



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

8/24/2010

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

FROM: Plan Amendment Program Specialist

SUBJECT: Linn County Plan Amendment
DLCD File Number 001-10

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: Wednesday, September 08, 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: Deborah Pinkerton, Linn County
Jon Jinings, DLCD Community Services Specialist
Katherine Daniels, DLCD Farm/Forest Specialist
Ed Moore, DLCD Regional Representative

<paa> YA



FORM 2

DLCD

Notice of Adoption

In person electronic mailed

DATE
STAMP

DEPT OF

AUG 19 2010

LAND CONSERVATION
AND DEVELOPMENT

For Office Use Only

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: **Linn County**

Local file number: **BC10-0001**

Date of Adoption: **August 17, 2010**

Date Mailed: **August 18, 2010**

Was a Notice of Proposed Amendment (Form 1) mailed to DLCD? Yes No Date: Feb. 2, 2010

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".

Applicant proposed to amend Comprehensive Plan map designation from Farm/Forest to Non-Resource and amend zoning map designation from Farm/Forest (F/F) to Non-Resource-5 acre minimum (NR-5) on a 55.00-acre property. The Board adopted the applicant's proposal.

Does the Adoption differ from proposal? Please select one

No

Plan Map Changed from: **Farm Forest**

to: **Non-Resource**

Zone Map Changed from: **Farm/Forest (F/F)**

to: **Non-Resource – 5 acre min (NR-5)**

Location: **T12S, R1W, Section 7, Tax Lot 408**

Acres Involved: **55.00**

Specify Density: Previous: **80 acre**

New: **5 acre**

Applicable statewide planning goals:

1 **2** **3** **4** **5** **6** **7** **8** **9** **10** **11** **12** **13** **14** **15** **16** **17** **18** **19**

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:

Local Contact: **Deborah Pinkerton**

Phone: (541) 967-3816 Extension: 2367

Address: P O Box 100

Fax Number: 541-926-2060

City: Albany

Zip: 97321

E-mail Address: dpinkerton@co.linn.or.us

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.



LINN COUNTY PLANNING AND BUILDING DEPARTMENT

Robert Wheeldon, Director

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

NOTICE OF FINAL DECISION

CASE BC10-0001

APPLICANT Allan C. Merrill consulting Forester LLC

**RESOLUTION/
ORDER** No. 2010-262

ORDINANCE No. 2010-261

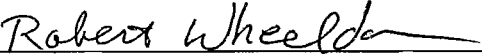
REQUEST The applicant proposed amending the Linn County *Comprehensive Plan* map designation on a 55.00-acre property, identified as Tax Lot 408 on map T12S, R1W, Section 7, from Farm/Forest to Non Resource and proposed amending the Linn County zoning map designation from Farm/Forest (F/F) to Non-Resource-5 acre minimum (NR-5).

BOARD OF COMMISSIONERS ACTION The Board approved the applicant's proposal.

If you wish to appeal this decision, an appeal must be filed with the Land Use Board of Appeals (LUBA) within 21 days from the date this notice is mailed.

Appeals to LUBA must be filed in accordance with ORS 197.830. If you have any questions about this process, you should contact LUBA in Salem.

Ordinance No. 2010-261 and Resolution and Order No. 2010-262 may be reviewed at the office of the Linn County Clerk, Room 205, Linn County Courthouse; that office is open from 8:30 a.m. to 5:00 p.m., Monday through Friday, except legal holidays. A copy of the ordinance and resolution and order are available in the office of the Linn County Clerk. A fee to cover copying costs will be charged.


Robert Wheeldon
Director

8/18/10
Date

c: Linn County Assessor's Office, Linn County GIS, Lebanon Rural Fire District, Department of State Lands, Lynn Merrill, Daniel Stotter, Friends of Linn County

BEFORE THE BOARD OF COUNTY COMMISSIONERS

FOR LINN COUNTY

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

ORDINANCE NO. 2010-261
(Amending Code)
(Planning and Building
Department; BC10-0001)

WHEREAS, The Linn County Board of Commissioners (Board) advertised notice that it would consider a proposed amendment to the Linn County zoning map and the Linn County *Comprehensive Plan* map on April 28, 2010;

WHEREAS, At 10:00 a.m., on April 28, 2010 and at 11:00 a.m. on May 25, 2010, the Board conducted a regularly scheduled and duly advertised public hearing, considered the proposed amendment for the zoning map and *Comprehensive Plan* map;

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

WHEREAS, The findings in support of this ordinance are attached to Resolution and Order No. 2010-262 and entitled Exhibit 1, (BC10-0001 Decision Criteria, Findings and Conclusions); and, now, therefore, be it

Ordained by the Linn County Board of Commissioners, That:

Section 1. Map Amendment. LCC 900.900, *Comprehensive Plan* map, be amended to designate the 55.00 acres, identified as Tax Lot 408 on Assessor map T12S, R1W, Section 7, Linn County, Oregon, as Non Resource on the Linn County *Comprehensive Plan* map.

Section 2. Map Amendment. Appendix 1, Zoning map, following LCC Chapter 920 [see LCC 920.010(B)] be amended to designate the 55.00 acres identified as Tax Lot 408 on Assessor map T12S, R1W, Section 7, Linn County, Oregon, Non-Resource-5 acre minimum (NR-5) on the Linn County zoning map.

Section 3. Savings clause. Repeal of a code section or ordinance shall not revive a code section or ordinance in force before or at the time the repealed code section or ordinance took effect. The repeal shall not affect a punishment or penalty incurred before the repeal took

effect, nor a suit, prosecution, or proceeding pending at the time of the repeal for an offense committed under the repealed code section or ordinance.

Section 4. Severability. Invalidity of a section or part of a section of this ordinance shall not affect the validity of the remaining sections or parts of sections.

Section 5. Effective date. To protect the health, safety, and welfare of the citizens of Linn County, this ordinance shall take effect following adoption.

Section 6. Codification. Following adoption, this ordinance shall be codified pursuant to LCC Chapter 120.


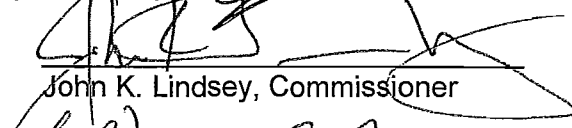
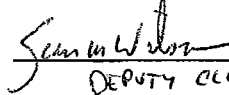
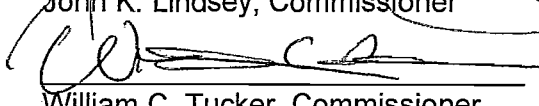
Public reading held April 28, 2010.

Adopted and passed August 17, 2010.

