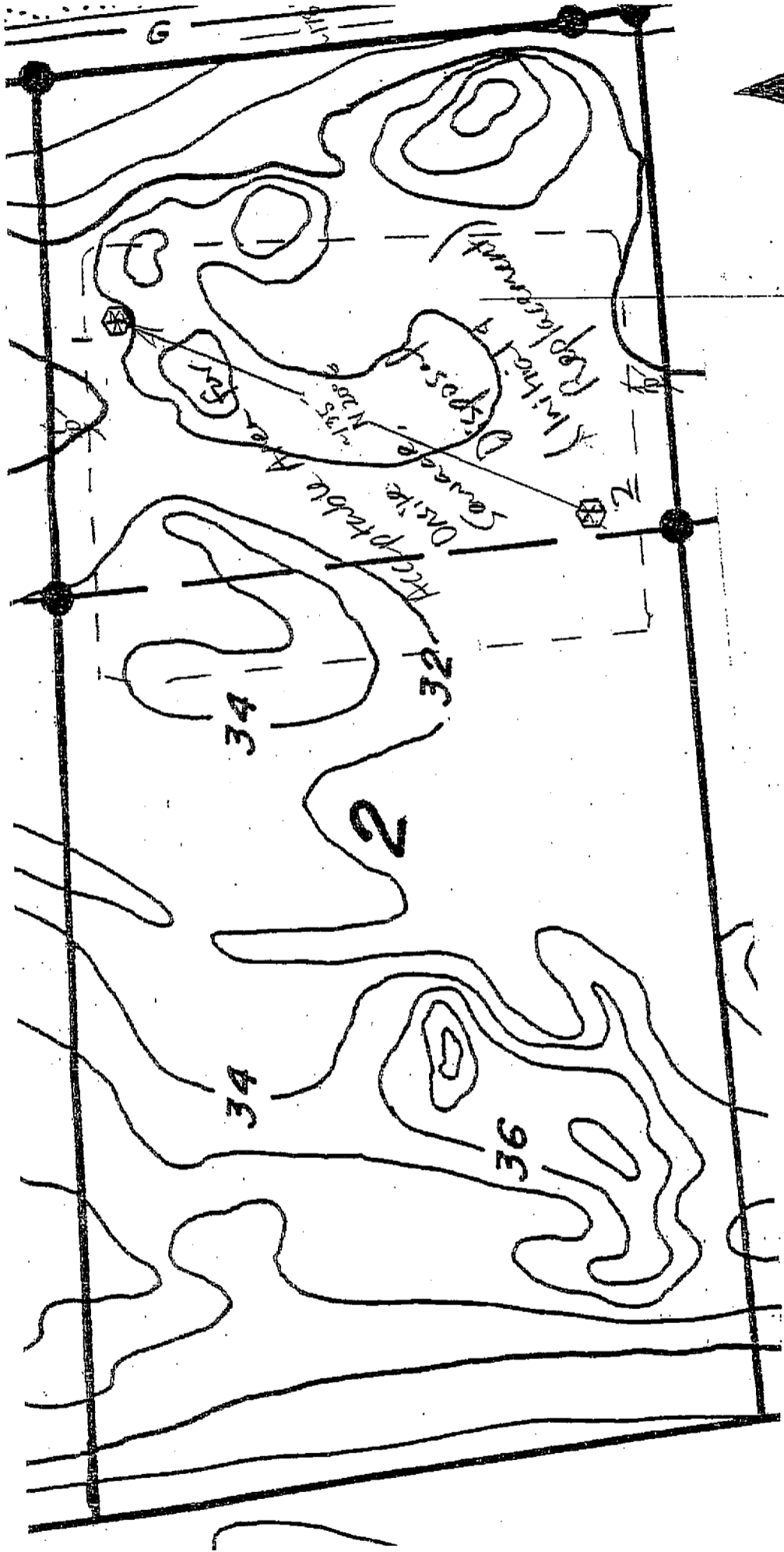


Maloney Pines Subdivision

710-16C-300 - Proposed lot 1 (2,36 acres)

(Approx. Scale: 1" = 50')

Big Bear LLC / K. Foerste
5/4/05
AMS



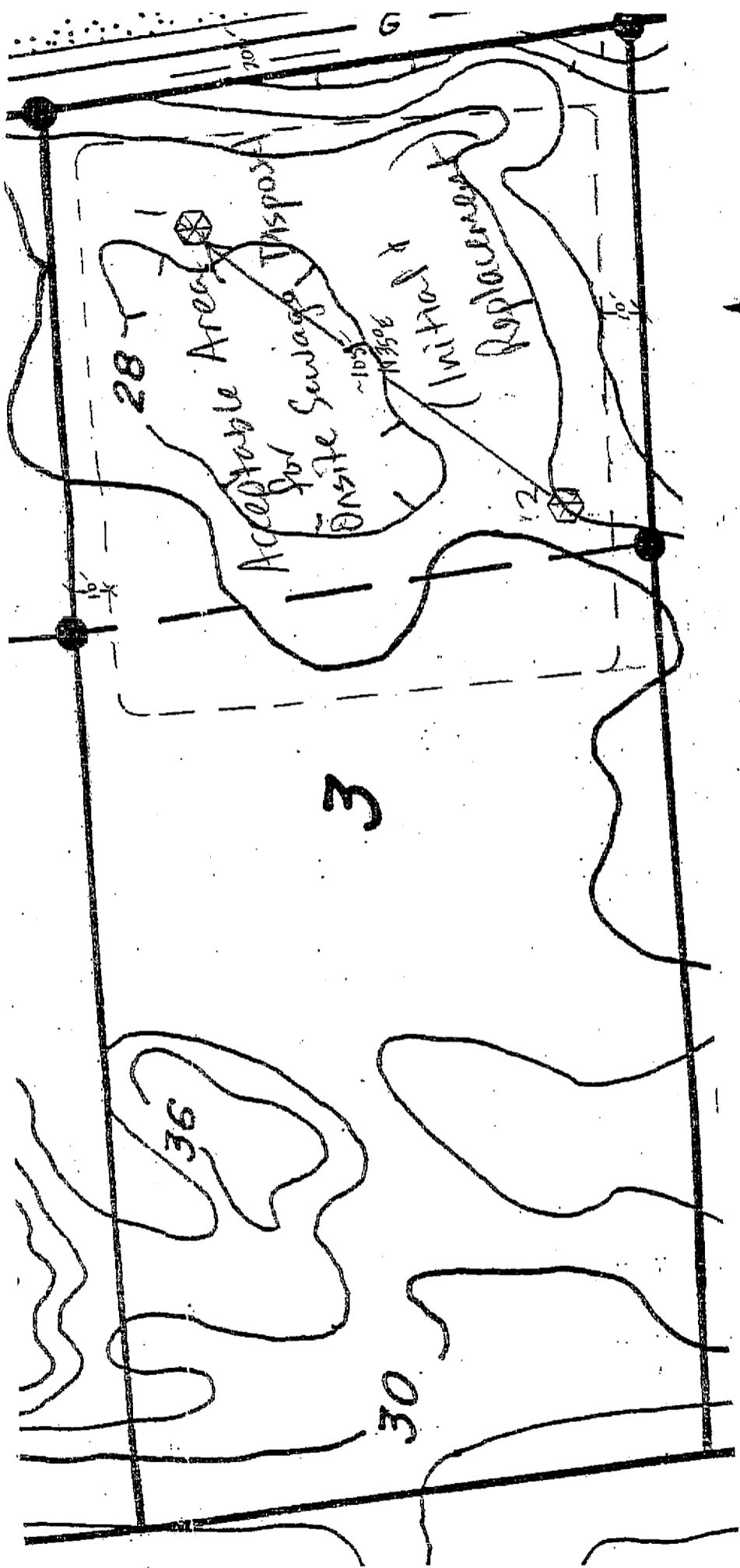
Approx. S.C.
 (1" = 50')

Malarkey Pines Subdivision

710-160-700 - Proposed Lot 2 (2.31 acres)

Big Bear LEC / K. Foeste

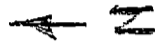
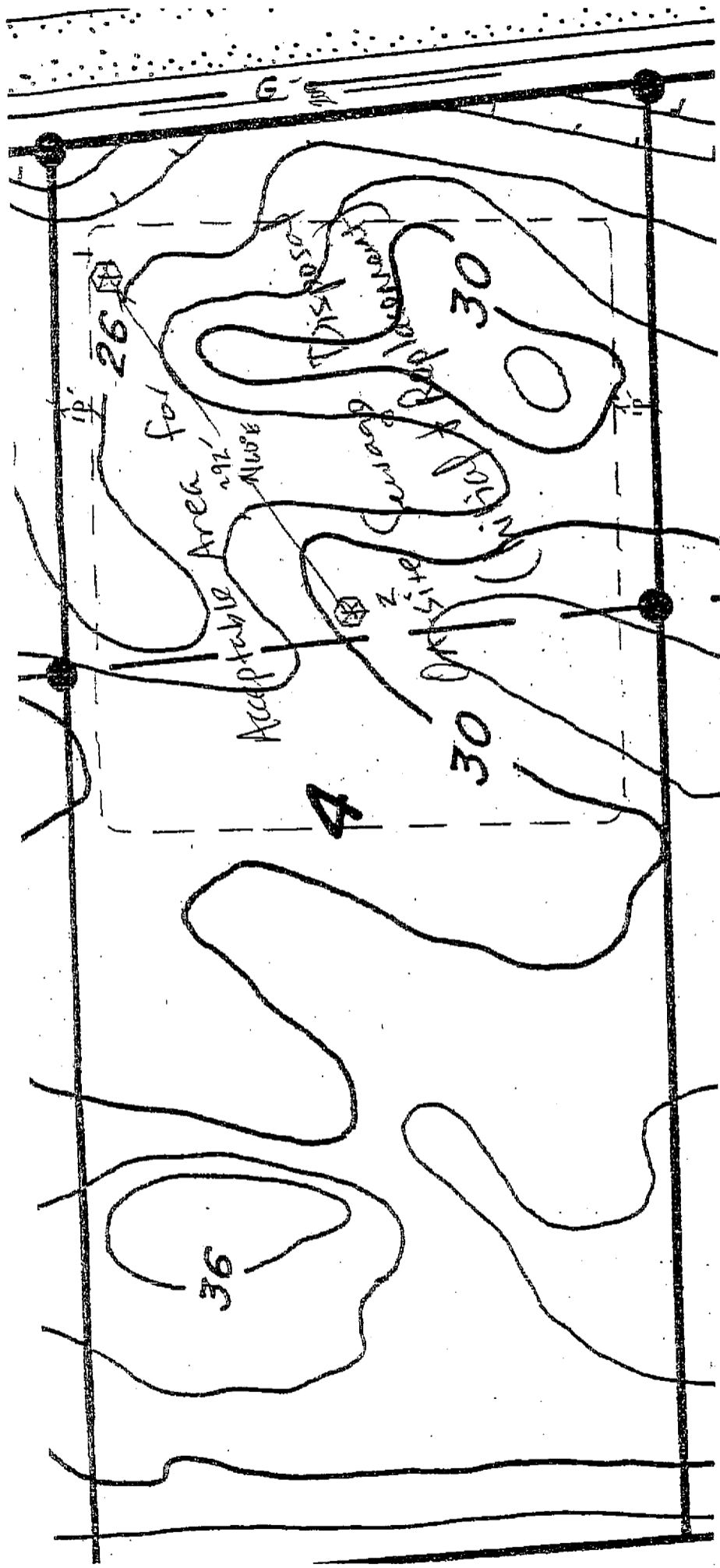
3/11/05
 CMS



Malaskey Pines Subdivision

710-16C-300 - Proposed Lot 3 (2.15 acres)

Big Bears LLC / K. Foeste 5/4/05
 CMS



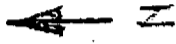
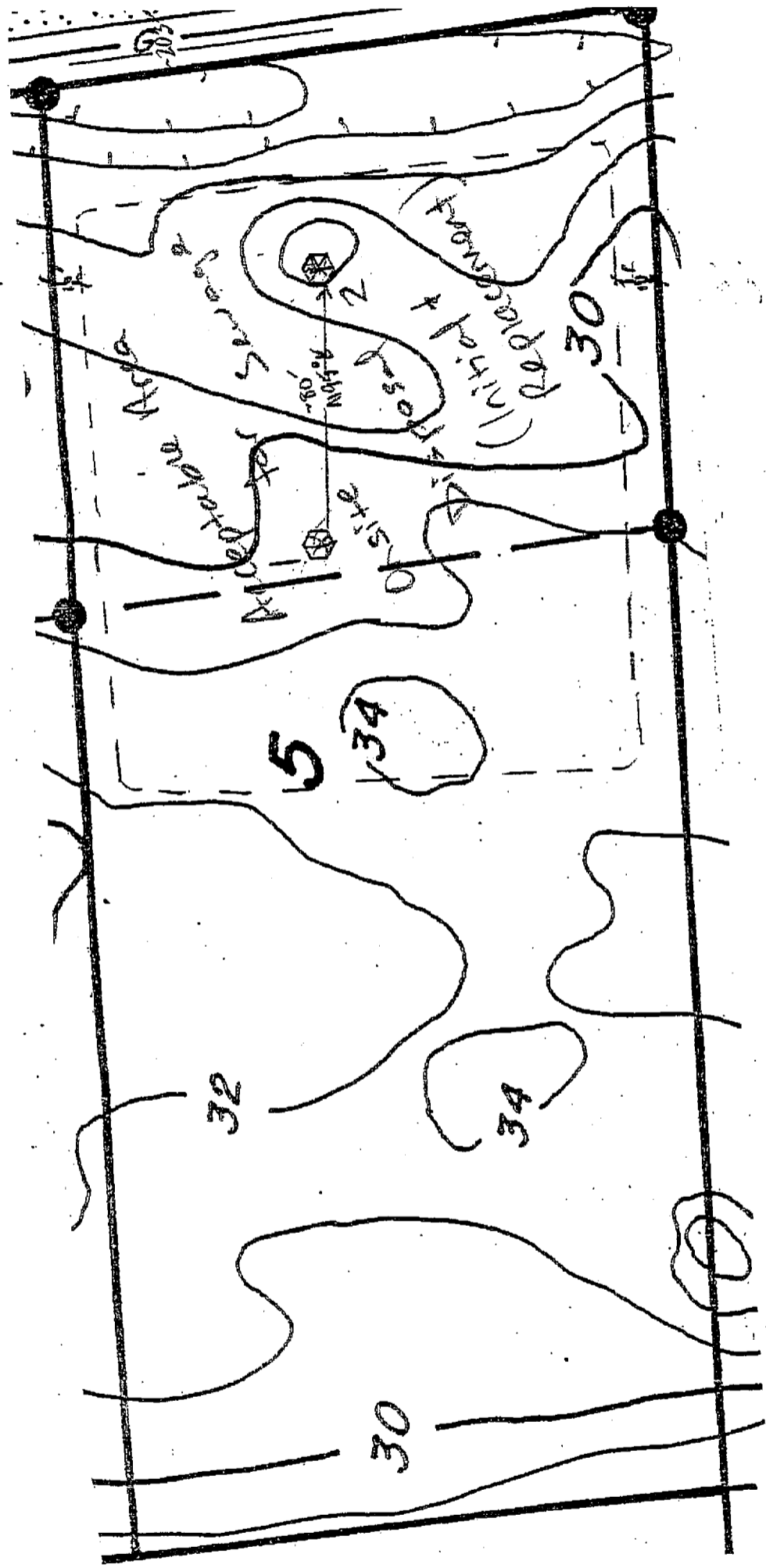
Approx. scale:
1" = 50'

Malarkey Pines Subdivision

710-16C-300 - Proposed Lot 4 (2.17 acres)

Big Bears LLC / K. Foeste

5/11/05
CWS



Approx. scale:
 (1" = 50')

Malaskey Pines Subdivision

710-160-300 - Proposed Lot 5 (2.24 acres)

Big Bears LLC / K. Frostic

5/1/06
 GMS



To Whom It May Concern

October 5, 2005

I have been asked to provide an assessment of current market conditions for ocean-front lots in the Surf Pines subdivision near Gearhart, OR.

I have been associated with Windermere Real Estate and its predecessor, Cronin and Caplan Realty Group since 1992. Currently I am a Broker with Windermere. During this time I have served as a listing agent for two developments in the Gearhart area, Shamrock Pines and Pinehurst. I have also sold several lots and homes in Surf Pines. Since these subdivisions are contiguous, working in one means keeping current in the other.

The year 2005 has been a particularly active one in the North Coast area. Sales have been very strong and the activity is gauged by many of my associates in real estate as unprecedented. This is particularly so for ocean-front property, especially vacant land. Demand is currently exceeding supply by a large margin. This has resulted in price appreciation in the range of 30% since March, 2005.

This phenomenon applies to Surf Pines where there are currently no ocean-front lots for sale. One recently came on the market (a 4 acre parcel) and it had an accepted offer within 20 days. The same, I am sure, would be true of other lots that might be for sale along Ocean Avenue in Surf Pines.

Without hesitation, I consider any buildable lot in Surf Pines, especially ocean-front lots, to be in demand. It is a seller's market if I have ever seen one.

Sincerely,

Conrad Thomason
Broker

Affidavit of Richard Charlton
In Support of Application No. _____

State of Oregon)
)ss.
County of Multnomah)

I Richard Charlton do hereby declare,

1. My former partner, George Malarkey, acquired his interest in the property is designated Clatsop County tax lot number 71016c300 in 1959 (the "Property").
2. In 1980, George Malarkey and I obtained county approval of the Strawberry Hill subdivision on the land to east of the Property.
3. In 1980, George and I were advised by former County Planning Director Curt Schneider to delay development of the Property.
4. Beginning in 1980, George Malarkey and I began selling lots within the Strawberry Hill development.
5. John McGowan bought lot 10, 33104 Malarkey Lane, in the Strawberry Hill subdivision. Mr. McGowan has stated that he paid a premium for the property because Tax Lot 300 was undeveloped. Attached as Exhibit 1 to this affidavit is a price sheet from my file. Attached as Exhibit 2 is a lot map from our original marketing efforts showing certain lots as sold. This price sheet was used by my partner, our broker and myself in our original marketing of Strawberry Hill. The McGowan Property was listed at \$110,000. Mr. McGowan did not in fact pay the listing price but in fact negotiated aggressively and ultimately paid \$97,000 for the lot. Any "premium" reflected the ocean view and not an agreement that the Property would be undeveloped.
6. On numerous occasions and most recently in a letter submitted to the Planning Commission, John McGowan has alleged that George Malarkey and/or myself told him that the Property would never be developed.
7. I never told anyone that the Property would never be developed.

8. No covenants, codes and restrictions applicable to Strawberry Hill provide that the Property will not be developed.

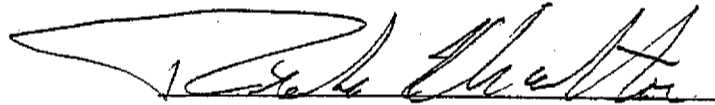
9. Water, power, road and gas to serve the Property were installed at the time Strawberry Hill was developed.

10. George Malarkey died in 1999. George and I worked closely together. I never heard George state that the Property would never be developed. On numerous occasions I heard George Malarkey state that he had never told anyone that the Property would never be developed.

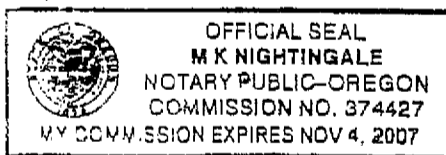
11. The deeds for the Strawberry Hill lots do not provide that the Property will not be developed.

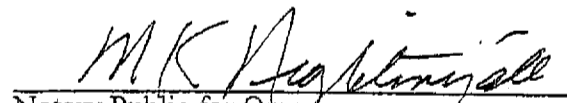
12. In 1969 the State of Oregon changed the coastal vegetation line to its current location, the western boundary of the Property. With this change the development potential of Tax Lot 302 under the applicable law was eliminated.

13. In 2003, as part of Clatsop County's periodic review process, the minimum lot size of the Property was reduced to two acre minimum, reducing the number of developable lots to five. All other properties in Surf Pines retained the one acre minimum lot size.


Richard Charlton

SUBSCRIBED AND SWORN to before me this 22 day of October, 2005.




Notary Public for Oregon
My Commission Expires: _____

STRAWBERRY HILL

PRICE SHEET

Effective March 10, 1981

BLOCK 1

Lot One	\$40,000
Lot Two	\$52,500
Lot Three	\$42,500
Lot Four	\$30,000
Lot Five	\$36,500
Lot Six	\$36,500
Lot Seven	\$31,500
Lot Eight	\$35,000
Lot Nine	\$35,000
Lot Ten	\$35,000
Lot Eleven	\$45,000
Lot Twelve	\$45,000

BLOCK 2

Lot One	\$ 30,000
Lot Two	\$ 45,000
Lot Three	\$ 52,500
Lot Four	\$110,000
Lot Five	\$ 75,000
Lot Six	\$ 75,000
Lot Seven	\$ 75,000
Lot Eight	\$ 48,500
Lot Nine	\$ 95,000
Lot Ten	\$110,000
Lot Eleven	\$175,000

PRICES SUBJECT TO CHANGE WITHOUT NOTICE

LONGFORD PROPERTIES
17885 S.W. Tualatin Valley Hwy., Aloha, Oregon 97006
Phone: (503) 642-3661

Ex. 1
plot 1

STRAWBERRY HILL

S. 14, SECTION 16, T. 7 N. R. 10 W. M.

SHEET 1 OF 2

1" = 100'

Oct/Nov 1980

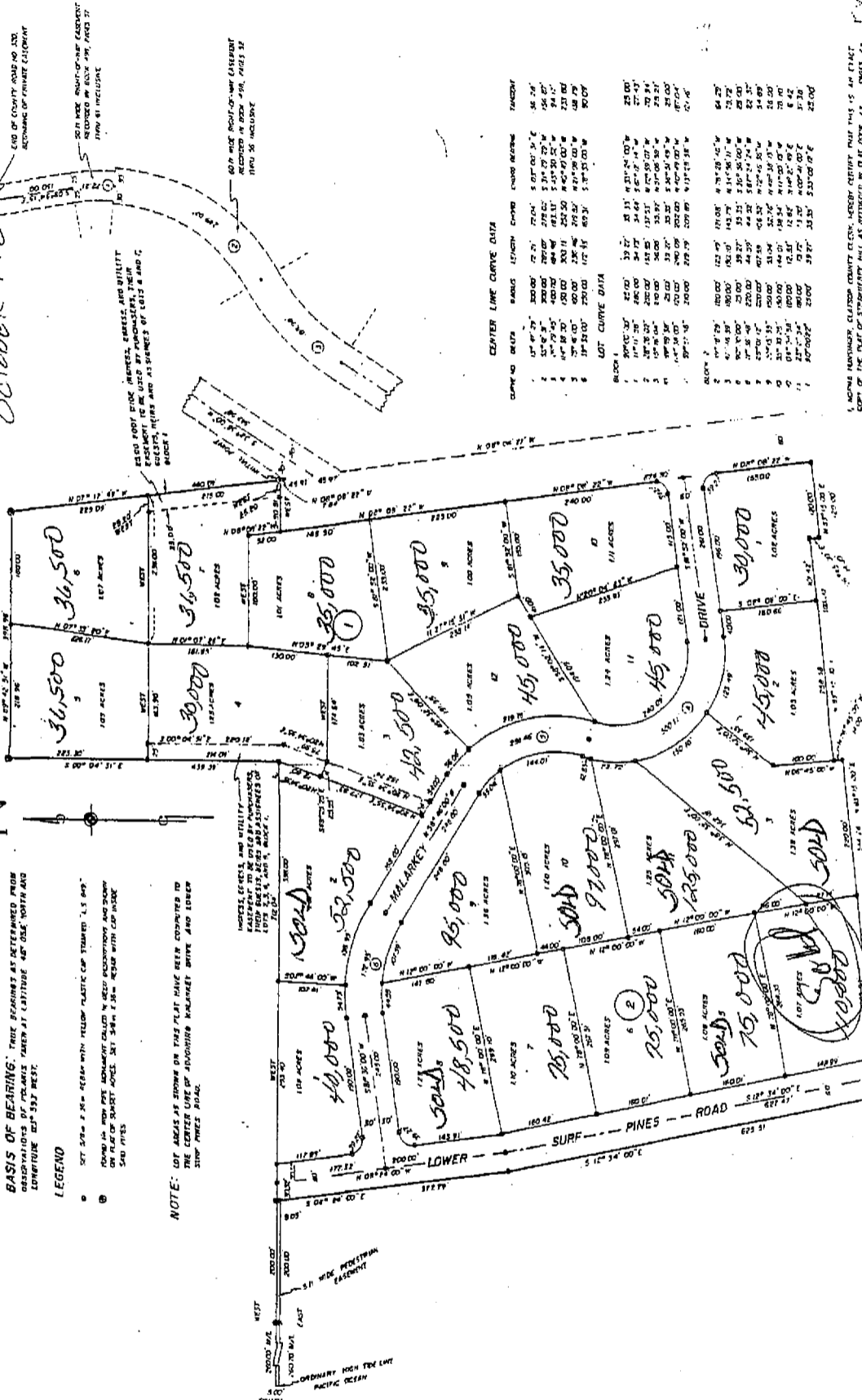
October 1980

BASIS OF BEARING: TRUE BEARINGS DETERMINED FROM OBSERVATIONS OF POLARIS TAKEN AT LATITUDE 46° 04' NORTH AND LONGITUDE 123° 53' WEST.

LEGEND

- SET 5/8" x 3/8" x 0.25" YELLOW PLASTIC CAP TURNED 1.5 90°
- ⊙ FOUND IN 2ND PLY MONUMENT CALLED W. CED. ENCOUNTERED AND SHOWN ON PLAN OF QUARTY ACRES. SET 5/8" x 3/8" x 0.25" REBAR WITH CAP INSTEAD OF PILES.

NOTE: LOT ANGLES SHOWN ON THIS PLAN HAVE BEEN COMPUTED TO THE CENTER LINE OF ADJOINING MALLARKEY DRIVE AND LOWER PINES ROAD.



CENTER LINE CURVE DATA

CURVE NO.	BEARING	CHORD	CHORD BEARING	TANGENT
1	17° 47' 31"	300.00'	172° 08' 37"	142.78'
2	17° 47' 31"	300.00'	172° 08' 37"	142.78'
3	17° 47' 31"	300.00'	172° 08' 37"	142.78'
4	17° 47' 31"	300.00'	172° 08' 37"	142.78'
5	17° 47' 31"	300.00'	172° 08' 37"	142.78'
6	17° 47' 31"	300.00'	172° 08' 37"	142.78'
7	17° 47' 31"	300.00'	172° 08' 37"	142.78'
8	17° 47' 31"	300.00'	172° 08' 37"	142.78'

LOT CURVE DATA

CURVE NO.	BEARING	CHORD	CHORD BEARING	TANGENT
1	30° 00' 00"	22.00'	149° 59' 59"	12.32'
2	30° 00' 00"	22.00'	149° 59' 59"	12.32'
3	30° 00' 00"	22.00'	149° 59' 59"	12.32'
4	30° 00' 00"	22.00'	149° 59' 59"	12.32'
5	30° 00' 00"	22.00'	149° 59' 59"	12.32'
6	30° 00' 00"	22.00'	149° 59' 59"	12.32'
7	30° 00' 00"	22.00'	149° 59' 59"	12.32'
8	30° 00' 00"	22.00'	149° 59' 59"	12.32'

A TRUE MONUMENT, CLASSIC COUNTY, OREGON, COUNTY, PLAT THIS IS AN EXACT COPY OF THE PLAT OF STRAWBERRY HILL AS RECORDED IN PLAT BOOK 12, PAGES 10 AND 11, CLATSOP COUNTY, OREGON.

Clatsop County Oregon
Real Property Tax Statement for the 7/1/2004 - 6/30/2005 Tax Year
 820 Exchange Suite 210 Astoria, Oregon 97103 Phone (503) 325-8561

LEGAL DESC: PARCEL 1 PARTITION PLAT 1999-003

ACCOUNT ID: 17514

TAX CODE: 1006 MAP: 71021D000207
 PROP CLASS: 401 ACRES: 1.23

SEPPA HUGH
 O'BRIEN HENRY J/DONNA M (C)
 422 N ROOSEVELT DR
 SEASIDE, OR 97138-6932

Last Year's Tax: 5,025.40

This Year's Tax
 See back for explanation of taxes marked with (*)

COMM COLLEGE	351.07
NWESD	69.36
SCHOOL 10	1,988.94
LO SCHOOL 10	234.50
School Total	2,643.87
GEARHART FD	144.04
4H & EXT SVC	24.08
CLATSOP CO	688.11
UNION HEALTH	29.04
SUNSET PARK	418.49
PORT ASTORIA	56.64
CO RURAL LAW	259.57
SUNSET TRANS	73.05
ROAD DIST #1	458.85
Government Total	2,151.87
FIRE PATROL	18.00
FIRE PATROL SUR	38.00
PORT ASTORIA	54.11
SCHOOL 10	131.81
UNION HEALTH	141.64
Bonds - Other Total	383.56
Total 2004 Tax	5,179.30

VALUES:	Last Year	This Year
Real Market (RMV) Land:	74,205	75,431
Structures:	497,131	521,987
Total RMV:	571,336	598,418
Assessed (AV):		
Total AV:	437,821	450,955
NET TAXABLE:	437,821	450,955

89468 SHADY PINE RD

Agent Code: WFR
 Lender Code: WFT Loan Number: 0007167

If a mortgage company pays your taxes,
 this statement is for your records only.

Full Payment with 3% Discount	2/3 Payment with 2% Discount	1/3 Payment with No Discount	Total Tax (Before Discount)	5,179.30
5,023.92	3,383.81	1,726.43		

2004 - 2005 Property Taxes

TAX CODE: 1006

ACCOUNT ID: 17514

Full Payment Enclosed.....Due:	11/15/2004	5,023.92
or 2/3 Payment Enclosed.....Due:	11/15/2004	3,383.81
or 1/3 Payment Enclosed.....Due:	11/15/2004	1,726.43

Discount is Lost & Interest Applies After Due Date

Mailing Address
 Change on Back

Enter Payment Amount
 \$

SEPPA HUGH
 O'BRIEN HENRY J/DONNA M (C)
 422 N ROOSEVELT DR
 SEASIDE, OR 97138-6932

MAKE PAYMENT TO:

Clatsop County Tax Collector
 820 Exchange Suite 210
 Astoria, Oregon 97103

Clatsop County Oregon
Real Property Tax Statement for the 7/1/2004 - 6/30/2005 Tax Year
 820 Exchange Suite 210 Astoria, Oregon 97103 Phone (503) 325-8561

ACCOUNT ID: 17234

LEGAL DESC: STRAWBERRY HILL LT 5 BLK 2

Last Year's Tax: 5,882.26

TAX CODE: 1006 MAP: 71016CA01900
 PROP CLASS: 401 ACRES: 1.08

GORMLEY-PEKKOLA MARION
 90073 OCEAN DR
 WARRENTON, OR 97146

This Year's Tax	
See back for explanation of taxes marked with (*)	
COMM COLLEGE	420.41
NW ESD	83.06
SCHOOL 10	2,381.80
LO SCHOOL 10	195.77
School Total	3,081.04
GEARHART FD	172.49
4H & EXT SVC	28.84
CLATSOP CO	824.03
UNION HEALTH	34.78
SUNSET PARK	501.15
PORT ASTORIA	67.83
CO RURAL LAW	310.84
SUNSET TRANS	87.48
ROAD DIST #1	549.48
Government Total	2,576.92
FIRE PATROL	18.00
FIRE PATROL SUR	38.00
PORT ASTORIA	64.80
SCHOOL 10	157.85
UNION HEALTH	169.62
Bonds - Other Total	448.27
Total 2004 Tax	6,106.23
Delinquent 2003 Tax	6,588.13

VALUES:	Last Year	This Year
Real Market (RMV) Land:	155,558	160,224
Structures:	434,270	455,983
Total RMV:	589,828	616,207
Assessed (AV)		
Total AV:	524,302	540,030
NET TAXABLE:	524,302	540,030

90073 OCEAN DR

If a mortgage company pays your taxes,
 this statement is for your records only.

Full Payment with 3% Discount	2/3 Payment with 2% Discount	1/3 Payment with No Discount	Total Tax (Before Discount)	12,694.36
5,923.04	3,989.40	2,035.41		

2004 - 2005 Property Taxes

TAX CODE: 1006

ACCOUNT ID: 17234

Full Payment Enclosed.....Due:	11/15/2004	5,923.04
or 2/3 Payment Enclosed.....Due:	11/15/2004	3,989.40
or 1/3 Payment Enclosed.....Due:	11/15/2004	2,035.41

Discount is Lost & Interest Applies After Due Date

Mailing Address
 Change on Back

Enter Payment Amount
 \$

GORMLEY-PEKKOLA MARION
 90073 OCEAN DR
 WARRENTON, OR 97146

MAKE PAYMENT TO:

Clatsop County Tax Collector
 820 Exchange Suite 210
 Astoria, Oregon 97103

Back Taxes Due

Clatsop County Oregon
Real Property Tax Statement for the 7/1/2003 - 6/30/2004 Tax Year
P.O. Box 719 Astoria, Oregon 97103-0719 Phone (503) 325-8561

ACCOUNT ID: 17187

ATTN: Lincoln

TAX CODE: 1002 MAP: 71016C000300
PROP CLASS: 400 ACRES: 10.90

BIG BEARS LLC
C/O MALARKEY GREGORY B - MANAGER
15655 NW PERIMETER DR
BEAVERTON, OR 97006

VALUES:	Last Year	This Year
Real Market (RMV) Land:	5,553	6,108
Structures:	0	0
Total RMV:	5,553	6,108
Assessed (AV)		
Total AV:	5,553	6,108
NET TAXABLE:	5,553	6,108

Last Year's Tax: 75.26

This Year's Tax	
See back for explanation of taxes marked with (*)	
COMM COLLEGE	4.45
NW ESD	0.88
SCHOOL 10	25.21
School Total	30.54
4H & EXT SVC	0.33
CLATSOP CO	9.21
SUNSET PARK	5.67
UNION HEALTH	0.17
PORT ASTORIA	0.77
CO RURAL LAW	3.62
SUNSET TRANS	0.99
ROAD DIST #1	6.21
Government Total	26.87
FIRE PATROL	18.00
PORT ASTORIA	0.75
SCHOOL 10	1.85
UNION HEALTH	2.10
Bonds - Other Total	22.70
Total 2003 Tax	80.11

If a mortgage company pays your taxes,
this statement is for your records only.

Full Payment with 3% Discount	2/3 Payment with 2% Discount	1/3 Payment with No Discount	Total Tax (Before Discount)	80.11
77.71	52.34	26.70		

2003 - 2004 Property Taxes

TAX CODE: 1002

ACCOUNT ID: 17187

Full Payment Enclosed.....Due:	11/17/2003	77.71
or 2/3 Payment Enclosed.....Due:	11/17/2003	52.34
or 1/3 Payment Enclosed.....Due:	11/17/2003	26.70

Discount is Lost & Interest Applies After Due Date

Mailing Address
Change on Back

Enter Payment Amount
\$

BIG BEARS LLC
C/O MALARKEY GREGORY B - MANAGER
15655 NW PERIMETER DR
BEAVERTON, OR 97006

MAKE PAYMENT TO:

Clatsop County Tax Collector
P.O. Box 719
Astoria, Oregon 97103-0719

Clatsop County Oregon
Real Property Tax Statement for the 7/1/2004 - 6/30/2005 Tax Year
P.O. Box 719 Astoria, Oregon 97103-0719 Phone (503) 325-8561

ACCOUNT ID: 17187

Attn: Lincoln

TAX CODE: 1002 MAP: 71016C000300
PROP CLASS: 400 ACRES: 10.90

BIG BEARS LLC
C/O CHARLTON RICHARD
855 SW SPRING LN
PORTLAND, OR 97225

Last Year's Tax: 80.11

This Year's Tax	
See back for explanation of taxes marked with (*)	
COMM COLLEGE	4.59
NW ESD	0.91
SCHOOL 10	25.96
School Total	31.46
4H & EXT SVC	0.34
CLATSOP CO	9.60
SUNSET PARK	5.84
UNION HEALTH	0.41
PORT ASTORIA	0.79
CO RURAL LAW	3.62
SUNSET TRANS	1.02
ROAD DIST #1	6.40
Government Total	28.02
FIRE PATROL	18.00
PORT ASTORIA	0.75
SCHOOL 10	1.84
UNION HEALTH	1.98
Bonds - Other Total	22.57
Total 2004 Tax	82.05

VALUES:	Last Year	This Year
Real Market (RMV) Land:	6,108	6,291
Structures:	0	0
Total RMV:	6,108	6,291
Assessed (AV)		
Total AV:	6,108	6,291
NET TAXABLE:	6,108	6,291

If a mortgage company pays your taxes,
this statement is for your records only.

Full Payment with 3% Discount	2/3 Payment with 2% Discount	1/3 Payment with No Discount	Total Tax (Before Discount)
79.59	53.61	27.35	82.05

2004 - 2005 Property Taxes

TAX CODE: 1002

ACCOUNT ID: 17187

Full Payment Enclosed.....Due:	11/15/2004	79.59
or 2/3 Payment Enclosed.....Due:	11/15/2004	53.61
or 1/3 Payment Enclosed.....Due:	11/15/2004	27.35

Discount is Lost & Interest Applies After Due Date

Mailing Address
Change on Back

Enter Payment Amount
\$

BIG BEARS LLC
C/O CHARLTON RICHARD
855 SW SPRING LN
PORTLAND, OR 97225

MAKE PAYMENT TO:

Clatsop County Tax Collector
P.O. Box 719
Astoria, Oregon 97103-0719

Clatsop County Oregon
Real Property Tax Statement for the 7/1/2002 - 6/30/2003 Tax Year
P.O. Box 719 Astoria, Oregon 97103-0719 Phone (503) 325-8561

ACCOUNT ID: 17187

Attn: Lincola

TAX CODE: 1002 MAP: 71016C000300
PROP CLASS: 400 ACRES: 10.90

BIG BEARS LLC
C/O MALARKEY GREGORY B - MANAGER
15655 NW PERIMETER DR
BEAVERTON, OR 97006

VALUES:	Last Year	This Year
Real Market (RMV) Land:	5,239	5,553
Structures:	0	0
Total RMV:	5,239	5,553
Assessed (AV)		
Total AV:	5,239	5,553
NET TAXABLE:	5,239	5,553

Last Year's Tax:	73.33
This Year's Tax	
See back for explanation of taxes marked with (*)	
COMM COLLEGE	4.04
NW ESD	0.80
SCHOOL 10	22.93
School Total	27.77
4H & EXT SVC	0.30
CLATSOP CO	8.38
SUNSET PARK	5.15
UNION HEALTH	0.17
PORT ASTORIA	0.70
CO RURAL LAW	4.00
SUNSET TRANS	0.90
ROAD DIST #1	6.65
Government Total	25.25
FIRE PATROL	18.00
PORT ASTORIA	0.82
SCHOOL 10	1.63
UNION HEALTH	1.79
Bonds - Other Total	22.24
Total 2002 Tax	75.26

If a mortgage company pays your taxes,
this statement is for your records only.

Full Payment with 3% Discount	2/3 Payment with 2% Discount	1/3 Payment with No Discount	Total Tax (Before Discount)	75.26
73.00	49.17	25.09		

2002 - 2003 Property Taxes

TAX CODE: 1002

ACCOUNT ID: 17187

Full Payment Enclosed.....Due:	11/15/2002	73.00
or 2/3 Payment Enclosed.....Due:	11/15/2002	49.17
or 1/3 Payment Enclosed.....Due:	11/15/2002	25.09

Discount is Lost & Interest Applies After Due Date

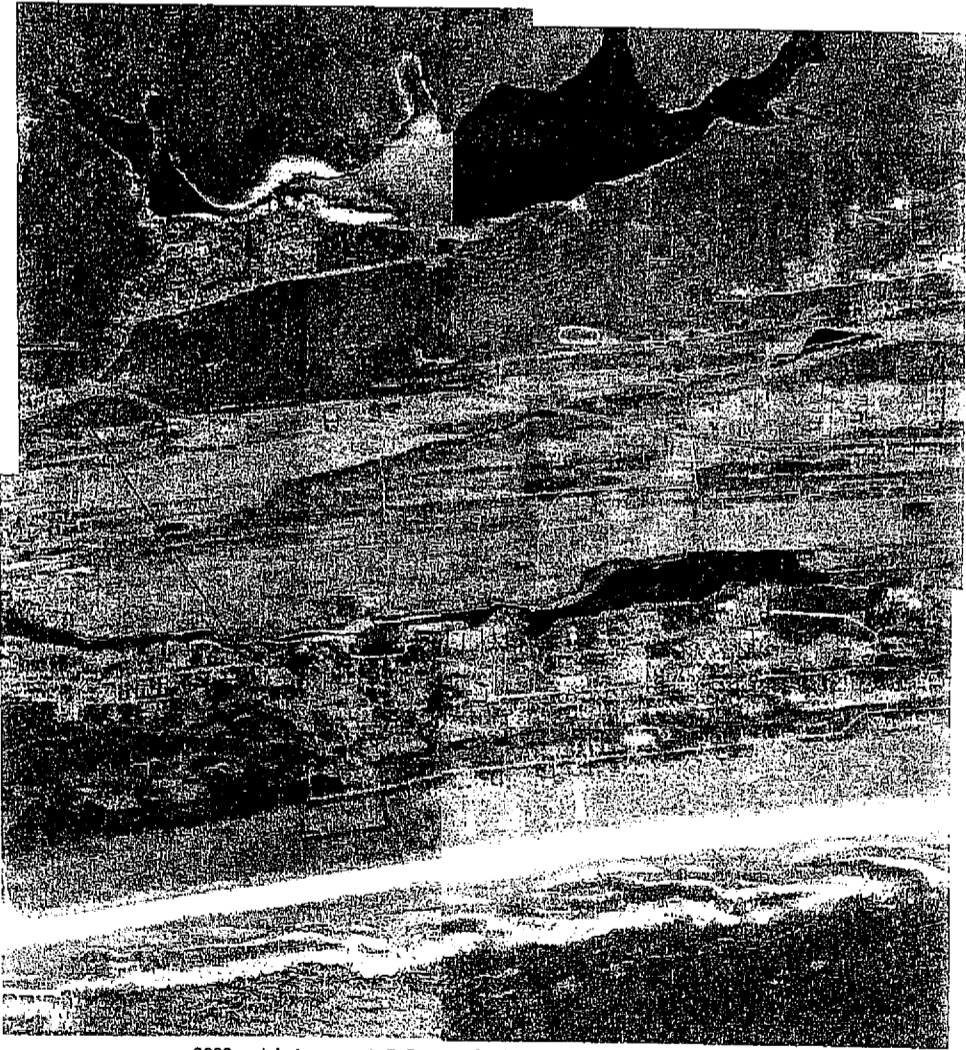
Mailing Address
Change on Back

Enter Payment Amount
\$

BIG BEARS LLC
C/O MALARKEY GREGORY B - MANAGER
15655 NW PERIMETER DR
BEAVERTON, OR 97006

MAKE PAYMENT TO:

Clatsop County Tax Collector
P.O. Box 719
Astoria, Oregon 97103-0719



tax lot 7-10-16C-300

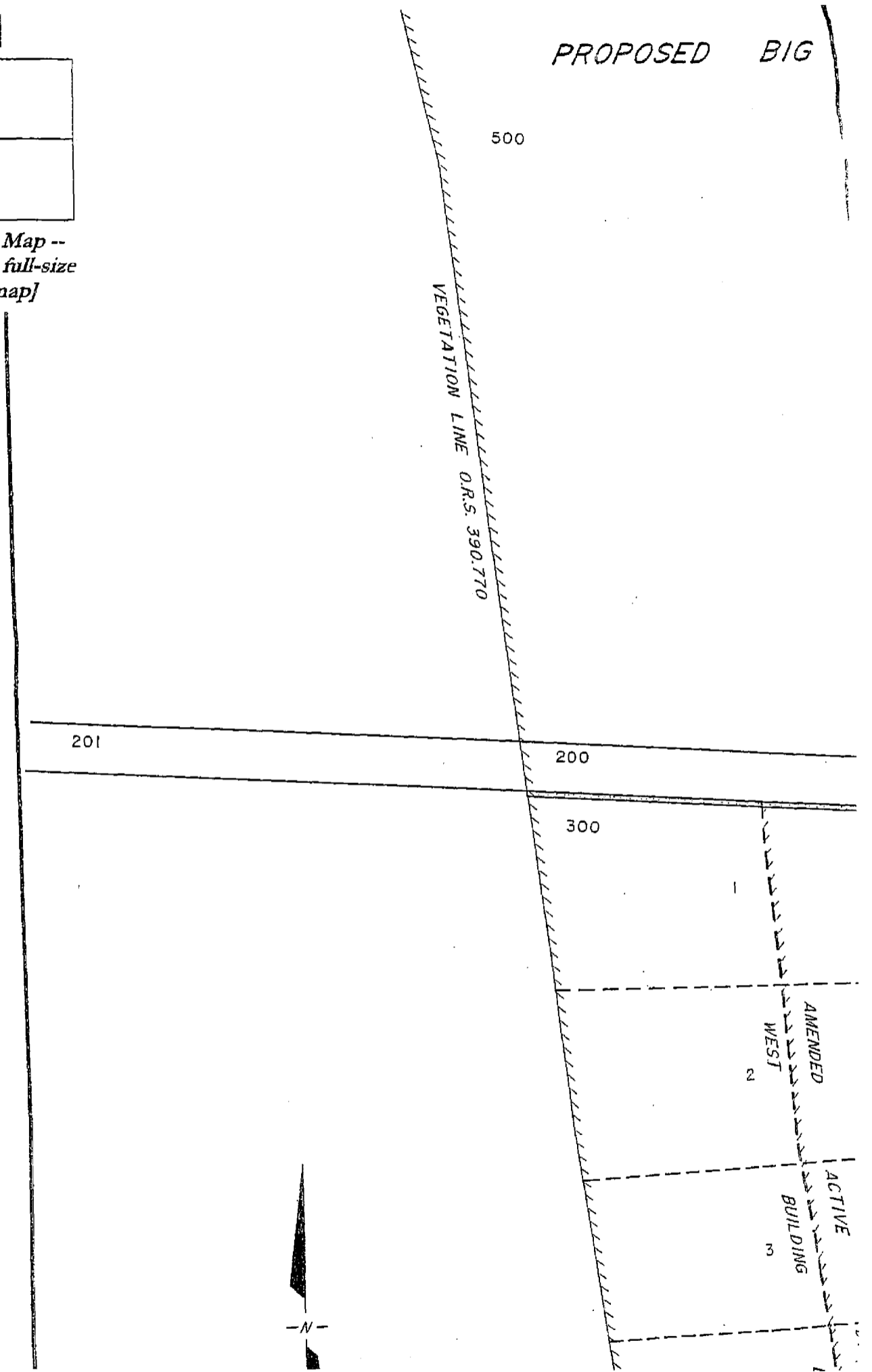
north

3.5"
one mile

Big Bears LLC
2002 Aerial Photograph
General Location

Sheet 1 of 4	

-- Reduced Map --
[see file for full-size
(24"x36") map]

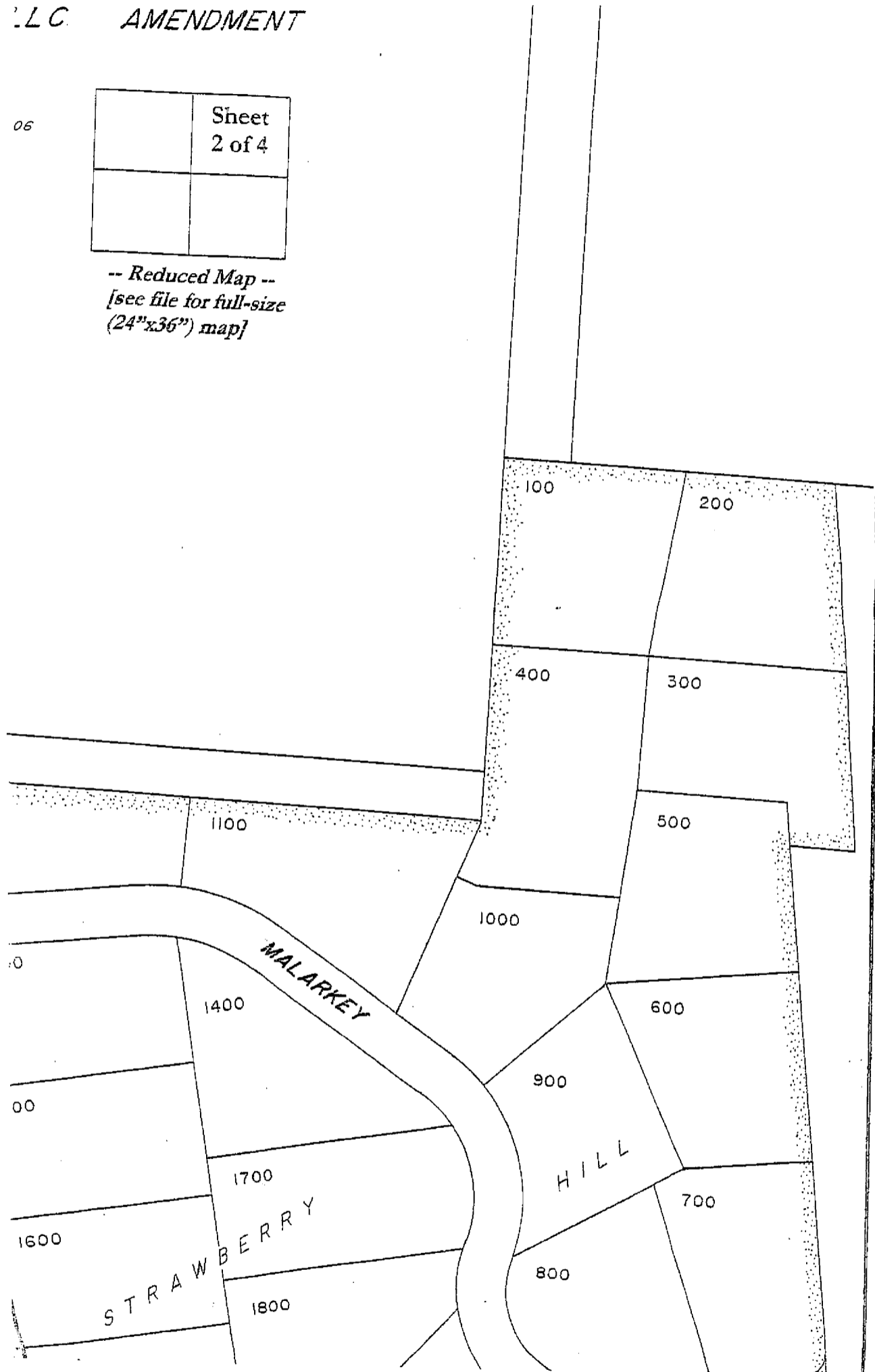


P.L.C. AMENDMENT

06

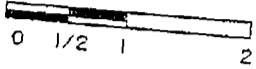
	Sheet 2 of 4

-- Reduced Map --
[see file for full-size
(24"x36") map]

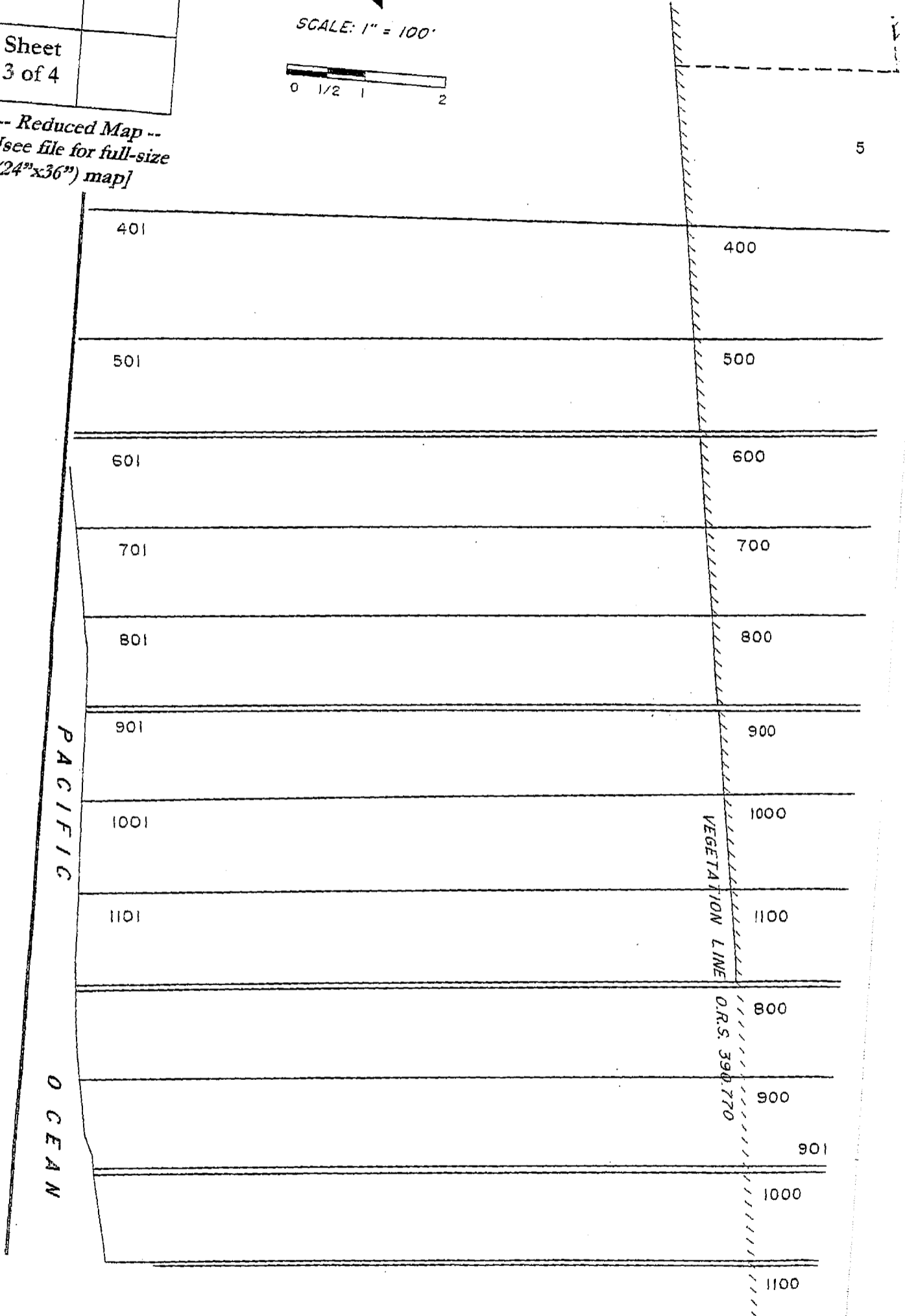


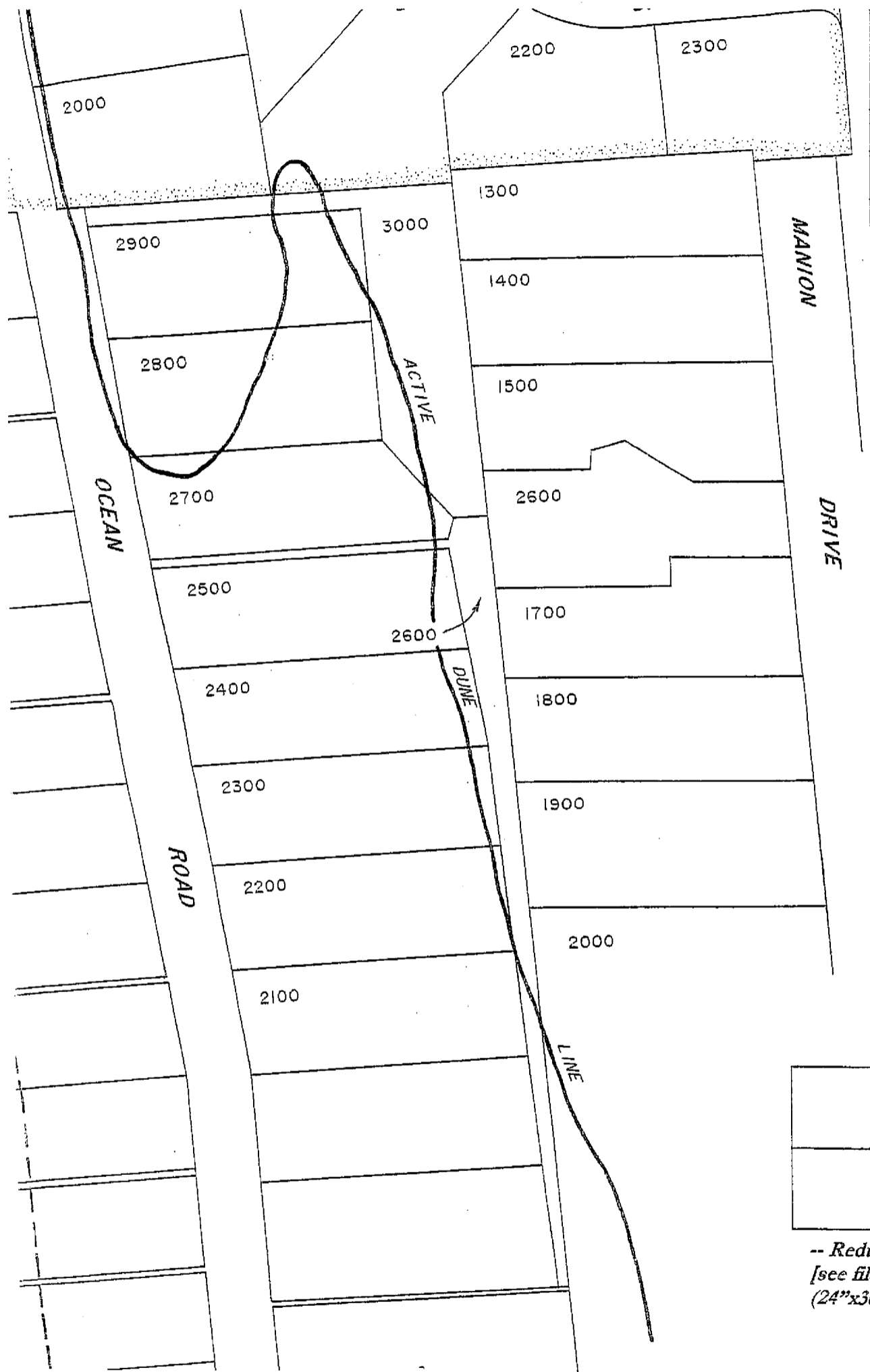
Sheet
3 of 4

SCALE: 1" = 100'



