

1 **BEFORE THE BOARD OF COMMISSIONERS**

2 **FOR LINCOLN COUNTY, OREGON**

3 **ORDINANCE # 465**

4 \_\_\_\_\_  
5  
6 **Amending the Lincoln County Comprehensive Plan from Farm Land to Forest Land and the**  
7 **Lincoln County Zoning Map from Agricultural Conservation (A-C) to Timber Conservation**  
8 **(T-C) on property identified as Tax Lot 600, Lincoln County Assessor's Map 12-11-13, and**  
9 **declaring an emergency.**  
10 \_\_\_\_\_

11 WHEREAS on August 22, 2011 the Lincoln County Planning Commission adopted findings  
12 and a final order to recommend approval of a request by applicants Ralph and Jennifer Hibbs for a  
13 Comprehensive Plan Map amendment from Farm Land to Forest Land and a Zone Change from  
14 Agricultural Conservation (A-C) to Timber Conservation (T-C) on property identified as Tax Lot  
15 600, Lincoln County Assessor's Map 12-11-13 (Case File # 05-LUPC-ZC-09); and

16 WHEREAS on August 30, 2011 an appeal was filed on that decision by Mary Belle  
17 O'Brien, Dawn Pavitt, and Terrance A. Ryan, Jr. to the Lincoln County Board of Commissioners;  
18 and

19 WHEREAS after notice in accordance with law, the Lincoln County Board of  
20 Commissioners held a public hearing on October 12, 2011 which was continued to October 26, 2011  
21 to consider the appeal; and

22 WHEREAS at the conclusion of that hearing, the Board voted to uphold the Planning  
23 Commission's recommendations and approve the applicant's request for a comprehensive plan  
24 amendment and zone change;

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

26 **SECTION 1.**

27 1. The Comprehensive Plan Map is amended from Farm Land to Forest Land and the  
28 Zoning Map is changed from Agricultural Conservation (A-C) to Timber Conservation (T-C) on  
29 property identified as Tax Lot 600, Lincoln County Assessor's Map 12-11-13 (Case File # 05-  
Page 1 -- ORDINANCE # 465

1 LUPC-ZC-09) located at 8060 North Beaver Creek Road. The subject property is identified on the  
2 map in Exhibit "A," which is attached hereto and incorporated herein.

3 2. The Board ratifies all decisions concerning the record in this matter made during the  
4 hearings on the appeal. The Board further modifies and adopts the Planning Commission's findings  
5 and conclusions to support these actions. Those findings and conclusions are as set forth in Exhibit  
6 "B" attached hereto and incorporated herein. In addition, the Board adopts supplemental findings as  
7 set forth in Exhibit "C" attached hereto and incorporated herein.

8 4. Copies of this ordinance shall be forwarded to the County Surveyor; County GIS/LIS  
9 Department; County Assessor; County Counsel; County Department of Planning and Development;  
10 applicants' agent Doug Holbrook, and appellants Mary Belle O'Brien, Dawn Pavitt, and Terrence  
11 Ryan, Jr.

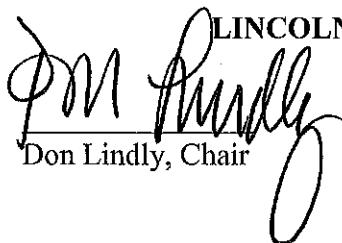
12 5. The Department of Planning and Development shall amend the official maps and shall  
13 forward a copy of this ordinance to the Department of Land Conservation and Development.

14 **SECTION 2.**

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

DATED: January 11, 2012.

**LINCOLN COUNTY BOARD OF COMMISSIONERS**

  
Don Lindly, Chair

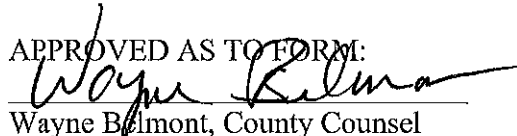
  
Bill Hall, Commissioner

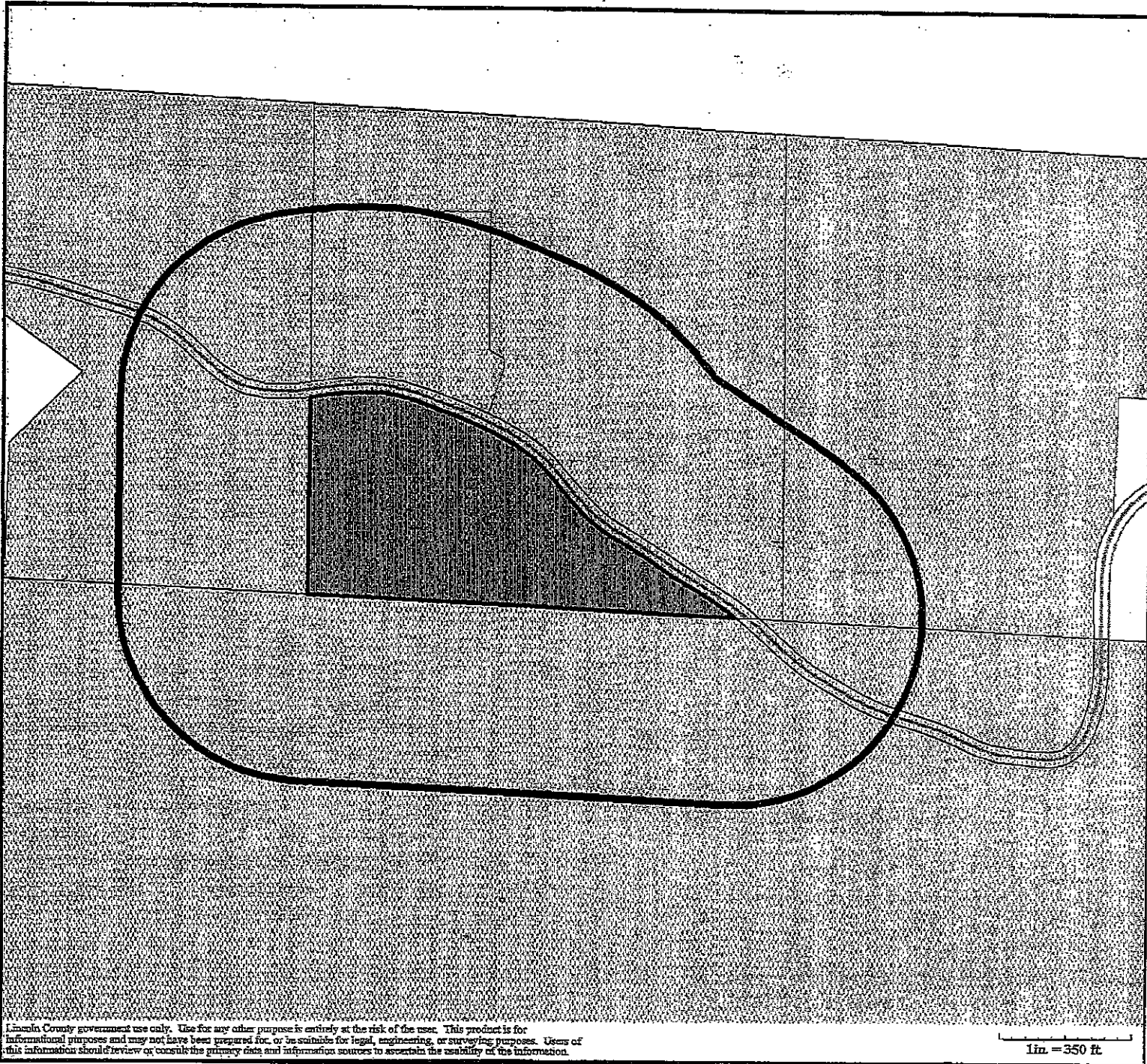
  
Terry N. Thompson, Commissioner

ATTESTED TO:

  
Judy Eames, Recorder

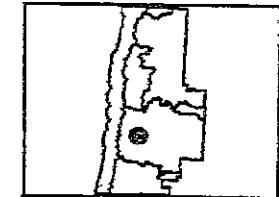
APPROVED AS TO FORM:

  
Wayne Belmont, County Counsel



Lincoln County  
Geographic Info System

Taxlot:  
 ParcelID  
 12-11-13-00-00600-00  
 Situs Address  
 8060 NORTH BEAVER CREEK RD  
 Owner  
 HIBBS RALPH E &  
 Address1  
 HIBBS JENNIFER L  
 Address2  
 1231 YEW ST  
 Address3  
 City/State/Zip  
 FLORENCE, OR 97439  
 Land Value  
 31010  
 Imp Value  
 15620  
 Acres  
 8.5  
 Tax Account  
 Account  
 R379456  
 Tax Code  
 109  
 Legal Desc.  
 TWP58RP 12, R3NG 11, ACRES 8.5..



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1 in. = 350 ft.



11/22/2010



**BEFORE THE LINCOLN COUNTY PLANNING COMMISSION**

**STATE OF OREGON**

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In the Matter of a Land Use Application: ) File Number 5-LUPC-ZC-09  
)  
HIBBS, RALPH "JACK" AND ) PLANNING COMMISSION FINDINGS  
JENNIFER, ) FOR APPLICATION FOR  
) COMPREHENSIVE LAND USE PLAN  
) MAP AMENDMENT AND ZONE  
) CHANGE SUBMITTED BY RALPH  
) "JACK" AND JENNIFER HIBBS  
) APPLICANTS

The following are findings in case number 5-LUPC-ZC-09. These findings are hereby adopted by the Lincoln County Planning Commission as part of their recommendation to the Lincoln County Board of Commissioners to approve applicants' application.

**PROCEDURAL BACKGROUND:**

On January 24, 2011, the Lincoln County Planning Commission ("Commission") held an evidentiary hearing on the Hibbs' application. On that date testimony was provided by the applicants and the applicants' attorney, Douglas R. Holbrook. Further testimony was provided by opponents to the application. The opponents testifying in person were Dawn Pavitt, James Hanselman, Robert Anthony, and Ryan Adams. Several other persons signed identically worded petitions opposing the application and 1000 Friends of Oregon sent correspondence opposing the application. The record was requested to be held open for at least seven days, and the Commission granted until February 7, 2011 for the opponents to enter any additional evidence or arguments into the record, and provided the applicants until February 18, 2011 to file any rebuttal arguments. The opponents, Pavitt, O'Brien, and 1000 Friends of Oregon all

1 submitted further written argument on February 7, 2011 and the applicants filed their rebuttal  
2 on February 18, 2011, at such time the record was closed.

