

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

ORDINANCE # 474

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**Amending the Lincoln County Comprehensive Plan from mixed Agricultural / Forest Lands on the Comprehensive Map to Forest Lands and a zone change from Agricultural Conservation (A-C) to Timber Conservation (T-C) on a portion of property located at 7006 Logsdan Road and 7070 Logsdan Road, on the Siletz River, further described as Lincoln County Assessor's Map 10-09-04-00300 (Case File #01-LUPC-ZC-13); and declaring an emergency.**

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WHEREAS on January 13, 2014 the Lincoln County Planning Commission held a public hearing to consider the request from Dennis Kauffman and Volland Siletz LLC for approval of a comprehensive plan map amendment and zone change, from Agricultural Lands to Forest Lands on the comprehensive plan map and from Agricultural Conservation (A-C) to Timber Conservation (T-C), on a portion of property located at 7006 Logsdan Road and 7070 Logsdan Road, on the Siletz River, further described as Lincoln County Assessor's Map 10-09-04-00300 (Case File #01-LUPC-ZC-13); and

WHEREAS the subject property is 11.9 acres. The Siletz River runs through the middle of the property, effectively dividing it into two sections. The north side of the River is designated Agricultural Lands and zoned A-C. There are two houses located on that portion of the property. The property has never been used for agriculture. This is the portion of the property subject to the requested changes; and

WHEREAS at the conclusion of the hearing the Planning Commission unanimously voted to recommend that the Board approve the amendment zone change. On February 10, 2014 the Planning Commission adopted findings, conclusions and a final order making that recommendation; and

WHEREAS the recommendations of the Planning Commission were not appealed;

NOW, THEREFORE, IT IS HEREBY ORDAINED AS FOLLOWS:

**SECTION 1.**

1. The Planning Commission's recommendations are adopted, and the Comprehensive Plan Map is amended from Agricultural Land to Forest Land and the zone is changed from Agricultural Conservation (A-C) to Timber Conservation (T-C) on portions of property located at 7006 and 7070 Logsden Road and further described as portions of Lincoln County Assessor's Map 10-09004-00-00300 north of the Siletz River (Case File #01-LUPC-ZC-13).

2. The findings and conclusions supporting these changes are adopted as set forth in Exhibit "A" attached hereto and incorporated herein.

3. Copies of this ordinance shall be forwarded to County Surveyor; County Assessor; County Counsel; Onno Husing, Lincoln County Planning Department Director; and the applicants.

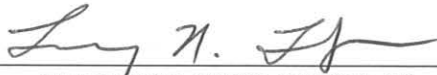
4. The Department of Planning and Development shall forward a copy of this ordinance to the Oregon Department of Land Conservation and Development, and amend the Comprehensive Plan and Zoning Maps to reflect these changes.

**SECTION 2.**

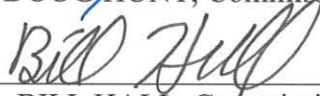
This Ordinance being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist and this Ordinance shall take effect upon its passage.

DATED this 12th day of March, 2014.

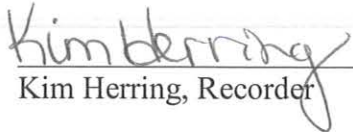
LINCOLN COUNTY BOARD OF COMMISSIONERS

  
TERRY N. THOMPSON, Chair

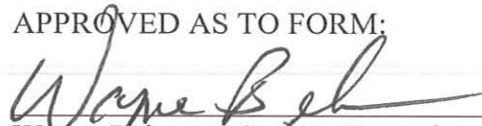
  
DOUG HUNT, Commissioner

  
BILL HALL, Commissioner

ATTESTED TO:

  
Kim Herring, Recorder

APPROVED AS TO FORM:

  
Wayne Belmont, County Counsel

BEFORE THE PLANNING COMMISSION  
OF  
LINCOLN COUNTY, OREGON

Comprehensive Map Amendment and Zone Change  
Applicant: Volland Siletz LLC  
Agent: Dennis Kauffman

) Case File: 01-LUPC-ZC-13  
) Findings, Conclusions and  
) Final Order

**Nature of the Application**

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

**Relevant Facts**

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

1. Property location: The property is located at 7006 Logsdan Road and 7070 Logsdan Road. The property is further identified on Lincoln County Assessor's map 10-09-04-00-00300.
2. Lot size: 11.9
3. Zoning Designation: : A-C (Agricultural Conservation) on the north of the Siletz River and T-C (Timber Conservation) on the south side of the Siletz River
4. Plan Designation: Agricultural Land/Timber Conservation Land
5. Topography and Vegetation: The topographic feature dominating the subject property is the Siletz River. The river runs from west to east, virtually through the center of the subject property. The riverine areas at the lower elevation portions of the property have been designated Floodway by Federal Emergency Management Administration (FEMA). The existing T-C zoned portion of the property is located within the lower-elevation Floodway. On the south border of the parcel along the north bank of the Siletz River exists a riparian area comprised of a strip of mature trees. On the north side of the river at the subject property adjacent to Logsdan Road, where the two existing dwellings are, the property has mature trees and lawns. This northern portion of the property is mostly level in elevation. Closer to the river that part of the property slopes down to the river.
6. Surrounding Land Use: The pattern of land use surrounding the subject property consists of a mixture of forestland, small scale farm use and scattered residential development. To the east of the subject property there are four developed A-C zoned parcels: tax lots 301 (4,14 acres), 1400 (2.71 acres), 1500 (2.81 acres) and 1600 (3.94 acres). Each of these tax lots contains a single-family dwelling. These four parcels are being used exclusively for residential development. To the north of the subject property, on the other side of the Logsdan Road, there are Tax lots 501 and 400. Tax lot

