

1                                   **BEFORE THE BOARD OF COMMISSIONERS**

2                                   **FOR LINCOLN COUNTY, OREGON**

3                                   ORDINANCE # 519

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4   **Amended Ordinance-Amending the Lincoln County Comprehensive Plan Map to**  
5   **provide a designation of Forest Land and a Zoning Map designation of T-C (Timber**  
6   **Conservation) on property located on Thornton Creek Road, approximately 0.3 miles**  
7   **from Crystal Creek Loop, and further identified on Lincoln County Assessor’s Map #10-**  
8   **09-31 as Tax Lot 00701; and declaring an emergency.**

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10           WHEREAS, applicants Kyle Humphrys and Ashley Humphrys, requested a  
11   comprehensive plan amendment change from Agriculture Lands to Forest Lands and a zone  
12   change from A-C (Agriculture Conservation) to T-C (Timber Conservation) for their subject  
13   property; and

14           WHEREAS, the subject property is located on Thornton Creek Road, approximately  
15   0.3 miles from Crystal Creek Loop, and further identified on Lincoln County Assessor’s Map  
16   #10-09-31 as Tax Lot 00701; and

17           WHEREAS, on April 26, 2021, after legal notice was given in accordance with the law,  
18   the Lincoln County Planning Commission held a public hearing on the subject request. The  
19   Planning Commission voted unanimously to recommend approval of the request. On April 26,  
20   2021, the Planning Commission adopted Findings, Conclusions and Final Order  
21   recommending that the request be approved. A copy of the Final Order is attached hereto and  
22   incorporated herein as Exhibit I. The recommendations of the Planning Commission were not  
23   appealed. The Planning Record in this matter is found in Case File #01-ZC-PC-20 and by this  
24   reference is incorporated herein as if fully set forth; and

25   ///

ORDINANCE # 519

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Office of Lincoln County Legal Counsel  
225 West Olive Street, Room 110  
Newport, Oregon 97365  
(541) 265-4108

26 WHEREAS, a hearing and reading of this Ordinance was held by the Board of  
27 Commissioners on September 8, 2021, and the Board considered whether or not to approve the  
28 Ordinance; which would allow the requested plan and zone change; and

29 WHEREAS, after deliberations, the Board unanimously approved the recommendation  
30 of the Planning Commission to amend the Lincoln County Comprehensive Plan Map and the  
31 Lincoln County Zoning Map, as requested by the applicant.

32 **NOW, THEREFORE, IT IS HEREBY ORDAINED AS FOLLOWS:**

33 **SECTION 1.**

34 1. The Planning Commission’s recommendations are adopted, and the Lincoln  
35 County Comprehensive Plan Map is amended to Forest Lands and the Lincoln County Zoning  
36 Map is amended to T-C (Timber Conservation) on a parcel of land located on Thornton Creek  
37 Road, approximately 0.3 miles from Crystal Creek Loop, and further identified on Lincoln  
38 County Assessor’s Map #10-09-31 as Tax Lot 00701 (Case File No. 01-ZC-PC-20).

39  
40 2. The findings and conclusions supporting these actions are adopted as set forth  
41 in Exhibit 1.

42  
43 3. Copies of this Ordinance shall be forwarded to the County Surveyor, County  
44 Assessor, County Counsel, and Lincoln County Department of Planning and Development.

45  
46 4. The Department of Planning and Development shall amend the official maps in  
47 the Lincoln County Clerk’s Office and shall forward a copy of this Ordinance to the  
48 Department of Land Conservation and Development.

49 **SECTION 2.**

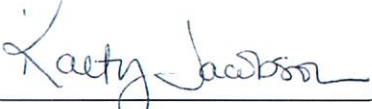
50 In accordance with the Findings supporting this request, this Ordinance being necessary  
51 for the immediate preservation of the public peace, health and safety, an emergency is declared  
52 to exist and this Ordinance shall take effect upon its passage.


53 **DATED** this 8th day of September, 2021.

54 **LINCOLN COUNTY BOARD OF COMMISSIONERS**

55   
56 \_\_\_\_\_  
57 Doug Hunt, Chair

58   
59 \_\_\_\_\_  
60 Claire Hall, Commissioner

61   
62 \_\_\_\_\_  
63 Kaety Jacobson, Commissioner

64 ATTESTED TO:  
65   
66 \_\_\_\_\_  
67 Kristi Peter, Recorder

APPROVED AS TO FORM:  
/s/ Gerald Herbage via email on 9/13/2021  
\_\_\_\_\_  
M. Gerard Herbage, Asst. County Counsel

68

## Exhibit 1

BEFORE THE PLANNING COMMISSION OF  
LINCOLN COUNTY, OREGON

Comprehensive Plan Map Amendment  
And Zone Change

Case File #01-ZC-PC-20

Applicant: Kyle and Ashley Humphrys

Findings, Conclusions, and Final Order

### **Nature of the Application**

The Applicant is requesting a comprehensive plan map amendment from Agricultural Land to Forest Land and a zone change from A-C (Agricultural Conservation) to T-C (Timber Conservation).<sup>1</sup>

