



Oregon

Theodore R. Kulongoski, Governor

Department of Land Conservation and Development

635 Capitol Street, Suite 150

Salem, OR 97301-2540

(503) 373-0050

Fax (503) 378-5518

www.lcd.state.or.us

NOTICE OF ADOPTED AMENDMENT

May 5, 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 013-07

The Department of Land Conservation and Development (DLCD) received the attached notice of adoption. Copies of the adopted plan amendment are available for review at DLCD offices in Salem, the applicable field office, and at the local government office.

Appeal Procedures*

DLCD ACKNOWLEDGMENT or DEADLINE TO APPEAL: May 19, 2008

This amendment was submitted to DLCD for review prior to adoption with less than the required 45-day notice. 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 DATE SPECIFIED ABOVE.**

Cc: Doug White, DLCD Community Services Specialist
John Renz, DLCD Regional Representative
Mark Bernard, Douglas County

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DLCD

Notice of Adoption

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

☐ In person ☐ electronic ☐ mailed

DEPT OF

APR 29 2008

LAND CONSERVATION
AND DEVELOPMENT

For DLCD Use Only

Jurisdiction: **Douglas County**

Local file number: **07-230A**

Date of Adoption: **4/23/2008**

Date Mailed: **4/28/2008**

Was a Notice of Proposed Amendment (Form 1) mailed to DLCD? **Yes** Date: **8/31/2007**

☐ Comprehensive Plan Text Amendment

☒ Comprehensive Plan Map Amendment

☐ Land Use Regulation Amendment

☒ Zoning Map Amendment

☐ New Land Use Regulation

☒ Other: Non-Resource Determination

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

Garden Valley Estates LLC, request for a Plan Amendment from Agriculture to Rural Residential-5 acre and a Zone Change from Exclusive Farm Use - Grazing to Rural Residential-5 Acre, on a 259 acre parcel, together with a determination that the property is non-resource land and on information that demonstrates consistency with the County's Rural Residential 5 - Acre density.

Does the Adoption differ from proposal? Yes, Please explain below:

The original proposal contemplated an expansion of the Riversdale Rural Unincorporated Community boundary as to the southerly 99 acres of the subject property. The RUC boundary portion of the application has been separated as Planning Department file number 07-230B, which has not been heard by the local authority.

Plan Map Changed from: **AGG**

to: **RR5**

Zone Map Changed from: **FG**

to: **5R**

Location: **Intersection of Del Rio Road and Garden Valley Rd.**

Acres Involved: **259**

Specify Density: Previous: **1 DU/160 AC**

New: **1 DU/5 AC**

Applicable statewide planning goals:

1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19
<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

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. **013-07 (16365)**

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

ODOT, ODF&W, Douglas County Fire District No. 2, Qwest, Charter Communications, Pacific Power, Avista Utilities, Umpqua Basin Water Association, Williams Gas Pipelines, Roseburg School District No. 4

Local Contact: **Mark Bernard**

Phone: (541) 440-4289 Extension:

Address: **Room 106, Justice Building**

Fax Number: **541-440-6266**

City: **Roseburg**

Zip: **97470-**

E-mail Address: **mabernar@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**.



PLANNING DEPARTMENT

Room 106 • Justice Building • Douglas County Courthouse
Roseburg, Oregon 97470

Agency Coordination • Administrative • Long Range • Support Services
(541) 440-4289 • (541) 440-6266 Fax

On-Site Services Community Services
(541) 440-6183 (541) 464-6443
(541) 464-6429 Fax

April 25, 2008

NOTICE

TO: Parties to the GARDEN VALLEY ESTATES LLC, request for a Comprehensive Plan Amendment from (AGG) Agriculture to (RR5) Rural Residential - 5 Acre, and Zone Change from (FG) Exclusive Farm Use - Grazing to (5R) Rural Residential - 5 Acre, based upon a Nonresource Determination on a 259 acre parcel to allow future division of the property into as many as 51 parcels, each of which would contain a dwelling. The property is located on Garden Valley Road, County Road No. 6 at its intersection with Del Rio Road, County Road No. 31C, adjacent to the Riversdale Rural Community Boundary, and is described as Tax Lot 100 in Section 21 of T26S, R6W, W.M. and Tax Lot 100 in Section 28A of T26S, R6W, W.M., Property I.D. Nos. R50854 & 51351. Planning Department File No. 07-230A. Callahan Planning Advisory Committee (PAC).

FROM: Douglas County Planning Department

RE: Notice of Board of Commissioners Decision

This correspondence shall serve as official notice that the Douglas County Board of Commissioners, on April 23, 2008, affirmed the Planning Commission Decision and GRANTED the request as stated above.

A copy of the Board of Commissioners final action (signed on April 23, 2008) and the Planning Commission Findings of Fact and Decision (dated March 20, 2008) are attached with this notice. The file for this matter is available for public review, Monday through Friday, 8:00 a.m. to 5:00 p.m., at the Douglas County Planning Department Office, located in Room 106, Justice Building, Douglas County Courthouse, Roseburg, Oregon.

This final local Decision can be appealed to the State Land Use Board of Appeals (LUBA) in Salem, Oregon, by any individual or agency who has been recognized as a party in this matter. An appeal is commenced by filing a "Notice of Intent to Appeal" not later than 21 days after the date the final local decision was made. The appeal must be filed at the LUBA office in Salem. Please consult your attorney for details. The LUBA rules can be found on the Internet at <http://luba.state.or.us/>

attachments

c. Board of Commissioners
Paul E. Meyer, County Counsel
Cheryl Goodhue, Planning Manager

DOUGLAS COUNTY OREGON
FILED

APR 25 2008

AN ORDINANCE ADOPTING AMENDMENTS TO THE DOUGLAS COUNTY COMPREHENSIVE PLAN MAP AND ZONING MAP BASED UPON A NONRESOURCE DETERMINATION FOR GOALS 3 AND 4, AND ON INFORMATION THAT DEMONSTRATES CONSISTENCY WITH THE COUNTY'S RURAL RESIDENTIAL 5 - ACRE DENSITY; PLANNING DEPARTMENT FILE NO. 07-230A.

ORDINANCE NO. 2008-04-02

RECITALS

- A. GARDEN VALLEY ESTATES LLC, request for a Comprehensive Plan Amendment from (AGG) Agriculture to (RR5) Rural Residential - 5 Acre and a concurrent Zone Change from (FG) Exclusive Farm Use - Grazing to (5R) Rural Residential - 5 Acre, based upon a Determination that the property is non-resource land and is not subject to Agricultural (Goal 3) and Forest Land (Goal 4) Goals and on information that demonstrates consistency with the County's Rural Residential 5 - Acre density, on a 259 acre parcel to allow future division of the property into as many as 51 parcels, each of which would contain a dwelling. The property is located on Garden Valley Road, County Road No. 6 at its intersection with Del Rio Road, County Road No. 31C, adjacent to the Riversdale Rural Community Boundary, and is described as Tax Lot 100 in Section 21 of T26S, R6W, W.M. and Tax Lot 100 in Section 28A of T26S, R6W, W.M., Property I.D. Nos. R50854 & 51351. Planning Department File No. 07-230A. Callahan Planning Advisory Committee (PAC).
- B. The Douglas County Planning Commission held hearings to consider the matter on December 13, 2007 and January 17, 2008, deliberating on the matter at the February 21, 2008 hearing and subsequently recommended for approval of the request in a Findings and Decision document dated March 21, 2008.
- C. The Board of Commissioners considered the matter on April 23, 2008, at a hearing held pursuant to Section 6.900.2 of the Douglas County Land Use & Development Ordinance. We affirmed the Planning Commission decision and ordered that the request be granted.

