



Oregon
Theodore R. Kubongski, 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 004-09

The Department of Land Conservation and Development (DLCD) received the attached notice of adoption. Due to the size of amended material submitted, a complete copy has not been attached. 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
Ed Moore, DLCD Regional Representative
Katherine Daniels, DLCD Farm/Forest Specialist

<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

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DEPT OF

AUG 19 2010

**LAND CONSERVATION
AND DEVELOPMENT**
For Office Use Only

Jurisdiction: **Linn County**

Local file number: **BC09-0002**

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: 11/19/09

Comprehensive Plan Text Amendment

Comprehensive Plan Map Amendment

Land Use Regulation Amendment

Zoning Map Amendment

New Land Use Regulation

Other:

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

The applicant proposed to amend the Linn County Comprehensive Plan map designation on a 10.00-acre property from Farm/Forest to Rural Residential and amend the zoning map designation from Farm/Forest (F/F) to Rural Residential-5 acre minimum (RR-5)

Does the Adoption differ from proposal? Please select one

No

Plan Map Changed from: **Farm/Forest**

to: **Rural Residential**

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

to: **Rural Residential-5 acre min (RR-5)**

Location: **T13S, R2W, Section 31, Tax Lot 702**

Acres Involved: **10.00**

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
<input type="checkbox"/>	<input 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 checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Was an Exception Adopted? YES NO

Did DLCD receive a Notice of Proposed Amendment...

45-days prior to first evidentiary hearing?

Yes No

If no, do the statewide planning goals apply?

Yes No

If no, did Emergency Circumstances require immediate adoption?

Yes No

DLCD File No. 004-09 (17953) [16286]

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: **541-541-926-2060**

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 BC09-0002

APPLICANT Frank Walker and Associates

**RESOLUTION/
ORDER** No. 2010-260

ORDINANCE No. 2010-259

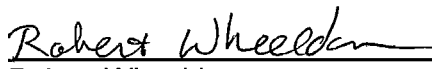
REQUEST The applicant proposed amending the Linn County *Comprehensive Plan* map designation on a 10.00-acre property, identified as Tax Lot 702 on map T13S, R2W, Section 31, from Farm/Forest to Rural Residential and proposed amending the Linn County zoning map designation from Farm/Forest (F/F) to Rural Residential-5 acre minimum (RR-5). Exceptions to Statewide Planning Goals 3, 4, and 14 were requested.

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. 2010-259 and Resolution and Order No. 2010-260 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, Bret Jones, Lynn Merrill, Friends of Linn County, Ron Whitted

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. 2010-259
(Amending Code)
(Planning and Building
Department; BC09-0002)

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 February 3, 2010;

WHEREAS, At 10:00 a.m., on February 3, 2010, March 3, 2010 and April 14, 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. 2010-260 and entitled Exhibit 1, (BC09-0002 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 10.00 acres, identified as Tax Lot 702 on Assessor map T13S, R2W, Section 31, Linn County, Oregon, as Rural Residential 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 10.00 acres identified as Tax Lot 702 on Assessor map T13S, R2W, Section 31, Linn County, Oregon, Rural Residential-5 acre minimum (RR-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.


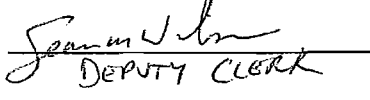
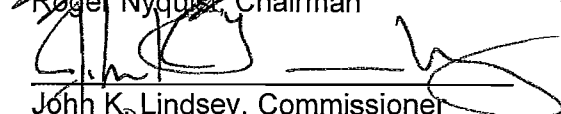
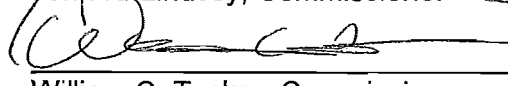
Public reading held April 14, 2010.

Adopted and passed August 17, 2010.

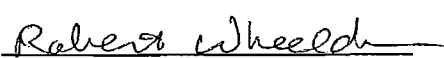
The effective date of this Ordinance shall be August 17, 2010.

BOARD OF COUNTY COMMISSIONERS FOR LINN COUNTY

Signed August 17, 2010

		Voting	
		For	Against
Steve Druckenmiller, Linn County Clerk Recording Secretary	 Roger Nyquist, Chairman		
By  DEPUTY CLERK	 John K. Lindsey, Commissioner	X	
	 William C. Tucker, Commissioner	X	

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 FRANK WALKER AND)
ASSOCIATES TO CHANGE THE ZONING AND)
COMPREHENSIVE PLAN MAP DESIGNATION)
ON A 10.00-ACRE PROPERTY)

RESOLUTION &
ORDER NO. 2010-260
Planning and Building Department
(BC09-0002)
(Findings and Conclusions)

WHEREAS, The Board of County Commissioners for Linn County (Board) conducted a duly advertised public hearing on February 3, 2010, March 3, 2010, and April 14, 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 10.00 acres identified as Tax Lot 702 on map T13S, R2W, Section 31;

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 January 12, 2010 and who voted four to two 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 (BC09-0002 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 (BC09-0002 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 10.00-acre property (Tax Lot 702 on map T13S, R2W, Section 31); and

RESOLVED, That the Board of Commissioners for Linn County adopt an "irrevocably committed" exception to Statewide Planning Goals 3, 4, and 14; 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 10.00 acres as Rural Residential on the *Comprehensive Plan* map and as Rural Residential-5 acre minimum (RR-5) on the zoning map.

Resolved this 17th day of August, 2010.

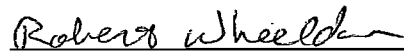
BOARD OF COUNTY COMMISSIONERS
FOR LINN COUNTY


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:

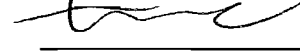

Thomas N. Corr
Linn County Legal Counsel

EXHIBIT 1

Decision Criteria, Findings, and Conclusion

BC09-0002; Frank Walker and Associates



FINAL SUMMARY AND ANALYSIS FOR
BRET JONES CASE FILE BC09-002

Property Owners:

Bret and Diane Jones
29404 Santiam Highway
Lebanon, Oregon 97355

Property Location:

Township 13 South, Range 2 West,
Section 31, Tax Lot 702

Prepared by:

Frank Walker & Associates
1480 Jamestown Street, S.E.
Salem, Oregon 97302

June 4, 2010

Introduction

Case File BC09-002 was approved by a vote of the Linn County Board of Commissioners subject to the preparation of "Findings of Fact." The entire record, which includes the original application, the staff report, materials provided to the Board of Commissioners, and additional information provided by expert witnesses, is incorporated herein. In addition, this record will examine the sequence of steps in the Exceptions process and address the applicable approval criteria for an Irrevocably Committed Exception.

The Linn County Board of Commissioners has already provided an oral decision to approve the Exceptions. The written order will be based upon substantial findings of fact. In order to prepare the written findings it is necessary to examine the procedural steps in the exceptions process.

Exceptions Process

The Exceptions process is defined in statute (ORS 197.712) and administrative rule (OAR 660 Division 4). The purpose of this section is to establish the sequence in which the steps of the Exceptions process occur to avoid confusion regarding how the different rules are applied. It is the objective of this analysis to provide a clear path through the Exceptions requirements by addressing all applicable criteria, which will be done in a subsequent section of this report.

The record should re-affirm that the Exception being taken is an Irrevocably Committed Exception because of the conditions on the subject property and conditions that surround the subject property on three sides. This exception is not a Reasons Exception. The record should

also affirm that this is a “new exception” area.

According to OAR 660-004-0018 (1):

Physically developed or irrevocably committed exceptions under OAR 660-004-0025 and 660-004-0028 are intended to recognize and allow continuation of existing types of development in the exception area. Adoption of plan and zoning provisions that would allow changes in existing types of uses, densities, or services requires the application of the standards outlined in this rule.

This defining paragraph for planning and zoning for Exception Areas splits the approval criteria between Physically Developed/Irrevocably Committed and Reasons Exceptions. This application is for an Irrevocably Committed Exception, and parallels exist between the requirements for an Irrevocably Committed Exception and a Reasons Exception. For example, the Irrevocably Committed Exception Standards in OAR 660-004-0018(B) parallel the criteria under 660-004-0018(4)(b). Both of these sets of standards require that a local government address rural uses, density, public facilities, and compatibility with adjacent or nearby resource uses. Exhibit 1 is entitled “Planning and Zoning for Exception Areas,” and it contains the text of OAR 660-004-0018.

The second step in the Exceptions process relates to the timing of decisions and when an Exception actually takes effect. OAR 660-004-0030 provides clarification concerning the process of adopting an Exception. Goal 2 requires that each notice of a public hearing on a proposed Exception shall specifically note that a Goal Exception is proposed and shall summarize the issues in an understandable manner; thus, the purpose of this section of this report. A Planning Exception takes effect when the Comprehensive Plan or Plan Amendment is

adopted by the city or county governing body. Linn County currently has an adopted Comprehensive Plan that allows for five-acre zoning that is applied for properties **adjacent to urban growth boundaries**. This Administrative Rule states, "Adopted exceptions will be reviewed by the Commission when the comprehensive plan is reviewed for compliance with the goals, when a plan amendment is reviewed pursuant to OAR Chapter 660, Division 18, or when a periodic review is conducted pursuant to ORS 197.640." It is the proponents' position that this proposal is in compliance with the goals and consequently gives the Board of Commissioners the option of applying their five-acre zoning to the subject property. It would appear difficult for the Department of Land Conservation and Development to make a finding that the proposed five-acre zoning is not in compliance in light of the fact that Linn County has a specific Comprehensive Plan provision that speaks to parcels that are directly contiguous to an urban growth boundary. These same Comprehensive Plan provisions specifically provide guidelines or criteria for when to apply the five- or ten-acre minimum parcel size. The proponents strongly maintain the position that this proposal is in compliance with the Linn County Comprehensive Plan policies that parcels next to urban growth boundaries be five acres in size. The proponents further believe that DLCD should give deference to the County in matters where the County has an adopted Comprehensive Plan with specific standards of application. The relevant standard which applies in this case is for those properties next to urban growth boundaries. Exhibit 2 contains the notice and adoption standards for an Exception. According to OAR 660-004-0030, "A planning exception takes effect when the comprehensive plan or plan amendment is adopted by the city or county governing body." All that remains once the order is adopted is for the County to apply Goal 14 to the newly

designated rural residential area.

The third step in the Exceptions process is to address on post-adoption the application of Goal 14 to Rural Residential Areas. These requirements are embodied in OAR 660-004-0040. The purpose of this rule is to specify how Statewide Planning Goal 14 (Urbanization) applies to rural lands in acknowledged exception areas planned for residential uses. This rule contains information that is critical to the County regarding the manner in which they choose to proceed.

The rule takes effect on the effective date of an amendment to Goal 14 to provide for development of all lawfully created lots and parcels. The Jones property has already passed the test of lawful creation.

According to OAR 660-004-0040(2)(a):

This rule applies to lands that are not within an urban growth boundary, that are planned and zoned primarily for residential uses, and for which an exception to Statewide Planning Goal 3 (Agricultural Lands), Goal 4 (Forest Lands), or both has been taken. Such lands are referred to in this rule as rural residential areas.

The findings in the original report plus the testimony of expert witnesses previously provided substantiate the fact that the subject property is not suitable for either agriculture or forestry uses. The Linn County Planning Commission and the Linn County Board of Commissioners determined that the subject property does not meet the statutory definition of farm land and is extremely marginal for forest resource uses. Further, the use of this property for forestry purposes would endanger the safety of those living in adjacent downhill urbanized areas. The record should establish that there is no recent history of this property for farm use, nor has a timber harvest ever been conducted on the subject property.

The timber site index is not the only determinant for forest lands. Another measure of whether lands are forest lands under Goal 4 is whether normal and necessary forest practices can be conducted. This particular property has well documented challenges provided in written testimony by the consulting foresters and in the *Soil Survey for Linn County Area, Oregon*. Even though this is a low site index site, the potential impacts of forest practices on adjoining properties constitute a major hazard. The published soil survey lists a long number of practices that must be conducted on this low site index property in order to harvest timber. Because special practices would have to be employed due to what surrounds the subject property, the cost of conducting forestry activity at this site is greater than at many other sites that produce higher quality timber. It must be noted for the record that despite any measures to prevent negative impacts from timber harvesting, they still have the potential to occur.

This criterion is especially important to this entire case because it places the subject property as “rural residential land” rather than urbanizable land; and, although the definition of urbanizable land varies from county to county, it does not vary in Linn County because an acknowledged plan already has adopted minimum lot size standards in place for rural lands that are 2.5 acres or greater in size. Once a determination has been made that the land is “rural residential land,” then the statute and administrative rules governing development on rural lands are applied rather than those for an exception to urbanization. The choice needs to be made under OAR 660-004-0040(2)(a) rather than by applying Division 14 criteria, which are pertinent to urbanizable rural lands.

The purpose of Division 14 is explicit. It is for application of the Statewide Planning

Goals to newly-incorporated cities, annexation, and urban development on rural lands. The purpose of the Division 14 rule under 660-014-0000 is to clarify the requirements of Goal 14 and to provide cities, counties, and local government commissions guidelines regarding urban development on rural lands, planning and zoning of newly incorporated cities, and the application of Statewide Goals during annexation proceedings. Division 14 simply does not apply to this situation because the subject property is not dependent upon or committed to urban services, nor will it be in the foreseeable future (please see letter from Bill Sattler, Planner for the City of Brownsville, Oregon in Exhibit 3 of this report). "Rural residential lands," as described in OAR 660-004-0040(2)(a), are lands "that are planned and zoned primarily for residential uses and for which an exception to Statewide Planning Goal 3 (Agricultural Lands), Goal 4 (Forest Lands), or both has been taken. Such lands are referred to in this rule as 'rural residential areas'." As such, "rural residential lands" do not fall under any of the categories listed in Division 14 (newly incorporated, lands irrevocably committed to urban levels of development, new urban development on undeveloped rural lands, annexation of lands subject to acknowledgment, and annexation of lands not subject to an acknowledgment); therefore the Division 14 rules do not apply.

Further, and according to OAR 660-004-0040(5)(a), "**A rural residential zone currently in effect shall be deemed to comply with Goal 14 if that zone requires any new lot or parcel to have an area of at least two acres.**" This proposal is for a five-acre parcel size that is recognized in the Linn County Comprehensive Plan, and five acres exceeds the existing minimum lot size of 2.5 acres. In addition, according to OAR 660-004-0040(6), "After the effective date of this rule, a local government's requirements for minimum lot or parcel sizes in rural residential

areas shall not be amended to allow a smaller minimum for any individual lot or parcel without taking an exception to Goal 14 pursuant to OAR 660, division 14.” Linn County at this juncture is not obligated to take a Goal 14 exception because the County is not amending their standard to require a smaller minimum lot size for any individual lot or parcel.

According to OAR 660-004-0040(7)(c), “If on the effective date of this rule, a local government’s land use regulations specify a minimum lot size of two acres or more, the area of any new lot or parcel shall equal or exceed that minimum lot size **which is already in effect**” (emphasis added). The articles on urbanization in Linn County’s Comprehensive Plan were rewritten, replaced, and adopted on December 13, 1995; and the Oregon Administrative Rule governing the application of Goal 14 to rural residential areas has a legislative history of being certified and placed into effect on October 4, 2000, through February 13, 2008. The Oregon Administrative Rules within Division 14 were recertified three times: on April 3, 2001; May 7, 2004; and February 13, 2008. The earliest possible date when OAR 660-004-0040(7)(c) could have been certified effective would have been at least four years and 10 months after the date upon which Linn County established a minimum lot size of 2.5 acres. Linn County’s minimum lot size of 2.5 acres has clearly been in effect continuously since substantially before the earliest possible date of certification for the Division 14 Administrative Rules.

What Linn County is clearly obligated to provide are findings under OAR 660-004-0018(2). A subsequent section of this report will provide findings that clearly demonstrate that this proposal conforms with OAR 660-004-0018(2).

Findings of Fact Pursuant to OAR, Division 4, Interpretation of Goal 2 Exception Process

660-004-0000

1. Purpose

(1) The purpose of this rule is to explain the three types of exceptions set forth in Goal 2 “Land Use Planning, Part II, Exceptions.” Except as provided for in OAR chapter 660, division 14, “Application of the Statewide Planning Goals to Newly Incorporated Cities and to Urban Development on Rural Lands” and OAR chapter 660, division 12, “Transportation Planning”, section 0070, “Exceptions for Transportation Improvements on Rural Land”, this division interprets the exception process as it applies to statewide Goals 3 to 19.

Findings of Fact:

- This proposal conforms to the first portion of the Purpose Statement because an irrevocably committed exception is one of the three types of exceptions set forth in Goal 2.
- This proposal is not subject to the provisions of OAR chapter 660, division 14 because the subject property is defined as rural residential land rather than newly incorporated land or rural land subject to urbanization.
- This proposal is not subject to the provisions of OAR 660, division 12, section 0070 because Pineview Road is a low-volume road that principally provides access to only three residences, and no transportation improvements are anticipated.

(2) An exception is a decision to exclude certain land from the requirements of one or more applicable statewide goals in accordance with the process specified in Goal 2, Part II, Exceptions. The documentation for an exception must be set forth in a local government’s comprehensive plan. Such documentation must support a conclusion that the standards for an exception have been met. The conclusion shall be based on findings of fact supported by substantial evidence in the record of the local proceeding and by a statement of reasons which explain why the proposed use not allowed by the applicable goal should be provided for. The exceptions process is not to be used to indicate that a jurisdiction disagrees with a goal.

- The exception was a decision by Linn County to exclude the subject property from

Goals 3 and 4 based on documentation set forth in the Linn County Comprehensive Plan and by substantial evidence outlining the reasons why these exceptions should be allowed.

- The soils on the subject property do not meet the statutory definition of farm land for Western Oregon because they are Class VI; therefore, Goal 3 does not apply, thus making it impractical to farm.
- The forest uses on the subject property were found to be marginal based on the expert testimony of two forestry consultants because of extreme limitations on the site for commercial forestry. They found the property to be impractical for forestry uses.
- The subject property was also found to be impractical for forestry because of the danger a logging operation poses to downhill locations within the city limits of Brownsville.
- The dangers downhill for forestry operations include but are not limited to: severe erosion, potential for rocks rolling down the hill and endangering property and life, runaway logs, and potential danger from falling trees. This renders the property impractical for forestry uses.
- The subject property has physical site limitations that make the application of Goal 4 impractical, including: poor quality timber, mixed species, widely disparate patches of timber that are not economically feasible to extract, steep slopes, and exceptional management practices that increase the cost of logging to a point where it is not commercially profitable.
- The proposed zoning of the property will be for rural residential land as defined in OAR 660-004-0040(2)(a); the acreage size exceeds the minimum of 2.5 acres established by Linn County in their Comprehensive Plan; and since the property borders an urban growth boundary, the 5-acre standard applies; therefore, Goal 14 has already been found to have been met.

(3) The intent of the exceptions process is to permit necessary flexibility in the application of the Statewide Planning Goals. The procedural and substantive objectives of the exceptions process are to:

- The subject property is exceptional and therefore warrants the flexibility afforded by this criterion. The subject property is the smallest FF-zoned parcel in Linn

County, it was formerly within the city limits of Brownsville and was de-annexed, it has unique qualities related to soils and timber productivity that preclude its use as commercial resource land, and its location directly above an urban interface creates a high potential for damage to life and property should it be used for commercial timber production.

