

BEFORE THE BOARD OF COMMISSIONERS

FOR LINCOLN COUNTY, OREGON

ORDINANCE # 292

AN ORDINANCE AMENDING THE LINCOLN COUNTY COMPREHENSIVE PLAN AND ZONING MAP AND THE TAKING OF AN EXCEPTION TO GOAL 3 (AGRICULTURAL LANDS), STATEWIDE GOALS, ALL ON PROPERTY IDENTIFIED ON LINCOLN COUNTY ASSESSOR'S MAP NO. 13-11-16 AS TAX LOT 100, OWNED BY CARL COLLINS, AND DECLARING AN EMERGENCY

WHEREAS Carl Collins applied for a Comprehensive Plan change from Agricultural Land to Dispersed Residential, and a Zone Change from AC-20 (Agricultural Conservation) to RR-5 (Rural Residential), which request also entails taking an exception to Goal 3 (Agricultural Lands) of the Statewide Planning Goals, all on property located east of Highway 101 approximately 4 miles, along Bayview Road, identified as Tax Lot 100, Assessor's Map 13-11-16; and

WHEREAS on March 12, 1990, the Lincoln County Planning Commission, following a public hearing held on January 22, 1990, recommended approval of the requested changes and the taking of the exception to Statwide Goal 3, and adopted Findings of Fact and Conclusions in support of the changes; and

WHEREAS the Department of Land Conservation and Development (DLCD) filed an appeal of the Planning Commission's decision with the Board; and

WHEREAS following legal notice, a hearing was conducted by the Board on May 9, 1990, on the record established before the Planning Commission; and

WHEREAS objections were raised by applicant Carl Collins to the scope of the appeal filed by DLCDC, which objections were upheld by the Board; and

WHEREAS the Board thereafter unanimously voted to uphold the Planning Commission's recommendation and to approve the Comprehensive Plan and Zone Map change and to take an exception to Statewide Goal 3;

NOW, THEREFORE, IT IS HEREBY ORDAINED AS FOLLOWS:

- 1. That the objection raised by applicant Carl Collins to the scope of the appeal submitted by appellant DLCDC is granted and an order limiting the scope of appeal is attached hereto and incorporated herein as Exhibit "A."

Lincoln County Legal Counsel
Lincoln County Courthouse
225 W. Olive Street
Newport, Oregon 97365
Phone: 265-6611, Ext. 308

2. That "this type of expansion of non-resource use into resource areas is contrary to the state-wide planning goals".

WHEREAS a public hearing on the above matter was held before the Lincoln County Planning Commission on January 22, 1990, and notice was duly given to DLCD, a copy of which notice is attached hereto as Exhibit "2" and by this reference incorporated herein; and

WHEREAS the Planning Commission meeting was the "final evidentiary hearing on the proposal before the local government" pursuant to ORS 197.763(1); and

WHEREAS DLCD filed an appeal of the planning action together with a letter dated March 26, 1990 explaining the basis for the appeal, a copy of which letter is attached hereto as Exhibit "3" and by this reference incorporated herein for the purposes of this order; and

WHEREAS the scope of the objections contained in the DLCD letter of March 26, 1990 are not in accord with and violate the provisions of 197.763 regarding the conduct of land use hearings before a local governing body; and

WHEREAS the objections contained in the DLCD letter of March 26, 1990 can be said to include the two objections contained in the DLCD letter of December 20, 1989; and

The Board being fully advised in the premises;

IT IS HEREBY ORDERED that:

1. Only those two objections as set out in the DLCD letter of December 20, 1989 are deemed to have been preserved for appeal to

the Board; and

2. Except as the said objections in the DLCD letter of March 26, 1990 can be said to contain the objections set out in the DLCD letter of December 20, 1989, said objections contained in the DLCD letter of March 26, 1990 are rejected and not considered for the reason that said objections do not and did not constitute issues raised sooner than the close of the record at or following the Lincoln County Planning Commission hearing on the proposal and for the further reason that such issues were not raised with sufficient specificity so as to afford the Planning Commission and the parties an adequate opportunity to respond to each issue.

Dated this 16th day of May, 1990.

