

BEFORE THE LAND USE BOARD OF APPEALS  
OF THE STATE OF OREGON

LINN COUNTY FARM BUREAU, CORY  
KOOS and KIM KOOS, JOHN GALE  
SWATZKA ESTATE, BETTY JO SMITH,  
MARY B. PARKER and LONNIE L. PARKER,  
PETER BOUCOT and JAN BOUCOT,  
MICHAEL GREIG and PRISCILLA GREIG,  
TELLY WIRTH, CAROLYN JENKS OLSEN,  
CINDY CLARK, ART MARTINAK and  
JOYCE MARTINAK, DEAN SCHROCK and  
KATHLEEN SCHROCK,

Petitioners,

v.

LINN COUNTY BOARD OF  
COMMISSIONERS,

Respondent.

LUBA No. 2010-006

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**PETITION FOR REVIEW**

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## TABLE OF CONTENTS

	<b>Page</b>
I. STANDING .....	1
II. STATEMENT OF THE CASE.....	1
A. Nature of the Decision and Relief Sought. ....	1
B. Summary of Argument. ....	1
C. Summary of Material Facts.....	2
III. STATEMENT OF JURISDICTION.....	4
IV. STANDARD OF REVIEW.....	4
V. ASSIGNMENTS OF ERROR .....	5
FIRST ASSIGNMENT OF ERROR .....	5
SECOND ASSIGNMENT OF ERROR .....	10
THIRD ASSIGNMENT OF ERROR.....	17
FOURTH ASSIGNMENT OF ERROR .....	20
VI. CONCLUSION.....	21

## APPENDICES

	<b>Page</b>
FINAL DECISION OF LINN COUNTY	APP A
EXCERPTS FROM THE LINN COUNTY COMPREHENSIVE PLAN AND CODE	APP B

1           **I.       STANDING**

2           ORS 197.830(2) establishes two requirements for standing to bring a LUBA appeal.  
3           Petitioners must have (1) filed a timely notice of intent to appeal, and (2) appeared during the  
4           local proceedings. *Miller v. Washington County*, 25 Or LUBA 169 (1993). The final order on  
5           the proceedings was issued on January 11, 2010. Petitioners’ notice of intent to appeal was filed  
6           on January 25, 2010, within 21 days of the final decision. Petitioners appeared orally and in  
7           writing during the local proceeding. Rec. pp. 112-114, 116-118, 126, 128-129, 131-137, 145,  
8           1020, 1032, and elsewhere. Thus, Petitioners have standing.

9           **II.       STATEMENT OF THE CASE**

10           **A.       Nature of the Decision and Relief Sought.**

11           The challenged decision, Linn County Board of Commissioners Resolution No. 2009-570  
12           (the “Challenged Decision”), approves a conditional use permit application by the Linn County  
13           Parks & Recreation Department to develop a County park on a 175-acre property, including  
14           recreational vehicle camping facilities in the Exclusive Farm Use (EFU) zone. Petitioners seek  
15           reversal or remand of the County’s decision.

16           **B.       Summary of Argument.**

17           Linn County (“Respondents” or “County”) misinterpreted ORS 215.283(2)(d)’s  
18           allowance of parks on EFU land by ignoring the limitations imposed on such use by the  
19           implementing regulations under OAR 660-034-0035 and 660-034-0040. Although public parks  
20           are permissible uses on farmland, the urban type RV park authorized by Linn County in the  
21           challenged decision exceeds the intensity of allowable park uses when the County has not  
22           adopted a local park master plan or taken an exception to Goal 3.

23           Based on the analysis of state statute and park planning regulations, the County could not  
24           approve the RV park component of the proposed park without taking exceptions to the Goals.  
25           Since the statewide process for avoiding the exception process has not been met in this  
26           application, the County was required to determine whether Goal 14 is implicated by the proposed

1 196 space RV park. Based on *1000 Friends of Oregon v. Marion County*, 24 Or LUBA 20  
2 (1992), and *1000 Friends of Oregon v. LCDC* (“Curry County”), 301 Or 447 (1986), the RV  
3 park is an urban use on resource land that is impermissible unless the County undergoes an  
4 exception to Goal 14.

5 Moreover, the County’s proposal to develop urban levels of public services requires the  
6 County to review the application for an exception to Goal 11. The septic system proposed to  
7 serve the RV park and other park uses will cross two parcels and is an urban scale community  
8 facility that qualifies as a sewer system under OAR 660-011-0060(1)(f). These characteristics  
9 show that County’s process culminates in allowing the establishment of a new sewer system  
10 outside of the UGB in contravention to OAR 660-011-0060(2)(a) and impermissibly does so  
11 without taking an exception to Goal 11. Further, the County’s condition of approval to  
12 consolidate the parcels is an improper deferral of the county code criteria and Petitioners due  
13 process with respect to construction of the septic system under *Gould v. Deschutes County*  
14 (“*Gould I*”), 216 Or.App. 140 (2007) and *Gould v. Deschutes County* (“*Gould IV*”), 227  
15 Or.App. 601, 611 (2009).

16 In addition, the RV park use requires review under Goal 12 to determine whether  
17 allowing the RV park will comply with the transportation planning rule (TPR) because Goal  
18 exceptions will be required. Since the record does not contain a final traffic study and the sole  
19 traffic study prepared to analyze the project only reviews impacts in 2008, the TPR is violated  
20 because the County has not reviewed the project in light of the TPR planning period.

21 In light of the County’s improper reliance on state law under ORS 215.283 and OAR  
22 660-034-0040 to avoid direct application of the Goals, the County unlawfully approved the  
23 proposed urban uses by dressing the RV park in the costume of a local park.

24 **C. Summary of Material Facts.**

25 In this case, Linn County attempts to enter the business of renting recreational vehicle  
26 spaces, 196 of them, within an RV “Park” under the guise of building a local public park. On

1 January 5, 2010 Linn County approved a conditional use permit to develop a county park on a  
2 175-acre property identified as 12-3-4 tax lots 500 and 600. Rec. pp. 6-9. The approval  
3 guarantees that 196 year round RV parking spaces are allowed at the park, even though the Parks  
4 & Recreation Department intends to phase the RV parking space development beginning with 50  
5 spaces. Rec. p. 11. The property is planned and zoned Exclusive Farm Use (EFU) on the far  
6 west portion of the County, where the comprehensive plan emphasizes protection of farmland for  
7 farm use. Rec. pp. 10 and 156. It is located at the southwest corner of the intersection of  
8 Highway 34 and Seven Mile Lane, within 2 – 2.4 miles of the urban growth boundaries (UGB)  
9 of both Albany and Tangent. Rec. pp. 10 and 21. The land has not been included in the  
10 County’s local park master plan, is prime farmland as identified in the County’s comprehensive  
11 plan, comprised of Class II-IV soils, and is currently under cultivation in perennial ryegrass.  
12 Rec. pp. 150, 153, 201 and 1002.

13 The proposed park would include natural areas and day use areas. Rec. p. 11. Sixty of  
14 the 175 acres would contain RV camping facilities accommodating up to 196 spaces. Rec. p. 11.  
15 The park amenities would include trails, play areas, shelters and restrooms with the necessary  
16 supporting infrastructure and utilities. Access would be at two locations on Seven Mile Lane.  
17 The County stated that water requirements would be 20,000 – 25,000 per day, provided by a  
18 community water system. Rec. p. 26. Urban scale sewage disposal facilities to serve the RV  
19 park, RV dump station, and up to eight restroom/shower locations would be provided on-site and  
20 cross both tax lots. Rec. pp. 26 and 211. Although the County claims that only 50 RV spaces  
21 will be constructed at this time, the supporting infrastructure and utilities for the full 196 space  
22 RV park have been approved for the entire project. Rec. pp. 6-9.

23 Notwithstanding the many existing RV facilities available nearby and along the I-5  
24 corridor, including the Blue Ox RV Park in Albany, the Mallard Creek Golf Course, Foster Lake  
25 RV Park & Campground, Lane KOA, KOA Albany-Corvallis, and Knox Butte RV Park, and an  
26 RV Park currently under development along I-5 at the Jefferson exit (Rec. p. 156), the County

1 believes that additional agricultural land should be transformed into an urban-scale RV Park with  
2 individual water, electrical and sewer hook-ups, permanent caretaker residence, camp store,  
3 clubhouses, and restroom facilities. Rec. pp. 10, 12 and 197.

### 4 III. STATEMENT OF JURISDICTION

5 Respondent's final decision involves the discretionary application of the state land use  
6 statutes and regulations, as well as the County's Comprehensive Plan. Accordingly, the County  
7 decision is a land use decision as that term is defined under ORS 197.015(10).

