



# Oregon

Theodore R. Kubongoski, 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

6/16/2010

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

FROM: Plan Amendment Program Specialist

SUBJECT: Curry County Plan Amendment  
DLCD File Number 004-09

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: Wednesday, June 30, 2010

This amendment was submitted to DLCD for review 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 Acknowledgment or 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. NO LUBA Notification to the jurisdiction of an appeal by the deadline, this Plan Amendment is acknowledged.

Cc: David Pratt, Curry County  
Jon Jinings, DLCD Community Services Specialist  
Dave Perry, DLCD Regional Representative

<paa> YA/l



FORM **2**

**DLCD**

# Notice of Adoption

In person  electronic  mailed

DATE STAMP

**DEPT OF**

**JUN 10 2010**  
For Office Use Only

**LAND CONSERVATION AND DEVELOPMENT**

This Form 2 must be mailed to DLCD within **5-Working Days after the Final Ordinance is signed** by the public Official Designated by the jurisdiction and all other requirements of ORS 197.615 and OAR 660-018-000

Jurisdiction: **Curry County**

Local file number: **ZC-0905**

Date of Adoption: **11/2/2009**

Date Mailed: **6/9/2010**

Was a Notice of Proposed Amendment (Form 1) mailed to DLCD?  Yes  No Date: **8/2/2009**

Comprehensive Plan Text Amendment

Comprehensive Plan Map Amendment

Land Use Regulation Amendment

Zoning Map Amendment

New Land Use Regulation

Other:

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

The amendment proposal was to change the zoning designation of the property located on the southwest side of Oceanview Drive approximately 0.4 miles northerly from the intersection of Oceanview Drive and US Highway 101 from Rural Residential Ten (with minimum parcel/lot size of ten (10) acres) to Rural Residential Two (with a minimum parcel/lot size of tow (2) acres). The subject property is identified on the Curry County Assessor's Map as 41-13-23CB; Tax lots 04800 and 04900.

Does the Adoption differ from proposal? No, no explanation is necessary

Plan Map Changed from: **N/A**

to: **N/A**

Zone Map Changed from: **RR-10**

to: **RR-2**

Location: **14798 Oceanview Drive**

Acres Involved: **4.43**

Specify Density: Previous: **1-SFDU/4.4acres**

New: **1-SFDU/2.0 acres**

Applicable statewide planning goals:

- |                                     |                                     |                                     |                                     |                          |                          |                          |                          |                          |                                     |                                     |                          |                          |                                     |                          |                          |                          |                          |                          |
|-------------------------------------|-------------------------------------|-------------------------------------|-------------------------------------|--------------------------|--------------------------|--------------------------|--------------------------|--------------------------|-------------------------------------|-------------------------------------|--------------------------|--------------------------|-------------------------------------|--------------------------|--------------------------|--------------------------|--------------------------|--------------------------|
| <b>1</b>                            | <b>2</b>                            | <b>3</b>                            | <b>4</b>                            | <b>5</b>                 | <b>6</b>                 | <b>7</b>                 | <b>8</b>                 | <b>9</b>                 | <b>10</b>                           | <b>11</b>                           | <b>12</b>                | <b>13</b>                | <b>14</b>                           | <b>15</b>                | <b>16</b>                | <b>17</b>                | <b>18</b>                | <b>19</b>                |
| <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 type="checkbox"/> | <input 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.** 004-09 (17809) [16165]

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

**Department of Land Conservation and Development (DLCD), Oregon Department of Water Resources (ODWR), the State Fire Marshall, Harbor Rural Fire Protection District, Harbor Water People Utility District, DEQ, DOGAMI, ODWR (Water Resources) and ODP.**

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Local Contact: **Dave Pratt**

Phone: **(541) 247-3228** Extension:

Address: **P.O. Box 746**

Fax Number: **541-247-4579**

City: **Gold Beach**

Zip: **97444**

E-mail Address: **pratt@dco.co.curry.or.us**

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## **ADOPTION SUBMITTAL REQUIREMENTS**

**This Form 2 must be received by DLCD no later than 5 days after the ordinance has been signed by the public official designated by the jurisdiction to sign the approved ordinance(s)**  
per ORS 197.615 and OAR Chapter 660, Division 18

1. This Form 2 must be submitted by local jurisdictions only (not by applicant).
2. When submitting, please print this **Form 2** on light green paper if available.
3. Send this Form 2 and One (1) Complete Paper Copy and One (1) Electronic Digital CD (documents and maps) of the Adopted Amendment to the address in number 6:
4. **Electronic Submittals: Form 2 – Notice of Adoption will not be accepted via email or any electronic or digital format at this time.**
5. The Adopted Materials must include the final decision signed by the official designated by the jurisdiction. The Final Decision must include approved signed ordinance(s), finding(s), exhibit(s), and any map(s).
6. **DLCD Notice of Adoption must be submitted in One (1) Complete Paper Copy and One (1) Electronic Digital CD via United States Postal Service, Common Carrier or Hand Carried to the DLCD Salem Office and stamped with the incoming date stamp.** (for submittal instructions, also see # 5)] **MAIL the PAPER COPY and CD 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**

7. Submittal of this Notice of Adoption must include the signed ordinance(s), finding(s), exhibit(s) and any other supplementary information (see ORS 197.615 ).
8. Deadline to appeals to LUBA is calculated **twenty-one (21) days** from the receipt (postmark date) of adoption (see ORS 197.830 to 197.845 ).
9. In addition to sending the Form 2 - Notice of Adoption to DLCD, please notify persons who participated in the local hearing and requested notice of the final decision at the same time the adoption packet is mailed to DLCD (see ORS 197.615 ).
10. **Need More Copies?** You can now access these forms online at **<http://www.lcd.state.or.us/>**. You may also call the DLCD Office at (503) 373-0050; or Fax your request to: (503) 378-5518.

