SUPPLEMENTAL INFORMATION SUBMITTED

Submitted on: 5/29/07 **Taken By:** Lisa Lansberry

SUPPLEMENTAL INFORMATION HAS BEEN RECEIVED BY THIS OFFICE IN REGARDS TO THE FOLLOWING:

BP# _____ To Matt

PA# 06-7191

SP# _____ Zip o Log

SI# _____

OTHER: Line 5 . Motion To Stay

BEFORE THE BOARD OF COUNTY COMMISSIONERS OF LANE COUNTY, OREGON

MOTION TO STAY THE ISSUANCE OF A FINAL ORDER
UNTIL STATE ACTION IN THE CASE IS FINAL
Measure 37 Claim, PA 06-7191

I, as a neighbor of the subject property, respectfully move the Board of Commissioners to stay the issuance of a final order in the above-referenced case until the claimant provides evidence of final state action, provided that the stay not exceed 540 days from the date the claim was filed with the County.

Any decision the Board makes in this case will undoubtedly result in an appeal. If the Board grants a waiver, I and other neighbors of the property will appeal. And conversely, if the Board denies the claim, it is anticipated that the claimant will appeal. A stay of the final order could obviate the need for an appeal depending upon the nature of the state decision and any intervening state legislative action.

The savings to the neighbors and the county will be considerable if an appeal is not necessary. The neighbors and I have been advised by attorneys that it will cost us over $20,000 to litigate, if an appeal is necessary. This is a substantial burden. The County's legal fees would be considerable as well. The County would be a defendant regardless of which side appeals and would also be responsible, to the extent necessary under Measure 37, for the claimant's legal fees.

HR 3546, which was signed by the Governor on May 10, 2007, gives the County 540 days from the date a claim was filed to render its decision. Thus the Board has the authority to grant the stay and will suffer no harm from staying a final order. Similarly, a stay will not harm the claimant since the proposed order in this case, if it were granted, would preclude the claimant from seeking county land use approval until the claimant provides evidence of final state action. And the neighbors would suffer no harm if the Board were to rule in their favor, but delay entry of the final order.

Wherefore, I respectfully request that the attached proposed order be granted.

Respectfully submitted,

Marilyn Cohen

Marilyn Cohen
29051 Fox Hollow Rd.
Eugene, OR 97405
541-344-0796

05-29-07A10:33 RCVD

BEFORE THE BOARD OF COUNTY COMMISSIONERS OF LANE COUNTY, OREGON

ORDER No.)IN THE MATTER OF CONSIDERING A MOTION IN
)A BALLOT MEASURE 37 CLAIM TO STAY ENTRY
)OF A FINAL ORDER UNTIL FINAL STATE ACTION
)(Zip-O-Log Mills, Inc., PA 06-7191)

IT IS HEREBY ORDERED that the final order in this case be stayed until the claimant provides evidence of final state action, provided that the stay shall not exceed 540 days from the date the claim in this case was filed with the County.

DATED this _____day of _____, 2007.

_____
Faye Stewart, Chair
Lane County Board of County Commissioners

Approved as to form
Date: _____
Lane County

_____
Office of Legal Counsel

SUPPLEMENTAL INFORMATION SUBMITTED

Submitted on: 5/29/07 **Taken By:** MC

SUPPLEMENTAL INFORMATION HAS BEEN RECEIVED BY THIS OFFICE IN REGARDS TO THE FOLLOWING:

BP# _____

PA# 06-7191 ZIP OLog

SP# _____

SI# _____

OTHER: June 5 Additional Documents

ADDITIONAL DOCUMENTS RELATING TO
THE PUBLIC HEALTH AND SAFETY EXEMPTION
OF MEASURE 37
PA 06-7191 for June 5, 2007 Hearing

Marilyn Cohen
29051 Fox Hollow Road
Eugene, OR 97405

Attached are the following documents relating to the health and safety exemption of Measure 37:

1. Oregon Department of Forestry, Land Use Planning Handbook 2003, page 18, addressing the danger of wildland fires caused by residential forest development and the resulting difficulties in protecting residents, structures and forests.

2. Oregon Department of Forestry, Forest Facts on Carbon, Forestlands and Climate Change, page 1, addressing the need to protect forests from conversion to other uses to help reduce atmospheric carbon.

Oregon Department of Forestry

Land Use Planning Handbook 2003

D. REDUCING CONFLICTS RELATED TO FIRE PREVENTION AND SUPPRESSION

Residential forest development can increase the costs of wildland fire protection by changing or restricting the tactics that can be used to fight a wildfire and by redirecting fire-fighting efforts away from protecting forest resources. The Oregon Department of Forestry found that the cost of suppressing large wildfires increased if dwellings were threatened. On average, the fires that threatened dwellings were 48.3% more expensive to suppress than similar large fires without dwellings (ODF, 1993).

Conflicts between the residential use and wildfire protection.

i. Rural residents cause many fires;

"Out of 1,581 forest fires on state protected lands during 1987, 976 were caused by people. Most others were started from lightning. Historically, 70% of fires are human-caused." (An Action Plan for Protecting Rural/Forest Lands from Wildfire at page 3.)

Many of the human-caused fires are related to rural dwellings and their occupants (ruralists). In particular, rural dwellings and ruralists are related to many of the debris burning fires, they contribute greatly to the miscellaneous category (especially children caused fires), and contribute somewhat to the smoker and camper fires. For 1989, there were 158 debris fires (21% of the total human-caused fires), 270 miscellaneous (includes children caused fires) fires (36%), 87 camper fires and 91 smoker fires. Ruralists were identified as directly causing 186 fires (25% of the total human-caused fires) in 1989.

ii. Management of fuel around dwellings becomes more difficult (residents want to retain cover for aesthetic and screening purposes) resulting in the long-term accumulation of fuel, increasing the chance of disastrous fires (Example: all of Deschutes County would have significantly less fuel - many fewer junipers, fewer trees per acre and a grass understory rather than brush if the natural fire cycle had been maintained);

iii. Fire protection priorities are complicated and fire-fighting resources can be diverted to the protection of homes and their residents while millions of dollars worth of timber burn along with the aesthetic, wildlife and watershed benefits.

iv. Tactics which can be employed in the suppression of wildfire may be restricted. Often dwellings sited on forest land dictate that the traditional perimeter control strategy must be sacrificed and other more dangerous, more expensive and less efficient strategies must be used, such as a frontal assault with large volumes of water, which requires great manpower and machinery resources.

v. Additional time must be devoted to coordination with structural protection agencies, resulting in both higher suppression costs and greater natural resource damages and losses.

Forest Facts

CARBON, FORESTLANDS AND CLIMATE CHANGE

March 2007

Experts agree that many human activities, like burning fossil fuels, pump carbon dioxide into the atmosphere and contribute to climate change. Trees have a remarkable capacity to not only remove carbon (sequester) from the atmosphere, but to store it as well. Young trees and forests that are growing rapidly are most efficient in taking up carbon and returning oxygen in the process of photosynthesis. As these forests mature, they will store large amounts of carbon. Carbon is also stored in wood products.

Because nearly half of Oregon's land is forested, there is plenty of potential for our forests to help reduce carbon dioxide in the earth's atmosphere. This is especially important, because scientists have discovered that current levels of carbon dioxide are the highest they have been in hundreds of thousands of years and are increasing rapidly. The more carbon in the atmosphere, the higher temperatures become. This is sometimes called the greenhouse effect because increased carbon dioxide and other gases trap heat radiating from the Earth's surface much like greenhouse windows trap heat from radiating sunlight.

Protecting forests from conversion and managing them appropriately can help reduce atmospheric carbon

Unfortunately, global forest losses since the industrial era about 300 years ago have resulted in only 50 percent of the forest cover that existed 8,000 years ago. These losses are attributed to population growth and larger and more permanent clearings for agriculture and development. This trend continues. The Food and Agriculture Organization of the United Nations estimates that each year we lose about 45 million acres of forestland worldwide—more than 1.5 times the total amount of forestland in Oregon. This makes it increasingly important to protect remaining forestlands from conversion to other uses and to manage them appropriately.

Several practices can help store carbon or reduce its emission into the atmosphere:

- Reducing the density of forests can help keep them healthy and minimize fire risk and disease problems. Fire not only causes loss of forestland, it also increases the emission of carbon into the atmosphere.
- Reforesting quickly after harvest
- Keeping forestland in forest use

SUPPLEMENTAL INFORMATION SUBMITTED

Submitted on: 5/22/07 **Taken By:** [illegible]

SUPPLEMENTAL INFORMATION HAS BEEN RECEIVED BY THIS OFFICE IN REGARDS TO THE FOLLOWING:

BP# _____

PA# 06-7191 ZIP O LOGS

SP# _____

SI# _____

OTHER: June 5 KM

REC'D MAY 22 2007

To: Lane County Land Management Division
125 East 8th Ave
Eugene, Or 97401 Attention: Kent Howe

From: Craig Latham and
Janice Dunn Tenants by Entirety
84141 Buckhorn Lane
Eugene, Or 97405

Re: M37 claim PA 06-7191 filed by Zip O Lumber Co.

Dear Mr. Howe,

We are writing to voice our opposition to the Measure 37 claim filed by Zip O Lumber Co. referenced by file # PA 06-7191. If approved, the quality of life for the neighbors of the claim and the value of their property would be adversely affected by increased traffic and the added stress to the already restricted water resources in our area. Our water gets iron in it when the groundwater level falls in the summer and a subdivision would undoubtedly make our situation worse. We think it is wrong for the claim to move forward before voters have a chance to vote on HB 3540 in the fall. The State of Oregon and Lane County have an obligation to protect the health, safety and welfare of the public under ORS 197.352. We are asking that the claim be denied for further processing.

Sincerely,

Craig Latham

Janice Dunn

*PROPERTY OWNERS:
CC: FILE

SUPPLEMENTAL INFORMATION SUBMITTED

Submitted on: Mar/16 **Taken By:** KM

SUPPLEMENTAL INFORMATION HAS BEEN RECEIVED BY THIS OFFICE IN REGARDS TO THE FOLLOWING:

BP# _____

PA# 06-7191 ZIP 0 LOGS

SP# _____

SI# _____

OTHER: _____

Addendum to Comments/Testimony for Measure 37 Claims

RE: PA 06-7191

Date:May 18, 2007

Peter Moulton
29051 Fox Hollow Rd.
Eugene, OR 97405

ORS 197.352 implementing Measure 37 Compromises Due Process in Considering Claims.

ORS 197.353(6) states:

(6) If a land use regulation continues to apply to the subject property more than 180 days after the present owner of the property has made written demand for compensation under this section, the present owner of the property, or any interest therein, shall have a cause for action for compensation under this section in the circuit court in which the real property is located, and the present owner of the real property shall be entitled to reasonable attorney fees, expenses, costs, and other disbursements reasonably incurred to collect the compensation. (Emphasis added)

Under this section the Board of Commissioners is faced with the potential cost of paying the legal expenses of a claimant's appeal of a denial of a Measure 37 claim. Since this provision appears to make an appeal free of any monetary cost to a claimant, it would almost automatically result in an appeal of any denial. Given the current economic crisis of the Lane County government which would allow no funding for claimant's legal expenses, much less for Measure 37 compensation payments, this section of Measure 37 can be expected to have an undeniably profound chilling effect on the Board's decisions regarding Measure 37 claims. This chilling effect can be expected to override the arguments and interests of citizens affected by the Measure 37 claims. The result is a significant denial of due process guaranteed by our Constitution and legal tradition.

Lane Code 2.740 Compromises Due Process in Considering Measure 37 Claims.

Lane Code 2.740 states:

(1) The County Administrator shall make a determination as to whether the application qualifies for Board compensation consideration.

There is no provision for any public involvement in the process of making this determination. There are neither provisions for a public hearing nor for review of the determination prior to its submission to the Board. Any public involvement is at the discretion of the County Administrator. Indeed in the case of PA 06-7161 the determination was submitted to the Board several days before being made available to the public and several days before citizen comment was due. Such a process does not allow adequate citizen input. The result is a denial of due process which must be afforded at the level of making a determination on the validity of a Measure 37 claim.

SUPPLEMENTAL INFORMATION SUBMITTED

Submitted on: May 18 **Taken By:** Km

SUPPLEMENTAL INFORMATION HAS BEEN RECEIVED BY THIS OFFICE IN REGARDS TO THE FOLLOWING:

BP# _____

PA# 06-7191 Zip 0 Loss

SP# _____

SI# _____

OTHER: _____

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

05-18-07P12:40

Board of Lane County Commissioners
125 E. 8th Ave.
Eugene, OR 97401

May 18, 2007
RE: Addendem to Comments on PA 06-7191, Measure 37 claim, Zip-O-Log Mills, Inc.

For 35 years, I have been proud to be called an Oregonian. When I travel, people say they have heard what a beautiful, natural, and unspoiled place Oregon is. Their image is of tall trees, snowcapped mountains, clean rivers, plentiful fish and wildlife, and people who love and protect the outdoors. I have built a business (a bed-and-breakfast) on attracting visitors to Oregon with visions of outdoor treks, healthy and organically raised food, and clean water. **Travel Oregon** is branding our state to reflect these values.

But I am most concerned at the current direction in which our county and state are going. Measure 37 is contributing to the "Californication" of Oregon, something many of us dreamed would "never happen here." And recent public opinion polls show that citizens

Among many other concerns are these regarding the process:

- The process is deeply flawed, there is a lack of due process, and testimony is limited to 3 minutes, which prevents true facts and testimony from being allowed and given in depth by people who are experts in the field.
- The statute requiring the county to pay attorney fees has a chilling effect on fair administration, as it causes government to act out of fear of reprisal.

You can do more than just sit there and rubber stamp all these claims that come to you! You KNOW this is not a good thing for our county or our state; development must be managed or water resources and infrastructure will be affected, and fire risks will be heightened. Take a courageous stand for healthy development and vision of the future for our county and state.

Thank you,

Robin Winfree

SUPPLEMENTAL INFORMATION SUBMITTED

Submitted on: MAY 18 **Taken By:** KM

SUPPLEMENTAL INFORMATION HAS BEEN RECEIVED BY THIS OFFICE IN REGARDS TO THE FOLLOWING:

BP#

PA# 06-7191

SP# Zip 0 Log

SI# JUNE 5

OTHER: ATTN: KEIR MILLER

3 INDIVIDUAL CITIZENS M37 COMMENTS

Additional Comments/Testimony in Opposition to Measure 37 Claim, PA06-7191
Addressing the Health and Safety Exemption of Measure 37

Marilyn Cohen
29051 Fox Hollow Road
Eugene, OR 97405
May 18, 2007

This case was continued to allow the Board to consider comments in opposition to the claim. All of those issues are presently before the Board. Commissioner Sorenson also requested further discussion of whether the challenged regulations are public health and safety provisions and as such are exempt from a Measure 37 claim.

The subject property is zoned F-1 Nonimpacted Forest Land and, as part of the Spencer Creek Watershed, is a "designated quantity groundwater limited" and "quality limited" area. (See maps, Attachment A). The specific question being addressed in this memorandum is whether the challenged regulations governing such zones are exempt under Measure 37 as public health and safety regulations. The question must be answered in the affirmative.

A. The challenged regulations are exempt from a Measure 37 claim under the public health and safety purpose provisions of Lane Code Chapters 13, 15 and 16, and Lane Manual, Chap.13. Measure 37 exempts land use regulations "[r]estricting or prohibiting activities for the protection of public health and safety...". ORS 197.352(3)(B). Commissioner Sorenson asked whether the courts have held the health and safety purpose provisions of other county codes to be applicable to this health and safety exemption. I have been advised by attorneys coordinating appeals in opposition to Measure 37 claims that the issue has not yet been decided by the courts.*

However, United States Supreme Court precedent on the purpose of zoning laws is applicable. In Village of Euclid, Ohio v. Ambler Realty Co, 272 U.S. 365 (1926), the leading case on public health and safety and zoning, the United States Supreme Court held that the very basis of zoning regulations lies in the power of the government to regulate for the public health, safety, morals and general welfare. In Euclid, a realty company alleged that restrictive provisions of ordinances excluding all business, trade and industrial structures from certain zones, had reduced the value of its property from $10,000 to $2,500 per acre and was therefore unconstitutional. The Court rejected the argument. The Court looked at the public health and safety purposes of the zoning laws and upheld them as valid public health and safety regulations. (The Supreme Court's opinion is attached as Attachment B).

