BEFORE THE BOARD OF COMMISSIONERS OF LANE COUNTY, OREGON

ORDINANCE NO. PA 1342

IN THE MATTER OF AMENDING THE RURAL COMPREHENSIVE PLAN TO REDESIGNATE LAND FROM "AGRICULTURAL" TO "MARGINAL LAND" AND REZONE LAND FROM "EXCLUSIVE FARM USE (E-40)" TO "MARGINAL LAND" (ML), AND ADOPTING SAVINGS AND SEVERABILITY CLAUSES (FILE NO. 509-PA15-05161; APPLICANT: BENEDICK ET AL.)

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

WHEREAS, on March 24, 2015, application no. 509-PA15-05161 was made for a minor amendment to re-designate a 110.5 acre property from "Agricultural" (A) to "Marginal Land" (ML), and to change the zoning from "Exclusive Farm Use" (E-40) to "Marginal Land" (ML); and

WHEREAS, the Lane County Planning Commission reviewed the proposal in a public hearing on June 7, 2016, and forwarded the matter to the Board with a recommendation for approval; and

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

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

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

1. The Lane County Rural Comprehensive Plan is amended to re-designate the subject 110.5 acre property from "Agricultural" (A) to "Marginal Lands" (ML). This is depicted on the Official Lane County Plan maps and further identified on the map detail attached as Exhibit "A" and incorporated herein.

2. The Lane County Official Zoning Map is amended to change the zone of the subject 110.5 acre property from "Exclusive Farm Use" (E-40) to "Marginal Land" (ML). This is depicted on the Official Lane County Zone maps and further identified on the map detail attached as Exhibit "B" and incorporated herein.

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

The prior designation and zone repealed by this Ordinance remain in full force and effect to authorize prosecution of persons in violation thereof prior to the effective date of this Ordinance.
If any section, subsection, sentence, clause, phrase or portion of this Ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision, and such holding shall not effect the validity to the remaining portions hereof.

ENACTED this 1st day of November, 2016.

Faye Stewart, Chair
Lane County Board of Commissioners

Recording Secretary for this Meeting of the Board

APPROVED AS TO FORM
Date 10-20-16
LANE COUNTY OFFICE OF LEGAL COUNSEL
The information on this map was derived from digital databases on the Lane County regional geographic information system. Care was taken in the creation of this map, but is provided as is. Lane County cannot accept any responsibility for errors, omissions or positional accuracy in the digital data or the underlying records. Current plan designation, zoning, etc., for specific parcels should be confirmed with the appropriate agency. There are no warranties, expressed or implied, accompanying this product. However, notification of any errors will be appreciated.
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Subject Property

- E40 - Exclusive Farm Use (40 acre minimum)
- PR - Park and Recreation
- NR - Natural Resource
- ML - Marginal Lands
- RR5 - Rural Residential (5 acre minimum)
- ML - Marginal Lands

Lane County, Oregon
8/10/2016

EXHIBIT B
ORDINANCE NO. PA 1342
PROPOSED ZONE DESIGNATIONS
ZONE MAP DETAIL
I. PROPOSAL

The proposed minor amendment to the Rural Comprehensive Plan (RCP) changes the plan designation of 110.5 acres from Agricultural to Marginal Land and changes the zone from Exclusive Farm Use (E-40) to Marginal Lands (ML). This application implements Lane County Goal 3, Policy 14 which provides for re-designating Agricultural Land to Marginal Land in compliance with ORS 197.247 (1991 edition) and applicable Lane County RCP policies and Statewide Planning Goals (Goals). Approval of the plan amendment would allow the subject property to be developed into 10 acre minimum parcels as provided by the Marginal Lands Zone, LC 16.214(6).

On June 7, 2016, the Lane County Planning Commission conducted a public hearing, deliberated on the proposal, and unanimously recommended the Board of County Commissioners approve the request.

A. Property location, description and history

The subject tract (the “subject property”) is located on the east side of Fern Ridge Reservoir, west of Fir Butte Road and consists of eight contiguous tax lots in three ownerships. The subject property is identified as tax lots 4100, 4101, 4200, 4300 on Assessor’s Map 17-05-13 and tax lots 5100, 5200, 5300 and 5400 on Assessor’s Map 17-05-24. The subject property is assigned addresses of 27922, 27942 and 27962 Ward Lane, Eugene, OR 97402. The subject property is not located within an urban growth boundary.

The subject property can be generally described as an L-shaped tract developed with three single-family dwellings, barn, shop, assorted accessory structures, a one-half acre pond, three acres of livestock pasture and a ten acre filbert orchard located on the northern portion. The subject property is served by on-site sanitation systems and wells. The remaining acreage to the south of the developed area and to the southeast consists of 60 acres of open, level hay field and approximately 20 acres of hardwood trees located in the southwest corner near the Amazon Diversion Channel. No merchantable timber is located on the subject property. A wetland determination conducted by Geo Resources’ Allen Martin, Registered Geologist, identified wetland areas covering 16.16 acres of the subject property in eight areas.

Access is provided by Ward Lane, a 60 foot private access easement from Fir Butte Lane to the north (Reel 766R, No. 7517001 and Reel 1811R, No.9271181 Lane County Deed Records), Crossley Lane (county road) which dead ends at the subject property near its midpoint and 2,380 feet of road frontage on Wildrose Lane (county road) to the south.
The Julius and Justine Benedick portion of the tract was assembled between 1977 and 1980. The Benedick Holdings LLC portion was purchased in 1983. The Whitten portion was purchased in 1977 by Julius and Justine Benedick and later conveyed in 1996 to their daughter and son-in-law, Sharla and Michael Whitten.

The subject property has a history of primarily raising hay and filberts. The filbert orchard planted in the 1940’s has declined in production and produces about $2,000 in annual income. A grass seed crop was attempted in 1980 and 1981 but was abandoned due to the cost of providing lime at $150 /acre, limited production and wet areas. About 60 acres continues to be leased for hay production and produces $50/acre or $3,000 per year. About three acres is used to pasture two horses and one donkey for personal use.

Lane County Assessment and Taxation records indicate 108.48 acres receives a farm tax deferral. The assessor has assigned agricultural capability Class V and VII rating to 30.33 acres of the hardwood forest and wet areas.

These lesser suited farm areas tend to generally correspond with the soil types, existing forested and delineated wetland areas. The poorer quality land and property configuration effectively divides the subject property into a northern unit that includes the small filbert orchard and hay field and a southern unit consisting of a hay field. Each of these more suitable farm units are bordered by residentially developed and zoned parcels on their north and east sides.

B. Surrounding Area

The subject property is the last large tract in the immediate vicinity located between Fir Butte Road and Fern Ridge Reservoir. Rural Comprehensive Plan (RCP) Developed and Committed Exception areas 251-1, 251-2, and 252-2, adopted in 1989 and 1990, indicate 448.4 acres is developed with 99 homes located adjacent or near the subject property. The county rural addressing inventory shows there are 84 dwellings or manufactured dwellings located within 1,000 feet of the subject property.

More specifically, eighteen (18) RR-5 zoned parcels between 1 and 5 acres developed with 17 residences surround the subject property on its north and east sides or about 78% of its perimeter boundary. To the south is tax lot 4600, a long, narrow 10.22 acre parcel that borders the subject property along 1,940 feet of its southern boundary. Tax lot 4600 consists of about eight acres of pasture and is used to raise about 15 head of cattle a year. Tax Lot 4600 is improved with a dwelling, zoned E-40 and is the only exclusive farm use zoned parcel contiguous to the subject property. Further, south of Tax Lot 4600 is the Amazon Diversion Channel, a year round drainage that flows into Fern Ridge Reservoir. To the northwest is Tax Lot 1300, a 14.32 acre brushy vacant Corps of Engineers parcel adjacent to the reservoir. Tax Lot 1300 borders 460 feet of the subject property in the far northwest corner and is zoned PR. To the west is “high pool” Corps land averaging about 1,000 feet in width between the subject property and the Fern Ridge Reservoir water body. To the southwest is Tax Lot 5500, a 11.36 acre vacant, brushy, wooded Corp of Engineers parcel above the 377 foot contour line adjacent to the reservoir. Tax Lot 5500 is zoned PR and borders 1,560 feet of the subject property near its southwest corner.

C. Plan and Zoning History

The subject property and the surrounding area generally bounded by Fern Ridge Reservoir to the west, Greenhill Road to the east, Clear Lake Road to the north and Route F (Hwy 126) to the south was first
designated Rural Woodland and Grazing (RWG) by the Willamette-Long Tom Subarea plan adopted by the County Board in 1976. While the subarea plan was replaced by the RCP and its current implementing zoning, it was the first county land use planning document that acknowledged the relatively high-density development concentrated in the vicinity of Fern Ridge Reservoir and the dispersed residential development characteristic of “suburban” or “ranch” type development that predominated the area. The Subarea Plan recognized the RWG designation was appropriate “for parts of the Subarea not particularly well-suited for large-scale farming but which are suitable for rural activities such as livestock production, wood production, grazing and pastureland, etc…” (Subarea Plan Pg. 33).

Prior to adoption of the current E-40 Exclusive Farm Use zoning, the northern portion of the subject property, Tax Lots 4100, 4101, 4200 and 4300, was first zoned AGT 5 Agriculture Grazing and Timber in 1973 by Ord. No.498. The southern portion of the subject property, tax lots 5100, 5200, 5300 and 5400, was zoned FF-20 Farm Forestry by Ord. No. 613 in 1977 and later rezoned from FF-20 to AGT 5 in 1979 by Ord. No.719. The subject property was rezoned from AGT 5 to E-40 to implement the RCP adopted in 1984 by Ord. No. PA 884.

D. Public Facilities and Services

Fire protection is provided by the Zumwalt RFPD through contract fire and ambulance service provided by Eugene Fire and EMS. The Lane County Sheriff provides police protection. Emerald PUD provides electric service to the area. Telephone service is provided by CenturyLink. Public schools are provided by the Bethel School District 52 and Lane Community College. Solid waste service is provided by Lane County at various sites. Access is provided by Ward Lane, a private access easement, and Crossley Lane and Wildrose Lane, designated local county roads.

II. APPROVAL CRITERIA AND ANALYSIS FOR MARGINAL LANDS


The marginal lands law was one of several legislative changes made in 1983 in response to a report by Governor Vic Atiyeh’s Task Force on Land Use in Oregon, published in September 1982. The underlying concept of the marginal lands bill (SB 237) was to identify land currently protected by Goals 3 and 4 (Agricultural Lands and Forest Lands) that will not likely make a contribution to commercial agriculture or forestry because of small parcel size, isolation from other resource lands or poor soils.

The final marginal lands statute requires a two-tier test consisting of standards regarding income and parcelization or soil quality. The first tier was to identify land which was not, at the time of the legislation, making a significant contribution to commercial agriculture by producing $20,000 or more in gross farm income (in three of five years) and the $10,000 in annual gross forest income (over the growth cycle). The second tier, consisting of parcelization or poor soil quality tests, was intended to identify land which did not have the potential for making a significant contribution in the future. DLCD reviewed SB 237 and found it was an important step in improving Oregon’s land use program.

Since its adoption and implementation by Lane County, there has been considerable discussion about the ambiguous text of the criteria which led the Board of Commissioners to adopt an “Interpretation Regarding the Implementation of Marginal Lands Applications” (“the 1997 Board Interpretation”), Applicant’s Statement, Appendix at App.2. The Board’s intent was to further define noncommercial agricultural and forest lands by establishing standards describing how poor soils or parcelization make agricultural or forest uses impracticable and to allow small scale farms and woodlots on lands that qualify
as being marginal for resource production.

B. Availability of Marginal Lands and Designation

The Marginal Lands designation is a resource designation that recognizes a much lower quality of resource lands and therefore allows residential development at 10 or 20 acre densities. The 1983 statute allowed counties to establish a plan designation and zoning for Marginal Lands. Only Washington County and Lane County adopted Marginal Lands.

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

“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.”

In its 1997 Interpretation the County Board 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 than 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.”

C. Marginal Lands Standards

*(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 relevant five year period preceding January 1, 1983, the Benedick “farm operation” consisted of property identified as Tax Lots 4100, 4101, 4200, 4300, (subject property) and Tax Lots 4401, 4402 and 4403 (11 acre contiguous ownership zoned RR-5), assessor’s map 17-05-13. During this period, the farm operation consisted of 21 acres of filberts for four years, 20 acres of oats for one year, and grass seed for two years, which produced a total gross income between 1978 and 1982 of $10,127.36.

Between 1978 and 1982 Tax Lots 5100, 5200 and 5300, map 17-05-24 (61 acres partitioned into three
20.56 acre parcels by partition M48-81) were owned by Robert Street. Mr. Street has indicated a total farm income of $5,000 was received between 1978 and 1982.

Gerald Denny, owner of Tax Lot 4600 raised about 15 head of cattle per year on about 8 acres. Mr. Denny has indicated his farm operation did not make $20,000 or more in gross annual income between 1978 and 1982.

The record includes property owner affidavits from Julius and Justine Benedick, Robert Street and Gerald Denny, respectively, that attest their respective farm operations, during three of five calendar years proceeding January 1, 1983, did not produce $20,000 or more in gross annual income and no forest related income.

A forest analysis prepared by Marc Setchko, Certified Forester, indicates that neither the subject property or Tax Lot 4600 is forest land due to poor soil conditions that include a high water table, saturated soils, and shallow effective rooting depths. Further, there is no history of conifer stands that ever existed on the subject property.

(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 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 477.00(21).

The Applicants have addressed the above (B) test, which requires 60 percent of the parcels within a minimum 240 acre area are composed of lots or parcels that are 20 acres or less in size on July 1, 1983. (emphasis added) As described below, 69 percent of the 680 acre study area consists of parcels 20 acres or less in size.

The study area, including the subject property, contains 680 acres. The subject property and Tax Lot 4600 total 120.69 acres. Within the study area there are 288 acres zoned AGT-5 as of July 1, 1983 that have not been counted as required by ORS 197.247(4), which states: “For purposes of subparagraph (B) of paragraph (b) of subsection (1) of this section, lots or parcels located within an area for which an exception has been adopted by the county shall not be included in the calculation.”

1 This is one of the ambiguous provisions of the marginal lands criteria. July 1, 1983, is the date that Subsection (B) establishes as the time for determining the number of parcels that are 20 acres or less in size within the study area. ORS 197.247(4), quoted above, specifically states: “For purposes of subparagraph (B) …” in requiring that “lots and parcels within an area for which an exception has been adopted by the County shall not be
Under Subsection (B), the subject property qualifies as marginal land. The specific calculations are:

Total study area equals 680 acres.

(a) Excluding 288 acres of lots and parcels located within adopted and acknowledged exception areas (680 acres – 288 acres) results in 392 acres remaining (includes 120 acres of the subject property and Tax Lot 4600).

(b) Of the 392 acres, 272 acres contained lots and parcels that were 20 acres or less in size. This is 69 percent of the 392 acres remaining which exceeds the 60 percent minimum required by Subsection (B).

Based on the above calculations, the subject property and study area meet the minimum 60 percent standard of Subsection (B).²

III. 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 has been reviewed 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. On June 7, 2016, the Lane County Planning Commission conducted a public hearing, deliberated on the proposal, and unanimously recommended the Board of County Commissioners approve the request.

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 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.

The County has developed and implemented a land use planning review process and policies to require and consider factual evidence in support of its land use decisions. 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 required.

Goal 3 — Agricultural Lands: To preserve and maintain agricultural lands. Agricultural lands shall

2 The applicants also calculated the number of lots and parcels within the study area with exclusion of the Subject Property and the exception areas and even higher percentages of lots and parcels that are 20 acres or less were found to exist.
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 designated as Marginal Lands are resource lands consistent with Goal 3 and Goal 4.

**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 continual US growing and harvesting 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 designated as Marginal Lands is consistent with Goal 3 and Goal 4.

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

Goal 5 requires the inventory of the locations, quality and quantity of the following resources: Land needed or desirable for open space; Mineral and aggregate resources; Energy resources; Fish and wildlife areas and habitats; Ecologically and scientifically significant natural areas, including desert areas; Outstanding scenic views and sites; Water areas, wetlands, watersheds and groundwater resources; Wilderness areas; Historic areas, sites structures and objects; Cultural areas; Potential and approved Oregon recreation trails; and Potential and approved federal wild and scenic waterways and state scenic waterways.

The RCP has inventoried the subject property as Impacted Big Game Range and found there is no conflict with rural residential uses because Impacted Big Game Range has been “written off” for big game management. The Flora and Fauna Working Paper adopted as a part of the Rural Comprehensive Plan states:

“Impacted Range is the lowest quality habitat of the three categories. It is already developed to an extent that precludes viable management of the species, although populations may still exist there.” (Pg. 23)

With regards to conflict identification for Big Game Habitat, the Working Paper goes on to state:

“Impacted Range has essentially been “written off” for big game management.” (Pg. 24)

Isolated wetlands on the subject property are protected by State and Federal Laws. With a minimum parcel size of 10 acres in the Marginal Lands zone, it is feasible to configure any future lots or parcels in a manner that could accommodate allowable development while leaving the wetlands areas undisturbed.

As a result there is no requirement to conduct an ESEE (economic, social, environmental, and energy) analysis to identify conflicting uses, determine the impact area, analyze the ESEE consequences or develop a program to achieve compliance with Goal 5.
Goal 6 — Air, Water and Land Resource Quality: To maintain and improve the quality of the air, water and land resources of the state. 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.

The purpose of this Goal is to maintain and improve the quality of land, air and water resources and is generally implemented during the comprehensive planning process and are primarily maintained and protected by local, State and Federal environmental standards through coordination with the Department of Environmental Quality, Oregon Water Policy Review Board and Lane Regional Air Pollution Authority.

As Goal 6 pertains to site specific development, it requires that adequate protection measures are taken to assure the retention of air, water and land quality. Residential development of the subject property will be subject to a site evaluation to assess soil conditions and require the proper type of sewage disposal system. Water resources will be protected by inspection of the installation of sewage disposal systems and adherence to required setbacks from wells and water bodies.

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 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.

The only natural hazard inventoried on the subject property is a small, narrow area along one property boundary that is mapped as a Zone A floodplain, where no base flood elevation has been determined. Adequate area exists to avoid this area for residential use. Also, LC 16.244 Floodplain Combing Zone, provides additional protection for flood hazard areas including those located within the Subject Property.

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.

Recreational needs are afforded local residents by various facilities associated with Fern Ridge Reservoir. Goal 8 is not directly applicable to this proposal. No destination resort is proposed. The proposed plan amendment and zone change has no impact on this Goal.

Goal 9 — Economic Development: To provide adequate opportunities throughout the state for a variety of economic activities vital to the health, welfare, and prosperity of Oregon’s citizens.

The purpose of Goal 9 is to diversify and improve the economy of the State. This goal is primarily applicable to commercial and industrial development and is not applicable to this residential uses in an area with a Marginal Lands designation.
Goal 10 — Housing: *To provide for the housing needs of citizens of the State.*

This goal is primarily focused on buildable lands inventories for lands within urban and urbanizable areas and is implemented through the comprehensive plan provisions. This subject property is outside any UGB. This goal is not applicable to designating the subject property as Marginal Lands.