-- Reduced Map --
[see file for full-size
(24"x36") map]

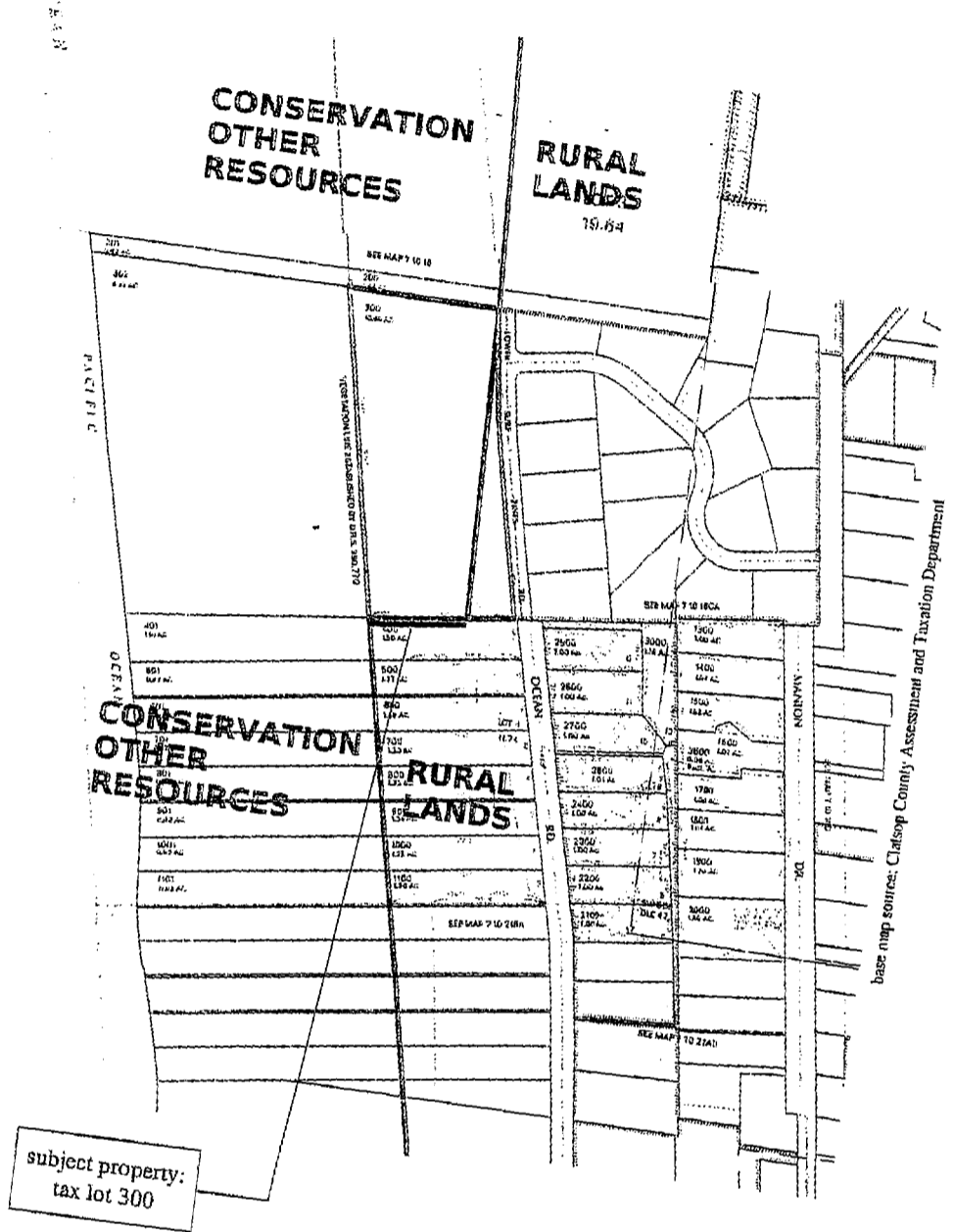




	Sheet 4 of 4

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 [see file for full-size
 (24"x36") map]

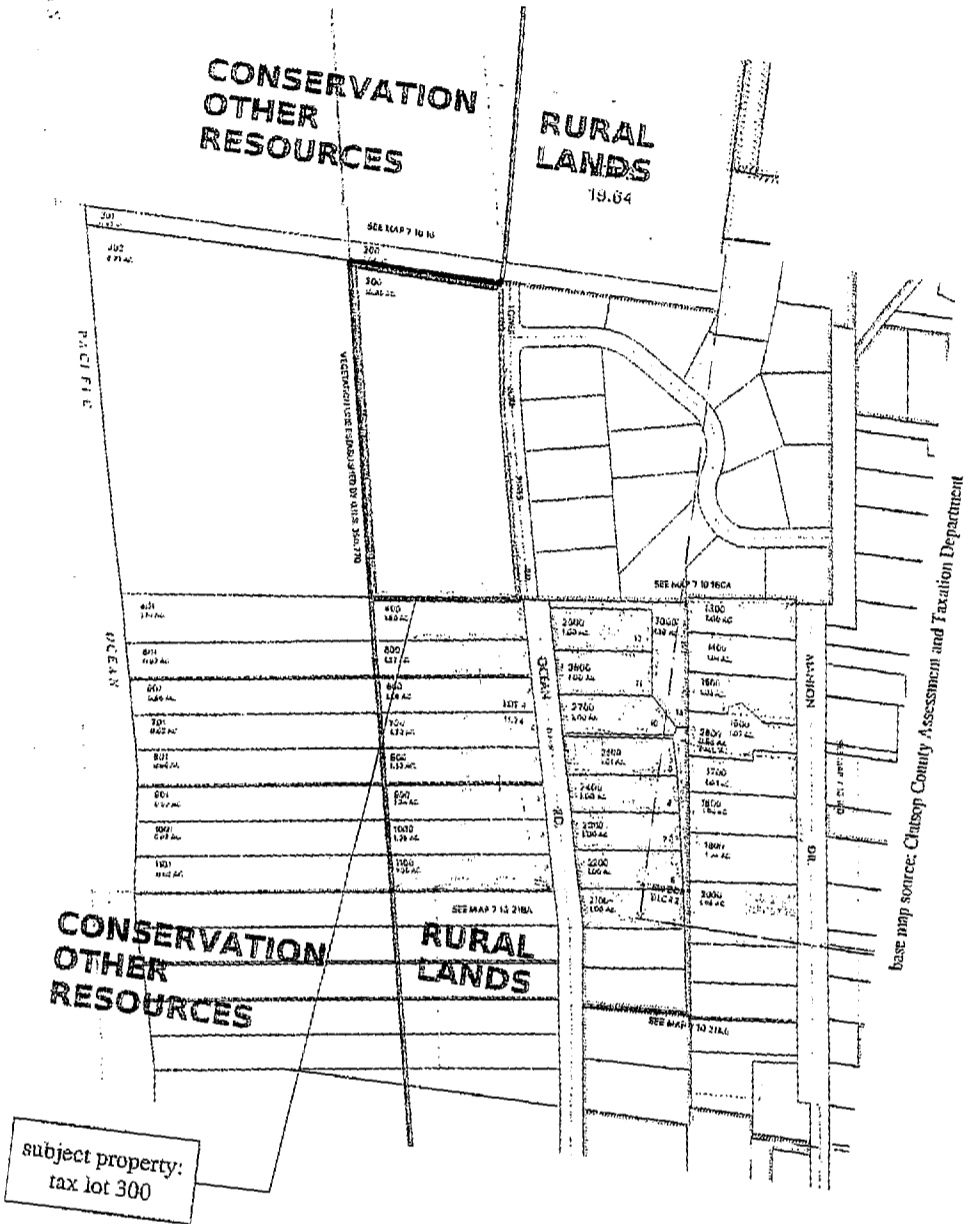
-- Reduced Map --
(11"x17" to 8-1/2"x11")
[see file for full-size map]



base map source: Clatsop County Assessor and Taxation Department

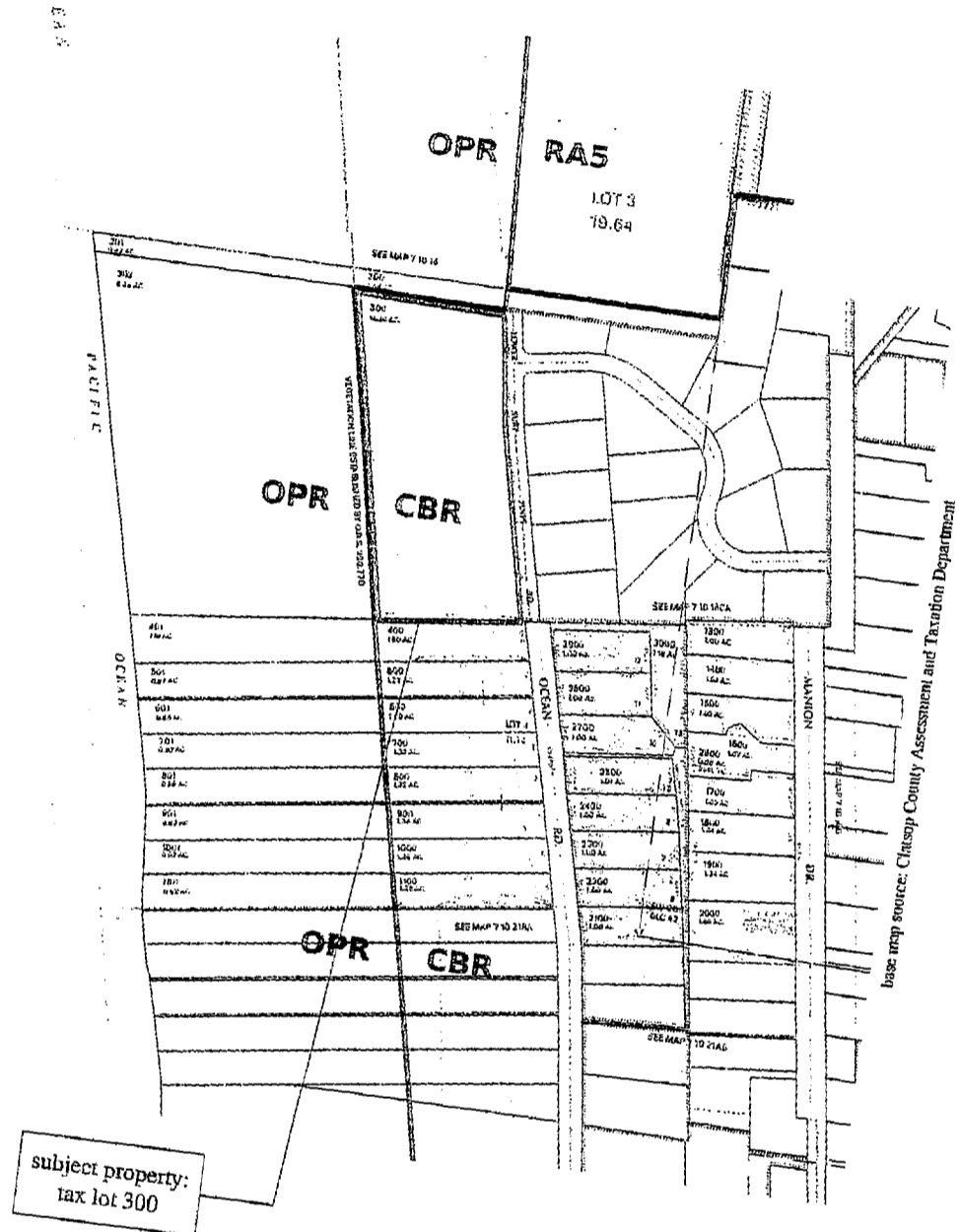
Existing Comprehensive
Plan Designations
Sheet 1

-- Reduced Map --
(11"x17" to 8-1/2"x11")
[see file for full-size map]



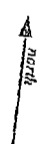
Proposed Comprehensive
Plan Designations
Sheet 2

-- Reduced Map --
(11"x17" to 8-1/2"x11")
[see file for full-size map]



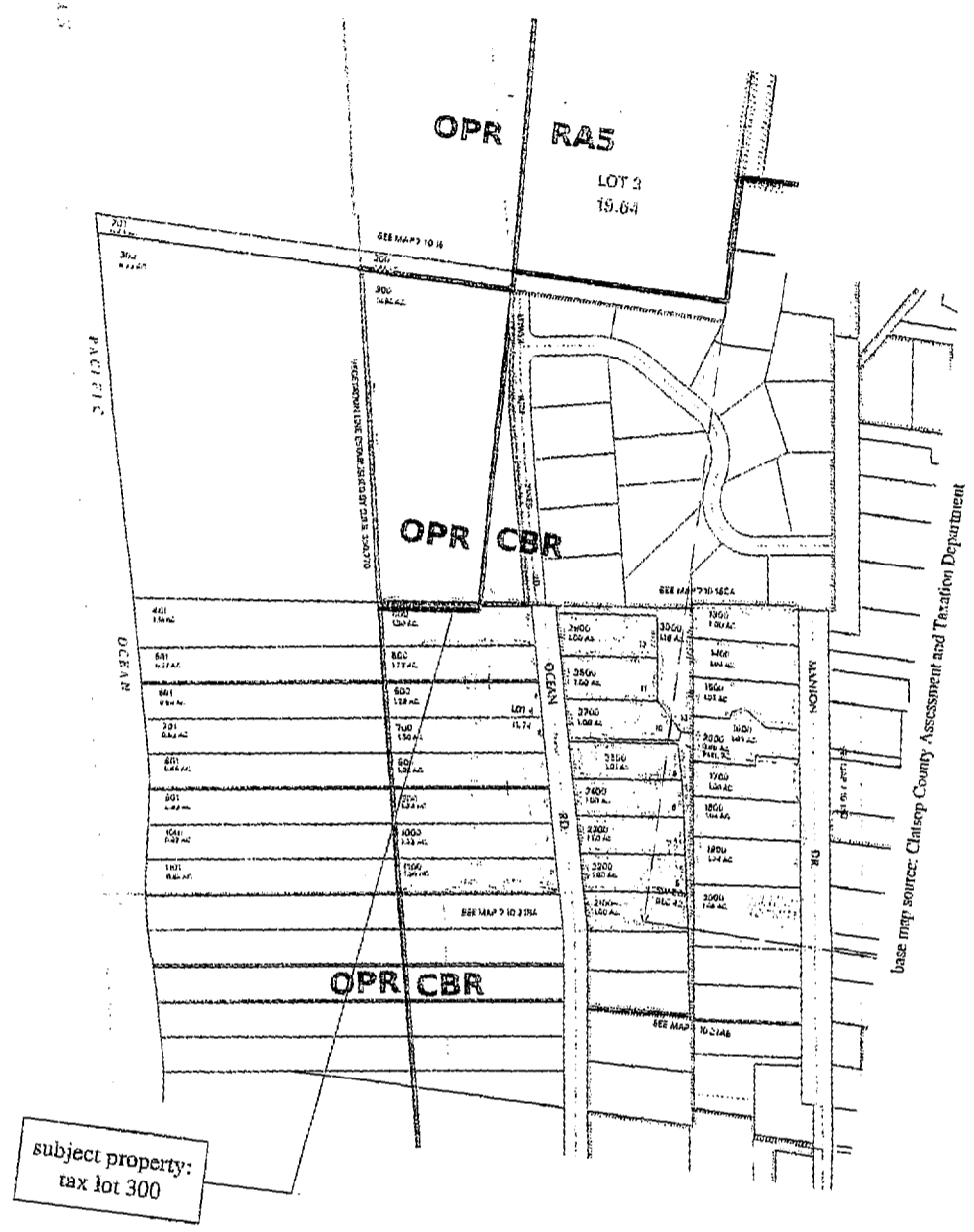
base map source: Clatsop County Assessment and Taxation Department

Proposed Zoning
Sheet 3



one inch
400 feet

-- Reduced Map --
(11"x17" to 8-1/2"x11")
[see file for full-size map]



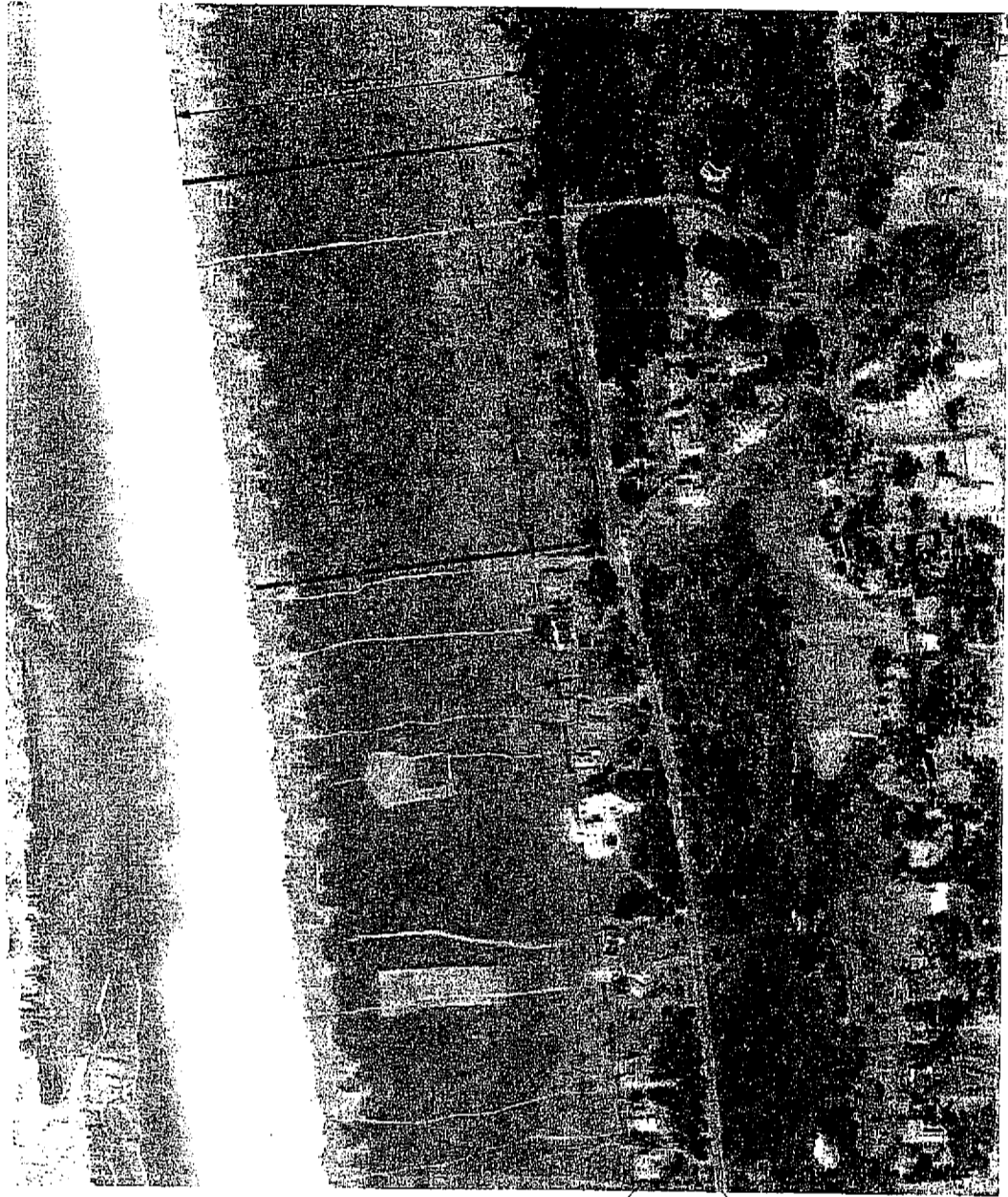
base map source: Chapp County Assessment and Taxation Department

Existing Zoning
Sheet 4



one inch
400 feet

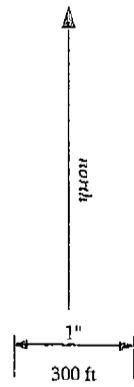
-- Reduced Map --
(11"x17" to 8-1/2"x11")
[see file for full-size map]



2002 aerial photograph © Spencer B. Gross, Inc. All rights reserved.

Surf Pines building line

Lower Surf Pines Road/
Ocean Avenue



Big Bears LLC
2002 Aerial Photograph

BEFORE THE PLANNING COMMISSION
FOR CLATSOP COUNTY, OREGON

COPY

In the matter of an amendment to the
Clatsop County Comprehensive Plan and
Comprehensive Plan/Zoning Map by
Big Bears LLC

RESOLUTION AND ORDER

RECITALS

A. Pursuant to Article 2 of the Clatsop County Land and Water Use Development Ordinance, Richard Charlton, on behalf of Big Bears LLC, applied for a comprehensive plan/zoning map amendment (attached as Exhibit A) on April 29, 2005, regarding property in Clatsop County (the "Property") described as:

T7N, R10W, Section 16C, Tax Lot 300

B. Pursuant to County Procedures for Land Use Applications, staff examined the application and submitted a report dated July 12, 2005 regarding the request.

C. Pursuant to County procedures, public hearings before the Planning Commission were held on the Exhibit A matter on July 12, 2005 and August 9, 2005 for which appropriate notices were provided.

D. Pursuant to County procedures, the Board of Commissioners reviewed the matter on October 12, 2005 and remanded the application to the Planning Commission for further consideration.


E. Pursuant to County procedures, a public hearing before the Planning Commission was held on the Exhibit A matter on December 13, 2005, for which appropriate notice was provided. The Staff Report is attached as Exhibit B.

WHEREFORE, the Planning Commission finds and resolves:

1. That the Planning Commission recommends approval of the application and findings for the proposed comprehensive plan/zoning map amendments but not for the requested text amendments.
2. That the Director is directed to present the Planning Commission's recommendation to approve the request to the Board of Commissioners for their consideration.
3. That the Exhibit B Staff Report, as amended by the December 13, 2005 Staff Memorandum, and the Exhibit A Applicant's Findings, as applicable, are adopted by reference in support of this recommendation.

SO ORDERED this 13th day of December 2005.

PLANNING COMMISSION FOR
CLATSOP COUNTY, OREGON



Bruce Francis, Commission Chair



RECEIVED 1/27/05 D. Johnson

**COMPREHENSIVE PLAN/ZONING
MAP AMENDMENT**
 Fee: \$977.00 (required with application)
 \$2175.00 (required with application)

PROPOSED USE: 5-lot subdivision 20050247

<u>Zoning</u>	<u>Comprehensive Plan Designation</u>
Current: <u>CPR</u>	<u>Conservation-Other Resources</u>
Proposed: <u>CBR</u>	<u>Rural Lands</u>

LEGAL DESCRIPTION OF PROPERTY:

T: 7 R: 10 S: 16C TL: 300 ACRES: 109

OTHER ADJACENT PROPERTY OWNED BY THE APPLICANT:

T: 7 R: 10 S: 16C TL: 302 ACRES: 8.2

T: _____ T: _____ S: _____ TL: _____ ACRES: _____

APPLICANT 1: (Mandatory)

Name: Richard Charlton Phone # (Day): 503/520-1322
 Mailing Address: 855 SW Spring Lane FAX #: _____
 City/State/Zip: Portland, OR 97225 Signature: [Signature]

PROPERTY OWNER: (Mandatory if different than applicant)

Name: Big Bears LLC Phone # (Day): _____
 Mailing Address: 855 SW Spring Lane FAX #: _____
 City/State/Zip: Portland, OR 97225 Signature: _____

PROPERTY OWNER #2 / SURVEYOR / AGENT / CONSULTANT / ATTORNEY: (optional)

Name: Margaret Kirkpatrick Phone # (Day): 503-294-9339
Stoel Rives LLP
 Mailing Address: 900 SW 5th Ave, Suite 2600 FAX #: 503-230-2480
 City/State/Zip: Portland, OR 97204 Signature: _____

Community Development Department
 800 Exchange, Suite 100 * Astoria Oregon 97103 * (503) 325-8611 * FAX 503-338-3666

Each of the following criteria and standards must be addressed by the applicant. The information needed to address these criteria should be submitted on separate 8.5" by 11" sheets of paper, typed.

1. The map change must be consistent with the Comprehensive Plan. The Comprehensive Plan includes the following elements:

- Goal 1 – Citizen Involvement
- Goal 2 – Land Use Planning
- Goal 3 – Agricultural Lands
- Goal 4 – Forest Lands
- Goal 5 – Open Space
- Goal 6 – Air, Water and Land Resources Quality
- Goal 7 – Natural Hazards
- Goal 8 – Recreational Needs
- Goal 9 – The Economy
- Goal 10 – Housing
- Goal 11 – Public Facilities and Services
- Goal 12 – Transportation
- Goal 13 – Energy Conservation
- Goal 14 – Urbanization
- Goal 16 – Estuarine Resources
- Goal 17 – Coastal Shorelands
- Goal 18 – Beaches and Dunes
- Southwest Coastal Community Plan
- Northeast Community Plan
- Elsie/Jewell Community Plan
- Seaside Rural Community Plan
- Lewis and Clark/Olney/Walluski Community Plan
- Clatsop Plains Community Plan

Some of these elements of the Comprehensive Plan are not applicable to the proposed map amendment. County staff will help identify applicable plan elements and policies.

2. Also address the following from Section 5.412, Zone Change Criteria of the Clatsop County Land and Water Development and Use Ordinance #80-14.

1. The proposed change is consistent with the policies of the Clatsop County Comprehensive Plan.
2. The proposed change is consistent with the statewide planning goals (ORS 197)
3. The property in the affected area will be provided with adequate public facilities and services including, but not limited to:
 1. Parks, schools and recreational facilities
 2. Police and fire protection and emergency medical service
 3. Solid waste collection
 4. Water and wastewater facilities
4. The proposed change will insure that an adequate and safe transportation network exists to support the proposed zoning and will not cause undue traffic congestion or hazards.
5. The proposed change will not result in over-extensive use of the land, will give reasonable consideration to the character of the area, and will be compatible with the overall zoning pattern.
6. The proposed change gives reasonable consideration to peculiar suitability of the property for particular uses
7. The proposed change will encourage the most appropriate use of land throughout Clatsop County
8. The proposed change will be detrimental to the health, safety, and general welfare of Clatsop County.

3. The property in the affected area must be presently provided with adequate public facilities, services and transportation networks to support the use; or the governing body by condition requires their provision by condition attached to any approval of use.

OFFICE USE ONLY:

date received :

4/27/05

application #:

date complete:

R.&O/Ord#:



900 S.W. Fifth Avenue, Suite 2600
Portland, Oregon 97204
main 503.234.3380
fax 503.220.2480
www.stoel.com

MARGARET D. KIRKPATRICK
Direct (503) 294-9339
mdkirkpatrick@stoel.com

April 26, 2005

VIA OVERNIGHT MAIL

Ms. Barbara Robinson
Community Development Supervisor
Clatsop County
Department of Community Development
800 Exchange Street, Suite 100
Astoria, Oregon 97103

RE: Richard Charlton Property – Surf Pines/T 7N, R10W, Section 16C, Tax Lot 300

Dear Ms. Robinson:

As you know, this firm represents Richard Charlton in connection with the land use approvals necessary for development of the property referenced above (the "Property"). Enclosed please find a comprehensive plan map amendment and a zoning map amendment, submitted on behalf of Mr. Charlton, to advance the residential developments of five two-acre lots on the Property.

At your request, we have also included proposed amendments to Section 4.052 of the County's Land and Water Development Use Ordinance ("LWDUO") and Section S3.015 of the County Standards Document to reflect the County's adoption of Ordinance No. 02-05. That ordinance, known as the "Charlton Active Dune Line Comprehensive Plan Text Amendment," amended Section 18 of the Comprehensive Plan to modify the active dune line as outlined in the *Horning Geoscience Report* by Tom Horning, dated September 22, 1998. Although Ordinance 02-05 is effective on its own, we understand the County would like to make "housekeeping" amendments to the relevant sections of the LWDUO and the Standards Document. Therefore, the proposed amendments simply conform those documents to the Comprehensive Plan.

As we discussed in our meeting last fall, the Property and the adjacent Tax Lot 302 have been the subject of a series of state and local actions over the years that have reduced the number of

Oregon
Washington
California
Utah
Idaho

Portland 1-2195810.1 0020566-00005



Ms. Barbara Robinson
April 26, 2005
Page 2

allowable residential lots on the Property from nineteen to five. Mr. Charlton acquired an interest in the Property in the 1970s. He and his partner George Malarkey developed the neighboring Strawberry Hill subdivision with twenty-three one-acre lots but held Tax Lots 300 and 302 for future development. However, in 1969 the State of Oregon changed the coastal vegetation line to its current location, which is the western boundary of Tax Lot 300. See ORS 390.770. This change eliminated the development potential of Tax Lot 302. A 1995 attempt to develop the Property with ten one-acre lots stalled during the approval process despite a positive staff recommendation. Then, in 2003, as a part of the Clatsop County periodic review process, the Comprehensive Plan was amended to restrict the minimum lot size in the area to two acres. Accordingly, Mr. Charlton has seen the development potential for his property shrink from nineteen one-acre lots to five two-acre lots. Consequently, he is eager to move forward with this application at this time.

I greatly appreciate the time you and Ms. Kathleen Sellman took to meet with me last fall and the assistance you have provided since that meeting. Please let me know if you need anything further to support this application.

Very truly yours,

Margaret D. Kirkpatrick -ejd

Margaret D. Kirkpatrick

MK:dew

Enclosures

cc: Richard Charlton (w/encls)
Mark Barnes (w/encls)
Steve W. Abel
Kathleen J. Doll

PROPOSED AMENDMENTS

Clatsop County Land and Water Development and Use Ordinance, Ordinance 80-14

New language is in bold. Deleted language is in brackets <> in *italics*.

Proposed text amendment language modifying Section 4 of the Clatsop County Land and Water Development and Use Ordinance, Beach and Dunes Overlay District subsection 4.052.

Applicability amended as follows.

Clatsop County Land and Water Development and Use Ordinance § 4.052

Section 4.052. Applicability.

The beach and dune overlay (BDO) includes the following beach and dune areas:

- (1) The beach, which extends from extreme low tide landward to the Statutory Vegetation Line established and described in ORS 390.770, or the line of established upland shore vegetation, whichever is further inland;
- (2) The dune hazard area, which extends from the Statutory Vegetation Line established and described by ORS 390.770 or the line of established upland shore vegetation, whichever is further inland, landward to the construction setback line.
- (3) **The beach and dune area outlined in the *Horning Geoscience Report* by Tom Horning (Sept. 22, 1998), adopted by the Charlton Active Dune Line Comprehensive Plan Text Amendment (Ordinance 02-05) and incorporated into the Clatsop County Comprehensive Plan, Section 18, Background (Inventory) Data, subsection 2, Beach and Dune Formation, Accretion, Erosion and Migration.**
- (~~3~~4) The construction setback line is established as follows:
 - (A) A line 570 feet landward of the Statutory Vegetation Line established and described by ORS 390.770 for the area north of Surf Pines to the Columbia River south jetty.
 - (B) The Pinehurst construction setback line, established and described in Ordinance 92-90; and
 - (C) The Surf Pines construction setback line, established and described in Ordinance 83-17 and extended north to include T7N, R10W, Section 16C, Tax Lot 300.
- (~~4~~5) The dune construction area, which extends from the construction setback line as defined in the section above, landward to the eastern limit of Highway 101.

PROPOSED AMENDMENT

Clatsop County Standards Document, Ordinance 80-14

New language is in **bold**. Deleted language is in brackets<> in *italics*.
Proposed text amendment language modifying Section 3 of the Clatsop County Standards Document, Ordinance 80-14, Chapter 3 Structure Siting and Development, subsection S3.015, Oceanfront Setback amended as follows.

S3.015 Oceanfront Setback.

For lots abutting the oceanshore, the ocean yard shall be determined by the oceanfront setback line.

- (1) The location of the oceanfront setback line for a given lot depends on the location of buildings on lots abutting the ocean shore in the vicinity of the proposed building site and:
 - (A) For the Clatsop Plains area the location and orientation of the following reference lines
 - 1) Described as the construction setback line in section 4.042: A line 570 feet landward of the Statutory Vegetation Line established and described by ORS 390.770, or the circa 1920's shoreline, whichever is further inland for the area north of Surf Pines to Columbia River south Jetty.
 - 2) Described as the Pinehurst construction setback line, in Ordinance 92-90<;
and>
 - 3) Described as the Surf Pines construction setback line in Ordinance 83-17;
and
 - 4) **Described as the Charlton Active Dune Comprehensive Plan Text Amendment in Ordinance 02-05.**
 - (B) For the Southwest Coastal Planning Area and elsewhere along the Clatsop County coast, the location and orientation of the Statutory Vegetation Line or the line of Oceanfront Averaging established upland shore vegetation, whichever is further inland.
- (2) For the purpose of determining the oceanfront setback line, the term "building" refers to a permanent residential or commercial structure attached to a fixed foundation on a lot. The term "building" does not include accessory structures or uses.
- (3) The oceanfront setback line that is established shall be parallel with the reference lines established in the preceding Section S3.015 (1) and measurements from buildings shall be perpendicular to these reference lines.
- (4) The setback of a building from these reference lines is measured from the most seaward point of the buildings foundation. A buildings foundation excludes decks, porches, and similar building additions.
- (5) The oceanfront setback line for a parcel is determined as follows:
 - (C) If there are legally constructed buildings within 200 feet of the exterior boundary (side lot lines) of the subject property to both the north and south, the oceanfront setback line for the subject property is the average oceanfront setback of the nearest buildings to the north and south.

(D) If there are legally constructed buildings within 200 feet of the exterior boundary (side lot lines) of the subject property in only one direction, either the north or south, the oceanfront setback line for the subject property is that of the nearest building.

(E) If there are no legally constructed buildings within 200 feet of the exterior boundary (side lot lines) of the subject property, the oceanfront setback line for the subject property shall be established by the geotechnical report.

Notwithstanding the above provisions, the Director shall require a greater oceanfront setback where information in a geotechnical report prepared pursuant to Section 4.030 indicates that a greater oceanfront setback is required to protect the proposed building from an identified coastal erosion hazard.

II. BACKGROUND

Tax Lot 300 is a 10.9-acre parcel located between the beach and the west side of Lower Surf Pines Road at the northern end of the Surf Pines development. The parcel is currently split-zoned, such that approximately 8.8 acres are located in the OPR, and approximately 2.1 acres are located in the CBR zone.

The proposed map amendments will extend CBR zoning to the entire 10.9-acre parcel and modify the Comprehensive Plan/Zoning map to locate Tax Lot 300 within the Comprehensive Plan's Rural Lands designation. The text of the Comprehensive Plan itself will not be modified. In addition, LWDUO Section 4.052 and Section S3.015 of the County Standards Document are amended to reflect Ordinance 02-05.

III. SECTION 5.412. ZONE CHANGE CRITERIA

An amendment to the boundaries of any base zone or overlay district delineated on the Comprehensive Plan/Zoning Map may be made according to the criteria of LWDUO section 5.412. Specifically, the County must find that:

- (1) The proposed change is consistent with the policies of the Clatsop County Comprehensive Plan.
- (2) The proposed change is consistent with the statewide planning goals (ORS 197).
- (3) The property in the affected area will be provided with adequate public facilities and services including, but not limited to:
 - (A) Parks, schools and recreational facilities
 - (B) Police and fire protection and emergency medical service
 - (C) Solid waste collection
 - (D) Water and wastewater facilities

- (4) The proposed change will insure that an adequate and safe transportation network exists to support the proposed zoning and will not cause undue traffic congestion or hazards.
- (5) The proposed change will not result in over-intensive use of the land, will give reasonable consideration to the character of the area, and will be compatible with the overall zoning pattern.
- (6) The proposed change gives reasonable consideration to peculiar suitability of the property for particular uses.
- (7) The proposed change will encourage the most appropriate use of land throughout Clatsop County.
- (8) The proposed change will not be detrimental to the health, safety and general welfare of Clatsop County.

IV. FINDINGS

A. Section 5.412(1): The Proposed Changes Are Consistent with the Policies of the Clatsop County Comprehensive Plan.

The proposed amendments are consistent with the Plan because they serve to align the Comprehensive Plan/Zoning Map, Standards Document, and LWDUO with the language of Section 18 of the Comprehensive Plan as amended by Ordinance 02-05. The Comprehensive Plan was amended by Ordinance 02-05 to exclude Tax Lot 300 from the Active Dune area. These amendments to the zoning map, LWDUO, and County Standards Document serve to provide consistency between the Comprehensive Plan and the LWDUO/Standards documents and maps.

Ordinance 02-05 was accompanied by Findings that demonstrated the consistency of the amendment with the elements of the Comprehensive Plan and the Statewide Planning Goals. These findings were approved and adopted with the passage of Ordinance 02-05. As amendments designed to provide consistency with Section 18, as amended by Ordinance 02-05, the proposed map and document amendments incorporate by reference the Findings of Ordinance 02-05. Having found Ordinance 02-05 consistent with the Comprehensive Plan, the

County should adopt those findings and conclude the proposed amendments are similarly consistent with the Comprehensive Plan.

B. Section 5.412(2): The Proposed Amendments Are Consistent with the Statewide Planning Goals (ORS 197).

In 2003 the County amended its Comprehensive Plan to remove Tax Lot 300 from the Active Dune Overlay zone. Ordinance No. 02-05 amended the Goal 18 text of the Comprehensive Plan and afforded to all parties the process established in ORS 197.763 for quasi-judicial hearings. The County found the textual amendment to be consistent with the Statewide Planning Goals and the Comprehensive Plan but noted that any subsequent rezoning of the property would require consideration of compliance with the Statewide Planning Goals. The proposed amendments similarly complies with the Statewide Planning Goals because they do not modify or compromise any of the Statewide Planning Goals. Specifically:

- **Statewide Planning Goal 1: Citizen Involvement.** This goal is satisfied because the amendments do not conflict with the state's policies of providing citizen involvement in all phases of the planning process. Barring a procedural error in the amendment process, the amendments are consistent with Goal 1.
- **Goal 2: Land Use Planning.** This goal is satisfied because the proposed amendments does not compromise the basic policy framework of the goal. The amendments are supported by Ordinance No. 02-05. Additional application procedures are required before development is allowed to occur on the property. Based on these factors, the proposed amendments are consistent with Goal 2.
- **Goal 3: Agricultural Lands; Goal 4: Forest Lands; Goal 5: Open Spaces.** These goals do not apply to the proposed amendments, because the subject property is not agricultural land or forest land, and because no protected Goal 5 resources are present on Tax Lot 300. Adoption of the amendments is not anticipated to have any direct effect on nearby Goal 5 resources. Therefore, the amendments comply with Goals 3, 4, and 5.
- **Goal 6: Air, Water, and Land Resources Quality.** The proposed amendments will designate Tax Lot 300 as part of the CBR zone, update the zoning map to include Tax

Lot 300 within the Rural Lands designation, and amend the LWDUO/Standards documents to reflect Ordinance 02-05. The amendments will not automatically approve development of the property. Because the proposed amendments do not directly or indirectly impact Goal 6 protected resources, the amendment is consistent with the goal.

- * **Goal 7: Areas Subject to Natural Disasters and Hazards.** The proposed amendments will not alter any of the Goal 7 protections required by the state. All standards approved in the Comprehensive Plan and the LWDUO will apply to any future development of Tax Lot 300.
- **Goal 8: Recreational Needs, and OAR 660-034.** Amending the zone designation of Tax Lot 300 will not implicate Goal 8 or the County's Goal 8 inventory. Similarly, the additional proposed amendments will not undermine the County's ability to implement Goal 8. Therefore, the amendments are consistent with Goal 8.
- **Goal 9: Economy of the State, and OAR 660-009.** Goal 9 is concerned with commercial and industrial land uses. The proposed amendments will not impact the County's inventory of developable commercial or industrial lands, nor will they compromise the County's ability to fulfill the policies of Goal 9. Therefore, Goal 9 does not apply to the amendments.
- **Goal 10: Housing.** Housing will not be adversely impacted by the proposed amendments. Modifying the CBR zone to include Tax Lot 300 will increase the County's inventory of buildable land by only five potential parcels. The site is fully serviced for rural residential home sites. The amendments will not undermine the County's compliance with Goal 10, but are consistent with the state's housing goals and policies.
- **Goal 11: Public Facilities and Services, and OAR 660-011.** The proposed amendments are consistent with Goal 11 because they will not require amendment of the County's Goal 11 element or undermine the County's compliance with Goal 11.
- **Goal 12: Transportation, and OAR 660-012, OAR 660-013.** The addition of Tax Lot 300 to the CBR zone is consistent with Goal 12 because the adjacent Surf Pines area is fully serviced by existing roads and transportation facilities. The various amendments are consistent with a safe, convenient, and economical transportation system.

- **Goal 13: Energy Conservation.** This goal will not be undermined by the proposed amendments. Any subsequent development of Tax Lot 300 must comply with the Goal 13 implementing policies established by the County.
- **Goal 14: Urbanization.** The County's approval of these amendment will not involve existing or proposed urban growth boundaries. Rezoning Tax Lot 300 would allow the construction of a maximum of five dwelling units. Any development would require compliance with the County's Goal 14 implementing standards and policies; thus the amendment is consistent with Goal 14.
- **Goal 15: Willamette River Greenway; Goal 16: Estuarine Resources.** These goals do not apply to the proposed amendment, because they will not affect the Willamette River Greenway or any estuarine waters or shorelands.
- **Goal 17: Coastal Shorelands.** The County's approval of the zone designation amendment and other proposed amendments will not alter any of the County's Goal 17 implementing measures. Any development of Tax Lot 300 will be required to comply with Goal 17 as implemented by the Comprehensive Plan and the LWDUO. Consequently, the County should find the proposed amendments consistent with Goal 17.
- **Goal 18: Beaches and Dunes.** The proposed amendments do not conflict with with Goal 18 because Ordinance No. 02-05 previously amended the Goal 18 element of the County Comprehensive Plan to ensure consistency between the Statewide Planning Goal and the County's beach and dune policies.

In sum, the proposed land-use zone designation amendment and amendments to the LWDUO/Standards documents are consistent with the Statewide Planning Goals because they do not require the County to compromise any of the goals or their implementing measures. Any subsequent development of Tax Lot 300 will be required to comply with the County's policies and goals under each statewide goal.

C. Section 5.412(3): The property in the affected area will be provided with adequate public facilities and services including, but not limited to: (A) Parks, schools and recreational facilities, (B) Police and fire protection and emergency medical service, (C) Solid waste collection, and (D) Water and wastewater facilities.

Tax Lot 300 is adequately served with the required public facilities and services outlined in LWDUO section 5.412(3). Public transportation facilities provide access to and from the Surf Pines community, and transportation within Surf Pines is through a private road network.

Several public and private parks exist in the vicinity of Tax Lot 300. These are listed in Table 1, along with their approximate distance from the site.

Table 1: Parks

Park	Distance from Tax Lot 300
State park land at Sunset Beach	1 mile
Sunset Lake Public Park	1 mile
Del Rey Beach State Wayside	2.7 miles
Cullaby Lake County Park	1.5 miles
Land owned by Surf Pines Association	0.7 mile
Ocean beach	0.1 mile

Source: Clatsop County Assessment and Taxation Department maps

Tax Lot 300 is in the Seaside School District and the Clatsop Community College District. Gearhart Grade School is about 4.4 miles south, Seaside High School is approximately 6.2 miles south, and Seaside Middle School is about 6.3 miles south of Tax Lot 300. Clatsop Community College's main campus is located in Astoria, about eight miles northeast. The college also maintains a south county campus in Seaside.

Tax Lot 300 is in the Sunset Empire Parks and Recreation District. The district's main facilities are located in Seaside, about 6.3 miles to the south. Other recreational facilities include the boat ramp on Sunset Lake, the Del Rey Beach access, the Sunset Beach access, and recreational facilities at Sunset Lake Park and Sunset Beach Road.

The subject property is in a Rural Law Enforcement district and receives law enforcement services from the Clatsop County Sheriff's Department. The Gearhart Rural Fire Protection District encompasses the lot, and includes a fire station about 4.4 miles to the south. A fire hydrant is located on the east side of the Ocean Avenue (Lower Surf Pines Road) right-of-way, immediately adjacent to Tax Lot 300.

Two local hospitals provide emergency medical services, as do a private ambulance service and volunteer fire fighters trained as EMTs. Seaside-Providence Hospital is located about 6.5 miles south, and Columbia Memorial Hospital in Astoria is about eight miles northeast.

Western Oregon Waste provides solid-waste disposal services to Surf Pines. This service can be extended to Tax Lot 300. Water in Surf Pines is provided by the City of Warrenton, which can extend water services to Tax Lot 300. Wastewater in the Surf Pines area is managed through individual septic tanks and drainfields.

D. Section 5.412(4): The proposed change will insure that an adequate and safe transportation network exists to support the proposed zoning and will not cause undue traffic congestion or hazards.

An adequate and safe transportation network exists to support the addition of five single-family detached dwellings on the north end of Ocean Avenue (Lower Surf Pines Road). The network includes Lower Surf Pines Road (Ocean Avenue), Malarkey Lane, Upper Surf Pines Road (Manion Drive), Horizon Lane, Lewis Road, Sunset Beach Road, Surf Pines Road, and Highway 101. The proposed change will not cause undue traffic congestion or hazards on Ocean Avenue or on any of the other streets in the road network serving Tax Lot 300.

E. Section 5.412(5): The proposed change will not result in over-intensive use of the land, will give reasonable consideration to the character of the area, and will be compatible with the overall zoning pattern.

The proposed zone designation amendment and LWDUO/Standards amendments will not result in overintensive use of the land, because any subsequent development may result in a maximum of five residences on 10.9 acres (average density = one dwelling per 2.18 acres). This density is comparable to density in Surf Pines on tax maps 7-10-16C and 7-10-16CA. Forty-nine lots, with an average lot size of 1.16 acres, surround the subject property to the south, southeast, and east. Land to the west of Tax Lot 300 is west of the vegetation line established by ORS 390.770, and is not included in calculations of developable land.

The proposed map amendment provides reasonable consideration of the character of the Surf Pines area. Nearly all land in Surf Pines is in the CBR zone. The minimum lot size in this zone is one acre, per LWDUO section 3.248(1). The CBR zone permits the development of single-family dwellings, but additional regulation helps define the character of the neighborhood in which Tax Lot 300 is located. Specifically, the CBR zone exists to “accommodate the immediate foreseeable demand for low density residential development” in Surf Pines. LWDUO § 3-109. The area is committed to low-density rural residential development.

Pending approval of the zone designation amendment, up to five single-family residences on two-acre lots within Tax Lot 300 will be developed in consideration of the character of the Surf Pines neighborhood. The proposed amendment is compatible with the overall zoning pattern in Surf Pines because it simply extends the CBR zone of Surf Pines to include Tax Lot 300.

E. Section 5.412(6): The proposed change gives reasonable consideration to peculiar suitability of the property for particular uses.

Amending the land-use zone designation for Tax Lot 300 gives reasonable consideration to the suitability of the property for particular uses. Similarly, the LWDUO/Standards amendments bring those documents into alignment with Ordinance 02-05, which previously recognized the property’s suitability for residential development. CBR zoning will facilitate the reasonable development of the property for five single-family residential dwellings. Tax Lot 300 is peculiarly suited for this moderate development because the site is large enough (10.9 acres) to accommodate these dwellings in a manner similar to development patterns elsewhere in Surf

Pines. Moreover, Tax Lot 300 has about 1,000 feet of frontage on Ocean Avenue. This is sufficient to accommodate five driveways with adequate separation and sight distance. In addition, the subject property is relatively flat and can be developed without extensive grading or filling.

Dwelling sites on Tax Lot 300 are not in the regulatory floodplain, and the property does not contain any of the natural resource features that conflict with development on other Clatsop Plains lots, such as wetlands or Oregon silverspot butterfly habitat.

Finally, the amended zone designation is compatible with land use on adjacent properties, which are developed with single-family detached dwellings. These dwellings are serviced with water, electricity, cable, telephone, and natural gas, which are also available to Tax Lot 300. The particular suitability of the property for moderate residential development has been thoroughly considered, and the County should find that the proposed zone amendment complies with this required consideration.

F. Section 5.412(7): The proposed change will encourage the most appropriate use of land throughout Clatsop County.

The proposed amendments will allow the development of up to five dwellings on Tax Lot 300. This development encourages appropriate land use throughout the County because the proposal will not affect the County's stated goal of conserving forest land nor will it impact agricultural land. Amending the LWDUO/Standards documents and modifying the zone designation of Tax Lot 300 to CBR will not require extending utilities or roads into presently unserved areas. Instead, any future development of the property will rely on existing infrastructure, supporting the County's policy of avoiding development in areas lacking utilities or adequate transportation networks.

G. Section 5.412(8): The proposed change will not be detrimental to the health, safety and general welfare of Clatsop County.

The proposed amendments are not anticipated to have any detrimental effect on the health, safety, or general welfare of Clatsop County. The risk of waterborne disease will be minimized by relying on DEQ-approved individual wastewater disposal systems and by using treated water from the City of Warrenton. Traffic safety risks will be minimized by building driveways to County standards, providing adequate separation between driveways, and locating driveways where site distances are adequate. These requirements can be met on Lower Surf Pines Road and Tax Lot 300.

V. CONCLUSION

The proposed land-use zone designation and LWDUO/Standards amendments meet each of the criteria outlined in section 5.412 of the County Land and Water Development and Use Ordinance. Modifying the CBR zone to include Tax Lot 300 will facilitate a reasonable use of this property, which has been determined and established through Ordinance No. 02-05 to be located outside the Active Dune Area and thus suitable for development, complementing the existing Surf Pines area. By using existing transportation and utility services and restricting development to five single-family dwellings, subsequent development will comply with all aspects of the County's Comprehensive Plan and the Statewide Planning Goals. The additional proposed amendments incorporate Ordinance 02-05 into the County's zoning and development documents to ensure consistency across the County's Planning materials. As demonstrated, all of the proposed amendments are consistent with the Comprehensive Plan, the Statewide Planning Goals, and the criteria set forth in LWDUO Section 5.412.

ORDINANCE #06-02

Exhibit 1

Previous Staff Reports

- ▶ **January 12, 2006**
- ▶ **December 6, 2005 w/
December 13, 2005 Addendum**
- ▶ **October 12, 2005**
- ▶ **August 1, 2005 (supplemental)**
 - ▶ **July 12, 2005**

NOTE: Review Ordinance #06-02 in its entirety to examine exhibits (i.e., findings, written comments, minutes, etc.) that are referenced in the respective staff reports.

**Charlton/Big Bears LLC
Comprehensive Plan/Zoning Map
Amendment**

February 22, 2006



STAFF REPORT

Date: January 12, 2006

Applicant: Richard Charlton
855 SW Spring Lane
Portland, OR 97225

Owner: Big Bears LLC
855 SW Spring Lane
Portland, OR 97225

Requests: Comprehensive Plan/Zoning Map Amendment to Change the Current Zoning of OPR (Open Space, Parks, and Recreation) to CBR (Coastal Beach Residential) and to Change the Current Plan Designation of Conservation – Other Resources to Rural Lands for a Portion of the Subject Property

Hearing Date: January 25, 2006

Hearing Body: Board of Commissioners

Subject Property: A portion of T7N, R10W, Section 16C, Tax Lot 300 described in Exhibit A, Tab 12

Acres: 8.8

Location: Between the Pacific Ocean beach and the west side of Lower Surf Pines Road/Ocean Road in the area of Clatsop County commonly known as the Surf Pines Development.

