

BEFORE THE BOARD OF COUNTY COMMISSIONERS OF LANE COUNTY, OREGON

**ORDINANCE NO. PA 1229) IN THE MATTER OF AMENDING THE LANE
) COUNTY COASTAL RESOURCES MANAGEMENT
) PLAN CHAPTER II-ESTUARINE RESOURCES
) TEXT & DIAGRAM FOR TEN ACRES OF ESTUARY
) MANAGEMENT UNIT (MU) 'C' IDENTIFIED AS
) 'SUB-AREA C-1' FROM 'NATURAL' TO
) 'CONSERVATION' AND ADOPTING SAVINGS AND
) SEVERABILITY CLAUSES (FILE No. PA 05-5506, City
) of Florence & Shelter Cove Homeowners Association)**

WHEREAS, the Board of County Commissioners of Lane County, through enactment of Ordinance PA 803, adopted the Coastal Goals Compliance Report as a component of the Rural Comprehensive Plan; and

WHEREAS, the Board of County Commissioners of Lane County, through enactment of Ordinances 862, and 876, adopted the Coastal Resources Management Plan as a Special Purpose Plan to comply with Statewide Planning Goals 16, 17, 18, and 19 within the jurisdiction of Lane County; and

WHEREAS, Ordinance PA 1000 amended the Coastal Resources Management Plan policies and permitted and conditional uses, and

WHEREAS, on May 17, 2004, by means of City Ordinance No. 6, Series 2004, the Florence City Council amended the Coastal Resources Management Plan designations and the Florence Comprehensive Plan text and diagram for Shoreland Management Unit 1 within the city from 'Natural Resource Conservation' to 'Residential Development' and Sub-area C-1 of Estuary Management Unit C from 'Natural' to 'Conservation' as recommended by the Florence Planning Commission; and

WHEREAS, on May 21, 2005, application no. PA 05-5506 was made by the City of Florence and the Shelter Cove Homeowners Association for co-adoption of City Ordinance No 6, Series 2004, a major amendment to the Coastal Resources Management Plan and the Florence Comprehensive Plan; and

WHEREAS, Lane Code Chapter 16.400 sets forth procedures and criteria for amendment of the rural comprehensive plan and special purpose plans for Lane County; and

WHEREAS, the Lane County Planning Commission reviewed the proposal in a public hearing on November 1, 2006, and upon consideration of public citizen and regulatory agency input, the applicants revised the co-adoption request to focus the discussion and recommendation on deliberation of the proposed change to the Estuary management unit only, and

WHEREAS, the Lane County Planning Commission deliberated on December 20, 2006, on the revised proposal, recommending approval of the proposed amendment to Sub-area C-1 of Management Unit C to the Board of Commissioners; 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:

1. The Coastal Resources Management Plan is amended by the redesignation of the ten acres of Management Unit C identified as 'Sub-Area C-1' from 'Natural' to 'Conservation' on Map 1 of the Coastal Resources Management Plan, such territory depicted on and further identified as Exhibit "A" attached and incorporated herein; and
2. The Coastal Resources Management Plan text in Chapter II- Estuarine Management Units that is applicable to Sub-area 'C-1' of Management Unit 'C' is amended as shown on Exhibit "B" attached and incorporated herein, and

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

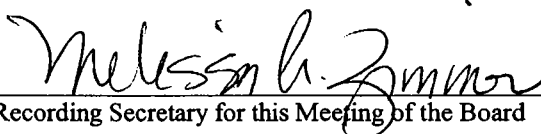
The prior designation repealed by this Ordinance remain in full force and effect to authorize prosecution of persons in violation thereof prior to the effective date of this Ordinance.

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 22nd day of February, 2006.