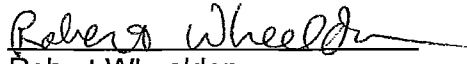
The effective date of this Ordinance shall be August 17, 2010.

BOARD OF COUNTY COMMISSIONERS FOR LINN COUNTY

Signed August 17, 2010

		Voting	
		For	Against
Steve Druckenmiller, Linn County Clerk Recording Secretary	 _____ Roger Nyquist, Chairman	<input checked="" type="checkbox"/>	<input type="checkbox"/>
	 _____ John K. Lindsey, Commissioner	<input checked="" type="checkbox"/>	<input type="checkbox"/>
By  DEPUTY CLERK	 _____ William C. Tucker, Commissioner	<input checked="" type="checkbox"/>	<input type="checkbox"/>

APPROVED AS TO CONTENT:



Robert Wheeldon
Linn County Planning and Building Director

APPROVED AS TO FORM:



Thomas N. Corr
Linn County Legal Counsel

BEFORE THE BOARD OF COUNTY COMMISSIONERS
FOR LINN COUNTY OREGON

IN THE MATTER OF A COMPREHENSIVE)
PLAN MAP AND ZONING MAP AMENDMENT)
APPLICATION BY ALLAN C. MERRILL)
CONSULTING FORESTER LLC TO CHANGE)
THE ZONING AND COMPREHENSIVE PLAN)
MAP DESIGNATION ON A 55.00-ACRE)
PROPERTY)

RESOLUTION &
ORDER NO. 2010-262
Planning and Building Department
(BC10-0001)
(Findings and Conclusions)

WHEREAS, The Board of County Commissioners for Linn County (Board) conducted a duly advertised public hearing on April 28, 2010 and May 25, 2010 for the purpose of considering the matter of a proposed zoning map amendment and *Comprehensive Plan* map amendment that would amend the zoning map designation and the *Comprehensive Plan* map designation on 55.00 acres identified as Tax Lot 408 on map T12S, R1W, Section 7;

WHEREAS, The proposed zoning map amendment and *Comprehensive Plan* map amendment had been previously considered by the Linn County Planning Commission at a duly advertised meeting on April 13, 2010 and who voted unanimously to recommend approval to the Board;

WHEREAS, The Board, after considering all testimony and evidence submitted, reached a consensus to recommend that a modification of the proposed zoning map amendment and *Comprehensive Plan* map amendment be adopted; and

WHEREAS, The findings in support of the proposed zoning map amendment and *Comprehensive Plan* map amendment are attached hereto as Exhibit 1 (BC10-0001 Decision Criteria, Findings and Conclusion); and now therefore, be it

RESOLVED, That the Board of County Commissioners for Linn County approve the Findings and Conclusions as set forth in Exhibit 1 (BC10-0001 Decision Criteria, Findings and Conclusions); and

RESOLVED, That the Board of Commissioners for Linn County approve a *Comprehensive Plan* map amendment and a zoning map amendment on a 55.00-acre property (Tax Lot 408 on map T12S, R1W, Section 7); and


ORDERED, That the Linn County *Comprehensive Plan* map and the Linn County Zoning map be prepared by county staff for amendment to designate the 55.00 acres as Non Resource

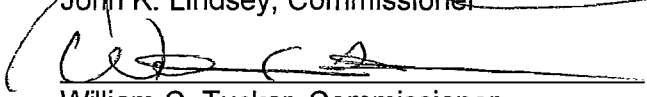
on the *Comprehensive Plan* map and as Non-Resource-5 acre minimum (NR-5) on the zoning map.

Resolved this 17th day of August, 2010.

BOARD OF COUNTY COMMISSIONERS
FOR LINN COUNTY



Roger Nyquist, Chairman

John K. Lindsey, Commissioner

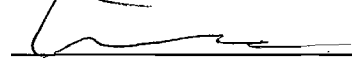
William C. Tucker, Commissioner

APPROVED AS TO CONTENT:



Robert Wheeldon
Director, Linn County Planning and Building

APPROVED AS TO FORM:



Thomas N. Corr
Linn County Legal Counsel

Exhibit 1

DECISION CRITERIA, FINDINGS AND CONCLUSIONS

A. SUMMARY

The applicant has proposed changing the *Comprehensive Plan* Map designation on 54.50 acres from its current designation of Farm Forest to Non-Resource and to change the current zoning from Farm/Forest (F/F) to Non-Resource-5 acre minimum (NR-5). Because the applicant has proposed to apply the Non-Resource zoning district and *Comprehensive Plan* designation to the 54.50 acres, an exception to Statewide Planning Goals 3 and 4 is not needed, however, the applicant has had to provide evidence the proposal is consistent with all the Statewide Planning Goals, including Goals 3 and 4.

The applicant provided substantial evidence that supports the Linn County Board of Commissioners' (The Board) findings and conclusions that exceptions to Goal 3 and Goal 4 are not required to adopt the *Comprehensive Plan* and Zoning changes designating the subject property Non-Resource land. In addition the Board has identified substantial evidence demonstrating the property is generally suitable for the use intended by the Non-Resource zone at a minimum parcel size designation of 5-acres (NR-5).

In support of the request the applicant submitted a substantial collection of documents organized into ten (10) chapters and several subchapters, referred to herein as Exhibit A and summarized as follows:

<u>Applications and Reports</u>	<u>Chapter</u>
COMPREHENSIVE PLAN MAP AMENDMENT APPLICATION	1
APPLICANT'S STATEMENT.....	2
APPLICANT'S RESPONSE TO APPROVAL CRITERIA.....	3
FOREST PRODUCTIVITY STUDIES AND REVEIWS	4
REVIEW LETTERS FROM THE OREGON DEPARTMENT OF FORESTRY (ODF)	4.1
LETTER TO ODF FROM JACKSON & PROCHNAU	4.2
DETAILED SOIL REPORT BY DR. JOEL NORNGREN	4.3
APPENDIX 3, FOREST IMPLICATIONS, BY DR. JOEL NORNGREN	4.4
FOREST PRODUCTIVITY ASSESSMENT BY MASON, BRUCE & GIRARD.....	4.5
NON-RESOURCE APPLICATION LETTER FROM JACKSON & PROCHNAU	5
REFORESTATION ADVICE FROM 1ST CHOICE CONTRACTING, INC.	6
VEGETATION AND LAND REPORT BY DR. THOMAS BEDELL	7
CORRESPONDENCE WITH CORY OWENS, USDA RESOURCE SOIL SCIENTIST	8
LETTER FROM LEBANON FIRE DISTRICT REGARDING IMPACTS	9
GEOLOGY REPORT BY ENGINEERING GEOLOGIST, DOUGLAS SHANK.....	10

Maps and Tables

Map A - Site Plan

Map B - One-Mile Study Area

Table 1 - Wells in Closest Proximity (well logs included)

In addition to the initial application materials the applicant submitted a letter to the Board of Commissioners dated May 19, 2010 and the applicant's expert, Dr. Bedell, submitted two (2) letters to the Board of Commissioners dated April 24, 2010 and May 3, 2010.

