

W. 17.b.

## AGENDA COVER MEMO

**Memorandum Date:** June 2, 2008  
**Agenda Date:** June 18, 2008  
**TO:** Lane County Board of Commissioners  
**DEPARTMENT:** Public Works Department, Land Management Division  
**PRESENTED BY:** Jerry Kendall/Associate Planner *JK*

**TITLE:** IN THE MATTER OF ADOPTING SUPPLEMENTAL FINDINGS TO ORDINANCE No. PA 1235, AMENDING THE RURAL COMPREHENSIVE PLAN TO REDESIGNATE LAND FROM "FOREST" TO "MARGINAL LAND" AND REZONING THAT LAND FROM "F-2/IMPACTED FOREST LANDS" TO "ML/MARGINAL LANDS" (file PA 04-6308; Dennis).

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### I. MOTION

Move approval of the proposed Order with Exhibits A and B.

### II. AGENDA ITEM SUMMARY

Via Ordinance No. PA 1235, the Board amended the Lane County *Rural Comprehensive Plan* (RCP) and redesignated 102+ acres of land from a plan designation of "Forest" land to "Marginal Land" and from "F-2/Impacted Forest Lands" to "ML/Marginal Lands". The property is identified as Map 18-01-33, tax lot 106. The ordinance was adopted by the Board of County Commissioners on November 29, 2006. That action was appealed to the Oregon Land Use Board of Appeals (LUBA), which affirmed the county's decision. An appeal to the Oregon Court of Appeals was filed, and the proposal was subsequently remanded back to LUBA and in turn to Lane County for action on one issue. This item presents the Board with a response to the Court of Appeals remand.

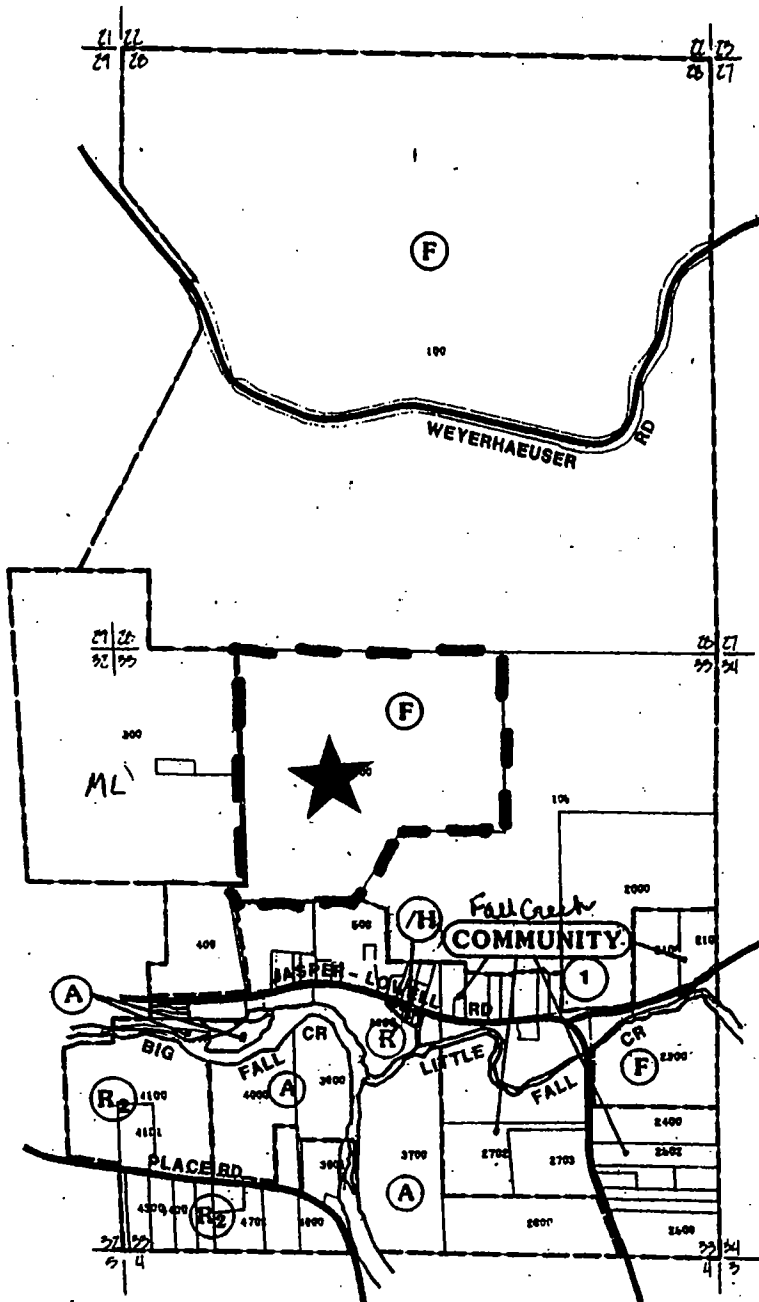
### III. BACKGROUND/IMPLICATIONS OF ACTION

#### A. Board Action and Other History

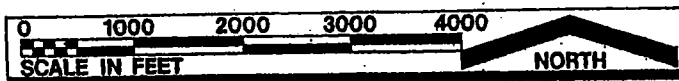
On November 29, 2004 the owners made application for this minor amendment to the Rural Comprehensive Plan. The Board approved the request on November 29, 2006 via Ordinance No. PA 1235. That action was appealed to the Oregon Land Use Board of Appeals (LUBA) and on August 6, 2007, LUBA issued its decision and affirmed the county decision in its entirety. The proposal was then appealed to the Oregon Court of Appeals, which issued its decision on November 28, 2007. The appeals court remanded the proposal on one issue only: the proper way to compute the "forest income" standard found in ORS 197.247(1)(a)(1991 version).

516

536



528



ane county



OFFICIAL PLAN MAP

PLOT# 527

 Twnshp Range Section  
 18 01 28

18 01 33

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

REVISION # 2 ORD. # PA1076 DATE 9 / 25 / 95 FILE # PA0658-95

B. Analysis

Marginal Lands proposals must comply with ORS 197.247 (1991 version). A successful application must pass a two-tier test, the first portion is known as the “income test”, the second is the “productivity test”. Only the income test portion regarding forest income was remanded.

The pertinent provision of ORS 197.247(1)(a) reads as follows:

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

In 1997, the Board issued guidelines for the evaluation of Marginal Lands proposals. The guideline advised that 1983 timber prices be utilized in evaluating forest income. The Court of Appeals<sup>1</sup> disagreed, stating that the provision above clearly instructs that the analysis focus on the years *preceding* January 1, 1983.

As detailed in the findings attached to the enclosed Board Order, the applicant’s professional forester, Marc Setchko, has now entered into the record price calculations for all the years preceding 1983.

The applicant introduces the pre-1983 timber prices for the Board’s adoption in the enclosed findings. Although ORS 197.247(1)(a) only requires data for any three years prior to 1983, data for all five years has been provided. The findings conclude that the subject tract was not capable of exceeding the \$10,000 gross annual income threshold for any of the five years. The income was as follows:

1978:	\$6,210
1979:	\$7,800
1980:	\$8,167
1981:	\$7,815
1982:	\$5,740

Mr. Setchko’s computations in support are attached as exhibits to the findings.

C. Alternatives / Options

1. Adopt the Order with Exhibits A and B.
2. Amend the Order or Exhibit B
3. Do not adopt the Order and provide additional direction on the remand.

D. Recommendation

Option 1.

E. Timing

The Order will be effective immediately.

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<sup>1</sup> See *Anderson v. Lane County*, 216 Or App 332, 172 P3d 302 (2007) and also *Herring v. Lane County*, 54 Or LUBA 417, rev’d and rem’d 216 Or App 84, 91, 171 P3d 1025 (2007), attached to the enclosed Order.

#### **IV. IMPLEMENTATION/FOLLOW-UP**

Notice of action will be provided to DLCD and the applicant.

#### **V. ATTACHMENTS**

Order with Exhibits A and B.

**BEFORE THE BOARD OF COUNTY COMMISSIONERS OF  
LANE COUNTY, OREGON**

**ORDER No. 08-**

) **IN THE MATTER OF ADOPTING SUPPLEMENTAL**  
) **FINDINGS TO ORDINANCE No. PA 1235, AMENDING**  
) **THE RURAL COMPREHENSIVE PLAN TO REDESIG-**  
) **NATE LAND FROM "FOREST" TO**  
) **"MARGINAL LAND" AND REZONING THAT**  
) **LAND FROM "F-2 IMPACTED FOREST LANDS"**  
) **TO "ML/MARGINAL LANDS"**  
) **(file PA 04-6308; Dennis).**

**WHEREAS**, on November 29, 2006, by means of Ordinance No. PA 1235 the Board of County Commissioners amended the Lane County *Rural Comprehensive Plan* (RCP) by the re-designation of approximately 107 acres of land identified as portions of Map 18-01-33, tax lot 106 from "Forest" land to "Marginal Land" and rezoning that land from "F-2/Impacted Forest Lands" to "ML/Marginal Lands"; and

**WHEREAS**, that action was appealed to the Oregon Land Use Board of Appeals (LUBA) which on August 6, 2007, affirmed the county's decision.

