



Oregon

Theodore R. Kulongoski, Governor

Department of Land Conservation and Development

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Salem, OR 97301-2540

(503) 373-0050

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NOTICE OF ADOPTED AMENDMENT

July 11, 2008

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

FROM: Mara Ulloa, Plan Amendment Program Specialist

SUBJECT: Douglas County Plan Amendment
DLCD File Number 012-07



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: July 24, 2008

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

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

***NOTE: THE APPEAL DEADLINE IS BASED UPON THE DATE THE DECISION WAS MAILED BY LOCAL GOVERNMENT. A DECISION MAY HAVE BEEN MAILED TO YOU ON A DIFFERENT DATE THAN IT WAS MAILED TO DLCD. AS A RESULT YOUR APPEAL DEADLINE MAY BE EARLIER THAN THE ABOVE DATE SPECIFIED.**

Cc: Doug White, DLCD Community Services Specialist
Dave Perry, DLCD Regional Representative
Cheryl Goodhue, Douglas County

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Notice of Adoption

In person electronic mailed

DEPT OF

JUL 07 2008

LAND CONSERVATION AND DEVELOPMENT

For DLCD Use Only

THIS FORM MUST BE MAILED TO DLCD WITHIN 5 WORKING DAYS AFTER THE FINAL DECISION PER ORS 197.610, OAR CHAPTER 660 - DIVISION 18

Jurisdiction: Douglas County

Local file number: 07-231

Date of Adoption: 7/2/2008

Date Mailed: 7/3/2008

Was a Notice of Proposed Amendment (Form 1) mailed to DLCD? Yes Date: 8/30/2007

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

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

180 JONES LLC Comprehensive Plan Amendment from (RLD) Low Density Residential to (RHD) High Density Residential, and Zone Change from (RS) Suburban Residential to (R-2) Multiple Family Residential, on a 4+/- acre portion of an 8.18 acre parcel, with application of the Design Review Overlay to limit development to 50 dwelling units.

Does the Adoption differ from proposal? Yes

Upper cap of 50 placed on development density.

Plan Map Changed from: RLD to: RHD
Zone Map Changed from: RS to: R-2

Location: Lighthouse Rd. in the Winchester Bay UUA Acres Involved: 4 +/-

Specify Density: Previous: 1DU/15,000 Sq Ft New: 50 DU Max

Applicable statewide planning goals:

- Goals 1-19 with checkboxes, goals 1, 2, 10, 11, 12, and 13 are checked.

Was an Exception Adopted? YES NO

Did DLCD receive a Notice of Proposed Amendment...

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

DLCD file No. 012-07 (16360)

Please list all affected State or Federal Agencies, Local Governments or Special Districts:

ODOT, City of Reedsport, Umpqua Soil and Water District, Port of Umpqua, Winchester Bay Rural Fire District, General Telephone Company, Central Lincoln People's Utility, Winchester Bay Sanitary District, City of Reedsport Water System, Reedsport School District No. 105

Local Contact: **Cheryl Goodhue**

Phone: (541) 440-4289 Extension:

Address: Rm 106, Justice Bldg, D.C. Courthouse

Fax Number: (541)-440-6266

City: Roseburg

Zip: 97470

E-mail Address: cagoodhu@co.douglas.or.us

ADOPTION SUBMITTAL REQUIREMENTS

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

1. Send this Form and TWO Complete Copies (documents and maps) of the Adopted Amendment to:
**ATTENTION: PLAN AMENDMENT SPECIALIST
DEPARTMENT OF LAND CONSERVATION AND DEVELOPMENT
635 CAPITOL STREET NE, SUITE 150
SALEM, OREGON 97301-2540**
2. Electronic Submittals: At least **one** hard copy must be sent by mail or in person, but you may also submit an electronic copy, by either email or FTP. You may connect to this address to FTP proposals and adoptions: **webserver.lcd.state.or.us**. To obtain our Username and password for FTP, call Mara Ulloa at 503-373-0050 extension 238, or by emailing **mara.ulloa@state.or.us**.
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 now access these forms online at **<http://www.lcd.state.or.us/>**. Please print on **8-1/2x11 green paper only**. You may also call the DLCD Office at (503) 373-0050; or Fax your request to: (503) 378-5518; or Email your request to **mara.ulloa@state.or.us** - ATTENTION: PLAN AMENDMENT SPECIALIST.

BEFORE THE BOARD OF COMMISSIONERS
OF DOUGLAS COUNTY

JUL 03 2008

Re: 180 JONES LLC, request for a)
Comprehensive Plan Amendment from)
(RLD) Low Density Residential to (RHD))
High Density Residential, and Zone Change)
from (RS) Suburban Residential to (R-2))
Multiple Family Residential on a 4± acre)
portion of an 8.18± acre parcel to allow)
development of up to fifty (50) dwelling units on)
Lighthouse Road in the Winchester Bay UUA.)

BARBARA E. NIELSEN, COUNTY CLERK

ORDER
PD File No. 07-231

180 JONES LLC, ("applicant") requested a Comprehensive Plan Amendment and Zone Change from a Low Density Residential Plan Designation with RS zoning, to a High Density Residential Plan Designation with R-2 zoning, to allow development of a 4± acre portion (site) of the 8.18± acre subject property at the Multiple Family Residential density. The property is located on the east side of Lighthouse Road in the Winchester Bay Urban Unincorporated Area (UUA).

The Commission initially heard the matter in a public hearing on November 15, 2007, at which the Commission deliberated to a 4-0 approval of the request. The Commission signed Findings of Fact on December 13, 2007. On December 21, 2007, timely appeal of the Commission's approval was filed by Vern & Cindy Simmons, et al. On January 14, 2008, the applicant requested a voluntary remand from the Board to the Commission to allow the applicant to address issues raised by opponents in the appeal. The Commission heard the matter on voluntary remand on March 6, 2008. On April 17th, 2008, the Commission again deliberated to a 4-0 approval, subject to 9 conditions, and signed Findings of Fact on May 15, 2008.

Douglas Dupriest & Zach Mittge, Attorneys for Vern & Cindy Simmons, James Koenig & Jack C. Underwood, filed a timely appeal of the Commission Decision on May 23, 2008.

The Board members individually reviewed the procedural facts of the Record. In their Decision approving the request, the Commission applied nine (9) conditions, which include application of the Design Review Overlay to limit development on the 4± acre site to a maximum of fifty (50) dwelling units, as well as conditions requiring the applicant to: i) mitigate impacts on the jurisdictional wetlands present on the property; ii) comply with Fire Code access requirements, and; iii) follow the guidelines of the submitted geotechnical reports and implement construction under the supervision of a geotechnical engineer.

Having reviewed the Record, the Board members determined the Planning Commission Decision contains a thorough Record and did not deem it necessary to hold an additional hearing before the Board. The Board also considered that, if the parties choose to pursue a higher level of review, eliminating the Board hearing will expedite the process. Based on these considerations, the Board opted to decline review of this matter.

Review by the Board of Commissioners is controlled by Douglas County Land Use and Development Ordinance ("LUDO") Section 2.700.8:

"Review by the Board is discretionary. After a Notice of Review is filed, the Board may choose to either: 1) allow review, in which case, the Board shall decide to either hear the matter itself and set a date for holding the review hearing, or the Board may, for any reason, appoint a Hearings Officer to review the matter and make a final local decision in the Board's place, or; 2) decline to review the matter, so long as the appealed decision does not involve a Plan Amendment of land designated agricultural or forest land or a goal exception. If Board review of a matter is declined, the lower decision shall stand. If Board review of a matter is declined, the Board shall adopt an order so stating, but the order need not state any reason for the Board's decision to decline review."

Review is discretionary so long as the application does not involve either a Plan Amendment of land designated agricultural or forest land, or a goal exception. The subject Comprehensive Plan Amendment and Zone Change request involves neither resource land nor a goal exception.

In the Board of Commissioner's discretion, review is declined. Because we decline review, the Commission's Decision – in the words of LUDO §2.700.8 – "*shall stand.*" In other words, it is affirmed. The Commission's Decision of May 15, 2008 is attached hereto and incorporated herein as the County's final decision.

Review is declined.

Dated: July 2, 2008

DOUGLAS COUNTY BOARD OF
COMMISSIONERS

By Joseph Laurance
Chair
By Mark Kellid
Commissioner
By Doug Roberts
Commissioner

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BEFORE THE PLANNING COMMISSION
OF DOUGLAS COUNTY, OREGON

15 Re: 180 JONES LLC, request for a Comprehensive Plan Amendment from (RLD) Low
16 Density Residential to (RHD) High Density Residential and a concurrent Zone Change
17 from (RS) Suburban Residential to (R-2) Multiple Family Residential on a 4+ acre
18 portion of an 8.18+ acre parcel on Lighthouse Road in the Winchester Bay Urban
19 Unincorporated Area. The property is described as Tax Lot 1500, Section 13BA,
20 Township 22S, Range 13W, Douglas County, Oregon; Property ID R51938. Planning
21 Department File No. 07-231.

