



Oregon

Theodore R. Kubongski, Governor

Department of Land Conservation and Development

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NOTICE OF ADOPTED AMENDMENT

6/2/2010

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

FROM: Plan Amendment Program Specialist

SUBJECT: Lane County Plan Amendment
DLCD File Number 003-10

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: Tuesday, June 15, 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: Linsey Eichner, Lane County
Jon Jinings, DLCD Community Services Specialist
Ed Moore, DLCD Regional Representative

<paa> YA



FORM 2

DLCD

Notice of Adoption

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

In person electronic mailed

DATE STAMP

DEPT OF

MAY 25 2010

For Office Use Only
LAND CONSERVATION AND DEVELOPMENT

Jurisdiction: **Lane County**

Local file number: **PA1268 & PA09-5255**

Date of Adoption: **05/19/2010**

Date Mailed: **05/25/2010**

Was a Notice of Proposed Amendment (Form 1) mailed to DLCD? Yes No Date: 01/29/2010

Comprehensive Plan Text Amendment

Comprehensive Plan Map Amendment

Land Use Regulation Amendment

Zoning Map Amendment

New Land Use Regulation

Other: Developed & Committed Exception

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

A minor plan amendment to the Lane County Rural Comprehensive Plan to redesignate 1.55 acres of a 10.29 acre parcel from Agriculture Lane to Rural Residential, concurrent with a rezone of E25 Exclusive Farm Use to RR5 Rural Residential, and adopt physically developed and developed and committed lands exceptions to Statewide Planning Goal 3 and Goal 4, to include a portion of the subject property into Exception Area 426-1.

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

Plan Map Changed from: **Agricultural** to: **Rural**

Zone Map Changed from: **E25 Exclusive Farm Use** to: **RR5 Rural Residential**

Location: **1 mile northeast of the community of Goshen**

Acres Involved: **1**

Specify Density: Previous:

New:

Applicable statewide planning goals:

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

Please list all affected State or Federal Agencies, Local Governments or Special Districts: *None*

Local Contact: **Lindsey Eichner**

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Fax Number: **541-682-3947**

City: **Eugene**

Zip: **97401-**

E-mail Address: **Lindsey.Eichner@co.lane.or.us**

DLCD File No. 003-10 (180191) [16154]

IN THE BOARD OF COMMISSIONERS OF LANE COUNTY, OREGON

ORDINANCE NO. PA 1268

IN THE MATTER OF AMENDING THE RURAL COMPREHENSIVE PLAN TO ADOPT A GOAL 2 EXCEPTION TO STATEWIDE PLANNING GOALS 3 & 4, REDESIGNATE LAND FROM "AGRICULTURAL LAND" TO "RURAL LAND", REZONE THAT LAND FROM "E-25/EXCLUSIVE FARM USE ZONE" TO "RR-5/RURAL RESIDENTIAL ZONE"; ADOPTING DEVELOPED AND COMMITTED LAND EXCEPTION AND ADOPTING SAVING AND SEVERABILITY CLAUSES. (FILE PA 09-5255; Rogers)

WHEREAS, the Board of County Commissioners of Lane County, through enactment of Ordinance PA 884, has adopted Lane Use Designations and Zoning for lands within the planning jurisdiction of the Lane County rural Comprehensive Plan; and

WHEREAS, Lane Code 16.400 sets forth procedures for amendment of the Rural Comprehensive Plan, and Lane Code 16.252 sets forth procedures for rezoning lands within the jurisdiction of the Rural Comprehensive Plan; and

WHEREAS, Oregon Administrative Rule 660-004-0000 sets forth procedures for the interpretation of the Goal 2 Exception process; and

WHEREAS, in May 2009, application no. PA09-5255 was made for a minor amendment to redesignate 1.55 acres of tax lot 600 of map 18-03-13-10, from "Agricultural" to "Rural", concurrently rezone the property from "E-25/Exclusive Farm Use" to "RR-5/Rural Residential", and taking a Exception to Goals 3 and 4; and

WHEREAS, the Lane County Planning Commission reviewed the proposal in a public hearing on April 6, 2010, and recommended approval of the proposed amendment and rezoning; and

WHEREAS, evidence existing within the record indicating that the proposal meets the requirements of Lane Code Chapter 16, and the requirements of applicable state and local law; and

WHEREAS, the Board of County Commissioners has conducted public hearings and is now ready to take action;

NOW, THEREFORE, the Board of County Commissioners of Lane County Ordains as follows:

Section 1. The Lane County Rural Comprehensive Plan is amended by the redesignation of 1.55 acres of tax lot 600, map 18-03-13-10, from "Agricultural" to "Rural", such territory depicted on the Official Lane County Plan Map 1803 and further identified on a portion of that map in Exhibits "A" and "B" attached and incorporated herein.

Section 2. The Lane County Rural Comprehensive Plan zoning designation for the 1.55 acres of tax lot 600 of map 18-03-13-10, is rezoned from "E-25/Exclusive Farm Use" to "RR-5/Rural Residential", such territory depicted on the Official Lane County Zoning Map 1803 and further identified on a portion of that map in Exhibits "A" and "B" attached and incorporated herein.

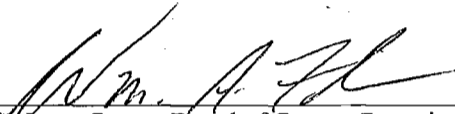
Section 3. The Lane County Rural Comprehensive Plan is amended to include a Goal 2 Exception taken for 1.55 acres of tax lot 600, map 18-03-13-10, to Statewide Planning Goals 3 (Agricultural Lands) & 4 (Forest Lands) based on the finding of fact and conclusions of law supporting the exception and amendments set forth in Exhibit "C" attached and incorporated herein and adopted in support of this action.

FURTHER, although not a part of this Ordinance except as described above, the Board of County Commissioners adopts Findings as set forth in Exhibit "C" attached, in support of this action.

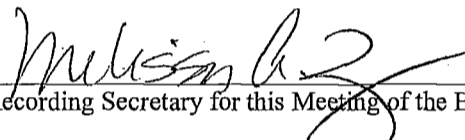
The prior designation and zone repealed by this Ordinance remain in full force and effect to authorize prosecution of persons in violation thereof prior to the effective date of this Ordinance.

