



Oregon

Theodore R. Kulongoski, 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

07/16/2012

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

FROM: Plan Amendment Program Specialist

SUBJECT: Linn County Plan Amendment
DLCD File Number 002-12

The Department of Land Conservation and Development (DLCD) received the attached notice of adoption. A Copy of the adopted plan amendment is available for review at the DLCD office in Salem and the local government office.

Appeal Procedures*

DLCD ACKNOWLEDGMENT or DEADLINE TO APPEAL: Thursday, August 02, 2012

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: Olivia Glantz, Linn County
Jon Jinings, DLCD Community Services Specialist
Katherine Daniels, DLCD Farm/Forest Specialist
Ed Moore, DLCD Regional Representative

<paa> YA



FORM 2

DLCD

Notice of Adoption

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

In person electronic mailed

DATE
STAMP

DEPT OF
JUL 13 2012
LAND CONSERVATION
AND DEVELOPMENT
For Office Use Only

Jurisdiction: **Linn County**

Local file number: **BC12-0002**

Date of Adoption: **07/11/2012**

Date Mailed: 07/16/2012

Was a Notice of Proposed Amendment (Form 1) mailed to DLCD? Yes No Date: 03/06/2012

Comprehensive Plan Text Amendment

Comprehensive Plan Map Amendment

Land Use Regulation Amendment

Zoning Map Amendment

New Land Use Regulation

Other:

BC12-0002; an application by Dale and Lesa Bergey for a Comprehensive Plan map amendment and a zoning map amendment on a 6.12-acre portion of a 13.53-acre property identified as Tax Lot 230 on map T16S, R3W, Section 02. The applicant is proposing to amend the Comprehensive Plan map designation from Farm/Forest to Non-Resource and to amend the zoning map designation from Farm/Forest (F/F) to Non Resource-5 acre minimum (NR-5).

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

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

Plan Map Changed from: **F/F**

to: **NR**

Zone Map Changed from: **F/F**

to: **NR-5**

Location: **16S-03W-02-230**

Acres Involved: **6.12**

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

Was an Exception Adopted? YES NO

Did DLCD receive a Notice of Proposed Amendment...

45-days prior to first evidentiary hearing?

Yes No

If no, do the statewide planning goals apply?

Yes No

If no, did Emergency Circumstances require immediate adoption?

Yes No

DLCD file No. 002-12 (19226) [17105]

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

Linn County Enviromental Health, Linn County Assessor, Linn County Building Offical, Linn County Roads Department, Lebanon Rural Fire Protection District, State Fire Marshall, Department of Forestry, DEQ, WRD, DOGAMI, United State Army Corps of Engineers, Oregon Fish and Wildlife

Local Contact: **OLIVIA GLANTZ**

Phone: (541) 967-3816 Extension: 2368

Address: **PO BOX 100, ROOM 114**

Fax Number: 541-967-2060

City: **ALBANY**

Zip: 97322

E-mail Address: **OGLANTZ@CO.LINN.OR.US**



LINN COUNTY PLANNING AND BUILDING DEPARTMENT

Robert Wheeldon, Director

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

NOTICE OF ADOPTION

RESOLUTION NO: 2012-156
ORDINANCE NO. 2012-157
PLANNING FILE NO: BC12-0002
APPLICANT Dale and Lesa Bergey

PROPOSAL

Application by Dale and Lesa Bergey for a *Comprehensive Plan* map amendment and a zoning map amendment on a 6.12-acre portion of a 13.53-acre property identified as Tax Lot 230 on map T16S, R3W, Section 02. The applicant is proposing to amend the *Comprehensive Plan* map designation from Farm/Forest to Non-Resource and to amend the zoning map designation from Farm/Forest (F/F) to Non Resource-5 acre minimum (NR-5). The property is located north of Mt. Tom Drive, about 900 feet east of the intersection Wildwood Estates Loop and Mt. Tom Drive, and about eight miles east of Harrisburg.

Board Action: Resolution and Order No. 2010-139

The Linn County Board Of Commissioners approved *Resolution and Order No. 2012-156* to: (1) Approve the Findings and Conclusions supporting the Board decision; (2) Order that the Linn County *Comprehensive Plan* map and Linn County Zoning Map be prepared by county staff for amendment to designate the eastern 6.12 acre portion of the 13.53 acre property as Non Resource on the *Comprehensive Plan* map and as Non-Resource 5 acre minimum (NR-5) on the zoning map.

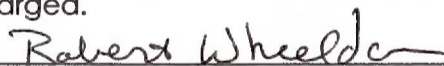
Board Action: Ordinance No. 2010-140

The Linn County Board Of Commissioners approved *Ordinance No. 2012-157* to: (1) Amend the Linn County *Comprehensive Plan* map and Linn County Zoning Map be prepared by county staff for amendment to designate the eastern 6.12 acre portion of the 13.53 acre property as Non Resource on the *Comprehensive Plan* map and as Non-Resource 5 acre minimum (NR-5) on the zoning map.

