

The proposed rezoning on the subject property would reduce the amount of land zoned F-1 by 32 percent and expose the remaining property zoned F-1 to the likelihood of an adjacent nonforest dwelling, the stated intent of the applicant. Commercial forest management of the 80-acre remainder would become more difficult, especially because access to that portion of the subject property would have to be through the rezoned portion. ~~The applicant has not shown how the proposed rezoning is consistent with this general purpose statement of Chapter 16 of the Lane Code.~~

B. Not be contrary to the public interest.

The public interest is best expressed by the Rural Comprehensive Plan. The overall intent of the Forest Land policies is encourage the preservation of forest land, to properly characterize F-1 lands and to protect those lands through accurate zoning and through the consolidation of ownerships. The best determinate of the public interest is therefore a showing of consistency with Forest Lands Policy #15 of the Rural Comprehensive Plan, addressed below in "D."

C. Consistent with Sections 16.210 and 16.211 of the Lane Code.

The joint purpose of the F-2 and F-1 Districts is to implement the forest land policies of the Lane County Rural Comprehensive Plan and to conserve forest land for forest uses consistent with Statewide Planning Goal #4, OAR 660-006 and ORS 215.700 through .755. Consistency with the Lane County Rural Comprehensive Plan is addressed in "D," below.

OAR 660-006-0000(1) states that the purpose of the Forest Lands Goal is to conserve forest lands and to carry out the legislative policy of ORS 215.700. ORS 215.700 states a policy to provide certain owners of less productive land an opportunity to build a dwelling on their land and to limit the future division of and the siting of dwellings upon the state's more productive resource land. In the present case, the record indicates that the soils of the property to be rezoned have a uniformly high forest productivity rating and it contains no evidence that surrounding development has or will interfere with forest management practices on the either the property to be rezoned or tax lot 3800 as a whole.

For the above-described reasons, the proposed reconfiguration is not consistent with Sections 16.210 and 16.211 of the Lane Code.

D. Conformity with the Rural Comprehensive Plan.

The subject property is designated "Forest Lands" by the Rural Comprehensive Plan. Goal #4 Policies #15(b) and (c) describe the characteristics of F-1 and F-2

properties, respectively. Policy #15(a) implies that the zoning should reflect a conclusion that the characteristics of the land correspond more closely to the characteristics of the proposed zoning (F-2) than the characteristics of the other forest zone (F-2).

The Lane County Rural Comprehensive Plan contains several policies in the Goal Four element that apply to the proposed rezoning.

Policy 1 Conserve forest land by maintaining the forest land base and protect the state's forest economy by making possible economically efficient forest practices that assure the continuous growing and harvesting of forest tree species as the leading use on forest land consistent with sound management of soil, air, water, and fish and wildlife resources and to provide for recreational opportunities and agriculture.

This policy appears to be advisory in nature and not directly applicable to the rezoning at hand.

Policy 2 Forest lands will be segregated into two categories, Non-Impacted and Impacted and these categories shall be defined and mapped by the general characteristics specified in the Non-Impacted and Impacted Forest Land Zones General Characteristics.

This policy appears to make reference to the policies set forth in Policy 15.

Policy 15 Lands designated within the Rural Comprehensive Plan as forest land shall be zoned Non-Impacted (F-1/RCP) or Impacted Forest Land (F-2/RCP). A decision to apply one of the above 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. 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.

The first issue, and one that is determinative to the success of this rezoning request, is the definition of the term "land." Relying upon the discussion of "ownership" in the Findings of Fact supporting Ordinance PA 1236,⁵ the applicant proposes, and the staff concurs, that the term "land" refers to the portion of the subject property that is proposed for rezoning. I do not

Symbiotic 5
⁵ Ordinance PA 1236, adopted August 20, 2006 was supported by Findings of Fact that interpreted the provisions of Rural Comprehensive Plan Forest Lands Policy #15.

believe that this was the definition embraced by the Board of Commissioners. The term "ownerships" is used in Sections b. (1) - (3) and c. (1) - (3) of Policy 15. The question considered by the Board was whether the term described the environment (i.e. ownership pattern) around the subject property or the subject property itself. The Board determined that the latter interpretation was correct. For instance, in applying its interpretation of Policy 15.b.(1) to Planning Action (PA) 06-5476, the Board held that the phrase "*predominantly ownerships not developed by residences or non-forest uses*" was to be measured against the property to be rezoned and not whether property was, for instance, one of several properties of common ownership within a tract. This is consistent with a determination that the "subject property" is the "land" against which the characteristics of F-1 and F-2 properties must be measured against. However, tax lot 3800 is the smallest unit of "ownership" that is divisible absent the application of split zoning.

The findings supporting Ordinance PA 1236 expressly acknowledge that the application of Policy 15 may result in split zoning.⁶ I believe, however, that this interpretation must be read extremely narrowly in order to avoid the creation of a loophole that could threaten the viability of Non-Impacted Forest Land zoning throughout the county.

Tax lot 3800 is under single ownership and comprises one legal lot. A request for split zoning is inherently different from that of a situation where an entire parcel is subject to a rezoning request. The concept of split zoning, as applied by the applicant and sanctioned by staff, has the dangerous potential of allowing Non-Impacted Forest Land to be carved up through rezoning based upon geographical vagaries that do not take into account the commercial viability of the property as a whole.

For this reason and for reasons explained below, I believe that the Policy #15 analysis of appropriate forest zoning should be applied to the entirety of tax lot 3800.

b. Non-impacted Forest Land Zone characteristics:

- (1) Predominantly ownerships not developed by residences or nonforest uses.**

In the application of RCP Goal 4 Policy 15 in Ordinance No. PA 1236, the Board of County Commissioners interpreted the use the term "ownerships" to apply only to the property subject to the

⁶ See the last line of the second full paragraph of the Findings of Fact and Conclusions of Law (Ordinance PA 1236), pg. 8.

rezoning. However the Board seemed to leave open the possibility that the characteristics of forestland may warrant a different conclusion. Tax lot 3800 is not developed with a residence nor is it occupied by nonforest uses so regardless of whether the term "ownership" is applied to the entire parcel or the portion of tax lot 3800 subject to this rezoning request, this characteristic of Non-impacted Forest Land zoning is met.

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

Staff and the applicant have interpreted Ordinance No. PA 1236 to mean that the term "ownership" is to be applied to the portion of the subject property that is subject to the rezoning. I find this interpretation, in the context of this rezoning request, to be inconsistent with the plain language of Policy 15.b.(2), with the intent of Policy 15.a. and with the plain meaning of "contiguous."

Section (a) of Policy 15 requires that the rezoning inquiry examine whether the characteristics of the "land" correspond more closely to the characteristics of the proposed zoning than the characteristics of the other forest zone. To apply the term "contiguous, ownerships" to a portion of property that is otherwise a stand-alone, legal lot essentially makes the criterion meaningless. That is, there is no initial baseline from which to measure compliance as "contiguous ownerships" would be whatever size (and location) an applicant wishes the rezoned parcel to be. Further, despite the applicant's intent to carve up an otherwise homogeneous parcel, the bisected portions are still under the same ownership and still contiguous.

A statement crucial to the application of Policy 15.b.(2) is found on page 8 of the Findings of Fact and Conclusions of Law of Ordinance No. PA 1236.⁷ This statement is as follows (*emphasis mine*):

"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 the finding constitutes a reasonable

⁷ Exhibit C., Findings of Fact and Conclusions of Law, Ordinance No. PA 1236 (August 20, 2006)

interpretation of the term "ownerships" as contained in that policy."

Ordinance No. PA 1236 concerned the application of RCP Goal 4 Policy 15 to property that, because of an oversight, had no zoning. Further, the property subject to the rezoning was fundamentally different, both in terms of geography and usage, from the remainder of its contiguous ownership, which was essentially used as a reservoir and supporting facilities (dam). In the present case, tax lot 3800 is homogeneous in nature and there is little to distinguish the property subject to the rezoning from the remainder of its parent tax lot.

I find that Policy 15.b(2) must be applied to the whole of tax lot 3800 and therefore the characteristics of that property are consistent with this criterion.

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

Tax lot 3800 is bordered by five contiguous ownerships, not counting Poodle Creek Road. Three of these ownerships, tax lots 3601 and 3600 (Evans Family Trust), tax lot 3700 (Paul and Norma Templeton), and tax lot 3900 (Cascadian Bowman) are under some form of forest deferral. Further, tax lots 3700, 3900 and 3901 are zoned F-1. The characteristics of tax lot 3800 are consistent with this criterion.

Even if the portion of tax lot 3800 subject to the rezoning request were to be considered as the "ownership," there would still be three contiguous ownerships utilized for commercial forest or commercial farm uses: the remainder of tax lot 3800 used for commercial forestry, tax lot 3900 to the east owned and used by the Cascadian Bowmen, and tax lot 3600 (7 acres) to the west. The 38.17 acres of the subject property does not meet this characteristic of Non-Impacted Forest Lands.

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

The subject property is accessed by Poodle Creek Road, a public county road with a functional classification of "Rural Major Collector." In rural areas, major collectors provide connections from outlying areas to the arterial system (primarily state highways). This road serves the rural residents of the Poodle

Creek area, including the Developed and Committed Area across from the subject property, and provides access to State Highway 126 on the south end and State Highway 36 on the north end. Neither tax lot 3800 nor the portion of that tax lot subject to the rezoning request is accessed by an arterial road or a road intended primarily for forest management. The property does not meet this characteristic of Non-Impacted Forest Lands.

(5) Primarily under commercial forest management.

The tax lot 3800 is zoned F-1, is under a forest deferral and contains soils with a forest capability range of 162 – 184 cu. ft./ac./yr. on 81% of its area. Timber was harvested by the clear-cut method in 1998 although it does not appear that it has been replanted. Tax lot 3800 has been treated as a single forest management unit in the recent past and failure to adhere to State Forestry replanting regulations does not change this fact. The entire tax lot exhibits this characteristic of Non-Impacted Forest Lands.

In summary, tax lot 3800 exhibits four of the five characteristics of property that should be zoned non-impacted forest land.

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

(1) Predominantly ownerships developed by residences or nonforest uses.

Neither tax lot 3800 nor the portion of that tax lot subject to the rezoning request is developed by a residence or nonforest use and therefore this characteristic of Impacted Forest Lands is not present.

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

Tax lot 3800 is 118 acres in size and therefore does not meet this characteristic of Impacted Forest Lands.

(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.

Lane Code 16.090 defines "tract" as a lot or parcel. ORS 215.010(2) defines "tract" as "one or more contiguous lots or

parcels under the same ownership." Using the statutory definition, Tax lot 3800 is contiguous on the west and north to tracts that exceed 80 acres in size. Staff defines the term "generally contiguous" as comprising all properties that share any length of common boundary, touch the subject property boundary at a corner point, and include the first tier of parcels immediately across the road to the south. This interpretation adds an additional 11 tracts of less than 80 acres in size, of which 10 are developed with one or more residences (clockwise from the northeast: tax lots 500, 900, 1100, 3900, 3901, 100, 105, 103, 102, 101, 302).

Tax lot 3800 meets this characteristic of Impacted Forest Lands.

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

Tax lot 3800, including the portion of this property subject to the rezoning request, has access to a full range of services normally available to a rural residence, including police and fire coverage, school, electricity, telephone, access, and solid waste disposal and therefore meets this characteristic of Impacted Forest Lands.


Tax lot 3800 has half the characteristics that characterize Impacted Forest Lands.

Policy 15 requires a conclusion that the characteristics of the land correspond more closely to the characteristics of the proposed zoning than the characteristics of the other forest zone. In the present case, the "land" represents four of the five characteristics of Non-Impacted Forest Land and half of the characteristics that would denote Impacted Forest Land.

Conclusion

The proposed rezoning is not consistent with the Lane Code and the Rural Comprehensive Plan.

Respectfully Submitted,


Gary Darnielle
Lane County Hearings Official



*Protecting Our Natural Heritage
From the Coast to the Cascades*

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03-07-07A08:33 RCVD

Mr. Gary Darnielle
Lane County Hearings Official
125 East 8th Avenue
Eugene, OR 97401

March 6, 2007

RE: PA 06-6054, Lininger zone change from F1 to F2

Dear Mr. Darnielle:

The purpose of this letter is to respond to additional material submitted by the applicant in a letter dated February 15, 2007.

I. *Symbiotics* is not binding precedent.

The applicant has repeatedly asserted that the county's decision in *Symbiotics* establishes precedent that is binding in this case. This is not correct.

A county is not bound by a previous legal interpretation of a local ordinance where the county determines that the earlier interpretation is incorrect. *Marquam Farms Corp. v. Multnomah County*, 32 Or LUBA 240 (1996). The county's obligation in this case is to correctly apply the applicable decision criteria to the facts in this case. If a previous decision incorrectly interpreted or applied decision criteria, the county is obligated to correct its previous error.