Lincoln County Board of Commissioners, by:



NEIL GOLDSCHMIDT
GOVERNOR

Department of Land Conservation and Development

1175 COURT STREET NE, SALEM, OREGON 97310-0590 PHONE (503) 373-0050

RECEIVED

DEC 21 1989

December 20, 1989

LINCOLN COUNTY PLANNING DEPT.
COURT HOUSE
NEWPORT, OREGON 97365

Matt Spangler
Lincoln County Planning and Development
210 Southwest Second Street
Newport, Oregon 97365

Dear Matt:

We have received the notice of the proposed plan amendment and zone change from Agricultural Conservation (AC-20) to Dispersed Residential (RR-5) for 37.5 acres located north of Alsea Bay. We have concerns relative to the proposal.


The request involves the conversion of agricultural land (Brenner silt loam (Bu), SCS Class III) and forest lands (Astoria clay loam (AuD), Cubic Foot Site Class 2) to nonresource use. An exception to both Goals 3 and 4 is required. The 37.5 acre parcel is not physically developed pursuant to OAR 660-04-025. As such, the county will have to address the requirements for land irrevocably committed to use not allowed by Goals 3 and 4 pursuant to OAR 660-04-028.

The information provided does not satisfy the requirements under OAR 660-04-028. The findings state that because of the soils, the property is not suited for farm use, but is suited mostly to forestry, wildlife, recreation, or water supply (Application, p. 4). The findings also state that land to the south and east of the property is vacant and suitable for commercial timber purposes. No information is provided which explains why the property cannot be managed for forest uses and why existing adjacent uses and other relevant factors make uses allowed by Goal 4 impracticable on the exception site.

The findings state that the proposal is a logical extension of residential and minifarms which are located to the north and west of the subject property. This type of expansion of nonresource use into resource areas is contrary to the statewide planning goals. Based on the information provided, we recommend that the current AC-20 zone be retained.

Please enter this letter into your record or proceedings at the hearing scheduled for January 8, 1990. If you have any questions, please contact Gail McEwen at 373-0096 or Doug White at 373-0083.

Sincerely,


Susan Brody
Director

SB:DW/sp
<pa>

cc: Gail McEwen, DLCD
PA Files 004-89 (Lincoln County)

NOTICE

OF PUBLIC HEARING AFFECTING THIS AREA

APPLICANT: Carl Collins

REQUEST: A request for a comprehensive plan change from Agricultural Land to Dispersed Residential and a zone change from AC-20 (Agricultural Conservation) to RR-5 (Rural Residential). The request also entails taking an exception to the requirements of Goal 3 (Agricultural Lands) of the Statewide Planning Goals. The applicant's representative has submitted a petition in support of his request.

APPLICABLE CRITERIA: Section 1.2350 - Quasi-Judicial Amendments
Goal 2 of Statewide Planning Goals (Land Use Planning)
Goal 3 of Statewide Planning Goals (Agricultural Lands)
OAR 660 - 04 Interpretation of Goal 2 Exemption Process

LOCATION: The subject property is located east of Highway 101 approximately 4 miles, along Bayview Road and is identified on Lincoln County Assessor's Map #13-11-16, as tax lot 100.

REPORTS: Copies of the staff report for this case may be purchased at the Lincoln County Planning Department, 210 2nd St., Newport, Oregon, seven days prior to the hearing. Application materials are available 20 days prior to the hearing.

TESTIMONY: Testimony can be submitted in written or oral form. Letters should be sent to the planning department; oral testimony will be taken during the course of the public hearing. Failure to raise an issue in a hearing, person or by letter, or failure to provide sufficient specificity to afford the planning commission an opportunity to respond to the issue precludes appeal to the Land Use Board of Appeals on that issue.

CONTACT: Jessica Bondy, Associate Planner, phone extension # 251.

TIME/PLACE OF HEARING: Monday, January 22, 1990, at 7:30 pm in the Lincoln County Conference Center (the Old Newport Library Building) 251 West Olive Street, Newport, Oregon. Any person having interest in this matter may attend and be heard, or they may submit testimony in writing to be entered into the record.

