

1 **BEFORE THE BOARD OF COMMISSIONERS**

2 **FOR LINCOLN COUNTY, OREGON**

3 **ORDINANCE #501**

4 _____
5
6 **Amending the Lincoln County Comprehensive Plan from Forest Land to Farm Land and the**
7 **Lincoln County Zoning Map from Timber Conservation (T-C) to Agricultural Conservation**
8 **(A-C) on property identified as Tax Lot 100, Lincoln County Assessor's Map 12-08-23, and**
9 **declaring it an emergency (Case file #02-LUPC-ZC-17).**
10 _____

11 WHEREAS after notice and a public hearing in accordance with the Lincoln County Code
12 (LCC) held on February 26, 2018, the Lincoln County Planning Commission on March 9, 2018
13 adopted findings, conclusions and a final order to recommend approval of a request by applicant
14 Don Kessi for a Comprehensive Plan Map amendment from Forest Land to Farm Land and a Zone
15 Change from Timber Conservation (T-C) to Agricultural Conservation (A-C) on property identified
16 as Tax Lot 100, Lincoln County Assessor's Map 12-08-23 (Case File #02-LUPC-ZC-17). He
17 decision and recommendation of the Planning Commission was not appealed; and

18 WHEREAS after notice in accordance with law, the Lincoln County Board of
19 Commissioners held a public hearing on May 30, 2018 to receive the Planning Commission's Final
20 Order and Recommendation; and

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

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

1 **SECTION 1.**

2 1. The Comprehensive Plan Map is amended from Forest Land to Farm Land
3 and the Zoning Map is changed from Timber Conservation (T-C) to Agricultural
4 Conservation (A-C) on property identified as Tax Lot 100, Lincoln County Assessor's Map
5 12-08-23 (Case File #02-LUPC-ZC-17) located at 3922 Marys Peak Road.

6 2. The Board adopts the Planning Commission's Findings, Conclusions and
7 Final Order to support these actions as set forth in Exhibit "A" attached hereto and
8 incorporated herein.

9 3. Copies of this Ordinance shall be forwarded to the County Surveyor; County
10 GIS/LIS Department; County Assessor; County Counsel; County Department of Planning
11 and Development; and applicant's agent Janai Kessi.


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

15 **SECTION 2.**

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

DATED this 10th day of June, 2018.


LINCOLN COUNTY BOARD OF COMMISSIONERS


Doug Hunt, Chair


Claire Hall, Commissioner


Terry N. Thompson, Commissioner

ATTESTED TO:



Kristi Whitaker, Recorder

APPROVED AS TO FORM:



Wayne Belmont, County Counsel

EXHIBIT A

Don Kessi, Case File #02-LUPC-ZC-18

BEFORE THE PLANNING COMMISSION
OF
LINCOLN COUNTY, OREGON

Comprehensive Plan Map Amendment and Zone Change) Case File: 02-LUPC-ZC-17
Applicant: Don Kessi) Findings, Conclusions and
Agent: Janai Kessi) Final Order

Nature of the Application

The applicant requests a zone change for his property from T-C (Timber Conservation) to A-C (Agriculture Conservation) and a comprehensive plan map amendment from Forest Land to Agricultural Land.

Relevant Facts

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

1. The subject property is located at 3922 Marys Peak Road. The property is further identified on Lincoln County Assessor's map 12-08-23 as tax lot # 100.
2. The subject property is approximately 142.85 acres in size. (Per soils analysis in Assessor's Office records, the subject property is 147.03 acres in size.)
3. The subject property is zoned T-C (Timber Conservation).
4. The subject property carries a plan designation of Forest Land.
5. Big Elk Creek and two of its tributaries run through the property from east to west. Approximately 80% of the land area on the subject property is between 0 to 5 percent slope. The subject property is largely pasture land with vegetated buffers along the streams.
6. The surrounding land use is predominantly forest. With the exception of disperse residential developments starting at approximately 1.5 miles west of the subject property on Marys Peak Road, the subject property is surrounded by parcels owned by private timber companies or US Forest Service Siuslaw National Forest.
7. One single-family dwelling, a loft barn, and a machine shed are on the subject property.
8. The following utilities serve the subject property:
 - a. Sewer: On-site
 - b. Water: On-site water source
 - c. Electricity: Consumer's Power, Inc.
9. Areas surrounding the streams on the subject property are within FEMA Special Flood Hazard Area zone A on Map/Panel 41041C0600D.

