

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

3
4 OREGON SHORES CONSERVATION
5 COALITION, KALMIOPSPIS AUDUBON SOCIETY,
6 and CURRY SPORTFISHING ASSOCIATION,
7 *Petitioners,*

8
9 vs.

10
11 CURRY COUNTY,
12 *Respondent,*

13
14 and

15
16 TIDEWATER CONTRACTORS, INC.,
17 *Intervenor-Respondent.*

18
19 LUBA No. 2009-119

20
21 FINAL OPINION
22 AND ORDER

23
24 Appeal from Curry County.

25
26 Courtney Johnson, Portland, filed the petition for review and argued on behalf of
27 petitioners. With her on the brief was the Crag Law Center.

28
29 No appearance by Curry County.

30
31 Daniel Terrell, Eugene, filed the response brief and argued on behalf of the
32 intervenor-respondent. With him on the brief was the Law Office of Bill Kloos, PC.

33
34 HOLSTUN, Board Member; BASSHAM, Board Chair; RYAN, Board Member,
35 participated in the decision.

36
37 AFFIRMED

02/09/2010

38
39 You are entitled to judicial review of this Order. Judicial review is governed by the
40 provisions of ORS 197.850.

FEB09'10 AM 8:07 LUBA

NATURE OF THE DECISION

Petitioners appeal a county decision that determines the location of a zoning map designation on intervenor-respondent’s (intervenor’s) property.

FACTS

The challenged decision concerns property that is within the Rogue River Estuary and subject to Statewide Planning Goal 16 (Estuarine Resources). Under Goal 16, estuaries are to be inventoried and classified into management units.¹ Goal 16 provides for three kinds of management units: (1) Natural, (2) Conservation, and (3) Development. Two of those management unit types are relevant in this appeal, Natural and Conservation, and the Goal 16 description of those two management unit types is set out below:

“1. **Natural** -- in all estuaries, areas shall be designated to assure the protection of significant fish and wildlife habitats, of continued biological productivity within the estuary, and of scientific, research, and educational needs. These shall be managed to preserve the natural resources in recognition of dynamic, natural, geological, and evolutionary processes. Such areas shall include, at a minimum, all major tracts of salt marsh, tideflats, and seagrass and algae beds.”

“2. **Conservation** -- In all estuaries, except those in the overall Oregon Estuary Classification which are classed for preservation, areas shall be designated for long-term uses of renewable resources that do not require major alteration of the estuary, except for the purpose of restoration. These areas shall be managed to conserve the natural

¹ Goal 16 provides in part:

“When classifying estuarine areas into management units, the following shall be considered in addition to the inventories:

- “1. Adjacent upland characteristics and existing land uses;
- “2. Compatibility with adjacent uses;
- “3. Energy costs and benefits; and
- “4. The extent to which the limited water surface area of the estuary shall be committed to different surface uses.”

1 resources and benefits. These shall include areas needed for
2 maintenance and enhancement of biological productivity, recreational
3 and aesthetic uses, and aquaculture. They shall include tracts of
4 significant habitat smaller or of less biological importance than those
5 in (1) above, and recreational or commercial oyster and clam beds not
6 included in (1) above. Areas that are partially altered and adjacent to
7 existing development of moderate intensity which do not possess the
8 resource characteristics of natural or development units shall also be
9 included in this classification.”

10 For purposes of this appeal, the most significant difference between the natural
11 management unit and the conservation management unit is that the conservation management
12 unit allows “[m]ining and mineral extraction,” and the natural management unit does not.

13 The county adopted the Curry County Comprehensive Plan (CCCP) in 1981. The
14 CCCP description of the Rogue River Estuary natural management unit number 3 that is at
15 the heart of this appeal is set out below:

16 “* * * Mail Boat Point, the tip of the much larger island, is a site where
17 juvenile salmon and cutthroat congregate. Peak abundance occurs during July
18 and August (Creamer and Martin, 1978). Mail Boat Point has a gravel
19 substrate like other shores and flats in the Rogue River Estuary, but its
20 location between the river channel and the mouth of the north slough slows
21 the current and increases sediment deposition. There are beds of *Corophium*
22 amphipods in the fine sand and mud. Productive algal beds occur on the
23 gravel and fringing low marsh is found along the shore. (ODFW, 1979).

24 “Oregon Department of Fish and Wildlife believes that the habitats at Mail
25 Boat Point, the north slough, and the island dividing the river channel from the
26 slough should be preserved. The shallow, protected waters of the slough are
27 productive and should not be disturbed. The eddies and slack water areas
28 around the island are productive habitats for benthic organisms and the fish
29 that feed on them. To protect the dynamic relationship between the river and
30 island, potential river channels should not be blocked and island banks should
31 not be diked.” Record 101.²

32 The 1981 CCCP included a map to show the estuarine management unit designations for the
33 lower Rogue River. Record 99. In this opinion we refer to that map as the CCCP Estuarine

² The record includes excerpts from the CCCP. Those excerpts appear to be from a version of the CCCP that predates the CCCP that is available on the county website.

