

BEFORE THE BOARD OF COUNTY COMMISSIONERS OF LANE COUNTY, OREGON

ORDINANCE PA 1118

PASSED

(IN THE MATTER OF AMENDING THE RURAL COMPREHENSIVE PLAN TO
(REDESIGNATE LAND FROM "AGRICULTURE" TO "MARGINAL LAND" AND
(REZONING THAT LAND FROM "E-40/EXCLUSIVE FARM USE" TO "ML/
(MARGINAL LAND"; AND ADOPTING SAVINGS AND SEVERABILITY
(CLAUSES (file PA 0026-98; Myers/Rudinsky)

WHEREAS, the Board of County Commissioners of Lane County, through enactment of Ordinance PA 884, has adopted Land Use Designations and Zoning for lands within the planning jurisdiction of the Lane County Rural Comprehensive Plan; and

WHEREAS, Lane Code 16.400 sets forth procedures for amendment of 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, in January 1998, application no. PA 0026-98 was made for a minor amendment to redesignate tax lots 213 and 215 of map 18-04-17 from "Agriculture" to "Marginal Land" and concurrently rezone the property from "E-40/Exclusive Farm Use " to "ML/Marginal Land"; and

WHEREAS, the Lane County Planning Commission reviewed the proposal in public hearing of March 17, 1998, and on that date 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 public hearings 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 by the redesignation of tax lots 213 and 215 of map 18-04-17 from "Agriculture " to "Marginal Land," such territory depicted on Plan Plot 285 and further identified as Exhibit "A" attached and incorporated herein.

Section 2. Tax lots 213 and 215 of map 18-04-17 are rezoned from "E-40/Exclusive Farm Use" (Lane Code 16.212) to "ML/Marginal Land" (Lane Code 16.214), such territory depicted on Rural Zoning Plot 285 and further identified as Exhibit "B" attached and incorporated herein.

FURTHER, although not a part of this Ordinance, the Board of County Commissioners adopts Findings 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The prior designation and zone repealed by this Ordinance remain in full force and effect to authorize prosecution of persons in violation thereof prior to the effective date of this Ordinance.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 29th day of July, 1998.

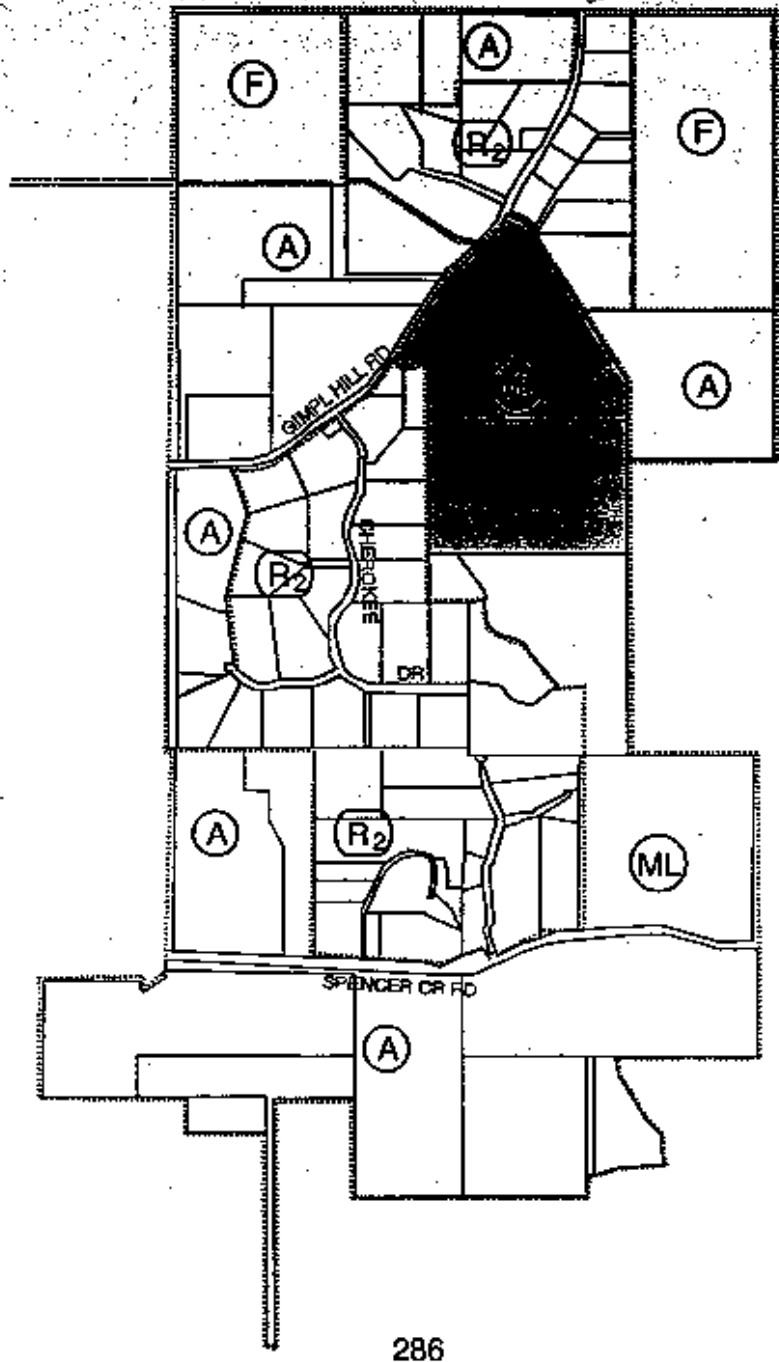
Vice Chair, Lane County Board of County Commissioners

