



# Oregon

Theodore R. Kulongoski, Governor

## Department of Land Conservation and Development

635 Capitol Street NE, Suite 150

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

August 15, 2006

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

FROM: Mara Ulloa, Plan Amendment Program Specialist

SUBJECT: Curry County Plan Amendment  
DLCD File Number 001-06



The Department of Land Conservation and Development (DLCD) received the attached notice of adoption. 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: August 29, 2006**

This amendment was submitted to DLCD for review 45 days prior to adoption. Pursuant to ORS 197.830 (2)(b) 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 MAILED BY LOCAL GOVERNMENT. A DECISION MAY HAVE BEEN MAILED TO YOU ON A DIFFERENT DATE THAN IT WAS MAILED TO DLCD. AS A RESULT YOUR APPEAL DEADLINE MAY BE EARLIER THAN THE ABOVE DATE SPECIFIED.**

Cc: Doug White, DLCD Community Services Specialist  
Dave Perry, DLCD Regional Representative  
David J. Pratt, Curry County

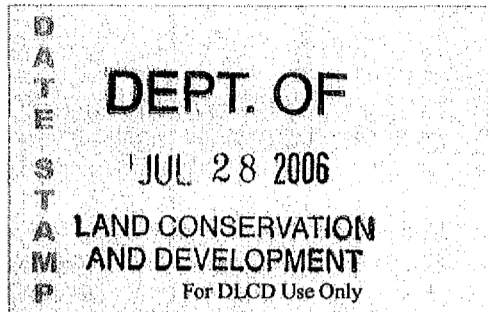
<paa> ya/



**FORM 2 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 12

**DEPT OF**  
**AUG 09 2006**



Jurisdiction: Curry County **LAND CONSERVATION AND DEVELOPMENT** Comment number: CPC/ZC-0502  
Date of Adoption: 7/17/2006 Date Mailed: 7/27/2006  
Date original Notice of Proposed Amendment was mailed to DLCD: 1/24/2006

- Comprehensive Plan Text Amendment
- Land Use Regulation Amendment
- New Land Use Regulation
- Comprehensive Plan Map Amendment
- Zoning Map Amendment
- Other: \_\_\_\_\_

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

**To change the Comprehensive Plan and zoning designations of five parcels in an exception area from a Rural Industrial to Rural Residential for property located in Curry County (Map 32-25-27 Tax Lots 900, 901, 902, 903, and 104). The subject property is the former site of the Western States Plywood Mill on the Elk River.**

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".

**N/A**

Plan Map Changed from: Industrial to: Residential

Zone Map Changed from: Rural Industrial to: Rural Residential 5 (RR-5)

Location: Elk River Rd. 2 miles no. of Port Orford Acres Involved: 28.197

Specify Density: Previous: \_\_\_\_\_ New: \_\_\_\_\_

Applicable Statewide Planning Goals: 1, 2, 3, 4, 9,10,12, and 14

Was an Exception Adopted?  YES  NO

DLCD File No.: 001-06(14955)

Did the Department of Land Conservation and Development receive a Notice of Proposed Amendment.....

- Forty-five (45) days prior to first evidentiary hearing?**       Yes       No  
If no, do the statewide planning goals apply?       Yes       No  
If no, did Emergency Circumstances require immediate adoption?       Yes       No

Affected State or Federal Agencies, Local Governments or Special Districts:

**Army Corps of Engineers (COE), Oregon DEQ, Fish and Wildlife, State Parks, and Watershed Council**

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Local Contact: **David J. Pratt AICP**      Phone: **(503) 247-3304**      Extension: \_\_\_\_\_  
Address: **P.O. Box 746**      City: **Gold Beach OR 97444**  
Zip Code + 4: **97444-**      Email Address: **prattd@co.curry.or.us**

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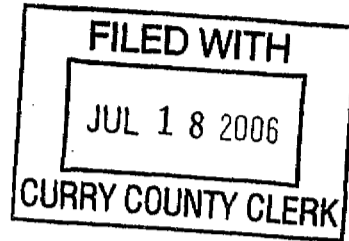
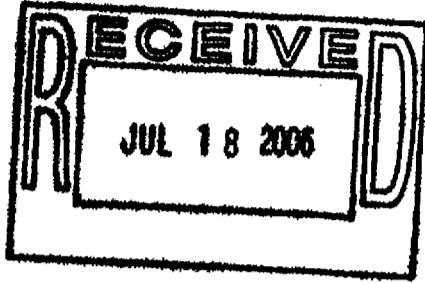
### **ADOPTION SUBMITTAL REQUIREMENTS**

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 **maru.ulloa@state.or.us** - ATTENTION: PLAN AMENDMENT SPECIALIST.

*Planning*



BEFORE THE BOARD OF COUNTY COMMISSIONERS  
IN AND FOR THE COUNTY OF CURRY, OREGON

In the Matter of the Adoption )  
Of a Change to the Curry County )  
Comprehensive Plan and Zoning )  
Maps Related to File No. CP/Z-0502 )  
For Applicants Donald G. Porior, )  
John G. Ohara, Jeffery Fick and )  
David Griffith )

ORDINANCE NO. 06-05

**COPY**

The Board of Curry County Commissioners ordains as follows:

Section 1

Except as otherwise provided below, this ordinance amends the Curry County Comprehensive Plan Designation of the subject property from "Industrial" to "Residential", and further changes the zoning of the subject property from RI (Rural Industrial) to RR-5 (Rural Residential- 5 Acres). The change in the comprehensive plan and zoning ordinances is based upon the subject property being non-resource land and is not based upon a Goal 2 exception to Goal 14 (Urbanization). With respect to the 75' riparian buffer strip along Elk River, the Comprehensive Plan Designation is amended from "Industrial" to "Forest Grazing" and the zoning designation is amended from RI (Rural Industrial) to FG (Forestry-Grazing).

Section 2

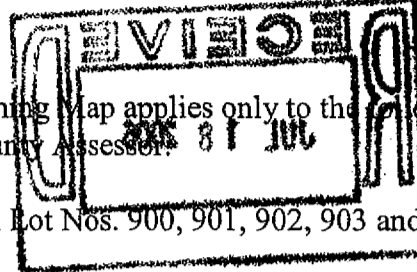
This ordinance is being adopted under the authority of ORS chapters 197 and 215 and the Curry County Zoning Ordinance (CCZO) following published notice.

Section 3

This amendment to the Curry County Zoning Map applies only to the following land as described in the records of the Curry County Assessor:

Assessor Map No. 32-15-27

Tax Lot Nos. 900, 901, 902, 903 and 104.



This property is shown on the attached map marked as Exhibit I which is incorporated by reference.

Section 4

The Curry County Board of Commissioners approved this application for a comprehensive plan and zone change in accordance with Sections 2.060(3)(a)(b), 9.021 and 9.030 of the CCZO. The order approving this comprehensive plan and zone change with the attached staff report (but not the exhibits to the staff report) and conditions is designated as Exhibit II and is hereby adopted as part of this ordinance.

Section 5

If any section, subsection, sentence, clause or phrase of this ordinance is, for any reason, held to be unconstitutional, such decision shall not affect the validity of the remaining portions of this ordinance.

DATED this 17<sup>th</sup> day of July, 2006.

BOARD OF CURRY COUNTY COMMISSIONERS

A handwritten signature in cursive script, appearing to read "Lucie La Bonté".

Lucie La Bonté, Chair

A handwritten signature in cursive script, appearing to read "Marilyn Schaefer".

Marilyn Schaefer, Vice Chair

A handwritten signature in cursive script, appearing to read "Ralph H. Brown".