13-11-9

900 - Pining
903 - Woolheater
904 - Woolheater
905 - Woolheater
1000 - York

13-11-10C cont'd

200 - Baker
201 - Baker
202 - Schaefer
500 - Baker

13-11-16

100 - Collins
101 - Valet
201 - Hoch
202 - Hoch
203 - Simpson
206 - Hills
208 - Bell
210 - Stonecypher
700 - Hayden

13-11-10C

100 - Lott
106 - Lott

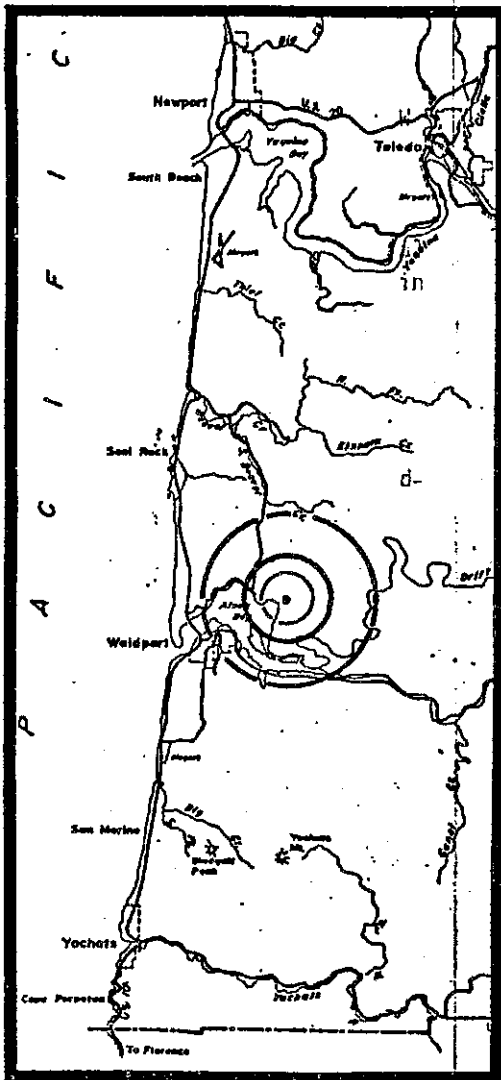
13-11-15

200 - Travelers Ins. Co.
300 - Carnegie

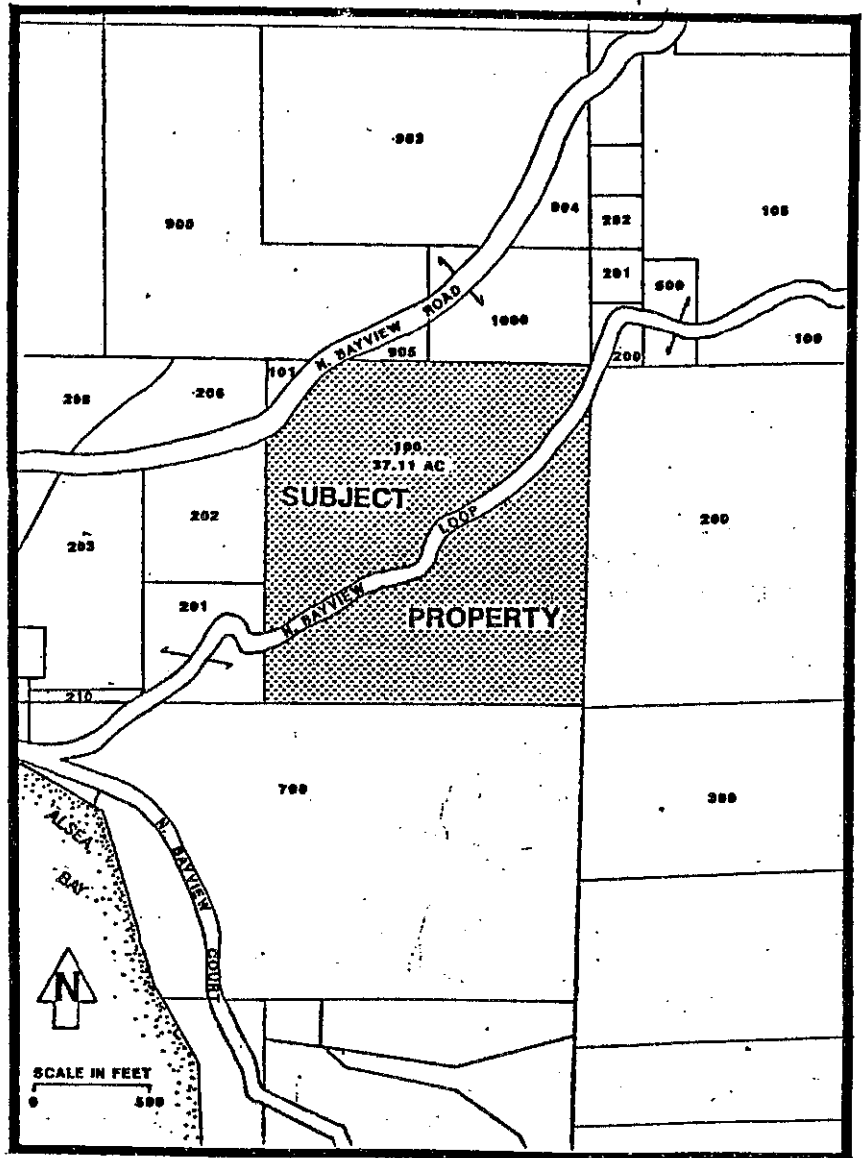
CARL COLLINS

#1-LUPC & ZC-89

LOCATION MAP



SITE MAP



RECEIVED
MAR 29 1990

Department of Land Conservation and Development

1175 COURT STREET NE, SALEM, OREGON 97310-0590 PHONE (503) 373-0050 FAX 362-6704

March 26, 1990

RECEIVED

MAR 27 1990

Matt Spangler, Director
Lincoln County Planning Department
210 Southwest Second Street
Newport, Oregon 97365

LINCOLN COUNTY PLANNING DEPT.
COURT HOUSE
NEWPORT, OREGON 97365

Dear Matt:

The Department of Land Conservation and Development wishes to appeal the planning commission's March 12, 1990, recommendation to approve a comprehensive plan and zoning ordinance amendment from AC-20 to RR-5 for property owned by Carl Collins (local file number 4-LUPC-ZC-89). This plan amendment and zone change also included a goal exception. A check for \$75.00 is enclosed to cover the cost of the appeal.

We object to this amendment on the basis that the planning commission's findings do not satisfy the requirements for an exception to the statewide planning goals (Goal 2, Part II, ORS 197.732 and OAR 660, Division 4). We also believe that the conversion of this parcel to residential use violates the county's acknowledged comprehensive plan.

