BEFORE THE BOARD OF COUNTY COMMISSIONERS OF LANE COUNTY, OREGON

ORDINANCE NO. PA 1365

IN THE MATTER OF AMENDING THE RURAL COMPREHENSIVE PLAN TO REDESIGNATE LAND FROM "FOREST LAND" TO "MARGINAL LAND", TO REZONE LAND FROM "IMPACTED FOREST LAND (F-2)" TO "MARGINAL LAND (ML)", AND ADOPTING SAVINGS AND SEVERABILITY CLAUSES (File No. 509-PA 16-05291; Applicant: Martinez)

WHEREAS, the Board of County Commissioners of Lane County, through enactment of Ordinance No. PA 884 has adopted Land Use Designations and Zoning for lands within the planning jurisdiction of the Lane County Rural Comprehensive Plan; and

WHEREAS, Lane Code 16.400 sets forth procedures 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 April 12, 2016, application no. 509-PA 16-05291 was made for a minor amendment to redesignate tax lot 200, Map 18-05-25, from "Forest" to "Marginal Land," with a concurrent request to rezone the property from "Impacted Forest Land (F-2)" to "Marginal Land (ML);" and

WHEREAS, the Lane County Planning Commission reviewed the proposal in a public hearing on April 17, 2018; and

WHEREAS, the Lane County Planning Commission deliberated on June 19, 2018, and forwarded the matter to the Board with a recommendation for approval of the proposed plan amendment and zone change; 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:

Section 1. The Official Lane County Rural Comprehensive Plan is amended to redesignate Tax Lot 200, Map 18-05-25, from "Forest Land" to "Marginal Land." This is depicted on the Official Lane County Plan maps and further identified as Exhibit "A" attached and incorporated herein.
Section 2. The Official Lane County Zoning Map is amended to change the zone for Tax Lot 200, Map 18-05-25, from "Impacted Forest Land (F-2)" to "Marginal Land (ML)." This is depicted on the Official Lane County Zone maps and further identified as Exhibit "B" attached and incorporated herein.

Section 3. Prior to land division approval, applicant shall conduct a complete aquifer study, including drawdown and recovery analysis using observation wells, that complies with the standards set forth in LC 13.060(1)(h)(ii)(aa) or 13.080(1)(m)(ii)(aa). The study must affirmatively demonstrate that the proposed land division is capable of sustaining the development anticipated with sufficient potable water.

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 affect the validity to the remaining portions hereof.

ENACTED this 12th day of March, 2019

Peter Sorenson, Chair
Lane County Board of County Commissioners

Recording Secretary for this Meeting of the Board

APPROVED AS TO FORM
Date 2-6-19 Lane County
Office of Legal Counsel.
I. PROPOSAL DESCRIPTION

A. Owner/Applicant

<table>
<thead>
<tr>
<th>Larry and Tommye Martinez</th>
</tr>
</thead>
<tbody>
<tr>
<td>85517 Pine Grove Road</td>
</tr>
<tr>
<td>Eugene, OR  97402</td>
</tr>
</tbody>
</table>

Agent

<table>
<thead>
<tr>
<th>Norman Waterbury</th>
</tr>
</thead>
<tbody>
<tr>
<td>Land Use Planning Consultant</td>
</tr>
<tr>
<td>86131 Cherokee Road</td>
</tr>
<tr>
<td>Eugene, OR  97402</td>
</tr>
</tbody>
</table>

B. Proposal

This proposal is a request to redesignate 54.04 acres of Forest Land to Marginal Land and rezone the same from Impacted Forest Lands (F-2) to Marginal Land (ML).

II. SITE AND PLANNING PROFILE

A. Location

Map 18-05-25, TL 200, hereafter referred to as the “subject property” or “property,” is located on Pine Grove Road just south of Spencer Creek Road southwest of Eugene.

B. Zoning

The subject property is currently designated Forest Lands and zoned Impacted Forest Lands (F-2).

C. Site Characteristics/History

The subject property is 54.04 acres in size and is generally rectangular in shape. It is comprised of one tax lot and is developed with a stick built single family dwelling, septic system, and well.

The property has a north aspect with gentle slopes, primarily on the southern portion of the property. The southern portion is forested with conifers, primarily Douglas fir with scattered ponderosa pine, incense cedar, grand fir, and Christmas tree sized noble firs. There is a small pond on the eastern edge of the northern portion of the property.

The soils are described in greater detail in Figure 1 below.
The property is identified as an area designated as “Peripheral Big Game” and does not contain any known unique environmental resources or habitat sites.

According to records at Lane County Deeds and Records, the subject property, along with other adjacent properties, was owned by Haldor Torkelsen until 1977. At that time, the property was used for grazing and contained a small orchard. In 1978, the property was transferred to Carl and Joanne Stallings. The Stallings divided the property, and the subject property was Parcel 2 of that land division. Sometime around 1985, the property went into foreclosure, and by 1987, Joseph and Julianne Arnold had obtained title to the property. In 1987, the Arnold’s obtained approval for a second “farm help” dwelling on the property. There is testimony in the record that the property contains remnants of an orchard and that the Arnolds kept horses on the property.

### D. Surrounding Area

Properties in the surrounding area have a mixture of zoning designations. Immediately to the north of the area proposed to be rezoned is land zoned RR-5 and developed with single family dwellings. Immediately to the east along most of the eastern boundary of the subject property are other F-2 zoned properties. A small portion of the eastern boundary lies adjacent to RR-5 zoned properties. Property to the south of the subject property are zoned RR-5 and developed with residences. Pine Grove Road abuts the northern portion of the property’s western border. Across the road to the west are more RR-5 zoned properties developed with single family residences.

## III. APPROVAL CRITERIA/ANALYSIS

### A. Introduction

These findings are organized according to the kinds of standards that apply. They address the
Statewide Planning Goals, the Rural Comprehensive Plan Policies, the criteria in LC 16.400 for plan changes, and the criteria in LC 16.252 for zone changes. Because the goals provide the most comprehensive set of standards, the evidence and legal argument is presented as comprehensively as possible in connection with the discussion of the goals. Whenever possible, in order to avoid repetition, reference is made back to the goal discussion when addressing the non-goal standards.

B. Marginal Lands Criteria

Marginal Land proposals are primarily governed by the 1991 version of ORS 197.247. Lands that are designated as “marginal lands” are considered a subset of resource lands, but have lower minimum lot size requirements than other resource lands and, as a result, more intensive development is allowed than is allowed on other resource lands. For instance, residential dwellings are permitted uses in the Marginal Land zone under Lane Code 16.214(2)(b).

