

W. 9. C.

AGENDA COVER MEMO

DATE: March 13, 2004 (Date of Memo)
March 31, 2004 (Date of First Reading)
April 14, 2004 (Date of Second Reading/Public Hearing)

TO: LANE COUNTY BOARD OF COMMISSIONERS

DEPT.: Public Works Department/Land Management Division

PRESENTED BY: Jerry Kendall/^{JK}Land Management Division

AGENDA ITEM TITLE: ORDINANCE NO. PA 1199 -- IN THE MATTER OF AMENDING THE RURAL COMPREHENSIVE PLAN TO REDESIGNATE LAND FROM "AGRICULTURAL LAND" TO "NONRESOURCE", REZONE THAT LAND FROM "E-30/EXCLUSIVE FARM USE" TO "RR-5/RURAL RESIDENTIAL"; AND ADOPTING SAVINGS AND SEVERABILITY CLAUSES (FILE PA 01-5875; Grant)

I. MOTION

1. MARCH 31, 2004: I MOVE APPROVAL OF THE FIRST READING OF ORDINANCE NO. PA 1199 AND SETTING THE SECOND READING AND PUBLIC HEARING FOR APRIL 14, 2004, AT 1:30 P.M. IN HARRIS HALL.
2. APRIL 14, 2004: ALTERNATIVE MOTIONS AFTER THE PUBLIC HEARING:
 - A. I MOVE TO TENTATIVELY APPROVE ORDINANCE NO. PA 1199 SUBJECT TO REVISED FINDINGS
 - OR**
 - B. I MOVE TO TENTATIVELY DENY THE APPLICATION IN FILE PA 01-5875 AND DIRECT STAFF TO PREPARE AN ORDER WITH APPROPRIATE FINDINGS FOR FINAL ACTION.

II. ISSUE OR PROBLEM

A privately-initiated minor amendment to the Rural Comprehensive Plan (RCP), and companion rezoning request, has been recommended for approval by the Lane County Planning Commission at a density of RR-5. This Ordinance sets the matter before the Board for adoption, modification, or denial.

III. DISCUSSION

A. Background

In June of 2001, application was made to redesignate a 30-acre parcel, at 39040 McKenzie Highway near Walterville, from "Agricultural Land" to "Nonresource" and rezone it from "E-30/Exclusive Farm Use" to "RR-5/Rural Residential". The property involved is tax lot 700 of map 17-01-28, located on the south side of the highway. Current improvements include a single family dwelling, a barn, and two outbuildings. Otherwise, the parcel is covered with a filbert orchard, the quality of which is discussed in depth in the record, and again below. Refer to page 5 of the attached findings for more background information.

On July 1, 2003, the Lane County Planning Commission held a public hearing on the proposal. The proposal was contested, mainly through written comments from DLCD, with a less detailed set of objections filed by the *Goal 1 Coalition*. In addition, LMD staff¹ recommended denial and raised questions seeking clarification of issues throughout. The record was left open for two weeks, and the Planning Commission recommended approval of the proposal by a 4-3 vote on July 15.

B. Analysis

The application is being made pursuant to Lane Code 16.400, which governs amendments to the Rural Comprehensive Plan, and LC 16.252, which governs rezoning actions. The Nonresource designation does not require adoption of a typical exception to statewide planning goals, since by its nature it obviates goal mandates.

If approved, the Nonresource plan designation is accompanied by a Rural Residential zone designation of a five or ten-acre minimum (RR-5 or RR-10). The requested RR-5 designation would result in six parcels out of the 30.19 acre parcel. The subsequent subdivision is a separate process and is not part of the present proposal.

The Staff report and other documents produced for the Planning Commission's review of this proposal are attached, -- please refer to it for additional details on the proposal, location of the property, etc. Also attached is Ordinance PA 1199 with exhibits, including the draft findings prepared by the applicant.

Major highlights of the proposal are summarized in the discussion below.

¹ This application was originally staffed by Associate Planner Thom Lanfear, and transferred to Jerry Kendall after the Planning Commission meetings were completed.

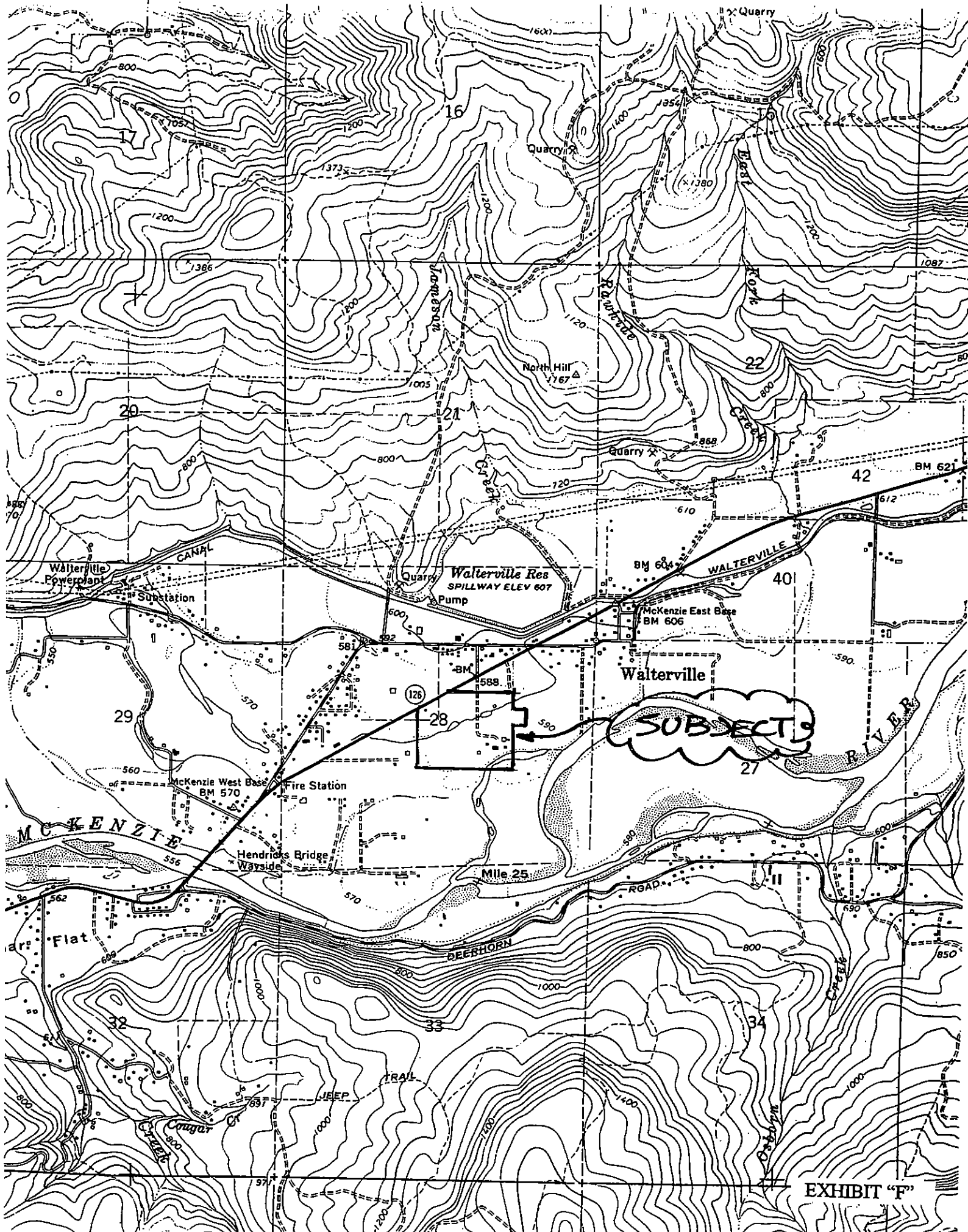


EXHIBIT "F"

EAST LAN
019-0

RTE 4

E 1,389,507

See Map 17 OI 29 1

RYANT SUR
 N. 89° 30' E 176.30'
 N. 82° 00' E 301.82'
 S. 70° 18' E 408.20'
 S. 60° 00' E 182.77'
 S. 80° 18' W 22.97'
 S. 89° 04' W 87.40'

RYANT SUR
 N. 89° 30' E 176.30'
 N. 82° 00' E 301.82'
 S. 70° 18' E 408.20'
 S. 60° 00' E 182.77'
 S. 80° 18' W 22.97'
 S. 89° 04' W 87.40'

L. 1200 & TL 1203
 D. 3.87° 04' 50" W - 10.241'
 E. 4.77° 34' 05" W - 18.402'
 S. 8.40° 10' 00" W - 42.500'

N 879,384

E 1,389,307

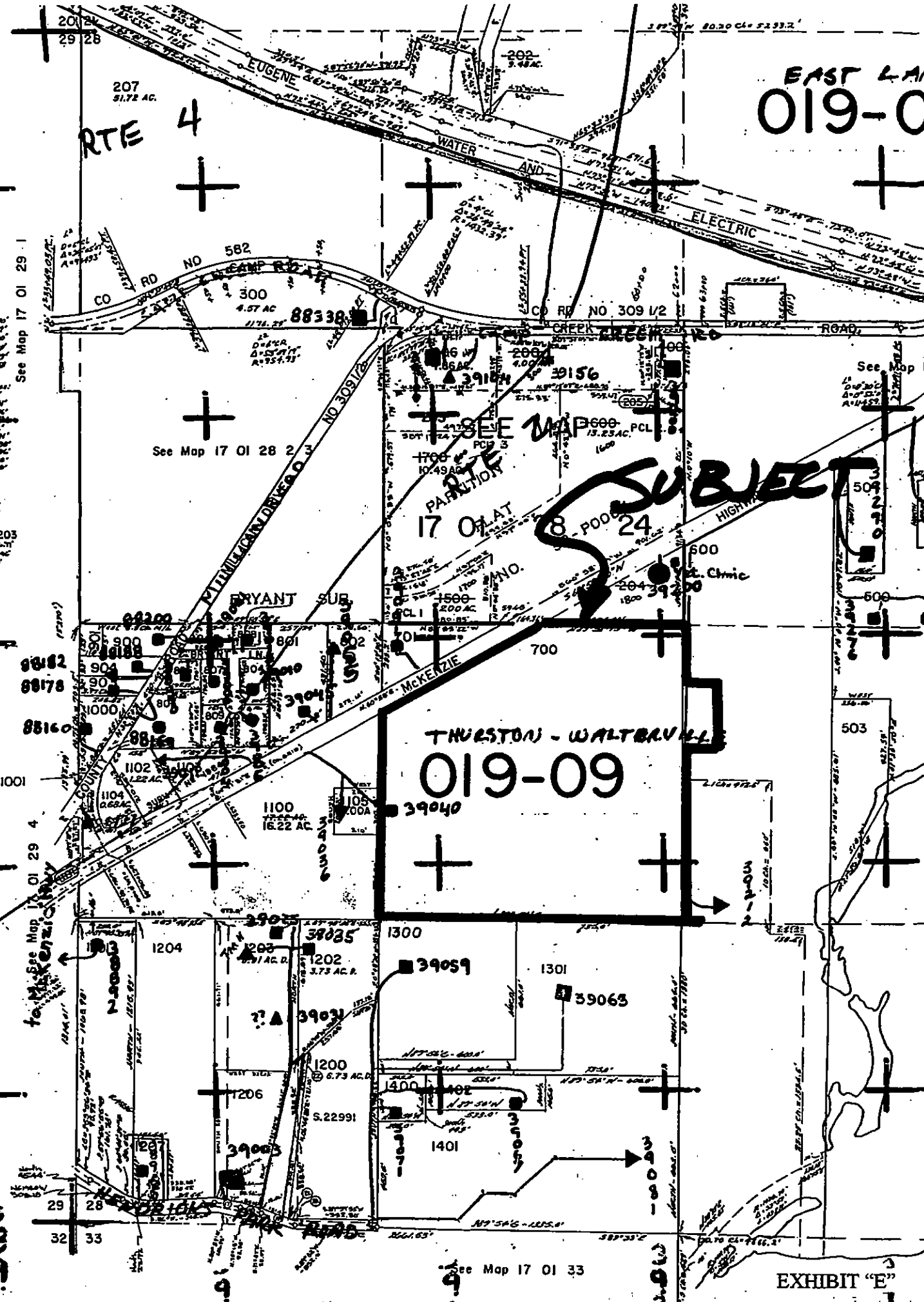
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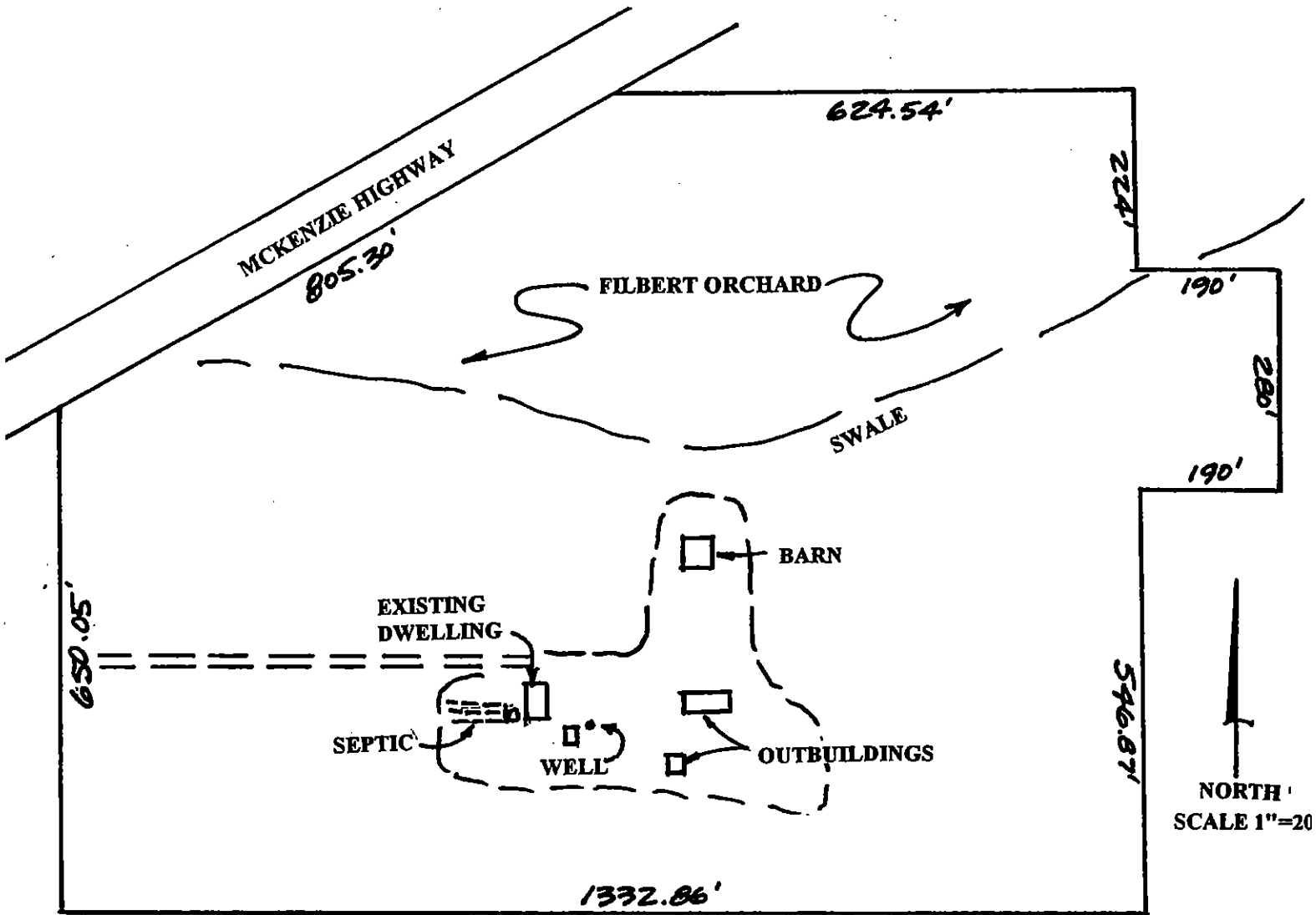
See Map 17 OI 28 2