**WHEREAS**, the LUBA decision was appealed to the Oregon Court of Appeals, which on November 28, 2007, issued its decision upholding the LUBA decision on all but one of the issues raised by the petitioners, but remanding the decision based on that one issue as described in the Oregon Court of Appeals decisions attached as Exhibit "A" and incorporated herein; and

**WHEREAS**, in response to the Oregon Court of Appeals and LUBA remands, supplemental findings and analysis based on substantial evidence in the record, which is attached hereto as Exhibit "B" and incorporated herein, has been prepared containing additional information regarding compliance with the "forest income" standard of ORS 197.247(1)(a) (1991 version); and

**WHEREAS**, the Board of County Commissioners has reviewed the record and is now ready to take action based upon the evidence and testimony in the record.

**NOW THEREFORE, IT IS HEREBY ORDERED** that the findings previously adopted in support of Ordinance No. PA 1235 are further supplemented as described in Exhibit "B" attached and incorporated here by this reference to establish that the findings and evidence in the record confirms the changes to the Lane County *Rural Comprehensive Plan* adopted by that ordinance conform with the "forest income" standard of ORS 197.247(1)(a) (1991 version).

**ADOPTED** this 18th day of June, 2008.

\_\_\_\_\_  
Chair, Lane County Board of Commissioners

APPROVED AS TO FORM

Date 6-16-2008 Lane County

  
\_\_\_\_\_  
OFFICE OF LEGAL COUNSEL

Exhibit A

**FILED:** November 28, 2007

IN THE COURT OF APPEALS OF THE STATE OF OREGON

CLARK ANDERSON,  
LYNN ANDERSON, PATRICIA CHOMYN,  
AMY DONNELLY, MARTIN DREISBEICH, ROBERT EMMONS,  
NENA LOVINGER, TIM MCMAHEN, JOHN A. RICHARDSON,  
JONNY B. WATSON, and ROBERT WINKLER,

Petitioners,

v.

LANE COUNTY  
and CAROL DENNIS,

Respondents.

Land Use Board of Appeals  
2006236; A136646

Argued and submitted October 22, 2007.

Jannett Wilson, Goal One Coalition, argued the cause and filed the brief for petitioners.

H. Andrew Clark argued the cause for respondent Lane County. With him on the brief were Stephen L. Vorhes and Lane County Office of Legal Counsel.

P. Steven Cornacchia argued the cause for respondent Carol Dennis. With him on the brief was Hershner, Hunter, LLP.

Before Schuman, Presiding Judge, and Brewer, Chief Judge, and Deits, Judge pro tempore.

PER CURIAM

Reversed and remanded to LUBA with instructions to remand to county for further proceedings.

PER CURIAM

Lane County amended its Rural Comprehensive Plan to change the designation of certain property from "Forest Land" to "Marginal Land" pursuant to ORS 197.247(1)(a) (1991), and the Land Use Board of Appeals (LUBA) affirmed. Petitioners seek judicial review, raising two assignments of error: First, they argue that LUBA erred in approving the county's use of 1983 prices in calculating the potential value of timber on that land; and, second, they argue that LUBA erred by allowing the county, in the same calculation, to

presume a uniform 50-year growth cycle for the timber. In *Herring v. Lane County*, 216 Or App 84, \_\_\_ P3d \_\_\_ (November 7, 2007), we held that LUBA erred in using 1983 prices but did not err in using a 50-year growth cycle. *Herring* resolves the issues in this case.

Reversed and remanded to LUBA with instructions to remand to county for further proceedings.



**FILED:** November 7, 2007

IN THE COURT OF APPEALS OF THE STATE OF OREGON

MARK HERRING,  
LESLIE HILDRETH, JESSE ULLOA,  
and JOANNE ULLOA,

Petitioners,

v.

LANE COUNTY,

Respondent.

Land Use Board of Appeals  
2006203;  
A136155

Argued and submitted August 28, 2007.

Jannett Wilson argued the cause for petitioners. With her on the brief was Goal One Coalition.

H. Andrew Clark argued the cause for respondent. With him on the brief were Stephen L. Vorhes and Lane County Office of Legal Counsel.

Before Haselton, Presiding Judge, and Armstrong and Rosenblum, Judges.

HASELTON, P. J.

Reversed and remanded to LUBA with instructions to remand to county for further proceedings.

HASELTON, P. J.

Petitioners seek review of a LUBA decision affirming respondent Lane County's amendment of its Rural Comprehensive Plan to change the designation of certain property from "agricultural" to "marginal land." As explained below, although we agree with some aspects of LUBA's decision, we conclude that the case must be remanded to the county due to its erroneous calculation, pursuant to ORS 197.247(1)(a) (1991), of whether the property was part of a forest operation capable of producing \$10,000 in annual gross income.

The land in question is a 74-acre portion of a piece of property consisting of two tax lots that was originally part of a 114-acre parcel that was designated agricultural land and zoned for agricultural use at the edge of Eugene's urban growth boundary. In 1992, the northernmost 40 acres of the property were declared marginal lands and rezoned. The



present case stems from an application by the owner in 2005 to change the designation of the southernmost 74 acres to marginal land and to rezone that portion of the property as well. <sup>(1)</sup> In response to that application, the county amended its Rural Comprehensive Plan to designate the property as "marginal land." Petitioners, who appeared before the county, appealed the county's decision to LUBA, arguing that the county erred in several respects. LUBA upheld the county's decision, and petitioner seeks judicial review.

Before turning to the specific arguments, we provide a background concerning the marginal lands statutory scheme and its application in Lane County. Enacted in 1983, the marginal lands statute, ORS 197.247 (1991), permitted counties to authorize procedures for designation of certain land as "marginal land" and to permit certain uses on it that otherwise would not be permitted, if the land met certain specified criteria. The criteria at issue in the present case are found in ORS 197.247(1) (1991):

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

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

"\* \* \* \*

"(C) The proposed marginal land is composed predominantly of soils in capability classes V through VIII in the Agricultural Capability Classification System in use by the United States Department of Agriculture Soil Conservation Service on October 15, 1983, and is not capable of producing \* \* \* eighty-five cubic feet of merchantable timber per acre per year in those counties west of the summit of the Cascade Range, as that term is defined in ORS 477.001(21)."

(Emphasis added.)

Although the legislature repealed the marginal land statute in 1991, it enacted a statute to permit counties that had adopted marginal land procedures under that statute to continue to apply them. ORS 215.316. <sup>(2)</sup> Lane County was one of the counties that had adopted marginal land procedures, and it has continued to utilize ORS 197.247 (1991) to designate land as marginal land.

In 1997, the Lane County Board of Commissioners issued a directive concerning how it would apply ORS 197.247 (1991) ("the 1997 directive"). The 1997 directive, which is central to our review, provides, in pertinent part:

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

"1. Based on the best information available regarding soils, topography, etc., determine the optimal level of timber production for the tract assuming reasonable management.

"2. Assume that the stand was, in 1983, fully mature and ready for harvest.

"3. Using the volumes calculated in step (1), and 1983 prices, calculate the average gross annual income over the growth cycle."

Returning to the particular circumstances of this case, we draw the following facts concerning the land from the county's unchallenged findings. The land in question was designated for agricultural use and zoned E-40 (Exclusive Farm Use - 40-acre minimum) in the county's Rural Comprehensive Plan, but has never been planted in crops. A limited amount of grazing has occurred on the property, but it did not qualify as part of a "farm operation" under the first clause of ORS 197.247(1)(a) (1991). The land consists mostly of south-facing slopes, and the soil is entirely Class VI and VII and, thus, is unsuitable for farming practices. A considerable portion of the property has very shallow soils, and aerial photos establish that trees have not grown over a large portion of the land for approximately 80 years. Easements for power lines run over approximately 10 acres of the land.

The applicant retained a consulting forester, Marc Setchko, to make the necessary calculations of whether the land in question would qualify as marginal land pursuant to ORS 197.247 (1991), as interpreted by the 1997 directive. As described in the county's findings, Setchko

"presented an analysis of the timber growing potential of the Subject Property which established that it could not be managed as a forest operation capable of producing an average, over the growth cycle, of \$10,000 in annual gross income. This conclusion was based on a detailed analysis of the existing soils and on-site growing conditions, their ability to grow timber (Douglas fir) and conversion of that growth potential into dollars based upon log prices in 1983. This methodology is dictated by the [1997 directive]."