(a) Assure that citizens and governmental units have an opportunity to participate in resolving plan conflicts while the exception is being developed and reviewed; and

- The process for taking the exception clearly meets the statutory requirements for citizen involvement through the notice process and the public hearings that have occurred.

(b) Assure that findings of fact and a statement of reasons supported by substantial evidence justify an exception to a statewide Goal.

- The findings of fact for this case include a response to every applicable entry under OAR 660-004-0000 through 0040.

(4) When taking an exception, a local government may rely on information and documentation prepared by other groups or agencies for the purpose of the exception or for other purposes, as substantial evidence to support its findings of fact. Such information must be either included or properly incorporated by reference into the record of the local exceptions proceeding. Information included by reference must be made available to interested persons for their review prior to the last evidentiary hearing on the exception.

- The exceptions process has relied upon documentation prepared by other groups, including but not limited to: the Oregon Department of Forestry; the Soil Survey of Linn County Area, Oregon, published by the United States Department of Agriculture; two forestry consultants; and the City of Brownsville, Oregon. Farm and forest use were determined to be impractical because of adverse soils, terrain, and adjoining uses.

660-004-0005

Definitions

For the purpose of this division, the definitions in ORS 197.015 and the Statewide Planning Goals shall apply. In addition the following definitions shall apply:

(1) An "Exception" is a comprehensive plan provision, including an amendment to an acknowledged comprehensive plan, that:

(a) Is applicable to specific properties or situations and does not establish a planning or zoning policy of general applicability;

- The proposed exception is applicable to a specific property and situation and does not establish a planning or zoning policy of general applicability because of the uniqueness of the subject property and the flexibility allowed by the exceptions process.

(b) Does not comply with some or all goal requirements applicable to the subject properties or situations; and

- The subject property was found to not comply with Goals 3 and 4 because of issues related to site and surrounding area characteristics.

(c) Complies with the provisions of this division.

- The proposed exception does comply with all of the applicable provisions of this division.

(2) "Resource Land" is land subject to the statewide Goals listed in OAR 660-004-0010(1)(a) through (g) except subsections (c) and (d).

- The subject property is defined as rural residential land. Though it is currently zoned Farm/Forest, its use as resource land is limited for the reasons outlined under section 660-004-0000(3) above.

(3) "Nonresource Land" is land not subject to the statewide Goals listed in OAR 660-004-0010(1)(a) through (g) except subsections (c) and (d). Nothing in these definitions is meant to imply that other goals, particularly Goal 5, do not apply to nonresource land.

- The subject property is defined as rural residential land, and consequently it has rural levels of public facilities and services. As rural residential land, it is deemed to have already met the Goal 11 and Goal 14 requirements. This was established under OAR 660-004-0040(2)(a), (5)(a), (6), and (7)(c), which make the following statements:

OAR 660-004-0040(2)(a) This rule applies to lands that are not within an urban growth boundary, that are planned and zoned primarily for residential uses, and for which an exception to Statewide Planning Goal 3 (Agricultural Lands), Goal 4

(Forest Lands), or both has been taken. Such lands are referred to in this rule as rural residential areas.

The subject property is not within an urban growth boundary, is planned and zoned primarily for residential uses, and exceptions for both Statewide Planning Goals 3 and 4 were taken at the time the Linn County Board of Commissioners issued their decision on April 14, 2010.

OAR 660-004-0040(5)(a) A rural residential zone currently in effect shall be deemed to comply with Goal 14 if that zone requires any new lot or parcel to have an area of at least two acres.

A planning exception takes effect when the Comprehensive Plan or Plan Amendment is adopted by the city or county governing body. This occurred for this exception on April 14, 2010. A rural residential zone is therefore currently in effect for the subject property. The parcel size of two acres precludes an exception to Goal 14 because Linn County already has an adopted Comprehensive Plan with minimum parcel sizes of 2.5, 5, and 10 acres respectively.

OAR 660-004-0040(6) After the effective date of this rule, a local government's requirements for minimum lot or parcel sizes in rural residential areas shall not be amended to allow a smaller minimum for any individual lot or parcel without taking an exception to Goal 14 pursuant to OAR 660, division 014.

Linn County has not amended its code to allow for smaller minimum lot or parcel sizes.

OAR 660-004-0040(7)(c) If, on the effective date of this rule, a local government's land use regulations specify a minimum lot size of two acres or more, the area of any new lot or parcel shall equal or exceed that minimum lot size which is already in effect.

As stated previously, Linn County already has an adopted Comprehensive Plan with minimum parcel sizes of 2.5 acres. Linn County's Comprehensive Plan was in effect prior to the effective date of OAR 660-004-0040(7)(c). (Please see page 7 of this report for an outline of the details pertaining to this criterion.)

660-004-0010

Application of the Goal 2 Exception Process to Certain Goals

(1) The exceptions process is not applicable to Statewide Goal 1 "Citizen Involvement" and Goal 2 "Land Use Planning." The exceptions process is generally applicable to all or part of those statewide goals which prescribe or restrict certain uses of resource land or limit the provision of certain public facilities and services. These statewide goals include but are not limited to:

(a) Goal 3 "Agricultural Lands"; however, an exception to Goal 3 "Agricultural Lands" is not required for any of the farm or nonfarm uses permitted in an exclusive farm use (EFU) zone under ORS chapter 215 and OAR chapter 660, division 33, "Agricultural Lands" ;

- The subject property is in a rural residential zone, and this criterion is no longer applicable.

(b) Goal 4 "Forest Lands"; however, an exception to Goal 4 "Forest lands" is not required for any of the forest or nonforest uses permitted in a forest or mixed farm/forest zone under OAR chapter 660, division 6, "Forest Lands";

- The subject property is in a rural residential zone, and this criterion is no longer applicable.

(c) Goal 14 "Urbanization" as provided for in OAR chapter 660, Division 14 and the applicable paragraph (1)(c)(A), (B) or (C) of this rule:

- This proposal is precluded from consideration for a Goal 14 exception as provided for in OAR chapter 660, division 14 because, as rural residential land, the subject property is deemed to have already met Goal 14; and the subject property is not in a newly incorporated city, annexed to an existing city, or experiencing urban development on rural land.

(A) An exception is not required for the establishment of an urban growth boundary around or including portions of an incorporated city;

- This criterion does not apply because this procedure does not involve the

establishment of an urban growth boundary around or including portions of an incorporated city.

(B) When a local government changes an established urban growth boundary applying Goal 14 as it existed prior to the amendments adopted April 28, 2005, it shall follow the procedures and requirements set forth in Goal 2 "Land Use Planning," Part II, Exceptions. An established urban growth boundary is one which has been acknowledged by the Commission under ORS 197.251, 197.625 or 197.626. Revised findings and reasons in support of an amendment to an established urban growth boundary shall demonstrate compliance with the seven factors of Goal 14 and demonstrate that the following standards are met:

(i) Reasons justify why the state policy embodied in the applicable goals should not apply (This factor can be satisfied by compliance with the seven factors of Goal 14);

(ii) Areas which do not require a new exception cannot reasonably accommodate the use;

(iii) The long-term environmental, economic, social and energy consequences resulting from the use at the proposed site with measures designed to reduce adverse impacts are not significantly more adverse than would typically result from the same proposal being located in areas requiring a goal exception other than the proposed site; and

(iv) The proposed uses are compatible with other adjacent uses or will be so rendered through measures designed to reduce adverse impacts.

- These criteria do not apply because the local government is not changing an urban growth boundary applying Goal 14.

(C) When a local government changes an established urban growth boundary applying Goal 14 as amended April 28, 2005, a goal exception is not required unless the local government seeks an exception to any of the requirements of Goal 14 or other applicable goals;

(d) Goal 11 "Public Facilities and Services" as provided in OAR 660-011-0060;

(e) Goal 16 "Estuarine Resources";

(f) Goal 17 "Coastal Shorelands"; and

(g) Goal 18 "Beaches and Dunes."

- These criteria do not apply because the local government is not changing an urban

growth boundary applying Goal 14.

(2) The exceptions process is generally not applicable to those statewide goals which establish planning procedures and standards that do not prescribe or restrict certain uses of resource land or limit the provision of certain public facilities and services, because these goals contain general planning guidance or their own procedures for resolving conflicts between competing uses. However, exceptions to these goals, although not required, are possible and exceptions taken to these goals will be reviewed when submitted by a local jurisdiction. These statewide goals are:

(a) Goal 5 "Natural Resources";

- The subject property is not located within a designated open space, scenic, or historic area, or natural resources area.

(b) Goal 6 "Air, Water, and Land Resources Quality";

- No exception was taken for this goal because no activities that degrade the resources or threaten the availability of such resources occur on the subject property.

(c) Goal 7 "Natural Disasters and Hazards";

- No exception was taken to Goal 7 despite the fact that the property has exceedingly steep slopes, erosion hazard, and danger from falling rocks and trees onto adjoining urban land downhill from the subject property should logging operations occur here.

(d) Goal 8 "Recreational Needs";

- No exception was taken to recreational needs because the property is in rural residential use.

(e) Goal 9 "Economy of the State";

- No exception was taken to economy of the state because no industrial or commercial

activities occur on or are planned for the subject property.

(f) Goal 10 "Housing" except as provided for in OAR 660-008-0035, "Substantive Standards for Taking a Goal 2, Part II, Exception Pursuant to ORS 197.303(3)";

- No exception was taken to the housing goal.

(g) Goal 12 "Transportation" except as provided for by OAR 660-012-0070, "Exceptions for Transportation Improvements on Rural Land";

- No transportation facilities exist on or are planned for the subject property. There is no plan to locate any transportation facility on rural land.

(h) Goal 13 "Energy Conservation";

- No exception is being requested for energy conservation.

(i) Goal 15 "Willamette Greenway" except as provided for in OAR 660-004-0022(6); and

- The subject property is not located within the Willamette Greenway.

(j) Goal 19 "Ocean Resources."

- The subject property is not on or near the ocean.

(3) An exception to one goal or goal requirement does not assure compliance with any other applicable goals or goal requirements for the proposed uses at the exception site. Therefore, an exception to exclude certain lands from the requirements of one or more statewide goals or goal requirements does not exempt a local government from the requirements of any other goal(s) for which an exception was not taken.

- This proposal included all of the relevant goals for exception consideration: Goals 3, 4, 11, and 14.

660-004-0015

Inclusion as Part of the Plan

(1) A local government approving a proposed exception shall adopt as part of its comprehensive plan findings of fact and a statement of reasons which demonstrate that the standards for an exception have been met. The applicable standards are those in Goal 2, Part II(c), OAR 660-004-0020(2), and 660-004-0022. The reasons and facts shall be supported by substantial evidence that the standard has been met.

- The applicable standards in OAR 660-004-0020(2) and 660-004-0022 will be addressed subsequently in this report.

(2) A local government denying a proposed exception shall adopt findings of fact and a statement of reasons which demonstrate that the standards for an exception have not been met. However, the findings need not be incorporated into the local comprehensive plan.

- The proposed exception has been adopted pending findings of fact.

660-004-0018

Planning and Zoning for Exception Areas

(1) Purpose. This rule explains the requirements for adoption of plan and zone designations for exceptions. Exceptions to one goal or a portion of one goal do not relieve a jurisdiction from remaining goal requirements and do not authorize uses, densities, public facilities and services, or activities other than those recognized or justified by the applicable exception. Physically developed or irrevocably committed exceptions under OAR 660-004-0025 and 660-004-0028 are intended to recognize and allow continuation of existing types of development in the exception area. Adoption of plan and zoning provisions that would allow changes in existing types of uses, densities, or services requires the application of the standards outlined in this rule.

- The exception to Goals 3, 4, and 14 were addressed as the relevant goal exception requirements for this formerly resource-zoned parcel. The potential for an

additional dwelling (density) requires the application of the standards outlined in this rule.

(2) For "physically developed" and "irrevocably committed" exceptions to goals, residential plan and zone designations shall authorize a single numeric minimum lot size and all plan and zone designations shall limit uses, density, and public facilities and services to those:

- This exception has been adopted as an irrevocably committed exception that limits uses, densities, and public facilities and services.

(a) That are the same as the existing land uses on the exception site;

- The subject property currently has a single-family residence and under the exception would be eligible for one additional single-family residence.

(b) That meet the following requirements:

(A) The rural uses, density, and public facilities and services will maintain the land as "Rural Land" as defined by the goals and are consistent with all other applicable Goal requirements; and

- The adopted Comprehensive Plan Amendment and Zone Change maintain the land as "Rural Land" as defined by the goals because public facilities and services will remain exactly as they are now with a density increase of one dwelling unit only.

(B) The rural uses, density, and public facilities and services will not commit adjacent or nearby resource land to nonresource use as defined in OAR 660-004-0028; and

- The proposed density, public facilities, and services will not commit adjacent or nearby resource land to nonresource use because a 465-foot distance separates the nearest dwelling from the resource parcel, and that area is steeply sloping and heavily vegetated.
- The potential second dwelling on the subject property is committed to be located in the extreme southwest corner because of an existing well and an approved on-site

sewage disposal system. The second proposed dwelling on the subject property would be a minimum distance of 700 feet from the nearest resource-zoned parcel. The proposed dwelling site is also segregated from that parcel by steep topography and thick intervening timber. In addition, the proposed configuration of the lot on which the second dwelling would be located would only border the resource parcel on the east at a single point (they do not share a common boundary).

(C) The rural uses, density, and public facilities and services are compatible with adjacent or nearby resource uses;

- The rural uses are compatible with the only adjacent EFU-zoned land to the east. The public facilities and services that serve both parcels are identical, graveled county roads, domestic wells, and on-site sewage disposal.

(c) For which the uses, density, and public facilities and services are consistent with OAR 660-022-0030, "Planning and Zoning of Unincorporated Communities", if applicable, or

- The subject property is not within an unincorporated community.

(d) That are industrial development uses, and accessory uses subordinate to the industrial development, in buildings of any size and type, provided the exception area was planned and zoned for industrial use on January 1, 2004, subject to the territorial limits and other requirements of ORS 197.713 and 197.714

- This criterion has no applicability to the subject property.

(3) Uses, density, and public facilities and services not meeting section (2) of this rule may be approved only under provisions for a reasons exception as outlined in section (4) of the rule and OAR 660-004-0020 through 660-004-0022.

- All of the uses, densities, and public facilities and services associated with this approval are consistent with the provisions of an irrevocably committed exception rather than a reasons exception.

(4) "Reasons" Exceptions:

(a) When a local government takes an exception under the "Reasons" section of ORS 197.732(1)(c) and OAR 660-004-0020 through 660-004-0022, plan and zone designations must limit the uses, density, public facilities and services, and activities to only those that are justified in the exception;

(b) When a local government changes the types or intensities of uses or public facilities and services within an area approved as a "Reasons" exception, a new "Reasons" exception is required;

(c) When a local government includes land within an unincorporated community for which an exception under the "Reasons" section of ORS 197.732(1)(c) and OAR 660-004-0020 through 660-004-0022 was previously adopted, plan and zone designations must limit the uses, density, public facilities and services, and activities to only those that were justified in the exception or OAR 660-022-0030, which ever is more stringent.

- This proposal was approved as an irrevocably committed exception, and the above standards therefore do not apply.

660-004-0028

1. Exception Requirements for Land Irrevocably Committed to Other Uses

(1) A local government may adopt an exception to a goal when the land subject to the exception is irrevocably committed to uses not allowed by the applicable goal because existing adjacent uses and other relevant factors make uses allowed by the applicable goal impracticable:

- The uses allowed by the applicable goals are impractical at this location because of the proximity of the subject property to urbanized areas. Farming and Forestry activities are also impractical due to extreme conditions on the site which include but are not limited to poor soils, steep topography and low productivity for timber.

(a) A "committed exception" is an exception taken in accordance with ORS 197.732(1)(b), Goal 2, Part II(b), and with the provisions of this rule;

(b) For the purposes of this rule, an "exception area" is that area of land for which a "committed exception" is taken;

- The subject property is committed to uses other than resource uses because existing adjacent uses and other relevant factors make uses allowed by the applicable goals

impractical.

(c) An "applicable goal," as used in this section, is a statewide planning goal or goal requirement that would apply to the exception area if an exception were not taken.

- The applicable Goals in this case are 3(Agriculture) and 4 Forestry.

(2) Whether land is irrevocably committed depends on the relationship between the exception area and the lands adjacent to it. The findings for a committed exception therefore must address the following:

(a) The characteristics of the exception area;

- The exception area is a 10-acre parcel of land located between the city of Brownsville, Oregon, and a 307-acre Urban Influence Exception area.
- The exception area is zoned Farm/Forest and is one of the smallest individual Farm/Forest zoned areas in Linn County.
- The exception area was formerly located in the Brownsville Urban Growth Boundary but was de-annexed by ordinance.
- The exception area only borders resource land on the east (zoned for Exclusive Farm Use) along a common border of 455 feet.
- The exception area is buffered from the resource land to the east by a strip of timber that ranges from a minimum of 70 feet wide up to 200 feet wide.
- The dwelling in the exception area is 1,600 feet from cleared farm land on the resource-zoned parcel to the east.
- The dwelling in the exception area has a nearly continuous uninterrupted buffer of forest land consisting of thick intervening timber for a distance of 1,600 feet to the nearest open farm land to the east.
- The dwelling and garage are located in the center of the parcel but very near the northern boundary.
- The existing dwelling is set back 40 feet from the northern boundary of the subject property.
- The existing dwelling is equidistant to the eastern and western boundaries and is approximately 475 feet from each of those boundaries.
- The existing dwelling is 387 feet from the southern boundary of the subject property.
- The exception area has seven distinct use areas defined by vegetation and improvements. These areas are shown in an aerial photograph and hereby incorporated as Exhibit 4.

- The existing dwelling is in a residential dwelling compound that includes the house, garage, and a portion of the drainfield.
- The exception area has two distinct areas where Ponderosa Pine are planted (principally along the northern and western boundaries).
- The exception area contains two oak groves which are located in the central portion and the southeast corner of the property respectively.
- The exception area contains one small area along the eastern boundary that is principally composed of Douglas Fir timber.
- The exception area contains a strip of bare land that runs diagonally across the property northeast to southwest. This open area of bare land varies from 100 feet wide near the northeast corner to just under 50 feet wide in the southwest corner.
- The bare land in the exception area, as noted above, does contain scattered oak trees.
- The exception area is composed exclusively of site class VI and VII soils which do not meet the statutory definition of farm soils in Western Oregon.
- The exception area has 6.4 acres of tree cover and 3.6 acres of open land that is largely devoid of trees (scattered oaks) and understory vegetation.
- The exception area has rural levels of public facilities and services, including a graveled Linn County road to the northern boundary, an on-site sewage disposal system, and a domestic well.
- The exception area contains one dwelling with a garage, a domestic well, on-site sewage disposal system and replacement area, and a one-lane gravel driveway originating from a graveled county road (Pineview Road).
- The exception area has a second domestic well and an approved drainfield and replacement drainfield location in the northwest corner.
- The exception area has a one-lane gravel driveway system that first extends to the eastern boundary and then loops back to the southwest corner of the property.
- The exception area has no streams, ponds, or other hydrologic features.
- The exception area has highly variable and complex slopes. The southern boundary has the steepest slopes on the property; and rock outcroppings, including boulders, can be found along this margin.

(b) The characteristics of the adjacent lands;

- The adjacent lands have variable zoning and are comprised of seven ownerships.
- The adjacent lands are shown in Exhibits 5 through 9, entitled Adjacent

Lands.