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FINDINGS AND DECISION

I. INTRODUCTION

A. Application

The applicant, 180 Jones LLC, filed an application to rezone approximately 4.0 acres of the 8.18-acre subject property from (RS) Suburban Residential to (R-2) Multiple Family Residential to accommodate future subdivision of the property.

The request has two components:

1. Amend the comprehensive plan land use designation on the subject property from (RLD) Low Density Residential to (RHD) High Density Residential.
2. Change the zoning classification of the property from RS to R-2.

Together these two components are referred to as “the proposed Plan Amendment and Zone Change.”

The property is vacant, undeveloped land that abuts Lighthouse Road along its west boundary and Glen-Dee Lane (a private drive) along its north boundary. The terrain is comprised of an older stabilized interdune landform with slopes of 12% to 30%, flattening to 2% along the west boundary. There are three small wetlands on the property and an unnamed seasonally intermittent drainage of Lake Marie located along Lighthouse Road. (Although this

1 drainage is sometimes referred to as Marie Creek, that name properly applies to the drainage into
2 Lake Marie. In the interest of simplicity, the unnamed drainage is informally referred to here as
3 Marie Creek.) The property was logged in the 1930's and again recently; it is generally covered
4 with brush and logging debris. The applicant proposes to rezone approximately 4.0 acres along
5 the east and south boundaries of the subject property.

6 The subject property and the areas to the west and north are within the Winchester Bay
7 Unincorporated Urban Area. The two properties to the west are zoned R-2 and (CT) Tourist
8 Commercial; one is vacant and the other contains a mobile home park and RV park. The
9 properties to the north are zoned (R-1) Single Family Residential and have residential
10 development. The areas to the east and south are zoned (PR) Public Reserve and owned by the
11 State of Oregon. The property to the east is managed as forestland. The property to the south is
12 managed as state parkland. The subject property is located in a mixed use area.

13 The applicant requests a plan amendment and zone change in order to proceed with a
14 contemplated development of 50 townhouses, each with approximately 3500 square feet of
15 living area. The use of these townhouses will be residential. It is estimated that about 75% of
16 the use will be rentals of a generally seasonal nature which will support the area's recreational
17 economic base. The development will also have permanent occupancy that meets anticipated
18 local and regional needs.

19 As detailed below, the contemplated development would include the following.

20 1. Lighthouse Road will be widened along the property's frontage, if needed to
21 maintain adequate clear sight distance.

22 2. Signage will be posted at the access directing tsunami evacuation traffic south
23 along Lighthouse Road.

1 3. Developmental impacts on the jurisdictional wetlands present on the subject
2 property will be mitigated.

3 4. Access to the site will comply with the Uniform Fire Code (dead-end access road
4 requires specific turnaround configuration and each unit to be equipped with an approved
5 automatic sprinkler system).

6 5. Necessary improvements to the water supply system will assure adequate
7 domestic pressure and fire flow (this could be done either by increasing the size of the main or
8 installing a large on-site reservoir).

9 6. Sewage disposal will be by an on-site system if the Winchester Bay Sanitary
10 District (WBSD) moratorium is still in effect or by direct connection to WBSD if the moratorium
11 has been lifted.

12 7. Construction, including structural fills, erosion control, drainage management,
13 foundation design, public utility connections, and vegetation preservation, will follow the
14 guidelines of the geotechnical reports submitted by the applicant, and will occur under the
15 supervision of a geotechnical engineer.

16 **B. Procedural History**

17 This matter came before the Planning Commission for a public hearing on November 15,
18 2007, in Room 216 of the Douglas County Courthouse, Roseburg, Oregon, pursuant to Douglas
19 County Land Use and Development Ordinance (LUDO) § 6.700. Parties and witnesses appeared
20 and presented evidence. The Planning Commission deliberated to a decision to recommend
21 approval of the application to the Board of Commissioners.

22 The Planning Commission adopted Findings of Fact on December 13, 2007. On
23 December 21, 2007, the planning department received a timely appeal of the Planning

1 Commission's decision from Vern & Cindy Simmons, James Koenig, and Jack Underwood (the
2 appellants). On January 14, 2008, the applicant requested a voluntary remand from the Board of
3 Commissioners to the Planning Commission.

4 On March 6, 2008, the Planning Commission opened the remand hearing at the usual
5 venue in Roseburg, but utilizing a videoconferencing link with the main courtroom of the
6 Reedsport Justice Court as a convenience to allow parties and witnesses to participate in the
7 proceeding from either location. The Planning Commission viewed a video of a site visit by
8 staff, and then proceeded to hear the matter.

9 At the close of the March 6th hearing, the applicant and the appellants requested an
10 opportunity to respond to written evidence submitted by other parties. The Planning
11 Commission ordered the record held open for written submissions until March 20, 2008,
12 followed by a second period during which only rebuttal would be allowed until April 3, 2008.

13 The applicant, the appellants, and other entities submitted evidence on or before March
14 20th. The applicant submitted rebuttal on April 3rd. On April 10th, the appellants requested that
15 the record be re-opened to respond to new evidence which they claimed the applicant submitted
16 April 3rd. The appellants tendered a geotechnical report with their request to re-open the record.

17 The Planning Commission convened for deliberations on April 17th. The appellants'
18 request to re-open the record was considered and denied. The statements and arguments
19 presented by the applicant in its April 14th and 16th letters regarding reopening the record are
20 adopted in support. The evidence submitted by the applicant on April 3rd was solely rebuttal
21 evidence, not new (non-rebuttal) evidence, as described in *Wetherell v. Douglas County*, LUBA
22 No. 2007-133 (Feb. 12, 2008), and is considered solely as rebuttal evidence. Re-opening the
23 record would likely lead to a delay of a month or more in the final decision, due to the rights of

1 parties to continue responding to further evidence. Since the present proceeding is a remand
2 hearing, not the initial evidentiary hearing (which concluded November 15th), the appellants do
3 not have a right to rebut rebuttal evidence. The documents proffered by the appellants after
4 April 3rd were allowed into the record only for the purpose of identification, and not as evidence
5 or argument. The documents submitted by the parties on or before April 3rd were accepted into
6 the record.

7 The Planning Commission deliberated to a decision to approve the application.
8 Commissioner Mast moved to approve; Commissioner Stratton seconded the motion; Chairman
9 Jaques and Commissioner Parkinson joined the movants in voting for the motion;
10 Commissioners Goirigolzarri, Leonard, and Raynor abstained as they were absent at the March
11 6th hearing.

12 **C. Jurisdiction**

13 The subject property is located in Winchester Bay UUA of Douglas County. The
14 proposal to amend the plan designation of the subject property is an amendment of the
15 acknowledged comprehensive plan governing the property. The subject property is subject to the
16 Douglas County Comprehensive Plan for urban unincorporated areas, including the Coastal
17 Resources Plan and the Winchester Bay Comprehensive Plan.

18 **D. Applicable Criteria**

19 The criteria applicable to the application are as follows:

20 Statewide Planning Goals 1-14

21 Douglas County Land Use and Development Ordinance (“LUDO”)

22 Criteria for Plan Amendments, LUDO § 6.500

23 Criteria for Zone Changes, § 3.38.100

1 The Douglas County Comprehensive Plan states:

2 “Urban Unincorporated Area Land Use Policies

3 “[T]he policies of this chapter of the Land Use Element represent the
4 complete County position regarding the six urban unincorporated areas of the
5 County. As such the direction provided in this and other elements of the
6 Comprehensive Plan supersede the Goals, Policies, Policy Implementation
7 Statements and Recommendations contained in the separate ... Winchester Bay
8 Comprehensive Plan documents. As the policies of this chapter of the Land Use
9 Element provide specific direction regarding the County’s six urban
10 unincorporated areas, they are intended to take precedence over the more general
11 policies of other sections of the Comprehensive Plan which have Countywide
12 applicability.”

13 **E. Official Notice**

14 Official notice is taken of the following, which are incorporated by reference.

15 Douglas County Comprehensive Plan

16 Douglas County Land Use and Development Ordinance

17 **II. FINDINGS OF FACT**

18 Each finding is intended to support the whole decision, and no finding in this document is
19 limited by the heading or caption under which it appears or is cross-referenced, these being
20 solely for the convenience of the reader.

21 The Planning Commission makes findings of fact as follows.

22 **A. Statewide Planning Goals**

23 **Goal 1 – Citizen Involvement**

24 Citizen comment and participation regarding this request have been solicited by the Douglas
25 County Planning Department in the form of notification to property owners, affected agencies, the
26 local Planning Advisory Committee, and any others entitled to notice. Notice of the public hearing
27 before the Planning Commission was published in a regional newspaper of general circulation at
28 least twenty days prior to the scheduled date of the first public hearing.

1 The county planning department arranged for videoconferencing in Reedsport to facilitate
2 participation of coastal residents in the proceeding.

3 These various forms of individual and public notice assured that local citizens had an
4 opportunity to become informed about, and participate in, the public hearing process, thus
5 complying with Goal 1.