Current Zoning: OPR & CBR

Proposed Zoning: CBR

Current Comprehensive Plan Designation: Conservation-Other Resources & Rural Lands

Proposed Comprehensive Plan Designation: Rural Lands

Overlay Districts: BDO – Beach and Dune Overlay (entire property)
FHO – Flood Hazard Overlay (western edge of property)
SO – Shoreland Overlay (western edge of property)

Exhibits:

A – Planning Commission Resolution and Order dated December 13, 2005 and Applicant's Proposed Findings of Fact and Conclusions of Law as modified by the Planning Commission

1 – Previous Staff Reports: October 12, 2005 (including the Board of Commissioners Remand Order); July 12, 2005 and August 9, 2005 (including the Planning Commission Resolution and Order).

2 – Minutes from the October 12, 2005 Board of Commissioners Meeting and the July 12, 2005 and August 9, 2005 Planning Commission Public Hearing;

3 – Written Comments Received

4 - Minutes from the December 13, 2005 Planning Commission public hearing.

Background:

Application Timeline:

DATE	ACTION
April 29, 2005	Application received.
May 9, 2005	Application deemed complete.
July 12, 2005	Planning Commission public hearing.
August 9, 2005	Planning Commission public hearing (continued from 7/12/05).
October 12, 2005	Board of Commissioners remand.
December 13, 2005	Planning Commission public hearing.
January 25, 2006	Board of Commissioners public hearing.

Synopsis:

On October 12, 2005 the Board of Commissioners remanded the application to the Planning Commission with the following instructions:

- Re-open the hearing for receipt of additional information from the parties.
- Assure that the record is complete.
- Assure that all maps in the record, including maps depicting dune boundary lines, are clear and accurate with adopted locations of such boundaries.

As a function of the Board's remand order (attached, Exhibit 1), the applicant submitted new application materials to the County on December 1, 2005. The new materials included improved (color) maps, enhanced drawings, and more detailed findings of fact and evidence to support the comprehensive plan/zoning map amendment request. These articles, updated on December 13, 2005 to reflect the Planning Commission's decision, are attached hereto as Exhibit A.

Application Description:

Please refer to the Applicant's December 13, 2005 Proposed Findings of Fact and Conclusions of Law as modified by the Planning Commission (Exhibit A). Note that the Planning Commission's modifications are highlighted using ~~strike-throughs~~ (deletions) and underlines (additions).

According to the official Clatsop County combined Comprehensive Plan/Zoning Map, the subject property is split-zoned with approximately 8.8 acres located in the OPR Zone and approximately 2.1 acres located in the CBR Zone. The portion of the subject property zoned OPR corresponds to the Conservation-Other Resources plan designation. The remainder of the property (zoned CBR) corresponds to the Rural Lands plan designation. Tab 12 of Exhibit A contains four, color, 11"x17" maps that accurately depict the current and proposed zoning for the subject property along with the current and proposed comprehensive plan designations.

The applicant requests an amendment to the Clatsop County Comprehensive Plan/Zoning Map that would place the entire subject property in the CBR zoning district with the Rural Lands comprehensive plan designation.

The timeline above provides an overview of the application's status. Previous Staff Reports compiled for the July 12, 2005, August 9, 2005, and December 13, 2005 Planning Commission meetings, and the October 12, 2005 Board of Commissioners meeting, contain extensive background details for this land use matter. The four staff reports, together with the respective Resolution and Orders previously adopted by the Planning Commission and Board of Commissioners for this matter, are incorporated into these land use proceedings as part of Exhibit A.

Physical Characteristics of the Subject Property:

The subject property (APN: 7-10-16C-300) is generally rectangular in shape and contains 10.9 acres. The property is located between the beach of the Pacific Ocean and the west side of Lower Surf Pines Road at the north end of the Surf Pines Development. The land is flat and consists of low shrubs and some overgrown noxious vegetation. The subject property abuts an 8.23-acre parcel to the west that extends to the ocean beach. The applicant owns this abutting lot.

Neighborhood Characteristics:

North: Properties to the north of the subject property are zoned OPR (Open Space, Parks, and Recreation), RA-5 (Rural-Agricultural 5), and RA-1 (Rural-Agricultural 1). The OPR and RA-5 lands are currently undeveloped. The RA-1 lands are developed with single-family residences.

South: Properties to the south of the subject property are zoned CBR (Coastal Beach Residential) and are developed with single-family residences.

East: Properties to the east of the subject property are zoned SFR-1 (Single-Family Residential-1) and are developed with single-family residences.

West: The Pacific Ocean and beaches lie to the west of the subject property. These lands are zoned OPR (Open Space, Parks, and Recreation).

Access and Utilities:

The subject property is accessed via Lower Surf Pines Road, a privately-maintained, public road. Potable water would be provided by the City of Warrenton. Provisions for sanitary sewer would be provided by DEC-permitted private on-site sewage disposal systems.

APPLICABLE REVIEW CODES AND POLICIES:

Comprehensive plan/zoning map amendments shall comply with the following criteria of Section 5.412 of the Clatsop County Land and Water Use and Development Ordinance (LWDUO):

The governing body shall approve a non-legislative zone designation change if it finds compliance with Section 1.040, and all of the following criteria:

- (1) The proposed change is consistent with the policies of the Clatsop County Comprehensive Plan.
- (2) The proposed change is consistent with the statewide planning goals (ORS 197).
- (3) The property in the affected area will be provided with adequate public facilities and services including, but not limited to:
 - (A) Parks, schools and recreational facilities
 - (B) Police and fire protection and emergency medical service
 - (C) Solid waste collection
 - (D) Water and wastewater facilities
- (4) The proposed change will insure that an adequate and safe transportation network exists to support the proposed zoning and will not cause undue traffic congestion or hazards.
- (5) The proposed change will not result in over-intensive use of the land, will give reasonable consideration to the character of the area, and will be compatible with the overall zoning pattern.
- (6) The proposed change gives reasonable consideration to peculiar suitability of the property for particular uses.
- (7) The proposed change will encourage the most appropriate use of land throughout Clatsop County.
- (8) The proposed change will not be detrimental to the health, safety and general welfare of Clatsop County.

Pursuant to the Board of Commissioner's October 12, 2005 remand of this matter to the Planning Commission, the applicant provided new Proposed Findings and Conclusions and Supporting Information and Evidence to the County on December 1, 2005. On December 13, 2005 the Planning Commission conducted a public hearing and adopted the applicant's proposed findings, with modifications, and forwarded a recommendation to approve the request to the Board of Commissioners.

The Planning Commission's recommendation to the Board of Commissioners is attached to this report as Exhibit A.

A summary of the Planning Commission's modifications to the applicant's proposed findings (Exhibit A) is as follows:

- Clarify that the subject property is currently split-zoned (OPR & CBR) and not already zoned CBR (Exhibit A, Tab 1, pg. 1);
- Remove the proposed text amendments to the County Land and Water Development and Use Ordinance (Exhibit A, Tab 1, pg.'s 2-3, 21-22);
- Strike reference(s) to the words "random" or "randomly" when describing the establishment of zoning districts in the County (Exhibit A, Tab 1, pg. 4);
- Strike reference(s) that depict the subject property as being "within the confines of" a fully developed neighborhood, and replace with, "adjacent to" (Exhibit A, Tab 1, pg. 8); and,
- Reposition the location of the Construction Setback Line (aka, West Building Line) on the Big Bears LLC Amendment Plat Map to coincide with the line location as shown on the December 13, 2005 Community Development Department map (Exhibit B-i of the December 13, 2005 Planning Commission Resolution and Order) (Exhibit A, Tab 11).

The Applicant's Proposed Findings of Fact and Conclusions of Law as Modified by the Planning Commission (dated December 13, 2005) are attached to this report as Exhibit A.

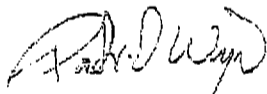
Minutes from the December 13, 2005 Planning Commission meeting are attached as Exhibit 4. Minutes from the preceding Planning Commission public hearing (July 12 – August 9, 2005) and the Board of Commissioners meeting (October 12, 2005) are attached as Exhibit 2.

Written testimony received for this matter is attached as Exhibit 3.

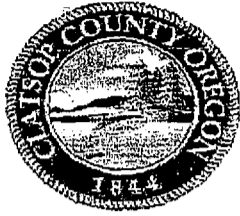
Conclusion:

The Applicant's Proposed December 13, 2005 Findings of Fact and Conclusions of Law as Modified by the Planning Commission (Exhibit A) demonstrate that the comprehensive plan/zoning map amendment application meets the applicable review criteria, LWDUO § 5.412, for approval.

Respectfully submitted,



Patrick Wingard AICP
Community Development Supervisor
January 12, 2006



STAFF REPORT

Date: December 6, 2005

Applicant: Richard Charlton
855 SW Spring Lane
Portland, OR 97225

Owner: Big Bears LLC
855 SW Spring Lane
Portland, OR 97225

Requests: Comprehensive Plan/Zoning Map Amendment to Change the Current Zoning of OPR (Open Space, Parks, and Recreation) to CBR (Coastal Beach Residential) and to Change the Current Plan Designation of Conservation – Other Resources to Rural Lands for a Portion of the Subject Property,

-and-

Text Amendments to Section 4.052 of the County's Land and Water Development and Use Ordinance (LWDUO) and Section S3.015 of the County's Standards Document (part of the LWDUO).

Hearing Date: December 13, 2005

Hearing Body: Planning Commission

Subject Property: T7N, R10W, Section 16C, Tax Lot 300

Acres: 10.9

Location: Between the Pacific Ocean beach and the west side of Lower Surf Pines Road/Ocean Road in the area of Clatsop County commonly known as the Surf Pines Development.

Current Zoning: OPR & CBR

Proposed Zoning: CBR

Current Comprehensive Plan Designation: Conservation-Other Resources & Rural Lands

Proposed Comprehensive Plan Designation: Rural Lands

Overlay Districts: BDO – Beach and Dune Overlay (entire property)
FHO – Flood Hazard Overlay (western edge of property)
SO – Shoreland Overlay (western edge of property)

Exhibits: A – Comprehensive Plan/Zoning Map Amendment Application including the Applicant's December 1, 2005 Hearing Packet: Proposed Findings and Conclusions and Supporting Information and Evidence.

1 – Previous Staff Reports: October 12, 2005 (including the Board of Commissioners Resolution and Order); July 12, 2005 and August 9, 2005 (including the Planning Commission Resolution and Order).

2 – Minutes from the October 12, 2005 Board of Commissioners meeting and the July 12, 2005 and August 9, 2005 Planning Commission public hearing.

3 – Written testimony received at (or prior to) the Planning Commission July 12, 2005 and August 9, 2005 public hearings and the Board of Commissioners October 12, 2005 meeting.

Background:

Application Timeline:

DATE	ACTION
April 29, 2005	Application received.
May 9, 2005	Application deemed complete.
July 12, 2005	Planning Commission public hearing.
August 9, 2005	Planning Commission public hearing (continued from 7/12/05).
October 12, 2005	Board of Commissioners remand.
December 13, 2005	Planning Commission public hearing (remand from BOC).

On October 12, 2005 the Board of Commissioners remanded the application to the Planning Commission with the following instructions:

- Re-open the hearing for receipt of additional information from the parties.
- Assure that the record is complete.
- Assure that all maps in the record, including maps depicting dune boundary lines, are clear and accurate with adopted locations of such boundaries.

The Board of Commissioners Resolution and Order for the remand is included in the attached Exhibit 1.

Application Description:

Please refer to the applicant's Hearing Packet, Exhibit A. According to the official Clatsop County combined Comprehensive Plan/Zoning Map, the subject property is split-zoned with approximately 8.8 acres located in the OPR Zone and approximately 2.1 acres located in the CBR Zone. The portion of the subject property zoned OPR corresponds to the Conservation-Other Resources plan designation. The remainder of the property (zoned CBR) corresponds to the Rural Lands plan designation. Exhibit 1, Section 12 contains four, color, 11"x17" maps that accurately depict the current and proposed zoning for the subject property along with the current and proposed comprehensive plan designations.

The applicant requests an amendment to the Clatsop County Comprehensive Plan/Zoning Map that would place the entire subject property in the CBR zoning district with the Rural Lands comprehensive plan designation.

The above timeline above provides an overview of the application's status. Previous Staff Reports and Findings compiled for the July 12, 2005 and August 9, 2005 Planning Commission meetings and the October 12, 2005 Board of Commissioners meeting contain extensive background details for this land use matter. The three Staff Reports, together with the respective Resolution and Orders that were previously adopted by the Planning Commission and Board of Commissioners, are attached to this report as Exhibit 1. For brevity, the attached reports do not include all documents and materials that constitute the official record for this land use matter. Please refer to the Community Development Department files for copies of referenced materials, oversized exhibits, etc..

Physical Characteristics:

The subject property (APN: 7-10-16C-300) is generally rectangular in shape and contains 10.9 acres. The property is located between the beach of the Pacific Ocean and the west side of Lower Surf Pines Road at the north end of the Surf Pines Development. The land is flat and consists of low shrubs and some overgrown noxious vegetation. The subject property abuts an 8.23-acre parcel to the west that extends to the ocean beach. The applicant owns this abutting lot.

Neighborhood Characteristics:

North: Properties to the north of the subject property are zoned OPR (Open Space, Parks, and Recreation), RA-5 (Rural-Agricultural 5), and RA-1 (Rural-Agricultural 1). The OPR and RA-5 lands are currently undeveloped. The RA-1 lands are developed with single-family residences.

South: Properties to the south of the subject property are zoned CBR (Coastal Beach Residential) and are developed with single-family residences.

East: Properties to the east of the subject property are zoned SFR-1 (Single-Family Residential-1) and are developed with single-family residences.

West: The Pacific Ocean and beaches lie to the west of the subject property. These lands are zoned OPR (Open Space, Parks, and Recreation).

Access and Utilities:

The subject property is accessed via Lower Surf Pines Road, a privately-maintained, public road. Potable water would be provided by the City of Warrenton. Provisions for sanitary sewer would be provided by DEQ-permitted private on-site sewage disposal systems.

i. APPLICABLE REVIEW CODES AND POLICIES:

Comprehensive plan/zoning map amendments shall comply with the following criteria of Section 5.412 of the Clatsop County Land and Water Use and Development Ordinance (LWDUO):

The governing body shall approve a non-legislative zone designation change if it finds compliance with Section 1.040, and all of the following criteria:

- (1) The proposed change is consistent with the policies of the Clatsop County Comprehensive Plan.
- (2) The proposed change is consistent with the statewide planning goals (ORS 197).
- (3) The property in the affected area will be provided with adequate public facilities and services including, but not limited to:
 - (A) Parks, schools and recreational facilities
 - (B) Police and fire protection and emergency medical service
 - (C) Solid waste collection
 - (D) Water and wastewater facilities
- (4) The proposed change will insure that an adequate and safe transportation network exists to support the proposed zoning and will not cause undue traffic congestion or hazards.
- (5) The proposed change will not result in over-intensive use of the land, will give reasonable consideration to the character of the area, and will be compatible with the overall zoning pattern.
- (6) The proposed change gives reasonable consideration to peculiar suitability of the property for particular uses.
- (7) The proposed change will encourage the most appropriate use of land throughout Clatsop County.
- (8) The proposed change will not be detrimental to the health, safety and general welfare of Clatsop County.

Pursuant to the Board of Commissioner's October 12, 2005 remand of this matter to the Planning Commission, the applicant provided new Proposed Findings and Conclusions and Supporting Information and Evidence (dated December 1, 2005; attached, Exhibit A) for this matter.

Finding #1:

Except as provided in Finding #2, this Report, together with the previous Staff Reports and Findings provided to the Planning Commission and Board of Commissioners (attached, Exhibit 1), confirm that the comprehensive plan/zoning map amendment application meets the above applicable review criteria for approval. The following documents are incorporated into this Finding by this reference:

- Applicant's new Proposed Findings and Conclusions and Supporting Information and Evidence (dated December 1, 2005; attached, Exhibit 1); and,
- Staff Reports for the July 12, 2005 and August 9, 2005 Planning Commission public hearings and the October 12, 2005 Board of Commissioners public hearing.

Finding #2:

The proposed text amendments to LWDUO § 4.052 and LWDUO Standards Document § S3.015 are not needed. Current language in the County land use code render the proposed amendments redundant and unnecessary. The adoption of County Ordinance No.'s 02-05 and 03-08 establish the active dune line and the corresponding oceanfront and construction setback lines (aka, "build line") for the subject property. The applicant's December 1, 2005 Findings, Conclusions, and Supporting Information and Evidence (attached, Exhibit A) confirm the application's consistency with the parameters of the two previously adopted County Ordinances. Approval of the request shall include the proposed amendments to the comprehensive plan/zoning map but shall not include the requested text amendments.

II. RECOMMENDATION TO PLANNING COMMISSION:


Recommend approval of the application to the Board of Commissioners for the proposed comprehensive plan/zoning map amendments but not for the requested text amendments, adopting the findings of fact of this report.

Respectfully submitted,

Patrick Wingard AICP
Community Development Supervisor
December 5, 2005

CLATSOP COUNTY
COMMUNITY DEVELOPMENT DEPARTMENT

MEMORANDUM

TO: Planning Commission
FROM: Patrick Wingard, Supervisor 
DATE: December 13, 2005

RE: Addendum to December 6, 2005 Staff Report (Big Bears LLC
Comprehensive Plan Map and Zoning Map Amendments)

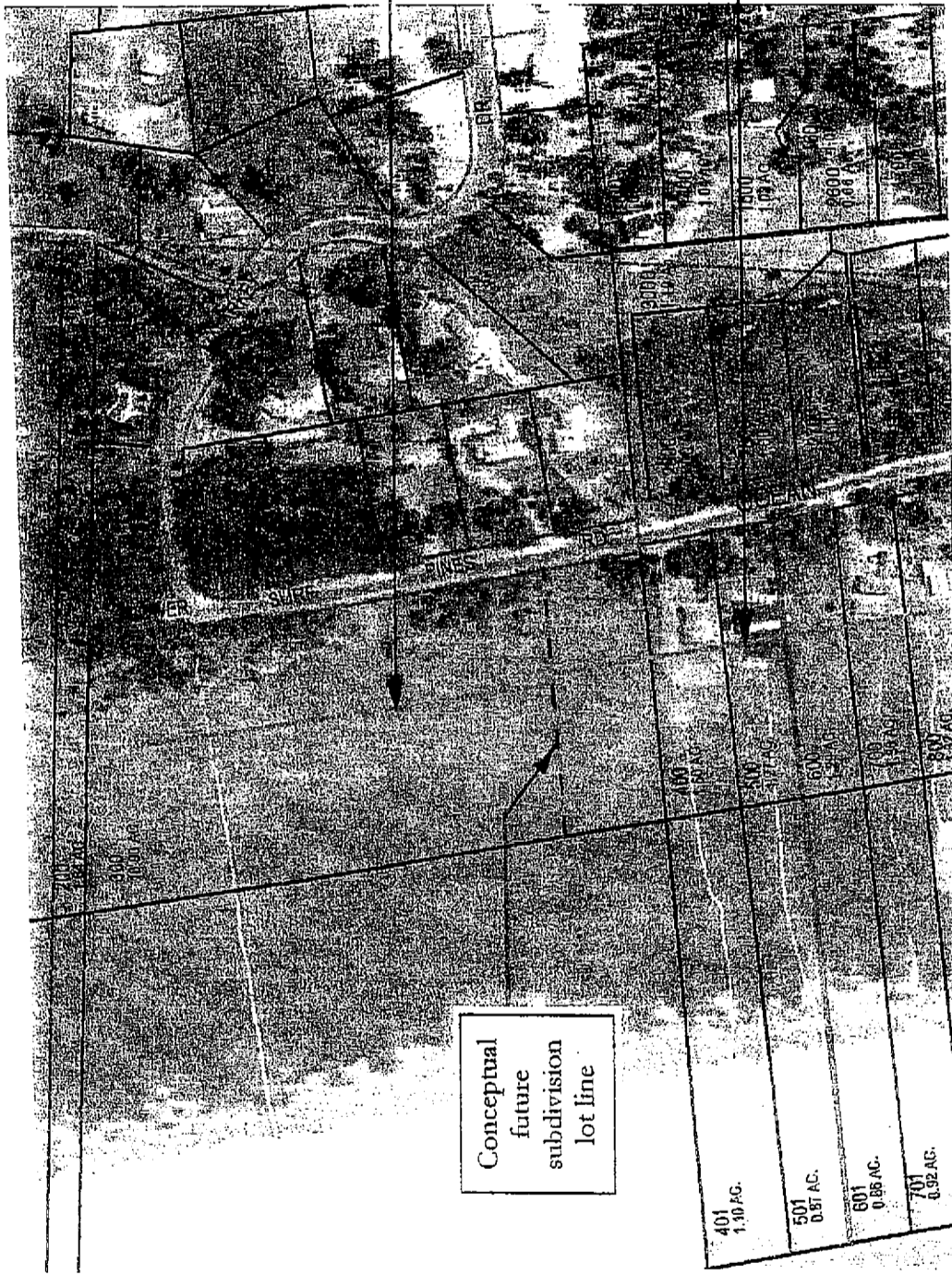
Review of new materials and continued research of County documents results in the following amendments to the December 6, 2005 Staff Report:

- The County does not concur with the applicant in its Proposed Findings (Tab 1, pg. 1, et. al) that the Clatsop County Land and Water Development and Use Ordinance (LWDUO) identifies the entire subject property as being zoned CBR. The subject property is currently split-zoned (CBR & OPR), as correctly referenced in the December 6, 2005 Staff Report, and as indicated in the maps that are attached as part of the Applicant's Proposed Findings (Tab 12, Sheet 4). Finding #1 of the Staff Report shall be amended to reflect this change.
- The Findings and Recommendation of the December 6, 2005 Staff Report exclude two sets of text amendments proposed by the applicant. If approved per the findings and recommendation, this comprehensive plan map and zoning map amendment application would not affect the location of the Construction Setback Line across the subject property. The location of this line has already been established by means of County Ordinance No. 02-5 (adopts the Horning GeoSciences Report) and County Ordinance No. 03-8 (adopts the Beaches and Dunes Overlay zoning district and Construction Setback Line).
- The correct location for the Construction Setback Line across the subject property, as it would apply to future construction on the subject property, is illustrated on the attached 'December 13, 2005 Construction Setback Line Map'. The County excludes the applicant's Plat Map (Tab 11 of the Applicant's Proposed Findings) that does not depict an accurate location for the 'West Building Line' (also known as the Construction Setback Line) across the subject property. Finding #1 of the Staff Report shall be amended to reflect this change.

Thank you.

Construction Setback Line Map
 Big Bears LLC Comp. Plan/Zone Map Amend.
 December 13, 2005

- ILS
- PLS
- PLS Townships
- Trce Lot Arrows
- Trce Map
- Water Body
- River
- Creek
- Parcel Boundary
- Supplemental Boundary
- 34
- DIC
- Road R.O.W
- RR R.O.W

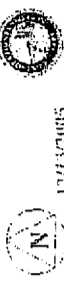
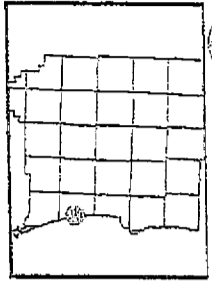


Conceptual
 future
 subdivision
 lot line

401
 1.10 AC.
 501
 0.87 AC.
 601
 0.88 AC.
 701
 0.92 AC.

Construction
 setback line
 per LWDO §
 S3.015(5)(C) &
 Ord.'s 02-5 & 03-8

Construction
 setback line
 per LWDO
 § S3.015(5)(B)



1 in. = 300 ft.

This map was prepared using the Clatsop County GIS data. The GIS data is provided by the county to support its governmental activities. The county is not responsible for map errors, omissions, misuses or misinterpretation.

**Board of Commissioners
Clatsop County**

AGENDA ITEM SUMMARY

Issue/Agenda Title: Big Bears LLC/Charlton Comprehensive Plan/Zoning Map and Text Amendment and Comprehensive Plan designation change.

Category: Ordinances

Meeting Date: October 12, 2005

Prepared By: K. Sellman **Department Head OK:** **CA OK:**

To Be Presented By: Kathleen Sellman, Community Development Director

Issue Before the Commission: Request that the Board consider the findings, hold a public hearing, and adopt the ordinance known as Big Bears LLC/Charlton Comprehensive Plan/Zoning Map and Text Amendment and Comprehensive Plan designation amendment on second reading.

Informational Summary: The applicants, Big Bears LLC/Richard Charlton, are seeking a quasi-judicial Comprehensive Plan/Zoning Map Amendment to amend the zoning of a parcel from OPR (Open Space Parks and Recreation) to CBR (Coastal Beach Residential) on a 10.9-acre parcel in Surf Pines. The applicant is also requesting a Comprehensive Plan designation change from Conservation Other Resources to Rural Lands.

The subject 10.9 acres of land is located between the beaches of the Pacific Ocean and Lower Surf Pines Road at the most northerly end of Surf Pines Development. The parcel is currently split-zoned, consisting of 8.8 acres in the OPR zone and 2.1 acres in the CBR Zone, according to the maps submitted by the applicant. The proposed map amendments will extend the CBR zoning to include the entire 10.9 acre parcel and modify the Comprehensive Plan/Zoning Map to locate all of Tax Lot 300 within the Comprehensive Plan's Rural Land designation. No comprehensive plan text amendment is required in conjunction with the map amendments.

Background: In 2003 (January 11, 2003) Clatsop County passed Ordinance No. 02-05, entitled the "Charlton Active Dune Line Comprehensive Plan Text Amendment", which established that portions of map 7-10-16C, Tax Lot 300 no longer were located in the Active Dune Area. The ordinance adopted the Horning Study (dated September 22, 1998) and reinforced Ordinance No. 83-17, which previously established the Surf Pines Construction setback line to include Tax Lot 300. To align the Clatsop County Land and Water Development and Use Ordinance (LWDUO) and the Comprehensive Plan/Zoning Map with Ordinance No. 02-05 and facilitate development of Tax Lot 300, amendments are required to the LWDUO and County Standards documents and to the Comprehensive Plan/Zoning Map

Neighbors testified in opposition, stating they were told when they purchased their properties that the subject property would not be developed. The OPR zoning on the subject land is not committed open space related to a cluster development, according to County records. This request follows County Ordinance 02-05, the Charlton Active Dune Comprehensive Plan Text amendment that established that portions of the subject property are not in the Active Dune construction area and adopted the 1998 Horning Study.

Some inconsistencies in previously mapped zoning lines emerged during review. While disconcerting, the old lines are relevant only should this amendment be denied. New scientific evidence is the basis for the application and will determine new zone district boundaries.

The County Planning Commission held a public hearing on July 12, 2005 and August 9, 2005 and unanimously voted to recommend approval of this request.

Other Alternatives Considered: Deny the request.

Fiscal Notes: No fiscal impact.

County's mission: Neighbor to neighbor serving Clatsop County with integrity, honesty, and respect.

Attachment List: Ordinance 05-09 and Exhibit "A" (Planning Commission Resolution and Order dated August 9, 2005, staff report, written comments received and Planning Commission minutes.

Staff Recommendation: Adopt the proposed ordinance known as the Big Bears LLC/Charlton Comprehensive Plan/Zoning Map and Text Amendment and Comprehensive Plan designation amendment.

BEFORE THE BOARD OF COMMISSIONERS
OF CLATSOP COUNTY, OREGON

IN THE MATTER OF THE COMPREHENSIVE
PLAN CHANGE PROPOSAL OF BIG BEAR
LLC/CHARLTON


RESOLUTION AND ORDER
NO. _____

Be it Resolved, that this matter be remanded to the Clatsop County Planning Commission, pursuant to Sections 2.095 and 2.260 of the Clatsop County Land and Water Development and Use Ordinance, with the following instructions:

- a. Re-open the hearing and record for receipt of additional information from the parties.
- b. Assure that the record to be forwarded to the Planning Commission and the Board of Commissioners is complete.
- c. Assure that all maps in the record, including maps depicting dune boundary lines, are clear and accurate and consistent with adopted locations of such boundaries.

So ORDERED this 12th day of October, 2005.

BOARD OF COMMISSIONERS FOR
CLATSOP COUNTY, OREGON


Richard H. Lee, Board Chair

Attest:

RESOLUTION AND ORDER NO. _____

SUPPLEMENTAL STAFF REPORT

Comprehensive/Zoning Map
and Text Amendments

Date: August 1, 2005

Applicant: Richard Charlton
855 SW Spring Lane
Portland, OR 97225

Property Owner: Big Bears LLC
855 SW Spring Lane
Portland, OR 97225

Address/General Location: Lower Surf Pines Road - Surf Pines

Legal Description: T7N R10 Section 16C Tax Lot 300

(NOTE: The applicant also owns abutting property to the west, legally described as Tax Lot 302; However, Tax Lot 302 is not part of the amendment request.)

Total Acreage of Parcel Subject to Proposed Amendment: 10.9 Acres
(Tax Lot 300)

Request: Comprehensive Plan/zoning Map Amendment to amend the current zoning of Open Space, Parks and Recreation (OPR) to Coastal Beach Residential (CBR) and a Comprehensive Plan Designation Amendment from Conservation-Other Resources to Rural Lands on a portion of Tax Lot 300.

The request also includes text amendments to Section 4.052 of the County's Land and Water Development and Use Ordinance (LWDUO) and Section S3.015 of the County's Standards Document of the LWDUO to reflect the County's adoption of Ordinance No. 02-05 (Effective January 11, 2003), known as the Charlton Active Dune Line Comprehensive Plan Text Amendment.

Current Zone: Open Space, Parks and Recreation (OPR) and Coastal Beach Residential (CBR)

Proposed Zone: Coastal Beach Residential (CBR)

**Current Comprehensive
Plan Designation:** Conservation-Other Resources and Rural Lands

**Proposed Comprehensive
Plan Designation:** Rural Lands

BACKGROUND: On July 12, 2005, the Clatsop County Planning Commission held a public hearing to consider amendments to the Clatsop County Comprehensive/Zoning Map and to the text of the Land and Water, Development and Use Ordinance (LWDUO)/Standards Document.

A Staff Report was prepared and submitted to the Commission for review and consideration, which included a recommendation that the Planning Commission recommend approval of the proposed amendments to the Board of County Commissioners. Public testimony was taken at the meeting, some of which expressed opposition to the proposed map amendments. There was some confusion at the hearing due to differences in the zoning maps for the subject property, specifically the conflict with the boundary of the CBR Zoning versus the OPR Zoning. The GIS mapping available through the County Assessment and Taxation Office depicted just the opposite of the maps submitted by the applicant with regard to the area of each zone. The applicant stated that the information on the maps submitted was taken from what he understood to be the official zoning map on file at the County in the Community Development Department. The Planning Commission asked that Staff review the maps, determine which is correct, area of each zone and provide the additional information to the Planning Commission at a subsequent meeting. There was also discussion on how the existing OPR boundary was originally established, questioning the basis for the location of the line on the applicant's property, which is different than the property immediately to the south. Given the questions on mapping and zone district boundaries, the Commission moved to continue the meeting until August 9, 2005 to allow Staff time to research all reports, data and records available and report back to the Commission with findings.

In response to the Planning Commission request, Staff has researched all records available, which includes both historic and current maps. The following information is provided for Commission review and consideration of the text and map amendments noted above, as continued from the July 12, 2005 public hearing of the Planning Commission.

ADDITIONAL INFORMATION:

Staff consulted with County Counsel in an effort to determine how the initial OPR Boundary was established, on and adjacent to the applicant's property. The background

reports provided for Planning Commission review as part of the original Staff Report (Palmer and Horning reports) was found to be the most complete and accurate information available. It appears from history and reports that the OPR Zone was established based on what was on the ground at the time. At that time Surf Pines was primarily developed, but only south of the applicant's property. The applicant's property is within the north boundary of Surf Pines Development, but was undeveloped and at the time nothing was contemplated.

Unfortunately the County does not have original zoning maps that are unchanged due to zone changes over the years. Maps available show that the Surf Pines area (including the applicant's property) was changed from R-1 to CBR in 1978. This map also does not identify any OPR zoning in 1978 when the zone was changed. Based on discussions with County Counsel, it appears the OPR originated in 1979 or 1980. The designation of the property as OPR Zone was given to area undeveloped at the time, thus the reason for the applicant's property falling within the OPR.

Other areas near Surf Pines, such as Sunset Lake also included some OPR Zoning, but randomly zoned, likely based on parcel size at the time and undeveloped property similar to the applicant's property. The planning at that time was vague and with little thought of future development.

The maps included for Planning Commission review as part of the original Staff Report were intended to reflect the area of OPR and CBR zoning as it currently exists. In looking further into the official zoning maps, it appears that the GIS mapping boundaries shown on those maps are incorrect. The current GIS maps show the CBR Zoned area totals approximately 8.7 acres and the OPR Zoned area 2.3 acres. This is reversed as it actually should be based on the official zoning maps, adopted as part of the LWDUO. The maps provided by the applicant were closer to the actual area of OPR versus CBR. Although we do not have documentation to back up the amount of area of each zone as shown on the original map, it appears that the areas should be reversed. The lines on the GIS mapping will need to be corrected to match the official zoning map on file in the Community Development Office, as originally adopted in 1980 with Ordinance 80-14.

RECOMMENDATION:

From the information available on file and through discussion with County Counsel, it appears that the portion of the applicant's property zoned OPR was done randomly, based on vacant land at the time. There is no documentation to support that this land is to be retained as OPR. The Clatsop County Comprehensive Plan as well as the Land and Water Development and Use Ordinance (LWDUO), provide for amendments to the comprehensive and zoning maps. Amendments shall comply with the criteria outlined in LWDUO S5.412 and requires that you make findings on the criteria. A decision to approve or deny a request for amendments should be based only on the evidence presented at the hearing as it applies to the criteria. This criteria is as follows:

- 1) The proposed change is consistent with the policies of the Clatsop County Comprehensive Plan.
- 2) The proposed change is consistent with the statewide planning goals (ORS 197).
- 3) The property in the affected area will be provided with adequate public facilities and services including, but not limited to:
 - (A) Parks, schools and recreational facilities
 - (B) Police and fire protection and emergency medical service
 - (C) Solid waste collection
 - (D) Water and wastewater facilities
- 4) The proposed change will insure that an adequate and safe transportation network exists to support the proposed zoning and will not cause undue traffic congestion or hazards.
- 5) The proposed change will not result in over-intensive use of the land, will give reasonable consideration to the character of the area, and will be compatible with the overall zoning pattern.
- 6) The proposed change gives reasonable consideration to peculiar suitability of the property for particular uses.
- 7) The proposed change will encourage the most appropriate use of land throughout Clatsop County.
- 8) The proposed change will not be detrimental to the health, safety and general welfare of Clatsop County.

The purpose of both the CBR and OPR are defined in Sections 3.252 (CBR) and Section 3.582 (OPR). The CBR zone specifically refers to the Surf Pines area as an area committed to low density rural residential development. The applicant has future plans to develop the property with single family dwellings on lots no less than two acres in size. Many of the lots in the existing Surf Pines Development are currently less than two acres in size. The OPR Zone is a zone intended to provide for conservation of open space and areas uniquely suited for outdoor recreation. In this case the applicant's property was originally zoned R-1, then changed to CBR, with the intent to allow development of the property. There is adequate open space suitable for recreation to the west of the applicant's property, consistent with the remainder of the property is this area.

The amendments in 2003 removing Tax Lot 300 is consistent with the intent of the original zoning boundaries. The comprehensive plan and LWDUO establish the criteria for amending zone designations, and further state that decisions to amend zoning should be based on new scientific data, which is consistent with the applicant's proposed amendments.

The Staff Report and Findings previously provided for Commission review and consideration presented documentation that the request met the above applicable review criteria for approval. The historic reports and new scientific data provided in the most recent reports support this finding based on the location of the building construction line, which is consistent with the past development patterns to the south. These reports were previously considered for their merit by both the Planning Commission and the Board of County Commissioners at individual public hearings, then adopted by ordinance into the Clatsop County Comprehensive Plan by reference. The amendments presented in this application will provided the clarity and consistency with the previously approved amendments.

Based on the information and documentation available, it is the Staff's determination that the scientific data previously submitted and adopted as part of the Comprehensive Plan and LWDUO supports the proposed amendments to the both the comprehensive and zoning maps, and the amendments to the text of the LWDUO and Standards. The proposed amendments are consistent with the comprehensive plan and Statewide Planning Goals and also meet the criteria for approval as stated in the County's LWDUO/Standards Documents. This is the basis for approval and findings of fact. Staff recommends the Planning Commission approve the amendment request as presented by the applicant based on the Findings of Fact presented at the July 12, 2005 meeting and the Supplemental Staff Report provided above and recommend to the Board of County Commissioners that the request be approved and an ordinance adopted authorizing changes to the map and text of the Code.

July 12, 2005
STAFF REPORT

COMPREHENSIVE PLAN/ZONING MAP AMENDMENT
TEXT AMENDMENT

I. APPLICATION INFORMATION

Applicant: Richard Charlton
855 SW Spring Lane
Portland, OR 97225

Property Owner: Big Bears LLC
855 SW Spring Lane
Portland, OR 97225

Address/General Location: Lower Surf Pines Road - Surf Pines

Legal Description: T7N R10 Section 16C Tax Lot 300

(NOTE: The applicant also owns abutting property to the west, legally described as Tax Lot 302; However, Tax Lot 302 is not part of the amendment request.)

Total Acreage of Parcel Subject to Proposed Amendment: 10.9 Acres (Tax Lot 300)

Request: Comprehensive Plan/zoning Map Amendment to amend the current zoning of Open Space, Parks and Recreation (OPR) to Coastal Beach Residential (CBR) and a Comprehensive Plan Designation Amendment from Conservation-Other Resources to Rural Lands on a portion of Tax Lot 300.

The request also includes text amendments to Section 4.052 of the County's Land and Water Development and Use Ordinance (LWDUO) and Section S3.015 of the County's Standards Document of the LWDUO to reflect the County's adoption of Ordinance No. 02-05 (Effective January 11, 2003), known as the Charlton Active Dune Line Comprehensive Plan Text Amendment.

Current Zone: Open Space, Parks and Recreation (OPR) and Coastal Beach Residential (CBR)

Proposed Zone: Coastal Beach Residential (CBR)

Current Comprehensive

Plan Designation: Conservation-Other Resources and Rural Lands

Proposed Comprehensive

Plan Designation: Rural Lands

Hearing Date: July 12, 2005

Physical Characteristics: The applicant's property consists of a parcel of land located between the beach of the Pacific Ocean and the west side of Lower Surf Pines Road at the north end of Surf Pines Development (Tax Lot 300). Tax Lot 300 is currently split zoned, with 8.8 acres located in the OPR Zone and the remaining 2.1 acres in the CBR zone, as shown on the maps submitted with the application for amendment by the applicant. The land is flat and consists of low shrubs and some overgrown noxious vegetation and abuts another 8.23 acre parcel on the west, also owned by the applicant. The applicant's property, consisting of the two large parcels, extends to the ocean beach.

Neighborhood Characteristics:

North: The property to the north is currently undeveloped land, lying with the OPR and Rural-Agriculture 5 (RA-5) zoned land and a comprehensive plan designation of Rural Lands. There is also some Lake and Wetland Zones on the property to the north.

South: The property to the south is currently developed with single family residences, lots which are zoned Coastal Beach Residential (CBR) with a comprehensive plan designation of Rural Lands.

East: The property to the east of the subject site, across Surf Pines Road, is developed with single family dwellings and zoned Single-Family Residential 1 (SFR-1) with a comprehensive plan designation of Rural Lands.

West: To the west is the Pacific Ocean and beaches with an OPR zone designation.

Access and Utilities:

The subject site is currently accessed from Lower Surf Pines Road. No subdivision has been approved for the redevelopment of the property, however, it is assumed all future lots will front and take access off Lower Surf Pines Road. Water is provided through the City of Warrenton. Each individual lot will have private sewage disposal systems in conjunction with the residential development of the lots. Lower Surf Pines Road is currently a public paved roadway, maintained by the property owners.

II. BACKGROUND AND DESCRIPTION

- A. Project Description: The subject property consists of 10.9 acres of land located between the beaches of the Pacific Ocean and Lower Surf Pines Road at the most northerly end of Surf Pines Development. The parcel is currently split-zoned, consisting of 8.8 acres in the OPR zone and 2.1 acres in the CBR Zone, according to the maps submitted by the applicant. The proposed map amendments will extend the CBR zoning to include the entire 10.9 acre parcel and modify the Comprehensive Plan/Zoning Map to locate all of Tax Lot 300 within the Comprehensive Plan's Rural Land designation. There is no

comprehensive plan text amendment required in conjunction with the map amendments.

B. Background: In 2003 (January 11, 2003) Clatsop County passed Ordinance No. 02-05, entitled the Charlton Active Dune Line Comprehensive Plan Text Amendment, which established that portions of map 7-10-16C, Tax Lot 300 was no longer located in the Active Dune Area. The ordinance adopted the Horning Study (dated September 22, 1998) and reinforced Ordinance No. 83-17, which previously established the Surf Pine Construction setback line to include Tax Lot 300. To align the Clatsop County Land and Water Development and Use Ordinance (LWDUO) and the Comprehensive Plan/Zoning Map with Ordinance No. 02-05 and facilitate development of Tax Lot 300, amendments are required to the LWDUO and County Standards documents and to the Comprehensive Plan/Zoning Map, to include the following:

- *An amendment to Section 4.052 of the LWDUO;*
- *An amendment to Section S3.015 of the County Standards Document;*
- *An amendment to the Comprehensive Plan designation of Tax Lot 300 from Conservation-Other Resources to Rural Lands, by amending the Comprehensive Plan/zoning Map, and;*
- *An amendment to the land-use zone designation of Tax Lot 300 from Open Space, Parks Recreation zone (OPR) to Coastal Beach Residential zone (CBR).*

III. APPLICABLE LAND USE AND COMPREHENSIVE PLAN CRITERIA

CLATSOP COUNTY COMPREHENSIVE PLAN:

The following goals and policies of the Clatsop County Comprehensive Plan apply to this request:

- Goal 1 - Citizen Involvement*
- Goal 2 - Land Use*
- Goal 6 - Air, Water and Land Quality*
- Goal 7 - Natural Hazards*
- Goal 10 - Population and Housing*
- Goal 11 - Public Facilities and Services*
- Goal 12 - Transportation*
- Goal 13 - Energy Conservation*
- Goal 14 - Urbanization*
- Goal 18 - Beaches and Dunes*

Clatsop Plains Community Plan

CLATSOP COUNTY LAND AND WATER DEVELOPMENT AND USE ORDINANCE (LWDUO):

The following LWDUO Sections apply to this request:

Section 3.240 Coastal Beach Residential Zone (CBR)

Section 3.242. Purpose.

The CBR zone is intended to accommodate the immediate foreseeable demand for low density residential development in the area commonly known as Surf Pines. Surf Pines covers an area of approximately 1-1/2 square miles and is located south of the community of Sunset Beach and west of Neacoxie Lake and Creek. Surf Pines is an area committed to low density rural residential development. This zone is a Goal 14 exceptions area.

Section 3.244. Development and Use Permitted.

The following uses and their accessory uses are permitted under a permit procedure subject to the applicable development standards.

- One family dwelling.
- Accessory uses as follows:
 - In conjunction with, or following the permitting or lawful establishment of the primary use on the same lot or parcel to include, but not limited to detached garages, storage buildings, or other non-agricultural farm uses.
- Limited home occupation.
- Public or private neighborhood park or playground.
- Utilities, maximum utilization of existing easements and rights-of-way shall be made.
- No sign except for:
 - Temporary "for sale" signs not larger than 260 square inches subject to the provisions of Clatsop County Standards Document, Section S2.300.
 - Political signs subject to the provisions of Clatsop County Standards Document, Section S2.300.
 - Name places subject to the provisions of Clatsop County Standards Document, Section S2.300.
- Handicapped housing facility.
- Cluster development subject to the provisions of Clatsop County Standards Document, Section S3.150-S3.161.
- Low intensity recreation.
- Property line adjustment subject to provisions Section 5.200 – 5.208 and the following:
 - Provided the existing parcel is not reduced below the minimum lot size; and
 - Provided the lot line adjustment is within the same zone.
- Partition subject to provisions of Section 5.200 – 5.208, and provided the existing parcel and new parcel(s) meet the minimum lot size and dimensions.

Section 3.580 - Open Space, Recreation Zone (OPR)

Section 3.582. Purpose.

The OPR zone is intended to provide for the conservation of open space; the protection and development

Section 3.584. Development and Use Permitted. The following developments and their accessory dev

1. Farm use.
2. Forest use.
3. Wildlife refuge or management area.
4. Public regional park or recreation area excluding campgrounds.
5. Historical or archaeological site/area.
6. Golf courses except in areas identified as Coastal Shorelands.
7. R.V. Park subject to Section S3.550-S3.552 except in the Clatsop Plains Planning Area.
8. Other watersheds.
9. Public or private neighborhood park or playground.
10. Golf driving range.
11. Municipally owned watersheds.
12. Accessory development customarily provided in conjunction with the above developments
13. Property line adjustment.
14. Low intensity recreation.

Section 5.412. Zone Change Criteria. The governing body shall approve a non-legislative zone designation change if it finds compliance with Section 1.040, and all of the following criteria:

- 1) *The proposed change is consistent with the policies of the Clatsop County Comprehensive Plan.*

Finding: The proposed changes are consistent with the goals and policies of the Comprehensive Plan due to the fact they align the Comprehensive/Zoning Map, LWDUO/Standards Document with the language of Chapter 18 of the Comprehensive Plan as amended in 2003 by Ordinance No. 02-05, which excludes Tax Lot 300 from the Active Dune area. The change by Ordinance No. 02-05 provides consistency with abutting property to the south.

Ordinance No. 02-05 was approved and adopted with Findings that demonstrated the consistency of the amendment and compliance with the applicable elements of the Comprehensive Plan, which confirms compliance with the Statewide Planning Goals.

There are several comprehensive plan goals and policies that are applicable to this request. The proposed amendments meet the goals and policies, which includes the following specific elements:

Goal 1 - Citizen Involvement

Policy 5. Citizens shall be provided the opportunity to be involved in the phases of the planning process as set forth and defined in the goals and guidelines for Land Use Planning, including preparation of plans, and implementation measures, plan content, plan adoption, minor changes and major revisions in the plan and implementation of measures.

Policy 9. Public notices will also be sent to affected residents concerning zone and comprehensive plan changes, conditional uses, subdivisions and planned developments.

Goal 2 - Land Use

Policy 6. Rural Lands. A diversity of housing options ranging from high density urban environments to low density farm-forest home sites has been a recognized need in Clatsop County since the first comprehensive plan was adopted in 1969. The County has looked to those lands which are built upon and/or irrevocably committed rural areas which generally have some level of public facilities and services, especially surfaced public roads, fire protection and piped water; a pattern of parcels generally smaller than 15 acres; existing residential development at a higher density than one dwelling unit per 10 acres; and, natural boundaries such as creeks and roads, separating the exception areas from adjacent resources lands.

Goal 6 - Air, Water and Land Quality

Policy 13. Any development of land, or change in designation of use of land, shall not occur until it is assured that such change or development complies with applicable State and Federal environmental standards.

Goal 7 - Natural Hazards

Goal - to protect life and property from natural disasters and hazards.

Goal 10 - Population and Housing

Populations Policies.

1. Promote population to locate in established service areas.
2. Utilize current vacant land found between developments or within committed lands.

Housing Policies.

1. Clatsop County shall encourage residential development only in those areas where necessary public facilities and services can be provided and where conflicts with forest and agriculture uses are minimized.
2. Clatsop County shall permit residential development in areas designated when it is demonstrated that:

Water is available

Housing has an approved sewage disposal system

Goal 11 - Public Facilities and Services

Outside Urbanizable Areas.

Support the provision of needed public facilities for rural areas at levels appropriate for rural densities.

Goal 12 - Transportation

- Goal 1. Mobility.
- Goal 2. Livability
- Goal 3. Coordination
- Goal 7. Environment
- Goal 8. System preservation
- Goal 9. Capacity
- Goal 11. Safety

Goal 14 - Urbanization

Goal. Provide an orderly and efficient transition from rural to urban land use.

Goal 18 - Beaches and Dunes

Goal 18 was amended by Ordinance No. 02-05 to provide consistency between the Statewide Planning Goals and the County's Beaches and Dunes Policies.

Clatsop Plains Community Plan

The subject property is regulated under the Clatsop Plains Community Plan, which provides for planned and orderly growth of the Clatsop Plains planning areas which is in keeping with a majority of its citizens and without unduly depriving landowners and/or residents of reasonable use of their land.

2) *The proposed change is consistent with the statewide planning goals (ORS 197).*

Finding: In 2003 the County amended its Comprehensive Plan to remove Tax lot 300 from the Active Dune Overlay Zone. This was done by the adoption of Ordinance No. 02-05, which amended the text of Goal 18. The text amendment was done to provide consistency with the Statewide Planning Goals and the Clatsop County Comprehensive Plan. The proposed amendments comply with the Statewide Planning Goals because they do not modify or compromise any of the Statewide Planning Goals as established in ORS 197.

3) *The property in the affected area will be provided with adequate public facilities and services including, but not limited to:*

- Parks, schools and recreational facilities
- Police and fire protection and emergency medical service
- Solid waste collection

Finding: The proposed amendment meets this requirement. The subject property is in close proximity to State and County parks, which includes Sunset Beach State Park (Also the terminus of the Fort to Sea Trail), Sunset Lane County Park, which are both approximately one miles from the site; Cullaby Lake County Park, which is approximately 1.5 miles from the site; Del Rey Beach State Wayside, which is slightly farther away at approximately 2.7 miles. There is also the ocean beach, just to the west of the property and adjacent dunes, and the recreational areas provided by the Surf Pines Association that provides areas for residents. Sunset Empire Parks and Recreation District is also located in Seaside, approximately six miles from the site, which serves the Seaside/Gearhart Areas.

The property is served by Seaside School District. Gearhart Grade school is to the south and Seaside Middle School and High School to the north. Clatsop Community College also has a Seaside campus, south of the applicant's property, near Gearhart on US Hwy.101.

Police and fire protection are available to serve the property, through a combination of Clatsop County Sheriff's Department and the Gearhart Rural Fire Protection District. Fire hydrants are located throughout the Surf Pines development. Future development of the subject property will likely require additional fire hydrants to serve additional dwellings per the International Fire Code. This would be addressed at a later date upon submittal of a subdivision plat.

Medical facilities that would serve the property include hospitals in both Astoria and Seaside. Both are approximately the same distance from the site. Emergency services provided by Gearhart Rural Fire would also serve the site.

Water is provided to serve the lots in Surf Pines by City of Warrenton. The City of Warrenton has capacity to extend the water to serve Tax Lot 300. Future development of the property will require verification as to the number of lots that can be served.

Wastewater would be managed through individual sewage disposal systems. Future subdivision of the property would require verification that the lots meet DEQ standards.

- 4) *The proposed change will insure that an adequate and safe transportation network exists to support the proposed zoning and will not cause undue traffic congestion or hazards.*

Finding: There is currently an adequate roadway system throughout Surf Pines Development. It is likely the subject property will be subdivided in the future in to five individual lots. Lower Surf Pines Road would serve the subject property directly. This road connects to Malarkey Drive to Manion Drive, ultimately extending to US Hwy. 101. The existing roadway system and intersections with main roadways and the State Highway are adequate to serve the site. With a potential for development of the site with five lots, it is unlikely that traffic congestion or hazards will result from the amendment to allow the development to proceed. The County's Transportation System Plan provides adequate roadways to serve new development in this area.

- 5) *The proposed change will not result in over-intensive use of the land, will give reasonable consideration to the character of the area, and will be compatible with the overall zoning pattern.*

Finding: The proposed amendment to the comprehensive plan and zoning map will not result in overintensive use of the subject land, or the abutting properties. The maximum number of residential lots that could be created on the site is five, resulting in each lot approximately two acres in size. Several of the lots in Surf Pines are one acre lots, with an average of 1.5. The proposed change will allow the development of the subject property consistent with or exceeding the development patterns in the surrounding area. All property developed to the south has used the same building line as that proposed by this amendment. The proposed change is initiated as a result of the ordinance approved and adopted by the County Commission in 2003, which was based on scientific documentation of the appropriate construction line for development in this area. The proposed amendment is consistent with this criteria for approval.

- 6) *The proposed change gives reasonable consideration to peculiar suitability of the property for particular uses.*

Finding: The proposed amendment is consistent with this criteria. Amending the land use/comprehensive plan map designations for Tax Lot 300 gives reasonable consideration to the suitability of the property for particular uses. The LWDUO/Standards Document amendments being proposed in conjunction with the map amendments will align the documents with Ordinance No. 02-05, which was previously approved and adopted recognizing the suitability for residential development of the property. The CBR zoning will facilitate the reasonable use and residential development of the property for single family dwelling use. The applicant's property is suited for this moderate development based on the size of the property, which will adequately accommodate the dwellings in a matter similar to the development patterns now existing within the Surf Pines Development area. The property is of sufficient width to warrant individual access to each lot that could be developed under the guidelines. The flat, easily accessible property

allows for development without extensive grading or fill.

The site is not located within an flood zone, floodway or velocity zone, nor are any natural resource features associated with the property that would hamper the development of the property.

The proposed amendment is consistent with and compatible with the existing development pattern in the area. The proposed amendment also provides for consistency and compliance with the 2003 ordinance passed regulating development of the site.

7) *The proposed change will encourage the most appropriate use of land throughout Clatsop County.*

Finding: The proposed change complies with this criteria. The future development of the property will be limited to single family dwellings, with a two acre minimum lot size. This is compatible with existing development, in fact, provides for larger sized lots that some in close proximity to the site. Low density residential development is the most appropriate use of the land, given the rural nature and existing development pattern. Adequate utilities and roadways are existing to provide adequate services to serve future development of the site.

8) *The proposed change will not be detrimental to the health, safety and general welfare of Clatsop County.*

Finding: It is not anticipated that the proposed change will result in any detrimental impacts to the health, safety and general welfare of the County, or the surrounding residentially developed properties. Future development of the property shall meet all minimum requirements of the County's LWDUO relating to subdivision of land. The proposed amendments will allow future development of the subject property as intended for the area. The previous ordinance revisions were approved and adopted, accepting the scientific data justifying the change in the zone and comprehensive plan designations to allow the best and most appropriate use of the property.

IV. DEPARTMENT AND AGENCY COMMENTS

None received

V. STAFF RECOMMENDATION

The proposed amendments to the comprehensive plan/zoning map as well as the LWDUO/Standards meet the criteria outlined above. Further the proposed amendments provide modifications necessary to align the recently passed ordinance relating to the active dune line and dune construction line. The proposed amendments will ensure consistency with development in the area and consistency with the County's Development Code and Comprehensive Plan goals and policies. Consistency with the County's Comprehensive Plan, as an acknowledged plan by the State of Oregon, verifies consistency with all Statewide Planning Goals.

Based on the findings provided in this Staff Report, the Staff recommends the Planning Commission recommend to the Board of County Commission that the proposed amendments as outlined in this report be approved and adopted by ordinance.