Recording Secretary for this Meeting of the Board

APPROVED AS TO FORM

Date 7-7-98 Lane County


OFFICE OF LEGAL COUNSEL



270

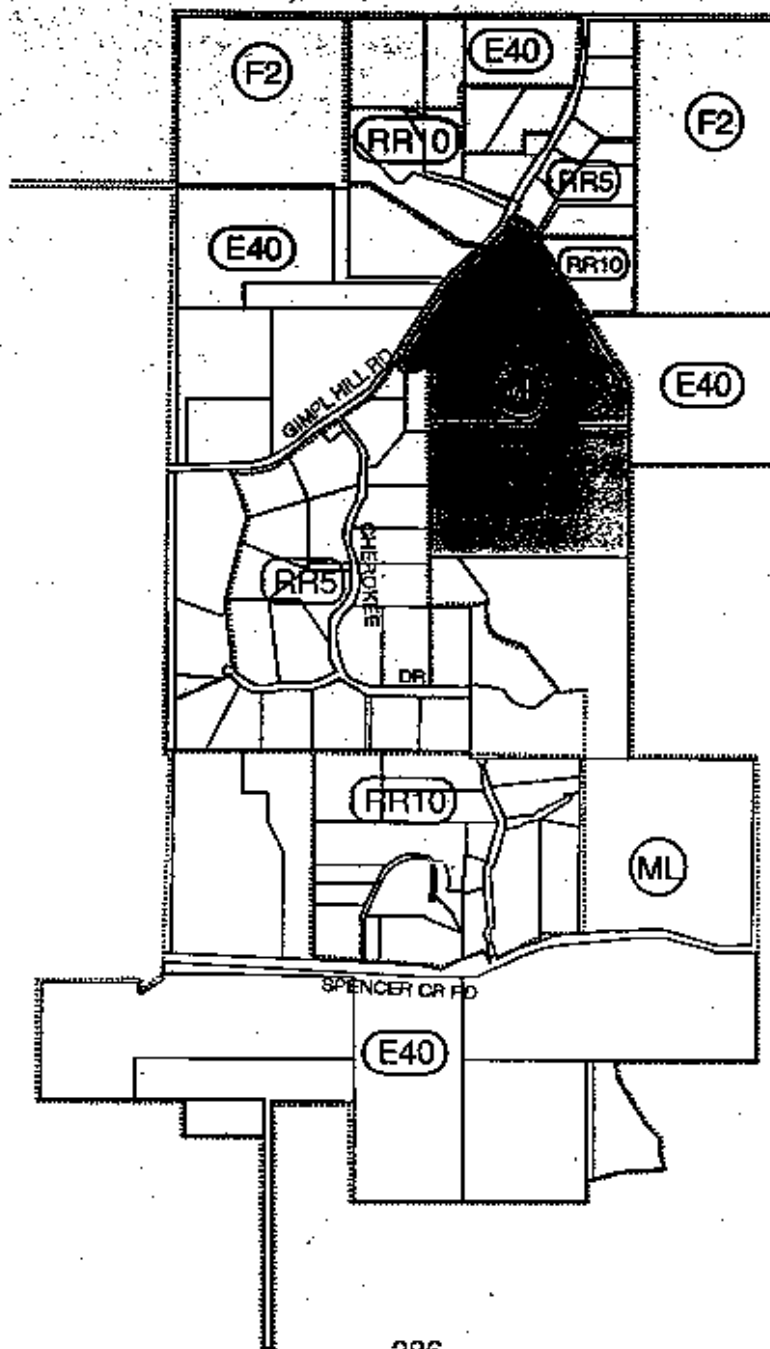
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286

