BEFORE THE BOARD OF COMMISSIONERS OF LANE COUNTY, OREGON

ORDINANCE NO. PA 1295

IN THE MATTER OF AMENDING THE RURAL COMPREHENSIVE PLAN TO REDESIGNATE LAND FROM “FOREST” TO “MARGINAL LAND” AND REZONING THAT LAND FROM “F-2/IMPACTED FOREST LANDS” TO “ML/SR MARGINAL LAND WITH SITE REVIEW”, 31 ACRES; AND ADOPTING SAVINGS AND SEVERABILITY CLAUSES (file 509-PA 11-05501; Suess Family Health & Welfare Trust)

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 July of 2011, application no. 509-PA 11-05501 was made for a minor amendment to redesignate approximately 31 acres of land, Map 18-04-11, tax lot 500, from “Forest” to “Marginal Land” with a concurrent request to rezone the property from “F-2/Impacted Forest Lands” to “ML/SR Marginal Land with Site Review”; and

WHEREAS, the Lane County Planning Commission reviewed the proposal in public hearings on March 6 and March 20, 2012, and deliberated and recommended denial on April 17, 2012; and

WHEREAS, the evidence in the record, as supplemented in the hearing before the Board of Commissioners, indicates that the proposal meets the requirements of Lane Code Chapter 16, and other requirements of state and local law; and

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

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

1. The Lane County Rural Comprehensive Plan is amended by redesignating that Tax Lot 500, Map 18-04-11, from “Forest” to “Marginal Land”. The area being redesignated is depicted on the Official Lane County Plan Map 1804, attached hereto as Exhibit “A” and incorporated herein.

2. Tax lot 500, Map 18-04-11, is rezoned from “F-2/Impacted Forest Land” to “ML/SR Marginal Land with Site Review”. The area being rezoned is depicted on the Official Lane County Zoning Map 1804, attached hereto as Exhibit “B” and incorporated herein. The exclusive reason for the addition of the Site Review overlay is to assure compliance with the following development standards.

   (a) To ensure adequate domestic supply, no unit of land on the subject property will be approved for a
dwelling building permit without the owner having a statement from a registered geologist stating that the
dwelling can be served by a tested, existing well that produces a supply adequate for a dwelling.

(b) To promote the sustainability of each domestic well and minimize the risk of interference with
surrounding wells, no building permit will be issued for any dwelling absent a recorded covenant, enforceable by
the county, other owners of the subject property, and any owners association: (a) limiting any well pump
capacity to 0.5 gpm; and (b) requiring a 1,500 gallon storage tank in connection with any proposed dwelling.

(c) To promote fire protection, any building permit application must demonstrate that the building site,
building plans and site plans comply with the standards in LC 16.211(8)(c) (Fire Siting Standards), (d)
(Domestic Water Supplies) and (e) (Fire Safety Design Standards for Roads and Driveways) in effect on the date
of enactment of this ordinance, and that continued compliance with these standards is enforceable by the county,
other owners of the subject property, and any owners’ association through covenants recorded against the
property.

(d) An applicant must demonstrate that the requirements in (a), (b) and (c) above can be met at the time the
building permit application is filed based on objectively determinable facts. The Land Management Division’s
review of the building permit application is an administrative action and not subject to appeal. The Land
Management Division may charge the standard fee for the on-site verification for (c) above for each permit
issued.

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

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 affect the validity of the remaining portions hereof.

ENACTED this 1st day of October, 2013.

[Signature]
Sid Leiken, Chair
Lane County Board of Commissioners

[Signature]
Recording Secretary for this Meeting of the Board

[Signature]
Date Lane County
APPROVED AS TO FORM

OFFICE OF LEGAL COUNSEL

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Exhibit C: Kohnen Tract Marginal Lands Supporting Findings

Supplemental Findings addressing issues following County Board Hearing:

Ensuring domestic well sustainability

As discussed below, the applicant demonstrated the aquifer is adequate to supply the use, which is the standard that must be met. There was, however, considerable discussion about domestic well sustainability and noninterference with other wells—that is, how to maximize the likelihood that a lot proposed for development will have a successful domestic well that will continue to produce an adequate supply and not interfere with neighboring wells. Ralph Christensen, R.G., explained that over pumping increases aquifer drawdown in the surrounding area and damages the well that is being pumped. See Ltr from R. Christensen, R.G. to B. Kloos (June 3, 2013). Based on the recommendations of Mr. Christensen, the Site Review overlay zone will be applied to require:

1. To ensure adequate domestic supply, no unit of land on the subject property will be approved for a dwelling building permit without the owner having a statement from a Registered Geologist stating that the dwelling can be served by a tested, existing well that produces a supply adequate for a dwelling.

2. To promote the sustainability of each domestic well and minimize the risk of interference with surrounding wells, no building permit will be issued for any dwelling absent a recorded covenant, enforceable by the county, other owners of the subject property, and any owners association: (a) limiting any well pump capacity to 0.5 gpm; and (b) requiring a 1,500 gallon storage tank in connection with any proposed dwelling.

Meeting these requirements is intended to be demonstrated at the time of building permit application based on objectively determinable facts.

Promoting fire protection (all applications):

County Board deliberations addressed issues of rural fire protection on Marginal Lands. The Marginal Lands Zone, LC 16.214, does not include dwelling siting standards for fire protection. The Impacted Forest Zone, LC 16.211, in contrast, contains robust standards for fire protections. These include: LC 16.211(8)(e) (Fire Siting Standards); LC 16.211(8)(d) (Domestic Water Supplies); and LC 16.211(8)(e) (Fire Safety Design Standards for Roads and Driveways). To promote fire safety, the Board incorporates the F-2 fire standards list above into the siting of any dwelling on the subject property

Site Review overlay zone will be applied to require a showing, at the time of building permit issuance, that:
1. The proposed building site, building plans and site plans comply with the standards in LC 16.211(8)(c), (d) and (e); and

2. Compliance with these standards is enforceable by other owners of the subject property and any owners’ association through covenants recorded against the property.

With these additional protections, any residences developed on the property will meet the same fire protection standards as F-2 dwellings. Furthermore, the protections will be enforceable by neighbors in the future.

**Adequacy of groundwater supply (all applications).**

The primary issue here is whether there is an adequate groundwater supply for the potential number of units. This issue is posed by LC 16.400(8)(a)(ii)(bb), which is a plan amendment standard, requiring “[a] Availability of public and/or private facilities and services to the area of the amendment, including transportation, water supply and sewage disposal;”

This issue is addressed in the Finding below, at Part III.B., which reflects evidence submitted to the Planning Commission, largely from Ralph Christensen, Senior Geologist, at EGR&Associates. He examined well logs in a four-square mile area in this neighborhood, including for many wells drilled since 1992. He also conducted a “water balance” study of the aquifer, which compares the amount of water going into the aquifer, mainly from precipitation, with the amount of water going out. His analysis, which the Board adopts, appears in EGR’s March 14, 2012 letter. Its conclusion is:

The studied area has low transmissivity and yield for water supply relative to even other bedrock areas of Lane County. Even so, the large parcel size of the Marginal Land designations is such that overtaxing the aquifer and causing an adverse impact on surrounding property owners is highly improbable. It is possible to have an individual well interfere with another individual well, but that will not be an aquifer-wide problem, but an isolated incident, which can be resolved under the rules governing Oregon water rights. Finally, and most importantly, it can be expected that wells in this area will go dry as the wells age, and particularly those wells that are used hard (storage helps alleviate this). However, the aquifer will not be depleted, as the transmissivity seen in this area is sufficiently low that a well, or series of wells, cannot dewater a significant area because water cannot move with sufficient ease through the aquifer for that to happen. Finally, the recharge to the area is sufficient to recover the groundwater that is pumped out several times over. Those wells which lose flow can reasonably be expected to be replaceable by a new well, and that new well will have a static level comparable to the
one seen in the initial well. However, as can be seen in the well log data, the potential yield from that well could vary widely.

Considerable opposing evidence on water supply was submitted to the Board. Most notable was written and oral testimony submitted on May 21 by Jonathan Williams, R.G., of Groundwater Science Applications, White City, Oregon.

The Williams testimony is premised on the assumption that two code standards apply to this decision that do not, in fact, apply. See Ltr from J. Williams to J. Kendall (May 21, 2013) at 1-2. One standard is the no “significant adverse impacts” standard of LC 16.290(5)(a). This standard applies to certain discretionary uses on Rural Residential lands. It is not incorporated into the standards for this plan/zone change to Marginal Lands. The other is the aquifer testing study requirement in LC 13.050(13)(c)(i), which by its terms applies at the time of any proposed land division. Neither of these standards applies to this plan/zone change decision.

Mr. Williams’ misunderstanding may derive from the letter from opponents’ attorney, Anne Davies, dated May 21. See Ltr from A. Davies to County Board (May 21, 2013) at 4. That letter looks to language in RCP Goal 11 Policy 6.j, which says that “[s]ervice levels for land designated marginal lands include levels consistent with service levels for Rural Residential outside a community designation.” She then jumps to the list of standards for certain discretionary uses listed in the RR zone – at LC 16.290(5). It is there that she finds the “no significant adverse impacts” standard. This “no significant adverse impacts standard” does not apply to dwellings permitted in the RR zone, only to a short list of discretionary uses. It is too far a stretch to start with the very general language in RCP Goal 11 Policy 6.j, and then draw into this policy the approval standards for some discretionary uses allowed in the RR zone.