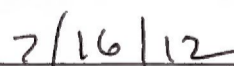
If you wish to appeal this decision, an appeal must be filed with the Land Use Board of Appeals (LUBA) within 21 days from the date this notice is mailed.

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

Resolution/Order No. 2012-156 and Ordinance No. 2012-157 may be reviewed at the office of the Linn County Clerk, Room 205, Linn County Courthouse; that office is open from 8:30 a.m. to 5:00 p.m., Monday through Friday, except legal holidays. A copy of the ordinance is available in the office of the Linn County Clerk. A fee to cover copying costs will be charged.



Robert Wheeldon
Director



Date

c: Linn County Assessors, Linn County GIS, Linn County Road Department, Dale and Lesa Bergey, Lynn Merrill, Oregon Department of Land, Conservation and Development

BEFORE THE BOARD OF COUNTY COMMISSIONERS
FOR LINN COUNTY OREGON

IN THE MATTER OF A COMPREHENSIVE)
PLAN MAP AND ZONING MAP AMENDMENT)
APPLICATION BY LESA AND DALE BERGEY)
TO CHANGE THE ZONING AND)
COMPREHENSIVE PLAN MAP)
DESIGNATION ON 6.12-ACRE)
PORTION OF PROPERTY)

RESOLUTION &
ORDER NO. 2012-156
Planning and Building Department
(BC12-0002)
(Findings and Conclusions)

WHEREAS, The Board of County Commissioners for Linn County (Board) conducted a duly advertised public hearing on June 6, 2012 for the purpose of considering the matter of a proposed *Comprehensive Plan* map amendment and zoning map amendment that would amend the zoning map designation and the *Comprehensive Plan* map designation on a 6.12 acre portion of a 13.53 acre property identified as Tax Lot 230 on map T16S, R3W, Section 2;

WHEREAS, The proposed zoning map amendment and *Comprehensive Plan* map amendment had been previously considered by the Linn County Planning Commission at a duly advertised meeting on May 8, 2012 and who voted 5-0-0 to recommend approval to the Board;

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

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


RESOLVED, That the Board of County Commissioners for Linn County approve the Findings and Conclusions as set forth in Exhibit 1 (BC12-0002 Decision Criteria, Findings and Conclusions); and

RESOLVED, That the Board of Commissioners for Linn County approve a *Comprehensive Plan* map amendment and a zoning map amendment on a 6.12-acre portion of a 13.53 property, as shown in Exhibit 2 (Tax Lot 230 on map T16S, R3W, Section 2); and

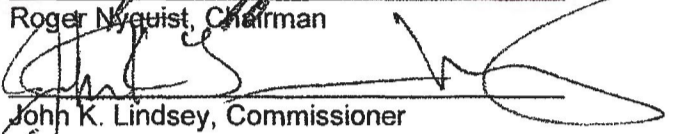
ORDERED, That the Linn County *Comprehensive Plan* map and the Linn County Zoning map be prepared by county staff for amendment to designate the eastern 6.12 acre portion of the 13.53 acre property, as shown in Exhibit 2, as Non Resource on the *Comprehensive Plan* map and as Non-Resource 5 acre minimum (NR-5) on the zoning map.

Resolved this 11th day of ~~June~~ ^{July}, 2012.

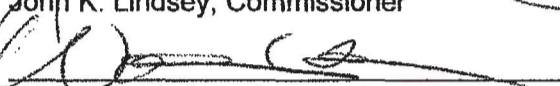
BOARD OF COUNTY COMMISSIONERS
FOR LINN COUNTY



Roger Nyquist, Chairman

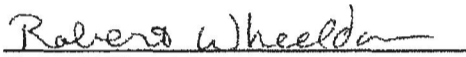


John K. Lindsey, Commissioner



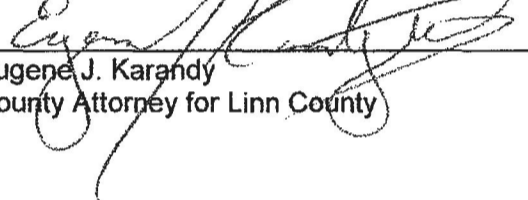
William C. Tucker, Commissioner

APPROVED AS TO CONTENT:



Robert Wheeldon
Director, Linn County Planning and Building

APPROVED AS TO FORM:



Eugene J. Karandy
County Attorney for Linn County

Resolution and Order No. 2012-156

**Planning File BC12-0002
Dale and Lesa Bergey
Non Resource Plan Amendment and Zone Map Amendment
Decision Criteria, Findings and Conclusions**

PROJECT SUMMARY AND ANALYSIS

The applicant is proposing to change the *Comprehensive Plan* Map designation on a 6.12-acre portion of a 13.53-acre property from its current designation of Farm Forest to Non-Resource and to change the current zoning from Farm/Forest (F/F) to Non-Resource-5 acre minimum (NR-5). The 13.53-acre property is split zoned Farm/Forest and Rural Residential-5-acre minimum (RR-5). If the application is approved the property would be split-zoned F/F and RR-5. Because the applicant is proposing to apply the Non-Resource zoning district and *Comprehensive Plan* designation to the 6.12 acres, an exception to Statewide Planning Goals 3 and 4 is not needed. However, the applicant must provide evidence that the proposal is consistent with all the Statewide Planning Goals, including Goals 3 and 4.

