

1 **BEFORE THE BOARD OF COMMISSIONERS**2 **FOR LINCOLN COUNTY, OREGON**

3 ORDINANCE # 448

4 _____
5
6 **Amending the Urban Growth Boundary (UGB) for the City of Yachats by removing**
7 **approximately 1.8 acres from the UGB and adding back a total of 1.8 acres in a locational**
8 **adjustment to the boundary; assigning a Lincoln County Comprehensive Plan**
9 **designation of Rural Community to the area removed from the UGB; changing the zoning**
10 **designation to R-1 (Single Family Residential) to the area removed from the UGB; and**
11 **declaring an emergency (County Case File #2-LUPC-PC-06).**

12 _____
13

14 WHEREAS the City of Yachats has requested a locational adjustment to the Urban
15 Growth Boundary (UGB) for the City of Yachats that will remove approximately 1.8 acres from
16 the UGB and add back 1.8 acres, and at the same time assign a Comprehensive Plan designation
17 of Rural Community and changing the zoning designation to R-1 (Single Family Residential)
18 for the area being removed from the UGB; and

19 WHEREAS the subject property of the request is located on the east side of Highway
20 101 at the north end of Yachats and is described as Tax Lot 4200 on Lincoln County Assessor's
21 Map #14-12-23 CB. A map of the areas to be added and removed from the UGB is attached as
22 Exhibit 1; and

23 WHEREAS the City of Yachats, following extensive proceedings before the Yachats
24 Planning Commission and City Council adopted Findings, Conclusions and Order dated July
25 14, 2005 approving the locational adjustment and in accordance with the results of a special
26 election on the question of changing the city boundaries memorialized in Yachats Resolution
27 No. 20006-04-01 which passed by a 209 to 50 vote, deannexed the area removed from the UGB
28 from the city limits; and

1 WHEREAS on December 11, 2006 after legal notice was given in accordance with law,
2 the Lincoln County Planning Commission held a public hearing on the subject request. On
3 January 22, 2007 the Planning Commission voted unanimously to approve the request and
4 adopted Findings, Conclusions and Final Order recommending that the locational adjustment be
5 approved. The planning record in this matter is found in Case File #2-LUPC-PC-06 and by this
6 reference is incorporated herein as if fully set forth; and

7 WHEREAS after legal notice was given in accordance with law, a public hearing was
8 held by the Board of Commissioners on April 11, 2007, to consider whether or not to grant the
9 request; and

10 WHEREAS at the close of the hearing and after deliberations, the Board unanimously
11 approved the recommendation of the Planning Commission to amend the Urban Growth
12 Boundary with the locational adjustment as requested by the City of Yachats.

13 NOW, THEREFORE, IT IS HEREBY ORDAINED AS FOLLOWS:

14 **SECTION 1.**

15 1. The Urban Growth Boundary (UGB) for the City of Yachats is hereby amended to
16 remove approximately 1.8 acres from the UGB and add back 1.8 acres in a locational
17 adjustment to the UGB approved by the City of Yachats and the voters of the city. The property
18 removed and added is identified as Tax Lot 4200, Lincoln County Assessor's Map 14-12-23
19 CB, and a map showing the areas added and removed is attached as Exhibit 1 hereto and
20 incorporated herein.

21 2. The findings and conclusions supporting these actions are adopted as set forth in
22 Exhibit 2 (Lincoln County Planning Commission Final Order) which is attached hereto and
23 incorporated herein.

24 3. Copies of this ordinance shall be forwarded to the City of Yachats Planning
25 Department; County Surveyor; County Assessor; County Counsel; and Lincoln County
26 Department of Planning and Development.

27 4. The Department of Planning and Development shall amend the official maps in the
28 Lincoln County Clerk's Office and shall forward a copy of this ordinance to the Department of
29 Land Conservation and Development.

1 **SECTION 2.**

2 This Ordinance being necessary for the immediate preservation of the public peace,
3 health and safety, an emergency is declared to exist and this Ordinance shall take effect upon its
4 passage.

DATED this 18th day of April, 2007.

LINCOLN COUNTY BOARD OF COMMISSIONERS

Bill Hall

Bill Hall, Chair

Don Lindly

Don Lindly, Commissioner

Terry N. Thompson

Terry N. Thompson, Commissioner

ATTESTED TO:

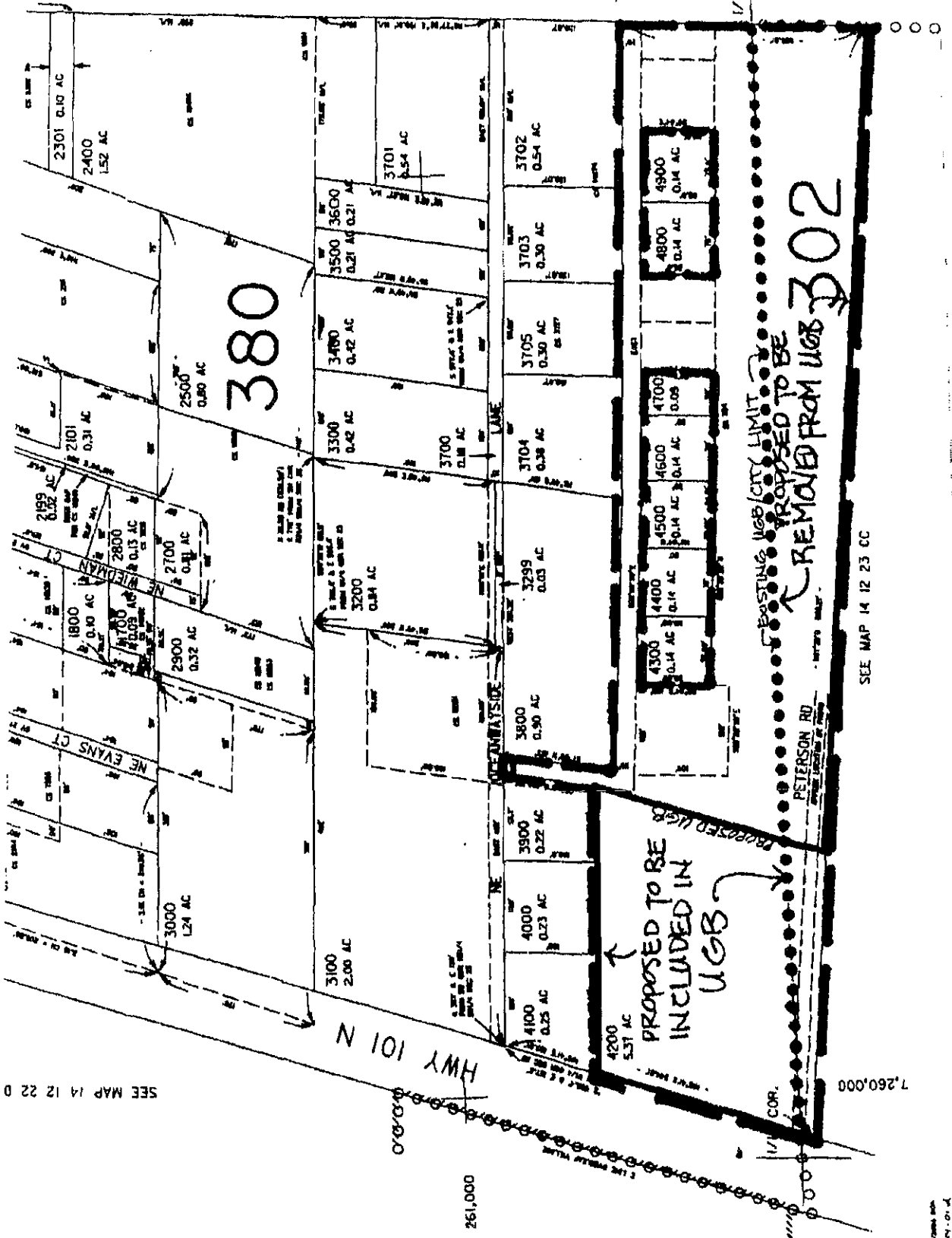
APPROVED AS TO FORM:

Liz Sample

Liz Sample, Recorder

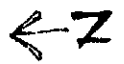
Wayne Belmont

Wayne Belmont, County Counsel



SEE MAP 14 12 23 CC

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SEE MAP 14 12 22 D

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BEFORE THE CITY COUNCIL
OF
YACHATS, OREGON

Request for Urban Growth Boundary Exchange

Case File #1-UGB-PC-04

Applicant: Steve and Robert Hamilton

FINDINGS, CONCLUSION AND ORDER

Nature of the Application

The applicants request a reconfigured Urban Growth Boundary (UGB) in order to create a useable lot while at the same time keeping the UGB area the same. Currently, the southern portion of tax lot 4200 is within the Yachats Urban Growth Boundary (UGB) and city limits, and the northern portion of the tax lot is outside the Yachats UGB and city limits.

