

FILED

MAY 07 1986

GLORIA A. McEWEN, CLERK

BEFORE THE BOARD OF COUNTY COMMISSIONERS BY \_\_\_\_\_ DEPUTY

FOR LINCOLN COUNTY, OREGON

ORDINANCE #243

AN ORDINANCE TAKING AN EXCEPTION TO STATE PLANNING GOAL #4 (FOREST LANDS GOAL), AUTHORIZING A COMPREHENSIVE PLAN CHANGE FROM FOREST LAND TO DISPERSED RESIDENTIAL, AND AMENDING THE ZONING MAPS FROM TIMBER CONSERVATION (TC-40) TO RURAL (RR-5) ON PROPERTY IDENTIFIED ON COUNTY ASSESSOR'S MAP 12-11-31, THE WESTERLY 40 ACRES OF TAX LOT 600, and DECLARING AN EMERGENCY

WHEREAS a comprehensive plan change from forest land to dispersed residential, and a zoning map change from Timber Conservation (TC-40) to Rural (RR-5) were requested on property owned by Bernice Holter located at the terminus of Gilchrist Street, one-half mile east of Seal Rock, identified on assessor's map 12-11-31, the westerly 40 acres of tax lot 600 ("subject property"); and

WHEREAS, on April 14, 1986, the Lincoln County Planning Commission voted to recommend to the board of county commissioners approval of an exception to state planning goal #4 (Forest Lands Goal), and the requested comprehensive plan and zoning map changes for the property; and

WHEREAS no appeal of the planning commission decision has been made within the time provided by law;

Now, therefore, the board hereby ORDAINS as follows:

1. That the findings of fact and conclusions of the planning commission are hereby adopted and incorporated herein as if fully set forth;
2. That an exception to state planning goal #4 (Forest Lands), is taken with regard to the subject property, and the Lincoln County Department of Planning and Development is hereby directed to amend the official comprehensive plan from forest land to dispersed residential, and to amend the official zoning maps from timber conservation (TC-40), to rural (RR-5) on the property;
3. That a copy of this ordinance be forwarded to Bernice Holter, planning and development, assessor, and surveyor;
4. That this ordinance being necessary for the immediate preservation of the public peace, health, and safety, an emergency is declared to exist and this ordinance takes effect upon its adoption. DATED this 7<sup>th</sup> day of May, 1986.

LINCOLN COUNTY BOARD OF COMMISSIONERS

Bob Deskins  
Chairman

R. D. Gierke  
Commissioner

Alberta Bryan  
Commissioner

Lincoln County Legal Counsel  
Lincoln County Courthouse  
225 W. Olive Street  
Newport, OR 97135  
Phone: 253-6611 ext 308



DEPARTMENT OF PLANNING AND DEVELOPMENT

Public Service Building
210 S.W. Second Street
Newport, Oregon 97366

(503) 265-6611

Building Division Ext. 251
On-Site Waste Mgmt. Ext. 253
Code Enforcement Ext. 292
Planning Division Ext. 292

MEMORANDUM

DATE: April 30, 1986
TO: Board of County Commissioners
FROM: Oscar R. Granger, Secretary, Lincoln County Planning Commission
SUBJECT: Bernice Holter Plan and Zone Change Request; (Case File #1-LUPC-86)

On April 14, 1986, the Lincoln County Planning Commission voted to recommend to the Board of County Commissioners approval for an exception to State Planning Goal 4 (Forest Lands goal), and approval for a plan/zone change from Forest Land/Timber Conservation (TC-40) to Dispersed Residential/Rural (RR-5) on a 40 acre portion of property owned by Bernice Holter.

This recommendation was based on the Commission's conclusion that the land is irrevocably committed to non-forest uses because it is incapable of producing timber on a commercial basis, and other relevant factors.

Attached is a copy of the minutes of the April 14, Planning Commission hearing pertaining to this action. Because no appeals have been filed, a public hearing is not necessary.

After approval by the Board, a copy of the Order must be sent to the applicant, the County Assessor's Office and the Planning Division.