If any section, subsection, sentence, clause, phrase or portion of this Ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision, and such holding shall not affect the validity of the remaining portions hereof.

ENACTED this 10th day of May, 2010.




Chair, Lane County Board of County Commissioners



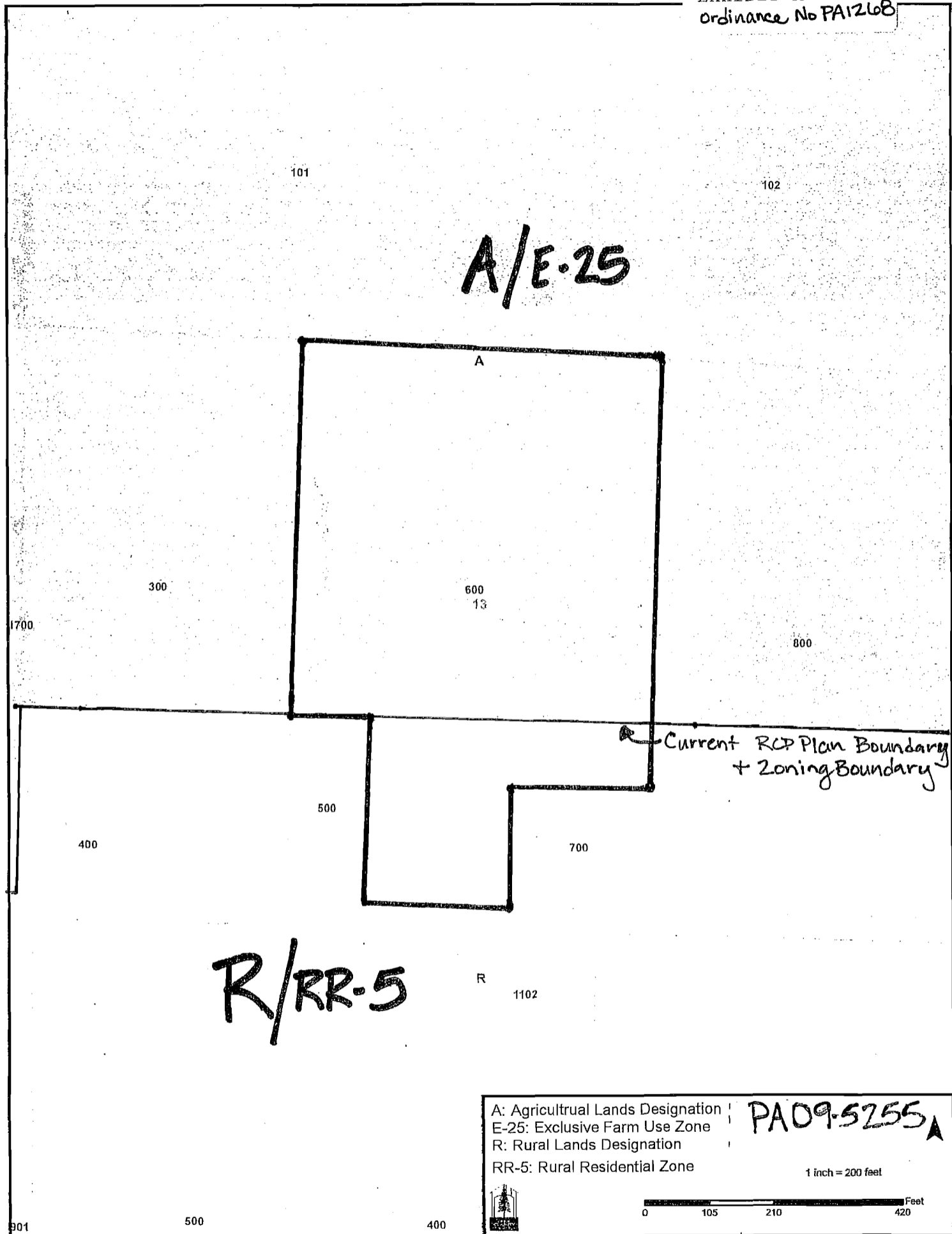
Recording Secretary for this Meeting of the Board