10. According to mapping prepared by the USDA Natural Resources Conservation Service, the subject property is comprised of the following soil units in the order of least acreage to the greatest:

- a. 29E Kilowan clay loam, 5 to 35 percent slopes. This map unit is on ridgetops and benches in mountainous areas. The native vegetation is mainly Douglas-fir, western hemlock, red alder, bigleaf maple, vine maple, salal, red huckleberry, salmonberry, cascade Oregongrape, and western swordfern. This unit is used mainly for timber production. It is also used for wildlife habitat and as a source of water. This unit is suited to the production of Douglas-fir. Its land capability class rating is VI, which is well suited for forest production.

This unit comprises 0.18 acres of the subject property or 0.12 percent of the total area.

- b. 29G Kilowan clay loam, 35 to 60 percent slopes. This map unit is on side slopes in mountainous areas. The native vegetation is mainly Douglas-fir, western hemlock, red alder, bigleaf maple, vine maple, salal, salmonberry, red huckleberry, cascade Oregongrape, and western swordfern. This unit is used mainly for timber production. It is also used for wildlife habitat and as a source of water. This unit is suited to the production of Douglas-fir. Its land capability class rating is VI, which is suited for forest production.

This unit comprises 0.5 acres of the subject property or 0.34 percent of the total area.

- c. 50G Preacher-Bohannon-Slickrock complex, 35 to 60 percent slopes. This map unit is on side slopes in mountainous areas. The native vegetation is mainly Douglas-fir, western hemlock, bigleaf maple, red alder, vine maple, salal, cascade Oregongrape, salmonberry, and western swordfern. This unit is used mainly for timber production. It also is used for wildlife habitat and as a source of water. This unit is suited to the production of Douglas-fir. Its land capability class rating is VI, which is suited for forest production.

This unit comprises 1.14 acres of the subject property or 0.78 percent of the total area.

- d. 6F Blachly silty clay loam, 35 to 50 percent slopes. This map unit is on side slopes in mountainous areas. The native vegetation is mainly Douglas-fir, western hemlock, red alder, bigleaf maple, vine maple, salal, cascade Oregongrape, and western swordfern. This unit is used mainly for timber production. It also is used for wildlife habitat and as a source of water. This unit is suited to the production of Douglas-fir. Its land capability class rating is VI, which is suited for forest production.

This unit comprises 2.18 acres of the subject property or 1.48 percent of the total area.

- e. 57A Treharne silt loam, 0 to 3 percent slopes. This map unit is in depressions on stream terraces. The native vegetation is mainly Douglas-fir, western hemlock, red alder, salal, salmonberry, western swordfern, and trailing blackberry. This unit is used for hay and pasture wildlife. Its land capability class rating is II, which is suited for pasture and hay production.

This unit comprises 17.65 acres of the subject property or 12.00 percent of the total area.

- f. 49E Preacher-Bohannon complex, 5 to 35 percent slopes. This map unit is on ridgetops and benches in mountainous areas. The native vegetation is mainly Douglas-fir, western hemlock, red alder, bigleaf maple, vine maple, salal, salmonberry, cascade Oregongrape, and western swordfern. This unit is used mainly for timber production. It also is used for wildlife habitat and as a source of water. This unit is suited to the production of Douglas-fir. Its land capability class rating is VI, which is suited for forest production.

This unit comprises 25.04 acres of the subject property or 17.03 percent of the total area.

