

PASSED

BEFORE THE BOARD OF COUNTY COMMISSIONERS OF LANE COUNTY, OREGON

ORDINANCE PA 1170) **IN THE MATTER OF AMENDING THE RURAL COMPREHENSIVE**
) **PLAN TO REDESIGNATE LAND FROM "FOREST" TO "AGRICULTURAL"**
) **AND REZONING THAT LAND FROM "F-2/IMPACTED FOREST LANDS" TO**
) **"E-30/EXCLUSIVE FARM USE"; AND ADOPTING SAVINGS AND**
) **SEVERABILITY CLAUSES (file PA 00-5810; Sullivan)**

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 June 2000, application no. PA 00-5810 was made for a minor amendment to redesignate tax lot 203 of map 16-25-34, from "Forest" to "Agriculture" and concurrently rezone the property from "F-2/Impacted Forest Lands" to "E-30/Exclusive Farm Use; and

WHEREAS, the Lane County Planning Commission reviewed the proposal in public hearing of March 20, 2001, and on that date recommended approval of the proposed amendment and rezoning; 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 lot 203 of map 16-25-34, from "Forest Lands" to "Agriculture", such territory depicted on Plan Plot 593 and further identified as Exhibit "A" attached and incorporated herein.

Section 2. Tax lot 203 of map 16-25-34, is rezoned from "F-2/Impacted Forest Lands" (Lane Code 16.211) to "E-30/Exclusive Farm Use" (Lane Code 16.212), such territory depicted on Rural Zoning Plot 593 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.

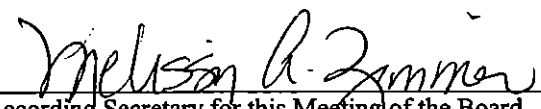
The prior designation and zone repealed by this Ordinance remain in full force and effect to authorize prosecution of persons in violation thereof prior to the effective date of this Ordinance.

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 3rd day of April, 2002.



Chair, Lane County Board of County Commissioners



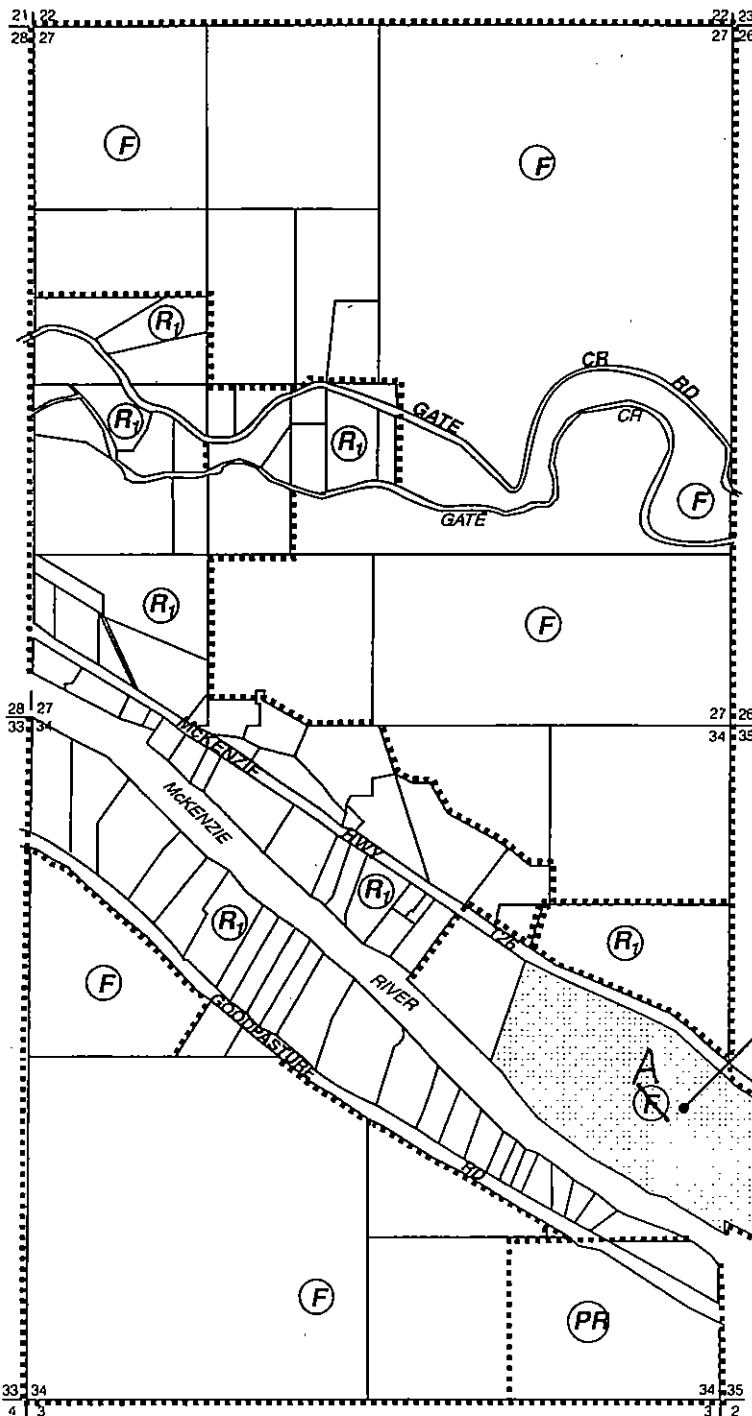
Recording Secretary for this Meeting of the Board