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.*

A full range of rural services, identified in Section I, exists to serve and support the subject property and the proposed rural residential density of one dwelling per 10 acres. The existing public facilities and services are consistent with County policies. No additional services beyond those that exist will be required.

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

Goal 12 is not oriented toward specific land use actions such as this plan amendment and zone change. It is intended to consider area-wide modes of transportation and is implemented at the comprehensive plan stage.

The subject property is served by Ward Lane a 60 foot private access easement and Crossley Lane and Wildrose Lane, local access (LAR) county roads. The three existing dwellings located at the northern end of the subject property will continue to use the Ward Lane private easement.

Based on anticipated 10 acre parcels, the remaining acreage of about eight parcels will utilize access from Crossley Lane and Wildrose Lane. The trip generation from eight single-family dwellings is estimated at 64 vehicle trips per day but less than a peak hour traffic flow of 50 or more trips. The County Transportation Engineer has waived the requirement to conduct a traffic impact analysis due to the small number of additional residences (8) that could be developed and that no change in the functional road classification would result from the plan amendment.

The proposed Marginal Lands plan designation will not result in any change of functional road classification or require a traffic impact analysis.

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

This Goal is more appropriately applied at the comprehensive plan phase and is therefore not applicable to this Marginal lands request.

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.
Goals 15 to 19 — Willamette Greenway and Coastal Goals

These five goals are not applicable to this application as they are geographically oriented and apply specifically to the Willamette River Greenway and coastal resources that are not present or near the subject property.

IV. 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 the subject property. By showing that the site qualifies for Marginal Lands the Applicants are 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 Lands Statute and RCP policies anticipate both Agricultural Land and Forest Land being re-designated as Marginal Lands if standards are met. In particular, RCP Goal 3 (Agricultural Lands), Policy 14 authorizes designation of marginal land when the requirements of ORS 197.247 (1991, Ed.) and Goal 5, Policies 11 and 12 have been addressed. This Marginal Lands application complies with these plan policies and therefore 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 subject property qualifies for a Marginal Lands designation in accordance with Goal 3, Policy 14 and therefore it is desirable, appropriate and proper to apply that designation.

(cc) For Minor Amendments as defined in LC 16.400(8) 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 a Marginal Lands designation for the subject property, specifically, Goal 3, Policy 14.

(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 property is consistent 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 that Marginal Lands are resource lands that are intended for occupancy with limited rural residential development.

B. Additional Plan 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 limited to the Plan Diagram only. No plan text is being changed. No goal exception is required. 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 Applicant’s Statement and these Findings.

(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 Marginal Lands designation is consistent with the existing rural residential land use pattern of the area that consists predominantly of 1 to 5 acre parcels developed with residences and used for small scale farming, gardens and woodlots. A Marginal Lands designation will allow low density residential development on the subject property with 10 acre parcels with residences. As described in Section I above, over three-quarters of the subject property’s perimeter abuts RR-5 zoned land with residences on 1 to 5.69 acre parcels. The activities associated with residences on 10 acre parcels will be similar to and compatible with the activities on adjacent rural residential parcels and will not change the character of the area.

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

As indicated in Section I above, the subject property is served by all the same rural facilities and services that serve the surrounding Fir Butte Road area neighborhoods. These public facilities and services are consistent with service levels for Rural Residential lands outside a Community designation, including: schools, rural level fire and police protection, electric and telephone service, and reasonable access to solid waste disposal facilities. County Transportation Planning has determined that a traffic impact analysis is not required due to the minimal impact on public roads in the area. Development of the site must address access and drainage issues during the subdivision process.

Sewer and water are provided by individual on-site systems. The record includes a well log report that indicates 115 wells located in Sections 13 and 24, Township 17 South, Range 05 West, indicate an average and median production of 30 gpm and 25 gpm, respectively. Published soils maps indicate the subject property is composed of 73 Linslaw loam, 105A Pengra silt loam and 120B Salkum silt loam. The existing residential development in the vicinity indicates these soils will support individual subsurface sewage disposal systems.

(cc) Impact of the amendment on proximate natural resources, resource
A Marginal Lands designation will result in 10 acre parcels similar or larger in size than many parcels that surround Fern Ridge Reservoir. The adjacent Corps land between the subject property and the reservoir consists of brushy land with scattered hardwoods within designated wetlands. The common Corps and subject property boundary is fenced and not directly accessible by the public. The proposed development of the subject property is not expected to impact the natural condition of the Corps ownership or reservoir. As previously indicated, there is one 10 acre exclusive farm use zoned resource parcel located adjacent to the subject property along its southern boundary. Adequate setback is available to prevent any significant impact to the limited cattle grazing use of this parcel by potentially two 10 acre parcels with residences. The necessity for a Goal 5 “ESEE” conflict analysis is addressed previously in the findings for compliance with the Statewide Planning Goals.

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

Flood Insurance Rate Map (FIRM) 41039C1105F identifies a Zone A floodplain (where no base elevation has been established) over a narrow, small swale located along or near the eastern property boundary of Tax Lot 5100. Adequate area exists on Tax Lot 5100 to site a residence(s) outside of the floodplain area. Overall, any development that impacts flood hazard areas must address the requirements of LC 16.244. No other natural hazards have been inventoried or observed 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):

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 Section II above.

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

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 with Oregon Department of Fish and Wildlife officials to prevent conflicts between development and Big Game Range through land use regulation in resource areas, siting requirements and similar activities which are already a part of the County’s rural resource zoning program.

The subject property is located in an Impacted Big Game Range. The County Board has found that the County and the ODFW have implemented Goal 5 Policy 11 through application of County land use regulations, siting requirements, and other elements of the County's rural resource zoning program. Residential densities allowed by the Marginal Lands designation (one dwelling per 10 acre parcel) will not exceed limits recommended by the ODFW, as directed by RCP Goal 5, Flora and Fauna, Policy 11.

The RCP has inventoried the subject property as Impacted Big Game Range and found there is no conflict with rural residential uses because Impacted Big Game Range has been “written off” for big game management. Consequently, there are no minimum residential densities for the Impacted Big Game Range. The Flora and Fauna Working Paper adopted as a part of the Rural Comprehensive Plan states:

“If Impacted Range is the lowest quality habitat of the three categories. It is already developed to an extent that precludes viable management of the species, although populations may still exist there.” (Pg. 23)

With regards to conflict identification for Big Game Habitat, the Working Paper goes on to state:

“If Impacted Range has essentially been “written off” for big game management.” (Pg. 24)

This policy is therefore satisfied.

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 residential uses that would be allowed within a Marginal Lands designation 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 satisfied.

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 proposed Marginal lands designation is consistent with this policy, as previously addressed in Section III above.

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 benefitting from increased levels of public facilities or services, namely new residences, 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. This proposal is fully consistent with this policy. As explained in connection with Statewide Planning Goal 11 above, development allowed by this proposal will be served primarily by on-site facilities and public services provided by existing service taxing districts. No public road improvements are triggered by this proposal. County Transportation Planning found that the proposed marginal lands plan amendment will not result in any change of functional road classification or require a traffic impact analysis.

RCP Goal Eleven: Public Facilities, Policy 6.j: Service Levels for lands consistent with service levels for Rural Residential outside a Community designation.

The public facilities and services available to serve the subject property have been identified in Section II above and are consistent with those required for Rural Residential lands located outside a designated Community.

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 Commissioner's or the Hearings Official in accordance with the procedures in this section.

The General Purpose of Chapter 16, Land Use and Development Code, LC 16.003, is to provide and coordinate regulations governing development and use of lands to implement the Rural Comprehensive Plan. The purpose of this chapter is further defined in fourteen broadly worded purpose statements that include a provision to insure development is commensurate with the character and physical limitations of the land.

The public interest will be appropriately served if the Planning Commission and County Board find the proposal is consistent with the purpose of the ML zone, the state marginal lands criteria, applicable RCP goals and the Statewide Planning Goals. This application has provided evidence that affirmatively addresses all the specific standards that apply.

Rezoning the subject property from E-40 to ML implements the proposed plan amendment from Agricultural Land to Marginal Land. SB 237 created the Marginal Lands designation in response to concerns that some lands were not suitable for commercial agricultural because of poor soil conditions or where existing development patterns of small parcels isolated some lands and reasonably precluded
reassembly. This approval will achieve the general purposes of Chapter 16.

VI. Marginal Lands Zone

The Marginal Lands Zone Purpose Section, LC 16.214(1) states the following intent for the ML zone:

(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 Rural Comprehensive Plan.

The Marginal Lands Zone, LC 16.214(2)(a), allows for dwellings or mobile homes to be placed on a vacant legal lot. A land partition or subdivision is required to create a parcel or lot before a building permit can be issued. The proposed zone change is consistent with the proposed residential and marginal resource use of the subject property.

The general area consists of small rural acreages used as rural residences with hobby farms. The proposed ML zone will allow 10 acre minimum parcel sizes which are less restrictive than the Exclusive Farm Use E-40 zone and will provide as the LC 16.214 states: “…. opportunities for persons to live in a rural environment and to conduct intensive or part-time farm or forest operations.” The proposal is compatible with the purpose of the Marginal Lands zone and is consistent with the land use pattern and character of the area.

VII. CONCLUSION

The Board of County Commissioners finds that the application to re-designate 110 acres from Agriculture Land to Marginal Land with a concurrent rezoning from E-40 Exclusive Farm Use to ML Marginal Lands meets the applicable approval criteria and addresses with substantial evidence the statutory standards of Oregon Revised Statutes 197.247, Rural Comprehensive Plan Policies, Lane Code requirements, and the Statewide Planning Goals. The Lane County Planning Commission unanimously recommends approval of the request. Additionally, the Planning Director finds the applicable approval criteria have been met and recommends approval.

Therefore, the Board of County Commissioners approves the application contained in Department File 509-PA15-05161.
EXHIBIT C
FIRST SUPPLEMENTAL FINDINGS OF FACT AND CONCLUSIONS OF LAW
BEFORE THE BOARD OF COMMISSIONERS
OF LANE COUNTY, OREGON

IN THE MATTER OF AMENDING THE RURAL COMPREHENSIVE PLAN TO
REDESIGNATE LAND FROM “AGRICULTURAL” TO “MARGINAL LAND” AND
REZONE LAND FROM “EXCLUSIVE FARM USE” (E-40) TO “MARGINAL LAND”
(ML), AND ADOPTING SAVINGS AND SEVERABILITY CLAUSES (FILE No. 509-
PA15-05161; APPLICANT: BENEDICK ET AL.)

INTRODUCTION

These Supplemental Findings respond to letters, testimony and comments that were made
at or entered into the record at the Second Reading and public hearing conducted on September
13, 2016 by the Board of Commissioners in consideration of a minor plan amendment that is
described in the Findings and Conclusions of Law set forth in Exhibit C. These Supplemental
Findings were initially prepared by the Applicants’ representative and then reviewed by our staff.
We adopt them in their present form in support of and to supplement the Findings set forth in
Exhibit C.

At the September 13, 2016 public hearing we considered testimony, both written and
oral, that either opposed approval of the proposed minor plan amendment or raised questions
regarding the potential impact of 10-acre lots within the area of the property that is the subject of
the proposed minor plan amendment. Included in those comments were questions and issues
raised by Commissioners Sorenson and Bozievich concerning a variety of topics. The
Applicants’ representatives believe, and we agree, that there is sufficient and substantial
evidence that supports the supplemental findings set forth below.

The findings hereafter will respond to the following: (1) LandWatch’s September 12,
2016 letter and exhibits; (2) Comments from neighbors; and (3) Commissioners Sorenson’s and
Bozievich’s comments and questions.

LandWatch September 12 Letter

The September 12 letter from LandWatch’s president, Robert Emmons, is in two parts,
with the first alleging a procedural error and the second asserting that the findings are
insufficient for a number of reasons. The procedural issue and each of the sub-assertions under
its second heading will be addressed separately.

“I. PROCEDURAL ERROR IS NOT ADDRESSED”

At the September 13 public hearing, Senior Planner Rafael Sebba provided a preliminary
but detailed response to LandWatch’s allegation that its representative, Ms. Segel, had requested
the Planning Commission to leave the record open for a week and that its failure to do so constituted procedural error. Mr. Sebba’s research of the Planning Commission’s audiotapes revealed that Ms. Segel’s request to leave the record open was for a different land use application. The draft minutes of the Planning Commission meeting will be corrected to reflect this fact.

Therefore, there was no request to leave the record open and therefore no procedural error occurred.

“II. APPLICANT’S FINDINGS (Ordinance No. PA 1324 Exhibit “C” - Findings of Fact and Conclusions of Law) ARE INSUFFICIENT AND BASED ON A LACK OF EVIDENCE AND FACTS IN THE RECORD”

Under this heading, LandWatch challenges various parts of the Application and the initial Findings set forth in Exhibit C under separate headings, A - E. All of them purport to relate to the approval criteria and the general claim that the Findings are insufficient.


The lack of specificity in LandWatch’s argument under this section makes it difficult to respond other than to state that no specific Marginal Lands criterion is addressed by this section. There is a vague reference to the Board’s 1997 Marginal Lands Interpretation as being an attempt to circumvent Goal 3 but there is no explanation, analysis or support for this statement and it has no relevance to the applicable criteria.

In fact, and as noted previously in the initial Findings, State Law and RCP Goal 3, Policy 14 support the designation and zoning of less productive and more impacted agricultural land to a marginal lands designation when those areas meet the standards in ORS 197.247 (1991 Edition).

“B. Marginal Lands Standards”

LandWatch first alleges that the Findings only address “1(a) and (b) and (4) of ORS 197.247 (1991 Edition)” and that this is “insufficient”. Then, LandWatch quotes ORS 197.247 (1)(a) and (5) with a comment that subsection (5) is not addressed in the Applicants’ findings or narrative.

This is an irrelevant and inaccurate statement. ORS 197.247 (1991 Edition), subsection (1) states:

“ (1) In accordance with ORS 197.240 and 197.245, the commission shall amend the goals to authorize counties to designate land as marginal land if the land meets the following criteria and the criteria set out in subsections (2) to (4) of this
section.”

(emphasis supplied). This plain language makes clear that subsection (5) through (9) of the statute are not approval criteria for a plan amendment to a marginal lands designation. These sections provide guidance and direction in the adoption and administration of the marginal lands land use designation.

LandWatch then argues that “applicant’s findings rely solely on affidavits signed in 2015 as evidence that approximately 35-37 years ago their farm operations did not produce $20,000 or more in annual gross income.” This is followed by a reference to the “1982 USDA Census of Agriculture’s historical archive” and some generalized data about farms and “average market value of agricultural products” in Lane County. There is also a suggestion that tax and business records could have been submitted which would pass the “objectivity test” which LandWatch references but provides no authority for its source, validity or relevance.

In response, we find the 1982 data to be completely irrelevant to addressing the farm income standard in ORS 197.247 (1)(a)(1991 Edition). That standard requires evidence of the annual gross income of any farm operation, if any, that was conducted on the Subject Property for the years, 1978-1983. We find the best evidence for establishing the annual gross income to be a sworn statement from the owner/operator who conducted the farming operations during the statutory time period. For this application, there are sworn statements from the three owners of the properties in 1978-1983 that are the subject of this plan amendment application. We find these statements to be credible, authentic and entirely believable. As such, they provide substantial and sufficient evidence that the annual gross income from all farm operations conducted between 1978-1983 on the Subject Property did not meet $20,000. LandWatch’s census data is not relevant or credible and certainly did not address the plain language of the statute that focuses on farm operations conducted during a specific time period. Additionally, it should be noted that several Commissioners and our staff noted that most, if not all marginal lands applications received and reviewed by Lane County over the last 25 years have relied upon sworn statements from the owner of the property or the person who conducted farm operations as to the annual gross income from those farm operations. This application is consistent with that long-standing practice and in the absence of any contrary or conflicting evidence, we find the statements provided by the Applicant to clearly establish that the annual gross income from farm operations on the Subject Properties did not exceed $20,000 during 1978-1983.

Following the farm income allegations LandWatch quotes ORS 197.247(1)(b)(B) which is the optional test that the applicant has elected to address followed by quoting ORS 197.247(3) which establishes that “lot” and “parcel” have their statutory meaning in ORS 92.010. LandWatch claims there are no findings that address this standard and points to two tax lots within the Subject Properties as not being legal lots.

The Applicant did not explicitly address subsection (3) because it is not something that can be waived. In fact, the Applicant has submitted all the data and evidence that establishes the lots and parcels referenced in the Applicant’s Study Area meet the statutory definition. That
Evidence is set forth in Exhibit “P” to the Application and which has previously been incorporated into these findings. Our staff has reviewed this evidence and finds that it is comprehensive, accurate and addresses the statutory definition of “lots” and “parcels” as required by ORS 197.247(3) (1991 Edition). The two lots identified by LandWatch are not counted as part of the 60% test because they are included in the 110 acre Subject Property as a single lot. In view of this substantial evidence and the absence of any contrary or conflicting evidence, we find the Applicant has fully addressed and satisfied this marginal lands standard for referencing and relying upon lots and parcels.

Thereafter, and still under the general heading of “Marginal Lands Standards”, LandWatch asserts there are no findings to justify “reliance on a study area that is not adjacent to the subject properties” or that is 680 acres in size. This assertion is contradicted by the fact the study area is adjacent to and nearly completely surrounding the Subject Property. It should be noted that Commissioner Bozievich also questioned the boundaries of the Study Area.

The Applicants’ response is that ORS 197.247(1)(b)(B) only requires that the study area be at least 240 acres. There are no other standards for establishment of the study area to address this criterion and we do not believe we are empowered to add requirements or restrictions when the Legislature declined to do so when this provision was enacted. Moreover, we find that the 1983 memo from the DLCD Director provides relevant legislative history about how the Marginal Lands process should be implemented at the local level. Especially, DLCD contrasts the two parcelization tests with the specificity of the quarter-mile study area in subsection (A) with the area-no-less-than-240 acres in subsection (B). We believe the Legislature and certainly DLCD in its administration of the Marginal Lands statute intended that subsection (B) allow applicants and counties broad discretion in establishing a parcel count study area pursuant to ORS 197.247(1)(b)(B)(1991 Edition). We find, therefore, that the study area proposed by the Applicants exceeds the statutory minimum of 240 acres and that it is both reasonable and functional. Neither LandWatch or anyone else has presented facts or precedent that establish the Applicant’s study area does not meet the statutory requirements. The fact that they do not like the result of the study area’s location does not provide a basis for rejecting it.

LandWatch concludes its arguments under this section (Marginal Lands Standards) with a cite to ORS 197.247(7) (1991 Edition) and assert the Applicants’ Findings did not address this provision. From that reference, LandWatch cites to ORS 215.317 and 215.327 as somehow being relevant. This is followed by a reference to the adjacent Denny property along the southern boundary of the Subject Properties and its EFU zoning.

The Applicant’s response at the hearing and with these Supplemental Findings begins with the fact that ORS 197.247(7)(1991 Edition), as noted previously, is not a land use criterion for this plan amendment application. The provision is a direction to counties to adopt marginal lands zones. Lane County has done so with Lane Code 16.214, Marginal Lands Zone (ML-RCP). Most of LandWatch’s discussion is focused on the subsequent land division process that would follow final approval of the plan amendment. LandWatch’s concerns about the size of parcels should be addressed at this subsequent stage. They are not relevant to the present
“C.  **Lane Code 16.214**

In this section, LandWatch repeats its earlier argument about 10-acre lots not being allowed, followed by an objection to a statement in the staff report about the general area including “hobby farms”. LandWatch proceeds to cite a case that supposedly excludes “hobby farm” from the noncommercial farm category.

