

W. G. d

AGENDA COVER MEMO



DATE: November 29, 2004 (Date of Memo)
December 15, 2004 (Date of First Reading)
January 12, 2005 (Date of Second Reading/Public Hearing)

TO: LANE COUNTY BOARD OF COMMISSIONERS

LAND MANAGEMENT DIVISION
http://www.LaneCounty.org/PW_LMD/

DEPT.: Public Works Department/Land Management Division

PRESENTED BY: Thom Lanfear/Land Management Division

AGENDA ITEM TITLE: ORDINANCE NO. PA 1220 / IN THE MATTER OF AMENDING THE RURAL COMPREHENSIVE PLAN TO REDESIGNATE LAND FROM "FOREST" TO "MARGINAL LAND" AND REZONING THAT LAND FROM "F-2/IMPACTED FOREST LANDS" TO "ML/MARGINAL LAND", AND ADOPTING SAVINGS AND SEVERABILITY CLAUSES (FILE PA 03-5901; CARVER)

I. MOTION

1. DECEMBER 15, 2004: I MOVE APPROVAL OF THE FIRST READING OF ORDINANCE NO. PA 1220 AND SETTING THE SECOND READING AND PUBLIC HEARING FOR JANUARY 12, 2005 AT 1:30 P.M. IN HARRIS HALL.
2. JANUARY 12, 2005: ALTERNATIVE MOTIONS AFTER DELIBERATIONS:
 - A. I MOVE TO APPROVE ORDINANCE NO. PA 1220 WITH THE CURRENT FINDINGS.

OR
 - B. I MOVE TO TENTATIVELY APPROVE ORDINANCE NO. PA 1220 SUBJECT TO REVISED FINDINGS TO BE PREPARED FOR FINAL ACTION.

OR
 - C. I MOVE TO TENTATIVELY DENY THE APPLICATION IN FILE PA 03-5901 AND DIRECT STAFF TO PREPARE AN ORDER WITH APPROPRIATE FINDINGS FOR FINAL ACTION.

II. ISSUE

The Lane County Planning Commission has recommended a privately initiated minor amendment to the RCP, and companion rezoning request, for approval. This Ordinance sets the matter before the Board for adoption or denial.



III. PROCEDURE

The Board of Commissioners has established these hearing procedures:

1. Announce the hearing is de novo and explain the rules of conduct;
2. Disclose any ex parte contacts and call for abstentions;
3. Request the Director or staff to present an introductory report, explain any graphic or pictorial displays which are a part of the report, read findings and recommendations, if any, and provide such information as may be requested by the Board of County Commissioners ("Board", hereinafter);
4. Allow the applicant to be heard first, on his own behalf or by representatives;
5. Allow other persons to be heard;
6. Allow the Director to present any further comments or information in response to testimony and evidence offered by any interested persons.
7. Allow the applicant to rebut, on his own behalf or by representative, any testimony previously presented to the Board.
8. Conclude the hearing of testimony at this time and close the record, unless the Board continues the hearing or leaves the record open.
9. At the conclusion of the public testimony, the Board has several options:
 - a) Continue the hearing to a date and time certain for the purposes of hearing additional testimony before commencing with deliberations; or
 - b) Leave the record open for additional written testimony. The Board must determine and announce reasonable time periods for the record to remain open for the submittal of additional written information by the applicant and opponents; or
 - c) Close the record and set deliberations for a time specified by the Board, and make a decision based on findings of fact and conclusions in response to the record and testimony.
 - d) Close the record and move directly to deliberations, and make a decision based on findings of fact and conclusions in response to the record and testimony.
10. At the conclusion of deliberations, the Board has several options:
 - a) the Board may adopt the Ordinance with the supporting findings of fact prepared by the applicant; or
 - b) the Board may assign the drafting of revised findings of fact and conclusions to the applicant for adoption at a subsequent reading; or
 - c) the Board may assign the drafting of an Order for denial to the Director.

IV. DISCUSSION

A. Background

On September 2, 2003, application was made to redesignate a parcel of land from Forest Land to Marginal Land and rezone it from F-2/Impacted Forest Lands to ML/Marginal Land. The Lane County Planning Commission recommended approval of the request, following a public hearing and deliberation on June 15, 2004.

The subject property is identified as Map 18-04-13 Taxlot 3500. The subject property consists of a total area of 42.2 acres. The undeveloped property is located immediately south of the Eugene City Limits and Urban Growth Boundary at the end of Ridgewood Drive.

The application also contains findings to demonstrate that adjacent lands qualify as Marginal Lands thereby allowing the division of the subject property into 10-acre parcels. The

subdivision application is a separate process to be evaluated at the Planning Director level, and is not a part of the proposal currently before the Board.

As evidenced in the attachments, the proposal was contested during Planning Commission review. Numerous revisions and supplements by the applicant enabled staff to conclude with a recommendation for approval of the request.

B. Analysis

The application is being made pursuant to Lane Code 16.400, which governs amendments to the Rural Comprehensive Plan, LC 16.252, which governs rezoning actions, and the provisions of 1991 ORS 197.247 (Marginal Lands). That statute no longer exists but its provisions are still available to marginal lands counties (of which Lane County is one) for designation of Marginal Lands. The provisions require evaluating history of use (e.g. income produced) and an analysis of either resource production capabilities of the subject property or an evaluation of the parcelization pattern surrounding the subject property. The applicant has selected the "resource production capability" option.

State statutory standards invoked by this application are as follows:

ORS 197.247(1)(a) The proposed marginal land was not managed, during three of the five calendar years preceding January 1, 1983, as part of a farm operation that produced \$20,000 or more in annual gross income or a forest operation capable of producing an average, over the growth cycle, of \$10,000 in annual gross income. ["income test"]

and

ORS 197.247(1)(b)(C) The proposed Marginal Land is composed predominantly of soils in capability classes V through VIII in the Agricultural Capability Classification system used by the U.S. Department of Agriculture Soil Conservation Service, and is not capable of producing 85 cubic feet of merchantable timber per acre per year. ["productivity test"]

Also effective on the decision are several County criteria from Lane Code 16.400, having to do with adoption of a Plan amendment and information required to be developed in support of the request. The applicant's Statement (see Findings – Ordinance Exhibit "C") recites the appropriate local and state standards and applies them to the proposal.

1. Income Tests

ORS 197.247(1)(a) The proposed marginal land was not managed, during three of the five calendar years preceding January 1, 1983, as part of a farm operation that produced \$20,000 or more in annual gross income or a forest operation capable of producing an average, over the growth cycle, of \$10,000 in annual gross income.

This provision requires the applicant to analyze the farm operations or forest operations that existed from January 1, 1978 through December 31, 1982, a five-year period. The subject property is comprised of two portions of properties under separate ownership during 1978 through 1982. In the LCPC Staff Report is a map opposite page 3 that illustrates the boundaries of ownership from 1978 to 1982. The "Wood Parcel" is the land in common ownership from 1979 – 1982 identified as Parcel 2 of minor subdivision M152-79 (48 acres). The "Frisbie Parcel" is comprised of the land that was added to the subject property

in 1997 and taxlot 3802 to the south (61.5 acres). The "Christie Parcel" is the adjacent property to the south in its' present configuration. In order to qualify the subject property for Marginal Land status, the applicant must analyze the actual farm operation or the capability of any farm or forest operation that was occurring on both the "Wood Parcel" and the "Frisbie Parcel" during the relevant 5-year period.

a. Farm Operation Analysis

The applicant has submitted two analyses from Mr. Paul Day examining the subject property's potential for farm use. The original analysis was updated on May 25, 2004 to review the entire "Wood Parcel" and submitted with the May 28, 2004 submittal. His determination concludes that the subject property was not managed, and could not have been managed, as part of a farming operation that produced \$20,000 in annual gross income between 1978 and 1983. This analysis is supported by the information supplied in the comments from Mr. Wayne Wood whose parents owned the property during the relevant time period. Apparently, all farming had ceased prior to 1978 and the land was converted to forestland.

b. Forest Operation Analysis "Wood Parcel"

The applicant's May 28, 2004 submittal (attached) contains an analysis of the capability of the forest operation that occurred on the "Wood Parcel". It is identified as Exhibit "A" to that submittal. The analysis has concluded that the forest operation was capable of producing only \$2,610 in annual gross income.

c. Forest Operation Analysis "Frisbie Parcel"

The applicant's May 28, 2004 submittal (attached) contains an analysis of the capability of the forest operation that occurred on the "Wood Parcel". It is identified as Exhibit "C" to that submittal. The analysis has concluded that the forest operation was capable of producing only \$2,922 in annual gross income.

d. Objections to the Forest Operations Analyses

The Goal One Coalition, represented by Mr. Just, has submitted objections to the methodology used by the applicant to analyze the income capability of the subject property forest operation and the adjacent property forest operation. There are two primary objections raised: capability for the production of tree species other than Douglas Fir, and the use of 1983-timber values to calculate potential gross income. The objections are contained on Page 10 of the April 22, 2004 submittal. The applicant has addressed the objections in the May 28, 2004 submittal. The applicant's Consulting Forester has provided an analysis of other tree species for each forest operation. The use of 1983-timber values follows direction contained in the Lane County Board of Commissioners 1997 interpretation attached to this report.

Based upon the information currently in the record, staff supports a finding that this criterion is met by this application.

2. Productivity Tests

ORS 197.247(1)(b)(C) The proposed Marginal Land is composed predominantly of soils in capability classes V through VIII in the Agricultural Capability Classification system used by the U.S. Department of Agriculture Soil Conservation Service on October 15, 1983, and is not capable of producing ... 85 cubic feet of merchantable

timber per acre per year in those counties west of the summit of the Cascade Range, as that term is defined in ORS 477.001(21).

There are two components to this criterion: the soils of the property must be >50% class V through VIII, and the subject property cannot be capable of producing 85 cubic feet of merchantable timber per acre per year.

a. Classification of Soils

The applicant has provided an analysis of the Agricultural Capability Classification of the soils for the subject property on page 5 of the original submittal. The analysis concludes that 61.347% of the soils are rated Class VI agricultural soils. The basis for the classification is identified as the Soil Survey of Lane County, September 1987 and the soil type and area calculations compiled by LCOG (Applicant's Original Submittal Exhibit D).

An issue has been raised by the Goal One Coalition over the use of the generalized Class VI rating for the Dixonville-Philomath-Hazelair soil complexes (soil types 43C and 43E). See Page 2 of the Goal One submittal. According to the Soil Survey of Lane County, the complex soil types are made up of a percentage of several soil types. The Goal One Coalition recommends different capability classification based upon the individual components of the complex soil types. However, reference to the classifications for the two complexes as Class VI is contained in the Agricultural Lands Working Paper published in November 1981 and is carried forward in the Soil Survey of Lane County Agricultural Capability Classification System in use by the USDA SCS on October 15, 1983.

The Class VI generalized rating assigned to these two complexes is apparently applied because it is the classification associated with the most limited of the individual component classifications for agricultural purposes. The components of the unit are so intricately intermingled that is impractical to manage them separately.

b. 85 cubic ft. per acre per year standard

The applicant has addressed the concerns about the original analysis raised by the Goal One Coalition and re-analyzed the capability of the subject property to produce 85 cubic feet per acre per year of merchantable. See Exhibit "B" of the May 28, 2004 submittal. The analysis includes species of trees other than Douglas Fir and concludes that the property produces only 62 cubic feet per acre per year. The applicant has also analyzed the capability of the adjacent property to the south to demonstrate that it also qualifies as marginal land so that the subject property may be divided into 10-acre parcels. See Exhibit "D" of the May 28, 2004 submittal. The analysis includes species of trees other than Douglas Fir and concludes that the property produces 66.4 cubic feet per acre per year.

3. Policy Analysis.

Reference is made in the application to Lane County RCP policy 3, Goal 4, as follows:

Forest Lands that satisfy the requirements of ORS 197.247 may be designated as Marginal Lands and such designations shall also be made in accordance with other

Plan Policies. Uses and land divisions allowed on Marginal Lands shall be those allowed by ORS 197.247.

Within the proposed findings is a discussion of applicable plan policies as required above; the findings concludes that policy compliance is achieved. Compliance with ORS 197.247 is satisfied by the Marginal Lands tests discussed earlier in this staff report.

4. Lane Code Requirements.

The remainder of the findings satisfactorily addresses compliance with the code aspects such as: fulfilling the purpose of the ML zone as found in LC 16.214(1); the Plan Amendment requirements of LC 16.400; and the rezone requirements of LC 16.252. Staff agrees with the statements as presented.

5. Lane County Planning Commission Action

The issues were presented to the LCPC for its evaluation in a public hearing on June 15, 2004. Although the proposal was contested, the Commission voted unanimously to recommend approval of the proposal.

The applicant is expected to be on hand at the Board hearing to present the proposal and respond to questions. Should additional written materials or testimony be produced concerning this item, it will be delivered to the Board in a supplement or delivered at the hearing.

C. Alternatives/Options

Upon conclusion of Board deliberations, a variety of options are available to the Board:

1. If the Board finds that the application meets all applicable criteria for approval:
 - a) Move to adopt the Ordinance as presented with the applicant's findings; OR
 - b) Move to tentatively approve the application and direct the applicant to prepare revised findings corresponding to the Board deliberations for subsequent final adoption.
2. If the Board finds that the application does not meet all applicable criteria for approval, move to tentatively deny the application and direct staff to prepare a Board Order for denial of the application for subsequent final adoption.

D. Recommendations

Staff recommends Option 1(a) above.

E. Timing

The Ordinance does not contain emergency clause.

V. IMPLEMENTATION/FOLLOW-UP

Notice of action will be provided to DLCD, the applicant, and other parties to the proceedings.

VI. ATTACHMENTS

1. Proposed Ordinance PA 1217 with Exhibits "A", "B", and "C"
2. BCC Direction Regarding the Interpretation and Administration of Marginal Lands Applications
3. Submittal from Roy Carver dated October 4, 2004
4. Submittal from Steve Cornacchia dated August 17, 2004
5. LCPC Minutes of June 15, 2004
6. Soil Interpretations, Lane County Oregon 1981
7. Soil Interpretation Records 43E dated 4/83 & 12/84
8. E-mail from Roy Carver dated June 11, 2004
9. LCPC Staff Report for June 15, 2004 hearing with attachments (includes all record items submitted prior to staff report):

BEFORE THE BOARD OF COUNTY COMMISSIONERS OF LANE COUNTY, OREGON

ORDINANCE NO. PA 1220) IN THE MATTER OF AMENDING THE RURAL COMPREHENSIVE
) PLAN TO REDESIGNATE LAND FROM "FOREST" TO "MARGINAL
) LAND" AND REZONING THAT LAND FROM "F-2/IMPACTED
) FOREST LANDS" TO "ML/MARGINAL LAND", AND ADOPTING
) SAVINGS AND SEVERABILITY CLAUSES (file PA 03-5901; Carver)

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

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

WHEREAS, in September 2003, application no. PA 03-5901 was made for a minor amendment to redesignate tax lot 3500 of map 18-04-13, from "Forest Land" to "Marginal Land" and concurrently rezone the property from "F-2/Impacted Forest Lands" to "ML/Marginal Land"; and

WHEREAS, the Lane County Planning Commission reviewed the proposal in public hearing of June 15, 2004, and on that date forwarded the matter to the Board with a recommendation for approval; and

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

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

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

Section 1. The Lane County Rural Comprehensive Plan is amended by the redesignation of tax lot 3500 of map 18-04-13, from "Forest Land" to "Marginal Land," such territory depicted on Plan Plot 334 and further identified as Exhibit "A" attached and incorporated herein.

Section 2. Tax lot 3500 of map 18-04-13, is rezoned from "F-2/Impacted Forest Lands" (Lane Code 16.211) to "ML/Marginal Land" (Lane Code 16.214), such territory depicted on Rural Zoning Plot 334 and further identified as Exhibit "B" attached and incorporated herein.

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

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

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

ENACTED this _____ day of _____, 2005.