LandWatch suggests the county's primary concern here should not be whether its decision is consistent with an earlier, unchallenged and unreviewed decision, but rather should be whether its decision in this case is correct.

II. Size of the property

The applicant argument is twofold: 1) the "subject property" is 80 acres in size, and therefore 2) the subject property resembles the F2 characteristic.

The applicant argues that a previous hearings official decision provides binding precedent. As previously explained, the county is and cannot be bound by a previous decision that is in error. There is nothing in the text or the context of Goal 4 Policy 15 that would support interpreting "ownership" to allow for consideration of less than a full ownership, especially a sub-parcel portion of an ownership.

The applicant fails to recognize that a parcel of exactly 80 acres in size matches the characteristics of both F1 and F2 lands.

Further, the applicant does not dispute that a previous property line adjustment removed 1.8 acres from the subject property. The "property line adjustment" was not reviewed or approved by the county and did not comply with ORS 92.190(3) or Lane Code Chapter 13, and is of no legal effect. The subject property is larger than 80 acres. LC 13.700 provides remedies for failure to comply with Lane Code Chapter 13, including prohibition on issuing building permits.

The applicant argues that legal lot status is not relevant to this proceeding. However, determining the lawful configuration and extent of the subject property is not only relevant but essential to the required inquiry, as that inquiry cannot proceed until the property boundaries are established.

The applicant argues that property line adjustment and legal lot issues were resolved in previous decisions and that those decisions cannot be collaterally attacked in this proceeding.

The decision in the previous land use action is not being challenged here; this is a new, separate, and independent proceeding. In order to make the determinations required in this case, the county must make findings regarding size and boundaries of the subject property. Previous determinations in proceedings that have no relationship are not "law of *this* case," particularly where appellants in this case were not parties to the previous decision.

The applicant notes in a footnote that the transfer of 1.8 acres of F1 land to the adjoining RR parcel did not "create" a 1.8-acre forestland parcel. That transfer was not reviewed for and is not consistent with the Lane County Comprehensive Plan or with Lane Code Chapter 13.

III. "Generally contiguous"

The applicant suggests that "generally contiguous" can be interpreted to include "a broader tapestry of tracts beyond those immediately adjacent to the Subject Property."

The applicant's suggested reading would remove all meaning or effect from the word "contiguous." For the reasons laid out in applicant's letter, the suggested interpretation would render the word "contiguous" "mere surplusage, thereby violating time-honored principles of interpretation." If the county had intended that a "broad tapestry of tracts" be considered in the inquiry, it could easily have said so.

"Contiguous" is defined by LC 13.010 and LC 16.090 to mean:

"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."

The suggested interpretation simply is not consistent or reconcilable with Lane Code. "Generally contiguous" could more reasonably and readily be interpreted to look "generally" at the perimeter of the property and to require an evaluation of the characteristics of the contiguous tracts, "generally."

The suggested interpretation is also bad policy, as it would allow an applicant or the county to expand the area to be considered arbitrarily and without any standards. The objective of Goal 4

Policy 15 is to identify and protect the county's commercial forest resources. If the suggested interpretation were to be applied, that purpose and intent would be undermined.

As explained earlier, any reliance on the *Symbiotics* decision is misplaced.

IV. "Intent" of Laughlin Road

The applicant suggests that it is not necessary to inquire into what the "intent" of Laughlin Road is or was. However, that is exactly what the criteria require – findings addressing whether the road is or was "intended primarily for forest management" or "intended primarily for direct services to rural residences."

There is no evidence in the record to support the required findings.

V. "Commercial" forest land

The applicant states that tax lot 1601 comprises 9.2% of the perimeter of the subject property and that it is not being managed for commercial forestry.

As the 1.8 acres of tax lot 1601 that was carved out of the subject property was never legally separated from the subject property, the perimeter referred to does not in fact exist.

The only reason that 1.8 acres is not in commercial forest use is because the area was illegally removed from the subject property. The applicant should not and cannot be rewarded for an illegal "property line adjustment."

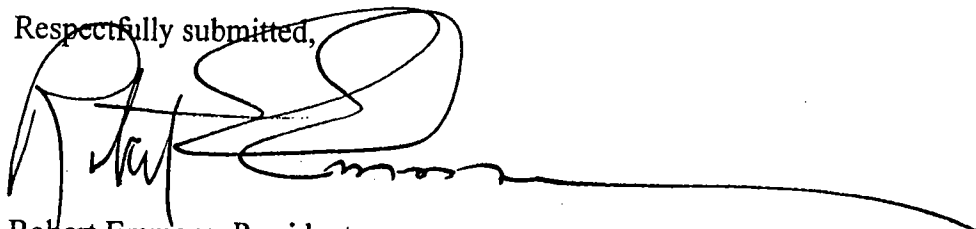
The fact that the new Parcel 3 is subject to a conservation easement does not necessarily lead to the conclusion that the property is not being used for commercial forestry. Commercial forest products are being grown on that property. The use of forest land for conservation purposes is not inconsistent with and does not preclude its use for commercial forest purposes.

The applicant's argument that commercial forest land can be "converted" to non-commercial forest land simply by the owner declaring his intent that it be so is dangerous, and would threaten the continuation of the forest industry in Lane County and throughout Oregon. The intent of any particular owner – which could change at any moment in time or with any change in ownership – should not govern or determine the planning and zoning of land.

CONCLUSION

The characteristics of the subject property correspond more closely correspond to those of F1 lands rather than to those of F2 lands. Therefore the rezoning request should not be approved.

Respectfully submitted,

A large, stylized handwritten signature in black ink, appearing to read 'Robert Emmons', is written over the signature line.

Robert Emmons, President
LandWatch Lane County



FEB 07 2007

*Protecting Our Natural Heritage
From the Coast to the Cascades*

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February 7, 2007

Mr. Gary Darnielle
Lane County Hearings Official
125 East 8th Avenue
Eugene, OR 97401

RE: PA 06-6054, Lininger zone change from F1 to F2

Dear Mr. Darnielle:

The purpose of this letter is to respond to additional material submitted by the applicant on February 1, 2007.

This letter will re-evaluate the relevant characteristics, taking into account the applicant's new material.

Characteristic 1:

"Predominantly ownerships not developed by residences or nonforest uses."

or

"Predominantly ownerships developed by residences or nonforest uses."

The applicant and the Staff Report concede that the subject property is not developed by residences or nonforest uses and the subject property therefore corresponds more closely to the F1 characteristic.

Characteristic 2:

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

or

"Predominantly ownerships 80 acres or less in size."

Again, this characteristic looks at the ownership or ownerships being considered, and not the surrounding area. The applicant suggests that the 0.6-acre portion of the ownership may be disregarded and that the subject ownership is then only 80 acres in size. However, the suggested reading of the Plan provisions, which would interpret "ownership" to mean less

than the totality of the subject ownership, is not consistent with the text of the Plan provisions.¹

The applicant suggests that the 0.6-acre RR area should not be counted as part of the "ownership" because of the RR zoning. The suggested reading of the Plan provision is not consistent with the text of the provision. Rather, it would qualify and add language to the provision, something like: "Predominantly contiguous ownerships of 80 acres or larger *under the same zoning in size*" or "Predominantly ownerships 80 acres or less *under the same zoning in size*." At issue is the correct zoning of the ownership; it may be in this case that the county will find it appropriate to rezone the RR portion of the subject ownership for forest use.

Applicants suggest that the subject property could be split-zoned to reduce the area to be considered for rezoning below 80 acres in size. The suggestion is manipulative and is not consistent with the Plan requirement that the size of the "ownership" be considered. The suggested interpretation would in essence strip the Characteristic 2 language of all meaning and operation, as any applicant could first ask that a portion of an 80-acre or larger parcel be rezoned from F1 to F2 and then later come back to have the remainder rezoned from F1 to F2. Further, LUBA has ruled that, when inventorying resource land, a parcel must be evaluated as a whole or at least in blocks that meet minimum lot or parcel size standards. *Wetherell v. Douglas County*, 50 Or LUBA 71 (2005). Goal 4 Policy 15 Characteristic 2 cannot be interpreted to allow the county to consider any sub-portion of the ownership that is less than 80 acres in size.

Further, tax lot 1601 was illegally carved out of tax lot 1600 by an illegal and unofficial property line adjustment.² The adjustment resulted in a substandard F1 parcel and is of no effect. See *Phillips v. Polk County*, ___ Or LUBA ___ (LUBA Nos. 2006-133, 2006-134 and 2006-135, 01/02/2007), slip op 6. The illegal property line adjustments also result in all of the properties involved losing their Lane County "legal lot" status. See LC 16.090.

The applicant argues that Ordinance No. PA 1236 (*Symbiotics*) and the hearing official's ruling in PA 04-5517 (*Siegrist*) provides "controlling authority" and that the hearing official in this case is bound by those previous decisions. However, LUBA and the Court of Appeals have repeatedly held that a county is not bound to a previous legal

¹ "Ownership" is not defined in the Plan or Lane Code. The Webster definition provides:

"Ownership, n. 1. the state or fact of being an owner.

"2. proprietorship; legal right of possession; legal or just claim or title (to something).

² ORS 92.190(3) authorizes a county to adjust property lines using procedures other than the replatting procedures in ORS 92.180 and 92.185 only if the property line adjustment procedures "include the recording, with the county clerk, of conveyances conforming to the *approved* property line adjustment[.]" (Emphasis added.) See *Kenagy v. Benton County*, 112 Or App 17, 20 n 2; 826 P2d 1047 (1992) ("Counties may enact more restrictive criteria than" the statutes impose, but "they may not apply criteria that are inconsistent with or less restrictive than the statutory standards."). LUBA in *Phillips* held that the Kenagy principle applies in the context of property line adjustments. The purported "property line adjustments" that resulted in the alleged configuration of the subject property and surrounding properties were not approved by Lane County and therefore are not lawful and are of no effect. ORS 92.018 provides remedies for damages or equitable relief for a purchaser of a lot or parcel created without approval of the appropriate city or county authority.

interpretation of a local ordinance, even in the same proceeding. The question is whether the earlier interpretation is correct or incorrect. See *Holland v. City of Cannon Beach*, 34 Or LUBA 1 (1998); *Wicks v. City of Reedsport*, 29 Or LUBA 8, 19 (1995); *Heceta Water District v. Lane County*, 24 Or LUBA 402, 419 (1993); see also *Marquam Farms Corp. v. Multnomah County*, 32 Or LUBA 240 (1996), *aff'd* 147 Or App 368 (1997).

The subject ownership is larger than 80 acres and thus more closely corresponds to the F1 characteristic.

Characteristic 3:

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

or

"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."

The applicant continues to incorrectly consider the *number* of lots or parcels rather than the contiguous "lands." The number of lots or parcels is not relevant, as the inquiry is directed to whether the *subject property* is "predominantly * * * contiguous" or "generally contiguous" to large tract, commercial resource lands or smaller tract, developed residential lands.

The applicant argues that the language "generally contiguous" can be read to include not only adjacent properties but also properties in the surrounding area. The suggested reading is not consistent with the definition of "contiguous" and is not consistent with the text of the provision.³ The F1 characteristic specifies that the lands must be "contiguous," not "generally contiguous." The F2 characteristic specifically requires that only "generally contiguous tracts" are to be considered – thus excluding non-contiguous tracts. If the intent of the Plan was to also consider nearby tracts, the wording of the provision could easily have so stated.

The applicant suggests that the *Symbiotics* decision is controlling regarding the interpretation of "generally contiguous." As explained previously, the relevant question is whether the suggested interpretation is correct.

The applicant argues that Parcel 3 to the south, which is under family ownership and management, is not under "commercial management" because it has been certified by the Oregon Department of Fish and Wildlife as a Wildlife Habitat Conservation and Management Zone. The management plan and aerial photos show that large areas of Parcel 3, including the clearcut area, remains forested or is being restored to a mixed conifer forest. The growing of commercial tree species is a commercial forest use.

³ "Contiguous" is defined in LC 16.090 to mean: "Having at least one common boundary line greater than eight feet in length." "Generally contiguous" is not defined. "Contiguous" is defined in Webster to mean: "touching; meeting or joining at the surface or border; close together; neighboring; bordering or adjoining; as, two *contiguous* bodies, houses, or countries."

As has been previously argued by others, at least part of Parcel 3 to the south is admittedly in commercial forest use and the Management Plan relied upon by the applicant as establishing the non-commercial nature of the use of Parcel 3 imposes no restrictions or obligations whatsoever and does not guarantee that any portion of timber harvested at any time in the future could not or will not be sold or exchanged commercially.

The applicant has submitted an affidavit from the owners of 18-04-33 tax lot 504 which asserts that the property is "primarily" used for residential purposes. Applicant suggests that this affidavit is sufficient to establish that the property is not used for commercial forest uses. However, the affidavit concedes that the property is used for growing trees – which is a commercial forest use.