We agree with the Applicants that this entire section poses no credible or even rational argument addressing the applicable criteria. Use of the term “hobby farm” is common and typically suggests acreages less than 15-20 acres with the owners/residents cultivating some kind of crop. It is descriptive and common and reflects the parcelization and use pattern in the general area surrounding the Subject Property. It is nothing more.

“**D. Rural Comprehensive Plan**

LandWatch begins by tracing the path from RCP Goal 3, Policy 14, the Agricultural Lands Policy that authorizes the Marginal Lands designation, to its requirement that applicants must address RCP Goal 5, Flora and Fauna, Policies 11 and 12. Specifically, LandWatch quotes Policy 12 which requires an ESEE analysis be conducted when there is a conflict between an identified use and Goal 5 resource. LandWatch then refers to the Applicants’ Findings addressing this point and the finding there is not a conflict that stimulates the need for an ESEE analysis. To support this argument, LandWatch cites to documents submitted that are identified as Ordinance PA 892 and LCDC Acknowledgment of Compliance, dated August 17, 1984. While difficult to follow, the primary point appears to be that an ESEE analysis is required.

The Applicant has responded in these Supplemental Findings by first noting that LandWatch does not identify or describe any conflict between an identified use and a specific Goal 5 resource. There is mention of isolated wetlands and the inclusion of the Subject Property in an Impacted Big Game Range Habitat. Both of these Goal 5 resources have been addressed in the Findings. For the wetlands, they are already protected to the maximum degree possible because they have been identified and inventoried by a qualified hydrologist. In the absence of any evidence of a potential conflict with these wetlands, Policy 12 has been addressed and satisfied by the Applicant. The Impacted Big Game Range Habitat has been developed to the point that viable species management is precluded and minimum residential densities are not needed.

Beyond this basic response to LandWatch’s Goal 5 argument, it should be noted that the materials submitted by LandWatch are incomplete and, more importantly, completely out of date. The County’s RCP was initially acknowledged by LCDC in 1984, to be in conformity with Statewide Planning Goals. Acknowledgment makes these documents just part of the legislative history of Lane County’s adoption of its RCP. They are completely irrelevant to this Application and the applicable criteria.
Moreover, the documents provided by LandWatch direct the Lane County to require a Goal 5 analysis when adopting a marginal lands designation. This is what occurred when RCP Goal 3, Policy 14 was adopted and required applicants for marginal lands to address RCP Goal 5, Flora and Fauna, Policies 11 and 12. Those policies were addressed in the Findings and in these Supplemental Findings. Beyond this, LandWatch does not present any contrary or conflicting evidence.

“E. Statewide Planning Goals”

LandWatch focuses on Goal 12 and the Transportation Planning Rule which requires analysis and mitigation measures to be implemented when a plan amendment would “significantly affect” a planned or existing transportation facility. After acknowledging that the County’s Engineer waived the requirement for a traffic impact analysis (TIA), LandWatch claims there must be an analysis and data to find that the TIA is not required.

The first response is that the Applicant provided an estimate of increased traffic (64 daily trips) if the amendment was approved and it was far less than the County’s threshold of increase of 50 trips during peak hours for triggering the need for a TIA. This was the analysis and data that the County Engineer used in determining that a TIA was not required. Again, LandWatch has not provided any evidence to support its claim that approval of this plan amendment would “significantly affect” existing or planned transportation facilities in the area.

“F. Conclusion”

LandWatch concludes there is not substantial evidence to support approval of the requested plan amendment. We disagree as described in our initial findings and these Supplemental Findings. The Applicants’ evidence, analysis and presentation have completely responded to and refuted LandWatch’s arguments. LandWatch has not provided any relevant or credible evidence to support any of its allegations.

Neighbors

Two neighbors appeared and voiced concerns about the proposed plan amendment. Mr. Kenton wrote a letter, dated September 9, 2016, in which he claimed that approval would set a precedent for future changes and increased housing as well as remove farm land. Mr. Floyd, a resident of Crossley Lane, testified at the hearing and voiced concerns about traffic impacts.

The Applicant and our staff both noted that the marginal lands criteria have been satisfied to change the plan description and zoning. However, there is a separate land division process in which neighbors and interested parties will be given a full opportunity to comment on specific items like traffic, water and other site development issues. The concerns of both individuals were general in nature and not directed at any specific criterion or approval standard.

COMMISSIONERS SORENSON AND BOZIEVICH

EXHIBIT C
FIRST SUPPLEMENTAL FINDINGS OF FACT AND CONCLUSIONS OF LAW - Page 6 of 8
Commissioner Sorenson

Previous findings herein have addressed the substance of what both commissioners stated. Commissioner Sorenson questioned whether the statements from the property owners, including Mr. Benedick, were the best evidence for establishing whether farm operations income exceeded $20,000 annual gross income. It was suggested that business or tax records could be introduced or that there might be more objective evidence available.

Again, and as stated previously and readily acknowledged by Commissioner Sorenson, applicants for marginal land plan amendments have been using owner/operator statements, as have been submitted with this application, for well over 20 years in order to address the farm operation income standard in ORS 197.247(1)(a)(1991 Edition). They have been routinely accepted and approved as providing credible, first-hand evidence of the farm income for particular property over the prescribed time period.

Based on what LandWatch has submitted, which is essentially unsupported and unfounded allegations, we find the owner/operator statements to be the best evidence of farm operation income and we therefore conclude that this standard has been conclusively and affirmatively addressed.

Commissioner Bozievich

Commissioner Bozievich voiced concerns related to the potential farm productivity of the Subject Property, his perception of the arbitrariness of the 680-acre study boundary and the permanent removal of farmland.

The Applicant’s representative responded to all three concerns by first pointing out that the (1)(a) income standard was directed at the income generated by the actual farm operations that were conducted on the Subject Property. It is not a capability test but rather what farm income was generated between 1978-1983. The Applicant has completely satisfied this standard.

With regard to Commissioner Bozievich’s concerns about the size and location of the study area, as we addressed previously in our findings addressing LandWatch’s similar concerns, they are not supported by any statute or ordinance nor is there any case law that provides support for Commissioner Bozievich’s suggestion that the boundary is arbitrary. Whether that is true or not is not relevant – what is important is whether the study area exceeds 240 acres. While there might be some reasonableness standard imposed in an extreme circumstance, the study area proposed by the Applicant is reasonable and conforms to the statute. The fact that other configurations could have been developed is completely irrelevant to the present circumstance. As with LandWatch’s expressed concerns, Commissioner Bozievich expresses a general uneasiness with the study area boundary but, like LandWatch, he did not relate his concerns to any relevant or applicable land use standard or criterion.
This leads to his general concern about the loss of farmland that might be generated with approval of this plan amendment request. Tied to this concern is Commissioner Bozievich suggesting approval of this request would set a precedent for future requests.

We first note that Commissioner Bozievich’s concerns in this regard are not directed at any applicable criterion. They are speculative in nature and do not provide any substantive reason to deny this application. Beyond that, the Applicant noted and we agree that the Marginal Lands designation is a resource designation. We agree that the Marginal Lands designation could result in more intensive farming on smaller parcels by an owner/resident much like the existing neighborhood. In fact, Commissioner Thorp specifically noted this possibility at the Planning Commission public hearing.

As for precedent, the Applicant notes that this is only the second Marginal Lands plan amendment application based on the parcelization criteria in the last 25 or more years. The Applicants’ representative confirmed that there are very few circumstances that will support a plan amendment using the parcelization criteria in (1)(b)(A) and (B). Based on this evidence, we conclude there is a low likelihood that approval of this plan amendment will stimulate future applications.

CONCLUSION

The testimony and evidence submitted by LandWatch and the neighbors is general and not accompanied by evidence that is directed at the applicable criteria and the Applicant’s application. Similarly, Commissioner Sorenson’s and Bozievich’s comments were speculative in nature and did not provide any facts or analysis that contradicted or disputed the Applicants’ materials. We find nothing in the testimony that materially or substantively requires this Application to be denied.
EXHIBIT C
SECOND - SUPPLEMENTAL FINDINGS OF FACT AND CONCLUSIONS OF LAW

BEFORE THE BOARD OF COMMISSIONERS
OF LANE COUNTY, OREGON

IN THE MATTER OF AMENDING THE RURAL COMPREHENSIVE PLAN TO
REDESIGNATE LAND FROM “AGRICULTURAL” TO “MARGINAL LAND” AND
REZONE LAND FROM “EXCLUSIVE FARM USE” (E-40) TO “MARGINAL LAND”
(ML), AND ADOPTING SAVINGS AND SEVERABILITY CLAUSES (FILE No. 509-PA15-05161; APPLICANT: BENEDICK ET AL.)

INTRODUCTION

These Second Supplemental Findings respond to the letter and attachments submitted by LandWatch’s president, Robert Emmons, on September 20, 2016. These are the only new materials submitted by anyone other than the Applicants before the close of the hearing record on September 20, 2016.

The letter identifies three issues: (1) size and location of 680 acre study area; (2) ORS 215.316; and (3) location of Subject Property relative to Zone A of the FEMA’s floodplain mapping. Attached to the letter are five unnumbered documents that appear to be related to some of the issues raised in the letter although there is no specific mention of any of the attached documents in LandWatch’s letter.

The remainder of these Second Supplemental Findings will address each of the issues raised by LandWatch under separate headings. Overall, LandWatch’s concerns either do not address the applicable criteria or are so vague and incomplete that they fail to make any kind of rational or credible argument.

680 ACRE STUDY AREA

LandWatch begins by stating:

“it is difficult to understand how the statutory language can be interpreted to mean exclude 488 acres of exception lands zoned as such subsequent to 1983 and then draw a study area of not less than 240 acres.”

What LandWatch is arguing in this assertion is not clear.

In response, there are 288 acres of exception lands within the Study Area, not “488” as claimed by LandWatch. The calculations for the Study Area are set forth in the Application and the initial Findings in Exhibit C. Regardless of how the calculations are made, i.e. exclusion of the Subject Properties and the exception areas, the 60% test in ORS 197.247(1)(b)(B) (1991 Edition) is fully addressed by the Application.
Beyond the obvious error in stating the size of the exception area, LandWatch’s statement makes no point or argument. LandWatch does not provide any details as to why this Study Area is not less than 240 acres. In fact, it is 680 acres which includes 288 acres of exception lands that were established after January 1, 1983. Nothing more need be stated with regard to the 240-acre minimum area set forth in ORS 197.247(1)(b)(B) (1991 Edition).

In its second point regarding the Study Area, LandWatch states:

“the applicant should be required to include in the study area properties that are actually adjacent to the subject property on the north and south to prove compliance with the statutory language, rather than basically ignoring 488 acres of exception lands adjacent to the east of the subject properties and hop scotching over them and across a County Road (Fir Butte Road) to establish the western boundary of the study area, then crossing yet another right of way (an abandoned railroad ROW) for the majority of parcels counted.”

In this statement LandWatch attempts to argue the Study Area has been improperly established because it ignored “488 acres” of exception lands and crossed over a county road and an abandoned railroad right-of-way. Also, LandWatch argues that “adjacent” properties on the north and south should be included in the Study Area.

Most, if not all of these arguments, have been previously addressed in the Findings and Supplemental Findings. Again, there are 288 acres of exception lands in the Study Area, not the “488” claimed by LandWatch. These exception lands border 78% of the Subject Properties’ boundary. Also, the Study Area does include lands that are adjacent on the northern and southern boundaries of the Subject Properties. The northern boundary includes the platted Green Oaks Subdivision with lots smaller than one acre. The reference to the western boundary being established by crossing Fir Butte Road is also contradicted by the Study Area map (Figure 5 in the Application) which shows the western boundary of the Subject Properties to be the shoreline of Fern Ridge Lake. There was no crossing of any road since the shore line is the Western boundary. The reference to the abandoned railroad right-of-way is similarly puzzling as well as irrelevant.

Other than providing an erroneous and biased description of the Study Area boundary, LandWatch does not provide any rational or credible argument regarding the appropriateness of that boundary.

ORS 215.316(2)

After quoting this provision, LandWatch argues:
“Lane County adopted marginal lands provisions prior to January 1, 1993. Dwellings exist, or existed, on both 17052400004100 and 4300 prior to that date. The applicants findings are insufficient to establish compliance with ORS 215.316(2).”

No other argument or analysis is provided by LandWatch to support its claim that ORS 215.316(2) has not been adequately addressed.

The first response, and the most conclusive, is that ORS 215.316(2) does not apply to this plan amendment application for the simple reason that Lane County is a marginal lands county that has elected not to apply the lot of record provisions set forth in ORS 215.700 to 215.750. These provisions are not in the County’s EFU zone (LC 16.212). LandWatch attaches two “Authorization Forms” for replacement dwellings within the Subject Properties (Tax Lots 4100 and 4300) were granted pursuant to then LC 16.212(9)(b). Neither that provision, nor any part of LC 16.212 in its current version, the County’s EFU zone, has ever allowed dwellings to be sited under ORS 215.705 to 215.750.

As background, in 1983, the Oregon Legislature adopted the Marginal Lands Act authorizing counties to designate marginal lands. See 1983 Or Laws ch 826. Lane County adopted marginal lands provisions in 1984. Ord. 884, Ex F, 02-29-84, and Supplemental Order No. 84-9-11-23, Ex C. The Act generally established a trade-off between less regulation of lower quality “marginal lands” and improved protection for the best or primary resource lands. In 1993, the Legislature repealed this authorization but allowed counties that adopted the marginal land system before January 1, 1993, to continue to apply those provisions unless those counties adopt or apply the lot-of-record dwelling provisions under ORS 215.705-215.730. ORS 215.316; See OAR 660-033-0020(8)(j); See also 1993 Or Laws ch 792. Only Lane County and Washington County elected to continue to apply the marginal lands ordinance and not adopt the lot-of-record provisions. After January 1, 1993, no county may adopt the marginal lands provisions. ORS 215.316(1).

**FEMA Zone A**

LandWatch states “[T]he entirety of the subject properties appear to be located in Zone A of FEMA’s floodplain mapping” and therefore the County’s floodplain provisions should be addressed. LandWatch provides no additional argument or analysis other than to attach two maps, one of which is entitled “FEMA MAP” and dated 12/18/85. The origin and current applicability of these maps is not addressed or provided by LandWatch.

As with previous assertions, LandWatch’s claim that the Subject Properties are “entirely” within FEMA’s Zone A is false. The maps submitted by LandWatch clearly depict the falsity of that statement especially when compared with the more detailed floodplain map submitted by the Applicants in Exhibit N of their Application.
The Findings (Exhibit C) address this issue in the Goal 7 findings (p8) which identifies the Zone A floodplain as a “small narrow area along one property boundary”. This is supplemented with a findings that this still leaves adequate area for residential use. Further LC 16.244, Floodplain Combining Zone, provides additional protection for flood hazard areas.

LandWatch has not provided any evidence, other than a misstatement of facts, that disputes those findings. The minimal amount of floodplain within the Subject Properties will be thoroughly protected by County zoning and FEMA regulations.

CONCLUSION

The testimony and evidence submitted by LandWatch is general and not accompanied by evidence that is directed at the applicable criteria and the Applicant’s Application. Neither of LandWatch’s submissions have contained any relevant, credible or, in some cases, truthful testimony that addresses the applicable criteria in a rational or persuasive manner. LandWatch’s arguments are rejected in their entirety.
EXHIBIT C
FINAL SUPPLEMENTAL FINDINGS OF FACT AND CONCLUSIONS OF LAW

BEFORE THE BOARD OF COMMISSIONERS
OF LANE COUNTY, OREGON

IN THE MATTER OF AMENDING THE RURAL COMPREHENSIVE PLAN TO
REDESIGNATE LAND FROM “AGRICULTURAL” TO “MARGINAL LAND” AND
REZONE LAND FROM “EXCLUSIVE FARM USE” (E-40) TO “MARGINAL LAND”
(ML), AND ADOPTING SAVINGS AND SEVERABILITY CLAUSES (FILE No. 509-
PA15-05161; APPLICANT: BENEDICK ET AL.)

INTRODUCTION

These Final Supplemental Findings respond to the letter and attachments submitted by
LandWatch’s president, Robert Emmons, on September 27, 2016. These are the only new
materials that were submitted in response to the Applicants’ September 27, 2016 letter.

The LandWatch letter uses the same headings that were in its September 20 letter and
these Final Supplemental Findings will address them in the same order.

“1. PROCEDURAL ERROR”

Under this heading, LandWatch seems to argue, in an indirect way, that its representative
must have requested the Planning Commission to leave the record open at the June 7 public
hearing because of circumstances that have nothing to do with whether she, Ms. Segel, actually
requested that the record be left open. This is followed by a wholesale condemnation of the
Planning Commission for making a decision immediately following closure of the public
hearing. Again, LandWatch provides no legal reason for its criticism of the Planning
Commission.

LandWatch’s statement is both confusing and irrelevant. This is because none of it is
directed to the facts set forth in Mr. Sebba’s report about the actual oral testimony that was
provided by Ms. Segel, LandWatch’s only representative that appeared and provided testimony to
the Planning Commission on June 7. Ms. Segel did not request that the record be left open. Mr.
Sebba’s report confirms this fact. In this most recent-response, LandWatch does not dispute this
fact or attempt to claim that Ms. Segel made any such request.

Based on these clear and uncontradicted facts, there was no procedural error committed
by the Planning Commission and LandWatch’s claims to the contrary are dismissed.

LandWatch begins this section by repeating its claim that the Board of Commissioners’ 1997 Marginal Lands Interpretation is “irrelevant” and cites to its previous testimony. LandWatch ends its argument by stating that “...the demonstration that the approval criteria has been met is the ultimate test.”

As a Board, we agree with that statement and, based on the substantial evidence in the record, the Applicants have addressed and satisfied all the applicable approval criteria in ORS 197.247 and Lane Code. As for the 1997 Board Interpretation, it is relevant to the extent that it provides individual commissioners with direction and analysis about how the marginal lands criteria can be applied to a particular property. The Interpretation is not part of the criteria and parties and commissioners are certainly welcome to agree or disagree with some particular statement.

At this point, however, LandWatch has not related its objection to the relevancy of the Interpretation to any applicable approval criterion in either ORS 197.247 or Lane Code. Without any linkage to a criterion, the objection is irrelevant and rejected.

“ • Marginal Lands Standards”

In this section, LandWatch repeats arguments made in previous letters concerning: (1) use of 1982 USDA data; (2) use of sworn affidavits to establish farm income; and (3) legal lot challenge. These topics have all been addressed previously and LandWatch’s present arguments are neither new nor persuasive.

LandWatch’s obsession with ORS 197.247(5) is misplaced and irrelevant. The statute is not a mandatory criterion. It is discretionary and entirely within the County’s authority to use if necessary. The most likely time for this type of data would be if information from the farm operator or owner is not available.