The applicant and his representative also provided verbal testimony before the Linn County Planning Commission on April 13, 2010, and before the Board on April 28, 2010.

Two letters opposing the request were submitted by Jim Just representing The Friends of Linn County, one dated April 12, 2010 and the other dated April 29, 2010. Mr. Just also provided verbal testimony before the Board on April 28, 2010 but was not present before the Linn County Planning Commission on April 13, 2010. He is the only person who communicated opposition to the proposal during the public process. Mr. Just did not provide any credentials or representations that would indicate his testimony should be considered expert testimony and his objections appear primarily focused on whether the subject property could be farmed for profit.

I. DECISION CRITERIA

The applicable decision criteria for this decision is LCC 921.822(A), LCC 921.874(A), LCC 905.960, and the Oregon Statewide Planning Goals.

II. INCORPORATION BY REFERENCE

The Board of Commissioners hereby adopt, and otherwise incorporate by reference, the Staff Report of April 28, 2010 for this land use matter, including all Staff findings of fact and associated conclusions for this land use application, in addition to those finding and conclusions set forth below. In the event of any inconsistency the Board's findings shall control over the Staff Report.

III. FINDINGS

LCC 921.822(A) Criteria: When a Zoning Map or Land Development Code amendment is necessary due to a proposed Comprehensive Plan amendment, only findings and conclusions responding to the Comprehensive Plan amendment criteria for decision are necessary to amend the Zoning Map or Code Text.

Facts: The applicant is proposing both a zoning map amendment and a Comprehensive Plan map amendment, and the applicant has specifically addressed all of the applicable criteria in LCC 921.874(A).

Conclusion: This criterion has been met.

LCC 921.874(A)(1) Criteria: The amendment is consistent with and does not alter the intent of the applicable section(s) of the Comprehensive Plan.

Facts: The Linn County Comprehensive Plan allows for the designation of land as Non-Resource under circumstances, such as the present application, where it can be demonstrated that the subject property is not suitable for either forestry or agricultural uses, and where the property is otherwise not consistent with the definition and purpose of resource lands. The applicant has demonstrated in the application materials submitted that the subject property does not meet either the definition or the purpose of resource lands pursuant to Chapter 905 of the Linn Code, and that this application is otherwise consistent with the intent of the Comprehensive Plan. This fact is echoed throughout these findings and in Exhibit A, Chapter 3.

Conclusion: The applicant is applying for a re-designation of the zoning of his property through a process allowed by Linn County. He is requesting a *Plan* designation of Non Resource with a zoning designation of NR-5. The Comprehensive Plan expressly allows for both of these actions. The applicant's proposal is consistent with, and does not otherwise conflict with or alter the intent of the *Comprehensive Plan*.

LCC 921.874(A)(2) Criteria: To approve a plan map amendment, findings shall be made that:
(2) The amendment will be compatible with adjacent uses and will not adversely impact the overall land use pattern in the area.

Facts: The applicant addresses this criterion directly in Exhibit A, Chapter 3, Pages 3, 4, and 19 -21. Findings relating to compatibility with adjacent uses have also been made in response to LCC 905.960(A) and are incorporated here by reference. The applicant's information indicates he analyzed properties within a one-mile radius of the subject property. This area includes land within the city of Lebanon, rural residential land and resource land, and found that the vast majority of adjacent properties are developed for residential uses, and that there is a lack of other commercial farm or forest ownerships in the area and significant topographic features buffer the subject property from surrounding uses demonstrating that the proposal is fully consistent with the adjacent and nearby land development patterns in this area.

Conclusion: The amendment is found to be compatible with adjacent uses and will not adversely impact the overall land use pattern in the area. The criterion is met.

LCC 921.874(A)(3) Criteria: To approve a plan map amendment, findings shall be made that:
(3) The amendment, if within an adopted urban growth boundary, is in substantial conformity with the *Comprehensive Plan* and implementing ordinances of an affected city.

Facts: This property is outside the urban growth boundary of the City of Lebanon, the nearest incorporated city.

Conclusion: The criterion does not pertain to this application.

LCC 921.874(A)(4) Criteria: To approve a plan map amendment, findings shall be made that:
(4) The amendment will not have a significant adverse impact on a sensitive fish or wildlife habitat.

Facts: The applicant has addressed this criterion in Exhibit A, Chapter 3, Page 21 of his application materials. No sensitive riparian, fish or wildlife habitat are identified on the property in the *Linn County Comprehensive Plan Wildlife Habitat Inventory*, and no adverse impacts to

sensitive wildlife or sensitive wildlife habitat have been identified. Within Linn County, big-game habitat areas are broken into three categories: "nonsensitive," "peripheral," and "sensitive." According to the Oregon Department of Fish and Wildlife, the subject property is within the "peripheral elk and deer winter range", a common and widespread designation in this part of the county. Moreover, the subject property area has been previously identified by the Linn County Plan as being already impacted/developed, and therefore does not require further Linn County evaluation as to whether this proposal for addition of further dwellings would have an impact on wildlife habitat. Findings relating to LCC 903.510(4) substantially address the same subject and are incorporated herein by reference.

Conclusion: The amendment will not have a significant adverse impact on sensitive fish or wildlife habitat.

LCC 921.874(A)(5) Criteria: To approve a plan map amendment, findings shall be made that: **(5)** The amendment will not have a significant adverse impact upon the provision of public facilities including police and fire protection, sanitary facilities and storm drainage facilities.

Facts: The applicant has addressed this criterion in Exhibit A, Chapter 3, Page 22 of their application materials. The property is located within the Lebanon Fire Protection District and Linn County Sheriff protection area. The property has access to a county road for fire and police protection services, and the county has received confirmation from Mr. Mark Wilson, Lebanon's Fire Marshal, stating, "We believe that as long as all the homes are built in accordance with all applicable codes, including the Oregon Fire Code, there would be no adverse impacts." (Exhibit A, Chapter 9). The Sheriff's Department was provided notice of the applicant's proposal, and no comments of any concerns were received from that office.