### 8 IV. STANDARD OF REVIEW

9 Under ORS 197.835(9), LUBA must reverse or remand the County's decision if it  
10 improperly construed the law or made a decision unsupported by substantial evidence. The  
11 County identified the following state laws as applicable decision criteria: ORS 215.283(2)(d),  
12 OAR 660-034-0035 and OAR 660-034-0040. Therefore, LUBA is not required to give the  
13 County's interpretation of ORS 215.283(2)(d) and the related administrative rules deference;  
14 instead LUBA must determine whether the county correctly interpreted the applicable statutes.  
15 *Collins v. Klamath County*, 148 Or App 515, 520, 941 P2d 559 (1997) (citing *Marquam Farms*  
16 *Corp. v. Multnomah County*, 147 Or App 368, 380, 936 P2d 990 (1997)). As will be shown  
17 below, the County misinterpreted the state land use regulations and inadequately addressed the  
18 approval criteria. Therefore, LUBA must reverse or remand the County's decision.

19 In addition, under ORS 197.835(8), LUBA must reverse or remand the County's decision  
20 if the challenged decision is not in compliance with the County's comprehensive plan. The  
21 County listed as decision criteria Linn County's Comprehensive Plan ("LCC") 933.310 which  
22 states that all criteria listed in 933.310(B) apply to the proposed park as well as mandating that  
23 "other requirements of law are met." In addition, LCC 928.330, governing nonfarm uses on  
24 EFU zones, similarly requires that uses approved in the Rural Resource Zone must meet "other  
25 requirements of the law." In several instances discussed in the assignments of error below, the  
26

1 County failed to meet requirements of its comprehensive plan, the county's local constitution  
2 governing land use decisions. Therefore, the County's decision must be reversed or remanded.

3 **V. ASSIGNMENTS OF ERROR**

4 **FIRST ASSIGNMENT OF ERROR - The County Misinterpreted the**

5 **Applicable Law and Failed to Comply with Goal 2, Exceptions.**

6 The County's decision criteria includes,

7 "Relevant statutes and administrative rules include ORS  
8 215.283(1)(p) and 215.283(2)(d); ORS 215.296; OAR 660-034-  
0035; and OAR 660-034-0040."

9 Rec. p. 10. The County findings then contends that,

10 "Arguments have been made in this case that the proposed park  
11 cannot be approved unless the County takes 'exception' to a host  
12 of statewide planning goals\*\*\* The Board rejects the arguments  
13 made with regard to Goal exceptions. State law allows the  
development of public parks in Exclusive Farm Use zones. An  
exception is not required to allow public park uses in the  
established zone.\*\*\*

14 ORS 215.283 allows listed farm and nonfarm uses to take place in  
15 exclusive farm use zones. Both state statute and LCDC  
16 administrative rules allow the use of agricultural land for the  
development of public parks."

17 Rec. pp. 18-19. However, the permissibility of locating a public park on agricultural and  
18 forestland is limited by the state regulations that govern local park planning. Pursuant to  
19 OAR 660-034-0040, LCDC created a process to plan for local parks on EFU lands, as requiring  
20 the preparation of local park master plans.<sup>1</sup>

21 \_\_\_\_\_  
22 <sup>1</sup> OAR 660-034-0040 Planning for Local Parks

23 "(1) Local park providers may prepare local park master plans, and local governments may amend  
24 acknowledged comprehensive plans and zoning ordinances pursuant to the requirements and procedures of  
25 ORS 197.610 to 197.625 in order to implement such local park plans. Local governments are not required  
26 to adopt a local park master plan in order to approve a land use decision allowing parks or park uses on  
agricultural lands under provisions of ORS 215.213 or 215.283 or on forestlands under provisions of OAR  
660-006-0025(4), as further addressed in sections (3) and (4) of this rule. If a local government decides to  
adopt a local park plan as part of the local comprehensive plan, the adoption shall include:

(a) A plan map designation, as necessary, to indicate the location and boundaries of the local park; and

1 The purpose of local park master planning is to take into account those comprehensive  
2 plan policies that prevent adverse impacts to other valued resources like agricultural land, and  
3 require recreational needs studies. See OAR 660-034-0040(4)(b) and OAR 736-018-  
4 0015(16)(f).<sup>2</sup> For example, looking at LCC governing community facilities and development,  
5 LCC Chapter 904<sup>3</sup> applies to recreational planning. LCC 904.400 directs that the

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7 (b) Appropriate zoning categories and map designations (a "local park" zone or overlay zone is  
8 recommended), including objective land use and siting review criteria, in order to authorize the existing and  
9 planned park uses described in local park master plan.

10 (2) Unless the context requires otherwise, this rule does not require changes to:

11 (a) Local park plans that were adopted as part of an acknowledged local land use plan prior to July 15,  
12 1998; or

13 (b) Lawful uses in existence within local parks on July 15, 1998.

14 (3) All uses allowed under Statewide Planning Goal 3 are allowed on agricultural land within a local park  
15 and all uses allowed under Statewide Planning Goal 4 are allowed on forest land within a local park, in  
16 accordance with applicable laws, statewide goals, and rules.

17 (4) Although some of the uses listed in OAR 660-034-0035(2)(a) to (g) are not allowed on agricultural or  
18 forest land without an exception to Goal 3 or Goal 4, a local government is not required to take an  
19 exception to Goals 3 or 4 to allow such uses on land within a local park provided such uses, alone or in  
20 combination, meet all other statewide goals and are described and authorized in a local park master plan  
21 that:

(a) Is adopted as part of the local comprehensive plan in conformance with Section (1) of this rule and  
consistent with all statewide goals;

(b) Is prepared and adopted applying criteria comparable to those required for uses in state parks under  
OAR chapter 736, division 18; and

(c) Includes findings demonstrating compliance with ORS 215.296 for all uses and activities proposed on  
or adjacent to land zoned for farm or forest use.”

2 Note that OAR 660-034-0040(b) directs local park master planning prepared and adopted applying criteria  
comparable to those required for uses in state parks under OAR chapter 736, division 18, which is why Petitioners  
point to the criteria in OAR 736-018-0015(16)(f) that

“Findings describing the compliance of the master plan with the state land use  
goals, ORS 215.296, compatibility with applicable local comprehensive plans,  
and other findings as needed for local comprehensive plan amendments\*\*\*\*”

3 Although Linn County Code Chapter 904 is not in the record, the Court may take judicial notice of these  
documents. *Fort Vannoy Irr. Dist. v. Water Resources Com'n*, 345 Or 56, 188 P3d 277 (2008).

1                    “[c]ounty’s primary niche in the provision of park land is largely  
2                    outside of the larger urban areas and federal resource lands, and  
3                    away from the intensive agricultural lands in the far west portion  
4                    of Linn County.” (emphasis added).

5                    LCC 904.400 further directs that development of future proposals for recreational facilities  
6                    should include consideration of the recreational needs of the County as determined through  
7                    recreation studies and public input. Rec. pp. 152-153, 156. The County’s decision to ignore this  
8                    plan policy obviated the need for a master planning process that would require a public review  
9                    process under OAR Chapter 736, Division 18, and would require explicit findings demonstrating  
10                    compliance with ORS 215.296 regarding whether the park would increase farming costs.<sup>4</sup>  
11                    Rec. pp. 112 and 1004. In effect, if a park master plan is adopted then the County can avoid  
12                    taking Goal 3 or Goal 4 exceptions. Linn County has not prepared such a local parks master plan  
13                    and Petitioners raised the lack of such plan throughout the public review process. Rec. pp 153  
14                    and 1002.

15                    Where no local park master plan has been adopted, Linn County may still consider a local  
16                    plan in compliance with OAR 660-034-0040(4), which provides:

17                    “(4) Although some of the uses listed in OAR 660-034-0035(2)(a)  
18                    to (g) are not allowed on agricultural or forest land without an  
19                    exception to Goal 3 or Goal 4, a local government is not required  
20                    to take an exception to Goals 3 or 4 to allow such uses on land  
21                    within a local park provided such uses, alone or in combination,  
22                    meet all other statewide goals and are described and authorized in  
23                    a local park master plan that:

24                    <sup>4</sup> See OAR 660-034-0040(4)(b) and (c). Under OAR 660-034-0040(4)(b), the requirement for local parks  
25                    master planning as a method for avoiding direct application of the goals requires that a local park plan be prepared  
26                    and adopted applying criteria comparable to those required for state parks under OAR chapter 736 division 18. Such  
                         criteria would include, for example OAR 736-018-0015(2) parks master planning which requires assessment of  
                         suitability of an area for a park; OAR 736-018-0015(7) assessment of need; OAR 736-018-0015(14) impacts on  
                         adjacent land; OAR 736-018-0020(2)(i) mitigate impacts on public services; OAR 736-018-0020(k) comply with  
                         land use goals; and OAR 736-018-0020(j) compliance with the comprehensive plan. The master planning process  
                         would have looked at the goals in context of the need and impacts of the park and if approved would have been  
                         allowed without having to take exceptions to the statewide planning goals. However, the County completely  
                         ignored this process.