1 Management Unit Map. That map is at a scale of approximately one inch to 3,500 feet. A
2 copy of the CCCP Estuarine Management Unit Map is attached to this opinion as Appendix I.
3 That map shows two small islands near the middle of the map. The main channel of the
4 Rogue River lies to the south of those two islands. The islands are separated from the north
5 shore of the Rogue River by what the parties refer to as the north slough. That map shows a
6 natural management unit in the vicinity of those islands. That natural management unit is
7 identified elsewhere in the CCCP as natural management unit 3. Natural management unit 3
8 (1) includes and surrounds the smaller island and (2) includes a portion of the north slough.
9 That natural management unit also includes a narrow strip along the south shore of the larger
10 island, but does not include the portion of the north slough that is north of the larger island.

11 The county has adopted a zoning map as part of the CCCP. Record 104. In this
12 opinion we refer to that map as the CCCP Estuarine Zoning Map. That map apparently is
13 based in large part on the CCCP Estuarine Management Unit Map. The CCCP Estuarine
14 Zoning Map appears to be at the same scale as the CCCP Estuarine Management Unit Map.
15 A copy of the CCCP Estuarine Zoning Map is attached as Appendix II. On the CCCP
16 Estuarine Zoning Map, natural management units are zoned Estuary Resource – 1 (ER-1) and
17 conservation management units are zoned Estuary Resource – 2 (ER-2). It is worth noting
18 here that the problem the county faced in determining the location of the management units
19 and the zoning of intervenor’s property is almost entirely attributable to the small scale of the
20 CCCP Estuarine Management Unit Map and the CCCP Estuarine Zoning Map. Much larger
21 scale maps must be used to locate intervenor’s tax lots, and determining the estuarine zoning
22 for intervenor’s tax lots calls for a decision that ultimately is little more than an educated
23 guess. The problem presented by the small scale of the maps is compounded by the very
24 different land and river configurations shown on the two maps and the very imprecise way
25 zoning map designations are indicated on the CCCP Estuarine Zoning Map. *See* Appendix
26 II.

1 A further complication is that the river today does not look like the river that is
2 depicted on the 1981 CCCP Estuarine Management Unit Map. A map that shows the current
3 morphology of the river in the area of intervenor's property and intervenor's tax lots is
4 attached as Appendix III. That map is at a scale of approximately one inch to 1000 feet.
5 According to that map, the two islands depicted on the 1981 map no longer exist in the
6 locations shown on the 1981 map. The main channel of the Rogue River has shifted to the
7 north and the north slough has receded so that the northeast connection of the north slough
8 with the Rogue River is located at the property line that divides tax lots 102 and 108. *See*
9 Appendix III.

10 Intervenor owns tax lots 105, 107, 102, 1402 and 1404.³ In 2007, intervenor sought
11 county approval to expand its gravel operation on those tax lots. The county denied that
12 application, finding that intervenor's property lies within the ER-1 zone. Intervenor then
13 sought a determination that it has a right to continue mining on the property as a
14 nonconforming use. The county found that intervenor failed to establish that it has a
15 nonconforming use to the requested mining. Following those two failed attempts, intervenor
16 filed the application that led to the decision that is before us in this appeal.

17 Tax lots 105 and 107 adjoin North Bank Rogue River Road, and petitioners do not
18 challenge the county's finding that those tax lots are outside the natural management unit.
19 The county found that tax lot 102 is located in natural management unit 3. Petitioners agree
20 with that finding. However, the county found that tax lots 108, 1404 and 1402 are outside
21 natural management unit 3 and inside the adjoining conservation management unit.
22 Petitioners assign error to that finding.

³ Tax lot 1402 is the easternmost triangle shaped tax lot on Appendix III. Tax lot 1404, which is barely discernable and is not identified by tax lot number, is a very small triangle shaped tax lot between tax lot 108 and tax lot 1402.

1 During the proceedings below, the planning staff enlarged the 1981 one inch to 3,500
2 feet scale CCCP Estuarine Management Unit Map (Appendix I) and superimposed that
3 enlarged map onto the one inch to 1000 feet map that shows intervenor’s tax lots (Appendix
4 III). In this opinion we refer to that map as the “composite map.” A black and white copy of
5 that composite map is attached as Appendix IV. The original composite map shows the
6 enlarged natural management unit designation in color and some detail is lost in making the
7 black and white copy that is attached to this opinion as Appendix IV. We have circled the
8 two islands in a heavy black line and indicated the approximate location of the natural
9 management unit, as shown on the composite map, with diagonal heavy black lines. As
10 depicted on that composite map, the natural management unit surrounds the former smaller
11 island and extends east along the southern shore of the former larger island. As shown on the
12 composite map, the natural management unit includes approximately one half of tax lot 108
13 and does not include tax lots 1402 and 1404.

