



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/Coastal Fax: (503) 378-6033

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

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

NOTICE OF ADOPTED AMENDMENT

March 3, 2006



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

FROM: Mara Ulloa, Plan Amendment Program Specialist

SUBJECT: Linn County Plan Amendment
DLCD File Number 005-04

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: 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
Marguerite Nabeta, DLCD Regional Representative
Robert Wheeldon, Linn County

<paa> ya/



FORM 2

DLCD NOTICE OF ADOPTION

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

(See reverse side for submittal requirements)

DEPT OF

MAR 01 2006

LAND CONSERVATION
AND DEVELOPMENT

Jurisdiction: Linn County Local File # BC04-0007

(If no number, use none)

Date of Adoption: February 22, 2006 Date Mailed February 28, 2006

(Must be filled in)

(Date mailed or sent to DLCD)

Date the Notice of Proposed Amendment was mailed to DLCD: 11/19/2004

| | |
|--|--|
| <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."

Change the Plan Designation of a 28.62-acre property from Farm/Forest to Non-Resource. Change the Zoning Map designation from Farm/Forest (F/F) to Non-Resource (NR-5).

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."

Same

Plan Map Changed from: Farm/Forest to Non-Resource

Zone Map Changed from: F/F to NR-5

Location: T12S, R1W, Sec 18; TL 801 Acres Involved: 28.62 acres

Specify Density: Previous: 80 acre min New: 5-acre minimum

Applicable Statewide Planning Goals: 3, 4

Was an Exception adopted? No Yes No X

DLCD File No: 005-04 (14013)

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: X 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: Linn County Road Dept.;

Linn County Environmental Health; DLCD; Water Resources; DOF; DOA; ODFW

Local Contact: Robert Wheeldon Area Code + Phone: 541-967-3816, ext. 2075

Address: Linn County Planning & Building Dept., PO Box 100

City: Albany, OR Zip Code + 4 97321

ADOPTION SUBMITTAL REQUIREMENTS

this form **must be mailed** to DLCD **within 5 working days after the final decision**

per ORS 197.610 and 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 St. NE, Ste. 150
Salem, Oregon 97301-2540

2. Submit **TWO (2) copies** of 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 ½ x 11 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 Larry.French@state.or.us - ATTENTION: PLAN AMENDMENT SPECIALIST.



LINN COUNTY PLANNING AND BUILDING DEPARTMENT

Steve Michaels, Director

Room 114, Linn County Courthouse
PO 100 Box, Albany, Oregon 97321
Phone 541-967-3816, 1-800-319-3816
Fax 541-926-2060 www.co.linn.or.us

NOTICE OF ADOPTION

Resolution And Order No. 2006-087
Ordinance No. 2006-088
Planning File No. BC04-0007
Applicant F.C. SCHWINDT

Proposal:

An application by F. C. Schwindt for a *Comprehensive Plan* (Plan) Map amendment and a Zoning Map amendment on a 28.62-acre property identified as T12S, R1W, Section 18, Tax Lot 801, in Linn County, Oregon. The property is located approximately one-half mile east of the Lebanon city limit and 2600 feet southwest of the intersection of Hidden Valley Road and First Creek Drive. The *Plan* map amendment would change the *Plan* designation from Farm/Forest-Rural Residential Reserve to Non-Resource. The Zoning map amendment would change the zoning from Farm/Forest (F/F) to Non-Resource (NR-5) with a five acre minimum parcel size.

Board Action: Resolution And Order No. 2006-087

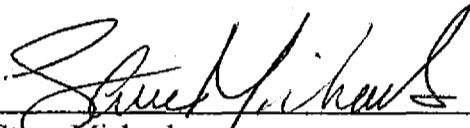
On February 22, 2006 the Linn County Board Of Commissioners voted unanimously to approve *Resolution and Order No. 2006-087* to: (1) Approve the Findings and Conclusions supporting the Board decision; (2) Order that the *Linn County Comprehensive Plan* map be prepared for amendment to designate thereon the 28.62 acres identified as Tax Lot 801 on Assessor map T12S, R1W, Section 18, Linn County, Oregon as "Non-Resource;" and (3) Order that the Linn County Zoning map be prepared for amendment to designate thereon the 28.62 acres identified as Tax Lot 801 on Assessor map T12S, R1W, Section 18, Linn County, Oregon as "Non-Resource (NR-5)."

Board Action: Ordinance No. 2006-088

On February 22, 2006 the Linn County Board of Commissioners voted unanimously to approve *Ordinance No. 2005-069* to: (1) Ordain that Appendix 1, *Comprehensive Plan* map, following LCC Chapter 919 [see LCC 900.101(B)] be amended to designate the 28.62 acres identified as Tax Lot 801 on Assessor map T12S, R1W, Section 18, Linn County, Oregon as "Non-Resource;" and (2) Ordain that Appendix 1, Zoning map, following LCC Chapter 920 [see LCC 920.010(B)] be amended to designate the 28.62 acres identified as Tax Lot 801 on Assessor map T12S, R1W, Section 18, Linn County, Oregon as "Non-Resource (NR-5)."

If you wish to appeal this decision, an appeal must be filed with the Land Use Board of Appeals (LUBA) within 21 days from the date this notice is mailed. Appeals to LUBA must be filed in accordance with ORS 197.830. If you have any questions about this process, contact LUBA in Salem at (503) 373-1265.

Resolution and Order No. 2006-087 and Ordinance No. 2006-088 may be reviewed at the office of the Linn County Clerk, Room 205, Linn County Courthouse. That office is open from 8:30 a.m. to 5:00 p.m., Monday through Friday, except legal holidays. A copy of the resolution and the ordinance is available in the office of the Linn County Clerk. A fee to cover copying costs will be charged.



Steve Michaels
Director

2/28/06

Date

cc: F.C. Schwindt; John Brosy; Jim Just, Goal One Coalition; William Roach, Jackson & Prochnau, Inc.; Benjamin Brown; Bill Latimer; B.L. McCallie; Ray Silbernagel; Mark Wilson, Lebanon Fire Marshall; DLCD; Gene Walton, ODOT; Linn County EHP; Linn County Road Department

FILED

FEB 22 2006

BEFORE THE BOARD OF COUNTY COMMISSIONERS
FOR LINN COUNTY OREGON

STEVE DRUGENMILLER, CLERK
Steve Drugenmiller
Clerk

IN THE MATTER OF AMENDING THE)
LINN COUNTY *COMPREHENSIVE*)
PLAN MAP AND THE LINN COUNTY)
ZONING MAP)

RESOLUTION &
ORDER NO. 2006-087
(Planning and Building Department BC04-0007)
(Findings and Conclusions)

WHEREAS, The Board of County Commissioners for Linn County (Board) conducted a duly advertised meeting on January 26, 2005, for the purpose of considering the matter of a proposed *Comprehensive Plan* map amendment and proposed zoning map amendment that would amend the *Comprehensive Plan* map designation and zoning map designation on property identified as Tax Lot 801 on Assessor map T12S, R1W, Section 18;

WHEREAS, The proposed *Comprehensive Plan* map amendment and proposed zoning map amendment had been previously considered by the Linn County Planning Commission at a duly advertised meeting on January 11, 2005, and who voted 5-2 to recommend approval to the Board;

WHEREAS, The Board opened the meeting for public comment and after hearing such comments left the record open for seven days to allow the parties an opportunity to submit written response to new written testimony submitted at the hearing; and an additional seven days to allow the applicant an opportunity to submit written rebuttal to any new written testimony thereby submitted;

WHEREAS, The Board reconvened the meeting on February 9, 2005, and reached a consensus to recommend that the proposed *Comprehensive Plan* map amendment and proposed zoning map amendment be adopted; and

WHEREAS, The findings in support of the proposed *Comprehensive Plan* map amendment and zoning map amendment are attached hereto as "Exhibit 1, BC04-0007 Decision Criteria, Findings and Conclusions;" and now, therefore, be it

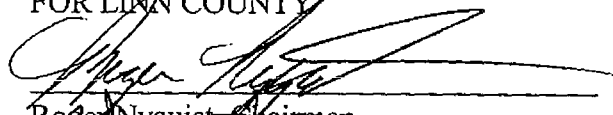
RESOLVED, That the Findings and Conclusions as set forth in Exhibit 1, BC04-0007 Decision Criteria, Findings and Conclusions, attached hereto, be approved; and

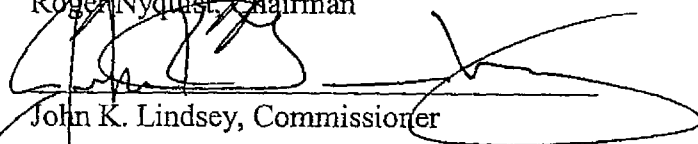
ORDERED, That the *Linn County Comprehensive Plan* map be prepared by county staff for amendment to designate thereon the 28.62 acres identified as Tax Lot 801 on Assessor map T12S, R1W, Section 18, Linn County, Oregon, as "Non-Resource;" and

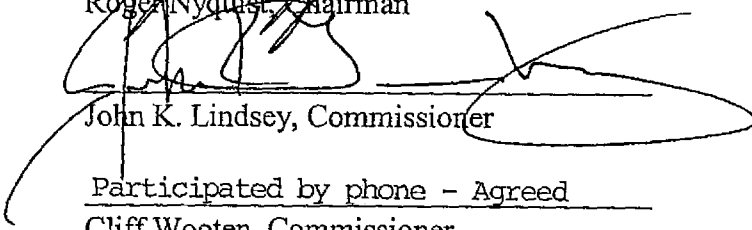
ORDERED, That the Linn County Zoning map be prepared by county staff for amendment to designate thereon the 28.62 acres identified as Tax Lot 801 on Assessor map T12S, R1W, Section 18, Linn County, Oregon, as "Non-Resource (NR-5)."

Resolved and Ordered this 22nd day of February, 2006.

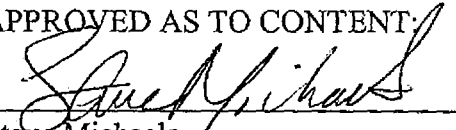
BOARD OF COUNTY COMMISSIONERS
FOR LINN COUNTY


Roger Nyquist, Chairman


John K. Lindsey, Commissioner


Participated by phone - Agreed
Cliff Wooten, Commissioner

APPROVED AS TO CONTENT:


Steve Michaels
Linn County Planning and Building Director

APPROVED AS TO FORM:

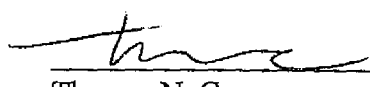

Thomas N. Corr
Linn County Legal Counsel

Exhibit 1

Decision Criteria, Findings and Conclusions

BC04-0007; An application by F. C. Schwindt for a Comprehensive Plan (Plan) Map amendment and a Zoning Map amendment. The affected property is 28.62 acres in size and is identified as T12S, R1W, Section 18, Tax Lot 801. The property is located west of First Creek Drive approximately one-half mile east of the Lebanon city limit and 2600 feet southwest of the intersection of Hidden Valley Road and First Creek Drive. The proposed Plan map amendment would change the Plan designation from "Farm/Forest-Rural Residential Reserve" to "Non-Resource." The proposed zone amendment would change the zoning from "Farm/Forest (F/F)" to "Non-Resource (NR-5)" with a five-acre minimum parcel size. The applicable decision criteria for the proposed Plan and Zoning Map amendments are identified in *Linn County Code (LCC) 921.874*. The proposed Plan amendment must be consistent with any applicable statewide planning goals and with the applicable provisions of the Comprehensive Plan, including the Non-Resource Policies in *LCC 905.960*.