1 (a) Is adopted as part of the local comprehensive plan in  
2 conformance with Section (1) of this rule and consistent with all  
3 statewide goals;

3 (b) Is prepared and adopted applying criteria comparable to those  
4 required for uses in state parks under OAR chapter 736, division  
5 18; and

5 (c) Includes findings demonstrating compliance with ORS 215.296  
6 for all uses and activities proposed on or adjacent to land zoned for  
7 farm or forest use.”

7 In conjunction with the instructions in the first phrase of OAR 660-034-0040, the County was  
8 required to review the list of uses in OAR 660-034-0035(2)(a)-(g) to identify whether some of  
9 the uses listed require an exception to Goal 3. The Petitioners raised the requirement to review  
10 these listed uses and whether exceptions were required, e.g. Rec. p. 153 – 154. While the  
11 County’s findings recognize the applicability of OAR 660-034-0040(4) as a decision criteria, it  
12 summarily ignores the regulation and determines, without explanation, that no Goal exceptions  
13 are required. Rec. p 18.

14 If the legislature had meant that all uses broadly characterized as park uses would be  
15 allowed in agricultural areas without an exception then the use of the word “some” in OAR 660-  
16 034-0040(4) would be superfluous. Such an interpretation is contrary to ORS 174.010’s  
17 instruction to not omit what has been inserted in a regulation. Therefore, Linn County erred by  
18 failing to consider which uses in the park proposal would irrevocably commit the property to a  
19 use other than farm uses.

20 The list of uses in OAR 660-034-0035(2)(a)-(g) range from intense uses like  
21 campground areas with RV sites and boat and fishing facilities to less intense uses like day use  
22 areas and recreational trails. In *Rural Thurston, Inc. v. Lane County*, 55 Or LUBA 382, 396-397  
23 (2007), LUBA adopted the county planning director’s approach to understanding the link  
24 between OAR 660-034-0040 and its direction to review the list of allowable uses in OAR 660-  
25 034-0035(2) when considering whether “some” of those uses require a Goal exception. In *Rural*  
26 *Thurston*, Lane County considered the specific uses that require an exception to include the more

1 intensive types of uses that irrevocably commit the property to a use other than farm uses such  
2 as: laundry facilities, recreation shops, snack shops, fuels stations, administrative offices, staff  
3 lodging, museums, retail stores, and visitor lodging. *Id.*

4 LUBA went further than merely adopting the Lane County planning director's decision in  
5 *Rural Thurston, Inc. v. Lane County*, 55 Or LUBA at 399, and described allowed park uses on  
6 farmland without a Goal exception to include passive, low-intensity uses similar to those allowed  
7 in campgrounds in resource zones, while an RV park is more akin to high intensity uses like  
8 visitor lodging. In support of that conclusion, other regulations provide context for the intensity  
9 of campground use that could be acceptable. For example, OAR 660-033-0130(19)(a)-(c)  
10 governs conditional private parks on farmland. Although RV's are allowed on private  
11 campgrounds, Linn County's proposal exceeds what would be authorized under that provisio  
12 because, under OAR 660-033-0130(19)(b), RV uses in private parks cannot have individual  
13 hook-ups. Without a local parks master plan, the County is limited to campgrounds that provide  
14 a more rural experience rather than a drive through stopping point to use urban scale public  
15 facilities like full service water, sewer, and electrical systems with individual hook-ups for each  
16 RV. Rec. pp 22<sup>5</sup> and 197. Further, none of the uses described in ORS 215.283 or the regulations  
17 regarding agricultural uses permit the support buildings for the RV park outlined in the approved  
18 findings, including but not limited to, permanent dwellings for a park ranger, restrooms to  
19 support the RV park, camp store, clubhouse, and offices. Rec. p. 12. In fact, RVs on agricultural  
20 land are allowed for hardship purposes only under ORS 215.283(2)(1). Given this context, the  
21 idea that year round RV parking was considered by Linn County to be a local park use strains  
22 credulity.

23  
24  
25 <sup>5</sup> The County's claim that the sewer facility will only serve 50 RVs at Rec. p 14 conflicts with the findings  
26 on Rec. p. 22 which concludes without explanation, "The provision of these services to 196 campsites does not  
justify a characterization of 'urban.'" The decision authorizes the infrastructure to support the eventual build out for  
196 RV spaces, even if that build out is accomplished in phases. The urbanization component of this finding will be  
addressed *infra*, under the Second Assignment of Error.

1 In sum, Linn County was required to take an exception to Goal 3 because of the intensity  
2 of development authorized by its decision. *Rural Thurston*. It may have been able to avoid the  
3 exception requirement under OAR 660-034-0040(4) if a local parks master plan has been  
4 adopted, but no such parks master plan has been adopted by the County. As LUBA has  
5 identified in previous cases involving RV Parks on agricultural land, like *1000 Friends of*  
6 *Oregon v. Marion County*, 24 Or LUBA 20, 24 (1992), state regulations, specifically those  
7 governing exceptions, express a strong preference that nonresource lands, including lands within  
8 existing UGBs, be utilized for nonresource uses before resource land is committed to such uses.  
9 Further, OAR 660-034-0020(1)(b) and (2) underscore the purpose of such local parks master  
10 planning. In the absence of the local master planning process, intensive park uses like the one  
11 proposed by Linn County must go through the exception process, but here the County attempts  
12 an end-run around the exceptions process to allow uses on agricultural land that would not  
13 otherwise be permitted under the guise of a “local park.”

14 **SECOND ASSIGNMENT OF ERROR - The County Misapplied the**  
15 **Applicable Law By Failing to Take an Exception to Goal 14**

16 Regardless of whether the County could have avoided taking an exception to Goal 3  
17 under OAR 660-034-0040(4), it was still required to take an exception to Goal 14 and its  
18 decision must be remanded for that reason alone.

19 Goal 14 protects rural lands from urbanization unless an exception to the goal is taken as  
20 provided by rules adopted by LCDC to ensure that such uses do not adversely effect agricultural  
21 and forest operations and do not interfere with the efficient functioning of the UGB. The County  
22 considered Goal 14 in its findings,

23 “Goal 14, Urbanization prohibits urban uses on rural land without  
24 an exception to Goal 14. No urban levels of use are proposed by  
25 the applicant in this case or allowed by the Conditions of  
26 Approval. The uses proposed are specifically authorized by statute  
and administrative rule, without an exception to a goal protecting  
resource land, which presumably includes Goal 14.”\*\*

1 The proposed uses are 'rural,' because they are uses authorized by  
2 statute and rule to take place in rural areas subject to minimization  
of conflicts with surrounding uses."

3 Rec. p. 20 -21.

4 The County's conclusion is that no Goal 14 exception is required because of its reliance  
5 on the allowance of public parks on agricultural land discussed supra, in the First Assignment of  
6 Error. Rec. p. 21. As discussed under the First Assignment of Error, the use of the property for  
7 an RV park exceeds the allowance to create public parks on agricultural land. The County may  
8 attempt to rely on *Stallkamp v. City of King City*, 43 Or LUBA 333 (2002), to support its  
9 reasoning that because parks are allowed on EFU land, no Goal 14 exception is required.  
10 However, *Stallkamp*, 43 Or LUBA at 336 involved a park approval on agricultural land with no  
11 habitable buildings, and significantly did not involve an RV park component and associated  
12 public services to operate an RV facility. Thus LUBA's reasoning in that case is not relevant to  
13 the County's decision to authorize a 196 space RV park.

14 As a result, the County is not allowed to conflate the two different questions presented by  
15 Goal 3 and Goal 14. The Court of Appeals, in *VINCEP v. Yamhill County*, 215 Or.App. 414,  
16 421-422 (2007), ruled that a proposed urban development on rural, agricultural land must be  
17 justified under exceptions to both Goal 3 and Goal 14.

18 "[i]n order to give effect to policies pertinent to justifying the  
19 conversion of agricultural land to nonresource uses as well as to  
rules specific to allowing urban development of rural land."

20 Further, as established herein and in accordance with LUBA's holding in *1000 Friends of*  
21 *Oregon v. Marion County*, 24 Or LUBA at 28-29, the proposed RV park is an impermissible  
22 urban use on resource land that is not allowed unless the County undertakes the exception  
23 process.