Bill Dwyer, Chair
Lane County Board of County Commissioners



Recording Secretary for this Meeting of the Board

APPROVED AS TO FORM

Date 1-31-2006 lane county

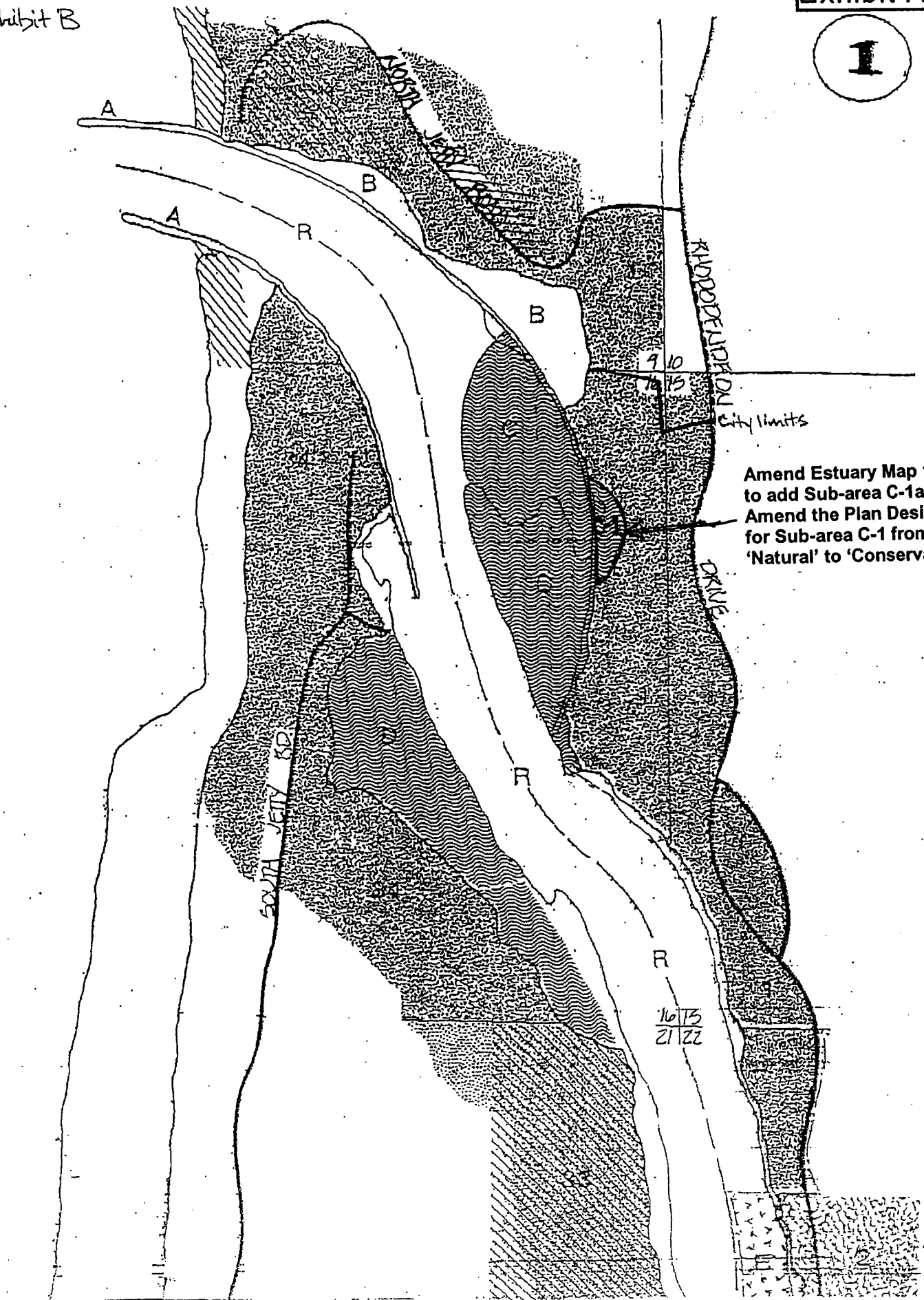


OFFICE OF LEGAL COUNSEL

Exhibit A

I

Ordinance No. 6 Series 2004
Exhibit B



Amend Estuary Map 1
to add Sub-area C-1 and
Amend the Plan Designation
for Sub-area C-1 from
'Natural' to 'Conservation'