R&O 05-08-02

IN THE PLANNING COMMISSION
FOR CLATSOP COUNTY, OREGON

IN THE MATTER OF AN AMENDMENT TO)
THE CLATSOP COUNTY COMPREHENSIVE))
PLAN AMENDMENT AND COMPREHENSIVE))
PLAN/ZONING MAP AMENDMENT BY BIG)
BEARS LLC)

RESOLUTION & ORDER

Approval Date: 8-9-05

THE ABOVE ENTITLED MATTER came before the Planning Commission at its meetings of July 12, 2005 and August 9, 2005 for public hearing and recommendation to the Board of County Commissioners; and

IT APPEARING TO THE PLANNING COMMISSION that the Planning Commission considered the proposed above request; and

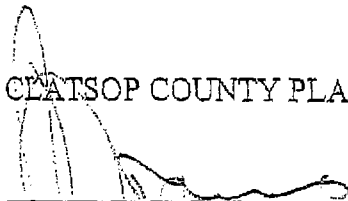
IT FURTHER APPEARING TO THE PLANNING COMMISSION from reports and information provided by the Community Development staff that the proposed request as described in Exhibit "A", attached hereto and by this reference made a part hereof, should be APPROVED by the County for the reasons set out in Exhibit "A"; and

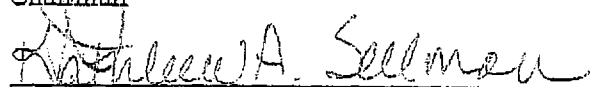
RESOLVED that the Planning Commission recommends that the Board of County Commissioners APPROVE the request set out in Exhibit "A"; and

RESOLVED that the Director be, and hereby is, directed to present the Planning Commission's recommendation on this matter to the Board of County Commissioners for their consideration.

DATED this 9th day of AUGUST, 2005.

CLATSOP COUNTY PLANNING COMMISSION


Chairman


Secretary

ORDINANCE #06-02

Exhibit 2

Meeting Minutes

- ▶ **January 25, 2006 BOC**
- ▶ **December 13, 2006 PC**
- ▶ **October 12, 2005 BOC**
- ▶ **August 9, 2005 PC**
- ▶ **July 12, 2005 PC**

NOTE: BOC=Clatsop County Board of Commissioners; PC=Planning Commission. Meeting Minutes from the February 8, 2006 and February 22, 2006 Board of Commissioners Meetings were not available at the time of printing this document.

**Charlton/Big Bears LLC
Comprehensive Plan/Zoning Map
Amendment**

February 22, 2006

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CLATSOP COUNTY BOARD OF COMMISSIONERS
MEETING MINUTES
January 25, 2006

Following Executive Session that began at 5:00 pm and concluded and 5:57 pm, Chairperson Richard Lee called the meeting to order at 6:05 pm in the meeting room of the 857 Commercial Building in Astoria. Also present were Commissioners Patricia Roberts, Lylla Gaebel, Helen Westbrook, and Samuel Patrick, as well as County Administrator Scott Derickson and County Counsel Andy Jordan.

Agenda Approval:

Gaebel requested that Consent Calendar items "h" and "k" be moved to Other Business as items "c" and "d". Roberts requested that the minutes of December 14, 2005 and January 11, 2006 be moved to Other Business as items "e" and "f", and add as item "g" under Other Business, the rescheduling of the work session for the purpose of discussing the proposed Budget Policies for 2005-06. *Gaebel made and Roberts seconded a motion to approve the agenda as amended. Motion was unanimously adopted.*

Business from the Public:

None.

Consent Calendar:

- a. Board of Commissioners 11/30/05 Meeting Minutes
- ~~b. Board of Commissioners 12/14/05 Meeting Minutes~~
- c. Board of Commissioners 01/4/06 Work Session Minutes
- d. Board of Commissioners 01/06/06 Emergency Meeting Minutes
- ~~e. Board of Commissioners 01/11/06 Meeting Minutes~~
- f. Board of Commissioners 01/12/06 Emergency Meeting Minutes
- g. Intergovernmental Cooperative Agreement Between Oregon Dept. of Fish & Wildlife and CEDC Fisheries for Operation of Fish Propagation Facility
- ~~h. Authorization for Sheriff to Open New Bank Account for Jail Commissary Fund~~
- i. Swanson Services Contract for Jail Commissary
- j. Request for Letter of Support for LEKTRO, Inc Expansion
- ~~k. Approval of 2006/07 Board Priority Goals~~

Westbrook made and Roberts seconded a motion to approve the Consent Calendar as amended. Motion was unanimously adopted.

Public Hearings:

Proposed Ordinance 06-02 Regarding Big Bear/Charlton Comprehensive Plan Zoning Map Amendment first reading by title only.

There were no exparte contacts or conflicts of interest reported, nor any objections to the Board hearing this matter. Patrick Wingard, Community Development Supervisor, delivered the staff report, noting that this matter was first heard by the Board at their meeting of October 12, and had been remanded back to the Planning Commission to reopen the record for receipt of additional information. Following the staff report, Wingard added to the record the following information, which was received too late to include with the packet material:

- Susan Holloway letter dated January 25, 2006
- Charles Rule letter and DVD dated January 24, 2006

- 1 • Email correspondence from Kathleen Sellman to Debbie Kraske, responding to
2 questions from Commissioner Roberts;
3 • January 23, 2006 Correspondence from Timothy McMahan of Stoel Rives, attorney for
4 applicant.
5

6 Wingard further noted that this zone change would not approve any development; it simply
7 changes the parameters for development, therefore, the County did not notify emergency
8 agencies, as reports were not required. In response to questions from the Commission,
9 Wingard explained the location of the "active dune line" and how it is represented on the map,
10 the overlay maps that apply to lot 300, and noted that approximately 25% of lot 300 had the
11 flood hazard overlay zone, and it is also subject to the Shoreland Overlay District standards.
12

13 Lee opened the meeting to public testimony by inviting comments from the proponents.
14

15 Mark Barnes. Planning Consultant, 800 Exchange St, Astoria. Barnes commented that the
16 exception to the dune line that was adopted in 1982 did not move the active dune line, and
17 allows for the construction of single-family dwellings only. Barnes displayed several exhibits
18 that were submitted to the Planning Commission, and discussed the different flood areas and
19 how they affect potential structures. With regard to utilities, Barnes stated that water service is
20 available on that road, a fire hydrant is present, and the other wired utilities are present and
21 buried. Next Barnes addressed the tsunami zone, explaining the various types of facilities that
22 restrictions would apply to within a tsunami zone, noting that single-family dwellings were not
23 regulated. Barnes pointed out that while this property may be within a tsunami inundation
24 zone, so is a good portion of the developed areas of Clatsop County, including: Downtown
25 Warrenton; virtually all of the developed areas of Gearhart, lower Surf Pines, Seaside, and
26 Arch Cape. Barnes called attention to the 1995 zone change referenced in the Holloway letter.
27 Barnes stated that in 1995 the application asked for several things at the same time – movement
28 of the dune line, and up to 10 houses. Barnes continued that since that time, there have been
29 separate applications to address the dune line only, and at this time, requesting approval of just
30 5 houses – half the number requested in 1995. There was brief discussion regarding the height
31 restriction of 18 feet on the proposed structures, and their relation to the elevation of the
32 existing homes located on Strawberry Hill.
33

34 Tim McMahan. attorney with Stoel Rives, 900 SW 5th Ave., Portland, 97204. McMahan
35 introduced Conrad Thomason, real estate broker with Windermere, Cronin & Caplin Real
36 Estate in Gearhart; residence address is 1453 SW Pine Court, Warrenton. Thomason reported
37 on the real estate market in Clatsop County and the high demand for ocean front properties. In
38 addition, Thomas responded to the allegation that the value of neighboring property had been
39 negatively affected by the potential development of the Big Bear property, and that the sale
40 price had been reduced by \$10,000. Thomason stated that, after speaking with the agents for
41 both the seller and buyer, it was determined that the price was reduced to stimulate offers, and
42 also due to the limited marketability of the property. Thomason communicated that Pam
43 Ackley, agent for buyers, stated that the buyers had no concerns whatsoever over the possible
44 development of the Big Bear property.
45

46 McMahan explained that the market information was being introduced to demonstrate the
47 public need for this type of buildable property, as outlined in State Goal 17, *The Ocean and*
48 *Coastal Lake Shore Lands Policy*. McMahan cited Goal 17, which reads "non dependant, non
49 water-related uses that cause a permanent or long term change in the features of ocean and

1 coastal lake shore lands, only upon demonstration of public need”.

2
3 McMahan summarized the process that has taken place with regard to this application, and
4 reminded the Board that the Planning Commission reviewed this case twice, and both times
5 unanimously recommended the Board of County Commissioners approve the proposal.
6 McMahan suggested that the recommendation of the Planning Commission should be entitled
7 to a certain amount of weight and deference by the Board.

8
9 Referring to the split zone, McMahan commented that during the 2003 periodic review, tax
10 lot 300 was specifically designated and listed in the County’s code, in section 3.248, the CBR
11 code, as a lot that was considered within CBR, listed for density of two acres within that zone.
12 McMahan stated that he is unclear as to the meaning of this designation, and would like some
13 meaning ascribed to it. McMahan added that the CBR zone does have a 2-acre minimum in
14 this area. Next McMahan referred the Board to his response to the letter written by the Goal
15 One Coalition, a copy of which was added to the record. Next, McMahan noted that the OPR
16 zone is for properties uniquely suited for outdoor recreation and open space, and questioned the
17 public purpose of a property situated within a gated community. McMahan declared that this
18 is actually a relative small number of residents who live near this property, and who want it
19 maintained fully in the OPR designation for their own private enjoyment. McMahan then
20 submitted that it is not a legitimate purpose for this zone and that it would be appropriate to
21 rezone the property as requested.

22
23 Opponents:

24 John McGowan, 33104 Malarkey Lane, Warrenton. McGowan noted that he lives in Surf Pines
25 overlooking the Big Bear property. McGowan summarized the history of tax lot 300, stating
26 that George Malarkey purchased it in 1959 for \$10.00. At that time, added McGowan, tax lot
27 300 was not a part of Surf Pines and did not become a part of Surf Pines until 1998. When he
28 purchased his property in 1982, explained McGowan, the agents for the developer told him that
29 tax lot 300 was an active dune and could never be built upon. McGowan also noted that
30 Charlton purchased the property in 1992, and first applied for zone change in 1994 and was
31 unsuccessful at that time. McGowan argued that it was not a matter of could the property be
32 built upon, but rather should it be built upon. McGowan gave the following reasons why it
33 should not: 1) It violates the assurances given to Mr. McGowan and his neighbors that there
34 would be no development there. 2) It reduces the value of homes overlooking the dunes and
35 reduces the view. 3) The property is habitat for elk, deer, and other animals. 4) Erosion
36 compounded by the rising ocean levels caused by the melting polar ice caps continues to
37 threaten the coastline; 5) The continued threat of earthquake and tsunami; And 6) The land
38 should be preserved for the benefit of the people of Clatsop County. McGowan declared that
39 its late owner, Norman Yeon, has bequeathed the adjoining 107 acres to the Trust for Public
40 Lands. McGowan read a letter by Mr. Yeon addressed to the Planning Commission in 1994,
41 opposing the zone change. In closing, McGowan urged the Board to deny the application for
42 zone change.

43
44 Roberts asked McGowan to explain the events that led to the annexation of the property into
45 Surf Pines in 1998. McGowan replied that having been turned down for a zone change, the
46 developers proposed a low impact recreational area and mowed a large area of the dune grass,
47 about the size of a football field, and started to build a gravel road out to it. McGowan stated
48 that he had reported the activity to the County Soil and Conservation Department who had
49 objected to the development. In addition, the public use of the Surf Pines private roads and

1 gates had not been approved, and it would negate their security. The President of Surf Pines
2 Association hired some men to come and restore (fill in) the ditch on the west side of the road.
3 Soon after, the Surf Pines Association received notice that they were being sued for \$500. The
4 members of the Association learned that when the Strawberry Hill addition became a part of
5 Surf Pines, Mr. Malarky kept title to the roads. To resolve this situation, continued McGowan,
6 a deal was made that would allow tax lot 300 to become a part of Surf Pines in return for Surf
7 Pines obtaining title to the roads in Strawberry Hill. In addition, there was an understanding
8 that the owner of tax lot 300 would pay all of the taxes and assessments from Surf Pines
9 Association, as would any other property owner. In response to a question from Roberts,
10 McGowan explained that the Association assesses its members by lot, and not by area, and that
11 undeveloped lots are assessed at a different level than homes are.

12
13 Charles Rule, 90054 Ocean Drive, Warrenton. Mr. Rule reminded the Board that the Ocean is
14 constantly changing, and to be aware of tsunami areas. Rule asked the Commission to view the
15 DVD that he had submitted into the record earlier today. Rule stated that the DVD does not
16 address any technical aspects, but does include images that show the beauty of the land where
17 applicant intends to build. Rule asked the Board to consider the repercussions of allowing
18 applicant to build houses there.

19
20 Susan Holloway, resident of Portland and owner of the property at 90054 Ocean Drive, located
21 directly south of tax lot 300. Holloway referred to written material that she had submitted to
22 the Planning Commission in December. Holloway stated that when she reviewed the report
23 submitted by Charlton, she did not find any language that changed the zoning, as asserted by
24 Mr. Charlton in his findings of the material that he presented to the Planning Commission.
25 Holloway continued that she questioned Patrick Wingard the day before the Planning
26 Commission hearing and he could not substantiate those findings either. In addition, Holloway
27 stated that Wingard had accepted it as fact and his first Resolution to the Commission did not
28 challenge the error. Holloway noted that a second Resolution was submitted based on her
29 discussion with Wingard, as well as the building lines on the west were corrected as well.
30 Holloway stated that she was worried by the obvious acceptance of all the presentations by
31 Charlton, and whether there might be other unsubstantiated statements presented as fact that
32 she did not have the professional expertise to uncover and question. Holloway advised the
33 Board that although she had delivered seven copies of the Goal 1 material to the Planning
34 Commission in advance of their meeting to allow them an opportunity to review it prior to their
35 work session and meeting. Holloway continued that the Planning Commission did not review
36 her material until 1:00 as the public meeting started, and they were not opened nor used by the
37 Planning Commission in reaching their decision.

38
39 Holloway reported that she purchased her Surf Pines home in 1962, and at that time, did not
40 expect any construction would occur north of the home. Holloway further argued that she did
41 not see how development of the property could not have a negative impact on the existing
42 homes. She continued that the decision to designate tax lot 300 OPR was not arbitrary, but was
43 done to preserve the existing resources, and should be kept as designated for the benefit of the
44 State. Holloway asserted that since Malarky had purchased this land for \$10.00, instead of the
45 \$5,000 that was the listed price for other Surf Pines property, that perhaps there was a different
46 value assigned to the quality of the land he was buying. Holloway argued that the preservation
47 of open space is important to maintaining wildlife that uses the land. Holloway continued that
48 if Goal 18 had been enforced prior to any home building on the west side of Ocean Drive, none
49 of their homes would have been built, and that the additional information that is available

1 regarding tsunami hazards should preclude further development to tax lot 300. Holloway
2 concluded by stating that they were not asking for a reversal of residential zoning, just to
3 maintain the land as it has been with the OPR designation. When stating that the Planning
4 Commission did not refer to the Goal 1 presentation, Westbrook asked Holloway if it was the
5 second hearing on December 9, and Holloway replied that it was.

6

7 Rebuttal by Applicant.

8 McMahan commented further on the "public need" standard, stating that County's Residential
9 Housing Policies Goal 10 provides that "*Clatsop County shall assist in planning for the*
10 *availability of adequate numbers of housing units at price ranges and levels commensurate*
11 *with the financial capabilities of County residents*". Therefore, stated McMahan, it is a
12 market-based issue on determining public need for housing in the county. Referring to
13 Residential Plan Policies 7, McMahan read "*Clatsop County shall encourage the development*
14 *of passed-over lots that already have services such as water and roads be preferred for*
15 *development over tracts requiring extension of services*". McMahan explained, "That is how
16 the County plan defines *need* with regard to *public need* for housing".

17

18 Regarding the issue of Mr. Malarky purchasing the property for \$10.00, McMahan proposed
19 that the issue was irrelevant, that he did not know where that figure was obtained from, and
20 that it was goofy to assert that someone could purchase this property for \$10.00, even in the
21 1950's. Referring to Mr. McGowan's statement that development would greatly impair the
22 natural view, McMahan stated that when they were last in front of the Board in October 2005,
23 Commissioner Roberts had asked a question about views and elevations and asked us to
24 provide information. McMahan continued that their exhibit number 9 shows that Mr.
25 McGowan's property is a good 50 feet above the property in question, and therefore this is not
26 a persuasive argument and does not relate to the criteria. As to habitat, McMahan commented
27 that the Planning Commission addressed that point at length and determined that there is no
28 real evidence that the wildlife habitat that is there should be protected under Goal 5 habitat
29 protection standards. Addressing the issue of the tsunami zone, McMahan noted that the risk
30 is the same as many other areas; there is no precedence; and neither the State nor the County
31 have a code, plan or policy restricting residential development in these areas.

32

33 McMahan asked the Board, when considering the preservation of this property for public
34 purpose, to consider Mr. McGowan's statement when he said that it would have allowed
35 citizens into the property and it "would negate our security" by getting through the gates to
36 access the property. McMahan referred the Board back to the County Plan Policy, stating that
37 it requires some indication of a need or unique purpose for the open space zoning to meet open
38 space and recreational needs, and not only to keep members of the public out.

39

40 Next McMahan referred to comments made by Ms. Holloway, and stated that it would be wild
41 speculation to make an assumption in 1962 that the surrounding property would never be
42 developed. McMahan further noted that although there have been several references to a
43 "realtor or realtors" making statements that there would be no development on this property,
44 the name of the "realtor(s)" who supposedly made these assurances are not known. McMahan
45 further noted that there was nothing in writing restricting or making promises of the non-
46 development of tax lot 300. Patrick asked if there were any deed restrictions on the lots in surf
47 pines. McMahan replied that there were many, however they were limited to deed restrictions
48 only. Referring to number 6 in the criterion that reads *the proposed change give reasonable*
49 *consideration to peculiar suitability of the property for particular uses*, Roberts asked

1 McMahan to provide an example of that. McMahan replied that the tax lot 300 has developed
2 property to the east and south, is in an enclosed-gated community, is split zoned and designated
3 for low density 2-acre zoning, it has water, gas and fiber-optic service, therefore it is peculiarly
4 suited for this use.

5
6 McMahan objected to the DVD being entered into the record and being considered in these
7 proceedings, stating that he did not feel it was an appropriate format. In addition, McMahan
8 stated that he was not aware of it being viewed by the Planning Commission, and applicant did
9 not have an opportunity to view it.

10
11 Westbrook, referring to the Surf Pines exception taken in 1982, asked that if the intent has
12 always been to develop the property for home sites, why tax lot 300 was withdrawn and not
13 included in the exception. Barnes explained that the 1982 exception allowed single-family
14 residential development waterward of the active dune line. He added that Charlton did not
15 pursue inclusion in the 1982 Goal 18 Active Dune Line Exception on the advice of Curt
16 Schneider, the Planning Director at that time. With regard to the recent Goal 14 exception that
17 opted to allow 1-acre zoning in Surf Pines, Barnes noted that they did try to work with County
18 staff at that time, however, chose not to participate because of the controversy this project
19 generated and the County's need to hasten closure of Periodic Review.

20
21 Holloway referred to her letter requesting that the record be left open for an additional week.
22 Tim McMahan commented that this was the third public hearing on this matter and they did not
23 see any need to leave the record open.

24
25 Jordan, advised the Board to hold the record open for 7 days for written submissions only. In
26 addition, Jordan recommended the Board rule on the objection to the DVD. Roberts referred to
27 page 5 of the applicant's findings, item 6, which read "*the Board of County Commission did*
28 *not question the Planning Commission recommendation, and did not in any way suggest that it*
29 *was wrong. The BOCC was fundamentally concerned with the quality of the photocopies*
30 *including the maps and the clarity of the documents provided*". Roberts asked that this
31 statement be struck from the record as it is not an accurate statement and does not represent the
32 intentions of the Board. Roberts added that when she read through the Planning Commission
33 minutes she found that one of the attorneys had made a similar statement to the Planning
34 Commission, that the Board of Commissioners had not told the Planning Commission that they
35 were wrong. Roberts added that she did not feel this was an accurate statement because the
36 Board was not able to make a determination with the incomplete and inadequate information
37 contained in the record at that time. Westbrook agreed that she felt it sent an erroneous
38 message. Gaebel noted that the second statement reads, "the Board was fundamentally
39 concerned with the quality of the photocopies", and noted that there is a conclusion drawn from
40 that statement that is not accurate. Roberts objected to the inference that the Board approved
41 without having complete information. Westbrook stated that if that statement is left in the
42 record, that it be modified to say "*the Board was concerned with the quality of photocopies*
43 *including the maps, the lack of clarity of several of the documents provided by the applicant,*
44 *and the incomplete record*".

45
46 Counsel Jordan advised the Board to hold off changing the record until all evidence is in, and
47 do it at the time that they make their decision. With regard to the DVD, *Roberts made and*
48 *Gaebel seconded a motion to accept the DVD into evidence and provide a copy to applicant.*
49 The Board did not vote on this motion.

1
2 The Chair called a recess at 8:20 to set up the necessary equipment for the Commission to view
3 the DVD. Due to technical difficulties, it was not possible to view the DVD at this time. The
4 meeting reconvened at 8:30, it was noted that the DVD would be available for viewing at the
5 County Administrator's office at 800 Exchange, Ste 310, in Astoria.
6

7 *Gaebel made a motion that the Board hold the record open for 7 days, and during that time the*
8 *applicant be provided an opportunity to view and respond to the DVD, and that if any*
9 *additional material is supplied, that the record be held open an additional three days beyond*
10 *that 7 days to allow for rebuttal.* Westbrook noted for clarity that the end of the 7-day period
11 would be 5 pm on Wednesday, February 1, 2006. In addition, *Westbrook amended the motion*
12 *to add consideration of this item to the February 8 meeting agenda.* Following discussion, the
13 *motion passed 4 to 1, with Lee voting nay.* Lee noted that the reason he voted in opposition to
14 this motion is he does not feel the material presented in the video is relevant to the applicable
15 laws in this case, and should not be considered in the decision making process. Westbrook
16 noted that, in addition to the DVD, four written pieces of correspondence were received by the
17 Board today and she wished to review those prior to decision-making.
18

19 Jordan summarized the process and noted that this item will come before the Board at their
20 next meeting on February 8. In addition, Jordan advised that any changes to the findings
21 should be made at that time, and could be done by advising staff as to the changes they would
22 like made. *Gaebel made a motion to keep the public hearing open. Motion died for lack of a*
23 *second.* Lee closed the public hearing.
24

25 **Other Business:**

26 Authorization for Sheriff to open bank account for Jail Commissary Fund. Chief Deputy
27 Sheriff Paul Williams delivered the staff report. Williams commented on the need for the new
28 account and how the old account would be resolved. Williams explained how the booking
29 records and receipts would be reviewed to determine if the County owes any money, and if so,
30 pay directly to the individual or send to the State of Oregon as unclaimed property. Any
31 remaining funds would be transferred to the new account. *Gaebel made and Westbrook*
32 *seconded a motion to approve and adopt the Resolution and Order authorizing the Sheriff to*
33 *open a bank account for the Jail Commissary Fund. Motion was unanimously adopted.*
34

35 Approval of 2006/07 Board Priority Goals

36 Following discussion, *Westbrook made a motion to remove the numbers and give all three*
37 *goals equal priority, and to change the last goal to read "Work with the Sheriff to review the*
38 *County's disaster preparedness and assist in modification of emergency preparedness*
39 *programs as necessary"* Roberts seconded the motion. *Motion passed 4 to 1 with Patrick*
40 *voting nay. Lee made and Roberts seconded a motion to adopt the Board's Priority Goals for*
41 *2006-07. Motion was unanimously adopted.*
42

43 Regarding the Board of Commissioners 12/14/05 Meeting Minutes, Roberts asked that on page
44 2, under Appointments to Clatsop County Housing Authority, her comments that were noted
45 should include that Mr. Coffee helped to complete the Long Term Strategic Plan for the
46 Housing Authority, and it would be in their best interest to have Mr. Coffee continue as a
47 member of the committee. In addition there were two other spelling and grammar corrections
48 noted. Regarding the Board of Commissioners 01/11/06 Meeting Minutes, Roberts asked that
49 page 4, line 26, be corrected to read "such as a possible *title transfer* of the dilapidated Waldorf

1 Hotel in Astoria". Roberts made and Gaebel seconded a motion to approve the minutes as
2 corrected. Motion was unanimously adopted.

3
4 Reschedule Work Session for the purpose of discussion of 2006-07 Budget Goals. Gaebel
5 made and Roberts seconded a motion to add the discussion of the proposed Budget Policies for
6 2006-07 to the February 1 Work Session agenda, and consideration of approval of the 2006-07
7 Budget Policies to the February 8 Meeting agenda. Motion was unanimously adopted.

8
9 Discussion of Meeting Locations

10 There was discussion regarding the possible locations for meetings and the facilities and
11 equipment that were available at each. Following further discussion, Patrick made and
12 Westbrook seconded a motion to hold the second regular meeting of the month in either
13 Seaside or Cannon Beach. Passed 3 to 2 with Gaebel and Lee voting nay.

14
15 **Commissioner's and Administrator's reports:**

16 Derickson asked the Board to consider possible dates for the Budget Committee meetings.
17 Following discussion, it was agreed to hold the Budget Committee meetings on May 18th, 19th
18 and also the 22nd if needed.

19
20 Derickson announced that the Portland Electric Railroad Company would be repairing the rail
21 lines that were damaged when the dike breached, and Lewis & Clark Road would be re-
22 opening soon. Derickson noted that he had also been meeting with the Sheriff to discuss a plan
23 to evaluate the different options available for the jail. Also, the County had provided a business
24 writing class to staff, with focus on writing effective agenda summary items. Out of that class,
25 added Derickson, came a request to reconsider the County's mission statement. In addition,
26 County staff presented the County's Economic Development Plan to the CEDC Board of
27 Directors. Derickson noted that the CEDC Board did support the County's recommendation
28 that CEDC become a different type of entity, that they be housed under 4H and Extension, and
29 they also endorsed the idea of the CEDC Fisheries Program pursuing a non-profit status.

30
31 Derickson announced that the Meth Summit Town Hall meeting scheduled for the 21st will be
32 held as scheduled, however, the meeting scheduled for 22nd, is rescheduled for March 15.

33
34 Next Derickson talked about a conference this coming March in Las Vegas on shooting range
35 development and business planning for shooting facilities. Derickson suggested that the Board
36 consider sending 2 or 3 people, and possibly include Commissioner Patrick. Derickson added
37 that the Sheriff's Department would send a representative and that the cost could be covered by
38 their training budget. Lee made and Roberts seconded a motion to send Commissioner Patrick
39 and one other member of the Shooting Range Committee to the Conference in Las Vegas.

40 Roberts asked if we would be covering the travel and accommodations as well as the
41 registration, and Derickson replied that we would. Gaebel noted that the Board chose to not
42 send a Commissioner to Washington D.C., yet they feel this trip would be worthwhile. Motion
43 was unanimously adopted. Lee stated that he thought this was an important project for Clatsop
44 County. Derickson reported on a brief meeting with Ann Hanus, Director of the Division of
45 State Lands. Lastly, Derickson reported that the City of Astoria has informally asked to hold
46 their City Council meetings in the Guy Boyington Conference Room. Gaebel expressed
47 interest in knowing the County's cost. The Board requested additional information and
48 Derickson stated that he would pursue a means that would be cost neutral, and investigate an
49 agreement outlining the city's responsibilities.

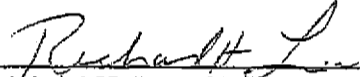
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Roberts reported on her attendance of the meeting of the Lewis & Clark Bicentennial Association, that they are in black, and they have enough money to keep the executive Director for 6 months. In addition, Roberts stated that she would be attending a Gateway Community Workshop.

Gaebel asked the Board to consider the appointment of herself as alternate to Commissioner Patrick as a member of the NOEA, and Commissioner Patrick as alternate to her as member of Col-Pac. *Westbrook made and Patrick seconded a motion to appoint Gaebel as alternate to Patrick for NOEA, and Commissioner Patrick as alternate to Gaebel for Col-Pac. Motion was unanimously adopted.* In addition, Gaebel asked that the County advertise member vacancies for NOEA, Col-Pac and ACT.

There being no further Business, the meeting was adjourned at 9:40 pm.

Approved By:


Richard H. Lee, Chairperson

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Chairperson Bruce Francis called the December 13, 2005, Planning Commission meeting to order at 1:04 p.m. Planning Commissioners (PC) present: Marc Auerbach, Bruce Francis, Jeff Martin, Brian Pogue, Dirk Rohne and Chuck Switzer.

Staff present: Andy Jordan, County Counsel; and Kathleen A. Sellman, Director, Patrick Wingard, Community Development Supervisor, and Julia Nevan Decker, staff assistant, Community Development Department.

Minutes

PC Auerbach moved and PC Martin seconded to approve the minutes of November 8, 2005, work session. Motion approved unanimously.

PC Auerbach and PC Martin seconded to approve the regular session minutes of November 8, 2005. Motion approved unanimously.

Public Hearing: Quasi-Judicial Hearing on Comprehensive Plan/Zoning Map Amendment Request by Big Bears LLC, Remanded to Planning Commission by Board of Clatsop County Commissioners

Chairperson Francis convened the quasi-judicial hearing on the request by Big Bears LLC to amend the current zoning of an 8.8-acre portion of a 10.9-acre parcel, identified as 71016C000300, from OPR (Open Space, Parks and Recreation) to CBR (Coastal Beach Residential), remanded to the planning commission by the Board of Clatsop County Commissioners.

No planning commissioner reported any exparte contacts or conflicts of interest. No one objected to the jurisdiction of the planning commission to hear the matter.

Community Development Supervisor Patrick Wingard reviewed the staff report dated December 6, 2005, noting the property is split-zoned currently, with 8.8 acres of the 10.9-acre property zoned OPR. The applicant wishes to consolidate the zoning to CBR, he explained, and change the Comprehensive Plan designation from Conservation, Other Resources to Rural Lands. Mr. Wingard provided some background information, saying the application came to the planning commission originally on April 29, 2005, and was heard in a public hearing July 12, 2005. It was continued to August 9, 2005, at which time the planning commission sent its recommendation for approval to the Board of Clatsop County Commissioners. The board met to hear the matter on October 12, 2005, but did not conduct a public hearing. Instead, the board remanded the matter to the planning commission with instructions to reopen the public hearing for receipt of additional information from the parties, assure that the record was complete, and ensure that all maps in the record, including all zone and dune boundary maps, were clear and accurate, with adopted locations of boundaries.

1 Mr. Wingard stated the packet now contains the best information available, including
2 updated maps and better versions and better quality submittals than originally provided,
3 and these would be the materials on which the commission could now base its
4 recommendation to the board.

5
6 Mr. Wingard continued his review of the staff report, describing the maps now included
7 and correcting references in the staff report to Exhibit A. He also described the property
8 itself, the neighborhood surrounding it, and the utilities that would serve the site. He
9 noted the request is for two-acre minimum lot size, which exceeds in size many lots in
10 the neighborhood, Surf Pines.

11
12 Mr. Wingard drew the commission's attention to wall posters that contained Section
13 1.040 of the Clatsop County Land and Water Development and Use Ordinance
14 (LWDUO), the criteria by which the request would be judged. He stated the new
15 proposed exhibits and findings comply with the criteria. Mr. Wingard stated the
16 proposed text amendments to LWDUO Section 4.052 and the zoning ordinance
17 Standards Document 3.015 were not needed, explaining the current language in the
18 land use code, Ordinances 02-5 and 03-8, established the active dune line and
19 corresponding ocean front construction setback lines for the property.

20
21 Mr. Wingard stated the applicants' December 1, 2005, findings of fact confirm the
22 application's consistency with the two previously adopted county ordinances. He added
23 that approval of the request would amend the Comprehensive Plan Zoning map but
24 would not include the requested text amendments.

25
26 Mr. Wingard entered into the record several documents:

- 27
28 o Exhibit B-i, a December 13, 2005, staff memo by Mr. Wingard, amending
29 the December 6, 2005, Staff Report, correcting the applicant's finding that
30 the property is zoned CBR and stating the property is split-zoned CBR and
31 OPR; excluding two sets of text amendments proposed by the applicant
32 because they are unnecessary and the construction setback line has
33 already been established by Ordinances 02-5 and 03-8; and excluding the
34 applicant's Plat Map, Tab 11 of the applicant's finding, as inaccurately
35 depicting the West Building Line, also called the Construction Setback
36 Line.
37 o Exhibit 4, a December 12, 2005, letter from John McGowan.
38 o Exhibit 5, a December 12, 2005, letter from Goal One Coalition.
39 o Exhibit 6, a December 9, 2005, letter from Michelle Rudd, Stoel Rives
40 LLP.

41
42 Mr. Wingard proposed the findings of fact be amended to reflect the changes noted in
43 Exhibit B-i above. He drew attention to the second page of Exhibit B-i, a map he
44 produced to show the correct Construction Setback Line, using the Surf Pines
45 Construction Setback Line to create a conceptual future subdivision lot and extending it,
46 noting county code requires review of adjoining properties and after that use of geo-
47 technical reports to establish the line.
48

1 In response to a question from PC Auerbach, Mr. Wingard stated he did not know why
2 Tax Lot 300 was excluded from Goal 14 specifically in Ordinance 03-11, but he
3 suspected there was information in the record that showed it did not meet the criteria.
4 He added that a maximum of five residences could be built on the site.
5

6 Mr. Wingard confirmed for PC Auerbach that the county would not issue development or
7 building permits without Department of Environmental Quality (DEQ) permits in place;
8 however, a zone change is not a request for development, thus DEQ permits are not
9 required for zone changes.
10

11 Chairperson Francis asked how the Goal One Coalition document submitted today
12 differed from previous submissions by the group. Mr. Wingard suggested asking if a
13 spokesperson for the coalition might address the question during public testimony.
14 County Counsel Andy Jordan agreed this was appropriate.
15

16 PC Auerbach, drawing attention to Exhibit A, Table 1, page 9, and the applicant's
17 assertion about traffic, asked if any traffic studies were available. Mr. Jordan thought
18 the question would be appropriate for the applicant.
19

20 Chairperson Francis opened the hearing for public testimony. No public agency
21 representative asked to speak.
22

23 Chairperson Francis asked if the applicant wished to speak. Greg Malarkey, 4394 SW
24 Fraser Avenue, Portland, a member of Big Bear LLC, provided some background about
25 when his father George purchased the property, which he left to family members after
26 his death. Mr. Malarkey said no development restrictions existed on the property when
27 his father purchased it. Rick Charlton was his father's business partner. Mr. Malarkey
28 said it was always the family's intention to develop the property, and he noted the
29 current application is for half the density allowed back in the 90s, when Mr. Malarkey
30 and Mr. Charlton first attempted to develop the site.
31

32 PC Martin asked why the owners did not attempt to make this application when the
33 zoning was first imposed. Mr. Malarkey noted he was quite young at the time and did
34 not remember. Chairperson Francis asked if Mr. Malarkey had been aware of any
35 agreement with former Planning Director Curt Schneider regarding not developing the
36 area. Mr. Malarkey stated he was not aware of any such agreement.
37

38 PC Auerbach asked why the property was specifically excluded. Mr. Malarkey thought
39 Mark Barnes, who has worked on the project, might be able to answer.
40

41 Mark Barnes, 800 Exchange, Astoria, and Tim McMahan, Stoel Rives, 900 SW Fifth
42 Avenue, Suite 2600, Portland, representing the applicant, asked to speak. Mr. Barnes
43 explained the exclusion at the time of Periodic Review was due to the need to let the
44 rest of the Surf Pines exception go forward to meet the deadlines imposed by Periodic
45 Review. The applicant, Mr. Barnes explained, had the choice of fighting it and delaying
46 it, or stepping aside and letting the county move forward. The applicant decided to back
47 away in the interest of letting the rest of the Surf Pines' exception go forward. Mr.
48 Barnes also responded to the question regarding the adequacy of roads in the vicinity,

1 saying the road in front of the site is paved and built to the standard of having
2 development on both sides.

3
4 Mr. Barnes, referring to the split zoning of the property, stated he could find no reason
5 for the split. "There is nothing on one side that's not on the other," he said. Mr. Barnes
6 showed how the building lines on the map were drawn. He noted questions have been
7 raised about habitat quality. No species listed in Goal 5, including the snowy plover and
8 silver spot butterfly, have been observed in the past 10 years, he stated. He noted Mr.
9 Malarkey and Mr. Charlton had placed underground utilities when they extended the
10 road, implying that development was intended.

11
12 He said the open space and recreational areas in Surf Pines are generally privately
13 owned and publicly owned park spaces are nearby. He pointed out a cross section map
14 that demonstrated building heights and distances, saying the increase in height was
15 significant enough that building would not block views. In addition, he said he looked for
16 possible agreements and restrictions of record and could not find anything that implied a
17 view corridor existed.

18
19 Mr. Barnes asked to enter into the record a zoning map, Exhibit 7, a preliminary plat,
20 Exhibit 8, and the cross section, Exhibit 9.

21
22 PC Auerbach asked if a view corridor would be imposed by the Surf Pines Homeowners
23 Association. Mr. Barnes explained the homeowners association was of a different type
24 than generally understood. There are no CCRs (codes, covenants and restrictions), he
25 said.

26
27 Mr. McMahan stated that although view impacts are not part of the criteria by which the
28 project should be evaluated, the applicants and representatives had reviewed it
29 because of potential arguments, which he called "imaginative," about views affecting
30 public health and safety and wanted to address the issues from the beginning.

31
32 In response to a question from PC Auerbach, Mr. Barnes stated the language regarding
33 wastewater is included because it is the county's language; it is not part of the
34 applicant's findings.

35
36 Mr. McMahan pointed out an affidavit from Rick Charlton in the packet that addresses
37 some of the allegations made previously. He stated there are two criteria regarding the
38 septic finding; one is whether the proposed change is consistent in the community and
39 the Comprehensive Plan, and the second is whether appropriate facilities would be
40 provided. He said the applicant has tried to make a good faith effort analysis, but it's a
41 building stage issue. The point is, he said, the applicant is showing he can comply with
42 the criteria.

43
44 Mr. McMahan noted the Board of County Commissioners did not question the planning
45 commission's recommendation. Instead, he continued, the Board found the record
46 lacking and the maps confusing. The Board wished the applicant to rectify the
47 problems, and that was the reason the issue was remanded, he said. "We are
48 proposing a two-acre minimum in a 10-acre area. We are not gaming it at all," Mr.

1 McMahan stated, for the record. He stated he saw no evidence that there was any
2 reason for the planning commission to change its recommendation.

3
4 Mr. McMahan pointed out his firm's response to materials submitted by the Goal One
5 Coalition and stated there had not been time to fully analyze the coalition's most recent
6 submission, which came minutes before the filing deadline. Still, he stated, he saw
7 nothing new that had not yet been addressed by the applicant. He reviewed the Goals
8 mentioned in the coalition's submittal, saying all were addressed and taking a moment
9 to address comments about the proposed development not complying with Goal 14,
10 Urbanization. He noted Tax Lot 300 was called out in the Comprehensive Plan and
11 stated it was put in the code for a reason. The code states it's compatible with
12 statewide goals, he said.

13
14 Mr. McMahan concluded by saying there is clearly a market demand for the property;
15 the application complies with the criteria; and Tax Lot 300 is within a developed, gated
16 community that is not accessible to the general public.

17
18 Chairperson Francis, finding no further comments from the proponents, asked if any
19 opponents wished to speak.

20
21 John McGowan, 33104 Malarkey Lane, Warrenton, referring to a letter he submitted the
22 day before, stated he would defer his arguments until the Board of County
23 Commissioners' meeting. He read from the draft Resolution and Order and stated the
24 language suggested the decision was already made, resulting in his conclusion that
25 there was not much reason to prepare arguments for today's meeting. However, he did
26 wish to make some comments. Mr. McGowan rebutted:

- 27
28 o Conclusions about the quality of the site as wildlife habitat, saying the
29 wildlife habitat was important to the quality of life of the residents,
30 particularly as the area filled with homes. He recounted the types of
31 wildlife that live there, including elk, deer, marsh hawks and pheasants.
32 o Conclusions about the impact on views from existing homes, saying the
33 views of natural setting would negatively impacted, as the ocean is only
34 part of the view.

35
36 Mr. McGowan stated Mr. Charlton might not have made any statement about never
37 developing the site, but his realtors and representatives made the statement when Mr.
38 McGowan purchased his own home site property from Mr. Charlton. He stated his
39 neighbors have told him they were told the same thing, and he alluded to letters from
40 original property owners in the neighborhood. Mr. McGowan asked the commission to
41 read the Goal One submission because there were a number of issues raised there that
42 he thought should be researched legally. He particularly pointed out pages 9 through
43 12, because they stated in clear language a lot of reasons why the property should not
44 be developed.

45
46 PC Pogue asked Mr. McGowan if, when he had been talking to the realtors, there was
47 anything in writing about protecting the view. Mr. McGowan said there was not.

48

1 PC Martin commented he was concerned that no one ever asked for the assurance in
2 writing. Mr. McGowan stated he thought everyone assumed the realtors would know
3 what they were talking about.
4

5 Susan Holloway, 90054 Ocean Avenue, Warrenton, and 3619 SE Francis, stated her
6 agreement with Mr. McGowan's letter and said she found it disconcerting to find a
7 Resolution and Order attached to the document stating a decision had been made. She
8 stated the process didn't feel open. She recounted problems with attending the October
9 County Commission meeting, including receiving wrong information about the hearing
10 location, an incorrect fax number, and being ignored when arriving to testify. She
11 referred to documents she submitted, saying she had been told the deadline for
12 submittals and thought by making the deadline the commission would have time to
13 review the documents during its morning work session. She felt the reason the land
14 was zoned differently than the rest of Surf Pines was because it had been zoned into
15 Surf Pines only in 1998.
16

17 Ms. Holloway entered into the public record a packet containing a copy of 3.242 and
18 3.248, a 1995 application and denial of the zoning change for Tax Lot 300, a copy of a
19 1994 letter from Norman Yeon bequeathing 107 acres to the Trust for Public Lands for
20 the benefit of Clatsop County, and a 1995 petition to the Board of Clatsop County
21 Commissioners from Surf Pines residents urging denial of the request for a zone
22 change for Tax Lot 300. The packet became Exhibit 10.
23

24 Ms. Holloway reviewed the history of her purchase of her property in the area of Tax Lot
25 300, recalling a realtor had told her the site would never be developed. She stated Mr.
26 Charlton had told her developing the site would not affect the value of neighboring
27 properties; however, a home nearby recently that sold for more than \$600,000 sold for
28 \$10,000 less than the county's market appraised value. She said this seemed unusual.
29 She stated the decision to zone Tax Lot 300 OPR was not arbitrary. It occurred in the
30 1970s, when, she said, decisions were being made about the preservation of resources.
31

32 Ms. Holloway reviewed how Surf Pines lots were marketed in the 1950s and referred to
33 the importance of habitat. She stated she would be interested in purchasing the
34 property from Big Bears and thought other Surf Pines residents would join her in the
35 purchase. Ms. Holloway referred to Goal 18 and said if it had been in force earlier, no
36 buildings would have been permitted on the west side of Ocean Drive.
37

38 PC Pogue asked staff if, under current OPR zoning, the site could be developed as a
39 recreational vehicle park, which is permitted in OPR zoning. Ms. Sellman stated this
40 was true and stated OPR zoning doesn't preserve land in its natural state.
41

42 In response to a query from PC Auerbach, County Counsel Andy Jordan explained the
43 draft Resolution and Order was prepared by staff, in this case Mr. Jordan, as part of the
44 proposal made by staff and was not evidence a decision had been made.
45

46 Ms. Sellman explained the change to meeting location for the County Commission
47 meeting was posted. The date was the same, but the location was changed to across
48 the street in the Courthouse. PC Martin recalled the reason testimony was not heard

1 was because the item was removed from the agenda. Ms. Sellman confirmed the item
2 was never heard because the Board decided to remand the item to the planning
3 commission for reasons stated earlier.
4

5 Chairperson Francis reasoned this might actually have worked to the benefit of the
6 opponents, who gained more time to make their arguments.
7

8 Charles W. Rule, 90054 Ocean Avenue, Warrenton, argued against the perspectives of
9 the applicant, saying he opposed the desecration of open land for a "quick fix." He
10 suggested planning commissioners visit the property to see what sorts of changes
11 would be made to the site if it were to be developed. He added that he sees deer and
12 elk outside his window on a daily basis and he stated he found indication that
13 developing the property would harm animals. Mr. Rule asked that the planning
14 commission uphold the previous denial [referred to in Ms. Holloway's submission,
15 Exhibit 10, a 1995 application and denial of the zoning change for Tax Lot 300] for
16 developing the site.
17

18 Chairperson Francis asked Mr. Rule if still sees wildlife on his property. Mr. Rule stated
19 he does, almost every day. Chairperson Francis asked if the wildlife seemed distraught
20 by being on Mr. Rule's property. Mr. Rule thought the animals were not. Chairperson
21 Francis asked if the wildlife might have grown accustomed to the development in Surf
22 Pines. Mr. Rule stated to some degree, yes. Mr. Rule stated further development
23 would force the animals to move someplace else and referred to reports about animals
24 infringing on humans and thought that should be considered.
25

26 Chairperson Francis recalled on many visits to friends' homes in Surf Pines he has seen
27 many types of wildlife and has always found it a harmonious relationship. Mr. Rule
28 agreed and said he would like it to remain so, saying he felt strongly that to allow more
29 building would diminish the quality of life there. Mr. Rule recalled a recent survey of
30 residents of Surf Pines showed 80% were concerned with maintaining open space.
31

32 Barbara Damon, 33112 Malarkey Lane, Warrenton, asked how many other parcels of
33 land that have been open spaces have been approved for change to residential. She
34 said it seemed people who bought property were told the open spaces would remain
35 open, and people believed it because it was zoned "open spaces." Now, 20 years later,
36 open space property owners are saying, "Oh, we didn't mean that." Chairperson
37 Francis stated this was a question for staff at the counter and could be researched
38 before a meeting.
39

40 Ms. Damon asked if the owners of Tax Lot 300 pay dues to the Homeowners
41 Association on one lot or more. The applicant responded he pays dues for one lot.
42

43 Ms. Damon stated the property referred to earlier as having sold for less than market
44 value sold for \$625,000, rather than \$695,000 and was on the market for two years.
45 She stated the owners had to divulge to prospective buyers that the property across the
46 street might be developed, and so the price came down. She stated the RV park
47 seemed like a threat, that either it's going to be houses or an RV park.
48

1 Chairperson Francis stated recreational vehicle parks are permitted outright in OPR
2 zoning. He said people are mistaken if they believe that OPR zoning will preserve an
3 area in a pristine condition forever.

4
5 In response to a question from PC Pogue, Ms. Damon stated the homeowner's
6 association dues pay mainly for roads.

7
8 Chairperson Francis asked if the applicant had any rebuttal. Mr. McMahan did not.

9
10 In response to a query from Chairperson Francis, Mr. Wingard told the commission that
11 staff had compiled a revised Resolution and Order and the amended version of the staff
12 report.

13
14 Chairperson Francis asked if the planning commission had any questions. No one
15 responded. Chairperson Francis closed public testimony and opened discussion for
16 planning commissioners.

17
18 PC Auerbach asked for confirmation that Exhibit A would be submitted as the planning
19 commission's findings, though the applicant prepared the materials. Mr. Wingard stated
20 this was true. PC Auerbach thought the staff description was more neutral than the
21 applicant's findings.

22
23 There was brief discussion among the planning commission and Mr. Jordan about how
24 the motion should be made and what it should contain.

25
26 Chairperson Francis recessed the meeting for 10 minutes at 3:10 p.m. and reconvened
27 at 3:20 p.m.

28
29 **PC Auerbach moved and PC Switzer seconded to strike the word**
30 **"randomly" in Exhibit A wherever it appears. Motion approved**
31 **unanimously.**

32
33 **PC Auerbach moved and PC Rohne seconded to change the word**
34 **"confines" in Exhibit A wherever it appears to "adjacent to." Motion**
35 **approved unanimously.**

36
37 Chairperson Francis asked if there were any procedural motions pursuant to ORS
38 197.763. Hearing none, he asked for a motion.

39
40 **PC Auerbach moved and PC Pogue seconded to adopt the revised**
41 **Resolution and Order of December 13th, 2005. Motion approved**
42 **unanimously.**

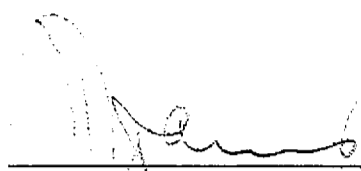
43
44 **Adjournment**

45
46 The meeting was adjourned at 3:24 p.m.

47
48

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Respectfully submitted,



Bruce Francis
Chairperson, Planning Commission

RECORDED

CLATSOP COUNTY BOARD OF COMMISSIONERS
MEETING MINUTES
October 12, 2005

NOV 9 2005

Doc # 2005110001

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TAPE 788A

Chairperson Richard Lee called the meeting to order at 6:03pm in Courtroom 200 of the Clatsop County Courthouse, 749 Commercial, Astoria. Also present were Vice-Chair Patricia Roberts, Commissioners Helen Westbrook, Lylla Gaebel, Sam Patrick as well as County Administrator Scott Derickson and County Counsel Andrew Jordan.

Agenda Approval:

Gaebel made and Roberts seconded a motion to approve the agenda as presented. Motion was unanimously adopted.

Business from the Public:

There was none.

Consent Calendar:

With regards to Consent Calendar items, Gaebel noted that she would like to see minutes from various committees in a more expeditious manner. *Westbrook made and Roberts seconded a motion to adopt the Consent Calendar. Motion was unanimously adopted.*

- a. Public Safety Coordinating Council Minutes 7/5/05
- b. Agreement with Oregon Dept of Fish and Wildlife to Fund a Portion of a SAFE Economic Evaluation Study with Accompanying Resolution and Order for Revision CEDC Budget
- c. 2005-07 Agreement with Oregon Commission on Children & Families for Medicaid
- d. Local Govt Grant Agreement for Playground at Cullaby Lake
- e. Consider Offers on County Property
- f. County Economic Development Council Minutes May 4, 2005
- g. Planning Commission Minutes May 10 and June 14, 2005
- h. Resolution and Order for Continued Cooperation w/ Regards to Fort Clatsop

Proclamations:

With regards to the Proclamation of Red Ribbon Week, Gaebel noted that she had asked that the item be placed on the Board's agenda. Health and Human Services Director Don Schreiner gave a brief report and introduced Jill River from LifeWorks Northwest and also Brandon Peterson from Astoria High School who was promoting Red Ribbon Week as his senior project. Peterson came forward and read the proclamation for the Board and spoke further about his volunteer work for drug, alcohol and tobacco awareness. He noted that he had been primarily working with middle school age kids with the campaign and also stated that on October 30th there would be a BBQ at the Astoria Aquatic Center for the community. *Gaebel made and Roberts seconded a motion approving the proclamation. Motion was unanimously adopted.*

Public Hearings:

Regarding the Proposed Ordinance 05-09. Big Bear/LLC Charlton Comprehensive Plan-Zoning Map and Text Amendment and Comprehensive Plan Designation Change, Chair Lee called upon Counsel Jordan. Jordan announced that he had drawn up a Resolution and Order remanding the matter back to the County's Planning Commission. He stated that the record was inadequate and the maps of the area were not of sufficient quality or clarity for the Board of Commissioners to make a decision on the issue. His recommendation to the Board was to

1 approve and authorize the Chair to sign the resolution and order, get "more" of a record, ensure
2 proper maps are included and that when it comes back before the Board of Commissioner, they
3 should have more of a complete record. Roberts expressed her dismay at finding the record in
4 her packet incomplete. She stated that she was struggling with whether the Board would be
5 developing new lots, because of an issue with the homes directly to the east of property in
6 question. She indicated that the people who had purchased the eastern lots were assured that
7 the land in question would never be developed. Roberts felt that the promise was expressed to
8 the buyers as a "sales tool" and felt discomfort if that was not going to be the case. Also, she
9 wanted any potential buyer of property to be told that they would be in the Tsunami zone and
10 asked that the Planning Commission consider enforcing height restrictions to protect the view
11 of existing homes. *Westbrook made and Gaebel seconded a motion to approve the resolution
12 and order drafted by counsel with a note under paragraph "b" that would indicate that the
13 Planning Commission would receive the full record. Motion was unanimously adopted.*
14

15 With reference to the item for Measure 37 Claim: Larry R. and Danielle F. Carlson, 93387
16 Brownsmead Hill Road, Astoria, the Chair called for the staff report. Community
17 Development Director Kathleen Sellman summarized her report, indicating that the claimants
18 were requesting that their property be changed from R5 to R1, a zoning designation that
19 predates their ownership of said property. Sellman asked that the Board consider the findings
20 1 through 8 and deny the Carlson's claim as invalid under Measure 37. The land was currently
21 zoned R5 now, she added, and was also R5 when the claimants acquired the land. The Chair
22 opened the public hearing. As there was no public testimony, the hearing was closed. Sellman
23 came forward and reported that the Carlson's did not plan on attending the hearing and also
24 that they were aware of the staff's recommendation for denial. *Westbrook made and Patrick
25 seconded a motion to approve the resolution and order denying the Measure37 claim made by
26 Larry and Danielle Carlson. Motion was unanimously adopted.*
27

28 Other Business:

29 Regarding the Appointments to the Board of Property Tax Appeals (BOPTA), County Clerk
30 Nicole Williams gave the staff report. She asked that the Board appoint one person to the
31 governing body and at least two people to the pool. Gaebel asked if Williams had a
32 recommendation on who would be most qualified for appointment to the pool. Following her
33 recommendation, *Roberts made and Lee seconded a motion to appoint Commissioner Lylla
34 Gaebel to the governing body position and Eischen, McGonigle and Brown to the BOPTA
35 pool. Motion was unanimously adopted.*
36

37 County Administrator Reports:

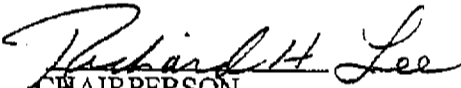
38 There were none.
39

40 Commissioners Reports:

41 Gaebel suggested that it was time that the Board appointed a Charter Review Committee,
42 noting that next year would be the fifth year since the current charter's adoption by voters. She
43 suggested the Commission begin the review process soon so any changes could be presented to
44 voters in the November 2006 election. Gaebel put forth that perhaps each Commissioner could
45 delegate one person from their district and then 2 or 3 additional at large people could be
46 appointed. Derickson noted that the topic could be discussed more in depth at a future work
47 session and noted that one would be scheduled.
48

49 Roberts read an e-mail she had received from Fort Clatsop Superintendent Chip Jenkins
50 thanking Public Works Director Ed Wegner and the Public Works crew for assistance with
51 installing signs. She also reported that Health and Human Services Director Don Schreiner is

1 assisting Clatsop Behavioral Healthcare with a \$100,000 grant for mental health housing.
2
3 Westbrook reported on the Parks Master Plan Task Force's first public workshop. She noted
4 that the Task Force was pleased to see 3 Commissioners at the workshop.
5
6 Sam asks about the emergency plan for Clatsop County. Following discussion with Chief
7 Deputy Paul Williams, the Board directed that staff schedule a special work session at 10 a.m.
8 Nov. 2 with representatives of the Sheriff's Office to discuss the county's emergency plan.
9 Westbrook reminded that she still wished to see some sort of report on the emergency planning
10 that occurred during the latest Tsunami alert and subsequent evacuation which took place in
11 June.
12
13 Patrick reported on the recent Drug Court graduation of six people. Since the inception of Drug
14 Court, 49 people have graduated of which only four have been re-arrested for drug crimes.
15
16 Chairperson Richard Lee reported on a meeting of Sunset Lake residents who are working on
17 removal of lily pads in area lakes. He also commended the Parks Supervisor Steve Meshke for
18 the good work that he was doing with County Parks.
19
20
21
22 There being no further business, the meeting was adjourned at 6:40 pm.
23
24
25
26
27
28


CHAIRPERSON

Chairperson Bruce Francis called the August 9, 2005, Planning Commission meeting to order at 1:00 p.m. Planning Commissioners (PC) present: Marc Auerbach, Bruce Francis, William "Bill" Harris, Brian Pogue, Jeff Martin and Chuck Switzer.