**BEFORE THE BOARD OF COUNTY COMMISSIONERS**

**IN AND FOR THE COUNTY OF CURRY, OREGON**

In the Matter of the Adoption )  
of a Change to the Curry County )  
Zoning Map Related to File No. )  
Z-0905 for Applicants Dorothy )  
Garvin and Lorraine Gordon )

**ORDINANCE NO.** 09-09

The Board of Curry County Commissioners ordains as follows:

**Section 1**

This ordinance amends the Curry County Zoning Map of a portion of the subject property from Rural Residential Ten (RR-10) to Rural Residential Two (RR-2).

**Section 2**

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

**Section 3**

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

**Assessor Map No. 41-13-23CB TL 4900**

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

**Section 4**

The Curry County Board of Commissioners approved this application for a zone change in accordance with Sections 2.060(3)(b) and 9.021 of the CCZO and by taking a Goal 2 exception to Goal 14 (Urbanization). The order approving this zone change with the attached findings of fact and conclusions of law (but excluding exhibits to the staff

report) is designated as Exhibit II and is hereby adopted as part of this ordinance.

Section 5

Consistent with ORS Chapters 197 and 215, this ordinance shall be effective upon its passage.

Section 6

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

DATED this 2<sup>nd</sup> day of November, 2009.

BOARD OF CURRY COUNTY COMMISSIONERS

*Bill Waddle*

Bill Waddle, Chair

*George Rhodes*

George Rhodes, Vice Chair

*Georgia Yee Nowlin*

Georgia Yee Nowlin, Commissioner

Recording Secretary:

*Patricia R. Cork*

First Reading: 11/2/09

Second Reading: NA

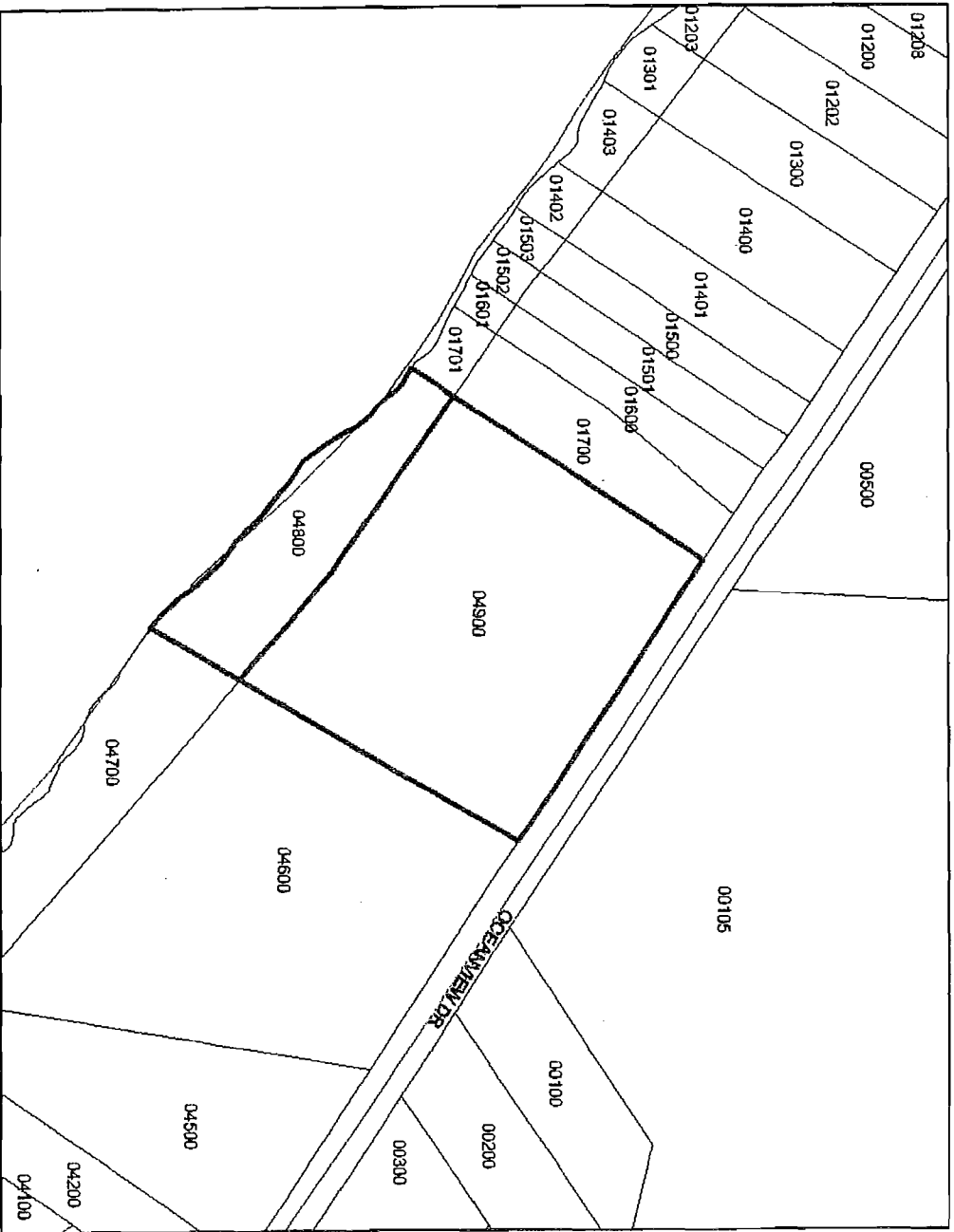
Effective Date: 11/2/09

Approved as to Form:

*M. Gerard Herbage*

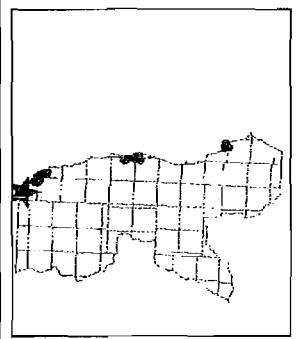
M. Gerard Herbage  
Curry County Legal Counsel

# GARVIN ZONE CHANGE



Map center: 42° 0' 38.6" N, 124° 13' 18.3" W

This map is a public resource of general information. Use this information at your own risk. Curry County makes no warranty of any kind, expressed or implied, including any warranty of merchantability, fitness for any particular purpose or any other matter.



### Legend

- ROADS ORTHO CORRECTED
- PARCELS
- CITY LIMITS
- TOWNSHIP



Scale: 1:2,500

Exhibit II

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

In the Matter of an Order )  
Approving the Application )  
of Dorothy Garvin and ) ORDER NO. 13170  
Lorraine Gordon in File No. )  
Z-0905 )

This matter came before the Board of Curry County Commissioners on the application of Dorothy Garvin and Lorraine Gordon. The application seeks a zone change of a portion of the subject property from Rural Residential Ten (RR-10) to Rural Residential Two (RR-2).

The subject property consists of two tax lots on Assessor Map No. 41-13-23CB with a total acreage of approximately 4.43 acres. Tax lot 4900 consists of approximately 3.54 acres and is currently zoned Rural Residential Ten (RR-10); tax lot 4800 consists of approximately .89 acres and has a zoning designation of Beaches and Dunes Conservation. The request to change the zoning designation from RR-10 to RR-2 only applies to Tax Lot 4900. This property is located at 14798 Oceanview Drive approximately ¼ mile west of the intersection with Highway 101, in the vicinity of the Winchuck River.

The Board of Curry County Commissioners, following appropriate notice as required by law, held a hearing on the application on October 21, 2009. Michael E. (Ted) Fitzgerald, Attorney at Law, and Chuck Nordstrom, Nordstrom Land Use Consulting, represented the applicants. Evidence was received in favor of the application, and no evidence was received in opposition to the application. The applicants then waived their right for additional argument, and the Board closed the hearing and began to deliberate to reach a decision.

When the Board reviewed the evidence in this matter, it found that the applicants had met their burden of proof. The decision criteria and facts and analysis supporting the criteria are found in the attached "Curry County Board of Commissioners Staff Report" (which excludes the exhibits) which is attached hereto and incorporated by reference.

NOW, THEREFORE, based upon the reasons reflected above, it is hereby ordered that Application File No. Z-0905 is approved subject to the following condition of approval:

The applicants shall obtain a site specific geologic hazard assessment for a proposed single family dwelling on the proposed new parcel prior to issuance of a building permit.

DATED this 2<sup>nd</sup> day of November, 2009.

BOARD OF CURRY COUNTY COMMISSIONERS

*Bill Waddle*

Bill Waddle, Chair

*George Rhodes*

George Rhodes, Vice Chair

*Georgia Yee Nowlin*

Georgia Yee Nowlin, Commissioner

Approved as to Form;

*M. Gerard Herbage*

M. Gerard Herbage  
Curry County Legal Counsel



For Curry County Board of Commissioners Public Hearing on October 21, 2009  
Time: 10:00 am  
Place: Commissioner's Hearing Room

**CURRY COUNTY BOARD OF COMMISSIONERS  
STAFF REPORT  
ZONE CHANGE REQUEST Z-0905 GARVIN  
RURAL RESIDENTIAL TEN (RR-10) TO RURAL RESIDENTIAL TWO (RR-2)**

REPORT DATE: October 14, 2009  
HEARING DATE: October 21, 2009

FILE #: Z-0905

**I. APPLICATION INFORMATION:**

**PROPERTY OWNER:**

Dorothy Garvin  
PO Box 2282  
Harbor, OR 97415

**PROPERTY OWNER:**

Lorraine Gordon  
PO Box 2507  
Harbor, OR 97444

**AGENT:**

Ted Fitzgerald  
PO Box 1981  
Brookings, OR 97415

**APPLICANT FINDINGS PREPARED BY:**

Chuck Nordstrom  
Nordstrom Land Use Consulting  
PO Box 127  
Langlois, OR 97450

**MAP DESCRIPTION:**

Assessor Map/TL: 4113-23CB TL 4800/4900

**NATURE OF LAND USE ACTION:** A request to change the zoning designation for a portion of the subject property, specifically Curry County Map No. 4113-23 Tax Lot 4900, from Rural Residential Ten acre minimum (RR-10) to Rural Residential Two acre minimum (RR-2). The applicants' findings in support of this request are attached to this report as EXHIBIT A. References to the applicants' findings will be made in later sections of this report.

**II. SITE INFORMATION**

**Property Address:** 14798 Oceanview Drive

**Location:** The subject property is located on the south end of Oceanview Drive approximately ¼ mile west of its intersection with Hwy 101, in the vicinity of the Winchuck River.