Portions of this property were evaluated by the Linn County Environmental Health Program (EHP) for suitability for sewage disposal systems. There is currently one installed system in the northwest corner of the 55 acres, and two additional site approvals were located in the northeast corner and along the western boundary of the 55 acres. The EHP has issued a Certificate of Satisfactory Completion (CSC) for the installed system in September 2009. EHP has submitted comments indicating they had no objection to approval of the current land use proposal, and there is evidence in the materials submitted by the applicant indicating that the subject property has the capacity for obtaining future sewage disposal systems approval. Additional site evaluations will need to be completed and approved prior to the division of the property, and no future divisions of the property for residential development can be authorized without an approval for an on-site sewage disposal system. As the property is developed for residential use, each parcel created will also need to be evaluated for any additional storm drainage needs, and to ensure that no additional runoff will be allowed to negatively impact properties located down-slope. There is no evidence of any adverse impact on storm drainage or any adverse impacts to downstream properties from this land use approval. In sum, the materials submitted by the applicant demonstrate that this Comprehensive Plan Amendment would not have any adverse impact on public facilities, so long as typical construction standards are observed and inspections are completed by Linn County for any future land division applications or site development permit review.

Conclusion: The amendment will not have a significant adverse impact upon the provisions of public facilities including police and fire protection, sanitary facilities and storm drainage facilities.

LCC 921.874(A)(3) Criteria: To approve a plan map amendment, findings shall be made that: (6) The amendment will not have a significant adverse impact upon the transportation facilities.

Facts: The applicant addresses this criterion in Exhibit A, Chapter 3, Pages 22 and 5 of his application materials. This criteria is also supported by the written testimony of Linn County Engineer which states: *"I have reviewed the proposal and traffic generated from its development. If developed for rural residential purposes the development will not cause significant adverse impacts to the existing transportation infrastructure of Linn County. Golden Valley Drive has sufficient extra capacity to accommodate the new traffic load."* (Letter from Chuck Knoll, Linn Co. Engineer, April 27, 2010) Findings in regard to LCC 905.960(E) are also incorporated by reference for this criterion.

Conclusion: The amendment will not have a significant adverse impact upon the transportation facilities.

LCC 921.874(A)(7) Criteria: To approve a plan map amendment, findings shall be made that: (7) The presence of any development limitations including geologic hazards, flood hazards or water quality or quantity will not have a significant adverse affect on land uses permitted through the amendment.

Facts: The applicant addresses this criterion in Exhibit A, Chapter 3, Pages 4-7, and Chapter 10, and Table 1 of his application materials. There are no hazard development limitations or water quality or quantity issues noted in the record that would have a significant effect on the land uses allowed by this amendment. Additional findings in regards to geologic hazards and flood hazards are made in response to LCC 905.960(B) and are incorporated here by reference. Finding relating to water quality and quantity made in response to LCC 905.960(D) are also incorporated herein by reference.

Conclusion: There are no development limitations, including geologic hazards, flood hazards or water quality or quantity issues which will have any significant adverse affects on land uses permitted through this Comprehensive Plan Amendment.

LCC 921.874(A)(8) Criteria: To approve a plan map amendment, findings shall be made that: (8) An exception to the statewide planning goals is not required. If required, then findings have been prepared to meet the exception criteria.

Facts: The applicant addresses this criterion in Exhibit A, Chapter 3, Pages 17 and 23 of his application materials. This criterion is addressed by the language of Linn County

Title 9, Community Development, Section XII, Non-Resource Lands, LCC 905.960 (K), Policies for Non-Resource Lands, which expressly indicates that no exceptions to statewide planning Goals 3 or 4 are required to rezone land via a Comprehensive Plan map designation that qualifies under the Plan as Non-Resource land.

Conclusion: The property is not agricultural land and is not forest land as defined in Statewide Planning Goal 3; Goal 4; and LCC 905.960; and an exception to those goals

is not required to adopt the Non-Resource Plan designation and the proposed NR-5 zoning designation. Exceptions to the Statewide Planning Goals are not required for this land use application.

LCC 921.874(A)(9) Criteria: To approve a plan map amendment, findings shall be made that: (9) The amendment is consistent with the statewide planning goals.

Facts: The applicant has addressed this criterion in Exhibit A, Chapter 3, Pages 23-25 of his application materials.

Goal 1, Citizen Involvement – Goal 1 addresses Linn County's obligation for public notice and allowing an opportunity for public participation in land use quasi judicial public hearings. Review of this proposal was by way of a type 3 review, which included two public hearings (one hearing before the Linn County Planning commission, and a second public hearing before the Linn County Board of Commissioners), with associated public notices and opportunities for public comment. This application was subject to appropriate public review and public participation at both of the public hearings in this matter, and in addition, public participation was encouraged by the county's allowance for additional time for all members of the public to submit any further written testimony in this matter, following the close of Linn County Board of Commissioners' public hearing on this land use action.

Goal 2, Land Use Planning – Linn County's Comprehensive Plan and implementing ordinances have all been acknowledged by the State of Oregon. These County documents establish a procedure to amend the Comprehensive Plan map and zoning map. This application complies with the County's requirements for this type of land use action. The Non-Resource Plan and zoning designations were adopted into the Linn County Code in 2004 in compliance with state policies and procedures. This land use action is fully consistent with the applicable portions of the Linn County Comprehensive Plan, which has been reviewed and acknowledged by DLCD for purposes of state land use planning review and oversight.

Goal 3, Agricultural Lands – The subject property is not agricultural lands as defined in Goal 3. This fact is demonstrated throughout the record, specifically in written testimony of Dr. Thomas Bedell and Dr. Joel Norgren who both identified multiple physical limitations of the site that make agricultural practices unpractical. The Comprehensive Plan at LCC 905.920(A), Non-Resource Lands, establishes that Linn County Non-Resource lands are not subject to Statewide Planning Goal 3.

Goal 4, Forest Lands – The subject property is not forestlands as defined in Goal 4. This fact is demonstrated throughout the record, specifically in written testimony of forestry experts Dr. Joel Norgren and Jackson and Prochnau's William H. Roach. Both men identified multiple site limitations which make use of the site as forest lands unpractical. The Comprehensive Plan at LCC 905.920(A), Non-Resource Lands, establishes that Linn County Non-Resource lands are not subject to Statewide Planning Goal 4.

Goal 5, Open Spaces, Scenic and Historic Areas and Natural Resources – The property does not contain any identified open spaces, scenic or historic areas or natural resources as mapped by Linn County. It does not contain any mapped wetlands, significant riparian habitat, significant big game habitat, or significant wildlife habitat. Also see response to LCC 905.960(J)(5) and LCC 921.874(A)(4) criteria, which are incorporated by reference.

Goal 6, Air, Water and Land Resources Quality – The partition and development permit review process will ensure that the property will continue to be in compliance with all state and local regulations regarding air, water and land quality. Because the property is not a significant producer of trees or other vegetation it is also not significant to maintaining air quality. See also findings relating to LCC 905.960(J)(5), which are incorporated herein by reference.

