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BEFORE THE BOARD OF COMMISSIONERS
FOR LINCOLN COUNTY, OREGON
ORDINANCE NO. 351

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**AN ORDINANCE GRANTING AN EXCEPTION TO OREGON STATEWIDE
PLANNING GOAL 4 (FOREST LANDS) AND AMENDMENT TO LINCOLN
COUNTY COMPREHENSIVE PLAN AND ZONING MAP ON PROPERTY
IDENTIFIED AS A PORTION OF TAX LOT 300, LINCOLN COUNTY
ASSESSOR'S MAP 13-11-18, AND DECLARING AN EMERGENCY**

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WHEREAS the Lincoln County Planning Commission, after legal notice, held a public hearing on July 11, 1994, which was continued to September 12, October 10, and December 12, 1994, to consider a request by applicant J. S. Morrill for an exception to Oregon Statewide Planning Goal 4 (Forest Lands), an amendment to the Lincoln County Comprehensive Plan from Forest Land to Dispersed Residential, and a Zoning Map change from T-C (Timber Conservation) to RR1-2 (Rural Residential); all on property identified as a portion of Tax Lot 300 (adjoining the eastern boundary of Tax Lot 900), Lincoln County Assessor's Map 13-11-18; and

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WHEREAS the Planning Commission recommended approval of the request to the Board of Commissioners; and

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WHEREAS after published notice in accordance with law, the Lincoln County Board of Commissioners held a hearing on the 12th day of April, 1995, to consider the statewide goal exception and the comprehensive plan and zoning amendments, and continued the hearing for deliberation and decision to April 19, 1995; and

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WHEREAS at the conclusion of that hearing, the Board voted 2 to 1 to approve the request and directed the applicant, with staff assistance, to draft Findings and Conclusions in support of the request; the Board also directed staff to work on implementing the proposed protection of adjoining property through the use of a conservation easement;

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NOW, THEREFORE, IT IS HEREBY ORDAINED AS FOLLOWS:

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1. That the Planning Commission's recommendation is adopted and an exception to Statewide Planning Goal 4 (Forest Lands) is granted, the Comprehensive Plan designation is hereby changed from Forest Land to Dispersed Residential, and the zoning is hereby changed from Timber Conservation to Rural Residential on a portion of Lot 300 (abutting the eastern boundary of Tax Lot 900), Lincoln County Assessor's Map 13-11-18. The subject property is more particularly identified on the Map in Exhibit "A" which is attached hereto and incorporated herein.

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2. That the findings and conclusions supporting these actions are adopted as set forth in Exhibit "B" attached hereto and incorporated herein.

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3. That the Department of Planning and Development amend the official maps in the Lincoln County Clerk's Office.

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4. That the staff schedule and prepare for a hearing on the proposed conservation easement in accordance with ORS 271.715 through 271.795.

5. That the Lincoln County Department of Planning and Development forward a copy of this ordinance to the Department of Land Conservation and Development.

6. 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.

7. That copies of this ordinance be forwarded to County Surveyor; County Assessor; Department of Planning and Development; County Counsel, and the parties listed on Exhibit "C," attached hereto and incorporated herein.

DATED AND APPROVED this 14th day of June, 1995.

LINCOLN COUNTY BOARD OF COMMISSIONERS

By Jean Cowan
Chair

By Nancy E. Seaman
Commissioner

By M. Lindly
Commissioner

ATTESTED TO:

Susan Kays
SUSAN KAYS
Recording Secretary

APPROVED AS TO FORM:

Wayne Belmont
WAYNE BELMONT
County Counsel

PLANNING/ordin.goal.ex.

Lincoln County Legal Counsel
Lincoln County Courthouse
225 W. Olive Street
Newport, Oregon 97365
Phone: 265-4108