APPROVED AS TO FORM

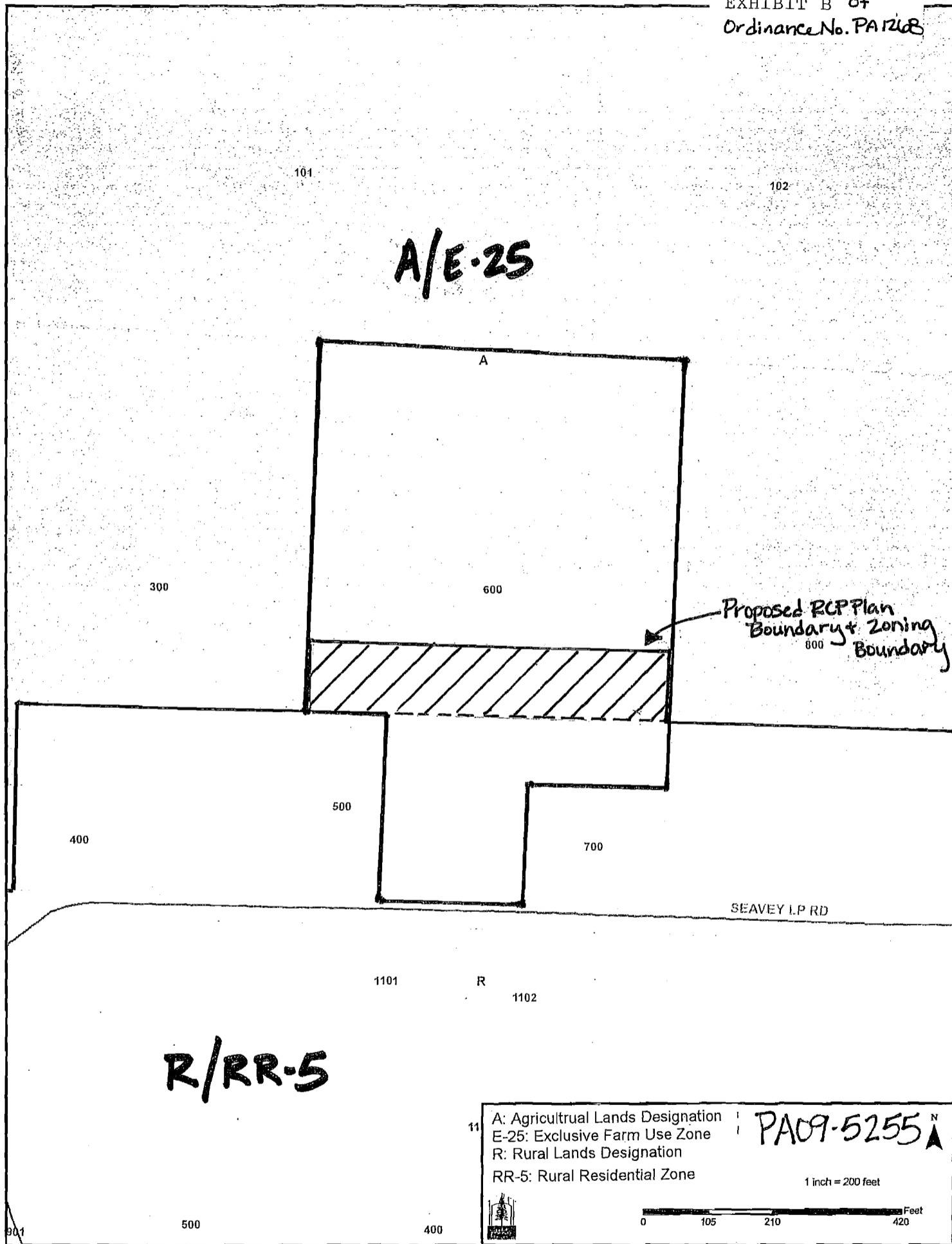
Date 4-28-2010 Lane County



OFFICE OF LEGAL COUNSEL



EXISTING CONFIGURATION MAP



PROPOSED CONFIGURATION MAP

MINOR RURAL COMPREHENSIVE PLAN AMENDMENT/ZONE CHANGE**MAP 18-03-13-10, TAX LOT 600
BRAD AND LORI ROGERS****PA 09-5255****FINDINGS OF FACT AND CONCLUSIONS OF LAW**

The following findings of fact and conclusions act to support an affirmative decision by the Board of County Commissioners (“the Board”) to approve the proposed plan amendment and concurrent zone change. Additional information is provided in the applicant’s statement and exhibits, which are incorporated herein by reference. These findings are divided into the following five sections:

- I. Summary of Issues
- II. General Findings Related to the Property and Application
- III. Findings and Conclusions Related to the Lane Code 16.400 Plan Amendment Criteria
- IV. Findings and Conclusions Related to the Statewide Planning Goals
- V. Findings and Conclusions Related to the Lane Code 16.252 Rezoning Criteria

I. SUMMARY OF ISSUES

1. **The subject property is split zoned RR-5/RCP Rural Residential and E-25/RCP Exclusive Farm Use. The applicants sited and constructed a single-family dwelling in error, approximately 50 feet into the E-25 zoned portion of the subject property. The 1.55 acre area subject to this plan amendment and zone change is physically developed and committed to an extent that it is impracticable to be used for normal and accepted farm and forest activities.**

In 1997, the applicants and landowners, Brad and Lori Rogers, obtained BP 1058-97 to construct a single-family dwelling and install a sewage disposal system. The applicant’s site plan indicated the dwelling would be sited within the southern RR-5 zoned portion adjacent to the zone boundary which divides the subject property. After staking the foundation footprint the owners and contractor determined that site was impacted by a swale that flooded in 1996. The dwelling was moved 50 feet north to a higher elevation and away from the swale. The revised site inadvertently overlooked the zone boundary. The building inspector noted the location appeared close to the zone boundary, but approved the revised site. The foundation was poured and signed-off by the inspector. Similarly, the county approved and signed-off on a different sanitation drainfield area. The applicants wrongly assumed the revised site was a nonissue and proceeded to build the dwelling until its occupancy in 2001. Subsequently, the county determined the building permit had expired by limit and after examining new aerial photographs also determined the dwelling had been constructed in the exclusive farm use zoned portion of the subject property. A plan amendment and zone change application was filed with the Lane County Land Management Division on May 1, 2009.

The applicants submit the 1.55 acre portion subject to this application is physically developed and committed to the extent that it is no longer available for either farm or forest uses. The plan amendment and zone change before the Board is the minimum necessary to correct the situation.

2. The portion of subject property proposed for an plan amendment and zone change is contiguous to a relatively large developed and committed exception area.

Developed and committed Exception Area 426-1 currently includes a 2.3 acre portion of the subject property. This exception area recognizes a settlement pattern of 237.6 acres in size and consists of 216 parcels with 307 dwellings. The adopted and acknowledged exception findings indicate Exception Area 426-1 is extensively developed. "The land within Exception Area 426-1 is impracticable to use for resource production because agriculture is the predominant use in the surrounding vicinity, and agricultural experts contend that parcels adjoined by dwellings on two sides are impracticable for farm management if 15 acres or less." This finding is supported by the 1989 Board Order 89-10-25-4, as an Addendum to the Lane County RCP Developed and Committed Lands Working Paper.

The proposed plan amendment extends the existing exception area 115 feet to the north by the 585 foot width of the subject property. Two dwellings adjacent to the subject property are located east and west of the existing RR zoned area. The proposed plan amendment and zone change will result in a 3.85 acre portion of the 10.29 acre subject property, including the existing dwelling, being designated Rural Residential and zoned RR-5. The residential use of the subject property is similar to a number of small parcels in the vicinity which form the basis of the exception area. The proposed plan amendment increases Exception Area 426-1 by .006 percent.

II. GENERAL FINDINGS RELATING TO THE PROPERTY AND APPLICATION

Findings of Fact:

1. The property subject to this application, hereinafter referred to as "the subject property", is identified as Tax Lot 600, Assessor's Map 18-03-13-10, with an assigned site address of 34706 Seavey Loop Road, Eugene, Oregon 97405.
2. The subject property is 10.29 acres in size. It is located on the north side of Seavey Loop Road approximately one-mile northeast of the community of Goshen.
3. The subject property is generally level land bisected by two gradual sloping drainage swales located on either side of the applicant's dwelling. The existing RR-5 zoned portion contains a 1.8 acre filbert orchard, well, underground utilities and a graveled driveway from Seavey Loop Road. The E-25 zoned portion contains the applicant's dwelling, subsurface sewage disposal system, graveled driveway, landscaped and irrigated yard, propane tank, barn, 5.5 acres of

fenced horse pasture and a 1.2 acre filbert orchard. The subject property does not receive a farm deferral for taxes.

