

PASSED

BEFORE THE BOARD OF COUNTY COMMISSIONERS OF LANE COUNTY, OREGON

ORDINANCE NO. PA 1256) IN THE MATTER OF AMENDING THE RURAL COMPREHENSIVE
) PLAN TO REDESIGNATE LAND FROM "RURAL RESIDENTIAL"
) TO "RURAL COMMERCIAL", REZONE THAT LAND FROM
) "RR-5/RURAL RESIDENTIAL" TO "RC/RURAL COMMERCIAL";
) AND ADOPTING SAVINGS AND
) SEVERABILITY CLAUSES (file PA 06-5600; Powell)

WHEREAS, the Board of County Commissioners of Lane County, through enactment of Ordinance PA 884, has adopted Land Use Designations and Zoning for lands within the planning jurisdiction of the Lane County Rural Comprehensive Plan; and

WHEREAS, Lane Code 16.400 sets forth procedures for amendment of the Rural Comprehensive Plan, and Lane Code 16.252 sets forth procedures for rezoning lands within the jurisdiction of the Rural Comprehensive Plan; and

WHEREAS, in April 2006, application no. PA 06-5600 was made for a minor amendment to redesignate tax lot 4900 of map 19-03-11, from "Rural Residential" to "Rural Commercial" and concurrently rezone the property from "RR-5/Rural Residential" to "RC/Rural Commercial"; and

WHEREAS, the Lane County Planning Commission reviewed the proposal in a public hearing of May 1, 2007, deliberated on February 19, 2008, and recommended approval of the proposed amendment and rezoning; and

WHEREAS, evidence exists within the record indicating that the proposal meets the requirements of Lane Code Chapter 16, and the requirements of applicable state and local law; and

WHEREAS, the Board of County Commissioners has conducted a public hearing on April 1, 2009, and is now ready to take action;

NOW, THEREFORE, the Board of County Commissioners of Lane County Ordains as follows:

Section 1. The Lane County Rural Comprehensive Plan is amended by the redesignation of tax lot 4900 of Assessor's Map 19-03-11, from "Rural Residential" to "Rural Commercial", such territory depicted on the portion of Official Lane County Plan Map 1903 as further identified in Exhibit "A" attached and incorporated herein.

Section 2. Tax lot 4900 of Assessor's Map 19-03-11, is rezoned from "RR-5/Rural Residential" (Lane Code 16.290) to "RC/Rural Commercial" (Lane Code 16.291), such territory depicted on the portion of Official Lane County Zoning Map 1903 as further identified in Exhibit "B" attached and incorporated herein.

FURTHER, although not a part of this Ordinance, the Board of County Commissioners adopts Findings of Fact and Conclusions of Law as set forth in Exhibit "C" attached, in support of this action.

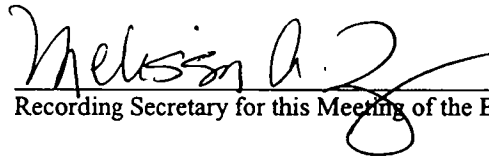
The prior designation and zone repealed by this Ordinance remain in full force and effect to authorize prosecution of persons in violation thereof prior to the effective date of this Ordinance.

If any section, subsection, sentence, clause, phrase or portion of this Ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision, and such holding shall not effect the validity of the remaining portions hereof.

ENACTED this 13th day of APRIL, 2009.



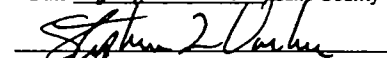
Chair, Lane County Board of County Commissioners