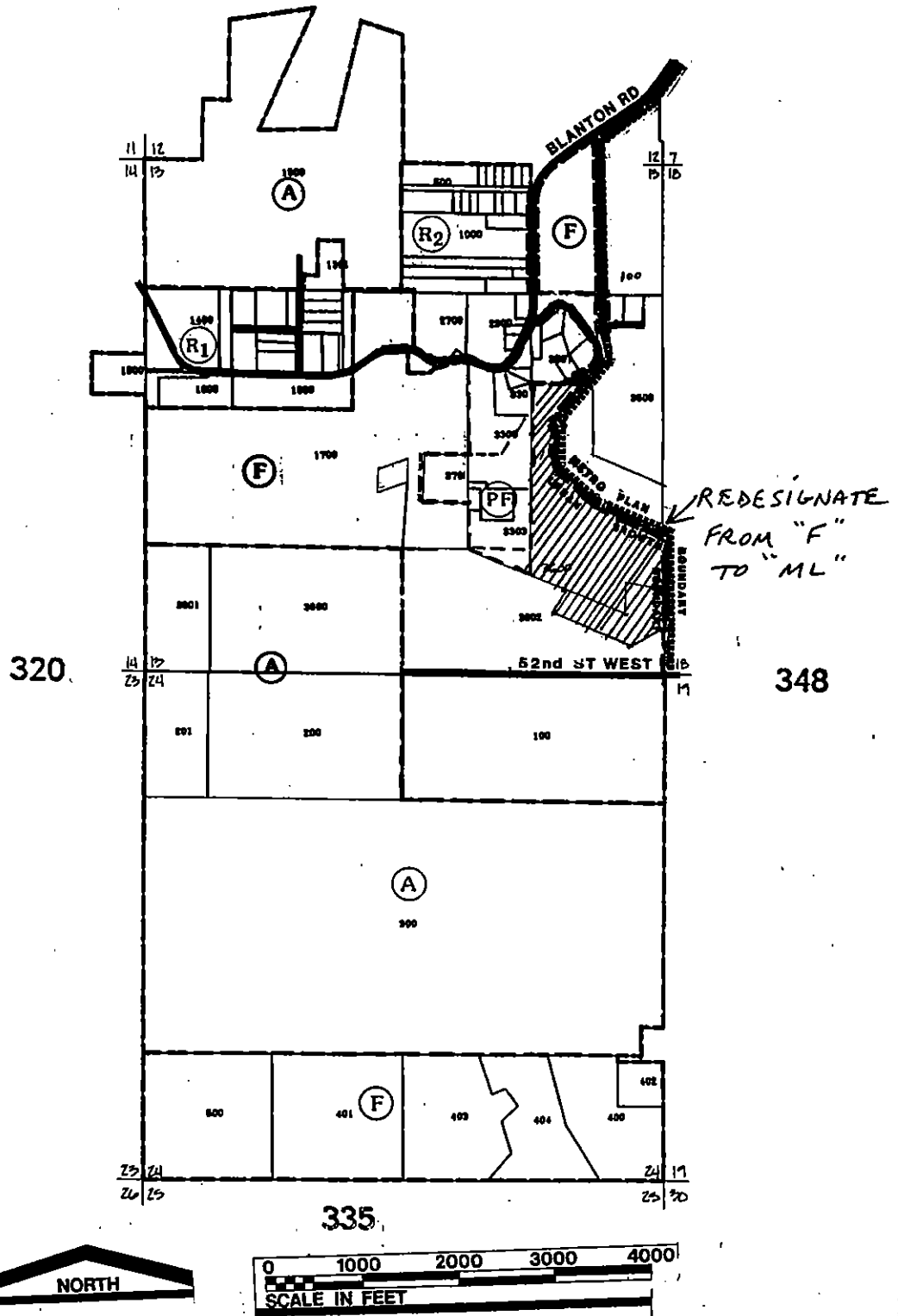
APPROVED AS TO FORM

Date 12-7-2004 1979 county
Stephen L. Carver
OFFICE OF LEGAL COUNSEL

Chair, Lane County Board of County Commissioners

Recording Secretary for this Meeting of the Board

ORDINANCE NO. PA 1220 / IN THE MATTER OF AMENDING THE RURAL COMPREHENSIVE PLAN TO REDESIGNATE LAND FROM "FOREST" TO "MARGINAL LAND" AND REZONING THAT LAND FROM "F-2/IMPACTED FOREST LANDS" TO "ML/MARGINAL LAND", AND ADOPTING SAVINGS AND SEVERABILITY CLAUSES (file PA 03-5901; Carver)



lane county



OFFICIAL PLAN MAP

PLOT# 334

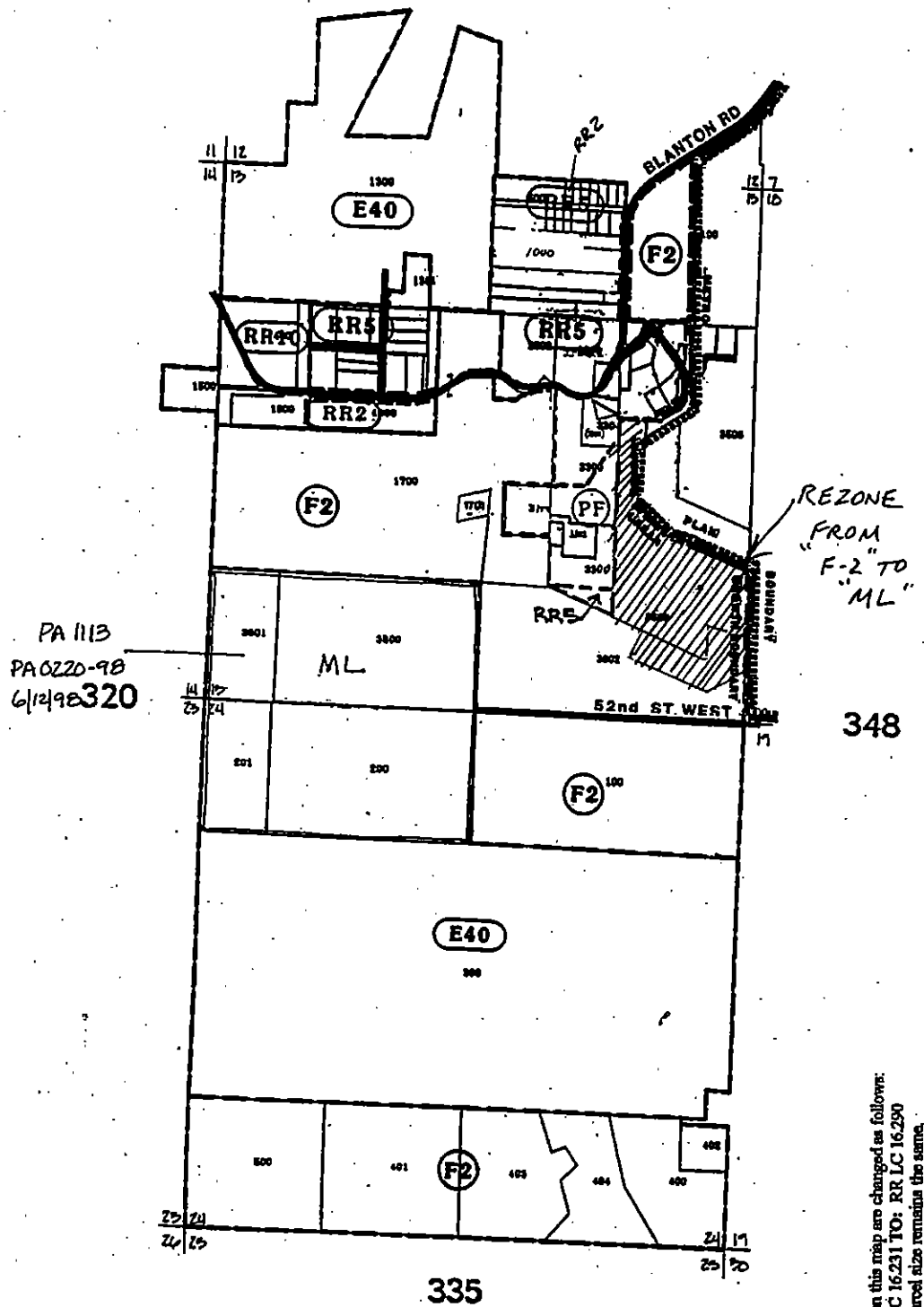
Township Range Section

18 04 13

18 04 24

ORIGINAL ORD. # PA 884 DATE 2/29/1984 FILE #

REVISION # 2 ORD. # PA1038 DATE 6/18/93 FILE # PA2781-91



The zones on this map are changed as follows:
 From: RG, RA ~~XXXX~~ To: RR2
 From: CR, C1, C2, & C3 To: RC Rural Commercial
 From: M1, M2, & M3 To: R1 Rural Industrial
 From: PF To: RPF Rural Public Facility
 From: PR To: RPR Rural Park & Recreation



The RR zones on this map are changed as follows:
 FROM: RR LC 16.231 TO: RR LC 16.290
 The RR zone parcel size remains the same.

ane county



OFFICIAL ZONING MAP

PLOT# 334

Township Range Section

18 04 13

18 04 24

ORIGINAL ORD. # PA 884

DATE 2/29/1984

FILE #

REVISION # 3 ORD. # PA1038

DATE 6/18/93

FILE # PA2781-91

FINDINGS OF FACT AND CONCLUSIONS OF LAW

for

MINOR AMENDMENT OF THE LANE COUNTY

RURAL COMPREHENSIVE PLAN

and

ZONE CHANGE FROM IMPACTED FOREST LAND

to

MARGINAL LAND

PA 03-5901

ROY CARVER III

**P.O. BOX 51505
Eugene, OR 97405**

Submitted by:

**P. STEVEN CORNACCHIA
HERSHNER, HUNTER, ANDREWS,
NEILL & SMITH, LLP**

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PROPOSAL

Applicant: Roy Carver III

Property Owner: Julia Carver

Property Location: Located immediately south of Eugene City Limits and Urban Growth Boundary at the end of Ridgewood Drive.

Assessor's Map and Lot: Assessor's Map No. 18-04-13-3500

Current County Zoning: Impacted Forest Land (F-2)

Land Use Consultant: Harry A. Taylor
P.O. Box 1420
Veneta, OR 97242

Attorney-Consultant: P. Steven Cornacchia
Hershner Hunter
180 E. 11th Avenue
Eugene, Oregon 97401

1.0 EVIDENCE.

1. Application materials dated September 2, 2003, with exhibits;
2. Forester's Supplemental Information from Booth Consulting, Inc., dated March 15, 2004;
3. Application materials dated May 28, 2004, with the following exhibits:
 - a. Correspondence from Steve Cornacchia
 - b. Exhibit "A" Forest Productivity Analysis (Wood Parcel)
 - c. Exhibit "B" Forest Productivity Analysis (Subject Property)
 - d. Exhibit "C" Forest Productivity Analysis (Frisbie Parcel)
 - e. Exhibit "D" Forest Productivity Analysis (Christie Parcel)
 - f. Exhibit "E" March 1997 Supplement to Marginal Lands Information Sheet
 - g. Traffic Impact Analysis by James Branch, P.E.
 - h. Letter from Don B. Mogstad, P.E.
 - i. Property Line Adjustment Deed #9788122
 - j. Legal Lot Verification PA 1162-98
 - k. ORS excerpts (5 pp.)
 - l. Letter from Paul Day (Wood Parcel);
4. Comments from Wayne Wood dated May 9, 2004.
5. Correspondence from Lane County Transportation Planning (Bill Morgan)
6. Letter from EWEB, dated April 6, 2004.

2.0 INTRODUCTION.

The property that is the subject of this application consists of a 42.2-acre site located adjacent to the Eugene Springfield Metropolitan General Plan (Metro Pan) Urban Growth Boundary (UGB) and the Eugene City limits on the city's south edge, approximately 1/4 mile south of Blanton Road. This application is for approval of a Minor Plan Amendment to the Lane County Rural Comprehensive Plan (RCP) diagram to designate the subject property from Forest to Marginal Lands, and a concurrent Lane County zoning map amendment from Impacted Forest Lands (F-2) to Marginal Lands (MLRCP).

3.0 BACKGROUND INFORMATION

3.1 General Site Description.

The Subject Property is a vacant 42.2 acre parcel, with gradual (0-5%) to moderate (6-10%) slopes downward to the south. There is a steeper (15-20%) downward slope to the south of approximately 6 acres at the southerly property line. Approximately 80% of the Subject Property contains mixed forested areas. These areas contain sparse and scattered Oak, Ponderosa Pine, and Douglas Fir trees. The plantation has been described by a professional forester as not being in good thrift, and that there are severe signs of stress. Approximately 20% of the Subject Property contains natural meadows and rock outcroppings. The Subject Property is located adjacent to the Metro Plan UGB and the Eugene city limits.

The subject property is an undeveloped tract of 42.2 acres with an irregular shape. The parcel has a maximum width of about 1360 feet from west to east, and a maximum length of about 2070 feet from north to south. The site has 60 feet of frontage on Ridgewood Drive, which terminates on the northern boundary of the site.

The site crests the ridge to the south of the Eugene city limits. The northern portion of the site is flat, while the southern portion is gentling sloping. Near the south property line the property slopes more steeply to the south with rock outcroppings. The northernmost portion of the site contains primarily scattered small Ponderosa Pine, and the southern area contains primarily scattered Douglas Fir and Oak.

The recent ownership history of the subject property is as follows. The subject property was part of a 90 acre parcel purchased by Helen and Hugh Wood in the 1940's. Mr. Wood was a full time professor in the University of Oregon School of Education. In 1979, Mr. and Mrs. Wood transferred 25 acres of that property to an organization for the benefit of Nepal. In 1985, the Wood's sold an additional 15.3 acres to the City of Eugene Parks Department. Other smaller parcels were sold over time for adjacent residential development.

The remaining 34.2 acre parcel was retained by the Woods until their deaths in the mid 1990's. At that time, the property passed by bequeath to their two children, who in turn sold the parcel in 1996 to Carver Trust No. 1. Subsequently, in 1997, Carver Trust No. 1 enlarged the parcel by acquiring an adjoining 8 acres of TL 3802 by lot line adjustment. The resulting 42.2 acre parcel is the subject property.

The lot line adjustment is challenged by Goal One Coalition. The challenge is without merit as it includes arguments that 1) ORS 92.190(3) requires Lane County to use the re-platting procedures of ORS 192.180 "to accomplish and approve property line adjustments," and 2) that "ORS 92.180 requires that an agency or body be established to approve subdivision or partition plats." Goal One Coalition has misread ORS 92.190 in its attempt to demonstrate that cities and counties in Oregon are required to approve lot line adjustments. ORS 92.190(3) only provides to cities and counties a means other than re-platting procedures of ORS 92.180 and 92.185 for the approval of lot line adjustments in the event that a city or county does regulate and approve such adjustments. It does not create any requirement that cities and counties approve lot line adjustments. ORS 92.180 also does not provide such a requirement on county governments. ORS 92.180 merely provides that "each agency or body authorized to approve subdivision or partition plats under ORS 92.040 shall have the same review and approval authority over any proposed re-plat of a recorded plat." Furthermore, even if the challenge was supported by Oregon law, the lot line adjustment was included in a previously-noticed Lane County land use decision regarding the approval of a F-2 dwelling permit on the subject property. No appeal was made of that Lane County decision to approve the dwelling permit and the decision became final. Goal One Coalition may not collaterally attack a previous land use decision that has become final without any appeal thereof being taken.

Lane County issued a Verification of Legal Lot on May 26, 1998 (PA 1162-98), a copy of which is contained in the record of this decision. In PA 1162-98, Lane County opined that, while the subject property is a legal lot, Lane County did not "recognize the new southerly property line" because "the deed does not have all the required elements of ORS Chapter 92.190(4)." That opinion was based on the fact that the front page of the deed did not contain a description of the adjusted property line. The applicant has provided evidence and authority (ORS 93.310, .600 and .870 and ORS 174.010, .020 and .030) that demonstrates that the recorded subject deed includes four exhibits, one of which consists of a map produced by the applicant's surveyor who prepared

the deed and that the entire deed, with exhibits, as produced by Wobbe & Associates, Inc., licensed surveyors, includes the description of the adjusted line in Exhibit B of the deed. Exhibit B contains a survey map, prepared by Wobbe & Associates, that clearly describes the adjusted boundary line. Lane County finds that the requirements of ORS 92.190(4) have been met by the applicant and that Lane County recognizes the southerly property line as adjusted.

The subject property receives the following public services: Eugene School District 4J (schools); Eugene Water and Electric Board (EWEB)(electrical power and water); Eugene Rural Fire Department (fire and ambulance); U.S. West Communications (telephone); LTD (bus service); Lane County Sheriff=s Department and Oregon State Police.

3.2 Description of Proposed Amendments The application before Lane County is for approval of the following:

1. An amendment to the county=s comprehensive plan and map designating the subject property as Marginal Lands and re-zoning it to Marginal Lands (ML).

2. The Lane County Board of Commissioners also finds as follows:

4.0 Plan Amendment Criteria of Lane Code 16.400

This application to amend the Lane County Rural Comprehensive Plan was initiated by Julia Carver on September 2, 2003. Pursuant to procedures set forth in Lane Code 16.400(6)(a)-(d), the Lane County Planning Commission voted unanimously to recommend to the Board of Commissioners that they grant final approval of the combined plan amendment and zone change applications as described and supported by these findings.

The following criteria apply to amendments of the comprehensive plan:

A. Lane Code 16.400(6)(h)(iii) (Method of Adoption and Amendment) provides that the Board may amend or supplement the Rural Comprehensive Plan upon making the following findings

(aa) For Major and Minor Amendments as defined in LC 16 400(8)(a) below, the Plan component or amendment meets all applicable requirements of local and state law, including Statewide Planning Goals and Oregon Administrative Rules

(bb)For Major and Minor Amendments as defined in LC 16.400(8)(a) below, the Plan amendment or component is:

(i-i) necessary to correct an identified error in the Plan; or

(ii-ii) necessary to fulfill an identified public or community need for the intended result of the component or amendment; or

(iii-iii) necessary to comply with the mandate of local, state or federal policy or law; or

(iv-iv) necessary to provide for the implementation of adopted Plan policy or elements, or

(v-v) otherwise deemed by the Board, for reasons briefly set forth in its decisions, to be

desirable, appropriate or proper.