Petitioners raised a variety of challenges to the correctness of the methodology prescribed by the 1997 directive and to Setchko's methodology and results, which they reiterated before LUBA and reprise on judicial review. The county rejected those challenges, found Setchko's opinion to be persuasive, and relied on it extensively in concluding that the land should be designated marginal land:

"We find Mr. Setchko's written analysis of the income potential for the Subject Property to be very persuasive for a number of reasons. First, Mr. Setchko's projection for income is, as a practical matter, virtually impossible to attain because it assumes a fully stocked stand of a single species. This is not realistic for this site because of the large areas of grassland and exposed rock which are not capable of growing stands of timber. Further, there is at least 9-10 acres of the site that is directly under major power lines (BPA and EWEB) which, due to provisions of the recorded easements, are not allowed to grow trees of any type. Therefore, we recognize that Mr. Setchko's estimate of \$5,173 per year as the projected income for this site over a 50-

year growth cycle is, as Mr. Setchko concludes, 'extremely difficult, if not impossible, to reach.'"

Specifically, in response to petitioners' arguments that Setchko's analysis was inadequate because it failed to comply with OAR 660-006-0010's directive concerning methods of determining forest land suitability, the county indicated, first, that Setchko's reports did satisfy the rule and, second, that, in any event, OAR 660-006-0010 (and the related rule OAR 660-006-0005(2)) were not directly applicable to marginal land determinations under ORS 197.247 (1991). Accordingly, the county concluded that the applicant's evidence demonstrated that the land should be designated as marginal land.

Petitioners appealed to LUBA, asserting that the county erred in concluding that the property could qualify as marginal land as defined in ORS 197.247 (1991). In particular, petitioners argued that the county (1) erroneously failed to utilize the criteria found in OAR 660-006-0010 <sup>(3)</sup> to make its determination of the amount of merchantable timber the property could produce as required by ORS 197.247(1)(b)(C) (1991); (2) erred in basing its determination about whether the property was part of a forest operation that could produce "an average, over the growth cycle, of \$10,000 in annual gross income," ORS 197.247(1)(a) (1991), in 1983 timber prices; and (3) further erred in making that calculation based on a presumed 50-year timber growth cycle.

With respect to OAR 660-006-0010, LUBA agreed with petitioners that that rule applied in this context. LUBA concluded that "[d]esignating forest lands as marginal lands and amending the comprehensive plan designations and zoning for those lands from one Goal 4 designation/zone to another Goal 4 designation/zone is a modification of the county Goal 4 inventory." However, LUBA further concluded that the county's determination that OAR 660-006-0010 did not apply was not reversible error, because the county specifically found that Setchko had employed a methodology that, in fact, complied with OAR 660-006-0010 and related rules.

As to the county's use of 1983 timber prices for making its determination pursuant to ORS 197.247(1)(b)(C) (1991), LUBA followed its own precedent from *Just v. Lane County*, 49 Or LUBA 456 (2005). In *Just*, LUBA affirmed the county's decision to use 1983 timber prices, pursuant to the methodology set out in the 1997 directive.

Finally, LUBA concluded that the county's decision to use a 50-year growth cycle to calculate a forest operation's average annual income under ORS 197.247(1)(a) (1991) was appropriate. LUBA also rejected additional arguments by petitioners that are not at issue on judicial review, and affirmed the county's decision.

Petitioners seek judicial review of LUBA's affirmance of the county's decision. We write only to address petitioners' arguments concerning the applicability of OAR 660-006-0010 in the present circumstances and to consider whether the use of the 1983 timber prices is consistent with the statutory directive of ORS 197.247(1)(b)(C) (1991). We reject petitioner's remaining arguments without discussion.

As to OAR 660-006-0010, petitioners assign error to LUBA's "harmless error" holding--that is, that the county's conclusion that the rule does not apply was, albeit erroneous, harmless, given the county's further finding that, in all events, Setchko's methodology did comport with that rule. Petitioners acknowledge that the county did find that the

methodology used by Setchko comported with the rule, but assert that that finding was conclusory and not backed up by any evidence in the record of any comparison of the consultant's methodology to those required by the Department of Forestry.

The county responds with two alternative arguments. First, the county asserts that, contrary to LUBA's conclusion, OAR 660-006-0010 does not apply in this context. That is, the county contends that it was correct in the first instance. Second, the county argues that, even if the rule does apply, LUBA's "harmless error" determination must be sustained because petitioners' challenge is, in effect, a substantial evidence challenge and LUBA correctly determined that the county's finding was supported by substantial evidence.

We agree with the county that OAR 660-006-0010 does not, in fact, apply in these circumstances. Consequently, we do not reach and address the question of whether LUBA's "harmless error" rationale comported with substantial evidence review.

OAR 660-006-0010 provides:

"Governing bodies shall include an inventory of 'forest lands' as defined by Goal 4 in the comprehensive plan. *Lands inventoried as Goal 3 agricultural lands* or lands for which an exception to Goal 4 is justified pursuant to ORS 197.732 and taken *are not required to be inventoried under this rule*. Outside urban growth boundaries, this inventory shall include a mapping of forest site class. If site information is not available then an equivalent method of determining forest land suitability must be used. Notwithstanding this rule, governing bodies are not required to reinventory forest lands if such an inventory was acknowledged previously by the Land Conservation and Development Commission."

(Emphasis added.)

As noted above, LUBA concluded that the rule applied to the present situation on the theory that a change "from one Goal 4 designation/zone to another Goal 4 designation/zone is a modification of the county Goal 4 inventory." Although that proposition may well be correct in the abstract, the problem with applying it to the present case, as the county points out, is that the land at issue here was not, in fact, included in the county's Goal 4 inventory in the first instance. Rather, the county asserts--and the record confirms--that the land was included in the county's Goal 3 inventory as "agricultural land." Thus, we agree with the county that OAR 660-006-0010, by its own terms, does not apply. We thus reject petitioners' first assignment of error.

Petitioners next argue that LUBA erred in upholding the county's use of 1983 prices in making its determination of potential gross income under ORS 197.247(1)(a) (1991). As noted, the county relied on its 1997 directive, which directs that the calculation of "average gross annual income over the growth cycle" under ORS 197.247(1)(a) (1991) be made using "1983 prices." *See* \_\_\_ Or App at \_\_\_ (slip op at 3). LUBA concluded that the statute gave the county "some latitude" in how to perform the calculation required by ORS 197.247(1)(a) (1991), reasoning that the statute is silent as to how a county is to determine whether a forest operation is "capable of producing an average, over the growth cycle, of \$10,000 in annual gross income."

On judicial review, the county first posits that LUBA's rationale was correct, because counties' "reasonable interpretations" of state statutes should be upheld. Suffice it to say that the authorities that the county invokes for that "reasonable interpretation" proposition do not support it. The question is simply one of statutory construction, to which we apply the well-known methodology for discerning legislative intent. We determine that intent by applying the principles of *PGE v. Bureau of Labor and Industries*, 317 Or 606, 610-12, 859 P2d 1143 (1993), first examining the text of the statute in context, and, if that inquiry is inconclusive, then turning to legislative history and other aids to construction.

Here, the county argued, and LUBA agreed, that ORS 197.247(1)(a) (1991) did not give precise instructions as to how to make a calculation of potential annual gross income with respect to a "forest operation." The statutorily prescribed methodology with respect to a farm operation is, in contrast, unambiguous and straightforward: Was the land part of a farm operation "*that produced*" a specified amount (\$20,000) of annual gross income "during three of the five calendar years preceding January 1, 1983"? Conversely, the application of the statute to a forest operation is potentially problematic in at least two respects. First, it is predicated on a determination of earning *capacity*--*i.e.*, whether the operation was "capable of producing" a certain annual gross income--rather than whether it actually did so. Second, the forest operation's potential annual gross income is to be determined by "averag[ing], over the growth cycle." The growth cycle of a forest, obviously, does not correlate to "the five calendar years preceding January 1, 1983," much less to "three of the five calendar years preceding January 1, 1983."

LUBA recognized those methodological difficulties, observing:

"For forest operations, the question is whether the subject property was managed as part of a forest operation during three of five years between 1978 and 1982 that was *capable* of producing an average annual gross income, over the growth cycle. Because forest operations do not produce annual revenue, the analysis of forest operations is necessarily more hypothetical than for farm operations, and the significance of the five-year period is less clear. The statute is simply silent as to how that five-year period is applied in determining whether the forest operation is 'capable of producing an average, over the growth cycle, of \$10,000 in annual gross income.'"

(Emphasis in original.) LUBA went on to conclude that the county's reliance, in the 1997 directive, on the 1983 prices represented a reasonable and permissible resolution of those difficulties:

"The legislature adopted the marginal lands statute in mid-1983, and it is reasonable to assume that the \$10,000 threshold is expressed in 1983 dollars, not \$10,000 in 1978 dollars or an average of dollar values during the years 1978-82. If so, then it also seems reasonable to assume that the legislature did not intend to preclude use of 1983 log prices to determine whether the forest operation exceeds the \$10,000 threshold."