24 In *Curry County*, 301 Or 447, 505-507 (1986), the Supreme Court identified certain  
25 factors that could be considered in determining whether a use is urban or rural: a) the size of the  
26 area in relation to the developed use; b) its proximity to an acknowledged UGB and whether the

1 proposed use is likely to become a magnet to attract people from outside the rural area; and c) the  
2 types and levels of services which must be provided to it. LUBA collectively reviews the *Curry*  
3 *County* factors to consider whether taken together a use is urban or rural in nature. *Oregon*  
4 *Shores Conservation Coalition v. Coos County* (“*Indian Point I*”), 55 Or LUBA 545, 556 (2008).

5 **A. Size of Area in Relationship to the Developed Use.**

6 The County’s findings suggest that the density of the RV park is .875 dwellings per acre.  
7 Rec. p. 21. However, this is sleight of hand where the County estimates density based on the  
8 entire acreage of the park. Earlier in the application summary portion of the findings, the County  
9 describes that the RV Park will be developed only on 60 acres of the property. Rec. p. 10.  
10 Therefore, at a total of 196 RV spaces in 60 acres, the more accurate density is 3.267 dwellings  
11 per acre. The County’s method of calculation underestimates the RV density by over 370  
12 percent. In *Indian Point II*, LUBA determined that the density of the RV park, at 6 RV spaces  
13 per acre, was an urban density. *Baxter v. Coos County* (“*Indian Point II*”), 58 Or LUBA 624,  
14 632-633 (2009). But, in *Indian Point II*, LUBA did not create an absolute density test for the  
15 level of RV parking spaces that trigger an urban use.<sup>6</sup> *Id.* Therefore, the RV space density  
16 proposed by Linn County, combined with the other urban level uses in the proposed park,  
17 support the need for a Goal 14 exception.

18 Moreover, the segmentation of the application, by seeking initial approval of only 50 RV  
19 spaces further complicates an analysis of the accurate density of RV spaces/acre because it is  
20 unlikely that the first 50 RV spaces will range across the entire 60 acres set aside for RV parking.  
21 This approach by the County effectively prevents the public from understanding the impacts of  
22 the proposal. Notwithstanding the County’s approach to play a numbers game with the  
23 application, it is impossible to hide the urban level of development of a 196-space RV park,

24 \_\_\_\_\_  
25 <sup>6</sup> See *Sperber v. Coos County*, 58 Or LUBA 588, 600 (2009) (LUBA found no basis for remand when the  
26 County found that 2.19-acre parcels constitute urban density); *Wetherell v. Douglas County*, 57 Or LUBA 240, 252  
(2008) (“[P]roposed residential densities between two and ten acres potentially implicate Goal 14 and may require a  
Goal 14 exception, depending on the particular circumstances.”); OAR 660-004-0040 (rural residential areas with lot  
sizes of less than 2 acres “shall be considered an urban use”).

1 especially as density on the 60 acres set aside for the RV park is intensified when the acreage is  
2 whittled down by the construction of the associated administrative buildings, clubhouses, camp  
3 stores, equipment storage facilities, permanent dwelling for a park ranger and public service  
4 facilities infrastructure to support the RV park. Rec. p. 190.

5 In comparison, the Linn County proposal calls for 196 spaces on a 60-acre RV park with  
6 similar support buildings and infrastructure, including a sewer system. Notwithstanding Linn  
7 County's attempt to distinguish itself from *Indian Point I*, supra, 55 Or LUBA at 547 by  
8 imposing a condition to limit the maximum stay of a particular RV, the year round nature of the  
9 RV Park in the Linn County proposal does not prevent each and every RV space from being used  
10 every day of the year. As LUBA concluded in *Indian Point I*, the urban level of uses of the 179  
11 space RV Park constituted an urban use of rural land not permitted without a Goal 14 exception.  
12 *Id.* at 554. LUBA maintained its holding on remand in *Indian Point II*, 58 Or LUBA at 633,  
13 even when the number RV parking spaces was reduced to 153 spaces. Similarly, in this case,  
14 Linn County fails to establish that its density and condition to prevent a single visitor from living  
15 on-site year round avoids urbanizing rural areas.

16 Comparing the permissibility of residential use on land that is proposed for use as an RV  
17 park has been sanctioned by LUBA in *Indian Point I*, 55 Or LUBA at 553. Notably, as a mirror  
18 to state law<sup>7</sup>, LCC 933.410<sup>8</sup> allows a single dwelling in conjunction with farm use on properties  
19 that exceed 160 acres, and non-farm dwellings are subject to rigorous review under LCC 933.500  
20 and 933.510. This mirror image to state regulations shows that the County adopted state policy  
21 regarding residential density, where the statewide policy is to preserve farmland for farm use.  
22 Increasing the density beyond the level created through statewide policymaking requires rigorous  
23

24 \_\_\_\_\_  
25 <sup>7</sup> See for example, ORS 215.283 and .284 and OAR 660-033-0030 and 0035.

26 <sup>8</sup> The entirety of LCC Chapter 933 is not in the record. See Note 3, the entirety of LCC Chapter 933 can be  
judicially noticed. Other subsections of Linn County Code Section 933.410 may allow dwellings in conjunction  
with farm use for relatives and farm workers under authorization in state law.

1 review, which was avoided by the County for the RV park by rushing to the conclusion that an  
2 RV park is not a residential use.

3 **B. The RV Park's Proximity to an Acknowledged UGB and Its Likelihood to**  
4 **Become a Magnet Attracting People from Outside the Rural Area.**

5 The proposed RV Park is within 2.09 miles of the Albany UGB, and within 2.39 miles of  
6 the Tangent UGB. Rec. p. 21. UGBs are meant to provide an effective method of protecting  
7 rural lands from urban development. *Indian Point I*, 55 Or LUBA at 554. Although Linn  
8 County's proposal is a public, rather than a private campground, the state regulations for private  
9 campgrounds on agricultural land provides helpful instruction regarding the radius of protection  
10 from urban uses necessary for areas surrounding UGBs. Under OAR 660-033-0130(19), private  
11 campgrounds are not allowed within three miles of a UGB without an exception. In addition, in  
12 *Indian Point I*, 55 Or LUBA at 554, LUBA concluded that an RV park proposed within one mile  
13 of the Bandon UGB undermined the function of the UGB to protect rural lands from urban uses.

14 Further, Petitioners established that the proposed RV park is not being designed primarily  
15 to serve the residents of Linn County. Rec. p. 156. Rather, it is designed to fill the presumed  
16 needs of travelers on I-5. Rec. p. 156. The applicant, through the testimony of the Parks and  
17 Recreation Department Director, Brian Carroll corroborated Petitioners' concerns when he  
18 explained,

19 "Improvements that are begun soon will enhance the value of the  
20 property to \*\*\* the traveling public to a greater degree, well into  
the future." (emphasis added).

21 Rec. p. 61. In this regard, the RV park will act as a magnet to attract out of county and urban  
22 residents to rural lands. The County's findings do not counter the Petitioners' assertion that the  
23 RV park will attract urban residents to rural lands, rather the County finds, without citation to  
24 any support from the record, that:

25 "None of the uses proposed for the park will 'draw' urban users  
26 into engaging in urban uses in a rural area."

1 Rec. p. 22. Placing the word “draw” in quotation marks does not suddenly give the County’s  
2 findings meaning. Instead the County is relying on another conclusionary and inadequate  
3 finding.<sup>9</sup> The language of the finding only emphasizes the County’s serious lack of  
4 consideration of the legal standards which it must apply prior to approving the RV park use.  
5 This inability to describe how urban residents will not be drawn to making added trips with  
6 adverse impacts to rural lands is a failure to comply with state law.

7 Moreover, the County’s findings attempt to redefine the purpose of the UGB in stating:

8 “Persons within Linn County UGBs will have access to, and be  
9 drawn to use the rural amenities of the park, and so will travelers  
10 from other jurisdictions, with recreational vehicles, seeking  
camping opportunities in Linn County.”

11 Rec. p. 22. These findings concede that the RV park will be a magnet for urban residents to use  
12 rural lands, like posting a neon open sign for visitors who would not otherwise travel to  
13 agricultural areas. The findings continue,

14 “This likelihood does not make the park any more ‘urban’ than it  
15 would be if it were to be located even farther from any local UGB,  
16 where other county and state parks with recreational vehicle campsites  
and a variety of other park amenities are currently located.”

