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SUPPLEMENTAL MATERIAL

SUPPLEMENTAL MEMORANDUM

Memorandum Date: August 29, 2006
Ordinance Date: August 30, 2006 (Fourth Reading and Deliberations)

TO: Board of County Commissioners
DEPARTMENT: Public Works Department – Land Management Division
PRESENTED BY: Bill Sage, Associate Planner
Stephen Vorhes, Assistant County Counsel

AGENDA ITEM TITLE: ORDINANCE NO. PA 1236 / IN THE MATTER OF ADOPTING A CONFORMITY DETERMINATION AMENDMENT PURSUANT TO RCP GENERAL PLAN POLICIES – GOAL TWO POLICY 27a. vii. AND GOAL FOUR POLICY 15, ADOPTING THE PLAN DESIGNATION OF FOREST (F) AND THE ZONING DESIGNATION OF IMPACTED FOREST LAND (F2) FOR 37.5 ACRES LOCATED IN SECTION 32, TOWNSHIP 20, RANGE 2 WEST, WILLAMETTE MERIDIAN, AND IDENTIFIED AS A PORTION OF TAX LOT 1700 OF LANE COUNTY ASSESSOR MAP 21-02-06, AND ADOPTING SAVINGS AND SEVERABILITY CLAUSES (PA 06-5476 SYMBIOTIC LLC, USACE)

I. MOTION

I move adoption of Ordinance No. PA 1236 with the revised Exhibit “C” Findings of Fact and Conclusions of Law which includes the proposed interpretation of “ownership.”

II. AGENDA ITEM SUMMARY

Written testimony in the record of Ordinance No. PA 1236 raises the question on how to interpret “ownerships” as used in RCP Goal Four, Policy 15 and whether it applies to the subject land (37.5 acres) specifically; to the entire Corps of Engineers holdings in the general vicinity which includes the Dorena Reservoir; or to the lands contiguous to the Corps lands and reservoir. The testimony suggests a need for further definition of that term based on two previous conformity determination decisions appealed to the Oregon Land Use Board of Appeals (“LUBA”).

The applicant has proposed supplemental findings of fact and conclusions of law which address the term “ownerships”. The salient recommended language is:

We find that "legal lots or parcels" or portions thereof are the functional equivalents of the term "ownerships" contained in the criteria of RCP Goal 4 Policy 15 and that finding constitutes an interpretation of the term "ownerships" as contained in that criteria.

For the purposes of this application, "ownership" would seem to mean the "land" subject to the request for RCP amendment and rezoning, in this instance being 37.5+ acres.

This supplemental memorandum addresses the issue raised in this proceeding and some of the issues involved in the two LUBA remands calling for Lane County to interpret the terms "ownership" as used in RCP General Plan Policies – Goal Four, Policy 15.

III. BACKGROUND/IMPLICATIONS OF ACTION

A. Board Action and Other History

In the first LUBA decision, several issues led to the remand. One of them involved a debate about whether the term "ownership" meant the same thing as "tract". The LUBA decision concluded:

“. . . because the county's decision never expressly recognizes the ambiguity that is presented by the use of the undefined term "ownerships" in RCP Goal 4, Policy 15(b) and (c), we believe remand for the county to adopt the needed interpretation is the appropriate course."

Refer to Attachment "A" – *Just v. Lane County* (LUBA No. 2005-71, October 14, 2005) for the text of the entire LUBA opinion.

In the second LUBA decision, several issues led to the remand. Primary among them was the focus of analysis under the specific conformity determination criteria in RCP Goal Two, Policy 27 that considered parcelization in 1984. That LUBA decision concluded:

"The county is presumably considering the meaning of the term "ownerships" pursuant to the remand in Just. As this appeal must be remanded in any event because the county erroneously applied the Policy 15 analysis to the current parcelization pattern, the county should reconsider this case pursuant to whatever express interpretation of "ownerships" the county adopts in Just.

Refer to Attachment "B", *Brown v. Lane County* (LUBA No. 2005-104, May 5, 2006) for the text of the entire opinion.

B. Analysis

Amendment criteria for a decision to apply zoning designations to property with an RCP plan designation of Forest Land (F) are found in Goal Four – Policy 15, and reproduced below.

Goal Four – Policy 15. Lands designated with the Rural Comprehensive Plan as forest land shall be zoned Non-Impacted Forest Lands (F-1, RCP) or Impacted Forest Lands (F-2, RCP). A decision to apply one of the above zones or both of the above zones in a split zone fashion shall be based upon:

- a. A conclusion that characteristics of the land correspond more closely to the characteristics of the proposed zoning than the characteristics of the other forest zone. The zoning characteristics referred to are specified below in subsections b and c. This conclusion shall be supported by a statement of reasons explaining why the facts support the conclusion.*
- b. Non-impacted Forest Land Zone (F-1, RCP) Characteristics:*
 - (1) Predominantly ownerships not developed by residences or nonforest uses.*
 - (2) Predominantly contiguous, ownerships of 80 acres or larger in size.*
 - (3) Predominantly ownerships contiguous to other lands utilized for commercial forest or commercial farm uses.*
 - (4) Accessed by arterial roads or roads intended primarily for forest management.
Primarily under commercial forest management.*
- c. Impacted Forest Land Zone (F-2, RCP) Characteristics:*
 - (1) Predominantly ownerships developed by residences or nonforest uses.*
 - (2) Predominantly ownerships 80 acres or less in size.*
 - (3) Ownerships generally contiguous to tracts containing less than 80 acres and residences and/or adjacent to developed or committed areas for which an exception has been taken in the Rural Comprehensive Plan.*
 - (4) Provided with a level of public facilities and services, and roads, intended primarily for direct services to rural residences.*

As pointed out in the LUBA opinions, the term “ownership” as used in Goal Four, Policy 15, has been utilized to identify different lands and the uses thereon, which are to be considered in making an evaluation of whether a F-1 or F-2 designation is warranted for the land under consideration for zoning. This was due to the need to look within the subject land to identify the development and uses present and to partially look beyond those boundaries

to the lands in the general vicinity and identify the existing resource or nonresource uses and development on the surrounding lands. It really amounted to identifying a singular pattern within a more expansive tapestry.

When Goal Four, Policy 15 was originally adopted in 1984 as a component of the General Plan Policies of the Rural Comprehensive Plan, the two planning commissions and the Board of Commissioners were applying the "characteristics" of Policy 15(b) and (c) in a broad matrix designed to (1) acknowledge development existing at the time on specific properties; and (2) analyze those commitments of specific lands in context with a broad-brush view or generalized sense of the surrounding parcelization and uses. Forest lands less than 80 acres in size and developed with residential uses or other nonforest uses, generally received Impacted Forest Land (F2) designations. Public forested lands and larger commercially managed, forest lands that were not impacted by nonforest uses, particularly in the ownership of industrial forest operators, were designated as Nonimpacted Forest Lands (F1).

Prior analysis during the 1970s and the resulting Lane Code Chapter 10 zoning designations which were incorporated into the thirteen subarea plans, contributed to the final decision on a property-by-property basis in 1984. At that time, the need for precise definition of the "ownership" term as legal lot, or parcel or tract was not important because the whole county was the subject of the zoning designation. In considering the present day applications, looking at the area proposed for rezoning generally provides sufficient definition to the term "ownership". In the case of the subject 37.5 plus acres of Ordinance No. PA 1236, the subject land would have been re-designated from FF20 Farm-Forestry to F2 Impacted Forest Land as were other lands with similar characteristics in the area, at the time.

Staff has reviewed the applicant's interpretation and offers the Board additional considerations. In the opening statement of Policy 15, the expressed language states:

"A decision to apply one of the above zones or both of the above zones in a split zone fashion shall be based upon."

The introductory policy statement provides for the application of zoning split between F-1 and F-2 on lands without consideration of the legal lot status of the proposed acreage or the entire ownership. In each case, the focus of the analysis remains primarily on the property proposed for rezoning. Staff suggests that the Board consider interpreting "ownership" to mean "land being proposed for rezoning" because of the introductory language in Policy 15.

The applicant's proposed language arrives at a similar conclusion in that it includes the phrase "or portions thereof". Staff feels it is appropriate and more

precise to eliminate the qualifier “legal lot” since the historical application of a zoning designation has always been with the recognition of how existing uses and potential for management posed by a single property or portion thereof play off other properties within the larger tapestry of an area. The critical focus of the analysis is on the property proposed for rezoning and the characteristics that property has that mitigate toward consideration of applying F-1 or F-2 zoning. Properties subject to amendments in the past have included portions or combinations of tax lots as metes and bounds descriptions with single owners or multiple owners. Lane Code does not require legal lot determinations as a qualifier for application for a zone change in recognition of the variety of configurations of zoning that might make sense regardless of property boundaries. Legal lot status is a factor that comes into play in subsequent development permits, both planning and building, after a zoning designation has been applied.

A reading of Goal Four, Policy 15 interpreting “ownership” to mean “land being proposed for rezoning” would seem a reasonable approach that avoids debate over whether the focus should be more than the subject property, beyond the portion of that analysis determined by the text that clearly notes the connection of the subject property to surrounding lands.

Goal Four, Policy 15 uses three terms to define the areas to be reviewed when assessing the surrounding properties as well as the land being considered for rezoning. Those terms are “contiguous”, “generally contiguous” and “adjacent”.

“Contiguous”, as defined in Lane Code 16.090 definitions, is used in Policy 15.b. (2) and (3) to look for the different characteristics of F-1 land. The text in LC 16.090 provides: “Having at least one common boundary line greater than eight feet in length. Tracts of land under the same ownership and which are intervened by a street (local access, public, County, State or Federal street) shall not be considered contiguous.” In the case of 15.b.(2), the intent is to look within the land being proposed for rezoning to determine whether or not that land being proposed for rezoning consists of contiguous land owned by the applicant that is 80 acres or larger in size. In the case of 15.b. (3), the intent is to determine whether other land contiguous to the land being proposed for rezoning is in commercial forest or commercial farm use.

Policy 15.c.(3) does not use the term “contiguous” to determine the same relationship between the land proposed for rezoning and the tapestry of uses and development in the surrounding area. Policy 15.c.(3) uses “generally contiguous” in a broader sense that looks beyond the definition of “contiguous” to determine if “tracts” owned by other property owners in the general area of the land being proposed for rezoning are less than 80 acres in size and developed with residences. The analysis is intended to venture beyond the only contiguous properties with common property lines. In some instances,

common sense may push that analysis a distance in some or all directions to fully assess the characteristics of the surrounding uses and development particularly when considering a “tract”.

Policy 15.c.(3) also uses the term “adjacent” to look even further beyond the nearby tracts or across intervening right-of-way to acknowledge the impacts of development within developed and committed exception areas in the general vicinity of the land being proposed for rezoning. It is a broader look at the complete tapestry of uses and development, particularly nonresource uses, in the general area. It does not depend on contiguity for that consideration.

This interpretation affirms the Lane Code 16.090 definition of “contiguous” as it is used in Policy 15.b.(2) and 15.b.(3) in the assessment of F-1 characteristics. It also makes clear that “generally contiguous” as used in Policy 15.c. (3) is different and broader in meaning and application when assessing the F-2 characteristics. It will remain for the Board of Commissioners to exercise discretion on a case-by-case basis, in making a final determination on how wide and how far that assessment pursuant to Policy 15.c.(3) would need to reach to provide a factual basis in arriving at a decision to approve or deny a request for rezoning. In all cases, the analysis under Goal Four, Policy 15 does not require a precise mathematical computation since the focus is on all the characteristics and whether, on balance, the land proposed for rezoning more closely corresponds to the F-1 or F-2 characteristics.

C. Alternatives/Options

1. Adopt Ordinance No. PA 1236 with the original Exhibit “C” Findings of Fact and Conclusions of Law, without an express interpretation of “ownerships”.
2. Adopt Ordinance No. PA 1236 with the original Exhibit “C” Findings of Fact and Conclusions of Law and Exhibit “C-1” Supplemental Findings of Fact and Conclusions of Law which include the applicant’s proposed interpretation of “ownership”.
3. Adopt Ordinance No. PA 1236 with the revised Exhibit “C” Findings of Fact and Conclusions of Law which includes the proposed interpretation of “ownership.”
4. Tentatively deny Ordinance No. PA 1236 and direct preparation of an order for final action.
5. Direct staff to provide additional analysis on the proposed interpretation of “ownerships” as used in Goal Four, Policy 15.

IV. RECOMMENDATION

Alternative/Option 3.

V. IMPLEMENTATION

Based on the Board's decision, notice of the action will be provided to DLCD and interest parties of record.

VI. ATTACHMENTS

- A. *Just v. Lane County* (LUBA No. 2005-071, October 14, 2005).
- B. *Brown v. Lane County* (LUBA No. 2005-104, May 5, 2006).
- C. Revised Exhibit C – Findings of Fact and Conclusions of Law.
- D. Legislative Format of Revised Exhibit C – Findings of Fact and Conclusions of Law.

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

JAMES JUST,
Petitioner,

vs.

LANE COUNTY,
Respondent.

LUBA No. 2005-071

FINAL OPINION
AND ORDER

Appeal from Lane County.

James Just, Lebanon, filed the petition for review and argued on his own behalf.

Stephen L. Vorhes, Assistant County Counsel, Eugene, filed the response brief and argued on behalf of respondent.

HOLSTUN, Board Member; DAVIES, Board Chair; BASSHAM, Board Member, participated in the decision.

REMANDED

10/14/2005

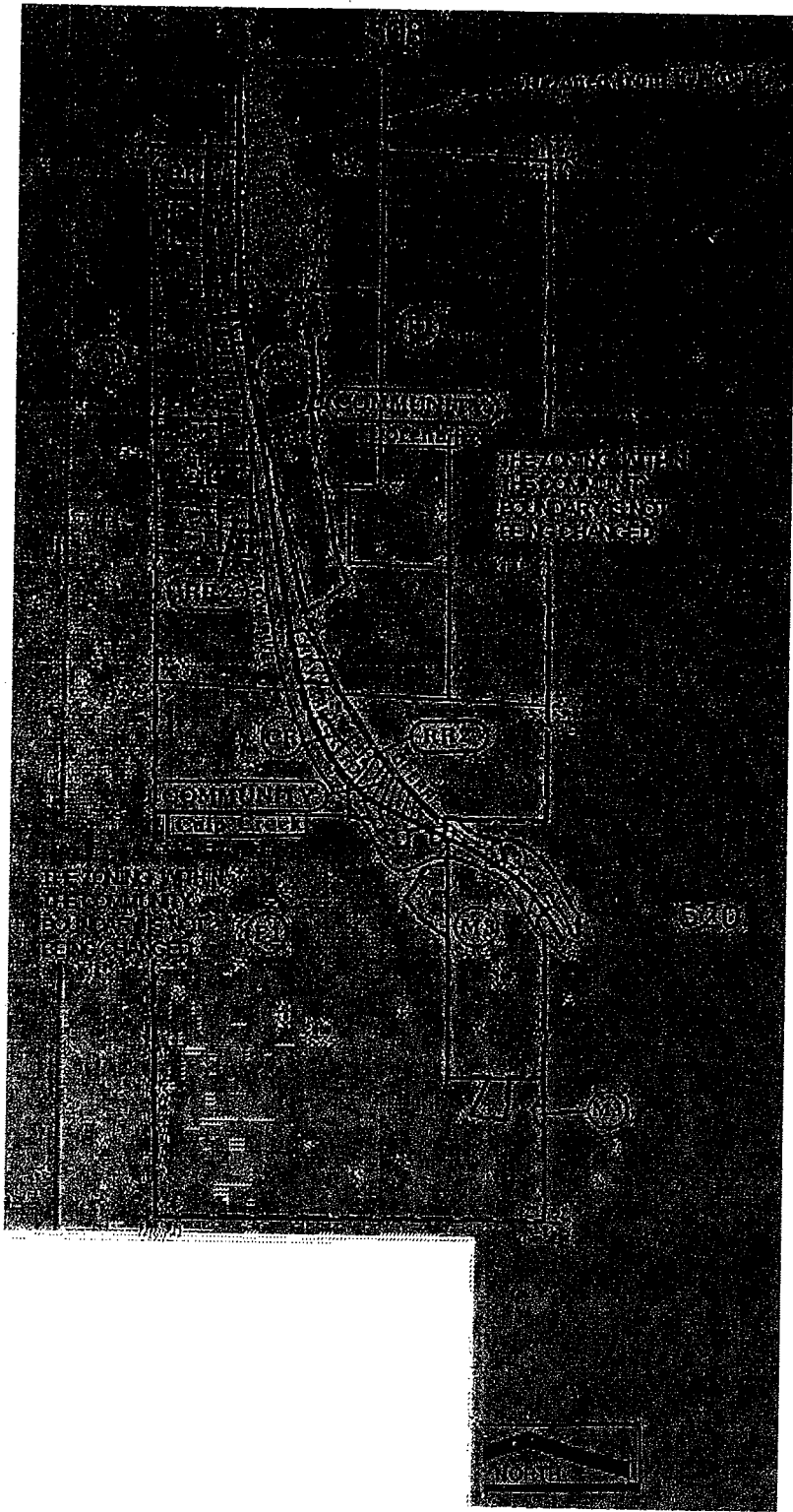
You are entitled to judicial review of this Order. Judicial review is governed by the provisions of ORS 197.850.