4. The applicants propose a Minor Plan amendment to the Lane County Rural Comprehensive Plan (RCP) from Agricultural Land to Rural Residential Land, with an exception to Statewide Goal 3 - Agricultural Lands and Goal 4 - Forest Lands, concurrent with a zone change from E-25 Exclusive Farm Use to RR-5 Rural Residential on a 1.55 acre portion of the subject property.
5. The southern 2.3 acres of the subject property is zoned RR-5 with the remaining eight acres zoned E-25. The proposed plan amendment and zone change will result in 3.85 acres being zoned RR-5 and 6.45 acres being zoned E-25.
6. The applicants have provided documentation to support a Developed and Committed exception to Statewide Goals 3 and 4 which will add a 1.55 acre portion of the subject property to Exception Area 426-1 consisting of 237.6 acres, 307 dwellings and 216 parcels.
7. The subject property is a legal lot, created by a Bargain and Sale Deed recorded in 1958 and verified as a legal lot by Legal Lot Verification PA 1057-97.
8. The Soil Survey of Lane County Area, Oregon (1987) NRCS map sheet 92 indicates the subject property is composed entirely of 26 Chehalis silty clay loam, an occasionally flooded agricultural class II high-value soil. The Lane County Soil Ratings for Forestry and Agriculture (1997) lists Chehalis silty clay loam has having a Douglas-fir site index of "none."
9. Flood Insurance Rate Map (FIRM) Panel #0610C and Floodway Panel #0025, both effective December 18, 1985, indicate the subject property is located within a 100 year (Zone A5) flood hazard area. An Elevation Certificate prepared by an Oregon registered professional land surveyor and floodplain special use permit PA 2707-97 indicate the dwelling is 2.8 feet above the base flood elevation.
10. The National Wetlands Inventory, Springfield 3 map, indicates there are no jurisdictional wetlands located on the subject property.
11. To the north, adjoining the subject property for 460 feet, is a 35.53 acre parcel developed with two dwellings, leased for an alfalfa crop and zoned E-25. To the northeast, adjoining the subject property for 130 feet, is a 25.01 acre parcel developed with a dwelling and a horse boarding and training facility and zoned E-25. To the east, adjoining the subject property for 690 feet, is a 14.76 acre parcel developed with a dwelling, used to raise about five cattle and zoned E-25. To the west, adjoining the subject property for 590 feet, is an undeveloped 9.66 acre parcel leased for a hay crop and split zoned RR-5 and E-25. To the south are two parcels, 0.89 and 0.99 acres, developed with dwellings and zoned RR-5. To the south is Seavey Loop Road, an asphalt surfaced county road. Further, south of Seavey Loop Road are two 1.08 acre parcels improved with dwellings and a 14.34 acre parcel improved with a dwelling, zoned RR-5.

12. The subject property receives all public services required by RCP Goal 11, Policy 6e, including fire protection provided by the Goshen Rural Fire District, police protection by the Lane County Sheriff, schools by the Springfield School District 19, solid waste disposal by the Glenwood Central Receiving Station, electric service provided by Emerald PUD, and individual water and sanitation systems service that are adequate to support the existing dwelling.
13. The subject property was first zoned AGT -Agriculture, Grazing and Timber in 1966. In 1984, the subject property was legislatively rezoned to RR-5 and E-25. In 1988, a Supplemental Developed and Committed Lands exception was adopted by Board Order 89-11-21-12, resulting in the existing partial RR-5 and E-25 zoning of the subject property.
14. The applicants have taken a developed and committed lands exception to Statewide Goals 3 and 4, as provided by OAR 660-04-025 and 660-04-028. An exception is warranted when the land is physically developed or irrevocably committed to uses not allowed by the goal(s) because of adjacent uses and other relevant factors. The applicant's record shows the nine standards specified in the pertinent sections of the OAR's have all been addressed, and demonstrate the 1.55 acre portion of subject property is physically developed to an extent that makes this portion of the subject property impracticable and unsuitable for any resource use and most appropriately designated rural residential.
15. The Lane County Planning Commission held an initial evidentiary public hearing on this application on April 6, 2010 and voted 7-0-1 (one abstention) to recommend approval of the application to the Board. No neighboring landowners testified either in favor or in objection to the proposed plan amendment and zone change. One person with an Eugene address gave neutral testimony regarding the incremental loss of agricultural lands, but was otherwise ambivalent about the application as it does not allow more residential development.

The planning commission found there was no reasonable alternative; no negative impact on farm use would result; no additional dwelling sites would result due to the zoning requirements for approval of a dwelling on high-value soils; and it was reasonable to site the dwelling outside the swales that had previously flooded. The planning commission determined approval of application was site specific and would not result in a bad precedent being established. There was discussion regarding whether a "gerrymandered" zoning boundary around the improvements would be preferred to the proposed east-west zoning boundary located 115 feet north of the existing RR-5 and E-25 zone boundary. However, while potentially ideal to prevent no net loss of agricultural land, the planning commission determined a meandering zone boundary was not feasible or necessary as it would result in the extension of a narrow finger of exclusive farm use zoning between existing rural residentially zoned areas. The planning commission indicated there would be no harm to allow the zone change and found the applicant's evidence and findings supported the proposed plan amendment and zone change.

III. FINDINGS AND CONCLUSIONS RELATED TO LANE CODE 16.400 PLAN AMENDMENT CRITERIA

Lane Code 16.400(6)(h)(iii) provides the Board may amend or supplement the RCP upon making the following findings:

(aa) For Major and Minor Amendments as defined in LC 16.400(8)(a) below, the Plan component or amendment meets all applicable requirements of local and state law, including Statewide Planning Goals and Oregon Administrative Rules.