See Map 17

See Map 17 OI 29 4

See Map 17 OI 33

EXHIBIT "E"



PLOT PLAN

June 28, 2001

MAP 17-01-28 TAX LOT 700

Applicant: David Grant
 39040 McKenzie Highway
 Springfield, OR 9747

Owners: Jack and Beverly Grant
 319 Country Club Road
 Eugene, OR 97401

Agent: Harry A. Taylor
 Land Use Consultant
 P.O. Box 1420
 Veneta, OR 97487

EXHIBIT "A"

1-2000

2-28

BLM

18

0-00-ENG

19-77.2-27



EXHIBIT "B"

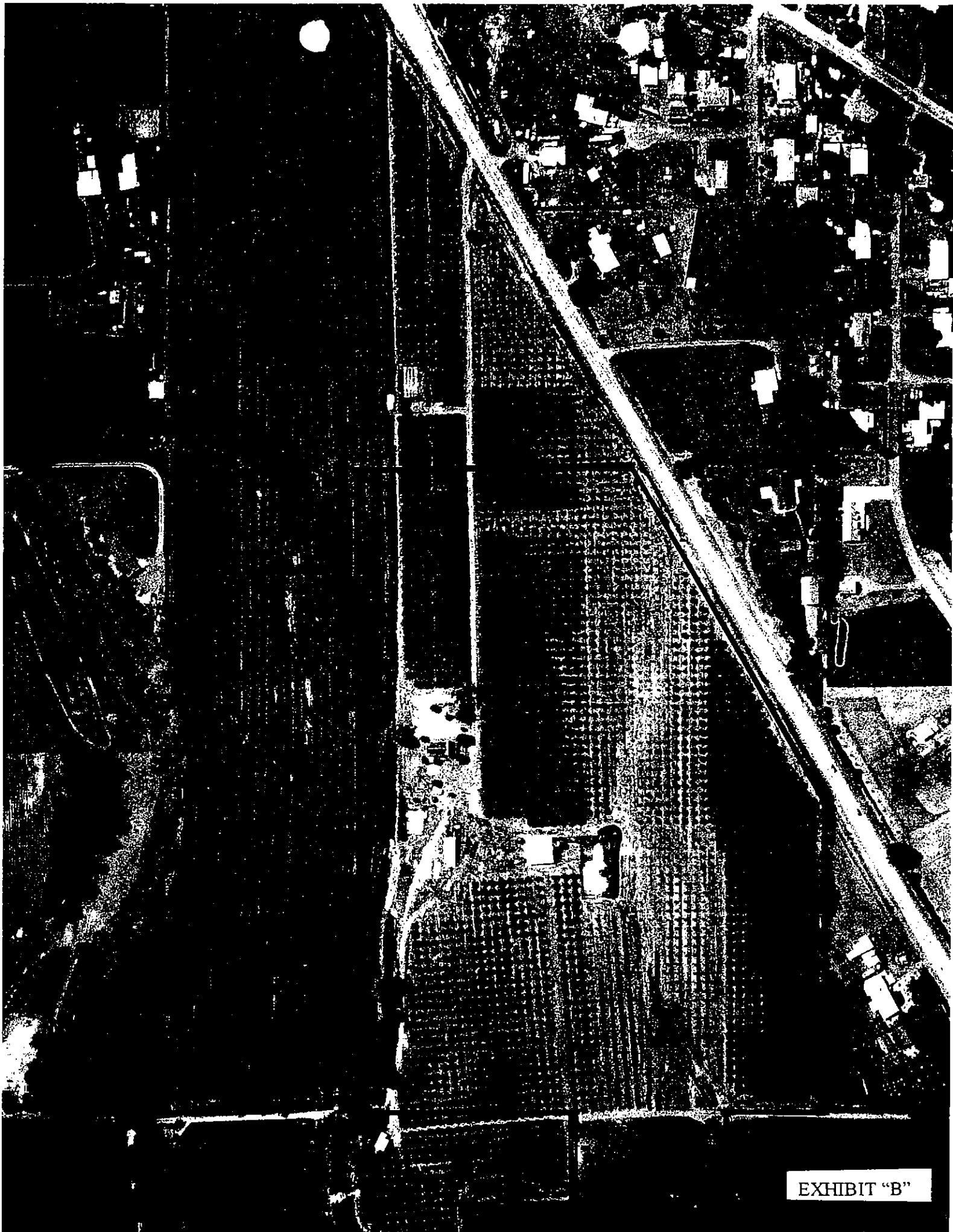


EXHIBIT "B"

General Comments

Generally speaking, in order to be successful in an application for a Nonresource designation, the applicant must show that the subject property does not meet the definition of farm or forest land as defined in Goals 3 and 4. This includes the need to demonstrate that the soils are unproductive, that the property is not part of a greater farm unit, that it need not be retained as resource land in order to sustain resource activities on nearby lands, and should include an evaluation of the proposal's effects on other resource lands.

Refer to the maps and aerial photo attached to the previous page, especially the aerial photo (labeled Exhibit "B"). The aerial shows the subject property covered with a filbert orchard and the farmer's dwelling and barn, an apparently idyllic picture of active farm use. However, the applicant has submitted documentation showing the orchard to be stressed and diseased due to poor soils, rapid drainage, and an abundance of rocks. Furthermore, most of the property is on a raised escarpment, with only a small percentage being the more productive bottomland. Primarily due to the abundance of rocks and inability to retain moisture, the applicant contends that the soils are not as productive as listed by the NRCS (Natural Resource Conservation Service), and that any farm or forest crop cannot meet with success.

Resource Suitability

A Nonresource (NR) plan designation requires findings that the subject property is not available for resource goal utilization. Two primary resource goals are that of farm and forest use. Farm land in western Oregon is defined as land having a predominance of soils in Agricultural capability classes I-IV. Forest land is largely defined as those lands with soils with productivity ratings of at least 50 cubic feet per acre annual.

Regarding the agricultural capabilities, the subject parcel is inventoried with the NRCS as having three soils types, with the following capability ratings:

- #29 Cloquato silty loam; Ag. Class II; 2.4 acres; 8%
- #100 Oxley gravelly silt loam; Ag. Class IIIw; 3.6 acres; 12%
- #123 Sifton gravelly loam; Ag. Class III; 24.2 acres; 80%

Normally, the above ratings would result in a denial of the proposal, as none of the soils are rated in the V-VIII capability range. However, testimony from the farmer (Dave Grant) and especially his soils scientist (Gary Kitzrow) reveals that 67% percentage of the *Sifton* soils contains rubble and rocks. In addition, because of the rocks, this soil is subject to very rapid drainage with little ability to retain moisture. Mr. Kitzrow concludes that the *Sifton* soil on the parcel is a variant with an agricultural capability class rating of V & VI, meeting the standard for Nonresource soils. The multiple

reports from Mr. Kitzrow are found in Exhibit "I" of the original submittal, as well as in updates of June 29 and July 7, 2003. Testimony concerning stress and disease on the filberts due in large part to the high rock content and subsequent lack of water retention of the soil is found in an affidavit from a filbert grower (Garry Radakowski, July 8, 2003) and an OSU Extension Plant Pathology Specialist (Jay Pscheidt, September 5, 2002).

In regards to the Kitzrow reports, Ron Eber of DLCD (July 8, 2003) states:

"The initial application and subsequent memo provides Mr. Kitzrow's expert opinion that the soils on this property are Class V or VI but it does not provide an analysis explaining, based on the specific criteria used by the NRCS to classify soils, that the soils should be reclassified to something other than what the NRCS soil survey has determined".

Staff does not view Mr. Kitzrow's work as a "reclassification". Mr. Kitzrow acknowledges that the *Sifton* soils are on the parcel, but simply adds that the mixed in rubble and rock present a variant, which lowers the overall capability class to a nonresource category.

Regarding forest soil capability, both the *Cloquato* and the *Oxley* soils are unrated for forest productivity in the *Lane County Soil Ratings for Forestry and Agriculture* (August 1997) booklet. In a footnote, the booklet acknowledges that no rating is not equivalent to zero productivity rating, but rather that "...no site index has been collected by the NRCS due to lack of suitable sites or lack of time and or funds". The *Sifton* soils are indexed with a high 182 cubic feet per acre annual productivity index for Doug fir. However, the applicant's forester, Bob Booth (July 1, 2003) noted that there are no local examples of *Sifton* soils producing a conifer forest; that the *Sifton* soil drains excessively resulting in stress during the dryer season, and that frequent chemical application is needed due to the rapid percolation. He concludes that the subject site is not capable of producing a viable Doug Fir crop, that hardwoods would not fair better, and that the productivity rating is in error. However, unlike the Kitzrow reports for farm soils, Mr. Booth does not provide an alternative rating, other than to say that the current rating is in error. Staff requests documentation that the overall rating for the entire parcel is below 50 cubic feet per acre per year be provided at the hearing.

Irrigation

Both the Kitzrow and Booth reports establish that the majority of the property (at least 67%) is composed of the rubbly *Sifton* variant. They both note its rapid percolation of water, resulting in stress on crops. The State Watermaster (Mike Mattick April 3, 2000) notes that six acres of water rights are available for the subject parcel. However, Mr.,

Taylor testified to the Planning Commission that the state is not currently issuing water appropriations from the McKenzie River, due to the federal "4d" salmon ruling. Again, because of the rapid percolation, the applicant's agents have testified that even if such water were available, the rocky *Sifton* soils would not retain enough water to make a crop feasible.

Farm Unit

Regarding the need to document that the parcel is not farm land as defined in Goal 3, OAR 660-033-0020(1)(b) defines farm land, in part, as:

(b) Land in capability classes other than I-IV² that is adjacent to or intermingled with lands in capability classes I-IV within a farm unit, shall be inventoried as agricultural lands even though this land may not be cropped or grazed;

Basically, this standard states that land having non-farm quality soils and without crops or grazing is still to be classified as farm land if it is intermingled with good soils within the same farm unit.

Mr. Eber of DLCD (July 8, 2003) contends that the subject 30 acres is part of a larger farm unit (with the 60 acre tax lot 600, found to the east and south), by virtue of common ownership, that the farmer's dwelling and barn is found on the subject parcel, and that the creation of the subject parcel via a lot line adjustment in 1998 complied with the minimum parcel size of the E-30 zone, implying a commercial level of agriculture.

Mr. Thorp, the applicant's attorney, responds in his letter of July 14, 2003. In brief, Mr. Thorp cites two cases (*DLCD v. Curry County*, 132 Or App 393, 398 (1995) & *DLCD v. Coos County*, 117 Or App 400, 405 (1992)), which lend support to the notion that a property is considered part of a farm unit if, historically, it was originally part of a larger property which was specifically created and/or managed as a farm unit. In the present case, both Mr. Thorp and Mr. Taylor note that the 30+ acre parcel was created by a lot line adjustment in 1996, a process that is not reviewed by the LMD nor was declared to be a farm unit, unlike in the two cited cases. They note that the subject parcel was not used for farm use, other than incidental grazing (and that taking place mostly on the bottomland area), until 1976, as shown in applicant's Exhibit "C". Furthermore, Mr. Thorp states that the subject parcel has never been an integral part of a uniform management plan, and that neither identical or interrelated farm operations have taken place on the two parcels.

² Staff in this quote has deleted reference to capability class ratings for eastern Oregon. Emphasis on farm unit added.

Goal 2, Policy #17

Rural Comprehensive Plan Goal 2, policy 17 reads as follows:

Residential densities for non-resource lands shall be one residence per five or ten acres and shall be determined through consistency with other plan policies and the following criteria:

- a. Existing development pattern and density of any adjacent committed areas;*
- b. Subsurface sewage disposal suitability;*
- c. Domestic Water supply availability;*
- d. Access;*
- e. Public Service;*
- f. Lack of natural hazards;*
- g. Effect on resource lands.*

Regarding “a” above, the applicant seeks a five acre density based on the adjacent committed area to the west and north, across the highway (RR-2). The standards in b through f have been satisfactorily addressed. However, in regards to “g”, the application falls short of a convincing argument that dwellings allowed to be up to ten feet from a common lot line with the E-30 zoned land to the east will not have an effect on that resource land. This is especially true, as the height difference of the escarpment is not found on the east side. The applicant is requested to offer more information at the hearing in this regard.

Lane County Planning Commission (LCPC) Action

The issues were presented to LCPC for its evaluation in a public hearing on July 1, 2004. Following the close of the record on July 15 the Commission voted 4-3 to recommend approval of the Plan Amendment, with a zone designation of RR-5. Commission reasoning is set forth in the Minutes of the meetings, attached to this packet (Note: the Planning Commission schedules the minutes for approval on March 16. Staff will advise the Board if any changes are made). The Board should review the Planning Commission record (Minutes) and reach its own conclusion on the issues. Tapes of the hearing and deliberation are available upon request.

The applicant is expected to be on hand at the Board hearing to present the proposal and respond to questions. Should additional written materials or testimony be produced concerning this item, it will be delivered to the Board in a supplement or delivered at the hearing.

C. Alternatives/Options

1. Adopt the Ordinance as presented with findings.

2. Adopt a modified Ordinance with modified findings.
3. Do not adopt the Ordinance and deny the application.

D. Recommendations

As discussed in this document, staff has requested additional information regarding forest capability rating and the effect of the density proposed on adjacent resource land.

If at the close of the hearing, the Board concludes that the applicants' case has adequately been made, alternative 1 above is the appropriate action to take. If not, the Ordinance either will need to be supplemented/ revised to respond to the issues, or denied (alternative 3). Staff has no recommendation at this time.

E. Timing

The Ordinance does not contain an emergency clause.

IV. IMPLEMENTATION/FOLLOW-UP

Should the Board decide against the proposal (alternative 3), an Order with findings setting forth the Board's reasons for denying the Ordinance will need to be prepared and returned to the Board for adoption. Notice of Board action will be provided to DLCD and parties. If the Board adopts the Ordinance as presented or modified, notice will also be provided.

ATTACHMENTS

1. Ordinance PA 1199 with Exhibits "A" through "C".
2. LCPC Staff Report dated June 23, 2003. [Applicants' statements are now part of Exhibit "C".]
3. Materials submitted at the LCPC hearing of July 1, 2003.
4. Supplemental materials provided to the Planning Commission on July 9, 2003.
5. Final submittal materials from the applicant.
6. Minutes of LCPC meetings of July 1 & 15, 2003

BEFORE THE BOARD OF COUNTY COMMISSIONERS OF LANE COUNTY, OREGON

ORDINANCE NO. PA 1199) IN THE MATTER OF AMENDING THE RURAL COMPREHENSIVE
) PLAN TO REDESIGNATE LAND FROM "AGRICULTURAL LAND"
) TO "NONRESOURCE", REZONE THAT LAND FROM
) "E-30/EXCLUSIVE FARM USE" TO
) "RR-5/RURAL RESIDENTIAL"; AND ADOPTING SAVINGS AND
) SEVERABILITY CLAUSES (file PA 01-5875; Grant)

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

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

WHEREAS, in June 2001, application no. PA 01-5875 was made for a minor amendment to redesignate tax lot 700 of map 17-01-28, from "Agricultural Land" to "Nonresource" and concurrently rezone the property from "E-30/Exclusive Farm Use" to "RR-5/Rural Residential"; and

WHEREAS, the Lane County Planning Commission reviewed the proposal in public hearing of July 1, 2003, and on July 15 recommended approval of the proposed amendment and rezoning; and

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

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

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

Section 1. The Lane County Rural Comprehensive Plan is amended by the redesignation of tax lot 700 of map 17-01-28, from "Agricultural Land" to " Nonresource", such territory depicted on Plan Plot 525 and further identified as Exhibit "A" attached and incorporated herein.