We agree with LUBA's overarching observation that the statutory text, when viewed in context, does not provide precise guidance as to how the calculation concerning gross annual income of forest operations is to be performed. However--and contrary to LUBA's affirmance of the county's reliance on 1983 prices--the statute is *not* unclear as to what

years' timber prices are relevant to the calculation.

To reiterate, ORS 197.247(1)(a) (1991) provides:

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

(Emphasis added.) The pertinence of "the five calendar years preceding January 1, 1983" is clear with respect to calculating the annual gross income of a farm operation: To qualify as marginal land, the land must not have been managed, during any three of the five years before January 1, 1983, as part of a farm operation that produced \$20,000 or more in annual gross income in those years. Thus, if the land was managed as part of a farm operation in 1978, 1979, 1980, 1981, and 1982, and annual gross income exceeded \$20,000 only in the latter two years, the land would satisfy the marginal lands "farm operation" income (or lack of income) criterion of ORS 197.247(1)(a) (1991).

The qualifying phrase "the five calendars years preceding January 1, 1983" applies equally, and functionally, to the statutorily prescribed calculation with respect to forest operation-related income. That is so because, as a matter of syntax, the legislature employed a parallel structure, rendering that qualifying phrase equally applicable to both farm and forest income. *See* Bryan A. Garner, *A Dictionary of Modern American Usage* 479 (1998) (Parallelism: "By phrasing parallel ideas in parallel grammatical constructions, you show the reader how one idea relates to another."); *cf. Priest v. Pearce*, 314 Or 411, 415-16, 840 P2d 65 (1992) (parallel construction in separate sentences of same constitutional provision indicated references were to same subject matter).

Given that principle of parallel construction, the statutory text provides that the calculation of potential annual gross income of a forest operation, like that for a farm operation, is to be based on the five calendar years preceding January 1, 1983--*i.e.*, 1978, 1979, 1980, 1981, and 1982. Although the statute is silent on some aspects of how one is to determine what a forest operation could potentially have produced in annual gross income in those particular years, it is explicit as to the years on which that calculation must be based. <sup>(4)</sup> Certainly, nothing in the text or context of the statute suggests that 1983 prices--prices for the year *following* January 1, 1983--are properly considered in determining compliance with the marginal lands income requirement. In sum, ORS 197.247(1)(a) (1991) unambiguously requires that the calculation of potential annual gross income be based on the five calendar years preceding 1983, rather than on 1983. <sup>(5)</sup>

We note, finally, that, in rejecting petitioners' challenge to reliance on the 1983 timber prices, LUBA made an additional observation, suggestive of an alternative basis for affirmance:

"In any case, as the county notes, the applicants' consulting forester made an alternative calculation that used the 1978-82 log prices suggested by petitioners. While the result was higher than using 1983 log prices, the average annual income still fell below \$10,000."

LUBA concluded that petitioners' arguments "provide no basis for remand."

To the extent that the county suggests on judicial review that LUBA's ultimate conclusion may be affirmed based on that alternative rationale, we disagree. Evidence in the record indicates that Setchko did, indeed, make alternative calculations of annual gross income based on 1978 through 1982 log prices. However, the county's findings were not based on those calculations; instead, the county's approval of the application was expressly based on Setchko's calculations that used 1983 prices. Given our respective review functions, and given that the county never purported to rely on Setchko's alternative calculations, neither we nor LUBA can affirm on an alternative basis that there is other evidence in the record which might, if accepted by the local decision-maker, have been sufficient to support its initial determination. *See Newcomer v. Clackamas County*, 92 Or App 174, 184-85, 758 P2d 369, *adh'd to as modified on recons*, 94 Or App 33, 764 P2d 927 (1988) (court will not presume that county would have made a finding that it did not, in fact, make).

Reversed and remanded to LUBA with instructions to remand to county for further proceedings.

1. The property's owner is not a party to this proceeding.

Return to previous location.

2. ORS 215.316 provides, in pertinent part, that "a county that adopted marginal lands provisions under ORS 197.247 (1991 Edition) \* \* \* may continue to apply those provisions."

Return to previous location.

3. The text of OAR 660-006-0010 is set out below. \_\_\_\_ Or App at \_\_\_\_ (slip op at 7).

Return to previous location.

4. That is to say, the statute may well be ambiguous as to some details of how the legislature intended the potential annual income to be calculated, such as whether the legislature intended the calculation to be based on trees hypothetically harvested in 1978 through 1982 or, perhaps, on the projected value of trees actually existing on the land in 1978 through 1982. Those questions, however, are not presented in this case, and ambiguities in one aspect of a statute do not necessarily render all aspects of a statute ambiguous.

Return to previous location.

5. We note, parenthetically, that the limited legislative history on this point confirms that construction. See, e.g., Tape Recording, House Committee on Energy and Environment, SB 237, Apr 25, 1983, Tape 260, Side A (testimony of Richard Benner) (indicating that, for the income test, "you use the five-year period preceding the effective date of the Act"); *id.* (statement of Committee Chair Darlene Hooley) (the income test involves "averaging of gross income in three of the five years preceding the effective date of this Act--1983").

Return to previous location.



**Home**



**Remand Response and Supplemental Findings  
Supporting Ordinance No. PA 1235 Amending  
Lane County Rural Comprehensive Plan and  
Zone Designations of the Subject Property.**

In support of our adoption and enactment of Ordinance No. PA 1235, we make the following findings of fact and conclusions of law.

**Introduction**

On November 29, 2006, the Board of County Commissioners adopted Ordinance No. PA 1235 that amended the Lane County Rural Comprehensive Plan diagram to re-designate that certain property described as Tax Lot 106 of Lane County Assessor’s Map No. 18-01-33 from Forest Land to Marginal Land and amended the Lane County zoning map from F-2 Impacted Forest Lands (F-2/RCP) to Marginal Lands (ML/RCP). That action was appealed to the Oregon Land Use Board of Appeals (LUBA) and on August 6, 2007, LUBA issued its decision upholding the county action on all of the issues raised by the petitioners. Specifically, LUBA rejected the petitioners’ argument that Lane County erred in relying on 1983 log prices in determining that the property is not capable of producing an average annual gross income of \$10,000, pursuant to a 1997 Lane County Board of Commissioners directive describing how the gross income test should be applied. LUBA affirmed Lane County’s approach and rejected the petitioners’ argument that former ORS 197.247(1)(a) compels the county to instead use log prices from the preceding five-year period from 1978-1982.

The LUBA decision was appealed to the Oregon Court of Appeals. The Court of Appeals held that former ORS 197.247(1)(a) explicitly directs Lane County to calculate potential gross income of a forest operation based on the five calendar years preceding January 1, 1983, and does not authorize the county to use 1983 prices in that calculation. The Court of Appeals remanded the decision back to LUBA with instructions to remand to Lane County for further proceedings. LUBA subsequently remanded to Lane County, for Lane County to address the forest operation income test using log prices from 1978 through 1982.

In reviewing the LUBA and Court of Appeals decisions and upon the request of the applicant, Lane County Planning Department staff and Lane County Legal Counsel determined the necessity of a remand evidentiary hearing limited in scope to correcting the deficiency that was the basis for the Court of Appeals’ and LUBA’s remands. The following additional findings and analysis of the evidence presented during the remand evidentiary hearing provide further support for our adoption of Ordinance No. PA 1235.

**Findings and analysis**

Former ORS 197.247 allows land in “Marginal Land Counties” to be designated as “Marginal Land” if several criteria are satisfied. One criterion expressed in former ORS 197.247(1)(a), is that “[t]he proposed marginal land was not managed during three of the five calendar years

preceding January 1, 1983, as part of a \* \* \* forest operation capable of producing an average, over the growth cycle, of \$10,000 in annual gross income.” We found that the applicant had demonstrated that the subject property was not managed, during three of the five calendar years preceding January 1, 1983, as part of a forest operation capable of producing an average, over the growth cycle, of \$10,000 in annual gross income. The Court of Appeals decision addressed that provision of former ORS 197.247(1)(a) and concluded our decision misconstrued the language of former ORS 197.247(1)(a) when we relied solely upon the calculations of the applicant’s consulting forester, Marc Setchko, using only 1983 log prices. The Court of Appeals, citing to the companion case of *Herring v. Lane County* 54 Or LUBA 417, rev’d and rem’d 216 Or App 84, 91, 171 P3d 1025 (2007) (the Brad Ogle application), in which it stated that the statute unambiguously requires the calculation to be based on the five calendar years preceding 1983, rather than on 1983 solely.<sup>1</sup>

The following supplemental findings and supporting evidence in the record establish that the subject property was not managed, during three of the five calendar years proceeding January 1, 1983, as part of a forestry operation capable of producing an average, over the growth cycle, of \$10,000 in annual gross income.

We find that evidence in the record demonstrates that the subject property was not managed, during three of five calendar years preceding January 1, 1983, as part of a forestry operation capable of producing an average, over the growth cycle, of \$10,000 in annual gross income.