**Proposed Text Amendment
Lane County Coastal Resources Management Plan**

Chapter II – Goal 16 Estuarine Resources

DESIGNATION OF ESTUARINE MANAGEMENT UNITS (pg. 14 & 15)

The proposed text amendment additions are in *italics*, deletions are in ~~strikethrough~~.

C. Natural:

1. Extent: Specifically indicated on estuary map #1 in the appendix. Generally, north side of the river from river mile 1.2 to Cannery Hill *excluding the area that falls between the inner north jetty and the shoreland.*

2. Rationale:

- a) Fish rearing (particularly fall Chinook juveniles) and spawning;
- b) Seal haulout at upriver portion;
- c) Clam beds with species found only at this salinity level (i.e., paddock gaper, cockle, and littleneck), ~~predominantly outside of jetty;~~
- d) Seagrass and algae beds predominantly in Piddock Bay area;
- e) Area of high quality biological habitat with unique consolidated substrate;
- f) low-intensity recreational potential

3. Discussion: The salinity range in this MU near the mouth of the river is higher than the remainder of the estuary since the Siuslaw has a strong riverine influence. This factor causes the organisms found here to be much different than those in the remainder of the estuary. Seals are known to use the Cannery Hill area as a haul-out and oceanic fishes can be found feeding here. The sand substrate is of high value for fish rearing, including fall chinook juveniles. The recreational and economic importance of this area extends beyond the limits of the MU because of this fish rearing capacity. The abundance of clams is also of high recreational value.

C-1. Conservation

1. Extent: *Portion of the estuary between the inner north jetty and the shoreland as indicated on Estuary Map #1 in the appendix.*

2. Rationale:

- a) Unstable substrate conditions;*
- b) Low abundance of benthic macroinvertebrate organisms*
- c) Adjacent to biologically productive portion of estuary*

3. Discussion: *Significant erosion of the adjacent bank has accelerated deposition of land in this portion of the estuary, covering the siltstone outcropping with a thick layer of sand. This change in ecological conditions has resulted in relatively poor biological habitat and nominal levels of unique biota. The sensitivity of the more productive adjacent estuary is buffered by the moderate designation of this estuary management unit.*

FINDINGS IN SUPPORT
Coastal Resources Management Plan Amendment
City of Florence/Shelter Cove Homeowners Association
Ordinance No. PA 1229 (Revised)

1. Shelter Cove is a residential subdivision located in the city of Florence. It is in the northern portion of the city located between Rhododendron Drive and the banks of the Siuslaw River.
2. The subdivision is located on a bluff approximately 75-85 feet above the north bank of the Siuslaw River.
3. The Siuslaw River and ocean waves from the mouth of the river are eroding the riverbank below Shelter Cove, thereby endangering the safety of lives and property in the development.
4. The evidence in the record shows the rate of erosion as measured by surveys is approximately 5-feet per year. In some recent years this rate on average has been exceeded.
5. The US Army Corps of Engineers constructed an "inner" rock jetty to protect the Shelter Cove river bank but the jetty has deteriorated to the point of failure and now lets wave action contact the toe of the slope.
6. Without the protection of the "inner" jetty, the continuing erosion of the bank has led the homeowners in Shelter Cove subdivision to seek a solution involving measures to stabilize the bank.
7. Erosion control and bank stabilization is a land use activity that is regulated by federal, state and local governmental agencies. The local means of regulating the activity begins

with the Coastal Resources Management Plan (CRMP). In accordance with state guidelines, the CRMP is the local document that defines and describes the designated estuarine and shoreland management units (MU), specifies the priority levels within these MU's, and details allowed and conditional uses within each of the MU's. The Lane County CRMP was adopted in June 1980 and amended in 1982, 1983, and 1991. The CRMP is a Special Purpose Plan of the Lane County Rural Comprehensive Plan and applies to all lands, rural and urban, in the coastal portion of Lane County.