The applicant considers F1-zoned tax lot 1601 as not being in commercial forest use. As previously discussed, this tax lot was illegally created in 1995 out of the subject 1600, as a result of unofficial and illegal property line adjustments. The asserted configuration of the boundaries of the subject tax lot 1600 and Parcel 1 cannot be considered in this proceeding. Further, it is conceded that tax lot 1601 is being used to grow trees, which is a commercial forest use.

The applicant's map at p. 7 of his letter of February 1, 2007 shows that the subject property is adjacent to rural residential uses along most of its western boundary, except for the F2-zoned tax lot 400; and along a small portion of the northern boundary, to include tax lots 505 and 510. Along the remainder of its boundary the subject Parcel 1 is adjacent to lands that are zoned F1 or F2 and that are growing trees, which is a commercial forest use.

Using the applicant's numbers – including the problematic tax lot 1601 - but counting Parcel 3 as being utilized for commercial forest uses, the subject property is contiguous with lands not used for commercial farm or forest uses along 3,603.68 feet of its boundary out of a total boundary length of 8,656.63 feet, or 41.6%. Conversely, the subject property is contiguous with lands utilized for commercial farm or forest uses along 58.4% of its boundary.

The subject property is contiguous to other lands of 80 acres or more in size along its eastern and southern boundaries. While the subject property may be adjacent to a developed or committed exception area, it is not "generally contiguous to tracts containing less than 80 acres and residences." The subject property is predominantly contiguous to lands used for commercial farm or forest uses.

While comparison of these F1 and F2 characteristics is more balanced than characteristics 1 and 2, on the whole the subject property more closely corresponds to the F1 Characteristic 3.

Characteristic 4:

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

or

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

The area proposed for rezoning is near to Laughlin Road. The functional classification of Laughlin Road has still not been identified. It is the applicant's burden to address the approval criteria and establish that they are met.

The applicant argues that Laughlin Road "primarily serves" residences, counting dwellings and estimating trips. However, the applicant's argument is not particularly responsive to the required inquiry. Questions to be answered include: What was Laughlin Road intended for when it was constructed? Where does Laughlin Road go? What businesses and industries does it presently serve? Merely tallying up residences and estimating trips is not relevant to the question of what uses the road was or is intended to primarily serve.

The area proposed for rezoning is accessed by a private driveway on the 0.6-acre area zoned RR10 which is stated to be not a part of this application. However, this area has apparently been appended to the subject property as a result of an illegal property line adjustment. ORS 92.190(3) authorizes a county to adjust property lines using procedures other than the replatting procedures in ORS 92.180 and 92.185 only if the property line adjustment procedures "include the recording, with the county clerk, of conveyances conforming to the *approved* property line adjustment[.]" (Emphasis added.) The purported "property line adjustments" that resulted in the alleged configuration of the subject property were not approved by Lane County and therefore are not lawful and are of no effect. Without this 0.6-acres, the subject property does not have direct access to any county road.

The applicant argues that the issue regarding availability of other public services, such as electricity, telephone, schools, and fire and police protection is whether the subject property has *access to* such services. However, the language of the F2 provision asks whether the subject property is "*provided with* a level of public facilities and services, and roads, intended primarily for direct services to rural residences." (Emphasis added.) If the intent had been to require only that the subject property had "access to" such services, the provision could easily have been written to say so.

There is not sufficient information in the record to determine whether Laughlin Road is an arterial road or a road primarily intended to provide direct access for rural residences. The area proposed for rezoning is not directly accessed by any public road, nor is it directly provided with other rural residential services. The area proposed for rezoning therefore more closely corresponds to F1 Characteristic 4.

Characteristic 5:

"Primarily under commercial forest management."

The applicant argues that the subject property is not under commercial forest management because the recording of a declaration using an ODF definition of "commercial" prohibits commercial uses of the property. The ODF definition is specifically stated to apply only within specified divisions of OAR Chapter 629. The

suggested interpretation of "commercial" is not consistent with Goal 4. Additionally, the recorded declaration does not impose any mandatory obligations or restrictions.

The applicant concedes that the subject property will be developed as a "Green Tag" certified tree farm and that the siting of a residence will enhance and is even necessary for the forest management practices to be utilized. The U.S Forest Service describes the "Green Tag" certification program as follows:

"The Green Tag program was developed by the National Forestry Association in cooperation with members of the Association of Consulting Foresters and the National Woodland Owners Association. It aims to support forestry practices that assure a balance of natural diversity and sustainable forest productivity. Green Tag is expressly designed for use by private forest landowners and is available in all 50 States. As of June 2003, the Green Tag program had certified 51,795 acres in 10 States."⁴

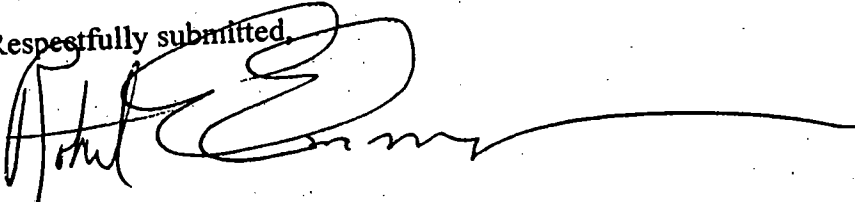
While the "green tag" program is stated to be oriented to non-industrial owners, it is not stated to be oriented to non-commercial forestry. Rather, its objective is explicitly stated to be "sustainable forest productivity" – which is a commercial forest use.

The subject property is therefore primarily under commercial forest management and more closely resembles F1 Characteristic 5.

CONCLUSION

The characteristics of the subject property correspond more closely correspond to those of F1 lands rather than to those of F2 lands. Therefore the rezoning request should not be approved.

Respectfully submitted,



Robert Emmons
President

⁴ <http://www.fs.fed.us/news/2005/releases/08/factsheets.pdf>



*Protecting Our Natural Heritage
From the Coast to the Cascades*

P.O. Box 5347 • Eugene, OR 97405 • (541) ⁷⁴¹⁻³⁶²⁵~~935-2795~~ • www.landwatch.net

January 18, 2007

Lane County Hearings Official
125 East 8th Avenue
Eugene, OR 97401

RE: PA 06-6054, Lininger zone change from F1 to F2

Dear Hearings Official:

LandWatch Lane County (LandWatch) is a nonprofit public benefit organization concerned with preserving farm and forest lands and ecological systems in Lane County. This testimony is presented on behalf of LandWatch Lane County and its membership in Lane County, specifically to include Robert Emmons, 40093 Little Fall Creek Road, Fall Creek, OR 97438.

LandWatch is interested in this application because the issues that arise in determining whether land is properly zoned F1 or F2 are raised in numerous applications in Lane County. LandWatch is concerned that county comprehensive plan policies and interpretations of those policies are reasonable and applied consistently. Residential development on forest lands, which becomes possible when F2 zoning is applied, has serious consequences for ecosystem health. Every decision we make about where and how we build within the landscape has energy, emissions, and environmental consequences. Minimizing adverse consequences requires that residential development not related to and necessitated by resource uses be minimized.

I. Introduction

The subject property is located southwest of Eugene in an area known as Peaceful Valley and is identified as 19-04-04. At the time it was purchased by the present owner it was part of an approximately 242-acre parcel which included 18-04—33 tax lots 1600 and 528. In 2006 the parent parcel was partitioned into Parcel 1, 80.6 acres; Parcel 2, 81.2 acres; and Parcel 3, 80 acres. Ownership of the three parcels is now held by different family members; therefore, the parcel does not presently constitute a "tract." All but a 0.6-acre portion of the subject Parcel 1 are zoned F1; the 0.6-acre portion, which provides access to Laughlin Road, is zoned RR-10. The parent parcel was clear-cut by preceding owner Roseboro Timber Company in 2004.

Properties along Laughlin Road, generally to the east of the subject property, and along Fox Hollow Road, generally to the south of the subject property, are developed with rural

residential uses. Otherwise, surrounding lands are generally held in large parcels and are used for resource purposes.

II. Applicable Criteria

Plan Goal 4, Policy 15 sets forth a number of "characteristics" of F1 lands and F2 lands. A decision "to apply one of the above zones or both of the above zones in a split zone fashion" must be based upon "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" and must "be supported by a statement of reasons explaining why the facts support the conclusion."

The analysis under Goal 4 Policy 15 requires an analysis of the subject "ownerships." The Staff Report suggests that "ownerships" means "the land subject to the rezoning request." The suggested interpretation cannot be accepted.

"Ownership" is not defined in the Plan or Lane Code. LC 16.090 provides:

"Where terms are not defined, they shall have their ordinary accepted meanings within the context with which they are used. Webster's Third New International Dictionary of the English Language, Unabridged, Copyright 1981, Principal Copyright 1961, shall be considered as providing ordinary accepted meanings."

"Ownership" in Webster is defined as follows:

- "1. the state or fact of being an owner.
- "2. proprietorship; legal right of possession; legal or just claim or title (to something.)"

The Staff Report suggests that the inquiry under Goal 4 Policy 15 may be limited to less than a full ownership -- that only a portion of an ownership may be considered and the remainder ignored. The suggested interpretation is not consistent with the "ordinary accepted meaning" of ownership, which includes all lands to which a person has "legal right of possession; legal or just claim or title."

Goal 14 Policy 15 clearly anticipates and allows that an ownership may be split-zoned. However, the decision on how to zone an ownership must *follow* and be based on the required analysis; no part of the ownership may be excluded *a priori* from the required analysis.

III. Analysis

In conducting the analysis required by the Lane County Rural Comprehensive Plan Policy 15, LandWatch has found that comparing the F1 and F2 characteristics together makes the issues more clear. An analysis of the subject property follows.

Characteristic 1:

"Predominantly ownerships not developed by residences or nonforest uses."

or

"Predominantly ownerships developed by residences or nonforest uses."

The applicant and the Staff Report concede that the subject property is not developed by residences or nonforest uses and the subject property therefore corresponds more closely to the F1 characteristic.

Characteristic 2:

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

or

"Predominantly ownerships 80 acres or less in size."

Again, this characteristic looks at the ownership or ownerships being considered, and not the surrounding area. The applicant incorrectly directs the inquiry to the size of surrounding properties in the F1 analysis, while inconsistently looking at the subject property in the F2 analysis.¹ As the Staff Report points out, surrounding properties are rather the subject of Characteristic 3. The subject ownership is larger than 80 acres and thus more closely corresponds to the F1 characteristic.

Characteristic 3:

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

or

"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."

In comparing these characteristics the focus turns to surrounding lands. The applicant concedes that "speculation is not sufficient to resolve the question. * * * The zoning of surrounding properties provides some indication of their utilization, but zoning alone is not dispositive." However, applicant does not provide any evidence of actual uses on contiguous lands except those under his own control.

¹ The F1 characteristic requires an examination of the characteristics of the "contiguous ownerships" being considered for zoning. The applicant's suggested interpretation could only be correct if the word "to" was to be inserted or read into the (b)(1) criterion: "Predominantly contiguous *to* ownerships of 80 acres or larger in size." As explained in the discussion of Characteristic 3, even if the inquiry were directed to surrounding lands the subject ownership would be "predominantly contiguous" to other ownerships 80 acres or larger in size - applicant's analysis improperly considers the number of parcels rather than determining whether the subject ownership is "predominantly contiguous."

The applicant incorrectly considers the *number* of lots or parcels rather than the contiguous "lands." The number of lots or parcels is not relevant, as the inquiry is directed to whether the *subject property* is "predominantly * * * contiguous" or "generally contiguous" to large tract, commercial resource lands or smaller tract, developed residential lands.

The applicant argues that Parcel 3 to the south, which is under family ownership and management, is not under "commercial management" because it has been certified by the Oregon Department of Fish and Wildlife as a Wildlife Habitat Conservation and Management Zone. The management plan and aerial photos show that large areas of Parcel 3, including the

clearcut area, remain forested or are being restored to a mixed conifer forest. The growing of commercial tree species is a commercial forest use.

The applicant further argues that, because 55% of the timber eventually harvested is to be milled for on-site use rather than sold to others, the growing of commercial tree species is not "commercial" under the Department of Forestry's regulations. ODF regulations do not govern in the land use context; OAR 629-600-0100 specifically states that the definitions therein apply only to OAR chapter 629, divisions 605 through 669 and divisions 680 through 699.²

The suggested interpretation is not consistent with Goal 4, which defines "forest lands" as lands that are suitable commercial forest uses. It is the capability or potential for production of commercial tree species that is at issue in determining a property's suitability for commercial forest uses. *Potts v. Clackamas County*, 42 Or LUBA 1, 4 (2002). Parcel 3 is admittedly being utilized for the production of commercial tree species, and therefore is utilized for commercial forest uses for purposes of Characteristic 3.