Section 2. Tax lot 700 of map 17-01-28, is rezoned from "E-30/Exclusive Farm Use" (Lane Code 16.212) to "RR-5/Rural Residential" (Lane Code 16.231), such territory depicted on Rural Zoning Plot 525 and further identified as Exhibit "B" attached and incorporated herein.

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

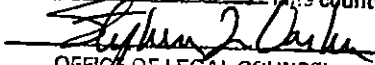
The prior designation and zone repealed by this Ordinance remain in full force and effect to authorize prosecution of persons in violation thereof prior to the effective date of this Ordinance.

If any section, subsection, sentence, clause, phrase or portion of this Ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision, and such holding shall not effect the validity to the remaining portions hereof.

ENACTED this _____ day of _____, 2004.

Chair, Lane County Board of County Commissioners

Recording Secretary for this Meeting of the Board

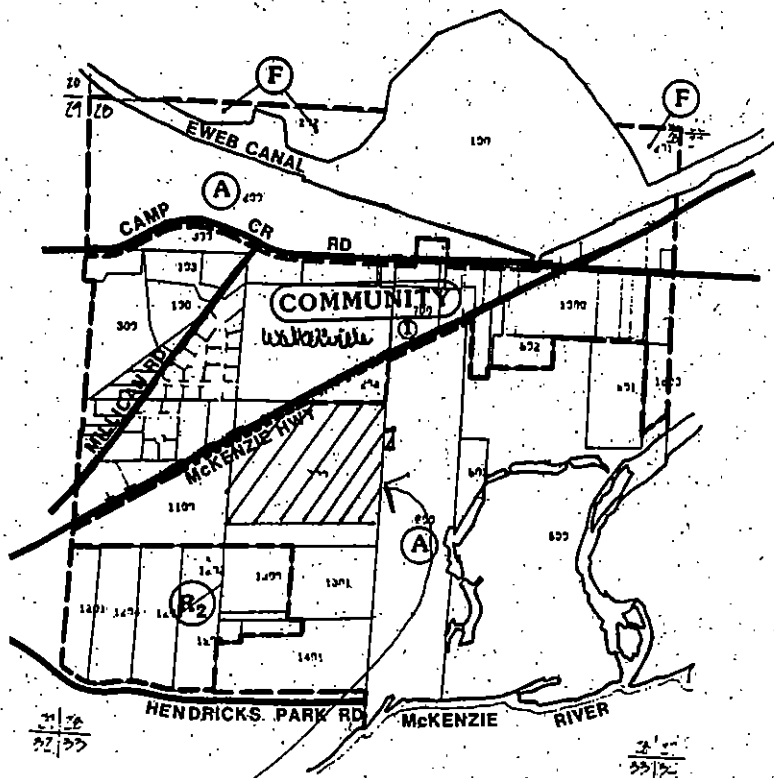
APPROVED AS TO FORM
Date 3-23-2004 Lane County

OFFICE OF LEGAL COUNSEL

ORD. NO. PA1199
EXHIBIT "A"

524A

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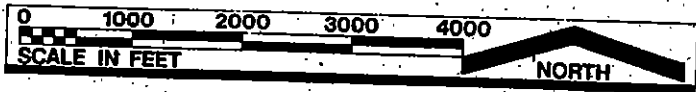


"AGRICULTURAL
LAND"

525A

TO

"NON RESOURCE"



ne county



OFFICIAL PLAN MAP

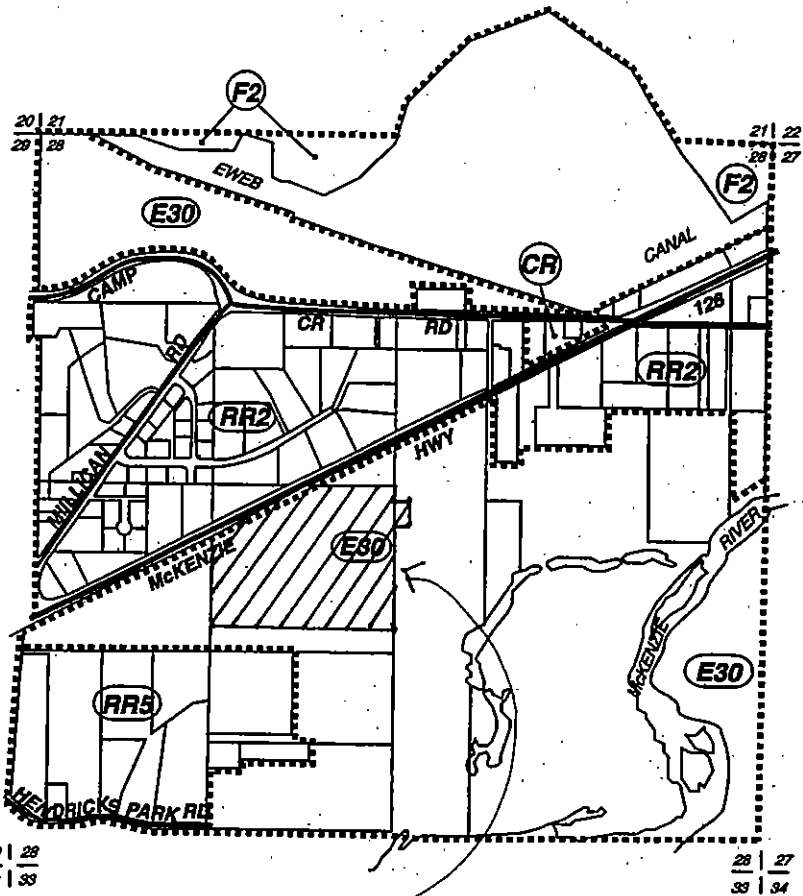
PLOT# 525

Township Range Section
17 01 28

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

PROVISION # ORD # DATE FILE #

524A



514

535

FLOODPLAIN

20 | 21
29 | 28

21 | 22
28 | 27

"E-30/RCP"


TO

"RR-3/RCP"

525A

The RR zones on this map are changed as follows:
FROM: RR LC 16.231 TO: RR LC 16.290
The RR zone parcel size remains the same.

The zones on this map are changed as follows:
From: RG, RA To: RR2
From: CR, C1, C2, & C3 To: RC Rural Commercial
From: M1, M2, & M3 To: R1 Rural Industrial
From: PF To: RPF Rural Public Facility
From: PR To: RPR Rural Park & Recreation

	lane county	OFFICIAL ZONING MAP		PLOT #525
		Township Range Section 17 01 28		
ORIGINAL ORD. #	PA 884	DATE	2/29/1984	FILE #
REVISION #	ORD#	DATE		FILE #

FINDINGS OF FACT AND CONCLUSIONS OF LAW

DAVID GRANT PLAN AMENDMENT AND ZONE CHANGE FILE NO. PA 01-5875

The following findings of fact and conclusions of law support an affirmative decision by the Board to approve the proposed plan amendment and concurrent zone change for the "Subject Property."

Additional information is provided in the Applicant's statement dated June 27, 2001, a statement from the Applicant's representative dated July 1, 2003, and two statements from the Applicant's attorney dated July 1, 2003 and July 14, 2003, respectively. These four statements are incorporated herein by reference. The findings are divided into the following five parts:

- I. Summary of Issues
- II. General Findings Relating to the Subject Property and Application.
- III. Findings and Conclusions Related to the Lane Code 16.400 Plan Amendment Criteria.
- IV. Findings and Conclusions Relating to the Lane Code 16.252 Rezoning Criteria.
- V. Findings and Conclusions Relating to the Statewide Planning Goals

I. SUMMARY OF ISSUES

This section includes a general overview of the amendment request, site characteristics, and the primary issues associated with the proposal.

General overview:

1. The Statewide Planning Goals and the Rural Comprehensive Plan ("the Plan") protect resource lands while allowing other, nonresource lands to develop. The proposed amendment allows rural residential development on a documented nonresource tract and will not affect any adjacent or nearby resource lands.
2. This application implements RCP Goal 2 Policy 16 by designating the Subject Property as nonresource land and zoning it RR-5. The Plan provides for designating lands that are not farm or forest lands as defined by Statewide Planning Goals 3 and 4 as nonresource lands. Nonresource lands by definition do not require an exception to the goals.
3. The current plan designation of the Subject Property as Agriculture Land is in error. Goal 2 mandates that an adequate factual base be used in land use decision making. This amendment and zone change request provides a factual base to show the Subject Property does not meet the state definition of agricultural land or warrants protection by the E-30 zone. The proposed rural residential zoning of RR-5 can be accommodated by an adequate water supply, access to a state road, and availability of all necessary services.

Grant Plan Amendment/Zone Change Findings

October 10, 2003

Page 2

Site characteristics:

4. The Subject Property consists of one 30.19 acre parcel, developed with the Applicant's dwelling, barn, accessory buildings, driveway, well and sanitation system. The majority of the Subject Property is planted with a filbert orchard, which has been unproductive due to the rocky non-resource soils present on a majority of the site.
5. The Subject Property is on a raised terrace separated from farmed bottom land to the south and east by an 8 to 10 foot high escarpment and a distinct change of soil types and capability.
6. The Subject Property is generally rectangular in configuration, approximately 1050 feet in depth by 1332 feet in width except for a 1.2 acre appendage on the east property line and the angular alignment of the McKenzie Highway along the northwest property boundary. The site has 805 feet of road frontage on McKenzie Highway 126.

Primary Issues:

The Subject Property is not resource land.

7. Approximately (67%) of the Subject Property has soils which are nonresource, as they exist on the site. This determination was based on a professional on-site investigation which met the strictest national soil survey standards, including the digging of 17 test pits throughout the Subject Property.
8. Evidence, including the detailed on-site soil survey cited above and reports prepared by professional agriculture and forestry consultants, shows the rocky soils present on most of the Subject Property have no farm or forest capability and include significant constraints for crops, orchards, grazing and growing commercial forest species.
9. This factually supported Nonresource designation is consistent with Oregon's agricultural land use policy (ORS 215.243(2)) as it helps preserve land that is truly agricultural land in large blocks necessary for maintaining the agricultural economy of the state. A Nonresource designation acknowledges certain lands are so poor that they do not meet the definition in the goals of either farm or forest land.
10. The Applicant is a successful farmer on other lands and has over 25 years of documented experience on the Subject Property proving that it has no history of supporting a profitable agricultural or forest operation. Information has been provided showing almost all of the site has never been used for agricultural or forestry purposes.
11. Approximately 20% (6 acres) of the Subject Property has water rights which are not being used, and cannot be used in the foreseeable future. The agricultural or forest capability of the site

would not be improved by irrigation of this relatively small area, as the rocky soil conditions on the Subject Property would result in either wet rocks with no fertility or too-rapid drainage.

12. Local farmers have indicated they would not attempt to farm the property due to its extremely rocky condition and lack of irrigation. It is precisely these conditions that make the site generally unsuitable for farm use. The Subject Property lacks any functional agricultural viability and does not substantially contribute to the agricultural economy of the area or state. In fact, it makes a negative contribution in terms of wasted time and energy, and harm to equipment and machinery.

13. The Subject Property does not have significant grazing, watershed, wildlife or scenic values that require maintaining a resource designation.

Rural residential development on the Subject Property will have no impact on adjacent or nearby resource lands.

14. The Subject Property is bordered by agricultural resource lands on its east, south and west boundaries. Its development for rural residential purposes will not affect the agricultural use, access, or irrigation of these lands. Agricultural land to the east and south is separated from the Subject Property by an 8 to 10 foot high escarpment, and has different soil types. The parcel to the west is a 17 acre parcel which shares the rocky soil conditions on the Subject Property. The McKenzie Highway, a state road, borders the site on its northern boundary. Property designated, zoned (RR-2) and developed with rural residential uses is located across the highway from the Subject Property. It is not being used or managed for resource purposes.

15. The Applicant has attempted without success to operate the Subject Property as a filbert orchard. The site has never been operated or farmed as part of a larger filbert orchard farm unit, and has not nor will not be needed for the operation of other farm units in the vicinity.

16. The Applicant has raised mint and is currently raising sugar beets on other adjacent resource lands. The filbert orchard on the Subject Property has been operated separately from these activities and is not managed as a farm unit with them. A substantial amount of Oregon case law provides tests for defining a farm unit. Factual evidence has shown the Subject Property does not meet most of these tests, and is therefore not part of a larger farm unit.

17. The Applicant's dwelling and outbuildings used for his farming operations are located on the Subject Property, as it is the least productive area of his lands. The dwelling and outbuildings are not needed for continued resource use of adjacent lands, as many properties are actively farmed when no dwellings or outbuildings are present. The Statewide Planning Goals and administrative rules make it difficult to build on agricultural land, thereby confirming that dwellings and outbuildings are not necessary for successful farming operations.

The proposed development density of the Subject Property is consistent with the Rural Comprehensive Plan, county policies, county plan amendment and zone change approval criteria, and statewide planning goals.

18. The proposed five acre rural residential zoning will result in a development density of six dwellings on the Subject Property. This request does not propose any land divisions. Future land division will be subject to a separate land division application and process that meets the requirements of Lane Code 16.231 Rural Residential Zone and LC 13.050, Land Divisions, and compliance with any conditions of approval.

19. The density of development proposed for the Subject Property will be less than the adjacent area to the northwest, which consists of rural residential development zoned for a two acre minimum lot size.

II. GENERAL FINDINGS RELATING TO THE PROPERTY AND APPLICATION

1. This application is for a minor plan amendment redesignating 30.19 acres of land from Agriculture Land to Nonresource Land with concurrent rezoning from E-30 Exclusive Farm Use to RR-5 Rural Residential. These findings provide factual support for the proposed redesignation.
2. The Subject Property is designated as Agriculture Land, a Goal 3 resource. The findings provided herein support a Nonresource Land designation and therefore do not require exceptions to the statewide planning goals.
3. The Subject Property is identified as tax lot 700 on Assessor's Map No. 17-01-28 located on Lane County Zoning Plot #525. It is a 30.19 acre parcel located on the south side of the McKenzie Highway, directly across from the community of Walterville and approximately four miles east of the City of Springfield.
4. The Subject Property is a legal lot as verified by Lane County Legal Lot Verification PA 00-6565.
5. The Subject Property is developed with a dwelling, barn, accessory structures, graveled roads, well and sanitation system.
6. The Subject Property is a terrace which is separated from farmed bottom land to the south and east by an escarpment 8 to 10 feet in height. This bottom land is irrigated and has productive agriculture soil types different from what is found on most of the site.
7. The Subject Property is provided the following public services:

Fire:	McKenzie Fire and Rescue District
Police:	Lane County Sheriff
School:	Springfield School District #19
Sewer:	Individual septic system
Water:	Individual well
Access:	McKenzie Highway (State)
Electricity:	Lane Electric
Telephone:	Qwest
Solid Waste:	Glenwood Solid Waste Transfer Site
8. National Wetlands Inventory Map "Walterville 3" indicates there are no wetland resources located on the Subject Property.
9. The Lane County Wildlife Inventory (Marcola Quad) indicates the Subject Property is located in an Impacted Big Game Range. There are no county inventories or specific site evidence that indicates the site is necessary to be preserved for wildlife, or to meet wildlife requirements for

food, water, shelter, reproduction, wildlife migration corridors, big game range, nesting or roosting sites.