8. The CRMP designation of the area where bank stabilization would need to occur is "Natural", a designation which does not permit bank stabilization. A change to "Conservation" on the Plan Diagram would conditionally allow bank stabilization following approval by state and federal agencies of the type of stabilization proposed and approval of a site specific permit to allow the activity to go forward.
9. The CRMP, as well as other special purpose plans affecting the city of Florence, require the co-adoption of such plans by Lane County and the city of Florence. Amendments to such plans also require co-adoption of proposed changes.
10. The Shelter Cove Homeowners Association and the city of Florence proposed changing the CRMP from "Natural" to "Conservation" to permit the stabilization activity to be allowed. In addition, the applicants proposed another change to the CRMP – to conform the portion of the Shoreline Management Unit inside the city to Residential Development, a change unrelated to the bank erosion issue.
11. In addition to the map changes noted above, text changes of the CRMP were proposed to reflect the changes in plan designation.
12. The city of Florence initiated the CRMP plan changes through a series of public hearings held between February and May of 2004. On April 13, 2004, the Florence Planning

Commission approved Resolution 04-02-10-05 adopting the changes and on May 17, 2004, the City Council passed Ordinance No. 6, Series 2004, also adopting the changes.

13. The specific map change made to the CRMP involved the creation of a small, 10-acre section of Estuarine Management Unit C, which is located between the failed "inner" jetty and the river bank. This area is referred to on maps and text as Subarea C-1
14. Following adoption by the city of Florence, application was made to Lane County and filed on April 21, 2005, by the city of Florence and the Shelter Cove Homeowners Association to co-adopt the changes.
15. On November 1, 2005, a public hearing was held by the Lane County Planning Commission on the requested changes. Testimony at the hearing was presented by the city and homeowners as to the urgent need to take action to prevent catastrophic damage to the homes above the river.
16. Evidence presented, both at the hearing and in the record of the city approval, shows that the CRMP designation of 'Natural' for Estuarine Management Unit C-1 was largely based on the need to protect the existence of Pittock clam beds. As the "inner" jetty failed, allowing the riverbank to collapse, the resulting sand covered the clam beds to the point they are no longer productive. The loss of this habitat no longer warrants the "Natural" designation of this part of the Management Unit and accommodates the change to "Conservation".
17. The record of the public hearing was kept open at the request of the National Oceanic and Atmospheric Administration for an additional three weeks. The written record closed to new input on November 22, one week was provided for general response to the new information through November 29, and a final week for applicant rebuttal allowed for the written record to close on December 6, 2005.

18. The Lane County Planning Commission deliberated on this matter on December 20, 2005. At this meeting, staff presented a request from the applicant to decouple the amendment to the Florence Comprehensive Plan 2000/2020 from the amendment to the CRMP and to withdraw the CRMP text amendment to MU-1 within the city. The Planning Commission subsequently deliberated only on the matter of co-adoption of CRMP Map Revision and Text Amendment for Estuary Management Unit Subarea C-1.
19. Following deliberation, the Planning Commission voted to recommend approval of the issue to the Lane County Board of Commissioners. The vote was 6 in favor, 2 opposed.
20. Criteria for a major amendment to the CRMP is found in Lane Code 16.400(6), (8) and (9). The CRMP is a Special Purpose Plan of the Rural Comprehensive Plan. Plan amendments must be found to be fully in compliance with Statewide Planning Goals and Oregon Administrative Rules in order for the amendments to be adopted.
21. The Lane Code criteria and response:
16.400(6)(h) Method of Adoption and Amendment
 - (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 Goals and Administrative Rules.
 - (bb) For Major and Minor Amendments as defined in LC.400(8)(a) below, the Plan amendment is:
 - (ii) necessary to correct an identified error in the Plan;
 - (ii-ii) necessary to fulfill an identified public or community need for the intended result of the component or amendment;

The proposed amendments are necessary to correct an error in the application of the Plan Designation that has changed over time. There is an identified community need to slow, and eliminate if possible, the erosion of the riverbank to protect property. Corrective actions may also improve the quality of the degraded habitat.