APPROVED AS TO FORM

Date 3-5-2002, Lane county



OFFICE OF LEGAL COUNSEL



Ord. PA 1170
Exhibit "A"

591

595

Plan amendment
from "Forest Land"
to "Agricultural Land"

lane county



OFFICIAL PLAN MAP

PLOT #593

Township Range Section

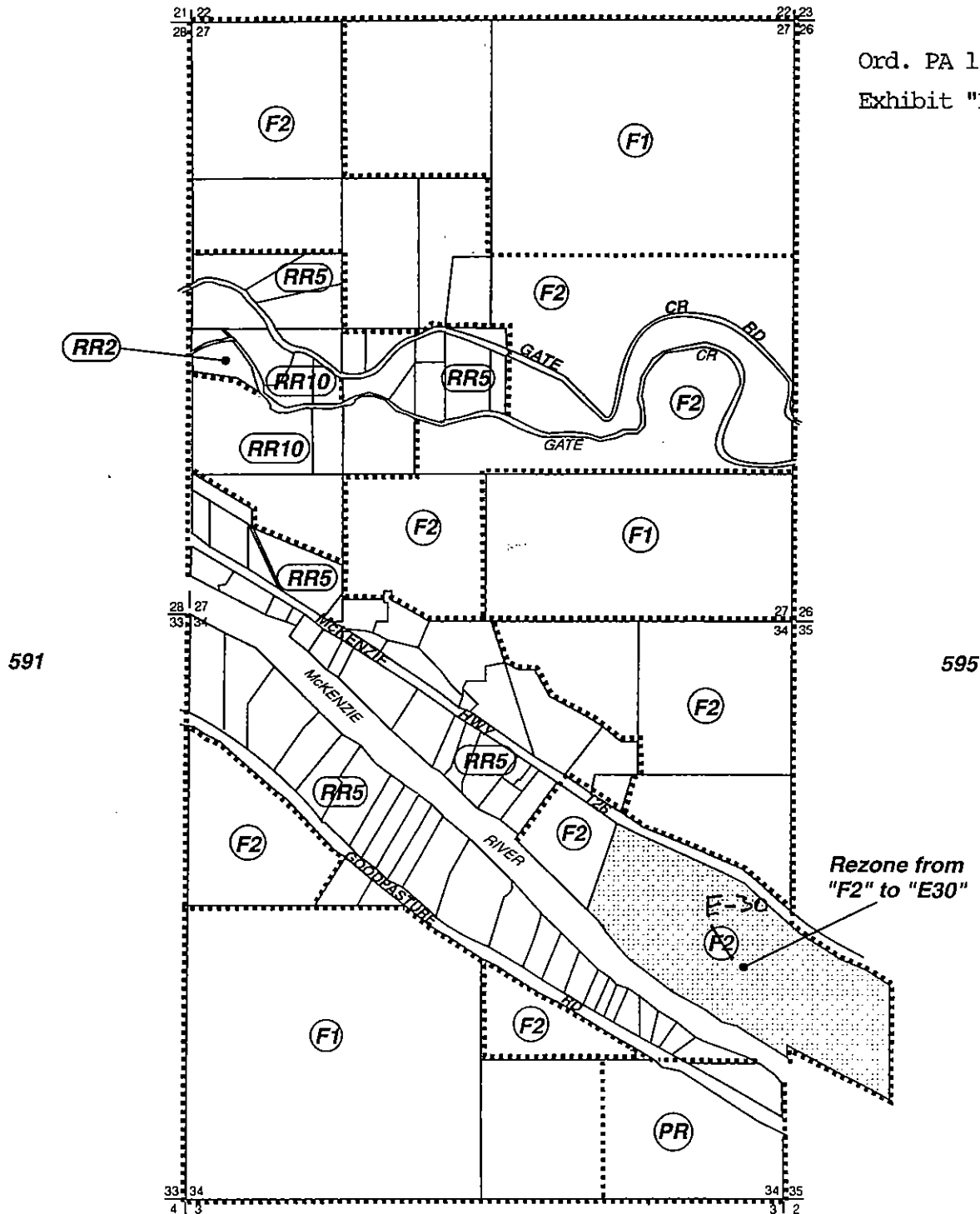
16 25 27

16 25 34

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

REVISION # _____ ORD# _____ DATE _____ FILE # _____

Ord. PA 1170
Exhibit "B"



lane county



OFFICIAL ZONING MAP

PLOT #593

Twship Range Section	
16 25 27	16 25 34

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

**FINDINGS of FACT
and
CONCLUSIONS of LAW
PA 00 - 5810**

Ord. PA 1170
Exhibit "C"

Application Summary

John & Carol Sullivan, 46296 McKenzie Highway, Vida, OR 97488. Request Approval of a minor Rural Comprehensive plan diagram amendment from Forest land to Agriculture land, concurrent with a zoning map amendment from Impacted Forest Land (F-2) to Exclusive Farm Use (E-30).

Parties of Record

John & Carol Sullivan

Application History

Lane County planning commission hearing date March, 20, 2001

Starement of Criteria

OAR 660-33-120

Lane Code 16.004

Lane Code 16.252

Finding of Fact

1. The site consists of 69 acres located at 46296 McKenzie Highway, Vida. The property is identified as map 16-28-34 taxlot #203. The property is developed with a single-family residence, barn, and outbuildings, along with 50+ acre filbert orchard. The property is approximately 28 miles east of Springfield, sandwiched between Highway 126 and the McKenzie River. The property was verified as a legal lot per PA 2403-97.
2. The filbert orchard has existed for approximately 62 years and has been farmed uninterrupted during this period, this use is obvious farm use as defined by ORS 215.203.
3. The subject property is located on Plot 593. Zoned Impacted Forest Lands, F-2/RCP. A portion of the property is also within the regulated 100 year flood hazard area (/FP)