THE DOUGLAS COUNTY BOARD OF COMMISSIONERS ORDAIN AS FOLLOWS:

SECTION ONE: The requested Comprehensive Plan Map Amendment, Zone Map Amendment and Nonresource Determination are GRANTED.

SECTION TWO: The "Findings of Fact and Order" of the Board (attached, dated April 23, 2008) and the "Findings of Fact and Decision" of the Douglas County Planning Commission (attached, dated March 20, 2008), are ADOPTED and by reference made part of this Ordinance.

DATED this 23rd day of April, 2008.

**BOARD OF COUNTY COMMISSIONERS
OF DOUGLAS COUNTY, OREGON**

Chair _____ NO 108

~~Mary Killea~~

Commissioner

~~David Robinson~~

Commissioner

**BEFORE THE BOARD OF COMMISSIONERS
OF DOUGLAS COUNTY, OREGON**

Garden Valley Estates LLC, request for a Plan map)
designation amendment from (AGG) Agriculture to)
(RR5) Rural Residential - 5 Acre based on a)
Determination that the property is non-resource land)
and is not subject to Agricultural (Goal 3) and Forest)
Land (Goal 4) Goals and on information that)
demonstrates consistency with the County's Rural)
Residential 5 - Acre density and a zone change from)
(FG) Exclusive Farm Use - Grazing to (5R) Rural)
Residential - 5 Acre on a 259 acre parcel to allow)
future subdivision development of the site at the 5R)
density. The site is located on the north side of)
Garden Valley Road at its intersection with Del Rio)
Road. The property is described as Tax Lot 100)
in Section 21, Township 26S, Range 6W, W.M. and)
Tax Lot 100 in Section 28A, Township 26S,)
Range 6W, W.M., Property ID Nos. R50854)
and R51351. Planning Department File No. 07-230A.)

**FINDINGS OF FACT
AND ORDER**

INTRODUCTION & PROCEDURAL FINDINGS

1. This matter came before the Board of County Commissioners ("the Board") at a public hearing on April 23, 2008, in Room 216 of the Douglas County Courthouse, Roseburg, Oregon, pursuant to Section 6.900.2 of the Douglas County Land Use and Development Ordinance.
2. The matter originally came before the Douglas County Planning Commission on application filed by Garden Valley Estates LLC. The Planning Commission held hearings to consider the matter on December 13, 2007 and January 17, 2008, deliberating on the matter at the February 21, 2008 hearing.
3. The Planning Commission memorialized its decision in a Findings and Decision document dated March 21, 2008. No appeals of that Decision were filed.
4. At the Board meeting on April 23, 2008, the public hearing on this matter was opened and parties were given an opportunity to speak on the record. The Board subsequently deliberated to affirm the Planning Commission decision at the April 23, 2008 public meeting.

FINDINGS

1. Upon considering evidence and exhibits entered as part of the Planning Commission record, including the written submittals from the applicant and parties, the written Staff Report and the Findings and Decision approved by the Planning Commission on March 20, 2008, and in consideration of evidence considered at the April 23, 2008 Board hearing, the Board finds that the applicable decision criteria, as established in the Staff

Report dated December 6, 2007, have been adequately addressed by the applicant.

2. The Board finds that the relevant facts raised in this matter support the conclusions and decision reached by the Planning Commission in their Findings and Decision, dated March 20, 2008.
3. The Board adopts the Planning Commission Findings and Decision as its own.
4. The description of the property for which the amendment has been approved is as follows:

Parcel 3 of Land Partition No. 2005-0088, as recorded in "Record of Partition Plats", Records of Douglas County, Oregon.

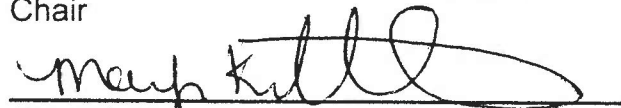
ORDER

Based on the foregoing, it is hereby ordered by the Board of Commissioners that the Planning Commission decision is affirmed and the application is GRANTED.

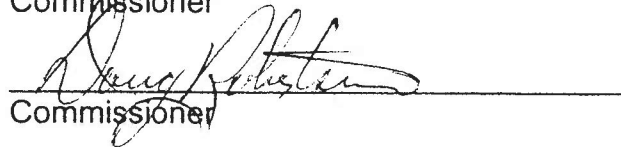
DATED this 23rd day of April, 2008.

BOARD OF COUNTY COMMISSIONERS
OF DOUGLAS COUNTY, OREGON

Chair

No vote


Commissioner



Commissioner

BEFORE THE DOUGLAS COUNTY PLANNING COMMISSION

Garden Valley Estates LLC, Findings of Fact and Decision, Planning Department
File No. 07-230A.

This matter came on regularly for hearing before the Douglas County Planning Commission on December 13, 2007 in Room 216 of the Douglas County Courthouse and was continued until the regular Planning Commission hearing on January 17, 2008. Deliberations on the matter were conducted at the February 21, 2008 regular Planning Commission hearing.

The applicant and its representatives were present at the December 13, 2007 and January 17, 2008 hearings.

The Planning Commissioners present at the December 13, 2007 hearing were: Rick Barnes, David Jaques, James Mast, Brian Parkinson, Rich Raynor and Edward Stratton

Planning Commissioners present at the January 17, 2008 hearing were: Rick Barnes, David Jaques, James Mast, Brian Parkinson and Edward Stratton.

Planning Commissioners present at the February 21, 2008 deliberation on the matter were: Rick Barnes, David Jaques, Dave Leonard, James Mast, Brian Parkinson, Rich Raynor and Edward Stratton. Commissioner Dave Leonard, who was not present at the December 13, 2007 and January 17, 2008 hearings on the matter, stated that he had reviewed the written materials relating to those hearings and was prepared to participate in deliberations.

The Planning Commission takes official notice of the following:

1. The Douglas County Comprehensive Plan, including the implementing Douglas County Land Use and Development Ordinance, adopted by the Douglas County Board of Commissioners December 31, 1980, effective April 1, 1981, and as later amended, which has been acknowledged by the Land Conservation and Development Commission on December 21, 1982, and by Compliance Acknowledgment Order 83-ACK-12 dated January 18, 1983.
2. The records of the Planning Department of Douglas County concerning publication and mailing of notice.

FINDINGS OF FACT

1. Application was filed with the Planning Department at least 73 days prior to December 13, 2007.
2. At least 45 days prior to December 13, 2007, notice of the hearing was sent by mail to the applicant, to all property owners within 500 feet of the property which is the subject of the application, to service providers and governmental agencies and to the Callahan Planning Advisory Committee (PAC).
3. Notice of the hearing was given by publication in a newspaper of general circulation in the affected area at least 20 days prior to December 13, 2007.
4. At the hearing the commission recognized the following parties in the matter: Garden Valley Estates, applicant and titleholder; James A. Mann LLC, applicant's representative; Hutchinson, Cox, Coons, DuPriest, Orr & Sherlock P.C., Douglas M. DuPriest and Zack P. Mittge, applicant's legal representatives; Douglas County Public Works, Robb Paul; Douglas County Fire District No. 2, Joseph Pedrola, Umpqua Basin Water Association, Brad Johnson; The Callahan PAC; Oregon Department of Land Conservation and Development, Doug R.

White; Les and Patricia Esparza; Bruce Williams and Nancy Bailey; Larry and Kathryn Fordyce; Mario Rosa and Sherry Holub; Mark Long; Dawn and Willy Starnes; Shelley Wetherell; Shelley Wetherell on behalf of Friends of Douglas County; and, Dena Searles.