NATURE OF THE DECISION

Petitioner appeals a county decision that grants a zoning map change from Non-impacted Forest Land (F-1) to Impacted Forest Land (F-2).

FACTS

The critical facts that bear directly on our disposition of this appeal are not in dispute. To facilitate an understanding of the relationship of the subject property to surrounding properties, we have included a map from page 97 of the record on the following page. The subject 34-acre property is tax lot 300, which is located at the top of the map and shaded to distinguish it from other properties. Row River Road and an adjacent railroad right of way run in a generally north-south direction in the vicinity of the rural community of Dorena. The subject property lies on the east side of Row River Road and the railroad right of way. The rural unincorporated community of Dorena lies on the west side of Row River Road and the railroad right of way. An unpaved road that has been used in the past in conjunction with forest management activities runs through the southern and eastern parts of the subject property. A small property improved with a church adjoins the subject property on the south, but the subject property is otherwise bordered by F-1 zoned lands to the east and south. A house was located on the 34 acres until 1982 when the house burned down. The county issued a permit for a replacement dwelling, but no replacement dwelling was ever constructed. Although the property includes soils that are suitable for forest use, it has few trees and has been used primarily for pasture.



1 Although the precise acreage involved apparently cannot be determined from the record, in
2 1984, when the F-1 zoning was applied to the subject property, the subject property was one of a
3 number of contiguous parcels owned by Bohemia Lumber Company. In 1984 many of Bohemia's
4 parcels, including the subject parcel, were zoned F-1. A mill and related structures were located on
5 a nearby portion of Bohemia's property in 1984 and that property was zoned industrial. That
6 industrially zoned area appears on the map as the area zoned M-3. Bohemia became Willamette
7 Industries, which was later acquired by Weyerhaeuser. Sometime after that, Everett acquired the
8 subject 34-acre property.

9 Utilizing a Policy of the Lane County Rural Comprehensive Plan (hereafter RCP) that allows
10 "Errors or Omissions" in zoning to be corrected, Everett sought to have the subject property
11 rezoned from F-1 to F-2. The county approved Everett's application, and petitioner challenges that
12 rezoning in this appeal.

13 INTRODUCTION

14 In the appealed decision, the county applied two RCP Policies. As already mentioned, one
15 of those policies is RCP Goal 2, Policy 27, Errors or Omissions. Once the county found that RCP
16 Goal 2, Policy 27 applies to the subject property, it applied RCP Goal 4, Policy 15 and found that
17 the subject property should be rezoned from F-1 to F-2. We first set out and briefly discuss those
18 RCP policies before turning to petitioner's assignments of error.

19 A. RCP Goal 2, Policy 27 Errors or Omissions

20 RCP Goal 2 concerns "Land Use Planning" generally. Goal 2, Policy 27(a) sets out a
21 number of circumstances that may establish that there have been "Errors or Omissions" that provide
22 a basis for changing the existing zoning of property. RCP Goal 2, Policy 27(a)(ii) is the only
23 circumstance that applies specifically to F-1 zoned property, and we set that policy out in the
24 margin.¹ Simply stated, RCP Goal 2, Policy 27(a)(ii) permits the county to rezone property from F-

¹ RCP Goal 2, Policy 27 provides, as relevant:

1 1 to F-2 if two circumstances are shown to exist. First, the maps that the county relied on in 1984
2 did not show legal lots within or adjacent to the property alleged to be improperly zoned F-1.
3 Second, had legal lots been accurately displayed on the maps that were used in 1984, Goal 4
4 policies would have dictated F-2 zoning for the property at issue at that time.

5 Whether the first circumstance exists appears to call for a finding of fact by the county,
6 presumably based on a comparison of the maps that were used in 1984 and corrected maps or
7 other information that disclose any additional legal lots that existed in 1984 but were not displayed
8 on the 1984 maps. The standards that govern the county's determination regarding whether the
9 second circumstance exists are set out in the RCP Goal 4 policies. We now turn to the Goal 4
10 policy that the county relied on in this case.

11 **B. RCP Goal 4, Policy 15**

12 RCP Goal, Policy 15 sets out the characteristics that govern whether lands that the RCP
13 designates as forest land are to be zoned F-1 or F-2.² Those characteristics include some wording

"Errors or Omissions. Lane County will * * * process applications to correct identified errors or omissions in the [RCP] and Zoning Plots resulting from the [RCP] and Zoning Plots not recognizing lawfully existing (in terms of the zoning) uses or from inconsistencies between the [RCP] and Zoning Plots. * * *

"a. Circumstances qualifying for consideration by the Board of Commissioners under the Errors or Omission Policy may include one or more of the following:

"* * * * *

"ii. Failure to zone a property [F-2], where maps used by staff to designate the property [F-1] did not display actual existing legal lots adjacent to or within the subject property, and had the actual parcelization pattern been available to County staff, the Goal 4 policies would have dictated the F-2 zone[.]"

² RCP Goal 4, Policy 15 provides:

"Lands designated within the Rural [Plan] as forest land shall be zoned [F-1] or [F-2]. A decision to apply one of the above zones * * * shall be based upon:

"a. A conclusion that characteristics of the land correspond more closely to the characteristics of the proposed zoning than the characteristics of the other forest zone. The zoning characteristics referred to are specified below in subsection b and c. This conclusion shall be supported by a statement of reasons explaining why the facts support the conclusion.

1 ambiguities and differences that neither the decision nor the parties discuss in any detail. One
2 particularly important choice in wording in RCP Goal 4, Policy 15(b) and (c) is the use of the term
3 “ownerships,” rather than one of the more commonly used words to describe units of land such as
4 “lots,” “parcels,” or “tracts.”

5 ORS 92.010 defines both “lot” and “parcel” as a “single unit of land.”³ As defined, the only
6 difference between a “lot” and “parcel” is the way in which the unit of land is created. ORS 92.010

“b. Non-impacted Forest Land Zone [F-1] Characteristics:

- “(1) Predominantly *ownerships* not developed by residences or nonforest uses.
- “(2) Predominantly contiguous, *ownerships* of 80 acres or larger in size.
- “(3) Predominantly, *ownerships* contiguous to ot[h]er lands utilized for commercial forest or commercial farm uses.
- “(4) Accessed by arterial roads or roads intended primarily for forest management. Primarily under commercial forest management.

“c. Impacted Forest Land Zone [F-2] Characteristics:

- “(1) Predominantly *ownerships* developed by residences or nonforest uses.
- “(2) Predominantly *ownerships* 80 acres or less in size.
- “(3) *Ownerships* generally contiguous to tracts containing less th[a]n 80 acres and residences and/or adjacent to developed or committed areas for which an exception has been taken in the Rural Comprehensive Plan.
- “(4) Provided with a level of public facilities and services, and roads, intended primarily for direct services to rural residences.” (Emphases added.)

³ As relevant, ORS 92.010 provides:

“As used in ORS 92.010 to 92.190, unless the context requires otherwise:

“* * * * *

“(3) ‘Lot’ means a single unit of land that is created by a subdivision of land.

“* * * * *

“(5) ‘Parcel’ means a single unit of land that is created by a partitioning of land.”

ORS 215.010 provides definitions for purposes of statutes concerning county planning. ORS 215.010(1) adopts the definitions in ORS 92.010 except that it adds to the ORS 92.010(5) definition of parcel, units of land that were

1 does not provide a definition of “ownership,” and the parties do not claim that the current versions
2 of the RCP or the Lane County Land Use and Development Code (LC) provide a definition of that
3 term now, or that they defined the term in 1984. However, the 1984 LC, the current LC and ORS
4 215.010 provide definitions of “tract.”⁴

5 With the above introduction to the relevant RCP policies, we turn to petitioner’s
6 assignments of error.

7 **FIRST ASSIGNMENT OF ERROR**

8 **A. In Applying RCP Goal 4, Policy 15 the County Erred in Considering Legal** 9 **Lots Rather than Ownerships**

10 Although this subassignment of error is the fourth of the subassignments of error presented
11 in the petition for review, we address this subassignment of error first, because it lies at the heart of
12 the real dispute between the parties.

13 As noted above in our discussion of RCP Goal 4, Policy 15, the terms “lot,” “parcel,” and
14 “tract” are defined terms. As the current LC defines “tract,” the term has the same meaning as “lot”
15 and “parcel.” However as ORS 215.010(2) defines tract, a tract could be a single lot or a single

created by deed or land sale contract before land use regulations applied. Although there are some wording differences, the current LC definitions of “lot” and “parcel” are consistent with the statutory definitions in ORS 92.010(3) and 215.010(1).

⁴ ORS 215.010(2) provides the following definition:

“‘Tract’ means one or more contiguous lots or parcels under the same ownership.”

In 1984, the LC defined “tract” is as follows:

“A lot, parcel or unsubdivided or unpartitioned land under the same ownership. Contiguous units of unsubdivided or unpartitioned land under the same ownership shall be considered a single tract.”

The current LC defines “tract” is as follows:

“A lot or parcel as defined in LC 16.090.”

Neither the 1984 LC definition nor the current LC definition of “tract” is consistent with the ORS 215.010(2) definition set out above. Under the 1984 LC definition of “tract,” contiguous lots or parcels under the same ownership did not qualify as a single “tract.” Under the current LC definition of “tract,” tracts are the same as lots or parcels.

1 parcel, or it could be a collection of more than one lot or more than one parcel, if those multiple lots
2 or parcels are contiguous and under the same ownership. A central problem in this appeal is that
3 most of the ultimate criteria that must be applied to decide whether the subject property is to be
4 zoned F-2 or to remain zoned F-1 require an analysis of “ownerships.” With one exception, those
5 criteria do not mention lots, parcels or tracts.⁵ Nevertheless, the county has proceeded as though
6 the term “ownership” in RCP Goal 4, Policy 15(b) and (c) means “lot” or “parcel.” Petitioner
7 believes that the term “ownership” has the same meaning as “tract,” as ORS 215.010(2) defines
8 that term. *See* n 4. However, petitioner makes no direct attempt to explain why the undefined term
9 “ownership” should be interpreted and applied as though it has the same meaning as a different,
10 defined term that is used only once in RCP Goal 4, Policy 15(c)(3). Similarly, the county makes no
11 attempt to explain why the word “ownership” has the same meaning as other defined terms that are
12 not used at all in RCP Goal 4, Policy 15(b) and (c).

13 Petitioner simply assumes the term “ownership” must mean the same thing as the term
14 “tract,” but never explains why that should be the case or why the county did not simply use the
15 word “tract” if that is what it meant. The county’s reasoning is almost as difficult to discover. It
16 appears to rely on a misunderstanding that the county had until the middle 1980s about contiguous
17 parcels that are in common ownership.⁶ The record includes a July 30, 1986 memorandum from
18 county counsel in which he takes the position that under the LC definitions of “parcel,” “partition,”

⁵ The one exception is RCP Goal 4, Policy 15(c)(3), which uses both the term “ownership” and the term “tract.” *See* n 2. As we have already noted, in 1984 the LC defined tract as including multiple lots or parcels in common ownership. *See* n 4. If it is not obvious at this point, it does not appear that the terms “lot,” “parcel,” “tract,” and “ownership,” are used with a great deal of precision and consistency in the RCP and the LC. We are not sure what significance to attach to the solitary use of the term “tract” in RCP Goal 4, Policy 15(c)(3).

⁶ The challenged decision includes the following finding:

“On October 5, 2004, the [Lane County Planning Commission] approved a motion * * * to apply a common sense interpretation of the 1983-1986 definition for ‘legal lot’ in Lane Code Chapter 13 and 16, based on the clarification of ORS 92 with the enactment of [ORS 92.017] by the Oregon Legislative Assembly, and Lane County’s adoption of three ordinances in 1986 * * * that contiguous, discrete parcels created lawfully by recorded deeds or real estate contracts prior to the 1983-1986 period were not merged during that period, and were during that period and are today, discrete legal lots.” Record 15-16.

1 and "partition land," subdivided "lots" retain their separate identity notwithstanding that two or more
2 lots may be held in common ownership. But under those definitions, parcels (by which county
3 counsel means units of land that were created by some other method than subdivision) lose their
4 separate identity on January 1 of each year if two or more contiguous parcels are held in common
5 ownership. Record 327-30. According to the county counsel memorandum, contiguous parcels in
6 common ownership became or become a single parcel by operation of law under existing statutes
7 and parallel county laws. Following statutory amendments in 1985, the county apparently changed
8 its view and thereafter did not assume that contiguous parcels in common ownership merged into
9 single parcels.⁷

10 Although no clear explanation is ever provided in the challenged decision, the county
11 apparently relies on this statutory change and the contemporaneous county change in view regarding
12 merger of contiguous lots and parcels in common ownership either to interpret the word
13 "ownership" in Goal 4, Policy 15 to mean "legal lots or parcels" or to allow the county to perform
14 the analysis that is required by Goal 4, Policies 15(b)(1)-(3) and 15(c)(1)-(3) on the basis of "legal
15 lots or parcels" rather than on the basis of "ownerships."

16 A reality that neither petitioner nor respondent appear to appreciate is that while the
17 county's prior view regarding whether contiguous lots and parcels in contiguous ownership merge
18 through operation of law may have some bearing on the correct application of RCP Goal 2, Policy
19 27(a)(ii), it is hard to see how it has any particular bearing on the meaning of "ownerships" in RCP
20 Goal 4, Policies 15(b)(1)-(3) and 15(c)(1)-(3). For land use planning purposes, units of land other
21 than "lots" or "parcels" may be the required unit of analysis if the relevant law so specifies. For
22 example, while ORS 215.750 requires consideration of "lot[s] or parcel[s]" in approving alternative

⁷ Oregon Laws 1985, chapter 702, section 2 provided:

"A lot or parcel lawfully created shall remain a discrete lot or parcel, unless the lot or parcel lines are changed or vacated or the lot or parcel is further divided, as provided by law."

The above is now codified in amended form at ORS 92.017.

1 forestland dwellings, “tracts” must be considered in approving large tract forest dwellings under
2 ORS 215.740.⁸ That tracts are considered in a particular context, rather than the individual lots or
3 parcels that make up the tracts, does not mean that the lots or parcels that make up those tracts lose
4 their separate legal identify as individual units of real property. Neither is a legal requirement to
5 consider “tracts” affected by an erroneous understanding about whether certain parcels in common
6 ownership merge. It simply means that for land use planning or other purposes, a local government
7 may wish to treat multiple lots or parcels as a single unit when applying a standard to make a land
8 use decision.

9 In this case, whether the county was right or wrong in 1984 about whether contiguous
10 parcels in common ownership merged to form a single parcel has no obvious bearing on whether the
11 requirement in RCP Goal 4, Policy 15(b) and (c) to consider “ownerships” requires the county to
12 consider “lots or parcels” or “tracts,” or some other unit of land. Because the term is not defined in
13 RCP Goal 4, Policy 15(b) and (c), it is not clear what units of land constitute “ownerships.”

14 While we tend to agree with petitioner that the word “ownership” could logically be read to
15 require consideration of groups of contiguous legal lots or parcels that are held in common
16 ownership as a single unit, that interpretation is hard to square with the fact that the county could
17 easily have used the term “tract,” as that term is defined in ORS 215.010(2), if that is what it
18 intended. On the other hand, the county may be able to rely on the apparent confusion in the 1980s
19 about contiguous parcels in common ownership, and its failure to use the term “tract” as that term is
20 defined in ORS 215.010(2), to justify expressly interpreting “ownership” in RCP Goal 4, Policy
21 15(b) and (c) to mean legal lots or parcels. Indeed, although the county’s decision never clearly
22 recognizes the interpretive problem posed by the use of the word “ownerships” in RCP Goal 4,
23 Policy 15(b) and (c), the historic confusion about the legal status of contiguous parcels in common

⁸ We use the term “tract” here as it is defined in ORS 215.010(2), recognizing that the LC now defines the term tract in a way that equates tracts with lots and parcels. When we use the word “tract” we are using that word with its statutory meaning, which as relevant here means a tract may be a single lot, a tract may be a single parcel or a tract may be more than one contiguous lot or parcel in common ownership.

1 ownership appears to be the reason why the county proceeded to analyze current “lots” and
2 “parcels” rather than “tracts” or “ownerships.” However, because the county’s decision never
3 expressly recognizes the ambiguity that is presented by the use of the undefined term “ownerships”
4 in RCP Goal 4, Policy 15(b) and (c), we believe remand for the county to adopt the needed
5 interpretation is the appropriate course.