6 **Goal 2 – Land Use Planning**

7 A public hearing was held to receive input from the applicant and concerned parties and
8 agencies. A public notice was published and mailed to the applicant, surrounding property
9 owners, and affected agencies as required by law. The Department of Land Conservation and
10 Development (DLCD) was notified, as required, of the proposed action at least 45 days prior to
11 the final hearing. A staff report was prepared and distributed within the time frame required for
12 a quasi-judicial land use decision. The written decision includes findings of fact. The
13 development and review of this application involved a land use planning process that has
14 complied with Goal 2.

15 **Goal 3 – Agricultural Lands**

16 Agricultural lands are defined as those of predominately Class I, II, III and IV soils in
17 western Oregon. Goal 3 also applies to other lands which are suitable for farm use taking into
18 consideration soil fertility, suitability for grazing, climatic conditions, existing and future
19 availability of water for farm irrigation purposes, as well as to lands of lower value which are
20 considered necessary to permit farm practices to be undertaken on adjacent or nearby lands. The
21 land proposed for amendment is located within the Winchester Bay UUA, has been the subject of
22 a previous Goal 14 exception, is not protected as a Goal 3 resource, and is irrevocably committed
23 to urban use. The proposed Plan Amendment and Zone Change complies with Goal 3.

1 **Goal 4 – Forest Lands**

2 Goal 4 defines forestlands as those lands that are suitable for commercial forest uses.
3 Goal 4 also applies to adjacent or nearby lands which are necessary to permit forest operations or
4 practices, as well as to other forested lands that are necessary to maintain soil, air, water and fish
5 and wildlife resources. The subject property is not forested land. Further, the area proposed for
6 amendment is located within the Winchester Bay UUA, has been the subject of a previous Goal
7 14 exception, is not protected as a Goal 4 resource, and is irrevocably committed to urban use.
8 The proposed Plan Amendment and Zone Change complies with Goal 4.

9 **Goal 5 – Open Spaces, Scenic and Historic Areas, and Natural Resources**

10 Goal 5 addresses the following resources:

- 11 1. Open space
- 12 2. Mineral and aggregate resources
- 13 3. Energy resources
- 14 4. Fish and wildlife areas and habitats
- 15 5. Ecologically and scientifically significant resources
- 16 6. Outstanding scenic views and sites
- 17 7. Water areas, wetlands, watersheds and groundwater resources
- 18 8. Wilderness areas
- 19 9. Historic areas, sites, structures and objects
- 20 10. Cultural areas
- 21 11. Oregon recreational trails
- 22 12. Wild and scenic waterways

23 **1. Land Needed or Desirable for Open Space**

24 The subject property is typical of the majority of the lands in the coastal area and contains
25 no identified topographic or vegetative features that warrant protection under Goal 5. There are
26 other lands which shares these same general characteristics in the area. Conversion of the site
27 from its present designation to a higher density residential designation would not result in a
28 significant impact on open space resources in the surrounding area due to the abundant supply of
29 open space with similar natural features. The site has not previously been identified by the

1 Douglas County Comprehensive Plan as being needed or desirable for open space.

2 **2. Mineral and Aggregate Resources**

3 No mineral or aggregate resources requiring Goal 5 protection has been identified on or
4 in the vicinity of the subject site.

5 **3. Energy Sources**

6 Goal 5 energy resources refers to sites and resources for the generation of energy (i.e.
7 natural gas, oil, coal, hydroelectric, geothermal, uranium, and solar). No known energy source
8 has been identified on or in the vicinity of the property. The property does have solar access, but
9 no more so than most other land in Douglas County.

10 **4. Fish and Wildlife Areas and Habitat**

11 The subject property is not been included in any inventories of sites with significant
12 wildlife habitat. Wetlands are present on the property; however, the wetlands do not provide
13 direct support for fish resources. Marie Creek is not a fish bearing stream on the subject
14 property, and immediately downstream of the subject property flows through an 18" culvert for
15 several hundred feet before emptying into Halfmoon Bay through a grate which appears to be
16 designed to prevent upstream fish migration. As shown on the photographs, Marie Creek is a
17 minor drainage with banks approximately 3 feet apart which has been significantly altered.

18 The wetland habitat does not constitute diverse wildlife habitat due to its structure,
19 disturbance, and lack of extensive adjoining wetland habitat.

20 The Marie Creek watercourse is protected by Douglas County's Riparian Vegetation
21 Corridor Overlay, which prescribes a 50-foot setback of improvements from the watercourse.
22 Conversion of the site to a higher density residential designation will require satisfaction of any
23 Goal 5 mitigation measures prescribed by State and/or Federal agencies covering impacts to

1 wildlife habitat on the subject property or in the general area. No significant development is
2 proposed within the riparian zone.

3 **5. Ecologically and Scientifically Significant Natural Areas**

4 The subject property does not have ecologically or scientifically significant natural areas;
5 the wetlands are addressed under section 7 Water Areas, below.

6 **6. Outstanding Scenic Views and Sites**

7 No identified scenic views or sites exist on the subject property. As noted under section
8 1 Open Space, above, the site has so much in common with many other locations in the general
9 area that its scenic value is not considered unique or significant. The property possesses no
10 prominent topographic features or vegetation, which would otherwise give it scenic significance.

11 The subject property does not have clear sight lines to the Umpqua Lighthouse. It is not
12 listed in the Umpqua Lighthouse Master Plan as an area where the view is essential to the
13 aesthetic experience. The site has not been identified in a comprehensive plan as critical to any
14 view. The Winchester Bay Comprehensive Plan (Map 4) shows that the site is not part of the
15 harbor or river view resources.

16 As the photographic montage of Lighthouse Road and the contour maps show, the site is
17 located in a local depression between higher stabilized dune forms, which will make
18 development of this site less conspicuous from surrounding areas. The homes on Glen-Dee
19 Lane, for example, such as the Simmons', are more visible from the Lighthouse direction than
20 townhouses would be on the subject property.

21 **7. Water Areas, Wetlands, Watersheds, and Groundwater Resources**

22 The subject property contains wetlands and a drainage called Marie Creek, but has no
23 identified groundwater resources. The applicant submitted a preliminary wetland delineation

1 report by Wilbur E. Ternyik, which shows that three wetlands are present, with areas of 0.04
2 acres, 0.17 acres, and 1.66 acres. Although these wetlands will largely be unaffected by the
3 contemplated development, any removal or fill within the wetlands will require compliance with
4 Oregon Division of State Lands standards for mitigation. The Ternyik report is adopted as part
5 of these findings. The Ternyik report shows the location, quantity, and quality of the wetlands
6 on the subject property. The wetlands (including Marie Creek) do not qualify as locally
7 significant wetlands. The site has capacity to absorb additional groundwater that would be
8 generated by an on-site sewage disposal system, due to the well-drained soils on the site.

9 There is no "existing fill activities" on the subject property, as alleged by the appellants,
10 and none of the prior fill was placed by the applicant, the current owner. The so-called "fill
11 activities" and "unpermitted accesses" have a long history on this site and are exempt from or
12 antedate the Oregon Removal/Fill Statute, ORS 196.795 to 196.990.

13 The logging road on the site was initially built in the 1930's for logging. The culvert
14 across Marie Creek was originally placed in the 1930's. The site road was re-established in the
15 early 1990's for logging. The culvert was replaced in the early 1990's at the request of the
16 Douglas County Public Works Department, under an access permit, to allow for greater stream
17 flow. The entire "road system" on the subject property was built and used for logging forestland.
18 The subject property was used for the commercial growing and harvesting of forest tree species,
19 and the roads were built, extended, and maintained for the purpose and use of commercial
20 forestry. The culvert replaced was serviceable immediately prior to its replacement; the road
21 crossing it was currently serviceable at the time of the replacement; and the replacement was in
22 connection with the forestry operation. Additional exemptions apply, ORS 196.905(6), (7).

23 We find that the fills identified by the appellants do not constitute deposits of 50 cubic

1 yards at one location by any one person in the waters of the state that occurred after the
2 removal/fill law went into effect (which was 1971, as to fill). The appellants allege there are
3 four fill sites.

4 Alleged site 1 is located where the existing logging road crosses a small drainage
5 between wetland #2 and wetland #3 (as numbered in the Ternyik report). The logging road was
6 constructed pursuant to an exemption, and was a re-establishment of the 1930's logging road.
7 The total amount of fill is approximately 11 cubic yards. The fill was placed over a series of
8 years. At no time was more than 50 yards of fill placed at alleged site 1 by one person.

9 Alleged site 2 is located where the main access road crosses Marie Creek. The amount of
10 fill involved in total at that site in a putative wetland is approximately 25 cubic yards. The fill
11 was placed there in the 1930's, and is not subject to the removal/fill law (which became effective
12 as to fills in 1971). There is no evidence that a wetland was present outside the thread of Marie
13 Creek in the area described by the opponents for alleged site 2. Any additional fill placed in the
14 early 1990's was placed in association with enlarging the culvert or in reestablishing the logging
15 road at that vicinity. The fill was deposited pursuant to an exemption to the removal/fill law as
16 an operation in conjunction with commercial forestry. At no time was more than 50 yards of fill
17 placed at alleged site 2 by one person.