However, when first hand information is provided by farm operator as to the annual gross income actually produced on the subject property from 1978-1983 that is the best evidence available. The fact that the Applicant (Julius E. Benedick) as well as two persons who owned part of the Subject Properties but have no interest in this application, have signed sworn affidavits establishing the gross farm income made during the 1978-1983 time period is both relevant and confirming of the Applicant’s sworn statement.

Moreover, neither LandWatch nor anyone else has provided any evidence that disputes or contradicts those sworn statements. Without any contrary evidence, we find the sworn statements to be credible and persuasive.
LandWatch then argues, again, that two tiny tax lots within the Subject Properties are not legal lots and therefore should not be counted as such. LandWatch, once more, misses the point which is that the Subject Properties are treated as a single parcel for purposes of the parcel count criteria in ORS 197.247(1)(b)(B). It is a single parcel that is 110 acres in size. It is counted in the parcel count because the statute states “the proposed marginal land is within an area . . .” which we believe means for purposes of the parcel count, the Subject Properties constitute a single parcel (“the proposed marginal land”) and are “within” and therefore part of the study area for which the parcel count is calculated. The two tax lots referenced by LandWatch are part of “the proposed marginal land” which is a single unit of land for purposes of the parcel count standard.

At the end of its discussion about legal lots, LandWatch argues that the lots and parcels within the 288 acres of exception lands have not addressed the requirements of ORS 197.247(3). Again, the short and definitive response is that such analysis is not required because those properties have not been included in the parcel count that implements and applies the statutory criteria and the overall purposes of the marginal lands statute and the County’s implementing ordinances. The Applicants provided several alternative interpretations of ORS 197.247(1)(b)(B) in their application (p9). We have elected to apply the most conservative interpretation which is to include the Subject Properties in the parcel count as a single lot that exceeds 20 acres but excludes the 288 acres of exception lands pursuant to ORS 197.247(4). While we believe this provision can be interpreted to mean that only exception areas that were identified and acknowledged on or before January 1, 1983 are to be counted, the statute does not provide a clear direction. Therefore, we believe the more conservative approach is to exclude the 288 acres from the parcel count and thereby give effect to the legislative intent to exclude exception areas from the 60% parcel count regardless of when they were adopted and acknowledged.

Therefore, the exception areas are not included in the parcel count and the determination of whether all the lots and parcels in those exception areas addresses ORS 197.247(4) is immaterial and irrelevant. LandWatch has not provided any evidence or argument that challenges our interpretation of how exception areas should be addressed for the parcel count criterion.

“ • Study Area”

Repeating objections made previously, LandWatch objects to the configuration of the Study Area because: (1) it is not adjacent to the Subject Property; (2) it is 680 acres; and (3) it excludes 288 acres that was not zoned EFU until 1984. LandWatch attempts to bolster these arguments with a series of disjointed, unsupported and irrelevant statements and undocumented exhibits.

One of the most repeated and erroneous statements made by LandWatch is that “the Applicant has erroneously omitted the 288 acres” of exception areas and therefore the Subject
Properties are not adjacent to the Study Area. This is not true. See Exhibit K and p 8-9 and Figure 5 of the Application. The Applicant proposed a Study Area that includes a total of 680 acres. Of that, 288 acres is located within exception owners. The Subject Properties are within the Study Area and contain 110 acres. This persistent claim by LandWatch is not true and is rejected.

From this misstatement LandWatch moves on to claim that “the larger a study area is, the easier it is to establish consistency with the 60% standard.” As with other assertions, LandWatch does not provide any evidence or data to support this statement. Beyond that, it has no relevance to the 240-acre minimum standard or any other applicable criterion.

LandWatch concludes by arguing there is no evidence that the Study Area “...does not meet the statutory requirements.” LandWatch does not identify what those “statutory requirements” are (other than the 240 acre minimum) or how the Applicants failed to address those unspecified requirements.

The ultimate fact is that the Study Area exceeds 240 acres in size even after the Subject Properties and the exception areas are excluded. This satisfies the only requirement which is that it “is not less than 240 acres”. The boundaries of the Study Area are irrelevant. LandWatch’s objections about the Study Area are irrelevant and not directed at any applicable criterion.

“• Parcel Size”

LandWatch ends this letter with an objection, if that is accurate, to the application including in its marginal lands analysis, Tax Lot 4600, assessor’s map 17-05-24 (“the Denny Property”) but not for purposes of re-designation and rezoning to Marginal Lands. This was made clear on page 1 of the Application. This property is included in the Study Area and adjacent to the Subject Properties but as part of the marginal lands analysis. It includes a sworn affidavit from Mr. Denny (Exhibit I-3) who has owned the property since 1964 and identified the limited farm use and income derived from the property.

Based on this information, and the lack of any conflicting information, we conclude the Denny Property qualifies as marginal lands.

CONCLUSION

We believe the Application for a Marginal Lands designation and Marginal Lands zoning based on the substantial evidence provided in the Application and based on the findings adopted.
October 3, 2016

HAND DELIVERED
and via email to: Rafael.Sebb@co.lane.or.us

Rafeal Sebb
Lane County Land Mgmt. Div
3050 N. Delta Highway
Eugene OR 97409

Re: Marginal Lands Plan Amendment and Zone Change
    Final Supplemental Findings of Fact and Conclusion of Law
    Ord. No. PA 1342 (File No. 509-PA15-05161, Benedick)

Dear Rafael:

Enclosed is my draft of Final Supplemental Findings that respond to the letter that was submitted by LandWatch on September 27. A Word version of this letter and this draft also been emailed to you.

The Word format allows you and Mr. Clark to make changes as necessary. It is my belief that staff can prepare findings without providing an opportunity to review a draft of the findings before they are presented to the Board. The attached draft Second Supplemental Findings represent the Applicants’ response to the LandWatch letter and is based on how that letter addressed the applicable marginal lands criteria. Once again, we believe LandWatch’s letter did not provide any credible or rational objection to the plan amendment application.

Thank you for your assistance and support. We look forward to moving on to a final decision.

Sincerely,

[Signature]
Michael E. Farthing

Enclosure

c: Harry Taylor
   Gene Benedick
EXHIBIT ___
FINAL SUPPLEMENTAL FINDINGS OF FACT AND CONCLUSIONS OF LAW

BEFORE THE BOARD OF COMMISSIONERS
OF LANE COUNTY, OREGON

IN THE MATTER OF AMENDING THE RURAL COMPREHENSIVE PLAN TO
REDESIGNATE LAND FROM “AGRICULTURAL” TO “MARGINAL LAND” AND
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must have requested the Planning Commission to leave the record open at the June 7 public
hearing because of circumstances that have nothing to do with whether she, Ms. Segel, actually
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However, when first hand information is provided by farm operator as to the annual gross income actually produced on the subject property from 1978-1983 that is the best evidence available. The fact that the Applicant (Julius E. Benedick) as well as two persons who owned part of the Subject Properties but have no interest in this application, have signed sworn affidavits establishing the gross farm income made during the 1978-1983 time period is both relevant and confirming of the Applicant’s sworn statement.

Moreover, neither LandWatch nor anyone else has provided any evidence that disputes or contradicts those sworn statements. Without any contrary evidence, we find the sworn statements to be credible and persuasive.
LandWatch then argues, again, that two tiny tax lots within the Subject Properties are not legal lots and therefore should not be counted as such. LandWatch, once more, misses the point which is that the Subject Properties are treated as a single parcel for purposes of the parcel count criteria in ORS 197.247(1)(b)(B). It is a single parcel that is 110 acres in size. It is counted in the parcel count because the statute states “the proposed marginal land is within an area . . .” which we believe means for purposes of the parcel count, the Subject Properties constitute a single parcel (“the proposed marginal land”) and are “within” and therefore part of the study area for which the parcel count is calculated. The two tax lots referenced by LandWatch are part of “the proposed marginal land” which is a single unit of land for purposes of the parcel count standard.

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From this misstatement LandWatch moves on to claim that “the larger a study area is, the easier it is to establish consistency with the 60% standard.” As with other assertions, LandWatch does not provide any evidence or data to support this statement. Beyond that, it has no relevance to the 240-acre minimum standard or any other applicable criterion.

LandWatch concludes by arguing there is no evidence that the Study Area “. . . does not meet the statutory requirements.” LandWatch does not identify what those “statutory requirements” are (other than the 240-acre minimum) or how the Applicants failed to address those unspecified requirements.

The ultimate fact is that the Study Area exceeds 240 acres in size even after the Subject Properties and the exception areas are excluded. This satisfies the only requirement which is that it “is not less than 240 acres”. The boundaries of the Study Area are irrelevant. LandWatch’s objections about the Study Area are irrelevant and not directed at any applicable criterion.

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Based on this information, and the lack of any conflicting information, we conclude the Denny Property qualifies as marginal lands.

CONCLUSION

We believe the Application for a Marginal Lands designation and Marginal Lands zoning based on the substantial evidence provided in the Application and based on the findings adopted.
September 27, 2016

TO: LANE COUNTY BOARD OF COUNTY COMMISSIONERS

FROM: LANDWATCH LANE COUNTY

SUBJECT: 509-PA15-05161, BENEDICK MARGINAL LANDS PROPOSAL

The comments below are submitted on behalf of Landwatch Lane County (PO Box 5347, Eugene, 97403) and Robert Emmons as an individual (40093 Little Fall Creek Road, Fall Creek.)

I. PROCEDURAL ERROR

The applicant and staff state that the Planning Commission's audiotapes establish there was no LWLC request to leave the record open, and that such a request was for a different land use application.

LW response: The only other hearing on the June 7 PC agenda was held following the hearing for the subject property; No one from LWLC was present at or otherwise participated in the second hearing.

There would have been no other opportunity for LW to ask that the record be left open than during the allotted 3 minutes pursuant to the public hearing for the rezone application for the subject property.

In addition, LWLC has not participated in any other PC hearings since May 10 of this year.

These facts make it difficult to understand the discrepancy. In any case, remarks made by LWLC were clearly dismissed, as were any concerns expressed by neighbors. This is evidenced by the fact that even knowing there were concerns and unanswered questions, the PC saw fit to make their recommendation of approval to the Board then and there, without even an additional week or two to review the massive application and related exhibits prior to deliberating.

This in and of itself exemplifies the PC's failure to act in the best interest of citizen participation by making no attempt to reconcile citizen concerns with the applicant's proposal.


The applicant complains about a "lack of specificity in LandWatch's argument under this section." Contrary to applicant's updated September 20th findings (submitted during the supplemental comments/evidence period) stating "there is a vague reference to the Board's 1997 Marginal Lands Interpretation as being an attempt to circumvent Goal 3" and that "it has no relevance to the applicable criteria", LWLC's statement was based on the staff report in support of the applicant's findings, which says:

"Since its adoption and implementation by Lane County, there has been considerable discussion about the ambiguous text of the criteria which led the Board of Commissioners to adopt an "Interpretation Regarding the Implementation of Marginal Lands Applications" ("the 1997 Board Interpretation"), Applicant's Statement, Appendix at App.2. The Board's intent was to further define noncommercial agricultural and forest lands by establishing standards describing how poor soils or parcelization make agricultural or forest uses impracticable as being marginal for resource production
In addition, the applicant included a copy of the 1997 Interpretation as Appendix 2 of their application, presumably to support their position that the subject properties are not ‘commercial’ resource lands. LWLC does believe the 1997 is irrelevant because it clearly attempts to establish a category of resource land that can be characterized as ‘noncommercial’, and LWLC has already provided a case law example of why that interpretation has no authority.

There was nothing vague about LWLC’s assertion, with caselaw evidence and citations, and the fact that the staff report references the 1997 Interpretation and that the applicant has included it in the application establishes the argument is relevant.

Although “the applicant, State Law and RCP Goal 3, Policy 14 support the designation and zoning of less productive and more impacted agricultural land to a marginal lands designation when those areas meet the standards in ORS 197.247”, the demonstration that the approval criteria has been met is the ultimate test.

LWLC does not believe that demonstration has been established by the application.

- Marginal Lands Standards

The applicant objects to LWLC pointing to “1982 USDA Census of Agriculture’s historical archive” data for information about farms and the “average market value of agricultural products” in Lane County” and the applicant’s failure to provide “tax and business records” to address the “objectivity test” referred to in ORS 197.247 (5). The complaint is that “LandWatch references but provides no authority for its source, validity or relevance.”

The reference to the applicable authority is 197.247(5) which states “a county may use statistical information compiled by the Oregon State University Extension Service or other objective criteria (emphasis added) . . .”

There is nothing in the language of the statute that directs Lane County to rely solely on affidavits, or affidavits at all, and LWLC merely pointed out that there are other tools and sources of information the County should consider relying on in addition to, if not in place of, affidavits that assert facts from, in this case, 33 years ago.

LWLC does not agree that “the 1982 data” is “completely irrelevant” as stated by the applicant. The farm operation income standard provides no guidance as to what type of proof is necessary to show annual gross income of any farm operation that was conducted on the subject property for the years 1978-1983.

While the applicant believes “the best evidence for establishing the annual gross income to be a sworn statement from the owner/operator who conducted the farming operations during the statutory time period”, the fact remains that those parties also happen to include the applicants who have a personal interest in the outcome of the application. (“There are sworn statements from the three owners of the properties in 1978-1983 that are the subject of this plan amendment application.”) Even if sworn affidavits concerning farm income from 33 years ago could be considered objective, that objectivity is at least somewhat compromised by the personal interest in the outcome of the request. Since it is highly unlikely that these ‘sworn affidavits’ have any authority other than in conjunction with this quasi-judicial zone change proposal, it is difficult to understand why the County would rely solely on affidavits when they have the authority to look further for objective information.

While the applicants agent believes “these statements to be credible, authentic and entirely believable”, they are not objective. The statements do not provide “substantial and sufficient evidence” that the annual gross income from all farm operations conducted between 1978-1983 on the Subject Property did not meet $20,000.

It is irrelevant that, according to the applicant, “most, if not all marginal lands applications received and reviewed by Lane County over the last 25 years have relied upon sworn statements from the owner of the property or the person who conducted farm operations as to the annual gross income from those farm operations.” The applicant sites no authority and provides no evidence to back up their statement.

Regardless of whether or not the County has established a “long-standing practice” of relying solely on affidavits to establish consistency with the farm operation standard in ORS 215.247, it is not the case, as stated by the applicant, that “the statements provided by the Applicant” . . . “clearly establish that the annual gross income from farm operations on the subject properties did not exceed $20,000 during 1978-1983.” The statements are vague, as would be expected, being based on a 33 year memory game.

While the applicant points to approval criteria being pursuant to only sections (2) - (4) of ORS 197.247, the agent asserts that (3) does not need to be “explicitly” addressed because “it is not something that can be waived.”

The applicant’s statement that the two lots identified by LandWatch as not being legal lots “are not counted as part of the 60% test because they are included in the 110 acre Subject Property as a single lot” is an insufficient response. The 2 parcels are not in the same section, are not contiguous, and cannot be considered a “single lot”.

Additionally, the incorrectly excluded 288 acres, which were zoned AGT between 1978-83, then subsequently identified and adopted, in 1989, as Developed and Committed Exception Lands and rezoned to rural residential, have not been analyzed for their consistency with (3), noted above.
• Study Area

The applicant relies on a study area that is not adjacent to the subject properties, that is 680 acres in size, and which excludes 288 acres zoned AGT-5 until 1984-85 when the unlawful zoning designation was replaced with E40 zoning.

The attached 1984 Official Zoning Map shows the 1983 configurations of the AGT-5 zoned properties that the applicant has excluded from the study area without lawful justification.

The language of the statute is clear the time period for applicability of the criteria is 1983.

"(B) The proposed marginal land is located within an 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" and "(4) For the purposes of subparagraph (B) *** lots and parcels located within an area for which an exception has been adopted by the county shall not be included in the calculation."

The 288 acres were zoned AGT-5 between at least 1978 and 1983, and were not redesignated as Developed and Committed and rezoned to rural residential until 1989. For this reason, the applicant has erroneously omitted the 288 acres.

LWLC does not challenge the applicants’ response that "ORS 197.247(1)(b)(B) only requires that the study area be at least 240 acres.”. However, the 1983 memo from the DLCD Director that the applicant points to was only a draft; to the extent it provided relevant legislative history about how the Marginal Lands process should be implemented at the local level” it certainly did not address how the criteria would be implemented should a county decide to allow (as only Lane County has) piecemeal rezones, property by property, into perpetuity.

The applicants’ assertion that because “the proposed study area exceeds the statutory minimum of 240 acres” “it is both reasonable and functional” is not substantiated. In fact, the larger a study area is, the easier it is to establish consistency with the 60% standard.

The applicant erred by not relying on a study area that included the 288 acres (adjacent and surrounding properties in 1983) + 110 acre (subject properties) = approximately 400 acres.

No other county in the state allows rezones to Marginal Lands so of course there is no evidence or precedent establishing that the study area does, or does not meet the statutory requirements. The fact that the applicant does not agree with LWLC that the study area is not justified does not also mean that LWLC is incorrect in expecting the study area boundary to be adjacent to the subject property.

• Parcel Size

The application is for 10-acre sized lots but the applicant asserts that subsection (5) through (9) of the statute are not approval criteria and that the provision in (7) is merely "direction to counties to adopt marginal lands zones."

LWLC agrees that Lane Code 16.214, Marginal Lands Zone (ML-RCP) is consistent with these provisions. However, is is insufficient for the applicant to allege in their application that "an adjacent property, tl #4600, is included to demonstrate it qualifies as Marginal Land, but is not included in this application."

There must be a demonstration that the EFU zoned tl # 4600 "qualifies as ML". That demonstration has not been made, and as such there is no justification to approve the requested 10 acre sized lots.

CONCLUSION

For the reasons provided, LWLC still believes the application should be denied.

Thank you for considering this testimony.

Robert Emmons
President
GOAL THREE: AGRICULTURAL LANDS

1. Encourage agricultural activities by preserving and maintaining agricultural lands through the use of an exclusive agricultural zone which is consistent with ORS 215 and OAR 660 Division 33.

2. In Agricultural Rent zones 1 and 2 preference will be given to Goal 3. In Rent Zone 3, unless commercial agricultural enterprises exist, preference will be given to Goal 4.

3. Reserve the use of the best agricultural soils exclusively for agricultural purposes.

4. To insure that zoning districts applied to agricultural lands encourage valid agricultural practices in a realistic manner; emphasis shall be placed on minimum parcel sizes which are based upon a countywide inventory and which are adequate for the continuation of commercial agriculture. As minimum parcel sizes decrease to accommodate more specialized commercial agricultural activities, the burden of proof upon the applicant shall increase in order to substantiate the proposed agricultural activity and restrictions shall increase in order to obtain a residence on the commercial farm unit. Deviation from minimum parcel sizes of the Exclusive Farm Use land for the creation of a parcel not smaller than 20 acres may be allowed when at least 19 acres of the parcel being created are currently managed or planned to be managed by a farm management plan for a farm operation consisting of one or more of the following: berries, grapes or horticultural specialties.

5. Use planning and implementation techniques that reflect appropriate uses and treatment for each type of land.

6. Encourage irrigation, drainage and flood control projects that benefit agricultural use with minimum environmental degradation in accordance with existing state and federal regulations.

7. Some agricultural land in the County is not suitable or available for agricultural use by nature of built upon, committed to or needed for nonagricultural uses by using applicable comprehensive plan policies and the exceptions process of LCDC Goal 2, Part II.