6 Before moving to petitioners’ arguments concerning RCP, Goal 2, Policy 27(a)(ii), we note
7 that the interpretive question presented by the county’s use of the word “ownerships” in RCP Goal
8 4, Policy 15 has little or nothing to do with the county’s use of the concept of “legal lots” in RCP
9 Goal 2, Policy 27(a)(ii). RCP Goal 2, Policy 27(a)(ii) postdates RCP Goal 4, Policy 15, which
10 means the ambiguity presented by the use of the word “ownerships” in RCP Goal 4, Policy 15
11 predated RCP Goal 2, Policy 27(a)(ii). We also note that because the ambiguity presented by the
12 use of the word *ownerships* must be resolved in any event, it is hard to see why the county would
13 want to apply RCP, Goal 2, Policy 27(a)(ii) at all, rather than simply apply RCP Goal 4, Policy 15
14 directly. As our discussion of petitioner’s other subassignments of error below shows, doing so
15 would allow the county to avoid some problems that it encountered in arriving at RCP Goal 4,
16 Policy 15 through RCP, Goal 2, Policy 27(a)(ii).

17 This subassignment of error is sustained.

18 **B. Maps did not Display Existing Legal Lots**

19 Petitioner contends that RCP Goal 2, Policy 27(a)(ii) requires that the county look back in
20 time. Specifically, petitioner contends that, according to its terms, RCP Goal 2, Policy 27(a)(ii) only
21 applies “where maps used by staff to designate the property [F-1] did not display actual existing
22 legal lots adjacent to or within the subject property * * *.” Petitioner argues:

23 “As a threshold matter, the county made no finding that the maps used by the
24 county when it initially assigned the F-1 zoning to the subject property did not
25 display actual *existing* legal lots adjacent to or within the subject property, and
26 there is no evidence in the record to support such a finding.” Petition for Review 6
27 (emphasis added).

1 Petitioner's understanding of the threshold requirement under RCP Goal 2, Policy 27(a)(ii)
2 is certainly consistent with the words of that policy, and it appears that the county in fact did not
3 proceed in the way that petitioner contends is required. We do not understand the county to
4 contend that the maps that were available to the county in 1984 failed to show the subject 34-acre
5 parcel, the other parcels that were owned by Bohemia, or the other contiguous and nearby parcels.
6 If an error was committed in 1984, apparently it had nothing to do with what was shown on the
7 maps. Rather, any error had to do with the county's view at that time that contiguous individual
8 parcels in common ownership that were shown on those maps were merged into a single parcel by
9 operation of law.

10 We question the county's apparent interpretation of RCP Goal 2, Policy 27(a)(ii) to the
11 effect that its old assumption regarding the legal status of contiguous parcels in common ownership
12 constitutes the kind of mapping error that Goal 2, Policy 27(a)(ii) requires. That interpretation may
13 or may not be sustainable under the deferential standard of review that is required by ORS
14 197.829(1) and *Church v. Grant County*, 187 Or App 518, 524, 69 P3d 759 (2003).
15 However, because we must remand the county's decision in any event, we sustain this assignment of
16 error. On remand, the county must adopt findings to more adequately explain why maps that were
17 used in 1984 to first apply the F-1 zoning "did not display actual existing legal lots," within the
18 meaning of Goal 2, Policy 27(a)(ii).

19 This subassignment of error is sustained.

20 **C. Goal 4 Policies Would Have Dictated F-2 Zoning**

21 The challenged decision includes a number of findings. Petitioner argues that Goal 2, Policy
22 27(a)(ii) expressly requires that the county must determine that "*had* the actual parcelization pattern
23 been available to County staff, the Goal 4 policies *would have* dictated the F-2 zone." (Emphasis
24 added.) Petitioner argues, and we agree, that Goal 2, Policy 27(a)(ii) requires the county to apply
25 the Goal 4 policies to a correct view of parcelization as it existed in 1984, not to parcelization as it

1 may exist today. Petitioner cites findings that were adopted by the county that petitioner contends
2 shows the county incorrectly applied the Goal 4 policies to parcelization as it exists today.⁹

3 We agree with petitioner that the disputed findings appear to apply RCP Goal 4, Policy 15
4 to lots and parcels as they exist today, rather than to the parcelization that existed in 1984, as Goal
5 2, Policy 27(a)(ii) requires. Respondent contends that the county supplemental findings at page 17
6 of the record address certain conditions on the site in 1984. While that may be true, it is equally
7 true that the findings cited by petitioner appear to be based on current conditions. Respondent
8 points to nothing in the record that allows us to assume that the findings' apparent references to
9 current conditions rather than 1984 conditions can be overlooked as harmless error.

10 This subassignment of error is sustained.

11 **D. Legal Lots Status in 1984**

12 Simply stated, under this subassignment of error petitioner contends the county erred by
13 applying its current view of contiguous parcels in common ownership in applying RCP Goal 2,
14 Policy 27(a)(ii), as opposed to its different view of contiguous parcels in common ownership before
15 ORS 92.017 was adopted in 1985. Because the F-1 zoning was applied in 1984, we understand

⁹ Petitioner quotes the following findings;

- "2. Pursuant to Goal Four, Policy 15b.(1) – the record supports a determination that the 'ownerships', subject and/or adjacent, *are* predominantly developed with residences or nonforest uses, thus F-2 Impacted Land was justified under this characteristic.
- "3. Pursuant to Goal Four, Policy 15c.(2) – the record supports a determination that the 'ownerships', subject and/or adjacent, *are* predominantly ownerships 80 acres or less in size, thus F-2 Impacted was justified under this characteristic.
- "4. Pursuant to Goal Four, Policy 15c.(3) – the record supports a determination that the subject parcel *is* contiguous to tracts containing less than 80 acres and residences and adjacent to two developed or committed areas for which an exception has been taken in the Rural [Plan], thus Impacted Forest Land (F-2) was justified under this characteristic.
- "5. Pursuant to Goal Four, Policy 15c.(4) – the record supports a determination that the subject parcel *is* provided with a level of public facilities and services, and roads, intended primarily for direct services to rural residences. Thus, Impacted Forest Land (F2) was justified under this characteristic." Record 16 (emphases added).

1 petitioner to argue that the county's prior understanding of the legal status of certain parcels in
2 common ownership must be applied now under RCP Goal 2, Policy 27(a)(ii).

3 As far as we know, the 1984 maps that the county used to zone the property F-1
4 accurately displayed property lines. As we have already explained, we question the county's
5 apparent interpretation of RCP Goal 2, Policy 27(a)(ii) to the effect that 1984 maps nevertheless
6 "did not display actual existing legal lots," within the meaning of RCP Goal 2, Policy 27(a)(ii), simply
7 because the county believed certain contiguous commonly owned parcels merged by operation of
8 law. Again, that seems to be an arguable legal error rather than a mapping error. However, that
9 arguable error aside, we do not agree with petitioner that the county is bound to apply RCP Goal 2,
10 Policy 27(a)(ii) based on its prior understanding of what it means to be a "legal lot" rather than its
11 current understanding of what it means to be a "legal lot."

12 This subassignment of error is denied.

13 The first assignment of error is sustained in part

14 **SECOND ASSIGNMENT OF ERROR**

15 Under the first three subassignments of error under the second assignment of error,
16 petitioner challenges the county findings concerning RCP Goal 4, Policy 15(b)(1)-(3) and 15(c)(1)-
17 (3). In applying each of those factors or characteristics, the meaning of the word "ownership" will
18 affect the analysis. That will particularly be the case if Goal 4, Policy 15(b)(1)-(3) and 15(c)(1) is
19 applied through RCP Goal 2, Policy 27(a)(ii) and the word "ownerships" is interpreted to mean
20 "tract" or some other unit of land that is larger than "lots" or "parcels." In that event, the larger
21 Bohemia Lumber Company ownership of which the subject parcel was a part in 1984 must be
22 considered together, and it seems highly unlikely that those factors or characteristics in RCP Goal 4,
23 Policy 15(b)(1)-(3) and 15(c)(1)-(3) support F-2 zoning. On the other hand, if the word
24 "ownerships" in Goal 4, Policy 15(b)(1)-(3) and 15(c)(1)-(3) is properly interpreted to require
25 consideration of individual lots and parcels, it seems much more likely that the factors or
26 characteristics in Goal 4, Policy 15(b)(1)-(3) and 15(c)(1)-(3) support F-2 zoning. This would

1 particularly be the case if Goal 4, Policy 15(b)(1)-(3) and 15(c)(1)-(3) is not applied through RCP
2 Goal 2, Policy 27(a)(ii) and existing parcelization and development is considered. Because we must
3 remand for the county to adopt a reviewable interpretation of the word “ownerships,” before it
4 applies those factors or characteristics, we do not decide these subassignments of error.

5 Petitioner’s fourth subassignment of error challenges the county’s application of Goal 4,
6 Policy 15(b)(4) and 15(c)(4). Although Goal 4, Policy 15(b)(4) and 15(c)(4) does not expressly
7 state that “ownerships” must be considered, neither does it say that a lot or parcel proposed for
8 rezoning may be considered in isolation. Viewed in context, it could be that one of the
9 characteristics stated in Goal 4, Policy 15(b)(4)—“[p]rimarily under commercial forest
10 management”—requires the county to consider whether the entire Bohemia Lumber Company
11 ownership in 1984 was properly viewed as being in commercial forest management.¹⁰ On the other
12 hand, if the county is to apply that consideration to only the subject 34-acre parcel, we tend to
13 agree with the county that it is not properly viewed as being in “commercial forest management,”
14 and that RCP Goal 4, Policy 15(c)(4) seems to support F-2 zoning. The threshold question of
15 interpretation that requires remand will affect the county’s application of this factor or consideration
16 as well. We therefore do not reach this subassignment either.

17 We do not decide the second assignment of error.

18 The county’s decision is remanded.

¹⁰ As we noted earlier, there was a house on the 34 acres until 1982 and the 34 acres were not being used to grow trees for commercial harvest. However, as far as we know the other contiguous Bohemia Lumber Company parcels were being used for commercial forest production.

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

MERLE BROWN,
GWENDOLYN FARNSWORTH,
and JAMES JUST,
Petitioners,

MAY 05 '06 AM 11:44 LUBA

vs.

LANE COUNTY,
Respondent,

and

DARREN KRONBERGER,
Intervenor-Respondent.

LUBA No. 2005-104

FINAL OPINION
AND ORDER

Appeal from Lane County.

Jannett Wilson, Eugene, filed the petition for review and argued on behalf of petitioners.

No appearance by Lane County.

Michael E. Farthing, Eugene, filed the response brief and argued on behalf of intervenor-respondent.

DAVIES, Board Member; BASSHAM, Board Chair; HOLSTUN, Board Member, participated in the decision.

REMANDED

05/05/2006

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

NATURE OF THE DECISION

Petitioners appeal a county decision that grants a zoning map change for four parcels from Non-Impacted Forest Land to Impacted Forest Land.

MOTION TO INTERVENE

Darren Kronberger (intervenor), the applicant below, moves to intervene on the side of respondent. There is no opposition to the motion and it is granted.

FACTS

The subject property consists of four adjacent lots comprising approximately 84 acres located in unincorporated Lane County near the communities of Trent and Dexter. The property was part of a larger parcel that was originally zoned Impacted Forest Land (F-2) in 1984. The subject property, however, along with other properties, was subsequently rezoned to Non-Impacted Forest Land (F-1). Intervenor submitted an application to change the zoning of the property to F-2 under the county's Errors or Omissions Policy of the Rural Comprehensive Plan (RCP). The planning commission recommended denial of the application. The board of commissioners approved the application. This appeal followed.

FIRST ASSIGNMENT OF ERROR

RCP Goal 2 concerns "Land Use Planning" generally. Goal 2, Policy 27(a) sets out a number of circumstances that may establish that there have been "Errors or Omissions" that provide a basis for correcting the existing zoning of property. RCP Goal 2, Policy 27(a)(ii) permits the county to rezone property from F-1 to F-2 in circumstances where (1) the maps that the county relied on when the property was zoned F-1 did not show legal lots within or adjacent to the property alleged to be improperly zoned F-1, and (2) had legal lots been

1 accurately displayed on the maps that were originally used, Goal 4 policies would have
2 dictated F-2 zoning for the property at issue at that time.¹

3 Under the county's interpretation of the errors or omissions policy, if any of the eight
4 subsections of RCP Goal 2, Policy 27(a) apply then the county turns to determining the
5 proper zoning for the property. In the present case, the county found that subsection (a)(ii)
6 was satisfied and proceeded to determine the proper zoning classification under the Goal 4
7 policies. *See n 6 infra*. In applying the Goal 4 policies, however, the county applied those
8 policies to the current parcelization pattern rather than the pattern that existed at the time the
9 property was zoned F-1. Petitioners argue that the county misconstrued the applicable law by
10 analyzing the existing parcelization pattern.

11 In *Just v. Lane County*, 50 Or LUBA 399 (2005), we recently addressed this precise
12 issue. We held “* * * Goal 2, Policy 27(a)(ii) requires the county to apply the Goal 4 policies
13 to a correct view of parcelization as it existed [when the property was originally zoned F-1],

¹ RCP Goal 2, Policy 27 provides, as pertinent:

“Errors or Omissions. Lane County will * * * process applications to correct identified errors or omissions in the [RCP] and Zoning Plots resulting from the [RCP] or Zoning Plots not recognizing lawfully existing (in terms of the zoning) uses or from inconsistencies between the [RCP] and Zoning Plots. * * *

“a. Circumstances qualifying for consideration by the Board of Commissioners under the Errors or Omission Policy may include one or more of the following:

“* * * * *

“ii. Failure to zone a property [F-2], where maps used by staff to designate the property [F-1] did not display actual existing legal lots adjacent to or within the subject property, and had the actual parcelization pattern been available to County staff, the Goal 4 policies would have dictated the F-2 zone.

“* * * * *

“vii. Correction of an inconsistency between the text of an order or ordinance adopted by the Board of Commissioners and an Official Plan or Zoning diagram.”

1 not to parcelization as it may exist today.” *Id.* at 411.² Because the county analyzed the
2 existing parcelization pattern rather than the parcelization pattern in 1984 when the property
3 was zoned F-1, the county misconstrued RCP Goal 2, Policy 27(a)(ii).

4 Intervenor argues that even if the county misconstrued Policy 27(a)(ii), the challenged
5 decision should be affirmed based on Policy 27(a)(vii), which allows the county to correct an
6 inconsistency between a zoning ordinance’s text and a zoning map. *See* n 1. Although
7 intervenor acknowledges that there are no findings addressing this subsection, he argues that
8 there is evidence that “clearly supports” the decision, and the decision should be affirmed
9 under ORS 197.835(11)(b).³ According to intervenor, the county originally zoned many
10 properties, including the subject property, F-2. Due to concerns from DLCD a number of
11 large properties were rezoned to F-1. Record 832. The subject property is depicted as
12 rezoned F-1 on the zoning map from the ordinance rezoning properties to F-1. Record 833.
13 An exhibit to that ordinance contains a computer-generated list of tax lots rezoned to F-1 that
14 does not include the subject property. Record 834. While there may be an inconsistency
15 between the text of the ordinance and the zoning map, the county’s decision to zone the
16 property F-2 is based entirely on Policy 27(a)(ii).⁴ The county did not approve the zoning
17 change under Policy 27(a)(vii).

² Our decision in *Just* had not been issued when the county made its decision in the present case.

³ ORS 197.835(11)(b) provides:

“Whenever the findings are defective because of failure to recite adequate facts or legal conclusions or failure to adequately identify the standards or their relation to the facts, but the parties identify relevant evidence in the record *which clearly supports the decision* or a part of the decision, the board shall affirm the decision or the part of the decision supported by the record and remand the remainder to the local government, with direction indicating appropriate remedial action.” (Emphasis added.)

⁴ The county’s decision explains in a footnote that because only one basis is needed to reach the question of proper zoning, it does not reach the question of an inconsistency between the text of the ordinance and the zoning map, pursuant to Policy 27(a)(vii). Record 15.

1 It is unclear to us whether ORS 197.835(11)(b) is available to affirm a decision based
2 on an alternative theory or approval standard that was not considered by the local
3 government. ORS 197.835(11)(b) provides that a decision that includes findings that are
4 deficient in one or more of several ways may be affirmed if there is relevant evidence in the
5 record which clearly supports the decision the local government made. In this case, the
6 county based its decision to correct the zoning on Policy 27(a)(ii); it explicitly declined to
7 base its decision, even in part, on Policy 27(a)(vii). This is not a circumstance where the
8 county's findings are defective because they fail to "recite adequate facts or legal
9 conclusions" or fail to "identify the standards or their relation to the facts." Rather, the
10 findings addressing Policy 27(a)(vii) are completely nonexistent. For whatever reason, the
11 county chose not to base its decision on Policy 27(a)(vii), and chose instead to rely solely on
12 Policy 27(a)(ii).

13 We need not decide whether ORS 197.835(11)(b) authorizes LUBA to affirm a
14 decision based on an alternative theory or approval standard that was not considered by the
15 local government. Even if it did, ORS 197.835(11)(b) does not provide a basis to affirm the
16 challenged decision based on compliance with Policy 27(a)(vii). The parties offer conflicting
17 interpretations of Policy 27(a)(vii), and it is unclear to us how the alleged conflict between
18 the text of an ordinance and an official planning or zoning map should be resolved under that
19 policy. No matter how clear the evidence of an ordinance text/plan or zoning map conflict,
20 the county must provide its own interpretation of Policy 27(a)(vii) in the first instance.⁵
21 Accordingly, intervenor cannot rely on ORS 197.835(11)(b) as a basis to affirm the county's
22 decision.

