



# Oregon

Kate Brown, Governor

Department of Land Conservation and Development

635 Capitol Street NE, Suite 150

Salem, Oregon 97301-2540

Phone: 503-373-0050

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[www.oregon.gov/LCD](http://www.oregon.gov/LCD)



## NOTICE OF ADOPTED CHANGE TO A COMPREHENSIVE PLAN OR LAND USE REGULATION

Date: February 29, 2016

Jurisdiction: Lane County

Local file no.: 509-PA 12-05208

DLCD file no.: 009-12

The Department of Land Conservation and Development (DLCD) received the attached notice of adopted amendment to a comprehensive plan or land use regulation on 02/26/2016. A copy of the adopted amendment is available for review at the DLCD office in Salem and the local government office.

Notice of the proposed amendment was submitted to DLCD 42 days prior to the first evidentiary hearing.

### Appeal Procedures

Eligibility to appeal this amendment is governed by ORS 197.612, ORS 197.620, and ORS 197.830. Under ORS 197.830(9), a notice of intent to appeal a land use decision to LUBA must be filed no later than 21 days after the date the decision sought to be reviewed became final. If you have questions about the date the decision became final, please contact the jurisdiction that adopted the amendment.

A 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).

If the amendment is not appealed, it will be deemed acknowledged as set forth in ORS 197.625(1)(a). Please call LUBA at 503-373-1265, if you have questions about appeal procedures.

### DLCD Contact

If you have questions about this notice, please contact DLCD's Plan Amendment Specialist at 503-934-0017 or [plan.amendments@state.or.us](mailto:plan.amendments@state.or.us)



# NOTICE OF ADOPTED CHANGE TO A COMPREHENSIVE PLAN OR LAND USE REGULATION

FOR DLCD USE

File No.: 009-12 {19227}

Received: 2/26/2016

Local governments are required to send notice of an adopted change to a comprehensive plan or land use regulation **no more than 20 days after the adoption.** (See OAR 660-018-0040). The rules require that the notice include a completed copy of this form. **This notice form is not for submittal of a completed periodic review task or a plan amendment reviewed in the manner of periodic review.** Use Form 4 for an adopted urban growth boundary including over 50 acres by a city with a population greater than 2,500 within the UGB or an urban growth boundary amendment over 100 acres adopted by a metropolitan service district. Use Form 5 for an adopted urban reserve designation, or amendment to add over 50 acres, by a city with a population greater than 2,500 within the UGB. Use Form 6 with submittal of an adopted periodic review task.

Jurisdiction: Lane County

Local file no.: **509-PA12-05208**

Date of adoption: 2-9-2016

Date sent: 2-9-2016

Was Notice of a Proposed Change (Form 1) submitted to DLCD?

Yes: Date (use the date of last revision if a revised Form 1 was submitted): 11-06-2012

No

Is the adopted change different from what was described in the Notice of Proposed Change? Yes No

If yes, describe how the adoption differs from the proposal:

Local contact (name and title): Deanna Wright, Associate Planner

Phone: 541-682-4082

E-mail: Deanna.Wright@co.lane.or.us

Street address: 3050 N. Delta Hwy.

City: Eugene

Zip: 97408-

### PLEASE COMPLETE ALL OF THE FOLLOWING SECTIONS THAT APPLY

#### For a change to comprehensive plan text:

Identify the sections of the plan that were added or amended and which statewide planning goals those sections implement, if any: N/A

#### For a change to a comprehensive plan map:

Identify the former and new map designations and the area affected:

Change from Agricultural to Marginal Land 85 acres. A goal exception was required for this change. NO

Change from \_\_\_\_\_ to \_\_\_\_\_ acres. A goal exception was required for this change.

Change from \_\_\_\_\_ to \_\_\_\_\_ acres. A goal exception was required for this change.

Change from \_\_\_\_\_ to \_\_\_\_\_ acres. A goal exception was required for this change.

Location of affected property (T, R, Sec., TL and address): 18-02-29-00-03508

The subject property is entirely within an urban growth boundary

The subject property is partially within an urban growth boundary

509-PA12-05208  
Exhibit 84

If the comprehensive plan map change is a UGB amendment including less than 50 acres and/or by a city with a population less than 2,500 in the urban area, indicate the number of acres of the former rural plan designation, by type, included in the boundary.

Exclusive Farm Use – Acres: Non-resource – Acres:  
Forest – Acres: Marginal Lands – Acres:  
Rural Residential – Acres: Natural Resource/Coastal/Open Space – Acres:  
Rural Commercial or Industrial – Acres: Other: – Acres:

If the comprehensive plan map change is an urban reserve amendment including less than 50 acres, or establishment or amendment of an urban reserve by a city with a population less than 2,500 in the urban area, indicate the number of acres, by plan designation, included in the boundary.

Exclusive Farm Use – Acres: Non-resource – Acres:  
Forest – Acres: Marginal Lands – Acres:  
Rural Residential – Acres: Natural Resource/Coastal/Open Space – Acres:  
Rural Commercial or Industrial – Acres: Other: – Acres:

**For a change to the text of an ordinance or code:**

Identify the sections of the ordinance or code that were added or amended by title and number:

N/A

**For a change to a zoning map:**

Identify the former and new base zone designations and the area affected:

Change from Exclusive Farm Use Zone to Marginal Land Acres: 85  
Change from to Acres:  
Change from to Acres:  
Change from to Acres:

Identify additions to or removal from an overlay zone designation and the area affected: N/A

Overlay zone designation: Acres added: Acres removed:

Location of affected property (T, R, Sec., TL and address): 18-02-29-00-03508

List affected state or federal agencies, local governments and special districts: ODFW, DSL, ODOT, SHPO.

Identify supplemental information that is included because it may be useful to inform DLCD or members of the public of the effect of the actual change that has been submitted with this Notice of Adopted Change, if any. If the submittal, including supplementary materials, exceeds 100 pages, include a summary of the amendment briefly describing its purpose and requirements.

Ordinance No. PA 1317. In the matter of amending the Rural Comprehensive Plan to re-designate land from "Agricultural" to "Marginal Land" and rezoning that land from "Exclusive Farm Use (E-40)" to "Marginal Land (ML/SR) with the Site Review", and adopting Savings and Severability Clauses, (File No. 509-PA12-05208; Property Map 18-02-29 Tax Lot 3508; Owner Margaret Iverson/Iverson Living Trust; Applicant's Representative, Bill Kloos).

BEFORE THE BOARD OF COUNTY COMMISSIONERS OF LANE COUNTY, OREGON

ORDINANCE NO. PA 1317 IN THE MATTER OF AMENDING THE RURAL COMPREHENSIVE PLAN TO REDESIGNATE LAND FROM "AGRICULTURAL" TO "MARGINAL LAND" AND REZONE THAT LAND FROM "EXCLUSIVE FARM USE (E-40)" TO "MARGINAL LAND (ML/SR) WITH SITE REVIEW", AND ADOPTING SAVINGS AND SEVERABILITY CLAUSES (File No. 509-PA12-05208; Applicant, Iverson)

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

WHEREAS, on April 2012, application No. 509-PA12-05208 was made for a minor amendment to redesignate Tax Lot 3508 of Map 18-02-29, from "Agriculture Land" to "Marginal Land" and to concurrently rezone the property from "E-40/Exclusive Farm Use" to "ML/SR Marginal Land With Site Review"; and

WHEREAS, the Lane County Planning Commission reviewed the proposal in a public hearing and deliberated on October 21, 2014, and forwarded the matter to the Board with a recommendation for approval; and

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

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

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

Section 1. The Lane County Rural Comprehensive Plan is amended to redesignate Tax Lot 3508 of map 18-02-29, from "Agricultural Land" to "Marginal Land". This is depicted on the Official Lane County Plan maps and further identified as Exhibit "A" attached and incorporated herein.

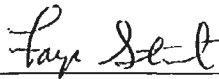
Section 2. The Lane County Official Zoning Map is amended to change the zone of Tax Lot 3508 of Map 18-02-29, from "E-40/Exclusive Farm Use Zone" to "ML/SR" "Marginal Land with Site Review". This is depicted on the Official Lane County Zone maps and further identified as Exhibit "B" attached and incorporated herein. The exclusive purpose of the Site Review suffix is to limit the property (approximately 84 acre subject property) to a maximum of 4 dwellings, as so represented in the Applicant's ESEE analysis.

FURTHER, although not a part of this Ordinance, the Board of County Commissioners adopts Findings of Fact and Conclusions of Law as set forth in Exhibit "C" attached, in support of this action.

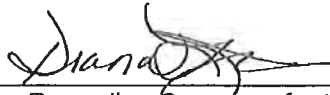
The prior designation and zone repealed by this Ordinance remain in full force and effect to authorize prosecution of persons in violation thereof prior to the effective date of this Ordinance.

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

ENACTED this 9<sup>th</sup> day of February, 2016.