18 Alleged site 3 is located north of wetland #1. There is no evidence that alleged site 3
19 ever was a wetland. The filling activity associated with site access occurred in the 1930's.
20 Subsequent work on the site access in the early 1990's was conducted pursuant to an exemption
21 to the removal/fill law as an operation in conjunction with commercial forestry.

22 Alleged site 4 is located by the culverts draining from a hillside seep and a spring on
23 Department of State Lands property. The seep, spring, and their proximate drainages do not

1 have beds or banks; they drain by laminar flow north to wetland #2. These springs, seeps, and
2 laminar flows do not constitute “waters of the state” which are subject to the removal/fill law.
3 The preliminary delineation by TERNYK does not show wetlands are present at alleged site 4, and
4 there is no evidence alleged site 4 was ever a wetland. The culverts were installed pursuant to an
5 exemption to the removal/fill law as an operation in conjunction with commercial forestry.

6 The seeps and springs are not protected under either the removal/fill law or the county
7 code’s riparian overlay. No evidence that the contemplated development will negatively impact
8 water quality exists, or that the design is deficient in failing to protect water quality. It is a
9 stretch of the imagination to label the property a “headwater” area, as Marie Creek is devoid of
10 fish and fed by Lake Marie, and the various seeps and springs on the property are seasonal and
11 intermittent.

12 The proposed zone change and subsequent contemplated development will likely impact
13 the wetlands. However, Oregon has not adopted an “avoid” or “no touch” wetlands policy.
14 Since the wetlands do not constitute locally significant wetlands in the regulatory framework,
15 development on the property which impacts the wetlands may be allowed, provided there is
16 mitigation in compliance with the applicable statutes and administrative rules. There are many
17 alternatives to such mitigation, including both on-site and off-site projects, all of which are
18 feasible. Mitigation of any wetlands impacted by the contemplated development will adequately
19 preserve the value and function of this Goal 5 resource.

20 Marie Creek on and near the subject property is highly altered (it is extensively culverted
21 and the outfall is grated) and has no significant fish population. The riparian setback protects
22 Marie Creek from potential impact of the contemplated development. None of the footprint of
23 the contemplated development lies within the riparian setback of Marie Creek. The

1 contemplated development can feasibly be developed outside the riparian overlay.

2 **8. Wilderness Areas**

3 The subject site is not within, adjacent to, or part of, a designated wilderness area.

4 **9. Historic Areas, Sites, Structures, and Objects**

5 There are no identified or inventoried historic structures or objects on, or adjacent to, the
6 subject property.

7 **10. Cultural Areas**

8 There are no identified or inventoried archaeological or cultural resources on the subject
9 site.

10 The appellants asserted Native American burial sites are located on the subject property.
11 The sole basis for this assertion is a letter from Sunnie Hedden, who recalled that when she was a
12 child 60 years ago, her mother and aunt warned her not to play by a pond in the area (there are no
13 ponds as she described on the subject property) because the area was an "Indian Burial Ground".
14 The letter does not provide a reasonable basis or substantial evidence to deny the application, for
15 the reasons mentioned in the applicant's March 20th letter.

16 A letter from Arrow Coyote, a registered professional archaeologist and Cultural
17 Resource Protection Coordinator for the Confederated Tribes of Coos, Lower Umpqua, and
18 Siuslaw Indians, states that the subject property is within the Tribe's ancestral territory, and the
19 Tribe has no records of sites in the area, and no oral tradition of any sites.

20 The county has not applied the Cultural, Historic, and Archeological Resources (CHA)
21 Overlay to the subject property, which would be required if any such resources were known to
22 occur on the property. This is evidence that no such resources occurs on the property.

23 Despite fairly extensive activity on the property by the owner, previous owner, land

1 managers, loggers, state forestry staff, land use planners, planning department staff, wetlands
2 consultants, traffic engineers, geotechnical engineers, and geologists, not a single Native
3 American artifact or burial site was identified or suspected on the subject property.

4 **11. Potential and Approved Oregon Recreation Trails**

5 There are no designated or planned recreational trails on or adjacent to the subject
6 property.

7 **12. Wild and Scenic Waterways**

8 The subject property is not within any designated or planned wild and scenic waterway,
9 nor has such designation been given to other lands or resources in the general vicinity.

10 The proposed Plan Amendment and Zone Change complies with Goal 5.

11 **Goal 6 – Air, Water and Land Resources Quality**

12 The contemplated development will not exceed the carrying capacity of the air, water, or
13 land resources, nor degrade or threaten the availability of such resources. The area of the
14 proposed development has deep eolian sand deposits with generally excellent drainage and
15 filtration properties. A conceptual stormwater plan is provided which will enhance the existing
16 wetlands for use as biofiltration swales and detention areas. Storm drainage is not considered to
17 be a problem in the portion of Winchester Bay west of Highway 101. The system for collecting
18 and transporting storm runoff from streets is adequate. The site does not have any wetlands
19 adjacent to Winchester Creek which perform a significant drainage function, nor does the site
20 provide a storm drainage function for areas east of Highway 101.

21 The geotechnical report by PBS indicates that construction measures addressing drainage
22 issues will be implemented to ensure foundation integrity of the development. The applicant
23 stipulates to following the construction recommendations of the PBS report. The site does not

1 have a significant drainage way, besides Marie Creek, for it or adjacent properties. On site
2 drainage is generally provided by laminar surface flow and percolation. The culvert where the
3 access road crosses Marie Creek will be improved at the time of development to assure adequate
4 drainage capacity. The provisions of the removal-fill laws concerning grading activities, and the
5 mandatory consultation with the Department of Fish and Wildlife for activity within the riparian
6 zone, will assure the issue is adequately addressed from hydrological and water quality
7 standpoints at the time of development.

8 All future land use activities on the property will comply with local, state, and federal
9 environmental regulations. The contemplated development has some potential for environmental
10 impacts if not properly monitored and regulated. Both Douglas County and the State of Oregon
11 have sufficient regulatory measures in place to ensure that development will not produce
12 unanticipated environmental impacts. The proposed Plan Amendment and Zone Change
13 complies with Goal 6.

14 **Goal 7 – Areas Subject to Natural Disasters and Hazards**

15 Natural disasters and hazards that may impact contemplated development of the subject
16 property include:

- 17 1. Slope failure
- 18 2. Seismic event
- 19 3. Tsunami
- 20 4. Flooding
- 21 5. Wildfire

22 **1. Slope Failure**

23 A detailed geotechnical report by PBS Engineering + Environmental was submitted at the
24 03/06/08 planning commission hearing. This report evaluated the site and showed that the
25 contemplated development is feasible, provided that appropriate construction techniques are

1 followed under the field supervision of a geotechnical engineer. The slopes at the site of the
2 contemplated development are 12-30%, which the PBS report notes are relatively gentle. The
3 report noted that since the subject property resides on stabilized dune forms, it is critical to
4 follow the construction guidelines to ensure an adequate drainage system and foundations
5 sufficient to accommodate lateral wall loadings.

6 The appellants claimed that logging of the subject property had the potential of increasing
7 erosion and triggering mass earth movement. The geotechnical report identified vegetation
8 management during construction as a necessary part of erosion control. The records of the
9 Department of Forestry show that the appellants logged their property at the same time, even
10 though it is on a steep slope adjacent to the subject property. The Department of Forestry noted
11 that there was no mass soil movement on the subject property, nor any signs of mass movement
12 observed during the PBS study. No sign of anthropogenic fill other than road bed was observed
13 during the PBS study, nor is the area located on alluvium or buried river channel. The bore sites
14 readily found native material. There is no evidence that pedestrian pathways will create
15 substantial erosion. ATV use is unauthorized on the state parklands to the south.

16 As the Winchester Bay Comprehensive Plan (Map 3) shows, the subject property does
17 not occur in an identified steep slope area. The DOGAMI earthquake landslide hazard map
18 shows the contemplated development is an area of low to medium landslide hazard.

19 The PBS report constitutes new information regarding the subject property's potential
20 which was not known at the time the comprehensive plan designations were applied. The PBS
21 reports show the site's limitations are less than originally believed and may be adequately
22 addressed with suitable geotechnical and engineering measures, so as not to create hazards on the
23 subject property or adjacent lands.

1 The PBS reports, including the rebuttal of the Busch letter, are adopted as part of these
2 findings.

3 **2. Seismic Event**

4 The PBS report found that the soils on the subject property have a low potential for
5 liquefaction. The DOGAMI earthquake hazard map shows almost all of the proposed
6 development is located in the area of lowest to intermediate relative seismic hazard. The Busch
7 letter provided by the appellants misreads the DOGAMI maps as to the location of the
8 contemplated development. The DOGAMI maps also show that the proposed development is
9 predominately located in an area with no liquefaction hazard, no to low amplification hazard, and
10 low to medium earthquake-induced landslide hazard. In the Winchester Bay area, the subject
11 property is relatively safe from seismic hazards.

12 By comparison, most of the developed portion of the Winchester Bay community is
13 located in areas of highest seismic hazard. This site is one of the best locations in the area for
14 residential development, from the viewpoint of seismic hazards. In the event of a seismic event,
15 the proposed development will better survive the event than most improvements in the
16 Winchester Bay area, and it thus has the potential of serving as a nucleus for a recovery effort
17 and a staging ground for response to the event.