5. Staff entered Staff Exhibits 1 through 22, including the Staff Report, into the Record at the December 13, 2007 hearing. On January 17, 2008, staff entered Staff Exhibits 23 through 29, including a Supplemental Staff Report into the Record and on February 21, 2008 staff entered Staff Exhibit 30, a second Supplemental Staff Report with attached materials into the Record. Applicant's Exhibits 1 through 3 were entered into the Record at the December 13, 2007 hearing. Opposer's Exhibits 1 through 24 were also entered into the Record at the December 13, 2007 hearing with Opposer's Exhibits 25 and 26 entered into the Record at the January 17, 2008 hearing.

6. The plan amendment and zone change are consistent with Douglas County plan amendment and zone change criteria.

7. The criteria for a plan amendment are set forth in the Douglas County Land Use and Development Ordinance at section 6.500(2). It provides:

"2. The application shall address the following requirements which shall be the standard for Amendment:"

8. The applicant has addressed all of these requirements related to its proposed plan amendment and zone change.

9. The first criteria for a plan amendment is that:

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

10. The plan amendment and zone change are consistent with the Statewide

Planning Goals and applicable administrative rules (including the Transportation Planning Rule) for the following reasons:

Goal 1: Citizen involvement - *"To develop a citizen involvement program that insures the opportunity for citizens to be involved in all phases of the planning process."*

11. The plan amendment and zone change are consistent with Goal 1.

12. Citizen comment and participation regarding this request was solicited by the Planning Department. Property owners within 500 feet, affected agencies and the local Planning Advisory Committee were notified by mail. Notice was published in a newspaper of general circulation. Citizens had opportunities to submit oral testimony in public hearings for this application before the planning commission on December 13, 2007 and January 17, 2008. Additionally, the planning record was open for the submission of written testimony by general public until January 25, 2008.

13. Avenues for citizen involvement and comment were opened in conformance with Goal 1.

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

14. The plan amendment and zone change is consistent with Goal 2.

15. The Board of Commissioners, by adopting the Plan Amendment procedure, has adopted an "implementation measure" as defined by Statewide Planning Goal 2.

16. The application, the required notice, and the quasi-judicial public hearings meet the requirements of the plan amendment procedure.

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

17. The plan amendment and zone change is consistent with Goal 3.
18. The subject property is not considered agricultural land that must be preserved or maintained under Goal 3. Accordingly, it is appropriate to apply a nonresource designation to the property.
19. Goal 3, and the Goal 3 rules, define agricultural lands as:
 - (1) Land classified by the NRCS as predominantly Class I-IV soils;
 - (2) Land in other soil classes that is suitable for farm use taking into consideration; a) soil fertility; b) suitability for grazing; c) climatic conditions; d) existing and future availability of water for irrigation purposes; e) existing land use patterns; f) technological and energy inputs required; and g) accepted farming practices.
 - (3) Land that is necessary to permit farm practices to be undertaken on adjacent or nearby agricultural lands;
 - (4) Land in capability classes other than I-IV that is adjacent to or intermingled with lands in capability classes I-IV within a farm unit.
20. The subject property is not "predominantly Class I-IV soils." Goal 3 provides that, although NRCS soil data may be relied upon for planning purposes:

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

The applicant provided more detailed soil data, in the form of two Order I soils reports (Applicant's Exhibits 6A and 6B; Staff Exhibit 21) prepared by a Professional Soil Classifier and Certified Professional Soil Scientist. These reports were based on detailed on-site investigation of the subject property including backhoe exposures and hand augur methods. These reports demonstrate that the subject property is not predominantly comprised of Class I through Class IV

soils, and that, even based on an extremely conservative estimate, over 67% of the subject property is comprised of soils that are Class V or higher.

21. The Commission finds that these soils reports constitute reliable, professional and "detailed soil data" and relies upon these same reports in determining that the subject property is not predominantly comprised of Class I through Class IV soils.

22. Opponents of the plan amendment and zone change have challenged the applicant's soils report, and have raised questions about the consistency of this report with a prior 2001 soils report for a larger 590-acre parcel, of which the subject property was (at that time) a part. However, the soils report expressly states that the 2007 Order I soil surveys were supplements and refinements to the prior 2001 report that were not intended to replace the prior 2001 work. Instead, the Professional Soil Classifier and Certified Professional Soil Scientist supplemented his prior report with more detailed field documentation on the smaller parcel, and detailed mapping units reliable to 0.5 to 1.5 acres. The commission finds no inconsistency in engaging in a more detailed evaluation of the subject property. As set forth above, the commission finds that the 2007 soils report constitutes professional, reliable and substantial evidence supporting approval in this case.

23. Opponents also questioned the level of available detail in the soils report. The planning commission finds the reports are more detailed than NRCS studies and are sufficiently detailed for planning purposes.

24. Turning to the second prong of the analysis, the Planning Commission finds that the subject property does not qualify as lands:

"[I]n other soil classes that is suitable for farm use taking into consideration; a) soil fertility; b) suitability for grazing; c) climatic conditions; d) existing and future availability of water for irrigation

purposes; e) existing land use patterns; f) technological and energy inputs required; and g) accepted farming practices."

25. First, the planning commission finds that subject property is not "suitable for farm use" and, therefore, cannot be considered agricultural land because it cannot be utilized for obtaining a profit in money. The definition of "farm use" is in ORS 215.203(2)(a). It states that "farm use" under Goal 3 "means the current employment of land for the primary purpose of **obtaining a profit in money**[" (Emphasis added).

26. The commission finds that the subject property cannot be employed for obtaining a profit in money.

27. The following were identified as potential agricultural uses on the subject property:

1. Grazing livestock
2. Hay and forage production
3. Grain and alfalfa production
4. Row crops and specialty crops
5. Vineyard production

28. With regard to grazing potential, the applicant submitted evidence from The applicants also submitted a statement from Mike Kesling, a Certified Crop Adviser and Pesticide Consultant with SureCrop Farm Services. Applicant's Exhibit 16. Mr. Kesling concluded that "the subject property's only potential agricultural use is marginal, short season livestock production" but that that "use is not a commercially viable agricultural operation."

29. The applicant also submitted evidence by one of its principals, Mr. Brian Heinze, regarding the viability of the subject property for grazing. Mr. Heinze is a professional agronomist and the owner of Lookingglass Red Angus, a pure-bred cattle ranching operation. Mr. Heinze has been attempting to conduct a portion of his cattle ranching operations on the subject property. Mr. Heinze

concludes that the subject property cannot be grazed to obtain a profit in money due to a variety of physical limitation on the property. In particular, Mr. Heinze states that the property can only be grazed during a fairly narrow window of approximately three months in the spring, due to the lack of rainfall to support forage on the property, the lack of irrigation water rights for the subject property, and the tendency of the soils on the property to dry out rapidly. Mr. Heinze also states that the property only has two stock watering ponds and no water rights for livestock watering, and that the forage produced on the subject property is not quality forage due to the poor soils and lack of minerals. Mr. Heinze points out that his own cattle are currently provided with mineral supplements to make up for this deficiency. Mr. Heinze identifies two possible alternatives for making grazing more viable on the property: (1) fertilizing the forage; or (2) intensively managing the subject property during the short three-month period of available fodder. However, he concludes that neither of these options are viable as (1) the subject property lacks an irrigation water right and fertilizer alone would not increase fodder production, and (2) intensive management would require protein supplements as well as inputs of hay, fertilizer and water which are not economical. Mr. Heinze concludes that the property might derive \$5,000 in gross profit, but that there is no net profit derived from the operation.