	lane county		OFFICIAL PLAN MAP		PLOT #285		
			Township Range Section		18 04 17 / 18 04 20		
ORIGINAL ORD. #		PA 884		DATE		2/29/1984	
REVISION #		ORD#		DATE		FILE #	

270

298



286

lane county



OFFICIAL ZONING MAP

PLOT #285

Township Range Section

18 04 17

18 04 20

ORIGINAL ORD. # PA 884 DATE 2/29/1984 FILE # _____

REVISION # _____ ORD# _____ DATE _____ FILE # _____

and includes some rock outcroppings. The vegetation is primarily sparse grass with some scrub oak, pine and a scattering of Douglas Fir trees.

F. Services:

Tax code area: 004-42
Schools: Dist. 4-J, Lane ESD, Lane Community College
Fire: Lane Co. Fire District No. 1
Police: Lane Co. Sheriff
Sewer: On-site SDS
Water: On-site wells
Access: Gimpl Hill Rd., Ainsely Lane and a Private Road
Power: Lane Electric Cooperative
Phone: U.S. West
Solid Waste: Franchised Collection Service, Glenwood Transfer Station

II. Findings of Fact and Conclusions of Law Related to Approval Criteria

A. Applicable Criteria

This application proposes related amendments to the Lane County Rural Comprehensive Plan Diagram and to the Lane County Zoning Map. The changes would result in a redesignation of the property from Agricultural Lands to Marginal Lands. The procedures, definitions and criteria for this type of application are found in state and local law as follows:

1. PURPOSE OF MARGINAL LANDS: Lane Code (LC) 16.214(1)(c) states that the purpose of the Marginal Lands zoning district is to designate lands consistent with ORS 197.005 to 197.430.

2. STATUTORY CRITERIA: ORS 197.247(1991) sets forth a two-part system of tests. The first part, which is mandatory for all applications, deals with management for agriculture or forestry during a certain time period, and with income capability.

The second part of the test involves a choice among three criteria. The first two are parcelization criteria and the last is a productivity criteria. The application must meet one of the three criteria. The tests of ORS 197.247 are set forth below and applied to the facts of this case. As noted below, this application meets these tests.

3. PLAN AMENDMENT CRITERIA OF LANE CODE: The application must also comply with certain criteria for a Plan amendment. This application is defined as a "Minor Amendment" in that it involves a change in the Plan Diagram only. LC 16.400(8)(a)(i). The criteria for a Minor Amendment are found at LC 16.400(6)(h)(iii)(aa through dd) and at LC 16.400(8)(a) & (c)(i through iii). These criteria deal generally with the policy bases for the amendment, the impact on nearby resources and services, natural hazards and the level of information required of

the applicant. As noted below, this application meets all of the criteria for a plan amendment.

4. ZONE CHANGE CRITERIA OF LANE CODE: Lastly, the application must meet the criteria for a zone change as set forth at LC 16.252(2). Those criteria deal generally with achieving the purposes of Lane Code, Chapter 16 and the Marginal Lands zoning district, with the public interest and with the applicable Plan elements and components. As noted below, this application meets the criteria for a zone change.

