



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

9/1/2010

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

FROM: Plan Amendment Program Specialist

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

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: Tuesday, September 14, 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: Bradford Sheets, Tillamook County
Jon Jinings, DLCD Community Services Specialist
Matt Spangler, 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

DEPT OF

AUG 25 2010

LAND CONSERVATION AND DEVELOPMENT

DATE STAMP

For Office Use Only

Jurisdiction: **Tillamook County**

Local file number: **OA-09-04**

Date of Adoption: **August 18, 2010**

Date Mailed: **August 24, 2010**

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

Comprehensive Plan Text Amendment

Comprehensive Plan Map Amendment

Land Use Regulation Amendment

Zoning Map Amendment

New Land Use Regulation

Other: **Ordinance Amendment**

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

This text amendment is to add "Firearms Training Facility" as defined in ORS 197.770 and implemented in OAR 660-006-0025(4)(n) as a Conditional Use within Tillamook County's Forest (F) Zone, TCLUO Section 3.004. This text amendment also includes the adoption of "Firearms Training Facility" as a generally used definition in TCLUO 1.030(A): Generally Used Definitions.

Does the Adoption differ from proposal? Please select one

Plan Map Changed from:

to:

Zone Map Changed from:

to:

Location:

Acres Involved:

Specify Density: Previous:

New:

Applicable statewide planning goals:

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

Was an Exception Adopted? YES NO

Did DLCD receive a Notice of Proposed Amendment...

45-days prior to first evidentiary hearing?

Yes No

If no, do the statewide planning goals apply?

Yes No

If no, did Emergency Circumstances require immediate adoption?

Yes No

DLCD file No. _____

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

Local Contact: **Bradford Sheets**

Phone: (503) 842-3408 Extension:

Address: **1510 – B Third Street**

Fax Number: 503-842-1819

City: **Tillamook**

Zip: **97141**

E-mail Address: **bsheets@co.tillamook.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.

Use Definitions. Commissioner Hoffman seconded the motion. The motion carried 7:0.

- (4) The Board of County Commissioners opened a de novo public hearing on the proposed Ordinance Amendment request on August 4, 2010. The hearing was properly noticed according to the requirements of ORS 197 and 215.
- (5) Oral and written testimony was received at the hearing, both in opposition and in favor of the request. After hearing all who wished to present testimony on the matter, the hearing was closed and the Board deliberated on the request.
- (6) After reviewing the Planning Commission's recommendation, the Staff report and issues raised in testimony received before and during the August 4, 2010 hearing, the record and file pertaining to Ordinance Amendment, OA-09-04, the Board made the following motion:
 - (i) I (Tim Josi) move that we amend the definition section of Tillamook County's Land Use Ordinance, Section 1.030 subsection A, as defined by ORS 197.770, "a 'firearms training facility' is an indoor or outdoor facility that provides training courses and issues certifications required:
 - a. For law enforcement personnel;
 - b. By the State Department of Fish and Wildlife; or
 - c. By nationally recognized programs that promote shooting matches, target shooting and safety."

Charles Hurliman seconded. The motion carried unanimously, all three voting in favor, 3:0.

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Tillamook County



DEPARTMENT OF COMMUNITY DEVELOPMENT
BUILDING, PLANNING & ON-SITE SANITATION SECTIONS

1510 – B Third Street
Tillamook, Oregon 97141
www.tillamook.or.us

DEPT OF
AUG 27 2010
LAND CONSERVATION
AND DEVELOPMENT

Building (503)842-3407
Planning (503)842-3408
On-Site Sanitation (503)842-3409
FAX (503)842-1819
Toll Free 1 (800)488-8280

Land of Cheese, Trees and Ocean Breeze

ATTENTION: PLAN AMENDMENT SPECIALIST
DEPARTMENT OF LAND CONSERVATION AND DEVELOPMENT
635 CAPITOL STREET NE, SUITE 150
SALEM, OREGON 97301-2540

August 26, 2010

RE: Recorded Board of County Commissioners Order for Ordinance Amendment,
OA-09-04

To Whom It May Concern:

Enclosed in this letter is the recorded Tillamook County Board of Commissioners Order for Ordinance Amendment, OA-09-04. A copy of the signed, but unrecorded Order was included in an August 24, 2010 mailing with the PAPA Form #2: Notice of Adoption.

We received the recorded copy this afternoon and are passing it along for inclusion in your files.

Sincerely,
Tillamook County Department of Community Development

A handwritten signature in black ink that reads 'Bradford Sheets'.

Bradford Sheets,
Associate Planner

Cc: File

Use Definitions. Commissioner Hoffnan seconded the motion. The motion carried 7:0.

- (4) The Board of County Commissioners opened a de novo public hearing on the proposed Ordinance Amendment request on August 4, 2010. The hearing was properly noticed according to the requirements of ORS 197 and 215.
- (5) Oral and written testimony was received at the hearing, both in opposition and in favor of the request. After hearing all who wished to present testimony on the matter, the hearing was closed and the Board deliberated on the request.
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 - (i) I (Tim Josi) move that we amend the definition section of Tillamook County's Land Use Ordinance, Section 1.030 subsection A, as defined by ORS 197.770, "a 'firearms training facility' is an indoor or outdoor facility that provides training courses and issues certifications required:
 - a. For law enforcement personnel;
 - b. By the State Department of Fish and Wildlife; or
 - c. By nationally recognized programs that promote shooting matches, target shooting and safety."

Charles Hurliman seconded. The motion carried unanimously, all three voting in favor, 3:0.

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(ii) Mr. Chair, I (Tim Josi) move that we amend Tillamook County's Land Use Ordinance, Section 3.004, subsection 3 that allows for firearms training facilities as a Conditional Use in a Forest Zone.

Seconded by Chuck Hurliman, the motion carried unanimously, all three voting in favor, 3:0.

NOW THEREFORE, THE BOARD OF COUNTY COMMISSIONERS OF TILLAMOOK COUNTY, OREGON, ORDERS AS FOLLOWS:

The Tillamook County Land Use Ordinance is hereby amended as outlined above. The record shall identify these changes as described herein by the Tillamook County Department of Community Development through Ordinance Amendment, OA-09-04.

DATED THIS 18th DAY OF August, 2010.

BOARD OF COUNTY COMMISSIONERS

FOR TILLAMOOK COUNTY, OREGON Aye Nay Abstain/Absent

Mark Labhart ✓ _____ /
Mark Labhart, Chair

Charles Hurliman ✓ _____ /
Charles Hurliman, Vice-Chair

_____ _____ _____ / ✓
Tim Josi, Commissioner

ATTEST: Tassi O'Neil,
County Clerk

Dusan L. Becroft
Special Deputy

APPROVED AS TO FORM:

William K. Sargent
William K. Sargent, County Counsel



Tillamook County



**DEPARTMENT OF COMMUNITY DEVELOPMENT
BUILDING, PLANNING & ON-SITE SANITATION SECTIONS**

201 Laurel Avenue
Tillamook, Oregon
www.tillamook.or.us

Building (503)842-3407
Planning (503)842-3408
On-Site Sanitation (503)842-3409
FAX (503)842-1819
Toll Free 1 (800)488-8280

Land of Cheese, Trees and Ocean Breeze

**Staff Report to the Tillamook County Planning Commission
Ordinance Amendment
OA-09-04**

**Date of Staff Report: April 22, 2010
Date of Planning Commission Hearing: April 29, 2010
Date of Board of Commissioner's Hearing: TBD
Staff Recommendation: APPROVAL**

Staff Report Prepared by: Bradford Sheets, Associate Planner

Proposed Amendment: A Text Amendment request to adopt "Firearms Training Facility" as a Use Permitted Conditionally in Section 3.004: Forest (F) Zone of the Tillamook County Land Use Ordinance (TCLUO).

Amends: TCLUO Section 3.004: Forest (F) Zone; Subsection (3): Uses Permitted Conditionally & TCLUO Section 1.030 (A): Generally Used Definitions

Proposed by: Tillamook County Shooter's Association, c/o C. Wayne Cook, 3180 Aldercrest, Tillamook, Oregon 97141

Tillamook County Land Use Ordinance, Article IX

I. TCLUO SECTION 9.010: AUTHORIZATION TO INITIATE AMENDMENTS

An AMENDMENT to a zoning map maybe initiated by the Board, the Commission, the Department, or by application of a property owner. Anyone may initiate proceedings to AMEND the text of this Ordinance.

Findings: Staff finds that the applicant has submitted an Ordinance Amendment for consideration and that "Anyone" may initiate the Text Amendment procedure.

Conclusion: Staff concludes this criterion is met.

II. TCLUO SECTION 9.030: TEXT AMENDMENT PROCEDURE

(1) This Ordinance may be AMENDED by application of any person. The proponent of an ORDINANCE AMENDMENT shall arrange a pre-application conference with the Department.

Findings: The applicant has met with this Department on multiple occasions to discuss the process through which a Firearms Training Facility may be considered. The original application was submitted early in 2009; however, interpretations of process and procedures in relation to the Tillamook County Land Use Ordinance, Oregon Administrative Rules (OARs) and Oregon Revised Statutes (ORSs) required that the initial Planning Commission hearing scheduled for early last May be postponed.

In working with representative from the Oregon Department of Land Conservation and Development (DLCD), options to proceed were relayed from Staff to the Applicant. The Applicant then took this information and modified their application to address the criteria and procedures necessary to move forward on this application.

The first step in allowing for a "Firearms Training Facility" within the Forest (F) zone is to adopt "Firearms Training Facility" as a use within the Tillamook County Comprehensive Plan and the Tillamook County Land Use Ordinance. Given that Tillamook County does not have a Code Amendment process, it has been the Policy of this Department to use the Text Amendment process outlined with Article IX of the TCLUO to process both Code and Text amendments. This is the process to adopt a proposed use into a zone within Tillamook County.

(2) An application for an ORDINANCE AMENDMENT shall be submitted to the Department at least 45 days prior to the Commission hearing for its consideration. Such applications shall be accompanied both by fees as set by order of the Board, and by the proponent's justification for the AMENDMENT.

Findings: This application was re-submitted by the Applicant in November 2009. Staff noticed sent the Post Acknowledgement Plan

Amendment (PAPA) notice to DLCDD on January 29, 2010, at least 45 days prior to the first evidentiary hearing.

Staff initially notified the surrounding property owners, State Agencies and the Tillamook Headlight Herald on March 3, 2010 of the hearings associated with this application and then re-noticed the application on April 7, 2010.

(3) Notice of a proposed AMENDMENT shall be published according to the provisions of Section 10.060 (3).

Findings: Staff finds that this Ordinance Amendment, OA-09-04, application was notified in a newspaper of general circulation in the County, the Tillamook Headlight Herald, on March 3, 2010. The application was re-noticed to the Tillamook Headlight Herald on April 7, 2010. This was more than 10 calendar days prior to the date of the first hearing.

(4) The Department shall prepare an analysis of the proposed AMENDMENT, addressing such issue as the intent of the provisions being amended; the affect on land use patterns in the County; the affect on the productivity of resource lands in the County; administration and enforcement; and the benefits or costs to Departmental resources resulting from the proposed text.

Findings: Staff finds that a Firearms Training Facility is defined under Oregon Revised Statute 197.770 as, " (1) Any firearms training facility in existence on September 9, 1995, shall be allowed to continue operating until such time as the facility is no longer used as a firearms training facility.(2) For purposes of this section, a "firearms training facility" is an indoor or outdoor facility that provides training courses and issues certifications required: (a) For law enforcement personnel; (b) By the State Department of Fish and Wildlife; or (c) By nationally recognized programs that promote shooting matches, target shooting and safety. [1995 c.475 §2]," (Exhibit C).

TCLUO Section 3.004: Forest (F) Zone states the, "Forest (F) Zone of Tillamook County Land Use Ordinance does not reflect all the current requirements of the Revised Statutes, 215 or Oregon Administrative Rules, Chapter 660, Division 06. In a case where the Land Use Ordinance and the State Law are in conflict the stricter of the two takes precedence," (Exhibit E).

"The Purpose of the F Zone is to retain forest land for forest use, and to encourage the management of forest land

for the growing, harvesting and processing of forest crops consistent with the Oregon Forest Practices Act. It is also to protect other forest uses from the encroachment of conflicting non-forest uses and influences, including watershed and soil protection; the maintenance of clean air and water; the preservation of fish and wildlife habitat; outdoor recreation; scenic preservation; and agricultural activities," (Exhibit E).

Oregon Administrative Rules (OARs) 660-006, Goals 4 Forest Lands, provides for the standards for uses, development, etc., on land zoned Forest (Exhibit D). Listed under OAR 660-006-0025, Uses Authorized in Forest Zones, uses may be allowed outright on forest lands or they may be allowed on forest lands subject to the review standards of the OARs.

OAR 660-006-0025(4) The following uses may be allowed on forest lands subject to the review standards in section (5) of this rule:

(n) Firearms training facility;

Following the ORSs and OARs, Staff finds that under prescriptive criteria a Firearms Training Facility could be developed on lands zoned Forest (F), per State Law (Exhibits C & D).

Discussions among the applicant, Staff, and the Oregon Department of Land Conservation and Development (DLCD) concluded that "Firearms Training Facility" would need to be adopted into the TCLUO and Tillamook County Comprehensive Plan, as a Use Permitted Conditionally, prior to any other Land Use action for a proposal such as this to proceed.

The applicant states, "The intent of the provisions being amended is to list uses that may be reasonably permitted as conditional uses in Tillamook County's Forest Zone provided they meet the conditional use criteria contained in Section 3.004(4) of that zone and are permitted by the applicable OAR for Goal 4 Forest Lands. The intent of the proposed amendment is to include in that list of permitted conditional uses a 'Firearms Training Facility' that is permitted by the above-cited Goal 4 Administrative Rule. Currently there is no explicit provision for a 'firearms training facility' or anything that approximates that term in any of Tillamook County's land use zones. The closest permissive language is a 'recreational facility' listed in several zones - a use that is not defined in the Land Use Ordinance. A 'firearms training facility' or 'shooting range'

may have a significant recreational component, but such a facility has primary uses other than recreation, and therefore requires more specific terminology that takes into account those uses. The term 'firearms training facility' must be employed because that is the term used in the applicable Goal 4 OAR," (Exhibit B).

According to the applicant, "The most logical place to locate an outdoor 'shooting range' or 'firearms training facility' is in a rural area that is both physically suited and removed as far as possible from residential development, yet still close enough to populated areas to be reasonably accessible. That would be resource-zoned land that is not too far removed from urbanized areas - not land within an urban or community growth boundary, or land within populated rural residential or commercial zones. The Recreation Management or Recreation Development Zones are possibilities, but we have not identified any land currently within either of these zones that is suitable for a firearms training facility. Rezoning farm or forest land to either of these zones would require a goal exception and would permit other uses that are not suitable on resource lands. The Forest Zone is the most appropriate location, given that the Goal 4 Forest Land OAR permits a 'Firearms Training Facility' as a conditional use without the above-described preexisting limitation that applies to Goal 3 Agricultural Lands," (Exhibit B).

"The affect of the proposed text amendment on land use patterns and the productivity of resource lands is addressed in the accompanying conditional use application's response to the Tillamook County Forest Zone's section 3.004(4) conditional use requirements and those contained in OAR 660-006-0025(5). These requirements include not interfering with farm or forest uses on adjacent or nearby forestlands, or materially altering the stability of the overall land use pattern of the area. Having to meet these and other enumerated requirements before the use is permitted ensures that inclusion of a 'firearms training facility; as a conditional use in the Forest Zone will not have an adverse affect on land use patterns and the productivity of resource lands," (Exhibit B).

"Administration and enforcement will be greatly enhanced by providing safe, secure and supervised location for firearms training and practice in lieu of the dispersed, unsupervised target practice that currently occurs primarily on rural forestlands throughout the county. The Department of Community Development will avoid the costs associated with requiring a

goal exception anytime such a facility is proposed on resource land. Tillamook County will benefit from having a procedure for locating a much needed firearms training facility consistent with state regulations," (Exhibit B).

"We recommend that the county amend Section 1.030(A) Generally Used Definitions to add a definition of 'Firearms Training Facility'. We offer the following definition contained in ORS 197.770(2):

'FIREARMS TRAINING FACILITY: An indoor or outdoor facility that provides training courses and issues certification required:

- A. For law enforcement personnel;
- B. By the State Department of Fish and Wildlife; or
- C. By nationally recognized programs that promote shooting matches, target shooting and safety,' (Exhibit B).

The applicant notes, "This definition of a 'firearms training facility' contained in ORS 197.770(2), and is identical to that contained in the Linn County Development Code. It omits the ORS 197.770 (1) pre-existing use provision that negates the inclusion of such a facility in any of the county's land use zones. Any deviation from the definition contained in ORS 197.770(2) would present legal problems with respect to its application in the Forest Zone [An October 7, 2009 email response from DLCD's Katherine Daniels affirms the appropriateness of this definition]," (Exhibit B).

Within the submittal from the Tillamook Shooter's Association, letter of support from Law Enforcement agencies like the Tillamook County Sheriff's Office, Oregon State Police, City of Tillamook Police, and the City of Rockaway Beach Police. The letters indicate that these agencies would use a "Firearms Training Facility" if allowed to train and maintain their respective certifications (Exhibit B).

The Oregon Department of Fish & Wildlife (ODFW) has also written letters of support for a "Firearms Training Facility" for the facilitation of Hunter Safety Education programs, providing hunters a safe and controlled environment to sight in and practice with hunting firearms and archery equipment, and the promotion of other shooting sports (e.g. sporting clays, competitive shooting) which can benefit hunting skills (Exhibit B).

The Oregon Department of Forestry, United States Department of Agriculture's Forest Service, and the Tillamook County Parks Department wrote letters of endorsement for a safe area off of Public Lands where responsible firearms training can take place," (Exhibit B).

Some citizen commentary indicates that the Forest (F) Zone is not the appropriate zone for the requested use, given the proximity of so many residences in Tillamook County to F zoned property (Exhibit G). Other suggestions state that there should be setbacks involved for siting a firearms training facility to reduce impacts on adjacent lands if adopted. "We understand that a Firing Range is desired by many, and therefore, some wording to allow such a use in Tillamook may be necessary, but we request that such language include setbacks that protect against the harmful affects to neighboring properties," (Exhibit G).

Some citizen commentary stated that the request Ordinance Amendment and related Zone Change and Conditional Use applications be noticed to all property owners in Tillamook County. This commentary continued by indicating that each of the three requested land use applications by the Tillamook Shooter's Association be considered separately to give the Public time to digest each application. Whereas this process, where three (OA, ZC, CU) are being processed at once, leads people to believe that the decision for approval has already been made.

Staff consulted with the Director of the Department of Community Development and County Counsel regarding a mass mailing to all property owners within Tillamook County since this proposed use would be available to any property owner with Forest (F) zoned land. It was determined that a mass-mailing is not necessary and that the regular notification processes for an Ordinance Amendment related to a resource zoned property are sufficient. Also addressed in the many pre-application meetings between this Department and the applicant was the three separate, but related applications, proceeding together at the same time. It was communicated by the Director to the applicant that this does take place in other jurisdictions and that there is nothing in the Tillamook County Ordinances preventing such a process. Based upon these verbal conversations, it is Staff's understanding that the applicant has selected this path due to a sales agreement with the current property owner and the desire to get a firm decision as to the outcome of this process.

The Planning Commission has the ability to craft standards related to an Ordinance Amendment and in this request the adoption and potential development of a "Firearms Training Facility" if it were to be included in the TCLUO, including setbacks. With the current F zone Standards, 3.004 (6), the minimum front, rear, and side yard setbacks are all 30-feet (Exhibit E). There is no height standards listed in the Forest zone (Exhibit E).

Staff finds that locating this type of land-intensive use in a resource zone likely provides the acreage availability for such a development in relation to other zones. In comparison to locating a "Firearms Training Facility" within residential, commercial, or industrial zones, there appear to be less conflicts among uses on Forest (F) zoned properties because there are large parcels typically associated with Forest zoning and the uses within the Forest zone are restrictive to begin with. Only existing "Firearms Training Facilities" are allowed to remain in the Farm (F-1) zone and no new such use is available in the F-1 zone. Given that Goal 4, Forest Land of the OARs allows for a "Firearms Training Facility," based upon ORS 197.770 and with review, Staff finds that factors contribute to the Forest Zone being the most appropriate zoning for this use.

Given the fact that the proposed use is already defined in the ORSs and outlined within OAR 660-006, the State of Oregon has determined that this use is consistent with the intent of Statewide Planning Goal 4, Forest Lands, provided that there is an associated review process. Through many conversations with DLCD, the proposed use could only be adopted into the Tillamook County Comprehensive Plan and Land Use Ordinance as a Use Permitted Conditionally. If adopted as a use under TCLUO Section 3.004(3), then each any application for this use would require a land use application and be reviewed against the criteria outlined in OAR 660-006, TCLUO Section 3.004(4), and all other applicable supplementary regulations contained in the TCLUO (Exhibits D & E). The Conditional Use process would determine the affect on the productivity of resource lands in the County.

Staff finds that the proposed Ordinance Amendment and subsequent proposed ordinance are restrictive as they relate to ORS 197.770 and OAR 660-006. Proposals related to Firearm Training Facilities would be strictly scrutinized in relation to the associated criteria.

The administration and enforcement of such a proposal would be consistent with any of the other ordinances. A request for a Firearms Training Facility has not been one of the more discussed uses to be brought to this Department. In the past three years, this is the first proposal Staff has seen for this type of use.

There are fees within this Department's fee structure for land use applications, etc., addressing these applications. There are also prescriptive fees associated through the Code Enforcement Process.

(5) The Commission shall consider an AMENDMENT request at the earliest practicable public hearing after it is proposed. It shall consider the intent of applicable policies of the Comprehensive Plan, and recommend that the Board adopt, adopt with modifications, or not adopt the proposed AMENDMENT.

Findings: Given the Staffing and workload within the Department of Community Development, Staff scheduled this Amendment request, OA-09-04, for the earliest practicable public hearing. In this case the first evidentiary hearing is scheduled for April 29, 2010 for consideration by the Tillamook County Planning Commission and will be scheduled for a hearing by the Tillamook County Board of Commissioners at a time to be notified and announced.

(6) The Director shall report the Commission's recommendation to the Board. The Board shall conduct a public hearing on an AMENDMENT of modify or change the text of the Land Use Ordinance subsequent to receiving the report and recommendation of the Planning Commission. AMENDMENTS to the text of this Ordinance shall be adopted by the Board of County Commissioners by Ordinance.

(7) The Board's decision on an AMENDMENT to the text of this Ordinance shall be final.

Findings: Upon the recommendation from the Planning Commission, Staff will present a report and recommendation to the Tillamook County Board of Commissioners for consideration at a Public Hearing. Given that the Planning Commission hearing was recently postponed from April 8, 2010 until April 29, 2010, the Board of County Commissioners hearing in consideration of this request will be noticed and announced at a future date.

Once a decision has been voted upon by the Board of County Commissioners, Staff will notify all parties involved and there will be a 21-day appeal period to the Oregon Land Use Board of Appeals (LUBA).

Conclusion: Staff concludes that a Text Amendment may be requested by any person. The applicant attended multiple pre-application meetings with this Department.

Staff concludes that this application for an Ordinance Amendment was submitted, along with the fees, to this Department at least 45 days prior to the Commission hearing for its consideration.

The hearings for Ordinance Amendment, OA-09-04, were notified in a newspaper of general circulation in the County, the Tillamook Headlight Herald, on March 3, 2010. Staff concludes that this was more than 10 calendar days prior to the date of the first hearing. The hearing were postponed and therefore the hearing was re-noticed to surrounding property owners, agencies and the Tillamook Headlight Herald on April 7, 2010, Staff concludes that this was more than 10 calendar days prior to the date of the first hearing.

Staff concludes that of the zones within Tillamook County's jurisdiction, the Forest (F) zone, is the most appropriate zone to allow for this type of use Permitted Conditionally because of the larger parcels typical in the F zone, the Forest Zone is restrictive on the use allowed already, and State Law allows for this use, through a review process, in this specific resource zone. The Conditional Use application is the appropriate process to determine the suitability of this proposed use in relation to the subject and surrounding properties.

This proposed ordinance would be addressed, processed and enforced by the Department of Community Development, if adopted, as prescribed through the potential outcome of this process and the existing Tillamook County Land Use Ordinance standards.

The Planning Commission could consider modifications to the standards outlined in TCLUO Section 3.004(6): Standards, for the potential development of this use in the F zone.

Staff concludes that due to staffing/resource constraints, the proposal was scheduled before Planning Commission at the earliest practicable public hearing.

Based upon the Planning Commission's consideration of this request, Staff shall follow the prescribed process of bringing this request to the Tillamook County Board of County Commissioners. Staff concludes the remainder of this process will adhere to the Ordinance Amendment procedure.

III RECOMMENDATION:

The resource zones within the Tillamook County Comprehensive Plan and Land Use Ordinance are not consistent with the Oregon Revised Statutes and Oregon Administrative Rules. This Ordinance Amendment would bring TCLUO Section 3.004: Forest (F) Zone closer to meeting State Law and Rules, while providing a very prescriptive and rigid definition "Firearms Training Facility" as a use in Tillamook County.

The applicant has made a proposal as to how the definition of a "Firearms Training Facility" may read. Citizen commentary has also provided recommendations to the Planning Commission regarding the need to analyze setbacks and development standards for a "Firearms Training Facility" if it were to be adopted.

Staff recommends the inclusion of "Firearms Training Facility" as a Use Permitted Conditionally in the Forest (F) Zone within the Tillamook County Land Use Ordinance Section 3.004 (4). A definition based upon ORS 197.770 could be adopted into Tillamook County Land Use Ordinance Section 1.030(A): GENERALLY USED DEFINITIONS, although there may be additional modifications within this process.

IV. EXHIBITS:

- A. Vicinity, Assessor's & Zoning Maps
- B. Applicant's submittal
- C. Oregon Revised Statute 197.770
- D. Oregon Administrative Rule 660-006, Goal 4 Forest Lands
- E. TCLUO Section 3.004: Forest (F) Zone
- F. TCLUO Article I: Introductory Provisions
- G. Citizen Commentary

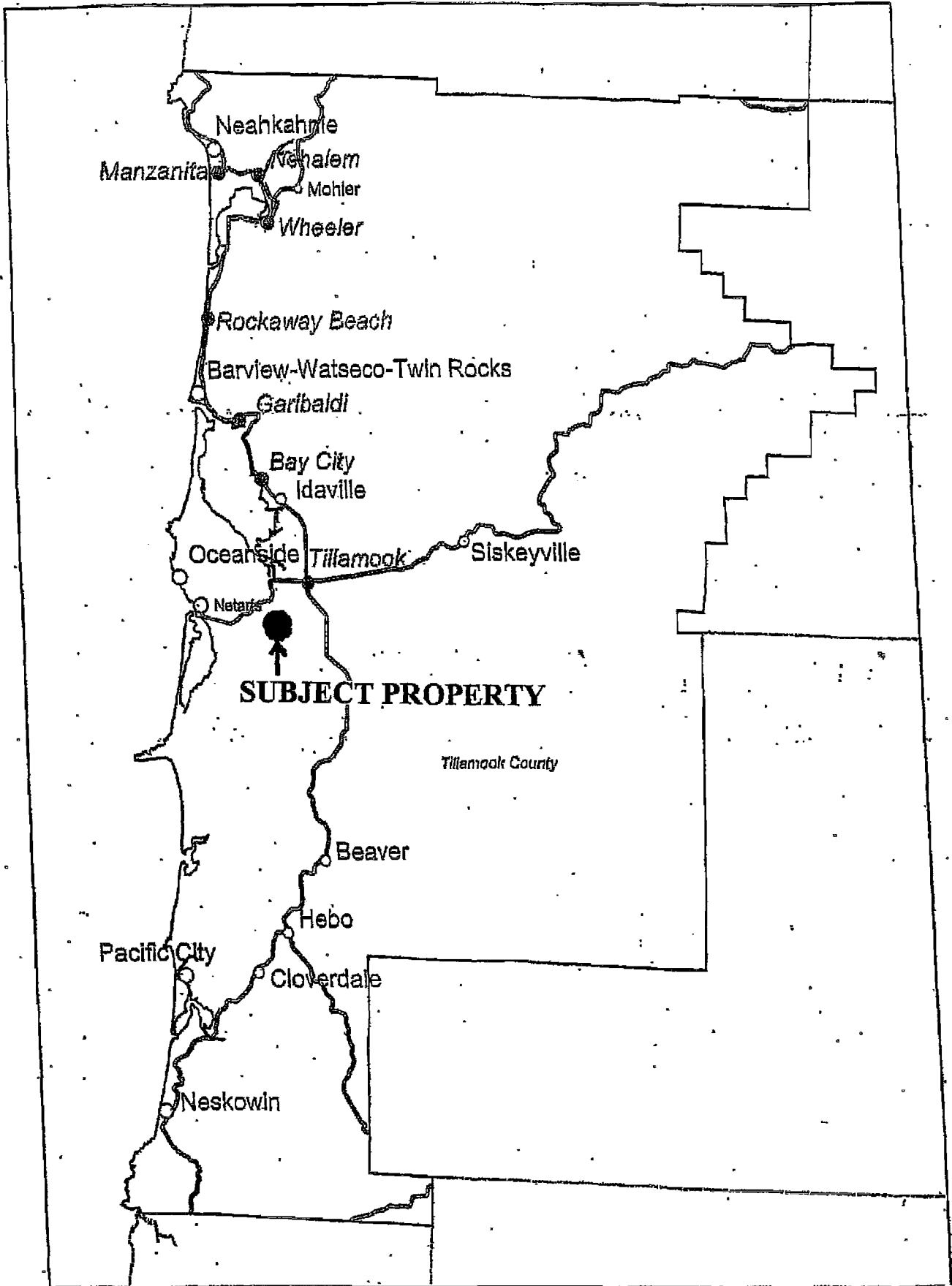
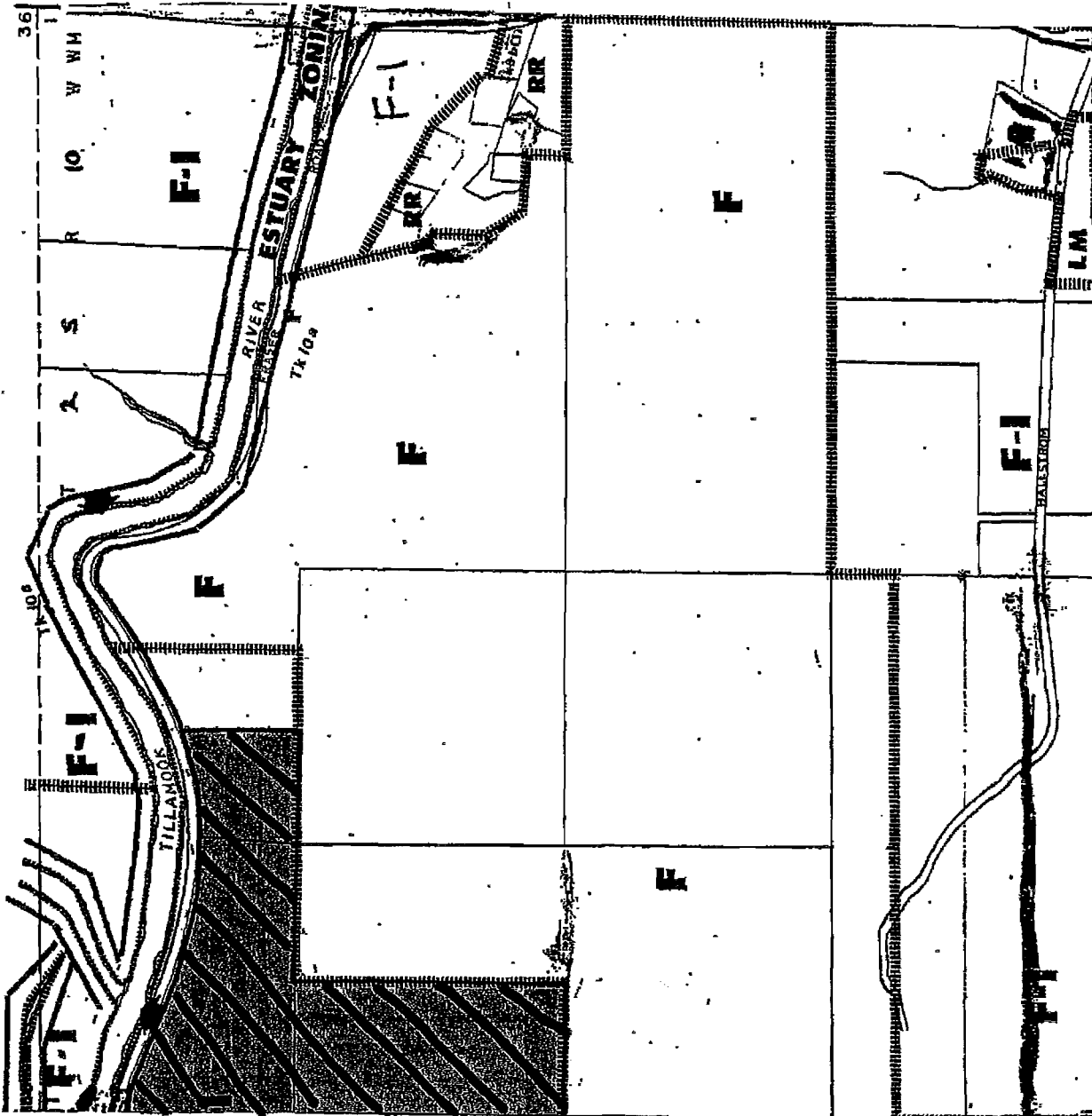


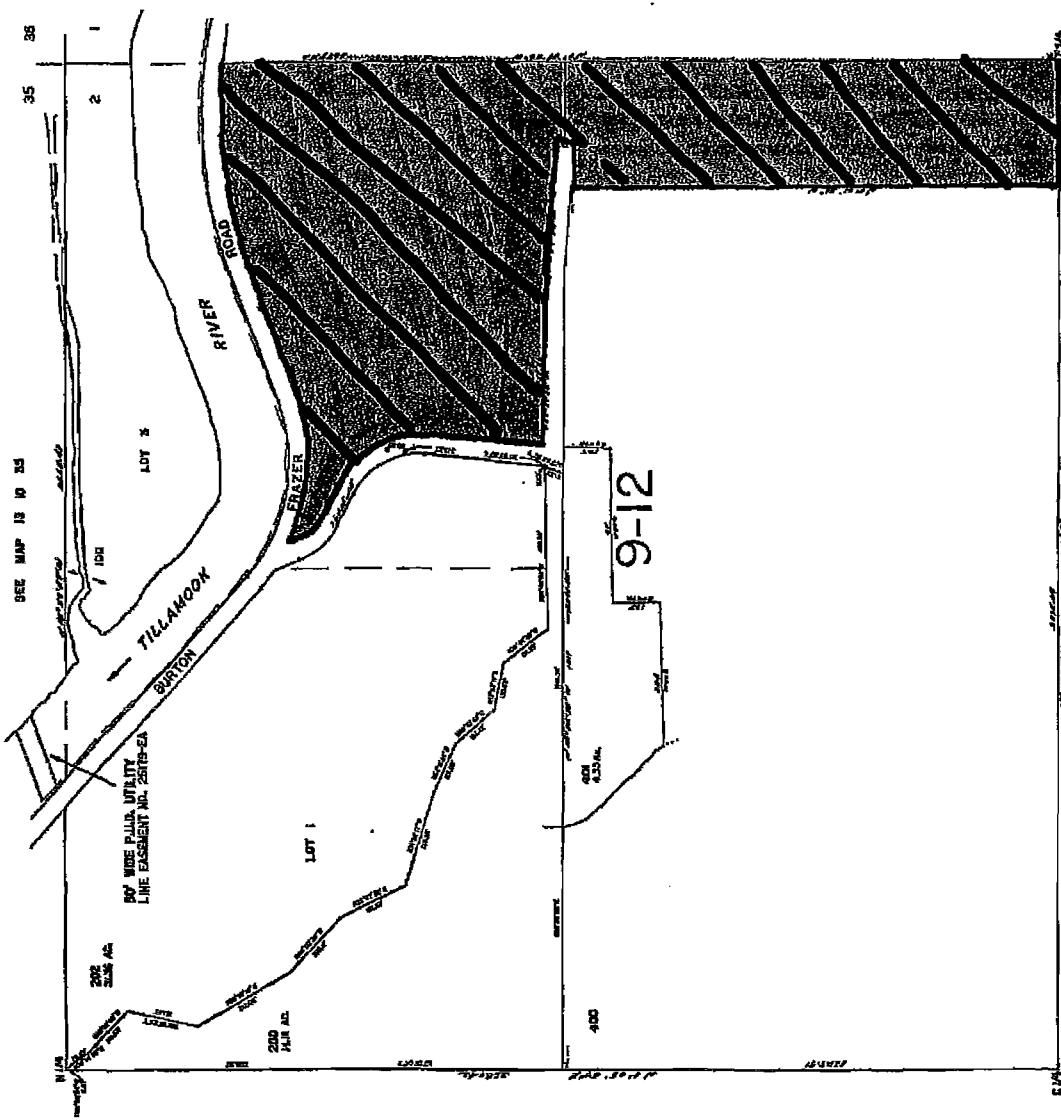
Exhibit A



25 10 2A

NE 1/4 SEC. 2 T.2S. R.10W. WM.
TILLAMOOK COUNTY

1"=200'



SEE MAP 25 10 1

25 10 2A
REVISED 04/26/04 SA

THIS MAP WAS PREPARED FOR
ASSESSMENT PURPOSES ONLY

SEE MAP 25 10

SEE MAP 25 10

PLANNING APPLICATION
DEPARTMENT OF COMMUNITY DEVELOPMENT

Application Number CU-09-11

<input type="checkbox"/> Admin Review	<input type="checkbox"/> LUC Review	<input type="checkbox"/> Variance
<input checked="" type="checkbox"/> Conditional Use	<input type="checkbox"/> Major Partition	<input type="checkbox"/> Zone Amendment
<input type="checkbox"/> Exception	<input type="checkbox"/> Ordinance Amend	<input type="checkbox"/> Zone Change
<input type="checkbox"/> Extension	<input type="checkbox"/> Sub - Pre Lim	<input type="checkbox"/> Non Conform Major Rev
<input type="checkbox"/> GHZ Report	<input type="checkbox"/> Sub - Final Plat	<input type="checkbox"/> Non Conform Minor Rev

REQUEST (Describe request) Subject to approval of zone change application # 2009-01, ~~code amendment~~ Develop a Firearms Training Facility

APPLICANT:
Name Tillamook ~~County~~ Shooters Association
c/o C. Wayne Cook Phone 503 842 8380
Address 3180 Aldercrest City Tillamook State OR Zip 97177

LEGALLY RECORDED OWNER:
Name Raymond Wyss, Estate of Phone _____
Address _____ City _____ State _____ Zip _____

RECEIVED
NOV 18 2009
COMMUNITY DEVELOPMENT

1. LEGAL DESCRIPTION OF THE PROPERTY INVOLVED IN THIS APPLICATION
Township 25 Range 10W Section 2A Tax Lot 201 & 300
25 10W 1 1100, 1200 & 1300
Subdivision _____ Lot _____ Block _____

2. ZONING _____

3. IS THE PROPERTY DEED RESTRICTED TO PROHIBIT THE USE AS PROPOSED IN THIS APPLICATION? " Yes No

4. I HEREBY APPLY FOR THE ABOVE REQUEST.
I agree to abide by the requirements of the Tillamook County Comprehensive Plan, Tillamook County Land Use Ordinance, Tillamook County Land Division Ordinance as they apply to this request.
Property Owner's Signature Janet C. Walker Conservator Date 11/15/09

5. I AUTHORIZE THIS REQUEST BY THE APPLICANT.
APPLICANT'S SIGNATURE C. Wayne Cook Date 11/03/09

***** FOR OFFICE USE ONLY *****

Date 11-18-09 Received DT Fee Paid 1585.⁰⁰ Receipt # 3014

GAADMINFORMS\PLANFORM\PLANNAPP

Exhibit B

09-2707CU

October 28, 2009

To: Tillamook County Planning Commission
Tillamook County Board of Commissioners

From: Vic Affolter, Land Use Consultant

Re: **Summary of Applications for Firearms Training Facility**

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COMMUNITY
DEVELOPMENT

I am working with the Tillamook Shooters Association on their land use applications to permit a "firearms training facility" southwest of the City of Tillamook at 315 Burton Fraser Road on a 25.33-acre portion of an 84.78-acre property currently owned by the Raymond Wyss Estate as shown in attached Exhibit A, B and C. The following information summarizes the required land use applications, and the need and support for the facility.

The subject 84.78-acre ownership is zoned Farm (F-1). The placement of a firearms training facility requires approval of three related land use applications that are addressed separately in the enclosed submittal:

- (1) Amend Tillamook County's Land Use Ordinance (LUO) to permit a firearms training facility as a conditional use in the Forest Zone (F) as permitted by the Oregon Administrative Rule (OAR) for Goal 4 Forest Lands.
- (2) Rezone to Forest (F) a 25.38-acre portion of the property that is currently adjacent to forest-zoned land, and
- (3) Obtain conditional use approval for the firearms training facility on the subject site within the portion rezoned to Forest.

A July 22-23, 2009 email exchange with Katherine Daniels, DLCD's Farm and Forest Lands Specialist, confirms that Oregon Administrative Rules permit a firearms training facility on Farm-zoned land **only** if such a facility was a preexisting use as of September 9, 1995. This precludes locating a firearms facility on any land in Tillamook County's Farm Zone since there are no such preexisting facilities within that zone. The applicable Goal 4 OAR does permit such a facility as a conditional use on forest-zoned land without this preexisting limitation. Tillamook County's Forest Zone requires amending because it currently does not list a firearms training facility as a conditional use. The proposed LUO amendment makes the county's Forest Zone consistent with the Goal 4 OAR provision for firearms training facilities.

The need for the facility and support for the proposed location is expressed in enclosed letters from a diverse group of individuals and organizations (attached as Exhibit J except as noted). These include:

- State, county and city law enforcement agencies—including Oregon State Police, County Sheriff, and Police Chiefs for the Cities of Tillamook and Rockaway Beach (the U.S. Coast Guard also is committed to using the facility);
- Oregon Department of Fish and Wildlife (separate letters from Rick Klumph, Ron Rehn and Herman Biederbeck);

Firearms Facility Application Summary – Page 2

- Oregon State Department of Forestry (Andy White, District Forester);
- U.S. Forest Service (George Buckingham, District Ranger);
- Rudy Fenk, long-time chair of the Tillamook soil and Water Conservation District (SWCD);
- Ed Jenkins, adjacent property owner and former planning commission member;
- Stimson Lumber Company—the adjacent forestland’s property owner;
- Green Diamond Resource Company (Mitch Parker);
- Tillamook PUD (Pat Ashby, General Manager);
- Tillamook Parks Department (Delbert Schleichert, Director);
- Danny Cotton, local Hunter Education Instructor;
- George Pitts, Chairman of Oregon Association of Shooting Ranges (Exhibit G);
- Wayne Cook, President of the Tillamook Shooters Association (Exhibit H);
- Individuals who have submitted letters in support as of October 24, including Marion and Linda Blaser who owned and farmed the subject property for more than 20 years until 1991.

Tillamook County Undersheriff Terry Huntsman’s enclosed April 22, 2009 letter of support for the applications expresses the need for a facility that “will give the Sheriff’s Office as well as other law enforcement agencies in Tillamook County a long term solution for firearms training and qualification issues we currently encounter.” Huntsman adds that the facility “will help reduce shooting in our forest which has been a problem for many years. Typical problems we see with shooting in our forest are vandalism, user mishaps, endangering other users and environmental damage.” The need to address these latter concerns is expressed in the letters of support from the public and private forestland managers, with habitat damage from dispersed shooting also being a concern of the Oregon Department of Fish and Wildlife.

The Tillamook Shooters Association has engaged in substantive discussions with the Tillamook Estuary Partnership (TEP) and the Oregon Department of Fish and Wildlife about enabling the reversion of the majority of the remaining 59 acres of the parent ownership to the natural fish and wildlife habitat that was present before the dikes, ditches and tide gates were installed to facilitate farming the property. This alternative would be available if the applications are approved and the Tillamook Shooters Association concludes their acquisition of the property. The TEP’s Rachel Hoffman has been very helpful in preparing materials, including maps, for the applications. TEP Executive Director Lisa Phipps affirms in an October 2, 2009 letter to Wayne Cook (Exhibit I) that: “The TEP Board of Directors has supported the restoration component of this project through its inclusion in our 2010 Workplan subject to the Associations success in obtaining approvals for the various land use requests.”

The applicant acknowledges that there is opposition to the firearms training facility from some neighboring property owners and the Tillamook County Creamery Association—the latter in apparent response to opposition from several nearby dairy

October 28, 2009

To: Tillamook County Planning Commission
Tillamook County Board of Commissioners
From: Vic Affolter
Re: **Text Amendment Application**

The Tillamook County Shooter's Association requests a text amendment to Section 3.004(3) of Tillamook County Land Use Ordinance to list a "Firearms Training Facility" as a conditional use in the Forest Zone (F) as permitted by Oregon Administrative Rule (OAR) 660-006-0025(4)(n). This amendment would make Tillamook County's Forest Zone consistent with the Goal 4 Forest Land's OAR provision for such a facility.

A July 22-23, 2009 email exchange with Katherine Daniels, DLCD's Farm and Forest Lands Specialist, establishes that the Goal 3 Agricultural Lands OAR limits a firearms training facility on farm-zoned land to a use pre-existing as of September 9, 1995. This is because of the OAR provision's reference to ORS 197.770 whose subsection (1) contains this limitation. The pre-existing use limitation does not apply to land in forest zones since the Goal 4 OAR provision for a firearms training facility does not contain a reference to any portion of ORS 197.770. Therefore this proposed amendment to the Tillamook County's Forest zone must not reference subsection (1) of 197.770 if we are to avoid the pre-existing use limitation.

TILLAMOOK COUNTY TEXT AMENDMENT REQUIREMENTS

The requirements for a text amendment are contained in Section 9.030(4) of Tillamook County's Land Use Ordinance. This section states that: *"the Department shall prepare an analysis of the proposed AMENDMENT, addressing such issues as the intent of the provisions being amended, the affect on land use patterns in the County, the affect on the productivity of resource lands in the County, administration and enforcement, and the benefits or costs to Department resources resulting from the proposed text."*

RESPONSE: The intent of the provisions being amended is to list uses that may be reasonably permitted as conditional uses in Tillamook County's Forest Zone provided they meet the conditional use criteria contained in Section 3.004(4) of that zone and are permitted by the applicable OAR for Goal 4 Forest Lands. The intent of the proposed amendment is to include in that list of permitted conditional uses a "Firearms Training Facility" that is permitted by the above-cited Goal 4 Administrative Rule. Currently there is no explicit provision for a "firearms training facility" or anything that approximates that term in any of Tillamook County's land use zones. The closest permissive language is a "recreational facility" listed in several zones—a use that is not defined in the Land Use Ordinance. A "firearms training facility" or "shooting range" may have a significant recreational component, but such a facility has primary uses other than recreation, and therefore requires more specific terminology that takes into account those uses. The term

Firearms Facility Text Amendment – Page 2

“firearms training facility” must be employed because that is the term used in the applicable Goal 4 OAR.

The most logical place to locate an outdoor “shooting range” or “firearms training facility” is in a rural area that is both physically suited and removed as far as possible from residential development, yet still close enough to populated areas to be reasonably accessible. That would be resource-zoned land that is not too far removed from urbanized areas—not land within an urban or community growth boundary, or land within populated rural residential or commercial zones. The Recreation Management or Recreation Development Zones are possibilities, but we have not identified any land currently within either of these zones that is suitable for a firearms training facility. Rezoning farm or forest land to either of these zones would require a goal exception and would permit other uses that are not suitable on resource lands. The Forest Zone is the most appropriate location, given that the Goal 4 Forest Land OAR permits a “Firearms Training Facility” as a conditional use without the above-described preexisting limitation that applies to Goal 3 Agricultural Lands.

The affect of the proposed text amendment on land use patterns and the productivity of resource lands is addressed in the accompanying conditional use application’s response to the Tillamook County Forest Zone’s section 3.004(4) conditional use requirements and those contained in OAR 660-006-0025(5). These requirements include not interfering with farm or forest uses on adjacent or nearby forestlands, or materially altering the stability of the overall land use pattern of the area. Having to meet these and other enumerated requirements before the use is permitted ensures that inclusion of a “firearms training facility” as a conditional use in the Forest Zone will not have an adverse affect on land use patterns and the productivity of resource lands.

Administration and enforcement will be greatly enhanced by providing a safe, secure and supervised location for firearms training and practice in lieu of the dispersed, unsupervised target practice that currently occurs primarily on rural forestlands throughout the county. The Department of Community Development will avoid the costs associated with requiring a goal exception anytime such a facility is proposed on resource land. Tillamook County will benefit from having a procedure for locating a much need firearms training facility consistent with state regulations.

DEFINITION AMENDMENT

We recommend that the county amend Section 1.030(A) Generally Used Definitions to add a definition of a “Firearms Training Facility.” We offer the following definition contained in ORS 197.770(2):

Firearms Facility Text Amendment – Page 3

“FIREARMS TRAINING FACILITY: An indoor or outdoor facility that provides training courses and issues certifications required:

- (a) For law enforcement personnel;
- (b) By the State Department of Fish and Wildlife; or
- (c) By nationally recognized programs that promote shooting matches, target shooting and safety.”

Note: This definition of a “firearms training facility” is contained in ORS 197.770(2), and is identical to that contained in the Linn County Development Code. It omits the ORS 197.770(1) pre-existing use provision that negates the inclusion of such a facility in any of the county’s land use zones. Any deviation from the definition contained in ORS 197.770(2) would present legal problems with respect to its application in the Forest Zone. (An October 7, 2009 email response from DLCD’s Katherine Daniels affirms the appropriateness of this definition.)

Exhibits
for
Tillamook Shooters Association's
Land Use Applications

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- Exhibit A: GIS Map and Preliminary Site Plan
- Exhibit B: County Assessor Maps Composite for subject Property and Nearby Area
- Exhibit C: Zoning Maps for Subject Property and Adjacent area
- Exhibit D: NRCS Soils Information
- Exhibit E: National Wetlands Inventory
- Exhibit F: George Pitts' Letter for Oregon Association of Shooting Ranges
- Exhibit G: Wayne Cook's Letter for Applicant Tillamook Shooters Association
- Exhibit H: Traffic Analysis
- Exhibit I: Lisa Phipps' Tillamook Estuary Partnership Letter
- Exhibit J: Letters of Support (as of 10/28/09)
1. Undersheriff Terry Huntsman, Tillamook County Sheriff's Office
 2. Sergeant Todd Hoodenpyl, Oregon State Police's Tillamook Worksite
 3. Terry Wright, City of Tillamook Police Chief
 4. Ed Wortman, City of Rockaway Beach Police Chief
 5. Herman Biederbeck, ODFW District Wildlife Biologist
 6. Rick Klumph, ODFW North Coast Watershed District Manager
 7. Ron Rehn, ODFW Habitat Conservation Biologist
 8. Andy White, ODF Tillamook and Forest Grove District Forester
 9. George Buckingham, U.S. Forest Service Hebo District Ranger
 10. Rudy Fenk, Dairy Farmer
 11. Ed Jenkins, neighboring property owner and former planning commission member
 12. Britt Madison, Stimson Lumber Company Tillamook Area Manager
 13. Mitch Parker, Green Diamond resource Company
 14. Dan Cotton, Hunter Education Instructor
 15. Pat Ashby, Tillamook PUD General Manager
 16. Delbert Schleichert, Tillamook County Parks Director
 17. Marion and Linda Blaser, former subject property owner
 18. Keith Whitehead
 19. Jerry Dove
 20. Scott Whitcher
 21. Tucker Slaven

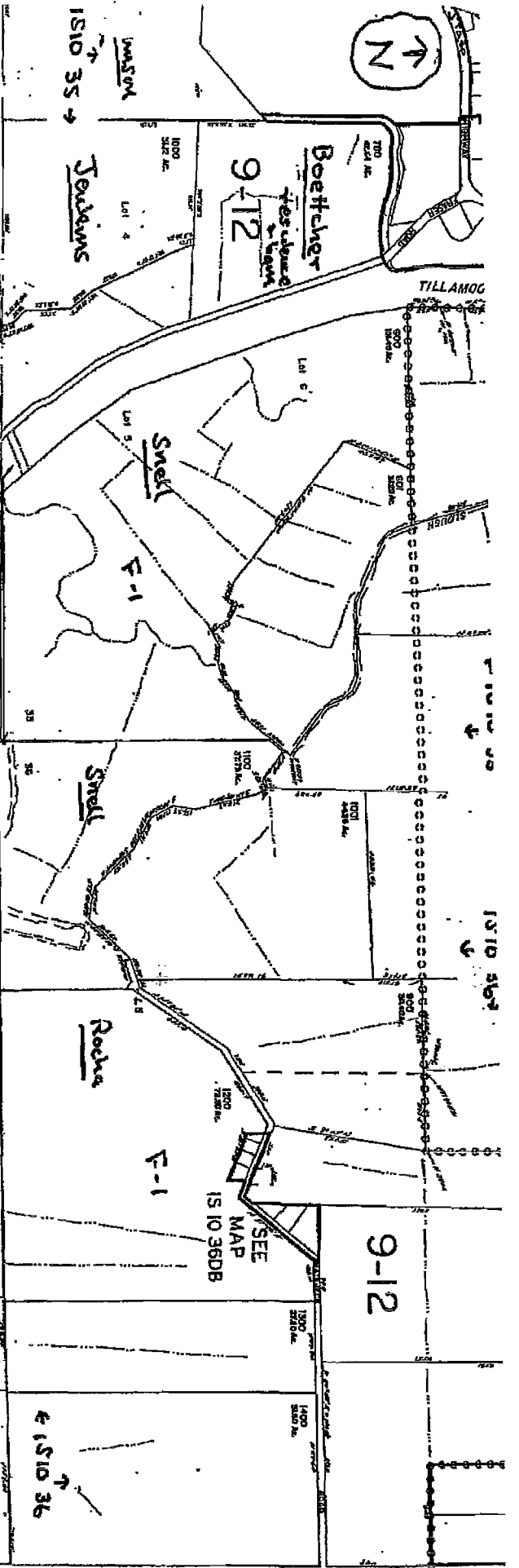
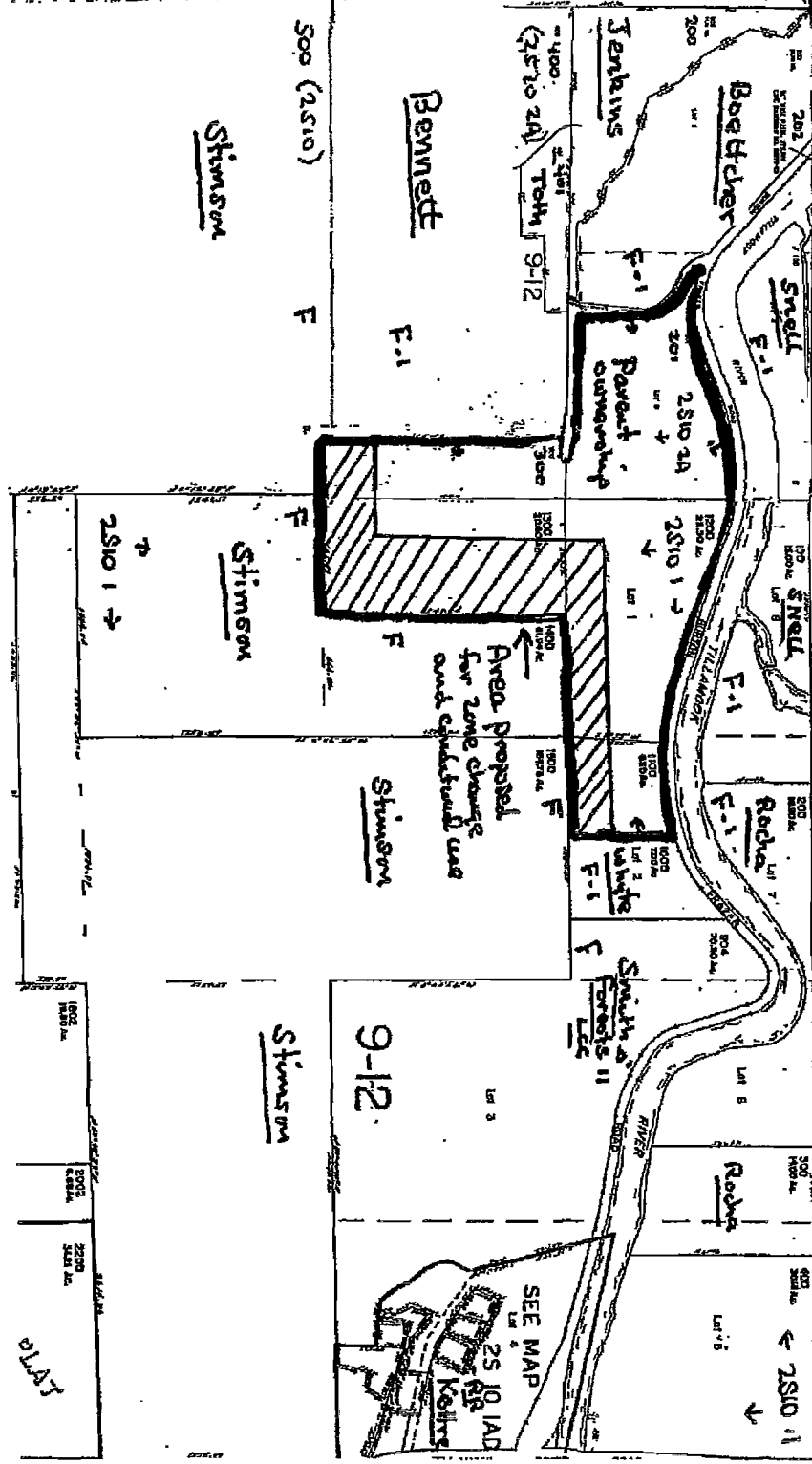


Exhibit B

Composit of
Assessor's Maps
1510 35, 1510-36,
2510 2A, 2510 1
and 2510.