Ralph H. Brown, Commissioner

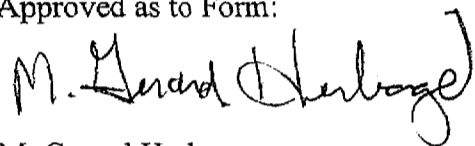
Recording Secretary:

Patricia R. Cook

First Reading: 7/17/06  
Second Reading: N/A  
Effective Date: 7/17/06

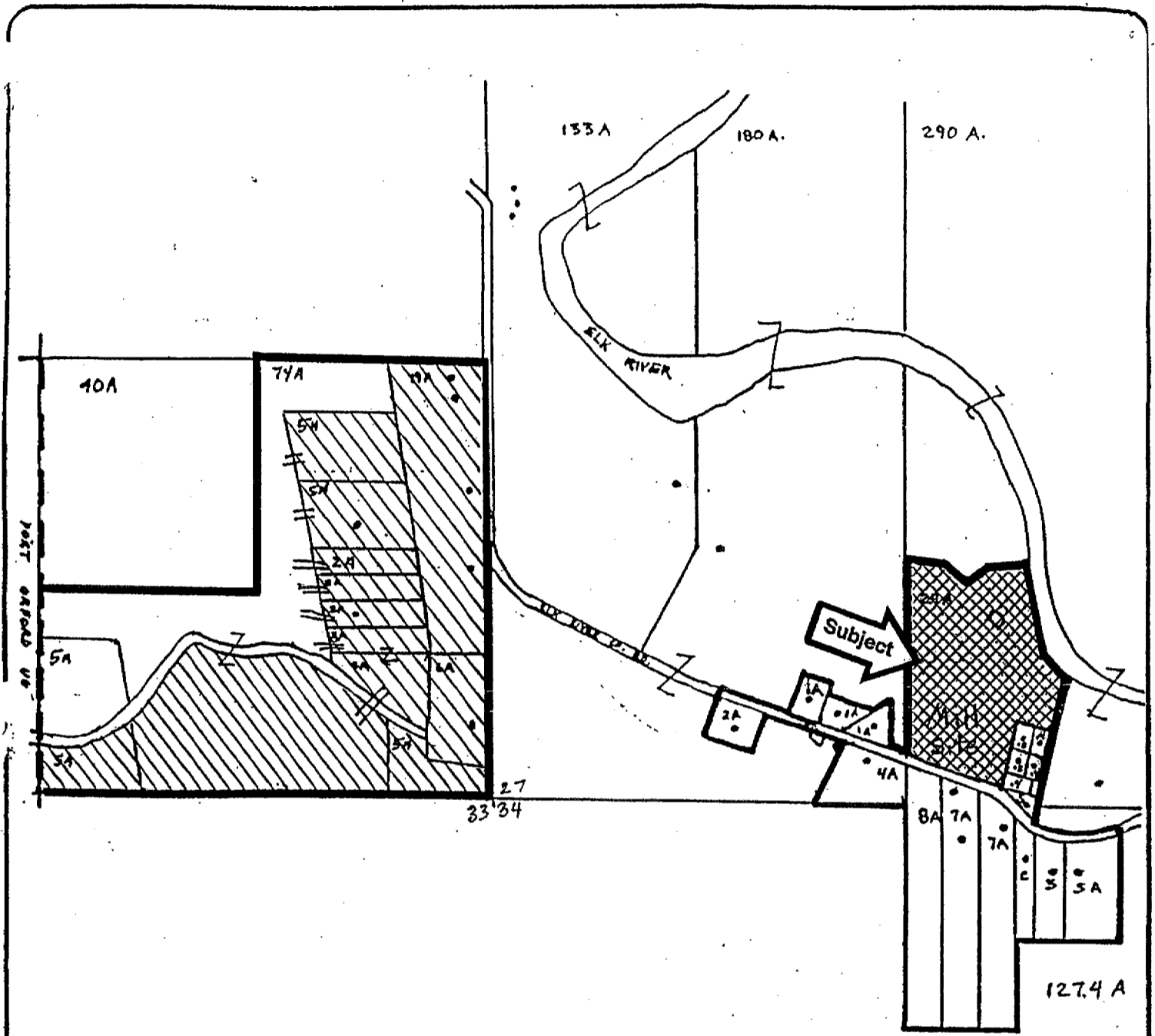
(Pursuant to ORS Chapters 197 and 215)

Approved as to Form:

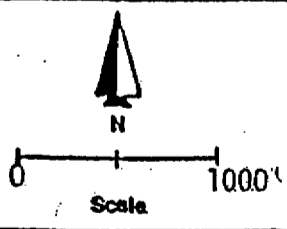


M. Gerard Herbage  
Curry County Legal Counsel

EXHIBIT "I"



- RR-5
  RI
- RR-10
  Common Ownership
  Partition
  Single Family Dwelling
  Exception Area Boundary



Hensley Hill/Elk River  
 Rural Land Exception No.: 5

**Zoning**  
**Attachment A**

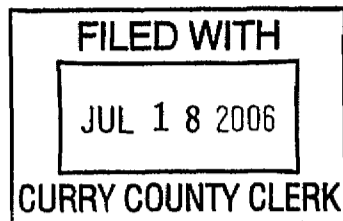


Exhibit "II"

BEFORE THE BOARD OF COUNTY COMMISSIONERS

IN AND FOR THE COUNTY OF CURRY, OREGON

In the Matter of an Order )  
Approving the Application )  
Of Donald G. Poria, John )  
G. Ohara, Jeffery Fick and )  
Dave Griffith in File No. )  
CP/Z-0502 )

ORDER NO. 12411

COPY

This matter came before the Board of Curry County Commissioners on the application of Donald G. Poria, John G. Ohara, Jeffery Fick and David Griffith in Application File No. CP/Z-0502. Except as provided below, the application requests with respect to the subject property a comprehensive plan designation change from "Industrial" to "Residential" and a zone change from RI (Rural Industrial) to RR-5 (Rural Residential - 5 acres. The change in the comprehensive plan and zoning ordinances is based upon the subject property being non-resource land, and an exception to Goal 14 was not taken (notwithstanding language in the first paragraph of the Staff Report to the contrary). With respect to the 75' riparian buffer strip of the subject property along the Elk River, the application (as amended) requests that the comprehensive plan designation change from "Industrial" to "Forest Grazing" and the zoning designation change from RI (Rural Industrial) to FG (Forestry- Grazing).

The subject property consists of approximately 28.197 acres and is located at Mile Post 2.0 on the north side of the Elk River Road in north Curry County. It is described as Tax Lot Nos. 900, 901, 902, 903, and 104 on Assessor Map No. 32-15-27. Each of the tax lots is 5 acres or larger and is located on the site of an abandoned plywood mill.

The Board of Curry County Commissioners, following appropriate notice as required by law, held a hearing on this matter on April 18, 2006. Attorney James W. Gardner and David Griffith represented the applicants during one or more of the proceedings. Evidence was received both in favor of, and in opposition to, the application. The hearing was continued from April 18 to May 12 and then to June 21,



2006, at which time an oral decision to approve the application was made. At the May 12 meeting a site visit was announced to be held on June 20, 2006, with the opportunity for all interested persons to attend. The site visit was held as scheduled.

During the hearing the objections to the application were very limited to just a few concerns. In fact almost all of the comments directed against the application related to a proposal by the applicants to relocate an existing driveway along the east property line that provides access to adjacent residential properties to the east of the subject property. The Board finds that relocation of a driveway is a development concern that does not relate to the broader standards for granting a comprehensive plan and zone change under the facts in this case. However, based upon the consent of the Applicants, and in the interests of resolving differences between the parties in this matter, the Board approves condition of approval (e) along with the other conditions of approval which are attached to this order and incorporated by reference. Condition (e) would require Applicants to make and record a 30-foot wide reciprocal an irrevocable access easement along the east line of the subject property to serve certain specified lots. The alignment of the access will need to meet Curry County street and access standards. Also, Applicants shall clear an area for the easement, identify soft spots, and bring in gravel to fill in the soft spots.