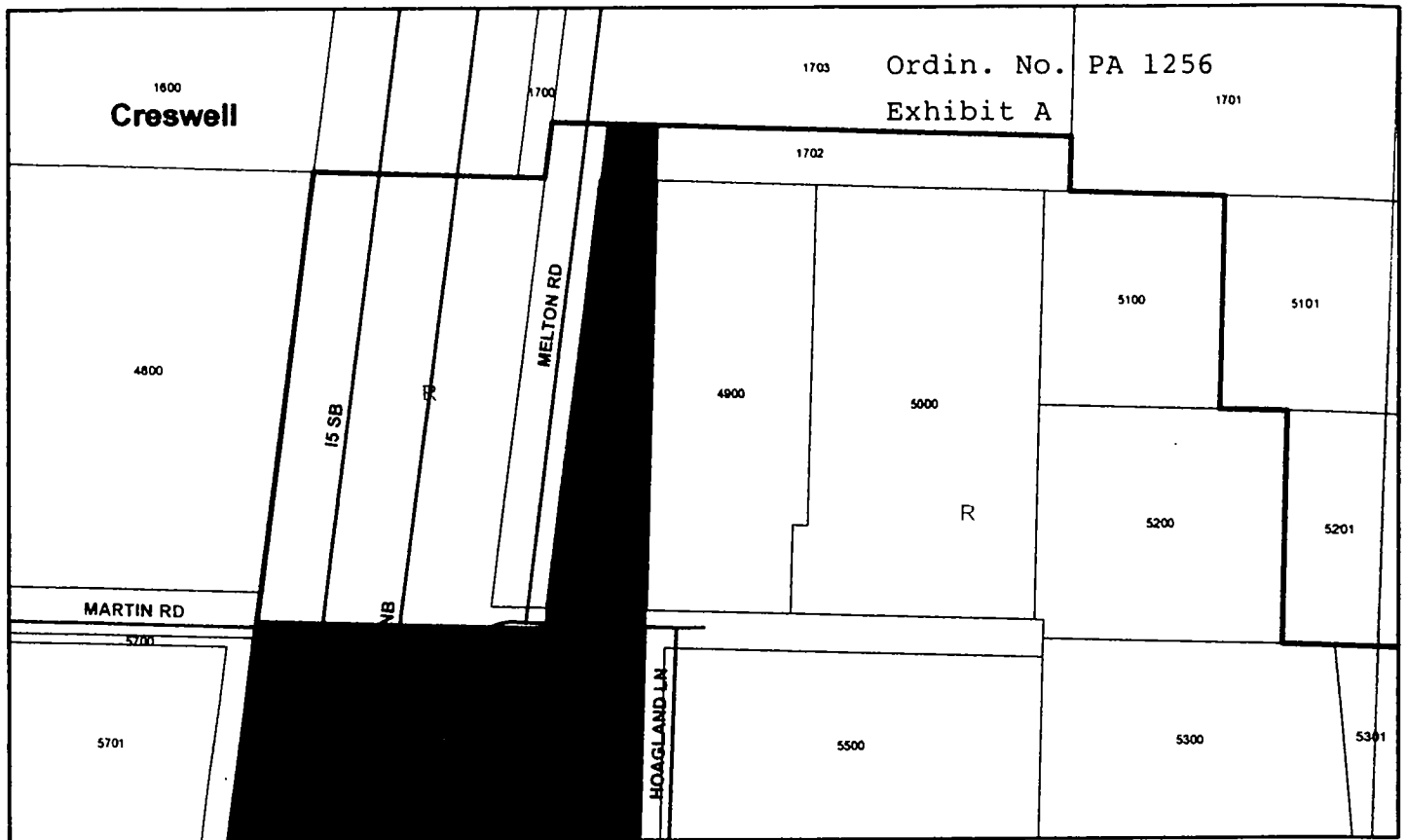
Recording Secretary for this Meeting of the Board