10. The majority of the Subject Property is within the 100 year flood plain of the McKenzie River, as identified in Panel 1190 of the Flood Insurance Rate Map for Lane County, prepared by the Federal Emergency Management Agency, effective June 2, 1999.

11. No historical, archaeological, scenic or other resource features have been identified on the Subject Property by county inventories.

12. As depicted on Lane County Rural Addressing Maps, there are at least 35 dwellings within approximately one-quarter mile of the Subject Property, not including additional dwellings in the vicinity of Walterville to the southwest, west, north and northeast of the Subject Property. Commercial development within Walterville is located less than one-quarter mile to the northeast. There are no industrial or government forest managed tracts that are located in the vicinity.

13. Zoning Plot #525 indicates land in the vicinity of the Subject Property is zoned RR-2, RR-5 and E-30. To the north is the McKenzie Highway and tax lot 1800, map 17-01-28-24. Tax lot 1800, is a 2.5 acre parcel improved with a residence, zoned RR-2, located within the community of Walterville, and abuts the Subject Property along 624 feet on its southern property boundary. Land north of the McKenzie Highway is also located within the community of Walterville, improved with residences and zoned RR-2. Land improved with residences and zoned RR-5 is located 272 feet southwest of the Subject Property. Land improved with residences and zoned RR-2 is located approximately 750 feet northeast of the site and south of the McKenzie Highway. Land zoned CR Rural Commercial is located approximately one-quarter mile to the northeast in the Walterville commercial area.

14. To the east and south is tax lot 600, map 17-01-28, a vacant 58 acre parcel farmed by the Applicant and zoned E-30. This parcel is different from most of the site as it is 8 to 10 feet lower, has available irrigation water and primarily consists of Class II agricultural soils which are not rocky.

15. To the west is a 17 acre parcel zoned E-30 and developed with a residence. Approximately 12 acres of this site is leased by the Applicant, who uses it for his sugar beet crop. The remaining acreage is similar to the Subject Property, as it is significantly higher than the productive land to the south, and has rocky soil which is unsuitable for agricultural production.

16. The Soil Survey for Lane County Area, Oregon, map sheet #78 indicates the property has the following soil classifications. "Ag" refers to NRCS agricultural class, while "Forest" refers to the forest capability rating for Douglas-fir.

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Map#	Soil type	Ag	Forest	Area (ac.)	% of site
29	Cloquato silty loam	II	0	2.4	8
100	Oxley gravelly silt loam	IIIw	0	3.6	12
123	Sifton gravelly loam	IVs	182	24.2	80

17. Based on extensive on-site investigations conducted by a qualified soil scientist, including digging 17 test pits throughout the Subject Property, approximately two-thirds of the site area (67%) is properly classified as Agricultural Class V and VI. These classifications are non-resource. The site-specific study found the extremely rocky conditions present on much of the site along with its inability to retain water, create non-resource soil conditions. The detailed, site-specific analysis was completed using national standards and provides much better information than the above soil survey classifications, which were developed with photo identification and no field work.

18. Most of the Subject Property contains soils that are unsuitable for commercial forest land. Mr. Bob Booth, a professional consulting forester, has prepared a report concerning the site. The soil descriptions and Table 6 Woodland Management and Productivity within the Soil Survey of Lane County Area, Oregon does not list Cloquato, Oxley, or Sifton soils as being suited for the production of Douglas-fir or any other fir or deciduous tree species. In 1997, Lane County revised the agricultural capability and forest ratings of many soils. At that time, the Sifton unit was rated as having a forest capability of 182 cubic feet per acre per year. The Forestry report for the site has found that this designation appears to be an error based on the low water holding capacity of the soil, droughty conditions and a lack of irrigation. It is also possible that the Sifton variant present on the site is so rocky that the forest capability for normal Sifton soils does not apply. These conditions have been documented by the onsite soil analysis and by the Forestry report and study. The property has no historic use as forest land.

19. The Subject Property is not irrigated. Approximately 6 acres of the site, or about 20% of its area in its southernmost portion, is the only area on the property with water rights. There are no wells in this area. The McKenzie River near the property is a stream providing habitat and spawning beds for salmon and other fish species which have been designated as threatened or endangered under the Endangered Species Act. For that reason, it is unlikely that the applicant could get approval for irrigation wells or new usable water rights from the McKenzie River.

20. The Subject Property is not capable of supporting irrigated pasture, as identified in the forage/grazing study prepared for the site. The Subject Property is primarily composed of soils which have excessive drainage, due to their rocky character. This limitation, combined with its lack of irrigation, its relatively small size, and the need to remove existing non-producing filbert trees, makes grazing use of the Subject Property impracticable.

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21. The Subject Property is impractical to farm due to the combination of constraints that include soil conditions, limited availability of irrigation from either surface water or groundwater sources, and slopes.

22. The U.S. Natural Resources Conservation Service indicates agricultural use of the subject soils is impractical due to soil conditions that include shallow soil depth to rock, slope, clayey soil texture, droughtiness, cobbles on the surface that limit use of equipment, high soil compaction and erosion conditions during wet periods, swale-drainage characteristics, seasonal high water table, wetness and plant winter-kill.

23. A registered geologist has prepared a Well Log Report based on well drilling and production data from wells in the immediate vicinity of the Subject Property. This report indicates adequate water is available to serve the proposed residential density.

24. The Subject Property is not located within a water quantity or quality limited area as identified by Lane Manual 13.010.

25. The Lane County Land Management planning staff reviewed the applicant's statement and supporting evidence and recommended denial of the proposed Nonresource designation with a Rural Residential RR-5 zone.

26. On July 1, 2003 the Lane County Planning Commission conducted an evidentiary public hearing. In addition to the written testimony submitted for the record, oral testimony was given in support of the application by a large-scale filbert grower who provided information to show the Subject Property is unsuitable for filbert production. No farmers in the vicinity of the site submitted testimony objecting to the application.

27. At their July 15, 2003 meeting a majority of the Planning Commissioners expressed their support for the application. The Planning Commission voted 4:3 to recommend the Board of County Commissioners approve the plan amendment and designate the entire Subject Property Nonresource Land with a Rural Residential RR-5 zone.

III. FINDINGS AND CONCLUSIONS RELATED TO THE LANE CODE 16.400 PLAN AMENDMENT CRITERIA

Lane Code 16.400(6)(h)(iii) provides 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.

1. The Board finds this application proposes to amend the Rural Comprehensive Plan from Agricultural Land to Nonresource Land with evidence that addresses the applicable requirements of the Lane Code, Rural Comprehensive Plan (RCP) policies, Statewide Planning Goals and Oregon Administrative Rules.

(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.**

2. The Board finds this amendment implements three of the five standards listed above.

- a. The amendment implements (i-i), as there is an identified error in designating the Subject Property as Agricultural Land. Evidence provided as part of the amendment request has provided factual information showing the characteristics of this property are inconsistent with County plan policies and Statewide planning goal requirements for the designation and protection of agricultural land.
- b. The amendment implements (iv-iv), specifically RCP Goal 2, Policy 26. This policy provides for designating lands as rural residential when the site does not meet the definition of farm or forest land as provided by Statewide Planning Goals 3 and 4. As previously stated, the site does not qualify as farm or forest land requiring protection by the statewide planning goals, and therefore qualifies as nonresource land.

c. The amendment implements (v-v), as based upon the reasons set forth in these findings, the Board finds it is desirable, appropriate and proper to designate this 30.19 acre parcel as Nonresource Land. Rural residential development is appropriately directed to areas like this site, which are severely limited or precluded from any substantial resource use. This action relieves the strain of similar development on other county lands that are more suitable for farm and forest resource use.

3. The Board finds the Subject Property is not farm or forest land as defined or requiring protection by the Goals, and therefore implements RCP Goal 2 Policy 16, which provides for designating lands that are not farm or forest lands as rural residential, provided the subject land:

a) is not farm or forest land as defined by the statewide planning goals;

4. The Board finds the Subject Property is not farm or forest land as defined and protected by Goal 3 Agricultural Lands and Goal 4 Forest Lands.

5. Regarding Goal 3, the Board finds the Subject Property is not predominantly agricultural land as defined by Goal 3 and OAR 660-33-020(1)(a), and is therefore not needed to be preserved for farm use. The Board finds the following analysis applies to the entire Subject Property.

OAR 660-33-020(1)(a) states that lands classified by the U.S. Natural Resources Conservation Service (NRCS) as predominantly Class I-IV soils in Western Oregon and I-VI soils in Eastern Oregon are considered agricultural.

The Soil Survey of Lane County Area, Oregon, (1987) map sheet #78 and soil descriptions, identifies the three soil types present on the Subject Property, as previously discussed. The published soil map has a scale of 1 inch = 20,000 feet and was mapped at an Order 2 level of intensity based on photo interpretation.

Goal 3 requires the NRCS soils data be used to classify soil types, but more specific information may be utilized as a result of on-site investigations conducted by a qualified soils scientist. A soil study conducted by Gary Kitzrow, a certified professional soil scientist and classifier, concludes 67% of the Subject Property soils are nonresource Class V and VI.

An Order 1, high intensity soil survey based on accepted national standards was conducted by Mr. Kitzrow in January 2000 to determine if the published soil identifications and soil boundaries were accurate, and to make necessary corrections. The entire tract was traversed and the soil profiles of 17 backhoe test pits located throughout the Subject Property were examined to a depth of more than 40 inches. The most significant findings include: 1) the predominant Sifton soil type has 35 to 70% gravels and rocks of 3 to 10 inch diameter, 2) irrigation rights are only present for 20% of the site, and cannot be presently used, 3) cultivation and harvesting is severely limited or eliminated due to surface rock, 4) water tables are often perched, 5) the soil water holding

capacity is less than 2 inches, and 6) the Sifton soil type as it exists on the Subject Property is most accurately classified as a Sifton variant Class V or VI soil due to its large amount of gravel and rock close to the surface. This rock is present throughout the Subject Property on the Sifton soils. Therefore, the Class V to VI rating applies to most of the Sifton variant present on the site.

In summary, the Subject Property is not agricultural land by this part of the test, as only 33% of its soils are Class I-IV as determined by a detailed on-site analysis completed using national standards.

6. Regarding Goal 4, the primary soil type (Sifton variant) on the Subject Property is listed by NRCS as having a forest capability. However, based on the Forestry report, there are no conifer forested areas within the McKenzie or Middle Fork of the Willamette drainages which are within mapped Sifton soil types. The excessive drainage caused by the rocky, permeable soil is harmful for commercial timber production, which is why no conifer forested areas are located on Sifton soils. The property has no historic use as forest land. The RCP has not identified the Subject Property as forest land necessary for watershed protection, special wildlife or fisheries habitat or for recreation purposes.

7. The Board finds the predominant vegetation is typical of similar lands in the county and does not require maintenance of vegetative cover for extreme conditions, soils or topography. The Subject Property is not located in an urban area and is not identified as being forest land necessary for urban buffers, windbreaks, scenic values or livestock habitat.

8. The Board adopts the forest land analysis of the Subject Property prepared by Bob Booth, a professional forestry consultant, that considered the ability of the site to produce a viable Douglas Fir crop of commercial value. The Board finds this Forestry report accurately identifies the constraints posed by the predominate soil type on the site, including excessive drainage. The Board finds no prudent forest manager would utilize this area for commercial forest production, given the impacts associated with this location.

9. The Subject Property has an overall forest capability of 146 cubic feet per acre per year, based on the published forest capability rating of the standard Sifton soil type and the parcel size. Evidence has shown no commercial forest stands are present on this soil type in the general area, and the Subject Property has extremely rocky and permeable soil which results in a Sifton variant soil type that is much less productive than typical Sifton soils. Based on this evidence, the Board finds the soil type and rocky, excessively drained conditions that are present make it impossible for the Subject Property to meet the 50 cubic feet per acre per year threshold adopted by Board Order 84-9-12-3, September 12, 1984, as consisting of commercial forest land.

b) that an exception is not required;

10. The Board finds the above Goal 3 and Goal 4 findings demonstrate the Subject Property is not agricultural land that requires protection by either Goal 3 or Goal 4 and no exception to goal requirements is required.

c) that a small isolated nonresource area is not created where surrounded by resource uses; and

11. The Board finds the Subject Property is bordered by a state road, one developed rural residential parcel, and three resource parcels. The Subject Property is not surrounded by resource uses. As stated earlier, most of the site is on a raised terrace separated from farmed bottom land to the south and east by an 8 to 10 foot high escarpment and a distinct change of soil types and capability. Land in the vicinity of the Subject Property is developed with rural residential uses as part of the rural community of Walterville. Other parcels located on the same side of the McKenzie Highway as the Subject Property are zoned and developed with rural residential uses. Land zoned RR-5 is located approximately 500 feet south of the site, while land zoned RR-2 is located approximately 270 feet northeast of the site.

12. The Board finds poor soil conditions render the Subject Property as not being capable or suitable for agricultural or forest resource use, and its designation as Nonresource land will not create an isolated area.

d) a rural residential use will be consistent with other RCP policies.

The Board finds the proposed rural residential use is consistent with the following applicable RCP policies.

Goal 2, Policy 16 provides that property that is not farm or forest lands may be designated rural residential upon a factual demonstration that the Subject Property is not farm or forest land as defined by Goals 3 and 4; does not require an exception; does not create a small, isolated nonresource tract that would be incompatible with surrounding farm and forest land; and is consistent with other plan policies. As previously addressed, the Subject Property is not farm or forest land as defined by Goals 3 and 4, and therefore does not require an exception.

The Subject Property is bordered on the northwest by the community of Walterville. To the east, south and west are lands zoned E-30. However, these parcels are of limited size and transition into RR-2 zoned lands approximately 750 feet to the northeast and RR-5 zoned lands located approximately 270 feet to the south.

Goal 2, Policy 17 provides rural development densities for nonresource lands shall be one residence per five or ten acres upon consideration of:

a) the existing development pattern of any adjacent committed areas;

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The Board finds the Subject Property is adjacent to committed lands zoned RR-2 within the community of Walterville. Further, a substantial amount of committed lands within the community of Walterville is located across the McKenzie Highway from the site. This nonresource request is subject to the specific conditions of the site. The Subject Property is located in the greater Walterville area, which contains broad pockets of RR-2 and RR-5 zoned parcels. The property is not isolated or surrounded by a large area of exclusive farm use zoned lands. The proposed RR-5 zoning is consistent with the overall residential land use pattern in the area.

b) subsurface sewage disposal suitability;

The Board finds the Subject Property has soils generally suitable for subsurface sewage disposal systems to support the proposed residential density of one dwelling per five acres. Prior to any further development of the property, individual sanitation site inspections will be required.

c) domestic water supply availability;

The Board finds the Well Log Report addresses water availability under the Goals portion of this application. The report determined adequate water is available to serve the proposed density.

d) access;

Suitable access to the Subject Property is provided by the McKenzie Highway, State Highway 126.

e) public services;

The public services and facilities available to serve the Subject Property have been previously addressed. The Board finds these services are adequate to serve the proposed residential density and are consistent with Goal 11, Public Facilities and Services Policy 6(k)(and (e)).

f) lack of natural hazards; and

FIRM Panel 1190 indicates portions of the Subject Property are located within a Zone AE 100 year flood plain with a base flood elevation of 580 feet established through the approximate middle of the property. Other portions of the site are designated Zone X, which are: areas of 500 year flood, areas of 100 year flood with average depths of less than one foot or areas protected by levees. USGS topography indicates the Subject Property has an elevation of 580 feet. However, the small scale of the USGS map will require on-site verifications. Any development within this area will be subject to subsequent review and approval of a flood plain development permit and establishment of minimum floor elevations where required. Based on the above information and procedures, the Board finds the Subject Property is not materially affected by any identified natural hazards.

g) effect on resource lands.