23 The first assignment of error is sustained.

⁵ While ORS 197.829(2) authorizes LUBA to provide its own interpretation where a local government fails to provide an interpretation, in this case, where the county chose not to rely on Policy 27(a)(vii) as a basis for its decision, we believe it is appropriate for the county to provide that interpretation in the first instance.

1 **SECOND ASSIGNMENT OF ERROR**

2 Under the county's interpretation of its code, once it is determined that one of the
3 eight subsections of RCP Goal 2, Policy 27(a) is met, then the county must determine
4 whether F-1 or F-2 zoning is appropriate pursuant to RCP Goal 4, Policy 15.⁶ Policy 15
5 requires the county to consider the characteristics of the property, and in particular, the size
6 and development of various "ownerships." In *Just*, we explained that although Policy 15
7 used the term "ownership" rather than more commonly understood terms such as "lot,"
8 "parcel," or "tract," the RCP does not provide any definition of "ownership." The petitioner

⁶ RCP Goal 4, Policy 15 provides:

"Lands designated within the Rural [Plan] as forest land shall be zoned [F-1] or [F-2]. A decision to apply one of the above zones * * * shall be based upon:

- "a. A conclusion that characteristics of the land correspond more closely to the characteristics of the proposed zoning than the characteristics of the other forest zone. The zoning characteristics referred to are specified below in subsection b and c. This conclusion shall be supported by a statement of reasons explaining why the facts support the conclusion.
- "b. Non-impacted Forest Land Zone [F-1] Characteristics:
 - "(1) Predominantly *ownerships* not developed by residences or nonforest uses.
 - "(2) Predominantly contiguous, *ownerships* of 80 acres or larger in size.
 - "(3) Predominantly *ownerships* contiguous to other lands utilized for commercial forest or commercial farm uses.
 - "(4) Accessed by arterial roads or roads intended primarily for forest management. Primarily under commercial forest management.
- "c. Impacted Forest Land Zone [F-2] Characteristics:
 - "(1) Predominantly *ownerships* developed by residences or nonforest uses.
 - "(2) Predominantly *ownerships* 80 acres or less in size.
 - "(3) *Ownerships* generally contiguous to tracts containing less than 80 acres and residences and/or adjacent to developed or committed areas for which an exception has been taken in the Rural Comprehensive Plan.
 - "(4) Provided with a level of public facilities and services, and roads, intended primarily for direct services to rural residences." (Emphases added.)

1 in *Just* argued that “ownership” meant “tract”, while the county argued that “ownership”
2 meant “legal lots or parcels.” We held that:

3 “* * * because the county’s decision never expressly recognizes the ambiguity
4 that is presented by the use of the undefined term ‘ownerships’ in RCP Goal 4,
5 Policy 15(b) and (c), we believe remand for the county to adopt the needed
6 interpretation is the appropriate course.” *Id.* at 409.

7 As noted, the decision challenged in this appeal was adopted before our opinion in
8 *Just* was issued. The county, therefore, did not attempt to answer the ambiguity presented by
9 the use of the undefined term “ownership” in Policy 15. Petitioners argue that the challenged
10 decision suffers from the same problems as the decision in *Just* and must be remanded for the
11 same reasons. Intervenor responds that the challenged decision goes into much greater detail
12 than the decision in *Just* and provides a reasonable interpretation of Policy 15.

13 While the challenged decision is more detailed than the decision in *Just*, it does not
14 provide an express interpretation of “ownerships.” Intervenor argues, however, that implicit
15 interpretations of “ownerships” can be deduced from the decision that explain any
16 ambiguity.⁷ According to the county, sometimes “ownerships” means the subject property;
17 sometimes it means the surrounding properties. According to intervenor this approach is
18 reasonable because “the [county] did not believe a single definition of ‘ownership’ is
19 appropriate or possible.” Response Brief 13. Intervenor also argues that “[t]here is nothing
20 inherently wrong or unreasonable in deciding that ‘ownerships’ means something different
21 for each characteristic.” *Id.* at 15.

22 First, we fundamentally disagree with intervenor’s contention that there is nothing
23 unreasonable in interpreting the term “ownerships” to have a different meaning for each
24 characteristic set forth in Policy 15. *See Racing Com. v. Multnomah Kennel Club*, 242 Or
25 572, 586, 411 P2d 65 (1966) (use of the same term throughout a statute indicates that the

⁷ We use the plural “interpretations” because the county appears to interpret “ownerships” in different ways throughout the decision.

1 term has the same meaning throughout the statute). To the extent intervenor intends to argue
2 that certain modifiers of the term may change the meaning of the term in a particular context,
3 such an express interpretation, if consistent with the text and context of the plan, might
4 survive the deferential review pursuant to ORS 197.829(1).⁸ See also *Church v. Grant*
5 *County*, 187 Or App 518, 69 P3d 759 (2003); *Clark v. Jackson County*, 313 Or 508, 836 P2d
6 710 (1992). However, the county did not make such an interpretation, either explicit or
7 implicit.⁹ The county is presumably considering the meaning of the term “ownerships”
8 pursuant to the remand in *Just*. As this appeal must be remanded in any event because the
9 county erroneously applied the Policy 15 analysis to the current parcelization pattern, the
10 county should reconsider this case pursuant to whatever express interpretation of
11 “ownerships” the county adopts in *Just*.

12 The second assignment of error is sustained.

13 **THIRD ASSIGNMENT OF ERROR**

14 Goal 4, Policy 15(b)(2) and (3) and 15(c)(3) require consideration of contiguous
15 ownerships. See n 6. In addition to misconstruing the term “ownerships,” petitioners argue
16 that once the county began considering such contiguous areas, the county further erred by
17 considering lands to the east of a railroad right-of-way to be contiguous.

⁸ ORS 197.829(1) provides:

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

⁹ We also question the county’s apparent belief that the different meanings of “ownerships” allows it to analyze a different area for each characteristic. If there is a basis in the text of the plan supporting this belief, the county must adopt explanatory findings on remand.

1 Lane Code 16.090 defines "contiguous" to mean:

2 "Having at least one common boundary line greater than eight feet in length.
3 Tracts of land under the same ownership and which are intervened by a street
4 (local access, public, County, State or Federal street) shall not be considered
5 contiguous."

6 Intervenor argues that the definitions in the Lane Code do not apply to the RCP, but
7 we agree with petitioners that by its own terms Policy 27 invokes the "procedures and
8 requirements" of Lane Code Chapter 16, including its definitions.¹⁰ The Lane Code
9 definition of "contiguous" includes the term "ownership." Goal 4, Policy 15 also uses the
10 terms "ownerships" and "contiguous" with various modifiers throughout the policy. As we
11 have discussed, the meaning of the term "ownerships" is ambiguous. Because we must
12 remand the decision for the county to interpret "ownerships" in the context of Policy 27 the
13 county will necessarily be required to explain the meaning of the term "contiguous."
14 Accordingly, it would be premature to reach this assignment of error.¹¹

15 We do not reach the third assignment of error.

16 The county's decision is remanded.

¹⁰ RCP Goal 2, Policy 27 provides:

"* * * Changes to correct errors or omissions shall comply with the procedures and requirements of Lane Code * * * Chapter 16 * * *."

¹¹ We note, however, that Policy 15(c)(3) uses the phrase "generally contiguous" which is not necessarily the same as "contiguous." Furthermore, Lane Code 16.090 only refers to intervening streets; it does not mention railroad right-of-ways. Petitioners rely on *Lovinger v. Lane County*, ___ Or LUBA ___ (LUBA No. 2005-098, January 12, 2006) *appeal pending*. In *Lovinger*, we merely held that where two parcels are divided by a fee interest in a strip of land owned by the county for use as a public roadway, the two parcels are not contiguous. It is not clear in this case, whether the railroad right-of-way at issue is an easement or is owned in fee. In any event, we need not determine the relevance of *Lovinger* here, because as we explained above, the county must explain the meaning of "contiguous" when it provides its interpretation of Policy 15.

Certificate of Mailing

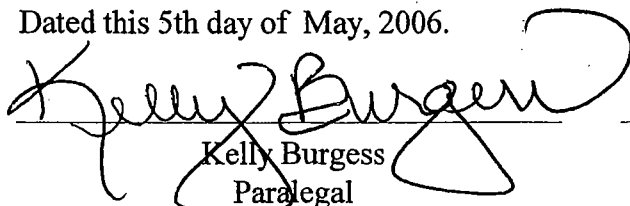
I hereby certify that I served the foregoing Final Opinion and Order for LUBA No. 2005-104 on May 5, 2006, by mailing to said parties or their attorney a true copy thereof contained in a sealed envelope with postage prepaid addressed to said parties or their attorney as follows:

Jannett Wilson
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Eugene, OR 97401

Dated this 5th day of May, 2006.


Kelly Burgess
Paralegal

Debra A. Frye
Executive Support Specialist

FINDINGS OF FACT AND CONCLUSIONS OF LAW

for

A CONFORMITY DETERMINATION AMENDMENT
PURSUANT TO RCP GENERAL PLAN POLICIES – GOAL TWO, POLICY 27. a. vii.

ADOPTING THE PLAN DESIGNATION OF FOREST (F)
AND THE ZONING DESIGNATION OF IMPACTED FOREST LAND (F-2)
FOR 37.5 ACRES LOCATED IN SECTION 32, TOWNSHIP 20, RANGE 2 WEST,
WILLAMETTE MERIDIAN, AND IDENTIFIED AS A PORTION OF TAX LOT 1700 OF
LANE COUNTY ASSESSOR MAP 21-02-06

and

ADOPTING SAVINGS AND SEVERABILITY CLAUSES

APPLICATION NO. PA 06-5476

ORDINANCE NO. PA 1236

Applicant: Symbiotics, LLC
Owner : U.S. Army Corp of Engineers
Applicant's Agent: Erik Steimle
Ecosystems Research Institute
Applicant's Attorney: Paul Vaughan
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FINDINGS OF FACT AND CONCLUSIONS OF LAW

In support of our adoption and enactment of Ordinance No. PA 1236, we make the following findings of fact and conclusions of law.

GENERAL FINDINGS AND CONCLUSIONS:

The property subject to this Conformity Determination Amendment (the Subject Property) is located north of the centerline thread of the Row River, south of Row River Road and east of the Developed and Committed Exception Area Plot #453-R1 (which exception area is located east of the intersection of Row River Road and Shoreline Drive). The property includes the Dorena Dam and spillway. The eastern boundary of the property extends south of Row River Road and north of the shoreline of Dorena Reservoir to the eastern boundary of Official Plan Plot # 453 and Official Zoning Plot #453 as depicted on Attachment "A" and Attachment "B", respectively. The property includes the right-of-way of the Oregon Pacific Electric Railroad (OPERR) and the southern right-of-way of Row River Road within Official Zoning Plot # 453. The property is approximately six miles east of Cottage Grove and is outside of the City of Cottage Grove urban growth boundary.

The Subject Property includes an approximately 37.5 acre portion of a 970.71-acre parcel owned by the U.S. Army Corp of Engineers (ACOE) that is tax lotted on Assessor's Map 21-02-06-00 as Tax Lot 1700. The 970.71-acre ACOE parcel was developed between approximately 1942 and 1949 with the Dorena Dam which impounded waters of the Row River and created the Dorena Reservoir, which occupies most of the 970.71 acre ACOE parcel.

On August 29, 1978, Lane County enacted Ordinance No. 688 that zoned lands within the Row River-London Subarea that included the Subject Property. The Subject Property was zoned FF-20 (Farm-Forest District—20 acre minimum parcel size) pursuant to that 1978 ordinance. A portion of the ACOE parcel immediately south of the Subject Property was included within the Public Reserve (PR) zone described in Lane Code Chapter 10, which is a zone that allows such uses as public parks, playgrounds, hunting and fishing lodges, government buildings and other intensive, non-forest uses and the rest was zoned FF-20.

In 1984, Lane County enacted Ordinance No. 884 with the stated intent of applying new Rural Comprehensive Plan designations and zoning (Lane Code Chapter 16) to all land outside of urban growth boundaries. Although the ordinance applied new RCP designations and zoning to surrounding properties, there was an apparent oversight with respect to the ACOE parcel—the ordinance failed to apply any RCP designation or zoning to any portion of the ACOE parcel, including the Subject Property. Although that might suggest that the Subject Property is still subject to the FF-20 (Lane Code Chapter 10) zoning applied to it in 1978 pursuant to Ordinance No. 688, 1984 Ordinance No. 884 went beyond merely applying new designations and zoning to properties described in the ordinance—Section 2 of the ordinance (with exceptions not relevant here) specifically repealed all prior plan and zone designations. As a result, we find that 1984 Ordinance No. 884 caused the ACOE parcel that includes the Subject Property to be stripped of any RCP designation and to become unzoned.

LCDC has acknowledged Lane County's Rural Comprehensive Plan and implementing regulations that included the designations and zoning applied by 1984 Ordinance No. 884. Since the 1984 ordinance did not apply any designation or zoning to the Subject Property, arguably the use and development of the Subject Property is not regulated by Lane County zoning ordinances. However, where a property is not subject to any zoning district, it is unclear what, if any, standards apply to the use and development of the property. In order to fill that vacuum and clarify the situation, Symbiotics filed an application for a Conformity Determination requesting that Lane County apply a plan designation and zoning of Impacted Forest Land (F-2, RCP) to the Subject Property. That resource designation, which does not require that the county take a Goal exception, is consistent with the FF-20 designation and zoning that was applied to the Subject Property in 1978 but subsequently repealed in 1984. It is also consistent with the aerial photographs attached as Appendix D to the application that show the current use of the Subject Property.

GENERAL PLAN POLICIES: GOAL TWO – POLICY 27:

The Lane County Rural Comprehensive Plan includes General Plan Policies specific to each of the Statewide Planning Goals One through Nineteen as they are implemented in Lane Code. Goal Two policies address Land Use Planning, which includes amendment processes for the Plan and Zoning designations of all properties within the rural lands of Lane County. Policy 27 of Goal Two pertaining to Conformity Determinations provides for the processing of a Conformity Determination Amendment by the Planning Commission and the Board of Commissioners for specific properties when a citizen, public agency or LMD staff shows that the plan and/or zoning designations satisfy one of the eight criteria set out in Policy 27.a.i.-viii.

a. Circumstances qualifying for consideration by the Board of Commissioners under the Conformity Determinations Policy may include one or more of the following:

i. Lawful, structural development existing prior to September 12, 1984 and use of the structures at the time qualified as an allowable use in a developed & committed zone designation other than that designated for the land on an Official Plan or Zoning Plot.

ii. Inappropriate Non-impacted Forest Land (F-1, RCP-zoning designation, where criteria of RCP Forest Land Policy 15 indicate that Impacted Forest Land (F-2, RCP) zoning designation is more suitable.

iii. A property was actively managed primarily as either an agricultural or forestry operation in 1984 and since, and a resource designation other than the primary, use was adopted on an Official Plan or Zoning Plot in 1984.

iv. Correction of a scrivener error on an adopted Official Plan or Zoning Plot.

v. Correction of an incompatible split-zoning of a legal lot resulting from a survey boundary line error that was discovered after September 12, 1984.

vi. *Compliance by a public jurisdiction or agency with a deed restriction on public land.*

vii. *Correction of an inconsistency between the text of an order or ordinance adopted by the board of Commissioners and an Official Plan or Zoning diagram.*

viii. *A circumstance other than as listed in Policy 27. a.i.-vii. above, which the Planning Commission elects to forward a favorable recommendation for consideration by the Board of Commissioners.*

We find that a Conformity Determination Amendment applicable to the Subject Property is appropriate under and consistent with General Plan Policy: Goal Two – Policy 27.a.vii. As stated in the General Findings, pursuant to 1978 Lane County Ordinance No. 688, the Subject Property was zoned FF-20 (Farm-Forest District–20 acre minimum parcel size). However, in 1984, Lane County enacted Ordinance No. 884 which effectively removed any RCP designation from the Subject Property and caused the property to become unzoned. Although the 1984 ordinance was enacted with the stated intent of applying new Rural Comprehensive Plan designations and zoning (Lane Code Chapter 16) to *all land outside of urban growth boundaries*, through an apparent oversight, the ordinance failed to apply any new RCP designation or zoning to the Subject Property. The property was simply omitted from the designation/zoning maps attached to the ordinance. Moreover, to compound the oversight, the 1984 ordinance specifically *repealed all prior plan and zone designations*. This is exactly the type of oversight and circumstances that the Conformity Determinations Policy was intended to address. This Conformity Determination Amendment restores a forestland resource designation to the Subject Property and zoning consistent therewith in accordance with the Lane County Rural Comprehensive Plan Goal 4: Forest Land - Policy 15 criteria discussed below. We also note that Subsection e. of Policy 27 recognizes that a Conformity Determination Amendment may be initiated by a private applicant in addition to being initiated by the county and find that the subject application was appropriately initiated by the applicant in accordance with that subsection.