Goal 7, Areas Subject to Natural Disasters and Hazards – *The applicant has submitted written testimony from Douglas C. Shank, a Registered Oregon Geologist, who has inspected the subject property, and found that "this area does not have any present or ancient land movement. Low density residential use, as is proposed in this case, will not cause an elevated exposure to geologic hazards."* (Exhibit A, Chapter 10, Page 2 of Application materials.)

Goal 8, Recreational Needs – This property is not planned for any recreational site needs by Linn County, or by any other agency with land use planning authority. This property is also not adjacent to any existing or planned public recreational site.

Goal 9, Economic Development of the State – This Goal does not specifically apply to individual land use applications. However, the change in the plan and zoning designations will enable dwellings to be constructed that will provide employment through construction jobs. Approving this request will have only an incremental, but positive effect, on the amount of permanent employment in this area.

Goal 10, Housing – Statewide Planning Goal 10 is primarily directed at actions required of local government (Linn County). This proposal will enable more home sites in a rural neighborhood near Lebanon, where housing demand has historically been very strong.

Goal 11, Public Facilities and Services – Findings relating to LCC 921.874(A)(5) are incorporated herein by reference.

Goal 12, Transportation – Linn County Engineer Chuck Knoll, has submitted written testimony stating: *"I have reviewed the proposal and traffic generated from its development. If developed for rural residential purposes the development will not cause significant adverse impacts to the existing transportation infrastructure of Linn County. Golden Valley Drive has sufficient extra capacity to accommodate the new traffic load."* (Letter from Chuck Knoll, Linn Co. Engineer, April 27, 2010). Findings relating to LCC 905.960(E) and LCC 921.874(A)(3) are also incorporated herein by reference for this criterion.

Goal 13, Energy Conservation – Goal 13 provides direction to governmental agencies including Linn County, and does not apply directly to individual land use requests. The proposal would not have a significant impact on energy resources.

Goal 14, Urbanization – The proposal before the Board does not include an urban growth boundary zoning designation nor an urban density rural residential designation. It does not request or require the establishment of any new special district for utilities or services. This proposal will not require any extension of public water service lines, as it has been demonstrated here there is more than sufficient groundwater available.

through private water wells on the subject property. No additional public sewerage is needed for this proposal, as the subject property has feasible potential for installment of private systems. This amendment would result in parcels compatible with the surrounding area, which is already parceled into relatively small lots relative to resource zoning minimums, with a significant number of pre-existing dwellings.

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

Goal 16, Estuarine Resources; Goal 17, Coastal Shore/Lands; Goal 18 Beaches and Dunes; and Goal 19, Ocean Resources – Goals 16 through 19 do not apply to lands in Linn County.

Conclusion: The amendment is consistent with the Statewide Planning Goals.

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

Facts: The proposed NR-5 tracts of land (five acre minimum) on the subject property will maintain the rural character of the area and allow low-density residential development to co-exist without conflict to the other existing land uses in the area. The remaining Farm/Forest lands in the vicinity will remain viable and unchanged due to significant topographic barriers which separate this site from lands to the immediate north, east, and west. The low intensity resource uses that exist in the surrounding area (small patches of private forest, non-irrigated grass hay, grazing) are not likely to have any conflict with low-density residential use (NR-5) proposed by this application. Findings relating to LCC 921.874(A)(2) also are incorporated here by reference. The applicant addressed this criterion fully in Exhibit A, Chapter 3, Pages 3, 4, and 19 -21 of his application materials.

Conclusion: The low-density development proposed by this application is fully consistent with, and will not otherwise cause conflict with the existing land uses in the area, and the topographic features in this area will further mitigate any potential for conflicts with other land uses in the vicinity. The proposed NR-5 zoning designation will provide for appropriate and orderly development in this area. Therefore, this criterion is met.

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

Facts: The subject property is not within any designated base flood area. The southeast portion of the property is identified as being within a mass movement topographical area in the Environmental Geology of Western Linn County, Oregon. The applicant has submitted a report from Douglas C. Shank, a Registered Oregon Geologist and Registered Oregon Engineering Geologist, dated January 12, 2010, which indicates the property can be safely developed (see Exhibit A, Chapter 10). The applicant further addressed this criterion in Exhibit A, Chapter 3, Pages 4-5, and Chapters 4.3 and 10 of the Application materials.

Conclusion: There is not a need for conditions addressing any geological hazards or a

100-year flood issues at this time for the present Comprehensive Plan Amendment application, and any issues associated with specific development on this property can be appropriately addressed in applications for property division or future site development applications. This criterion is met.

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

Facts: A letter dated July 3, 2008 from the Lebanon Rural Fire Protection District indicates that the fire district has capability to provide the subject property with fire protection services. The applicant also addressed this criterion in Exhibit A, Chapter 9 of his application materials.

Conclusion: The criterion is met.

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

Facts: The soils on the subject property are described in the applicant's consultant's soil report as being well drained, and include findings of some areas of deeper soils that could be used for on-site sewage disposal systems (*see Soil Report by Dr. Joel Norgren, Chapter 4.3 of Application*). There is one installed sewage disposal system on tax lot 408, and two approvals from the Linn County Environmental Health Program for two other areas on the property. Given the low-density development that is proposed (5-acre minimum), the evidence in the record demonstrates that the property can support additional any necessary on-site sewage disposal systems. Any future permits for land division or site development will require further review and approval addressing the more specific details of the on-site waste disposal systems for the subject property. The applicant has provided copies of well logs for seven wells in the area, located within 300 feet of the subject property. These well logs indicate the wells produce between 20 and 780 gallons of water per minute. Copies of this well log data is found in Exhibit A, Table 1, of the application materials.

Conclusion: Based upon the well logs provided by the applicant, the existing septic system approvals on the property, and the soil report provided by that applicant's consultant, there is sufficient evidence that the subject property has feasible site conditions for sub-surface disposal systems, and an adequate supply of potable water. This criterion is met.

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

Facts: The subject property has approximately 68.5 feet of frontage with Golden Valley Drive, an existing, paved county maintained road identified in the Linn County Transportation Plan as a minor collector. The specific method of extending access beyond the county road to future home sites will be approved by Linn County as part of the future land division application process. In a letter to the applicant dated April 27, 2010 the Linn County Engineer states, "*I have reviewed the proposal and traffic generated from its development. If developed for rural residential purposes the*

development will not cause significant adverse impacts to the existing transportation infrastructure of Linn County. Golden Valley Drive has sufficient extra capacity to accommodate the new traffic load." (Letter from Chuck Knoll, Linn Co. Engineer, April 27, 2010). The applicant also addresses this criterion in Exhibit A, Chapter 3, Page 5 of his application materials.