Showing subject
ownership, area
proposed for zone
change and adjacent
use, and surrounding
ownership.

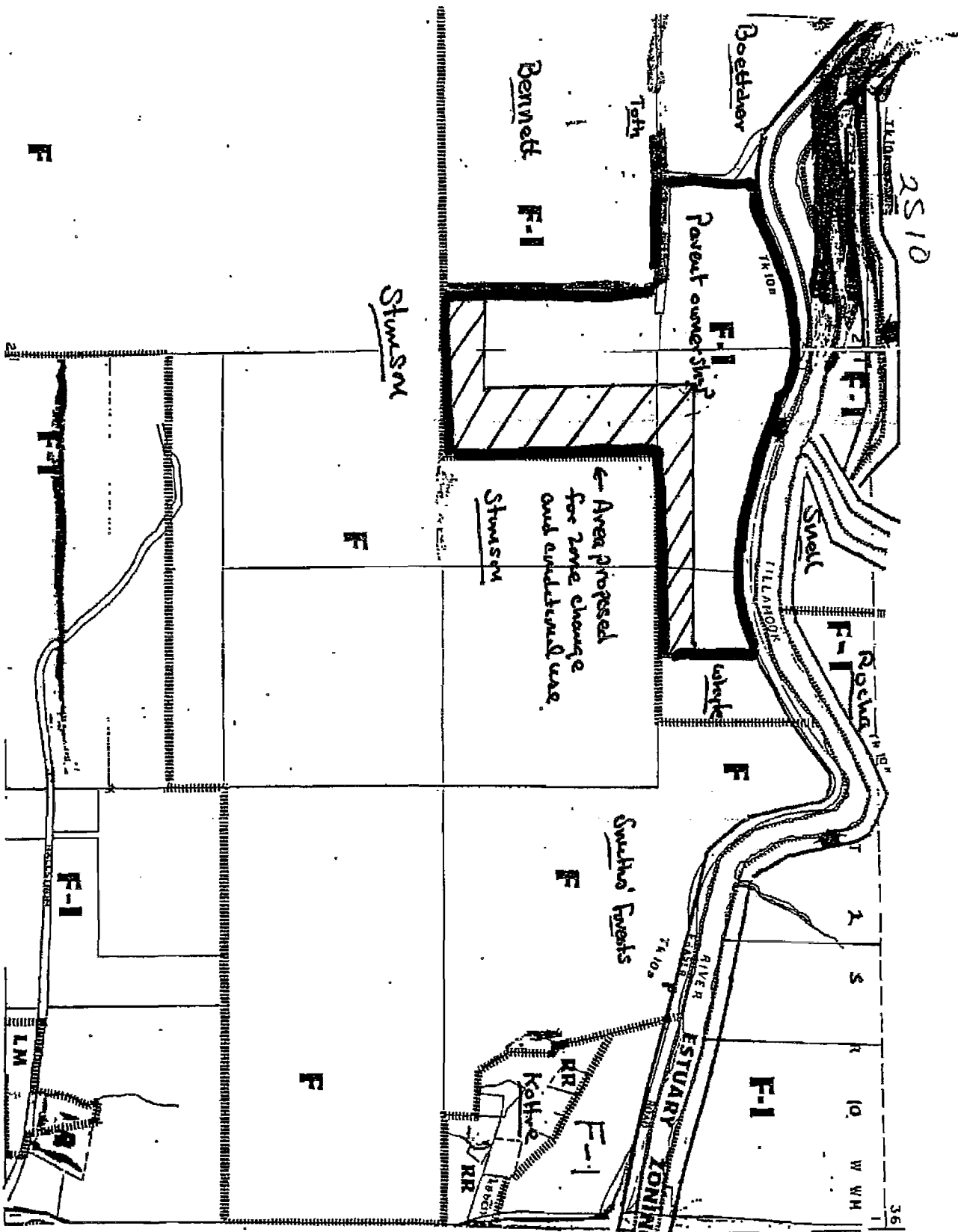
Scale: 1" = 800'



25 10 IAD
SEE MAP

Exhibit C

Zoning Maps for 2S101 + 2S102A



Nonirrigated Capability Class—Tillamook County, Oregon
(Tillamook Shooters Assoc. Gun Range)

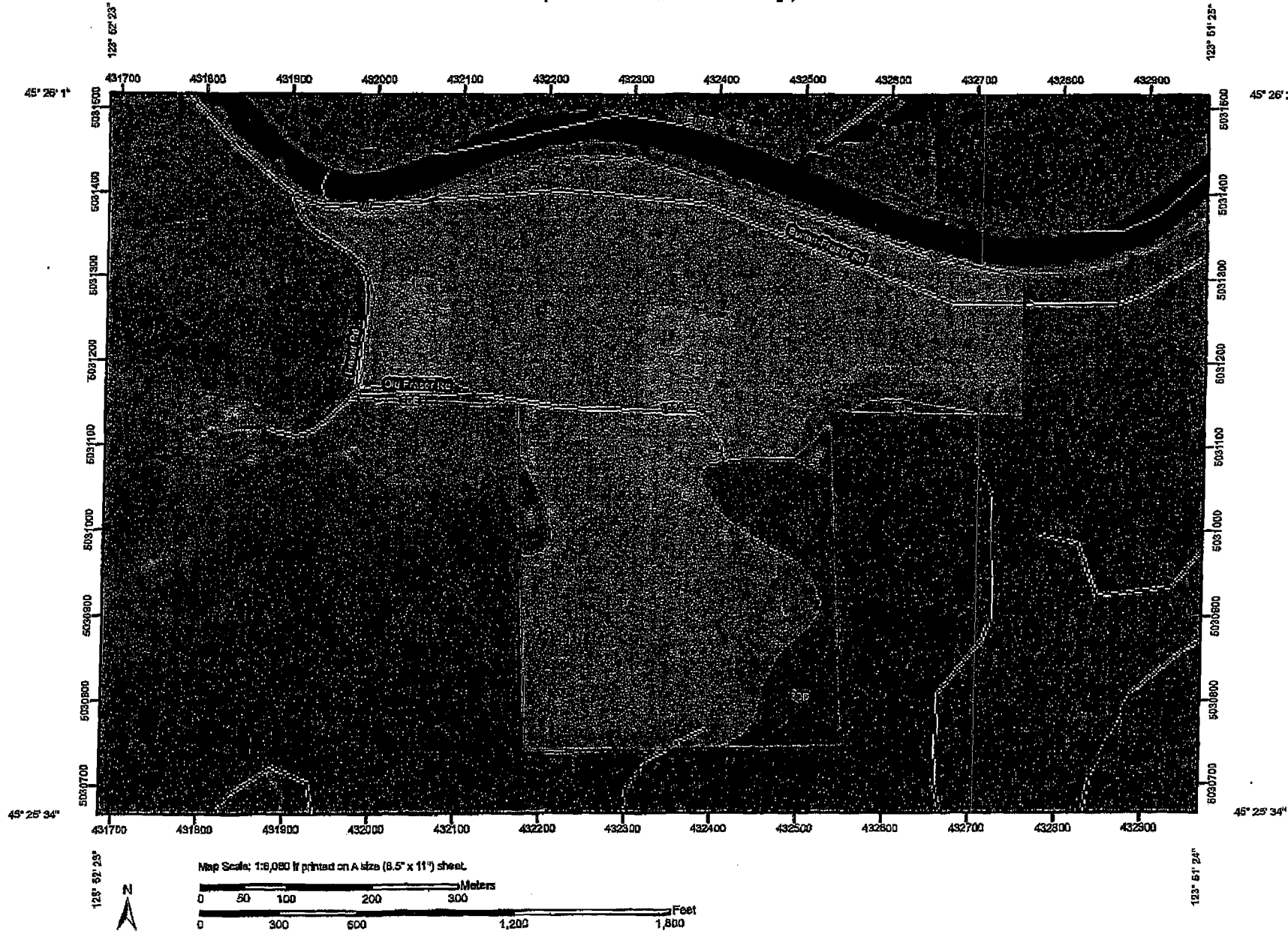





















Exhibit D NRCS Soils Information

Nonirrigated Capability Class--Tillamook County, Oregon
(Tillamook Shooters Assoc. Gun Range)

MAP LEGEND

- Area of Interest (AOI)**
 Area of Interest (AOI)
- Soils**
 Soil Map Units
- Soil Ratings**
-  Capability Class - I
 -  Capability Class - II
 -  Capability Class - III
 -  Capability Class - IV
 -  Capability Class - V
 -  Capability Class - VI
 -  Capability Class - VII
 -  Capability Class - VIII
 -  Not rated or not available
- Political Features**
 Cities
- Water Features**
 Oceans
 Streams and Canals
- Transportation**
 Rails
 Interstate Highways
 US Routes
 Major Roads
 Local Roads

MAP INFORMATION

Map Scale: 1:6,080 if printed on A size (8.5" x 11") sheet.

The soil surveys that comprise your AOI were mapped at 1:24,000.

Please rely on the bar scale on each map sheet for accurate map measurements.

Source of Map: Natural Resources Conservation Service

Web Soil Survey URL: <http://websoilsurvey.nrcs.usda.gov>

Coordinate System: UTM Zone 10N NAD83

This product is generated from the USDA-NRCS certified data as of the version date(s) listed below.

Soil Survey Area: Tillamook County, Oregon

Survey Area Data: Version 1, Sep 21, 2006

Date(s) aerial images were photographed: 7/19/2005

The orthophoto or other base map on which the soil lines were compiled and digitized probably differs from the background imagery displayed on these maps. As a result, some minor shifting of map unit boundaries may be evident.

Nonirrigated Capability Class

Nonirrigated Capability Class - Summary by Map Unit - Tillamook County, Oregon				
Map unit symbol	Map unit name	Rating	Acres in AOI	Percent of AOI
30D	Templeton medial silt loam, 5 to 30 percent slopes	6	6.8	8.1%
30E	Templeton-Ecola medial silt loams, 30 to 60 percent slopes	6	2.1	2.5%
103A	Coquille silt loam, 0 to 1 percent slopes, diked	4	74.4	88.2%
W	Water		0.2	0.2%
Totals for Area of Interest			83.4	100.0%

Description

Land capability classification shows, in a general way, the suitability of soils for most kinds of field crops. Crops that require special management are excluded. The soils are grouped according to their limitations for field crops, the risk of damage if they are used for crops, and the way they respond to management. The criteria used in grouping the soils do not include major and generally expensive landforming that would change slope, depth, or other characteristics of the soils, nor do they include possible but unlikely major reclamation projects. Capability classification is not a substitute for interpretations that show suitability and limitations of groups of soils for rangeland, for woodland, or for engineering purposes.

In the capability system, soils are generally grouped at three levels--capability class, subclass, and unit. Only class and subclass are included in this data set.

Capability classes, the broadest groups, are designated by the numbers 1 through 8. The numbers indicate progressively greater limitations and narrower choices for practical use. The classes are defined as follows:

Class 1 soils have few limitations that restrict their use.

Class 2 soils have moderate limitations that reduce the choice of plants or that require moderate conservation practices.

Class 3 soils have severe limitations that reduce the choice of plants or that require special conservation practices, or both.

Class 4 soils have very severe limitations that reduce the choice of plants or that require very careful management, or both.

Class 5 soils are subject to little or no erosion but have other limitations, impractical to remove, that restrict their use mainly to pasture, rangeland, forestland, or wildlife habitat.

Class 6 soils have severe limitations that make them generally unsuitable for cultivation and that restrict their use mainly to pasture, rangeland, forestland, or wildlife habitat.

Class 7 soils have very severe limitations that make them unsuitable for cultivation and that restrict their use mainly to grazing, forestland, or wildlife habitat.

Class 8 soils and miscellaneous areas have limitations that preclude commercial plant production and that restrict their use to recreational purposes, wildlife habitat, watershed, or esthetic purposes.

Rating Options

Aggregation Method: Dominant Condition

Component Percent Cutoff: None Specified

Tie-break Rule: Higher

Map Unit Description (Brief, Generated)

The map units delineated on the detailed soil maps in a soil survey represent the soils or miscellaneous areas in the survey area. The map unit descriptions in this report, along with the maps, can be used to determine the composition and properties of a unit.

A map unit delineation on a soil map represents an area dominated by one or more major kinds of soil or miscellaneous areas. A map unit is identified and named according to the taxonomic classification of the dominant soils. Within a taxonomic class there are precisely defined limits for the properties of the soils. On the landscape, however, the soils are natural phenomena, and they have the characteristic variability of all natural phenomena. Thus, the range of some observed properties may extend beyond the limits defined for a taxonomic class. Areas of soils of a single taxonomic class rarely, if ever, can be mapped without including areas of other taxonomic classes. Consequently, every map unit is made up of the soils or miscellaneous areas for which it is named and some minor components that belong to taxonomic classes other than those of the major soils.

The Map Unit Description (Brief, Generated) report displays a generated description of the major soils that occur in a map unit. Descriptions of non-soil (miscellaneous areas) and minor map unit components are not included. This description is generated from the underlying soil attribute data.

Additional information about the map units described in this report is available in other Soil Data Mart reports, which give properties of the soils and the limitations, capabilities, and potentials for many uses. Also, the narratives that accompany the Soil Data Mart reports define some of the properties included in the map unit descriptions.

Report—Map Unit Description (Brief, Generated)

Tillamook County, Oregon

Map Unit: 30D—Templeton medial silt loam, 5 to 30 percent slopes

Component: Templeton (85%)

The Templeton component makes up 85 percent of the map unit. Slopes are 5 to 30 percent. This component is on mountains, hillslopes, mountain slopes. The parent material consists of colluvium and residuum derived from sedimentary rock. Depth to a root restrictive layer, bedrock, paralithic, is 40 to 60 inches. The natural drainage class is well drained. Water movement in the most restrictive layer is moderately high. Available water to a depth of 60 inches is very high. Shrink-swell potential is low. This soil is not flooded. It is not ponded. There is no zone of water saturation within a depth of 72 inches. Organic matter content in the surface horizon is about 75 percent. Nonirrigated land capability classification is 6e. This soil does not meet hydric criteria.

Map Unit: 30E—Templeton-Ecola medial silt loams, 30 to 60 percent slopes

Component: Templeton (60%)

The Templeton component makes up 60 percent of the map unit. Slopes are 30 to 60 percent. This component is on mountains, hillslopes, mountain slopes. The parent material consists of colluvium and residuum derived from sedimentary rock. Depth to a root restrictive layer, bedrock, paralithic, is 40 to 60 inches. The natural drainage class is well drained. Water movement in the most restrictive layer is moderately high. Available water to a depth of 60 inches is very high. Shrink-swell potential is low. This soil is not flooded. It is not ponded. There is no zone of water saturation within a depth of 72 inches. Organic matter content in the surface horizon is about 75 percent. Nonirrigated land capability classification is 6e. This soil does not meet hydric criteria.

Component: Ecola (20%)

The Ecola component makes up 20 percent of the map unit. Slopes are 30 to 60 percent. This component is on mountains, mountain slopes, hillslopes. The parent material consists of colluvium derived from sedimentary rock. Depth to a root restrictive layer, bedrock, paralithic, is 20 to 40 inches. The natural drainage class is well drained. Water movement in the most restrictive layer is moderately high. Available water to a depth of 60 inches is high. Shrink-swell potential is low. This soil is not flooded. It is not ponded. There is no zone of water saturation within a depth of 72 inches. Organic matter content in the surface horizon is about 75 percent. Nonirrigated land capability classification is 6e. This soil does not meet hydric criteria.

Map Unit: 103A—Coquille silt loam, 0 to 1 percent slopes, diked**Component: Coquille, diked (85%)**

The Coquille, diked component makes up 85 percent of the map unit. Slopes are 0 to 1 percent. This component is on tidal marshes, lowlands. The parent material consists of estuarine deposits. Depth to a root restrictive layer is greater than 60 inches. The natural drainage class is very poorly drained. Water movement in the most restrictive layer is moderately low. Available water to a depth of 60 inches is high. Shrink-swell potential is low. This soil is frequently flooded. It is frequently ponded. A seasonal zone of water saturation is at 0 inches during January, February, March, December. Organic matter content in the surface horizon is about 7 percent. Nonirrigated land capability classification is 4w. Irrigated land capability classification is 4w. This soil meets hydric criteria.

Component: Histosols (10%)

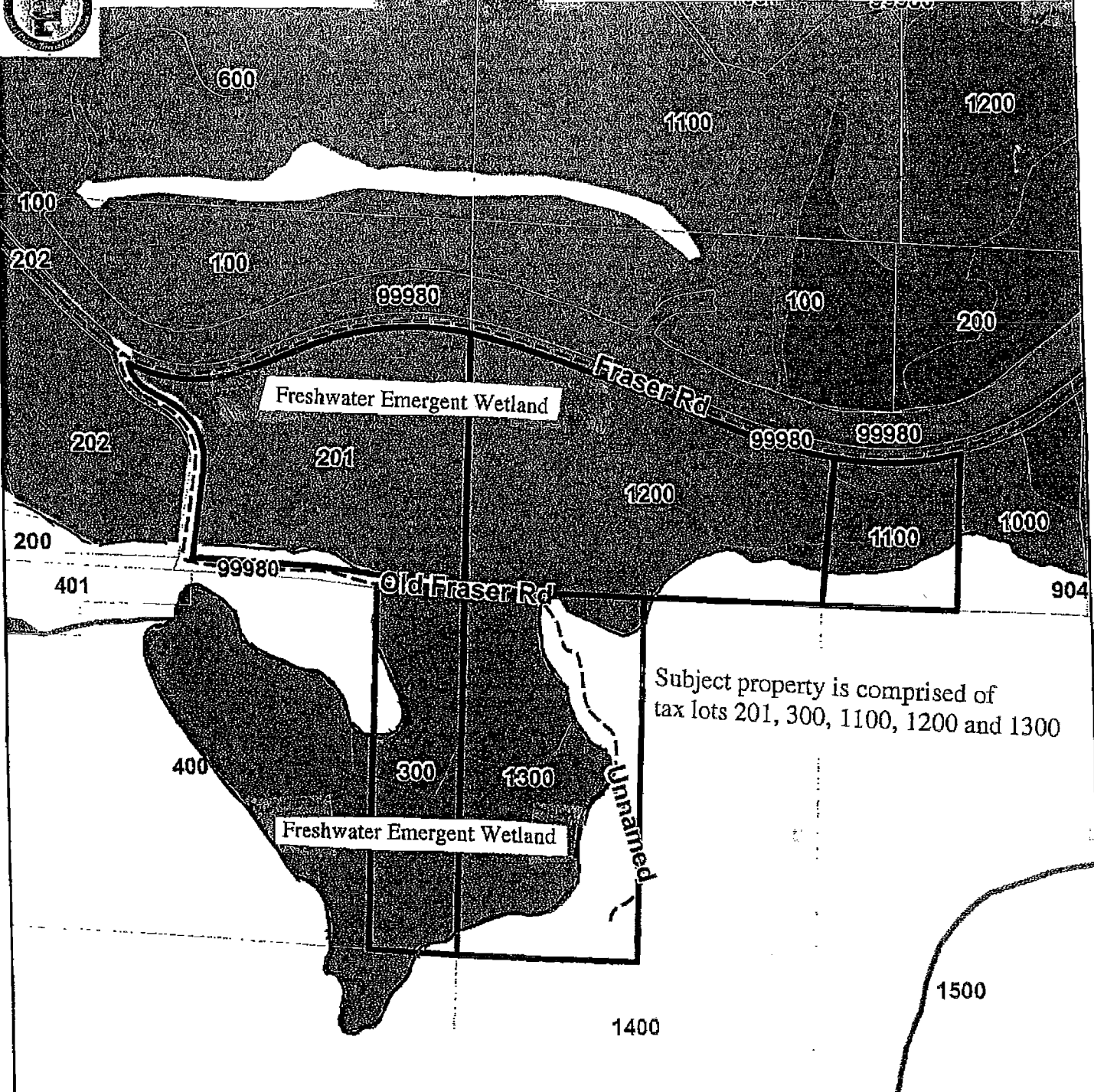
Generated brief soil descriptions are created for major components. The Histosols soil is a minor component.

Component: Brenner (5%)

Generated brief soil descriptions are created for major components. The Brenner soil is a minor component.

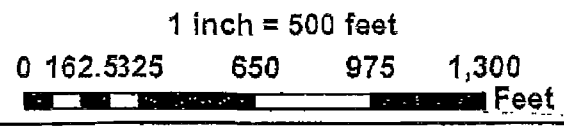
Exhibit E

NATIONAL WETLANDS INVENTORY



Subject property is comprised of tax lots 201, 300, 1100, 1200 and 1300

- National Wetlands Inventory**
- Estuarine and Marine Wetland 500
 - Freshwater Emergent Wetland
 - Freshwater Forest/Shrub Wetland
 - Freshwater Pond
 - Lake
 - Other
 - Riverine
 - Site
 - Taxlots
 - Roads



Disclaimer: The United States Fish and Wildlife Service, National Wetlands Inventory (NWI) provides the best available information on the location and extent of wetlands. The NWI is based on the best available information and is not a guarantee of accuracy. The NWI is not a legal document and should not be used for legal purposes. The NWI is not a substitute for a professional survey or other site-specific information. The NWI is not a guarantee of accuracy and should not be used for legal purposes. The NWI is not a substitute for a professional survey or other site-specific information. The NWI is not a guarantee of accuracy and should not be used for legal purposes.

Exhibit I



Tillamook Estuaries Partnership
A National Estuary Project

613 Commercial Street, PO Box 493, Garibaldi, OR 97118

Phone (503) 322-2222 Fax (503) 322-2261

October 2, 2009

Tillamook Shooter's Association
Attn: Wayne Cook, President
3180 Aldercrest Road
Tillamook, Oregon 97141

Re: Applications for a Firearms Training Facility

Dear Mr. Cook,

As you may know, the Tillamook Estuaries Partnership (TEP) has been collaborating with the Tillamook Shooter's Association (Association) on the potential restoration of wetlands on the property shown on the attached map and currently owned by the Raymond Wyss Estate. In terms of the need for an amendment, rezone and application for a conditional use for the firearms training facility, I will defer to the federal, state and local law enforcement officials. Our involvement in the project will focus on the potential restoration of the remaining 59 acres to a healthy functioning wetland if the Association is successful in acquiring the property.

The TEP Board of Directors has supported the restoration component of this project through its inclusion in our 2010 Workplan subject to the Association's success in obtaining approvals for the various land use requests.

If you have any questions, please contact me at 503-322-2222.

Sincerely,

Lisa Phipps
Executive Director

Exhibit F Pitts Letter

September 24, 2009

Tillamook County Planning Commission
and Board of Commissioners
201 Laurel Avenue
Tillamook, OR 97141

Dear Commissioners,

This letter is in support of providing a safe rifle and pistol shooting facility in Tillamook County for the purpose of training and practice. The organizers have asked for our support and technical assistance, which we are prepared to provide.

Range safety and the safety of the adjacent properties is paramount. This would be controlled by backstops, side berms, and overhead baffles. The range must be designed so that accidental discharges and ricochets remain on the range. These same berms and baffles help control noise by absorption or redirection from areas where DEQ limits apply. This is usually the nearest "noise sensitive" properties. Range activities will still be audible, but must be within legal limits. I recommend that the range provide qualified range officers at any time the range may be open to the public, and that members be safety certified. Law enforcement and military should only use the range during professional training while led by a qualified training officer. Most clubs do not allow automatic weapons fire or .50 BMG. This range would not be an appropriate venue for either of these. Specific rules for range management would be tailored for this range's specific needs.

The Oregon Association of Shooting Ranges will be available as a resource and advisor to help get this range operational with best management practices as used by our member ranges. We also would receive help from the Oregon State Shooting Assn., National Assn. of Shooting Ranges, and the National Rifle Assn. I am a long time officer of Tri-County Gun Club (4,000 members, 3,500 law enforcement, and 500 Marine reservists) located at the Urban Growth Boundaries of both Sherwood and Tualatin. Yet these two cities are our best supporters. Their respective mayors: Keith Mays and Lou Ogden may be contacted for comment.

OASR has considerable experience working with DEQ, EPA, DSL, ODF&W, and the Corps of Engineers. Our ranges use the EPA's Best Management Practices for Lead at Outdoor Shooting Ranges for their guide. Lead is not a hazardous material on shooting ranges per Federal law, and as long as it is handled and recycled properly it is not an environmental issue.

If you have questions please call me or email, and I will do what I can to get you answers.

Thank you for your consideration.

George Pitts, Chairman
Oregon Assn. of Shooting Ranges
19041 SW Olson Ave.
Lake Oswego, OR 97034
503-638-5084, gcpitts@verizon.net

Exhibit G Cook Letter

October 26, 2009

Tillamook County Planning Commission
And Tillamook County Commissioners
201 Laurel Avenue
Tillamook, Oregon 97141

Re: Tillamook Shooters Association's land use applications.

Dear Commissioners,

I would first like to give you a brief history and background of the TILLAMOOK SHOOTERS ASSOCIATION (TSA). We are a non-profit corporation, organized earlier this year, we are an offshoot from the Tillamook Chapter of the Oregon Hunters Association (see attachment). The Tillamook Chapter of the OHA is very service oriented, donating time and money for many local projects such as; hunters safety classes and materials, annual college scholarships for county students, volunteer our dunk tank for local fundraisers and gatherings, offer rewards for information related to poaching and forest vandalism cases, install gates requested by ODFW to restrict access for protection of wildlife in new clear-cuts, supply cellular phones and pay for service for OSP game troupers, volunteer projects for habitat restoration and cleanup of illegal dumpsite on public and private forest-lands, to name a few. Many of the illegal dump sites are related to dispersed target, practice, and sport shooting on public and private property with little thought for safety. Believing most of the dispersed, unsafe and damaging, shooting practices are the result no available developed safe, controlled, maintained, and supervised shooting facility.

For the past 12 to 14 years, we have tried to find a suitable site to develop and operate a firearms training and shooting facility, that would be available to the public within reasonable proximity to the most populated area of the county. With the cooperation of; Tillamook County, POTB, ODF, ODFW, USFS, BLM and most of the local private timber companies, we have investigated dozens of sites, none of which have been suitable for various reasons, such as reasonable proximity to the populace, safety topography, available utilities, access, environmental hazards, and security, etc. On any sites that showed promise we contacted the NRA or the Oregon State Shooting Association, for an on site review and recommendation, none were deemed suitable. In 2001 the proposed site (the Blaser Farm on Fraser Road) became vacant. For the past 8 years we have tried to obtain this property and now have the opportunity. Our intent in developing the much need shooting facility, has been to be good neighbors, good stewards of the land and to provide a safe controlled and supervised facility to serve the citizens of Tillamook County. We have a diverse group of partners (OHA, TSA, ODFW, OSP, Tillamook County Sheriff,

City Police of Tillamook, Rockaway and Manzanita, USCG, OASR, OSSA and the Tillamook Estuary Partnership) who are cooperating, supporting, supplying expertise and services, needed to develop a facility that everyone in the county can be proud of.

The Tillamook Chapter of the OHA and the TSA are dedicated to habitat protection, preserving our hunting heritage, maintaining and promoting safety and training in the shooting sports, especially for new and young shooters, and supporting individuals and organized shooting groups and associations, such as: Firearm and archery hunters, hand loaders and gunsmiths, collectors of rare, obsolete, antique or specialty firearms, competitive shooters, and youth teams, such as 4H, Boy Scouts of America, Oregon Hunters Association, National Rifle Association, and scholastic to name a few.

The Oregon State Police, Tillamook County Sheriffs Department, City Police of Tillamook, Rockaway and Manzanita, and the US Coast Guard have committed to contract with the TAS, to use the proposed facility, for their training and qualification requirements.

We have formed an association with and plan to become members (when we have the approval to develop the facility) of the Oregon Association of Shooting Ranges and Affiliate Members of the NRA. The Oregon Association of Shooting Ranges along with the NRA and the Oregon State Shooting Association, are committed to providing expertise and help with design, operation and maintenance of the facility.

Following are some of the most important criteria, issues and resources that will be addressed and used:

We will work with the Oregon Association of Shooting Ranges and the NRA to determine and apply best management practices for a firearms training facility, and that we will comply with their recommendations, including not permitting automatic weapons fire or .50 BGM ("machine guns") on range.

The range will be designed and managed in a manner that any possible accidental discharges and ricochets remain on range. No lead or bullets of any kind will go off range.

There will be no trap or skeet shooting or thrown clay targets.

Noise will be controlled in accord with DEQ regulations.

We will follow the EPA's Best Management Practices for Lead at Outdoor Shooting Ranges.

We will comply with any other required federal state or local regulations.

TSA will be a participating member of the Oregon Association of Shooting Ranges.

Oregon Hunters Association

Our *History*

In February 1983, in the small community of Powell Butte, Oregon, the Oregon Hunters Association was conceived. A small group of individuals sponsored by the Wallowa Elk Hunters met and established procedures, rules, and goals to form a professional, well-organized, statewide organization. It's primary goals were to enhance wildlife habitat, ensure a huntable wildlife resource, and to protect hunter's rights.

The structure of Oregon Hunters Association (OHA) would be a Board of Directors at large. This would be the governing body of OHA. In the beginning there were three paid employees: One executive director, one office manager, and one magazine editor. All other positions were filled by non-paid volunteers.

During the first year, OHA proved to be a formidable group, always keeping its major goals in view. Wildlife and habitat were top priorities. Deer and elk herds in Eastern Oregon had suffered greatly due to harsh winters and drought summers. Numbers were decreasing at a rapid rate. Winter feeding programs were set up to sustain the herds through the winter. For the coming summer, water guzzlers were purchased, installed, and maintained. These programs helped stabilize the herds, and they are slowly recovering. These programs were funded by OHA from donations received statewide and the manpower supplied by volunteers. Each donor was asked to join OHA, and many did.

Hunter's rights became a major issue in the mid-80's. OHA sent a representative to lobby at the 1985 State Legislature. This proved successful, and some important laws were passed to benefit and protect hunters. As membership grew, politicians began counting votes. OHA now has a loud voice and they listen.

In the early years, membership proved to be the key to success. The first year, 1700 members were signed and proved to be a group of hard workers dedicated to the same cause. Today we steadily increase in numbers. Membership has grown to 10,500-plus in 25 chapters statewide. We have a long way to go but we will get there.

Our *Mission*

"To Provide an abundant huntable wildlife resource in Oregon for present and future

Exhibit H.

TRAFFIC ANALYSIS

May 4, 2009

To: Bradford Sheets, Associate Planner
Butch Parker, Community Development Director.
From: C. Wayne Cook, Tillamook Gun Club.
Re: Proposed land use Zone Change (Tillamook County
Department of Community Development application
ZC-09-01) at 315 Fraser Road, Tillamook, Oregon.

The subject tract is an existing farm of ±85 acres. The proposed use is to develop a private nonprofit, firearms safety training and shooting facility on ±30 acres of the property, with the remaining ±55 acres to be returned to a natural state. Access is onto Burton-Fraser County Road, which is a 2 lane paved road, along the Southerly side of the Tillamook River, and connecting OSH #131 with Tillamook River Loop County Road.

EFFECT ON TRANSPORTATION FACILITIES:

There are five possible points of access to the planned facility from the State Highway system identified.

(1) The North end of Tillamook River County Road at Tillamook via Twelfth Street from Hwy 101 (2 lanes Northbound, AKA Pacific Ave. and 2 lanes Southbound, AKA Main Ave., Speed limit at this point is 25 MPH. This is the most likely access point for Tillamook residents and for users coming from the North and East. Traffic count information indicates an average of 6900 trips per day (ODOT) in 2007 at this location on Hwy 101. Also, ODOT recorded an average of 1200 trips per day on Tillamook River County Road at Tone Bridge in 1991 near this location.

(2) The South end of Tillamook River County Road from Hwy 101 is approximately 3.4 miles South of Tillamook. This is the most likely access point for users coming from points South of Tillamook. ODOT traffic count information indicates that an average of 6700 trips per day on Hwy 101 at this point in 2007. An average of 400 trips per day were counted by ODOT at this location on Tillamook River County Road in 1991, and 492 per day were counted by Tillamook County in 1999. Tillamook River County Road is about 3.49 miles in length.

(3) Gienger County Road, which begins at Hwy 101 about 1.6 miles South of Tillamook and connects to Tillamook River County Road. This is the common intersection with Long Prairie County Road (access point for Port of Tillamook Bay Property). Traffic count information was not found for this location on Hwy 101, but

is assumed to be between the 6700 and 6900 trips per day as noted above. The number of trips per day on Gienger County Road, at Hwy 101, were recorded as 360 per day in 1980 by Tillamook County and 504 were recorded at the Tillamook River County Road end of Gienger County Road in 1980. Gienger County Road is about 1.29 miles in length.

(4) Neilson County Road which begins at Hwy 101 about 1.4 miles South of Tillamook and connects to Tillamook River County Road. Traffic count information was not found for this location on Hwy 101, but is assumed to be between the 6700 and 6900 vehicles per day. Neilson County Road is about 1.5 miles in length. It is very unlikely that Neilson County Road will be used as an access to the planned development.

(5) Fraser County Road from Hwy 131, about 2.5 miles West of Tillamook, is the likely access for Oceanside, Cape Mears and Netarts area residents. An average of 4200 trips per day, were counted by ODOT in 2007, on Hwy 131 at this location. Tillamook County recorded 312 trips per day on Fraser County Road in 1980.

Tillamook County Public Works copy of the "ITE TRIP GENERATION MANUAL, Fifth Edition", was reviewed to establish existing and anticipated use trip estimates. There is no reference to Farm, Forest, and Firearms training facility, Gun Range or Shooting Range.

Finding no documentation or studies to establish average trip numbers, the following has been used to estimate vehicle trips;

CURRENT USE: For the past 8 years, the subject property has been more or less vacant; generating an average of less than 2 vehicle trips per day.

PROPOSED USE: Anticipated to generate an average of up to 100 vehicle trips per day, if the full potential is met.

CONCLUSION:

The increase of average vehicle trips per day, from ±2 current to 100 anticipated, is 98. This anticipated increase is well below the threshold of 300, which is considered insignificant impact to the state highway system.

EXHIBIT J

LETTERS IN SUPPORT OF FIREARMS TRAINING FACILITY

1. Undersheriff Terry Huntsman, Tillamook County Sheriff's Office
2. Sergeant Todd Hoodenpyl, Oregon State Police's Tillamook Worksite
3. Terry Wright, City of Tillamook Police Chief
4. Ed Wortman, City of Rockaway Beach Police Chief
5. Herman Biederbeck, ODFW District Wildlife Biologist
6. Rick Klumph, ODFW North Coast Watershed District Manager
7. Ron Rehn, ODFW Habitat Conservation Biologist
8. Andy White, ODF Tillamook and Forest Grove District Forester
9. George Buckingham, U.S. Forest Service Hebo District Ranger
10. Rudy Fenk, Dairy Farmer
11. Ed Jenkins, neighboring property owner and former planning commission member
12. Britt Madison, Stimson Lumber Company Tillamook Area Manager
13. Mitch Parker, Green Diamond resource Company
14. Dan Cotton, Hunter Education Instructor
15. Pat Ashby, Tillamook PUD General Manager
16. Delbert Schleichert, Tillamook County Parks Director
17. Marion and Linda Blaser, former subject property owner
18. Keith Whitehead
19. Jerry Dove
20. Scott ~~Whitehead~~ Whitehead
21. Tucker Slaven

TILLAMOOK COUNTY SHERIFF'S OFFICE

"To Serve and Protect"



Sheriff Todd Anderson

April 22, 2009

RECEIVED

APR 23 2009

COMMUNITY
DEVELOPMENT

Bradford Sheets
Tillamook County Community Development
201 Laurel Avenue
Tillamook, OR 97141

RE: Zone change request ZC-09-01.


Dear Mr. Sheets,

The Tillamook County Sheriff's Office supports the zone change request for property located at 315 Fraser Road, Tillamook Oregon. This zone change is a needed in order to place a Firearms Training Facility at that location.

A Firearms Training Facility will give the Sheriff's Office as well as other law enforcement agencies in Tillamook County a long term solution for firearms training and qualification issues we currently encounter. This training is needed for deputies to maintain firearms proficiency and is a requirement through the State of Oregon in order for deputies to keep their police certification.

A Firearms Training Facility in Tillamook County will help to reduce shooting in our forest which has been a problem for many years. Typical problems we see with shooting in our forest are vandalism, user mishaps, endangering others users and environmental damage. While this will not eliminate all these concerns I believe it will significantly reduce these issues. This facility will give the citizens of Tillamook County a safe, structured and well managed area for target shooting.

Sincerely,


Undersheriff Terry Huntsman
503-815-3326

5995 Long Prairie Road Tillamook OR 97141

phone (503) 842-2561 fax (503) 815-3399

web <http://www.tillamooksheriff.org>



Oregon

Theodore R. Kulongoski, Governor

Department of State Police

5995 Long Prairie Road

Tillamook, OR 97141

(503) 842-2899

FAX (503) 842-5250

RECEIVED

MAY 04 2009

COMMUNITY
DEVELOPMENT

April 29, 2009

Tillamook County Department of Community Development

Attn: Brad Sheets

201 Laurel Avenue

Tillamook, Oregon 97141

Reference: Zone Change ZC-09-01

Dear Mr. Sheets,

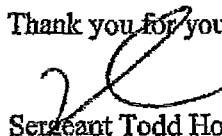
I am writing this letter in support of a proposed zone change for 315 Fraser Road in Tillamook, Oregon.

The Oregon State Police and other public safety agencies have been working closely with the Tillamook Gun Club and the Tillamook Shooter Association to locate a tract of land that would be suitable for a firearms training facility. This zone change would allow the land located at 315 Fraser Road to be used as a law enforcement firearms training area which is much needed in Tillamook County.

Most law enforcement agencies operating within Tillamook County are without a permanent location to conduct required firearms training. The Oregon State Police and other law enforcement agencies are required to have their officers trained in the use of firearms for the protection of the public and the officers themselves. Without the ability to conduct firearms training it jeopardizes the safety of the public and potentially makes each agency open to increased civil liability. If a permanent firearms training location is not identified soon, agencies will incur increased overtime, travel, and training costs.

The location of this zone change would allow this firearms training area to exist and would also allow each law enforcement agency in Tillamook County to properly train their officers for the safety of the general public.

Thank you for your time.


Sergeant Todd Hoodenpyl
Oregon State Police
Tillamook Worksite

C. Wayne Cook

From: "Terry Wright" <twright@tillamookor.gov>
To: <cwaynecook@embarqmail.com>
Sent: Wednesday, January 28, 2009 9:04 AM
Subject: Gun Range

The City of Tillamook supports the proposed zone change as it would allow, with the subsequent development of a gun range, city law enforcement to achieve training, certification and qualification requirements locally.

Terry Wright
Police Chief

2/2/2009

C. Wayne Cook

From: "Ed Wortman" <ed@rockawaybeach.or.us>
To: <cwayneccook@embarqmail.com>
Cc: "Terry Huntsman" <thuntsma@co.tillamook.or.us>
Sent: Thursday, April 23, 2009 12:32 PM
Subject: Shooting Range

Wayne,

Chief Ed Wortman here with Rockaway Beach. It is our intent to participate with other departments in the shooting range project. We will commit to a \$1,250.00 per year contribution to the project to maintain this valuable resource. I need to speak with Terry Huntsman a little more to make sure we can coordinate firearms training and noted that Terry has backed off from 52 days per year exclusive use. We may ask for the range on up to 8 days per year, excluding weekends, which would add to the commitment of time as I do not want to attempt to take County days. We can work that out.

We strongly support your efforts and I was personally very interested in the personal "charter or preferred memberships" you spoke of at the first meeting. While I do not shoot a lot, I would be happy to buy a membership just so I had a place to go rather than shooting in the back yard so to speak.

Feel free to call me on my cell 503 457-6407 if you need more information or if I can help. I think that it will take awhile for our City Attorney and City Manager to approve an agreement as they will want to send it to the CCI representatives to make sure their risk management approves.

Thanks for your efforts on this and I apologize for not making the last meeting, I was unfortunately called to the middle school and did not get out in time to come to the meeting.

Stay Safe and Well
Ed

Ed Wortman, Chief
City of Rockaway Beach
503 355-2252 Office
Cell 503 457-6407

5/6/2009

C. Wayne Cook

From: "Herman Biederbeck" <Herman.H.Biederbeck@state.or.us>
To: <cwaynecook@embarqmail.com>
Cc: "Rick Klumph" <Rick.L.Klumph@state.or.us>
Sent: Wednesday, January 28, 2009 2:05 PM
Subject: Wyss property zone change

Wayne

As a representative of the Oregon Dept. of Fish and Wildlife, I support the application to rezone the R. Wyss estate property along Burton Fraser Rd from Farm to Forest. This will allow subsequent development of a gun range open to the public which can benefit the hunting community in a number of ways. These include, but are not limited to

1. Facilitating Hunter Safety Education programs.
2. Providing hunters a safe and controlled environment to sight in and practice with hunting firearms and archery equipment.
3. Promote other shooting sports (e.g. sporting clays, competitive shooting) which can benefit hunting skills.

With subsequent ownership of said property in a non-profit entity affiliated with Oregon Hunter's Association, waterfowl hunting and wildlife viewing opportunities would be increased over the current situation (privately owned).

Sincerely,

Herman Biederbeck
District Wildlife Biologist
North Coast Watershed District
Oregon Dept. of Fish and Wildlife
4907 Third Street
Tillamook, OR 97141
Ph: 503-842-2741 ext. 227
Fax: 503-842-8385
email: herman.h.biederbeck@state.or.us

2/2/2009



Oregon

Theodore R. Kulongoski, Governor

RECEIVED

APR 30 2009

April 27, 2009

COMMUNITY
DEVELOPMENT

Department of Fish and Wildlife

North Coast Watershed District

4907 Third Street

Tillamook, OR 97141

(503) 842-2741

FAX (503) 842-8385

www.dfw.state.or.us



Tillamook County Planning Commission
Tillamook County Courthouse
201 Laurel Avenue
Tillamook, OR 97141

Dear Commission Members:

I'm writing to you today on behalf of the Oregon Dept. of Fish and Wildlife (ODFW) to express support for the zone change request (ZC-09-01) by the Tillamook Gun Club. It is my understanding that the rezoning from Farm (F-1) to Forest (F) is necessary to allow the development of a gun range as a conditional use.

A gun range has been a need in Tillamook County for many years. Currently, hunters have no established range to practice or sight in firearms in the county. Establishment of a gun range would allow an opportunity for hunters to become more skilled at shooting and learn safe gun handling practices. It would also allow young hunters, such as those undergoing Hunter Education instruction, a place to qualify for certification and practice shooting. Having an established gun range could also promote shooting sports, such as hunting, at a time when traditional outdoor activities are declining across the state and the nation.

Again, ODFW supports the rezoning request (ZC-09-01), and thanks the Tillamook County Planning Commission for the opportunity to comment on the proposal.

Sincerely,

Rick Klumph
Watershed Manager
North Coast Watershed District

C Herman Biederbeck



Oregon

Theodore R. Kulongoski, Governor

Department of Fish and Wildlife
North Coast Watershed District
4907 Third Street
Tillamook, OR 97141
(503) 842-2741
FAX (503) 842-8385
www.dfw.state.or.us



April 16, 2009

Bradford Sheets
Tillamook County Dept. of Community Development
201 Laurel Ave.
Tillamook, Oregon 97141

Re: ODFW comments on Zone Change Request ZC-09-01

Mr. Sheets:

The Oregon Department of Fish and Wildlife (ODFW) has reviewed Zone Change Request ZC-09-01 to rezone the subject property from Farm (F1) to Forest (F) zoning. The application identifies restoring and maintaining portions of this property back to natural conditions as part of the development of this property. Based on the proposed future development as stated in this application and onsite field visits, no adverse impacts to fish and wildlife resources are expected as a result of approving the request. ODFW sees an overall benefit to the resource and supports approval of this request. However, we recommend the following items be addressed appropriately to mitigate any potential impacts as a result of developing this site as stated in this application.

Riparian Areas

ODFW recommends that the project be designed to avoid entering County-designated riparian setbacks. This includes all proposed developmental actions. Any development within these areas which could result in a loss of fish and wildlife habitat may require the impact be mitigated consistent with current habitat mitigation standards (OAR 635, Division 415).

Stream Crossings

Any stream-road crossings (temporary or permanent) are to comply with fish passage requirements. Laws regarding fish passage may be found in ORS 509.580 through 910, and in OAR 635, Division 412. ODFW shall approve in advance any stream crossing including utilities.

Wetlands

Any development within or near wetlands should be avoided or minimized. Identification of these areas should be done prior to project design.

Sensitive Resources

No sensitive fish and wildlife resource sites requiring restrictions such as timing and proximity of project activities are known to exist within the subject property.

~~Thank you for the opportunity to review and provide comment on this request. If you any further~~
questions regarding this review, please contact me at (503) 842-2741.

Sincerely,



Ron Rehn

~~Habitat Conservation Biologist, ODFW~~

4907 East Third Street

Phone (503) 842-2741

Fax (503) 842-8385

Email ron.f.rehn@state.or.us



Oregon

Theodore R. Kulongoski, Governor

Department of Forestry
Forest Grove District
801 Gales Creek Road
Forest Grove, OR 97116
(503) 357-2191
FAX (503) 357-4548



STEWARDSHIP IN FORESTRY

October 2, 2009

Tillamook County Board of Commissioners
and Planning Commission
201 Laurel Avenue
Tillamook, OR 97141

Re: Tillamook Shooter's Association's Land Use Applications

Dear Commissioners,

It has come to my attention that the Tillamook Shooter's Association is submitting applications that would permit them to place a firearms training facility on a piece of land that is currently zoned as farmland. Included in their application is a request to rezone from Farm to Forest the 25.88 acres adjacent to forestland on which the firearms training facility would be located. As such, the Tillamook Shooter's Association is seeking conditional use approval for the firearms facility on that portion of the property mentioned above.

The Tillamook District supports the Association's applications due to the limited opportunities for safe shooting in the area. Target shooting continues to be a significant issue on State Forest ownership as well, given the multitude uses that occur on these lands and the concerns for safety. I applaud the association's efforts in seeking a long term solution to their identified need.

Sincerely,

Andy White
District Forester
Tillamook and Forest Grove Districts
Oregon Department of Forestry



United States
Department of
Agriculture

Forest
Service

Siuslaw National Forest

Hebo Ranger District
P.O. Box 235
Hebo, OR 97122
503 392-3161

File Code: 2300

Date: September 23, 2009

Tillamook County Planning Commission
210 Laurel Ave
Tillamook, OR 97141

Dear Planning Commission:

I was recently contacted by Wayne Cook regarding the proposal for a firearms training facility and public shooting site located off Old Fraser Road.

As you may be aware, public shooting is permitted on national forest system lands where it can be done safely. However, many shooters leave trash and debris behind, shoot unsafely, and even transport appliances and other large objects to these sites to use as targets. These areas become "attractive nuisance" sites which cause damage to the environment and are costly to clean up.

A public shooting and firearms training site in a controlled environment located closer to the larger populations centers of the county would likely have the effect of reducing pressure on national forest system lands for shooting sports use. For these reasons, I support the proposal.

Sincerely,

GEORGE T. BUCKINGHAM

GEORGE T. BUCKINGHAM
District Ranger
Hebo Ranger District



September 26, 2009

Tillamook County Planning Commission
and Board of Commissioners
201 Laurel Ave.
Tillamook, OR 97141

Re: Tillamook Shooter's Association's Land Use Applications

Dear Commissioners,

I have served on the board of the Tillamook County Soil and Water Conservation District (SWCD) for more than 35 years—most of that time as Board Chair. The SWCD Board played a central role in all aspects of the agricultural-related work on the county's Comprehensive Plan and the zoning of farmland in the late 1970's and early 1980's. I remain committed to protecting productive farmland in Tillamook County.

The Tillamook Shooter's Association is submitting applications that would permit placement of a firearms training facility on a portion of an 85-acre property off Old Fraser Road. Their applications include rezoning 25.88 acres adjacent to forestland from Farm to Forest, and seeking conditional use approval for the firearms facility on that portion of the property.

I strongly support these applications because of the need for a firearms training facility in our county, and because I am very aware of the proposed site's inherent limitations for commercial agriculture. Its low-lying Coquille soils would require costly repair and maintenance of the dikes, ditches and tide gates that are now in very poor condition. The old farm house and out buildings are beyond repair. The 85-acre ownership is no longer capable of operating as a self-contained dairy because of current acreage requirements and other physical limitations. Farmers in the area may use a portion of the property for grass hay and possibly the grazing of dry stock, but I don't think anyone will find it cost-effective to repair and maintain the dikes, ditches and tide gates—even if they were legally permitted to do so. The proposed zone change would leave 59 acres of the property in the Farm zone. That portion could be available either for limited farm use or it could be permitted to revert to its natural state for enhanced fish and wildlife habitat.

An outdoor firearms training facility can be located only on resource-zoned land in a rural area because of distance requirements from more developed areas. Opposition from nearby property owners is likely no matter where an accessible, physically suitable facility is proposed. All things considered, I know of no better site than this one. I do not foresee this facility having a significantly adverse impact on nearby dairy operations.

Sincerely,



Rudy Fenk

40 Fawk Road
Tillamook, OR

October 21, 2009

To: Tillamook County Planning Commission
Tillamook County Board of Commissioners

From: Edwin L. Jenkins

Re: Tillamook Shooter's Association's Land Use Application
84.78 acre property located at 315 Fraser Rd.

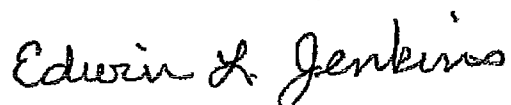
Dear Commissioners,

I am an adjacent land owner and owned and farmed the farm located at 130 Fraser Rd. for nearly 23 years. I am writing this letter in support of amending Tillamook County's Land Use Ordinance to permit a firearms training facility as a conditional use in the Forest Zone (F) as permitted by the Oregon Administrative Rule for Goal 4 Forest Lands. I also support the request to rezone a 25.38 acre portion of the property that is currently adjacent to forest zoned land and grant a conditional use approval for the firearms training facility on that portion of land rezoned as Forest. I can appreciate the decisions that you are faced with as I served on the Tillamook County Planning Commission during the early 1980's when the Tillamook County Comprehensive Land Use Plan was developed and adopted.

It is my understanding that the Tillamook Shooters Association has had discussions with the Tillamook Estuary Partnership and the Oregon Department of Fish and Wildlife about enabling the reversion of the majority of the remaining 59 acres of the property to the natural fish and wildlife habitat that was present before the ditches and tide gates were installed to facilitate the farming of the property. I am not opposed to enhancing properties for the benefit of fish and wildlife, but to allow this property to revert back to "tussiks" would be a mistake. I would encourage the Tillamook Shooters Association to repair the tide gates, clean the ditches and allow sound farming practices to continue on that portion of the property suitable for farming. As demonstrated by the "Goose Reserve" in Oretown, wildlife prefer well farmed grasslands over natural grasses that exist in "wetlands". Tide gates do not discourage fish passage. I maintained the tide gates and drainage ditches on my farm in order to maximize grass production and at certain times of the year, my drainage ditches were full of smolts.

I recognize the need for a firearms training facility but I also recognize the need for the preservation of farm land. I believe this is a situation whereby working together, both needs can be achieved.

Sincerely,



Edwin L. Jenkins

RECEIVED

MAY 04 2009

COMMUNITY
DEVELOPMENT

May 1, 2009

Tillamook County Planning Commission

210 Laurel Avenue

Tillamook, OR 97141

RE: Zone Change Request ZC-09-01 Tillamook Gun Club From Farm (F-1) to Forest (F).

To the Board of Commissioners.

Stimson Lumber Company is in support of the zone change for request ZC-09-01 from Farm to Forest.

It is are understanding that the land is to be used for a new gun range for the community to use. As one of the larger land owners in Tillamook County we are faced each year to damage to our property from people shooting . We spend thousands of dollars on gate repairs, cleaning up of trash, damage to our young stands of timber. It is our hope that by allowing the zone change and providing a new area for a gun range that we will see a reduction in the vandalism to our lands. We are behind the change 100%.

Thank you for considering the zone change.

Britt Madison


Stimson Lumber Company



Northwest Division
PO Box 190

Tillamook, Oregon
97141-0190

T (503) 812-5484
greendiamond.com

April 28, 2009

RECEIVED

APR 29 2009

Tillamook County Planning Commission
Tillamook County Courthouse
201 Laurel Avenue
Tillamook, OR 97141

COMMUNITY
DEVELOPMENT

Dear Planning Commission,

The Tillamook Gun Club, along with other professional organizations and gun enthusiasts has been trying to secure a safe and compatible location to develop a gun and rifle range for many years. A location that is convenient and compatible with appropriate zoning is hard to find. As a manager of an industrial tree farm in Tillamook County, I have been approached several times about this issue. In today's world, we have to concern ourselves with the liability of target practice and incidental shooting on our property. We do allow and encourage responsible hunting, as it is a valued recreation to many Oregonians.

There has been a zone change request (ZC-09-01) located at 315 Fraser Road in Tillamook county. The subject property is designated as Tax Lots 201 and 300 in Section 2A, T2S, R10W and Tax Lots 1100, 1200 and 1300 in Section 1, T2S, R10W, W.M. The current property owner is the Estate of Raymond Wyss.

I know there has been a lot of effort over several years searching for a suitable location for a gun range. It would serve many needs of the county including public safety (law enforcement) gun practice and training, Oregon's Hunter Education Program and a safe and controlled setting for sighting in and practice shooting firearms in general.

I hope the county joins me in full support of this zone change to enable a very needed and necessary location for a firearm range proposed by the Tillamook Gun Club.

Sincerely,

A handwritten signature in cursive script that reads "Mitch Parker".

Mitch Parker

C. Wayne Cook

From: "COTTON Dan L" <Dan.L.Cotton@state.or.us>
To: <cwaynecook@ambarqmail.com>
Sent: Friday, January 30, 2009 2:23 PM
Subject: Firearms Training Facility and Gun Range

Wayne, I have been asked to comment on the need for a firearms training facility and gun range. I have been teaching Hunter Education in Tillamook county for nearly 12 years and from my experience as a instructor I can say that -YES! - we do need a firearms training facility and gun range. During a hunter education course students learn important skills. Many of these learning activities require extensive handling of firearms. Some of these skills can easily be taught in a class room, while others are better suited to be done at a safe range facility. I can easily teach loading and safe handling of firearms in-doors by using our non-firing firearms and "dummy" ammunition. Other activities such as crossing fences, field carries and "live fire" are best suited for outdoors. "Live Fire" is a course requirement where the students do shot fire arms. As a instructor, I have the option to use .22 rifles, 20ga or smaller shotguns or pellet air rifles. I have conducted "live fire" at both in-doors and outdoors facilities. Currently, since there is no local outdoors gun range that meets our safety requirements for .22 rifles, we are using pellet air rifles at in-doors facilities. We do meet our course requirements by using the pellet air rifles. But for some reason, actually going to a range and shooting a .22 rifle or shotgun has a greater impact on the students. All the safety messages we have been teaching during a course seem to be driven home the instant they here the "crack" of the .22 rifle or feel the push of the shotgun. Once again- Yes! - we do need a firearms training facility and gun range in our county. Dan Cotton

2/2/2009



Tillamook People's Utility District

Directors
Harry E. Hewitt
Edwin L. Jenkins
Doug Olson
Ken R. Phillips
Barbara A. Trout

Customer-Owned Electric Utility

Office: 503 842-2535 • Toll-free: 800 422-2535 • Fax: 503 842-4161

www.tpuud.org

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Patrick F. Ashby
GENERAL MANAGER

MAY 1 2009

COMMUNITY
DEVELOPMENT

April 28, 2009

Tillamook County Department of Community Development
201 Laurel Avenue
Tillamook, OR 97141

RE: Zone Change Application ZC-09-01

Dear Planning Commission:

Tillamook People's Utility District is supportive of the land use Zone Change ZC-09-01 for the Tillamook Shooters Association.

The District advocates for local organizations that promote safe activities with broad socio-economic benefits to Tillamook County.

A shooting and training facility developed and maintained in a safe and controlled area would provide educational and recreational opportunities for our local residents and our visitors. This type of facility could also support training exercises for law enforcement agencies and promote safe gun handling practices. Certainly owners of second homes would find such a facility convenient and an attribute to our rural characteristics.

Sincerely,

Patrick Ashby
General Manager

Tillamook County



Parks Department
P.O. Box 633
Garibaldi, OR 97118

Land of Trees, Cheese and Ocean Breeze

Delbert F. Schleichert, Director

Office: 503-322-3477

FAX: 503-322-0212

Date: May 7, 2009
TO: Bradford Sheets, Community Development Department
From: Delbert F. Schleichert, Director Parks
Re: Letter of Support - Tillamook County Shooting Range

It is frequently reported that country is seeing an enormous growth in personal gun ownership. This alone could be enough to support a public shooting range. Most people whether they own a gun or not, are not very knowledgeable about their gun or gun safety. Moreover, many gun owners have not shot there gun since they purchased it and therefore, are not secure with it or proficient in handling the weapon.