Currently, 1.80 acres of the subject tax lot are located within the UGB. It is shaped like a wedge and is essentially unusable for building purposes because of the shape. The applicants propose to rearrange the 1.80 acres within the UGB resulting in an area with 241 feet of Highway 101 frontage and 325 feet of depth. The Yachats Urban Growth Boundary (UGB) will not be increased. For the 1.8 acre land currently outside the UGB that will be included within the UGB, an equal amount of land area will be removed from the Yachats UGB.

Relevant Facts

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

- A. Property Location: The property is located on the east side of Highway 101 at the north end of the City and is further identified on Lincoln County Tax Assessors Map 14-12-23CB as tax lot 4200.
- B. Access: Tax lot 4200 is accessed from Highway 101 at Peterson Road and includes approximately 235 feet of frontage along the highway. Tax lot 4200 also includes a 20 foot wide access road off Oceanwayside Lane at the north end of the property.
- C. Lot Size and Configuration: The subject property (tax lot 4200) totals 5.37 acres. The area currently within the UGB and city limits totals 1.80 acres.
Tax lot 4200 completely surrounds seven tax lots (#4300 – 4900). Those seven tax lots are not included in the requested UGB amendment.
- D. Topography/Vegetation: The eastern two-thirds of the land is fairly steep and forested. The western one-third of the property, that fronts Highway 101, is somewhat flatter with less vegetation.

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- E. Services: City water and sewer services do not currently service the property but do extend near the property within Highway 101.
- F. Zoning/Development: The portion of the subject property that is within the city limits and UGB is zoned Residential R-3. If the UGB exchange is approved and the land currently outside the city limits is subsequently annexed into the city, the R-3 zoning will apply to that portion of the land within the city limits.
- G. Annexation: If the UGB exchange is approved, a subsequent step to be initiated by the property owner will be to pursue annexation of the 'new UGB area' into the Yachats city limits.
That portion of the property that will be excluded from the UGB shall be de-annexed from the city limits.
- H. The applicant submitted the application form, fee, narrative and map which are herein incorporated as part of the Findings, Conclusion and Order.
- I. A public meeting was held before the Yachats Planning Commission on February 15, 2005 at 7:00 p.m. and before the Yachats City Council on June 9, 2005 at 2:00 p.m. in order to consider the applicant's request. Due notice of the meeting was given and all interested parties were given an opportunity to present testimony.
- J. The applicant presented the proposed plan and answered questions at the City Council meeting which are hereby incorporated into the Findings and Conclusion for City of Yachats, Case File #1-UGB-PC-04. Written and oral testimony was provided and is hereby incorporated into the Findings, Conclusion and Order for City of Yachats, Case File #1-UGB-PC-04.

Public Agency Comments

Oregon Department of Land Conservation and Development (DLCD)

DLCD states that with no net change in the amount of land within the Yachats UGB, the city should still make a finding regarding what effect, if any, the change would have on its inventory of buildable lands. If the zoning of the areas to be included and excluded is the same, e.g. Residential R-3, the city's buildable lands inventories (BLI) would be unaffected by the proposed amendment. Under this scenario, it would not be necessary for the city to update its BLI as a prerequisite to amending the urban growth boundary.

Findings

The following is a summary of the Planning Commission findings:

- A. The Yachats Urban Growth Boundary (UGB) will not be increased. For the land currently outside the UGB that will come into the UGB, an identical amount of land area (1.8 acres) will be removed from the Yachats UGB.
- B. The UGB exchange will not affect the Yachats inventory of buildable lands. If annexed into the Yachats city limits, the land to be included within the UGB will be zoned Residential R-3, the same zoning designation that the land being removed from the UGB is currently zoned.
- C. Since the city's buildable lands inventory will not be affected, it is not necessary for the city to update its buildable lands inventory as a prerequisite to amending the urban growth boundary.

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Case File #1-UGB-PC-04 Hamilton
City Council Findings, Conclusion and Order
July 14, 2005

D. If land currently within the UGB and city limits is removed from the UGB, that land shall be de-annexed from the city limits.

Conclusions

Based on the above facts and findings, the Yachats Planning Commission finds:

- A. Given the equal 'swap' or exchange of lands that will be removed and included in the urban growth boundary, the property under consideration is suitable for the proposed urban growth boundary amendment.
- B. This application satisfies the provisions of the Yachats Municipal Code and Comprehensive Plan.

Order

It is ORDERED by the Yachats City Council that the requested Urban Growth Boundary 'swap' or exchange be and is hereby recommended for approval by the City Council. Said approval is subject to the following conditions and shall not be considered final until all three conditions are satisfied:

- A. The land being removed from the Yachats Urban Growth Boundary shall also be de-annexed from the Yachats city limits.
- B. The applicant shall be responsible for preparation of any legal descriptions or other required documents or legal instruments necessary to finalize the UGB amendment.
- C. The applicant shall be responsible for any future efforts to annex the land being incorporated into the UGB into the Yachats city limits.
- D. Applicant agrees to waive any Measure 37 Claim that may arise once the property is included in the City Limits and under the jurisdiction of the Yachats Municipal Zoning Code.

This ORDER was presented to and approved by the Yachats City Council on July 14, 2005.

Sue Smith

Sue Smith, Mayor

7-15-05

Date

Enclosure: Map of subject property and proposed UGB amendment

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City of Yachats

441 Hwy 101 N.
P O Box 345
Yachats, OR 97498

October 3, 2006

**To: Matt Spangler, Director
Lincoln County Planning and Development**

From: Larry Lewis, City Planner *LL*

Re: Hamilton Urban Growth Boundary 'Exchange'

Hi Matt –

As you know, in July 2005 the Yachats City Council approved Steve and Robert Hamilton's requested Urban Growth Boundary 'exchange' with four conditions of approval. In April 2006 the City Council adopted Resolution No. 2006-04-01 recognizing the special election that resulted in 209 voters favoring the city boundary exchange and 50 voters opposing the exchange.

The next step is to forward the information to Lincoln County for consideration of the UGB exchange. The following information is enclosed:

- City of Yachats Resolution No. 2006-04-01, Election Results, Official Abstract of votes – March 14, 2006 Special Election
- Yachats City Council Findings, Conclusion and Order July 15, 2005
- Yachats City Council Minutes – July 14, 2005
- City Council Agenda Cover sheet, Staff Report, Planning Commission Minutes, Planning Commission Findings and Conclusion, Planning Commission Minutes

Matt, please contact me if you request additional information, have questions, or would like to meet to discuss this.

- Larry

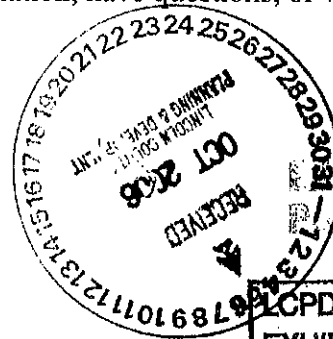


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CITY COUNCIL AGENDA COVER-SHEET

From: Nancy Otterson, City Recorder

- Regular Meeting Agenda Item
- Work Session Discussion Topic
- Add to agenda for _____ meeting.
- Table this item until _____
- Item dismissed.

DATE: June 2, 2005

Title: Urban Growth Boundary Expansion - PUBLIC HEARING

Item: Application by Steve and Robert Hamilton for a change in the UGB

Related Goal: n/a

Reference And Review Material: Planners report, Findings as adopted, and minutes of the public hearing are attached.

Budget Impact: n/a

Additional Information: n/a

Attachments:

Staff Report from City Planner for Planning Commission Meeting on Feb. 15, 2005
 Minutes of Planning Commission Public Hearing - Feb. 15, 2005
 Findings and Conclusions adopted by Planning Commission on March 15, 2005
 Minutes of Planning Commission Meeting at which they were adopted - March 15, 2005

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February 8, 2005

CASE FILE: 1-UGB-PC-04

DATE FILED: 8-12-04

DATE APPLICATION DEEMED COMPLETE: 8-30-04

120-DAY COMPLETION DATE (EXTENDED): 4-26-05

HEARING DATE: 2-15-05

STAFF REPORT

Urban Growth Boundary Expansion Application

APPLICANT: Steve and Robert Hamilton

AGENT: David J. Pedersen & Associates, Inc.

APPLICANT REQUEST: The applicants have amended their original request. Rather than request an expansion of the Yachats Urban Growth Boundary (UGB), the applicants request a reconfigured UGB in order to create a useable lot while at the same time keeping the UGB area the same. Currently, the southern portion of tax lot 4200 is within the Yachats Urban Growth Boundary (UGB) and city limits, and the northern portion is outside the Yachats UGB and city limits (see attached map).