Findings in the record demonstrate that the subject property is agricultural and forest land. Therefore, an exception to Goals 3 and 4 is required. The site is identified as having two soil series: (Astoria clay loam) capability unit VIe-3, forest management group 6/Cubic Foot Site Class 3; and (Brenner silt loam) capability unit IIIw-3, not placed in forest management group. Species suitable for production include Western Hemlock, Sitka Spruce, and Douglas Fir. Under Site Class 3, the potential yield for Douglas Fir equals 120-164 cubic feet per acre which is an average yield based on this system (staff report, p. 7).

The findings indicate a history of agricultural use of the property (cattle grazed for 29 years) (Item 11, p. 2). Commercial and private forest lands are found to the south and east of the subject property. Scattered rural residences associated with agricultural uses are found to the north and west as well as along Bayview Road (staff report, p. 1). Property to the east is covered with potentially harvestable timber and the property to the south is more suitable for commercial timber production (staff report, p. 4). The findings do not demonstrate

that the land is not needed to permit farm or forest practices on adjacent or nearby lands.

The 37.50 acre parcel is not "physically developed" pursuant to OAR 660-04-025. The county must therefore demonstrate that the property is "irrevocably committed" to uses not allowed by Goal (OAR 660-04-028). OAR 660-04-028(4) states:

"A conclusion that an exception area is irrevocably committed shall be supported by findings of fact which address all applicable factors of subsection (6) (OAR 660-04-028(6)) of this rule and by a statement of reasons explaining why the facts support the conclusion that uses allowed by the applicable goal are impracticable in the exception area."