400 is 23.54 acres being utilized as pasture (part of a much larger agriculture operation that encompasses other parcels). Tax lot 501, again, also across the road, is a 4.77 acres parcel with a residence.

7. Existing Structures: The portion of tax lot 300 on the north bank of the Siletz River contains two legally built residential structures. One house (owned by Volland Siletz, LLC.) was constructed in 1960. The second house is owned by Dennis Kauffman and was constructed in 1935. The house owned by Dennis Kauffman sits on approximately .92 acres of land that is owned by Volland Siletz, LLC. The land on which this dwelling sits is under lease to Kauffman for 100 years with an option to renew. Tax lot 300 on the north of the Siletz River also contains a large shop, yards, wells and two septic systems.
8. Development Constraints: The Siletz River runs through the center of the subject property. On the north side of the river, where the houses are, there are four acres of higher elevation ground wedged between the Siletz River and Logsdan Road. Large parts of the rest of subject property are located within a Floodway.

Details of the applicant's proposal can be found in staff's report and evidence submitted by the applicant, which is incorporated into the record herein.

9. A public hearing was held before the Lincoln County Planning Commission on Monday, January 13, 2014. All interested parties were given an opportunity to testify.
10. Mr. Onno Husing, Director of Planning and Development with Lincoln County, gave the staff presentation. Husing noted that the Planning Staff determined that the property under review was zoned in error. Director Husing recommended to the Planning Commission that the Planning Commission adopt the set of findings submitted by the applicant.
11. There was no other oral testimony in either support or opposition of the application.
12. There were no letters of concern submitted by neighbors or agencies.
13. No party requested a continuance of the public hearing or for the record to remain open.

#### **Relevant Criteria**

##### **Lincoln County Land Use Code**

- a) LCC, Section 1.0005(4), Comprehensive Plan Designation Forest Lands.
- b) LCC, Section 1.0005(5), Comprehensive Plan Designation Agricultural Lands.
- c) LCC, Section 1.0065, Forest Land Policies.
- d) LCC, Section 1.0070, Agricultural Lands Policies.
- e) LCC, Section 1.0190(1,2), Plan Designations.
- f) LCC, Section 1.1115(5), Definitions; "Agricultural land".
- g) LCC, Section 1.1235, Quasi-Judicial Amendments.
- h) LCC, Section 1.1373, Agricultural Conservation Zone.
- i) LCC, Section 1.1375, Timber Conservation Zone.

- j) Oregon Statewide Planning Goal 3, Agricultural Lands.
- k) Oregon Statewide Planning Goal 4, Forest Lands.

**Findings**

The Commission finds:

1. Volland Siletz, LLC is the owner of tax lot 300 on the Lincoln County Assessor's Map 10-09-04. The property consists of approximately 11.9 acres. The portion of the parcel lying south of the Siletz River is zoned T-C. The portion of the parcel lying north of the Siletz River is zoned AC. Approximately 3.25 acres of land is zoned AC and approximately 8.65 acres is zoned T-C or is in the river.
2. There are two houses located on tax lot 300 north of the Siletz River. One house is owned by Volland Siletz, LLC. It was constructed in 1960. The second house is owned by Dennis Kauffman. It was built in 1935. The house owned by Kauffman sits on approximately 8.65 acres is zoned TC or is in the river.
3. Tax lot 301 on Map 10-09-04- is presently owned by Phillip and Cynthia Rainey. The house on tax lot 301 was built in 1970.
4. Previously, the Kauffman house was part of tax lot 301. However, when Kauffman purchased tax lot 300, a property line adjustment was done to place the house owned by Kauffman on tax lot 300.
5. All three houses were built before any zoning laws affected the property and before there were any minimum lot sizes or restrictions on how many houses could be placed on an individual parcel. Accordingly, all three houses were legally placed.
6. Tax lot 300 lying north of the Siletz River now contains two houses, both legally built, a large shop, yards, wells and septic systems that serve the two houses.
7. Although one house, the Kauffman house, "moved" from tax lot 301 to 300, the fact is that between tax lot 300 and 301, there were three legally built residences, all constructed prior to zoning laws and under the effective laws and ordinances each was entitled to its own lot. Since the Kauffman house will be the lot which is separated from tax lot 300, pursuant to OAR 660-006-0026(1)(d), it must be between two acres and five acres in size if the property is zoned TC.
8. That portion of tax lot 300 lying north of the Siletz River consists of approximately 3.25 acres of the 11.9-acre parcel. It has the improvements previously discussed, all of which preclude the ability to utilize any portion of the property lying north of the Siletz River for agricultural purposes.
9. The portion of the tax lot 300 lying north of the Siletz River is a narrow strip of land that, at its widest point, is approximately 250 feet between Logsdon Road, a paved county road, and the Siletz River (based on a survey by Denison Surveying). The average width of the parcel between the river and the road is less than 100 feet. Additionally, the portion of tax lot 300 lying north of the river slopes downward at a steep angle, further reducing the viability of this area for any agricultural use. The property between the road and the river has characteristics more resembling T-C zoned property rather than AC zoned property as can be seen by the aerial photo that was submitted. A review of the characteristics of the property demonstrate that whatever soil class may be present on this portion of tax lot 300, the improvements existing prior to zoning, its steep slopes, narrow width and existing trees, are all significant detractors from using the property for any agricultural use.