8. Provide maximum protection to agricultural activities by minimizing activities, particularly residential, that conflict with such use. Whenever possible planning goals, policies and regulations should be interpreted in favor of agricultural activities.

9. Agricultural lands shall be identified as high value farm lands and farm lands in other soil classes in accordance with OAR 660 Division 33.

10. Such minimum lot sizes or land division criteria as are used in exclusive farm use zones
September 27, 2016

HAND DELIVERED
and via email to: Rafael.Sebba@co.lane.or.us

Rafael Sebba
Lane County Land Mgmt. Div
3050 N. Delta Highway
Eugene OR 97409

Re: Marginal Lands Plan Amendment and Zone Change
Second Supplemental Findings of Fact and Conclusion of Law
Ord. No. PA 1342 (File No. 509-PA15-05161, Benedick)

Dear Rafael:

Enclosed is my draft of Second Supplemental Findings that responds to the letter that was submitted by LandWatch on September 20. A Word version of this letter and this draft also been emailed to you.

The Word format allows you and Mr. Clark to make changes as necessary. It is my belief that staff can prepare findings without providing an opportunity to review a draft of the findings before they are presented to the Board. The attached draft Second Supplemental Findings represent the Applicants’ response to the LandWatch letter and is based on how that letter addressed the applicable marginal lands criteria. Obviously, we believe LandWatch’s letter did not provide any credible or rational objection to the plan amendment application.

Thank you for your assistance and support. We look forward to moving on to a final decision.

Sincerely,

Michael E. Farthing

Enclosure

c: Harry Taylor
Gene Benedick
INTRODUCTION

These Second Supplemental Findings respond to the letter and attachments submitted by LandWatch’s president, Robert Emmons, on September 20, 2016. These are the only new materials submitted by anyone other than the Applicants before the close of the hearing record on September 20, 2016.

The letter identifies three issues: (1) size and location of 680 acre study area; (2) ORS 215.316; and (3) location of Subject Property relative to Zone A of the FEMA’s floodplain mapping. Attached to the letter are five unnumbered documents that appear to be related to some of the issues raised in the letter although there is no specific mention of any of the attached documents in LandWatch’s letter.

The remainder of these Second Supplemental Findings will address each of the issues raised by LandWatch under separate headings. Overall, LandWatch’s concerns either do not address the applicable criteria or are so vague and incomplete that they fail to make any kind of rational or credible argument.

680 Acre Study Area

LandWatch begins by stating:

“it is difficult to understand how the statutory language can be interpreted to mean exclude 488 acres of exception lands zoned as such subsequent to 1983 and then draw a study area of not less than 240 acres.”

What LandWatch is arguing in this assertion is not clear.

In response, there are 288 acres of exception lands within the Study Area, not “488” as claimed by LandWatch. The calculations for the Study Area are set forth in the Application and the initial Findings in Exhibit C. Regardless of how the calculations are made, i.e. exclusion of the Subject Properties and the exception areas, the 60% test in ORS 197.247(1)(b)(B) (1991 Edition) is fully addressed by the Application.
Beyond the obvious error in stating the size of the exception area, LandWatch’s statement makes no point or argument. LandWatch does not provide any details as to why this Study Area is not less than 240 acres. In fact, it is 680 acres which includes 288 acres of exception lands that were established after January 1, 1983. Nothing more need be stated with regard to the 240-acre minimum area set forth in ORS 197.247(1)(b)(B) (1991 Edition).

In its second point regarding the Study Area, LandWatch states:

“the applicant should be required to include in the study area properties that are actually adjacent to the subject property on the north and south to prove compliance with the statutory language, rather than basically ignoring 488 acres of exception lands adjacent to the east of the subject properties and hopscotching over them and across a County Road (Fir Butte Road) to establish the western boundary of the study area, then crossing yet another right of way (an abandoned railroad ROW) for the majority of parcels counted.”

In this statement LandWatch attempts to argue the Study Area has been improperly established because it ignored “488 acres” of exception lands and crossed over a county road and an abandoned railroad right-of-way. Also, LandWatch argues that “adjacent” properties on the north and south should be included in the Study Area.

Most, if not all of these arguments, have been previously addressed in the Findings and Supplemental Findings. Again, there are 288 acres of exception lands in the Study Area, not the “488” claimed by LandWatch. These exception lands border 78% of the Subject Properties’ boundary. Also, the Study Area does include lands that are adjacent on the northern and southern boundaries of the Subject Properties. The northern boundary includes the platted Green Oaks Subdivision with lots smaller than one acre. The reference to the western boundary being established by crossing Fir Butte Road is also contradicted by the Study Area map (Figure 5 in the Application) which shows the western boundary of the Subject Properties to be the shoreline of Fern Ridge Lake. There was no crossing of any road since the shore line is the Western boundary. The reference to the abandoned railroad right-of-way is similarly puzzling as well as irrelevant.

Other than providing an erroneous and biased description of the Study Area boundary, LandWatch does not provide any rational or credible argument regarding the appropriateness of that boundary.

ORS 215.316(2)

After quoting this provision, LandWatch argues:
Lane County adopted marginal lands provisions prior to January 1, 1993. Dwellings exist, or existed, on both 17052400004100 and 4300 prior to that date. The applicants' findings are insufficient to establish compliance with ORS 215.316(2).

No other argument or analysis is provided by LandWatch to support its claim that ORS 215.316(2) has not been adequately addressed.

The first response, and the most conclusive, is that ORS 215.316(2) does not apply to this plan amendment application for the simple reason that Lane County is a marginal lands county that has elected not to apply the lot of record provisions set forth in ORS 215.700 to 215.750. These provisions are not in the County’s EFU zone (LC 16.212). LandWatch attaches two “Authorization Forms” for replacement dwellings within the Subject Properties (Tax Lots 4100 and 4300) were granted pursuant to then LC 16.212(9)(b). Neither that provision, nor any part of LC 16.212 in its current version, the County’s EFU zone, has ever allowed dwellings to be sited under ORS 215.705 to 215.750.

As background, in 1983, the Oregon Legislature adopted the Marginal Lands Act authorizing counties to designate marginal lands. See 1983 Or Laws ch 826. Lane County adopted marginal lands provisions in 1984. Ord. 884, Ex F, 02-29-84, and Supplemental Order No. 84-9-11-23, Ex C. The Act generally established a trade-off between less regulation of lower quality “marginal lands” and improved protection for the best or primary resource lands. In 1993, the Legislature repealed this authorization but allowed counties that adopted the marginal land system before January 1, 1993, to continue to apply those provisions unless those counties adopt or apply the lot-of-record dwelling provisions under ORS 215.705-215.730. ORS 215.316; See OAR 660-033-0020(8)(j); See also 1993 Or Laws ch 792. Only Lane County and Washington County elected to continue to apply the marginal lands ordinance and not adopt the lot-of-record provisions. After January 1, 1993, no county may adopt the marginal lands provisions. ORS 215.316(1).

FEMA Zone A

LandWatch states “[T]he entirety of the subject properties appear to be located in Zone A of FEMA’s floodplain mapping” and therefore the County’s floodplain provisions should be addressed. LandWatch provides no additional argument or analysis other than to attach two maps, one of which is entitled “FEMA MAP” and dated 12/18/85. The origin and current applicability of these maps is not addressed or provided by LandWatch.

As with previous assertions, LandWatch’s claim that the Subject Properties are “entirely” within FEMA’s Zone A is false. The maps submitted by LandWatch clearly depict the falsity of that statement especially when compared with the more detailed floodplain map submitted by the Applicants in Exhibit N of their Application.
The Findings (Exhibit C) address this issue in the Goal 7 findings (p8) which identifies the Zone A floodplain as a “small narrow area along one property boundary”. This is supplemented with a finding that this still leaves adequate area for residential use. Further LC 16.244, Floodplain Combining Zone, provides additional protection for flood hazard areas.

LandWatch has not provided any evidence, other than a misstatement of facts, that disputes those findings. The minimal amount of floodplain within the Subject Properties will be thoroughly protected by County zoning and FEMA regulations.

CONCLUSION

The testimony and evidence submitted by LandWatch is general and not accompanied by evidence that is directed at the applicable criteria and the Applicant’s Application. Neither of LandWatch’s submissions have contained any relevant, credible or, in some cases, truthful testimony that addresses the applicable criteria in a rational or persuasive manner. LandWatch’s arguments are rejected in their entirety.
September 20, 2016

TO: LANE COUNTY BOARD OF COUNTY COMMISSIONERS

FROM: LANDWATCH LANE COUNTY

SUBJECT: SUPPLEMENTAL COMMENTS RE: 509-PA15-05161, BENEDICK MARGINAL LANDS PROPOSAL

Regarding the applicant's use of a 680-acre study area when the statutory provision requires a study area "not less than 240 acres":

- It is difficult to understand how the statutory language can be interpreted to mean 'exclude 488 acres of exception lands zoned as such subsequent to 1983' and then draw a study area of not less than 240 acres.
- The applicant should be required to include in the study area properties that are actually adjacent to the subject properties on the north and south to prove compliance with the statutory language, rather than basically ignoring 488 acres of exception lands adjacent to the east of the subject properties and hopscotching over them and across a County Road (Fir Butte Road) to establish the western boundary of the study area, then crossing yet another right of way (an abandoned railroad ROW) for the majority of parcels counted.

Regarding ORS 215.316 (Termination of adoption of marginal lands)

(2) If a county that had adopted marginal lands provisions before January 1, 1993, subsequently sites a dwelling under ORS 215.705 to 215.750 on land zoned for exclusive farm use, the county shall not later apply marginal lands provisions, including those set forth in ORS 215.213, to lots or parcels other than those to which the county applied the marginal lands provisions before the county sited a dwelling under ORS 215.705 to 215.750.

- Lane County adopted marginal lands provisions prior to January 1, 1993. Dwellings exist, or existed, on both 17052400004100 and 4300 prior to that date. The applicants findings are insufficient to establish compliance with ORS 215.316(2).

The entirety of the subject properties appear to be located in Zone A of FEMA's floodplain mapping; as such, the flood hazard provisions of LC should be considered in conjunction with the subject proposal.

Thank you.

Robert Emmons
President
General Land Use Application

I. PROPERTY LOCATION
   Township V7 Range 05 Section 24 Tax Lot 04101 Zoning RS/FP
   Site Address 28041 Bridges Ln. Size
   Plot #

II. REQUEST/PROPOSAL
    Build Barn

III. IDENTIFICATION & OWNERSHIP
    Applicant:
    1. Name David L. Miller
       Address
       City Zip
       Phone
    2. Legal Interest Title Holder
       Contract Purchaser
       Lessee
       Present use
       Existing Structures
       Do you own any adjoining property?
       Acreage
       Map
       Tax Lot(s)

    Road Status:
    State County Public Easement Fire Dist.
    Water Supply:
    Public On-site Well Community System
    Power Company
    Sewage:
    Public On-site Septic Community System
    Telephone Co.

I (we) have completed all the attached application requirements and certify that all statements are true and accurate to the best of my (our) knowledge and belief. I am (We are) so authorized to submit this application as evidenced by the signature of the owner below.

3. Signatures:
   Applicant Date
   Owner Date
   Agent Date
   Agent Address Zip Phone

4. Staff Comments
   Proposed Site of Agriculture Building Is 102 Urban And Not In A Flood Hazard Area, WDR 92-18
   350 PAVM 415591-03500 01325
   125 E. 8th Ave. Eugene, OR 30410

AUTHORIZATION FORM

REQUEST FOR: CONSTRUCT SINGLE FAMILY DWELLING

TOWNSHIP 17  RANGE 05  SECTION 27913  TAX LOT 3800  SUBDIVISION/FRAC 400
LOCATION ADDRESS 27913 WARD LANE, EUGENE, OREGON 97402

EXISTING SINGLE FAMILY DWELLING TO BE BURNED DOWN BY FIRE DEPT., AG BUILDING, PRIVATE USE

DESCRIPTION OF PROPOSED WORK
CONSTRUCT SINGLE FAMILY DWELLING

DIRECTIONS TO SITE FROM COURTHOUSE
ROYAL AVE., TO FIR BUTTE ROAD, TO WARD LANE

APPLICANT NAME & ADDRESS
SAVAGE CONST.

OWNERS NAME & ADDRESS
GENE BENEDICT, 333 HOWARD AVE., EUGENE, OREGON 97404

CONTRACTOR NAME
SAVAGE CONST.
OWNERS ADDRESS

MAIL PERMIT TO:
SAVAGE CONST., 77942 BENSON ROAD, EUGENE, OREGON 97402

I have carefully read BOTH sides of this application and hereby certify that all information is true and correct.

SAVAGE CONST.

PLANNING/ZONING
EFDREP - MINIMUM SETBACKS

SANITATION
2539-90

BUILDING
V-N - R-3 - SFD

FEES DUE: $754.48 APPROVED BY: PAKE DATE 9-27-90

CALL FOR INSPECTIONS (SEE BACK OF FORM FOR INSTRUCTIONS) 687-4065
SEPTIC permits are good for one year. ALL other permits expire after 180 days unless inspections are current.
AUTHORIZATION FORM

REQUEST FOR:  S.F.A (Replacement)

LAND MANAGEMENT DIVISION 125 E. 8th Ave. Eugene, OR 97401

LOCATION ADDRESS
1762 Ward Lane Eugene OR 97402

PROPOSED USE: House

DESCRIPTION OF PROGRESS:

2010 S.F.A. and 8375 attached garage

DIRECTIONS TO SITE FROM NEAREST MAIN INTERSECTION:

W on Beden home off Arvada Hill cross Fir Battle Rd

APPLICANT NAME & ADDRESS:

Gene Benedict 1762 Ward Lane Eugene OR 97402

PHONE

679-975

CONTRACTOR/INSTALLER/OWNER NAME:

Same

PHONE

FAX 541-484-9751

MAIL PERMIT TO:

Call when ready to P.O. 16457 Fairmont 97403

I have carefully read both sides of this application and hereby certify that all information is true and correct.

Gene Benedict

PLANNING/ZONING:

ZONE: NA NA

MINIMUM 20' - 10:10

REPLACE S.F.A. permitted up to 16:212(9) (B)

EXISTING S.F.A. MUST BE REMOVED OR DEMOLISHED

WETLANDS NA replace in same site

APPROVED BY:

J. Lander

DATE: 3-25-93

SANITATION:

1513-81 INSTALLED UNDER PERMIT 1513-81 A SAND FILTER REPLACEMENT AREA IS TO BE RESERVED PER PLAT PLAN.

DATE: 4-8-93

BUILDING:

V.N. R-3 SFD

LEAVE PLUMBING SUPPLY & DRAIN LINES EXPOSED UNTIL INSPECTED

DATE: 4-12-93

FEES DUE: 810.92 APPROVED BY:

DATE: 4-12-93

CALL FOR INSPECTIONS (SEE BACK OF FORM FOR INSTRUCTIONS) 687-4065

SEPTIC permits are good for one year. ALL other permits expire after 180 days unless inspections are current.
September 20, 2016

HAND DELIVERED
and via email to: Rafael.Sebba@co.lane.or.us

Rafeal Sebba
Lane County Land Mgmt. Div
3050 N. Delta Highway
Eugene OR 97409

Re: Marginal Lands Plan Amendment and Zone Change
Supplemental Findings of Fact and Conclusion of Law

Dear Rafael:

Enclosed is my draft of Supplemental Findings that responds to the materials and testimony that was submitted before and at the Board’s September 13 public hearing. A Word version of this letter and the draft Supplemental Findings has also been emailed to you. These draft findings constitute our response to the opponents’ and Commissioners’ comments. As I stated after the hearing, Harry and I do not believe we need to submit additional evidence in support of the application.

The Word format allows you and Mr. Clark to make changes and, if necessary, respond to any new materials and argument that might be submitted before the record closes today. It is my belief that staff can prepare findings without providing an opportunity to review a draft of the findings before they are presented to the Board. The attached draft Supplemental Findings represent the Applicants’ response to the evidence and materials presented at the Board Hearing and is based on how that testimony addressed the applicable marginal lands criteria.

At this point, we do not know if LandWatch or anyone else will submit new testimony and therefore trigger the need for a second supplement to the findings. We can only wait and react accordingly. Thank you for your assistance and support. We look forward to moving on to a final decision.

Sincerely,

Michael E. Farthing

Enclosure

c: Harry Taylor
   Gene Benedick
EXHIBIT _____
FIRST SUPPLEMENTAL FINDINGS OF FACT AND CONCLUSIONS OF LAW
BEFORE THE BOARD OF COMMISSIONERS
OF LANE COUNTY, OREGON

IN THE MATTER OF AMENDING THE RURAL COMPREHENSIVE PLAN TO
REDESIGNATE LAND FROM “AGRICULTURAL” TO “MARGINAL LAND” AND
REZONE LAND FROM “EXCLUSIVE FARM USE” (E-40) TO “MARGINAL LAND”
(ML), AND ADOPTING SAVINGS AND SEVERABILITY CLAUSES (FILE No. 509-
PA15-05161; APPLICANT: BENEDICK ET AL.)

INTRODUCTION

These Supplemental Findings respond to letters, testimony and comments that were made
at or entered into the record at the Second Reading and public hearing conducted on September
13, 2016 by the Board of Commissioners in consideration of a minor plan amendment that is
described in the Findings and Conclusions of Law set forth in Exhibit C. These Supplemental
Findings were initially prepared by the Applicants’ representative and then reviewed by our staff.
We adopt them in their present form in support of and to supplement the Findings set forth in
Exhibit C.

At the September 13, 2016 public hearing we considered testimony, both written and
oral, that either opposed approval of the proposed minor plan amendment or raised questions
regarding the potential impact of 10-acre lots within the area of the property that is the subject of
the proposed minor plan amendment. Included in those comments were questions and issues
raised by Commissioners Sorenson and Bozievich concerning a variety of topics. The
Applicants’ representatives believe, and we agree, that there is sufficient and substantial
evidence that supports the supplemental findings set forth below.

The findings hereafter will respond to the following: (1) LandWatch’s September 12,
2016 letter and exhibits; (2) Comments from neighbors; and (3) Commissioners Sorenson’s and
Bozievich’s comments and questions.

LandWatch September 12 Letter

The September 12 letter from LandWatch’s president, Robert Emmons, is in two parts,
with the first alleging a procedural error and the second asserting that the findings are
insufficient for a number of reasons. The procedural issue and each of the sub-assertions under
its second heading will be addressed separately.

“1. PROCEDURAL ERROR IS NOT ADDRESSED”

At the September 13 public hearing, Senior Planner Rafael Sebba provided a preliminary
but detailed response to LandWatch’s allegation that its representative, Ms. Segel, had requested
the Planning Commission to leave the record open for a week and that its failure to do so constituted procedural error. Mr. Sebba’s research of the Planning Commission’s audiotapes revealed that Ms. Segel’s request to leave the record open was for a different land use application. The draft minutes of the Planning Commission meeting will be corrected to reflect this fact.

Therefore, there was no request to leave the record open and therefore no procedural error occurred.

“II. APPLICANT’S FINDINGS (Ordinance No. PA 1324 Exhibit “C” - Findings of Fact and Conclusions of Law) ARE INSUFFICIENT AND BASED ON A LACK OF EVIDENCE AND FACTS IN THE RECORD”

Under this heading, LandWatch challenges various parts of the Application and the initial Findings set forth in Exhibit C under separate headings, A - E. All of them purport to relate to the approval criteria and the general claim that the Findings are insufficient.