APPROVED AS TO FORM

Date 3-10-2009 Lane County



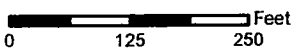
OFFICE OF LEGAL COUNSEL

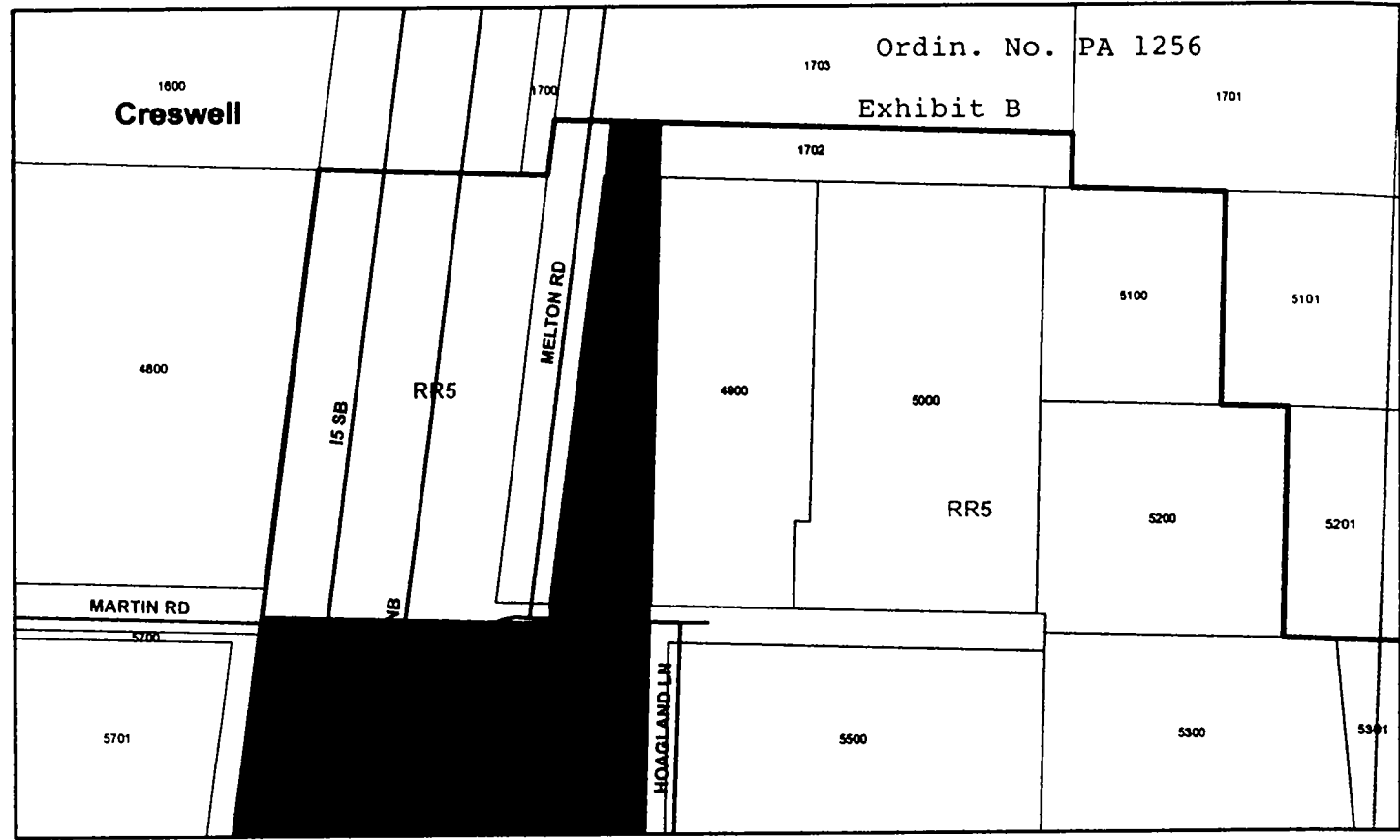


Existing Plan Designation



Change being enacted by No. PA-1256 on Official Plan Map 1903

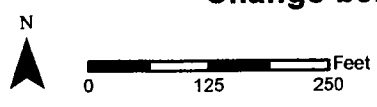




Existing Zoning



Change being enacted by No. PA-1256 on Official Zone Map 1903



FINDINGS OF FACT AND CONCLUSIONS OF LAW
FILE NO. PA 06-5600
March 2, 2009

The following findings of fact support the decision by the Lane County Board of Commissioners to approve a minor amendment to the Rural Comprehensive Plan and a concurrent zone change from RR-5 Rural Residential to RC Rural Commercial for the subject property described below.