**Property Description:**

**Assessor Map/TL:** 4113-23CB tax lots 4800 & 4900  
**Total Land Area:** Approximately 4.43 +/- acres

*Curry County Board of Commissioners  
Staff Report  
Hearing Date: Wednesday October 21, 2009  
Z-0905 Garvin  
Page 1 of 13*

**Current Zoning:** The subject property is located within the Lower Oceanview Area Rural Land Exception (RLE-66) and has zoning designations of Rural Residential (RR) and Beaches and Dunes Conservation. The subject property is outside of the Brookings Urban Growth Boundary.

**Existing Land Use:** The subject property consists of two tax lots with a total acreage of approximately 4.43 acres. Tax lot 4900 currently has a zoning designation of Rural Residential (RR); consists of approximately 3.54 acres; and is developed with one single-family dwelling and a detached garage. Single family dwellings are permitted outright in the RR zone. Tax lot 4800 consists of approximately .89 acres and has a zoning designation of Beaches and Dunes Conservation. Single family dwelling are permitted as a conditional use in the Beaches and Dunes Conservation zone. The request to change the zoning designation from RR-10 to RR-2 only applies to Tax Lot 4900.

**Surrounding Land Use:** Parcels to the northwest are residential parcels also located within the Lower Oceanview Area RLE-66 (EXHIBIT B-1). To the north (on the opposite side of Oceanview Drive) are large farm parcels zoned Agriculture (AFD). To southeast are residential parcels within the neighboring Lower Winchuck Rural Land Exception area (RLE-67 EXHIBIT B-2). To the south is the Pacific Ocean.

**Topography:** The subject property is located adjacent to the Pacific Ocean. According to the County's GIS (Geographic Information System), the slopes on the subject property range from 3 to 5.5 percent. A small bluff separates the beach from the parcel. Elevations range from 12' near the bluff face to approximately 45' near Oceanview Drive.

**Streams/Wetlands:** According to the GIS, no streams, creeks, or identified wetlands are present on the subject property. The Pacific Ocean is located to the south.

### III. Applicable Decision Criteria

#### Curry County Comprehensive Plan Policies

Goal 10      **Housing Policy 1**  
Goal 14      **Urbanization Policies 1, 2, 7, 10**

#### Oregon Administrative Rules (OAR)

OAR Chapter 660, Division 4      Interpretation of Goal 2 Exception Process

OAR Chapter 660, Division 14      Application of the Statewide Planning Goals to Newly Incorporated City and to Urban Development on Rural Lands

#### Curry County Zoning Ordinance

Section 3.080      Rural Residential  
Section 3.083      Lot Size and Dwelling Density  
Article IX      Amendments to the Zoning Ordinance

### Compliance with the Curry County Comprehensive Plan Policies

#### *Goal 10-Housing*

**GOAL: To provide for the housing needs for the citizens of the county.**

*Curry County Board of Commissioners  
Staff Report  
Hearing Date: Wednesday October 21, 2009  
Z-0905 Garvin  
Page 2 of 13*

**APPLICABLE POLICIES**

1. *Curry County encourages the development of adequate housing for all of its citizens in terms of location, quality, and affordability.*

**FINDINGS:** The applicants' findings regarding this criterion can be found at A-18 to A-19. Staff concurs with the applicants findings.

**Goal 14-Urbanization**

**GOAL:** *To provide for an orderly and efficient transition from rural to urban land use in the county.*

**APPLICABLE POLICIES**

1. *Curry County defines "rural uses" as those uses which are located outside of urban growth boundaries including non-urban agriculture, forestry, open space, sparse settlement, small farms or acreage homesites with no hardly any public services.*
2. *Curry County defines "urban uses" as those which are high intensity residential, commercial or industrial uses located inside urban growth boundaries, or outside urban growth boundaries where an exception to Goal 14 has been justified.*
7. *Curry County recognizes rural lands in the county and seeks to retain the rural character of these lands by limiting the development of these lands through rural zoning which will retain the rural character of these areas as reflected in the existing lot size pattern.*
10. *Curry County has zoned lands located within the various rural land exception areas for Rural Residential (RR-2, RR-5, and RR-10) use which limits rural residential development to dwelling son existing parcels and the development of new parcels at a density of 2-acre, 5 acre, or 10 acre minimum lot sizes. Rural Residential Two (RR-2) shall not be applied to areas presently zoned for rural use unless a Goal 14 exception is approved by the county. A zone change from RR-10 or RR-5 to RR-2 shall only be permitted in Rural Land Exceptions areas existing as of February 13, 1989 that are not within a current Urban Growth Boundary.*

**FINDINGS:** The subject property is within the Lower Oceanview Area RLE-66 (B-1) and adjacent to the Lower Winchuck RLE-67 (B-2). The parcel has a zoning designation of RR (Rural Residential) with minimum lot/parcel size of ten (10) acres. At the time this rural exception area was adopted, the subject property was found to be "physically developed for rural residential use" to the extent that it is impracticable to use the parcel for farm uses. The parcel was physically developed with the existing single-family dwelling and accessory uses.

According to the county records and the applicants' findings, the subject property is developed with one single-family dwelling and a garage. The structures are located in southeast portion of the property near the ocean bluff (applicants' findings, Figure 6, A-31).

Goal 14 Policy No. 1 defines "rural" uses as uses that are located outside of urban growth boundaries including non-urban uses such as agriculture, forestry, open space, sparse settlement, small farms or acreage homesites with no or hardly any public services. Rural service areas are defined under Section 11.10 of the *Curry County Comprehensive Plan* as "...basic protective services, energy and communication services and education available, water and sewage disposal on individual basis."