3 The matter was deliberated at a regularly scheduled hearing on March 14, 2011 with  
4 all planning commissioners in attendance and participating in the deliberations and voted 4-3  
5 to approve the application and directed applicants' counsel to prepare a draft of the following  
6 adopted findings, which have been reviewed by Planning Department Staff and County legal  
7 counsel.

8 **APPLICABLE STANDARDS AND CRITERIA:**

9 The applicable standards and criteria for purpose of this application include the  
10 following:

- 11 1. LCC Section 1.0005(4), Comprehensive Plan Designation Forest Lands
- 12 2. LCC Section 1.0005(5), Comprehensive Plan Designation Agricultural Lands
- 13 3. LCC Section 1.0065, Forest Land Policies
- 14 4. LCC Section 1.0070, Agricultural Lands Policies
- 15 5. LCC Section 1.0190(1)(2), Plan Designations
- 16 6. LCC Section 1.1115(5), OAR 660-033-0020 (1) (a) Definitions; "Agricultural  
17 Land."
- 18 7. LCC Section 1.1235, Quasi-Judicial Amendments
- 19 8. LCC Section 1.1373, Agricultural Conservation Zone
- 20 9. LCC Section 1.1375, Timber Conservation Zone
- 21 10. Oregon Statewide Planning Goal 3, Agricultural Lands
- 22 11. Oregon Statewide Planning Goal 4, Forest Lands
- 23 12. Additional Authorities

1 **EVIDENCE AND FINDINGS RELATING TO APPLICABLE STANDARDS AND**  
2 **CRITERIA:**

3 **1. LCC Section 1.0005(4), Comprehensive Plan Designation Forest Lands**

4 (4) Forest Lands: Approximately 87 percent of the total land area of  
5 Lincoln County is forest land. Of this 550,000 acres, roughly 80  
6 percent is in either industrial or public ownership. The primary use of  
7 the majority of these forest lands is commercial wood fiber production.  
8 Secondary uses include wildlife production, outdoor recreation,  
9 domestic watersheds and livestock grazing Existing ownership  
10 patterns, historical use trends, and past and current management  
11 practices for private non-industrial forest lands indicates that parcels of  
12 40 to 50 acres comprise the large majority of ownerships and that  
13 parcels in this size range are compatible with the conservation of forest  
14 lands for forest uses.

15 This criteria is essentially informational. The Commission finds the application is  
16 consistent with LCC 1.0005(4) for the reasons including that the application is to zone the  
17 subject property TC, and the evidence discussed in Sections 2-12, establishes the consistency.

18 **2. LCC Section 1.0005(5), Comprehensive Plan Designation Agricultural Lands**

19 (5) Agricultural Lands: The analysis considers available sources of  
20 data on farms in Lincoln County including the 1979 Census of  
21 Agriculture, the S.C.S. Farm Plans, and the Farm Deferral Information.  
22 Comparisons are made of all these sources and they are found to be  
23 representative samples of agriculture and commercial agriculture in the  
24 County. These sources indicate that different size parcels may be  
25 appropriate for different types of activities. Average acreages of  
26 commercial farm uses were as follows: crops, 28 acres; pasture, 55  
acres; wooded pastures, 34 acres; farm wood lots, 41 acres; overall  
average, 81 acres. The diversity of these averages preclude a  
county-wide minimum lot size. The two step approach is suggested  
using the above information as a guideline and more detailed  
information applied to the guideline area which is mapped and  
determined in the study. Use of a Commercial Viability Rating System  
is proposed as a system to provide for the continuation of the  
commercial agriculture if the person is able to have similar types and  
averages of activities as 75 percent of the surrounding farms on Farm  
Deferral within the guideline area. This result is obtained when a  
minimum rating of 36 points is achieved.

27 This criteria is essentially informational, but states the average acreage for commercial  
28 farm uses as over twice the size of the Hibbs' property, and refers to the goal of providing for  
29 ". . . the continuation of the commercial agriculture if the person is able to have similar type  
30

1 and averages of activities as 75 percent of the surrounding farms on Farm Deferral within the  
2 guideline area.”

3 Analysis.

4 O'Brien argued that the Hibbs' parcel conforms to the profile under this section,  
5 except for its size, but provided no evidence whether the Hibbs' property achieved or could  
6 have achieved the minimum 36 point rating. There was no evidence that the subject parcel in  
7 1981 was within or adjacent to any guideline area however, given its small size and low  
8 grazing resources it could not have the similar type and averages of activities as 75% of  
9 surrounding farms in 1981. As discussed elsewhere in these findings including §6, the subject  
10 property does not meet the definition of agricultural property, and therefore the application is  
11 consistent with LCC 1.0005(5).

### 12 3. LCC Section 1.0065, Forest Land Policies

#### 13 1.0065 Forest Land Policies

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

15 (2) Lincoln County shall provide for compatible uses on forest lands.

16 (3) Lincoln County shall recognize the Oregon State Department of  
Forestry as the regulatory agency for forest management practices.

17 Lincoln County shall cooperate with the Oregon State Department of  
Forestry to ensure that application of forest management practices are  
consistent with the Oregon Forest Practices Act.

18 (4) Lincoln County shall protect existing forest uses from encroachment  
of incompatible forest uses.

19 (5) Forest lands within designated urban growth boundaries shall be  
considered urbanizable upon a showing of need for such use.

20 (6) Lincoln County will recognize the need for ownership consolidation  
in maximizing the forest objectives of individual forest land owners and  
will encourage and cooperate in the process of land exchanges between  
21 the various owners.

22 (7) Lincoln County shall allow residences in association with forest  
uses within forest zones.

23 (8) Lincoln County may permit non-forest residences on single units of  
ownership within forest zones. The location of such residences shall be  
compatible with forest management activities on adjacent properties.

24 (9) Lands identified in the inventory as forest lands shall be designated  
on the comprehensive plan maps as forest lands unless lands are  
25 determined to be committed to or needed for non-forest uses.  
26

1 The opponents testified that the Hibbs' property had never been used for commercial  
2 timber production and that it should be conserved as agricultural land.

3 Analysis.

4 The "forest uses" are broader than commercial forestry. Goal 4 and LCC 1.0005(4)  
5 clarify forest uses to include protection of water etc. The application and property are  
6 consistent with forest use and therefore with LCC 1.0065.

#### 7 **4. LCC Section 1.0075, Agricultural Lands Policies**

##### 8 1.0075 Agricultural Lands Policies

9 (1) Lincoln County shall designate, preserve and maintain agricultural  
10 land for farm use consistent with existing and future needs for  
11 agricultural products, forest and open space.

12 (2) Lincoln County shall convert agricultural land to urbanizable land  
13 only after considering all of the following factors:

14 (a) Environmental, social, economic and energy consequences.

15 (b) Demonstrated need consistent with LCDC Goals.

16 (c) Unavailability of an alternative suitable location for the  
17 requested use.

18 (d) Compatibility of the proposed use with related agricultural  
19 land.

20 (e) The retention of Class I-IV soil in farm use.

21 (f) The requirement for an exception to the Statewide Goals.

22 (3) Lincoln County shall ensure that designated agricultural lands are  
23 protected from encroachment of incompatible land use.

24 (4) Where rural residences can be accommodated on land within  
25 agricultural areas not suited for agriculture or commercial timber  
26 production, such residences shall be allowed if they pose no threat of  
conflict with prevailing farm and forest practices.

(5) Lincoln County shall allow one residence for farm purposes outright  
on lands designated for agricultural use when the parcel is found to be  
appropriate for the continuation of the existing commercial agricultural  
enterprises in the area.

(6) Lincoln County shall review the location of additional residences for  
farm helpers or family members assisting in farm operations on lands  
designated for agricultural use.

(7) Lincoln County shall adopt an agricultural conservation zone that shall  
conform to ORS chapter 215.

(8) Lincoln County shall establish lot sizes appropriate for the  
continuation of the existing commercial agriculture.

(9) Lincoln County shall define farm use as set out in ORS chapter 215.

(10) Lincoln County shall define agricultural lands as set out in the  
State-Wide Planning Goal on Agricultural Lands.

1 The evidence was that the soil type for nearly all of the valley, including the Hibbs'  
2 property and all its adjoining parcels is soil class VI.

3 Analysis.

4 O'Brien and Pavitt/Ryan argued that a zone change would not comply with the policy  
5 under this section or OAR 660-015-000(3), nor LCC Section 1.0070 (Agricultural Lands  
6 Goals). O'Brien letter February 23, 2010, page 2; Pavitt/Ryan letter January 23, 2011, page 2.  
7 The Commission finds their arguments fail to explain how a zone change would not comply  
8 with the policy to conserve agricultural property if this property does not meet the definition  
9 for agricultural land. (See §6). LCC 1.0075 is interpreted to require preserving agricultural  
10 land for farm use, but in a way that is consistent with other zoning uses such as forest and  
11 open space, but does not apply to land which is not agricultural land under LCC 1.1115(5).

## 12 **5. LCC Section 1.0190(1)(2), Plan Designations**

### 13 1.0190 Plan Designations

14 The purpose of plan designations is to define and set down on maps  
15 what the citizens and property owners of Lincoln County consider to be  
16 appropriate uses of the land. These designations are the conclusions  
17 wrought from the consideration of facts and information presented and  
18 evaluated through the process of developing this comprehensive plan.  
19 The following plan designations are set out on the Lincoln County  
20 Comprehensive Plan Maps.

21 (1) Forest Lands: Forest lands represent nearly 90 percent of  
22 Lincoln County, and are its major resource. These are mainly held in  
23 large ownership patterns and covered by commercial stands of Douglas  
24 fir, true fir, hemlock, cedar, and spruce. Uses such as raising and  
25 harvesting of the forest crop and existing recreation facilities are  
26 primary. Secondary uses such as new recreation facilities, public and  
private utilities, and dwellings may be included by county review.