18 **3. Tsunami**

19 The subject property is located above the tsunami hazard zone. The contemplated
20 development would provide additional community resources in the event of a tsunami disaster,
21 such as housing, parking, and staging areas. When the development is complete, signage will be
22 posted at the entrance directing tsunami evacuation south towards Umpqua Lighthouse, as that
23 exit route is entirely outside the tsunami hazard zone and does not cross the Winchester Creek

1 bridge.

2 **4. Flooding**

3 The Federal Flood Insurance Rate Map for the area shows that the subject property lies
4 well outside the flood plain of area streams.

5 The subject property has not been identified in any inventory of areas that have the potential
6 to be subjected to natural disasters and hazards.

7 **5. Wildfire**

8 We find future residential development on the subject property will reduce the danger of
9 wildfire by the removal of fire fuels from the property to accommodate residential development.
10 Associated landscaping, irrigation systems and continual human presence will provide additional
11 protection against wildfire.

12 The state park land south of the subject property and the Department of State Land
13 property east of the subject property have a Sitka spruce forest with little undergrowth, and
14 which is managed to reduce fuel loading. In addition, fire damage from these adjacent lands is
15 mitigated by their direction and slope position. The state lands are located to the south and east;
16 the prevailing winds in the area blow off the ocean, from a westerly direction. The state lands
17 are located at higher elevations than the subject property, so that wildfire is less likely to spread
18 downward to the contemplated development.

19 The proposed development will have a water reservoir on site or will upgrade the existing
20 main in coordination with the City of Reedsport to ensure adequate water pressure and fire flow.
21 The development will increase the community's ability to combat wildfire in the state park and
22 DSL lands by providing a large water source at the site, plus a vigilant on-site resident
23 community that will facilitate early discovery of wildfire.

1 Adequate water for fire flow has been demonstrated for the property based on the
2 proposed site improvement of a 200,000-gallon reservoir, and the 6" main along the frontage of
3 the site (or the alternative of upgrading the main).

4 The Umpqua Lighthouse Master Plan (ULMP) includes the state park property south of
5 the subject property and the state land property east of the subject property within its planning
6 area. The ULMP identifies the forests adjacent to the subject property as Sitka spruce and
7 western hemlock with understories of salal and sword fern. The communities have evidence of
8 past logging. The ULMP characterizes these communities as second growth forests in "fairly
9 good condition." The 12-point management objectives in the ULMP make no mention of forest
10 wildfire as a significant hazard. The Winchester Bay Comprehensive Plan does not identify
11 forest wildfire as a significant hazard. The contemplated development will be a concentrated
12 urban use, not dispersed as rural homesites in wooded areas, which is where wildfire/residential
13 conflicts generally arise in southern Oregon. Based on the foregoing, forest wildfire is not a
14 significant hazard to this development. The fact that neither the ULMP nor the WBCP recognize
15 wildfire as a hazard indicates its minimal threat on the site.

16 The property will be improved in such a manner so as to qualify for fire protection from
17 the Winchester Bay Rural Fire Protection District, which is located in the immediate area and
18 offers contract protection to similarly situated properties. The district maintains a fire station
19 within one mile of the subject property.

20 We find the proposed Plan Amendment and Zone Change complies with Goal 7.

21 **Goal 8 – Recreational Needs**

22 Recreational needs for the general public have been provided for on numerous sites in
23 and around Douglas County. The Douglas County Comprehensive Plan has not identified the

1 subject property on any inventory for recreational facilities or opportunities.

2 The subject property is located well below the Umpqua Lighthouse in elevation. It is not
3 listed in the Umpqua Lighthouse Master Plan as an area where the view is essential to the
4 aesthetic experience. The site has not been identified in a comprehensive plan as critical to any
5 view. The Winchester Bay Comprehensive Plan (Map 4) shows that the site is not part of the
6 harbor or river view resources.

7 As the photographic montage of Lighthouse Road and the contour maps show, the site is
8 located in a local depression between higher stabilized dune forms, which will make
9 development of this site less conspicuous from surrounding areas. The homes on Glen-Dee
10 Lane, for example, such as the Simmons', are more visible from the Lighthouse direction than
11 would be townhouses on the subject property. The contemplated development will not have a
12 substantial adverse impact on recreational use of the state park.

13 The proposed Plan Amendment and Zone Change complies with Goal 8.

14 **Goal 9 – Economic Development**

15 The Statewide Economic Development Goal (Goal 9) requires that local land use plans
16 “provide for at least an adequate supply of sites of suitable sizes, types, locations, and service levels
17 for a variety of industrial and commercial uses consistent with plan policies.” Goal 9 is intended
18 to be applied on a County-wide basis and requires that future economic growth be accommodated,
19 in part, by ensuring that there is sufficient suitable land planned and zoned for commercial and
20 industrial uses. The proposed Plan Amendment and Zone Change does not involve or impact the
21 county’s inventory of lands needed for economic development. The Plan Amendment and Zone
22 Change complies with the Goal 9.

1 **Goal 10 – Housing**

2 The Douglas County Comprehensive Plan requires that population growth be monitored and
3 assessed for impacts on previous estimates of needed housing and the availability of sufficient land
4 for residential use. As previously noted, the subject site is vacant. The proposed R-2 zoning will
5 create the potential for 50 additional dwelling sites on the property with the application of Design
6 Review Overlay. The proposed Plan Amendment and Zone Change will have a positive effect on
7 the urban residential housing stock in Douglas County. The Plan Amendment and Zone Change
8 complies with the Goal 10.

9 **Goal 11 – Public Facilities and Services**

10 The principal issues raised concern water supply, sewage disposal, storm drainage, and
11 fire protection. Storm drainage is addressed under Goal 6.

12 We find the applicant’s property is situated in an urban area where public facilities and
13 services are immediately available. The demand for other utilities and services, including
14 electricity and communications, will be no greater than that resulting from the historic use of
15 other adjoining and nearby properties.

16 **1. Water Supply**

17 The City of Reedsport has a 6” main to the property which, according to the City’s
18 comment letter, needs to be upgraded to serve the proposed development. The contemplated
19 development will include a reservoir of approximately 200,000 gallon capacity to maintain water
20 pressure and fire flow (an alternative is upgrading the main to a 12” line). This will benefit not
21 only the proposed 50-unit subdivision but also all other properties in the area by contributing to
22 more stable water pressure and augmenting fire flow. In the event of disruption of municipal
23 services due to a tsunami or seismic event, the proposed 200,000-gallon reservoir would provide

1 a significant community resource.

2 The Winchester Bay Comprehensive Plan (WBCP), which is acknowledged by the
3 Department of Land Conservation and Development as being in compliance with the Statewide
4 Planning Goals, states that water service is provided from the City of Reedsport, whose service
5 area encompasses Winchester Bay. WBCP (2002 rev. ed.), p. 31. The Winchester Bay UUA
6 “circumscribes the area within which urban services may be provided, and within which urban
7 development may occur according to Statewide Planning Goal 11.” WBCP, p. 1. There is no
8 basis for the appellants’ claim that the application violates Goal 11 in proposing to obtain water
9 from the City of Reedsport main, which is located on or adjacent to the entire frontage of the
10 subject property (although the water line will require improvements to serve the proposed
11 development) and serves numerous residences in the area, including the homes of the appellants
12 which lie adjacent to the subject property..

13 2. Sewage Disposal

14 The Winchester Bay Sanitary District has imposed a moratorium on new hook-ups until
15 plant capacity is increased. The District is putting a new wastewater disposal plant out for bid,
16 with construction scheduled to begin later in 2008. If hook-ups are available when the subject
17 property is developed, the municipal sewage system will be utilized (as required by law). The
18 Winchester Bay Sanitary District has stated in a nonbinding letter that it can provide sewer
19 service to the property upon completion of the planned plant expansion.

20 We find that if the moratorium is still in place, an on-site wastewater treatment system
21 with geoflow disposal system is feasible for the site, as there is sufficient area and the soils have
22 adequate absorption and filtration ability.

23 The reports and rebuttals by MAP Engineering submitted by the applicant are

1 incorporated herein as findings. The Orenco sewage plant is capable of producing effluent
2 which is drinkable quality water.

3 **3. Fire Protection**

4 Fire protection in the area for structural and wild fire will be available from the
5 Winchester Bay Rural Fire Protection District upon entering into a service contract with the
6 district. The contemplated development with a single access will meet the applicable fire code
7 standards by having sprinklers installed as required as part of any future subdivision application
8 on the subject property. Protection from wildfire is addressed under Goal 7.

9 We find the subject property and contemplated development will be provided with an
10 adequate level of public facilities and services. Such facilities and services will be delivered in a
11 timely, orderly, and efficient manner consistent with Goal 11. The proposed Plan Amendment and
12 Zone Change will not adversely impact the present or future provision of public facilities and
13 services in the surrounding area. This conclusion is supported by consideration of the existing
14 public service delivery systems and plans that are in effect within the surrounding area, which are
15 intended to ensure proper coordination of the types, locations, and delivery of the public facilities
16 and services necessary to support existing and proposed land uses in the area.