On June 18, 2008, we conducted a remand evidentiary hearing that was limited in scope to correcting the deficiency that was the basis for the Court of Appeals remand—whether the subject property was managed during three of the five years preceding January 1, 1983 as a forest operation capable of producing an average of \$10,000, over the growth cycle in annual gross income. We find, based upon the evidence produced at the remand evidentiary hearing, that it was not.

At the June 18, 2008, remand evidentiary hearing, the applicant produced substantial evidence that the forest operation on the subject property was not capable of producing an average of \$10,000, over the growth cycle, in annual gross income during three of the five calendar years preceding January 1, 1983. That substantial evidence was in the form of stated and written testimony from the applicant and from Mr. Setchko, which testimony is incorporated herein by this reference. Copies of the written testimony are attached to these supplemental findings.

Mr. Setchko testified that, based upon his original June 2004, analysis and calculations, the subject property was not capable of producing \$10,000 in annual gross forest income during any of the five years preceding January 1, 1983. His written report provides calculations of forest capability, using log prices from each of the years from 1978 to 1982. Mr. Setchko concludes that based on log prices of each year, the subject property was capable of producing \$6,210 in 1978, \$7,800 in 1979, \$8,167 in 1980, \$7,815 in 1981 and \$5,740 in 1982. Mr. Setchko’s conclusions are a result of the same methodology that he provided to Lane County in the original hearing and include analysis the Court of Appeals found to be consistent with former ORS

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<sup>1</sup> *Anderson v. Lane County*, 216 Or App 332, 172 P3d 302 (2007)

197.247(1)(a). The Court of Appeals, however, rejected the sole use of 1983 log prices to reach those conclusions.

The opponents stated in the original hearing before us that Lane County should use log prices from the 1978-82 period rather than 1983 to make the calculations. They made that same argument to LUBA and to the Court of Appeals. Mr. Setchko's conclusions use the log prices that the opponents have asserted should be used throughout the public process of this application.

We find Mr. Setchko's testimony persuasive on the question of whether the subject property was managed during three of the five years preceding January 1, 1983, as a forest operation capable of producing an average of \$10,000, over the growth cycle, in annual gross income during the relevant time period. Therefore, we find that the subject property was not managed, during three of the five calendar years preceding January 1, 1983, as part of a forest operation capable of producing \$10,000 or more in annual gross income in three of the five years preceding January 1, 1983. Based upon evidence in the record we find that the applicant has demonstrated that the requirements of former ORS 197.247 are fulfilled and that the subject application for marginal land designation of the subject property should be approved. Accordingly, we adopt these supplemental findings as further support for our previous decision to approve the application and amend the plan and zoning designation of the subject property.



**Marc E. Setchko**  
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December 4, 2007

**AMMENDMENT TO  
FOREST PRODUCTIVITY ANALYSIS  
for  
Carol Sutton**

**SUBJECT PARCEL: ASSESSORS MAP NO. 18-01-33  
TL #106, totaling ±102.61 ac.**

**RESULTS OF INCOME CALCULATIONS**

From original analysis dated June, 2004; exhibits mentioned are in original report; new exhibits are included with this ammendment.

It has been several years since any logging activities were undertaken on the property; the last logging completed was a light selective thinning. There was not much timber growing on the parcel at that time; currently the majority of the timber left is either premerchantable size or of poor form and health. Therefore, the above mentioned soil ratings tables were used to obtain site indexes, if a rating is available. A volume figure per acre can be obtained from the growth tables for each soil with a Site Index rating. Volume per acre for soils with no assigned site index was calculated by comparing the cu.ft./ac./yr. production of the above mentioned soils. Adding the volume per acre of all the soil types together will give a total for the entire parcel. A fifty year rotation (growth cycle to final harvest) was used, as this is the rotation age accepted by Lane County (Issue 5: Supplement to Marginal Lands Information Sheet, 1997). The State of Oregon also accepts this rotation.

**CALCULATIONS:**

50 Year Site Index Ratings from Tables (see Exhibits 2-1 and 2-2)

41C&E Dixonville silty clay loam 109 113G Ritner cobbly silty clay loam 107

The remaining soil types have no Site Index given. However, the other soil types have cu.ft./yr./ac. ratings (see Exhibits 2-1, 3-1, 3-2, 3-3). Type 43C -- 54 cu.ft./ac./yr., 43E -- 63 cu.ft./ac./yr., 107C -- 45 cu.ft./ac./yr., 116G -- 21 cu.ft./ac./yr. and 138E -- 70 cu.ft./ac./yr. Taking these figures and dividing by 152 cu.ft./ac./yr. (the growth that the Dixonville silty clay loam is capable of acheiving) gives a ratio that can be applied to the board feet per acre shown below. This gives a volume figure for the Dixonville-Philomath-hazelair complex, the Philomath silty clay, the rock outcrop-Witzel complex and the Witzel very cobbly loam. Douglas-fir volumes and log prices are used because it is the most valuable tree species (see above). While there may be species which could grow faster on this site, their value is so much lower that it would take a large increase in volume to approach the same value.

41C -Dixonville silty clay loam - 3.297 acres @ 23,872 bd.ft./ac.*	78,706 bd.ft.
41E -Dixonville silty clay loam - 18.627 acres @ 23,872 bd.ft./ac.*	444,664 bd.ft.
43C -Dixonville-Philomath-hazelair complex -14.403ac.@ 8,481 bd.ft./ac.	122,152 bd.ft.
43E -Dixonville-Philomath-hazelair complex -10.845ac.@ 9,894 bd.ft./ac.	107,300 bd.ft.
107C - Philomath silty clay - 13.768 acres @ 7,067 bd.ft./ac.	97,298 bd.ft.
113G - Ritner cobbly silty clay loam - 5.341 acres @ 23,005 bd.ft./ac.*	122,870 bd.ft.
116G - Rock outcrop-Witzel complex - 14.904 acres @ 3,298 bd.ft./ac.	49,153 bd.ft.
138E - Witzel very cobbly loam - 21.424 acres @ 10,994 bd.ft./ac.	<u>235,535 bd.ft.</u>
<b>Total - 102.609 acres of Douglas-fir</b>	<b>1,257,678 bd.ft.</b>

\*See Exhibit 4.

Cruising & Inventory

Forestland Management

Timber Appraisals, Marketing & Sales

Forestland Productivity & Zoning Work



A 50 year old stand on this site should have approximately 40% 2 SAW, 50% 3 SAW and 10% 4 SAW. If anything, these grade estimates err on the high side. In all probability there would be less 2 SAW and more 4 SAW. However, these figures are used to represent the highest possible log price scenario for the applicant.

Total Volume - 1,257.68 MBF (thousand board feet)

503.07 MBF of 2 SAW @ <u>\$255/MBF**</u>	\$128,283
628.84 MBF of 3 SAW @ <u>\$215/MBF**</u>	135,201
125.77 MBF of 4 SAW @ <u>\$200/MBF**</u>	<u>25,154</u>

Total Projected Gross Revenue	\$288,638
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\*\*See Exhibit 5.

AVERAGE GROSS INCOME --  $\$288,638 \div 50 \text{ YEARS} = \underline{\$5,773/\text{YEAR}}$

The income shown above used 1983 log prices (from the highest quarter of that year); all of the preceeding information is reprinted from my original analysis. It is presented again to show how the productivity numbers were calculated. All of the income projections shown below use the productivity, i.e., timber volume, numbers presented in the original analysis.

#### INCOME PROJECTIONS YEAR BY YEAR (See Exhibit A for Log Prices Used)

The following calculations will show the average gross income for each year from 1978 through 1982, as well as the average price for those five years. The highest log prices occurred from the first quarter of 1980 and continued through the third quarter of 1981 (see Exhibit A). The calculations presented below will show that **highest possible** average gross income per year would be obtained using 1980 log prices. Furthermore, since the log prices remained the same throughout the entire year, the calculations for 1980 would also show the highest possible average gross income if only the highest quarters were used.