To eliminate multiple interpretations and offer guidance, in March 1997 the Lane County Board of Commissioners issued a directive on how to interpret and administer Marginal Land applications. In addition, multiple Lane County Marginal Lands cases have been appealed to LUBA and beyond, often resulting in remands back to the County. Thus, the methodology of Marginal Land applications has been refined over the years and has been very well vetted by the courts, and has withstood subsequent appeals.

The Applicant’s agent has recited and addressed the applicable standards, including ORS 197.247, utilized the March 1997 Board document, addressed State and local goals, and Lane Code requirements.

Essentially, qualification for a ML designation is a two-fold test. Any proposal for a ML designation must first comply with the “income test” requirement found in ORS 197.247(1)(a), recited below. It basically requires the Applicant to document that the proposed ML land is of less than “commercial-grade” for farm or forest use during a 5-year period preceding 1983. This examination must include any lands that might have been part of such farm or forest operation at that time.

The second part of the test contains three options, two of which are “parcelization tests”, and one commonly known as the “productivity test.” Under the productivity test, the Applicant is required to demonstrate that the farm soil capability is predominantly class V-VIII (on a I-VIII scale), and that per acre, the proposed land cannot produce, on average, more than 85 cubic feet of merchantable timber annually.

1. Income Tests:

ORS 197.247(1)(a) reads as follows:

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.

Board Direction from 1997 concludes:

No evidence of human activity on the land is required for forest land to be “managed”. The conscious decision not to convert the land to another use is enough evidence of management to meet the statutory intent, provided there is a significant amount of merchantable or potentially merchantable trees on the property . . . For farm land, no evidence of farm use during the five year statutory window would indicate the land was not managed for farm use. (Board of County Commissioners Direction Regarding the Interpretation and Administration of Marginal Land, Supplement to Marginal Lands Information Sheet, 1997)

The Income Test has two parts: a farm income requirement and a forest income requirement. The applicant must demonstrate that the subject property was not managed as part of a farm operation or as part of a forest operation in order to satisfy the Income Tests.

a. Farm Income standard

With regard to the Farm Income standard, the applicant must demonstrate that the subject property was not managed as part of a farm operation that produced on average $20,000 or more in annual gross income between 1978 and 1983. The Applicant provided a letter from Richard Walker, who lived on a neighboring property from the early 1970s until 2004. Mr. Walker noted that the only agricultural use he was aware of on the subject property was a very old apple orchard, of which only several trees remain on the property. Mr. Walker testified that the subject property was not actively managed for farm use during the five years preceding January 1, 1983, as required by the statute.

During the open record period, opponents submitted evidence that the property was, in fact, actively farmed during those years. The evidence included aerial photos from 1979 and 1982, as well as a 1979 permit for a new barn, and an approval in 1987 for a farm help dwelling. The farm help dwelling was approved four years after the statutory time period (1978-1983). Accordingly, its approval would generally be irrelevant to the determination of compliance with the Farm Income requirement. However, opponents argue that the aerial photos and the 1979 barn permit suggest that the agricultural uses must have existed during the statutory time period. Mr. Walker subsequently submitted another letter re-iterating that no commercial farm use occurred on the property during the statutory time period.

At the time the farm help dwelling was approved (1987), the Lane Code did not require a demonstration of any particular minimum income from the farm use. Lane Code 16.211(4) required the applicant to demonstrate that “generally accepted agricultural practices regularly occur over 50% of the property.” Lane Code also required a demonstration that the second dwelling was “necessary” for the continued operation of the farm. LC 16.211(2)(i)(iv)(aa).
While the approval of the farm help dwelling could be read to contradict Mr. Walker’s testimony that no farm use occurred on the property during the relevant time periods, it does not demonstrate that any farm uses that occurred on the property produced $20,000 or more in annual gross income. In Mr. Walker’s second letter, he explained that the Arnolds, the previous owners of the subject property, kept several show horses and that, during the statutory time period, there was no farm use such as cattle or crops on the property. In fact, the record is devoid of any evidence that farm use on the property, if any, produced $20,000 or more in annual gross income during the time period between 1978 and 1983.

Accordingly, the subject property was not managed as part of a farm operation that produced $20,000 or more in annual gross income during the five years preceding January 1, 1983, as required by the statute.

b. Forest Income standard

The forest income test requires that during the same time period, the proposed marginal land was not capable, by itself or in conjunction with other land, of generating over $10,000 gross annual income from timber revenue using timber proceeds at that time. Mr. Setchko concludes that at best, the subject parcel was capable of generating $2,639 in annual gross timber revenue during the period of 1978 and 1983. This is far less than the $10,000 threshold set by ORS 197.247(1)(a). Opponents did not challenge this analysis. Based on this information, the subject property complies with ORS 197.247(1)(a).

2. Productivity Test

In addition to the Income Tests above, the land must meet one of the following tests:

(A) At least fifty 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. [Lands within an adopted Urban Growth Boundary are not included in this calculation. Those lots or parcels which are adjacent and of common ownership are to be considered one lot or parcel (lots or parcels separated by a public road are not considered adjacent).]

(B) The proposed marginal land is located within an area of not less than 240 acres of which at least 60 percent [by area] is composed of lots or parcels that are 20 acres or less in size on July 1, 1983. [Lands within an adopted Urban Growth Boundary and/or lands within an area to which an exception has been adopted to Goal 3 or 4 (e.g., a developed and committed area), by the County are not to be included in the above calculation. Parcel ownership provisions as stated in “a” above also apply to this test.]
(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 Conservation Service on October 15, 1983, and is not capable of producing 85 cubic feet of merchantable timber per acre per year in those counties west of the summit of the Cascade Range.

In his original application, the applicant asserted that all three of these tests were satisfied. However, he only provided evidence regarding subsection (C). During the open record period, the applicant submitted evidence that appears to be directed only towards subsection (A).

The applicant and opponents read the language of subsection (A) differently. The opponent asserts that subsection (A) includes two separate components. They assert that the test requires an applicant to demonstrate two things: one, that at least 50% of the proposed marginal land consists of lots or parcels 20 acres or less in size on July 1, 1983; and two, that at least 50% of the lots or parcels that are at least partially located within ¼ mile of the perimeter of the proposed marginal land consist of lots or parcels 20 acres or less in size on July 1, 1983.

While the language of ORS 197.247(1)(b)(A) is not extremely clear, the County has interpreted it to include only one test. See Training for Lane County Planning Commission, March 6, 2012, page 7. This parcelization test requires the applicant to create a study area that includes all of the land within ¼ mile of the perimeter of the subject property. The total area of all of the lots or parcels falling all or partially within the study area must be considered along with the subject property. The total area of all of the lots and parcels, including the subject property, that are 20 acres or less, must be equal to or greater than one half of the total area of the study area.