The lack of specificity in LandWatch’s argument under this section makes it difficult to respond other than to state that no specific Marginal Lands criterion is addressed by this section. There is a vague reference to the Board’s 1997 Marginal Lands Interpretation as being an attempt to circumvent Goal 3 but there is no explanation, analysis or support for this statement and it has no relevance to the applicable criteria.

In fact, and as noted previously in the initial Findings, State Law and RCP Goal 3, Policy 14 support the designation and zoning of less productive and more impacted agricultural land to a marginal lands designation when those areas meet the standards in ORS 197.247 (1991 Edition).

“B. Marginal Lands Standards”

LandWatch first alleges that the Findings only address “1(a) and (b) and (4) of ORS 197.247 (1991 Edition)” and that this is “insufficient”. Then, LandWatch quotes ORS 197.247 (1)(a) and (5) with a comment that subsection (5) is not addressed in the Applicants’ findings or narrative.

This is an irrelevant and inaccurate statement. ORS 197.247 (1991 Edition), subsection (1) states:

“ (1) In accordance with ORS 197.240 and 197.245, the commission shall amend the goals to authorize counties to designate land as marginal land if the land meets the following criteria and the criteria set out in subsections (2) to (4) of this...
section.”

(emphasis supplied). This plain language makes clear that subsection (5) through (9) of the statute are not approval criteria for a plan amendment to a marginal lands designation. These sections provide guidance and direction in the adoption and administration of the marginal lands land use designation.

LandWatch then argues that “applicant’s findings rely solely on affidavits signed in 2015 as evidence that approximately 35-37 years ago their farm operations did not produce $20,000 or more in annual gross income.” This is followed by a reference to the “1982 USDA Census of Agriculture’s historical archive” and some generalized data about farms and “average market value of agricultural products” in Lane County. There is also a suggestion that tax and business records could have been submitted which would pass the “objectivity test” which LandWatch references but provides no authority for its source, validity or relevance.

In response, we find the 1982 data to be completely irrelevant to addressing the farm income standard in ORS 197.247 (1)(a)(1991 Edition). That standard requires evidence of the annual gross income of any farm operation, if any, that was conducted on the Subject Property for the years, 1978-1983. We find the best evidence for establishing the annual gross income to be a sworn statement from the owner/operator who conducted the farming operations during the statutory time period. For this application, there are sworn statements from the three owners of the properties in 1978-1983 that are the subject of this plan amendment application. We find these statements to be credible, authentic and entirely believable. As such, they provide substantial and sufficient evidence that the annual gross income from all farm operations conducted between 1978-1983 on the Subject Property did not meet $20,000. LandWatch’s census data is not relevant or credible and certainly did not address the plain language of the statute that focuses on farm operations conducted during a specific time period. Additionally, it should be noted that several Commissioners and our staff noted that most, if not all marginal lands applications received and reviewed by Lane County over the last 25 years have relied upon sworn statements from the owner of the property or the person who conducted farm operations as to the annual gross income from those farm operations. This application is consistent with that long-standing practice and in the absence of any contrary or conflicting evidence, we find the statements provided by the Applicant to clearly establish that the annual gross income from farm operations on the Subject Properties did not exceed $20,000 during 1978-1983.

Following the farm income allegations LandWatch quotes ORS 197.247(1)(b)(B) which is the optional test that the applicant has elected to address followed by quoting ORS 197.247(3) which establishes that “lot” and “parcel” have their statutory meaning in ORS 92.010. LandWatch claims there are no findings that address this standard and points to two tax lots within the Subject Properties as not being legal lots.

The Applicant did not explicitly address subsection (3) because it is not something that can be waived. In fact, the Applicant has submitted all the data and evidence that establishes the lots and parcels referenced in the Applicant’s Study Area meet the statutory definition. That
evidence is set forth in Exhibit “P” to the Application and which has previously been incorporated into these findings. Our staff has reviewed this evidence and finds that it is comprehensive, accurate and addresses the statutory definition of “lots” and “parcels” as required by ORS 197.247(3) (1991 Edition). The two lots identified by LandWatch are not counted as part of the 60% test because they are included in the 110 acre Subject Property as a single lot. In view of this substantial evidence and the absence of any contrary or conflicting evidence, we find the Applicant has fully addressed and satisfied this marginal lands standard for referencing and relying upon lots and parcels.

Thereafter, and still under the general heading of “Marginal Lands Standards”, LandWatch asserts there are no findings to justify “reliance on a study area that is not adjacent to the subject properties” or that is 680 acres in size. This assertion is contradicted by the fact the study area is adjacent to and nearly completely surrounding the Subject Property. It should be noted that Commissioner Bozievich also questioned the boundaries of the Study Area.

The Applicants’ response is that ORS 197.247(1)(b)(B) only requires that the study area be at least 240 acres. There are no other standards for establishment of the study area to address this criterion and we do not believe we are empowered to add requirements or restrictions when the Legislature declined to do so when this provision was enacted. Moreover, we find that the 1983 memo from the DLCD Director provides relevant legislative history about how the Marginal Lands process should be implemented at the local level. Especially, DLCD contrasts the two parcelization tests with the specificity of the quarter-mile study area in subsection (A) with the area-no-less-than-240 acres in subsection (B). We believe the Legislature and certainly DLCD in its administration of the Marginal Lands statute intended that subsection (B) allow applicants and counties broad discretion in establishing a parcel count study area pursuant to ORS 197.247(1)(b)(B)(1991 Edition). We find, therefore, that the study area proposed by the Applicants exceeds the statutory minimum of 240 acres and that it is both reasonable and functional. Neither LandWatch or anyone else has presented facts or precedent that establish the Applicant’s study area does not meet the statutory requirements. The fact that they do not like the result of the study area’s location does not provide a basis for rejecting it.

LandWatch concludes its arguments under this section (Marginal Lands Standards) with a cite to ORS 197.247(7) (1991 Edition) and assert the Applicants’ Findings did not address this provision. From that reference, LandWatch cites to ORS 215.317 and 215.327 as somehow being relevant. This is followed by a reference to the adjacent Denny property along the southern boundary of the Subject Properties and its EFU zoning.

The Applicant’s response at the hearing and with these Supplemental Findings begins with the fact that ORS 197.247(7)(1991 Edition), as noted previously, is not a land use criterion for this plan amendment application. The provision is a direction to counties to adopt marginal lands zones. Lane County has done so with Lane Code 16.214, Marginal Lands Zone (ML-RCP). Most of LandWatch’s discussion is focused on the subsequent land division process that would follow final approval of the plan amendment. LandWatch’s concerns about the size of parcels should be addressed at this subsequent stage. They are not relevant to the present
“C. Lane Code 16.214”

In this section, LandWatch repeats its earlier argument about 10-acre lots not being allowed, followed by an objection to a statement in the staff report about the general area including “hobby farms”. LandWatch proceeds to cite a case that supposedly excludes “hobby farm” from the noncommercial farm category.

We agree with the Applicants that this entire section poses no credible or even rational argument addressing the applicable criteria. Use of the term “hobby farm” is common and typically suggests acreages less than 15-20 acres with the owners/residents cultivating some kind of crop. It is descriptive and common and reflects the parcelization and use pattern in the general area surrounding the Subject Property. It is nothing more.

“D. Rural Comprehensive Plan”

LandWatch begins by tracing the path from RCP Goal 3, Policy 14, the Agricultural Lands Policy that authorizes the Marginal Lands designation, to its requirement that applicants must address RCP Goal 5, Flora and Fauna, Policies 11 and 12. Specifically, LandWatch quotes Policy 12 which requires an ESEE analysis be conducted when there is a conflict between an identified use and Goal 5 resource. LandWatch then refers to the Applicants’ Findings addressing this point and the finding there is not a conflict that stimulates the need for an ESEE analysis. To support this argument, LandWatch cites to documents submitted that are identified as Ordinance PA 892 and LCDC Acknowledgment of Compliance, dated August 17, 1984. While difficult to follow, the primary point appears to be that an ESEE analysis is required.

The Applicant has responded in these Supplemental Findings by first noting that LandWatch does not identify or describe any conflict between an identified use and a specific Goal 5 resource. There is mention of isolated wetlands and the inclusion of the Subject Property in an Impacted Big Game Range Habitat. Both of these Goal 5 resources have been addressed in the Findings. For the wetlands, they are already protected to the maximum degree possible because they have been identified and inventoried by a qualified hydrologist. In the absence of any evidence of a potential conflict with these wetlands, Policy 12 has been addressed and satisfied by the Applicant. The Impacted Big Game Range Habitat has been developed to the point that viable species management is precluded and minimum residential densities are not needed.

Beyond this basic response to LandWatch’s Goal 5 argument, it should be noted that the materials submitted by LandWatch are incomplete and, more importantly, completely out of date. The County’s RCP was initially acknowledged by LCDC in 1984, to be in conformity with Statewide Planning Goals. Acknowledgment makes these documents just part of the legislative history of Lane County’s adoption of its RCP. They are completely irrelevant to this Application and the applicable criteria.
Moreover, the documents provided by LandWatch direct the Lane County to require a Goal 5 analysis when adopting a marginal lands designation. This is what occurred when RCP Goal 3, Policy 14 was adopted and required applicants for marginal lands to address RCP Goal 5, Flora and Fauna, Policies 11 and 12. Those policies were addressed in the Findings and in these Supplemental Findings. Beyond this, LandWatch does not present any contrary or conflicting evidence.

“E. Statewide Planning Goals”

LandWatch focuses on Goal 12 and the Transportation Planning Rule which requires analysis and mitigation measures to be implemented when a plan amendment would “significantly affect” a planned or existing transportation facility. After acknowledging that the County’s Engineer waived the requirement for a traffic impact analysis (TIA), LandWatch claims there must be an analysis and data to find that the TIA is not required.

The first response is that the Applicant provided an estimate of increased traffic (64 daily trips) if the amendment was approved and it was far less than the County’s threshold of increase of 50 trips during peak hours for triggering the need for a TIA. This was the analysis and data that the County Engineer used in determining that a TIA was not required. Again, LandWatch has not provided any evidence to support its claim that approval of this plan amendment would “significantly affect” existing or planned transportation facilities in the area.

“F. Conclusion”

LandWatch concludes there is not substantial evidence to support approval of the requested plan amendment. We disagree as described in our initial findings and these Supplemental Findings. The Applicants’ evidence, analysis and presentation have completely responded to and refuted LandWatch’s arguments. LandWatch has not provided any relevant or credible evidence to support any of its allegations.

Neighbors

Two neighbors appeared and voiced concerns about the proposed plan amendment. Mr. Kenton wrote a letter, dated September 9, 2016, in which he claimed that approval would set a precedent for future changes and increased housing as well as remove farm land. Mr. Floyd, a resident of Crossley Lane, testified at the hearing and voiced concerns about traffic impacts.

The Applicant and our staff both noted that the marginal lands criteria have been satisfied to change the plan description and zoning. However, there is a separate land division process in which neighbors and interested parties will be given a full opportunity to comment on specific items like traffic, water and other site development issues. The concerns of both individuals were general in nature and not directed at any specific criterion or approval standard.

COMMISSIONERS SORENSON AND BOZIEVICH
Commissioner Sorenson

Previous findings herein have addressed the substance of what both commissioners stated. Commissioner Sorenson questioned whether the statements from the property owners, including Mr. Benedick, were the best evidence for establishing whether farm operations income exceeded $20,000 annual gross income. It was suggested that business or tax records could be introduced or that there might be more objective evidence available.

Again, and as stated previously and readily acknowledged by Commissioner Sorenson, applicants for marginal land plan amendments have been using owner/operator statements, as have been submitted with this application, for well over 20 years in order to address the farm operation income standard in ORS 197.247(1)(a)(1991 Edition). They have been routinely accepted and approved as providing credible, first-hand evidence of the farm income for particular property over the prescribed time period.

Based on what LandWatch has submitted, which is essentially unsupported and unfounded allegations, we find the owner/operator statements to be the best evidence of farm operation income and we therefore conclude that this standard has been conclusively and affirmatively addressed.

Commissioner Bozievich

Commissioner Bozievich voiced concerns related to the potential farm productivity of the Subject Property, his perception of the arbitrariness of the 680-acre study boundary and the permanent removal of farmland.

The Applicant’s representative responded to all three concerns by first pointing out that the (1)(a) income standard was directed at the income generated by the actual farm operations that were conducted on the Subject Property. It is not a capability test but rather what farm income was generated between 1978-1983. The Applicant has completely satisfied this standard.

With regard to Commissioner Bozievich’s concerns about the size and location of the study area, as we addressed previously in our findings addressing LandWatch’s similar concerns, they are not supported by any statute or ordinance nor is there any case law that provides support for Commissioner Bozievich’s suggestion that the boundary is arbitrary. Whether that is true or not is not relevant – what is important is whether the study area exceeds 240 acres. While there might be some reasonableness standard imposed in an extreme circumstance, the study area proposed by the Applicant is reasonable and conforms to the statute. The fact that other configurations could have been developed is completely irrelevant to the present circumstance. As with LandWatch’s expressed concerns, Commissioner Bozievich expresses a general uneasiness with the study area boundary but, like LandWatch, he did not relate his concerns to any relevant or applicable land use standard or criterion.
This leads to his general concern about the loss of farmland that might be generated with approval of this plan amendment request. Tied to this concern is Commissioner Bozievich suggesting approval of this request would set a precedent for future requests.

We first note that Commissioner Bozievich’s concerns in this regard are not directed at any applicable criterion. They are speculative in nature and do not provide any substantive reason to deny this application. Beyond that, the Applicant noted and we agree that the Marginal Lands designation is a resource designation. We agree that the Marginal Lands designation could result in more intensive farming on smaller parcels by an owner/resident much like the existing neighborhood. In fact, Commissioner Thorp specifically noted this possibility at the Planning Commission public hearing.

As for precedent, the Applicant notes that this is only the second Marginal Lands plan amendment application based on the parcelization criteria in the last 25 or more years. The Applicants’ representative confirmed that there are very few circumstances that will support a plan amendment using the parcelization criteria in (1)(b)(A) and (B). Based on this evidence, we conclude there is a low likelihood that approval of this plan amendment will stimulate future applications.

CONCLUSION

The testimony and evidence submitted by LandWatch and the neighbors is general and not accompanied by evidence that is directed at the applicable criteria and the Applicant’s application. Similarly, Commissioner Sorenson’s and Bozievich’s comments were speculative in nature and did not provide any facts or analysis that contradicted or disputed the Applicants’ materials. We find nothing in the testimony that materially or substantively requires this Application to be denied.
MEMORANDUM

Date: September 20, 2016
To: Lane County Board of Commissioners
From: Rafael Seba, Senior Planner
RE: New Evidence for File Record of Ordinance No. PA 1342 / 509-PA15-05161
Benedick Plan Amendment / Zone Change

In response to written testimony submitted by LandWatch Lane County on September 12, 2016, staff transcribed Lauri Segel’s testimony submitted at the June 7, 2016 Planning Commission Public Hearing in order to demonstrate that Ms. Segel did not request the record be held open for the subject application. The transcription is taken from the audio recording of the hearing available at:

http://www.lanecounty.org/Departments/PW/LMD/LandUse/Pages/LCPCAudioRecordings.aspx

Attachments to this Memo

Attachment 1: Staff Transcription of Segel Testimony during 06.07.2016 Planning Commission 1st Public Hearing
I am Lauri Segel from LandWatch, PO Box 5347, Eugene, 97405. I don’t have any written testimony. I have read the staff report. I’ve done some research. So I’m just going to talk. When LandWatch appealed the Iverson Marginal Lands we asked the Board for a week to keep the record open. We thought it would be the right thing to do in Iverson because we hadn’t had opportunity to participate up until, granted the last minute, although it is allowed. We thought, well, keep the record open, there wasn’t much more we would do but it might help the applicant. Well, everybody said no, LandWatch is against everything, why should we keep the record open for them. So, we wrote a brief, we filed it at LUBA, and then we got the response brief from the applicant’s attorney. The response brief was two pages long and said, whoops guess we should have addressed your issues, we’ll take a remand. So they’ll be coming back to you now knowing all our legal arguments of course. They should have taken a voluntary remand. This is one of the very frustrating situations. We do know a little bit about what we are talking about with Marginal Lands, maybe just a little. I’m not going to talk to the parcelization at all. I want to point out that all these soils are class 2 and 3, predominantly. There’s letters all through the record, I’ll provide evidence, not in this record, in the property records, there’s evidence all through the property records that this should not, this, especially tax lot 4100, that’s the one I focused on most, which is the largest, it’s the 43.79 acre parcel. There were soil reports requested by an applicant and done by the county that says the water table is way too high. That there shouldn’t be any, they’ll never be able to have individual septic systems. There’s a reason this isn’t zoned Rural Residential. At some point, [you have one minute, go ahead], OK I have one minute left, the property is filled with wetlands, there’s wetlands on the property, there’s impacted big game. Staff did not, staff pointed out in the approval criteria which plan polices apply, but the applicant didn’t address the plan policy for Marginal Lands in Goal 3. They only address Goal 3, Policy 11. Goal 3, Policy 14 requires them to do an ESEE analysis. Not in the record is the letter from ODF&W that talks about the 20 acre minimum parcel sizes that they recommend. There is no doubt that an ESEE analysis is required. You can just, you know, let the applicant refute that, I have the evidence, I’m not going to be able to bring it up now, I’m not going to be able to talk to it now. I’ll put it in the record eventually. [we’re at time] OK.
September 12, 2016

TO: LANE COUNTY BOARD OF COUNTY COMMISSIONERS

FROM: LANDWATCH LANE COUNTY

SUBJECT: 509-PA15-05161, BENEDICK MARGINAL LANDS PROPOSAL

The comments below are submitted on behalf of Landwatch Lane County (PO Box 5347, Eugene, 97403) and Robert Emmons as an individual (40093 Little Fall Creek Road, Fall Creek.)

Our concerns with the proposal are articulated herein. Based on the issues raised below and the failure of the application to comply with the full set of approval criteria, the application should be denied.

I. PROCEDURAL ERROR IS NOT ADDRESSED

The September 13 Staff Report for the September 13th BCC hearing notes that on June 7, 2016, the Lane County Planning Commission held a public hearing on the proposal, deliberated, and passed a unanimous motion to forward a recommendation of approval to the Board of County Commissioners.

The minutes of the June 7 Planning Commission hearing include the following:

Laurie (sic) Segel-Vaccher said she represented Land Watch. She asked the LCPC for a week to keep the record open because they had not had an opportunity to participate until the last minute. Land Watch had filed a brief with the Land Use Board of Appeals (LUBA). She said all of the soils were class 2 and 3, and there was evidence in the property records that the sites, especially tax lot 4100, should not be zoned rural residential because there wetlands and impacted big game areas on the property. The applicant did not address the plan policy for marginal lands in Goal 3. The applicant only addressed Goal 3 policy 11. Goal 3 policy 14 required an Economic, Social, Environment and Energy (ESSE) analysis. A letter from the Oregon Department of Fish and Wildlife (ODFW) that addressed the 20 acre minimum parcel size was not included in the record.