22. Lane Code Criteria and response:

LC 16.400(8) In addition to the general procedures set forth in LC 16.400(6), the following provisions shall apply to any amendment of Rural Comprehensive Plan components:

- (c)(iii) An assessment of the probable impacts of implementing the proposed amendment.

The identified impacts are evaluated adequately, including the addition of a tsunami impact evaluation.

23. Lane Code Criteria and response:

LC 16.400(9) In addition to the general provisions set forth in LC16.400(6), the following provisions shall apply to any amendment of Rural Comprehensive Plan Components classified in LC 16.400(4) above as Special Purpose Plans. Amendments to Special Purpose Plans may only be initiated by the county. Any individual may request the Board to initiate such amendment.

The request to amend the CRMP was brought to the Board by the Shelter Cove Homeowners Association and the city of Florence. The Lane County Planning Commission public hearing on November 1, 2005, is the initiation of the amendment to the CRMP.

24. Applicable Statewide Planning Goals. The recommendation to approve the proposal is based on compliance with the applicable Statewide Planning Goals, as discussed below.

Goal 1: Citizen Involvement:

To develop a citizen involvement program that insures the opportunity for citizens to be involved in all phases of the planning process.

December 15, 2003: Notice of this proposed action was mailed to Department of Land Conservation and Development (DLCD) by the city of Florence.

January 21, 2004: Notice mailed to residents within 300 feet of subject property and city's Planning Commission public hearing public notice published in the Siuslaw News.

January 31/February 4, 2004: Notice published in Siuslaw News

February 10, 2004: Florence Planning Commission held a public hearing

April 13, 2004: Florence Planning Commission deliberations and decision

May 8, 12, & 15, 2004: Florence Planning Commission Notice of Public Hearing published in Siuslaw News

May 17, 2004: Florence City Council decision to approve Ordinance No. 6, Series 2004, amending the Comprehensive Plan and CRMP

April 21, 2005: Lane County received the application proposal

October 12, 2005: Lane County mailed notice to surrounding property owners and published legal ads in the Eugene Register-Guard and the Siuslaw News announcing the November 1, 2005, public hearing.

November 1, 2005: Lane County Planning Commission public hearing on this proposal, PA 05-5506.

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 city has completed adoption of the proposal that included opportunity for public input and agency comment on the change in Plan Designations for this area. The applicant provides extensive studies and supporting documentation regarding the change in habitat for the area. The county conducted two public hearings for consideration of this

proposal for consistency with Comprehensive Plans of cities and the special resource area of the CRMP. Notice was provided to neighboring property owners, regulatory agencies, and other affected governmental units. Interested parties were provided opportunities to provide evidence and their views regarding this issue to the decision making bodies. These decision making bodies considered the staff reports, evidence, testimony, and other information in the record in making their decision.

Goal 3: Agricultural Lands and Goal 4: Forest Lands: These goals do not apply to the proposal because no farm or forest lands are in the area proposed for amendment.

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

The Siuslaw River is a Goal 5 resource for both the city and the county. Florence has been identified as a top location in America for retirement living, and the Shelter Cove subdivision is in an area with scenic views and is highly desirable for residential development.

Area C-1 is a small subarea of the larger management unit which was initially proposed for redesignation in its entirety by the city's Planning Commission. Public and agency testimony guided the city council to protect the majority of the natural area remaining in MU C by retaining the existing designation for the majority of the area, and proposing only the subarea C-1 for change in Plan Designation. Therefore, the proposed amendments are consistent with Statewide Planning Goal 5.