The applicant’s evidence includes a map showing the study area within ¼ mile of the subject property, a list of properties smaller than 20 acres that fall within that study area, and property description cards for those properties. It also contains a one-page explanation of the evidence. In summary, applicant created a study area that included land ¼ from the perimeter of the subject property. He then calculated the square footage of that study area, which came to 16,229,676 square feet. ¹ One acre is equivalent to 43,560 square feet; therefore, the study area is approximately 388 acres. The applicant calculated the area taken up by lots that were less than 20 acres in 1983 at 285.67 acres, which is more than 50% of 388 acres.

Opponents challenge the applicant’s calculation in several ways. First, they allege that the applicant failed to provide the total number of lots and parcels for determining the 50% threshold. The Board does not believe that the number of lots and parcels is relevant. The test requires a determination of the entire area in the study area and the entire area of the lots and parcels that are smaller than 20 acres. The number of lots and parcels is irrelevant to that determination.

Opponents next allege that the lots and parcels to be counted must be legal lots and parcels. They

¹ Staff calculations put that number at 16,921,905 square feet. However, that discrepancy is immaterial to the ultimate conclusion.
also allege that the definition of “lots” and “parcels” to be used is the definition of those terms that are found in ORS 92.010. Quite recently, LUBA determined that the parcelization test in ORS 197.247(1)(b)(B) requires an analysis of the legal lot status of lots and parcels found to be less than 20 acres in size. LandWatch Lane County, ___ Or LUBA ___, LUBA No. 2016-115 (April 17, 2017). However, it appears that the parties in that appeal did not contest that the “lots” or “parcels” had to be lawfully created. The Board questions whether that holding was a point that was conceded by the parties and therefore merely an assumed legal conclusion, and if so, whether that assumption was correct. The LUBA decision cites to ORS 197.247(3)(b) as the source for that requirement. However, as explained below, the direction in subsection (3)(b) of the marginal lands statute only provide the definition of “lots” and “parcels” for purposes of subsection (2)(b).

ORS 92.010, as it is exists currently and as it existed in 1983, defined “lots” as units of land created by subdivision and “parcels” as units of land created by partition. ORS Chapter 197 did not include those definitions of lots and parcels, and did not incorporate the definitions from ORS Chapter 92, as was done in ORS Chapter 215. See ORS 215.010(1)(1983) (“The terms defined in ORS 92.010 shall have the meanings given therein.”). Accordingly, ORS Chapter 197(1983) did not provide a definition of “lots” or “parcels.” The marginal lands statute, ORS 197.247(1983) did define the terms, but only for a very limited purpose. ORS 197.247(3) provides, in relevant part: “For the purposes of paragraph (b) of subsection (2) of this section: * * * (b) ‘Lot’ and ‘parcel’ have the meanings given those terms in ORS 92.010.” ORS 197.247(2)(b) provides the circumstances where one lot or parcel exists for purposes of the 50% test in ORS 197.247(1)(b)(A). Because the legislature carefully determined the ORS 92.010 definition of “lots and “parcels” applied to subsection (2)(b), but did not apply in general to the 50% in subsection (1)(b)(A) (or the entire statute), it is clear that those definitions did not apply to the 50% test. Rather, the terms “lot” and “parcel,” for purposes of the 50% test, are used more generically, as they likely were intended to be used in 1983. See also Maxwell v. Lane County, 178 Or App 210, 35 P3d 1128 (2001), adh’d to as modified on recon, 179 Or App 409, 40 P3d 532 (2002) (local government only required to determine whether lots or parcels were created legally if an approval criterion either expressly or implicitly requires it). In this case, it would appear that there is no approval criterion that requires that the lawful status of each lot or parcel be determined.

The Board, however, is bound by decisions of LUBA, and it is likely that its ruling on this issue in LandWatch, cited above, is controlling law. Accordingly, it is assumed that the “lots” and “parcels” counted for the 50% must be lawfully created. That said, as was the case in LandWatch, opponents have not developed an argument or identified a sufficient number of lot or parcels that it alleges were not lawfully created that would suggest that the 50% is not satisfied. A large number of the lots and parcels identified by the applicant were lots created in phases of a subdivision approved in 1964 and 1966. Many others were created in the 1960s and early 1970s, before regulations governing smaller land divisions were in effect. The Board concludes that the preponderance of the evidence supports applicant’s conclusion that the 50% test is satisfied.

Opponents also challenge the applicant’s calculation because it subtracts the area of roads from the total area of the template. While the statute does not mention anything about subtracting the
area of roads, neither does it preclude such a calculation. The statute requires a comparison between the area of those lots and parcels that were less than 20 acres in 1983 and the area of the lots and parcels within a study area within one quarter mile of the perimeter of the marginal lands being studied. The area of the lots and parcels would necessarily not include the area of roads. Accordingly, the language of the statute supports applicant’s calculation in this respect.2

Finally, opponents allege that applicant must study each and every lot and parcel and determine whether adjacent properties were held in the same ownership in 1983. See ORS 197.247((2)(b). Many of the lots are parts of subdivisions, and the property description cards included with applicant’s evidence demonstrates that most of the properties were created by land division and then likely sold to different owners for single family dwellings. The map applicant included shows where single family dwellings exist on those properties. The Board concludes that the applicant, in this circumstance, is not required to locate the ownership of each and every parcel to demonstrate that it is accurately counted as one lot or parcel. The applicant has provided evidence that demonstrates compliance with the marginal lands criteria. The opponents must do more than argue that some of those lots or parcels were under the same ownership. They must present evidence that some of the lots or parcels that applicant has counted are overcounted because they are part of another lot or parcel, and they must demonstrate that the undercounting results in noncompliance with the marginal lands criteria. This they have not done.

Opponents do not challenge applicant’s calculation, except as set forth above. The Board concludes that applicant has satisfied his burden of demonstrating compliance with ORS 197.247(1)(b)(A).

**C. Statewide Planning Goals**

Amendments to local plans and code must comply with the Statewide Planning Goals. ORS 197.175(2)(A). This Part addresses each relevant goal and explains why the proposal complies. This application requires no goal exceptions.