This provision has been previously addressed under the Goals statement, above.

Goal 5, Water Resource Policies 3 and 5 require adequate water supplies to support proposed development, and application of a plan designation and zoning consistent with groundwater aquifer capacities.

13. The Board finds the previously cited Well Log Report concludes that an adequate water supply is available to serve the proposed residential zoning of one dwelling per five acres. The Board adopts the findings of this report. The site is not located within a water quantity or quality limited area as identified by Lane Code 13.010.

14. The Board finds the Subject Property is provided a level of service consistent with Goal 11 Public Facilities and Services Policy 6 k, which is appropriate for rural residential lands. Specific service providers have been previously addressed, and include schools, on-site sewage disposal, individual water supply, electrical service, telephone service, rural level fire and police protection, and reasonable access to solid waste disposal facilities.

(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.

15. The Board finds this application identifies various policies that provide policy support for this amendment. No policies have been identified that directly conflict with this request.

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

16. The Board finds the proposed plan amendment is consistent with the intent and structure of the Rural Comprehensive Plan to choose between competing uses. As previously indicated, this amendment is consistent with county policies that provide for designating lands that do not have a farm or forest capability as nonresource land. Approval of this amendment does not conflict with unamended portions of the plan and is therefore consistent with the plan.

LANE CODE 16.400(8):

(a) Amendments to the Rural Comprehensive Plan shall be classified according to the following criteria:

(i) Minor Amendment. An amendment limited to the Plan Diagram only and, if requiring an exception to 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.

17. The Board finds this application proposes a minor amendment to the Plan Diagram from Agriculture Land to Nonresource Land. The detailed, site-specific soils analysis prepared for the Subject Property indicates that it predominantly consists of agriculture Class V and VI soils with no commercial forest capability. Therefore, no exception to the statewide planning goals is required.

(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.

18. The Board finds the required description has been previously provided. The proposed use of the Subject Property is for rural residential development at a zoning of one dwelling per five acres. A Nonresource Land designation is applied to the property through an evaluation that the Subject Property does not qualify as farm or forest land as previously described.

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

19. The Board finds the required analysis is addressed 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;

20. The Board finds an identification and analysis of the surrounding land use pattern has been adequately provided.

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

21. The Board finds the property will be served by on-site individual sewage and water systems and accessed from a state public road. The Board finds the applicant's evidence shows these

facilities are adequate to serve the proposed residential use. All other public facilities and services, including fire protection and utility service, are available to serve the Subject Property.

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

22. The Board finds the Rural Comprehensive Plan does not identify any historic, archaeological or sensitive wildlife habitat sites on or near the Subject Property. The county's wildlife inventory indicates the property is located within an Impacted Big Game Range. The Lane Code and RCP do not have any special requirements for wildlife protection in an impacted range area. The National Wetland Inventory does not identify any jurisdictional wetlands on the Subject Property. No apparent conflict exists with Goal 5 resources. Therefore, the Board finds an ESEE analysis is not applicable to this amendment.

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

23. The only natural hazard on the Subject Property is a 100 year flood plain on a portion of the site which has been previously discussed. No other dangerous conditions or natural hazards have been identified on the Subject Property or by county inventories.

(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;

24. The Board finds this criterion is not applicable since the proposed amendment is for a residential designation.

(ff) For a proposed amendment to 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;

25. The Board finds this criterion is not applicable because the proposed amendment is for a residential designation.

(gg) For a proposed amendment to a Nonresource designation or a Marginal Lands designation, an analysis responding to the criteria for the respective request as cited in the Plan document entitled, "Working Paper: Marginal Lands" (Lane County, 1983).

Lands may be designated as NON-RESOURCE/NON-EXCEPTION LAND upon submission of satisfactory factual information to support the following findings:

1. The land is not composed of existing or potential forest lands which are suitable for the commercial production of wood fiber products.

26. The Board finds the Subject Property is not forested, and is not capable of or suitable for commercial forest production. The previously discussed Forestry report states that the excessive drainage of the predominate soil type as it exists on the site makes it unsuitable for commercial forestry use. The report found that the only Douglas Fir trees on the site, which have been regularly watered, have growth characteristics which indicate poor growing conditions, consistent with the poor growing conditions observed for the filbert trees on the site.

27. The Board finds the Forestry report accurately concludes: 1) the primary site soil has no commercial species growing on it in the general area of the site, due to its excessive drainage; 2) there is no evidence (existing or historic) to support a finding that a forest use of the property exists, 3) the Subject Property is not forest land suitable for the production of wood fiber, and 4) no other forest values were identified that would require maintenance of the property as forest land.

2. The land is not needed for watershed protection.

28. The Board finds the Subject Property does not need to be designated for Agriculture or Forest use for watershed protection, as discussed under Goals 4 and 5.

3. Designation of the land as NON-RESOURCE/NON-EXCEPTION LAND will not adversely effect management of the land for big game range or other wildlife, fish or waterfowl habitat.

29. The Board finds the proposed residential zoning of one dwelling per five acres will not adversely affect management of big game or other wildlife, fish or waterfowl habitat. The Subject Property is within an inventoried Impacted Big Game Range. The Rural Comprehensive Plan has not designated the property as within a sensitive fish or wildlife area. The property does not contain any significant wetlands, marshes or ponds necessary or suitable for fish and waterfowl habitat.

4. No extreme soil or climatic conditions exist to the extent to require maintenance of existing vegetative cover to a degree not provided by the NON-RESOURCE/NON-EXCEPTION designation.

30. The Board finds there are no extreme soil or climatic conditions present on the Subject Property that would require the maintenance of its existing vegetation.

5. The land is not located in an agricultural or urban area and provided needed urban buffers, wind breaks, wildlife and fisheries habitat, livestock habitat, scenic corridors or recreational uses.

31. The Board finds the Subject Property is not located within an urban growth boundary nor is it agricultural land within the meaning of Goal 3. It has not been identified as necessary to provide urban buffers; wind breaks, wildlife, fisheries or livestock habitat; scenic corridors or recreational uses.

6. The land is predominantly Class V-VIII soils as identified in the Soil Capability Classification system of the U.S. Soil Conservation Service.

32. The Board finds the Subject Property is predominantly (67% of its area) Class V or VI soils, as identified by extensive on-site investigation using accepted national standards.

7. The land is not suitable for farm use or grazing taking into account soil fertility, climatic conditions, existing land use patterns, technological and energy inputs required, or accepted farming practices.

33. The Board finds the Subject Property is not suitable for farm use or grazing. The site is unsuitable for farm use, as shown by over 25 years of unsuccessful attempts to create a viable farm use on the property. Evidence has been provided by an agricultural consultant that the rocky, excessively drained conditions over most of the site, combined with its lack of irrigation water, make it unsuitable for grazing. The Board finds the Subject Property is therefore not agricultural land necessary for protection by Goal 3.

8. Designation of the land as AGRICULTURAL LAND is not necessary to permit farm practices to be undertaken on adjacent or nearby lands.

34. The Board finds the current Agricultural Land designation is not necessary to permit farm practices on adjacent or nearby lands. Adjacent and nearby lands used for agricultural production are separated from most of the Subject Property by an 8 to 10 foot high escarpment which creates a physical barrier. Access, irrigation, and the overall operation and management of adjacent lands does not depend upon the Subject Property. Location of a farmer's residence, barn, or equipment storage facilities on or adjacent to land used for agricultural purposes is not necessary to effectively farm that land.

IV. FINDINGS AND CONCLUSIONS RELATING TO LANE CODE 16.252 REZONING CRITERIA

Lane Code 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 for compliance with the Statewide Planning Goals by the Land Conservation and Development Commission. Any zoning or rezoning may be effected by Ordinance or Order of the Board of County Commissioners, the Planning Commission or the Hearings Official in accordance with the procedures in this section.

1. The Board finds the proposed rezoning is consistent with the purpose of Chapter 16, Lane County Land Use and Development Code and properly implements the Nonresource Land designation of the Lane County Rural Comprehensive Plan.
2. The Board further finds rezoning the Subject Property from E-30 to RR-5 is consistent with Lane Code 16.003. This section has 14 broadly-worded purpose statements that include a provision to insure development is commensurate with the character and physical limitations of the land.
3. The Board finds the public interest is appropriately served by recognizing the Subject Property is neither farm or forest land. Rural residential development is properly oriented to lands with no viable farm/forest capability and removes the pressure to develop bonafide farm and forest land.
4. The Board finds the proposed RR-5 Zone is compatible with the overall development/density pattern of the lands in the vicinity of the Subject Property to the northwest, north, northeast, and southwest.
5. The Board finds the proposed RR-5 Zone is consistent with the purpose of the Rural Residential Zone District and provides opportunities for people to live in a rural area; allows primary and accessory residential uses that are compatible with primary residential uses; and implements Plan policies related to nonresource lands.
6. As previously demonstrated, the application is consistent with applicable Plan policies. In addition, the Board finds the application is consistent with the Goal 2 Land Use Planning Policy 17, which provides:

"Residential densities for nonresource lands shall be one residence per five or ten acres and shall be determined through consistency with other plan policies and the following criteria:

a. Existing development pattern and density of any adjacent committed areas;

7. The Board finds that the Developed and Committed exception area within the rural community of Walterville is directly across the McKenzie Highway from the Subject Property. The lands directly across the highway are developed with homes on small acreages with rural characteristics. Parcels in these areas are zoned RR-2 with a 2 acre minimum lot size. The Board finds that the development density for the Subject Property will exceed this minimum parcel size.

b. Subsurface sewage disposal suitability;

8. The Board finds the Subject Property can be served by on-site standard type sewage disposal system or sand filter type systems.

c. Domestic water supply availability;

9. As previously indicated, the Board finds the Subject Property has an adequate supply of potable domestic water available to serve the proposed residential density.

d. Access;

10. The Board finds the proposed residential density can be adequately and safely served from the McKenzie Highway.

e. Public service;

11. The Board finds the Subject Property receives all available services necessary to serve the proposed density and as required by RCP Goal 11 Public Facilities and Services Policy 6k.

f. Lack of natural hazards;

12. The Board finds the Subject Property is located within a flood hazard area but is not subject to any other known natural hazards. Any development will be subject to subsequent review and approval of a flood plain development permit and establishment of minimum floor elevations where required. Based on the above information and procedures, the Board finds the Subject Property is not materially affected by any identified natural hazards.

g. Effect on resource lands.

13. The Board finds the proposed RR-5 zoning will not adversely affect any nearby resource lands. Two parcels are designated and zoned for resource use in the vicinity of the Subject Property. The resource parcel to the east and south of the site is separated from most of it by an 8 to 10 foot high escarpment, and does not need the Subject Property for access, irrigation, or any

other operating needs. The resource parcel to the west of the site is under 20 acres in size and is developed with a residence. The portion of this site which has viable resource use also does not require the use of the Subject Property for any purpose. The Board finds the proposed residential use of the property will not affect these two parcels which are zoned for resource use.

14. The Board finds the proposed RR-5 zoning appropriately implements the proposed Nonresource designation. The Board further finds the proposed RR-5 zone is consistent with the General Purpose of Chapter 16, the Purpose statement of the Rural Residential Zone, and applicable Rural Comprehensive Plan Policies, all of which were previously addressed.

15. The Board finds zoning the Subject Property RR-5 is consistent with the documented carrying capacity of the Subject Property, consistent with the existing development pattern of the area and is an appropriate use of nonresource land.

V. FINDINGS AND CONCLUSIONS RELATING TO THE STATEWIDE PLANNING GOALS

The Board finds the subject application is consistent with all applicable Statewide Planning Goals. For purposes of the analysis of this section the following applicable statewide planning goal statements have been summarized. The Oregon Land Conservation and Development Commission Goals and Guidelines are incorporated herein by reference, except as noted.

GOAL 1 Citizen Involvement

Requires citizens and affected public agencies be provided an opportunity to comment on the proposed amendment and zone change. Public notification in the form of mailed public notice was sent by Lane County to affected agencies, including the Department of Land Conservation and Development and owners of record within 500 feet of the Subject Property. The Lane County Planning Commission and Board of Commissioners have conducted two public hearings to receive comments on the plan amendment and zone change request.

GOAL 2 Land Use Planning

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

Lane County has adopted a comprehensive land use plan amendment process with specific standards that must be addressed to justify a minor change. Substantial compliance with LC 16.400, RCP Amendments (addressed in Section IV. in these findings) constitutes compliance with the applicable provisions of Goal 2.

GOAL 3 Agricultural Lands

Goal 3 strives to preserve and maintain agricultural lands. In western Oregon agricultural land consists of predominantly Class I-IV soils as identified by the NRCS. It includes other lands which are suitable for farm use, taking into consideration soil fertility, suitability for grazing, climatic conditions, existing and future availability of water for farm irrigation purposes, existing land use patterns, required technological and energy inputs, or accepted farming practices. Lands in other soil classes which are necessary to permit farm practices to be undertaken on adjacent or nearby lands will be included as agricultural lands.

More detailed data on soil capability than is contained in the NRCS soil maps and soil surveys may be used to define agricultural land.

“Agricultural Land”, as defined by Goal 3, has been described more specifically by OAR 660-033-0020 in four parts. Each part of the definition in the rule is addressed below.

OAR 660-033-0020(1)(a): Predominant Soil Types

(A) Lands classified by the U.S. Natural Resources Conservation Service (NRCS) as predominantly Class I-IV soils in Western Oregon and I-VI soils in Eastern Oregon;

The Soil Survey of Lane County Area, Oregon, (1987) map sheet #78 and soil descriptions identify three soil types occur on the Subject Property: 29 Cloquato silty loam, Class II (8 percent), 100 Oxley gravelly silt loam Class IIIw (12 percent), and 123 Sifton gravelly loam Class IVs (80 percent). This map is published at a relatively large scale and was based on photo interpretation and no field work.

Goal 3 requires the NRCS soils data be used to classify soil types, but information more specific than that shown on the large scale NRCS Soil Survey Map may be utilized as a result of on-site investigations conducted by a qualified soils scientist. A soil study conducted by a certified professional soil scientist and classifier concludes 67% of the Subject Property soils are nonresource Class V and VI.

A detailed soil survey based on accepted national standards was conducted on the site. 17 backhoe test pits located throughout the Subject Property were examined to a depth of more than 40 inches. The most significant findings include: 1) the predominant Sifton soil has a substantial amount of gravel and 3 to 10 inch diameter rocks, 2) irrigation rights are only present for 20% of the site, and cannot be presently used, 3) cultivation and harvesting is severely limited or eliminated due to surface rock, 4) water tables are often perched, 5) the soil water holding capacity is less than 2 inches, and 6) the Sifton soil type as it exists on the Subject Property is most accurately classified as a Sifton variant Class V or VI soil.

In summary, the Subject Property is not agricultural land under this part of the test, as only 33% of its soils as they exist on the site are Class I-IV.