Mr. Farthing (AGENT for APPLICANT) said some of Ms. Segel-Vaccher's testimony was non-specific, (THIS IS WHEN THE APPLICANT, OR STAFF, SHOULD HAVE AGREED THAT KEEPING THE RECORD OPEN TO ALLOW LW TO ELABORATE WOULD BE A GOOD IDEA, AND THAT DOING SO WAS REQUIRED BY LAW) including her comment about the LUBA remand. She said an ESSE analysis would be required because of non-specific issues, which Mr. Farthing assumed she meant to be big game habitat. . . . “There are no densities for impacted big game range and therefore there is no conflict and therefore there is no requirement for an ESSE analysis.”

The Planning Commission erred in failing to keep the record of the first evidentiary hearing open for one week as required by ORS 197.763(6)(a) (below) as requested by Landwatch, by calling for deliberations after the request was made that the record be left open one week for written comments, and in basing their recommendation of approval to the BCC on a record based on lack of evidence and insufficient findings.

197.763 Conduct of local quasi-judicial land use hearings; notice requirements; hearing procedures.

(6)(a) Prior to the conclusion of the initial evidentiary hearing, any participant may request an opportunity to present additional evidence, arguments or testimony regarding the application. The local hearings authority shall grant such request by continuing the public hearing pursuant to paragraph (b) of this subsection or leaving the record open for additional written evidence, arguments or testimony pursuant to paragraph (c) of this subsection.
The procedural error was not without effect, that effect being that LWLC was not given the opportunity, as required, to present lawful arguments regarding the shortcomings of the proposal prior to PC deliberations. Deliberating and making a recommendation based on only one parties documentation and arguments is evidence that the Planning Commission is prejudiced towards approving what the applicant has put before them, without consideration of other facts and legal arguments.

II. APPLICANT’S FINDINGS (Ordinance No. PA 1342 Exhibit “C” - Findings of Fact and Conclusions of Law) ARE INSUFFICIENT AND BASED ON A LACK OF EVIDENCE AND FACTS IN THE RECORD

LUBA found "the appropriate question is whether the county's findings of compliance or feasibility of compliance are adequate and supported by substantial evidence."

In footnote # 5, LUBA noted: "As a review body, we are authorized to reverse or remand the challenged decision if it is “not supported by substantial evidence in the whole record.” ORS 197.835(9)(a)(C). Substantial evidence is evidence a reasonable person would rely on in reaching a decision. City of Portland v. Bureau of Labor and Ind., 298 Or 104, 119, 690 P2d 475 (1984); Bay v. State Board of Education, 233 Or 601, 605, 378 P2d 558 (1963); Carsey v. Deschutes County, 21 Or LUBA 118, aff’d 108 Or App 339, 815 P2d 233 (1991). In reviewing the evidence, however, we may not substitute our judgment for that of the local decision maker. Rather, we must consider all the evidence in the record to which we are directed, and determine whether, based on that evidence, the local decision maker’s conclusion is supported by substantial evidence". Younger v. City of Portland, 305 Or 346, 358-60, 752 P2d 262 (1988); 1000 Friends of Oregon v. Marion County, 116 Or App 584, 588, 842 P2d 441 (1992).

Landwatch’s claim of insufficient findings is based on record events, record materials, and facts of the record, summarized below.

APPROVAL CRITERIA AND ANALYSIS FOR MARGINAL LANDS


The September 13, 2016 staff report notes:

"Since its adoption and implementation by Lane County, there has been considerable discussion about the ambiguous text of the criteria which led the Board of Commissioners to adopt an “Interpretation Regarding the Implementation of Marginal Lands Applications” (“the 1997 Board Interpretation”), Applicant’s Statement, Appendix at App.2. The Board’s intent was to further define noncommercial agricultural and forest lands by establishing standards describing how poor soils or parcelization make agricultural or forest uses impracticable as being marginal for resource production."

As a matter of law, the Board's 1997 interpretation is without merit and irrelevant; the attempt to circumvent Goal 3 in a manner both inconsistent with and weaker than the Goals and law allows, and contrary to LUBA rulings, evidenced below, has no legal authority.

B. Marginal Lands Standards

The applicant’s findings address only 1(a) and (b), and (4) of ORS 197.247 (1991 Edition); insufficient findings should not be the basis for a final decision

1. (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;

2. 197.247(5) (not addressed in the applicant's narrative or findings) further establishes: "A county may use statistical information compiled by the Oregon State University Extension Service or other objective criteria to calculate income for the purposes of paragraph (a) of subsection (1) of this section."
The applicant’s findings rely solely on affidavits signed in 2015 as evidence that approximately 35 - 37 years ago their farm operations did not produce $20,000 or more in annual gross income.

"The record includes property owner affidavits from Julius and Justine Benedick, Robert Street and Gerald Denny, respectively, that attest their respective farm operations, during three of five calendar years proceeding January 1, 1983, did not produce $20,000 or more in gross annual income and no forest related income."

There are no accompanying IRS or other tax or business records, records that might pass the ‘objectivity test’, in the record to support the affidavit statements. And while it is an amazing to be able to recall such mundane facts decades later, the 1991 version of ORS 197.247(5) requires reliance on "objective criteria to calculate income" for the purposes of making the determination, rather than ‘mental recollections’ made without the benefit of supporting, objective criteria.

Objective criteria is available but was not relied on or even expected to be provided. An example of objective data is sited, below:

1982 USDA Census of Agriculture’s historical archive shows for Lane County, Oregon, the following farm income statistics:

<table>
<thead>
<tr>
<th>YEAR</th>
<th># OF FARMS</th>
<th># ACRES/FARMS</th>
<th>AVERAGE MARKET VALUE OF AGRICULTURAL PRODUCTS</th>
</tr>
</thead>
<tbody>
<tr>
<td>1978</td>
<td>1,709</td>
<td>266,765</td>
<td>$95,197</td>
</tr>
<tr>
<td>1982</td>
<td>2,208</td>
<td>272,264</td>
<td>$112,958</td>
</tr>
</tbody>
</table>

The applicant’s findings are not based on objective data, and are insufficient for that reason. The applicant should have provided objective evidence, such as IRS or personal business records, in conjunction with the 3 affidavits, which by themselves cannot be considered to be objective.

- **(1)(b):** The proposed marginal land also meets at least one of the following tests:
- **(B):** The proposed marginal land is located within an 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

- 197.247(3) establishes: "For the purposes of paragraph (b) of subsection (2) of this section:
  1. Lots or parcels are not “adjacent” if they are separated by a public road; and
  2. “Lot” and “parcel” have the meanings given those terms in ORS 92.010.

This relevant provision of ORS 197.247 is not addressed in the applicant’s narrative or findings

- 92.010, in relevant part, establishes:
  1. "Lot" means a single unit of land that is created by a subdivision of land.
  2. "Parcel" means a single unit of land that is created by a partition of land.

There are no findings to justify the applicant’s reliance on a study area that is not adjacent to the subject properties - the 488 acres adjacent to the east of the subject properties are exception lands adopted as such in 1989 & 1990 and have been excluded from the applicant’s study area. However, there are adjacent properties directly north, directly south, and also southeast of the subject property that are not exception lands but are not included in the applicant’s study area.

The applicant’s findings also fail to address whether or not the parcels in the 680 acre study area or the subject parcels themselves are legal lots as required pursuant to 197.247(1). The following subject properties do not appear to be legal lots:

- 1705240005400 - appears it was created to satisfy a mortgage, and was not created by a lawful means.
- 1705130004101 - created as a substandard sized parcel in the EFU zone, out of t# 04100, by a bargain and sale deed (27414) in 1996

**Applicant’s reliance on a 680 acre study area**

There are no findings or justification for the applicant’s use of a 680 acre study area, when the relevant language of the statute is "not less than 240 acres."

The statute, at (3)(b), also establishes that lots and parcels separated by a public road are not adjacent.

The implication that "not less than 240" can be interpreted to mean as large as desired has no factual or lawful basis. As previously noted, the properties within the applicant’s 680 acre study area that are being counted are located at least 100 miles east of the subject property, across a County Public Road (Fir Butte Road). The facts from the record establishing that 488 acres of the 680 acre study area were adopted as developed and committed exception lands in 1989 through adoption of a developed and committed exception may justify not including those properties in the study area but does not by itself justify reliance on such a large study area that includes 488 acres not adjacent to the subject properties.

Nor is there any justification or findings addressing the fact that the study area boundary doesn't include any adjacent properties to the north and/or south of the subject property that are contiguous to the subject property other than beginning over 100 miles away, and that don't cross a major County Road.
• 197.247 (7) (This relevant provision of ORS 197.247 is not addressed in the applicant's narrative or findings)
  "The amended goals shall permit counties to authorize the uses on and divisions of marginal land set out in ORS 215.317 and 215.327"

ORS 215.317 (Permitted uses on marginal lands) and 215.327 (Divisions of marginal land), are not addressed in the applicant's narrative or findings

• 215.317 - Permitted uses on marginal land. (1) A county may allow the following uses to be established on land designated as marginal land under ORS 197.247 (1991 Edition):
  (a) Intensive farm or forest operations, including but not limited to “farm use” as defined in ORS 215.203.
  (b) Part-time farms.
  (c) Woodlots.
  (d) One single-family dwelling on a lot or parcel created under ORS 215.327 (1) or (2).

• 215.327 A county may allow the following divisions of marginal land:
  (1) Divisions of land to create a parcel or lot containing 10 or more acres if the lot or parcel is not adjacent to land zoned for exclusive farm use or forest use or, if it is adjacent to such land, the land qualifies for designation as marginal land under ORS 197.247 (1991 Edition).
  (2) Divisions of land to create a lot or parcel containing 20 or more acres if the lot or parcel is adjacent to land zoned for exclusive farm use and that land does not qualify for designation as marginal land under ORS 197.247 (1991 Edition)

Regarding adjacent zoning, the fact that adjacent property, Map # 1705240004600 is zoned EFU and is adjacent to subject properties 170524000, tax lot numbers: 5100, 5200, and 5300, establishes that the application for 10 acre parcels cannot be approved.

As noted above, divisions of land into lots of 10 or more acres cannot be approved if the area proposed for division is adjacent to land zoned exclusive farm use.

Additionally, there are EFU zoned properties located adjacent to the Amazon Channel, which is adjacent to the subject properties on their SW corner; there is nothing in the language of 197.247 establishing hat lots or parcels are not adjacent if separated by anything other than a public road.

C. Lane Code 16.214

The September 13th staff report says that "Approval of the plan amendment would allow the subject property to be developed into 10 acre minimum parcels as provided by the Marginal Lands Zone, LC 16.214(6)." The LC language is consistent with the 215.327, yet the staff report and findings fail to point out that 10-acre sized lots cannot be approved as requested, as explained above.

The staff report then asserts "The general area consists of small rural acreages used as rural residences with hobby farms." Hobby Farms are not defined in statute, rule, or Lane Code, and LUBA has ruled, in LUBA No. 93-136 DUANE STROUPE and LORETTA S STROUPE vs. CLACKAMAS COUNTY, in footnote 5 - "...The definition of noncommercial farm does not employ the term "hobby farm.""

It is unclear if the staff reference to "the general area" is limited to the 680 study area or includes surrounding properties that for some unexplained/unjustified reason are not included in the study area. In either case, it is inconsistent with state law to refer to resource lands as being used for hobby farming.

Because the subject property is adjacent to land zoned EFU, the proposal for 10-acre lots cannot be approved and findings that state the proposal is consistent with LC 16.214 are in error.

D. Rural Comprehensive Plan (RCP)

• Goal 3 - Agricultural Lands

Th staff report states that the "application implements Lane County Goal 3, Policy 14 which provides for re-designating Agricultural Land to Marginal Land in compliance with ORS 197.247 (1991 edition) and applicable Lane County RCP policies and Statewide Planning Goals (Goals)."

Goal 3 Policy 14 actually says "Land may be designated as marginal land if it complies with th following criteria:
  a. The requirements of ORS 197.247 (1991 Edition), and
  (b) Lane County General Plan Policies, Goal 5, Flora and Fauna, policies numbered 11 and 12.

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

• Goal 5 — Open Spaces, Scenic and Historic and Natural Resources: To conserve open space and protect natural and scenic resources
The applicant's findings assert that because the subject property is "inventoried as Impacted Big Game" and because "isolated wetlands on the subject property are protected by State and Federal Laws (laws not indicated or otherwise identified). . .", there is "no requirement to conduct an ESEE analysis to identify conflicting uses, determine the impact area, analyze the ESEE consequences or develop a program to achieve compliance with Goal 5."

This is contrary to the Supplemental Findings adopted by Ordinance PA892 (Item 2 (G), adopted "in order to fully comply with the requirements of Oregon statewide planning Goals as promulgated by the Oregon Land Conservation and Development Commission. Lane County must revise certain elements of it's rural General Plan."

The supplemental findings adopted by Ordinance PA 892 includes the following: "Revise Goal 3, policy 14 to set forth criteria to be followed in designating land as marginal land. In its 8/19/84 staff report, DLCD pointed out that Goal 5 should be applied to lands which are requesting a change to the marginal land plan designation to identify the resources present, identify conflicting uses and ESEE consequences, etc. This revision makes clear the policy that, if land is to be designated as marginal land, a Goal 5 analysis must (emphasis added) be applied to the change."

Additionally, LCDC Acknowledgement of Compliance documentation, with Date of Commission Action August 17, 1984 establishes among other actions that "...as noted previously, the County still needs to adopt measures in its F2, ML, and EFU zones which ensure that ODFW's density standards will be achieved." However, t LC 16.214 (ML) has no language or provisions addressing ODF&W density standards, and there is no evidence in the record to support the findings that no ESEE analysis is required.

Regarding Big Game Range, the 1984 Acknowledgement also notes "Developed and committed exception areas are considered impacted, and the County has decided that conflicting uses should be permitted in those areas." The subject property is not a 'developed and committed exception area' and the findings asserting no ESEE analysis is necessary is in error.

E. Statewide Planning Goals

- Goal 12

The staff report includes the statement that "The proposed Marginal Lands plan designation will not result in any change of functional road classification or require a traffic impact analysis." Although County Transportation has waived the requirement for a TIA, this statement is insufficient to establish that no significant impacts will result from the proposed Plan Amendment/Zone change and subdivision proposal because there is no analysis whatsoever, or conditions of approval established, to limit any uses that might have the effect of resulting in significant affects.

OAR 660-012-0060, part of the Transportation Planning Rule (TPR), provides in relevant part that if a plan amendment or zone change would "significantly affect" an existing or planned transportation facility, the local government must put in place measures to mitigate the impacts.

As LUBA explained in Savage v. City of Astoria, 68 Or 15 LUBA 225, 227 (2013): "OAR 660-012-0060(1) requires certain specified mitigation measures if a land use regulation amendment would significantly affect an existing or planned transportation facility. Determining whether a land use regulation amendment would significantly affect a transportation facility requires a rather complicated inquiry under OAR 660-012-0060(1)."

In LUBA No. 2003-201, with respect to the necessity for a TIA, LUBA generally agreed with respondents that OAR 660-012-0060 does not require preparation or analysis of a TIA, saying "although, depending on the nature of the proposed amendment and the local government's approach to finding or ensuring compliance with the TPR, some kind of traffic generation or traffic impact analysis may be necessary."

There must be some analysis and data to rely on to find that a TIA, or any, analysis is unnecessary for purposes of finding no significant affect from the proposed PA/ZC. Reliance on county staff's assertion that "the trip generation from eight single-family dwellings is estimated at 64 vehicle trips per day but less than a peak hour traffic flow of 50 or more trips" thus waiving the requirement for an analysis of affects, is not based on substantial evidence in the record.

F. Conclusion

As noted above, and supported by the attached supplemental material, the approval of the subject proposal for a plan amendment and zone change is not based on substantial evidence in the record, and is inconsistent with provisions of law established by ORS 197.247 (1991 Edition). Board interpretations that are inconsistent with Statute, Goal, and Rule cannot be relied on in lieu of applying the full set of statutory approval criteria.

Because this application is inconsistent with the approval criteria, it must be denied.

Thank you for considering this testimony.

Robert Emmons
President
1982 Census Publications

Volume 1, Part 37:
Oregon

INTRODUCTION

- 1. Title Page and Introduction
- 2. State Map
- 3. Highlights of the State's Agriculture: 1982 and 1978

CHAPTER 1: State Data

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<td>Commodity Credit Corporation Loans, Agricultural Services, and Direct Sales of Agricultural Products: 1982, 1978 and 1974</td>
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<td>13</td>
<td>Value of Machinery and Equipment on Place: 1982 and 1978</td>
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<td>14</td>
<td>Selected Machinery and Equipment on Place: 1982 and 1978</td>
</tr>
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<td>15</td>
<td>Selected Characteristics of Farms by Standard Industrial Classification: 1982</td>
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<td>16</td>
<td>Agricultural Chemical Used, Including Fertilizer and Lime: 1982 and 1978</td>
</tr>
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<td>18</td>
<td>Poultry - Inventory and Sales: 1982 and 1978</td>
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<td>19</td>
<td>Broilers and Started Pullets - Sales: 1982 and 1978</td>
</tr>
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<td>20</td>
<td>Poultry - Inventory and Sales by Size of Flock: 1982</td>
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<td>21</td>
<td>Turkeys - Sales by Number Sold Per Farm: 1982</td>
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<td>22</td>
<td>Cattle and Calves - Inventory: 1982 and 1978</td>
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## Table: Description

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<td>Cattle and Calves - Sales: 1982 and 1978</td>
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<td>24</td>
<td>Cattle and Calves - Inventory and Sales by Size of Herd: 1982</td>
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<td>25</td>
<td>Cattle and Calves - Inventory and Sales by Size of Cow Herd: 1982</td>
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<td>Cattle and Calves - Inventory and Sales by Size of Beef Cow Herd: 1982</td>
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<td>Cattle and Calves - Inventory and Sales by Size of Milk Cow Herd: 1982</td>
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<td>28</td>
<td>Cattle and Calves - Sales by Number Sold Per Farm: 1982</td>
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<td>29</td>
<td>Hogs and Pigs - Inventory: 1982 and 1978</td>
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<td>30</td>
<td>Hogs and Pigs - Sales: 1982 and 1978</td>
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<td>31</td>
<td>Hogs and Pigs - Litters Farrowed: 1982 and 1978</td>
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<td>Hogs and Pigs - Inventory and Sales by Size of Herd: 1982</td>
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<td>Hogs and Pigs - Inventory and Sales by Number Sold Per Farm: 1982</td>
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<td>Hogs and Pigs - Inventory, Sales, and Litters by Total Litters Farrowed: 1982</td>
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<td>Sheep and Lambs - Inventory and Sales: 1982 and 1978</td>
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<td>36</td>
<td>Sheep and Lambs - Inventory and Sales by Size of Flock: 1982</td>
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<td>37</td>
<td>Sheep and Lambs - Inventory and Sales by Size of Ewe Flock: 1982</td>
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<td>38</td>
<td>Other Livestock, Livestock Products, and Animal Specialties - Inventory and Sales: 1982 and 1978</td>
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<td>39</td>
<td>Crops Harvested and Value of Production: 1982 and 1978</td>
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<td>Specified Crops Harvested - Yield Per Acre Irrigated and Nonirrigated: 1982</td>
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<td>41</td>
<td>Specified Crops by Acres Harvested: 1982 and 1978</td>
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<td>42</td>
<td>Specified Fruits and Nuts by Bearing and Nonbearing Acres: 1982 and 1978</td>
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<td>44</td>
<td>Summary by Tenure of Operator: 1982</td>
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<td>Summary by Type of Organization: 1982</td>
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<td>46</td>
<td>Summary by Age and Principal Occupation of Operator: 1982</td>
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<td>47</td>
<td>Summary by Age and Principal Occupation of Operators for Farms With Sales of Less Than $20,000: 1982</td>
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<td>48</td>
<td>Summary by Size of Farm: 1982</td>
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<td>Summary by Value of Agricultural Products Sold: 1982</td>
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## CHAPTER 2: County Data

### Table: Description

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<td>4</td>
<td>Land in Farms, Harvested Cropland, and Irrigated Land: 1982 and 1978</td>
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<td>5</td>
<td>Tenure and Characteristics of Operator and Type of Organization: 1982 and 1978</td>
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<td>Selected Farm Production Expenses and Fuel Storage Capacity: 1982 and 1978</td>
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<td>Agricultural Chemicals Used, Including Fertilizer and Lime: 1982 and 1978</td>
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<td>Machinery and Equipment on Place: 1982 and 1978</td>
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<td>Hired Farm Labor - Workers and Payroll: 1982 and 1978</td>
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<td>Commodity Credit Corporation Loans, Agricultural Services, and Direct Sales of Agricultural Products: 1982 and 1978</td>
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<td>11</td>
<td>Cattle and Calves - Inventory and Sales: 1982 and 1978</td>
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Table 1. Farms, Land in Farms, and Land Use: 1982 and 1978—Con.