**Goal 1: Citizen Involvement**

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

Goal 1 is a process goal. This proposal complies with Goal 1 because it will be processed as a quasi-judicial application through the County’s acknowledged public process for individual plan and zone changes. This process includes public hearings before the Planning Commission and the Board of County Commissioners. Notice of the request was sent to the Oregon Department of Land Conservation and Development Department (DLCD) on March 13, 2018. A legal advertisement was published in the Register Guard newspaper, notices were mailed to adjacent property owners and agencies, and notice was posted on the subject property announcing the

---

2 Opponents also claim that three of the lots and parcels included in applicant’s analysis are duplicates. However, opponents do not allege that the removal of those three double-counted lots would change the result of the analysis.
upcoming Lane County Planning Commission public hearing. A public hearing was conducted on April 17, 2018 and the hearing was closed. The written record was held open until May 15, 2018, with an opportunity for written rebuttal by May 22nd and final applicant’s rebuttal by May 29th. On June 19, 2018, the Planning Commission deliberated on the matter and unanimously voted to recommend approval by the Board of County Commissioners. Timely notice in accordance with Lane Code Chapter 14 will be provided prior to the Board’s second reading and public hearing. The County has a citizen involvement program, and it has been followed.

**Goal 2: Land Use Planning**

Part I of Goal 2 requires local governments to establish processes and policies for land use decisions.

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.

This application complies with Goal 2 because it is being processed under the Rural Comprehensive Plan and Lane Code and no exception to any resource goal is proposed. The application is trading one resource designation for another because the land better fits one category based on use and capability.

**Goal 3: Agricultural Lands**

To preserve and maintain agricultural lands. Agricultural lands shall be preserved and maintained for farm use, consistent with existing and future needs for agricultural products, forest and open space and with the State's agricultural land use policy expressed in ORS 215.243 and 215.700.

This goal strives to maintain and preserve agricultural lands. The subject property is planned and zoned for forest uses. It is not zoned for agricultural uses and no adjacent properties are zoned for farm use. The vast majority of the property surrounding the subject property consists of small lots zoned for residential uses. Accordingly, the proposed plan amendment and zone change will not affect the county’s ability to preserve and maintain agricultural lands, and complies with Goal 3.

**Goal 4: Forest Lands**

To conserve forest lands by maintaining the forest land base and to protect the state's forest economy by making possible economically efficient forest practices that assure the continuous growing and harvesting of forest tree species as the leading use on forest land consistent with sound management of soil, air, water, and fish and...
wildlife resources and to provide for recreational opportunities and agriculture.

The Marginal Land designation is a resource designation and is intended to preserve the forest economy by allowing more development on marginally productive parcels than is allowed on other forest lands designated for forest uses. So long as the property satisfies the requirements of ORS 197.247, it is appropriately zoned Marginal Lands, and complies with Goal 4.

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

To conserve open space and protect natural and scenic resources.

1. What Goal 5 requires.

Goal 5 requires the County to inventory the locations, quality, and quantity of certain natural resources. Where no conflicting uses are identified, the inventoried resources shall be preserved. Where conflicting uses are identified, the economic, social, environmental, and energy consequences of the conflicting uses shall be determined and programs developed to achieve the goal.

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

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

“(3) Local governments are not required to apply Goal 5 in consideration of a PAPA unless the PAPA affects a Goal 5 resource. For purposes of this section, a PAPA would affect a Goal 5 resource only if:

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

(b) The PAPA allows new uses that could be conflicting uses with a particular significant Goal 5 resource site on an acknowledged resource list; or
(c) The PAPA amends an acknowledged UGB and factual information is submitted demonstrating that a resource site, or the impact areas of such a site, is included in the amended UGB area.

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

The italicized language quoted above is relevant to this application. The provisions above reflect case law stating that where a county is amending acknowledged plan and zoning designations, the county must address Goal 5 if any of the area proposed for change encompasses lands included on the county’s inventory of Goal 5 resources. The County need not go through the Goal 5 conflict resolution process for alleged Goal 5 resources that are not on the acknowledged Goal 5 inventory.

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

2. Inventoried Goal 5 Resources on the Subject Property.

The paragraphs below address the acknowledged Goal 5 resource inventories.

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

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

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

**Water Resources:** The Water Resources Working Paper (1982) inventories the following water resources which include or potentially include the subject property: Watersheds and Groundwater.

**Riparian Resources:** The Flora & Fauna Working Paper (1982) and Addendum (1983) inventories Riparian resources. The quantity of riparian areas is inventoried to include all land within 100 feet of the banks of a Class 1 stream. Addendum at 7. There are no Class I streams on the subject property or within 100 feet.

**Wetland Resources:** As stated in the Flora and Fauna Working Paper Addendum at 6,
there are five major wetland areas of sufficient size to warrant County identification including Fern Ridge, the Old Long Tom Channel below Fern Ridge Dam, the North Fork Siuslaw Freshwater Marsh, Maple Creek marsh, and Amazon Canal at its confluence with the waters of Fern Ridge Reservoir. The National Wetlands Inventory (NWI) mapping does not indicate any wetlands on the property.

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

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

**Big Game Range:** The plan classifies the entire county into three categories of Big Game Range: Major, Peripheral, and Impacted. See Flora & Fauna Working Paper at 23-25, Addendum at 14. The subject property is within an area designated as Peripheral Big Game. The document indicates that the County and the Oregon Department of Fish & Wildlife should collaborate on conflict resolution between development and Big Game Habitat areas.

### 3. ESEE Decision Process for Inventoried Goal 5 Resources

The basic requirements for conducting the conflicts analysis and developing a program for inventoried and acknowledged resources is spelled out in OAR 660-023-0040. The introductory provisions in OAR 660-023-0040(1) explain that there are four steps in the ESEE process, that the county has discretion in how it proceeds through the process so long as it completes each step, and that the analysis need not be lengthy or complex. The result should create a clear understanding of the conflicts and the consequences. The four steps in the ESEE process are:

(a) Identify conflicting uses;

(b) Determine the impact area;

(c) Analyze the ESEE consequences; and

(d) Develop a program to achieve Goal 5

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

### 4. ESEE Analysis for Big Game Range

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

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

(a) Identify Conflicting Uses

The approach to identifying conflicting uses is stated in OAR 660-023-0040(2)\(^3\). The existing and potential conflicting uses with Big Game Range must be determined. This requires looking at the uses allowed, outright or conditionally, by the proposed ML zoning that could occur or are likely to be developed.

Agricultural and forest uses are allowed in both the existing and proposed zones. The ML zone will allow further division of the subject property (ML allows 10 and 20 acre parcels pursuant to LC 16.214(6)(a) and (b), while the existing F-2 zoning imposes an 80 acre minimum for new lots or parcels pursuant to LC 16.211(10)(a)). An additional dwelling could potentially be allowed on each of the newly created parcels. LC 16.214(2)(b). The plan identifies a conflict with Peripheral Big Game where residential densities are allowed at higher than one unit per forty acres.