We find that this Conformity Determination Amendment is a Minor Amendment pursuant to Policy 27.a.vii and Lane Code 16.400(6)(h) and involves applying a plan and zoning designation subject to Lane Code 16.252 processes. We find that no exception to any Statewide Goal, resource or otherwise, is necessary, and that this Minor Amendment is consistent with all applicable Statewide Goals. This Minor Amendment merely corrects an oversight—it causes currently undesignated and unzoned land to be designated for forest resource use and zoned Impacted Forest Land (F-2) in accordance with the county’s Goal 4: Forest Land – Policy 15.

CONFORMITY DETERMINATION AMENDMENT – GENERAL PROCEDURES:

Lane Code 16.400(6) Plan Adoption or Amendment – General Procedures. The Rural Comprehensive Plan or any component of such Plan, shall be adopted or amended in accordance with the following procedures:

* * * * *

(h) Method of Adoption and Amendment.

(i) The adoption or amendment of a Rural Comprehensive Plan component shall be by Ordinance.

(ii) The adoption or amendment shall be concurrent with an amendment to LC 16.400(4) above. In the case of a Rural Comprehensive Plan adoption, the Code amendment shall place such Plan in the appropriate category. In the case of a Rural Comprehensive Plan amendment, the Code amendment shall insert the number of the amending Ordinance.

(iii) 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 application of 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 decision, to be desirable, appropriate or proper.

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

(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.

(i) 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.

We find that this Minor Amendment is adopted by ordinance as required by Lane Code 16.400(6)(h)(i).

We find that pursuant to LC 16.400(6)(h)(iii)(bb)(i-i), Ordinance No. PA 1236 is a Minor Amendment (processed as a Conformity Determination Amendment) necessary to correct an identified error in the application of the Plan. In this case, the discovery of unzoned land in the rural area of Lane County and the intent to apply the appropriate resource designation in conformity with similar actions at the time of adoption of the Rural Comprehensive Plan in 1984.

As noted above, the Conformity Determination Amendment applicable to the Subject Property is appropriate under and consistent with General Plan Policy: Goal Two – Policy 27.a.vii. We also find that the amendment is compatible with the existing structure of the Rural Comprehensive Plan, and is consistent with the unamended portions or elements of the Plan. We also incorporate herein our findings and conclusions set out below addressing Lane County Rural Comprehensive Plan Goal 4: Forest Land - Policy 15.

We also find that a change of zoning to implement the Conformity Determination Amendment was considered concurrently with the amendment, and the Board has made the final zone change decision from unzoned land to Impacted Forest Land (F-2) zoning. Accordingly, we find and conclude that the Hearings Official's consideration need not occur.

ADDITIONAL LANE CODE PROCEDURES FOR PLAN AMENDMENT:

Portions of Lane Code 16.400(8) are also applicable to the amendment process.

Lane Code 16.400(8) Additional Amendment Provisions.

(8) Additional Amendment Provisions. In addition to the general procedures set forth in LC 16.400(6) above, the following provisions shall apply to any amendment of Rural Comprehensive Plan components.

(a) Amendments to the Rural Comprehensive Plan shall be classified according to the following criteria:

(i) Minor Amendment. An amendment limited to the Plan Diagram only and, if requiring an exception to Statewide Planning Goals, justifies the exception solely on the basis that the resource land is already built upon or is irrevocably committed to other uses not allowed by an applicable goal.

(ii) Major Amendment. Any amendment that is not classified as a minor amendment.

(b) Amendment proposals, either minor or major, may be initiated by the County or by individual application. Individual applications shall be subject to a fee established by the Board and submitted pursuant to LC 14.050.

(c) Minor amendment proposals initiated by an applicant shall provide adequate documentation to allow complete evaluation of the proposal to determine if the findings required by LC 16.400(6)(h)(iii) above can be affirmatively made. Unless waived in writing by the Planning Director, the applicant shall supply documentation concerning the following:

(i) A complete description of the proposal and its relationship to the Plan.

(ii) An analysis responding to each of the required findings of LC 16.400(6)(h)(ii) above.

(iii) An assessment of the probable impacts of implementing the proposed amendment, including the following:

(aa) Evaluation of land use and ownership patterns of the area of the amendment;

(bb) Availability of public and/or private facilities and services to the area of the amendment, including transportation, water supply and sewage disposal;

(cc) Impact of the amendment on proximate natural resources, resource lands or resource sites, including a Statewide Planning Goal 5 "ESEE" conflict analysis where applicable;

(dd) Natural hazards affecting or affected by the proposal;

(ee) For a proposed amendment to a nonresidential, nonagricultural or nonforest designation, an assessment of employment gain or loss, tax revenue impacts and public service/facility costs, as compared to equivalent factors for the existing uses to be replaced by the proposal;

(ff) For a proposed amendment to a nonresidential, nonagricultural or nonforest designation, an inventory of reasonable alternative sites now appropriately designated by the Rural Comprehensive Plan, within the jurisdictional area of the Plan and located in the general vicinity of the proposed amendment;

(gg) For a proposed amendment to a Nonresource designation or a Marginal Land designation, an analysis responding to the criteria for the respective request as cited in the Plan document entitled, "Working Paper: Marginal Lands" (Lane County, 1983).

We find that this amendment is a Minor Amendment because it is limited to the Plan Diagram only and does not require an exception to any Statewide Planning Goal.

We further find that the applicant submitted a complete application in compliance with the requirements of Lane Code 16.400(8)(b). The Planning Director waived the requirement for the applicant to supply documentation concerning Lane Code 16.400(8)(c)(iii)(aa)-(gg), above. We

find that waiver to be appropriate because this Minor Amendment is a Conformity Determination Amendment to correct an inconsistency between the text of 1984 Ordinance No. 884 adopted by the Board of Commissioners and the Official Plan and Zoning diagram; and because the amendment applies a forest resource designation to forest land and does not require any exception to any Statewide Goal.

We find that similar resource lands designated as Farm Forest 20 (FF20) within Plot # 453 from 1976 to 1984, and amended by the Board of Commissioners in February 1984 by 1984 Ordinance No. 884, were predominantly designated for forest use and zoned Impacted Forest Land (F-2). Specifically, the zoning designations for lands within the vicinity of the subject property were illustrated on Attachment "D" to the staff report. Lands designated from 1976 to 1984 as FF20 were predominantly amended to Impacted Forest Land (F-2). We also find, based on the evidence in the record, that the Subject Property is predominantly forested, that it is not in a farm use, and that it is appropriately designated for forest use.

FINDINGS OF FACT AND CONCLUSIONS OF LAW REGARDING APPLYING THE RURAL COMPREHENSIVE PLAN DESIGNATION AND ZONING OF IMPACTED FOREST LAND (F-2, RCP) TO THE SUBJECT PROPERTY:

We find that the county previously recognized that the Subject Property is forest resource land when it enacted 1978 Lane County Ordinance No. 688. A forest resource land designation is also consistent with what is shown by the evidence in the record including the aerial photographs of the Subject Property that are attached to the application.

We find that the primary issue to be decided in connection with this Conformity Determination Amendment (which will restore a forest resource designation and zoning to the Subject Property) is whether the designation and zoning should be Non-Impacted Forest Lands (F-1, RCP) or Impacted Forest Lands (F-2, RCP). We find unequivocally that the Subject Property qualifies for an Impacted Forest Lands (F-2, RCP) designation and zoning under the applicable criteria.

Lane County Rural Comprehensive Plan Goal 4: Forest Land - Policy 15 sets out the criteria for deciding whether forest land shall be designated and zoned as Non-impacted Forest Lands or Impacted Forest Lands as follows:

15. Lands designated within the Rural Comprehensive Plan as forest land shall be zoned Non Impacted Forest Lands (F 1, RCP) or Impacted Forest Lands (F 2, RCP). A decision to apply one of the above zones or both of the above zones in a split zone fashion shall be based upon:

a. A conclusion that characteristics of the land correspond more closely to the characteristics of the proposed zoning than the characteristics of the other forest zone. The zoning characteristics referred to are specified below in subsections b and c. This conclusion shall be supported by a statement of reasons explaining why the facts support the conclusion.

b. Non impacted Forest Land Zone (F-1, RCP) Characteristics:

(1) Predominantly ownerships not developed by residences or non-forest uses.

(2) *Predominantly contiguous, ownerships of 80 acres or larger in size.*

(3) *Predominantly ownerships contiguous, to other lands utilized for commercial forest or commercial farm uses.*

(4) *Accessed by arterial roads or roads intended primarily for forest management.*

(5) *Primarily under commercial forest management.*

c. *Impacted Forest Land Zone (F 2, RCP) Characteristics*

(1) *Predominantly ownerships developed by residences or non-forest uses.*

(2) *Predominantly ownerships 80 acres or less in size.*

(3) *Ownerships generally contiguous to tracts containing less than 80 acres and residences and/or adjacent to developed or committed areas for which an exception has been taken in the Rural Comprehensive Plan.*

(4) *Provided with a level of public facilities and services, and roads, intended primarily for direct services to rural residences.*

A review of the evidence and testimony, including the objections raised around terms contained in this policy makes it clear that the focus of the analysis must be on the property proposed for forest land zoning. For reasons that become clear when each of the various portions of the policy are addressed, most of the assessment of property or the area beyond the boundaries of the property proposed for zoning comes through the expression of the characteristics of each zone and does not rely on a precise definition of the term “ownerships” as either a “legal lot or parcel” or a “tract” of land since the primary focus is on the land that is the subject of the zoning request itself. For that reason we reject the assertion that the term means more than the Subject Property.

We find that the term “ownerships” contained in the criteria of RCP Goal 4 Policy 15 should be considered as including only the land being proposed for rezoning (unless other qualifiers in a particular characteristic compels a different result) because of the introductory language in Policy 15 and that finding constitutes a reasonable interpretation of the term “ownerships” as contained in that policy. Such an interpretation is consistent with the text, context, purpose and intent of Policy 15. Sub-paragraph a. of Policy 15 states that a decision to apply one of the zones (or both in a split zone fashion) shall be based upon:

“a. A conclusion that **characteristics of the land** correspond more closely to the characteristics of the proposed zoning than the characteristics of the other forest zone.” (Emphasis added)

The characteristics of the land, not the ownership of it, control the analysis. Policy 15 was crafted as a means of distinguishing large-scale industrial forest land from small-scale non-industrial forest land in the present and for the foreseeable future. The policy was intended to provide an analysis of the size and use of the subject property and of the land in the immediate

vicinity. Size and use of land constitute the four sets of characteristics of each type of forest land required by Policy 15 to be analyzed and compared. The listed characteristics do not include any reference to the determination of a particular type of ownership or whether contiguous properties owned by the same person or entity constitute one or more ownerships. The critical focus of the analysis is on the property proposed for rezoning and the characteristics that property has that mitigate toward consideration of applying F-1 or F-2 zoning.

The term "ownership" as used in Goal Four, Policy 15, has been utilized to identify different lands and the uses thereon, which are to be considered in making an evaluation of whether a F-1 or F-2 designation is warranted for the land under consideration for zoning. This was due to the need to look within the subject land to identify the development and uses present and to partially look beyond those boundaries to the lands in the general vicinity and identify the existing resource or nonresource uses and development on the surrounding lands. It really amounted to identifying a singular pattern within a more expansive tapestry.

When Goal Four, Policy 15 was originally adopted in 1984 as a component of the General Plan Policies of the Rural Comprehensive Plan, the two planning commissions and the Board of Commissioners were applying the "characteristics" of Policy 15(b) and (c) in a broad matrix designed to (1) acknowledge development existing at the time on specific properties; and (2) analyze those commitments of specific lands in context with a broad-brush view or generalized sense of the surrounding parcelization and uses. Forest lands less than 80 acres in size and developed with residential uses or other nonforest uses, generally received Impacted Forest Land (F2) designations. Public forested lands and larger commercially managed, forest lands that were not impacted by nonforest uses, particularly in the ownership of industrial forest operators, were designated as Nonimpacted Forest Lands (F1).

Prior analysis during the 1970s and the resulting Lane Code Chapter 10 zoning designations which were incorporated into the thirteen subarea plans, contributed to the final decision on a property-by-property basis in 1984. At that time, the need for precise definition of the "ownership" term as legal lot, or parcel or tract was not important because the whole county was the subject of the zoning designation. In considering the present day applications, looking at the area proposed for rezoning generally provides sufficient definition to the term "ownership". In the case of the subject 37.5 plus acres of Ordinance No. PA 1236, the subject land would have been re-designated from FF20 Farm-Forestry to F2 Impacted Forest Land as were other lands with similar characteristics in the area, at the time.

The critical focus of the analysis is on the property proposed for rezoning and the characteristics that property has that mitigate toward consideration of applying F-1 or F-2 zoning. Properties subject to amendments in the past have included portions or combinations of tax lots as metes and bounds descriptions with single owners or multiple owners. Lane Code does not require legal lot determinations as a qualifier for application for a zone change in recognition of the variety of configurations of zoning that might make sense regardless of property boundaries. Legal lot status is a factor that comes into play in subsequent development permits, both planning and building, after a zoning designation has been applied.

A reading of Goal Four, Policy 15 interpreting “ownership” to mean “land being proposed for rezoning” seems a reasonable approach that avoids debate over whether the focus should be more than the subject property, beyond the portion of that analysis determined by other text that clearly notes the connection of the subject property to surrounding lands.

Goal Four, Policy 15 uses three terms to define the areas to be reviewed when assessing the surrounding properties as well as the land being considered for rezoning. Those terms are “contiguous”, “generally contiguous” and “adjacent”.

“Contiguous”, as defined in Lane Code 16.090 definitions, is used in Policy 15.b. (2) and (3) to look for the different characteristics of F-1 land. The text in LC 16.090 provides: “Having at least one common boundary line greater than eight feet in length. Tracts of land under the same ownership and which are intervened by a street (local access, public, County, State or Federal street) shall not be considered contiguous.” In the case of 15.b.(2), the intent is to look within the land being proposed for rezoning to determine whether or not that land being proposed for rezoning consists of contiguous land owned by the applicant that is 80 acres or larger in size. In the case of 15.b. (3), the intent is to determine whether other land contiguous to the land being proposed for rezoning is in commercial forest or commercial farm use.

Policy 15.c.(3) does not use the term “contiguous” to determine the same relationship between the land proposed for rezoning and the tapestry of uses and development in the surrounding area. Policy 15.c.(3) uses “generally contiguous” in a broader sense that looks beyond the definition of “contiguous” to determine if “tracts” owned by other property owners in the general area of the land being proposed for rezoning are less than 80 acres in size and developed with residences. The analysis is intended to venture beyond the only contiguous properties with common property lines. In some instances, common sense may push that analysis a distance in some or all directions to fully assess the characteristics of the surrounding uses and development particularly when considering a “tract”.

Policy 15.c.(3) also uses the term “adjacent” to look even further beyond the nearby tracts or across intervening right-of-way to acknowledge the impacts of development within developed and committed exception areas in the general vicinity of the land being proposed for rezoning. It is a broader look at the complete tapestry of uses and development, particularly nonresource uses, in the general area. It does not depend on contiguity for that consideration.

This interpretation affirms the Lane Code 16.090 definition of “contiguous” as it is used in Policy 15.b.(2) and 15.b.(3) in the assessment of F-1 characteristics. It also makes clear that “generally contiguous” as used in Policy 15.c. (3) is different and broader in meaning and application when assessing the F-2 characteristics. It will remain for the Board of Commissioners to exercise discretion on a case-by-case basis, in making a final determination on how wide and how far that assessment pursuant to Policy 15.c.(3) would need to reach to provide a factual basis in arriving at a decision to approve or deny a request for rezoning. In all cases, the analysis under Goal Four, Policy 15 does not require a precise mathematical computation since the focus is on all the characteristics and whether, on balance, the land proposed for rezoning more closely corresponds to the F-1 or F-2 characteristics.

We find that the characteristics of the Subject Property do not correspond closely with the Non-impacted Forest Land Zone (F-1, RCP) characteristics:

Policy 15.b.(1):

Predominantly ownerships not developed by residences or non-forest uses.

We find that the Subject Property does not have this characteristic. It consists of road and railroad right-of-way ownerships and a 37.5-acre ownership that are generally in non-forest uses such as the roadways (Row River Road and Spillway Road), the dam and the spillway. Based on this alone, we conclude the Subject Property consists predominantly of ownerships that are developed by non-forest uses.

In addition, the Subject Property is a portion of the 970.71-acre ACOE parcel that is predominantly developed with non-forest uses. Specifically, we also find that most of the area of the ACOE parcel is developed with the Dorena Reservoir. In addition to the reservoir, there are developed improvements on other portions of the parcel including Dorena Dam and related infrastructure (some located on the 37.5-acre portion of the Subject Property) and parks and recreation facilities including those at the Schwarz Park campground and recreation area (located at the base of Dorena Dam on the banks of the Row River) which has restrooms, showers, camp sites and RV sites and those at Baker Bay Park (located on the south side of Dorena Reservoir) which has restrooms, showers, picnic areas, a swimming area, boat ramp, marina, camp sites and RV sites, paved parking areas and recreational commercial facilities. We find that the assessor's records also reflect that there are a number of manufactured structures on the ACOE parcel including a single family dwelling associated with intense non-forest development.

We conclude that the response to this criterion strongly supports our finding, conclusion and decision that the Subject Property be designated and zoned as Impacted Forest Land.