I. Background and Proposal Summary

The property owner, F. C. Schwindt, is represented in this application by John L. Brosy. The applicant requests a Plan map amendment and Zone map amendment to change the Plan designation of his 28.62-acre property from *Farm/Forest-Rural Residential Reserve* to the *Non-Resource* Plan designation. The zoning designation would change from *Farm/Forest (F/F)*, which has an 80-acre minimum for the creation of new parcels, to *Non-Resource (NR-5)* with a five-acre minimum parcel size. (Staff report Exhibit 1)

The property is identified on Linn County Assessor maps as T12S, R1W, Section 18, Tax Lot 801, and is located at the end of First Creek Drive, off of Hidden Valley Road, approximately one-half mile east of the Lebanon city limit. The property is developed with one single-family dwelling and an outbuilding.

The proposed NR-5 zoning designation would allow for an application to create between one and four additional parcels for home sites, depending on septic suitability, availability of water, terrain features, access considerations, and compliance with other applicable property development standards. The applicant is proposing to create two additional parcels for a total of three parcels and home sites on the 28.62-acre property.

The Non-Resource Plan and zoning designations were adopted into County Code on April 28, 2004 to recognize property that does not meet the definition of agricultural land in statewide land use planning Goal 3, and does not meet the definition of forest land in statewide land use planning Goal 4. If the property is not subject to Goal 3 or Goal 4 an exception to these statewide planning goals is not required and the property may be classified in the Plan as Non-Resource land. The applicable Plan policies are identified in *LCC 905.960*. (Staff report Exhibit 2)

Exhibit 1
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II. Planning Commission Hearing and Recommendation

The Planning Commission (Commission) held a public hearing on this matter at 7:00 p.m. on January 11, 2005. Testimony was presented in favor of the application by John Brody and F.C. Schwindt. Jim Just presented testimony in opposition to the application. The hearing debate centered primarily on the question of whether or not the property is "forest land" as defined in statewide planning Goal 4 and in *LCC 905.960(J)(5)*. (Staff report Exhibit 2)

After considering all the written and oral testimony presented at the hearing the Commission voted 5-2 to adopt a motion recommending that the Board of Commissioners (Board) approve the proposed Plan and Zone amendments. Voting in favor of the motion were Commissioners Furtwangler, McKinney, Metts, VanAgmael and Walsh. Voting to deny the motion were commissioners Mackie and Magnuson.

III. Land Use Process and Decision Criteria

The Plan map and Zoning map amendment applications were reviewed concurrently. The Board held a public hearing on this matter at 10:00 a.m., January 26, 2005. The hearing was closed to oral testimony and the record was left open for seven days, until February 2, 2005, to allow opponents to the application to respond to new written testimony. The hearing was continued to 10:00 a.m. on February 9, 2005 for the applicant's final written rebuttal and the Board decision.

The decision criteria for a Plan map amendment are identified in *Linn County Code (LCC) 921.874*. Pursuant to *LCC 921.822*, when a Zoning Map amendment is necessary due to a proposed Comprehensive Plan amendment, only findings and conclusions responding to the Plan amendment decision criteria are necessary to amend the Zoning Map. (Staff report Exhibit 2)

As specified in the criteria in *LCC 921.874*, the proposal must be consistent with the statewide planning goals and with the applicable sections of the *Comprehensive Plan*. The Plan policies for Farm/Forest lands are in *LCC 905.330*. The Plan policies for Non-Resource lands are in *LCC 905.960*. (Staff report Exhibit 2)

IV. Surrounding Land Uses

The Hidden Valley Estates Rural Residential (RR-2.5) exception area on First Creek Drive is east of the subject property. The Hidden Valley Estates exception area totals 165 acres and contains 51 dwellings. The properties range in size from one acre to more than five acres.

The properties to the north, south and west of the subject property are zoned Farm/Forest, which has an 80-acre minimum for the creation of new parcels. Land to the north and west is mixed pasture and timber and range in size from 38 to 79 acres. Property to the south is grazing land and ranges in size from 14 to 41 acres.

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V. Zoning and Development Background

The property is developed with a 1966 single-wide manufactured home and a 1440 square foot outbuilding, constructed in 1992. The zoning history of the subject property is as follows:

1. Since January 30, 1985 the property has been zoned Farm/Forest (F/F), with a Comprehensive Plan (Plan) designation of Farm/Forest-Rural Residential Reserve.
2. Between September 2, 1980 and January 30, 1985 the property was zoned Rural Residential (RR-1) with a one-acre minimum lot size, and a Rural Residential Plan designation.
3. Between March 10, 1980 and September 2, 1980 the property was zoned Agriculture, Residential and Timber (ART-2½) with a two and one-half acre minimum lot size.
4. Between March 22, 1972 and March 10, 1980 the land was zoned ART-5, with a five-acre minimum lot size.

The RR-1, ART-2½ and ART-5 zones allowed one single-family dwelling on a lot or parcel.

The subject property has also been involved in the following previous land use actions:

1. S-1-79/80; September 18, 1979. The eastern portion of the originating 44.14-acre parcel was part of a 21-lot subdivision in the ART-5 zoning district (Hidden Valley Estates #2).
2. MP-12-87/88; September 15, 1987. Two, three-acre parcels (tax lot 805 and tax lot 806) were created from the 39+acre tax lot 801, leaving 33.63 acres. The partition to create the two non-resource parcels for dwellings was authorized through a Farm/Forest administrative review (F/F-14-85/86).
3. MP-8-93/94; November 30, 1993. A partition to re-authorize the same three parcels in MP-12-87/88 with an easement across the one-foot barrier strip at the west end of First Creek Drive to serve the three properties.
4. PLA-23-98; October 13, 1998. A property line adjustment to reduce tax lot 801 to 28.62 acres and increase tax lot 806 to 8.00 acres.
5. BC01-0001; January 22, 2002. The Board of Commissioners (Board) approved Plan and Zone amendments to designate the subject property, along with three adjacent properties, Rural Residential and Rural Residential (RR-10) with a 10-acre minimum parcel size. The decision included a Plan text amendment to adopt an "irrevocably committed" exception to statewide land use planning Goal 3 (agricultural land) and Goal 4 (forest land). The approval was appealed to the Land Use Board of Appeals (LUBA). The LUBA remanded the decision to the Board for further review of the exception, finding that the exception did not support findings that there is a relationship between the subject property and surrounding land that renders the subject property "committed" to non-resource uses.

Exhibit 1
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6. BC01-0001; December 3, 2002. The Board again approved the Plan and Zone amendments and the committed exception. The decision was again appealed to LUBA, and LUBA again remanded the decision on the same grounds. The property owners did not seek a new hearing before the Board.

Table 1
Existing and Proposed Conditions

| CONDITION | EXISTING | PROPOSED |
|------------------|---|--|
| Plan Designation | Farm/Forest-Rural Residential Reserve | Non Resource |
| Zone Designation | F/F | NR-5 |
| Access | Property has 60 feet of frontage onto the end of First Creek Drive. | New parcels would be served by easements to First Creek Drive across 60-foot access strip. |
| Land Use | One single-family dwelling; Outbuilding | Three 5+-acre residential parcels. |

VI. Environmental Factors

- A. **Soil Types** – The soils on the property were determined using the County’s Geographic Information System (GIS) database. The soils data in the GIS database are from the Soil Conservation Service (SCS) (Now NRCS) *Soil Survey of Linn County Area, Oregon, July, 1987*. The following soils in *Table 2* are identified on the property:

Table 2
Soils Report

| Soil Type | Acreage | Percent | SCS Class | High-Value Farmland? | Forest Cap: Cu Ft / Acre / Year |
|--------------|---------|---------|-----------------|----------------------|---------------------------------|
| 104E: Witzel | 25.39 | 93.2% | VI _s | No | 106 |
| 104G: Witzel | 1.85 | 6.8% | VI _s | No | 106 |
| Total | 27.24 | 100.0% | -- | -- | -- |

According to the soil analysis, the agricultural suitability rating of the property is SCS Class VI soil. The soil is not defined under state rules as “high-value farmland.”

The forest productive rating, from the Oregon Department of Forestry, is 106 cu. ft. per acre per year. The applicant submitted a forest capability report for the property from Jackson and Prochnau, Consulting Forest Engineers. The report determines that the average 50 year site index is 95 and the forest site class is 4. The conclusion of the Jackson and Prochnau report is that based on several factors, including the thin, rocky soil, the predominately southern exposure, the lack of moisture, and other site conditions, the property is non productive as timberland and is not suitable for commercial forest uses.

Exhibit 1
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The Jackson and Prochnau forest capability report for the property is included as the applicant's *Attachment 8*, in Exhibit 1 of the Staff Report. The Board notes that *the site index is for the approximately 2 acres of the property that are forested. The remaining approximately 25 acres have a rating of nil, since not enough trees exist on the balance of the property to index.*

- B. Topography** -- The property is generally hilly, sloping to the southeast. The highest is in the northwest corner of the property. Elevation contours are depicted in the applicant's *Attachment 3*, included in Exhibit 1 of the Staff Report.
- C. Natural And/Or Geologic Hazards** -- The property is not within a geologic hazard area identified in the *Environmental Geology of Western Linn County, Oregon*. The property is not within the identified 100-year floodplain, as indicated by the Federal Emergency Management Agency (FEMA) Flood Insurance Rate Maps.
- D. Wildlife Habitat** -- No sensitive riparian, fish or wildlife habitat is identified on the property in the *Linn County Comprehensive Plan Wildlife Habitat Inventory*. The property contains some scattered trees but is not forested. The property lies within a peripheral big game habitat area. Because of the large number of existing and approved dwellings within Section 18 (30 dwellings), Section 18 is considered impacted for wildlife habitat and there is no requirement to further evaluate whether additional dwellings would impact wildlife.
- E. Wetlands** -- No wetlands are identified within the proposal area in the National Wetlands Inventory (NWI) wetlands maps.

VII. PUBLIC FACILITIES AND SERVICES

- A. Fire** -- The property is located within the Lebanon Rural Fire Protection District.
- B. Police** -- The Linn County Sheriff's Department serves the area.
- C. School** -- The property is in the Lebanon School District, the Linn Benton Lincoln Education Service District and the Linn Benton Community College District.
- D. Other Districts** -- The property is within the Linn Soil and Water Conservation District.
- E. Sewage Disposal** -- Tax lot 801 contains an installed residential sewage disposal system. The Linn County Environmental Health Program (EHP) has approved a septic system for the dwelling on tax lot 801 and one additional system for a separate site on the eastern portion of tax lot 801. *Attachment 14* in Exhibit 1 of the Staff Report includes the two septic evaluations for tax lot 801, one evaluation

Exhibit 1
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for tax lot 805 and one evaluation for tax lot 806. Tax lot 805 and 806 were partitioned from tax lot 801 in 1993.