Findings of Fact:

1. The Board finds this plan amendment meets all legal processing requirements of the Lane Code and the acknowledged comprehensive plan, and incorporates by reference the Applicant's Statement and supporting exhibits. This amendment changes the RCP designation on a portion of the subject property from Agricultural Land to Rural

Residential Land. Findings provided herein address applicable County standards and Statewide planning goals.

2. The applicants have taken a developed and committed exception to Statewide Goals 3 and 4, as provided by OAR 660-004-0025(2) and OAR 660-004-028(2). An exception is warranted when the requested plan designation and zoning district is consistent with other applicable Statewide Goal requirements, is compatible with nearby uses and does not commit them to a nonresource use.
3. OAR 660-004-0018(2)(b) sets forth a number of requirements that this plan amendment must meet. These requirements are summarized as follows:

(A) The application needs to maintain the rural character of the area, as defined by Statewide planning goals. The Board finds this application will correct a siting error of the existing dwelling. No additional dwellings will result from this application. The proposed plan amendment will not change the existing character of the area as rural land.

(B) The application will not commit adjacent or nearby resource land to nonresource use. The existing dwelling is located 280 feet from a E-25 zoned 14.76 acre parcel to the east used for low scale livestock grazing; 230 feet from a 9.66 acre hay field to the west; and 540 feet from a 35.53 acre parcel leased for an alfalfa crop and a 25.01 acre parcel used for horse boarding and training. These farm uses are generally low intensity in nature and significantly setback from the existing dwelling and proposed zone boundary. The Board finds the proposed zone change area will not commit or promote justification for changing adjacent or nearby agricultural lands to nonresource use. There are no designated, zoned or managed forest lands located in the vicinity.

C) The portion of the subject property to be zoned RR-5 includes the applicant's dwelling, physical improvements and supporting facilities. No additional dwellings or change of density inconsistent with the character and density of the contiguous exception area will result. No increase of public services or facilities will be required. The Board recognizes the applicant's resulting 3.85 acre parcel developed with a dwelling is similar in size, character and use to other parcels located within the exception area and will be compatible with adjacent resource uses.

4. OAR 660-004-0028(2) sets forth a number of requirements that this plan amendment needs to address, which are summarized as follows:

(A) The characteristics of the exception area: The Board finds Exception Area 426-1 is located within farm region 18 where the 25 acres is the standard for commercial agriculture. Exception Area 426-1 consists of a 216 parcels that range in size from .2 to 15.1 acres in size with an average parcel size of 1.1 acres. The resulting 3.85 acre parcel is consistent with the size of parcels in the exception area. Exception Area 426-1 contains 307 dwellings, many of which are located on small parcels used for rural residences in conjunction with hobby scale farming activities. The Board finds the applicant's residence in conjunction with the combined orchard and horse pasture use of the total 10.29 acre parcel is similar and consistent with the type and level of activities that occur on lands located within the exception area.

(B) The characteristics of adjacent lands. The Board finds since construction of the dwelling in 1997 and its occupancy since 2001 there has been no apparent conflict between the applicant's residential use and adjacent or nearby resource lands. The Board finds the type and level of agricultural activities associated with hay and alfalfa cropping, livestock pasture and horse boarding and training located on surrounding E-25 zoned lands to the north, east and west will not conflict with the applicant's dwelling located over 230 feet from the closest agricultural parcel.

C) The relationship between the subject property and adjacent land. The Board finds that the residential use of that portion of developed subject property is similar to the residential use of adjacent lands to the south within Exception Area 426-1. The Board further finds rezoning 1.55 acres of the subject property will not adversely affect the agricultural use of adjacent or nearby lands zoned for exclusive farm use.

5. OAR 660-004-0028(3) requires proof that land taking an exception from Goals 3 and 4 is impracticable to be used for the following purposes:

(A) Farm use for the primary purpose of making a profit in money. The Board finds the 1.55 acre portion of the subject property is developed to such an extent with the dwelling site, subsurface sewage disposal system, underground utilities, and associated residential facilities that it's impracticable to obtain a profit in money from agricultural activities. The costs associated with making the property suitable for farm use (removal of the dwelling, sewage system and associated improvements, and site preparation) practically act to make it

impracticable to obtain a profit in money from any agricultural activities that could otherwise occur on the 1.55 acre portion proposed for this plan amendment and rezoning.

(B) The Board finds the subject 1.55 acre portion of the subject property is developed to such an extent that the growing or harvesting a forest product, and forest management activities are impracticable. The Board further finds there are no forest lands by use or zoning in the vicinity and its adopted Lane County Soil Ratings for Forestry and Agriculture indicate the subject Chehalis silty clay loam soil has a site index of “none.”

6. The following factors of OAR 660-004-0028(6) need to be addressed:

(A) Existing adjacent uses. The Board finds this required analysis has been addressed in previous findings.

(B) Existing public facilities and services. The Board finds this required analysis has been addressed in previous findings.

(C) Parcel size and ownership patterns of the subject property and adjacent lands. The Board finds this required analysis has been addressed in previous findings.

(D) Neighborhood and regional characteristics. The Board finds the portion of the subject property subject to this application is located on the edge of existing developed and committed exception area 426-1 that has been previously addressed. The Board finds the level of development proposed by this application is consistent with the use of lands located within the contiguous exception area.

(E) Features separating the subject property from adjacent resource land. The Board finds this required analysis has been addressed in previous findings.

(F) Development of the subject property. The Board finds this required analysis has been addressed in previous findings.

(G) Other relevant factors. The Board finds the following relevant factors conclude the subject property is committed to a rural land use. The proposed Rural Residential plan amendment is the minimum necessary to resolve the situation without any impact to adjacent resource lands.

(bb) For Major and Minor Amendments as defined in LC 16.400(8)(a) below, the Plan amendment or component is:

(i-i) necessary to correct an identified error in the Plan; OR

(iv-iv) necessary to provide for the implementation of adopted Plan policy or elements; OR

(v-v) otherwise deemed by the Board, for reasons briefly set forth in its decision, to be desirable, appropriate or proper.