\_\_\_\_\_  
Faye Stewart, Chair  
Lane County Board of County Commissioners



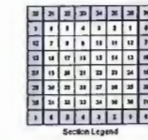
\_\_\_\_\_  
Recording Secretary for this Meeting of the Board

APPROVED AS TO FORM

Date 2-2-16 Lane County

  
\_\_\_\_\_  
OFFICE OF LEGAL COUNSEL

Township 18 South, Range 02 West

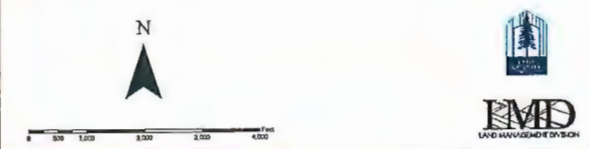


- RCP Plan Designations**
- F - Forest
  - A - Agricultural
  - ML - Marginal
  - C - Commercial
  - I - Industrial
  - R - Residential
  - NRES - Non Resource
  - P - Parks
  - AIR - Airport
  - NR:CA - Natural Resource Conservation Area
  - NR:M - Natural Resource : Mineral
  - NR:W - Natural Resource : Wildlife
  - E - Estuary
  - DR - Destination Resort
  - PF - Public Facility

- UGB - Urban Growth Boundary
- City Limits
- Communities - Rural, Urban
- Township Range
- Sections
- Metro Plan Boundary
- Parcels
- Roads
- Surface Water

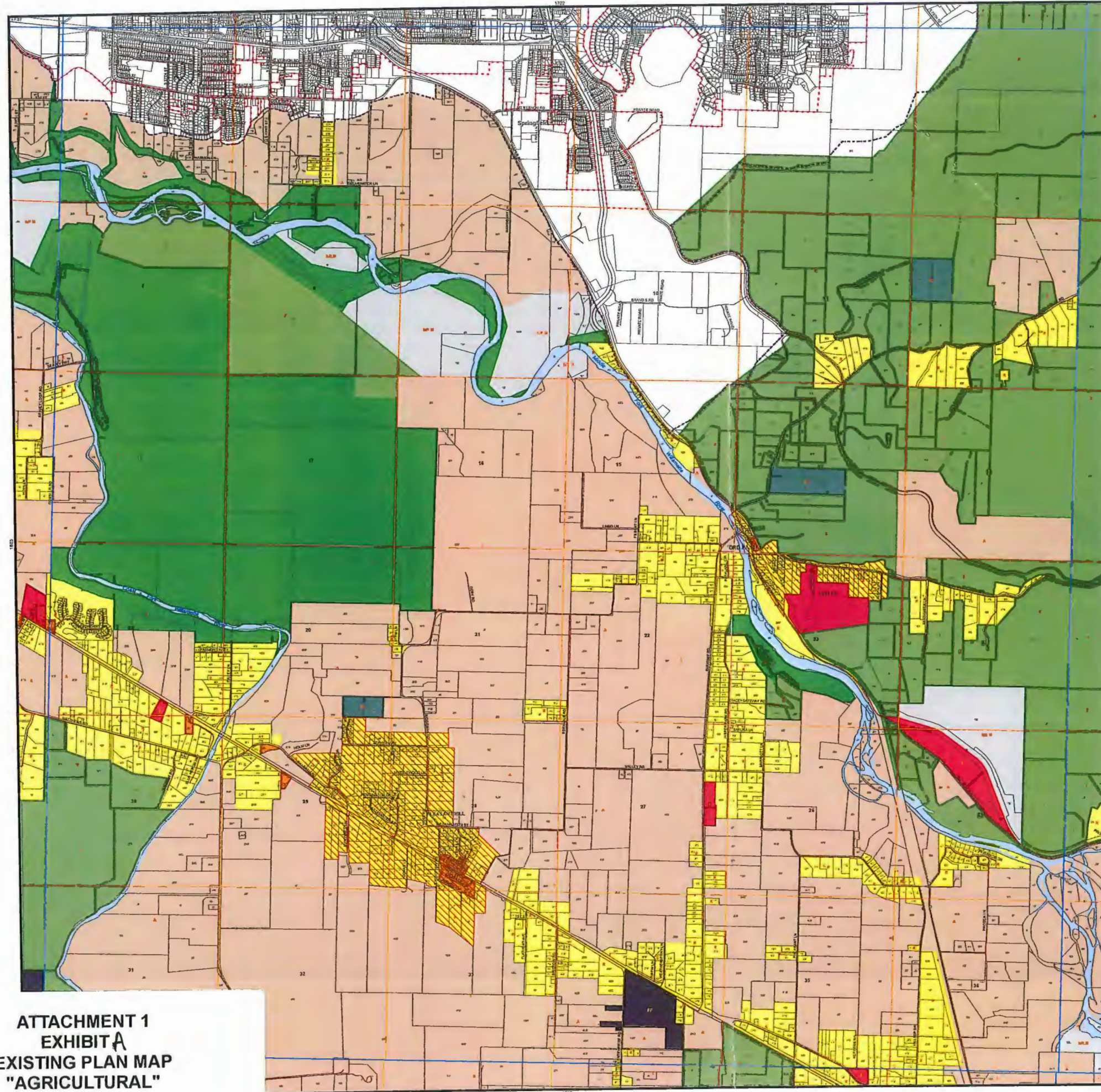
ORIGINAL ADOPTING ORDINANCE NUMBER: ORD.PA1246

Revision	Ordinance or Order Number	Date Effective	Planning Action Number	Revision Description
1	ORD.PA1246	July 11, 2008	NA	Map Adopted
2	NA	Oct 10, 2008	NA	Map Updated to reflect changes to the Plan
3	ORD.PA 1283	July 4, 2013	PA11-5092	Map Updated to reflect changes to the Plan
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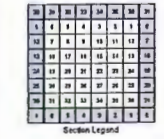


Official Lane County Plan Map

ATTACHMENT 1  
EXHIBIT A  
EXISTING PLAN MAP  
"AGRICULTURAL"



Township 18 South, Range 02 West



- RCP Plan Designations**
- F - Forest
  - A - Agricultural
  - ML - Marginal
  - C - Commercial
  - I - Industrial
  - R - Residential
  - NRES - Non Resource
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  - NR:M - Natural Resource : Mineral
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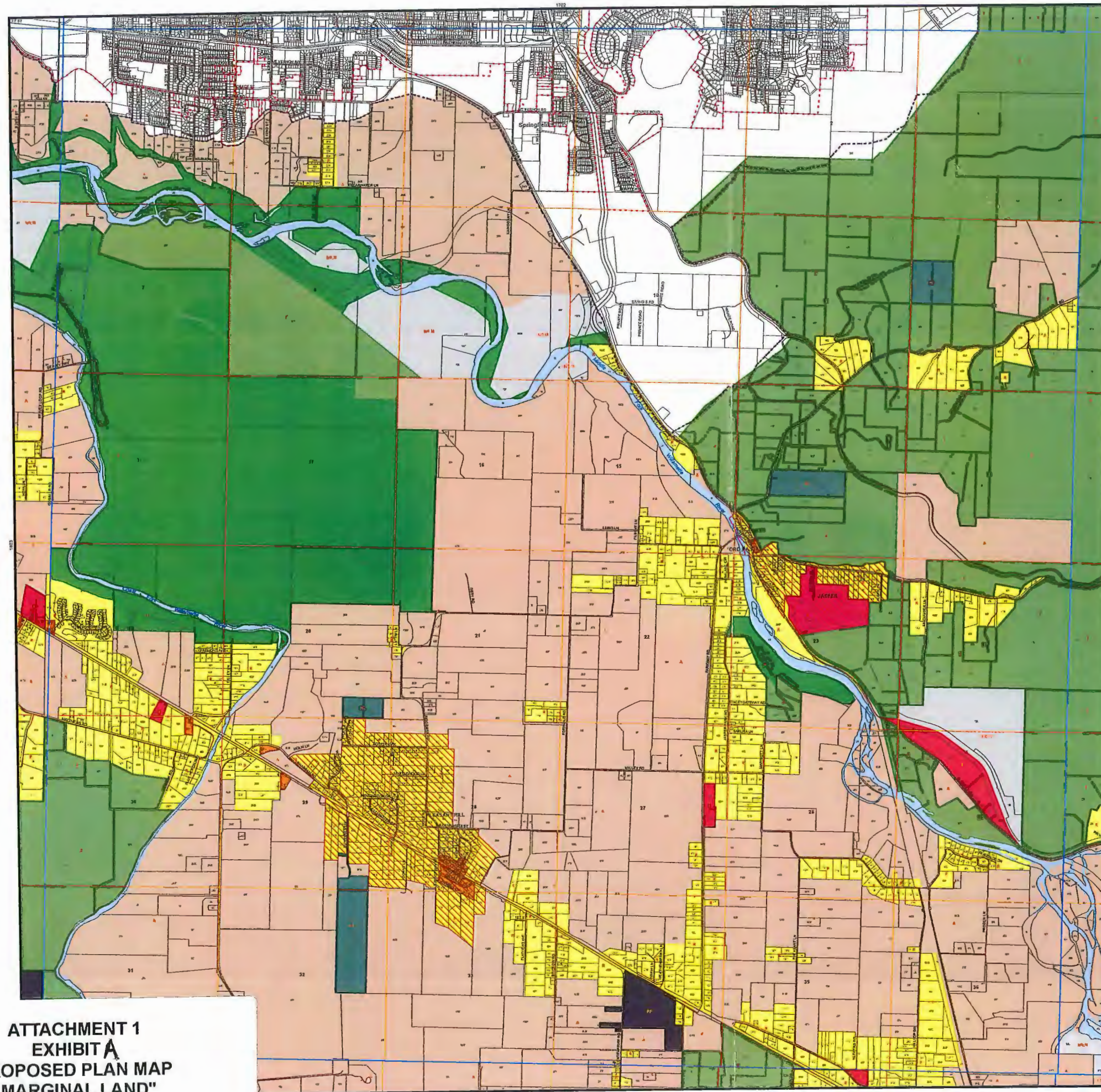
ORIGINAL ADOPTING ORDINANCE NUMBER: ORD.PA1246