F. Water Supply – The application indicates there are two existing wells on the subject property. Information on the subject wells and a Water Resources Department (WRD) Well Log Report table listing information on other wells in the vicinity are included in the applicant's *Attachment 12*, in Exhibit 1 of the Staff Report. A water well report for the property from January 1994 showing 16 gallons per minute (gpm), and a well report from Star Water Systems from September 2001, showing 15 gpm and recommending the use of water storage tanks to maintain maximum flow are included in the record.

G. Access – On November 30, 1993 Linn County approved an easement across a one-foot wide barrier strip as access from the subject property to First Creek Drive. The easement was recorded on February 14, 1994.

The applicant is proposing to create two additional parcels for a total of three parcels and home sites on the subject 28.62-acre property. The proposed zoning would allow up to four additional parcels depending on septic suitability, availability of water, terrain features, access considerations, and compliance with other applicable property development standards. Two other parcels access First Creek Drive across the 60-foot wide flag strip on the subject property. If the driveway to First Creek Drive serves more than five home sites, increased road development standards, possibly including paving, may be required at that time.

VIII. Findings and Conclusions

The applicant's full argument and testimony were attached in Exhibit 1 of the Staff Report. The decision criteria are shown in *italics*, the applicant's statements are shown in **bold**, and the staff comments are shown in regular font.

A. Summary

The proposed Plan map amendment is to change the Plan designation of the subject 28.62-acre property from Farm/Forest-Rural Residential Reserve to Non-Resource. This action would include a concurrent Zoning Map amendment to change the zoning designation of the property from Farm/Forest (F/F) to Non-Resource (NR-5). The NR-5 zone has a five-acre minimum for the creation of new parcels and allows one dwelling per legal lot or parcel.

Exceptions to Statewide Planning Goal 3 (agricultural land) or Goal 4 (forest land) are not required to adopt the proposed Non-Resource Plan and zoning designations if the evidence supports findings that the property is not agriculture or forest land pursuant to the Plan policies in *LCC 905.960* and the definitions in Goal 3 and Goal 4.

Exhibit 1
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The application includes 37 pages of written applicant testimony plus 13 supporting attachments supporting the Board's findings and conclusion that exceptions to Goal 3 and Goal 4 are not required to adopt the Non-Resource Plan and Zoning designations on this property, because the property is not defined as agricultural land or forest land under the Plan policies and the statewide goals.

Two subsequent letters from Mr. Brosy (January 25, 2005 and Feb. 8, 2005) and a Feb. 7, 2005 letter from Jackson & Prochnau are also part of the applicant's written testimony and are included in the record. Portions of the applicant's testimony are cited below.

In addition to showing the property is not farm or forest land, the applicant provided evidence that the property is suitable for the proposed zoning, including information on access, septic suitability, water availability, and other applicable property development standards. The applicant provided convincing evidence that the proposal would not conflict with other land uses and that other criteria in *LCC 921.874* are satisfied. Because the property is found to meet the suitability requirements for the proposed development density, the property is eligible for the NR-5 (5-acre minimum) zoning designation.

B. Criteria and Findings

The Findings address specific sections of the *Linn County Land Development Code 921.874*, for a Comprehensive Plan Map Amendment as follows:

- (1) The amendment is consistent with and does not alter the intent of applicable section(s) of the *Comprehensive Plan*;
- (2) The amendment will be compatible with adjacent uses and will not adversely impact the overall land use pattern in the area;
- (3) The amendment, if within an adopted urban growth boundary, is in substantial conformity with the *Comprehensive Plan* and implementing ordinances of an affected city;
- (4) The amendment will not have a significant adverse impact on a sensitive fish and wildlife habitat;
- (5) The amendment will not have a significant adverse impact upon the provision of public facilities including police and fire protection, sanitary facilities and storm drainage facilities;
- (6) The amendment will not have a significant adverse impact upon the transportation facilities;
- (7) The presence of any development limitations including geologic hazards, flood hazards or water quality or quantity, or will not have a significant adverse impact on land uses permitted through the amendment;
- (8) An exception to the statewide goals is not required. If required, then findings have been prepared to meet the exception criteria; and,

Exhibit 1
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(9) The amendment is consistent with the statewide planning goals.

1. **Criterion 921.874(A)(1) The amendment is consistent with and does not alter the intent of applicable section(s) of the comprehensive plan.**

The following are the applicable sections of the Linn County Comprehensive Plan.

1.A. Farm/Forest Lands Policies (LCC 905.330)

1.A.1 *Linn County shall adopt zoning that will maintain the resource orientation of Farm/Forest lands*

Findings of Fact: The subject property would act as a buffer between the resource property to the west and the primarily 2.5- 5 acre properties to the east. The larger proposed tracts of land (five acre minimum) on the subject property will maintain the rural character of the property by allowing low-density residential development to co-exist with wildlife habitat. The remaining Farm/Forest lands in the general vicinity of this application will remain viable and basically undisturbed or unchanged partly because of the significant topographic barrier which is the steep slope immediately west, and because of the lack of connecting roads to those resource lands (Applicant's attachment #3 – Site Map with topography).

Conclusion: The nature of the property as a buffer and the property as a buffer and the low density development proposed for the property, coupled with the topographic barrier and the lack of connecting roadways will maintain the resource orientation of the surrounding Farm/Forest lands.

1.A.2 *Impacts on the local economy will be assessed before comprehensive plan amendments are approved to change a Farm/Forest designation to a development designation.*

Findings of Fact: The property is not in any farm or forest production. The great difficulties and impracticalities of any such production are discussed at length in the application (see response to Non-Resource land policies). A portion of the property was logged approximately 50 years ago, but the extent of the logging is unknown because few stumps exist. Some grazing was also attempted several years ago. The property has never been used for any other farm or forest use. For the 2003 tax year, the property and improvements were assessed for \$1,296.98. If the Schwindt property is developed for future residential uses the amount of real property taxes on the property will significantly increase. Developing the property will create short-term construction jobs for building access roads, installing septic systems and wells and building dwellings. The addition of the few extra homesites enabled by this plan and zone change can have only a very minor positive or negative long term impact on the local economy of Linn County.

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Conclusion: The property is not a significant contributor to the local economy in its present state. The resource use of the property has been sparse and unsuccessful, so the impact of taking the property out of resource production will not negatively impact the local economy. The local economy will be improved in the short-term by the creation of jobs for building roadways, installing septic systems and wells and building houses. The local economy will also be improved by the increase in taxes to be paid to the various taxing districts.

1.A.3 *Linn County shall insure that siting of and access to non-resource related dwellings will not adversely affect nearby farm and forest lands or remove significant acreages from production*

Findings of Fact: The very steep, rocky slope faces on the far west of the site tend to isolate this property from larger, resource lands further to the west and south. The consistent east/southeast slope down from these two high points orients the property toward the rural residential lands in the First Creek Drive neighborhood.

The homes along First Creek Drive are part of an exception area approved by the County during the Comprehensive Plan adoption and acknowledgement era of the early 1980's. The zoning for that area is RR-2.5, Rural Residential. There are approximately 45 dwellings in this area south of Hidden Valley Road and including Buck Hill Lane. The topography and rocky soils result in a larger amount of natural area left between dwellings (application page 3), than in a more typical Linn County rural residential area in lower elevation, less severe soil and rock situations.

The Schwindt property is physically isolated from agricultural and forest resource uses to the west by the steep ridge and by the lack of road connections to the west. Topography and lack of road connections also isolate the Schwindt property from resource lands to the south and north. Any farm practices on adjacent or nearby agricultural lands will still be undertaken on adjacent or nearby agricultural lands without any negative impact or increased difficulty. The isolated nature of the Schwindt property is created by the distinct topographic barriers as well as the lack of roadway connections to resource areas (Applicant's Attachment #3 Map). The few additional homes on the Schwindt property will take access from an extension of First Creek Drive, coming from the east through the existing exception area. This access is completely removed from all existing resource lands to the west and north. The conclusion is that changing the designation of this one particular tax lot (801) will not hinder farm practices to be undertaken on adjacent or nearby agricultural lands (application page 8).

The isolation of the Schwindt property from resource uses has already been established. This is shown by the topographic map and the tax lot map (attachments 3 and 4). The topographic map shows the steep ridge that creates a physical separation between the Schwindt site and resource lands to the west. The

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tax lot map also shows that an extension of First Creek Drive would be unnecessary for resource use (logging) access, as other, less intrusive and more direct routes are readily available (application, page 9). These factors are supported by the soils classification map, which is Applicant's Attachment #5).

Land use compatibility has been discussed previously in the application and in these findings. This site orients clearly to the rural residential development built along First Creek Drive, because it is at the end of the same drive, and because the property slopes toward that exception area neighborhood and away from the resource lands beyond the ridge to the west. If the NR-5 zone is granted, the applicant will create two additional parcels for a total of three parcels on the 28.62-acre parcel. Further divisions may be possible depending on site suitability. These lot sizes will be compatible with the parcel sizes immediately to the east and throughout the exception area to the east and northeast. The tax lot map in attachment 4 (pp. 15) of the application illustrates the development pattern.

The approval of this Plan and Zone change will not remove any acreage from farm or forest production, as none now exists on the Schwindt property, and as the testimony and evidence in the record clearly shows that the property is not suitable for such resource production.

Conclusion: This property is isolated from other farm and forest lands to the west and north by significant topography (steep slopes) and lack of roadway connections. Because of topography and roadway connections, this site orients towards the existing rural residential area that uses First Creek Drive for access. The siting of this Non-Resource Plan and zone designation for the Schwindt property will not adversely affect nearby farm or forest lands or remove significant acreages from production.

1.A.4. *Linn County shall utilize its agency involvement program to request comments on the impact of proposed comprehensive plan amendments, zone changes and other land use actions of Farm/Forest lands.*

Findings of Fact: Comments were requested by all appropriate agencies through the notice process by Linn County, prior to the beginning of public hearings on this application.

Conclusion: Agency comments on the impact of the proposed comprehensive plan amendment and zone change were requested by Linn County.

Conclusion: The evidence and testimony submitted before the Board supports the Board's conclusion that the proposal satisfies the criterion in *LCC 921.874(A)(1)*.

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2. ***Criterion 921.874.A.2: The amendment will be compatible with adjacent uses and will not adversely impact the overall land use pattern in the area***

The very steep, rocky slope faces on the far west of the site tend to isolate this property from larger, resource lands further to the west. The consistent east/southeast slope down from these two high points orients the property toward the rural residential lands in the First Creek Drive neighborhood.

The homes along First Creek Drive are part of an exception area approved by the County during the Comprehensive Plan adoption and acknowledgement era of the early 1980's. The zoning for that area is RR-2.5, Rural Residential. There are approximately 45 dwellings in this area south of Hidden Valley Road and including Buck Hill Lane. The topography and rocky soils result in a larger amount of natural area left between dwellings (application page 3).