A. REPORT OF FACTS

1. Property Location: The property is located on the east side of Highway 101 at the north end of the City and is further identified on Lincoln County Tax Assessors Map 14-12-23CB as tax lot 4200.
2. Access: Tax lot 4200 is accessed from Highway 101 at Peterson Road and also includes approximately 235 feet of frontage along the highway. Tax lot 4200 also includes a 20 foot wide access road off Oceanwayside Lane at the north end of the property.
3. Lot Size: The subject property totals 5.37 acres. The area currently within the UGB and city limits totals 1.80 acres.
4. Topography/Vegetation: The eastern two-thirds of the land is fairly steep and forested. The western one-third of the property, that fronts Highway 101, is somewhat flatter with less vegetation.
5. Services: City water and sewer services do not currently service the property but do extend near the property within Highway 101.
6. Zoning/Development: The portion of the subject property that is within the city limits and UGB is zoned Residential R-3. If the UGB 'swap' is approved and the land currently outside the city limits is subsequently annexed into the city, the R-3 zoning would apply to that portion of the land within the city limits.
7. Annexation: If the UGB 'swap' is approved, a subsequent step required by the property owner would be to pursue annexation of the 'new UGB area' into the Yachats city limits.

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Hamilton UGB 'Swap' Application
Case File #1-UGB-PC-04
Planning Commission Meeting February 15, 2005

B. COMPREHENSIVE PLAN MAP AMENDMENT APPROVAL PROCESS

The UGB 'swap', if approved, will amend the UGB boundary identified on the Yachats Comprehensive Plan Map.

C. APPROVAL PROCESS

The Planning Commission will make a recommendation to the City Council on whether or not the UGB 'swap' should occur.

If the Planning Commission recommends approval of the UGB expansion, and the City Council approves the UGB expansion, the proposal would then be forwarded to a public hearing with the Lincoln County Planning Commission.

Once the land is within the UGB it would then have to be annexed into the City prior to any development in accordance with the City's R-3 standards. Annexation into the City requires voter approval. Once annexed into the city limits, the developer of the property would be responsible for extending water and sewer services to the property.

D. APPLICANT LETTER AND MAP

The applicant's agent, David J. Pedersen & Associates, Inc., submitted a letter and map dated January 18, 2005 requesting the UGB 'swap' (letter and map enclosed). The letter states the following:

"[The applicants] no longer request to expand the urban growth boundary but rather reconfigure the boundary to create a useable lot while at the same time keeping the UGB area the same.

There is currently 1.8 acres of the UGB in the Hamilton property. It is shaped like a wedge and is essentially unusable for building purposes because of this shape. We propose taking the 1.8 acres and arranging it along the highway frontage, resulting in an area with 241 feet of highway frontage and 325 feet of depth.

By not increasing the size of the UGB, it should be possible to approve this request without the needs analysis required for a UGB expansion. We ask for consideration of this request so the Hamiltons can benefit by having a portion of their property within the UGB."

E. PUBLIC AGENCY COMMENTS

Oregon Department of Land Conservation and Development (DLCD)

DLCD states that with no net change in the amount of land within the Yachats UGB, the city should still make a finding regarding what effect, if any, the change would have on its inventory of buildable lands. If the zoning of the areas to be included and excluded is the same (e/g/ residential), the city's buildable lands inventories (BLI) would be unaffected by the proposed amendment. Under this scenario, it would not be necessary for the city to update its BLI as a prerequisite to amending the urban growth boundary.

F. PUBLIC TESTIMONY

Prior to the amended request for the UGB 'swap' versus a UGB expansion, the city received both oral and written testimony. This testimony primarily pertains to the UGB expansion.

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Hamilton UGB 'Swap' Application
Case File #1-UGB-PC-04
Planning Commission Meeting February 15, 2005

As of the writing of this staff report, no new written testimony pertaining to the UGB 'swap' had been received by the city.

CONCLUSIONS AND OPTIONS

In conclusion, staff offers the following two options, both of which are recommendations to the City Council:

Option A. Recommend approval of the UGB 'swap'. Consider the unique situation of the existing property having an odd-angled UGB line that bisects the property. Make findings that the UGB reconfiguration will not change the city's inventory of buildable lands.

Option 2. Recommend denial of the UGB 'swap'. Make findings that the UGB reconfiguration is not in the best interest of the city.

Submitted by:
Larry Lewis, City Planner

Enclosures: January 18, 2005 Letter from David J. Pedersen
Map showing the tax lot and proposed UGB reconfiguration
January 19, 2005 DLCD letter

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**CITY OF YACHATS
PLANNING COMMISSION
February 15, 2005**

Minutes

The regular meeting of the Yachats Planning Commission was called to order at 7:00 p.m. by Chair Lawrence Musial in the Civic Meeting room of the Yachats Commons. Members present: Musial, Greg Scott, Daniel Serbu and Rachel Vanderthorne. Members absent: Katherine Guenther (excused) and Tom Jones. Also present: City Planner Larry Lewis. Audience – approximately 15.

I. Announcements – none.

II. Minutes – January 18, 2005

MOTION: To approve the minutes of the January 18, 2005 work session. AYE – 4, NO – 0.

MOTION: To approve the minutes of the January 18, 2005 regular meeting. AYE – 4, NO – 0.

III. Citizen's Concerns – none.

IV. Public Hearings

A. Case File #1-UGB-PC-04 Steve and Robert Hamilton

Proposed Urban Growth Boundary "swap" - east side of highway 101, north end of City

- There were no objections to the jurisdiction of the Commission to hear this matter.
- No Commissioner made any disclosure or abstained from participating or voting on this application because of possible financial gain resulting from this application; because they own property within the area entitled to received notice of this hearing; because they have a direct private interest in the proposal; or because they have determined that they cannot be impartial.
- Commissioner **Serbu** declared contact with the applicant at a Super Bowl party and stated that the application was not discussed.

STAFF REPORT:

Lewis stated that the original application was to expand to include all of the subject tax lot into the urban growth boundary. The applicant has amended the application, so instead of requesting an expansion, they are requesting an equal exchange of land. **Lewis** pointed out a map of subject tax lot, showing that the triangular piece at the south end of the lot (now in the UGB and City limits) would be swapped for a rectangular piece of the same land area in a rectangular shape adjacent to Highway 101.

Lewis pointed out that the commission has received a letter of written testimony and commissioners each have a copy. **Lewis** said he received letter from DLCD. Their previous concern was that if the City were to expand its urban growth boundary, the expansion would have to be justified and the City would have to conduct a buildable lands inventory to see if there is enough undeveloped land to accommodate the growth of the City. DLCD is not inclined to ask for a buildable lands inventory now because this change will not be increasing the density since the zoning will be the same (R-3).

Lewis explained that if the Planning Commission recommends to the City Council, and they approve the swap, then it will be forwarded to the Lincoln County Planning Commission for their review. **Lewis** pointed out that there needs to be an understanding that this purely has to do with the urban growth boundary, not the City limits. Annexation or de-annexation of land in the city limits is another process. **Lewis** said if the commission moves forward with the swap, there needs to be a finding included that states that this change would not increase the overall density.

Serbu asked **Lewis** if he mentioned that it should state in the findings that the de-annexation is not occurring until annexation occurs.

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1 **Lewis** said that he suggested making a recommendation that the area that would be excluded from the
 2 urban growth boundary would also need to be de-annexed from the City. He cautioned about taking an
 3 area out of the urban growth boundary and leaving it in the city limits. **Serbu** asked about time on the
 4 application. **Lewis** said the end of the 120-day period has been extended by the applicant to April 26,
 5 2005. **Serbu** asked about the testimony received from "the committee of opponents", wanting to know
 6 who they are. There is a paragraph at the bottom of the second page identifying who they are.

7
 8 **VanderThorne** asked if there were "more technical" drawings available. **Lewis** said certainly a legal
 9 description would be required but is not available now. **Musial** asked if the swap would only put the
 10 rectangle into the UGB and not add it to the city limits. Yes. **Musial** clarified that this is a swap of urban
 11 growth boundary only. Bringing land into the city limits is a totally different process, and requires a vote
 12 of the people. **Serbu** stated that we are reducing the size of the city. **Lewis** said that if the commission
 13 moves forward with a recommendation for approval, they should include the condition that the existing
 14 land in the city limits be de-annexed from the city limits if and when the "swapped" portion is annexed
 15 into the city limits.

16
 17 **Musial** read the procedures for the public testimony portion of the meeting and opened it at 7:17 p.m.

18
 19 **APPLICANTS & PROPONENTS:**

20 **Steve Hamilton, Yachats River Road, 5 mile post**

21 **Hamilton** praised **Lewis** for his help and for trying to be fair. **Hamilton** said that he thinks it's interesting
 22 that so far there hasn't been anyone in the city limits against what they are trying to do. The opposition is
 23 from outside the city limits. He said he has discussed this with them, and their main concern is the trees
 24 on the four acres on the back of the property. **Hamilton** said that is his concern also. He said that the
 25 green timber may not stop a fire, but it would slow it down. **Hamilton** said he was on the fire department
 26 for a number of years so this is his great concern. **Hamilton** said his brother, who is on the application
 27 with him, would rather cut the trees, sell them and take the City to court. He said he would rather do it
 28 this way (indicating this hearing). He said hopefully it won't come to that. **Hamilton** said this is a
 29 positive thing. He said the County has some federal money and is interested in the back four acres. **Matt**
 30 **Spangler** (Lincoln County) has looked at the property and it meets all of their criteria. **Hamilton** said it
 31 was presented to the County Commissioners and they have looked at it and have called for a survey and
 32 an appraisal. **Hamilton** said he and his brother are just trying to sell the property. He said the opposition
 33 to this proposal also wants to see this area left as it is, wooded with a trail.