Goal 6: Air, Water and Land Resources Quality

The Siuslaw River is a high quality water resource. NOAA Fisheries has expressed concern about the ultimate application of rip rap to protect personal property from severe erosion. Rock rip rap is mentioned a number of times as the preferred choice to stabilize the eroding bank at Shelter Cove. Although the Shelter Cove shoreline is affected by strong wave energy, leading to actively eroding sand cliffs, NOAA Fisheries would like to

encourage exploring alternative solutions for bank stabilization to the construction of an armoring structure made solely of rock or concrete. Structural hardening of embankments is not necessarily the most successful stabilization method that supports threatened, endangered, rare or other fisheries species. The most desirable method is revegetation, however, it is seldom successful when used alone. Combining structural measures such as sloped rip rap or mechanically stabilized earth walls, vegetation, and large woody material is preferable to a structural solution without vegetation. These techniques will be explored with the permitting agencies as a solution is developed and reviewed by the responsible state and federal permitting agencies.

Goal 7: Natural Disasters

The Subarea C-1 is within the Tsunami Inundation Zone of Coastal Lane County, as identified on the recently updated City of Florence Tsunami Map. The inundation by a tsunami could be mitigated by the provision of some type of bank protection following adoption of the proposed amendment.

Goal 8: Recreational Needs; Goal 9: Economic Development; Goal 10: Housing; Goal 11: Public Facilities and Services; Goal 12: Transportation; Goal 13: Energy Conservation; Goal 14: Urbanization; and, Goal 15: Willamette Greenway do not apply to the proposed activity or the geographic area proposed for amendment.

Goal 16: Estuarine Resources

To recognize and protect the unique environmental, economic, and social values of each estuary and associated wetlands; and to protect, maintain, where appropriate develop, and where appropriate restore the long-term environmental, economic and social values, diversity and benefits of Oregon's estuaries.

The exhibits that are included in the application have the scientific background information supporting the change of plan designation for a small ten acre subarea of the MU that is now identified as C-1. For the remainder of MU C, the following text on page 15 of the CRMP should be retained because it is still applicable to the rest or the

management unit.

- d) Sea grass and algae beds predominantly in Pidcock Bay clams.
 - e) Area of high quality biological habitat with unique consolidated substrate;
 - f) Low-intensity recreational potential.
3. Discussion: The salinity range in this MU near the mouth of the river is higher than the remainder of the estuary since the Siuslaw River has a strong riverine influence. This factor causes the organisms found here to be much different than those in the remainder of the estuary. Seals are known to use the Cannery Hill area as a haulout and oceanic fishes can be found feeding here. The sand substrate is of high value for fish rearing, including fall Chinook juveniles. The recreational and economic importance of this area extends beyond the limits of the MU because of the fish rearing capacity. The abundance of clams is also of higher recreational value.

The proposed change is to allow for examination of the site for erosion control that could reduce loss of the bank and be compatible with current identified resource values.

Goal 18: Beaches and Dunes

To conserve, protect, where appropriate develop, and where appropriate restore the resources and benefits of coastal beach and dune areas; and

To reduce the hazard to human life and property, from natural or man-induced actions associated with these areas.

The Beaches and Dunes Combining Zone is the broad overlay zone that covers both management units for the entire area, because the underlying strata to the estuary shore is stabilized dune formations. The procedures and requirements for conditional uses allowed in this overlay zone would be followed upon application for bank stabilization proposals if allowed by the change in the plan designation.

Goal 19: Ocean Resources

The Ocean Resources under Goal 19 are the near-shore ocean resources and resources/impacts to the underwater area known as the continental shelf. Since the subject properties are in the river estuary, Goal 19 is not applicable.