Thank you.

org/mw
Enclosure
cc: Legal Counsel

Date: 5-1-1986
Commr. Bryant
Commr. Deskins
Commr. Jantzi
Denied
Forward:
Planning
Engineer
Surveyor
Acctg
Counsel
Other
Action Requested

6. ACTION ITEMS.

No action items.

7. PUBLIC HEARING.

7.1 Plan/zone change from Forest Land/Timber Conservation to DR/RR-5, for Berenice Holter, case file #1-LUPC/ZC-86.

Chairman Webb requested a review of the staff report by Kevin Harrison.

Commissioner Spulnik requested that he be excused from voting on this case, as he has a conflict of interest.

Chairman Webb asked if any other commission members had a conflict of interest in this case, or if anyone in the audience objected to anyone on the commission hearing this case.

Kevin Harrison reviewed the staff report and read a letter from L.C.D.C.

Commissioner Over asked if the area was logged after or before the current zoning was placed on the property.

Oscar Granger responded that the area was probably logged after the initial rezoning, but he was not sure if this case was ever discussed during the 1982 rezoning hearings.

Kevin Harrison added that the zoning for this land was A-2 prior to 1980, but during that year it was zoned TC.

With regard to the logging, this land was commercially thinned and after this extensive thinning a storm hit and caused extensive wind damage. Since that time there has been some salvage logging taken place. The property did not come under the state requirements for replanting. Replanting is not required as long as there is certain stocking existing on the land.

A member of the audience, a Mrs. Alice Gilchrist, interjected that the land was clear cut before the storm, which affected their timber as well as the timber on the surrounding properties.

Chairman Webb asked for testimony from the applicant or the applicant's representative.

Dennis Bartoldus, a local attorney, approached the table to speak on behalf of Mrs. Holter explaining that there are two issues to be considered in this case. The first issue is the unsuitability of the land for forest uses, and the second issue is the built and committed land in the Seal Rock vicinity. The strong evidence in this case confirms that this property is not suitable for timberland. One of the neighboring property owners requested an extension of the residential zoning some years ago. There are a number of lots along the west and the north side of the property which are zoned R-1. This zoning means that the lots qualify for divisions down to 15,000 square feet, since there is water service to the land. Some of the other adjoining properties can be divided into one acre parcels. In 1981 a timber expert, Gerald Hughes, stated that this land is not good forest land. In 1986 the Planning Department requested a comment on this land from the Oregon Department of Forestry and were informed that this is not good forest land. A recent timber report from William McKinney also confirms that this land is poorly suited and marginal for timber production. This conclusion was also confirmed by

the Soil Conservation Service. A couple of surrounding property owners, including the Boise Cascade Company, are interested in the results of this zone change request, as they also wish to rezone their land.

With the proposed 5 acre parcels, there would be plenty of buffer between the adjoining R-1, RR 1-2 residential zones and the adjoining Timber-Conservation zone.

Mr. Bartoldus felt that this area is built and committed. There are 59 lots in the surrounding area which are less than one acre in size. Seal Rock is a rural community center and an area which is slated for future growth, and this proposed zoning would help accommodate this growth. There are adequate public facilities and services in this area, including the Seal Rock Water District and the Seal Rock Rural Fire Protection District.

In concluding his testimony, Dennis Bartoldus, explained that by changing this designation, it does not mean that the property will be subdivided tomorrow. Any divisions would have to be prepared according to the requirements and approved by the Planning Commission.

**Kevin Harrison** stated that there were no letters received either for or against this proposal.

**Oscar Granger** described the background history on the zoning of this land by explaining that in the late 1970's there were approximately only one third of the platted lots in this coastal strip area which were developed. On the basis of public need the land was placed in the current zoning, as it was a large undeveloped parcel of property. It was recognized at that time that this area was marginal for timber production. This area was used for Spruce growth and harvesting in the early part of the century and it was never replanted. Many of the larger, undeveloped parcels of land such as the Holter parcel were placed in resource zones, as there was no other zoning designation which was appropriate at that time. We were trying to direct development by using the resource zones as "holding" zones, that is holding them for future growth.