Even assuming applicant's argument is valid, the fact remains that 45% of the forest use is admittedly "commercial." Even more, the Management Plan includes the following disclaimer:

"1. This plan may be amended at any time in the future if requested by either party."

The Management Plan relied upon by the applicant as establishing the non-commercial nature of the use of Parcel 3 imposes no restrictions or obligations whatsoever and does not guarantee that any portion of timber harvested at any time in the future could not or will not be sold or exchanged commercially.

Using the applicant's numbers but counting Parcel 3 as being utilized for commercial forest uses, the subject property is contiguous with lands not used for commercial farm or forest uses along 3,603.68 feet of its boundary out of a total boundary length of 8,656.63 feet, or 41.6%. Conversely, the subject property is contiguous with lands utilized for commercial farm or forest uses along 58.4% of its boundary.

² "Commercial" is not defined in the Plan or Lane Code. The Webster definition is:

"1. of or pertaining to commerce, as *commercial* affairs.

"2. designating unrefined products bought and sold in large quantities for industrial uses; as, *commercial* sulfuric acid.

"3. made or done primarily for sale or profit."

The subject property is predominantly contiguous to other lands of 80 acres or more and used for commercial farm or forest uses and more closely corresponds to the F1 Characteristic 3.

Characteristic 4:

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

or

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

The area proposed for rezoning is near Laughlin Road. The functional classification of Laughlin Road has not been identified. The area proposed for rezoning is accessed by a private driveway on the 0.6-acre area zoned RR10 which is stated to be not a part of this application. However, it should be understood that a *Modification of Restriction in Deed* between Karla Rice and Marie Matsen and the applicants restricts use of the access road "for land and forest management practices."

The availability of other public services, such as electricity, telephone, schools, and fire and police protection is pretty much ubiquitous throughout most of Lane County. The Staff Report states that "the subject property *has access* to a full range of services normally available to a rural residence, including police and fire coverage, school, electricity, telephone, access, and solid waste disposal. However, the inquiry asks whether the subject property is *provided* with services appropriate for rural residences. The subject property currently is not provided with electricity, telephone, water, or sewer; and access is provided by a private driveway rather than a public road primarily intended to service rural residences. Fire, police, garbage, and school services are available as elsewhere in Lane County.

There is not sufficient information in the record to determine whether Laughlin Road is an arterial road or a road primarily intended to provide direct access for rural residences. The area proposed for rezoning is not directly accessed by the public road, nor is it directly provided with other rural residential services. The area proposed for rezoning therefore more closely corresponds to F1 Characteristic 4.

Characteristic 5:

"Primarily under commercial forest management."

The applicant argues that the subject property is not under commercial forest management because 55% of the timber eventually to be harvested will be milled for on-site use rather than sold to others. The response to that argument under Characteristic 3 is incorporated here by reference: ODF regulations do not apply in this context, the suggested interpretation is not consistent with Goal 4, the applicant concedes that at least some portion of the use will be "commercial," and there is nothing in the management plan or ODF&W agreements that impose any mandatory obligations or restrictions.

The applicant concedes that the subject property will be used for the production of commercial tree species, and that the siting of a residence will enhance and is even necessary for the forest management practices to be utilized. The subject property is therefore primarily under commercial forest management and more closely resembles F1 Characteristic 5.

CONCLUSION

The characteristics of the subject property correspond more closely correspond to those of F1 lands rather than to those of F2 lands. Therefore the rezoning request should not be approved.

Respectfully submitted,

Robert Emmons
President

**To: Lane County Board of Commissioners
Lane County Counsel
Lane County Hearings Official
Lane County Land Management Division
Counsel for Appellant**

From: Tom Lininger and Merle Weiner

Date: June 18, 2007

Re: Hal Hermanson's Appeal in PA 06-6170

06-18-07 P02:23
END

Summary

Tom Lininger and Merle Weiner ("Applicants") respectfully submit this response to the appeal filed on June 11, 2007, by Anne Davies on behalf of Hal Hermanson. Mr. Hermanson appeals a decision by Hearings Official Gary Darnielle on May 30, 2007, in PA 06-6170. That decision granted Applicants' request to rezone a parcel of property from F-1 to F-2 so they could build a home there.

Applicants bought 242 acres from the Rosboro Timber Company in 2005. At the time of the purchase, Applicants had the ability to build one house on the south side of their property. Applicants still want to build only one house, but in a different location. A wildlife biologist indicated that the south side has significant value as habitat, so applicants converted this area to a state-certified Wildlife Habitat Conservation and Management Zone. Applicants would rather build on a flat, clear-cut area to the north that has less habitat value. Applicants' preferred location is closer to the road, so building costs would be lower. Applicants' preferred location is also closer to neighboring development, allowing Applicants to keep an eye on trespassers who sometimes hunt and ride ATVs on the property. The Lane Code favors the siting of homes next to existing residences rather than in remote forestland.

The Board of County Commissioners should uphold Mr. Darnielle's decision. This decision complied with all applicable standards in the Lane Code. The Lane County planning staff supported the Applicants. In fact, Planning Director Kent Howe commented that the present zoning of the subject property is a "mistake," and that the subject property exhibits more characteristics of F-2 land than F-1 land. A total of 44 neighbors who reside near the subject property expressed their support for the Applicants. Among the adjacent property owners who expressed their views, supporters outnumbered opponents by a margin of ten to three.

Applicants' proposal is good for the environment. At the hearing below, environmentalists such as Lisa Arkin of the Oregon Toxics Alliance supported Applicants' proposal because Applicants are conscientious environmental stewards. For example, Applicants are not using herbicides throughout the 242-acre parcel, and are relying instead on mulch mats that require frequent maintenance. Applicants have manually removed Scotch Broom, vine maple and blackberries. Applicants are taking steps to conserve wildlife habitat. Applicants' management strategies are labor-intensive; these strategies would be easier and more effective if Applicants lived on their property.

In this response, Applicants will address two questions. First, should the Board of County Commissioners hear the appeal, or should the Board refer this appeal to the Land Use Board of Appeals (LUBA)? Second, should the Board of County Commissioners express its support for Mr. Darnielle's interpretation of the decision criteria?

BCC ATTACH. # 3 - 3798

I. Should the Board of County Commissioners hear Mr. Hermanson's appeal?

The Lane Code provides that when a party wishes to appeal a decision by the Hearings Official, the first step is to present the appeal to the Board of County Commissioners. If the Board elects to hear the appeal, the Board reviews the record of evidence presented to the Hearings Official (in this case, several hundred pages of documents). The Board also has the option of passing the appeal directly to LUBA. Applicants respectfully request that the Board take the latter course.

This case appears destined for LUBA no matter what the outcome before the Board of County Commissioners. The party that loses before the Board of County Commissioners will almost certainly appeal. In fact, Mr. Hermanson recently hired a former member of LUBA, Anne Davies, to represent him. Applicants are committed to appealing any adverse ruling. A time-consuming appeal lies ahead, and Applicants would prefer to proceed to LUBA as soon as possible.

In determining whether to hear an appeal of a decision by the Lane County Hearings Official, the Board of County Commissioners applies the test set forth in Lane Code 14.600(3):

A decision by the Board to hear the appeal on the record must conclude the issue raised in the appeal to the Board could have been and was raised before the close of the record at or following the final evidentiary hearing and must comply with one or more of the following criteria:

- (a) The issue is of Countywide significance.*
- (b) The issue will reoccur with frequency and there is a need for policy guidance.*
- (c) The issue involves a unique environmental resource.*
- (d) The Planning Director or Hearings Official recommends review.*

Mr. Hermanson has not met any of the four tests in Lane Code 14.600(3). He has not shown that the issues raised in the appeal are of countywide significance. The decision under appeal only applies to a single parcel. The Hearings Official did not adjudicate any other applications, or rule on the use of any other land, when adjudicating PA 06-6170.

Because the facts of this case are so unique, the countywide significance of this case is slight. An expert forester has submitted a letter indicating that the subject property is highly unusual F-1 land because it is so close to residential development. An official with the Oregon Department of Forestry indicated that Applicants' forestry methods are highly distinctive, and that Applicants are using mulch mats on a larger scale than any other landowner in Lane County. The same official indicated that neighbors' protests against traditional forestry operations on the subject property were more significant than protests elsewhere in Lane County. Applicants have taken a very unusual step of committing a large amount of land to conservation. Mr. Hermanson has not shown that these circumstances have converged, or will converge, anywhere else in Lane County. In fact, he has not identified a single case involving similar facts.

Turning now to the second criterion under Lane Code 14.600(3), Mr. Hermanson has not shown that the issue presented here will reoccur with frequency. In fact, since the creation of the F-1 and F-2 zones in 1984, **A TOTAL OF ONLY SIX APPLICANTS** have filed requests with the Lane County Hearings Official to rezone property from F-1 to F-2. Here is a complete list of all such applications filed with the Lane County Hearings Official since 1984 (Applicants compiled this list with help from the Lane County Land Management Division):

Baker-Fisk (PA 1057-91)
Park (PA 0039-91)
West (PA 99-5789)
Siegrist (PA 01-5738 and PA 04-5516)
Dockum (PA 06-6054)
Lininger/Weiner (PA 06-6170)

Mr. Hermanson argues briefly that the issues presented in this appeal will reoccur with frequency and will require policy guidance from the Board of County Commissioners. He cites just three examples: the Everett case, PA 04-5252 (renamed Just v. Lane County on appeal); the Kronberger case, PA 04-5276 (renamed Brown v. Lane County on appeal); and the Symbiotics case, PA 06-5476. These cases are all distinguishable in that they involved “errors and omissions” analysis under RCP Goal 2, Policy 27, which is not at issue in the present case. The “errors and omissions” analysis is a retrospective classification of parcels based on their characteristics in 1984. In the present case, the parties are not arguing about how the neighborhood looked in 1984, but how it looks now.

Moreover, LUBA’s remands in the Everett and Kronberger cases directed the Board of County Commissioners to interpret precisely the meaning of the term “ownership,” which the Board did in the Symbiotics Ordinance (No. 1236). Neither LUBA nor a higher court has disapproved the Board of County Commissioners’ interpretation of “ownership” since the Symbiotics ordinance, so it is difficult to say that there is a need for further guidance on the subject.¹

Focusing now on the third test under Lane Code 14.600(3)(c), the present appeal does not involve a “unique environmental resource” of the sort that necessitates appellate review by the Board of County Commissioners. The subject property is clear-cut forestland. Applicants have a deep attachment to the land, but they realize that it lacks a “unique environmental resource” within the meaning of Lane Code 14.600(3)(c).

The fourth test under Lane Code 14.600(3)(d) inquires whether the Planning Director or the Hearings Official recommend that the Board hear the appeal. Applicants are not yet aware if the Planning Director or the Hearings Official will recommend that the Board hear this appeal. The Planning Director did recommend in favor of Applicants when the matter was pending before the Hearings Official.

In sum, Mr. Hermanson has not met any of the four tests set forth in Lane Code 14.600(3)(c). He therefore has not provided a basis for the Board of County Commissioners to hear his appeal.

Applicants respectfully request that the Board bear in mind its unanimous vote on June 13, 2007, not to hear the appeal in the Dockum case. There, the Board applied the test in Lane Code 14.600(3)(c) and determined that a decision by Hearings Official Gary Darnielle on a single proposed conversion of F-1 to F-2 land did not meet the review criteria under Lane Code 14.600(3). Applicants hope that the Board will interpret Lane Code 14.600(3) consistently in the present case.

¹ LUBA’s recent follow-up ruling in the Kronberger case (LUBA No. 2006-237), issued on May 18, 2007, did not concern the definition of “ownership” or any of the other issues raised in the present appeal.

II. Should the Board of County Commissioners affirm Mr. Darnielle's interpretation of the decision criteria?

Whether the Board elects to hear the appeal or refer the appeal directly to LUBA, the Board will have an opportunity to express agreement with Mr. Darnielle's interpretations of the applicable standards. Applicants respectfully request that the Board indicate its agreement with Mr. Darnielle.

Mr. Darnielle carefully applied the applicable criteria set forth by the Board of County Commissioners in Goal Four, Policy 15 of the Rural Comprehensive Plan. These criteria establish guidelines for distinguishing F-1 ("nonimpacted") forestland from F-2 ("impacted") forestland. The considerations include the extent of neighboring development, the size of neighboring lots, the uses of neighboring property, the availability of services and utilities, etc. Here, the subject property is a highly unusual F-1 parcel situated in the midst of a residential development. When Planning Director Kent Howe saw the awkward interface between the subject property's F-1 land and the surrounding RR-10 lots, he commented to the Eugene Register-Guard that the present zoning of the subject property is a "mistake," because the subject property exhibits F-2 characteristics rather than F-1 characteristics.

It appears that Mr. Hermanson wishes the criteria under Policy 15 were different. But that argument is not appropriate at the present time. If Mr. Hermanson wants to change the rules under Policy 15, he should go through the appropriate channels to request that the policy be rewritten. It would be unfair to rewrite the rules abruptly in the middle of a land use proceeding begun in earnest under existing law.