### **Relevant Facts**

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

1. The subject property in its entirety is approximately 8.10 acres in size.
2. The subject property is located on Thornton Creek Road, approximately 0.3 miles from Crystal Creek Loop (formerly Highway 20.) It is further identified on Lincoln County Assessor's Map #10-09-31 as tax lot 00701.
3. The subject property is zoned A-C (Agricultural Conservation).
4. The subject property carries a plan designation of Agricultural Land.
5. The predominant pattern of land use surrounding the subject property on Thornton Creek road is dispersed residential development, pastureland, and forestland.
6. The subject property is heavily wooded and has uneven terrain.
7. There are no existing structures located on the subject property.
8. The following utilities are proposed to serve the subject property:
  - a. Water: On-site
  - b. Sewer: On-site sewage disposal system

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<sup>1</sup> This application was originally reviewed by the Lincoln County Planning Commission during a public hearing on February 8, 2021. Staff discovered that a procedural error had occurred after that hearing, and the Planning Commission conducted a new hearing on April 26, 2021, to correct the error. Because of this, two Planning Commission orders for this case file exist.

c. Electricity: Consumer Power

9. The subject property contains no development constraints.

10. According to mapping prepared by the Natural Resources Conservation Service, the subject property is comprised of the following soils units:

a. 50G Preacher-Bohannon Slickrock Complex, 35 to 60 percent slopes. Its land capability class rating is VI, which is well suited for forest production.

This unit comprises approximately 4.7 acres of the subject property.

b. 49E Preacher-Bohannon Slickrock Complex, 5 to 35 percent slopes. Its land capability rating is VI, which is well suited for forest production.

This unit comprises 3.3 acres of the subject property.

c. 15B, Eilertsen Silt Loam. 0 to 5 percent slopes Its land capacity is class rating II, which is well suited to farm production.

This unit comprises 0.1 acres of the subject property.

In summary, Class II soils make up approximately 1% of the subject parcel. Class VI soils make up approximately 99% of the subject property.

11. A public hearing was held on April 26, 2021, before the Lincoln County Planning Commission. All interested parties were given an opportunity to submit testimony.

12. No comments were received from the Department of Land Conservation and Development.

13. The basis for the applicant's request is that the subject property is predominantly forest land and the property was originally zoned A-C in error. The applicant submits that, given the predominant soils classifications, and, that agricultural uses have never taken place at the subject property, the subject property does not meet the statutory definition under Statewide Planning Goal 3 (Agricultural Lands). In addition, the applicant submits the subject property meets provisions for designation under Statewide Planning Goal 4, Forest Lands. The Goal 3 definition for Agricultural Land specifies agricultural land must be predominantly Class I-IV soils as defined in the soils rating system used by the US Natural Resources Conservation Service (formerly the Soil Conservation Service). Evidence submitted by the applicant, and independently confirmed by staff, demonstrates the subject property is predominantly forest land, and it has always been managed for forest uses, and the soils on the property are 99% Class VI forest class soils.

The applicant submits that the Forest Land designation under the County's Comprehensive Plan is more appropriate for the subject property than the Agricultural

Land designation. As such, the applicant submits that the subject property was zoned in error and requests that the zoning for the property be changed (re-zoned) from A-C to T-C.

14. No opposition testimony was entered into the record.
15. One letter in support was received and entered into the record.
16. All application materials and staff's report are by reference incorporated into the record herein.

### **Relevant Criteria**

A. Lincoln County Development Code, Section 1.1235, Quasi-Judicial Amendments: A quasi-judicial amendment to the Comprehensive Plan and Zoning Maps may be authorized provided that the proposal satisfies all applicable requirements of this Chapter and also provided that the applicant, in a quasi-judicial hearing, demonstrates that:

- 1) The change is in accord with the Comprehensive Plan goals and policies or the Statewide Planning Goals; and
- 2) There has been a substantial change in the character of the area since zoning was adopted and which warrants changing the zone; or
- 3) The zoning previously adopted for the area was in error; or
- 4) There is a public need for the change being sought.

B. Oregon Statewide Planning Goal 3, Agricultural Lands: The definition of agricultural land in Goal 3 reads as follows: ... "in western Oregon is land of predominantly Class I, II, III, and IV soils as defined in the Soil Capability Classification System of the United States Soil Conservation Service and other lands which are suitable for farm use taking into consideration soil fertility, suitability for grazing, climatic conditions, existing and future availability of water for farm irrigation purposes, existing land use patterns, technological and energy inputs required, or accepted farming practices. Lands in other classes which are necessary to permit farm practices to be undertaken on adjacent or nearby lands, shall be included as agricultural land in any event".