Goal 14 Policy No. 2 defines "urban" uses as high intensity residential, commercial or industrial uses located inside urban growth boundaries or outside urban growth boundaries where an exception to Statewide Goal 14 has been justified. Urban level services, as opposed to "urban level of development", are generally determined, under Section 11.10 of the *Curry County Comprehensive Plan*, to be those services found in rural areas and also the provision of public water and sewage disposal. A rural exception area, such as the Lower Oceanview Area RLE-66, can have an urban level of development at urban densities but still be considered to be a rural level of service.

Goal 14 Policy No. 7 establishes the need to retain the rural character of the area by limiting development. Development is limited through Policy No. 10 which establishes minimum parcel/lot sizes of 10, 5, or 2 acres for parcels/lots in Rural Exception Areas that have the Rural Residential zoning designation. Under OAR 660-004-040(7) (a), the creation of any new lot or parcel smaller than two acres in a rural residential area is considered an urban use. The proposal is to divide a parcel consisting of 4.43 acres into two parcels each of which will be greater than two acres. Therefore, the proposal is consistent with Urbanization Policy No. 7 and OAR 660-004-040(7) (a).

Curry County Zoning Ordinance Section 3.083 requires that changes in the minimum lot size designation in the RR zoning designation be approved only when it is found to be in compliance with the policies of the Curry County Comprehensive Plan related to urbanization and taking an exception to Statewide Goal 14 – Urbanization. This issue is addressed below regarding compliance with Oregon Administrative Rules 660-014-030 and 660-004-040(6).

#### **Compliance with the Oregon Administrative Rules 660-014-030 and (OAR) 660-004-040 (6)**

1. *The Oregon Administrative Rules Division 14 addresses the application of the statewide planning goals to newly incorporated cities and to urban development on rural lands. OAR 660-014-030 states:*

- (1) *A conclusion, supported by reasons and facts, that rural land is irrevocably committed to urban levels of development can satisfy the Goal 2 exceptions standard (e.g., that it is not appropriate to apply Goals 14's requirement prohibiting the establishment of urban uses on rural lands). If a conclusion that land is irrevocably committed to urban levels of development is supported, the four factors in Goal 2 and OAR 660-004-0020(2) need not be addressed.*

**FINDINGS:** As stated in the *Exception Statement (EXHIBIT C)* for the Lower Oceanview Area RLE-66, the subject property is physically developed with a dwelling and associated structures to the extent that the land cannot be use for agricultural or forest use.

At the time RLE-66 was adopted a total of thirty-eight parcels were located within the exception area. Fourteen of the thirty-eight parcels were between .50-.99 acres in size. Thirteen of the thirty-eight parcels were between 1-2.49 acres in size. Today there are thirty-eight residential parcels (the McVay State Park parcels were excluded from the analysis). Utilizing Curry County assessment data it was determined that the rural residential development encompasses a total of 38.31 developable acres (it should be noted that ocean shore acres in Beaches & Dunes Conservation zoning were also excluded from the analysis since development is prohibited on these acres). The average parcel/lot size of the properties within the RLE is approximately 1 acre. The median average parcel size is approximately .61 acres.

In addition, the subject property is also located next to the Lower Winchuck Area RLE-67 (B-2). For this analysis, exception parcels within ½ mile of the subject property were reviewed. These parcels are located in the same general area of the subject property, specifically adjacent to Oceanview Drive and in the vicinity of the Winchuck River. Parcels in the RLE that were located further away or on the opposite side of Hwy 101 were not considered statistically valid since this was an adjacent RLE. The portion of the RLE in the study area includes a total of 51.73 acres with 125 parcels. All parcels, except one, are utilized for residential purposes (the one parcel is zoned Rural Commercial and is developed with small retail stores and mini-storage units.) Average parcel size is approximately .41 acres. Median parcel size is approximately .40 acres.

Parcels in both RLE areas are already committed to an urban level of development. Therefore, the proposed zone change can satisfy the standards for taking an exception to Goal 14 under OAR 660-014-0030(2) as being physically developed to an urban level of development, not urban service level as defined in the *Curry County Comprehensive Plan* under Section 11.10, and the four factors in Goal 2. Therefore, OAR 660-004-0020(2) need not be addressed.

- (2) *A decision that land has been built upon at urban densities or irrevocably committed to an urban level of development depends on the situation at the specific site. The exact nature and extent of the areas found to be irrevocably committed to urban levels of development shall be clearly set forth in the justification for the exception. The area proposed as land that is built upon at urban densities or irrevocably committed to an urban level of development must be shown on a map or otherwise described and keyed to the appropriate findings of fact.*

**FINDINGS:** As indicated in the *Exception Statement*, properties within the 40 acre Lower Oceanview Area RLE-66, and the 51.73 acres of the Lower Winchuck RLE-67 studied are either physically developed or irrevocably committed to other uses. In the case of this request, the subject property is physically developed with a single family dwelling and associated structures to the extent that the land cannot be used for agricultural or forest uses and committed to an urban level of development with certain community services at a rural level and consists of such services as police (Curry County Sheriff) and fire (Harbor Rural Fire Protection District); schools (Brookings-Harbor School District 17C), electrical (Coos-Curry Electric Cooperative Inc), and telephone (Verizon) but not to urban use or densities which would require community sewer services.