OAR 660-033-0020(1)(b): Other suitable lands.

(B) Land in other soil classes that is suitable for farm use as defined in ORS 215.203(2)(a), taking into consideration soil fertility; suitability for grazing; climatic conditions; existing and future availability of water for farm irrigation purposes; existing land use patterns; technological and energy inputs required; and accepted farming practices;

This part of the test requires an evaluation of whether the Subject Property is nonetheless suitable for agricultural use in spite of its lack of predominantly Class I-IV soils. The seven factors listed

above are individually addressed below. Furthermore, recent LUBA court cases have interpreted this provision of the administrative rule to consider the potential for use in conjunction with adjacent or nearby land. The agricultural history of the Subject Property, such as its use as a filbert orchard and intermittent use for grazing, is relevant to its current suitability but it is not determinative.

To explain why the Subject Property is not necessary to be retained as part of the adjacent farm operation, a brief summary of the property's stewardship and use is necessary.

- * 1976: Subject Property purchased in combination with other adjacent lands. Site was not managed or used for resource purposes since the 1950's, and at that time was only used for limited sheep grazing, primarily on its bottomland areas.
- * 1977: Started clearing the subject 30 acre terrace area, and began planting donated filbert trees as Subject Property was deemed unsuitable for crops or grazing due to its rocky conditions.
- * 1982: 15 acres had been planted in filberts; however, many of the first trees planted had died and had to be replaced. Advised not to plant remaining 15 acres because of rocky conditions, but proceeded with clearing and planting due to free trees and a desire to place land in production.
- * 1985: The remaining acreage was incrementally cleared and planted. To get the trees to grow oversize holes were dug and good soil was imported, but only supported the trees for the short-term. Due to a lack of water many trees started to show cracked trunks, dead limbs and stress. Trees only 4-5 years old were being replaced regularly.
- * 1991: Only approximately 12 acres could be harvested due to equipment breakage and a lack of production on the remaining acreage.

The Subject Property is not agricultural land simply because of its attempted agricultural use. The site is not suitable either alone or in conjunction with adjacent or nearby lands. This conclusion is based on: 1) the general failure of the subject property to support a viable crop, 2) the distinct differences of land form (bottom land bordered by an escarpment) and soil types, 3) unavailability of irrigation water, 4) crop capability and production, and 5) the locational factor of the property, because it is not located within a large block of land devoted solely to agricultural use.

The Applicant has tried, where no one else had, to make the Subject Property a profitable and manageable component of the larger acreage. As previously documented, extraordinary efforts were employed for over 25 years in an effort to convert a "rock farm" into a viable agricultural use. The Applicant has failed to make the Subject Property agriculturally productive, not for a lack of effort or expense, but solely because of the extreme conditions of the land.

The Subject Property is a 30.19 acre terrace separated from farmed bottom land to the south and east by a 8-10 foot escarpment and a distinct change of soil types and capability. Where the site cannot be tilled, the bottom land is very tillable and is productive agricultural land.

Both the NRCS soils maps and on-site soil analysis have identified Class II soils on the bottom land, whereas the Subject Property consists of a majority of Class V and VI Sifton variant rocky soils. Irrigation is only available on the bottom land area. Prior owners presumably never tried to establish water rights from the McKenzie River on the Subject Property because they recognized that even when irrigated, it was not productive farm land. The Class II soils, with irrigation, are suitable for a wide variety of farm crops. Conversely, the Sifton variant Class V and VI soils are not suitable for agricultural crops or grazing, mainly due to substantial rocky areas and a lack of irrigation water.

The Subject Property is located in an area that consists predominantly of small residential tracts and hobby scale parcels. The most intense agricultural use in the area occurs on the adjacent 60 acres (10 acres to the south and 50 acres to the east) and approximately 10 acres of contiguous leased bottom ground to the southeast. The Subject Property is not located within a large block of agricultural land.

Soil fertility: The NRCS soil descriptions indicate the predominance of the site's soils have low soil fertility and require supplemental fertilization. However, the rocky condition of the land and its lack of water holding capacity and irrigation make this impossible to achieve. The limited natural fertility and limited ability to correct or augment this condition contribute to this property not being suitable for agricultural use.

Suitability for grazing and other crops: The suitability of the property as a forage/grazing resource was evaluated by Paul Day, Agriculture Consultant and a former livestock extension agent with Oregon State University. Mr. Day's report concludes the Subject Property is restricted from being used for forage or grazing due to the aforementioned rocky condition that occurs across most of the surface, and a lack of irrigation to promote and maintain forage at a rate necessary to support livestock. The low water holding capacity of the soils make it difficult to impossible to establish a desirable stand of annual or perennial forage plants. The combination of these factors render the property unsuitable for grazing.

With regard to other crops, Table 5 of the Soil Survey for Lane County Area, Oregon indicates 92 percent of the Subject Property, composed of the Oxley and Sifton soils, is technically suitable for sweet corn, snap beans and winter wheat. Both sweet corn and snap beans require irrigation, which is unavailable for the site through its limited water rights and inability to drill irrigation wells within this limited area. Winter wheat is not a viable crop due to the small size of the property, lack of any other known wheat cropping in the vicinity (which is important for transportation and marketing purposes) and primarily due to the rocky condition on the surface and of subsurface soils that restrict equipment usage for tillage and harvest. Under these conditions the cultivation and management of these crops is not feasible for these soil types as they exist on the Subject Property.

Climatic Conditions: Climatic conditions combined with soil conditions render the Subject Property unsuitable for either grazing or cropping. The subject's soil types are dependant on irrigation to overcome droughty conditions in the summer. Perched water tables in the winter restrict accessibility and limit the effective rooting depth of perennial crops, orchards and horticultural specialties. The predominant Sifton variant is listed by the NRCS (in its normal Sifton form) as having an available water holding capacity of 3-6 inches. The on-site, detailed soil survey indicates the site soils have almost no available water (less than 2 inches) in the soil during the growing season. Water balance data for the Eugene Airport shows an average moisture deficit of 3.7 inches by the end of June, and 8.1 inches at the end of July (Special Report 150, OSU Agricultural Experiment station, 1963). Even the Leaburg Station, about 10 miles east of WALTERVILLE and 100 feet higher, has a 4.8 inch deficit by July 31. These data show an average Sifton gravelly loam soil with approximately 4.5 inches of available water storage can not support crop growth much beyond mid-July in most years without irrigation. These conditions further render the unsuitability of the Subject Property for agricultural use.

Irrigation water: There are 6 acres of water rights on-site on the Subject Property's southernmost portion. There are no wells in this area and it is presently not possible to drill new irrigation wells. The one well on the Subject Property does not have sufficient capacity to be used for irrigation purposes.

Existing Land Use Patterns: The Applicant actively farms approximately 70 acres of bottom land to the east and south of the Subject Property. The Applicant, a full-time farmer, states the proposed residential use will be compatible with his farm use of the remaining property. The Subject Property is separated from the bottom land by a steep escarpment with an 8-10 foot difference in elevation and does not require the use of the site for access. Because the farm income from the bottom land constitutes a majority of the Applicant's income, he will not compromise its use as farm land. Further protection is possible by recording a Farm and Forest Management Agreement that prevents any successors in interest from complaining about standard resource practices. More importantly, the proposed plan and zone designations reflect the proper use of the property and are consistent with similar residential zonings applied to other tracts in the vicinity. The Subject Property does not need to be maintained in a resource designation to allow farm practices to continue on nearby lands.

Technical and Energy Requirements: This criterion suggests that if certain technology and energy inputs are present and or employed the Subject Property would potentially have an ability to be maintained as agricultural land. Factual evidence has shown the combination of soil and climatic conditions render the site unsuitable for agricultural use. The site's conditions of extremely rocky soils and a lack of irrigation, together severely limit any agricultural use on a majority of the property. Those portions of the property that have some degree of capability are small and cannot be practically farmed together. This point is backed up by the Applicant's attempt for the last 25 years to make this area suitable for a farm use. The combined effects of soil and climatic conditions, and a lack of irrigation effectively suggest no practical application of

energy or technology can be expected to overcome the inherent limitations in the soils or make the site suitable for farm use.

Accepted Farm Practices: The Applicant has attempted to develop what appears to be the only potential farm use of the property. As previously described, even the existing filbert orchard under a high degree of management has been unsuccessful. This long-term good faith attempt has been made to convert the property's prior under-managed status to no avail. The Applicant has attempted to use the property in the only potentially feasible way as farm land, for a filbert orchard. Neither planting orchard trees in imported soil, special preparation of plant sites nor repeated replantings have proved successful. Without irrigation the Subject Property's rocky soil conditions make all farm uses impractical. Even with irrigation, farm uses would be severely impaired by the rocky condition of the land.

OAR 660-033-0020(1)(a)(C): Land that is necessary to permit farm practices to be undertaken on adjacent or nearby agricultural lands.

This part of the test focuses on adjacent and nearby agricultural lands. Adjacent lands zoned E-30 Exclusive Farm Use are located to the east, south and west. To the north is the McKenzie Highway and one parcel developed and zoned RR-2 in the community of Walterville. Further, north of the road is the community of Walterville, developed and zoned RR-2 for residential uses.

To the east and south is a 58 acre parcel that consists of bottom land with a beet crop, and is separated from the Subject Property by an escarpment and rocky terrace. This parcel has water rights for irrigation and contains primarily Class II soils, both of which are not present on the site. Access, irrigation and all other operating characteristics of this land are independent of the Subject Property and do not require its use for continued agricultural production. The marginal use of the Subject Property has been documented and it is not necessary to be retained in an exclusive farm use zone to permit the farm practices to be undertaken on farmland to the south and east.

To the west is a 17 acre parcel owned by a third party and improved with a residence. This parcel consists of approximately 12 acres leased by the Applicant for a beet crop on the bottom land and three acres of filberts located on an extension of the Subject Property's rocky terrace. The filbert orchard shares Subject Property's lack of irrigation and rocky conditions. The 12 acres is farmed in conjunction with the 58 acres of bottom land. The escarpment located along the Subject Property's southern property boundary extends westerly and forms a physical boundary between the commercially viable bottom land and the terrace. The Subject Property is not necessary to permit continued farm practices to continue on the 12 acres.

A barn and house are located on the Subject Property. None of the farm practices conducted on the 58 acre parcel to the east and west, or on the 17 acre parcel to the west, depend on the existence of on-site or adjacent structures for storing equipment, harvesting crops, or conducting

other farming activities. Accordingly, the barn and house located on the Subject Property are not necessary to permit continued farm practices on adjacent or nearby agricultural lands.

OAD 660-033-0020(1)(b): Farm unit test.

Land in capability classes other than I-IV/I-VI that is adjacent to or intermingled with lands in capability classes I-IV/I-VI within a farm unit, shall be inventoried as agricultural lands even though this land may not be cropped or grazed;

This part of the test focuses on lands, such as the Subject Property, which are predominantly nonagricultural soils, and inquires into whether they are adjacent to or intermingled with better lands within the "farm unit." This is commonly referred to as the farm unit test. If the Subject Property is not a part of the farm unit, then this test does not apply.

The term "farm unit" is not defined in any statute, goal, or rule. The term first appeared in the LCDC Goal 3 Policy Paper. That policy paper became the basis for the first Goal 3 Rule adopted in 1982. This classification has been subject to considerable litigation due to the lack of any definition, in statute or administrative rule, of the term "farm unit." Three pertinent farm unit cases are:

A) Riggs v. Douglas County, 167Or App 1, 1 P3d 1042 (2000);

This case involved an application to re-designate, from Farm and Forestry to Rural Residential, a 101 acre parcel that had been part of a larger property on which a sheep ranch had been operated. The parcel in question was not in the same ownership as the parent parcel at the time of application. Because there was no common ownership, the county held that the 101 acres was not part of a larger farm unit. In its decision the court held that common ownership of the subject parcel and adjacent land could be an "indication" that the parcel is part of a farm unit, but that common ownership is not determinative. The court remanded the case to the county to determine whether the 101 acres was part of a farm unit.

B) DLCD v. Coos County, 24Or LUBA 173, *aff'd*, 117 Or App 400 (1992);

This case involved an application to re-designate, from Forest to Rural Residential, 20 acres of a 175 acre parcel. The parent parcel was created 6 years earlier, and at that time a farm management plan for cattle ranching the entire 175 acres was submitted and accepted. This plan included the 20 acres proposed for rural residential use. The applicant for rezoning was the owner of both parcels and also the party which filed the farm management plan for the entire 175 acres. The application was denied on the basis that the 20 acres was a part of a 175 acre farm unit.

C) DLCD v. Curry County, 28 Or LUBA 205 (1994), *aff'd*, 132 Or App 393 (1995).

This case involved an application to rezone from Forest Grazing to Rural Residential, 233 acres of a 272 acre parcel. The parent parcel was created 2 years earlier as a partition from a 1,075 acre tract, and at that time a farm management plan for cattle ranching the entire 272 acres was

submitted and accepted. This plan included the 233 acres proposed for rural residential use. The application was denied on the basis that the 233 acres was part of a farm unit.

These cases demonstrate that a farm unit should be defined through a factual determination, as an area managed and operated as part of a unified, indivisible agricultural business. Oregon courts have considered the following nine factors in determining whether a parcel is part of a larger farm unit.

1) Common ownership.

This factor examines the historic ownership of a subject property and the adjacent lands. The Applicant's Subject Property is owned in common with the adjacent 58 acres. However, as *Riggs v. Douglas County* shows, common ownership of adjacent parcels is not determinative of whether a farm unit exists. The issue of how the land has been used is more important. Therefore, the Board finds the common ownership of the Subject Property and the adjacent farm land which have never been farmed as a unit, is not determinative of whether the Subject Property is part of a larger farm unit.

2) Historic use of each parcel, including whether the Subject Property has ever been actively farmed.

This factor examines historic farming practices on a subject property and adjacent land. The Board finds that, until the Applicant unsuccessfully attempted to raise filberts, the Subject Property had no history of active farm use, let alone farm use in conjunction with another tract. In addition, the attempt at active farm use of the site has been unsuccessful due to rocky soils that lack irrigation.

3) Whether the Subject Property is an integral part of a uniform farm management plan.

This factor examines whether the Subject Property is part of a uniform management plan. The Board finds that the Subject Property has never been part of a farm management plan for all of the Applicant's properties in the area, unlike the properties in the *Coos County* and *Curry County* cases.

4) Whether the Subject Property has ever been managed as an economically viable farming operation.

This factor examines the economic viability of a subject property. The Board finds that the Subject Property has never been economically viable for agricultural use, either along or in conjunction with another parcel.

5) Whether identical or interrelated farming operations take place on adjacent parcels.

This factor examines whether similar farming practices take place on adjacent parcels. Unlike the common uses on the *Coos County* and *Curry County* parcels, the Board finds that the farm use

adjacent to the Subject Property is completely different and requires different soil conditions, management methods and equipment.

6) Whether the Subject Property functions operationally as part of a larger farming operation.

This factor examines the inter-dependence of a subject property and adjacent parcels. The Applicant's dwelling and outbuildings are located on the Subject Property because it is the nonproductive land. Based on the testimony of the Applicant and other experienced farmers, the Board finds that the use of these facilities or their common ownership or zoning are not necessary for the continued farm operation of adjacent parcels. LCDC Statewide goals and a substantial amount of administrative rules actively discourage construction on bona fide agricultural soils. For this and other reasons, the Board finds that it is customary in the Willamette Valley that a farmer's dwelling and outbuildings are not necessary on or adjacent to the land being farmed and frequently are located miles away.