Policy 15.b.(2):

Predominantly contiguous, ownerships of 80 acres or larger in size.

The Subject Property is approximately 37.5 acres in size and therefore does not correspond to this characteristic even with the additional area included in the rights-of-way.

With respect to property contiguous to the Subject Property, the tax lots referred to in these findings are shown on Appendix C to the application. We find that that portion of the ACOE parcel located contiguous to the south and east of the Subject Property is larger than 80 acres, although as noted above, the vast majority of that land is developed with non-forest uses, most of it having been developed with Dorena Reservoir.

There is one other property 80 acres or larger in size that is north of the Subject Property and separated from it only by Row River Road and the abandoned railway right-of-way. That property, which consists of two tax lots (Tax Lots 100 and 208), is owned by the Vereck Trust et al. and contains slightly over 207 acres. It is under a different ownership than the Subject Property. In addition, Lane County already designated and zoned that property for Rural Residential (RR-10) use. Furthermore, Lane Code Section 16.090 defines "contiguous" as having one common boundary greater than eight feet in length and the definition makes clear that even if the land is in the same ownership, it is not "contiguous" if it is separated by a public

road. The Vereck Trust property is separated from the Subject Property by Row River Road so it is not technically contiguous for the purpose of analysis under this characteristic.

Other property located directly north of the Subject Property (but also separated from it by Row River Road) are smaller than 80 acres: (i) Tax Lot 203 is a 4.85 acre parcel zoned RR-5; (ii) Tax Lot 200 is a 5.8 acre parcel zoned RR-5; and Tax Lot 500 is a 16.20 acre parcel zoned ML (Marginal Lands).

All of the other contiguous properties are much smaller than 80 acres. (See Appendix C to the application.) Those contiguous properties are as follows:

1. Tax Lot 201 – 1.1 acres;
2. Tax Lot 202 – 12.14 acres; and
3. Tax Lot 401 – .97 acres.

In summary, we find that neither the Subject Property itself (which is approximately 37.5 acres in size) nor the properties contiguous to the Subject Property (which are predominantly smaller than 80 acres and not in the same ownership as the Subject Property) correspond more closely to the stated Non-Impacted Forest Land characteristic, thereby supporting our finding, conclusion and decision that the Subject Property be designated and zoned as Impacted Forest Land.

Policy 15.b.(3):

Predominantly ownerships contiguous, to other lands utilized for commercial forest or commercial farm uses.

As is reflected in the maps attached as Appendix A, Appendix B and Appendix C to the application, the other lands contiguous to the Subject Property are predominantly *not* utilized for commercial forest or commercial farm uses.

Also, as discussed above, the other land to the north of the Subject Property are not technically “contiguous” because they are separated from the Subject Property by Row River Road. Nevertheless, even if those lands were deemed to be contiguous or connected to the Subject Property under the definition of that term in LC 16.090, not one of those other lands are in the same ownership as the Subject Property or used for commercial forest or commercial farm uses. Those other lands are all zoned and designated for either Rural Residential (RR-5; RR-10) uses or as Marginal Land (ML).

The contiguous lands to the west of the Subject Property are also not used for commercial forest or commercial farm uses. All of those lands are designated and zoned for Rural Residential (RR-5) use, and all are developed with residential dwellings.

The land to the south of the Subject Property across the Row River is that portion of the ACOE parcel that is developed with restrooms, showers, camp sites and RV sites associated with the Schwarz Park campground and recreation area (located at the base of Dorena Dam on the banks of the Row River). We think the intervening ownership of the beds and banks of the river by the state makes this area noncontiguous with the Subject Property. In any case, the entire ACOE parcel became unzoned as a result of 1984 Ordinance No. 884. However, the county previously recognized that the portion of the ACOE parcel south of the Subject Property was not forest resource land when, pursuant to 1978 Ordinance No. 688, it included that property within the

Public Reserve (PR) zone described in Lane Code Chapter 10, which is a zone that allows such uses as public parks, playgrounds, hunting and fishing lodges, government buildings and other intensive, non-forest uses. We find that the land to the south of the Subject Property is not contiguous and is not used for commercial forest or commercial farm uses.

Finally, the contiguous land to the east of the Subject Property is that portion of the ACOE parcel that is developed with Dorena Reservoir, and which is not used for commercial forest or commercial farm uses.

Since the other lands contiguous to the Subject Property are predominantly if not exclusively utilized for purposes other than commercial forest or commercial farm uses, the response to this criterion strongly supports our finding, conclusion and decision that the Subject Property be designated and zoned as Impacted Forest Land.

Policy 15.b.(4):

Accessed by arterial roads or roads intended primarily for forest management.

We find that the Subject Property is not accessed by arterial roads or roads intended primarily for forest management.

Access to the Subject Property is provided by Spillway Road. Spillway Road is classified in the County's Transportation System Plan (TSP) as a Rural Local road to the point it enters the Subject Property, and it provides access to the rural residential development to the west of the Subject Property as well as access at the westerly boundary of the Subject Property. We also find that from the point Spillway Road enters the Subject Property; it is not open to the public. That portion of the road provides access through the Subject Property to the base of Dorena Dam on the northwest bank of the Row River. That portion of the road was built for the purpose of providing access for the operation and maintenance of Dorena Dam; it was not built for the purpose of commercial forestry.

Access to Spillway Road is via Shoreview Drive, which is classified in the TSP as a Rural Major Collector.

Neither Spillway Road nor Shoreview Drive is classified as an arterial road, and neither road is intended primarily for forest management. Accordingly, the response to this criterion also strongly supports our finding, conclusion and decision that the Subject Property be designated and zoned as Impacted Forest Land.

Policy 15.b.:

Primarily under commercial forest management.

We find that the Subject Property is not under commercial forest management. The primary use of the entire ACOE parcel that includes the Subject Property is for the operation and maintenance of Dorena Dam and Reservoir. There is no evidence that the portion of that operation that is on the Subject Property and the right-of-way not owned by ACOE are under commercial forest management. The dam and reservoir provide flood control, irrigation, recreational opportunities, and improved downstream passage. Accordingly, the response to this criterion similarly strongly supports our finding, conclusion and decision that the Subject Property be designated and zoned as Impacted Forest Land.

We find that the characteristics of the subject property do correspond closely with the Impacted Forest Land Zone (F-2, RCP) characteristics:

Policy 15.c.(1):

Predominantly ownerships developed by residences or non-forested uses.

We find that the characteristics of the Subject Property correspond closely with this characteristic. It consists of road and railroad right-of-way ownerships and a 37.5-acre ownership that are generally in non-forest uses such as the roadways (Row River Road and Spillway Road), the dam and the spillway. Based on this alone, we conclude the Subject Property consists predominantly of ownerships that are developed by non-forest uses.

In addition, the Subject Property is a portion of the 970.71-acre ACOE parcel that is predominantly developed with non-forest uses. Almost the entire ACOE parcel is developed with Dorena Reservoir. In addition to the reservoir, there are developed improvements on other portions of the parcel including Dorena Dam and related infrastructure (some located on the 37.5-acre portion of the Subject Property) and parks and recreation facilities including those at the Schwarz Park campground and recreation area (located at the base of Dorena Dam on the banks of the Row River) which has restrooms, showers, camp sites and RV sites and those at Baker Bay Park (located on the south side of Dorena Reservoir) which has restrooms, showers, picnic areas, a swimming area, boat ramp, marina, camp sites and RV sites, paved parking areas and recreational commercial facilities. The assessor's records also reflect that there are a number of manufactured structures on the parcel including a single family dwelling. Moreover, Subject Property is not managed as part of a commercial forest operation and is developed with portions of the Dorena Dam infrastructure and the access roadway that provides access for inspection and maintenance of the dam and the spillway.

In short, the response to this criterion strongly supports our finding, conclusion and decision that the Subject Property be designated and zoned as Impacted Forest Land.

Policy 15.c.(2):

Predominantly ownerships 80 acres or less in size.

While the entire ACOE parcel is much larger than 80 acres, this Conformity Determination only pertains to the Subject Property. The Subject Property includes approximately 37.5 acres of ACOE property and accordingly, the predominant ownership of the Subject Property under consideration is well under the 80-acre threshold. Moreover, as was explained previously, the vast majority of the entire ACOE parcel is developed with non-forest uses, most of the parcel having been developed with Dorena Reservoir and park, camping and recreation facilities. Finally, even if the Subject Property is deemed not to conform to this characteristic because the entire ACOE parcel is larger than 80 acres, this is only one of the four Impacted Forest Land characteristics and we find that the Subject Property corresponds closely with each of the other three Impacted Forest Land characteristics (Policy 15.c.(1), (3) and (4)). In addition, the Subject Property does not closely conform to any of the five Non-Impacted Forest Land characteristics. When considering all the characteristics together, we conclude the Subject Property more closely corresponds to the Impacted Forest Land characteristics.

Policy 15.c.(3):

Ownerships generally contiguous to tracts containing less than 80 acres and residences and/or adjacent to developed or committed areas for which an exception has been taken in the Rural Comprehensive Plan.

As is reflected in the map attached as Appendix C to the application, the Subject Property is generally contiguous to tracts containing less than 80 acres and residences and/or adjacent to developed or committed areas for which an exception has been taken in the Rural Comprehensive Plan.

As is shown by the map attached as Appendix C to the application, the tracts to the north of the Subject Property are not technically “contiguous” because they are separated from the Subject Property by Row River Road. Nevertheless, except for the tract owned by the Verek Trust et al. that is zoned RR-10 and is part of a rural residential exception area, each of those tracts is substantially smaller than 80 acres: the Richards tract (TL 203) is 4.85 acres; the Bettis tract (TL 200) is 4.85 acres; and the McCarthy tract (TL 500) is 16.20 acres. Furthermore, each of those tracts (except the McCarthy tract that is zoned Marginal Land) is part of an “adjacent” developed and committed area for which an exception has been taken. Finally, except for the Verek Trust tract, each of the other tracts to the north of the Subject Property, including the McCarthy tract, is developed with a residence.

The generally contiguous tracts to the west of the Subject Property are each substantially smaller than 80 acres. In addition, those areas are zoned for Rural Residential (RR-5) use and development and are part of an “adjacent” developed or committed area for which an exception has been taken in the Rural Comprehensive Plan. Finally, all of those tracts are developed with residences.

The “tract” to the south and east of the Subject Property is that portion of the ACOE parcel that to the south of the Subject Property is developed with restrooms, showers, camp sites and RV sites associated with the Schwarz Park campground and recreation area (located at the base of Dorena Dam on the banks of the Row River) and that to the east of the Subject Property is developed with the Dorena Reservoir and the associated Baker Bay Park recreational amenities described in our findings above. That “tract” is larger than 80 acres, but as noted previously, it may be generally contiguous but it is not designated in the RCP and is unzoned.

In short, the majority of the tracts generally contiguous or adjacent to the Subject Property contain substantially less than 80 acres, are developed with residences, and are within developed or committed areas for which an exception has been taken in the Rural Comprehensive Plan. Accordingly, the response to this criterion strongly supports our finding, conclusion and decision that the Subject Property be designated and zoned as Impacted Forest Land.

Policy 15.c.(4):

Provided with a level of public facilities and services, and roads, intended primarily for direct services to rural residences.

As discussed in our findings in response to Policy 15.b.(4), access to the Subject Property is provided by Spillway Road. Spillway Road is classified in the County’s Transportation System Plan (TSP) as a Rural Local road to the point it enters the Subject Property, and it provides access to the rural residential development to the west of the Subject Property as well as access

at the westerly boundary of the Subject Property. Access to Spillway Road is via Shoreview Drive, which is classified in the TSP as a Rural Major Collector. Spillway Road and Shoreview Drive are intended primarily to serve the rural residential development in the area and the Dorena Reservoir parks and recreation areas.

While the Subject Property is not in an urban area and therefore is not served by municipal water or sewer services, we find that it is provided with the following public facilities and services:

1. Emergency Services: Cottage Grove Fire and Ambulance Department;
2. Schools: District 45J – South Lane

The Subject Property also has access to electric utility and telephone service.

In summary, the Subject Property conforms closely to this characteristic which also supports our finding, conclusion and decision that the Subject Property be designated and zoned as Impacted Forest Land.

CONCLUSION REGARDING IMPACTED FOREST LAND ZONE (F-2, RCP) DESIGNATION AND ZONING:

In summary, we find, conclude and decide that the Subject Property does not conform to the Non-Impacted Forest Land Zone (F-1, RCP) characteristics and that the Subject Property does conform more closely to the Impacted Forest Land Zone (F-2, RCP) characteristics. Accordingly, we find, conclude and decide that the Subject Property should, through the enactment of Ordinance No. PA 1236, be designated and zoned Impacted Forest Land (F-2, RCP).

D. Legislative Format of Revised Exhibit C – Findings of Fact and Conclusions of Law

Exhibit C
Ordinance No. PA 1236

FINDINGS OF FACT AND CONCLUSIONS OF LAW

for

**A CONFORMITY DETERMINATION AMENDMENT
PURSUANT TO RCP GENERAL PLAN POLICIES – GOAL TWO, POLICY 27. a. vii.**

**ADOPTING THE PLAN DESIGNATION OF FOREST (F)
AND THE ZONING DESIGNATION OF IMPACTED FOREST LAND (F-2)
FOR 37.5 ACRES LOCATED IN SECTION 32, TOWNSHIP 20, RANGE 2 WEST,
WILLAMETTE MERIDIAN, AND IDENTIFIED AS A PORTION OF TAX LOT 1700 OF
LANE COUNTY ASSESSOR MAP 21-02-06**

and

ADOPTING SAVINGS AND SEVERABILITY CLAUSES

APPLICATION NO. PA 06-5476

ORDINANCE NO. PA 1236

Applicant: Symbiotics, LLC
Owner : U.S. Army Corp of Engineers
Applicant's Agent: Erik Steimle
Ecosystems Research Institute
Applicant's Attorney: Paul Vaughan
Hershner Hunter, LLP

FINDINGS OF FACT AND CONCLUSIONS OF LAW

In support of our adoption and enactment of Ordinance No. PA 1236, we make the following findings of fact and conclusions of law.

GENERAL FINDINGS AND CONCLUSIONS:

The property subject to this Conformity Determination Amendment (the Subject Property) is located north of the centerline thread of the Row River, south of Row River Road and east of the Developed and Committed Exception Area Plot #453-R1 (which exception area is located east of the intersection of Row River Road and Shoreline Drive). The property includes the Dorena Dam and spillway. The eastern boundary of the property extends south of Row River Road and north of the shoreline of Dorena Reservoir to the eastern boundary of Official Plan Plot # 453 and Official Zoning Plot # 453 as depicted on Attachment "A" and Attachment "B", respectively. The property includes the right-of-way of the Oregon Pacific Electric Railroad (OPERR) and the southern right-of-way of Row River Road within Official Zoning Plot # 453. The property is approximately six miles east of Cottage Grove and is outside of the City of Cottage Grove urban growth boundary.

The Subject Property includes an approximately 37.5 acre portion of a 970.71-acre parcel owned by the U.S. Army Corp of Engineers (ACOE) that is tax lotted on Assessor's Map 21-02-06-00 as Tax Lot 1700. The 970.71-acre ACOE parcel was developed between approximately 1942 and 1949 with the Dorena Dam which impounded waters of the Row River and created the Dorena Reservoir, which occupies most of the 970.71 acre ACOE parcel.

On August 29, 1978, Lane County enacted Ordinance No. 688 that zoned lands within the Row River-London Subarea that included the Subject Property. The Subject Property was zoned FF-20 (Farm-Forest District-20 acre minimum parcel size) pursuant to that 1978 ordinance. A portion of the ACOE parcel immediately south of the Subject Property was included within the Public Reserve (PR) zone described in Lane Code Chapter 10, which is a zone that allows such uses as public parks, playgrounds, hunting and fishing lodges, government buildings and other intensive, non-forest uses and the rest was zoned FF-20.

In 1984, Lane County enacted Ordinance No. 884 with the stated intent of applying new Rural Comprehensive Plan designations and zoning (Lane Code Chapter 16) to all land outside of urban growth boundaries. Although the ordinance applied new RCP designations and zoning to surrounding properties, there was an apparent oversight with respect to the ACOE parcel—the ordinance failed to apply any RCP designation or zoning to any portion of the ACOE parcel, including the Subject Property. Although that might suggest that the Subject Property is still subject to the FF-20 (Lane Code Chapter 10) zoning applied to it in 1978 pursuant to Ordinance No. 688, 1984 Ordinance No. 884 went beyond merely applying new designations and zoning to properties described in the ordinance—Section 2 of the ordinance (with exceptions not relevant here) specifically repealed all prior plan and zone designations. As a result, we find that 1984 Ordinance No. 884 caused the ACOE parcel that includes the Subject Property to be stripped of any RCP designation and to become unzoned.