GENERAL FINDINGS

- Finding 1. Subject property is 1.93 acres lot located at 33907 Martin Road, and identified on the Tax Assessor's Map T19-R03-S11 as tax lot 4900.
- Finding 2. The Applicant, Mr. Robert Powell, purchased the property on February 22, 2005 and is the legal owner of this property as shown and recorded on deed number 2005-012572, as recorded in the Lane County Office of Deeds and Records.
- Finding 3. The subject property is located on the north side of Martin Road. Abutting the property to the west is Mr. Powell's existing business (tax lot 4802) which is located at the corner of Melton Road and Martin Road. The plan and zone designation of this property was changed in the year 2000 to Rural Commercial. The current proposal basically expands the existing commercial use. The northbound lane of I-5 is adjacent to Melton Road. The Creswell city limits and the Creswell Airport are north of the subject property. Tax lot 5600 which is south of the subject property is zoned Rural Industrial and is developed with a commercial trucking business. Adjacent to the trucking business is tax lot 5500 which is zoned RR-5, Rural Residential, four acres in size and developed with a dwelling. To the east of the subject property are several lots that are zoned RR-5 and developed with dwellings.
- Finding 4. The zoning for this property is identified as Rural Residential, RR-5, on the Official Zoning Map 19S-03 for Lane County. Due to proximity to the Creswell Airport, the airport overlay zone applies to this site. The Airport Safety Combining Zone is defined in LC 16.246 and is indicated by an "/AS-RCP" suffix. The main effect of the AS overlay on the subject property is to limit the height of buildings and structures near the airport. This designation remains unchanged.
- Finding 5. The subject property is topographically level, with a dwelling built in 1938.
- Finding 6. Any new commercial uses on the subject property will be subject to further land use review (Planning Director level review) per LC 16.291(3) & (4). These standards will address the compatibility of a specific commercial use with nearby properties, as well as address the "carrying capacity" in terms of septic system, water supply, and actual traffic generation.
- Finding 7. The Planning Commission held a public hearing on this matter on May 1, 2007. The Commission subsequently recommended approval of the request, by a vote of 7-0 on February 19, 2008.

Finding 8. According to LC 16.400(8)(a)(i), this application is for a minor plan amendment because it involves only a change to the plan diagram and does not require any exceptions to Statewide Planning Goals. The land is zoned RR-5 and therefore is already within a developed and committed exception area.

FINDINGS RELATED TO APPROVAL CRITERIA

Finding 9. The criteria for RCP amendments are identified in LC 16.400(6)(h)(iii).

According to LC 16.400(6)(h)(iii), the proposed amendment must be at least one of the five following tests:

- (i-i) necessary to correct an identified error in the application of the Plan; OR***
- (ii-ii) necessary to fulfill an identified public or community need for the intended result of the component or amendment; OR***
- (iii-iii) necessary to comply with the mandate of local, state or federal policy or law; OR***
- (iv-iv) necessary to provide for the implementation of adopted Plan policy or elements; OR***
- (v-v) otherwise deemed by the Board, for reasons briefly set forth in its decision, to be desirable, appropriate or proper.***

The proposed amendment meets *(iv-iv)* above since it is *necessary to provide for the implementation of adopted Plan policy or elements*, as described under findings related to specific RCP Goals and Policy below. The proposal also meets *(v-v)* above, as the Board of Commissioners finds that it is *desirable, appropriate, or proper*.

Finding 10. Conformity with RCP Goals and Policies is required according to LC 16.400(6)(h)(iii)(cc), which states:

For Minor Amendments... the Plan amendment or component does not conflict with adopted Policies of the Rural Comprehensive Plan, and if possible, achieves policy support.

Applicable RCP Goals include Goal #2 (Land Use Planning), Goal #9 (Economy), Goal #10 (Housing) and Goal #11 (Public Facilities and Services, and Goal #14 (Urbanization. Discussion about compliance with each of these goals, and their applicable policies, follows.

Goal #2: Land Use Planning

RCP Goal 2, Policy 11 and 11(b) reads as follows.

- 11. Land use designations and densities appropriate for developed and committed areas shall be determined through compliance with other plan policies and the following***

criteria:

- b. A Commercial designation shall be applied to existing uses and/or tracts presently zoned for commercial activities addressing the same criteria as listed for the Rural Residential designation [Policy 11(a)]. The Rural Commercial designation shall encompass all commercial activities in rural area. The range of limited, medium and medium/heavy commercial designations shall be applicable in areas receiving a Community designation.***

Tax lot 4802, adjacent and west of the subject property (tax lot 4900), is currently owned by the Applicant and already zoned RC. Tax lot 4802 is engaged in the retail sale of farm equipment. While the exact commercial use of the subject property is not known at this time, the proposal includes an “existing tract” currently devoted to commercial activity.