Findings of Fact:

3. The Board finds that this amendment meets criteria (iv-iv), and (v-v) above.

(iv-iv): The Board finds that this RCP amendment implements RCP Goal 3, Policies 7 and 8, as specified in the following finding. The change in plan designation provided for in RCP Goal 2, Policy 12, changes to Plan designations for developed and committed areas outside of a Community designation shall be accomplished through the County's Plan Amendment Procedure, will be fulfilled by the proposed amendment. RCP Goal 3 Policy 7 provides some agricultural lands are not suitable or available for agricultural use by the nature of being built upon, committed or need or nonagricultural uses. The Board finds the subject 1.55 acre portion is developed and committed to nonagricultural uses as previously described. RCP Goal 3, Policy 8 states maximum protection to agricultural activities should be provided to minimize activities, particularly residential, that conflict with such use. The Board finds there has been no apparent conflict from the residential use of the subject property with agricultural activities in the vicinity and the location of the existing dwelling is setback a substantial distance from nearby agricultural activities to provide a reasonable protection for such activities. The Board finds if a dwelling were allowed on the E-25 zoned portion, that Lane Code 16.212(10)(a)(ii)(aa) would require a minimum 100 foot setback from any adjoining lines of property zoned EFU. The Board finds the existing dwelling is setback more than 230 feet from the closest adjacent EFU zoned property boundaries, whereby providing a substantial setback for maintaining compatibility between residential and agricultural uses.

(v-v): Based upon reasons discussed in this application, the Board finds that it is desirable, appropriate and proper to designate 1.55 acres of the subject property as Rural Residential.

(cc) For Minor Amendments as defined in LC 16.400 (8)(a), the Plan amendment or component does not conflict with adopted Policies of the Rural Comprehensive Plan and if possible, achieves policy support.

Findings of Fact:

4. In addition to Goal 2, Policy 12 and Goal 3, Policies 7 and 8, and Goal 11, Policy 6e previous addressed, the Board finds the proposed amendment conforms with the following applicable RCP Policies:

Goal 2, Policy 9 allows for exceptions to LCDC goals as part of the plan amendment process. Findings for exceptions to Goals 3 and 4 are included in the applicant's statement.

Goal 2, Policy 11(a) specifies standards to be used in determining the location and density for developed and committed lands. Findings addressing these standards are included in the applicant's statement. The portion of the subject property proposed for amendment is bordered by a LCDC acknowledged developed and committed lands exception on the south.

Goal 3, Policy 4 and Goal 3, Policy 8 both state agricultural activities should be protected by minimizing residential and other land uses which create conflicts with them. The Board finds the proposed plan amendment will not conflict with adjacent or nearby agricultural activities as previously described.

(dd) For Minor Amendments as defined in Lane Code 16.400(8)(a), the Plan amendment or component is compatible with the existing structure of the Rural Comprehensive Plan, and is consistent with the unamended portions or elements of the Plan.

Findings of Fact:

5. The Board finds this plan amendment is consistent with the RCP intent to choose between competing uses. As stated in the record, the subject property is irrevocably committed to non-agricultural uses due to the developed nature of the subject 1.55 acre portion, its impracticability for resource use and its compatibility with adjacent agricultural uses. As the site is not available for normal agricultural uses, the Board finds a rural residential plan designation and zone is most appropriate. The Board finds this RCP amendment is consistent with unamended portions or elements of the Plan.

Lane Code 16.400(8)(a): Amendments to the Rural Comprehensive Plan shall be classified according to the following criteria:

(i) Minor Amendment. An amendment limited to the Plan Diagram only and, if requiring an exception to the Statewide Planning Goals, justifies the exception solely on the basis that the resource land is already built upon or is irrevocably committed to other uses not allowed by an applicable goal.

Findings of Fact:

1. The Board finds that the proposed amendment is limited to a change of the RCP diagram from Agricultural Land to Rural Residential Land. The soils on the subject property are classified by the NRCS as having a farm capability. For this reason, a developed and committed lands exception to Statewide Planning Goals 3 and 4 is required and addressed in Section III A. of the Applicant's Statement. This application qualifies as a Minor Amendment.

c) Minor amendment proposals initiated by an applicant shall provide adequate documentation to allow complete evaluation of the proposal to determine if the findings required by LC 16.400(6)(h)(iii) above can be affirmatively made. Unless waived in writing by the Planning Director, the applicant shall supply documentation concerning the following:

(i) A complete description of the proposal and its relationship to the Plan.

Findings of Fact:

2. The required description has been previously provided. The requested Rural Residential RCP designation recognizes the site's irrevocable commitment to non-resource uses and is consistent with the existing development pattern in the vicinity of the subject property.

(ii) An analysis responding to each of the required findings of LC 16.400(6)(h)(ii) above.

Findings of Fact:

3. The Board finds this required analysis has been addressed in previous findings.

(iii) An assessment of the probable impacts of implementing the proposed amendment, including the following:

(aa) Evaluation of land use and patterns of the area of the amendment;

Findings of Fact:

4. The Board finds the applicants have provided a complete description of the area's land use pattern within the previous findings, Applicant's Statement and supporting exhibits.

(bb) Availability of public and/or private facilities and services to the area of the amendment, including transportation, water supply and sewage disposal;

Findings of Fact:

5. The Board finds adequate public and private facilities and services are available to the subject property to serve rural residential uses, as addressed within the previous findings.

(cc) Impact of the amendment on proximate natural resources, resource lands or resource sites including a Statewide Planning Goal 5 "ESEE" conflict analysis where applicable;

Findings of Fact:

6. The Board finds that no open space, scenic, cultural, historic or natural resource uses or values have been identified or inventoried on the subject property. The Board finds no conflict exists with Goal 5 resources, and an "ESEE" analysis is not applicable to this amendment.

(dd) Natural hazards affecting or affected by the proposal;

Findings of Fact:

7. The Board finds that there are no natural hazards present on the subject property that significantly affect or are affected by the proposed amendment. As addressed in the Applicant's Statement, the subject property is located within a 100 year floodplain. The existing dwelling has been certified by Lane County to be located above the required minimum floodplain elevation.

(ee) For a proposed amendment to a nonresidential, nonagricultural or nonforest designation, an assessment of employment gain or loss, tax revenue impacts and public service/facility costs, as compared to equivalent factors for the existing uses to be replaced by the proposal;

(ff) For a proposed amendment to a nonresidential, nonagricultural or nonforest designation, an inventory of reasonable alternative sites now appropriately designated by the Rural Comprehensive Plan, within the jurisdictional area of the Plan and located in the general vicinity of the proposed amendment;

(gg) For a proposed amendment to a Nonresource designation or a Marginal Lands designation, an analysis responding to the criteria for the respective request as cited in the Plan document entitled, "Working Paper: Marginal Lands" (Lane County, 1983).