In addition, the Court stated that "[i]f the validity of the legislative classification for zoning purposes be fairly debatable, the legislative judgment must be allowed to control". 276 U.S. 365, 388. Accordingly, the stated purpose of zoning regulations to protect public health and safety is not a tangential issue, but rather goes to the very validity of the regulations.

The purpose provisions of Lane Code Chapters 13.005 (governing land divisions) and 16.003 (governing the Lane County Land Use and Development Code) state that both Chapters 13 and 16 were adopted to promote and protect public health and safety. (See Attachment C). The purpose provisions parallel the language of Measure 37 "[r]estricting or prohibiting activities for the protection of public health and safety...". ORS 197.352(3)(B). (Emphasis added).

Similarly, the purpose provision of Lane Code Chapter 15 (governing roads) states that the chapter was adopted to provide safe vehicular and pedestrian movement throughout the County. And the purpose provision of Lane Manual 13.010 (establishing Quantity and Quality Groundwater Limited Areas) states that the designations were adopted in the interests of public health. The relevant purpose provisions are set forth in Attachment C and were discussed more fully in my initial Comments/Testimony submitted on April 30, 2007, pp. 1-4.

In addition to the provisions discussed in my earlier comments, I would like to call the Board's attention to two additional provisions. LC 16.003(10) states that an additional purpose of Chapter 16 is to "[p]rotect the quality of the air, water and land resources of the County". And most significantly, LC 16.011 specifically states that the zone classifications of Chapter 16, which include the F-1 classification, were established "[i]n order to achieve the purposes outlined in LC 16.003". Thus the Code itself ties the F-1 classification to the purposes of the chapter.

Under the code's stated purposes of protecting health and safety, all of the challenged regulations are health and safety measures and are exempt under Measure 37. Neither Measure 37, Lane Code 2.700 et. seq. implementing Measure 37, nor the chapters themselves grants the Board the authority to override the stated purposes in the code. Accordingly, the Board has no authority to waive the challenged regulations nor can it grant compensation to the claimant on the basis of those regulations.

B. The challenged regulations, in and of themselves, are health and safety measures and are therefore exempt from a Measure 37 claim.

Whether or not the purpose provisions of the code are dispositive, the challenged regulations, in and of themselves, are regulations restricting or prohibiting activities for the protection of public health and safety and thus come directly within the Measure 37 exemption.

The Supreme Court in Euclid, in determining the validity of ordinances excluding development in certain zones, looked behind the broad exclusions and focused on whether the exclusion "bears a rational relation to the health and safety of the community". 272 U.S. 365, 391. The Court looked specifically at the ordinances' ability to limit or protect citizens from the dangers of fire, noise, air pollution, traffic etc. In upholding the ordinances as valid health and safety regulations, the Court stated that a zoning ordinance will be upheld as valid unless there is "no substantial relation to the public health, safety, morals or general welfare". 272 U.S. 265, 394. (Emphasis added). The Court also stated that the inquiry does not focus on a particular property but on the circumstances and locality, i.e. the need to protect a broader area. 272 U.S. 365, 388.

Thus, in the instant case, the Board must look behind the challenged regulations at the importance of the regulations in protecting the health and safety of the citizens of Lane County and, in particular, the citizens in the forest-urban interface. The subject property is in a forested area with BLM, Guistina, Rosboro Lumber and others having significant tracts of F-1 forested land. It also is an area that has homes on F-2 land. It is the County's power to protect the health and safety of this forest-urban interface which is at issue in this case.

The challenged regulations of Lane Code Chapters 13, 15 and 16 prohibit residential development and create minimum parcel sizes on F-1 land, create designated quantity groundwater limited and quality limited areas, require safe subdivision design, and provide for

safe roads. These provisions protect against fire danger, degraded water quantity and quality, degraded air, unsafe partitioning, and unsafe traffic, and as such, protect public health and safety.

However, it is Chapter 16's prohibition of residential development and restriction of parcel size on F-1 land that are most significant. If the Board holds, as I believe it must, that these regulations protect public health and safety and are exempt under Measure 37, the decision would eliminate any valid claim for compensation. All the other regulations would be moot. Accordingly, the following discussion focuses on establishing that Chapter 16's prohibition on residential development and restriction of parcel size constitute regulations "[r]estricting or prohibiting activities for the protection of public health and safety..." and thus are exempt from a Measure 37 claim under ORS 197.352(3)(B).

Chapter 16's protection against the danger of wildfire

The challenged provisions of Chapter 16, prohibiting residential development on F-1 land and restricting parcel size, protect against the danger of wildfire. Marvin Brown, the State Forester, has unequivocally stated that residential development and parcelization on forest land significantly increases the risk of wildfires.

> 1) "[t]he presence of development in forested areas changes everything about wildfire - placing homes at risk, making firefighting more complicated, and increasing firefighting costs". (Emphasis added). (Oregon State Forester, Attachment D p.21. See also, p.6).
>
> 2) "In Oregon ... tract sizes are getting smaller ... and more forested acres are being viewed as potential residential development... ." With these changes, "[t]he control of wildfire moves from a 'loss of timber investment' concern to a 'loss of life and personal property'". (Emphasis added). (Oregon State Forester, Attachment D p.1).
>
> 3) "The loss of forest land to development - and all the consequences - is a reality we have to respond to. ... This is shaping up as the defining forestry issue of our times". (Emphasis added). (Oregon State Forester, Attachment D p.21).

In addition, Rod Nichols of the Oregon Department of Forestry, in an email dated May 11, 2007 to Neal Miller, one of the neighbors of the subject property, stressed that human-caused fires, especially in the wildland-urban interface, are a major concern.

> "In the five year period running through 2006, we had 3,951 human-caused fires on the 15.8 million acres of private and public lands protected by the Oregon Dept. of Forestry. Of those fires, 925 occurred in the wildland-urban interface. So, 23 percent of the total human-caused fires occurred in the interface during the past five years.
>
> The specific causes of these interface wildfires include debris burns, smoking, use of power equipment (typically lawnmowers, weed whackers, etc.). ...
>
> Each year, about two-thirds of the total wildfires on Department of Forestry-protected lands are human caused and the other one-third lightning caused. ...

> Debris Burning is noteworthy, as this has emerged in recent years as the major type of human caused wildfire. Many of these debris-burning wildfires are the result of homeowners in the interface burning yard waste and other debris in their backyards. Typically, the homeowner starts the fire, then leaves it unattended or doesn't ensure it is completely extinguished at the end of the burn. The fire escapes and spreads into a wildfire". (Nichols, Attachment E).

Thus, Chapter 16's prohibition of residential development and restriction on parcel size on F-1 land are significant protections against the danger of wildfires. As the State Forester noted the presence of development moves the control of wildfires from a loss of timber investment to a loss of life and personal property. There can be no greater threat to public health and safety than the loss of life. Accordingly, for this reason alone, the County's restrictions on residential development and minimum parcel size on F-1 land are valid protections of public health and safety and are therefore exempt from a Measure 37 claim.

Chapter 16's protection against the diminution and degradation of water

The challenged provisions of Chapter 16 prohibiting residential development on F-1 land and restricting parcel size are also valid protections against the diminution and degradation of water quantity and quality. This is especially true in an area which has been designated as a "quantity and quality groundwater limited area". The Oregon Department of Forestry has stated that

> 1) "degraded *water quality* is another consequence" of development in forest lands. (Department of Forestry, Attachment D, p.6). (Underlined emphasis added).
>
> 2) "The fragmentation and parcelization of Oregon's forests, combined with the development of roads and residences, can degrade the 'green infrastructure' of a forested watershed and potentially impact water quality and quantity...". (Emphasis added). (Department of Forestry, Attachment D p. 6).

People can live without a lot of things, but they cannot live without water. The drawdown of water in a common aquifer that is already in a water quantity limited area has serious health and safety consequences. It can degrade water quantity and quality, can diminish water on neighboring properties, and can diminish the amount of water necessary for fighting fires. The County 's restrictions on development in F-1 zones, especially in areas designated water quantity limited, are thus valid protections of public health and safety and are exempt from a Measure 37 claim.

Chapter 16's protection of air quality

The removal of forest land for residential construction also adversely affects air quality. The State Forester has stated that

> 1) "Fewer trees mean fewer benefits to air quality, aesthetics, and carbon storage". (Department of Forestry Attachment D p.1).

With global warming and air pollution constituting major threats to public health and safety, Chapter 16's preservation of F-1 land for the growing of trees is a valid and necessary regulation to protect public health and safety. Concern about these issues should be paramount. For this reason, the code's restriction of residential development on F-1 land must be viewed as

protecting health and safety and therefore exempt from a Measure 37 claim.

As the Supreme Court noted in Euclid, "with the great increase and concentration of population, problems have developed, and constantly are developing, which require, and will continue to require, additional restriction in respect of the use and occupation of private lands..." 272 U.S. 365, 386. ... And in this there is no inconsistency, for, while the meaning of constitutional guaranties never varies, the scope of their application must expand or contract to meet the new and different conditions which are constantly coming within the field of their operation. In a changing world it is impossible that it should be otherwise". 272 U.S. 365, 387. As global warming has become a major threat to health and safety, the necessity of precluding residential development and restricting parcel size on prime forest land has become a public health and safety issue.

The threat of wildfire, the degradation of water quantity and quality, and the degradation of air quality are not just present concerns. As the Pacific Northwest Research Station has stated "development is permanent. ... "[A]fter a forest is converted to urban uses, the ecosystem services, such as water and air filtration, ... and carbon storage are effectively gone". (Oregon Department of Forestry, Attachment D, p. 6, note 1). And after a forest is converted to urban uses, the danger of wildfires from homes is permanent as well.

In sum, Chapter 16's prohibition of residential development and restriction on parcel size on F-1 land are regulations "restricting or prohibiting activities for the protection of public health and safety" and, as Measure 37 is written, are exempt from a Measure 37 claim. Measure 37 does not require that health and safety be the sole justification for the regulation nor does it even require that the health and safety prohibitions and restrictions be substantial.

In addition, Measure 37 does not require that the health and safety exemption of ORS 197.352 (3)(B) be narrowly construed. In contrast, in allowing an exemption for public nuisances under ORS 197(3)(A), Measure 37 specifically states that the "subsection shall be construed narrowly in favor of a finding of compensation under this section". However, there is no such limitation in the public health and safety exemption in subsection (B).

Measure 37, as written, specifically exempts regulations "[r]estricting or prohibiting activities for the protection of public health and safety...". ORS 197.352(3)(B). The challenged regulations of Chapter 16 of the Lane Code come within that definition and therefore the Board must hold that they are exempt under Measure 37, and deny the claim. The answer for those who would be unhappy with such a ruling is not to take issue with the Board, but to return to the legislature or the ballot box.

Footnote for page 1:
*The Hood River County Circuit Court, in Columbia River Gorge Commission et.al. v. State of Oregon et.al., decided February 7, 2007, in finding a Measure 37 federal law exemption, did hold that purpose statements in a federal statute creating the Columbia River Gorge National Scenic Area and county land use ordinances formed an integrated whole. However, the Court did so under a specific federal statute and the ruling is not applicable to the instant case.

Attachments

A. Maps establishing that the subject property is in the Spencer Creek Watershed and clarifying previously submitted maps establishing that the subject property is within a designated quantity and quality groundwater limited area.

B. United States Supreme Court decision in Village of Euclid, Ohio v. Ambler Realty Co, 272 U.S. 365 (1926).

C. The general purpose provisions of Lane Code Chapters 13, 15 and 16, and Lane Manual 13.010.

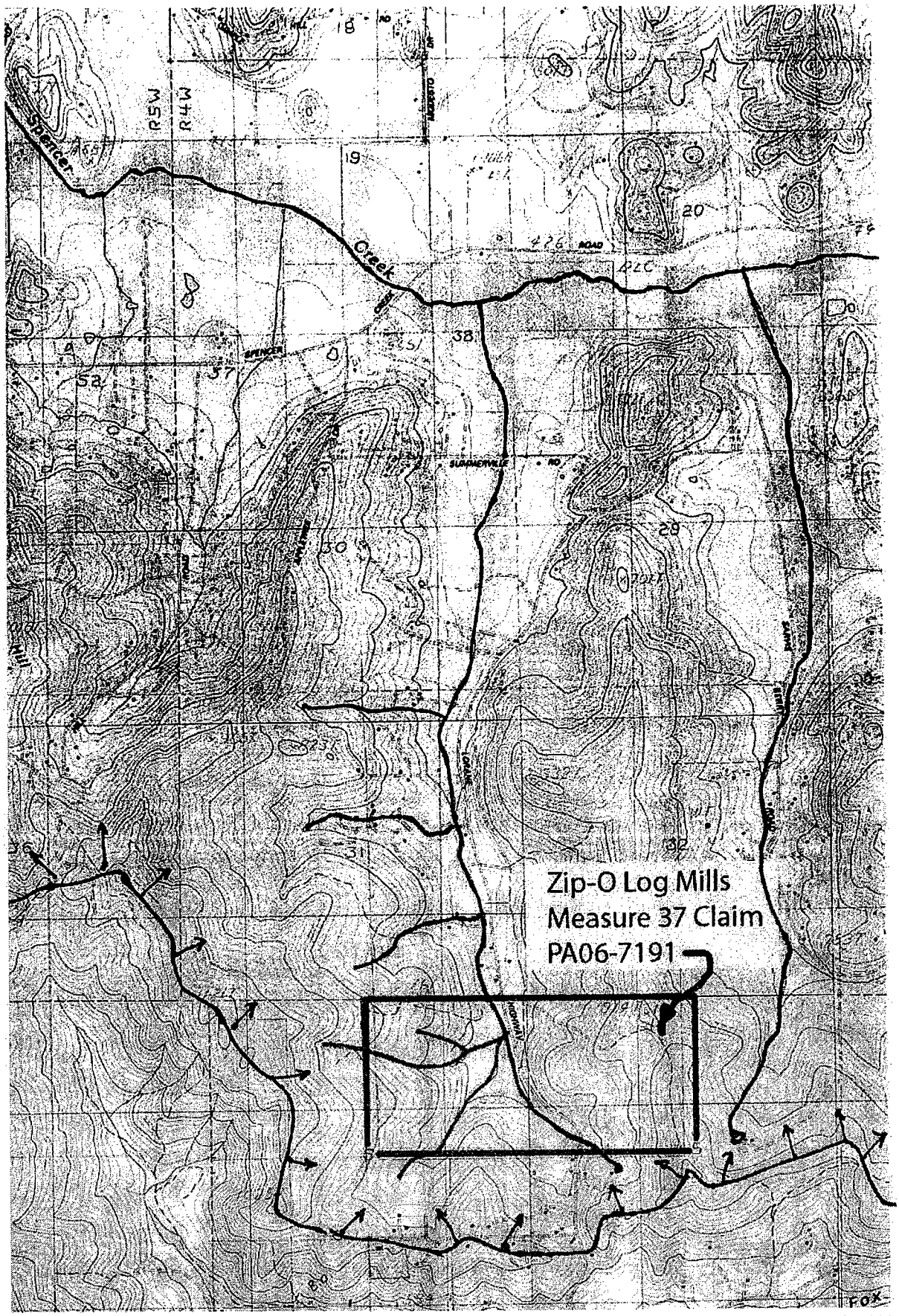
D. Forests for Oregon, Magazine of the Oregon Department of Forestry, Spring 2007, containing a State Forester letter and two articles.