DECISION CRITERIA AND FINDINGS:

LCC 921.822(A), 921.874(A), and 905.960 and the Oregon Statewide Planning Goals contain applicable decision criteria.

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

The criterion is addressed in the Exhibit A, of the record.

Based on evidence in the record and the testimony provided in public hearings, the Board finds that this criterion is satisfied.

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

FACTS: The Linn County *Comprehensive Plan* allows for the designation of land as Non-Resource. The *Comprehensive Plan* describes these lands that are not subject to Statewide Planning Goal 3 or 4, where the land is neither suitable for farm or forest use based on a set of decision criteria. The applicant is proposing to apply the Non-Resource comprehensive plan map designation to a portion of his property and apply a Non-Resource-5 acre minimum (NR-5) zoning district to the 6.12 acres. Through an analysis of the property and the applicant's information, a determination will be made as to whether the applicant's property can be designated non-resource land and whether the *Comprehensive Plan* map and zoning map amendment should be amended.

The criterion is addressed in the Exhibit A, Page 40-44 of the record.

The Board finds that the applicant's proposal is consistent with and does not alter the intent of the *Comprehensive Plan*.

LCC 921.874(A)(2): The amendment will be compatible with adjacent uses and will not adversely impact the overall land use pattern in the area.

FACTS: The property sizes range between four and ten acres to the west of the applicant's property. The properties to the east range from five to 167-acres. The areas east and south of the property are planted in trees. The properties west of the subject property are located within a rural residential exception area. These properties are zoned Rural Residential-5 acre minimum (RR-5). Properties immediately to the west (zoned RR-5) contain dwellings and the smaller properties to the east (zoned F/F) contain dwellings.

The Non-Resource *Plan* designation and NR-5 zoning designation for 6.12-acre portion of the 13.53 acre property the applicant has indicated his intention is to divide the 13.53 acres into two parcels/lots along the zoning boundary line (RR-5 and NR-5). The NR-5 zoning designation allows one dwelling per parcel.

The criterion is addressed in Exhibit A, Page 43 of the record.

The change to the NR designation will extend, by one additional dwelling, the fairly extensive existing neighborhood of dwellings on 5-10 acres in size to the west of the Bergey property. Since the use type is the same as the predominant neighborhood use, the proposal will not adversely impact the overall land use pattern in the area.

Although this is unproductive land as defined and described in the soil survey, it is not intermingled within a farm or forest unit. It is on the far, residential western edge of forest land further uphill and not near any agricultural lands. The application will not block any access to woodlots uphill to the east. Therefore the site is not necessary to support farm or forest practices.

The site is isolated from any nearby farm units by the large rural residential lot pattern to the west. That area is typified by homes on 5-10 acre tracts rather than farming. The site is isolated from better timber production uphill to the east by being on the far downhill edge bordering residential lots.

The privately owned woodlot to the east will not adversely be affected by one additional home site. The Bergey property is located on the extreme western edge of the woodlot and does not pose any barriers to accessing the property. There is also a large buffer area that has previously been described that eliminates the chance of an adverse effect on existing forest uses.

The report by Jackson & Prochnau (Applicant Exhibit #7) and OSU Forestry Agent Steve Bowers (Applicant Exhibit #5) describes in detail how unsuited this extreme western edge is for F/F resources. The orientation of the 167-acre F/F area will remain intact.

The notice map attached to the staff report in the record, shows there are a number of relatively small properties ranging in size from 4.33 acres within a few hundred feet of the subject property. Most of these small properties are zoned RR-5. The applicant's analysis states that the NR designation would only allow one additional dwelling and would be consistent with the RR-5 zoned properties.

The Board finds that the proposal is compatible with adjacent uses and will not adversely impact the overall land use pattern.

LCC 921.874(A)(3): The amendment, if within an adopted urban growth boundary, is in substantial conformity with the *Comprehensive Plan* and implementing ordinances of an affected city.

The property is not located within a city's adopted urban growth boundary.

This criterion is not applicable.

LCC 921.874(A)(4): The amendment will not have a significant adverse impact on a sensitive fish or wildlife habitat.

FACTS: The property is located within a peripheral big game habitat area. However the section (Section 2) is developed with more than 32 dwellings (impacted) and therefore siting standards for big game habitat are no longer applicable for future development on this property. There are no sensitive fish or riparian habitats on the property.