B. Analysis

The Board adopts the following findings of fact and conclusions of law in support of an amendment of the Lane Rural Comprehensive Plan Diagram from Agricultural Lands to Marginal Lands and a related amendment of the Zoning Map from Exclusive Farm Use to Marginal Lands.

1. Management and income test of ORS 197.247:

"The land must not have been managed during three of the five calendar years between January 1, 1978 and January 1, 1983, as part of a farming operation which produced \$20,000 or more in annual gross income, or as part of a forest operation capable of producing an average, over the growth cycle, of \$10,000 in annual gross income. Statistical information compiled by Oregon State University Extension Service or other similar empirical data may be used to demonstrate income capability."

Findings:

According to former owner Florence Breeden, the subject property was not managed during any of the five calendar years between January 1, 1978 and January 1, 1983 as part of any farm operation which produced \$20,000 or more in annual gross income. One spring the former owner allowed someone to graze cattle on the subject property for a few weeks. Because the land would not support it, this operation was ceased.

The property was also not actively managed as part of a forest operation, but the occurrence of logging on what was formerly Tax Lot 200 (Assessor's Map 18-04-17, now Tax Lots 213, 214, & 215) in 1992 and 1993 creates a presumption of at least "passive" management according to Board policy. For that reason it is appropriate to apply the income test stated above.

The applicant hired forester Robert Booth to evaluate the forest capability of the subject property and the contiguous property that was previously part of Tax Lot 200. This area constitutes the presumed forest operation as it existed during the relevant five-year period.

Mr. Booth concluded that, over a growth cycle of 60 years, the three parcels together would have produced an average annual gross income of \$8465.67. Because the average annual gross income is less than \$10,000, the subject property meets the income and management test of ORS 197.247.

Conclusions and Reasons:

Based on the above findings, the Board first concludes that the property was passively "managed" for forestry as that term is meant to apply under the marginal lands laws. Further, the Board finds, based on Mr. Booth's forestry report, that over a growth cycle of 60 years, the property would have produced an average annual gross income of \$8,465.67. Because the income produced is less than \$10,000, the Board concludes that the management and income test of ORS 197.247, is met.

Also, the Board finds that the only evidence of farming during the relevant five-year period was a few weeks of grazing which generated less than \$20,000 gross annual income. Therefore, the Board concludes that the management and income test is met.

2. Productivity criteria of ORS 197.247:

"The proposed Marginal Land is composed predominantly (more than 50%, by area) 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."

Findings:

Data and maps from the USDA SCS Soils Survey for Lane County Area, Oregon indicate that the subject property is comprised of 81.56 acres of soils types which are within agricultural capability classes V through VIII. This amounts to 84.3 percent of the property.

The aforementioned soils data, plus productivity information provided by the Lane County Planning Department, indicate that the parcel is capable of producing 58.34 cubic feet of merchantable timber per acre per year. The Board finds that this is below the 85 ft³ standard of the statute.

Conclusions and Reasons:

Based on the above uncontested mathematical evidence, the Board concludes that the parcel meets both the agricultural and the forest productivity criteria stated above.

3. Plan Amendment Criteria

LC 16.400(6)(h)(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.

Findings and Conclusions:

The Board finds and concludes that this application is a Minor Amendment in that it involves a change in the Plan Diagram only. The Board finds and concludes that this plan amendment proposal meets all legal requirements in that it is being processed pursuant to the requirements of Lane Code and the acknowledged Rural Comprehensive Plan (RCP). The proposal also meets the requirements of ORS 197.247 as discussed above.

Because Statewide Planning Goals 3 - Agricultural Lands and 4 - Forest Lands expressly allow Marginal Lands zoning, an exception to those Goals is not required. The Board also concludes that an exception to Goal 14 - Urbanization is not required. This is so because, in addition to the provisions of Goals 3 and 4, the subject property can potentially only be divided into five to seven parcels upon approval of this application, because sewerage and water will be provided on-site, and because the Lane Code will not allow "cluster" development within a Marginal Lands zoning district.