Revision	Ordinance or Order Number	Date Effective	Planning Action Number	Revision Description
1	ORD.PA1246	July 11, 2008	NA	Map Adopted
2	NA	Oct 10, 2008	NA	18 South, 02 West, 2011 Map of the Plan 12-18-08
3	ORD.PA 1283	July 4, 2013	PA11-5092	Metropolitan Boundary provided in light of new planning
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**Official Lane County  
Plan Map**

**ATTACHMENT 1  
EXHIBIT A  
PROPOSED PLAN MAP  
"MARGINAL LAND"**



Township 18 South, Range 02 West



Section Legend

1	2	3	4	5	6	7	8
9	10	11	12	13	14	15	16
17	18	19	20	21	22	23	24
25	26	27	28	29	30	31	32
33	34	35	36	37	38	39	40
41	42	43	44	45	46	47	48

Zoning

- F1 - Non-impacted Forest
- F2 - Impacted Forest
- E25 - Exclusive Farm Use (25 acre minimum)
- E30 - Exclusive Farm Use (30 acre minimum)
- E40 - Exclusive Farm Use (40 acre minimum)
- E60 - Exclusive Farm Use (60 acre minimum)
- ML - Marginal Lands
- RC - Rural Commercial
- RI - Rural Industrial
- LI - Light Industrial
- GI - General Industrial
- RPF - Rural Public Facility
- RR1 - Rural Residential (1 acre minimum)
- RR2 - Rural Residential (2 acre minimum)
- RR2-HRES - Non Resource (2 acre minimum)
- RR5 - Rural Residential (5 acre minimum)
- RR5-HRES - Non Resource (5 acre minimum)
- RR10 - Rural Residential (10 acre minimum)
- RR10-HRES - Non Resource (10 acre minimum)
- PR - Park and Recreation
- RPR - Rural Park and Recreation
- AO - Airport Operations
- CLMP - Clear Lake Watershed Protection Area
- NR - Natural Resource
- NE - Natural Estuary
- DR - Destination Resort
- QM - Quarry and Mining Operations
- GO - Sand, Gravel and Rock Products
- SGICP - Sand, Gravel and Rock Products Combining Processing
- CR - Rural Commercial
- C2 - Neighborhood Commercial
- C3 - Commercial
- M2 - Light Industrial
- PF - Public Facility

- UGB - Township Range
- City Limits - Sections
- Parcels - Roads
- Surface Water

ORIGINAL ADOPTING ORDINANCE NUMBER: ORD.PA1246

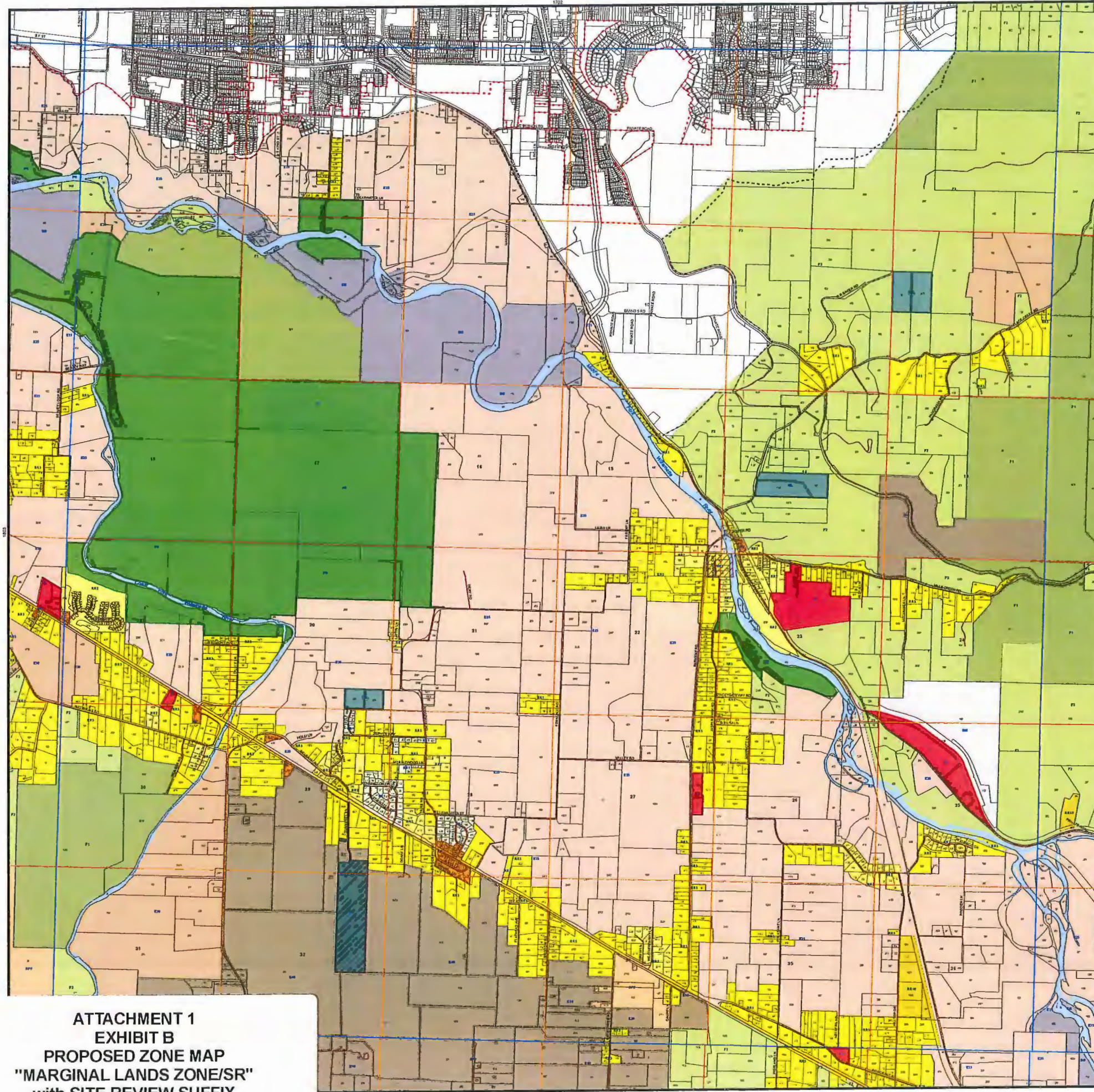
Revision	Ordinance or Order Number	Date Effective	Planning Action Number	Revision Description
1	ORD.PA1246	July 11, 2008	NA	Map Adopted
2	NA	Oct 10, 2008	NA	
3	NA	March 8, 2011	NA	
4	ORD.PA 1284	July 4, 2013	PA-11-5092	State Plan Boundary overlaid and being shown (Ordinance)
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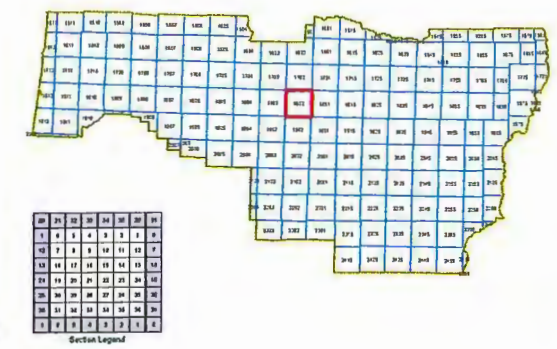
Official Lane County Zoning Map

ATTACHMENT 1  
EXHIBIT B  
EXISTING ZONE MAP  
"EXCLUSIVE FARM USE (E-40) ZONE"





Township 18 South, Range 02 West

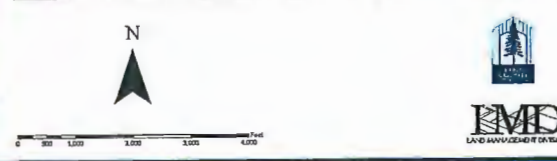


- Zoning**
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  - RC - Rural Commercial
  - RI - Rural Industrial
  - LI - Light Industrial
  - GI - General Industrial
  - RPF - Rural Public Facility
  - RR1 - Rural Residential (1 acre minimum)
  - RR2 - Rural Residential (2 acre minimum)
  - RR2-NRES - Non Resource (2 acre minimum)
  - RR5 - Rural Residential (5 acre minimum)
  - RR5-NRES - Non Resource (5 acre minimum)
  - RR10 - Rural Residential (10 acre minimum)
  - RR10-NRES - Non Resource (10 acre minimum)
  - PR - Park and Recreation
  - RPR - Rural Park and Recreation
  - AO - Airport Operations
  - CLWP - Clear Lake Watershed Protection Area
  - NRI - Natural Resource
  - NE - Natural Estuary
  - DR - Destination Resort
  - QM - Quarry and Mining Operations
  - SG - Sand, Gravel and Rock Products
  - SGCP - Sand, Gravel and Rock Products Combining Processing
  - CR - Rural Commercial
  - C2 - Neighborhood Commercial
  - C3 - Commercial
  - M2 - Light Industrial
  - PF - Public Facility