Mr. Williams’ critique is focused on the 1992 pump test of the well on the Blanton property done by Ray Walter Engineering and documented on Feb. 7, 1992. This pump test was relied in part by EGR&Associates to document the aquifer characteristics. The Williams letter provides a detailed negative critique of the 1992 pump test documentation.

EGR&Associates responded in detail to the Williams critique. See Ltr from R. Christensen, EGR&Associates to B. Kloos (June 3, 2013). The June 3 EGR letter also responded to questions from the County Board about water supply and preserving wells, and it responded to individual neighbors’ documentation of their historic well problems.

The June 3 EGR letter responded point by point to the 13 criticisms of the pump test in the Williams letter. The major theme is that the adequacy of the water supply is determined by the water budget analysis, not by a well pump test. The Board agrees with the ERG responses.
The June 3 EGR letter also showed the four-square mile area in which the well analysis, summarized in the EGR March 14, 2012 letter. The area is shown on page one.

The June 3 EGR letter also took a close look at the properties of four neighboring owners whose reported difficulties with wells were summarized in the Williams letter. These owners are McKenzie, Funk, Harrang, and Taylor. The size and proximity of these neighboring properties is summarized in the Table on page 2 of the EGR letter. The Taylor property is to the north and inside the EWEB service boundary. The other three owners are to the south and outside the EWEB service boundary. The distance from the subject property to these three dwellings ranges from about 238 feet (McKenzie) to about 1,202 feet (Harrang).

In response to a question from Commissioner Boziewich, the June 3 EGR letter calculated the drawdown from a well, pumping at 0.5 gpm, at the perimeter of a 10-acre lot — a distance of 330 feet. The calculated drawdown is 1.5 feet. June 3 EGR Ltr at 2-3. This approval is being conditioned to limit well pumps to 0.5 gpm.

The June 3 EGR letter reaches three basic conclusions: (1) “[R]echarge that goes into the ground on just 2 acres in the vicinity of the subject property is sufficient to meet the annual water needs of a dwelling using the conservative 650 gpd in year round water use. Therefore, 10 acre parcels will produce excess groundwater above the needs of a dwelling on that parcel. The carrying capacity of this aquifer is greater than the demands of the potential dwelling units. * * * Parcels could actually be much smaller and not deplete the aquifer.” (2) “Pumping for residential use on the subject property has a very low probability of causing any significant adverse impact on * * * existing users * * * *” Ltr at page 2. (3) “Mr. Williams agrees that the values presented by Mr. Walters and EGR for transmissivity are reasonable for the area.” Ltr at page 6. “The aquifer will not be depleted by this development because the transmissivity seen in this area is sufficiently low that a well, or even a series of well, cannot dewater the aquifer to any significant extent beyond the immediate vicinity of the well.” Ltr at 6.

The Board adopts the conclusions of EGR above. The Board also adopts EGR’s summary conclusion and recommendations for wells and storage, from page 7:

My recommendation for management of wells on this project would be the same as my recommendation for management of any domestic well in this neighborhood. Limit the size of the well pump to 0.5 gpm, and require each dwelling to have above ground storage of about 1500 gallons. This will provide the adequate protection for the continued utility of each well so equipped. It is also minimize the potential for interference between wells. These measures are not needed to ensure an adequate supply of groundwater; the adequacy of the supply is inherent in the water budget. This will promote the utility of individual wells.
Individual opponents and the attorney for the Blanton opponents summarized their recollection about what Mr. Christensen said about groundwater at this location in the 1990-1992 proceeding on a different application for a more dense “nonresource” development proposal. EGR June 3 Ltr at 5 item 9. Mr. Christensen objected to this hearsay being used in place of his current, direct, written testimony. The Board concurs.

In summary, the relevant issue on groundwater is one of supply versus demand for the subject property. The applicant has shown that the supply exceeds the demand by several times. The Board has imposed conditions that will ensure a well will be available for each dwelling, minimize the potential for well interference, and promote the sustainability of each well.

**Goal 5 Big Game Issue**

In Part III.C of these findings, under RCP Goal Five: Flora and Fauna Policy 11, the question is raised whether Goal 5 must be applied directly.

The policy is:

*RCP Goal Five: Flora and Fauna, Policy 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 OAR 660-16-000. The County shall work 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.*

The assumption in the findings below is that this policy must be applied directly, and a full Goal 5 ESEE analysis accompanies this decision. The ESEE analysis acknowledges the basic conflict between residences in rural areas and big game. The conclusion is to allow the increment of additional conflict that would accompany the new residential uses because the general neighborhood is already substantially degraded as big game habitat. This characterization of the big game value of the neighborhood is based on a site inspection by a Big Game Environmental Specialist. See Ltr from Brian Meiering, Environmental Specialist, Schirmer Satre Group (Nov. 30, 2013) and (June 4, 2013).

Staff has correctly noted that the County in the past has not applied Goal 5 directly in making plan and zone changes to ML. The assumption has been that the plan and
zone change is from one resource designation (either Ag or Forest) to another resource designation (ML), and, as with the Forest and Agriculture designations, compliance with Goal 5 applies to development density that is allowed by the zoning - 10 or 20-acre parcels in the case of the ML designation. Under this view, the first sentence of Policy 11, which invokes the ODFW density recommendations (80 acres for Major big game and 40 acres for Peripheral big game) is a target “within regions of the County,” not a standard for individual sites. The policy as a whole is a directive to the county to continue working with the ODFW when amending land use regulations in resource areas. The Board adopts this reading of Policy 11.

The ESEE analysis supporting this decision is adopted as a contingency, in the event that the Board’s reading of Policy 11 is not correct, or if for any other reason Goal 5 applies directly to this decision. If no ESEE is needed, the findings therein are otherwise adopted as supportive findings.

**Related Big Game Issues**
A May 21 memorandum from Mr. Reeder questioned whether the ML residences would force more big game into the adjacent urban areas. The June 4 letter from Environmental Specialist Meiering explained that big game already move across the UGB line for a number of reasons, and adding the potential number of ML residences will not noticeably affect the existing pattern.

The May 21 memorandum from Mr. Reeder also questions whether the ML development will cause a negative snowballing effect on big game. The June 4 Meiering letter explains why it will not:

The second full paragraph of page 3 [of the Reeder letter] introduces a discussion related to avoiding a decision which impacts “Major Big Game Range” and which could perpetuate negative impacts. In my November 30, 2012 memo to your office I noted how the property of interest already fits more appropriately within the “Peripheral Big Game Range” and “Impacted Big Game Range” designations. Please note that surrounding land use was not my only consideration. This professional opinion was based on several field visits to the site, analysis of aerial photography, consideration of limited ODFW survey data and consideration of surrounding land uses. I believe negative impacts will not be generated if the ML applications are approved. That is because the subject properties are already a part of a large neighborhood that is significantly degraded in terms of its habitat value for Big Game. Development of the subject property with rural residential uses similar in density to the surrounding land will not trigger a spread of the lower quality habitat.

The Board adopts the conclusions of the applicant’s big game expert Meiering. These match his conclusions stated in the ESEE analysis.

KOHNEN TRACT ML ORDINANCE: Ex. C -FINDINGS -- Page 6
Issues related to Marginal Land statutory test for forestry

Use of the 50-year growth cycle: Goal One Coalition challenges the use of a 50-year growth cycle for timber in applying the eighty-five cubic feet of merchantable timber per acre per year standard and the $10,000 per year income standard. See Ltr from Attny Malone to J. Kendall (May 21, 2013). As explained in the June 5 letter from consulting forester Marc Setchko, this Board has previously determined that the 50-year growth cycle is the correct growth cycle to use, and LUBA has affirmed the use of the 50-year growth cycle in litigation brought by LandWatch Lane County. See Walker v. Lane County, 53 Or LUBA 374 (No. 2006-138, 2007).

Goal One Coalition also makes the related argument that the forestry income analysis assumed sale for sawmill logs, rather than peeler logs of grades “1P, 2P or 3P,” and the peeler logs are more valuable. See Ltr from Attny Malone to J. Kendall (June 4, 2013) at 6. As Consulting Forester Setchko explains, the peeler logs are from old growth timber, and that assumption is not consistent with a 50-year growth cycle. Ltr from M. Setchko to County Board (June 6, 2013) at 1 (submitted on June 11).

Focus on Douglas fir versus other species of merchantable timber: The Blanton neighbors challenged the exclusive use of Douglas fir as the species for determining whether the site is capable of producing 85 cf/acre/yr of merchantable timber. See Ltr from Attny Davies to County Board (May 21, 2013) at 2; Ltr from Attny Malone to J. Kendall (June 4, 2013) at 6. Mr. Setchko explained that Douglas fir was used, rather than any other species, because Douglas fir has the highest growth rates at these sites and the highest income potential because it is the most valuable tree species that will grow at these sites. Using Douglas fir generates the highest numbers for potential volume and income, for the reasons explained by Mr. Setchko. See Ltrs from M. Setchko to County Board (June 5, 2013) at page 3 item 4, and (June 6, 2013) at 1 para 3.