- The exception area is bordered on the north by Tax Lot 526, which is zoned Rural Residential 5 Acres. This property is 2.5 acres and contains a dwelling.
- The exception area is also bordered on the north by Tax Lot 503, which is zoned Rural Residential 5 Acres. This property is 2.5 acres and contains a dwelling that is very close to the common property boundary.
- The exception area is also bordered on the north by Tax Lot 550, which is zoned Rural Residential 5 Acres. This property is 4.94 acres and contains a dwelling that is located in the extreme northeast corner on Oak View Drive.
- The exception area is also bordered on the north by Tax Lot 545, which is zoned Rural Residential 5 Acres. This property is 4.95 acres and contains a dwelling that is located near the northeast corner.
- The exception area is bordered on the west by Tax Lot 600, which is zoned Special Development Low Density. This property is 30.82 acres, is currently vacant, and is within the corporate boundaries of Brownsville, Oregon.
- The exception area is bordered on the south by Tax Lots 704 and 705, which are under one ownership. The combined acreage of these tax lots is 13.44 acres, and Tax Lot 704 contains a dwelling that is 505 feet from the southern boundary of the exception area. This ownership is also within the corporate limits of Brownsville, Oregon.
- The exception area is bordered on the east by a single ownership represented by Tax Lot 801. This parcel is 197.17 acres and is zoned for Exclusive Farm Use. No dwelling is located on this property. This is the only bordering resource-zoned parcel, and it is not located within the Brownsville City Limits.

(c) The relationship between the exception area and the lands adjacent to it; and

North:

Tax Lot 526:

- This small tax lot shares a common boundary of 281 feet with the subject property. Both properties have access from Pineview Road, which is a Linn County maintained gravel road. Both parcels rely on rural rather than urban services. No resource uses are present on this property.

Tax Lot 503:

- This small tax lot shares a common boundary of 230 feet with the subject property. Both properties have access from Pineview Road, which is a Linn County maintained gravel road. Both parcels rely on rural rather than urban services.
- Tax Lot 550:
Tax Lot 550 shares a common boundary of 270 feet with the subject property. This property has access from Oak View Drive. Both parcels rely on rural rather than urban services.
- Tax Lot 545:
Tax Lot 545 shares a common boundary of approximately 200 feet with the subject property. This property has access from Oak View Drive. Both parcels rely on rural rather than urban services.

South:

- Tax Lots 704 and 705:
These tax lots are under one ownership, and Tax Lot 704 contains a house that was built in 1992. These tax lots together share a common boundary of 957 feet with the subject property. Both of these parcels are within the corporate limits of Brownsville, Oregon, and they are zoned Special Development Low Density. Neither of these parcels have any relationship to the subject property as they share no access or utilities.

East:

- Tax Lot 801:
This EFU-zoned parcel of 197.17 acres has no relationship to the subject property because there are no connecting roads or infrastructure of any type. It only shares a 455-foot common boundary with the subject property. No historical connection between these two resource-zoned parcels exists, nor is it likely that that would occur given the disparate productivity qualities of the timber and agricultural potentials on these respective sites. The resource uses on Tax Lot 801 are not impacted whatsoever by the activities in the exception area because of thick intervening timber and underbrush and a large physical segregation of 475 feet.

West:

- Tax Lot 600:

This tax lot shares a common boundary of 455 feet with the subject property. It is entirely within the corporate limits of Brownsville, Oregon, and is zoned Special Development Low Density. The exception area has no relationship to this property because there are no connecting roads or infrastructure. When this property is developed, it will be from the south and the west rather than from the north.

(d) The other relevant factors set forth in OAR 660-004-0028(6).

- Please see section (6) for a response to these criteria.

(3) Whether uses or activities allowed by an applicable goal are impracticable as that term is used in ORS 197.732(1)(b), in Goal 2, Part II(b), and in this rule shall be determined through consideration of factors set forth in this rule. Compliance with this rule shall constitute compliance with the requirements of Goal 2, Part II. It is the purpose of this rule to permit irrevocably committed exceptions where justified so as to provide flexibility in the application of broad resource protection goals. It shall not be required that local governments demonstrate that every use allowed by the applicable goal is "impossible." For exceptions to Goals 3 or 4, local governments are required to demonstrate that only the following uses or activities are impracticable:

(a) Farm use as defined in ORS 215.203;

- The exception area is not currently employed for farm use, nor has it ever been so employed according to the best information available.
- The exception area only contains 3.6 acres of bare land, and it has never been used for farming, nor has it ever been subject to any farm-related government programs.
- The exception area is not lying fallow to encourage animal husbandry, nor has it ever been.
- The exception area has never been planted in orchards or other perennials.
- The exception area has not been used for animal breeding, livestock, poultry, fur-bearing animals, honeybees, dairy products, horticulture, or any combination of these uses because it is impracticable to do so based on exceedingly poor soils (classes VI and VII).
- The exception area has not been utilized in conjunction with any commercial farming enterprises that are either adjacent to or nearby to it.

- The exception area has never been employed with the primary purpose of obtaining a profit in money through farming activities because no agricultural activities have ever been contemplated for this site.
- The exception area is predominantly in tree cover and would have to be cleared in order to even consider agricultural uses; and, if cleared, the soils are still class VI and VII, which would preclude its use for these activities.
- The exception area's poor soils and steep topography preclude customary farm activities related to machinery.
- The exception area's poor soils and steep topography render all farm uses, as defined in ORS 215.203, impracticable.
- An exception to Goal 3 has been approved for the exception area.

(b) Propagation or harvesting of a forest product as specified in OAR 660-033-0120; and

- The criteria contained in OAR 660-033-0120 have no applicability to this proposal, and they do not appear to relate to the propagation or harvesting of a forest product.
- The exception area's poor soils and steep slopes render the propagation or harvesting of forest products impracticable.
- The exception area has not been utilized in conjunction with any commercial propagation or harvesting of a forest product because of its poor site characteristics for this use.
- The exception area has never been employed with the primary purpose of obtaining a profit in money through forestry activities because no forestry activities have ever been contemplated for this site.
- The location of the exception area above an urban growth boundary containing residences and other improvements would pose an extreme danger if forestry activities were conducted here.
- An exception to Goal 4 has been approved for the exception area.

(c) Forest operations or forest practices as specified in OAR 660-006-0025(2)(a).

- The exception area has no uses related to or in support of forest operations.
- The exception area is not utilized to conserve soil, air quality, water quality, fish and wildlife resources, or agricultural and recreational opportunities within a forest environment.
- The exception area does not contain the appropriate forest environment to conserve

soil, air, water quality, and the provision of fish and wildlife resources and recreational opportunities.

- The additional cost of conducting forestry practices on a low-site-index area is cost-prohibitive.
- An exception to Goal 4 has been approved for the exception area because the site was deemed to be inappropriate for forestry use based on dangers posed by its being adjacent to an urban area.

(4) A conclusion that an exception area is irrevocably committed shall be supported by findings of fact which address all applicable factors of section (6) of this rule and by a statement of reasons explaining why the facts support the conclusion that uses allowed by the applicable goal are impracticable in the exception area.

- Applicable factors of section (6) are addressed under that section of this report.
- The exception area is irrevocably committed to nonresource use because of shallow soils, stony soils, droughty soils, highly plastic soils, low-bearing-strength soils, steep and irregular topography, lack of any large contiguous area with a single harvestable tree species, poor timber yield, defective timber (principally from wind-throw and kerf/sway), poorly developed roads, boulders, and its proximity to urban uses that could be damaged from falling trees, erosion, and boulders that could roll downhill. The above characteristics of this property render all commercial agricultural and forestry enterprises impracticable. All of the above-referenced factors have been well documented in the application process and through the employment of consulting foresters.

(5) Findings of fact and a statement of reasons that land subject to an exception is irrevocably committed need not be prepared for each individual parcel in the exception area. Lands which are found to be irrevocably committed under this rule may include physically developed lands.

- A portion of the subject property of approximately 1 acre (or 10% of the site) is irrevocably committed to a residential dwelling compound.
- Another .5-acre area (or 5% of the site) near the northwest corner has multiple well heads and an approved drainfield area.
- These two committed areas comprise 15% of the total area within the subject property. This portion of the property is built and committed to uses not otherwise permitted in the zone.

(6) Findings of fact for a committed exception shall address the following factors:

(a) Existing adjacent uses;

- Existing adjacent uses were addressed previously.

(b) Existing public facilities and services (water and sewer lines, etc.);

- The exception area contains no public facilities and services except for Pineview Road, which terminates at the northern boundary of the property.
- The exception area is devoid of storm sewer, sanitary sewer, municipal water, and municipal streets.
- The exception area is a Rural Residential Area; and, as such, should not contain any urban levels of services, but has a rural residential level of services.

(c) Parcel size and ownership patterns of the exception area and adjacent lands:

- Parcel size and ownership patterns of the exception area and adjacent lands were addressed previously.

(A) Consideration of parcel size and ownership patterns under subsection (6)(c) of this rule shall include an analysis of how the existing development pattern came about and whether findings against the Goals were made at the time of partitioning or subdivision. Past land divisions made without application of the Goals do not in themselves demonstrate irrevocable commitment of the exception area. Only if development (e.g., physical improvements such as roads and underground facilities) on the resulting parcels or other factors make unsuitable their resource use or the resource use of nearby lands can the parcels be considered to be irrevocably committed. Resource and nonresource parcels created pursuant to the applicable goals shall not be used to justify a committed exception. For example, the presence of several parcels created for nonfarm dwellings or an intensive commercial agricultural operation under the provisions of an exclusive farm use zone cannot be used to justify a committed exception for land adjoining those parcels;

- The exception area was originally created by deed rather than by partitioning or subdivision.
- All of the adjacent parcels also were created by deed rather than through an act of subdividing or partitioning except for Tax Lot 801 to the east which was created through Partitioning Plat 1991-15.
- The partitioning of Tax Lot 801 to the east was definitely made with respect to the acknowledged Comprehensive Plan and an implementing partitioning ordinance. Findings against the Goals were made for this partitioning only. These factors are

both site specific and based on adjoining uses.

- Among those factors upon which the exception area is relying to justify a committed exception is the proximity of urban improvements at a steep downhill location.
- The exception area is also being justified on the basis that the soils on the subject property do not meet the statutory definition of agricultural land in Western Oregon.
- The exception area is also being justified on the basis that it cannot be utilized with the only resource parcel to the east because of the soil limitations previously mentioned.
- The exception area is also being justified on the basis that it has extremely poor conditions for propagating and harvesting timber on a commercial scale, owing again to poor soils, steep topography, and the impediments imposed by the urban uses to the south.
- The proposed exception area is also being justified by the fact that no commercial forestry activity has ever taken place on the parcel. The consulting foresters and the Oregon Department of Forestry confirmed the site limitations of the exception area for commercial forestry.

(B) Existing parcel sizes and contiguous ownerships shall be considered together in relation to the land's actual use. For example, several contiguous undeveloped parcels (including parcels separated only by a road or highway) under one ownership shall be considered as one farm or forest operation. The mere fact that small parcels exist does not in itself constitute irrevocable commitment. Small parcels in separate ownerships are more likely to be irrevocably committed if the parcels are developed, clustered in a large group or clustered around a road designed to serve these parcels. Small parcels in separate ownerships are not likely to be irrevocably committed if they stand alone amidst larger farm or forest operations, or are buffered from such operations.

- The exception area is not relying on its relative small size as a basis for irrevocable commitment but rather is relying on soils, topography, use history, and impediments posed by nearby urban lands that are downhill of forested areas.
- Aside from the statement above, the exception area is proportionate in size with contiguous existing parcel sizes with the exception of the 191.17-acre resource-zoned parcel to the east.
- The parcel sizes for contiguous urban and rural residential properties are as follows: 30.82 acres, 13.44 acres, 4.95 acres, 4.94 acres, 2.5 acres, and 2.5 acres.
- The sole contiguous parcel that is zoned for resource use is 191.17 acres.

- The exception area, at 10 acres, is larger than four and smaller than three of the contiguous ownerships.
- The exception area is amongst parcels that are predominantly smaller. The four parcels to the north are all smaller, and the three to the west, south, and east are larger.
- Small parcels in separate ownerships that surround the property do not stand alone and are part of a 307-acre block of exception land.
- The exception area is not dependent upon the 307-acre exception area to the north as a basis for irrevocable commitment.
- As outlined previously, the subject exception area is unique within the surrounding area for reasons which justify this exception.

(d) Neighborhood and regional characteristics;

- The neighborhood consists of a unique blend of characteristics including urban, urban influence, and resource.
- The urban area is the City of Brownsville with a Special Development Low Density Zone.
- The urban influence area is the 307-acre block of RR-5-zoned land immediately north and northwest of the subject property.
- The only resource-zoned parcel that touches the subject property is the 197.17-acre parcel to the east.
- The three above-referenced use areas represent the neighborhood surrounding the subject property.
- The regional characteristics are resource oriented.

North:

- The regional characteristics are predominantly large-scale farming operations with relatively small blocks of timber-zoned lands. The nearest timber-zoned area is located immediately north of the 307-acre exception area lying to the north of the subject property.

South:

- The regional characteristics to the south are very heavily dominant in the agricultural sector.

East:

- The regional characteristics to the east are predominantly agricultural with the exception of some timberlands in the low foothills.

West:

- The regional characteristics to the west are almost 100% agriculture with the exception of a heavy industrial area to the west of Halsey.

Regional:

- The City of Brownsville is the only incorporated city that lies within 5 miles of the subject exception area.
- The exception area is in the portion of Linn County that is characterized by having a few scattered small towns that include Shedd, Halsey, Harrisburg, and Brownsville.
- The South Linn County Region is extremely dominant in grass seed and grain production.

(e) Natural or man-made features or other impediments separating the exception area from adjacent resource land. Such features or impediments include but are not limited to roads, watercourses, utility lines, easements, or rights-of-way that effectively impede practicable resource use of all or part of the exception area;

- The exception area is separated from resource-zoned land to the north by a 307-acre block of RR-5-zoned land, to the west by a 30-acre Special Development Low Density (SDLD) parcel, and on the south by a 13.44-acre SDLD tract.
- The presence of these non-resource-zoned parcels present impediments that make resource use of the exception area impracticable because of the presence of dwelling units, steep slopes, and lack of utility connections.
- The exception area only has one way in and one way out via Pineview Road, and Pineview Road goes directly through the middle of an exception area.

(f) Physical development according to OAR 660-004-0025; and

- The exception area, as stated previously, is developed with driveways, drainfields, domestic wells, dwellings, and accessory structures over 15% of its area.

(g) Other relevant factors.

- The exception area, for being such a small parcel, has a broad range of use areas that make managing it as a single farm or forest unit extremely difficult. The property simply lacks a large contiguous block of land that has any uniform

characteristics for either farm or forest management practices.

- The exception area is unique, having once been part of Brownsville, but the fact that it was de-annexed was based on findings that the land, in fact, was not urban in character.
- The exception area is one of the smallest, if not the smallest, and most isolated FF-zoned areas in all of Linn County.
- The exception area has no complementarity with other resource lands because the nearest other FF-zoned land is approximately one-half mile away to the northwest.

(7) The evidence submitted to support any committed exception shall, at a minimum, include a current map, or aerial photograph which shows the exception area and adjoining lands, and any other means needed to convey information about the factors set forth in this rule. For example, a local government may use tables, charts, summaries, or narratives to supplement the maps or photos. The applicable factors set forth in section (6) of this rule shall be shown on the map or aerial photograph.

- The maps are included at the end of the report as Exhibits 5 through 9. The maps include a Linn County Zoning Map with the subject property and the surrounding area circled, a color closeup zoning map showing the subject property and all adjacent properties, two Assessor's Maps that clearly identify which ownerships are adjacent to the subject property, and an aerial photograph map that shows all adjacent parcels.

(8) The requirement for a map or aerial photograph in section (7) of this rule only applies to the following committed exceptions:

(a) Those adopted or amended as required by a Continuance Order dated after the effective date of section (7) of this rule; and

(b) Those adopted or amended after the effective date of section (7) of this rule by a jurisdiction with an acknowledged comprehensive plan and land use regulations.

- The exception area was approved by the Linn County Board of Commissioners on April 14, 2010, which was after the effective date of section (7) of this rule by a jurisdiction with an acknowledged comprehensive plan and land use regulations.

660-004-040

Application of Goal 14 to Rural Residential Areas

(1) The purpose of this rule is to specify how Statewide Planning Goal 14 (Urbanization) applies to rural lands in acknowledged exception areas planned for residential uses.

- The exception area is not urbanizable land but is rural residential land.

(2)(a) This rule applies to lands that are not within an urban growth boundary, that are planned and zoned primarily for residential uses, and for which an exception to Statewide Planning Goal 3 (Agricultural Lands), Goal 4 (Forest Lands), or both has been taken. Such lands are referred to in this rule as rural residential areas.

- The exception area clearly fits the rule as rural residential land since it is not within an urban growth boundary and is zoned primarily for residential use. Exceptions to Statewide Planning Goals 3 and 4 have been approved.

(4) The rural residential areas described in Subsection (2)(a) of this rule are rural lands. Division and development of such lands are subject to Statewide Planning Goal 14 (Urbanization) which prohibits urban use of rural lands.

- The exception area is in conformity with this rule because it will be used primarily for rural residential use and is only subject to Goal 14 with respect to the future division of the land.

(5)(a) A rural residential zone currently in effect shall be deemed to comply with Goal 14 if that zone requires any new lot or parcel to have an area of at least two acres.

- The exception area is in conformity with this rule because the parcel to be created will be 5 acres, which is in excess of the two-acre threshold acreage size for this rule.

(b) A rural residential zone does not comply with Goal 14 if that zone allows the creation of any new lots or parcels smaller than two acres. For such a zone, a local government must either amend the zone's minimum lot and parcel size provisions to require a minimum of at least two

acres or take an exception to Goal 14. Until a local government amends its land use regulations to comply with this subsection, any new lot or parcel created in such a zone must have an area of at least two acres.

- The exception area will not require an exception to Goal 14 because the subject property will conform to the 5-acre rule for parcels being created next to urban growth boundaries pursuant to the Linn County Comprehensive Plan.
- The exception area will not require an exception to Goal 14 because the two parcels resulting from a future partitioning will be greater than the two-acre minimum lot size.
- The exception area will not require an exception to Goal 14 because Linn County has an acknowledged Comprehensive Plan recognizing 2.5, 5, and 10-acre minimum lot sizes.

(c) For purposes of this section, "rural residential zone currently in effect" means a zone applied to a rural residential area, in effect on the effective date of this rule, and acknowledged to comply with the statewide planning goals.

- The exception area is already in a zone that is currently in effect for rural residential use. Prior to the effective date of this rule, the Linn County Comprehensive Plan was acknowledged to comply with Statewide Planning Goals and Guidelines.

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

- The Linn County Comprehensive Plan has not been amended since original acknowledgment to allow a smaller minimum lot size for any individual lot or parcel.

(7)(a) The creation of any new lot or parcel smaller than two acres in a rural residential area shall be considered an urban use. Such a lot or parcel may be created only if an exception to Goal 14 is taken. This subsection shall not be construed to imply that creation of new lots or parcels two

acres or larger always complies with Goal 14. The question of whether the creation of such lots or parcels complies with Goal 14 depends upon compliance with all provisions of this rule.

- The exception area has a minimum lot size that is larger than 2 acres; and it complies with the 2-acre or larger rule because the acknowledged Comprehensive Plan already adopted minimum parcel sizes of 2.5 acres or greater.
- Linn County had an adopted Comprehensive Plan on the effective date of this rule, and that plan made a provision for 5-acre parcels next to urban growth boundaries.
- The exception area complies with all applicable provisions of this rule.