- (3) *A decision that land is committed to urban levels of development shall be based on findings of fact, supported by substantial evidence in the record of the local proceeding, that address the following:*

- (a) *Size and extent of commercial and industrial uses;*

**FINDINGS:** There are no commercial or industrial uses within the Lower Oceanview Area RLE-66. There is one Rural Commercial parcel at the corner of Oceanview Drive and Hwy 101 within the Lower Winchuck RLE-67.

- (b) *Location, number and density of residential dwellings;*

**FINDINGS:** According to Curry County Assessor records 35 of 38 parcels within the Lower Oceanview Area RLE-66 are developed with single-family dwellings. Of the 125 parcels within the Lower Winchuck RLE-67 study area, 111 are developed with single-family dwellings. A conceptual

development plan (Proposed Partition) was submitted as part of the application and as required under CCZO Section 3.083 (3). As indicated on the conceptual plan, the subject property is to eventually be partitioned into two (parcels) with a single-family dwelling on each parcel. There currently is one single-family dwelling and a garage located on the subject property. If approved, the minimum parcel/lot size will be approximately 2.0 acres and the new density for the subject will decrease from one (1) dwelling per 4.43 acres to (1) single family dwelling per 2.21 acres. The proposed zone change and partitioning of the subject property will be consistent with OAR 660-004-040(7)(a) and well above the average of one dwelling per 1.09 acres in RLE-66, and one dwelling per .41 acres in RLE-67.

(c) *Location of urban levels of facilities and services; including at least public water and sewer facilities; and*

**FINDINGS:** The subject property is served by community water service from the Harbor Water District which provides water service all the way to the California/Oregon border. There are no community sewer facilities available to this area. The services that are provided include police and fire protection; access to schools; electrical; and telephone, which, under Section 11.10 of the *Curry County Comprehensive Plan*, is at a rural, not urban, service level. The applicants have submitted site plat showing the septic system that serves the existing single family dwelling and a favorable site evaluation dated July 19, 2009, from the County Sanitarian, for the proposed single family dwelling on the second parcel (see A-58 to A-64 which is Attachment F of the applicants findings).

(d) *Parcel sizes and ownership patterns.*

**FINDINGS:** The subject property is located south of Oceanview Drive within the Lower Oceanview Area RLE-66. According the *Exception Statement* for RLE-66 (EXHIBIT C), twenty-nine (29) of the parcels that are within the exception area were developed with single family dwellings, septic systems, accessory buildings, yards, and driveways, in 1989 when the document was adopted. There were no commercial or industrial uses within RLE-66. However, McVay State Wayside is located within the RLE. The physically developed parcels were, for the most part, densely clustered in the area of the subject property. The parcels within the adjacent Lower Winchuck RLE-67 are even more densely developed.

A Goal 2 exception for the Lower Oceanview Area RLE-66 was taken to Goals 3 (Agricultural) and Goal 4 (Forestry) on the basis that the lands were either (1) physically developed to other uses; or (2) committed to other uses. The basis of the determination was that:

- Twenty-nine (29) of the thirty-eight (38) parcels, including the subject property, were physically developed with dwellings and associated structures to the extent that the land cannot be used for agricultural or forest uses typical of the surrounding area;
- Eight (8) parcels included in the exception area were irrevocably committed to small parcel sizes by previous partitions, the development of roads, utility lines, etc., which precluded the use of these lots for agricultural or forest uses typical of the surrounding area.

As mentioned previously, there are currently thirty-eight (38) parcels/lots within the Lower Oceanview Area RLE-66 ranging from 0.30 of an acre to 5.83 acres in size. The following table illustrates the distribution of lot/parcel size within the exception area and demonstrates that, although the subject property will continue to be committed to a rural residential use and level of development, the

surrounding lots/parcels are committed to an urban level of development.

**TABLE ON FOLLOWING PAGE**

Lot/Parcel Size	Number of Lots/parcels
Less than one (1) acre to 1.99 acres	35
Two (2) to 4.99 acres	2
Five (5) to 9.99 acres	1
Total	38

In summary, out of the 38 parcels/lots within the Lower Oceanview RLE-66, 35 parcels/lots, or approximately 93 percent of all parcels/lots are less than two (2) acres in size.

- (4) *A conclusion that rural land is irrevocably committed to urban development shall be based on all of the factors listed in section (3) of this rule. The conclusion shall be supported by a statement of reasons explaining why the facts found support the conclusion that the land in question is committed to urban uses and urban level development rather than a rural level of development.*

**FINDINGS:** As demonstrated by the staff and applicants findings the property within the Lower Oceanview Area RLE-66 is, and has been, irrevocably committed to residential use at an urban level of development.

- (5) *More detailed findings and reasons must be provided to demonstrate that land is committed to urban development than would be required if the land is currently built upon at urban densities.*

**FINDINGS/CONCLUSIONS:** The findings of fact contained in this staff report, as well as the applicants' findings (EXHIBIT A) demonstrate that the subject property is irrevocably committed to residential use at an urban level of development as is characteristic of the Lower Oceanview Area RLE-66. The proposal will maintain a minimum 2.0-acre lot/parcel size and will allow the subject property to retain its rural characteristics.

2. *The Oregon Administrative Rules Division 4 interprets the Statewide Goal Exception. OAR 660-004-040 (6) states:*

*After the effective date of this rule, a local government's requirements for minimum lot or parcel sizes in rural residential areas shall not be amended to allow a smaller minimum for any individual lot or parcel without taking an exception to Goal 14 pursuant to OAR 660, Division 014.*

**FINDINGS/CONCLUSIONS:** The findings of fact contained in this staff report, and the applicants' findings (EXHIBIT A) demonstrate that property within the Lower Oceanview Area RLE-66, including the subject property, is irrevocably committed to residential use at an urban level of development.