17 Rec. p. 22. This conclusion flips the purpose of the UGB on its head. The comparison is not one  
18 between whether or not a use can occur farther away from the UGB, but rather whether the UGB  
19 itself functions as the demarcation point between urban and rural uses. Allowing urban uses, like  
20 an RV park, beyond the UGB defies the purpose of the UGB to protect rural areas from urban  
21 encroachment. The County completely ignores this purpose and proposes an RV park in close  
22 proximity to two UGBs. In doing so, the County violates Goal 14 and has not taken an exception  
23 to avoid its requirements.

24 \_\_\_\_\_  
25 <sup>9</sup> The finding further rests its conclusion on whether urban dwellers will engage in urban uses. However,  
26 Goal 14’s focus is on the intensity of the development and whether people will be drawn from outside of the rural  
area, not whether the “urban users will make an urban use of the land,” which phrase Petitioners are not sure the  
meaning of in any case.

1           **C.     The Types and Levels of Services Which Must be Provided to the Proposed**  
2                   **RV Park Signal Urban Levels of Development on Rural Lands.**

3           LCDC defines rural lands as,

4                   “Land outside urban growth boundaries that is:

- 5                           (a) Non-urban agricultural, forest or open space,
- 6                           (b) Suitable for sparse settlement, small farms or acreage  
7                           homesites with no or minimal public services, and not  
8                           suitable, necessary or intended for urban use, or
- 9                           (c) In an unincorporated community.”<sup>10</sup>

9           Therefore, the provision of public services, like sewer systems play a significant role in  
10           determining whether urban uses are being built on rural lands.

11           The applicant describes the estimated wastewater generation for all uses at 25,000 gallons  
12           per day, 15,000 gallons per day of which it attributes solely to the RV park (not including the  
13           accessory buildings). Rec. p. 199. However, this measurement is an underestimation because  
14           the County Health Department’s Report of Evaluation for On-site Sewage Disposal only  
15           reviewed septic demand for 150 RV-spaces. Rec. pp. 232, 1266. Based on the disposal rate used  
16           in the County Health Department’s evaluation, the disposal rates for 196 RV-spaces is closer to  
17           19,000 gallons per day. Adding the non-RV uses and other permanent disposal demand to the  
18           sewage system would require a system with closer to a 29,000 gallon capacity. The proposal  
19           calls for the installation of a 25,000 gallon on-site septic system. This septic system, which  
20           really requires a 29,000 gallon capacity, is an urban level of service provided to the RV park.  
21           Further, the development will include other urban uses like a camp store designed to support a  
22           high intensity dense collection of residential uses in the form of RVs. Rec. p. 197.

23           In *Indian Point I*, 55 Or LUBA at 563, LUBA concluded that a 10,000 – 20,000 gallon  
24           per day septic system constitutes urban levels of development. Further, LUBA concluded that

25  
26           <sup>10</sup> See Note 3, LCDC definitions for the Goals can be judicially noticed and are available for review at  
<http://www.oregon.gov/LCD/goals.shtml>.

1 the water and sewer systems necessary to serve the RV Park in *Indian Point I*, 55 Or LUBA at  
2 555-556 are urban levels of services that commonly serve residential uses. The sewer system  
3 proposed by Linn County is even larger than the proposal in Coos County, even using the  
4 County's 25,000 gallon capacity estimate, and should be similarly treated in terms of requiring  
5 an exception to Goal 14.

6 Therefore, taking all the *Curry County* factors into consideration, Linn County proposed  
7 a use that more closely resembles a high density residential development with urban levels of  
8 services in providing a sewer system on rural lands that denigrates the effectiveness of  
9 neighboring UGBs by drawing urban residents to rural lands like ants to a grain of sugar. This  
10 intensity of development signals that the proposal unquestionably requires an exception to  
11 Goal 14.

12 **THIRD ASSIGNMENT OF ERROR - The County Misapplied the**  
13 **Applicable Law by Failing to Take an Exception to Goal 11.**

14 The First Assignment of Error discussed the County's proposed septic system to serve the  
15 park as one of the intense uses under OAR 660-034-0035(2)(f), which triggers the need for an  
16 exception to the Goals in the absence of a local parks master plan. Independent from the  
17 standards applied to local park planning under OAR 660-034-0040 and 0035, under OAR 660-  
18 011-0060(2) new sewer system development outside of the UGB is prohibited unless a public  
19 health hazard exists or an exception to Goal 11 is taken.

20 Nonetheless, the County findings state,

21 "Goal 11 does not prevent a County agency from providing a  
22 public water system or sewage disposal system, or other, similar  
23 service to a public park.\*\*\* The applicant agrees to a condition of  
24 approval requiring that the two contiguous tax lots owned by the  
25 county and proposed for development of a park be formally  
26 consolidated into a single tax lot, prior to development of any  
sewer or water systems on the subject property that cross existing  
tax lot lines. Goal 11 is not implicated in this case and no  
exception to Goal 11 is required."

Rec. p. 19.

1 As the County's condition recognizes, OAR 660-011-0060(1)(f) defines "sewer system"  
2 to include a system that serves more than one lot or parcel. The proposed park is composed of  
3 two parcels, 12-3W-4 tax lots 500 and 600, and calls for development of a sewer system. The  
4 Conceptual Site Plan for the park shows that a sewer system serving the restroom and showers  
5 on the western portion of the subject property would cross parcel boundaries. Rec. p. 211. The  
6 scale of waste in need of disposal at the proposed park is similar in scale to that in *Indian Point I*,  
7 55 Or LUBA at 563, where LUBA determined that the septic system in that case qualified as a  
8 sewer system. Regardless of whether the system occupies one parcel or two, the septic system at  
9 the proposed park will rise to the scale of a community facility at an urban level of usage.

10 Petitioners challenged the County's failure to address an exception to Goal 11 to allow  
11 development of the RV park. Rec. p. 154. Nonetheless, the County's findings ignore the  
12 express language of OAR 660-011-0060(2)(a), that

13 "[a] local government shall not allow (a) the establishment of a  
14 new sewer system outside of the UGB\*\*\*\*" (emphasis added).

15 Instead, the County finds that a condition consolidating the property to one parcel will  
16 resolve Petitioners concerns and avoid application of Goal 11. Rec. p. 19. Yet, this is just  
17 another example, as shown below in the analysis of the County's comprehensive plan, of the  
18 County simply finding a way around the public disclosure process by approving a project and  
19 allowing site consolidation to be justified based on the park's approval.

20 In any event, conditioning the park on the consolidation of parcels does not fulfill the  
21 requirement that the sewer system that is approved in this application meets the state law  
22 limitation that the sewer system serve only one parcel. The County's attempt at a way-around is  
23 illuminated by the County's code governing lot line adjustments. Under LCC 925.130(D)<sup>11</sup>:

24  
25  
26 <sup>11</sup> See Note 3, the LCC Chapter 925 can be judicially noticed.

1            “An authorized unit of land which is a commercial farm or is part  
2            of a commercial farm shall remain a commercial farm after its  
             property lines are adjusted.”

3            The property is currently in commercial farm use in production of ryegrass. Rec. pp. 150 and  
4            201. Therefore, the County Code would not allow a lot line adjustment to enable construction of  
5            a large, 29,000 gallon sewage disposal facility as discussed above.

6            The County should have undertaken a lot consolidation procedure as part of this  
7            application. Since the consolidation process is not a given, as the County Code requires the land  
8            remain in ryegrass production, the County’s findings lack a showing of feasibility that the  
9            condition could be accomplished under *Gould IV*, 227 Or.App. at 611 (2009). In *Gould IV*, the  
10           court ruled that the deferral of approval of the wildlife mitigation plan at issue required an  
11           assessment by the County that the proposed mitigations were feasible in a sense that the  
12           conditions of approval to protect wildlife could be met. *Id.* at 612. Similar to Deschutes County,  
13           Linn County has failed to provide any explanation that the tax lots can be consolidated under  
14           LCC 925.130(D).

15           Given the controversial nature of the proposed project, the Planning Director likely  
16           would have considered this a Type IIA decision requiring the exercise of discretion under  
17           LCC 921.120.<sup>12</sup> Therefore, the decision would have been subject to appeal to the Planning  
18           Commission under LCC 921.210(D) and to the Board of County Commissioners under  
19           LCC 921.230. A decision to consolidate the parcels would have been subject to at least two  
20           public hearings. Avoiding this process deprives Petitioners and the general public of their due  
21           process rights of a notice and opportunity under their general participatory rights granted by the  
22           code. *Gould II*, 216 Or.App. at 163. Instead, the County has crafted this approval to make the  
23           decision to consolidate the parcels a *fait accompli* by conditioning approval of the RV park septic  
24           system on the consolidation.

25  
26            <sup>12</sup> See Note 3, LCC Chapter 921 can be judicially noticed.