Conclusion: The subject property has direct access to a county road with sufficient capacity to accommodate the proposed additional development. This approval criterion is met.

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

Facts: The applicant has requested the NR-5 zoning. The evidence and testimony throughout the record support a finding that the property can provide the necessary facilities for the NR-5 zoning designation. This fact is also demonstrated in response to LCC 905.960(D), above.

Conclusion: The NR-5 designation is appropriate for the subject property.

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

Facts: The uses allowed by the applicant's request would be fully compatible with the existing rural development pattern in the area. The adjacent property is primarily used for similar non-resource and residential uses, and the NR-5 zoning will not cause any conflicts with adjacent or nearby properties. There is adequate natural topographical features that further limit any conflicts from the proposed use to other properties in this area, as further set forth in the findings addressing LCC 921.874(A)(2) herein. The applicant has addressed this criterion in Exhibit A, Chapter 3, Pages 3, 4, 6 and 19 - 21 of his application materials.

Conclusion: The NR-5 designation is appropriate for the subject property.

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

Facts: It is not necessary to apply the NR-10 zoning designation to this property, as the evidence in the record demonstrates that there are not large commercial forestry or

agricultural property uses located in this area, and that the NR-5 zone is a size and scale appropriate for the subject property, and that is otherwise compatible with surrounding land use development patterns.

Conclusion: The NR-5 designation is appropriate for the subject property.

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

Facts: No public sewer or water systems are requested or necessary. The applicant has proposed to serve any new residential uses with individual septic systems and private wells, both of which have been demonstrated to be feasible.

Conclusion: No new public sewer or water systems will be required. This criterion is met.

LCC 905.960(J) Criteria: A comprehensive plan and zoning map amendment must be approved before property designated Agricultural Resource or Farm/Forest can be amended to a Non-Resource Plan map designation. In addition to the LCC plan amendment criteria, the following criteria (Statewide Planning Goal and Administrative Rule resource land definition) must be met:

LCC 905.960(J)(1) Criteria: The land is not predominantly SCS Class I, II, III and IV soils.

Facts: Information in the National Resources Conservation Service (NRCS), formerly the Soil Conservation Service (SCS), publication Soil Survey of Linn County Area, Oregon, July, 1987, indicate the property contains approximately eight percent of soil identified as SCS Class III and IV. The remaining 92 percent of the property is SCS Class VI and VII soil. However, the applicant has submitted a detailed study of the soils for the subject property prepared by his consultant, Dr. Joel Norgren a ARCPACS certified soil scientist. Dr. Norgren's report provides detailed soil information analysis of the subject property, and indicates SCS Class III soil comprises only 3.5 percent of the property, SCS Class IV soils account for 3.9 percent of the property, and Class VI soils comprise 92.6 percent of the subject property. This soil analysis information is contained I, Exhibit A, Chapter 4.3, Page 3 and Chapter 4.4 of the application materials. The applicant also addresses this criterion in Exhibit A, Chapter 3, Page 7 and Chapters 4.3, 4.4, and 7 of his application materials.

Conclusion: The land is not predominantly SCS Class I, II, III and IV soils. Therefore, this criterion is met.

LCC 905.960(J)(2) Criteria: The land is not intermingled with or adjacent to SCS Class I -IV land within the same farm unit.

Facts: The applicant and applicant's farm expert has stated the property is not a farm; nor has it ever been a farm or a part of a farm unit. *"This property has no evidence that it has ever been managed for farming, used for livestock, or managed for timber production."* (Vegetation and Land Report by Dr. Thomas Bedell, Exhibit A, Chapter 7, Page 2, paragraph (e)).

The 7.4% of the subject containing SCS Class III or IV soils are situated in the extreme southern "panhandle" of the property or along the western edge. Dr. Bedell reported these soils are not adjacent to, or otherwise intermingled with other SCS Class I-IV soils that are in farm production with which their use could be combined, regardless of ownership (Exhibit A, Chapter 7, *Vegetation and Land Report By Dr. Thomas Bedell*, Page 2, Paragraph (4)). In addition to the very small size and narrow shape of these SCS Class III or IV soils, a large portion of these soils are occupied by an already developed road and utility easement that significantly limits any practical resource production of that area (Exhibit A, Chapter 4.3, Page 4, Fig. 1 and Page 7). See also Exhibit A, Chapter 3, *Applicant Response to Approval Criteria*, Page 7. The subject does not contain any SCS Class I or II soils.

Conclusion: The land is not intermingled with or adjacent to SCS Class I -IV land within the same farm unit. Therefore, the criterion is met.

LCC 905.960(J)(3) Criteria: The land is not suitable for farm use taking into consideration; (a) Soil fertility; (b) Suitability for grazing; (c) Climatic conditions; (d) Existing and future availability of water for farm irrigation purposes; (e) Existing land use patterns; (f) Technological and energy inputs required; or (g) Accepted farming practices.

Facts: The applicant addresses this criterion in Exhibit A, Chapter 3, Pages 8 through 10, Chapter 4.3, and Chapter 7. The applicant provided a report by Dr. Thomas Bedell (Exhibit A, Chapter 7), an agriculture expert with extensive knowledge of local farm practices, in which he addressed each subpart of LCC 905.960(J)(3) criteria.

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

*"Some 92% of the soils are Class VI and only 8% Class III and IV. Inherent fertility of the Class VI soils is quite low as evidenced by the relatively slow growth of the tree species due primarily to very shallow soils and consequently low availability and content of its nutrients. The 8% of Class III and IV soils would be more fertile but occur noncontiguously on the property. Thus, overall, the fertility is low contributing to relatively low plant productivity." (Exhibit A, Chapter 7, *Vegetation and Land Report By Dr. Thomas Bedell*, Page 1)*

Subpart (b): The land is not suitable for farm use taking into consideration; (b) Suitability for grazing;

*"The property currently is not managed for domestic livestock grazing, is unfenced except for a few boundary areas where neighbors have stock, and gives no evidence of being used for stock grazing in many years, and perhaps never. Vegetation for grazing purposes primarily consists of native perennial grasses that would not withstand defoliation over time. Grazing uses, to be practical and economic, must be based on improved species such as perennial ryegrass, tall fescue, orchard grass and various clovers. It is not practical, economical and in fact likely hazardous (steep, shallow erosive slopes) to attempt renovation. In addition, there is no evidence of live water on the property for livestock watering. Cost of water development on the property would far outweigh any value obtained from grazing even if grazing were practiced." (Exhibit A, Chapter 7, *Vegetation and Land Report By Dr. Thomas Bedell*, Page 1)*