34
 35 **OPPONENTS:**

36 **Charlotte Mills, 2450 Hemlock**

37 **Mills** asked if this is approved to be brought into the UGB, who gets the triangle. **Musial** said the County
 38 would have to approve the swap. The City would have to deal with the triangle not being in the city
 39 limits any more. **Mills** said that this is a different process than an urban growth boundary (expansion).

40
 41 **Mills** said that it seems like the urban growth boundary (expansion) process should be cancelled and the
 42 candidate should start a new process. **Musial** said he appreciates the input, but the Commission has
 43 placed this matter on the agenda tonight and this period of time is to hear opposition to the application as
 44 it is.

45
 46 **Mills** said that her group has been working for a win-win process and had a lot to do with **Matt Spangler's**
 47 Title 3 funds being offered to **Mr. Hamilton**. She said **Mr. Hamilton** did not mention it, but the Title 3
 48 funds have also been offered for the rectangle.

49
 50 **Hamilton** said it's hard to tell an opponent from a proponent sometimes. He said they (he and his
 51 brother) want to do this with the county, and are even willing to shave the price off of the appraised value

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1 to make it happen, even \$25,000 - \$30,000. **Serbu** asked if the County is interested in the rectangle.
 2 **Hamilton** said he thinks they only have money for the back portion. They are mostly interested in the
 3 forested part.

4
 5 **Nancy Middleman, 1205 SW Abbey St, Newport**

6 **Middleman** said she thinks she agrees with Mills but just arrived at the meeting so doesn't know what
 7 Mills said. She said it seems to her that reading over the statewide goal #14, whether you're talking about
 8 establishing or changing the urban growth boundary, they both abide by the same rules. She said this is a
 9 change of boundaries, even if it is swapping. She began to speak about the fact that this land would be
 10 more developable and put a greater strain on city services. **Musial** pointed out that approval will not
 11 change the city limits. He repeated the procedure for annexation, since Middleman was not at the
 12 beginning of the meeting.

13
 14 **Middleman** said she is asking the commission to be more visionary, to not look at it in a very
 15 microscopic way. She said she would prefer that the commission look to what will happen in the future.
 16 She said that Mr. Hamilton is complaining that the land is worthless to him the way it is arranged now,
 17 and he cannot reap enough monetary benefits out of it, but they (she and Hamilton) bought their property
 18 at the same time. Middleman said he knew it was not developable at the time, and it is not the City's
 19 responsibility to bail him out. She said she bought her property because the Hamilton property is not
 20 developable. Middleman said Hamilton has not met the criteria for changing the UGB. She brought up
 21 City services again and **Musial** said once again, we are not discussing bringing this into the city limits.

22
 23 **Hamilton** said they bought the property with the idea of logging it. They no longer want to log it but
 24 they could if they wanted to, whether it's in the city or the county. **Mills** said the Title 3 funds available
 25 could be for the whole area. The funds would be for a survey and appraisal.

26
 27 **STAFF RECOMMENDATIONS:**

28 Lewis said there are two options:

- 29 1. Recommend approval. Lewis said in this case he would encourage the commission to have
 30 findings that basically follow the State's recommendation, stating that the density would not increase and
 31 the buildable lands inventory would not increase because of the swap. Also, he would recommend a
 32 procedure by which the land taken out of the urban growth boundary would also de-annexed from the
 33 City.
- 34 2. Recommend denial. Lewis said if the commission recommends denial of the application they
 35 also need to make findings giving the reasons for denial, and how it is not in the city's best interest to
 36 approve the application.

37
 38 **VanderThorne** said by doing the swap, the urban growth boundary won't change, but asked if the city
 39 would be actually shrinking. This would be the case if the application were approved and the voters did
 40 not approve the annexation but the de-annexation had taken place.

41
 42 **Musial** closed the public testimony portion of the hearing at 7:45 p.m.

43
 44 **DELIBERATIONS:**

45 **Lewis** said that if you recommend the swap, the condition would be that the de-annexation take place
 46 when the annexation takes place. Lewis said that the property owner has the right to apply for this UGB
 47 amendment. He does not have the right to apply for annexation until the UGB change is made.

48 **Scott** said that the only financial consideration would be the property taxes. He does not see any adverse
 49 financial consideration from the swap. Scott mentioned measure 37 and its implications.

50

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14 34

1 **Musial** asked Lewis about measure 37. **Lewis** said it would depend upon what claim they had, and
 2 whether they owned the property before the new ordinance went into effect. **Scott** said that if the
 3 commission makes a decision and someone feels it effects their property value they may have a claim.
 4

5 **Serbu** said he finds it all well and good that people want to preserve what is, but this is private property
 6 that is effected by somewhat arbitrary boundaries that followed the water district. **Serbu** said as much as
 7 the commission must not, under measure 37, try to hurt Mr. Hamilton, he doesn't think it is wrong, in fact
 8 it is immaterial whether he (Hamilton) gets helped by this. There is nothing wrong with Hamilton having
 9 more utilization of the property. **Serbu** said he thinks the worst of all for everybody would be that the
 10 area get logged. He said he is hearing from both sides that neither side wants to do this. **Serbu** said it is
 11 not like shooting yourself in the foot, more like cutting your foot off. **Serbu** suggested that perhaps 1000
 12 Friends of Oregon should buy the property from Hamilton. He said he doesn't see where the opponents
 13 have more than an emotional issue.
 14

15 **Scott** said that he is not convinced that any action taken by the Commission will preclude any other side
 16 issues from continuing. **Musial** asked about the buildable lands inventory. **Lewis** said that the rectangle
 17 would be zoned R-3 the same as the area going out. He said in talking with the State it's not the
 18 commission's opinion of whether a piece of land is more developable or less developable, it's a matter of
 19 the zoning. To rezone the swapped piece from R-3 to R-4, for example, would not be acceptable without
 20 a buildable lands inventory.
 21

22 **Serbu** said it would seem to him that whether the triangle would be developed or logged, the thing to do
 23 would be to allow the applicant to develop the front and leave the back alone.
 24

25 **MOTION:** To recommend approval of the Urban Growth Boundary Modification with findings and
 26 conclusions according to the recommendations made by the City Planner, including the statement that the
 27 density of buildable lands does not change and the number of buildable lots does not increase. To also
 28 include wording that should the new area to be included within the urban growth boundary be annexed
 29 into the City limits, the land excluded from the urban growth boundary would be de-annexed from the
 30 City limits. AYE - 3, NO - 1 (VanderThorne) *PASSED*
 31

32 The public hearing was closed at 7:58 p.m.
 33

34 B. Case File #1-S-PC-05 Avenir Enterprises Limited Partnership
 35 Proposed 9-lot Subdivision

36 The public hearing was opened at 7:59 p.m.
 37

- 38 • There were no objections to the jurisdiction of the Commission to hear this matter.
- 39 • No Commissioner made any disclosure or abstained from participating or voting on this application
 40 because of possible financial gain resulting from this application; because they own property within
 41 the area entitled to received notice of this hearing; because they have a direct private interest in the
 42 proposal; or because they have determined that they cannot be impartial.
- 43 • No Commissioner declared any contact, written, oral or otherwise, prior to this hearing, with the
 44 applicant, appellant, any other party involved in this hearing, or any other source of information
 45 (outside of staff) regarding the subject of this hearing.
 46

47 **STAFF REPORT:**

48 **Lewis** stated that the original application was for a 9-lot subdivision, but that has been amended to a
 49 Planned Unit Development (PUD) application, which would be also 9 lots. **Lewis** referred to the staff
 50 analysis, showing on the plan where the common areas would be, tracts A, B, and C. He pointed out the
 51 Elk Mountain Road connection on the map, which will connect with other subdivisions in the area. **Lewis**

BEFORE THE PLANNING COMMISSION
OF
YACHATS, OREGON

Request for Urban Growth Boundary 'Swap'

Case File #1-UGB-PC-04

Applicant: Steve and Robert Hamilton

FINDINGS AND CONCLUSION

Nature of the Application

The applicants request a reconfigured Urban Growth Boundary (UGB) in order to create a useable lot while at the same time keeping the UGB area the same. Currently, the southern portion of tax lot 4200 is within the Yachats Urban Growth Boundary (UGB) and city limits, and the northern portion of the tax lot is outside the Yachats UGB and city limits.

Currently, 1.80 acres of the subject tax lot are located within the UGB. It is shaped like a wedge and is essentially unusable for building purposes because of the shape. The applicants propose to rearrange the 1.80 acres along the Highway 101 frontage, resulting in an area with 241 feet of highway frontage and 325 feet of depth.