Findings of Fact:

8. The Board finds the previous three standards are not applicable to the proposed amendment.

Conclusion:

The Board concludes the proposed plan amendment meets all legal processing requirements. The Board further concludes the evidence and findings provided herein address and support the Lane Code criteria for a plan amendment and the exception requirements of OAR 660-004-0025 for land physically developed to other uses and the exception requirements of OAR 660-004-0028 for land irrevocably committed to other uses.

IV. FINDINGS AND CONCLUSIONS RELATED TO STATEWIDE PLANNING GOALS

Findings of Fact:

GOAL 1 Citizen Involvement

Goal 1 requires citizens and affected public agencies be provided an opportunity to comment on the proposed amendment and zone change. The Board finds public notification has been provided in the form of mailed public notice has been sent by Lane County to affected agencies,

including the Oregon Department of Land Conservation and Development, and to owners of record within 500 feet of the subject property, along with posting the subject property. The Board finds the aforementioned notifications have enabled citizens, agencies and private organizations an opportunity to comprehend the issues and participate in a public process prior to final action by the county.

GOAL 2 Land Use Planning

Goal 2 establishes a land use planning process and policy framework as a basis for all land use decisions, and requires the development of an adequate factual base to support these decisions. A minor change is one that does not have significant effect beyond its immediate area and is based on special studies or information. The public need and justification for the particular change must be established.

The Board finds the adopted comprehensive land use plan amendment process, including specific criteria that must be addressed to justify a minor change has been adequately satisfied. Substantial compliance with LC 16.400 Rural Comprehensive Plan Amendments and the requirements for a physically developed and committed lands exception constitute compliance with the applicable provisions of Goal 2. The Board finds the application has affirmatively addressed the required approval criteria which demonstrates the proposed amendment is an appropriate means to correct the situation

GOAL 3 Agricultural Lands

Goal 3 strives to preserve and maintain agricultural lands. In western Oregon, agricultural land consists of predominantly Class I through IV soils as identified by the NRCS, and other lands which are suitable for farm use, taking into consideration soil fertility, grazing suitability, climatic conditions, existing and future availability of water for farm irrigation purposes, existing land use patterns, required technological and energy inputs, or accepted farming practices. Lands in other soil classes will be included as agricultural lands if they are necessary to permit farm practices to be undertaken on adjacent or nearby lands.

NRCS data identifies the soil on the subject property as having a Class II agricultural capability. The Lane County Policies component of the General Plan, Goal 3: Agricultural Lands, Policy 7 states:

“Some agricultural land in the County is not suitable or available for agricultural use by nature of being built upon, committed to or needed for nonagricultural uses. The County shall plan and zone such lands for nonagricultural uses by using applicable comprehensive plan policies and the exceptions process of LCDC Goal 2, Part II.”

The Board finds the agricultural land within the subject 1.55 acre area is developed and committed to such an extent as to render it not suitable or available for agricultural use. The Board has considered the applicant’s evidence and finds it has affirmatively addressed relevant

RCP policies and the exception requirements for land physically developed to other uses as required by OAR 660-004-0025 and the exception requirements for land irrevocably committed to other uses as required by OAR 660-004-0028. The Board incorporates the Findings and Conclusions provided in Section III of this document as providing the necessary support to justify and adopt an exception to the requirements of Goal 3.

GOAL 4 Forest Lands

Goal 4 requires the preservation and conservation of forest land and forest uses. Forest land is defined by Statewide Planning Goal 4 as: *"1) lands composed of existing and potential forest lands which are suitable for commercial forest uses; 2) other forested lands needed for watershed protection, wildlife and fisheries habitat and recreation; 3) lands where extreme conditions of climate, soil and topography require the maintenance of vegetative cover irrespective of use; 4) other forested lands in urban and agricultural areas which provide urban buffers, windbreaks, wildlife and fisheries habitat, livestock habitat, scenic corridors and recreational use."*

The Lane County Soil Ratings for Forest and Agriculture (1997) indicates the 26 Chehalis silty clay loam soil located on the subject property (per NRCS map 92) is listed as having a Douglas-fir site index of "none." A November 21, 2008 letter from the Oregon Department of Forestry to Kent Howe, Lane County Planning Director, states: "No further Department of Forestry review or approval of site productivity determinations are needed when these data sources are used." No forest lands or forest zoned lands are located in the vicinity. The Board finds the subject 1.55 acre area has no capability for commercial forest production and has not been identified in any known inventory or study as being needed for watershed protection, wildlife and fisheries habitat and/or recreation; containing extreme conditions of climate, soil and topography; or located in an urban or agricultural area, and needed for urban buffers, windbreaks, wildlife and fisheries habitat, livestock habitat, scenic corridors and recreational use. The Board finds the subject area is physically developed to an extent which prevents any practical forest use and adopts an exception to Goal 4.

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

Goal 5 requires the conservation of open space and the protection of numerous natural, cultural, historic and scenic resources. The goal requires an evaluation of the following resources: riparian corridors, water and riparian areas and fish habitat, wetlands, wildlife habitat, mineral and aggregate resources, energy sources, natural areas, scenic views and sites, open space, groundwater resources, wilderness areas, historic resources, cultural areas, Oregon recreational trails, federal wild and scenic waterways and state scenic waterways. OAR 660-023-0010 and 0020 includes definitions, standards and specific rules applicable to each Goal 5 resource inventoried for conservation under the goal. The Board finds there are no Goal 5 resources have been identified as being applicable to this request.

GOAL 6 Air, Water and Land Resource Quality

The purpose of Goal 6 is to maintain and improve the quality of the air, water and land resources of the State. This Goal is generally implemented during the comprehensive planning process. As it pertains to site specific development, it requires that adequate protection measures are taken to assure the retention of air, water and land resources. The Board finds the dwelling located on subject property is served by adequate on-site water and sanitation facilities. The Board further finds the existing residential use of the property does not produce or discharge any product or by-product to an extent that it would degrade such resources.