7) Whether the Subject Property is intermingled with higher quality farmland.

This factor examines the soil quality on adjacent farmlands. The Board finds that the Subject Property is isolated from higher quality farmland to the south and east by an 8 to 10 foot high escarpment. In addition, there is a substantial amount of rural residential development close to the site, on both sides of the McKenzie Highway. The Board finds that the Subject Property is more intermingled with residential development than high quality farm land.

8) When and under what circumstances the landowner's entire parcel of land was created.

This factor examines whether a subject property was partitioned from a larger tract of farmland. In the Coos and Curry County cases, LUBA made much of the fact that the land in question had recently been partitioned off from an active farm as an apparent step toward development. The Board finds that the applicant's entire holdings in the area were not recently partitioned from a larger holding to form a discrete unit.

9) Whether the Subject Property could be utilized for agricultural uses (other than those currently being conducted) that would bring it within a farm unit.

This factor examines other possible farm uses for a subject property to see if it could be integrated into an existing farming operation. The Board finds that the Subject Property cannot be used for other agricultural purposes. Rocky conditions on the Subject Property make any agricultural uses involving tilling impossible. An agricultural consultant has determined that the site cannot be used for grazing due to its rocky conditions, lack of irrigation, and low water holding capacity of the soil.

Factual evidence has been provided that the Subject Property has never been managed or operated for agricultural use in conjunction with other adjacent lands, which have completely different crops, different soil, and different growing conditions such as available irrigation. The site has never been part of an overall farm management plan for the applicant's holdings in the area. The Board finds that the Subject Property is not part of a "farm unit." If the Board found

that the presence of the Applicant's residence and barn on the Subject Property make it a part of a farm unit, it would have to reach the same conclusion if they were located across the McKenzie Highway in a subdivision or five miles away in the City of Springfield. That would be an absurd result.

GOAL 4 Forest Lands

Goal 4 requires the conservation of forest land for forest uses. Forest land is defined by Statewide Planning Goal 4 as lands suitable for commercial forest uses including adjacent and 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 Subject Property is composed of approximately 67% soils which are Class V and VI as they occur on the site. The soil descriptions and Table 6 Woodland Management and Productivity within The Soil Survey of Lane County Area, Oregon do not list Cloquato, Oxley, or Sifton soils as being suited for the production of Douglas-fir or any other fir or deciduous tree species. In 1997, Lane County revised the agricultural capability and forest ratings of many soils. The Sifton unit is rated as having a forest capability of 182 cubic feet per acre per year. This designation appears to be incorrect for the Subject Property, as the Sifton variant present on the site is so rocky that the forest capability for normal Sifton soils does not apply. Other constraints to forest production identified in the Forestry report are the low water holding capacity of the soil, droughty conditions and a lack of irrigation. These conditions have been documented by the onsite soil analysis and Forestry report. There is no evidence that the property ever supported commercial forest uses. The Subject Property is not suitable for forest uses.

The second part of the test inquires into whether the Subject Property must be kept in a resource designation in order to permit forest operations or practices on adjacent or nearby lands. There are no forest lands located on adjacent or nearby lands. The closest forest lands are located approximately one-half mile away and separated by the community of Walterville to the north and the McKenzie River to the south.

Therefore, based on an analysis of the factors discussed above and earlier in this statement, the site is not forest land required for conservation by Goal 4, and an exception to Goal 4 is not required.

GOAL 5 Open Spaces, Scenic and Historic Areas and Natural Resources

Goal 5 requires the conservation of open space and protection of natural and scenic resources that include cultural, historic, scenic and wilderness area characteristics. The goal, as amended by OAR 660-23-000, contains policies and procedures for a variety of resources which are listed below. The administrative rule requires the county to inventory and evaluate the location, quality and quantity of certain natural resources.

The county must address Goal 5 when an acknowledged plan and zoning designation is proposed for amendment. If no conflicting uses are identified, the inventoried resources shall be preserved. If 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. The Goal 5 conflict resolution process is not required for Goal 5 resources that are not on an acknowledged Goal 5 inventory. Therefore, Goal 5 requires a determination whether any of the following Goal 5 resources are inventoried in the acknowledged county plan.

The following Goal 5 resources are addressed in an inventory done as part of a Countywide legislative planning process: Federal wild and scenic rivers, Oregon scenic waterways, approved Oregon recreational trails, natural areas, wilderness areas, mineral and aggregate resources, energy sources, historic resources, open space, and scenic views and sites. The Subject Property is not listed on any county inventory for these resources.

The Goal 5 resources that are listed below have been determined to be site-specific, given the requirements of each resource.

Water Resources: The Subject Property is served by an existing well. Groundwater will be the source for domestic water supply for up to six single-family residences on the Subject Property. The site is not listed by Lane Manual 13.010 as being located within a water quantity or quality limited area. A Well Log Report was completed for wells in the vicinity of the Subject Property. The report concludes the local aquifer is capable of serving the proposed residential density for domestic purposes.

Riparian Resources: The *Flora and Fauna Working Paper and Addendum* inventories riparian resources. Riparian areas are inventoried to include all lands within 100 feet of the banks of a Class I stream. There are no Class I streams on the Subject Property or within 100 feet of it.

Wetland Resources: The National Wetland Inventory (NWI) mapping for the county is being used as the inventory of wetland resources. NWI map Walterville 3 indicates there are no wetland resources located on the Subject Property.

Big Game Resources: The Wildlife Inventory, Marcola Quad indicates the Subject Property is located within an Impacted Big Game Range. There are no county inventories or specific site evidence that indicates the property is necessary to be preserved for wildlife to meet the requirements for food, water, shelter, reproduction, wildlife migration corridors, big game range, nesting or roosting sites.

GOAL 6 Air, Water and Land Resource Quality

Goal 6 is intended to maintain and improve the quality of the air, water and land resources of the State. This Goal is generally implemented during the comprehensive planning process. As it

pertains to site-specific development, it requires that adequate protection measures are taken to assure the retention of air, water and land quality.

The Subject Property will be served by individual on-site sanitation systems. As a condition of any land divisions and prior to residential development, each parcel will be required to gain approval of an on-site sanitation system in accordance with DEQ rules.

GOAL 7 Areas Subject to Natural Disasters or Hazards

Goal 7 is intended to protect life and property from natural hazards. The Subject Property is located within a 100 year flood plain where base flood elevations have been determined, and portions on the terrace are outside this area. Any future residential development will be subject to establishing floor elevations one foot above the established flood plain elevation, where applicable. No other natural hazards have been identified by county inventories or a site view of the Subject Property.

GOAL 8 Recreational Needs

This goal addresses the recreational needs of Oregon residents and visitors. Provisions of this goal are appropriately implemented by a legislative process as part of periodic review of the comprehensive plan. The proposed change from E-30 Exclusive Farm Use to RR-5 Rural Residential has no impact on Goal 8.

GOAL 9 Economy of the State

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 pertinent to this redesignation and rezoning.

GOAL 10 Housing

Goal 10 is intended to provide for the housing needs of the citizens of the State. This plan amendment request will facilitate the construction of housing on the site; however, it's primarily implemented through provisions of the Rural Comprehensive Plan.

GOAL 11 Public Facilities and Services

The purpose of Goal 11 is to provide for the planning and development of public facilities and services in a timely, orderly and efficient manner, in order to support rural and urban development. The Subject Property is rural land and will remain rural land after approval of this request. The RCP Goal 11 Policy 6 (e)(k) describes the minimum level of services for Nonresource lands. As stated earlier, the site receives a full range of rural facilities and services

that can serve the proposed rural residential development on the property. No additional public facilities and services are required to serve the proposed residential use of the site.

GOAL 12 Transportation

Goal 12 is intended to provide and encourage a safe, convenient and economical transportation system. This goal is implemented through the Goal 12 Rule, OAR 660-12), adopted in 1991. The Rule specifically addresses amendments to an acknowledged comprehensive plans and implementing regulations. OAR 660-12-060(1) provides that any such amendments that “significantly affect a transportation facility shall assure that allowed land uses are consistent with the identified function, capacity, and level of service of the facility.” To determine what constitutes a significant affect, OAR 660-12-060(2) requires an evaluation of whether the amendment: 1) changes the functional classification of an existing or proposed transportation facility, 2) changes standards implementing a functional classification system, 3) 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 4) would reduce the level of service of the facility below the minimum acceptable level identified in the TSP.

The Subject Property is served by the McKenzie Highway, a State road designated as a principal arterial. The Oregon Department of Transportation staff was consulted regarding the proposed use of the property and indicated a consolidated access approach onto the McKenzie Highway would not conflict with the use or functional classification of the highway. The road has ample capacity to accommodate five additional residences, and is within the acceptable level of service established by the county and state.

Goal 13 Energy Conservation

This Goal is most appropriately addressed at the comprehensive planning phase, and as such is not directly applicable to this plan amendment request.

Goal 14 Urbanization

The purpose of Goal 14 is to provide for the orderly and efficient transition from rural to urban land use.

Goal 14 prohibits urban uses on rural lands. The proposed amendment and zone change to allow five acre rural residential parcels does not constitute an urban density or is located within an urban growth boundary or urban transition area. All lands located outside of an acknowledged urban growth boundary and not subject to a Goal 14 exception are considered rural lands, per 1000 Friends of Oregon v. DLCD (Curry County), 301 Or 447, 498-501, 724 P 2d 268 (1986). The proposed five acre density is consistent with the lowest Rural Residential density allowed by the county’s zoning district for Nonresource lands.

Goals 15 - 19

The Goals are not applicable to this plan amendment request, as they are geographically oriented to specific areas and resources that are not present on the Subject Property.

CONCLUSIONS OF LAW

The Board finds that the subject 30.19 acre tract qualifies for a Nonresource plan designation and is appropriately zoned Rural Residential RR-5.

The Board concludes the Subject Property is located in an area that is primarily composed of soils that are not suitable for agriculture or forest use as they occur on the site.

The Board further concludes this application corrects a plan error, properly identifies and implements the proper plan designation and zone district, and is consistent with the intent and purpose of the Rural Comprehensive Plan and county policies.

The Board concludes this application for a minor plan amendment and rezoning addresses and satisfies all applicable criteria. The Subject Property has been evaluated within the context of the Rural Comprehensive Plan, Lane Code and Statewide Planning Goals. The Board concludes the Subject Property consists predominantly of land that is not agriculture or forest land as defined by the Goals. The Board concludes this application will have no significant adverse impact on existing or planned uses in the area. It is therefore appropriately designated as nonresource land.

Finally, the Board concludes that based on the extensive documentation and factual evidence presented in the Applicant's statement, including Exhibits, supplemental information, evidence received at public hearings and made part of the record, and findings provided herein, the plan amendment and zone change conforms with all applicable criteria to justify a redesignation from Agriculture Land to Nonresource Land and rezoning from E-30 Exclusive Farm Use to Rural Residential RR-5.

APPLICANT'S STATEMENT

APPLICATION FOR APPROVAL OF A MINOR PLAN AMENDMENT FROM AGRICULTURE TO NONRESOURCE AND A ZONE CHANGE FROM E-30 TO RR-5 BY THE PLANNING COMMISSION AND BOARD

DATE: June 27, 2001

I. PROPOSAL DESCRIPTION

- A. APPLICANT:** David Grant
39040 McKenzie Highway
Springfield, OR 97478-9068
- B. OWNERS:** Jack and Beverly Grant, Trustees of the Grant Revocable Trust
319 Country Club Road
Eugene, OR 97401
- C. AGENT:** Harry A. Taylor
Land Use Consultant
P.O. Box 1420
Veneta, OR 97487

D. PROPOSAL: Approval of a Rural Comprehensive Plan (RCP) diagram amendment from Agriculture Land to Nonresource Land, and a zoning map amendment from E-30 Exclusive Farm Use to RR-5 Rural Residential for a 30.19 acre site located south of McKenzie Highway 126 and the community of Walterville, pursuant to Lane Code 16.252.

This application implements Lane County RCP Goal 2 Land Use Planning Policy 16 which allows designating land that does not meet the statewide planning goals definition of farm or forest land as Nonresource Land. The subject property is depicted on Exhibit "A", Plot Plan; Exhibit "B", Aerial Photograph 1995; Exhibit "C", Property Photographs; and Exhibit "D", Assessor's Maps 17-01-28 and 17-01-28-1; Exhibit "E", Rural Addressing Maps; and Exhibit "F", USGS Topography.

II. INTRODUCTION

The applicant, David Grant, seeks a plan change to Nonresource from Agriculture and a zone change to RR-5 from E-30 for a 30.19 acres of land to allow residential development of a maximum of 6 five acre parcels on land generally unsuitable for agricultural uses. Mr. Grant has tried unsuccessfully for over 20 years to develop the property as a filbert orchard. This application does not propose any land divisions. Future land division will be subject to a separate land division application and process that meets the requirements of Lane Code 16.231 Rural Residential Zone and LC 13.050, Land Divisions, and compliance with any conditions of approval.

A Nonresource designation that is factually supported is consistent with Oregon's Agricultural land use policy, ORS 215.243(2), because it helps preserve land that is truly agricultural land in large blocks necessary for maintaining the agricultural economy of the state. A Nonresource designation acknowledges certain lands are so poor that they do not meet the definition in the goals of either farm or forest land. As a result, development of Nonresource lands helps remove the pressure to convert bonafide farm and forest land or expand urban growth boundaries and rural communities into resource lands.

Mr. Grant is a talented full-time farmer who since 1976 has attempted with marginal success to convert a historically unused piece of land into a filbert orchard. It would be unfair to penalize his efforts in trying to make the land productive. Local farmers have indicated they would not attempt to farm the property due to its extremely rocky condition and lack of irrigation. It is precisely these conditions that make the site generally unsuitable for farm use. The subject property lacks any functional agricultural viability and does not substantially contribute to the agricultural economy of the area or state. In fact, it makes a negative contribution in terms of wasted time and energy, and harm to equipment and machinery. The subject property consists of 67 percent Class V and VI nonresource soils.

III. GENERAL INFORMATION

LOCATION AND SITE DESCRIPTION

Assessor's Map No.: 17-01-28 Tax Lot 700
Zoning: E-30/RCP
Plot No.: 525
Area: 30.19 acres
Tax Code: 19-09

Location: The subject property is located on the south side of the McKenzie Highway, across from the community of Walterville, with a site address of 39040 McKenzie Highway, Springfield, OR 97478-9068. The property is located approximately four miles east of the City of Springfield.

Site: The subject property is a 30.19 acre parcel as reconfigured by a property line adjustment. It is generally rectangular in configuration, approximately 1050 feet in depth by 1332 feet in width except for a 1.2 acre appendage on the east property line and the angular alignment of the McKenzie Highway along the northwest property boundary. The subject property has 805 feet of road frontage on the McKenzie Highway 126.

Improvements: The site is improved with the applicant's dwelling, barn, accessory structures, graveled roads, well and sanitation system.

Legal Lot Status: The subject property is a legal lot, as confirmed by Lane County Land Management staff through Legal Lot Verification PA 00-6565, attached as Exhibit "G".

IV. APPROVAL CRITERIA AND ANALYSIS

A. STANDARDS IN THE STATEWIDE PLANNING GOALS

The Oregon Land Conservation and Development Commission Goals and Guidelines are incorporated herein by reference, except as noted. The following applicable statewide goal statements have been summarized.

GOAL 1 Citizen Involvement

Requires that citizens and affected public agencies be provided an opportunity to comment on the proposed amendment and zone change. Public notification in the form of mailed public notice will be sent by Lane County to affected agencies, including the Department of Land Conservation and Development and owners of record within 500 feet of the site.