The Oregon Department of Fish and Wildlife (ODF&W) submitted a letter dated April 17, 2006, to the record of the proceeding that has been marked as Exhibit "B". In that correspondence Assistant District Fish Biologist Steve Mazur wrote "ODF&W would like the county to apply a 75 foot riparian setback to Elk River, Bagley Creek, all miscellaneous wetlands, fire pond, and mill pond." In addition, Attachment E to the staff report (Exhibit "A" to the record) contains a letter Dave Perry of DLCD indicating that there is a Goal 5 riparian area along the Elk River that harbors anadromous fish habitat. The County's non-resource designation does not allow areas to be included that are within the Goal 5 inventory. Mr. Perry asked that the riparian area be removed from the proposed area to be designated and rezoned for residential use. It should also be pointed out that a setback of 50 feet is required under Section 3.281 "Riparian Corridors" of the Curry County Code. The County is assuring compliance with these requirements by adopting condition of approval (a) attached hereto which will apply the "Forest Grazing" Plan Designation and the zoning designation of Forestry-Grazing to 75 feet upland on the subject property from the top of the west bank along the Elk River. The County is further assuring compliance by imposing condition (c) requiring Applicants to contact the Division of State Lands to determine if wetlands exist on the subject property and to determine the delineation of wetlands before building permits are issued.

Section 9.021(1) of the Curry County Comprehensive Plan requires that rezoning of the subject property will conform with the intent of all relevant policies of the Curry County Comprehensive Plan. Curry County supports the Economic Goal by having a Plan Policy "to diversify and improve the economy of Curry County." To that end Jerry Becker in Exhibit "H" to the record, and Jim Rogers in oral testimony, argued that the property should remain in industrial use, and that there is a need in Curry County for industrial use land. David Griffith testified on June 21, 2006, that the subject property

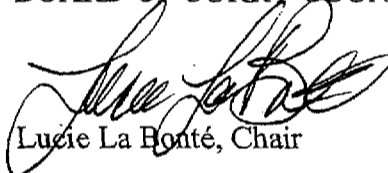
had been for sale since the year 2000 as industrial land, and that there had been no buyers, indicating that there is a lack of interest in industrial land. Also, the supplemental staff report (Exhibit "I" to the record) contains an inventory of industrial lands for the north County showing that there are extensive lands available for industrial use. To be specific, there are approximately 310 acres of designated Rural Industrial (RI) and Industrial (I) property in north Curry County from the City of Gold Beach to the rural community of Langlois. The Board finds that the plan policy on the economy has been satisfied.

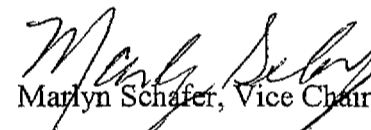
In reviewing the evidence in this matter, the Board finds that the Applicants have met their burden of proof. The decision criteria and facts and analysis supporting the decision criteria are found in the staff report and supplemental staff report submitted to the record in this matter. These two documents, without the attachments, are made part of this order and incorporated by reference.

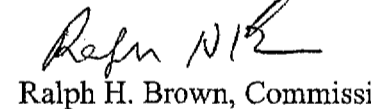
NOW, THEREFORE, for the reasons stated above, it is hereby ordered that Application File No. CP/Z- 0502 be approved subject to the conditions attached hereto and incorporated by reference.

DATED this 17<sup>th</sup> day of July, 2006

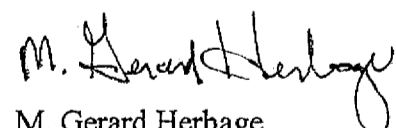
BOARD OF CURRY COUNTY COMMISSIONERS

  
Lucie La Bonté, Chair

  
Marilyn Schafer, Vice Chair

  
Ralph H. Brown, Commissioner

Approved as to Form:

  
M. Gerard Herbage  
Curry County Legal Counsel

## **Comprehensive Plan/Zone Change Case No. 0502 Conditions of Approval**

- (a) The Comprehensive Plan designation of "Forest-Grazing" and the zoning designation of Forestry-Grazing (FG) be limited to 75-feet upland on the subject property from the top of the west bank along the Elk River.
- (b) The Applicants shall be required to file a road maintenance agreement for the existing private road which begins approximately 327-feet from the southwest corner of the subject property. This existing privately maintained road on the subject property shall be improved to County standards with a minimum all-weather roadway surface of 16-feet within a minimum 50-foot right-of-way.
- (c) The Applicants shall be required to contact the Division of State of Lands to determine if any wetlands exist on the subject property and whether delineation of wetlands will be required before building permits are issued.
- (d) Proof of availability of water for each lot shall be submitted before building permits are issued.
- (e) A 30-foot wide reciprocal and irrevocable access easement along the east line of the subject property shall be recorded within 60 days of the date of this order to serve Curry County Assessor Map No. 32-15-27 Tax Lot Numbers 1000, 1100, 1200, 1300, and 1400. The alignment of the access easement shall meet Curry County Street and Access standards and be approved by the Curry County Roadmaster and Public Services Director. Within 60 days of the date of this order, Applicants shall clear brush along the easement, identify any soft spots and bring in gravel if necessary, to fill in the soft spots.

CURRY COUNTY BOARD OF COMMISSIONERS  
STAFF REPORT AND FINDINGS

April 18, 2006

**I APPLICATION INFORMATION**

<b>File No. CP/Z-0502</b>	<b>Application Date:</b>	April 11, 2005
	<b>File Complete Date:</b>	December 20, 2005
	<b>Hearing Date:</b>	April 18, 2006
<b>Applicants:</b>	<b>Agents:</b>	James W. Gardner
Donald G. Porior		David Griffith
John G. Ohara		
Jeffery Fick		
David Griffith		

**II. SITE INFORMATION**

**Basis Proposal:**

The applicants have filed an application to change the comprehensive plan designation from "Industrial" to "Residential" and to change the zoning from RI (Rural Industrial) to RR-5 (Rural Residential – 5 Acres) with a Goal 2 exception to Goal 14 (Urban Urbanization).

On April 7, 2005, the applicants submitted additional information modifying their request and stating that the proposed zoning designation for the subject property is RR5 in all areas of the property with the exception of the "...75' riparian buffer strip along Elk River where the proposed zoning will be Forestry Grazing (FG)."

**Property Location.**

Address: None

Location: The subject property (See Attachment A) is located at Mile Post 2.0 on the north side of Elk River Road in north Curry County. Elk River Road is 2.0 miles north of Port Orford.

**Property Description:**

Assessor Map No.: 32-15-27; Tax Lot Numbers: 900, 901, 902, 903, and 104

Total Land Area: 28.197 acres Current Zoning: RI (Rural Industrial)

**Existing Land Use:** The subject property consists of five separate parcels and is the site of an abandoned plywood mill (Western States Plywood) which has been cleared of all structures with the exception of a wigwam burner, a small concrete structure, a concrete block storage shed, a

concrete pad, and gravel access roads. Bagley Creek traverses the western half of the subject property connecting two existing mill ponds with Elk River. Various species of trees and underbrush are scattered throughout the subject property.

**Surrounding Land Use:** Properties to the west, north, east, and across the Elk River are ranch lands and have a zoning designation of FG (Forestry-Grazing) while properties to the south and southeast and along Elk River Road are designated RR-10 (Rural Residential – 10 acres). The subject property is within the Hensley Hill/Elk River Rural Land Exception Area (No. 5).