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

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

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

(b) Determine the Impact Area

The approach to determining the impact area is stated in OAR 660-023-0040(3). The applicant determined that the subject property was the study area. Opponents challenge the applicant’s determination that the “study area” only includes the subject property. The impact area is to include only “area in which allowed uses could adversely affect the identified resource.” Opponents allege that big game migrate and rely on corridors to move about. While opponents are correct that big game generally travel, the subject property is surrounded by developed and committed areas that are densely developed with residences. This adjacent and nearby development degrades the value of the habitat on the subject property to such an extent that it can be concluded that the allowed uses would not further adversely affect big game habitat off of the property. Further, opponents have not identified a specific big game corridor that exists in the vicinity or otherwise indicated why a larger impact area would be necessary or would require a different result.

(c) Analyze the ESEE Consequences

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

---

4 OAR 660-023-0040(3) states:

Determine the impact area. Local governments shall determine an impact area for each significant resource site. The impact area shall be drawn to include only the area in which allowed uses could adversely affect the identified resource. The impact area defines the geographic limits within which to conduct an ESEE analysis for the identified significant resource site.

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

Analyze the ESEE consequences. Local governments shall analyze the ESEE consequences that could result from decisions to allow, limit, or prohibit a conflicting use. The analysis may address each of the identified conflicting uses, or it may address a group of similar conflicting uses. A local government may conduct a single analysis for two or more resource sites that are within the same area or that are similarly situated and subject to the same zoning. The local government may establish a matrix of commonly occurring conflicting uses and apply the matrix to particular resource sites in order to facilitate the analysis. A local government may conduct a single analysis for a site containing more than one significant Goal 5 resource. The ESEE analysis must consider any applicable statewide goal or acknowledged plan requirements, including the requirements of Goal 5. The analyses of the ESEE consequences shall be adopted either as part of the plan or as a land use regulation.
limiting, or prohibiting the potentially conflicting uses listed above.

Applicant submitted a detailed ESEE analysis on big game habitat. His analysis was limited to big game species that occur in western Oregon, i.e., deer, elk, cougar, and black bear. A central theme of applicant’s ESEE analysis is that residential density and habitat reduction is not “the most important” factor in influencing big game populations. He asserts that big game populations have grown concomitantly with the increase in human population in Oregon. The applicant also relies on the Wisdom Model analysis to support his conclusion that the ESEE analysis weighs in favor of fully allowing the conflicting residential uses. The Wisdom model provides that where road densities reach 6 miles of roadway per square mile, the habitat has essentially no value for elk. He asserts that the road density in the area surrounding the subject property is approximately 4.3 miles of roadway per square mile, concluding that the area must already be extremely marginal for elk habitat.

Opponents challenge the ESEE analysis for three reasons. First, they assert the analysis is flawed because it relies on statewide growth in Roosevelt elk, black tailed deer, black bear, and cougar to justify its conclusions regarding consequences to the local populations. Second, opponents contend the ESEE analysis relies on a comparison of human population growth to animal population growth and that the Wisdom Model (analyzing elk habitat) discussion in the ESEE analysis, analyzing the linear miles of roadway per square mile, actually supports protection of the habitat because the distance of roadway is actually less than the threshold for determining marginal elk habitat. Finally, Opponents take issue with what they view as applicant’s position that the proposed plan and zone change will not impact the big game habitat because the animal populations are already so healthy.

Opponents submitted a letter from Brian Wolfer, District Wildlife Biologist with ODFW. Mr. Wolfer points out the need to acknowledge the cumulative impacts that development has on big game habitat. He points out the error in the applicant’s attempt to minimize the importance of the reduction in the quantity of habitat on the impacts to big game populations. Finally, he takes issue with the applicant’s density analysis in that it includes properties inside the Eugene Urban Growth Boundary and some even within the city limits. While Mr. Wolfer challenges certain aspects of the applicant’s calculation of dwelling density, he does not point to any statute, rule, or regulation that precludes the applicant’s analysis with regard to Goal 5. The Board does agree with the opponents and Mr. Wolfer, however, that the applicant’s assertions that reduction in habitat does not impact big game populations and that the increase in big game populations.

That said, the Board agrees with applicant’s general conclusion that the existing parcelization in the area renders the habitat for big game already more impacted than other similar, less densely populated rural areas. In this case, it is true that much of the development pattern in the area surrounding the subject property is consistent with the proposed density.6 There are subdivisions

---

6 If this proposed amendment(zone change is approved, the property will likely be dividable into one 20-acre parcel, and three approximately 10-acre parcels (or at most three additional dwellings). See LC 16.214(6)(a) and (b))(new lots or parcels must be 20 acres or more where those lots and parcels are adjacent to resource zoned land and the adjacent land does not itself qualify as marginal land; otherwise, lots and parcels must be at least 10 acres).
to the south, west, and northwest of the property with smaller lots in the 1- to 5-acre range, and the proposed density will be less intense than what already exists in the area.

Opponents challenge several other aspects of the applicant’s ESEE analysis. They assert that no professional expert completed the ESEE analysis. However, they do not allege that an expert is required, and the Board does not believe that is required. The measure is preponderance of the evidence. Opponents next assert that the energy component of the analysis is without merit because it does not recognize the potential increase in traffic, requiring commutes into the city from a distant rural location. The Board concludes that a potential increase of three dwelling in this location that already consists of very dense rural residential development is so insignificant as to be negligible in this analysis.

Opponents assert the social consequences analysis must consider the loss of open space and more traffic accidents. Transportation staff concluded a traffic impact analysis was not required and that the proposal would not significantly impact a transportation facility. The loss of open space, again, in an area that is already relatively densely developed does not outweigh the social consequences weighing in favor of allowing dwellings in this location. With regard to economic consequences, opponents point to the need for urban levels of development. The proposed density of development is not an urban level density. The infrastructure that will be required is either already in place, or is minimal compared to the infrastructure that is already in place for the existing development.

The Board also adopts the portion of applicant’s ESEE analysis that weighs the relative consequences of allowing the conflicting use (i.e., residential dwellings). See Section 2(c)(iii), page 7-13 of the applicant’s ESEE analysis contained in the record. The Board concludes that the energy, social, environmental and economic consequences of allowing the conflicting uses are minimal and that the ESEE analysis supports allowing the conflicting use.