(2) Agricultural Lands: Agricultural lands represent nearly 2  
percent of the lands in Lincoln County. These ownerships lie along the  
river and creek valleys and are mainly used for grazing and small  
gardens with some commercial agriculture. The primary use of these  
properties is intended to be agricultural to maintain their current  
resource value. Uses such as agriculture, forestry, dwellings necessary  
for farm use and existing public recreation facilities are primary.  
Secondary uses such as farm help residences, quarrying, new recreation  
facilities, and similar uses may be included by County review.

1 The evidence was that the Hibbs' property is approximately 8.5 acres in size and that  
2 the soil classification is VI. The property is topographically steep after a short gentle slope up  
3 from Beaver Creek, with the majority of the property being greater than 5%, and half of the  
4 property between 15-35% grade. (Exhibit B to application). 7.5 acres of the property is under  
5 forest tax assessment. Testimony of applicants' attorney. Dawn Pavitt stated she thought that  
6 the forest tax assessment was obtained by the earlier owners, Newman, for growing Christmas  
7 trees, and that none had ever been planted.

8 Analysis.

9 O'Brien argued that "This section shows zoning cannot be determined by what one  
10 owner of a recently purchased 8.5 acre parcel thinks is the appropriate zoning for his or her  
11 parcel." O'Brien letter February 23, 2010, page 2. The Commission agrees that the county  
12 made the initial determination of zoning, but the County adopted a process for changing the  
13 zoning of a particular property if it was zoned in error or for other reasons under the code.  
14 O'Brien argues that this section "shows there is no pressing conservation need to add the  
15 Hibbs' 8.5 acre property to the County's forestland, as forests represent nearly 90 percent of  
16 the land in Lincoln County. . . ." O'Brien letter February 23, 2010, page 2. Pavitt/Ryan made  
17 a similar argument. Pavitt/Ryan January 23, 2011 letter, page 1. The Commission does not  
18 find this persuasive: either the subject property was zoned correctly or it wasn't. The  
19 question of which zoning category it should have been inventoried as is based upon applicable  
20 criteria discussed in Sections 2-12.

21 O'Brien continues her argument that the Hibbs' property is not capable of producing  
22 commercial quantities of wood fiber and that it looks to her more like a woodlot found in the  
23 AC zone. O'Brien letter February 23, 2010, page 2. The Commission finds that commercial  
24 timber harvest is not the only defining characteristic of Goal 4 property, which include  
25 property conserved for wildlife and water resources. LCC 1.0005(4) is also interpreted to  
26 include uses other than commercial forestry on TC zoned land. Pavitt/Ryan and O'Brien's

1 argument begs the question of whether the Hibbs' property is properly zoned AC if it does not  
2 meet the definition of agricultural property.

3  
4 **6. LCC Section 1.1115(5), "Agricultural Land," & OAR 660-033-0020(1)(a)**

5 (5) "Agricultural land" means land of predominantly Class I, II, III and  
6 IV soils as identified in the Soil Capability Classification System of the  
7 United States Soil Conservation Service, and other lands which are  
8 suitable for farm use taking into consideration soil fertility, suitability  
9 for grazing, climatic conditions, existing and future availability of water  
10 for farm irrigation purposes, existing land use patterns, technological  
11 and energy inputs required, or accepted farming practices. Also, lands  
12 in other classes which are necessary to permit farm practices to be  
13 undertaken on adjacent or nearby lands.

14 The evidence was that the subject property and adjacent properties were all of soil  
15 Class VI, and therefore the property is not presumed to be agricultural land. Additional  
16 evidence will be discussed below to determine if the property qualifies as "other lands" under  
17 LCC 1.1115(5). The opponents have argued that OAR 660-033-0020(1)(a) applies, but it is  
18 not a criteria where this section of the LCC has been adopted, and is in most respects identical.  
19 If it applies, the analysis is the same under OAR 660-033-0020(1)(a) as it is under LCC  
20 1.1115(5) with the exception of the reference in the OAR to ORS 215.203(2)(a). That statute  
21 is discussed in Section 12.2, below because while that statute defines "farm use" separately  
22 from the LCC 1.1115(5) definition, the factors applied under the statute apply to its "farm  
23 use" definition only if the property meets that statutory definition. The factors below are more  
24 integral to LCC 1.1115(5)'s definition of "other lands which are suitable for farm use. . ." but  
25 overlap with the OAR and statutory definition.

26 The opponents also argued that the applicants' property was necessary to permit farm  
practices to be undertaken on adjacent or nearby lands. See OAR 660-033-0020(1)(a)(C).  
Dawn Pavitt testified that while her family had used the subject property for grazing under an  
agreement with the previous owner, that no grazing had occurred since 2004 or 2007. Ms.  
O'Brien testified she saw grazing on the property in the 1980's and 1990's.

1 Analysis.

2 The parties provided evidence related to the factors under LCC 1.1115(5) (also OAR  
3 660-033-0020(1)(a)(A)- (C)) as follows:

4 Land in predominately Class I-IV soils is presumed to be agricultural land under OAR  
5 660-033-022(1)(a)(A) and LCC 1.1115(5). The subject properties' soil is Class VI according  
6 to the applicant and staff's information. Class VI soil is identified in Goal 4 as among the soil  
7 types for forest conservation zones. Class VI is not a defined soil class for Agricultural  
8 property. While Ms. O'Brien testified the soil was a different class, she provided no expert's  
9 soil analysis. Therefore, does the applicant's property qualify as "other lands for farm use."

10 The factors common to LCC 1.1115(5) and OAR 660-033-020(1)(a)(B) are as follows:

11 Soil Fertility. The primary evidence of soil fertility is in the information pertaining to  
12 its classification as VI. The Commission infers that the soil classification system has to do  
13 with a continuum of fertility, and a relationship to what grows well. Class VI property, by  
14 virtue of not being within the presumptive definition of agricultural land, but is within the  
15 defined soil class for forests, strongly implies that soil is more fertile and receptive to forest  
16 than growing normal agricultural products.

17 Suitability for Grazing. The number of animals which could be grazed sustainably on  
18 a full time basis on this small parcel would be approximately 2 cattle or up to 14 sheep (either  
19 constituting two "Animal Units") for this area of the county. (Exhibit 3 to Applicants'  
20 Hearing Memorandum.) The rental rate estimate on the high end is \$15.00 per Animal Unit,  
21 or \$30.00 per month. The real property taxes were established to be \$504.46 annually.

22 Opponents stated this land had been used for grazing in the past, and it still could be, but  
23 provided no contrary evidence about how many animals could be grazed on this land, or what  
24 the lease rate would be.

25 Climatic Conditions. The evidence was the climatic conditions could affect the  
26 amount of area available for grazing because the high volume of rainfall and the existence of

1 Beaver Creek would require fencing along the creek to keep the salmon-bearing water from  
2 being fouled, and the animal's hooves could make the lower elevation area generally muddy  
3 and increase silt in the Creek. Applicants' Hearing Memorandum, page 6 and testimony of  
4 applicants' attorney.

5 Existing & Future Availability of Water for Farm Irrigation Purposes. The applicants'  
6 evidence was that the area does not rely upon irrigation for farm purposes, grazing or crop  
7 growing. Applicants' Hearing Memorandum, page 6.

8 Existing Land Use Patterns. The evidence was the Beaver Creek valley was all zoned  
9 Agricultural (AC). Most of the nearby parcels (within a mile's radius) are substantially larger  
10 than the subject property. Federal land (the assessor records reflect BLM ownership) is  
11 adjacent and on either side of the Beaver Creek valley and is all zoned TC. Many of the  
12 surrounding area property owners have residences on their property.

13 Technological and Energy Inputs Required. No evidence was submitted.

14 Accepted Farming Practices. Applicants' evidence was that the prevailing farming  
15 practice on the adjacent area was grazing. Dawn Pavitt testified that her property is used for  
16 grazing, gardening and fruit trees, from which income is generated and that decades ago, when  
17 the Pavitt property also included the Hibbs, that it was used in conjunction with the other  
18 property for grazing and fruit trees. Mary O'Brien submitted written testimony that she had  
19 used her property for seasonal grazing and conservation purposes and that at some  
20 unidentified time she had raised hay on an unidentified portion of her 280 acres and harvested  
21 some timber. O'Brien February 23, 2010 letter, page 1.

22 Lands in Other Classes Necessary to Permit Farm Practices on Adjacent or Nearby  
23 Farm Lands. [OAR 660-033-0020(1)(c)] No evidence established that the Hibbs' property  
24 was necessary for any other lands farm use. Pavitt has not used the Hibbs' property for  
25 several years and did not testify that the lost of use resulted in any lost income, nor did she  
26 testify the Hibbs' property was necessary to her farm operations then or now.

1 O'Brien argues this section is not "pertinently applicable" to property like the subject  
2 property. She stated in her letter that "A mix of soil types exist on all properties along Beaver  
3 Creek zoned A-C." O'Brien letter February 23, 2010, page 2. The Commission finds it is  
4 appropriate to apply LCC 1.1115(5), and notes that Ms. O'Brien did not present any evidence  
5 of mixed soil types, and that the county zoning/soils map is the best evidence of soil type in  
6 this hearing. The Commission finds that the subject property, and its adjacent properties are  
7 all soil class VI, which is not the defined soil for an AC zone. Without other evidence the  
8 property does not meet the definition of agricultural property. Ms. O'Brien's expressed fear of  
9 piecemeal zoning is not a legal criteria for decision making. O'Brien letter February 23, 2010,  
10 page 3. Her argument (echoed by those signing the petitions) that the Hibbs might at some  
11 time in the future seek a conditional use to place a residence on the property (O'Brien letter  
12 February 23, 2010, page 3) is not part of the application before the Commission, and therefore  
13 not a legal criteria.