E. Rod Nichols, Oregon Department of Forestry statistics.

Attachment A

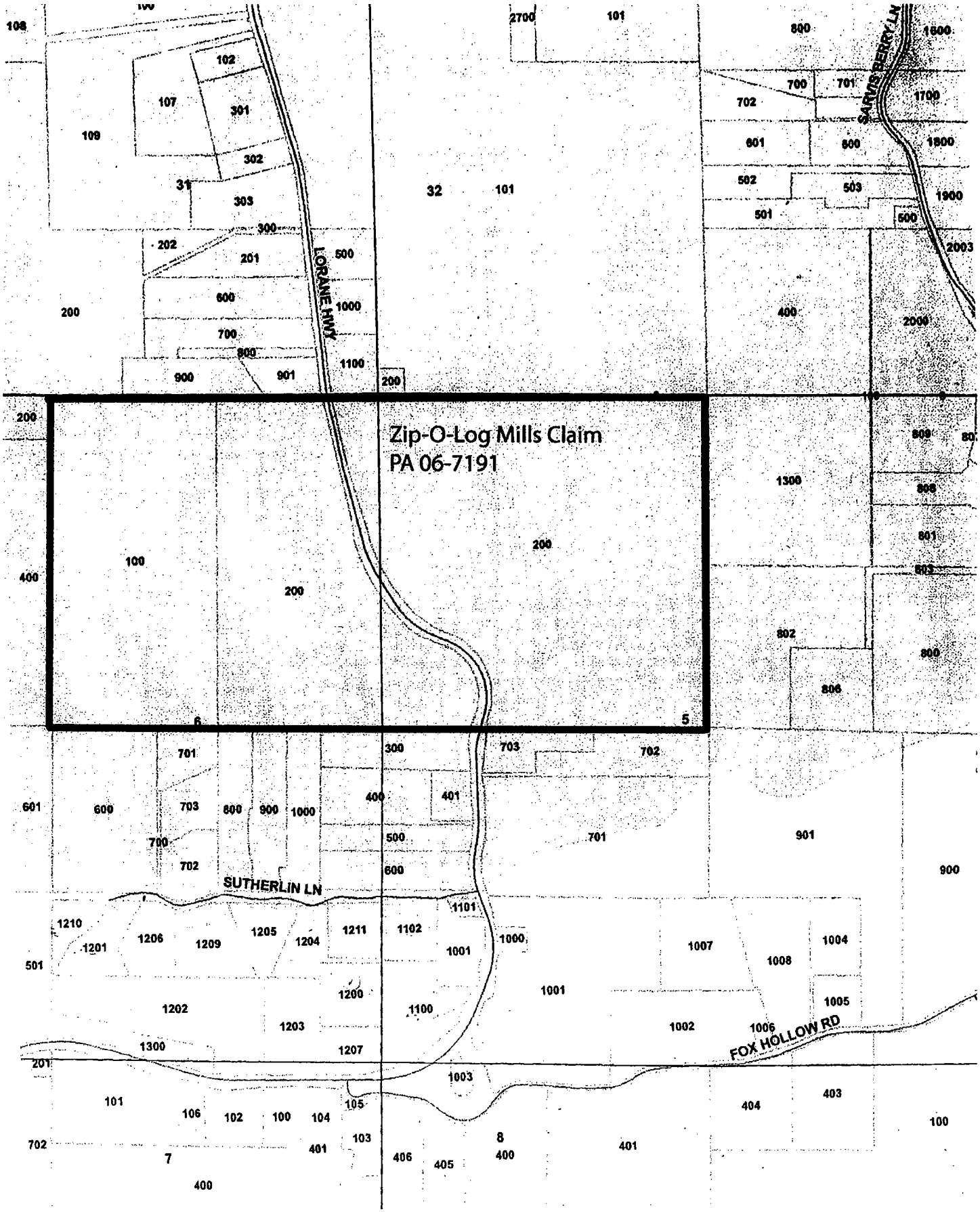
Maps establishing that the subject property is in the Spencer Creek Watershed and clarifying previously submitted maps establishing that the subject property is within a designated quantity and quality groundwater limited area.

Topographic Expression of the Spencer Creek Watershed
In the Vicinity of the Zip-O-Log Mills Measure 37 Claim: PA 06-7191
Prepared and Submitted by Jackie Robertson, BLA



Base map excerpted from the USGS Fox Hollow Quadrangle, 7.5 minute series 1984

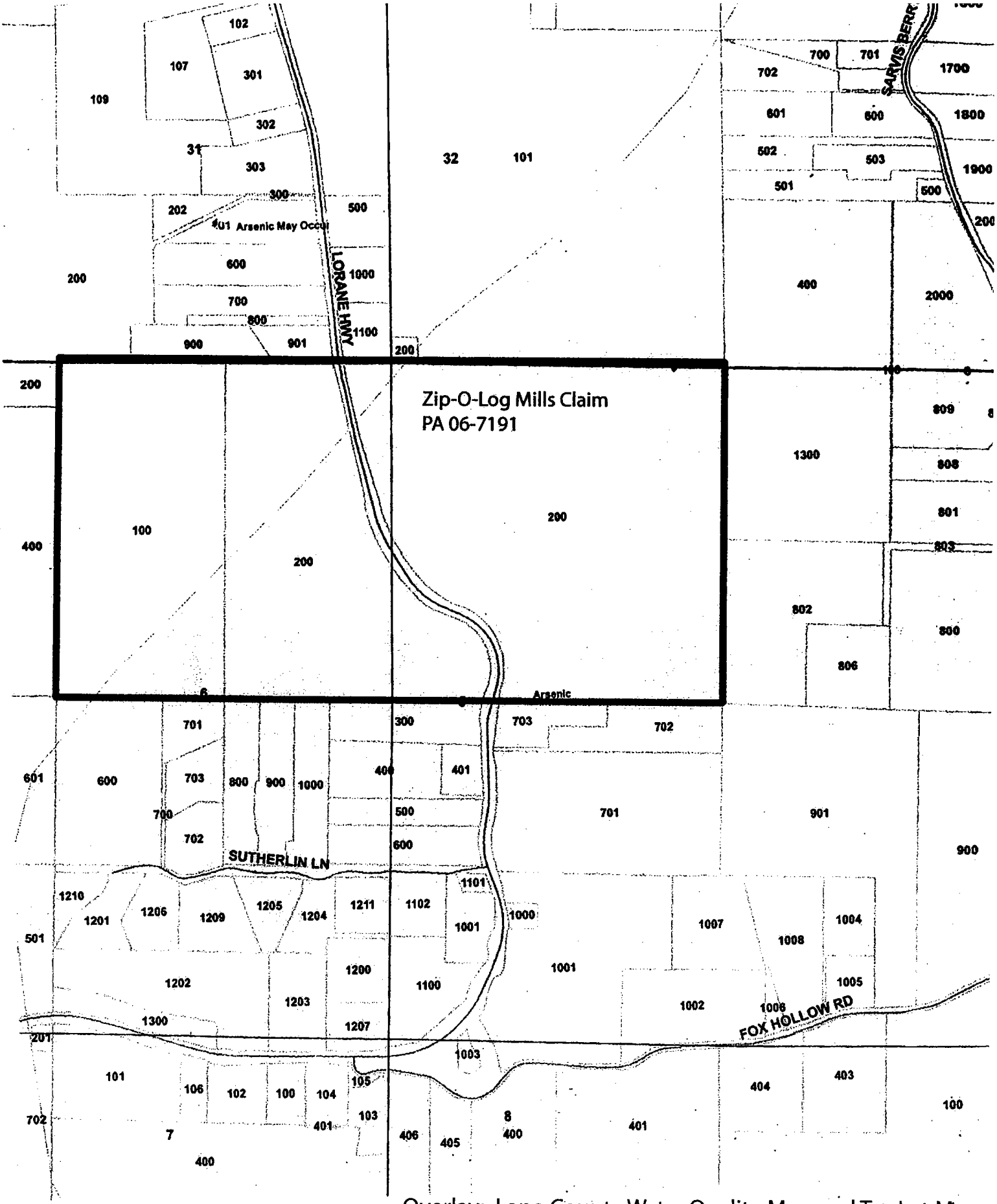
Cover overlay and watershed analysis by J. Robertson



Overlay: Lane County Water Quantity Limited Areas Map and Tax Lot Maps in the Vicintiy of Zip-O-Log Mills Measure 37 Claim PA 06-7191

*Previously submitted document with color and emphasis added for clarity.

Designated water quality limited area



Overlay: Lane County Water Quality Map and Tax Lot Maps
in the Vicintiy of Zip-O-Log Mills Measure 37 Claim PA 06-7191
*Previously submitted document with color and emphasis added for clarity.

Attachment B

United States Supreme Court decision in Village of Euclid, Ohio v. Ambler Realty Co, 272 U.S. 365 (1926).

U.S. Supreme Court

VILLAGE OF EUCLID, OHIO v. AMBLER REALTY CO., 272 U.S. 365 (1926)

272 U.S. 365

VILLAGE OF EUCLID, OHIO, et al.
v.
AMBLER REALTY CO.
No. 31.

Reargued Oct. 12, 1926.
Decided Nov. 22, 1926.

[272 U.S. 365, 367] Mr. James Metzenbaum, of Cleveland, Ohio, for appellants.

[272 U.S. 365, 371] Messrs. Newton D. Baker and Robert M. Morgan, both of Cleveland, Ohio, for appellee.

[272 U.S. 365, 379]

Mr. Justice SUTHERLAND delivered the opinion of the Court.

The village of Euclid is an Ohio municipal corporation. It adjoins and practically is a suburb of the city of Cleveland. Its estimated population is between 5,000 and 10,000, and its area from 12 to 14 square miles, the greater part of which is farm lands or unimproved acreage. It lies, roughly, in the form of a parallelogram measuring approximately 3 1/2 miles each way. East and west it is traversed by three principal highways: Euclid avenue, through the southerly border, St. Clair avenue, through the central portion, and Lake Shore boulevard, through the northerly border, in close proximity to the shore of Lake Erie. The Nickel Plate Railroad lies from 1,500 to 1,800 feet north of Euclid avenue, and the Lake Shore Railroad 1,600 feet farther to the north. The three highways and the two railroads are substantially parallel.

Appellee is the owner of a tract of land containing 68 acres, situated in the westerly end of the village, abutting on Euclid avenue to the south and the Nickel Plate Railroad to the north. Adjoining this tract, both on the east and on the west, there have been laid out restricted residential plats upon which residences have been erected.

On November 13, 1922, an ordinance was adopted by the village council, establishing a comprehensive zoning plan for regulating and restricting the location of trades, [272 U.S. 365, 380] industries, apartment houses, two-family houses, single family houses, etc ., the lot area to be built upon, the size and height of buildings, etc.

The entire area of the village is divided by the ordinance into six classes of use districts, denominated U-1

to U-6, inclusive; three classes of height districts, denominated H-1 to H-3, inclusive; and four classes of area districts, denominated A-1 to A-4, inclusive. The use districts are classified in respect of the buildings which may be erected within their respective limits, as follows: U-1 is restricted to single family dwellings, public parks, water towers and reservoirs, suburban and interurban electric railway passenger stations and rights of way, and farming, non-commercial greenhouse nurseries, and truck gardening; U-2 is extended to include two-family dwellings; U-3 is further extended to include apartment houses, hotels, churches, schools, public libraries, museums, private clubs, community center buildings, hospitals, sanitariums, public playgrounds, and recreation buildings, and a city hall and courthouse; U-4 is further extended to include banks, offices, studios, telephone exchanges, fire and police stations, restaurants, theaters and moving picture shows, retail stores and shops, sales offices, sample rooms, wholesale stores for hardware, drugs, and groceries, stations for gasoline and oil (not exceeding 1,000 gallons storage) and for ice delivery, skating rinks and dance halls, electric substations, job and newspaper printing, public garages for motor vehicles, stables and wagon sheds (not exceeding five horses, wagons or motor trucks), and distributing stations for central store and commercial enterprises; U-5 is further extended to include billboards and advertising signs (if permitted), warehouses, ice and ice cream manufacturing and cold storage plants, bottling works milk bottling and central distribution stations, laundries, carpet cleaning, dry cleaning, and dyeing establishments, [272 U.S. 365, 381] blacksmith, horseshoeing, wagon and motor vehicle repair shops, freight stations, street car barns, stables and wagon sheds (for more than five horses, wagons or motor trucks), and wholesale produce markets and salesroom; U-6 is further extended to include plants for sewage disposal and for producing gas, garbage and refuse incineration, scrap iron, junk, scrap paper, and rag storage, aviation fields, cemeteries, crematories, penal and correctional institutions, insane and feeble-minded institutions, storage of oil and gasoline (not to exceed 25,000 gallons), and manufacturing and industrial operations of any kind other than, and any public utility not included in, a class U-1, U-2, U-3, U-4, or U-5 use. There is a seventh class of uses which is prohibited altogether.

Class U-1 is the only district in which buildings are restricted to those enumerated. In the other classes the uses are cumulative-that is to say, uses in class U-2 include those enumerated in the preceding class U-1; class U-3 includes uses enumerated in the preceding classes, U-2, and U-1; and so on. In addition to the enumerated uses, the ordinance provides for accessory uses; that is, for uses customarily incident to the principal use, such as private garages. Many regulations are provided in respect of such accessory uses.

The height districts are classified as follows: In class H-1, buildings are limited to a height of 2 1/2 stories, or 35 feet; in class H- 2, to 4 stories, or 50 feet; in class H-3, to 80 feet. To all of these, certain exceptions are made, as in the case of church spires, water tanks, etc.

The classification of area districts is: In A-1 districts, dwellings or apartment houses to accommodate more than one family must have at least 5,000 square feet for interior lots and at least 4,000 square feet for corner lots; in A-2 districts, the area must be at least 2,500 square feet for interior lots, and 2,000 square feet for corner lots; in A-3 [272 U.S. 365, 382] districts, the limites are 1,250 and 1,000 square feet, respectively; in A- 4 districts, the limits are 900 and 700 square feet, respectively. The ordinance contains, in great variety and detail, provisions in respect of width of lots, front, side, and rear yards, and other matters, including restrictions and regulations as to the use of billboards, signboards, and advertising signs.

A single family dwelling consists of a basement and not less than three rooms and a bathroom. A two-family dwelling consists of a basement and not less than four living rooms and a bathroom for each family, and is further described as a detached dwelling for the occupation of two families, one having its principal living rooms on the first floor and the other on the second floor.

Appellee's tract of land comes under U-2, U-3 and U-6. The first strip of 620 feet immediately north of Euclid avenue falls in class U-2, the next 130 feet to the north, in U-3, and the remainder in U-6. The uses of the first 620 feet, therefore, do not include apartment houses, hotels, churches, schools, or other public and semipublic buildings, or other uses enumerated in respect of U-3 to U-6, inclusive. The uses of the next 130 feet include all of these, but exclude industries, theaters, banks, shops, and the various other uses set forth in respect of U-4 to U-6, inclusive. 1 [272 U.S. 365, 383] Annexed to the ordinance, and made a part of it, is a zone map, showing the location and limits of the various use, height, and area districts, from which it appears that the three classes overlap one another; that is to say, for example, both U-5 and U-6 use districts are in A-4 area district, but the former is in H-2 and the latter in H-3 height districts. The plan is a complicated one, and can be better understood by an inspection of the map, though it does not seem necessary to reproduce it for present purposes.

The lands lying between the two railroads for the entire length of the village area and extending some distance on either side to the north and south, having an average width of about 1,600 feet, are left open, with slight exceptions, for industrial and all other uses. This includes the larger part of appellee's tract. Approximately one-sixth of the area of the entire village is included in U-5 and U-6 use districts. That part of the village lying south of Euclid avenue is principally in U-1 districts. The lands lying north of Euclid avenue and bordering on the long strip just described are included in U-1, U-2, U-3, and U-4 districts, principally in U-2.

The enforcement of the ordinance is intrusted to the inspector of buildings, under rules and regulations of the board of zoning appeals. Meetings of the board are public, and minutes of its proceedings are kept. It is authorized to adopt rules and regulations to carry into effect provisions of the ordinance. Decisions of the inspector of buildings may be appealed to the board by any person claiming to be adversely affected by any such decision. The board is given power in specific cases of practical difficulty or unnecessary hardship to interpret the ordinance in harmony with its general purpose and intent, so that the public health, safety and general welfare may be secure and substantial justice done. Penalties are prescribed for violations, and it is provided that the various [272 U.S. 365, 384] provisions are to be regarded as independent and the holding of any provision to be unconstitutional, void or ineffective shall not affect any of the others.