C. Oregon Statewide Planning Goal 4, Forest Lands: Goal 4 (Forest Lands) provides for the following: ... " Where a [plan is not acknowledged or] a plan amendment involving forest lands is proposed, forest land shall include lands which are suitable for commercial forest uses including adjacent or nearby lands which are necessary to permit forest operations or practices and other forested lands that maintain soil, air, water and fish and wildlife resources .... " Uses which may be allowed subject to standards set forth in this goal and administrative rule are: (1) uses related to and in support of forest operations; (2) uses to conserve soil, water and air quality, and to provide for fish and wildlife resources, agriculture and recreational opportunities appropriate in a forest environment; (3) locationally dependent uses; (4) dwellings authorized by law.

D. Lincoln County Comprehensive Plan:

- (1) Forest Lands (Section 1.0005(4)): Approximately 87 percent of the total land area of Lincoln County is forest land. Of this 550,000 acres, roughly 80 percent is in either industrial or public ownership. The primary use of the majority of these forest lands is commercial wood fiber production. Secondary uses include wildlife production, outdoor recreation, domestic watersheds and livestock grazing. Existing ownership patterns, historical use trends, and past and current management practices for private non-industrial forest lands indicates that parcels of 40 to 50 acres comprise the large majority of ownerships and that parcels in this size range are compatible with the conservation of forest lands for forest uses. [Note: state law requires an 80 acre minimum lot size for new parcels in the T-C zone.]
- (2) Agricultural Lands (Section 1.0005(5)): The analysis considers available sources of data on farms in Lincoln County including the 1979 Census of Agriculture, the S.C.S. Farm Plans, and the Farm Deferral Information. Comparisons are made of all these sources and they are found to be representative samples of agriculture and commercial agriculture in the County. These sources indicate that different size parcels may be appropriate for different types of activities. Average acreages of 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. [Note: state law requires an 80 acre minimum lot size for new parcels in the A-C zone.]

E. Lincoln County Comprehensive Plan Designations:

- (1) Forest Lands (Section 1.0190(1)): Forest lands represent approximately 90 percent of Lincoln County and are its major resource. These are mainly held in large ownership patterns and covered by commercial stands of Douglas fir, true fir, hemlock, cedar, and spruce. Uses such as raising and harvesting of the forest crop and existing recreation facilities are primary. Secondary uses such as new recreation facilities, public and private utilities, and dwellings may be included by county review.
- (2) Agricultural Lands (Section 1.0190(2)): 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 agriculture 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.

F. Lincoln County Code:

- (1) A-C (Agricultural Conservation) Zone: LCC Section 1.1373.
- (2) T-C (Timber Conservation) Zone: LCC Section 1.1375.

### **Findings**

The Commission Finds:

1. The Goal 3 definition for Agricultural Land specifies that it be of predominantly Class I-IV soils as defined in the soils rating system used by the US Natural Resource Conservation Service. Evidence submitted by the applicant indicates that 99% of the subject property is comprised of Class VI forest class soils.
2. Historically, the subject property has not been used or managed for agricultural purposes. Based on this and other information of record, the subject property does not meet the Statewide Planning Goal definition of Agricultural Land.
3. Other factors, such as location, topography, climate, and soil characteristics add further weight to the evidence that the predominant character of the property is consistent with the Forest Land designation of the comprehensive plan.
4. Evidence in the record and testimony presented at the hearing indicates that the subject property was zoned A-C (Agricultural Conservation) and designated Agricultural Land in error, which warrants a zone change and a comprehensive plan map amendment.
5. Based on soil class information, forest land management practices, topography, and other factors of record, the subject property was designated Agricultural Land and zoned A-C in error.

### **Conclusions**

Whereas, substantial evidence in the record demonstrates that the proposed comprehensive plan map amendment and zone change are in accordance with the Comprehensive Goals and Policies and Statewide Planning Goals; and,

Whereas, substantial evidence in the record demonstrates that the subject property was designated Agricultural Land under the Comprehensive Plan Map in error and therefore meets the requirements for a Comprehensive Plan Map amendment from Agricultural Land to Forest Land; and,

Whereas, substantial evidence in the record demonstrates that the subject property was zoned in error and therefore meets the requirements for a zone change from A-C to T-C; and,

**Order**

NOW THEREFORE, IT IS SO ORDERED by the Lincoln County Planning Commission that the comprehensive plan map amendment from Agricultural Land to Forest Land and the zone change from A-C (Agricultural Conservation) to T-C (Timber Conservation) as requested in Case File #01-ZC-PC-20 be APPROVED. This approval will serve as a recommendation to the Lincoln County Board of Commissioners.

This ORDER was presented to and approved by the Lincoln County Planning Commission on April 26, 2021.



Andra Bobbitt, Chair  
Lincoln County Planning Commission