The criterion is addressed in the Exhibit A, Page 43 of the record.

Based on evidence in the record and the testimony provided in public hearings, the Board finds that this criterion is satisfied.

LCC 921.874(A)(5): The amendment will not have a significant adverse impact upon the provision of public facilities including police and fire protection, sanitary facilities and storm drainage facilities.

FACTS: Portions of this property have been evaluated by the Linn County Environmental Health Program (EHP) for suitability for sewage disposal systems. There is one installed system on the RR-5 portion of the 13.53-acre property and there is one site approval located on the 6.12-acre portion proposed for NR-5. No divisions of the property for residential development can be authorized without an approval for an on-site sewage disposal system. EHP submitted comments indicating they had no objection to the proposal.

The property is located within the Harrisburg Rural Fire Protection District. The Linn County Sheriff's Department provides police protection for the property. The Sheriff's Department was provided notice of the applicant's proposal, but no comments have been received.

No drainage from a property is permitted to negatively impact a down slope property. The re-zoning of the property, by itself, will have no impact on drainage. However, future residential development would have to comply with

building regulations regarding storm drainage. Storm drainage issues are addressed during the building plan and construction phase of development of a property.

The criterion is addressed in the Exhibit A, Page 44 of the record.

Based on evidence in the record and the testimony provided in public hearings, the Board finds that this criterion is satisfied.

LCC 921.874(A)(6): The amendment will not have a significant adverse impact upon the transportation facilities.

FACTS: An existing paved, county road, Mount Tom Drive, is identified in the Linn County Transportation Plan as a local road. Mount Tom Drive provides access to the subject property. If this application is approved and the applicant goes forward with development of the 6.12-acre portion of the property, the applicant may be required to apply for an access review for a future easement. The Linn County Road Department was provided notice of the proposal, but comments have not been received as of the writing of this report.

The criterion is addressed in the Exhibit A, Page 44 of the record.

Based on evidence in the record and the testimony provided in public hearings, the Board finds that this criterion is satisfied.

LCC 921.874(A)(7): The presence of any development limitations including geologic hazards, flood hazards or water quality or quantity will not have a significant adverse affect on land uses permitted through the amendment.

FACTS: No part of the property is located within an identified flood hazard area. No water quantity or quality information has been provided.

The entire property is identified in the Environmental Geology of Western Linn County, Oregon as being an area subject to mass movement topography. The applicant states that a report will be submitted from a Registered Oregon Geologist or registered Oregon Engineering Geologist, as part of the building permit process.

The criterion is addressed in the Exhibit A, Page 43- 44 of the record.

Based on evidence in the record and the testimony provided in public hearings, the Board finds that this criterion is satisfied.

LCC 921.874(A)(8): An exception to the statewide planning goals is not required. If required, then findings have been prepared to meet the exception criteria.

FACTS: Because the applicant is proposing an amendment to the Non-Resource *Comprehensive Plan* map designation, a goal exception is not required.

Based on evidence in the record and the testimony provided in public hearings, the Board finds that this criterion is satisfied.

LCC 921.874(A)(9): The amendment is consistent with the statewide planning goals.

The criterion is addressed in Exhibit A, Pages 47-50 of the record and further addressed below:

There is no way to get an EXACT cu/ft/ac number....it is more of a ballpark figure that can vary depending upon site conditions. Regardless of what the actual cu/ft/ac rating is; it is very evident that our 6.12 acres are not suitable for forestry due to the conditions that are present. Both OSU agents and William Roach, private forest consultant and soil scientist, Joel Norgren stated regarding the site conditions (I will paraphrase here to spare you me reading their quotes again) that soils are heavy clay and very rocky with exposed bedrock in many areas. Depth of soil is very shallow and available water capacity is only 2 to 4 inches. The indicator species present (pucker pear, blackberry and poison oak) and the condition of the existing trees (top die off, stunted, sweep, butt rot) and lack of success of natural regeneration of trees all indicate a droughty environment that is ill-suited to production of commercial timber species. No matter what the stated cu/ft/ac is, no forester worth his salt would recommend a commercial forest operation with these site conditions present.

Concerning the actual cu/ft/ac figure for the 6.12 acres I want to first emphasize that we are not attempting to reclassify the site productivity rating. Since we are not attempting to reclassify the site productivity rating, then the Department of Forestry is not required to review and approve any alternative methodology that was used.

Since NRCS does not supply any cubic feet per acre per year statistics for Philomath soils the 45 cubic feet per acre supplied by the Linn County Planning office for Philomath soils was used for our application. This figure was calculated by Oregon department of forestry staff and also gives a site index rating of low for Philomath soil.

The LCDC has not established a threshold for the level of cf/ac/per year that qualifies land as suitable for commercial forest use. Also in a 1998 decision, LUBA pointed out that "no particular level of cf/ac/year" is determinative in determining whether land qualifies as forest land under goal 4.