The lack of a good well equipped and managed shooting range leaves many private gun owners without a safe alternative. Some gun owners may just put their weapon up and figure they will use it when they need to. Others we find go out into the parks or forest and find a place to practice shooting. This can be dangerous! Rural homes, campers, and other recreationists have found themselves in a spot with bullets whistling by.

A practical solution! A safe solution! to this kind of problem is the provision of a well equipped and managed public shooting range. It is time that Tillamook County has a safe and efficient shooting range. Such a range would serve private gun owners as well as the Counties many Professional Law Enforcement Officers who need to train and practice to maintain their proficiency and certifications with various weapons.

Sincerely,

Delbert F. Schleichert, Director
Tillamook County Parks Department

September 28, 2009

Tillamook County Planning Commission and
Board of County Commissioners
201 Laurel Avenue
Tillamook, OR 97141

Re: Firearms Training Facility Applications

Dear Commissioners:

We support the Tillamook Shooter's Associations applications for a firearms training facility on a portion of the Fraser Road property that we farmed for more than 20 years until 1991. We believe that this will be an appropriate use for the 25 acres that is adjacent to forestland owned and managed by Stimson Lumber Company.

Thank you for considering our opinion on this matter.

Sincerely,

Marion Blaser

Linda Blaser

Marion and Linda Blaser

April 22, 2009

Dept. Of Community Development
Re: OHA Gun Range

APR 4 2009

I'm writing this letter in support to the land use zone change application ZC-09-01. This change will enable the Tillamook OHA to purchase and build a gun range which is highly needed facility for our county. The range will be used by several city law enforcements, coast guard, Oregon dept. of wildlife, Hunting Safety Education training for our young adults. The public is welcome plus this will bring out of town sportsmans to practice.

*Tucker Stevens
Beamer, Or.*



Oregon Revised Statutes - 2009
Chapters 171 - 200

Chapter 197 — Comprehensive Land Use Planning Coordination

2009 EDITION

COMPREHENSIVE LAND USE PLANNING COORDINATION

MISCELLANEOUS MATTERS

197.770 Firearms training facilities.

(1) Any firearms training facility in existence on September 9, 1995, shall be allowed to continue operating until such time as the facility is no longer used as a firearms training facility.

(2) For purposes of this section, a “firearms training facility” is an indoor or outdoor facility that provides training courses and issues certifications required:

- (a) For law enforcement personnel;
- (b) By the State Department of Fish and Wildlife; or
- (c) By nationally recognized programs that promote shooting matches, target shooting and safety. [1995 c.475 §2]

Exhibit C

Oregon Administrative Rules[alpha links](#) | [numerical links](#) | [bulletins](#) | [filing resources](#) | [rules coordinators](#) | [about oars](#) | [search oars](#) | [buy oars](#) | [ors](#)**The Oregon Administrative Rules contain OARs filed through February 12, 2010****LAND CONSERVATION AND DEVELOPMENT DEPARTMENT****DIVISION 6****GOAL 4 FOREST LANDS****660-006-0000****Purpose**

- (1) The purpose of the Forest Lands Goal is to conserve forest lands and to carry out the legislative policy of ORS 215.700.
- (2) To accomplish the purpose of conserving forest lands, the governing body shall:
 - (a) Designate forest lands on the comprehensive plan map as forest lands consistent with Goal 4 and OAR Chapter 660, Division 6;
 - (b) Zone forest lands for uses allowed pursuant to OAR Chapter 660, Division 6 on designated forest lands; and
 - (c) Adopt plan policies consistent with OAR Chapter 660, Division 6.
- (3) This rule provides for a balance between the application of Goal 3 "Agricultural Lands" and Goal 4 "Forest Lands," because of the extent of lands that may be designated as either agricultural or forest land.

Stat. Auth.: ORS 183, ORS 197.040, ORS 197.230 & ORS 197.245

Stats. Implemented: ORS 197.040, ORS 197.230, ORS 197.245, ORS 215.700, ORS 215.705, ORS 215.720, ORS 215.740, ORS 215.750, ORS 215.780 & Ch. 792, 1993 OL

Hist.: LCDC 8-1982, f. & ef. 9-1-82; LCDC 1-1990, f. & cert. ef. 2-5-90; LCDC 1-1994, f. & cert. ef. 3-1-94

660-006-0003**Applicability**

- (1) OAR Chapter 660, Division 6 applies to all forest lands as defined by Goal 4.
- (2) Governing bodies shall amend their comprehensive plan and land use regulations to comply with requirements of OAR 660-006-0035(2) and 660-006-0040 by September 6, 1994.

Stat. Auth.: ORS 183, ORS 197.040, ORS 197.230 & ORS 197.245

Stats. Implemented: ORS 197.040, ORS 197.230, ORS 197.245, ORS 215.700, ORS 215.705, ORS 215.720, ORS 215.740, ORS 215.750, ORS 215.780 & Ch. 792, 1993 OL

Hist.: LCDC 1-1990, f. & cert. ef. 2-5-90; LCDC 7-1992, f. & cert. ef. 12-10-92; LCDC 1-1994, f. & cert. ef. 3-1-94

Exhibit D

660-006-0004**Notice of Decision in Forest Zones**

Governing bodies shall provide the following types of notice:

- (1) Notice of all applications for dwellings and land divisions in forest and agriculture/forest zones shall be provided to the Department of Land Conservation and Development at the Salem office. Notice shall be in accordance with the governing body's acknowledged comprehensive plan and land use regulations, and shall be mailed at least ten calendar days prior to the hearing or decision being made.
- (2) Notice of proposed actions described in section (1) of this rule shall be provided as required by procedures for notice contained in ORS 197.763 and 215.402 to 215.438.
- (3) The provisions of sections (1) and (2) of this rule are repealed on September 6, 1995.

Stat. Auth.: ORS 183, ORS 197.040, ORS 197.230 & ORS 197.245

Stats. Implemented: ORS 197.040, ORS 197.230, ORS 197.245, ORS 215.700, ORS 215.705, ORS 215.720, ORS 215.740, ORS 215.750, ORS 215.780 & Ch. 792, 1993 OL

Hist.: LCDC 1-1990, f. & cert. ef. 2-5-90; LCDC 1-1994, f. & cert. ef. 3-1-94

660-006-0005**Definitions**

For the purpose of this division, the following definitions apply:

- (1) Definitions contained in ORS 197.015 and the Statewide Planning Goals.
- (2) "Cubic Foot Per Acre" means the average annual increase in cubic foot volume of wood fiber per acre for fully stocked stands at the culmination of mean annual increment as reported by the USDA Natural Resource Conservation Service (NRCS) soil survey information, USDA Forest Service plant association guides, Oregon Department of Revenue western Oregon site class maps, or other information determined by the State Forester to be of comparable quality. Where such data are not available or are shown to be inaccurate, an alternative method for determining productivity may be used. An alternative method must provide equivalent data as explained in the Oregon Department of Forestry's Technical Bulletin entitled "Land Use Planning Notes Number 3 dated April 1998" and be approved by the Oregon Department of Forestry.
- (3) "Cubic Foot Per Tract Per Year" means the average annual increase in cubic foot volume of wood fiber per tract for fully stocked stands at the culmination of mean annual increment as reported by the USDA Natural Resource Conservation Service (NRCS) soil survey information, USDA Forest Service plant association guides, Oregon Department of Revenue western Oregon site class maps, or other information determined by the State Forester to be of comparable quality. Where such data are not available or are shown to be inaccurate, an alternative method for determining productivity may be used. An alternative method must provide equivalent data as explained in the Oregon Department of Forestry's Technical Bulletin entitled "Land Use Planning Notes Number 3 dated April 1998" and be approved by the Oregon Department of Forestry.
- (4) "Date of Creation and Existence." When a lot, parcel or tract is reconfigured pursuant to applicable law after November 4, 1993, the effect of which is to qualify a lot, parcel or tract for the siting of a dwelling, the date of the reconfiguration is the date of creation or existence. Reconfigured means any change in the boundary of the lot, parcel, or tract.
- (5) "Eastern Oregon" means that portion of the state lying east of a line beginning at the intersection of the northern boundary of the State of Oregon and the western boundary of Wasco County, then south along the western boundaries of the counties of Wasco, Jefferson, Deschutes and Klamath to the southern boundary of the State of Oregon.
- (6) "Forest Operation" means any commercial activity relating to the growing or harvesting or any forest tree species as defined in ORS 527.620(6).
- (7) "Governing Body" means a city council, county board of commissioners, or county court or its designate, including planning director, hearings officer, planning commission or as provided by Oregon law.

(8) "Western Oregon" means that portion of the state lying west of a line beginning at the intersection of the northern boundary of the State of Oregon and the western boundary of Wasco County, then south along the western boundaries of the counties of Wasco, Jefferson, Deschutes and Klamath to the southern boundary of the State of Oregon.

(9) "Lot" shall have the meaning set forth in ORS 92.010 and "parcel" shall have the meaning set forth ORS 215.010.

Stat. Auth.: ORS 197.040, 197.230 & 197.245

Stats. Implemented: ORS 197.040, 197.230, 197.245, 215.700, 215.705, 215.720, 215.740, 215.750, 215.780 & Ch. 792, 1993 OL
 Hist.: LCDC 8-1982, f. & ef. 9-1-82; LCDC 1-1990, f. & cert. ef. 2-5-90; LCDC 7-1992, f. & cert. ef. 12-10-92; LCDC 1-1994, f. & cert. ef. 3-1-94; LCDD 2-1998, f. & cert. ef. 6-1-98; LCDD 5-2000, f. & cert. ef. 4-24-00; LCDD 3-2008, f. & cert. ef. 4-18-08

660-006-0010

Inventory

Governing bodies shall include an inventory of "forest lands" as defined by Goal 4 in the comprehensive plan. Lands inventoried as Goal 3 agricultural lands or lands for which an exception to Goal 4 is justified pursuant to ORS 197.732 and taken are not required to be inventoried under this rule. Outside urban growth boundaries, this inventory shall include a mapping of average annual wood production capability by cubic foot per acre (cf/ac). If site information is not available then an equivalent method of determining forest land suitability must be used. Notwithstanding this rule, governing bodies are not required to reinventory forest lands if such an inventory was acknowledged previously by the Land Conservation and Development Commission.

Stat. Auth.: ORS 197.040

Stats. Implemented: ORS 197.040, ORS 197.230, ORS 197.245, ORS 215.700, ORS 215.705, ORS 215.720, ORS 215.740, ORS 215.750, ORS 215.780 & Ch. 792, 1993 OL

Hist.: LCDC 8-1982, f. & ef. 9-1-82; LCDC 1-1990, f. & cert. ef. 2-5-90; LCDD 3-2008, f. & cert. ef. 4-18-08

660-006-0015

Plan Designation Outside an Urban Growth Boundary

(1) Lands inventoried as forest lands must be designated in the comprehensive plan and implemented with a zone which conserves forest lands consistent with OAR chapter 660, division 6, unless an exception to Goal 4 is taken pursuant to ORS 197.732, the forest lands are marginal lands pursuant to ORS 197.247 (1991 Edition), the land is zoned with an Exclusive Farm Use Zone pursuant to ORS Chapter 215 provided the zone qualifies for special assessment under ORS 308.370, or is an "abandoned mill site" zoned for industrial use as provided for by Or Laws 2003, Ch 688, Section 3. In areas of intermingled agricultural and forest lands, an agricultural/forest lands designation may also be appropriate if it provides protection for forest lands consistent with the requirements of OAR chapter 660, division 6. The plan shall describe the zoning designation(s) applied to forest lands and its purpose and shall contain criteria which clearly indicate where the zone(s) will be applied.

(2) When lands satisfy the definition requirements of both agricultural land and forest land, an exception is not required to show why one resource designation is chosen over another. The plan need only document the factors that were used to select an agricultural, forest, agricultural/forest, or other appropriate designation.

Stat. Auth.: ORS 183, 197.040, 197.230 & 197.245

Stats. Implemented: ORS 197.040, 197.230, 197.245, 215.700, 215.705, 215.720, 215.740, 215.750, 215.780 & Ch. 792, 1993 OL
 Hist.: LCDC 8-1982, f. & ef. 9-1-82; LCDC 1-1990, f. & cert. ef. 2-5-90; LCDC 7-1992, f. & cert. ef. 12-10-92; LCDC 1-1994, f. & cert. ef. 3-1-94; LCDD 3-2004, f. & cert. ef. 5-7-04

660-006-0020

Plan Designation Within an Urban Growth Boundary

Goal 4 does not apply within urban growth boundaries and therefore, the designation of forest lands is not required.

Stat. Auth.: ORS 183 & ORS 197

Stats. Implemented: ORS 197.040, ORS 197.230, ORS 197.245 & Ch. 792, 1993 OL

Hist.: LCDC 8-1982, f. & ef. 9-1-82; LCDC 1-1990, f. & cert. ef. 2-5-90

660-006-0025

Uses Authorized in Forest Zones

(1) Goal 4 requires that forest land be conserved. Forest lands are conserved by adopting and applying comprehensive plan provisions and zoning regulations consistent with the goals and this rule. In addition to forest practices and operations and uses auxiliary to forest practices, as set forth in ORS 527.722, the Commission has determined that five general types of uses, as set forth in the goal, may be allowed in the forest environment, subject to the standards in the goal and in this rule. These general types of uses are:

(a) Uses related to and in support of forest operations;

(b) Uses to conserve soil, air and water quality and to provide for fish and wildlife resources, agriculture and recreational opportunities appropriate in a forest environment;

(c) Locationally dependent uses, such as communication towers, mineral and aggregate resources, etc.;

(d) Dwellings authorized by ORS 215.720 to 215.750; and

(e) Other dwellings under prescribed conditions.

(2) The following uses pursuant to the Forest Practices Act (ORS Chapter 527) and Goal 4 shall be allowed in forest zones:

(a) Forest operations or forest practices including, but not limited to, reforestation of forest land, road construction and maintenance, harvesting of a forest tree species, application of chemicals, and disposal of slash;

(b) Temporary on-site structures which are auxiliary to and used during the term of a particular forest operation;

(c) Physical alterations to the land auxiliary to forest practices including, but not limited to, those made for purposes of exploration, mining, commercial gravel extraction and processing, landfills, dams, reservoirs, road construction or recreational facilities; and

(d) For the purposes of section (2) of this rule "auxiliary" means a use or alteration of a structure or land which provides help or is directly associated with the conduct of a particular forest practice. An auxiliary structure is located on site, temporary in nature, and is not designed to remain for the forest's entire growth cycle from planting to harvesting. An auxiliary use is removed when a particular forest practice has concluded.

(3) The following uses may be allowed outright on forest lands:

(a) Uses to conserve soil, air and water quality and to provide for wildlife and fisheries resources;

(b) Farm use as defined in ORS 215.203;

(c) Local distribution lines (e.g., electric, telephone, natural gas) and accessory equipment (e.g., electric distribution transformers, poles, meter cabinets, terminal boxes, pedestals), or equipment which provides service hookups, including water service hookups;

(d) Temporary portable facility for the primary processing of forest products;

(e) Exploration for mineral and aggregate resources as defined in ORS Chapter 517;

(f) Private hunting and fishing operations without any lodging accommodations;

(g) Towers and fire stations for forest fire protection;

(h) Widening of roads within existing rights-of-way in conformance with the transportation element of acknowledged comprehensive plans and public road and highway projects as described in ORS 215.213(1)(m) through (p) and 215.283(1)(k) through (n);

(i) Water intake facilities, canals and distribution lines for farm irrigation and ponds;

- (j) Caretaker residences for public parks and public fish hatcheries;
 - (k) Uninhabitable structures accessory to fish and wildlife enhancement;
 - (l) Temporary forest labor camps;
 - (m) Exploration for and production of geothermal, gas, oil, and other associated hydrocarbons, including the placement and operation of compressors, separators and other customary production equipment for an individual well adjacent to the well head;
 - (n) Destination resorts reviewed and approved pursuant to ORS 197.435 to 197.465 and Goal 8;
 - (o) Disposal site for solid waste that has been ordered established by the Oregon Environmental Quality Commission under ORS 459.049, together with the equipment, facilities or buildings necessary for its operation; and
 - (p) Alteration, restoration or replacement of a lawfully established dwelling that:
 - (A) Has intact exterior walls and roof structures;
 - (B) Has indoor plumbing consisting of a kitchen sink, toilet and bathing facilities connected to a sanitary waste disposal system;
 - (C) Has interior wiring for interior lights;
 - (D) Has a heating system; and
 - (E) In the case of replacement, is removed, demolished or converted to an allowable nonresidential use within three months of the completion of the replacement dwelling.
 - (q) An outdoor mass gathering as defined in ORS 433.735 or other gathering of fewer than 3,000 persons that is not anticipated to continue for more than 120 hours in any three-month period is not a "land use decision" as defined in ORS 197.015(10) or subject to review under this division.
- (4) The following uses may be allowed on forest lands subject to the review standards in section (5) of this rule:
- (a) Permanent facility for the primary processing of forest products;
 - (b) Permanent logging equipment repair and storage;
 - (c) Log scaling and weigh stations;
 - (d) Disposal site for solid waste approved by the governing body of a city or county or both and for which the Oregon Department of Environmental Quality has granted a permit under ORS 459.245, together with equipment, facilities or buildings necessary for its operation;
 - (e)(A) Private parks and campgrounds. Campgrounds in private parks shall only be those allowed by this subsection. Except on a lot or parcel contiguous to a lake or reservoir, campgrounds shall not be allowed within three miles of an urban growth boundary unless an exception is approved pursuant to ORS 197.732 and OAR chapter 660, division 004. A campground is an area devoted to overnight temporary use for vacation, recreational or emergency purposes, but not for residential purposes and is established on a site or is contiguous to lands with a park or other outdoor natural amenity that is accessible for recreational use by the occupants of the campground. A campground shall be designed and integrated into the rural agricultural and forest environment in a manner that protects the natural amenities of the site and provides buffers of existing native trees and vegetation or other natural features between campsites. Campsites may be occupied by a tent, travel trailer or recreational vehicle. Separate sewer, water or electric service hook-ups shall not be provided to individual camp sites. Campgrounds authorized by this rule shall not include intensively developed recreational uses such as swimming pools, tennis courts, retail stores or gas stations. Overnight temporary use in the same campground by a camper or camper's vehicle shall not exceed a total of 30 days during any consecutive 6 month period.
 - (B) Campsites may be occupied by a tent, travel trailer, yurt or recreational vehicle. Separate sewer, water or electric service hook-ups shall not be provided to individual camp sites except that electrical service may be provided to yurts allowed for by paragraph (4)(e)(C) of this rule.

(C) Subject to the approval of the county governing body or its designee, a private campground may provide yurts for overnight camping. No more than one-third or a maximum of 10 campsites, whichever is smaller, may include a yurt. The yurt shall be located on the ground or on a wood floor with no permanent foundation. Upon request of a county governing body, the Commission may provide by rule for an increase in the number of yurts allowed on all or a portion of the campgrounds in a county if the Commission determines that the increase will comply with the standards described in ORS 215.296(1). As used in this rule, "yurt" means a round, domed shelter of cloth or canvas on a collapsible frame with no plumbing, sewage disposal hook-up or internal cooking appliance.

(f) Public parks including only those uses specified under OAR 660-034-0035 or 660-034-0040, whichever is applicable.

(g) Mining and processing of oil, gas, or other subsurface resources, as defined in ORS Chapter 520, and not otherwise permitted under subsection (3)(m) of this rule (e.g., compressors, separators and storage serving multiple wells), and mining and processing of aggregate and mineral resources as defined in ORS Chapter 517;

(h) Television, microwave and radio communication facilities and transmission towers;

(i) Fire stations for rural fire protection;

(j) Utility facilities for the purpose of generating power. A power generation facility shall not preclude more than ten acres from use as a commercial forest operation unless an exception is taken pursuant to OAR chapter 660, division 004;

(k) Aids to navigation and aviation;

(l) Water intake facilities, related treatment facilities, pumping stations, and distribution lines;

(m) Reservoirs and water impoundments;

(n) Firearms training facility;

(o) Cemeteries;

(p) Private seasonal accommodations for fee hunting operations may be allowed subject to section (5) of this rule, OAR 660-006-0029, and 660-006-0035 and the following requirements:

(A) Accommodations are limited to no more than 15 guest rooms as that term is defined in the Oregon Structural Speciality Code;

(B) Only minor incidental and accessory retail sales are permitted;

(C) Accommodations are occupied temporarily for the purpose of hunting during game bird and big game hunting seasons authorized by the Oregon Fish and Wildlife Commission; and

(D) A governing body may impose other appropriate conditions.

(q) New electric transmission lines with right of way widths of up to 100 feet as specified in ORS 772.210. New distribution lines (e.g., gas, oil, geothermal, telephone, fiber optic cable) with rights-of-way 50 feet or less in width;

(r) Temporary asphalt and concrete batch plants as accessory uses to specific highway projects;

(s) Home occupations as defined in ORS 215.448;

(t) A manufactured dwelling or recreational vehicle, or the temporary residential use of an existing building, in conjunction with an existing dwelling as a temporary use for the term of a hardship suffered by the existing resident or a relative as defined in ORS 215.213 and 215.283. The manufactured dwelling shall use the same subsurface sewage disposal system used by the existing dwelling, if that disposal system is adequate to accommodate the additional dwelling. If the manufactured dwelling will use a public sanitary sewer system, such condition will not be required. Within three months of the end of the hardship, the manufactured dwelling or recreational vehicle shall be removed or demolished or, in the case of an existing building, the building shall be removed, demolished or returned to an allowed nonresidential use. A temporary residence approved under this subsection is not eligible for replacement under subsection (3)(p) of this rule. Governing bodies every two years shall review the permit authorizing

such mobile homes. When the hardships end, governing bodies or their designate shall require the removal of such mobile homes. Oregon Department of Environmental Quality review and removal requirements also apply to such mobile homes. As used in this section, "hardship" means a medical hardship or hardship for the care of an aged or infirm person or persons;

(u) Expansion of existing airports;

(v) Public road and highway projects as described in ORS 215.213(2)(q) through (s) and (10) and 215.283(2)(p) through (r) and (3);

(w) Private accommodations for fishing occupied on a temporary basis may be allowed subject to section (5) of this rule, OAR 600-060-0029 and 660-006-0035 and the following requirements:

(A) Accommodations limited to no more than 15 guest rooms as that term is defined in the Oregon Structural Speciality Code;

(B) Only minor incidental and accessory retail sales are permitted;

(C) Accommodations occupied temporarily for the purpose of fishing during fishing seasons authorized by the Oregon Fish and Wildlife Commission;

(D) Accommodations must be located within 1/4 mile of fish bearing Class I waters; and

(E) A governing body may impose other appropriate conditions.

(x) Forest management research and experimentation facilities as defined by ORS 526.215 or where accessory to forest operations.

(y) Any gathering subject to review by a county planning commission under the provisions of ORS 433.763. These gatherings are those of more than 3,000 persons which continue or can reasonably be expected to continue for more than 120 hours within any three-month period and any part of which is held in open spaces.

(5) A use authorized by section (4) of this rule may be allowed provided the following requirements or their equivalent are met. These requirements are designed to make the use compatible with forest operations and agriculture and to conserve values found on forest lands:

(a) The proposed use will not force a significant change in, or significantly increase the cost of, accepted farming or forest practices on agriculture or forest lands;

(b) The proposed use will not significantly increase fire hazard or significantly increase fire suppression costs or significantly increase risks to fire suppression personnel; and

(c) A written statement recorded with the deed or written contract with the county or its equivalent is obtained from the land owner which recognizes the rights of adjacent and nearby land owners to conduct forest operations consistent with the Forest Practices Act and Rules for uses authorized in subsections (4)(e), (m), (s), (t) and (w) of this rule.

(6) Nothing in this rule relieves governing bodies from complying with other requirement contained in the comprehensive plan or implementing ordinances such as the requirements addressing other resource values (e.g., Goal 5) which exist on forest lands.

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 183, 197.040, 197.230 & 197.245

Stats. Implemented: ORS 197.040, 197.230, 197.245, 215.700, 215.705, 215.720, 215.740, 215.750, 215.780 & Ch. 792, 1993 OL Hist.: LCDC 1-1990, f. & cert. ef. 2-5-90; LCDC 7-1992, f. & cert. ef. 12-10-92; LCDC 1-1994, f. & cert. ef. 3-1-94; LCDC 8-1995, f. & cert. ef. 6-29-95; ; LCDC 3-1996, f. & cert. ef. 12-23-96; LCDD 2-1998, f. & cert. ef. 6-1-98; LCDD 5-2000, f. & cert. ef. 4-24-00; LCDD 1-2002, f. & cert. ef. 5-22-02; LCDD 3-2004, f. & cert. ef. 5-7-04

660-006-0026

New Land Division Requirements in Forest Zones

- (1) Governing bodies shall legislatively amend their land division standards to incorporate one or more of the following parcel sizes. Under these provisions, a governing body may not determine minimum parcel sizes for forest land on a case-by-case basis:
- (a) An 80-acre or larger minimum parcel size; or
 - (b) One or more numeric minimum parcel sizes less than 80 acres provided that each parcel size is large enough to ensure:
 - (A) The opportunity for economically efficient forest operations typically occurring in the area;
 - (B) The opportunity for the continuous growing and harvesting of forest tree species;
 - (C) The conservation of other values found on forest lands as described in Goal 4; and
 - (D) That parcel meets the requirements of ORS 527.630.
- (2) New land divisions less than the parcel size in section (1) of this rule may be approved for any of the following circumstances:
- (a) For the uses listed in OAR 660-060-0025(3)(m) through (o) and (4)(a) through (o) provided that such uses have been approved pursuant to OAR 660-060-0025(5) and the parcel created from the division is the minimum size necessary for the use.
 - (b) For the establishment of a parcel for a dwelling on land zoned for forest use, subject to the following requirements:
 - (A) The parcel established shall not be larger than five acres, except as necessary to recognize physical factors such as roads or streams, in which case the parcel shall not be larger than 10 acres;
 - (B) The dwelling existed prior to June 1, 1995;
 - (C)(i) The remaining parcel, not containing the dwelling, meets the minimum land division standards of the zone; or
 - (ii) The remaining parcel, not containing the dwelling, is consolidated with another parcel, and together the parcels meet the minimum land division standards of the zone.
 - (D) The remaining parcel, not containing the dwelling, is not entitled to a dwelling unless subsequently authorized by law or goal.
 - (c) To allow a division of forest land to facilitate a forest practice as defined in ORS 527.620 that results in a parcel that does not meet the minimum area requirements of subsection (1)(a) or (b). Approvals shall be based on findings which demonstrate that there are unique property specific characteristics present in the proposed parcel that require an amount of land smaller than the minimum area requirements of subsections (1)(a) or (b) of this rule in order to conduct the forest practice. Parcels created pursuant to this subsection:
 - (A) Shall not be eligible for siting of new dwelling;
 - (B) Shall not serve as the justification for the siting of a future dwelling on other lots or parcels;
 - (C) Shall not result in a parcel of less than 35 acres, except:
 - (i) Where the purpose of the land division is to facilitate an exchange of lands involving a governmental agency; or
 - (ii) Where the purpose of the land division is to allow transactions in which at least one participant is a person with a cumulative ownership of at least 2,000 acres of forest land; and
 - (D) If associated with the creation of a parcel where a dwelling is involved, shall not result in a parcel less than the minimum lot or parcel size of the zone or the minimum size required for dwellings approved under OAR 660-006-0027(1)(e).
 - (d) To allow the division of a lot or parcel as provided for by OAR 660-006-0055(2)(d), (3), (4) and (6).
 - (e) To allow a proposed division of land as provided in ORS 215.783.

(3)(a) An applicant for the creation of a parcel pursuant to subsection (2)(b) of this section shall provide evidence that a restriction on the remaining parcel, not containing the dwelling, has been recorded with the county clerk of the county where the property is located. The restriction shall allow no dwellings unless authorized by law or goal on land zoned for forest use except as permitted under subsection (2) of this section.

(b) A restriction imposed under this subsection shall be irrevocable unless a statement of release is signed by the county planning director of the county where the property is located indicating that the comprehensive plan or land use regulations applicable to the property have been changed in such a manner that the parcel is no longer subject to statewide planning goals pertaining to agricultural land or forest land.

(c) The county planning director shall maintain a record of parcels that do not qualify for the siting of a new dwelling under restrictions imposed by this subsection. The record shall be readily available to the public.

(4) A landowner allowed a land division under section (2) of this rule shall sign a statement that shall be recorded with the county clerk of the county in which the property is located, declaring that the landowner will not in the future complain about accepted farming or forest practices on nearby lands devoted to farm or forest use.

Stat. Auth.: ORS 197.040, 197.230 & 197.245

Stats. Implemented: ORS 197.040, 197.230, 197.245, 215.700, 215.705, 215.720, 215.740, 215.750, 215.780, 215.783 & Ch. 792, 1993 OL

Hist.: LCDC 1-1990, f. & cert. ef. 2-5-90; LCDC 7 1992, f. & cert. ef. 12-10-92; LCDC 1-1994, f. & cert. ef. 3-1-94; LCDC 3-1996, f. & cert. ef. 12-23-96; LCDD 2-1998, f. & cert. ef. 6-1-98; LCDD 1-2002, f. & cert. ef. 5-22-02; LCDD 3-2008, f. & cert. ef. 4-18-08

660-006-0027

Dwellings in Forest Zones

(1) Dwellings authorized by OAR 660-006-0025(1)(d) are:

(a) A dwelling may be allowed if:

(A) The lot or parcel on which the dwelling will be sited was lawfully created and was acquired and owned continuously by the present owner as defined in subsection (b) of this section:

(i) Since prior to January 1, 1985; or

(ii) By devise or by intestate succession from a person who acquired and had owned continuously the lot or parcel since prior to January 1, 1985.

(B) The tract on which the dwelling will be sited does not include a dwelling;

(C) The lot or parcel on which the dwelling will be sited was part of a tract on November 4, 1993, no dwelling exists on another lot or parcel that was part of that tract.

(b) For purposes of subsection (a) of this section, "owner" includes the wife, husband, son, daughter, mother, father, brother, brother-in-law, sister, sister-in-law, son-in-law, daughter-in-law, mother-in-law, father-in-law, aunt, uncle, niece, nephew, stepparent, stepchild, grandparent or grandchild of the owner or a business entity owned by any one or combination of these family members.

(c) For purposes of subsection (a) of this section the dwelling must be located:

(A) On a tract in western Oregon that is composed of soil is not capable of producing 5,000 cubic feet per year of commercial tree species and is located within 1,500 feet of a public road as defined under ORS 368.001 that provides or will provide access to the subject tract. The road shall be maintained and either paved or surfaced with rock and shall not be:

(i) A United States Bureau of Land Management road; or

(ii) A United States Forest Service road unless the road is paved to a minimum width of 18 feet, there is at least one defined lane in each direction and a maintenance agreement exists between the United States Forest Service and landowners adjacent to the road, a local government or a state agency.

(B) On a tract in eastern Oregon that is composed of soils not capable of producing 4,000 cubic feet per year of commercial tree species and is located within 1,500 feet of a public road as defined under ORS 368.001 that provides or will provide access to the subject tract. The road shall be maintained and either paved or surfaced with rock and shall not be:

(i) A United States Bureau of Land Management road; or

(ii) A United States Forest Service road unless the road is paved to a minimum width of 18 feet, there is at least one defined lane in each direction and a maintenance agreement exists between the United States Forest Service and landowners adjacent to the road, a local government or a state agency.

(d) A dwelling authorized under subsection (a) of this section shall comply with the following requirements:

(A) When the lot or parcel on which the dwelling will be sited lies within an area designated in an acknowledged comprehensive plan as habitat of big game, the siting of the dwelling shall be consistent with the limitations on density upon which the acknowledged comprehensive plan and land use regulations intended to protect the habitat are based;

(B) When the lot or parcel on which the dwelling will be sited is part of a tract, the remaining portions of the tract shall be consolidated into a single lot or parcel when the dwelling is allowed.

(e) If a dwelling is not allowed pursuant to subsection (a) of this section, a dwelling may be allowed on land zoned for forest use if it complies with other provisions of law and is sited on a tract that does not include a dwelling:

(A) In eastern Oregon of at least 240 contiguous acres or 320 acres in one ownership that are not contiguous but are in the same county or adjacent counties and zoned for forest use. A deed restriction shall be filed pursuant to section (6) of this rule for all tracts that are used to meet the acreage requirements of this paragraph;

(B) In western Oregon of at least 160 contiguous acres or 200 acres in one ownership that are not contiguous but are in the same county or adjacent counties and zoned for forest use. A deed restriction shall be filed pursuant to section (6) of this rule for all tracts that are used to meet the acreage requirements of this paragraph.

(f) In western Oregon, a governing body of a county or its designate may allow the establishment of a single family dwelling on a lot or parcel located within a forest zone if the lot or parcel is predominantly composed of soils that are:

(A) Capable of producing 0 to 49 cubic feet per acre per year of wood fiber if:

(i) All or part of at least three other lots or parcels that existed on January 1, 1993, are within a 160 acre square centered on the center of the subject tract; and

(ii) At least three dwellings existed on January 1, 1993 and continue to exist on the other lots or parcels.

(B) Capable of producing 50 to 85 cubic feet per acre per year of wood fiber if:

(i) All or part of at least seven other lots or parcels that existed on January 1, 1993, are within a 160 acre square centered on the center of the subject tract; and

(ii) At least three dwellings existed on January 1, 1993 and continue to exist on the other lots or parcels.

(C) Capable of producing more than 85 cubic feet per acre per year of wood fiber if:

(i) All or part of at least 11 other lots or parcels that existed on January 1, 1993, are within a 160 acre square centered on the center of the subject tract; and

(ii) At least three dwellings existed on January 1, 1993 and continue to exist on the other lots or parcels.

(g) In eastern Oregon, a governing body of a county or its designate may allow the establishment of a single family dwelling on a lot or parcel located within a forest zone if the lot or parcel is predominantly composed of soils that are:

(A) Capable of producing 0 to 20 cubic feet per acre per year of wood fiber if:

(i) All or part of at least three other lots or parcels that existed on January 1, 1993, are within a 160 acre square centered on the center of the subject tract; and

(ii) At least three dwellings existed on January 1, 1993 and continue to exist on the other lots or parcels.

(B) Capable of producing 21 to 50 cubic feet per acre per year of wood fiber if:

(i) All or part of at least seven other lots or parcels that existed on January 1, 1993, are within a 160 acre square centered on the center of the subject tract; and

(ii) At least three dwellings existed on January 1, 1993 and continue to exist on the other lots or parcels.

(C) Capable of producing more than 50 cubic feet per acre per year of wood fiber if:

(i) All or part of at least 11 other lots or parcels that existed on January 1, 1993, are within a 160 acre square centered on the center of the subject tract; and

(ii) At least three dwellings existed on January 1, 1993 and continue to exist on the other lots or parcels.

(h) Lots or parcels within urban growth boundaries shall not be used to satisfy the eligibility requirements under subsections (1)(f) and (1)(g) of this section.

(i) A proposed dwelling provided for by subsection (1)(f) and (1)(g) is not allowed if the tract on which the dwelling will be sited includes a dwelling.

(2) Except as provided by subsection (3) of this section, if the tract under subsection (1)(f) or (g) of this rule abuts a road that existed on January 1, 1993, the measurement may be made by creating a 160 acre rectangle that is one mile long and 1/4 mile wide centered on the center of the subject tract and that is to the maximum extent possible, aligned with the road.

(3)(a) If a tract 60 acres or larger described under subsection (1)(f) or (g) of this rule abuts a road or perennial stream, the measurement shall be made in accordance with section (2) of this rule. However, one of the three required dwellings shall be on the same side of the road or stream as the tract, and:

(A) Be located within a 160-acre rectangle that is one mile long and 1/4 mile wide centered on the center of the subject tract and that is, to the maximum extent possible aligned with the road or stream; or

(B) Be within 1/4 mile from the edge of the subject tract but not outside the length of the 160 acre rectangle, and on the same side of the road or stream as the tract.

(b) If a road crosses the tract on which the dwelling will be located, at least one of the three required dwellings shall be on the same side of the road as the proposed dwelling.

(4) A proposed dwelling under this rule is not allowed:

(a) If it is prohibited by or will not comply with the requirements of an acknowledged comprehensive plan and acknowledged land use regulations or other provisions of law;

(b) Unless it complies with the requirements of OAR 660-006-0029 and 660-006-0035;

(c) Unless no dwellings are allowed on other lots or parcels that make up the tract and deed restrictions established under section (6) of this rule for the other lots or parcels that make up the tract are met.

(5) The following definitions shall apply to this rule:

- (a) "Tract" means one or more contiguous lots or parcels in the same ownership. A tract shall not be considered to consist of less than the required acreage because it is crossed by a public road or waterway;
- (b) "Commercial Tree Species" means trees recognized under rules adopted under ORS 527.715 for commercial production.
- (6)(a) The applicant for a dwelling authorized by paragraph (1)(e)(A) or (B) of this rule that requires one or more lot or parcel to meet minimum acreage requirements shall provide evidence that the covenants, conditions and restrictions form adopted as "Exhibit A" has been recorded with the county clerk of the county or counties where the property subject to the covenants, conditions and restrictions is located;
- (b) The covenants, conditions and restrictions are irrevocable, unless a statement of release is signed by an authorized representative of the county or counties where the property subject to the covenants, conditions and restrictions is located;
- (c) Enforcement of the covenants, conditions and restrictions may be undertaken by the Department of Land Conservation and Development or by the county or counties where the property subject to the covenants, conditions and restrictions is located;
- (d) The failure to follow the requirements of this section shall not affect the validity of the transfer of property or the legal remedies available to the buyers of property which is subject to the covenants, conditions and restrictions required by this section;
- (e) The county planning director shall maintain a copy of the covenants, conditions and restrictions filed in the county deed records pursuant to this section and a map or other record depicting tracts which do not qualify for the siting of a dwelling under the covenants, conditions and restrictions filed in the county deed records pursuant to this section. The map or other record required by this subsection shall be readily available to the public in the county planning office.
- (7) Notwithstanding subsection (4)(a) of this rule, if the acknowledged comprehensive plan and land use regulations of a county require that a dwelling be located in a 160-acre square or rectangle described in subsections (1)(f) or (g) or sections (2) or (3) of this rule, a dwelling is in the 160-acre square or rectangle if any part of the dwelling is in the 160-acre square or rectangle.

[ED. NOTE: Exhibits referenced are available from the agency.]

Stat. Auth.: ORS 183, 197.040, 197.230 & 197.245

Stats. Implemented: ORS 197.040, 197.230, 197.245, 215.700, 215.705, 215.720, 215.740, 215.750, 215.780 & Ch. 792, 1993 OL Hist.: LCDC 1-1990, f. & cert. ef. 2-5-90; LCDC 2-1990, f. & cert. ef. 3-9-90; LCDC 7-1992, f. & cert. ef. 12-10-92; LCDC 1-1994, f. & cert. ef. 3-1-94; LCDC 3-1996, f. & cert. ef. 12-23-96; LCDD 2-1998, f. & cert. ef. 6-1-98; LCDD 6-2000, f. & cert. ef. 6-14-00; LCDD 2-2006, f. & cert. ef. 2-15-06

660-006-0029

Siting Standards for Dwellings and Structures in Forest Zones

The following siting criteria or their equivalent shall apply to all new dwellings and structures in forest and agriculture/forest zones. These criteria are designed to make such uses compatible with forest operations and agriculture, to minimize wildfire hazards and risks and to conserve values found on forest lands. A governing body shall consider the criteria in this rule together with the requirements OAR 660-0060-0035 to identify the building site:

- (1) Dwellings and structures shall be sited on the parcel so that:
- (a) They have the least impact on nearby or adjoining forest or agricultural lands;
- (b) The siting ensures that adverse impacts on forest operations and accepted farming practices on the tract will be minimized;
- (c) The amount of forest lands used to site access roads, service corridors, the dwelling and structures is minimized; and
- (d) The risks associated with wildfire are minimized.
- (2) Siting criteria satisfying section (1) of this rule may include setbacks from adjoining properties, clustering near or among existing structures, siting close to existing roads and siting on that portion of the parcel least suited for growing trees.

(3) The applicant shall provide evidence to the governing body that the domestic water supply is from a source authorized in accordance with the Water Resources Department's administrative rules for the appropriation of ground water or surface water and not from a Class II stream as defined in the Forest Practices rules (OAR Chapter 629). For purposes of this section, evidence of a domestic water supply means:

(a) Verification from a water purveyor that the use described in the application will be served by the purveyor under the purveyor's rights to appropriate water; or

(b) A water use permit issued by the Water Resources Department for the use described in the application; or

(c) Verification from the Water Resources Department that a water use permit is not required for the use described in the application. If the proposed water supply is from a well and is exempt from permitting requirements under ORS 537.545, the applicant shall submit the well constructor's report to the county upon completion of the well.

(4) As a condition of approval, if road access to the dwelling is by a road owned and maintained by a private party or by the Oregon Department of Forestry, the U.S. Bureau of Land Management, or the U.S. Forest Service, then the applicant shall provide proof of a long-term road access use permit or agreement. The road use permit may require the applicant to agree to accept responsibility for road maintenance.

(5) Approval of a dwelling shall be subject to the following requirements:

(a) Approval of a dwelling requires the owner of the tract to plant a sufficient number of trees on the tract to demonstrate that the tract is reasonably expected to meet Department of Forestry stocking requirements at the time specified in department of Forestry administrative rules;

(b) The planning department shall notify the county assessor of the above condition at the time the dwelling is approved;

(c) If the lot or parcel is more than 10 acres in western Oregon, as defined in ORS 321.257, or more than 30 acres in eastern Oregon, as defined in ORS 321.405, the property owner shall submit a stocking survey report to the county assessor and the assessor will verify that the minimum stocking requirements have been met by the time required by Department of Forestry rules.

(d) Upon notification by the assessor the Department of Forestry will determine whether the tract meets minimum stocking requirements of the Forest Practices Act. If the department determines that the tract does not meet those requirements, the department will notify the owner and the assessor that the land is not being managed as forest land. The assessor will then remove the forest land designation pursuant to ORS 321.359 and impose the additional tax pursuant to ORS 321.372.

(e) The County governing body or its designate shall require as a condition of approval of a single-family dwelling under ORS 215.213, 215.383 or 215.284 or otherwise in a farm or forest zone, that the landowner for the dwelling sign and record in the deed records for the county a document binding the landowner, and the landowner's successors in interest, prohibiting them from pursuing a claim for relief or cause of action alleging injury from farming or forest practices for which no action or claim is allowed under ORS 30.936 or 30.937.

Stat. Auth.: ORS 197.040, ORS 197.245 & ORS 215.730

Stats. Implemented: ORS 197.040, ORS 197.230, ORS 197.245, ORS 215.700, ORS 215.705, ORS 215.720, ORS 215.740, ORS 215.750, ORS 215.780 & Ch. 792, 1993 OL

Hist.: LCDC 1-1990, f. & cert. ef. 2-5-90; LCDC 1-1994, f. & cert. ef. 3-1-94; LCDC 7-1994, f. & cert. ef. 9-21-94; LCDC 3-1996, f. & cert. ef. 12-23-96; LCDD 2-1998, f. & cert. ef. 6-1-98

660-006-0031

Youth Camps

(1) A youth camp may be established in compliance with the provisions of this rule. The purpose of this rule is to provide for the establishment of a youth camp that is generally self-contained and located on a parcel suitable to limit potential impacts on nearby and adjacent land and to be compatible with the forest environment.

(2) The provisions of this rule shall not apply to youth camps established prior to the effective date of this rule.

(3) A "youth camp" is a facility either owned or leased, and operated by a state or local government, or a nonprofit corporation as

defined under ORS 65.001, to provide an outdoor recreational and educational experience primarily for the benefit of persons twenty-one (21) years of age and younger. Youth camps do not include any manner of juvenile detention center or juvenile detention facility.

(4) An application for a proposed youth camp shall comply with the following:

(a) The number of overnight camp participants that may be accommodated shall be determined by the governing body, or its designate, based on the size, topography, geographic features and any other characteristics of the proposed site for the youth camp. Except as provided by subsection (4)(b) of this rule a youth camp shall not provide overnight accommodations for more than 350 youth camp participants, including staff.

(b) The governing body, or its designated may allow up to eight (8) nights during the calendar year when the number of overnight participants may exceed the total number of overnight participants allowed under subsection (4)(a) of this rule.

(c) Overnight stays for adult programs primarily for individuals over twenty-one years of age, not including staff, shall not exceed 10% of the total camper nights offered by the youth camp.

(d) The provisions of OAR 660-006-0025(5)(a).

(e) A campground as described in ORS 215.283(2)(c), 215.213(2)(c) and OAR 660-006-0025(4)(e) shall not be established in conjunction with a youth camp.

(f) A youth camp shall not be allowed in conjunction with an existing golf course.

(g) A youth camp shall not interfere with the exercise of legally established water rights on adjacent properties.

(5) The youth camp shall be located on a lawful parcel that is:

(a) Suitable to provide a forested setting needed to ensure a primarily outdoor experience without depending upon the use or natural characteristics of adjacent and nearby public and private land. This determination shall be based on the size, topography, geographic features and any other characteristics of the proposed site for the youth camp, as well as, the number of overnight participants and type and number of proposed facilities. A youth camp shall be located on a parcel of at least:

(A) 80-acres if located in eastern Oregon.

(B) 40-acres if located in western Oregon.

(b) Suitable to provide a protective buffer to separate the visual and audible aspects of youth camp activities from other nearby and adjacent lands. The buffers shall consist of forest vegetation, topographic or other natural features as well as structural setbacks from adjacent public and private lands, roads, and riparian areas. The structural setback from roads and adjacent public and private property shall be 250 feet unless the governing body, or its designate sets a different setback based upon the following criteria that may be applied on a case-by-case basis:

(A) The proposed setback will prevent conflicts with commercial resource management practices;

(B) The proposed setback will prevent a significant increase in safety hazards associated with vehicular traffic; and

(C) The proposed setback will provide an appropriate buffer from visual and audible aspects of youth camp activities from other nearby and adjacent resource lands.

(c) Suitable to provide for the establishment of sewage disposal facilities without requiring a sewer system as defined in OAR 660-011-0060(1)(f). Prior to granting final approval, the governing body or its designate shall verify that a proposed youth camp will not result in the need for a sewer system.

(d) Predominantly forestland if within a mixed agricultural/forest zone as provided for under 660-006-0050.

(6) A youth camp may provide for the following facilities:

- (a) Recreational facilities limited to passive improvements, such as open areas suitable for ball fields, volleyball courts, soccer fields, archery or shooting ranges, hiking and biking trails, horse back riding or swimming that can be provided in conjunction with the site's natural environment. Intensively developed facilities such as tennis courts, gymnasiums, and golf courses shall not be allowed. One swimming pool may be allowed if no lake or other water feature suitable for aquatic recreation is located on the subject property or immediately available for youth camp use.
- (b) Primary cooking and eating facilities shall be included in a single building. Except in sleeping quarters, the governing body, or its designate, may allow secondary cooking and eating facilities in one or more buildings designed to accommodate other youth camp activities. Food services shall be limited to the operation of the youth camp and shall be provided only for youth camp participants. The sale of individual meals may be offered only to family members or guardians of youth camp participants.
- (c) Bathing and laundry facilities except that they shall not be provided in the same building as sleeping quarters.
- (d) Up to three camp activity buildings, not including primary cooking and eating facilities.
- (e) Sleeping quarters including cabins, tents or other structures. Sleeping quarters may include toilets, but, except for the caretaker's dwelling, shall not include kitchen facilities. Sleeping quarters shall be provided only for youth camp participants and shall not be offered as overnight accommodations for persons not participating in youth camp activities or as individual rentals.
- (f) Covered areas that are not fully enclosed.
- (g) Administrative, maintenance and storage buildings; permanent structure for administrative services, first aid, equipment and supply storage, and for use as an infirmary if necessary or requested by the applicant.
- (h) An infirmary may provide sleeping quarters for the medical care provider (e.g. Doctor, Registered Nurse, Emergency Medical Technician, etc.).
- (i) A caretaker's residence may be established in conjunction with a youth camp prior to or after the effective date of this rule, if no other dwelling exists on the subject property.
- (7) A proposed youth camp shall comply with the following fire safety requirements:
- (a) The fire siting standards in OAR 660-006-0035;
- (b) A fire safety protection plan shall be developed for each youth camp that includes the following:
- (A) Fire prevention measures;
- (B) On site pre-suppression and suppression measures; and
- (C) The establishment and maintenance of fire safe area(s) in which camp participants can gather in the event of a fire.
- (c) Except as determined under subsection (7)(d) of this rule, a youth camp's on-site fire suppression capability shall at least include:
- (A) A 1000 gallon mobile water supply that can access all areas of the camp; and
- (B) A 30 gallon-per-minute water pump and an adequate amount of hose and nozzles; and
- (C) A sufficient number of fire fighting hand tools; and
- (D) Trained personnel capable of operating all fire suppression equipment at the camp during designated periods of fire danger.
- (d) An equivalent level of fire suppression facilities may be determined by the governing body, or its designate. The equivalent capability shall be based on the Oregon Department of Forestry's (ODF) Wildfire Hazard Zone rating system, the response time of the effective wildfire suppression agencies, and consultation with ODF personnel if the camp is within an area protected by the Oregon Department of Forestry and not served by a local structural fire protection provider.

(e) The provisions of OAR 660-006-0031(7)(d) may be waived by the governing body, or its designate, if the youth camp is located in an area served by a structural fire protection provider and that provider informs the governing body in writing that on-site fire suppression at the camp is not needed.

(8) The governing body, or its designate, shall require as a condition of approval of a youth camp, that the land owner of the youth camp sign and record in the deed records for the county a document binding the land owner, or operator of the youth camp if different from the owner, and the land owner's or operator's successors in interest, prohibiting them from pursuing a claim for relief or cause of action alleging injury from farming or forest practices for which no action or claim is allowed under ORS 30.936 or 30.937.

(9) Nothing in this rule relieves governing bodies from complying with other requirements contained in the comprehensive plan or implementing land use regulations such as the requirements addressing other resource values (e.g. Goal 5) which exist on forest lands.

(10) The provisions of this rule shall apply directly to any land use decision pursuant to ORS 197.646 and 215.427(3) commencing 120 days following the effective date of this rule. A county may adopt provisions in its comprehensive plan or land use regulations that establish standards and criteria in addition to those set forth in this rule, or to ensure compliance with any standards or criteria.

Stat. Auth.: ORS 183, 197 & 215

Stats. Implemented: ORS 184.618, 195.025, 197.040 - 197.717 & 215.750 - 215.755

Hist.: LCDD 6-2000, f. & cert. ef. 6-14-00; LCDD 2-2006, f. & cert. ef. 2-15-06

660-006-0035

Fire-Siting Standards for Dwellings and Structures

The following fire-siting standards or their equivalent shall apply to new dwelling or structures in a forest or agriculture/forest zone:

(1) The dwelling shall be located upon a parcel within a fire protection district or shall be provided with residential fire protection by contract. If the dwelling is not within a fire protection district, the applicant shall provide evidence that the applicant has asked to be included within the nearest such district. If the governing body determines that inclusion within a fire protection district or contracting for residential fire protection is impracticable, the governing body may provide an alternative means for protecting the dwelling from fire hazards. The means selected may include a fire sprinkling system, onsite equipment and water storage or other methods that are reasonable, given the site conditions. If a water supply is required for fire protection, it shall be a swimming pool, pond, lake, or similar body of water that at all times contains at least 4,000 gallons or a stream that has a continuous year round flow of at least one cubic foot per second. The applicant shall provide verification from the Water Resources Department that any permits or registrations required for water diversion or storage have been obtained or that permits or registrations are not required for the use. Road access shall be provided to within 15 feet of the water's edge for firefighting pumping units. The road access shall accommodate the turnaround of firefighting equipment during the fires season. Permanent signs shall be posted along the access route to indicate the location of the emergency water source.

(2) Road access to the dwelling shall meet road design standards described in OAR 660-006-0040.

(3) The owners of the dwellings and structures shall maintain a primary fuel-free break area surrounding all structures and clear and maintain a secondary fuel-free break area on land surrounding the dwelling that is owned or controlled by the owner in accordance with the provisions in "Recommended Fire Siting Standards for Dwellings and Structures and Fire Safety Design Standards for Roads" dated March 1, 1991, and published by the Oregon Department of Forestry.

(4) The dwelling shall have a fire retardant roof.

(5) The dwelling shall not be sited on a slope of greater than 40 percent.

(6) If the dwelling has a chimney or chimneys, each chimney shall have a spark arrester.

[Publications: The publication(s) referred to or incorporated by reference in this rule are available from the agency.]

Stat. Auth.: ORS 183, ORS 197.040, ORS 197.230 & ORS 197.245

Stats. Implemented: ORS 197.040, ORS 197.230, ORS 197.245, ORS 215.700, ORS 215.705, ORS 215.720, ORS 215.740, ORS

http://arcweb.sos.state.or.us/rules/OARS_600/OAR_660/660_006.html

3/30/2010

215.750, ORS 215.780 & Ch. 792, 1993 OL

Hist.: LCDC 1-1990, f. & cert. ef. 2-5-90; LCDC 1-1994, f. & cert. ef. 3-1-94; LCDD 2-1998, f. & cert. ef. 6-1-98

660-006-0040

Fire Safety Design Standards for Roads

The governing body shall establish road design standards, except for private roads and bridges accessing only commercial forest uses, which ensure that public roads, bridges, private roads and driveways are constructed so as to provide adequate access for fire fighting equipment. Such standards shall address maximum grade, road width, turning radius, road surface, bridge design, culverts, and road access taking into consideration seasonal weather conditions. The governing body shall consult with the appropriate Rural Fire Protection District and Forest Protection District in establishing these standards.

Stat. Auth.: ORS 183 & ORS 197

Stats. Implemented: ORS 197.040, ORS 197.230, ORS 197.245, ORS 215.700, ORS 215.705, ORS 215.720, ORS 215.740, ORS 215.750, ORS 215.780 & Ch. 792, 1993 OL

Hist.: LCDC 1-1990, f. & cert. ef. 2-5-90

660-006-0050

Uses Authorized in Agriculture/Forest Zones

(1) Governing bodies may establish agriculture/forest zones in accordance with both Goals 3 and 4, and OAR Chapter 660, Divisions 6 and 33.

(2) Uses authorized in Exclusive Farm Use Zones in ORS Chapter 215, and in OAR 660-006-0025 and 660-006-0027, subject to the requirements of the applicable section, may be allowed in any agricultural/forest zone. The county shall apply either OAR Chapter 660, Division 6 or 33 standards for siting a dwelling in an agriculture/forest zone based on the predominant use of the tract on January 1, 1993.

(3) Dwellings and related structures authorized under section (2), where the predominant use is forestry, shall be subject to the requirements of OAR 660-006-0029 and 660-006-0035.

Stat. Auth.: ORS 183, ORS 197.040, ORS 197.230 & ORS 197.245

Stats. Implemented: ORS 197.040, ORS 197.230, ORS 197.245, ORS 215.213, ORS 215.283, ORS 215.700, ORS 215.705, ORS 215.720, ORS 215.740, ORS 215.750, ORS 215.780 & Ch. 792, 1993 OL

Hist.: LCDC 1-1990, f. & cert. ef. 2-5-90; LCDC 1-1994, f. & cert. ef. 3-1-94

660-006-0055

New Land Division Requirements in Agriculture/Forest Zones

(1) A governing body shall apply the standards of OAR 660-006-0026 and 660-033-0100 to determine the proper minimum lot or parcel size for a mixed agriculture/forest zone. These standards are designed: To make new land divisions compatible with forest operations; to maintain the opportunity for economically efficient forest and agriculture practices; and to conserve values found on forest lands.

(2) New land divisions less than the parcel size established according to the requirements in section (1) of this rule may be approved for any of the following circumstances:

(a) For the uses listed in OAR 660-006-0025(3)(m) through (o) and (4)(a) through (n) provided that such uses have been approved pursuant to OAR 660-060-0025(5) and the land division created is the minimum size necessary for the use.

(b) For the establishment of a parcel for a dwelling on land zoned for mixed farm and forest use, subject to the following requirements:

(A) The parcel established shall not be larger than five acres, except as necessary to recognize physical factors such as roads or streams, in which case the parcel shall not be larger than 10 acres;

(B) The dwelling existed prior to June 1, 1995;

(C)(i) The remaining parcel, not containing the dwelling, meets the minimum land division standards of the zone; or

(ii) The remaining parcel, not containing the dwelling, is consolidated with another parcel, and together the parcels meet the minimum land division standards of the zone;

(D) The remaining parcel, not containing the dwelling, is not entitled to a dwelling unless subsequently authorized by law or goal.

(E) The minimum tract eligible under subsection (b) of this section is 40 acres.

(F) The tract shall be predominantly in forest use and that portion in forest use qualified for special assessment under a program under ORS chapter 321.

(G) The remainder of the tract shall not qualify for any uses allowed under ORS 215.213 and 215.283 that are not allowed on forestland.

(c) To allow a division of forestland to facilitate a forest practice as defined in ORS 527.620 that results in a parcel that does not meet the minimum area requirements of section (1). Parcels created pursuant to this subsection:

(A) Shall not be eligible for siting of new dwelling;

(B) Shall not serve as the justification for the siting of a future dwelling on other lots or parcels;

(C) Shall not result in a parcel of less than 35 acres, except:

(i) Where the purpose of the land division is to facilitate an exchange of lands involving a governmental agency; or

(ii) Where the purpose of the land division is to allow transactions in which at least one participant is a person with a cumulative ownership of at least 2,000 acres of forestland; and

(D) If associated with the creation of a parcel where a dwelling is involved, shall not result in a parcel less than the minimum lot or parcel size of the zone.