Relevance from income of logging on Blanton site: The Blanton neighbors point to the 1990 estimated revenue from 1989 logging on the Blanton site as evidence countering the Setchko calculation of income potential from forestry operations on the site. See Ltr from Attny Davies to County Board (May 21, 2013) at 1-2. Mr. Setchko addressed this evidence. See Ltr from M. Setchko to County Board (June 5, 2013) at page 2 item 2. He explained that estimated revenue from particular logging events is not particularly relevant to applying the income test for marginal lands. It does not address the capability of the site to produce revenue on an annual basis over the 50-year growth cycle. It is not based on log prices in the relevant time period – 1978 to 1982. Marginal land is intended to produce timber and revenue from timber harvest, as it is resource land. Opponents’ evidence of 1990 logging revenue does not undermine the applicant’s evidence showing that the income and productivity standards for forestry are met.
Blanton clear cutting without reforestation: Attorney Malone alleges that the Blanton site, contrary to law, was not replanted after harvesting in the 1980s. Ltrr from Attny Malone to J. Kendall (June 4, 2013) at 2 para B. Whatever the merits of this allegation, it is not relevant to the productivity issue, which is based on the acreage and the quality of the soils for timber production.

Existing farm or forest operation: Attorneys Malone and Davies critique the Setchko forestry analysis for each site because it did not consider contiguous land in the same ownership. Ltrr from Attny Davies to County Board (May 21, 2013) at 2; Ltrr from Attny Malone to J. Kendall (May 21, 2013) at 3. Contiguous land in the same ownership during the relevant period (1978-1982) must be considered in the analysis, as explained in Walker v. Lane County, 53 Or LUBA 374, 382 (No. 2006-138, 2007). For each of the three applications, the applicant has demonstrated, with letters from family members of the property owner, that no contiguous land was owned during the relevant period and that the properties were not a part of larger farm or forest operation. Goal One questions whether the assertions by these family members is accurate; however, Goal One provides no evidence that the family members’ evidence is not accurate.

Potential farm or forest operation: Attorney Malone, on behalf of Goal One Coalition, asserts that the marginal land test requires looking at “potential” farm and forest operations that could include adjacent land in other ownerships. Ltrr from Attny Malone to J. Kendall (May 21, 2013) at 3-4. The notion is the adjacent lands in other ownerships needs be considered in applying the test. This is incorrect. The focus of the test under the statute is on a “farm operation” or “forest operation.” There is no need to post hypothetical farm or forest operations using other resource land in other ownerships. Under this theory, all adjacent resource land in the county would constitute a single operation for purposes of applying the test.

What soils tables to use

Attorney Malone on behalf of Goal One asserts that the applicant used the wrong soils tables to determine agricultural capability; the applicant should have used the same soils tables used by Forester Setchko to do his forest capability analysis. See Ltrr from Attny Malone to J. Kendall (June 4, 2013) at 3. This reflects a fundamental misunderstanding of the rules. The Marginal Lands statute prescribes using the SCS soils tables and classifications from 1983 (published in 1987) to determine agricultural capability. Those were the same soils tables used in 1992 County Board decision denying the nonresource plan change for the Blanton site, but finding that the site is not Agricultural Land based on the soil types. In an earlier case brought by the Goal One Coalition LUBA explained what soils data must be used in a Marginal Land application to determine agricultural capability. See Just v. Lane County, 49 Or LUBA 456 (2005). That is what the applicant did here.

Public Interest Standard
The findings below explain that this application is in the public interest if it otherwise meets the standards stated in the plan and the code for making the requested changes. To the extent that opponents have raised other issues that are not directly related to an approval standard, the Board considers those as raising a public interest issue, but rejects those as a basis for denying the application.

Consistency with Purposes of ML Zone
Opponents assert that the rezoning to ML is not consistent with the “Purposes” of the ML zone stated in LC 16.214(1). See Ltrrs from Attny M. Reeder (May 21, 2013) page 3, (June 4, 2013) page 5, 7. The purpose is:

*Purpose. The Marginal Lands Zone (ML-RCP) is intended to:
(a) Provide an alternative to more restrictive farm and forest zoning.
(b) Provide opportunities for persons to live in a rural environment and to conduct intensive or part-time farm or forest operations.
(c) Be applied to specific properties consistently with the requirements of ORS 197.005 to 197.430 and the policies of the Lane County Rural Comprehensive Plan.*

The rezoning will be consistent with each of these very generally stated standards.

With respect to subsection (a), the rezoning will provide an alternative to more restrictive farm and forest zoning. The ML remains resource land, but it will allow division for dwellings at 10 or 20 acres, depending on the adjacent zoning. This is less restrictive than the standards for dwelling development on Ag or Forest land.

With respect to subsection (b), the rezoning will provide opportunities for more people to live in a rural environment and conduct farm and forestry uses on low value resource land. This follows from the finding above, that there dwelling will be allowed on somewhat smaller lots. This standard does not compel owners to conduct farm or forest uses. It provides the opportunity for that.

With respect to subsection (c), this rezoning is being made consistent with the relevant standards in state law and the Rural Comprehensive Plan.

ML designation and expansion of the UGB

In connection with all three applications it was asserted that a ML designation would increase the likelihood that the subject properties would be included in the UGB. See Ltrrs from Attny M. Reeder to County Board (May 21, 2013) at 4 and (June 4, 2013) at 5; Ltr from Attny A. Davies to County Board (May 21, 2013) at 7. Even if the subject property were to be considered for inclusion in the UGB, the County Board would have to co-adopt such changes, and, acting in the capacity as elected officials, would consider the broader public interest through that decision making process at that time.
Basic Findings Addressing Applicable Standards:

I. Summary of the Proposal

This application proposes to change the Rural Comprehensive Plan (RCP) designation from Forest to Marginal Lands and the zoning from F-2, Impacted Forest, to ML, Marginal Lands, for about 31 acres of land located on the north side of Lorane Highway, near but not adjacent to the Eugene Urban Growth Boundary (UGB). The property appears on zoning map 1804.

With this approval, the property potentially could be approved with a single residence potentially served by EWEB.

Exhibit references are to exhibits in the application narrative.

A. Availability of Marginal Land Designation

The Marginal Lands designation is a resource designation that recognizes a much lower quality of resource soils and, therefore, allows residential development at 10 or 20-acre densities. A 1983 statute allowed counties to opt into Marginal Lands. Only two counties did so.

The Court of Appeals, in Herring v. Lane County, 216 Or App 84, 171 P3d 1025 (2007), summarized the availability of Marginal Lands:

“Before turning to the specific arguments, we provide a background concerning the marginal lands statutory scheme and its application in Lane County. Enacted in 1983, the marginal lands statute, ORS 197.247 (1991), permitted counties to authorize procedures for designation of certain land as “marginal land” and to permit certain uses on it that otherwise would not be permitted, if the land met certain specified criteria. The criteria at issue in the present case are found in ORS 197.247(1) (1991):

* * * *

Although the legislature repealed the marginal land statute in 1991, it enacted a statute to permit counties that had adopted marginal land procedures under that statute to continue to apply them. ORS 215.316. Lane County was one of the counties that had adopted marginal land procedures, and it has continued to utilize ORS 197.247 (1991) to designate land as marginal land.” [Footnote omitted] 216 Or App at 86-87.

The County Board, in its 1997 interpretation implementing the Marginal Land Statute, also recognized:
“Marginal land is intended to be a sub-set of resource land, i.e., there are ‘prime’ resource lands and ‘marginal’ resource lands. The marginal lands are to be available for occupancy and use as smaller tracts that are required in the better resource lands. The criteria in the law define which lands may be designated as marginal. Evidence for this position is found in legislative history and the fact that marginal lands are recognized in both Statewide Goal 3 – Agricultural Lands and Goal 4 – Forest Lands.”

B. Subject Property: Location; Ownership; History

This property is Assessor’s Map 18-04-11, TL 500. Basic information about the subject property is provided in the RLID Detailed Property report, attached as Exhibit A. RLID shows the property as 31.6 acres in size, zoned F-2, and vacant.


Exhibit B to this application is the Report of Consulting Forester, Marc E. Setchko. Note that the Setchko Report contains a summary cover letter and Exhibits 1 through 10. Exhibit 1 to the Setchko Report is a detailed air photo of the subject property.

Page 1 of the Setchko Report describes the property:

The subject parcel is ±31.57 acres in size (see Exhibits 1&2). Terrain throughout the site is gentle to moderate, with slopes ranging from 5-35%. Clumps of timber are growing along the northern edge; the high point of the parcel. South of the timbered area, the terrain slopes down to a creek running southeast to southwest through the southern portion of the parcel. The area between the creek and timber is grassland over thin, rocky soils with scattered hardwoods growing on a south to southwest exposure. The creek is bordered by wetland areas, which cover several acres of the south portion of the tract. The parcel is composed of three soil types (see Exhibit 3). Over three quarters of the parcel is composed of the Panther silty clay loam (Soil Type 102C), most of the remainder of the parcel is Philomath cobbly silty clay (Soil Type 108C&F), both of these are poor forestland soils. The third soil type is Ritner cobbly silty clay loam (Soil Type 113E). This is a good forestland soil; it is in the northwest corner of the parcel where most of the standing timber is. However, the high water table and wetland conditions, combined with the thin, rocky soils covering most of the areas outside the northwest corner, are not good growing conditions for conifers.
Hardwood species including cottonwood, ash and oak are the predominant tree species on the parcel. The predominant conifer on the parcel is Douglas-fir; other species include ponderosa pine and incense cedar. Almost all of these trees are in the northern portion, growing in the Ritner soil type. Multiple brush species are present, including blackberry, scotch broom, poison oak, rose, hazel and vine maple.

C. The Neighborhood: Uses and Impacts

The subject property is shown on the air photo of the vicinity, which appears on the cover of the application. A more detailed air photo appears as Exhibit 1 of the Setchko Report, which is Exhibit B hereto.