(cc) For Minor Amendments as defined in LC 16.400(8)(a), the Plan amendment or component does not conflict with adopted Policies of the Rural Comprehensive Plan and if possible, achieves policy support.

B. Lane Code 16.400(6)(i) provides that a change of zoning to implement a proposed Plan amendment may be considered concurrently with such amendment. In such case, the Board shall also make the final zone change decision, and the Hearings Official's consideration need not occur.

4.1 Lane Code 16.400(6)(h)(iii)(aa).

For Major and Minor Amendments as defined in LC 16 400(8)(a) below, the Plan component or amendment meets all applicable requirements of local and state law, including Statewide Planning Goals and Oregon Administrative Rules.

4.1.1 Goal 1 - Citizen Involvement.

To ensure the opportunity for citizen involvement in all phases of the planning process.

Lane County has provided written notice of the proposed amendments and public hearings before its planning commission and board of commissioners in conformance with ORS 197.763. The information included in the notices conforms with ORS 197.763 (2) and (3) and enabled citizens to identify and comprehend the issues and to participate in a public process prior to final action by the county. Referral notices were also mailed to all federal, state, and private organizations as required by state law and Lane Code. The proposed amendments have been processed in a manner that assures full compliance with Goal 1.

4.1.2 Goal 2 - Land Use Planning

To establish a land use planning process and policy framework as a basis for all decisions and actions related to the use of land and to assure an adequate factual base for such decisions and actions.

Goal 2 establishes a land use planning process and policy framework as a basis for all land use decisions, and requires development of an adequate factual base to support those decisions. A minor change is one that does not have significant effects beyond the immediate area of change, and is based on special studies or information. The justification for the specific change must be established by substantial evidence in support of the conclusion that the applicable criteria have been met.

Lane County has adopted a comprehensive land use plan amendment process with specific standards that must be addressed to justify a minor change. Substantial compliance with the plan amendment criteria in Lane Code (LC)16.400 constitutes compliance with the applicable provisions. This plan amendment must also address and satisfy the criteria set forth in ORS 197.247 (1991 ed.). This application is supported by substantial evidence upon which the Lane County Planning Commission and Lane County Board of Commissioners conclude that the applicable criteria have been met.

4.1.3 Goal 3 - Agricultural Land.

To preserve and maintain agricultural lands.

The Subject Property is not agricultural land as defined by Goal 3. It contains soils predominantly classified as Class V-VII by the Soil Conservation Service and is of low suitability for farming as discussed in Section 4.2 below. Accordingly, this decision is consistent with Goal 3.

4.1.4 Goal 4 - Forest Lands.

To preserve forest lands for forest use.

The Subject Property is not suitable for growing and sustaining Douglas-fir or other less merchantable tree species as discussed more fully in Section 4.2 below. No other species would grow as fast on the subject property or be as valuable and merchantable as Douglas-fir. Zoning the property for Marginal Lands maintains the property in a resource zone and capable of being used for limited, marginal, resource uses. The Subject Property's suitability for growing and sustaining merchantable tree species is discussed more fully in Section 4.2 below. Accordingly, this decision is consistent with Goal 4.

4.1.5 Goal 5 - Open Space, Scenic and Historic Areas, and Natural Resources.

To conserve open space and protect natural and scenic resources.

Goal 5 is not applicable to this request. There has previously been a legislative determination by Lane County, as embodied in the acknowledged Lane County Rural Comprehensive Plan, that no Goal 5 resources exist on subject site. The subject property has not been included in any inventory of needed open space or scenic areas defined by Goal 5, nor has it been identified in the comprehensive plan as having any historic, cultural or natural resources which need to be preserved and/or protected. The proposed amendments will not conflict with any Goal 5 resources.

4.1.6 Goal 6 - Air, Water and Land Resources Quality..

To maintain and improve the quality of the air, water and land resources of the state.

Goal 6 requires that air, land and water resources of the state be maintained and improved by assuring that future development, in conjunction with existing development, does not violate applicable state and federal environmental quality standards, and does not exceed the carrying capacity of local air sheds, degrade land resources or threaten the availability of such resources. Lane County has sufficient regulatory measures in place so as to ensure that existing land use activities, as well as any future development on the site, will not produce any unanticipated impacts resulting from the proposed amendments.

The proposed amendments will not produce results that will be in conflict or inconsistent with the purpose and intent of Goal 6. The proposed amendments change the use designation on the subject property and any additional uses or change of use will require compliance with Lane County's existing regulatory system and measures.

4.1.7 Goal 7 - Areas subject to Natural Disasters and Hazards.

To protect life and property from natural disasters and hazards.

No areas containing or prone to natural disasters or natural hazards have been identified on the subject property.

4.1.8 Goal 8 - Recreational Needs.

To satisfy the recreational needs of the citizens of the state.

Goal 8 is not applicable to this request. There has previously been a legislative determination by Lane County, as embodied in the acknowledged Lane County Rural Comprehensive Plan, that no Goal 8 resources exist on subject site. The subject property has not been included in any inventory of recreational needs as defined by Goal 8. The proposed amendments will not conflict with any Goal 8 resources.

4.1.9 Goal 9 - Economy of the State..

To diversify and improve the economy of the state.

Goal 9 is directed towards the comprehensive plans of the state=s political subdivisions. Lane County=s Rural Comprehensive Plan has been acknowledged by the Land Conservation and Development Commission. Goal 9 is not applicable to this application beyond a demonstration that the application is consistent with the Goal 9 policies of the plan. Approval of the subject application will allow the subject property to be developed with one to four additional homesites. Goal 9 has limited applicability to the subject application.

4.1.10 Goal 10 – Housing.

To provide for the housing needs of the citizens of the state.

Approval of this application would result in the development of up to four dwellings on the subject property. Approval of this application would be consistent with Goal 10.

4.1.11 Goal 11 - Public Facilities and Services.

To plan and develop a timely, orderly and efficient arrangement of public facilities and services to serve as a framework for urban development.

The subject property receives the following public services: Eugene School District 4J (schools); EWEB (electrical power and water); Eugene Rural Fire Department (fire and ambulance); U.S. Communications (telephone); LTD (bus service); Lane County Sheriff=s Department and Oregon State Police. The subject property has access to the full range of public services specified for Communities in RCP Goal 11: Public Facilities and Services, Policy 6.j. No additional public facilities and services will be required beyond the present level. While Goal 11 is couched in terms of Aurban development,@ approval of the application will not result in any urban level of development in a rural area. The public services identified above are adequate to serve the level of rural uses that the application envisions and provide the demonstration of consistency with Goal 11.

4.1.12 Goal 12 – Transportation.

The intent of Goal 12 is implemented through the provisions of the State Transportation Planning Rule (TPR) (OAR 660, Division 12), which was adopted by LCDC in 1991.

OAR 660-012-0060(1) requires that amendments to functional plans, acknowledged comprehensive plans, and land use regulations which significantly affect a transportation facility shall assure that allowed land uses are consistent with the identified function, capacity, and level of service of the facility.

To determine whether the proposed amendments will significantly affect a transportation facility, the TPR lists specific criteria against which the proposed amendments are to be evaluated. The TPR provides that a plan or land use regulation amendment significantly affects a transportation facility if it:

- (a) Changes the functional classification of an existing or planned transportation facility;
- (b) Changes standards implementing a functional classification system;
- (c) Allows types or levels of land uses which would result in levels of travel or access which are inconsistent with the functional classification of a transportation facility; or,
- (d) Would reduce the level of service of the facility below the minimum acceptable level identified in the TSP (Transportation System Plan).

The engineering firm Branch Engineering has analyzed the traffic impact resulting from approval of the application and has concluded that it would not have a significant impact on transportation facilities. A copy of the firm's analysis and conclusions is provided as Attachment 4.g. to the Lane County Staff Report and is included in the record of this decision.

4.1.13 Goal 13 - Energy Conservation..

To conserve energy

Goal 13 requires that land uses maximize conservation of all forms of energy based on sound economic principles. It is implemented by local plans and regulations that control location, orientation and density of development to minimize net energy consumption. Any development on the subject property will be subject to those rules.

4.1.14 Goal 14 – Urbanization

To provide for an orderly and efficient transition from rural to urban land use.

The entire ownership of the applicant is within an area committed to rural uses, both resource and non-resource in nature, as designated and provided by Lane Code and the acknowledged Lane County Rural Comprehensive Plan. No urban uses are contemplated as a result of approval of this application. No extension of urban services is necessary as a result of approval of this application. Approval of this application will not change the uses made on the subject parcel from

rural to urban.

The uses on the subject parcels resulting from approval of this application would be forestry and rural residential, both of which are rural in nature. The uses are not considered urban by the code in its implementation of the acknowledged Lane County Rural Comprehensive Plan. Therefore, approval of this application would not result in the establishment of urban land use or urban land use in transition from rural land use.

All parcels resulting from approval of the subject application shall be no less than 10 acres in size which will not prevent further urban development in the future if the subject property is included within the UGB and city limits.

Approval of the application will not result in any level of urbanization of the subject property or the surrounding area and, therefore, is consistent with Goal 14.

4.1.15 Goal 15 - Willamette River Greenway

To protect, conserve, enhance and maintain the natural, scenic, historical, agricultural, economic and recreational qualities of lands along the Willamette River as the Willamette River Greenway.

The subject property is not located within the Willamette River Greenway. Goal 15 is not applicable to this application.

4.1.16 Goal 16 - Estuarine Resources.

To recognize and protect the unique environmental, economic, and social values of each estuary and associated wetlands; and

To protect, maintain, where appropriate develop, and where appropriate restore the long-term environmental, economic, and social values, diversity and benefits of Oregon's estuaries.

The subject property contains no estuarine resources. Goal 16 is not applicable to this request.

4.1.17 Goal 17 - Coastal Shorelines *To conserve, protect, where appropriate, develop and where appropriate restore the resources and benefits of all coastal shorelines, recognizing their value for protection and maintenance of water quality, fish and wildlife habitat, water-dependent uses, economic resources and recreation and aesthetics.*

The subject property contains no coastal shorelines. Goal 17 is not applicable to this request.

4.1.8 Goal 18 - Beaches and Dunes

To conserve, protect, where appropriate develop, and where appropriate restore the resources and benefits of coastal beach and dune areas.

The subject property contains no beaches or dunes. Goal 18 is not applicable to this request.

4.1.19 Goal 19 - Ocean Resources

To conserve the long-term values, benefits, and natural resources of the nearshore ocean and the continental shelf.

The subject property contains no ocean resources. Goal 19 is not applicable to this request.

4.2 Lane Code 16.400(6)(h)(iii)(bb).

For Major and Minor Amendments as defined in LC 16.400(8) (a) below, the Plan amendment or component is:

(i-i) necessary to correct an identified error in the Plan; or

The subject property was designated Forestry and zoned F-2 as part of the Lane County Rural Comprehensive Plan (RCP) adoption process in 1984. Nonetheless, it was so designated and zoned pursuant to County policy which determined that lands that might qualify as marginal lands should be addressed subsequently on a case-by-case basis pursuant to policies in the RCP and the statutory criteria in ORS 197.247.

(ii-ii) necessary to fulfill an identified public or community need for the intended result of the component or amendment; or

Not applicable.

(iii-iii) necessary to comply with the mandate of local, state or federal policy or law; or

Not applicable.

(iv-iv) necessary to provide for the implementation of adopted Plan policy or elements, or

ORS 197.247 (1991 ed.) authorizes counties to designate land as marginal land. Lane County has acted to utilize this authority through the adoption of RCP Goal 3, Policy 14 and Goal 4, Policy 3. Those policies require an applicant for a marginal lands designation and zoning to address and satisfy the requirements of ORS 197.247 (1991 ed.) and applicable Lane County policies and requirements. The subject application is implementing policies in the RCP which allow qualified resource lands to be designated as Marginal Lands rather than Agriculture or Forest.

In order to aid applicants, the staff and general public in addressing the marginal lands criteria, the Lane County Board of Commissioners, in 1997, adopted an interpretation of and supplement to the County's marginal lands information sheet ("the Board interpretation") a copy of which has been made a part of the record of this decision. The Board interpretation clarifies how the marginal lands statute and criteria are to be applied in specific situations by addressing seven issues and providing policy direction for each. As discussed in these findings, the Board interpretation has particular relevance to this application in the context of evaluating the site's ability to grow merchantable timber.

ORS. 194.247(1) (1991 ed.) provides the following criteria:

(a) The proposed marginal land was not managed, during the three of the five

calendar years preceding January 1, 1983, as part of a farm operation that produced \$20,000 or more in annual gross income or a forest operation capable of producing on average, over the growth cycle, of \$10,000 in annual gross income; and .

(b) The proposed marginal land meets at least one of the following tests:

(A) At least 50 percent of the proposed marginal land plus the lots or parcels at least partially located within one-quarter mile of the perimeter of the proposed marginal land consists of lots or parcels 20 acres or less in size on July 1, 1983;

than (B) The proposed marginal land is located within an area of not less 240 acres of which at least 60 percent is composed of lots or parcels that are 20 acres or less in size on July 1, 1983; or

(C) The proposed marginal land is composed predominately of soils in capability classes V through VIII in the Agricultural Capability Class Classification System in use by the United States Department of Agriculture Conservation Service on October 15, 1983, and is not capable of producing eighty-five cubic feet of merchantable timber per acre per year in those counties west of the summit of the Cascade

Range.

The applicant has addressed subsections (a) and (b)(C) of the statute for demonstrating that the subject property is suitable for Marginal Lands designation. The following findings address each of those criteria:

ORS 197.247(1)(a):

The applicant has demonstrated that the subject property was not managed, during three of the five calendar years preceding January 1, 1983, as part of a farm operation that produced \$20,000 or more in annual gross income.

The applicant has provided the analysis and conclusion of Mr. Paul Day, former Lane County Extension Agent. Mr. Day examined the subject property, aerial photographs, soil data from the U.S. Department of Agriculture (USDA) and the Lane Council of Governments (LCOG) and concluded that the subject property is not capable of generating \$20,000 in gross income per year and was not capable, during the applicable five-year period, of so generating \$20,000 in gross income per year from agriculture. His report was made a part of the record of this decision and concluded that the subject property is not suitable for grazing or crop production, was not capable of growing irrigated crops and was not necessary to permit farm practices on adjacent and nearby lands.

The applicant has provided to the record a 1982 aerial photograph that shows that Christmas trees existed on the subject property. The applicant has provided to the record a 2000 aerial photograph that shows that the Christmas trees had not been harvested. Without a harvest of the Christmas trees the subject property could not have produced farm income from them during the applicable five-year period.

Mr. Day's professional opinion, the aerial photographs and the fact that the previous owner, Mr. Wood, was a full-time professor in the University of Oregon School of Education, offer substantial and conclusive evidence that the subject property was not part of a farming operation that generated \$20,000 or more in annual gross income during three of the five years preceding

January 1, 1983.

The applicant has demonstrated that the subject property was not managed as part of a forest operation that produced an average, over the growth cycle, of \$10,000 in annual gross income.

The applicant's forester, Marc Setchko, provided an analysis to the record of the timber-growing potential of the subject property and concluded that the subject property could not be managed as a forest operation capable of producing an average, over the growth cycle, of \$10,000 in annual gross income. Mr. Setchko, with both professional credentials and 27 years of experience, is highly qualified to render such any analysis and conclusion.

Mr. Setchko's opinion was based on a detailed analysis of the existing soils, their ability to grow timber (primarily Douglas-fir) and conversion of that growth potential into dollars based upon log prices in 1983. Mr. Setchko's methodology is dictated by the Board interpretation (Direction for Issue 4). Mr. Setchko's analysis used a fifty-year growth cycle as directed by the Board interpretation (Direction for Issue 5).

Mr. Setchko's opinion was challenged by Goal One Coalition. The Board finds that the challenge by Goal One Coalition is without legal foundation and does not include any supporting professional opinion regarding forest productivity of the subject property and, therefore, is without merit.

The specific challenges of Goal One Coalition, which cover both ORS 197.247(1)(a) and (b)(C), are discussed and rejected as without merit as follows:

1. The income test "forest operation" has not been addressed.

Goal One Coalition argues that the applicant has not conducted any analysis of the "income-producing capability" of the proposed marginal lands using "current timber values" to calculate the potential gross income over the growth cycle. Goal One Coalition is correct in asserting that the calculation of the annual gross income for the ORS 197.247(1)(a) income test can be accomplished by the use of timber values. However, it is incorrect in its assertion that the calculation must use "current timber values."

Goal One Coalition references language in *DLCD v. Lane County* (Ericcson)¹ that mentions that "current prices" were used in the calculations of the Ericcson application. In that case, however, the use of a particular year's prices was not at issue and LUBA made no determination regarding such use. What the decision in Ericcson did establish, in addition to affirming Lane County's approval of a Marginal Lands re-zoning application, was that on-site evaluation of forest productivity by a qualified expert is weightier evidence than published data or that provided by individuals not qualified as experts in forest management.

Mr. Setchko used 1983 Douglas-fir log prices and volumes in his calculation of the projected gross forest operation income of the proposed marginal land. In this case Mr. Setchko is the qualified expert with 27 years of forest management experience, including 17 years as a private consultant and a Master's Degree in Forestry. Goal One Coalition has not established that it has any experience or credentials in forest management. Furthermore, it has not provided any testimony from a qualified expert in forest management to support its assumptions and conclusions.