According to Policy 11(b), the determination of the appropriate “designation and density” of the subject property is to be determined, in part, by compliance with the same criteria applied to the Rural Residential designation in Policy 11(a). Policy 11(a) requires that the zoning designation be evaluated by the following criteria:

i. Existing development pattern and density;

The area surrounding the property is zoned AO, Airport Operations on the north, RR-5, Rural Residential on the south and east, RC (Rural Commercial) to the west (TL 4802). Land to the west across I-5 is designate for both residential and industrial uses. The intensity of development in the area increased substantially with the addition of the Creswell Market and Emerald Valley Resort. The proposed RC zoning is compatible with the existing development pattern and density.

ii. On-site sewage disposal suitability, or community sewerage;

The property already has on-site septic serving the existing dwelling. Any commercial development of this property would be required to demonstrate any needed septic capacity during the subsequent Special Use Permit process of LC 16.291(3) & (4). This would involve documentation to assure that the system is functioning correctly and that the capacity is adequate to serve the intended use, or can be expanded to serve that use.

iii. Access;

Access to the property is excellent with frontage on two public roads: Martin Road and Melton Road.

iv. Public services;

All necessary public services are available to the property, as described under Goal 11 below. Evidence of sufficient water supply was provided during the rezone of tax lot 4802, adjacent on the west, zoned RC, and under the Applicant’s ownership. The documentation was in the form of

a 4-hour well/pump test conducted by the firm Aquametrics. The test found that the well produces 19 gpm, which was probably the limit of the pump installed in the well. The water level in the well recovered completely within 15 minutes after the test was completed. The report concludes that:

"This is an excellent well and will likely produce more water than the installed pump can deliver."

Further evidence of water supply is provided in the record in the form of well log reports for all wells dug since 1980 and reported to the State Watermaster on properties in the same township-range-section as the subject property. These log reports show that nearby wells are producing from 12 to 60 gpm.

v. *Lack of natural hazards;*

There are no natural hazards or wetlands on the property.

vi. *Effect on resource lands.*

The property is not adjacent to any natural resource lands and there does not appear to be any effect on resource lands that would result from this zone change. The nearest resource land is a small strip of farmland located about 500 feet to the south of subject property and just south of a parcel zoned RI, Rural Industrial (tax lot 5600).

Goal #9: Economy

RCP Goal #9, Policy #1 states, in part that *"... the county shall encourage the diversification and growth of the local economy."*

As commercially-zone land, the subject property can support commercial activity that will create jobs and contribute to the growth and diversification of the local economy.

RCP Goal #9, Policy #8 states that land uses which are zoned commercial *"...shall be zoned to allow for continued operation and routine expansion commensurate with their character, provided significant conflicts with other land uses (existing or planned) do not result."*

This proposal will allow expansion of the commercial use currently taking place on the adjacent tax lot (4802). The proposal does not appear to create any conflicts with other existing, or planned, land uses in the area.

RCP Goal #9, Policy #9 states: *"Tourism shall be considered as a base industry having high potential for growth throughout the County. Development of facilities oriented towards tourists shall be given maximum support within the framework of these policies."*

Due to its highly visible location along I-5 and near a freeway exit, this site has excellent

potential for the tourism-related uses which are permitted in the RC zone.

Goal #10: Housing

The property is in a location that is highly impacted by traffic noise and pollution from the interstate and airplane noise from the airport making it a poor location for residential use. This zone change would not necessary eliminate desired housing, since the Rural Commercial zone allows for residential use and could accommodate both residential and commercial uses together.

Goal #11: Public Facilities and Services

RCP Goal #11, Policy #1 states that *“Designation of land into any given category either initially or by subsequent plan amendment, shall be consistent with the minimum level of services established for that category.”*

Service levels for Rural Commercial are defined under Policy #6(g) and include schools, on-site sewage disposal, individual water supply, electrical service, telephone service, rural level of fire and police protection and reasonable access to solid waste disposal facility.