(d) A division of a lot or parcel zoned for mixed farm forest may be allowed if:

(A) At least two dwellings lawfully existed on the lot or parcel prior to November 4, 1993;

(B) Each dwelling complies with the criteria for a replacement dwelling under ORS 215.213(1)(u) or 215.283(1)(t);

(C) Except for one lot or parcel, each lot or parcel created under this section is between two and five acres in size;

(D) At least one dwelling is located on each lot or parcel created under this section; and

(E) The landowner of a lot or parcel created under this section provides evidence that a restriction prohibiting the landowner and the land owner's successors in interest from further dividing the lot or parcel has been recorded with the county clerk of the county in which the lot or parcel is located. A restriction imposed under this section shall be irrevocable unless a statement of release is signed by the county planning director of the county in which the lot or parcel is located indicating that the comprehensive plan or land use regulations applicable to the lot or parcel have been changed so that the lot or parcel is no longer subject to statewide goal 4 (Forest Lands) or unless the land division is subsequently authorized by law or by a change in statewide goal 4 (Forest Land);

(e) To allow a proposed division of land as provided in ORS 215.783;

(3) A county planning director shall maintain a record of lots and parcels that do not qualify for division under the restrictions imposed by OAR 660-006-0055(2)(d) and (4). The record shall be readily available to the public.

(4) A lot or parcel may not be divided under OAR 660-006-0055(2)(d) if an existing dwelling on the lot or parcel was approved under:

- (a) A statute, an administrative rule or a land use regulation as defined in ORS 197.015 that required removal of the dwelling or that prohibited subsequent division of the lot or parcel; or
- (b) A farm use zone provision that allowed both farm and forest uses in a mixed farm and forest use zone under statewide goal 4 (Forest Lands).
- (5)(a) An applicant for the creation of a parcel pursuant to subsection (2)(b) of this rule shall provide evidence that a restriction on the remaining parcel, not containing the dwelling, has been recorded with the county clerk of the county where the property is located. The restriction shall allow no dwellings unless authorized by law or goal on land zoned for forest use except as permitted under section (2) of this rule.
- (b) A restriction imposed under this section shall be irrevocable unless a statement of release is signed by the county planning director of the county where the property is located indicating that the comprehensive plan or land use regulations applicable to the property have been changed in such a manner that the parcel is no longer subject to statewide planning goals pertaining to agricultural land or forestland.
- (c) The county planning director shall maintain a record of parcels that do not qualify for the siting of a new dwelling under restrictions imposed by this section. The record shall be readily available to the public.
- (6) A landowner allowed a land division under section (2) of this rule shall sign a statement that shall be recorded with the county clerk of the county in which the property is located, declaring that the landowner and the landowner's successors in interest will not in the future complain about accepted farming or forest practices on nearby lands devoted to farm or forest use.

Stat. Auth.: ORS 197.040, 197.230 & 197.245

Stats. Implemented: ORS 197.040, 197.230, 197.245, 215.213, 215.283, 215.700, 215.705, 215.720, 215.740, 215.750, 215.780, 215.783 & Ch. 792, 1993 OL

Hist.: LCDC 1-1990, f. & cert. ef. 2-5-90; LCDC 7-1992, f. & cert. ef. 12-10-92; LCDC 1-1994, f. & cert. ef. 3-1-94; LCDC 3-1996, f. & cert. ef. 12-23-96; LCDD 1-2002, f. & cert. ef. 5-22-02; LCDD 3-2008, f. & cert. ef. 4-18-08

660-006-0057

Rezoning Land to an Agriculture/Forest Zone

Any rezoning or plan map amendment of lands from an acknowledged zone or plan designation to an agriculture/forest zone requires a demonstration that each area being rezoned or replanned contains such a mixture of agriculture and forest uses that neither Goal 3 nor 4 can be applied alone.

Stat. Auth.: ORS 183, ORS 197.040, ORS 197.230 & ORS 197.245

Stats. Implemented: ORS 197.040, ORS 197.230, ORS 197.245, ORS 215.213, ORS 215.283, ORS 215.700, ORS 215.705, ORS 215.720, ORS 215.740, ORS 215.750, ORS 215.780 & Ch. 792, 1993 OL

Hist.: LCDC 1-1990, f. & cert. ef. 2-5-90; LCDC 7-1992, f. & cert. ef. 12-10-92; LCDC 1-1994, f. & cert. ef. 3-1-94

660-006-0060

Regulation of Forest Operations

The Forest Practices Act (ORS 527.620 to 527.990) as implemented through Oregon Board of Forestry rules (OAR 629-024-0101 to 629-024-0648) regulates forest operations on forest lands. The relationship between the Forest Practices Act and land use planning is described in 527.722 to 527.726. OAR 660-006-0025 does not authorize county governing bodies to regular forest operations or other uses allowed by ORS 527.620 to 527.990 and OAR 629-024-0101 to 629-024-0648.

Stat. Auth.: ORS 183, ORS 197 & ORS 215

Stats. Implemented: ORS 197.040, ORS 197.230, ORS 197.245, ORS 215.700, ORS 215.705, ORS 215.720, ORS 215.740, ORS 215.750, ORS 215.780 & Ch. 792, 1993 OL

Hist.: LCDC 8-1982, f. & ef. 9-1-82; LCDC 1-1990, f. & cert. ef. 2-5-90; Renumbered from 660-006-0030; LCDC 7-1992, f. & cert. ef. 12-10-92

The official copy of an Oregon Administrative Rule is contained in the Administrative Order filed at the Archives Division, 800 Summer St. NE, Salem, Oregon 97310. Any discrepancies with the published version are satisfied in favor of the Administrative Order. The Oregon Administrative Rules and the

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SECTION 3.004: FOREST ZONE (F)

Section 3.004: Forest (F) Zone of Tillamook County Land Use Ordinance does not reflect all the current requirements of the Oregon Revised Statutes, 215 or Oregon Administrative Rules, Chapter 660, Division 06. In a case where the Land Use Ordinance and the State Law are in conflict the stricter of the two takes precedence. Please contact the Tillamook County Community Development Department, Planning Division at (503) 842-3408 for clarification.

- (1) **PURPOSE:** The purpose of the F Zone is to retain forest land for forest use, and to encourage the management of forest land for the growing, harvesting and processing of forest crops consistent with the Oregon Forest Practices Act. It is also to protect other forest uses from the encroachment of conflicting non-forest uses and influences, including watershed and soil protection; the maintenance of clean air and water; the preservation of fish and wildlife habitat; outdoor recreation; scenic preservation; and agricultural activities.
- (2) **USES PERMITTED OUTRIGHT:** In the F Zone, the following uses and their accessory uses are permitted outright, except that within the Shorelands Overlay Zone, all structures, facilities and quarries are permitted conditionally as provided by Section 3.004 (3) (a). all uses are subject to all applicable supplementary regulations contained in this ordinance.
 - (a) Commercial forest management consistent with the intent and purposes of the Oregon Forest Practices Act.
 - (b) Fish and wildlife management.
 - (c) Structures and facilities necessary for, and accessory to, commercial forest management or fish and wildlife management. The uses served by such structures and facilities may include, but are not limited to, administration; equipment storage and maintenance; communications; fire protection; fish rearing; and residences for property owners, employers or full-time employees directly required for commercial forest management or fish and wildlife management. To assure that structures and facilities are consistent with the requirements of this ordinance, a management plan may be required before a building permit is issued.
 - (d) A single-family residence on an existing lot of record, in accordance with the provisions of Sections 9 through 11, Chapter 884, Oregon Laws 1981 as amended by Sections 14 and 15, Chapter 826, Oregon Laws 1983.
 - (e) A recreation vehicle used in conjunction with forest resource management for a period not to exceed six months in a calendar year.
 - (f) Primary wood-processing facilities, including, but not limited to, pole and piling preparation; small portable saw mills; log sorting yard; wood chipping operations; fence post manufacturing; and fire wood production.

- (g) Facilities and test sites for experimental and research activities associated with the propagation, management, or harvesting of forest tree species.
 - (h) Forest tree nurseries and their accessory facilities.
 - (i) Rock quarries, including the crushing, screening and stockpiling of materials when the rock is used for a commercial forest operation, or when an operating permit and reclamation are not required by State Law (ORS 517.790). Commercial forest operations include construction, reconstruction, and maintenance of forest access roads; and forest management support activities such as riprapping, bridge wing wall diversions, culvert bedding and other similar activities located on forest lands and conducted for the purpose of forest management.
 - (j) Helipad and balloon bedding areas necessary for commercial forest management.
 - (k) Farm uses as defined by ORS 215.203 (2), including dwellings and other buildings customarily provided in conjunction with a farm use.
 - (l) A mobile home or recreation vehicle used during the construction of a use for which a building permit has been issued.
 - (m) Repair, maintenance, and minor improvement of existing park structures and facilities.
 - (n) Signs, subject to Section 4.020.
- (3) **USES PERMITTED CONDITIONALLY:** In the F Zone, the following conditional uses and their accessory uses are permitted subject to the provisions of 3.004 (4) and (5) and all other applicable supplementary regulations contained in this Ordinance. A Conditional Use shall be reviewed according to the provisions of Article 6, except that the review criteria contained in Section 6.040 shall not apply.
- (a) Structures, facilities, and quarries subject to the Shorelands Overlay (SH) Zone, that would otherwise be permitted outright in the Forest (F) Zone.
 - (b) Wood processing facilities other than primary processing.
 - (c) Operations conducted for the exploration, mining and processing of geothermal, aggregate and other mineral or subsurface resources that are not permitted outright.
 - (d) Parks, recreation campground and primitive campgrounds, hunting and fishing preserves, and other recreational uses that require roads or structures.
 - (e) Small-scale solid waste disposal sites or transfer stations not to exceed 20 acres approved by the governing body of a city or county or both and for which a permit

has been granted under ORS 459.245 by the Department of Environmental Quality, together with equipment, facilities, or buildings necessary for its operation.

- (f) Facilities for sewage disposal, water supply and treatment, or other public utilities.
- (g) Water impoundments of not greater than 1000 acre-feet.
- (h) Utility facilities, including utility corridors for electrical transmission lines of up to 115 kV's, and small electric generation facilities.
- (i) Communication facilities used for the purpose of commercial forest management.
- (j) Airplane landing strips and accessory facilities provided in conjunction with forest use.
- (k) A nonresource-related one-family residential structure subject to Section 3.004 (5).
- (l) Storage of construction equipment and materials, including a structure to be used for this purpose.
- (m) Home occupation.
- (n) Temporary placement of a mobile home or recreation vehicle to be used because of a health hardship, subject to Section 6.050.

(4) ALL CONDITIONAL USES PERMITTED IN THE F ZONE SHALL MEET THE FOLLOWING REQUIREMENTS:

- (a) The use is consistent with forest and farm uses and with the intent and purpose set forth in the Oregon Forest Practices Act.
- (b) The use will not interfere with accepted forest management practices or farm uses on adjacent or nearby lands that are devoted to forest or farm use.
- (c) The use will neither materially alter the stability of the overall land use pattern of the area, nor substantially limit or impair the use of surrounding properties for permitted purposes.
- (d) The use does not constitute an unnecessary fire hazard, and fire safety measures are provided for in its planning, design, construction and operation.
- (e) Public utilities are to develop or utilize rights-of-way that have the least adverse impact on the continued production of forest resources in the vicinity. Existing rights-of-way are to be utilized wherever possible.
- (f) Development within major and peripheral big game ranges shall be sited to minimize the impact on big game habitat. To minimize the impact, structures shall be located

near existing roads; be as close as possible to existing structures on adjoining lots; and be clustered where several structures are proposed.

- (5) **RESIDENTIAL STRUCTURES SHALL MEET THE FOLLOWING ADDITIONAL REQUIREMENTS:**
- (a) Nonresource-related structures provided by Section 3.004 (3) (k) shall be placed only on land that is generally unsuitable for commercial forestry or agriculture, taking into consideration the terrain; adverse soil or land conditions; drainage; flooding; vegetation; and the location and size of the tract.
 - (b) Responsibility for protection from wildlife damage on the property shall be assumed by the dwelling's owner or occupant.
 - (c) The use does not impose any limitation on the operation of a nearby primary wood-processing facility.
 - (d) To assure that the above requirements are met, a forest management impact statement may be required that shows the relationship between the proposed residential use and surrounding resource uses, and addresses the setbacks of any dwellings from forest or farm uses.
- (6) **STANDARDS:**
- (a) The minimum lot size for structures and facilities necessary for, or accessory to, commercial forest management and commercial agriculture shall be 80 acres. The minimum lot size for all other permitted uses shall be 20,000 square feet.
 - (b) The minimum lot width and minimum lot depth shall be 100 feet.
 - (c) The minimum front, rear, and side yards shall all be 30 feet.
- (7) **PARTITIONS:** Any division of land that results in the creation of a parcel smaller than 80 acres must be reviewed and approved by the Department, and either must be for an approved use provided in Subsection 3.004 (3), or for a public fish and wildlife management facility. Such parcels shall not be larger than the minimum size necessary for the use. Divisions of land for the purpose of consolidating existing private or public land holdings are exempt from partition review, provided that the resulting parcels shall not be recognized as new parcels for the purpose of establishing additional homesites unless they are 8- acres in size.
- (8) **REESTABLISHMENT OF NON-FOREST USE:** A non-forest use that is unintentionally destroyed by fire, other casualty, or natural disaster may be reestablished to its previous nature and extent, so long as the reestablishment meets all other building, plumbing, sanitation and other codes, ordinances, or permit requirements, and is in the same location.

- (9) **NOTIFICATION OF STATE AGENCIES:** The Oregon Department of Forestry's Tillamook District Office and the Oregon Department of Fish and Wildlife's Tillamook Office shall be notified and requested to comment on all requests filed under Subsection (3) of this Section, and all building or placement permit applications filed under Subsections (c), (e), (f), (g), (h) and (i), and (k) of Section 3.004 (2). Responses must be received within 10 days of the date of mailing to be assured consideration.

ARTICLE I

INTRODUCTORY PROVISIONS

SECTION 1.010: TITLE

This Ordinance shall be known as the TILLAMOOK COUNTY LAND USE ORDINANCE of 1981.

SECTION 1.020: PURPOSE

The purposes of this Ordinance are to encourage the orderly development of land in the County; to promote appropriate uses of land; to preserve and stabilize the value of property; to aid in the provision of fire and police protection; to preserve access to adequate light and air; to minimize traffic congestion; to prevent undue concentration of population; to facilitate the provision of community services such as water supply and sewage treatment; to encourage the conservation of non-renewable energy resources and provide for the use of renewable energy resources; to protect and enhance the appearance of the landscape; and in general to protect and promote the public health, safety, convenience and general welfare.

SECTION 1.030: DEFINITIONS

Unless specifically defined in this Section or elsewhere in this Ordinance, words or phrases used herein shall be interpreted so as to give them the meaning they have in common usage, and to give this Ordinance its most reasonable application. Words used in the present tense include the future; the word "building" includes the "structure"; and the word "shall" is mandatory and not discretionary.

(A) GENERALLY USED DEFINITIONS

ABUTTING: Sharing all or part of a common property line. For the purpose of determining abutting property, intervening public and private ways and watercourses do not break the continuity of abutting properties.

ACCEPTED FARMING PRACTICES: A mode of operation that is common to farms of a similar nature, that is necessary for the operation of such farms to obtain a profit in money, and is customarily utilized in conjunction with farm use.

ACCESS: The legally established route by which pedestrians and vehicles enter and leave property from a public way.

ACCESSORY STRUCTURE-ACCESSORY USE: A detached structure or a land use that is incidental and subordinate to the established primary use of a piece of property, and which is located on the same property as is the primary use, except as provided in Section 5.040.

ADJOINING; Contiguous or abutting exclusive of street width. It shall include the terms adjacent, abutting or contiguous.

ADULT FOSTER HOME: As defined by OAR 411-5-400 (2); a State-certified dwelling operated in a family-type setting for senior citizens and/or disabled persons over the age of 18 who are in need of help in the provision of shelter, food, medical care and/or other service.

AIRPORT, RUNWAY: The center portion of the landing strip, which is designed and constructed for takeoff and landing of aircraft.

ALLEY: A street which affords only a secondary means of vehicular access to property.

APARTMENT HOUSE: Any building, or portion thereof, which is designed, built, rented, leased, let or hired out to be occupied, or which is occupied as the home or residence of four or more families living independently of each other and doing their own cooking in the building.

APPEAL: Means a request for review of a Planning Director's or a Planning Commission's decision or interpretation of any provision of this Ordinance.

AQUACULTURE: The propagation, cultivation, maintenance, and harvesting of aquatic species.

ARCHITECTURAL FEATURES: Features include, but are not limited to cornices, canopies, sunshades, gutters, chimneys, fireplaces, flues, and eaves. Architectural features shall not include any portion of a structure built for support, occupancy, shelter, or enclosure of persons or property of any kind.

AUTOMOBILE WRECKING YARD: Any property where two or more motor vehicles which are not in running condition, or the parts thereof, are wrecked, dismantled, disassembled, substantially altered, or stored in the open, and are not intended to be restored to operation. Such intent may be shown by progressive repair or restoration work on said vehicles.

AWNING: A shade structure that is supported by both posts or columns and by a mobile home installed on a mobile home lot.

BAYFRONT LOT: Lot which abuts the Estuary Planning Boundary of non-riverine waterways or a lot where there is no buildable lot between it and estuarine bay waters.

BEACH: The sloping unvegetated shore of a body of water.

BASEMENT: A portion of a building which has less than one-half (1/2) of its height measured from finished floor to finished ceiling above the average elevation of the adjoining ground, but not an "underground structure" as defined in this ordinance. (FLOOD DEFINITION INSERT)

BEACON: Any light with one or more beams directed in the atmosphere or directed at one or more points not on the same site as the light source; also, any light with one or more beams that rotate or move.

BED AND BREAKFAST ENTERPRISE, BOARDING, LODGING OR ROOMING HOUSE:

A residential structure where not more than 15 persons, not including members of the family occupying such a structure, provide compensation for lodging.

BIOMASS ENERGY SYSTEM: A system that produces, collects, converts, or uses organic materials other than fossil fuels for the production of energy.

BOARD: The Board of County Commissioners of Tillamook County, Oregon.

BOARDING, LODGING, OR ROOMING HOUSE: See BED AND BREAKFAST ENTERPRISE, BOARDING, LODGING, OR ROOMING HOUSE.

BUILDABLE AREA:

- (a) For the purpose of siting structures on a parcel, the area thereon exclusive of all applicable setbacks or areas within restrictive overlay zones contained in this Ordinance.
- (b) For purposes of calculating the allowable number of dwellings on a lot or parcel, the area thereof, exclusive of the following:
 - 1. Road or utility easements;
 - 2. Narrow strips of land provided for access from a street to a flag lot;
 - 3. Areas seaward of the beach zone line;
 - 4. Areas within all estuary zones;
 - 5. Channels within the ordinary high water lines of streams that are at least 15 feet wide; and
 - 6. Areas within the ordinary high water line of lakes.

This definition shall not apply to erosion control structures or structures otherwise allowed within applicable overlay zones.

BUILDING: A structure built or used for the support, shelter, or enclosure of persons, animals, chattels, or property of any kind.

BUILDING HEIGHT: The vertical distance of a building measured from grade to the highest point of the roof. (See grade)

CABANA: A room enclosure attached to a mobile home for residential use by the occupant of the mobile home.

CAMPER: See RECREATIONAL VEHICLE.

CAMPING UNIT: Any tent or recreational vehicle located in a campground as temporary living quarters for recreational, education or vacation purposes.

CAMPSITE: Any plot of ground within a campground intended for the exclusive occupancy by a camping unit or units.

CLEAR-VISION AREA: See Section 4.010.

CO-GENERATION: The sequential conversion of a primary fuel to produce two or more energy streams, one of electrical or mechanical energy, and one of heat energy.

COMMISSION: The Tillamook County Planning Commission.

COMMUNITY GROWTH BOUNDARY: A boundary placed on zoning maps to entirely contain the lands within an unincorporated community that are either served, or can be served, by community sewage treatment facilities; such lands are typically designated for residential or commercial development at urban densities.

COMMON OWNERSHIP: Land commonly owned to include open space lands dedicated in planned unit developments and lands dedicated for open space which are owned by homeowners associations.

COMPOSTING: The managed process of controlled biological decomposition of green feedstocks. It does not include composting for the purpose of soil remediation.

COMPOSTING FACILITY: A site or facility, excluding home composting and agricultural composting conducted as a farm use, which utilizes green feedstocks to produce a useful product through a managed process of controlled biological decomposition. Composting may include amendments beneficial to the composting process. Vermiculture and vermicomposting are considered composting facilities. Composting facilities or sites may include sales of the finished product, as well as accessory products limited to topsoil, barkdust and aggregate commonly used in landscaping to wholesale and retail customers

CONDITIONAL USE: A use of land that generally conforms to the type and nature of the uses permitted by right in a zone, but because of potential adverse off-site impacts, requires the review and discretionary approval of the Director or Commission according to the provisions of Article VI of this Ordinance.

CONDOMINIUM: A structure containing more than one dwelling unit, each of which is owned individually, exclusive of the land upon which the structure is located. (See also ORS ~~91.500~~ 100.005).

CONTIGUOUS: Sharing all or part of a common boundary.

COTTAGE INDUSTRY: A business or business-related activity that is carried on within either a dwelling or a building accessory to that dwelling, which employs no more than two non-family members, and which has limited impacts on the surrounding properties. Deliveries and customer visitations are limited to the hours between 8:00 a.m. and 6:00 p.m. Outdoor storage is allowed if it is similar to what legally occurs in the neighborhood, and accessory structures conform to the character of the neighborhood.

COUNTY: The County of Tillamook, State of Oregon.

CURRENT EMPLOYMENT OF LAND: That land for farm use which includes:

- (a) Land subject to soil-bank provisions of the Federal Agricultural Act of 1956, as amended (P.L. 84-540, Stat. 188);
- (b) Land lying fallow for one year as a normal and regular requirement of good agricultural husbandry;
- (c) Land planted in orchards or other perennials prior to maturity;
- (d) Any land constituting a woodlot of less than 20 acres contiguous to and owned by the owner of land specially assessed at true cash value for farm use, even if the land constituting the wood lot is not utilized in conjunction with farm use;
- (e) Wasteland, in an exclusive farm use zone, dry, covered or partially covered with water, lying in or adjacent to and in common ownership with farm use land and which is not currently being used for any economic farm use;
- (f) Land under dwellings customarily provided in conjunction with the farm use in an exclusive farm use zone; and
- (g) Land under buildings supporting accepted farm practices.

DEDICATION: The designation of land by its owner for any general public use.

DEPARTMENT: The Tillamook County Department of Community Development.

DEVELOPMENT: Any man-made change to improved or unimproved land, including, but not limited to, buildings or other structures; mining; dredging; filling; grading; paving; excavation; drilling operations; construction of roads or ditches; earth-moving; or construction of dikes, berms or levees. It does not include ordinary farm or forest practices such as plowing, disking, harrowing, cutting, or planting, or other similar activities for the cultivation or preparation of the soil for farm or forest production.

DIRECTOR: The Director of the Department or his or her designate.

DORMITORIES: A large room for sleeping, containing numerous beds.

DWELLING: A detached structure that meets the requirements of the Uniform Building Code for residential structures, and which is intended and/or used for residential purposes. **DWELLING** includes qualifiers such as the following, indicating the number of dwelling units per structure:

Single family.....1
Two-family2
3 or 4 family..... 3 or 4
Multi-family.....5 or more

DWELLING, ACCESSORY: A dwelling unit with a separate entrance that shares at least one building wall, or portion thereof, with a single family, detached dwelling unit, or an accessory structure on the same tax lot, but not a two or three family dwelling. For purposes of these provisions, 'wall' does not include a breezeway, porch, or awning.

DWELLING, ATTACHED OR COMMONWALL: A dwelling which shares at least one wall, or portion thereof, with another dwelling and which is permitted in a single-family residential zone subject to the same density requirements as single family detached dwellings in those zones. An attached or commonwall dwelling may, or may not, include a separate lot or parcel.

DWELLING UNIT: One or more rooms occupied, designed or intended for occupancy as separate living quarters, and containing three or more of the following:

- refrigeration;
- cooking facility (including cooking stove, hot plate, range hood, microwave oven, or similar facility)
- dishwashing machine
- sink intended for meal preparation (not including a wet bar)
- garbage disposal
- toilet.

EASEMENT: The grant of a right of use for a specific purpose over, through, or on a parcel of land.

FACING: Directly opposite, across from.

FAMILY: One or more persons related by blood, marriage, adoption or guardianship, and not more than five additional persons not so related, occupying a dwelling unit and living as a single household unit. This includes the occupants of an ADULT FOSTER HOME and a FOSTER FAMILY HOME.

FARM USE: The current employment of land for the primary purpose of obtaining a profit measurable in money by raising, harvesting, and selling crops or by the feeding, breeding, management and sale of, or the produce of, livestock, poultry, fur-bearing animals or honeybees or for dairying and the sale of dairy products or any other agricultural or horticultural use or animal husbandry or any combination thereof. FARM USE includes the preparation and storage of the products raised on such land for man's use and animal use and disposal by marketing or otherwise.

It does not include the use of land subject to the provisions of ORS Chapter 321 except land used exclusively for growing cultured Christmas trees as defined in ORS 215.203 (3).

FENCE, SIGHT OBSCURING: A fence or shrubbery arranged in such a way as to obstruct vision.

FLOOR AREA: The area included within the surrounding exterior walls of a building or portion thereof, exclusive of porches and exterior stairs, multiplied by the number of stories or portion thereof. The floor area of a building, or portion thereof, not provided with surrounding exterior walls shall be the usable area under the horizontal projection of the roof or floor above. Floor area shall not include portions of buildings used for parking of vehicles, except the square footage of commercial uses in parking structures can be counted as part of the total floor area.

FOSTER FAMILY HOME: As defined by OAR 412-22-010 (4); any State-certified home maintained by a person who has under his or her care any child unattended by parents or a guardian for the purpose of providing such child with care, food, and lodging. Such homes include foster family, group, and shelter homes. (See Adult Foster Home)

GRADE: The average elevation of the existing ground at the centers of all walls of a building.

GROUP COTTAGES: See HOTEL.

HEALTH HARDSHIP: Circumstances where the temporary placement of a mobile home or recreational vehicle to accommodate a seriously ill person or their attendant is justified by the absence of a reasonable alternative.

HEAVY INDUSTRY: A manufacturing activity that has substantial impact on the surrounding area because of hazards, dust, odor, light, heat, noise, or other pollutants, but which does not present a significant public hazard.

HEIGHT OF BUILDING: See BUILDING HEIGHT.

HOME OCCUPATION: A lawful occupation carried out by a resident of the property on which the activity is located, within the residence or other buildings normally associate with uses permitted in the zone in which the property is located, subject to the provisions of Section 4.140 of this Ordinance.

Home occupations do not include garage sales, yard sales, Christmas bazaars, or home parties which are held for the purpose of the sale or distribution of goods or services. However, if such sales and/or parties are held more than 2 times in any calendar year, such sales and/or parties shall be considered a home occupation.

HOMEOWNERS ASSOCIATION: The grouping or uniting of persons residing within a defined area, such as subdivision, into an incorporated entity for the prosecution of a common enterprise.

HOSPITAL, ANIMAL: A building or premises for the medical or surgical treatment of domestic animals or pets including dog, cat, and veterinary hospitals.

HOTEL OR GROUP COTTAGES: A building or group of buildings containing six or more units without cooking facilities which are designed to be used, or which are used, rented, or hired out for transient occupancy.

HYDROELECTRIC SYSTEM: A mechanism for converting energy from moving or falling water into electrical or mechanical energy. A hydroelectric system which produces no more electricity than the average annual consumption of the owner shall not be considered a **COMMERCIAL FACILITY** under ORS 215.213, even though it may sell excess power to the local utility.

IMPROVEMENT: Any building structure, parking facility, fence, gate, wall, work of art or other object constituting a physical betterment of real property, or any part of such betterment.

JUNK YARD: Any property used as a site for breaking up, dismantling, sorting, storing, distributing, trading, bartering, buying, or selling of any scrap, waste, or disposed material.

KENNEL: A commercial establishment where four or more dogs, cats, or animals that are at least four months of age are kept for board, propagation, training, or sale.

KIOSK: A small structure used as a newsstand, information booth, refreshment stand, bandstand, or display of goods, etc.

LIGHT INDUSTRY: A business having noise, dust, odor, light, traffic, and hazard impacts that are similar to those experienced in general business areas. Outdoor storage is screened with sight-obscuring fences.

LINE, PROPERTY: A line, or a description thereof, that is recorded in the office of the County Clerk, and which serves to distinguish a lot or parcel from surrounding properties.

LIVESTOCK: Domestic animals and fowl of types customarily raised or kept on farms for profit or home consumption.

LOT: A tract of land that has been created by a subdivision.

LOT AREA: The total area of a lot or parcel measured in a horizontal plane within the property lines, exclusive of public and private roads.

LOT COVERAGE: The area of a lot covered by a building or buildings expressed as a percentage of the total lot area.

LOT, CORNER: A lot abutting two or more streets or private ways, other than an alley, at their intersection.

LOT DEPTH: The average horizontal distance between the front lot line and the rear lot line.

LOT, FLAG: A single buildable lot partially separated from a public or private road by other land, but maintaining a minimum of 25 foot frontage on the public or private road from which it gains access.

LOT, INTERIOR: A non-corner lot.

LOT LINE: The property line of a lot.

LOT LINE, FRONT: The line separating a lot from a street or private way, other than an alley. On a corner lot, the front is the shortest property line along a street or private way other than an alley. In the case of a through lot or a corner lot with equal lines abutting streets, the front lot line is the side from which primary vehicular access is attained.

LOT LINE, REAR: A property line which is opposite and most distant from the front lot line. In the case of an irregular, triangular, or other-shaped lot, a hypothetical line 10 feet in length within the lot that is parallel to the front lot line.

LOT LINE, SIDE: Any non-front or -rear lot line.

LOT LINE, STREET SIDE: Any lot line along a street or private way (not an alley), other than the front lot line.

LOT OF RECORD: A lot, parcel, other unit of land, or combination thereof, that conformed to all zoning and Subdivision Ordinance requirements and applicable Comprehensive Plan provisions, in effect on the date when a recorded separate deed or contract creating the lot, parcel or unit of land was signed by the parties to the deed or contract; except:

1. Contiguous lots under the same ownership when initially zoned shall be combined when any of these lots, parcels or units of land did not satisfy the lot size requirements of the initial zoning district, excluding lots in a recorded plat.

2. A unit of land created solely to establish a separate tax account, or for mortgage purposes, that does not conform to all zoning and Subdivision Ordinance requirements and applicable Comprehensive Plan provisions, in effect on the date when a recorded separate deed, tax account or contract creating it was signed by the parties to the deed or contract, unless it is sold under the foreclosure provisions of Chapter 88 of the Oregon Revised Statutes.

LOT, THROUGH: An interior lot abutting two streets.

LOT, WIDTH: The average horizontal distance between the side lot lines, ordinarily measured parallel to the front lot line.

MANUFACTURED DWELLING: Includes:

Residential trailer: a structure, greater than 400 square feet, constructed for movement on the public highways that has sleeping, cooking and plumbing facilities, that is intended for human occupancy, that is being used for residential purposes and that was constructed before January 1, 1962.

Mobile home: A structure having at least 400 square feet of floor area and which is transportable in one or more sections. A structure constructed for movement on the public highways that has sleeping, cooking and plumbing facilities, that is intended for human occupancy, that is being used for residential purposes and that was constructed between January 1, 1962 and June 15, 1976, and met the construction requirements of Oregon mobile home law in effect at the time of construction.

Manufactured home: A structure constructed for movement on the public highways, after June 15, 1976, that has sleeping, cooking and plumbing facilities, that is intended for human occupancy, that is being used for residential purposes and that was constructed in accordance with federal manufactured housing construction and safety standards and regulations in effect at the time of construction.

MANUFACTURED STRUCTURE: Recreational Vehicle or Manufactured Dwelling,

MASTER PLAN: A sketch or other presentation showing the ultimate development layout of a parcel of property that is to be developed in successive stages or subdivisions. The plan need not be completely engineered but shall be of sufficient detail to illustrate the property's inherent features and probable development pattern.

MOBILE/MANUFACTURED HOME PARK: A place where either four or more mobile homes/manufactured homes or mobile homes/manufactured homes and recreational vehicles mixed, are located on one or more contiguous lots, tracts, or parcels of land under a single ownership, the purpose of which is to provide permanent residential spaces for charge or fee paid for the use of facilities, or to offer space free of charge in connection with securing the trade, patronage or services of the occupant.

MOBILE HOME SUBDIVISION: A subdivision designated by the County to permit the outright

placement of mobile homes, and where the primary use of lots is for placement of mobile homes and where development standards have been met.

MOBILE KITCHEN UNIT, TEMPORARY: A vehicle in which food is prepared, processed, or converted, or which is used in selling and dispensing of food to the ultimate consumer.

MOTEL: A building or group of buildings used for transient residential purposes that contains guest rooms or dwelling units, and which is designed, intended or used primarily for the accommodation of transient automobile travelers. MOTEL includes groups designated as auto cabins, motor courts, motor hotels and similar designations.

MOTOR HOME: See RECREATIONAL VEHICLE.

NONCONFORMING STRUCTURE OR USE: A structure or use that legally exists at the time this Ordinance or any Amendment hereto becomes effective, but which does not conform to the current requirements of the zone in which it is located.

NURSERY: The propagation of trees, shrubs, vines or flowering plants for transplanting, sale, or for grafting or budding; planting of seeds or cuttings; grafting and budding one variety on another; spraying and dusting of plants to control insects and diseases, and buying and selling the above plant stock at wholesale or retail. Help and seasonal labor may be employed. The term "nursery" contemplates the sale of a product of such nursery. The conduct of a nursery business presumes parking places for customers, the keeping of sales records, and quarters for these functions. However, the use does not include the business of reselling goods purchased off the premises, except plant stock, or the establishment of a roadside stand.

OCEANFRONT LOT: Lot which abuts the State Beach Zone Line (ORS 390.770) or a lot where there is no portion of a buildable lot between it and the State Beach Zone Line.

OWNER: The owner of the title to real property, or the contract purchaser of real property of record, as shown on the last available complete tax assessment roll. OWNER shall also mean any agent with written authority of the owner.

PARCEL: Any tract of land that is not included within the bounds of a residential subdivision.

PARKING SPACE: A 20 by 8 foot area (exclusive areas for maneuvering and access) that is permanently reserved for the temporary storage of a single vehicle, and which has legal access to a street or alley.

PARTITION: To divide an area or tract of land into two or three parcels within a calendar year when such area or tract of land exists as a unit or contiguous units of land under single ownership at the beginning of such year. "Partition" does not include divisions of land resulting from lien foreclosures, divisions of land resulting from foreclosure of recorded contracts for the sale of real property and divisions of land resulting from the creation of cemetery lots; and "partition" does not include any adjustment of a lot line by the relocation of a common boundary where an additional parcel is not created and where the existing parcel reduced in size by the adjustment is not reduced below the minimum lot size established by an applicable zoning ordinance. "Partition" does not include the sale of a lot in a recorded subdivision, even though the lot may have been acquired prior to the sale with other contiguous lots or property by a single owner

PARTY TO PROCEEDING: For the purpose of notice, party to proceeding includes only the applicant, individuals or agencies who respond in writing to a request, or those individuals who attend the hearing and sign the guest list.

PERSON: Every natural person, firm, partnership, association, social or fraternal organization, corporation, estate, trust, receiver, syndicate, branch of government, or any other group or combination acting as a unit.

PLANNING COMMISSION: A Commission appointed by the governing body of the County to assist in the development and administration of the County's planning regulations as provided by ORS 215.020 to 215.035.

PLANNING DIRECTOR: An individual or his or her designate who is appointed by the governing body of the County to be responsible for the administration of planning as provided by ORS 215.042.

PRIMARY USE: The principle purpose for which property is used or occupied.

PRIMARY WOOD PROCESSING: The use of a portable chipper or stud mill or other similar methods of initial treatment of a forest product, including, but not limited to pole and piling preparation, small portable saw mills, log sorting yards, wood chipping operations, fence post manufacturing and fire wood production.

PRIMITIVE CAMPGROUND: A designated place where four or more campsites are located for occupancy by camping units on a temporary basis for recreation, education or vacation purposes. A primitive campground is predominantly an unattended facility which is established to accommodate recreational vehicles, tents, or bicycle uses for a period of time not to exceed two weeks in any given four week period.

PRINCIPALLY ABOVE GROUND: A structure where at least 51 percent of the actual cash value, less land value, is above ground.

PRIVATE WAY: A thoroughfare reserved for use by an identifiable set of persons.

PRODUCE STAND: An accessory facility to a farm use. As a permitted use, a produce stand shall be located on property owned or leased by the produce stand operator for the production of farm products. As a conditional use, a produce stand may include the sale of farm products produced by other farmers, but

excludes the sale of meats. Such facility may include the sale of incidental and related items. Produce stands are subject to the regulations and licensing requirements of the Food and Dairy Division of Oregon Department of Agriculture, the requirements of the Uniform Building Code, and the parking and signing requirements of this Ordinance.

PUBLIC PARK OR RECREATION: Recreation developments which provide for picnicking, swimming, hunting, fishing, riding or other similar activities, but which exclude overnight camper or recreational vehicle use and outdoor commercial amusements such as miniature golf courses and go-cart tracks.

RECREATIONAL VEHICLE: A portable temporary dwelling unit, with a gross floor area not exceeding 400 square feet in the set up mode, which is intended for vacation, emergency or recreational use, but not for permanent residential use, unless located in a recreational vehicle or mobile/manufactured dwelling park.

RECREATIONAL VEHICLE includes the following:

- (a) **CAMPER:** A structure containing a floor that is designed to be temporarily mounted upon a motor vehicle, and which is designed to provide facilities for temporary human habitation.
- (b) **MOTOR HOME:** A motor vehicle with a permanently attached camper, or that is originally designed, reconstructed or permanently altered to provide facilities for temporary human habitation.
- (c) **TRAVEL TRAILER:** A trailer that is capable of being used for temporary human habitation, which is not more than eight feet wide, and except in the case of a tent trailer, has four permanent walls when it is in the usual travel position.
- (d) **SELF-CONTAINED RECREATIONAL VEHICLE:** A vehicle that contains a factory-equipped, on-board system for the storage and disposal of gray water and sewage.

This definition of a recreational vehicle shall not apply in the F-1 or SFW-20 zones.

RECREATIONAL CAMPGROUND: A place where four or more recreational vehicles and/or tents are located on one or more continuous lots, tracts or parcel of land under a single ownership for temporary recreational camping. A permanent house, mobile home, or recreational vehicle for the owner, operator, or manager of the campground is permitted, however other Sections of the Ordinance pertaining to such use shall apply i.e. Section 4.040, etc. Accessory uses that may be permitted include recreation cabins, shower, laundry, a grocery, gas pump, and recreation facilities that are designated for the primary purpose of serving the occupants of the campground. A camper shall not be permitted to stay any longer than six (6) months in any twelve (12) month period.

RECREATIONAL VEHICLE SUBDIVISION: A subdivision designated by the County as permitting the placement of recreational vehicles outright, subject to all development standards and placement permit

requirements.

RESIDENTIAL CARE, TRAINING, OR TREATMENT FACILITY: As defined by ORS 443.400; any facility which provides care, training, or treatment for six or more physically, mentally, emotionally, or behaviorally disabled individuals. Facilities that provide for five or less are addressed as ADULT FOSTER HOMES or FOSTER FAMILY HOMES.

ROAD: A public or private way created to provide ingress to, or egress from, one or more lots, parcels, areas or tracts of land, or that provides for travel between places by vehicles. A private way created exclusively to provide ingress and egress to land in conjunction with a forest, farm or mining use is not a "road." The terms "street," "access drive" and "highway" for the purposes of this Ordinance shall be synonymous with the term "road."

ROAD, COUNTY: A public way under County jurisdiction which has been accepted into the County road maintenance system by order of the board of county Commissioners.

ROAD, PUBLIC: A public way dedicated or deeded for public use but not accepted into the County road maintenance system, intended primarily for vehicular circulation and access to abutting properties.

ROADWAY: That portion of a road or alley that has been improved for vehicular traffic.

RURAL INDUSTRY: A business conducted in non-urban zones that employs up to ten non-family members, and which is not necessarily conducted in conjunction with a dwelling. Impacts to surrounding properties are not offensive. All parking is provided for on the property.

RURAL LAND: Lands that are neither suitable nor necessary for development at urban densities, and which, as a result, are designated for rural homesites or recreational, agricultural, or forestry uses. RURAL LAND includes all lands within zones which require, outright, at least a two acre minimum lot size.

SAND DUNES: The aeolian deposition of sand in ridged or mounds, landward of the beach.

SCREENING: Sight-obscuring fence, or sight-obscuring planting.

SEASONAL FARM WORKER: Any person who, for an agreed remuneration or rate of pay, performs temporary labor for another to work in production of farm products or planting, cultivating or harvesting of seasonal agricultural crops or in reforestation of lands, including but not limited to, the planting, transplanting, tubing, pre-commercial thinning, and thinning of trees and seedlings, the clearing, piling and disposal of brush and slash and other related activities.

SEASONAL FARM WORKER HOUSING: Housing limited to occupancy by seasonal farm workers and their immediate families, that is occupied for no more than nine months in a calendar year.

SETBACK: A linear distance perpendicular to a lot line that describes the depth of a lot or parcel that shall not be occupied by a structure, unless specifically provided for in this Ordinance. See also YARD.

SEWAGE: Water-carried wastes from a home or community.

SEWAGE TREATMENT PLANT: Facilities for the treatment and disposal of sewage.

SHOPPING CENTER: Three or more retail or service establishments on a single unit of land.

SIGHT-OBSCURING FENCE: Any fence or wall which conceals or makes indistinct any object viewed through such fence or wall.

SIGHT-OBSCURING PLANTING: A dense perennial evergreen planting with sufficient foliage to obscure vision and which will reach a height of at least six (6) feet within thirty (30) months after planting.

SIGN: An identification, description, illustration or device which is affixed to or represented, directly or indirectly, upon a building, structure or land, and which directs attention to a product, place, activity, person, institution, or business. Each display surface of a sign other than two surfaces parallel and back to back on the same structure shall be considered a sign.

SIGN, ADVERTISING: A sign which directs attention to a business, product, activity, or service which is not necessarily conducted, sold, or offered upon the premises where such sign is located.

SOLAR ENERGY SYSTEM: Any device, structure, mechanism, or series of mechanisms which uses solar radiation as a source for heating, cooling, or electrical energy.

SMALL POWER PRODUCTION FACILITY: A facility that produces energy primarily by use of biomass, waste, solar energy, wind power, water power, geothermal energy or any combination thereof, having a power production capacity that, together with any other facilities located at the same site, is not greater than 80 megawatts; and such facility is more than 50 percent owned by a person who is not a public utility, an electric utility holding company or an affiliated interest. When this definition differs from that in ORS 758.500, the definition in ORS 758.500 shall prevail.

SOLID WASTE: Solid waste shall include all putrescible and non-putrescible waste, including, but not limited to, garbage; compost; organic waste; yard debris; brush and branches; land clearing debris; sewer sludge; residential, commercial and industrial building demolition or construction waste; discarded residential, commercial and industrial appliances, equipment and furniture; discarded, inoperable or abandoned vehicles or vehicle parts and vehicle tires; special vehicles and equipment that are immobile and/or inoperable, manufactured dwellings or residential trailers which are dilapidated, partially dismantled or fire damaged; manure; feces; vegetable or animal solid and semi-solid waste and dead animals; and infectious waste. Waste shall mean useless, unwanted or discarded materials. The fact that materials which would otherwise come within the definition of Solid Waste may, from time to time, have value and thus be utilized shall not remove them from the definition. The terms Solid Waste or Waste do not include:

- a. Environmentally hazardous wastes as defined in ORS 466.055;
- b. Materials used for fertilizer or for other productive purposes on land in agricultural

operations in the growing and harvesting of crops or the raising of fowl or animals. This exception does not apply to the keeping of animals on land which has been zoned for residential non-agricultural purposes;

- c. Septic tank and cesspool pumping or chemical toilet waste;
- d. For purposes of Article V of this Ordinance, reusable beverage containers as defined in ORS 459A;
- e. Source separated, principal recyclable materials as defined in ORS 459A and the Rules promulgated thereunder and under this Ordinance, which have been purchased or exchanged for fair market value, unless said principal recyclable materials create a public nuisance pursuant to Article II of this Ordinance;
- f. Applications of industrial sludges or industrial waste by-products authorized through a Land Use Compatibility Statement or Management Plan approval and that have been applied to agricultural lands according to accepted agronomic practices or accepted method approved by the Land Use Compatibility Statement or Management Plan, but not to exceed 100 dry tons per acre annually;
- g. Stabilized municipal sewage sludge applied for accepted beneficial uses on land in agricultural, non-agricultural, or silvicultural operations. Sludge derived products applied for beneficial uses on land in landscaping projects.

STANDARDS: Rules governing the size, dimensions, shape, or orientation of a lot or parcel, or the placement of buildings or activities thereon.

START OF CONSTRUCTION:

- (a) For a structure other than a mobile home, **START OF CONSTRUCTION** means the first placement of permanent material for the construction of the primary use on a site, such as the pouring of slabs or footings or any work beyond the stage of excavation. For a structure without a basement or poured footings, the **START OF CONSTRUCTION** means the first permanent framing or assembly of the structure, or any part thereof, on its piling or foundation.

- (b) For mobile homes not within a mobile home park or subdivision, START OF CONSTRUCTION means securing the mobile home at its permanent location by means of tiedowns or, in the case of a double-wide mobile home, its placement upon piers.

STORY: That portion of a building between the finished surface of any floor and the next floor above, that is at least six feet above grade; the top story shall be the topmost living space.

STREAM: A body of perennial running water, together with the channel occupied by such running water.

STREET: The entire right-of-way of every public and private way for vehicular and pedestrian traffic; includes the terms ROAD, HIGHWAY, LANE, PLACE, AVENUE, ALLEY, and other similar designations. For setback purposes, non-vehicular public and private ways are not considered streets and require no setbacks.

STREET LINE: A property line between a lot, tract, or parcel of land and an adjacent street or private way.

STRUCTURAL ALTERATION: Any change to the weight-bearing members of a building, including foundations, bearing walls, columns, beams, girders, or any change in the roof or exterior walls.

STRUCTURE: Anything constructed or installed or portable, the use of which requires a location on a parcel of land.

SUBDIVISION: A tract of land that has been divided into four or more lots within a calendar year.

SUBSTANTIAL IMPROVEMENT: Any repair, reconstruction, or improvement of a structure, where the cost equals or exceeds fifty (50) percent of the market value of the structure, either;

- (a) Before the improvement or repair is started; or
- (b) If the structure has been damaged and is being restored, before the damage occurred.

SUBSTANTIAL IMPROVEMENT occurs upon the first structural alteration of a building, whether or not the alteration of a building, whether or not the alteration affects the external dimensions of the building. The term does not, however, include:

- (a) Any improvements made to a structure to comply with existing state or local health, sanitary, or safety code specifications, and which are solely necessary to assure safe living conditions;
- (b) Any restoration work on a structure listed in the National Register of Historic Places or a State Inventory of Historic Places; or

- (c) Any project for the addition or expansion of an electrical cogeneration facility.

SURFACE MINING: Includes the mining of minerals by removing overburden and extracting a natural mineral deposit thereby exposed, or simply such extraction. Surface mining includes open-pit mining, auger mining, production of surface mining waste, prospecting and exploring that extracts minerals or affects land, processing to include rock crushing and batch plant operations, and excavation of adjacent offsite borrow pits other than those excavated for building access roads.

SURFACE MINING, MINERALS: Includes soil, clay, stone, sand, gravel, and any other inorganic solid excavated from a natural deposit in the earth for commercial, industrial, or construction use.

SURFACE MINING, NONAGGREGATE MINERALS: Coal and metal-bearing ores, including but not limited to ores that contain nickel, cobalt, lead, zinc, gold, molybdenum, uranium, silver, aluminum, chrome, copper or mercury.

SURFACE MINING, OPERATOR: A legal entity engaged in surface mining or in an activity at a surface mining site preliminary to surface mining.

SURFACE MINING, RECLAMATION: Procedures designed to minimize the disturbance from surface mining and to provide for the rehabilitation of surface resources through the use of plant cover, soil stabilization, and other procedures to protect the surface and subsurface water resources, and other measures appropriate to the subsequent beneficial use of mined lands.

TEMPORARY MOBILE KITCHEN UNIT: See MOBILE KITCHEN UNIT, TEMPORARY.

TOWNHOUSE: Townhouse is a single-family dwelling unit constructed in a row of attached units separated by property lines and with open space on at least two sides.

TRACT: One or more contiguous lots or parcels under the same ownership.

TRAIL: A hard or soft surfaced facility for pedestrians, or equestrians separate from vehicular traffic. Trails often go through natural areas and are designed to have a minimal impact on the natural environment.

TRANSFER STATION: A fixed or mobile facility used as part of a solid waste collection and disposal system or resource recovery system, between a collection route and a processing facility or a disposal site, including but not limited to drop boxes made available for general public use. This definition does not include solid waste collection vehicles.

TRAVEL TRAILER: See RECREATIONAL VEHICLE.

URBAN or URBANIZABLE LAND: Only those lands within or surrounding an incorporated city which

are contained by an Urban Growth Boundary.

URBAN GROWTH BOUNDARY: A line established by the governing body and placed on a zoning map, which distinguishes urbanizable land adjacent to an incorporated city from surrounding rural land.

UTILITY CARRIER CABINETS: A small enclosure used to house utility equipment intended for offsite service, such as electrical transformer boxes, telephone cable boxes, cable TV boxes, fire alarm boxes, police call boxes, traffic signal control boxes, and other similar apparatus.

USE: The purpose for which a structure is designed, arranged, or intended, or for which a unit of land is developed, occupied or maintained.

UTILITY FACILITIES: Structures, pipes, or transmission lines which provide the public with electricity, gas, heat, steam, communication, water, sewage collection, or other similar service.

VARIANCE: A grant of relief from one or more of the standards contained in this Ordinance.

WASTE RELATED: Waste-related uses are characterized by uses that receive solid or liquid wastes from others for disposal on the site for transfer to another location, uses which collect sanitary wastes, or uses that manufacture or produce goods or energy from the composting of organic material. Waste-related uses also includes uses which receive hazardous wastes from others and which are subject to the regulations of OAR 340.100-110, Hazardous Waste Management.

WETLANDS: Areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions.

WIND ENERGY CONVERSION SYSTEM (WECS): A system for converting energy from moving air masses into electrical energy. A single WECS with a tower height less than 150 feet and which produces no more electricity than the average annual consumption of the owner shall not be considered a **COMMERCIAL FACILITY** under ORS 215.213, even though it may sell excess power to the local utility.

WINDMILL: A system for converting energy from moving air masses into a form of energy other than electricity.

YARD: Any portion of a lot or parcel that is not occupied by a structure, unless specifically allowed by this Ordinance.

YARD, FRONT: The area between side lot lines, measured horizontally and at right angles to the front lot line, to the nearest point of a structure.

YARD, REAR: The area between side lot lines or between a street and the opposite side lot line, measured horizontally and at right angles to the rear lot line, to the nearest point of a structure.

YARD REQUIREMENT: The portion of a lot or parcel that shall not be occupied by a structure, unless specifically provided for in this ordinance. This has the same meaning as "required yard", "minimum yard", or "setback".

YARD, SIDE: The area between the front and rear yard, measured horizontally and at right angles to the side lot line, to the nearest point of a structure.

YARD, STREET SIDE: The area adjacent to a street or private way, located between the front and rear yards, measured horizontally and at right angles from the street side lot line to the nearest point of a structure.



Tillamook County Soil and Water Conservation District

6415 Signal Street - Tillamook, Oregon 97141 Phone (503) 842-2240 / Fax (503) 842-2760

Website - <http://www.tbcc.cc.or.us/~tcwrc/swcd> E-Mail: tcswcd@oregoncoast.com

RECEIVED

FEB 24 2010

**COMMUNITY
DEVELOPMENT**

February 23, 2010

Tillamook County Planning Commission
And Board of Commissioners
201 Laurel Ave.
Tillamook, OR 97141

Re: Tillamook Shooter's Association Land Use Application

Dear Commissioners,

The Tillamook County Soil and Water Conservation District voted unanimously to support Rudy Fenks letter of support for the Shooter's Association Land Use Application.

The District Board understands that the approved application would permit placement of a firearms training facility on a portion of an 85 acre property off Old Frazer Road. The application includes rezoning 25.88 acres adjacent to forestland from Farm to Forest, and seeks a conditional use approval for the firearms facility on that portion of property.

Sincerely,

Bill Hagerty

Vice Chair Tillamook SWCD

Cc: Vic Affolter

Cc: Tillamook County Planning Commission

Cc: Tillamook County Community Development

TILLAMOOK COUNTY SOIL & WATER CONSERVATION DISTRICT BOARD OF DIRECTORS

RUDY FENK, DIRECTOR AT-LARGE, WALTER PORTER, DIRECTOR ZONE 1, BARBARA BOSCH-SEAHOLM, DIRECTOR ZONE 2,

CLARENCE BOQUIST, DIRECTOR ZONE 3, BRYAN MEASOR, DIRECTOR ZONE 4, WILLIAM HAGERTY, DIRECTOR ZONE 5

LARRY ZWEIFEL, DIRECTOR AT-LARGE

Exhibit G

March 19, 2010

Tillamook County Planning Commission
201 Laurel Avenue
Tillamook, Oregon 97141

Re: Zoning change and conditional use permit request by the Tillamook Shooters Assoc.

RECEIVED
MAR 19 2010
COMMITTEE
ON DEVELOPMENT

Dear Commissioner Hoffman,

I have concerns about the noise reduction levels and the assertion by the applicant that noise levels will comply with DEQ regulations. The DEQ does not have and has not had a noise control function at shooting ranges for years.

In 1991, the Legislative Assembly withdrew all funding for implementing and administering ORS Chapter 467 and the Department's noise program. Accordingly, the Commission and the Department have suspended administration of the noise program, including but not limited to processing requests for exceptions and variances, reviewing plans, issuing certifications, forming advisory committees, and responding to complaints. Similarly, the public's obligations to submit plans or certifications to the Department are suspended. 340-035-0110

http://arcweb.sos.state.or.us/rules/OARs_300/OAR_340/340_035.html Suspension of Commission and Department Responsibilities

My family lives in one of the residences in the "less than five acre enclave", identified in the application, 2,250 feet crow flight from the subject site that allegedly will be unaffected by excess noise from the range because a forested ridge separates us. The Tillamook trap shooting range is more than 3 miles from our house and there are several forested areas between it and us. We can hear every shot that is fired at that facility. Trap shooting occurs on weekends and at least one evening per week, weather permitting. It is not a pleasant sound to us.

The traffic analysis submitted by Mr. Cook states the following:

"Finding no documentation or studies to establish average trip numbers, the following has been used to estimate vehicle trips:

CURRENT USE: For the past 8 years, the subject property has been more or less vacant, generating on average less than 2 vehicle trips per day.

PROPOSED USE: Anticipated to generate an average of up to 100 vehicle trips per day, if the full potential is met."

Assuming that at least one person per vehicle from each of the anticipated 100 vehicles per day will use the facility and further assuming that that person fires just 10 rounds; 1000 rounds per day will be fired on the range at its "full potential". That is an onerous scenario to consider. The possibility of hearing 360,000 rounds fired per year is an egregious assault on any concept of a harmonious, noise shielded, environment. Considering that various law enforcement agencies have stated their support for the facility as a preferable place for their officers to train and also considering that the range will be used as a venue for competitive events and further that various youth groups will also hold fire arms training and qualification events, the estimate of 360000 rounds is, at the least, a conservative estimate. (Please see my enclosed Exhibit 1 for an annual lead deposit estimate for this level of activity).

The last paragraph on page 3 of the Firearms Facility Application Summary reads: ***"The applicant believes that it is impossible to propose locating a firearms range at a physically suitable location anywhere in the county without objections from neighbors who anticipate being adversely affected, no matter how many assurances are made about safe operations and the absence of significant off-site impacts. The Tillamook Shooters Association is committed to doing everything possible to construct and operate their facility in a manner that results(sic) in their being regarded as a good neighbor."***

I object to the approval of the application unless, as a condition for approval, a precise written explanation is submitted that details what measures will be taken by the applicant to address and remedy possible noise and/or noise nuisance impact complaints in such a manner that the applicant might warrant being "regarded as a good neighbor". With the absence of DEQ regulation or enforcement it is vital to know what standards the applicant intends to follow to control noise levels since once the facility becomes operational the provisions contained in **ORS 467.131 (Exemption from civil or criminal liability based on noise or noise pollution from a shooting range)** and **ORS 467.133 (Exemption from action for nuisance on basis of noise caused by shooting range)** preclude any action to seek relief from noise or nuisance issues caused by normal shooting range activities.

Additionally, **ORS 467.138: (Limitation on law enforcement training exemption for shooting range)** provides that law enforcement agencies may conduct training exercises after the legal range closing time of 10 pm as many as 4 nights per month. Further, **ORS 467.136 (Preemption of certain local regulation of shooting range)** states: ***Any local government or special district ordinance or regulation now in effect or subsequently adopted that makes a shooting range a nuisance or trespass or provides for its abatement as a nuisance or trespass is invalid with respect to a shooting range for which no action or claim is allowed under ORS 467.131 and 467.133. [1996 c.8 §10 (enacted in lieu of 467.)]***

In actuality then if the shooting range application is approved and the facility becomes functional there is no legal recourse that an individual, a group or a local governing agency can employ to seek relief from the noise levels and/or nuisance noise levels that are inherent to shooting facilities without adequate noise suppression measures. I oppose the approval of the application unless and until the applicant agrees to address and remedy noise and/or nuisance noise complaints due to normal range operations as well as complaints that may arise from law enforcement agencies during training activities that occur after normal range closing time.