¹ 23 Or LUBA 33 (1992)

the manner that it argues.

The applicant has followed the rules set out by ORS 197.247 to test the proposed marginal land for agricultural capability. Goal One Coalition's argument would require that the specific rules of the statute be ignored and, accordingly, is without merit and fails on that basis.

3. The applicant has not established that the subject parcel is not capable of producing 85 cu.ft./ac./yr. of merchantable timber.

Goal One Coalition argues two points within this argument. First it argues that the applicant's consulting forester has incorrectly assigned a "zero" rating to those soils that do not have a rating in the Lane County soil ratings and that "NRCS-approved methodology for marginal lands zone change applications uses the capability class for the predominant component" of soil complexes 43C and 43E.

To address the first point of Goal One Coalition's second argument, the applicant conducted additional analysis of the proposed marginal land through the services of Mr. Setchko. Mr. Setchko analyzed the proposed marginal land along with adjacent lands and his conclusions, titled "Forest Productivity Analysis" and dated May 21, 2004, were provided to the record of this decision. Mr. Setchko used information generated by Lane County and the Oregon State Forester's office consistent with LCDC regulations for providing such ratings.³ Mr. Setchko applied a rating to each of the soils of the proposed marginal land and concluded that the proposed marginal land produces less than 85 cu.ft./ac./yr. of merchantable timber.

The second part of Goal One Coalition's first point argues that the NRCS has issued or published direction that the capability class of the predominant component of soil complexes 43C and 43E must be used for marginal lands zone change applications. Goal One Coalition has provided no authority or evidence of such a "NRCS-approved methodology." It attempts to bootstrap that argument to its first argument regarding agricultural productivity by including Table E.1 (Goal One Coalition Exhibit 3-2) and by again referring to the memorandum from Katie Wiederhold. The Table E-1 does not include any NRCS directive to use the first-listed soil type (Dixonville) of the complex. It merely provides the Site Index and Volume of Wood Fiber (CuFt/Acre) of each of the components that the NRCS has assigned to them. Consistent with previous published NRCS ratings, both Hazelair and Philomath soils have no rating for productivity. Goal One Coalition has provided no evidence that NRCS has approved a methodology that requires using only Dixonville soils to determine the forest productivity of complex soils.

Goal One Coalition attempts to use the Wiederhold memorandum as authority that for determining forest capability the applicant must use only the site index and productivity ratings of the Dixonville soils within the complex. While the Wiederhold memo provides anecdotal statements

³ See OAR 660-006-0005(2)

regarding Wiederhold's understanding of NRCS methodology, it does not provide any authority or evidence from the NRCS that the methodology argued for has actually been published or issued. Furthermore, the memo's subject is agricultural productivity of soil complexes, not forest productivity. The memo does not discuss forest productivity and provides no support to Goal One Coalition's argument.

Mr. Setchko's analysis uses information generated by Lane County and the Oregon State Forester's Office and includes ratings for all soils listed for the proposed marginal land. Mr. Setchko's professional opinion is that the proposed marginal land produces less than 85 cu.ft./ac./yr. and that it will not support a sufficient production capability in excess of the ORS 197.247(1)(b)(C) test. Goal One Coalition has provided no professional opinion regarding the proposed marginal land contrary to the opinion of Mr. Setchko.

The second part of Goal One Coalition's second argument is that "(A)n evaluation of a property's capacity for forest production must consider productivity for all merchantable forest tree species, not just Douglas-fir." Mr. Setchko has provided an analysis of the species that Goal One Coalition argues are "merchantable" and concludes that a majority of those species are not "merchantable." He further concludes that all other species that may be merchantable grow sufficiently slower than Douglas-fir on the subject soils and that they would not produce at least 85 cu.ft./ac./yr. on the subject property. Mr. Setchko includes that analysis in each of his "Forest Productivity Analysis" that were provided to the record in support of the application. Mr. Setchko's experience and expertise provides the conclusion that many of the species, especially KMX and hybrid poplar, have no established market and are, therefore, not merchantable. His overall conclusion is that if the proposed marginal land is not capable of producing an average of \$10,000 in annual gross income from Douglas-fir, then there are no other merchantable tree species that could produce any more than the calculated figures that he has provided in his analysis for Douglas-fir. Goal One Coalition has not provided any evidence that contradicts or conflicts with the findings and conclusion of the Setchko reports.

4. The 53.6 acre F-2 zoned parcel to the south of the subject property does not qualify as marginal land.

In its fourth argument, Goal One Coalition reiterates its first three arguments regarding the proposed marginal land and applies them to the adjacent F-2 zoned parcel. In response to Goal One Coalition's fourth argument, the findings to its first three arguments and the analysis and conclusions of Mr. Setchko as provided in the record are reiterated and incorporated herein.

Mr. Setchko provided analysis and conclusions regarding the adjacent parcel as configured in 1983 and an analysis of that parcel as configured today. In both reports, Mr. Setchko demonstrates the application of the relevant criteria of ORS 197.247 and Lane County concludes that the adjacent property qualifies as marginal land. Mr. Setchko's reports respond to Goal One Coalition's arguments and issues and provide substantial evidence to support a re-designation of

the adjacent property to Marginal Land. Goal One Coalition has not provided any substantial evidence that contradicts the findings and conclusions of Mr. Setchko and its arguments have been shown to be without foundation, authority or merit.

ORS 197.247(1)(b)(C):

This criterion has two parts: (1) the proposed marginal land is composed predominantly of soils in capability classes V through VIII and (2) is not capable of producing 85 cubic feet of merchantable timber per acre per year. The proposed marginal land satisfies both of those criteria. The Board further incorporates the findings regarding the Goal One Coalition arguments provided hereinabove as they relate to ORS 197.247(1)(b)(C).

LCOG soils information indicates that the subject property is composed of predominantly (61.347%) class V through VIII soils and the subject property satisfies the first part of the test.

The Setchko reports provide substantial evidence that the subject property is not capable of producing more than 62 cubic feet of merchantable timber per acre per year. The reports also provide substantial evidence that the adjacent parcel to the south is not capable of producing more than 66.4 cubic feet of merchantable timber per acre per year. In both cases, it is found that the applicant has demonstrated that the subject property qualifies as Marginal Lands pursuant to the statute.

Conclusion: The subject property qualifies under ORS 197.247(1) as marginal land because:

- (a) it was not managed during three of the five calendar years preceding January 1, 1983, as part of a farm operation that produced \$20,000 or more in annual gross income;
- (b) it was not managed as a part of a forest operation during that same time period which was capable of producing an average, over the growth cycle, of \$10,000 in annual gross income;
- (c) it is composed predominantly of soils in agricultural capability classes V through VIII, and
- (d) it is not capable of producing 85 cubic feet of merchantable timber per acre per year.

It is found that substantial evidence in the record, primarily the Setchko reports, exists to support each of the above conclusions. No documentation, expert testimony or other substantial evidence has been submitted to the record that refutes or contradicts these findings with regard to the resource capabilities of the subject property as measured by the statutory standards and criteria in ORS 197.247.

For the reasons set forth above, the Board finds that the policies in the RCP, specifically RCP Goal 3, Policy 14 and RCP Goal 4, Policy 3, authorize and allow certain qualified resource lands to be designated and zoned marginal lands. Approval of this application implements those policies which have been acknowledged by the Land Conservation and Development Commission to be in conformity with Statewide Planning Goals and ORS197.247 (1991 ed.).

(v-v) otherwise deemed by the Board, for reasons briefly set forth in its decisions, to be desirable, appropriate or proper.

The totality of this application=s response to and treatment of applicable criteria, coupled with the benefits accruing to both the public and the applicant as demonstrated in this application, provides the Lane County Board of Commissioners with adequate foundation and reason to find that approval of the application is desirable, appropriate and proper and would be a demonstration of good public policy.

4.3 Lane Code 16.400(6)(h)(iii)(cc).

For Minor Amendments as defined in LC 16.400(8)(a), the Plan amendment or component does not conflict with adopted policies of the Rural Comprehensive Plan and if possible, achieves policy support.

There are no policies in the adopted and acknowledged RCP that conflict with this request for plan amendment. As discussed in the previous section, there are policies in the RCP that specifically support and encourage approval of marginal lands applications for qualified property. The subject property addresses and satisfies the marginal lands criteria that are set forth in ORS 197.247 (1991 ed.).

Approval of this plan amendment is also consistent with the Board's interpretation of the Marginal Lands statute (ORS 197.247 (1991 ed.)) and its application to individual requests for plan amendment. The application is supported by detailed and thorough analysis and testimony provided by a qualified and experienced forester. The analysis and testimony was produced and provided in conformance with direction provided by the Board's interpretation.

Other RCP policies that may be relevant to this decision are as follows:

4.3.1 GOAL ONE: CITIZEN INVOLVEMENT.

Notice to affected property owners and evidentiary hearings provided by Lane County ensures that the application meets and supports the citizen involvement goal and policies of the comprehensive plan.

4.3.2 GOAL TWO: LAND USE PLANNING.

4.3.2.1 Policy 25: Changes to Plan Diagram.

This application for amendment of the Plan Diagram designations for the subject property has

been evaluated through the county's plan amendment procedure and approval of this application is based upon fulfillment of the criteria of Lane Code 16.400 which is addressed in Section 4 of these findings

4.3.3 GOAL THREE: AGRICULTURAL LANDS.

There has previously been a legislative determination by Lane County, as embodied in the acknowledged Lane County Rural Comprehensive Plan, that the subject property is not agricultural land and is not AHigh Value Farmland®. Nonetheless, consideration of agricultural use of the subject property and application of all relevant criteria regarding agricultural considerations have been adequately provided in the application and during the evidentiary hearings.

4.3.4 GOAL FOUR: FOREST LANDS.

4.3.4.1 Policy 1: Conservation of forest lands.

The primary policy of both the comprehensive plan and statewide planning goals regarding forest lands is the conservation of those lands for multiple forest uses. Approval of this application is consistent with and supports Policy 1 of Goal Four of the Comprehensive Plan.

4.4 Lane Code 16.400(6)(h)(iii)(dd)

For Minor Amendments as defined in LC 16.400(8)(a) below, the Plan amendment or component is compatible with the existing structure of the Rural Comprehensive Plan, and is consistent with the unamended portions or elements of the Plan.

As discussed in previous sections, this plan amendment is consistent with and satisfies the criteria that are referenced and adopted by specific policies in the RCP. Those policies are RCP Goal 3, Agricultural Lands, Policy 14 and RCP Goal 4, Forest Lands, Policy 3 which specifically all certain, qualified resource lands to be designated and zone marginal lands. Approval of this amendment is consistent with the RCP policies for farm (Goal 3) and forest (Goal 4) lands.

The Board interpretation recognizes this consistency. It states under "ISSUE 1":

"Marginal land is intended to be a sub-set of resource land, i.e., there are 'prime; resource lands and 'marginal' resource lands. The marginal lands are to be available for occupancy and use as small tracts than are required in the better resource lands. The criteria in the law define which lands may be designated as marginal. Evidence for this position is found in the legislative history and the fact that marginal lands are recognized in both Statewide Goal 3 – Agricultural Lands and Goal 4 – Forest Lands."

Marginal lands are resource lands that are intended for occupancy with limited rural residential development.

Based on the evidence in the record which addresses and satisfies the criterion in ORS 197.247 (1991 ed.) and the above-referenced RCP resource policies, the Board concludes that approval of the subject plan amendment is compatible with the existing structure of the acknowledged RCP and is consistent with the unamended portions and elements of the RCP.

4.5 Zone Change Criteria of Lane Code 16.252

4.5.1 Lane Code 16.252(2)(Criteria).

Zonings, rezonings and changes in the requirements of this Chapter shall be enacted to achieve the general purpose of this Chapter and shall not be contrary to the public interest. In addition, zonings and rezonings shall be consistent with the specific purposes of the zone classification proposed, applicable to Rural Comprehensive Plan elements and components, and Statewide Planning Goals for any portion of Lane County which has not been acknowledged by the Land Conservation and Development Commission. Any zonings or rezonings may be effected by Ordinance or Order of the Board of County Commissioners, the Planning Commission or the Hearings Official in accordance with the procedures of this section.

This decision results in a change from F-2 Impacted Forest Lands to ML Marginal Lands. The facts relevant to the zone change standards are largely redundant with the facts relevant to plan policies and the Statewide Planning Goals and have been addressed in preceding sections of these findings of fact and are incorporated into these findings by this reference.

This zone change is consistent with the general purposes of LC Chapter 16 as set forth in LC 16.003 in that:

- 1) In conformity with various development rules discussed above, the subject property will be developed commensurate with the character and physical limitations of the land and will thus promote the health, safety and general welfare of the built environment;
- 2) It will provide home construction opportunities that will aid the economy;
- 3) It will conserve farm and forest lands by locating residential opportunities within a resource zone that allows limited residential development;
- 4) It will aid the provision of affordable housing that allows reasonable selection of a place to live;
- 5) By its location along the edge of the UGB, it will provide for the orderly and efficient transition from rural to urban lands and the efficient provision of public facilities and services;
- 6) By virtue of regulations discussed above, it will protect the quality of the land, air and water of the county and will protect life and property in areas subject to flooding.

This zone change is consistent with the purposes of the Marginal Lands Zoning District because it provides an alternative to more restrictive farm and forest zoning and it will allow any of the uses permitted in the Marginal Lands zoning district and thereby provide opportunities for persons to live in a rural environment and to conduct intensive or part-time farm or forest operations. It is being applied to property in accordance with Lane Code Chapter 16 criteria and procedures, RCP plan policies and criteria in ORS 197.247 (1991 ed.).

5.0 CONCLUSION

The Lane County Planning Commission voted unanimously on June 6, 2004, to recommend approval of the application as submitted to Lane County.

This application has addressed the applicable criteria, shown consistency with that criteria, has demonstrated good public policy through the public and private benefits accruing from its proposals.

Based on the substantial evidence presented above and included in the record of this decision, the Board of County Commissioners finds and concludes that the subject application for plan amendment and zone change meets and satisfies all of the relevant criteria and hereby is granted approval.

March 1997

Supplement to Marginal Lands Information Sheet

**BOARD OF COUNTY COMMISSIONERS DIRECTION REGARDING THE
INTERPRETATION AND ADMINISTRATION OF MARGINAL LANDS
APPLICATIONS**

On February 26, 1997, the Lane County Board of Commissioners reviewed the state Marginal Lands law and developed responses to seven issues in the law needing clarification for purposes of administration by Lane County. Those issues are identified below, followed by the direction provided by the Board. Any application for the Marginal Land designation within the Lane County Rural Comprehensive Plan's jurisdiction must be in compliance with the Board's directions. Refer to the Marginal Lands Information Sheet, or to Oregon Revised Statutes 197.247 (1991 laws), for an explanation of the law itself.

ISSUE 1: What is the Marginal Lands concept?**Board's Direction:**

The Board recognized that marginal land is intended to be a sub-set of resource land, i.e., there are "prime" resource lands and "marginal" resource lands. The marginal lands are to be available for occupancy and use as smaller tracts than are required in the better resource lands. The criteria in the law define which lands may be designated as marginal. Evidence for this position is found in the legislative history and the fact that marginal lands are recognized in both Statewide Goal 3 - Agricultural Lands and Goal 4 - Forest Lands.

ISSUE 2: Definition of "Management".

When considering forest land, the entire growth cycle must be considered for evidence of management. This is because even the best managed forest operations may have nothing occurring on the land during the five-year window (1978 - 1982) stated in the marginal lands statute (ORS 197.247(1)(a)(1991 Edition). For farm operations, however, it is hard to conceive of an operating farm on which nothing occurred for five years.

Board's Direction :

No evidence of human activity on the land is required for forest land to be "managed". The conscious decision not to convert the land to another use is enough evidence of management to meet the statutory intent, provided there is a significant amount of merchantable or potentially merchantable trees on the property. Likewise, evidence of timber harvest since 1978 would suffice to show management even if there were no trees currently on the property. For farm land, no evidence of farm use during the 5-year statutory window would indicate that land was not managed for farm use.

ISSUE 3. Managed "as part of" a (farm or forest) operation during (1978-1982).

Does this phrase in ORS 197.247(1)(a)(1991) mean, for example, that if a large timber company owned and managed a 2000 acre tract during the five-year window, and then sold someone a 40 acre portion of non-forest land in 1985, that 40 acres would not be eligible for Marginal Lands designation?

Board's Direction :

The Board found that the law creates a general presumption that all contiguous land owned during 1978-82 was part of the owner's "operation". That presumption could be rebutted, however, by substantial evidence

that the parcel in question was not, in fact, a "contributing part" of the operation. The applicant would bear the burden of producing such evidence.

ISSUE 4: What price data should be used to calculate gross annual income for forest lands?

Board's Direction :

The legislative intent of the "management and income test" of the Marginal Lands Law was to identify those lands which were not, at the time the Marginal Lands law was enacted (1983), making a "significant contribution" to commercial forestry. Therefore, it is appropriate and statistically valid to use the following methodology:

1. Based on the best information available regarding soils, topography, etc., determine the optimal level of timber production for the tract assuming reasonable management.
2. Assume that the stand was, in 1983, fully mature and ready for harvest.
3. Using the volumes calculated in step (1), and 1983 prices, calculate the average gross annual income over the growth cycle.