14 **SECOND ASSIGNMENT OF ERROR**

15 One of the county’s rationales in finding that tax lots 108, 1402 and 1404 are not
16 located within the natural management unit or the ER-1 zone is because the CCCP and
17 evidence in the record shows that an active gravel mining operation existed on those tax lots
18 in 1981. In three subassignments of error under the second assignment of error, petitioners
19 challenge those findings.

20 **A. The Legal Effect of 1981 Mining**

21 In their third subassignment of error, petitioners contend that even if the CCCP and
22 evidentiary record established that there was an existing gravel mining operation on tax lots
23 108, 1402 and 1404 in 1981, that would not conclusively establish that the county intended in
24 1981 to apply the conservation management unit and ER-2 zoning to those tax lots. We
25 agree with petitioners that even if the CCCP and evidentiary record established that there was
26 a gravel mining operation on the disputed tax lots in 1981, that would not *conclusively*

1 establish that the county intended to include those tax lots in the conservation management
2 unit and the ER-2 zone. However, absent some indication in the CCCP or evidence to the
3 contrary, such evidence would almost certainly constitute substantial evidence of that intent.
4 We believe a reasonable decision maker could conclude that if gravel mining in fact was
5 occurring on the disputed tax lots in 1981 the county likely intended to include those tax lots
6 in the conservation management unit and ER-2 zoning (which conditionally allow mining)
7 rather than the natural management unit and ER-1 zoning (which do not allow mining).

8 This subassignment of error is denied.

9 **B. The County's Findings Regarding Mining in 1981 and the Evidentiary**
10 **Support for Those Findings**

11 Citing CCCP maps, figures and text and aerial photographs that were taken in 1986
12 and 2005, the county found that gravel mining was occurring on the subject tax lots (tax lots
13 108, 1402 and 1404) in 1981. On pages 6-7 of its brief, intervenor identifies where this
14 evidence is located in the record. In their other two subassignments of error under the second
15 assignment of error, petitioners contend that the non-lot-specific maps, figures and equally
16 non-specific CCCP text do not constitute substantial evidence that mining was occurring on
17 those tax lots in 1981.

18 Substantial evidence is evidence a reasonable person would rely on to support a
19 conclusion. *Dodd v. Hood River County*, 317 Or 172, 179, 855 P2d 608 (1993). The CCCP
20 text, maps and figures would allow a reasonable person to conclude that there was gravel
21 mining on intervenor's property in the vicinity of the disputed tax lots. The Oregon
22 Department of State Lands (DSL) mining permit suggests that at least some of that mining
23 was taking place within waters of the state. However, as petitioners point out, the CCCP
24 maps, figures and text are not tax lot specific. The post-1981 maps may or may not show that
25 the surface of those tax lots is now disturbed, but they are not substantial evidence that tax
26 lots 108, 1402 and 1404 were being mined in 1981. The evidence that the county cited in
27 concluding that the disputed tax lots were being mined in 1981 is not evidence a reasonable

1 person would rely on to support that conclusion. None of the evidence that the parties have
2 cited to us is tax lot specific. The evidence is simply insufficient to draw any reasonable
3 conclusion about whether those tax lots were being mined in 1981.

4 These subassignments of error are sustained.

5 The second assignment of error is sustained in part.

6 **FIRST ASSIGNMENT OF ERROR**

7 In their first assignment of error, petitioners argue the county erroneously interpreted
8 the CCCP to place tax lots 108, 1402 and 1404 *outside* natural management unit 3 and the
9 ER-1 zone and *inside* the adjoining conservation management unit and ER-2 zone. LUBA’s
10 standard of review is set out at ORS 197.829(1).⁴ Under that standard of review, we must
11 affirm the county’s interpretation unless it is inconsistent with the express language of local
12 land use laws or is inconsistent the “purpose” or “underlying policy” of those laws or is
13 contrary to a state law that the local land use law implements. The express language of the
14 CCCP includes both text and maps. Therefore, the standard of review set out in ORS
15 197.829(1) applies to interpretations of maps as well as text.

16 The heart of the problem that the county faced in deciding which of intervenor’s tax
17 lots are included in the natural management unit is the small scale of the 1981 CCCP

⁴ ORS 197.829(1) provides:

“The Land Use Board of Appeals shall affirm a local government’s interpretation of its comprehensive plan and land use regulations, unless the board determines that the local government’s interpretation:

- “(a) Is inconsistent with the express language of the comprehensive plan or land use regulation;
- “(b) Is inconsistent with the purpose for the comprehensive plan or land use regulation;
- “(c) Is inconsistent with the underlying policy that provides the basis for the comprehensive plan or land use regulation; or
- “(d) Is contrary to a state statute, land use goal or rule that the comprehensive plan provision or land use regulation implements.