Thinking of the conservative estimate of 360,000 rounds of ammunition that could be fired at the range, if the application is approved, gives rise to a concern I have about lead contamination, one of several byproducts at all shooting range facilities. Due to the abundant rain fall in Tillamook, rain water runoff could easily transport lead particles down slope in relation to the layout of the shooting lanes to the wetlands below and beyond. It is also possible for the lead particles from the spent bullets to rinse out of the range backstops; penetrate the top soil layers and enter the ground water table to be deposited in the onsite well and the water that will be consumed by users of the facility.

Among the exhibit letters submitted by the applicant are two: Exhibit F by Mr. Pitts and G by Mr. Cook, that state that operation of the range will be in accord with the EPA guide lines for Best Management Practices for Lead at Outdoor Shooting Ranges.

The EPA guide outlines 4 steps for best range management:

1. Bullet & Shot containment.
2. BMP to prevent Lead migration.

3. Lead removal and recovery.
4. Documentation of activities and record keeping.

While the stated intention of the applicant to develop a Best Management plan is commendable it is my experience that intentions and reality are all too often two different matters. That seems especially so when intentions are not made enforceable by means of a contract. I am opposed to approval of the application unless the applicant agrees, as a condition for approval, to continually follow each of the four recommended steps and obtains a Certificate of Recognition from the EPA. While the EPA does not approve or disapprove the function of a shooting range it has powerful tools to implement its pollution control recommendations; the Water Conversation Act (CWA) and the Resource Conservation & Recovery Act (RCRA) among others. Having an EPA certificate could forestall possible future action involving either or both of these tools.

Thank you for your consideration of my concerns and objections.

Sincerely,



Charles R. Flackus
1805 Burton Hill Rd.
Tillamook, OR. 97141
(503) 842-5368

Cc: Kurt Heckeroth
Bruce Lovelin
Gale Ousele
Terry Jones
Kurt Mizze
Don LaFrance

BULLETT LEAD WEIGHTS

44 mag	240 grain bullet is approx	.50 oz
45 cal fmj	185 grain bullet is approx	.40 oz
.357 cal fmj	125 grain bullet is approx	.25 oz
9mm fmj	115 grain bullet is approx	.25 oz
22 LR	40 grain bullet is approx	.09 oz

30-06 nosler ballistic tip	150 grain is approx	.34 oz
270 soft point	150 grain is approx	.34 oz
AR 15	55 grain is approx	.12 oz
7mm	156 grain approx	.35 oz
243	95 grain approx	<u>.21 oz</u>

Average bullet weight 2.85 oz /10= .285 oz per round

Given the applicants estimate of 100 vehicle trips per day and my premise that at least one occupant per vehicle will fire a minimum of 10 rounds to arrive at the conservative 360000 rounds fired per year it can be computed :

360000 rounds per year at .285 oz average weight per round is 1026000 oz of lead.

1026000/16 oz equals 6412.5 pounds of lead that could be deposited in the range backstops, per year.

Tillamook County Planning Commission
201 Laurel Ave
Tillamook, OR 97141
March 21, 2010

RECEIVED
MAR 22 2010
COMMUNITY
DEVELOPMENT

Attention: Bradford Sheets

Dear Planning Commission,

We object to the firearms range that is proposed for 315 Fraser Rd. The subject property is located in Farm Zone and taking it out of this zone is in contrast to Goal 3 of the comprehensive Plan.

Putting a firearms facility close to town and farms would damage the use of the surrounding properties and the recreational use of the Tillamook River. This is in contrast to Goal 9 of the Comprehensive Plan.

The use of lead so close to water is against the Clean Water Act and would most likely prove to be a hazard to the Tillamook River over time.

Noise of gunshots would damage the property owners of surrounding parcels by taking away the enjoyment of their own property. It would also do damage to the livestock, pets and wildlife in the area.

Mike and Sandy Kottre

Mike Kottre
Sandy Kottre

Dept. of Community Development
Attention: Bradford Sheets and
Tillamook County Planning Commission
201 Laurel Ave
Tillamook OR 97141
March 21, 2010

RECEIVED
MAR 22 2010
COMMUNITY
DEVELOPMENT

To Whom It May Concern:

It is our understanding that a zone change has been requested for the property located at 315 Fraser Rd., Tillamook OR. We believe this application should be denied due to the fact it does not meet the zone map amendment approval criteria.

A) The proposed new zone is consistent with applicable Comprehensive Plan Policies.

This request is not consistent with Goal 3 of the Plan. The farmers and dairymen are squeezed from every direction. Goal 3 is the protection that is left to the agriculture industry. Throughout Goal 3, reasons are expressed that indicate how valuable every piece of Farm Zone land is. It is crucial that each piece is kept in the only zoning that will completely protect the agriculture industry and not be allowed to be morphed into something that will damage the surrounding farms.

In many ways this application is in conflict with Goal 9 as well. If the parcel was allowed to become a rifle range, as indicated in the application, it may attract some groups to the area, but it would do excessive damage to the existing tourism that enjoys the area. It would damage the scenic dairy industry that draws tourists, by the extensive damage it would do to the family operations of dairies and hobby farms that surround the piece. The noise pollution put out by the proposed use would irritate their stock and push the operations out of the area. It would harm the fishing industry along Tillamook River, and the tourism that comes with it, because the noise pollution would make it an undesirable place to fish. Tourism is also generated by people that come to nature watch in this area. This would be extremely compromised by the noise pollution generated by the applicant use. Nobody wants to enjoy viewing wildlife while listening to gunfire.

B) The Proposed new zone shall not result in the conversion of resource land to non-resource land use without an approved exception to applicable state resource protection goals.

This application is indeed going from resource land to resource land but *only* for the purpose of moving forward to a use that is accepted under conditional use and in conflict with the surrounding resource zone land. The remaining land would no longer be usable for agricultural purposes either. Truly this removes land from the resource zoning all together.

C) The site under consideration is better suited to the purpose of the proposed zone than it is to the purpose of the existing zone.

This site is pasture for agriculture use and has been used as such since 1920. This parcel has a history of being very beneficial to the surrounding farm parcels. The soil may be considered poor quality to the applicant but, the farmer that has taken green chop off of this piece for a number of years has seen it as a productive and useful asset. It fact many of the farms on the area consist of the same soils and are doing quite well at farming. Most of the prime real estate for farming is turned into housing developments, leaving this "poor" soil to be used by the farmers. Now pressures are attempting to take this land out of use for the farmer also. The applicant states that they only wish to remove 25 acres from Farm zone to allow farming practices on the piece but they are using the high ground for a shooting range which makes it impossible to build shelter for livestock. It also makes it less feasible to fix the tide gates and keep the grassland dry. Therefore they are effectively taking the entire parcel out of farm zone and replacing it with a conflicting use.

D) Development anticipated to result from the proposed zone shall not impair the actual or the legally designated uses of the surrounding properties.

The anticipated use of this zone change would definitely impair the actual use of the surrounding properties. The safety of the workers in the timberland that is located behind and the side of the target range of the proposed use would be in jeopardy. The safety of anyone that happens to be in the woods for any reason would be compromised. The safety of the homes, and their residents and livestock, located beyond the trees is questionable also.

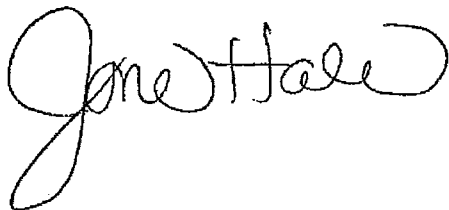
The home that is adjacent to the subject property would not be able to enjoy their own property in any sense of the word due to noise pollution or safety, while the rifle range was in use.

The surrounding dairies, hobby farms and cattle farms would suffer immeasurable losses due to the noise pollution disturbing the livestock.

The area in question is located in a community. The proposed use of the parcel is a substantial safety risk and a risk to the livelihoods of the surrounding land owners.

With this application meeting none of the criteria for a zone map amendment, we urge the Planning Commission to deny this application.

We also request that the conditional use be denied as it goes against many of the items mentioned in Goal 3 of the Comprehensive Plan. It conflicts with other Goals as well, such as tourism and not harming the water resources as mentioned in Goal 4.



March 20, 2010
Department of Community Development
Tillamook County Planning Commission
Attention: Brad Sheets
201 Laurel Ave
Tillamook, OR 97141

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MAR 22 2010
COMMUNITY
DEVELOPMENT

Tillamook County Planning Commission,

We are the closest neighbor to the proposed firearms site. This use would have an extremely detrimental affect on our lives. The applicant states that we are not a farm use. In fact we do have horses, and dogs, and we do a lot of gardening outside. This would be considered a 'Hobby Farm,' but it still means that we spend a lot of time outside and rely on the agricultural atmosphere to be able to have livestock and grow various harvestable plants. The proposed use would destroy our property for keeping horses and take the enjoyment out of planting and harvesting outside. Therefore we request that you deny the application for a Firearms Facility at 315 Fraser Rd in its entirety.

The **Text Amendment** does not take into consideration the unique setting of Tillamook County. We have too many homes and farms close to Forest Zone. We understand that a Firing Range is desired by many, and therefore, some wording to allow such a use in Tillamook may be necessary, but we request that such language include setbacks that protect against the harmful affects to neighboring properties.

There are other areas that can be used, such as State Forest. The State Forestry already has recreational uses in its description. These lands often have good roads and natural sound buffers due to their locations. They also tend to be able to protect their neighbors since the parcels are often large enough to allow a use as requested by the applicant to be placed in the center of a large forested tract. There are also large tracts of forest land in private ownership. There are numerous ones that are large enough to allow for a setback of one or two miles from agricultural or residential uses.

Because the language does not protect surrounding uses and may even be the wrong zoning to put this conditional use into, we ask that you deny this request.

The **Map amendment** to request a change to the zoning on the said parcel from Farm use to Agriculture should also be denied. By taking 25 acres away from the existing 84 acres, it makes the parcel too small for a farming operation. OAR 660-033-0100 (1) establishes minimum sizes for

new parcels for land zoned for exclusive farm use. "For land not designated rangeland, the minimum parcel size shall be 80 acres." (2)... "This standard is intended to prevent division of farmland into parcels that are too small to contribute to commercial agriculture in an area." The land should not be allowed to be taken out of Farm zone. It also removes the high ground that building could be built upon.

The topography, drainage of this property allows the runoff of water to go directly into the waterways. Lead will leach into the waterways and perhaps our well. Should the tide gates be pulled, our well could also be compromised. Not to mention any neighboring pasture that is of lower elevation. What pulling these gates will do to the water table in the area is impossible to predict.

The criteria states the compatibility of the proposed new zone with surrounding zoning and land uses. This use is not compatible with the life we lead on our property nor is it compatible with the other uses of the surrounding land owners. Nor is it compatible with the recreational uses on the Tillamook River. People use the area hard for fishing, kayaking, biking, boating, or just walking. The applicant seems to believe that it is only sight that matters when a person is on the river, or on their own property, but sound has a lot to do with it and no matter how hard they try they will not be able to contain the noise that comes from a firing range. Go out to the existing firing range and try to enjoy a picnic while they are shooting. How long will you feel like listening to it? Would friends want come over for a BBQ if your yard sounded like that?

The new firing range is expected to be used much heavier than the current one is. With all of the activities they are proposing on the shooting range, the activities in the surrounding area would cease to exist.

The criteria look at the land use objective of both the applicable and the proposed zoning. Since a firearms facility is not allowed in Farm zone under any circumstance, it is apparent that the land use objectives are very different under this particular circumstance.

The applicant has not met the criteria for a Map Amendment and we request that you deny this portion of the application.

The **Conditional Use** Criteria under general requirements states it is "subject to the standards of the zone in which it is located." That really doesn't mean much if the applicant can pull property out of its current zoning against the neighboring land owners desires or the Goals set in the Comprehensive Plan. This request could not even be considered if a zoning change is not done. It is not a conditional use under Farm zone.

The Comprehensive Plan protects Agricultural use and property under Goal 3. It is designed to stop this very thing from happening. The Goal warns of non-farm uses encroaching ever closer to farm zone and how this inevitably forces the farmers in the area to abandon their land and move on. This applicant doesn't want to encroach close to Farm zone, it wants to jump right on top of it actually taking land from agriculture and putting it into a use that will harm all of the neighboring properties.

Number four of the criteria says the "proposed use will not alter the character of the surrounding area in a manner which substantially limits, impairs or prevents the use of surrounding properties for the permitted uses listed in the underlying zone."

This use would substantially limit the use of our property. Our animals would be fearful of the noise. It would be impossible for us to get used to the loud noises emanating from the firing range. Quiet time for us outside would be reduced to after 10:00pm and that is only if a law enforcement team does not wish to use it after hours, since there are no restrictions on the hours they can use such a facility. We would probably even be able to hear the gunshots from inside our home. Please think about what it would be like to live this way.

Google earth has the elevation at the location that the firearms facility will be shooting from as 23 feet. Our home is at 24 Feet. The "ridge" that is supposed to "buffer" us from "where the shooting will occur" is at its highest 42 Ft. The higher area of the ridge is north of us. The area between the firing range and our home averages approximately 20 ft.

A 20 foot elevation on the ridge between the firing range and our home, when we are at 24 Feet and the firing range is at 23 feet. I don't think that ridge is going to protect us from seeing the firing range or hearing the gunfire. The map that the applicant gave you shows these elevations. They know the damage they will do to our property but they are twisting information to make it look as if no one will be bothered by their intended use.

We have shown you why this parcel does not fit the Conditional use Criteria and ask that you deny this portion of the application. We ask that the entire application be denied because it is not in keep with the Goals of the Comprehensive Plan and it would destroy our home.

Tim + Jodene Toth

325 Old Fraser Rd.

Tillamook OR. 97141

March 18, 2010

Tillamook County Planning Commission:

Re: Firearms Training Center, Fraser Rd

RECEIVED
MAR 22 2010

COMMUNITY
DEVELOPMENT

(After I wrote this letter for publication in the Headlight Herald, I learned the conditional use request is not on behalf of any local organization but is a request by the Oregon Hunters Assn. That only makes it harder to understand why you, charged with planning Tillamook County livability, would grant this request.)

A Firearms Training Center is planned west of Tillamook, one mile across open pastures from the edge of town, along the scenic Tillamook River and Fraser Road.

The downside is the constant sound of gun shots.

Please find a better location for this (gun club) project.

Tillamook lives in this valley. We all know how clearly random sounds carry in various air currents and weather. Anyone who fishes, boats, cycles, kayaks, walks, runs, bird watches, gardens, or sits in the open air knows this.

Hunting season is seasonal. A Firearms Training Center is constant and permanent and creates nothing but gunfire.

County decision makers won't hear these gun shots while sitting in the County Courthouse. Gun shots are traumatic sounds. So please go into the open air and listen.

Before you make all the decisions that allow this Firearms Training Center, please conduct a careful and public test of the noise impact on the greater community. The sounds of regular, routine gunfire are not good for any of us.



Elaine Hungerford
Tillamook
503-842-7411

March 19, 2010

Mr. Bradford Sheets
Tillamook County Dept. of Community Development
201 Laurel Ave.
Tillamook, OR 97141

RECEIVED
MAR 22 2010
COMMUNITY
DEVELOPMENT

Ms. Dora Norwood
25 Fraser Rd.
Tillamook, OR 97141

RE: Comments against the Application of Zone Change from Farm to Forestry and the associated conditional use permit.

Dear Mr. Sheets:

The application for zone change and the application for a conditional use permit appear to be tied together. The request for a conditional use permit for the firearms shooting range is scheduled for the same evening prior to the public review for an open gun/shooting range.

Though there are many supporters there are **none** that live within gun shot range of the proposed site. All live miles away.

Mr. Edwin Jenkins, one of the vocal proponents, though he owns a piece of undeveloped property adjacent and though he claims to be a neighbor, he has few ties to the immediate community since his application for construction of a private residence on that piece of property was denied years ago.

This application smells of back room old boy deal making, undermining the rights of residents and property owners who will be directly adversely impacted.

There has been a great deal of unofficial support by local government groups and individuals who say they DEFEND the public and private citizens, yet these same people are pushing to trample the rights of due process of those they have sworn to protect without a thought.

The zone change to allow the conditional use of a weapons firing range is the latest ploy to skirt the requirements of an environmental assessment or environmental impact study which would otherwise be required under any circumstance but, they attempt to roll-over this process through this application.

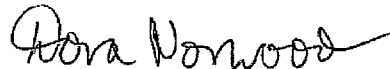
This means the gun club will be given the Right to contaminate the soil and the Tillamook River freely and permanently with the blessings of City of Tillamook, Tillamook County, and State of Oregon oversight agencies that are and should be examining this travesty of rights abuses and permanent destruction of the watershed.

Local nesting owls, ducks, Great Blue Herons, and other critical wildlife will be driven from the area creating an abandoned waste-shed. Their absence could allow a population explosion of vermin which would otherwise be kept in balance through the natural process. Additional damage to the watershed will logically follow from the increased traffic and garbage tossed from gun range patrons. The addition of the constant blasts of gun-fire and the carcinogenic smoke will taint the air and watershed. The land, hills, and trees will be peppered with spent copper bullets and will be contaminated forever.

The change in the region's serenity, eco-vitality, and attraction to eco-tourism will be destroyed and lost for the economic gain of a handful of businessmen bent on short-term profits and not the well-being of the community.

All the supporters claimed by the applicant need to come forward at the public meeting personally and officially cast their support for or against, to let the community know where they officially stand on the destruction of the Tillamook River Watershed, the destruction and displacement of wildlife and finally the eradication of the lifestyle of the community which is supporting our families, our schools, and our way of life in complement with nature and our community.

Respectfully,

A handwritten signature in cursive script that reads "Dora Norwood". The signature is written in dark ink and is positioned below the word "Respectfully,".

Dora Norwood

Member of: Friends and Families of the Tillamook Watershed

22 March 2010

Department of Community Development
201 Laurel Ave.
Tillamook, Oregon 97141

RECEIVED
MAR 23 2010
COMMUNITY
DEVELOPMENT

Ordinance Amendment OA-09-04
Zone Change ZC-09-01
Conditional Use CU-09-11

We have serious objections to the process planned for considering approving an ordinance amendment, a zone change, and approval of a conditional use agreement during one Planning Commission Public Hearing, and one Board of Commissioners Public Hearing. In our view it is pre-decisional to include all three actions in one meeting. If the zoning change has not been decided it is unreasonable to consider the other two issues at this time. Organized in this way, it implies the decisions have already been made and the hearing is simply to satisfy County requirements allowing public comments, and that the hearings will have no effect on the outcome.

Statements in the application should not be taken at the applicant's word, and need to be thoroughly researched. In our view it is the County's responsibility to protect its citizens, and not the citizens who are responsible for researching the potential impacts of the proposed project. Has the County done a careful study on the likely impacts of this proposal?

A zoning change is county-wide and requires careful consideration. It will have far-reaching implications. Has the entire county been adequately notified? Has the County considered how the decision will affect other lands within the county?

More research needs to be done on the effects of a shooting range in the Tillamook Valley. The County needs to carefully consider livability and aesthetics of the area. Even if the noise produced is within allowable thresholds, is the sound of potentially 98 high powered rifles, continuous, seven days a week, something we want in our valley? Is this the quality of life the County wants to provide its residents? How far will the noise from weapons discharge carry in the valley, and how will it affect the livability of the area? A short sighted decision benefiting one user group, firearms users, will impact the area forever. It is a decision unlikely to be reversed and one which will threaten the aesthetic, social and economic benefits of open land in Tillamook County far into the future.

Zoning change from Farm to Forest at this location is inconsistent with Comprehensive Plan Policies. Tillamook Planning documents describe the need to protect farmland and promote agricultural enterprises. Open land for agriculture is considered important physical, social and aesthetic, and an economic asset to all people which should be preserved. A zoning change from Farm to Forest would eliminate the protection of farm practices that promote agricultural enterprises.

Zoning change from Farm to Forest is not appropriate for the area. A decision to change zoning must consider if the new zoning is more appropriate for the area than the current zoning. This proposed zone change functionally converts land from resource to non-resource land since the land is more suited to farm than forest. Of the 25.38 acres being considered for a zoning change, only seven acres in the Templeton and Templeton-Ecola soil types is suitable for forest, with a medium to high productivity for trees. Coquille soils exist in the remaining 17.58 acres and are considered severely restricted, containing estuarine deposits, frequently flooded. Forest productivity is not listed for Coquille soil. Therefore, most of the area (69 %) being considered for a zoning change is not known to support productive forests and is more appropriate as Farm, regardless of its current use.

Development anticipated from the proposed zone will impair the actual uses of surrounding properties. The proposed firearms training facility will have a number of negative impacts including; creating significant noise pollution which will be detrimental to the peaceful nature of the area, and will substantially impair and limit the use of surrounding properties. The increased noise will create an unpleasant atmosphere and will decrease property values due to aesthetic losses. A decrease in property values will impact the ability to sell homes and property in the area. These changes will reduce the quality of life of nearby homeowners, and across the valley.

There will be a significant increase in vehicle traffic because of the proposed facility estimated at 98 additional vehicle trips per day traveling to and from the facility. This equates to 98 or more people firing weapons on the range. This would create continuous loud noise from weapons fire and disruption of the peaceful nature of the area. Sound barriers of the surrounding hills will not be effective in containing the noise produced by weapons fire, since the topography of the Tillamook Valley carries sound for miles. Weapons fire is startling, unnerving, and creates an inhospitable environment for people and wildlife. The noise produced will reduce the likelihood current owners will remain in Tillamook, and discourage businesses and people from locating to Tillamook.

The proposed facility will be a deterrent for use by outdoor enthusiasts like anglers, kayakers, birdwatchers, joggers and others. The Tillamook River borders the proposed property and provides an excellent destination for local residents and visitors to enjoy the outdoors. It is widely known that outdoor activities contribute significant income to the county, and to local businesses in Tillamook. These local benefits include staying in local hotels and eating at local restaurants, the purchase of outdoor equipment such as for boating and kayaking, and bird watching equipment such as binoculars and scopes. There are few main roads traversing the Tillamook River where visitors and locals can engage in peaceful outdoor activities. Allowing a weapons training facility in the proposed location is incompatible with enjoying outdoor activities because it creates noise pollution, and disruption of the peaceful nature of the area. It will likely decrease use of and visitation to the area, and have negative economic impacts.

The proposed facility will have adverse impacts on wildlife. The letter from Oregon Department of Fish and Wildlife included in the application is designed to support the proposed facility rather than to provide an accurate assessment of the impacts the project will have on wildlife. The letter states “no adverse impacts to fish and wildlife resources are expected”. Wildlife often is concentrated in and near waterways and wetlands because the areas provide an abundance of food and cover. The proposed area along the Tillamook River is no exception and provides habitat for a variety of game and non-game mammals and birds. Elk and deer use the proposed project area for browsing and the nearby forest for cover. Birds are numerous on the site. In December of 2009, we completed a bird survey of the area for National Audubon Society Christmas Bird Count. During the count, six species of raptors were hunting or perching within or near the site; bald eagle, red-tailed hawk, northern harrier, white-tailed kite, sharp-shinned hawk, Cooper’s hawk. Also counted were songbirds and several waterfowl species. This list is not a complete survey of the area, but a snapshot of birds seen on one day during one hour of surveying. This list does not include species that use the area the rest of the year, and for breeding. In fact, two raptor species are known to use the adjoining forest for nesting, the red-tailed hawk and great-horned owl.

Weapons fire has obvious impacts on wildlife species by effectively hazing wildlife from areas. In fact, weapons fire is commonly used by Federal and State agencies as an effective wildlife hazing technique. We are part of a team of biologists monitoring raptors in migration in the Klamath Basin. At the raptor count site, there is a firing range within ¼ mile, where locals frequently site in their weapons and target shoot. We have observed the behavior of raptors dramatically change at the sound of weapons fire, resulting in startling the birds, changing their flight direction, and then the birds often leave the area. There is no doubt the change in the behavior of the birds is caused by weapons fire. A similar response can be seen on Bayocean spit during hunting season. At the sound of weapons fire waterfowl and other birds will take flight and move out of the area. Adverse impacts to wildlife species is expected if the proposed project is approved.

In closing, we are opposed to Ordinance Amendment OA-09-04, Zone Change ZC-09-01 and Conditional Use CU-0911. More outreach and analysis needs to be done to adequately consider the negative impacts of the proposed facility. The three proposed changes should be considered separately by the Planning Commission and the County Commissioners, allowing sufficient time for members of the public and the County to consider impacts of the changes.

In Summary:

We are opposed to Ordinance Amendment OA-09-04, Zone Change ZC-09-01 and Conditional Use CU-0911.

We have serious objections to the process planned for considering approving an ordinance amendment, a zone change, and approval of a conditional use agreement during one Planning Commission Public Hearing, and one Board of Commissioners Public Hearing. In our view it is pre-decisional to include all three actions in one meeting.

Statements in the application should not be taken at the applicant's word, and need to be thoroughly researched. Has the County done a careful study on the likely impacts of this proposal?

More research needs to be done on the effects of a shooting range in the Tillamook Valley. The County needs to carefully consider livability and aesthetics of the area.

A zoning change from Farm to Forest at this location is inconsistent with Comprehensive Plan Policies. It eliminates protection of Farm practices.

A zoning change from Farm to Forest is not appropriate for the area, because the area is better suited to Farm than Forest.

The proposed facility will have adverse impacts on wildlife, effectively hazing them from the area.

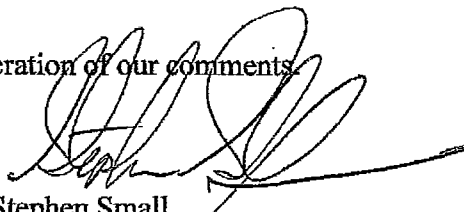
Development anticipated from the proposed zone will impair the actual uses of surrounding properties by decreasing the aesthetic values, and quality of life in the area. This would make it more difficult to sell homes and property in the area, and reduce property values.

We request to be added to any mailing list, or kept informed by any other means, regarding developments on this proposal.

Thank you for your thoughtful consideration of our comments.

Carol Cwiklinski

Carol Cwiklinski
1655 Hillside Drive
Tillamook, OR 97141



Stephen Small
1655 Hillside Drive
Tillamook, OR 97141

TO: Tillamook Planning Commission
Attn: Brad Sheets
FROM: Norman and Dorothy Bennett
RE: OA-09-04
March 21, 2010

RECEIVED
MAR 23 2010
COMMUNITY
DEVELOPMENT

Dear Mr. Sheets and Planning Commission,

We request this change in zoning be denied for the following property 315 Fraser Road, Tillamook, Oregon 97141. We believe this argument will provide enough data to prove the failure to meet the required planning of this zone change.

A) Tillamook County has been in long standing a farming community; however the county only retains 5% of the land for farm zoning. With this change this will remove valuable farm land in which a dairy, horse stables, dry cow facility, green chop and manure handling for the neighboring farmers has existed. This change will affect the potential of neighbors and the farming community. Even though the applicant only asks to remove 25 acres from farm zone, the use requested would prevent future farm use.

C) Farm zoning to Forest zoning is not feasible in this location. This property has insufficient area for the proposed forest application. There are not enough sound barriers between this location and the current farms and residences.

D) The neighboring properties would be affected in many ways. We have property adjacent to the proposed zone change. In the event this occurs, we are limited in how we would approach an additional facility to our operation. The building of a heifer facility would not be feasible. The heifers would be in a state of heightened agitation, as well as have difficulty calving. The neighboring dairy farm would encounter disruption in their grazing of fields, and the letting down of their milk, as well as a decrease in their milk production. The financial impact of this zone change is detrimental.

The neighboring horse owners are within hearing distance of the site, and believe their horses would be extremely nervous of the gunfire. Horses are typically flighty anyway, but add a loud noise to the situation and they would run excessively. The closest neighbor would experience constant gunfire and it would decrease the value of their property.

The forest behind the property proposed is used by many people. There are trails behind the property which people access frequently. This would be a danger to any travelers due to the gunfire especially if a stray shot goes off.

The wildlife would be affected as well. The birds would not be able to properly lay in their nests therefore no more hatchlings. The elk that frequent the property would be in danger of stray bullets.

The tide gate would be a source of concern. If the tide gate is pulled our low lying ground will be affected and we would lose valuable pastureland.

The noise pollution this zone change will create will leave constant hardship for many people.

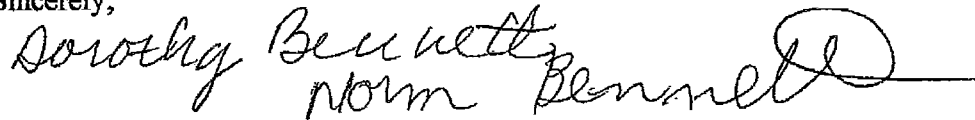
The road access is not sufficient to handle more vehicles. The single lane gravel road is on a corner which is a risk for all vehicles.

The proposed zone change does not meet the required criteria for an amendment. We would like to request the planning department deny this zone change.

Since they have also included the conditional use application in this application, we also request this be denied.

This parcel is not consistent with the goals of the Comprehensive Plan. It is in conflict with Goal 3. This conditional use would not be allowed in the Farm zone because it is harmful to said zone. Therefore it is unreasonable to suggest that this conditional use can be entertained in an agricultural community.

Sincerely,

Handwritten signatures of Dorothy Bennett and Norm Bennett. The signature for Dorothy Bennett is on the left, and the signature for Norm Bennett is on the right, with a large circular flourish at the end.

Norman and Dorothy Bennet

March 19, 2010

Tillamook County Planning Commission
Attention: Bradford Sheets
201 Laurel Ave.
Tillamook OR 97141
Re: OA-09-04

RECEIVED
MAR 22 2010
COMMUNITY
DEVELOPMENT

Dear County Planning Commission,

We respectfully request that you deny the application for a shooting range located at 315 Fraser Road. This application is in three parts. To simplify things we will attempt to show you our reasons to ask you for denial in the same order as the application.

Actually we need to address the applicant's summary first.

It states that "OAR permits a firearms training facility on Farm-zoned land if such a facility was a preexisting use as of September 9, 1995. This precludes locating a firearms facility on any land in Tillamook County's Farm Zone since there are no such pre-existing facilities within that zone."

My question is, being as this is true and based on Goal 3 OAR, how can it even be considered to put a firearms facility on Agricultural land? This ruling obviously exists to protect farmers and livestock. Changing the zoning on the parcel now does not make it any less detrimental to the neighboring agricultural lands.

The summary goes on to state "noise will be controlled in accord with DEQ regulations." This will definitely be on the honor system since the DEQ Noise Control Program was terminated effective July 1, 1991 (see attached Exhibit S1). The regulations are still there but there is no investigation or enforcement for them. It is left to the county sheriff and city police departments to investigate noise complaints. Since these police departments are backing this firearms facility, there will be a conflict of interest for them here.

They say they want to be "regarded as good neighbors" yet they want to put a firearms facility on Agricultural land, and the DEQ regulations they say they will adhere to are not enforceable. So far we are not off to "good neighbor" relations.

Text Amendment Application

Currently Tillamook State Forest has a Recreational Plan. This "provides outdoor recreation opportunities". (See attached T1) Many of the letters in support of this Firearms facility comes from Forest and State officials. Is it possible for them to work together to find a location that will work for a firearms facility without changing zoning language? The NRA manual (att. G-1) for constructing firearms ranges states "where it is possible to do so, build a range on government-owned land that will generally have the advantage of noise buffer area." The Tillamook Dept. of Forestry brochure states that

they have "364,000 acres" that make up the Tillamook state Forest. That is only the government owned land. Do we need to put a shooting range on Agricultural land, in a neighborhood?

The applicant states that they have not found any land in the Recreational Management or Recreational Development Zones that are suitable for a firearms training facility. Much of the State Forest Land has road access, but still has remote locale. Meaning it will not interfere with other land uses. Is it that they cannot find a suitable spot, or do they just really like the easy access of a paved road that is close to town? But there in lies the problem, being close to town and agriculture is in direct violation to Goal 3. The applicant admits that they need to "avoid the pre-existing use limitation," they state you "must not reference subsection of 197.770 to avoid pre-existing use limitations regarding a shooting range, which is attached to Goal 3 Agricultural lands. This implies that their only motive to put this new language in the Forest Zone is so they can place a firearm facility on what is currently an Agricultural piece of land that they hope to change to Forest zone.

Should you agree with the applicant, that the Forest Zone is best suited for this firearms use, also look at the layout of Tillamook County and the proximity of Farm, Forest and Rural zoning to each other. We ask you to seriously look at setbacks for a firearms facility. The language offered by the applicant is in conflict to Goal 3 and may be in conflict to Goal 4. A firearms facility is noisy and could be dangerous to unsuspecting hikers, etc.

With Tillamook being 87% Forest, much of it butts up against Rural Residential and Agricultural land. It is reasonable to require distance as a noise and safety barrier. Ammunition boxes read, "know your target and what is behind it." Also know the distance a bullet travels. One box, average ammunition, I picked up said 1 1/2 miles. (This is a .22 caliber rimfire box, too small for hunting game). With so much forest land in Tillamook, a setback of one or two miles from Agricultural and Residential land is not unreasonable. Just a little bit less convenient to get to.

Considering how far people go into the forest now to shoot, it is likely that they will also be willing to go a few miles to use a shooting range. If setbacks are not considered and we succeed in our plead to you to deny this request, the problem only moves to another location. Our Forest zone is mingled with Farm and Residential land throughout the County. This could definitely come up again. This wording is not only about this one property, it is about every property in Tillamook County.

ZONE CHANGE

Analysis of site:

A) Size, shape and orientation of the subject property.

As stated in the application.

B) Surrounding parcel sizes.

The parcel sizes are as stated.

C) Topography, drainage, hazards, and other physical site characteristics.

The site is set as many farms in Tillamook County. The building site is high above the floodplain with some hilly pasture and treed acreage on the high ground. The buildings are in bad condition and in need of repair or replacement, they do show neglect and abuse, but the site is one that could be rebuilt as long as there is still high ground left for buildings. If the high ground is allowed to be removed then it would be more difficult to ever use this as a farm in the future. The low lying acreage is typical for farm practices in Tillamook County, flood land that require tide gates for drainage and floods seasonally. Drainage is aided by tiles in the ground and ditching that hastens run off (See attachment C-1). It has been used since 1920 in farm practice from dairy, to horse refuge, to pasture for green chop. This parcel has proven itself as a valuable farm piece with soils equivalent to many used in farming practices by neighboring farms (See attachment C1a). Although the buildings need extensive repair, minor care would bring this pasture back to scenic open land desired in Goal 9. (See attachment C-1, taken when the farmland was managed).

D) Parcel ownership and current use.

It is currently as stated in the application, but this parcel was used for livestock and horses not long ago. These animals would need shelter if they are to use this land again, shelter that would need to be built on high land. Removing tide gates would make it too wet to cut green chop, as has been done recently.

E) Economic and population data for the affected area that may be contained in the Comprehensive Plan.

This zone change would not be consistent with Goal 3 of the Comprehensive Plan. This zone change would be harmful to the dairies and other farms that surround the parcel. Nor does this change improve the compliance with Goal 4, since in its present zone the timber is harvestable. But, it is harmful to Goal 4 in the fact that the lead from the ammunition would enter into the waterways that crisscross this property draining into creeks and the Tillamook River, which is a violation of the Federal Clean Water Act of 1972 (Attachment C-2). The wetland would be poisoned by lead. The applicant states that they are considering opening the tide gates and allowing the land to become an estuary. With this they get support and letters from the ODFW, and other wetland supporters, but, they also say they will leave the majority of the farm land in agricultural use to appease the Creamery Association. This is one too many promises for one piece of land. If they open the gates it will be too wet, even in the summertime to harvest silage. If they repair the gates for the farmers, then the wetlands people are not happy. More good neighbor policy?

I find it interesting that the applicant stresses that there are few RR zoned properties and they are each over a half mile away, (yet a bullet and the sound thereof travels further), as if he realizes this activity may be dangerous or bothersome to humans, yet the livestock is not taken into consideration at all, neither the livestock nor Goal 3. And remember, the nearest home is less than a quarter of a mile away. The zoning really doesn't say it all.

Nor is it brought into consideration how sound travels, especially aided by wind. There are many residence and farmers on Matejeck Road and Tone Road that will be affected by this development. Since we, and several other neighbors, can hear gunfire from the existing shooting range, (yes, we are told we can't, but we can), it is not at all far fetched to think that a large part of the Southwest of town will be disturbed by this proposed development. I am certain that this vast of an impact on a community would be in opposition to Goal 9 and perhaps other goals I am not aware of.

This change would have financial impact on the neighbors as it would adversely affect the livestock on these farms and could potentially cause these farms the need to relocate. Again as stated in Goal 3, the farmer is becoming the "underdog" and "land use conflicts are leading to the demise of local agriculture". It also takes much needed farm land out of the farmers use. Perhaps more than we think. If the tide gates are opened it could wipe out some of the land that the neighboring farmers own and operate. The neighboring farmers will lose whether they remove 84 or 25 acres from Farm zone.

The Change would also conflict with Goal 9. Granted the rifle range may produce some tourism but it would do as much damage to the tourism in the area to those that enjoy the peaceful outdoors, bird watching, boating, kayaking, or fishing on the Tillamook River.

F) Traffic circulation.

Fraser Rd is a winding and narrow two lane road that is not conducive to the heavy traffic flow that would be introduced by all of the events that this gun club is proposing to invite to the location. Because the road often has water that runs across it during seasonal flooding, the roadbed would deteriorate more easily with heavier traffic flow. The entrance into the property is unsafe for heavy traffic also. The traffic numbers forecasted in the application would be impossible to accommodate. There is no place to expand Fraser Rd since it has river on one side and farm property on the other. Or would they take some pasture from the neighboring farms later to widen the road? The impact on the farmer just continues.

G) Zoning history of the subject property.

As stated in the application, this parcel has been in Farm zone for many years, extending well beyond the September 9, 1995. The applicant has an email from Katherine Daniels, DLCDC's Farm and Forest land specialist, establishing "that Goal 3 Agricultural lands OAR limits a firearms training facility on farm-zoned land to a use pre-existing as of September 9 1995." This Farm-zoned parcel should not qualify for a firearms facility and this zone change should not be considered.

H) Compatibility of the proposed new zone with surrounding zoning and land use. This change is not at all compatible the surrounding zoning and land use. Even the NRA manual (Att.G-1) Suggests building such a facility a **MINIMUM** of a half mile away. In the application it seems as if few would be affected by this change but in fact there are numerous residences in the area. Each farm or dairy sited in the application has a home on it. There is one home adjacent to the subject property. There are several homes that are behind the target area. The berm *should* protect these homes but ammunition boxes read "Know your target and what is beyond it". They also warn that the bullets carry one and a half miles. (See attachment H-1 and H-2. Please note that the warning on H-2 is merely a rimfire cartridge. Ammunition fired at this range could be much larger) A high flying bullet could travel quite a distance. There are at least seven homes in RR zone. Plus one dairyman's home and seven other homes that share his driveway, beyond the target, this does concern us and it makes us feel like it would be incompatible with working safely outside on our properties.

There are also the negative effects on livestock and domestic pets due to loud noises such as gunfire. The stock often becomes very nervous. This could cause the cows to not let their milk down causing mastitis or heifers to not be able to rest in the pastures or grazing in the summer. Horses often run excessively when startled by loud sounds since they are a flight animal.

Then there are the timber workers. The roads need to be maintained in the timber and thinning is done. People are in the neighboring forest zone parcel constantly. They would barely be protected from a misguided bullet.

There is no way this will enhance the adjacent uses since the buffering between farm and forest use with a wetland is not helpful to farmers either, since this often causes conflict with farmers trying to use their land for manure management. It would also be interesting to find out how much lead it will take before the waters are contaminated with lead poisoning leading to crop destruction on the neighboring farms. This in turn would lead to lead in the milk and destruction of the farms. The applicant states that there are only two residences within 2000 ft of the proposed site. Do they honestly believe no one further away will be affected by this use? Even if nobody else was, (which is not true) those two residences alone should be enough to stop the zone change.

I) Availability and feasibility for the development of nearby properties in the proposed zone.

There is not a lot of property to be developed in the area because it is already developed into working dairies, farms, hobby farms and residences. This area is fully developed and this parcel would be a wonderful farm for another person that would like the agriculture life style. That is, if we don't all get run out by this conflicting use being allowed to be developed.

J) Aesthetics

This land has been neglected for the past five years, but has in the past been a beautiful farm even when maintained only for green chop and heifer feed. It could be very easily again be this way if any of the neighboring farmers were allowed to use it for livestock feed or be allowed to purchase it for farm use. (See attachment C-1)

K) Availability of public facilities and service.

Water availability is further away than the farm residences that would be affected by this zone change. Public water is back at the bridge at the west end of Fraser Road, and would be very costly to develop. Fire protection would be limited by the Tillamook Fire District without sufficient water to combat a grass or forest fire. The applicant states that there is a well on the property for water. How many gallons per minute does it provide? Is it potable? A past tenant buried several horses on the property. The graves were marked by crosses with names on them. These buried animals could lead to contamination on ground water. Would a septic system be needed or would temporary toilets be brought in? A septic system to handle the extra persons using the facility could contaminate the well also. Is the pond that they show on the map for "auxiliary fire protection 75,000 gal." seasonal or year round?

Then there is the neighbor. All of this activity could affect their well. What happens to the Toths if their well is compromised by lead or overuse of the property? Will opening the flood gates let the saltwater table change? Will it affect the quality of their well?

L) Land use objectives of both the applicable and the proposed zoning.

The land use objectives for both farm and forest in their outright uses are interchangeable as resource therefore there is no reason to change the zoning except to allow a Rifle range which conflicts with the land use objectives of the farm zone which states the first criteria of it's purpose is to "protect farm practices and promote agriculture enterprise on qualifying land". This is made clear by Goal 3, with its limits to firearms facilities in Farm zone

Zone Change Map Review Criteria

A) The proposed new zone is consistent with applicable Comprehensive Plan policies.

This zone change is in conflict with the comprehensive Goal 3. Goal 3 is for the protection of farm land and the farm industry. This change removes valued farm land that has been in use in conjunction with that zoning since 1920, from dairy, to horse stable, to dry cow/heifer pasture, to grass for green chop. Over the years this parcel has served the farming community well and should be left to continue to do so. The neighboring farms

could, and have used this land to enhance their farming operations. Even though the request changed from 84 to 25 acres, it has been made clear that the applicant can not let the remaining acreage be both grass land for cows and estuary that removes the tide gates. Therefore the all of land is effectively being removed from Agricultural use.

The Comprehensive Plan states that 87% of Tillamook County land is zoned forest and Timber is the largest income producing industry in the county. Farming is the second largest income producing industry in Tillamook but, only retains **FIVE PERCENT** of the land in farm zoning.

In the event this land should be changed to Forest, and the applicant proceeds to use the land as described in the application, this would damage the neighbors' uses. The gunfire would disrupt cows that were trying to graze or rest between milkings. The loud noise may well result in the cows not letting their milk down and therefore, hurt production and cause mastitis in the cows which would cause a financial hardship to the dairies.

There are horses in the area owned by the neighbors to this land that would be made extremely nervous by gunfire sounds causing them to run excessively. Horses are a fight animal and do not get used to loud noises easily. Many domestic pets fear the sound of gunfire as well. The neighboring dogs may not do well with the constant noise either. We had one that peed when she heard gunfire or thunder. Not something I care to get used to.

Should the floodgate be pulled, as suggested in the application, and the lowlands are allowed to turn into wetlands, the Bennett farm could have damage done to his low lying pasture. Because it is hard to tell water which lowlands it can go on and where to stop, I do not think it will discriminate as to whose land it is on. A second negative for this farm and the other surrounding farms with being located next to a wetland would be the conflict that will occur when the boundary for how close a cow can be to the wetlands. How close can fertilizer be put to the wetland? Can the heifers graze to the edge? Can the grass be cut for green chop to the border or does a buffer need to remain? Will the water table rise leaving their land less usable? These are the conflicts that Goal 3 of the Comprehensive Plan are designed to avoid.

As for being consistent with Goal 4 of the Comprehensive Plan, The treed area does that in its current zoning. As stated in Goal 3, 23% of farm zone property is currently woodlands. That is 23% of the mere 5% that is Farm zone..

This application states that it conforms to the Comprehensive Plan Goal 9, of attracting tourism. And serving the population, but it also does damage to tourism by distributing noise pollution over the river where many tourists and locals fish, kayak, sight see and nature watch, therefore, the benefit of the change is limited and cancelled out by what is lost by those that will not want to enjoy the outdoors with bullets flying and constant noise that disturbs the wildlife.

B) The proposed new zone shall not result in the conversion of resource lands to non-resource use without an approved exception to applicable state resource protection Goals.

This change of resource zone to resource zone is not suppose to need to meet this requirement, but I wonder, if the only motive to change the zone is to then go after a conditional that is explicitly denied in the current zone and will be in conflict of the original resource zone, perhaps it should need to qualify under this category.

C) The site under consideration is better suited to the purpose of the proposed zone than it is to the purpose of the existing zone.

The site under consideration is not better suited to timber. Any promise of "restoring wetlands" would only happen in the event a conditional use was granted after the zone change was completed. There is no guarantee that there would be any wetlands restoration that would take place. Too often these ideas are set aside when it is too expensive or when it is found to actually conflict with their plans after all. These conflicts may include, lead pollution entering the waterways, birds feeding on shotgun pellets or gunfire disturbing the wildlife. In fact wetland may well be a detriment to the gun club in the long run. (See attachment C-2) Since cannons are used to keep birds out of wineries and firecrackers used to clear runways, I find it hard to conceive that the gun club and a wetland will work well together. Birds and wildlife may come to the area after the shots have quieted, but what happens when it is quiet for a couple of weeks due to rain and then the shooting starts up again. Birds and other wildlife make their homes or nests, only to be driven out at the next big event. Eggs may have been laid but cannot be set or young birds not fed.

The trees on the land now could be harvested under its current zoning. There is no reason to change this parcel to Forest except to pursue a conflicting use.

D) Development anticipated to result from the proposed zone shall not impair the actual or the legally designated uses of surrounding properties.

The result of the proposed zone change would impair the uses of the surrounding properties. It may flood some of the farm pasture if the tide gates are removed. As stated in Goal 3, "Farming can be adversely affected by noise". It can also be adversely affected by lead poisoning. The gunfire will be very detrimental to both livestock and domestic pets. It will not do humans any good either. It will cause noise pollution that will prevent the neighbors (some of which live adjacent to the property) from enjoying their homes when they get a break from work.

Goal 3 also states that "the sale of productive farmland to non-farmers leads to its irreversible transfer to non-farm uses. An extension of this trend in Tillamook County could lead to the transformation of the County's dairy industry into a second home and retirement community. The long-term production and economic returns from the County's farmlands would be replaced by the short-term profitability of selling land and building houses". This also applies to short sighted goals such a conflicting recreation.

Goal 3 could be quoted over and over in this brief, but it comes down to the fact that agricultural land is under attack and we cannot afford to lose any of it.

There are also safety factors that affect all of the neighbors, accidental discharge, bad aim and lead poisoning.

Due to the fact that the property in question does not meet the four criteria for a Zone Map Application, we respectfully request that the planning commission defn this portion of the application.

Conditional use

Tillamook County Land Use Ordinances 6.040 States the following criteria for Conditional Use:

1) The use is listed as a Conditional use in the underlying zone, or in an applicable overlying zone.

This use will be a listed if the County allows the verbiage changes to the zone as requested, and allows the zone change on the parcel. It is not right for a zone change to occur only to go after a conflicting conditional use. This is a conditional use that conflicts with the original zoning. This is a conditional use that is not allowed under Agricultural lands.

2) The use is consistent with the applicable goals and policies of the Comprehensive Plan.

This use is not consistent with the Comprehensive Plan Goals 3, 4, or 9. It would conflict with 3 in the respect that it will harm the neighboring agriculture properties. It will take valued Farm land out of the Farm zone. Goal 3 states that "Farming can be adversely affected by noise..." also "The intrusion of non-farm development into a farm area can ultimately remove the entire areas from agriculture production as adjacent farmers, tired of conflicts with their non-farm neighbors, are induced to convert their land to other uses."

A study by the National Association of Counties' Agricultural lands is quoted in Goal 3, to say "The farmer is becoming the 'underdog'... He is becoming scarcer all the time...in part because land use conflicts are leading to the demise of local agriculture. **And that means that, when new land use conflicts arise, the community as a whole—composed more and more of people who do not understand agriculture – is less sympathetic to the farmers point of view.**" The booklet concludes that "unless something is done at the LOCAL LEVEL to guide community growth and development, so that residential development is kept at a respectable distance from the farming industry, the future of agriculture in any localities around the nation looks gloomy"

It is clear that the applicant does not understand the needs of agriculture or the devastating affects this use will have on neighboring livestock.

Goal 4 of the Plan defines 'forest uses' as:

the production of trees and the processing of forest products; 2)open space, **buffers from noise , and visual separation of conflicting uses**; 3) watershed protection and wildlife and fisheries habitat; 4)...5) **maintenance of clean air and water** 6)..7)..

Goal 4 stresses buffers from noise, and separation of conflicting uses, not the creation thereof. It stresses the maintenance of clean air and water, not the introduction of lead into the waterways.

Goal 4 also states that "uses limited by a conditional use process are allowed only if they are compatible with forest AND farm uses on adjacent and or nearby land" This request does not meet that requirement.

Goal 9 is for the protection and encouragement of tourism in the area. Any increase in tourism brought by this firearms facility would be equally discouraged by the facility due to noise pollution and loss of wildlife viewing in the area. It would also decrease use of the boat ramp for the Tillamook River on Fraser Road since people fishing would not want to hear the constant noise of gunfire.

In an attached article (G1,pg.3) The NRA Range Manual is quoted. It recommends allowing a "maximum distance between the range and inhabited dwellings," and "where it is possible to do so, build a range on government-owned land that will have the advantage of noise buffer areas." The manual goes on to suggest a distance between homes and range of at least one half mile for ranges generally, and three quarters of a mile for trap and skeet ranges. Granted the article is written by those that do not care for firearms training facilities, but the recommendations are written by the NRA in a manual that is instructing how to build a firearm facility. They are trying to advise how to build one. Not how to avoid one. The NRA knows this location is a bad idea.

3) The parcel is suitable for the proposed use considering its size, shape, location, topography, existence of improvements and natural features.

The location of this parcel is not suitable for the proposed use in that it conflicts with the neighboring uses. It also could be detrimental to the water that surrounds the parcel. The runoff from the parcel's ditches and drainage tiles would be a quick trip to the river and bay with lead poisoning. The DEQ's tolerance for lead contamination is zero. The location being surrounded by water with a high water table and only six feet above sea level is a poor choice for the real potential of lead leaching into the water. Attachment C-2, the Clean Water Act, states "It is unlawful for any person to discharge 'pollutants' from any 'point sources.' Therefore, any range from which patrons shoot out over 'Waters of the United States' must have an NPDES permit. This is a stringent requirement because 'Waters of the United States' id broadly

defined to include virtually all rivers, streams, lakes, ponds, drainageways, wetlands and similar features, even those on private property, and it appears, at least to date, no NPDES permit has ever been issued to a shooting range." The applicants own map shows shooting lanes that reach over water drainage ditches. (att.C-3)

- 4) **The proposed use will not alter the character of the surrounding area in a manner which substantially limits, impairs or prevents the use of surrounding properties for the permitted uses listed in the underlying zone.**

The underlying zone is resource. This zone is meant to work in harmony with other resource zones. Therefore allowing this conditional will alter the character of the surrounding area. It will limit, impair and prevent the farm use and the residential use of the surrounding properties. It will destroy the character of the surrounding area.

- 5) **The proposed use will not have a detrimental effect on existing of solar energy systems, wind energy conversion systems or wind mills.**

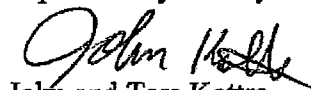
This one I can't argue with.

- 6) **The proposed use is timely, considering the adequacy of public facilities and services existing or planned for the area affected by the use.**

The public Road is not adequate. Nor will it be in the future. The area cannot handle the traffic that this use would bring to the area. It is unclear as to whether there is enough water available to protect the neighboring area against fire.

In the application, they state that they cannot find a suitable location that will not upset someone. They also say they will not be visible from our property as if that matters to us. The sight of it is not our concern. It is the noise, the damage it will do to the environment and how it will limit the use of our property that concerns us. I have to wonder if this were going into the neighborhood of the applicants, would they be so callus as to how it will affect so few. The neighboring owners that did submit letters in favor do not live here. They have timber or non-buildable land in the area. Will they be going for a zone change soon to develop their land in a non agricultural way? Honestly, would you want to hear this firearms range in your neighborhood daily?

The property in question **does not** meet the conditional use criteria. We respectfully request that you deny this application.



John and Tara Kottre
1800 Hillside Dr.
Tillamook, OR 97141



Drainage U.Tunes

Attachment 1



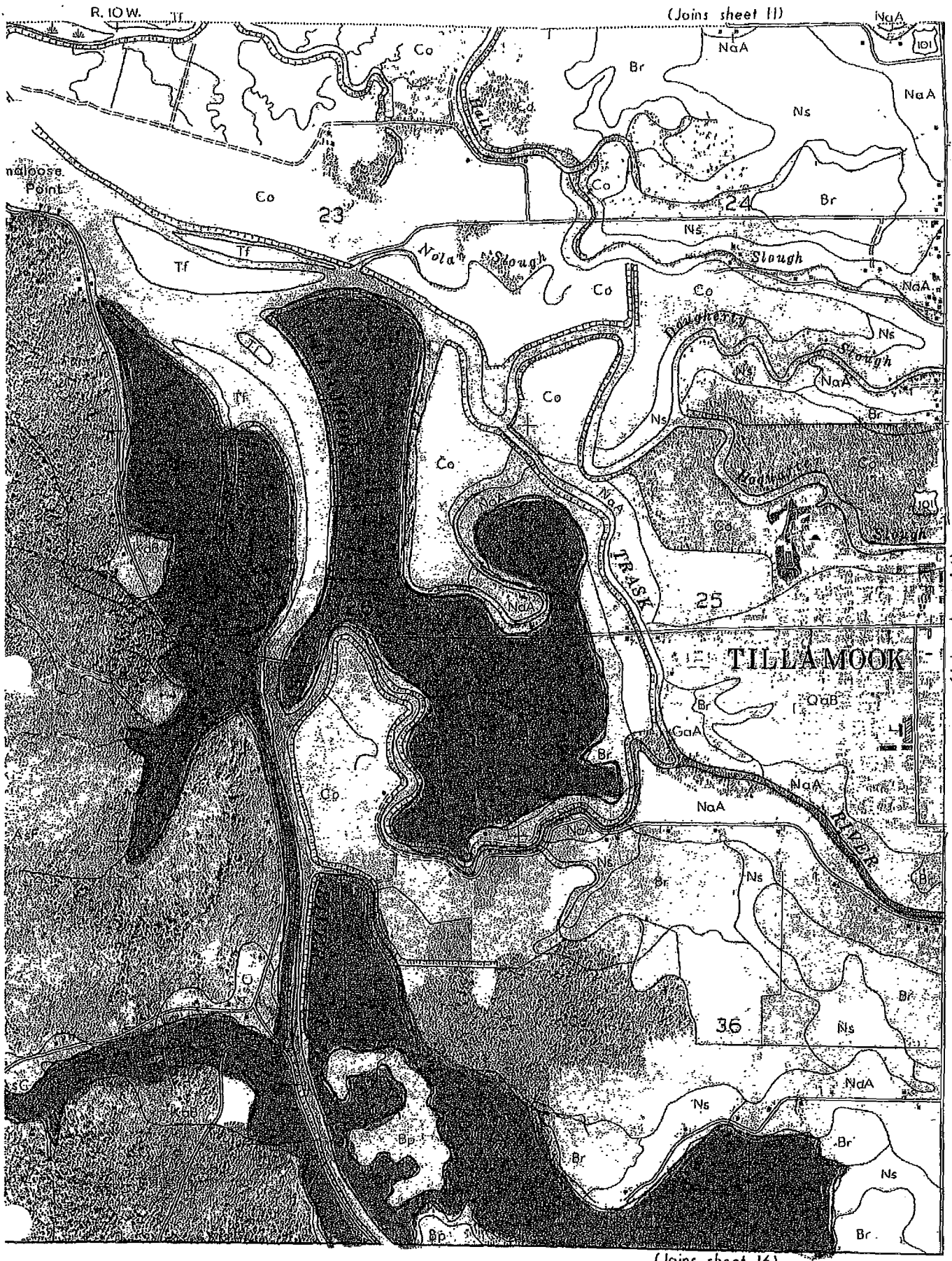
Attachment C-1a

SOIL LEGEND

4 pages

The first capital letter is the initial one of the soil name. A second capital letter, A, B, C, D, E, F, or G, shows the slope. Symbols without a slope letter are those of nearly level soils, such as Brenner silt loam, or of land types, such as Rock land, that have a considerable range of slope.