1 Further, the County claims that the TPR is not implicated because no amendment to the  
2 comprehensive plan is being considered. Rec. pp. 19-20.

3 The County findings claim to be based on an "extensive" traffic study. Rec. p. 30.

4 However, in the record, Petitioners informed the county that,

5 "The Oregon Highway Plan establishes the greater of 15 years or  
6 the planning horizon of the applicable local and regional  
7 transportation system plans for amendments to transportation plans,  
8 comprehensive plans or land use regulations. OHP at p. 72."

8 Rec. p. 155. Yet, the record contains only a "Draft Report." Rec. p. 271. The traffic report only  
9 analyzes the "Year of Opening" impacts (assumed to be 2008), instead of looking at the county's  
10 Transportation System Plan horizon. Petitioners raised the lack of information in comments to  
11 the County Board of Commissioners. Rec. p. 155. Nonetheless, the County has not identified  
12 the applicable planning horizon, nor has it analyzed traffic impacts from development allowed  
13 under the park approval.

14 As a result of the foregoing analysis that Goal exceptions are required to allow this park  
15 use, the County is also required to provide findings showing compliance with the TPR. Since the  
16 record does not analyze traffic impacts over the required planning horizon, the decision must be  
17 remanded.

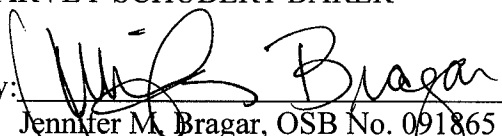
18 **VI. CONCLUSION**

19 For all of the reasons set forth above, LUBA should reverse or remand the County's  
20 decision.

21 Dated: April 7, 2010.

22 Respectfully submitted,

23 GARVEY SCHUBERT BARER

24 By:   
25 Jennifer M. Bragar, OSB No. 091865  
26 William K. Kabeiseman, OSB No. 944920  
Of Attorneys for Petitioners



## LINN COUNTY PLANNING AND BUILDING DEPARTMENT

Robert Wheeldon, Director

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 Phone 541-967-3816, 1-800-319-3816  
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### NOTICE OF DECISION

**Resolution No.** 2009-570  
**Planning File No.** PD08-0019  
**Applicant** Linn County Parks Director  
**Proposal**

PD08-0019; An appeal by Brian Carroll, Linn County Parks Director, of the Linn County Planning Commission's decision to deny a conditional use permit application by the Linn County Parks & Recreation Department to develop a County park on a 175-acre property identified on Linn County Assessor maps as T12S, R3W, Section 4, Tax Lots 500 and 600; in the Exclusive Farm Use (EFU) zone. The proposed park would include natural areas, day-use areas and recreational vehicle (RV) camping facilities. The property is located approximately three miles south of Albany, in the southwest corner of the intersection of Highway 34 and Seven Mile Lane. The applicable decision criteria are contained in LCC 933.930(B) and LCC 933.310.

#### Board Action

At a duly advertised public hearing held on December 9, 2009 the Linn County Board of Commissioners (Board) voted 3-0 that the proposed conditional use permit be approved. On January 5, 2010 the Board voted 3-0 to adopt *Resolution No. 2009-570*, including findings and permit conditions, approving the proposed conditional use permit as set forth in the Board Resolution.

If you wish to appeal this decision, an appeal must be filed with the Land Use Board of Appeals (LUBA) within 21 days from the date this notice is mailed. Appeals to LUBA must be filed in accordance with ORS 197.830. If you have any questions about this process, contact LUBA in Salem at (503) 373-1265.

Resolution No. 2009-570 may be reviewed at the office of the Linn County Clerk, Room 205, Linn County Courthouse. That office is open from 8:30 a.m. to 5:00 p.m., Monday through Friday, except legal holidays. A copy of the resolution is available in the office of the Linn County Clerk. A fee to cover copying costs will be charged.

Robert Wheeldon  
 Robert Wheeldon  
 Director

1/11/2010  
 Date

cc: Brian Carroll; Todd Sadlo; Jim Monroe; Colleen Phillips; Wayne Scheler; Don & Betty Jo Smith; Dennis Glaser; Michael Koos; Michael & Priscilla Greig; Jim Just FOLC; Mary Grimes, Linn County Farm Bureau; Kathy & Dean Schrock; Del Shirley; Cory Koos; Dennis Wirth; Shawn Glaser; Harry Parker; Rick Bergeron; Curt Smith; Ralph Reid; Jongsun Wun; Harold & Dona Bates; Scheler Drilling; Nirmil Singh; George VanKeulen; Telly Wirth; Cindy Clark; Pete Boucot; Brian Wilson; Brian Vandeta; Lloyd Henion; Louise Owens; Bruce Koos; Chris Schrock; Virk LLC; John Gale; Ryan Graves; Joel Brinson; Larry & Myrna Roth; Damewood Family Ltd. Ptn.; BT OH LLC; DKTK LLC; Ronda Marlega; Robert Ray Lamb; Khae Saetern; Art & Joyce Martinak; Kay Macpherson Trust; Building Official; Treasurer; EHP; Road Department



MINUTES OF THE REGULAR SESSION OF THE  
LINN COUNTY BOARD OF COMMISSIONERS  
TUESDAY AND WEDNESDAY MEETINGS  
LINN COUNTY COURTHOUSE – ROOM 200  
January 5 and 6, 2010

**Minutes of the Linn County Board of Commissioners – Tuesday Meeting, January 5, 2010.**

The Linn County Board of Commissioners met for the regularly scheduled meeting on Tuesday, January 5, 2010. Unless otherwise noted, those present for the entire meeting were: Commissioners, Roger Nyquist (Chairman), John K. Lindsey (Vice-Chairman) and Will Tucker; Ralph Wyatt, Linn County Administrative Officer and as Recorder for the Board of Commissioners, Bekkie Snyder.

Those present at various times for the matters as indicated below were: Robert Wheeldon, Linn County Planning and Building Director; Brian Carroll, Linn County Parks and Recreation Director; Mark Volmert, Linn County Transportation Projects Coordinator, Cascades West Council of Governments; Frank Moore, Linn County Health Administrator and Alex Paul, Reporter for the Democrat-Herald.

1, 2, 3. At 9:30 a.m. Chairman Nyquist called the meeting to order. The flag salute and roll call followed. Commissioners Roger Nyquist, John K. Lindsey and Will Tucker were present, as well as, Ralph Wyatt, Linn County Administrative Officer and Recorder for the Board of Commissioners, Bekkie Snyder.

4. Approval of Agenda.

**Action – Commissioner Tucker moved and Commissioner Lindsey seconded the motion to approve the agenda. The vote was called. The motion passed unanimously.**

5. Business from the Public (2 minute limit per speaker): There was no one present from the public wishing to use this forum.

6. Resolution & Order 2010-002 in the matter of the election of the Chairperson and Vice-Chairperson of the Linn County Board of Commissioners for the year 2010.

**Action – Commissioner Tucker moved and Commissioner Lindsey seconded the motion to elect Roger Nyquist as Chairperson of the Board of Commissioners for 2010. The vote was called. The motion passed unanimously.**

**Action – Commissioner Tucker moved and Commissioner Nyquist seconded the motion to elect John K. Lindsey as Vice-Chairperson of the Board of Commissioners for 2010. The vote was called. The motion passed unanimously.**

7. Reports of Staff and Committees:

A. Planning Update – Robert Wheeldon, Linn County Planning and Building Director.

Robert Wheeldon, Linn County Planning and Building Director, provided the Board with a monthly update. He noted that there was no revenue update for last month. He stated that planning permit applications were down in December, 2009. He expects six or more applications to be scheduled for hearings. Olivia Glantz, Linn County Planner, has started working on the Natural Hazards Mitigation Plan Update, which will hopefully be completed by July, 2010. Ms. Glantz will also be working on existing and new quarries. A hearing on an expansion for the Northrock Quarry is scheduled in February. Applications are expected from Al Sullivan and the Weber Quarry.

Mr. Wheeldon mentioned that the Board would be holding a hearing on a zone change on February 3, 2010. Commissioner Nyquist asked about zone changes in general. Discussion followed. Commissioner Nyquist asked Mr. Wheeldon to get back to the Board, in the next few months, regarding how the zone change procedure could be adjusted.

Commissioner Nyquist brought up the issue of the Planning Department accepting credit cards. Commissioner Lindsey stated that the processing fee needs to be charged to the user of the card. Commissioner Tucker agreed with Commissioner Lindsey. Commissioner Nyquist stated that processing fees are very competitive. Mr. Wheeldon was asked to check with other counties to see what their process is for accepting credit cards and then report back to the Board.