ISSUE 5: What "growth cycle" should be used to calculate gross annual income?

Board's Direction :

The consensus of the Board was that a 50-year growth cycle should be adopted as the usual standard, with the option that another standard could be used if substantiated by compelling scientific evidence presented by the applicant. The Board's choice was based on evidence that the USDA Natural Resource Conservation Service has adopted the 50-year cycle for rating soil productivity, plus the administrative ease of having a standardized figure.

ISSUE 6: Weight of evidence.

One of the main holdings of the Ericsson case, which arose in Lane County, is that on-site evaluation by a qualified expert is weightier evidence than published data. Given this ruling, what is the appropriate role of the parcelization table in Lane Code 16.211(10)(b) and the legislative findings for Goal 4 of the Rural Comprehensive Plan as an income standard?

Board's Direction :

As a matter of administrative ease, and in the absence of other substantial evidence, the parcelization test could still be used. It is one method of identifying the acreage required of a given forest capability classification to achieve the \$10,000 income standard.

ISSUE 7: Ambiguities in the parcelization tests of ORS 197.247(1)(b)(A) & (B).

Is the parcelization test measuring the percent of an area (acreage) or the percent of the number of parcels a "parcel count"? If the test in ORS 197.247(1)(b)(A) is an area test, does the percentage requirement apply to the acreage or to the number of parcels that lie wholly or partly within the 1/4 mile of the subject tract?

Board's Direction :

Regard the tests in ORS 197.247(1)(b)(A) & (B) as "area" tests with the difference being that (A) specifies an area including the subject parcel and land within 1/4 mile and uses a 50% small lot test, whereas (B) increases the area to a minimum of 240 acres but raises the small lot test to 60%.

(Note: This is the position adopted by Lane County in the Jackson case. In that case, Lane County ruled that the area was limited to the 1/4-mile line, whereas DLCD argued that the area line should expand to include the entirety of any parcel partly located within the 1/4 mile boundary. DLCD threatened to appeal the Jackson case on that basis, but did not do so.)

October 4, 2004

Mr. Thomas Lanfear
Associate Planner
Land Management Division
LANE COUNTY
125 E. 8th Avenue
Eugene, OR 97401

Re: PA 03-5901

Dear Mr. Lanfear:

Enclosed please find our forester's additional supplemental information. This submittal provides additional analysis concerning the potential of other species of trees to grow on the subject property and their merchantability.

Should you have any questions, please do not hesitate to contact me.

Sincerely,

A handwritten signature in cursive script, appearing to read "Roy Carver, III".

Roy Carver, III
On behalf of the Applicant

c. P. Steve Cornacchia, Esq.
Harry Taylor



Marc E. Setchko
CONSULTING FORESTER

870 Fox Glenn Avenue
Eugene, Oregon 97405
Phone: (541) 344-0473
FAX: (541) 344-7791

September 30, 2004

Supplement to Productivity Analysis done on Carver Parcel
ASSESSORS MAP NO. 18-04-13
Tax Lot #3500, totaling ±42.19 acres

Re: Productivity of tree species, other than Douglas-fir, on this site.

This supplement presents additional information on trees that grow in Oregon, to be included with information in my original analysis (see report dated May 21, 2004).

<u>CONIFER</u> TREE SPECIES	Does This Tree Produce Merchantable Products	Will This Species Grow On This Site
Douglas-fir	Yes	Yes
Valley Ponderosa Pine	Yes	Yes
Jeffrey Pine	Yes	NO
Shore Pine	Yes	NO
Lodgepole Pine	Yes	NO
Western White Pine	Yes	NO
Limber Pine	NO	NO
Whitebark Pine	NO	NO
Sugar Pine	Yes	NO
Western Red Cedar	Yes	NO
Incense Cedar	Yes	Yes
Port Orford Cedar	Yes	NO
Alaska Yellow Cedar	Yes	NO
Knobcone Pine	NO	NO
Grand/White Fir	Yes	Yes
Noble Fir	Yes	NO
Shasta Red Fir	Yes	NO
Pacific Silver Fir	Yes	NO
Subalpine Fir	NO	NO
Sitka Spruce	Yes	NO
Engelmann Spruce	Yes	NO
Brewer Spruce	NO	NO
Western Larch	Yes	NO
Western Juniper	Yes	NO
Western Hemlock	Yes	NO
Mountain Hemlock	Yes	NO
KMX	NO	Yes
Pacific Yew	Yes	NO
Redwood	Yes	NO
Sequoia	Yes	NO



Constraints to growth for conifer species which will not grow on this site:

Jeffrey Pine - Site is out of its' geographic range, this tree is almost identical to ponderosa pine, it just grows in other areas, primarily northern California.

Shore Pine - Site is out of its' geographic range, not enough moisture.

Lodgepole pine - Site is out of its' geographic range, it is an eastern Oregon tree.

Western White Pine - White pine grows scattered throughout other trees, it does not grow in pure stands and is extremely susceptible to blister rust (which kills the tree), therefore it is not planted.

Limber and Whitebark Pine - High elevation, bush-like trees.

Sugar Pine - Site is out of its' geographic range, grows scattered among other trees, it does not grow in pure stands.

Western Red Cedar - Not enough moisture on this site, does not grow in pure stands.

Port Orford Cedar - Site is out of its' geographic range, grows scattered among other trees, it does not grow in pure stands. Currently a root rot is killing this tree throughout its' range.

Alaska Yellow Cedar - Site is out of its' geographic range, grows scattered among other trees, it does not grow in pure stands.

Knobcone Pine - Extremely slow growing, scarce bush-like tree, which grows on harsh sites (primarily high elevation ridges) by coming in after a fire; it is not a commercial species.

Noble, Shasta Red, Pacific Silver Fir - Site is out of its' geographic range, these are high elevation trees.

Subalpine Fir - Noncommercial, high elevation tree, site is out of its' geographic range.

Spruce - Site is out of its' geographic range, not enough moisture, cold winters (sitka spruce only grows in moderate coastal zones).

Engelmann Spruce - Site is out of its' geographic range, high elevation tree.

Brewer Spruce - Noncommercial, high elevation tree, site is out of its' geographic range.

Western Larch - Site is out of its' geographic range, it is an eastern Oregon tree.

Western Juniper - Site is out of its' geographic range, it is an eastern Oregon tree.

Western Hemlock - Not enough moisture on this site, on edge of geographic range.

Mountain Hemlock - Site is out of its' geographic range, high elevation tree.

Pacific Yew - Not enough moisture on this site, slow growing, scarce tree grows scattered underneath larger canopy of trees.

Redwood and Sequoia - Site is out of its' geographic range, these species only grow near Brookings, Oregon and south into California.

<u>HARDWOOD</u> TREE SPECIES	Does This Tree Produce Merchantable Products	Will This Species Grow On This Site
Red Alder	Yes	NO
Bigleaf Maple	Yes	Yes
White Oak	Yes	Yes
Oregon Ash	Yes	NO
Cottonwood	NO	NO
Hybrid Poplar	Yes	NO
Willow	NO	NO

Constraints to Growth: All of the above hardwood species listed as not capable of growing on this site need considerably more moisture than is available on this site.

PRODUCTIVITY OF SPECIES CAPABLE OF GROWING ON THIS SITE:

Conifers

Only the species which could **potentially** grow on this site have been considered. Douglas-fir has already been discussed (see analysis dated May 21, 2004). KMX has also been suggested as a species which could grow here, but it is **not** a merchantable species.

KMX will grow almost anywhere. However, it grows like a bush with very poor form, is extremely limby and too resinous for any commercial use. Discussions with foresters from Roseburg Lumber, Seneca and Lone Rock Timber, three companies which have planted this tree, have confirmed this. This is also what I personally have observed with KMX trees. In addition, many of the trees growing are now dying from foliar diseases. In short, none of these companies will plant KMX again. Furthermore, the state foresters I have talked to, including those in Lane County, discourage planting KMX; as a professional consulting forester managing private owners small woodlands, I would **not** recommend planting KMX.

Limited testing, of the characteristics of KMX (not actual KMX saw logs), show that it produces high quality pulp and is suitable for studs and dimension lumber. Talking with mills and log buyers throughout the state of Oregon shows otherwise. The pulp is so high in resin content that it gums up the machinery in the mills; they will not use it for pulp. **No mill** will purchase **KMX sawlogs**. **No mills** will purchase KMX pulp logs.

The final argument for merchantability of KMX concerns the use of KMX for firewood. To begin with it is hard to conceive of someone planting KMX to grow for firewood. The next point is whether or not it makes good firewood, not just will it burn. Anything will burn, given enough fuel. Ponderosa pine is horrible as firewood. It is extremely pitchy and resinous; both of these substances create creosote in chimneys, whether burned in an open fireplace or a wood stove. Creosote creates an extreme fire hazard. Furthermore, unless ponderosa pine is extremely dry, it is hard to light and burns poorly, which creates huge amounts of smoke. KMX has even more resin than ponderosa pine which would mean it produces even more smoke and creosote than ponderosa pine produces. I have never heard of anyone selling KMX as firewood, even from the back of their pickup.

For all of the reasons discussed above, KMX is not a merchantable species.

This leaves valley ponderosa pine, incense cedar, grand/white fir, maple and oak. The difference between grand and white fir is elevation. Grand fir is a low elevation tree (below 3500') and white fir grows above this elevation; otherwise the trees are almost indistinguishable from each other. Grand fir prefers lowlands and stream valleys with high water tables and will not do well on this site due to moisture constraints, but it could conceivably grow here. However, it will not outcompete Douglas-fir in the open; it does much better growing up under shade cover from other species of trees, rarely grows in pure stands and has a growth rate similar to Douglas-fir, but on this site would not grow as well as Douglas-fir. There is no grand fir growing on the site at the present time.

Incense cedar is extremely slow growing and does not grow in pure stands. It will not grow even close to Douglas-fir growth rates on this site or any other site.

Valley ponderosa pine is suited to this site but it has major constraints. There are three soil types on this parcel; of these three the Witzell soil (138E) is the only soil type for which the SCS lists ponderosa pine as a suitable species to plant. However, it also states that from a management standpoint seedling mortality is very high. The Dupee soil (45C) is very poor from a timber growing standpoint and within the Dixonville-Philomath-Hazelair complex (43C&E), only the Dixonville component is a potentially good tree growing soil. As a complex this soil is a poor tree growing soil.

From aerial photos back to the 1950's (see Exhibit 1) it can be seen that the majority of the property was grassland until the early 1970's when the soil was ripped and ponderosa pine was planted. Yet today, due to seedling mortality, it can be seen that 7.2 acres of the parcel have no trees growing (see Exhibit 2), even after the original planting followed by replanting. Trees that have survived are of poor thrift and not growing well.

Looking at a soil overlay on the property shows almost no trees growing in the areas underlaid with the Dupee soil. In the areas that had scattered trees in the past (primarily Douglas-fir), the Douglas-fir has been coming back in and outcompeting the planted ponderosa pine. These observations indicate ponderosa pine will not grow a fully stocked, pure stand on this site.

Historically, ponderosa pine has grown throughout the Willamette Valley, but not in pure stands. These historical stands were either scattered groves of large ponderosa pine trees in grassy bottom areas or trees growing in the Pacific Ponderosa Pine - Douglas-fir timber type (Type 244); ponderosa pine intermixed with Douglas-fir (see Exhibit 3). In the interior (eastern Oregon and Washington, Idaho and western Montana) ponderosa pine will grow in pure stands. Most of the large old ponderosa pine in the Willamette Valley was logged in the past. Currently, there are few large stands of ponderosa pine that are 50 years old; the rotation age deemed appropriate for long term growth figures to be valid. The stands that do exist appear to have volumes similar to local Douglas-fir stands of similar ages. The exception may be on the very severe (either wet or dry) sites, where ponderosa pine volumes per acre will be less (see Exhibit 4).

All of the verifiable established growth tables for a tree species showing cubic foot growth per acre per year assume fully stocked, pure stands at rotation age. The term pure is used for a stand which, other than a few scattered trees, is comprised of only one species of tree. Fully stocked stands of pure Douglas-fir exist throughout the Willamette Valley; there is no question that pure Douglas-fir stands can and do exist. As a result there are verifiable Douglas-fir growth tables. Some tree species do not grow in pure stands (other than small clumps); red and incense cedar, Jeffrey pine, sugar pine and western white pine to name a few. Growth tables for these species are hard, if not impossible to find. Other species will grow in pure stands but not in this geographical area. Ponderosa pine is one of these species; it will and does grow in pure stands east of the Cascades. It does not naturally grow in pure stands in the Willamette Valley; the existing pure stands are plantations.

Pure ponderosa pine stands are scarce; of the pure stands in existence, most are 20 years old or younger (although a few stands approaching 30 years exist as well). A study done by Anderson in 1938 on scattered Willamette Valley ponderosa pines show young ponderosa pines growing rapidly but their growth rates peaked at 30 years then began to slow down. Juvenile tree growth cannot be used for growth over a rotation, because the initial growth (without later growth averaged in) shows a skewed (higher) growth figure.

Tree growth has four stages. First, a tree establishes itself, during this stage growth is slow. After establishment a tree will take off; i.e., grow extremely fast for 10-15 years. After this point in time, which is defined as the culmination of mean annual increment, the growth levels off. The final stage occurs when a tree is very old and actually begins to die. At this point the tree will actually show a negative growth figure. Therefore it is not yet known if Valley pine can sustain the growth rates which have been extrapolated out to 50 or more years. Most current pure stands have been planted at a much higher density than their counterparts in the past, which means their future development and growth is uncertain. Because ponderosa pine is intolerant of shade, it is likely that the stocking level of these stands will be reduced over time through mortality due to insect or disease outbreaks as well as natural thinning within the stand due to competition among the trees. Man will also thin these stands in order to increase growth rates of the remaining trees, otherwise the stands will stagnate. Another major problem is the IPS beetle outbreaks which occur any time logging activities are conducted during January through July. These outbreaks kill large number of trees with every outbreak and are very persistent in Valley pine as opposed to eastern ponderosa pine where the beetle has a short life cycle. What all these factors point to is the question of whether or not ponderosa pine can be grown to maturity in fully stocked stands at the growth rates being seen when these trees are 20-25 years old; if the stands will reach maturity at all, while maintaining a full stocking level.

Due to all of the factors discussed above there are no verifiable Valley ponderosa pine growth tables or site index tables for western Oregon; current ponderosa pine tables are for eastern Oregon pine. Eastern Oregon pine tables are not valid or appropriate for west side growth calculations. Until fully stocked, pure stands reach rotation age (final harvest), any tables created will be unreliable extrapolations of future growth rates.

CONCLUSION CONCERNING CONIFERS

Ponderosa pine is not capable of growing a fully stocked, pure stand on this site. Douglas-fir will outcompete it and produce more cubic feet per acre per year than any other conifer species on this site.

PRODUCTIVITY OF SPECIES CAPABLE OF GROWING ON THIS SITE:

Hardwoods

Of the hardwood species mentioned above only maple and oak will grow on this site. Oak is very slow growing; far slower than Douglas-fir. Individual maple trees have large canopies which cover tremendous amounts of space, which results in a low number of trees per acre, and maples do not grow in pure stands. They are usually scattered throughout conifer stands. Even if a pure maple stand could be found, the number of maples per acre is low, which results in a low cubic foot per acre growth figure.

A hardwood species frequently mentioned is hybrid poplar. There are many reasons hybrid poplar will not grow on this site. This site has very shallow soils (or none at all in areas of exposed rock), a south to southwest aspect (hot and dry summers, harsh tree growing conditions) and does not have adequate water. Hybrid poplar stands grow best in deep alluvial soils for satisfactory yields and need tremendous amounts of water to grow successfully (see Exhibit 5). Neither of these conditions are present on this site, and irrigation water in sufficient quantities is not available. Poplar does not grow well in nonalluvial (hill) soils (see Exhibit 6).

Hybrid poplar plantations are established in the same manner as an agricultural crop (see Exhibit 5). In fact, the state of Oregon considers it an agricultural crop through the age of 12 years, because it was originally intended that the trees would be harvested between 8 to 10 years old. To establish a poplar plantation, all old stumps must be removed, the soil tilled by plowing or ripping, competing vegetation must be controlled and drainage must be improved by using either surface ditches or subsurface tile (see Exhibit 5). These are agricultural practices which are done using machinery; **plowing and improving drainage are not forestry practices**. For hybrid poplar stands to obtain full stocking, and meet their full growth potential, the landowner must carry out intensive weed control, fertilize, thin, prune and protect the stand from animals, insects and diseases (see Exhibit 5). Especially important is weed control. If not controlled the hybrids will grow slowly and may not survive (see Exhibit 5). The majority of these activities are done with machinery. All of the above mentioned activities must be completed in order to establish a fully stocked, fast growing poplar stand.