17 **Goal 12 – Transportation**

18 Goal 12 is implemented by the State Transportation Planning Rule which requires the
19 applicant to show that a proposed land use which significantly affects a transportation facility will
20 assure that the use is consistent with the identified function, capacity, and performance standards of
21 the facility.” OAR 660-012-0060(1).

22 The appellants raised issues concerning vehicle capacity, site access, and bicycle and
23 pedestrian use.

1 **1. Vehicle Capacity**

2 To ensure that a proposed land use change complies with the Transportation Planning
3 Rule, Douglas County adopted the following standard:

4 “(2) The applicant shall certify the proposed land use designations,
5 densities or design standards are consistent with the function, capacity and
6 performance standards for roads identified in the County Transportation System
7 Plan.

8 (a) The applicant shall cite the identified Comprehensive Plan function,
9 capacity and performance standard of the road used for direct access and provide
10 findings that the proposed amendment will be consistent with the County
11 Transportation System Plan.”

12 Transportation issues are addressed in a series of reports by Lancaster Engineering that
13 comprises a Traffic Impact Study (TIS) and related comments. The Lancaster reports are
14 incorporated herein as findings. The Lancaster reports found that Lighthouse Road, Salmon
15 Harbor Drive, and Highway 101, have more than adequate capacity for the next 20 years with the
16 contemplated development.

17 The proposed development does not “significantly affect” the transportation facility: (a)
18 it does not change the functional classification of Lighthouse Road, Salmon Harbor Drive, or
19 Highway 101; (b) it does not change the standards of the functional classification system; (c) it
20 does not allow land uses which are inconsistent with the functional classification of the roads; (d)
21 it does not reduce the performance standards of the facility below the minimum acceptable
22 levels; and (e) the roads involved are not projected to perform below the minimum acceptable
23 performance standards identified in the transportation system plan or comprehensive plan.

24 The Douglas County Comprehensive Plan sets the maximum allowable volume to
25 capacity ratio (V/C) for Lighthouse Road at 0.95, Salmon Harbor Drive at 0.90, and Highway
26 101 at 0.70. With the proposed development, the V/C ratio is 0.02 for the 20-year planning
27 horizon. At Salmon Harbor Drive and Highway 101, the V/C ratio is 0.45 for the 20-year

1 horizon. The functional classification of the three roads is unchanged. Each is well able to
2 handle the additional traffic that would be generated by the contemplated development.

3 Although the 09/21/07 letter from Public Works stated additional right-of-way dedication
4 will be needed on Lighthouse Road adjacent to the proposed development to meet minimum
5 county standards, Public Works reviewed the TIS and issued a letter on 11/14/07 (email from K.
6 Mike Luttrell, division manager for engineering, county public works) stating that clearing the
7 right-of-way of brush in the vicinity of the proposed development would address the issues.

8 The approaches to the subject property from the north and south directions, as shown in
9 the photographic montage of Lighthouse Road, are somewhat obscured due to overgrown brush
10 along the right-of-way. Clearing this brush during project development will improve the clear
11 view distances and safety factor at the main access to the development.

12 The photographic montage submitted by the applicant shows the road has adequate
13 pavement width, shoulder width, and sight distances, in view of the level of traffic and speed limit,
14 to allow further development of the subject property without compromising the safety of
15 vehicles, bicyclists, or pedestrians.

16 The county comprehensive plan set a standard for minor collectors (such as Lighthouse
17 Road) of 60-84 feet of right-of-way width. Lighthouse Road has a right-of-way 60 feet wide
18 along the road's entire length. It meets the county standard.

19 The use of vacation-oriented occupancy (category 260) in the TIS is not critical to the
20 conclusion that the proposed development does not significantly impact local traffic. Even if
21 permanent residential townhouse occupancy (category 230) were used for the entire
22 development, the conclusions are not impacted. The 03/20/08 supplement to the traffic impact
23 study shows that only three additional trips during the morning peak hour, and no additional trips

1 during the evening peak hour, will occur. The supplement reflected that the proposed
2 development will be limited to 50 homes.

3 A large portion of the privately-owned residential areas in Winchester Bay are seasonally
4 occupied second homes. The estimate in the Lancaster report that 75% of the homes will be
5 seasonally occupied is reasonable.

6 **2. Site Access**

7 The applicant submitted a revised redevelopment plan showing one access point for the
8 proposed development. There is already a vehicular access point at that location. The proposed
9 development will not add an access point to Lighthouse Road. No other access to the subject
10 property is practical.

11 The county acknowledged suitability of the access and on 01/14/08 granted an access
12 permit for construction on the subject property. The permit noted there was adequate sight
13 distance along Lighthouse Road, once brush on the right-of-way is cleared.

14 The applicant will dedicate additional right-of-way to widen Lighthouse Road at the main
15 access point, so as to enhance clear sight distances, if required by the county in the subsequent
16 subdivision approval process.

17 **3. Bicycle and Pedestrian Use**

18 Lighthouse Road is designated as a Class IIIs bikeway. Its primary bikeway function is
19 as a recreational bikeway. Striped lanes are not planned for Class IIIs bikeways; bike traffic is
20 intended to share the roadway with motor vehicles. The Class IIIs designation is applied along
21 streets with low traffic volumes, such as Lighthouse Road. The TIS found the road was adequate
22 for bicycle and pedestrian use, which is apparent in view of the very low volume/capacity ratio
23 of the road, and also the local reports of low usage levels. The photographic montage of

1 Lighthouse Road shows adequate sight distances and shoulder widths along the roadway, in view
2 of the low motor vehicle, very low bicycle, and very low pedestrian traffic levels present. The
3 low speed and low seasonal volume of motor vehicle traffic on Lighthouse Road contribute to
4 reduction in potential conflict with bike and pedestrian traffic. No traffic accidents involving
5 bicycles have been reported for Lighthouse Road or Salmon Harbor Drive.

6 Despite the occasional bicycle tour that may utilize Lighthouse Road, all of the evidence
7 indicates that use of the road by bicyclists is virtually nonexistent and well below capacity, even
8 with the additional development added. The annual occurrence of a tour of 200 bicyclists at one
9 time will increase safety of the riders, in that a large number of cyclists are more visible to, and
10 draw more attention from, motor vehiclists, which will increase the care of drivers and decrease
11 vehicle speeds when the tour is encountered.

12 The proposed Plan Amendment and Zone Change and subsequent contemplated
13 development can be completed without unacceptable impacts on the area transportation system,
14 will be consistent with the county transportation system plan, and complies with Goal 12.

15 **Goal 13 – Energy Conservation**

16 The subject property is located inside of the Winchester Bay UUA boundary where its
17 future development will promote the efficient energy-related use of existing and planned public
18 facilities and services. The site is free of any significant physical constraints that would
19 otherwise require more energy to develop and use the property than would other property in the
20 general area. Specific energy conservation policies and development standards are included
21 within the county comprehensive plan and LUDO to ensure that the statewide energy
22 conservation goal is implemented on a site-specific basis at the time of property development.
23 The proposed Plan Amendment and Zone Change complies with Goal 13.

1 **Goal 14 – Urbanization**

2 The subject property is located inside the Winchester Bay Urban Unincorporated Area.
3 The proposed Plan Amendment and Zone Change does not involve the conversion of rural land to
4 urban use as set out in the Winchester Bay exception document, nor does it change or otherwise
5 involve an established urban growth boundary. The proposed Plan Amendment and Zone Change
6 complies with Goal 14.

7 **B. LUDO Plan Amendment Criteria**

8 LUDO § 6.500(2) provides the following standards for a plan amendment.

9 “The application shall address the following requirements which shall be the
10 standard for Amendment:

11 a. That the Amendment complies with the Statewide Planning Goals and
12 applicable Administrative Rules (which include OAR 660-12, the Transportation
13 Planning Rule) adopted by the Land Conservation and Development Commission
14 pursuant to ORS 197.240 or as revised pursuant to ORS 197.245.

15 (1) The applicant shall certify the proposed land use designations,
16 densities or design standards are consistent with the function, capacity and
17 performance standards for roads identified in the County Transportation
18 System Plan.

19 (a) The applicant shall cite the identified Comprehensive Plan
20 function, capacity and performance standard of the road used for
21 direct access and provide findings that the proposed amendment
22 will be consistent with the County Transportation System Plan.

23 (b) The jurisdiction providing direct access (County or
24 ODOT) may require the applicant to submit a Traffic Impact Study
25 certified by a Traffic Engineer that supports the findings used to
26 address §6.500.2.a(1)(a).

27 b. That the amendment provides a reasonable opportunity to satisfy a local
28 need for a different land use. A demonstration of need for the change may be
29 based upon special studies or other factual information.

30 c. That the particular property in question is suited to the proposed land use,
31 and if an exception is involved, that the property in question is best suited for the
32 use as compared to other available properties.”
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1 **1. Statewide Planning Goals and Transportation Planning Rule**

2 The findings above show the proposed Plan Amendment complies with the Statewide
3 Planning Goals. The applicant's transportation reports, which include a traffic impact study
4 certified by a traffic engineer, show that the proposed land use designations, densities, and design
5 standards are consistent with the function, capacity, and performance standards for the roads
6 identified in the county transportation system plan.