In general, this application is in a neighborhood that is a mix of Rural Residential, Forest, Agriculture, and Marginal Land designations.

The Kohnen tract is adjacent to Agriculture, Forest, and Rural Residential lands on its perimeter. The adjacent Agricultural and Forest lands are not developed. However, due to their size and zoning, each potentially could be developed with a dwelling. The Rural Residential lands adjacent to the south, across Lorane Highway, are developed with rural residences in a fairly dense pattern.

The requested ML designation of this property would allow the development of dwellings pursuant to LC 16.214(6).

D. Public Facilities and Services

This site is vacant and adjacent to Lorane Highway on its south. The RLID Detailed Property Report, Exhibit A, describes services. Fire protection is by Bailey-Spencer RFPD; ambulance is Eugene Fire & EMS; LTD provides bus service; EPUD is the electric provider; the school district is 4-J; the eastern half of this acreage is in the service area of EWEB, which absorbed the service area of the Hillside Water District. See EWEB map in Exhibit E. There is an EWEB main on Lorane Hwy at the southeast corner of this property.


(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 the growth cycle, of $10,000 in annual gross income; and

During the five relevant years, this property was owned by Kenneth Kohnen and was vacant. The daughter of Kenneth Kohnen, Mary Smith, has documented the use of

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the property during the 1978 through 1982 calendar years. She explains that her father was an accountant, not a farmer or forester. The subject property was not put to any farm use and was not managed for forest use during the time he owned it—1968 to 1992. See Exhibit D, Ltr from M. Smith (April 13, 2011).

Furthermore, the subject property was not capable of producing $10,000 in annual gross income from a forest operation during the 1978 1982 calendar years. Documentation supporting this conclusion appears in Exhibit B, the Report of Consulting Forester, Marc E. Setchko. The Setchko Report was updated at the conclusion of the Planning Commission proceeding to reflect the most recent Lane County soils data on productivity. Note that the Setchko Report contains a summary cover letter and Exhibits 1 through 10. The Setchko Report shows that the annual gross income from a forestry operation ranges between $1,044 per year and $1,486 per year, depending on which of the five years log prices is used for the calculation. In summary, the potential income ranges between about 10% and 15% of the minimum income needed to meet the test.

(b) The proposed marginal land also meets at least one of the following tests

(A) At least 50 percent of the proposed marginal land plus the lots or parcels at least partially located within one-quarter mile of the perimeter of the proposed marginal land consists of lots or parcels 20 acres or less in size on July 1, 1983;

(B) The proposed marginal land is located within and area of not less than 240 acres of which at least 60 percent is composed of lots or parcels that are 20 acres or less in size on July 1, 1983; or

(C) The proposed marginal land is composed predominantly of soils in capability classes V through VIII in the Agricultural Capability Classification System in use by the United States Department of Agriculture Soil Conservation Service on October 15, 1983, and is not capable of producing ** eighty-five cubic feet of merchantable timber per acre per year in those counties west of the summit of the Cascade Range, as that term is defined in ORS 477.001(21).

The subject property meets the soils test in (C) above. Documentation supporting this conclusion appears in Exhibit B, the Report of Consulting Forester, Marc E. Setchko. Note that the Setchko Report contains a summary cover letter and Exhibits 1 through 10. Exhibit 3 of the Setchko Report is an LCOG Soils Map. It shows that all four soil types are Class VI.

The Setchko Report also documents that the subject property is capable of producing 49.15 cubic feet of merchantable timber per acre per year. This is about half of the threshold amount of 85 cubic feet that qualifies for Marginal Land.

III. Plan Amendment Standards in Lane Code and Rural Comprehensive Plan:
A. LC 16.400(6)(h)(iii):

(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 is a “Minor Amendment” to the plan because it amends only the plan diagram. The relevant standards are addressed above and below.

(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 current plan designation was applied to the property in 1984, with the recognition that the property might qualify for Marginal Lands, based on an individual application. This is that application for this property. By showing that the site qualifies for Marginal Land the applicant is demonstrating that the existing plan designation is not correct.

   (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 Marginal Land Statute and RCP policies anticipate both Agricultural Land and Forest Land being redesignated as Marginal Land, if standards are met. The description of the Marginal Lands plan designation, under Goal Eleven of the RCP, says: “Lands 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 should find that if a tract of land qualifies for a Marginal Land designation then it is desirable, appropriate and proper to apply that designation.
Opponents at the Planning Commission suggest that the purposes of the ML-RCP zone, LC 16.214(1), are relevant to compliance with this standard. Those purposes are:

16.214 Marginal Lands Zone (ML-RCP).

(1) Purpose. The Marginal Lands Zone (ML-RCP) is intended to:
(a) Provide an alternative to more restrictive farm and forest zoning.
(b) Provide opportunities for persons to live in a rural environment and to conduct intensive or part-time farm or forest operations.
(c) Be applied to specific properties consistently with the requirements of ORS 197.005 to 197.430 and the policies of the Lane County Rural Comprehensive Plan.

The purposes of the ML zone are of marginal or no relevance to a requested plan change. However, the plan amendment is consistent with each purpose state in this section.

(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.

There are no policies in the RCP that conflict with this amendment. As discussed elsewhere, there are policies in the RCP that support and encourage Marginal Land designation for qualified property.

(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.

As noted immediately above, the change in plan designation for this tract is compatible with all relevant plan policies, in particular, RCP Goal 3, Agricultural Lands, Policy 14, and RCP Goal 4, Forest Lands, Policy 3, both of which allow the ML designation for qualified property. The County Board confirmed in its 1997 interpretation, quoted at the start of this statement, that Marginal Lands are resource lands that are intended for occupancy with limited rural residential development.

B. Additional Amendment Standards at LC 16.400(8):

(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 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.

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

This is a “minor” plan amendment. No plan text is being changed. No goal exception is being approved. 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 applications 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 the whole of this application.

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

These standards have been 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 low density residential development on the subject property, where there now is none. The subject property has the potential for up to three residences per LC 16.214(6). The immediately surrounding property is in resource use with very low density residential uses. When the subject property is developed it will generate the same kinds of externalities as the nearby residential
uses – noise, lights, stormwater, septic discharges, traffic and the like. However, these impacts will be no greater than the impacts generated by the existing adjacent uses.

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

See discussion above in I.D., which also draws from the RLID Detailed Property Report in Exhibit A. Much of this site is in the EWEB service area, as shown on Exhibit E. A maximum of three dwellings on this site would be allowed by the ML designation per LC 16.214(6). It can be served by the same rural services and facilities that serve the Rural Residential uses in the neighborhood. It has potential access to EWEB water. The dwellings potentially allowed on this site would be served with onsite septic.

(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;

In response to the Staff Report, the applicant prepared a full Goal 5 analysis in support of this proposal. See Exhibit F. The ESEE analysis is adopted together with this plan amendment, and is summarized below as part of the discussion of the Statewide Planning Goals. The Goal 5 analysis adequately addresses the impacts related to this standard.

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

No natural hazards have been identified or inventoried on the subject property.

(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; Marginal Lands is a resource designation.

C. Plan Amendment Standards in the Rural Comprehensive Plan:

**RCP Goal Three: Agricultural Lands, Policy 14:**
Land may be designated as marginal land if it complies with the following criteria:

a. The requirements of ORS 197.247, and
Compliance with the statute is addressed in Part II above.

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

Policies 11 and 12 are discussed below.

RCP Goal Four: Forest Lands, Policy 1:
Conserv[e]e forest lands by maintaining the forest land base and protect[e] 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.

This proposal will conserve forest lands because the ML zone is a resource zone.

RCP Goal Four: Forest Lands, Policy 3:
Forest lands that satisfy the requirements of ORS 197.247 (1991 Edition), may be designated as Marginal Lands and such designations shall also [be] made in accordance with other Plan policies. Uses and land division allowed on Marginal Lands [and] shall be those allowed by ORS 197.247 (1991 Edition).

This policy contains the word “may.” Redesignation to Marginal Lands is discretionary. However, if an application for Marginal Land designation otherwise meets the state and county standards, then the redesignation is justified.

RCP Goal Four: Forest Lands, Policy 12:
Encourage the conversion of under-productive forest lands through[s]ilvicultural practices and reforestation efforts.

This is a generally stated, nonmandatory policy that is not contrary to this proposal, as the ML designation is a resource designation.

RCP Goal Five: Flora and Fauna, Policy 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 OAR 660-16-000. The County shall work 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.

Compliance with this plan policy was a major source of controversy in the proceeding before the Planning Commission. In previous Marginal Land designations the County Board has 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 designation (10 acres 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. Opponents of the companion ML applications have argued that the subject property, like all property in the county, is inventoried as some level of Big Game Habitat, ODFW density limitations apply, absent a full Goal 5 analysis. As a precaution, the applicant has prepared a full Goal 5 analysis for all significant Goal 5 resources potentially on the site. That analysis appended to the application as Exhibit F and summarized in the Statewide Planning Goals analysis below. If Goal 5 is triggered by this policy, then the Goal 5 analysis has been done, and this policy is complied with.

Potential impacts on big game was a recurring theme in these companion ML applications. This issue addressed in detail in the ESEE analysis. However, a short summary is appropriate here.