Plantations growing west of the Cascades in areas of "ample rainfall", on flat ground, with all of the above activities carried out will reach their full growth potential. The east slopes of the coast range and Cascades are in a rain shadow and are considerably drier. The Carver parcel is close to the rain shadow of the coast range; it is definitely not in the foothills of the Cascades. Rainfall amounts increase as you go from the rain shadow of the coast range to the west slopes of the Cascades. If site conditions are conducive to the growth of hybrid poplar, the tree will grow. Economic success with these plantations depends on intensive cultural techniques and **good** quality land (see Exhibit 6). Hybrid poplar plantations can supplement conventional forest production, but for several reasons, including their cultural and soil requirements, they cannot replace forests of Dougals-fir and other conifer species on most of the forest lands of the Pacific Northwest (see Exhibit 6). On the Carver parcel, the on site conditions, i.e. slope, aspect, actual soil conditions, etc., will not support the growth of hybrid poplar.

CONCLUSION CONCERNING HARDWOODS

None of the above hardwood species, capable of growing on the this site, will produce as high a cubic foot per acre per year growth rate as Douglas-fir.

Sincerely,





CARVER PARCEL

JUNE 2000

EXHIBIT 2



CARVER PARCEL

1952

EXHIBIT 1

EXHIBIT 3

SILVICS OF FOREST TREES OF THE UNITED STATES

419

more so than the chemical constituents (58, 97, 17).

Studies have shown strong relationships between site index and soil depth (89, 133). In the Black Hills, soil depth had more influence on tree height than parent material (89). In Montana, ponderosa pine growth response has been related to soil type, effective soil depth, landform, and moisture availability. High water tables or seeps tend to increase site productivity regardless of the soil type and landform (26).

Ponderosa pine stands, 51, 75, and 78 years old, growing in coarse-, medium-, and fine-textured soils in Montana, had their greatest root development in the medium-textured soils and the least in fine-textured soils. Root concentration was more uniform in the medium-textured soil and concentration dropped off abruptly below a soil depth of 18 inches in fine-textured soils (25).

Evidence of the dangers of off-site planting has been shown in northern Idaho. Ponderosa pine planted on western white pine sites exhibited good growth the first few years, but subsequent growth and vigor declined, becoming progressively more apparent by 20 years of age.

On selected areas in Utah, Arizona, Colorado, and Idaho, waterholding capacities of the soil varied from 25.8 to 70.0 percent, and wilting coefficients from 3.3 to 16.1 percent (10).

Ponderosa pine is found at elevations from sea level near Tacoma, Wash., to about 9,000 feet in California, Colorado, and Arizona (97). From north to south throughout its range the species tends to grow at progressively higher altitudes and within more restricted elevational limits. In California, it is most commonly found at elevations from 500 to 3,500 feet in the north and from 5,300 to 7,300 feet in the south. The implications are that from north to south the isohyets gain altitude faster than the isotherms, thereby curtailing the elevational zone in which ponderosa pine can favorably grow (53). Although exceptions can be found, the best developed stands are at elevations of 4,000 to 8,000 feet on benches, plateaus, and west and south aspects.

Associated Trees and Shrubs

Ponderosa pine is contained largely within the arid transition zone of the West. Characteristically, ponderosa pine tends to grow in groupwise arrangement of age classes, particularly where it occurs in pure stands.

Ponderosa pine is an integral component of five forest cover types in the West: Ponderosa Pine—Larch—Douglas-Fir (Type 214), Interior Ponderosa Pine (Type 237), Ponderosa Pine—Sugar Pine—Fir (Type 243), Pacific Ponderosa Pine—Douglas-Fir (Type 244), and Pacific Ponderosa Pine (Type 245). The first is typical in western



F-478012

Group of immature ponderosa pines in Blacks Mountain Experimental Forest, Calif.

Montana; in this type ponderosa pine never predominates. With cutting or increase in moisture it is easily transformed into either the Larch—Douglas-Fir Type or the Douglas-Fir Type.

The Interior Ponderosa Pine Type covers the greater part of the area on which the species grows in eastern Oregon and Washington, Idaho, western Montana, South Dakota, the east slope of the Sierra Nevada in California, Utah, western Colorado, Arizona, and New Mexico. Ponderosa pine is frequently found in pure stands and elevationally is the first forest type of timber importance above the desert floor. This is commonly a climax type.

The Ponderosa Pine—Sugar Pine—Fir Type is often called the mixed conifer type in California where it is most extensive on the west side slope of the Sierra Nevada. It is characterized by the predominance of ponderosa pine, sugar pine, white fir, Douglas-fir, or incense-cedar, singly or in combination. The type is found at 3,000 to 6,000 feet elevation and is considered a climax form.

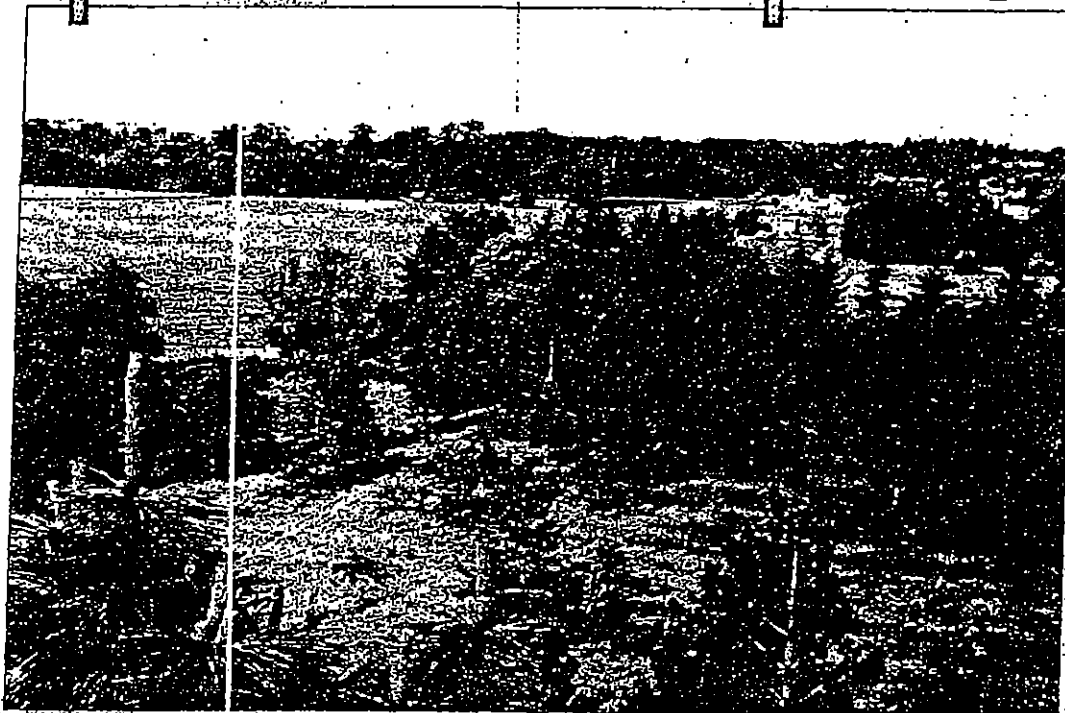
The Pacific Ponderosa Pine—Douglas-fir and the Pacific Ponderosa Pine Types are found in



EM 8805 • May 2003
\$24.00

EXHIBIT 4-1

*Establishing
& managing*
ponderosa pine



in the Willamette Valley

OREGON STATE UNIVERSITY
EXTENSION SERVICE

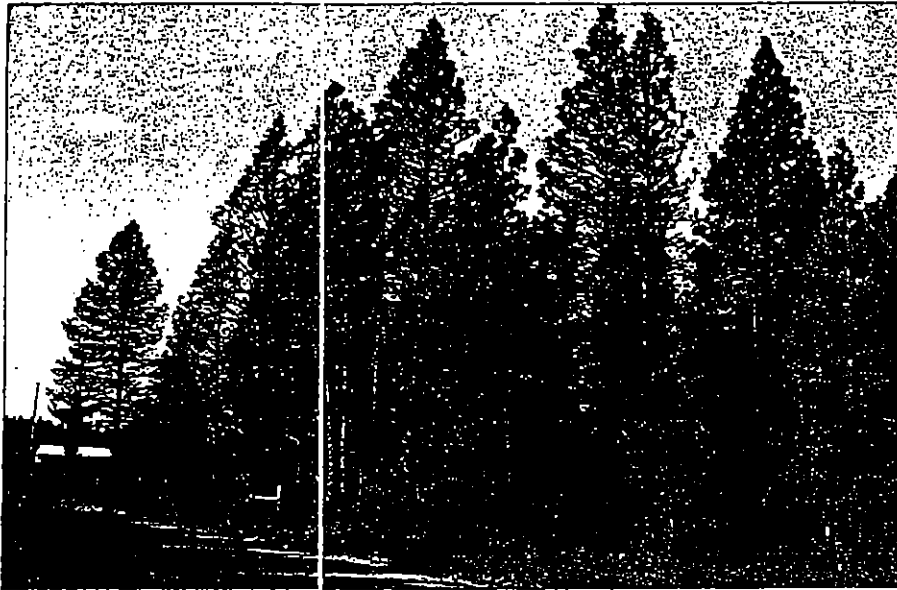


Figure 14.—Native, 40-year-old ponderosa pine stand on wet soil near Lacombe, OR.

No studies of volume growth per acre have been done. Currently, large stands of ponderosa are few, but they appear to have volumes similar to local Douglas-fir stands of similar ages. The exception may be on the very severe (either wet or dry) sites, where volumes per acre will be less. ★

Managing natural stands of Valley ponderosa pine

If you are one of the lucky Willamette Valley landowners with a natural stand of ponderosas on your property, your trees might benefit from thinning or possibly pruning if they are still pole size.

Thinning

Thinning spaces out trees and improves the health and vigor of the overall stand. The key feature is not what you cut but the stand left behind after harvest. It is these trees, generally referred to as crop trees, that will determine future growth and overall stand health. In deciding which will be crop trees, and which ones you'll remove, consider the following factors.

1. Overall stand age and stocking Stands that respond best to thinning are young, moderately stocked ones. Older stands (50 years plus) likely have passed the time when thinning will greatly benefit growth rates, unless the stand was previously thinned. Thinning an older stand still might make sense, however, if you want to reduce longer term competition for crop trees or to remove unhealthy trees. Very dense stands may need several light thinnings, spaced by recovery periods, to move the stand gradually to a healthy density.

Possibly the most important thinning is a very early one, while the trees are not yet of merchantable size. This precommercial thinning sets the growth curve for the future stand and can have a dramatic, positive impact on growth if done at the right time.

2. Type of future stand desired If you want an even-age stand, then it makes sense to space crop trees evenly for maximum

how tall a tree of a given species will grow on a site in a given number of years) for each site were extrapolated from existing site index curves from ponderosa pine in southwest Oregon, based on expected total height at 50 years.

On most sites, ponderosas are expected to grow nearly 100 feet in the first 50 years. Exceptions were on very severe sites where the high water table and shallow soils converged. When these trees will slow down or stop growing taller is not known and undoubtedly will vary widely by soil type, but large specimen trees on suitable soils have grown up to 150 feet tall.

EXHIBIT

4-2.

Growth of Willamette Valley natural stands

Soil type	Height	Age	Site index (50)
Bashaw silty clay loam	98	59	92
Dayton silt loam	84	42	98
Dixonville/Hazelair/Philomath	96	98	63
Dupee silt loam	110	56	101
Hazelair silty clay* loam	93	52	92
McBee silty clay loam	104	59	92
Philomath cobbly, silty clay*	87	42	104
Ritner cobbly, silty clay loam	101	54	95
Salem gravelly loam	111	63	93
Waldo silty clay loam	83	41	96
Witzel very cobbly loam	92	98	59

* An average of more than one site

WSU-Puyallup Hybrid Poplar Research Program

EXHIBIT 5

Washington State
University

WSU-Puyallup

Establishing High Yield Plantations

In most cases, high yield plantations will be established on cleared land. In western Washington and Oregon, consider agricultural lands not currently suited for cultivated crops. Usually, such lands are in grass for hay or pasture. Quality cropland also can be used, since methods are available to eliminate the stumps and return the field to agriculture. Special considerations required to establish plantations on grasslands are discussed below. For more details please refer to "High Yield Hybrid Poplar Plantations in the Pacific Northwest."

Genetic Diversity - Use of a single clone in plantations increases risk from insects and disease. Therefore, in extensive plantings (over 40 acres), plant several clones, either in pure blocks or in mixed clone stands.

Suitable soils - Hybrid poplars attain the best growth on deep, fertile, alluvial soils that have adequate moisture. One reason for their high productivity is their ability to fully use such soils. Light textured soils, such as sandy loams and silt loams, are generally best, but heavier textured soils can produce excellent growth if the soil is relatively loose and friable.

Where can hybrid poplar be grown? - Use caution in planting hybrids developed for the Pacific Northwest in regions of the world that have unsuitable climates and significantly different latitudes. Even in similar climates, susceptibility to local diseases can limit hybrid growth.

Cold Injury - Most serious cold injury has resulted from sudden cold in fall. Low temperatures occurring later, when the trees are fully dormant, is of little concern. Spring frosts can injure newly emerging leaves and succulent stems. Such damage occurs both east and west of the Cascades in Washington, but rarely kills trees. The other type of cold injury noted with older specimens of certain clones is frost cracking of the trunk.

Choosing the spacing - If trees will be harvested as biomass fuel, small sized trees as young as one year can be used. Expect rerouting for subsequent harvests (provided harvesting is done in the dormant season). Under such conditions, use close spacing - 2 4 feet or 4 x 4 feet. Spacing for longer cycle cuttings can range up to 20 x 20 feet, depending on the size of the tree desired.

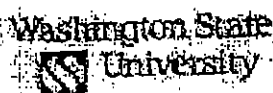
Land Preparation - Proper land preparation is vital for ensuring high productivity plantations. The major objectives in land preparation include:

1. controlling competing vegetation
2. loosening the soil by plowing, ripping, subsoiling, and
3. improving drainage by using either surface ditches or subsurface tile.

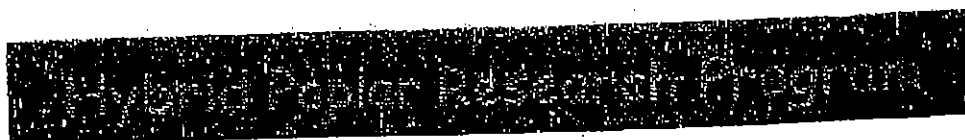
Cost share assistance - Establishment of hybrid poplar plantations may be eligible for USDA cost-sharing funds if harvest rotations exceed 10 years. Local offices of the USDA Agricultural Stabilization and Conservation Service (ASCS) or your state forestry agency, Washington State Department of Natural Resources, Oregon Department of Forestry, or

5-1

WSU-Puyallup Hybrid Research Program



WSU-Puyallup



Managing Plantations:

Plantation management needs to address several concerns:

- * 1) weed control
- * 2) need for fertilizer
- * 3) thinning and pruning where appropriate; and
- * 4) protection against animals, insects and diseases.

The following discussion is intended to introduce you to the different aspects of managing hybrid poplar plantation. For further details please refer to "High Yield Poplar Plantations the Pacific Northwest."

Weed Control -

* If the grower does not control weeds and grass adequately, hybrids will grow slowly and may not survive. Furthermore, weeds and grasses provide cover to voles, which can girdle and kill trees as old as 4 years. Growers usually control weeds in plantations by combining cultivation and herbicides, starting with a chemical spray before or soon after planting.

A number of effective weed control treatments that employ herbicides are used. The Pacific Northwest Weed Control Handbook lists the most commonly used materials and is updated annually. Refer herbicide questions to your Cooperative Extension agent.

Fertilization -

A vigorous plantation takes up as much as 200 lb of nitrogen (N) per acre per year. However, from 50 to 150 lb of N per acre per year is generally the rate applied. On fertile soils, including some old pastures, the nitrogen released from soil organic matter can be sufficient to carry the plantation for several years without need for added fertilizer. Usual fertilizer is not broadcast before planting or applied during the first year of growth.

Appearance of plants can indicate need for nitrogen. Leaves of nitrogen deficient plants are generally smaller, light green and sometimes even yellowish. When nitrogen deficient the entire leaf becomes a uniform light green or yellow. Need for other nutrients has not been demonstrated in western Washington. However, zinc fertilization can be very beneficial on calcareous soils east of the Cascades.

Thinning and Pruning -

For all but biomass harvests, practice early thinning to one stem per stump before the second growing season; extra stems can be used for cuttings. Thinning or partial harvests of trees later in the life of the plantation may be desirable to make space for larger, better trees for lumber or plywood. Clear, knot free wood adds value to such trees. For

5-2

WSU-Puyallup Hybrid Poplar Research Program



WSU-Puyallup

Harvesting Plantations

* One important advantage of intensive culture of plantations is the suitability of such plantations for mechanized harvest. Considerable effort has been made in developing new machines and in modifying existing equipment for more efficient harvest of short rotation material. Growers should consider the harvest operation in planning the layout and spacing of biomass plantations. This section briefly discusses harvest options. For a more in depth discussion please refer to "High Yield Hybrid Poplar Plantations in the Pacific Northwest."

Small Scale Plantations -

Recommendations for establishment and culture of smaller plantations are similar to those for commercial plantations. The major difference in operations between large and small plantations is in the harvesting scale. Felling in a small scale harvest is generally done with a chain saw.