1 Estuarine Management Unit Map, which establishes the boundary between the natural and
2 conservation management units and the resulting zoning. The CCCP Estuarine Zoning Map
3 is at the same small scale and is even less precise than the CCCP Estuarine Management Unit
4 Map because its zoning designations frequently are shown by arrows that point to properties
5 without indicating what parts of the property carry the zoning designation indicated by the
6 arrow. As with ambiguous CCCP text, the small scale of the CCCP Estuarine Management
7 Unit Map requires that the county interpret the CCCP. *See Larson v. Willowa County*, 23 Or
8 LUBA 527, 536 (1992), *aff'd in part, rev'd and remanded in part on other grounds* 116 Or
9 App 96, 840 P2d 1350 (1993) (remanding county application of an extremely small scale
10 comprehensive plan map for a reviewable interpretation). If the CCCP included related text
11 or refinement maps that would assist in applying the small scale CCCP Estuarine
12 Management Unit Map to individual tax lots, they might provide valuable context in adopting
13 the required interpretation. *Knudsen Family LLC v. City of Eugene*, 48 Or LUBA 399, 412-
14 13, *aff'd* 200 Or App 292, 114 P3d 1150 (2005). However, the other maps and figures in the
15 CCCP that petitioners and intervenor rely on to support their respective positions are at the
16 same small scale and are crudely drawn. Similarly, the relevant text in the CCCP is not tax
17 lot specific. The county explained that the CCCP lacks helpful context for interpreting and
18 applying the CCCP Estuarine Management Unit Map:

19 “The Board of Commissioners does not have the benefit of a tax lot specific
20 refinement plan to aid in its interpretation. [The 1981 CCCP Estuarine
21 Management Unit Map is] at a scale where a heavy pencil line is
22 approximately 100 feet in width. Add to that the problems that can arise with
23 scaling, registering and enlarging hand-drawn, GIS and photographic images,
24 multiple types of errors can factor into the final product, rendering it less than
25 totally accurate. For those reasons, the Board of Commissioners believes that
26 the composite images alone are not conclusive in resolving the issue presented
27 in this appeal.

28 “Despite the above reservations, the images appear to show the division
29 between the natural management unit and the conservation unit as running
30 down the middle of Tax Lot 108. * * *.” Record 10.

1 The county goes on to cite and rely on evidence of mining shown on 1986 and 2005
2 photographs to support including tax lots 108, 1402 and 1404 in the conservation
3 management unit and ER-2 zone.

4 As already noted, if the CCCP had more detailed maps or figures or tax lot specific
5 text that might assist the county in locating the precise dividing line between natural
6 management unit 3 and the adjoining conservation management unit, that relevant context
7 would guide and might limit the county's discretion in interpreting the CCCP Estuarine
8 Management Unit Map. *Knudsen Family LLC*, 48 Or LUBA at 414-15 (small scale regional
9 plan map and larger scale refinement plan map do not conflict and larger scale refinement
10 plan map controls). However, in the absence of such relevant and helpful context, it was
11 entirely appropriate for the county to enlarge the 1981 CCCP Estuarine Management Unit
12 Map, apply it to a tax lot specific map, and use the resulting composite map to assist it in
13 making its decision about where the division between the two management units falls. We
14 have already agreed with petitioners that the photographs cited by the county are not
15 substantial evidence that there actually was mining on tax lots 108, 1402 and 1404 in 1981.
16 However, the county could just as easily have relied entirely on the lack of precision in the
17 CCCP Estuarine Management Unit Map and the lack of any other contextual provisions that
18 support including the disputed tax lots in natural management unit 3 and ER-1 zone to
19 conclude that tax lots 108, 1402 and 1404 are located in the conservation management unit
20 and zoned ER-2.

21 The composite map clearly supports a decision to exclude tax lots 1402 and 1404
22 from natural management unit 3. The composite map arguably calls for the county to decide
23 whether the western half of tax lot 108 is in natural management unit 3, resulting in a split
24 zoned property, or whether tax lot 108 should be included in or excluded from natural
25 management unit 3 in its entirety. The composite map appears to be the most reliable
26 evidence that was available to the county. However, given the lack of precision that was

1 inherent in preparing the composite map, which the county notes in its findings, we believe
2 that decisions to include tax lot 108, exclude tax lot 108 or include only one half of tax lot
3 108 are all plausible, based on the composite map. No additional explanation for the
4 county's choice from among those plausible interpretations was required.

5 Under Goal 16, the conservation management unit allows mining, so it is entirely
6 consistent with the conservation management unit to include property that is suitable for
7 mining. If there is something in the text of natural management unit number 3 that is
8 inconsistent with excluding tax lots 108, 1402 and 1404 from that management unit, that
9 inconsistency is not apparent to us. The text of natural management unit 3 was quoted earlier
10 in this opinion, and we set out part of that text below:

11 "Oregon Department of Fish and Wildlife believes that the habitats at Mail
12 Boat Point, the north slough, and the island dividing the river channel from the
13 slough should be preserved. The shallow, protected waters of the slough are
14 productive and should not be disturbed. The eddies and slack water areas
15 around the island are productive habitats for benthic organisms and the fish
16 that feed on them." Record 101.