Staff present: Blair Henningsgaard, County Counsel; and Kathleen A. Sellman, Director, and Julia Nevan Decker, staff assistant, Community Development Department.

Minutes

PC Harris moved and PC Auerbach seconded to approve the minutes of July 12, 2005, work session, as presented. Motion approved unanimously.

PC Martin moved and PC Harris seconded to approve the regular session minutes of July 12, 2005, as presented. Motion approved unanimously.

Changes to the Agenda

Chairperson Francis asked if there were any objections to deleting the Land and Water Land and Use Ordinance #80-14 and Standards Document text amendments from the agenda, as they had been placed there by error and were completed already. There were no objections.

Public Hearing: Quasi-Judicial Hearing on Comprehensive Plan Amendment and Comprehensive Plan / Zoning Map Amendment, Continued from July 12, 2005

Chairperson Francis re-convened the quasi-judicial hearing on the request by Margaret Kirkpatrick, of Stoel, Rives LLP, for Richard Charlton, on property owned by Big Bears LLC, to change the Comprehensive Plan designation from Conservation-Other Resources to Rural Lands and to change OPR zoning to CBR on the Clatsop Plains. He noted the public testimony portion of the hearing was closed.

Ms. Sellman presented supplemental comments to the staff report on the project. She clarified the inconsistencies in the mapping and GIS system and said the GIS would be corrected. The staff recommendation remains the same, she stated.

Hearing no discussion from planning commissioners, Chairperson Francis asked for a motion.

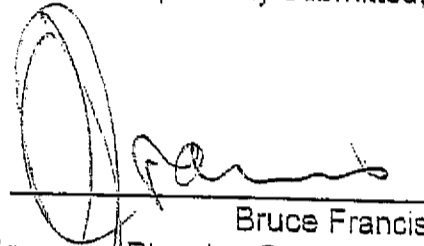
PC Auerbach moved and PC Harris seconded to accept the findings and report of staff and the zone amendments. Motion approved unanimously.

1 Adjournment

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The meeting was adjourned at 1:07 p.m.

Respectfully submitted,



Bruce Francis
Chairperson, Planning Commission

Chairperson Bruce Francis called the July 12, 2005, Planning Commission meeting to order at 1:00 p.m. Planning Commissioners (PC) present: Marc Auerbach, Bruce Francis, William "Bill" Harris, Brian Pogue, Dirk Rohne, Jeff Martin and Chuck Switzer.

Staff present: Kathleen A. Sellman, Director; Barbara Robinson, consulting planner; Patricia Getchell, Planning Technician; and Patrick Wingard, Supervisor, Community Development Department.

Minutes

PC Harris moved and PC Martin seconded to approve the minutes of June 14, 2005, work session, as presented. Motion approved unanimously.

PC Harris moved and PC Martin seconded to approve the regular session minutes of June 14, 2005. Motion approved unanimously.

Public Hearing: Quasi-Judicial Hearing on Comprehensive Plan Amendment and Comprehensive Plan / Zoning Map Amendment

Chairperson Francis opened the quasi-judicial hearing on the request by Margaret Kirkpatrick, of Stoel, Rives LLP, for Richard Charlton, on property owned by Big Bears LLC, to change the Comprehensive Plan designation from Conservation-Other Resources to Rural Lands and to change OPR zoning to CBR on the Clatsop Plains. No planning commissioner reported an ex-parte contact or a conflict of interest. No one objected to the planning commission's jurisdiction to hear the matter at this time.

Barbara Robinson, former Community Development Supervisor currently acting as a consulting planner to the county's Community Development Department on this project, presented the staff report, clarifying that Michelle Rudd would replace Margaret Kirkpatrick in representing Mr. Charlton. Ms. Robinson reviewed the maps, pointing out and explaining several inconsistencies. Ms. Robinson explained Ordinance 02-05, which adjusted the active dune line, and reviewed for the planning commission staff findings and the criteria to change a zone. She explained that if the re-zone were approved, based on current land use laws, five two-acre homesites for single-family dwellings could be developed.

Ms. Robinson concluded by saying the proposed change would be compatible with statewide planning goals and with the use already established in the general area of the property and recommended the planning commission recommend to the Board of Clatsop County Commissioners that the proposed amendments to both the text of the ordinance and the standards document and the required map amendments be approved and adopted by ordinance. She affirmed that this application would align with

1 the active dune line established by Ordinance 02-05 and was consistent with the earlier
2 ordinance.

3
4 Chairperson Francis opened the floor to questions of staff from the commissioners. The
5 commissioners and staff discussed a variety of issues; none of the discussion altered
6 Ms. Robinson's recommendation.

7
8 Chairperson Francis opened public testimony. There were no public agency comments.

9
10 Ms. Rudd, Stoe! Rives, 900 S. 5th Avenue, Portland, 97204, representing Mr. Charlton,
11 stated her client had purchased the property in the 1960s for its development potential
12 as residential homesites. Subsequent land use laws have limited its development
13 potential significantly; however, she continued, the applicant is interested in proceeding
14 with a five-lot development. She offered to answer questions from the planning
15 commissioners.

16
17 Chairperson Francis asked if there were any comments from proponents. Hearing
18 none, he asked if there were questions from opponents.

19
20 John McGowan, 33104 Malarkey Lane, Warrenton, 97146, brought seven letters,
21 including his own, to be included in the record in opposition. Mr. McGowan stated he
22 and a number of his neighbors received no notice of the public hearing. Mr. McGowan
23 stated when he purchased his property, he had been told the dune was an active
24 foredune and never would be built upon; as a result, he paid more for his lot than he
25 would have otherwise. The dune, he said, had not changed significantly in the 22 years
26 he has lived above it. He stated approval could open "Pandora's Box" for development
27 along the foredunes to the north and south of it, and he said there was a significant
28 tsunami risk in the area proposed for re-zone. In responses to a question from PC
29 Switzer, Mr. McGowan stated the assurances he had received about the dune never
30 being built upon had been verbal.

31
32 Susan Holloway, 3619 SE Francis, Portland, 97202, and 90054 Ocean Avenue,
33 Warrenton, 97146, spoke in opposition. Ms. Holloway stated she had contacted the
34 planning and development department as many as 12 times over the course of the last
35 12 months and had been told that no action was planned regarding this issue. When
36 she purchased her property in 2003, near Mr. Charlton's property, she checked on the
37 value and buildability of Mr. Charlton's property. The information she received, she said,
38 stated Mr. Charlton's property was worth \$6,000 and that it was not zoned to be built on,
39 a major consideration in her decision to purchase. Ms. Holloway stated she was
40 opposed to seeing the site developed because of the wildlife that inhabited it and the
41 natural beauty of it. She submitted a letter in support of her testimony. In response to a
42 question from PC Harris, Ms. Holloway said both porches on her Surf Pines home had
43 settled.

44
45 Chairperson Francis asked if the applicant had a rebuttal to the testimony in opposition.
46 Ms. Rudd spoke, noting the neighbors' desire to continue to enjoy the open space was
47 understandable; however, the criteria had been met and that it was appropriate to move
48 the line, as recommended by staff, to permit Mr. Charlton to develop his land.

1
2 Chairperson Francis asked if there were further comments from staff. Ms. Robinson
3 responded that notice had been mailed to all property owners within 250 feet and to the
4 Surf Pines Home Owners Association on June 21, 2005. The list of nearby property
5 owners is based on the records of the Clatsop County Department of Assessment and
6 Taxation, she explained, adding that Mr. McGowan's property might be located farther
7 than 250 feet away. Notice was published June 23, 2005, in The Daily Astorian, she
8 added. Ms. Robinson, noting Mr. McGowan's comment regarding tsunami risk,
9 explained there is nothing in the standards that prohibits residential development within
10 a tsunami zone. Ms. Robinson stated the county has never been notified that the
11 property is not permitted to be developed. Finally, she stated, the beaches and dunes
12 overlay rules would protect against erosion and protect the shoreline.

13
14 Those present discussed the maps and the inconsistencies among them.

15
16 Chairperson Francis closed public comment and opened discussion among planning
17 commission members.

18
19 Chairperson Francis called a five-minute recess. Chairperson Francis reconvened the
20 hearing, and Ms. Robinson presented the official zoning map for the area, a colored wall
21 map showing detailed zoning. Ms. Robinson stated the commission should rely on the
22 Horning Report to establish the active dune line, noting it did not change the zoning.

23
24 The planning commissioners discussed the original zoning, the inconsistencies among
25 the maps and the neighbors' expectations of conservation. Chairperson Francis
26 referred to the Horning Report, stating it is the most recent and best information
27 available. Ms. Robinson explained that the county is allowed to rezone land if better is
28 gained, and that is the case here.

29
30 Chairperson Francis closed testimony and asked for a motion.

31
32 **PC Harris moved and PC Martin seconded to postpone to date**
33 **definite, our next meeting, and I want to have the lines drawn**
34 **correctly, so I can see exactly what they are, I want to see how much**
35 **of this lot is OPR, how much of this lot is CBR and I think that would**
36 **better give us an idea of what direction we should go.**

37
38 Discussion: PC Pogue would like the history on how the property was zoned; several
39 others agreed.

40
41 **VOTE: Motion approved, five in favor and two opposed.**

42
43 Chairperson Francis announced the matter would be continued at the next planning
44 commission meeting on August 9, 2005.

45
46 **Legislative Hearing: Land and Water Development and Use Ordinance #80-14 Text**
47 **Amendment and Standards Document Text Amendment**

48

1 Chairperson Francis opened the legislative hearing on proposed amendments to the
2 Land and Water Development and Use Ordinance #80-14 to Section 4.052 of the Beach
3 and Dune Overlay District and to the Standards Document to Section S3.015 of the
4 Oceanfront Setback. No conflicts of interest were reported and no one objected to the
5 jurisdiction of the planning commission to hear the matter at this time.

6
7 Ms. Robinson provided the staff report and reviewed the proposed changes, which she
8 explained would clean up the language and reflect changes already approved in 2002.

9
10 PC Harris noted a typographical error.

11
12 Chairperson Francis opened public testimony. No public agency requested to speak.
13 There was no public testimony, and Chairperson Francis closed public testimony.

14
15 Hearing no discussion from planning commissioners, Chairperson Francis asked for a
16 motion.

17
18 **PC Auerbach proposed we accept staff recommendation for the**
19 **proposed amendment to Clatsop County Land and Water**
20 **Development and Use Ordinance 80-14 and Clatsop County**
21 **Standards Document with the exception that the word "outline" in**
22 **4.052, subsection 2, be changed to "as set forth" and that in the**
23 **Standards Document, subsection 5, that that be renumbered A, B,**
24 **and C. PC Switzer seconded the motion.**

25
26 Chairperson Francis asked staff to repeat the motion. Mr. Wingard summarized the
27 motion above.

28
29 **Motion approved unanimously.**

30
31 **New Business**

32
33 **Review and Recommendation of Adoption to the Clatsop County Board of**
34 **Commissioners of New Planning Commission By-laws**

35
36 Chairperson Francis, introducing the topic of the review and revision of the planning
37 commission's bylaws and reading from a prepared statement, asked if there were any
38 objections to motions being made prior to discussion, to facilitate the review. No one
39 objected.

40
41 Planning Technician Pat Getchell reviewed each article separately.

42
43 **Article 1:**

44
45 Ms. Getchell stated no changes had been recommended for Article 1. Chairperson
46 Francis asked if there were any changes to be recommended at this time. There were
47 none.

48

1 Article II:

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3 Ms. Getchell read the proposed new language.

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Article II:

Ms. Getchell read the proposed new language.

PC Auerbach moved and PC Harris seconded to insert "Article II, Object, The object is for the planning commission to recommend to the Board how the Comprehensive Plan and implementing Ordinance should be developed, maintained, and assist the Board in carrying out the plan. In its second capacity, the Planning Commission hears and decides on land use decisions such as variances, conditional uses, enforcement and subdivisions, and the committee for citizen involvement shall be the Clatsop County Planning Commission." Motion approved unanimously.

Article III:

Ms. Getchell read the proposed new language for Article III, Membership, Section 1.

PC Switzer moved and PC Auerbach seconded to strike the words, "and qualified" from the end of the statement.

Ms. Getchell stated a motion need to be made before it could be amended.

PC Harris moved and PC Auerbach seconded to accept Section 1, The Commission shall consist of seven (7) members appointed by and serving at the pleasure of the Clatsop County Board of Commissioners, each to serve a term of four years or until their respective successors are appointed and qualified.

PC Switzer moved and PC Auerbach seconded to amend the main motion and strike the words "and qualified" at the end of the statement.

The motion to amend the motion was approved unanimously.

The amended motion was approved unanimously.

Ms. Getchell read the proposed new language for Article III, Section 2.

PC Harris moved and PC Martin seconded to accept Article III, Section 2, as read. Motion approved unanimously.

Ms. Getchell read the proposed language for Article III, Section 3, for which she said no changes were recommended. No one objected to the section as written.

Ms. Getchell read the proposed new language for Article III, Section 4, for which a recommendation was made to strike the first sentence.

1 PC Auerbach moved and PC Harris seconded to strike the first
2 sentence of Section 4, "Members of the Commission shall be
3 residents of the various geographic areas of the County." Motion
4 approved unanimously.
5

6 Ms. Getchell stated the only recommendation for Section 5 was to correct a
7 typographical error, making an "s" on the end of the word "times" non-italic, like the rest
8 of the paragraph.

9 PC Switzer moved to change the word "chairman" to "chair"
10 throughout the document.
11

12 Ms. Getchell recommended that, at the conclusion of the reading of the entire by-laws,
13 such a motion be made for the entire document. There was general consensus to
14 follow this course.
15

16 PC Auerbach moved and PC Rohne seconded to strike Section 5 and
17 replace it with "Members shall attend all meetings faithfully except in
18 such cases of illness. The Chair may excuse a member for up to
19 three regular Planning Commission meetings. Additional requests
20 for regular meetings to be missed must be made to the Commission
21 prior to the meeting(s) missed. If a Commission member is absent
22 more than three times and has failed to secure the approval of the
23 Commission for such absence(s) his (her) absence may be
24 considered to be non-performance of duty."
25

26 PC Harris moved and PC Martin seconded to amend the motion to
27 strike "secure the approval of" and to insert "to notify."
28

29 Amendment to the motion approved unanimously.
30

31 Amended motion approved unanimously.
32

33 Ms. Getchell read the proposed new language for Article III, Section 6, for which staff
34 recommended replacing c, "A Commission Member may be removed by the Board of
35 County Commissioners, after hearing, for misconduct or non-performance of duty," with
36 "The Board of Clatsop County Commissioners may remove any appointed commission
37 members by affirmative vote of at least three commissioners. Removal may be initiated
38 in accordance to county policies and at the Board's discretion; or upon recommendation
39 of the commission as provided in Paragraph 3.C of Ordinance #01-10." Ms. Getchell
40 recommended striking the last words of the last sentence and placing a period after the
41 word "commission."
42

43 PC Harris moved and PC Auerbach seconded to approve Section 6
44 as amended by staff. Motion approved unanimously.
45

46 Ms. Getchell recommended for Article III, Section 7, striking the words "governing body"
47 and inserting the words Board of Clatsop County Commissioners." She read the
48 proposed new language.

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PC Auerbach moved and PC Harris seconded to accept staff recommendation on Section 7. Motion approved unanimously.

Ms. Getchell read Article III, Section 8, adding that no changes were recommended by staff.

PC Auerbach moved and PC Martin seconded to strike “: (1)” and “and (2) may also designate one or more other advisory members from other than the County and who shall serve without compensation and without vote but who may participate in the discussion of all Planning Commission matters.” Motion approved, four in favor and three opposed: Martin, yes; Rohne, yes; Switzer, no; Harris, no; Pogue, yes; Auerbach, no; and Francis, yes.

Chairperson Francis read the language as approved: “The Board of Commissioners may designate one or more officers of the County to be members of the Commission.”

Article IV

Ms. Getchell read the proposed language for Article IV, Officers, Section 1, adding that no changes were recommended by staff.

PC Auerbach moved and PC Harris seconded to strike “, and 2nd Vice-Chairman.”

PC Martin moved and PC Harris seconded to amend the motion to insert the word “and” between “Chairman” and “Vice Chairman.”

Amendment to the original motion approved unanimously.

Amended motion approved unanimously.

Ms. Getchell read new language proposed as Article IV, Section 2.

PC Harris moved and PC Auerbach seconded, “Section 2, Election of Officers shall occur annually at the first meeting of the year and elected officers shall take office at the end of the current meeting.” Motion approved unanimously.

Article V:

Ms. Getchell pointed out the proposed language for Article V, Officers' Duties, noting staff was not recommending any changes. Planning commissioners decide to look at Article V, Section 5.

PC Martin moved and PC Auerbach seconded to delete Section 5 out of Article V. Motion approved unanimously.

1 *Article VI:*

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3 Ms. Getchell read the language recommended for Article VI, Meetings, Section 1.

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Ms. Getchell read the language recommended for Article VI, Meetings, Section 1.

PC Auerbach moved and PC Switzer seconded to strike Section 1 and insert "This Commission will generally hold its regular meetings on the second Tuesday of each month at 1:00 p.m. Special meetings may be called by the Chairman as required." Motion approved, six in favor and one (PC Harris) opposed.

Ms. Getchell noted staff had no recommendations for Article VI, Sections 2 through 4. She read the change proposed for Article VI, Section 5.

PC Auerbach moved and PC Martin seconded to accept staff recommendation Section 5. Motion approved unanimously.

Ms. Getchell reported the staff recommendation for Article VI, Section 6, was to insert the language recommended by the National Association of Parliamentarians.

PC Harris moved and PC Martin seconded, "we do that exactly as stated." Motion approved unanimously.

Article VII:

Ms. Getchell reported staff recommends Article VII, Conflict of Interest, be revised to include the updated sections in Ordinance #80-14.

PC Harris so moved and PC Martin seconded. Chairperson Francis read the proposed language as, "Members shall be required to vote on all matters which require a decision unless a member has a conflict of interest. For procedure to be followed regarding conflict of interest see Ordinance 80-14, Section 2.130 through 2.175." Motion approved unanimously.

Article VIII:

Ms. Getchell reported that in Article VIII, Public Hearings, Section, staff recommended the reference to Article IV be changed to Article V. She described this as an administrative change that did not require the planning commission's action.

In Section 2, she recommended deleting Section 6.4 and inserting Section 2.185.

PC Auerbach moved "we do it." PC Harris seconded the motion. Chairperson Francis read the proposed language: The order of proceedings shall be set forth in Ordinance 80-14, Section 2.185. Motion approved unanimously.

1 Ms. Getchell read the language proposed for Article VIII, Section 3, which changed
2 "right of limit" to "right to limit."
3

4 PC Auerbach stated, "Move it." PC Martin seconded the motion.
5 Chairperson Francis restated the motion as, "The Chairman shall
6 have the right to limit testimony on any public hearing matter when
7 he feels the Commission has received adequate representative
8 testimony of all sides of the matter." Motion approved.
9

10 *Article IX:*

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12 Ms. Getchell reported staff recommends deleting all of Article IX, Special Records,
13 Sections 1 through 8.
14

15 PC Harris so moved (to delete Article IX, Special Records, Sections 1
16 to 8) and PC Martin seconded the motion. Motion approved
17 unanimously.
18

19 *Article IX:*

20
21 Ms. Getchell reported staff recommends inserting Article IX, Bylaws. She read the
22 proposed language.
23

24 PC Auerbach moved and PC Harris seconded that "We add Article IX,
25 Bylaws, The Commission is authorized to develop bylaws consistent
26 with Ordinance #01-10 Section 3.E and applicable provisions of state
27 law. Such bylaws shall be effective upon approval by the Board."
28 Motion approved unanimously.
29

30 *Article X:*

31
32 Ms. Getchell reported staff recommends inserting Article X, Amendments. She read the
33 proposed language.
34

35 PC Harris stated: "I make that motion as stated." PC Auerbach
36 seconded the motion. Chairperson Francis read the proposed
37 language: " Article X, Amendments, The Commission may
38 recommend bylaw changes to the Board of Clatsop County
39 Commissioners. The bylaws may be amended by a majority vote of
40 the Board of Clatsop County Commissioners and take effect
41 immediately." Motion approved unanimously.
42

43 *Article XI:*

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45 Ms. Getchell reported staff recommends adding Article XI, Dissolution of Planning
46 Commission. She read the proposed language. She suggested leaving out the
47 reference to the ordinance at the end of the sentence.
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PC Harris said: "I'll make a motion to that effect." PC Auerbach seconded the motion. Chairperson Francis read the proposed language: "Whenever it is determined that the Planning Commission created by the Board of Commissioners is no longer useful or necessary, it may be discontinued by affirmative vote of at least three commissioners of the governing body."

PC Auerbach moved and PC Martin seconded to amend the motion to change the reference to "Board of Commissioners" to "Board of Clatsop County Commissioners."

Motion to amend the motion approved unanimously.

Amended motion approved unanimously.

After deciding to move to a later meeting consideration of creating a policy for an annual review of the bylaws, Chairperson Francis opened the floor to other revisions.

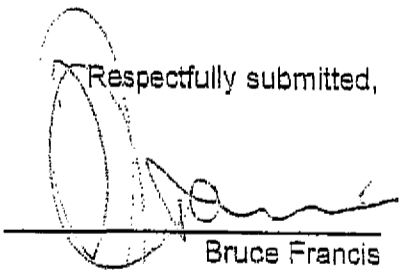
PC Switzer moved and PC Harris seconded to strike "chairman" and insert "chair" throughout the document. Motion approved unanimously.

PC Martin moved and PC Auerbach seconded that anywhere throughout the document that the word "Board" appears it will be amended to Board of Clatsop County Commissioners. Motion approved unanimously.

PC Auerbach moved and PC Martin seconded to accept all the bylaw changes and to recommend these changes to the Board of Clatsop County Commission. Motion approved unanimously.

Adjournment

The meeting was adjourned at approximately 3:30 p.m.

Respectfully submitted,


Bruce Francis
Chairperson, Planning Commission

ORDINANCE #06-02

Exhibit 3

**Written Comments
Received**

**Charlton/Big Bears LLC
Comprehensive Plan/Zoning Map
Amendment**

February 22, 2006

Written Comments Received at
July 12, 2005 Planning Commission Meeting

SUSAN HOLLOWAY Clatsop County Plan Commission
90054 Ocean Avenue Warrenton, Oregon 97124 503 706-5860

Subject: Letter in defense of keeping Lot 300, T7N R10 Section 16C zoned as Open Space, Parks and Recreation (OPR)

I would like The Clatsop County Planning Commission to know that I am opposed to a zone change for Lot 300 in Surf Pines. From reading the printed records, it appears that the land has always been considered unbuildable and that Mr. Chariton purchased the property with that designation.

When I purchased my home in 2003 I asked for a copy of the conditions on that property and it was shown to have a tax value of only \$6,000 and was not zoned for residential. It was a major consideration in the purchase of my house.

He has not lost actual value on this property due to the designation as Open Parks and Recreation.

The property is home to wonderful wildlife and should remain designated to that purpose. Please do not consider losing a beautiful natural piece of the coast to more houses. I would offer to purchase the property (for the same increase in value that I realized on my property in Arcadia) and give it to the Nature Conservancy or other non-profit entity that would keep it as park land, adding to the beauty of the north coast and Clatsop County.

Sincerely,

Susan Holloway

Susan Holloway

Planning Commission:

L. Phelan & Patricia J.
Gamble are opposed to
the rezoning of property
on the lower road of
Ocean View (west side)
This is a dunes area that
should not be altered.

10057 Oakdale
Waukegan, Ill.

Barbara Kent Damon
33112 Malarkey Ln. Surf Pines
Warrenton, Or. 97146
Mailing address:
PO Box 2548
Gearhart, Or. 97138

July 11, 2005

Clatsop County Planning Commission
800 Exchange St.
Astoria, Or.

RE: Zoning amendment requested by Margaret Kirkpatrick for Richard Charlton on property owned by Big Bears LLC to amend the current zoning of "Open Space, Parks and Recreation" to "Coastal Beach Residential". The request consists of amending the zoning on the property legally described as T7N R 10W Section 16 Tax Lot 300.

Attn: Teri Allen, Project Planner

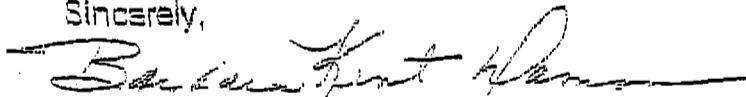
Dear Teri;

The request for a zone change does not seem to be in line with the Clatsop Plains Community Comprehensive Planning. There must have been a good reason the 10+ acres were zoned "Open Space, Parks and Recreation" in the first place. I am not aware of anything that has taken place to make the land now okay to be residential.

The homeowners in the area of the 10+ acres have believed the zoning would not change and that no homes would be built in the open space. It doesn't seem right to change the zoning to "residential" to benefit one land owner when the change could be detrimental to the existing homeowners.

I request you seriously consider denying the zoning change request.

Sincerely,



Barbara Kent Damon

July 11, 2005

County Commissioners
Clatsop County Planning Council
Community Development Department
800 Exchange Street Suite 100
Astoria, Oregon

RE: Big Bears LLC petition

To Whom It May Concern:

I am in direct opposition to the proposed development and zoning changes. I believe that this will greatly decrease the value of our properties in the Surf Pines community. This will negatively impact the enjoyment derived from the open space.

This property was originally sold to Leonard and Marion Rice with the assurance that there could not and would not be building on the open space below the home that I purchased from Marion Rice in 1998. Mr. and Mrs. Rice were greatly opposed to development of this area and fought hard to keep this as open space as it was presented to them at the time of purchase in the 1980's.

I do not believe in light of last winter's disaster that this is still contemplated given the tsunami conditions and stability issues of the dunes.

I respectfully request that you do not grant the petition at hand, as this is not in the interest of the community and its livability.

Thank you for your consideration of my letter.

Respectfully yours,

Marian Gormley-Pekola

Marian Gormley-Pekola
90073 Ocean Drive - Surf Pines
Warrenton, Oregon 97146

Marian Gormley-Pekola
Certified Public Accountant
11801 NW Milliken Community Rd.
Gaston, OR 97111
503.857.6282
fax 503.857.6444
mpe@marianpe.com

THE CHAIR

CLATSOP COUNTY PLANNING COMMISSION
ASTORIA OREGON

JULY 12, 2005

Dear Sir or Madam,

The undersigned are strongly opposed to
the proposal of changes in the zoning
law of ocean drive at Surf Pines.

Sincerely,

E W Berkeley

EDWARD W. BERKELEY MD

Ann M. Berkeley

ANN M. BERKELEY

33077 MALARKEY LANE

SURF PINES WARRENTON

LOTS 1 & 2 at Strawberry Hill

To: Clatsop County Planning Commission

From: Winchester and Suzanne King
33099 Malarky Lane
Warrenton, Oregon 97146

Re: Public hearing Tuesday, July 12, 2005 to consider a
zoning change on property owned by Big Bears LLC

We are residents of Surf Pines residing due east of the of the property
legally described as T7N R10W Section 16C Tax lot 300. We respectfully
urge the Commission to deny a zoning change for this property for the
following reasons:

1. There is no compelling need for development of this parcel other than
to enrich the developer. There is no shortage of more suitable land in
and around Surf Pines.
2. This parcel is in a precarious flood zone and certainly vulnerable to any
tsunami wave activity. Development of this parcel carries potential legal
consequences given the common body of knowledge concerning
earthquake and wave activity we have acquired within the last few years.
3. If this parcel is rezoned an ecologically sensitive 10 acres will be destroyed
and the ensuing residential development will encroach on the still pristine
adjacent land to the North.

Thankyou for your consideration. We are aware of the difficulty of the decisions
which confront you and are confident of your ability to render a fair and impartial
recommendation to the Board of Commissioners on this matter.

July 11, 2005

Winchester and Suzanne King

Winchester King
Suzanne King

July 5, 2005

Community Development Commission

Clatsop County Planning Commission
Planning Commission Chair
300 Exchange Street, Suite 100
Astoria, OR 97103

I am writing in regards to the amending of the current zoning of OPR to CBR and the Comprehensive Plan Designation Amendment from Conservative-Other Resources to Rural Lands on the 10.9 acres west of the Lower Surf Pines Road.

I have only one lot that is adjacent to this development but I am opposed to changing and annexing new lots to an area that has not been completely developed. There is much building and development that is taking place in the Surf Pines area now and it is not near complete in the development to annex new potential building lots. The reason for my opposition is the safety of the residents in this community. If there is a tsunami that occurs there will be inadequate relief areas and exit roads that will be available. Lets develop the existing lots and areas before expanding.

Secondly, even though I am not a proximate owner of property overlooking this area, the people who did buy these lots paid a premium price for the land and the land was bought with the knowledge that no large development would be built to the west of them. The views of these few property owners would be permanently destroyed. Those who build or who have new homes on the ocean front would never have a view due to the sea wall which is increasing rapidly over time. I do own some lots south and east of Ocean Avenue. The homes to the west of my lots have a lot restriction on the deed of no building greater than 14 feet but it is my understanding that the height restriction on any new development would be 18 feet. I think this asymmetry in height is deplorable if any homes were to be built in this area.

Thirdly, this land was designated to be a conservative resource and this land should be protected. This area in Clatsop County is close to the National Park and the land in this area should be preserved as long as possible. People will be coming from all over the United States to view our coast line. Some will be on the beach and some will be hiking in this area, others will fly over the area in planes. This area must be developed carefully and methodically and not hastily. This is not the time to open this area to development only for the gain of a few to profit. There is plenty of area that is away from the sea wall that needs to be developed or restored. The National Park and the sea wall is for all of us to enjoy. These lots are essentially sand dunes and part of the sea wall. The future of this area is in the hands of a few now.

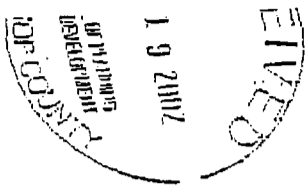
Recently, this land development has been considered in the past and was wisely defeated. There has not been significant changes to warrant such an annexation at this time. There are lots that the Clatsop County Planning Commission has opened up to development already and development should be timely especially when public lands are precious and need to be preserved.

I do believe in progress and development areas such as this should be preserved for a longer period of time. Progress should be timely.

Russell J. Keizer
Russell J. Keizer
90016 Marion Drive
Warrenton, OR 97146s

Astoria, Washington 97103
August 16, 2002

Veronica Smith, Senior Planner
Planning Commission
800 Exchange Street
Astoria, Oregon 97103



Dear Ms. Smith:

Concerning the hearing on the request to move the Active Dune Line on Malarig Road in Surf Pines, I will unfortunately be unable to be in attendance to express my views, so will do so in this letter. To summarize I think it is a very bad idea, and has already caused a major effect on me financially.

I own the property at 90093 Ocean Drive, which is directly across the road from the proposed rezone. When I bought this property three years ago I was told and promised that in the original platting of this area the lots across the street were restricted by covenant from being developed. I was told that in the past the people who had originally developed this property of mine had agreed to this policy and actually used it as a sales tool for the original development. A few years ago they went back on their word and tried to rezone, and were stopped by the County and by the land owners who bought the original property. It appears that again they are trying to get around their earlier agreements and are coming in through the back door, a well known tactic of developers, and I wish to protest this latest move.

My property is for sale, and we are moving ahead. However, my buyer got wind of this chicanery and has entered contingencies on the sale of my property based on your decisions. This is the first of many domino effects should your commission act favorably on the behalf of these developers. I am not sure my buyer will complete the proceedings if you rule in favor of this proposal, and certainly the value of my property will be drastically affected. For the worse.

I am not a qualified scientist in the field of geology, but have a great amateur interest in this field. I also am an historian of the Oregon Coast, have played golf at the Astoria Country Club with all its obvious geological records of Coastal pressures and changes. I have seen pictures of the houses falling in the ocean up and down the coast, and have lived closest of anyone to the area you are considering. I know how active that area is, I have felt the ocean pounding under my feet from my property, and with all this just cannot believe that the dune line out there is safe and permanent. I know with money and power such as developers have a geologist can be hired to say anything, but the real test is common sense. Walk out there yourself and see if you would buy one of those lots. The "permanent" coast line really is Ocean drive, for that is the first place that there is

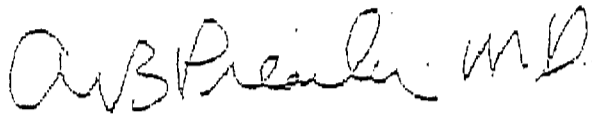
Submitted by John M. Gordon - 208-
9-22-05

D-2

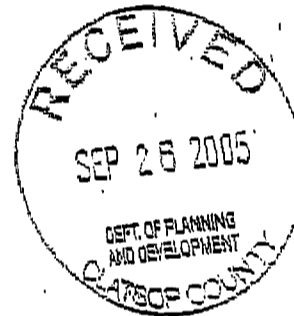
structures seems futile to me.

I respectfully submit my reasons for being against this rezoning, hope you will seriously consider my rights and values as a property owner, and stop this proposal. This is my first run in with the modern gorillas of commerce who care nothing of their prior commitments, want only more and more, and I am somewhat unhappy. Please come to the correct conclusions.

Sincerely,



Abner Bushnell Preacher, M. D., FACC



JOHN S. MCGOWAN
33104 Malarky Lane
Warrenton, OR 97146



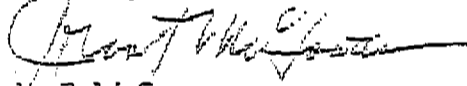
Chair
Clatsop County board of Commissioners
800 Exchange Street
Astoria, OR 97103

I have been assured by County Planning Staff that letters in opposition to the rezoning of Tax Lot 300 which were submitted to the Planning Commission at their meeting on July 12, 2005 would be in your packet for your October 12, 2005 hearing.

Accordingly, we will not burden you with additional letters today, but I would like to submit a letter dated August 16, 2002 to the Planning Commission from Dr. Abner Preacher which provides clear evidence that the proposed development of Tax Lot 300 adversely affected the value of his property.

I look forward to appearing before you at your October 12, hearing.

Respectfully,


John S. McGowan

 J. B. McGowan
33101 Lafayette Ln
Vancouver, OR 97116

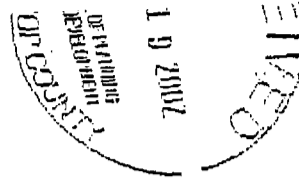
RECEIVED
SEP 29 2005
DEPT OF FINANCIAL
MANAGEMENT
CLATSOP COUNTY

Clark
Clatsop County Board of Commissioners
800 Exchange Street
Astoria, OR 97103

-211-2 p. John McGowan
letter D-2, D-3
from Alan R. ...

Washington 97102
August 16, 2002

Veronica Smith, Senior Planner
Planning Commission
800 Exchange Street
Astoria, Oregon 97103



Dear Ms. Smith:

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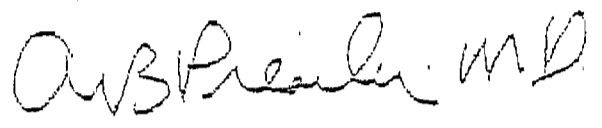
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Sincerely,



Abner Bushnell Prescher, M. D., FACC

From: "VINCE" <vince@vincewilliams.com>
To: "Lylla Gaebel" <lgaebel@co.clatsop.or.us>
Date: 10/10/2005 10:03:29 AM
Subject: Re: Wednesday hearing

LYLLA,

THANKS FOR REMINDING ME TO EMAIL MY TESTIMONY REGUATDING THE ZONE CHANGE ON OCEAN DRIVE IN SURPINES.

AS A RESIDENT WHO LIVES @ 89880 OCEAN DRIVE,WARRENTON,ORGEON.97146 AND A MEMBER OF THE SURFPINES ASSOCIATION I FULLY SUPPORT THE ZONE CHANGE. FIVE NEW HOME SITES OF TWO ACRES IS A PLUS FOR THE NEIGHBORHOOD IN OUR OPINION..

VINE AND PATTY WILLIAMS----- Original Message -----

From: "Lylla Gaebel" <lgaebel@co.clatsop.or.us>
To: <vince@vincewilliams.com>
Sent: Saturday, October 08, 2005 5:09 PM
Subject: Wednesday hearing

- > ** Reply Requested When Convenient **
- >
- > Vince,
- > It was nice talking with you the other night.
- >
- > Just reminding you that if you wish me to take your testimony forward, I
- > would be happy to do so if you'd like to send it to me in writing. An
- > email is fine.
- > Lylla
- >
- > This message has been prepared on resources owned by Clatsop County,
- > Oregon.
- > It is subject to the Internet and Online Services Use Policy and
- > Procedures of Clatsop County.
- >
- > Lylla Gaebel, Commissioner District 1
- > lgaebel@co.clatsop.or.us
- > 503-861-2080
- >
- >

10-12-05

From: Debbie Kraske
To: Kathleen Sellman
Date: Tue, Oct 11, 2005 10:00 AM
Subject: Re: Fwd: Big Bears LLC/Charlton Comp Plan/Zoning Map and Text Amendment and Comp Plan Designation Ch

Thanks. Do you want me to forward your info to Patricia or wait for Blair to respond?

>>> Kathleen Sellman 10/11 9:58 AM >>>

Working on it now. By the way, in the Standards Doc, Sec S.3.650 TSUMANI INUNDATION ZONE, only applies (OAR 632-05-050) to essential facilities, hazardous facilities, major structures, or special occupancy structures. Consultation with DOGAMI is required for those facilities per ORS 455.456 and 455.447 requirements.

On a related note, Standards Doc again, S4.011 Standards for area protection conditions: When the imposition of discretionary standards is authorized to avoid detrimental impacts to the public, the standards should be designed to:

- (1) Designate the size, number, location and nature of vehicle access points.
- (2) Increase the amount of street dedication, roadway width or improvements within the street right-of-way.
- (3) Protect vegetation, water resource, wildlife habitat or another significant natural resource.

One possible conclusion from these two sections taken together is that change of zone is not precluded by something like the tsunami inundation zone, because conditions such as these listed in S4.011, are particular to subdivision, partition, or site review.

>>> Debbie Kraske 9:39:13 AM 10/11/2005 >>>
Kathy,

Here are Pat's questions that I sent to Blair.

>>> Debbie Kraske 10/10 5:38 PM >>>
Blair,

Here are Pat's questions on the matter (aside from the lack of map issues):

1. Does the Statutory Vegetation Line described in ORS 390.770 move in and out?
2. What is the "4.042 construction setback line" (see page 97 and 110 of packet)?
3. What is our construction setback line based on?
4. Is the S3.015 Oceanfront Setback referred to on pages 113 and 114 the same as the construction setback line?
5. What is in Section 4.030, page 114?

Thanks.

GLORIA MIGHELL
89903 Manion Drive Warrenton, Oregon 97146
503 717-1490

October 11, 2005

Letter to the Board of County Commissioners in opposition to the zone change requested by Big Bear, LLC.

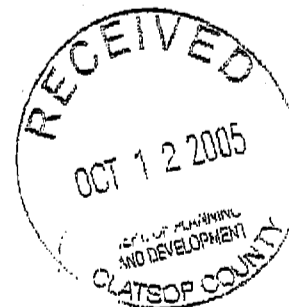
I have been a resident of Surf Pines for three years. I specifically chose Surf Pines, and the north coast, over other coastal areas in Oregon because of the open spaces, sea grass, deer and elk. I am greatly disappointed that the county would even consider changing a large parcel of open beach front land, specifically designated OPR for more than 25 years, to allow more ocean-front development of homes.

The result of the change would be to denigrate the value of the homes on the east side of Ocean and to the south. I considered purchasing the home at 90073 Ocean during the last year, but felt that the value of the home, both monetarily and esthetically, would be cheapened by the building of homes on Lot 300. My understanding is that the original purchasers of lots on the east side of the street paid premium prices for their lots and were assured that they had ocean-front views and that nothing would be built there based on the designation of Open Park and Recreation zoning.

Please maintain the integrity of the land and wildlife environment by refusing to change the zoning on this parcel of land. In the most recent survey of Surf Pine residents, I, along with the majority of residents, have prioritized more open space as the most important issue for us. Help us to achieve our goal by keeping Lot 300 as OPR.

Thank you,


Gloria Mighell



SUSAN HOLLOWAY
90054 Ocean Avenue Warrenton, Oregon 97146 503 706-5860

Subject: Letter in defense of keeping Lot 300 zoned as Open Parks and Recreation

I am the landowner directly to the south of Lot 300. My home was built in 1962 and no construction has occurred to the north of my home for 43 years. The original builder of the home believed that this would be the final home built on the west side of Ocean Drive and therefore built thirteen floor-to-ceiling windows on the north side.

The value of my home will be directly and negatively impacted should you chose to change this zoning. At the time that I purchased my home in 2003 I was given the county tax papers on Lot 300, designated as OPR. It was a factor in my decision to purchase.

The applicant's company paid \$10, less than \$1 an acre, in 1959. Lot 300 was considered unbuildable in the 60's and was then designated as Open Parks and Recreation. This parcel of land was never zoned for housing. Contrary to the Planning staff report, rather than an arbitrary designation of OPR in 1979, it most likely resulted from the Oregon Comprehensive Land Use Planning Goals and the four additional goals that addressed coastal resource planning and management issues. "Oregon's coastal goals are generally thought to have been instrumental in conserving the resources and functions of Oregon's estuaries, beaches, dunes and coastal shorelands." (from the draft of *The Oregon Coastal Management Program Coastal and Estuarine Land Conservation Plan, October 2005*)

Declining populations of native plants and animals are threatened in limited habitats along the coast. In particular, natural communities on grassy headlands and coastal dunes have been greatly diminished due to residential development and the spread of introduced weeds. I feel it is important to maintain open spaces for the multitude of wildlife that share that land with us - deer, elk, pheasants, and families of harrier hawks.

The applicant is confident he will win this zone change and has already dug the septic holes and had all the survey work completed.

The Board of County Commissioners turned down the same request 10 years ago. Please turn it down again now.

Sincerely,

Susan Holloway

Susan Holloway



11 October 2005

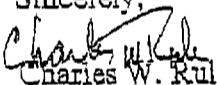
To: The Clatsop County Board of Commissioners.
SUBJECT: Denying the Re-Zoning of Tax Lot 300

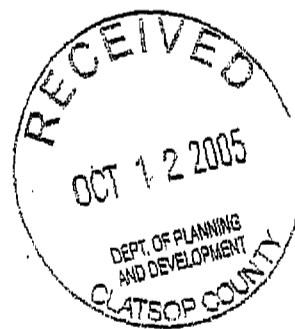
As you well know the Re-Zoning of Tax Lot 300 has been denied previously. The impact of Re-Zoning of this land will have negative repercussions even if the applicant meets the required standards to do so.

- It is clear that property values of adjacent property owners will decrease.
- Many of those living in this area were informed this property could not be built upon.
- Statistically speaking, for every house built there are a minimum of 6 automobile trips per house per day. The applicant is building five houses.
- These five houses, with driveways and all of necessities of said houses will cause a major negative impact upon the wild life.
- Re-Zoning Tax Lot 300 will create new traffic and parking problems, which this area will not sustain.
- The people living in this area are not exempt from natural disasters. Considering recent geological and meteorological events, it would be unwise to allow this zoning change to take place.

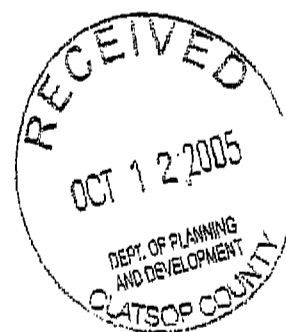
With all due respect to the present Clatsop County Board of Commissioners, please reconsider and deny this re-zoning, as did previous Clatsop County Board of Commissioners.

Please let this land remain OPR. Do not destroy that all may enjoy its beauty and the life with which is a part of our lives.

Sincerely,

Charles W. Rule
90054 Ocean Drive
Warrenton Oregon



The attached letter was sent to Susan Holloway, with the request that it be given to the Board of County Commissioners and entered into the records in opposition to the zoning change of Lot 300 at the County Commission hearing on October 12, 2005.



Dear Susan;

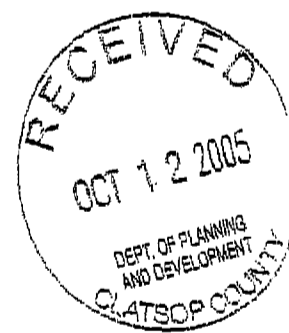
I am in complete agreement with you on the not rezoning the property near mine @ 90040 Ocean Drive.

I think this would hurt the habitat and would eventually hurt our beaches. One of the primary reasons that I bought in Sunbines rather than another home in Calif. is the beaches and the preservation of the beaches.

I would appreciate if you would voice my concern at the upcoming meeting since I will not be able to attend.

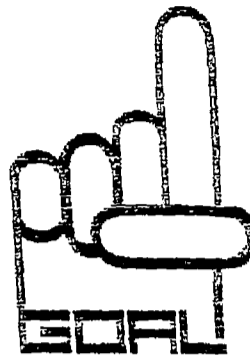
Sincerely,

Cathy Smith
90040 Ocean Drive,
Warrenton, OR
408-221-0083



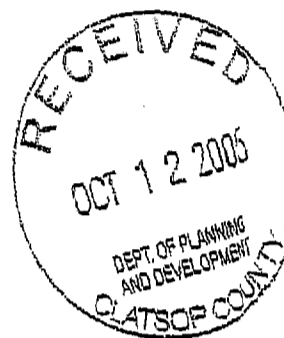
GOAL ONE COALITION

39625 Almen Drive
Lebanon, Oregon 97355
Phone: 541-258-6074
Fax: 541-258-6810
goal1@pacifier.com



October 11, 2005

Clatsop County
800 Exchange St., Suite 310
Astoria, OR 97103



RE: Charlton plan amendment/rezoning request

Dear Sir or Madam:

The Goal One Coalition (Goal One) is a nonprofit organization whose mission is to provide assistance and support to Oregonians in matters affecting their communities. Goal One is appearing in these proceedings at the request of and on behalf of its membership residing in Clatsop County. This testimony is presented on behalf of Goal One and its membership in Clatsop County, the Goal One Coalition, Oregon Shores Conservation Coalition and its membership in Clatsop County, and Charles Rule and John McGowan as individuals.

I. Introduction

This request concerns an 8.8 acre portion of a 10.9 acre parcel identified as 7-10-16C TL 300. The request is to amend the Comprehensive Plan Map designation from Conservation – Other Resources to Rural Lands and the Zoning Map designation from Open Space, Parks and Recreation (OPR) to Coastal Beach Residential (CBR).

The request also includes text amendments to Section 4.052 of the county's Land and Water Development and Use Ordinance (LWDUO) and Section S3.015 of the county's Standards Document of the LWDUO to reflect the county's adoption of Ordinance No. 02-05 (effective January 11, 2003), known as the Charlton Active Dune Line Comprehensive Plan Text Amendment.

The applicant's property consists of a parcel of land located between the beach of the Pacific Ocean and the west side of Lower Surf Pines Road at the north end of Surf Pines Development. Tax Lot 300 is currently split zoned, with 8.8 acres located in the OPR zone and the remaining 2.1 acres in the CBR zone. While TL 300 is at present undeveloped, the existing plan map and zoning map designations would allow for the siting of one dwelling on the CBR-zoned portion of the subject property.

Championing citizen participation in realizing sustainable communities, economies and environments

The land is flat and is vegetated with low shrubs. The applicant also owns the 8.23 acre TL 302, zoned OPR, which is adjacent to the subject TL 300 along its western boundary. Access to the subject property is from Lower Surf Pines Road. No subdivision proposal accompanies the redesignation and rezoning request. Minimum lot sizes in the CBR zone are established by LWDUO 3.248(1), and are either one or two acres. Approval of the request could possibly allow for between five to ten, or perhaps 11, lots to be created and developed on the subject TL 300.¹ Water is to be provided by the City of Warrenton and private sewage disposal systems are proposed as residential development occurs.

The property to the north is undeveloped land zoned OPR and Rural-Agriculture (RA-5). In addition, there are some Lake and Wetland zoned properties to the north. To the west is the Pacific Ocean and beaches designated Conservation - Other and zoned OPR.

To the east of the subject property, across Surf Pines Road, is an area designated Rural Lands and zoned Single-Family Residential (SFR-1); this area is developed with single family dwellings.

To the south is the Surf Pines development, which contains lots designated Rural Lands and zoned CBR; these lots are developed with single family residences. The CBR zone is a Goal 14 exception area. Additionally, the Surf Pines subdivision was developed pursuant to an exception to Goal 18.

II. Statewide Planning Goals applicable to the request

ORS 197.835(6) requires that amendments to comprehensive plans be reviewed for compliance with the statewide planning goals. In addition, LWDUO 5.412 specifically requires findings of consistency with the statewide planning goals.

The Surf Pines development, including that part of the subject property currently zoned CBR, is a Goal 14 and Goal 18 exception area. The extension of the CBR zoning to the remainder of TL 300 cannot be accomplished without taking exceptions to goals 14 and 18. Additionally, the proposed extension of water service provided by the City of Warrenton will require an exception to Goal 11.

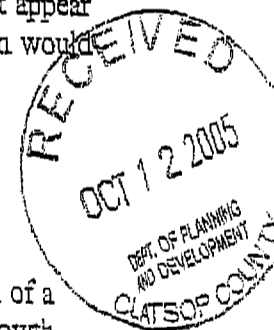
The area is not "developed." It is not argued that the area is "committed" nor does it appear that the area is committed to urban levels of residential development. Any exception would have to be a "reasons" exception.

A. Goal 11

Goal 11 provides, in relevant part:

"Local governments shall not rely upon the presence, establishment, or extension of a water or sewer system to allow residential development of land outside urban growth boundaries or unincorporated community boundaries at a density higher than authorized without service from such a system."

¹ LWDUO 5.132(1) allows for variances to minimum lot sizes under certain circumstances.



GOAL ONE COALITION

In addition, OAR 660-011-0065(2)(c) any increase in residential densities due to the presence, establishment, or extension of a water system.

Presently, no residential development is allowed on the OPR-zoned portion of TL 300. No plan or zoning map amendments which would allow for an increase in the currently allowed residential densities on the OPR-zoned portion of TL 300 may be approved in reliance upon the availability of water from the City of Warrenton without an exception to Goal 11. *DeShazer v. Columbia County*, 34 Or LUBA 416 (1998); *DLCD v. Lincoln County*, 31 Or LUBA 240 (1996).

In addition, although Goal 11 does not require lot-by-lot approvals of individual septic systems at the time property is rezoned, a local government's findings must establish that it is feasible to provide adequate individual sewage disposal systems. *DLCD v. Klamath County*, 38 Or LUBA 769 (2000). Neither the staff report nor the applicant's material address the feasibility of providing adequate individual septic systems. Rather, that required findings are improperly deferred until TL 300 is subdivided.

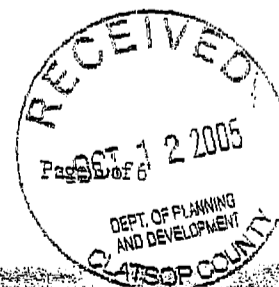
B. Goal 14

LWDUO 3.242 states that the CBR zone is a Goal 14 exception area. The CBR zone cannot be extended to the OPR-zoned portion of TL 300 without taking an exception to Goal 14.

LWDUO 3.248, which establishes development and use standards within the CBR zone, appears to recognize that some CBR-zoned lots are not included within the Goal 14 exception area. LWDUO 3.248(1) establishes a 2-acre minimum for such lots. Regardless, changing the zoning of the OPR-zoned portion of TL 300 to CBR requires findings of compliance with or an exception to Goal 14.

By definition, all land outside an acknowledged UGB and not the subject of an exception to Goal 14 is "rural" land. When amending its acknowledged comprehensive plan and zone designations for such land, a local government must demonstrate that the new plan and zone designations comply with Goal 14 or adopt an exception to Goal 14. *1000 Friends of Oregon v. LCDC (Curry County)*, 301 Or 447, 471 (1986); *Churchill v. Tillamook County*, 29 Or LUBA 68 (1995). Lot sizes of one acre or less are clearly urban, and lot sizes of greater than 10 acres are clearly rural. Whether densities between those extremes are urban or rural depends on the types of urban services to be provided and the proximity of the proposed development to urban growth boundaries. *Curry County* at 506-07. A public water system is a major indicator of urban development. *Curry County* at 504.

OAR 660-004-0040 states that the creation of any new residential lot of less than 2 acres is a rural use, and requires that an exception to Goal 14 be taken to establish any minimum lot size smaller than 10 acres. Although that rule does not apply under the circumstances in this case, it provides pertinent guidance as to whether a rezoning decision that would allow residential lots smaller than 2 acres is consistent with Goal 14. *Friends of Yamhill County v. Yamhill County*, 43 Or LUBA 97 (2002).



GOAL ONE COALITION

It is not entirely clear here what minimum lot size would be established by the proposed zone change, or whether the applicable minimum would be one or two acres in size. Regardless, the county must either make findings of compliance with Goal 14 or take an exception to Goal 14. No such findings are proposed in either the staff report or the applicant's material.

An exception would need to address the standards and criteria of OAR 660-014-0040. *1000 Friends of Oregon v. Marion County*, 24 Or LUBA 20 (1992). These criteria have not been identified or addressed in either the applicant's materials or in the staff reports.

C. Goals 17 and 18

As the staff report points out, development in the Surf Pine development required an exception to Goal 18. It would appear that a similar exception is required to allow for the rezoning of the OPR-zoned portion of TL 300 and for the development of entirety of TL 300.

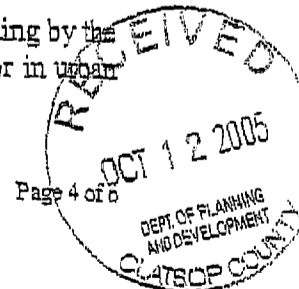
Goal 18 is applicable to beaches, active dune forms, recently stabilized dune forms, older stabilized dune forms, and interdune forms. Goal 18 requires local governments to conduct inventories that describe the stability, movement, groundwater resource, hazards and values of the beach and dune areas in sufficient detail to establish a sound basis for planning and management. The inventory must also address the Coastal Shorelands goal, Goal 17. The Goal 17 inventory must include additional factors including geologic and hydrologic hazards; shoreland values, including fish and wildlife habitat; water-dependent uses; economic resources; recreational uses; and aesthetics.