The ordinance is assailed on the grounds that it is in derogation of section 1 of the Fourteenth Amendment to the federal Constitution in that it deprives appellee of liberty and property without due process of law and denies it the equal protection of the law, and that it offends against certain provisions of the Constitution of the state of Ohio. The prayer of the bill is for an injunction restraining the enforcement of the ordinance and all attempts to impose or maintain as to appellee's property any of the restrictions, limitations or conditions. The court below held the ordinance to be unconstitutional and void, and enjoined its enforcement, 297 F. 307.

Before proceeding to a consideration of the case, it is necessary to determine the scope of the inquiry. The bill alleges that the tract of land in question is vacant and has been held for years for the purpose of selling and developing it for industrial uses, for which it is especially adapted, being immediately in the path or progressive industrial development; that for such uses it has a market value of about $10,000 per acre, but if the use be limited to residential purposes the market value is not in excess of $2,500 per acre; that the first 200 feet of the parcel back from Euclid avenue, if unrestricted in respect of use, has a value of $ 150 per front foot, but if limited to residential uses, and ordinary mercantile business be excluded therefrom, its value is not in excess of $ 50 per front foot.

It is specifically averred that the ordinanceattempts to restrict and control the lawful uses of appellee's land, so as to confiscate and destroy a great part of its value; that it is being enforced in accordance with its terms; that propective buyers of land for industrial, commercial, and residential uses in the metropolitan district of Cleveland [272 U.S. 365, 385] are deterred from buying any part of this land because of the existence of the ordinance and the necessity thereby entailed of conducting burdensome and expensive litigation in order to vindicate the right to use the land for lawful and legitimate purposes; that the ordinance constitutes a cloud upon the land, reduces and destroys its value, and has the effect of diverting the normal industrial, commercial, and residential development thereof to other and less favorable locations.

The record goes no farther than to show, as the lower court found, that the normal and reasonably to be expected use and development of that part of appellee's land adjoining Euclid avenue is for general trade and commercial purposes, particularly retail stores and like establishments, and that the normal and reasonably to be expected use and development of the residue of the land is for industrial and trade purposes. Whatever injury is inflicted by the mere existence and threatened enforcement of the ordinance is due to restrictions in respect of these and similar uses, to which perhaps should be added-if not included in the foregoing- restrictions in respect of apartment houses. Specifically there is nothing in the record to suggest that any damage results from the presence in the ordinance of those restrictions relating to churches, schools, libraries, and other public and semipublic buildings. It is neither alleged nor proved that there is or may be a demand for any part of appellee's land for any of the last-named uses, and we cannot assume the existence of facts which would justify an injunction upon this record in respect to this class of restrictions. For present purposes the provisions of the ordinance in respect of these uses may therefore be put aside as unnecessary to be considered. It is also unnecessary to consider the effect of the restrictions in respect of U-1 districts, since none of appellee's land falls within that class. [272 U.S. 365, 386] We proceed, then, to a consideration of those provisions of the ordinance to which the case as it is made relates, first disposing of a preliminary matter.

A motion was made in the court below to dismiss the bill on the ground that, because complainant (appellee) had made no effort to obtain a building permit or apply to the zoning board of appeals for relief, as it might have done under the terms of the ordinance, the suit was premature. The motion was properly overruled, the effect of the allegations of the bill is that the ordinance of its own force operates greatly to reduce the value of appellee's lands and destroy their marketability for industrial, commercial and residential uses, and the attack is directed, not against any specific provision or provisions, but against the ordinance as an entirety. Assuming the premises, the existence and maintenance of the ordinance in effect constitutes a present invasion of appellee's property rights and a threat to continue it. Under these circumstances, the equitable jurisdiction is clear. See Terrace v. Thompson, 263 U.S. 197, 215, 44 S. Ct. 15; Pierce v. Society of Sisters, 268 U.S. 510, 535, 45 S. Ct. 571, 30 A. L. R. 468.

It is not necessary to set forth the provisions of the Ohio Constitution which are thought to be infringed. The question is the same under both Constitutions, namely, as stated by appellee: Is the ordinance invalid, in that it violates the constitutional protection 'to the right of property in the appellee by attempted regulations under the guise of the police power, which are unreasonable and confiscatory'?

Building zone laws are of modern origin. They began in this country about 25 years ago. Until recent years, urban life was comparatively simple; but, with the great increase and concentration of population, problems have developed, and constantly are developing, which require, and will continue to require, additional restrictions in respect of the use and occupation of private lands in [272 U.S. 365, 387] urban communities. Regulations, the wisdom, necessity, and validity of which, as applied to existing conditions,

are so apparent that they are now uniformly sustained, a century ago, or even half a century ago, probably would have been rejected as arbitrary and oppressive. Such regulations are sustained, under the complex conditions of our day, for reasons analogous to those which justify traffic regulations, which, before the advent of automobiles and rapid transit street railways, would have been condemned as fatally arbitrary and unreasonable. And in this there is no inconsistency, for, while the meaning of constitutional guaranties never varies, the scope of their application must expand or contract to meet the new and different conditions which are constantly coming within the field of their operation. In a changing world it is impossible that it should be otherwise. But although a degree of elasticity is thus imparted, not to the meaning, but to the application of constitutional principles, statutes and ordinances, which, after giving due weight to the new conditions, are found clearly not to conform to the Constitution, of course, must fall.

The ordinance now under review, and all similar laws and regulations, must find their justification in some aspect of the police power, asserted for the public welfare. The line which in this field separates the legitimate from the illegitimate assumption of power is not capable of precise delimitation. It varies with circumstances and conditions. A regulatory zoning ordinance, which would be clearly valid as applied to the great cities, might be clearly invalid as applied to rural communities. In solving doubts, the maxim 'sic utere tuo ut alienum non laedas,' which lies at the foundation of so much of the common low of nuisances, ordinarily will furnish a fairly helpful clew. And the law of nuisances, likewise, may be consulted, not for the purpose of controlling, but for the helpful aid of its analogies in the process of ascertaining [272 U.S. 365, 388] the scope of, the power. Thus the question whether the power exists to forbid the erection of a building of a particular kind or for a particular use, like the question whether a particular thing is a nuisance, is to be determined, not by an abstract consideration of the building or of the thing considered apart, but by considering it in connection with the circumstances and the locality. Sturgis v. Bridgeman, L. R. 11 Ch. 852, 865. A nuisance may be merely a right thing in the wrong place, like a pig in the parlor instead of the barnyard. If the validity of the legislative classification for zoning purposes be fairly debatable, the legislative judgment must be allowed to control. Radice v. New York, 264 U.S. 292, 294 , 44 S. Ct. 325.

There is no serious difference of opinion in respect of the validity of laws and regulations fixing the height of buildings within reasonable limits, the character of materials and methods of construction, and the adjoining area which must be left open, in order to minimize the danger of fire or collapse, the evils of overcrowding and the like, and excluding from residential sections offensive trades, industries and structures likely to create nuisances. See Welch v. Swasey, 214 U.S. 91 , 29 S. Ct. 567; Hadacheck v. Los Angeles, 239 U.S. 394 , 36 S. Ct. 143, Ann. Cas. 1917B, 927; Reinman v. Little Rock, 237 U.S. 171 , 35 S. Ct. 511; Cusack Co. v. City of Chicago, 242 U.S. 526, 529 , 530 S., 37 S. Ct. 190, L. R. A. 1918A, 136, App. Cas. 1917C, 594.

Here, however, the exclusion is in general terms of all industrial establishments, and it may thereby happen that not only offensive or dangerous industries will be excluded, but those which are neither offensive nor dangerous will share the same fate. But this is no more than happens in respect of many practice-forbidding laws which this court has upheld, although drawn in general terms so as to include individual cases that may turn out to be innocuous in themselves. Hebe Co. v. Shaw, 248 U.S. 297, 303 , 39 S. Ct. 125; Pierce Oil Corp. v. City of Hope, 248 U.S. 498, 500 , 39 S. Ct. 172. The inclusion of a reasonable margin, to insure effective enforcement, will not put upon a law, otherwise [272 U.S. 365, 389] valid, the stamp of invalidity. Such laws may also find their justification in the fact that, in some fields, the bad fades into the good by such insensible degrees that the two are not capable of being readily distinguished and separated in terms of legislation. In the light of these considerations, we are not prepared to say that the end in view was not sufficient to justify the general rule of the ordinance,

although some industries of an innocent character might fall within the proscribed class. It cannot be said that the ordinance in this respect 'passes the bounds of reason and assumes the character of a merely arbitrary fiat.' Purity Extract Co. v. Lynch, 226 U.S. 192, 204, 33 S. Ct. 44, 47 (57 L. Ed. 184). Moreover, the restrictive provisions of the ordinance in this particular may be sustained upon the principles applicable to the broader exclusion from residential districts of all business and trade structures, presently to be discussed.

It is said that the village of Euclid is a mere suburb of the city of Cleveland; that the industrial development of that city has now reached and in some degree extended into the village, and in the obvious course of things will soon absorb the entire area for industrial enterprises; that the effect of the ordinance is to divert this natural development elsewhere, with the consequent loss of increased values to the owners of the lands within the village borders. But the village, though physically a suburb of Cleveland, is politically a separate municipality, with powers of its own and authority to govern itself as it sees fit, within the limits of the organic law of its creation and the state and federal Constitutions. Its governing authorities, presumably representing a majority of its inhabitants and voicing their will, have determined, not that industrial development shall cease at its boundaries, but that the course of such development shall proceed within definitely fixed lines. If it be a proper exercise of the police power to relegate industrial establishments to local- [272 U.S. 365, 390] ities separated from residential sections, it is not easy to find a sufficient reason for denying the power because the effect of its exercise is to divert an industrial flow from the course which it would follow, to the injury of the residential public, if left alone, to another course where such injury will be obviated. It is not meant by this, however, to exclude the possibility of cases where the general public interest would so far outweigh the interest of the municipality that the municipality would not be allowed to stand in the way.

We find no difficulty in sustaining restrictions of the kind thus far reviewed. The serious question in the case arises over the provisions of the ordinance excluding from residential districts apartment houses, business houses, retail stores and shops, and other like establishments. This question involves the validity of what is really the crux of the more recent zoning legislation, namely, the creation and maintenance of residential districts, from which business and trade of every sort, including hotels and apartment houses, are excluded. Upon that question this court has not thus far spoken. The decisions of the state courts are numerous and conflicting; but those which broadly sustain the power greatly outnumber those which deny it altogether or narrowly limit it, and it is very apparent that there is a constantly increasing tendency in the direction of the broader view. We shall not attempt to review these decisions at length, but content ourselves with citing a few as illustrative of all.

As sustaining a broader view, see Opinion of the Justices, 234 Mass. 597, 607, 127 N. E. 525; Inspector of Buildings of Lowell v. Stoklosa, 250 Mass. 52, 145 N. E. 262; Spector v. Building Inspector of Milton, 250 Mass. 63, 145 N. E. 265; Brett v. Building Commissioner of Brookline, 250 Mass. 73, 145 N. E. 269; State v. City of New Orleans, 154 La. 271, 282, 97 So. 440, 33 A. L. R. 260; Lincoln Trust Co. v. Williams Bldg. Corp., 229 N. Y. 313, 128 N. E. 209; City of Aurora v. Burns, 319 Ill. 84, 93, 149 N. E. 784; Deynzer v. City of Evanston, 319 Ill. 226, 149 N E. 790; [272 U.S. 365, 391] State ex rel. v. Houghton, 164 Minn. 146, 204 N. W. 569; State ex rel. Carter v. Harper, 182 Wis. 148, 157-161, 196 N. W. 451, 33 A. L. R. 269; Ware v. City of Wichita, 113 Kan. 153, 214 P. 99; Miller v. Board of Public Works, 195 Cal. 477, 486-495, 234 P. 381, 38 A. L. R. 1479; City of Providence v. Stephens (R. I.) 133 A. 614.

For the contrary view, see Goldman v. Crowther, 147 Md. 282, 128 A. 50, 38 A. L. R. 1455; Ignaciunas v. Risley, 98 N. J. Law. 712, 121 A. 783; Spann v. City of Dallas, 111 Tex. 350, 238 S. W. 513, 19 A. L. R. 1387

As evidence of the decided trend toward the broader view, it is significant that in sime instances the state courts in later decisions have reversed their former decisions holding the other way. For example, compare State ex rel. v. Houghton, supra, sustaining the power, with State ex rel. Lachtman v. Houghton, 134 Minn. 226, 158 N. W. 1917, L. R. A. 1917F, 1050, State ex rel. Roerig v. City of Minneapolis, 136 Minn. 479, 162 N. W. 477, and Vorlander v. Hokenson, 145 Minn. 484, 175 N. W. 995, denying it, all of which are disapproved in the Houghton Case (page 151 (204 N. W. 569)) last decided.

The decisions enumerated in the first group cited above agree that the exclusion of buildings devoted to business, trade, etc., from residential districts, bears a rational relation to the health and safety of the community. Some of the grounds for this conclusion are promotion of the health and security from injury of children and others by separating dwelling houses from territory devoted to trade and industry; suppression and prevention of disorder; facilitating the extinguishment of fires, and the enforcement of street traffic regulations and other general welfare ordinances; aiding the health and safety of the community, by excluding from residential areas the confusion and danger of fire, contagion, and disorder, which in greater or less degree attach to the location of stores, shops, and factories. Another ground is that the construction and repair of streets may be rendered easier and less expensive, by confining the greater part of the heavy traffic to the streets where business is carried on. [272 U.S. 365, 392] The Supreme Court of Illinois, in City of Aurora v. Burns, supra, pages 93-95 (149 N. E. 788), in sustaining a comprehensive building zone ordinance dividing the city into eight districts, including exclusive residential districts for one and two family dwellings, churches, educational institutions, and schools, said:

> 'The constantly increasing density of our urban populations, the multiplying forms of industry and the growing complexity of our civilization make it necessary for the state, either directly or through some public agency by its sanction, to limit individual activities to a greater extent than formerly. With the growth and development of the state the police power necessarily develops, within reasonable bounds, to meet the changing conditions. ...
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> '... The harmless may sometimes be brought within the regulation or prohibition in order to abate or destroy the harmful. The segregation of industries, commercial pursuits, and dwellings to particular districts in a city, when exercised reasonably, may bear a rational relation to the health, morals, safety, and general welfare of the community. The establishment of such districts or zones may, among other things, prevent congestion of population, secure quiet residence districts, expedite local transportation, and facilitate the suppression of disorder, the extinguishment of fires, and the enforcement of traffic and sanitary regulations. The danger of fire and the of contagion are often lessened by the exclusion of stores and factories from areas devoted to residences, and, in consequence, the safety and health of the community may be promoted. ...
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> '... The exclusion of places of business from residential districts is not a declaration that such places are nuisances or that they are to be suppressed as such, but it is a part of the general plan by which the city's territory is allotted to different uses, in order to prevent, or at least to reduce, the congestion, disorder, and dangers [272 U.S. 365, 393] which often inhere in unregulated municipal development.'

The Supreme Court of Louisiana, in State v. City of New Orleans, supra, pages 282, 283 (97 So. 444), said:

> 'In the first place, the exclusion of business establishments from residence districts might enable the municipal government to give better police protection. Patrolmen's beats are larger, and therefore fewer, in residence neighborhoods than in business neighborhoods. A place of business in a

residence neighborhood furnishes an excuse for any criminal to go into the neighborhood, where, otherwise, a stranger would be under the ban of suspicion. Besides, open shops invite loiterers and idlers to congregate; and the places of such congregations need police protection. In the second place, the zoning of a city into residence districts and commercial districts is a matter of economy is street paving. Heavy trucks, hauling freight to and from places of business in residence districts, require the city to maintain the same costly pavement in such districts that is required for business districts; whereas, in the residence districts, where business establishments are excluded, a cheaper pavement serves the purpose. ...