(b) Each local government must specify a minimum area for any new lot or parcel that is to be created in a rural residential area. For the purposes of this rule, that minimum area shall be referred to as the minimum lot size.

- The local government has approved a 5-acre minimum parcel size for the new lot to be created, and it has a policy of allowing 5-acre parcels that are adjacent to urban growth boundaries.

(c) If, on the effective date of this rule, a local government's land use regulations specify a minimum lot size of two acres or more, the area of any new lot or parcel shall equal or exceed that minimum lot size which is already in effect.

- The exception area minimum lot size of 5 acres does exceed the minimum lot size of 2.5 acres which is already in effect.

(d) If, on the effective date of this rule, a local government's land use regulations specify a minimum lot size smaller than two acres, the area of any new lot or parcel created shall equal or exceed two acres.

- The exception area exceeds 2 acres, and the newly-created parcel will be 5 acres.

(i) For rural residential areas designated after the effective date of this rule, the affected county

shall either:

(A) Require that any new lot or parcel have an area of at least ten acres, or

(B) Establish a minimum lot size of at least two acres for new lots or parcels in accordance with the requirements for an exception to Goal 14 in OAR chapter 660, division 14. The minimum lot size adopted by the county shall be consistent with OAR 660-004-0018, "Planning and Zoning for Exception Areas."

- The exception area complies with (B) above. The criteria of OAR 660-004-0018 have been addressed previously in this report.
- Linn County's minimum lot sizes of 2.5, 5, and 10 acres are in compliance with OAR 660-004-0018.

Linn County Comprehensive Plan Policies for rural residential lands pursuant to LCC 905.420

Applicable policies LCC905.420 (5) through (8).

(5) The Rural Residential *Plan* designation is implemented with four rural residential zones which are distinguished only by minimum property size standards. The RR-2½ acre minimum property size zone, for reasons established in the text of this section, is considered a rural designation. The RR-2½ designation has been applied to exception sites which are capable of supporting additional development without adversely impacting rural services and urbanization plans of the cities in the county. A Goal 14 exception has been taken for rural residential urban influence areas which are zoned RR-2½.

- The exception area, at five acres, clearly exceeds the baseline standard for a rural residential land use designation .

(6) The RR-10 acre minimum property size zone may be established on larger size properties where development limitations exist. Such limitations may include limited groundwater quantity, poor septic suitability, access difficulties, steep slopes, important natural features or the lack of fire protection.

- The exception area has some of the limitations characteristic of the 10-acre minimum property size standard but is not groundwater limited, nor does it have a complete absence of safe building sites based on slopes and septic suitability.
- The exception area has two proven on-site sewage disposal areas and two wells.

(7) The RR-10 zone may also be applied to land that will provide a buffer between smaller residential property size development and farm and forest resource uses. The RR-10 zone may be changed to either a RR-2½ or RR-1 with a zone amendment and an exception to Goal 14. A change from RR-10 to RR-5 requires a zone amendment only.

- The exception area provides no buffer between smaller residential property size development and farm and forest zones.
- The exception area does not comply with the above objective of the RR-10 zone.

(8) The RR-5 acre minimum property size zone has been applied to areas which are considered to be urban influence areas, subject to development limitations or located near resource activities. Some exception areas have been designated RR-5 based upon the potential number of residences that could be built. It is the intent of the *Plan* not to permit large, rural communities in the exception areas. The RR-5 zone may not be changed to another rural residential designation without a zone amendment and an exception to Goal 14.

- The RR-5 property size zone has been applied to areas which are considered to be urban influence areas, which is why the five-acre minimum parcel size has been requested for the subject property.
- The exception area is between an urban growth boundary and an urban influence area.
- The five-acre exception area is usually applied where properties abut an urban growth boundary or city limit. In this case, the property is adjacent to the Brownsville, Oregon, city limits

EXHIBIT 1

PLANNING AND ZONING FOR EXCEPTION AREAS

660-004-0018

Planning and Zoning for Exception Areas

(1) Purpose. This rule explains the requirements for adoption of plan and zone designations for exceptions. Exceptions to one goal or a portion of one goal do not relieve a jurisdiction from remaining goal requirements and do not authorize uses, densities, public facilities and services, or activities other than those recognized or justified by the applicable exception. Physically developed or irrevocably committed exceptions under OAR 660-004-0025 and 660-004-0028 are intended to recognize and allow continuation of existing types of development in the exception area. Adoption of plan and zoning provisions that would allow changes in existing types of uses, densities, or services requires the application of the standards outlined in this rule.

(2) For "physically developed" and "irrevocably committed" exceptions to goals, residential plan and zone designations shall authorize a single numeric minimum lot size and all plan and zone designations shall limit uses, density, and public facilities and services to those:

(a) That are the same as the existing land uses on the exception site;

(b) That meet the following requirements:

(A) The rural uses, density, and public facilities and services will maintain the land as "Rural Land" as defined by the goals and are consistent with all other applicable Goal requirements; and

(B) The rural uses, density, and public facilities and services will not commit adjacent or nearby resource land to nonresource use as defined in OAR 660-004-0028; and

(C) The rural uses, density, and public facilities and services are compatible with adjacent or nearby resource uses;

(c) For which the uses, density, and public facilities and services are consistent with OAR 660-022-0030, "Planning and Zoning of Unincorporated Communities", if applicable, or

(d) That are industrial development uses, and accessory uses subordinate to the industrial development, in buildings of any size and type, provided the exception area was planned and zoned for industrial use on January 1, 2004, subject to the territorial limits and other requirements of ORS 197.713 and 197.714

(3) Uses, density, and public facilities and services not meeting section (2) of this rule may be approved only under provisions for a reasons exception as outlined in section (4) of the rule and OAR 660-004-0020 through 660-004-0022.

(4) "Reasons" Exceptions:

(a) When a local government takes an exception under the "Reasons" section of ORS 197.732(1)(c) and OAR 660-004-0020 through 660-004-0022, plan and zone designations must limit the uses, density, public facilities and services, and activities to only those that are justified in the exception;

(b) When a local government changes the types or intensities of uses or public facilities and services within an area approved as a "Reasons" exception, a new "Reasons" exception is required;

(c) When a local government includes land within an unincorporated community for which an exception under the "Reasons" section of ORS 197.732(1)(c) and OAR 660-004-0020 through 660-004-0022 was previously adopted, plan and zone designations must limit the uses, density, public facilities and services, and activities to only those that were justified in the exception or OAR 660-022-0030, which ever is more stringent.

Stat. Auth.: ORS 197

Stats. Implemented: ORS 197.732

Hist.: LCDC 9-1983, f. & ef. 12-30-83; LCDC 1-1986, f. & ef. 3-20-

EXHIBIT 2

NOTICE AND ADOPTION STANDARDS FOR AN EXCEPTION

660-004-0030

Notice and Adoption of an Exception

(1) Goal 2 requires that each notice of a public hearing on a proposed exception shall specifically note that a goal exception is proposed and shall summarize the issues in an understandable manner.

(2) A planning exception takes effect when the comprehensive plan or plan amendment is adopted by the city or county governing body. Adopted exceptions will be reviewed by the Commission when the comprehensive plan is reviewed for compliance with the goals, when a plan amendment is reviewed pursuant to OAR chapter 660, division 18, or when a periodic review is conducted pursuant to ORS 197.640.

Stat. Auth.: ORS 197

Stats. Implemented ORS 197.610 - ORS 197.625, ORS 197.628 - ORS 197.646 & ORS 197.732

EXHIBIT 3

LETTER FROM BILL SATTLER TO FRANK WALKER & ASSOCIATES
REGARDING DEVELOPMENT POTENTIAL ON URBAN GROWTH BOUNDARY
PROPERTIES BORDERING THE EXCEPTION AREA



Brownsville City Hall
255 N. Main Street • P.O. Box 188 • Brownsville, OR 97327 • (541) 466-5666 • Fax (541) 466-5118
TT/TDD 1 (800) 555-1155

Frank Walker
Walker & Associates
1480 Jamestown Street, SE
Salem, OR 97302

July 10, 2009

Dear Frank,

You asked me about the development potential of the properties located at the far northeastern corner of the City of Brownsville to the south of your client's property at 13S 2W 31 TL 700.

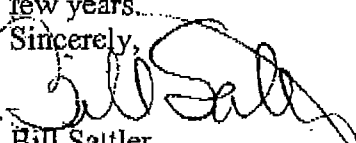
That area is designated with our zone of "Special Development". That is our Low Density Residential zone where it occurs on the steeper slopes around town. The minimum lot size is 7500 square feet and the maximum density is a duplex on a larger lot. It is the lowest density residential zoning we have.

That area is unlikely to see any significant development any time in the foreseeable future for a number of reasons. It is served by only one access road, Spaulding Avenue / Amelia Street which is very narrow and inadequate for any increased amount of traffic, crossing the mill race on a one-lane bridge. In addition, all of the property on the eastern side is accessed via a large private road owned by Mr. Jim Isenberg who owns a large parcel of property there. When Mr. Isenberg built his house he expressly kept that as a private road so that he could control development in the area, with his intention being to prevent any further development of the property surrounding his land. Since that is the only access to about 40 acres of residential land there, it is effectively off the table for development any time in the near future.

In addition, much of that land is at a higher elevation than the City's water reservoir, or so near the elevation as to preclude adequate water pressure. In order to develop that area it will be necessary for the developer to install a booster pump system and a large water reservoir to provide adequate water flow for fire protection.

Given all the negative factors I don't have any expectation that the nature of the area will change from the current usage any time in the foreseeable future. Even during the recent development boom there were no inquiries or attempts to develop that area and no development has occurred there in quite a few years.

Sincerely,


Bill Sattler
City Planner

WE ARE AN EQUAL OPPORTUNITY EMPLOYER
AND SERVICE PROVIDER

LINN COUNTY
PLANNING AND
BUILDING DEPT.

BEFORE THE BOARD OF COUNTY COMMISSIONERS
AUG 23 3 21 PM '89
FOR LINN COUNTY, OREGON

Ray Jaul

IN THE MATTER OF CORRECTING THE ORDINANCE)
ADOPTING THE PLAN MAP AMENDMENT, URBAN) Order 89-497,
GROWTH BOUNDARY AMENDMENT, AND ZONING MAP) Correcting Ordinance 89-468
AMENDMENT APPLICATION BY THE CITY OF)
BROWNSVILLE; CP-8-88/89)

The Board of County Commissioners for Linn County, Oregon, on August 8, 1989, adopted amendments to the Brownsville Comprehensive Plan, the Brownsville Urban Growth Boundary, and the Linn County Zoning Map. Case CP-8-88/89 by Ordinance 89-468; and

Now being advised that through manifest clerical error the description contained in Ordinance 89-468 described the section number as 3, instead of 31, on Page 1 Paragraph 1, Lines 11 and 12 as follows:

"...Brownsville and is identified on the county assessors maps as T13S, R2W, Section 3, Tax Lot 702."

which description should read as follows:

"...Brownsville and is identified on the county assessors maps as T13S, R2W, Section 31, Tax Lot 702."

And, it further appearing that the description was correct in all proceedings except the final ordinance,

NOW, THEREFORE, IT IS HEREBY ORDERED that Ordinance 89-468 is corrected by changing the legal description on Page 1, Paragraph 1, Lines 11 and 12 to read as follows:

"...Brownsville and is identified on the county assessors maps as T13S, R2W, Section 31, Tax Lot 702."

IT IS FURTHER ORDERED that Ordinance 89-468 is affirmed in all other respects.

Dated this *23rd* day of August 1989.

LINN COUNTY BOARD OF COMMISSIONERS

Larry Johnson
Larry Johnson, Chairman

Richard Stach
Richard Stach, Commissioner

Dave Schmidt
Dave Schmidt, Commissioner

Approved as to form:

William Smith
Linn County Legal Counsel
No. 89-497

LINN COUNTY
PLANNING AND
BUILDING DEPT.

BEFORE THE COUNTY COMMISSIONERS
AUG 11 11 43 AM '89
FOR LINN COUNTY, OREGON

FILED

AUG 8 1989

STEVE [unclear]
By: [Signature]
Deputy

IN THE MATTER OF A COMPREHENSIVE)
PLAN MAP AMENDMENT, URBAN GROWTH)
BOUNDARY AMENDMENT, AND ZONING)
MAP AMENDMENT APPLICATION BY THE)
CITY OF BROWNSVILLE; CP-8-88/89)

ORDINANCE 89-468
AMENDING THE COMPREHENSIVE PLAN
AND ZONING MAPS

The City of Brownsville submitted an application for a comprehensive plan map amendment, zoning map amendment, and an urban growth boundary amendment. The application proposed the realignment of the Brownsville Urban Growth Boundary by withdrawing 10 acres from the boundary. This action would allow the city to deannex the 10 acres from the city. When property is deannexed from the city, the county must establish an appropriate comprehensive plan and zoning designation. The proposal is to redesignate the property Farm/Forest (F/F) on the Linn County Comprehensive Plan and Zoning maps when it is deannexed from the city. The property is situated in the northeast corner of the city of Brownsville and is identified on the county assessors maps as T13S, R2W, Section 3, Tax Lot 702.

The City of Brownsville Planning Commission reviewed and recommended removal of the property from the urban growth boundary on May 8, 1989.

The Brownsville City Council reviewed the matter on June 19, 1989 and approved the removal of the property from the urban growth boundary. After final action by Linn County, the city council will make a final decision on the deannexation.

The Linn County Planning Commission held a public hearing on the matter on July 11, 1989. Oral testimony supporting the application was provided by the property owner, Mrs. Betty Barratt. Written testimony was provided by the Linn County Engineer, Thomas and Betty Barratt, Louis E. Walker, Jr., and the City of Brownsville. No testimony was submitted opposing the application. The planning commission voted five to one to recommend approval of the application.

The Linn County Board of Commissioners held a public hearing on the matter on July 19, 1989. Brownsville City Recorder Diane Rinks and the property owner, Betty Barratt, testified on behalf of the application.

THE LINN COUNTY BOARD OF COMMISSIONERS HEREBY ORDAINS THAT:

- (1) The decision criteria, findings of fact, and conclusions in Exhibit A are adopted as the basis for this decision.
- (2) The recommendation of the Brownsville Planning Commission and the Linn County Planning Commission and the decision of the Brownsville City Council to remove Tax Lot 702, T13S, R2W, Section 31 from the Brownsville Urban Growth Boundary is hereby accepted.
- (3) The recommendation of the Linn County Planning Commission to redesignate the property to Farm/Forest on the comprehensive plan and

to Farm/Forest (F/F) on the zoning map when it is deannexed from the City of Brownsville is hereby accepted. The following condition of approval is part of the decision:

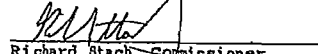
That the property be placed in the Brownsville Rural Fire Protection District upon deannexation from the city.

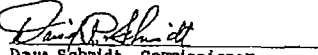
- (4) The recommendation of the Linn County Planning Commission that approval of this particular case not be considered as a precedent for deannexation of other properties from any of the cities in Linn County is hereby accepted.
- (5) That the 10 acre land area as shown on the attached map be redesignated Farm/Forest on the comprehensive plan map and Farm/Forest (F/F) on the zoning map at the time of deannexation of the property from the City of Brownsville.
- (6) Passage of this ordinance is necessary for the immediate preservation of the public peace, health, and safety. An emergency therefore exists and this ordinance shall take effect upon passage.

ADOPTED THIS 8th DAY OF AUGUST, 1989.

Linn County Board of Commissioners


Larry Johnson, Chairman


Richard Stach, Commissioner


Dave Schmidt, Commissioner

Approved as to form:



John T. Helton
Linn County Legal Counsel

Exhibit A
Ordinance #89-468
Criteria, Findings, and Conclusions
CP-8-88/89; City of Brownsville

A. Reduction of Brownsville Urban Growth Boundary.

The Linn County Board of Commissioners adopts the Criteria, Findings, and Conclusions as submitted and adopted by the City of Brownsville. These are listed below:

DESCRIPTION

The City of Brownsville proposes an alteration to the urban growth boundary (UGB) and city limits. The realignment would withdraw ten (10) acres from the UGB to allow for the deannexation of Tax Lot 702. The action would involve a comprehensive plan amendment in the form of an amendment to the UGB and a zoning map amendment.

Findings based on the decision criteria listed in the Development Regulations for Comprehensive Plan Amendments and Zone Changes are included below.

CRITERIA FOR DECISION-MAKING AND FINDINGS OF FACT

Comprehensive Plan Change:

Section 804.7 (1-5): To approve an application for amendment of the comprehensive plan, findings shall be made that:

CRITERIA (1)

The proposed amendment assists the city of comply with the state-mandated planning goals and guidelines and other applicable legislative acts and judicial determinations.

FINDINGS AND CONCLUSIONS

- (A) The proposed UGB Amendment relates to the statewide Planning Goal Number 14, "Urbanization". In the area in question, the city limits is coincident with the UGB, yet no city services are available. The cost of providing services to this parcel would be prohibitive due to excessive distance from existing city services, steep slopes, and unstable soils. During its periodic review, the city has chosen to tailor its city limits in this location and, thus, its UGB to better fit the existing pattern of city services.
- (B) Goal 14, Urbanization, establishes the following seven factors to consider when amending the UGB. These factors are discussed under responses C-F below:

- Factor 1 - Demonstrated need to accommodate long-range urban populations growth requirements consistent with LCDC goals;
- Factor 2 - Need for housing, employment opportunities, and livability.
- Factor 3 - Orderly and economic provision for public facilities and services.
- Factor 4 - Maximum efficiency of land uses within and on the fringe of the existing urban area;
- Factor 5 - Environmental, energy, economic and social consequences;
- Factor 6 - Retention of agricultural land as defined, with Class I being the highest priority for retention and Class VI the lowest priority; and,
- Factor 7 - Compatibility of the proposed urban uses with nearby agricultural activities.

- (C) The subject property is situated on a hillside in the Special Development Zone which has limited suitability for housing development. As stated on page 60 of the Brownsville Comprehensive Plan, "Combined effects of steep slopes and adverse soils cause these areas to be potentially hazardous". Withdrawal of the ten (10) acres from the urban growth boundary will not significantly impact the supply of residential land needed to meet Brownsville's projected urban population growth requirements or the need for housing, employment opportunities and livability.
- (D) The inclusion of the subject parcel within the UGB does not fit with the state's objective of orderly and economic provision of public of public facilities and services. The parcel does not benefit from any city public facility and, for reasons discussed above and below, the provision of water, sewer, or city roads would be prohibitively expensive. The access to the property is from the Linn County side and the parcel will most logically continue to be served by the county.
- (E) The Soil Survey for the Linn County Area shows the underlying soil for the parcel is a Ritner Cobbly, Silty, Clay Loam which has a capability class of VI-s (stony limitation). Shallow soil depth, moderate to slow permeability, moderate to steep slopes, and the hazard of soil erosion render this soil unit unsuitable for most development. Ritner Cobbly, Silty, Clay Loam is used mainly for timber production. The building site development table and the sanitary facilities table show the soil has severe limitations for the following: dwellings with or without basements, local roads and streets, and septic tank absorption fields. The removal of this parcel from the UGB

would be an efficient, environmentally sound, and economically prudent management approach.

- (F) The existing and proposed use for the parcel is residential and wood lot. No urban uses are proposed and the present use is compatible with the surrounding rural land uses.