Relevant Facts

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

- A. Property Location: The property is located on the east side of Highway 101 at the north end of the City and is further identified on Lincoln County Tax Assessors Map 14-12-23CB as tax lot 4200.
- B. Access: Tax lot 4200 is accessed from Highway 101 at Peterson Road and also includes approximately 235 feet of frontage along the highway. Tax lot 4200 also includes a 20 foot wide access road off Oceanwayside Lane at the north end of the property.
- C. Lot Size: The subject property totals 5.37 acres. The area currently within the UGB and city limits totals 1.80 acres.
- D. Topography/Vegetation: The eastern two-thirds of the land is fairly steep and forested. The western one-third of the property, that fronts Highway 101, is somewhat flatter with less vegetation.
- E. Services: City water and sewer services do not currently service the property but do extend near the property within Highway 101.
- F. Zoning/Development: The portion of the subject property that is within the city limits and UGB is zoned Residential R-3. If the UGB 'swap' is approved and the land currently outside the city

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**Case File #1-UGB-PC-04 Hamilton
Findings and Conclusion**

limits is subsequently annexed into the city, the R-3 zoning would apply to that portion of the land within the city limits.

- G. Annexation: If the UGB 'swap' is approved, a subsequent step required by the property owner would be to pursue annexation of the 'new UGB area' into the Yachats city limits. That portion of the property that would be excluded from the UGB would need to be de-annexed from the city limits.
- H. The applicant submitted the application form, fee, narrative and map which are herein incorporated as part of the Findings and Conclusion.
- I. A public meeting was held before the Yachats Planning Commission on February 15, 2005 at 7:00 p.m. in order to consider the applicant's request. Due notice of the meeting was given and all interested parties were given an opportunity to present testimony.
- J. The applicant presented the proposed plan and answered questions at the Planning Commission meeting which are hereby incorporated into the Findings for City of Yachats, Case File #1-UGB-PC-04. Written and oral testimony was provided and is hereby incorporated into the Findings for City of Yachats, Case File #1-UGB-PC-04.

Public Agency Comments

Oregon Department of Land Conservation and Development (DLCD)

DLCD states that with no net change in the amount of land within the Yachats UGB, the city should still make a finding regarding what effect, if any, the change would have on its inventory of buildable lands. If the zoning of the areas to be included and excluded is the same, e.g. Residential R-3, the city's buildable lands inventories (BLI) would be unaffected by the proposed amendment. Under this scenario, it would not be necessary for the city to update its BLI as a prerequisite to amending the urban growth boundary.

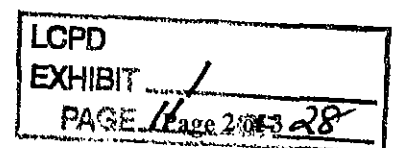
Findings

The following is a summary of the Planning Commission findings:

- A. The Yachats Urban Growth Boundary (UGB) will not be increased. For the land currently outside the UGB that will come into the UGB, an identical amount of land area will be removed from the Yachats UGB.
- B. The UGB 'swap' will not affect the Yachats inventory of buildable lands. If annexed into the Yachats city limits, the land coming into the UGB will be zoned Residential R-3, the same zoning designation that the land being removed from the UGB currently is zoned.
- C. Since the city's buildable lands inventory will not be affected, it is not necessary for the city to update its buildable lands inventory as a prerequisite to amending the urban growth boundary.
- D. If land currently within the UGB and city limits is removed from the UGB, that land also shall be de-annexed from the city limits.

Conclusions

Based on the above facts and findings, the Yachats Planning Commission finds:



Case File #1-UGB-PC-04 Hamilton
Findings and Conclusion

- A. Given the equal 'swap' or exchange of lands that will be removed and included in the urban growth boundary, the property under consideration is suitable for the proposed urban growth boundary amendment.
- B. This application satisfies the provisions of the Yachats Municipal Code and Comprehensive Plan.

Order

It is ORDERED by the Yachats Planning Commission that the requested Urban Growth Boundary 'swap' be and is hereby recommended for approval by the City Council. Said approval is subject to the following conditions:

- A. The land being removed from the Yachats Urban Growth Boundary shall also be de-annexed from the Yachats city limits.
- B. The applicant shall be responsible for preparation of any legal descriptions or other required documents or legal instruments necessary to finalize the UGB amendment.
- C. The applicant shall be responsible for any future efforts to annex the land being incorporated into the UGB into the Yachats city limits.

This ORDER was presented to and approved by the Yachats Planning Commission on March 8, 2005.

Lawrence Musial, Yachats Planning Commission Chair

Date

Enclosure: Map of subject property and proposed UGB amendment

SEARCHED _____ 2
SERIALIZED _____ 18
INDEXED _____ 34

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1
2 **Jones** said that if Fritsch and his wife have two cars, and there are only four off-street spaces available,
3 that would limit the attendance to 4. He said he did not see a big problem with parking there once a
4 month or so.

5
6 **Serbu** asked if the customers pay for the seminar. **Fritsch** said yes. **Serbu** said he has two problems,
7 condition number 4, which states that no person other than the person residing in the dwelling shall be
8 engaged in the home occupation. Serbu said that in the past this has been a big consideration (on other
9 applications), even one employee was not allowed. Serbu said that number 9 says..... or so as to
10 necessitate off-street parking shall not be allowed. The meaning of this was discussed and it was not
11 determined if this was stated in the code as intended or not. Serbu said that if the Planning Commission
12 approves this they would get called on #4.

13
14 **Lewis** said he interpreted #4 as meaning that the applicant could not have someone from outside the home
15 working for him. It was asked whether the attorney and tax preparer in town have clients in their homes.
16 Staff said they do not, but after reviewing files, found that the tax preparer was allowed to have 2-4
17 clients in his home per day, as allowed by a conditional use. The attorney did not apply for a conditional
18 use and is not allowed to have clients in his home. There is also a conditional use on file for a piano
19 teacher that allows students in the home.

20
21 **Scott** said his issue is the parking. He asked if this should be a variance. **Lewis** said a variance is not
22 appropriate, it does not apply to a use.

23
24 **Jones** said he has no problem with #4. Commissioners discussed the fact that Fritsch is a teacher, and the
25 students would not be engaged in the occupation.

26
27 **Scott** said that especially in the core area, a hot potato is the parking issue, and that this would add more
28 fuel to the fire.

29
30 **MOTION:** To approve the application, subject to annual review, with immediate review upon complaint,
31 limiting the use to no more than seven clients twice a month.

32
33 **DISCUSSION:**

34 **Lewis** said there is technically a review process for conditional uses every year, but this has not been the
35 case because if there are no complaints there would be no reason to review. **VanderThorne** asked if
36 there is a requirement for more than one person to complain before a review is initiated. **Lewis** said one
37 complaint would trigger a review. **VanderThorne** was concerned that anyone could register a complaint
38 whether it was legitimate or not.

39
40 **VanderThorne** wanted to change the motion to leave out the limit on number of clients. The consensus
41 of the commission was to not change the motion.

42
43 **AYE - 4, NO - 1 (VanderThorne) Passed**

44
45 **A. Case File #1-UGB-PC-04 Steve & Robert Hamilton - Findings and Conclusion**
46 **Proposed Urban Growth Boundary 'Swap' - East side of Hwy. 101 at North end of City**
47 **VanderThorne** asked if annexation and de-annexation occurs, would the applicant pay for the special
48 elections required. **Lewis** said that if this UGB swap goes forward, Hamilton would be responsible for
49 the costs of annexation or de-annexation.

50
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1 MOTION: To approve the findings and conclusions, case file #1-UGB-PC-04 as presented. AYE - 2,
2 NO - 1, (VanderThorne) ABSTAIN - 2 (Jones & Guenther) *Passed*

3
4 **B. Case File #1-S-PC-05 Avenir Enterprises Limited Partnership – Findings and**
5 **Conclusion**
6 ***Proposed 9-lot Subdivision***

7
8 MOTION: To approve the findings and conclusions as presented. AYE - 2, NO 1 (VanderThorne),
9 ABSTAIN – 2 (Jones and Guenther) *Passed*

10
11 The public hearing portion of the meeting was closed at 8:18 p.m.
12 There was some discussion as to procedure for motions and it was determined that this would be
13 discussed at the next work session.

14 V. Planners Report – Lewis reported that there are currently no EDUs available. The DEQ should
15 be allowing ten additional EDUs upon the City showing that the financing for the wastewater treatment
16 plant is secured. There is a waiting list for those ten EDUs.

17 VI. Unfinished business

18 A. Planning Commission Goals 2005. The commission decided to wait until the chair is
19 present to continue this discussion.

20 VII. New Business

21 A. Results of Work Session discussions – see work session minutes.

22 VIII. Committee for Citizen Involvement (CCI)

23 VanderThorne volunteered to meet with the Mayor to determine what needs to be done to revive
24 the Committee for Citizen Involvement.

25 IX. Other business

26 A. From the Commission - VanderThorne asked about an article on mixed use that was
27 passed on to commissioners by the Mayor. Serbu gave opinions of how this could be incorporated into
28 the City. Scott said the place to start is to determine if people want this. VanderThorne asked how to
29 go about getting this into the comp. plan. Mixed use is included in City zoning, this will be reviewed and
30 discussed during public input on the comp. plan review.