Goal 17 requires that, at a minimum, areas subject to ocean flooding and lands within 100 feet of the ocean shore or within 50 feet of an estuary or lake be inventoried as coastal shorelands. In addition, adjacent areas of geologic instability and natural or man-made riparian resources, especially vegetation necessary to stabilize the shoreline, are to be included in the coastal shorelands inventory.

Ordinance No. 02-05, adopted in 2003 and which excludes TL 300 from the Active Dune area, is not sufficient to address the inventory requirements of Goals 17 and 18.

No finding is proposed that TL 300 is an "older stabilized dune" area. In the absence of such a finding, the county is required to make findings regarding the potential impact of uses allowed by the proposed plan amendment and zone change. Goal 18 prohibits residential development on conditionally stable foredunes subject to ocean undercutting or wave overtopping or on interdune areas (deflation plains) that are subject to ocean flooding. The proposed residential uses can otherwise only be allowed if the plan amendment and rezoning decision is accompanied by findings addressing adverse effects on the site and adjacent areas, stabilization programs and vegetation maintenance, methods for protecting the surrounding area from any adverse effects of the development, and hazards to life, public and private property, and natural environment.

Goal 17 requires that the proposed residential uses can only be allowed upon a finding by the county that such uses satisfy a need which cannot be accommodated on uplands or in urban



GOAL ONE COALITION

and urbanizable areas or in rural areas built upon or irrevocably committed to non-resource use.

The requirements of goals 17 and 18 have not been adequately addressed.

D. Goals 5 and 8

The proposed findings state that statewide planning goals 5 and 8 are satisfied because the subject property does not implicate the county's Goal 8 inventory and because the subject property contains no Goal 5 resources.

The subject property is in fact inventoried as open space, parks, and recreation land, as is adjacent land. The OPR zone is intended to provide for the conservation of open space; the protection and development of areas uniquely suited for outdoor recreation and the protection of designated scenic, natural and cultural resource areas.

A finding is proposed that the amendments comply with Goal 5 because the subject property contains no Goal 5 resources. Even if it is true that TL 300 contains no Goal 5 resources, the relevant inquiry then becomes whether development of TL 300 would impact Goal 5 resources on adjacent or nearby lands. Evidence in the record indicates that such resources are in fact present on adjacent or nearby lands.

The county must consider whether the proposed amendments would have direct or secondary effects on recreation areas, facilities, and opportunities inventoried and designated in the comprehensive plan to meet Clatsop County's recreational needs. *Salem Golf Club v. City of Salem*, 28 Or LUBA 561 (1995).

III. Conclusion

The requested plan map and zoning map amendments cannot be approved until and unless statewide planning goals 11, 14, 17, and 18 are adequately addressed.

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

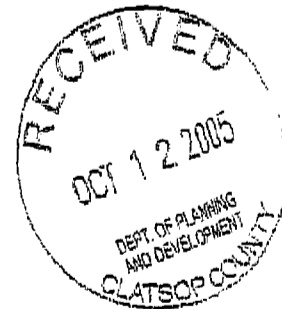
It is also requested that notice and a copy of any decision and findings regarding this matter be sent to:

Oregon Shores Conservation Coalition
PO Box 1344
Depoe Bay, Oregon 97341-1344

Charles Rule
(address)

John McGowan
(address)

Charlton plan map and zoning map amendments, 10/12/05



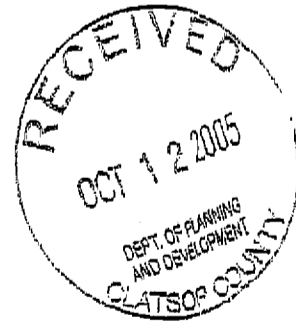
Page 5 of 6

COAL ONE COALITION

Respectfully submitted,

/s/ *Jim Just*

Jim Just
Executive Director



LOUIS PHAON GAMBEE

October 11, 2005

C/O Clatsop County Board of Commissioners:

Dear Sir's:

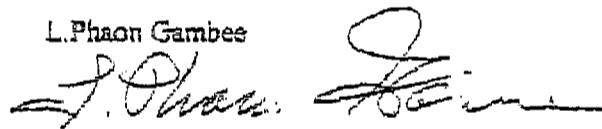
Again we are faced with the threat of being betrayed by avaricious developers and politicians who are in their pockets.

There is certainly is no shortage of buildable real estate and lots in our area. The proposed zoning of a living sand dune to buildable real estate decreases the value of surrounding properties and places the buyers of these properties on living sand dunes to death or an destruction from a tsunami.

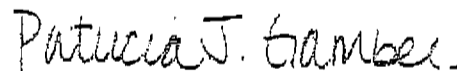
These lots are not view lots with the on going increase of sand build up in front of them.

We were told that this property was not buildable when we purchased our lot. We consider this a fiducially betrayal if it is allowed to proceed.

L. Phaon Gambée



Patricia J. Gambée



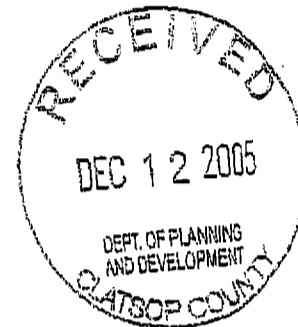


200 S.W. Fifth Avenue, Suite 2500
Portland, Oregon 97204
main 503.224.3380
fax 503.220.3480
www.stoel.com

December 9, 2005

MICHELLE RUDD
Direct (503) 294-9390
mrudd@stoel.com

Clatsop County Planning Commissioners
800 Exchange Street
Astoria, OR 97103



Re: **Big Bears LLC Application**

Dear Planning Commissioners:

A number of letters submitted to the county prior to the October 12, 2005 Board meeting were provided to the applicant for the first time on December 5, 2005. Many of the issues raised by the opponents in those letters have been raised and responded to previously.

General unsubstantiated allegations continue to be made that approval of this request will reduce the property values of adjoining lands. No evidence has been provided to support this claim. Similarly, no evidence supports the general allegations made that native plants, animals, grassy headlands and coastal dunes are threatened by the request. There is no basis for the allegation that statistically the proposed houses will generate 2 trips per day or that the infrastructure cannot support 30 trips per day if they occur. One of the letters submitted argued that the applicant had done something improper in completing survey work and drilling septic holes. The survey work is far from complete and was performed because Applicant intends to apply to subdivide the property into five lots if this zoning amendment is approved. The planned subdivision is not a secret. The holes dug for the septic work are merely those necessary to prove that the property is capable of supporting five drainfields, an issue another opponent claimed had not been addressed. Allegations continue to be made that prior owners were assured Tax Lot 300 would never be developed. An affidavit signed by Rick Charlton has been entered into the record in which Mr. Charlton testifies purchasers of lots in the adjacent development did not pay a premium price and were not assured that Tax Lot 300 would never be developed. Further, as the county found when approving Ord 02-05, even if such representations had been made they would not be relevant. You will hear testimony that there is no record in the real estate title of any promise or restraint on the development of Tax Lot 300.

Lastly, unsupported and incorrect claims are made that a variety of "Statewide Planning Goal" Exceptions are needed. The short answer is that by zoning code or ordinance, the proposed use is allowed. Goal Exceptions are not needed. These allegations are legally and factually wrong for the following reasons:

Oregon
Washington
California
Utah
Idaho

PortInd1-2213826.1 0099999-00001



Clatsop County Planning Commissioners
December 8, 2005
Page 2

*An exception to Goal 5 is not needed because Tax Lot 300 is not identified in the county's Goal 5 inventory. There is no evidence the zone change will adversely impact inventoried Goal 5 resources.

*An exception to Goal 11 is not needed because no extension of an urban water service is proposed. Tax Lot 300 is within the boundaries of the City of Warrenton's water service district. Warrenton provides water service to surrounding lots and homes.

*An exception to Goal 14 is not needed because the zoning allows minimum 2-acre rural size lots. This complies with the County's zoning code. Applicable zoning code provisions already reference Tax Lot 300 within the CBR zone, and subject it to a 2-acre rural lot size minimum.

*An exception to Goals 17 and 18 is not required because unlike other areas of Surf Pines the Horning Report established that the property is outside the area of concern. The County fully resolved these issues by Ordinance. Goals 17 and 18 are met as the need for residential lots is established by evidence in the record and actual development on the property will be conducted in a manner consistent with the Goals.

Clatsop County's code provides a mechanism for amendments to the comprehensive plan/zoning map. This mechanism recognizes that land use planning is not static and zoning may change over time to reflect changing conditions and information. (See Ord 02-05.) One opponent even alleges that the person who built her home 43 years ago (when there were *no* meaningful restraints on developing Tax Lot 300) thought the property would never be developed. A person may not reasonably rely on land use zoning in their area never changing. The initial purchase price of the property is irrelevant. The Clatsop County Board found in Ordinance 02-05, that the active dune line does not include Tax Lot 300. Tax Lot 300 is properly zoned CBR.

For the foregoing reasons, we respectfully request that this application be approved.

Very truly yours,

Michelle Rudd

MR:cle

December 12, 2005

JOHN S. MCGOWAN
33104 Malarkey Lane
Warrenton, OR 97146



Chair, Clatsop County Planning Commission
800 Exchange Street
Astoria, OR, 97103

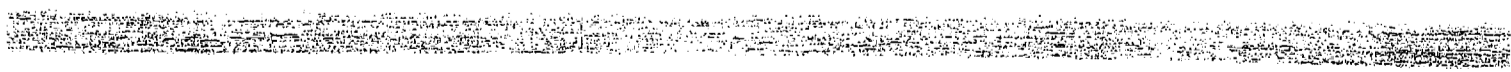
Dear commissioners:

In view the Resolution and Order pertaining to the Planning Commission meeting scheduled for 1:00 PM December 13, 2005 indicates the decision has already been made I will defer my arguments in opposition until the meeting of the Board of County Commissioners on this requested Zone Change for Tax Lot 300.

I may, however request an opportunity to verbally refute some of the erroneous claims made by the Developers and their representatives.

Respectfully yours,

John S. McGowan



SUSAN IVEY HOLLOWAY
3619 SE Francis St Portland, Oregon 97202
90054 Ocean Avenue Warrenton, OR 97146
503/ 706-5860

Documents attached:

- by County Planning Commission to County Commissioners*
1. LWDUO 3.242 and LWDUO 3.248
 2. 1995 Application and denial of zoning change for tax lot 300 by Chariton/Malarkey
 3. Copy of 1994 letter to County Commissioners from Norman Yeon. Mr. Yeon has bequeathed 107 acres to The Trust for Public Land for the benefit of Clatsop County .
 4. 1995 petition to Clatsop County Planning Commission from 46 Surf Pines residents urging the denial of the request for a zone change to tax lot 300.

SECTION 3.240. COASTAL BEACH RESIDENTIAL ZONE (CBR).

Section 3.242. Purpose.

The CBR zone is intended to accommodate the immediate foreseeable demand for low density residential development in the area commonly known as Surf Pines. Surf Pines covers an area of approximately 1-1/2 square miles and is located south of the community of Sunset Beach and west of Neacoxie Lake and Creek. Surf Pines is an area committed to low density rural residential development. This zone is a Goal 14 exceptions area.

Section 3.244. Development and Use Permitted.

The following uses and their accessory uses are permitted under a permit procedure subject to the applicable development standards.

- (1)
- (2)
- (3)
- (4) Public or private neighborhood park or playground.
- (5)
- (6)
- (7)
- (8)
- (9)
- (10)

(A) Provided the existing parcel is not reduced below the minimum lot size; and

(11) Partition subject to provisions of Section 5.200 - 5.208, and provided the existing parcel

and new parcel(s) meet the minimum lot size and dimensions.

One family dwelling.

Accessory uses as follows:

(A) In conjunction with, or following the permitting or lawful establishment of the primary use on the same lot or parcel to include, but not limited to detached garages, storage buildings, or other non-agricultural farm uses.

Limited home occupation.

Utilities, maximum utilization of existing easements and rights-of-way shall be made.

No sign except for:

(A) Temporary "for sale" signs not larger than 260 square inches subject to the provisions of Clatsop County Standards Document, Section S2.300.

(B) Political signs subject to the provisions of Clatsop County Standards Document, Section S2.300.

(C) Name places subject to the provisions of Clatsop County Standards Document, Section S2.300.

Handicapped housing facility.

Cluster development subject to the provisions of Clatsop County Standards Document, Section S3.150-S3.161.

Low intensity recreation.

Property line adjustment subject to provisions Section 5.200 - 5.208 and the following:

(B) Provided the lot line adjustment is within the same zone.

Section 3.246. Conditional Development and Use.

None.

Clatsop County Land and Water 3-110 May 10, 2004
Development and Use Ordinance
Section 3.248. Development and Use Standards.

The following standards are applicable to permitted uses in this zone:

- (1)
- (B) Cluster development subject to the provisions of Section S3.150-S3.161.
- (D) Other permitted development as required to meet State sanitation requirements and local setback and ordinance requirements.
- (2)
- (3)
- (4) Required front yard: 20 feet.
- (5)
- (C) When the side yard abuts a resource zone, the minimum side yard shall be 50 feet.
- (6)
- (7)
- (8) An accessory structure separated from the main building may be located in the required rear and side yard except in the required street side of a corner lot provided that it is no closer than five (5) feet to a property line.
- (9)

Lot size

(A) for residential uses: one (1) acre except for the following parcels which are not exceptions areas and therefore, require two (2) acres: T.7N., R.10W., Section 16C, Tax Lot 300 and 301.

(C) Lots outside the exceptions area, two (2) acre in size.

Minimum lot width: 100 feet.

Lot width/depth dimension shall not exceed 1:3 ratio.

Required side yard:

(A) Minimum side yard 10 feet, except on a corner lot, the minimum street side yard shall be 20 feet.

(B) For lots of record created prior to September 30, 1980 that are less than the minimum lot size, required side yards shall be 5 feet.

Required rear yard: 20 feet, exception on a corner lot: 10 feet.

For lots abutting the oceanshore, the ocean yard shall be determined by the oceanfront setback line established by Section S3.015 Oceanfront Setback.

Maximum building height: 26 feet, except for ocean front lots which shall be: 18 feet.

(A) The height of a structure is measured from the average grade of the undisturbed ground at the four principal corners of the proposed structure.

(B) To determine height:

- 1) Construction/building plans submitted for uses permitted in this zone shall show the elevations of the undisturbed ground prior to construction as measured at the four principal corners of the proposed structure on a plot plan. A control point shall be established outside of the building's footprint.
- 2) Photographs of the undisturbed site shall be required. Photographs need not be professional or aerial photographs, but can be taken using a Polaroid or other camera.
- 3) To verify the height, a survey by a registered surveyor may be required by the Community Development Director.

JUN 29 1995

55-00-0022

cb

IN THE BOARD OF COMMISSIONERS
OF CLATSOP COUNTY, OREGON

IN THE MATTER OF AN APPLICATION BY) FINAL ORDER
CHARLTON/MALARKEY FOR A ZONE CHANGE) Recording Date 6-29-95

This matter came on before the Board of Commissioners for hearing on June 14, 1995 on a recommendation from a decision and resolution and order of the Clatsop County Planning Commission recommending denial of the request of Charlton/Malarkey for a zone change; and

The Board having heard testimony, reviewed the record before the Planning Commission, and considered exhibits and materials brought before it during these proceedings and being fully advised in the premises, it is, therefore

RESOLVED AND ORDERED that the application of Charlton/Malarkey for a zone change be, and the same hereby is, denied, based on the Planning Commission's findings attached as exhibit "A" hereto; and it is further

RESOLVED AND ORDERED that the Planning Director be, and hereby is, authorized and directed to notify the parties to these proceedings of the final decision of this board on this application.

DATED this 14th day of June, 1995.

THE BOARD OF COUNTY COMMISSIONERS
FOR CLATSOP COUNTY, OREGON

BY Joe Bakkensen
Joe Bakkensen, Chair

BY Recording Secretary
Recording Secretary

Handwritten notes:
THIS IS WITHDRAWN
no final decision

hence

*see BC minutes of
6-28-95*

[REDACTED]

Pte 1, Box 20817
Warrenton, Oregon
Jan. 21, 1994

ILLEGIBLE ORIGINAL
Best Possible Copy

Planning Commission Chair
P.O. Box 178
Astoria, Oregon

Gentlemen:

Regarding the requested zone change and Comprehensive Plan amendment on property owned by Rick Charlton and George Salankov I wish to express my opposition to these changes. I own the coastal acreage immediately to the north.

These active dunes have been protected in order to preserve this land, not only because of the nature of the land, but to insure the open space for the benefit of all the people of the county. Clatsop County's unspoiled shoreline is one of its unique features and one of its greatest and most assets, something that can only increase in value and, once destroyed, can never be replaced. This dunes and has been wisely protected and this protection should not be withdrawn. To do so would establish a destructive precedent.

I hope the future of the county will be considered when a decision on these amendments is made.

Sincerely yours,

Norman F. Yeon

Norman F. Yeon

Petition



ILLEGIBLE ORIGINAL
Best Possible Copy

The undersigned property owners within the Surf Pine Development respectfully request that the Clatsop County Planning Commission deny the request for a zone change, a comprehensive plan amendment, and removal of the Active Dune Overlay on approximately five (5) acres of a 19-acre parcel per item 3 of the Clatsop County Planning Commission's public hearing on Tuesday, June 14, 1994.

The property in question is owned by Rick Charlton and George Melarkey and is located west of the Strawberry Hill subdivision in Surf Pine and is further described as T7N R10W Section 16C Taxlot 300. The undersigned petitioners urge the Planning Commission to deny the requested zone change and comprehensive plan amendment on the aforementioned five (5) acres for a zone change from OPR (Open Space, Parks and Recreation) to CBR (Coastal Beach Residential) and further to deny the request to remove the Active Dune Overlay (ADO) on the same five acres and an exception to Goal 1B.

Name	Address	Date
<i>John L. Myer</i>	2370 Main Dr	5-28-94
<i>Vivian Kottke</i>	2348 Lucas Dr.	5/28/94
<i>David W. Aubrey</i>	2316 Lucas Dr.	5-28-94
<i>Tom R. Clark</i>	2312 Lucas Dr	5-28-94
<i>John Clark</i>	2312 Lucas Dr	5-28-94
<i>Samuel Berger</i>	2300 Lucas Dr.	5/28/94
<i>Samuel Berger</i>	2300 Lucas Dr	5/28/94
<i>Benjamin Ross</i>	2296 Lucas Dr	5/28/94
<i>Thomas Nedrick</i>	2292 Lucas Dr.	5/28/94
<i>Thomas Nedrick</i>	2292 Lucas Dr	5-28-94
<i>Rick Melarkey</i>	2272 Lucas Dr	5/28/94
<i>Mary Anne Corbett</i>	2265 Lucas Dr	5/28/94
<i>Mike K. Stoney</i>	2265 Lucas Dr	5/28/94

7-5111100

RECEIVED
Dept. of Planning
& Development

The undersigned property owners within the Surf Pines Development urgently request that the Clatsop County Planning Commission deny the request for a zone change, a comprehensive plan amendment, and removal of the Active Dune Overlay on approximately five (5) acres of a 19-acre parcel per item 3 of the Clatsop County Planning Commission's public hearing on Tuesday, June 14, 1994.

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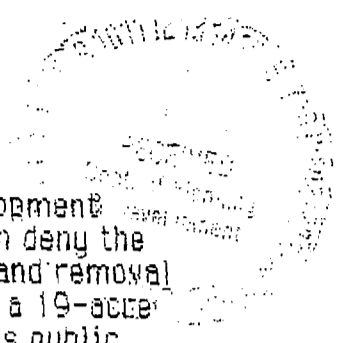
Name	Address	Date
Norma Keener	2006 Ocean Dr.	6-12-94
Gene Keener	2006 Ocean Dr.	6-12-94
Margaret Bloomfield	2364 Marion Dr.	6/13/94
Katherine Bloomfield	2364 Marion Dr.	6/13/94
LeRoy Frohberg	2002 Ocean Dr.	6/13/94
Benny J. Frohberg	2002 Ocean Dr.	6/13/94
Albert W. Raab Sr.	2010 Ocean Dr.	6/13/94
Fareeha S. Raab Sr.	2010 Ocean Dr.	6/13/94
Michael W. Raab	2044 Ocean Dr.	6/13/94
Dustin W. Raab	2044 Ocean Dr.	6/13/94

The undersigned property owners within the Surf Pines Development, urgently request that the Clatsop County Planning Commission deny the request for a zone change, a comprehensive plan amendment, and removal of the Active Dune Overlay on approximately five (5) acres of a 19-acre parcel per item 3 of the Clatsop County Planning Commission's public hearing on Tuesday, June 14, 1994.

The property in question is owned by Rick Chariton and George Malarky and is located west of the Strawberry Hill subdivision in Surf Pines and is further described as T7N R10W Section 16C Taxlot 300. The undersigned petitioners urge the Planning Commission to deny the requested zone change and comprehensive plan amendment on the aforementioned five (5) acres for a zone change from OPR (Open Space, Parks and Recreation) to CBR (Coastal Beach Residential) and further to deny the request to remove the Active Dune Overlay (ADO) on the same five acres and an exception to Goal 18.

Name	Address	Date
Bob & Mary Ann	2428 Ocean	5/30/94
Howard F. Rice	2505 Ocean	5/31/94
Betty M. Larson	2650 Malarky	5/30/94
By Berneill	2603 Malarky	5/30/94
Ken Birdwell	2603 Malarky	5/30/94
Scott & Lisa	2502 Malarky	5/30/94
Med C Larson	2502 Malarky	5/30/94
Alexander M. Ebert	2514 Malarky	5/30/94
Shirley Kauten	2611 Malarky Dr	5/30/94
Ursula Kauten	2611 Malarky Dr.	5/30/94
John F. Cur	2334 Malarky Dr.	5-30-94
Catherine A. Orr	2334 Malarky Dr.	5-30-94

Petition



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y the request to remove the Active Dune Overlay (ADO) on the same five
s and an exception to Goal 18.

ie *L. Shaul* Address *2260 Marion Dr* Date *May 28th, 94*
Warrenton, OR 97146

E. Greb *2264 Marion Dr. 5-28-94*
Warrenton OR 97146

Tom Seymour *2272 Marion Dr. 5-28-94*

Mary Jane Curni *2281 Lucas Dr. 5-28-94*
Warrenton, OR 97146

T.H. Schrage *2305 Lucas Dr. - 5-28-94*

Ruth A. Baum *2317 Lucas Dr. 5-28-94*

Douglas H. Baum *2317 Lucas Dr 5-28-94*

R. Anderson *2320 Lucas Dr. 5-28-94*

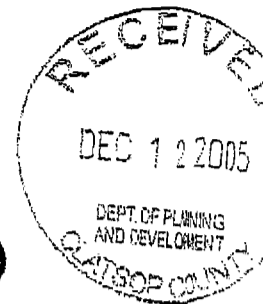
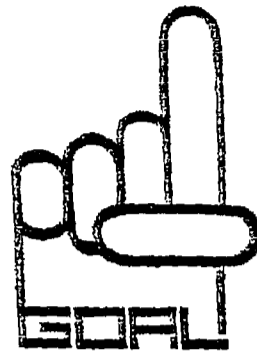
Ruth B. Anderson *2320 Lucas Drive*

Kenneth K. Wilby *2325 Lucas Dr. 5-28-94*

Kate Weber *2325 Lucas Dr. 5-28-94*

GOAL ONE COALITION

39625 Almen Drive
Lebanon, Oregon 97355
Phone: 541-258-6074
Fax: 541-258-6810
goal1@pacifier.com



December 12, 2005

Clatsop County Planning Commission
800 Exchange St., Suite 310
Astoria, OR 97103

RE: Charlton plan amendment/rezoning request

Dear Member of the Commission:

The Goal One Coalition (Goal One) is a nonprofit organization whose mission is to provide assistance and support to Oregonians in matters affecting their communities. Goal One is appearing in these proceedings at the request of and on behalf of its membership residing in Clatsop County. This testimony is presented on behalf of Goal One and its membership in Clatsop County, the Goal One Coalition, Oregon Shores Conservation Coalition and its membership in Clatsop County, and Charles Rule and John McGowan as individuals.

I. Introduction

This request concerns an 8.8 acre portion of a 10.9 acre parcel identified as 7-10-16C TL 300. The request is to amend the Comprehensive Plan Map designation from Conservation - Other Resources to Rural Lands and the Zoning Map designation from Open Space, Parks and Recreation (OPR) to Coastal Beach Residential (CBR).

The request also includes text amendments to Section 4.052 of the county's Land and Water Development and Use Ordinance (LWDUO) and Section S3.015 of the county's Standards Document of the LWDUO to reflect the county's adoption of Ordinance No. 02-05 (effective January 11, 2003), known as the Charlton Active Dune Line Comprehensive Plan Text Amendment.

The subject property is located approximately 5 miles south of the city of Warrenton and approximately 3 miles north of the city of Gearhart. The applicant's property is a 10.9 acre parcel located between the beach of the Pacific Ocean and the west side of Lower Surf Pines Road at the north end of the Surf Pines development. The subject Tax Lot 300 is currently split zoned, with 8.8 acres located in the OPR zone and the remaining 2.1 acres in the CBR zone. While TL 300 is at present undeveloped, the existing plan map and zoning map designations would allow for the siting of one dwelling on the CBR-zoned portion of the subject property. Plan Rural Shoreland Policy (e) also allows for "single family dwellings on

Championing citizen participation in realizing sustainable communities, economies and environments

existing lots, parcels or units of land" on "[s]horelands in rural areas (other than those designated as major marshes, significant wildlife habitat, coastal headlands, exception (sic) aesthetic resources and historical and archaeological sites)].]"

The land is flat and is vegetated with low shrubs. The applicant also owns the 8.23 acre TL 302, zoned OPR, which is adjacent to the subject TL 300 along its western boundary. Access to the subject property is from Lower Surf Pines Road. No subdivision proposal accompanies the redesignation and rezoning request. Minimum lot sizes in the CBR zone are established by LWDUO 3.248(1), and are either one or two acres. Approval of the request would allow for five, or possibly ten or even 11, lots to be created and developed on the subject TL 300.¹ Water is to be provided by the City of Warrenton and private sewage disposal systems are proposed to serve residential development as it occurs.

The property to the north is undeveloped land zoned OPR and Rural-Agriculture (RA-5). In addition, there are some Lake and Wetland zoned properties to the north. To the west is the Pacific Ocean and beaches designated Conservation - Other and zoned OPR.

To the east of the subject property, across Surf Pines Road, is an area designated Rural Lands and zoned Single-Family Residential (SFR-1); this area is developed with single family dwellings.

To the south is the Surf Pines development, which contains lots designated Rural Lands and zoned CBR; these lots are stated to be developed with single family residences. The CBR zone is a Goal 14 exception area. Development of the Surf Pines subdivision also required an exception to Goal 18.

II. Statewide Planning Goals applicable to the request

ORS 197.835(6) requires that amendments to comprehensive plans be reviewed for compliance with the statewide planning goals. In addition, LWDUO 5.412 specifically requires findings of consistency with the statewide planning goals.

The Surf Pines development, including that part of the subject property currently zoned CBR, is a Goal 14 and Goal 18 exception area. The extension of the Surf Pines development and CBR zoning to the remainder of TL 300 requires an exception to Goal 14 to allow for either 1- or 2-acre minimum lot sizes. Additionally, the proposed extension of water service provided by the City of Warrenton will require an exception to Goal 11.

A. Goal 5

The proposed findings state that statewide planning goals 5 and 8 are satisfied because the subject property does not implicate the county's Goal 8 inventory and because the subject property contains no Goal 5 resources.

The subject property is in fact inventoried as open space, parks, and recreation land, as is adjacent land. The OPR zone is intended to provide for the conservation of open space;

¹ LWDUO 5.132(1) allows for variances to minimum lot sizes under certain circumstances.

GOAL ONE COALITION

the protection and development of areas uniquely suited for outdoor recreation and the protection of designated scenic, natural and cultural resource areas.

A finding is proposed that the amendments comply with Goal 5 because the subject property contains no Goal 5 resources. Even if it is true that TL 300 contains no Goal 5 resources, the relevant inquiry then becomes whether development of TL 300 would impact Goal 5 resources on adjacent or nearby lands. Evidence in the record indicates that such resources are in fact present on adjacent or nearby lands, to the north on the 107 acres of land bequeathed to The Trust for Public Lands by the estate of Norman Yeon.

B. Goal 8

Goal 8 requires a local government with responsibility for "recreation areas, facilities and opportunities" to plan for "meeting [its recreational] needs, now and in the future," "in such quantity, quality and locations as is consistent with the availability of the resources to meet such requirements." *Sahagian v. Columbia County*, 27 Or LUBA 592, 597 (1994). When reviewing a post acknowledgment comprehensive plan or land use regulation amendment for compliance with Goal 8, the relevant concern is whether the amendment has either direct or secondary effects on recreation areas, facilities, and opportunities inventoried and designated in the comprehensive plan to meet Clatsop County's recreational needs. See *1000 Friends of Oregon v. Jackson County*, 79 Or App 93, 98, 718 P2d 753 (1986); *Salem Golf Club v. City of Salem*, 28 Or LUBA 561, 587 (1995).

Neither the applicant nor the county has addressed the relevant concern of whether the proposed plan map and zoning map amendments would have a direct or secondary effects on inventoried and designated recreation areas, facilities, and opportunities. The applicant has merely listed nearby parks, without discussing potential impacts on those facilities.

C. Goal 11

1. Water

Goal 11 provides, in relevant part:

"Local governments shall not rely upon the presence, establishment, or extension of a water or sewer system to allow residential development of land outside urban growth boundaries or unincorporated community boundaries at a density higher than authorized without service from such a system."

Goal 1 defines "water system" as follows:

"*Water system* – means a [system] for the provision of piped water for human consumption subject to regulation under ORS 448.119 to 448.285."

The extension of the City of Warrenton water system to serve the subject property would constitute an "extension of a water system" within the meaning of Goal 11. Approving the

request plan and zoning map amendments in reliance on extension of the water system would violate Goal 1.

OAR 660-01-0065 defines "extension of a water system":

"Extension of a water system" means the extension of a pipe, conduit, pipeline, main, or other physical component from or to an existing water system in order to provide service to a use that was not served by the system on the applicable date of this rule, regardless of whether the use is inside the service boundaries of the public or private service provider."

OAR 660-011-0065(2) provides, in relevant part:

"Consistent with Goal 1, local land use regulations applicable to lands that are outside urban growth boundaries and unincorporated community boundaries shall not:

"(c) Allow an increase in the allowable density of residential development due to the presence, establishment, or extension of a water system."

Presently, no residential development is allowed on the OPR-zoned portion of TL 300. One residential dwelling unit could be allowed on the CBR zoned portion of the TL 300. No plan or zoning map amendments which would allow for an increase in the currently allowed residential densities on the OPR-zoned portion of TL 300 may be approved in reliance upon the availability of water from the City of Warrenton without an exception to Goal 11.

2. Sewer

Goal 11 provides, in relevant part:

"Rural development shall be guided and supported by types and levels of * * * rural public facilities and services appropriate for, but limited to, the needs and requirements of the * * * rural areas to be served."

Although Goal 11 does not require lot-by-lot approvals of individual septic systems at the time property is rezoned, a local government's findings must establish that it is feasible to provide adequate individual sewage disposal systems. *DLCD v. Klamath County*, 38 Or LUBA 769, 779 (2000). Neither the staff report nor the applicant's material address the feasibility of providing adequate individual septic systems. Rather, that required findings are improperly deferred until TL 300 is subdivided. The proposed findings state at p. 10: "Future subdivision of the property would require verification that the lots meet DEQ standards."

D. Goal 14

OAR 660-004-0040 specifies how Statewide Planning Goal 14, *Urbanization*, applies to rural lands in acknowledged exception areas planned for residential uses. The proposed plan and zoning map amendments require an exception to Statewide Planning Goal 17. OAR 660-004-0040 applies to this request.

GOAL ONE COALITION

OAR 660-004-0040(7)(i) provides:

"For rural residential areas designated after the effective date of this rule, the affected county shall either:

"(A) Require that any new lot or parcel have an area of at least ten acres, or

"(B) Establish a minimum size of at least two acres for new lots or parcels in accordance with the requirements of Section (6)"

OAR 660-004-0040(6) provides:

"After the effective date of this rule, a local government's requirements for minimum lot or parcel sizes in rural residential areas shall not be amended to allow a smaller minimum for any individual lot or parcel without taking an exception to Goal 14."

Approval of the request would result in the designation of a rural residential area. The county must either: 1) impose a minimum parcel size of at least ten acres, or 2) take an exception to Goal 14 to allow for a smaller lot size.

Exceptions to Goal 14 are subject to the requirements of OAR 660-014-0040, Establishment of New Urban Development on Undeveloped Rural Lands, which requires that there be "reasons" for allowing the urban uses on rural lands.²

² OAR 660-014-0040 provides:

"(1) As used in this rule, "undeveloped rural land" includes all land outside of acknowledged urban growth boundaries except for rural areas committed to urban development. This definition includes all resource and nonresource lands outside of urban growth boundaries. It also includes those lands subject to built and committed exceptions to Goals 3 or 4 but not developed at urban density or committed to urban level development.

"(2) A county can justify an exception to Goal 14 to allow establishment of new urban development on undeveloped rural land. Reasons that can justify why the policies in Goals 3, 4, 11 and 14 should not apply can include but are not limited to findings that an urban population and urban levels of facilities and services are necessary to support an economic activity that is dependent upon an adjacent or nearby natural resources.

"(3) To approve an exception under section (2) of this rule, a county must also show:

"(a) That Goal 2, Part II(c)(1) and (c)(2) are met by showing that the proposed urban development cannot be reasonably accommodated in or through expansion of existing urban growth boundaries or by intensification of development in existing rural communities;

"(b) That Goal 2, Part II(c)(3) is met by showing that the long-term environmental, economic, social and energy consequences resulting from urban development at the proposed site with measures designed to reduce adverse impacts are not significantly more adverse than would typically result from the same proposal being located on other undeveloped rural lands, considering:

GOAL ONE EXCEPTION

In the event that the subject property is found to not be subject to Goal 17, Goal 14 still would apply to the plan and zoning amendment request. LWDUO 3.242 states that the CBR zone is a Goal 14 exception area. The CBR zone cannot be extended to the OPR-zoned portion of TL 300 without taking an exception to Goal 14.

LWDUO 3.248, which establishes development and use standards within the CBR zone, appears to recognize that some CBR-zoned lots are not included within the Goal 14 exception area. LWDUO 3.248(1) establishes a 5-acre rather than a 2-acre minimum for such lots. Regardless, changing the zoning of the OPR-zoned portion of TL 300 to CBR requires findings of compliance with or an exception to Goal 14.

By definition, all land outside an acknowledged UGB and not the subject of an exception to Goal 14 is rural land. When amending its acknowledged comprehensive plan and zone designations for such land, a local government must demonstrate that the new plan and zone designations comply with Goal 14 or adopt an exception to Goal 14. *1000 Friends of Oregon v. LCDC (Curry County)*, 301 Or 447, 471 (1986); *Churchill v. Tillamook County*, 29 Or LUBA 68 (1995).

As a rule of thumb, residential lot sizes of one acre or less are clearly urban, while lot sizes of greater than 10 acres are clearly rural. *Curry County* at 504-05; *Kaye/LCDC v. Marion County*, 23 Or LUBA 452, 462-64 (1992); *Hammack & Associates, Inc. v. Washington County*, 16 Or LUBA 75, 80, *aff'd* 89 Or App 40, 747 P2d 373 (1987). Whether densities between those extremes are urban or rural depends on the types of urban services to be provided and the proximity of the proposed development to urban growth boundaries. *Curry*

“(A) Whether the amount of land included within the boundaries of the proposed urban development is appropriate, and

“(B) Whether urban development is limited by the air, water, energy and land resources at or available to the proposed site, and whether urban development at the proposed site will adversely affect the air, water, energy and land resources of the surrounding area.

“(c) That Goal 2, Part II(c)(4) is met by showing that the proposed urban uses are compatible with adjacent uses or will be so rendered through measures designed to reduce adverse impacts considering:

“(A) Whether urban development at the proposed site detracts from the ability of existing cities and service districts to provide services; and

“(B) Whether the potential for continued resource management of land at present levels surrounding and nearby the site proposed for urban development is assured.

“(d) That an appropriate level of public facilities and services are likely to be provided in a timely and efficient manner; and

“(e) That establishment of an urban growth boundary for a newly incorporated city or establishment of new urban development on undeveloped rural land is coordinated with comprehensive plans of affected jurisdictions and consistent with plans that control the area proposed for new urban development.

GOAL ONE COALITION

County at 506-07. A public water system is an important indicator of urban development. *Curry County* at 504.

OAR 660-004-0040 provides that the creation of any new residential lot of less than 2 acres is a urban use, and requires that an exception to Goal 14 be taken to establish any minimum lot size smaller than 10 acres. Although, if the subject property is found not to be land protected by Goal 17, that rule would not apply in this case because the subject property would then not be lands for which an exception to any statewide planning goal is proposed or has been taken, it provides guidance as to whether a rezoning decision is consistent with Goal 14. *Friends of Yamhill County v. Yamhill County*, 43 Or LUBA 97, 103 (2002).

It appears that approval of the request would zone the subject property for residential uses with a minimum lot size of five acres. The area would be an extension of an existing Goal 14 exception area. Development of the subject property at the requested densities is dependent upon extension of community water service. Such development is urban. Therefore the county must take an exception to Goal 14.

As previously explained, any exception would need to address the standards and criteria of OAR 660-014-0040. *1000 Friends of Oregon v. Marion County*, 24 Or LUBA 20 (1992). These criteria have not been identified or addressed in either the applicant's materials or in the staff reports.

C. Goal 17

Goal 17 applied to the subject property when the Clatsop County comprehensive plan was first adopted and acknowledged, and continues to apply to the subject property today. The proposed changes in plan and zoning designations, which would allow for residential development of the property, require an exception to Goal 17.

The Conservation - Other Resources comprehensive plan designation is a resource designation: "Conservation Other Resources areas provide important resource or ecosystem support functions[.]" See Plan Goal 2 p. 8, Appendix A-7. The Conservation - Other Resources designation implements several inventory factors of Goal 17, and Sections 1 and 4 of the "Coastal Shoreland Uses" section of Goal 17.

Plan Goal 2 Section 6 contains a discussion of the "Rural Lands" plan designation and explains, as it relates to Goal 17 coastal shorelands, that the designation is applied to those "areas of coastal shorelands which are 'built upon or are irrevocably committed' to development and cannot be used for agricultural or forest use."

The Goal 2 element of the comprehensive plan include a Goal 17 exception for 7-10-16C tax lots 400, 500, 600, 700, 800, 900, 1000, and 1100. See Appendix A-14, A-18, A-19. These properties, all part of the Surf Pines subdivision, lie immediately south of the subject property and are, as is the subject property, immediately west of Ocean Rd and are in the same relation to the statutory vegetation line. The subject property was also part of the Surf Pines subdivision but was not included in the exception area. Consequently, Goal 17 continues to apply to the subject property.

The county in 2002 confirmed that Goal 17 applies to the subject property. The county's action in approving Ordinance No. 02-05, adopted December 12, 2002, included a determination that the subject property was subject to Goal 17. The county's findings addressing Goal 17 stated:

"Goal 17, Coastal Shorelands

"Goal 17: 'To conserve, protect, where appropriate, develop and where appropriate restore the resources and benefits of all coastal shorelands, recognizing their value for protection and maintenance of water quality, fish and wildlife habitat, water-dependent uses, economic resources and recreation and aesthetics. The management of these shoreland areas shall be compatible with the characteristics of the adjacent coastal waters; and

"To reduce the hazard to human life and property, and the adverse effects upon water quality and fish and wildlife habitat, resulting from the use and enjoyment of Oregon's coastal shorelands.'

"Tax Lot 300 is within the coastal shorelands planning area. The County's approval of the text amendment identifying the present location of the active dune line, however, does not allow for any development of any coastal shoreland or otherwise affect the resources of the coastal shoreland. No activities are authorized which would alter or otherwise impact habitat or other resources. The County finds that the amendment is consistent with Goal 17."

See Appendix B-1, B-2.

Goal 17, under "Guidelines for Goal 17," specifically states: "The planning process described in the Land Use Planning Goal (Goal 2), including the exceptions provisions described in Goal 2, applies to coastal shoreland areas and implementation of the Coastal Shorelands Goal." An exception is required to remove the subject property from the protection of Goal 17 and to plan and zone it for rural residential use.

The requested "Rural Lands" plan designation and implementing "Coastal Beach Residential (CBR) zone are rural residential designations (although the "Rural Lands" plan designation also includes implementing commercial and light industrial zones). An exception to Goal 17 is required to remove the subject property from the protection of Goal 17 and to allow for the proposed residential development.

The county must also establish that the level of development permitted in the proposed rural residential zone outside the boundary will not adversely affect Goal 17 resources within the boundary. *Brown v. Coos County*, 31 Or LUBA 142 (1996). There are important natural areas, areas that support wildlife, and recreation areas to the west and north of the subject property. Impacts from development of the subject property on these resources have not been considered or addressed.

GOAL ONE COALITION

III. LWDUO zone change criteria

A. LWDUO 5.412(1):

"The proposed change is consistent with the policies of the Clatsop County Comprehensive Plan."

As explained above in Section II.C, the subject property is within an area protected by Goal 17. The proposed amendments are not consistent with the comprehensive plan unless a concurrent exception to Goal 17 is taken.

B. LWDUO 5.412(2):

"The proposed change is consistent with the statewide planning goals (ORS 197)."

As explained above in Section II, the proposed amendments are not consistent with statewide planning goals 5, 8, 11, 14 or 17.

C. LWDUO 5.412(3):

"The property in the affected area will be provided with adequate public facilities and services including, but not limited to:

"(D) Water and wastewater facilities."

The soils on the subject property are extremely sandy and porous. It has not been established that it is feasible to provide on-site septic systems adequate to safely accommodate the proposed residential uses at the allowed densities. As stated previously, the proposed findings defer determination for suitability for on-site sewage disposal until future subdivision of the subject property.

As explained above in Section II.C.1, water service cannot be extended to serve the proposed residential uses without an exception to Goal 11. No such exception has been proposed, nor may an exception to Goal 11 be approved.

D. LWDUO 5.412(5):

"The proposed change will not result in over-intensive use of the land, will give reasonable consideration to the character of the area, and will be compatible with the overall zoning pattern."

Immediately to the north of the subject property, Norman Yeon has amassed a mixed zone parcel of land that currently encompasses 107 acres. He specifically accumulated this land to ensure that it would not be developed and would remain or be converted to OPR. It is currently in probate court, but will be under the management of Trust for Public Lands. (per conversation with Trust for Public Lands personnel in October 2005).

THE SITE LOCATION

The proposed redesignation of the subject property would result in over-intensive use of an area that is currently designated for the protection of shoreland resources and which is adjacent to a large area set aside for the protection of shoreland resources. Redesignation would not be compatible with that overall zoning pattern.

E. LWDUO 5.412(6):

"The proposed change gives reasonable consideration to peculiar suitability of the property for particular uses."

The applicant states that the original designation as OPR, made in 1978 or 1979 was arbitrary, yet it was done as part of the comprehensive state-wide land use planning to protect land from development. He further states that it was always deemed to be residential property yet he only paid \$10 for 10.9 acres in 1959. The last house built on the west side of Ocean Avenue / Lower Surf Pines Road was built in 1963.

The property was only annexed into Surf Pines in 1998, having previously been outside of the Surf Pines development. Mr. Charlton negotiated annexation in exchange for use of roads which he had built for the Strawberry Hill development but had previously kept in his ownership.

The existing OPR designation of the subject property accurately reflects its unique suitability for the conservation of shore land resources.

F. LWDUO 5.412(7):

"The proposed change will encourage the most appropriate use of land throughout Clatsop County."

Purchased in 1959, the 10.9 acre subject property contains sand dunes, pines and grasses. It mildly undulates as a result of the dune activity over the years. In addition to the natural beauty of the grassland next to the ocean, the site is home to deer, elk, hawks, pheasants and multitudes of birds. It abuts 107 acres of protected land consisting of the same sand dunes, pines and grasses. The 107 acres were amassed by Norman Yeon over the years and bequeathed to The Trust for Public Land to be protected from any development. Mr. Malarky paid only \$10 for the entire 10.9 acres in 1959 in comparison to lots within Surf Pines being sold for \$5,000 for the same or smaller size parcel.

1979 8.8 acres of the property was designated OPR, as part of the comprehensive land use planning and ocean shores protection done in the state of Oregon. 2.1 acres were designated CBR. In 1995 Clatsop County Planning Commission turned down the Charlton zone change request 5-0 and the County Commissioners also voted down the proposal 4-1, believing the current state of the land was the most appropriate use of the land for Clatsop County. In 1998 Charlton achieved annexation of the land into Surf Pines by transferring the roads built when he developed Strawberry Hill to the ownership of Surf Pines in exchange for the annexation. He now states that he should have the same rights as any Surf Pines lot owner, even though the property was not in Surf Pines at the time that the Goal 14, 17 and 18 exceptions were obtained for the development of Surf Pines. The exception should not be granted now, when

GOAL ONE COALITION

more knowledge is available of the dangers of building this close to the ocean and of the importance of protecting the limited remaining shoreland resources.

Re-designating the subject property will fail to achieve the objective of LEDUO 5.412(7). Rather, it will encourage the conversion of resource-designated land for inappropriate and unnecessary residential development.

G. LWDUO 5.412(8):

"The proposed change will not be detrimental to the health, safety and general welfare of Clatsop County."

The Horning Geosciences and GeoEngineers hazard reports concur that the Clatsop Plains area will experience shoreline erosion and retreat in the future, and that foredune boundaries will shift eastward, and that there is great uncertainty concerning the timing and extent of these movements. The wisdom of allowing additional development in the path of known movements is highly questionable. The health, safety and general welfare of Clatsop County would be better furthered by discouraging such development and by directing development to more stable areas.

The hazard reports concur that the likelihood of a large magnitude earthquake is significant in the next 50 years, and that such an event could be accompanied by tsunami inundation, ground liquefaction, and significant ground subsidence. Ground subsidence would significantly impact the site and would affect the location of the surf line, active dune line, and other features.

The hazard reports evaluate the likelihood of wave overtopping of the 40 foot high foredune as "unlikely" based on the Flood Insurance Rate Map (FIRM). This conclusion assumes that the 40-foot dune will continue to exist into the future; however, examination of Figure 3 at p. 5 of the September 22, 1998 HG Report reveals that the 40-foot foredune is a feature that has developed only over the past 30+ years. As reversal of the pattern of accretion is expected, it follows that the processes that built the foredune may also be expected to reverse and that the foredune may shrink or recede, adding to the flood danger. In addition, rising sea levels and increasing intensity of storm events are anticipated consequences of global warming. These phenomena are not incorporated in current FIRM mapping. Concern for health, safety and the general welfare would suggest prudence in placing additional development in harm's way.

IV. Conclusion

The requested plan map and zoning map amendments cannot be approved until and unless statewide planning goals 5, 8, 11, 14, and 17 are adequately addressed.

Compliance with local criteria has not been established. The proposed amendments are not consistent with the comprehensive plan or the statewide planning goals 5, 8, 11, 14 or 17. The adequacy or provision of sewer and water service has not been adequately addressed. Redesignation would not be compatible with that overall zoning pattern. The requested redesignation fails to give reasonable consideration to the peculiar suitability of the subject property for shoreland uses and would encourage the conversion of resource-designated land

for inappropriate and unnecessary residential development. The redesignation could allow for development in an area which is likely to become increasingly susceptible to tsunami or other flood hazard.

For these reasons, the proposed amendments should be denied.

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

It is also requested that notice and a copy of any decision and findings regarding this matter be sent to:

Oregon Shores Conservation Coalition
PO Box 1344
Depoe Bay, Oregon 97341-1344

Charles Rule
90054 Ocean
Warrenton, OR 97146

Susan Holloway
3619 SE Francis
Portland, OR 97202

John McGowan
33104 Maiarkey Lane
Warrenton, OR 97146

Respectfully submitted,

/s/ Jim Just

Jim Just
Executive Director

because it does not result in any change of land use that consumes energy or changes energy production or alters renewable or non-renewable energy resources. The County finds the proposal consistent with Goal 13.

N. Goal 14, Urbanization

Goal 14: *"To provide for an orderly and efficient transition from rural to urban land use."*

The goal goes on to address urban growth boundaries. This County's approval of this amendment does not involve an existing or proposed urban growth boundary. Existing UGBs are more than two miles to the south (Gearhart), and more than four miles to the north (Warronton). Finally, the Goal addresses unincorporated communities. Although the Surf Pines area might qualify as an unincorporated community under the Goal, Clatsop County has not identified or designated any unincorporated communities. More importantly, the County's approval of the amendment does not allow for any development or other activity associated with urbanization and Goal 14. The County finds that the amendment is consistent with Goal 14.

O. Goal 15, Willamette River Greenway

Goal 15 does not apply to this amendment because it is not within the Willamette River Greenway.

P. Goal 16, Estuarine Resources

Goal 16 does not apply to the dune line amendment because it does not affect estuarine waters or estuarine shorelands.

Q. Goal 17, Coastal Shorelands

Goal 17: *"To conserve, protect where appropriate, develop and where appropriate restore the resources and benefits of all coastal shorelands, recognizing their value for protection and maintenance of water quality, fish and wildlife habitat, water-dependent uses, economic resources and recreation and aesthetics. The management of these shoreland areas shall be compatible with the characteristics of the adjacent coastal waters; and*

To reduce the hazard to human life and property, and the adverse effects upon water quality and fish and wildlife habitat, resulting from the use and enjoyment of Oregon's coastal shorelands."

8-1

EXHIBIT A

Goal 2

COUNTY-WIDE ELEMENT

GOAL 2 LAND USE PLANNING

Adopted July 23, 1980 by
Clatsop County Board of Commissioners
Amended by Ordinance 03-10, 03-11, 04-06

A-2

Goal 2 Land Use Planning Index

- Comprehensive Plan/Zoning Map
- County-wide Element
- Exception Process & Committed Lands

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- Goal 2 Index Map

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- Map B (Astoria to East Knappa)
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- Findings for Exception areas
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- Other Exceptions
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 - Arch Cape Ordinance #03-10
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 - Westport Ordinance #03-10

-
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 - Arcadia Beach Ordinance #03-11
 - Cove Beach Ordinance #03-11
 - Olney-Helligso Property Ordinance #04-06

A.S.

Goal 2 - Land Use Planning

The County's land and water have been placed in one of six (6) Plan designations (see map next page). They are:

1. Development

Development areas are those with a combination of physical, biological, and social/economic characteristics which make them necessary and suitable for residential, commercial, or industrial development and includes those which can be adequately served by existing or planned urban services and facilities.

In Clatsop County, the County has three types of such areas: cities and their urban growth boundaries; rural communities; and rural service areas, which are areas similar to cities (sewer and water) but lack size and a government structure.

- a. Rural Service Area (RSA). The County has designated four areas as RSAs. They are Cullaby Lake, Glenwood Mobile Home Park, Old Naval Hospital site, and Fishhawk Lake. Information on these is found in the community plan in which the RSA resides.
- b. Urban Growth Boundaries. See land use plans of Astoria, Cannon Beach, Gearhart, Seaside and Warrenton. Clatsop County has adopted each of the city's land use plans for areas outside of the city limits and inside the urban growth boundary. The cities and the County have adopted Urban Growth Boundary Management Agreements. Clatsop County has turned over all administration and enforcement with Cannon Beach's urban growth boundary to Cannon Beach and Astoria's urban growth boundary to Astoria. Currently, Clatsop County administers and performs enforcement for areas outside the city limits inside the urban growth boundaries of Gearhart, Seaside and Warrenton.
- c. Rural Communities. Clatsop County has identified and established boundaries for the following rural communities: Miles Crossing - Jeffers Gardens, Arch Cape, Swansen, Knappa, and Westport. Land use plans in these areas recognize the importance of communities in rural Clatsop County. These communities are established through a process that applies OAR 660 Division 22 requirements. Portions of land identified in the Miles Crossing and Jeffers Gardens rural community plan take an exception to Statewide Planning Goal 3 and Goal 4 for portions of land zoned EFU or AF. The exceptions documentation for a portion of the Miles Crossing and Jeffers Gardens rural community boundary is adopted as part of the Comprehensive Plan, and is located at the end of this section.

2. Rural Agricultural Lands

Agricultural lands are those lands that are to be preserved and maintained for farm use, consistent with existing and future needs for agricultural products, forest and open space.*

In land use changes involving a change from Conservation Forest Lands or Rural Agricultural Lands to Rural Lands or Development designations an Exception to the Agricultural Lands or Forest Lands Goals must be taken.*

A.6

Conservation areas provide important resource or ecosystem support functions but because of their value for low-intensity recreation or sustained yield resources (e.g. forestry), or because of their unsuitability for development (e.g. hazard areas) should be designated for nonconsumptive uses. Nonconsumptive uses are those uses which can utilize resources on a sustained yield basis while minimally reducing opportunities for other future uses of the area's resources.*

3. Conservation Forest Lands*

Forest lands are those lands that are to be retained for the production of wood fiber and other forest uses.*

In land use changes involving a change from Conservation Forest Lands or Rural Agricultural Lands to Rural Lands or Development designations an Exception to the Agricultural Lands or Forest Lands Goals must be taken.*

4. Conservation Other Resources*

Conservation Other Resources areas provide important resource or ecosystem support functions such as lakes and wetlands and federal, state and local parks. Other areas designated Conservation Other Resources include lands for low intensity uses which do not disrupt the resource and recreational value of the land.* Most of the Columbia River Estuary is in this designation.

5. Natural

Natural areas are those which have not been significantly altered by man and which, in their natural state, perform resource support functions including those functions vital to estuarine or riparian ecosystems. Publicly owned fragile and ecologically valuable areas, especially watersheds and groundwater resource areas, are most likely to be designated as Natural. Natural areas identified by the Oregon Natural Heritage Program, as well as fish and wildlife areas and habitats identified by the Oregon Wildlife Commission, should be considered for Natural designation.

6. Rural Lands

Rural Lands are those that are outside the urban growth boundary, outside of rural community boundaries, and are not agricultural lands or forest lands. Rural lands includes lands suitable for sparse settlement, small farms or acreage homesteads with no or hardly any public services, and which are not suitable, necessary or intended for urban use.

Rural Lands in Clatsop County

A diversity of housing options ranging from high density urban environments to low density farm-forest home sites has been a recognized need in Clatsop County since the County's first Comprehensive Plan was adopted in 1965. While developing the present Comprehensive Plan,

citizens and elected and appointed officials stressed the economic and cultural importance of providing for the demand for recreational and year round rural homesites.