The following table contains a list of existing zoning designations by property owner for the subject property and surrounding properties:

OWNER	MAP/TAX LOT	ZONING	ACREAGE
Peirce, Al Co	3215-00 -00100	FG	704.47
Wagner, Robert Kent	3215-00 -06700	FG	26.67
Wagner, Paul Brice	3215-00 -06700	FG	13.33
Marsh, Joseph B & Jeanmarie	3215-27 -00100	FG	0
Mayea Dolores A Trustee Etal	3215-27 -00100	FG	285.02
Griffith, David L Etal	3215-27 -00104	RI	5.39
Wagner, Allan K	3215-27 -00200	RR10	3.80
Wagner, Paul Brice	3215-27 -00201	FG	5.00
Wagner, Paul Brice	3215-27 -00201	FG	175.10
USA	3215-27 -00500	RR10	1.12
Bodfield, Frances A	3215-27 -00600	RR10	0.99
Mecum, Leone M	3215-27 -00700	RR10	1.10
Coos Curry Electric Co-Op	3215-27 -00800	FG	0.14
Fick, Jeffrey William	3215-27 -00900	RI/FG	5.54
Case, Charles V	3215-27 -00901	RI	6.87
Ohara, John Galen Trustee	3215-27 -00902	RI	5.35
Ohara, John Galen Trustee	3215-27 -00903	RI	5.04
Field, Jeanette S	3215-27 -01000	RR10	0.47
Shuell, Joan Lee Etal	3215-27 -01100	RR10	0.47
Wachs, Alexander Raymond	3215-27 -01200	RR10	0.39
Corey, Mary Et Al	3215-27 -01300	RR10	0.39
Lamar, Raymond John	3215-27 -01400	RR10	0.39
Stoopes, William G & Jacqueline	3215-34A -00300	RR10	2.52
Cheney, Roy G Sr & Rhonda J	3215-34A -00301	RR10	5.03
Aytes, Kenneth C & Diane M	3215-34A -00400	RR10	2.06
Forty, John L Et Al	3215-34A -00500	RR10	6.74
Jennings, Jennifer A Etal	3215-34A -00600	RR10	5.00
Wagner, Allan K & Shannon J	3215-34A -00700	RR10	7.72

Note: Based on the information listed above the average parcel size for property with a zoning designation of RR-10 within 750 feet of the subject property is approximately 2.5 acres.

## Soils and Natural Features:

### 1. Soils Present on Subject Property:

According to US Soil Conservation Service (SCS) maps that were published in May 1990, the soils on the subject property are classified as "53 – Orthents." Orthents are defined as Entisols that lack horizon development due to either steep slopes or parent materials that contain no permanent weatherable minerals such as ironstone. Typically, Orthents are exceedingly shallow soils and are often referred to as "skeletal soils", or, in the FAO soil classification, as Lithosols. The basic requirement for recognition of an Orthent is that any former soil has been either completely removed or so truncated that the diagnostic horizons typical of all orders other than Entisols are absent.

The *Soil Survey of Curry County* completed by the US Department of Agriculture, Natural Resource Conservation Service (NRCS), classifies the soil on the subject property as "Urban Land (266)" in nearly level or gently sloping areas with a land form of marine terraces or stream terraces with a bedrock depth of greater than 10 inches. The major uses listed include industrial and residential development in and around the cities of Brookings, Gold Beach, and Port Orford. (Note: The subject property is located approximately one mile east of the City of Port Orford Urban Growth Boundary.)

According to the NRCS publication, the Urban Land soil is not suited to cranberry, grass-legume hay, or pasture crops or that the crops are not generally grown on the soil. The subject property has a Land Capability Class of VIIIs. This particular soil is not listed as "prime farmland."

### 2. Topography

The subject property is relatively flat.

### 3. Geological and Flood Hazards

According to maps provided by the Department of Geology and Mineral Industries (DOGAMI) Bulletin 90, the subject property is not located within an area of potential geologic hazard.

The subject property is located adjacent to the Elk River. FEMA Floodway maps indicate that the subject property is not located within an area of special flood hazard as defined and regulated by the County Flood Damage Prevention Ordinance.

### 4. Other Natural Features

#### a. Streams, rivers, lakes

The westerly portion of the subject property is transected by Bagley Creek that connects two former mill ponds to Elk River.

b. Wetlands, riparian vegetation

According to the *National Wetlands Inventory* map (G-4) published by the US Department of the Interior, Fish and Wildlife Forestry Service, in 1998, there are emergent wetlands located on the western portion of the subject property, specifically on parcels 1, 2, and 3. The applicant shall be required to contact the Division of State Lands to determine if any wetlands exist on the subject property and whether delineation of wetlands will be required before building permits are issued.

The area adjacent to the Elk River contains riparian vegetation. The River is also within a riparian area and an inventoried significant resource and is subject to Goal 5 "safe harbor" rule requirements under OAR 660-023-0090(5) and CCZO Section 3.280 to 3.283. A 50-foot riparian corridor boundary is required along the top bank of the Elk River.

c. Wildlife habitat

The subject property is not located in a "sensitive" or "peripheral" big game habitat area as indicated by the Curry County Comprehensive Plan Maps and is, therefore, not subject to suggested big game dwelling density guidelines from the Oregon Department of Fish and Wildlife.

d. Other features (archeological, historical, natural area, etc.)

There are no identified archeological, historical, or natural areas located on the subject property.

**Services and Facilities Available to Subject Property:**

1. Water Source: The subject property currently has one well and was the subject of a microbiology analysis which was completed on March 20, 2000. The results of this analysis were submitted with the original application (See Attachment B). According to the applicant, the remainder of the lots will have drilled wells.
2. Sewage Disposal: On-site systems are proposed for all five lots. Site evaluations have been conducted and approved for all lots by the Curry County Sanitarian on March 9, 2005.
3. Electric Power: Coos Curry Electric Coop
4. Telephone: According to the applicant, telephone service is available to the subject property. Verizon Northwest is the service provider for Curry County.

5. Protective Services:

Police: Curry County Sheriff Department  
Fire: Port Orford Rural Fire Protection District

6. School District: Port Orford-Langois School District 2CJ

Assessment Status:

According to the Curry County Assessor's Office the subject parcel is currently being assessed as Industrial land. However, the Assessor noted in the file that the "...highest and best use of the property would be Rural Residential."

Urban Growth Boundary Proximity Information:

The subject property is approximately 1.0 mile east of the City of Port Orford Urban Growth Boundary.

Road Information:

**Nearest Public Road Serving Subject Property:** Two lots are adjacent to Elk River Road (County Road No. 208)

**Road Condition:** Two-lane paved county maintained road.

**Other Roads Serving Subject Property:** According to the applicants, a private road has been constructed to provide access to all five lots.

**Road Condition:** One-lane gravel, privately maintained road.

**Legal Status:** According the applicant, there are written easements allowing all five lots to use the private road into the properties. The privately maintained road must meet Curry County Road Standards. Additionally, the applicants shall be required to file a road maintenance agreement for the private road.

**New Roads to be Created:** None

**Prior Land Use Actions:**

According to Curry County records approval for a lot line adjustment (LL-9826) was approved for Map No. 32-15-27 Tax Lot 900 in October 1999. The proposed lot line adjustment was subsequently approved. A pre-application conference (PA-0410) on the proposed Comprehensive Plan/Zone Change was held in September 2004.



### III. FINDINGS AND STAFF ANALYSIS

The burden of proof in justifying any land use decision is upon the applicant(s). The applicants have submitted findings to support the requested land use change. These findings together with supporting documents are attached to this report as Attachment B.