SYMBOL	NAME
Ad	Active dune land
AsC	Astoria silt loam, 3 to 12 percent slopes
AsD	Astoria silt loam, 12 to 20 percent slopes
AsE	Astoria silt loam, 20 to 40 percent slopes
AsG	Astoria silt loam, 40 to 60 percent slopes
AlF	Astoria silt loam, moderately deep, 20 to 40 percent slopes
AlG	Astoria silt loam, moderately deep, 40 to 60 percent slopes
Bp	Brallier peat
Bt	Brenner silt loam
ChB	Chitwood silt loam, 0 to 7 percent slopes
ChC	Chitwood silt loam, 7 to 12 percent slopes
ChD	Chitwood silt loam, 12 to 20 percent slopes
GaA	Gardiner fine sandy loam, 0 to 3 percent slopes
GdB	Gardiner fine sandy loam, overwashed, 3 to 7 percent slopes
GmB	Gauldy loam, 0 to 7 percent slopes
GsB	Gauldy loam, shallow, 0 to 7 percent slopes
GlB	Ginger silt loam, 0 to 7 percent slopes
HbA	Hebo silty clay loam, 0 to 3 percent slopes
HeC	Hembre silt loam, 3 to 12 percent slopes
HeD	Hembre silt loam, 12 to 20 percent slopes
HeE	Hembre silt loam, 20 to 40 percent slopes
HeG	Hembre silt loam, 40 to 60 percent slopes
HmF	Hembre silt loam, moderately deep, 20 to 40 percent slopes
HmG	Hembre silt loam, moderately deep, 40 to 60 percent slopes
KaB	Knappa silt loam, 0 to 7 percent slopes
KaC	Knappa silt loam, 7 to 12 percent slopes
KmC	Knappa silt loam, moderately deep, 0 to 12 percent slopes
Ma	Made land
MeC	Meda gravelly loam, 3 to 12 percent slopes
MeD	Meda gravelly loam, 12 to 20 percent slopes
NaA	Nehalem silt loam, 0 to 3 percent slopes
NaB	Nehalem silt loam, overwashed, 3 to 7 percent slopes
NkD	Neskowin silty clay loam, 12 to 20 percent slopes
NkE	Neskowin silty clay loam, 20 to 40 percent slopes
NkG	Neskowin silty clay loam, 40 to 60 percent slopes



13



Soil Class

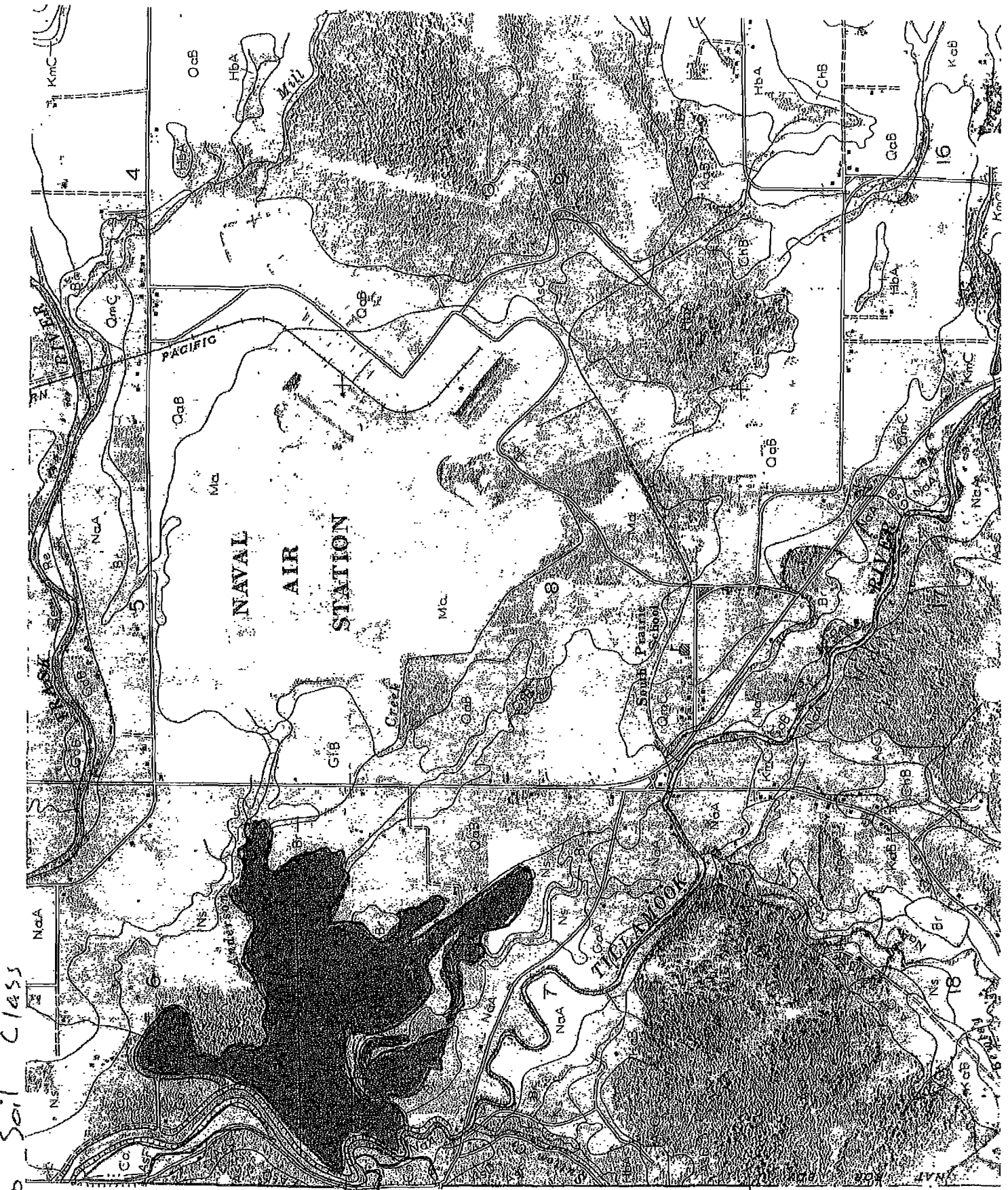
(Joins sheet 14)

(Joins sheet 11)

(Joins sheet 16)

Scale 1:20 000
 1 Mile 0 5000 Feet

Co Soil Class



1:25,000 (Joins sheet 16)



magazine to have found that "a lot of people trying to get in on a shoestring" in the shooting range market were "cutting corners on costs that resulted in substandard ranges in terms of safety, environmental concerns and cleanliness."⁶³ An engineering consulting firm specializing in shooting ranges notes in its promotional materials that the increased attention to lead contamination and human health exposure "has put range owners and operators into areas outside of their expertise."⁶⁴

Even the most well-designed indoor range demands constant and sometimes expensive attention in order to keep delicately balanced air filtration systems working effectively.

Outdoor Shooting Ranges

Just as shooters at indoor ranges fired away for decades ignorant of the public health risks, so have outdoor range shooters poured millions of tons of lead downrange, ignorant (or heedless) of the damage they have been inflicting on the environment. Although human lead poisoning is less of a problem at outdoor ranges, negative effects on the environment are far greater. Lead bullets and shot used in outdoor shooting ranges present at least three dangers to the environment:

- ! poisoning of wildlife, especially waterfowl, that ingest lead pellets;
- ! contamination of ground water, poisoning wells and other water sources; and;
- ! contamination of wetlands or waterways into which lead falls.

Shotgun shell casing, wads, and assorted packaging materials can also contain lead, chemicals, and other materials potentially harmful to the environment.⁶⁵ For example, certain polycyclic aromatic hydrocarbons found in clay targets are said to be known carcinogens.⁶⁶ (It is worth noting that shotgun shooters rejected a biodegradable clay target Winchester tried to market because it discharged white smoke when hit rather than the black smoke they were used to.)⁶⁷

Dealing with these problems is complicated by the esoteric nature of the state and federal laws and regulations protecting the environment.^k Several key issues of

^k The National Shooting Sports Foundation advises its members: "Should a range manager be notified that the range may face legal or regulatory action involving environmental issues, they should *immediately notify or obtain legal counsel*. Because environmental laws and regulations are extremely complex, it is often advisable to enlist the aid of counsel with specific experience in environmental law,

federal environmental law have been roughly focused in a handful of shooting range cases litigated to conclusion. But the NSSF notes that the relatively low number of reported law cases is not a true measure of the activity going on because "many shooting range cases are resolved in the early stages of litigation through consent orders under which the ranges agree to close down and perform further environmental investigations and cleanup at the range."⁶⁸

Three federal laws have been found to be especially relevant to outdoor shooting ranges: the Clean Water Act (CWA),^l the Resource Conservation and Recovery Act (RCRA),^m and the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA or "Superfund").ⁿ Other federal laws may apply to a particular case, and state protections may be more stringent than the applicable federal laws.

The Clean Water Act (CWA)

The Clean Water Act makes it unlawful for any person to discharge "pollutants" from any "point source" into waters of the United States without obtaining a permit, called a "National Pollution Discharge Elimination System" (NPDES) permit.

Two leading federal cases have held that lead shot and target debris (shattered clay pigeons) are "pollutants," and the trap shooting stations at shooting ranges are "point sources." Therefore, any range from which patrons shoot out over "Waters of the United States" must have an NPDES permit. This is a stringent requirement because "Waters of the United States" is broadly defined to include virtually all rivers, streams, lakes, ponds, drainage-ways, wetlands, and similar features, even those on private property, and it appears that, at least to date, *no NPDES permit has ever been issued to a shooting range.*⁶⁹

Long Island Soundkeeper Fund, Inc. v. New York Athletic Club^o involved a

particularly with experience in defending shooting ranges." National Shooting Sports Foundation, *Environmental Aspects of Construction and Management of Outdoor Shooting Ranges* (Newtown, CT: NSSF, 1997), 1-4 (emphasis in original).

^l 33 US Code, Sec. 1251, et seq.

^m 42 US Code, Sec. 6901, et seq.

ⁿ 42 US Code, Sec. 9601, et seq.

^o 1996 U.S. Dist. LEXIS 3383 (SDNY 1996).

private trap shooting range at which spring launchers were used to toss clay targets out over Long Island Sound. Shooters fired at the clay targets from concrete platforms. Acting on a lawsuit brought by two public interest groups interested in preserving the Long Island Sound environment, the court ruled that "shot and target debris" generated by the shooting range constituted pollutants, and that the range was a point source. It is noteworthy that the court ruled that even though the club had switched to the use of steel shot, the shot was nevertheless a pollutant for purposes of the CWA. The club elected to discontinue the discharge rather than seek a permit.⁷⁰

Stone v. Naperville Park District settled a dispute over a trap-shooting range in Naperville, Illinois.^p The range was reported to have dumped as much as 230 tons of lead over 50 years of use on a small patch of land in a park near a high school.⁷¹ The controversy began when neighbors became concerned about possible lead contamination of ground water and wells. Although state officials indicated they would allow the range to continue operation, federal officials expressed concern about lead pollution, especially noting two ponds on the site.⁷² Eventually the court ruled, consistent with the *New York Athletic Club* case, that the range's operations fell under the CWA and barred shooting until an NPDES permit was obtained. Although city and park officials have pressed for a permit, it seems clear that it will not be issued, certainly if lead shot is used.⁷³

It is almost certain that many other shooting ranges across the country are operating without permits required by the CWA. This is particularly true when the shooting range is located on or near wetlands or waters such as rivers or creeks, or where the range allows the natural flow of rain or runoff to carry lead contaminants into such waters or even into groundwater.⁷⁴

The Resource Conservation and Recovery Act (RCRA)

RCRA established a "cradle to grave" regulatory scheme for the treatment, storage, and disposal of solid and hazardous wastes. The leading federal case in the field is *Connecticut Coastal Fishermen's Association v. Remington Arms Co., Inc.* The first such suit against a private range, it resulted in the closing of the Lordship Gun Club in Stratford, Connecticut, operated by Remington Arms Company.⁷⁵

The Lordship trap and skeet range was located on Long Island Sound, directly across the mouth of the Housatonic River from two wildlife refuges. According to the

^p 38 F. Supp2d 651, 1999 U.S. Dist. LEXIS 1828 (NDIL 1999).

Remington

High Velocity

2-B

C442C

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SAFETY RULES

- Treat every gun as if it were loaded. Don't rely on the safety.
- Never load a gun until ready to use.
- Watch your muzzle. Keep gun pointed in safe direction.
- Know your target and what is beyond it.
- Write Remington for free booklet on firearms safety.
- Wear eye and ear protection.
- Keep barrel clear of obstructions.
- Only use ammunition that exactly matches markings on your gun.
- If gun fails to fire, keep it pointed in safe direction, then unload carefully, avoiding exposure to breach.
- Read your firearms instruction manual. Write manufacturer for copy.

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Remington

7 mm Rem. Mag.

175 GR. CORE-LOCK™ LTD. SOFT POINT R7MM3


75 GR. CORE-LOCK™ LTD. SOFT POINT R7MM3



Poisonous Pastime

The Health Risks of Shooting Ranges and Lead to Children, Families, and the Environment

 Violence Policy Center

 ENVIRONMENTAL HEALTH PERSPECTIVES

ATT. 1-1 P183

Poisonous Past Jim

Vandalism often sets in when ranges open to the shooting public are not staffed, or are understaffed. For example, public ranges often depend on volunteer help. But when volunteer interest fades, vandalism and other problems follow, as Nebraska state officials described at a range symposium:

Like many other new projects, this one received lots of tender, loving care in its early years. But, as the years went on, interest waned and management problems grew. The once-enthusiastic volunteer help became bored, and use of the facility dropped along with maintenance.

Today, the trap range sees occasional use. The rifle range is accessible to anyone but no one oversees its use or attends to maintenance. Consequently, the target area is littered with junk which is scrounged or brought onto the area for use as target material.¹¹⁷

The message for local communities is that the nice, orderly range down the street has the potential of turning into a dangerous eyesore as soon as its users get tired of their new tax-funded toy. Not incidentally, the use of volunteers may also open ranges up to tort liability, if the range fails to check the background of its volunteers and harm results from allowing unsuitable persons to operate the range such as, for example, a "person of violent disposition."¹¹⁸

In short, public land managers are caught between two evils. If they allow so-called "open shooting" on public land, "slob shooters" often abuse the trust extended them by vandalizing public property, littering, and even dumping garbage and hazardous waste. On the other hand, corralling such shooters onto a shooting range imposes operating and liability costs on the taxpayer, simply to indulge (and control) these reckless gunslingers.

Noise Pollution

Zoning violations and the high levels of noise inherent in shooting range operations cause the majority of complaints about them, according to the NRA's general counsel.¹¹⁹ Many shooting ranges have been involved in "costly litigation" and some have closed because neighbors objected to noise, especially during early morning or late hours.¹²⁰

"Noise continues to be a major concern on our project and unless your project is built in a vacuum it will be on yours," Michigan state officials Bruce Gustafson and James Dabb told a shooting range symposium. "Persons living in proximity to the

proposed site invariably are concerned with the potential disturbances to their 'quiet' neighborhood."¹²¹

According to the NRA's *Range Manual*, a comprehensive technical guide for designing and constructing shooting ranges: "No set distance eliminates noise complaints entirely."¹²² The manual, which devotes an entire chapter to the subject of noise pollution, generally recommends allowing a "maximum distance between the range and inhabited dwellings," and "where it is possible to do so, build a range on government-owned land that will generally have the advantage of noise buffer areas." The manual suggests a distance between homes and range of at least one half mile for ranges generally, and three quarters of a mile for trap and skeet ranges (where shotguns are used). "Controlling sounds coming from shotgun facilities is almost impossible," according to the director of the Delaware State Division of Fish and Wildlife, paraphrasing advice he got from the NRA on the problem.¹²³

What might be called the "ostrich approach" to shooting range noise was urged on a range symposium by NRA official William L. Poole:

I recommend that rather than using the term noise, you should use the term sound. Anytime you talk about what happens when the trigger of a firearm is pulled, that audible tone that comes from the firearm, you should talk about it as sound rather than noise. Noise has a bad connotation to it. Sound is more generally acceptable.¹²⁴

On-Range Hazards—Suicides, Murders, and Unintentional Deaths

Another problem that the gun industry doesn't like to talk about is people killing each other (and themselves) at shooting ranges. For example, former U.S. Congressman and NRA board member Harold L. Volkmer painted a rosy picture of range safety in his address to the first shooting range symposium (for which he was paid a \$1,000 honorarium).¹²⁵ Volkmer said "the use of shooting ranges takes the danger that arises from inexperience out of the picture."¹²⁶

But in a 1994 article, *Shooting Industry* writer Ross Thurman offered a considerably different expert opinion on the safety of shooting ranges:

Unfortunately, I've found most safety standards at shooting ranges to be extremely casual. On a number of occasions, I've cut short a range visit because of how carelessly other shooters handled firearms.¹²⁷

Thurman's account is not an isolated example. A reader of *Guns & Ammo* wrote a letter to the magazine in 1986 to describe "a situation that was unbelievable"

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Air Quality

Noise

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Effective July 1, 1991, the state Department of Environmental Quality (DEQ) Noise Control Program was terminated. DEQ eliminated the program as a cost-saving measure, in anticipation of reduced revenue.

Were the State noise regulations rescinded?

No. The state noise regulations remain on the books. Regulated sources of noise are legally responsible for complying with all applicable provisions and standards, even though DEQ no longer investigates noise complaints.

What types of State noise standards are there?

State regulations have standards for:

- New and used motor vehicles
- Industry and commerce
- Motor sports vehicles and facilities
- Airports

What other agencies investigate noise problems?

Several Oregon cities and counties have enacted local noise ordinances. Other state and federal agencies also regulate noise. For example, the State Marine Board regulates noise from boats, with enforcement of suspected boat-noise violations handled primarily through county marine enforcement offices; the Oregon Liquor Control Commission regulates noise from licensed liquor establishments.

What Other Enforcement Options are There?

- Enforcement of local government noise or public nuisance ordinances.
- Class B misdemeanor criminal action for violation of the state noise statutes or the state disorderly misconduct statutes.

exhibit 51 pg 1 of 2

What types of local noise standards are there?

Standards vary from city to city and county to county. Some jurisdictions use the state standards; others have enacted separate standards. A couple of cities have standards that are more stringent than the state's. In general, most local regulations include standards for:

- Heat pumps and air conditioner units
- Amplified music from musical groups and car stereos
- Off-road ATVs, motorcycles, and dune buggies
- Loud speakers
- Musical instruments

Who Enforces Local Standards?

Generally, the county sheriff and city police departments investigate noise complaints and initiate enforcement actions. In some cases, the local codes enforcement office assumes this responsibility.

Find your local government contact:

- State and Local Governments on the Net
- Oregon Blue Book - Counties

Where Can I Get Information on Noise Pollution?

- Statutes, ORS Chapter 467, Noise Control
- Oregon Administrative Rules, (see Division 35 Noise Control Regulations)
- The National Noise Clearinghouse or 1-888-200-8332
- Noise Regulation and Wind Energy Facilities - Oregon Department of Energy
- City of Portland Noise Control
- City of Tigard Noise mediation
- City of Grants Pass Code Enforcement

[print version]

For more information about **Air Quality** call 503-229-5359 or e-mail.

Oregon Department of Environmental Quality
Headquarters: 811 Sixth Ave., Portland, OR 97204-1390
Phone: 503-229-5696 or toll free in Oregon 1-800-452-4011
Oregon Telecommunications Relay Service: 1-800-735-2900 FAX: 503-229-6124

The Oregon Department of Environmental Quality is a regulatory agency authorized to protect Oregon's environment by the State of Oregon and the Environmental Protection Agency.

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SI pg 2 of 2

domestic livestock, and water supplies), provided such uses are 'not detrimental to the best interest of the state' in the opinion of the Board of Forestry.
 ➤ Do all things and make all rules necessary for the "management, protection, utilization, and conservation of the lands."

Oregon Administrative Rules 629-035-0000 through 629-035-0110 provide direction for state forest management policy and planning and further define how the lands are to be managed to achieve "greatest permanent value" to the citizens of Oregon: "healthy, productive, and sustainable forest ecosystems that over time and across the landscape provide for a full range of social, economic, and environmental benefits to the people of Oregon." The rule continues by describing a management context that:

- (a) Results in a high probability of maintaining and restoring properly functioning aquatic habitats for salmonids, and other native fish and aquatic life;
- (b) Protects, maintains, and enhances native wildlife habitats;
- (c) Protects soil, air, and water; and
- (d) Provides outdoor recreation opportunities.

OAR 629-035 also directs the Oregon Department of Forestry to complete long-range forest management plans.

Forest Management Planning

The *Draft Northwest Oregon State Forests Management Plan (FMP)* is an overarching plan that describes guiding principles, goals, and resource management strategies for over 600,000 acres of northwest Oregon state forests. A similar but smaller plan, the *Southwest Oregon State Forests Management Plan* guides management on approximately 20,000 acres in southwest Oregon. The *Draft Western Oregon State Forests Habitat Conservation Plan (HCP)* specifically addresses strategies for threatened and endangered species and other species of concern in both these plan areas. Implementation of FMP and HCP strategies is expressed by means of district implementation plans, which describe existing resource conditions, forest management activities and summarize environmental and forest product outputs for about ten years into the future. Land management classification system maps display further detail on implementation of FMP strategies.

In 1998, the Department of Forestry requested input through a variety of public processes and from a panel of 26 independent scientists on the draft NW Oregon FMP and the HCP. These comments were then incorporated into updated drafts of the plans. In September, 2000 the Board of Forestry approved the FMP to proceed to the rulemaking stage with final approval occurring in January, 2001. The final draft of the HCP is still being prepared for submission to the Board of Forestry.

District implementation plans are now being completed to cover approximately the next ten years. These implementation plans can be updated as needed, every few years as new information indicates. District implementation plans tier from the forest management plan and HCP, and reflect policies, strategies and resource management goals contained in the draft plans. Objectives for each management basin cover such topics as desired future stand conditions, landscape design, road construction and improvements, and recreation. The recreation component will reflect the objectives, actions, and priorities set forth in this "Recreation Action Plan 2000".

Att. T-1

Department of Community Development
Tillamook County Planning Commission
Attn: Bradford Sheets
201 Laurel Avenue

RECEIVED

MAR 23 2010

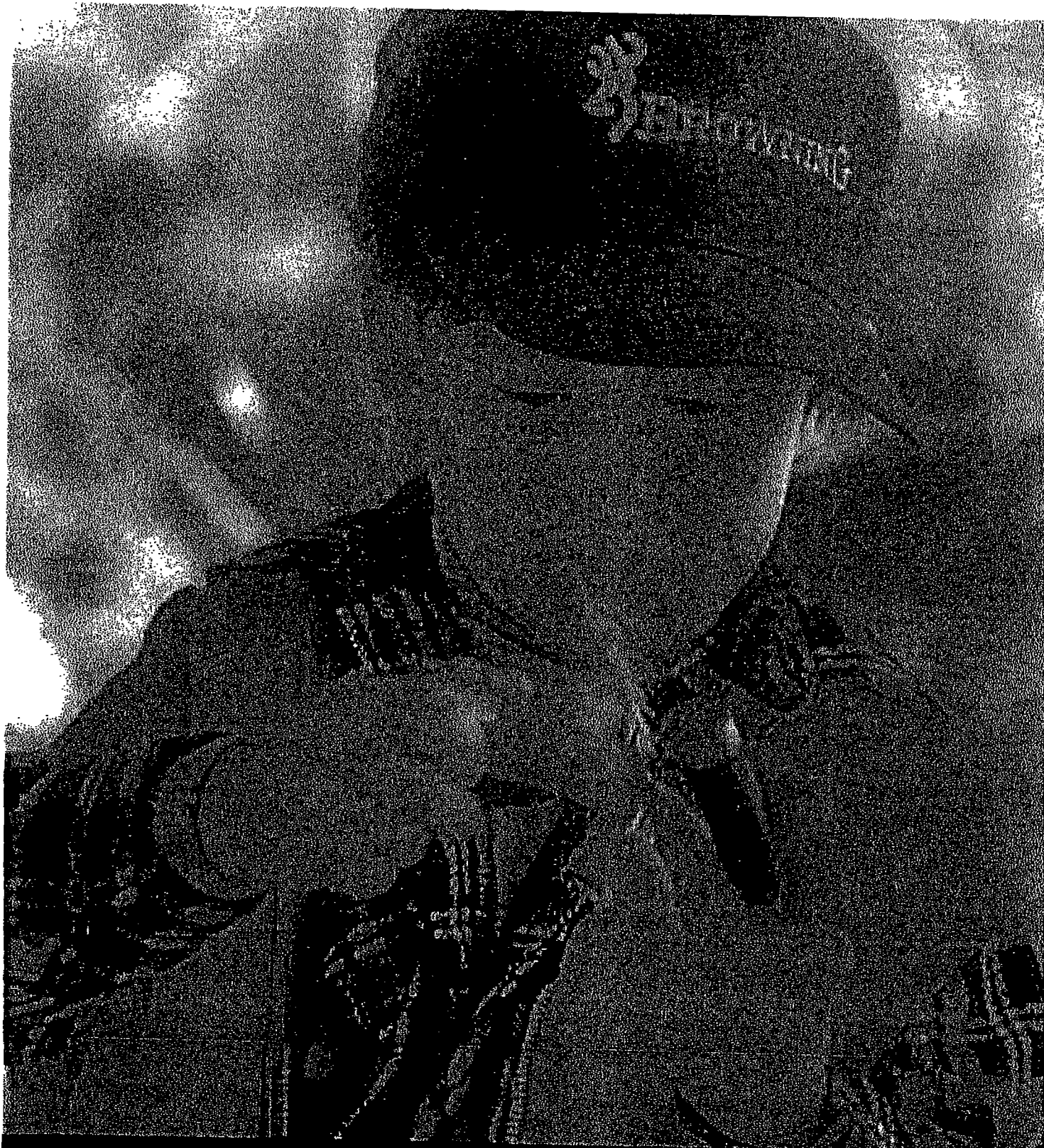
COMMUNITY
DEVELOPMENT

RE: ZC-09-01
CU-09-11
OA-09-04

To Whom It May Concern:

We are requesting that this Zone Change, Conditional Use and Ordinance Amendment be denied for the property located at 315 Fraser Road. The applications appear to be joined together.

- The proposed zone change to rezone 25.38 acres of the 87.48 acre tract of land from Farm (F-1) to Forest (F), is not consistent with goal 3. The farmers and dairymen are squeezed from every direction. The goal is to protect the agriculture industry. Throughout Goal 3, reasons are expressed that indicate how valuable every piece of Farm Zone land is. It is crucial that each piece is kept in the only zoning that will completely protect the agriculture industry and not be allowed to be morphed into something that will damage the surrounding farm.
- If the parcel was allowed to become a rifle range, as indicated in the applications, it may attract some groups to the area, but it would do excessive damage to the existing tourism that enjoys the area. It would damage the scenic dairy industry that draws tourists to the community who keep many businesses afloat, by the excessive damage it would do to the family operations of dairies and hobby farms that surround the piece. The noise pollution put out by the proposed use would irritate their stock and push the operations out of the area. It would harm the fishing industry along the Tillamook River, and the tourism that comes with it, because the noise pollution would make it an undesirable place to fish. Tourism is also generated by people that come to nature watch in this area. This would be extremely compromised by the noise pollution generated by the applicant use. Nobody wants to enjoy viewing wildlife while listening to gunfire. The neighboring property owned by the Bennett's would be affected as it is currently used for pasturing heifers. The heifers will not be able to free range the property if the rifle range encompasses the property, the heifers will be endanger of stray bullets or inaccurate shooters.
- This application is indeed going from resource to resource land but *only* for the purpose of moving forward to a use that is accepted under conditional use and in conflict with the surrounding resource zone land.



Poisonous Pastime

The Health Risks of Shooting Ranges and Lead to Children, Families, and the Environment

 Violence Policy Center

 ENVIRONMENTAL HEALTH PERSPECTIVES

Attachment A

The Violence Policy Center is a national organization working to stop gun death and injury in America through research, analysis, and advocacy for effective firearms policy.

The Environmental Working Group is an independent, non-partisan research and watchdog organization that conducts computer investigations into the toxins in our food, air and water and the influence-peddling that makes it worse.

This study was authored by VPC Senior Policy Analyst Tom Diaz and edited by VPC Publications Coordinator Airnée Stenzel. The VPC is grateful for the advice and expertise provided by the Environmental Working Group.

This study was funded with the support of The David Bohnett Foundation, The Center on Crime, Communities & Culture of the Open Society Institute/Funders' Collaborative for Gun Violence Prevention, The George Gund Foundation, The Joyce Foundation, and The John D. and Catherine T. MacArthur Foundation. Past studies released by the Violence Policy Center include:

- *Where'd They Get Their Guns?—An Analysis of the Firearms Used in High-Profile Shootings, 1963 to 2001* (April 2001)
- *Firearms Production in America—2000 Edition* (March 2001)
- *Every Handgun Is Aimed at You: The Case for Banning Handguns* (March 2001)
- *A Deadly Myth: Women, Handguns, and Self-Defense* (January 2001)
- *From Gun Games to Gun Stores: Why the Firearms Industry Wants Their Video Games on Your Child's Wish List* (December 2000)
- *Handgun Licensing and Registration: What it Can and Cannot Do* (September 2000)
- *License to Kill III: The Texas Concealed Handgun Law's Legacy of Crime and Violence* (August 2000)
- *Pocket Rockets: The Gun Industry's Sale of Increased Killing Power* (July 2000)
- *Gunland USA: A State-by-State Ranking of Gun Shows, Gun Retailers, Machine Guns, and Gun Manufacturers* (June 2000)
- *Guns For Felons: How the NRA Works to Rearm Criminals* (March 2000)
- *Deadly Exceptions: Gun Manufacturers That Would Be Protected by the "Small Business" Cap on Punitive Damages* (February 2000)
- *Where Did You Get That Statistic?—A Bibliography and Resource Guide for Advocates Working to Reduce Gun Death and Injury* (January 2000)
- *Cashing in on the New Millennium: How the Firearms Industry Exploits Y2K Fears to Sell More Guns* (December 1999)
- *Gold Medal Gunslingers: Combat Shooting Targets the Olympic Games* (July 1999)
- *One Shot, One Kill: Civilian Sales of Military Sniper Rifles* (May 1999)
- *Start 'Em Young—Recruitment of Kids to the Gun Culture* (April 1999)
- *Making a Killing: The Business of Guns in America* (January 1999)
- *Joe Camel with Feathers: How the NRA with Gun and Tobacco Industry Dollars Uses Its Eddie Eagle Program to Market Guns to Kids* (November 1997)
- *Cease Fire: A Comprehensive Strategy to Reduce Firearms Violence* (Revised, October 1997)

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Introduction: There Goes the Neighborhood

The American gun industry is in big trouble. Hunting is fading as a sport. Guns are seen by most of the general public as either weapons of crime or dangerous toys owned only by a shrinking minority of Americans.^a As a result, the civilian firearms market is becoming smaller and more concentrated.^b

The gun industry is keenly aware that it faces eventual extinction unless it can break out of this fatal cycle of fewer and fewer people owning more and more guns. The industry and its satellite organizations—the National Rifle Association (NRA) and the National Shooting Sports Foundation (NSSF), in particular—have developed a long-range “survival” strategy to pump up gun sales. One arm of this survival strategy—selling lethality, or killing power—is described in a number of Violence Policy Center books and reports. But a hitherto less well-documented arm of the industry strategy is that of building more shooting ranges to draw new customers—especially women and children—into what it euphemistically calls the “shooting sports.” (Appendix A documents the means by which the industry is using tax dollars and co-opted federal officials to help underwrite this strategy.)

As is so often the case, what is good for the gun industry is bad for the general public. Thus, as a Michigan hunter safety coordinator told a national shooting range symposium in 1990, shooting ranges are “like a waste disposal facility.” The attitude most people have toward shooting ranges is “not in their neighborhood and definitely not next door.”¹

There is good reason to compare shooting ranges to garbage dumps. Part of this is because, in the understated words of ubiquitous gun industry defense lawyer Anne Kimball, “the activity of shooting is one that is controversial in our society.”² Shooting is indeed controversial in America because of our world-record levels of

^a A measure of the growing disfavor with which firearms are held among the general public may be seen in the reported decision of the Make-A-Wish Foundation to reverse policy and no longer grant wishes that involve firearms or other weapons. The Foundation underwrites the wishes of children with terminal illnesses. “Make-A-Wish Opts To Shun Future Gun, Hunt Requests,” *The New Gun Week*, July 1, 2000, 11.

^b Firearms ownership has declined and those who own guns typically own more than one. In the 1950s, about half of American households reported owning a firearm. This dropped to just 35 percent by 1994. Only one in six adults owns a handgun. In 1994, just 10 percent of firearms owners held 77 percent of the privately owned guns in America. Philip J. Cook and Jens Ludwig, *Guns in America: Results of a Comprehensive National Survey on Firearms Ownership and Use, Summary Report* (Washington, DC: Police Foundation, 1996).

firearms death and injury.^c But, as this report documents, shooting ranges actually are bad neighbors. They pollute the environment. They threaten public health, most severely among children—the gun industry's prime targets.^d And they are backed by special-interest bullies like the NRA who use their lobbying clout to pass laws that block citizen recourse against unwelcome ranges and their influence with government agencies to cut back-room deals for special treatment.

Spokesmen for the gun industry and the "shooting sports" publicly describe shooting ranges as places where skilled marksmen engage in disciplined and wholesome sport shooting. But when they talk privately among themselves, they discuss a less savory reality: lead poisoning and other types of environmental pollution such as excessive noise, dangerous novice shooters who barely know what they are doing, the "Rambo factor" (shooters intent on destroying targets and other objects by blasting away at high speed with powerful guns), suicides, unintentional deaths and injuries—even murders.

These are truly neighbors that no one would want moving in next door. And "next door" is constantly getting closer and closer. As cities and suburbs expand into once-rural areas, new homeowners increasingly "complain of noise and safety," according to U.S. Fish & Wildlife Service deputy director Conley Moffett.³

This report documents the problems that shooting ranges bring to those who use them, their families, their neighbors, and even to entire communities stuck with the considerable costs of cleaning up the hazards that abandoned ranges leave behind. It suggests ways that local citizens can organize and take action to:

- ! help keep these bad neighbors from moving in next door;
- ! get them out of the schools; and,
- ! inform communities of the hazards of existing ranges.

^c Since 1960, more than a million Americans have died in firearm homicides, suicides, and unintentional shootings. In 1998 alone, a total of 30,708 Americans died from gun violence. Of these, 17,424 deaths were suicides, 12,102 were homicides, 866 were unintentional fatalities, and 316 were of an undetermined nature. "Deaths: Final Data for 1998," *National Vital Statistics Report* 48, no. 11 (2000).

^d "Everyone past toddler age should get the chance to shoot," advises *Guns & Ammo* magazine in a special section, "Recreational Shooting: Fun for the Whole Family," May 2000, 52.

Section One:
Lead, Environmental Pollution, and Health Hazards

"Until fairly recent years, most shooters wore no hearing protection. As a result, most shooters over 40 have some hearing loss. For many, it is a very significant and noticeable hearing loss. Most of us didn't know how much damage we were incrementally inflicting on ourselves. There was little or no warning about the danger to our health years ago. The same is true with the lead problem. We fired round after round, match after match, without realizing what lead could do to us."

**—Joseph P. Tartaro, Second Amendment Foundation news release,
January 10, 1998**

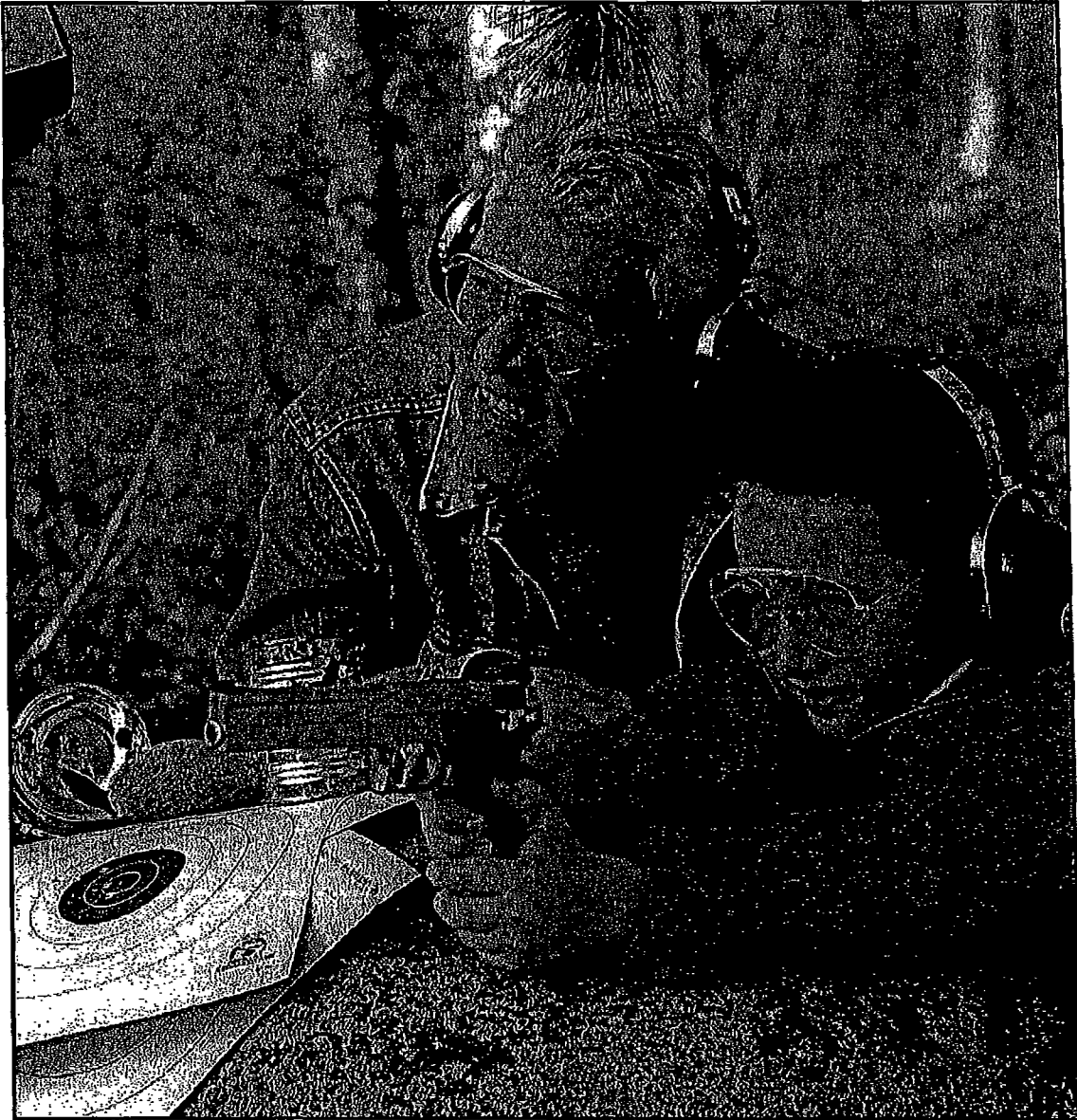
Shooting ranges are of two basic types. Indoor ranges are usually restricted to the use of handguns or lower caliber rifles—such as the .22s used by many school rifle teams—shooting at relatively short range. Outdoor ranges allow use of a wider variety of long guns: shotguns for skeet, trap, and "sporting clays,"^e and higher-powered rifles for target shooting at longer ranges.

Both types of ranges share a common problem—lead. Most ammunition used at ranges is made of lead. Although no records on ammunition production are kept in the United States, it has been estimated that between 400 and 600 tons of lead are used each day to make bullets and "a high proportion of it is left to clutter up shooting ranges."⁴ It is no wonder, then, that numerous studies—since at least the 1970s—have documented that *outdoor* shooting ranges are major sources of lead pollution in the environment, and that *indoor* shooting ranges are significant sources of lead poisoning among people who use them.^f

The danger of lead poisoning extends not only to those who shoot in indoor firing ranges. It also reaches the shooters' families (especially children), and third parties, such as construction workers whose jobs bring them into contact with shooting ranges, and persons who share the building, such as children in a school in which a range is located.

^e Skeet, trap, and sporting clays are variants of an activity in which a circular disc is hurled, usually mechanically, simulating the flight of a game bird within sight of the shooter, who is armed with a shotgun. The object is to react quickly and accurately enough to hit and shatter the disc, sometimes called a "clay pigeon," with shotgun pellets.

^f The U.S. military was reported to have closed more than 700 firing ranges as of August 1999 due to lead contamination, and taken major steps to clean up and prevent further contamination at others. "Army shoots for safe environment with tungsten bullets," *American Metal Market*, August 26, 1999, 4. Although beyond the scope of this study, the military's approach contrasts with the head-in-the-sand attitude of many civilian range owners and operators.



Seems like only yesterday that your father brought you here for the first time. Those sure were the good times—just you, Dad, and his Smith & Wesson.

Smith & Wesson Catalog, 1992, pp. 29, 30

Lead poisoning has long been known to cause terribly debilitating and sometimes fatal effects on one's body. But there is a growing body of evidence that the neurological damage that lead causes also helps cause violent criminal behavior, perhaps even "rampage" killings.⁵ Ironically, overexposure to lead at shooting ranges may therefore cause some violent gun crime.

Lawsuits and regulatory action already have closed some shooting ranges because of the health risks and environmental pollution problems they pose.⁶ Nevertheless, many ranges continue to operate as silent hazards, with little or no health and environmental protection measures. Their owners and operators are either ignorant of the effects of their businesses, or simply hoping that their users, their neighbors, and their employees will remain ignorant of the threat to their health.

Lead—An Extraordinarily Toxic Element

Effects on Human Beings. Lead is a highly potent toxic element that attacks many different body organs and systems, including the blood-forming, nervous, urinary, and reproductive systems.⁷ It is especially dangerous to fetuses and young children. Unlike other metals such as zinc or iron, lead has no known useful function in the body. Lead taken in large enough doses can cause brain damage—leading to seizures, coma, and death in a matter of days. Although the good news is that such short-term, extreme overdoses are rare, the bad news is that chronic overexposure to lower levels of lead simply causes these and other serious health impairments to develop over a longer period of time.

Human beings can be exposed to lead from breathing air, drinking water, eating food, or ingesting dust or soil that contains lead dust or particles of lead. The effects of lead are the same no matter how it gets into the body, although how the body processes lead ingested in different ways varies. For example, most of the lead inhaled into the lungs moves into the blood stream, where it is circulated throughout the body and stored in various body organs, tissues, and bone. On the other hand, very little lead that is swallowed by *adults* enters the blood stream. However, much more lead that is swallowed by *children* enters the bloodstream than in adults, and children are much more prone to this form of ingestion.

Although some of the lead in the bloodstream is filtered out and excreted from the body, the remainder is stored, most of it in bone but some also in soft tissues. The level of this stored lead increases with chronic exposure. The victim may not be aware of it, since there is often no "bright line" at which obvious symptoms appear,⁹

⁹ Many symptoms of chronic overexposure are subtle. They include loss of appetite, metallic taste in the mouth, anxiety, constipation, nausea, pallor, excessive tiredness, weakness, insomnia,

but he or she is slowly being poisoned, suffering long-term, chronic, and irreversible damage.

The effects of lead poisoning include: damage to the brain and central nervous system; kidney disease; high blood pressure; anemia; and damage to the reproductive system, including decreased sex drive, abnormal menstrual periods, impotence, premature ejaculation, sterility, reduction in number of sperm cells, and damage to sperm cells resulting in birth defects, miscarriage, and stillbirth.

Effects on women and children. Lead is particularly harmful to the rapidly developing brains and nervous systems of fetuses and young children. This harm has been well-studied in actual human cases, not mere theoretical calculations, animal studies, or academic conjecture.⁸

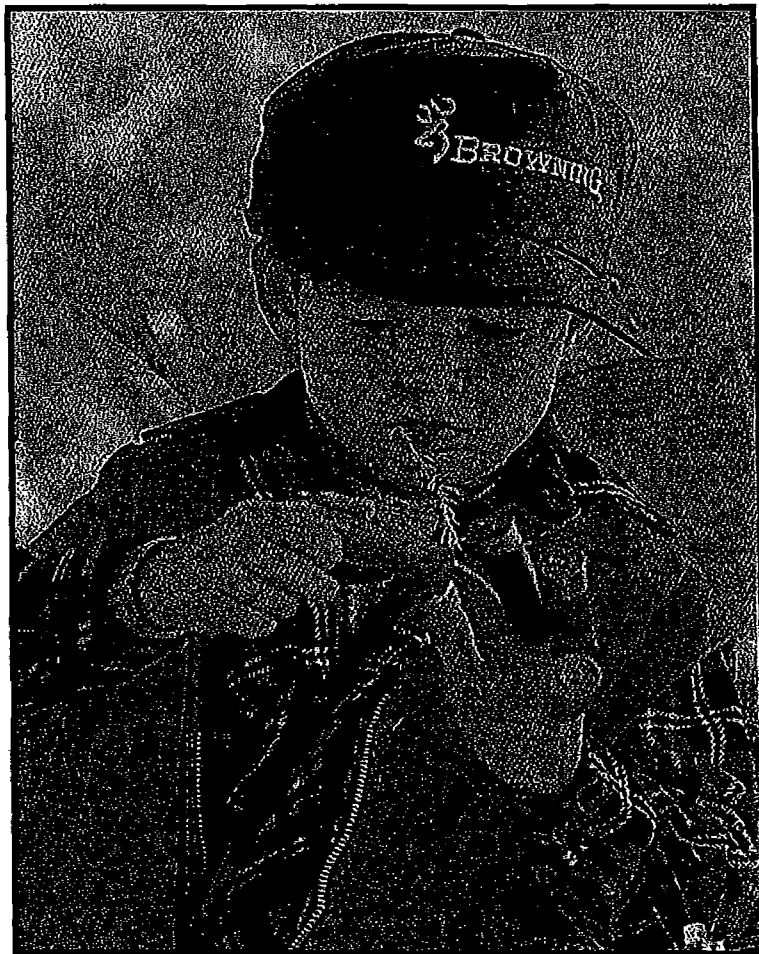
Most strikingly, the level of lead known to be toxic to children has shifted *downward* since the 1970s as health investigators have developed more sensitive instruments and better study designs. Also, children are at a higher risk because they normally have more hand-to-mouth activity than adults (thus ingesting lead-contaminated dust, for example) and because their bodies absorb lead more readily than adult bodies. Because multiple low-level lead input can result in significant overexposure, it is often difficult to pinpoint all the sources contributing to a given child's overexposure. Contaminated house dust is known to be a major source. "Take-home" exposure to children also results when adults launder contaminated clothing with the rest of the family's wash, track in dust, or bring contaminated materials home.

Unfortunately, like adults, most lead-poisoned children do not exhibit obvious symptoms. Their protection hinges on vigilant parents and aggressive public health authorities. Nevertheless, these poisoned children suffer a particular harm that will handicap them for life—lowered intelligence. A number of studies have shown conclusively that children's IQ scores are inversely related to lead exposure. Moreover, the decrease in IQ scores has a direct and serious practical impact: a substantial increase in the number of children with severe intellectual deficits and a decrease in children with superior skills.

"It makes you stupid," in the words of one lead testing expert, and the damage is irreversible.⁹

These effects on children and fetuses are logically of grave concern to women who are, or plan to become, mothers. In addition to the fertility problems described

headache, nervous irritability, muscle and joint pain or soreness, fine tremors, numbness, dizziness, hyperactivity, and colic.



Catalog, Browning Arms Company, 1997

in the preceding section, it is known that lead crosses the placental barrier and puts developing fetuses at severe risk. Children born of parents either of whom were exposed to excess lead levels are more likely to have birth defects, mental retardation, behavioral disorders, or die within their first year.¹⁰

Lead Poisoning and Criminal Behavior. Perhaps the most ironic and problematic problem of lead poisoning in the context of firearms is a growing body of evidence that lead poisoning, particularly in childhood, may be a cause of violent criminal behavior in some individuals.¹¹ The point of this body of evidence is not that every person exposed to lead becomes a violent criminal, any more than every smoker contracts lung cancer. Rather it is that there is a scientifically demonstrable relationship between lead poisoning and criminal behavior, just as there is between smoking and lung cancer.¹²

For example, Dr. Deborah Denno, a sociologist and professor at Fordham Law School, conducted a comprehensive, landmark study of the relationship between lead and violence among young boys.¹³ "Lead had its own independent effect on delinquency and adult criminality, separate from IQ," said Dr. Denno.¹⁴

Dr. Herbert L. Needleman, a psychiatrist at the University of Pittsburgh Medical Center, conducted another study of 301 boys in public school and reached similar findings.¹⁵ Dr. Needleman explained the connection this way:

I'm not saying that lead exposure is the cause of delinquency. It is a cause and one with the biggest handle to prevention. Lead is a brain poison that interferes with the ability to restrain impulses. It's a life experience which gets into biology and increases a child's risk for doing bad things.¹⁶

Even if the poisoning and original misbehavior may happen in childhood, its effects often continue into adulthood.¹⁷ Indeed, at least one researcher has suggested that lead poisoning may have contributed to James Huberty's 1984 shooting rampage at a McDonald's restaurant in California, and linked Huberty's high lead levels in his blood to his handling guns and visiting shooting ranges.¹⁸ Clearly, there is substantial cause to conduct further research into links between lead poisoning associated with firearms and rampage killings.

Effects on Wildlife. Lead has devastating effects on wildlife that mistake lead shotgun pellets for food or grit and ingest it. Ducks and geese, for example, "deliberately swallow small bits of stone and gravel to help grind up food in their gizzards."¹⁹ When this grit contains lead, the result is lead poisoning and a slow and agonizing death. "You see them walking with drooping wings and they can't fly," an

Illinois veterinarian said recently. "It really is a terrible death because it's very slow and gradual."²⁰

Waterfowl have been most directly impacted historically—from 1.5 to 2.5 million died every year from lead poisoning until 1991, when the U.S. Fish & Wildlife Service banned use of lead shot for hunting them. But other avian species, ranging from songbirds to bald eagles, are also poisoned by ingesting lead shot directly or in their prey.²¹ In any case, the lead shot ban does not extend to other forms of hunting or to target shooting. In addition, in 1997 a source in the ammunition industry said that about 20 percent of American hunters still use lead in defiance of the ban—the result is that about 300,000 ducks and geese are still poisoned each year by lead shot.²²

Sources of Lead at Shooting Ranges

Exposure to lead poisoning in indoor firing ranges comes primarily from inhaling lead particles suspended in the air in the range (although it may also be ingested orally, with contaminated food for example). These particles come principally from ignition of the primer, which contains lead styphnate,^h from microscopic lead particles scraped off the bullet as it passes through the gun barrel, and from lead dust created when the bullet strikes the target or the backstop behind the target.²³

Pollution from outdoor ranges comes primarily from spent shotgun pellets and rifle bullets, including materials fired into backstops, called "berms," or out over waterways. According to *Sports Afield*, "the quantity of recreational lead deposited in the environment is enormous. For example, at some trap and skeet ranges, lead shot densities of 1.5 billion pellets per acre have been recorded. That's 334 pellets in every square foot."²⁴ (This massive pollution at shooting ranges is entirely separate from another question, posed by a U.S. Forest Service official at a gun industry shooting range symposium, of "where the lead is going for the millions of shooters who currently are not using established ranges," but are instead shooting on open public land.²⁵)

Another source of airborne lead for some range shooters is casting their own

^h Each round of ammunition is composed of four parts: (1) a bullet, or pellets in the case of a shotgun round, seated in (2) a cylindrical shell casing (or case), within which is (3) a charge of gunpowder, and (4) a primer, seated in the base of the case. The firing pin strikes the primer, made of a highly explosive compound, which explodes and in turn ignites the gunpowder. The burning gunpowder creates gas pressure which expels the bullet or pellets from the casing and through the barrel of the gun.

lead bullets by pouring molten lead into molds of the appropriate size for the caliber bullet desired. Although beyond the scope of this study, a number of sources warn that this practice can cause serious lead poisoning.²⁶ Melting lead produces a fume which can remain airborne for several hours, is easily inhaled, and can contaminate surfaces.²⁷ The director of a New Hampshire occupational health center said some of the worst cases of lead poisoning he has seen have been in people who make their own bullets, and warned of "an amazing lack of awareness" of the danger. "That's a wonderful way to poison not only yourself but members of your family," said another state health official.²⁸

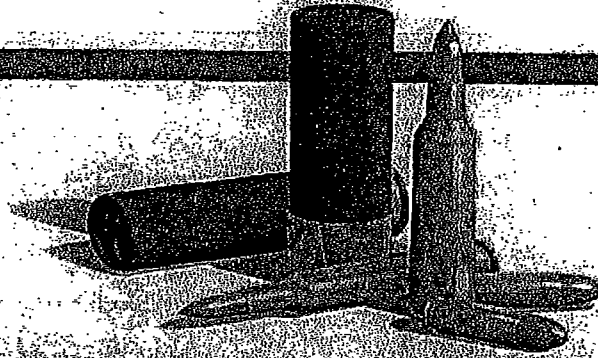
Indoor Shooting Ranges

Indoor shooting ranges have been identified as serious lead poisoners since at least the mid-1970s, documented in a string of studies by public health authorities.²⁹ Although an official of a major shooting range supply company attacked the early warnings as "lead-intoxication hysteria" in a 1976 issue of *The Police Chief* magazine,³⁰ no serious challenge has been mounted to the growing body of science underlying the indisputable fact that lead poisoning is a serious threat to health at indoor shooting ranges.¹

An NRA official speaking in 1990 said, "Lead contamination directly contributed to closing hundreds of indoor ranges in the last 20 years."³¹ Nevertheless, indoor shooting ranges continue to appear regularly in public health records and news stories as major offenders for lead poisoning. For example, the California Department of Health Services reported that, among commercial industries, indoor firing ranges had the largest number of lead poisoning cases as recently as 1993 and 1994.³² Problems with lead overexposure also continue to be regularly seen at law enforcement firing ranges³³ and at both active and abandoned firing ranges located within school buildings. But most privately operated firing ranges (shooting clubs, for example) are completely unregulated by public health authorities, even though they present major health problems for their staff and users.

It should also be noted that most indoor shooting ranges, like any small business dealing with toxic materials, are subject to a wide range of state and local health and

¹ Indoor firing ranges also present problems of exposure to noxious gases such as carbon monoxide and oxides of nitrogen. See, e.g., T. Anania and J. Seta, *Lead Exposure and Design Considerations for Indoor Firing Ranges* (Springfield, VA: National Institute for Occupational Safety and Health, 1975); Brian O'Rourke, "Indoor firing range ventilation system," *Heating, Piping, Air Conditioning* (October 1992), p. 77.



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Guns & Ammo, April 2001, p. 81

safety regulations, such as special health and safety provisions of building codes, and special procedures for containing and cleaning up lead waste (such as being sure that plumbing connections do not discharge lead waste into waters).³⁴

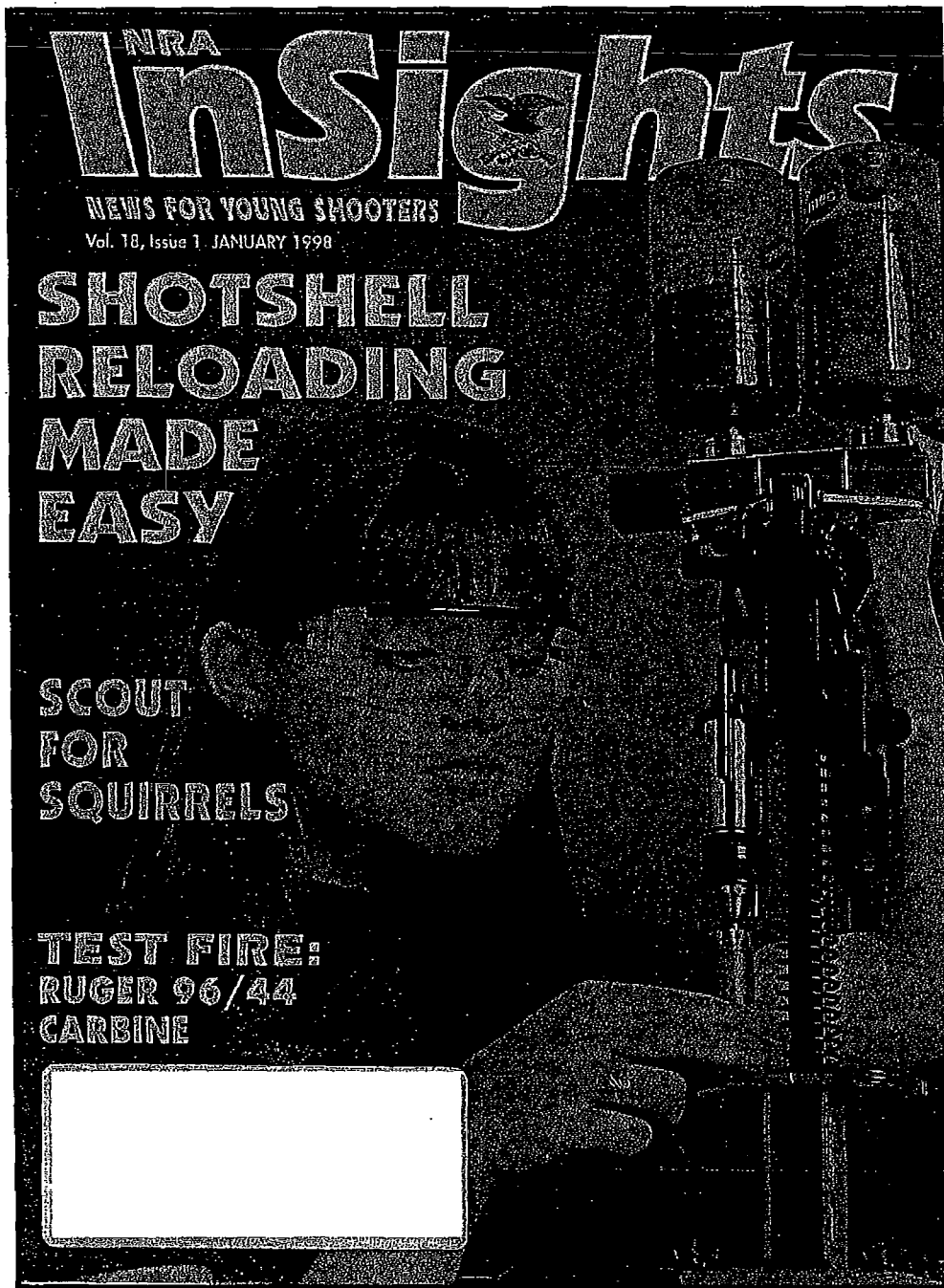
A wide fan of risk. The risk of lead poisoning begins most acutely with firearm instructors, other range employees, and individual shooters, all of whom may inhale lead dust or fumes while shooting or engaging in other activities such as cleaning firearms, handling spent casings, or cleaning bullet traps and the range itself.³⁵ The risk then fans out widely over a surprising range of third parties who are not participants in the "shooting sports."