LINCOLN COUNTY

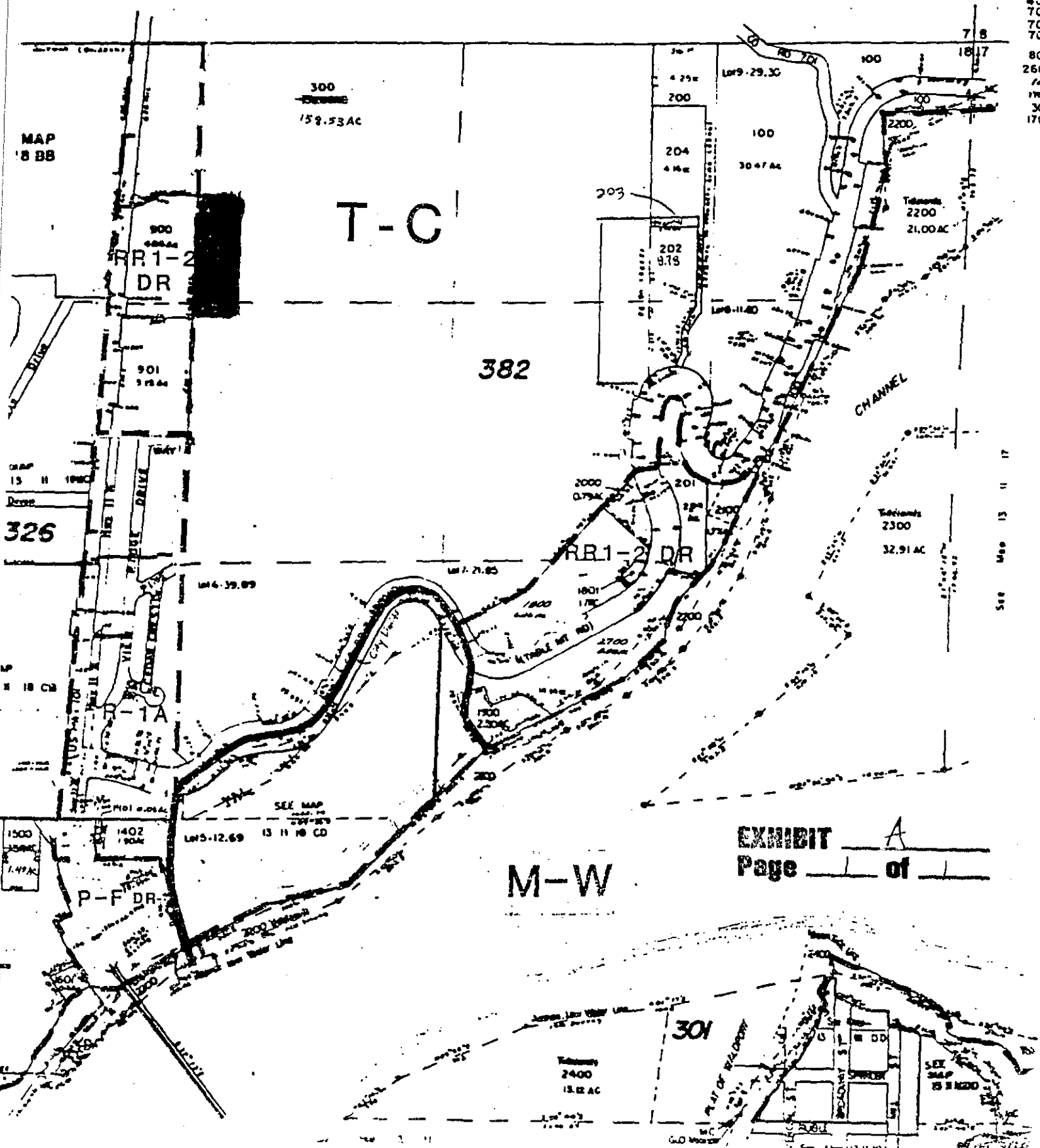
For Assessors Use

1" = 400'

SUBJECT SITE DEAD

See Map 13 11 7

NOS
500
600
1100
1200
1300
2500
1600
400
700
701
702
800
2600
101
100
301
1700



See Map 13 11 17

EXHIBIT A
Page 1 of 1

M-W

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BEFORE THE BOARD OF COUNTY COMMISSIONERS

OF

LINCOLN COUNTY, OREGON

REQUEST FOR APPROVAL OF ZONE) Case File 2-LUPC-ZC-94
CHANGE FROM TC (TIMBER CONSER-)
VATION) TO RR 1-2 (RURAL) FINDINGS AND
RESIDENTIAL) AND COMPREHENSIVE) CONCLUSIONS
PLAN MAP AMENDMENT FROM FOREST)
LAND TO DISPERSED RESIDENTIAL)
BY J.S. (STEVE) MORRILL)

Nature of the Application

The applicant is requesting approval of a zone change from TC (Timber Conservation) to RR 1-2 (Rural Residential) and a Comprehensive Plan Map amendment from Forest Land to Dispersed Residential of approximately 3.5 acres.

Purpose of Application and Effect of Approval

Applicant owns two parcels that are presently zoned RR 1-2. Under existing zoning and with available utilities, he can establish six home sites on these parcels. The requested zone change involves a 200 by 600 foot strip on the eastern boundary of the two parcels. Approval will enable the applicant to:

Move all six home sites up to the ridge line away from the highway.

Utilize the one existing (permitted) access from the Pacific Coast Highway and the existing access road for all home sites.

Preserve the timber along the highway as a green belt buffer in a Highway Scenic Preservation Easement.

Preserve generous setbacks from the creek and pond on the south end of the parcels.

Refer to Exhibits I and II.

Relevant Facts

The following is a summary of the facts and testimony found to be relevant to this decision (all of the record of this case is incorporated herein as if recited in full).

1. The subject property is a strip along the eastern boundary of 13-11-18 tax lots 501 and 900. The subject property is also identified as formerly a portion of 13-11-18 tax lot 300. This property is located along the Pacific Coast Highway about .7 miles north of the Alsea Bay Bridge.

2. The subject property is 200 by (approx.) 600 feet in size (approximately 3.5 acres). The total size of the two involved parcels is approximately 9.5 acres. About two acres of the subject property have historically been in trees. The balance is devoted to old logging roads, a landing and the abrupt ravine and creek on the south end.

3. Utilities are as follows:

Power -- by Central Lincoln County P.U.D.

Water -- by Seal Rock Water District (Seal Rock Board of Directors was represented at Hearing and confirmed that service is available to the subject property).

Sewage disposal -- on site subsurface systems

4. Formal "Notice of Public Hearing" was mailed to in excess of 160 property owners and individuals in the area. Four public hearings were held and all interested parties were given an opportunity to present testimony in support and/or in opposition to the proposal. *See Exhibit III.*

5. Additional information was made available to the public in the form of a series of letter and articles to the local newspapers. *See Exhibits IV (A to D).*

6. Opposition to the project is summarized as follows:

- Ten letters were received from opponents. One of these letters was a petition signed by about 24 residents of two subdivisions about a quarter of a mile from the subject property. About a third of these people retracted their opposition after receiving information from the applicant.
- Five individuals have testified against the proposal at public hearings (three of them have on several occasions).