Applicants will now respond in turn to the arguments raised by Mr. Hermanson's attorney and by Mr. Hermanson himself in their June 11 submissions.

A. Arguments raised by Mr. Hermanson's attorney

1. "Ownership"

Ms. Davies devotes most of her June 11 letter to the definition of the term "ownership." She argues that the term should include the entire 242-acre former Rosboro property. The Board of County Commissioners made clear last August in the Symbiotic ordinance that the term "ownership" means the land proposed for rezoning. The Board should not reverse itself.

Furthermore, the 242-acre tract formerly held by Rosboro is not in common ownership at this time. Applicants lawfully reconfigured the property into three parcels with distinct owners and distinct purposes. One parcel, owned by Applicants' children, is devoted to commercial forestry; the kids' ownership of this land makes sense because the reforestation will probably not be merchantable for 45 years, when Applicants are no longer living. Another parcel, owned by Applicant Tom Lininger, is devoted to a state-certified Wildlife Habitat Conservation and Management Zone; the separation of that parcel from the rest of the property makes sense because it has a different assessment status and it is subject to a different management strategy. A third parcel, owned by Merle Weiner, is devoted to sustainable forestry and is the Applicants' preferred homesite. LUBA has ruled that distinct ownerships within a family should do not constitute a single tract in the context of siting a forest template dwelling. *Parsons v. Clackamas County*, 32 Or LUBA 147 (1996). Ms. Davies does not cite any authority for the proposition that separately owned parcels should be treated as a single ownership.

Incidentally, the record in this case shows that the 242-acre Rosboro property consisted of three separate parcels when Applicants bought it: tax lot 18-04-33-528, tax lot 18-04-33-1600, and tax lot 19-04-04-401. Applicants changed the lines, but the property still consists of three separate parcels. Applicants have not created more parcels than they originally had when they purchased the property.

2. Surrounding parcels

Ms. Davies attached a zoning map from the 1980s to her June 11 letter. This map shows fewer neighboring lots than now exist. Many of the lots depicted on Ms. Davies' map from the 1980s are now significantly smaller. Applicants hope that the Board of County Commissioners will base its decision on accurate, up-to-date maps. Applicants have placed several up-to-date maps in the record, and one is attached as an appendix to this submission.

Ms. Davies incorrectly asserts that the Hearings Official "only considered the 18 parcels that had common boundary lines with the subject 80-acre property." In fact, Mr. Darnielle looked at both the adjacent parcels and the broader parcelization pattern. Among the adjacent parcels, the vast majority are noncommercial and are smaller than 80 acres. Widening the focus, the parcelization pattern is even more favorable to Applicants' position. There are 50 to 60 parcels within 2,000 feet of the subject property. This dense residential development is atypical in such close proximity to F-1 land.

Ms. Davies suggests that the Hearings Official should have focused more on nonadjacent properties to the east of the subject property, but she neglects to mention that the Grifes' 140-acre parcel to the east is now the subject of a Measure 37 claim seeking division into 28 small lots. The Board of County Commissioners decided on February 13, 2007, not to enforce the F-2 zoning on the Grifes' property.

3. "Precedent" for other rezoning?

Ms. Davies asserts that Applicants' victory in this case "would allow rezoning of many large F-1 zoned lands in the county." That statement is not correct. The circumstances presented here are unique: 1) dense residential development surrounding F-1 land; 2) labor-intensive forest management that involves installing thousands of mulch mats and weeding them frequently; 3) costly conservation strategies; and 4) ready access to services of the sort that are typical for a rural residential neighborhood. It is hard to imagine that another case could present all these circumstances.

In any event, the Hearings Official and the Board of County Commissioners must consider every case on its merits. If a future application seeks rezoning that is not appropriate, the County can deny that request.

4. Legal lot status

Ms. Davies reprises the argument that the subject property is not a legal lot. The Applicants went through the normal process for legal lot verification. Neighbors received notice, and none challenged the legality of the subject property. Now it is too late to challenge legal lot status collaterally. Further, the RCP policy at issue here does not take account of legal lot status, as Ms. Davies concedes.

5. Pesticides

Ms. Davies' suggests that neighbors' concerns about pesticide use do not justify the decision by the Hearings Official. In fact, Mr. Darnielle's decision rests primarily on the application of nine criteria under RCP Goal Four, Policy 15. The most important considerations are the proximity of nearby homes, the size of neighboring lots, the availability of utilities and services, etc. The neighbors' concerns about pesticide use by Rosboro are a reflection of the incongruous zoning, but these concerns are surely not the sole rationale for the rezoning of the subject property.

Ms. Davies cites a LUBA opinion, *Anderson v. Coos County*, 51 Or LUBA 454 (2006), that addressed whether neighbors' concerns about pesticide use could justify removing property from forestland status altogether on the ground that the property has become "irrevocably committed" to nonforestry use. That opinion has no application here. In the present case, Applicants are not seeking to abandon forestry altogether and convert their property to a nonforestry designation. Quite to the contrary, Applicants are trying to keep their property as forestland (F-2 forestland) and show the viability of a nonchemical approach. The success of Applicants' strategy will demonstrate that forestland owners need not convert forests to subdivisions just because neighbors are concerned about pesticide use. Applicants are trying to show that middle ground is possible: labor-intensive nonchemical forestry with a single house on 242 acres of forestland.

B. Arguments raised by Mr. Hermanson

Many of the arguments in Mr. Hermanson's June 11 letter to the Board of County Commissioners did not appear in the record below. Lane Code 14.600(3) makes clear that the Board should not consider new issues on appeal unless the appellant had no chance to make those arguments before the Hearings Official. Mr. Hermanson testified at the evidentiary hearing on January 18, 2007, and he submitted a number of lengthy filings before the close of the record, so he has no need to present new arguments on appeal.

1. "Environmental group inside information"

Mr. Hermanson asserts that "Tom Lininger and Merle Weiner used environmental group insider information for their own private gain." Apparently Mr. Hermanson believes that Applicants somehow discovered secret information about neighbors' opposition to Rosboro's pesticide use, and that Applicants exploited this information to "shrewdly negotiate a private land sale." Mr. Hermanson's claim is completely false. Applicants first approached Rosboro's real estate agent about a property on the other side of Lane County, and the agent suggested that Applicants consider the Rosboro property in Peaceful Valley. At this time, the neighbors' protests against Rosboro's pesticide use were hardly a secret. Rosboro itself shared this information with Applicants. Neighbors who opposed pesticides were sending letters to officials at many levels of government. In any event, Mr. Hermanson's conjecture about the Applicants' use of "insider information" in buying the property is irrelevant to this appeal.

2. Hiring of Bill Kloos

Mr. Hermanson suggests that Applicants are untrustworthy because they hired Bill Kloos, whom Mr. Hermanson describes as an attorney for developers. Applicants are both law professors and they are representing themselves. Bill Kloos only helped Applicants for a few hours. He was a stand-by counsel during the January 18 hearing just in case any questions came up about procedure.

Applicant Tom Lininger knows Bill Kloos because they worked together in opposing the Coburg power plant. Mr. Hermanson's dislike for Mr. Kloos should not influence the Board of County Commissioners in adjudicating this appeal.

3. Real Ex., LLC

Mr. Hermanson complains about the involvement of "Real Ex, LLC" in the transaction through which Applicants bought the former Rosboro property. Mr. Hermanson speculates that "Real Ex, LLC is a legal shield." Applicants have no ownership interest in Real Ex. Evidently Rosboro used this entity in transferring the property to Applicants. If Mr. Hermanson has complaints about the way Rosboro does business, he should take these complaints up with Rosboro; the arguments have no bearing on the present appeal.

4. Driveway access

The subject property has access to Laughlin Road via a driveway on a small parcel of RR-10 land that some neighbors sold to Applicants' predecessor. As part of the sale, the neighbors imposed a restriction on the number of residences that could use the driveway for access. Applicants asked the neighbors to raise the access limit to ten residences upon their death in case the City of Eugene moved out to Peaceful Valley in the next 50 to 100 years (long after Applicants are dead). Applicants want to live in privacy and do not want to share the former Rosboro property with any neighbors. Applicants hope that their grandchildren will feel the same way when they inherit the property. However, Applicants foresee (and dread) a day when the City of Eugene may envelop Peaceful Valley, and then Applicants' grandchildren might find that the zoning of the entire Peaceful Valley neighborhood has changed. It is important to note that the ten-residence language in the driveway restriction no longer exists. Applicants learned in early 2007 that some neighbors were uncomfortable with the ten-residence language, so Applicants changed the number of possible future residences to three. Applicants are managing the forestland in order to grow a tall stand of trees for future generations, and Applicants do not want future generations to forsake this legacy.

5. Neighbors' reaction to Applicants' proposal

Mr. Hermanson asserts that Applicants are "harassing" neighbors. In fact, Applicants are trying in good faith to answer neighbors' questions about Applicants' plans for the subject property. Applicants have attended community meetings and have found that neighbors appreciate this interaction. Applicants want to make sure neighbors have the facts about Applicants' proposal.

Neighbors generally support Applicants' plans. Among the 13 adjacent property owners who expressed their opinions about Applicants' proposal, ten were supportive and three (including Mr. Hermanson and his wife) were opposed. By the close of the record, 44 neighbors sent supportive letters to the County or otherwise registered their support for Applicants' proposal.

At an early stage of the proceedings, Mr. Hermanson circulated a petition and signed up approximately 50 people as opponents of the Applicants' proposal. But by the close of the record, 15 people who had signed Mr. Hermanson's petition decided to withdraw their opposition when they learned more about the Applicants' plans. Thus, by the close of the record, the supporters outnumbered the opponents. The record includes a number of letters from neighbors who decided to support Applicants after they initially had opposed the proposal. Many of these neighbors say that they are grateful for Applicants' sensitivity to neighbors' concerns.

III. Conclusion

For the reasons outlined above, Applicants respectfully request that the Board of County Commissioners decline to hear Mr. Hermanson's appeal, and that the Board express its agreement with Mr. Darnielle's interpretation of the Lane Code and RCP policies at issue in this case

Respectfully submitted,


Tom Lininger and Merle Weiner
Applicants

Appendices:

List of supportive neighbors and citations of neighbors' letters in the record
Map of subject property and surrounding parcels

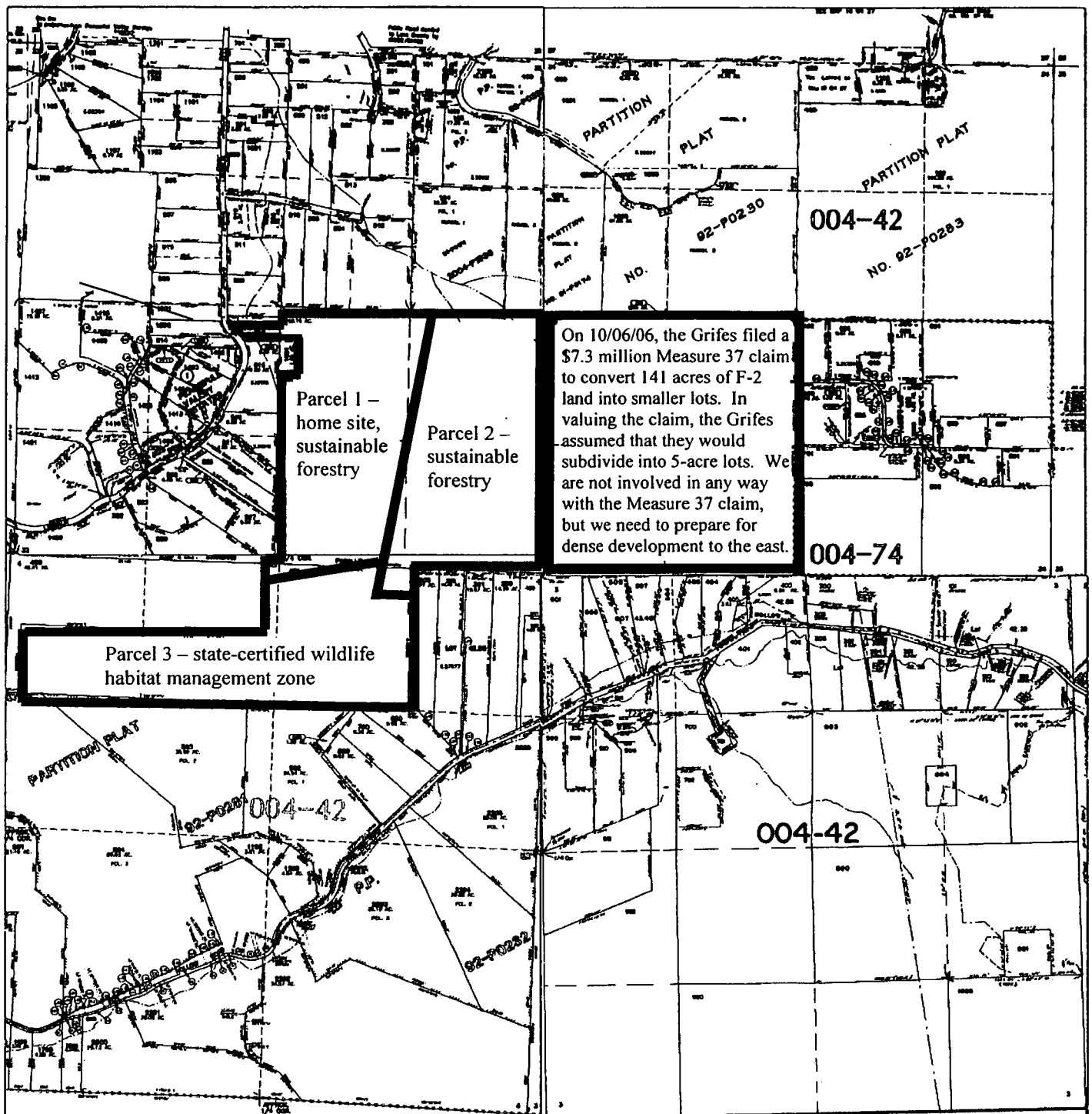
Appendix 1: List of Supportive Neighbors and Citations of Neighbors' Letters in the Record