LCDC has acknowledged Lane County's Rural Comprehensive Plan and implementing regulations that included the designations and zoning applied by 1984 Ordinance No. 884. Since the 1984 ordinance did not apply any designation or zoning to the Subject Property, arguably the use and development of the Subject Property is not regulated by Lane County zoning ordinances. However, where a property is not subject to any zoning district, it is unclear what, if any, standards apply to the use and development of the property. In order to fill that vacuum and clarify the situation, Symbiotics filed an application for a Conformity Determination requesting that Lane County apply a plan designation and zoning of Impacted Forest Land (F-2, RCP) to the Subject Property. That resource designation, which does not require that the county take a Goal exception, is consistent with the FF-20 designation and zoning that was applied to the Subject Property in 1978 but subsequently repealed in 1984. It is also consistent with the aerial photographs attached as Appendix D to the application that show the current use of the Subject Property.

GENERAL PLAN POLICIES: GOAL TWO – POLICY 27:

The Lane County Rural Comprehensive Plan includes General Plan Policies specific to each of the Statewide Planning Goals One through Nineteen as they are implemented in Lane Code. Goal Two policies address Land Use Planning, which includes amendment processes for the Plan and Zoning designations of all properties within the rural lands of Lane County. Policy 27 of Goal Two pertaining to Conformity Determinations provides for the processing of a Conformity Determination Amendment by the Planning Commission and the Board of Commissioners for specific properties when a citizen, public agency or LMD staff shows that the plan and/or zoning designations satisfy one of the eight criteria set out in Policy 27 a.1-viii.

a. Circumstances qualifying for consideration by the Board of Commissioners under the Conformity Determinations Policy may include one or more of the following:

i. Lawful, structural development existing prior to September 12, 1984 and use of the structures at the time qualified as an allowable use in a developed & committed zone designation other than that designated for the land on an Official Plan or Zoning Plot.

ii. Inappropriate Non-impacted Forest Land (F-1, RCP-zoning designation, where criteria of RCP Forest Land Policy 15 indicate that Impacted Forest Land (F-2, RCP) zoning designation is more suitable.

iii. A property was actively managed primarily as either an agricultural or forestry operation in 1984 and since, and a resource designation other than the primary, use was adopted on an Official Plan or Zoning Plot in 1984.

iv. Correction of a scrivener error on an adopted Official Plan or Zoning Plot.

v. Correction of an incompatible split-zoning of a legal lot resulting from a survey boundary line error that was discovered after September 12, 1984.

vi. *Compliance by a public jurisdiction or agency with a deed restriction on public land.*

vii. *Correction of an inconsistency between the text of an order or ordinance adopted by the board of Commissioners and an Official Plan or Zoning diagram.*

viii. *A circumstance other than as listed in Policy 27, a.i-vii above, which the Planning Commission elects to forward a favorable recommendation for consideration by the Board of Commissioners.*

We find that a Conformity Determination Amendment applicable to the Subject Property is appropriate under and consistent with General Plan Policy: Goal Two – Policy 27.a.vii. As stated in the General Findings, pursuant to 1978 Lane County Ordinance No. 688, the Subject Property was zoned FF-20 (Farm-Forest District–20 acre minimum parcel size). However, in 1984, Lane County enacted Ordinance No. 884 which effectively removed any RCP designation from the Subject Property and caused the property to become unzoned. Although the 1984 ordinance was enacted with the stated intent of applying new Rural Comprehensive Plan designations and zoning (Lane Code Chapter 16) to *all land outside of urban growth boundaries*, through an apparent oversight, the ordinance failed to apply any new RCP designation or zoning to the Subject Property. The property was simply omitted from the designation/zoning maps attached to the ordinance. Moreover, to compound the oversight, the 1984 ordinance specifically *repealed all prior plan and zone designations*. This is exactly the type of oversight and circumstances that the Conformity Determinations Policy was intended to address. This Conformity Determination Amendment restores a forestland resource designation to the Subject Property and zoning consistent therewith in accordance with the Lane County Rural Comprehensive Plan Goal 4: Forest Land - Policy 15 criteria discussed below. We also note that Subsection e. of Policy 27 recognizes that a Conformity Determination Amendment may be initiated by a private applicant in addition to being initiated by the county and find that the subject application was appropriately initiated by the applicant in accordance with that subsection.

We find that this Conformity Determination Amendment is a Minor Amendment pursuant to Policy 27.a.vii and Lane Code 16.400(6)(h) and involves applying a plan and zoning designation subject to Lane Code 16.252 processes. We find that no exception to any Statewide Goal, resource or otherwise, is necessary, and that this Minor Amendment is consistent with all applicable Statewide Goals. This Minor Amendment merely corrects an oversight—it causes currently undesignated and unzoned land to be designated for forest resource use and zoned Impacted Forest Land (F-2) in accordance with the county’s Goal 4: Forest Land – Policy 15.

CONFORMITY DETERMINATION AMENDMENT – GENERAL PROCEDURES:

Lane Code 16.400(6) Plan Adoption or Amendment – General Procedures. The Rural Comprehensive Plan or any component of such Plan, shall be adopted or amended in accordance with the following procedures:

* * * * *

(h) *Method of Adoption and Amendment.*

(i) *The adoption or amendment of a Rural Comprehensive Plan component shall be by Ordinance.*

(ii) *The adoption or amendment shall be concurrent with an amendment to LC 16.400(4) above. In the case of a Rural Comprehensive Plan adoption, the Code amendment shall place such Plan in the appropriate category. In the case of a Rural Comprehensive Plan amendment, the Code amendment shall insert the number of the amending Ordinance.*

(iii) *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 application of 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 decision, to be desirable, appropriate or proper.*

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

(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.*

(i) *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.

We find that this Minor Amendment is adopted by ordinance as required by Lane Code 16.400(6)(h)(i).

We find that pursuant to LC 16.400(6)(h)(iii)(bb)(i-i), Ordinance No. PA 1236 is a Minor Amendment (processed as a Conformity Determination Amendment) necessary to correct an identified error in the application of the Plan. In this case, the discovery of unzoned land in the rural area of Lane County and the intent to apply the appropriate resource designation in conformity with similar actions at the time of adoption of the Rural Comprehensive Plan in 1984.

As noted above, the Conformity Determination Amendment applicable to the Subject Property is appropriate under and consistent with General Plan Policy: Goal Two – Policy 27.a.vii. We also find that the amendment is compatible with the existing structure of the Rural Comprehensive Plan, and is consistent with the unamended portions or elements of the Plan. We also incorporate herein our findings and conclusions set out below addressing Lane County Rural Comprehensive Plan Goal 4: Forest Land - Policy 15.

We also find that a change of zoning to implement the Conformity Determination Amendment was considered concurrently with the amendment, and the Board has made the final zone change decision from unzoned land to Impacted Forest Land (E-2) zoning. Accordingly, we find and conclude that the Hearings Official's consideration need not occur.

ADDITIONAL LANE CODE PROCEDURES FOR PLAN AMENDMENT:

Portions of Lane Code 16.400(8) are also applicable to the amendment process.

Lane Code 16.400(8) Additional Amendment Provisions.

(8) Additional Amendment Provisions. In addition to the general procedures set forth in LC 16.400(6) above, the following provisions shall apply to any amendment of Rural Comprehensive Plan components.

(a) Amendments to the Rural Comprehensive Plan shall be classified according to the following criteria:

(i) Minor Amendment. An amendment limited to the Plan Diagram only and, if requiring an exception to Statewide Planning Goals, justifies the exception solely on the basis that the resource land is already built upon or is irrevocably committed to other uses not allowed by an applicable goal.

(ii) Major Amendment. Any amendment that is not classified as a minor amendment.

(b) *Amendment proposals, either minor or major, may be initiated by the County or by individual application. Individual applications shall be subject to a fee established by the Board and submitted pursuant to LC 14.050.*

(c) *Minor amendment proposals initiated by an applicant shall provide adequate documentation to allow complete evaluation of the proposal to determine if the findings required by LC 16.400(6)(h)(iii) above can be affirmatively made. Unless waived in writing by the Planning Director, the applicant shall supply documentation concerning the following:*

(i) *A complete description of the proposal and its relationship to the Plan.*

(ii) *An analysis responding to each of the required findings of LC 16.400(6)(h)(ii) above.*

(iii) *An assessment of the probable impacts of implementing the proposed amendment, including the following:*

(aa) *Evaluation of land use and ownership patterns of the area of the amendment;*

(bb) *Availability of public and/or private facilities and services to the area of the amendment, including transportation, water supply and sewage disposal;*

(cc) *Impact of the amendment on proximate natural resources, resource lands or resource sites, including a Statewide Planning Goal 5 "ESEE" conflict analysis where applicable;*

(dd) *Natural hazards affecting or affected by the proposal;*

(ee) *For a proposed amendment to a nonresidential, nonagricultural or nonforest designation, an assessment of employment gain or loss, tax revenue impacts and public service/facility costs, as compared to equivalent factors for the existing uses to be replaced by the proposal;*

(ff) *For a proposed amendment to a nonresidential, nonagricultural or nonforest designation, an inventory of reasonable alternative sites now appropriately designated by the Rural Comprehensive Plan, within the jurisdictional area of the Plan and located in the general vicinity of the proposed amendment;*

(gg) *For a proposed amendment to a Nonresource designation or a Marginal Land designation, an analysis responding to the criteria for the respective request as cited in the Plan document entitled, "Working Paper: Marginal Lands" (Lane County, 1983).*

We find that this amendment is a Minor Amendment because it is limited to the Plan Diagram only and does not require an exception to any Statewide Planning Goal.

We further find that the applicant submitted a complete application in compliance with the requirements of Lane Code 16.400(8)(b). The Planning Director waived the requirement for the applicant to supply documentation concerning Lane Code 16.400(8)(c)(iii)(aa)-(gg), above. We

find that waiver to be appropriate because this Minor Amendment is a Conformity Determination Amendment to correct an inconsistency between the text of 1984 Ordinance No. 884 adopted by the Board of Commissioners and the Official Plan and Zoning diagram; and because the amendment applies a forest resource designation to forest land and does not require any exception to any Statewide Goal.

We find that similar resource lands designated as Farm Forest 20 (FF20) within Plot # 453 from 1976 to 1984, and amended by the Board of Commissioners in February 1984 by 1984 Ordinance No. 884, were predominantly designated for forest use and zoned Impacted Forest Land (F-2). Specifically, the zoning designations for lands within the vicinity of the subject property were illustrated on Attachment "D" to the staff report. Lands designated from 1976 to 1984 as FF20 were predominantly amended to Impacted Forest Land (F-2). We also find, based on the evidence in the record, that the Subject Property is predominantly forested, that it is not in a farm use, and that it is appropriately designated for forest use.

FINDINGS OF FACT AND CONCLUSIONS OF LAW REGARDING APPLYING THE RURAL COMPREHENSIVE PLAN DESIGNATION AND ZONING OF IMPACTED FOREST LAND (F-2, RCP) TO THE SUBJECT PROPERTY:

We find that the county previously recognized that the Subject Property is forest resource land when it enacted 1978 Lane County Ordinance No. 688. A forest resource land designation is also consistent with what is shown by the evidence in the record including the aerial photographs of the Subject Property that are attached to the application.

We find that the primary issue to be decided in connection with this Conformity Determination Amendment (which will restore a forest resource designation and zoning to the Subject Property) is whether the designation and zoning should be Non-Impacted Forest Lands (F-1, RCP) or Impacted Forest Lands (F-2, RCP). We find unequivocally that the Subject Property qualifies for an Impacted Forest Lands (F-2, RCP) designation and zoning under the applicable criteria.

Lane County Rural Comprehensive Plan Goal 4: Forest Land - Policy 15 sets out the criteria for deciding whether forest land shall be designated and zoned as Non-impacted Forest Lands or Impacted Forest Lands as follows:

15. Lands designated within the Rural Comprehensive Plan as forest land shall be zoned Non Impacted Forest Lands (F 1, RCP) or Impacted Forest Lands (F 2, RCP). A decision to apply one of the above zones or both of the above zones in a split zone fashion shall be based upon:

a. A conclusion that characteristics of the land correspond more closely to the characteristics of the proposed zoning than the characteristics of the other forest zone. The zoning characteristics referred to are specified below in subsections b and c. This conclusion shall be supported by a statement of reasons explaining why the facts support the conclusion.

b. Non impacted Forest Land Zone (F-1, RCP) Characteristics:

(1) Predominantly ownerships not developed by residences or non-forest uses.

(2) *Predominantly contiguous, ownerships of 80 acres or larger in size.*

(3) *Predominantly ownerships contiguous, to other lands utilized for commercial forest or commercial farm uses.*

(4) *Accessed by arterial roads or roads intended primarily for forest management.*

(5) *Primarily under commercial forest management.*

c. *Impacted Forest Land Zone (F 2, RCP) Characteristics*

(1) *Predominantly ownerships developed by residences or non-forest uses.*

(2) *Predominantly ownerships 80 acres or less in size.*

(3) *Ownerships generally contiguous to tracts containing less than 80 acres and residences and/or adjacent to developed or committed areas for which an exception has been taken in the Rural Comprehensive Plan.*

(4) *Provided with a level of public facilities and services, and roads, intended primarily for direct services to rural residences.*

A review of the evidence and testimony, including the objections raised around terms contained in this policy makes it clear that the focus of the analysis must be on the property proposed for forest land zoning. For reasons that become clear when each of the various portions of the policy are addressed, most of the assessment of property or the area beyond the boundaries of the property proposed for zoning comes through the expression of the characteristics of each zone and does not rely on a precise definition of the term "ownerships" as either a "legal lot or parcel" or a "tract" of land since the primary focus is on the land that is the subject of the zoning request itself. For that reason we reject the assertion that the term means more than the Subject Property.

We find that the term "ownerships" contained in the criteria of RCP Goal 4 Policy 15 should be considered as including only the land being proposed for rezoning (unless other qualifiers in a particular characteristic compels a different result) because of the introductory language in Policy 15 and that finding constitutes a reasonable interpretation of the term "ownerships" as contained in that policy. Such an interpretation is consistent with the text, context, purpose and intent of Policy 15. Sub-paragraph a. of Policy 15 states that a decision to apply one of the zones (or both in a split zone fashion) shall be based upon:

"a. A conclusion that **characteristics of the land** correspond more closely to the characteristics of the proposed zoning than the characteristics of the other forest zone." (Emphasis added)

The characteristics of the land, not the ownership of it, control the analysis. Policy 15 was crafted as a means of distinguishing large-scale industrial forest land from small-scale non-industrial forest land in the present and for the foreseeable future. The policy was intended to provide an analysis of the size and use of the subject property and of the land in the immediate

vicinity. Size and use of land constitute the four sets of characteristics of each type of forest land required by Policy 15 to be analyzed and compared. The listed characteristics do not include any reference to the determination of a particular type of ownership or whether contiguous properties owned by the same person or entity constitute one or more ownerships. The critical focus of the analysis is on the property proposed for rezoning and the characteristics that property has that mitigate toward consideration of applying F-1 or F-2 zoning.

The term "ownership" as used in Goal Four, Policy 15, has been utilized to identify different lands and the uses thereon, which are to be considered in making an evaluation of whether a F-1 or F-2 designation is warranted for the land under consideration for zoning. This was due to the need to look within the subject land to identify the development and uses present and to partially look beyond those boundaries to the lands in the general vicinity and identify the existing resource or nonresource uses and development on the surrounding lands. It really amounted to identifying a singular pattern within a more expansive tapestry.

When Goal Four, Policy 15 was originally adopted in 1984 as a component of the General Plan Policies of the Rural Comprehensive Plan, the two planning commissions and the Board of Commissioners were applying the "characteristics" of Policy 15(b) and (c) in a broad matrix designed to (1) acknowledge development existing at the time on specific properties; and (2) analyze those commitments of specific lands in context with a broad-brush view or generalized sense of the surrounding parcelization and uses. Forest lands less than 80 acres in size and developed with residential uses or other nonforest uses, generally received Impacted Forest Land (F2) designations. Public forested lands and larger commercially managed, forest lands that were not impacted by nonforest uses, particularly in the ownership of industrial forest operators, were designated as Nonimpacted Forest Lands (F1).

Prior analysis during the 1970s and the resulting Lane Code Chapter 10 zoning designations which were incorporated into the thirteen subarea plans, contributed to the final decision on a property-by-property basis in 1984. At that time, the need for precise definition of the "ownership" term as legal lot, or parcel or tract was not important because the whole county was the subject of the zoning designation. In considering the present day applications, looking at the area proposed for rezoning generally provides sufficient definition to the term "ownership". In the case of the subject 37.5 plus acres of Ordinance No. PA 1236, the subject land would have been re-designated from FF20 Farm-Forestry to F2 Impacted Forest Land as were other lands with similar characteristics in the area, at the time.

The critical focus of the analysis is on the property proposed for rezoning and the characteristics that property has that mitigate toward consideration of applying F-1 or F-2 zoning. Properties subject to amendments in the past have included portions or combinations of tax lots as metes and bounds descriptions with single owners or multiple owners. Lane Code does not require legal lot determinations as a qualifier for application for a zone change in recognition of the variety of configurations of zoning that might make sense regardless of property boundaries. Legal lot status is a factor that comes into play in subsequent development permits, both planning and building, after a zoning designation has been applied.