However, indicators show that as a guideline, land with productivity under 50 cf/ac/yr in Western Oregon is considered not suitable for commercial forest use. For example, ORS 215.263(4)(b)(D)(i) requires that new parcels proposed for non-farm dwelling in Western Oregon outside the Willamette Valley not be capable of producing "50 cubic feet per acre per year of wood fiber." That suggests that the legislature believes property in Western Oregon outside the Willamette Valley that is capable of producing 50 cf/ac/yr or more is worthy of protection from non-farm dwellings.

The applicant stated; "In addition, past findings indicate that in addition to cf/ac/yr productivity, other factors will also be considered that contribute to the land's forest productivity. Soils scientist Dr. Norgren, states that due to average rainfall, soil depth and moisture holding capacity potential all being on the lower end of the given range that the potential forest productivity on the Bergey property will therefore be less than half of the values proposed for the entire county. His conclusion states, "The mean annual productivity of the predominant soil on this property is approximately 22.5 cubic feet per acre per year". Steve Bowers, OSU forestry agent, concurs with Mr. Norgren's conclusion. This information was included in our application because we felt that it was another factor (just like existing site conditions) that should be considered to determine if the site is appropriate for forestry."

"So, even though we are not challenging the 45 cu/ft/yr rating, we also want emphasize that in reality, on our 6.12 acres, it is most likely substantially less than 45 cu/ft/yr due to existing site conditions and expert testimony by Dr. Norgren and OSU Forestry agent Steve Bowers, who both state that in their opinion the cu/ft/ac on our 6.12 acres is considerably less than 45 cu/ft/ac."

The Board finds that the proposal is consistent with State Wide Planning Goal 3 and 4.

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

FACTS: In the Linn County Land Development Code, predominantly means (a) more than 50% when comparing two variables, or (b) the greatest quantity if more than two variables are compared.

Information in the National Resources Conservation Service (NRCS), formerly the Soil Conservation Service (SCS), publication Soil Survey of Linn County Area, Oregon, July, 1987, indicates the property contains approximately one hundred percent of soil identified as SCS Class VI. The applicant has submitted a detailed study of soils for the subject property, prepared by his consultant, Joel Norgren. Mr. Norgren's report provides revised soil information on the subject property that indicates SCS Class IV soils account for 6.8 percent of the property and Class VI soil is at 93.3 percent. The amended information is contained in the applicant's information, Exhibit A, Pages 55-81.

The criterion is addressed in Exhibit A, Page 26-31 and pages 55- 81 of the record.

Based on evidence in the record and the testimony provided in public hearings, the Board finds that this criterion is satisfied.

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

FACTS: The subject property is a single unit of land, not part of a larger farm unit, and is owned by Dale and Lesa Bergey. SCS Class III and IV soils are mapped on properties south of the subject property but the properties are not adjacent to the subject property and are not in farm use. SCS Class III and IV soils are also mapped on the adjacent property to the northeast of the subject property. The

property to the northeast is not in farm use or in the same ownership as the subject property. The applicant has submitted a report from Ross Penhallegon, OSU Extension Service – Benton, Linn and Lane County, which addresses the soil on the property and which concludes it is not suitability for farm uses.

The criterion is addressed in the Exhibit A, Page 26 and 89- 92 of the record.

Based on evidence in the record and the testimony provided in public hearings, the Board finds that this criterion is satisfied.

LCC 905.960(J)(3): The land is not suitable for farm use taking into consideration;

- (a) Soil fertility;
- (b) Suitability for grazing;
- (c) Climatic conditions;
- (d) Existing and future availability of water for farm irrigation purposes;
- (e) Existing land use patterns;
- (f) Technological and energy inputs required; or
- (g) Accepted farming practices.

FACTS: Linn County has five-foot interval contour information for the subject property. The contours show steep slopes over much of the property. About eight percent of the property is identified as containing SCS Class III and IV soils. The remaining 92 percent is SCS Class VI and VII soils. The applicant has submitted a letter from Ross Penhallegon that addresses the site analysis for estimated potential for agricultural production and determination of suitability for agricultural production. His report indicates that most of the land is on a 3-20% westward facing slope. The report states "There is virtually no flat land other than ridge tops. There did not appear to be any areas on the property flat enough for reasonable crop production." He further states: "this site is extremely non-agricultural in nature. The soils depth is shallow; there is exposed bedrock or bedrock from 0-40 inches of the soil." His report further states "Suitability for grazing: There is grass, but by August 9, the grass was drying and dead. Fractured bedrock on the surface indicated very shallow soil, so there isn't much soil or water holding capacity." His report also references the limited water-holding capacity of the soils.

The criterion is addressed in Exhibit A, Page 26-28 of the record.