"Thus, suitability for domestic livestock uses is nil in the property's present condition (effective erosion control with good native vegetation cover) and tillage of the small

openings not recommended for the above outlined reasons.” (Exhibit A, Chapter 7, Vegetation and Land Report By Dr. Thomas Bedell, Page 1)

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

“Water-holding capacity of the predominant soils is quite low, contributing to a relatively short growing season of the herbaceous vegetation and very slow growth of the existing tree species. The Soil Scientist report dated September 25, 2009, states the shallow Philomath and Witzel soils make up 80% of this tax lot. All of the mapped Witzel soils on this tax lot were 12” or less in depth. The average depth to rock was 6.4 inches. The Philomath soils ranged from 2-18 inches and averaged 11.2 inches in depth. All the Witzel soils were on a south facing aspect with an average slope of 48.6% and ranged from 32-80%. The average slope for the Philomath soils was 33.5% and ranged from 2-80%. The scientist estimated the water holding capacity on these slopes would be ½” for the Witzel, and no more than 2” for the Philomath and the shallower 2/3 (8.5” deep) would have a water-holding capacity of approximately 1.3 inches.” (Exhibit A, Chapter 7, Vegetation and Land Report By Dr. Thomas Bedell, Pages 1-2)

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

“There is no existing water for irrigation purposes. Grazing uses under existing conditions are not suitable, economical or profitable. Other agricultural crop uses are not feasible. Developing water, e.g. well drilling, does not appear desirable even if it were possible. The south aspect magnifies the dry nature of the property significantly reducing the effective growing season for forage plants.” (Exhibit A, Chapter 7, Vegetation and Land Report By Dr. Thomas Bedell, Page 2)

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

“This property has no evidence that it has ever been managed for farming, used for livestock, or managed for timber production. Tree growth where trees exist is quite slow except on a portion of the Dixonville soils. The property is unfenced except for a short section on the boundary with two neighbors.” (Exhibit A, Chapter 7, Vegetation and Land Report By Dr. Thomas Bedell, Page 2)

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

“Management for existing land uses does not require technological or energy inputs other than maintaining existing access for fire prevention or management if fire occurs.” (Exhibit A, Chapter 7, Vegetation and Land Report By Dr. Thomas Bedell, Page 2)

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

“Not applicable on this property as neither farming nor domestic livestock grazing is suitable, practical or economical.” (Exhibit A, Chapter 7, Vegetation and Land Report

By Dr. Thomas Bedell, Page 2)

In separate written testimony to the Board dated May 3, 2010 Dr. Bedell recites the many potential farm uses defined in ORS 215.203(2)(a), and as an expert in agricultural practices he explained why the property is not suited for any of these uses:

" The [subject property] sites are not suited to agricultural practices as described. Even if such practices could be undertaken, very significant additional expenses would be incurred to overcome the physical limitations of the sites relative to other lands in this region. A nonexclusive list of these site limitations includes: shallow soils, poor soil moisture holding capacity, relatively steep slopes, susceptibility to erosion, lack of surface water and general unsuitability for ponds, threats of predation, low forage value of native vegetation, infeasibility of converting to introduced forage species intended for grazing, the site's incompatibility for fertilization and irrigation, and the exceptional costs associated with developing fencing and farm structures on the site's rocky and steep terrain."

"A reasonable person would not be likely to undertake any of these agricultural practices with the intent of profit for money." (Testimony of Dr. Thomas E. Bedell, May 3, 2010 in a letter to Linn County).

Dr. Bedell's conclusions are supported by the investigation of Dr. Norgren who measured and reported extreme physical impediments to agricultural uses at the site such as shallow soils, low water holding capacity and steep slopes (Exhibit A, Chapter 4.4).

Conclusion: Dr. Bedell has provided compelling evidence in his report of November 3, 2009 (Appendix A, Chapter 7) and in his two subsequent letters dated April 24 2010 and May 3, 2010 that demonstrate the site is not suitable for agricultural practices, taking into consideration; (a) Soil fertility; (b) Suitability for grazing; (c) Climatic conditions; (d) Existing and future availability of water for farm irrigation purposes; (e) Existing land use patterns; (f) Technological and energy inputs required; or (g) Accepted farming practices. Dr. Bedell's evidence is particularly compelling given his professional credentials, the site specific nature of his work, the clarity and directness with which he addresses the approval criteria, his thoroughness in addressing all potential uses in ORS 215.203(2)(a), and his consistency with the conclusions of Dr. Norgren and others experts who studied and reported on the site. This criterion demonstrating the land is not suitable for farm use is met.

LCC 905.960(J)(4) Criteria: The land is not necessary to permit farm practices to be undertaken on adjacent or nearby agricultural lands.

Facts: There are not any significant agricultural uses on adjoining properties, as previously discussed in the findings of fact for LCC 905.960(A) above. There is no indication that the proposed plan amendment would have any effect on any adverse impact, or is otherwise needed to support nearby farm uses. Dr. Bedell reports:

"Because of the nature of the sites on the property (shallow soils, steepness, erosion hazard if or when soils would be disturbed) and the apparent similarity of soils/sites on the boundaries, there exists no adjacent active farming for the most part. Two exceptions are a very limited boundary with a NE property that is spring grazed and one small horse acreage bordering Golden Valley Road on the south consisting of 2½ acres. No active haying or commercial farming exists anywhere close and no irrigated

or row crops within one mile. (See map and description of adjoining acreage)" (From Exhibit A, Chapter 7, Vegetation and Land Report By Dr. Thomas Bedell, Page 2)

Similar findings appear in responses to LCC 905.960(A), LCC 905.960(J)(2), and LCC 921.874(A)(2). The applicant also addressed this criterion in Exhibit A, Chapter 3, Pages 3, 4, 7, 10, and 19 -21.

Conclusion: The subject property is not needed to support or accommodate any farm practices on adjacent or nearby agricultural land. Therefore, this criterion is met.

LCC 905.960(J)(5) Criteria: The land is not suitable for commercial forest uses including adjacent or nearby lands which are necessary to permit forest operations or practices on commercial forest lands or other forested lands that maintain soil, air, water and fish and wildlife resources.