Existing Adjacent Uses: The county's findings do not address "the characteristics of the adjacent lands" and "the relationship between the exception area the lands adjacent to it" as required under OAR 660-04-028(2). Information on the size of tax lots in the area is provided (Findings and Conclusions, Relevant Fact 18 and 19). The findings state that the small ownerships to the west and north of the property are not suited for agriculture and will not be used for agriculture in the future, and therefore, no cooperative farming efforts between the property to the west and north and the subject property will occur. These findings are not adequate to conclude that the subject property is committed. The fact that the subject property may not be able to enter into a cooperative farming arrangement with property to the north and west does not irrevocably commit the property to residential use.

The subject property is 37.5 acres in size. As discussed above, the 83 acre parcel to the east and the 52 acre parcel to the south of the subject property are being managed for forest use. The county's findings do not justify the conclusion that existing adjacent uses make uses allowed by Goal 3 "impracticable" as required under the rule.

The county's findings do not adequately describe the types of adjacent uses and why these uses irrevocably commit the property. OAR 660-04-028(6)(c)(A) states that resource and nonresource parcels created pursuant to the applicable goals shall not be used to justify a committed exception. Adjacent lands are zoned for resource use and the county findings for the exception appear to rely on development approved under these zones.

The fact that the property is located near an area where other residences are located is not adequate to demonstrate that the area is irrevocably committed to nonresource use. Findings must explain why or how the existing development or ownership pattern makes farming impractical or the land unsuitable (Billington v. Polk County, 13 OR LUBA 125, 131 (1985); Sweeten v. Clackamas County, LUBA 89-024).

Existing Public Facilities and Services: The staff report discusses the availability of phone service, electricity, road access and fire protection. The applicant's proposal explains that all basic services are available except water. The findings do not explain how the presence of these services irrevocably commit the property.

Parcel Size and Ownership Pattern: As discussed above, information on the parcel sizes and ownership pattern in the area is not adequate to support the exception. The 37.5 acre parcel is one of the largest parcels zoned AC-20 in the area. Larger parcels zoned Timber Conservation are located to the south and east of the subject property.

Neighborhood and Regional Characteristics The findings do not demonstrate how neighborhood and regional characteristics irrevocably commit the subject property to rural residential use. The area is described as a mini-farm community. However, evidence in the record also describes land in the area as used for commercial forestry.

Natural or Man-Made Features or Other Impediments Separating the Exception Area From other Adjacent Resource Land: Findings in response to this factor state that the subject 37.5 acre parcel is a logical extension of the mini-farm area and that dispersed residential is the best use of the property. This statement is irrelevant to the question of whether natural or man-made features exist which separate the exception area from other resource land. The proposed RR-5 zone will be a "spot zone" in the middle of an area zoned AC-20 and Timber Conservation. The closest exception area is over one mile to the west and north along Beaver Creek Road.

The county also failed to address Agricultural Lands Policy (3), which reads as follows (Comprehensive Plan, p. 44):

"Lincoln County shall ensure that designated agricultural lands are protected from encroachment of incompatible land uses."

Physical Improvements: As stated previously, the 37.5 acre parcel is not "physically developed" pursuant to OAR 660-04-025.

Other Relevant Factors: The findings declare that the property is unsuitable for agricultural or forest use because of poor soils and the compacting of these soils due to grazing for the past 29 years. The fact that land may be currently unsuitable for resource uses does not justify an exception to Goal 3 or Goal 4. Soil conditions can change and/or be improved or returned to a productive level using accepted practices. The findings do not address the possibility of improving the soil conditions.

The Current AC-20 Zone Was Not Assigned in Error

Comprehensive Plan Section 1.019(2), "Agricultural Lands", (p. 98) states:

"Agricultural lands represent nearly 2% of the lands in Lincoln County. These ownerships lie along the river and creek valleys and are mainly used for grazing and small gardens with some commercial agriculture..." (Emphasis added).

The subject property and surrounding lands meet the definition of agricultural land in Lincoln County. Prior use of the property (i.e., grazing) and the surrounding land uses clearly demonstrates that the current AC-Zone is the appropriate designation. The 37.5 acre parcel is one of the largest ownerships within the immediate area zoned AC-20. Parcels of this size and smaller dominate the areas zoned AC throughout the county. Furthermore, the subject property is almost twice the size of the 20 acre commercial agricultural minimum lot size guideline established in the acknowledged plan.