The Schwindt property is physically isolated from agricultural and forest resource uses to the west by the steep ridge and by the lack of road connections to the west. Topography and lack of road connections also isolate the Schwindt property from resource lands to the south and north. The Board finds that farm practices on adjacent or nearby agricultural lands will still be undertaken on adjacent or nearby agricultural lands without any difficulty. This finding is made due to the preponderance of Class VI soils in the vicinity, the proximity of the exception area to the east, and the isolated nature of the Schwindt property created by the distinct topographic barriers as well as the lack of roadway connections to resource areas. The Board finds that changing the designation of this one particular tax lot (801) will not hinder farm practices to be undertaken on adjacent or nearby agricultural lands (application page 8).

The isolation of the Schwindt property from resource uses has already been established, as shown by the topographic map and the tax lot map (application attachments 3 and 4). The topographic map shows the steep ridge that creates a physical separation between the Schwindt site and resource lands to the west. The tax lot map shows that an extension of First Creek Drive would be unnecessary for resource use (logging) access, as other, less intrusive and more direct routes are readily available (application, page 9).

Evidence to support a finding of land use compatibility was provided in the application and in testimony before the Board. This site orients clearly to the rural residential development built along First Creek Drive, because it is at the end of the same drive, and because the property slopes toward that exception area neighborhood and away from the resource lands beyond the ridge to the west. If the NR-5 zone is granted, the applicant will create two additional parcels for a total of three parcels on the 28.62-acre parcel. Further divisions may be possible. These lot sizes will be compatible with the parcel sizes immediately to the east and throughout the exception area to the east and northeast. This is illustrated by the tax lot map, in the applicant's attachment 4.

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Conclusion: The evidence and testimony submitted before the Board supports the Board's conclusion that the proposal satisfies the criterion in LCC 921.874(A)(2).

3. **Criterion:** *LCC 921.874(A)(3) The amendment, if within an adopted urban growth boundary, is in substantial conformity with the Comprehensive Plan and implementing ordinances of an affected city*

This property is outside the urban growth boundary of the City of Lebanon, the nearest incorporated city, so the policy does not pertain to this application.

Conclusion: The proposal satisfies the criterion in LCC 921.874(A)(1).

4. **Criterion:** *LCC 921.874(A)(4) The amendment will not have a significant adverse impact on a sensitive fish or wildlife habitat*

Streams in the general vicinity of the subject property are discussed on applicant's page 9, bottom paragraph. Geographic barriers minimizing impacts are described on Page 18, top paragraph. Wildlife habitat is discussed on Page 34, and soil and vegetation and the likely impacts of development are described on Page 35, all from the applicant's statement.

The peripheral elk and deer winter range, as discussed on page 5 of this findings Exhibit 1, are not impacted by the proposed Plan and Zone map amendments. Statewide Goal 5 is further addressed in the application on page 28.

The Schwindt property does not contain any identified open spaces, scenic or historic areas or natural resources as mapped by Linn County. According to the Oregon Department of Fish and Wildlife, the subject property is within the "peripheral elk and deer winter range." ODF&W makes a distinction between "major" and "peripheral" habitats. In the County Plan policies, "major" habitat equals "sensitive." The property is not mapped as a "major" elk and deer winter range, so the proposed amendment will not have a significant adverse impact on a sensitive wildlife habitat (application page 34).

The proposed Non-Forest Plan and zone designations still enable the County to protect that habitat in a similar manner as it is now protecting that habitat. The Linn County Plan at LCC 903.510(B)(3) describes ways that this winter range may be protected:

"The major and peripheral habitats are protected from most conflicting uses through application of the Forest Conservation and Management (FCM), Exclusive Farm Use (EFU), and Farm/Forest (F/F) zones. The FCM, EFU, and F/F zones encourage resource activities and limit potentially conflicting uses. Because of the recreational, economic, aesthetic, and ecological value of fish and wildlife, the potential impact on sensitive habitats will be assessed on planning permit applications for conditional uses, variances, and zone and

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plan amendments. Site standards, including the use of setbacks and clustering methods, will be used to lessen impact on habitats.”

The same section of the Linn County Plan has objective standards to determine when the residential densities within sections of land mapped with major or peripheral habitats. Because of the number of existing and approved dwellings (30) within this section 18, the section is considered by the Plan policies to be already impacted for wildlife habitat and there is no longer a requirement to evaluate whether any additional dwellings would have an impact on habitat (application page 34).

In the third sentence of the highlighted subsection above, the Plan anticipates zone and plan amendment applications may still be approvable in habitat areas, depending upon the potential impact on those habitats. That is to say that the FCM, EFU and F/F zone designations are not the only zones that will adequately protect this resource. The Plan uses the phrase “protected from most conflicting uses” in the first sentence of this subsection because the Plan recognizes that deer and elk are wild animals that from time to time, roam into many parts of Linn County, and do not restrict their roamings to only FCM, EFU or F/F zone land. The FCM, EFU and F/F zones are not the only way to avoid or reduce conflicts, especially for only a peripheral, winter range (application page 34).

This peripheral habitat is still be protected by the County through the discretionary planning permit applications, including conditional uses, variances, and zone and plan amendments. The County has ample opportunity to use its discretionary authority to protect this habitat when reviewing these cases.

The Board finds that the proposal will not significantly disturb the peripheral elk and deer winter range. The densest possible development scenario under the Non-Resource Plan and zoning (NR-5) is one dwelling on five acres. Much or most of a typical five acre Non-Resource parcel can be left intact for grazing of wild animals (deer or elk). In the existing rural residential parcels in the vicinity of this site, only a small portion of most of those parcels is actually developed for residential use. For example, a rather large 3,000 sq. ft. house, even if it were spread out on only one level, occupies less than 1.4% of a five acre parcel. Additional impacted areas will vary depending upon the length of driveway, kind of accessory buildings, landscaping, etc. The Schwindt property and homesites in the near vicinity to the east have significant topography throughout with rocky soils and rock outcroppings. The percentage of the site areas that are altered or disturbed tends to be smaller as a result and response to that difficult topography and very thin soils. It is likely that much, if not most of the future parcel areas will remain in an undeveloped condition. This will enable occasional wildlife grazing in the large areas between the homes and therefore help protect the peripheral elk and deer winter range (Applicant’s page 35).

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Findings: The property does not contain any sensitive riparian, fish or wildlife habitat identified in the *Linn County Comprehensive Plan Wildlife Habitat Inventory*. The property contains some scattered trees but is not forested. The property lies within a peripheral big game habitat area. Because of the large number of existing and approved dwellings within Section 18 (30 dwellings), Section 18 is considered impacted for wildlife habitat and there is no requirement to evaluate whether additional dwellings would impact wildlife. The clustering provisions do not apply to new residential development on this property.

Conclusion: The evidence and testimony submitted before the Board supports the Board's findings and conclusion that the proposal satisfies the criterion in *LCC 921.874(A)(4)*.

5. **Criterion: *LCC 921.874(A)(5) The amendment will not have a significant adverse impact upon the provision of public facilities including police and fire protection, sanitary facilities and storm drainage facilities***

The property is located within the Lebanon Fire Protection District and Linn County Sheriff protection area. The property has access to a county road for fire and police protection services. Each future residential unit will need to be approved for septic facilities by the Linn County Environmental Health Division. As the property is developed for residential use, each building placed on the property will need to be evaluated for storm drainage needs, and no additional runoff will be allowed to negatively impact properties located downstream. The development will result in no significant adverse impacts on police or fire protection, sanitary facilities or storm drainage (Applicant's pages 28-29).

The one existing dwelling on this site is using a County-approved septic tank and drain field. The Linn County Environmental Health Program has approved three additional sites for new systems on tax lot 801. Those earlier tests in the mid-1980s were successful, but systems were not constructed. If more testing is required, it is reasonable to assume that testing for two or three more dwellings will be successful, especially since there has been no disturbance to the property or properties in this immediate vicinity. The NRCS report on the Witzel soil types in this area cautions that septic tank absorption fields are not suited to this soil unit because of the shallow depth to bedrock and slope. However, there will be care to site the drain fields and replacement drain fields on the most gradual slopes. County Sanitarian staff is very knowledgeable about drain field characteristics and will require better treatment methods such as sand filters, if the situation requires. Other effectively operating septic tank/drain fields exist in the same Witzel soil series in the exception areas farther down First Creek Drive from this site. Soils are illustrated on the soil map and tax lot map, attachments 4 and 5 (application page 16).

The Lebanon Rural Fire Protection District serves this area. Response times are acceptable, given the proximity of this site to the City of Lebanon. The fire

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district did not object to this proposal or an earlier proposal on this property (application page 17).

Attachment #14 of the application contains copies of four septic site approvals on tax lot 801 as it was configured prior to 1993. The first evaluation is for tax lot 805, partitioned from the southeastern 3 acres of tax lot 801. The second septic evaluation is for the existing dwelling site on the western portion of the property. The third evaluation is for tax lot 806, partitioned from the northeastern 3 acres of tax lot 801. The fourth septic evaluation is for an area west of tax lot 806.

Conclusion: The evidence and testimony submitted before the Board supports the Board's findings and conclusion that the proposal satisfies the criterion in *LCC 921.874(A)(5)*.

6. **Criterion: *LCC 921.874(A)(6) The amendment will not have a significant adverse impact upon the transportation facilities***

The property has frontage at the end of First Creek Drive, an existing county road built to County rural road standards and in good condition. The roadway serves over 30 dwellings. The specific method of extending access to future homesites will be approved by Linn County as part of the land division process. Because only a maximum of four additional dwellings (including the existing dwelling) would be enabled by the proposed zone change, there will be no significant negative impact to First Creek Drive. Linn County Public Works received notice and an opportunity to comment on this Plan and zone change application (application page 29).

The proposed Plan and zone amendment will not require the creation of any new county roadways. The Schwindt property is at the end of First Creek Drive, as shown on the maps included in the record. Linn County Public Works will determine the level of improvement necessary for an extension of the road, if necessary. This situation will create very little additional impact on the surrounding area. Adding traffic from two more dwellings on the Schwindt property, with the possibility of future divisions to create a maximum of two more dwellings at the end of the roadway, currently serving approximately 30 dwellings, is a minor change to First Creek Drive. This road access is adequate to accommodate this proposed Plan and zone change (Application page 16).

There are approximately 30 dwellings already using this county roadway that is paved to county rural roadway standards and in good condition. That road is paved all the way to the driveway serving 38628 First Creek Drive, which is the nearest house to the Schwindt property (tax lot 805). Schwindt has adequate frontage on the end of First Creek Drive to extend "flag lot" ownerships and a jointly used private roadway. Other details regarding the improvement of access to the new parcels enabled by this Plan and zone change will be reviewed and approved through the County's subsequent land division process.