Facts: NON-SUITABILITY FOR COMMERCIAL FOREST USE

The applicant has submitted several forestry expert reports and letters demonstrating that the subject property is not suitable nor commercially viable for commercial forestry uses. See 11/1/09 Letter from William Roach, Senior Forester, Jackson & Prochnau, Inc (Application, Chapter 5); see also 7/1/08 Site Productivity Assessment by Forester Dave Zentsis, Mason, Bruce & Girard (Application, Chapter 4.5); see also Soil Report and "Forest implications Analysis" by Dr. Joel Norgren (Application, Chapters 4.3 & 4.4)

PRODUCTIVITY

The subject is not suitable for commercial forest use due to exceptionally low soil productivity, extreme difficulty or impracticality of artificial reforestation, susceptibility to permanent soil damage from forestry equipment, and the tendency of the subject to grow undesirable species or forms of trees. (Exhibit A, Chapter 3, Applicant Response to Approval Criteria, at page 10)

The ability of a property to produce commercial forest products is central to determining whether that property is forest land subject to Goal 4. The applicant has submitted detailed forest productivity information from Dr. Joel Norgren, Reginald Fay and Dave Zentsis of Mason, Bruce, and Girard, and from forester William Roach of Jackson and Prochnau, Inc., all indicating the property's potential forest productivity is extremely low, between 10.3 and 14.8 cubic foot/acre/year, depending upon the method used to calculate the productivity.

The applicant also submitted a letter from Bradley A. Knotts, Land Use Policy Analyst, with the Oregon Department of Forestry, indicating that the agency has reviewed and approved the methodology of the above referenced reports used to determine the annual wood productivity of the property. This agency's letter also notes that "the Oregon Board of Forestry has determined that any forest land which is capable of annual wood production of at least 20 cubic feet per acre per year at culmination of mean annual increment (Cubic Foot Site Class VI or better) is subject to the reforestation requirements developed under the Oregon Forest Practices Act."

SUSTAINABILITY

The applicant has submitted the testimony of soil scientist Dr. Joel Norgren, who has found:

"The site simply lacks the physical qualities needed for sustainable logging and reforestation. Shallow soils (less than 20 inches to bedrock) comprise 80% of this site. The soils that predominate, Philomath and Witzel, average 11.2 inches and 6.4 inches to bedrock, respectively. Such shallow soils, on steep and very steep slopes, are highly susceptible to compaction by ground-logging equipment. The use of cable-logging equipment to reduce compaction on the site may be impractical due to the low overall volume. Compaction of these thin soils resulting from equipment operation further reduces the moisture-holding capabilities of the soils." (Soil Report, Exhibit A Chapter 4.4 Appendix 3, Page 37)

REFORESTATION

The applicant has also addressed reforestation limitations, by submission of a reforestation expert letter from Mr. Leo Vera of 1st Choice Contracting, a reforestation contractor who typically plants 2.7 million trees per year, and who has inspected the subject property, (Exhibit A, Chapter 6). Mr. Vera expressly found the subject site has extremely poor reforestation potential. In addition, reforestation limitations of the subject property were also addressed by Dr. Norgren's testimony, including findings noting that poor site and soil conditions would make reforestation of the subject property very problematic. (Exhibit A, Chapter 4.4, Pages 35 & 37 of Soil Report, Appendix 3)

CONTRIBUTION TO FOREST INDUSTRY

The written testimony of Mr. Roach, Senior Forester for Jackson and Prochnau, Inc., submitted by the applicant, found that the subject property has never been a productive forest resource site. See Chapter 5 of Application materials. Forrester Roach expressly found that the site does not contribute to the local timber industry because of its low productivity and other site-specific limitations.

IMPACTS TO ADJACENT AND NEARBY FOREST LANDS

In his written testimony Mr. Roach states:

"A change in subject zoning to non-resource designation would not adversely affect the function of adjoining forestlands. The property does not block access to other forestlands. Low density housing on the subject would not necessitate any changes in forest use on any adjacent forest parcels or in any way affect the ability of those parcels to continue to function as forest parcels." (Exhibit A, Chapter 5, Page 3)

The applicant has also testified that:

"There are no commercial timber company ownerships within a one-mile study area around the subject property. (see Map B). Nor are any parcels in the study zoned Forest Conservation Management (FCM) . There are no mills, transfer facilities, or similar intensive forest related uses in the study area." (Exhibit A, Chapter 3, Applicant

SOIL, AIR, WATER, AND FISH AND WILDLIFE

There is no evidence of any adversely impacted soil, air, water, fish or wildlife natural resources from this proposal. The applicant has submitted written testimony addressing this criteria:

"The property contains scattered trees but is not forested. Any minimal values that may exist for maintaining soil, air, water and wildlife resources are likely to continue on the property given the low residential density allowed by this application (five-acre minimum size parcels)."

"With the exception of a small wet area that intersects the access road, the site is exceptionally dry and well drained. There are no all-season ponds or streams on the subject that provide habitat for fish. The nearest significant fish-bearing waters are the South Santiam River, approximately 2 miles to the west. The proposed low-density residential use will not cause significant soil erosion and other negative impacts to fish and water quality. Since the site is very unproductive for timber growth it is not a significant contributor to air quality either. Fish and wildlife are addressed further in response to LCC 921.874(A)(4)." (Exhibit A, Chapter 3, Applicant Response to Approval Criteria, Page 16).

Conclusion: This criterion has been met.

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

Facts: The application contains detailed evidence demonstrating that the subject property is not farm (agricultural) land, as defined in Goal 3; or forestland as defined in Goal 4. An exception to Statewide Planning Goals 3 and 4 is not required to support the proposed Plan map amendment to a Non-Resource Plan designation.

Conclusion: An exception to Statewide Planning Goals 3 and 4 are not needed.

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

Facts: No exception is requested or required here because it is demonstrated Statewide Planning Goals 3 and 4 do not apply to the subject, as the subject is not forest or agriculture land as defined in statute and rule.

Conclusion: An exception to Statewide Planning Goals 3 and 4 are not needed.

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

Facts: The applicant has submitted the written testimony of agricultural expert Dr. Thomas Bedell, and forestry expert William H. Roach, who have both documented the lack of any adverse impact on surrounding agricultural and forest resource uses, as noted in the findings relating to LCC 905.960(J)(4). The applicant also addresses this criterion in Exhibit A, Chapter 3, Pages 3-4 and 19 -21 of his application materials. The evidence submitted by the applicant demonstrates that the surrounding land use pattern is compatible with this proposal. The relative isolation of this site by topography from any active or historically active farm or forestlands has also been documented. Importantly, the surrounding area has been shown to have a low intensity resource use, which is already adapted to the parcel size proposed here (5-acres). Surrounding land uses are also addressed in response to LCC 905.960(J)(4-5). Compatibility with the current land use pattern in the area, as well as a discussion of the parcels studied to establish that land use pattern are also discussed in detail in findings relating to LCC 921.874(A)(2), which are also incorporated by reference for this criterion.

Conclusion: Applying the Non-Resource designation to this property will not adversely affect existing farm or forest uses; the criterion is met.

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

Facts: The subject property is designated Farm/Forest, and so is eligible for the requested Plan map amendment to a Non-Resource Plan designation.

Conclusion: The criterion is met.

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