17 The island where Mail Boat Point is located has increased in size over the years. *See*
18 Appendix IV. However, as the county has clarified the dividing line between the natural and
19 conservation management units in this area, the natural management unit and ER-1 zoning
20 includes "Mail Boat Point." It also includes the now larger "island" dividing the north slough
21 from the river, and it includes the "north slough" itself as well as the low lying area adjoining
22 the north slough to the north. Finally, natural management area 3 appears to include "eddies
23 and slackwater areas around the island," although fewer such areas currently exist because
24 the island has increased significantly in size.

25 As we noted earlier, the existing location of the north slough is not where it was
26 shown on the 1981 CCCP Estuarine Management Unit Map. However, the northeastern
27 connection of the north slough is located at the property line that divides tax lot 102 (which is
28 in the natural management unit) and tax lot 108 (which the county determined is outside the

1 natural management unit). Under the disputed decision, natural management unit 3 includes
2 the north slough from its northeast connection with the river to the southwest connection with
3 the river.⁵ Petitioners have not established that the county’s interpretation of the CCCP
4 Estuarine Management Unit Map is inconsistent with the text of natural management unit 3
5 or any other contextual provisions included in the CCCP.

6 As we noted earlier, LUBA’s standard of review is set out at ORS 197.829(1). *See n*
7 4. Under ORS 197.829(1)(a), we must affirm the county’s decision unless petitioners
8 establish that the county’s interpretation is “inconsistent with the express language of the
9 comprehensive plan.” For the reasons explained above, petitioners have not established that
10 the county’s interpretation is inconsistent with the CCCP Estuarine Management Unit Map or
11 any of the contextual CCCP provisions the county relied on. Under ORS 197.829(1)(b) and
12 (c), we must affirm the county’s decision unless it is inconsistent with the “purpose” or
13 “underlying policy” of the CCCP. As far as we can tell, the resources that the county cited in
14 designating natural management unit 3 in 1981 remain within natural management unit 3
15 under the challenged interpretation. Petitioners have not established that the county’s
16 interpretation is inconsistent with the “purpose” or “underlying policy” of the CCCP.
17 Finally, the 1981 CCCP Estuarine Management Unit Map was adopted to comply with Goal
18 16. Petitioner contends the county’s interpretation is inconsistent with Goal 16. However, as
19 intervenor points out in its brief, Goal 16 mandates a planning process that results in both
20 natural management units and conservation management units. The county has done so and
21 designated both natural and conservation management units. Petitioners have not
22 demonstrated how the county’s interpretation is inconsistent with any requirement of Goal
23 16.

⁵ A very small portion of a long narrow arm off the north slough appears to continue a short distance onto tax lot 108. *See* Appendix III. We cannot tell if that portion of the arm is properly viewed as part of the north slough and petitioners do not argue that it is.

1 As we note above, given the small scale CCCP mapping that is not tax lot specific
2 and the lack of any meaningful textual guidance in the CCCP for deciding whether tax lots
3 108, 1402 and 1404 are located within or just outside natural management unit 3, it was
4 appropriate for the county to rely on the composite map in adopting the required
5 interpretation. Given the inherent limitations in preparing the composite map, the county's
6 ultimate interpretation of the 1981 CCCP Estuarine Management Unit Map to exclude those
7 tax lots is at least as plausible as petitioners' interpretation that all three tax lots are included
8 in natural management unit 3. Where the local government governing body selects between
9 plausible interpretations of its land use legislation, LUBA is required to defer to the local
10 government governing body's interpretation. *Siporen v. City of Medford*, 231 Or App 585,
11 598-99, 228 P3d 427 (2009); *Foland v. Jackson County*, 215 Or App 157, 164, 168 P3d
12 1238, *rev den* 343 Or 690 (2007). We therefore defer to the county's interpretation.

13 The first assignment of error is denied.

14 **THIRD ASSIGNMENT OF ERROR**

15 Petitioners finally argue that the county's interpretation of the 1981 CCCP Estuarine
16 Management Unit Map is inconsistent with Curry County Zoning Ordinance (CCZO) 4.040.
17 CCZO 4.040 provides:

18 "Unless otherwise specified, zone boundaries are property lines, the centerline
19 of streets, and railroad rights-of-way, or such lines extended. Where a zone
20 boundary divides a land parcel under a single ownership into two zones, the
21 entire parcel shall be placed in the zone that accounts for the greater area of
22 the lot by the adjustment of the boundaries, provided the boundary adjustment
23 is a distance of less than 20 feet. If the adjustment involves a distance of more
24 than 20 feet, the property shall be considered as having two separate zones."

25 Petitioners argue that the county erred in finding that tax lot 108 lies outside the natural
26 management unit, because the composite map shows that approximately one half of tax lot
27 108 is located within the natural management unit and omitting tax lot 108 calls for a
28 boundary adjustment of more than 20 feet.