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The property includes a 60-foot wide flag that accesses First Creek Drive across a one-foot access control strip. The applicant is proposing to create two additional parcels for a total of three parcels and home sites on the subject 28.62-acre property. The proposed zoning would allow up to four additional parcels. Two other parcels access First Creek Drive across the 60-foot wide flag strip on the subject property and across the barrier strip. The proposed partitioning to create additional home sites would require county access approval to cross the barrier strip. If the driveway to First Creek Drive were to serve more than five total home sites, increased road development standards, possibly including paving, may be required at that time.

Conclusion: The testimony and evidence submitted before the Board supports the Board's conclusion that the proposal satisfies the criterion in *LCC 921.874(A)(6)*.

7. **Criterion: *LCC 921.874(A)(7) The presence of any development limitations including geologic hazards, flood hazards or water quality or quantity will not have a significant adverse affect on land uses permitted through the amendment***

There is one well located on the Schwindt property that provides 30 gallons per minute. The application includes attachments related to well water. The record does not show any negative information regarding water quality problems. There are no development limitations (geologic hazards, flood hazards or water quality or quantity) that would have an adverse effect on future land uses permitted by this application. The site is not within any mapped flood plain or geologic hazard area. The terrain is similar to many of the steeper homesites already existing along First Creek Drive. This standard is met because the property does not contain any adverse developmental limitations for low density (five acre minimum) development (application page 29).

The well log data for the two existing wells on the property is included in the application as attachment 12. Information from well drillers with significant experience in this immediate vicinity is included as attachment 12. Well log summaries for all of Section 18 (one square mile) are also included as attachment 13 (application page 16).

Tax lot 801 is not within any flood plain, as mapped by the Federal Emergency Management Administration (FEMA). No mass movement topography is identified on the properties in the Environmental Geology of Western Linn County, Oregon, published by the State Department of Geology and Mineral Industries (DOGAMI) (application page 17).

The applicant's *Attachment 12* contains two well logs. A well report from January 1994 shows 16 gallons per minute (gpm). A well report from Star Water Systems from September 2001, shows 15 gpm and recommends the use of water storage tanks to maintain maximum flow.

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Conclusion: The testimony and evidence submitted before the Board supports the Board's findings and conclusion that the proposal satisfies the criterion in *LCC 921.874(A)(7)*.

8. **Criterion:** *LCC 921.874(A)(8) An exception to the statewide planning goals is not required. If required, then findings have been prepared to meet the exception criteria*

This criterion is addressed by the specific language of Linn County Title 9, Community Development, Section XII, Non-Resource Lands, LCC 905.960, titled Policies for non-resource lands, subsection (K). The Linn County Comprehensive Plan expressly identifies reasons why exceptions to statewide planning goals 3 or 4 are not required to rezone land that qualifies under the Plan as Non-Resource land (Linn County Ordinance Numbers 04-041, 042 and 043). DLCD participated in the County's legislative process to adopt Non-Resource land provisions in the Plan and the Land Development Code. Those provisions were not appealed. Compliance with other statewide goals is also addressed in the application (application page 30).

The Board finds that the property is not agricultural land and is not forest land as defined in Statewide Planning Goal 3, Goal 4, and LCC 905.960, and that an exception to those goals is not required to adopt the Non-Resource Plan designation and the proposed NR-5 zoning designation. The evidence and testimony to support these findings is presented throughout this findings document, and specifically in Section IX, titled "Policies for Non Resource Lands; LCC 905.960" below. The Board finds that exceptions to Statewide Planning Goals are not required.

Conclusion: The testimony and evidence submitted before the Board supports the Board's findings and conclusion that the proposal satisfies the criterion in *LCC 921.874(A)(8)*.

9. **Criterion:** *LCC 921.874(A)(9) The amendment is consistent with the statewide planning goals.*

There is ample evidence and testimony throughout this findings document that the proposed amendment is consistent with the Statewide Planning Goals. The applicant addresses the goals on page 30 and in pages 33 through 37 of the application. Specific findings to address compliance with Goal 5 are in section 4 above. Goal 12 is addressed in section 6. Compliance with Goal 3 and Goal 4 is addressed in section 1, section 2, and section 8 above; and in Section IX below.

Conclusion: The testimony and evidence submitted before the Board supports the Board's findings and conclusion that the proposal satisfies the criterion in *LCC 921.874(A)(9)*.

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IX. Policies for Non-Resource lands; LCC 905.960

The proposed Plan and zone amendments must be consistent with the Non-Resource Policies in *LCC 905.960*.

1. **Criterion: *LCC 905.960(A) Linn County shall provide for the appropriate and orderly development of Non-Resource lands while minimizing potential conflicts with other land uses.***

The minimal potential conflicts with other resource-zoned lands are supported by the application. The record shows that there will be minimal potential conflicts with nearby land in the adjacent rural residential exception area (primarily along First Creek Drive). There are approximately 30 dwellings already using this county roadway that is paved to county rural roadway standards and in good condition. That road is paved all the way to the driveway serving 38628 First Creek Drive, which is the nearest house to the Schwindt property (tax lot 805). The Schwindt property has adequate frontage on the end of First Creek Drive to extend "flag pole" ownerships and a jointly used private roadway. Other details regarding the improvement of access to the new parcels enabled by this Plan and zone change will be reviewed and approved through the County's subsequent land division process.

The good quality of First Creek Drive and the small incremental impact these homesites will have on the overall use of that County road certainly will create only a minimal impact on the nearby homesites in the exception area. Also, the fact that these parcels must be at least five acres in size (see below) compared to the mostly RR-2 ½ zoned parcels in adjacent neighborhood, further reduces potential impact. Also, the vegetation on the future Schwindt parcels, although mostly small scattered trees and underbrush, will provide good buffering, especially given the relatively large parcel sizes (application page 19).

Conclusion: The testimony and evidence submitted before the Board supports the Board's conclusion that the proposal satisfies the criterion in *LCC 905.960(A)*.

2. **Criterion: *LCC 905.960(B) Land designated Non-Resource should have conditions that permit development with a limited exposure to geological hazards or a 100-year flood.***

As previously established in these findings, the Schwindt property is not mapped as a geologic hazard area by any authoritative public document. It is also not within a 100-year flood plain. The NRCS report classifies the Witzel soils as well drained. This is primarily related to the high rock content of the soil horizons. This is good for road drainage, creating a stable environment for road construction and maintenance. The NRCS observations relating to dwelling construction on this soil type are common conditions for construction on higher elevations in Linn County (application page 19).

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Conclusion: The testimony and evidence submitted before the Board supports the Boards findings and conclusion that the proposal satisfies the criterion in *LCC 905.960(B)*.

3. **Criterion:** *LCC 905.960(C) Land designated Non-Resource should be located or have the capability to be included in a rural fire protection district.*

As previously established in these findings, the subject property is within the Lebanon Rural Fire Protection District (application page 19).

Conclusion: The testimony and evidence submitted before the Board supports the Boards findings and conclusion that the proposal satisfies the criterion in *LCC 905.960(C)*.

4. **Criterion:** *LCC 905.960(D) Land designated Non-Resource should have favorable conditions for location of sub-surface waste disposal systems and for supplying adequate amounts of potable water.*

NRCS's cautionary comments about sub surface waste disposal systems have been previously noted. However, the previous subsurface testing has been successful on this site, and the physical conditions on the site have not changed since those tests in the 1980's. New testing will be conducted, per Linn County's standards. In the event that traditional septic tank/drain field combinations do not test out for certain specific locations, there are many alternative areas to test on such large parcels. Also, sand filters are often used as approved alternatives to septic tanks and drain fields by Linn County (application page 19).

As previously noted in these findings, the existing well on tax lot 801 (Schwindt) is adequate for the existing dwelling. A holding tank was constructed in part in case this well serves more than the one dwelling in the future. The information on applicant's attachment 12 from well drillers with extensive experience in the vicinity, together with the drill log information for this site (applicant's attachment 13) lead to the conclusion that there are favorable conditions for potable water supply (residential wells) (application page 20).

Conclusion: The testimony and evidence submitted before the Board supports the Boards findings and conclusion that the proposal satisfies the criterion in *LCC 905.960(D)*.

5. **Criterion:** *LCC 905.960(E) Land designated Non-Resource should have access to a county road with sufficient capacity to accommodate additional development.*

Access and road capacity have been previously addressed in these findings. First Creek Drive is in good to excellent condition and is improved to full county rural

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standards. Linn County Public Works has previously issued access permits for a similar level of use at the end of this roadway. The roadway is well drained, and along much of its length has painted fog lines and painted centerlines. Four more dwellings at the end of First Creek Drive represent an increase of only 12% usage. There are a few parcels in the exception area that are not developed (application page 20).

Conclusion: The testimony and evidence submitted before the Board supports the Board's findings and conclusion that the proposal satisfies the criterion in *LCC 905.960(E)*.

6. **Criterion: *LCC 905.960(F) The Non-Resource Plan designation is implemented with two Non-Resource zoning districts that are distinguished only by minimum property size standards. The NR-5 zone has a 5-acre minimum property size for new units of land and the NR-10 zone has a 10-acre minimum property size for new units of land.***

This application is for the NR-5 zoning (application page 20). The evidence and testimony supports a finding that the property can provide the necessary facilities for the NR-5 zoning designation.

Conclusion: The testimony and evidence submitted before the Board supports the Board's findings and conclusion that the proposal satisfies the criterion in *LCC 905.960(F)*.

7. **Criterion: *LCC 905.960(G) The NR-5 (5-acre minimum for new units of land) district is applied to suitable areas in order to maintain a rural development pattern reasonably compatible with nearby resource and non-resource lands. When applied near agricultural and forest resource areas, the 5-acre size standard will maintain an adequate buffer to minimize potential conflicts.***

As previously established in these findings, the five-acre zoning will be most compatible with the adjacent exception area zoning of RR- 2 ½. The substantially steep ridge line on the western edge of the site creates significant buffering from nearby farm and forest zones, as does the large proposed lot pattern. The trees and underbrush on the site, while not good for commercial forest production, still provide good buffering, as will the significant topographic barriers (application page 21). The application provides evidence and testimony on pages 3-4 and pages 15-19 to support a finding of suitability and compatibility for the proposed NR-5 zoning designation.

Conclusion: The testimony and evidence submitted before the Board supports the Board's findings and conclusion that the proposal satisfies the criterion in *LCC 905.960(G)*.

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8. **Criterion: LCC 905.960(H) The NR-10 (10-acre minimum for new units of land) district is applied to suitable areas where larger property sizes are necessary to maintain a rural development pattern reasonably compatible with nearby resource and non-resource lands, or where larger property sizes are necessary to meet residential suitability characteristics such as groundwater availability, septic suitability, or access standards. When applied near agricultural and forest resource areas, the 10-acre size standard will maintain an adequate buffer to minimize potential conflicts.**

The evidence and testimony, as previously established in this findings document, support the Board's finding that it is not necessary to apply the larger NR-10 zoning designation to this property. The record, as previously described in this document, shows that the NR-5 zone will be compatible with surrounding farm, forest and residential land use patterns. Groundwater, septic, and access suitability and availability to support the five-acre density (rather than a 10-acre density) have been thoroughly documented in the application, the hearing process and in this findings document (application page 21). The applicant also discusses suitability and compatibility for the NR-5 zoning designation on pages 3-4 and pages 15-19.