##### 1978

Total Volume - 1,257.68 MBF (thousand board feet)

503.07 MBF of 2 SAW @ <u>\$276/MBF</u>	\$138,847
628.84 MBF of 3 SAW @ <u>\$235/MBF</u>	147,777
125.77 MBF of 4 SAW @ <u>\$190/MBF</u>	<u>23,896</u>

Total Projected Gross Revenue	\$310,520
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AVERAGE GROSS INCOME --  $\$310,520 \div 50 \text{ YEARS} = \underline{\$6,210/\text{YEAR}}$

##### 1979

Total Volume - 1,257.68 MBF (thousand board feet)

503.07 MBF of 2 SAW @ <u>\$338/MBF</u>	\$170,038
628.84 MBF of 3 SAW @ <u>\$296/MBF</u>	186,137
125.77 MBF of 4 SAW @ <u>\$269/MBF</u>	<u>33,832</u>

Total Projected Gross Revenue	\$390,007
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AVERAGE GROSS INCOME --  $\$390,007 \div 50 \text{ YEARS} = \underline{\$7,800/\text{YEAR}}$

### 1980

Total Volume - 1,257.68 MBF (thousand board feet)

503.07 MBF of 2 SAW @ <u>\$354/MBF</u>	\$178,087
628.84 MBF of 3 SAW @ <u>\$310/MBF</u>	194,940
125.77 MBF of 4 SAW @ <u>\$281/MBF</u>	<u>35,341</u>

Total Projected Gross Revenue \$408,368

AVERAGE GROSS INCOME --  $\$408,368 \div 50 \text{ YEARS} = \underline{\$8,167/\text{YEAR}}$

### 1981

Total Volume - 1,257.68 MBF (thousand board feet)

503.07 MBF of 2 SAW @ <u>\$346/MBF</u>	\$174,062
628.84 MBF of 3 SAW @ <u>\$292/MBF</u>	183,621
125.77 MBF of 4 SAW @ <u>\$263/MBF</u>	<u>33,078</u>

Total Projected Gross Revenue \$390,761

AVERAGE GROSS INCOME --  $\$390,761 \div 50 \text{ YEARS} = \underline{\$7,815/\text{YEAR}}$

### 1982

Total Volume - 1,257.68 MBF (thousand board feet)

503.07 MBF of 2 SAW @ <u>\$267/MBF</u>	\$134,320
628.84 MBF of 3 SAW @ <u>\$208/MBF</u>	130,799
125.77 MBF of 4 SAW @ <u>\$174/MBF</u>	<u>21,884</u>

Total Projected Gross Revenue \$287,003

AVERAGE GROSS INCOME --  $\$287,003 \div 50 \text{ YEARS} = \underline{\$5,740/\text{YEAR}}$

The 1982 log prices also include a Camp Run (CR) price for 2, 3 and 4 saw. Camp Run prices are not always available, and when they are available, they are only given by **some** of the mills and only for **some** of the logs being purchased. However, to present all scenarios I have included camp run price calculations for the only year shown, 1982.

### 1982 Camp Run Prices

Total Volume - 1,257.68 MBF @ \$243/MBF \$305,616

AVERAGE GROSS INCOME --  $\$305,616 \div 50 \text{ YEARS} = \underline{\$6,112/\text{YEAR}}$

### 1978-1982 AVERAGE

Total Volume - 1,257.68 MBF (thousand board feet)

503.07 MBF of 2 SAW @ <u>\$316/MBF</u>	\$158,970
628.84 MBF of 3 SAW @ <u>\$268/MBF</u>	168,529
125.77 MBF of 4 SAW @ <u>\$235/MBF</u>	<u>29,556</u>

Total Projected Gross Revenue \$357,055

AVERAGE GROSS INCOME --  $\$357,055 \div 50 \text{ YEARS} = \underline{\$7,141/\text{YEAR}}$

## CONCLUSION

The analysis presented shows conclusively that this property will not support a merchantable stand of timber, of sufficient production capability, to meet or exceed the Marginal Lands Income test:

The estimated gross income based on a 50 year rotation for the 102.61 acre site would have ranged from a low of \$288,638 in 1983 to a high of \$408,368 in 1980. The average annual gross income would have ranged from a low of \$5,773/year in 1983 to a high of \$8,167/year in 1980. Because **all of the above figures** are less than \$10,000/year, the property meets the following statutory test for Marginal Lands: ORS 197.247 (1)(a) "The proposed marginal land was not managed during three of the five calendar years preceding January 1, 1983, as part of a ... forest operation capable of producing an average, over the growth cycle, of \$10,000 in annual gross income."

In summary, I find from the specific site conditions present, empirical yield tables, SCS data, Lane County Data and experience with similar lands, that this property is ill suited to the production of merchantable timber and use as land for forestry purposes. It is my opinion that this parcel should be classified as marginal land.

Sincerely,

A handwritten signature in black ink, appearing to read "Mark E. Setchell". The signature is written in a cursive, flowing style.

# EXHIBIT A

## DOUGLAS FIR LOG PRICES 1978-1982, 1983

### REGION 1 - WESTERN OREGON UNIT

Reporting format: ODF reporting as of 4<sup>th</sup> quarter 1981

Source: Oregon Department of Forestry Forest Management Division  
[http://www.odf.state.or.us/divisions/management/asset\\_management/logprices/logP483.HTM](http://www.odf.state.or.us/divisions/management/asset_management/logprices/logP483.HTM)

Domestically Processed Logs (Delivered to a mill; "Pond Value")

### 1978

Douglas-Fir Grade	Quarter				Average
	1st	2nd	3rd	4th	
#1P	\$ 460	475	475	475	471
#2P	\$ 415	435	435	435	430
#3P	\$ 358	389	389	389	381
SM	\$ 283	338	338	338	324
#2S	\$ 242	287	287	287	276
#3S	\$ 191	250	250	250	235
#4S	\$ 161	200	200	200	190
SC	\$ 125	157	157	157	149
Utility	\$ 70	80	80	80	78

### 1979

Douglas-Fir Grade	Quarter				Average
	1st	2nd	3rd	4th	
#1P	\$ 531	531	584	584	555
#2P	\$ 476	476	523	523	500
#3P	\$ 425	425	467	467	446
SM	\$ 385	385	423	423	404
#2S	\$ 322	322	354	354	338
#3S	\$ 282	282	310	310	296
#4S	\$ 256	256	281	281	269
SC	\$ 160	160	176	176	168
Utility	\$ 90	90	99	99	95

### 1980

Douglas-Fir Grade	Quarter				Average
	1st	2nd	3rd	4th	
#1P	\$ 584	584	584	584	584
#2P	\$ 523	523	523	523	523
#3P	\$ 467	467	467	467	467
SM	\$ 423	423	423	423	423
#2S	\$ 354	354	354	354	354
#3S	\$ 310	310	310	310	310
#4S	\$ 281	281	281	281	281
SC	\$ 176	176	176	176	176
Utility	\$ 99	99	99	99	99



## 1981

Douglas-Fir Grade	Quarter				Average
	1st	2nd	3rd	4th	
#1P	\$ 584	584	584	648	648
#2P	\$ 523	523	523	550	550
#3P	\$ 467	467	467	439	439
SM	\$ 423	423	423	390	415
#2S	\$ 354	354	354	323	346
#3S	\$ 310	310	310	238	292
#4S	\$ 281	281	281	208	263
SC	\$ 176	176	176	212	185
Utility	\$ 99	99	99	104	100

## 1982

Douglas-Fir Grade	Quarter				Average
	1st	2nd	3rd	4th	
1P	\$ 600	512	512	512	534
2P	\$ 510	439	439	439	457
3P	\$ 425	370	370	370	384
SM	\$ 375	316	316	316	331
2S	\$ 295	258	258	258	267
3S	\$ 225	202	202	202	208
4S	\$ 190	169	169	169	174
SC	\$ 190	164	164	164	171
Utility	\$ 90	123	123	123	115
CR (2S & better)	\$ --	303	303	303	303
CR (2S, 3S, and 4S)	\$ --	243	243	243	243

## 1983

Douglas-Fir Grade	Quarter				Average
	1st	2nd	3rd	4th	
1P	\$ 512	505	505	505	507
2P	\$ 439	410	425	425	425
3P	\$ 370	325	340	340	343
SM	\$ 316	275	285	285	290
2S	\$ 258	250	255	255	255
3S	\$ 202	210	215	215	211
4S	\$ 169	195	200	200	191
SC	\$ 164	130	140	140	144
Utility	\$ 123	75	75	75	87
CR (2S & better)	\$ 303	--	--	--	303
CR (2S, 3S, and 4S)	\$ 243	240	240	240	241

# DOUGLAS FIR LOG PRICES 1978-1982, 1983

DF Grade	1978-1982 Average	1983 Average	%+	% -
1P	\$ 558	507		- 9.1%
2P	\$ 492	425		-13.6%
3P	\$ 423	343		-18.9%
SM	\$ 379	290		-23.5%
2S	\$ 316	255		-19.3%
3S	\$ 268	211		-21.3%
4S	\$ 235	191		-18.7%
SC	\$ 170	144		-15.3%
Utility	\$ 97	87		-10.3%
CR (2S & better)	\$ 303	303		n/c
CR (2S, 3S, and 4S)	\$ 243	241		- 0.8%
Average*	\$ 326	273	19.4**	-16.3

\*In the absence of information concerning distribution of grades, it is not possible to assign the different grades their proper weight in calculating an overall average. This calculation assigns each grade equal weight, with the exception of the CR grades which were used only during the years 1982 and 1983 years and are not included.