#### A. Type of Land Use Action:

The request is to amend the *Curry County Comprehensive Plan* by changing the plan designation from "Industrial" to "Residential" and the zoning map from Rural Industrial (RI) to Rural Residential Five (RR-5) for five adjacent properties (Subject Property). It is the responsibility of the applicants to prove that the subject property is not resource land.

#### B. Relevant Legal Citations, Criteria, and Findings:

- (1) Case Law related to comprehensive plan changes in Neuberger vs. City of Portland 288 OR 155 (1979).

The proposed zone change must be found to be in compliance with the criteria in the LCDC acknowledged comprehensive plan and related ordinances. In cases where those criteria do not apply, then the zone change must be in compliance with relevant Statewide Planning Goals.

- (2) Statewide Planning Goals

**Goal 2 - Land Use Planning:** *To establish a land use planning process and policy framework as a basis for all decisions and actions related to use of land and to assure an adequate factual base for such decision*

**Finding:** Under Statewide Planning Goal 2, applications for comprehensive plan changes that do not have significant effect beyond the immediate area of the change are considered "minor" must be based on special studies or other information. The applicants have submitted documentation which serves as the factual basis to support the requested changes to the *Curry County Comprehensive Plan* and the Curry County Zoning map.

**Goal 3 - Agricultural Lands:** *To preserve and maintain agricultural lands.*

**Finding:** According to the Statewide Goals, agricultural land in western Oregon is land of predominantly Class I, II, III and IV as identified in the Soil Capability Classification System of the United States Soil Conservation Service (SCS), and other lands which are suitable for farm use taking into consideration soil fertility, suitability for grazing, climatic conditions, existing and future availability of water for farm irrigation purposes, existing land use patterns, technological and energy inputs required, or accepted farming practices. Lands in other classes

which are necessary to permit farm practices to be undertaken on adjacent or nearby lands, must also be included as agricultural land. In this particular case, the subject property has a Land Capability Class of VIIIs, as indicated in the *Soil Survey of Curry County*, and is not suited for agricultural uses.

The subject property is the site of the former Western States Plywood Mill and had been used as a mill prior to the adoption of the Statewide Planning Goals. The Curry County Assessor's office records indicate that the subject property was the site of a working mill at least as far back as 1965, and probably back to the 1950's. The mill was closed in the mid-1970's. The extensive use of the subject property for mill operations has impacted the ability of the subject property to support farming or forest uses/activities. The 1990 SCS classifies the soils on the subject property as "53 - Orthents."

The *Soil Survey of Curry County* classifies the soil on the subject property as "Urban Land (266)" with major uses being listed as industrial and residential development in and around the cities of Brookings, Gold Beach, and Port Orford. According to the NRCS publication, the "Urban Land" soil is not suited to cranberry, Grass-legume hay, or pasture crops or that the crops are not generally grown on the soil. It should be noted that this particular soil is not listed as "prime farmland" on Table 6 of the *Soil Survey*.

**Goal 4 - Forest Lands:** *To conserve forest lands by maintaining the forest land base and to protect the state's forest economy by making possible economically efficient forest practices that assure the continuous growing and harvesting of forest tree species as the leading use on forest land consistent with sound management of soil, air, water, and fish and wildlife resources and to provide for recreational opportunities and agriculture.*

**Finding:** The subject property is not suitable for commercial forest uses. The properties adjacent to and northwest, north and north east of the subject property have a zoning designation of Forestry-Grazing (FG). To comply with the provisions of Goal 4 and to protect the fish in and wildlife along the Elk River, the applicants are proposing a 75' buffer with a zoning designation of FG upland of the top west bank along the Elk River. Therefore, the intent of this Goal is met.

**Goal 5 - Natural Resources, Scenic and Historic Areas, and Open Spaces:** *To protect natural resources and historic areas and open spaces.*

**Finding:** The use of the subject property for industrial use was established before the adoption of the statewide goals and the *Curry County Comprehensive Plan* and Zoning Ordinances. The request to change the comprehensive plan and zoning designations from industrial to residential will better meet the intent of this goal by protecting the natural resources along the Elk River and by providing open space.

**Goal 9 – Economic Development:** *To provide adequate opportunities throughout the state for a variety of economic activities vital to the health, welfare, and prosperity of Oregon's citizens.*

**Finding:** On December 19, 2005, the applicants submitted additional information (Attachment C). In their findings, the applicants state that the decline of the timber processing industry on the South Coast, the significant reductions in the fishing industry, and the recent downturns in the agricultural markets, opportunity for economic development has not kept pace with the economic losses in Curry County. The applicants further state that the subject property has severely been affected by the collapse of the timber processing industry and there is a need for the property owners to seek alternative uses due to the significant lack of demand for old industrial mill sites.

Staff concurs. Western State Plywood ceased mill operations in the mid 1970's and the subject property has not been in productive industrial use since that time. Most of the buildings and structures have been removed; the soil is compacted as the result of the mill operations making the subject property unsuited for agricultural use; and the subject property is surrounded by single family dwellings on parcels with zoning designations of RR-10 and FG. Furthermore, the subject property has a zoning designation of Rural Industrial (RI). This classification is applied to all rural lands in Curry County with existing industrial uses in built and committed exceptions to the Statewide Planning Goals as of the date of the adoption of the Curry County Zoning Ordinance. The mill site is located in the Hensley Hill/Elk River Exception Area (no. 5). Given the facts stated above, the retention of the industrial use designation of the subject property would not be in compliance with Statewide Goal 9.

**Goal 11 – Public Facilities and Services:** *To plan and develop a timely orderly and efficient arrangement of public facilities and services to serve as a framework for urban and rural development.*

**Finding:** Since the applicants are proposing that the individual parcels are to be served by individual wells and septic systems and not by urban services, Goal 11 is not applicable.

**Goal 14 – Urbanization:** *To provide for an orderly and efficient transition from rural to urban land use, to accommodate urban population and urban employment inside urban growth boundaries, to ensure efficient use of land, and to provide for livable communities.*

**Finding:** Counties may approve uses in unincorporated communities outside urban growth boundaries for uses, public facilities and services more intensive than allowed on rural lands by Goal 11 (Public Facilities and Services) and Goal 14 (Urbanization), either by exception to those goals, or as provided by commission rules which ensure such uses do not adversely affect agricultural and forest

operations and interfere with the efficient functioning of urban growth boundaries. The subject property is located within an exception area and not within a rural community. Therefore, Goal 14 does not apply.

(3) Oregon Administrative Rule 660-04-025

*(1) A local government may adopt an exception to a goal when physically developed to the extent that it is no longer available for uses allowed by the applicable goal.*

**Finding:** The subject property is within the Hensley Hill/Elk River Rural Land Exception Area No. 5. However, the applicants are not addressing exceptions to Statewide planning goals but that the subject property is non-resource land in order to justify the comprehensive plan and zone change from industrial to residential. Therefore, this provision of the OAR is not applicable.

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

**Finding:** Compliance with the provisions of the Oregon Administrative Rules was demonstrated in the Exceptions Document of the *Curry County Comprehensive Plan* in 1989. However, since the applicants are not addressing exceptions to Goals 3, 4, 11, and 14, this provision of the OAR is not applicable. The issue is whether or not the subject property is considered non-resource land.

(4) Curry County Comprehensive Plan Relevant Plan Policies:

**A. Goal 3 - Agricultural Lands:** *To preserve and maintain agricultural lands by retaining the economically viable agricultural uses within the county.*

**Finding:** The proposal to develop the subject property for residential use is consistent with Curry County Agricultural Lands Comprehensive Plan Policies 1 and 10. The subject property is the site of a former mill site and is not suited to support agricultural crops. Although it is the policy of Curry County to seek retention of agricultural land for agricultural use, the property has been used for industrial use prior to the adoption of the Statewide Goals and the goals and policies of the adopted *Curry County Comprehensive Plan*.