30. Mr. Kesling agreed with Mr. Heinze's assessment but notes that gross profit from the livestock operation would likely be approximately \$3,885 per year.

31. Two opponents of the subject property, area ranchers Mr. Kennedy and Mr. Holcomb indicated that they would be willing to pay a rental value on the subject property of approximately \$30 to \$50 per acre.

32. Other opposition testimony was directed at the historical use of the larger Busby ownership, NRCS rankings for grazing potential, and general information on various ranching practices adopted elsewhere.

33. While the commission gave consideration to the testimony of area ranchers Mr. Kennedy and Mr. Holcomb, we believe that a more conservative estimate of grazing value is more appropriate under the circumstances. We note that Mr. Heinze is the party with the most familiarity with the subject property and its constraints, and the only rancher that testified who has actually attempted to graze livestock on the subject property. We also note that, Mr. Heinze's assessment of value was above that provided by Mr. Kesling, an independent expert, which lends further credence to its veracity. The applicant sought to rent the property to area ranchers for a higher amount and was ultimately required to lease the property to Mr. Heinze due to a lack of interest among other area ranchers.

34. Opponents of the plan amendment and zone change have challenged Mr. Heinze as being a biased witness, and argued that his testimony should not be considered. There is no provision in state or local law barring an applicant from testifying on his own behalf. Accordingly, the planning commission will not disregard all of an applicant's information simply because he is perceived by opponents as biased, but will make its own independent assessment of credibility of each witnesses' statements.

35. The planning commission finds Mr. Heinze to be a credible witness. Given his professional background and his familiarity with the property, the commission relies on his assessment of the subject property's grazing potential as substantial evidence that demonstrates that the subject property cannot be grazed to obtain a profit in money.

36. Alternatively, even if the commission were to rely on the estimates of value provided by Mr. Holcomb and Mr. Kennedy those per acre values would equate to between \$7,770 and \$12,950 in gross profit for all 259 acres of the property. Mr. Heinze noted at the December 13, 2007 hearing that neither of these

amounts would result in a net profit to the applicant. Therefore, even under the opponent's analysis, the property could not be grazed to obtain a profit in money.

37. Testimony was submitted by a number of opponents of the plan amendment and zone change relating to the historical grazing operation of the Busby property. The commission notes that the Busby operation comprised a larger 509-acre ranch that contained the subject property. The grazing operation was not limited to the subject property. Additionally, there was no evidence submitted reflecting that Mr. Busby's operation was a profitable operation, or that it would be a profitable operation if it still existed and were operating today. Testimony concerning Mr. Busby's operation only attests to a past level of productivity on a much larger ownership than what currently exists due to amenities to the land, past economies, of scale, lower fuel and fertilizer costs and other factors. The fact that livestock can be, or has been, grazed on a property does not necessarily mean that it is suitable for farm use.

38. As noted, general information regarding ranching practices was placed into the record by opponents of the application – including information related to subclover production, sacrifice pasture, and organic beef. None of this information relates to the particular property at issue. The commission relies, in part, on the statement of Mr. Heinze, who reviewed these possibilities in light of his own particular experience and knowledge of the property and concluded that ranching was not viable.

39. Opponents also raised the issue of hay and forage production on the subject property. We agree that most of the property is not suited to the production of hay and forage due to a variety of physical factors including slopes, draws, and areas subject to compaction or other limitations. We also find that the property is largely unsuitable to the production of forage due the low quality presently produced and the lack of an available water right to support the irrigation of the

forage or hay. We find that, based on the high costs associated with hay and forage production - fertilizer and equipment costs, and labor for cutting, raking, baling and roadsiding - and the low amount of quality forage that could be produced from the site, the subject property cannot be profitably used for the production of hay or forage.

40. Opponents of the proposal indicated that some portion of the Busby ownership may have been used for grain or alfalfa production in the past. Applicants submitted evidence reflecting that the inherent limitations of the property substantially limits the amount of the subject property that could be used to produce alfalfa or grain, and that without an irrigation water right for the subject property there would be crop failures and a net operating loss for the production of these crops. Moreover, the applicants point to the lack of available combine equipment to harvest such crops, and that any income derived from production of these crops would be consumed by labor, equipment costs, seed and the costs of cultivations. Opponents submitted no evidence controverting these facts, and the planning commission finds that the subject property could not be managed to obtain a profit in money from the production of grain or alfalfa.

41. The applicant provided evidence in the form of opinions by Mike Kesling, a Certified Crop Adviser and Pesticide Consultant with SureCrop Farm Services, and by Don Kruse, owner of Kruse Farms, reflecting that the subject property is not suitable for the production of row crops or specialty crops. Opponents submitted no evidence controverting these facts, and the planning commission finds that the subject property could not be managed to obtain a profit in money from the production of row crops or specialty crops.

42. Opponents argued that the subject property might be suitable for a commercial vineyard. Mike Kesling, a Certified Crop Adviser and Pesticide Consultant with SureCrop Farm Services, indicated that

"[w]hile some portion of the subject property might theoretically be used for the production of wine grapes, the lack of water or a water right for irrigation means that a commercially viable vineyard cannot be established on the Garden Valley property. A commercial vineyard would cost an estimated \$30,000 per acre in stock, improvements and management. On a non-irrigated parcel like the Garden Valley property, this expenditure, and the risk it represents, is simply not commercially viable."

The planning commission agrees with this assessment and holds that the subject property may not be farmed to produce a profit in money as a vineyard.

43. Opponents challenged the vineyard potential primarily on the grounds that the subject property could be dry-farmed to produce wine grapes, and submitted opinions by a number of persons familiar with the practice of dry-farming to substantiate their argument that dry-farming is possible on the subject property. They also expressed opinions about the relative costs of establishing a commercial vineyard on the subject property. The applicant responded by providing a report from the OSU Extension Office regarding the costs inherent in producing a commercial vineyard, opinions from an established vineyard manager regarding the efficacy of dry farming, and a cost estimate regarding the expense of constructing a water impoundment of sufficient size to accommodate a "planted vineyard" as that term is defined in the DLCD rules.

44. On balance, we note that while there are a number of general opinions regarding the efficacy of dry-farming as a method, all of the experts both for and against the proposed application concur that irrigation is necessary to establish grapes on the subject property. The applicant has demonstrated that the subject property has no irrigation water rights and cannot obtain any for the months of July through November due to the fact that the property is hydrologically connected to an already over-allocated North Umpqua River system. See Applicant's Exhibits 17, 29-30; Staff Exhibit 21. Without this water there can be little or no use of the subject property for a commercial vineyard. Accordingly,

we find that the subject property cannot obtain a profit in money as a commercial vineyard.

45. We also note, that the opponents have not conclusively demonstrated there is a market advantage associated with dry-farming grapes. As reflected in the testimony of Norbert Fiebig, vineyard manager of Van Duzer vineyards, the lack of water for irrigation would in fact, only limit the competitiveness of a dry-farmed vineyard, by limiting or entirely destroying crops (and possibly even vines) during a bad rain year. There is no off-setting advantage to planting a vineyard without an irrigation system.

46. There was some testimony about constructing water impoundments to catch rain on the subject property, limiting the need for irrigation water rights. This would be difficult, if not impossible for the applicant, in light of the fact that the subject property currently has a number of seasonal drainages that cross it and empty off of the property, and interference with any one of these drainages by a water impoundment of any appreciable size would likely require an irrigation water right. Nevertheless, the applicant has provided an estimate from professional excavators, surveyors and engineers for the costs to construct such an impoundment on the subject property sufficient in size to provide two-acre feet of water per annum for a 40-acre vineyard. That expense is \$2,607,508.53. We find this estimate to be reliable.