14 The Commission does not doubt the evidence that animals grazed on the subject  
15 property in the past. Ms. O'Brien placed the last significant grazing at 12-14 years ago. See  
16 undated O'Brien "Review of Staff Report" received January 19, 2011. Dawn Pavitt may have  
17 placed grazing as more recent in her testimony. There was, however, no evidence  
18 contradicting the applicants' evidence that the number of Animal Units that could sustainably  
19 graze (year round) this property would be only two, severely limiting the grazing capacity as a  
20 practical and economic matter. Further, there was no evidence that Pavitt required the use of  
21 the subject property to sustain or help sustain her farming operations.

22 Mr. Holbrook argued that, pursuant to *Whetherell v. Douglas County*, 342 Or 666  
23 (2007), another factor the Commission can take into account is whether a reasonable farmer  
24 would chose to graze this property. Applicants' evidence established grazing would not be a  
25 profit-making enterprise for any farmer owning this property, just considering the annual  
26 property taxes (Hearing Exhibit 6 \$504.46), not including any purchase price debt, fencing

1 costs, or maintenance, all which the Commission finds would preclude a reasonable farmer  
2 from using the property for grazing purposes. The evidence was that lease rates for two  
3 Animal Units would yield approximated \$360.00 annually (Hearing Exhibit 5 and page 4,  
4 Applicants' Hearing Memorandum), or a \$144.46 annual loss. Reasonable farmers do not  
5 enter into unprofitable farm practices and arrangements. No evidence to the contrary was  
6 presented.

## 7 **7. LCC Section 1.1235, Quasi-Judicial Amendments**

### 8 1.1235 Quasi-Judicial Amendments

9 A quasi-judicial amendment to the Comprehensive Plan and Zoning  
10 Maps may be authorized provided that the proposal satisfies all  
11 applicable requirements of this Chapter and also provided that the  
12 applicant, in a quasi-judicial hearing, demonstrates that the change is in  
13 accord with the Comprehensive Plan goals and policies or the Statewide  
14 Planning Goals and that:

- 15 (1) There has been a substantial change in the character of the  
16 area since zoning was adopted and which warrants changing the  
17 zone;
- 18 (2) Zoning previously adopted for the area was in error; or
- 19 (3) There is a public need for the change being sought.

20 The application relied primarily upon the theory that the zoning previously adopted  
21 was in error. The applicants' evidence consisted of the parcel's history, being created by deed  
22 recorded in May 1980, a date before the current Lincoln County Zoning Ordinance was  
23 adopted, the parcel's relatively small size of 8.5 acres, its soil type (VI), the steep topography,  
24 and the practical limitations imposed by size, the creek and forest for grazing. The opponents  
25 stated the parcel's size and creeks would prevent commercial forestry on the property.

### 26 Analysis.

O'Brien argued that this section is not applicable to this zone change application  
because there has been no substantial change in the AC zone in the area. O'Brien letter  
February 23, 2010, page 3. Other opponents made the same argument. The Commission  
agrees there is insufficient evidence of a change in the character of the area to warrant a zone  
change. Ms. O'Brien argues at page 4 of the same letter that the zoning was not in error,

1 arguing that there is no history of lawful residential use, that she observed grazing on the  
2 property in the 1980's and 1990's, and that the parcel is not a legal one. The Commission does  
3 not find the history of residential use directly part of the criteria, except that the applicants  
4 evidence that a septic permit was granted before zoning was adopted (Exhibit 2, Applicants'  
5 Hearing Memorandum) does establish that prior to adopting the zoning, there was likely  
6 residential use of the property, buttressing applicants' argument that the zoning process was  
7 broad-brushed, and could have incorrectly zoned this parcel without considering its  
8 characteristics (including size and topography) specifically. Whether or not the original  
9 manufactured home was permitted is not the criteria either.

10 The legality of the parcel is not an applicable criteria for the rezoning application. Any  
11 portion of a property may be rezoned. The Commission interprets LCC 1.1235 to require only  
12 ownership of the parcel for initiating the application. However, even if the legality of the  
13 parcel was a hurdle, the applicants' evidence established that the parcel was created by deed  
14 recorded May 1980 before the applicable zoning ordinance was adopted. LCC 1.1371  
15 governs the matter. It provides in relevant part:

16 (3)(a) "Parcel" means a unit of land not created solely to establish a  
17 separate tax account  
and:

18 (A) Created by partitioning land as defined in ORS 92.010;  
19 (B) In compliance with all applicable planning, zoning,  
20 partitioning and subdivision ordinances and regulations; *or*  
21 (C) *Created by deed or land sales contract if there were no*  
22 *applicable planning, zoning, partitioning, or subdivision*  
23 *ordinances or regulations. As used in this subparagraph,*  
24 *"created by" means a unit of land specifically described in the*  
25 *deed or land sales contract, or a remnant unit of land resulting*  
26 *from such deed or land sales contract.*

23 On March 7, 2010, Ms. O'Brien submitted into the record a copy of a letter dated  
24 February 9, 1999 from the DLCD requiring the county do the following:

25 (3) Amend Section (4)(d) so that units of land created by deed or land  
26 sales contract in the county's EFU zone after August 24, 1981 are not  
recognized as lawful unless in conformance with the applicable  
standards in ORS Chapter 215 and the statewide goals as well as any

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local zoning provisions, consistent with these statewide standards, in effect at the time the deed or land sales contract was recorded.

Contrary to Ms. O'Brien's argument, DLCD's position in 1999 was that any parcel created by deed or contract *prior to August 24, 1981* is valid without consideration of the statewide standards including Goal 3. The same DLCD letter extensively reviewed the legislative history of land use divisions, and concluded on page four of that letter, that "Thus, without a review for compliance with the applicable Goal 3 and statutory EFU standards, no unit of land created by deed or land sales contract after the 1981 Legislative mandate to review all land divisions in EFU zones under ORS 215.263(1) can be considered a lawfully created parcel." Since the deed partitioning this land was recorded May 12, 1980, the Commission finds it pre-dated the legislative mandate stated in the DLCD letter, and therefore, the subject property is a legal parcel under Oregon law and Lincoln County Code. This also answers her argument on page 5 of her February 23, and December 22, 2010 letters that argue that in the absence of a county adopted plan at the time of the May 1980 deed, Goal 3 and a requirement to adopt EFU zones under ORS Chapter 215 required governmental approval of the partition by deed. The same arguments by other opponents, including 1000 Friends of Oregon are wrong per the DLCD letter. However, the applicants' evidence has established that due to the size of the parcel, its topography, soil types and the presence of two creeks, it is not currently in productive farm use, and is not capable of future commercial productivity. While there is evidence it was grazed at times by sheep/goats owned by Pavitt/Ryan, there was no evidence that such activity created a commercially productive venture sustainable on the subject property nor that the subject property is somehow necessary for the Pavitt/Ryan animal grazing. It appears the grazing arrangement was historically a convenience to both neighbors, one to keep the brush down, the other to get free animal forage. In all events, rezoning this property is consistent with and accommodates the applicable planning goals, code and comprehensive plan because the parcel is not agricultural land under Goal 3.

1 Ms. O'Brien also raises as part of her legal parcel argument the partition by deed was  
2 not in compliance with ORS 92.014, 92.010(7) and ORS 215.010(1). Her position appears to  
3 be adverse to that expressed by DLCD, which made an exhaustive analysis of this issue.

4 However, Ms. O'Brien's reference to the above statutes will be briefly analyzed.

5 Section 92.014 Approval of city or county required for specified  
6 divisions of land

7 (1) A person may not create a street or road for the purpose of  
8 subdividing or partitioning an area or tract of land without the approval  
9 of the city or county having jurisdiction over the area or tract of land to  
10 be subdivided or partitioned.

(2) Notwithstanding ORS 92.175, an instrument dedicating land to  
public use may not be accepted for recording in this state unless the  
instrument bears the approval of the city or county authorized by law to  
accept the dedication. [1955 c.756 Sec.3; 1973 c.696 Sec.4; 1991 c.763  
Sec.4; 2005 c.399 Sec.2]

11 Ms. O'Brien has argued in some of her many record submissions that the original  
12 partition was created by the existence of Beaver Creek Road. The Commission does not find  
13 that to be true. First, the terms of ORS 92.014 do not apply since Beaver Creek Road is a  
14 county road that pre-existed the May 1980 deed and was not created for the purpose of  
15 partitioning any property. Her argument that the Lincoln County Code failed to include the  
16 terms of ORS 92.014 in its code is wrong since its requirements appear in LCC 1.3225.

17 She next argues that ORS 92.010(7) proves that the partition was illegal. That section  
18 states "Partition" means either an act of partitioning land or an area or tract of land partitioned.  
19 The Commission is not required to guess here what her legal argument is, and declines to do  
20 so.

21 Next, she argued that ORS 215.010 establishes the May 1980 partition was illegal.

22 ORS 215.010 Definitions

23 As used in this chapter:

24 (1) The terms defined in ORS 92.010 shall have the meanings given  
therein, except that "parcel":

(a) Includes a unit of land created:

(A) By partitioning land as defined in ORS 92.010;

(B) In compliance with all applicable planning, zoning  
and partitioning ordinances and regulations; or

1 (C) By deed or land sales contract, if there were no  
2 applicable planning, zoning or partitioning ordinances or  
3 regulations.

3 (b) Does not include a unit of land created solely to  
4 establish a separate tax account.

4 ORS 215.010 is tracked by LCC 1.1371(2), and has been addressed above as part of  
5 the DLCD letter discussion, but both the statute and LCC provide for a legal parcel if it was  
6 created at a time where “. . . there were no applicable planning, zoning or partitioning  
7 ordinances or regulations.”

8 Ms. O’Brien argues that the holding in *State v. Emmich*, 34 Or App 945 (1978)  
9 establishes that the parcel is not legal. O’Brien letter March 23, 2011, page 4. That case  
10 involved a criminal prosecution for a developer who was marketing lots in a subdivision  
11 where the lots had not been governmentally approved as required under the former version of  
12 ORS 92.325(1). A partition is different than a subdivision, and the legislature obviously made  
13 land use approval of subdivisions applicable in a mandatory fashion before it made land use  
14 approval of partitions mandatory in 1981, as established by the extensive analysis in the  
15 DLCD letter Ms. O’Brien herself put into the record. In any event, the existence of the  
16 subdivision rules do not prove the existence of applicable partition rules in 1979.