Risk to direct participants. It is logical that, as even the pro-gun Second Amendment Foundation warns, "the people at the highest risk are those with the greatest and most consistent exposure to the ambient lead—range officers, coaches, and those attempting to remove lead from a range without proper safety gear and equipment."³⁶

Although the greater part of the indoor firing range lead problem appears to be chronic exposure over time, there are several reported cases of catastrophic effects due to intensive short-term exposure. For example, a police firearms instructor in New Hampshire died in his sleep of acute respiratory failure following exposure to lead dust and gases during a five-day training course at an indoor firing range.³⁷ At least one shooting range employee in the same state was also diagnosed as having suffered a chronic lung disease from a single day's intensive exposure. The employee cleaned up lead dust deposits wearing only a painter's mask, after members of a security firm spent a day of heavy shooting at the range.³⁸

Maintenance employees are at especially high risk if proper procedures are not followed. The highest blood lead levels ever recorded by the Baltimore City Health Department (as of 1988) were in an attendant who regularly swept up in an amusement park shooting gallery.³⁹ A 17-year-old part-time employee at an indoor rifle range developed abdominal pain within one month's employment, and vomiting, severe abdominal pain, and constipation after five months.⁴⁰ Unfortunately, as California authorities have observed, "many ranges contract out range cleanup to other firms that may be even less aware of the potential for lead poisoning in this industry."⁴¹

Standard users of indoor shooting ranges are also at risk. Officials at the California Occupational Lead Poisoning Prevention Program currently report seeing elevated blood lead levels "among recreational and competitive shooters."⁴² A doctor at Boston's Children's Hospital reported in 1999 the cases of four adolescent girls with elevated lead blood levels, all of whom were competitive shooters at an indoor firing range.⁴³ A public health doctor in London reported in 1994 that three out of four



Cover, *Insights*, January 1998

regular shooters at a Manchester range had lead blood levels so high that six-month monitoring of their blood levels would have been required had the exposure resulted from working in industry.⁴⁴

A landmark study in Colorado dramatically demonstrated the risks to indoor range shooters. After getting frequent reports of elevated lead blood levels from firing range employees or users, Colorado public health officials tracked 17 members of a law enforcement trainee class during and after a three-month period of firearm instruction at a state-owned indoor firing range.⁴⁵ Despite the fact that a new ventilation system was installed early in the study, the researchers found levels of lead in the range's air 40 times those set in the applicable federal Occupational Safety and Health Administration (OSHA) safety standard. According to a study author, those levels were *low* compared to other indoor ranges examined by Colorado public health officials. None of the 17 trainees had elevated blood levels before the class, but 15 had elevated levels after the training, eight of those above the OSHA threshold requiring medical monitoring.

Private firing ranges in Colorado all refused requests by the researchers to test blood levels of their patrons. But the researchers concluded that "frequent users would be at risk for developing elevated blood lead levels and adverse health effects from the lead exposure."⁴⁶

Risk to families and other third party nonparticipants. Because lead dust settles on clothing, shoes, and accessories worn or used at the range, the families of persons who work at or use firing ranges are also subject to "take-home" exposure to lead dust.⁴⁷ This can cause secondary lead poisoning, particularly in children.⁴⁸

This risk may not be obvious, but it is no less real—shooters can even contaminate their children's clothing by washing them together with the clothes they wore to the range. "If you take your clothing home, you actually contaminate the family clothing when you wash it (together)," a New Hampshire police captain and range instructor warned.⁴⁹

A 1996 National Institute of Occupational Safety and Health (NIOSH) lead health hazard evaluation of firing range activities at the FBI Academy's Firearms Training Unit found significantly higher levels of lead in the carpets of the dormitory rooms of FBI students as compared to the rooms of nonstudents. The study concluded, "FBI students may be contaminating their living quarters with lead," and that "a potential problem of 'take-home' lead exposure of families of firearms instructors was found."⁵⁰

Persons who spend time in the same building in which a firing range is located will be exposed to lead dust from the range unless special precautions are taken. These include totally isolating the range's ventilation system from the rest of the

building and ensuring a negative air pressure in the range so that lead dust does not escape into adjacent offices or work areas, in which a positive air pressure should be maintained to keep lead dust out.⁵¹ In any case, lead residue from inadequately designed old ranges may still be found in building air ducts long after the range has been retired.⁵² This risk is especially acute in the case of firing ranges located within schools, a topic addressed in more detail below.

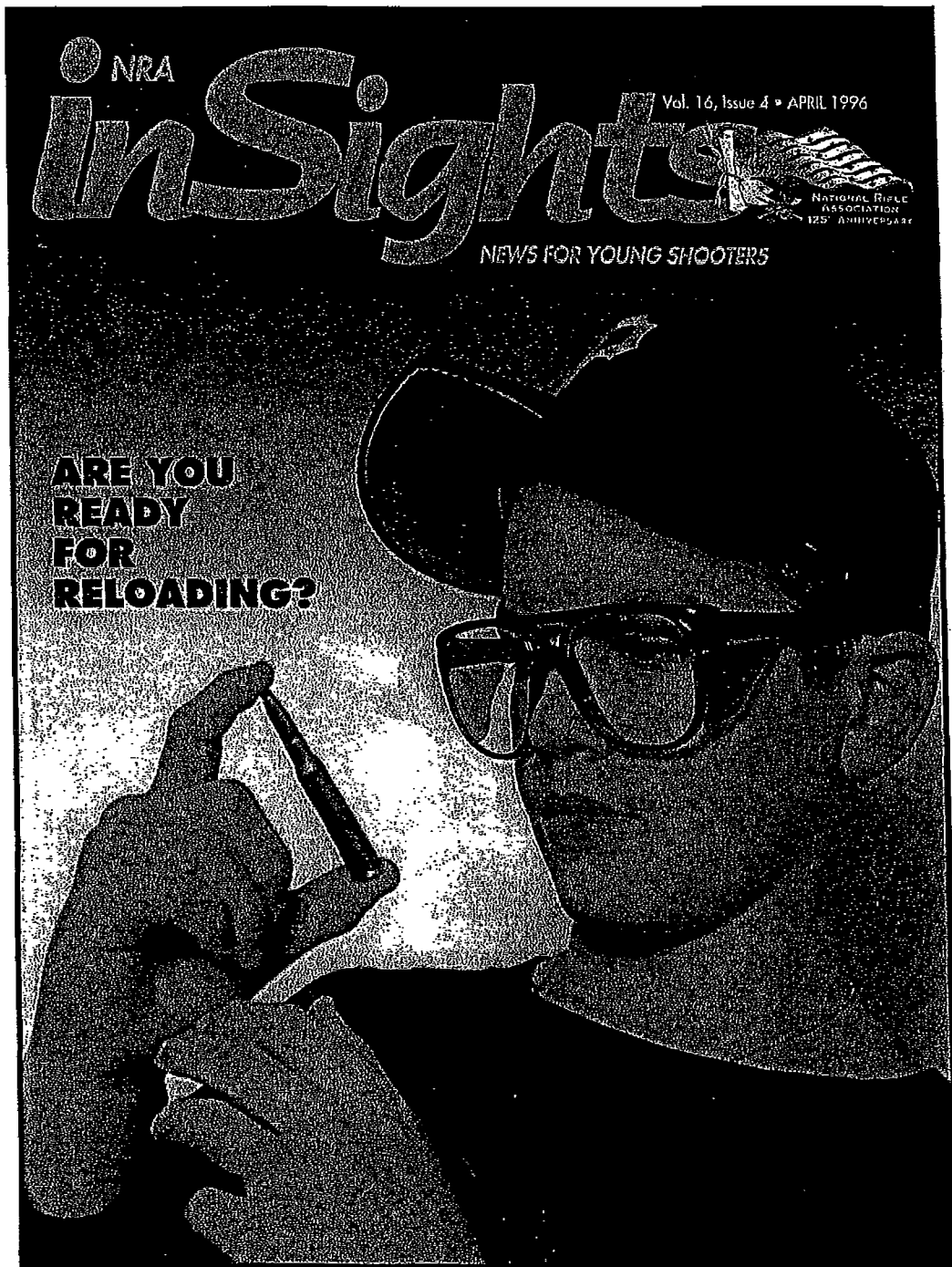
Air exhausted from an indoor shooting range can also threaten third parties. For example, a day-care center in Clearwater, Florida, was forced to close and the children were required to have blood tests after it was discovered that a neighboring indoor shooting range was venting lead-contaminated air into the center's playground area. Lead levels just outside the range's exhaust fan were found to be 8,000 times higher than the acceptable level set by the Pinellas County's Department of Environmental Management, and those in the soil near the border between the range and the daycare center were about 40 times the acceptable level. The proprietor of the private shooting range was reported to be "shocked" by the revelation, arguing that the ventilation system had been inspected by health officials 10 years earlier when the range was built.⁵³ (As is described in more detail below, poor maintenance of such ventilation systems is a major problem for indoor ranges.)

Construction employees who work on firing ranges may also be exposed to lead contamination, especially since they may not be aware of the danger when working in older buildings. California health officials have seen "some serious lead poisoning cases among construction employees engaged in demolition of a firing range, as well as among these employees' children."⁵⁴

Exposure of Children at Indoor School Ranges. Given the vast amount of effort devoted to protecting children from lead in paint in recent decades, it may come as a shock to parents to learn that schools all over the country are exposing children to lead contamination from indoor firing ranges.^J Yet using shooting ranges to get children and youth involved in the "shooting sports" is an integral part of the gun industry's survival strategy, described in more detail in Appendix A. The National Rifle Association supports the gun industry's overall range survival strategy by helping to underwrite school shooting ranges. In Illinois alone, for example, the NRA increased grants for school shooting ranges from \$7,844 in 1995 to more than \$23,750 in 1998.⁵⁵

Unfortunately, many school administrators appear to be oblivious to the threat that lead from shooting ranges presents to the health of the children under their care—until after a problem is discovered. For example, officials in Lancaster County,

^J About 500 schools nationwide are reported to have rifle teams, although it is not known how many of them use indoor ranges. Frank Eltman, "School rifle teams in spotlight amid spate of school shootings," *The Associated Press State & Local Wire*, 22 November 1999.



Cover, *InSights*, April 1996

Pennsylvania, learned of lead contamination at six high school shooting ranges only *after* one student had a routine blood test unrelated to the shooting program and was found to have elevated lead levels. When blood tests were given to other students in the program, they were also found to have elevated blood lead levels. As a result, the rifle ranges were closed.⁵⁶

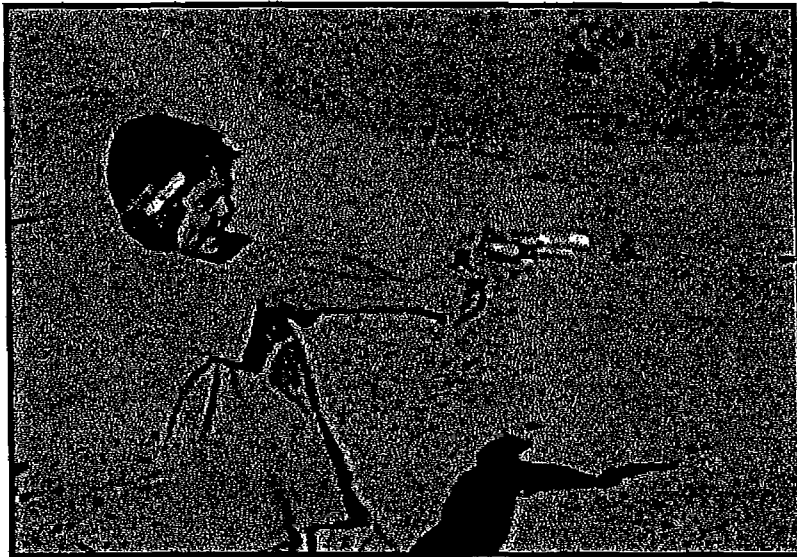
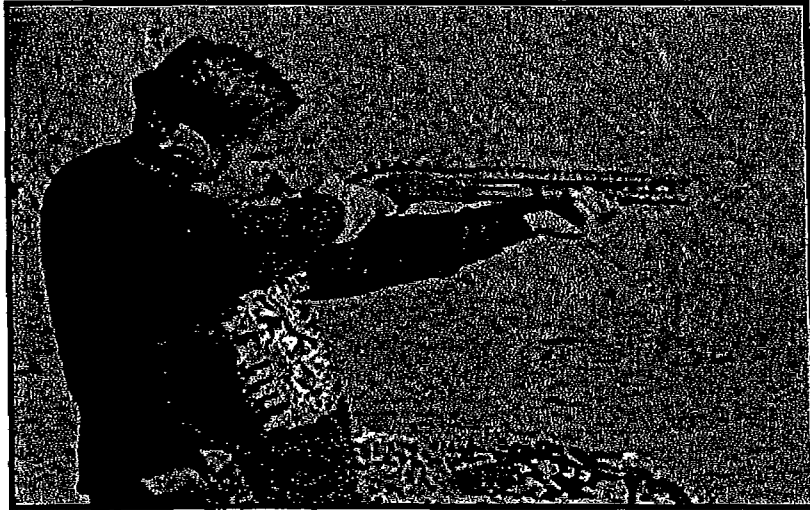
Similarly, lead contamination at an indoor shooting range in the basement of an elementary school in Lynbrook, New York, was discovered only after a parent raised the issue of lead contamination with the school superintendent. "I decided, innocently, to have an air test, expecting to be able to stand up and say the range had a clean bill of health," said the school official. "I got the results and was shocked. I made the decision to close the school, shut down the range and begin the cleanup."⁵⁷ The revelation prompted state officials to advise all schools with such ranges to have similar tests done, and two other schools with firing ranges were subsequently temporarily closed.⁵⁸

Growing public concern with gun violence and an especial distaste for the mix of firearms in schools after such tragedies as the shootings at Columbine High School in 1999 have forced the closing of some school shooting ranges.⁵⁹ A New Jersey school board shut down an indoor range that had been inconspicuously operated by an adult gun club under an elementary school after a group of boy scouts wandered into the range from the school gym.⁶⁰ Although the danger of exposing elementary age children to lead has been well documented by public health experts, range supporters insist on maintaining ranges in schools.

But even after school ranges have been shut down, they may continue to poison students. For example, when the Louisville, Kentucky, school system tested for lead at sites in 20 schools slated for renovation, it found lead contamination at a school rifle range left over from an old ROTC program that had been shut down years earlier.⁶¹

Bad management, poor facilities. The primary causes of the dismal record of shooting ranges in lead contamination and other health matters are ignorance, bad or indifferent management, and antiquated facilities.

These problems are no secret within the gun industry. For example, the Boston-based Strategic Planning Institute found in a recent report outlining a gun industry survival strategy for the National Shooting Sports Foundation (NSSF) that "a large majority of shooting facilities in the country are not professionally managed, commercial operations."⁶² Similarly, a major supplier of shooting range equipment, Caswell International Corp., was reported in 1989 by the NRA's *American Rifleman*



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magazine to have found that "a lot of people trying to get in on a shoestring" in the shooting range market were "cutting corners on costs that resulted in substandard ranges in terms of safety, environmental concerns and cleanliness."⁶³ An engineering consulting firm specializing in shooting ranges notes in its promotional materials that the increased attention to lead contamination and human health exposure "has put range owners and operators into areas outside of their expertise."⁶⁴

Even the most well-designed indoor range demands constant and sometimes expensive attention in order to keep delicately balanced air filtration systems working effectively.

Outdoor Shooting Ranges

Just as shooters at indoor ranges fired away for decades ignorant of the public health risks, so have outdoor range shooters poured millions of tons of lead downrange, ignorant (or heedless) of the damage they have been inflicting on the environment. Although human lead poisoning is less of a problem at outdoor ranges, negative effects on the environment are far greater. Lead bullets and shot used in outdoor shooting ranges present at least three dangers to the environment:

- ! poisoning of wildlife, especially waterfowl, that ingest lead pellets;
- ! contamination of ground water, poisoning wells and other water sources; and,
- ! contamination of wetlands or waterways into which lead falls.

Shotgun shell casing, wads, and assorted packaging materials can also contain lead, chemicals, and other materials potentially harmful to the environment.⁶⁵ For example, certain polycyclic aromatic hydrocarbons found in clay targets are said to be known carcinogens.⁶⁶ (It is worth noting that shotgun shooters rejected a biodegradable clay target Winchester tried to market because it discharged white smoke when hit rather than the black smoke they were used to.)⁶⁷

Dealing with these problems is complicated by the esoteric nature of the state and federal laws and regulations protecting the environment.^k Several key issues of

^k The National Shooting Sports Foundation advises its members: "Should a range manager be notified that the range may face legal or regulatory action involving environmental issues, they should *immediately notify or obtain legal counsel*. Because environmental laws and regulations are extremely complex, it is often advisable to enlist the aid of counsel with specific experience in environmental law,

federal environmental law have been roughly focused in a handful of shooting range cases litigated to conclusion. But the NSSF notes that the relatively low number of reported law cases is not a true measure of the activity going on because "many shooting range cases are resolved in the early stages of litigation through consent orders under which the ranges agree to close down and perform further environmental investigations and cleanup at the range."⁶⁸

Three federal laws have been found to be especially relevant to outdoor shooting ranges: the Clean Water Act (CWA),^l the Resource Conservation and Recovery Act (RCRA),^m and the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA or "Superfund").ⁿ Other federal laws may apply to a particular case, and state protections may be more stringent than the applicable federal laws.

The Clean Water Act (CWA)

The Clean Water Act makes it unlawful for any person to discharge "pollutants" from any "point source" into waters of the United States without obtaining a permit, called a "National Pollution Discharge Elimination System" (NPDES) permit.

Two leading federal cases have held that lead shot and target debris (shattered clay pigeons) are "pollutants," and the trap shooting stations at shooting ranges are "point sources." Therefore, any range from which patrons shoot out over "Waters of the United States" must have an NPDES permit. This is a stringent requirement because "Waters of the United States" is broadly defined to include virtually all rivers, streams, lakes, ponds, drainage-ways, wetlands, and similar features, even those on private property, and it appears that, at least to date, *no NPDES permit has ever been issued to a shooting range.*⁶⁹

Long Island Soundkeeper Fund, Inc. v. New York Athletic Club^o involved a

particularly with experience in defending shooting ranges." National Shooting Sports Foundation, *Environmental Aspects of Construction and Management of Outdoor Shooting Ranges* (Newtown, CT: NSSF, 1997), I-4 (emphasis in original).

^l 33 US Code, Sec. 1251, et seq.

^m 42 US Code, Sec. 6901, et seq.

ⁿ 42 US Code, Sec. 9601, et seq.

^o 1996 U.S. Dist. LEXIS 3383 (SDNY 1996).

private trap shooting range at which spring launchers were used to toss clay targets out over Long Island Sound. Shooters fired at the clay targets from concrete platforms. Acting on a lawsuit brought by two public interest groups interested in preserving the Long Island Sound environment, the court ruled that "shot and target debris" generated by the shooting range constituted pollutants, and that the range was a point source. It is noteworthy that the court ruled that even though the club had switched to the use of steel shot, the shot was nevertheless a pollutant for purposes of the CWA. The club elected to discontinue the discharge rather than seek a permit.⁷⁰

Stone v. Naperville Park District settled a dispute over a trap-shooting range in Naperville, Illinois.^P The range was reported to have dumped as much as 230 tons of lead over 50 years of use on a small patch of land in a park near a high school.⁷¹ The controversy began when neighbors became concerned about possible lead contamination of ground water and wells. Although state officials indicated they would allow the range to continue operation, federal officials expressed concern about lead pollution, especially noting two ponds on the site.⁷² Eventually the court ruled, consistent with the *New York Athletic Club* case, that the range's operations fell under the CWA and barred shooting until an NPDES permit was obtained. Although city and park officials have pressed for a permit, it seems clear that it will not be issued, certainly if lead shot is used.⁷³

It is almost certain that many other shooting ranges across the country are operating without permits required by the CWA. This is particularly true when the shooting range is located on or near wetlands or waters such as rivers or creeks, or where the range allows the natural flow of rain or runoff to carry lead contaminants into such waters or even into groundwater.⁷⁴

The Resource Conservation and Recovery Act (RCRA)

RCRA established a "cradle to grave" regulatory scheme for the treatment, storage, and disposal of solid and hazardous wastes. The leading federal case in the field is *Connecticut Coastal Fishermen's Association v. Remington Arms Co., Inc.* The first such suit against a private range, it resulted in the closing of the Lordship Gun Club in Stratford, Connecticut, operated by Remington Arms Company.⁷⁵

The Lordship trap and skeet range was located on Long Island Sound, directly across the mouth of the Housatonic River from two wildlife refuges. According to the

^P 38 F. Supp2d 651, 1999 U.S. Dist. LEXIS 1828 (NDIL 1999).

U.S. Court of Appeals for the Second Circuit, "After nearly 70 years of use, close to 2,400 tons of lead shot (5 million pounds) and 11 million pounds of clay target fragments were deposited on land around the club and in the adjacent waters of Long Island Sound."⁷⁶ A 1987 study documented acute lead poisoning in 15 of 28 black ducks captured in the area.

Concerned about the effects of the range's operations, the Connecticut Coastal Fisherman's Association filed a lawsuit against the range, citing the CWA and RCRA. The case eventually wound up in the Second Circuit Court of Appeals which made three significant rulings:

- ! The CWA complaint was moot because the range had suspended operations and was unlikely to resume. In short, past violations will not support a CWA suit so long as it appears that operations have been permanently suspended.
- ! Under EPA's regulations and interpretations, shooting range operations do not constitute "discarding" a hazardous waste, and therefore do not require a permit.
- ! However, the deposited lead and potential target debris do constitute hazardous solid wastes that present a substantial threat to the environment. The range was therefore subject to another provision of RCRA requiring remediation and cleanup, even though the range had ceased operations.

As a result of this ruling, the range closed and Remington agreed to clean up both the lead and clay target waste.

According to NSSF, several other ranges have been charged with violating CWA and RCRA, but most either went out of business, settled out of court, changed their shooting direction, or switched to non-toxic shot.⁷⁷

Comprehensive Environmental Response, Compensation and Liability Act (CERCLA or "Superfund")

One of the peculiarities of these laws, as interpreted by the EPA, is that so long as a range is being used, the lead and other toxic materials it dumps into the environment are not considered as being discarded or abandoned. Shooting ranges are therefore not required to get the permits that, say, a landfill or toxic dump would

be required to have if it wished to deposit the same material.

However, a range that is closed or abandoned triggers specific liabilities for lead and other toxic materials deposited on the land during shooting operations, since it is then considered to be "abandoned waste."⁷⁸ The reported transport of lead waste to landfill dump sites by some range operators also could subject them to any future "superfund" liabilities of the disposal sites, according to the NRA's range development manager.⁷⁹

Cleanup costs can be substantial: New York City reportedly paid a Canadian company \$25 million to clean up a police shooting range in the Bronx. Company officials found the prospects of such work in the United States "promising," estimating that there were about 28,000 such potential cleanup sites in the country.⁸⁰ The cost of cleaning up abandoned ranges often comes as a shocking surprise to new owners or to government units that operate or sometimes inherit the property in question. In some cases, governmental units simply continue the fiction that the abandoned range is still "in service" in order to avoid paying the costs. The following are representative examples of cleanup cases:

- ! As part of a consent decree, current and past owners of a former Playboy Club property in Wisconsin agreed to pay the U.S. government \$1,000,000 in cleanup costs for contamination from a trap and skeet shooting range. The contamination at the abandoned site was discovered after 200 geese died of lead poisoning. The federal government was reported to have spent \$1.75 million for cleanup as of the time of the agreement.⁸¹
- ! The State of Massachusetts inherited a cleanup problem when it acquired a former resort that included a skeet shooting range.⁸²
- ! Port Richey, Florida, was hit with a \$50,000 cleanup bill after it learned that a children's play area called Totsville had been designed and built by a well-meaning volunteer on a site that had formerly been a city firing range.⁸³
- ! Port Salerno, Florida, was stuck with a \$400,000 cleanup bill when tests of a proposed development site revealed contamination from an abandoned shooting range formerly used by the sheriff's office.⁸⁴
- ! Crystal River, Florida, dodged cleanup costs by simply fencing off a shooting range area, keeping it in limbo between its former use as a pistol range and any new use. Should the city decide to make use of the parcel, which one council member compared to an abandoned

nuclear site, it would have to pay for the cleanup.⁸⁵

- ! Brea, California, was sued by the owner of a parcel of land it leased for use as a firing range. The owner complained that the property lost value and that 165 tons of soil had to be removed as a result of lead contamination after 25 years of use.⁸⁶
- ! Bay Village, Ohio, city officials abandoned cleanup plans when they saw a price tag of \$600,000 to clean up an estimated 150 tons of lead blasted into Lake Erie over several decades by a private gun club. The federal EPA looked the other way. "Why invite trouble?" said one city official, who admitted he was aware of the court ruling in the similar *Connecticut Coastal Fishermen's Association* case.⁸⁷

These and other abandoned range cases pose a serious question for communities with existing or newly proposed range operations: who will pay the cleanup bill when the shooters have moved on?⁸⁸

National Environmental Policy Act (NEPA)

The National Environmental Policy Act (NEPA) established a national scheme to control and minimize the impact that federal government actions—including tax-subsidized activities—have on the environment. Prominent among these is the requirement that an environmental impact statement (EIS) be prepared for any major federal action that might significantly affect the quality of the human environment.⁸⁹ No one appears yet to have explored whether, given the extensive federal assistance extended to the gun industry for its shooting range programs, certain federal agencies—such as the Fish & Wildlife Service—should be required to develop such plans.

Other Major Pollution Sites

A number of other shooting range environmental horror stories can be found in news reports from all over the country. The following are a few representative examples:

- ! Westchester County, New York, entered into a consent decree with the EPA to clean up contamination from lead and targets at its Sportsmen's Center, located next to an elementary school. EPA sued the county under the imminent hazard provision of RCRA.⁹⁰ The case prompted

NSSF executive Bob Delfay to complain, "Lead is a four-letter word these days."⁹¹

- ! Illinois environmental officials got a toxic double whammy when it turned out that the backstop of a rifle range originally built for the 1959 Pan American Games was made of asbestos waste. In addition to lead pollution problems, officials learned that the asbestos had simply been bulldozed into Lake Michigan, then later recycled onto a public beach as part of dredging operations.⁹²

- ! A former skeet shooting range in Delaware earned the title "Harbeson Dead Swan Site" when it was designated a federal Superfund cleanup site after 41 dead black-billed tundra swans, victims of lead poisoning, were found by two bird watchers. The kill was reportedly one of the highest ever recorded for tundra swans. Federal taxpayers paid for the estimated \$200,000 cleanup cost. The EPA originally tried to hide ownership of the site after a meeting with the owners was arranged by Senator Joseph Biden (D-DE), but relented under media pressure.⁹³ Taxpayers were also slated to pay the \$250,000 cleanup costs at another private skeet-shooting range on Prime Hook National Wildlife Refuge in Delaware. "[T]he club doesn't have the money," the organization's treasurer said. "I'm sure it would bankrupt us."⁹⁴

**Section Two:
The Rambo Factor, "Slob Shooters," and Other Sporting Curiosities**

"I think if you plan it well enough, you won't shoot up any more trees than you have to, and many trees recover from being shot if you move the station around. You just can't shoot the trees to pieces. I have seen courses where the same shot was presented year after year; it actually looked like a forest fire or a nuclear blast had occurred."

—William L. Poole, Director, Division of Recreation Shooting, Training and Ranges, National Rifle Association (October 1993)

The gun industry and its surrogates publicly conjure shooting ranges as public palaces for old-fashioned family fun. But, shooting ranges attract or generate major problems (other than the health and environmental nuisances described in the preceding section) that make them unwelcome neighbors and downright dangerous sites.

The "Rambo Factor"

Gary Anderson, the NRA's executive director for general operations, coined the phrase the "Rambo factor" to describe one problem that modern shooting ranges (and their neighbors) face. His language was diplomatically phrased, but extraordinarily revealing, because it belies the notion that shooting ranges are mostly places where the gentry gather for controlled, precision marksmanship. On the contrary, the gentry more often just want some place to blast holes through things. Says Anderson:

American shooting activities place a predominant emphasis on large caliber arms that can be fired rapidly. [emphasis in original]

- I If you look at the key words in arms and ammunition advertising, they are not skill, accuracy or marksmanship. The key words are "power," "speed" and "firepower."
- I If you visit ranges where informal shooting is taking place, note the range users' preference for centerfire rifles and pistols, often large calibers. You may observe that many shooters seem to prefer rapid firing. Whether we call this a "Rambo factor" in America's informal shooting or recognize it as a popularity trend, it is a reality which must be recognized in range planning and management.

- ! A majority of range use in this country stresses what we call "plinking." There is a preference for targets that fall, break or do something.
- ! Range shooting in this country is often not as disciplined as it could be. Whether it is from poor marksmanship or an unthinking attraction to targets that break or an occasional lack of responsibility, many shots fired on ranges do not hit the targets or anticipated impact areas and things like target frames or holders often are quickly damaged. A painted indoor range or baffled outdoor range will soon reveal bullet impact marks from numerous shots which obviously were not directed at the target.
- ! The implications of these shooting preferences for range planning and management are apparent. The demand for range use won't be satisfied by air guns or rimfire guns alone. Ranges must accommodate highpower rifles and pistols. And range operators must not assume that all range users will have the discipline, control or marksmanship skill to keep their shots on the targets.⁹⁵

The "Rambo factor" not only affects the users of the shooting range. It also raises concerns for the range's neighbors. One reasonable source of concern is that, as noted in the preceding section, the industry itself has found that most ranges are not professionally managed. The lack of professional management leads one naturally to wonder exactly who at those ranges is capable of dealing with shooters who, in Anderson's words, do not have "the discipline, control or marksmanship skill to keep their shots on the targets." Cutting corners is serious business in the case of shooting ranges, because—in the words of R. Max Peterson, executive vice president of the International Association of Fish and Wildlife Agencies—shooting ranges "can be dangerous if improperly operated or maintained."⁹⁶

It is small wonder that "successful range operations face a formidable public relations challenge."⁹⁷ Bullets that don't land in what Anderson delicately calls the "anticipated impact area" on the range can end up in an *unanticipated* impact area off the range—such as in a neighbor's house or head. "Many ranges operate today knowing a single projectile or a shot charge landing off the range property means closure," federal Fish & Wildlife Service deputy director Conley Moffett told a tax-funded industry symposium.⁹⁸ News accounts from all over the country confirm that stray bullets from shooting ranges are not merely theoretical concerns but real problems for nearby residents.⁹⁹

The "Rambo factor" also creates friction between hunters and non-hunting shooters at public ranges, as Peter S. Duncan, executive director of the Pennsylvania Game Commission, told the symposium:

The non-hunting segments of the shooting public are using game land ranges in greater numbers, bringing with them semiautomatic pistols and rifles (which are not legal for hunting but are certainly legal to possess). In taking advantage of these free range facilities, these folks often monopolize the shooting points for hours at a time...we are more concerned about the apparent conflicts between the hunting and non-hunting users of our game land facilities.¹⁰⁰

In plainer English, the would-be Rambos are pushing the hunters off of shooting ranges.⁹

Another NRA official, William L. Poole, director of the NRA's division of recreational shooting, training and ranges, told a shooting range symposium about a special kind of management problem with sporting clays ranges:

In working with ranges, probably the top problems that we encounter in the NRA Range Development Department are environmental and sound problems at sporting clays courses. There is not enough consideration given to the necessary design. We're finding courses that are dropping shot on other people's property; that have given no consideration to where the broken birds go; that drop shot into an open waterway. In general there seems to be a prevailing attitude that you can walk into a woods, set up some trap machines, and have a sporting clays course.¹⁰¹

The nonchalance of that "prevailing attitude" toward non-shooters is reflected in other problems documented in many shooting ranges.

Slob Shooters—Vandalism, Litter, and Trashing of Outdoor Areas

U.S. Forest Service officials report that use of public outdoor firing ranges in national parks brings with it "unsafe acts, illegal weapons and ammunition, litter and destruction of property and signs."¹⁰²

⁹ It should also be noted that Duncan's remarks further undermine the "hunter safety" rationale that the industry uses as its excuse for siphoning federal tax funds into shooting ranges. By his account "non-hunting users" dominate the use of many ranges.

The NRA's Anderson unintentionally confirmed what many critics of the "shooting sports" argue—that so-called "recreational shooters" are often little more than reckless vandals who threaten the lives of others, *even at shooting ranges*. Says Anderson:

There are unfortunately a small minority of gun uses which are not responsible and which lead to a serious negative image for legitimate, safe range uses. [emphasis in original]

- ! A trip through the rural areas of our country will almost always reveal a distressingly large number of road signs with bullet holes or shotgun patterns on them.
- ! National Forest managers in the Los Angeles area have considered closing their forests to any public shooting because too many people bring in junk which they riddle with bullet holes and leave as dangerous litter.
- ! A few weeks ago, an NRA police school and its shooting training which was conducted on a controlled, baffled range, was accused of being responsible for a bullet which struck a woman in a passing car over one-half mile from the range, even though it is almost certain that the stray bullet came from a plinker who didn't bother to find a safe backstop.
- ! These lamentable occurrences of vandalism with guns establish a critical element in the socio-political climate for ranges and have two important implications. One is that as long as this kind of irresponsible gun use goes on, it will be difficult to win public acceptance of ranges, because the public won't understand that ranges can be safe. The second implication is that the best way to stop these irresponsible gun uses is to get as many informal shooting activities as possible onto ranges where guns can be used in a safe physical environment under the discipline of responsible range-use rules.¹⁰³

But, with respect to Anderson's last point (getting more shooting activities onto "safe" ranges), one is reminded of his earlier lamentation—quoted earlier—that because of "poor marksmanship or an unthinking attraction to targets that break or an occasional lack of responsibility, many shots fired on ranges do not hit the targets or anticipated impact areas" *even at shooting ranges!*

Examples of shooter abuse on both open land and public shooting ranges abound. David E. Wickstrom, a recreation planner from the U.S. Department of Interior's Bureau of Land Management, told a shooting range symposium: "Open areas available for shooting, such as gravel pits, often become littered with refuse left from use."¹⁰⁴

He described the situation mildly. In 1992, *American Rifleman* carried a detailed account entitled: "Gross abuse of a public shooting area by slobbs with firearms forced its closing."¹⁰⁵ Although the gun industry likes to publicly portray gun owners as uniformly responsible citizens with only a few "bad apples," the author, a federal Bureau of Land Management official wrote that "we estimated that somewhere between 30% and 40% of the apples were bad." Because the agency could not afford to station an employee at the range, wrote the official, "we trusted the good sense and ethical standards of the shooting public. We were very disappointed by the result." Among the problems observed were the following:

It very quickly became apparent that not all shooters understood the safe handling of firearms and were not true believers in law and order. As examples, I personally observed two young men set down their beers as they passed a loaded and cocked pistol back and forth to take turns shooting. Automatic weapons fire has been reported regularly....Fires have been started by people using illegal tracer bullets....

It was also apparent that there was not much sensitivity to the environment. Citizens concerned about our environment do not shoot car batteries so that the acid runs into stream beds.¹⁰⁶

The U.S. Forest Service has suffered similar experiences at the hands of shooters. Until 1988, target ranges were unwelcome in national forests "due to problems of littering, safety, and administration," according to John Shilling, chief of concessions and winter sports, speaking at a 1990 range symposium. "Current policy allows target ranges only when and where they will enhance forest management by consolidating shooting activities, thereby reducing vandalism and litter associated with dispersed target shooting."¹⁰⁷

In plain English, Forest Service policy is to tolerate a shooting range only when shooters become so obnoxious that putting them all in one place makes more sense than letting them destroy the forest.

Shilling cited the example of Forest Service experience at the Angeles National Forest in southern California. Originally, shooters were allowed to shoot anywhere

in the forest, so long as they "followed guidelines such as distance from structures and places of habitation." But slob shooters got out of control under the "open shooting" policy:

Conflicts with other recreationists and danger of starting forest fires created an unacceptable situation. Shooting areas were designated to control the activity, but these areas quickly became dumps, collecting debris used for targets, old car bodies and at least one murder victim....

[T]hree to four fires a year occurred as a result of shooting activity, including one which burned 700 acres....¹⁰⁸

In order to save the forest from the shooters, the Forest Service eventually allowed a commercial operator to open a public range and banned all open shooting in that forest. Fires caused by shooters were also a problem in the Cleveland National Forest in southern California, a Forest Service representative told a national shooting range symposium,¹⁰⁹ and fires at open shooting areas continue to be a problem in other forest areas.¹¹⁰

Forest Service official Jerry W. Davis described the kinds of "misuse and abuse" of firearms he has seen, and their effects on the environment and the public at the same symposium:

These have varied from signs, mailboxes, cans, bottles, and the first illegal deer or other form of wildlife encountered afield, to Saguaro cactus in the deserts of Arizona and pine trees in the forests of East Texas. Something seemingly as innocent as using a loblolly pine as a backstop for a target has caused tree mortality and insect infestations that killed hundreds of trees. This action has led to the loss of revenue to counties, schools, local economy, and the national treasury, as well as habitat loss for some species of wildlife.¹¹¹

But closing open lands and forcing shooters onto ranges is expensive and brings other problems. Lyle Laverty, director of recreation, heritage, and wilderness resources for the federal Forest Service, told the symposium:

A big problem that forest officers are facing is junk and hazardous materials left scattered around national forest shooting ranges. It's not just a small problem; it's a major problem. At Angeles National Forest outside Los Angeles, you can find car parts, car bodies, anything that is dragged out there that people can shoot at. It just becomes a tremendous problem for the Forest Service managers to take care of....

One problem is that even though the district has a lot of volunteer help to pick up the trash, the dump fees are costing the district 50 percent of their recreation budget.¹¹²

Vandals at Forest Service shooting ranges "shoot signs, displays, roofs, toilets, garbage containers, and posts," Laverty's colleague, Davis, told the same group. "They litter and have been known to use wooden shooting benches for firewood."¹¹³

State officials have similar problems maintaining public ranges. Pennsylvania state land management officials described how some shooting ranges literally become garbage dumps:

Not unlike many other states, we also have some problems maintaining shooting ranges....The maintenance problems for these ranges are compounded by the large amount of litter that is often left behind by the users. An additional problem is how do we dispose of this litter. As the solid waste problem becomes more acute and the average family is less able to afford the costs of proper waste disposal, the ranges are increasingly being used for such purposes.¹¹⁴

The Kansas Department of Wildlife and Parks had to overhaul a free outdoor range under similar circumstances. According to an official, the lack of a range officer at the range led aficionados of the "shooting sports" to engage in the following family fun:

We hauled out 10 cubic yards of trash after Thanksgiving weekend. People were shooting at car batteries, bowling balls, bowling pins, stuffed animals, a TV set. They'd get garbage from the trash bin to use as targets and leave it out there. It wasn't very safe.¹¹⁵

NRA official William L. Poole described the destruction that can be wreaked by a sporting clays shotgun course in a wooded environment:

I think if you plan it well enough, you won't shoot up any more trees than you have to, and many trees recover from being shot if you move the station around. You just can't shoot the trees to pieces. I have seen courses where the same shot was presented year after year; it actually looked like a forest fire or a nuclear blast had occurred. With just a little bit of effort, you can move that shooting station and not relentlessly fire on the same tree. Pines do not hold up well. You'll find that they go very quickly, so I'd move the course away from them. Some hardwood trees will really take a lot, but eventually, if you keep it up, you'll destroy the tree.¹¹⁶

Vandalism often sets in when ranges open to the shooting public are not staffed, or are understaffed. For example, public ranges often depend on volunteer help. But when volunteer interest fades, vandalism and other problems follow, as Nebraska state officials described at a range symposium:

Like many other new projects, this one received lots of tender, loving care in its early years. But, as the years went on, interest waned and management problems grew. The once-enthusiastic volunteer help became bored, and use of the facility dropped along with maintenance.

Today, the trap range sees occasional use. The rifle range is accessible to anyone but no one oversees its use or attends to maintenance. Consequently, the target area is littered with junk which is scrounged or brought onto the area for use as target material.¹¹⁷

The message for local communities is that the nice, orderly range down the street has the potential of turning into a dangerous eyesore as soon as its users get tired of their new tax-funded toy. Not incidentally, the use of volunteers may also open ranges up to tort liability, if the range fails to check the background of its volunteers and harm results from allowing unsuitable persons to operate the range such as, for example, a "person of violent disposition."¹¹⁸

In short, public land managers are caught between two evils. If they allow so-called "open shooting" on public land, "slob shooters" often abuse the trust extended them by vandalizing public property, littering, and even dumping garbage and hazardous waste. On the other hand, corralling such shooters onto a shooting range imposes operating and liability costs on the taxpayer, simply to indulge (and control) these reckless gunslingers.

Noise Pollution

Zoning violations and the high levels of noise inherent in shooting range operations cause the majority of complaints about them, according to the NRA's general counsel.¹¹⁹ Many shooting ranges have been involved in "costly litigation" and some have closed because neighbors objected to noise, especially during early morning or late hours.¹²⁰

"Noise continues to be a major concern on our project and unless your project is built in a vacuum it will be on yours," Michigan state officials Bruce Gustafson and James Dabb told a shooting range symposium. "Persons living in proximity to the

proposed site invariably are concerned with the potential disturbances to their 'quiet' neighborhood."¹²¹

According to the NRA's *Range Manual*, a comprehensive technical guide for designing and constructing shooting ranges: "No set distance eliminates noise complaints entirely."¹²² The manual, which devotes an entire chapter to the subject of noise pollution, generally recommends allowing a "maximum distance between the range and inhabited dwellings," and "where it is possible to do so, build a range on government-owned land that will generally have the advantage of noise buffer areas." The manual suggests a distance between homes and range of at least one half mile for ranges generally, and three quarters of a mile for trap and skeet ranges (where shotguns are used). "Controlling sounds coming from shotgun facilities is almost impossible," according to the director of the Delaware State Division of Fish and Wildlife, paraphrasing advice he got from the NRA on the problem.¹²³

What might be called the "ostrich approach" to shooting range noise was urged on a range symposium by NRA official William L. Poole:

I recommend that rather than using the term noise, you should use the term sound. Anytime you talk about what happens when the trigger of a firearm is pulled, that audible tone that comes from the firearm, you should talk about it as sound rather than noise. Noise has a bad connotation to it. Sound is more generally acceptable.¹²⁴

On-Range Hazards—Suicides, Murders, and Unintentional Deaths

Another problem that the gun industry doesn't like to talk about is people killing each other (and themselves) at shooting ranges. For example, former U.S. Congressman and NRA board member Harold L. Volkmer painted a rosy picture of range safety in his address to the first shooting range symposium (for which he was paid a \$1,000 honorarium).¹²⁵ Volkmer said "the use of shooting ranges takes the danger that arises from inexperience out of the picture."¹²⁶

But in a 1994 article, *Shooting Industry* writer Ross Thurman offered a considerably different expert opinion on the safety of shooting ranges:

Unfortunately, I've found most safety standards at shooting ranges to be extremely casual. On a number of occasions, I've cut short a range visit because of how carelessly other shooters handled firearms.¹²⁷

Thurman's account is not an isolated example. A reader of *Guns & Ammo* wrote a letter to the magazine in 1986 to describe "a situation that was unbelievable"

at a shooting range:

[A] person entered the shooting stall next to mine. He proceeded to take a brand-new handgun from its box and make a very futile attempt to load it. He started loading his ammo in the magazine backward. I offered my assistance, for which he was very grateful. He informed me that he had just purchased the gun (an S&W 639) and did not know anything about it or handguns in general....

I was so concerned by this situation that I took a small, informal survey over a month or so when I visited the range and found that 80 percent of the shooters that came to the range were there for the first time, had just recently purchased a firearm and did not know anything about the firearm or firearm safety.¹²⁸

The president of a New Jersey insurance company summarized the type of insurance claims filed against shooting ranges. These included eye injuries to shooters and spectators, often caused by ricochets; persons shooting themselves unintentionally; death from fire caused by muzzle flash igniting foam insulation; suicides; and, injury from an exploding handgun.¹²⁹ News accounts from all over the country again confirm that suicides,¹³⁰ unintentional shootings,¹³¹ and even murders,¹³² occur with depressing frequency at shooting ranges (often involving handguns rented at the range itself).

Lawyer Anne Kimball told participants at a shooting range symposium that "it may be advisable to require all range users to have passed an NRA instruction program."¹³³ But there is little evidence that many public shooting ranges impose even such a basic standard of care and prudence on paying customers.

William L. Poole, director of the NRA's division of recreational shooting, training, and ranges, described at a shooting range symposium the apparently widespread negligence by shotgunners. Musing on the duties of "pullers" (the people who release targets at trap and skeet shotgun ranges) Poole said:

The pullers, of course, should know the safety rules. Shotgun shooters can be negligent. As a matter of fact, I was looking at a shotgun this morning down on the airgun range and set the darned thing on the end of my toe with the barrels closed. Well, I'm sorry, but it's a force of habit after 30 years and one I'm trying to give up. I knew the gun wasn't loaded, and that's not a good excuse at all, *but you're going to see that happen on a daily basis. If you're not familiar with the way trap and skeet shooters act, that's just a part of their mannerisms.* It's very difficult to make a safety monitor out of a 15-year-old kid [the

puller}....¹³⁴ [emphasis added]

Other problems include whether fully automatic weapons should be allowed at public ranges. Missouri found itself at odds with the NRA when a proposal was floated to ban machine guns from ranges on the grounds that they destroyed target stands and unnerved other shooters.¹³⁵ (The NRA opposes restrictions on private ownership of machine guns.)¹³⁶ Ranges also often bring increased traffic problems to nearby neighborhoods, with the associated noise and congestion.¹³⁷

Section Three: The Uphill Fight Back

"Everybody I've talked to has been against it. I'm a gun person. This is not anti-gun. This is anti-noise. I don't want to worry about my sons going into the woods and being shot by a stray bullet."

**—Terry Trimble, vice president, Sunset Acres Homeowners Association
(Tacoma, Washington), January 3, 2000**

Because of their inherently obnoxious nature, shooting ranges have a serious public relations problem, as summed up by Dennis C. Eggers, assistant director of the NRA's Hunter Services Division:

The reality is this—if the majority of the affected general public is opposed to that range, or just doesn't care one way or the other, the range is doomed. It's just a matter of time.¹³⁸

Eggers' pessimistic proclamation of doom is typical of the Chicken Little mindset of America's gun culture. But reality shows that fighting back against a shooting range is often a costly, slow, uphill battle, complicated by protective special-interest legislation and behind-the-scenes deals by vested interests. Here are a few examples culled from news clips and public records:

- ! Like most states, Texas doesn't keep records of how many shooting ranges exist within its borders, how many injuries occur at them, or what kind of complaints are filed against them. And Texas counties have no authority to regulate shooting ranges. As a result, conflicts between residents and range owners often end up in civil court. A group of Austin homeowners, for example, spent \$100,000 in a three-year battle that was only partly successful.¹³⁹

- ! The residents of a small town in Maine have fought for five years to reduce the noise from a private shooting range. "It can go from irritating pops to ear-shattering blasts," said one of the residents in describing the noise.¹⁴⁰ Their efforts have been frustrated in large part by a special interest "range-protection law" rammed through the state legislature by the NRA. (Range protection laws are discussed in more detail below.)

- ! Homeowners near Des Moines, Iowa, were startled three years ago when Polk County allowed a new shooting range to open across the street from their residential neighborhood. The noise was so bad,

complained one resident, that he couldn't carry on a conversation, watch television, or sleep. Efforts to shut down the range slowed to a crawl in the county zoning commission.¹⁴¹

- ! A Pennsylvania court allowed a township and some of its residents to sue the Pennsylvania Game Commission last year to block a shooting range on the grounds that the commission violated its own procedures and a commissioner misled both the commission and individual taxpayers about details of the range, including supposed lack of opposition and no cost to the state.¹⁴²
- ! Residents of Land O'Lakes, Florida, took it on the chin when they missed a court filing deadline to appeal dismissal of a law suit against Pasco County commissioners.¹⁴³ Reversing an earlier vote, the county commission ruled in favor of a shooting range backed by powerful investors, including retired Army General Norman Schwarzkopf and NRA top lobbyist James Baker, amid allegations that one commissioner had "sold his vote for future campaign contributions."¹⁴⁴
- ! Residents of a Fort Worth neighborhood struggled for two years before they were apparently able to end operation of a nine-range gun club. Their complaints included noise, lead contamination, stray bullets, and accumulation of trash and debris.¹⁴⁵

These few representative cases merely scratch the surface of scores of other instances in which ordinary people have found themselves locked in frustrating struggles with shooting ranges and their political and industry friends.¹⁴⁶

"Range Protection"—The NRA Gag Laws

Lawsuits are one avenue that the general public has traditionally been forced to use to keep shooting ranges under control. The courts have often held shooting ranges to high standards, according to Anne Kimball, an attorney for the gun industry. She stated:

Because of the nature of the activity and the use of firearms at shooting ranges, courts have generally looked at shooting ranges somewhat differently than they have looked at bowling alleys, driving ranges, and other recreational facilities....

A number of courts have held shooters and operators of shooting ranges

to a higher degree of care than the owners and operators of other establishments....Some courts have held firearms users to the highest degree of care.¹⁴⁷

Lawsuits and other legal remedies against shooting ranges have usually been pursued by neighbors, neighborhood associations, or local governments, particularly zoning boards, environmental action groups, and regulatory agencies. There are a number of theories on which lawsuits against shooting ranges might be based. For example, if range activity has caused actual injury or death, various forms of tort action might be pursued to seek monetary compensation. If the shooting range is operating or proposes to operate in an area not zoned for such activity, zoning violations can form the basis of a lawsuit or regulatory proceeding. Poor control of hazardous materials is a basis for litigation under environmental laws.

But absent torts, zoning violations, or environmental violations, neighbors, associations, and local governments have traditionally relied on "nuisance" theories and noise control laws to abate shooting-range activity.

Nuisance lawsuits are based on the general premise, according to the NRA's general counsel, that "no person is absolutely free to perform acts that others find offensive or that interfere with others' rights to safety and the quiet enjoyment of their own property."¹⁴⁸ These lawsuits usually seek an injunction, either closing the range or forcing it to change its operations so as to lessen its obnoxious effects (e.g., stopping night shooting). State or local laws and regulations also often set noise limits, so that government officials can take regulatory or legal action against ranges that violate such limits.¹⁴⁹

Nuisance law suits based on noise and noise abatement proceedings represent a serious obstacle to the gun industry's range expansion strategy. If neighbors whose tranquility and property values will be dramatically reduced by a shooting range can stop it from opening or expanding by appealing to the courts, the gun industry's national strategy will be seriously impeded, no matter how much of a federal tax subsidy it receives.

Well aware of this, the NRA devised and has quietly implemented a plan to frustrate the will of the general public. The NRA's ploy has been to hide shooting ranges from judicial scrutiny behind the skirts of state "range-protection" laws. These laws effectively bully ordinary people into submission by denying them access to the courts for relief from the most obnoxious features of shooting ranges.

History and effect of the "range-protection" laws. Range-protection statutes vary in detail but most are "very broad" and "protect shooting ranges from civil action

and criminal prosecution in matters relating to noise or 'noise pollution' resulting from operations of the range."¹⁵⁰

The solicitous nature of these laws toward shooting ranges is neither an accident nor a response to broad popular will. From the very first "range-protection" law to the most recent, they have been a creation of the NRA, so quietly introduced and slickly passed through state legislatures that the public has by and large been unaware of their passage and of their devastating effect on neighborhoods exposed to shooting ranges.

The first range-protection law, according to Robert N. Pemberton, Sr., administrator of the NRA's range conference program, was herded to passage in New Hampshire by Doris Reilly, "a New Hampshire legislator and wife of former NRA president Dick Reilly."¹⁵¹

Delaware's experience is an interesting and illuminating example of the NRA's strong-arm tactics. The director of Delaware's Division of Fish and Wildlife presented a case study at the first shooting range symposium in 1990, describing (under the title "Maintaining Good Neighbor Relations") how the state's "premier" shooting facility worked out noise problems with its neighbors under existing laws.¹⁵² Nevertheless, not content with an arrangement that clearly worked, the NRA later rammed a range protection law through the Delaware state legislature.

In short, the NRA, the gun industry in general, and the range industry in particular continue to use special-interest muscle to inflict noise, pollution, and public health harm on the general public so that a dwindling minority of range users can enjoy their destructive "shooting sports."

Section Four: Recommendations

The vast majority of Americans who do not own guns and have no interest in subsidizing the gun industry can do a number of things about the shooting-range industry and its depredations.

Local Activism

There are several actions Americans can undertake at the local level to combat the serious hazards, especially to children, that shooting ranges and ammunition reloading pose. These include:

- ! **All children who have any direct or indirect exposure to a shooting range or to reloading should immediately have their blood lead levels tested.** There is no truly "safe" level of exposure to lead. Any child who has recently shot at a range, or otherwise been present at a shooting range, needs to be tested. Likewise, any child who has participated in, or had any exposure to, ammunition reloading should be tested. Furthermore, any child with indirect exposure through a parent, sibling, etc. who frequents shooting ranges or engages in reloading should be tested.

- ! **No children should be allowed at shooting ranges, nor should they participate in or be exposed to ammunition reloading, since there is no "safe" level of lead exposure for children.** Minimum age standards of 18 should be imposed at all shooting ranges and no parent should allow children access to ammunition reloading equipment.

- ! **Conduct local "audits" of shooting ranges to check lead levels at ranges and ensure compliance with all applicable laws and regulations, including zoning, noise, environmental, as well as health and safety.** One of the most effective things local activists can do is to form coalitions with health and environmental groups to challenge shooting-range compliance with all applicable laws and regulations and test ranges for lead. Applicable standards include not only zoning and noise ordinances, but state, local, and federal health and environmental-protection laws and regulations. (One of the best sources of information about this potential is material published by the NRA and the NSSF relating to shooting

ranges.) In many cases, citizens will find that they can themselves bring lawsuits directly against shooting ranges that are arguably not in compliance with environmental laws. In others, they can urge government officials to take appropriate action.

Federal Actions

Additional action can be taken at the federal level, primarily through legislation, but also through regulation.

- I **Give first priority for Pittman-Robertson' funds to cleaning up and repairing lead damage to public lands—such as national parks—caused by "slob shooters" and others in the shooting sports.** New federal legislation earmarks at least \$7.5 million each fiscal year for hunter education and "the enhancement of construction or development of firearm shooting ranges...and the updating of safety features of firearm shooting ranges...." As this report documents, serious resources need to be devoted to cleaning up the lead pollution generated by shooting ranges. Pittman-Robertson funds should first be devoted to this task. Resources should also be dedicated to repairing the environmental damage inflicted by "slob shooters."

- I **Redirect a portion of Pittman-Robertson funds from the sale of handguns and handgun ammunition to paying the cost of handgun lethality and injury.** Firearms cause tens of thousands of deaths and injuries every

All of the revenue generated by the excise taxes on pistols, revolvers, long guns (rifles and shotguns) and ammunition was deposited in the general treasury until 1937 when the Pittman-Robertson "Federal Aid in Wildlife Restoration Act" (Pittman-Robertson or Wildlife Restoration Act) was passed. The stated purpose of the legislation was to rectify dwindling wildlife resources. The bill set aside funds generated by the excise tax on long guns and ammunition to be allocated to the states for use in wildlife conservation projects. The bill did not earmark the revenue collected on pistols and revolvers which continued to flow into the general treasury until the Act was revised in 1970. The legislation was amended so that the tax on pistols and revolvers was diverted from the general fund of the Treasury to the Federal Aid in Wildlife Restoration Fund, with states having the option of using these funds for carrying out hunter safety programs or regular wildlife restoration programs. Organizations supporting the 1970 legislation included the National Shooting Sports Foundation, the National Rifle Association, and the National Sporting Goods Association. Despite protestations from the Interior and Treasury departments, the tax revenue from handguns was earmarked exclusively for hunter safety and wildlife conservation programs. This has remained the status quo for 30 years.

year, at a staggering cost to our public health system. In 1998 alone, 30,708 Americans died by gunfire. Since 1960, more than a million Americans have died in firearm suicides, homicides, and unintentional shootings. Nearly three times that number are treated in emergency rooms each year for nonfatal injuries. Most of this carnage is caused by handguns. The nation's health care system should have a superior claim on funds derived from the sale of handguns and ammunition. This money should be restricted to funding trauma centers, for example, rather than shooting ranges.

- ! **Forbid use of federal dollars for any range that permits use of assault weapons, high-capacity magazines, or machine guns.** The national policy against assault weapons, high-capacity magazines, and machine guns is clear and already law. No shooting range subsidized under Pittman-Robertson should allow the use of such banned weapons. Any range that does should forfeit federal tax dollars.
- ! **Investigate the use of federal government assets (including military resources) to support the gun-industry range strategy.** Congress and the General Accounting Office should investigate the extent to which federal agencies and military appendages are inappropriately expending taxpayer resources to support the gun industry's range strategy.
- ! **Investigate the propriety and administration of Pittman-Robertson grants for the National Shooting Range Symposiums.** This report raises serious questions, as detailed in Appendix A, about several aspects of the Pittman-Robertson grants for the National Shooting Range Symposiums. The General Accounting Office should be asked to investigate and report on these questions.