While the ODFW “recommendation” is that dwellings be limited in the Peripheral Big Game designation to one per 40 acres, this guidance is merely a recommendation. ODFW itself acknowledges that fact. “[O]fficials of the ODFW stress the fact that a mere ‘numbers game’ is not the optimum manner to deal with conflicts to the Big Game Range resource. While overall densities are important indicators of conflict, the manner in which these densities occur can either create worse conflict or reduce that which already exists. . . . As a general rule, . . . the 40-acre zone will satisfy the requirements of Peripheral Range.” Addendum to Flora and Fauna Working Paper at p 14.

The Board concludes that Goal 5 is complied with.

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

The proposed program to achieve the goal is to allow the conflicting residential uses because the property has the same value for Big Game after the rezone as it did before. The new zoning and permitted residential uses do not change the character or substantially degrade the range, which is already significantly impacted by the existing development.
5. ESEE Analysis for Groundwater Resources

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

While dwellings are allowed in the F-2 zone, they are not permitted outright, as they are in the ML zone. As such, the proposed plan and zone change could be said to require an analysis of groundwater resources.

(a) Identify Conflicting Uses

The county plan identifies two groundwater resource conflicts – development in quantity limited aquifers and in areas of polluted groundwater. Id. at 11. The county plan conducts a full ESEE analysis for development in water quantity and water quality limited aquifers, and it adopts a program that resolves the conflicts and achieves the goal.

With respect to quantity, the plan resolves that residential development and other uses requiring groundwater should be allowed if a showing is made that water will be available for a foreseeable period in the future. The program calls for strengthening the standards in the subdivision ordinance and for formally designating groundwater quantity limited areas. The land division provisions in the zoning code have been amended accordingly. Id. at 12-13. Standards have been adopted in the code for demonstrating adequate quantities of water in connection with rezoning that would create the potential for land division. See LC 13.050(13)(a)-(d). Certain sections in the county have been identified in the Lane Manual as having limited groundwater quantity.

LC 13.050(13)(c)(i) requires an aquifer test prior to approval of a proposed partition or subdivision where the subject property falls within a water quantity limited area, as determined by Board order. Board Order No. 83-12-6-2 (December 6, 1983). Lane Manual (LM) 13.010(2) provides those areas that the Board has determined are water quantity limited. Subsection (2)(b)(i) contains a list of areas that are designated water quantity limited, but all of those areas are developed and committed (D&C) exception lands. The subject property is not in a D&C area, and is therefore not designated water quantity limited. As a result, the aquifer study requirement of LC 13.050(13)(c)(i) does not apply. And the approval of additional residential dwellings on the subject property is not a conflict under the Goal 5 analysis.

(b) Compliance with Acknowledged Plan and Implementing Regulations

Under the Goal 5 Rule, when no conflicting uses are identified with a significant resource site, compliance with the acknowledged policies and land use regulations is sufficient. “If no uses conflict with a significant resource site, acknowledged policies and land use regulations may be considered
sufficient to protect the resource site.” OAR 660-023-0040(2)(a). Therefore, no further analysis is needed.

**Goal 6: Air, Water and Land Resources Quality**

To maintain and improve the quality of the air, water and land resources of the State.

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

Goal 6 protects the quality of land, air and water resources. The focus is on discharges from future development in combination with discharges from existing development. State and federal environmental standards are the benchmark for protection. Where there are state or federal standards for quality in air sheds or river basins, then the carrying capacity, nondegradation, and continued availability of the resources are standards.

The subject property is developed, and the additional of at most three dwellings will have no measurable impacts to land, water or air quality.

**Goal 7: Areas Subject to Natural Disasters and Hazards.**

To protect life and property from natural disasters and hazards. Developments subject to damage or that could result in loss of life shall not be planned nor located in known areas of natural disasters and hazards without appropriate safeguards. Plans shall be based on an inventory of known areas of natural disaster and hazards.

The phrase “areas of natural disasters and hazards” means “areas that are subject to natural events that are known to result in death or endanger the works of man, such as stream flooding, ocean flooding, ground water, erosion and deposition, landslides, earthquakes, weak foundation soils and other hazards unique to local or regional areas.” There are no such areas known on 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.
The overriding purpose of Goal 8 is to address all recreational needs, but its primary focus is on siting and developing destination resorts, defined in Goal 8 as "self-contained development[s] providing visitor-oriented accommodations and developed recreational facilities in a setting with high natural amenities."

Goal 8 is not directly applicable to this proposal.

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.

Goal 9 is focused on commercial and industrial development. The Goal 9 Rule is explicitly limited to areas within urban growth boundaries. This goal is not directly applicable to this proposal.

Goal 10: Housing

To provide for the housing needs of citizens of the State.

Buildable lands for residential use shall be inventoried and plans shall encourage the availability of adequate numbers of needed housing units at price ranges and rent levels which are commensurate with the financial capabilities of Oregon households and allow for flexibility of housing location, type and density.

Goal 10, like its implementing rule, is geared primarily to housing issues inside urban growth boundaries. The goal’s definition of “buildable lands,” for example, is limited to lands in urban and urbanizable areas. This site is outside any UGB. This goal is not applicable to this proposal.

Goal 11: Public Facilities and Services

To plan and develop a timely, orderly and efficient arrangement of public facilities and services to serve as a framework for urban and rural development.

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

“Public facilities and services” is defined in the Statewide Planning Goals to include: "[p]rojects, activities and facilities which the planning agency determines to be necessary for the public health, safety and welfare." The Goal 11 Rule defines a “public facility.” “A public facility includes water, sewer, and transportation facilities, but does not include buildings, structures or equipment incidental to the direct operation of those facilities.” OAR 660-011-0005(5).

Goal 11 addresses facilities and services in urban and rural areas. The subject property is “resource” land and will remain rural after this approval. The subject proposal does not provide for any rural or urban development. Therefore, Goal 11 does not apply.

Resource designations have no required minimum level of services. However, Figure 6 lists the services now available to the subject property.

**Figure 6--Rural Public Facilities, Existing or Proposed**

<table>
<thead>
<tr>
<th>Service</th>
<th>Provider</th>
</tr>
</thead>
<tbody>
<tr>
<td>Fire</td>
<td>Lane County Fire Protection District #1</td>
</tr>
<tr>
<td>Police</td>
<td>Lane County Sheriff and State Police</td>
</tr>
<tr>
<td>Schools</td>
<td>Eugene School District 4J</td>
</tr>
<tr>
<td>Access</td>
<td>Pine Grove Road</td>
</tr>
<tr>
<td>Electric</td>
<td>Lane Electric</td>
</tr>
<tr>
<td>Solid Waste</td>
<td>Private</td>
</tr>
<tr>
<td>Sewer</td>
<td>Individual On-Site Stems</td>
</tr>
<tr>
<td>Water</td>
<td>Well</td>
</tr>
</tbody>
</table>

**Goal 12: Transportation**

To provide and encourage a safe, convenient and economic transportation system.