17 Ms. O’Brien next argues that the remand result in *O’Brien v. Lincoln County*, 31 Or  
18 LUBA 262-265 (1996) requiring Lincoln County to bring its codes into post-acknowledgment  
19 compliance with state law proves the parcel is not a legal one. Her point appears to be that she  
20 does not believe Lincoln County has fully complied with the decision’s requirements.  
21 O’Brien letter March 23, 2011, page 4.-5. However, she does not elaborate here as to what the  
22 county has failed to change to be in compliance or how it would affect this application. The  
23 Commission cannot be required to speculate as to her exact argument. However, the  
24 attachment to her letter as a purported copy of the order from her cited LUBA case, applies  
25 only to  
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... applications for dwellings and related land divisions in the AC and TC zones received by the County for a period of six months from the effective date of this order, or for a total of twenty applications, whichever is greater.

On its face, the Order does not have any application to this rezone, and the case she cited contested a non-farm dwelling application, not a rezone.

Ms. O'Brien also argued that the historic use (grazing), and the trees being mostly alder prevent the zone change. O'Brien's undated "Review of Staff Report" received January 19, 2011. The type of tree species is not relevant to the Commission's decision, since one of the primary points of Goal 4 is to protect water & wildlife resources, not necessarily to provide commercial timber on every TC property. The applicant established that TC forest management requirements are more stringent than agricultural zoning would be for water quality and testified that they had tree-planting along the creek frontage of this property. There was no evidence submitted establishing any regulations for water quality in AC zoning, but the opponents testified that it was "good for" the creek to allow grazing along its banks. Eric Horvath submitted a statement dated November 26, 2010 that the Forest Protective Act would require a 100 foot buffer from the side of each stream. He points out that buffer would restrict commercial timber harvest on this small lot. This also shows the stream buffer is greater than any proved applicable to the AC Zone. He is correct the stream buffer could hinder commercial timber harvest, but Goal 4 has an equal priority of water protection. The Commission notes that grazing is allowed in the TC zone, but forest regulations were submitted and establish water quality protections are mandated therein. As has been noted, TC zoning and Goal 4 are not limited to commercial timber activities.

Opponents Dawn Pavitt and Terrence Ryan made two major submissions, one dated March 8, 2010 and one dated January 23, 2011. The March 2010 document contains the following argument points:

1 a. The subject parcel and their farm used to be one, and was used for agricultural  
2 purposes for decades, including grazing and orchard use. Analysis. This does not establish  
3 that, in combination with all the facts, that the property was properly zoned, nor that the  
4 Hibbs' property is necessary for the Pavitt/Ryan farm operations.

5 b. The owners' signature is required on the application and was not provided.  
6 Analysis. This is not legally true as LCC 1.1225(2) allows an agent to sign. Also, the Hibbs  
7 have provided express authorization for their lawyer to have signed the application.

8 c. There is no existing well. Analysis. This is not a criteria.

9 d. The septic system was obtained using the tax lot number for the Pavitt/Ryan parcel,  
10 and the septic does not currently function. Analysis. The evidence supporting this statement  
11 seems to be only that Mia Craig did not use the septic system. There is no indication whether  
12 she connected to it, knew about it, nor what repairs, if any, might now be required. More  
13 fundamentally, the Commission looks upon the establishment of the septic permit in 1980, if  
14 not the actual septic system, before the AC zoning was applied, as evidence that this parcel  
15 likely was not considered on its own facts at the time of zoning this area of Lincoln County.  
16 The evidence appears to establish that the county did not immediately assign a new tax lot  
17 number to the Hibbs' parcel after the May 1980 deed. See Exhibits 1 & 2 to Hibbs' Hearing  
18 Memorandum.

19 e. Some of the neighboring properties are used for agricultural purposes. Analysis.  
20 This evidence does not establish that the subject property was correctly zoned AC.

21 f. The subject property is not surrounded on three sides by developed residential  
22 parcels. Analysis. This evidence does not establish that the subject property was correctly  
23 zoned AC.

24 g. The slope on the property is covered in salmonberry and brush, and timber is  
25 primarily at the ridge, and is alder. Analysis. This evidence does not establish that the subject  
26 property was correctly zoned AC. Goal 4 and TC zoning is not limited to commercial

1 forestry, as preserving water quality for fish and wildlife resources is a valid conservation use  
2 of the property.

3 h. The current building was not established with a building permit. Believes the prior  
4 home was not legally permitted. Analysis. This evidence does not establish that the subject  
5 property was correctly zoned AC. Pavitt/Ryan did not provide evidence that a permit was  
6 required at the time the manufactured home was installed (around time of the septic system.)

7 i. Pavitt/Ryan sheep and goats have grazed the subject property, but not since the  
8 Hibbs' purchase. Analysis. This evidence does not establish that the subject property was  
9 correctly zoned AC, nor does it establish that the subject property is necessary for nearby  
10 property farm use. There was no evidence that lack of use of the Hibbs' parcel for grazing by  
11 Pavitt/Ryan had cost them in their business.

12 j. Goal 3 was never reviewed at the time of the parcel creation. Analysis. This  
13 argument was made by Ms. O'Brien, and is addressed elsewhere in these findings by the 1999  
14 DLCD letter.

15 k. The application did not provide an analysis of the factors set forth in OAR 660-033-  
16 0020(1). Analysis. The OAR does not apply where Lincoln County has an applicable code  
17 provision in LCC 1.1115, especially where the county has the same definition as that in the  
18 OAR. The application did not have to provide that analysis, the hearing evidence did.  
19 Applicant provided a satisfactory analysis in its hearing memorandum and testimony by  
20 Attorney Holbrook. See §6, above.

21 l. The subject property was "necessary grazing land for the adjoining farm." Analysis.  
22 Pavitt/Ryan did not establish this by evidence. In fact, the evidence was they had not used the  
23 subject property at least since the Hibbs purchased it, and did not allege nor prove that their  
24 agricultural business had somehow suffered from lack of forage they could not provide on  
25 their own 24 acres.

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1 m. ORS 215.203(1) and (2)(a) defining “farm use” for making a zone designation is  
2 relevant. Analysis. This was raised by Ms. O’Brien, and analyzed elsewhere in these findings  
3 at 12.2. In summary, this statute governs the designation of land currently in farm use, as EFU  
4 (AC) property for tax purposes. As discussed above, the evidence established that the subject  
5 parcel could not now, nor in the future be “currently employed” for agricultural production  
6 “for the purpose of obtaining a profit in money.”

7 n. There is no history of forest-related activity for this property on record with the  
8 Oregon Department of Forestry, proving there is no justification for the zone change.

9 Analysis. The property’s soil composition is appropriate for forest as defined in Goal 4.  
10 Further, Goal 4 does not limit forest use to commercial forestry, but includes water quality  
11 preservation, which the subject property provides due to having two creeks on the property.  
12 Further, this objection does not address whether the Hibbs’ property was properly zoned AC  
13 just because no commercial forestry has occurred on the land.

14 o. The land is not suited for commercial forestry due to its narrow configuration, and  
15 frontage with North Beaver Creek, and if a home were established, it would be in the way of  
16 any logging operations. Analysis. See above.

17 p. The adjacent National Forest does not justify making this TC. Analysis. The  
18 Planning Commission agrees the adjacent federal forest does not itself justify the zone change,  
19 but it buttresses the fact that the adjoining forest uses are in accordance with the soil  
20 classifications.

21 q. The request is not consistent with Goal 4 because it is all about putting a house on  
22 the land. Analysis. There is no application before the county to put a house on the property,  
23 and therefore, this is not responsive to the criteria for a zone change.

24 Pavitt/Ryan’s arguments in their January 2011 submission are addressed throughout  
25 these findings.

1 **8. LCC Section 1.1373, Agricultural Conservation Zone**

2 1.1373 Agricultural Conservation Zone A-C

3 In an A-C zone, the following regulations shall apply:

4 (1) Uses Permitted Outright:

5 The following uses and their accessory uses are permitted subject to the  
6 applicable provisions of LCC 1.1401 to 1.1499, 1.1501 to 1.1599 and  
7 1.1901 to 1.1999:

8 (a) Farm use as defined in ORS 215.203.

9 (b) Other buildings customarily provided in conjunction with farm use.

10 (c) Propagation and harvesting of a forest product.

11 (d) Creation, restoration and enhancement of wetlands.

12 (e) A winery as defined in ORS 215.452.

13 (f) Operations for the exploration of geothermal resources as defined  
14 by ORS 522.005, oil and gas as defined by ORS 520.005, or minerals as  
15 defined by ORS 517.750.

16 (g) Climbing and passing lanes within a highway right of way existing  
17 as of July 1, 1987.

18 (h) Reconstruction or modification of public roads and highways, not  
19 including the addition of travel lanes, where no removal or  
20 displacement of structures would occur, and no new land parcels would  
21 be created.

22 (i) Temporary public road and highway detours that will be abandoned  
23 and restored to original condition when no longer needed.

24 (j) Minor betterment of existing public roads and highway related  
25 facilities, such as maintenance yards, weigh stations and rest areas  
26 within right of way existing as of July 1, 1987, and contiguous  
public-owned property utilized to support the operation and  
maintenance of public roads and highways.

(k) Alteration, restoration or replacement of a lawfully established  
dwelling that:

(A) Has intact interior walls and roof structure;

(B) Has indoor plumbing consisting of a kitchen sink, toilet, and  
bathing facilities

connected to a sanitary waste disposal system;

(C) Has interior wiring or interior lights;

(D) Has a heating system; and

(E) In the case of replacement, is removed, demolished or converted to  
a permitted

nonresidential use within 90 days of completion of the replacement  
dwelling.

(L) Fire service facilities providing rural fire protection services.

\*\*\*(omitting conditional use standards)

(8) Lot Size Standards:

(a) The minimum lot size shall be 80 acres.