7 **2. Local Need**

8 The subject property is presently designated for low density residential use by the
9 comprehensive plan within the Winchester Bay Urban Unincorporated Area. The applicant
10 proposes to change the plan designation to high density residential to allow a residential planned
11 development. The Douglas County Comprehensive Plan Housing Policy 1 states the county
12 shall "ensure that the amount of residential land designated in urban unincorporated areas
13 corresponds with anticipated demand for various housing types and ownership patterns."

14 The Commission heard testimony from the appellants that additional land is not needed
15 for the type of development being proposed by the applicant because they claimed several
16 undeveloped parcels are able to support the proposed development. The applicant provided
17 letters from a long-time area real estate professional and a hospital administrator that indicate a
18 significant need in the Winchester Bay/Reedsport area for housing to accommodate incoming
19 medical professionals and others, and a "short supply" of land to meet current and future
20 residential needs of the community. (See Applicant's Exhibits 2 and 9 – hearing exhibits)

21 The applicant's proposal provides a reasonable opportunity to satisfy a local need for
22 additional single family residential development in the Winchester Bay UUA. We find that a full
23 range of public facilities and services are available to the subject property to accommodate the

1 demands created by a future residential development. The property has appropriate access via
2 the public road system and the site characteristics of the property may lend themselves to the
3 type of residential development proposed by applicant.

4 The Winchester Bay community has few townhouse developments of the type envisioned
5 here, with a predominant emphasis on recreation-oriented ownership. The Winchester Bay
6 Comprehensive Plan notes that "rental units are typically in demand and are full on a year-round
7 basis." This indicates a need for alternate housing, which the townhouses have the ideal design
8 for providing. The proposed development will increase the diversity of the housing stock in the
9 community. The proposal provides a reasonable opportunity to satisfy a local need for a
10 different land use.

11 Most small businesses in the area, as well as the region's largest employer, perceived a
12 need for more housing development of the type contemplated for the subject property, for which
13 the proposed Plan Amendment and Zone Change is a necessary prerequisite.

14 From the regional perspective, there is a need for more housing in coastal Douglas
15 County. The comprehensive plan projects that the coastal population will increase 23.7% in the
16 next 20 years, which will require a parallel increase in housing accommodations. The proposed
17 development will help accommodate this regional need.

18 About three quarters of the occupancy of the contemplated townhouses will be seasonal.
19 The increasing popularity of the adjacent dunes for ATV-based recreation along with the future
20 improvements currently planned to support additional ATV use of the dunes in the Umpqua
21 Lighthouse area will assure a continuing future need and demand for secondary housing in the
22 immediate area. (ATV's are not allowed to drive directly to the dunes from the subject
23 property.)

1 The proposed Plan Amendment and Zone Change will provide a reasonable opportunity
2 to satisfy a local need for additional residential occupancy, particularly townhouses on a mostly
3 seasonal basis in the Winchester Bay urban unincorporated area and in the regional coastal area.

4 **3. Site Suitability**

5 The findings above indicate the subject property is materially suitable for the contemplated
6 development from the perspectives of natural resource conservation, hazard management, public
7 facility support, housing need, and transportation function.

8 The subject property is located on an older stabilized dune. The contemplated residential
9 development is consistent with the requested zoning and with the development pattern of the
10 surrounding area. The contemplated development will provide needed housing in the area while
11 preserving identified natural resources on the subject property.

12 Structural fills, slopes, erosion control and drainage, foundation design, public utilities and
13 other related improvements will be constructed in accordance with the geotechnical reports and
14 under the supervision of a geotechnical engineer. Vegetation removal will generally be restricted
15 to the access roads and building sites, and will be minimized to avoid potential erosion and slope
16 destabilization. The contemplated development will not create geologic or personal hazards on site
17 or to the adjacent properties in accordance with the conscious preservation of existing natural
18 features, the careful geotechnical design, and the closely supervised construction process as set
19 forth in the conditions of approval.

20 The contemplated development is for a total of fifty townhouse dwelling units, limited by
21 application of the Design Review (AC) Overlay. The R-2 zoning is requested to preserve the
22 option of developing condominiums on the property, which would not be permitted in R-1 zoning.

23 The subject property is generally suited for the proposed R-2 zoning and the contemplated

1 development as to physical characteristics of the property, the potential availability of necessary
2 and appropriate public and private facilities and services, adequate access and accessibility to local
3 transportation facilities, and compatibility with adjacent and nearby land use activities. The site is
4 suitable for the proposed zone and its intended use. The proposed Plan Amendment meets the
5 criteria of LUDO § 6.500.

6 **C. LUDO Zone Change Criteria**

7 LUDO § 3.38.100 provides the following standards for a zone change.

8 “The Approving Authority may grant a zone change only if the following
9 circumstances are found to exist: ...

10 2. It is established that:

11 (a) The rezoning will conform with the applicable sections of the
12 Comprehensive Plan;

13 (b) The site is suitable to the proposed zone; and

14 (c) There has been a conscious consideration of the public health, safety, and
15 welfare in applying the specific zoning regulations.”

16 Addressing the zone change criteria cited above, the following findings are made:

17 **1. Compliance with the Comprehensive Plan**

18 The requested zone change from RS to R-2 is concurrent with the plan amendment to
19 change the map designation from RLD to RHD. The requested zone change will conform to the
20 amended plan map. Findings that the requested zone change conforms to applicable plan
21 policies are included above.

22 **2. Site Suitability**

23 The suitability of the subject site for the proposed zone is addressed above. The site is
24 materially suitable for R-2 zoning and its intended use.

1 **3. Public Health, Safety, and Welfare**

2 The findings above show that the public health, safety, and welfare have been consciously
3 considered in applying the specific zoning regulations.

4 Except as otherwise stated above, the application and the applicant's exhibits are adopted as
5 findings in support of the decision. The proposed zone change complies with LUDO 3.38.100.

6 The proposed Plan Amendment and Zone Change complies with the Statewide Planning
7 Goals and the county ordinance requirements for plan amendments and zone changes.

8 **D. Other Issues**

9 The appellants raised issues concerning the authority of a foreign LLC and the effect of a
10 previous partition of the subject property.

11 **1. Foreign LLC**

12 At the time of the initial application, it appears the applicant was a properly organized
13 and operating Nevada limited liability company which owned the subject property, but had not
14 registered to do business in Oregon. There is no evidence the applicant had conducted any
15 business in Oregon, other than the filing the instant application.

16 A foreign LLC is permitted to own property and perform a variety of acts in Oregon
17 without registration. ORS 63.701(2). The application for a plan amendment and zone change is
18 not an example of "transacting business." Filing a land use application is not the same as
19 commencing a court proceeding to enforce a contract. The list of activities a foreign LLC is
20 permitted to conduct in Oregon without registering with the Secretary of State is not inclusive.
21 The applicant appears to have the authority to file the plan amendment and zone change
22 application.

1 To moot this issue, 180 Jones LLC has registered as a foreign LLC with the Secretary of
2 State.

3 **2. Tentative Plan**

4 The conceptual redevelopment plan approved as part of the partition of the subject
5 property may be modified as a minor amendment in a ministerial action pursuant to LUDO §
6 4.300(2) with respect to the aforementioned partition. The present proceeding offers even more
7 due process protection in the modification of the conceptual plan than is accorded in the minor
8 amendment process for an approved partition. The present proceeding does not itself alter the
9 conceptual redevelopment plan approved in the previous partition.

10 **III. DECISION**

11 The proposed Plan Amendment from (RLD) Low Density Residential to (RHD) High
12 Density Residential and Zone Change from (RS) Suburban Residential to (R-2) Multiple Family
13 Residential for approximately 4.0 acres of an 8.18 acre parcel described as Tax Lot 1500, Section
14 13BA, Township 22S, Range 13W, meets the applicable criteria. Pursuant to LUDO §
15 2.600(3)(a) and (b), the Commission APPROVES the requested Plan Amendment and Zone
16 Change, subject to the following conditions:

17 1. Proof will be provided that all conditions of approval for a land partition in
18 Planning Department File No. 07-220 have been satisfied and the final plat map has been
19 recorded.

20 2. Residential development on the 4+ acre portion of the subject property will be
21 limited to a maximum of fifty (50) dwelling units. A Design Review Overlay will be applied to
22 reflect this condition.

23 3. The owner will dedicate additional right-of-way from the subject property along

1 Lighthouse Road, if requested by the county to assure adequate clear sight distances.

2 4. Signage will be posted at the access directing tsunami evacuation traffic south
3 along Lighthouse Road.

4 5. Developmental impacts on the jurisdictional wetlands present on the subject
5 property will be mitigated.

6 6. Access to the site will comply with the Uniform Fire Code (dead-end access road
7 requires specific turnaround configuration and each unit to be equipped with an approved
8 automatic sprinkler system).

9 7. Necessary improvements to the water supply system will assure adequate
10 domestic pressure and fire flow (this could be done by increasing the size of the main or by
11 installing a large on-site reservoir).