The applicant submitted a "Detailed investigation of soils on the eastern half of Tax lot 230, located in Section 2, T16S, R3W, Linn County 6.12 acres" written by Joel Norgren, ARCPACS.

Based on the information submitted by the applicant (reports from Joel Norgren and Ross Penhallegon), the evidence in the record and the testimony provided in public hearings, the Board finds that this criterion is satisfied.

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

FACTS: Information has been previously identified regarding the surrounding land use pattern and agricultural activity. Much of the area is devoted to rural home sites with land to the east identified as forest land.

The applicant states: "The site is isolated from other agricultural uses by the extensive rural residential pattern to the west and the woodlots to the east. Therefore, it will not affect farm practices on adjacent or nearby agricultural lands (there are none)." The criterion is addressed in Exhibit A, Page 29 of the record.

Based on evidence in the record and the testimony provided in public hearings, the Board finds that this criterion is satisfied.

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

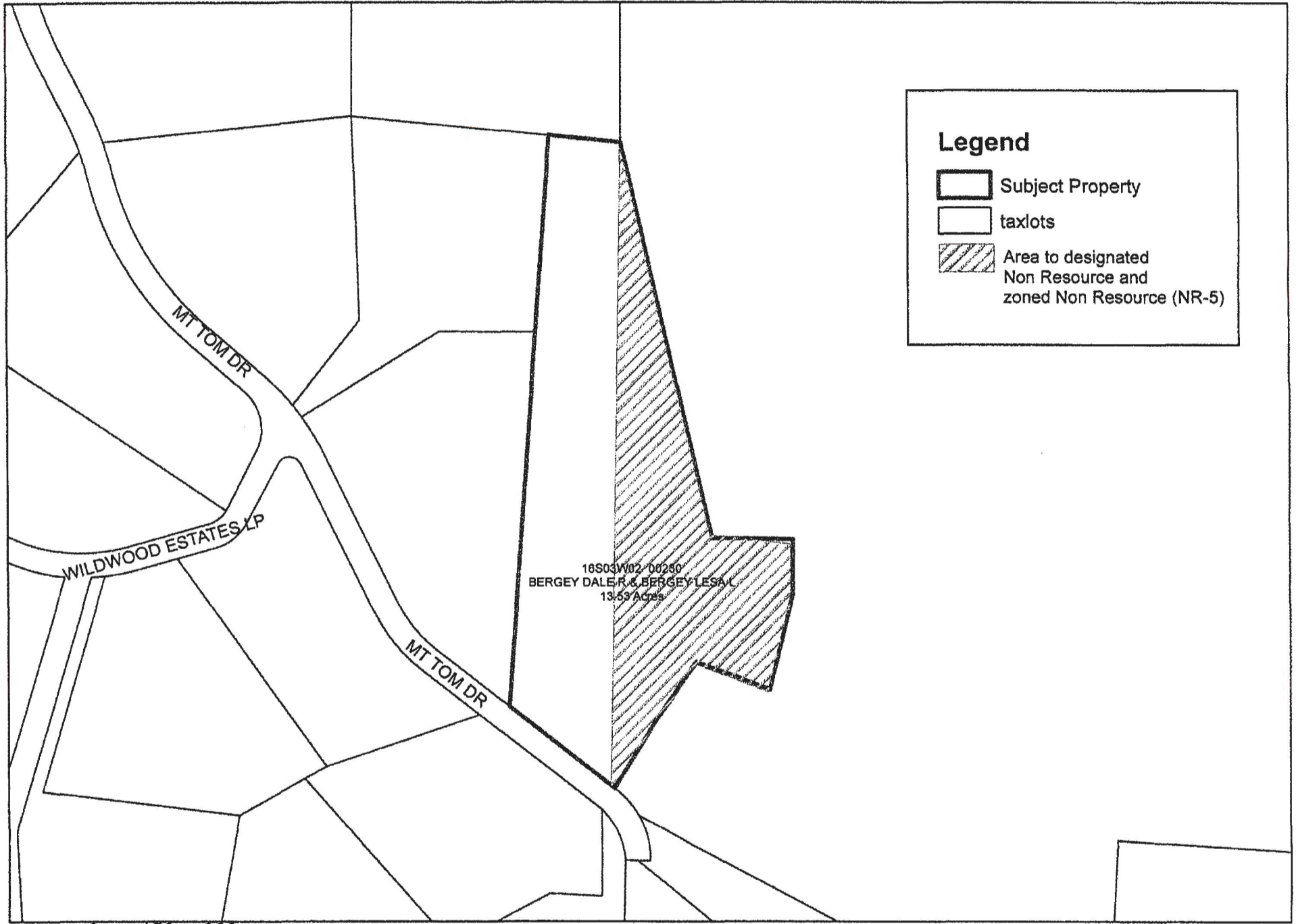
FACTS: The NRCS publication for Linn County provides soils information for the 6.12 acres that indicates the property can produce an average of 45 cubic feet/acre/year of wood fiber. The applicant has submitted an on-site soils evaluation conducted by Joel Norgren which concludes the forest productivity of the property is 22.5 cubic feet/acre/year (Attachment A, Page 56). The applicant also submitted a letter from William Roach of Jackson & Prochnau Forest Resources. The letter details a site visit to the property and states that he used the Oregon Department of Forestry's Technical Bulletin entitled "Land Use Planning Notes Number 3 dated April 1998". He noted that there was not one acceptable tree to measure on the subject property or on adjacent property. The applicant submitted a letter from Steven Bowers, Oregon State University Forestry Agent, which states "The Bergey parcel however, is not appropriate for commercial timber production and it would not be cost effective to do so." The applicant testified he did not submit the alternative methodology or his forester's conclusions to the Oregon Department of Forestry for review and approval of the alternative methodology under the Oregon Department of Forestry's Bulletin entitled "Land Use Planning Notes Number 3 dated April 1998". The applicant and his representative testified that the conclusions of their analysis show that even using the 45 cu ft/acre/year estimate, combined with the on-site reconnaissance and conclusion of their forestry experts are sufficient to show the property is not suitable as commercial forest land.