*NOTE: The Board also asked Brian Carroll, Linn County Parks and Recreation Director, how not accepting credit cards would affect the Parks Department. Mr. Carroll stated that it could easily affect thirty to forty percent of the fees collected by the Parks Department.*

1. Resolution 2009-570 Findings and Conclusion in the matter of an Application for a Conditional Use Permit to develop a County Park; T12S, R3W, Section 4, TL 500 & 600.

Commissioner Lindsey had a question regarding public process. Some discussion followed.

**Action - Commissioner Tucker moved and Commissioner Lindsey seconded the motion to approve Resolution & Order 2009-570. The vote was called. The motion passed unanimously.**

8. Resolution & Order 2009-576 adopting a Contract for Professional Services between Linn County and David Reed dba David Reed & Associates, Inc. for a recreation plan for Green Peter Reservoir and the Quartzville Road Recreation Area.

**Action - Commissioner Tucker moved and Commissioner Lindsey seconded the motion to approve Resolution & Order 2009-576. The vote was called. The motion passed unanimously.**

9. Resolution & Order 2009-575 adopting an Oregon Department of Transportation Agreement for Linn County Operating Funds for public transit and delegating authority to executive originals.

**Action - Commissioner Tucker moved and Commissioner Lindsey seconded the motion to approve Resolution & Order 2009-575. The vote was called. The motion passed unanimously.**

10. Health Services - Frank Moore, Linn County Health Administrator.

A. Resolution & Order 2009-557 adopting an Intergovernmental Agreement between Linn County and the Central Linn School District for alcohol and drug prevention services.

**Action Taken Below.**

B. Resolution & Order 2009-579 adopting an Intergovernmental Agreement between Linn County and the Oregon Department of Human Services for mental health services and delegating authority to execute originals.

**Action - Commissioner Tucker moved and Commissioner Lindsey seconded the motion to approve Resolution & Orders 2009-557 and 579. The vote was called. The motion passed unanimously.**

Commissioner Tucker asked Mr. Moore about swine flu shots being given to the general public. Mr. Moore stated, that as of December 14th when it was opened to the public, the demand had flattened. Mr. Moore noted that the County has a more than adequate stockpile of the H1N1 vaccine and also has limited quantities of the seasonal flu vaccine.

LINN COUNTY, OREGON  
Commissioners' Journal  
CJ2010-00007  
01/11/2010 11:00:00 AM

FILED

JAN 11 2010

STEVE DRUCKENMILLER, CLERK  
By *[Signature]*  
Clerk



I, Steve Druckenmiller, County Clerk for Linn County, Oregon, certify that the instrument identified herein was recorded in the Clerk records.

Steve Druckenmiller - County Clerk



**BEFORE THE BOARD OF COUNTY COMMISSIONERS  
FOR LINN COUNTY OREGON**

**IN THE MATTER OF AN APPLICATION)  
FOR A CONDITIONAL USE PERMIT TO)  
DEVELOP A COUNTY PARK; )  
T12S, R3W, SECTION 4, TL 500 & 600 )**

**RESOLUTION NO. 2009-570**  
(Planning and Building Department PD08-0019)  
(Findings and Conclusions)

**WHEREAS**, The Linn County Planning Commission conducted duly advertised public meetings on April 8, 2008, May 12, 2009, and June 9, 2009, to consider an application by Linn County seeking approval of a conditional use permit application filed by Brian Carroll, Linn County Parks Director, to develop a county park on the 175-acre property identified on Linn County Assessor maps as T12S, R3W, Section 4, Tax Lots 500 and 600; in the Exclusive Farm Use (EFU) zone;

**WHEREAS**, the Planning Commission voted 4-3 on June 9, 2009 to deny the application;

**WHEREAS**, The Board of County Commissioners for Linn County (Board) conducted a duly advertised public meeting on October 21, 2009 for the purpose of considering the matter of an appeal of the Planning Commission decision to deny the conditional use permit application;

**WHEREAS**, at the conclusion of the public testimony the Board closed the hearing and left the record open limited to new written comments until 5:00 p.m. October 30, 2009, and for written rebuttal by the applicant until 5:00 p.m. November 6, 2009;

**WHEREAS**, On December 9, 2009, the Board held a duly advertised public meeting on this matter where no further oral public comments were taken and where submitted written comments and rebuttal were accepted into the record;

**WHEREAS**, After considering all testimony and evidence previously submitted, the Board reached a consensus that the proposed conditional use permit be approved; and

WHEREAS, The findings in support of the decision to approve the proposed conditional use permit are attached hereto as Exhibit 1 (PD08-0019 Decision Criteria, Findings and Conclusions); and now, therefore, be it

**RESOLVED**, That the Board of County Commissioners for Linn County reverse the decision of the Planning Commission, adopt the findings and permit conditions as set forth in Exhibit 1 (PD08-0019 Decision Criteria, Findings and Conclusions), and approve the conditional use permit subject to the following permit conditions:

1. Only the uses described in the findings for approval, or listed as "park" uses in LCC 920.100(B)(208), and not otherwise limited by these conditions, are allowed under this approval.
2. A Recreational Vehicle (RV) camping facility, having no more than 50 Recreational Vehicle camping spaces may be developed on the site, without prior, additional public process or Board of Commissioners review, in accordance with law. Additional public process and Board of Commissioners review are required prior to construction of more than 50 RV camping spaces at the park. A caretaker dwelling, interpretive kiosks and trails may be developed as operations of the park warrant.
3. Lighting associated with the RV park will be designed so that light is shielded and directed downward to the greatest extent practical.
4. The applicant shall enhance the wetland value of identified areas by improving wetland hydrology. All wetland enhancement activities are to be conducted in compliance with applicable removal-fill permits from the Oregon Department of State Lands or the U.S. Army Corps of Engineers.
5. Storm water control and management shall be developed as necessary to support park uses or correct existing deficiencies, pursuant to final, engineered drawings, stamped by an Oregon Professional Engineer. The storm water system will be established prior to, or contemporaneously with, establishment of any uses on the site that could exacerbate existing conditions on the site or generate significant, additional storm water flows on the site.
  - a. Storm water control on the site shall include design features that will convey surface waters from upstream properties through the development without creating adverse effects on the upstream system. Open water channels with shallow side slopes are preferred over pipe systems wherever possible;
  - b. Best available erosion control and management techniques and design are to be employed as necessary to prevent downstream increases in turbidity, at all times during construction and operation of a park on the site;

- c. Storm water detention facilities shall be established that are capable of storing enough volume of water to limit the discharge rate of a 10-year, 24-hour developed storm event to a 2-year, 24-hour pre-developed storm event.
  - d. The design of the storm water drainage will include adequate water quality features that meet the requirements of DEQ to qualify for issuance of a 401 Water Quality Certification. "Low impact" design features are recommended for use if allowed by DEQ, including the use of vegetated bio-swales and other techniques to be employed prior to discharge of storm waters generated on-site into the identified wetlands.
5. Development plans shall reserve sufficient approved sewage disposal areas to accommodate full build-out of the proposed development.
  6. Water provided from any on-site well(s) and public water system(s) shall be permitted and monitored as required by the Oregon Drinking Water Program.
  7. Access control to the property from Seven Mile Lane is regulated by the Linn County Road Department. The Parks Department shall obtain all necessary County permits for access and shall comply with applicable County access and road improvement standards as determined by the Linn County Roadmaster.
  8. Prior to installation or operation of any park uses that could significantly, negatively impact transportation facilities or services in the area the following traffic mitigation shall be provided: Installation of a traffic signal at the intersection of Oregon State Highway 34 and Seven Mile Lane, in accordance with detailed plans approved by the County Roadmaster and the Oregon Department of Transportation.
  9. Park rules will be substantially as adopted for all County parks. Except in the case of an emergency or to provide humanitarian aid (as determined by the Parks Director) no recreational vehicle visitor/camper shall be allowed to stay at the facility for more than seven consecutive days, except as an accommodation to participants of an event held at said park. No residential use of the site, beyond the temporary, camping facility uses allowed by this approval and conditions, is allowed; with the exception of park management, which could include a park manager and up to four camp hosts (hostesses) as necessary, at full build-out.
  10. Non-remonstrance. Prior to or contemporaneous with the development of the park, the applicant shall have recorded in the deed and mortgage records of the state a properly executed instrument acknowledging the existences of farm uses and practices in the area and covenanting not to remonstrate against such uses as are otherwise conducted in accordance with applicable law.

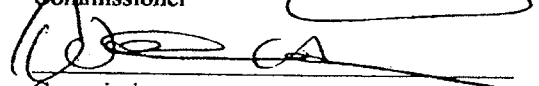
- 11. Consolidation of Tax Lots. Prior to development of any sewer or water systems on the subject property that cross an existing tax lot line the applicant shall formally consolidate the tax lots into a single tax lot.