"(bb) for Major and Minor amendments as defined in LC 16.400(8)(a) below, the Plan amendment or component is:

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

Findings and Conclusions:

The Board finds and concludes that this Plan amendment is necessary to provide for the implementation of RCP Goal 3, Policy 14, discussed below, which provides for the designation of Marginal Lands if the land meets certain criteria as addressed in the other sections of this application report. A plan amendment is necessary to redesignate the property from Agricultural Lands to Marginal Lands to implement this policy.

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

Findings and Conclusions:

The Board takes note of RCP Goal 3, policy 14 which states:

"Land may be designated as Marginal Lands if it complies with the following criteria: (a) the requirements of ORS 197.247, and (b) Lane County General Plan Policies, Goal 5, Flora and Fauna Policies 11 and 12."

ORS 197.247 outlines the standards for qualification as Marginal Lands. Those criteria are applied to the facts of this case as discussed elsewhere in these findings and the property has been shown to qualify under those statutory provisions.

Policy 11, cited above, states:

"Oregon Department of Fish and Wildlife (ODFW) 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 OAR 660-16-000. The County shall work with ODFW 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."

The Board finds that the residential density proposed by this request will be governed by the standards set forth in Lane County's acknowledged land use regulations at LC 16.214(6)(a-c). In this situation, new parcels will have to contain at least 10 acres where the property abuts Rural Residentially zoned land and at least 20 acres where the property abuts EFU Lands.

On the subject property, the Board finds that this will allow five to seven parcels of either ten or twenty acres each. The resulting average density will be between thirteen and nineteen acres for each dwelling. These standards will be applied during the land division process which will follow approval of this plan and zoning amendment. The land application will be subject to review and comment by ODFW. The applicant will work with ODFW toward a goal of achieving a design which integrates a relevant concern for big game needs into the development pattern.

Policy 12, cited above, states:

"If uses are 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 consequences shall be used to determine the level of protection necessary for the resource. The procedure outlined in OAR 660-16-000 will be followed."

The Board finds that there are no previously unidentified Goal 5 resources on the subject property. All of the property lies within the Peripheral Big Game Range. Development

on this property would be governed by Goal 5, Flora and Fauna Policy 9 which states that residential building permits within a Major or Peripheral Big Game Range shall include an indication of the Range and a note that compatibility problems, such as damage to vegetation, may occur. See also discussion above in these findings.

"(dd) For Minor Amendments as defined in LC 16.400(8)(a), 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:

The Board finds that the requested plan amendment follows the existing structure of the Comprehensive Plan. No land use designations which do not now exist are being requested. Because it is a Minor Amendment, the impact will be site specific and consistent with unamended portions of the plan diagram. As shown above, the request complies with existing plan policy and therefore is consistent with the unamended elements of the plan.

Conclusions and Reasons: Based on the findings of fact as stated above, the Board concludes that this application meets the Plan change criteria of LC 16.400(6)(h)(iii)

Lane Code 16.400(8)(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) 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.

Findings:

The Board finds that the required description is provided in the prior portions of this application. The proposed use of the property is for future land divisions and small scale resource/residential use consistent with the density and other standards of Lane Code Chapters 16 and 13. The Plan amendment will change the designation from Agricultural Lands to Marginal Lands in recognition of the limited capability of the property for resource uses.

Conclusions and Reasons:

Based on the findings of fact as stated above, the Board concludes that this application

meets the Plan change criteria of LC 16.400(8)(c)(i).

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

Findings and Conclusions:

The Board finds and concludes that the required analysis is provided above and that this application meets the Plan change criteria of LC 16.400 (8)(c)(ii).

"(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;

Findings:

The Board finds that land use in the area is reflected by the zoning. Basically the pattern is one of rural residential zoning and parcelization along Gimpl Hill Road to the north of the property and Ainsley Lane (north of Tax Lot 213). Immediately south of the subject property lie Tax Lot 208 and Tax Lot 100 which are zoned Marginal Lands. Portions of TL 100 are producing hay. To the south and west of the subject property is the Cherokee Hills subdivision which is zoned RR5. Most of these rural residential lots and parcels are developed with dwellings.