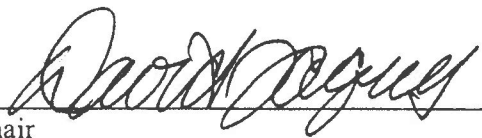
12 8. Sewage disposal will be by an on-site system if the Winchester Bay Sanitary
13 District (WBSD) moratorium is still in effect or by direct connection to the WBSD system if the
14 moratorium has been lifted.

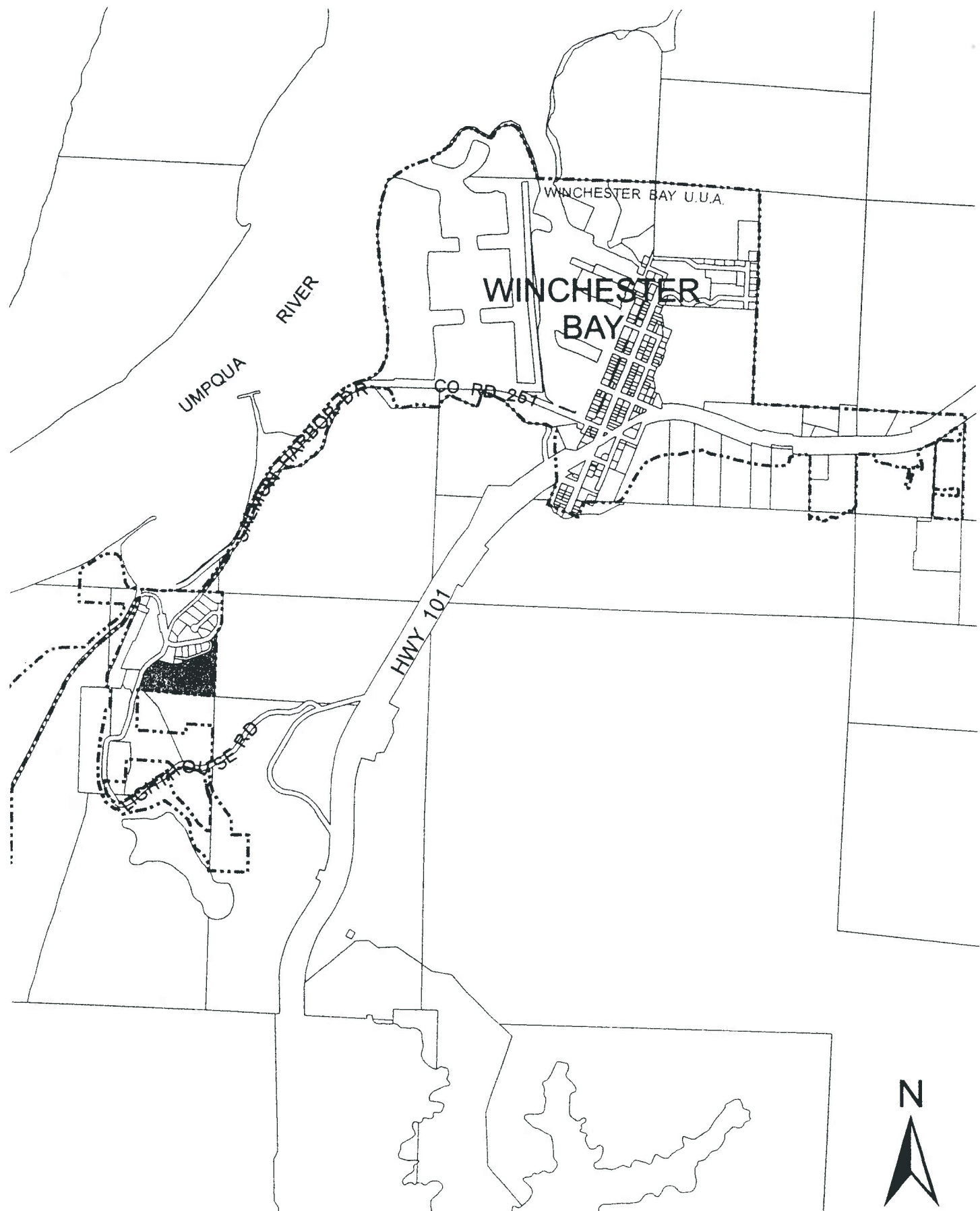
15 9. Construction, including structural fills, erosion control, drainage management,
16 foundation design, public utility connections, and vegetation preservation, will follow the
17 guidelines of the geotechnical reports submitted by the applicant, and will occur under the
18 supervision of a geotechnical engineer.

19 Date May 15, 2008

Douglas County Planning Commission

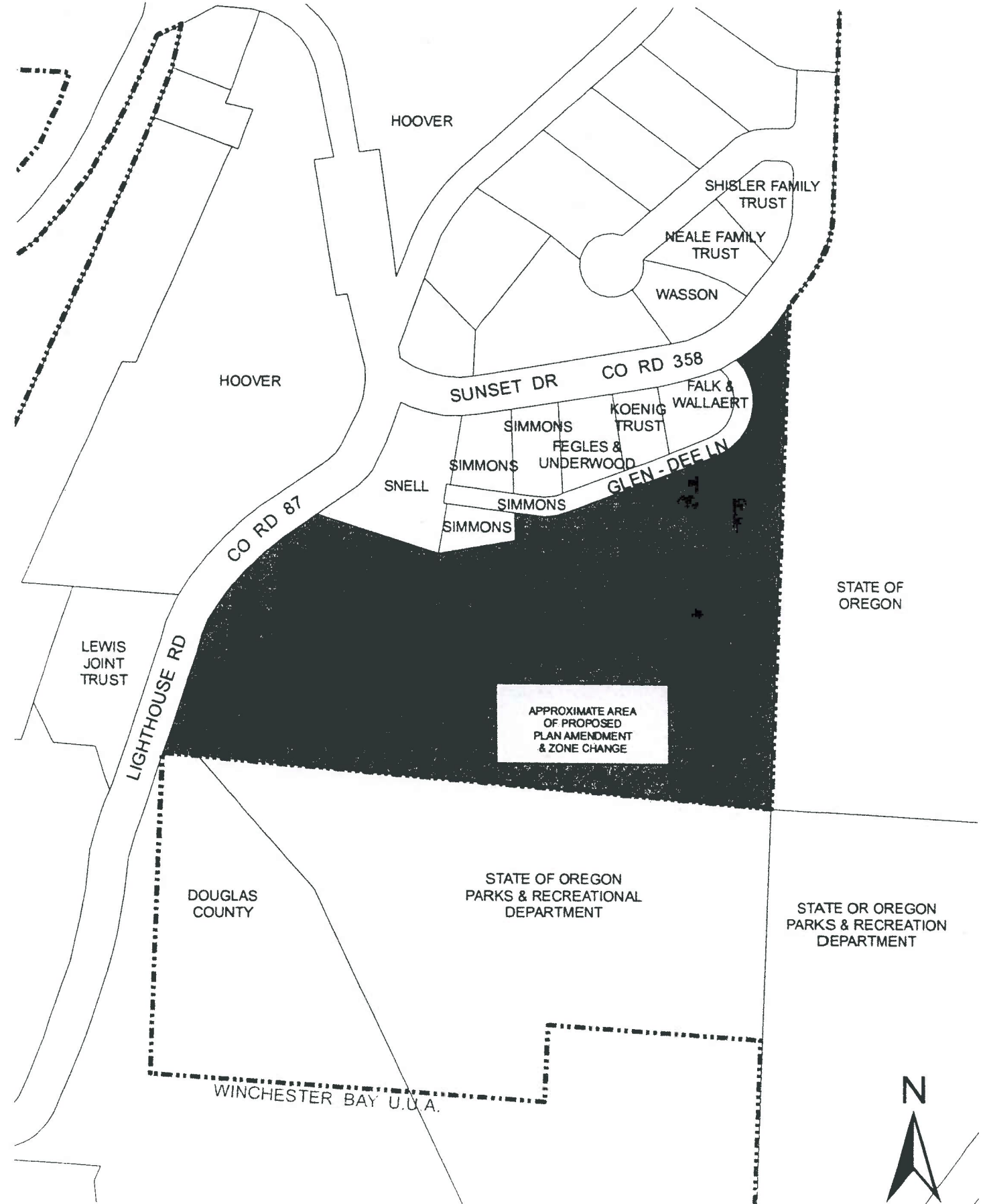
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Chair



ASSESSOR MAP STAFF EXHIBIT NO. 7
T22S R13W SEC 13

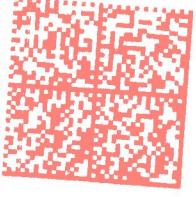
P/D 07-220
180 JONES LLC



**UGLAS COUNTY PLANNING DEPARTMENT
ROOM 106, JUSTICE BUILDING
DOUGLAS COUNTY COURTHOUSE
ROSEBURG, OR 97470**

**ATTN: PLAN AMENDMENT SPECIALIST
DLCD
635 CAPITOL STREET NE, SUITE 150
SALEM OR 97301-2540**

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