The opponents' testimony was primarily in the vein of a desire to protect "forest land" in general.

No "site specific" facts were presented by the opponents. The Oregon Department of Forestry did present generalized tables and data. Even this generalized data supported the applicant's Consulting Forester's (Mr. Jim Dennison) opinion that the subject property is Site Class IV.

Further, the applicant testified - and presented written evidence - that he had invited both the Oregon Department of Forestry and the citizen opponents to view the property.

7. Support by neighbors and interested parties is summarized as follows:

- Eleven letters of support were received. The most immediate neighbor (who lives directly across the highway from the subject property) included photographs of the proposed "green belt" as viewed from his house.
- Eight supporters testified on behalf of the applicant.

See Exhibit V.

8. Written comments were received from the Oregon Department of Transportation (Exhibit VI), the Department of Forestry (Exhibit VII) and the Department of Land Conservation and Development (Exhibit VIII). Verbal testimony was delivered by Seal Rock Water District (a member of the Board).

9. Applicant testified that he had proceeded with the attempt to develop Tax Lots 900 and 501 in conjunction with the 200 foot strip only after repeated consultation with the Oregon Department of Forestry over a period of several years and only with an understanding that the proposed use of this property was in their view appropriate to the character of the property. Applicant further testified that a number of these consultations with the Forestry took place on - or in sight of - the subject property. Applicant documented this testimony with his Septem-

ber 17, 1994 letter to the Oregon Department of Forestry. (See Exhibit IX). Applicant testified that he did not receive any response or denial of this letter - nor did the Forestry September 23, 1994 response letter to the Planning Staff assert that the Applicant's actions were not in concert with the Forestry previous advice to him.

In point of fact, the Oregon Department of Forestry September 23, 1994 letter (and accompanying materials) does not state a position relative to the proposal. It does present observations and opinions relative to topography and lack of existing infrastructure which appear to run counter to approval. However, it also notes that the (Lincoln County Planning) staff report was in error, and downgrades the subject property to a Site IV.

The Forestry letter does indicate that they visited the site during these land use proceedings. However, the applicant later testified - and provided written notification to the Forestry (see Exhibit X11) - that their visit on or about September 20, 1994 was at a location on Tax Lot 300 about a mile to the south of the "subject property."

10. The Lincoln County Comprehensive Plan relies on the State Statutes and Administrative Rules for a definition of "Forest Land." The State definition of "Forest Lands" includes "Where . . . a plan amendment involving Forest Land is proposed, Forest Land shall include lands which are suitable for commercial forest uses . . ." and "to protect the state's forest

economy by making possible economically efficient forest practices that assure the continuous growing of forest tree species as the leading use on forest land."

Applicant and his consulting forester presented substantial evidence that the 200 foot strip subject property does not now, and has never, supported commercial timber growth and that it is not economically efficient to pursue forest practices on the strip of land. Their testimony is supported by the following:

- Department of Forestry characterizes the property as Site IV - not Site II as stated in Staff report and the DLCD letter. Based on generalized tables, the Forestry estimates the productivity at 198 cubic feet per acre per year. They also state that "142 cubic feet (exists) on the least productive sites in Lincoln County." The applicant testified that the actual yield of the one acre that was harvested in 1991 was less than 100 cubic feet per acre per year. Applicant also testified that this yield production is comparable to the remaining ONE ACRE which is still in trees on the subject property. The applicant supported his productivity testimony with calculation details of the actual 1991 harvest of the one acre, and an inventory of the actual stumps remaining from this harvest.

The consulting forester also testified and presented site specific evidence that it is ECONOMICALLY INEFFICIENT AND IMPRACTICAL to manage the subject property as commercial forest land.

See Exhibit X.

The consulting forester expressed his opinion that the actual productivity of the subject property is actually MUCH LESS than even the 100 cubic feet per acre per year stated above.

This opinion is based on his site specific observations and his personal involvement in the only other harvesting on the entire Tax Lot 300 (in the 1950's). His opinion is that the 1991 yield and remaining trees are the total production since the last fire in the area. He estimates (from remains of burned out logs and stumps) that this is probably a period of time approaching 100 years. The Consulting Forester remembers that the strip close to the ocean (which includes the subject property) was not actually logged in the 1950's due to a lack of worthwhile timber.

The Consulting Forester further supported his opinions with site specific measurements, color photographs of sample holes (dug for soil depth evaluation) and a presentation of "rounds" cut from stumps on the harvested one acre. The rounds reflected an average age of 45 to 50 years. The diameter ranged from 9.5 to 13 inches. One Spruce stump was found that is 17 inches in diameter. The Forester estimated the age at about 100 years. One round from an existing tree (on the one acre that has not been harvested) was presented which is 40 to 50 years old. This tree was 5.5 inches in diameter and 25 feet tall at a three inch diameter.

The Consulting Forester's opinion that the subject property cannot support economically efficient forest land management is further supported by his statement that in the 1950's he seldom found any trees - anywhere on Tax Lot 300 - that were in excess of 70 feet tall - in spite of the fact that some of the trees were 200 years old. He testified that it is his opinion that the property cannot produce trees in excess of 70 feet tall regardless of the age. The Forester stated that it is his opinion that this was due primarily to the shallow soil and secondarily due to the close proximity to the ocean. He presented seven photographs taken around the subject property that show the very shallow soil (10 to 18 inches) with sandy conditions underneath. *See Exhibit XI.*

11. The Consulting Forester has expressed his opinion that granting the exception to Goal Four will not violate sound management of soil, air or water as it relates to the management of the adjoining resource land. He testified that this is due to the fact that the subject property is physically separated from the balance of tax lot 300 and is not involved in any way in the management of that tax lot. He presented color photographs to support this contention.