- 1) Jared Hanely, 84625 Laughlin Road (adjacent owner) – letter filed with county
- 2) Rebekah Hanley, 84625 Laughlin Road (adjacent owner) – affidavit filed with county
- 3) Richard Hazzard, 84629 Laughlin Road (adjacent owner) – letter filed with county
- 4) Dale Olson, 84633 Laughlin Road (adjacent owner) – letter filed with county
- 5) Karla Rice, 84691 Laughlin Road (adjacent owner) – letter, affidavit filed with county
- 6) Marie Matsen, 84691 Laughlin Road (adjacent owner) – letter filed with county
- 7) J.R. Frost, 29536 Simmons Road (adjacent owner) – letter filed with county
- 8) Susan Frost, 29536 Simmons Road (adjacent owner) – letter filed with county
- 9) Larry Banfield, 29588 Simmons Road (adjacent owner) – name is on list of supportive neighbors (see third Lininger affidavit)
- 10) Joan Banfield, 29588 Simmons Road (adjacent owner) – affidavit filed with county
- 11) Benita Mather, 29545 Simmons Road – letter filed with county
- 12) Linda Bovard, 29611 Simmons Road – letter filed with county
- 13) Warren Colvin, 29611 Simmons Road – letter filed with county
- 14) David Simone, 84569 Laughlin Road – letter filed with county
- 15) Karen Perkins, 84569 Laughlin Road – letter filed with county
- 16) Rod Roy, unlisted address, Laughlin Road Road -- name is on list of supportive neighbors (see third Lininger affidavit)
- 17) Mike Anderson, 85046 Laughlin Road Road -- name is on list of supportive neighbors (see third Lininger affidavit)
- 18) Stuart Perlmeter, 84897 Laughlin Road – letter filed with county
- 19) Anne Todd, 84897 Laughlin Road – letter filed with county
- 20) Amanda Moore, 84747 Laughlin Road – letter filed with county
- 21) David Tipton, 84747 Laughlin Road – letter filed with county
- 22) Marsh Wingard, 85124 Laughlin Road – letter filed with county
- 23) Jude Painton, 85091 Larson Road -- name is on list of supportive neighbors (see third Lininger affidavit)
- 24) Anta Pushkara, 85091 Larson Road -- name is on list of supportive neighbors (see third Lininger affidavit)
- 25) Wendall Gray, 85007 Laughlin Road -- name is on list of supportive neighbors (see third Lininger affidavit)
- 26) Cherie Shoepfin, 85114 Larson Road -- name is on list of supportive neighbors (see third Lininger affidavit)
- 27) Steve Milosovich, 85159 Larson Road – expressed support in conversation (see third Lininger affidavit)
- 28) Jerry Shapiro, 85262 Peaceful Valley Road -- name is on list of supportive neighbors (see third Lininger affidavit)
- 29) Rose Wilde, 85262 Peaceful Valley Road -- name is on list of supportive neighbors (see third Lininger affidavit)
- 30) Jeff Flower, 85333 Peaceful Valley Road -- name is on list of supportive neighbors (see third Lininger affidavit)
- 31) Mike Willemsen, 85276 Peaceful Valley Road – expressed support in conversation (see third Lininger affidavit)
- 32) Tom Woxell, 84977 Peaceful Valley Road – letter filed with county
- 33) Edna Anderson, 85115 Florence Road
- 34) Marc Shapiro, 84679 Arlie Lane – letter filed with county
- 35) Suzanne Shapiro, 84679 Arlie Lane – name is on list of supportive neighbors (see third Lininger affidavit)
- 36) Kaye Bauman, 84604 Arlie Lane – letter filed with county
- 37) Harold Hadden, 84604 Arlie Lane – letter filed with county
- 38) Claudia Gray, 29633 Fox Hollow Road – letter filed with county
- 39) Mary Milo, 29633 Fox Hollow Road – letter filed with county
- 40) Jason Plant, unlisted address, Fox Hollow Road – expressed support in conversation (see third Lininger affidavit)
- 41) Robin Winfree-Andrew, 29775 Fox Hollow Road – letter filed with county
- 42) Lynn Bowers, 30251 Fox Hollow Road – letter filed with county
- 43) Charles Kimmel, 30306 Fox Hollow Road – letter filed with county
- 44) Reida Kimmel, 30306 Fox Hollow Road – letter filed with county

The following neighbors initially signed Hal Hermanson's petition opposing the Applicants' proposal, but these neighbors became supporters when they found out more about the proposal: Edna Anderson, Mike Anderson, Lynn Bowers, J.R. Frost, Claudia Gray, Richard Hazzard, Charles Kimmel, Reida Kimmel, Mary Milo, Amanda Moore, Stewart Perlmeter, David Tipton, Anne Todd, and Robin Winfree-Andrew and Tom Woxell. Applicants have been unable to speak with many of the people who signed Mr. Hermanson's petition.

(This list appeared in Applicants' Surrebuttal, filed before the close of the record.)

Appendix 2: Map of Subject Property (Parcel 1) and Surrounding Parcels



(This map was placed in the record during the evidentiary hearing on January 18, 2007.)

**To: Lane County Board of Commissioners
Lane County Counsel
Lane County Hearings Official
Lane County Land Management Division
Counsel for Appellant**

05-18-07P02:23 RCVD

From: Tom Lininger and Merle Weiner

Date: June 18, 2007

Re: PA 06-6170 – Examples of Letters in Record Supporting Applicants

Thank you for your consideration of the attached letters.

January 16, 2007

To: Land Management Division/Public Works Department
Lane County Courthouse
Eugene, OR 97401

From: Marie Matsen
84691 Laughlin Rd.
Eugene, OR 97405

Re: Statement in Support of Proposed Land Use Change PA 06-6170 (owned by applicants Lininger & Weiner)

I live at 84691 Laughlin Road directly adjacent to the subject parcel proposed for zoning change from F-1 (Non-impacted forestland) to F-2 (Impacted forestland). Karla Rice and I have owned our land since 1991 and lived there since 1995. I retired last month as Vice President for College Operations at Lane Community College, a position I held for over 12 years, during which time the college established a nationally recognized reputation for sustainable and environmentally sound practices in operations. I am also a member of 1000 Friends of Oregon, Northwest Coalition Against Pesticides, Sierra Club, and Nature Conservancy. I list these credentials to point out that I have been actively involved in advocating for sound environmental practices, and that land use is a very important issue for me. It is especially important to me that the land around my property is used and managed in environmentally sound ways.

For the first 14 years we owned our land, the 240 acres identified now as partition 2006-P2019 was owned successively by a timber company, an individual with direct interest in industrial forest use, and finally by another timber company. There were a few very positive things about a timber company owning and managing the land, the primary one being that one side of our property abutted to a large undeveloped parcel of land. However, there were also major disadvantages that pose real threats to the land and the neighbors.

- This land has been successively owned by individuals or businesses with a commercial interest in forestlands using land management practices consisting of a repeating cycle of logging 35-year-old trees (clear-cutting in the case of the first and the most recent owners), erosion and destruction of habitat, planting of a single forest species, application of herbicides, commercial thinning, and logging again after as few as 30 years.
- Where no one is residing on large parcels of land so near an urban area and in the middle of a rural residential area, there is little to deter people from using the land for sometimes destructive purposes such as riding ATVs or dirt bikes which cause major destruction of vegetation and subsequent erosion in addition to the nuisance of noise. This has been a frequent problem that often had a direct impact on our land since the people who rode these vehicles did not distinguish between the timber company property and our property.
- The land in question has been used frequently (and illegally) by hunters and target-shooters. Because the land is almost completely surrounded by residential property-owners none of us, including our pets and livestock, are safe from stray

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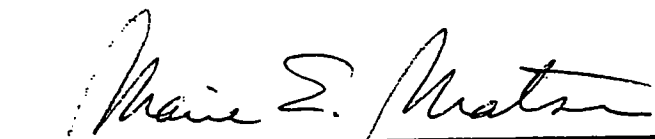
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bullets or buckshot. And, obviously, hunters have had a negative impact on wildlife that share their habitat with us. Resident owners are in a much better position to ensure their land is not used by hunters and target shooters.

- Finally, the use of the land for ATVs and hunting, and the occasional illegal use of chainsaws on the land, all greatly increase the threat of wildfire during the dry season. Once again, resident owners are in a much better position to monitor these kinds of uses that are especially dangerous during dry weather.

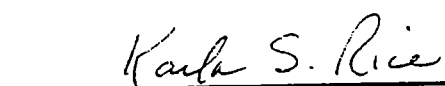
I fully support the application by Mr. Lininger and Ms. Weiner to change the zoning of Parcel 1 to F-2 (impacted forestland). I was wary when first told that they were considering purchase of the property. My biggest fear has been that someone would want to divide the land into dozens of residential parcels permanently changing the character of the land and the character of the neighboring community. However, the more I have talked with the applicants the more confident I am that they share a vision for the land that closely coincides with my vision. All of their actions to this point have been entirely consistent with their stated intentions of living quietly and peaceably on the land, conserving and preserving unlogged portions of wild habitat, and responsibly restoring and caring for the remaining forestland using sound environmental practices. I would much rather have them as neighbors than to have a timber company or a commercial developer own the land.

The reality is that the property in question is no longer "non-impacted" forestland. The fact that it is surrounded by residential properties, and for the reasons stated previously in this letter, the property IS impacted. Given that fact, the best possible outcome I could imagine is to have the property owned by someone who wants to maintain the property as forestland with the restrictions that go along with an F-2 (impacted forestland) zone designation. For me, the clear choice is (a) to trust some unknown future landowner who may push to develop the land and/or continue the destructive clearcut logging cycle; or (b) to trust in two people who have clearly exhibited a personal commitment to care appropriately for the land and to protect it from thoughtless and selfish development. I choose the latter.



(signed) Marie E. Matsen, 84691 Laughlin Rd., Eugene, OR 97405

I agree with the statement above given by Marie Matsen and I also support the application of Mr. Lininger and Ms. Weiner.



(signed) Karla S. Rice, 84691 Laughlin Rd., Eugene, OR 97405

To: Hearings C. Ricer Gary Dainielle
From: Lisa Arkin, Executive Director
Oregon Toxics Alliance
Re: PA 06-6170 (Linninger-Weiner)
Date: 1/18/07

Pesticides Disrupt the Natural Balance Between Pest and Predator Insects

Broad-spectrum chemical application for weed control in forests destroys both pest and beneficial organisms indiscriminately, upsetting the balance between pest and predator insects.

Many growers are moving to non-toxic methods of pest ^{and weed} control that focus on biological controls to solve their pest problems. Research and experience have shown that:

- Beneficial organisms serve many valuable functions in an agricultural ecosystem, including ~~dead~~ ^{healthy} soil zones pollination, soil aeration, nutrient cycling, and pest control.
- Application of insecticides indiscriminately kills pests and beneficial organisms. Pest populations often recover rapidly because of their larger numbers and ability to develop resistance, but beneficial insects do not, resulting in a resurgence of the target pest as well as secondary pests that reproduce rapidly with no predators to check their numbers.

Restoring the Balance: Alternatives to Pesticides Are Available

- Pesticides destroy the delicate balance between species that characterizes a functioning ecosystem. Fortunately, there are alternatives to dumping massive quantities of toxic chemicals on our crops, forests, and roadsides, and in our homes and gardens.

This land use zone change application is directed at the goal of using non-chemicals means of sustainable forestry. This holds the promise of forestry that meets the needs of both economic, environmental and public health goals.