PASSED

BEFORE THE BOARD OF COUNTY COMMISSIONERS OF LANE COUNTY, OREGON

ORDER No. 05-11-30-4

) IN THE MATTER OF CONSIDERING A BALLOT
) MEASURE 37 CLAIM AND DECIDING
) WHETHER TO MODIFY, REMOVE OR NOT
) APPLY RESTRICTIVE LAND USE
) REGULATIONS IN LIEU OF PROVIDING JUST
) COMPENSATION (PA05-5680/George Hinnenkamp
) Trust)

WHEREAS, the voters of the State of Oregon passed Ballot Measure 37 on November 2, 2004, which added provisions to Oregon Revised Statutes (ORS) Chapter 197 to require, under certain circumstances, payment to landowners if a government land use regulation restricts the use of private real property and has the effect of reducing the property value; and

WHEREAS, the Board of County Commissioners of Lane County enacted Ordinance No. 18-04 on December 1, 2004, to establish a real property compensation claim application process in LC 2.700 through 2.770 for Ballot Measure 37 claims; and

WHEREAS, the County Administrator has reviewed an application for a Measure 37 claim submitted by George Hinnenkamp (PA05-5680) as trustee of the George Hinnenkamp Trust, the alleged owner of real property located at Territorial Highway and Hamm Road and more specifically described in the records of the Lane County Assessor as map 19-04-30, tax lot 300, and map 19-05-25, tax lot 600, consisting of approximately 159 acres in Lane County, Oregon; and

WHEREAS, the County Administrator determined that the application appeared to meet all of the criteria of LC 2.740(1)(a)-(d), appeared to be eligible for just compensation and appeared to require modification, removal or not applying the restrictive land use regulations in lieu of payment of just compensation and referred the application to the Board for public hearing and confirmation that the application qualifies for further action under Measure 37 and LC 2.700 through 2.770; and

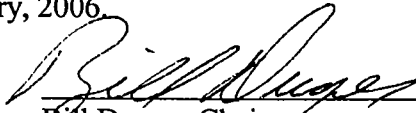
WHEREAS, on November 30, 2005, the Board conducted a public hearing on George Hinnenkamp's Measure 37 claim (PA05-5680), continued the hearing until January 25, 2006, left the record open until February 8, 2006, to allow the applicant to provide more complete information on ownership or other interests held in the property, deliberated on February 15, 2006, and has now determined that there are numerous questions regarding ownership and other interests in the property left unanswered and George Hinnenkamp has not provided adequate evidence to sufficiently establish continuous ownership prior to the adoption of the Impacted Forest Land (F-2) and Exclusive Farm Use zones (E-40) or necessary assurances for the Board to conclude that he alone holds all ownership interest in the property without identifying other interests or encumbrances that might subject Lane County to other Ballot Measure 37 claims involving this property; and

WHEREAS, the Board finds that under LC 2.720(2) the application shall include information identifying the property owner and anyone with any interest in the property, including lien holders, trustees, renters, lessees, along with a complete description of the ownership interest of each and the signature of those with an interest in the property and the evidence reveals extensive conduct in the nature of ownership exhibited by persons other than George Hinnenkamp; and

WHEREAS, this matter having been fully considered by the Lane County Board of Commissioners.

NOW, THEREFORE IT IS HEREBY ORDERED that the applicant George Hinnenkamp did not provide sufficient information on all interests held in the property by others to make a valid claim under Ballot Measure 37 and by failing to show adequate evidence of complete, unencumbered and continuous ownership from a time prior to enactment or enforcement of the alleged restrictive county land use regulations until the time he submitted the claim he is not entitled to compensation or a waiver of the alleged restrictive county land use regulations under Ballot Measure 37 or LC 2.700 through 2.770 and the claim shall be denied.

DATED this 22nd day of February, 2006.


Bill Dwyer, Chair

Lane County Board of County Commissioners

APPROVED AS TO FORM

Date 2-21-2006 Lane County


OFFICE OF LEGAL COUNSEL