This site, along with the other two companion sites proposed for Marginal Land designation in the same neighborhood, were examined by an environmental specialist in connection with these applications. The research included a site visit. The evaluation was documented in a November 30, 2012 letter, which is in the record of the applications. The study concluded, for each site:

“However, in my opinion, developing the tax lots in question with low density residential uses (in the range of one unit per 10 or 20-acre lot sizes) would not have an appreciable adverse impact on big game populations in the neighborhood that these tax lots share or in Lane County as a whole. This conclusion is based primarily on the existing low density residential development pattern in the immediate neighborhood and the much higher residential development pattern in the city adjacent to the north.” Ltr from Brian Meiering, Environmental Specialist, Schirmer Satre Group (Nov. 30. 2013) at page 3.

RCP Goal Five: Flora and Fauna, Policy 12:
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 low density Rural Residential uses that would be allowed on this property are similar to those in the surrounding neighborhood, thus potentially generating the same types of conflicts with inventoried Goal 5 resources. These are evaluated in connection with the Goal 5 analysis below. This policy is, therefore, complied with.

**RCP Goal Eleven: Public Facilities, Policy 1:**
Lane County shall provide an orderly and efficient arrangement for the provision of public facilities, services and utilities. Designation of land into any given use category either initially or by subsequent plan amendment, shall be consistent with the minimum level of services established for that category.

The proposal is consistent with this policy, as explained in connection with Statewide Planning Goal 11 below.

**RCP Goal Eleven: Public Facilities, Policy 2:**
Any increases in the levels of public facilities and services generated by the application of new or revised land use designations within an area shall, to the extent practicable, be financed and maintained by revenues generated within or as a result of those designated land uses. Those land uses benefiting from increased levels of public facilities or services shall be expected to provide a significant share of the costs associated with providing such facilities and services, recognizing that in some instances, resources for such provision must be obtained on a widespread geographic or revenue basis and may involve capital investments exceeding the immediate needs of the area being served.

The proposal is fully consistent with this policy. As explained in connection with Statewide Planning Goal 11 below, development allowed by this proposal will be served primarily by on-site facilities and services. The use, if served by EWEB water, will pay for that service. No public road improvements are triggered by this proposal.

**RCP Goal Eleven: Public Facilities, Policy 6:**
Service levels for lands designated marginal lands include levels consistent with service levels for Rural Residential outside a Community designation: i.e., schools, on-site or community sewage disposal, individual or community water supply, electrical service, telephone service, rural level of fire and police protection, reasonable access to solid waste disposal facility.

The discussion below in connection with Statewide Planning Goal 11 demonstrates compliance with this policy.

**IV. Application of the Statewide Planning Goals:**
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.

Goal 1 is a process goal. This proposal complies with Goal 1 because it will be processed as a quasi-judicial application through the county's acknowledged public process for individual plan and zone changes. This process includes public hearings before the Planning Commission and the County Board.

Goal 2 – Land Use Planning: PART I – 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.

Part I of Goal 2 requires local governments to establish processes and policies for land use decisions. That process is in place. Part II of Goal 2 authorizes exceptions to the goals – land use decisions that are not in compliance with the goals under certain circumstances. Statutes also describe when exceptions are authorized. See ORS 197.732. This application complies with Goal 2 because it is being processed under the county plan and code and because no exception to any resource goal is proposed.

Goal 3 – Agricultural Lands: 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.

Marginal Land is a resource designation. Land that is plan designated as Marginal Land is consistent with Goal 3 or Goal 4 or both. The subject property has been determined by the county and confirmed by LUBA, in previous litigation, as not being Agricultural land.

Goal 4 – Forest Land: 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 resource designation. Land that is plan designated as Marginal Land is consistent with Goal 3 or Goal 4 or both.

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

A complete Goal 5 analysis is included with the supporting materials and is intended to be adopted as an amendment to the plan in connection with the county approval.
Part A of the analysis summarizes what Goal 5 requires. Part B identifies the inventoried and acknowledged Goal 5 resources that are on the subject property, as reflected in county plan documents and inventories. The subject property is inventoried as having water resources and big game range. Part C is the ESEE analysis for the resources that are present. The conclusion is to allow the potentially conflicting use – very low density rural residential use. The complete Goal 5 analysis satisfies the Goal 5 requirements.

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

*All waste and process discharges from future development, when combined with such discharges from existing developments shall not threaten to violate, or violate applicable state or federal environmental quality statutes, rules and standards. With respect to the air, water and land resources of the applicable air sheds and river basins described or included in state environmental quality statutes, rules, standards and implementation plans, such discharges shall not (1) exceed the carrying capacity of such resources, considering long range needs; (2) degrade such resources; or (3) threaten the availability of such resources.*

Goal 6 protects the quality of land, air and water resources. The focus is on discharges from future development in combination with discharges from 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, nondegradation, and continued availability of the resources are standards.

The subject property is currently vacant and unused. It has no history of agricultural or forestry use.

The potential maximum of three dwellings would generate septic wastes. A precondition to any residential use, however, will be the development of individual septic systems meeting state standards. The soils on the subject property are suitable for one or more types of septic systems that meet state standards. The availability of the state standards as a precondition to residential development ensures that the future use will comply 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 phrase “areas of natural disasters and hazards” means “areas that are subject to
natural events that are known to result in death or endanger the works of man, such
as stream flooding, ocean flooding, ground water, erosion and deposition, landslides,
earthquakes, weak foundation soils and other hazards unique to local or regional
areas.” OAR 660-15-000. There are no such areas known on the subject property.
The elevation of the site in the South Hills near Eugene avoids any potential flood
hazards. None of the soil types present is described as being prone to landslides in
the SCS Lane County Soil Survey.

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 overriding purpose of Goal 8 is to address all recreational needs, but its primary
focus is on siting and developing destination resorts, defined in Goal 8 as "self-
contained development[s] providing visitor-oriented accommodations and developed
recreational facilities in a setting with high natural amenities."

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.

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 Land designation.

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

Buildable 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.

Goal 10, like its implementing rule, OAR 660-008, is geared primarily to housing
issues inside urban growth boundaries. The goal’s definition of “buildable lands,”
for example, is limited to lands in urban and urbanizable areas. This site is outside
any UGB.

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.
Urban and rural development shall be guided and supported by types and levels of urban and rural public facilities and services appropriate for, but limited to, the needs and requirements of the urban, urbanizable, and rural areas to be served. A provision for key facilities shall be included in each plan. Cities or counties shall develop and adopt a public facility plan for areas within an urban growth boundary containing a population greater than 2,500 persons. To meet current and long-range needs, a provision for solid waste disposal sites, including sites for inert waste, shall be included in each plan. In accordance with ORS 197.180 and Goal 2, state agencies that provide funding for transportation, water supply, sewage and solid waste facilities shall identify in their coordination programs how they will coordinate that funding with other state agencies and with the public facility plans of cities and counties.

Goal 11 addresses facilities and services in urban and rural areas. The subject property is “rural” land and will remain rural after this approval, as discussed in connection with Goal 14.

“Public facilities and services” is defined in the Statewide Planning Goals to include: "[p]rojects, 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.” “A public facility includes water, sewer, and transportation facilities, but does not include buildings, structures or equipment incidental to the direct operation of those facilities.” OAR 660-11-005(5).

The Rural Plan 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, reasonable access to solid waste disposal. See Goal 11, Policy 6.j. The services now available to the subject property, or proposed to be developed, include:

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<tr>
<td>Fire</td>
<td>Bailey-Spencer RFPD</td>
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<tr>
<td>Police</td>
<td>Lane County Sheriff and State Police</td>
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<tr>
<td>Schools</td>
<td>Eugene School District 4J</td>
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<tr>
<td>Access</td>
<td>Lorane Hwy, a County Rural Major Collector at this point</td>
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<tr>
<td>Electric</td>
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<td>Telephone</td>
<td>Qwest Communications</td>
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**Table: Rural Public Facilities, Existing or Proposed**

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

A transportation plan shall (1) consider all modes of transportation including mass transit, air, water, pipeline, rail, highway, bicycle and pedestrian; (2) be based upon an inventory of local, regional and state transportation needs; (3) consider the differences in social consequences that would result from utilizing differing combinations of transportation modes; (4) avoid principal reliance upon any one mode of transportation; (5) minimize adverse social, economic and environmental impacts and costs; (6) conserve energy; (7) meet the needs of the transportation disadvantaged by improving transportation services, (8) facilitate the flow of goods and services so as to strengthen the local and regional economy; and (9) conform with local and regional comprehensive land use plans. Each plan shall include a provision for transportation as a key facility.

Goal 12 is implemented through the Goal 12 Rule (OAR 660-12) adopted in 1991. The Rule has a section that specifically addresses 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 threshold 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 it:

(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 proposed Marginal Land designation will not trigger this section of the rule. It will not have a significant effect on Lorane Highway as measured by any of the four standards listed above. Hence the proposed changes comply with Goal 12.

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

*Land and uses developed on the land shall be managed and controlled so as to maximize the conservation of all forms of energy, based on sound economic principles.*

This goal is not directly applicable to individual land use decisions. 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).

**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 designation. The proposal is to change from one resource plan designation to another. Furthermore, the residential density allowed in the ML zoning is either 10 acres or 20 acres per unit. If the plan designation and zoning were considered to be a “rural” use rather than a “resource” use, this density range has been 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, a Marginal Land designation cannot run afoul of Goal 14.

**Goals 15 to 19 -- Willamette Greenway and Coastal Goals**

These five goals are not applicable as they deal with resources that are not present on the subject property.

V. Zone Changes Standards in Lane Code – 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 or the Hearings Official in accordance with the procedures in this section.