\*\* % by which 1978-82 prices exceed 1983 prices

FOR ASSESSMENT  
AND TAXATION  
ONLY

SEC. 33 T.18S. R.1W. W.M.  
LANE COUNTY

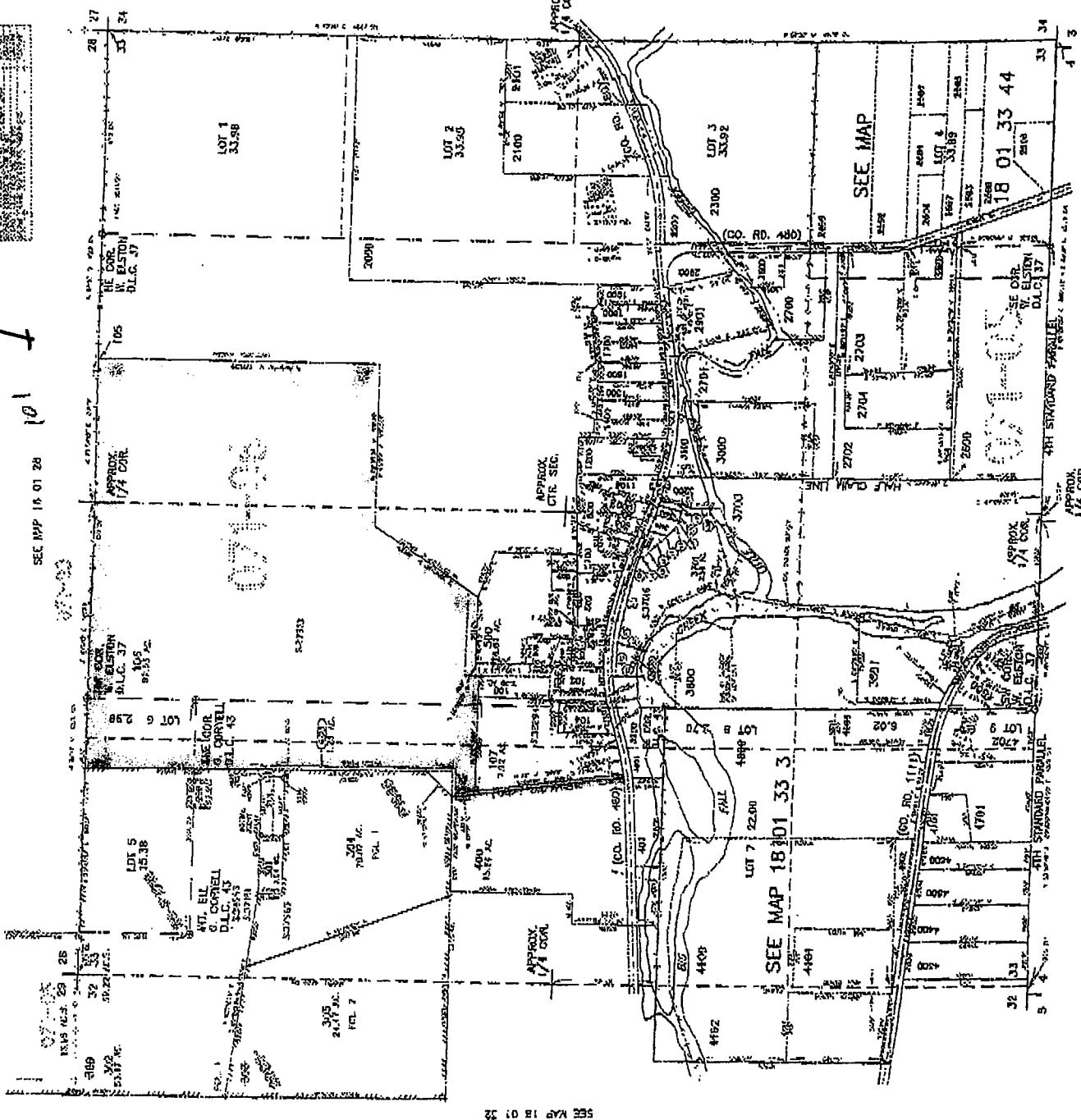
SCALE 1" = 400'

EXHIBIT  
1

SEC MAP 18 01 28

07-03

18 01 33  
NAD 83/91



SEE MAP 18 01 28

SEE MAP 18 01 32

18 01 33  
NAD 83/91

18 01 33

SEE MAP 18 01 04

# Lane County Soil Ratings for Forestry and Agriculture

Map Symbol	Lane County Soil Map Unit	Douglas Fir Site Index	Cu. Ft./ Acre/ Year	Agricultural Capability Class	High Value Farmland
22	Camas gravelly sandy loam, occasionally flooded	none		4	
23	Camas-Urban land complex	none		4	
24	Chapman loam	none		1	X
25	Chapman-Urban land complex	none		1	X
26	Chehalis silty clay loam, occasionally flooded	none		2	X
27	Chehalis-Urban land complex	none		2	X
28C	Chehulpum silt loam, 3 - 12% slopes	none		6 *	
28E	Chehulpum silt loam, 12 - 40% slopes	none		6	
29	Cloquato silt loam	none		2	X
30	Cloquato-Urban land complex	none		2	X
31	Coburg silty clay loam	none		2	X
32	Coburg-Urban land complex	none		2	X
33	Conser silty clay loam	none		3	X
34	Courtney gravelly silty clay loam	none		4	X
35D	Cruiser gravelly clay loam, 3 - 25% slopes	140**	145	6	
35F	Cruiser gravelly clay loam, 25 - 50% slopes	140**	145	6	
35G	Cruiser gravelly clay loam, 35 - 70% slopes	140**	145	7	
36D	Cumley silty clay loam, 2 - 20% slopes	114	162	6	
37C	Cupola cobbly loam, 3 - 12% slopes	100	136	6	
37E	Cupola cobbly loam, 12 - 30% slopes	100	136	6	
38	Dayton silt loam, clay substratum	none		4	X
39E	Digger gravelly loam, 10 - 30% slopes	102	140	6	
39F	Digger gravelly loam, 30 - 50% slopes	102	140	6	
40H	Digger-Rock outcrop complex, 50 - 85% slopes	***	114	7	
41C	Dixonville silty clay loam, 3 - 12% slopes	109	152	3	
41E	Dixonville silty clay loam, 12 - 30% slopes	109	152	4	
41F	Dixonville silty clay loam, 30 - 50% slopes	109	152	6	
42E	Dixonville-Hazelair-Urban land complex, 12 - 35% slopes	***	89	4	
43C	Dixonville-Philomath-Hazelair complex, 3 - 12% slopes	***	54	3	
43E	Dixonville-Philomath-Hazelair complex, 12 - 35% slopes	***	63	4	
44	Dune land	none		8	
45C	Dupee silt loam, 3 - 20% slopes	none		3	
46	Eilertsen silt loam	133	199	2	X
47E	Fendall silt loam, 3 - 30% slopes	125	184	6	
48	Fluvents, nearly level	none		--	
49E	Formader loam, 3 - 30% slopes	121	176	6	
49G	Formader loam, 30 - 60% slopes	121	176	6	
50G	Formader-Hembre-Klickitat complex, 50 - 80% slopes	***	176	7	

# Lane County Soil Ratings for Forestry and Agriculture

Map Symbol	Lane County Soil Map Unit	Douglas Fir Site Index	Cu. Ft./ Acre/ Year	Agricultural Capability Class	High Value Farmland
97	Newberg-Urban land complex	none		2	X
98	Noti loam	none		4	X
99H	Ochrepts & Umbrepts, very steep	none		--	
100	Oxley gravelly silt loam	none		3	
101	Oxley-Urban land complex	none		3	
102C	Panther silty clay loam, 2 - 12% slopes	none		6	
103C	Panther-Urban land complex, 2 - 12% slopes	none		6	
104E	Peavine silty clay loam, 3 - 30% slopes	125	184	6	
104G	Peavine silty clay loam, 30 - 60% slopes	125	184	6	
105A	Pengra silt loam, 1 - 4% slopes	none		3	X <sup>1</sup>
106A	Pengra-Urban land complex, 1 - 4% slopes	none		3	
107C	Philomath silty clay, 3 - 12% slopes	none		6	
108C	Philomath cobbly silty clay, 3 - 12% slopes	none		6	
108F	Philomath cobbly silty clay, 12 - 45% slopes	none		6	
109F	Philomath-Urban land complex, 12 - 45% slopes	none		6	
110	Pits	none		8	
111D	Preacher loam, 0 - 25% slopes	128	190	6	
111F	Preacher loam, 25 - 50% slopes	128	190	6	
112G	Preacher-Bohannon-Slickrock complex, 50 - 75% slopes	***	188	7	
113C	Ritner cobbly silty clay loam, 2 - 12% slopes	107	149	4	
113E	Ritner cobbly silty clay loam, 12 - 30% slopes	107	149	6	
113G	Ritner cobbly silty clay loam, 30 - 60% slopes	107	149	7	
114	Riverwash	none		8	
115H	Rock outcrop-Kilchis complex, 30 - 90% slopes	***	27	8	
116G	Rock outcrop-Witzel complex, 10 - 70% slopes	***	none	8	
117E	Salander silt loam, 12 - 30% slopes	125	184	6	
118	Salem gravelly silt loam	none		2	X
119	Salem-Urban land complex	none		2	X
120B	Salkum silt loam, 2 - 6% slopes	116	167	2	X
121B	Salkum silty clay loam, 2 - 8% slopes	116	167	2	X
121C	Salkum silty clay loam, 8 - 16% slopes	116	167	3	X
122	Saturn clay loam	123	180	3	
123	Sifton gravelly loam	124	182	3	X
124D	Slickrock gravelly loam, 3 - 25% slopes	137	209	6	
124F	Slickrock gravelly loam, 25 - 50% slopes	137	209	6	
125C	Steiber loam, 3 - 12% slopes	none		3	
125D	Steiber loam, 12 - 20% slopes	none		4*	