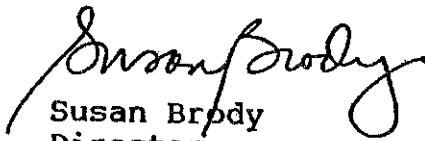
Summary

The planning commission's conclusion that the property is irrevocably committed is not supported by findings of fact addressing all applicable factors of the rule. The findings do not adequately explain why the facts support the conclusion that uses allowed by Goals 3 and 4 are impracticable (OAR 660-04-028).

The planning commission's findings do not demonstrate that the change is consistent with the acknowledged comprehensive plan. Finally, the current AC-20 zoning applied to the property is appropriate and is not in error.

If you have any questions, please contact your field representative, Gail McEwen, at 373-0096.

Sincerely,


Susan Brody
Director

SB:DW/sp
<pa>

cc: Greg Wolf
Gail McEwen
Doug White

EXHIBIT B-1

BEFORE THE PLANNING COMMISSION
OF LINCOLN COUNTY, OREGON

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)
In the Matter of a Plan and) FINDINGS OF FACT
Zone Change for Carl Collins) AND CONCLUSIONS

Nature of the Application

The applicant, Carl Collins, requested a Comprehensive Plan change from Agricultural Land to Dispersed Residential and a Zone Change for AC-20 (Agricultural Conservation) to RR-5 (Rural Residential). The request also entailed taking an exception to Goal 3 (Agricultural Lands) of the Statewide Planning Goals.

Relevant Facts

The following is a summary of the facts found to be relevant to this decision.

1. The subject property, owned by Carl Collins, is identified on Lincoln County Assessor's Map #13-11-16 as tax lot 100. The parcel consists of 37.5 acres.
2. The parcel is currently planned agricultural land and is zoned AC-20 (Agricultural Conservation).
3. Mr. Collins has requested a comprehensive plan change from agricultural land to dispersed residential and a zone change from AC-20 to RR-5 (Rural Residential).
4. The application also entails taking an exception to Goal 3 (Agricultural Lands) of the Statewide Planning Goals.
5. A public hearing was held before the Lincoln County Planning Commission on January 22, 1990. All interested parties were given an opportunity to testify and present evidence.
6. Mr. Collins' property is located east of Highway 101, approximately four miles northeast of the incorporated City of Waldport. The subject property is crossed by two Lincoln County Roads. Bayview Drift Creek Road (Lincoln County Road No. 702) cuts across the northwest tip of the subject property. Bayview Loop (Lincoln County Road No. 703) bisects Mr. Collins' property diagonally from approximately the southwest corner to the northeast corner, dividing the property into two approximately equal parcels.
7. The subject property contains a single-family home and out-

buildings. A junk yard is located on a terrace above the homesite, and a single-wide mobile home is located on the northwest corner of the property on the northwest side of Lincoln County Road No. 702.

8. The subject property is served by Consumer Power, Inc., the Pioneer Telephone Cooperative, and the Seal Rock Fire Department. Individual wells and on-site sewage disposal systems serve the subject property and the surrounding property.
9. Basic services are readily available to the property since they already serve the existing structures on the property as well as the residences located on the access roads leading to the subject property.
10. The subject parcel drops north to south and is characterized by both north and south facing ridges which are covered primarily with brush, grasses, alder, spruce, salal, and blackberries.
11. The site is identified under soils capability unit VIE-3 (Astoria Clay Loam). The soils in this capability unit are so severely limited that they are suited mostly to forestry, wildlife, recreation, or water supply. However, the land is not suited for forestry purposes. Carl Collins purchased the land in 1960 and has grazed cattle for 29 years. The most cattle that can be grazed at any one time is 1 head on the "upper property" (North of Bayview Loop) and 3 head on the "lower property" (South of Bayview Loop). A forestry professional, Jim Denison, viewed the property and testified at the hearing. The soil has been compacted by almost 30 years of grazing cattle and the top soil is very thin. The predominate soil types are Bu (Brenner silt loam) which is not placed in the forest management group, and AuD (Astoria Clay Loam). The Brenner soil is found in the "lower" part of the Collins property and is not suited for growing trees. Given the cool temperatures, high water table, and proximity to the bay, it cannot be used for growing hay. No other possible agricultural use of this portion of the property has been identified. The Astoria Clay Loam soil, although theoretically an "average" timber producing soil, is below average as found on the Collins property and not capable of producing trees on a commercial scale because of the compaction of the soil, the proximity of Alsea Bay, and the salt laden air. The surrounding property to the North, South, and East demonstrates trees with dead tops and an "ice cream cone" shape, indicating "burning" from the salt air, "limby" trees, low timber volume and therefore low commercial values. The property is neither suited nor necessary for water supply or storage. The property is not necessary for or suited for recreational opportunities.