31 B. From the Staff

32 C. From the Floor

33
34
35 There being no further business before the Planning Commission, the meeting was adjourned at 8:32 p.m.

36
37
38
39
40 _____
Katherine Guenther, Vice Chair

41
42 Attest:

43
44
45
46 _____
47 Joy McCaslin, Recording Secretary

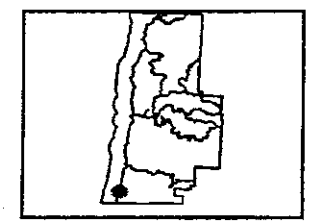
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Lincoln County Geographic Info System

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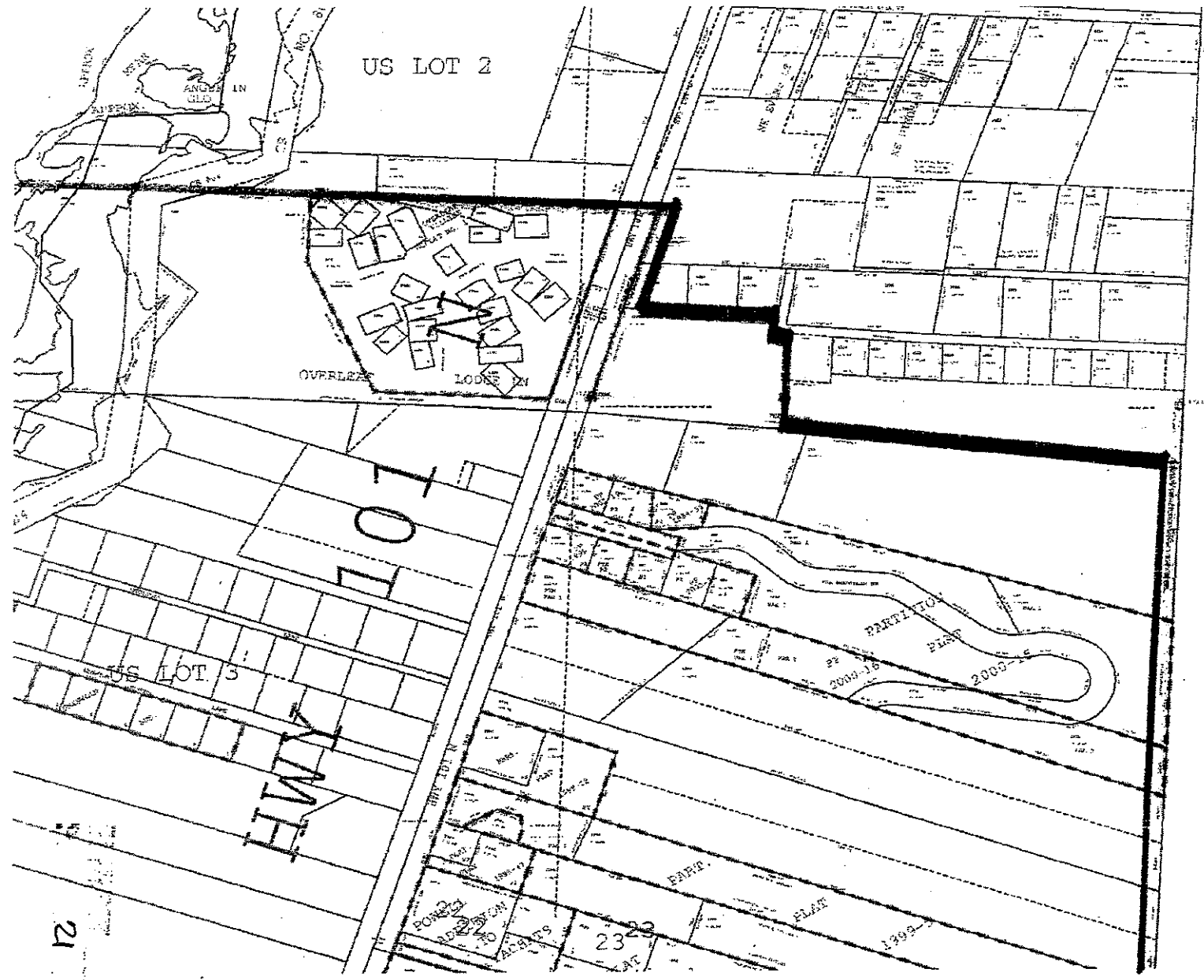
Existing UGB
Proposed UGB



10/24/2006



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LOPD
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1 in. = 300 ft.

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Lincoln County Geographic Info System

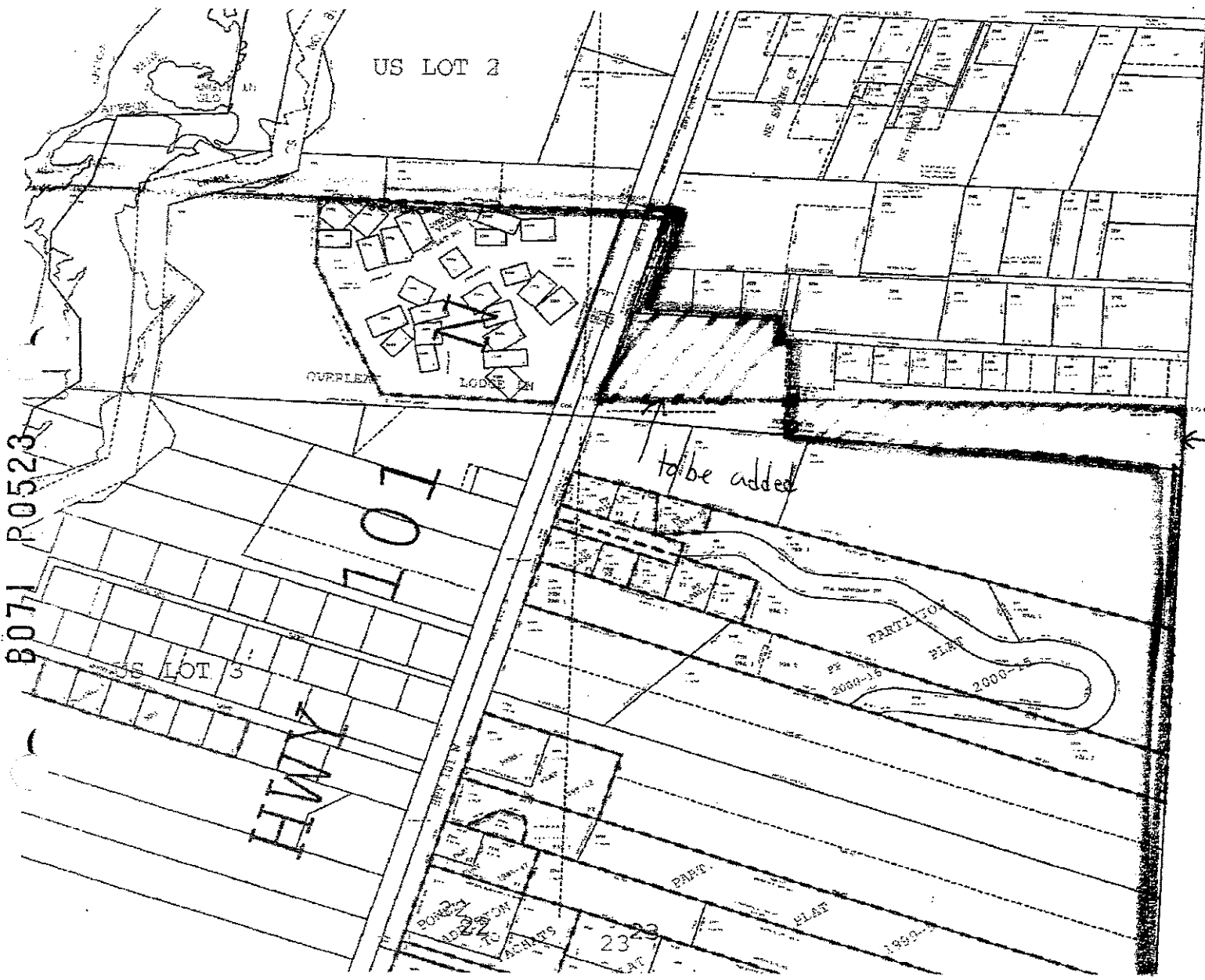
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Existing UGB
Proposed UGB

EXHIBIT
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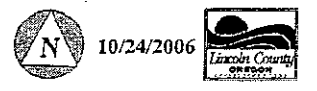


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HWY 101

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1in. = 300 ft.



**CITY OF YACHATS
RESOLUTION NO. 2006-04-01
CANVASS OF VOTES**

WHEREAS, a State wide election was duly and legally held on the 14th of March, 2006, within the City of Yachats, Lincoln County, Oregon, at which the following measure was submitted to the voters:

Measure No. 21-105

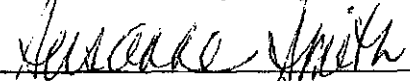
Question: Shall eastern 1.80 acres of certain Hamilton property be withdrawn from city boundary, and western 1.80 acres annexed to city?