CRITERIA (2)

The proposed amendment is of substantial public need to warrant action prior to the timetable established for revision of the existing comprehensive plan.

FINDINGS AND CONCLUSIONS

- (G) This amendment is being included in the Periodic Review Process, and no land use changes are proposed; thus, criteria (2) and (5) of Section 8-4.7 do not apply.

CRITERIA (3)

Other suitable alternative locations or policy changes are not presently available to accommodate the use for which the amendment is proposed.

FINDINGS AND CONCLUSIONS

- (H) the proposed amendment is site specific, and no other policy changes are available to remedy the situation. This proposal, however, is viewed as a unique situation and under no circumstances is intended to establish a precedent.

CRITERIA (4)

Approval of the proposed comprehensive plan amendment will not have a significant negative impact on the existing level of public facilities and transportation services, and on the overall land use pattern of the area.

FINDINGS AND CONCLUSIONS

- (I) The proposed amendment will not have a significant negative impact on the existing level of public facilities and transportation services, nor on the overall land use pattern of the area.

CRITERIA (5)

The development limitations, such as soil and foundation suitability, geology, water quality, etc., of the parcel and area are capable of supporting the use for which the plan is proposed to be amended.

FINDINGS AND CONCLUSIONS

- (J) A discussion of soil characteristics as they apply to the proposed land use designation change is discussed under Finding E above.

CRITERIA (6)

The proposed amendment will not have a significant negative impact on the health, safety, or welfare of any citizen.

FINDINGS AND CONCLUSIONS

- (K) No significant negative impacts on the health, safety, or welfare of any citizen is anticipated.
- B. Redesignation of the property as Farm/Forest on the Linn County Comprehensive Plan and Zoning Maps upon deannexation from the City of Brownsville.

(1) Background information.

Tax lot 702 is located on steep terrain which cannot be served by sanitary sewer or community water without great expense. The lot is developed with a single family dwelling. Without the prospect of city services being provided at any time in the future, there is little reason for this parcel to be within the corporate limits of Brownsville. The city is not establishing a policy of deannexation when services cannot be provided, but because this property is located on the edge of the city limits the city has agreed to the exclusion.

When the property is removed from the city, it must be given a county plan and zone designation. The Linn County Planning Department and Planning Commission recommended that the Farm/Forest plan and zone designation be applied. All of the property consists of Ritner Cobbley Silty Clay Loam soil which is rated as Class VI and VII (depending on slope) agricultural soil by the SCS. The cubic foot site class rating for timber production is class III, a rating which indicates the soil is suitable for timber production. The Class VI soils have 2 - 30 percent slopes and the Class VII area has 25 - 50 percent slopes. A 1987 air photo of the site shows forest cover and an area which has been cleared. The property to the east, although it is zoned Exclusive Farm Use, is covered with trees. Nine acres of tax lot 7-2 receives a forest exemption from the Linn County Assessor's Office and has recently been restocked with trees.

The property is bordered to the north by the Oakview Heights rural residential exception area. The exception area is zoned RR-5 and contains 307 acres and forty dwellings. Property to the south and west are in Brownsville and are zoned Special Development. This designation is a type of planned development

zone where almost all land uses are permitted subject to city approval.

(2) Criteria for decision.

The Linn County Comprehensive Plan Amendment Ordinance, Paragraph 2, Section 6.

(2) To approve a plan map amendment, findings shall be made that:

- (A) The amendment is consistent with and does not alter the intent of applicable section(s) of the comprehensive plan;
- (B) The amendment will be compatible with adjacent uses and will not adversely impact the overall land use pattern in the area;
- (C) The amendment, if within an adopted urban growth boundary, is in substantial conformity with the comprehensive plan and implementing ordinances of an affected city;
- (D) The amendment will not have a significant adverse impact on a sensitive fish or wildlife habitat;
- (E) 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;
- (F) The amendment will not have a significant adverse impact upon the transportation facilities;
- (G) 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;
- (H) An exception to the statewide planning goals is not required. If required, then findings have been prepared to meet the exception criteria; and
- (I) The amendment is consistent with the statewide planning goals.

(3) Findings and conclusions.

- (A) The application of the Farm/Forest plan and zoning map designation is consistent with the comprehensive plan. It is the intent of the plan to apply a resource designation

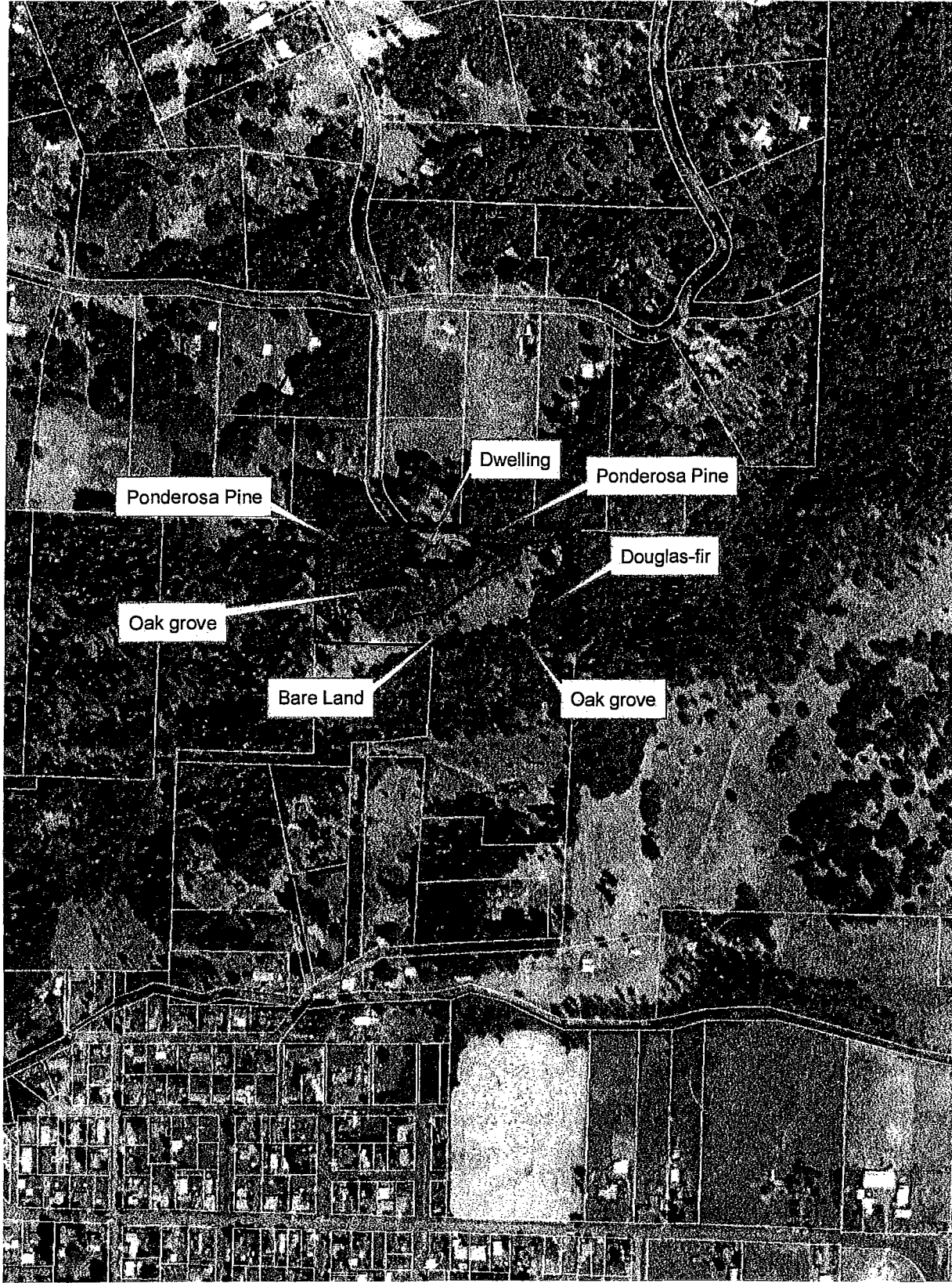
to property which is being used for forestry or agriculture. Tax lot 702 has suitable soil types for forestry and is partially covered with trees.

- (B) The parcel is developed with a single family dwelling. North of the site is a Rural Residential - 5 acre minimum zone. Forest covered land zoned Exclusive Farm Use is located east of lot 702. The city limits would be south and west of the site if this land use action is approved.
- The amendment will be consistent with the adjacent uses and will not impact the overall land use pattern in the area. Given the steep terrain on the property, any further development is unlikely. If any additional development is proposed, it would be through the conditional use process. Conditional use permit decision criteria require findings that show future development on lot 702 would be compatible with nearby development. Application of the Farm/Forest zone will be beneficial for the resource land to the east because potentially incompatible urban development will no longer be possible on lot 702.
- (C) See City of Brownsville findings above.
- (D) The property is not located within a sensitive fish or wildlife habitat and will no longer be within an urban growth boundary.
- (E and F) The amendment will have no affect on the provision of public facilities. Additional development is not anticipated after the property is deannexed. Access to the property is over Pineview Road, a county road. This access will continue to be adequate for the level of development on the property.
- (G) The property is not located in a geologic or flood hazard area. No water quality or quantity problems have been identified on the property or are anticipated as result of the amendment. The zoning designation will maintain the existing level of development.
- (H) No statewide goal exception is required.
- (I) The amendment will be consistent with the statewide goals for the following reasons:
1. Goal 1 - Public hearings have been held by the city and the county and notice provided through adopted notice procedures.
 2. Goal 2 - Adopted plan amendment procedures have been followed.

3. Goal 3 - The property is not considered agricultural land because of the SCS soil classification.
4. Goal 4 - The property does contain soil types suitable for forestry; and the property is used to grow trees. The Farm/Forest designation is an acknowledged resource management zone.
5. Goal 5 - The Linn County Goal 5 Background Report does not identify any Goal 5 resources near tax lot 702.
6. Goal 6 - The site has an authorized subsurface sewage disposal system. No other discharge permits have been issued for the property or are expected to be needed in the future.
7. Goal 7 - No natural hazards have been identified.
8. Goal 8 - The area near the site is not identified as a recreation resource.
9. Goal 9 - No economic impacts have been identified in conjunction with the plan amendment.
10. Goal 10 - No change in the quantity or type of housing is expected as a result of this amendment.
11. Goal 11 - Public facilities have been previously discussed.
12. Goal 12 - Transportation has been previously discussed.
13. Goal 13 - No energy conservation impacts are anticipated because of the minor nature of the amendment.
14. Goal 14 - The property, once within the city limits and UGB, will be excluded from both. The Farm/Forest designation is clearly a rural zone and will be consistent with Brownsville planning efforts.
15. Goal 15 - The property is not within the Willamette River Greenway.

EXHIBIT 4 TIMBER UNITS WITHIN EXCEPTION AREA

T13S R2W Sec. 31 tl 702



1 inch = 500 feet

CASCADE.TIMBERCONSULTING, INC.

Drawn by: Brian Murray
1/29/10

EXHIBIT 5 LINN COUNTY ZONING MAP AND LOCATION OF EXCEPTION AREA

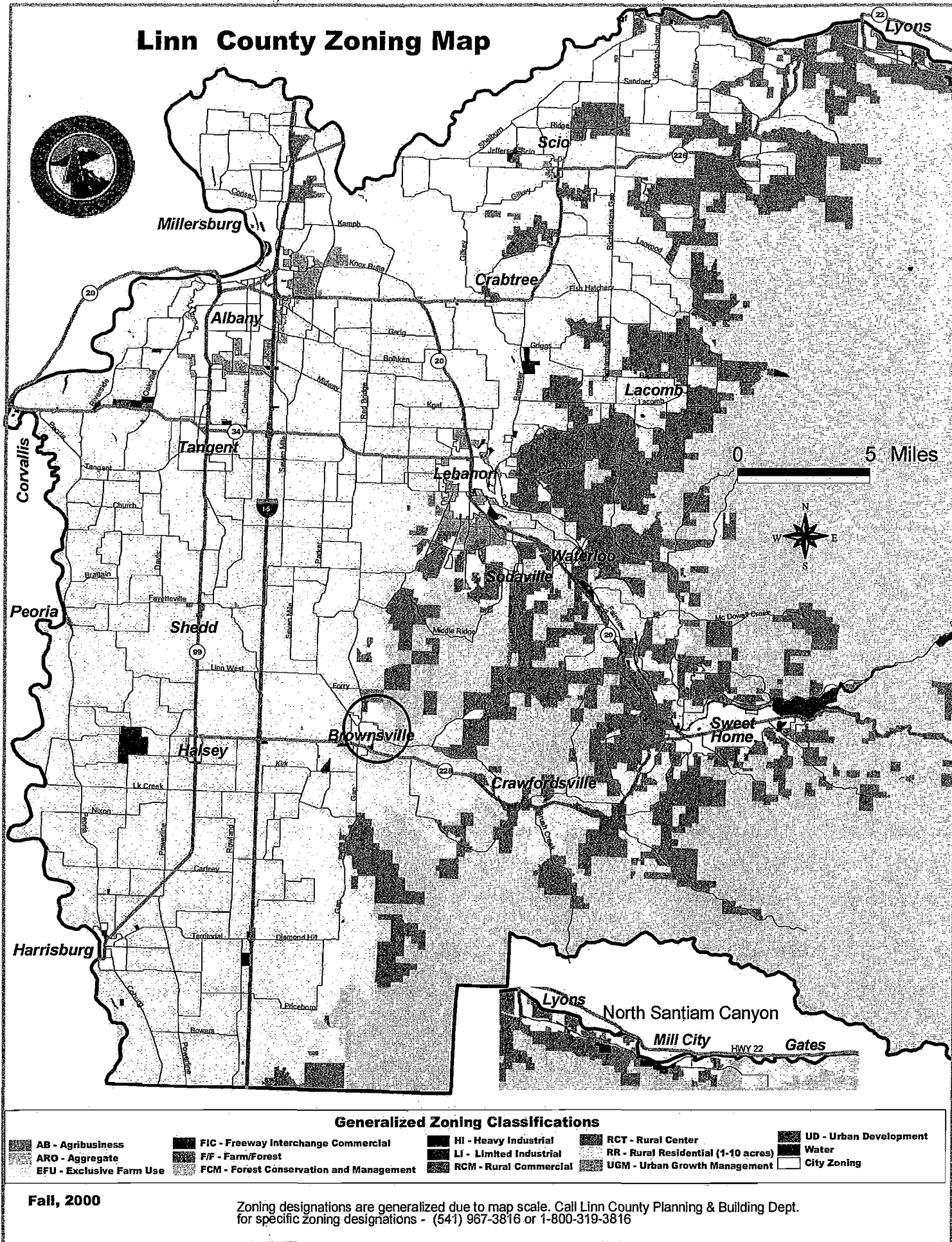
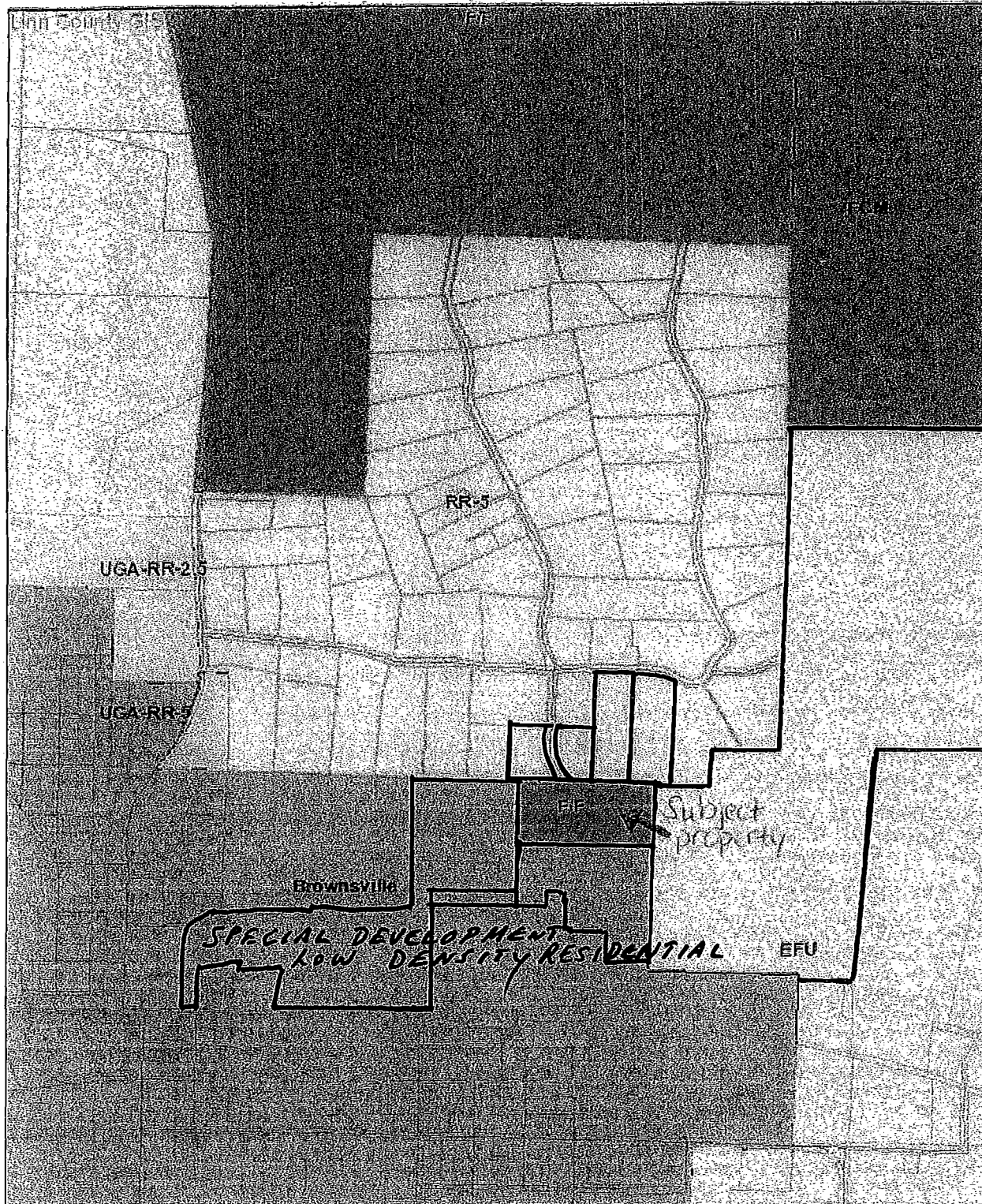
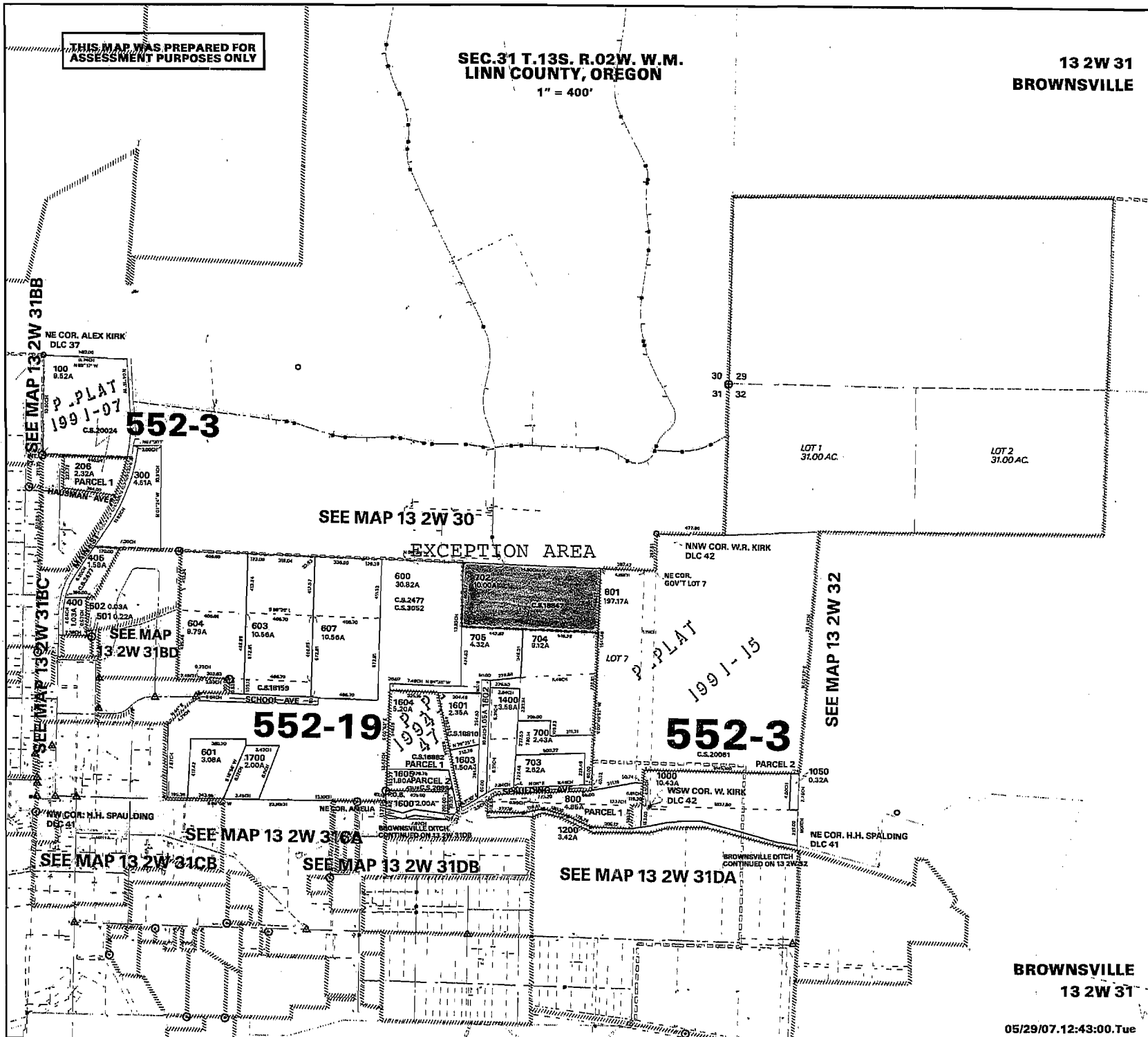
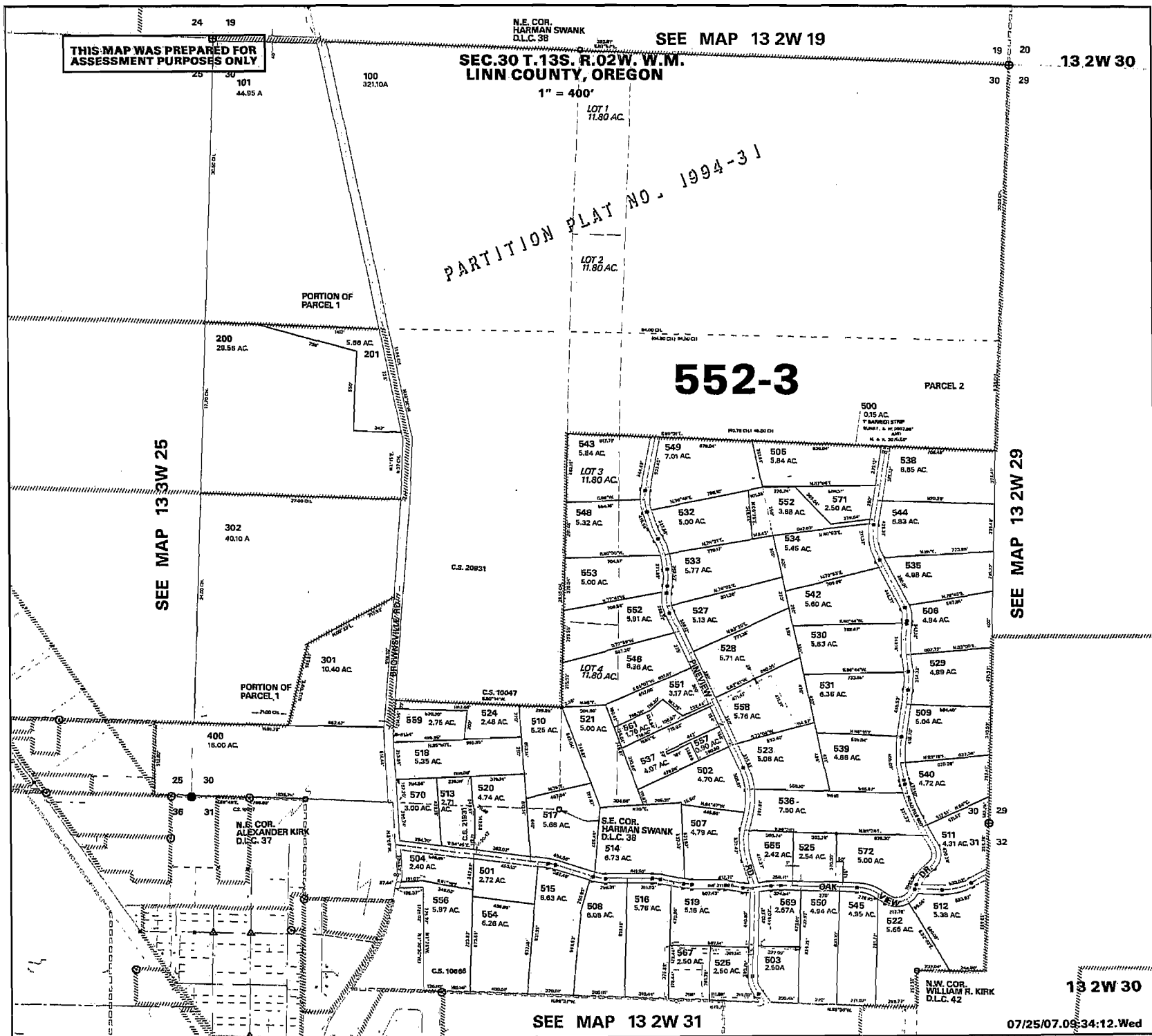