12. The remainder of tax lot 300 on the east - and for a few hundred feet to the north and the south is legally designated forest land. However in a practical sense, except for tax lot 300, the general area is completely developed as residential use. A template test of density shows 74 residences, six

commercial uses and over 100 residential parcels in an approximate 160 acre area, and another 15 residences and 20 parcels on the north and east boundary of tax lot 300. Parcel size ranges from small lots in four nearby subdivisions to parcels of one to two acres. It is the Applicant's position that at least most of the residential development has occurred under the Goals in that the residential zoning was done in concert with the promulgation of the Comprehensive Plan. *See Exhibit XIII.*

13. The Applicant declares that the present boundaries of tax lots 501 and 900 are logical and appropriate. The arbitrary boundary that previously existed simply followed the section line on the map. In real physical terms, this allowed the positioning of home sites along the ridge line to butt right up to the TC zoning boundary. The rezoning of the 200 foot strip to dispersed residential will take advantage of the natural ravine to the east as a separation from the resource land (tax lot 300). This enables positioning of homesites away from the highway and steep slope to the west while at the same time maintaining an approximate 100 foot setback from the TC zone.

14. Applicant has related - with the support of testimony from a neighbor and logging contractor - numerous incidents during timber harvesting operations on the subject property and adjacent property which disrupted normal management procedures. These incidents included complaints that halted the operations, complaints that prevented economical disposal of logging slash by conventional methods, vandalism to equipment, arson - and

even one neighbor who threatened to shoot the equipment operator with a pistol.

See Exhibit XIV.

15. Applicant asserts that the zoning of tax lot 501 and 900 - and the adjacent lands to the north, south and west - as Residential is proper and appropriate. The changes in character of this area - e.g. residential development - is consistent with . . . to a large extent due to . . . the zoning of the Comprehensive Plan. The Applicant requests that the zoning boundary between the forest land and the residential parcels be adjusted consistent with the "lay of the land" rather than the section line on the map. It is his position that the zoning boundary was in "error." It was impossible for the Planning Commission to visit all property at the time of the Comprehensive Plan and Zoning action. The section line technique was simple and expeditious.

RELEVANT CRITERIA

A. OREGON STATUTE 197.732(1)(b) GOAL EXCEPTIONS

(1) A local government may adopt an exception to a goal when:

(b) The land subject to the exception is irrevocably committed . . . because existing adjacent uses and other relevant factors make uses allowed by the . . . goal . . . impractical.

B. OREGON STATUTE 197.835(7)(a)(C) SUBSTANTIAL EVIDENCE

. . . decision (must be) supported by substantial evidence. ["Substantial Evidence" is evidence a reasonable, prudent person would rely on in reaching a decision per *City of Portland v. Bureau of Labor and Ind.*, 298 Or 104, 690 P2dc475c (1984).]

C. OREGON ADMINISTRATIVE RULE 660-04-028

(1) A local government may adopt an exception to a goal when . . . existing adjacent uses and other relevant factors make uses allowed by the applicable rule impracticable.

(2) . . . findings . . . must address the following:

(a) The characteristics of exception area.

(b) The characteristics of adjacent lands.

(c) The relationship between the exception area and adjacent lands, and

(d) Other relevant factors per OAR 660-04-028(6).

(3) It is the purpose of this goal to . . . provide flexibility in the application of broad resource protection goals. It shall not be required that local governments demonstrate that every use allowed by the applicable goal is "impossible."

(6) Findings shall address the following:

(a) Existing adjacent uses.

(b) Existing public facilities . . .

(c) Parcel size and ownership patterns of the exception area and adjacent lands.

(A) (Paraphrased as) . . . Analysis must show that development in the area has taken place consistent with the Goals . . .

D. OREGON ADMINISTRATIVE RULE 660-04-015(1)

A local government approving a proposed exception shall adopt as part of its comprehensive plan findings of fact and a statement of reasons which demonstrate that the standards for an exception have been met.

E. LINCOLN COUNTY COMPREHENSIVE PLAN 1.0065 - FOREST LAND POLICIES

(1) Forest Lands shall be retained for the production of wood fiber and other forest uses.

F. LINCOLN COUNTY CODE 1.1235 QUASI JUDICIAL AMENDMENTS

Authorizes zone change and amendment to comprehensive plan map in case of error.

FINDINGS

1. Substantial evidence has been presented to the effect that an exception under OAR 660-04-028 in accordance with ORS 197.732(1)(b) is justified. This evidence is summarized in Relevant Facts (hereinafter referred to as "RF") paragraphs 10, 11, 12 and 13 and Exhibits IX, X, XI, XII, XII and XIV (herein incorporated as if recited in full).

2. Paragraphs 4, 5, 6, 7 and 8 of the "RF" - and supporting Exhibits - relate in some detail (and are incorporated herein) the extensive notification, hearings and publicity that occurred relative to this proposal over seven or eight months.

3. Substantial evidence has been introduced which supports the contention that the surrounding area has been extensively developed ("RF" #12 and Exhibit XIII are incorporated herein) and that this close proximity of residential development makes the management of the subject property impracticable as outlined in the following paragraph #6. This alone justifies an exception to Goal 4 (*DLCD v. Josephine County*, 18 Or LUBA 88 (1989)).