The criterion is addressed in Exhibit A, Pages 29-31, 55-81, 86-97 of the record.

The Board must find that the land is not suitable for commercial forest uses including adjacent or nearby lands which are necessary to permit forest operations or practices on commercial forest lands or other forest lands that maintain soil, air, water and fish and wildlife resources.

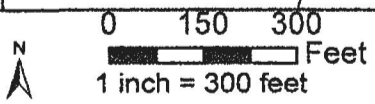
Based on evidence in the record and the testimony provided in public hearings, the Board finds that this criterion is satisfied.

Exhibit 2



Legend

- Subject Property
- taxlots
- Area to designated Non Resource and zoned Non Resource (NR-5)



Linn County Planning & Building Department

Date: 6/14/2012

BEFORE THE BOARD OF COUNTY COMMISSIONERS
FOR LINN COUNTY

IN THE MATTER OF AN ORDINANCE)	ORDINANCE NO. 2012-157
AMENDING THE LINN COUNTY)	(Amending Code)
COMPREHENSIVE MAP AND THE LINN)	(Planning and Building
<u>ZONING MAP</u>)	Department; BC12-0002)

WHEREAS, The Linn County Board of Commissioners (Board) advertised notice that it would consider a proposed amendment to the *Comprehensive Plan* map and the Linn County Linn County zoning map on June 6, 2012;

WHEREAS, At 10:00 a.m., on June 6, 2012, the Board conducted a regularly scheduled and duly advertised public hearing, considered the proposed amendment for the *Comprehensive Plan* map and zoning map;

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

WHEREAS, The findings in support of this ordinance are attached to Resolution and Order No. 2012-156 and entitled Exhibit 1, (BC12-0002 Decision Criteria, Findings and Conclusions); and, now, therefore, be it

Ordained by the Linn County Board of Commissioners, That:

Section 1. Map Amendment. LCC 900.900, *Comprehensive Plan* map, be amended to designate the eastern 6.12 acre portion, identified as Tax Lot 230 on Assessor map T16S, R3W, Section 02, Linn County, Oregon, as identified in Exhibit A, as Non Resource on the Linn County *Comprehensive Plan* map.

Section 2. Map Amendment. Appendix 1, Zoning map, following LCC Chapter 920 [see LCC 920.010(B)] be amended to designate the eastern 6.12 acre portion identified as Tax Lot 230 on Assessor map T16S, R3W, Section 02, Linn County, Oregon, as identified in Exhibit A, Non-Resource-5 acre minimum (NR-5) on the Linn County zoning map.

Section 3. Savings clause. Repeal of a code section or ordinance shall not revive a code section or ordinance in force before or at the time the repealed code section or ordinance took effect. The repeal shall not affect a punishment or penalty incurred before the repeal took effect, nor a suit, prosecution, or proceeding pending at the time of the repeal for an offense committed under the repealed code section or ordinance.

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



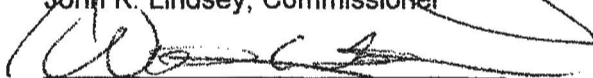
Section 5. Effective date. To protect the health, safety, and welfare of the citizens of Linn County, this ordinance shall take effect following adoption.

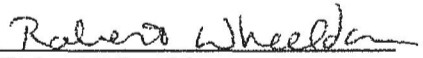
Section 6. Codification. Following adoption, this ordinance shall be codified pursuant to LCC Chapter 120.

Public reading held June 6, 2012.
 Adopted and passed July 11, 2012.
 The effective date of this Ordinance shall be July 11, 2012.