EXHIBIT 6 ZONING FOR PARCELS ADJACENT TO EXCEPTION AREA







PROPOSED COMPREHENSIVE PLAN MAP AMENDMENT
AND ZONE CHANGE

Property Owner:

Bret Jones
29404 Santiam Highway
Lebanon, Oregon 97355

Property Location:

27717 Pine View Road
Brownsville, Oregon 97327

Legal Description:

Township 13 South, Range 2 West,
Section 31, Tax Lot 702

Consultant:

Frank Walker & Associates
1480 Jamestown Street, S.E.
Salem, Oregon 97302
(503) 588-8001

June 3, 2009

Introduction

This is an application by Bret Jones to amend the Comprehensive Plan and change the zoning for a 10-acre parcel located in the Farm Forest Zone (see Vicinity Map, Figure 1). The property is located on the southern terminus of Pine View Road immediately east and north of the Brownsville, Oregon, urban growth boundary and city limits.

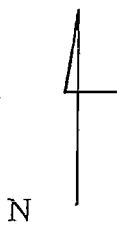
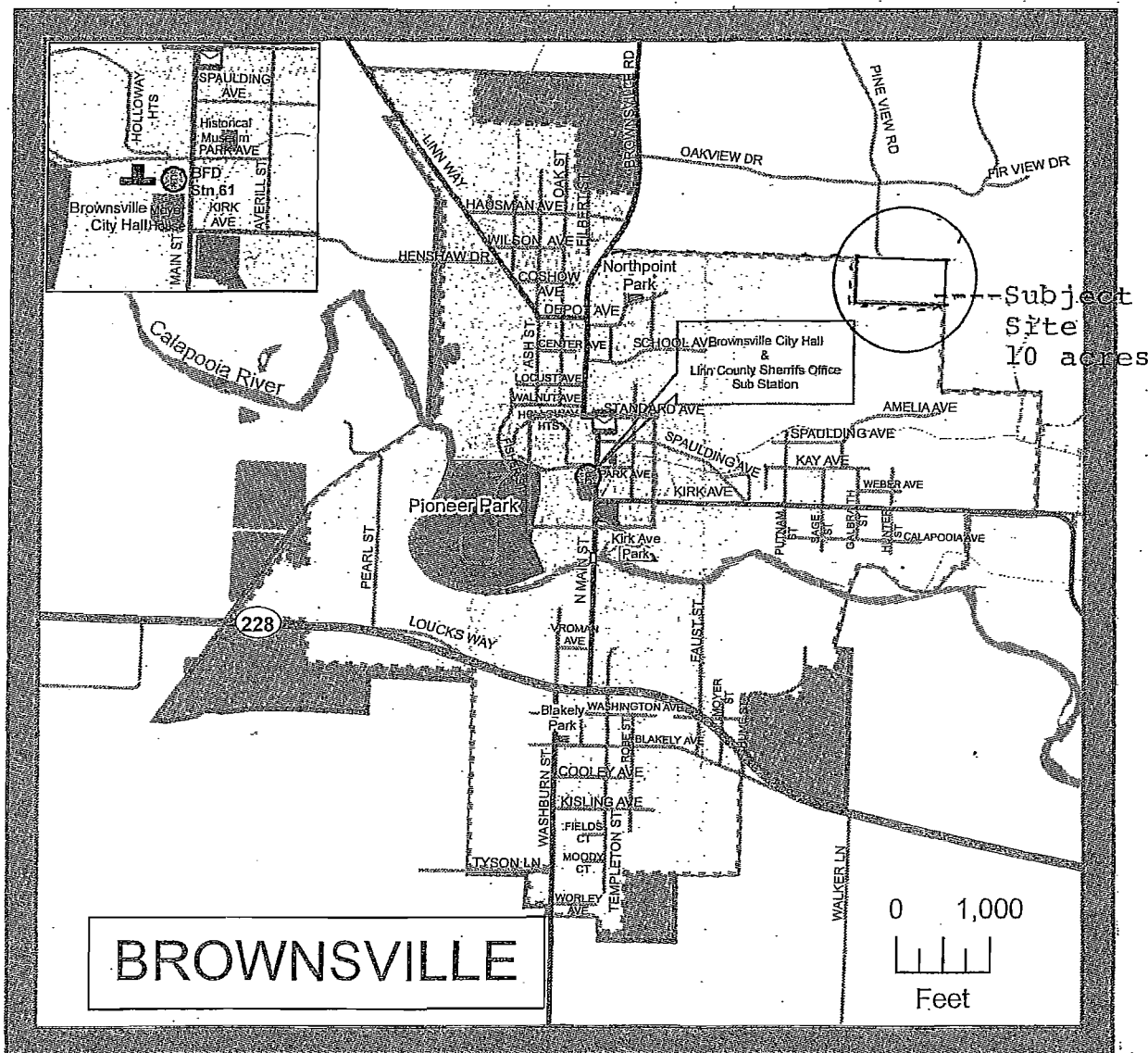
The subject property is located adjacent to the Brownsville, Oregon, Municipal Boundary, a large area of Rural Residential zoned land that has lots that average under five acres in size. A modern dwelling is located in the north/central location of the subject property. The subject property is also located very close to the Brownsville Municipal water storage facility; and, in fact, at one time this property was within the Brownsville City Urban Growth Boundary. It was removed by ordinance from the city limits, as evidenced in Appendix 1.

It is apparent from visiting the subject property that it is impacted by the presence of the large population that surrounds it. None of the surrounding properties, including those that are still in resource zoning, have any evidence of commercial resource use. The property to the east that is zoned Exclusive Farm Use contains scrubby timber land that is consistent with what is found on the subject site. Multiple dwellings (56) are located within one-fourth mile of the subject property. None of these properties have any active farming enterprises, but it is evident that they are used strictly for residential purposes. It is these external characteristics surrounding the site that make this property unsuitable for resource use. Normal and necessary forestry practices such as the aerial application of herbicides and pesticides cannot be conducted along sensitive borders to the north, south and west due to the proximity of dwellings.

The minimum lot size in the Farm/Forest Zone is 80 acres; and this property is 10 acres, or exactly 12.5% of the required minimum lot size for the zone. Normal and necessary forest

Figure 1

Vicinity Map



Scale: 1' = 2,000'

management practices that are customary with larger sites cannot be practiced at this location without having impacts on adjacent and nearby uses. The presence of dwellings in the area, as well as the dwelling on the existing property make farm and forest practices impracticable. The size of the property, in combination with the impacted areas to the north, west, northwest, and northeast has prompted this owner to seek an Irrevocably Committed Exception from Statewide Goals 3 and 4. The owner cannot practicably manage this property, which is currently devoid of any substantial commercial timber, over the next 50-year cycle given all the challenges of having so many conflicting uses nearby. For example, all of the tall, merchantable trees are very close to the dwelling on the subject property, so they are really part of the yard and dwelling compound rather than something that could be seriously considered for future harvesting.

The owner is requesting an Exception to Goal 14 in addition to the Exceptions to Goals 3 and 4 because the subject property is bordered by lands with much smaller parcel sizes.

The owner is specifically requesting a five-acre minimum lot size rather than anything smaller due to topographic and shallow soil constraints. One could envision from examining the property that four or five lots could be created if a minimum lot size of two acres were applied; but topographic constraints and poor soil conditions would likely preclude maximum build-out. A five-acre zone would allow only two developable sites; which is more in keeping with the limited groundwater resources in the area. Five-acre lots would also be consistent with the parcel sizes in exception areas north of the subject property. The average parcel size is 4.81 acres.

Approval Criteria

An Exception to Statewide Goals 3 and 4 requires an examination of all of the applicable

Statewide Planning Goals, the Oregon Revised Statutes, Chapter 660 of the Oregon Administrative Rules, and the Linn County Comprehensive Plan and Zoning Ordinances. Each of these sets of approval criteria will be addressed separately as follows.

Statewide Planning Goals and Guidelines

Goal 1. Citizen Involvement.

The purpose of this goal is to insure citizen involvement and the opportunity for the public to comment on specific land use actions. The Oregon Statutes require that notice be sent to neighbors within prescribed distances of the external boundary of the subject property. Since this property borders the Brownsville City Limits, notice will need to be sent to all property owners within 100 feet of the subject property. This goal will be fulfilled through appropriate notification to affected property owners, by posting a public hearing notice in a local newspaper of general circulation, and by posting the property with a sign within a prescribed time period prior to the first hearing date. This goal will be met.

Goal 2. Land Use Planning.

The purpose of this goal is to establish a land use planning process and policy framework as a basis for all decisions and actions related to use of the land. These guidelines were originally embodied in ORS 197.015. This statute allows local governments the option of taking an Exception to Statewide Planning Goals through an Exceptions Process. This process allows for an Exception to the Goal only if it can be proven that the land is either physically developed to the extent that it is no longer available for uses allowed for the goal or that it is irrevocably committed to uses not allowed by the applicable goal because existing adjacent uses and other

relevant factors make uses allowed by the applicable goal impracticable.

The term “impracticable” is not interchangeable with “impractical” and serves to underscore the difficulty in satisfying this requirement. Actually, the use of the legislatively-undefined term “practicable” only serves to underscore the difficulty in applying this administrative rule. The term “practicable” appears in ORS 215.705(2)(a)(C)(I), upon which most counties base their zone change criteria. No definition exists in ORS Chapter 215 or in the Oregon Administrative Rules, Chapter 660. No language exists that even hints at why the legislature elected to use this particular term. It is important to note that although LCDC insists without any reference to legislative history or other support that the terms “practicably” and “practically” do not represent interchangeable concepts a simple dictionary search reveals that “practicable” can mean “capable,” “feasible,” “possible,” “usable,” “viable,” “workable,” “serviceable,” “suitable,” “qualified,” “reasonable,” “likely,” “useful,” “inexpensive,” and contrary to DLCD’s opinion even “practical.”

Given the context of its use in ORS 215.705(2)(a)(C)(I) and its ostensible purpose of allowing an exception, and given the legislature’s reference to “less productive resource lands” in the policy statement in ORS 215.700, one can only conclude the term “practicably” best aligns with synonyms such as “feasibly,” “reasonably,” or “capably.” Each of these terms connotes rational, common sense limits to the use of land for agriculture or forestry. If these sorts of limitations were not implicit, then there would be no reason to interpose the term “practicably” in the Oregon Administrative Rules.

The area surrounding the property has a profound and measurable effect upon the lands

within the rezone area. The absence of complementarity and the inability to adapt the rezone area to accepted forest practices in the area adversely affects it. Consider the following factors when applying the term “practicability” with respect to both farm and forest practices.

Access: The subject property can only be entered through a small driveway that is at the end of a dead-end street. Even if the property could be practicably farmed and managed for timber, it would be extremely difficult to bring in any type of large-scale equipment. The only internal access road for farming and forestry has to pass within 30 feet of the residence. There is no second way in or out in any direction other than to the north. Noise, dust, odor, vibration and the inherent safety hazards are brought right to the door step of the existing residence.

Proximity to Developed Areas: The subject property is bordered on the north and northwest by highly parcelized non-resource ownerships that are developed with home sites.

The property is bordered on the west by the City of Brownsville UGB. The subject site was formerly in the UGB which clearly indicates that a non-resource future was in affect at one time. This proposal is an attempt to re-emphasize that this relatively small resource parcel is highly impacted from the surrounding urban and non-resource properties. It is this adjacency to developed areas that is prompting the owner to seek this Exception. Standard forest practices for small woodland operations still involve suppression of competing vegetation through aerial application of herbicides, pre-commercial thinning practices which include but are not limited to building temporary roadways, piling and burning slash, conducting timber operations during quiet hours, and heavy truck traffic removing timber. These practices would have to be altered in the event that someone would attempt to establish commercial timber production. These

practices are often offensive to neighboring property owners who are in proximity to commercial timber lands.

Goal 3. Agricultural Lands.

The purpose of this goal is to preserve lands that are necessary for the production of food and fiber. The subject property contains only one soil, and that is the Ritner cobbly silty clay loam. This soil does not meet the statutory definition of farm land for Western Oregon because it is Site Class VI. The property is not used in conjunction with other farming operations either.

Goal 4. Forest Lands.

The purpose of this goal is to conserve lands for forest use. Forest lands are lands composed of existing and potential forest lands which are suitable for commercial forest uses. These forest lands can also be necessary for watershed protection, wildlife and fisheries habitat, recreation, and buffers. Forest uses are specifically for the production of trees and the processing of forest products. No such use has ever taken place here.

The most appropriate species for planting are Ponderosa pine and Douglas fir, but according to the Soil Survey for Linn County Area, Oregon, this particular site has an exposure factor that results in generally greater mortality than timber lands that receive greater protection further to the east. According to the Survey, "the droughtiness of the surface layer increases seedling mortality, especially on south- and southwest-facing slopes." The Soil Survey further states that "The large amount of rock fragments in the soil limits seedling survival." Because of this, the adjusted 50-year site curve results in a mean site index of 100 rather than 130, as published in the Woodland Management and Productivity Tables in the Soil Survey. The soils

on the subject property are only 55% as productive as the best commercial timberlands in Linn County.