1 CCZO 4.040 would apply if the county zoning map showed tax lot 108 as split-zoned.
2 But the threshold question that the county had to answer in this case was whether tax lot 108
3 is wholly within, wholly without or partially within the natural management unit and ER-1
4 zoning. To the extent that CCZO 4.040 applies at all in making that decision, we agree with
5 intervenor that the first sentence CCZO 4.040 supports either total inclusion or total
6 exclusion of tax lot 108 where, as is the case here, the location of the boundary between two
7 zones is not clear. If the county had decided that tax lot 108 is split zoned ER-1 and ER-2,
8 then CCZO 4.040 would apply and permit the county to apply “the zone that accounts for the
9 greater area of the lot * * *, provided the boundary adjustment is a distance of less than 20
10 feet.” However, based on the imprecise nature of the county’s 1981 CCCP Estuarine
11 Management Unit Map, the county concluded that all of tax lot 108 lies outside the natural
12 management unit and ER-1 zone. CCZO 4.040 does not apply to that decision because the
13 county never found that tax lot 108 is partially zoned ER-1.

14 The third assignment of error is denied.

15 **CONCLUSION**

16 We sustain the second assignment of error in part, because we agree with petitioners
17 that there is not substantial evidence in the record that tax lots 108, 1402 and 1404 were
18 being mined in 1981. However, that error in the county’s decision is harmless. Based on the
19 composite map alone, the county could plausibly conclude that all of tax lot 108 and tax lots
20 1402 and 1404 are located outside the natural management unit and the ER-1 zone, without
21 regard to whether the tax lots were being mined in 1981.

22 The county’s decision is affirmed.

Appendix I

— Estuarine Boundary (mean higher high water datum)

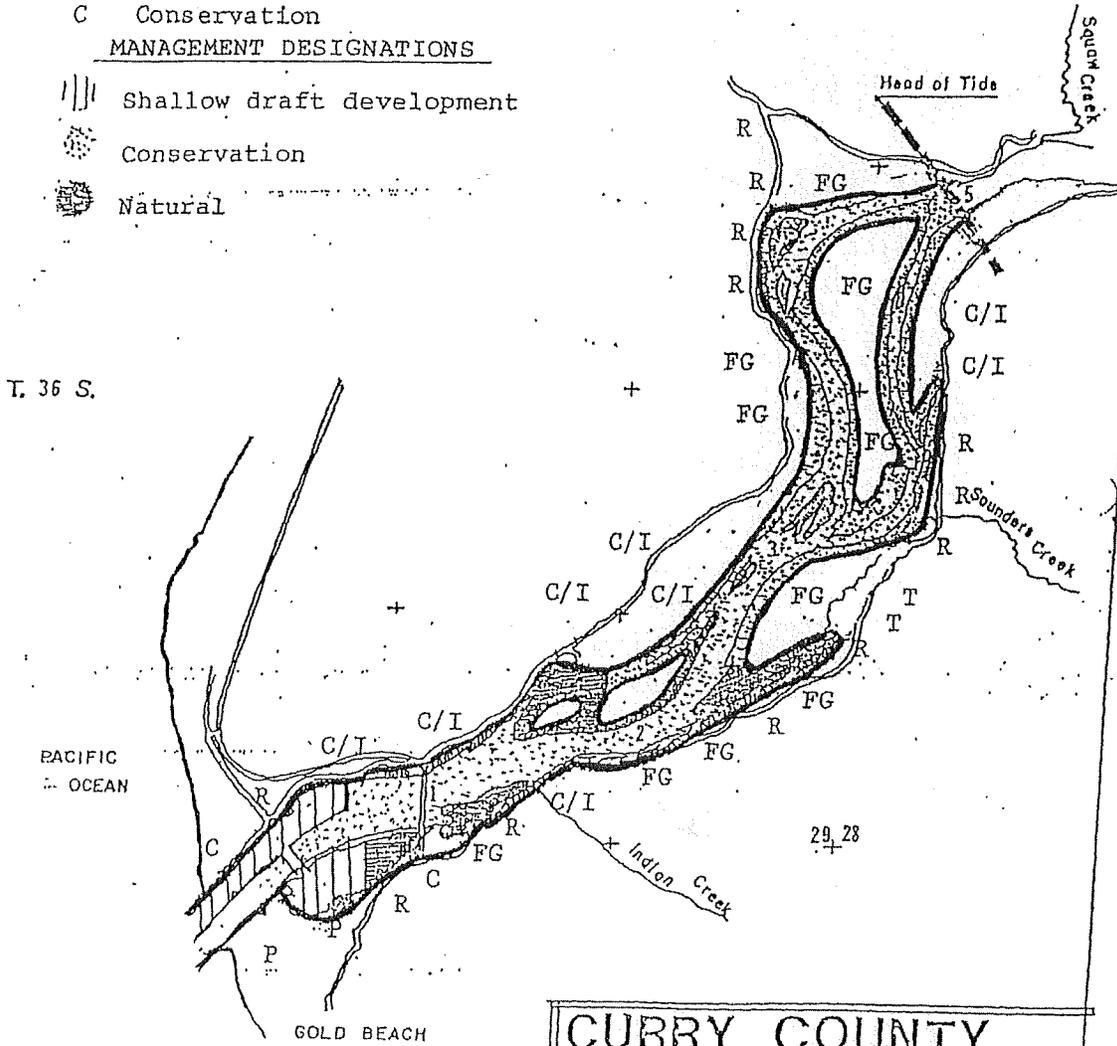
R. 14 W.