'Aside from considerations of economic administration, in the matter of police and fire protection, street paving, etc., any business establishment is likely to be a genuine nuisance in a neighborhood of residences. Places of business are noisy; they are apt to be disturbing at night; some of them are malodorous; some are unsightly; some are apt to breed rats, mice, roaches, flies, ants, etc. ...

'If the municipal council deemed any of the reasons which have been suggested, or any other substantial reason, a sufficient reason for adopting the ordinance in question, it is not the province of the courts to take issue with the council. We have nothing to do with the question of the wisdom or good policy of municipal ordinances. If they are not satisfying to a majority of the citizens, their recourse is to the ballot-not the courts.' [272 U.S. 365, 394] The matter of zoning has received much attention at the hands of commissions and experts, and the results of their investigations have been set forth in comprehensive reports. These reports which bear every evidence of painstaking consideration, concur in the view that the segregation of residential, business and industrial buildings will make it easier to provide fire apparatus suitable for the character and intensity of the development in each section; that it will increase the safety and security of home life, greatly tend to prevent street accidents, especially to children, by reducing the traffic and resulting confusion in residential sections, decrease noise and other conditions which produce or intensify nervous disorders, preserve a more favorable environment in which to rear children, etc. With particular reference to apartment houses, it is pointed out that the development of detached house sections is greatly retarded by the coming of apartment houses, which has sometimes resulted in destroying the entire section for private house purposes; that in such sections very often the apartment house is a mere parasite, constructed in order to take advantage of the open spaces and attractive surroundings created by the residential character of the district. Moreover, the coming of one apartment house is followed by others, interfering by their height and bulk with the free circulation of air and monopolizing the rays of the sun which otherwise would fall upon the smaller homes, and bringing, as their necessary accompaniments, the disturbing noises incident to increased traffic and business, and the occupation, by means of moving and parked automobiles, of larger portions of the streets, thus detracting from their safety and depriving children of the privilege of quiet and open spaces for play, enjoyed by those in more favored localities-until, finally, the residential character of the neighborhood and its desirability as a place of detached residences are utterly destroyed. Under these circum- [272 U.S. 365, 395] stances, apartment houses, which in a different environment would be not only entirely unobjectionable but highly desirable, come very near to being nuisances.

If these reasons, thus summarized, do not demonstrate the wisdom or sound policy in all respects of those restrictions which we have indicated as pertinent to the inquiry, at least, the reasons are sufficiently cogent to preclude us from saying, as it must be said before the ordinance can be declared unconstitutional, that such provisions are clearly arbitrary and unreasonable, having no substantial relation to the public health, safety, morals, or general welfare. Cusack Co. v. City of Chicago, supra, pages 530-531 (37 S. Ct. 190); Jacobson v. Massachusetts, 197 U.S. 11, 30-31, 25 S. Ct. 358, 3 Ann. Cas. 765.

It is true that when, if ever, the provisions set forth in the ordinance in tedious and minute detail, come to be concretely applied to particular premises, including those of the appellee, or to particular conditions, or to be considered in connection with specific complaints, some of them, or even many of them, may be found to be clearly arbitrary and unreasonable. But where the equitable remedy of injunction is sought, as it is here, not upon the ground of a present infringement or denial of a specific right, or of a particular injury in process of actual execution, but upon the broad ground that the mere existence and threatened enforcement of the ordinance, by materially and adversely affecting values and curtailing the opportunities of the market, constitute a present and irreparable injury, the court will not scrutinize its provisions, sentence by sentence, to ascertain by a process of piecemeal dissection whether there may be, here and there, provisions of a minor character, or relating to matters of administration, or not shown to contribute to the injury complained of, which, if attacked separately, might not withstand the test of constitutionality. In respect of such provisions, of which specific complaint is not [272 U.S. 365, 396] made, it cannot be said that the landowner has suffered or is threatened with an injury which entitles him to challenge their constitutionality. Turpin v. Lemon, 187 U.S. 51, 60 , 23 S. Ct. 20. In Railroad Commission Cases, 116 U.S. 307 , 335-337, 6 S. Ct. 334, 388, 1191, this court dealt with an analogous situation. There an act of the Mississippi Legislature, regulating freight and passenger rates on intrastate railroads and creating a supervisory commission, was attacked as unconstitutional. The suit was brought to enjoin the commission from enforcing against the plaintiff railroad company any of its provisions. In an opinion delivered by Chief Justice Waite, this court held that the chief purpose of the statute was to fix a maximum of charges and to regulate in some matters of a police nature the use of railroads in the state. After sustaining the constitutionality of the statute 'in its general scope' this court said:

> 'Whether in some of its details the statute may be defective or invalid we do not deem it necessary to inquire, for this suit is brought to prevent the commissioners from giving it any effect whatever as against this company.'

Quoting with approval from the opinion of the Supreme Court of Mississppi, it was further said:

> 'Many questions may arise under it not necessary to be disposed of now, and we leave them for consideration when presented.'

And finally:

> 'When the commission has acted and proceedings are had to enforce what it has done, questions may arise as to the validity of some of the various provisions which will be worthy of consideration, but we are unable to say that, as a whole, the statute is invalid.'

The relief sought here is of the same character, namely, an injunction against the enforcement of any of the restrictions, limitations, or conditions of the ordinance. And the gravamen of the complaint is that a portion of the land of the appellee cannot be sold for certain enumer- [272 U.S. 365, 397] ated uses because of the general and broad restraints of the ordinance. What would be the effect of a restraint imposed by one or more or the innumerable provisions of the ordinance, considered apart, upon the value or marketability of the lands, is neither disclosed by the bill nor by the evidence, and we are afforded no basis, apart from mere speculation, upon which to rest a conclusion that it or they would have any appreciable effect upon those matters. Under these circumstances, therefore, it is enough for us to determine, as we do, that the ordinance in its general scope and dominant features, so far as its provisions are here involved, is a valid exercise of authority, leaving other provisions to be dealt with as cases arise directly involving them.

And this is in accordance with the traditional policy of this court. In the realm of constitutional law, especially, this court has perceived the embarrassment which is likely to result from an attempt to formulate rules or decide questions beyond the necessities of the immediate issue. It has preferred to follow the method of a gradual approach to the general by a systematically guarded application and extension of constitutional principles to particular cases as they arise, rather than by out of hand attempts to establish general rules to which future cases must be fitted. This process applies with peculiar force to the solution of questions arising under the due process clause of the Constitution as applied to the exercise of the flexible powers of police, with which we are here concerned.

Decree reversed.

Mr. Justice VAN DEVANTER, Mr. Justice McREYNOLDS, and Mr. Justice BUTLER dissent.

Footnotes

[Footnote 1] The court below seemed to think that the frontage of this property on Euclid avenue to a depth of 150 feet came under U-1 district and was available only for single family dwellings. An examination of the ordinance and subsequent amendments, and a comparison of their terms with the maps, shows very clearly, however, that this view was incorrect. Appellee's brief correctly interpreted the ordinance: 'The northerly 500 feet thereof immediately adjacent to the right of way of the New York, Chicago & St. Louis Railroad Company under the original ordinance was classed as U-6 territory and the rest thereof as U-2 territory. By amendments to the ordinance a strip 630(620) feet wide north of Euclid avenue is classed as U-2 territory, a strip 130 feet wide next north as U- 3 territory and the rest of the parcel to the Nickel Plate right of way as U-6 territory.'

Attachment C

The general purpose provisions of Lane Code Chapters 13, 15 and 16, and Lane Manual 13.010.

Relevant General Purpose Sections of Lane Code

13.005 Purpose.
Pursuant to ORS Chapters 92, 197 and 215, any person desiring to partition or subdivide land within any part of Lane County outside of incorporated cities shall submit pre-liminary plans and final plats for such partitions or subdivisions to the Director for review. Such review of proposed partitions or subdivisions is necessary in order that Lane County provide for the proper width and arrangement of streets and thoroughfares and their relation to existing or planned streets and thoroughfares; provide for conformity with the comprehensive plan regarding patterns for the development and improvement of Lane County; provide for safety and health; and promote the public health, safety and general welfare, as defined in ORS Chapters 197 and 215. *(Revised by Ordinance No. 1-90; Effective 2.7.90)* (Emphasis Added)

15.005 General Purpose.
The general purpose of this Chapter is to consolidate and coordinate those rules, regulations and standards relating to the existing and future transportation and access needs of Lane County. It is intended to establish minimum requirements for efficient, safe and attractive vehicular and pedestrian movement throughout the County and usable ingress and egress to properties, to protect the public investment in the County Road system and the capacity of existing transportation facilities, to provide for private participation in the widening and improvement of roads when the same becomes necessary by reason of development of abutting property and to assist in guiding the future development or redevelopment of the County in accordance with the Comprehensive Plan for Lane County. For purposes of this chapter, the Comprehensive Plan shall mean the Lane County General Plan, including the following documents which provide the overall policy direction for roads within Lane County. (1) The Lane County Transportation System Plan (TSP); (2) The Eugene-Springfield Metropolitan Area Transportation Plan (TransPlan); and (3) The transportation system plans adopted by the incorporated communities within Lane County outside of the Eugene-Springfield metropolitan area. *(Revised by Ordinance No. 6-75, Effective 3.26.75; 10-04, 6.4.04)* (Emphasis Added)

16.003 Purpose.
This chapter is designed to provide and coordinate regulations in Lane County governing the development and use of lands to implement the Lane County Rural Comprehensive Plan. To these ends, it is the purpose of this chapter to:
(1) Insure that the development of property within the County is commensurate with the character and physical limitations of the land and, in general, to promote and protect the public health, safety, convenience and welfare.
...
(10) Protect the quality of the air, water and land resources of the County. (Emphasis Added)

16.011 Introductory Provisions.
In order to achieve the purposes outlined in LC 16.003, and to assure that the development and use of land in Lane County conforms to the Rural Comprehensive Plan, zone classifications have been established for all unincorporated areas outside of adopted urban growth boundaries and within Lane County. These zones specify regulations for the use of land and property development

standards, and use applied by boundaries indicated on the Lane County Rural Comprehensive Plan Zoning Maps. *(Revised by Ordinance No. 7-87, Effective 6.17.87)* (Emphasis Added)

16.012 Zone Classifications.
For the purpose of this chapter of Lane Code, the following zones are hereby established:

Zone Classification	Abbreviation	Section No.
Nonimpacted Forest Lands	F-1, RCP	16.210

(Revised by Ordinance No. 7-87, Effective 6.17.87; 17-87, 12.25.87; 12-90, 10.11.90; 11-91A, 8.30.91; 6-98, 12.2.98; 6-02, 5.16.02)

Relevant Purpose Section of Lane Manual

13.010 Quantity and Quality Groundwater Limited Areas.
In the interest of public health and the economic well being of the citizens of Lane County, the following areas of Lane County are to be designated quantity and/or quality groundwater limited areas, pursuant to LC 13.050(13).

(2) The following areas are designated quantity limited areas for groundwater:

a) Broad areas of very limited groundwater.

(i) The Spencer Creek Watershed as defined by the topographic expression of the watershed boundaries. (Emphasis Added)

Attachment D

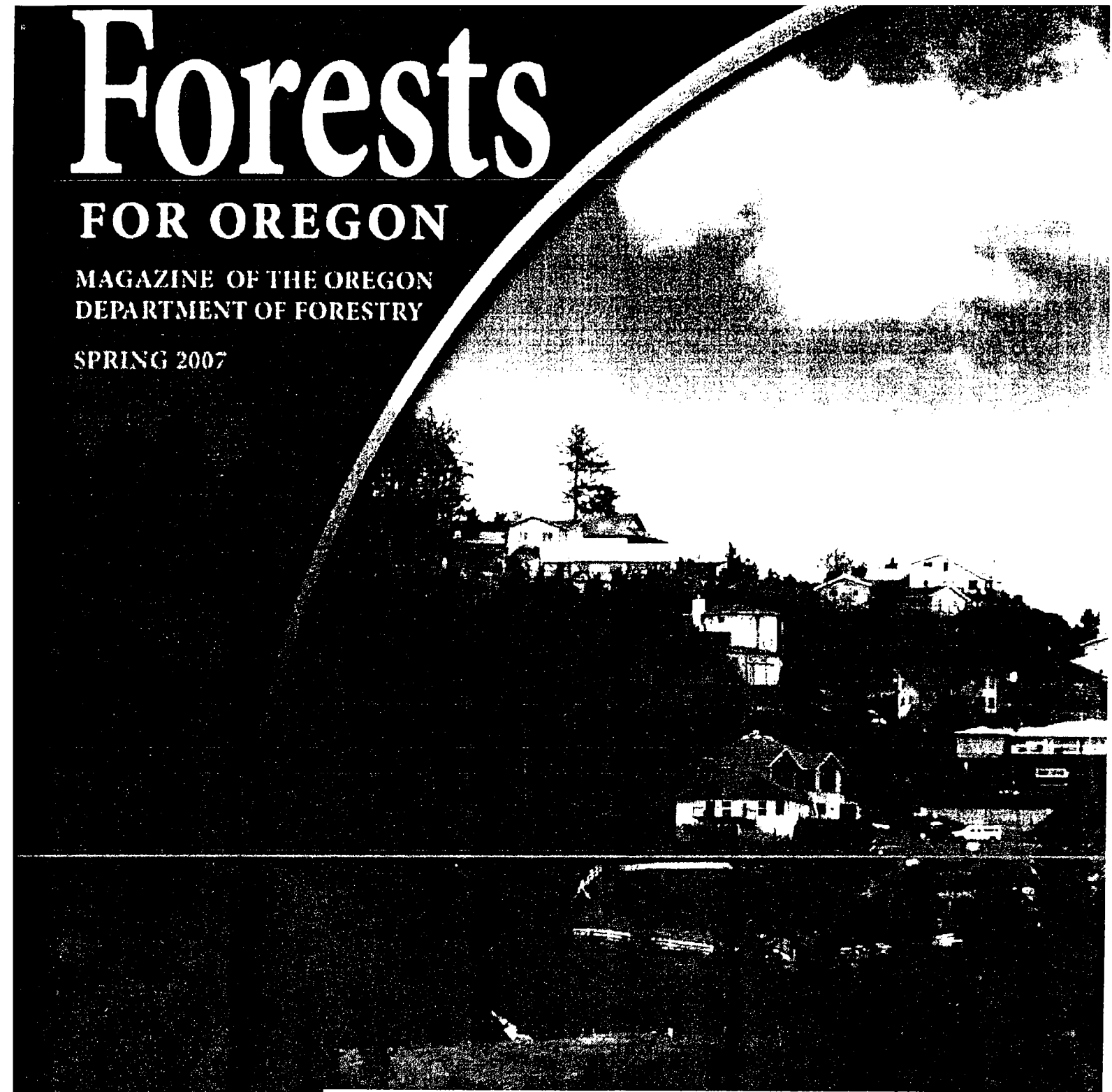
Forests for Oregon, Magazine of the Oregon Department of Forestry, Spring 2007, containing a State Forester letter and two articles.

Forests

FOR OREGON

MAGAZINE OF THE OREGON DEPARTMENT OF FORESTRY

SPRING 2007



INSIDE: Urban development reshaping Oregon's forests – can we channel growth responsibly?

State Forester
Marvin Brown

FROM THE State Forester

Dear Readers,

A few weeks ago I spent the day with some of our field personnel looking at a host of on-the-ground situations related to the changing nature of forests in Oregon.

The changes are not unique to our state. In Oregon and across the country, tract sizes are getting smaller, fewer acres are owned as a long-term investment in forest management, and more forested acres are being viewed as potential residential development in the future.

With these changes come issues.

Less long-term forest management leads to reduced timber supplies. From there starts a downward spiral of less timber supply leading to fewer wood products manufacturers, leading to fewer market incentives for people to invest in forest management, that leads to less supply and ultimately fewer markets still, and so on.