47. It has been argued that less water might be sufficient to establish a commercial vineyard on the subject property. However, even assuming that an impoundment of half the size could be constructed for half the price (which may not be the case due to the economies of scale necessary to create a commercial vineyard), we find that a person could not obtain a profit in money by investing \$1,300,000 simply in order to be able to compete on an equal footing with other area vineyards.

48. Even setting aside the significant cost associated with constructing a water impoundment for the subject property, the planning commission finds that the risk in establishing a commercial vineyard on the subject property without irrigation is too substantial. In particular, applicant's provided two pieces of compelling information reflecting that the costs for establishing a vineyard would be between \$22,000 and \$30,000 an acre. The OSU Extension Office publication reflects the costs of establishing a vineyard in 2004, and arrives at a cost of \$4,153.05 per acre for each year and over the period of five years necessary to establish a vineyard costs per acre of \$22,087.88 assuming no rate of inflation over that time period. We are mindful that this calculation is no longer entirely valid due to a variety of assumptions that are no longer valid (i.e. costs of gasoline at \$1.40 a gallon), and for the lack of assessment of inflation inherent. However, the commission finds that the assessment supports the estimate of Mr. Kesling of \$30,000 per acre for establishing a commercial vineyard. The commission also notes that, even with these lower figures, the OSU Extension Service model reflects that a commercial vineyard would be operating at a deficit throughout the first 25 years. Given the inherent constraints of the subject property, and its lack of any irrigation water right the commission finds that the subject property could not be used to maintain a profit in money as a commercial vineyard.

49. Opponents have argued that, whether or not the property can be used for obtaining a profit in money is irrelevant for determining whether is capable of being used for "farm use," and have argued that as long as the "purpose" is to obtain a profit in money a person need never actually obtain such a profit. We reject this argument.

50. As an initial matter, the Oregon Supreme Court recently interpreted this provision in *Wetherall v. Douglas County*, 342 Or 666 (2007), holding:

"we conclude that in determining whether land is "suitable" for "farm use" - defined in ORS 215.203(2) as the "current employment of the land

for the primary purpose of obtaining a profit in money" by engaging in specified farm or agricultural activities – **a local government may not be precluded from considering the costs or expenses of engaging in those activities.**" (Emphasis added.)

In so holding, the Supreme Court upheld Douglas County's decision to re-designate properties that could not be profitably managed for farm use, and struck down an administrative rule promulgated by DLCD which purported to bar local jurisdictions from considering "net income" or "profitability" in this analysis. To ensure that its rejection of DLCD's rule was clearly understood, the Court expressly stated:

"The factfinder may consider "profitability," which includes consideration of the monetary benefits or advantages that are or may be obtained from the farm use of the property *and* the costs or expenses associated with those benefits, to the extent such consideration is consistent with the remainder of the definition of "agricultural land" in Goal 3." (Italics original.)

51. Here, the applicant has demonstrated that the property cannot be profitably managed for agricultural purposes. According, it is not suitable for farm use, and is not "agricultural land" under Goal 3.

52. We believe that a "purpose" statement is designed to ensure that mere "hobby farm" uses – i.e. the maintaining of a few livestock, or a truck garden – do not entitle a rural property owner to a tax exemption related for farm use; and to ensure property owners are not required to maintain non-farm properties for farm uses simply because a property might support one or more livestock or other resources. Profitability provides an important benchmark to determine the designation of such properties; and, where, as here, it has been demonstrated that an owner cannot obtain a profit in money from farm uses, Douglas County will not compel them to continue to manage that property for this "purpose."

53. Therefore, the applicant has demonstrated that the subject property cannot be currently employed to obtain a profit in money, and is, therefore, not suitable for "farm use."

The second prong of the analysis also considers a list of factors for a local government to consider in determining whether the subject property is suitable for farm use. Careful consideration of the following factors reflects that the subject property is not:

54. Soil Fertility. As set forth, under the first part of the analysis the applicant has demonstrated through the submission of professional Order I soils reports the subject property is not suitable for farm use.

55. Suitability for grazing. As set forth above, the applicant has demonstrated that the subject property could not produce a profit in money from grazing.

56. Climatic conditions. The area is wet during the winter and spring, but dry and droughty during the growing season (July through September). Temperatures are moderate to hot from July through October and moderate to cold the remainder of the year. Expert testimony from both the certified soils scientist, Mr. Kitzrow, and the certified crop adviser, Mr. Kesling, identify the drought conditions during the summer months, combined with overall southern aspect of the subject property, and shallow soils as being a primary limitation on agricultural production on this property. The opponents have provided no evidence controverting these facts, and the planning commission adopts them.

57. Existing and future availability of water for irrigation purposes. As set forth above, the subject property is not irrigated, possesses no irrigation water rights

and cannot obtain an irrigation water right during the dry season due to the overallocation of the North Umpqua River.

58. Existing land use patterns. As will be addressed in detail below, the subject property is bordered on two sides by residential development and 5-acre densities appropriate for rural use (including the Riversdale Unincorporated Community to the south, a developed and committed lands area to the west and some agricultural properties developed with residences and five-acre densities to the west). There are large ownerships of agricultural land to the north and east. However, as will be addressed below, these properties, are owned and managed separately from the subject property and are at least double the minimum lot sizes for EFU properties.

59. Technological and energy inputs required. As detailed above, the technological and energy inputs required to manage the subject property for agricultural purposes are simply too high to obtain a profit in money. Additionally, as identified by certified crop adviser Mr. Kesling, deposits of aggregate throughout the soils on the subject property, and the presence of numerous drainages on the subject property impede movement of equipment and make tillage impractical throughout.

60. Accepted farming practices. As detailed above, the applicant has demonstrated that the subject property cannot be managed to maintain a profit in money using accepted farming practices. Based on consideration of each of these issues, the planning commission finds that the subject is not appropriate for farm use.

61. Turning to the third prong of the analysis, the subject property is not “[l]and that is necessary to permit farm practices to be undertaken on adjacent or nearby agricultural lands.”

62. There was no evidence submitted reflecting that the subject property is necessary to permit farm practices to be undertaken on adjacent or nearby agricultural lands.

63. The applicant submitted maps and photographs illustrating land use patterns in the area, as well as a summary of adjoining land uses as applicant’s exhibit 8. The commission finds that these materials are substantial evidence of the existing land use patterns in the area, and relies upon them in making its findings.

64. The property is bounded by Garden Valley Road and Del Rio Road on the south. South across the road is a large committed lands area including the unincorporated rural community of Riversdale. In particular, a fire station is located on the south of the road. The subject property is not necessary to be used in conjunction with farm practices on the land to the south, because there are no agricultural lands to the south.

65. On its west side, the subject property is adjacent to a large developed and committed rural residential area. That residential area contains parcels of five acres or less. It is also adjacent to three tax lots zoned FG. Although zoned for grazing uses, each of these lots is similar in size and character to the adjoining committed rural residential area. Each contains approximately five acres and a dwelling. There are no identified farming practices being carried out on these small ownerships. Nor was there evidence submitted reflecting that these adjoining small lot owners need the subject property to permit farm practices on their lots. The planning commission finds that the subject property is not necessary to be used in conjunction with farm practices on the land to the west, because there are no agricultural lands to the west.