SHORELAND PLAN DESIGNATIONS

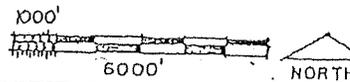
- T Timber
- FG Forest-Grazing
- R Residential
- C/I Commercial-Industrial
- P Public Areas
- C Conservation

MANAGEMENT DESIGNATIONS

- |||| Shallow draft development
- Conservation
- ⊘ Natural



CURRY COUNTY ROGUE RIVER ESTUARY



COMPREHENSIVE PLAN Management Designations

Figure 16.3.0

00099

Appendix II

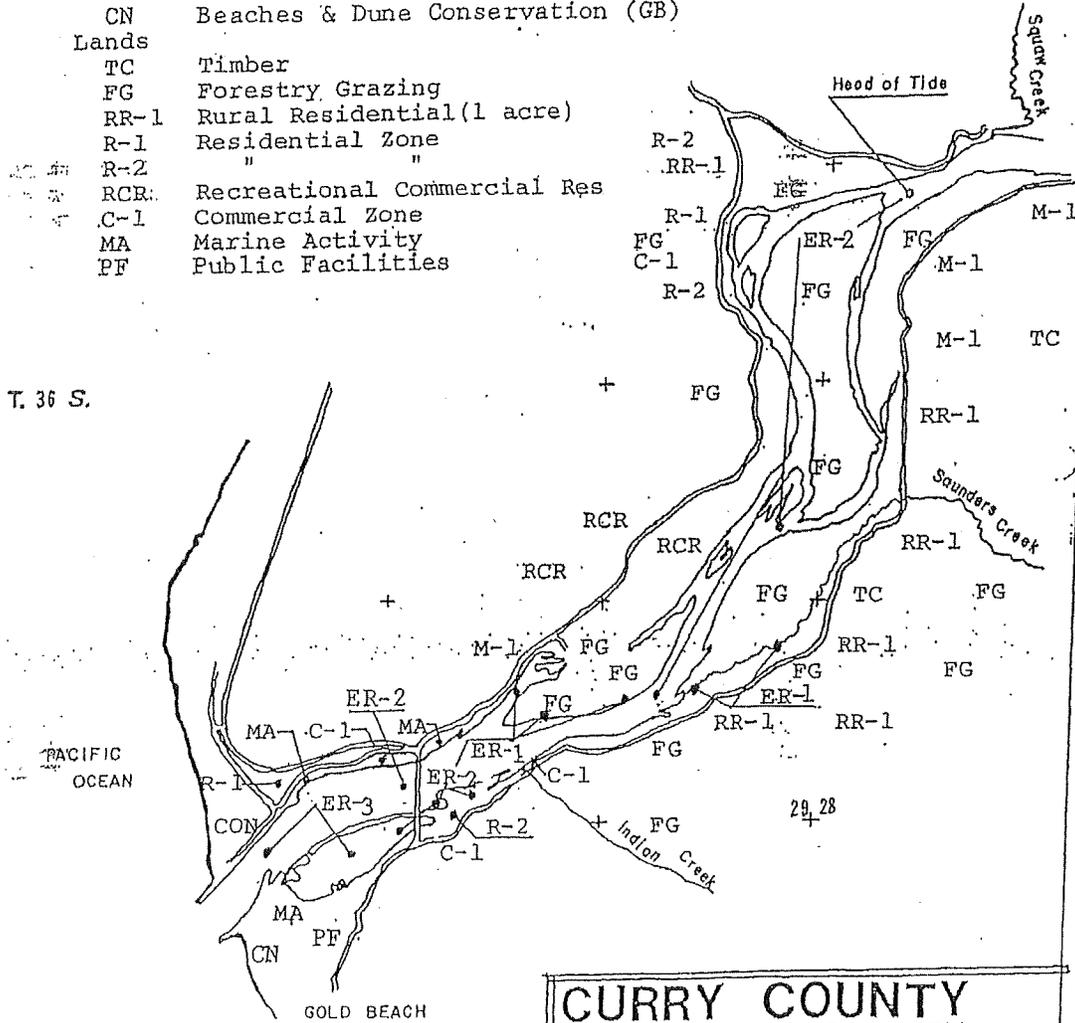
ZONING CLASSIFICATION

R.14 W.