Because of the rural character of the County along with its geographic proximity to the northern Willamette Valley population centers, there has been a steady demand for second homes and rural homesites located on small rural tracts (see Housing Element and Background Report). The demand for rural tracts is expected to continue. In order to continue to meet the demand for affordable rural homesites the County has looked to those which are "built upon and/or irrevocably committed" rural areas which generally have:

- (a) some level of public facilities and services, especially surfaced public roads, fire protection, and piped water;
- (b) a pattern of parcel sizes generally smaller than 15 acres;
- (c) existing residential development at a density generally higher than 1 dwelling unit per 10 acres; and
- (d) natural boundaries, such as creeks and roads, separating the exception area from adjacent resource lands.

Areas generally falling under the above set of criteria are designated Rural Lands throughout the Comprehensive Plan. Rural Lands are those lands which are outside the urban growth boundary and are not agricultural lands or forest lands. Rural Lands include lands suitable for sparse settlement, small farms or acreage homesites with no or hardly any public services, and which are not suitable, necessary or intended for urban use. Most of these lands contain agricultural site class II-IV and forest site class FA-FD.

The Coastal Shorelands Goal #17 requires that shorelands in rural areas other than those in major marshes, significant wildlife habitat areas etc. be used for appropriate for:

- "f. subdivisions, major and minor partitions and other uses only upon a finding by the governing body of the county that such uses satisfy a need which cannot be accommodated at other upland locations or in urban or urbanizable areas and are compatible with the objectives of this goal to protect riparian vegetation and wildlife habitat; and
- g. a single family residence on existing lots, parcels or units of land when compatible with the objectives and implementation standards of this goal."

These are areas of coastal shorelands which are "built upon or are irrevocably committed" to development and cannot be used for agricultural or forest use.

In developing the data base and criteria used to identify exception areas the County planning staff relied heavily on information provided by the six CACs, individual land owners, realtors and builders as well as the opinions of appointed and elected officials. Most of the information used to substantiate commitment of those lands was gathered over a 5 year period through the public hearings process which resulted in the current Comprehensive Plan. In addition, the various needs of each subarea were examined and weighed against the goals. After completion

of each subarea plan, each plan's specific goals and objectives and recommended land use allocations were compared against the County as a whole. This information was compiled and tabulated using the criteria developed during the planning process and forms the main body of this report.

Generally, lands which fall under the general criteria enumerated in this Exception Process and Committed Lands Identification section are designated Rural throughout the Comprehensive Plan. Characteristically, these lands have scattered residences on parcel one-half to 15 acres in size and are clustered along roads throughout the unincorporated County.

Designation of Rural Lands Policy:

Generally parcels less than 15 acres and that are "built upon or irrevocably committed" to a non-resource use are to be placed in a residential, industrial or commercial zone.

Residential

Residential densities are generally designated through the following additional criteria:

- a. Where subdivisions or partitioning or both have occurred in a one acre pattern of development the area will be placed in one of the one-acre zones;
- b. In areas with a development pattern of two to five acre parcels (some smaller and some larger), the areas will be placed in a two acre zone;
- c. In areas adjacent to resource (forest, agriculture, wetlands, estuary areas) lands, or Camp Rilea, the areas will be placed in a five acre zone;
- d. In areas where large parcels (15 acres or greater) of non-resource land are located, the areas will be placed in a five acre zone;
- e. In addition to criteria a through d, minimum lot sizes increase with increasing distances from the following areas:
 1. all urban growth boundaries
 2. Svensen center
 3. Knappa center

Since approximately 90% of the total County land area is forest land, it is not surprising that most of the lands identified as Rural in the Plan contains forest land class FA-FC and/or agricultural site class soils II-IV (see Forestry and Agricultural Background Report).

Interest has been expressed to locate a 400 to 600-acre Destination Resort in the area north of Gearhart. Specific information on boundaries are not available at this time. Clatsop County believes that the area north of Gearhart is a good location for a Destination Resort. Clatsop County designates the area from the north Gearhart UGB line north to the southern entrance road to Surf Pines and from U.S. Hwy. 101 on the east to the easterly Active Dune Overlay District line on the west as the boundaries within which the Destination Resort is to be contained. Clatsop County also recognized that part of the proposed Destination Resort will likely occur within the northern portion of the Gearhart UGB. When more detailed plans are submitted it

may be appropriate to amend the Gearhart UGB Plan, the Clatsop County Plan or both. Clatsop County has adopted information on Destination Resorts in its Economy Element and a Destination Resort Overlay District as background information and land use regulations for a Destination Resort.

COMPREHENSIVE/ZONING MAPS

The Comprehensive/Zoning Maps recorded on September 20, 1983 are at a scale that may make it difficult to determine the exact Comprehensive Plan and Zoning designation for a piece of property. More detailed maps showing the precise Comprehensive/Zoning Map designation are on file in the Clatsop County Department of Planning and Development.

COMPREHENSIVE PLAN/ZONING MAP

Clatsop County has adopted a combination Comprehensive Plan - Zoning Map. The map illustrates the zones of the County. The key includes Comprehensive Plan designations and the corresponding zones that implement the Comprehensive Plan designation. A list of the Comprehensive Plan designations and the corresponding zones is in Table L.010 of the Clatsop County Land and Water Development and Use Ordinance 80-14. There are six (6) Plan designations each with a number of zones that are consistent with the particular Plan designation. Zone map changes may occur within the same Plan designation, e.g. F-30 to F-38 both under Conservation-Forest Lands or RA-1 to SRR-1 both under Rural Lands without changing the Comprehensive Plan/Zoning Map. However, Comprehensive Plan changes are required for changes in zones that occur between Plan designations, e.g. AP-20, Conservation-Forest Lands to RA-3, Rural Lands or OPR, Conservation-Other Resources to PC, Rural Lands or Development.

Urban Growth Boundaries

The Comprehensive Plan/Zoning Map classifies all Urban Growth Boundaries (UGB) in a DEVELOPMENT classification. Clatsop County has adopted land use regulations for each of the cities and towns by separate ordinances. The purpose of the Map designation for Urban Growth Boundaries is illustrative. The user should refer to the appropriate UGB map and text for determining the uses allowed within the UGB.

CLATSOP COUNTY

COUNTY-WIDE ELEMENT

GOAL 2

LAND USE PLANNING

9/15/83

GOAL 2 - LAND USE PLANNING COUNTY-WIDE ELEMENT

INTRODUCTION

A diversity of housing options ranging from high density urban environments to low density farm-forest home sites has been a recognized need in Clatsop County since the County's first Comprehensive Plan was adopted in 1965. While developing the present Comprehensive Plan, citizens and elected and appointed officials stressed the economic and cultural importance of providing for the demand for recreational and year round rural homesites.

Because of the rural character of the County along with its geographic proximity to the northern Willamette Valley population centers, there has been a steady demand for second homes and rural homesites located on small rural tracts (see Housing Element and Background Report). The demand for rural tracts is expected to continue. In order to continue to meet the demand for desirable rural homesites the County has looked to those which are "built upon and or irrevocably committed" rural areas which generally have:

- (a) some level of public facilities and services, especially surfaced public roads, fire protection, and piped water;
- (b) a pattern of parcel sizes generally smaller than 15 acres;
- (c) existing residential development at a density generally higher than 1 dwelling unit per 10 acres; and
- (d) natural boundaries, such as creeks or roads, separating the exception area from adjacent resource lands.

Areas generally falling under the above set of criteria are designated RURAL throughout the Comprehensive Plan. Most of these lands contain agricultural site class II-IV and forest site class FA-FD.

The Coastal Shorelands Goal #17 requires that shorelands in rural areas other than those in major estuaries, significant wildlife habitat areas etc. be used as appropriate for:

- "f. subdivisions, major and minor partitions and other uses only upon a finding by the governing body of the county that such uses satisfy a need which cannot be accommodated at other upland locations or in urban or urbanizable areas and are compatible with the objectives of this goal to protect riparian vegetation and wildlife habitat; and

- g. a single family residence on existing lots, parcels, or units of land when compatible with the objectives and implementation standards of this goal."

These are areas of coastal shorelands which are "built upon or are irrevocably committed" to development and cannot be used for agricultural or forest use.

This report is divided into two sections. The first section gives a general outline of the process used by the County to identify committed lands and to develop the exceptions statements. The second section contains detailed findings pursuant to OAR 660-04-025 for each exception area.

A. EXCEPTIONS PROCESS AND COMMITTED LANDS IDENTIFICATION

The six built and committed criteria in OAR 660-04-025 are discussed in this section. Clatsop County has applied these criteria in as consistent a manner as possible. The criteria are discussed below.

(1) Adjacent Uses. Most of the County's exception areas are adjacent to resource lands in the AF-20, F-3B, F-3U or 2FU zones. Some exception areas are adjacent to residential uses in cities or urban growth boundaries. Adjacent residential uses are an important factor in determining commitment in an area.

(2) Public Facilities and Services. A wide range of services is included under this heading: Piped water, sewerage, paved roads, fire protection, garbage collection, electricity, natural gas, cable television, telephone service, schools, sheriff/police protection, ambulance service and others. It is not generally necessary to mention all of these services on each exception statement. For example, the entire County receives the same level of sheriff's service. Only those public facilities and services that distinguish different areas are examined under this plan element. These distinguishing public services include piped water, sewer, roads and fire protection.

Many of the County's exception areas are in water districts or are served by community water systems. Generally water delivered by such districts or water associations is important in committing an area, as compared to individual water systems.

There are four Rural Service Areas in the County: all are served by sewer systems. The existence of a sewer system is an important factor in the committed status of these areas.

All of the County's exception areas are served by roads. Areas served by paved public roads (including improved state and county roads) generally are more committed than areas served only by unimproved public roads. Access to public roads is also an important factor: for example, many parcels have highway frontage but cannot gain access to the highway because of grade or clear-vision problems.

(3) Parcel Size and Ownership Patterns. A pattern of small parcel sizes is an important factor in an area's committed status. "Small parcel sizes" means parcel sizes generally smaller than 15 acres. The words "parcel" or "lot" may include several tax lots under the same ownership. Only legally-created lots are considered as separate parcels for purposes of this criterion. Lots created under County ordinance without specific goal findings can not by themselves create a committed area, unless such parcels also prevent resource use of the lot.

most of the class II-IV agricultural soils occur in the County and
lands. Class IV soils make up the largest percentage of soil type (77.7%) and
are considered unsuitable for agriculture (Agriculture Background Report).
However, these soils are suitable for pasture or woodlands and much of the
lands with soils of this type are used for those purposes.

Findings for Exception Areas

Planning Area: CHANSON PLAINS
Goal 17 - - an exception to section (3)(f)

Map: 7-10-16C
7-10-21
7-10-21BA
7-10-21BB
7-10-21CB
7-10-22AA
7-10-22AC
7-10-22DB

FINDINGS

(a) adjacent uses:

NORTH - residential
SOUTH - residential
EAST - residential
WEST - Pacific Ocean.

(b) public facilities and services:

WATER - Sunn Pines Water District.
FIRE - Warrenton Rural Fire District
ROADS - Paved private roads.

(c) parcel size and ownership patterns:

There are 73 parcels in this exception area totaling 168.59 acres. The overall average lot size is 2.31 acres. The area includes 3 parcels larger than ten acres, totaling 44.36 acres or about 26% of the total exception area.

(d) neighborhood and regional characteristics:

There are a total of 25 houses in the Sunn Pines exception area at an overall average density of 1 d.u. per 6.02 acres.

CONCLUSION

This area is built and irrevocably committed to land divisions not otherwise permitted under Goal 17 for the following reasons.

- Lands surrounding this area are divided into small residential parcels.
- Public facilities and services are developed to a level which supports continued small lot residential development in this area.
- The area is already divided into small residential parcels; only a small portion of the land is not yet divided.
- The area is already developed to residential densities.

A-18

Tax Lot 300 is within the coastal shorelands planning area. The County's approval of the text amendment identifying the present location of the active dune line, however, does not allow for any development of any coastal shoreland or otherwise affect the resources of the coastal shoreline. No activities are authorized which would alter or otherwise impact habitat or other resources. The County finds that the amendment is consistent with Goal 17.

R. Goal 18, Beaches and Dunes

Goal 18: *"To conserve, protect, where appropriate develop, and where appropriate restore the resources and benefits of coastal beach and dune areas; and*

To reduce the hazard to human life and property from natural or man-induced actions associated with these areas."

The County adopted a beach and dune inventory as required by this goal in 1979. ~~Clatsop County Goal 18 County-Wide Element Beaches and Dunes (adopted by the County in 1979)~~ is based on the report by Leonard Palmer (the "Palmer Study"). The element states at page 2: "Active dune areas mapped in the Palmer Study were identified by LCDC criteria. The criteria are further explained below. This mapping is not intended to specify site conditions or stability, nor to replace existing studies. *The dune mapping is here intended to be a preliminary working designation of areas in which further studies may be required. The boundaries map should be changed when onsite conditions are shown to have changed, or when improved data is obtained. However, any changes should be conservative, since it is better to be on the side of safety and allow developers to provide verification of conditions by qualified experts as required by LCDC, Beach and Dune Guidelines, C-1.*" The LWDUO also provides in Section 4.042 that "[t]he dune mapping is intended to be a preliminary working designation of areas in which further studies may be required. The boundaries mapped should be changed when on-site conditions are shown to have changed, or when improved data is obtained."

With respect to Plan requirements, Goal 18 provides that based on the inventory, comprehensive plans shall:

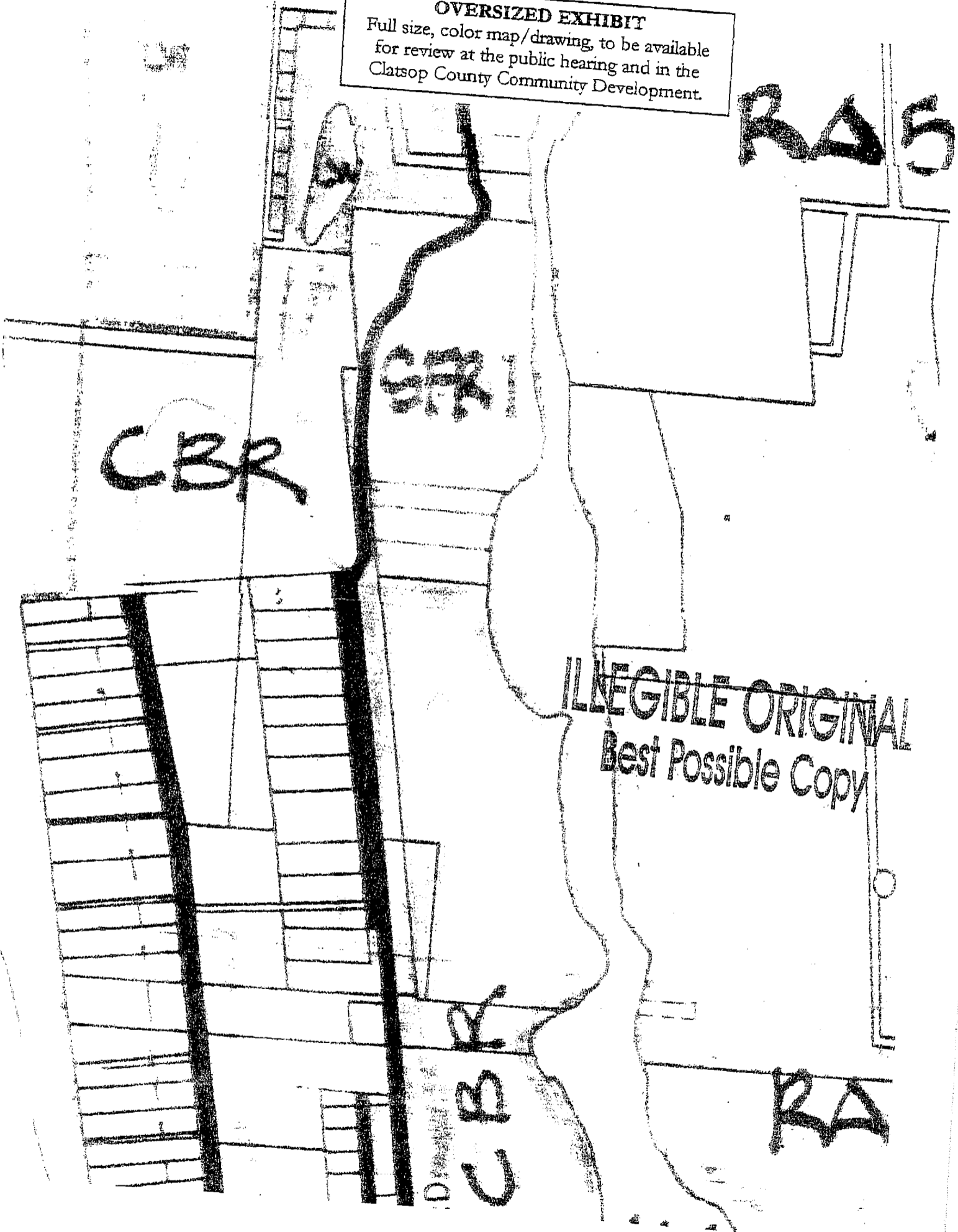
1. Identify beach and dune areas; and
2. Establish policies and uses for these areas consistent with the provisions of [Goal 18].

Goal 18 also specifically provides that the only areas subject to Goal 18 "shall include beaches, active dune forms, recently stabilized dune forms, older stabilized dune forms and interdune forms."

The Horning Report determines that portions of Tax Lot 300 which were identified in the Palmer Study, are not presently within the active dune area. Although the Horning

B-2

OVERSIZED EXHIBIT
Full size, color map/drawing, to be available
for review at the public hearing and in the
Clatsop County Community Development.



CBR

SFR

RA5

ILLEGIBLE ORIGINAL
Best Possible Copy

CUB

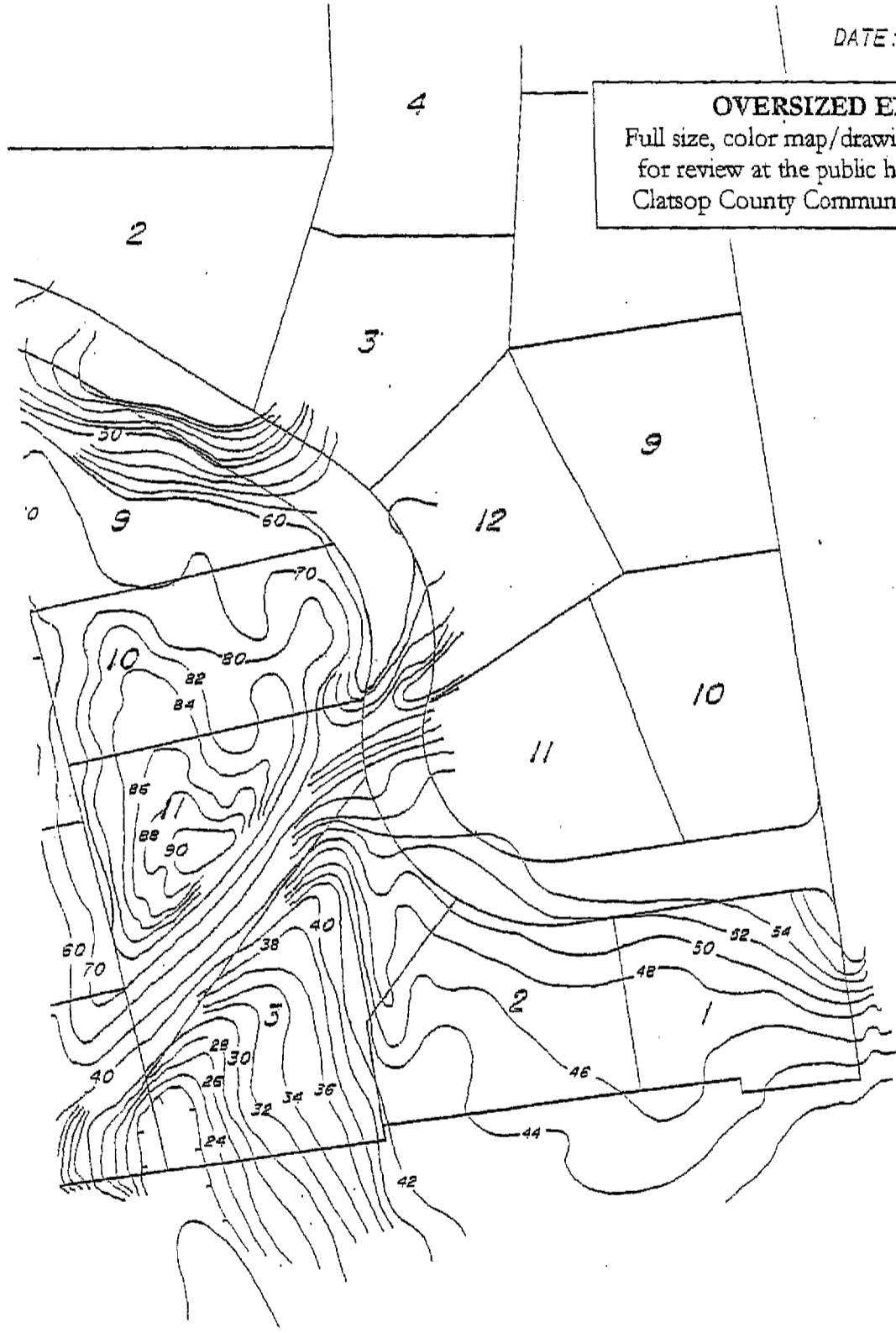
RA

PRELIMINARY PLAT OF MALARKEY PINES
IN CLATSOP COUNTY, OREGON

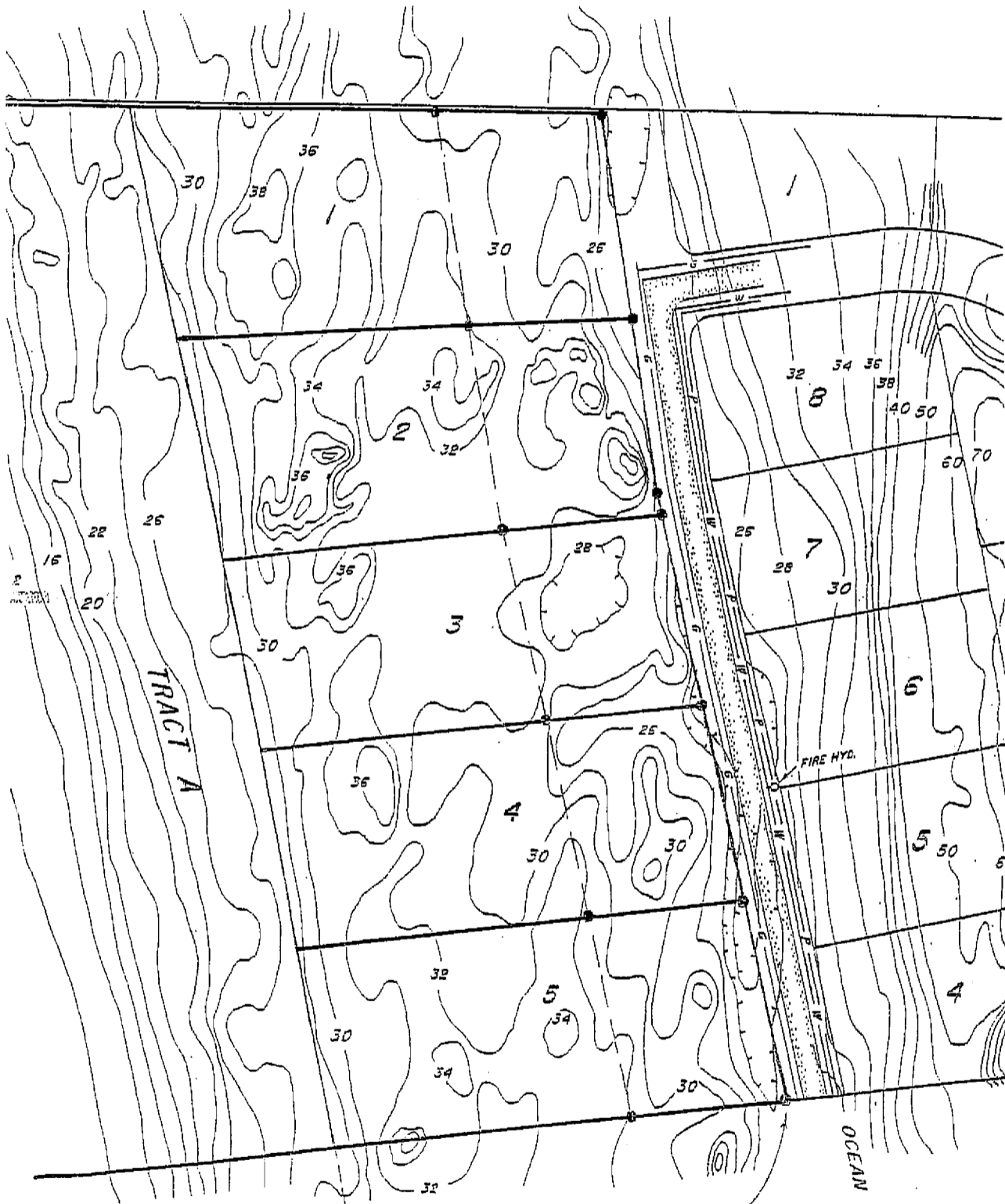
S.W. 1/4 OF SECTION 16, T7N, R10W, W.M.
TAX LOTS 7 10 16C, 300 & 302

DATE: 3/24/05

OVERSIZED EXHIBIT
Full size, color map/drawing, to be available
for review at the public hearing and in the
Clatsop County Community Development.

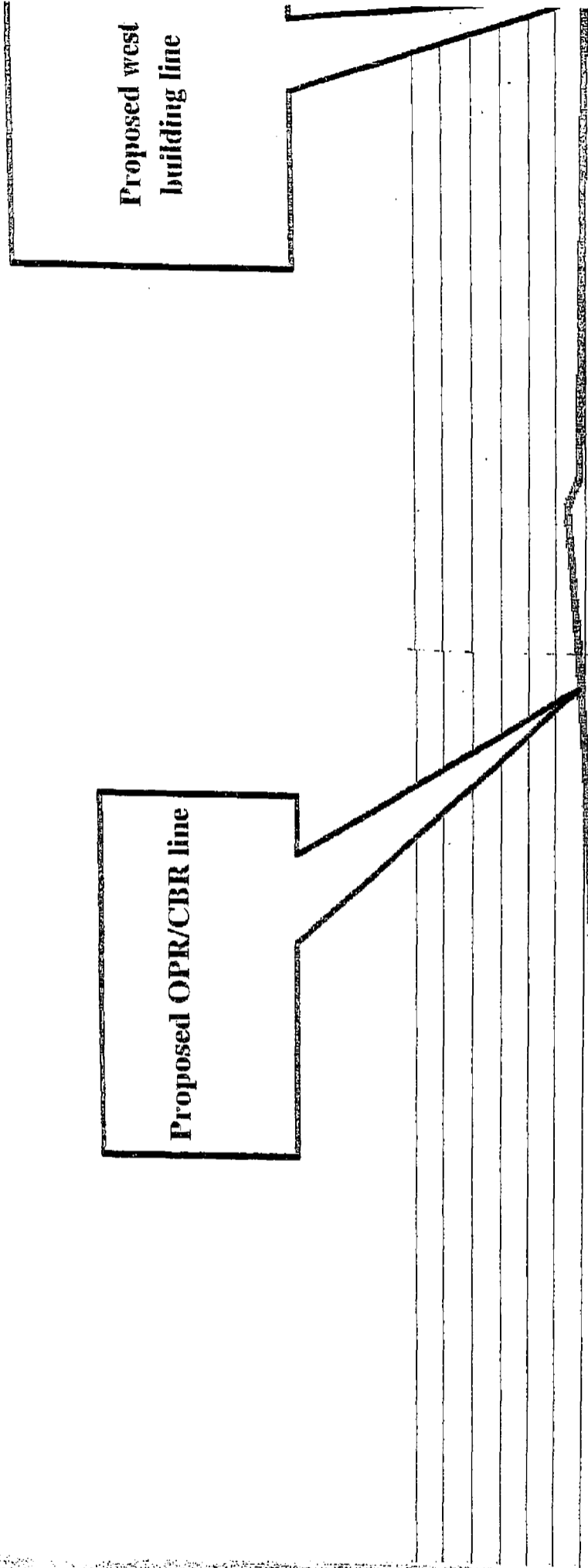


SCALE: 1" = 100'



BENCH MARK. 5/8" REBAR
WITH YELLOW PLASTIC CAP
STAMPED "X FOESTE LS 848"
ELEV. = 23.82' M.G.V.D.

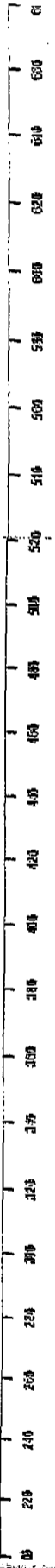
OCEAN
DRIVE



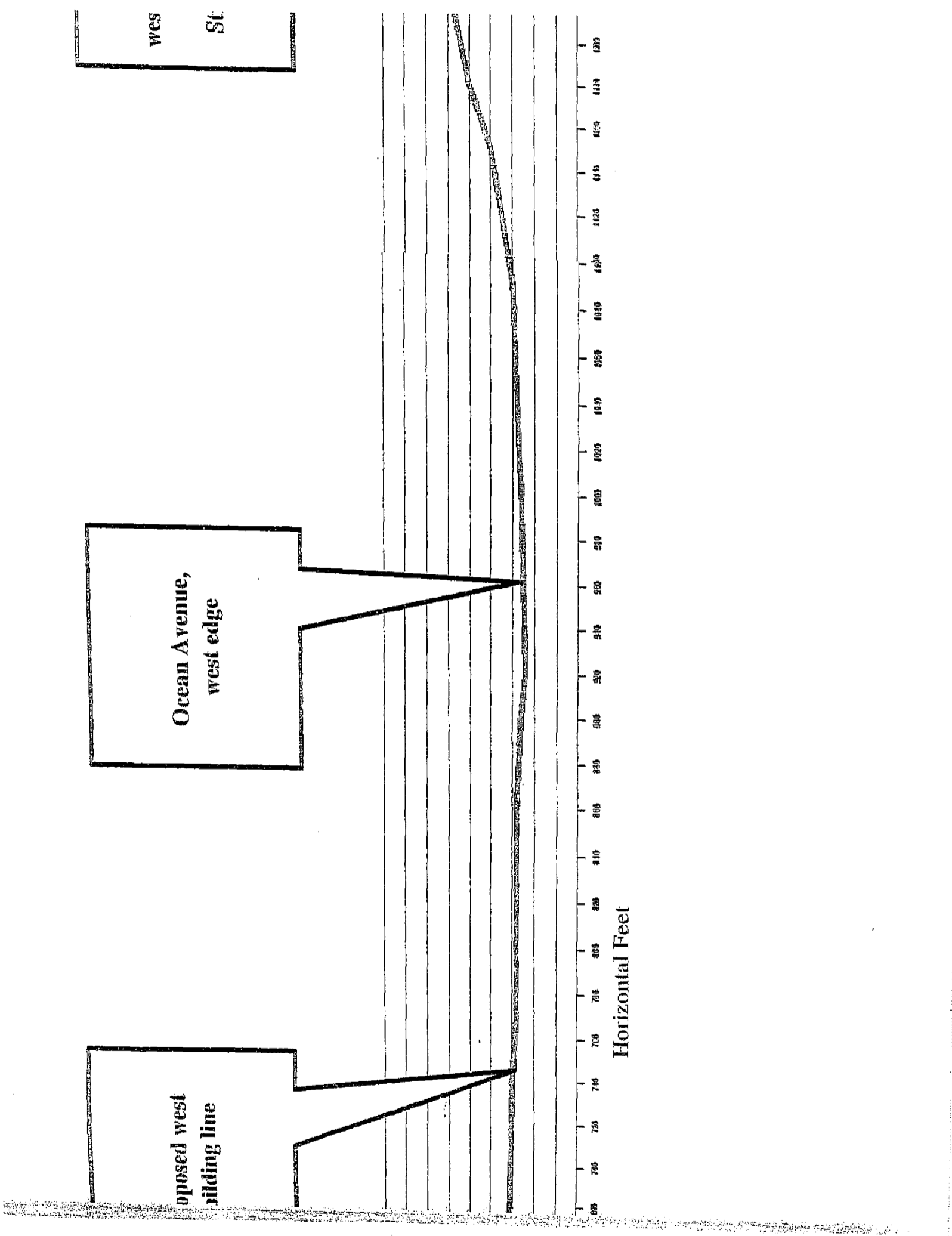
Proposed OPR/CBR line

Proposed west building line

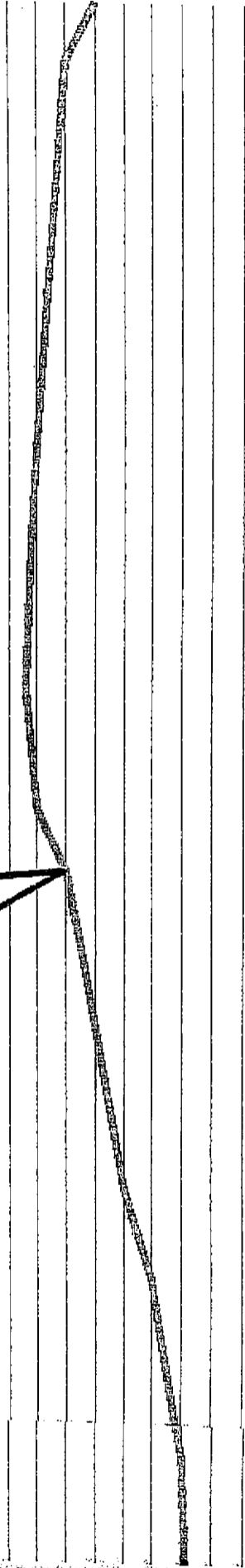
OVERSIZED EXHIBIT
Full size, color map/drawing, to be available for review at the public hearing and in the Clatsop County Community Development.



74



west property line,
lot 10,
Strawberry Hill





900 S.W. Fifth Avenue, Suite 2600
Portland, Oregon 97204
main 503.224.3380
fax 503.220.2480
www.stoel.com

TIMOTHY L. MCMAHAN
Direct (503) 294-9517
timcmahan@stoel.com

January 23, 2006

VIA EMAIL AND OVERNIGHT DELIVERY

Ms. Kathleen Sellman, AICP
Director
Clatsop County Community Development
800 Exchange Street, Suite 100
Astoria, OR 97103

Re: Chariton and Big Bears LLC—Response to Goal 1 Coalition Letter

Dear Kathleen:

I am providing to you, for circulation to the Board of County Commissioners as you deem appropriate, the Applicant's Response to the December 12 Goal 1 Coalition letter. We have formatted this response by first setting forth brief, summary responses to each contention, and secondly more detailed, legal responses.

As I indicated to you in my email correspondence, I believe that the record is sufficient to fully rebut Goal 1's letter. However, in order to ensure that the Board of County Commissioners has a record with sufficient clarity, we are providing this response to you, for use and circulation as you deem appropriate.

Please feel free to call me with any questions.

Very truly yours,


Timothy L. McMahan

TLM:nh
Enclosure

cc (w/Encl.): Mr. E. Andrew Jordan, Jordan Schrader P.C. (via email)
Mr. Richard Chariton (via email)
Mr. Mark Barnes (via email)
Ms. Michelle Rudd

Portland-2217199.1 0020566-00005

Oregon
Washington
California
Utah
Idaho

IN THE MATTER OF THE COMPREHENSIVE PLAN AND ZONING MAP
AMENDMENT PROPOSAL OF BIG BEAR LLC & CHARLTON

Applicant's Response to Goal 1 Coalition's December 12, 2005 Letter

Submitted January 23, 2006

The Applicant owns a 10.9-acre parcel of land located between the beach of the Pacific Ocean and the west side of Lower Surf Pines Road in Clatsop County, Oregon (the "County"). The property, also identified as Tax Lot 7-10-16C-300 ("Tax Lot 300" or the "Property"), is within and directly to the north of the Surf Pines Development ("Surf Pines"), which is Goal 14 exception area that has been platted and developed for low-density rural residential use; however, Tax Lot 300 was not expressly included in the exception created for Surf Pines. Notwithstanding the County's failure to include Tax Lot 300 within the Goal 14 exception, Section 3.240 of the County's Land and Water Development and Use Ordinance ("LWDUO") includes all of Surf Pines within the CBR zone, including Tax Lot 300, and LWDUO § 3.248 specifically refers to all of Tax Lot 300 as subject to the density restrictions of the CBR zone.¹ However, the County's zoning map and Comprehensive Plan map have not been amended to reflect these Comprehensive Plan and LWDUO amendments. To align the Comprehensive Plan map with Ordinance No. 02-05, and to reconcile the Property's zone designation with the County's recognition in Ordinance No. 02-05 and LWDUO § 3.240 that Tax Lot 300 is suitable for residential development, Applicant has requested that the County:

1. Amend the Comprehensive Plan designation of all of Tax Lot 300 from Conservation-Other Resources to Rural Lands, by amending the Comprehensive Plan map;² and
2. Amend the land-use zone designation of Tax Lot 300 on the County zoning map from Open Space, Parks, and Recreation ("OPR") to Coastal Beach Residential ("CBR").

Several neighboring property owners have solicited assistance from the Lebanon, Oregon-based "Goal One Coalition" ("Goal One") to oppose the proposed amendment of the Clatsop County's Comprehensive Plan / Zoning Map to reflect previously adopted text amendments to the County's Land and Water Development and Use Ordinance ("LWDUO") and Comprehensive Plan. Goal One asserts that Oregon's Statewide Planning Goals 5, 8, 11, 14, and 17 apply to the proposed map amendments and that the County has not analyzed the proposed amendments in

¹ In 2003, the County passed the Applicant Active Dune Line Comprehensive Plan Text Amendment, Clatsop County Ordinance No. 02-05 (Jan. 11, 2003). Ordinance No. 02-05 amended the Clatsop County Comprehensive Plan (the "Comprehensive Plan") and removed Tax Lot 300 from the active dune area. Ordinance No. 02-05 also reinforced Ordinance No. 83-17, which previously established that the construction setback line for Surf Pines applies to Tax Lot 300, as reflected in LWDUO § 3.248.

² The text of the Comprehensive Plan will not be modified.

light of these goals. Contrary to Goal One's contentions, the request is consistent with all applicable statewide goals. Each claim regarding the applicability of the particular Statewide Planning Goal is addressed in turn below.

I. BRIEF SUMMARY OF RESPONSE

A. Goal 5

Goal One Argument. Goal One asserts that even if Tax Lot 300 contains no Goal 5 resources, the County must determine whether development of Tax Lot 300 would impact Goal 5 resources on adjacent or nearby lands, including certain lands to the north of Tax Lot 300.

Response. There is no evidence of any potential effect on Goal 5 inventoried resources or impacts to the County's compliance with Goal 5. The County must consider Goal 5 when it amends its comprehensive plan only if the proposed amendment allows a new use that could conflict with a Goal 5 resource site, or amends a land use regulation adopted to protect a significant Goal 5 resource or to address a specific Goal 5 requirement. OAR 660-023-0250(3). The proposed map amendments address the mapping designation of a lot that is not a Goal 5 inventoried resource, and there is no evidence that the proposed map amendments would affect, directly or indirectly, any significant Goal 5 resources.

B. Goal 8

Goal One Argument. Goal One argues that the County must consider whether the proposed amendment has direct or secondary effects on recreation areas, facilities, and opportunities inventoried and designated in the comprehensive plan to meet Clatsop County's recreational needs.

Response. The proposed amendments comply with the Statewide Planning Goals because they do not disrupt the County's land-use policies related to Goal 8 or diminish the County's compliance with the Goals as a whole. In addition, there is no evidence of direct or secondary impacts to Goal 8 resources. The proposed amendments, involving only private property in a gated community, will not directly impact any of the inventoried recreational resources in the vicinity. Moreover, a "secondary effect" occurs only when an amendment to one provision affects the way in which another provision operates, or affects the land uses on which that second provision operates. *1000 Friends of Oregon v. Jackson County*, 79 Or App 93, 98 (1986). The proposed amendments will not alter any other provision of the Comprehensive Plan to create noncompliance with the Statewide Planning Goals generally or Goal 8 in particular.

C. Goal 11: Water

Goal One Argument. Goal One asserts that use of the city of Warrenton water system constitutes an "extension of a water system" to increase authorized density in contravention of Goal 11.

Response. The proposed map amendments will not alter the existing authorized density of the CBR zone or Tax Lot 300, and the use of the city's water will not constitute an extension of that system enabling the otherwise unauthorized urban development of a rural area. The CBR

designation in the LWDUO includes Tax Lot 300. LWDUO § 3.248. The allowed density in the CBR zone for Tax Lot 300 is two-acre residential parcels. *Id.* The map amendments will not modify the existing authorized density for the Property or the CBR zone, as set forth in the LWDUO. In addition, the use of the city of Warrenton's water system does not constitute an "extension" of a water system prohibited by Goal 11. "Extension" means the "physical expansions of the service areas or major facilities of existing systems." *Dept. of Land Conservation v. Lincoln County*, 144 Or App 9, 14, 925 P2d 135 (1996). It does not include connections to individual lots in the existing service area. *Id.* at 15, 17. Goal 11 prohibits the provision of urban levels of services to rural areas, but permits public facilities and services appropriate for the needs and requirements of the rural areas to be served. *Conarow v. Coos County*, 2 Or LUBA 190, 193 (1981). The proposed amendments comply with this goal.

D. Goal 11: Sewer

Goal One Argument. Goal One claims that Goal 11 requires the County to demonstrate the feasibility of providing adequate sewage disposal systems as part of the proposed map amendments and that the County has not made such a finding.

Response. Evidence in the record states that the Oregon Department of Environmental Quality has approved on-site sewage disposal systems for each of the potential parcels on Tax Lot 300. (See May 16, 2005 Letter from Connie M. Schrandt, DEQ to Applicant (approving on-site sewage disposal systems for Tax Lot 300).) Additional approval of Tax Lot 300's individual septic system is not required for the proposed map amendments, and no additional showing of compliance with Goal 11 should be required to adopt the proposed map amendments.

E. Goal 14

Goal One Argument. Goal One claims that approval of the map amendments would result in the designation of a rural residential area, requiring the County to impose a minimum parcel size of at least 10 acres or take an exception to Goal 14.

Response. OAR 660-004-0040, which limits lot sizes in rural residential areas, does not apply to Tax Lot 300, because that rule applies only to lands for which an exception to Statewide Planning Goal 3, Goal 4, or both has been taken. OAR 660-004-0040(2)(a). Tax Lot 300, Surf Pines, and the Rural Lands classification under the Comprehensive Plan are by their definitions not Goal 3 or 4 exception lands; consequently, the lot size limitations of OAR 660-004-0040 do not require a Goal 14 exception or a 10-acre lot size restriction on Tax Lot 300.³

In addition, the County has identified Tax Lot 300 in the LWDUO as within the CBR zone. That zone is rural by definition, such that development is already circumscribed by restrictive development standards. LWDUO § 3.240. The County expressly limits development in rural areas to specific densities, and the proposed amendments merely align the Comprehensive Plan /

³ The Plan's Land Use element defines Rural Lands as those lands "outside the Urban Growth Boundary and are not agricultural lands or forest lands." Clatsop County Comprehensive Plan, Land Use Element at 8. The County adopted findings in 1982 demonstrating that Tax Lot 300 was not suitable for agriculture or forestry.

Zoning Map with the County's previous determination that Tax Lot 300 may be developed according to the CBR density restriction set forth in the LWDUO. Because the proposed use does not implicate Goal 14, Goal One's claim that an exception is required should be rejected.

F. Goal 17

Goal One Argument. According to Goal One, Goal 17 applies to Tax Lot 300 because the Goal 17 exception taken for the Surf Pines area did not include Tax Lot 300; consequently, an exception is required to allow for residential development of the Property, and the County must establish that proposed development will not adversely affect Goal 17 resources within the Urban Growth Boundary.

Response. The County has designated Tax Lot 300 as within Surf Pines, an area that by County ordinance is deemed "committed to low density rural residential development," LWDUO § 3.242, and has provided for the development of Tax Lot 300 through the promulgation of development density standards specifically applicable to the Property. *Id.* § 3.248. Under the Comprehensive Plan's Goal 17 element, Tax Lot 300 is located within Site 11, which includes OPR and CBR as base zones. *Clatsop County Comprehensive Plan* Goal 17 Element at 18. Residential development is allowed in Goal 17 areas upon a showing of public need. *Id.* at 27. Public need for low-density rural residential development has been demonstrated by evidence in the record that demand has increased for housing in the County generally and that development of ocean-front property such as Tax Lot 300 would serve this public need. (See Applicant's Proposed Findings tab 7.)

II. DETAILED RESPONSE

A. Goal 5

The proposed amendments to the County's Comprehensive Plan map and zoning map are consistent with Statewide Planning Goal 5, because Tax Lot 300 is not inventoried as a Goal 5 resource, and the County has not found Tax Lot 300 to contain any Goal 5 resources. Under Oregon's land use law, a proposed amendment to an acknowledged comprehensive plan must be consistent with specific related land-use policies contained in the County's acknowledged Comprehensive Plan, or be compliant, on the whole, with the purposes of the statewide goals. ORS 197.835(6), (8). In the absence of any evidence that the proposed amendments affects a Goal 5 resource or otherwise is inconsistent with the County's land-use policies, Goal 5 is satisfied regardless of the Property's zoning map designation as OPR.

Goal 5 is the "Natural Resources, Scenic and Historic Areas, and Open Spaces" goal. *Rest-Haven Memorial Park v. City of Eugene*, 175 Or App 419, 421 n 2, 28 P3d 1229 (2001). The Goal requires protection of natural resources and conservation of scenic and historic areas and open spaces partly through the development of inventories of natural resources, including open spaces, wildlife habitat, and natural areas. *Id.* After collecting data regarding Goal 5 resources, a local government may choose not to include a particular resource site on the plan inventory, either because the resource is not important enough or because it does not meet the specific Goal 5 standards. OAR 660-016-0000(5)(a). Upon such a determination, no further action is

needed with regard to the site. "The local government is not required to justify in its comprehensive plan a decision not to include a particular site in the plan inventory[.]" *Id.*

After acknowledgment by the Land Conservation and Development Commission ("LCDC") of a local government's comprehensive plan, a local planning jurisdiction must consider Goal 5 when it amends its comprehensive plan, but only if the proposed amendment affects a Goal 5 resource by allowing a new use that could conflict with a Goal 5 resource site. OAR 660-023-0250(3). A proposed amendment would affect a Goal 5 resource if:

"(a) The [amendment] 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; [or]

"(b) The [amendment] allows new uses that could be conflicting uses⁴ with a particular significant Goal 5 resource site on an acknowledged resource list[.]"

Id. Pursuant to OAR 660-023-0250(3)(a), the proposed map amendments do not implicate Goal 5, because the amendments are not designed to protect a significant Goal 5 resource or address specific requirements of Goal 5. Instead, the amendments address the Comprehensive Plan map and zoning map designation of a lot that is not a Goal 5 inventoried resource. Similarly, Goal 5 does not apply to the proposed amendments under OAR 660-023-0250(3)(b), because there is no evidence in the record that the proposed map amendments would affect, directly or indirectly, any significant Goal 5 resources. The property to the north is not an inventoried Goal 5 resource, and therefore cannot implicate Goal 5 absent a revision to the inventory during the next scheduled periodic review. Goal One has identified no other Goal 5 resources on adjacent or nearby lands, and has not provided any evidence to indicate that the proposed amendments would impact such lands. In the absence of any evidence in the record demonstrating a potential effect on Goal 5 resources, Goal 5 does not apply to the proposed amendments, and Goal One's assertion to the contrary should be rejected.

B. Goal 8

The Statewide Planning Goals do not require Applicant to demonstrate, or the County to find, that the proposed amendments do not have direct or secondary effects on inventoried and designed recreation areas, facilities, and opportunities. Instead, as explained above, the proposed amendments must simply comply with the Statewide Planning Goals, as measured by whether the amendment is either (1) consistent with specific related land-use policies contained in the County's acknowledged Comprehensive Plan, or (2) compliant, on the whole, with the purposes of the statewide goals. ORS 197.835(6), (8). The proposed amendments satisfy this compliance requirement under either standard, because the amendments do not disrupt the County's land-use

⁴ OAR 660-023-0010(1) defines "conflicting use" as "a land use, or other activity reasonably and customarily subject to land use regulations, that could adversely affect a significant Goal 5 resource[.]"

policies related to Goal 8 and do not diminish the County's compliance with the goals as a whole. No further inquiry into the "direct or secondary effects" of the amendments are required.

Goal One argues that when reviewing a proposed comprehensive plan amendment or land-use regulation amendment for compliance with Goal 8, "the relevant concern is whether the amendment has either direct or secondary effects on recreation areas, facilities, and opportunities inventoried and designated in the comprehensive plan to meet Clatsop County's recreational needs." (Goal One Brief at 3 (citing *1000 Friends of Oregon v. Jackson Co.*, 79 Or App 93, 98, 718 P2d 753 (1986); *Salem Golf Club v. City of Salem*, 28 Or LUBA 561, 587 (1995).))

Goal One misconstrues the analysis required by the statewide goals and the cited authorities. The *1000 Friends* court explained that a "secondary effect[]" occurs when an amendment to one provision affects the way in which another provision operates, or affects the land uses on which that second provision operates. 79 Or App at 98. When the proposed amendment results in the new or changed operation of an unamended provision, thereby creating inconsistency with the Statewide Planning Goals, the initial proposed amendment is inconsistent with the goals because of its "secondary effects." *Id.* In addition, the Oregon Land Use Board of Appeals' ("LUBA") decision in *Salem Golf Club* specifically held that Goal 8 does not require that there will be no adverse effects on any recreational activity occurring in the vicinity of the proposed amendment. 28 Or LUBA at 587. Indeed, when a challenger fails to identify a specific facility as an inventoried recreational resource, Goal 8 does not require that the impact on such facilities be addressed. *Id.*

Goal One does not explain which inventoried and designated resources may be affected by the proposed amendment, nor does it offer any substantive argument that the amendments will in fact affect any inventoried resources. There is similarly no evidence that the proposed amendments, involving only private property in a gated community, will have any direct impact on any of the inventoried recreational resources in the vicinity. Moreover, there is no evidence of any potential secondary effect on inventoried resources, because the proposed amendments will not alter any other provision of the Comprehensive Plan such that the unamended provision will result in noncompliance with the Statewide Planning Goals generally or Goal 8 in particular. In the absence of any substantiated argument that the proposed amendments will directly change provisions of the Comprehensive Plan related to Goal 8 or secondarily affect the Comprehensive Plan's unamended provisions, the Clatsop County Planning Commission ("Commission") should reject Goal One's claim.

C. Goal 11

1. Water

Goal One's assertion that use of the city of Warrenton water system constitutes an "extension of a water system" to increase authorized density in contravention of Goal 11 is misplaced because authorized density will not be modified by the amendments, and the use of the city's water does not constitute an extension of that system. Thus, the proposed amendments do not violate Goal 11's design to prevent the urbanization of rural areas.

Goal 11 provides, in part, that local governments must not rely on the extension of a water system to allow residential development of land outside urban growth boundaries at a density higher than authorized without service from such a system. *See also* OAR 660-011-0065(2)(c) (prohibiting increase in allowable density due to extension of water system). However, the critical language is “an *increase* in the *allowable* density of residential development.” OAR 660-011-0065(2)(c) (emphasis added). The proposed amendments will do no more than bring Tax Lot 300 within the CBR zoning map designation (in alignment with the text of the LWDUO, which includes the Property within the CBR zone) and within the Rural Lands Comprehensive Plan map designation; they will not increase the allowable density of either the CBR or Rural Lands designated areas, and because the allowable density for Tax Lot 300 is currently established in LWDUO §3.240, the amendments will not facilitate development in excess of the density already prescribed. The CBR designation in the LWDUO includes Tax Lot 300. LWDUO § 3.248. The allowed density in the CBR zone is one-acre residential parcels, except for Tax Lot 300, which requires two-acre parcels. *Id.* The amendments simply allow develop in conformance with authorized density for the Property and the CBR zone. Nothing in the proposed map amendments would alter or increase the authorized density of the area. The density would remain one- or two-acre parcels.

In addition, the use of the city of Warrenton’s water system does not constitute an “extension” of a water system prohibited by Goal 11. Goal 11 prohibits the provision of urban levels of services to rural areas, but permits public facilities and services appropriate for, but limited to, the needs and requirements of the rural areas to be served. *Conarow v. Coos County*, 2 Or LUBA 190, 193 (1981).

The Property can be served by the city of Warrenton without an extension of the city’s water system. The term “extension,” as used in Goal 11, refers only to “physical expansions of the service areas or major facilities of existing systems.” *Dept. of Land Conservation v. Lincoln County*, 144 Or App 9, 14, 925 P2d 135 (1996). It does not include connections to individual lots in the existing service area. *Id.* at 15, 17. The use of the city of Warrenton’s water will require no more than the hookup of lots created from Tax Lot 300 to the service provided to Surf Pines. It will not require the physical expansion of the service area or any expansion of the city’s facilities. Consequently, Goal One’s argument is without force. The proposed map amendments will do no more than make the map designation of Tax Lot 300 consistent with its acknowledged location within Surf Pines; that is, the CBR zone. The map amendments will not increase authorized density in the CBR zone, nor will they involve the extension of water service in contravention of Goal 11. Goal One’s argument that the proposed amendments violate Goal 11 should be rejected.

2. Sewer

Contrary to Goal One’s assertion, the County has satisfied the Goal 11 policy of demonstrating the feasibility of providing adequate sewage disposal systems as part of the proposed map amendments. Evidence has been submitted into the record that the Oregon Department of Environmental Quality has approved on-site sewage disposal systems for each of the potential parcels on Tax Lot 300. (*See* May 16, 2005 Letter from Connie M. Schrandt, DEQ to Applicant (approving on-site sewage disposal systems for Tax Lot 300).)

As noted above, LWDUO identifies Tax Lot 300 as part of Surf Pines comprising the CBR zone. The County had previously rezoned the tax lot, and the map amendments merely serve to align the County's maps with its existing Comprehensive Plan and zoning designation of the property. Finally, evidence in the record demonstrates DEQ's approval of on-site sewage disposal systems for the potential parcels within Tax Lot 300. No additional showing of compliance with Goal 11 should be required to adopt the proposed map amendments.

D. Goal 14

Goal One's claim that the proposed amendments require an exception to Goal 14 are without merit because Tax Lot 300 was previously zoned CBR, as set forth in LWDUO § 3.242. The CBR zone is, by definition, "rural," such that development within the zone is circumscribed by restrictive rural development standards. Goal 14 does not apply to the proposed amendments because they do not convert rural land to urban use but merely bring property that has previously been zoned as rural within that designation on the county's zoning and Comprehensive Plan map.⁵ See *1000 Friends of Oregon v. LCDC (Curry Co.)*, 301 Or 447, 471, 724 P2d 268 (1986) (requiring Goal 14 exception for plan amendments that convert rural lands to urban uses). Based on the County's designation of the property and the CBR zone as rural, and the County's express limitation of development to rural density limits, Goal 14 is not triggered by the proposed map amendments. The amendments merely align the Comprehensive Plan map and zoning map with the County's previous determination that Tax Lot 300 is part of Surf Pines and is not in an active dune area subject to development prohibitions.