NOW, THEREFORE, it is hereby resolved as follows:

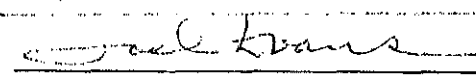
WE THE UNDERSIGNED, duly elected and qualified Council Members and Election Officer of the City of Yachats, do hereby certify that after canvassing the returns of the ballots of the election find that the measures received the number of votes hereinafter indicated:

Measure No. 21-105	Number of Votes
Yes	209
No	50
Under-votes	0
Over-votes	0

Dated this 13th day of April, 2006.



Susanne Smith, Mayor



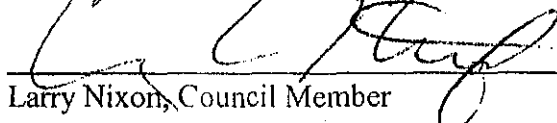
Joel Evans, Council President



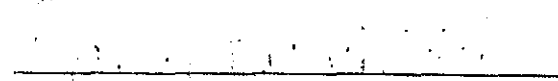
L. Yvonne Wulff, Council Member



Ray Meehan, Council Member



Larry Nixon, Council Member



Nancy Batchelder, City Recorder/Elections Officer

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ELECTION RESULTS LINCOLN COUNTY, OREGON SPECIAL ELECTION MARCH 14, 2006

Final Official Results
03.21.2006 @ 1:00pm

47.79% turnout

Total Number Voting:.....259
Precincts Reporting 1 of 1
Approx. % counted:..... 100.00%
Turnout:.....47.79%

CITY OF YACHATS

21-105 PROPOSED WITHDRAWAL OF TERRITORY AND ANNEXATION OF HAMILTON PROPERTY

YES	209	80.69%
NO	50	19.31%

Number Overvotes	0	0%
Number Undervotes	0	0%
Total Votes	259	

EXHIBIT 2
 24 31
 LCPD
 EXHIBIT 1
 PAGE 18 28

ELECTION RESULTS LINCOLN COUNTY, OREGON SPECIAL ELECTION MARCH 14, 2006

Final Official Results
03.21.2006 @ 1:00pm

47.79% turnout

Total Number Voting:.....259
Precincts Reporting 1 of 1
Approx. % counted:..... 100.00%
Turnout:.....47.79%

CITY OF YACHATS

21-105 PROPOSED WITHDRAWL OF TERRITORY AND ANNEXATION OF HAMILTON PROPERTY

YES	209	80.69%
NO	50	19.31%

.....

Number Overvotes	0	0%
Number Undervotes	0	0%
Total Votes	259	

2
26 of 34

LCPD
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F. City Attorney – None.

VI. Unfinished Business

A. 2nd Reading: Ordinance No. 254 - An Ordinance Amending, In Part, Yachats Municipal Code Title 5 - Health and Safety, Sections 5.08.120 - Scattering Rubbish and 5.08.140 Surface Water and Drainage

Motion to adopt Ordinance No. 254, Aye - 5, No - 0.

B. 2nd Reading: Ordinance No. 255 - An Ordinance Amending the Yachats Municipal Code Section 8.04.040 - Billing (To Make Owners Responsible for all Water/Sewer Bills)

Motion to adopt Ordinance No. 255, Aye - 5, No - 0.

C. Urban Growth Boundary Exchange - Case File: #1-UGB-Planning Commission-04 - Findings, Conclusion and Order

Evans said that he thought one of the conditions in the Order was that the applicant had to agree to waive any Measure 37 claims that may arise once the property is inside the city limits and under the jurisdiction of the Municipal Zoning Code. Otterson said that the applicant had been asked if he would, and the applicant agreed, but that the condition was not included in the motion. Otterson read the motion that was made at the June meeting.

Evans said that he wanted that condition in the order.

Motion to add Item D. – Applicant agrees to waive any Measure 37 Claim that may arise once the property is included in the City Limits and under the jurisdiction of the Yachats Municipal Zoning Code, Aye – 5, Aye – 0.

Motion to adopt the Findings, Conclusion and Order as amended, Aye - 5, No - 0.

D. Funding for Yachats Community Health Clinic

Smith read a statement. Smith said that the City Council has received about 68 letters asking that the Council reconsider the issue.

Carl Miller: The clinic is an important asset to the City and that is why he voted for the allocation as a member of the Budget Committee. Miller said that the One of Us Productions has given money to the Health Clinic and he thinks it is important for the City to contribute as well.

Laila Corbin: Concerned that about the message the decision sends.

Richard Hull: Perhaps the Council should define what they mean by “appropriate funding”.

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COPY

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1

Notice of

Proposed Amendment

THIS FORM **MUST BE RECEIVED** BY DLCD

45 DAYS PRIOR TO THE FIRST EVIDENTIARY HEARING

PER ORS 197.610, OAR CHAPTER 660 - DIVISION 18 AND SENATE BILL 543,

EFFECTIVE JUNE 30, 1999

For DLCD Use Only

Jurisdiction: Lincoln County Local file number: 2-LUPC-C-06

Date First Evidentiary hearing: 12/7/2006 Date of Final Hearing: _____

Date this Notice of Proposed Amendment was mailed to DLCD: 10/24/2006

Is this a **REVISED** Proposal previously submitted to DLCD? YES NO Date Submitted: _____

Comprehensive Plan Text Amendment Comprehensive Plan Map Amendment

Land Use Regulation Amendment Zoning Map Amendment

New Land Use Regulation Other: _____

Briefly Summarize Proposal. Do not use technical terms. Do not write "See Attached". (limit of 500 characters)

This proposed amendment to the Yachats UGB involves a locational adjustment resulting in no net change in land area within the UGB. Approximately 1.8 acres will be added and an equal area removed. See attached maps for depiction of the affected areas. This amendment has been approved by the City of Yachats (city's findings attached).

Plan Map Changed from: Rural Community to: UGB

Zone Map Changed from: _____ to: _____

Location: Map 14-12-23-CB, tax lot 4200 Acres Involved: 1.8

Specify Density: Previous: _____ New: _____

Applicable Statewide Planning Goals: Goal 14

Is an Exception Proposed? YES NO

Affected State or Federal Agencies, Local Governments or Special Districts:

City of Yachats

Local Contact: Matt Spangler Phone: (541) 265-4192 Extension: _____

Address: 210 SW 2nd City: Newport Zip: 97365

Fax Number: 541-265-6945 Email Address: mspanglar@co.lincoln.or.us

DLCD File No.: _____

EXHIBIT	2	LCPD
Page	29 of 30	EXHIBIT 1

SUBMITTAL REQUIREMENTS

This form **must be received** by DLCD **at least 45 days prior to the first evidentiary hearing**
per ORS 197.610, OAR Chapter 660 - Division 18
and Senate Bill 543 effective on June 30, 1999.

1. This form must be submitted by local **jurisdictions only**.
2. When submitting, please print this form on **green paper**.
3. **Send this Form and TWO (2) Copies of the Proposed Amendment to:**

ATTENTION: PLAN AMENDMENT SPECIALIST
DEPARTMENT OF LAND CONSERVATION AND DEVELOPMENT
635 CAPITOL STREET NE, SUITE 150
SALEM, OREGON 97301-2540

4. Unless exempt by ORS 197.610 (2), proposed amendments must be **received** at the **DLCD's SALEM OFFICE** at least **FORTY-FIVE (45) days before the first evidentiary hearing on the proposal**. The **first evidentiary hearing** is usually the **first public hearing** held by the jurisdiction's planning commission on the proposal.
5. Submittal of proposed amendments shall include the text of the amendment and any other information the local government believes is necessary to advise DLCD of the proposal. Text means the specific language being added to or deleted from the acknowledged plan or land use regulations. A general description of the proposal is not adequate.
6. Submittal of proposed map amendments must include a map of the affected area showing existing and proposed plan and zone designations. The map should be on 8-1/2 x 11 inch paper. A legal description, tax account number, address or general description is not adequate. Text of background and / or reason for change request should be included.
7. Submittal of proposed amendments which involve a goal exception must include the proposed language of the exception.
8. **Need More Copies?** You can copy this form on to 8-1/2x11 green paper only; or call the DLCD Office at (503) 373-0050; or Fax your request to: (503) 378-5518; or email your request to mara.ulloa@state.or.us - ATTENTION: PLAN AMENDMENT SPECIALIST.

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EXHIBIT <u>1</u>
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**BEFORE THE CITY COUNCIL
OF
YACHATS, OREGON**

Request for Urban Growth Boundary Exchange

Case File #1-UGB-PC-04

Applicant: Steve and Robert Hamilton

FINDINGS, CONCLUSION AND ORDER

Nature of the Application

The applicants request a reconfigured Urban Growth Boundary (UGB) in order to create a useable lot while at the same time keeping the UGB area the same. Currently, the southern portion of tax lot 4200 is within the Yachats Urban Growth Boundary (UGB) and city limits, and the northern portion of the tax lot is outside the Yachats UGB and city limits.