For meaning of abbreviations and symbols, see introductory text.

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<tr>
<th>All farms</th>
<th>Hood River</th>
<th>Jackson</th>
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<th>Josephine</th>
<th>Klamath</th>
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<td>64,833</td>
<td>10,049</td>
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<td>131,142</td>
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<td>1,000 acres or more, acres, 1978...</td>
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<td>50,002</td>
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<td>15,623</td>
<td>131,631</td>
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</table>

See footnotes at end of table.

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1982 CENSUS OF AGRICULTURE—COUNTY DATA
Table 16. Farms With Sales of $10,000 or More: 1982 and 1978—Con.

[For meaning of abbreviations and symbols, see introductory text]

<table>
<thead>
<tr>
<th>Item</th>
<th>Hood River</th>
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<th>Josephine</th>
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<td>Land in farms, 1982</td>
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<td>341</td>
<td>251</td>
<td>94</td>
<td>561</td>
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<td>1978</td>
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<td>410</td>
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<td>acres, 1982</td>
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<td>388,296</td>
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<td>1978</td>
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<td>17,702</td>
<td>793,583</td>
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<td>672</td>
<td>1,547</td>
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<td>3,029</td>
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<td>1978</td>
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<td>869</td>
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<td>676,832</td>
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<td>468,702</td>
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<td>334,227</td>
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<td>Average per acre, dollars, 1982</td>
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<td>25,303</td>
<td>48,571</td>
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<td>238,477</td>
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<td>1978</td>
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<td>84,245</td>
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<td>72</td>
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<td>252</td>
<td>81</td>
<td>359</td>
<td>278</td>
<td>120</td>
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<tr>
<td>harvested, acres, 1982</td>
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<td>45,501</td>
<td>92,201</td>
<td>9,614</td>
<td>194,885</td>
<td>150,020</td>
<td>96,517</td>
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<tr>
<td>1978</td>
<td>16,016</td>
<td>46,320</td>
<td>89,835</td>
<td>10,405</td>
<td>181,301</td>
<td>177,335</td>
<td>88,347</td>
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<td>Irrigated land, acres, 1982</td>
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<td>274</td>
<td>224</td>
<td>72</td>
<td>315</td>
<td>264</td>
<td>105</td>
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<td>1978</td>
<td>291</td>
<td>249</td>
<td>252</td>
<td>81</td>
<td>359</td>
<td>278</td>
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<td>Irrigated, acres, 1982</td>
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<td>9,614</td>
<td>194,885</td>
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<td>1978</td>
<td>16,016</td>
<td>46,320</td>
<td>89,835</td>
<td>10,405</td>
<td>181,301</td>
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<td>$1,000,000</td>
<td>$1,000,000</td>
<td>$1,000,000</td>
<td>$1,000,000</td>
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<td>1982 sales by commodity or commodity group</td>
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<td>Crops, including nursery and greenhouse products</td>
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<td>225</td>
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<td>376</td>
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<td>119</td>
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<td>145</td>
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<td>192</td>
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<td>144</td>
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<td>(2)</td>
<td>(2)</td>
<td>(2)</td>
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<td>192</td>
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<td>144</td>
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<td>Hogs and pigs.</td>
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<td>192</td>
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<td>231</td>
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<td>144</td>
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<tr>
<td>Cash grains (01)</td>
<td>5</td>
<td>62</td>
<td>3</td>
<td>73</td>
<td>18</td>
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<tr>
<td>Field crops, except cash grains (013)</td>
<td>23</td>
<td>88</td>
<td>3</td>
<td>73</td>
<td>18</td>
<td>22</td>
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<tr>
<td>Cotton (011)</td>
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<tr>
<td>Tobacco (013)</td>
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<tr>
<td>Sugar crops, Irish potatoes, hay, peanuts, and other field crops (013, 015, 018)</td>
<td>23</td>
<td>88</td>
<td>3</td>
<td>73</td>
<td>18</td>
<td>22</td>
<td>49</td>
</tr>
</tbody>
</table>

See footnotes at end of table.

1982 CENSUS OF AGRICULTURE—COUNTY DATA
**Dwelling / Building Type**
- Class 3 dwelling

**Floor Characteristics**
- Base Sq Ft: 1648
- Finished Sq Ft: 1648
- Exterior: Wood siding

**Exterior Features**
- Roof Style: Hip
- Roof Cover: Comp shingle medium
- Masonry Fireplace(s): No
- Improvement Complete: 100%
- Heat: Forced hot air

**Other Square Footage**
- Attached Garage: 400
- Basement Garage: N/A
- Carport: N/A
- Paved Patio: 256
- Paved Driveway: N/A

**Site Address Information**
- 89160 FIR BUTTE RD
- EUGENE, OR 97402-9304

**House #**
- 89160

**Street Name**
- FIR BUTTE

**Mail City**
- EUGENE

**Zip + 4**
- 9304

**Land Use Information**
- 1111 Single Family Housing
- USPS Carrier Route: R001

**General Taxlot Characteristics**
- Geographic Coordinates
  - X: 4202631
  - Y: 892707
  - Latitude: 44.0811
  - Longitude: -123.335

- Zoning
  - Zoning Jurisdiction: Lane County

- Land Use
  - General Land Use

- Taxlot Characteristics
  - Incorporated City Limits: none
  - Urban Growth Boundary: none
  - Year Annexed: N/A
  - Annexation #: N/A
  - Approximate Taxlot Acreage: 11.88
  - Approx Taxlot Sq Footage: 517,493
  - 2010 Census Tract: 1606
  - 2010 Census Block Group: 1
  - Plan Designation: AGRICULTURE
  - Eugene Neighborhood: N/A
  - Metro Area Nodal Dev Area: No
  - Historic Property Name: N/A
  - City Historic Landmark?: No
  - National Historical Register?: No
Real Property Tax Lot Record

Lane County Assessment and Taxation
Print Date: Jun 6, 2016

In preparation of these records, every effort has been made to offer the most current, correct, and clearly expressed information possible. Nevertheless, inadvertent errors in information may occur. In particular but without limiting anything here, Lane County disclaims any responsibility for typographical errors and accuracy of this information. The information and data included on Lane County servers have been compiled by Lane County staff from a variety of sources, and are subject to change without notice to the User. Lane County makes no warranties or representations whatsoever regarding the quality, content, completeness, suitability, adequacy, sequence, accuracy, or timeliness of such information and data.

The legal descriptions contained herein are for tax lot purposes only.

Included in this report:

1. A listing of documents affecting ownership and/or property boundary changes.
2. The scanned tax lot record image and any legal description changes made since .

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Comments:
The north 30 feet of the following described property:

Lot 2 of Section 24 and that part of the North-west quarter of the northeast quarter and that part of the northeast quarter of the northwest quarter of Section 24, described as follows: Beginning at a point where the west line of the county Road intersects the north line of the said northeast quarter being at a point 20 chains, more or less, west of the northeast corner of said Section, thence running

South 19.90 chains on the west line of said County Road; thence
West 20 chains; thence
North 1.20 chains; thence
West 12.65 chains; thence
North 18.70 chains to the north line of said Section; thence
S.89°48'East 32.65 chains, more or less to the place of beginning, all in Twp. 17 South, Range 5 West, W.M., in Lane County, Oregon, Except that certain tract conveyed to Mae Borror by deed recorded January 12, 1944, at Page 159 of Volume 260, Lane County Oregon Deed Records, Lane County, Oregon.

Containing more or less

EXCEPT: 1.22 acres out to New Plat of: "F R V SUBDIVISION" per File 72, Slide 186 for 1979-80.

Containing more or less

Acreage correction for 1979

Containing more or less

*Does not read as above, but is contained therein
Real Property Tax Lot Record

Lane County Assessment and Taxation
Print Date: Jun 6, 2016

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Comments:
MEMORANDUM

TO interested Persons and Groups

FROM Land Management Division

SUBJECT Revision of General Plan Working Papers

DATE June 1984

In order to fully comply with the requirements of Oregon statewide planning Goals as promulgated by the Oregon Land Conservation and Development Commission, Lane County must revise certain elements of its rural General Plan. Following the revision action, the Plan must be submitted to LCDC for acknowledgement.

Part of the revision effort is directed toward improving the information base and Policy suggestions of the Working Papers. These documents were originally intended to serve as technical foundations (by pulling together information and in some cases indicating where it was already available) for Plan development. The actual Plan was to take the form of Policies and a Plan Diagram, both of which were completed and, in the case of the Policies, adopted. Working Papers were to serve as reference material.

To bring the Plan into better compliance with state Goals, all three elements -- Working Papers, Policies and Plan Diagram -- need some revision. Since the Policies are generated from information in the Working Papers, it follows that new Policy statements must be founded in the form of Working Paper revisions.

Attached for your review and comment are revisions to one of the existing Working Papers. It is the intention of the County to follow essentially the same process of public review that was followed when the Working Paper were originally published. Bear in mind that in some instances, revisions pre-empt or modify or add to material now in the Working Papers.

After action is completed on all Working Paper revisions, the Policy statements generated by this procedure will be compiled and brought before the public and County officials for adoption as amendments to the General Plan Policies document. When the Plan Diagram is made available for similar action, it too will contain pertinent directives of this and the other Working Papers.
Supplemental Findings
Ordinance No. PA 892, Item 2(G)

Revise Goal 3, policy 14 to set forth criteria to be followed in designating land as marginal land. In its 8/19/84 staff report, DLCD pointed out that Goal 5 should be applied to lands which are requesting a change to a marginal land plan designation to identify the resources present, identify conflicting uses and ESEE consequences, etc. This revision makes clear the policy that, if land is to be designated as marginal land, a Goal 5 analysis must be applied to the change.
LAND CONSERVATION AND DEVELOPMENT COMMISSION
ACKNOWLEDGMENT OF COMPLIANCE

Lane County
and
Rural Portion of Eugene/Springfield Metro Plan
Goal 2—Nonresource Lands, Goal 5, Goal 15

Response from Denial Order of November 6, 1981
and from Continuance Order of November, 1981

DATE RECEIVED:                                      DATE OF COMMISSION ACTION:
March 15, 1984                                        August 17, 1984

REQUEST

The County has requested that its comprehensive plan and implementing
measures be acknowledged as in compliance with the Statewide Planning
Goals for areas outside adapted urban growth boundaries. Also, the
County and the Cities of Eugene and Springfield request acknowledgment of
compliance for the rural portions of the Eugene/Springfield Area General
Plan.

SUMMARY OF RECOMMENDATIONS

Staff

Recommends the Commission continue Lane County's request to allow
amendments to the plan to comply with Statewide Planning Goals 2, 5,
and 15. The Commission should hear testimony on these issues July 19,
1984, but not take final action until the August hearing.

Recommends the Commission continue the request to allow amendments to the
Eugene/Springfield Metro Area General Plan under Goals 2, 5, and 16. The
Commission should not take final action on this until the August
Commission hearing.

FIELD REPRESENTATIVES: Bob Rindy/Glen Hale (Coastal)

LEAD REVIEWERS: Mike Rupp (Goals 2—Nonresource Lands
Claire Puchy (Goals 5 and 15)

Phone: 378-4926

COORDINATOR: Gary Darnielle
Phone: 667-4283

Date of Report: July 19, 1984
Sensitive Fish and Waterfowl Areas: Removal of riparian vegetation in identified sensitive areas is considered the major conflicting use with these resources (Working Paper, p. 21). The County notes that the ESEE consequences analysis is generally the same as that for riparian areas and wetlands, summarized in the previous section of this report (Working Paper, p. 21). However, the County indicates that since the sensitive fish and waterfowl areas are considered more valuable than others in the County, the effects of vegetation removal can be more significant (p. 21). Based on these analyses, Lane County has chosen a (3C) approach to protect riparian vegetation in such areas "whenever possible" (p. 22). The County notes that ODFW has recommended setbacks of 50 to 100 feet along waterways designated as sensitive fish habitat, plus natural resource zoning for wetlands not within that riparian strip (Addendum, p. 5).

Conflicting uses and ESEE consequences of conflicting uses with fish habitat in the Big Creek Exception Area are addressed on pages 54-56 of the Exception. Based on this analysis, the applicant will be required to protect the anadromous fish through development of a management plan and protection or riparian vegetation (pp. 27, 55).

Big Game Range: The primary conflict with big game range is identified as residential use at densities over one dwelling unit per 40 acres in Peripheral Range, and one unit per 80 acres in Major Range (Working Paper, p. 24). The County indicates that its 80-acre commercial timber zoning is very restrictive in terms of dwelling unit placement, and therefore, "it is unlikely that conflicts will occur" in Major Range areas (Addendum, p. 14). Similarly, the County believes its 40-acre zone will satisfy ODFW's recommended density in Peripheral Range (p. 14). Developed and committed exception areas are considered impacted, and the County has decided that conflicting uses should be permitted in those areas (p. 14).

The conflicts and ESEE consequences of conflicts with major elk habitat in the Big Creek Exception area are discussed on pages 53-54, and 56 of the Exception document. Based on this analysis, the applicant will be required to protect elk winter forage areas (p. 27) and to develop an elk management plan (p. 32).

Policies

Lane County has adopted numerous policies regarding its fish and wildlife resources (Flora and Fauna Policies, Plan, pp. 14-16). These policies include the following:

1. Implement construction, development and other land use activities which significantly alter natural systems only after evaluation of effects on wildlife habitats and natural areas.

2. Recognize existing federal and state programs protecting threatened or endangered fish and wildlife species.
process. Depending upon this analysis, the policies may have to be modified, and implementing measures will have to be adopted. The concern that Policy 3 is unclear as to which species or habitat areas are covered by the policy is valid.

2. Policy 11 states:

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 with Oregon Department of Fish and Wildlife officials to prevent conflicts between development and Big Game Range through land use regulation in resource areas, siting requirements and similar activities which are already a part of the County's rural resource zoning program.

Objectors are not correct that this policy violates Goal 5. Densities above those recommended by ODFW would certainly constitute a conflict with big game habitat. The County has, through this policy, however, simply indicated that it intends to resolve them by applying the entire Goal 5 process when such proposals are made. This would require a plan amendment and could only take place if justified based on the Goal 5 analysis. However, as noted previously, the County still needs to adopt measures and EFU zones which ensure that ODFW's density standards will be achieved.

The second part of the policy requires the County to work with ODFW in preventing conflicts from occurring through land use regulations in resource areas and such things as siting requirements. ODFW is correct that its recommended density standards (if adopted in the ordinance) would constitute an approach to resolve and/or prevent conflicts between dwellings and big game habitat. However, as discussed below, the County has not adopted such standards in its zoning ordinance.

3. ODFW is correct that the County's F-1 and F-2 zones do not incorporate ODFW's development density recommendations, nor do they set forth siting or clustering requirements. Without siting and clustering requirements, the minimum lot sizes in the F-1, F-2 and E zones are half that recommended by ODFW (i.e., the minimum lot sizes would have to be doubled to be acceptable). This is a problem in the F-2 and EFU zones in particular, but not in the F-1 Zone, since in general, dwellings are not permitted in that zone.
4. Objectives are correct that Goal 5 has not been applied by the County in the process of Designating marginal lands. OAR 197-247(8) requires that applications of a marginal lands zone must satisfy all requirements of other Goals, including Goal 5.

5. The response to the objections regarding Pudding Creek Heronry is presented in the Goal 15 section of this report.

6. The response to the objections regarding Big Island is presented in the Goal 15 section of this report.

7. The County has indicated it has sufficient inventory information on only five noncoastal wetlands at this time. 1000 Friends has not provided location, quality, or quantity information on specific wetlands it believes should be (1C) sites, rather than (1B) sites.

ODFW has not objected to the County's determination that only five wetlands are (1C) and the remainder are (1B) sites. 1000 Friends is correct that Policy 22 calls for protection of (1B) sites only at the beginning of the plan refinement process. However, the Goal 5 Rule does not require any interim protection for (1B) sites.

Although the incompleta National Wetlands Inventory is the basis for the County's wetlands inventory, 1000 Friends is not correct that the County must wait until the National Inventory is completed before it can apply the Goal 5 process to (1B) sites. Furthermore, Policy 7 does not prevent the County from considering information about other sites not on the national inventory during its plan update process. 1000 Friends, or other parties may supply the County with information about wetlands, and the County would be required to apply the Goal 5 process to those sites. Plan Policy 7 states:

Because of incomplete County coverage by, and interpretation of, the National Wetlands Inventory, wetland resources are to be considered "significant" in terms of OAR 660-15-000/025 and placed in "1B" and "1C" categories. Major wetlands designated "1C" resources shall be protected per the "3C" option through a combination of existing County Coastal and Greenway zoning regulations, and federal; state ownership; where these do not occur, an appropriate wetlands zoning district shall be developed and applied. Other wetlands from the national Wetlands Inventory shall be evaluated per "1B" requirements within two years of the date of plan adoption, and decision made on the protection or use of the resource. The County shall consider enlarging the list of protected wetlands per Goal 5 requirements if it is clearly demonstrated that an unprotected significant wetland(s) is likely to be significantly impacted by a land use action over which the County has jurisdiction. (Modification in process).
Supplemental Findings
Ordinance No. PA 892, Item 2(G)

Revise Goal 3, policy 14 to set forth criteria to be followed in designating land as marginal land. In its 8/19/84 staff report, DLCD pointed out that Goal 5 should be applied to lands which are requesting a change to a marginal land plan designation to identify the resources present, identify conflicting uses and ESEE consequences, etc. This revision makes clear the policy that, if land is to be designated as marginal land, a Goal 5 analysis must be applied to the change.