WE must be especially cognizant of the effects of chemical-based forestry occurring in urban-rural interface zones where resource lands and residential areas are proximal. The use of chemical applications of herbicides by aerial

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P.A. NO. _____

DATE: 1-18-07 EXHIBIT NO. _____

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application can cause unintended pesticide drift onto other people's property
- this is a situation similar to second-hand smoke, where people who have
no involvement in the use of the chemicals are victims of its health impacts.

Drift and run-off are genuine health and environmental concerns in Lane
County. I urge the approval of this request for a zone change from F1 to F2
for the purpose of supporting non-chemical forestry and better neighbor
relationships where neighbors feel their properties will be safe from
chemical drift from herbicide use.



Crystalline Publications

1/17/07

Zoning Hearing : Tom Lenninger-Merle Weiner

PA06-6170

My property 83633 Laughlin Road directly borders the land presently in consideration for rezoning. It has been my observation that Tom Lenninger and Merle Weiner have attempted to properly manage this forest land. They have chosen not to use pesticides with their forest management practice which is not only very considerate to all of the surrounding neighbors but also considerate to the environment. Many of the surrounding neighbors have organic farms and gardens and are greatly appreciative in their choice of forest management practice.

Dale Olson 541-683-8418

Crystalline Publications

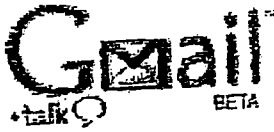
P.O. Box 2088

Eugene, OR 97402

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DATE: 1-18-07 EXHIBIT NO. _____



FEB 01 2007

Proposed Rezone of Peaceful Valley Land

2 messages

Wed, Jan 31, 2007 at 9:22 AM

[REDACTED]

Gary Darnielle
Lane County Hearing Official
c/o Lane County Land Management
125 E. 8th Ave
Eugene Oregon 97401
Dear Gary,

I live on two lots adjacent to the land owned by Merle Weiner and Tom Lininger that is under consideration for rezoning from F1 to F2. Given the close proximity of my home to their land and the shared water table, my primary concern regarding the use of that land is to eliminate or reduce all chemical/pesticide spraying. It is my understanding that Tom and Merle plan to undertake a natural reforestation process. I am therefore in support of their rezoning.

I would be happy to discuss my position further if that would be helpful. My contact information is below.

Jared R. Hanley
BRERETON, HANLEY & Co., Inc.
Private Investment Banking
www.breretonhanley.com

Telephone 323-573-6600
Facsimile 541-687-4738

[REDACTED]
Skype User Name: jaredhanley

Member: IMAP (International Association of Mergers & Acquisitions Professionals)

THIS CORRESPONDENCE IS CONFIDENTIAL & PRIVILEGED

FEB 01 2007

From: Bernita K. Mather
29545 Simmons Road
Eugene, OR 97405

January 30, 2007

To: Land Management Hearings Officer
Mr. Gary Darnielle

Dear Sir,

I have read the information about the request for a zone change on the piece of property owned by Tom Lininger and Merle Weiner (file number PA 06-6170). This property is in the hills directly above our land, so we are concerned about what happens there. After hearing arguments on both sides of this issue, I am now in favor of this rezoning. I support the request made by Tom Lininger and Merle Weiner.

Sincerely,

Bernita K. Mather

Richard Hazzard
84629 Laughlin Rd
Eugene, OR 97405
(541) 344-4909

January 29, 2007

Lane Management
Public works Department
125 East 8th Avenue
Eugene, OR 97401

FEB 02 2007

File Number: PA 06-6170

Gary Darnielle (Hearings official)

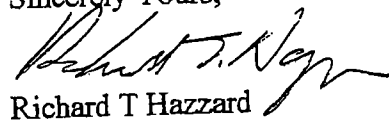
I am writing in regards to the hearing concerning the proposed zoning change by Tom Lininger and Merle Weiner from F-1 to F-2. On January 15th I sent a letter to you objecting to the zoning change. My main concern was the 10 dwelling access changes to the deed. Since then things have changed. The 10 dwelling access clause has been removed from the deed. The owners have vowed to be good stewards of the land. They have reforested and have not and don't intend on using herbicides.

I am a neighbor directly below their parcel and I now support their request for a zone change F-1 to F-2. I believe they will care for and protect the land from trespassers such as illegal campers, four wheelers, Etc.

A few days ago I received in my paper box a flyer, form letter, and a stamped envelope addressed to Lane County Commissioner Pete Sorenson encouraging me to oppose the zone change. I was encouraged to send copies to the other commissioners, to Gary Danielle, Jeff Towery, Senator Floyd Prozanski, and Senator Vicki Walker. The flyer and letter was solely based on the 10 dwelling access, which is no longer exist. The Fox Hollow and Peaceful valley residents behind this new this to be true but chose to send it anyway. The letter and flyer are filled with inaccuracies and scare tactics. It makes us envision homes sprawled across the hillside, 10 wells depleting our water resources and much more. It implies this is a tactic to fully develop the land above us. This is simply not true. Nor is it possible with a zone change from F-1 to F-2.

I felt compelled to write this letter of support because I felt that without knowing, people will who received these will react without knowing the accurate and true facts.

Sincerely Yours,


Richard T Hazzard

Zoning F-1 to F-2 PA06-6170 Tom Lenninger & Merle Weiner

1/29/07

Attention: Mr. Jerry Kendall Land Management Division

I'm Dale Olson at 84633 Laughlin Road whose property directly borders the land presently in consideration for rezoning. I completely support this rezoning of parcel 1 of 80 acres from F-1 to F-2. It has been my experience that Tom Lenniger and Merle Weiner are utilizing good forest management practices and being most considerate to the surrounding organic gardens and farms by using plant mats and Not using pesticides. It is also an extremely important factor that by having a residence on this acreage would deter most of the illegal hunting, illegal ATV use, illegal camping, and illegal chainsaw use that is presently going on. In turn there residence up there would greatly decrease the potential of fire danger and other forms of accidents that could have harmful impact on the surrounding neighbors.

I would like to go on record at this time expressing my concern with the limitations of the existing aquifer. I feel that it is okay for no more than 1 dwelling per 80 acres be allowed. Both the quantity and quality of the water in this area has been a real issue. I have lost one well already. My neighbor across the street has had to truck in water for his garden, do their laundry in town for over 20 years. Another neighbor just recently had to put in a new well. The lack of water is a major consideration to limit the expansion of any kind in this area.

I have received a letter from a group of people in this area using "scare tactics" to coerce people into writing letters of opposition to many county officials. It is most unfortunate to see such manipulation, as it is truly a misuse of our county officials time and resources. Their letter is Not based on any facts and for the most part is

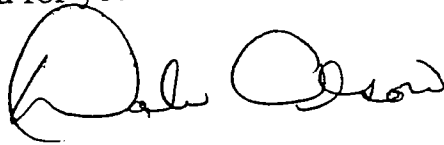
nothing more than a smear campaign. I wish to bring attention to the rhetoric used in that letter that may cause your department to receive letters in opposition. It reads as follows:

Approval of this application would:

- Add to damaging water run-off from lot grading and home construction.
- Dramatically increase the noise, pollution and danger attendant to increase auto and construction vehicle traffic on your street.
- Put up to 10 more wells on an already-marginal aquifer, reducing our water quantity and quality.
- Increase your exposure to herbicides.
- Result in "visual pollution", with large homes strung across the hills.

Again, I support the rezoning of Parcel 1 from F-1 to F-2 PA06-6170 and believe that it is in greatest interest for the neighbors and surrounding community.

Thank you for your time and consideration,



Dale Olson

→ 84633 Laughlin Rd.

Eugene 97405-9495

cc: Gary Darnielle

Jerry Kendall

Jeff Towery

Senator Floyd Prozanski

Senator Vicki Walker

Commissioner Pete Sorenson

Commissioner Bill Dwyer

Commissioner Bobbie Green

Commissioner Faye Steward

Commissioner Bill Fleenor

Tom Linninger & Merle Weiner

Memo

FEB 01 2007

To: To whom it may Concern
From: J.R. and Susan Frost
CC: Tom Liniger
Date: 01/30/07
Re: Application for Zoning Change

We are writing this letter in support of Mr. Liniger's request for a zoning change. Our address is 29536 Simmons road. This address butts directly to the NW corner of Parcel #1, owned by Mr. Liniger.

I have spoken directly to parties on both sides of the argument. I am convinced that Mr. Liniger's intentions are as he has stated. He wants to build a nice home for his family on property that he already owns. Based upon the proposed location of the home, it would have a marvelous view of the valley and surrounding areas.

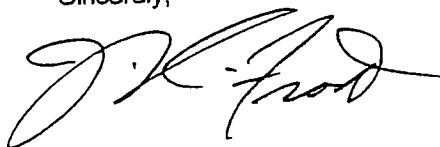
Mr. Liniger's past history indicates that he has a strong sense of what is good for the environment and community. His proposed use of this property for a homestead has much less impact then that of continued heavy logging. While his home would probably be in view of several of the residents of this valley, none of us own the view. I also believe that a nice looking home only adds to the sense of neighborhood within the valley.

Others in this valley, who are not directly effected by the zone change, seem to want to protest for the sake of protest. It seems that the attitude is "I got mine but I am going to stop you from getting yours". If in fact there were any sustainable evidence of danger to the valley, or residents, I would be the first to cry "Halt". I have seen no such evidence. In fact I believe that Mr. Liniger will not only be a great Steward for the land, he will become a valued neighbor.

When Rosoboro Timber owned the property, the clear cut logging caused a change in the water runoff. Mr. Liniger is replanting the areas and making the property more suited to that of a residential neighborhood.

Most of us in rural areas value our privacy. Mr. Liniger's request for a zone change does not infringe on our privacy in any way. I suspect that is why he purchased the property originally, to seek privacy and security for his family. We would not presume to invade upon his privacy. Adding a nice home, in a secluded section of this valley, will not turn this into an urban area.

Sincerely,



REC'D FEB 09 2007

Wednesday, February 7, 2007

Lane County Commissioners
125 E. 8th Ave.
Eugene, Or. 97401

Dear Mr. Sorenson,

We are writing to reverse our opposition to the proposed rezoning application PA-06-6170 submitted by Tom Lininger and Merle Weimer. We recently had the opportunity to meet both of these individuals during which they explained their perspective on their request to rezone this one parcel of their land they have purchased in Peaceful Valley. We now believe they will be outstanding stewards of the land and the measures they have already implemented and intend to implement in the future will protect the environment and tranquility of all residents in the valley. These measures include:

- Enhance the land through their reforestation efforts using manual labor as oppose to the application of herbicides
- Protect the water quality and groundwater in the area
- Limit the number of houses now and in the future they envision for the property
- Protect the land by opposing Measure 37 claims that are adjacent to their property

After having the opportunity to meet both Tom and Merle and discuss our initial concerns, we are convinced that their purchase and future plans for the property on Laughlin Road are genuine and sincere and that they will be welcomed additions to our small community in Peaceful Valley. They have gone out of their way to address concerns of many residents by meeting with all of us on February 5th to listen to issues and carefully responding to each of these concerns. This clearly demonstrates that they want to be good neighbors. I look forward to time when they complete their home and they can raise their children in this unique little community.

Thank you for your time and efforts.



Stuart Perlmeter and Anne Todd
84897 Laughlin Road
Eugene, Or. 97405
541-912-1918

FEB 01 2007

January 30, 2007

Mr. Gary Darnielle, Hearings Official
Land Management Division
125 E. 8th Ave.
Eugene, OR 97401

RE: Rezoning Application PA-06-6170

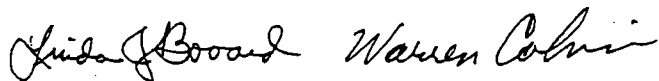
Dear Mr. Darnielle:

We live in Peaceful Valley. Our property does not touch the property owned by Tom Lininger and Merle Weiner. However, we see this land every time we drive into the Valley and one of the stream courses that originates in their land crosses ours.

We were unhappy when this land was logged and pleased when it was purchased by a private party. We believe that the Lininger/Weiner family will be good stewards of the land. We are aware that they have reversed the possibility for up to 10 houses. We do not believe that there will be a noticeable increase in noise or traffic. We believe them when they say that they will plant a variety of trees and that they will not develop the property beyond the one house that they are currently requesting. We believe that they are the best option for the land and we look forward to watching the new forest grow. We also believe that limited housing is unlikely to have an impact on our water supply.

We support the change from F1 to F2 for this parcel.

Sincerely,



Linda J. Bovard and F. Warren Colvin
29611 Simmons Road
Eugene, OR 97405

REC'D FEB 08 2007

Re: File # PA 06-61,0

After meeting on Feb. 5
with Jiringer and Weiner and
a large gathering of neighbors,
I wish to amend my previous
comments: I support a
zoning change allowing
them to build one family
dwelling with access from
Laughlin Road only.