- UGB      Township Range      Parcels      Surface Water  
 City Limits      Sections      Roads

ORIGINAL ADOPTING ORDINANCE NUMBER: ORD.PA1246

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1	ORD.PA1246	July 11, 2008	NA	Map Adopted
2	NA	Oct 10, 2008	NA	
3	NA	March 8, 2011	NA	
4	ORD.PA 1284	July 4, 2013	PA11-5092	Plans Plan Boundary adjustment and signature recording (revised)
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ATTACHMENT 1  
EXHIBIT B  
PROPOSED ZONE MAP  
"MARGINAL LANDS ZONE/SR"  
with SITE REVIEW SUFFIX

Official Lane County  
Zoning Map

**FINDINGS OF FACT AND CONCLUSIONS OF LAW FOR ORDINANCE  
NO. PA 1317**

**BEFORE THE BOARD OF COUNTY COMMISSIONERS OF  
LANE COUNTY, OREGON**

IN THE MATTER OF AMENDING THE RURAL COMPREHENSIVE PLAN TO REDESIGNATE LAND FROM "AGRICULTURAL" TO "MARGINAL LAND" AND REZONE THAT LAND FROM "EXCLUSIVE FARM USE (E-40)" TO "MARGINAL LAND (ML/SR) WITH SITE REVIEW", AND ADOPTING SAVINGS AND SEVERABILITY CLAUSES (File 509-PA12-05208)

I.     **Applicant/Owner:**                     Margaret Iverson and Iverson Living Trust  
   1872 Willamette St.  
   Eugene, OR. 97401

**Applicant's Representative:** Bill Kloos  
   Law Office of Bill Kloos, PC  
   375 W. 4<sup>th</sup> Avenue, Suite 204  
   Eugene, OR. 97401

II.     **PROPOSAL**

Lane County Land Management Division received an application for a Plan Amendment and concurrent Zone Change from the owner/applicant requesting an amendment to the Lane County Rural Comprehensive Plan (RCP). The applicant's request is to redesignate the land from Agricultural to Marginal Land and to rezone from Exclusive Farm Use (E-40) Zone to Marginal Lands Zone (ML/SR) with Site Review (refer to Attachment 1, Exhibits A & B for existing and proposed plan/zone maps). The Lane County Planning Commission's discussion on addition of Site Review suffix is addressed below in section III.C.

The Lane County Planning Commission (LCPC) unanimously recommended the Board of County Commissioners approve the request. The application is now before the Board for a public hearing and decision.

### III. BACKGROUND

#### A. Nature of Request

This request is a Plan Amendment / Zone Change application request to amend the acknowledged Lane County Rural Comprehensive Plan (RCP) from Agricultural Land to Marginal Land, and change the zoning classification from Exclusive Farm Use (E-40) Zone to Marginal Land Zone.

This is a quasi-judicial Plan Amendment request. The decision must be based on approval criteria, findings of fact and the evidence in the official record of the proceedings. The Plan Adoption or Amendment process is through Planning Commission recommendation and Board action, both with public hearing(s) (conducted pursuant to LC 14.300 Hearing procedure). The criteria consists of the Marginal Land ORS law (section IV.A.), Lane Code Plan Amendment/Zone Change criteria (section IV.B.), Lane County Rural Comprehensive Plan (RCP, section IV.C), Goal 5 ESEE Analysis (section IV.D.), and the Oregon Statewide Planning Goals (section IV.E.).

Approval of this request will allow division of the subject property into four 20 acre minimum parcels. During the LCPC hearing the applicant agreed to the LCPC recommendation to add a site suffix that conditions the property to a maximum four houses (equivalent to a four (4) twenty (20) acre minimum parcel outcome) on the subject property.

The land division process is a separate land use application and is not part of the proposal currently before the Board.

#### B. Subject Property Information and Nearby Area

The subject property is an irregular configured approximately 85 acre flag lot off of Highway 58. The property consists of one tax lot referred to as "the subject property" (refer to Exhibit 1, vicinity map). The property is a legal lot as it was partitioned in 2011, related to a Measure 49 Land Partition application (files 509-PA07-05951 and final partition 509-PA10-05762), as Parcel 3 of Partition Plat 2011-P2486 (refer to Exhibit 2).

The property is zoned Exclusive Farm Use (E-40) Zone (refer to Exhibit 3, existing zoning map) governed by Lane Code Ch. 16.212. The subject property is just south of and adjacent to the boundaries of the Rural Community of Pleasant Hill. Properties to the north are zoned Rural Residential (RR-5) Zone, and properties to the south, east, and west are all zoned E-40. The subject property is bisected in the northern area by Papenfus Creek which is mapped 100 year Floodplain near the creek bed (refer to Exhibit 4, 2013 aerial photo with

floodplain). Papenfus Creek is not a regulated Class 1 Stream, however there are mapped wetlands mostly located just south of the creek.

The 2013 aerial photos (refer to Exhibit 4, 2013 aerial photo) shows the property to the west appears to be in active farm use, properties to the east appears forested, and properties to the north zoned RR-5 contain dwellings and outbuildings. The property ranges in elevation from approximately 520 feet to 640 feet Mean Sea Level(MSL). There is a single family dwelling already on the property which access off Sunny Hill Lane, a private access easement off of Highway 58.

**C. Lane County Planning Commission Action**

The application was presented to the Lane County Planning Commission for evaluation and recommendation at a public hearing on October 21, 2014 (refer to LCPC Minutes, Exhibit 5). The item was originally scheduled for LCPC hearing in November and December 2012, but was pulled by the applicant. The applicant requested the application to be placed on hold for three primary reasons: need for a soils evaluation review, need for Economic, Social, Environmental, and Energy (ESEE) analysis addressing Goal 5 issues including Big Game Habitat, and the applicant wanted to await the outcome of other zone changes applications to Marginal Lands zoning unrelated to this proposal. During the LCPC hearing, they recommended approval in an eight to zero vote. With the recommendation to add a /SR Site Review suffix limiting the property to four dwellings. The Site Review suffix was also recommended by staff during the LCPC hearing, driven by the agent's discussion of the Goal 5 ESEE analysis (refer to ESEE discussion in Section IV.D.). Throughout the ESEE analysis the agent bases his findings on an assumption of four total dwellings being built on the subject property should this application be approved.

The Marginal Lands zone allows parcel sizes of 10 or 20 acres per LC 16.214(6), with a permitted use allowance of one dwelling per parcel under LC 16.214(2)(b). This could result in eight dwellings on the 85 acre property. Since the agent used a maximum of four dwellings to justify meeting the ESEE Big Game Habitat needs, the proposal needs to be explicitly limited to sustain the logic of the applicant's arguments.

Finally, the LCPC recommended a condition requiring the applicant to record a Farm/Forest Management Agreement prior to the Board review to which the applicant agreed. This was based on a comment staff received from an adjacent property owner concerning the need to protect their farm operations. The Farm/Forest Easement is a recorded document which is intended to protect a property owner's right to farm and protect against related nuisance lawsuits.

**D. Financial and/or Resource Considerations**

The applicant's request for a Plan Amendment/Zone Change is a fee-for-service land use application that is processed in the Land Management Division by planning staff and the Planning Director. There are no foreseeable financial or staff resource considerations related to the applicant's proposal.

**IV. CRITERIA & ANALYSIS**

**A. Marginal Land ORS's Criteria**

Marginal Land proposals are primarily governed by the 1991 version of ORS 197.247 (refer to Exhibit 6). Lane County is one of two Oregon counties that have adopted the Marginal Lands Plan/Zone designations. Lands that are designated as "marginal lands" are considered a subset of resource lands, but are allowed as smaller tracts in which dwellings are a permitted use pursuant to Marginal Land zone under Lane Code 16.214(2)(b).

Marginal Land law has changed since its inception in Lane County in 1984 (Ordinance 884). Lane County Marginal Lands cases have been appealed to Land Use Board of Appeals and beyond, often resulting in remands back to the County with changing methodology of Marginal Lands applications. As a result and as mentioned previously above, to eliminate multiple interpretations and offer guidance, in March 1997 the Lane County Board of Commissioners issued a Supplement to Marginal Lands Information Sheet (Exhibit 7) summarizing the seven issues that changed policy.

Essentially, qualification for a marginal land designation is a two-fold test. Any proposal must comply with the income test, and a parcelization test or productivity test. The applicant chose to do the income test and productivity test for this application.