- g. 15B Eilersten silt loam, 0 to 5 percent slopes. This map unit is on stream terraces. The native vegetation is mainly Douglas-fir, western hemlock, red alder, bigleaf maple, vine maple, salmonberry, western swordfern, and trailing blackberry. This unit is used mainly for hay and pasture. It also is used for homesite development, limited timber production, Christmas tree production, and wildlife habitat. This unit is well suited to hay and pasture. This unit is suited to Douglas-fir. Its land capability class rating is II, which is suited for pasture and hay production.

This unit comprises 43.47 acres of the subject property or 29.57 percent of the total area.

- h. 41A Nekoma-Fluvaquents complex, 0 to 3 percent slopes. This map unit is on flood plains. The native vegetation is mainly scattered Douglas-fir, western hemlock, red alder, vine maple, red huckleberry, salmonberry, and western swordfern on the Nekoma soils and willow, red alder, rushes, and sedges on Fluvaquents. This unit is used mainly for hay and pasture and wildlife habitat. Its land capability class rating is III, which is suited for pasture and hay production.

This unit comprises 56.60 acres of the subject property or 38.50 percent of the total area.

- i. In summary:
- i. Class VI soils comprise 29.31 acres or 19.93 percent of the total area.
 - ii. Class III soils comprise 56.60 acres or 38.50 percent of the total area.
 - iii. Class II soils comprise 61.12 acres or 41.57 percent of the total area.

It is noted here that the total acreage of the subject property used for the above calculations is 147.03 acres, which is the figure generated by Assessor's Office soils analysis.

11. A public hearing was held before the Lincoln County Planning Commission on Monday, February 26, 2018. All interested parties were given an opportunity to testify.
12. Don Kessi, Applicant, and Janai Kessi, Agent, provided oral testimony in support of the request. The basis for the applicant's request is that the subject property was zoned in error. As noted above in these findings, the predominant soils are Class II and III for agricultural production. The applicant and his agent presented a brief history of events and agricultural activities occurring on the subject property. They submitted copies of legal documents supporting agricultural activity as the predominant use of the property since as early as 1891. Mr. Don Kessi has been actively raising cattle on the subject property ever since he acquired the property in 1980.
13. There was no testimony in opposition to the request.

Findings

The Commission finds:

1. The Goal 3 definition for agricultural land specifies that agricultural land be of predominantly Class I-IV soils as defined in the soils rating system used by the USDA Natural Resource Conservation Service (formerly the Soil Conservation Service). Evidence submitted in the record indicates that over 80 percent of the subject parcel is comprised of Class II and III agricultural soils.
2. Evidence submitted indicates that, according to the Natural Resource Conservation Service, approximately 117.72 acres out of 147.03 acres or 80.06 percent of the subject property are of Class II and III soils. The Class II and III soils map units present on the subject property are: 57A Treharne silt loam, 0 to 3 percent slopes; 15B Eilersten silt loam, 0 to 5 percent slopes; and 41A Nekoma-Fluvaquents complex, 0 to 3 percent slopes. These three units are suitable for pasture and hay production.
3. Evidence submitted indicates that the property has been managed continuously for agricultural uses since the late 1800s, with the earliest recorded use in 1891.
4. Based on soil class information, agricultural land management practices, topography and other factors of record, the subject property was designated Forest Land and zoned T-C in error.

Conclusions

1. Substantial evidence in the record demonstrates that the proposed comprehensive plan map amendment and zone change are in accordance with the Comprehensive Plan Goals and Policies and Statewide Planning Goals.

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2. Substantial evidence in the record demonstrates that the subject property was zoned in error and therefore meets the requirements for a zone change from T-C to A-C.

Order

It is ORDERED by the Lincoln County Planning Commission that Case File #02-LUPC-ZC-17 be APPROVED. This approval will serve as a recommendation to the Lincoln County Board of Commissioners to change the comprehensive plan designation to Agricultural Land and change the zone designation to Agriculture Conservation.

This ORDER was presented to and approved by the Lincoln County Planning Commission on March 9, 2018.



Richard A. Johnson
Dick Johnson, Chair
Lincoln County Planning Commission