**B. Goal 4 - Forest Lands:** *To conserve forest lands for forest use.*

**Finding:** Curry County has applied forest zoning to all identified forest lands that are not committed to non-resource use and has encouraged the maintenance of maximum productivity of commercial forest lands (Forest Lands Policy 1). The mill site was already committed to a non-resource use at the time of the adoption of the Statewide Goals and the *Curry County Comprehensive Plan* goals and policies.

**C. Goal 5 - Natural Resources:** *To conserve open space and protect natural and scenic resources.*

**Finding:** The Elk River and its banks are within a riparian corridor area. The boundaries of riparian corridors are established under Curry County Zoning Ordinance (CCZO) Section 3.281(2) at 50-foot from the top bank, in this case, of the Elk River. Removal of vegetation within the riparian corridor area is prohibited except:

- a) As necessary for restoration activities, such as replacement of non-native vegetation with native riparian species. The replacement vegetation shall cover, at a minimum, the area from which vegetation was removed, and shall maintain or exceed the density of the removed vegetation.
- b) As necessary for the development of approved water-dependent or water-related uses. Vegetation removal shall be kept to the minimum necessary to allow the water-dependent or water-related use.
- c) Trees in danger of falling and thereby posing a hazard to life or property may be removed, following consultation and approval from the Oregon Department of Fish & Wildlife. If no hazard will be created, the trees, once felled, may be required to be left in place in the riparian area.
- d) Activities as necessary for uses involving forest practices subject to ORS 527.610 to 527.770, 527.990(1) and 527.992 and involving farming practices defined by ORS 30.930(2).

Curry County Zoning Ordinance (CCZO) also prohibits permanent alteration of the riparian corridor by placement of structures, by grading or the creation of impervious surfaces, except for the uses list under CCZO 3.283 provided they are designed to minimize intrusion into the riparian area, and no other options or locations are feasible.

The proposal is to develop the subject property, consisting of five (5) separate parcels, for single family residential use with a minimum size of five (5) acres. This request is consistent with Natural Resources Policies A-1 and A-2 regarding open space. The less intensive development of the RR-5 zone coupled with the

proposed zoning designation of FG for the riparian corridor along Elk River will provide open space for scenic quality and wildlife habitat.

To protect resource land along the riparian corridor and the fish bearing Elk River, the applicants have requested that a "...75-foot riparian buffer strip along where the proposed zoning will be zoning designation of FG (Forestry-Grazing)." (See Attachment D). Although the boundary of the riparian corridor for Elk River is 50-feet, a 75-foot buffer upland from the top of bank will provide better protection for the fish, wildlife, and riparian vegetation in and along the Elk River. To accommodate a change in the zoning designation from RI to FG, the comprehensive plan must also be changed from "Industrial" to "Timber."

**D. Economy:** *To diversity and improve the economy of Curry County.*

**Finding:** The Curry County Comprehensive Planning policies supporting the Economic Goal relate to uses such as forest products (Policies 1 and 2) and other resources (i.e., agricultural, commercial fishing, and mineral industry), under Policy 3. The property is not suited for agricultural use because of the compacted soil on the site as the result of mill operations not is it suitable for the forest products industry. Therefore, this goal is no longer applicable.

**E. Urbanization:** *To provide for an orderly and efficient transition from rural to urban land use in the County.*

**Finding:** Curry County recognizes the rural lands in the county and seeks to retain the rural character of these lands by limiting the development of these lands through rural zoning which will retain the rural character of these areas as reflected in the existing lot size patterns (Policy No. 7). Designating the subject property for rural residential use is consistent with this policy.

The subject property is part of the Hensley Hill/Elk River community (Rural Land Exception Area No. 5). Curry County has zoned lands located within the various rural land exceptions areas for Rural Residential (RR-5 and RR-10) use which limits rural residential development to dwellings on existing parcels and to develop new parcels with a density of 5 or 10 acre minimum lot sizes. In this particular case, the parcels adjacent to Elk River Road and located south of the subject property have a zoning designation of RR-10 with an average parcel size of approximately 2.5 acres. The applicants are proposing a minimum lot zone zoning designation of 5 acres (RR-5). The RR-5 zoning designation will retain the rural character of this area and reflect the existing lot size pattern. Therefore, the proposal is consistent with Policy No. 10.

Finally, Curry County limits commercial and industrial uses under Policy No.12 on rural lands to no more than a total of three separate commercial or industrial uses on a single parcel presently zoned for such use; and not allow the rezoning of land to permit more than a total of three separate commercial or industrial uses

within a single rural exception area excluding rural communities. The proposal is consistent with this policy since it will remove the industrial land use designation from this rural exception area.

(5) Curry County Zoning Ordinance

**Comprehensive Plan Amendment for Non-resource Land**

Section 9.031 Standards for Comprehensive Plan Amendment for Non-resource Land.

The Board must determine that requests for comprehensive plan amendments prove that land planned and zoned for resource use is not resource land and meets the following standards:

1. *The subject property does not meet the definition of Agricultural Land under Statewide Planning Goal 3 and/or Forest Land under Statewide Planning Goal 4.*

**Finding:** By definition, agriculture land consists of predominately Class I-IV soils. According to the *Soil Survey of Curry County*, the subject property consists of predominantly Class VIIIs soils and is not capable of supporting agriculture use. Therefore, the definition of agricultural use under Statewide Goal 3 has not been met. This standard has been met.

2. *The subject property does not contain any natural resources defined in Statewide Planning Goal 5 which are identified in the Curry County Comprehensive Plan.*

**Finding:** The subject property that is the focus of the proposed non-resource designation does not contain Goal 5 natural resources. The exceptions to this statement are the two mill ponds which may contain riparian vegetation and a portion of the subject property along the Elk River that is within the riparian corridor. If approved and as a condition of approval, the applicants should be required to identify, delineate and protect any wetlands that may be on the subject property. The applicants will also be required to maintain a 50-foot riparian buffer along Elk River under CCZO Section 3.281(2). This standard can be met with adherence to conditions of approval regarding wetlands and the riparian corridor along the Elk River.

3. *The subject property has been proven to be generally unsuitable for the production of farm crops and livestock or merchantable tree species, considering terrain, adverse soil conditions, drainage and flooding, vegetation, location and size of the tract. The subject property shall not be considered non-resource land solely because of its size or location if it can*

*be reasonably be put to farm or forest use in conjunction with other land.*

**Finding:** Use of the subject property for mill operations over the decades had an adverse impact making the land unsuitable for the production of crops, livestock, and/or merchantable tree species. Therefore, the property can be considered non-resource land since it cannot support agricultural or forest uses. This standard has been met.

4. *The subject property is not considered to be non-resource land simply because it is too small to be farmed or forest managed profitably by itself. If the subject property can be sold, leased, rented or otherwise managed as part of a commercial farm, ranch or other forest land it is not considered to be non-resource land.*

**Finding:** Because of the existing soil conditions, the subject property cannot be sold, leased, rented or managed as part of a commercial farm, ranch, or other forest land.

5. *The subject property is not considered to be non-resource land if it has been given a special tax assessment for zoned farm use, unzoned "greenbelt" farm use or as designated forest land at any time in the past five years.*

**Finding:** According to Curry County Tax Assessors records, the subject property has not been given a special assessment. This standard has been met.