EXHIBIT B-3

Given the lack of cover, the property is neither suited for nor necessary for wildlife habitat.

12. Grass does not grow well on the Collins property because of the lack of water in the summer time and poor top soil conditions. Additionally, the hilly topography of the subject property and the surrounding property make it difficult to operate farm machinery safely or economically. It would be very difficult if not impossible to harvest a crop of hay to support livestock due to the hilly terrain and also due to the wet coastal climate.
13. Soils in these capability units do not support raising, harvesting and selling crops on a commercial scale. Several of the neighboring property owners have unsuccessfully attempted to raise commercial crops, including produce, lettuce, and alfalfa.
14. The climate and vegetation of the subject property are not conducive to profitable maintenance of honey bees due to the cool nature of the climate and the lack of adequate vegetation for pollination.
15. Any attempt to put the subject property in shape for forestry uses would involve ripping (plowing) the property with heavy machinery and heavy fertilization. Even then, the property would still have problems with shallow top soil, cool temperatures, and salt air.
16. Christmas tree farming is not appropriate given the cool temperatures, the compacted top soil, and steep ridges. A tremendous amount of fertilization would be needed and this site does not compete with more suitable and productive sites further inland.
17. None of the adjacent property is utilized for agricultural purposes. The small size ownerships of the property to the west and north of the subject property are not suitable for agriculture, will not be used for agriculture in the future, and the lack of such agricultural use means that there will be no cooperative effort between the surrounding properties and the Collins property to use the Collins property for agricultural use (such as shared farm machinery, cooperative harvesting, cooperative planting, etc.). The surrounding uses, as they actually exist, are rural residential in nature and there is no realistic chance that the subject property will ever be used for either the purposes set out in Goal 3 or Goal 4.
18. Of the 10 adjacent lots, 6 are less than 20 acres and 5 are less than 10 acres.

EXHIBIT B-4

19. Of the 25 tax lots within 1,000 feet of the subject property, only 16 are over one acre in size and only 10 are over 5 acres. Within 1,000 feet of the property there are four lots under one acre in size. Eight out of the 25 lots have improvements. There are only six lots within 1,000 feet of the subject property which are 20 acres or more in size.

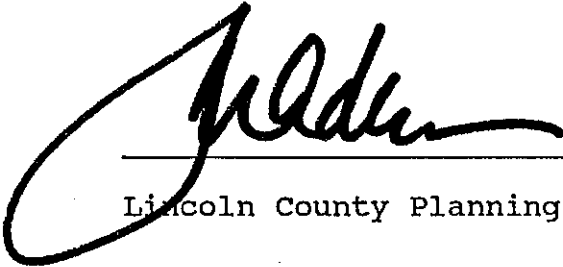
CONCLUSIONS:

1. The subject property is irrevocably committed to non-farm uses because existing adjacent uses, existing public facilities, the parcel size of neighboring properties and ownership patterns, neighborhood and regional characteristics, and other relevant factors make the uses allowed by Goal 3 impractical, and therefore the property qualifies for an exception and was zoned in error.
2. The appropriate plan designation is dispersed residential, since the subject property is suitable and desirable for rural development and small scale resource uses while reducing development pressures.
3. The zone should be changed to RR-5.

WHEREFORE, based upon the foregoing findings and conclusions, the Lincoln County Planning Commission hereby recommends that the Lincoln County Board of Commissioners:

1. Grant an exception to the agricultural lands goal on the subject property.
2. Grant a comprehensive plan change from agricultural land to dispersed residential.
3. Grant a zone change from AC-20 to RR-5.

Dated this ¹⁴12 day of ^{March}~~February~~, 1990.



Lincoln County Planning Commission