

1                                   BEFORE THE LAND USE BOARD OF APPEALS

2                                   OF THE STATE OF OREGON

3  
4                                   LANDWATCH LANE COUNTY,

5   *Petitioner,*

6  
7   vs.

8  
9   LANE COUNTY,

10   *Respondent,*

11  
12   and

13  
14   JORDAN IVERSON  
15   and MARGARET IVERSON,  
16   *Intervenors-Respondents.*

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18   LUBA No. 2016-019

19  
20   FINAL OPINION  
21   AND ORDER

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23                                   Appeal from Lane County.

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25                                   Sean T. Malone, Eugene, filed the petition for review on behalf of  
26 petitioners.

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28                                   No appearance by Lane County.

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30                                   Bill Kloos, Eugene, filed the response brief on behalf of intervenors-  
31 respondents. With him on the brief was the Law Office of Bill Kloos, PC.

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

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36                                   REMANDED                                   06/13/2016

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38                                   You are entitled to judicial review of this Order. Judicial review is

1 governed by the provisions of ORS 197.850.

**NATURE OF THE DECISION**

Petitioner appeals a county decision that approves a comprehensive plan map amendment to redesignate land from Agricultural to Marginal Land, and rezone that land from Exclusive Farm Use (E-40) to Marginal Land with Site Review (ML/SR).

**FACTS**

The subject property is an 85-acre parcel planned and zoned for agricultural use, and developed with a single family dwelling. The property is inventoried in the Lane County Rural Comprehensive Plan (RCP) as Big Game Habitat, with 35 acres of the property subject to the sub-classification Peripheral Big Game Range and 49 acres subject to the sub-classification Impacted Big Game Range.

Intervenors-respondents (intervenors) applied to the county to redesignate and rezone the subject property from agricultural use to marginal lands, which would allow the property to be divided and developed with a density of one dwelling per 20 acres. To address compliance with Statewide Planning Goal 5 (Natural Resources, Scenic and Historic Areas, and Open Spaces) and related RCP provisions with respect to impacts on Big Game Habitat, intervenors' agent submitted an analysis of the ESEE (Economic, Social, Environmental and Energy) consequences of residential development of the property with respect to its Big Game Habitat resources. The ESEE

1 analysis concluded that development of the property at a density of one  
2 dwelling per 20 acres would not conflict with the inventoried Big Game  
3 Habitat resources.

4 The county planning commission conducted a hearing on the application  
5 and recommended approval. The county board of commissioners conducted a  
6 hearing on February 9, 2016. On the date of the hearing, petitioner submitted  
7 comments regarding conflicts with Big Game Habitat on the property. At the  
8 conclusion of the February 9, 2016 hearing, the commissioners voted to  
9 approve the application, and adopted the county's final written decision. This  
10 appeal followed.

#### 11 **ASSIGNMENT OF ERROR**

12 In three sub-assignments of error, petitioner challenges the county's  
13 findings regarding conflicts with the Big Game Habitat on the property.  
14 Among other things, petitioner argues that RCP Goal 5 Flora and Fauna Policy  
15 11 requires the county to use Oregon Department of Fish and Wildlife (ODFW)  
16 recommendations on overall residential density for protection of big game, and  
17 cites to evidence that ODFW has recommended a maximum residential density  
18 of one dwelling per 40 acres on lands subject to the Peripheral Big Game  
19 Range designation.<sup>1</sup>

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<sup>1</sup> RCP Goal 5, Flora and Fauna Policy 11 provides, in relevant part:

“Oregon Department of Fish and Wildlife recommendations on overall residential density for protection of big game shall be used

1           With respect to each sub-assignment of error, intervenors concur that  
2 remand is require to address the issues raised therein. Given that concession,  
3 we see no point in setting forth petitioner’s specific arguments.

4           The assignment of error is sustained.

5           The county’s decision is remanded.

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to determine the allowable number of residential units within regions of the County. Any density above that limit shall be considered to conflict with Goal 5 and will be allowed only after resolution in accordance with OAR 660-016-0000. \* \* \*”