6. *If the subject property is found to meet all of the standards above to be considered non-resource land the county shall also determine that rezoning the property to a non-resource zone will not materially alter the stability of the overall land use pattern of the area and lead to the rezoning of other lands to non-resource use to the detriment of the resource uses in the area.*

**Finding:** The change in the comprehensive plan and zoning designations will not materially alter the stability of the area but will provide stability to the overall land use pattern of the area which is rural residential use. The subject property has been vacant for several years and, therefore, unproductive. The subject property is within an exception area and is adjacent to rural residential uses (RR-10) with lot sizes varying from 0.47 of an acre to 5.54 acres and an average size of approximately 2.5 acres. Therefore, this standard has been met. (See Table of "existing zoning designations by property owner for the subject property and surrounding properties" on page 2.)

7. *The subject property shall be at least 20 acres in area unless it is contiguous to an area that is zoned for non-resource use.*



**Finding:** The subject property consist of approximately 28.197 acres of land and is contiguous to a non-resource area that is zoned RR-10. Therefore, this standard has been met.

8. *Rezoning of land that is found to be non-resource land shall be to a "rural" zone that is appropriate for the type of land and its intended use (i.e. dune land that is found to be nonfarm/nonforest land should be zoned for Conservation use).*

**Finding:** The subject property is within an established exception area and rural community. A change in the zoning designation to RR-5 is appropriate for the type of land and its intended use since it is located adjacent to land that is zoned RR-10. Therefore, this standard has been met.

#### Section 9.021 Standards for a Zone Change

The Commission or Board shall determine that zone change requests meet the following standards:

1. *Rezoning of the subject property will conform with the intent of all relevant policies of the Comprehensive Plan*

**Finding:** As evidenced by the findings listed above, the zone change request conforms with the relevant policies of the Curry County Comprehensive Plan. Therefore, this standard has been met.

2. *Rezoning of the subject property will conform with the intent of the zoning designation to which the subject property is proposed to be changed as defined in the purpose statement of the proposed zone;*

**Finding:** The request is to change the zoning designation from Rural Industrial (RI) to RR-5. The RR-5 provides a lower density of residential development than the RI zoning designation or the residential development that currently exists in the area. The purpose of the RR zone is to allow for low density residential development outside of the urban growth boundaries of the Cities of Port Orford, Gold Beach and Brookings and rural communities as defined by the *Curry County Comprehensive Plan*. In addition to the lower density of residential development, the subject property is located approximately one mile east of the Port Orford Urban Growth Boundary and is within a rural exception area. Therefore, the proposed zone change meets this standard.

3. *Rezoning of the subject property will not seriously interfere with the permitted uses on other nearby parcels;*

**Finding:** The change in the zoning designation to rural residential will be

consistent with adjacent and contiguous properties. Therefore, this standard has been met.

4. *Rezoning of the subject property will not adversely impact the orderly provision of public services (water, sewer, police, fire, schools, etc.) in the area in which the property is located; and*

**Finding:** The subject property is within a rural exception area (Hensley Hill/Elk River Exception Area No. 5) and is outside of the City of Port Orford Urban Growth Boundary. There are no urban services (i.e., water, sewer, and City police). The County, including the Curry County Sheriff's Office, and Port Orford Fire Protection District will continue to provide services whether or not the comprehensive plan/zone change is granted. Site evaluations for septic systems have been approved and proof of availability of water for each lot should be a condition of approval prior to the issuance of a building permit. This standard will be met upon meeting a condition of approval for proof of water availability for each lot.

5. *Amendments to the comprehensive plan and zoning designations of the subject property which significantly affect a transportation facility (see # 6, below) shall assure that allowed land uses are consistent with the function, capacity and level of service of the facility as identified in the Transportation System Plan. This shall be accomplished by one of the following:*

- a) *Limiting allowed land uses to be consistent with the planned function of the transportation facility;*

**Finding:** The subject property has an unimproved road serving all five lots with direct access onto Elk River Road. Elk River Road is designated as a major collector in the *Curry County Transportation System Plan*. The function of a collector is to connect residential neighborhoods with smaller community centers and the arterial system. Therefore, standard is met. However, if the request is approved, the existing private road on the subject property should be improved to county standards with a minimum all weather roadway surface of 16-feet within a minimum 50-foot right-of-way.

- b) *Amending the Transportation System Plan to ensure that existing, improved or new transportation facilities are adequate to support the proposed land uses consistent with the requirement of the Transportation Planning Rule; or,*

**Finding:** Elk River Road is a major collector and is capable of serving the proposed development. An amendment is not required or needed to accommodate the land use request. Therefore, this

standard has been met.

- c) *Altering land use designations, densities, or design requirements to reduce demand for automobile travel and meet travel needs through other modes.*

**Finding:** This standard is not applicable.

6. *A comprehensive plan or zoning designation amendment significantly affects a transportation facility if it:*

- a) *Changes the functional classification of an existing or planned transportation facility;*

**Finding:** The proposed change in the comprehensive plan and zoning designation will not require a change in the functional classification of Elk River Road.

- b) *Changes standards implementing a functional classification system;*

**Finding:** There will be no changes required in implementing the functional classification system as a result of the proposed comprehensive plan change and concurrent zone change from industrial to residential use.

- c) *Allows types or levels of land use that would result in levels of travel or access that are inconsistent with the functional classification of a transportation facility; or*

**Finding:** The proposed change in comprehensive plan and zoning designations will not affect the current functional classification of Elk River Road nor will it result in changes in the level of travel or access.

- d) *Would reduce the vehicle/capacity ratio and level of service of the facility below the minimum acceptable level identified in the Transportation System Plan.*

**Finding:** According to the Curry County Road Department, the last traffic counts on Elk River Road were taken in 2001 for the purpose of determining the impacts of the fall hunting and fishing seasons on Elk River Road. The counts, which were taken in October of 2001, showed the Average Daily Traffic (ADT) to be at 470. Counts taken in late November 2001 revealed ADTs of near 1000 for the section within the first 1.6 miles of Elk River Road. Counts taken in April of 1997 resulted in ADTs of about 575 for the same section of

road. The capacity of the road is approximately 10,000 ADT with a current level of service is A. The proposed change in use will not reduce the vehicle/capacity ratio and level of service.

#### IV. PUBLIC COMMENT

The following comments have been received from interested parties, agencies, and affected property owners:

1. **Letter from the Department of Land Conservation and Development DLCD) dated March 23, 2006 (Attachment E).**

The letter from DLCD stated that clarification was needed as to whether the proposed amendment is an exception or a nonresource land use issue.

**Response:** The comments have been incorporated into this staff report.

2. **Letter from affect property owners dated April 7, 2006 (Attachment F).**

The owners of five parcels located adjacent to and immediately to the east of the subject property along Elk River Road were concerned with losing access to their property.

**Response:** The concerns of the affected property owners with access to the parcels immediately adjacent to and east of the subject property can be addressed with a 50-foot wide reciprocal and irrevocable access easement to serve Curry County Assessor Map No. 32-15-27 Tax Lot Numbers 1000, 1100, 1200, 1300, and 1400. The easement should begin on the southeast corner of the subject property closest to the Elk River Road right-of-way and extend 440 feet to the north along the east line of the subject property. The applicants' agent was agreeable to this condition.

#### V. CONCLUSION

The applicable statewide goals; the applicable goals and policies of the *Curry County Comprehensive Plan*; and the standards for a nonresource comprehensive plan change with a concurrent zone change have been met. The request to change the comprehensive plan designation from "Industrial" to "Residential" and "Timber" to change the zoning from RI (Rural Industrial) to RR-5 (Rural Residential – 5 Acres) and Forestry-Grazing (FG) for property in Curry County (Tax Assessor Map No.: 32-15-27, Tax Lot Numbers: 900, 901, 902, 903, and 104) and located along Elk River Road is warranted.