Resolved this 5<sup>th</sup> day of January 2010.

BOARD OF COUNTY  
COMMISSIONERS FOR LINN  
COUNTY

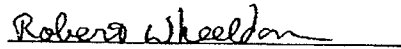
  
Chairman

  
Commissioner


  
Commissioner

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APPROVED AS TO CONTENT:

  
Robert Wheeldon  
Linn County Planning and Building Director

APPROVED AS TO FORM:

  
Thomas N. Corr  
County Attorney for Linn County

## EXHIBIT 1

PD08-0019

## DECISION CRITERIA, FINDINGS AND CONCLUSIONS

## I. APPLICATION SUMMARY

The applicant, Linn County Parks and Recreation Department, is seeking Conditional use permit approval for a county park on a 175-acre site identified on Linn County assessor maps as T12S, R3W, Section 4, Tax Lots 500 and 600.

The site is located in the Exclusive Farm Use (EFU) zone. The property is located approximately three miles south of Albany, in the southwest corner of the intersection of Highway 34 and Seven Mile Lane.

The proposed park will include a recreational vehicle park, a large day-use area, natural areas and support facilities. Camping facilities are proposed to be located at the park (approximately 60 acres), with a long-range plan for up to 196 recreational vehicle (RV) spaces to be developed in phases, with a large, multiple-activity day-use park (approximately 115 acres) planned for the majority of the property. A condition of approval would limit the number of RV spaces to 50 under this Conditional Use Approval. Additional public process and Board of Commissioners review would be required prior to construction of more than 50 RV camping spaces at the park. A caretaker dwelling, interpretive kiosks and trails could be developed, as budgeted.

The applicant has also outlined its plans for improved storm water management on the site, including the restoration and enhancement of wetlands and water features on the site. These are allowed uses in the EFU zone, and do not require Conditional Use Permit approval (see ORS 215.283(1)(p): "(1) The following uses may be established in any area zoned for exclusive farm use: \* \* \* (p) Creation of, restoration of or enhancement of wetlands.").

## II. DECISION CRITERIA

The applicable decision criteria are located in Linn County Code (LCC) sections 933.930(B) and LCC 933.310. The County's Code requirements are consistent with State law. Relevant statutes and administrative rules include ORS 215.283(1)(p) and 215.283(2)(d); ORS 215.296; OAR 660-034-0035; and OAR 660-034-0040. The proposed park is subject to approval as a conditional use under state law and the County Code.

## III. FINDINGS

The following findings of fact support a decision to approve the application subject to the conditions of approval that accompany these findings. These findings are based on the written record of proceedings before the Planning Commission, and the evidence and testimony received by the Board of Commissioners in its *de novo* review of the Planning Commission's decision.

## 1. Characteristics of the Proposed Park

1.1 The characteristics of the proposed park are discussed below, and the Conceptual Plan is attached.

1.2 Unless specifically limited by the Conditions of Approval, the Seven Mile Lane park project is proposed for the ±175-acre property, which is to be developed and maintained in perpetuity as a County park. The park will include a recreational vehicle camping area (at full build-out of approximately 60 acres) and a large day-use area of approximately 115 acres, including landscaping, wetland and waterway restoration, trails and other park amenities.

1.3 The northern ±60 acres are planned as a 196-space recreational vehicle park, to be developed in phases. This Conditional Use Permit application seeks approval of no more than 50 RV camping spaces. Conceptual designs and studies establish the feasibility of accommodating "full build-out" of the park as presented, with all identified, potentially significant conflicts fully mitigated. Plans for park use may change over time, especially as the basic park amenities presented in the plan are developed (such as, landscaping, surface water management and development of proposed park services).

1.4 There will be a looped access road entering from two points on Seven Mile Lane.

1.5 The southern / southwestern ±115 acres of the site are intended to be used for various day use activities. No overnight camping will be permitted in designated day use areas.

1.6 Day use activities may include:

- Picnicking. Two or three (+/-) large picnic shelters and smaller picnic areas are planned. Each will have a fire ring and barbeque grill.
- Four (+/-) restroom facilities. It is anticipated that each restroom building will have men's and women's facilities with flush toilets and two stalls on each side. All restrooms will be handicap accessible.
- Parking areas. Special event parking will primarily be in the southeastern portion of the park. Other parking will be provided in conjunction with day use activities (around picnic shelters, etc.).
- Weddings
- Large group picnics / gatherings
- Sports activities not requiring developed facilities
- Possible future development of sports fields (baseball, softball, soccer, ultimate Frisbee, volleyball, etc.), to be determined by interest, funding and compatibility.
- Open areas on the site that do not contain reclaimed wetlands, waterways, riparian vegetation or landscaped forests, may be made available for informal games and sports by park visitors.
- Hiking trails
- Pet area(s)
- Possible future disk golf course

- Possible equestrian uses and facilities depending on interest, funding and compatibility. Equestrian facilities could include a riding arena and event stables for short-term boarding; and
- Other park day uses as appropriate and as not prohibited by the Conditions of Approval.

1.7 There will be vegetative landscape buffers around the perimeter of the property and in other locations.

1.8 Multi-use trails will be developed around the perimeter of the property and in other locations.

1.9 Playground areas are planned for both the recreational vehicle park and day use areas.

1.10 Drainage of the property will be improved.

1.11 The wetlands on the property will be enhanced under permit from Oregon DSL and (if required by law) the Army Corps of Engineers.

1.12 Number and Type of Buildings and Their Intended Use

1.2.1 The RV park area is anticipated to contain (contingent on funding availability) the following types of buildings:

- One permanent dwelling for a full-time park ranger, including a garage and normally provided residential accessory buildings as appropriate (shed/shop, etc.).
- Three or four restroom and shower buildings at full build-out, and otherwise as necessary to accommodate other developed uses as specified in this approval. Each building is anticipated to have three stalls in the men's side and three stalls in the women's side. All facilities will be handicap accessible. Each building is anticipated to have three unisex shower stalls.
- A camp store.
- One or two clubhouses or enclosed shelters (approximately 1,200 s.f.) for group activities. These will be designed for all-season use with large sliding glass doors on at least one side.
- An office for the park ranger and other park staff.
- A shop / equipment storage building for maintenance equipment and supplies.
- Enclosures for trash receptacles.

1.2.2 The day use area is anticipated to contain:

- Three (+/-) large picnic shelters and other smaller picnic areas. Each will have a fire ring and barbeque grill.
- Four (+/-) restroom facilities. It is anticipated that each restroom building will have men's and women's facilities with flush toilets and two stalls on each side. All restrooms will be handicap accessible.

- Possible equestrian uses and facilities depending on interest, funding and compatibility. Equestrian facilities could include a riding arena and event stables for short-term boarding.

#### 1.13 Roadways and Driveways

Access will be from two locations on Seven Mile Lane, as shown on the conceptual park plan. Seven Mile Lane is an improved County Road. Internal circulation will be via a loop road as shown on the conceptual park plan. There will be additional internal circulation roads in the RV park. Roads will be constructed as the park is developed, to the standards required by the Linn County Roadmaster and Board of Commissioners.

#### 1.14 Parking Lots

Parking will be provided in conjunction with the RV park and day uses in locations, and of a size and design to serve park amenities as they are developed.

#### 1.15 Signs

It is anticipated that the following signs will be necessary:

- Location / directional signs on Highway 34
- Ingress / egress signs on Seven Mile Lane
- Internal traffic direction and control signs
- Trail head markers
- Informational Kiosks
- Other internal signs necessary to identify use areas and provide for safe and convenient vehicle and pedestrian use of the park.

#### 1.16 Landscaping Improvements

The County plans to establish a nearly continuous vegetative buffer along the southern, western and northern property boundaries, as shown on conceptual plans submitted by the applicant. A partial buffer will be planted along the eastern boundary. The goal is to establish natural looking plantings, using native plants to the greatest extent practical, along the property boundaries. The plantings will range from near the property line to 150-200 feet back from the line. A conceptual rendering of the perimeter vegetative buffer and other landscaping is shown on the conceptual park plan.

Plantings will be done in consultation with the local Soil and Water Conservation District, the OSU / Linn County Extension Service and adjacent property owners. County staff has met with representatives of these agencies to begin developing a landscaping / buffering plan. Volunteers may also be enlisted. The County intends to establish relatively fast growing native plants to the greatest extent practical and as required (or recommended) to restore identified wetlands.

The property contains a significant amount of wetlands. A wetlands assessment was completed by Environmental Science & Assessment, LLC and accepted by the Department of State Lands.