As we see more fingers of residential ownership working their way into what had once been unbroken rural landscapes of actively managed forest, we see the spiral accelerate. These new residents may not welcome timber harvest, or prescribed fire or herbicide use on the other side of their backyard fence. They don't like to share their roads with log trucks or hear the noise of heavy equipment being operated before they ever get out of bed. These pressures encourage even more disinvestment in forest management.

These changes also certainly bring environmental issues. Wildlife habitat is often fragmented. Streams are less protected under many land conversions. Fewer trees mean fewer benefits to air quality, aesthetics, and carbon storage. Smaller tracts are normally closed to public recreation.

The demands on Department of Forestry programs also change. The control of wildfire moves from a "loss of timber investment" concern to a "loss of life and personal property" concern. Foresters responsible for enforcing forest practice laws that are built around a desire to maintain the continuous growing and harvesting of trees for forest products are repeatedly pulled in to "not in my backyard" disagreements.

On my day out of the office field staff were showing me all of these things firsthand, and more. In one suburban neighborhood of typical single-family homes, a homeowner was conducting a timber sale of all the trees in his front yard. In another place a resident claimed tremendous unhappiness with the slash burning that took place next door. In another, there were claims of damage to a municipal water source.

Frankly, the Department of Forestry doesn't have the right set of programs in place to deal with these issues effectively. Several articles here give more insight into the problems. Another article talks about how we would like to start addressing these changes. We hope you'll enjoy reading more on these issues, but we also hope it will get you thinking about them.

I'm sure we'll need the collective insight of many to craft sound solutions. So read, think on it, and then don't hesitate to share your thoughts with us on this important matter.

Marvin Brown

While many Oregonians are emotionally attached to the beautiful trees in our state and lament their loss, there is a failure to recognize that "unlike wildfires or logging, development is permanent."

From its largest cities to its smallest communities...

OREGON IS LOSING PRIZED FORESTED LANDSCAPES TO DEVELOPMENT.

Arlene Whalen, Public Affairs Specialist

It's easy to take forestland for granted in Oregon. After all, trees are so abundant in many areas of our state that it's as though they serve as our official mascot marking Oregon's remarkable environmental beauty.

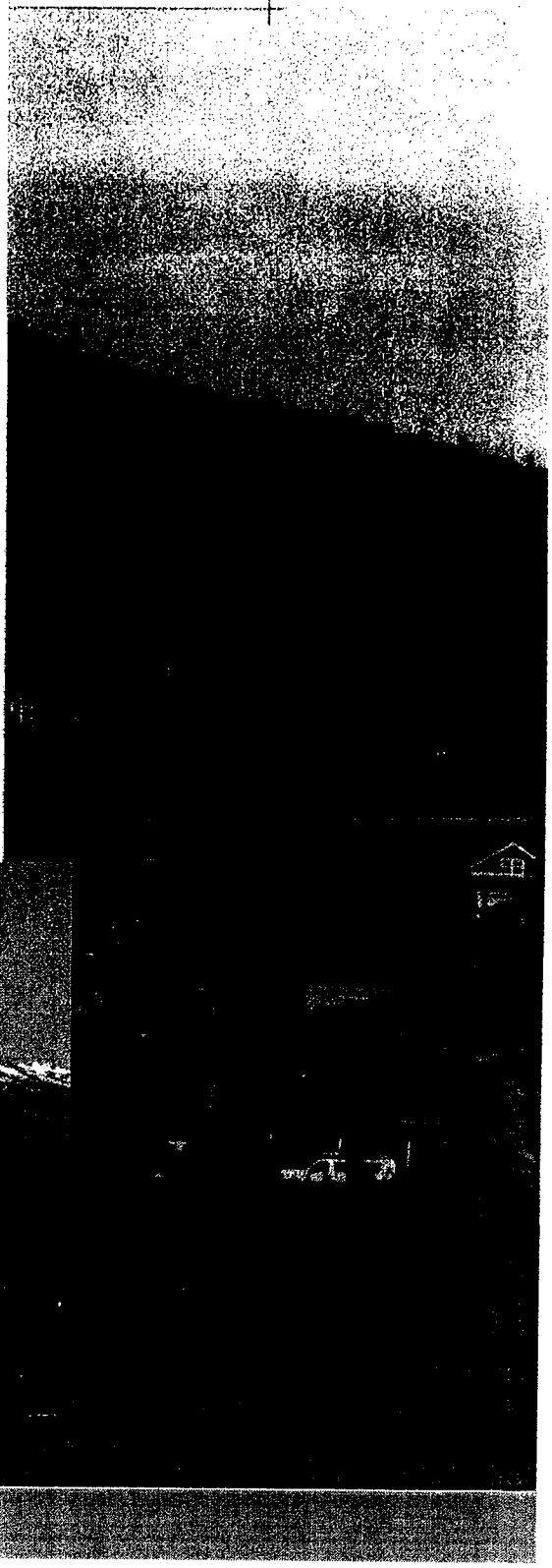


Photo by Brian Ballou, ODF

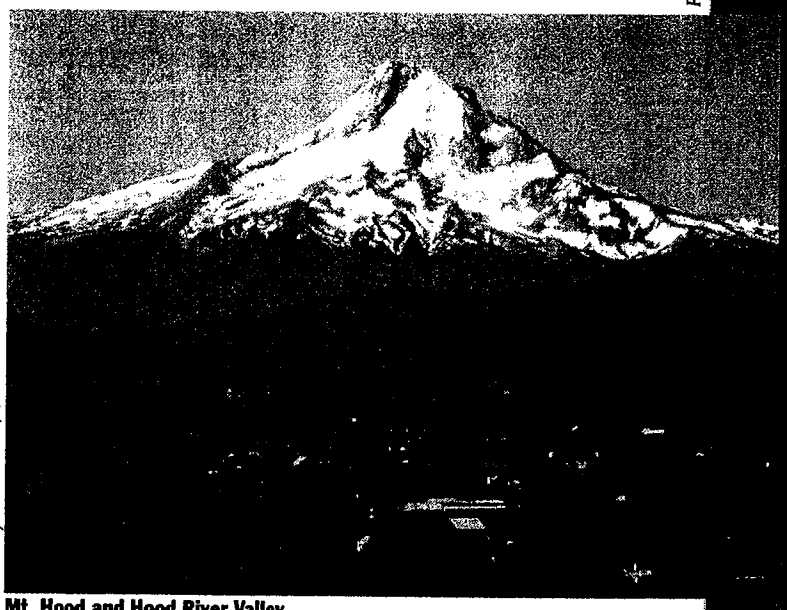
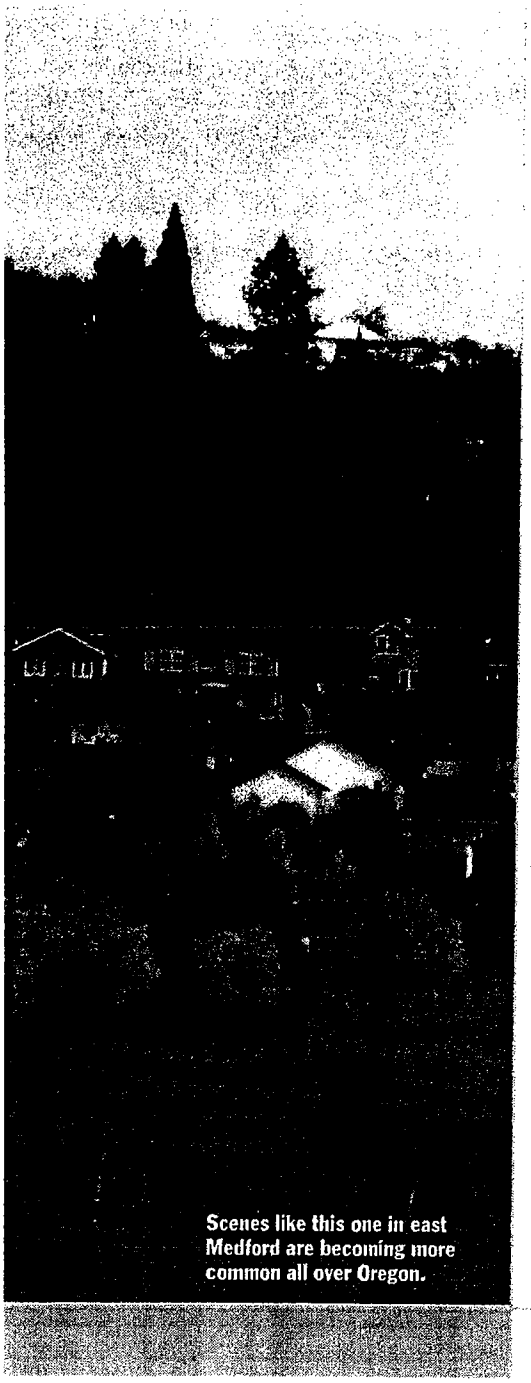


Photo by Ann Walker, ODF

Mt. Hood and Hood River Valley.



Scenes like this one in east Medford are becoming more common all over Oregon.

Unfortunately, Oregon's abundance of trees has provided a false sense of security that they'll be around for generations to come - regardless of human impacts. The reality is, there are new forces reshaping Oregon's forests in ways more significant than any wildfire, windstorm or disease outbreak. Fueled by development pressures, population growth, concerns about Measure 37 and increasing real estate values, forestland is being converted to suburban and residential land uses.

This is not a new trend and it's not just affecting Oregon's rural communities. Even Oregon's largest cities and smallest communities are losing prized forested landscapes. Consider that about 10 percent of Oregon's non-federal forestland exists inside urban growth boundaries or other development zones; and, it's projected that these lands will be converted to development during this century.

A national trend

In the past 15 years alone, 30 million acres of private industrial forest in the U.S. has changed hands. A telling example of the scope of this trend is the state of Maine, where a third of the state has changed ownership in the last seven years. This same pattern is documented all along the east coast, the South, in Appalachia, the Lake states, the Midwest and the Intermountain Region.

Oregon following suit

Oregon State Forester Marvin Brown says that until recently, Oregon's land-use laws have kept the state from following this same trend to the extent that it has occurred elsewhere. However, he notes this is changing. "Forestland sales have become significant in Oregon in the past decade, and notwithstanding our existing land-use program, we appear to be following the national trends of initially large scale transactions [forestland sales], followed by an increasing number of smaller scale transactions. The private forest landscape is being fragmented and reduced."

According to Ralph Alig, with the U.S. Forest Service Pacific Northwest (PNW) Research Station in Corvallis, forests in the U.S. are primarily being converted to urban areas, but also to croplands, pasture and rangelands. Declining interest rates have helped prompt new housing starts, but Alig notes that the key determinants for conversion of forests to urban and developed uses are population and personal income. In general, as incomes rise, desire for larger homes and vacation homes rises, and forestlands experience increased development pressure. "In the U.S.," says Alig, "the population is expected to grow by 120 million people by the year 2050, an approximately 40 percent increase." In addition, he says average personal incomes are also expected to increase.

The human population is also increasing in Oregon, and this is triggering a decrease in forests and farmland and, therefore, forest management activities. Jeff Kline, another researcher at the PNW Research Station, says this activity change occurs because parcelization causes higher forest management operating costs, new owners aren't interested in doing forestry, and "neighbors in developed areas are less accepting of forestry practices." This issue is compounded when you consider that Oregon's population base is becoming increasingly urban, shifting from a 58 percent rural/42 percent urban ratio in 1910 to a 79 percent urban/21 percent ratio today.

Perhaps the most startling changes are occurring in Deschutes County in Central Oregon. This is an area with several scenic, cultural and other amenities that are attracting new, affluent residents (amenity migration). The county saw a doubling of its population from 1980 to 2005. This, unfortunately, has posed severe challenges in providing affordable housing, clean water and an adequate community infrastructure, and dealing with wildfire urban interface issues.

Peter Gutowsky, Deschutes County Commission Development Department, stresses that the destination resorts proposed in the area create a dilemma, "trying to determine where to allow them and where to hem them in." Currently, acreage eligible for such resorts is on private forestland and small tracts of irrigated land outside the urban growth boundary.

Continued on next page

Help chart a new course for family forestlands – Don't miss this important symposium!

Oregonians & Their Forestlands: What's at Stake?

April 27 – 28

LOOKING FORWARD II

Oregon State University, LaSells Stewart Center, Corvallis, Ore.

Hosted by the Oregon Board of Forestry and the Committee for Family Forestlands, this symposium will challenge and engage family forest landowners, conservationists, civic leaders, industrial forest landowners and members of the caring public to find ways to preserve Oregon's family forestlands. This working symposium will:

- Explore the importance of family forestlands to Oregon
- Discuss Oregon's changing forestry environment in the context of family forestlands
- Identify issues that affect the management of family forestlands
- Develop action plans to address priority issues relevant to family forestlands

Register by visiting

www.oregonforests.org/conferences/ffl

($50 registration fee)

Losing Forests to Development ... Continued from page 5

In addition, forestlands that are worth more money if developed are naturally at risk of conversion. Unfortunately, research has shown that these are the forests usually closest to developed areas, and many of these forests are owned by family forestland owners, not large, industrial timber operators. These forest landowners also find it exceptionally hard to compete in today's timber markets. Because they often manage far fewer acres of forest, they often aren't able to realize the same economies of scale that larger timber producers derive. Family forestland owners are often managing their lands for multiple values and passing them on from one generation to the next. Unfortunately, it is getting harder and harder for them to make ends meet — a single financial obligation (i.e. medical expenses, college tuition, taxes) can often be just enough to force them to sell their forestland.

Losing forestland – what are the consequences?

With such significant changes well underway, land-use planners, policymakers, politicians, and others concerned about maintaining quality of life in Oregon have been analyzing the potential consequences of losing forestland. Naturally, from an Oregon Department of Forestry perspective, there's much at stake. For starters, development in forested areas changes everything about *wildfires* — more homes are placed at risk, and firefighting becomes more complicated and, expensive.

Degraded *water quality* is another consequence. The fragmentation and parcelization of Oregon's forests, combined with the development of roads and residences, can degrade the "green infrastructure" of a forested watershed and potentially impact water quality and quantity as well as the diversity of fish. Family forestlands are often located in lower elevations closer to developed areas and waterways, so their demise can have an especially serious impact on water quality. Overall, a significant amount of America's freshwater supply is dependent on private forests. Fragmentation can also impact *wildlife* species and their habitat.

As noted previously, converting forests to development also dramatically changes the way the land is managed, limiting the range of traditional forestry practices. Those who have made their living producing timber value from the land using sustainable forestry practices find it harder and harder to gain acceptance from those living in increasingly urbanized areas and neighborhoods.

The loss of a *viable timber industry* in Oregon will also affect surrounding economies and supporting industries – especially in several rural areas of the state. Forest products jobs and infrastructure will continue to disappear, and so will some of the tax revenues that support local government services and education. It is also inevitable that some forest landowners will find it necessary to sell their land for development or other non-forest use, because they will no longer be able to earn enough return for their forest management activities to make it worth the effort so they can afford to keep their forestland.

The irony, so poignantly noted in a publication produced by the PNW Research Station,* is that "unlike wildfires or logging, development is permanent." While many Oregonians are emotionally attached to the beautiful trees in our state and lament their loss, there is a failure to recognize that "after a forest is converted to urban uses, the ecosystem services, such as water and air filtration, biodiversity protection, and carbon storage are effectively gone."

It is inevitable that with a growing population, some development will and must occur. The questions Oregonians must ask include, "What should we be learning from other states that have experienced loss of forestland? Can we channel growth in Oregon responsibly, while maintaining a sustainable forestland base with its accompanying resources?"

The choices we make today will determine whether the "tree" will remain Oregon's environmental mascot in the future. It's not that hard anymore to imagine what some parts of Oregon would look like if that weren't the case — for some of us, that visual cue just might be a matter of checking out the view from our own backyard.

*Science Findings, Pacific Northwest Research Station, Society's Choices: Land Use Changes, Forest Fragmentation, and Conservation, November 2006

ODF'S COMMUNITY FORESTRY INITIATIVE:

One tool to address Oregon's changing forest landscape

Doug Decker, Interpretive Program Director

New forces are reshaping Oregon's forests in ways that may ultimately be more significant than any wildfire, windstorm, or disease outbreak. Fueled by development pressures, population growth, concerns about Measure 37, and increasing real estate values, forest land is being converted to other land uses such as residential development, or sold to new owners with limited understanding about forests. This is not just an urban or rural problem. It affects Oregon's largest cities and smallest communities.