Larger Plantations -

Although harvest in large plantations can involve highly efficient yarding equipment, chainsaws are an option for felling trees. Most harvesting presently underway in the Northwest uses conventional feller bunchers and grapple skidders.

Soil and Plant Considerations in harvest timing -

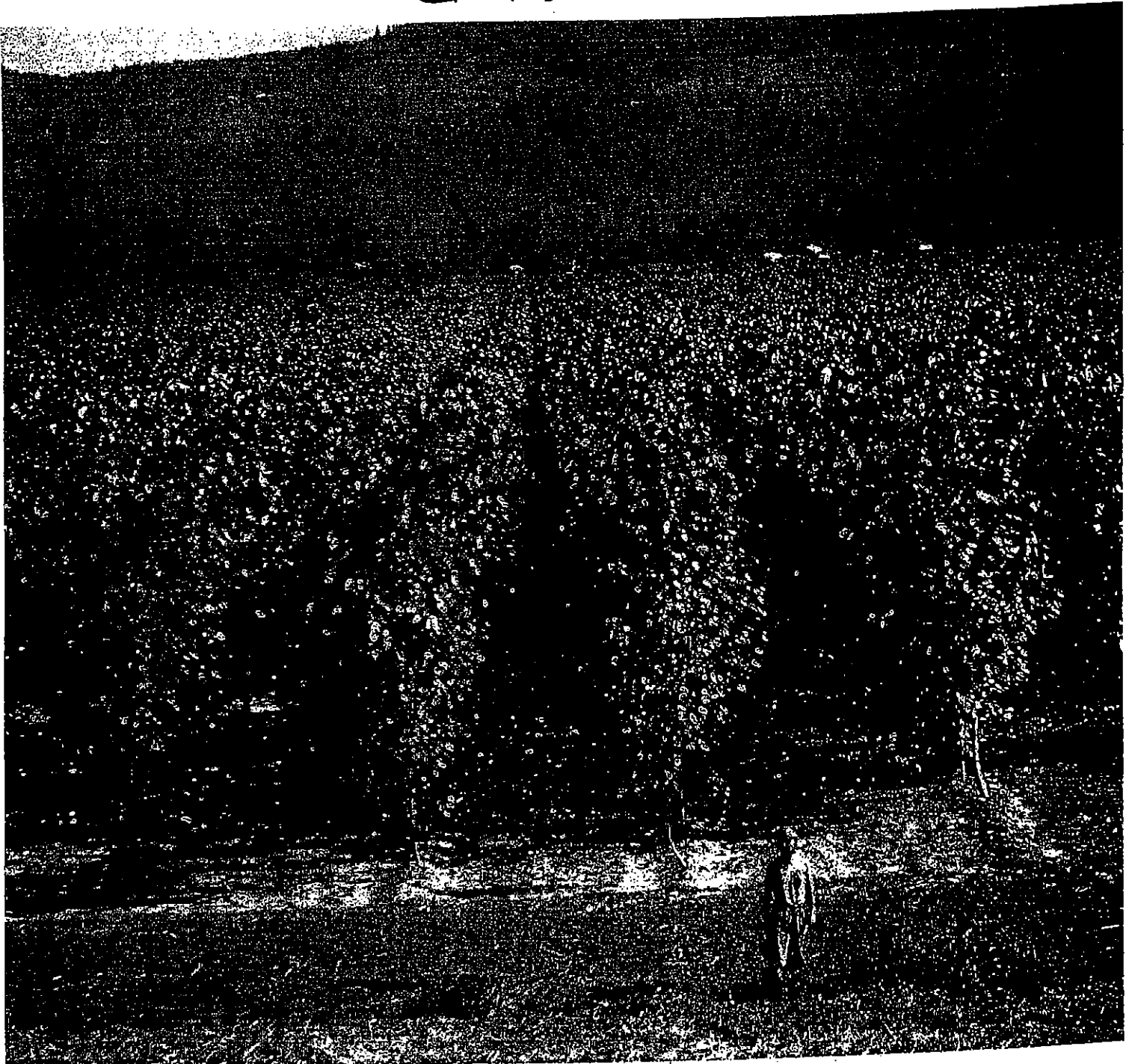
Harvesting in the dormant season is desirable under two situations. The first occurs when resprouting is needed. Dormant season harvests give the most consistent and vigorous resprouting. The second is where year-round supply of wood is required, such as for a pulp mill. Soils suited for these plantations may not support harvesting equipment during wet periods without sustaining compaction. Considerable effort is required to restore puddled and compacted soil to former productivity.

5-3

PNW356

High Yield Hybrid Poplar Plantations in the Pacific Northwest

EXHIBIT 6



A Pacific Northwest Regional Extension Bulletin
Washington • Oregon • Idaho

6-1

PREFACE

Paul Heilman's research with black cottonwood in short rotation began in 1967 in cooperation with Dwight Peabody, Jr., at Washington State University Research and Extension Unit, Mount Vernon, Washington. About the same time, Dean DeBell and Robert Strand, then with Crown Zellerbach Corporation in Camas, Washington, began similar studies. R.F. Stettler's research on hybridization in *Populus* started in 1966. Formal collaboration between Heilman and Stettler began in 1978 when the U.S. Department of Energy granted a contract for genetic improvement and evaluation of black cottonwood for short rotation biomass production. The project, a cooperative effort between the University of Washington and Washington State University, and the contractual support from the Department of Energy continue. Most of the hybrids in use were developed in that project and are considered UW/WSU hybrids. Initial interest in short rotation culture was

directed toward chip production for the pulp and paper industry. In the 1970s, concern grew about future energy shortages, and the U.S. Department of Energy (DOE) became interested. Woody biomass was then seen as having potential to fuel electrical generation. The major current DOE interest in biomass relates to processing the material into liquid fuels—ethanol, methanol, and a product similar to diesel oil.

This bulletin describes the potential and principles, and notes precautions for short rotation culture using hybrid poplars in the Pacific Northwest. Although we used yield estimates in our examples of economic analyses and indicated tentative ranges in expected yields, we do not have sufficient trials at harvest age to develop growth and yield tables for the hybrids.

Perhaps the most troublesome aspect in recommending the use of hybrid poplar is avoiding the

implication that these are "super trees" capable of amazing growth regardless of soil or other conditions. The Poplar Council of the United States has listed three rules for success with poplar culture.

- 1) Use hardy, disease resistant cultivars (or clones);
- 2) Plant them in good soil. Most nonalluvial (hill) soils will not give satisfactory yields; and
- 3) Control competing vegetation.

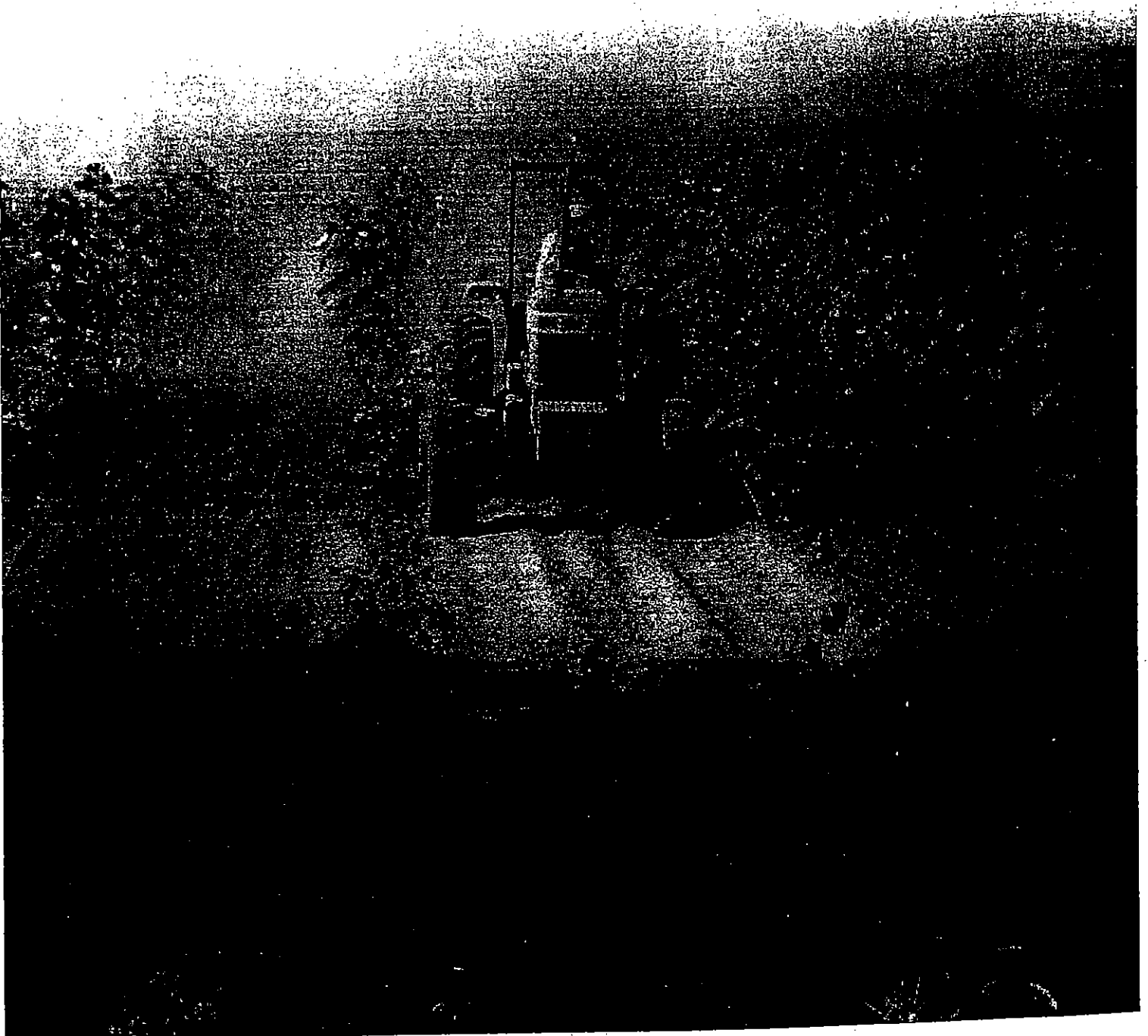
Attention to these rules and to the precautions presented here set the stage for both realistic expectations and success in planting and managing poplar plantations.

We are indebted to the following individuals for their review of the manuscript for the first edition: Dean DeBell, USDA Forest Service; Dave Hibbs, Oregon State University; Don Rice, James River Corporation; and Dave Wenny, University of Idaho.

Figure 8.

Cultivating a first-year plantation. (James River photo)

6-3



Summary

6-4

This bulletin describes a new approach for the production of wood and fiber using fast-growing *Populus* hybrids. Although the cultural system featuring these trees offers a potential alternative to conventional forestry, economic success with these plantations depends on intensive cultural techniques and good quality land.

The results of the economic analysis example show that, given the costs and production assumptions, both the 8-year example for pulp and the 15-year example for logs and pulp are profitable ventures, except for the lowest price option for pulp production (Table 9). The longer rotation is the more profitable of the two alternatives. The greater risk associated with its longer time horizon is more than offset by higher value of its product. The results depend on the assumptions of costs, productivity and product prices. Those considering the hybrid poplar enterprise should use their own estimates of yields, costs and future market prices.

Hybrid poplar plantations can supplement conventional forest production, but for several reasons, including their cultural and soil requirements, they cannot replace forests of Douglas fir and other conifer species on most of the forest lands of the Pacific Northwest.

HERSHNER HUNTER^{LLP}

STEVE CORNACCHIA
scornacchia@hershnerhunter.com

August 17, 2004

Thom Lanfear
Lane County Land Management Division
125 E. 8th Avenue
Eugene, OR 97401

Re: PA 03-5901 (Carver)
Our File No. 30517.30002

Dear Thom:

Mr. Carver thanks you for your time and effort regarding the subject application.

At the June 15, 2004, Planning Commission hearing on PA 03-5901, Mr. Jim Just raised three issues not previously covered in his original written testimony, dated April 22, 2004.

First, Mr. Just argued that the lot line adjustment deed recorded December 31, 1997, does not meet certain technical requirements regarding form of the document. Mr. Carver previously submitted a letter, dated May 24, 2004, which provides evidence and authority to substantiate the form of the document in relation to Oregon Revised Statutes.

Second, Mr. Just argues that the lot line adjustment is of no effect because the procedure and document used to execute the adjustment did not and does not comply with the statutory requirements of ORS 92.180 and 92.185.

Third, Mr. Just argues that Lane County erroneously granted our Report and Verification of Legal Lot, dated March 26, 1998. He further argues that PA 03-5901 cannot be approved in the absence of a legal lot.

Regarding the legal lot issue, Lane County issued the above referenced Report and Verification of Legal Lot in conjunction with a previous land use application for a Non-forest Dwelling Permit (PA 1162-98) That land use application was properly approved by Lane County on September 9, 1998, at which time notice of the decision was mailed to the required parties (see Exhibit A). That land use decision became final (without appeal) on September 21, 1998. The Report and Verification of Legal Lot (included in PA 1162-98)

Celebrating 60 years of service to our community.

om Lanfear
August 17, 2004
Page 2

became legally final concurrently. To the extent a party with standing desired to appeal that noticed land use decision, the time for such notice of appeal expired on September 21, 1998. Mr. Just may not now collaterally attack the Report and Verification of Legal Lot.

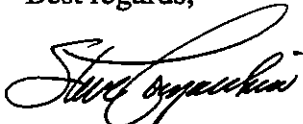
Regarding the lot line adjustment deed and the legal lot verification, Mr. Just is barred from raising those issues. ORS 197.830 (see Exhibit B) provides the procedure and time limits for a party with standing to appeal a land use decision. Under the most liberal interpretation of that statute, and assuming Mr. Just has standing to appeal, his time to appeal those prior decision is tolled to the date of his actual knowledge of the decisions plus 21 days. Mr. Just had actual knowledge of these decisions at least as late as June 15, 2004, when he raised this issue in his public testimony before the Planning Commission. Mr. Just's time period in which to file a notice of appeal of this prior land use decision could not have been any later than September 9, 2001. Mr. Just has filed no such appeal.

Furthermore, both the legal lot and lot line adjustment matters were included in the September 9, 1998, land use decision properly noticed in accordance with ORS 197.195. In such noticed land use decisions, ORS 197.830(6)(b) bars any and all appeals filed more than three years after the date of final decision. The subject final decision date was September 9, 1998. Therefore, the last day to file any and all appeals of the subject decisions was September 9, 2001.

Mr. Just is barred by ORS 197.830 from attacking the subject decisions in this proceeding and in any subsequent appeals therefrom.

If you have questions regarding this matter please contact me.

Best regards,



STEVE CORNACCHIA

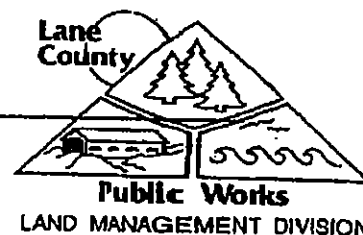
PSC:ss

Enclosures

cc: Julia Carver (with enclosures)

Exhibit A

Date Recd. 11-20-97
 Deemed Complete on 7-16-98
 Date Issued 2-9-98
 Days Waived 224
 Total Processing Days 56



NOTICE OF PENDING LAND USE DECISION BY THE LANE COUNTY PLANNING DIRECTOR

Department File No:	PA 3229-97
Property Owner:	Carver Trust 1
Applicant:	Harry Taylor
Property Address:	None. Off of Blanton Rd.
Map & Tax Lot Number:	18-04-13, tax lot 3500

You own or occupy property very near the above referenced property which is the subject of a land use application and pending decision for **APPROVAL** of this application by the Lane County Planning Director. Notice to mortgagee, lien holder, vendor or seller: ORS Chapter 215 requires that if you receive this notice, it must be promptly forwarded to the purchaser.

The purpose of this letter is to inform you about this land use application, where you may receive more information about the application, and the requirements if you wish to appeal the pending decision by the Director to the Lane County Hearings Official.

PROPOSAL: To seek approval of a residential use permit by the Lane County Planning Director to allow a dwelling unit in the Unplatted Forest Land Zone F-2(R) in accordance with the applicable standards set forth in Lane Administrative Rule 660-06-027(1)(d), (1)(e), (1)(f), and (1)(g), and the applicable standards of Lane Code 16.211(8) for a subject parcel identified below:

Enclosed is vicinity map of the subject property and surrounding properties. A copy of the approved plot plan is also enclosed.

The proposed use or uses that could be authorized by approval of the land use application are: Construction of a dwelling in the F-2 zone.

The criteria from Lane Code and the Comprehensive Plan that apply to the application and decision are: Oregon Administrative Rule 660-06-027(1)(d), 029, 035 and 040, and the siting standards of Lane Code 16.211(8). The criteria, and a copy of the Lane County Planning Director's report, including all of the submitted materials, are available for inspection at the Lane County Land Management Division at no cost, and copies will be provided at reasonable cost. The name of the Lane County Land Management Division representative to contact is Jerry Kendall, and the telephone number where more information can be obtained is 682-4057.

This decision will become final at 5 P.M. on 9-21-98 unless before this time a completed **APPLICATION FOR AN APPEAL OF A DECISION BY THE PLANNING DIRECTOR** form is submitted to and received by the Lane County Land Management Division. This form is enclosed and must be used if you wish to appeal this decision.