The examination must include any lands, which might have been part of such farm or forest operations during the five year time period of 1978-1982 (established by ORS 197.247(1)(a)). The land owned and managed as verified by staff included an approximately 122 acre property owned by Margaret Iverson (current owner) during the five year time period. In 1982 the property was divided (M-Partition M201-80) into two parcels, Parcel 1 at approximately 118 acres, and parcel 2 at approximately four acres with the original homestead. The then 122 acre ownership consisted of what are now Tax Lots 3502, 3504, 3505, 3507, 3506, 3508, 3600, 3601, 3602, & 3603. Currently, the subject property is considered a legal lot as Parcel 3 of 2011-P 2486 (refer to Exhibit 2).

## 1. Income Test

**ORS 197.247(1)(a) The proposed marginal land was not managed, during three of the five calendar years preceding January 1, 1983, as part of a farm operation that produced \$20,000 or more in annual gross income or a forest operation capable of producing an average, over growth cycle, of \$10,000 in annual gross income.**

Farm Income - The applicant has provided an affidavit (Exhibit 8) from Margaret Iverson, who owned the then 122 acre property during the five years preceding 1983. The affidavit attests the proposed marginal land was not part of a farm operation that produced \$20,000 or more annual gross farm income. Staff accepts this evidence as it meets the Board directive.

Forest Income – The applicant hired a professional forester (Marc Setchko) to conduct this analysis and submitted a report (Exhibit 9, forester report). Mr. Setchko calculated average gross incomes for each year with the highest log prices in 1981 at \$9,881 and the lowest log prices in 1982 at \$6,945 (Exhibit 9 pages 5-7). These calculations show the property did not exceed the maximum \$10,000 annual gross income during the five year time period.

Due to the evidence in the record, the Board finds the criterion above is met.

## 2. Productivity Test

**ORS 197.247(1)(b)(C) The proposed Marginal Land is composed predominantly of soils in capability classes V through VIII in the Agricultural Capability Classification system used by the U.S. Department of Agriculture Soil Conservation Service, and is not capable of producing 85 cubic feet of merchantable timber per acre per year.**

Agricultural Capability Classification - According to Natural Resources Conservation Service data using their Web Soil Survey tool, the then 122 acre property contained approximately 74% Class 2-4 soils (refer to Exhibit 10). The term "*predominantly*" in relation to Marginal Lands applications means 51%+. As such, the applicant hired a professional soil scientist (Gary Kitzrow) to conduct a soils analysis (refer to Exhibit 11, soils report) using field methodologies. Mr. Kitzrow concluded that the property contains 73.7% Class 4-8 soils, and 26.3% Class 2-4 soils (refer to Exhibit 12, soils map for total acreage).

A new administrative rule (OAR 660-033-0030 & 0045 Identifying Agricultural Land) took effect in 2010, requiring that in cases where soils data is presented that is different from those listed in the standard NRCS source, that the study needs to be first vetted by Department of Land Conservation & Development (DLCD). The purpose of the DLCD staff review is to ensure that an adequate and

consistent methodology is used by the professional in the soils analysis. LMD staff determined this OAR applied to this soils analysis. As such, the applicant submitted their Soils Assessment application to DLCD.

When DLCD reviewed the soils assessment, they requested additional information from the agent. DLCD concluded the methodology of the soil report was deficient. However, DLCD stated that the County had the option of whether or not to accept the reports on its own accord. Because the reports accepted during the partition process, had previously been peer reviewed by another soils scientist, and that the calculations were revised by the Registered Engineer, the County accepted the reports. This was supported by County Counsel. Counsel indicated that the property does not meet the definition of agricultural land, but rather is a subset of resource farm land. Lands designated as "Marginal Lands" are still considered a subset of resource land that is marginally productive due to low productive soil capability or impact from other land uses (pg. 2 Legislative History, Exhibit 6). Therefore, the legal trigger of OAR 660-033-0020(1)(a)(A) is not activated, a key item requiring soils review by DLCD.

Merchantable timber - The applicant hired a professional forester (Marc Setchko) to conduct this analysis and submitted a report (Exhibit 9). Mr. Setchko concluded the property is incapable of producing 85 cubic/acre/year. (Exhibit 8 pgs. 2-3) of merchantable timber.

In summary, the Board finds the Marginal Land application meets the ORS criterion above.

**B. Lane Code Plan Amendment / Zone Change Criteria**

**1. Lane Code Ch. 16.400(6)(h) Method of Adoption and Amendment:**

**(i) The adoption or amendment of a Rural Comprehensive Plan component shall be by Ordinance.**

If approved, the adoption of the RCP amendments shall be by Ordinance.

**(ii) The adoption or amendment shall be concurrent with an amendment to LC 16.400(4) above. In the case of a Rural Comprehensive Plan adoption, the Code amendment shall place such Plan in the appropriate category. In the case of a Rural Comprehensive Plan amendment, the Code amendment shall insert the number of the amending Ordinance.**

The adoption is concurrent with an amendment to category (a) listed in LC 16.400(4), The Code Amendment will insert the number of the amending Ordinance within the document.

**(iii) The Board may amend or supplement the Rural Comprehensive Plan upon making the following findings:**

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

This request is classified as a Minor Plan Amendment as it is a change request to the Plan diagram (map) only and not a change in RCP text. Findings on applicable local and state law, including Statewide Planning Goals are addressed in this section.

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

**(i-i) necessary to correct an identified error in the application of the Plan; or**

The applicant states by showing that the property qualifies for Marginal Land designation, the applicant is essentially demonstrating that the existing plan designation of Agriculture is not correct and in error.

**(ii-ii) necessary to fulfill an identified public or community need for the intended result of the component or amendment; or**

**(iii-iii) necessary to comply with the mandate of local, state or federal policy or law; or**

Neither of the above applies.

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

The property is currently designated Agriculture, thus RCP Goal 3 applies (see Section IV.C. for RCP findings). The marginal land statute and RCP policies (Goal 3 Policy 14) anticipate that Agricultural land can be redesignated as marginal land. Also, the description of the Marginal Lands plan designation, under Goal 11 of the RCP, states: "Land that satisfy the requirements of ORS 197.246 may be designated Marginal Lands in accordance with other Plan policies." A Marginal Lands application that complies with these Plan policies implements the RCP.

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



The County Board finds that if a tract of land qualifies for Marginal Lands designation then it is desirable, appropriate and proper to apply that designation.

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

Findings of consistency with the RCP policies are addressed below under RCP Policies, section IV.C.

**(dd) For Minor Amendments ad defined in LC 16.400(8)(a) below, the Plan Amendment or component is compatible with the existing structure of the Rural Comprehensive Plan, and is consistent with the unamended portions or elements of the Plan.**

Findings of consistency with the RCP policies are addressed below under RCP Policies, section IV.C.

**(i) A change of zoning to implement a proposed Plan amendment may be considered concurrently with such amendment. In such case, the Board shall also make the final zone change decision, and the Hearings Officials consideration need not occur.**

The application proposal is a Plan Amendment and concurrent Zone Change request. As such, the item was not required to go before the Hearing Official for consideration. The item's title, review, and motion to action identifies that the review and decision is for a concurrent Plan Amendment and Zone Change request.

**2. Lane Code 16.400(8) Additional Amendment Provisions. In addition to the general procedures set forth in LC 16.400(6) above, the following provisions shall apply to any amendment of Rural Comprehensive Plan components:**

**(a) Amendments to the Rural Comprehensive Plan shall be classified according to the following criteria:**

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

**(ii) Major Amendment. Any Amendment that is not classified as a minor amendment.**

This is a minor plan amendment request. No Plan text is proposed to be changed. No Goal exception is being requested. The change is from one resource Plan designation to another.

**(b) Amendment proposals, either minor or major, may be initiated by the County or by individual application. Individual application shall be subject to a fee established by the Board and submitted pursuant to LC 14.050.**

This is a minor amendment, initiated by the owner, with payment of the application fee.

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

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

The proposal is described in whole within the application.

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

This was addressed above.

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

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

The proposed Marginal Land designation will maintain the resource character of the property. However, it will allow for low density residential development of the subject property. There is currently one dwelling on the property. Approval of this request will allow division of the subject property into 20 acre minimum parcels/lots, a four parcel outcome. During the LC Planning Commission hearing the applicant agreed to the LCPC recommendation to add a site suffix that conditions that the property can only contain maximum 4 houses (equivalent to a four (4) twenty (20) acre minimum parcel outcome) on the subject property. This intensity is comparable to or less dense than the surrounding Rural Residential density in the Pleasant Hill area.

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

The following rural services are available to the property:

Fire:	Pleasant Hill Rural Fire Protection District
Police:	County/State
Sewer/water:	Proposed on-site septic/well
School District:	Pleasant Hill
Power:	EPUD
Access:	Sunny Hill Lane, a private access easement off of Highway 58

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

The applicant conducted an ESEE analysis; refer to section 2.G.d. for discussion.

**(dd) Natural hazards affecting or affected by the proposal:**

The RCP Goal 7 states natural hazards inventory are contained in the 1982 Natural Hazards Working Paper. Potential hazards inventoried on this property include Natural Resource Conservation Service (NRCS) soil data and the Flood Insurance Rate maps. While the application stated no natural hazards have been identified or inventoried on the subject property, potential for flooding does exist according to the current mapped Flood Zone A near the north portion of the subject property along Papenfus Creek (refer to Floodplain Map, Exhibit 4). Other natural hazards such as earthquakes, landslide, erosion, and deposition are not inventoried (Natural Hazards Working Paper, pg. 4) for this property.