In addition, OAR 660-004-0040, cited by Goal One for the proposition that the proposed amendments require a Goal 14 exception, does not apply to Tax Lot 300, because the rule expressly applies only to "lands * * * for which an exception to Statewide Planning Goal 3, (*Agricultural Lands*), Goal 4 (*Forest Lands*), or both has been taken." OAR 660-004-0040(2)(a) (emphasis in original). Tax Lot 300, Surf Pines, and the Rural Lands classification under the Comprehensive Plan are by their definitions not Goal 3 or 4 exception lands.⁶ In addition, even if OAR chapter 660, division 4 applied to the amendments at issue, the amendments would not require a Goal 14 exception because OAR 660-004-0040(5) provides that a rural residential area in effect on the effective date of the rule "shall be deemed to comply with Goal 14 if that zone requires any new lot or parcel to have an area of at least two acres." OAR 660-004-0040(5)(a). The CBR designation, which includes Tax Lot 300, was in effect on the effective date of that rule. Consequently the exception provisions of OAR 660-004-0040 do not apply to the proposed Rural Lands designation of Tax Lot 300, because the proposed amendments would not result in the designation of a rural residential area, and if they did, the rural designation applied requires

⁵ Rural lands are defined in Goal 14's planning goals as nonurban agricultural, forest, or open space lands, or other lands suitable for sparse settlement or acreage home sites with few public services, and which are not suitable, necessary, or intended for urban use.

⁶ The Plan's Land Use element defines Rural Lands as those lands "outside the Urban Growth Boundary and are not agricultural lands or forest lands." Clatsop County Comprehensive Plan, Land Use Element at 8. The County adopted findings in 1982 demonstrating that Tax Lot 300 was not suitable for agriculture or forestry.

no more than two-acre parcels. Because the proposed use does not implicate Goal 14, Goal One's claim that an exception is required should be rejected.

E. Goal 17

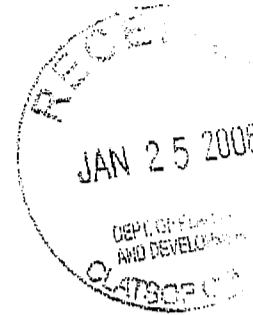
The County has designated Tax Lot 300 as within Surf Pines, an area that by County ordinance is deemed "committed to low density rural residential development," LWDUO § 3.242. Further, the County has provided for the development of Tax Lot 300 through the promulgation of development density standards specifically applicable to the Property. *Id.* § 3.248. Under the Comprehensive Plan's Goal 17 element, Tax Lot 300 is located within Site 11, which includes OPR and CBR as base zones. *Clatsop County Comprehensive Plan* Goal 17 Element at 18. Under that same element, residential development is allowed in Goal 17 areas upon a showing of public need. *Id.* at 27. Public need for low-density rural residential development has been demonstrated by evidence in the record that demand has increased for housing in the County generally and that development of ocean-front property such as Tax Lot 300 would serve this public need. (See Applicant's Proposed Findings tab 7.) Consequently, the County has satisfied its obligation to find a public need for low-density residential development through the CBR zoning designation of Tax Lot 300.

III. CONCLUSION

Goal One's assertions that Statewide Planning Goals 5, 8, 11, 14 and 17 apply to the proposed Comprehensive Plan map and zoning map amendments are unsupported by the goals themselves, their applicable regulations, and interpreting case law. Tax Lot 300 is included in the County's CBR zone, which is dedicated to rural residential development. The proposed amendments do not alter the zoning designation for Tax Lot 300, and their adoption will not alter the County's compliance with the Statewide Planning Goals. Consequently, Goal One's claim that the map amendments implicate the goals listed above should be rejected, and the proposed map amendments should be approved.

SUSAN IVEY HOLLOWAY
3619 SE FRANCIS PORTLAND, OREGON
90054 OCEAN AVENUE WARRENTON, OREGON

Clatsop County Board of Commissioners
800 Exchange Street, Suite 100
Astoria, Oregon 97103



Dear County Commissioners:

I would like to begin by asking you to review the copy of LWDUO 3.242 and 3.248 that I submitted to the Planning Commission in December. I do not find any language that changes the zoning as asserted by Mr. Charlton in his findings presented to the Planning Commission staff and the Planning Commission on December 12, 2005. When I questioned Patrick Wingard the day before the Planning Commission Hearing he could not substantiate the finding either, but had accepted it as fact and his first resolution for the Commission did not challenge the error.

This obvious acceptance of all that Charlton presents worries me – are there other unsubstantiated statements presented as facts that I do not have the professional expertise to uncover.

My home was built in 1962 and no construction has occurred to the north of my home for 43 years because the land was not zoned for residential development and was not part of the Surf Pines Association until 1998 when Mr. Malarky and Mr. Charlton exchanged roads built for the Strawberry Hill Surf Pine homes with the right to annex into Surf Pines.

The original builder of my home believed that this would be the final home built on the west side of Ocean Drive and therefore built 12 floor-to-ceiling windows on the north side of the house and will look directly into houses on that property. It has been asserted by Mr. Charlton that no monetary home value will be suffered, yet a large home on the east side of Ocean, across from his proposed "Malarky Pines" just sold for more than \$10,000 less than the market value assigned by the county, certainly negative value and a rarity in this market.

The decision to designate tax Lot 300 OPR was NOT an arbitrary decision as reported by the Planning Commission staff and Charlton staff, but occurred during the 1970s, a time of land use planning and coastal management planning in the state of Oregon. The decisions were made for the preservation of these resources. The designation most likely resulted from the Oregon Comprehensive Land Use Planning Goals and the four additional goals that addressed coastal resource planning and management issues. It was not arbitrary and the remaining parcels of land must be kept as designated for the benefit of the state. The 107 acres just north of the Charlton property belonged to the Norman Yeon family and have been bequeathed to the Trust for Public Lands to benefit Clatsop County.

Surf Pines lots were first advertised for sale in the 1950s. An ad from the Oregon Journal, lists 10-acre tracts being sold for \$5,000. George Malarky only paid \$10 for an even larger parcel of land. He did not buy a piece of property that was suited for residential use. It has never, to my knowledge, been designated for residential development.

Declining populations of native plants and animals are threatened in limited habitats along the coast. In particular, natural communities on grassy headlands and coastal dunes have been greatly diminished due to residential development and the spread of introduced weeds. I feel it is important to maintain open spaces for the multitude of wildlife that share that land with us.

Goal 18 is to conserve, protect, where appropriate develop, and where appropriate, restore the resources and benefits of coastal beach and dune areas; and to reduce the hazard to human life and property from natural and man-induced actions associated with these areas. Had goal 18 been in force prior to any home building on the west side of Ocean Drive, none of our homes would have been built. I am one of those home owners at risk, and have warnings posted in the house, issue warnings to all users of my house and have an emergency plan, gas, water, food and clothing should I need to make an emergency getaway. I would have re-considered the purchase of my home had I known all this in 2003. You do know this now, there is extensive public information being disseminated and you should not allow the change to tax lot 300 at this time.

Remember, we are not asking for a reversal of residential property zoning, but asking your wise guidance to maintain this land as it has been preserved with the OPR designation.

We have sought council from 1000 friends of Oregon, the Oregon Coast Nature Conservancy, Jim Just of GoalOne, the Oregon Shores Association, the Trust for Public Lands and the Oregon Coastal Management Program.

There are three reasons to overturn this zone change request: 1.) The implied promises made by representatives of Mr. Charlton and Malarky that the buyers of prime land on Strawberry Hill would not suffer the loss of their views by having houses on lot 300; 2,) The land will never be returned to its original intention/designation as decreed by the state in the 1970's if you allow this zone change; and 3.) the danger of loss of life and property by building new homes in a tsunami area.

Do not overturn this current zone designation. Keep tax lot 300 OPR!

Sincerely,

Susan Holloway

Susan Holloway

Attachment: history

I request that the record remain open an additional week - until February 1, 2006
Susan Holloway

**Tax lot 300 Malarky/Charlton land history
as understood by Susan Holloway**

- 1959: 10.9 acres purchased by George Malarky for \$10. Residential parcels of equal size within Surf Pines were sold for \$5,000 during that time period. This was not residential property at the time of purchase and has not been since then.

- 1979: Tax lot 300 designated OPR as part of comprehensive land use planning in the State of Oregon, expressly done to protect dunes and beaches.

- 1980's: Malarky sold lots on subdivision he named Strawberry Hill. Built roads to the lots, but retained ownership of the roads. Realtor selling the property represented that the dunes area in front of Strawberry Hill would not ever be developed, to ensure unobstructed views for the purchasers of the Strawberry Hill lots.

- 1995: Malarky and Charlton failed in an attempt to get the zoning on tax lot changed. Vote was unanimous from the Planning Commission and only one vote was favorable from the County Commissioners.

- 1998: Surf Pines Board discovered that the Strawberry Hill access roads had not been deeded to Surf Pines when the Strawberry Hill property was deeded. In an effort to avoid lawsuits, Surf Pines exchanged the roads for annexation of Tax Lot 300, making it part of Surf Pines for the first time.

- 2002: Geologist hired by Charlton declares that the dune to the west is stabilized.

- 2005/06: Zone change again requested.

Charles W. Rule
90054 Ocean Drive
Warrenton, Oregon
97146



January 24, 2006

Clatsop County Board of Commissioners
800 Exchange Street
Suite 100
Astoria Oregon

Dear Commissioners:

Enclosed you will find a DVD made specifically for you concerning the issues of Tax
Lot 300 and your plans for changing the zoning from OPR to CBR. The images provided
for you on the DVD are exactly where the applicant wishes to build his five dwellings.

Although I am not a lawyer, nor can I afford the costs of hiring lawyers to present
graphics, folders, pleasantly colored maps and legal representation, I ask you as a citizen
to seriously reconsider the re-zoning of this property.

Each of you are aware of the exceptional dramatic environmental changes taking place
within your local region as well as the rest of the world. Granted, you may never see a
Tsunami within your lifetime. Granted, your children may never see a Tsunami.

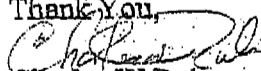
On the other hand, there is a very strong possibility everyone directly on the Oregon
coast might be confronted with this particular issue.

Personally, I would not want to hear the haunting question, "Who is responsible for
allowing these dwellings to be built here?"

Your responsibility is not only to the applicants' wishes, but to the public, including
those who do not live here at the present moment.

The re-zoning of this piece of property has repeatedly been shown to have many
negative consequences. I ask that you give serious consideration to those who live in this
area and those yet to arrive.

Please reconsider. Do not change this property to residential.

Thank You,

Charles W. Rule

To: Platsop County Board of Commission
Subject: DVD for hearing 01/25/06

From: Kathleen Seliman
To: Debbie Kraske
Date: 1/25/2006 10:31:22 AM
Subject: Fwd: Re: Commissioner Roberts' Question

Debbie,

Andy Jordan has reviewed these responses to the questions. I will scan and email three maps to you: BDO, FEMA Flood, and SO. The subject property is outlined in red. I will include an October response to similar questions. This is ready for distribution.

Kathy

1. As noted in the Staff Report, the Beach and Dune Overlay (BDO) applies to the subject property per Land & Water Development and Use Ordinance (LWDUO) Section 4.050. Uses and activities permitted in the beach and dune overlay zone are subject to the provisions and standards of the underlying zone as well as the BDO section. General Development and Use criteria are found in section 4.059. It is prohibited to remove sand from the beach or dune system. It is prohibited to remove stabilizing vegetation, except in conjunction with a permitted development or use (Section 4.058).

2. The subject property contains a flood hazard zone to the west of the construction setback line as noted on the Staff Report, bottom of Page one. Development of the property will not be subject to flood hazard standards as development will not be within the flood hazard area. The subject property is in a mapped Tsunami zone according to our geographic information system (GIS). Neither the state nor Clatsop County prohibits single family dwellings in the tsunami zone. Conditions are authorized in Section S4.011 (imposed at the subdivision, partition, or site review stage) to avoid detrimental impacts to the public.

The Shoreland Overlay (SO) applies. This is Category 2 SO, and Section 4.090 LWDUO defines developments permitted within that overlay. Single family dwellings are allowed subject to the requirements and standards of the use in the underlying zone.

3. The active dune line today is based upon the 1998 Horning Study. In 2003 Clatsop County adopted the 1998 Horning Study findings that portions of the subject property are no longer in the Active Dune Construction Area (Ord. 02-05, Charlton Active Dune Line Comprehensive Plan Text Amendment). The 2003 action reinforced Ord. 83-17, which previously established the Surf Pines Construction Line to include Tax Lot 300 (subject property). The original Palmer line was redrawn by these actions.

>>> Debbie Kraske 3:50 PM 1/24/2006 24/2006 >>>

Kathy,

As we discussed here is Commissioner Roberts' question regarding the Big Bears LLC/Charlton Comp Plan/Zoning Map Amendment as I understand it:

1. What are the requirements of flood, tsunami and any other zoning overlays on the subject property?
2. By allowing construction in these zones, what is the county's liability should a flood occur and damage the property from a legal and morale standpoint?
3. Is the active dune line the original Palmer building line?

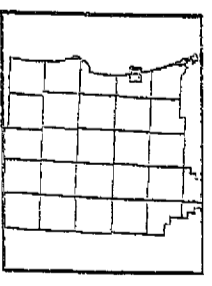
If you need Andy's input, please ask him for it. Scott wants to provide the answers to the full Board prior to the meeting tomorrow night.



1" = 1355 ft

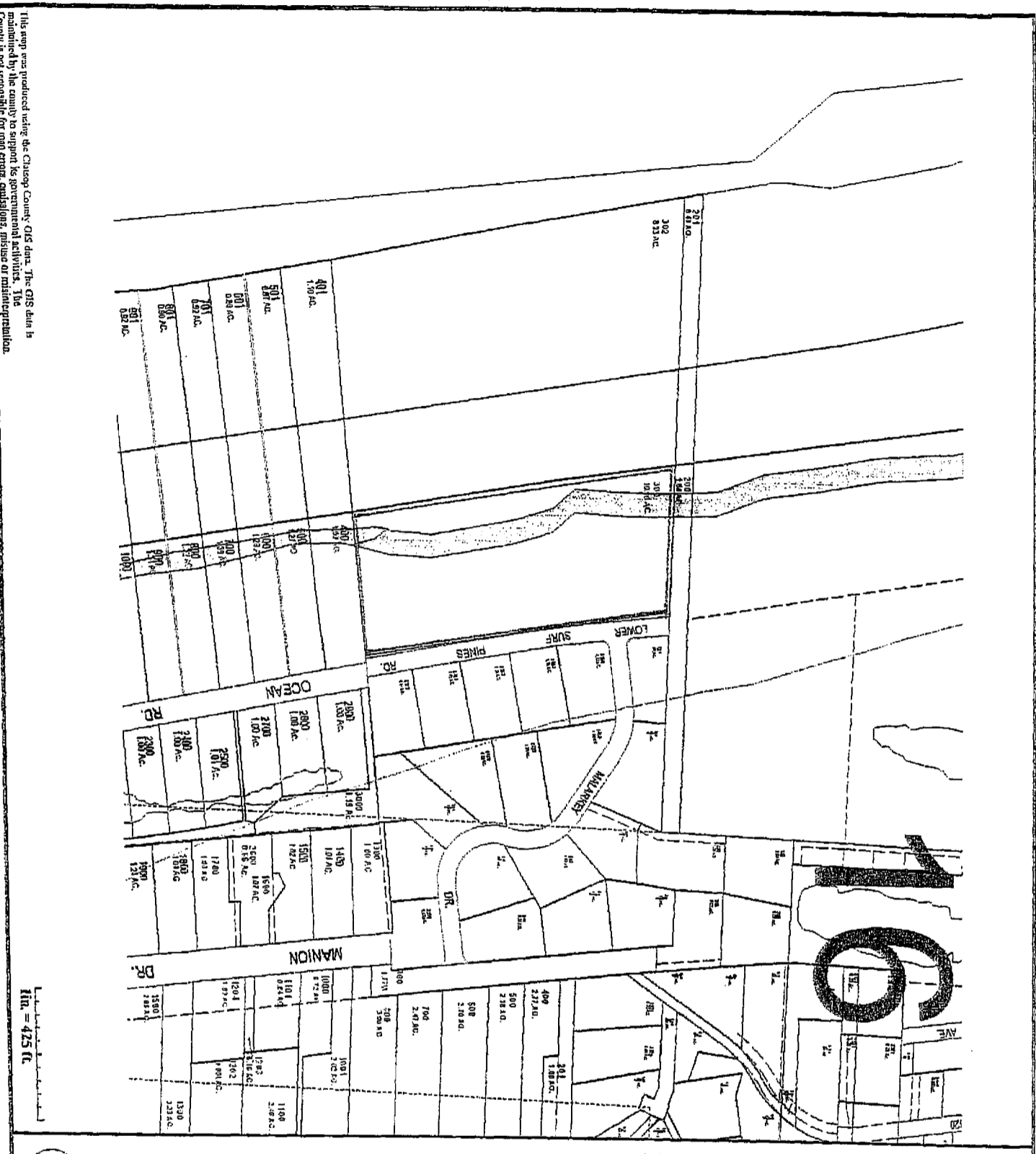
Clatsop County Assessment & Taxation

- PLS
- PLS
- PLS Townships
- Shaded land-Only
- Tax Lot Areas
- Tax Map
- Water Body
- River
- Creek
- Pinced Boundary
- Supplemental Boundaries
- 3/4
- DLC
- Road R.O.W
- RR R.O.W



This map was produced using the Clatsop County GIS data. The GIS data is maintained by the county to support its governmental activities. The County is not responsible for map errors, omissions, misuses or misinterpretation.

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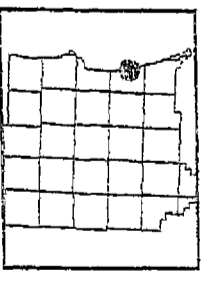


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1 in = 425 ft

Clatsop County

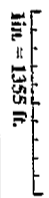
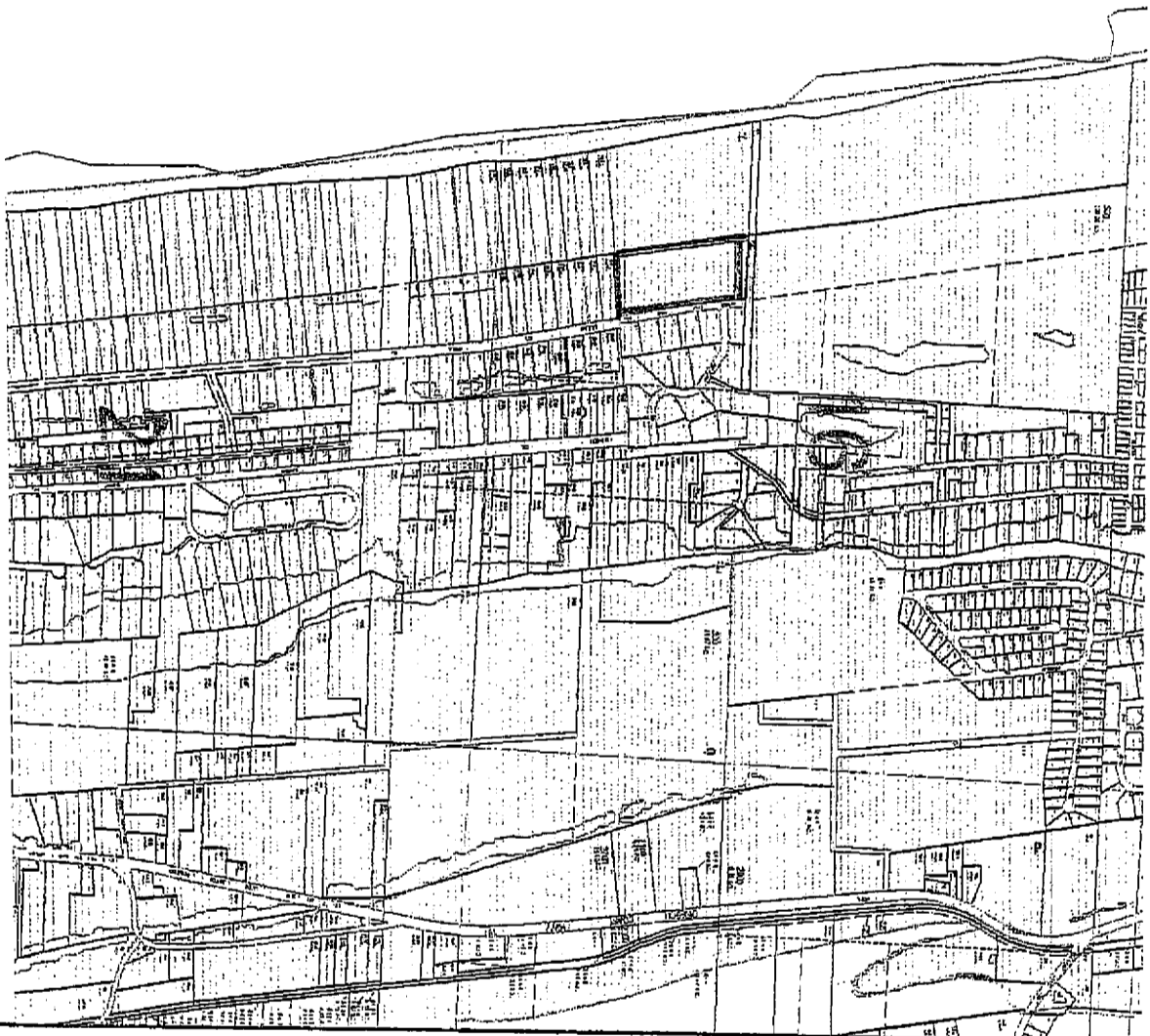
- #### Assessment & Taxation
- FEMA Flood
 - Zone A - 1st Annual Flo..
 - Area Not Included
 - Undererated
 - Outside 1% & 2% Flo..
 - Zone X - 0.2% Annual C..
 - PLS
 - PLS
 - PLS Townships
 - Tax Map
 - Water Body
 - River
 - Creek
 - Parcel Boundary
 - Supplemental Boundary
 - 34
 - D/LC
 - Road R.O.W
 - RR R.O.W
 - Township(County)

















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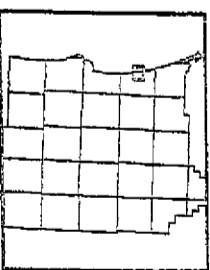


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Clatsop County Assessment & Taxation

-  Benchmark Only
-  PLS
-  PLS Townships
-  Tax Lots
-  Tax Strip
-  Water Body
-  River
-  Creek
-  Parcel Boundary
-  Supplemental Boundary
-  34
-  D/LC
-  Road R-O-W
-  RR R-O-W



1/25/2006



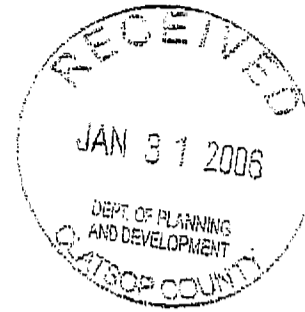
MEMORANDUM to the Record

January 31, 2006

TO: Big Bears/Charlton Ordinance #06-02 Record

FROM: Kathleen Sellman, Community Development Director

SUBJECT: Response to Commissioner Patricia Roberts



Commissioner Patricia Roberts asked about the history of Lots 200 (long skinny lot) and Lots 300/302 (the subject parcel and the tax lot immediately west of that).

I spoke with Suzanne Johnson, Assessment & Taxation Department (A&T), for background.

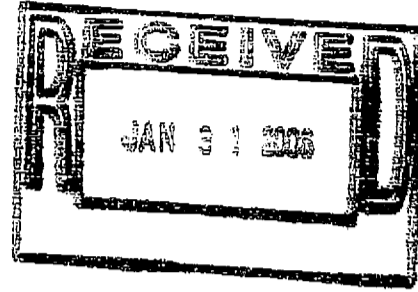
Ms. Johnson stated that ORS 390.770 provided for creation of tax exempt parcels west of the state vegetation line, formerly called the "OSHD (Oregon State Highway Department) Zoneline". Pursuant to that ORS, Tax Lot 300 was divided into two tax lots. The westernmost tax lot became Tax Lot 302. The taxable portion retained the Tax Lot 300 designation.

Ms. Johnson stated that Tax Lot 200 appears as a long skinny lot today. All available documentation shows the same configuration, dating from at least 1954. She further stated that the A&T database carries a previous tax parcel number of 7 10 16 6500. She was able to find no other documentation about Tax Lot 200's origin. Also pursuant to ORS 390.770, Lot 200 was divided for tax purposes at the OSHD Zoneline, creating a second Tax Lot at its western end.

1/30/06

Patrick Wingard -

Big Bear



Patrick,

Please distribute copies of this document to all county commissioners. Thank you.

I will call on Tuesday, January 31, to confirm that you received.

Thank you again.

Susan Holloway
503 706 5860

GOAL ONE COALITION



Goal One is Citizen Involvement

Clatsop County Board of Commissioners
800 Exchange St., Suite 310
Astoria, OR 97103

January 30, 2006

**RE: Charlton plan amendment/rezoning request – response to Stoel Rives letter of
1/23/06**

Dear Commissioners,

The Goal One Coalition (Goal One) is a nonprofit organization whose mission is to provide assistance and support to Oregonians in matters affecting their communities. Goal One is appearing in these proceedings at the request of and on behalf of its membership residing in Clatsop County. This testimony is presented on behalf of Goal One and its membership in Clatsop County, the Goal One Coalition, Oregon Shores Conservation Coalition and its membership in Clatsop County, and Charles Rule, Susan Holloway and John McGowan as individuals.

The purpose of this letter is to respond to arguments presented in the letter from Stoel Rives dated January 23, 2006.

1. Goal 11

Stoel Rives argues that the authorized density will not be modified by the amendments, and therefore Goal 11 is not implicated. Stoel Rives also argues that provision of water to TL 300 does not require an "extension" of water service that is prohibited by Goal 1. Stoel Rives' analysis is not correct.

The amendments would change the plan map designation of an 8.8 acre portion of the 10.9 acre TL 300 from "Conservation – Other Resources" to "Rural Lands," and the Zoning Map designation from "Open Space, Parks and Recreation (OPR)" to "Coastal Beach Residential (CBR)." As a result of the amendments, the allowable density of residential development on the 8.8 acres would be increased.

At present, TL 300 could be developed with one dwelling. The amendments would establish a minimum lot or parcel size of two acres. LWDUO 3.248(1)(A). LWDUO 5.412(3)(D) requires that a zone change be based on findings that water facilities are adequate. The applicant proposes that water be provided by the City of Warrenton's system. The increase in allowable density on TL 300 is dependent on and would be due to the presence of the water system, in violation of OAR 660-011-0065(2)(c).

The Stoel Rives letter cites *DLCD v. Lincoln Co.*, 144 Or App 9, 14 (1996) in support of its argument that "extension" refers only to "physical expansions of the service areas or major facilities or existing systems." It has not been established that TL 300 is within the existing "service area."



GOAL ONE COALITION

More importantly, 1998 amendments to OAR 660 Division 11 in essence reverse the holding in *DLCD v. Lincoln County*. The definition of "extension" in OAR 660-0011-0065(1)(b) includes "service to a use that was not served by the system on the applicable date of this rule, regardless of whether the use is inside the service boundaries of the public or private service provider." OAR 660-011-0065(2)(c) now specifically prohibits allowing an increase in residential development due to the *presence* of a water system, regardless of whether any "extension" is required.

Goal 11 and OAR 660-011-0065 prohibit approving the proposed amendments in reliance on the provision of water from the City of Warrenton or any other water system.

2. Goal 14

Stoel Rives argues that, because "all" of the Surf Pines subdivision is included in the CRB zone; because TL 300 has been recognized by the county as being part of the Surf Pines subdivision; and because the CRB zone is recognized as "rural," that Goal 14 is not implicated by the amendments. Stoel Rives analysis is not correct.

LWDUO 3.242 is the purpose statement of the CRB zone. It provides:

The CBR zone is intended to accommodate the immediate foreseeable demand for low density residential development in the area commonly known as Surf Pines. Surf Pines covers an area of approximately 1-1/2 square miles and is located south of the community of Sunset Beach and west of Neacoxie Lake and Creek. Surf Pines is an area committed to low density rural residential development. This zone is a Goal 14 exceptions area.

LWDUO 3.242 does not purport to give a precise delineation of either the CBR zone or the Surf Pines development. It is not disputed that a Goal 14 exception was taken for the Surf Pines subdivision, an exception which did not include TL 300. The fact that a Goal 14 exception was taken is an acknowledgment that the zone is in fact "urban."

The mere fact that LWDUO provisions governing allowable lot sizes in the CBR zone have been acknowledged does not suffice to establish that uses enabled by the proposed amendments are "rural" rather than "urban." Acknowledgement of a zone as being generally in compliance with Goal 14 does not mean that all uses that may be approved under that zone are necessarily rural in nature. *Doty v. Coos County*, 42 Or LUBA 103.

Approval of the proposed amendments requires findings of compliance with Goal 14.

3. Goal 17

Stoel Rives concedes that TL 300 is within a Goal 17 area, but argues that residential development is allowed in Goal 17 areas upon a showing of "public need."

Goal One agrees that the Clatsop County Comprehensive Plan allows for some residential development in Goal 17 areas. Addressing areas protected by Goal 17, Plan Goal 2 Element at p. 9 allows for:

GOAL ONE CALLITION

"g. One single-family residence on existing lots, parcels, or units of land when compatible with the objectives and implementation standards of this goal."

Plan Goal 17 Element at p. 27 establishes a General Use Priorities policy for ocean and coastal lake shorelands which mirrors the priorities established by Statewide Planning Goal 17. It provides:

"New shoreland development, expansion, maintenance or restoration of existing development and restoration of historic sites shall conform to the following general priorities for the overall use of ocean and coastal lake shorelands (in order of priority):

"1. water-dependent uses;

"2. water-related uses;

"3. non-dependent, non-related uses which retain flexibility of future use and do not prematurely or inalterably commit ocean and coastal lake shorelands to more intensive uses;

"4. development, including non-dependent, non-related uses, in Rural Service Areas (compatible with existing or committed uses);

"5. non-dependent, non-related uses which cause a permanent or long term change in the features of ocean and coastal lake shorelands only upon a demonstration of public need."

Stoel Rives concedes that the proposed residential use is the lowest priority use in Goal 17 areas, and that it may be allowed only upon a finding of public need.

Goal 2 requires that any finding of public need must be supported by an adequate factual base. A finding of public need must be supported by population projections, identification of public needs, and inventories in the county's comprehensive plan. *Lengkeek v. City of Tangent*, ___ Or LUBA ___ (LUBA No. 2004-164, 10/12/2005); *1000 Friends of Oregon v. City of Dundee*, ___ Or App ___ (A129505, 12/14/2005).

There is no factual base to support a finding of public need for additional housing in the area, and no evidence to support a finding that any identified public need would be met or would best be met by providing additional housing at the proposed location.

CONCLUSION

Approval of the proposed amendments would not be consistent with Statewide Planning Goals 2, 11, 14 or 17; and would not be consistent with Clatsop County Comprehensive Plan elements addressing Goals 2 and 17.

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

Respectfully submitted,

/s/ **Jim Just**

Jim Just
Executive Director

From: "Rudd, Michelle" <MRUDD@stoei.com>
To: "Kathleen Sellman" <KSELLMAN@co.clatsop.or.us>
Date: 2/1/2006 9:52:26 AM
Subject: RE: CD for #06-02

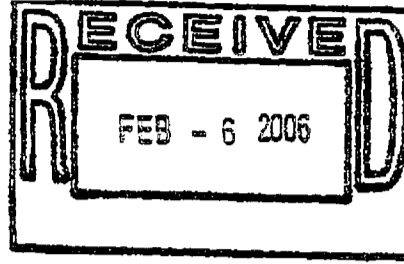
Mark's review is fine. Thanks.

-----Original Message-----

From: Kathleen Sellman [mailto:KSELLMAN@co.clatsop.or.us]
Sent: Wednesday, February 01, 2006 9:33 AM
To: Rudd, Michelle
Cc: Patrick Wingard
Subject: CD for #06-02

Michelle,
On Friday Jan 27, 2006, Mark Barnes viewed the CD submitted by Charles Rule. It is our understanding that his viewing meets the applicants' needs. If this is not the case, please let me know asap so we can arrange to get a copy to you.

Kathy



900 S.W. Fifth Avenue, Suite 2600
Portland, Oregon 97204
main 503.224.3350
fax 503.226.2480
www.stoel.com

February 3, 2006

MICHELLE RUDD
Direct (503) 294-9390
mrudd@stoel.com

Clatsop County Board of Commissioners
800 Exchange Street, Suite 310
Astoria, OR 97103

Re: Big Bears LLC Comprehensive Plan and Zoning Map Amendment Request, the Rule DVD and the January 30, 2006 Letter from Goal One

Dear Board of Commissioners:

This letter is submitted in response to the Rule DVD and Goal One's letter of January 30, 2006.

Big Bears LLC ("Big Bears") representative Mark Barnes reviewed the Rule DVD. Based upon this review, Big Bears has concluded that nothing on the DVD requires a response.

The remainder of this letter addresses issues raised in the Goal One January 30, 2006 letter. Goal One argues in this letter that the requested Comprehensive Plan and Zoning Maps amendments are inconsistent with Goals 11, 14 and 17 and Clatsop County Comprehensive Plan elements addressing Goals 2 and 17. These arguments are without merit as set forth below.

Goal 11:

The requested Comprehensive Plan and zoning map amendments do not, in and of themselves, authorize higher density residential development on Tax Lot 300.

Goal One contends that upon approval of this application the 8.8 acres of Tax Lot 300 currently zoned OPR would be subject to a higher residential density. As Big Bears has previously noted, LWDUO § 3.248(1)(A) already provides for two acre residential lots on Tax Lot 300.

Assuming, however, that this application is considered to authorize higher residential density, the application is consistent with Goal 11 because the increased density is not contingent upon or "due to the presence, establishment or extension of a water system."

Tax Lot 300 is located within the gated community of Surf Pines. The residences within the Surf Pines subdivision were served by a domestic water system operated by wells prior to their hookup to the city water system. There are homeowners on Ocean Blvd. who have installed wells for their own source of domestic water. Experience therefore indicates that it is feasible to

Oregon
Washington
California
Utah
Idaho



Board of Commissioners
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Page 2

have wells serving residential lots in this area of the County. A letter from an engineer confirming that five wells are feasible on the property is included with this letter in Exhibit 1. Since it is feasible to provide water for residential use without use of the existing city water system, approval of this application will not "[a]llow an increase in the allowable density of residential development due to the presence, establishment or extension of a water system." OAR 660-011-0065(2).

Further, OAR 660-011-0065(1) does not compel a finding that connection to the city's system is an impermissible extension of service.

LWDUO section 5.412(3)(D) requires that as part of a zone change approval, the County finds that the property will be provided with adequate public facilities, including water. Evidence in the record establishes that there are adequate public facilities to serve the property through the existing water system and also that wells have served land within the Surf Pines area in the past and are feasible on Tax Lot 300. Exhibit 1. While it is feasible to provide water to additional lots if Tax Lot 300 is subdivided without use of the city water system by using wells as Surf Pines residents have in the past, connecting to the city facility is Big Bears' preference and consistent with Goal 11. Goal 11's objective is the planning and developing of "a timely, orderly and efficient arrangement of public facilities to serve as a framework for urban and rural development". In this case, Goal 11's objective of planning and developing "a timely, orderly and efficient arrangement of public facilities to serve as a framework for urban and rural development" is furthered by connection to the city system. OAR 660-0015-000(11). Timely, orderly and efficient "refers to a system or plan that coordinates the type, location and delivery of public facilities in a manner that best supports the existing and proposed land uses." *Id.* Residential development of Tax Lot 300 will not promote widespread development of residential uses outside the urban growth boundary. Rather, given that the developability of the area adjacent to Tax Lot 300 is constrained by existing residential development to the east and south, the undevelopable Tax Lot 301 and the Pacific Ocean to the west and the "reserve" area to the north, efficient provision of water service to the property is furthered by use of the system existing in the adjacent road.

OAR 660-011-0065(1) does not compel a finding in this case that provision of water by the existing water system at the time an increase in allowed density is requested is an impermissible extension of service. OAR 660-011-0065(1) provides unless *the context requires otherwise* the extension of a water system is "the extension of a pipe, conduit, pipeline, main or other physical component from or to an existing water system in order to provide service to a use that was not served by the system on the applicable date of this rule, regardless of whether the use is inside the service boundaries of the public or private service provider." As explained above, in this



context, timely, orderly and efficient planning requires concluding that the hook up of Tax Lot 300 to the existing system, as well as any future lots approved by the County, is not an impermissible extension of service.

Goal 14

Goal One argues that uses allowed under the CBR zone may not be rural in nature and therefore implicate Goal 14. Goal One is incorrect.

Uses that are allowed by statute on EFU land are permitted on rural land without requiring compliance with Goal 14 or an exception. ORS 215.283 provides for the following CBR comparable uses on EFU land. By implication, these are proper uses on non EFU rural land and do not require a showing of compliance with Goal 14 or an exception to Goal 14. *Stallkamp v. King City* 43 Or LUBA 333 (2002), *aff'd* 186 Or App 742 (2003).

CBR Use	ORS 215.283 Use
Limited Home Occupation LWDUO 3.244(3)	Home Occupations as provided in ORS 215.448(2)(i)
Public or private neighborhood park or playground LWDUO 3.244(4); Low intensity recreation LWDUO 3.244(9)	Private and public parks, playgrounds, hunting and fishing preserves (2)(c), (2) (d)
Utilities for local service LWDUO 3.244, 1.030	Utility facility service lines (1)(x)

Furthermore, these are all low intensity uses properly considered rural in nature. These uses would be subject to the same physical constraints and service options discussed throughout this letter. Further, the existing OPR zoning allows the low intensity recreation, park and playground uses. LWDUO 3.584 (4), (9), (14).



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The handicapped housing facilities are not urban level uses and rather are similar to residential homes defined in ORS 197.660 and allowed in existing dwellings under ORS 215.283(2)(o) and room and board facilities allowed in existing dwellings under ORS 215.283(2)(u). The footprint of these uses is no more intense than may be experienced by the single family residential uses that are not urban as established below. The amendments are properly considered rural in nature and Goal 14 is not implicated.

Big Bears ultimately plans a residential development on Tax Lot 300. This will involve construction of single family residences and accessory uses such as garages. "Determining whether residential development outside a UGB is urban or rural for purposes of Goal 14 is an uncertain task. As a rule of thumb, residential lot sizes of one acre or less are clearly urban, while lot sizes greater than 10 acres are clearly rural." *Friends of Yamhill County v. Yamhill County* 43 Or LUBA 97, 102 (2002). (The Surf Pines subdivision required an exception because it has a minimum lot size of one acre.) "Densities between the two extremes may be viewed as urban or rural depending on the types of urban services provided and the proximity of the proposed development to urban growth boundaries. *1000 Friends of Oregon v. LCDC (Curry Co.)*, 301 Or at 506-507. Provision of public water or sewer systems is an important but nonconclusive indicator of urban development. *Id.* at 504." *Id.*

The site is not proximate to UGB boundaries. Tax Lot 300 is about 4.5 miles south of the Warrenton UGB and about three miles north of the Gearhart UGB. Development under the rezoning and comprehensive plan amendment will not require the extension of sewer service as the evidence in the record shows that Tax Lot 300 is physically capable of supporting septic system treatment of waste. Water could be provided by wells although Big Bears' prefers to connect to the existing, adjacent city water system. OAR 660-004-0040 is not directly on point because it applies to the application of Goal 14 to acknowledged rural residential areas. It is helpful as guidance, however, and the rule provides that the creation of a lot less than two acres in size in a rural residential area is considered an urban use. LWDUO section 3.248(1) states that for residential uses the lot size requirement is one acre "except for the following parcels which are not exception areas and therefore, require two (2) acres: T.7N., R.10W., Section 16C, Tax Lot 300 and 301." LWDUO section 3.248(1) also provides that all CBR land outside the exception areas has a minimum lot size of 2 acres. The reference to Tax Lot 300 within the CBR zone text suggests that Tax Lot 300 is properly considered part of the CBR zone. In any event, however, the provision in LWDUO section 3.248(2) that lots outside the exception area have a two acre minimum reflects a determination by the County that since Tax Lot 300 is not within an exception area, the appropriate minimum lot size on this rural land (not urban or urbanizable land) is two acres.



The County has found that clustering of subdivisions ensures optimization of open space and maintenance of rural character. Clatsop County Standard ("CCS") S3.159. No commercial or industrial cluster development is allowed. CCS S3.158(4). Given the distance of Tax Lot 300 from the nearest UGB's, and availability of water and sewer service without using public facilities and the substantial open space requirements, cluster development is not urban in nature. In any event, however, clustering is prohibited in Surf Pines pursuant to Open Space Policy 4.

The CBR zone also allows minimal signs, property line adjustments and partitions. These are low intensity uses, do not require an urban level of service and are not prohibited on Tax Lot 300 by Goal 14. Property line adjustments and partitions are reconfigurations and divisions of property. They are not urban in nature since no use is tied to their occurrence and lots smaller than two acres in size are prohibited. The limited signs allowed in the CBR are similarly low intensity and are not urban in nature and do not require urban levels of service. These are rural uses consistent with Goal 14.

Goal 17. Clatsop County Comprehensive Plan elements related to Goals 2 and 17

The cases cited by Goal One alleging that the County must consider population projections and buildable land inventories in the County's Comprehensive Plan in determining need do not support Goal One's contention. Population projections are not relevant here because Big Bears is not arguing that there is a need for additional residentially zoned land based upon a population projection inconsistent with a population projection in the Comprehensive Plan. Rather, Big Bears has submitted evidence that there is a public need for residential land of this particular type. Both cases cited by Goal One concern city buildable lands inventories created for lands within urban growth boundaries. Population projections are an element considered in the generation of buildable lands inventories. ORS 197.296(5). "Buildable lands" is defined to mean "lands in urban and urbanizable areas that are suitable, available and necessary for residential uses." ORS 197.295(1). A buildable lands inventory is therefore a list of lands in urban and urbanizable areas. Rural lands, such as Tax Lot 300 are not inventoried. The lands remain, however, an important component of the Comprehensive Plan to provide housing options.

The County has an acknowledged comprehensive plan. The County's plan does not include a buildable lands inventory. Rather, the County has established policies for the implementation of Goal 10 and as previously explained, these goals are furthered by this rezone.

Attached as Exhibit 2 is the complete text of the Rural Lands discussion at pp. 8-11 of the County's Goal 2 document. In this document the County finds:



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- A diversity of housing options ranging from high density urban environments to low density farm-forest home sites has been a recognized need in Clatsop County since the County's first Comprehensive Plan was adopted in 1969. "While developing the present Comprehensive Plan, citizens and elected and appointed officials stressed the economic and cultural importance of providing for the demand for recreational and year round rural homesites." (see Housing Element and Background Report, p. 9).
- "Because of the rural character of the County along with its geographic proximity to the northern Willamette Valley population centers, there has been a steady demand for second homes and rural homesites located on small rural tracts (see Housing Element and Background Report, p. 9)."

To meet the demand, the County has identified areas which are "built upon and/or irrevocably committed for exception areas." The County has also recognized that in limited instances use of shorelands is appropriate. The Coastal Shoreland Goal "requires that shorelands in rural areas other than those in major marshes, significant wildlife habitat areas, etc. be used for [sic] appropriate for:

"f. Subdivisions, major and minor partitions and other uses only upon a finding by the governing body that such uses satisfy a need which cannot be accommodated at other upland locations or in urban or urbanizable areas and are compatible with the objectives and implementation standards of this goal." *Id.*

"g. a single family residence on existing lots, parcels or units of land when compatible with the objectives and implementation standards of the goal." *Id.*

This application is consistent with Goal 17. Only one residence will be allowed on the site if this amendment is approved. Construction of additional residences on the site would require subdivision of the property. As noted in "f", division will only be allowed upon the finding of need for the number of lots proposed and compatibility with the applicable objectives and standards.



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Statewide Planning Goal 2 requires that findings be supported by an adequate factual base. The written and oral evidence in the record from a realtor concerning the need for the type of housing that may ultimately be provided on this property provides a more than adequate factual basis for approval of this application.

Very truly yours,

Michelle Rudd

cc: Ms. Kathleen Sellman
Mr. Andy Jordan
Mr. Rick Charlton
Mr. Mark Barnes
Mr. Tim McMahan

JB RANKIN ENGINEERING Inc.

CIVIL ENGINEERING
P.O. BOX 387 - 679 EAST HARBOR, Suite 110
WARRENTON, OREGON 97146
(503) 861-0779 (T/F) e-mail: rankineng@yahoo.com

JAMES B. RANKIN, PE
President

February 2, 2006

Mr. Richard T. Charlton
855 SW Spring Lane
Portland, OR. 97225

Dear Sir:

You have asked whether it is feasible to provide five (5) water wells on your property identified by the Clatsop County Assessor as Tax Lot 7-10-16C-300. Your property is located on the north-end of Ocean Blvd. in the Surf Pines area. I am familiar with the various studies conducted on the soils of this area, and I have worked with the City of Warrenton and the Surf Pines Water Association in the design of water system improvements.

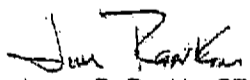
I am aware that there are homeowners on Ocean Blvd. who have installed wells for their own source of domestic water. The normal practice is to drill a well with a PVC casing down into the existing sandy soils for a depth of approximately 60-feet. A separate well is usually provided for each home site.

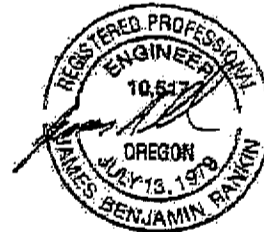
At one time the residents of Surf Pines were served with a domestic water system operated from wells. The Surf Pines Water Association was formed in 1973 and eventually dissolved in the late 1990's, turning over their waterlines to the City of Warrenton. The Surf Pines Water Association reported that their system provided service to about 400 residents with a potential of 1,200, and a service area of approximately 695 acres.

In conclusion, it is my professional opinion that it is feasible to construct five (5) water wells on Tax Lot 7-10-16C-300 for future home sites for domestic use.

Please do not hesitate to contact me, should you have any questions.

Yours truly,


James B. Rankin, PE



RENEWS 12/31/06

Ex. 1
plot 4

"Making a difference through excellence of service"



CITY OF WARRENTON

February 2, 2006

Mr. Richard T. Charlton
855 SW Spring Lane
Portland, OR. 97225

Dear Mr. Charlton:

You have requested a letter from the City of Warrenton regarding the availability of domestic water service for five (5) home sites that you would like to develop on your property identified by the Clatsop County Assessor as tax Int 7-10-16C-300. This property is located at the north end of Ocean Blvd. in the Surf Pines area.

The City of Warrenton does provide water service to this general area and it does have the capability of providing water service for these five (5) home sites.

Construction plans should be submitted to the City for review and approval. Final approval may require an agreement between the City and the developer regarding conditions of construction and connection and other related fees.

Please let me know if you have any questions.

Very truly yours,

Edward Madere
City Manager

Copy to: Linda Engbretson, City Recorder
Alan Johansson, Public Works Director
Dave Haskell, Public Works Superintendent
James Rankin, Rankin Engineering

P.O. Box 150 WARRENTON, OR 97146-0250
503/861-2233 FAX: 503/861-2351

P. 1

503.861.0729

JIM RANKIN

FEB 02 08 12:56P

Ex. 1
p2 of 4

FROM : CHARLTON

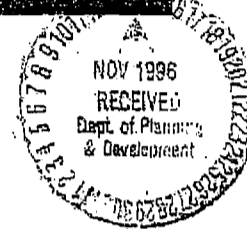
FAX NO. : 503 644-2166

Feb. 01 2006 01:48PM P1

12 November 1996

Curt Schneider
Clatsop County Planning & Development Dept.
800 Exchange Street, Suite 100
Astoria, OR 97103

Mark R. Barnes, AICP
800 Exchange Street, Suite 320
Astoria, Oregon 97103
503/325-4856 • Fax: 503/325-8417



re: Malarkey/Charlton property; 7-10-16C-300

Dear Curt;

Attached is evidence of water availability for the above-referenced tax lot. My clients, Mr. Rick Charlton and Mr. George Malarkey, paid the City of Warrenton \$550 on 18 June 1996 for a water hookup for their property west of the Strawberry Hill subdivision. A photocopy of the cashed check is attached. Please contact me if you have any questions on this matter.

Yours Sincerely,

A handwritten signature in cursive script, appearing to read "Mark R. Barnes".

Mark R. Barnes, AICP

copies: George Malarkey
Rick Charlton
Lou Larsen

attachment

Ex. 1
p3of4

Conservation areas provide important resource or ecosystem support functions but because of their value for low-intensity recreation or sustained yield resource (e.g. forestry), or because of their unsuitability for development (e.g. hazard areas) should be designated for nonconsumptive uses. Nonconsumptive uses are those uses which can utilize resources on a sustained yield basis while minimally reducing opportunities for other future uses of the area's resources.*

3. Conservation Forest Lands*

Forest lands are those lands that are to be retained for the production of wood fiber and other forest uses.*

In land use changes involving a change from Conservation Forest Lands or Rural Agricultural Lands to Rural Lands or Development designations an Exception to the Agricultural Lands or Forest Lands Goals must be taken.*

4. Conservation Other Resources*

Conservation Other Resources areas provide important resource or ecosystem support functions such as lakes and wetlands and federal, state and local parks. Other areas designated Conservation Other Resources include lands for low intensity uses which do not disrupt the resource and recreational value of the land.* Most of the Columbia River Estuary is in this designation.

5. Natural

Natural areas are those which have not been significantly altered by man and which, in their natural state, perform resource support functions including those functions vital to estuarine or riparian ecosystems. Publicly owned fragile and ecologically valuable areas, especially watersheds and groundwater resource areas, are most likely to be designated as Natural. Natural areas identified by the Oregon Natural Heritage Program, as well as fish and wildlife areas and habitats identified by the Oregon Wildlife Commission, should be considered for Natural designation.

6. Rural Lands

Rural Lands are those that are outside the urban growth boundary, outside of rural community boundaries, and are not agricultural lands or forest lands. Rural lands includes lands suitable for sparse settlement, small farms or acreage homesites with no or hardly any public services, and which are not suitable, necessary or intended for urban use.

Rural Lands in Clatsop County

A diversity of housing options ranging from high density urban environments to low density farm-forest home sites has been a recognized need in Clatsop County since the County's first Comprehensive Plan was adopted in 1969. While developing the present Comprehensive Plan,

citizens and elected and appointed officials stressed the economic and cultural importance of providing for the demand for recreational and year round rural homesites.

Because of the rural character of the County along with its geographic proximity to the northern Willamette Valley population centers, there has been a steady demand for second homes and rural homesites located on small rural tracts (see Housing Element and Background Report). The demand for rural tracts is expected to continue. In order to continue to meet the demand for affordable rural homesites the County has looked to those which are "built upon and/or irrevocably committed" rural areas which generally have:

- (a) some level of public facilities and services, especially surfaced public roads, fire protection, and piped water;
- (b) a pattern of parcel sizes generally smaller than 15 acres;
- (c) existing residential development at a density generally higher than 1 dwelling unit per 10 acres; and
- (d) natural boundaries, such as creeks and roads, separating the exception area from adjacent resource lands.

Areas generally falling under the above set of criteria are designated Rural Lands throughout the Comprehensive Plan. Rural Lands are those lands which are outside the urban growth boundary and are not agricultural lands or forest lands. Rural Lands include lands suitable for sparse settlement, small farms or acreage homesites with no or hardly any public services, and which are not suitable, necessary or intended for urban use. Most of these lands contain agricultural site class II-IV and forest site class FA-FD.

The Coastal Shorelands Goal #17 requires that shorelands in rural areas other than those in major marshes, significant wildlife habitat areas etc. be used for appropriate for:

- "f. subdivisions, major and minor partitions and other uses only upon a finding by the governing body of the county that such uses satisfy a need which cannot be accommodated at other upland locations or in urban or urbanizable areas and are compatible with the objectives of this goal to protect riparian vegetation and wildlife habitat; and
- g. a single family residence on existing lots, parcels or units of land when compatible with the objectives and implementation standards of this goal."

These are areas of coastal shorelands which are "built upon or are irrevocably committed" to development and cannot be used for agricultural or forest use.

In developing the data base and criteria used to identify exception areas the County planning staff relied heavily on information provided by the six CACs, individual land owners, realtors and builders as well as the opinions of appointed and elected officials. Most of the information used to substantiate commitment of those lands was gathered over a 5 year period through the public hearings process which resulted in the current Comprehensive Plan. In addition, the various needs of each subarea were examined and weighed against the goals. After completion

of each subarea plan, each plan's specific goals and objectives and recommended land use allocations were compared against the County as a whole. This information was compiled and tabulated using the criteria developed during the planning process and forms the main body of this report.

Generally, lands which fall under the general criteria enumerated in this Exception Process and Committed Lands Identification section are designated Rural throughout the Comprehensive Plan. Characteristically, these lands have scattered residences on parcel one-half to 1.5 acres in size and are clustered along roads throughout the unincorporated County.

Designation of Rural Lands Policy:

Generally parcels less than 1.5 acres and that are "built upon or irrevocably committed" to a non-resource use are to be placed in a residential, industrial or commercial zone.

Residential

Residential densities are generally designated through the following additional criteria:

- a. Where subdivisions or partitioning or both have occurred in a one acre pattern of development the area will be placed in one of the one acre zones;
- b. In areas with a development pattern of two to five acre parcels (some smaller and some larger), the areas will be placed in a two acre zone;
- c. In areas adjacent to resource (forest, agriculture, wetlands, estuary areas) lands, or Camp Rilea, the areas will be placed in a five acre zone;
- d. In areas where large parcels (1.5 acres or greater) of non-resource land are located, the areas will be placed in a five acre zone;
- e. In addition to criteria a through d, minimum lot sizes increase with increasing distance from the following areas:
 1. all urban growth boundaries
 2. Svensen center
 3. Knappa center

Since approximately 90% of the total County land area is forest land, it is not surprising that most of the lands identified as Rural in the Plan contains forest land class FA-FC and/or agricultural site class soils II-IV (see Forestry and Agricultural Background Report).

Interest has been expressed to locate a 400 to 600 acre Destination Resort in the area north of Gearhart. Specific information on boundaries are not available at this time. Clatsop County believes that the area north of Gearhart is a good location for a Destination Resort. Clatsop County designates the area from the north Gearhart UGB line north to the southern entrance road to Surf Pines and from U.S. Hwy. 101 on the east to the easterly Active Dune Overlay District line on the west as the boundaries within which the Destination Resort is to be contained. Clatsop County also recognized that part of the proposed Destination Resort will likely occur within the northern portion of the Gearhart UGB. When more detailed plans are submitted it

may be appropriate to amend the Gearhart UGB Plan, the Clatsop County Plan or both. Clatsop County has adopted information on Destination Resorts in its Economy Element and a Destination Resort Overlay District as background information and land use regulations for a Destination Resort.