**Commissioner Goebel** pointed out that the argument that a piece of property is not good for timberland just because it is damaged, or has already been logged, is not valid, because the soil may be suitable for supporting future timber growth.

After Commissioner Over described her impressions upon visiting the property, **Dennis Bartoldus** commented in response to Oscar Granger's earlier statements by explaining that he felt that the property owner should be entitled to another designation other than TC, if the land is not really timberland. Originally, the County had requested more flexibility in the minimum parcel size for the Timber Conservation zones, but this request was rejected by LCDC and resulted in a 40 acre minimum parcel size. An RR-5 designation would be more effective for a holding type of zone, as it encourages clearing of the property for useage, and would create a buffer from surrounding TC and the other RR zones.

Chairman Webb closed the public testimony portion of the hearing and requested comments from the Planning Commission members.

Commissioner Galasso had no comment.

Commissioner Pattison stated that he felt the land was irrevocably committed to uses other than timber conservation and also that it was zoned in error, so he felt that this request could be justified.

Commissioner Over mentioned that she had mixed emotions, and was concerned that it might be zoned in error if the logging had taken place after the zoning had been assigned to the land. There are residences in that area. In it's current condition, the land is a fire hazard, and especially a threat to the timber which is to the east of the property.

Commissioner Seaton felt that the land was zoned in error and had the same concerns as Commissioner Over. It is important that this property be managed according to the Department of Forestry fire hazard regulations.

Commissioner Palmer complimented Dennis Bartoldus upon his presentation, which she felt reflected the need to change the comprehensive plan. If it is a fire hazard, by opening this land up for residential purposes, it would mean clearing the land for useage and decreasing the threat of a fire in this area. In its current zoning, nothing would probably take place on the land.

Commissioner Imes stated that he was convinced the property was not timberland, and he finds no fault in saying it was zoned in error.

Commissioner Goebel expressed appreciation for Dennis Bartoldus' presentation, as he agreed with Mr. Bartoldus and Oscar Granger. If this land is not good for timber, and if the County had zoned it, simply because they did not know what to do with it, timber land would be the safest designation, because that means nothing can be done with it. Five acre parcels is not such a bad compromise and he would support that.

Chairman Webb felt that land designated timber conservation should be at least suitable for the production of timber. The RR-5 designation is a more logical designation than a zone which places the property in limbo.

Commissioner Goebel moved to accept the applicant's arguments for the exception, as submitted by the applicant, pages 1 through 5, items 1 through 30.

Chairman Webb rephrased Commissioner Goebel's motion by explaining that he moved to recommend to the Board of County Commissioners that an exception be made on the basis of the applicant's findings of facts, items 1 through 30.

Commissioner Imes seconded the motion.

The vote was taken and passed unanimously.

MOTION TO RECOMMEND TO BOARD OF COUNTY COMMISSIONERS AN EXCEPTION  
BE MADE FOR BERENICE HOLTER'S REQUEST, CASE FILE #1-LUPC/ZC-86

Commissioner Palmer moved to change the plan designation from Forest Land to Dispersed Residential, based upon the applicant's findings of fact, on page 6, items 31 through 34.

Commissioner Seaton seconded the motion.

Chairman Webb explained that it had been moved and seconded that the recommendation to the Board of County Commissioners be made to change the plan designation from Forest Land to Dispersed Residential, based upon the applicant's findings of fact, items 31 through 34, and the conclusions items 1 through 3 on page 7.

The vote was taken and passed unanimously.

MOTION TO RECOMMEND TO THE BOARD OF COUNTY COMMISSIONERS  
TO CHANGE THE PLAN DESIGNATION ON CASE FILE #1-LUPC/ZC-86  
FROM FOREST LAND TO DISPERSED RESIDENTIAL. #14-86

Commissioner Imes made a motion to recommend to the Board of County Commissioners to change the zone on case file #1-LUPC/ZC-86 from TC-40 to RR-5 using the applicant's findings of fact, items 31 through 34 and conclusions items 1 through 3.

Commissioner Palmer seconded the motion.

Chairman Webb reviewed the motion as a zone change from TC-40 to RR-5.

The vote was taken and unanimously passed.