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

Goal 12 is implemented through the Goal 12 Rule (OAR 660-012) adopted in 1991. The Rule contains a section that specifically addresses proposals such as this one – amendments to acknowledged comprehensive plans and implementing regulations. OAR 660-012-0060(1) provides that any such amendments that “significantly affect a transportation facility shall assure that allowed land uses are consistent with the identified function, capacity, and level of service of the facility.”

The rule spells out clearly what constitutes a “significant affect.” OAR 660-012-0060(2) states:

A plan or land use regulation amendment significantly affects a transportation facility if it:

(a) Changes the functional classification of an existing or planned transportation facility;

(b) Changes standards implementing a functional classification system;

(c) Allows types or levels of land uses which would result in levels of travel or access which are inconsistent with the functional classification of a transportation facility; or

(d) Would reduce the level of service of the facility below the minimum acceptable level identified in the TSP.

Lane County Transportation Planning staff reviewed the proposal and provided comment. The comments do not state a need for road improvements, a traffic impact analysis or other ‘triggers’ that would justify major changes to the existing transportation infrastructure and access to the subject property. Any possible increase in traffic from a maximum of three additional dwellings would not significantly affect a transportation facility. The opponents do not challenge this conclusion. Accordingly, Goal 12 is not implicated.

Goal 13: Energy Conservation

To conserve energy.

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

Goal 13 is primarily directed towards the development of local government land management
implementation measures that maximize energy conservation.\textsuperscript{7} It is not directly applicable to this application for a site-specific plan and zone change.

Goal 14: Urbanization

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

The subject proposal keeps the parcel in Resource designation. There, there is no transition. This goal does not apply.

Goal 15: Willamette River Greenway
Goal 16: Estuarine Resources
Goal 17: Coastal Shorelands
Goal 18: Beaches and Dunes
Goal 19: Ocean Resources

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

D. Rural Comprehensive Plan Policies

Any plan and zone change must comply with the relevant Rural Comprehensive Plan Policies. This requirement is based in statutes (ORS 197.175(2)), the Rural Comprehensive Plan Policies themselves (see, e.g. Rural Plan Policies at page 6), and the Lane Code (see, e.g., LC 16.400(6)(h)). This section, therefore, addresses the apparently relevant elements of the Rural Plan Policies. It is organized by Goal. Where possible to avoid duplicative discussion, reference is made to the discussion under the Statewide Planning Goals.

Goal Four: Forest Lands

Policy 1:

Conserve forest lands by maintaining the forest land base and protect the state’s forest economy by making possible economically efficient forest practices that assure the continuous growing and harvesting of forest tree species as the leading use on forest land consistent with sound management of soil, air, water, and fish and wildlife resources and to provide for recreational opportunities and agriculture.

Forest land shall include lands which are suitable for commercial forest uses including adjacent or nearby lands which are necessary to permit forest operations or practices and other forested lands that maintain soil, air, water, and fish and

wildlife resources.

The Marginal Lands designation requested is consistent with this policy and reflects a determination that marginally productive forest land is more likely to be managed for forest use when smaller lot sizes are permitted. The Marginal Lands designation is still a resource designation and zone and supports farm and forest uses.

Policy 3:

Forest lands that meet the requirements of ORS 197.247 (1991 Edition), may be designated as Marginal lands and such designations shall also be made in accordance with other plan policies. Uses and land divisions allowed on Marginal Lands shall be those allowed by ORS 197247 (1991 Edition).

The applicant’s proposal is consistent with ORS 197.247, as discussed elsewhere in this decision.

Goal Five: Opens Spaces, Scenic and Historic Areas and Natural Resources

Flora and Fauna Policy 1:

Implement construction development and other land use activities which significantly alter natural systems only after evaluating the effects on wildlife habitats and other areas.

See Findings under Statewide Planning Goal Five.

Flora and Fauna Policy 9:

Residential building permits issued within Major or Peripheral Big Game Range, as identified in the 1982 Lane County Working Paper on Flora and Fauna, and as revised and updated in 1983, shall include an indication of that Range and a note that compatibility problems, such as damage to vegetation, may occur.

Lane County staff notifies applicants of building permits within the Peripheral Big Game Range of potential compatibility problems, such as damage to vegetation, at time of permit submittal.

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.
In previous Marginal Lands applications, the Board found that the County and ODFW implemented Policy 11 through application of County land use regulations, siting requirements, and other elements of the County’s rural resource zoning program. That is, residential densities that will be allowed by the Marginal Lands designation (one dwelling per 40 acres in this instance) will not exceed any limits recommended by ODFW.

However, beginning with the Suess Marginal Lands application in 2013 (Planning File No. 509-PA11-05502), an ESEE analysis was completed, and is now considered a normal requirement for Marginal Lands application in Lane County. An ESEE analysis was completed for this application, and the Goal 5 analysis was completed, as required by this Policy 11.

**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 applicant has conducted an ESEE analysis for this application. See Findings under Statewide Planning Goal 5.

**Water Resources Policy 3:**

Adequacy of water resources, particularly those relying on groundwater sources, shall be a major consideration when reviewing major land use changes. For the purpose of applying this policy, major land use change shall be any application reviewed by the hearings official or planning commission.

According to the definition supplied in this Policy 3, this application qualifies as a “major land use change.” Accordingly, adequacy of water resources is a major consideration.

As mentioned elsewhere in this decision, the likely result of this amendment will be the eventual division of the subject property into a total of four lots: one 20-acre parcel and three approximately 10-acre parcels.

The public testimony and the supplemental information contain concerns about water quantity availability, including personal stories of wells going dry or very limited water supply. The applicant supplied a report prepared by a registered professional geologist who conducted an aquifer analysis. The analysis concludes that the aquifer that serves the subject property can accommodate four dwellings. No additional professional reports have been entered into the record by the opponents or to supplement the record by the applicant.

The neighboring Rural Residential zoned properties are deemed water quantity limited areas. These areas are designated in Lane Manual and only apply to specific developed and committed
The standards that apply to water quantity limited areas do not apply to resource zoned land, marginal land, or even rural residential non-resource zoned land (i.e., property zoned rural residential that is not part of developed and committed exception area). The applicant has produced evidence of adequate water supply for the proposal to add the potential for three new dwellings on the subject property. If the subject property were in a water quantity limited area, at time of partition the applicant would be required to complete a full aquifer study, including drawn down and recovery tests (Lane Code 13.050(13)(c)(i)). The applicant’s aquifer analysis does not comply fully with Lane Code 13.050(13)(c)(i) requirements, but it is not required to because the subject property is not in a water quantity limited area. The Board concludes that the evidence satisfies the level of detail required at this stage.