**Compliance with the Curry County Zoning Ordinance (CCZO)**

**Sections 3.080 and 3.083**

1. *The purpose of the Rural Residential (RR) zone is outlined in CCZO 3.080 and states:*

*The Rural Residential Zone is designed to allow for low density residential development outside urban growth boundaries and rural communities defined by the Comprehensive Plan.*

**FINDINGS:** The request is to reduce the minimum lot/parcel size in a Rural Residential Zone from 10 to 2 acres to allow the division of the subject property into two (2) parcels. The partitioning of the subject property will allow the subject property to retain its rural (low density) residential characteristic that is required for land outside of an urban growth boundary. The subject property is within a rural exception area as defined by the *Curry County Comprehensive Plan*. Therefore, the requested zone change is consistent with the purpose of the RR zone.

2. *The minimum lot/parcel size and dwelling density is addressed in CCZO Section 3.083 which states:*

*The RR zone has minimum lot sizes of 2, 5, and 10 acres which are applied according to policies in the comprehensive plan. Changes in minimum lot size designation from 10 to 5 acres shall only be approved by the Board when found to be in compliance with the policies related to the urbanization element of the Curry County Comprehensive Plan and upon a determination that all proposed lots are adequate for proper sewage disposal and have a suitable source of water for residential use.*

*Changes in minimum lot size in from 10 or 5 acres to 2 acres shall only be approved by the Board for land within a Rural Residential zoning designation if the proposed development on the subject property:*

1. *Was within a Rural Exceptions area as of February 13, 1989; and*

**FINDINGS:** The subject property is within the Lower Oceanview Area RLE-66 that was adopted as part of the *Curry County Comprehensive Plan* in 1989.

2. *Is not currently within an Urban Growth Boundary; and*

**FINDINGS:** The subject property is outside and located approximately 1 mile south of the Brookings Urban Growth Boundary.



3. *Is found to be in compliance with the policies related to the urbanization element of the Curry County Comprehensive Plan; and*

**FINDINGS:** The proposal, as mentioned previously in this report, was found to be in compliance with the relevant policies of the comprehensive plan.

4. *Is not applied to areas presently zoned for rural use unless a Goal 14 an exception to Statewide Goal 14 (Urbanization) is approved by the County; and*

**FINDINGS:** Findings to address this standard were mentioned previously in this report in the Compliance with Oregon Administrative Rules section.

5. *Demonstrates that:*
  - a. *Rural uses, density, and public facilities and services are compatible with and will not commit adjacent or nearby resource land to non-resource use; or*
  - b. *The plan and zoning designations limit the uses, density, public facilities and services, and activities to only those that are justified in the exception; and*

**FINDINGS:** As demonstrated in earlier findings, the proposed zone change will not commit adjacent or nearby resource land to non-resource use as there will be no change in the existing land use pattern. No additional public facilities or services are proposed in this zone change application.

6. *Has a conceptual development plan showing the number of lots or parcels; the location of lot or parcel lines; and proposed road and access connections.*

**FINDING:** The applicant has submitted a conceptual plan (A-31).

#### **Compliance with the Curry County Zoning Ordinance Standards for a Zone Change**

*Comprehensive CCZO Section 9.021 Standards for a Zone Change provides standards for the determination of zone changes and the response to the standards are as follows:*

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

**FINDINGS:** As demonstrated previously, the proposal is consistent with the appropriate goals and objectives of the *Curry County Comprehensive Plan*. The County recognizes three levels of service (*Policy No. 1*) and the proposed development falls within the rural services category since it will be retaining its rural residential character with low density use (i.e., single family dwellings) (*Policy No. 4*). The RR zoning designation of the subject property addresses the service level which, in turn, determines the land use and minimum lot/parcel size (*Policy No. 6*); and the subject property is recognized as being in a rural service since no community sewer service is being proposed (*Policy No. 9*). Therefore, *Curry County Comprehensive Plan* Goal 11 (Public Facilities) and *Public Facilities Policies No. 1, 4, 6, and 9*;

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are satisfied.

The subject property is located adjacent to the Pacific Ocean and is therefore located within an area identified as possible geological hazard. The applicants, as part of their findings, have submitted a Geologic Hazard Evaluation for Proposed Partition, prepared by an Oregon licensed Engineering Geologist (A-80 to A-91). A condition of approval of the zone change should require the applicants to follow the recommendation in the report to obtain a site specific geologic assessment at the time a building permit is applied for on the new single-family dwelling. Therefore, *Curry County Comprehensive Plan* Goal 7 (Natural Hazards) and *Natural Hazards Policies No. 1, 2, and 3* are satisfied.

Direct access to and from the subject property is gained from Oceanview Drive, a county owned and maintained road. Therefore, Goal 12 (Transportation) is satisfied.

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

**FINDINGS:** The purpose of the Rural Residential (RR) zone is to allow low density residential development outside of urban growth boundaries and rural communities as defined by the Curry County Comprehensive Plan. The Rural Residential (RR) designation will be retained. The proposed zone change, if approved, will change the minimum size from ten (10) to two (2) acres and still conform to the intent of the RR zoning designation which is to allow low density residential development outside an urban growth boundary.