As for potential flooding, any development proposed (roads, structures, land division) shall comply with the current county floodplain management regulations in LC 16.244, which will require a floodplain permit prior to any development to ensure the applicable regulations are adhered to.

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

**(ff) For a proposed amendment to a nonresidential, nonagricultural or nonforest designation, an inventory of reasonable alternative sites now appropriately designated by the Rural Comprehensive**

**Plan, within the jurisdictional area of the Plan and located in the general vicinity of the proposed amendment;**

These criteria are not applicable; the Board had found that Marginal Land is considered a resource designation.

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

The standards listed in the Marginal Lands Working paper cite Senate Bill 237 in 1983 (Marginal Lands Working Paper, pgs. 4-7). The Marginal Lands law was amended in 1991 and the Working Paper was never amended. As such, the appropriate criteria to base the Marginal Lands Plan Amendment is derived from state law under ORS 197.247 (Marginal Lands ORS criteria, refer to findings of consistency under section G.2.a.) and guided by RCP Goal 3, Policy 14 and RCP Goal 4, Policy 4 (refer to findings of consistency under section IV.C.).

**3. Lane Code 12.050 Method of Adoption and Amendment:**

**(1) The adoption of the comprehensive plan or an amendment to such plan shall be by an ordinance.**

The method of adoption is by a proposed ordinance.

**(2) The Board may amend or supplement the comprehensive plan upon a finding of:**

- (a) an error in the plan; or**
- (b) changed circumstances affecting or pertaining to the plan; or**
- (c) a change in public policy; or**
- (d) a change in public need based on a reevaluation of factors affecting the plan; provided, the amendment or supplement does not impair the purpose of the plan as established by LC 12.005 above.**

The above criterion is duplicative of LC 16.400(6)(h)(iii)(bb), refer to findings above.

**4. Lane Code 16.252 Procedures for Zoning, Rezoning, and Amendments to the RCP:**

**(1) Purpose. As the Rural Comprehensive Plan for Lane County is implemented, changes in zone and other requirements of this chapter will be required. Such Amendments shall be made in accordance with the procedures of this section.**

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

The applicant's agent attests the approval of this request will achieve the general purpose of this chapter and will not be contrary to the public interest. There are 14 general purpose statements in LC 16.003. The agent states that if the application proposal meets the standards that govern the redesignation of the property, then the Board finds it is reasonable to conclude that the application will meet the general purpose statements and be in the public interest.

**(3) Initiation/Application. (c) By Applicant. Application for the zoning or rezoning of properties may be made by any person as provided in LC 14.050.**

The initiation of the application was originally done by Boyd Iverson in 2012. Since his recent passing, his son Jordan Iverson has taken over as the applicant on this application submittal. Jordan Iverson is a person with legal interest in the property meeting the standard in LC 14.050(1)(a) as shown in the submitted property owner authorization form and proof of executorship in the application materials.

In summary, the Board finds the LC Plan Amendment / Zone change standards are met.

**C. Rural Comprehensive Plan (RCP) Policies**

**RCP Goal 3, Policy 14 state:**

***Land may be designated as marginal land if it complies with the following criteria:***

***a. The requirements of ORS 197.247 (1991 edition), and***

Findings of consistency with ORS 197.247 (1991 ed.) are addressed in section IV.A. above.

***b. Lane County General Plan Goal 5, Flora and Fauna, policies numbered 11 & 12.***

Findings of consistency with Goal 5, Flora and Fauna are addressed below under RCP Goal 5 policy.

**RCP Goal 4, Forest Lands Policy 1 state:**

***Conserve forest lands by maintaining the forest lands base and protect the state's forest economy by making possible economically efficient forest practices that assure the continuous growing and harvesting of forest tree species as the leading use on forest land consistent with sound management of soil, air, water and fish and wildlife resources and to provide for recreational opportunities and agriculture. Forest land shall include lands which are suitable for commercial forest uses including adjacent or nearby lands which are necessary to permit forest operations or practices and other forested lands that maintain soil, air, water, and fish and wildlife resources.***

The proposal will conserve forest lands because the Marginal Lands zone is a resource zone. Farm and forest operations are permitted uses in the Marginal Lands zone in order to allow continued opportunities to conduct farm or forest operations on lands zoned Marginal Lands.

**RCP Goal 4, Forest Lands Policy 3 state:**

***Forest lands that satisfy the requirements of ORS 197.247 (1991 ed), may be designated as Marginal Lands and such designations shall also be made in accordance with other Plan policies. Uses and land divisions allowed on Marginal Lands shall be those allowed under ORS 197.247 (1991 ed).***

Findings of consistency with ORS 197.247 (1991 ed.) are addressed in section IV.A. above.

**RCP Goal 4, Forest Lands Policy 12 state:**

***Encourage the conversion of under-productive forest lands through silvicultural practices and reforestation efforts.***

Farm and forest operations are permitted uses in the Marginal Lands zone in order to allow continued opportunities to conduct farm or forest operations on lands zoned Marginal Lands.

**RCP Goal 5, Flora and Fauna Policies 11 & 12 state:**

**11. Oregon Department of Fish and Wildlife recommendations on overall residential density for protection of big game shall be used to determine the allowable number of residential units within regions of the County. Any density above that limit shall be considered to conflict with Goal 5 and will be allowed only after resolution in accordance with OAR660-16-000. The County shall work with Oregon Department of Fish and Wildlife officials to prevent conflicts between development and big game Range through land use regulation in resource areas, siting requirements and similar activities which are already a part of the County's rural resource zoning program.**

In previous Marginal Land applications the County Board found that the County and the ODFW have implemented Policy 11 through application of county land use regulations, siting requirements, and other elements of the County's rural resource zoning program. That is, residential densities that will be allowed by the Marginal Land designations (20 acre per unit in this instance) will not exceed any limits recommended by the ODFW, as directed by RCP Goal 5, Flora and Fauna, Policy 11.

However, beginning with the Suess Marginal Lands applications, an economic, social, environmental, and energy (ESEE) analysis was completed in connection with Marginal Lands zone change requests and is now considered normal requirement, for Marginal Lands applications. As such, refer to Policy 12 & RCP Goal 5 ESEE Analysis sections below for further discussion.

**12. If uses identified (which were not previously identified in the Plan) which would conflict with a Goal 5 Resource, an evaluation of the economic, social, environmental, and energy consequence shall be used to determine the level of protection necessary for the resource. The procedure is outlined in OAR 660-16-000 will be followed.**

Beginning with the Suess Marginal Land applications/decision, the applicant has conducted an economic, social, environmental, and energy (ESEE analysis) analysis in connection with the Marginal Land application analysis. The ESEE analysis is considered necessary because the analysis was not done on this subject property in the 1984 RCP adoption. Now with this submittal, the applicant has conducted the ESEE analysis related to certain Goal 5 Resources addressed in the Goal 5 ESEE Analysis section below.

In summary, the Board finds the application demonstrates compliance with the RCP policies above.

**D. Goal 5 ESEE Analysis**

Goal 5 requires the County to inventory the locations, quality and quantity of certain natural resources. Where no conflicting uses are identified, the inventoried resources shall be preserved. Where conflicting uses are identified, the economic, social, environmental and energy consequences shall be determined and programs developed to achieve the goal.

The applicant is not required to do an entire Goal 5 analysis. Particularly relevant is OAR 660-023-0250 subsections (3) & (4), where a county is amending an acknowledged plan and zoning designations, the applicant must address Goal 5 if any of the area proposed for change encompasses lands included on the county's inventory of Goal 5 resources. The Goal 5 question, therefore, is whether the subject property includes any significant Goal 5 resources inventoried in the acknowledged county plan.

Goal 5 resources could include: Open Spaces, Scenic, and Historic Areas and Natural areas, Historic Resources, Mineral & Aggregate Resources, Flora & Fauna, Energy, Big Gam Habitat, Water Resources including Wetlands, Floodplain.

The property is not designated as Open Space, Historic Area/Structure, Historic Resources, Energy resources, or a Significant Mineral & Aggregate Resource as inventoried in the Rural Comprehensive Plan. As such, the applicant's analysis on Goal 5 ESEE was related to Big Game Habitat, Flora & Fauna, and Water Resources, wetlands, floodplain, and archeological sites in the area.

**Big Game Habitat**

The property is inventoried as Big Game Habitat in the RCP. There are three classifications of Big Game range, "Major Big Game", "Impacted Big Game," and Peripheral Big Game." The subject property contains Impacted and Peripheral Big Game classifications (refer to Exhibit 13, Big Game Habitat Map). Major Big Game is the most "wild" and valuable, generally found on federal land with lards forest holdings, and touching the valley in some of the foothills. None of this designation is found on the subject property. The intermediate range is Peripheral Big Game Range and covers approximately 35 acres of the property. The property then transitions into the Impacted Big Game Range which covers approximately 49 acres of the property. This latter range includes the cities of Lane County and rural areas of unincorporated communities such as nearby Pleasant Hill. While the Impacted Big Game Range does not have much or any protection, the other two do.