(b) Land divisions creating parcels of less than 80 acres may be  
permitted for non-farm uses authorized in accordance with subsection  
(2) or (3) of this section. Such new parcels shall be the  
minimum size needed to accommodate the authorized use. No new  
parcels for non-farm uses may be created until after the subject use has

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been authorized in accordance with subsections (2) or (3) of this section.

(c) New lots or parcels for dwellings not in conjunction with farm use may be permitted only if the dwelling has been authorized in accordance with subsection (2) or (3) of this section and:

(A) The remaining lot or parcel not containing the dwelling meets the minimum 80 acre parcel size of the A-C zone; or

(B) The remaining lot or parcel not containing the dwelling is consolidated with an adjoining lot or parcel which together meet the 80 acre minimum parcel size of the A-C zone.

(d) New parcels created for dwellings not in conjunction with farm use shall be a minimum of two acres.

Applicants' evidence was that their property was approximately 8.5 acres in size, while the minimum under the code is 80 acres for agricultural land.

Analysis:

Similar argument was made by Pavitt/Ryan and Ms. O'Brien. See discussion under §9, below.

**9. LCC Section 1.1375, Timber Conservation Zone**

1.1375 Timber Conservation Zone T-C

In a T-C zone the following regulations shall apply:

(1) Uses Permitted Outright:

The following uses and their accessory uses are permitted outright, subject to applicable siting criteria, other applicable provisions of this section, and applicable provisions of LCC 1.1401 to 1.1499, 1.1501 to 1.1599, and 1901-1.1999:

(a) Forest operations or forest practices including, but not limited to, reforestation of forest land, road construction and maintenance, harvesting of a forest tree species, application of chemicals, and disposal of slash.

(b) Temporary on-site structures which are auxiliary to and used during the term of a particular forest operation. As used in this paragraph, "auxiliary" means a use or alteration of a structure or land which provides help or is directly associated with the conduct of a particular forest practice. An "auxiliary structure" is located on-site, temporary in nature, and is not designed to remain for the forest's entire growth cycle from planting to harvesting. An auxiliary use is removed when a particular forest practice has concluded.

(c) Physical alterations to the land auxiliary to forest practices, including but not limited to, those made for purposes of exploration, mining, commercial gravel extraction and processing, landfills, dams, reservoirs, road construction or recreational facilities.

(d) Uses to conserve soil, air and water quality and to provide for wildlife and fisheries resources.

(e) Farm use as defined in ORS 215.203.

- 1 (f) Local distribution lines, such as electric, telephone and natural gas,  
2 and accessory equipment, such as electric distribution transformers,  
3 poles, meter cabinets, terminal boxes, pedestals, or equipment which  
4 provides service hookups, including water service hookups.
- 5 (g) Temporary portable facility for the primary processing of forest  
6 products. The facility shall not be placed on a permanent foundation  
7 and shall be removed at the conclusion of the forest operation requiring  
8 its use.
- 9 (h) Temporary forest labor camps limited to the duration of the forest  
10 operation requiring the use.
- 11 (i) Exploration for, and production of, geothermal, gas, oil, and other  
12 associated hydrocarbons, including the placement and operation of  
13 compressors, separators and other customary production equipment for  
14 an individual well adjacent to the well head as defined in ORS chapters  
15 517 and 520.
- 16 (j) Caretaker residences for public parks and fish hatcheries.
- 17 (k) Private hunting and fishing operations without any  
18 accommodations.
- 19 (L) Exploration for mineral and aggregate resources as defined in ORS  
20 chapter 517.
- 21 (m) Towers and fire stations for forest fire protection.
- 22 (n) Widening of roads within existing rights-of-way in conformance  
23 with the transportation element of acknowledged comprehensive plans,  
24 including public road and highway projects as described in ORS  
25 215.213(1)(L) through (o) and ORS 215.283(1)(k) through (n).
- 26 (o) Water intake facilities, canals and distribution lines for farm  
irrigation and ponds.
- (p) Uninhabitable structures accessory to fish and wildlife  
enhancement.
- (q) Alteration, restoration or replacement of a lawfully established  
dwelling that:
  - (A) Has intact interior walls and roof structure;
  - (B) Has indoor plumbing consisting of a kitchen sink, toilet, and  
bathing facilities connected to a sanitary waste disposal system;
  - (C) Has interior wiring or interior lights;
  - (D) Has a heating system; and
  - (E) In the case of replacement, is removed, demolished or converted to  
a permitted nonresidential use within 90 days of completion of the  
replacement dwelling.
- \*\*\*\* (omitting conditional uses)
- (4) Lot Size Standards:
  - (a) The minimum lot size shall be 80 acres.
  - (b) Land divisions creating parcels less than 80 acres in size may be  
approved:
    - (A) For uses which have been authorized in accordance with  
paragraphs (a) through (n) of subsection (2) of this section. Such  
parcels shall be the minimum size necessary to accommodate the  
authorized use.
    - (B) To allow the establishment of a parcel for an existing dwelling,  
subject to the following requirements:

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- (i) The parcel established shall be not larger than five acres, except as necessary to recognize physical factors such as roads or streams, in which case the parcel shall be no larger than 10 acres;
  - (ii) The dwelling was lawfully established prior to June 1, 1995;
  - (iii) The remaining parcel, not containing the dwelling, is 80 acres or more in size or is consolidated with another parcel, and together the parcels are 80 acres or more in size;
  - (iv) The remaining parcel, not containing the dwelling, is not entitled to a dwelling; and
  - (v) The applicant landowner agrees to record in the deed records of the county a restriction applicable to the remaining parcel not containing the dwelling which prohibits the placement of any new dwellings on the parcel, and is irrevocable unless a statement is signed by the director indicating that the comprehensive plan or land use regulations applicable to the property have been changed in such a manner that the parcel is no longer subject to statewide planning goals pertaining to forest land; and
  - (vi) The applicant landowner agrees to record in the deed records of the county a statement declaring that the landowner will not in the future complain about accepted farming or forest practices on nearby lands devoted to farm or forest use..
- (C) To allow the division of a lot or parcel if:
- (i) At least two dwellings lawfully existed on the lot or parcel prior to November 4, 1993;
  - (ii) Each dwelling currently complies with the criteria for a replacement dwelling under LCC 1.1375(1)(q);
  - (iii) None of the dwellings was approved under a statute, administrative rule or land use regulation as defined in ORS 197.015 that required removal of the dwelling or that prohibited subsequent division of the lot or parcel;
  - (iv) At least one dwelling is located on each lot or parcel created;
  - (v) Not more than one of the lots or parcels created is less than two acres or greater than five acres in size; and
  - (vi) The landowner of a lot or parcel created under this subparagraph provides evidence that a restriction prohibiting the landowner and the landowner's successors in interest from further dividing the lot or parcel has been recorded in the county deed records. A restriction imposed under this subparagraph shall be irrevocable unless a statement of release is signed by the director indicating that the land use regulations applicable to the subject lot or parcel have been changed so that the lot or parcel is no longer subject to statewide planning goals protecting forestland or unless the land division is subsequently authorized by law or by a change in a statewide planning goal for land zoned for forest use.
- (c) The director shall maintain a record of parcels that do not qualify for the siting of a new dwelling under the restrictions imposed by subparagraph (v) of subparagraph (B) of paragraph (b) of this subsection and of parcels that do not qualify for division under the restrictions imposed under subparagraph (vi) of subparagraph (C) of this subsection. The record shall be readily available to the public for inspection.

1 Applicants' evidence was that their property was approximately 8.5 acres in size, while  
2 the minimum under the code is 80 acres for AC and TC zoned property.

3 O'Brien noted that LCC 1.1373 permits "propagation and harvesting of a forest  
4 product." O'Brien letter February 23, 2010, page 1. She argued that the historical use of the  
5 entire area was for agricultural uses such as grazing livestock, dairy farms and timber. Similar  
6 argument was made by Pavitt/Ryan, and in written petitions signed by numerous persons, and  
7 the separate written statements of Lyle Weber, Beverly Branson, and Richard Christiansen.

8 Analysis: The Commission recognizes that both forest activities and grazing are valid  
9 uses of AC and TC land. LCC 1.1375 (1)(d) makes conserving water/wildlife also an outright  
10 use of TC property and where the property does not meet the definition of Agricultural  
11 property it is incorrectly zoned. No evidence was introduced that the applicants would seek to  
12 use the property in a way inconsistent with the TC zone, and as discussed, the soil type, the  
13 size etc. makes the property more appropriate for TC zoning. The Commission observes from  
14 the text of the LCC, that at the time of adopting the AC and TC zoning, the subject property  
15 was more like the minimum 5 acre parcel required for allowed non-forest uses in the TC zone  
16 (LCC 1.1375(4)(b)(B)) than any similar use under AC zoning with a 2 acre minimum. This  
17 seems persuasive where some residential development had occurred at the time of zoning  
18 adoption for this 8-plus acre parcel.

### 19 **10. Oregon Statewide Planning Goal 3, Agricultural Lands**

20 Goal 3 defines agricultural land in the same way as LCC Section 1.1115(5), and is  
21 discussed above in §6. Goal 3's state level definition of agricultural land is also present in  
22 OAR 660-033-0020 discussed in section 6 above and section 12.2 below. Analysis: For the  
23 reasons discussed herein, rezoning the subject property is consistent with Goal 3, LCC  
24 1.1115(5) and OAR 660-033-0020, because the property does not meet the definition of  
25 agricultural property.

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1           **11. Oregon Statewide Planning Goal 4, Forest Lands**

2           Goal 4 defines forest lands as those “which are suitable for commercial forest uses,  
3 including adjacent or nearby lands which are necessary to permit forest operations or  
4 practices, and other forested lands that maintain soil, air, water and fish and wildlife  
5 resources.” Goal 4 soil types include Class VI soil. Goal 4 is implemented through LCC  
6 1.1375.

7           The evidence was that the subject property has Beaver Creek running along its border  
8 and a tributary to that creek on the subject property. The property is mostly forested and steep.  
9 The topography of land along the Beaver Creek valley in the area of the subject property  
10 becomes steeper upriver from the coast. The soil is class VI.