Lynn Bowers
30251 Fox Hollow Rd.
Eugene 97405
344-1977

February 6, 2007

January 30, 2007

FEB 01 2007

Land Management Division/Public Works Department
Lane County Courthouse
Eugene, OR 97401

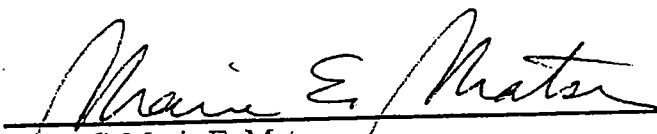
Attn: Jerry Kendall

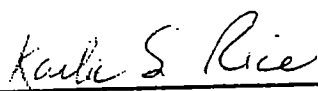
Re: Addition to Statement in Support of Proposed Land Use Change PA 06-6170

We live at 84691 Laughlin Road directly adjacent to the subject parcel proposed for zoning change from F-1 (Non-impacted forestland) to F-2 (Impacted forestland). We submitted a prior letter in support of the applicants and Marie Matsen spoke at the hearing.

After the January 18 public hearing, Mr. Lininger and Ms. Weiner approached us and asked us to enter into an agreement to change the deed restrictions on the land used as an access road to the subject property. The prior agreement read in part: "Road use shall be for land and forest management practices and shall not be used for residential access for more than three (3) dwellings for as long as either Karla Rice or Marie Matsen live at 84691 Laughlin Rd, after which time residential access may be increased to ten (10) dwellings." The new agreement, which has been signed by both parties and is being recorded, now reads: "Road use shall be for land and forest management practices and shall not be used for residential access for more than three (3) dwellings." The applicants asked for this change in response to concerns raised at the hearing by nearby property owners and asked for no consideration from us in return for the change. Furthermore, the applicants did not ask us to consider future changes to the deed restriction and there has been no conversation or any other communication between us and the applicants about future changes to the deed restriction.

We believe the applicants' stated intentions not to develop the land are sincere and believe the change to the deed restrictions is a good faith effort to alleviate fears expressed by nearby property owners that the applicants intended more dense development of the three parcels owned by them. We continue to fully support the proposed zoning change and consider it to be in the best interests of us as adjacent property owners to have responsible owners living on the forestland in question.


(signed) Marie E. Matsen


(signed) Karla S. Rice, 84691 Laughlin Rd., Eugene, OR 97405

County of Lane)
)
State of Oregon)

AFFIDAVIT OF JOAN BANFIELD

I, Joan Banfield, do solemnly swear that the following facts are true and accurate to the best of my knowledge:

1. My husband Larry Banfield and I own Tax Lot 18-04-33-504. Our address is 29588 Simmon Road. Our property consists of 13.91 acres. We have owned this property for 30 years. We share a common boundary with Parcel 1, Partition No. 2006-P2019 (the "Subject Property"), owned by Tom Lininger and Merle Weiner.

2. When the Rosboro Timber Company owned the Subject Property prior to May 2005, my husband and I were concerned about traditional industrial forestry practices on the Subject Property. We were worried about the use of herbicides because our property is downhill from the Subject Property, and the creek that runs down from the Subject Property might feed into the pond on our property.

3. We have also been concerned about trespassing on the Subject Property. We have heard gunshots on the Subject Property, even though hunting is prohibited there. We are aware that illegal use of three-wheel motorized vehicles occurs on the Subject Property, creating a fire risk for neighbors. We have also heard fire-crackers on the Subject Property.

4. Our 13.91-acre property is used primarily as for residential purposes. We do have trees on our property, but we do not consider ourselves to be commercial foresters. We have owned this property for 30 years and we have never sold any trees. We have never held ourselves out to the public as a forestry business. We have never incorporated nor filed business tax returns for a forestry operation, nor have we ever tried to write off the purchase of forestry-related equipment as a business expense on our tax returns. We have never held membership in any organization for commercial forestland owners. Our trees are a part of our yard, providing a buffer that insulates our house from the clear cut to the south. When Rosboro was our neighbor, we did not feel that our management practices were similar to Rosboro's commercial practices; to the contrary, we felt that Rosboro's commercial practices sometimes seemed to be inconsistent with our goals for our property.

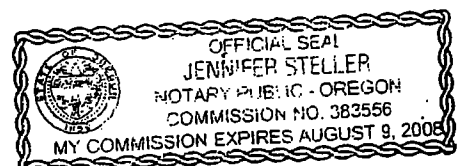
5. As we consider the range of possible uses for the Subject Property, we think that the approach taken by Tom Lininger and Merle Weiner is better than the likely alternatives. We support the application to rezone the Subject Property from F-1 to F-2.

Executed this 29 day of January, 2007.

Joan Banfield 1-29-07
Joan Banfield/Date

[Signature]
Notary/Date/Seal

8/9/08



U.S. Bank

County of Lane)
)
State of Oregon)

AFFIDAVIT OF REBEKAH HANLEY

I, Rebekah Hanley, do solemnly swear that the following facts are true and accurate to the best of my knowledge:

1. I reside with my husband and 11-month-old son at 84625 Laughlin Road, Eugene, OR, 97405. Our family has lived at this residence since July 2004.
2. Our property is adjacent to the former Rosboro property recently purchased by Tom Lininger and Merle Weiner (hereafter, the "Subject Property").
3. Our residence is less than 100 feet from the boundary of the Subject Property. I believe this to be true because the clear cut and the surveyor's flags appear to be less than 100 feet from the northern wall of our residence.
4. Only a few trees separate our residence from the industrial forestland on the Subject Property.
5. With a young child in our residence, and with little buffer between our residence and the Subject Property, I am concerned about the health risks posed by traditional industrial forest practices on the Subject Property, especially the aerial application of herbicides.
6. I believe that residential occupancy of the Subject Property by a family with young children would be desirable because it would significantly decrease the likelihood that forestry practices on the Subject Property would pose a health risk to my family.

Executed this 14 day of December, 2005.

Rebeka Hanley 12-14-05
Rebekah Hanley/Date

Dianne Bass 12/14/05
Notary/Date/Seal



REC'D FEB 13 2007

Robin Winfree-Andrew
29775 Fox Hollow Road
Eugene, Oregon 97405
541-343-1557

February 6, 2007

Mr. Gary Darnielle
Lane County Hearings Official
125 East 8th Ave.,
Eugene, OR 97401

RE: PA 06-6170, Lininger property

Dear Mr. Darnielle,

I have written 2 letters of concern regarding this re-zoning request; I still believe that re-zoning from F1 to F2 in general sets a dangerous precedent for conversion of other F1 lands in our area, enabling further development. However, after further discussion and a neighborhood meeting at which many concerns were addressed and somewhat resolved, I have decided to withdraw my opposition to this particular request.

I do expect that our Land Management Division will be more conscious about NOT granting re-zoning requests in the future; our land use laws were developed with the good of future generations in mind, and seek to maintain a balance of forest, farm and residential lands. I sincerely hope that your office does not view them as an impediment to be surmounted at every opportunity. I intend to continue to work in ways that ensure that they are upheld.

Thank you.

Robin Winfree

REC'D FEB 16 2007

Would like to have my
signature removed from petition
regarding rezoning of property
belonging to Merle Weiner and
Tom Lininger. This issue is no
longer a concern.

Tom Woyell

No address
provided.

REC'D FEB 21 2007


Gary Darnielle
Hearing Officer
% Lane County Management and Jerry Kendall
125 E. 8th
Eugene, Or 97401

19 Feb 2007

Dear Sir:

I had signed a petition against transferring the former Rosboro property in Peaceful Valley, from F1 status to F2 status, but have changed my mind about it since attending a meeting of the new owners Tom Linninger and Merle Weiner. We discussed the issues and I feel certain their intentions are to make the property an asset to our neighborhood. Therefore, I am in favor of the change of status to F2 for the benefit of our area.

Thank you,


Marsh Wingard
85124 Laughlin Rd
Eugene, Oregon 97405

REC'D FEB 26 2007

David Tipton
Amanda Moore
84738 Laughlin Road
Eugene, OR. 97405
541-686-1449

To: Hearings Officer c/o Lane County Land Management

Mr. Gary Danielle
Mr. Jerry Kendall
125 E. 8th Avenue
Eugene, OR. 97401

February 22, 2007

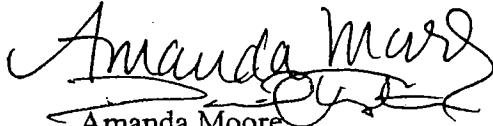
Dear Commissioners:

I am writing you in regards to the Weiner/Lininger rezone on Laughlin Road in Eugene, Oregon.

Earlier, we signed a petition against the rezone for their property. My partner and I would like to withdraw our opposition to this proposal.

There has been a lot of misinformation between neighbors and we feel that we are neutral on this issue.

Thank You,


Amanda Moore
David Tipton

TO: Lane County Land Management

Jerry Kendall

Gary Darnielle

MAR 08 2007

RE: Thomas Linger / Merle Linger

Rezoning of Laughlin - Peaceful Valley Property

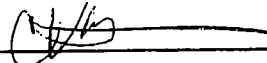
Dear Sirs:

We have met with Thomas & Merle and are in support of their application. We feel that they have addressed the important issues surrounding this change.

In addition, we also believe that the plans they have for this property will be an asset to the neighborhood, and their concern for the land, its use, and us as neighbors will make for a safer, environmentally sound neighborhood.

Thank you

Harold Hedden



Faye Bauman

84604 Arlie Ln. Eugene, OR 97405

30306 Fox Hollow Road
Eugene, OR 97405
345 4919
February 2, 2007

Gary Danielle
Lane County Hearings Official
C/o Lane County Management Division
125 E.8th Avenue
Eugene, OR 97401

Dear Mr Danielle,

We wrote earlier urging you to reject PA 06-6170, Tom Lininger and Merle Weiner's proposal to rezone their land holdings in the Peaceful Valley area. Now that the owners have agreed to modify the restriction in the deed so that it no longer allows the driveway to be used for ten residences, we are asking you speedily to grant them the zoning that will permit them to erect their own home on their property. We do urge, however, that this rezoning not extend to granting permission for additional road building other than that which would provide access to the dwelling from the existing road.

Very truly yours,



Reida Kimmel



Charles Kimmel

03-08-07408:51 RCLD

To: Lane County Land Management Division -

We are writing to say we are in support of
the application for zoning change submitted by Tom Hinenger.

We are not in support of any zone changes that could
result in dividing the land into less than 80 acre
parcels. Though we too are not fond of the notion of
yet another home visible on the ridge, we think it's in
the interest of the neighborhood to have the land owned
privately by one who chooses to maintain the natural
health of the forest. - Karen Perkins
David Simone

84569 Loughlin Rd.
Eugene OR 97405

February 20, 1007

Bill Dwyer, Bill Fleenor, Bobby Green, Peter Sorenson, Gaye Stewart
Lane County Commissioners
125 E. 8th Ave.,
Eugene, OR 97401

Dear Lane County Commissioners,

We previously sent letters opposing the Thomas Lininger/Merle Weiner request to rezone their acreage in the Peaceful Valley area (off Laughlin Road) in order to allow a dwelling.

However, since then, we have received more information about the situation, and feel confident that this is not an untoward request. With this letter we withdraw our opposition to the zoning change.

Sincerely,

A handwritten signature in cursive script, reading "Mary / Claudia". The signature is written in dark ink and is positioned above the typed names of the signatories.

Mary F. Milo
Claudia A. Gary
Milo/Gray Trust
29633 Fox Hollow Rd.,
Eugene, OR 97405

Marc Shapiro
84679 Arlie lane
Eugene, OR 97405-9455
PH: 541 342 4795, FX: 541 342 2011, E-mail: mrs@efn.org
February 21, 2007

Gary Darnielle
Hearing Officer
C/O Lane County Land Management and Jerry Kendall

Bill Dwyer, Bill Fleenor, Bobby Green, Peter Sorenson, & Fay Stewart
Lane County Commissioners

125 E. 8th Ave.
Eugene, OR 97401

Gentlemen:

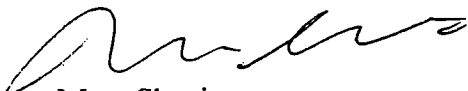
I have met with Tom Lininger and Merle Weiner, who are applying a zoning change from F-1 to F-2 for a segment of the former Rosboro property in Peaceful Valley.

I believe that they are well intended in their efforts to build a home on said property, should their application be granted. They are clearly committed protecting the environment, as it applies to their land. I anticipate their being good neighbors and a positive influence in preventing a variety of planning and environmental disasters that might take place if, because of their inability to take advantage of their land for their personal use, they were obliged to sell it to people who have no such commitment.

I strongly support them with respect to their zoning application and I trust that if reason prevails, their application will be granted.

Thank you for considering my comments.

Sincerely,



Marc Shapiro