MOTION TO RECOMMEND TO THE BOARD OF COUNTY COMMISSIONERS  
A ZONE CHANGE ON CASE FILE #1-LUPC/ZC FROM TC-40 TO RR-5.  
#15-86

## 8. PLANNING COMMISSION CONCERNS

Oscar Granger informed the Commission of the recent death of Planning Commission member, Robert Wiens of Yachats. Flowers and a card were sent to Mrs. Wiens on behalf of the Planning Commission.

At future meetings when the deliberation portion of the hearing is completed, and a decision is made to approve the motion, staff should be directed to draw up the findings and conclusions necessary to substantiate the decision to bring back at the following meeting for the commission's approval. To avoid some of the problems we have had in the past.

Chairman Webb asked what type of a motion that would require and he was informed that it would be similar to the way the Board of Commissioners directs their staff to draw up findings in support of the motion.

Commissioner Pattison expressed concerns that this new procedure might delay the applicant.

NOTICE OF ADOPTION

RECEIVED  
MAY 8 1986

TO: DEPARTMENT OF LAND CONSERVATION & DEVELOPMENT  
1175 Court Street N.E.  
Salem, Oregon 97310-0590

NOTE: Adopted plan and land use regulation amendments must be sent to DLCD 45 days of the date of final adoption.

Action: (Check all that apply)

Comprehensive Plan Amendment       Land Use Regulation Amendment       New Land Use Regulation

DATE: Thursday, May 8, 1986  
FROM: Lincoln Co.-Board of Commissioners (City or County)  
DATE OF ADOPTION: Wed., May 7, 1986 LOCAL FILE NUMBER: 2-LUPC-86  
DATE PROPOSAL WAS PROVIDED TO DLCD: 6/21/85

- (1) Describe the action taken, including the size and location of the affected area (NOTE: If notice of the proposal was sent to DLCD 45 days prior to the final hearing, describe how the adopted measure differs from the proposal. If the adopted action is more than 100 pages in length, including supplementary findings and information, the local government is required to briefly describe the purpose and requirements of the action: Assessor Map 10-10-32, tax lots 300, 301 and 200, comprising 42.75 acres. Subject property is located on the west side of County Road 405 (Upper Olalla Rd.) approximately 1/2 mile north of the Olalla Golf Course. Applicants requested a Comprehensive Plan Change from Forest Land to Dispersed Residential and a zone change from TC-40 to RR-5. The request required a Goal 2 exception to the requirements of Goal 4, Forest Lands. The applicants contended that the property was "built and committed" to non-forest uses. The Planning Commission held a public hearing on Feb. 10, 1986 and continued the hearing on March 10, 1986. The motion justifying the exception failed, and a subsequent motion to deny the plan and zone change passed. The case was appealed to the Board of County Commissioners on March 25, 1986, and a public hearing was held on April 30th, 1986. The Board voted to overturn the Planning Commission decision and directed the applicant's attorney to draft appropriate findings of fact. Order passed by BOC 5/7/86.
- (2) If notice of the proposal was NOT sent to DLCD 45 days prior to the final hearing, please indicate why:

Statewide Planning Goals are inapplicable       Emergency circumstances required expedited review

- (3) List Statewide Goals which may apply to the proposal:  
Goal 2, Exceptions  
Goal 4, Forest Lands
- (4) List any state or federal agencies, local governments or local special service districts which may be interested in or impacted by the proposal.  
Oregon Division of Forestry  
Oregon Division of Fish and Wildlife  
L.C.D.C.

Direct questions and comments to: Alice Markwardt (phone) 265-6611  
Address Lincoln Co. Dept. of Planning & Development  
210 SW 2nd Street, Newport, Ore. 97365

\*NOTE: ATTACH A COPY OF THE ADOPTED ACTION TO THIS FORM\*

Hold for April 2  
Carter  
4/30/86

MINUTES

LINCOLN COUNTY PLANNING COMMISSION

April 14, 1986

RECEIVED  
APR 23 1986

Lincoln County Legal Counsel

1. CALL TO ORDER - Roll Call.

The meeting was called to order by Chairman Jim Webb. The following Commission members were present:

Sam Galasso  
Dietmar Goebel  
Inez Palmer  
Phil Spulnik  
Ernest Seaton

Neil Imes  
Izetta Over  
Jim Webb  
Roger Pattison

Staff members present were: Oscar Granger, Kevin Harrison and Sue Kays.