GOAL 2 Land Use Planning

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

Lane County has adopted a comprehensive land use plan amendment process with specific standards that must be addressed to justify a minor change. Substantial compliance with LC 16.400, RCP Amendments (addressed in Section IV B in this statement) constitutes compliance with the applicable provisions of Goal 2.

GOAL 3 Agricultural Lands

Goal 3 strives to preserve and maintain agricultural lands. In western Oregon agricultural land consists of predominantly Class I-IV soils as identified by the Soil Conservation Service. It includes other lands which are suitable for farm use, taking into consideration soil fertility, suitability for grazing, climatic conditions, existing and future availability of water for farm irrigation purposes, existing land use patterns, required technological and energy inputs, or accepted farming practices. Lands in other soil classes which are necessary to permit farm practices to be undertaken on adjacent or nearby lands will be included as agricultural lands.

More detailed data on soil capability than is contained in the U.S. Natural Resources Conservation Service (NRCS) soil maps and soil surveys may be used to define agricultural land.

“Agricultural Land”, as defined by Goal 3, has been further articulated by OAR 660-033-0020 in four parts. Each part of the definition in the rule is addressed below.

OAR 660-033-0020(1)(a): Predominant Soil Types

(A) Lands classified by the U.S. Natural; Resources Conservation Service (NRCS) as predominantly Class I-IV soils in Western Oregon and I-VI soils in Eastern Oregon;

The Soil Survey of Lane County Area, Oregon, (1987) map sheet #78 and soil descriptions, attached as Exhibit “H”, identify three soil types occur on the subject property: 29 Cloquato silty loam, Class II (8 percent), 100 Oxley gravelly silt loam Class IIIw (12 percent), and 123 Sifton gravelly loam Class IVs (80 percent). The published soil map has a scale of 1: 20,000 and was mapped at an Order 2 level of intensity.

Goal 3 requires the NRCS soils data be used to classify soil types, but more specific information may be utilized as a result of on-site investigations conducted by a qualified soils scientist. A soil study conducted by Gary Kitzrow, a certified professional soil scientist and classifier, attached as Exhibit “I”, concludes 67 percent of the subject properties soils are nonresource Class V and VI.

An Order 1, high intensity soil survey was conducted by Mr. Kitzrow in January 2000, to determine if the published soil identifications and soil boundaries were accurate, and to make necessary corrections. The Kitzrow report is only summarized here, but should be consulted for additional details and photographs of soil conditions encountered.

The entire tract was traversed and the soil profiles of 17 backhoe test pits were examined to a depth of more than 40 inches. The most significant findings include: 1) the predominant Sifton unit has 35-70 percent gravels and cobbles (3 to 10 inch), 2) no irrigation rights are present, 3) cultivation and harvesting is severely limited if not eliminated due to surface rock, 4) water tables are often perched, 5) the available water capacity is less than 2 inches, and 6) the Sifton soil type is accurately classified as a Class V soil.

In summary, the subject property is clearly not Agricultural land by this part of the test as only 33percent of the soils are Class I-IV.

OAR 660-033-0020(1)(b): Other suitable lands.

(B) Land in other soil classes that is suitable for farm use as defined in ORS 215.203(2)(a), taking into consideration soil fertility; suitability for grazing; climatic conditions; existing and future availability of water for farm irrigation purposes;

existing land use patterns; technological and energy inputs required; and accepted farming practices;

This part of the test requires an evaluation of whether the subject property is nonetheless suitable for agricultural use in spite of its lack of predominantly Class I-IV soils. The seven factors listed above are individually addressed below. Furthermore, recent LUBA court cases have interpreted this provision of the administrative rule to consider the potential for use in conjunction with adjacent or nearby land. The agricultural history of the subject property, such as its use as a filbert orchard and intermittent use for grazing, is relevant to its current suitability, but it is not determinative.

To explain why the subject property is not necessary to be retained as part of the adjacent farm operation, a brief summary of the property's stewardship and use is necessary. In 1976, Jack and Beverly Grant purchased a 107 acre tract, including the subject 30 acres. About the same time, the owner's son and the applicant of this request, Dave Grant, started to work part-time on a local mint farm owned by Jack Sandgate. Mr. Sandgate offered to distill any mint Mr. Grant raised on the family tract. With a loan from his parents, that proposal launched Dave Grant into full-time farming.

The Grant tract had been unused for a number of years and was in a state of general disrepair with the land overgrown with brush, blackberries and junk, and barns and outbuildings that were falling down. The last farm use of the property in the 1950's consisted of raising sheep primarily on the bottomland areas. Starting in 1977, 20 acres adjacent to the subject property was cleared and planted in mint. The first years crop was a loss, but Mr. Grant continued to clear more bottom land for mint and started to clear the subject 30 acre terrace area. Feeling a need to do something with the terrace, as it was not suitable for crops or grazing due to rocky conditions, Mr. Grant started to plant filbert trees that were "trash trees" given to him by a local grower for no charge. By 1982, 15 acres had been planted in filberts; however, many of the first trees planted had died and to be replaced. Mr. Grant was advised not to plant the remaining 15 acres because it couldn't be harvested, but with free trees and a desire to some how make the area productive, the remaining acreage was incrementally cleared and planted by 1985. To get the trees to grow oversize holes were dug and good soil was imported, but only supported the trees for the short-term. Due to a lack of water many trees started to show cracked trunks, dead limbs and stress. Trees only 4-5 years old were being replaced regularly. During this same period the mint crop had been increased to 60 acres and was financially carrying the farm. What income that was made from filbert nut sales was off-set by equipment and machinery breakdowns and extraordinary labor inputs. By 1991, only approximately 12 acres could be harvested due to equipment breakage and a lack of production on the remaining acreage. See Exhibit "J", Applicant's Farm Use History, and Exhibit "K", Filbert Production Records.

The subject property is not agricultural land simply because of its attempted agricultural use. The subject property is not suitable either alone or in conjunction with adjacent or nearby lands. This

conclusion is based on: 1) the general failure of the subject property to support a viable crop, 2) the distinct differences of land form (bottom land bordered by an escarpment) and soil types, 3) availability of irrigation water, 4) crop capability and production, and 5) the locational factor of the property, because it's not located within a large block of land devoted solely to agricultural use.

The applicant has tried, where no one else had, to make the subject property a profitable and manageable component of the larger acreage. As previously documented, extraordinary efforts were employed for over 25 years in an effort to convert a "rock farm" into a viable agricultural use. The applicant has generally failed, not for a lack of effort or expense, but solely on the extreme conditions of the land to make this portion agriculturally productive.

The subject property is a 30 acre terrace separated from farmed bottom land to the south and east by a 8-10 foot escarpment and a distinct change of soil types and capability. Where the subject cannot be tilled, the bottom land is very tillable. The applicant raised mint on this area until market conditions forced a change to the current beet crop.

Both the NRCS soils maps and the applicant's soil scientist have delineated the bottom land as consisting of Class II soils, whereas the subject property consists of Class V and VI rocky soils. Irrigation is only available on the bottom land area. The Class II soils, with irrigation, are suitable for a wide variety of farm crops. Conversely, the Class V and VI soils are not suitable for agricultural crops or grazing, mainly due to substantial rocky areas and a lack of irrigation water.

The subject property is located in an area that consists predominantly of small residential tracts and hobby scale parcels. The attached Lane County Rural Addressing Maps of the surrounding area depict the location and density of residential development that virtually surrounds the subject property. The most intense agricultural use in the area occurs on the owner's adjacent 60 acres (10 acres to the south and 50 acres to the east) and approximately 10 acres of contiguous leased bottom ground to the southeast. The subject property is not located within a large block of agricultural land.

Soil fertility: The NRCS soil descriptions indicate the predominance of the sites soils have low soil fertility and require supplemental fertilization. However, the rocky condition of the land and its lack of irrigation render this an impracticable practice. The limited natural fertility and limited ability to correct or augment this condition contribute to this property not being suitable for agricultural use.

Suitability for grazing and other crops: The suitability of the property as a forage/grazing resource was evaluated by Paul Day, Agriculture Consultant and a former livestock extension agent with Oregon State University. Mr. Day's report, attached as Exhibit "L", concludes the subject property is restricted from being used for forage or grazing due to the aforementioned rocky condition that occurs across most of the surface, a lack of irrigation to

promote and maintain forage at a rate necessary to support livestock. The low water holding capacity of the soils make it difficult to impossible to establish a desirable stand of annual or perennial forage plants. The combination of these factors render the property unsuitable for raising grazing.

With regard to other crops, Table 5 of the Soil Survey for Lane County Area, Oregon, attached as Exhibit "M", indicates 92 percent of the subject property, composed of the Oxley and Sifton soils, is technically suitable for sweet corn, snap beans and winter wheat. Both sweet corn and snap beans require irrigation, which is not available. Winter wheat is not a viable crop due to the small size of the property, lack of any other known wheat cropping in the vicinity (important for transportation and marketing purposes) and primarily due to the rocky condition on the surface and of subsurface soils that restrict equipment usage for tillage and harvest. Under these conditions the cultivation and management of these crops is not feasible for these soil types.

Climatic Conditions: Climatic conditions combined with soil conditions render the subject property unsuitable for either grazing or cropping. The subject's soil types are dependant on irrigation to overcome droughty conditions in the summer. Perched water tables in the winter restrict accessibility and limit the effective rooting depth of perennial crops, orchards and horticultural specialties. The predominant Sifton gravelly loam is listed by the NRCS as having an available water capacity of 3-6 inches. The Kitzrow soil survey indicates the site soils have a almost no available water (less than 2 inches) in the soil during the growing season. Water balance data for the Eugene Airport shows an average moisture deficit of 3.7 inches by the end of June, and 8.1 inches at the end of July (Special Report 150, OSU Agricultural Experiment station, 1963). Even the Leaburg Station, about 10 miles east of Walterville and 100 feet higher, has a 4.8 inch deficit by July 31. These data show an average Sifton gravelly loam soil with approximately 4.5 inches of available water storage can not support crop growth much beyond mid-July in most years without irrigation. These conditions further render the unsuitability of the subject property for agricultural use.

Irrigation water: There are no declared or potential water rights on-site, or from a nearby source that would be adequate for farm crop irrigation. Irrigation rights from the McKenzie River are limited to the bottom land, a superior productive area.

Existing Land Use Patterns: The applicant actively farms approximately 70 acres of bottom land to the east and south of the subject property. The applicant, a full-time farmer, finds the proposed residential use will be compatible with his farm use of the remaining property. The subject property is separated from the bottom land by a steep escarpment with a 8-10 foot difference in elevation. Because the farm income from the bottom land constitutes a majority of Mr. Grant's income, he is not about to compromise its use as farm land. Further protection can be provided by recording a Farm and Forest Management Agreement that prevents any successors in interest from complaining about standard resource practices. More importantly, the proposed plan and zone designations reflect the proper use of the property and are consistent with similar

residential zonings applied to other tracts in the vicinity. The subject property does not need to be maintained in a resource designation to allow farm practices to continue on nearby lands.

Technical and Energy Requirements: This criterion suggests that if certain technology and energy inputs are present and or employed the subject would potentially have an ability to be maintained as agricultural land. The applicant has indicated the combination of soil and climatic conditions render the site unsuitable for agricultural use. The site's conditions of extremely rocky soils and a lack of irrigation, together severely limit any agricultural use on a majority of the property. Those portions of the property that have some degree of capability are small and cannot be practically farmed together. This point is backed up by the applicant's attempt for the last 25 years to make this area suitable for a farm use. The combined effects of soil and climatic conditions, and a lack of irrigation effectively suggest no practical application of energy or technology can be expected to overcome the inherent limitations in the soils or make the site suitable for farm use.

Accepted Farm Practices: The applicant has attempted to develop, what appears to be, the only potential farm use of the property. As previously described, even the existing filbert orchard, under a high degree of management has been unsuccessful. This long-term good faith attempt has been made to convert the property's prior under managed status to no avail. The applicant has attempted to use the property in the only potentially feasible way as farm land, for a filbert orchard. Neither planting orchard trees in imported soil, special preparation of plant sites nor repeated replantings have proved successful. Without irrigation the subject property's rocky soil conditions make all farm uses impractical. Even with irrigation, farm uses would be severely impaired by the rocky condition of the land.

OAR 660-033-0020(1)(a)(C): Land that is necessary to permit farm practices to be undertaken on adjacent or nearby agricultural lands.

This part of the test focuses on adjacent and nearby agricultural lands. Adjacent lands zoned E-30 Exclusive Farm Use are located to the east, south and west. To the north is the McKenzie Highway, Further, north of the road is the community of Waltherville developed and zoned RR-2 for residential uses.

To the east and south is a 58 acre parcel that consists of bottom land with a beet crop, and is separated from the subject property by an escarpment and rocky terrace. This parcel receives water rights for irrigation and contains primarily Class II soils. The marginal use of the subject property has been documented and it is not necessary to be retained in an exclusive farm use zone to permit the farm practices to be undertaken on the south and eastern farmed land.

To the west is a 17 acre parcel improved with a residence. This parcel consists of approximately 12 acres leased by the applicant for a beet crop on the bottom land and three acres of filberts located on an extension of the subject's rocky terrace. The filbert orchard shares the subjects lack

of irrigation and rocky conditions. The escarpment located along the subject property's southern property boundary extends westerly and forms a physical boundary between the commercially viable bottom land and the terrace. The subject property is not necessary to permit continued farm practices to continue on either the bottom land or filbert orchard area.

OAR 660-033-0020(1)(b): Farm unit test.

Land in capability classes other than I-IV/I-VI that is adjacent to or intermingled with lands in capability classes I-IV/I-VI within a farm unit, shall be inventoried as agricultural lands even though this land may not be cropped or grazed;

This part of the test focuses on lands, such as the subject property, which are predominantly nonagricultural soils, and inquires into whether they are adjacent to or intermingled with better lands within the "farm unit." This is commonly referred to as the "farm unit" test. If the subject property is not a part of the "farm unit", then this test does not apply.

The term "farm unit" is not defined in any statute, goal, or rule. The term first appeared in the LCDC Goal 3 Policy Paper. That policy paper became the basis for the first Goal 3 Rule adopted in 1982. This classification has been subject to considerable litigation due to the lack of any definition, in statute or administrative rule, of the term "farm unit." A generous interpretation of the term "farm unit" would suggest it includes all lands in the same ownership, and lands in different ownership that are jointly managed for farm use.

An important case on point is Riggs v. Douglas County, 167Or App 1, 1 P3d 1042 (2000). This case involved an application to re-designate, from farm and forestry to rural residential, a 101 acre parcel that had been part of a larger property on which a sheep ranch had been operated. The subject property was not in the same ownership as the parent parcel at the time of application. In affirming LUBA's remand for additional findings on whether the subject property was part of a "farm unit" with the other parcels in the original operation, the court held that common ownership of the subject parcel and adjacent land could be an "indication" that the parcel is part of a farm unit, but that common ownership is not determinative (emphasis provided). The court and LUBA took note of OAR 660-033-0030(3), which provides that Goal 3 attaches no significance to the ownership of a lot or parcel when determining whether it is "agricultural land."

The applicant submits the "farm unit" does not include the subject 30 acre parcel, due to its demonstrated lack of agricultural suitability even with a high level of management and monetary inputs, along with its physical isolation from other farm land in the vicinity. The subject property is not suited to other crops or grazing uses because of a lack of irrigation and rocky soils. Finally, the applicant submits the county can adopt adequate findings that conclude the subject property is not part of a farm unit based on the facts presented herein.