## **VI. RECOMMENDED CONDITIONS OF APPROVAL**

If the Board approves the requested comprehensive plan/zone change, staff suggests that the following conditions of approval be applied:

- (a) The comprehensive plan designation of "Timber" and the zoning designation of Forestry-Grazing (FG) be limited to 75-feet upland on the subject property from top of the west bank along the Elk River.
- (b) The applicants shall be required to file a road maintenance agreement for the private road.
- (c) The applicant shall be required to contact the Division of State of Lands to determine if any wetlands exist on the subject property and whether delineation of wetlands will be required before building permits are issued.
- (d) Proof of availability of water for each lot shall be submitted for each lot before building permits are issued.
- (e) The existing privately maintained road on the subject property shall be improved to County standards with a minimum paved roadway surface of 16-feet within a minimum 50-foot right-of-way.
- (f) A 50-foot wide reciprocal and irrevocable access easement shall be recorded to serve Curry County Assessor Map No. 32-15-27 Tax Lot Numbers 1000, 1100, 1200, 1300, and 1400. The access easement shall begin on the southeast corner of the subject property and extend 440 feet to the north along the east line of the subject property.

- Attachments:
- A. Site Map
  - B. Application for a Comprehensive Plan Change with a concurrent Zone Change (SP/Z Case No. 0502) dated April 2, 2004
  - C. Letter from Applicants dated December 19, 2005 responding to Comprehensive Planning Goal 9
  - D. Supplemental Application Material dated April 7, 2006
  - E. Letter from the Department of Land Conservation and Development dated March 23, 2006
  - F. Letter from affected property owners dated April 9, 2006



# Memorandum

Department of Public Services: Planning Division

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To: Curry County Board of Commissioners  
From: David J. Pratt, AICP  
Date: May 12, 2006  
Subject: Supplemental Staff Report: CPC/ZC Case No. 0502

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## Background

An application was filed on April 11, 2005, to change the comprehensive plan designation from "Industrial" to "Residential" and to change the zoning from RI (Rural Industrial) to RR-5 (Rural Residential – 5 Acres) with a Goal 2 exception to Goal 14 (Urban Urbanization) for property located near Mile Post 2.0 on the north side of Elk River Road. The application was modified on April 7, 2006, for the purpose of clarifying the proposed zoning designation for the subject property. The proposal was to change the zoning designation to RR5 in all areas of the property with the exception of the "...75' riparian buffer strip along Elk River where the proposed zoning will be Forestry Grazing (FG)."

On April 18, 2006, the Curry County Board of Commissions convened a public hearing under the authority of the Curry County Zoning Ordinance (CCZO) Section 2.060(3)(a) at the request of Donald G. Prorior, John G. O'Hara, Jeffery Fick, and David Griffith. The written record of the public hearing was left open until 5:00 pm, Monday 1, 2006, with the public hearing being continued to Friday, May 12, 2006. The Commissioners referred questions to staff and request additional information.

## Facts and Findings

1. The following information was requested by the Board of Commissioners:
  - a. *Supply a letter from John O'Hara authorizing the access easement.*

**Response:** The applicants' agent, David Griffith, submitted a letter dated April 21, 2006 (Attachment A, page A-3) that contains a letter signed by John O'Hara authorizing David Gritffith and Don Porior as his representatives to establish an easement on his property.

b. *What amount of land is designated industrial in North Curry County?*

**Response:** There are approximately 310 acres of designated Rural Industrial (RI) and Industrial (I) property in North Curry County from the City of Gold Beach to the Rural Community of Langlois. The industrial land is concentrated in the North County area in:

- i. The Langlois Rural Community consisting of approximately 7.5 acres with an RI zoning Designation;
  - ii. An area along Cape Blanco Road (Sixes River – Rural Site Exception Area No. 12) consisting of approximately 83.5 acres with a zoning designation of RI;
  - iii. The Elk River Area listed as Rural Land Exception No. 7 (Subject Property) consisting of approximately 28.2 acres with a zoning designation of RI;
  - iv. An area within the Urban Growth Boundary and north of Port Orford consisting of approximately 5 acres with a split zoning designation of I (Industrial) and R2 (Residential -Two);
  - v. The Tams Mill site along Euchre Creek consisting of approximately 23.7 acres with a zoning designation of RI; and
  - vi. A Gold Beach mill site along the Rogue River consisting of approximately 162 acres with a zoning designation of I (Industrial).
- c. *Contact Oregon Department of Fish and Wildlife (ODWF) regarding non-navigable rivers; property line vs. center line of river, drift boat access; and their request for public access through the subject property to the Elk River.*

**Response:** According to ODWF, it is unclear whether or not the Elk River is navigable under Federal law. However, the Oregon Marine Board rules allow navigation in the Elk River but the State does not own the bed or banks of the Elk River. Access to the river can be gained at the Elk River Bridge through Highway 101 right-of-way; the Iron Head Boat Ramp, and Elk River Fish Hatchery.

*Property Access for Adjacent Properties*

2. Both the applicants' agent and the affected property owners have submitted comments regarding the retention and location of an existing driveway that provides access to adjacent residential properties to the east of the subject property (See Attachments A and B).
3. The Curry County Roadmaster reviewed the historic access for the residential parcels immediately to the east of the Old Western States Mill Site. He found the current access, which is located on the mill site property, has acceptable sight

distance and meets Curry County standards. However, efforts to relocate to an upriver location will reduce the available sight distance to an unacceptable level. Based upon his observations, there appears to be very little latitude for the location of this access due the curve in Elk River Road that limits the sight distance to the east. Therefore, the Curry County Roadmaster recommended that arrangements be made to allow the existing access to remain in its present location.

4. If the proposed Comprehensive Plan and concurrent zone change from industrial to residential is approved and in light of the Roadmaster's findings, it is recommended that the Condition No. "F" be modified as follows:

“(f) A 50-foot wide reciprocal and irrevocable access easement **along the east line of the subject property** shall be recorded to serve Curry County Assessor Map No. 32-15-27 Tax Lot Numbers 1000, 1100, 1200, 1300, and 1400. The **alignment of the access easement shall begin on the southeast corner of the subject property and extend 440 feet to the north along the east line of the subject property meet Curry County Street and Access standards and be approved by the Curry County Roadmaster and Public Services Director.**”

#### **Recommended Conditions of Approval**

If the Board approves the requested comprehensive plan/zone change, staff suggests that the following conditions of approval be applied:

- (a) The comprehensive plan designation of "Timber" and the zoning designation of Forestry-Grazing (FG) be limited to 75-foot upland on the subject property from top of the west bank along the Elk River.
- (b) The applicants shall be required to file a road maintenance agreement for the private road.
- (c) The applicants shall be required to contact the Division of State of Lands to determine if any wetlands exist on the subject property and whether delineation of wetlands will be required before building permits are issued.
- (d) Proof of availability of water for each lot shall be submitted for each lot before building permits are issued.
- (e) The existing privately maintained road on the subject property shall be improved to County standards with a minimum paved roadway surface of 16-feet within a minimum 50-foot right-of-way.



- (f) A 50-foot wide reciprocal and irrevocable access easement along the east line of the subject property shall be recorded to serve Curry County Assessor Map No. 32-15-27 Tax Lot Numbers 1000, 1100, 1200, 1300, and 1400. The alignment of the access easement shall meet Curry County Street and Access standards and be approved by the Curry County Roadmaster and Public Services Director.

- Attachments: A. Letter from David Griffith dated April 21, 2006  
B. Letter from Mary Corey and Vincent D'Luge dated April 28, 2006