2. APPROVAL OF MINUTES - March 10, 1986

Commissioner Over moved to approve the meeting minutes of March 10, 1986.

Commissioner Seaton seconded the motion.

MOTION TO APPROVE MEETING MINUTES  
OF MARCH 10, 1986. #12-86

3. ITEMS FROM THE AUDIENCE.

No items from the audience.

4. PAST ACTION REVIEW FOR PLANNING COMMISSION.

Oscar Granger updated the Planning Commission on three cases they have acted upon. The Makai zone change to R-1A has been approved by the Board of Commissioners. The Ralph Schwab zone change in Lincoln Beach, has also been approved by the Board. The zone change request for the Carter case has been appealed to the Board of Commissioners and it will be heard on Wednesday, April 30, 1986.

5. UNFINISHED BUSINESS.

Chairman Webb asked if a mobile home placement permit was issued for Makai recently and he was informed by Oscar Granger that an application was received prior to the hearing on that case by the Board of Commissioners and that application was approved and a placement permit was issued.

Commissioner Goebel asked for clarification on the appeal of the Carter case and the applicant's representative, Dennis Bartoldus explained that the appeal of this case to the Board of County Commissioners was placed on the basis that there was no notice given for the quasi-judicial hearings which were held in 1981 and 1982, when the zone was changed without notice, therefore, due process and equal protection were violated, he claimed, based upon the fact that not everyone was given notice. Also the area of the Olalla Valley in general was built and committed, and it is hard to single out any particular parcel to say that it was not built and committed, according to Mr. Bartoldus.

6. ACTION ITEMS.

No action items.

7. PUBLIC HEARING.

7.1 Plan/zone change from Forest Land/Timber Conservation to DR/RR-5, for Berenice Holter, case file #1-LUPC/ZC-86.

Chairman Webb requested a review of the staff report by Kevin Harrison.

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Commissioner Over asked if the area was logged after or before the current zoning was placed on the property.

Oscar Granger responded that the area was probably logged after the initial rezoning, but he was not sure if this case was ever discussed during the 1982 rezoning hearings.

Kevin Harrison added that the zoning for this land was A-2 prior to 1980, but during that year it was zoned TC.

With regard to the logging, this land was commercially thinned and after this extensive thinning a storm hit and caused extensive wind damage. Since that time there has been some salvage logging taken place. The property did not come under the state requirements for replanting. Replanting is not required as long as there is certain stocking existing on the land.

A member of the audience, a Mrs. Alice Gilchrist, interjected that the land was clear cut before the storm, which affected their timber as well as the timber on the surrounding properties.

Chairman Webb asked for testimony from the applicant or the applicant's representative.

Dennis Bartoldus, a local attorney, approached the table to speak on behalf of Mrs. Holter explaining that there are two issues to be considered in this case. The first issue is the unsuitability of the land for forest uses, and the second issue is the built and committed land in the Seal Rock vicinity. The strong evidence in this case confirms that this property is not suitable for timberland. One of the neighboring property owners requested an extension of the residential zoning some years ago. There are a number of lots along the west and the north side of the property which are zoned R-1. This zoning means that the lots qualify for divisions down to 15,000 square feet, since there is water service to the land. Some of the other adjoining properties can be divided into one acre parcels. In 1981 a timber expert, Gerald Hughes, stated that this land is not good forest land. In 1986 the Planning Department requested a comment on this land from the Oregon Department of Forestry and were informed that this is not good forest land. A recent timber report from William McKinney also confirms that this land is poorly suited and marginal for timber production. This conclusion was also confirmed by

the Soil Conservation Service. A couple of surrounding property owners, including the Boise Cascade Company, are interested in the results of this zone change request, as they also wish to rezone their land.

With the proposed 5 acre parcels, there would be plenty of buffer between the adjoining R-1, -RR 1-2 residential zones and the adjoining Timber Conservation zone.