The timber at this location is altered by strong coastal winds in the most exposed locations, and because of this the amount of merchantable timber is comparatively less than one would find at a more protected site. Windthrow hazard, uprooting of trees during major storm episodes, and damage from other trees resulting from windthrow collectively define a site that is more marginal for commercial timber production. The Douglas fir timber site class index for this property is 100 on the basis of a 50-year site curve. While this site is not considered marginal for Douglas fir, it has a lower site index than almost all commercial timberland in Linn County. The timber is typical of low foothills to the Cascade Range where the soils are highly erodible.

The forest goal is clear: that forest lands are those that are suitable for commercial forest uses, and the owner clearly believes that this land is not suitable for commercial harvesting because of poor tree quality and also because a substantial portion of the property is not in timber production. No prudent investor would seriously consider this particular property with an intent of making a profit in money from the timber. This site requires extraordinary preparation to deal with compaction, seedling mortality, exposure, and thin, rocky soils. In addition commercial forest practices would be hampered due to their potential adverse impacts on adjoining non-resource properties with residences.

Goal 5. Open Spaces, Scenic and Historic Areas, and Natural Resources.

The purpose of this goal is to conserve open space and scenic and natural resources. The subject property does not contain any scenic, natural or historic resources nor is it close to any

such areas. No archeological resources are known to exist on the site and though the property is scenic, it does not have scenic qualities that necessitate conservation.

None of the twelve categories listed under Goal 5 protection are located in or adjacent to the subject property.

Goal 6. Air, Water and Land Resources Quality.

The objective of this goal is to maintain and improve the quality of the air, water and land resources of the area. This proposal is already in an impacted area with respect to the above-referenced resources. The addition of one potential dwelling on the subject property is not of a great enough magnitude to significantly degrade these qualities. The issue of water quality is the foremost issue with respect to this property because on-site sewage disposal systems will be required. The shallow depth to parent material that results in blow overs and windthrown tops may also limit the potential for standard serial distribution for on-site systems for sewage disposal. Some preliminary examinations for one potential site appear favorable.

This goal can be met through the careful testing and placement of sewage disposal systems.

Goal 7. Areas subject to Natural Disasters and Hazards.

The objective of this goal is to preserve life and property from natural disasters and hazards. The majority of this property is free from geologic hazards and there are no flood hazard areas at all given the hilltop location of this site. The isolated steeply sloping areas on the site will be avoided for dwelling placement.

The subject property is also devoid of wetlands, mine subsidence or any other hazard that

would limit or prohibit improvements. The majority of the upland area is not steep enough to be concerned about geologic hazards and no flooding occurs anywhere on the site because there are no streams or ditches.

If dwellings are permitted they would need to be sensitively placed to avoid being constructed in fire chimneys or on slopes exceeding 25 percent.

Goal 8. Recreation Needs.

The purpose of this goal is to satisfy the recreational needs of the citizens of the state. This property lacks the appropriate characteristics to be utilized for recreational activities even though it is a relatively close distance to Foster Dam and other recreational activities.

Goal 9. Economy of the State.

The objective of this goal is to diversify the economy of the state through the creation of sustained employment. This proposal would create temporary construction jobs but would offer little in the way of permanent employment.

Goal 10. Housing.

The Goal is to provide for the housing needs of the citizens of the state of Oregon. This goal calls for the establishment of affordable housing for different income levels. This project would fill the need for additional rural residential housing.

Goal 11. Public Facilities and Services.

The purpose of this goal is to plan and develop the timely, orderly and efficient provision of public facilities and services. This proposal would require no services over and above those that currently exist. The property already has a public road frontage that can be adapted for a

new or improved access. No sewers would be required because septic systems will be used that are independent from the public sewers. Water will be provided by individual or shared wells rather than by a domestic water cooperative or city water.

This proposal scores high on this Goal.

Goal 12. Transportation.

The objective of this goal is to provide and encourage a safe and convenient transportation system. The subject site already has public frontage on Pine View Road. Modifications to the access will be required to meet sight distance and grade but the potential traffic generation in any event will not create more than 9.5 trips at a maximum buildout of 1 residential dwelling.

The number of trips is not high enough to warrant a Traffic Impact Study because the Oregon Department of Transportation has a 600 daily trip limit threshold and a 100 trip increase in the am/pm peak hours. The potential traffic increase reaches neither of those benchmarks.

Goal 13. Energy Conservation.

The purpose of this goal is to maximize the conservation of forms of energy. One of the implementation strategies written into this goal is to increase the density of uses, particularly those that relate to housing densities. This proposal will be consistent with this goal.

Goal 14. Urbanization.

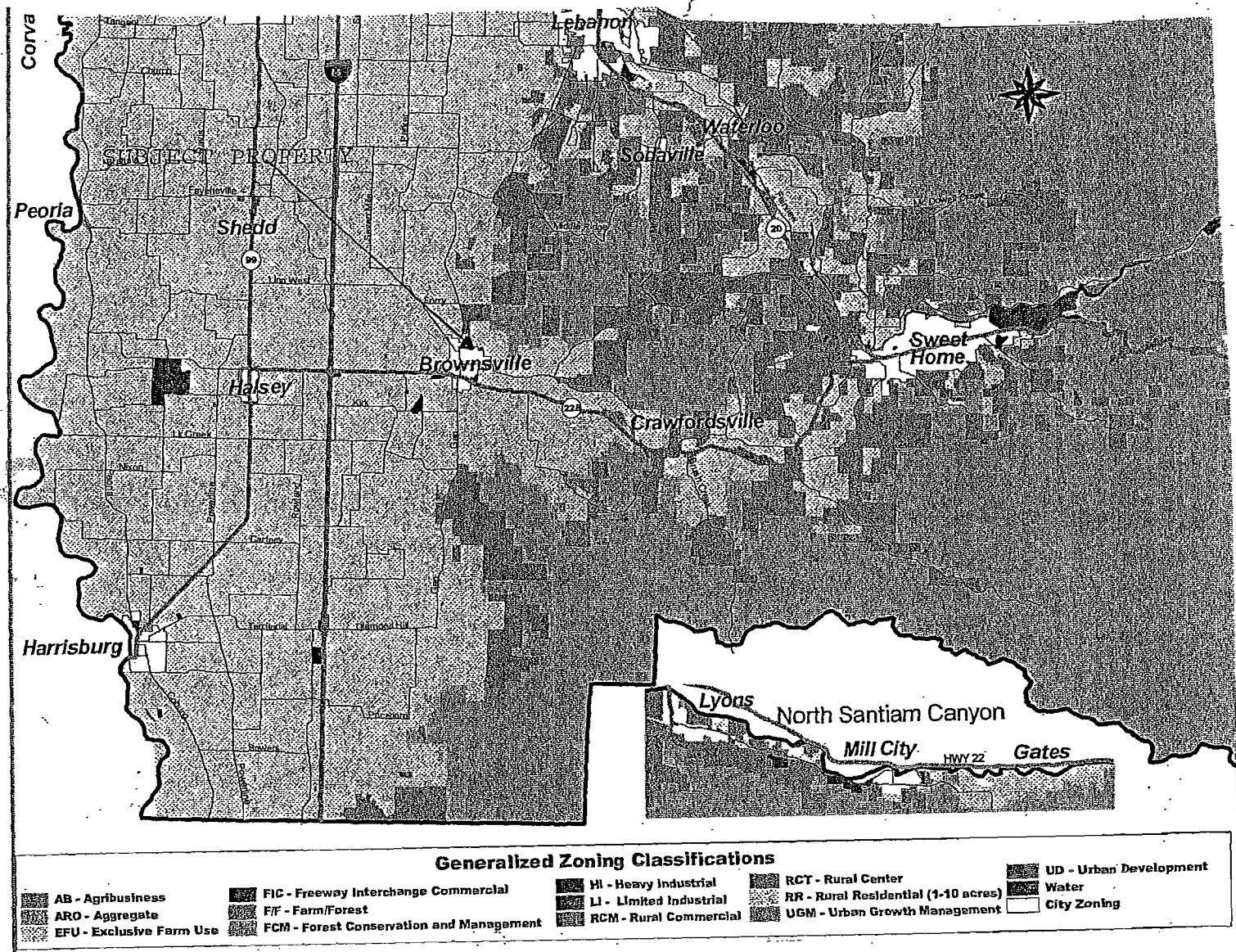
The purpose of this goal is to provide an orderly and efficient transition from rural to urban land use. The establishment and change of the boundaries between rural and urban are

based upon consideration of seven factors, one of which is to establish maximum efficiency of land uses within and on the fringe of the existing urban area. The subject property is such a property. Another factor to be considered under Goal 14 is the compatibility of the proposed urban uses with nearby agricultural activities. The original goal language does not include compatibility with forest uses. This request is not to place land within the urban growth boundary but rather to allow for rural residential use near the perimeter of the urban growth boundary and the city limits of Brownsville, Oregon. According to the guidelines in goal 14, plans should designate sufficient amounts of urbanizable land to accommodate the need for further urban expansion taking into account the growth policy of the area, the population needs by the year 2000, the carrying capacity of the planning area, and the open space and recreational needs. The subject property was formerly in the Brownsville Urban Growth Boundary but was removed by ordinance. The inclusion of this land as an exception area near the urban growth boundary will allow for the orderly and efficient transition from forest uses to rural residential uses without truly being urban since the prospective lots or parcels to be created will not require urban services such as storm drainage, sewer, water, and police protection. Other services provided by Linn County would continue under this proposal.

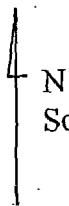
An examination of the parcelization in the area clearly shows that a parcel size less than 10 acres can be justified under this exception criterion. Significant areas of rural residential one-acre, two-acre, and five-acre lots are located north of the subject property. The addition of this property to the rural residential inventory of the area is consistent with the pattern shown in Figure 2, Area Zoning Map.

Figure 2

Zoning Map for Subject Property and Surrounding Area



SMALL DOT AT THE END OF THE ARROW IS THE SUBJECT PROPERTY. IT APPEARS TO BE THE SMALLEST FF ZONED PARCEL IN LINN COUNTY THAT IS NOT CONTIGUOUS TO OTHER FF ZONED PARCELS.



Source: Linn County GIS

Scale: 1" = 5 Miles

Administrative Rule chapter 660-04-028. A Committed Exception is an exception taken in accordance with ORS 197.732. Each criterion for a Committed Exception must be judged against the criteria in OAR 660-04-028(2)(a) through (d).

660-04-028(2)9a) The Characteristics of the Exception Area.

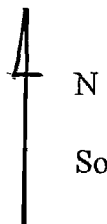
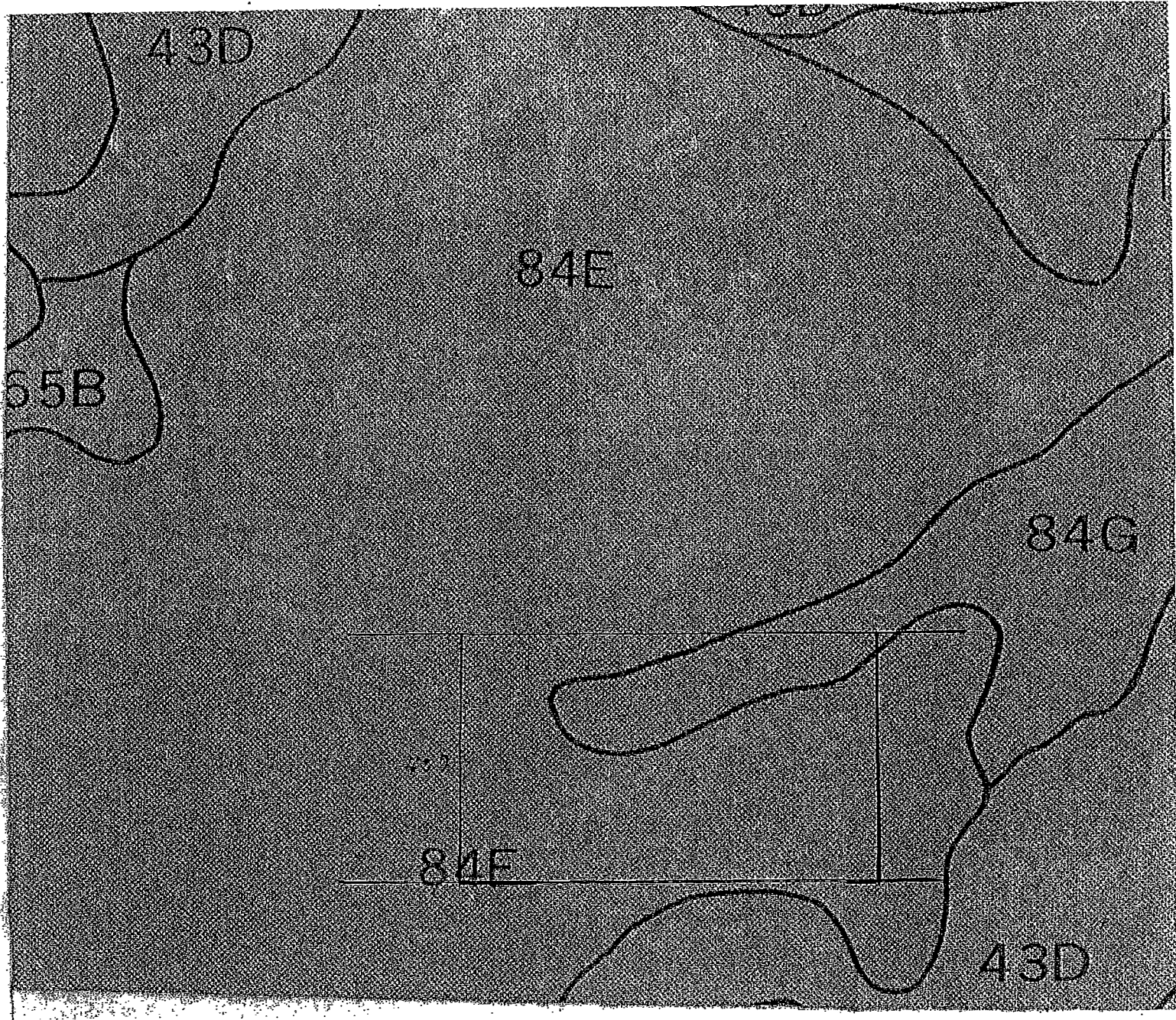
Access - The subject property has frontage on a small county road named Pine View Road. The existing access is from a driveway that originates at the end of Pine View Road. The potential addition of one dwelling at the end of Pine View Road should not necessitate any type of a large improvement; it simply is not warranted and any decision regarding this should be considered in a partitioning rather than a zone change application.

Soils - According to the Soil survey of Linn County Area, Oregon, one principal soil mapping with two variants dominates the entire site. The soils are mapped as a Ritner cobbly silty clay loam with the only variation being steepness of slope. The 84E soil is mapped as a class VI soil with slopes ranging from 2-30 percent, while the 84G is class VII with soils ranging from 30-60 percent. Neither of these soils meet the statutory definition of farm soils for Western Oregon according to Chapter 660 of the Oregon Administrative Rules.

Permeability is moderately slow in this mapping unit, and the effective rooting depth is 20-40 inches due to the presence of bedrock. This shallow depth to bedrock is the single most limiting factor to the establishment and production of commercial timber. A description of these two mapping units is provided in Appendix 3 of this report. The distribution of these soils are shown in Figure 3 for Soil Mapping Units.

Topography - Topography on the site is highly variable, ranging from nearly level (2%)

Figure 3
Soil Mapping Units



Scale: 1" 400' (Approximately)

Source: Soil Survey for Linn County Area, Oregon

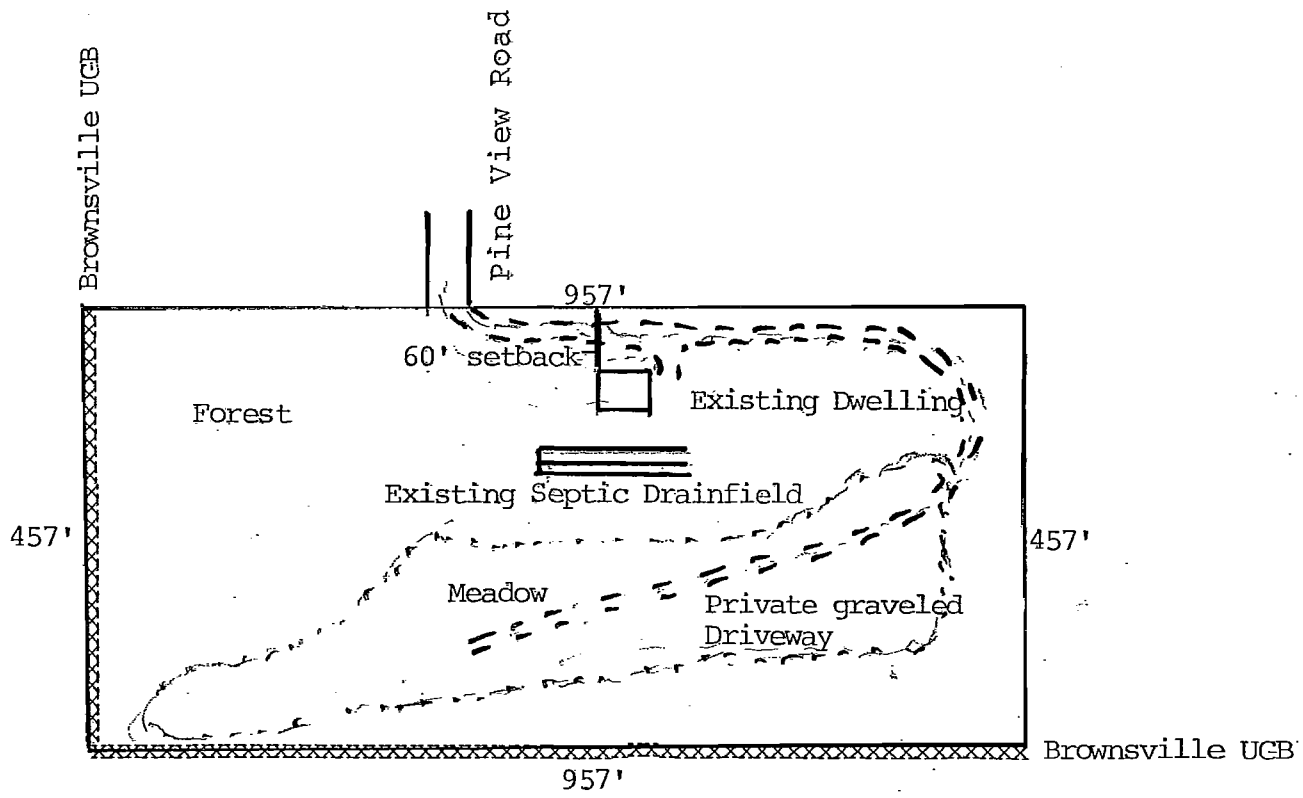
to in excess of 60 percent. Slope aspect is predominantly to the south and west, though there are some isolated and small east-facing slopes. The slopes in the vicinity of the dwelling are amongst the most level on the entire site even though there are some small benches at different locations. There is no large enough level area to be large enough for a farm field even taking into account the extremely poor non-farm soils.