4. Paragraphs 10 and 11 of the relevant facts should be included when considering the "characteristics" of the subject property under OAR 660-04-028(2). In effect the soil and other conditions that render the property incapable of sustaining economically efficient timber production, are in effect "characteristics." Further it is a "characteristic" that the property has apparently never been harvested to any extent. It is significant that an original landing was established - with the soil scraped to the sand - on about a half acre of this property. It is further significant that the 1991 harvest on the one acre yielded less than 70% of the production that the Department of Forestry states is the least productive Forest Land in Lincoln County. Applicant maintains that the topographical characteristics of the subject property strongly supports the inclusion of 200 foot strip into tax lots 501 and 900. There is a deep ravine that runs on the east boundary of the subject property. This effectively separates the residential development from the remainder of tax lot 300.

5. Substantial testimony and evidence is in the record and summarized in "RF" #10 and #11 to find that the subject parcel is not "capable of producing" the requisite income over the growth cycle as specified in ORS 197.247(1)(a). A commercial forester found that this property is not capable of producing, if reasonably managed, an average annual gross income of \$10,000 over the growth cycle of the trees. This finding was based on the soils rating on the property, a physical site inspection, knowledge of the history of timber production on that parcel, and a knowledge of reasonable timber management practices. This justifies an exception to Goal 4 (*DLCD and DOF v. Lane County*, 23 Or LUBA 33 (1992)).

6. Testimony summarized in "RF" #14 and Exhibit XV (incorporated herein) suggests that while commercial forest land management may be justified in surrounding areas in spite of the difficulties due to close proximity of residents who are so strongly against timber harvesting, it seems clear that the very poor yield on the two acres of the subject property that have historically been in "tree growth" - coupled with the "residential proximity" problems - make commercial forest land use very economically inefficient.

7. Paragraphs 13 and 15 of the "RF" (incorporated herein) were supported by photographs and testimony. It seems clear that the Planning Commission would have established the zone boundary consistent with this proposal if the site had been visited at the time the Comprehensive Plan - and Forest Land inventory - was put together. The amendment to the Comprehensive Plan zone map and zone change of the subject 200 foot strip will provide better separation from the remainder of tax lot 300 (Forest Land), will enable home sites to be established without disturbing the "green belt" along the highway and will promote the safety of the general public and the homeowner alike (through the use of one safe access road).

8. The Applicant has voluntarily provided mitigation with a deed covenant to establish a Highway Scenic Preservation Easement to protect the "green belt" along the highway and the ravine, creek and pond on the south end of the property (about 2.5 acres). Although this mitigation does not in itself justify an exception to Goal 4, it certainly is consistent with Goal 5 and the Oregon Department of Transportation's efforts to protect scenic beauty for the public travelling on Highway 101. Further, it enables the County to approve the zone change on the 200 foot strip without any substantial loss in protection of forest land.

9. There are no public facilities (except for the road) on the subject 200 foot strip. However, tax lot 300 itself is bordered on three sides by Seal Rock Water District lines and on

four sides by Central Public Utility electric lines. Further, the water district has confirmed that service is available to the subject property.

10. It is stated (in OAR 660-04-028) that the "goal exception process" is intended to provide flexibility in the application of the broad resource goal to specific situations . . . and that it is not necessary to demonstrate that every use allowed under the goal is "impossible."

11. It is questionable that the subject property should ever have been classified as Forest Land under the definition of Goal Four. It is not suitable for economical and efficient commercial forest uses, is not necessary for the forest operations on adjacent forest land and is not critical for the maintenance of soil, air, water . . . etc.

This is due to the very small size of the subject property in the context of the adjacent forest land and the topography wherein it is separated by the ravine.

12. Substantial evidence and testimony have been presented to support the premise that the property cannot support economic and efficient forest practices. Evidence has addressed the poor soil and historically demonstrated height and size limitations on the timber. Substantial evidence has been presented that the 1991 harvest yield was less than 100 cubic feet per acre per year on the 50 year formulation. The actual "yield per year" is even less in the Forester's opinion. He believes that this

stand of trees has been growing there since "the last fire" - much longer than 50 years.

It is not without merit that the Applicant testified that he proceeded to annex the 200 foot strip to the already residentially zoned parcels only after receiving advice from the Department of Forestry that was consistent with this premise.

Paragraphs 9 through 12 of the "RF" (and the supporting Exhibits) are incorporated herein as if recited in full.

These "Findings" further incorporate the entire record of this case as if recited in detail.

CONCLUSIONS

The record, Relevant Facts, Findings and application of the facts to the Relevant Criteria, support the conclusions that:

GOAL 2, PART II (c) EXCEPTION TO GOAL 4

1. Substantial evidence has been presented to result in the conclusion that a "committed exception" under OAR 660-04-028 is justified and appropriate. The Findings and Relevant Facts set forth substantial facts and reasons determining that the land is irrevocably committed to other uses. The findings (See Findings 1, 3, 4, 5, 6 and 7) substantially address the significant tests concerning (a) the characteristics of the exception area; (b) the characteristics of the adjacent lands; (c) the relationship between the exception area and the lands adjacent to it; and (d) the other relevant factors set forth in OAR 660-04-028(6). Those factors include (a) existing adjacent uses;

(b) existing public facilities and services; (c) Parcel size and ownership patterns of the exception area and adjacent lands: (A) ..analysis of how the existing development pattern came about..- .; and consideration of existing parcel sizes and contiguous ownerships. (See RF 1, 2, 3, 9, 10, 11, 12, 13, 14, 15 and Findings 1, 3, 4, 5, 6, 7, 8, 9, 10, 11 and 12.)