To the west and northwest are properties currently zoned E-40. Most of these properties also contain dwellings. A permit for a non-farm dwelling was issued for Tax Lot 213 of the subject property and a residence is currently being built (PA 3118-96). The E-40 properties across Gimpl Hill Road to the west and northwest are primarily being used for hobby farms. One parcel, Tax Lot 603, contains a small cattle operation and Tax Lot 510 contains a small horse stable operation. Portions of Tax Lot 214, which is also zoned E-40 and is directly to the east of the subject property, have been planted with Douglas Fir seedlings.

Directly to the east lies Tax Lot 700 which is zoned F-2 and which is contiguous with other parcels zoned F-2. These properties are either used for grazing or for tree growing operations.

In general, the area is characterized by rural residential properties and hobby farms. The only major exception to this pattern is the grazing and tree growing operations described above on the F-2 properties that are to the east between the subject property and Bailey Hill Road.

Conclusions and Reasons:

Based on the findings of fact as stated above, the Board concludes that this application meets the Plan change criteria of LC 16.400(8)(c)(iii)(aa).

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

Findings:

The Board finds that the property is served by all of the basic facilities and services described in RCP Goal 11, Policy 6E for Rural Residential Land. These include schools, on-site sewage disposal, electrical service, telephone service, rural level fire and police protection and reasonable access to solid waste disposal services. Board notes, however, that the requested Marginal Lands designation is not a residential classification; it is instead a resource land classification for lands of lesser capability. Marginal Lands designation will allow lots with dwellings on 10-acre parcels where abutting residentially zoned land and 20-acre lots elsewhere.

Development of water supply will proceed in recognition that the property lies within a water quantity limited area designated by the Board of Commissioners and set forth in the Lane Manual. The Board takes note of the applicable regulations as follows:

In rezoning situations such as this which can result in additional parcelization, LC 16.004(4) provides that: “[A]ll requirements to affirmatively demonstrate adequacy of long-term water supply must be met as described in LC 13.050(13)(a)-(d).”

LC 13.050(13) requires lots and parcels to be served by an approved public, community, or individual water system. The applicant anticipates using individual wells on the subject property, so the individual water system requirements are relevant. Those requirements are:

“Individual Water Systems. When lots or parcels are to be served by individual water systems, sufficient evidence shall be submitted to show that each parcel or lot will have available at time of development an adequate supply of potable water which will meet minimum County standards for drinking water. Aquifer and quality tests as discussed in LC 13.050(13)(c) below may be required.”

The Board finds that the applicant hired hydrologist Ralph Christensen of EGR & Associates to perform a pump test and a well log analysis on the subject property. The pump test is designed to indicate whether there is enough water on-site to serve this zone change at its buildout of five to seven lots. This test looks at transmissivity, which is the rate at which water passes through the aquifer, and secondarily, looks at impacts on nearby wells.

The well was pumped for a four day period with a 70 hour, 23 minute recovery period. Mr. Christensen measured drawdown and recovery in the pumped well and an

observation well 570 feet away. The well was pumped at an average rate of 40 gallons per minute which is less than its maximum production rate of 100 gallons per minute. This slower pumping rate is recommended practice for any well in order to avoid damage to the well. The four-day pumping period is a much longer test period than is usually performed for Lane Code requirements. The minimum acceptable length of time for a pump test is five hours. This test was run for this extended amount of time to determine whether any affect on the neighbors well could be detected.

The Board finds that the pump test indicates no adverse impact on the observation well. Mr. Christensen concluded that, based on the pump test, the test well on the subject property can be pumped at an average annual rate of 7.11 gallons per minute with a safe drawdown. It is clear that this well can provide an adequate water supply for the maximum allowable parcelization. A steady pumping rate of 7.11 gallons per minute would supply the average year-round use for twenty residences. The Board finds that, based on the pump test, there is enough water on-site to serve this zone change without any long-term degradation of the aquifer.