The agent presented his case modeled after the Suess Marginal Lands applications. One of the major differences in the two cases is the current



application does not contain Major Big Game range generally given to lands containing Oak savannah habitat. According to conversations that staff had with ODF&W during the Suess applications, oak savannah need protection because they are excellent habitat for deer, and once deer are present their predators will follow, such as bobcat, bear, and especially cougars. There is no oak savannah on the subject property according to the applicant (Boyd Iverson). Furthermore, the applicant concludes that limiting the presence of four total dwellings on the 85 acre subject property will not create a conflict with Black Tailed Deer, as they favor the open and cleared habitat present on the property. By claiming no conflict (through reliance of numerous publications), along with limiting development to maximum of four total dwellings (via a Site Review /SR Zone suffix), the agent can assert that Goal 5 has been met in regards to Big Game Habitat. Therefore, the Board finds that the record demonstrates the ESEE analysis is acceptable in relation to Big Game Habitat.

### **Flora and Fauna**

The Goal 5 Flora and Fauna findings of consistency were addressed above under section G.2.c., RCP Goal 5, Flora and Fauna Policies 11 & 12, and Big Game Habitat.

### **Water Resources**

The acknowledged county plan identifies surface water and watersheds as Goal 5 resources. The Water Resources Working Paper (1982 Version, pgs 3-10) state that it is difficult to separate the discussion of watersheds from that of surface water. Hence, the two will be addressed here.

By "watershed," the working paper refers to areas of drainage basins that drain to a particular point of use. As defined in the working paper, "the area which drains to a domestic water supply is correctly termed as watershed, even if it is much smaller than a basin (1982 Version, pg 3). The working paper maps drainage basins in the County, but not watersheds, since a watershed is a function of where water is being used. According to the working paper, the subject property would be in the "watershed" for any domestic user of water downstream of the intermittent streams on the subject property. The working paper recognizes that the entire County is within one or more categories of watersheds, and all ranges may be found (1982 Version, pg. 5).

The quality discussion in the plan recognizes that watersheds play vital role in individual and municipal water supplies, fish and wildlife habitat, water quality, flood protection, among others. The quantity discussion in the plan recognizes that a range of uses such as soil compaction, removal of vegetation, and increase in impervious surfaces, among others, affect the amount of water that is retained in the watershed and the amount that runs off.

Only one conflict is identified by the plans ESEE analysis as a watershed conflict, as opposed to a surface water or groundwater conflict. That is “contamination or possible contamination of surface water supplies used for domestic purposes” (1982 Version, pg. 5). The plan identifies two places where that conflict exists. One is from forestry related practices on federal, state, and private timber lands. The other is from residential development in the Clear Lake area, which is the watershed district at the coast in the Heceta Water District. The plan conducts no ESEE analysis for forestry practices for the reason that the county has so little control over these practices.

The working paper maps drainage basins and lists the principle streams in Lane County. There is a creek running through the property named Papenfus Creek and is shown in the USGS Topographic maps. However, this stream is not a Class 1 classified stream, nor is it listed as a principle stream in the working paper.

The working paper recognizes that the quality of surface waters throughout the county is affected adversely by a range of factors, only some of which are under county control. Its discussion of stream water quantity is limited to a description of flow regulations in rivers and streams by federal agencies with storage and flood control responsibilities (1982 Version, pgs. 8-9).

The working paper identifies a number of activities that conflict with water quality in streams, but states that the impacts of these activities are largely beyond County land use control. Examples in the working paper’s discussion include: water release schedules from federal reservoirs, state water rights regulation that contribute to over appropriation, nonpoint pollution from forest practices regulated by the state, nonpoint pollution from agricultural practices, and urban runoff from cities.

The working paper concludes no ESEE analysis of the problems listed above. “These are not considered as conflict in the Goal 5 sense as they do not result from County planning or zoning actions, and generally cannot be resolved in that manner” (1982 Version, pg. 10).

The County program found only one conflict that is specifically a watershed conflict, and not a surface or groundwater conflict. That is contamination or possible contamination of surface water supplies use for domestic purposes. However the County did no ESEE analysis for this potential conflict, recognizing that the problem is substantially outside its jurisdiction to resolve, relying instead on state and federal authorities.

State and federal agency programs listed included federal reservoirs, state water rights laws, state forest practices regulations, and DEQ clean water regulations. Hence, the County conducted no ESEE analysis for surface waters.

Potential impacts of very low density rural residential development on watersheds and surface water are not conflicts identified in the acknowledged Goal 5 program. During the LC Planning Commission hearing the applicant agreed to the LCPC recommendation to add a site review suffix that conditions that the property to a maximum of four houses (equivalent to a four (4) twenty (20) acre minimum parcel outcome) on the subject property. Furthermore, some might argue that multiple smaller ownerships of this larger parcel might encourage small scale farming, as compared with the site remaining unused, and farm use might impact the watershed and surface waters. However, Goal 5 rule does not require considering the impacts of the agricultural uses. "Local governments are not required to consider agricultural practices as conflicting uses." OAR 660-23-0010(1).

In summary, under the acknowledged Goal 5 plan for watershed and surface water resources, the Board finds there are no recognized conflicting uses associated with the potential low density rural residential uses associated with this proposal.

#### **Other Goal 5 Resources**

The subject property does contain mapped Wetlands, Floodplain, and may contain Archeological Sites in the area. The applicants ESEE analysis concludes that those resources are protected by existing Lane Code regulations or other state agencies. For example, wetlands are regulated by Oregon Department of State Lands, archeological sites are monitored by Oregon State Historic Preservation Office, and any development in the floodplain is regulated by Lane Code 16.244, which would require a permit prior to any fill or structures proposed in the floodplain near Papenfus Creek. The agent concludes these resources are already protected by existing regulations and existing agencies.

The Board finds these explanations to be reasonable and satisfactory, and agree Goal 5 has been met for these resources.

#### **E. Statewide Planning Goals**

**Goal 1 – Citizen Involvement: To develop a citizen involvement program that ensures the opportunity for citizens to be involved in all phases of the planning process.**

There are multiple opportunities for the public to participate in this application process. The application was formally noticed (750' around the subject property) to adjacent property owners and agencies prior to the Lane County Planning Commission and the Lane County Board of Commissioners public hearings. Publication of both hearings was given to the Register Guard requesting the application be noticed in the Legal Ad section. Additionally, siting of the application request was posted at the entrance of the subject property prior to

both hearings. During the hearings, the public is given an opportunity to give public testimony or submit written material to the record. The application is also appealable to the Land Use Board of Appeals. The Board finds the Plan Amendment / Zone Change is consistent with Goal 1.

**Goal 2 - Land Use Planning: To establish a land use planning process and policy framework as a basis for all decisions and actions related to use of land and to assure an adequate factual base for such decisions and actions.**

The land use process for this Plan Amendment is a quasi-judicial process. This type of review requires findings of fact, public hearings, and an adopted Ordinance. Criteria and findings for this process were discussed in sections above found in LC 16.400(6)(h), & (8), LC 12.050, LC 16.252, LC 14.050, pursuant to De Novo public hearing procedures under LC 14.300.

Policy framework applicable to this application request was addressed under RCP findings in section IV.C. The Board finds the Plan Amendment / Zone Change is consistent with Goal 2.

**Goal 3 – Agricultural Lands: To preserve and maintain agricultural lands. Agricultural lands shall be preserved and maintained for farm use, consistent with existing future needs for agricultural products, forest and open space and with the state’s agricultural land use policy expressed in ORS 215.243 and 215.700.**

Marginal Land is a subset of resource lands designation. Land that is plan designated as Marginal Land is consistent with Goal 3 or Goal 4 or both. Farm and forest operations are explicit permitted uses in the Marginal Lands zone (under LC 16.214(2)(d), (e), & (f)) in order to allow continued opportunities to conduct farm or forest operations on lands zoned Marginal Lands. The Board finds the Plan Amendment / Zone Change is consistent with Goal 3.

**Goal 4 - Forest Lands: To conserve forest lands by maintaining the forest land base and to protect the state’s forest economy by making possible economically efficient forest practices that assure the continuous growing and harvesting of forest tree species as the leading use on forest land consistent with sound management of soil, air, water, and fish and wildlife resources and to provide for recreational opportunities and agriculture.**

Marginal Land is a subset of resource lands designation. Land that is plan designated as Marginal Land is consistent with Goal 3 or Goal 4 or both. Farm and forest operations are explicit permitted uses in the Marginal Lands zone (under LC 16.214(2)(d), (e), & (f)) in order to allow continued opportunities to conduct farm or forest operations on lands zoned Marginal Lands. The Board finds the Plan Amendment / Zone Change is consistent with Goal 4.