10. The placement of A-C and T-C zoning designations in the area surrounding the subject property has been inconsistent with property that is used for agricultural purposes being zoned T-C and T-C uses being zoned A-C. This position is substantiated by the information provided by the applicant. Pictures 7-12 submitted by the applicant show various properties located in the immediate vicinity that are all zoned T-C. All of these properties feature flat fields of at least 12-20 acres that are planted in hay or graze cattle and are of high quality, Class II or Class III soils. Three of those properties have been functioning farms for many years.
11. By contrast, the subject property has never been used for any agricultural pursuit, according to the statements of long time area residents, which have been submitted into the record.
12. The uses on that portion of tax lot 300 north of the river have existed prior to zoning laws and the designation of T-C or A-C will not change the actual use.
13. To the extent there is native vegetation growing on tax lot 300 north of the river, the vegetation is trees rather than grass fields.
14. OAR 660-006-0026(2)(d) provides that new land divisions or less than 80 acres may be approved to allow a division of a lot or parcel zoned for forest use if:
  - (a) At least two dwellings lawfully existed on the lot or parcel prior to November 4, 1993;
  - (b) Each dwelling complies with the criteria for a replacement dwelling under ORS 215.213(1) or 215.283(1);
  - (c) Except for one lot or parcel, each lot or parcel created under this subsection is between two and five acres in size;
  - (d) At least one dwelling is located on each lot or parcel created under this subsection; and
  - (e) The landowner of a lot or parcel created under this paragraph 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 with the county clerk of the county in which the parcel is located....
15. ORS 215.283(1)(p) provides that a lawfully established dwelling must have the following:
  - (A) Has intact exterior walls and roof structures;
  - (B) Has indoor plumbing consisting of a kitchen sink, toilet, and bathing facilities connected to a sanitary waste disposal system;
  - (C) Has interior wiring for interior lights; and
  - (D) Has a heating system.
16. The subject property meets the requirements set forth in the relevant portions of OAR 660-006-0026(2)(d) and ORS 215.283(1) set forth above.
  - a) As noted above, there were three legal dwellings between tax lots 300 and 301 prior to the execution of the laws. This was well before even the date of November 4, 1993. As such, whether there were two houses on tax lot 300 or tax lot 301 is not relevant because the combination of those two parcels were entitled to one additional lot so that each house was situated on its own parcel. There is no net increase of the number of dwellings that legally existed or could legally exist as November 4, 1993.

- b) Each of the dwellings complies with the requirements of ORS 215.283(1)(p) in that each has intact exterior walls and roof structure, indoor plumbing consisting of a kitchen sink, toilet and bathing facilities connected to a sanitary waste disposal system, has interior wiring for interior lights and has a heating system.
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- 17. The requirement to record a deed restriction prohibiting future divisions is a prospective act that can be made a condition of approval to be satisfied before final approval.
  - 18. Tax lot 300 can be divided so the newly created parcel being conveyed to Kauffman can be two acres in size.
  - 19. Given the existing improvements that predate zoning, the general topography of the parcel, the narrowness of the strip, north of the Siletz River, and the inconsistency of zoning when applied to actual uses in the vicinity, that portion of tax lot 300 lying north of the Siletz River was zoned in error and should appropriately be zoned T-C. The owner and applicant should be allowed to create a two-acres lot to allow the Kauffman house to sit on a legally created lot.

**Conclusions**

The record and findings support the conclusion that:

- 1. Substantial evidence in the record demonstrates that the change is in accord with the Comprehensive Plan goals and policies.
- 2. Substantial evidence in the record demonstrates that the change is in accord with the Statewide Planning Goals.
- 3. Substantial evidence in the record demonstrates that the A-C/Agriculture Conservation zoning was made in error and that the zoning should be changed to T-C/Timber Conservation.

**Order**

It is ORDERED by the Lincoln County Planning Commission that Case File 1-ZC-PC-13 be APPROVED. This approval will serve as a recommendation to the Lincoln County Board of Commissioners to change the comprehensive plan designation to Forest Lands and change the zone designation to T-C/Timber Conservation.

This ORDER was presented to and approved by the Lincoln County Planning Commission on February 10, 2014.

  
Cris Torp, Chair  
Lincoln County Planning Commission