4. The adjacent properties to the north (across the highway), east, and west are zoned F-2. Land across the river to the south is zoned RR-5.
5. Public services for the property are currently provided as follows:
Fire: McKenzie Fire & Rescue

Police: County, State
Water & Sewer: On site septic and well
School: McKenzie #68
Telephone: US West
Power: Lane Electric
Access: McKenzie Hwy. (State)

6. This application implements Lane County RCP Goal 3 Agricultural lands, policy 5 which directs use of planning and implementation techniques that reflect appropriate uses and treatment for each type of land. The Subject property south of the highway consists of 94 percent High Value Farmland soils. A established filbert farm has been located on this site since, 1938. The current owner is the third generation of a family, which has owned and operated this farm since 1954.
7. The proposal is a Minor Amendment pursuant to Lane Code 16.400(6)(h) and involves a rezoning subject to LC 16.252. No exception to any Goal, resource or otherwise, is necessary. The application simply requests a proposed change from one resource zone to another.
8. This application seeks to remedy an apparent error in the Plan designation (LC 16.400(6)(h)(iii)(bb)(i-i)). The parent parcel, which consisted of tax lots 203 and 201 combined, was formerly zoned GR-10, "General Rural District", a zone designation now only to be found within Urban Growth Boundaries. The GR-10 zone allowed a mixture of farm and forest uses. However, when the county rezoned all areas outside of the UGB's in 1984, the effort was one of "high-volume" and of a "broad-brush" approach. While the majority of the parent parcel was obviously in orchard, a forest designation was given, probably to reflect the mixed use and the isolated pocket of filbert orchards among the more predominant forest uses in the area.