The extensive well log analysis of the area surrounding the subject property gives a picture of how water passes through the aquifer and roughly how much is stored. This analysis also shows the probability of developing other productive wells on the subject property. The Board finds that the results of the well log analysis show that there is enough water from the existing wells on the property to serve the entire development without off-site impact on the aquifer. The analysis also shows that there is a good chance of developing other productive wells on the subject property.

Finally, the Board finds that there will be no adverse impact from this zone change on adjacent wells. This is true for two reasons. First, based on Mr. Christensen's studies, there is adequate water in the aquifer. Second, the wells in this geologic formation tend to be self-limiting. That is, if someone does try to pump at a very high rate, they will dry up their own well before they can do any damage to a neighboring well or the aquifer.

Conclusions and Reasons:

Based on the findings of fact stated above, the Board concludes that this application meets the Plan Change Criteria of LC 16.400(8)(c)(iii)(bb).

“(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;

Findings:

The Board finds and concludes, as noted elsewhere, that the Marginal Lands designation is a resource, rather than residential, land use designation. It is one of the only ways in which the Oregon land use program has attempted to legitimize the small-scale farm lifestyle. As such, and with parcels of 10 and 20 acres, there should be little or no

impact on other resource lands. The Board finds that there are no identified Goal 5 resources requiring an ESEE analysis.

Conclusions and Reasons:

Based on the findings of fact stated above, the Board concludes that this application meets the Plan change criteria of LC 16.400(8)(c)(iii)(cc).

“(dd) Natural hazards affecting or affected by the proposal;

Findings and Conclusions:

The Board finds and concludes that there are no identified natural hazards affecting or affected by this proposal and, therefore, this application meets the Plan change criteria of LC 16.400(8)(c)(iii)(dd).

“(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;

Findings and Conclusions:

The Board finds and concludes that Marginal Lands is a designation for land of lesser quality for agricultural or forest use. Marginal Lands is not a “nonagricultural” or “nonforest” designation. Neither is it a “nonresidential” designation. As such, this criteria does not apply to this application.

“(ff) For a proposed amendment to a nonresidential, nonagricultural or nonforest designation, an inventory of reasonable alternative sites now appropriately designated by the Comprehensive Plan, within the jurisdictional area of the Plan and located in the general vicinity of the proposed amendment;

Findings and Conclusions:

The Board finds and concludes that Marginal Lands is a designation for land of lesser quality for agricultural or forest use. Marginal Lands is not a “nonagricultural” or “nonforest” designation. Neither is it a “nonresidential” designation. As such, this criteria does not apply to this application.

(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).

Findings and Conclusions:

The Board finds and concludes that the criteria for Marginal Lands contained in the Marginal Lands Working Paper are the same as those required by ORS 197.497. These criteria have been applied and satisfied in the prior sections of this report. The Board further concludes, based on the facts, reasoning and conclusions stated above, that the application meets all of the Lane Code criteria for amendment of the Rural Comprehensive Plan Diagram from Agricultural Lands to Marginal Lands for the subject property.

4. Zone change criteria of LC 16.252(2):

"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. . . ."

Findings and Conclusions:

The Board finds and concludes that the variety of criteria involved in a Plan Amendment, which must precede the zone change have been deemed to provide sufficient assurance that the zone change is correctly carried out and is consistent with the specific purposes of the zone classification proposed. See e.g. Ordinance PA 1061 and related findings adopted August 24, 1994.

As noted above, the proposed amendment complies with applicable Comprehensive Plan Policies and standards. Because the Comprehensive Plan is, under Oregon law, the primary expression of public policy regarding land use and related matters, compliance with Plan policies and standards assures that the amendment is not contrary to the public interest.

Because the applicable portions of the Comprehensive Plan are acknowledged to be in conformance with Statewide Planning Goals, no Goal examination beyond that required for Plan amendment is required.

Conclusions and Reasons:

Based on the facts, reasons and conclusions stated above, the Board concludes that the application meets the criteria of L.C. 16.252(2) for a change in the Zoning Map from Exclusive Farm Use (EFU-40/RCP) to Marginal Lands (ML/RCP).