{[A]chieves the general purpose of this chapter – LC 16.003}

16.003 Purpose.
This chapter is designed to provide and coordinate regulations in Lane County governing the development and use of lands to implement the Lane County Rural Comprehensive Plan. To these ends, it is the purpose of this chapter to:
(1) Insure that the development of property within the County is commensurate with the character and physical limitations of the land and, in general, to promote and protect the public health, safety, convenience and welfare.
(2) Protect and diversify the economy of the County.
(3) Conserve the limited supply of prime industrial lands to provide sufficient space for existing industrial enterprises and future industrial growth.
(4) Conserve farm and forest lands for the production of crops, livestock and timber products.
(5) Encourage the provision of affordable housing in quantities sufficient to allow all citizens some reasonable choice in the selection of a place to live.
(6) Conserve all forms of energy through sound economical use of land and land uses developed on the land.
(7) Provide for the orderly and efficient transition from rural to urban land use.
(8) Provide for the ultimate development and arrangement of efficient public services and facilities within the County.
(9) Provide for and encourage a safe, convenient and economic transportation system within the County.
(10) Protect the quality of the air, water and land resources of the County.
(11) Protect life and property in areas subject to floods, landslides and other natural disasters and hazards.
(12) Provide for the recreational needs of residents of Lane County and visitors to the County.
(13) Conserve open space and protect historic, cultural, natural and scenic resources.
(14) Protect, maintain, and where appropriate, develop and restore the estuaries, coastal shorelands, coastal beach and dune area and to conserve the nearshore ocean and continental shelf of Lane County.

This approval will achieve the general purposes of Chapter 16 and not be contrary to the public interest. There are 14 purpose statements in LC 16.003. These statements are very general in content. The balance of the standards in the plan and the code that govern this redesignation are much more specific. If this application meets the
specific standards that apply, then it is fair to conclude that it will also be consistent with the general purpose statements and be in the public interest.

(Consistent with the specific purposes of the zone classification proposed – ML 16.214(1).)

**Purpose.** The Marginal Lands Zone (ML-RCP) is intended to:
(a) Provide an alternative to more restrictive farm and forest zoning.
(b) Provide opportunities for persons to live in a rural environment and to conduct intensive or part-time farm or forest operations.
(c) Be applied to specific properties consistently with the requirements of ORS 197.005 to 197.430 and the policies of the Lane County Rural Comprehensive Plan.

This approval is fully consistent with these general purpose statements, as supported in the balance of these findings.
LIST OF EXHIBITS FOR KOHNEN MARGINAL LANDS APPLICATION

A. RLID Detailed Property Report

B. Report of Consulting Forester, Marc E. Setchko (6 pages with Exhibits 1 to 10)

   Exhibit 1: Air Photo showing subject property
   Exhibit 2: Assessor's Map: 18-04-11, TL 500
   Exhibit 3: LCOG Soils Map: 18-04-11, TL 500
   Exhibit 4: Or Dept Forestry, "Land Use Planning Notes, No. 3, April 1998, Updated for Clarity April 2010"
   Exhibit 5: Ltrr from D. Morman, Director, Forest Resources Planning Program, Dept of Forestry, to K. Howe, Lane County Land Management Division (Nov. 21, 2008)
   Exhibit 6: Lane County Forest Soil Ratings
   Exhibit 7: Lane County Soil Ratings for Forestry and Agriculture, Lane County Land Management Division (Aug. 1997), page 5
   Exhibit 8: Lane County Soil Ratings for Forestry and Agriculture, Lane County Land Management Division (Aug. 1997), page 2
   Exhibit 9: Douglas fir Empirical Yield Table

C. Relevant Deeds for Property


D. Ltrr from M. Smith to B. Kloos (April 13, 2011)(documenting use of property)

E. EWEB Service Area Map

F. Goal 5 ESEE analysis to be incorporated in to the comprehensive plan.
Exhibit D: Kohnen Tract ESEE Analysis

IN SUPPORT OF
SUSS APPLICATION: KOHNEN SITE (31.6 ACRES); PA 11-5501 PLAN CHANGE FROM FOREST TO MARGINAL LANDS ZONE CHANGE FROM F-2 TO ML

Goal 5
Open spaces, scenic and historic areas, and natural resources.

To conserve open space and protect natural and scenic resources.

A. What Goal 5 requires.

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 of the conflicting uses shall be determined and programs developed to achieve the goal.

Goal 5 is implemented through the Goal 5 Rule adopted by the LCDC in 1996. The Rule appears in OAR Chapter 660, Division 23: Procedures and Requirements for Complying with Goal 5. The Rule applies to “post-acknowledgment plan amendments” or “PAPAs,”1 such as this application.2 The Division 23 Rule replaces the Division 16 Rule.3

When a local government undertakes a PAPA, it is not required to do an entire Goal 5 analysis from scratch. The local government’s obligation to do a Goal 5 analysis, and the scope of the Goal 5 analysis that is required, has been the subject of considerable case law development, which has been distilled into the applicability provisions of the Goal 5 Rule. Particularly relevant are subsection (3) and (4) of OAR 660-023-0250, which state:

(3) Local governments are not required to apply Goal 5 in consideration of a

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1 OAR 660-23-0010(5) states:

“PAPA” is a “post-acknowledgment plan amendment.” The term encompasses actions taken in accordance with ORS 197.610 through 197.625, including amendments to an acknowledged comprehensive plan or land use regulation and the adoption of any new plan or land use regulation. The term does not include periodic review actions taken in accordance with ORS 197.628 through 197.650.

2 OAR 660-023-0250(2) states, in part: “The requirements of this division are applicable to PAPAs initiated on or after September 1, 1996.”

3 See OAR 660-023-0250(1).
PAPA unless the PAPA affects a Goal 5 resource. For purposes of this section, a PAPA would affect a Goal 5 resource only if:

(a) The PAPA creates or amends a resource list or a portion of an acknowledged plan or land use regulation adopted in order to protect a significant Goal 5 resource or to address specific requirements of Goal 5;

(b) The PAPA allows new uses that could be conflicting uses with a particular significant Goal 5 resource site on an acknowledged resource list; or

(c) The PAPA amends an acknowledged UGB and factual information is submitted demonstrating that a resource site, or the impact areas of such a site, is included in the amended UGB area.

(4) Consideration of a PAPA regarding a specific resource site, or regarding a specific provision of a Goal 5 implementing measure, does not require a local government to revise acknowledged inventories or other implementing measures, for the resource site or for other Goal 5 sites, that are not affected by the PAPA, regardless of whether such inventories or provisions were acknowledged under this rule or under OAR 660, Division 16.

The italicized language above is particularly applicable here. The provisions above reflect caselaw stating that where a county is amending acknowledged plan and zoning designations, the county must address Goal 5 if any of the area proposed for change encompasses lands included on the county’s inventory of Goal 5 resources.4 The county need not go through the Goal 5 conflict resolution process for alleged Goal 5 resources that are not on the acknowledged Goal 5 inventory.5

The initial Goal 5 question, therefore, is whether the subject property includes any significant Goal 5 resources inventoried in the acknowledged county plan.

As historical background, the county’s Goal 5 program is reflected in its Rural Comprehensive Plan Policies document, as supported by its related Working Papers from the early 1980s. The county’s Goal 5 program was initially acknowledged in 1984. See Compliance Acknowledgment Order 84-ACK-201 (Oct. 3, 1984). That Order was appealed and eventually remanded by the Supreme Court. See 1000 Friends of Oregon v. LCDC (Lane County), 305 Or 384, 752 P2d 271 (1988). However, the Goal 5 program was upheld in that review. There were two DLCD Staff Reports that reviewed the Goal 5 program, initially finding shortcomings in the first review and

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then finding compliance. The first DLCD Staff Report was dated July 19, 1984 (hereafter July 19, 1984 DLCD Staff Report). The Goal 5 review therein begins at page 124. The second DLCD Report was dated September 12, 1984. (hereafter Sept. 12, 1984 DLCD Staff Report.) The Goal 5 review therein begins at page 23.

**B. Inventoried and acknowledged Goal 5 Resources on the Subject Property.**

The paragraphs below address the acknowledged Goal 5 resource inventories. Consistent with the “Applicability” provisions in OAR 660-023-0250, the Goal 5 process will be applied here only for those Goal 5 resources inventoried in the acknowledged plan that are known to be present on the subject property.

**Historic Resources:** The acknowledged list of historic resources is listed as “Historic Sites or Sites.” The subject property is not on the list.

**Mineral and Aggregate Resources:** Mineral and aggregate sites are listed in several appendices in the *Mineral and Aggregate Working Paper*. The subject property is not listed in any of the appendices.

**Energy:** The subject property is not listed on any county inventory of sites to be protected for energy production.

**Water Resources:** The *Water Resources Working Paper (1982)* inventories the following water resources which include or potentially include the subject property: Watersheds (specifically the Spencer Creek (Basin 14), which is a tributary to the Long Tom River (Basin 7); Surface Waters; and Groundwater. See also the summary for the water resources program in the July 19, 1984 DLCD Staff Report at 173. County data show Spencer Creek on the property on north side of Crest Drive.

**Riparian Resources:** The *Flora & Fauna Working Paper (1982) and Addendum (1983)* inventories Riparian resources. Riparian areas are inventoried to include all land within 100 feet of the banks of a Class I stream. *Addendum* at 7. There are no Class I streams on the subject property; Spencer Creek is not inventories as a Class I stream.