Other Policy Ramifications

In addition to the environmental hazards and health problems associated with shooting ranges, other concerns regarding the utility of ranges should be addressed. For example:

- ! **The serious lead hazard associated with shooting ranges calls into question the wisdom of encouraging or requiring firearm safety training as a mechanism to reduce firearm-related violence.** Studies indicate that firearm safety training has little or no effect in making gun owners store

their weapons in a safer manner. In fact, one of the leading studies indicates that safety training actually encourages gun owners to store their firearms unlocked and loaded for ready access. Taking into account the clear hazard posed to human health by exposure to lead at shooting ranges, any possible benefits of firearm safety training are outweighed by the risk of lead poisoning.

- ! **The significant health and environmental hazards associated with shooting ranges demonstrate the folly of supporting range development with public funds.** States and localities should consider moratoriums on the construction of new ranges.

Appendix A: Financing the Strategy

A Tax-Funded Coordinating Mechanism

Having developed its long-range survival strategy of building more shooting ranges to attract new shooters, the gun industry faced a threshold problem: How to pay for it?

Jody L. Williams, a member of the Utah Wildlife Board, told a national shooting range symposium in 1993 that "budgetary and political realities make development of new ranges today much more difficult."¹⁵³ Since the gun industry either could not, or would not, put up the money itself to build more ranges, it needed financing from somewhere else. To overcome what Williams described as a "budgetary crisis" and subsidize its strategy, the gun industry turned to federal and state tax revenues and the use of other public resources.

Through the NSSF, the NRA, and a variety of compliant organizations like the International Association of Fish and Wildlife Agencies, the firearms industry is using federal tax dollars and other public resources both to (1) coordinate and promote the range-building strategy in general and (2) directly fund the building and operation of shooting ranges. Tax dollars the industry uses for these purposes include Pittman-Robertson federal excise tax receipts and other funds from the federal government, state recreation funds and licensing fees, and various forms of direct and indirect material and logistical support from government agencies at all levels.

Added together, these government programs amount to billions of dollars of federal tax subsidies supporting the gun industry's desperate strategy to stay alive.

Coordinating and Promoting the Gun Industry's Strategy— "National Shooting Range Symposiums"

Since at least 1990, federal tax dollars have underwritten the creation and operation of a centralized command and control structure through which the industry has coordinated and promoted its shooting range strategy. These tax-funded activities include encouraging political action to overcome citizen resistance to new ranges and seeking money to build them.

The heart of this gun industry structure is a series of "national shooting range symposiums." Held every three years since 1990, these symposiums have been paid

for largely with federal tax dollars funneled through the U.S. Department of Interior's Fish & Wildlife Service. The Violence Policy Center's investigation of these symposiums reveals an unusual degree of self-dealing, apparent conflict of interest, and industry-hand-in-government-pocket operation.

Grant History Raises Troubling Questions

The Violence Policy Center traced the genesis and growth of this federally funded mechanism for implementing the industry's shooting range strategy primarily through documents obtained through the Freedom of Information Act. The VPC's original interest was to review the record of the discussion of substantive issues regarding firing ranges at the symposiums. But examination of the records documenting the series of federal grants given to fund the symposiums raised troubling questions about conflict of interest, self-dealing, and proper disposition of surplus funds generated through the symposiums.

The process of self-dealing. The first issue these documents raise is a pattern of self-dealing among a handful of gun industry-related organizations.

The genesis of the symposium idea can first be traced to a discussion in 1988 among the members of a group of organizations calling itself the Hunter Education Council.¹⁵⁴

Key members of the Hunter Education Council (the Council) were:

- ! the National Rifle Association (NRA), the nation's pre-eminent pro-gun activist organization;
- ! the National Shooting Sports Foundation (NSSF), the gun industry's national trade association;
- ! the International Association of Fish and Wildlife Agencies, a national combine of the hunting and fishing industry and state wildlife agencies; and,
- ! several federal agencies, including most significantly the U.S. Fish & Wildlife Service.¹⁵⁵

The self-serving actions that these Council members subsequently took demonstrate how the gun industry and government at every level are thoroughly interlocked.

The Council agreed that a national symposium on shooting ranges would be "beneficial" to those "interested in shooting sports facilities," and the International

Association of Fish and Wildlife Agencies (the International Association) volunteered to "coordinate the planning of a National Shooting Range Symposium."¹⁵⁶

The International Association convened a January 1989 summit meeting on shooting ranges in Washington, DC. This summit was attended by representatives of the International Association, the National Rifle Association, the U.S. Fish & Wildlife Service, the Wildlife Management Institute, and the Hunter Education Association. The agenda of that meeting included "how to further expand shooting ranges to maximize the use of available federal funds."¹⁵⁷ The outcome of the meeting included an agreement to "develop alternative ways to hold meetings to focus attention on the development and use of shooting ranges."¹⁵⁸

The NRA was working on a parallel track. The agenda for a January 13, 1990, meeting at NRA headquarters of the organization's Hunting and Wildlife Conservation Committee—transmitted by memo dated December 21, 1989—included a "range symposium update" by NRA staff.¹⁵⁹

The International Association did not have to look far to "develop ways to hold meetings." The U.S. Fish & Wildlife Service, a member of the Council that originated the idea, *also just happened to administer a multi-million dollar pot of federal tax dollars*. Although it is not clear exactly when application was made, the International Association applied to *fellow Council member* U.S. Fish & Wildlife Service for a federal grant to fund the first national shooting range symposium.

Not surprisingly—given the evidence of the cozy development of the idea—the first grant awarding federal tax dollars was signed on June 26, 1990. Thus the loop of self-dealing among the members of the Council was closed.

Although the International Association fronted as sponsor for the symposium, the gun industry and the NRA were operating behind the scenes: the NSSF (the gun industry trade group) provided a "bridge loan" of \$15,000, which was repaid to it after the federal grant was awarded, and a donation of \$10,000. The NRA also donated \$10,000. The federal government put up \$44,813.66 in tax dollars.¹⁶⁰

Two other symposiums have been held since, in 1993 and 1996. Federal tax dollars have paid for about 75 percent of the costs of the meetings.¹⁶¹ The costs have also dramatically escalated: the symposium's organizers were awarded a grant of \$105,000 for the 1993 symposium¹⁶² and \$174,580 for the 1996 symposium.¹⁶³

Incredibly, the Fish & Wildlife Service even approved a \$24,500 increase to the original \$150,000 1996 symposium contract, based in part on this fact: "With budgets in public and private sectors being slashed, the amount of steering committee and speaker travel costs that the symposium will cover have increased sharply." The

increase also helped pay for a "Shoot 'N Feed" banquet and entertainment for delegates at a Florida shooting range.¹⁶⁴

In sum, gun industry leaders (1) saw the need for an ongoing series of meetings to coordinate and implement their shooting-range strategy, (2) met with federal government officials in conveniently interlocked forums, (3) came up with the idea of tax-funded symposiums to meet that need, and (4) got the U.S. Fish & Wildlife Service to pay for the symposiums with federal tax dollars.

Some troubling administrative questions. An obvious question arises whether a certain conflict of interest does not reside in a federal agency that both generates and funds programs to benefit a given industry.

This potential conflict is crystallized in a question noted by Fish & Wildlife Service official Eugene Stephenson on an undated "Project Review Summary" form obtained under the FOIA. Scoring the proposal for the 1993 symposium on the form, Stephenson noted: "Does not meet criteria—costs could be absorbed in registration fee."¹⁶⁵ The question is a good one—why shouldn't the industry pay its own way through registration fees? Although, in fact, some fees apparently were charged at the symposiums, the federal government nevertheless ended up footing most of the bill. This is in spite of the fact that an International Association official reported that "attendance may burst at the seams at 400 people" at the 1996 symposium.¹⁶⁶

Other troubling questions lurk in the details of this tax-funded gun industry subsidy program.

Proper disposition of surpluses or profits. One such question is how the federal government and the symposium's sponsors should deal with "surpluses," which one might call *profits*, that the symposiums have generated. Should these surpluses remain in the hands of the grantees, or should they (or a portion of them) be returned to the taxpayers?

For example, as noted above, the organizers of the 1990 symposium received a federal grant totaling almost \$45,000. Yet the organizers netted a surplus of \$28,697.37 after all receipts and expenses were accounted for.¹⁶⁷ It is not clear how that surplus was disposed of. However, the 1993 symposium "carried over" \$10,500, which was subsequently counted as income for the 1996 symposium.¹⁶⁸ Since the 1996 budget also showed only \$10,000 in contributions from "sponsors," it appears that the "carryovers" have in effect been used in lieu of the "seed money" and "bridge loan" that the industry put up for the first symposium.

It is not clear whether a surplus was "carried over" from the 1996 symposium to help fund another planned symposium.

Proper use of "administrative" funds. Although the federal tax-funded grant for each of the three symposiums has been approved individually, it was clear that the 1989 summit envisioned a *series* of such meetings. In fact, industry leaders describe the symposiums as being on a regular three-year schedule, and appear to regard the federal funding approval process as a mere pro forma exercise.¹⁶⁹ For example, in a letter to the Fish & Wildlife Service attaching a final invoice for federal tax dollars for the 1996 summit, Don McLaughlin, international resource director for the International Association of Fish and Wildlife Agencies, noted a planned meeting to "make sure the lessons learned from this experience are well documented so that they will be of use for the next symposium."¹⁷⁰

This raises a question about the propriety of the federal grants, which are from "Federal Aid Administrative Funds." A memorandum in Fish & Wildlife Service files from the acting director of its "Region 5" notes with respect to another proposal: "Administrative funds should be considered 'seed' money to get projects started, not fund them indefinitely."¹⁷¹ It is interesting that the same source questions the "appropriateness of inviting staff from other Service programs to be involved in eligibility determination" as it is a "departure from policy and creates the potential for conflict of interest."¹⁷²

These symposiums are invaluable tools for implementing the industry's range-building strategy. They bring range operators, representatives of the gun industry, state and federal government, hunting and wildlife groups, and the National Rifle Association together to share strategies and "brainstorm" plans to build more ranges and defeat opponents of those ranges.

The notion of "sides" in a global conflict. The symposium proceedings also reveal an "us" against "them" tone. For example, John Powell, the chairman of the Missouri Conservation Commission, sounded a tone of decidedly global conflict over shooting ranges and all that they represent in his welcoming address at the first symposium. Powell drew the following contrast between the two notional "sides" he saw contending over the question of shooting ranges:

Many are well aware of the international movement that is surging to stop cutting trees, restrict and impede our agricultural industry, abolish sport hunting, giving animals the same rights as humans, and, of course, gun control. This will directly affect those of you wanting to use

shooting ranges. We are all in the same boat and indeed have a common enemy.

By and large, the same people or people with the same thinking are our adversaries. A prototype [sic] of their leadership would be a person who is well-educated and, in some cases over-educated, bold, fanatic, radical, very vocal, with no common sense and who won't compromise on anything. They are out of touch with reality; they are nonworldly [sic]; and their causes tend to become a religion with them,...

Who's on our side? Well, we have those in the timber industry, the farmers, sportsmen, a good portion of our industry and businesses and their respective organizations. I would like to believe we have some of the sound thinkers in our society, but we certainly do not have a united front.¹⁷³

Political issues. Some might also question whether it is appropriate for federal tax money to underwrite forums where speakers urge those who attend: "Get involved in politics," in the words of Robert N. Pemberton, Sr., administrator of the NRA's range conference program (speaking at the second symposium).¹⁷⁴

"The ultimate control of shooting range activities will be political," Gary L. Anderson, the NRA's executive director for general operations, told the 1990 symposium in a talk titled "The Socio-Political Climate for Ranges."¹⁷⁵ Anderson told participants that "political decision-makers will decide whether or which guns can be owned for use on ranges, whether or where a range can be built and how it can be operated."

He also spoke directly in favor of political lobbying at this tax-funded meeting:

The implication of the gun control debate for ranges is that shooting clubs must have a strategic plan to develop sufficient political influence to enhance their chances to win favorable governmental decisions when that debate affects their range and shooting activities.¹⁷⁶

Conley L. Moffett, a federal bureaucrat in the U.S. Fish & Wildlife Service, did a little lobbying of his own, explicitly criticizing proposed legislation pending before Congress during the second symposium in 1993, describing it as a "raid" on wildlife funds that his agency administers. That proposal (S. 868 and H.R. 2276) would have redirected Pittman-Robertson funds to hospitals and trauma units to help pay for the medical costs of treating gunshot victims. "No good will be accomplished by victimizing one of the cornerstones of wildlife conservation in this country—the P-R

funds," Moffett complained, attending and speaking on federal taxpayers' time and dollars.¹⁷⁷

In summary, the national shooting range symposiums are nothing less than a command and control mechanism for the gun industry's shooting range survival strategy underwritten by federal tax dollars.

Endnotes

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5. See, e.g., Deborah W. Denno, "A Response To 'Childhood Lead Poisoning As A Criminal Defense: An Examination of the Research,'" *Mealey's Litigation Reports*, August 28, 1998; Andrew Rubin, "Researcher says poisoning contributed to shooting spree," *UPI*, 1 August 1986.
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9. Stephanie Raphael, "Get the lead out!" *Business First-Louisville*, April 11, 1994, p. 37.
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11. See generally, Deborah W. Denno, *Biology and Violence: From Birth to Adulthood* (New York: Cambridge University Press, 1990); Jane E. Brody, "Aggressiveness and Delinquency In Boys Is Linked to Lead in Bones," *New York Times*, 7 February 1996, p. C9.
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Clean Water Act

From Wikipedia, the free encyclopedia

The **Clean Water Act** is the primary federal law in the United States governing water pollution. [1] Commonly abbreviated as the **CWA**, the act established the goals of eliminating releases to water of high amounts of toxic substances, eliminating additional water pollution by 1985, and ensuring that surface waters would meet standards necessary for human sports and recreation by 1983.

The principal body of law currently in effect is based on the **Federal**
http://en.wikipedia.org/wiki/Clean_Water_Act

Clean Water Act



Full title	Federal Water Pollution Control Amendments of 1972
Acronym / colloquial name	CWA / Clean Water Act
Enacted by the	92nd United States Congress
Effective	October 18, 1972
Public Law Stat.	Citations P.L. 92-500 86 Stat. 816 (1972)
Act(s) amended	Codification Federal Water Pollution Control Act
Title(s) amended	33 (Navigable Waters)
U.S.C. sections created	33 U.S.C. § 1251 <i>et seq.</i>

Legislative history

- **Introduced in the Senate as S.2770** by Edmund Muskie on October 28, 1971
- **Committee consideration by:** Senate Public Works Committee
- **Passed the Senate** on November 2, 1971 ()
- **Passed the House** on March 29, 1972 ()
- **Reported by the joint conference committee** on October 4, 1972; **agreed to by the House** on October 4, 1972 () **and by the Senate** on October 4, 1972 ()
- **Signed into law by President Richard Nixon** (Congressional override of Presidential Veto) **on October 18, 1972**

Major amendments

Clean Water Act of 1977; Water Quality Act of 1987

3/23/2010

Attachment B

Water Pollution Control Amendments of 1972, which significantly expanded and strengthened earlier legislation.^[2] Major amendments were enacted in the **Clean Water Act of 1977**^[3] and the **Water Quality Act of 1987**.^[4]

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 - 9.3 Research programs

Waters Protected Under the CWA

All waters with a "significant nexus" to "navigable waters" are covered under the CWA; however, the phrase "significant nexus" remains open to judicial interpretation and considerable controversy. (*See Case law.*) The 1972 statute frequently uses the term "navigable waters," but also defines the term as "waters of the United States, including the territorial seas."^[5] Some regulations interpreting the 1972 law have included water features such as intermittent streams, playa lakes, prairie potholes, sloughs and wetlands as "waters of the United States" ^[6]

In 2006 the Supreme Court clarified that the term "waters of the United States":

...includes only those relatively permanent, standing or continuously flowing bodies of water "forming geographic features" that are described in ordinary parlance as "streams[,] ... oceans, rivers, [and] lakes." ^[7]

Pollution control strategy in the CWA

Point sources

The 1972 act introduced a permit system for regulating point sources of pollution. Point sources include:

- industrial facilities (including manufacturing, mining, oil and gas extraction, and service industries)
- municipal governments and other government facilities (such as military bases), and
- some agricultural facilities, such as animal feedlots.

Point sources may not discharge pollutants to surface waters without a permit from the **National Pollutant Discharge Elimination System (NPDES)**. This system is managed by the United States Environmental Protection Agency (EPA) in partnership with state environmental agencies. EPA has authorized 46 states to issue permits directly to the discharging facilities. The CWA also allows tribes to issue permits, but no tribes have been authorized by EPA. In the remaining states and territories, the permits are issued by an EPA regional office.^[8] (See Titles III and IV.)

In previous legislation, Congress had authorized states to develop **water quality standards**, which would limit discharges from facilities based on the characteristics of individual water bodies. However, these standards were only to be developed for interstate waters, and the science to support this process (i.e. data, methodology) was in the early stages of development. This system was not effective and there was no permit system in place to enforce the requirements. In the 1972 CWA Congress added the permit system and a requirement for **technology-based effluent limitations**.^[9]

Technology-based standards

The 1972 CWA created a new requirement for technology-based standards for point source discharges. EPA develops these standards for categories of dischargers, based on the performance of pollution control technologies without regard to the conditions of a particular receiving water body. The intent of Congress was to create a "level playing field" by establishing a basic national discharge standard for all facilities within a category, using a "Best Available Technology." The standard becomes the minimum regulatory requirement in a permit. If the national standard is not sufficiently protective at a particular location, then water quality standards may be employed.^[10]

Water quality standards

The 1972 act authorized continued use of the water quality-based approach, but in coordination with the technology-based standards. After application of technology-based standards to a permit, if water quality is still impaired for the particular water body, then the permit agency (state or EPA) may add water quality-based limitations to that permit. The additional limitations are to be more stringent than the technology-based limitations and would require the permittee to install additional controls.

Nonpoint sources

Congress exempted some water pollution sources from the point source definition in the 1972 CWA, and was unclear on the status of some other sources. These sources were therefore considered to be **nonpoint sources** that were not subject to the permit program.

Agricultural stormwater discharges and irrigation return flows were specifically exempted from permit requirements.^[11] Congress, however, provided support for research, technical and financial assistance programs at the U.S. Department of Agriculture to improve runoff management practices on farms. *See* Natural Resources Conservation Service.

Stormwater runoff from industrial sources, municipal storm drains, and other sources were not specifically addressed in the 1972 law. EPA declined to include urban runoff and industrial stormwater discharges in the NPDES program and consequently was sued by an environmental group. The courts ruled that stormwater discharges must be covered by the permit program.^[12]

A growing body of water research during the late 1970s and 1980's indicated that stormwater runoff was a significant cause of water quality impairment in many parts of the U.S. In the early 1980s EPA conducted the Nationwide Urban Runoff Program (NURP) to document the extent of the urban stormwater problem. The agency began to develop regulations for stormwater permit coverage, but encountered resistance from industry and municipalities, and there were additional rounds of litigation. This litigation was pending when Congress considered further amendments to the Act in 1986.

In the **Water Quality Act of 1987** (1987 WQA) Congress responded to the

stormwater problem by requiring that industrial stormwater dischargers and municipal separate storm sewer systems (often called "MS4") obtain NPDES permits, by specific deadlines. The permit exemption for agricultural discharges continued, but Congress created a nonpoint source pollution demonstration grant program at EPA to expand the research and development of nonpoint controls and management practices.

To combat nonpoint source pollution, EPA initiated numerous programs and grants to aid the public in improving their local water quality. These programs are described at an EPA website, Watershed Central.

Financing of pollution controls

Congress created a major public works financing program for municipal sewage treatment in the 1972 CWA. A system of grants for construction of municipal sewage treatment plants was authorized and funded in Title II. In the initial program the federal portion of each grant was up to 75 percent of a facility's capital cost, with the remainder financed by the state. In subsequent amendments Congress reduced the federal proportion of the grants and in the 1987 WQA transitioned to a revolving loan program in Title VI. Industrial and other private facilities are required to finance their own treatment improvements on the "polluter pays" principle.

Major statutory provisions

The Act has six titles.

Title I - Research and Related Programs

Title I includes a *Declaration of Goals and Policy*^[13] and various grant authorizations for research programs and pollution control programs. Some of the programs authorized by the 1972 law are ongoing (e.g. section 104 research programs, section 106 pollution control programs, section 117 Chesapeake Bay Program) while other programs no longer receive funds from Congress and have been discontinued.

Title II - Grants for Construction of Treatment Works

To assist municipalities in creating or expanding sewage treatment plants, also known as **publicly owned treatment works (POTW)**, Title II established a system of construction grants. This was replaced by the Clean Water State Revolving Fund in the 1987 WQA. See Title VI.

Title III - Standards and enforcement

Discharge permits required

Section 301 of the Act prohibits discharges to waters of the U.S. except with a permit.^[14] (See Title IV for discussion of permit programs.)

Technology-Based Standards Program

Under the 1972 act EPA began to issue technology-based standards for municipal and industrial sources.

- Municipal sewage treatment plants (POTW) are required to meet **secondary treatment standards.**^[15]
- **Effluent guidelines** (for existing sources) and **New Source Performance Standards** are issued for categories of industrial facilities discharging directly to surface waters.^[16]
- **Categorical Pretreatment Standards** are issued to industrial users (also called "indirect dischargers") contributing wastes to POTW.^[17] These standards are developed in conjunction with the effluent guidelines program.

To date, the effluent guidelines and categorical pretreatment standards regulations have been published for 56 categories and apply to between 35,000 and 45,000 facilities that discharge directly to the nation's waters. These regulations are responsible for preventing the discharge of almost 700 billion pounds of pollutants each year.^[18] EPA has updated some categories since their initial promulgation and has added new categories.

The secondary treatment standards for POTWs and the effluent guidelines are implemented through NPDES permits. (See Title IV.) The categorical

pretreatment standards are typically implemented by POTWs through permits that they issue to their industrial users.^[19]

Water Quality Standards Program

Water quality standards (WQS) are risk-based (also called hazard-based) requirements which set site-specific allowable pollutant levels for individual water bodies, such as rivers, lakes, streams and wetlands. States set WQS by designating uses for the water body (e.g., recreation, water supply, aquatic life, agriculture) and applying **water quality criteria** (numeric pollutant concentrations and narrative requirements) to protect the designated uses. An **antidegradation policy** is also issued by each state to maintain and protect existing uses and high quality waters.^[20]

Water bodies that do not meet applicable water quality standards with technology-based controls alone are placed on the section 303(d) list of water bodies not meeting standards. Water bodies on the 303(d) list require development of a Total Maximum Daily Load (TMDL). A TMDL is a calculation of the maximum amount of a pollutant that a water body can receive and still meet WQS. The TMDL is determined after study of the specific properties of the water body and the pollutant sources that contribute to the non-compliant status. Generally, the TMDL determines load based on a Waste Load Allocation (WLA), Load Allocation (LA), and Margin of Safety (MOS) Once the TMDL assessment is completed and the maximum pollutant loading capacity defined, an implementation plan is developed that outlines the measures needed to reduce pollutant loading to the non-compliant water body, and bring it into compliance. Over 60,000 TMDLs are proposed or in development for U.S. waters in the next decade and a half.

Following the issuance of a TMDL for a water body, implementation of the requirements involves modification to NPDES permits for facilities discharging to the water body to meet the WLA allocated to the water body (see Title IV).

As of 2007, approximately half of the rivers, lakes, and bays under EPA oversight were not safe enough for fishing and swimming.^[21] The development of WQS and TMDL is a complex process, both scientifically and legally, and it is a resource-intensive process for state agencies.

National Water Quality Inventory

Section 305(b) requires EPA and the states to compile a biennial Report to Congress on the nation's water quality.^[22]

Enforcement

Under section 309, EPA can issue administrative orders against violators, and seek civil or criminal penalties when necessary.^[23]

- For a first offense of criminal negligence, the minimum fine is \$2,500, with a maximum of \$25,000 fine per day of violation. A violator may also receive up to a year in jail. On a second offense, a maximum fine of \$50,000 per day may be issued.
- For a knowing endangerment violation, i.e. placing another person in imminent danger of death or serious bodily injury, a fine may be issued up to \$250,000 and/or imprisonment up to 15 years for an individual, or up to \$1,000,000 for an organization.

States that are authorized by EPA to administer the NPDES program must have authority to enforce permit requirements under their respective state laws.

Federal facilities

Military bases, national parks and other federal facilities must comply with CWA provisions.^[24]

Thermal pollution

Section 316 requires standards for thermal pollution discharges, as well as standards for cooling water intake structures.^[25] These standards are applicable to power plants and other industrial facilities.

Nonpoint Source Management Program

The 1987 amendments created the Nonpoint Source Management Program under CWA section 319.^[26] This program provides grants to states, territories and Indian tribes to support demonstration projects, technology transfer
http://en.wikipedia.org/wiki/Clean_Water_Act

education, training, technical assistance and related activities designed to reduce nonpoint source pollution. Grant funding for the program averaged \$210 million annually for Fiscal Years 2004 through 2008.^[27]

Title IV - Permits and licenses

State certification of compliance

States are required to certify that discharges authorized by federal permits will not violate the state's water quality standards.^[28]

NPDES permits for point sources

The NPDES permit program is authorized by CWA section 402.^[29] The initial permits issued in the 1970s and early 1980s focused on POTWs and industrial wastewater—typically "process" wastewater and cooling water where applicable, and in some cases, industrial stormwater. The 1987 WQA expanded the program to cover stormwater discharges explicitly, both from municipal separate storm sewer systems (MS4) and industrial sources.^[30] The MS4 NPDES permits require regulated municipalities to use Best Management Practices to reduce pollutants to the "Maximum Extent Practicable."

Non-stormwater permits typically include numeric effluent limitations for specific pollutants. A numeric limitation quantifies the maximum pollutant load or concentration allowed in the discharge, e.g. 30 mg/L of biochemical oxygen demand. Exceeding a numeric limitation constitutes a violation of the permit, and the discharger is subject to fines as laid out in section 309. Facilities must periodically monitor their effluent (i.e. collect and analyze wastewater samples), and submit Discharge Monitoring Reports to the appropriate agency, to demonstrate compliance. Stormwater permits typically require facilities to prepare a Stormwater Pollution Prevention Plan and implement best management practices, but do not specify numeric effluent limits and may not include regular monitoring requirements. Some permits cover both stormwater and non-stormwater discharges. NPDES permits must be reissued every five years. Permit agencies (EPA, states, tribes) must provide notice to the public of pending permits and provide an opportunity for public comment.^[31]

As of 2001, over 400,000 facilities were subject to NPDES permit requirements.^[32]

Dredge and Fill Exemptions

After passage of the CWA in 1972, a controversy arose as to its application to agriculture and certain other activities. The Act was interpreted by some to place restrictions on virtually all placement of dredged materials in wetlands and other waters of the United States, raising concern that the federal government was about to place all agricultural activities under the jurisdiction of the U.S. Army Corps of Engineers (USACE). For opponents of the Act, section 404 had, as a result of this concern, become a symbol of dramatic over-regulation.^{[33]:901-903} When Congress considered the 1977 CWA Amendments, a significant issue was to assure that certain agricultural activities and other selected activities, could continue without the government's supervision—in other words, completely outside the regulatory or permit jurisdiction of any federal agency.

The 1977 amendments included a set of six section 404 exemptions. For example, totally new activities such as construction of farm roads, Sec. 1344(f)(1)(E), construction of farm or stock ponds or irrigation ditches, and minor agricultural drainage, Sec. 1344(f)(1)(A), all are exempted by Statute. Section 1344(f)(1)(C), which exempts discharge of dredged material “for the purpose of . . . the maintenance of drainage ditches.” All of these exemptions were envisioned to be self-executing, that is not technically requiring an administrative no-jurisdiction determination. One such example was the maintenance of agricultural drainage ditches.^{[33]:906} Throughout the hearing process, Congressmen of every environmental persuasion repeatedly stated that the over \$5 Billion invested in drainage facilities could be maintained without government regulation of any kind.^{[33]:906-912} Senator Edmund Muskie, for example, explained that exempt activities such as agricultural drainage would be entirely unregulated.^{[33]:949} Other exemptions were granted as well, including exemptions for normal farming activities.

Importance of No-Jurisdiction Determinations

1. ^ 33 U.S.C. § 1251 *et seq.*
2. ^ Pub.L. 92-500, October 18, 1972.
3. ^ Pub.L. 95-217, December 27, 1977.
4. ^ Pub.L. 100-4, February 4, 1987.
5. ^ CWA sec. 502 (7), 33 U.S.C. § 1362.
6. ^ *Code of Federal Regulations*, 33 CFR Part 328; 40 CFR 122.2;40 CFR 230.3(s).
7. ^ ^{a b} U.S. Supreme Court. *Rapanos v. United States*, 547 U.S. 715 (2006).
8. ^ U.S. Environmental Protection Agency (EPA). Washington, D.C. NPDES State Program Status
9. ^ Water Pollution Control Foundation (WPCF): "The Clean Water Act of 1987." Joan M. Kovalic et al. Alexandria, VA, 1987. ISBN 978-0-943244-40-2.
10. ^ EPA. "NPDES Permit Writers' Manual." Chapter 1. December 1996. Document No. EPA-833-B-96-003.
11. ^ CWA 502(14), 33 U.S.C. § 1362.
12. ^ *Natural Resources Defense Council v. Train*, 396 F.Supp. 1393 (D.D.C. 1975), *aff'd.* by *NRDC v. Costle*, 568 F.2d 1369 (D.C. Cir. 1977).
13. ^ CWA 101, 33 U.S.C. § 1251.
14. ^ CWA 301(a), 33 U.S.C. § 1311(a).
15. ^ CWA 304(d)(1), 33 U.S.C. § 1314(d)(1) and Secondary Treatment Regulation *Code of Federal Regulations*, 40 CFR Part 133
16. ^ CWA 301, 33 U.S.C. § 1311; CWA 304(b), 33 U.S.C. § 1314(b); and CWA 306, 33 U.S.C. § 1316.
17. ^ CWA 307(b), 33 U.S.C. § 1317(b); and CWA 307(c), 33 U.S.C. § 1317(c).
18. ^ EPA. *EPA Evaluation Report: Effectiveness of Effluent Guidelines Program for Reducing Pollutant Discharges Uncertain*. Report No. 2004-P-00025. August 24, 2004.
19. ^ EPA. "Introduction to the National Pretreatment Program." February 1999. Document No. EPA-833-B-98-002.
20. ^ EPA. "NPDES Permit Writers' Manual." Chapter 6. December 1996. Document No. EPA-833-B-96-003.
21. ^ National Public Radio. *Cities Battle Over River's Pollution Level*. Susan Sharon. May 17, 2007.
22. ^ CWA 305(b), 33 U.S.C. § 1315(b).
23. ^ CWA 309, 33 U.S.C. § 1319.
24. ^ CWA 313, 33 U.S.C. § 1323.
25. ^ 33 U.S.C. § 1326.
26. ^ 33 U.S.C. § 1329.
27. ^ EPA. "Clean Water Act Section 319(h) Grant Funds History." Accessed 2008-07-28.
28. ^ CWA 401, 33 U.S.C. § 1341.
29. ^ 33 U.S.C. § 1342.
30. ^ CWA 402(p), 33 U.S.C. § 1342(p).
31. ^ EPA. "NPDES Permit Writers' Manual." Chapter 3. December 1996. Document http://en.wikipedia.org/wiki/Clean_Water_Act

- No. EPA-833-B-96-003.
32. ^ EPA (2001) Protecting the Nation's Waters Through Effective NPDES Permits: A Strategic Plan; FY 2001 and Beyond . (Report). Retrieved on 2010-02-08. Document No. EPA-833-R-01-001.
 33. ^ *abcd* U.S. Congress. Senate. Committee on Public Works (1978). "A Legislative History of the Clean Water Act of 1977." Serial No. 95-14. Vol. 4. Washington, DC: U.S. Government Printing Office.
 34. ^ 33 U.S.C. § 1311, 33 U.S.C. § 1362.
 35. ^ 33 U.S.C. § 1344.
 36. ^ EPA (2004). "Wetland Regulatory Authority." Wetland Fact Sheet Series. Document No. EPA-843-F-04-001.
 37. ^ EPA. "Mid-Atlantic Mountaintop Mining." 2010-01-05.
 38. ^ CWA 405, 33 U.S.C. § 1345.
 39. ^ CWA 505, 33 U.S.C. § 1365
 40. ^ CWA 507, 33 U.S.C. § 1367.
 41. ^ CWA 601, 33 U.S.C. § 1381 *et seq.*
 42. ^ EPA. "Clean Water State Revolving Fund." Accessed 2008-01-12.
 43. ^ EPA. "Clean Water State Revolving Fund Programs: 2006 Annual Report," p. 24. March 2007. Document No. EPA-832-R-07-001.
 44. ^ Ch. 425, Sec. 9, 30 Stat. 1151. 33 U.S.C. § 401. March 3, 1899.
 45. ^ 37 Stat. 309. August 14, 1912.
 46. ^ 43 Stat. 604.
 47. ^ Pub.L. 80-845, June 30, 1948.
 48. ^ Pub.L. 89-234, October 2, 1965
 49. ^ U.S. Supreme Court. *United States v. Riverside Bayview Homes*, 474 U.S. 121 (1985).
 50. ^ 531 U.S. 159 (2001).
 51. ^ 547 U.S. 370 (2006).

External links

CWA text and analysis

- Clean Water Act - Full text with amendments through 2008-07-29. Maintained by California Water Resources Control Board.
- "Water Quality: Implementing the Clean Water Act." August 15, 2001. Congressional Research Service.
- "Clean Water Act Jurisdictional Handbook." Environmental Law Institute (2007)
- NYT Investigation: Corporations Violated Clean Water Act Over 500,000 Times in Last Five Years - video report by *Democracy Now!*

- CWA Legal Updates

EPA programs

- Clean Water State Revolving Fund
- NPDES Permit Program
- National Water Quality Inventory Report to Congress - also called the "305(b) Report."
- Nonpoint Source Management Program
- Total Maximum Daily Loads Program

Research programs

- Center for TMDL and Watershed Studies Virginia Tech
- Water Environment Research Foundation (WERF)

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TILLAMOOK COUNTY PLANNING COMMISSION

April 29, 2010 – Beginning at 7:00 pm

- I. **CALL TO ORDER:** Chair Heckeroth called the meeting to order at 7:03 pm.

- II. **ROLL CALL:** Kurt Heckeroth, Terry Jones, Kurt Mizee, Gale Ousele, Don LaFrance, Terry Jones, Trish Bush

- III. **APPROVAL OF MINUTES:** None

- IV. **OLD BUSINESS:** None

- V. **NEW BUSINESS:** **OA-09-04:** A Text Amendment hearing request to adopt “Firearms Training Facility” as a Use Permitted Conditionally in Section 3.004: Forest (F) Zone of the Tillamook County Land Use Ordinance (TCLUO). This proposal would amend TCLUO Section 3.004: Forest (F) Zone; Subsection (3): Uses Permitted Conditionally & TCLUO Section 1.030 (A): Generally Used Definitions. The applicant is the Tillamook County Shooter’s Association, c/o C. Wayne Cook, 3180 Aldercrest, Tillamook, Oregon 97141

ZC-09-01: The Tillamook Shooters Association is requesting a Zone Change, ZC-09-01, of 25.38-acres of Farm (F-1) land, out of an 84.78-acre tract, to Forest (F) zoned land. The tract of land associated with this request is designated as Tax Lots 201 & 300 in Section 2A, Township 2 South, Range 10 West and Tax Lots 1100, 1200 & 1300 in Section 1, Township 2 South, Range 10 West of the Willamette Meridian, Tillamook County, Oregon. The applicant is the Tillamook Shooters Association, c/o C. Wayne Cook, 3180 Aldercrest Road, Tillamook, Oregon 97141. The owner is the Estate of Raymond Wyss, c/o Janet C. Walker (Conservator), 10005 Hughey Lane, Tillamook, Oregon 97141

CU-09-11: To locate a firearms training facility on a 25.38-acre site proposed for the Forest Zone. The tract of land associated with this request is designated as Tax Lots 201 & 300 in Section 2A, Township 2 South, Range 10 West and Tax Lots 1100, 1200 & 1300 in Section 1, Township 2 South, Range 10 West of the Willamette Meridian, Tillamook County, Oregon. The applicant is the Tillamook Shooters Association, c/o C. Wayne Cook, 3180 Aldercrest Road, Tillamook, Oregon 97141. The owner is the Estate of Raymond Wyss, c/o Janet C. Walker (Conservator), 10005 Hughey Lane, Tillamook, Oregon 97141

Chair Heckeroth opened the hearing by talking with Staff about the application and how the applications will be heard. He continued by expressing his frustration with having all three applications presented at one hearing. He continued by stating that the Conditional Use cannot be heard until the Ordinance Amendment and Zone Change have been completed. Chair Heckeroth asked Staff to explain the reasoning behind scheduling all three applications were

scheduled to be heard at one hearing. He continued by asking for other Planning Commissioners feedback regarding this. Gerald Parker, Director of the Department of Community Development, stated that the Tillamook County Land Use Ordinance does not list Firearms Training Facility anywhere in the ordinance. He continued by explaining that the Oregon Revised Statute (ORS) 215 addresses it as a Conditional Use in the Forest Zone, but it is not listed in the Farm Zone. Mr. Parker continued by stating the first order of business should be the Ordinance Amendment to allow Firearms Training Facility anyplace in Tillamook County in the Forest Zone, as a Conditional Use, with the Zone Change and Conditional Use to follow. Mr. Parker agreed that there is some confusion around hearing all of the applications on one evening, considering that the Conditional Use is contingent upon the Ordinance Amendment and Zone Change being adopted.

Bradford Sheets, Associate Planner with the Department of Community Development, stated that the Applicant chose to have all three applications presented at the same time to generate discussion and present the full scope of the project.

Chair Heckeroth asked about the timeline for the applications. Mr. Sheets stated there is no time frame for the Ordinance Amendment or the Zone Change. However, the Conditional Use has about one and a half months left before it reaches the end of the 180 day timeline. Mr. Parker stated that the Applicant could sign a waiver on the 180 day timeline.

Commissioners Heckeroth and Ousele commented on all three applications being intertwined with one another and Chair Heckeroth feels that the Ordinance Amendment is tainted with the other two applications. After discussion amongst the Commissioners, it was decided that the Ordinance Amendment and Zone Change to be heard first with a decision about how to handle the Conditional Use to be determined later in the hearing.

- a. **OA-09-04:** Bradford Sheets, Associate Planner, gave the staff report. Mr. Sheets stated this is a Text Amendment request to adopt "Firearms Training Facility" as a Use Permitted Conditionally in Section 3.004: Forest (F) zone of the Tillamook County Land Use Ordinance (TCLUO). He further stated that anyone may initiate proceedings to amend the text of this ordinance. Mr. Sheets continued by explaining the Text Amendment Procedures and stated that the applicant has successfully fulfilled the requirements of TCLUO Section 9.030: These Requirements include:
 1. The proponent of an Ordinance Amendment shall arrange a pre-application conference with the Department. Mr. Sheets stated that the applicant had meetings with the Department and communicated with a representative from the Oregon Department of Land Conservation and Development (DLCD). He further stated the Applicant took the information gained from these meetings and modified their application accordingly.
 2. An Application for an Ordinance Amendment shall be submitted to the Department at least 45 days prior to the Commission hearing for its consideration. Such application shall be accompanied both by fees, as set by order of the Board, and by the proponent's justification for the Amendment.

Mr. Sheets stated the Applicant submitted application in November 2009. He explained Staff sent the Post Acknowledgement Plan Amendment (PAPA) notice to DLCD on January 29, 2010, at least 45 days prior to the first evidentiary hearing. Mr. Sheets further stated Staff initially notified the surrounding property owners, State Agencies, and the Tillamook Headlight Herald on March 3, 2010 of the hearings associated with this application and then re-noticed the application on April 7, 2010.

3. Notice of a proposed Amendment shall be published according to the provisions of Section 10.060 (3). Mr. Sheets explained the application was noticed in the Headlight Herald on March 3, 2010, and re-noticed in the Headlight Herald on April 7, 2010, more than 10 calendar days prior to the date of the first hearing.
4. The Department shall prepare an analysis of the proposed Amendment, addressing such issues as the intent of the provisions being amended; the affect on land use patterns in the County; the affect on the productivity of resource lands in the County; administration and enforcement; and the benefits or costs to Departmental resources resulting from the proposed text. Mr. Sheets defined Firearms Training Facility, under Oregon Revised Statute 197.770, as 1) Any firearms training facility in existence on September 9, 1995, shall be allowed to continue operating until such time as the facility is no longer used as a firearms training facility. 2) For purposes of the section a Firearms Training Facility is an indoor or outdoor facility that provides training courses and issues certifications required: a) for Law Enforcement personnel; b) By the State Department of Fish and Wildlife; or c) By nationally recognized programs that promote shooting matches, target shooting and safety. Mr. Sheets stated this is a narrow parameter of what the firearms training facility can be. He further stated that the amendment cannot deviate from the ORS 197.770's definition.

Mr. Sheets read from the TCLUO Section 3.004: Forest (F) Zone which states that in a case where the Land Use Ordinance and the State Law are in conflict, the stricter of the two takes precedence. He went on to explain how Forest Zone is defined in the TCLUO. Mr. Sheets stated the Firearms Training Facility is listed in Oregon Administrative Rules (OAR) 660-006-0025 (4), (n) and finds that under prescriptive criteria a Firearms Training Facility could be developed on lands zoned Forest (F), per State Law.

Mr. Sheets stated that State and local law enforcement agencies supported this application as well as Oregon Fish and Wildlife in the Forest zone. Not much citizen commentary against the Firearms training facility. Comments spoke to setbacks and buffering. Currently, Front/Rear setbacks are 30 foot on all sides with no height restriction in this zone.

Mr. Sheets concluded by stating that based on the information, including applicant submittal, citizen comment, and current laws, Staff recommends approval of OA-09-04.

Questions for Staff: Chair Heckerth asked Staff if the Applicant is able to present in this type of hearing. Mr. Sheets stated that the Applicant would be presenting to the Planning Commission.

Commissioner Jones asked Staff what types of buildings would be permitted in the Forest Zone. Mr. Sheets stated that any structure, as defined by TCLUO section 3.004 and 1.030, would have to be 30 feet off any property line; this would include any indoor areas or outdoor covered areas. Primary and secondary fire breaks would need to be in place to mitigate a crown fire. Mr. Sheets explained firebreaks and how slope impacts the circumference of the fire break. He continued by explaining this is the reason behind the 30 foot setbacks as it implements the initial Primary break.

Commissioner Jones asked if a template test would be necessary. Mr. Sheets stated that this is a different process than a Single Family Dwelling permit. He further stated that any applicant who wished to site a firearms training facility on a piece of property would have to go through the Conditional Use process. The Conditional Use process outlines the feasibility and topography of siting a structure in the Forest zone. Mr. Sheets referenced OAR 660-006-0035 for the siting standards for structures and dwellings in the Forest zone as well as access requirements for emergency vehicles.

Commissioner Jones expressed concern about the number of structures that would be allowed to be placed in the Forest zone under the Firearms Training Facility umbrella. Mr. Sheets stated that the applicant would have to abide by the standards and conditions set through the Conditional Use process.

Commissioner La France asked if State Statute allowed for Firearms Training Facility in any zone, other than the Forest zone. Mr. Sheets stated that his focus was mainly on Resource Zones, however, the options are 'open', as Firearms Training Facility is not listed anywhere in the TCLUO. Mr. Sheets continued by stating that the Oregon Revised Statute gives a very narrow definition and it would take a unique applicant that meets the criteria who could go through the process to see what other zone it could go into.

Commissioner Ousele restated that if Tillamook County had this Ordinance Amendment, allowing as a Conditional Use, a Firearms Training Facility in the Forest zone, anyone who wanted to put a Firearms Training Facility would have to file a Conditional Use, there would be a hearing and it would fall under the same scrutiny as any other Conditional Use application. Mr. Sheets stated that the only addition would be that a Conditional Use can be done administratively or

through the hearing process. He continued by explaining that if the decision is made administratively, they have the potential to be appealed and brought before the Planning Commission. Mr. Sheets stated that the ordinance allows the Director to make the decision as to whether the decision is made administratively or brought before the Planning Commission.

Chair Heckerath asked Staff if an applicant would be allowed to build a large indoor shooting range as well as outdoor facilities. Mr. Sheets referenced ORS 197.770 which provides a very specific definition of what is allowed and if the applicant meets that criteria, they would be allowed to continue with application.

Commissioner Hoffman asked Mr. Sheets about getting into alignment with State law. Mr. Sheets stated that several years ago planning goals were prioritized and there was a push to adopt the OARS, as current ordinance is more lenient. He further stated that in any situation the stricter of the two ordinances applies and in the end the State is concerned with meeting state law, and in our case, State law takes precedent as it is the strictest. Mr. Sheets then stated that Firearms Training Facility must be in the ordinance, per the DLCD representative. Commissioner Hoffman then clarified that the only way for a firearms training facility to be placed in Tillamook County, is to add it to the ordinance. Mr. Sheets concurred with Commissioner Hoffman.

Chair Heckerath asked what would happen if the Ordinance Amendment were not passed. Mr. Sheets stated that re-application would have to be looked at and also that firearms training facility, as a Conditional Use, has to be a use in the Forest Zone in order for application to be made.

Commissioner Heckerath asked about buffering standards and whether the Planning Commission is able to impose restrictions on distances from growth boundaries. Mr. Sheets explained that it would be up the Planning Commission as to whether they wished to consider putting these standards in the ordinance. Mr. Sheets continued to state that the condition could be put into the consideration of the Conditional Use itself as the criteria are different for the Forest Zone.

Commissioner LaFrance suggested only discussing setbacks as part of the criteria of the Conditional Use, not as part of the Ordinance Amendment, as each application will be property specific. Mr. Sheets interjected that the OARs have criteria for siting a structure on the least valuable soil to grow timber.

Chair Heckerath brought up concerns around ambient noise levels and asked Staff how and if it is addressed under the ordinance. Mr. Sheets stated that it is not addressed as part of this application, but could be. He continued by referencing Lincoln City and their decibel reading at the property lines for wind turbin energy systems, he further stated that Tillamook County does not have a noise ordinance and all noise complaints are forwarded to the Sheriff's office. Mr. Sheets

suggested directing noise questions to the applicant, as they have information on the specific property.

There being no further questions for Staff, the Applicant began their presentation. C. Wayne Cook, President of Tillamook Shooters Association which is a branch off of the Oregon Hunters Association, Tillamook Chapter, and Vic Affolter, Consultant for Tillamook Shooters Association, 300 Marvin Rd., Tillamook, gave the Applicant presentation.

Mr. Affolter opened by stating their intention for the application, which is to amend the Tillamook County Land Use Ordinance to include Firearms Training Facility, as a Conditional Use in the Forest Zone.

Mr. Affolter continued by stating that it would benefit the county to bring the TCLUO in line with the OARs regarding Farm and Forest zones. He suggested taking what is allowed under the OARs and incorporating them into the TCLUO. He continued by stating that the only reason for not approving the Ordinance Amendment is if the Planning Commission does not want a Firearms Training Facility to be allowed anywhere in Tillamook County. However, he continued to say that by approving the Ordinance Amendment, it allows for the opportunity for someone to apply to place a firearms training facility in a Forest zone somewhere in the county.

Mr. Affolter asked for the Planning Commission to look at the need for the facility in Tillamook County and stated that he is willing to provide additional public comment on the need for this type of facility in Tillamook County. He continued by stating that the allowed zones should be kept to the Forest zone versus Rural Residential, Commercial or inside urban growth boundaries.

Mr. Affolter asked that site specific criteria be addressed as part of the Conditional Use process, not in the Ordinance Amendment. He further explained that was one reason for having all three applications before the Planning Commission on one night was to bring all of the criteria out at one time. Mr. Affolter continued by stating that off-site impacts, like noise, will have to be addressed in the Conditional Use process as these will vary based on the individual site and its topography.

Mr. Affolter concluded by offering further comments and supporting documents regarding the need for a Firearms Training Facility somewhere in Tillamook County and that he recommended that the Ordinance Amendment be passed.

Chair Heckerth talked to the audience about testifying and what comments were allowed. He continued by explaining the Ordinance Amendment is the only application that can be addressed in testimony, so the recommendation to the Board of County Commission to adopt the language in the TCLUO to allow a

Firearms Training Facility in the Forest zone. Comments can only be directed to that issue.

Public Testimony:

- Bill Larson, 1035 Tone Rd., Tillamook – Opposed to the application.
- Ken Oleman, 50 Fraser Rd., Tillamook – Opposed to the application.
- Tarra Kottre – 1800 Hillside Drive, Tillamook – Opposed to the application and feels that setbacks should be addressed in the ordinance and the Conditional Use criteria should be stricter to address noise and setbacks.
- Elaine Hungerford, 980 Netarts Highway, Tillamook – Not opposed, but feels more research should take place before making a decision.
- Susan Aalykke, 7585 Doughty Rd., Tillamook – Opposed to application for health and safety reasons.
- Patty Blondo, 855 Tone Rd., Tillamook – Opposed to the application for lead impact. Also concerned that Tillamook County Estuaries Partnership has not done an impact study.
- Steven Kershaw, 2800 Champagne Lane, Tillamook – Supports the application as it will allow for a controlled and safe environment for shooters.
- John Kottre, 1800 Hillside Dr., Tillamook – Supports the application, not the location of the proposed site of this application.
- Tim Toth, 325 Old Fraser Rd., Tillamook – Cannot say whether he is for or against without more information about setbacks and safety.
- Donald Swanson – 1435 North First, Rockaway Beach – Supports the application.
- John Putman – 6200 Cedar Springs, Tillamook – Supports the application.

Chair Heckerorth asked for a rebuttal from Applicant. Mr. Affolter asked Commission members for specific reservations or concerns regarding the need for the Ordinance Amendment as he could provide additional support, if needed. Commissioner Jones asked if an indoor range was actually needed or if there was a possibility to have something located in the Commercial Zone. Chair Heckerorth stated it was not a question to ask at this time for this application.

Mr. Affolter spoke to the concerns of off-site impacts, topography/setbacks, and the development of the facility. He stated that these are issues to be addressed in the Conditional Use application as they are site specific.

Mr. Cook referenced off-site projections and mitigating the affect on neighbors. He continued by stating that putting limitations on sound and safe shooting directions are best addressed in the Conditional Use process. He also spoke to the safety of a controlled environment for shooting. Commissioner Jones asked Mr. Cook if all shooting ranges were controlled and monitored by

a Range Officer. Mr. Cook could only speak to the project they are proposing.

Mr. Cook asked Commissioners not to put a condition of distance in the ordinance as to not limit options for applicants.

Chair Heckerth asked for comments from Staff. Mr. Sheets addressed the interchangeability of resources allowed under Goal 3 and 4 of the Tillamook County Comprehensive Plan, which allows for the property owner to select what type of activity they would like to have on their property. Mr. Jones asked for further clarification. Mr. Sheets stated that it does revert back to the zoning as the zoning is specific to the property. Tillamook County Comprehensive Plan allows for the interchangeability of uses and leaves the decision to the property owner to conduct those uses as outlined in the zone. Mr. Sheets continued by addressing the concern of the proximity of Residential zones to Forest zones. Mr. Sheets stated a Community Wildfire Plan was developed and reiterated that 85 – 90 percent of Tillamook County is zoned Forest, with that said, all zones abut forest land.

Mr. Sheets suggested looking at the Conditional Use criteria in the Forest zone and determine if they cover everything talked about.

Mr. Sheets also wanted to clarify the parameters of the facility. The structures allowed would be tied to the shooting range, it should not be viewed as a fraternal organization that also shoots guns as that is not what is outlined in the OARs. He continued by addressing other concerns like hours of operation, and size limits and stated that these could be addressed in the Conditional Use process on a case by case basis. Commissioner Jones asked Mr. Sheets if there was a list of criteria to look at when determining what a conditional use should allow and would it be appropriate to look at a list of what to consider. Mr. Sheets explained that he used current standards when developing conditions and essentially a framework about how things will be considered in relation to this use.

Commissioner Mizce asked Staff if there were other Land Use applications that were not handled administratively and immediately went before the Planning Commission for review and a public hearing. Mr. Sheets stated that they could add that requirement. Mr. Parker stated that it would be acceptable to add, to the ordinance, that the Conditional Use must go before the Planning Commission. Commissioner LaFrance expressed his concerns about singling out one type of Conditional Use to be reviewed by the Planning Commission while all other Conditional Use decisions are made administratively.

Chair Heckerth closed the hearing to public comment and opened the floor for Commissioner Discussion.

Commissioners discussed the Ordinance Amendment and agreed it is a need in Tillamook County for a controlled environment for shooting. There was discussion around specific conditions being attached to the ordinance regarding, minimum parcel size, noise, and buffering. It was decided that those issues are best addressed in individual Conditional Use applications. Commissioners also felt that Conditional Uses for a Firearms Training Facility in the Forest zone should be heard by the Planning Commission, not decided administratively.

Commissioner Ousele also stated that there should be work done to make the Tillamook County Land Use Ordinance compatible with the OARs and ORSs

After deliberation was complete and a Firearms Training Facility was defined, under ORS 197.770 as "Firearms Training Facility is an indoor or outdoor facility that provides training courses and issues certifications required: a) for Law Enforcement personnel; b) By the State Department of Fish and Wildlife; or c) By nationally recognized programs that promote shooting matches, target shooting and safety". Commissioner LaFrance moved to make a recommendation to the Board of County Commissioners regarding OA-09-04 based on the staff report, verbal and written testimony and that the Text Amendment request to adopt "Firearms Training Facility" as a Use Permitted Conditionally in Section 3.004: Forest (F) Zone of the Tillamook County Land Use Ordinance (TCLUO) and amends TCLUO 3.004: Forest (F) Zone; Subsection (3): Uses Permitted Conditionally and TCLUO 1.030 (A): Generally Used Definitions. Commissioner Hoffman seconded the motion. Motion carries 7:0.

b. Zone Change ZC-09-01:

Chair Heckerroth opened the hearing by reading the Chair Statement.

Bradford Sheets, Associate Planner, Tillamook County Department of Community Development, read his Staff Report for the Map Amendment to re-zone 25.38 acres of Farm (F-1) land out of an 84.78 acre tract, and concluded that based on the findings of fact and other relevant information to deny ZC-09-01, as proposed on the subject property.

Commissioner Jones asked Mr. Sheets what the applicant is proposing to do with the remaining acreage, after the zone change. Mr. Sheets began to answer the question and Chair Heckerroth asked for the conversation to stop as it was outside the scope of the zone change.

Mr. Sheets pointed out the soil information in exhibit 11. Chair Heckerath asked for the information not include the firearms training facility.

Commissioner Hoffman asked for clarification on Page 22 of the Staff Report, top of page "Conclusion". Mr. Sheets explained that he wrote the conclusion to summarize the findings from the previous three points.

Mr. Sheets explained to Commissioner Ousele that the Zone Change is not creating a separate parcel, but just creating another zone, the parcel is still meets the 80 acre minimum.

Chair Heckerath asked for a motion to continue with the hearing. Commissioner LaFrance moved to continue the hearing for one hour and then reassess at that time whether to continue at that time. Commissioner Ousele Seconded. Motion carried 7:0.

Vic Affolter, 300 Marvin Rd., Tillamook, Consultant to the Tillamook Shooters Association. Mr. Afolter began by explaining the history behind the Tillamook Shooters Association finding a viable site.

Mr. Affolter discussed the criteria, specifically criteria C and D, which must be met in order for the Zone Change to take place. He spoke directly to the use of the property being better suited to Forest use than Farm use. He continued by addressing the concerns around the development and its impact.

After a lengthy discussion with Applicant and Staff, Commissioners acknowledged that it is hard to make a decision and hear testimony when the Ordinance Amendment has not been adopted, which would allow for the Conditional Use for the Firearms Training Facility. Director Parker stated that there has to be dialogue which includes discussions around the Firearms Training Facility as that is the determined use as referenced under Criteria (D), page 20 of the Staff Report.

Commissioner LaFrance moved to continue the Zone Change 09-01, to a future date, as soon as possible following the 21 day appeal period to LUBA of OA-09-04. Commissioner Ousele seconded the motion. Motion carries 7:0.

Commissioner Jones moved to consider CU-09-11 together with ZC-09-01, on the same date and agenda, to be determined. Commissioner Mizze seconded. Motion carried 6:1.

VI. AUTHORIZATION FOR CHAIR TO SIGN APPROPRIATE ORDERS, IF NECESSARY: Commissioner LaFrance moved. Commissioner Ousele seconded. Motion carries 7:0.

VII. ADMINISTRATIVE DECISIONS: To be included at the next meeting.

VIII. DEPARTMENT OF COMMUNITY DEVELOPMENT REPORT:

Director Parker stated that the Board of Community Development signed a board order to approve a lease for the Department of Community Development to move to the new TLC Federal Credit Union. Mr. Parker also stated that the BOCC will move the Department to a fee based budget.

Mr. Parker also stated that Short Term Rentals are continuing to come in as the deadline is approaching.

Commissioner Ousele asked that Staff copy the reports in a more friendly manner (tablet style) in the future.

IX. ADJOURNMENT: There being no further issues Chair Heckerroth adjourned the meeting at 12:45 a.m.

Kurt Heckerroth, Chair

Christina Biggs, Recording Secretary

Date

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