A reading of Goal Four, Policy 15 interpreting “ownership” to mean “land being proposed for rezoning” seems a reasonable approach that avoids debate over whether the focus should be more than the subject property, beyond the portion of that analysis determined by other text that clearly notes the connection of the subject property to surrounding lands.

Goal Four, Policy 15 uses three terms to define the areas to be reviewed when assessing the surrounding properties as well as the land being considered for rezoning. Those terms are “contiguous”, “generally contiguous” and “adjacent”.

“Contiguous”, as defined in Lane Code 16.090 definitions, is used in Policy 15.b. (2) and (3) to look for the different characteristics of F-1 land. The text in LC 16.090 provides: “Having at least one common boundary line greater than eight feet in length. Tracts of land under the same ownership and which are intervened by a street (local access, public, County, State or Federal street) shall not be considered contiguous.” In the case of 15.b.(2), the intent is to look within the land being proposed for rezoning to determine whether or not that land being proposed for rezoning consists of contiguous land owned by the applicant that is 80 acres or larger in size. In the case of 15.b. (3), the intent is to determine whether other land contiguous to the land being proposed for rezoning is in commercial forest or commercial farm use.

Policy 15.c.(3) does not use the term “contiguous” to determine the same relationship between the land proposed for rezoning and the tapestry of uses and development in the surrounding area. Policy 15.c.(3) uses “generally contiguous” in a broader sense that looks beyond the definition of “contiguous” to determine if “tracts” owned by other property owners in the general area of the land being proposed for rezoning are less than 80 acres in size and developed with residences. The analysis is intended to venture beyond the only contiguous properties with common property lines. In some instances, common sense may push that analysis a distance in some or all directions to fully assess the characteristics of the surrounding uses and development particularly when considering a “tract”.

Policy 15.c.(3) also uses the term “adjacent” to look even further beyond the nearby tracts or across intervening right-of-way to acknowledge the impacts of development within developed and committed exception areas in the general vicinity of the land being proposed for rezoning. It is a broader look at the complete tapestry of uses and development, particularly nonresource uses, in the general area. It does not depend on contiguity for that consideration.

This interpretation affirms the Lane Code 16.090 definition of “contiguous” as it is used in Policy 15.b.(2) and 15.b.(3) in the assessment of F-1 characteristics. It also makes clear that “generally contiguous” as used in Policy 15.c. (3) is different and broader in meaning and application when assessing the F-2 characteristics. It will remain for the Board of Commissioners to exercise discretion on a case-by-case basis, in making a final determination on how wide and how far that assessment pursuant to Policy 15.c.(3) would need to reach to provide a factual basis in arriving at a decision to approve or deny a request for rezoning. In all cases, the analysis under Goal Four, Policy 15 does not require a precise mathematical computation since the focus is on all the characteristics and whether, on balance, the land proposed for rezoning more closely corresponds to the F-1 or F-2 characteristics.

We find that the characteristics of the Subject Property do not correspond closely with the Non-impacted Forest Land Zone (F-1, RCP) characteristics:

Policy 15.b.(1):

Predominantly ownerships not developed by residences or non-forest uses

We find that the Subject Property does not have this characteristic. It consists of road and railroad right-of-way ownerships and a 37.5-acre ownership that are generally in non-forest uses such as the roadways (Row River Road and Spillway Road), the dam and the spillway. Based on this alone, we conclude the Subject Property consists predominantly of ownerships that are developed by non-forest uses.

In addition, the Subject Property is a portion of the 970.71-acre ACOE parcel that is predominantly developed with non-forest uses. Specifically, we also find that most of the area of the ACOE parcel is developed with the Dorena Reservoir. In addition to the reservoir, there are developed improvements on other portions of the parcel including Dorena Dam and related infrastructure (some located on the 37.5-acre portion of the Subject Property) and parks and recreation facilities including those at the Schwarz Park campground and recreation area (located at the base of Dorena Dam on the banks of the Row River) which has restrooms, showers, camp sites and RV sites and those at Baker Bay Park (located on the south side of Dorena Reservoir) which has restrooms, showers, picnic areas, a swimming area, boat ramp, marina, camp sites and RV sites, paved parking areas and recreational commercial facilities. We find that the assessor's records also reflect that there are a number of manufactured structures on the ACOE parcel including a single family dwelling associated with intense non-forest development.

We conclude that the response to this criterion strongly supports our finding, conclusion and decision that the Subject Property be designated and zoned as Impacted Forest Land.

Policy 15.b.(2):

Predominantly contiguous ownerships of 80 acres or larger in size.

The Subject Property is approximately 37.5 acres in size and therefore does not correspond to this characteristic even with the additional area included in the rights-of-way.

With respect to property ownerships contiguous to the Subject Property, the tax lots referred to in these findings are shown on Appendix C to the application. We find that that portion of the ACOE parcel located contiguous to the south and east of the Subject Property is larger than 80 acres, although as noted above, the vast majority of that land is developed with non-forest uses, most of it having been developed with Dorena Reservoir.

There is one other property ownership 80 acres or larger in size that is north of the Subject Property and separated from it only by Row River Road and the abandoned railway right-of-way. That property, which consists of two tax lots (Tax Lots 100 and 208), is owned by the Verek Trust et al. and contains slightly over 207 acres. It is under a different ownership than the Subject Property. In addition, However, Lane County already designated and zoned that property for Rural Residential (RR-10) use. Furthermore, Lane Code Section 16.090 defines "contiguous" as having one common boundary greater than eight feet in length and the definition makes clear that even if the land is in the same ownership, it is not "contiguous" if it is separated

by a public road. The Verek Trust property is separated from the Subject Property by Row River Road so it is not technically contiguous for the purpose of this analysis under this characteristic.

Other property ownerships located directly north of the Subject Property (but also separated from it by Row River Road) are smaller than 80 acres: (i) Tax Lot 203 is a 4.85 acre parcel zoned RR-5; (ii) Tax Lot 200 is a 5.8 acre parcel zoned RR-5; and Tax Lot 500 is a 16.20 acre parcel zoned ML (Marginal Lands).

All of the other contiguous propertie ownerships are much smaller than 80 acres. (See Appendix C to the application.) Those contiguous propertie ownerships are as follows:

1. Tax Lot 201 – 1.1 acres;
2. Tax Lot 202 – 12.14 acres; and
3. Tax Lot 401 – .97 acres.

In summary, we find that neither the Subject Property itself (which is approximately 37.5 acres in size) nor the properties contiguous ownerships to the Subject Property (which are predominantly smaller than 80 acres and not in the same ownership as the Subject Property) correspond more closely to the stated Non-Impacted Forest Land characteristic, thereby supporting our finding, conclusion and decision that the Subject Property be designated and zoned as Impacted Forest Land.

Policy 15.b.(3):

Predominantly ownerships contiguous, to other lands utilized for commercial forest or commercial farm uses.

As is reflected in the maps attached as Appendix A, Appendix B and Appendix C to the application, the other land ownerships contiguous to the Subject Property are predominantly *not* utilized for commercial forest or commercial farm uses.

Also, as discussed above, the other land ownerships to the north of the Subject Property are not technically “contiguous” because they are separated from the Subject Property by Row River Road. Nevertheless, even if those land ownerships were deemed to be contiguous or connected to the Subject Property under the definition of that term in LC 16.090, not one of those other land ownerships are is in the same ownership as the Subject Property or used for commercial forest or commercial farm uses. Those other land ownerships are all zoned and designated for either Rural Residential (RR-5; RR-10) uses or as Marginal Land (ML).

The contiguous land ownerships to the west of the Subject Property are also not used for commercial forest or commercial farm uses. All of those land ownerships are designated and zoned for Rural Residential (RR-5) use, and all are developed with residential dwellings.

The land contiguous ownership to the south of the Subject Property across the Row River is that portion of the ACOE parcel that is developed with restrooms, showers, camp sites and RV sites associated with the Schwarz Park campground and recreation area (located at the base of Dorena Dam on the banks of the Row River). We think the intervening ownership of the beds and banks of the river by the state makes this area noncontiguous with the Subject Property. In any case, The entire ACOE parcel became unzoned as a result of 1984 Ordinance No. 884. However, the county previously recognized that the portion of the ACOE parcel south of the Subject Property

was not forest resource land when, pursuant to 1978 Ordinance No. 688, it included that property within the Public Reserve (PR) zone described in Lane Code Chapter 10, which is a zone that allows such uses as public parks, playgrounds, hunting and fishing lodges, government buildings and other intensive, non-forest uses. We find that the land contiguous ownership to the south of the Subject Property is not contiguous and is not used for commercial forest or commercial farm uses.

Finally, the contiguous land ownership to the east of the Subject Property is that portion of the ACOE parcel that is developed with Dorena Reservoir, and which is not used for commercial forest or commercial farm uses.

Since the other land ownerships contiguous to the Subject Property are predominantly if not exclusively utilized for purposes other than commercial forest or commercial farm uses, the response to this criterion strongly supports our finding, conclusion and decision that the Subject Property be designated and zoned as Impacted Forest Land.

Policy 15.b.(4):

Accessed by arterial roads or roads intended primarily for forest management.

We find that the Subject Property is not accessed by arterial roads or roads intended primarily for forest management.

Access to the Subject Property is provided by Spillway Road. Spillway Road is classified in the County's Transportation System Plan (TSP) as a Rural Local road to the point it enters the Subject Property, and it provides access to the rural residential development to the west of the Subject Property as well as access at the westerly boundary of the Subject Property. We also find that from the point Spillway Road enters the Subject Property, it is not open to the public. That portion of the road provides access through the Subject Property to the base of Dorena Dam on the northwest bank of the Row River. That portion of the road was built for the purpose of providing access for the operation and maintenance of Dorena Dam; it was not built for the purpose of commercial forestry.

Access to Spillway Road is via Shoreview Drive, which is classified in the TSP as a Rural Major Collector.

Neither Spillway Road nor Shoreview Drive is classified as an arterial road, and neither road is intended primarily for forest management. Accordingly, the response to this criterion also strongly supports our finding, conclusion and decision that the Subject Property be designated and zoned as Impacted Forest Land.

Policy 15.b.(5):

Primarily under commercial forest management.

We find that the Subject Property is not under commercial forest management. †The primary use of the entire ACOE parcel that includes the Subject Property is for the operation and maintenance of Dorena Dam and Reservoir. There is no evidence that the portion of that operation that is on the Subject Property and the right-of-way not owned by ACOE are under commercial forest management. The dam and reservoir provide flood control, irrigation, recreational opportunities, and improved downstream passage. The Subject Property is not under commercial forest management. Accordingly, the response to this criterion similarly strongly

supports our finding, conclusion and decision that the Subject Property be designated and zoned as Impacted Forest Land.

We find that the characteristics of the subject property do correspond closely with the Impacted Forest Land Zone (F-2, RCP) characteristics:

Policy 15.c.(1):

Predominantly ownerships developed by residences or non-forested uses

We find that the characteristics of the Subject Property correspond closely with this characteristic. It consists of road and railroad right-of-way ownerships and a 37.5-acre ownership that are generally in non-forest uses such as the roadways (Row River Road and Spillway Road), the dam and the spillway. Based on this alone, we conclude the Subject Property consists predominantly of ownerships that are developed by non-forest uses.

In addition, the Subject Property is a portion of the 970.71-acre ACOE parcel that is predominantly developed with non-forest uses. Almost the entire ACOE parcel is developed with Dorena Reservoir. In addition to the reservoir, there are developed improvements on other portions of the parcel including Dorena Dam and related infrastructure (some located on the 37.5-acre portion of the Subject Property) and parks and recreation facilities including those at the Schwarz Park campground and recreation area (located at the base of Dorena Dam on the banks of the Row River) which has restrooms, showers, camp sites and RV sites and those at Baker Bay Park (located on the south side of Dorena Reservoir) which has restrooms, showers, picnic areas, a swimming area, boat ramp, marina, camp sites and RV sites, paved parking areas and recreational commercial facilities. The assessor's records also reflect that there are a number of manufactured structures on the parcel including a single family dwelling. Moreover, Subject Property is not managed as part of a commercial forest operation and is developed with portions of the Dorena Dam infrastructure and the access roadway that provides access for inspection and maintenance of the dam and the spillway.

In short, the response to this criterion strongly supports our finding, conclusion and decision that the Subject Property be designated and zoned as Impacted Forest Land.

Policy 15.c.(2):

Predominantly ownerships 80 acres or less in size.

While the entire ACOE parcel is much larger than 80 acres, this Conformity Determination only pertains to the Subject Property. The Subject Property includes approximately 37.5 acres of ACOE property in size and accordingly, the predominant ownership of the Subject Property under consideration is well under the 80-acre threshold. Moreover, as was explained previously, the vast majority of the entire ACOE parcel is developed with non-forest uses, most of the parcel having been developed with Dorena Reservoir and park, camping and recreation facilities. Finally, even if the Subject Property is deemed not to conform to this characteristic because the entire ACOE parcel is larger than 80 acres, this is only one of the four Impacted Forest Land characteristics and we find that the Subject Property corresponds closely with each of the other three Impacted Forest Land characteristics (Policy 15.c.(1), (3) and (4)). In addition, the Subject Property does not closely conform to any of the five Non-Impacted Forest Land characteristics.

When considering all the characteristics together, we conclude the Subject Property more closely corresponds to the Impacted Forest Land characteristics.

Policy 15.c.(3):

Ownerships generally contiguous to tracts containing less than 80 acres and residences and/or adjacent to developed or committed areas for which an exception has been taken in the Rural Comprehensive Plan.

As is reflected in the map attached as Appendix C to the application, the Subject Property is generally contiguous to tracts containing less than 80 acres and residences and/or adjacent to developed or committed areas for which an exception has been taken in the Rural Comprehensive Plan.

As is shown by the map attached as Appendix C to the application, the tracts to the north of the Subject Property are not technically “contiguous” because they are separated from the Subject Property by Row River Road. Nevertheless, except for the tract owned by the Vereck Trust et al. that is zoned RR-10 and is part of a rural residential exception area, each of those tracts is substantially smaller than 80 acres: the Richards tract (TL 203) is 4.85 acres, the Bettis tract (TL 200) is 4.85 acres; and the McCarthy tract (TL 500) is 16.20 acres. Furthermore, each of those tracts (except the McCarthy tract that is zoned Marginal Land) is part of an “adjacent” developed and committed area for which an exception has been taken. Finally, except for the Vereck Trust tract, each of the other tracts to the north of the Subject Property, including the McCarthy tract, is developed with a residence.

The generally contiguous tracts to the west of the Subject Property are each substantially smaller than 80 acres. In addition, those ~~are~~ tracts are zoned for Rural Residential (RR-5) use and development and are part of an “adjacent” developed or committed area for which an exception has been taken in the Rural Comprehensive Plan. Finally, all of those tracts are developed with residences.

The ~~contiguous~~ “tract” to the south and east of the Subject Property is that portion of the ACOE parcel that to the south of the Subject Property is developed with restrooms, showers, camp sites and RV sites associated with the Schwarz Park campground and recreation area (located at the base of Dorena Dam on the banks of the Row River) and that to the east of the Subject Property is developed with the Dorena Reservoir and the associated Baker Bay Park recreational amenities described in our findings above. That “tract” is larger than 80 acres, but as noted previously, it may be generally contiguous but it is not designated in the RCP and is unzoned.

In short, the majority of the tracts generally contiguous or adjacent to the Subject Property contain substantially less than 80 acres, are developed with residences, and are within developed or committed areas for which an exception has been taken in the Rural Comprehensive Plan. Accordingly, the response to this criterion strongly supports our finding, conclusion and decision that the Subject Property be designated and zoned as Impacted Forest Land.

Policy 15.c.(4):

Provided with a level of public facilities and services, and roads, intended primarily for direct services to rural residences.

As discussed in our findings in response to Policy 15.b.(4), access to the Subject Property is provided by Spillway Road. Spillway Road is classified in the County's Transportation System Plan (TSP) as a Rural Local road to the point it enters the Subject Property, and it provides access to the rural residential development to the west of the Subject Property as well as access at the westerly boundary of the Subject Property. Access to Spillway Road is via Shoreview Drive, which is classified in the TSP as a Rural Major Collector. Spillway Road and Shoreview Drive are intended primarily to serve the rural residential development in the area and the Dorena Reservoir parks and recreation areas.

While the Subject Property is not in an urban area and therefore is not served by municipal water or sewer services, we find that it is provided with the following public facilities and services:

1. Emergency Services: Cottage Grove Fire and Ambulance Department;
2. Schools: District 45J – South Lane

The Subject Property also has access to electric utility and telephone service.

In summary, the Subject Property conforms closely to this characteristic which also supports our finding, conclusion and decision that the Subject Property be designated and zoned as Impacted Forest Land.

CONCLUSION REGARDING IMPACTED FOREST LAND ZONE (F-2, RCP) DESIGNATION AND ZONING:

In summary, we find, conclude and decide that the Subject Property does not conform to the Non-Impacted Forest Land Zone (F-1, RCP) characteristics and that the Subject Property does conform more closely to the Impacted Forest Land Zone (F-2, RCP) characteristics. Accordingly, we find, conclude and decide that the Subject Property should, through the enactment of Ordinance No. PA 1236, be designated and zoned Impacted Forest Land (F-2, RCP).