1. In order to complete this form, fill in the required information and attach to it all of the materials and information required in numbers 2, 3 and 6 of the appeal form.
2. Then, submit the completed form to Lane County Planning Director so that it is received by him or her prior to the above mentioned time that the decision becomes final.
3. The Lane County Planning Director shall reject an appeal if it is not received prior to the time that the decision becomes final or if it is not complete.

Failure of an issue to be raised in a hearing, in person or in writing, or failure to provide statements of evidence sufficient to afford the Approval Authority an opportunity to respond to the issue precludes raising the issue in an appeal to the Land Use Board of Appeals.

Prepared by: J. Kendall
Jerry Kendall/Associate Planner

Date: 9-9-98

Authorized by: Kent Howe
Kent Howe, Planning Director

Date: 9-9-98

Exhibit B

Subj: (no subject)
Date: 8/7/2004 1:39:49 PM Pacific Daylight Time
From: RCarverIII
To: RCarverIII

197.830 Review procedures; standing; deadlines; issues subject to review; attorney fees and costs; publication of orders; mediation. (1) Review of land use decisions or limited land use decisions under ORS 197.830 to 197.845 shall be commenced by filing a notice of intent to appeal with the Land Use Board of Appeals.

(2) Except as provided in ORS 197.620 (1) and (2), a person may petition the board for review of a land use decision or limited land use decision if the person:

(a) Filed a notice of intent to appeal the decision as provided in subsection (1) of this section; and

(b) Appeared before the local government, special district or state agency orally or in writing.

(3) If a local government makes a land use decision without providing a hearing, except as provided under ORS 215.416 (11) or 227.175 (10), or the local government makes a land use decision that is different from the proposal described in the notice of hearing to such a degree that the notice of the proposed action did not reasonably describe the local government's final actions, a person adversely affected by the decision may appeal the decision to the board under this section:

(a) Within 21 days of actual notice where notice is required; or

(b) Within 21 days of the date a person knew or should have known of the decision where no notice is required.

(4) If a local government makes a land use decision without a hearing pursuant to ORS 215.416 (11) or 227.175 (10):

(a) A person who was not provided mailed notice of the decision as required under ORS 215.416 (11)(c) or 227.175 (10)(c) may appeal the decision to the board under this section within 21 days of receiving actual notice of the decision.

(b) A person who is not entitled to notice under ORS 215.416 (11)(c) or 227.175 (10)(c) but who is adversely affected or aggrieved by the decision may appeal the decision to the board under this section within 21 days after the expiration of the period for filing a local appeal of the decision established by the local government under ORS 215.416 (11)(a) or 227.175 (10)(a).

(c) A person who receives mailed notice of a decision made without a hearing under ORS 215.416 (11) or 227.175 (10) may appeal the decision to the board under this section within 21 days of receiving actual notice of the nature of the decision, if the mailed notice of the decision did not reasonably describe the nature of the decision.

(d) Except as provided in paragraph (c) of this subsection, a person who receives mailed notice of a decision made without a hearing under ORS 215.416 (11) or 227.175 (10) may not appeal the decision to the board under this section.

(5) If a local government makes a limited land use decision which is different from the proposal described in the notice to such a degree that the notice of the proposed action did not reasonably describe the local government's final actions, a person adversely affected by the decision may appeal the decision to the board under this section:

(a) Within 21 days of actual notice where notice is required; or

(b) Within 21 days of the date a person knew or should have known of the decision where no notice is

required.

(6)(a) Except as provided in paragraph (b) of this subsection, the appeal periods described in subsections (3), (4) and (5) of this section shall not exceed three years after the date of the decision.

(b) If notice of a hearing or an administrative decision made pursuant to ORS 197.195 or 197.763 is required but has not been provided, the provisions of paragraph (a) of this subsection do not apply.

(7)(a) Within 21 days after a notice of intent to appeal has been filed with the board under subsection (1) of this section, any person may intervene in and be made a party to the review proceeding upon a showing of compliance with subsection (2) of this section.

(b) Notwithstanding the provisions of paragraph (a) of this subsection, persons who may intervene in and be made a party to the review proceedings, as set forth in subsection (1) of this section, are:

(A) The applicant who initiated the action before the local government, special district or state agency; or

(B) Persons who appeared before the local government, special district or state agency, orally or in writing.

(c) Failure to comply with the deadline set forth in paragraph (a) of this subsection shall result in denial of a motion to intervene.

(8) If a state agency whose order, rule, ruling, policy or other action is at issue is not a party to the proceeding, it may file a brief with the board as if it were a party. The brief shall be due on the same date the respondent's brief is due.

(9) A notice of intent to appeal a land use decision or limited land use decision shall be filed not later than 21 days after the date the decision sought to be reviewed becomes final. A notice of intent to appeal plan and land use regulation amendments processed pursuant to ORS 197.610 to 197.625 shall be filed not later than 21 days after notice of the decision sought to be reviewed is mailed or otherwise submitted to parties entitled to notice under ORS 197.615. Failure to include a certificate of mailing with the notice mailed under ORS 197.615 shall not render the notice defective. Copies of the notice of intent to appeal shall be served upon the local government, special district or state agency and the applicant of record, if any, in the local government, special district or state agency proceeding. The notice shall be served and filed in the form and manner prescribed by rule of the board and shall be accompanied by a filing fee of \$175 and a deposit for costs to be established by the board. If a petition for review is not filed with the board as required in subsections (10) and (11) of this section, the filing fee and deposit shall be awarded to the local government, special district or state agency as cost of preparation of the record.

(10)(a) Within 21 days after service of the notice of intent to appeal, the local government, special district or state agency shall transmit to the board the original or a certified copy of the entire record of the proceeding under review. By stipulation of all parties to the review proceeding the record may be shortened. The board may require or permit subsequent corrections to the record; however, the board shall issue an order on a motion objecting to the record within 60 days of receiving the motion.

(b) Within 10 days after service of a notice of intent to appeal, the board shall provide notice to the petitioner and the respondent of their option to enter into mediation pursuant to ORS 197.860. Any person moving to intervene shall be provided such notice within seven days after a motion to intervene is filed. The notice required by this paragraph shall be accompanied by a statement that mediation information or assistance may be obtained from the Department of Land Conservation and Development.

(11) A petition for review of the land use decision or limited land use decision and supporting brief shall be filed with the board as required by the board under subsection (13) of this section.

(12) The petition shall include a copy of the decision sought to be reviewed and shall state:

(a) The facts that establish that the petitioner has standing.

(b) The date of the decision.

(c) The issues the petitioner seeks to have reviewed.

(13)(a) The board shall adopt rules establishing deadlines for filing petitions and briefs and for oral argument.

(b) At any time subsequent to the filing of a notice of intent and prior to the date set for filing the record, or, on appeal of a decision under ORS 197.610 to 197.625, prior to the filing of the respondent's brief, the local government or state agency may withdraw its decision for purposes of reconsideration. If a local government or state agency withdraws an order for purposes of reconsideration, it shall, within such time as the board may allow, affirm, modify or reverse its decision. If the petitioner is dissatisfied with the local government or agency action after withdrawal for purposes of reconsideration, the petitioner may refile the notice of intent and the review shall proceed upon the revised order. An amended notice of intent shall not be required if the local government or state agency, on reconsideration, affirms the order or modifies the order with only minor changes.

(14) The board shall issue a final order within 77 days after the date of transmittal of the record. If the order is not issued within 77 days the applicant may apply in Marion County or the circuit court of the county where the application was filed for a writ of mandamus to compel the board to issue a final order.

(15)(a) Upon entry of its final order the board may, in its discretion, award costs to the prevailing party including the cost of preparation of the record if the prevailing party is the local government, special district or state agency whose decision is under review. The deposit required by subsection (9) of this section shall be applied to any costs charged against the petitioner.

(b) The board shall also award reasonable attorney fees and expenses to the prevailing party against any other party who the board finds presented a position without probable cause to believe the position was well-founded in law or on factually supported information.

(16) Orders issued under this section may be enforced in appropriate judicial proceedings.

(17)(a) The board shall provide for the publication of its orders that are of general public interest in the form it deems best adapted for public convenience. The publications shall constitute the official reports of the board.

(b) Any moneys collected or received from sales by the board shall be paid into the Board Publications Account established by ORS 197.832.

(18) Except for any sums collected for publication of board opinions, all fees collected by the board under this section that are not awarded as costs shall be paid over to the State Treasurer to be credited to the General Fund. [1983 c.827 §31; 1985 c.119 §3; 1987 c.278 §1; 1987 c.729 §16; 1989 c.761 §12; 1991 c.817 §7; 1993 c.143 §1; 1993 c.310 §1; 1995 c.160 §1; 1995 c.595 §3; 1997 c.187 §1; 1997 c.452 §1; 1999 c.255 §2; 1999 c.348 §17; 1999 c.621 §3; 2003 c.791 §28; 2003 c.793 §6]

MINUTES

Lane County Planning Commission
Harris Hall - Lane County Courthouse

June 15, 2004
7:00 p.m.

PRESENT: Marion Esty, Mark Herbert, Juanita Kirkham, Vincent Martorello, Steve Dignam, James Carmichael, members; Kent Howe, Stephanie Schulz, Thom Lanfear, Staff

ABSENT: Ed Becker, Chris Clemow, Jacque Betz

I. PUBLIC HEARING: PA 04 -5216

Ms. Kirkham convened the meeting at 7 pm. She noted that agenda item 2 would take place first.

Ms. Kirkham invited public comment on items not related to the agenda items for the evening. Seeing no one else wishing to speak, she moved to the first agenda item.

Stephanie Schulz provided the staff report. She said staff was recommending approval of the proposal.

Ms. Kirkham called for declarations of *ex parte* contacts or conflicts of interest. None were declared.

Ms. Kirkham opened the public hearing and called for testimony from the applicant.

Emily Jerome, 310 East 10th, Eugene, spoke as the applicant's attorney. She said the proposal related to the Goal 14 urbanization which the City of Florence needed to complete. She noted that the City of Florence could not extend urban services outside of its UGB and noted that the annexation would enable the City to provide a "looped" water system which would provide service redundancies and added capacity for providing water. She added that the sewer system had also been expanded to enable the City to provide service to the newly annexed areas.

Linda Sarnoff, City of Florence, showed an overhead projection of the areas proposed for annexation. She noted some public testimony had expressed concern over the ability of the City to provide water and said the City had increased its ability to provide water by one third. She reiterated that the annexation would enable the City to provide a "looped" water system.

Ms. Sarnoff noted that the City had also increased its sewer capacity to be able to handle a population of twice the size of the current population and stressed that the City could provide water and sewer services to the newly annexed areas. She said she concurred with the staff report and stressed that the application met all approval criteria.

In response to a question from Mr. Martorello regarding how a looped system could be closed without expanding the Urban Growth Boundary (UGB), Ms. Sarnoff noted that it would look possible on the map

but noted that topography would not allow it in reality. She added that area one for annexation had aged sewer systems that needed to be hooked up to the city sewer.

Rob Ward 5441 Huckleberry Lane, Dunes City, said he was the owner of property adjacent to Area 2. He said it would make sense to support the position of the city so a higher level of services could be provided to Florence citizens.

Bill Robinson, PO Box 2709 Florence, noted that his golf course was only half included in the City limits which was causing jurisdictional problems for law enforcement. He urged approval of the application.

Ms. Kirkham called for testimony from those in opposition to the application.

Laurie Segel noted that notice requirements had not been met. She added concerns over the proposed zoning for the lands to be annexed. She called for a hearing to be held in Florence to allow more citizens to testify. She said the application was premature. She said the City had not established any need to expand the UGB. She added that there were items missing from the public record related to the application.

John Hans, 87442 Munsel Lake Road, Florence, said the existing water system was adequate for the needs of the area. He raised concern over having to pay for hooking up to the City sewer system.

Marla Adams 87254 Munsel Lake Road, said she was happy with the existing water system. She said the septic systems in place were handling the needs of the area. She said she did not see the need to expand the UGB and asked to be left alone.

Seeing no one else wishing to speak, Ms. Kirkham called for applicant rebuttal.

In response to a concern raised by Mr. Carmichael regarding the possibility of appeal, Lane County Planning Director Kent Howe said all applications were open to appeal. He said the County felt the application had met the requirements of the code.

In response to a question from Mr. Dignam regarding site review for Area Two, Ms. Schulz said it was included in response to transportation planning staff concerns regarding Goal 12 implementation in the application. She said under the site review clause, transportation impact analysis would happen if new development is proposed in the expanded UGB area.

Mr. Herbert raised concern over proceeding without addressing some of the concerns raised by Ms. Segel.

Mr. Dignam said he was confident when staff assured him that notice requirements had been met. He said he did not know how to address whether items were missing from the public record.

Ms. Esty said what Ms. Segel had cited as missing was for a different application four years previously.

Mr. Howe noted that the evening's hearing was a new proceeding with the record starting with the application filed. He noted that the previous application was a different proceeding with a different record.

Mr. Herbert reiterated his concerns over Ms. Segel's comments and said he would have those concerns addressed by County Counsel.

Ms. Kirkham noted that there had been a written request to keep the record open.

Mr. Howe noted that the request to hold the record open was for the commission to receive the entire record and said the commission had received the full record.

Mr. Martorello commented that leaving the record open would require a decision as to whether the hearing would be continued in the City of Florence.

Mr. Howe commented that the appropriate thing to do would be to close the hearing and decide when the commission would deliberate and make a recommendation to the Board of Commissioners.

In response to a question from Mr. Herbert regarding whether Ms. Jerome was comfortable in differing from Ms. Segel's comments, Ms. Jerome said she was comfortable with keeping the record open for seven days and would address Ms. Segel's comments in her rebuttal statement.

Ms. Kirkham close the public comment period.

Mr. Martorello called for data from Florence public works regarding the need for a looped system.

Mr. Dignam, seconded by Mr. Herbert, moved to hold the record open for seven days and finish the hearing in Eugene.

Mr. Martorello raised concern over not deliberating in Florence.

Mr. Herbert said no more spoken testimony was going to be received. He said deliberating in Florence would not be significantly different than doing so in Eugene.

Mr. Carmichael reiterated Mr. Herbert.

Mr. Herbert called for a date certain for deliberation and action.

Mr. Howe said the July 6, meeting was open for any deliberation.

The motion passed unanimously.

II. PUBLIC HEARING: Rescheduled from May 4; PA 03-5901

Thom Lanfear provided the staff report. He distributed an e-mail from the applicant addressing an issue raised in the staff report. He showed overhead projections of the subject property representing ownership from 1978 – 1992.

Mr. Lanfear said he had tracked down soil classifications from the 1980's and distributed written copies of the data. He said the soils had been identified as class 6 soils. He said the applicant had met the requirements for Marginal Lands zoning.

Ms. Kirkham called for declarations of *ex parte* contacts or conflicts of interests. None were declared.

Ms. Kirkham opened the public hearing and called for testimony from the applicant.

Harry Taylor PO Box 1420, Veneta, spoke as the applicant's representative. He stressed that the property was sloped and 80 percent covered with a variety of trees. He said the zone change to Marginal Lands was very consistent with surrounding areas. He stressed that surrounding areas also had class 6 soils which was required for a Marginal Lands designation.

Mr. Carmichael confirmed that EWEB was administering the water system for the area and that there was capacity to meet the needs of the proposed new lots.

Ms. Kirkham called for opposing testimony.

Jim Just, 39625 Almond Drive, Lebanon, opined that 87 percent of the soils on the subject property were class 3 or better. He said the applicant's argument would not withstand legal challenge. He stressed the importance of using the latest data instead of data from the 1980's. He surmised that the land could be profitably used for farming or logging activity.

Mr. Just said there was some question over the legality of the lots in the application. He said it would be impossible to know a soil classification if no one knew the legality of the lot.

Ms. Kirkham called for applicant rebuttal.

Mr. Taylor said the statute was very clear regarding what data was supposed to be used to rate soils. He said the data was published and quite clear.

Regarding legal lot verification, Mr. Taylor said the legality of the lot had been confirmed by the County. He said a building permit could not have been issued if that were not the case.

Steve Cornacchia reiterated that the soil classification statutes were very clear and well established.

Regarding the legality of lot lines, Mr. Cornacchia said counties were not required to regulate lot line adjustments. He added that the F2 dwelling permit also proved the legality of the lot.

Ms. Kirkham closed the public hearing and called for deliberations from the commission.

Mr. Herbert said it was clear that the applicant had established the soil classification.

Mr. Herbert, seconded by Ms. Esty, moved to approve the application.

Mr. Dignam said he would support the motion. He noted that the surrounding lands were similar in nature and were Marginal Lands.

The motion passed unanimously.

(Recorded by Joe Sams)

SOIL INTERPRETATIONS

LANE COUNTY
OREGON

Assistance Provided
by the
Soil Conservation Service
and the
Upper Willamette
Resource Conservation & Development Area
through the
North Lane, Siuslaw and Upper Willamette
Soil & Water Conservation Districts

Prepared by
W. R. Patching, Soil Scientist
Ralph B. Cleveland, District Conservationist
E. C. Hutcheson, Secretary