Approval criteria

PLAN AMENDMENT CRITERIA LANE CODE 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 Planning Goals and Oregon Administrative Rules.

This application propose to amend the Rural Comprehensive Plan from Forest Land to Agricultural Land. This application provides evidence that addresses the applicable requirements of the Lane Code, RCP policies, statewide planning goal and the OAR.

(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

This plan amendment identifies an error in the RCP, where the subject property was erroneously designated Forest Land. This application implements Lane County RCP Goal 3 Agricultural lands, policy 5 which directs use of planning and implementation techniques that reflect appropriate uses and treatment for the land.

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

This plan amendment implements RCP Goal 3 Policy 5, Which provides for the use of planning and implementation techniques that reflect appropriate uses and treatment of each type of land. As stated above the historic use of the subject property as well as the property to the East and the West of the subject property is agricultural. No specific evidence exists that suggests that the current F-2 zoning is truly more applicable to the site than the proposed Agricultural designation.

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

The Board can find the proposed plan amendment implements certain RCP policies, previously identified, which are appropriate to this request and supportive of changing the designation to Agricultural Land.

(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.

This application identifies various policies that provide policy support for this document. No policies have been identified that directly conflict with this request.

(dd) For Minor Amendments as 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.

The plan amendment is consistent with the intent and structure of the RCP to choose between competing uses. As previously indicated, this amendment is consistent with county policies that provide for designating both forest and agriculture lands. Approval of this amendment

does not conflict with unamended portions of the plan and is therefore consistent with the plan.

2. LANE CODE 16.400(8)

(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 an 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.

This application proposes a minor amendment to the Plan diagram from Forest land to Agriculture land. SCS soil mapping indicates that the 94 percent of the Subject Property consists of soils which are considered High Value and that the historic use of the site for over 60 years has been predominately agriculturally based, a filbert farm.

(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.

(ii) An analysis responding to each of the required findings of LC 16.400(6)(h)(ii) 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 subject portion is bounded on the North by the State of Oregon Highway # 126, McKenzie Highway, to the east by a 10 acre parcel zoned F-2. This parcel contains an established filbert orchard and is actively farmed. The southerly boundary is the McKenzie River, and is bounded to the west by a 10 acre parcel zoned F-2 which is also an established filbert orchard and is actively farmed.

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

Ground water

The water supply on the subject property is supplied via a on-site well. This well was drilled in 1994, and State of Oregon records identify that the well has a yield of 40 GPM. Prior to 1994 the site was served by a spring fed water supply.

Sewage Disposal

The subject property is currently served by an on-site septic system. USDA soils information for the site specific soils type (map unit #61) acknowledges that the soils are suitable for residential development. Given the surrounding properties are served by individual on-site sewage disposal systems and if the need became apparent, there is no evidence suggesting that the same type of on-site sewer service would not be feasible for the subject property.

Transportation

Access is provided by Oregon State Highway # 126, McKenzie Highway

Fire protection and others

Fire protection is provided by Mckenzie Rural Fire Department. All other utilities necessary to support a agricultural use are present.

(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 applicants opinion is that the approval of the amendment would cause no substantial impacts to the Goal 5 resource lands. Delineated wetlands are the only resource identified on or near the subject property. Protection of this resource is managed. Any future development of the site, which would cause wetland impacts, would be regulated through the State fill permit process, coordinated through the State of Oregon Division of State Lands and the Army Corps of Engineers.

3. STATEWIDE PLANNING GOALS

For purposes of the analysis of this section the following applicable statewide planning goal statements have been summarized. The Oregon Land Conservation and Development Commission Goals and Guidelines are incorporated herein by reference, except as noted.

Goal 1: Citizen Involvement

Goal 1 requires citizens and affected public agencies be provided an opportunity to comment on the proposed amendment and zone change.