Conclusion: The testimony and evidence submitted before the Board supports the Board's findings and conclusion that the proposal satisfies the criterion in LCC 905.960(H).

9. **Criterion: LCC 905.960(I) New public sewer and water systems may not be established within the NR zone unless the County determines that a health hazard exists pursuant to DEQ or Oregon Health Division procedures and criteria. A new or extended public water or sewer system is appropriate in the rural areas only when needed to protect the public's health and safety.**

No public sewer or water systems are proposed or are necessary for the Schwindt property (application page 21).

Conclusion: The proposal satisfies the criterion in LCC 905.960(H).

10. **Criterion: LCC 905.960(J) A comprehensive plan and zoning map amendment must be approved before property designated Agricultural Resource or Farm/Forest can be amended to a Non-Resource Plan map designation. In addition to the LCC plan amendment criteria, the following criteria (Statewide Planning Goal and Administrative Rule resource land definition) must be met:**
(1) The land is not predominantly SCS Class I, II, III and IV soils.

Findings of Fact: The entire Schwindt property is comprised of SCS Class VI soils. This is shown on applicant's attachment 5, which is a soils map of this vicinity taken directly from the Soil Conservation Service (SCS) Soil Survey of Linn County Oregon (1982). That mapping was not disputed by any written or

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oral testimony before Planning Commission or the Board of Commissioners. Since the site has NO soils classified by SCS as Class I, II, III or IV soils, the request meets this criterion.

Conclusion: The testimony and evidence submitted before the Board supports the Boards findings and conclusion that the proposal satisfies the criterion in *LCC 905.960(J)(1)*.

(2) The land is not intermingled with or adjacent to SCS Class I-IV land within the same farm unit.

Findings of Fact: The evidence and testimony show that the Schwindt property is not a "farm unit." The property is not in farm use. The property is entirely comprised of SCS Class VI soil and does not contain any SCS Class I-IV land, as indicated by the SCS soils mapping for Linn County. This site is also not intermingled with lands in capability class I through IV. In fact, much of the surrounding area is class VI soil. Sizeable acreages on all sides of the Schwindt property are class VI soil. The SCS map shows that well beyond the Schwindt property boundaries in all directions are located a large amount of class VI soil.

Conclusion: The testimony and evidence submitted before the Board supports the Boards findings and conclusion that the proposal satisfies the criterion in *LCC 905.960(J)(2)*.

***(3) The land is not suitable for farm use taking into consideration;
(a) Soil fertility;***

Findings of Fact: There are two kinds of Witzel (both Class VI) soils occurring on this site. The steepest part of the Schwindt site, immediately below a significant ridge on the far west of the site, is Witzel 104G. That soil, as described by NRCS, has very steep slopes (30-70 percent). Its capability for agricultural and forest purposes in all instances as reported in the NRCS survey book, is even less than the Witzel 104E soils.

The 104E Witzel soils were described in the NRCS mapping and survey book for Linn County, and included in applicant's response to LCC 905.910(A). In addition, that report states (on pages 152 and 153 of that NRCS Linn County survey) that depth to hard bedrock and effective rooting depth are (only) 12 to 20 inches. This is a particular problem for viable forest growth as well. The hazard of erosion is slight to high. NRCS states that the main agricultural purpose for this soil type (104E Witzel) is for native pasture. This means that other forage grasses are difficult to sustain. When grazing is attempted, the main limitations are droughtiness and slope. The soil in this unit is droughty because of low rainfall in summer and shallow depth to bedrock. Lack of sufficient moisture limits the amount of fertilizer that can be used by plants. Only a small portion of fertilizer

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can be applied in fall to take advantage of the moisture available in winter. The use of equipment is limited by stones on the surface and by slope.

The property contains a number of surface areas with exposed bedrock on the surface. Applicant's attachment 7 is comprised of three site photos, the third of which is a photo of exposed bedrock on a small surface cut on tax lot 801. Additional photographs showing the same characteristics were entered into the record by Planning and Building Department staff.

Further evidence of the very poor soil fertility condition comes from letters and personal background from Ray Silbernagel (applicant's attachment 9), and Benjamin Brown (applicant's attachment 10). Both men have farming experience in this vicinity and both men strongly advise against considering this site a viable farming site. Silbernagel's letter (paragraph 3) states: *"I have been farming in the Willamette Valley since the 1940's, and have gone through all the changes in crops and farming methods, during that time. The possibility of this land every (sic) being worth farming is beyond my imagination."* Benjamin Brown's first paragraph, beginning with the second sentence, states: *"I have been over most of it on foot and consider it very poor for farm use. The soil is very thin with solid rock on top in many places, and boulder and rocks scattered over most of the area. Being very thin the soil dries out very quickly, so is not suitable for crop or grazing. It would be impossible to till, and being so steeply sloped, the soil would erode badly."* His last sentence states: *"I have been farming in this area since 1947 and would not even attempt to use this land for farming."*

During the Planning Commission and Board of Commissioners hearings, the opposition (Jim Just of Friends of Linn County) did not refute any issues regarding farm viability, and instead concentrated on forest issues.

Conclusion: The testimony and evidence submitted before the Board supports the Board's findings and conclusion that the suitability for farming in relation to soils fertility meets the conditions for Non-Resource Plan designation under the criterion in *LCC 905.960(J)(3)(a)*.

- (3) The land is not suitable for farm use taking into consideration;***
(b) Suitability for grazing;

Findings of Fact: Suitability for pasture and grazing were addressed in the previous criterion. Testimony indicates that the NRCS cautions that grazing when the (Witsel 104E) soil is moist results in compaction of the subsurface layer, poor tilth (the physical condition of the soil as related to tillage, seedbed preparation, seedling emergence and poor root penetration), and excessive runoff. The two letters submitted by area farmers and identified in the previous criterion also support the finding that the property is not suitable for grazing as a form of farming.

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Conclusion: The testimony and evidence submitted before the Board supports the Board's findings and conclusion that the proposal satisfies the criterion in LCC 905.960(J)(3)(b).

***(3) The land is not suitable for farm use taking into consideration;
(c) Climatic conditions;***

Findings of Fact: The application and testimony established the droughty characteristics of the soil, which relates to the climatic conditions on the property. NRCS notes that the annual average precipitation is 40 to 60 inches, the average annual air temperature is 52 to 54 degrees F, and the average frost-free period is 165 to 210 days. Much of the property is comprised of ridge top topography, with south facing slopes. The property is subject to high winds as evidenced by highly defective trees with top breaks, "sweep" and "crook" evident in nearly every individual tree observed. As noted by Bill Roach of Jackson & Prochnau, consulting forest engineers (applicant attachment 8), it was difficult to locate any acceptable site trees on the property to estimate productivity, due to these pervasive form breaks. Mr. Roach also submitted a later written statement into the record dated February 7, 2005 supporting these conclusions. Testimony showed there is not enough moisture retention in the soil to support grasses into the summer.

Conclusion: The testimony and evidence submitted before the Board supports the Board's findings and conclusion that the proposal satisfies the criterion in LCC 905.960(J)(3)(c).

***(3) The land is not suitable for farm use taking into consideration;
(d) Existing and future availability of water for farm irrigation purposes;***

Findings of Fact: The limitations of water availability for irrigation purposes were discussed in the applicant's response to LCC 905.910(A), on pages 6 and 7 of the application. Besides the seasonal peak use/supply problems described in the application, there are practical problems posed for irrigating this kind of terrain with such a thin soil horizon, as stated in the NRCS report and cited in the applicant's statement.

Conclusion: The testimony and evidence submitted before the Board supports the Board's findings and conclusion that the land is not suitable for farm use taking into consideration existing and future availability of water for farm irrigation purposes. The Board concludes that the proposal satisfies the criterion in LCC 905.960(J)(3)(d).

***(3) The land is not suitable for farm use taking into consideration;
(e) Existing land use patterns;***

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Findings of Fact: As previously documented in these findings, the property is isolated from other resource area land by terrain as well as by (lack of) road connections. The site is at the end of First Creek Drive. Nearly all of the other properties along that long roadway are within a rural residential exception area. The properties immediately east of tax lot 801 (Schwindt) are already divided into similar sized parcels as would be enabled by this proposed Plan and zone change.

Conclusion: The testimony and evidence submitted before the Board supports the Board's findings and conclusion that the land is not suitable for farm use taking into consideration existing land use patterns. The Board concludes that the proposal satisfies the criterion in *LCC 905.960(J)(3)(e)*.

**(3) The land is not suitable for farm use taking into consideration;
(f) Technological and energy inputs required; or**

Findings of Fact: The record shows that the practical difficulty of cultivating the subject property (see NRCS comments regarding tillage) is significant. Extensive terracing is expensive to construct and maintain, and to date, no crops are raised in this area that warrant that kind of major physical site alteration. The slope and very rocky soils reduce the practicability of grazing as well as increases the energy required to have a practical farm use. This finding is supported by the letters from several areas farmers explaining why the property is not suitable for farm use, included in the applicant's attachments 9 and 10. The Witzel soil has significant limitations for fertilizing, as noted by the NRCS report. Massive fertilization is specifically discouraged by the NRCS report, in part because of the very shallow soils and the steep terrain.

Conclusion: The testimony and evidence submitted before the Board supports the Board's findings and conclusion that the land is not suitable for farm use taking into consideration the technological and energy inputs required. The Board concludes that the proposal satisfies the criterion in *LCC 905.960(J)(3)(f)*.

**(3) The land is not suitable for farm use taking into consideration;
(g) Accepted farming practices.**

Findings of Fact: The record shows that the difficulties of farming this property using accepted farming practices, or even by extraordinary attempts at fertilization, irrigation, or terracing, are significant and render the farm use of this land impracticable. The Witzel soil has significant limitations for fertilizing, as noted by the NRCS report. Extensive fertilization is specifically discouraged by the NRCS report, in part because of the very shallow soils and the steep terrain. Adequate irrigation water is not available in the summer months. Extensive terracing is expensive to construct and maintain, and to date, no crops are raised in this area that warrant that kind of major physical site alteration. The slope and very rocky soils reduce the practicability of grazing as well as increases the energy required to engage in a practical farm use. These findings are supported by the

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NRCS comments regarding tillage as well as documented letters by several area farmers who have reviewed the site, included in the applicant's attachments 9 and 10.

Conclusion: The testimony and evidence submitted before the Board supports the Board's findings and conclusion that the land is not suitable for farm use taking into consideration accepted farming practices. The Board concludes that the proposal satisfies the criterion in *LCC 905.960(J)(3)(g)*.

4) *The land is not necessary to permit farm practices to be undertaken on adjacent or nearby agricultural lands.*

Findings of Fact: The record establishes that the land is not necessary to permit farm practices on nearby lands. The land is not part of a farm unit. The property is isolated from other land in farm use by significant terrain barriers (steep ridge line) and lack of roadway connections to surrounding resource lands. There is a significant terrain barrier between the Schwindt property and F/F areas to the west. These same physical barriers prevent conflicts between other resource land and the subject property. F/F lands to the north and south have ample opportunity for their own access, and are not now connected by roads to the Schwindt property. The area to the east is predominantly exception area and not agricultural land by definition.