GOAL 7 Areas Subject to Natural Disasters or Hazards

The purpose of Goal 7 is to protect life and property from natural hazards. The subject property is located in a 100 year flood hazard area. The Board finds the applicant's Elevation Certificate and subsequent floodplain special use permit approval certify the existing dwelling meets the require base flood elevations. The Board finds there are no other known hazards on the subject property.

GOAL 8 Recreational Needs

Goal 8 addresses the recreational needs of Oregon residents and visitors. Provisions of this goal are appropriately implemented by a legislative process as part of periodic review of the comprehensive plan. The Board finds Goal 8 is not applicable to this application.

GOAL 9 Economy of the State

The purpose of Goal 9 is to diversify and improve the economy of the State. The Board finds this goal is primarily applicable to commercial and industrial development and is not pertinent to this application.

GOAL 10 Housing

Goal 10 is intended to provide for the housing needs of the citizens of the State. The Board finds this goal is primarily implemented through the provisions of the RCP.

GOAL 11 Public Facilities and Services

The purpose of Goal 11 is to provide for the planning and development of a timely, orderly and efficient arrangement of public facilities and services to serve as a framework for urban and rural development. The Board finds a full range of rural services necessary to serve the use exists and will not require any public services beyond the level of those that exist.

GOAL 12 Transportation

The purpose of Goal 12 is to provide and encourage a safe, convenient and economic transportation system. Goal 12 is not oriented toward specific land use actions such as this application. The Board finds this goal is generally intended to consider area-wide models of transportation and is implemented at the comprehensive plan stage. The Board recognizes the subject property is served by Seavey Loop Road, a county maintained road, and finds the proposed plan amendment will not generate any additional trip generation nor cause any detrimental effect to the local road system.

GOAL 13 Energy Conservation

The Board finds Goal 13 is more appropriately applied at the comprehensive plan phase, and is therefore not applicable to this application.

GOAL 14 Urbanization

The purpose of Goal 14 is to provide for the orderly and efficient transition from rural to urban land use. The Board finds the proposed plan amendment is not located within or adjacent to an urban growth boundary and is therefore not urbanizable, nor will the proposal create any additional lots or parcels within the exception area which would require compliance with OAR 660-004-0040, Application of Goal 14 Urbanization to Rural Residential Areas.

GOALS 15 - 19

The Board finds Goals 15-19 do not apply to this application as they are geographically oriented and only apply to the Willamette River Greenway and coastal resources.

Conclusion:

The Board concludes the plan amendment is consistent with the Statewide Planning Goals, including adoption of an exception to Goal 3 and Goal 4.

V. FINDINGS AND CONCLUSIONS RELATED TO LANE CODE 16.252 REZONING CRITERIA.

Lane Code 16.252(2) Criteria. Zonings, rezonings, and changes in the requirements of this Chapter shall be enacted to achieve the general purpose of this Chapter and shall not be contrary to the public interest. In addition, zonings and rezonings shall be consistent with the specific purposes of the zone classification proposed, applicable to Rural Comprehensive Plan elements and components, and Statewide Planning Goals for any portion of Lane County which has not been acknowledged for compliance with the Statewide Planning Goals by the Land Conservation and Development Commission. Any zoning or rezoning may be effected by Ordinance or Order of the Board of County Commissioners, the Planning

Commission or the Hearings Official in accordance with the procedures in this section.

Findings of Fact:

1. The Board finds the proposed RR-5 zoning appropriately implements the proposed Rural Residential designation. The Board further finds the proposed RR-5 zone is consistent with the general purpose of Chapter 16, specifically LC 16.003(1), (2), and (3). LC 16.003(1) states development should conform to site characteristics and be in the public interest. This RCP amendment and rezoning request recognizes the site's irrevocable commitment to non-resource uses and is consistent with the existing development pattern in the vicinity of the property. The site characteristics of the property are similar to nearby residentially developed lands and has available public services to serve the public interest, while recognizing the existing rural residential nature of the vicinity.
2. The Board finds the proposed RR-5 zoning appropriately implements applicable RCP policies which have been addressed in previous findings. The purpose statement of the Rural Residential zone specifies that it is intended to allow residential development in areas committed to rural development. As shown in previous findings and the Applicant's Statement, the 1.55 acre portion of subject property is committed to rural development because it is substantially developed to such an extent to prevent its agricultural use.
3. The Board finds the proposed RR-5 zone most accurately reflects the committed nature of the subject property, is the most appropriate residential zone for the site and consistent with RR-5 zoning within the adjacent exception area.

Conclusion:

The Board concludes the proposed zone change from E-25 to RR-5 on a portion of the subject property is consistent with the general purpose of Lane Code Chapter 16, the purpose of the Rural Residential Zone and the previously addressed Rural Comprehensive Plan policies and Statewide Planning Goals.

CONCLUSIONS OF LAW

The Board finds that the subject 1.55 acre portion of the subject property qualifies for a Rural Comprehensive Plan (RCP) designation as Rural Residential with a RR-5 zone. The Board finds the facts presented accurately conclude the subject property is not agricultural or forest land and that the proposed Rural Residential designation is consistent with RCP policies and the approval standards, addressed in these findings.

The Board finds the subject 1.55 acre area qualifies for a developed and committed lands exception and is irrevocably committed to non-agricultural uses. Existing physical improvements make normal agriculture or forest use impracticable on the site. Adjacent agricultural lands are protected from conflicts from the existing dwelling by substantial setbacks from property line boundaries. The subject

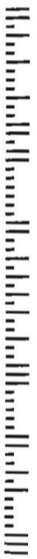
portion of the subject property is not farm or forest land as defined by Statewide Planning Goals 3 and 4, nor is it required for protection by those Goals.

The Board concludes that based upon the information contained in the Applicant's Statement and supplemental documents, evidence received at public hearings and made part of the record, the recommendation of approval by the Planning Commission, and the findings provided, the plan amendment and zone change conforms with all applicable standards to allow redesignation from Agricultural Land to Rural Residential and rezoning from E-25 Exclusive Farm Use to RR-5 Rural Residential. The Board finds that approval of this request is consistent with the procedures and policies used in developing and adopting the County's LCDC-acknowledged Developed and Committed lands process.



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