Public notification in the form of mailed public notice was sent by Lane County to affected agencies, including the Department of Land Conservation and Development, and owners of record within 500 feet of the subject property.

Goal 2: Land Use Planning

Goal 2 establishes a land use planning process and policy framework as a basis for all land use decisions and requires an adequate factual base be developed to support such decisions. A minor amendment is one that does not have significant effect beyond the immediate area of change and is based on special studies or information. The public need and justification for the particular change must be established.

Lane County has adopted a comprehensive land use plan amendment process with specific criteria that must be addressed to justify a minor change. Substantial compliance with Lane Code 16.400, Rural Comprehensive Plan amendments which will constitute compliance with the applicable provisions of Goal 2.

Goal 3: Agricultural Lands

Goal 3 is to preserve and maintain agricultural lands.

Agricultural lands shall be preserved and maintained for farm use, consistent with existing and 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. The descriptions of the historic use of the subject property provides to this application the evidence that the proposed land and the existing land use are the same. The application seeks a change on the plan designation, with no modification to the current agricultural use. This will not force a significant change in accepted farm or forest practices on surrounding lands devoted to farm or forest use, or increase the cost of accepted farm or forest practices on lands devoted to farm or forest use.

Goal 4: Forest Lands

The purpose of Goal 4 is to conserve and maintain the forest land base and to protect the states 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. This coupled with consistent sound management of soil, air, water, and fish and wildlife resources and to provide for recreational opportunities and agriculture.

Neither county inventories or policies have identified any watershed, wildlife, or scenic values that would require a Forest designation to protect these specific values.

Goal 5: Open Spaces, Scenic and Historic Areas and Natural Resources

To protect natural resources and conserve scenic and historic areas and open spaces. Local governments shall adopt programs that will protect natural resources and conserve scenic, historic, and open space resources for present and future generations. These resources promote a healthy environment and natural landscape that contributes to Oregon's livability. The following resources shall be inventoried:

- a. Riparian corridors, including water and riparian areas and fish habitat;
This application does not seek to create any action which would not comply with LC. 16.253, Class I stream Riparian Regulations.
- b. Wetlands;
No jurisdictional wetlands, other than the McKenzie River are present.
- c. Wildlife Habitat;
No significant wildlife habitat identified
- d. Federal Wild and Scenic Rivers
No Federal Wild or Scenic river has been identified
- e. State Scenic Waterways;
No State Scenic river has been identified
- f. Groundwater Resources;
The adequacy of the groundwater supply is a major factor. Land use designations shall be commensurate with ground water aquifer capacities. This site has been managed predominately for agriculture since 1938. No historic concerns exist regarding groundwater supply for this use. This application does not to seek any change in the current agricultural use.
- g. Approved Oregon Recreation Trails;
none identified
- h. Natural Areas;
none identified
- i. Wilderness Areas;
none identified
- j. Mineral and Aggregate Resources;
none identified
- k. Energy sources;
none identified
- l. Cultural areas.
none identified

Local governments and state agencies are encouraged to maintain current inventories of the following resources:

- a. Historic Resources;

- none identified
- b. Open Space
 - none identified
- c. Scenic Views and Sites.
 - none identified

Goal 6: Air, Water and Land Resources Quality

The purpose of Goal 6 is to maintain and improve the quality of the air, water and land resources of the State. This Goal is generally implemented during the comprehensive planning process. As this goal pertains to site specific development, it requires that adequate protection measures are taken to assure the retention of air, water and land quality. The subject property will be served by adequate on-site water and sanitation facilities.

The agricultural land use will not produce or discharge any product or by-product that would de-grade such resources. No change is expected from the historic agricultural use.

Goal 7: Areas Subject to Natural Disasters and Hazards

The purpose of Goal 7 is to protect life and property from natural hazards.

The floodway boundary as mapped by FEMA, generally follows the bank of the McKenzie River.

This application does not seek to create any action, which would be in conflict with LC 16.244 Floodplain Combining zone. The agricultural land use will not increase the potential of hazards of natural disasters.

Goal 8: Recreational Needs

The purpose of Goal 8 is to satisfy the recreational needs of the State and visitors.

This goal is not applicable to this application,

Goal 9: Economic Development

The main purpose of Goal 9 is To provide adequate opportunities throughout the state for a variety of economic activities vital to the health, welfare, and prosperity of Oregon's citizens.