E. **Lane Code Criteria for Plan Changes**

LC 16.400(6)(h) sets out the criteria for amending the county plan designation. Each of the criteria is addressed here. Where a criterion incorporates a Statewide Planning Goal, LCDC Rule, or Rural Plan Policy, reference is made the relevant part of the narrative above so as to avoid repetition.

**LC 16.400(6)(h): Method of Plan Adoption and Amendment.**

(iii) The Board may amend or supplement the Rural Comprehensive Plan upon making the following findings’’

(aa) For Major and Minor Amendments as defined in LC 16.400(8)(a) below, the Plan component or amendment meets all the applicable requirements of local and state law, including Statewide Planning Goals and Oregon Administrative Rules.

This criterion makes general reference to other sources of standards that apply to plan changes. Those other standards are addressed elsewhere in this narrative.

(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

(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

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

(v-v) otherwise deemed by the Board, for reasons briefly set forth in its decision, to be desirable, appropriate or proper.
The proposal identifies and corrects an error in the Rural Comprehensive Plan: the land is currently designated as resource land (F-2); this designation is inconsistent with site capabilities and limitations. The subject property satisfies the definition of Marginal Lands and, as such, the F-2 zoning district is applied in error.

Item (iv) allows a plan amendment that is necessary to implement an adopted plan policy or element. The marginal lands statute and RCP Goal 4, Policy 3 anticipate the redesignation of land zoned F-2 where such land is only marginally productive. Further, the description of the Marginal Lands plan designation, under RCP Goal 11 states: “Land that satisfy the requirements of ORS 197.247 may be designated Marginal Lands in accordance with other Plan policies.”

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

Compliance with individual policies in the Rural Plan Policies is discussed thoroughly above.

(dd) For Minor Amendments as defined in LC 16.400(8)(a) below, the Plan amendment or component is compatible with the existing structure of the Rural Comprehensive Plan, and is consistent with the unamended portions or elements of the Plan.

The existing structure of the plan anticipates Resource plan designations. As discussed above, this designation is also consistent with relevant policies in the Rural Comprehensive Plan Policies.


(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 the Statewide Planning Goals, justifies the exception solely on the basis that the resource land is already built upon or is irrevocably committed to other uses not allowed by an applicable goal.

This is a minor amendment to the plan which requests a change to the Plan Diagram for the subject property – from Forest to Marginal Land. No goal exceptions are requested.

(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.

This description has been provided throughout this supporting statement.

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

The required analysis is provided above.

(iii) An assessment of the probable impacts of implementing the proposed amendment, including the following:

(aa) Evaluation of land use and patterns of the area of the amendment;

See detailed discussion in Section II, above. To summarize, the subject property is located in a sea of Residential land.

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

The public facilities and services available or to be provided to the site are discussed in detail above. For a discussion of each facility and service, see the Goal 11 discussion above. For a further discussion of transportation facilities, see the Goal 12 discussion above. In summary, because the site is already developed with a residence, and because it is in a highly developed area, all facilities and services are available to the site.

(cc) Impact of the amendment on proximate natural resources, resource lands or resource sites including a Statewide Planning Goal 5 “ESEE” conflict analysis where applicable;

This discussion appears in detail in other parts of this statement. The proximate natural resources to consider are those that are identified as Goal 5 resources in the comprehensive plan. The impact on these resources is discussed as part of the Goal 5 analysis above.

This proposal will have no adverse impact on proximate resource lands because the subject property will remain in resource designation and zoning.

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

As discussed in connection with Goal 7, the subject property neither contains nor is threatened by any natural hazards.

(gg) For a proposed amendment to a nonresource designation or a Marginal Lands designation, an analysis responding to the criteria for

This provision is not applicable.

F. Lane Code Criteria for Zone Changes

This proposal requests a change from F-2 zoning to ML zoning. LC 16.252 sets out standards for zone changes. The facts relevant to the zone change standards are largely redundant with the facts relevant to plan policies and the Statewide Planning Goals. The LC 16.252 standards are stated here and addressed, with appropriate references to other parts of this narrative.

**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 to Rural Comprehensive Plan elements and components, and Statewide Planning Goals for any portion of Lane County which has not been acknowledged by the Land Conservation and Development Commission. Any zoning or rezoning may be effected by Ordinance or Order of the Board of County Commissioners, the Planning Commission or the Hearings Official in accordance with the procedures of this section.

1. General purposes of Chapter 16:

LC 16.003 sets forth 14 broadly-worded purpose statements that include a provision to ensure that development is commensurate with the character and physical limitations of the land. LC 16.003(1). The subject property is marginally productive resource land as demonstrated by the soil types and timber productivity of the site. Rezoning from F-2 to ML implements the proposed plan amendment to the Marginal Land plan designation. The public interest is served by recognizing that the land has limited capabilities and planning and zoning it accordingly.

2. Purpose of Marginal Lands Zone:

The proposal is consistent with the purpose of the Marginal Lands zone which provides that the Marginal Lands zone is intended to make economically beneficial use of marginally productive lands and to allow people to reside in a rural environment. LC 16.214(1).

3. Rural Comprehensive Plan Criteria:

The Rural Plan Policies provide the policy basis for comprehensive plan and implementing regulations, provide direction for land use decisions, and fulfill LCDC planning requirements. Compliance with relevant Comprehensive Plan policies is addressed elsewhere in this narrative.
LC 16.004(4):

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

The request is a rezone from F-2 to ML. These zoning districts both implement resource designations. The rezone provides for potential further parcelization of as much as an additional 20-acre parcel and three 10-acre parcels, each qualifying for one single-family dwelling. The subject property is not within an area identified as a water quantity limited area. Accordingly, this approval criterion is complied with.

IV. CONCLUSION:

The subject property is rural resource land that is developed with a stick built single-family dwelling and is partially forested. The redesignating and rezoning of the subject property as Marginal Lands accurately reflects the most appropriate resource use of the site. The proposal conforms to Lane Code 16.400 and Lane Code 16.452 to allow the change in plan designation from “Forest” to “Marginal” and a change in zoning from “F-2” to “ML” for 54.04 acres of land. The Board of County Commissioners finds that the application to redesignate 54.04 acres from Forest Land to Marginal Land with a concurrent rezoning from F-2 to ML meets the applicable approval criteria and addresses with substantial evidence the statutory standards of Oregon Revised Statutes, Rural Comprehensive Plan Policies, Lane Code requirements, and Statewide Planning Goals. The Land 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-PA16-05291.