11           Analysis.

12           The rezoning of the subject property is consistent with Goal 4 and LCC 1.1375 for  
13 those reasons stated in these findings, including that the soil type is most applicable to forest  
14 conservation (the property does not meet the AC zone definition as well), and the property can  
15 be used to maintain soil, air, water and fish and wildlife resources due to its waterways and  
16 being adjacent to National Forest. For those reasons, it is found the property was zoned  
17 incorrectly.

18           **12. Other Authorities: Identifying Agricultural Land**

19                   **12.1 Section 660-033-0030**

20           This section appears applicable to initial inventory of agricultural land, adopted first in  
21 1992. It refers the jurisdiction to OAR 660-033-0020(1)(a)(B).

22           OAR 660-033-0020(1)(a) is addressed in §6, above.

23           OAR 660-033-0020(1)(b) does not apply because the Hibbs’ property is not within a  
24 farm unit. The property is not in a farm unit because it and the Pavitt/Ryan properties have  
25 been legally separated since 1980. See *Wetherell v. Douglas County*, LUBA No. 2005-045  
26

1 (9/8/2005) holding that where there was a lapse of three to four years between the partition  
2 and cessation of farm use and the application to rezone, the property was not in a "farm unit."

3 **12.2 ORS 215.203**

4 215.203 Zoning ordinances establishing exclusive farm use zones;  
5 definitions

6 (1) Zoning ordinances may be adopted to zone designated areas of land  
7 within the county as exclusive farm use zones. Land within such zones  
8 shall be used exclusively for farm use except as otherwise provided in  
9 ORS 215.213, 215.283 or 215.284. Farm use zones shall be established  
10 only when such zoning is consistent with the comprehensive plan.

11 (2)(a) As used in this section, "farm use" means the current  
12 employment of land for the primary purpose of obtaining a profit in  
13 money by raising, harvesting and selling crops or the feeding, breeding,  
14 management and sale of, or the produce of, livestock, poultry,  
15 fur-bearing animals or honeybees or for dairying and the sale of dairy  
16 products or any other agricultural or horticultural use or animal  
17 husbandry or any combination thereof. "Farm use" includes the  
18 preparation, storage and disposal by marketing or otherwise of the  
19 products or by-products raised on such land for human or animal use.

"Farm use" also includes the current employment of land for the  
primary purpose of obtaining a profit in money by stabling or training  
equines including but not limited to providing riding lessons, training  
clinics and schooling shows. "Farm use" also includes the propagation,  
cultivation, maintenance and harvesting of aquatic, bird and animal  
species that are under the jurisdiction of the State Fish and Wildlife  
Commission, to the extent allowed by the rules adopted by the  
commission. "Farm use" includes the on-site construction and  
maintenance of equipment and facilities used for the activities described  
in this subsection. "Farm use" does not include the use of land subject  
to the provisions of ORS chapter 321, except land used exclusively for  
growing cultured Christmas trees as defined in subsection (3) of this  
section or land described in ORS 321.267 (3) or 321.824 (3).

20 (b) "Current employment" of land for farm use includes:

21 (A) Farmland, the operation or use of which is subject to any  
22 farm-related government program;

23 (B) Land lying fallow for one year as a normal and regular requirement  
24 of good agricultural husbandry;

25 (C) Land planted in orchards or other perennials, other than land  
26 specified in subparagraph (D) of this paragraph, prior to maturity;

(D) Land not in an exclusive farm use zone which has not been eligible  
for assessment at special farm use value in the year prior to planting the

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current crop and has been planted in orchards, cultured Christmas trees or vineyards for at least three years;

(E) Wasteland, in an exclusive farm use zone, dry or covered with water, neither economically tillable nor grazeable, lying in or adjacent to and in common ownership with a farm use land and which is not currently being used for any economic farm use;

(F) Except for land under a single family dwelling, land under buildings supporting accepted farm practices, including the processing facilities allowed by ORS 215.213 (1)(u) and 215.283 (1)(r) and the processing of farm crops into biofuel as commercial activities in conjunction with farm use under ORS 215.213 (2)(c) and 215.283 (2)(a);

(G) Water impoundments lying in or adjacent to and in common ownership with farm use land;

(H) Any land constituting a woodlot, not to exceed 20 acres, contiguous to and owned by the owner of land specially valued for farm use even if the land constituting the woodlot is not utilized in conjunction with farm use;

(I) Land lying idle for no more than one year where the absence of farming activity is due to the illness of the farmer or member of the farmer's immediate family. For purposes of this paragraph, illness includes injury or infirmity whether or not such illness results in death;

(J) Any land described under ORS 321.267 (3) or 321.824 (3);

(K) Land used for the primary purpose of obtaining a profit in money by breeding, raising, kenneling or training of greyhounds for racing; and

(L) Land used for the processing of farm crops into biofuel, as defined in ORS 315.141, if:

- (i) Only the crops of the landowner are being processed;
- (ii) The biofuel from all of the crops purchased for processing into biofuel is used on the farm of the landowner; or
- (iii) The landowner is custom processing crops into biofuel from other landowners in the area for their use or sale.

(c) As used in this subsection, "accepted farming practice" means a mode of operation that is common to farms of a similar nature, necessary for the operation of such farms to obtain a profit in money, and customarily utilized in conjunction with farm use.

(3) "Cultured Christmas trees" means trees:

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- (a) Grown on lands used exclusively for that purpose, capable of preparation by intensive cultivation methods such as plowing or turning over the soil;
- (b) Of a marketable species;
- (c) Managed to produce trees meeting U.S. No. 2 or better standards for Christmas trees as specified by the Agriculture Marketing Services of the United States Department of Agriculture; and
- (d) Evidencing periodic maintenance practices of shearing for Douglas fir and pine species, weed and brush control and one or more of the following practices: Basal pruning, fertilizing, insect and disease control, stump culture, soil cultivation, irrigation.

The opponents argued the subject property met the definition of “farm use” under this statute because, as they testified, the property in the past was used for seasonal grazing by a neighbor, and an unidentified number of fruit trees were planted and may currently survive on the property. Opponents were not specific about which part of ORS 215.203 applied. OAR 660-033-0020 provides in its definition of “Agricultural Land” to include land in soil classes other than I-IV that is suitable for farm use as defined in ORS 215.203(2)(a) taking into various factors. Analysis: These factors were analyzed and discussed above in §6 of these findings in conjunction with an analysis of “other lands for farm use” under LCC 1.1115(5), but only apply under the statute if the property first meets the farm use definition, which it does not.

Additionally, this statute is likely irrelevant to any Goal 3 analysis because it was enacted as part of the tax assessment scheme for agriculture land, and is therefore not a land use rule. See *1000 Friends of Oregon v. Board of County Commissioners, Benton County*, 32 Or App 413 (1978). The statutes provide that “farm use zones shall be established only where such zoning is consistent with the comprehensive plan.” In this case, the land does not meet the zoning definition for agricultural land under Lincoln County Code and therefore the statute is irrelevant to these findings.

1 If ORS 215.203(2)(a) is a criteria, it defines “farm use” as requiring the land to be  
2 under “the current employment of land for the primary purpose of obtaining profit in money  
3 by raising, harvesting and selling crops or the feeding, breeding, management and sale of, or  
4 the produce of [animals or honeybees]. . . .” The Hibbs property has not been used by its  
5 owners for any such farm use at least in the last 30 years. While some grazing occurred  
6 through agreement between neighbors, there was no evidence of any purpose of obtaining  
7 profit for the Hibbs’ property. None of the other definitions of “farm use” nor “current  
8 employment of land for farm use” under ORS 215.203(2)(a) and (b) apply to the Hibbs’  
9 property, as the only agricultural activity, at least since it became a parcel in May 1980, has  
10 been the aforementioned grazing over but a few years by a neighbor’s animals, and again,  
11 without evidence of seeking a profit by the owner of the Hibbs’ property. The property is  
12 mostly under a forest assessment, but the testimony was that no Christmas trees were ever  
13 planted nor any timber harvested. Therefore, the Commission finds the property is not within  
14 the definition of “farm use” under ORS 215.203(2).

15 **12.3 LCC Section 1.1225 Amendments**

16 The purpose of LCC 1.1225 to 1.1235 is to describe general  
17 requirements and criteria to be considered in reviewing an application  
18 for an amendment to the provisions of this chapter. An amendment  
19 may be made to the text of the Lincoln County Comprehensive Plan  
20 (LCC 1.0001 to 1.0190), Zoning and Land Division Regulations (LCC  
21 1.1101 to 1.3270), the Comprehensive Plan and Zoning Maps, or to the  
22 related land use ordinances incorporated into this chapter by reference.  
23 An amendment may be accomplished in either a legislative or  
24 quasi-judicial manner as follows:

25 (1) Legislative amendments may be made only for the establishment of  
26 policy. Such an amendment may be initiated only by the Board or the  
Commission. A person may petition the Board or the Commission to  
initiate such a legislative amendment but may not initiate the  
amendment by making direct application. Such amendments shall be  
made only after a public hearing has been held pursuant to LCC  
1.1250.

(2) Quasi-judicial amendments may be made only for the application of  
established policy to specific properties in the county. Such  
amendments may be initiated by the Board, the 2010 Commission, or  
by the application of an owner of land or agent thereof. An application  
for an amendment by an owner or agent shall be made in accordance

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with the application procedure specified in LCC 1.1205. All quasi-judicial amendments shall be subject to the public hearing requirements of LCC 1.1250 and 1.1255. [1995 o.255 §3]

O'Brien argued that the application should be denied because a zone change was not allowed for a single parcel of land under Lincoln County Code.

Analysis. O'Brien's argument is rejected. The Commission interprets LCC 1.1225(2), which allows initiation of an amendment by "an owner of land or agent thereof" to mean and apply only to that owner's land. Therefore, a zone change application, which results in an amendment under LCC 1.1225(2), may be initiated for a single parcel of land under one ownership.

**12.4 LCC 1.0150 and Goal 13.**

Pavitt/Ryan argued the application should be denied because these "Energy Goals" would only be served if the subject land was preserved to grow local food. Analysis: First, this argument does not help answer whether the property was zoned in error. Second, after three decades of separate ownership and incremental rise in property taxes, the property can't be economically farmed. Third, grazing or other food production is allowed on TC zoned property, meeting the Goal if it applied.