BOARD OF COUNTY COMMISSIONERS FOR LINN COUNTY

Signed ~~June~~ ^{July} 11, 2012
~~2010~~

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

APPROVED AS TO CONTENT:

 Robert Wheeldon
 Linn County Planning and Building Director

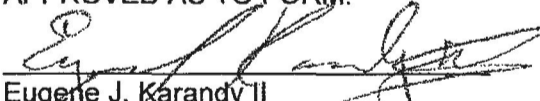
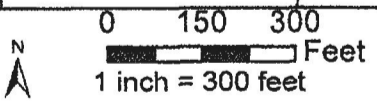
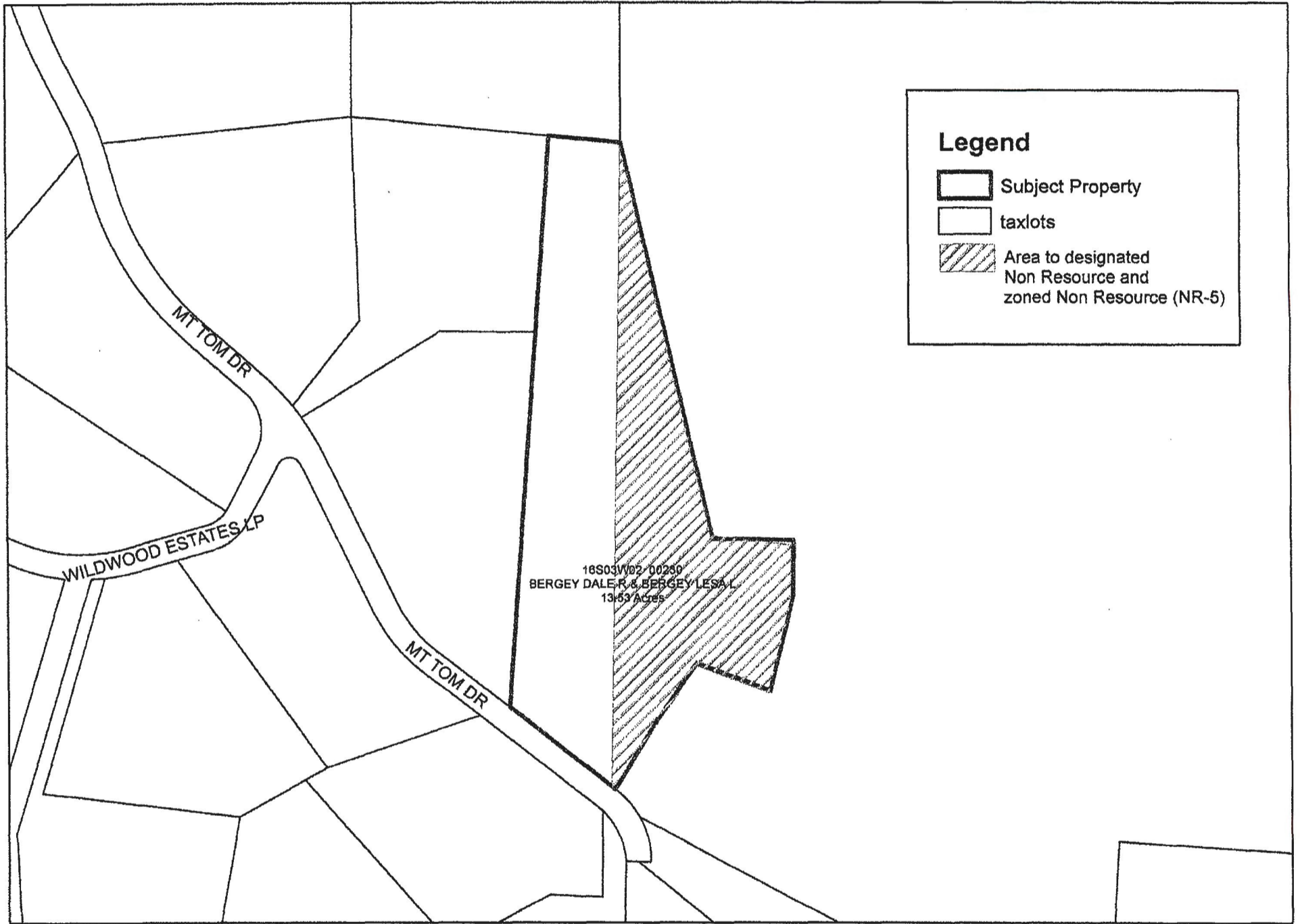
APPROVED AS TO FORM:

 Eugene J. Karandy II
 County Attorney for Linn County

Exhibit A



Linn County Planning & Building Department

Date: 6/14/2012

ING & BUILDING
K 100
R 97321



DEPT OF
JUL 13 2012
LAND CONSERVATION
AND DEVELOPMENT



Attn: Plan Amendment Spec.
DLCD
635 Capitol St. NE, Ste. 150
Salem, OR 97301-2540