The agricultural land use does provide for the continuation of an economic opportunity, for the applicant and future agriculture managers.

Goal 10: Housing

The main purpose of Goal 10 is to provide for the housing needs of citizens of the state. Build able lands for residential use shall be inventoried and plans shall encourage the availability of adequate numbers of needed housing units at price ranges and rent levels which are commensurate with the financial capabilities of Oregon households and allow for flexibility of housing location, type and density.

No dwellings are proposed or required at this time

Goal 11: Public Facilities and Services

The main purpose of Goal 11 is 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.

All of the rural services necessary are in existence, this amendment will not require any increase in the public services beyond the level that exists.

Fire: McKenzie Fire & Rescue
Police: County, State
Water & Sewer: On site septic and well
School: McKenzie #68
Telephone: US West
Power: Lane Electric Coop
Access: McKenzie Hwy. (State)

Goal 12: Transportation

The main purpose of Goal 12 is to provide and encourage a safe, convenient and economic transportation system.

This goal is not orientated toward specific land use action such as this. This application does not seek to create any action, which would increase the current or future demands on the existing transportation system.

Goal 13: Energy Conservation

The main purpose of Goal 13 is to conserve energy.

This goal is more appropriately applied the comprehensive plan phase and therefore is not applicable to this application.

Goal 14: Urbanization

To provide for an orderly and efficient transition from rural to urban land use.

The subject property is not located within an urban growth boundary and therefore this goal is not applicable to this application.

The following Goals are not applicable to this application as they are geographically oriented and apply to the Willamette River Greenway and coastal resources.

Goal 15: Willamette River Greenway

Goal 16: Estuarine Resources

Goal 17: Coastal Shorelands

Goal 18: Beaches and Dunes

Goal 19: Ocean Resources

ZONE CHANGE CRITERIA LC 16.004

(4) (Scope and Compliance) requires;

Prior to the zoning or rezoning of land under this Chapter, which will result in the potential for additional parcelization, subdivision or water demands or intensification of uses beyond normal single-family residential equivalent water usage, all requirements to affirmatively demonstrate adequacy of long-term water supply must be met as described in LC 13.050(13)(a)-(d).

This application does not seek any change in the current land use which would result in any potential additional parcelization, or increase on the current water demands.

ZONE CHANGE CRITERIA LC 16.252

(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, the Planning Commission or the Hearings Official in accordance with the procedures in this section.

GENERAL PURPOSE The purpose of Chapter 16 Lane County land Use and Development Code is to provide and coordinate regulations governing development in the county and to implement the Lane County Rural Comprehensive Plan. Lane Code 16.003 sets 14 broadly worded purpose statements that includes a provision to insure development is commensurate with the character and physical limitations of the land.

Rezoning the subject property from F-2 to E-30 implements the proposed plan amendment from Forest Land to Agricultural Land. The public interest is appropriately served by recognizing the subject property is not forest land and that the Agricultural designation is orientated to allow that existing adjacent development and land use by maintained and enhanced. The proposed agricultural use of the property implements the general purpose of Lane Code 16.

The application proposes rezoning from F-2 to E-30 to recognize the historic use of the subject property. The proposed E-30 zone is consistent with the Agricultural Lands policy #10 of the Lane County RCP for land managed for hazel nut production and is consistent with the existing development and land use in the surrounding area.

Rural Comprehensive Plan: The policies of the RCP serve as the basis of the County Plan and provide the direction for land use decisions and fulfill the mandate of the LCDC Statewide Planning Goals. Goal 2 Land Use Planning Policy 26 specifically provides that land use designations shall be implemented by specific zoning districts. Thus, these policies specifically support adoption of this plan amendment and the implementing zoning. Therefore this application corrects a plan error and is consistent with the intent and purpose of the Rural Comprehensive Plan and county policies.

CONCLUSION

This application for a minor plan amendment and rezoning addresses and satisfies all applicable criteria. The request is consistent with and receives policy support from the Rural Comprehensive Plan and the implementing E-30 zone. The applicant finds the request will have no significant adverse impact on existing or planned uses in the area. The Board approves this application based on the findings provided herein.