Mr. Bartoldus felt that this area is built and committed. There are 59 lots in the surrounding area which are less than one acre in size. Seal Rock is a rural community center and an area which is slated for future growth, and this proposed zoning would help accommodate this growth. There are adequate public facilities and services in this area, including the Seal Rock Water District and the Seal Rock Rural Fire Protection District.

In concluding his testimony, Dennis Bartoldus, explained that by changing this designation, it does not mean that the property will be subdivided tomorrow. Any divisions would have to be prepared according to the requirements and approved by the Planning Commission.

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After Commissioner Over described her impressions upon visiting the property, Dennis Bartoldus commented in response to Oscar Granger's earlier statements by explaining that he felt that the property owner should be entitled to another designation other than TC, if the land is not really timberland. Originally, the County had requested more flexibility in the minimum parcel size for the Timber Conservation zones, but this request was rejected by LCDC and resulted in a 40 acre minimum parcel size. An RR-5 designation would be more effective for a holding type of zone, as it encourages clearing of the property for useage, and would create a buffer from surrounding TC and the other RR zones.

Chairman Webb closed the public testimony portion of the hearing and requested comments from the Planning Commission members.

Commissioner Galasso had no comment.

Commissioner Pattison stated that he felt the land was irrevocably committed to uses other than timber conservation and also that it was zoned in error, so he felt that this request could be justified.

Commissioner Over mentioned that she had mixed emotions, and was concerned that it might be zoned in error if the logging had taken place after the zoning had been assigned to the land. There are residences in that area. In it's current condition, the land is a fire hazard, and especially a threat to the timber which is to the east of the property.

Commissioner Seaton felt that the land was zoned in error and had the same concerns as Commissioner Over. It is important that this property be managed according to the Department of Forestry fire hazard regulations.

Commissioner Palmer complimented Dennis Bartoldus upon his presentation, which she felt reflected the need to change the comprehensive plan. If it is a fire hazard, by opening this land up for residential purposes, it would mean clearing the land for useage and decreasing the threat of a fire in this area. In its current zoning, nothing would probably take place on the land.

Commissioner Imes stated that he was convinced the property was not timberland, and he finds no fault in saying it was zoned in error.

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Commissioner Imes seconded the motion.

The vote was taken and passed unanimously.

MOTION TO RECOMMEND TO BOARD OF COUNTY COMMISSIONERS AN EXCEPTION  
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Commissioner Seaton seconded the motion.

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TO CHANGE THE PLAN DESIGNATION ON CASE FILE #1-LUPC/ZC-86  
FROM FOREST LAND TO DISPERSED RESIDENTIAL. #14-86**

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Commissioner Palmer seconded the motion.

Chairman Webb reviewed the motion as a zone change from TC-40 to RR-5.

The vote was taken and unanimously passed.

**MOTION TO RECOMMEND TO THE BOARD OF COUNTY COMMISSIONERS  
A ZONE CHANGE ON CASE FILE #1-LUPC/ZC FROM TC-40 TO RR-5.  
#15-86**

## 8. PLANNING COMMISSION CONCERNS

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At future meetings when the deliberation portion of the hearing is completed, and a decision is made to approve the motion, staff should be directed to draw up the findings and conclusions necessary to substantiate the decision to bring back at the following meeting for the commission's approval. To avoid some of the problems we have had in the past.

Chairman Webb asked what type of a motion that would require and he was informed that it would be similar to the way the Board of Commissioners directs their staff to draw up findings in support of the motion.

Commissioner Pattison expressed concerns that this new procedure might delay the applicant.

Oscar Granger responded by explaining that this method would ensure that in the event of a possible appeal of a case, our record is correct and the decision will hold up. From the time we receive a completed application, we have 120 days to process it, which is not that much time if a case is appealed.

Chairman Webb agreed this new method would be beneficial.

Commissioner Goebel asked if this procedure would be done on every case and he was informed that this method would be used only on complicated cases that may be appealed.

9. **ADJOURNMENT**

The meeting was adjourned at 8:55 pm.