As determined in the Relevant Facts and Findings, and summarized above, a commercial forest use on the subject parcel is impracticable and economically inefficient. It is only under the broadest interpretation of the Statewide Planning Goals definition of Goal 4, that the subject property would have been considered as "forest land". This conclusion - supported by the record, and the Relevant Facts and Findings - is adequate to justify a Goal 2 Part II Exception to Goal Four.

COMPLIANCE WITH LINCOLN COUNTY COMPREHENSIVE PLAN

2. Substantial evidence has been presented and is summarized in the Relevant Facts which support the conclusion that the 200 foot strip should have been included within the residentially zoned parcels at the time the County Comprehensive Plan and zoning was accomplished. This is an error in "zoning" resulting from a situation wherein the zoning followed a line on a map rather than the actual terrain. The proposal does not represent rezoning of a piece of property in itself as much as it is a boundary adjustment to include a 200 foot strip which should have been part of the residentially zoned parcels all along. (See RF 13 and 15 and Finding 7.)

3. Lincoln County Codes emphasize the responsibility of local government to protect "forest lands." However, (as outlined in RF 10), the Lincoln County Codes rely on state statutes and rules to define (forest lands.) It seems clear that state statutes and rules are focused on forest lands as "commercial forest uses land." Accordingly, rezoning of the subject property is not in conflict with the principle of protecting "forest land" in that the subject property cannot be economically efficiently managed as commercial timber land. Further, the rezoning does not impact on the management of the resource land to the east in terms of soil, water, etc. (RF 10 and 11 and Finding 11).

4. A document entitled *Deed Covenant to Establish Highway Scenic Preservation Easement* is attached to these Findings, Conclusions and Final Order. This deed covenant was created to provide for a scenic, conservation area along the highway. The deed covenant will be reviewed in a hearing held by Lincoln County. After the hearing, if deemed appropriate by Lincoln County, the deed covenant will be made a scenic preservation easement.

The voluntary use of a preservation easement to protect the "green belt" along the highway and the ravine, creek and pond are significant and appropriate in terms of public esthetics and protection of riparian areas. By creating the preservation easement, approval of the zone change can be made without any substantial loss to forest land/resource area. (See Finding 5.)

5. The preceding conclusions do not imply any evaluation of the remainder of tax lot 300. Inasmuch as many of the concerns - and statements by - opponents related to tax lot 300 in toto - not the subject property, it is appropriate to emphasize that this proposal and the conclusions herein address specifically the subject property, and should not be construed to have intended implications in any broader sense. It is further noted that these conclusions are based on unique circumstances and do not represent any intent to relax the Forest Land goals expressed in Comprehensive Plan Section 1.0065.

SUMMARY OF CONCLUSIONS

The record, Relevant Facts, Findings and application of the facts to the Relevant Criteria, support the conclusions that:

GOAL 2, PART II (c) EXCEPTION TO GOAL 4

The applicant has provided substantial evidence to support granting of a "committed exception" owing to: the nature of the developed character of the area and, the determination by a commercial forester that a commercial forest use on the subject property is both impracticable and economically inefficient.

COMPLIANCE WITH LINCOLN COUNTY COMPREHENSIVE PLAN

Zoning in error- Substantial and sufficient evidence has been provided to conclude that the property was zoned in error

due to zoning which followed general mapping rather than physical site evaluation and actual topography.

Conservation of "green belt"- A deed covenant to establish a Highway Scenic Preservation Easement has been created to protect the scenic forested area along the highway.

COPY

DEED COVENANT TO ESTABLISH
HIGHWAY SCENIC PRESERVATION AREA

COMES NOW J.S. Morrill, the owner of the real property described on the attached and incorporated Exhibit A and Exhibit C, and does hereby declare and establish for the benefit of the general public of the County of Lincoln, the hereinafter set forth deed covenant to become appurtenant to and run with the title to the real property described on the attached and incorporated Exhibit A and Exhibit C.

The consideration, and therefore the purpose, for enacting this deed covenant is to fulfill a representation by Declarant to the general public as part of the Lincoln County Land Use process wherein Declarant offered mitigation for Lincoln County undertaking a zone and plan change whereby the property described on the attached and incorporated Exhibit C would be zoned RR 1-2 and would contain a comprehensive plan designation of dispersed residential.

The deed covenant hereby declared and established for highway scenic preservation is as follows:

A portion of the real property described on the attached and incorporated Exhibit A, said portion as more particularly described on the Exhibit B, shall be subject to an easement in favor of the public of a non-possessory nature whereby the area described on the attached and incorporated Exhibit B shall be preserved in its present, natural, scenic and open space valued configuration. The timber and vegetation located within the easement way shall be maintained in its natural state and shall not be harvested or otherwise disturbed by Declarant, Declarant's heirs, successors and assigns.

Nothing herein shall be so construed so as to prevent the installation and maintenance of utilities over and across the easement way together with a means of ingress and egress all to

service the remainder of the property described on the attached and incorporated Exhibit A in a residential configuration as allowed by the existing or future land use laws of Lincoln County or any other jurisdiction. Further, the existing roadway system shall be allowed to remain in its present location and the owners and users thereof shall be entitled to continue said ownership and use, including the full right of maintenance and repair.