66. To the north, the subject property is adjacent to four tax lots ranging in size from 60 to 100 acres, owned by two property owners Black (160 acres), and Campman (130.50 acres). Evidence was submitted in the form of a letter from Mr. Black reflecting that the subject property was not necessary for farm practices on his properties. No evidence was submitted reflecting that the property was necessary for farm practices on the Campman property. Both ownerships exceed the 80-acre minimum size for farm units in Douglas County. LUDO 3.3.200. The planning commission finds that the subject property is not necessary to be used in conjunction with farm practices on lands to the north.

67. The property to the east of the subject property consists of two lots owned by Gordon Avery totaling 124.66 acres in size. Evidence was submitted in the form of a letter from Mr. Avery reflecting that the subject property was not necessary for farm practices on his properties. Mr. Avery's ownership also exceeds the 80-acre minimum size for farm units in Douglas County. The planning commission finds that the subject property is not necessary to be used in conjunction with farm practices on lands to the east.

68. Furthermore, the soils limitations, slopes, aspect, climate and other limitations described above further support the conclusions that the property is not necessary to be used in conjunction with farm practices on adjacent lands, because the subject property cannot be used for farm practices due to these limitations.

69. Turning to the fourth and final prong on the Goal 3 definition, the subject property is not "[l]and in capability classes other than I-IV that is adjacent to or intermingled with lands in capability classes I-IV within a farm unit."

70. As set forth above, the subject property cannot be profitably managed as a farm unit, and is predominantly comprised of soils that are class V or higher. As

reflected in the soils report, the small pockets of suitable soils are fragmentary and separated from one another by large areas on unsuitable soils. Therefore, the subject property itself is not a farm unit.

71. Opponents have indicated that the subject property should be considered part of a larger "farm unit" that includes adjacent properties that were previously held in a single ownership, the "Busby property."

72. The evidence submitted reflects that the subject property is not jointly managed with the adjacent ownerships that comprised the "Busby property" as a farm unit. In fact, one of the principals of the applicant has been attempting to independently manage the subject property for limited cattle grazing as a separate and distinct use on the subject property. Additionally, Douglas County approved the partition of the former Busby ownership in 2005 into three units that were each at least double the minimum lot size for a farm unit in Douglas County. See Applicant's Exhibit 4. The commission finds that under the Land Use Board of Appeal's precedent in *Wetherell v. Douglas County*, 50 Or LUBA 167, 174-176 (2005), each of these factors, combined with the length of time that the property has been held in separate ownerships and the presence of two five-acre residential lots located within the perimeter of the subject property, reflect that the subject property is not a part of a "farm unit" with the adjoining properties.

73. Since the subject property does not qualify as "agricultural land" under Goal 3, the proposed plan amendment and zone change do not conflict with Goal 3, and the property should be redesignated for a nonresource use.

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

74. The plan amendment and zone change is consistent with Goal 4.

75. Goal 4 is designed to protect generally three types of forest lands: (1) lands that are suitable for commercial forest uses; (2) adjacent or nearby lands that are necessary to permit forest operations or practices; and (3) other forested lands that maintain soil, air, water and fish and wildlife resources. The subject property does not fall into any of these categories. Therefore, Goal 4 does not create a conflict with this plan amendment and zone change.

76. In accordance with Goal 4, Douglas County inventoried all "forest lands" in the County prior to the acknowledgement of its comprehensive plan in 1983. Relying on "cubic foot site index" information from the NRCS, the BLM, and the Oregon State Department of Revenue, and working closely with the Oregon Department of Forestry, Douglas County included in its Goal 4 inventory all areas that were "suitable for commercial forest uses." These areas included both "existing" and "potential" forest land areas based solely on suitability for commercial forest uses. Suitable areas were designated in the County's Comprehensive Plan as either Timberlands or Farm/Forest Transitional lands. The Land Conservation and Development Commission acknowledged the County's evaluation process and the resulting forest lands inventory as being consistent with Goal 4.

77. The subject property was not included in the Goal 4 inventory as either an "existing" or "potential" forest land, and was not designated as Timberlands or Farm/Forest Transitional lands. Therefore, Goal 4 is not implicated by the proposed plan amendment or zone change.

78. Furthermore, the applicant has clearly demonstrated that the subject property is not "forest land" as defined by Goal 4.

79. The subject property is not land that is suitable for commercial forest use. The applicant has provided empirical evidence in the form of a detailed soils analysis demonstrating that the subject property is not suitable for commercial forest use. This study identified only two small isolated pockets of soils potentially suitable for forestry on the subject property and limited areas that were suitable for either farm or forestry, and concluded that, due to the shallow, lithic soils and predominantly south and west aspect of the subject property, over 80% of the subject property was unsuitable for commercial forest use. The commission finds this detailed soils analysis to be substantial evidence that the subject property is not land suitable for commercial forest use. It is particularly persuasive in light of Douglas County's own inventory evaluation (in conjunction with the Oregon Department of Forestry) which arrived at the same conclusion.

80. Opponents of the proposal point to NRCS materials to argue that the subject property is capable of commercial forest activities. Although the commission notes that this NRCS information might appear to reflect higher timber productivity on portions of the subject property, these values are summaries of general soil characteristics and do not necessarily reflect the particular attributes of the subject property. The commission expressly relies upon the more detailed and site specific soils reports, prepared by Mr. Kitzrow, in determining that the subject property is not land suitable for commercial forest uses.

81. Opponents also question the lack of "forest site class" or an equivalent method for analyzing whether the subject property is suitable for commercial forest uses. As an initial matter, the commission finds that the empirical analysis provided by the applicant is a sufficiently equivalent method given the known limitations of the subject property. In particular, the analysis includes cubic foot site index for those isolated portions of the property that actually contain measurable trees species, and evaluates the limitations of the predominant class

VI through class VII soils that make these soils unsuitable for the production of commercial tree species on the subject property.

82. Furthermore, the Oregon Court of Appeals recently addressed the issue of whether a "forest site class" or equivalent method is required to be used in converting agricultural land to another use in the case of *Herring v. Lane County*. In that case, the Court of Appeals determined that, since the property was not included on the County's Goal 4 inventory in the "first instance," rules requiring the use of a "forest site class" or an equivalent method to determine potential forest productivity were not applicable. We abide by the determination of the Oregon Court of Appeals, and agree that the applicant has provided sufficient empirical evidence demonstrating the subject property is not suitable for commercial timber operations.

83. The subject property is not necessary to permit forest operations or practices on adjacent or nearby lands. The record reflects that there are no forest operations or practices occurring on adjacent or nearby lands.

84. The subject property is not "other forest land" that maintains soil, air, water and fish and wildlife resources. There are only scattered trees on the property, interspersed with some brush and open space. Therefore, the property is not properly considered as "other forested land" within the meaning of the Goal 4 definition.

85. Since the subject property does not qualify as "forest land" under Goal 4, the proposed plan amendment and zone change does not conflict with Goal 4, and it is appropriate to rezone and redesignate the subject property for a nonresource use.

Goal 5: Open Spaces, Scenic and Historic Areas, and Natural Resources - "To conserve open space and protect natural and scenic resources."

86. The Planning Commission finds that the proposal is consistent with Goal 5.

87. The following are Goal 5 resources:

Open space

Mineral and aggregate resources

Energy resources

Fish and wildlife areas and habitats

Ecologically and scientifically significant resources

Outstanding scenic views and sites

Water areas, wetlands, watersheds and groundwater resources

Wilderness areas

Historic areas, sites, structures and objects

Cultural areas

Oregon recreational trails

Wild and scenic waterways

88. These Goal 5 resources have been identified and are protected under Goal 5 inventories contained within the Comprehensive Plan. The Subject Property has not been included on any inventory of significant Goal 5 resources.