**Wetland Resources:** At the time the *Flora & Fauna Working Paper* was prepared, the U.S. Fish and Wildlife Service had not completed its National Wetlands Inventory (“NWI”) mapping for the entire county. As a result, the county Goal 5 wetlands inventory was limited to five “major wetlands” areas in the county, which do not include the subject property. Consideration of adding other “minor wetland” areas to the inventory was deferred by the county to a later date, to follow completion of the NWI mapping. County reconsideration has not yet occurred. Thus, the county plan inventory of wetland resources does not include any such resources on the subject property.

Although the acknowledged county inventory of wetlands remains truncated, the NWI has been completed. The NWI maps show a large wetland area on the subject property, associated with KOHNEN TRACT ML ORDINANCE: Ex. D – ESEE ANALYSIS – Page 3
Spencer Creek, along the southern half of the property. Notwithstanding the county’s failure to inventory more than the five major wetland areas as Goal 5 resources, all wetland areas, including mapped and unmapped wetlands, are protected by federal and state law. They are protected from filling as “waters of the United States” under 33 USC §1344 and as “waters of the State” under ORS 196.800(14).

**Sensitive Fish and Waterfowl Areas:** The inventory of these sites appears in the *Flora & Fauna Working Paper Addendum (1983)* at 1-4. The subject property is not included on the inventory.

**Natural Areas:** The inventory of these sites appears in the *Flora & Fauna Working Paper* at 26-32. The subject property is not included on the inventory.

**Big Game Range:** The plan classifies the entire county into three categories of Big Game Range, using an ODFW classification: Major, Peripheral, and Impacted. See *Flora & Fauna Working Paper* at 23-25, *Addendum* at 14. The Wildlife Habitat Maps (Dec. 1980) were adopted as part of the plan and introduced into this record.

Major Big Game Range “supports the majority of big game,” generally on “sparsely developed commercial forest land.” See *Flora & Fauna Working Paper* at 23. Peripheral Big Game Range generally is in the foothills area “between commercial forest land and valley floors.” These areas support substantial big game populations. *Id.* Impacted Big Game Range areas are other areas that “have existing levels of land use which preclude future wildlife management options.” *Id.* “Impacted range has essentially been ‘written off’ for big game management.” *Id.* at 24.

The ODFW’s Big Game maps in the plan are generalized. All lands in the county that are “committed” to nonresource use, and hence zoned for rural residential use, are considered to be “Impacted” for purposes of Big Game, which means they have been written off in terms of Big Game value, and conflicting uses are permitted. See *Flora & Fauna Working Paper* at 24 para 1; *Addendum* at 14 para 5. Because the committed lands are generally small, they appear on the ODFW Big Game maps in areas that are otherwise mapped as Major or Peripheral Big Game areas. *Id.* The status of committed lands as areas where all conflicting uses are allowed is also confirmed in the July 19, 1984 DLC/D Staff Report at 149 para 1: “Developed and committed exception areas are considered impacted, and the County has decided that conflicting uses should be permitted in those areas.”

The county uses ODFW recommended densities as the general as a general standard for identifying conflicts. See *Flora & Fauna Working Paper* at 24 para 6:

“The primary conflict to big game, as mentioned earlier is residential use at certain densities. ODFW has recommended overall residential densities for Peripheral Big Game Range at one dwelling unit per 40 acres; for Major Big Game Range at one dwelling unit per 80 acres. Therefore, to restate the conflict: overall residential density greater than one dwelling unit/40 acres in Peripheral Range and one dwelling unit/80 acres in Major Range conflicts with habitat for big game.”

KOHNEN TRACT ML ORDINANCE: Ex. D – ESEE ANALYSIS – Page 4
The county elaborates on this rule of thumb in the Working Paper and Addendum at 14 para 1.

"Although this is a useful index, officials of the ODFW stress the fact that a mere 'numbers game' is not the optimum manner to deal with conflicts to the Big Game Range resource. While overall densities are important indicators of conflict, the manner in which these densities occur can either create worse conflict or reduce that which already exists."

Based on all of the above, the Big Game maps show the northwest corner of the subject property to be Major Big Range, and the balance of the property to be Peripheral Big Game. Peripheral Big Game range is adjacent to the east and west. Adjacent to the south and southwest is Impacted Big Game range, due to the committed land status and RR-5 zoning.

A final word is in order about Goal 5, Big Game Range, and the Marginal Lands designation. In the county acknowledgment process, the DLCD disposed of specific objections that the avenue in the plan and code for Marginal Land designations violated Goal 5, for failure to address big game habitat. The DLCD denied this objection. It found that statutes require the goals to be applied in connection with ML designations, and it found that RCP Goal 5, Flora and Fauna Policy 11 explicitly requires applying Goal 5 if the ODFW density recommendations will not be met. See July 19, 1984 DLCD Staff Report at 160-161, Response to Objections 2 and 4.

C. ESEE Decision Process for Inventoried Goal 5 Resources Present.

The basic requirements for conducting the conflicts analysis and developing a program for inventoried and acknowledged resources is spelled out in OAR 660-023-0040. The introductory provisions in OAR 660-023-0040(1) explain that there are four steps in the ESEE process, that

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6 OAR 660-023-0040(1) provides:

Local governments shall develop a program to achieve Goal 5 for all significant resource sites based on an analysis of the economic, social, environmental, and energy (ESEE) consequences that could result from a decision to allow, limit, or prohibit a conflicting use. This rule describes four steps to be followed in conducting an ESEE analysis, as set out in detail in sections (2) through (5) of this rule. Local governments are not required to follow these steps sequentially, and some steps anticipate a return to a previous step. However, findings shall demonstrate that requirements under each of the steps have been met, regardless of the sequence followed by the local government. The ESEE analysis need not be lengthy or complex, but should enable reviewers to gain a clear understanding of the conflicts and the consequences to be expected. The steps in the standard ESEE process are as follows:

(a) Identify conflicting uses;
(b) Determine the impact area;
(c) Analyze the ESEE consequences; and
(d) Develop a program to achieve Goal 5.
the county has discretion in how it proceeds through the process so long as it completes each step, and that the analysis need not be lengthy or complex. The result should create a clear understanding of the conflicts and the consequences. The four steps in the ESEE process are:

(a) Identify conflicting uses;
(b) Determine the impact area;
(c) Analyze the ESEE consequences; and
(d) Develop a program to achieve Goal 5.

The Goal 5 Rule provides additional instructions on how to conduct each of the four steps listed above. The approach taken here will be to address each of the Goal 5 resources inventoried on the site in the acknowledged plan (Big Game Range and three Water Resources) and conduct the four-step analysis. Big Game Range will be addressed first. The full text of Goal 5 Rule instructions relating to each of the four steps will be quoted in footnotes in connection with the Big Game analysis.

1. ESEE Analysis for Big Game Range

As noted above, the acknowledged county plan inventories Big Game Range as a significant Goal 5 resource. The County has not yet completed the Goal 5 process for this resource. The plan documents declined to simplify the issue of conflict identification to a matter of densities for individual development sites, and instead deferred the issue to future work between the county and the ODFW. “The County should continue to work with the ODFW to resolve the issue of Big Game designation and protection in a mutually acceptable manner -- including the involvement of that agency in land use regulation development.” Flora & Fauna Working Paper Addendum at 14. Thus, the County has not yet completed the Goal 5 process for Big Game Habitat. At this point, the County has recognized that the resource is significant, it has recognized that there are several degrees of significance (by mapping the entire county into three alternative zones -- Major, Peripheral, and Impacted), and it has deferred the balance of the Goal 5 analysis to a later date.

The ESEE analysis must be conducted for Big Game Range because this is a post-acknowledgment plan amendment that would allow new uses (very low density rural residential) that could conflict with Big Game Range. OAR 660-023-0250(3)(b).

(a) Identify Conflicting Uses

The approach to identifying conflicting uses is stated in OAR 660-023-0040(2). The existing

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7 OAR 660-023-0040(2) states:

KOHNNEN TRACT ML ORDINANCE: Ex. D – ESEE ANALYSIS – Page 6
and potential conflicting uses with Big Game Range must be determined. This requires looking at the uses allowed by the proposed ML zoning that are likely to be developed. For this site that would be one dwelling unit on the entire 31 acres.

Residential uses at certain densities conflict with big game management in Peripheral and Major Big Game Range. "Impacted Range has essentially been 'written off' for big game management." Flora & Fauna Working Paper (1982) at 24. The plan identifies this conflict when overall residential densities reach certain levels in Peripheral and Major Big Game Range. However, the plan declines to resolve conflicts by setting density limits. Flora & Fauna Working Paper Addendum (1983) at 14.

At this site the ML zoning would allow one rural residential dwelling.

(b) Determine the Impact Area

The approach to determining the impact area is stated in OAR 660-023-0040(3). Here the impact area for the PAPA is the entire 31-acre area of the subject property itself, since the entire county is mapped as being in one of the three big game areas. As noted above, the generalized Wildlife Habitat Maps (Dec. 1980) adopted as part of the plan show the subject property substantially in the Peripheral Big Game category, with a small area of Major Big Game area in the northwest corner.