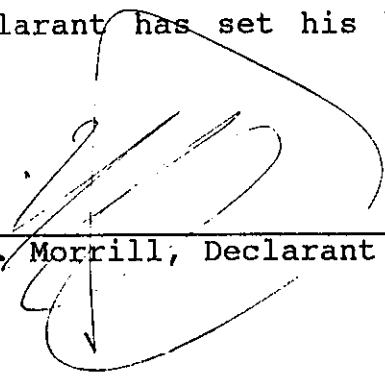
Nothing shall be so construed so as to prevent the performance of acts necessary to eliminate any dangerous condition which might affect the public roadway or any of the surrounding properties adjacent to the property described on the attached and incorporated Exhibit B. Further, nothing shall prevent the removal of dead and down timber from the Exhibit B area by Declarant and his heirs, successors and assigns.

This covenant shall be recorded at such time as the zoning and comprehensive plan adjustments have been completely finalized and thereafter shall be perpetual.

Declarant has volunteered this Covenant and the subsequent performance hereinafter set forth to generally benefit the public in the manner contained herein. In establishing this covenant, Declarant recognizes that the County of Lincoln shall desire a conservation easement or a highway scenic preservation easement or both involving the property set forth on the attached and incorporated Exhibit B in the place and stead of this deed covenant. Declarant agrees to cooperate with the provisions of ORS 271.715 to ORS 271.795 to effectuate such an easement to replace the content and intent of this declaration.

This declaration is binding upon the heirs, successors and assigns of Declarant and is subject to all prior recorded easements, conditions and restrictions of record.


IN WITNESS WHEREOF, the Declarant has set his hand on the 15th day of May, 1995.



J.S. Morrill, Declarant

STATE OF OREGON)
) ss.
County of Lincoln)

This instrument was acknowledged before me this 15th day of May, 1995 by J.S. Morrill.



NOTARY PUBLIC FOR OREGON
My Commission Expires: 9-20-96



That part of Section 18, Township 13 South, Range 11 West, Willamette Meridian, in Lincoln County, Oregon, more particularly described as follows: Beginning at a point on the East line of Government Lot 1, said point being 100 feet South of the North line of the South half of said Lot 1; thence Southerly along the East line of said lot 1, 600 feet, more or less, to the North line of the tract described in deed from Wineberg Properties, Inc. to Charles E. Poulton, et ux, dated June 19, 1972, recorded June 30, 1972 in Volume 34, Page 1333, Film Records; thence Westerly along said Poulton tract 350 feet, more or less, to the East line of U.S. Highway 101; thence Northerly along said highway 600, more or less, to a point that is 100 feet South of the North line of the South half of said Lot 1; thence East 350 feet, more or less, along the South line of Parcel 2 as described in deed to Hagland et ux recorded December 3, 1953 in Book 161, Page 311, Deed Records to the point of beginning.

EXCEPTING THEREFROM the following described tract: Beginning at a point on the Easterly right of way of the Oregon Coast Highway 100 feet South of the North line of the South half of Government Lot 1, Section 18 aforesaid; thence East 100 feet; thence South 20 feet; thence Southerly to a point on the Easterly right of way aforesaid, South 4°40' West 60 feet from the point of beginning; thence North 4°40' East along said right of way 60 feet to the point of beginning.

The hereinafter described portion of the Exhibit A parcel shall be the portion affected by said Deed Covenant:

All that portion of the property described in Exhibit A, also appended to the Deed Covenant to which this Exhibit B description is appended, more particularly described as follows:

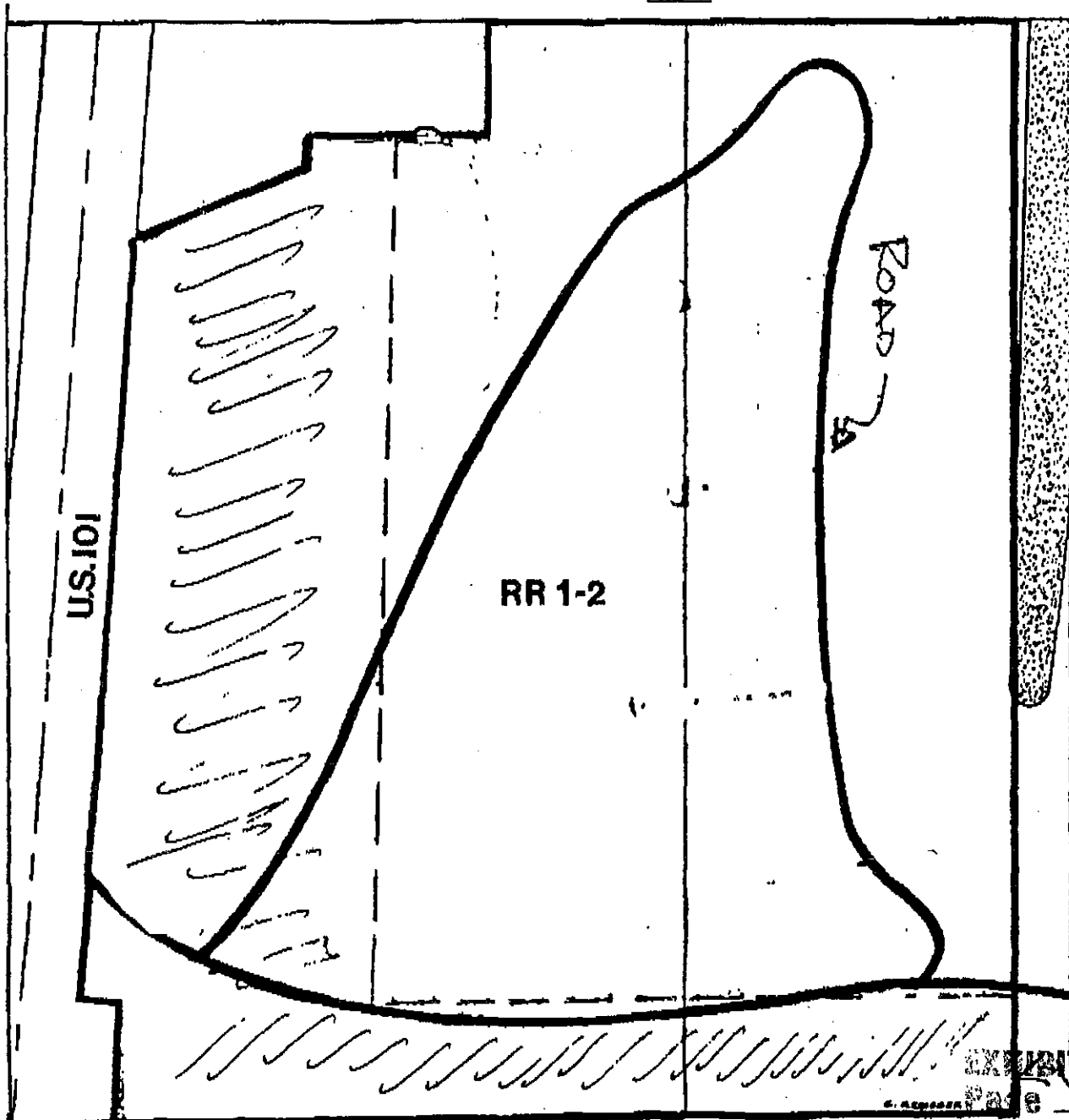
Beginning at the Southwest corner of the property described in Exhibit A above referenced; thence Easterly along the South line of said Exhibit A tract 250 feet; thence North 50 feet; thence Westerly and parallel to the South line of said Exhibit A tract 200 feet, to a point that is 50 feet due East from a point on the Westerly boundary of the Exhibit A tract located 50 feet Northerly of the Southwest corner thereof; thence Northeasterly 550 feet, more or less, to the Southeast corner of the excepted portion of the Exhibit A description above referenced; thence Southwesterly along the Southerly line of said excepted portion 100 feet, more or less, to a point on the Easterly right-of-way of U.S. Highway 101, located South 4°40' West 60 feet from the point of beginning of the excepted parcel in Exhibit A above referenced; thence Southerly along the West line of the Exhibit A tract, said line also being the Easterly right-of-way line of U.S. Highway 101 490 feet, more or less, to the true of beginning.

Beginning at the common section corner of Sections 7, 12, 13 and 18, Township 13 South, Range 11 West, Willamette Meridian, in Lincoln County, Oregon; thence North 89° 56' 36" East, 1378.06 feet, to the Northwest corner of the above described Tax Lot 300; thence South 0° 53' 44" West 723.78 feet, more or less, to the Northeast corner of the above described Tax Lot 900, the same being the true point of beginning. Thence North 89° 56' 36" East, 200 feet; thence South 0° 53' 44" West, 600 feet, more or less, to a point that is North 89° 56' 36" East of the Southeast corner of Tax Lot 900 as above described; thence South 89° 56' 36" West 200 feet to the Southeast corner of said Tax Lot 900 as above described; thence North 0° 53' 44" East, 600 feet, more or less, to the true point of beginning.

THE SKETCH BELOW ILLUSTRATES A TC ZONE STRIP THAT WOULD FORMALIZE OUR OFFER OF MITIGATION ON THE 2-LUPC-ZC-94 PROJECT

ALL HOMESITES TO BE LOCATED WITHIN RR 1-2 ZONE —

TAX LOTS 501 $\frac{1}{4}$ 900



PROPOSED 2
"TC" ZONE
STRIP

RICHARD FASHBAUGH
2116 NW PINE CREST WAY
WALDPORT OR 97394

ROBERT J. HART
1101 LAPINE WAY
WALDPORT OR 97394

GLEN SMALL
2393 BAY VIEW ROAD
WALDPORT OR 97394

GARY OLARREA
PO BOX 1586
WALDPORT OR 97394

ROBERT E. WEATHERLY
2108 NW PINE CREST WAY
WALDPORT OR 97394

JACK DUNAWAY
UNIT FORESTER
OREGON DEPT. OF FORESTRY
763 NW FORESTRY ROAD
TOLEDO OR 97391

WAYNE HUFFMON
927 NORTH BAYVIEW ROAD
WALDPORT OR 97394

J S MORRILL
PO BOX 1629
WALDPORT OR 97394

DALE JORDAN
DEPT. OF LAND CONSER-
VATION & DEVELOPMENT
1175 COURT STREET NE
SALEM OR 97310-0590

JOANNE L. CVAR
PO BOX 1117
WALDPORT OR 97394

KURT CARSTENS
ATTORNEY AT LAW
PO BOX 1730
NEWPORT OR 97365

ESTELLE ANDERSON
1806 VIEW RIDGE
WALDPORT OR 97394

MILICA DEDIJER
2393 BAY VIEW ROAD
WALDPORT OR 97394

FRAN RECHT, PRESIDENT
OREGON SHORES CONSERVA-
TION COALITION
PO BOX 1344
DEPOE BAY OR 97341

EXHIBIT C
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