Services and service providers for the subject property are listed below:

Water:	Existing on-site well
Sewer:	Existing on-site septic
Road:	Martin Rd. (county)
Fire District:	Creswell Rural FPD
Power Company:	Emerald PUD
School District:	Creswell District #40
Phone Company:	Qwest

All required services are available to this property.

Goal #14: Urbanization

RCP Goal #14, Policy #1 reads as follows:

1. The County shall encourage new residential, commercial and industrial development to locate within existing incorporated cities or rural communities. Any growth outside Urban Growth Boundaries must:

a. Be restricted to committed or developed areas including approved new development centers; or

b. Under certain specified conditions set forth in this plan, industrial, commercial and residential development is appropriate outside of developed and committed areas provided a valid exception is taken and/or all Statewide Goal requirements are met.

c. Any community designated in the plan that does not have an adequate Urban Growth Boundary, or any addition to such community that may be proposed, shall be justified by a valid exception pursuant to Statewide Goal 2, Part II.

The subject property is within a developed and committed exception area and therefore meets part (a) and complies with this policy.

Based on the above findings of conformity with individual goals and policies applicable to this decision, this application is found to conform to the Goals and Policies of the RCP, as required.

Finding #11: The proposed zone change is consistent with the “general purposes” of Lane Code Chapter 16. Specifically, the proposal will help to achieve the following purposes listed in the *Introductory and General Provisions, LC 16.003 Purposes*:

(1) Insure that the development of property within the County is commensurate with the character and physical limitations of the land and, in general, to promote and protect the public health, safety, convenience and welfare.

The proposal is compatible with the current character of the area and does not exceed any physical limitations of land in the area. The property is adequately served by roads and already has on-site water and septic. Any new commercial use of the property will also be subsequently reviewed under LC 16.291(3) & (4).

(2) Protect and diversify the economy of the County.

This is a prime location for providing commercial services to the airport and Interstate travelers. By allowing an appropriate mix of land uses, this area can serve a diverse range of needs which will tend to strengthen the local economy.

(6) Conserve all forms of energy through sound economical use of land and land uses developed on the land.

This location has a convenient and efficient relationship to the Creswell Airport, the City of Creswell, and Interstate traffic. The location can provide needed commercial services in a convenient way that minimizes travel distances.

(12) Provide for the recreational needs of residents of Lane County and visitors to the County.

As a high-visibility location with convenient access from I-5, this property has potential to serve tourists, travelers and interstate commerce.

Finding #12: Lane Code 16.252(2) states that “***...rezonings shall be consistent with the specific purposes of the zone classification proposed, ...***” The zone classification sought through this

application is consistent with the *purpose* and *permitted uses* as defined in LC 16.291 for the Rural Commercial zone as cited below:

16.291 Rural Commercial Zone (RC, RCP).

(1) Purpose. The purposes of the Rural Commercial Zone (RC, RCP) are: to implement the policies of the Lane County Rural Comprehensive Plan (RCP), to allow commercial uses and development that are consistent with Goal 14 and that are for the retail trade of products or services needed by rural residents or by persons traveling through the rural area, and to provide protective measures for riparian vegetation along Class I streams designated as significant in the Rural Comprehensive Plan. LC 16.291 is not retroactive. The Director has no authority to initiate compliance with LC 16.291 for lawfully (per LC Chapter 16) existing uses.

The analysis under the RCP policies, above, demonstrates that the proposal implements plan policies, including Goal 14. The proposal would allow the expansion of retail trade of farm equipment currently taking place on the adjacent tax lot (4802). This equipment outlet serves rural residents. There are no Class 1 riparian streams in the vicinity.

Finding #13: Under Lane Code 16.400(6)(iii)(aa), the application must meet all applicable state and local laws. Conformity with Lane Code and applicable RCP Goals and Policies have already been addressed above. Demonstration of compliance with the Statewide Planning Goal #12, ***Transportation Planning Rule*** was performed as part of the application.

Applicant submitted a Traffic Impact Analysis report that was prepared for the adjacent tax lot 4802, by Access Engineering. This document was considered as sufficient to address county road system concerns. No concerns from the City of Creswell or the State (ODOT) have been filed. It is also noted that under LC 16.291(3) & (4)(f), any new and specific commercial use will require traffic generation data specific to that use be submitted and approved as part of the Special Use Permit process.