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

**FINDINGS:** The request to change the minimum size designation of the subject property is consistent with the size of parcels and lots within the Lower Oceanview Area RLE-66 and will not interfere with the permitted uses on adjacent or nearby parcels. The proposed zone change will accommodate the siting of a second dwelling on the subject property; be consistent with OAR 660-004-0040(7) (a); and will allow the area to retain its rural characteristics.

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

**FINDINGS:** The change in the zoning designation of the subject property will not adversely impact the orderly provision of public services currently being provided to surrounding properties by police (County Sheriff), fire, schools, electrical, or telephone utilities. The subject property is within the boundaries of the Harbor Rural Fire Protection District. Harbor Water District already serves the subject property and the surrounding area to the California/Oregon border. No community sewer system serves the Lower Oceanview area. There is existing septic disposal system on site with site approval from Curry County for a second septic system.

5. *Amendments to the comprehensive plan and zoning designation of the subject property which significantly affect a transportation facility (see #6, below) shall assure that allowed land uses are consistent with the function, capacity and level*

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*of service of the facility as identified in the Transportation System Plan (TSP). This shall be accomplished by one of the following:*

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

**Findings:** The subject property fronts onto Oceanview Drive which is a county owned and maintained road. Oceanview Drive is classified as a collector road in the *Curry County Transportation Plan (TSP)*. A collector is a road providing service to land uses that generate trips such as consolidated schools, shipping points, mining and agricultural uses. The proposed division of land into two parcels is consistent with the planned function of Oceanview Drive.

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

**Findings:** According to the TSP, traffic on Oceanview Drive currently generates an average of 1,000 trips per day and has a carrying capacity of 6,000 trips per day. The proposed use, of an additional single-family dwelling, will generate approximately 10 new trips per day. Therefore, the existing road facility has sufficient capacity to adequately support the proposed development on the subject property.

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

**Findings:** The subject property has direct access to and from Oceanview Drive. This road is designated as a collector road in the *Curry County Transportation System Plan*. Since the subject property is proposed to be developed at rural residential use, the limitation of allowed land uses; amending the Transportation System Plan; or altering land use designations, densities, or design requirements to reduce demand for automobile travel is not warranted in this case.

6. *A comprehensive plan or zoning designation amendment significantly affects the transportation facility if it:*
  - a. *Changes the functional classification or existing transportation facility;*

**Findings:** The proposed change in the zoning designation will not require a change in the functional classification of Oceanview Drive.

- b. *Changes standards implementing functional classifications system;*

**Findings:** There will be no changes required in implementing the functional classification system as a result of the proposed zone change from RR-10 to RR-2.

- c. *Allows types of levels of land use that would result in levels of travel that are inconsistent with the transportation facility; or*

**Findings:** The proposed change in the zoning designation will not affect the current functional classification of Oceanview Drive nor will it result in changes in the level of travel or access.

*d. Would reduce the capacity ration and level of service of the facility below the minimum acceptable level in the TSP.*

**Findings:** The proposed development will not reduce the vehicle/capacity ratio and level of service below the minimum acceptable level of service. Therefore, this standard has been satisfied.

#### **IV. AGENCY COMMENTS**

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

**Letter from the Department of Land Conservation and Development (DLCD) dated February 19, 2009. (EXHIBIT D)**

The letter from DLCD stated that, in addition to the County's general review standards for zoning amendments in CCZO Section 9.021, the County has adopted standards as part of the Curry County Zoning Ordinance, specifically Section 3.083, that addresses requirements under Oregon Administrative Rules (OAR) 660-04-040 (6) and OAR 660-14-030." DLCD continued with the following comments:

"The applicant's statement makes a good case for the proposed RR-2 zoning. The subject property is within the Lower Oceanview rural exception area that is fully developed for residential use at about one unit per acre. The Lower Winchuck exception area, just south of the subject property is also fully developed for commercial and residential use, with a residential density of about one unit per 1.25 acres. There are over 200 dwelling units in the immediate vicinity, on lots averaging less than the 2-acre density proposed in this application. This proposal, if approved, would allow the subject parcel to be partitioned and would facilitate the addition of one single-family residence to the Lower Oceanview neighborhood. The evidence provided by the applicant indicates that potential development of the property under the proposed RR-2 zoning would be consistent with the pattern of land parcelization and development in the vicinity and the existing rural services. The potential to create one additional acreage home site from this parent parcel, under the County's rural development standards, would not precipitate the need for urban facilities and services."

**Staff Response:** Staff concurs with the DLCD comments. The standards and criteria under OAR 660-04-040 (6) and OAR 660-14-030, in addition to the provisions of CCZO Section 9.021 (Standards for a Zone Change), have been addressed.

#### **V. PUBLIC COMMENTS**

No comments have been received from affected property owners as of the publication date of this report. The Board of Commissioners should, however, consider any testimony received in writing prior to and at the public hearing in their decision as well as any oral testimony that may be presented at the public hearing.

## VI. CONCLUSION

The Curry County Zoning Ordinance permits the change in minimum lot size from 10 acres to 2 acres within the Rural Residential zone when found to be in compliance with the Comprehensive Plan, the Curry County Zoning Code, and the appropriate provisions of the Oregon Administrative Rules. The *Exception Statement* for the Lower Oceanview Area RLE-66 that was adopted as part of the *Curry County Comprehensive Plan* in 1989, states that the subject property is "...physically developed with dwellings and associated structures to the extent that the land cannot be used for agricultural or forest uses typical of the surrounding area." A Goal 14 exception is warranted based on the evidence contained within this staff report and its attachments and the applicants findings.

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