**Goal 5 - Open Spaces, Scenic and Historic and Natural Resources: To conserve open space and protect natural and scenic resources.**

The applicant submitted a Goal 5 ESEE analysis for the impacts of this proposal on acknowledged Goal 5 resources present on-site. The Goal 5 Analysis is discussed in section IV.D. above. The Board finds the Plan Amendment / Zone Change is consistent with Goal 5

**Goal 6 - Air, Water and Land Resource Quality: To maintain and improve the quality of the air, water, and land resources of the state.**

Goal 6 protects the quality of land, air, and water resources. The focus is on discharges from future development in combination with discharges with existing development. State and federal environmental standards are the benchmark for protection. Where there are state or federal standards for quality in air sheds or river basins, then the carrying capacity, non-degradation, and continued availability of the resources are the standards. The availability of these standards as a precondition to residential development ensures that the future use will comply with Goal 6. The Board finds the Plan Amendment / Zone Change is consistent with Goal 6.

**Goal 7 – Areas Subject to Natural Disasters or Hazards: To protect life and property from natural disasters and hazards.**

**Developments subject to damage or that could result in loss of life shall not be planned nor located in known areas of natural disasters and hazards without appropriate safeguards. Plans shall be based on an inventory of known areas of natural disaster and hazards.**

The subject property does contain mapped Wetlands, Floodplain, NRCS Soils data, and may contain Archeological Sites in the area. The applicants ESEE analysis concludes that those resources are protected by existing Lane Code regulations or other state agencies. For example, wetlands are regulated by Oregon Department of State Lands, archeological sites are monitored by Oregon State Historic Preservation Office, and any development in the floodplain is regulated by Lane Code 16.244, which would require a permit prior to any fill or structures proposed in the floodplain near Papenfus Creek. The agent concludes these resources are already protected by existing regulations or existing agencies.

Other natural hazards such as earthquakes, landslide, erosion, and deposition are not inventoried (Natural Hazards Working Paper, pg. 4) for this property. The Board finds the Plan Amendment / Zone Change is consistent with Goal 7.

**Goal 8 – Recreational Needs: To satisfy the recreational needs of the citizens of the state and visitors and, where appropriate, to provide for the siting of necessary recreational facilities including destination resorts.**

The purpose of Goal 8 is to address all recreational needs. Goal 8 is not directly applicable to this proposal. No destination resort is proposed. Furthermore, the subject property is not used for public recreational purposes and is not designated on any county plan as intended for that purpose in the long run. The Board finds Goal 8 is not applicable with the Plan Amendment / Zone Change application.

**Goal 9 - Economy of the State: To provide adequate opportunities throughout the state for a variety of economic activities vital to the health, welfare, and prosperity of Oregon's citizens.**

Goal 9 is focused on commercial and industrial development. The Goal 9 rule, OAR 660-09, is explicitly limited to areas within urban growth boundaries. This goal does not apply to rural residential uses in a Marginal Lands designation. The Board finds Goal 9 is not applicable with the Plan Amendment / Zone Change application.

**Goal 10 – Housing: To provide for the housing needs of the citizens of the state.**

Goal 10, like its implementing rule OAR 660-008, is geared to housing issues inside urban growth boundaries (UGB). The goal does not apply because this site is outside the UGB. The Board finds Goal 10 is not applicable with the Plan Amendment / Zone Change application.

**Goal 11 – Public Facilities and Services: To plan and develop a timely, orderly and efficient arrangement of public facilities and services to serve as a framework for urban and rural development.**

Goal 11 addresses facilities in urban and rural areas. The subject property is rural and will remain rural should this application obtain approval. "Public facilities and services" is defined in the Statewide Planning Goals to include: "projects, activities and facilities which the planning agency determines to be necessary for the public health, safety, and welfare." The Goal 11 Rule defines a public facility and includes water, sewer, transportation facilities, but does not include buildings, structures, or equipment incidental to the direct operation of those facilities.

The RCP policies describe the minimum level of services for Marginal Land areas in rural Lane County. The services are: schools, on-site sewage disposal, individual water supply system, electrical service, telephone service, rural level of fire and police protection, and reasonable access to solid waste disposal (RCP Goal 11 policy 6.j.) The services now available to the subject property, or proposed to be developed, include:

Fire – Pleasant Hill RFPD

Police – Lane County Sheriff and State Police

Schools – Pleasant Hill  
Access – Sunny Lane to Hwy 58  
Electric – EPUD  
Telephone – Quest Communications  
Solid Waste – Private  
Sewer – Individual Septic System  
Water – Private wells

The Board finds the Plan Amendment / Zone Change is consistent with Goal 11.

**Goal 12 – Transportation: To provide and encourage a safe, convenient and economic transportation system.**

Goal 12 is implemented through the Goal 12 Rule (OAR 660-12 adopted in 1991). The rule has a section that specifically addressed proposals such as this – amendments to acknowledged comprehensive plans and implementing regulations. OAR 660-12-060(1) provides that any such amendments that “significantly affect a transportation facility shall assure that allowed land uses are consistent with the identified function, capacity, and level of service of the facility.”

The question, therefore, is whether the residential development potentially allowed by this application would significantly affect a transportation facility. The rule spells out clearly what constitutes a “significant affect,” OAR 660-12-060(2) states:

**A plan or land use regulation amendment significantly affects a transportation facility if:**

**(a) Changes the functional classification of an existing or planned transportation facility;**

**(b) Changes standards implementing a functional classification system;**

**(c) Allows types or levels of land uses which would result in levels of travel or access which are inconsistent with the functional classification of a transportation facility; or**

**(d) Would reduce the level of service of the facility below the minimum acceptable level identified in the TSP.**

The property is accessed off of Sunny Hill Lane which connects to State Highway 58. Both Hwy 58 and Sunny Hill Lane are under the jurisdiction of Oregon Department of Transportation (ODOT). It appears 12 properties take access off of Sunny Hill Lane. There are no County roads adjacent to the subject property so the proposed Plan Amendment/Zone Change is unlikely to impact the County

road transportation system according to comments received the Lane County Transportation Planning staff.

During the notice for the public hearing of the Planning Commission, staff did not receive a response from ODOT. ODOT will have another opportunity to comment on the land partition process should this application obtain approval.

The Marginal Lands zone allows parcel sizes of 10 or 20 acre per LC 16.214(6), with a permitted use allowance of one dwelling per parcel under LC 16.214(2)(b), which could then result in eight dwellings on the 85 acre property. Since the agent uses a maximum of four dwellings as part of his justification in meeting the ESEE Big Game Habitat needs, the proposal needs to be explicitly limited via a Site Review suffix to sustain the logic of the applicant's arguments. As such, the applicant/agent agreed to staffs and the LCPC recommendation to add a site review suffix that conditions the property only contain maximum four houses (equivalent to a four (4) twenty (20) acre minimum parcel outcome) on the subject property.

Therefore, the maximum number of increased user on the road would be four parcels. The proposed Marginal Land designation does not trigger this section of rule. It will not have a significant effect on Highway 58 as measured by the standards above. The Board finds the Plan Amendment / Zone Change is consistent with Goal 12.

**Goal 13 – Energy Conservation: To conserve energy.**

This goal is not directly applicable to individual land use decision. Rather, its focus is on the adoption and the amendment of land use regulations. See *Brandt v. Marion County*, 22 Or LUBA 473, 484 (1991), *aff'd in part, rev'd in part*, 112 Or App 30 (1992). The Board finds Goal 13 is not applicable with the Plan Amendment / Zone Change application.

**Goal 14 – Urbanization: To provide for an orderly and efficient transition from rural to urban land use.**

Goal 14 is not applicable. The Marginal Lands plan designation is a resource zone designation. The proposal is to change from one resource plan designation to another. Furthermore, the residential density allowed in the Marginal Lands zoning is either 10 or 20 acres per unit. The plan designation and zoning were considered to be a "rural" use rather than a "resource" use, determined by the Supreme Court to be "rural" in character, not "urban." *1000 Friends of Oregon v. DLCD (Curry County)*, 301 Or 447, 501, 724 P2d 268 (1986). Therefore, the Board finds the Marginal Lands application does not run afoul of Goal 14.



## **Goals 15 - 19 Willamette River Greenway and Coastal Goals**

These five goals are not applicable as they deal with resources that are not present on the subject property. The Board finds Goals 15-19 are not applicable with the Plan Amendment / Zone Change application.

### **IV. SUMMARY**

The Board finds that the application has met the approval criteria. The criteria for a minor amendment have been addressed for the Marginal Land ORS law (section IV.A.), Lane Code Plan Amendment/Zone Change criteria (section IV.B.), Lane County Rural Comprehensive Plan (RCP, section IV.C), Goal 5 ESEE Analysis (section IV.D.), and the Oregon Statewide Planning Goals (section IV.E.). The Planning Director finds the criteria have been met and can recommend approval. Additionally, the Lane County Planning Commissioners voted unanimously to recommend approval of the request.

In conclusion, the Board approves this request.

### **V. EXHIBITS**

1. Vicinity Map
2. Subject Property Partition Plat 2011-P2486
3. Existing Zoning Map
4. Aerial Photo with Floodplain, 2013
5. LCPC Minutes (Approved December 16, 2014, Item B.2.)
6. Marginal Land ORS Criteria (1991 Version)
7. Marginal Lands Information Sheet
8. Affidavit from property owner
9. Applicant's Professional Forrester Report
10. NRCS Soil Data/Map
11. Applicant's Professional Soil Report
12. Existing Soils Map from Soil Scientist
13. Big Game Habitat Map