**12.5 LCC 1.0130 and Goal 9.**

Pavitt/Ryan argued the Economic Goals applied. As the court of appeals has noted, the Goals are at times in conflict. Economic Goals can be adverse to Goal 4 which also speaks to water and wildlife protections. In such case, the more applicable goal to the parcel and application should control, in this case, Goal 4. Further, the opponents did not explain why a TC zoned parcel would necessarily be in conflict with the economic goal's provision "to recognize the environmental and developmental constraints in expansion of industrial, commercial and residential activities." However, in this case, preserving Beaver Creek and its tributaries on the applicants' property under the TC zone and related Forest Practices Act

1 regulations will protect salmon production, a significant economic resource for Lincoln  
2 County. Thus, the application is in compliance with LCC 1.0130.

3 **12.6 Goals 1 and 2.**

4 A. Goal 1 pertains to Citizen Involvement. The complaint is that notices were not  
5 mailed to everyone who may have had notice of hearing requested for them by others.  
6 Pavitt/Ryan argued the process was flawed because notice of the hearing was not mailed to  
7 persons outside the notice area who had submitted written comments, in violation of *Fasano*  
8 *v. Washington County*, 264 Or 574 (1973). Analysis. Notice was provided to those required  
9 to be notified under LCC 1.1250. Pavitt/Ryan agrees with this in their January 23, 2011 letter,  
10 page 11, but appear to argue the LCC is not sufficient in this instance. Lincoln County Code  
11 does not require notice to more, and has been properly acknowledged by DLCD and is in  
12 accord with relevant statutes. Oral notice at the time of the originally scheduled hearing is  
13 also sufficient notice to interested parties. *Apalategvi v. Washington County*, Or App 508  
14 (1986). Also, the fact Pavitt/Ryan requested in writing that everyone who filed comments be  
15 notified of each stage of the hearing is not binding on the county under ORS 197.767 at least  
16 not without evidence that Pavitt/Ryan were authorized legal agents for all other persons  
17 providing written comments. The *Fasano* case cited is not controlling on notice issues the  
18 legislature has set out. The complaint by Pavitt/Ryan and Ms. O'Brien about the staff report's  
19 contents are not substantiated because there is no requirement the staff report make  
20 recommendations or evaluate the evidence or even list every argument submitted. The  
21 opponents claim this created a biased report, but fail to state how it gave rise to bias nor how  
22 they were prejudiced at the hearing on the question of whether this property was erroneously  
23 zoned AC.

24 B. Goal 2 pertains to the exceptions process. Because no exception to the goals  
25 are sought by applicant, Goal 2 does not apply.

26

1           **13. 1000 Friends of Oregon Arguments in Opposition**

2           1000 Friends of Oregon submitted two letters into the record opposing the application  
3 on several grounds, which will be discussed here.

4                   **13.1** The application is inconsistent with LCC 1.0075 agricultural policies  
5 stating that Lincoln County “shall designate, preserve and maintain agricultural land for farm  
6 use. . . .” Analysis. This argument assumes the Hibbs’ property is properly considered to be  
7 agricultural land, the very subject of the applicants argument. If it is not, and never should  
8 have been zoned AC, the policy is not violated by zoning it TC. This argument was also  
9 discussed in §4, 7 and 9 of these findings.

10                   **13.2** The OAR 660-033-0020(1)(a) definition applies and makes the Hibbs’  
11 property AC property by definition as agricultural property. Analysis. This OAR and  
12 argument has been addressed above in §6, but is not a criteria under the acknowledged plan.

13                   **13.3** The historical use of the property, including use with adjacent land means  
14 the land is “necessary to permit farm practices to be undertaken on adjacent or nearby  
15 agricultural lands.” Analysis. There was no evidence to support the argument the Hibbs’  
16 property was necessary for any nearby property owner to successfully prosecute agricultural  
17 practices. To the extent there are statements to that effect, they are found less credible than  
18 the fact no commercial grazing has occurred (as opposed to neighbor’s mutual agreements)  
19 and no grazing has occurred at least since the Hibbs purchased the property, and Pavitt/Ryan  
20 provided no evidence of hardship for themselves or others as a result.

21                   **13.4** The analysis must include the entire “legal parcel” of which the subject  
22 unit of land is a part.

23           Analysis. The Planning Commission understands this argument, including the statutes  
24 cited by 1000 Friends at page 3 of their January 17, 2011 letter, to be a species of that raised  
25 by O’Brien primarily, that the partition by deed in May 1980 was illegal if it did not have  
26 county review and findings under Goal 3. This is counter to the legal position of the DLCD



1           3. The property was created by deed dated May 7, 1980, not recorded until May 12,  
2 1980. Exhibit 1 to Applicants' Hearing Memorandum. The county zoning at the time had a  
3 five acre minimum. Lincoln County first adopted its Comprehensive Plan in June 1980.  
4 Lincoln County Code was amended at the behest of the Department of Land Conservation &  
5 Development to provide in LCC 1.1371(3), which provides a definition for parcel to include  
6 one created by a legal description in a deed before the applicable planning, zoning,  
7 partitioning etc. ordinances or regulations were in place. According to the DLCD enforcement  
8 letter dated February 9, 1999, review of land divisions was not made mandatory by the Oregon  
9 legislature until law which became effective on August 24, 1981. A copy of this letter was  
10 submitted into the record by Mary O'Brien. The Commission interprets the LCC to not  
11 include as criteria the legality of the parcel, however, if its legality is required for any purpose,  
12 the Commission finds on the substantial evidence that it is a parcel as defined under LCC  
13 1.1371(3).

14           4. Substantial evidence established that the subject property cannot now, nor in the  
15 future be employed for agricultural production for the purpose of obtaining a profit, nor would  
16 a reasonable farmer lease out the property for grazing without a profit. Testimony of  
17 Applicants' counsel established this, and it was unrebutted by evidence of grazing some years  
18 in the past, where such evidence did not establish how many months the grazing occurred  
19 annually, nor the number of animals nor any financial arrangements such as to establish the  
20 viability (economic and vegetation-wise) of the subject property for grazing. The property  
21 does not meet the definition for agricultural land, and there is no reason to think, at least since  
22 it became a separate parcel in May 1980, that it could have met the zoning definition for AC at  
23 the time the zoning ordinance and comprehensive plan were adopted in Lincoln County. The  
24 subject property is not part of a farm unit, nor is it necessary to adjacent farm uses. The  
25 Commission finds it a relevant factor to determining the zoning error, but it is not  
26 determinative, that the parcel had at least some development on it at the time of the zoning,

1 and that the size of the parcel was considerably under the acreage minimum for the AC zone.  
2 While the parcel may have been created in May 1980 knowing the zoning ordinances were  
3 about to change, there is no direct evidence of that, and such would not have been improper.  
4 The Hibbs certainly were not party to any such actions, but instead are going through the  
5 arduous and expensive land use process.

6 5. The application is consistent with the county's acknowledged comprehensive plan  
7 and zoning ordinance because the property does not meet its definition of agricultural  
8 property, nor that definition under any state statutes, administrative rules or Goals cited by  
9 opponents for agricultural property. LCC 1.0075 is interpreted to require preserving  
10 agricultural land for farm use, but in a way that is consistent with other zoning uses such as  
11 forest and open space but only to land properly inventoried as AC property. However, the  
12 property meets the definition for Timber Conservation.

13 6. The Commission interprets LCC 1.1235 and section 1.1225 to allow a single  
14 applicant of a single property to apply for a zone change, map amendment etc. as discussed in  
15 section 12.3 of the findings. The Commission also interprets LCC 1.1235 to require the  
16 applicants in a zone change be the owner, not that the parcel is a legal one.

17 7. Goals 1, 2, 9 and 13 do not apply to this application but the application is not in  
18 conflict with any of these Goals.

19 8. The parcel is a legal parcel having been partitioned by deed prior to county  
20 adoption of its code in June 1980.

21 The application therefore is approved on the basis of LCC 1.1235(2), the zoning  
22 previously being adopted in error, and the application is found to be consistent with Lincoln  
23 County's acknowledged comprehensive plan and zoning ordinance to rezone the property to  
24 Timber Conservation.

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1 1975. A major partition involved division of a tract of land into two or three parcels in  
2 a calendar year that involves creation of a road (public or private). It was then, and  
3 continues now, to be inapplicable in the circumstances and history of the present  
4 application.

5 4. Other ordinances (cited only by book and page), established  
6 zoning existed in 1975. There is no doubt that zoning pre-existed the adopted  
7 Comprehensive Plan. That zoning did not prohibit the creation of the subject parcel.  
8 The Comprehensive Plan process adopted new zoning after the creation of this  
9 parcel. The Planning Commission findings justify their conclusion why this is a legal  
10 parcel.

11 5. It was error to consider current uses of the subject property,  
12 rather than the historical uses. The Planning Commission findings considered the  
13 historical uses of the property and the original zoning and support this request.

14 6. The county failed to adopt an amendment to its Code Section  
15 1.1371(4)(d) and remove LCC 1.1371(4)(f) from the code. The current code does not  
16 contain a subsection (4) as Ms. O'Brien argued, and is not relied upon by the  
17 applicants.

18 B. Dawn Pavitt argued the Lincoln County Planning Commission was not  
19 legally constituted in membership such that its decision could be valid or upheld. She  
20 argued the county code requires 13 members, and there are only 8 on the planning  
21 commission. The Board of Commissioners found the argument invalid and ruled  
22 against this argument.

23 C. Terry Ryan stated his belief that the Planning Commission did not  
24 consider a letter submitted by Michael Custer. Mr. Custer's letter was submitted for  
25 the record on December 12, 2010. Mr. Custer's letter contains the same arguments

1 provided by other opponents regarding the historical use of the property, the property  
2 size, steepness, that given these characteristics, the property is either improbable for  
3 commercial timber use or timber uses are allowable under AC zoning. These  
4 arguments were all considered in the original findings.