The steep slopes are also very problematic for timber production because the steepest areas cannot be traversed by wheeled logging machinery. The property is not large enough to warrant high lead logging, yet the slopes are sufficiently steep to justify it. The practices that must be employed on this property are not the most efficient for managing forest land but are somewhat typical for small ownerships: This property would have to be logged with ground equipment such as articulated skidders or a cat capable of handling full bucked sections of trees. Ground operations are more environmentally damaging than use of a tower. The topography also influences how operators treat logging roads on the site. Because the topography is so steep on the south side of the site, the logging roads must be closer to the residence on the property. This would increase noise, dust, and vibration and result in log trucks having to pass within 25 feet of the residence

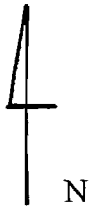
Both of the soils on the property are susceptible to compaction from heavy ground equipment, including processors. Consequently, using standard wheeled and track equipment results in rutting and compaction. The Soil Survey for Linn County Area, Oregon, devotes considerable text to practices that will safeguard against all of the impacts from ground based logging. The Soil Survey even mentions using low-pressure ground equipment to minimize

Figure 4

Site Plan for Subject Property



Frank D. Walker
Frank Walker & Associates
1480 Jamestown St., S.E.
Salem, OR 97302
(503) 588-8001



Scale: 1" = 200'

East: A 197.7 acre EFU-zoned parcel directly borders the property and is currently managed for farm and forest use. This property is reached from roads farther to the south and has no access from the north as the subject property does.

West: A 30.82- acre parcel within the Brownsville UGB forms the entire western boundary. Within this property are municipal water facilities for Brownsville. This site has no residential improvements.

In summary, a finding can be made that one adjoining parcel has resource use and that the common boundary is heavily timbered with poor quality timber. The evidence clearly points to the fact that the subject property is more similar to the lands that are non-resource zoned than to the sole property on the east that is in resource use (EFU).

660-04-028 © The relationship between the exception area and the lands adjacent to it.

The relationship of a resource-zoned parcel to those parcels adjacent to it can have a profound effect on the success of either a farming or forest operation because roads can be shared, practices can be conducted on a more extensive scale, and even equipment can be shared. Properties that are similarly zoned and free of impediments can carry out forest management activities freely without fear of lawsuits or paying damages to adjoining owners who feel aggrieved by logging procedures. The subject property has no such benefits with the surrounding properties because they are small and principally used for rural residential purposes even though one of them (east of subject property) is zoned for resource use. The subject property is a small management unit when taking into account the minimum lot size for the zone (80 acres and 160

Existing adjacent uses are:

North: Five RR-5 zoned parcels with a residence on each

Northeast: Two more RR-5 zoned parcels with a residence on each.

East: EFU- zoned parcel consisting of 197 acres. The common boundary with the subject property is in timber and areas to the southeast and east are in open meadow and pasture.

South: Two parcels (4.32 and 9.12 acres) in the Brownsville UGB that both have residences. Neither of the parcels are in resource use.

West: The property forming the entire western boundary is in the Brownsville UGB and contains the Brownsville water reservoir.

(b) Existing public facilities and services (water and sewer lines, etc.).

The only public facility serving the subject property is Pine View Road. Water, sewer and storm drainage from Brownsville do not reach the subject property, nor are any of these services available through a rural service provider.

Police and fire protection are provided by the Linn County Sheriff's Office and the Brownsville Fire District. The subject property is served by the Central Linn School District.

(c) Parcel size and ownership patterns of the exception area and adjacent lands.

The parcel size and ownership pattern for the exception area and adjacent lands are as follows:

SUBJECT PROPERTY: 10.0 acres

12 2W 30 Tax Lot 567 2.5 acres with dwelling

12 2W 30 Tax Lot 526 2.5 acres with dwelling

12 2W 30 Tax Lot 503	2.5 acres with dwelling
12 2W 30 Tax Lot 550	4.94 acres with dwelling
12 2W 30 Tax Lot 545	4.95 acres with dwelling
12 2W 31 Tax Lot 704	9.12 acres with dwelling
12 2W31 Tax Lot 705	4.32 acres with dwelling
12 2W 31 Tax Lot 600	30.82 acres with municipal water reservoir
12 2W 31 Tax Lot 801	197.17 acres

This criterion requires consideration of parcel size and ownership patterns, including an analysis of how the existing development pattern came about and whether findings against the goals were made at the time of partitioning or subdivision. A finding can clearly be made that the subject property was not partitioned or subdivided at the time of goal implementation but rather that it was a pre-existing legal lot of record.

The parcelization pattern was very similar to how it exists now at the time of Comprehensive Plan Adoption.

Decision Criteria for Zoning Map amendments

921.822 Decision Criteria for Zoning Map amendments

(A) When a Zoning Map or Land Development Code text 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 provisions.

Pursuant to this provision of the code, the application will only make findings and

conclusions for the Comprehensive Plan amendment criteria.

(B) Except as stated in subsection (A) and LCC 921.824, a Zoning Map amendment from one zoning district to another may be granted if on the basis of the application, investigation, testimony and evidence submitted, findings and conclusions show that all of the following conditions exist:

(I) The presence of development limitations including but not limited to geologic hazards, natural hazards, water quality and quantity and septic suitability, do not significantly adversely affect development permitted in the proposed zoning district;

The key word with respect to this criterion is “significantly” adversely affect development permitted in the RR-5 zone. The slope ranges for the Ritner cobbly silty clay loam are 2 to 30 percent where the 84E soil unit is mapped. The property does contain a few level benches where a potential dwelling could be located without it being in a geologic hazard zone. A significant portion of the subject property is clearly too steep for development, including driveways, drainfields, and dwellings. The soils map included in this report best represents where development should and should not occur based on the soil mapping units. The 84E soil clearly has areas that are suitable for dwellings, drainfields, and driveways.

The only other natural hazard on the property is the potential for wild land fires originating from downslope locations. Fortunately, the subject property does not have any distinct draws that would act as fire chimneys. The potential for wild land fire hazard is also reduced by the fact that a large field on the property acts as a fire break between the mixed conifer forest where the 84G soil is mapped and the oak fir forest located in the northern half of the subject property.

The subject property likely has enough water to support one additional dwelling based on

an examination of well log records within the surrounding area. The subject property is not within an identified groundwater limited area, but it is known that some residents in Section 31 to the north have water quantity problems during the late summer. These issues are usually quickly resolved because property owners make adjustments in their consumption patterns. The owner of the subject property is a well driller by profession and would be able to establish adequate water supply through various techniques, including a potential shared well, and by storing water to assure that it is available during periods of low flow.

The property owner has submitted and obtained an approval from the Linn County Department of Health Services for a standard serial distribution system. The approval documents and map are contained in Appendix 4 of this report.

- (2) The amendment will result in a development pattern having no significant adverse impact upon transportation facilities, police and fire protection, storm drainage facilities or the provision of other regional public facilities.

This proposal rates very strongly for this criterion. Pine View Road south of Oak View Drive only serves three residences. The addition of one residence is not enough to warrant any type of a significant impact on this transportation facility.

Fire protection impacts can be mitigated through appropriate siting of dwellings and the use of fire-resistant and fire-retardant building materials. The local fire protection services can also be facilitated through appropriate addressing of the subject property and any potential additional lots. Fire protection can also be enhanced by establishing protection zones around the dwelling, similar to what is employed in resource zones. The Linn County Sheriff's Department will continue to provide law enforcement services to the subject property and the surrounding

an examination of well log records within the surrounding area. The subject property is not within an identified groundwater limited area, but it is known that some residents in Section 31 to the north have water quantity problems during the late summer. These issues are usually quickly resolved because property owners make adjustments in their consumption patterns. The owner of the subject property is a well driller by profession and would be able to establish adequate water supply through various techniques, including a potential shared well, and by storing water to assure that it is available during periods of low flow.

The property owner will be submitting a request to Linn County for on-site sewage disposal testing as part of this application. Based on the existing system approval on the property, it appears that an adequate site for on-site sewage disposal can be established.

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area.

Storm drainage facilities are not connected to this area and are not necessary where there is no means of conveying storm water runoff. Nevertheless, storm water from any proposed dwelling could be detained in soaking trenches, french drains, or detention sloughs if, in the opinion of the building official, these are necessary. Any prospective dwelling on the property could be designed with storm drainage management being incorporated into the overall building design.

(3) The amendment will result in a development pattern compatible with uses on nearby lands and will have no significant adverse impact on the overall land use pattern in the area;

This proposal has extreme conformity to this criterion. The rural residential zoned area north of the property has 64 ownerships within a 308.8-acre block, with an average parcel size of 4.81 acres. This proposal to rezone the area to RR-5 will be compatible with the average parcel size of this entire area. One property to the south of the subject property is 4.32 acres which is also compatible in terms of development pattern (parcel size).

Because of this, the proposal to establish five acre parcels is compatible with similarly situated properties on both the north and south. The RR-5 zoned block to the north is surrounded on three sides by resource zoned parcels and resource uses whereas the subject property only has one small common boundary with resource zoned land.

No "significant" impact should occur as a result of this action because this area is already heavily impacted by other non-resource zoned properties, namely the 64 ownerships to the north and 2 ownerships to the south.

(4) The amendment is consistent with the intent and purpose statement of the proposed zoning district;

The property owner's representative carefully examined the Linn County background statements and policies contained in Sections 905.400 and 905.420. The one repetitive theme that occurs throughout the six pages of background materials and policies is that Linn County shall provide an adequate supply of buildable land for rural residential use (905.420(B)(1)). The second major premise is that an RR-5 District needs to be applied to areas which are adjacent to an urban growth boundary or applied to areas which are considered to be urban influence areas. The subject property unquestionably conforms with this policy direction. In fact, under 905.420(15), the code states: "Within an urban influence area, the minimum property size standard will generally be five acres." The code further states that a five-acre minimum property size standard is applied to urban influence areas to maintain a rural development pattern which is convertible to urban densities at some time in the future. The subject property has already been in the Brownsville Urban Growth Boundary but was removed by an ordinance. It is difficult to envision how a property could be more qualified for a redesignation to rural residential based on the urban influence factor. Not only does it border urban areas on two boundaries, but it was formerly in an urban area. The code states that it is the intent of the plan not to permit large, rural communities in the exception areas, and this is clearly not the case with the subject property. If this property were to be rezoned to rural residential, it would become part of a 308.8-acre rural residential zoning district.

(5) The amendment is consistent with the existing Comprehensive Plan map designation.

The whole purpose of this application is to demonstrate that the proposed comprehensive plan designation for rural residential land is more appropriate than is the current designation.

The subject property characteristics are not supported by all of the policies contained in LCC 905.330 for farm/forest land.

These above-referenced policies open up the argument that some Farm/Forest lands could be redesignated on the comprehensive plan if the property owner submits evidence that the property is clearly not protected by one of the goals {{ 905.330 (G)}}. In this case Goal 3 protections are negated by the fact that none of the soils on the subject property meet the statutory definition of farm land for western Oregon. The property has no documentable history for any type of agriculture including livestock. The cleared land within the site, which is approximately three acres, has never been cultivated or grazed.

The evidence for maintaining the land for Goal 4 protection is relatively weak considering the following factors:

1. The subject property has low quality, mixed species timber, with a 50-year growth cycle and a mean site index of 100. The mean is an average which suggests that the site index could be lower.

2. The relatively low site index is due to the shallow depth to bedrock of the Ritter cobbly silty clay loam.

3. The shallow depth to bedrock and wind exposure results in a higher than normal windthrow damage. Trees that are damaged directly by windthrow also correlate strongly with trees that have fungus rots or other defects.

4. The inherent soil limitations also results in blow downs which damage other standing

timber. The damaged trees are graded down and cannot command as much value at the mill.

5. According to the Soil Survey for Linn County Area, Oregon (Page 131 right column) this site has the following limitations:

- Low site index
- Erosion hazard
- Equipment limitations
- High seedling mortality
- Windthrow hazard
- Plant competition
- High erosion potential
- High capital outlay to minimize erosion
- Sticky and plastic soils when wet
- Compaction (seriously reduces productivity)
- Droughtiness of surface layers
- High stone content

6. The property has no history through the Oregon Department of Forestry (Sweet Home Office) of having been issued a harvesting permit for timber.

7. The existing timber on the site contains trees with broken tops, excessive kerf and taper, rot and other defects that lower the value of the timber.

8. The net usable area for timber is approximately half the site (5 acres) after excluding the 1-acre dwelling compound, open meadows, roadways and obvious rock outcrops.

In light of all of these factors, it is difficult to manage this site for the production of timber. The main values of the timber becomes those associated with watershed and wildlife protection rather than commercial timber production. These values can also be achieved through the Rural Residential Zone.

A prudent investor would not seriously consider this property for commercial timber production. The Goal 4 protection would be for reasons other than economic in this particular case. The justification for maintaining Goal 4 protection would have to be for watershed and wildlife protection only.

(6) The amendment will not have a significant adverse impact on a sensitive fish or wildlife habitat; and

The subject property does not lie within a sensitive fish or wildlife habitat because it is so impacted by urban uses. This criterion requires a finding that no "significant" adverse impacts

would occur to sensitive fish or wildlife. In this particular case the subject property is located on a ridge line where streams are absent; consequently, sensitive fish habitat is not an issue. Other wildlife is already impacted by the presence of houses, roads, and fenced compounds that limit their mobility. This is a highly impacted area for wildlife habitat.

(7) The amendment, if within an adopted urban growth boundary, is consistent with the Comprehensive Plan and implementing ordinances of the affected city.

The subject property is not within an urban growth boundary but was, at one time, in the Brownsville UGB. It was removed from the UGB by an ordinance that is contained within Appendix 1 of this report.

971.862 Types of amendment applications

(D) A separate application to amend the Plan map shall be required for each proposed map designation. Approval of an application shall not mandate approval of other applications. The application may be consolidated for public hearing purposes if the applications are interrelated and consolidation would expedite their review.

This request is for a Map Amendment from Farm/Forest to Rural Residential.

921.864 Application procedure

(A) An application may be filed seeking an amendment to the Comprehensive Plan if the application complies with the applicable requirements of LCC 921.002 to 921.499. The Department shall not accept an application for amendment of the Comprehensive Plan if incomplete or incorrect information has been submitted or if the applicant has failed to attend a pre-application conference with the planning staff.

All of the information submitted is based on an analysis of the Linn County Code.

921.866 Fees

(B) Fees for amendments.

(1) If a Comprehensive Plan amendment necessitates a Zoning Map amendment, only the Comprehensive Plan amendment fee shall be charged.

(2) In addition to the filing fee, the applicant shall be assessed the cost of Research, duplication and mailing of public notices to affected persons at a rate of \$1.50 per required notice.

The amount of the fee will be determined at the pre-application conference. The tentative amount for the fee is \$1,413.50 unless a fee increase has become effective after July 1, 2009.

921.874 Decision criteria for Plan map amendments

(A) To approve a plan map amendment, findings shall be made that:

(1) The amendment is consistent with and does not alter the intent of the applicable section(s) of the Comprehensive Plan;

This criterion has been addressed previously in this report. The application of the Farm/Forest Zone to the subject property is not a good fit given the highly impacted nature of the area and the serious site limitations for resource use which have been described in previous text.

(2) The amendment will be compatible with adjacent uses and will not adversely impact the overall land use pattern in the area;

The proposed amendment demonstrates strong conformity with this issue since this is the sole farm/forest parcel in a much larger non-resource area. The only other resource parcel that is adjacent to the subject property is 197 acres and is zoned EFU. This property is much more compatible in terms of size and impact of development to those properties located in the City of Brownsville and those located within the RR-5 Zone to the north. A positive finding can be made that the amendment will be compatible with adjacent uses, particularly in light of the fact that this property was formerly in the Brownsville UGB.

(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;

The amendment is not within an urban growth boundary but is adjacent to it on the west and south. It needs to be repeated that this property was once within the Brownsville UGB because officials felt that it was more appropriately placed within the City.

- (4) The amendment will not have a significant adverse impact on a sensitive fish or wildlife habitat;

This criterion has been addressed previously in this report, and a positive finding can be made that the subject property is already within a wildlife-impacted area.

- (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;

No greater impacts to public services will exist after development than before.

- (6) The amendment will not have a significant adverse impact upon the transportation facilities;

Pine View Road dead-ends at the subject property. Only three dwellings currently use Pine View Road south of Oak View Drive. The possible addition of one more dwelling will not significantly impact Pine View Road.

- (7) The presence of any development limitations including geologic hazards, flood hazards or water quality or quantity will not have a significant adverse effect on land uses permitted through the amendment;

This criterion was addressed previously, and a positive finding can be made that there are no identified geologic or flood hazard areas within the site that would be considered for dwelling placement. Water quality and quantity should be assured through either a shared well program or other measures to extend the groundwater resource in the area.

- (8) An exception to the statewide planning goals is not required. If required,

the findings have been prepared to meet the exception criteria; and

Exceptions to statewide Goals 3, 4, and 14 are required, and findings in support of all three goals have been made previously in this report. In summary, an Exception to Goal 3 can be justified on the basis that the land does not meet the statutory definition of farm land for Western Oregon. An Exception to Goal 4 can be justified because the property has an extreme number of limitations for commercial timber production and high impacts to other forestry values such as watershed and wildlife protection because the area is already impacted by urban and rural development. Goal 14 can be justified by the fact that the 308 acres north of the subject property is already divided into 64 individual ownerships, most of which have dwellings situated upon them.

(9) The amendment is consistent with the statewide planning goals.

This report has already addressed all applicable statewide planning goals, and findings were made that the proposed amendment is consistent with all applicable goals.

Comprehensive Goals and Policies for Linn County

1. Plot Plan.

Figure 6 Plot Plan shows the location of existing and proposed property improvements including but not limited to the dwelling location, driveway, domestic well and drainfield for on-site sewage disposal. Meadows and woodlands are differentiated and steeply sloping areas are also shown.

3. Written narrative addressing LCC 1.1235 including:

A Is the requested change in accordance with the Comprehensive Plan goals

and policies and state-wide planning goals?

This criterion has been addressed previously in this report, and findings were made that the change is in accordance with the Comprehensive Plan goals and policies and statewide planning goals.

B. Why the proposed zone change meets at least one of the following criteria:

- 1) There has been a substantial change of the character of the area around the subject property since zoning was adopted and
- 2) The zoning previously adopted for the zone was in error.
- 3) There is a public need for the zone change being sought.
- 4) Other information as determined by the staff.

This proposal is based on the premise that the zoning previously adopted was in error. As stated previously throughout this report, the subject property has no justification for being placed in a farm protection zone based on extreme soil limitations. The same factors that limit agricultural use also limit timber use except that more factors than just soil classification limit timber production. Twelve factors from the Soil Survey of Linn County Area, Oregon, that limit timber production all apply to the subject property. The collective impact of these 12 factors render the property nearly useless for any type of commercial timber production. The argument, then, shifts to the protection of the land for values other than for commercial purposes, namely wildlife and watershed protection. This area is clearly impacted with respect to wildlife protection given the number of homes, streets, yards, driveways, and fencing. The impacts to wildlife and watershed protection would not change appreciably with the addition of one home.

It is also difficult to justify an exception to Goal 4 based strictly on wildlife and watershed protection issues. The argument, therefore, is that the property should have been left in the Brownsville UGB rather than zoned Farm/Forest. A more appropriate designation at the time would have been to zone it Rural/Residential because that is exactly what the property's function is. This exception would correct the past zoning error.

LINN COUNTY PLANNING & BUILDING
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ALBANY, OR 97321

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