Conclusion: The testimony and evidence submitted before the Board supports the Board's findings and conclusion that the land is not necessary to permit farm practices to be undertaken on adjacent or nearby agricultural lands. The Board concludes that the proposal satisfies the criterion in *LCC 905.960(J)(4)*.

(5) *The land is not suitable for commercial forest uses including adjacent or nearby lands which are necessary to permit forest operations or practices on commercial forest lands or other forested lands that maintain soil, air, water and fish and wildlife resources.*

Findings of Fact: The Goal One Coalition submitted comments challenging the applicant's conclusion that the property is not forest land. The comments include arguments that the property is forest land because of forest suitability ratings and management recommendations in the NRCS soils report; and that the applicant's forestry report does not explain why the property cannot support other commercial forest tree species such as Ponderosa Pine. The Goal One comments also assert the property is "forested land" that maintains soil, air, water and fish and wildlife resources.

The only professional forester to analyze this property on the record, however, is Bill Roach, a professional forester with the firm Jackson & Prochnau. His original report is included as applicant's attachment #8. That report was supplemented in the record by another letter, dated February 7, 2005, submitted

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into the record in response to testimony by the Goal 1 Coalition. Of the 27 acre property in this application, only approximately 2 acres have enough trees in which to create any forest productivity site class or site index. This finding is supported by the information at the bottom of page 1 of the February 7, 2005 letter submitted into the record by Bill Roach, of Jackson, Prochnau and Associates; and the January 25, 2005 letter (bottom of page 2) to Board of Commissioners submitted into the record from John Brosy.

The harsh conditions for commercial forest growth were reported by Mr. Roach in applicant's attachment 8. Other significant conditions include weak and shallow class VI (Witzel) soils that have significant limitations to tilling, moisture retention and limitations for fertilizing. The Board finds that Mr. Roach's Feb. 7, 2005 letter (top of page 2) successfully overrides the claim that ponderosa pine could be commercially grown on the subject property.

The Board also finds that the land is not "other forested lands that maintain soil, air, water and fish and wildlife resources." This finding is adequately supported by the applicant's testimony and the overall record. Of primary significance is the fact that the property is not "forest lands." All but two acres of the property is nearly bare with thin rocky soils, dry grasses, and few shrubs. The lack of consistent tree cover limits cover for wildlife. No streams or water bodies occur on the property. Comments throughout the applicant's report address these other forest land values, including streams (applicant's page 9), geographic barriers (Page 18), wildlife habitat (Page 34), and soil and vegetation (page 35). Any minimal values that may exist for maintaining soil, air, water and fish and wildlife resources are likely to continue on the property, given the low residential density allowed by this application (five acre minimum size parcels); and the physical orientation and access orientation of this site towards existing rural residential exception area to the east, and away from the resource lands to the west.

Conclusion: The testimony and evidence submitted before the Board supports the Board's findings and conclusion that the land is not suitable for commercial forest uses including adjacent or nearby lands which are necessary to permit forest operations or practices on commercial forest lands, or other forested lands that maintain soil, air, water and fish and wildlife resources. The Board concludes that the proposal satisfies the criterion in *LCC 905.960(J)(5)*.

11. **Criterion: *LCC 905.960(K)*** *An exception to Statewide Planning Goals 3 and 4 is not required to support a plan map amendment to a Non-Resource Plan designation when detailed and factual evidence shows that the lands are not farm or forest lands as defined in the Goals.*

The Board finds that the overall record, as documented on virtually every page of this findings document, contains overwhelming detailed and factual evidence to show that the subject property is not farm (agricultural) land, as defined in Goal 3; or forest land as defined in Goal 4. The Board finds, therefore, that an exception

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to Statewide Planning Goals 3 and 4 is not required to support the proposed Plan map amendment to a Non-Resource Plan designation.

Conclusion: The testimony and evidence submitted before the Board supports the Boards findings and conclusion that proposal satisfies the Plan policy and criterion in *LCC 905.960(K)*.

12. **Criterion:** *LCC 905.960(L) Notwithstanding the provisions of LCC 905.120(G) and LCC 905.330(G), conversion of lands designated as Agricultural Resource or Farm/Forest in the Comprehensive Plan to a Non-Resource Plan designation does not require an exception to Statewide Planning Goal 3 or Goal 4.*

The Board finds that the overall record, as documented throughout this findings document, contains overwhelming detailed and factual evidence to show that the subject property is not farm (agricultural) land, as defined in Goal 3; or forest land as defined in Goal 4. The Board finds, therefore, that an exception to Statewide Planning Goals 3 and 4 is not required to support the proposed Plan map amendment to a Non-Resource Plan designation.

Conclusion: The testimony and evidence submitted before the Board supports the Boards findings and conclusion that proposal satisfies the Plan policy and criterion in *LCC 905.960(L)*.

13. **Criterion:** *LCC 905.960(M) Applying the Non-Resource designation on isolated tracts surrounded by farm or forest lands shall be discouraged if it is shown that a non-resource designation would adversely affect existing farm or forest uses.*

The zone map and aerial photos provided in the record show that the Schwindt property is not surrounded by farm or forest lands. Land to the east is developed as rural residential exception land with the RR-2 ½ (Rural Residential, 2.5-acre minimum) zone. The lands immediately adjacent to the east are residential-sized lots that are developed with one dwelling and not used as resource lands. The physical orientation of this site toward the residential neighborhood on First Creek Drive has been previously described. The adjacent and nearby property zoned for farm or forest use is completely isolated from the subject property by the existing topography. The relative isolation of this site from other F/F lands by topography and lack of roadways has also been previously described in this document and on page 23 of the application. The Board finds that the property is not surrounded by farm or forest lands; is isolated from nearby farm and forest uses; and that a non-resource designation would not adversely affect existing farm or forest uses.

Conclusion: The testimony and evidence submitted before the Board supports the Boards findings and conclusion that proposal satisfies the Plan policy and criterion in *LCC 905.960(M)*.

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14. **Criterion:** *LCC 905.960(N) Only lands designated Agricultural Resource, Farm/Forest, Agricultural Resource-Rural Residential Reserve or Farm/Forest-Rural Residential Reserve are eligible for a map amendment to Non-Resource.*

Conclusion: The subject property is designated Farm/Forest, and so is eligible for the requested Plan map amendment to a Non-Resource Plan designation. The proposal satisfies the Plan policy and criterion in *LCC 905.960(N)*.

X. LCC 921.874(9); Statewide Planning Goals

Linn County Code (LCC) 921.874 (9) requires that a map amendment is consistent with the statewide planning goals. Findings of compliance with the planning goals are addressed in this section.

Goal 1, Citizen Involvement

Goal 1 addresses Linn County's obligation for public notice and opportunity for hearings. The County established the Non-Resource Plan and zone designations through a legislative process that included ample and numerous opportunities for public and citizen involvement during the hearing process in 2003 and 2004.

The public hearings on this application included public notice and an opportunity for public comment. Affected public agencies and owners of property within 1000 feet of the subject property were provided written notice of this application at least 21 days prior to the scheduled public hearings. A public notice was also published in the Albany Democrat-Herald newspaper at least 21 days prior to the public hearings. The Board reviewed and considered all submitted testimony.

The Planning Commission held a public hearing on this matter at 7:00 p.m. on January 11, 2005 and voted 5-2 to recommend the Board approve the applications. The Board of Commissioners held a public hearing on this matter at 10:00 a.m., January 26, 2005. The hearing was held open for seven days for additional written testimony in opposition; and another seven days for written rebuttal testimony. After the close of the public hearing, the Board voted to direct the Planning and Building Department to prepare adoption documents for the approval of the proposed Plan and Zone amendments.

The Board finds that the proposed Plan and Zone map amendments are consistent with Goal 1.

Goal 2, Land Use Planning

Linn County's Comprehensive Plan and implementing ordinances have all been acknowledged by the State of Oregon. These County documents establish a procedure to amend the Comprehensive Plan map and zoning map. This application complies with the County's requirements for this type of land use action. The Non-Resource Plan and zoning designations were adopted into the Linn County Code in 2004 in compliance with state policies and procedures.

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The Board finds that the proposed Plan and Zone map amendments are consistent with Goal 2.

Goal 3, Agricultural Lands

The record, as previously documented in these findings, establishes that the subject property is not agricultural lands as defined in Goal 3. The Comprehensive Plan at LCC 905.920(A), Non-Resource Lands, establishes that Linn County Non-Resource lands are not subject to Statewide Planning Goal 3.

The Board finds that the proposed Plan and Zone map amendments are consistent with Goal 3.

Goal 4, Forest Lands

The record, as previously documented in these findings, establishes that the subject property is not forest lands as defined in Goal 4. The Comprehensive Plan at LCC 905.920(A), Non-Resource Lands, establishes that Linn County Non-Resource lands are not subject to Statewide Planning Goal 4.

The Board finds that the proposed Plan and Zone map amendments are consistent with Goal 4.

Goal 5, Open Spaces, Scenic and Historic Areas and Natural Resources

The evidence shows that the Schwindt property does not contain any identified open spaces, scenic or historic areas or natural resources as mapped by Linn County; and does not contain any wetlands, significant riparian or wildlife habitat.

According to the Oregon Department of Fish and Wildlife, the subject property is within the "peripheral elk and deer winter range." ODF&W makes a distinction between "major" and "peripheral" habitats. In the County Plan policies, "major" habitat equals "sensitive." The property is not mapped as a "major" elk and deer winter range, so the proposed amendment will not have a significant adverse impact on a sensitive wildlife habitat.

The proposed Non-Resource Plan and zone designations still enable the County to protect that habitat in a similar manner as it is now protecting that habitat. The Linn County Plan at LCC903.510(B)(3) describes ways that this winter range may be protected:

"The major and peripheral habitats are protected from most conflicting uses through application of the Forest Conservation and Management (FCM), Exclusive Farm Use (EFU), and Farm/Forest (F/F) zones. The FCM, EFU, and F/F zones encourage resource activities and limit potentially conflicting uses. Because of the recreational, economic, aesthetic, and ecological value of fish and wildlife, the potential impact on sensitive habitats will be assessed on planning permit applications for conditional uses, variances, and zone and plan amendments. Site standards, including the use of setbacks and clustering methods, will be used to lessen impact on habitats."

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The same section of the Plan contains objective standards to determine when the residential densities within sections of land mapped with major or peripheral habitats. Because of the number of existing and approved dwellings (30) within this section 18, the section is considered by the Plan policies to be already impacted for wildlife habitat and there is no longer a requirement to evaluate whether any additional dwellings would have an impact on habitat.