As this pattern spreads into forestland, new challenges emerge, including protecting homes from wildfire, retaining healthy streams and other forest values in developing areas, and helping homeowners and commercial forest operators coexist as neighbors.

As a step toward addressing fundamental changes in Oregon's forest landscape, a budget proposal offered by the Oregon Department of Forestry and included in the Governor's Recommended Budget would provide assistance on the ground to help with these complicated issues that arise in Oregon's "residential forests."

The Department's ***Community Forestry Initiative*** would provide experienced and knowledgeable foresters in these vulnerable areas to assist landowners, communities, and local government in maintaining forest values. The Department and the Board of Forestry are contemplating other tools to

Facts about population and

Since the early 1970s, areas in Western Oregon zoned for residential and urban land use have increased markedly (45 percent and 36 percent) while areas in forest land use classification have decreased.

An estimated 1 million acres of Oregon forest—about 10 percent of the state's non-federal forestland—

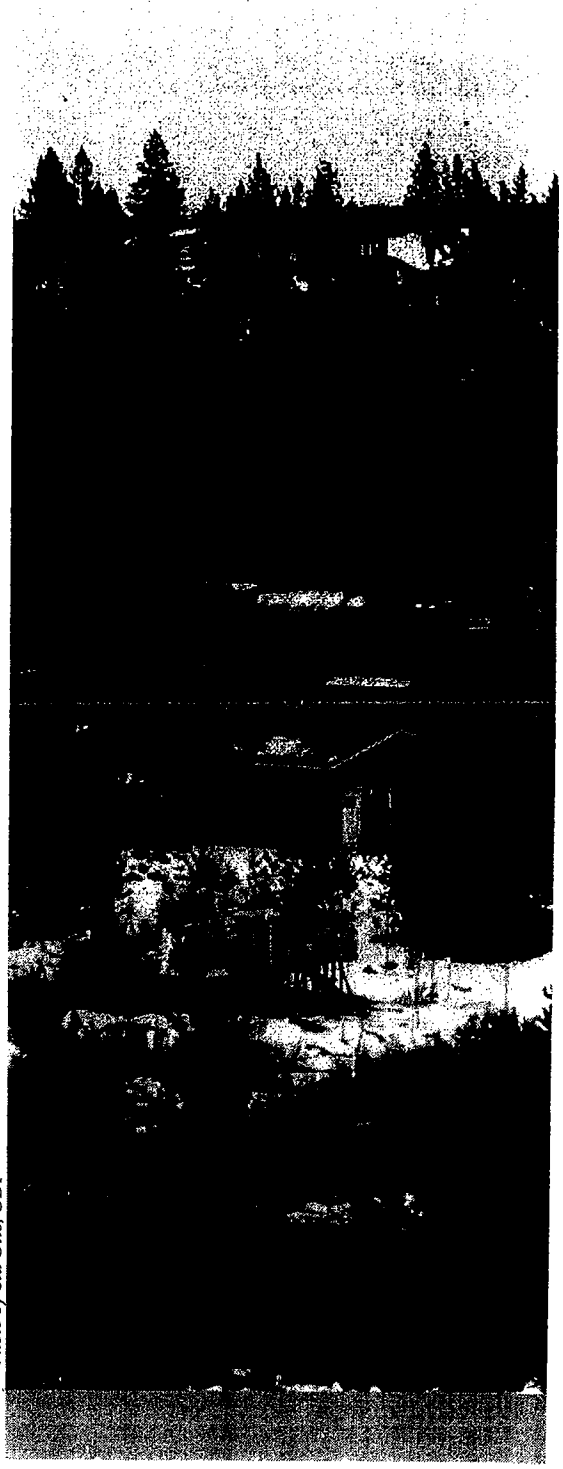


Photo by Stu Otto, ODF

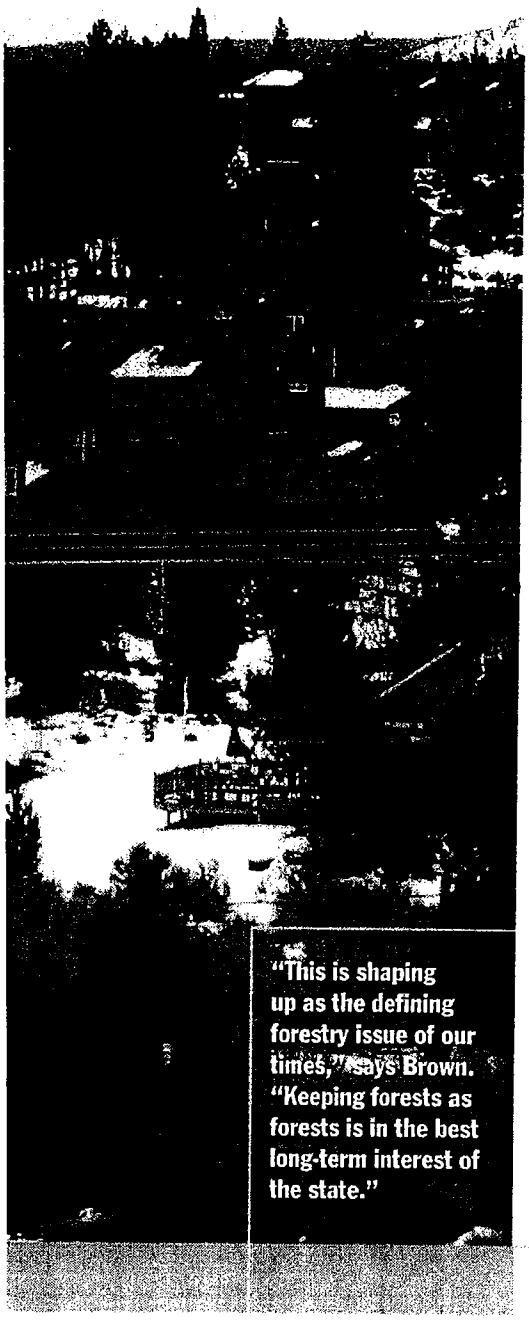
orest land use change in Oregon:

exist inside urban growth boundaries or other development zones. **These lands will be converted to development during this century.**

Statewide, another 2.5 million acres of forest exist within one mile of residential or urban areas.

Oregon's population base has become predominantly urban, shifting from a 58 percent rural/ 42 percent urban ratio in 1910 to a 79 percent urban/21 percent ratio today. Since 1990, Oregon has been among the leading states in population growth.

The population in the Pacific Northwest is expected to grow faster than the national average.



"This is shaping up as the defining forestry issue of our times," says Brown. "Keeping forests as forests is in the best long-term interest of the state."

help communities prevent the loss of forest landbase, and to help address wildfire safety, stream health, and other issues in forested areas where development is occurring. These tools also include seeking ways in which development can occur in a manner that is compatible with maintaining forest values that are important to Oregon's quality of life.

"There is no single solution to this problem, nor any short-term fix," says Oregon State Forester Marvin Brown. "The key is to get people talking and thinking about the community-wide consequences of forest fragmentation." According to Brown, the purpose of the Community Forestry Initiative is to provide a mix of tools and resources that support sound decisions that keep forests as forests.

"Unless we recognize this trend and respond with thoughtful, community-based tools, policy and incentives, this loss of forest to development will change our environmental, social and economic quality of life," Brown says, offering the following consequences:

- The presence of development in forested areas changes everything about wildfire—placing homes at risk, making firefighting more complicated, and increasing firefighting costs.
- Fragmentation and parcelization of forests, combined with the development of roads and residences, can degrade the "green infrastructure" of a forested watershed, including clean water, and the diversity of fish and wildlife species and their habitat.
- Conversion from forest to development dramatically changes the way the surrounding landscape is managed, limiting the range of traditional forestry practices. In many areas, the notion of producing a timber value from the lands — even in the context of sustainable forestry practices — is no longer acceptable to neighborhood residents.

When formerly productive forestlands are converted to development, surrounding economies and supporting industries are affected as forest products-related jobs and infrastructure is no longer viable. Fewer tax dollars are available to support local government services and education. With no workable return for their investment in forest management, some landowners sell the land for development or other non-forest land use, perpetuating the problem.

Looking for solutions

Brown and a team of others working on this topic have gained helpful input from ODF Stewardship Foresters on the ground in these areas, and have been meeting with a wide variety of stakeholders and interests this winter to raise awareness about the trend and its consequences. While a secure funding source for the budget proposal remains elusive, the department is committed to addressing the challenge over the long term.

"The loss of forest land to development — and all the consequences — is a reality we have to respond to," says Brown, comparing the trend to major challenges the Department and the forestry community responded to in the 20th century including the need for fire protection and emphasizing the importance of reforestation.

"This is shaping up as the defining forestry issue of our times," says Brown. "Keeping forests as forests is in the best long-term interest of the state."

Attachment E

Rod Nichols, Oregon Department of Forestry statistics.

From: NICHOLS Rod L
To: nealmil@gotsky.com
Sent: Friday, May 11, 2007 9:10 AM
Subject: wildfire causes

Hi, Neal

Per our phone conversation earlier this week about causes of wildfires and the incidence of such fires in the wildland-urban interface, here is a statistic that I hope is helpful to you: In the five-year period running through 2006, we had 3,951 human-caused fires on the 15.8 million acres of private and public lands protected by the Oregon Dept. of Forestry. Of those fires, 925 occurred in the wildland-urban interface. So, 23 percent of the total human-caused fires occurred in the interface during the past five years.

The specific causes of these interface wildfires include debris burns, smoking, use of power equipment (typically lawnmowers, weed whackers, etc.). I've attached two Excel charts that provide additional detail on fire causes.

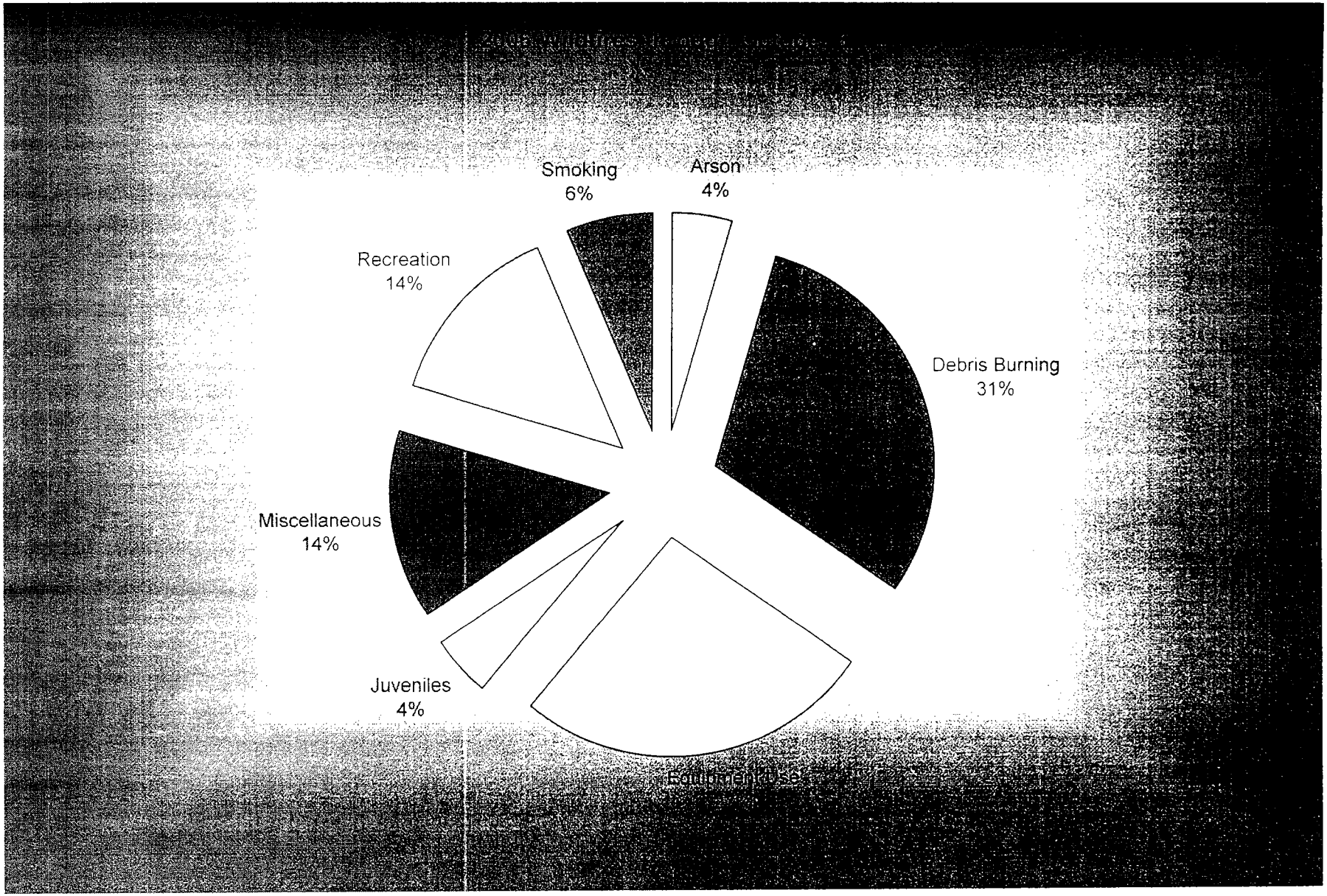
PIE CHART
This breaks out human-caused wildfires by cause. Each year, about two-thirds of the total wildfires on Department of Forestry-protected lands are human caused and the other one-third lightning caused. This chart does not depict fire incidence by location, such as pure forest vs. interface. Some of the causes, such as Juveniles and Smoking, occurred in both locations. But the chart gives a feel for the major causes of wildfires.

Debris Burning is noteworthy, as this has emerged in recent years as the major type of human-caused wildfire. Many of these debris-burning wildfires are the result of homeowners in the interface burning yard waste and other debris in their backyards. Typically, the homeowner starts the fire, then leaves it unattended or doesn't ensure it is completely extinguished at the end of the burn. The fire escapes and spreads into a wildfire. All debris burns, however, are not in the interface. Logging slash burns are also included in this category.

