

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

1000 FRIENDS OF OREGON,  
*Petitioner,*

vs.

LINN COUNTY,  
*Respondent,*

and

RONALD HENTHORNE, VIRGINIA HENTHORNE,  
and LYNN MERRILL,  
*Intervenors-Respondents.*

LUBA Nos. 2019-103/104

FINAL OPINION  
AND ORDER

Appeal on remand from the Court of Appeals.

Andrew Mulkey represented petitioner.

No appearance by Linn County.

Wendie L. Kellington represented intervenors-respondents.

RYAN, Board Member; RUDD, Board Chair, participated in the decision.

ZAMUDIO, Board Member, did not participate in the decision.

REMANDED

02/09/2021

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

1 Opinion by Ryan.

2 **NATURE OF THE DECISION**

3 In these appeals, petitioner appeals an ordinance adopting a plan  
4 amendment and zone change from Farm Forest to Non-Resource 5-Acre  
5 Minimum and a resolution and order adopted in support of the ordinance.

6 **INTRODUCTION**

7 This matter is on remand from the Court of Appeals. *1000 Friends of*  
8 *Oregon v. Linn County*, 306 Or App 432, 475 P3d 121 (2020) (*1000 Friends II*).  
9 We take the facts from our decision in *1000 Friends of Oregon v. Linn County*,  
10 \_\_\_ Or LUBA \_\_\_ (LUBA Nos. 2019-103/104, May 8, 2020) (*1000 Friends I*):

11 “The subject property is an approximately 108-acre vacant parcel  
12 designated on the county’s comprehensive plan map as Farm Forest  
13 (F/F) and zoned F/F. Together with the Agricultural Resources  
14 Lands (AR) and the Forest Resources Lands (FR) designations, the  
15 F/F plan designation implements Statewide Planning Goal 3  
16 (Agricultural Lands), Goal 4 (Forest Lands), and Goal 5 (Natural  
17 Resources, Scenic and Historic Areas, and Open Spaces).

18 “A majority of the property is included on the county’s mapped  
19 peripheral big game habitat, an area jointly identified and mapped  
20 by the county and the Oregon Department of Fish and Wildlife  
21 (ODFW). The property borders land zoned Rural Residential and  
22 Forest Conservation Management (FCM) to the east, and land zoned  
23 FF and FCM to the west, north and east. Land to the south is zoned  
24 EFU. Record 376. The property includes sloped and stepped bench  
25 slopes, with volcanic rock, clay, basalt, cobble and gravel, with  
26 intermittent drainage ways.

27 “Intervenors applied to change the plan designation for the property  
28 from F/F to Non-Resource (NR) and zone the property Non-  
29 Resource 5-acre minimum (NR-5). The board of county

1 commissioners held hearings on the application and approved the  
2 application. These appeals followed.” *1000 Friends I*, \_\_\_\_ Or LUBA  
3 at \_\_\_\_ (slip op at 3-4) (citations omitted).

4 In *1000 Friends I*, we sustained a portion of petitioner’s first assignment  
5 of error which argued that the county’s interpretation of the relevant Linn County  
6 Code (LCC) provisions to allow the county to defer the required analysis  
7 regarding the impact of the plan and zone change on mapped wildlife habitat until  
8 development approval is sought was inconsistent with the express language of  
9 those provisions. *Id.* at \_\_\_\_ (slip op at 11-14). On appeal, the Court of Appeals  
10 agreed with petitioner that intervenors-respondents did not challenge that aspect  
11 of our decision. *1000 Friends II*, 306 Or App at 434-35. Accordingly, that part of  
12 our decision in *1000 Friends I* is undisturbed.

13 We also sustained a portion of petitioner’s first assignment of error which  
14 argued that the express language of LCC 903.550(A)(1) and LCC 903.510(B)(3)  
15 require resource designations for property that is mapped as big game habitat and,  
16 therefore, the county’s decision to approve Non-Resource plan and zoning  
17 designations was inconsistent with the express language of those provisions.  
18 *1000 Friends I*, \_\_\_\_ Or LUBA at \_\_\_\_ (slip op at 11-12). Accordingly, we  
19 concluded that the county’s decision to approve Non-Resource plan and zoning  
20 designations for the property was “prohibited as a matter of law” under OAR  
21 661-010-00(1)(c) and reversed the county’s decision.

22 In *1000 Friends II*, the court concluded that the county board of  
23 commissioners’ implied interpretation of LCC 903.550(A)(1) and LCC

1 903.510(B)(3) to not preclude Non-Resource plan and zoning designations for  
2 property that is mapped as big game habitat was plausible under *Siporen v. City*  
3 *of Medford*, 349 Or 247, 262, 243 P3d 776 (2010), and reversed and remanded  
4 that aspect of our decision. 306 Or App at 437-38.

5 Accordingly, because the first part of our resolution of petitioner's first  
6 assignment of error—that the county erred in deferring the required analysis of  
7 the impacts of the plan and zone change on mapped wildlife habitat to a future  
8 time when development approval is sought—remains undisturbed, we remand  
9 the decision for the county to conduct that required analysis in considering the  
10 plan and zone change amendment application.

11 The county's decision is remanded.