In the third sentence of the highlighted subsection above, the County anticipates zone and plan amendment applications may still be approvable in habitat areas, depending upon the potential impact on those habitats. That is to say that the FCM, EFU and F/F zone designations are not the only zones that will adequately protect this resource. The County uses the phrase "protected from most conflicting uses" in the first sentence of this subsection because it recognizes that deer and elk are wild animals that from time to time, roam into many parts of Linn County, and do not restrict their roamings to only FCM, EFU or F/F zone land. Clearly, the FCM, EFU and F/F zones are not the only way to avoid or reduce conflicts, especially for only a peripheral, winter range.

This peripheral habitat can also still be protected by the County through the discretionary planning permit applications listed in the subsection, including conditional uses, variances, and zone and plan amendments. The County has ample opportunity to use its discretionary authority to protect this habitat when reviewing these cases.

The proposal will not significantly disturb this peripheral elk and deer winter range. The densest possible development scenario under within the Non-Resource Plan and zoning (NR-5) is one dwelling on five acres. Much or most of a typical five acre Non-Resource parcel can be left intact for grazing of wild animals (deer or elk). In the existing rural residential parcels adjacent to and in the vicinity of the subject property, only a small portion of most of those parcels is actually developed for residential use. For example, a rather large 3,000 sq. ft. house, even if were spread out on only one level, occupies less than 1.4% of a five acre parcel. Additional impacted areas will vary depending upon the length of driveway, kind of accessory buildings, landscaping, etc.

The Schwindt property and other home sites in the near vicinity to the east have significant topography throughout with rocky soils and rock outcroppings. The percentage of the total property areas that are altered or disturbed tends to be smaller as a result and response to that difficult topography. It is likely that much, if not most of the area of the proposed parcels will remain in an undeveloped condition. This will enable occasional wildlife grazing in the large areas between the homes and therefore help protect the peripheral elk and deer winter range.

The Board finds that the proposed Plan and Zone map amendments are consistent with Goal 5.

Goal 6, Air, Water and Land Resources Quality

As noted, the subject property now contains one dwelling, which is operating with a Linn County-approved septic system. The partition and development permit review process will ensure that the property will continue to be in compliance with all state Department

of Environmental Quality (DEQ) and Linn County regulations for siting future septic systems and wells on the property for any further residential development. Recent testing on adjacent and nearby properties has resulted in approvals for standard septic tank/drain field installations. The applicant will also comply with DEQ and Linn County regulations regarding construction of new wells.

The Board finds that the proposed Plan and Zone map amendments are consistent with Goal 6.

Goal 7, Areas Subject to Natural Disasters and Hazards

This property is not within any designated flood plains, as mapped by the Federal Emergency Management Agency (FEMA), as per FEMA Community Panel (map) Number 310136 0025 B. No mass movement topography is identified on the property in the Environmental Geology of Western Linn County, Oregon or the "Geologic Hazards Map of the Albany Quadrangle," State of Oregon Department of Geology and Mineral Industries.

The Board finds that the proposed Plan and Zone map amendments are consistent with Goal 7.

Goal 8, Recreational Needs

This property is not planned for any recreational site by Linn County or any other agency with land use planning authority. This property is also not adjacent to any existing or planned public recreational site.

The Board finds that the proposed Plan and Zone map amendments are consistent with Goal 8.

Goal 9, Economy of the State

This Goal does not specifically apply to individual land use applications. However, the change in the Plan and zoning designations will enable dwellings to be constructed that will provide construction jobs. Approving this request will have only an incremental, but positive effect on the amount of permanent employment in this area.

The Board finds that the proposed Plan and Zone map amendments are consistent with Goal 9.

Goal 10, Housing

The application states that if the Non-Resource Plan and zone designations are approved, a partition to create two additional parcels for home sites will be requested. Statewide Planning Goal 10 is primarily directed at actions required of local government (Linn County). However, this proposal will enable more homesites in a rural neighborhood near Lebanon where demand appears to remain strong.

The proposed Plan and Zone map amendments are consistent with Goal 10.

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Goal 11, Public Facilities and Services

The property is located within the Lebanon Fire Protection District. Access to future dwellings will be designed in accordance with that district's standards. Police protection is provided by the Linn County Sheriff. The property is located within the Lebanon Public School District boundaries. No known capacity issues exist in this part of the Lebanon district. The school district was notified of earlier land use requests on the Schwindt property, including County file BOC 01-0001, and did not respond unfavorably. Sewer and water facilities will be provided on-site.

The Board finds that the proposed Plan and Zone map amendments are consistent with Goal 11.

Goal 12, Transportation

The subject property has frontage at the end of First Creek Drive, a dedicated Linn County roadway. No additional public roadways are required. First Creek Drive, which begins at Hidden Valley Road, serves a large number of existing dwellings in this vicinity. The Schwindt tax lot abuts the western end of First Creek Drive. First Creek Drive is constructed and operates at rural Linn County standards. The current level of improvement is adequate to serve the existing neighborhood, plus at least the two to four potential dwellings on the Schwindt property.

The Board finds that the proposed Plan and Zone map amendments are consistent with Goal 12.

Goal 13, Energy

Goal 13 provides direction to governmental agencies including Linn County, and does not apply directly to individual land use requests. The proposed Plan amendment and zone change would result in between two to four new home sites adjacent to a rural residential exception are, within short commuting distance to both Lebanon and Sweet Home. The proposal would not have a significant impact on energy resources.

The Board finds that the proposed Plan and Zone map amendments are consistent with Goal 13.

Goal #14, Urbanization

The purpose of Goal 14 is to provide for an orderly and efficient transition from rural to urban use. This goal does not pertain to this land use application because the site is outside any urban growth boundary. The proposal does not request or require the establishment of any new special district for utilities or services. Goal 14 also does not pertain, because the proposal is for the Non-Resource Plan designation and NR-5 zoning district, and not a Rural Residential zoning district, such as RR-2.5 or RR-5.

The legislation that adopted the Non-resource Comprehensive Plan designation into the Linn County Comprehensive Plan followed all notification and hearing requirements, including an extensive period for agency and public comments. The Department of Land Conservation and Development (DLCD) participated in writing during that legislative

process, as did other agencies, special interest groups and individual citizens. Goal 14 may apply to the rezoning of land to an urban growth boundary designation; or the rezoning of land to a Rural Residential designation above a 10-acre density. The proposal before the Board does not include an urban growth boundary zoning designation or an urban density rural residential designation. The Non-Resource Plan designation as drafted and adopted in the Linn County Comprehensive Plan, and as reviewed and acknowledged by the Department of Land Conservation and Development is not subject to Goal 14.

The Board finds that the proposed Plan and Zone map amendments are consistent with Goal 14.

Goal 15, Willamette River Greenway

The subject property is approximately 20 miles from the Willamette River. The property is not located within the Willamette River Greenway. Goal 15 therefore does not apply to this proposal

The Board finds that the proposed Plan and Zone map amendments are consistent with Goal 15.

Goal 16, Estuarine Resources; Goal 17, Coastal Shorelands; Goal 18 Beaches and Dunes; and Goal 19, Ocean Resources

Goals 16 through 19 do not apply to lands in Linn County. The Board finds that the proposed Plan and Zone map amendments are consistent with Goals 16 through 19.

XI. Board Conclusion

Based on the whole record including the testimony and evidence presented to the Board in public hearings on this matter; and the findings of fact set forth in this findings document; the Board concludes that the proposal to change the Plan designation and the Zone designation of the subject 28.62-acre property, identified as T12S, R1W, Section 18, Tax Lot 801; is substantially supported by the facts and findings set forth therein. The Board concludes therefore that the proposal shall be approved and the Non-Resource Plan designation and the Non-Resource (NR-5) zoning designation shall be adopted for the subject property by County Resolution and Ordinance.

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FILED

FEB 22 2006

BEFORE THE BOARD OF COUNTY COMMISSIONERS
FOR LINN COUNTY

STEVE DRUCKENMILLER, CLERK
Steve Druckenmiller

IN THE MATTER OF AN ORDINANCE)
AMENDING THE LINN COUNTY)
COMPREHENSIVE PLAN MAP, AND)
THE LINN COUNTY ZONING MAP)

ORDINANCE NO. 2006-088
(Amending Code)
(Planning and Building Department BC04-0007)

WHEREAS, The Linn County Board of Commissioners (Board) advertised notice that it would consider proposed amendments to the Linn County *Comprehensive Plan* map and zoning map on January 26, 2005;

WHEREAS, At 10:00 a.m., on January 26, 2005, the Board conducted a regularly scheduled and duly advertised public hearing, considered the proposed amendments for the *Comprehensive Plan* map and the zoning map;

WHEREAS, The Board having read the proposed ordinance and having received and considered the oral and written public testimony presented prior to and at the hearing; and

WHEREAS, The findings in support of this ordinance are attached to Resolution and Order No. 2006-087 and entitled Exhibit 1, (BC04-0007 Decision Criteria, Findings and Conclusions); and, now, therefore, be it

Ordained by the Linn County Board of Commissioners, That:

Section 1. Map Amendment. Appendix 1, *Comprehensive Plan* map, following LCC Chapter 919 [see LCC 900.101(B)] be amended to designate the 28.62 acres identified as Tax Lot 801 on Assessor map T12S, R1W, Section 18, Linn County, Oregon, as "Non-Resource."

Section 3. Map Amendment. Appendix 1, Zoning map, following LCC Chapter 920 [see LCC 920.010(B)] be amended to designate the 28.62 acres identified as Tax Lot 801 on Assessor map T12S, R1W, Section 18, Linn County, Oregon, as "Non-Resource (NR-5)."

Section 4. Savings clause. Repeal of a code section or ordinance shall not revive a code section or ordinance in force before or at the time the repealed code section or ordinance took effect. The repeal shall not affect a punishment or penalty incurred before the repeal took effect, nor a suit, prosecution, or proceeding pending at the time of the repeal for an offense committed under the repealed code section or ordinance.

Section 5. Severability. Invalidity of a section or part of a section of this ordinance shall not affect the validity of the remaining sections or parts of sections.

LINN COUNTY, OREGON 2006-04221
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I, Steve Druckenmiller, County Clerk for Linn County, Oregon, certify that the instrument identified herein was recorded in the Clerk records.
Steve Druckenmiller - County Clerk



Section 6. Effective date. To protect the health, safety, and welfare of the citizens of Linn County, this ordinance shall take effect following adoption.

Section 7. Codification. Following adoption, this ordinance shall be codified pursuant to LCC Chapter 120.

Public reading held January 26, 2006.
Adopted and passed February 22, 2006.
The effective date of this Ordinance shall be February 22, 2006.

BOARD OF COUNTY COMMISSIONERS FOR LINN COUNTY

Signed Feb. 22, 2006

| | Voting | |
|--|--------|---------|
| | For | Against |
| Steve Druckenmiller, Linn County Clerk Recording Secretary | | |
| By <u>Gay Hoover</u> <u>Deputy</u> | | |
| Roger Nyquist, Chairman | | |
| John K. Lindsey, Commissioner | X | |
| Participated by Phone - Agreed Cliff Wooten, Commissioner | X | |

APPROVED AS TO CONTENT:

Steve Michaels
Steve Michaels
Linn County Planning and Building Director

APPROVED AS TO FORM:

Thomas N. Corr
Thomas N. Corr
Linn County Legal Counsel