89. The subject property is not identified as a Douglas County Goal 5 protected open space.

90. The subject property is not shown on Table 6-2, 3C Mineral Resource Sites.

91. The subject property is not identified as a Douglas County Goal 5 significant energy resource.

92. The subject property is not identified as a Douglas County Goal 5 protected fish habitat.

93. The subject property is designated as Impacted Big Game Habitat (Big Game Habitat, Map C). However, the comprehensive plan provides that impacted areas are: "no longer considered viable big game habitat." The subject property, therefore, is not within the protected Goal 5 resource.

94. The subject property is not designated as Significant Bird Habitat (see Significant Bird Habitat Map of T26S, R6W).
95. The subject property is not designated on Table 6-3, Natural Area Sites.
96. The subject property is not identified as a Douglas County Goal 5 protected ecologically and scientifically significant resource.
97. The subject property is not identified as a Douglas County Goal 5 protected outstanding scenic view or site.
98. The subject property is not identified as a Douglas County Goal 5 protected wilderness area.
99. The subject property is not identified as a Douglas County Goal 5 protected historic areas, sites, structures and objects.
100. The subject property is not identified as a Douglas County Goal 5 protected cultural area.
101. The subject property is not identified as having any Douglas County Goal 5 protected Oregon recreational trails.
102. The subject property is not identified as having a Douglas County Goal 5 protected wild and scenic waterway.
103. The subject property is not identified as a Douglas County Goal 5 protected water areas, wetlands, watersheds and groundwater resources.
104. The subject property does contain a wetland area that is not included on the County's acknowledged Goal 5 inventory. In the future, if the applicant proposes development in or near the wetland area, it is likely the applicant will then be required to perform a formal delineation of this area and present the same to the Department of State Lands as well as to Douglas County. The applicant would also be required to obtain any required removal-fill permits from the Department of State Lands and the Army Corps of Engineers prior to

development of the subject property.

105. The plan amendment and zone change does not affect, poses no conflict and is consistent with the protection of significant Goal 5 resources as identified and protected by the County on its Goal 5 Inventories.

Goal 6: Air, Water and Land Resources Quality - *"To maintain and improve the quality of the air, water and land resources of the state"*.

106. The plan amendment and zone change is consistent with Goal 6.

107. Goal 6 is a requirement to maintain and improve the quality of air, water and land resources. The Douglas County Comprehensive Plan addresses Goal 6 within the Air, Noise, and Land Quality and Water Resources Elements.

108. Since any future development of the subject property will be required to comply with applicable state, federal, and local environmental regulations, the proposed plan amendment and zone change are in compliance with Goal 6.

Goal 7: Areas Subject to Natural Disasters and Hazards - To *"protect life and property from natural disasters and hazards."*

109. The plan amendment and zone change is consistent with Goal 7.

110. The "natural disasters and hazards" with which Goal 7 is concerned are those

"natural events that are known to result in death or endanger the works of man, such as stream flooding, ocean flooding, ground water, erosion and deposition, landslides, earthquakes, weak foundation soils and other hazards unique to local or regional areas." OAR 660-15-0000.

111. The subject property has not been identified within a floodplain area or any inventory of areas likely to be subject to these natural disasters or hazards.

112. Furthermore, any future development activity on the property will

be required to comply with applicable standards established under state and local development regulations, including the requirement for a floodplain certification from a licensed engineer prior to the issuance of any planning worksheets.

Goal 8: Recreational Needs - To *"satisfy the recreational needs of the citizens of the state and visitors and, where appropriate, to provide for the siting of necessary recreational facilities including destination resorts."*

113. The plan amendment and zone change are consistent with Goal 8.

114. No part of the subject property has been identified as an area needed for recreational purposes, and no destination resort is being proposed. Therefore, Goal 8 is not implicated by the plan amendment and zone change.

Goal 9: Economy of the State - To *"provide adequate opportunities throughout the State for a variety of economic activities vital to the health, welfare and prosperity of Oregon's cities."*

115. The plan amendment and zone change is consistent with Goal 9.

116. Goal 9 is intended to promote future economic growth by ensuring there is a sufficient amount of suitable land planned and zoned for commercial and industrial uses. The plan amendment does not involve or impact the County's inventory of lands needed for development of commercial and industrial development. It does not add to, nor subtract from commercially or industrially designated areas. It does not reduce the resource land base as the property is not resource land. Therefore, Goal 9 is not implicated by the proposed development.

117. Furthermore, the rules implementing Goal 9 are expressly limited to areas within urban growth boundaries (see 660-009-0010). The subject property is located outside of an urban growth boundary. Goal 9 is not implicated by this rural residential plan amendment or zone changes outside of urban growth boundaries.

Goal 10: Housing - *"To provide for the housing needs of the citizens of the state."*

118. The plan amendment and zone change are consistent with Goal 10.

119. Goal 10 is expressly limited to areas within urban growth boundaries (see OAR 660-008-0000 and 660-008-0005). The subject property is outside an urban growth boundary. Goal 10 is not implicated by this rural residential plan amendment or zone change outside of urban growth boundaries.

Goal 11: Public Facilities and Services - *"To plan and develop a timely, orderly and effective arrangement of public facilities and services to serve as a frame-work for urban and rural development."*

120. The plan amendment and zone change is consistent with Goal 11.

121. The applicant provided evidence demonstrating that the following existing rural public facilities and service providers have the capacity to serve the level of development for the plan amendment.

Fire:	Douglas County Fire District No. 2 (annexation is needed)
Police:	Douglas County Sheriff
School:	Roseburg School District 4
Sewer:	On-site septic systems
Water:	Umpqua Basin Water Association (annexation is needed)
Access:	Garden Valley Road and Del Rio Road (County), Larkin Lane (private)
Electricity:	Pacific Power
Telephone:	Qwest

122. Sanitation will be provided by on-site septic systems. Septic approvals consistent with applicable Department of Environmental Quality restrictions will be required prior to development. Therefore, the application is consistent with Goal 11.

Goal 12: Transportation - *"To provide and encourage a safe, convenient and economic transportation system."*

123. The plan amendment and zone change is consistent with the Goal 12 and the transportation planning rule.

124. Goal 12 is implemented by the State Transportation Planning Rule (TPR) which requires that "amendments to functional plans, acknowledged comprehensive plans, and land use regulations which significantly affect a transportation facility shall assure that allowed land uses are consistent with the identified function, capacity, and level of service of the facility."

125. LUDO §6.500(2)(a) expressly incorporates these standards for Plan Amendment applications, in order to insure compliance with the TPR:

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

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

(b) The jurisdiction providing direct access (County or ODOT) may require the applicant to submit a Traffic Impact Study certified by a Traffic Engineer that supports the findings used to address Section 6.500(2)(a)(1)(a)."

126. The applicant provided a Transportation Impact Analysis at the hearing on December 13, 2007 by a leading transportation engineering firm in the State of Oregon. This report meets all of the foregoing requirements and demonstrates that the plan amendment and zone change would not significantly affect a transportation facility at full build-out and at the planning horizon.

127. The Commission finds that this Transportation Impact Analysis

constitutes reliable, and professional analysis by a reputable traffic engineer, and expressly relies upon the same in finding that the plan amendment and zone change comply with Goal 12, the Transportation Planning Rule, and the requirements of LUDO 6.500(2)(a)(1).

Goal 13: Energy – “To conserve energy.”

128. The plan amendment and zone change are consistent with Goal 13.

129. Goal 13 is not directly applicable to individual land use decisions. Its focus is on the adoption and the amendment of land use regulations. Goal 13 is not applicable to this application.