Currently, 1.80 acres of the subject tax lot are located within the UGB. It is shaped like a wedge and is essentially unusable for building purposes because of the shape. The applicants propose to rearrange the 1.80 acres within the UGB resulting in an area with 241 feet of Highway 101 frontage and 325 feet of depth. The Yachats Urban Growth Boundary (UGB) will not be increased. For the 1.8 acre land currently outside the UGB that will be included within the UGB, an equal amount of land area will be removed from the Yachats UGB.

Relevant Facts

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

- A. **Property Location:** The property is located on the east side of Highway 101 at the north end of the City and is further identified on Lincoln County Tax Assessors Map 14-12-23CB as tax lot 4200.
- B. **Access:** Tax lot 4200 is accessed from Highway 101 at Peterson Road and includes approximately 235 feet of frontage along the highway. Tax lot 4200 also includes a 20 foot wide access road off Oceanwayside Lane at the north end of the property.
- C. **Lot Size and Configuration:** The subject property (tax lot 4200) totals 5.37 acres. The area currently within the UGB and city limits totals 1.80 acres.
Tax lot 4200 completely surrounds seven tax lots (#4300 – 4900). Those seven tax lots are not included in the requested UGB amendment.
- D. **Topography/Vegetation:** The eastern two-thirds of the land is fairly steep and forested. The western one-third of the property, that fronts Highway 101, is somewhat flatter with less vegetation.

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- E. Services: City water and sewer services do not currently service the property but do extend near the property within Highway 101.
- F. Zoning/Development: The portion of the subject property that is within the city limits and UGB is zoned Residential R-3. If the UGB exchange is approved and the land currently outside the city limits is subsequently annexed into the city, the R-3 zoning will apply to that portion of the land within the city limits.
- G. Annexation: If the UGB exchange is approved, a subsequent step to be initiated by the property owner will be to pursue annexation of the 'new UGB area' into the Yachats city limits.
- That portion of the property that will be excluded from the UGB shall be de-annexed from the city limits.
- H. The applicant submitted the application form, fee, narrative and map which are herein incorporated as part of the Findings, Conclusion and Order.
- I. A public meeting was held before the Yachats Planning Commission on February 15, 2005 at 7:00 p.m. and before the Yachats City Council on June 9, 2005 at 2:00 p.m. in order to consider the applicant's request. Due notice of the meeting was given and all interested parties were given an opportunity to present testimony.
- J. The applicant presented the proposed plan and answered questions at the City Council meeting which are hereby incorporated into the Findings and Conclusion for City of Yachats, Case File #1-UGB-PC-04. Written and oral testimony was provided and is hereby incorporated into the Findings, Conclusion and Order for City of Yachats, Case File #1-UGB-PC-04.

Public Agency Comments

Oregon Department of Land Conservation and Development (DLCD)

DLCD states that with no net change in the amount of land within the Yachats UGB, the city should still make a finding regarding what effect, if any, the change would have on its inventory of buildable lands. If the zoning of the areas to be included and excluded is the same, e.g. Residential R-3, the city's buildable lands inventories (BLI) would be unaffected by the proposed amendment. Under this scenario, it would not be necessary for the city to update its BLI as a prerequisite to amending the urban growth boundary.

Findings

The following is a summary of the Planning Commission findings:

- A. The Yachats Urban Growth Boundary (UGB) will not be increased. For the land currently outside the UGB that will come into the UGB, an identical amount of land area (1.8 acres) will be removed from the Yachats UGB.
- B. The UGB exchange will not affect the Yachats inventory of buildable lands. If annexed into the Yachats city limits, the land to be included within the UGB will be zoned Residential R-3, the same zoning designation that the land being removed from the UGB is currently zoned.
- C. Since the city's buildable lands inventory will not be affected, it is not necessary for the city to update its buildable lands inventory as a prerequisite to amending the urban growth boundary.

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D. If land currently within the UGB and city limits is removed from the UGB, that land shall be de-annexed from the city limits.

Conclusions

Based on the above facts and findings, the Yachats Planning Commission finds:

- A. Given the equal 'swap' or exchange of lands that will be removed and included in the urban growth boundary, the property under consideration is suitable for the proposed urban growth boundary amendment.
- B. This application satisfies the provisions of the Yachats Municipal Code and Comprehensive Plan.

Order

It is ORDERED by the Yachats City Council that the requested Urban Growth Boundary 'swap' or exchange be and is hereby recommended for approval by the City Council. Said approval is subject to the following conditions and shall not be considered final until all three conditions are satisfied:

- A. The land being removed from the Yachats Urban Growth Boundary shall also be de-annexed from the Yachats city limits.
- B. The applicant shall be responsible for preparation of any legal descriptions or other required documents or legal instruments necessary to finalize the UGB amendment.
- C. The applicant shall be responsible for any future efforts to annex the land being incorporated into the UGB into the Yachats city limits.
- D. Applicant agrees to waive any Measure 37 Claim that may arise once the property is included in the City Limits and under the jurisdiction of the Yachats Municipal Zoning Code.

This ORDER was presented to and approved by the Yachats City Council on July 14, 2005.

Sue Smith

Sue Smith, Mayor

7-15-05

Date

Enclosure: Map of subject property and proposed UGB amendment

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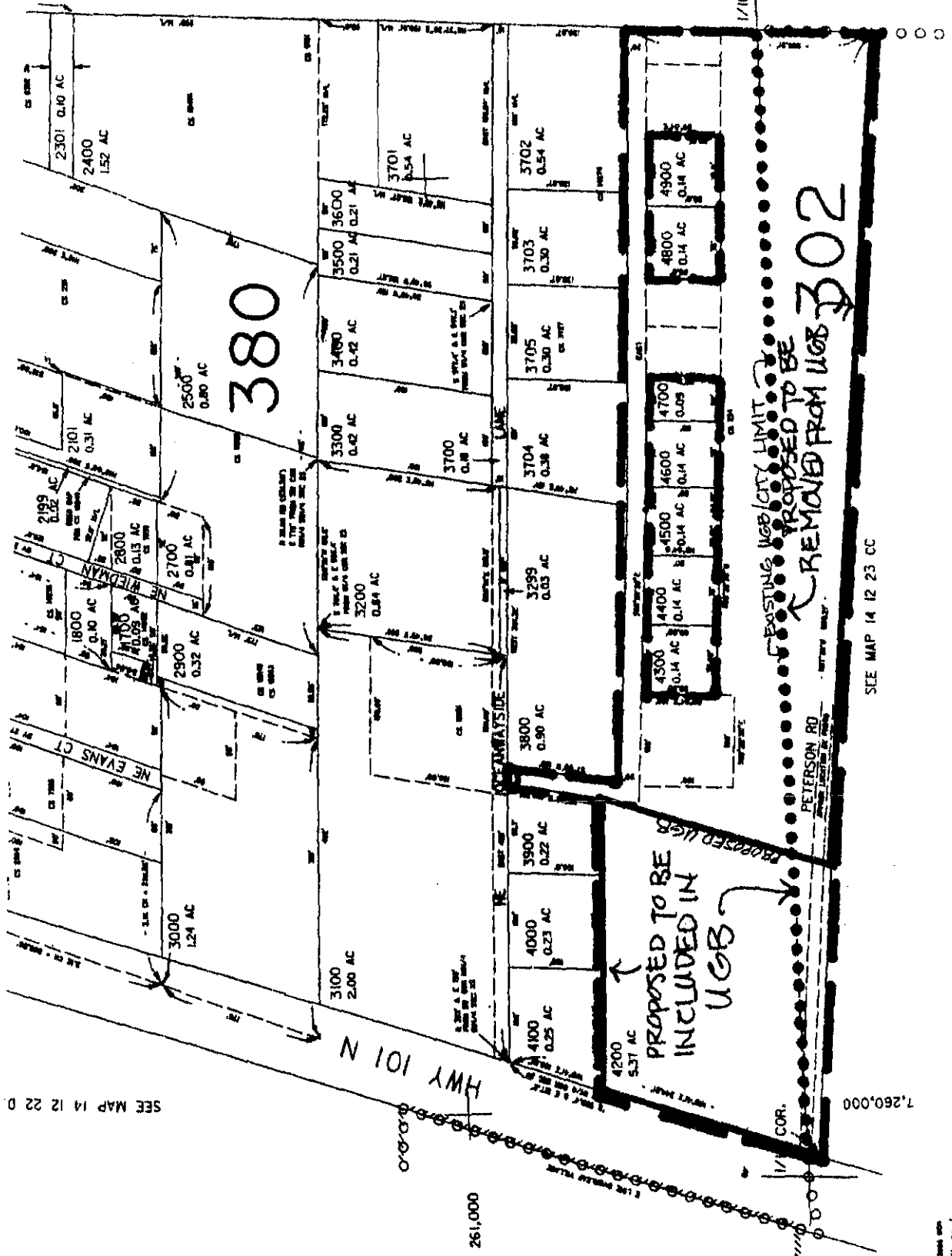
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TAK MAP 14-12-2500

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MAP 14 12 23

1/16 COR.



SEE MAP 14 12 22 D

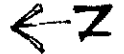
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