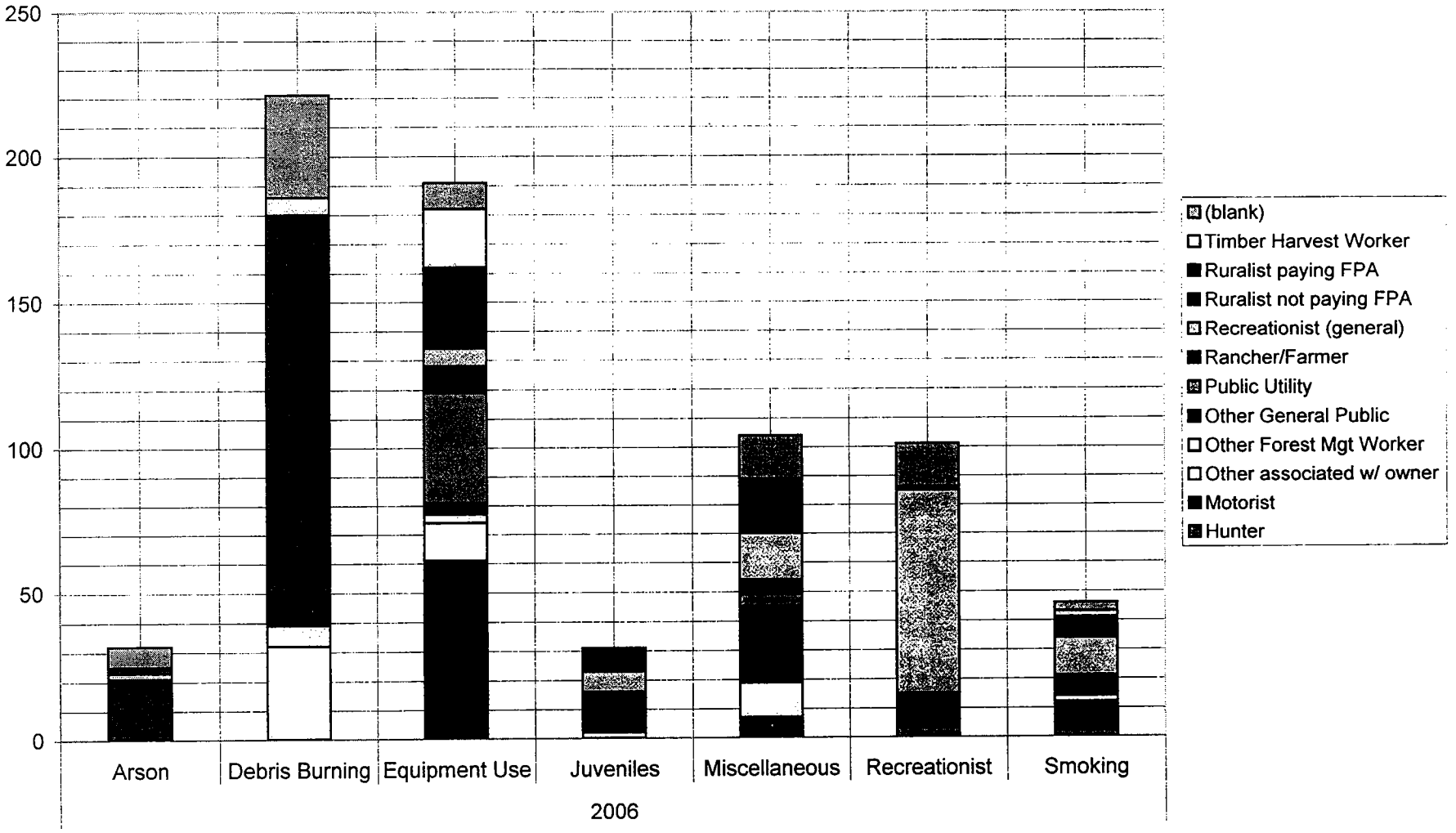
BAR CHART
This chart breaks out human-caused fires by forest user types. The X axis shows general categories of forest users, such as recreationists, etc. Each bar is then color coded to show the specific forest users within that general category. As with the pie chart, this chart does not break out fire causes by location.

I hope this information is helpful to you. Feel free to contact me if you have follow-up questions.

Rod Nichols
Oregon Dept. of Forestry
2600 State St.
Salem, Oregon 97310
503-945-7425 office
rnichols@odf.state.or.us


Smoking
6%
Arson
4%
Recreation
14%
Debris Burning
31%
Miscellaneous
14%
Juveniles
4%

2006 Fires by Forest Users



SUPPLEMENTAL INFORMATION SUBMITTED

Submitted on: 5/7/07 **Taken By:** M

SUPPLEMENTAL INFORMATION HAS BEEN RECEIVED BY THIS OFFICE IN REGARDS TO THE FOLLOWING:

BP# _____

PA# 06-7191 ZIP O LOGS

SP# _____

SI# _____

OTHER: June 5 KM

May 4, 2007

Land Management Division
125 East 8th Avenue
Eugene, OR 97401

Department File Number: PA 06-7191

In reply to the Hearing Notice on Measure 37 Claims, Zip-O-Log Mills, Inc. I agree with Gov. Kulongoski that a moratorium should be adopted on large claims such as this. All the land in this area is forest land and should not be divided into five acre parcels. This would have a huge impact on the area for any water supply, run off and fire access. We have lived in this area for thirty-five years as small forest land owners and if Oregon lets large land owner sub-divide like this the Eugene area will turn into another Los Angeles.

Larry & June Wise
29652 Lusk Rd.
Eugene, Or. 97405

SUPPLEMENTAL INFORMATION SUBMITTED

Submitted on: 6-7-19 Taken By: [illegible]

SUPPLEMENTAL INFORMATION HAS BEEN RECEIVED BY THIS OFFICE IN REGARDS TO THE FOLLOWING:

BP# _____

PA# 66-794

SP# _____

SI# _____

OTHER: June 5 letter

To Lane County Commissioners and
Lane County Land Management Division
125 East 8th Ave.
Eugene, Oregon 97401

May18, 2007

Testimony regarding file number: PA 06-7191

The Halstrom-Zip-O Measure 37 Application

Halstrom-Zip-O is claiming that land use and zoning laws have financially harmed them by preventing them from achieving a one-time windfall revenue of $11,633,321. This value is based entirely upon future actions and future markets. Land use and zoning decisions cannot rationally be based upon uncertain and possibly unrealistic concepts of the future.

The same appraisal source, the RE/MAX Integrity Broker, Mick Cates, also clearly states, on page 32 of the Halstrom-Zip-O application "My opinion is that the subject property is at least average in overall quality compared to the sold properties and therefore of at least average value. Hence, (314.51 acres x's $1014/acre) as the property is zoned at this time its Current Fair Market Value is $318,913. (P. 32, Halstrom-Zip-O Measure 37 Application.)

The value in excess of eleven million is conditional; it would "theoretically have 63 buildable parcels. His (Halstrom-Zip-O) parcels would be at least average in quality and therefore average in price." That price per acre is stated as approximately $190,000. (P. 32, Halstrom-Zip-O Measure 37 Application.)

This amounts to basing a claim of financial harm on the supposition that property currently valued at approximately $1000 per acre would increase, by a means and in a time that is purely conjectural, by a factor of approximately 190%.

Mr. Cates estimates of value contradict one another. The value of $318,913 is real and describes property that lacks improvements and amenities. The value of $189, 718 per acre is theoretical. The value of $189, 718 per acre estimated by Mr. Cates is based upon comparisons with current real estate sales. The sold parcels would all have been surveyed, and would have had improvements. The application parcel has not been surveyed and has no improvements. Mr. Cates skirts the issue of amenities by using the phrase "at least average in overall quality." Rural real estate with amenities has a high value. Properties with amenities such as tree cover, views, ponds, or creeks are available for the price Mr. Cates estimates as appropriate for a dry, recently harvested (in 2000 and in 2006) acreage that is not yet surveyed; has no improvements, not even access; and is unlikely to have water in sufficient quantity and quality to support 63 homes. As Mr. James Mann states in his documents included in the Halstrom-Zip-O application, page 19, "the subject property is in two sections with residential areas designated as water quantity or quality limited area."(Lane Manual Chapter 13.010)

Examination of pages 49 through 69 of the Halstrom-Zip-O application contrasts timberland parcels valued at $1014 per acre with buildable 4.76-acre parcels valued at $39856 per acre. The value of improvements and amenities is evident.

In order for Halstrom-Zip-O to realize any revenue in any amount near the $189,718 per acre, Halstrom-Zip-O would have to form a development corporation, survey the property, add access roads, conduct soil and water tests to determine if they could create 63 saleable parcels (parcels with sufficient water), conduct engineering surveys to determine if 63 lots can be built on a slope this steep, and begin to market this currently non-existent subdivision. Land use and zoning laws cannot be held responsible for preventing a family corporation such as Halstrom-Zip-O from realizing theoretical revenues.

What the land use and zoning laws have done for Halstrom-Zip-O since the inception of those laws includes: making ownership of timber properties possible and affordable, making timber available locally and therefore cheaper to acquire, deferring taxes on forest properties, and providing public safety and protection for both the Halstrom-Zip-O property and all surrounding properties.

Clearly two, common sense, conclusions can be drawn.

The supposed financial harm that Halstrom-Zip-O claims was done to them by land use and zoning laws ignores all benefits these laws bestowed upon Halstrom-Zip-O, and it ignores the financial opportunities created by these laws: affordable ownership, tax savings, assets and resources for Halstrom-Zip-O Mills

The financial harm that Halstrom-Zip-O claims was done to them by land use and zoning laws is theoretical, and is presented as a probability in an indefinable future. The exorbitant value in excess of 11 million dollars ignores both the costs necessary to create buildable lots out of undeveloped timberland, and it ignores the reality that water is insufficient to support 63 home. Living on the southern boundary of the Halstrom-Zip-O property on the east side of Lorane Highway, we are knowledgeable about the water quality and quantity issues. Two wells in our area went dry in the mid-1990s and had to be drilled much deeper yielding water with higher calcium and arsenic content. USGS topographic maps for this area identify the ridge-top as approximately 1000-1200 feet above sea level. Few if any usable wells are located above 600 feet elevation along this hillside, and most are located below that.

Realizing that it is highly unlikely that the timber property owned by Halstrom-Zip-O would support 63 homes, and noting that considerable funds must be spent to identify and make marketable what sites the parcel could support, it is evident that the supposed financial harm done to Halstrom-Zip-O has been falsely stated and the benefits from land use and zoning laws ignored.

This reasoning is acceptable only if one is operating on faulty premises. It might seem more persuasive if viewed using the method presented as the "single exemption" method

in *Three Methods for Evaluating Measure 37 Claim* by W. K. Jaeger of OSU. (Dr. Jaeger presented his research findings to the Commissioners.) The single exemption method makes a determination using the hypothesis of removing land use regulation from this one property. Property does not exist in isolation; nor are land use regulations passed specific to one property. As Dr. Jaeger points out, this method errs 2 out of 3 times it is used. And, as citizen residents of Lane County, we are all affected by these laws and those of us living near the Halstrom-Zip-O parcel face the likelihood that both our quality of life and the financial value of our properties will decline if the Halstrom-Zip-O application is approved. Looking at a single parcel in isolation not only leads to false conclusions about that property's value; it ignores effects on adjacent properties. Our social contract system of government is intended to provide benefits to all even though it may exercise some limitations on a few. Halstrom-Zip-O is trying to claim extreme limitation in the form of financial harm not based in any reality but based in an unrealistically described future. Halstrom-Zip-O is attempting to take advantage of the citizens of Lane County and their Commissioners by hoping the decision is based upon looking at their application in isolation and with an uncritical eye.

If the Commissioners would choose to use the method identified by Dr. Jaeger as "the before and after method," a method that yields correct results 3 out of 4 times, they would realize that the land use laws allowed the property to increase in value as real estate appreciated, allowed Halstrom-Zip-O to afford to own the property and thereby mill its timber, and allowed Halstrom-Zip-O considerable financial benefit through timber tax deferral during years of appreciation, and created a reality which built roads allowing Halstrom-Zip-O to harvest and haul to mills the timber on this property. The property was logged twice in the last 10 years. Those same land use regulations would have allowed Halstrom-Zip-O at any time to sell the property with marketable timber at considerable profit compared to their purchase price.

Further, the use of the "before and after" method would reveal that the positive changes to the value of this property were from forces outside of, but compatible with, land use regulations such as overall appreciation, and the growing market for timber.

Lastly, if the false premises excessive harm (11 million) and examination of the property in isolation are discarded, it is evident that the land use regulations benefited Halstrom-Zip-O, benefited the property owners nearby, and benefited citizens of the county, thereby remaining true to the principals of social contract. Commissioners, as elected officials, cannot act, nor can they reason, in isolation. They are elected to serve all voters. Therefore, at times, these Commissioners must find the foresight and fortitude to act wisely and justly for all.

Michael Simon
Janet Sonduck
84299 Lorane Highway
Lot 19-04-05-00-00702

SUPPLEMENTAL INFORMATION SUBMITTED

Submitted on: 5-16-07 **Taken By:** SGS

SUPPLEMENTAL INFORMATION HAS BEEN RECEIVED BY THIS OFFICE IN REGARDS TO THE FOLLOWING:

BP#

PA# 067191 Zip 0 lugs

SP#

SI# (May 1)

OTHER: Cont. June 5 KM

5.16.2007

05-16-07 P02:32 IN

Zip-o-Log Measure 37 Claim
PA 06-7191
A Note on Valuation

The opinion of value and Comparative Market Analysis submitted in the Zip-o-log Measure 37 Claim PA 06-7191 does not include the following elements and therefore cannot be viewed as a legitimate method of valuation. The following are some of the elements that would lead to a legitimate valuation.

The opinion of value and Comparative Market Analysis is based upon the average sales price of eleven sales of five acre parcels located in the Eugene/Springfield area. It states the average sales price of $189,718 and then multiplies this by 63 (315 acres/5 acre parcels = 63 parcels). This form of valuation seems plausible, yet is spurious for the following reasons.

First. The current average price of the eleven sales is based upon the current supply and demand within the Eugene/Springfield area. Increasing the supply of 5 acre parcels by a total of 63 five acre parcels in this case (and potentially hundreds of other five acre parcels if all of these Measure 37 Claims go through) would flood the market with five acre parcels in the surrounding countryside of Eugene/Springfield. In simple economic terms, such a significant shift in the supply curve would dramatically lower the price/valuation of not only these 5 acre parcels but also the current 5 acre parcels on the market. The stated analysis does not account for this shift in the supply curve and the lowered valuations.

Second. The stated analysis does not consider the deleterious affects 63 new 5 acre parcels would have on surrounding property valuations. The influx of 63 five acre parcels would lower the value of the current surrounding properties. The five acre parcel values would be lowered significantly (why would a future buyer buy an existing parcel at an average price of $189,718 when they could buy a new parcel within the new supply of 63 five acre parcels for considerably less?)

Third. The analysis does not consider the significant costs to the current land owners associated with an additional 63 five acre parcels. These costs could be:

A. Reduced water quality and reduced water quantity. This is already an area where water is limited. Are 63 new wells feasible in this area? If a theoretical valuation analysis is going to be used in this application, then there has to be a method to quantify this potential cost. Can you have 63 new wells built in this area? How many new wells can this property actually have before it affects the water of the existing properties? A water analysis needs to be conducted first to determine the number of wells the property can have. Then you can base valuations on a more concrete number of 5 acre parcels and not the theoretical maximum number of parcels.

B. Cost of Fire suppression. Please read the article on Wild Fire in the Register Guard Editorial page 5.14.2007 for a discussion of the potential costs of building in forests. In short it says that the costs of fire suppression and the costs of fighting fires to save housing built within forested areas is significant. This factor needs to be built into the overall valuation model.

C. Erosion of quality of life of surrounding land owners and rural land owners in the vicinity by the increase in auto traffic, truck traffic, builders traffic, trash collection, auto emissions, etc., not to mention the visual housing clutter of forest land and the countryside. How much is it worth to people to have uninterrupted stretches of country land where few houses are visible? The drive on Lorane Highway is picturesque. Let us not make Lorane Highway Coburg Road.

Fourth. The valuation model used does not include the annual decreased tax bill (decreased significantly each year) Zip-O-Logs has accrued since 1961. The model must include this or the model is spurious. Zip-O-Logs decided to keep this primary forest land for many years when there were few zoning regulations. Now that Measure 37 appears to have created a way around these zoning regulations, they cannot just jump from an F-1 zoning classification to Rural Residential 5. This is a case where they are trying to have their cake and eat it too. This should not be allowed.

Therefore using this market analysis is merely a method of avoiding the difficult economic valuation modeling that should be conducted by expert economists, not simply real estate brokers who are talking about the state of the current market. This type of analysis does not "connect the dots" in reduction of value. It only appears to. Do not be fooled by this flawed analysis. The whole point of my analysis is that these valuations fail to account for the radical shift in the supply curve, hence cannot be taken on their face value. If they are taken on face value then the Board of Commissioners is merely rubberstamping these Measure 37 Claims with spurious valuation models.

It was never the intention of the majority of Measure 37 Voters who voted Yes in 2004 to make F-1 forest land into a sea of 5 acre parcels that benefit single land owners, in this case Zip-O-Log, a corporation. The Board of Commissioners charge is to evaluate what is best for the immediate community and county as a whole. The surrounding property owners, the other rural land owners in the vicinity, and the greater society's values need to be weighed in consideration of such a claim. If you do not do this, then you are abdicating your responsibility as County Commissioners. Otherwise, the private interests of one individual or corporation trump the interests of the greater society. This is not the imbalance that Measure 37 was trying to correct. I urge you to throw out this claim based on a spurious method of valuation.

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