Goal 14: Urbanization – “To provide for an orderly and efficient transition from rural to urban land use.”

130. The plan amendment and zone change are consistent with Goal 14.

131. Goal 14 is designed to ensure an orderly and efficient transition from rural to urban land uses. This plan amendment and zone change would convert property from an agricultural designation to a rural residential designation with a five-acre minimum lot size(RR-5). Therefore, there is no conversion of land from a rural to an urban use, merely a conversion from one rural use to another rural use. This does not implicate Goal 14. For the foregoing reasons, the application is consistent with Goal 14.

132. In 2003, Douglas County adopted a County-wide Goal 14 Exception which was acknowledged by the State through the post-acknowledgment exception process. This County-wide Exception establishes that a 5-acre minimum parcel size is rural in Douglas County. It was affirmed by the State Land Use Board of Appeals in *Friends of Douglas County vs. Douglas County, Great American Properties*, LUBA No. 2005-045, Sept. 8, 2005.

133. A Goal 14 Exception is not required when applying for the rural residential designation with a five-acre minimum lot size in Douglas County. The county is justified in relying on its prior acknowledged county-wide goal

exception. For the foregoing reasons, the application is consistent with Goal 14.

Goal 15: Willamette River Greenway; Goal 16: Estuarine Resources; Goal 17: Coastal Shorelands; Goal 18: Beaches and Dunes; Goal 19: Ocean Resources.

134. The proposed plan amendment and zone change is consistent with Goals 15-19.

135. Goals 15-19 protect particular resources that are not present on the subject property. Therefore these Goals are not implicated by the plan amendment and zone change.

136. For each of the foregoing reasons, the applicant has demonstrated that the plan amendment and zone change is consistent with the requirements of the statewide planning goals, and LUDO 6.500(2)(a).

137. LUDO 6.500(2)(b) requires that the application must demonstrate:

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

138. The plan amendment and zone change demonstrate a reasonable opportunity to satisfy a local need for a different land use on the subject property.

139. The planning commission finds that a local need for a different land use on the subject is demonstrated by the fact that the subject property is incapable of supporting the resource provide for under the current land use designation due to the lack of suitable soils, irrigation water rights, or any farm use that would provide a profit in money.

140. The planning commission further finds that existing Douglas County planning policy recognizes that there is a public need to facilitate rural residential development in rural areas of Douglas County where resource

related uses are not practicable, and that the subject application provides a reasonable opportunity to satisfy this identified local need on a nonresource parcel.

141. Moreover, the subject property would provide additional rural residential development in an area adjacent to the Riversdale Rural Community. That rural community is at 91% of its infill potential. Approval of the requested plan amendment and zone change on the subject property, provides a reasonable opportunity to fulfill an identified local need provision of rural residential use in an area with documented need for such use. This location is also appropriate due to the presence of rural residential zoning on two sides of the property as this helps to minimize disruption of existing patterns of land use.

142. LUDO 6.500(2)(c) requires that the application demonstrate:

“That the particular property in question is suited to the proposed land use, and if an exception is involved, that the property in question is best suited for the use as compared to other available properties.”

143. The planning commission finds that the particular property in question is suited to the proposed land use of rural residential housing at a five-acre minimum density recognizing information that demonstrates consistency with Douglas County’s rural residential 5-acre density. No exception is involved in this proposal so the alternative standard need not be addressed. We incorporate here by this reference the findings for LUDO 6.500(2)(b) to the extent they are relevant to this criterion.

144. The subject property is suited to the proposed rural residential land use because it is in an area that is contiguous with other rural residential uses (including the Riversdale Rural Community), has sufficient facilities and services (including transportation facilities) to support the use, will improve transportation facilities in the area through the realignment of Lark Lane so that

it creates a four-way intersection with Kestrel Lane, provides a reasonable opportunity for rural residential development in the area and provides a buffer between rural residential uses to the south and the agricultural ownerships to the north.

145. The planning commission finds that the proposed zone change complies with all applicable criteria for a zone change.

146. LUDO section 3.38.100 identifies the following criteria for a zone change:

"The Approving Authority may grant a zone change only if the following circumstances are found to exist:

1. The original zoning was the product of a mistake; or
2. It is established that:
 - a. The rezoning will conform with the applicable sections of the Comprehensive Plan;
 - b. The site is suitable to the proposed zone; and
 - c. There has been a conscious consideration of the public health, safety and welfare in applying the specific zoning regulations."

147. The planning commission finds that the current zoning of the subject property for a resource use is based on a mistaken assessment of the soil characteristics on the subject property and its suitability for farm use. Having been presented with detailed Order I soil survey reports demonstrating that the subject property is not comprised of Class I through Class IV soils, information from the Oregon Water Resources Department demonstrating that the subject property does not have and cannot obtain irrigation water rights throughout the dry season July through October, and competent and professional testimony demonstrating that the subject property cannot be currently employed for obtaining a profit in money, the commission is convinced that the existing resource designation of the subject property is an error and it is appropriate to correct this error by rezoning the subject property for rural residential use at 5-acre densities.

148. In the alternative, and without waiving any of the foregoing, the

commission finds that the applicant has demonstrated compliance with LUDO section 3.38.100(2).

149. In particular, conformity with the Land Use Plan would be accomplished by the Plan Amendment addressed in the preceding findings. The applicant has addressed relevant sections of the Comprehensive Plan and has demonstrated the consistency of the request with applicable policies of the Plan, has presented findings which demonstrate there is a sufficient level of rural public services available to support the amendment, has noted that the site has a suitable means of adequate access, and that the site has not been identified as having the potential to be subjected to natural hazards. Other than as to the issues of agriculture and forestry, no testimony in opposition has identified any inconsistency with other aspects of the comprehensive plan created by the application. The planning commission finds that no such inconsistency would be created by the proposal.

150. The applicant has also demonstrated that the subject property is most suitable for the proposed rural residential use at the 5-acre density. In particular, the subject property is in an area adjacent to the Riversdale Rural Community, and that the subject property would provide for an effective buffer between that rural community and larger agricultural holdings (predominantly to the north of the subject property), as well as provide the subject property with ready access to rural services. Additionally, the proposed 5-acre density would be consistent with the developed and committed areas and small ownerships to the west, and also provides for transportation improvements which will benefit these parcels. The commission finds that the subject property is most suitable for the proposed rural residential use at the 5-acre density.

151. The applicant has also demonstrated consideration of public health, safety and welfare in the preceding findings, by demonstrating

consistency with Goals 6, 7 and 12.

152. Accordingly, the commission finds that the proposed rezoning is consistent with the County's rezoning criteria.

153. To the extent they are consistent with these findings, the Planning Commission also adopts the findings of the Staff Report, and the two Supplemental Staff Reports, finding that application meets the criteria for a Plan Amendment and Zone Change as provided in Section 6.500.2 and Section 3.38.100.2 of the Douglas County Land Use and Development Ordinance, and as set forth in the Statewide Planning Goals and applicable Oregon Administrative Rules.

DECISION

Based on evidence received, testimony received, the findings above and the findings contained in the Staff Report and the Supplemental Staff Reports, the commission APPROVES the request for a Comprehensive Plan Amendment from (AGG) Agriculture to (RR5) Rural Residential - 5 and a concurrent Zone Change from (FC) Exclusive Farm Use - Grazing to (5R) Rural Residential - 5 Acre, on an 259 acre parcel to allow development at the 5R density.

Dated this 20th day of March, 2008.

DOUGLAS COUNTY PLANNING COMMISSION

By 
Chairman