It is worth noting, for purposes of this analysis, that the subject property is in an area of relatively

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Identify conflicting uses. Local governments shall identify conflicting uses that exist, or could occur, with regard to significant Goal 5 resource sites. To identify these uses, local governments shall examine land uses allowed outright or conditionally within the zones applied to the resource site and in its impact area. Local governments are not required to consider allowed uses that would be unlikely to occur in the impact area because existing permanent uses occupy the site. The following shall also apply in the identification of conflicting uses:

(a) If no uses conflict with a significant resource site, acknowledged policies and land use regulations may be considered sufficient to protect the resource site. The determination that there are no conflicting uses must be based on the applicable zoning rather than ownership of the site. (Therefore, public ownership of a site does not by itself support a conclusion that there are no conflicting uses.)

(b) A local government may determine that one or more significant Goal 5 resource sites are conflicting uses with another significant resource site. The local government shall determine the level of protection for each significant site using the ESEE process and/or the requirements in OAR 660-023-0090 through 660-023-0230 (see OAR 660-023-0020(1)).

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OAR 660-023-0040(3) states:

Determine the impact area. Local governments shall determine an impact area for each significant resource site. The impact area shall be drawn to include only the area in which allowed uses could adversely affect the identified resource. The impact area defines the geographic limits within which to conduct an ESEE analysis for the identified significant resource site.
dense residential development and small parcels. The Eugene UGB is very close to the north. Adjacent to the south of the property are committed lands that extend to the east, west and south, and comprise hundreds of acres of Impacted Big Game habitat, due the dense residential development. Looking at the larger picture, this site is a part of an island of several hundred acres that is completely surrounded by urban development on the north, rural residential zoning on the east and south, and ML zoning on the west. This adjacent and nearby development degrades the value of the habitat on the subject property.

(c) Analyze the ESEE Consequences

The approach to analyzing the ESEE consequences is stated in OAR 660-023-0040(4).9 “ESEE consequences’ are the positive and negative economic, social, environmental, and energy (ESEE) consequences that could result from a decision to allow, limit, or prohibit a conflicting use.” OAR 660-023-0010(2). The County must analyze the ESEE consequences of allowing, limiting, or prohibiting the conflicting rural residential uses.

The common context for analyzing the alternatives of allowing, limiting or prohibiting the conflicting use (residential development at a 20-acre or 10-acre density) is the existing development pattern on the surrounding property and its impact on big game management. As noted above, the subject property is part of an island of Big Game land that is surrounded by the city on the north, rural residential land on the east and south (Impacted Big Game range), and Marginal Lands on the west.

The adjacent and nearby Rural Residential lands have been written off by the county plan for big game range values. The urban land is also written off. In summary, the immediately adjacent neighborhood to the island of which the subject property is a part has been developed or parcelized to the point where it has little or no value as Big Game habitat.

**Economic Consequences:** Allowing the subject property to be developed with a single rural residential use would have short term economic impacts in terms of construction activity during the build out of subdivision infrastructure and individual residences. In the long term it

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9 OAR 660-023-0040(4) states:

_Analyze the ESEE consequences. Local governments shall analyze the ESEE consequences that could result from decisions to allow, limit, or prohibit a conflicting use. The analysis may address each of the identified conflicting uses, or it may address a group of similar conflicting uses. A local government may conduct a single analysis for two or more resource sites that are within the same area or that are similarly situated and subject to the same zoning. The local government may establish a matrix of commonly occurring conflicting uses and apply the matrix to particular resource sites in order to facilitate the analysis. A local government may conduct a single analysis for a site containing more than one significant Goal 5 resource. The ESEE analysis must consider any applicable statewide goal or acknowledged plan requirements, including the requirements of Goal 5. The analyses of the ESEE consequences shall be adopted either as part of the plan or as a land use regulation._
would increase the property value at this site with attendant impacts on tax revenues. It is unclear, however, whether there would be a net increase in value countywide.

The impacts of the single residential use on big game resources would be nominal, for the reason that the subject property is part of an island in a sea of land that already has been determined to have little or no value as habitat. What is important for Big Game is having large contiguous acres of undisturbed forest land. That does not exist here.

Prohibiting the rural residential use completely would have no economic consequences, as distinct from the status quo. The subject property is vacant and not being managed for any agricultural, forest, or other uses.

**Social Consequences:** Allowing the residential use would mean that this site would be developed with uses that are similar to the rural residential uses in the neighborhood. The difference is that residential development of the subject property would be much less dense than in the immediate neighborhood. Prohibiting the residential uses would maintain the status quo.

**Environmental Consequences:** Allowing the ML zoning means the subject property would remain higher quality habitat than on the rural residential land nearby. It would have some residential development, but at a much lower density than exists on all the surrounding land.

This site, along with the other two companion sites proposed for Marginal Land designation in the same neighborhood, were examined by an environmental specialist in connection with these applications. The research included a site visit. The evaluation was documented in a November 30, 2012 letter, which is in the record of the applications. The study concluded, for each site:

> "However, in my opinion, developing the tax lots in question with low density residential uses (in the range of one unit per 10 or 20-acre lot sizes) would not have an appreciable adverse impact on big game populations in the neighborhood that these tax lots share or in Lane County as a whole. This conclusion is based primarily on the existing low density residential development pattern in the immediate neighborhood and the much higher residential development pattern in the city adjacent to the north." Ltr from Brian Meiering, Environmental Specialist, Schirmer Satre Group (Nov. 30, 2013) at page 3.

**Energy Consequences:** The net impacts on energy consumption countywide might be negligible or zero if this site attracts rural residential development that might otherwise locate elsewhere in the rural county. Prohibiting the residential use would maintain the status quo.

(d) **Develop a program to achieve Goal 5 for Big Game Range**

The proposed program to achieve the goal is to allow the conflicting low density residential use, a single dwelling, that would come with the ML designation. The subject property is located in an area that has very limited value as Big Game habitat, due to existing development. Allowing one dwelling on the subject property will have no appreciable effect on Big Game habitat in this part of KOhnen Tract ML ORDINANCE: Ex. D – ESEE ANALYSIS – Page 9
2. **ESEE Analysis for Groundwater Resources**

The acknowledged county plan identifies groundwater as a Goal 5 resource. See *Water Resources Working Paper (1982)* at 10. It identifies groundwater as "extremely valuable as a direct resource of drinking water for individuals and communities, a source of irrigation water for livestock and crops, and as a base source of water for lakes and streams." *Id.* at 10. As with Big Game Range, the plan inventories this resource as being present throughout the county. It maps the quantity of groundwater available into five general categories which reflect geographic regions. It also notes that groundwater quality is limited by natural and human induced factors.

Groundwater will not be the source for domestic water supply for the single dwelling allowed by the ML zoning on this site. A substantial portion of this site is within the EWEB service area. Therefore, groundwater will not be used, and there is no potential conflict with this Goal 5 resource.

3. **ESEE Analysis for Surface Water Resources and Watershed Resources**

The acknowledged county plan identifies surface water and watersheds as Goal 5 resources. See *Water Resources Working Paper (1982)* at 3-10. The working paper states that is difficult to separate the discussion of watersheds from that of surface water. Hence, the two will be addressed together 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 a watershed, even if it is much smaller than a basin." *Id.* at 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. The subject property is located in the Spencer Creek basin of the Long Tom Basin. See *id.* at Map 2 and Appendix B. 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 "[t]he entire County is within one or more categories of watersheds, and all ranges of quality may be found." *Id.* at 5.

The "quality" discussion in the plan recognizes that watersheds play vital roles in individual and municipal water supplies, fish and wildlife habitat, water quality, flood protection, among others. *Id.* at 5. 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 a watershed and the amount that runs off. *Id.*

Only one conflict is identified by the plan’s 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." *Id.* at 5. See also July 19, 1984 DLCD Staff Report at 174. The plan found 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 KOHNEN TRACT ML ORDINANCE: Ex. D – ESEE ANALYSIS – Page 10
the Clear Lake area, which is in the watershed of the Heceta Water District. *Id.* at 5-6. The plan conducts no ESSE analysis for forestry practices for the reason that the county has so little control over these practices. And it conducts no ESEE analysis of the Clear Lake situation due to inadequate data. *Id.* at 5-6.

The working paper maps drainage basins and lists the principal streams in Lane County. As noted above, the subject property is located in the Spencer Creek basin of the Long Tom River Basin. See *id.* at Map 2 and Appendix B. Spencer Creek runs through the property adjacent to the north site of Crest Drive.

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. *Id.* at 7-8. Its discussion of stream water quantity is limited to a description of flow regulation in rivers and streams by federal agencies with storage and flood control responsibilities. *Id.* at 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 included in the working paper's discussion include: water release schedules from federal reservoirs, state water rights regulation that contributes 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 conducts no ESEE analysis of the problems above. "[T]hese are not considered as conflicts in the Goal 5 sense as they do not result from County planning or zoning actions, and generally cannot be resolved in that manner." *Id.* at 10.

(a) Identify Conflicting Uses

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 used 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, lying instead with state and federal authorities. See July 19, 1984 DLCD Staff Report at 174-175.

The county found a number of conflicts for protection of surface waters of the county, but concluded that these are not the consequence of county actions, but rather of state and federal regulatory schemes. 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.

In summary, potential impacts of very low density rural residential development on watersheds and surface waters are not conflicts identified in the acknowledged Goal 5 program. Furthermore, some might argue that multiple smaller ownerships of this larger parcel might encourage small scale farming, as compared the site remaining unused, and farm use might impact the watershed and surface waters. However, Goal 5 Rule does not require considering the KOHNEN TRACT ML ORDINANCE: Ex. D – ESEE ANALYSIS – Page 11
impacts of 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 program for watershed and surface water resources, there are no recognized conflicting uses associated with the potential low density rural residential uses associated with this proposal.

End