Finding#14: As above, under Lane Code 16.400(6)(iii)(aa), the application must meet all applicable state and local laws. OAR 660-004-0018(2) (2001), Planning and Zoning for Exception Areas, is also applicable to this application.

OAR 660-004-0018(2) guides the exception process for Statewide Planning Goal #2, and refers to zoning designations on developed and committed lands.

OAR 660-004-0018(2) Planning and Zoning for Exception Areas

(2) For "physically developed" and "irrevocably committed" exceptions to goals, plan, and zone designations shall authorize a single numeric minimum lot size and shall limit uses, density, and public facilities and services to those:

(a) Which are the same as the existing land uses on the exception site; or

(b) Which meet the following requirements:

(A) The rural uses, density, and public facilities and services will maintain the land as "Rural Land" as defined by the goals and are consistent with all other applicable Goal requirements; and

(B) The rural uses, density, and public facilities and services will not commit adjacent or nearby resource land to nonresource use as defined in OAR 660-004-0028; and

(C) The rural uses, density, and public facilities and services are compatible with adjacent or nearby resource uses.

There are two routes to achieve compliance with this statute via sections (2)(a) or (b). The applicant has demonstrated compliance with both routes. Based on section 2(a) uses are to be limited to those which "*are the same as the existing land uses on the exception site.*" Lane County has interpreted this to mean that the proposed use is the same as a land use anywhere within the exception area designated by Lane County.

Subsection (2)(a) of this rule is met, as tax lot 4802, adjacent on the west and under the same ownership, is RC zoned land found within the same exception site. Retail trade of farm equipment occurs on tax lot 4802. The current proposal is to expand that use onto tax lot 4900.

Regarding compliance with section (2)(b), which guides rural land uses, the applicant must show compliance with subsections (A), (B) and (C).

(A) The rural uses, density, and public facilities and services will maintain the land as "Rural Land" as defined by the goals and are consistent with all other applicable Goal requirements; and

Subsection (A) is addressed with regard to the subject property being maintained as "rural land" since this is an application for Rural Commercial zoning which specifically limits development to those suitable for rural lands. As stated in RCP Goal #2, Policy 11(b), the RC-Rural Commercial designation is the only commercial zoning designation for commercial activities in rural areas. The RC zone is designed to accommodate rural types of commercial uses.

Goal #14 of the State Land Use Program addresses urbanization and prohibits urban uses of rural lands. Until 2000, there has been no clear definition of what constitutes an "urban" use. The Land Conservation and Development Commission (LCDC) issued new rules on June 9, 2000 (OAR 660-004-0040) to clarify what levels of development constitute "urbanization" that should be prevented on rural lands and instead directed to land within urban growth boundaries and designated rural communities.

The new rule concerned primarily with the subdivision of Rural Residential land into smaller lots and does not limit development of existing Rural Residential lots. However, LCDC's new rule addresses only residential land uses and specifically excludes rural commercial uses as well as rural industrial and public uses. Thus, the new rule provides no guidance on what definition should be used to distinguish urban from rural uses when it comes to commercial uses. It is also important to note that this application is limited to a zone change (and associated minor Plan amendment) and is not for a subdivision or partition of property and would not result in greater parcelization of rural land.

(B) The rural uses, density and public facilities and services will not commit adjacent or nearby resource land to nonresource use as defined in OAR 660-004-0028; and

The proposed zone change would have no apparent impact on resources lands. Surrounding land uses are described in the application on pages 5-7 and additional information can be found in the aerial photo and zoning maps provided. The subject property has no adjacent resource lands. Land to the north is zoned AO (Airport Operations), RR-5 (Rural Residential) to the east and south. The adjacent property to the west is zoned Rural Commercial. The nearest resource land is about 500 feet to the south of the subject property.

(C) The rural uses, density and public facilities and services are compatible with adjacent or nearby resource uses.

As stated above, there is no adjacent resource land, and there is no apparent impact on nearby resources land. Any additional traffic generated by the zone change would take Melton Road past the narrow strip of resource land on the east side of the road to enter the Creswell UGB. This would not disrupt farming activity.