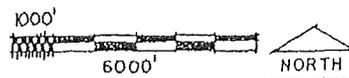
Aquatic (ER= estuary resources)
 ER-1 Natural
 ER-2 Conservation
 ER-3 Development

Shoreland
 CON Beaches & Dune Conservation (CC)
 CN Beaches & Dune Conservation (GB)

Lands
 TC Timber
 FG Forestry Grazing
 RR-1 Rural Residential (1 acre)
 R-1 Residential Zone
 R-2 " " " "
 RCR Recreational Commercial Res
 C-1 Commercial Zone
 MA Marine Activity
 PF Public Facilities



CURRY COUNTY ROGUE RIVER ESTUARY

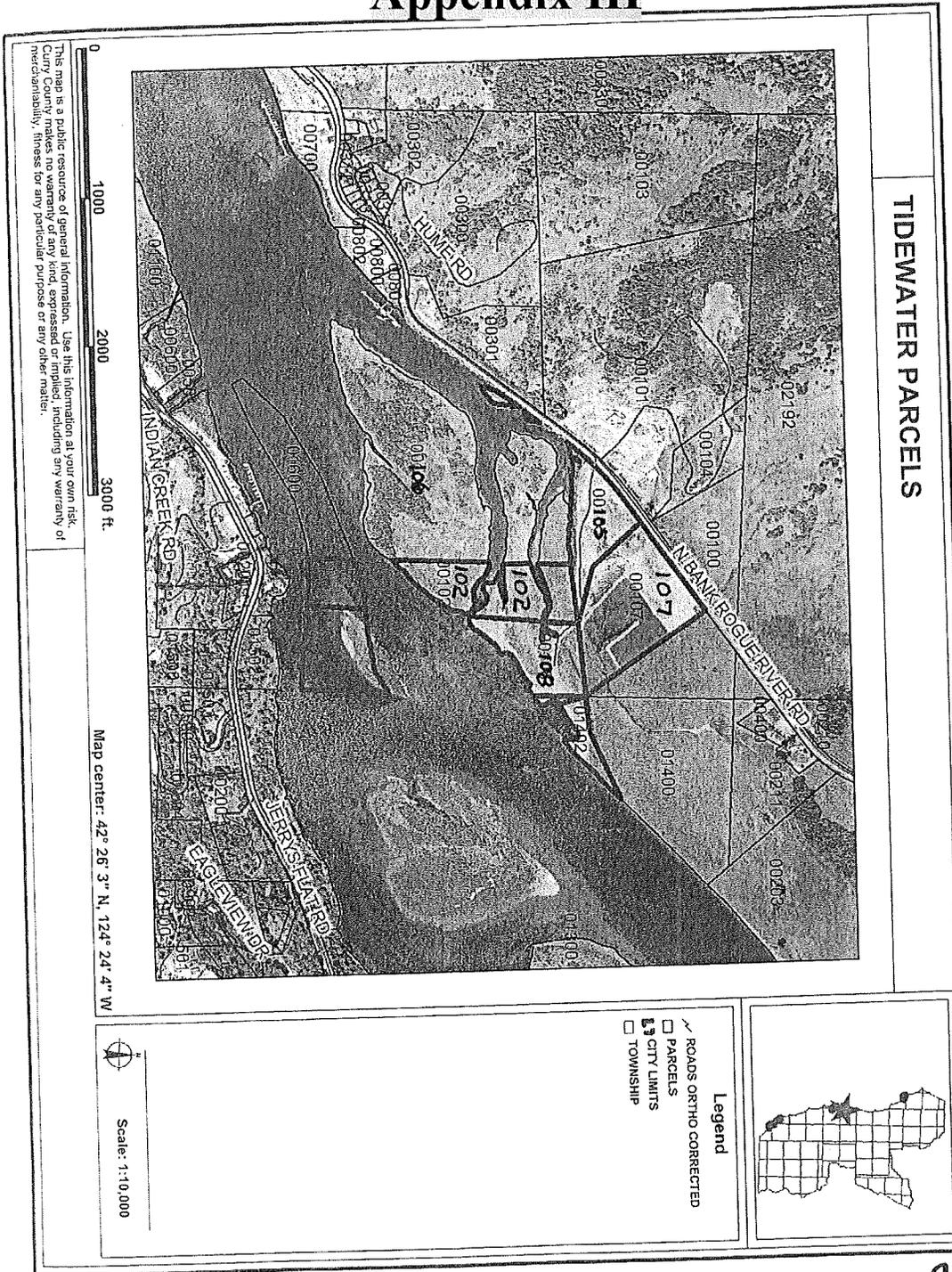


COMPREHENSIVE PLAN
 Zoning Map

Figure 16.3.P

00104

Appendix III



268

Appendix IV

Tidewater (A-906E / AD-....,
Current Parcels vs Comprehensive Plan
2005 Photos



297