EXHIBIT 2-2

# LANE COUNTY FOREST SOIL RATINGS

Map Symbol	Soil Name	[1] Site Index	[2] Cubic Foot /Acre/Year
077B	Marcola cob sicl, 2-7%	97	130
078	McAlpin sicl	125	184
079	McBee sicl	119	173
080F	McCully cl, 30-35%	125	184
080G	McCully cl, 50-70%	125	184
081D	McDuff cl, 3-25%	115	163
081F	McDuff cl, 25-50%	115	163
081G	McDuff cl, 50-70%	120	175
082C	Meda l, 2-12%	128	190
083B	Minniece sicl, 0-8%	112	158
084D	Mulkey l, 5-25%	90*	116
085	Natroy sicl	none	60**
086	Natroy sic	none	60**
087	Natroy-Urban land complex	***	40**
088	Nehalem sil	124	182
089C	Nekia sicl, 2-12%	115	163
089D	Nekia sicl, 12-20%	115	163
089E	Nekia sicl, 20-30%	115	163
089F	Nekia sicl, 30-50%	112	158
090	Nekoma sil	140	214
091D	Neskowin sil, 12-20%	109*	152
091E	Neskowin sil, 20-40%	109*	152
092G	Neskowin-Salander sil, 40-60%	***	205**
093	Nestucca sil	99	134
094C	Netarts fs, 3-12%	95	125
094E	Netarts fs, 12-30%	95	125
095	Newberg fsl	110	154
096	Newberg l	110	154
097	Newberg-Urban land complex	***	100**
098	Noti l	none	30**
099H	Ochrepts & Umbrepts, v. steep	***	130**
100	Oxley gr sil	none	80**
101	Oxley-Urban land complex	***	60**
102C	Panther sicl, 2-12%	none	45**
103C	Panther-Urban land complex, 2-12%	***	40**
104E	Peavine sicl, 3-30%	124	182
104G	Peavine sicl, 30-60%	124	182
105A	Pengra sil, 1-4%	none	45**
106A	Pengra-Urban land complex, 1-4%	***	30**
107C	Philomath sic, 3-12%	none	45**

All ratings are taken from the "Single Phase Interpretation Sheets" (green sheets) published by the Soil Conservation Service (SCS) for the Lane County Area, Oregon except those marked \*\*

All ratings are for Douglas Fir unmanaged, fully stocked stands.

\* ratings for additional tree species are listed on SCS green sheets

\*\* These estimated soils ratings are taken from an Office of State Forester Memorandum, February 8, 1990, General File 7-1-1

\*\*\* multiple site indices; refer to the cu.ft./acre/yr column for a composite rating for this complex

[1] 50 year base

[2] volume produced at age of culmination

EXHIBIT 3-1

LANE COUNTY FOREST SOIL RATINGS

Map Symbol	Soil Name	[1] Site Index	[2] Cubic Foot /Acre/Year
108C	Philomath cob sic, 3-12%	none	45**
108F	Philomath cob sic, 12-45%	none	45**
109F	Philomath-Urban land complex, 12-45%	***	20**
110	Pits	none	none
111D	Preacher l, 0-25%	128*	190
111F	Preacher l, 25-50%	128*	190
112G	Preacher-Bohannon-Slickrock, 50-75%	***	185**
113C	Ritner cob sicl, 2-12%	102*	140
113E	Ritner cob sicl, 12-30%	102*	140
113G	Ritner cob sicl, 30-60%	102*	140
114	Riverwash	none	none
115H	Rock outcrop-Kilchis complex, 30-90%	***	34**
116G	Rock outcrop-Witzel complex, 10-70%	***	21**
117E	Salander sil, 12-30%	125*	184
118	Salem gr sil	114	162
119	Salem-Urban land complex	***	100**
120B	Salkum sil, 2-6%	119	173
121B	Salkum sil, 2-6%	126	186
121C	Salkum sicl, 8-16%	126	186
122	Saturn cl	104	143
123	Sifton gr l	110	154
124D	Slickrock gr l, 3-25%	137*	209
124F	Slickrock gr l, 25-50%	137*	209
125C	Steiber l, 3-12%	none	30**
125D	Steiber l, 12-20%	none	30**
125F	Steiber l, 20-50%	none	30**
126F	Tahkenitch l, 20-45%	120	175
126G	Tahkenitch l, 45-75%	112	158
127C	Urban land-Hazelair-Dixonville, 3-12%	***	45**
128B	Veneta l, 0-7%	108	150
129B	Veneta variant sil, 0-7%	128	190
130	Waldo sicl	none	45**
131C	Waldport fs, 0-12%	90	116
131E	Waldport fs, 12-30%	90	116
131G	Waldport fs, 30-70%	90	116
132E	Waldport fs, thin surf., 0-30%	none	29**
133C	Waldport-Urban land complex, 0-12%	***	20**
134	Wapato sicl	none	none
135C	Willakenzie cl, 2-12%	110	154
135D	Willakenzie cl, 12-20%	110	154

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All ratings are for Douglas Fir unmanaged, fully stocked stands.

\* ratings for additional tree species are listed on SCS green sheets

\*\* These estimated soils ratings are taken from an Office of State Forester Memorandum, February 8, 1990, General File 7-1-1

\*\*\* multiple site indices; refer to the cu.ft./acre/yr column for a composite rating for this complex

[1] 50 year base

[2] volume produced at age of culmination

EXHIBIT 3-2

# LANE COUNTY FOREST SOIL RATINGS

Map Symbol	Soil Name	[1] Site Index	[2] Cubic Foot /Acre/Year
135E	Willakenzie cl, 20-30%	110	154
135F	Willakenzie cl, 30-50%	110	154
136	Willanch fsl	none	40**
137F	Winberry v gr l, 10-45%	80	98
138E	Witzel v cob l, 3-30%	none	70**
138G	Witzel v cob l, 30-75%	none	70**
139	Woodburn sil	133	199
140	Yaquina lfs	none*	none
141	Yaquina-Urban land complex	***	45**
142G	Yellowstone-Rock outcrop, 10-60%	***	38**

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All ratings are for Douglas Fir unmanaged, fully stocked stands.

\* ratings for additional tree species are listed on SCS green sheets

\*\* These estimated soils ratings are taken from an Office of State Forester Memorandum, February 8, 1990, General File 7-1-1

\*\*\* multiple site indices; refer to the cu.ft./acre/yr column for a composite rating for this complex

[1] 50 year base

[2] volume produced at age of culmination

EXHIBIT 3-3



## DOUGLAS FIR EMPIRICAL YIELD TABLE

TABLE 5

SITE 100

Total Age	Normal Basal Area	Mean Diameter	CVTS	CV4	SV6(32')	C/SCR Ratio
20	17	8.53	85	85	335	.254
26	70	9.33	1,324	1,236	2,561	.483
30	97	9.85	2,130	1,913	4,601	.416
40	146	11.14	4,071	3,703	11,450	.323
41	150	11.27	4,259	3,886	12,248	.317
50	181	12.39	5,909	5,541	19,972	.277
60	209	13.59	7,643	7,325	29,247	.250
70	232	14.71	9,273	8,982	38,528	.233
80	252	15.75	10,799	10,468	47,294	.221
90	269	16.69	12,222	11,750	55,131	.213
100	284	17.53	13,541	12,805	61,760	.207
110	297	18.24	14,756	13,624	66,922	.204
120	310	18.81	15,867	14,190	70,448	.201
130	321	19.24	16,875	14,502	72,234	.201

SITE CLASS 107 23,005

TABLE 6

SITE 110

Total Age	Normal Basal Area	Mean Diameter	CVTS	CV4	SV6(32')	C/SCR Ratio
20	30	8.74	327	327	666	.491
26	83	9.63	1,688	1,494	3,299	.453
30	109	10.23	2,574	2,253	5,812	.388
40	158	11.69	4,717	4,275	14,125	.303
41	162	11.83	4,926	4,482	15,074	.297
50	194	13.11	6,757	6,345	24,305	.261
60	222	14.47	8,693	8,344	35,244	.237
70	245	15.76	10,525	10,200	46,141	.221
80	264	16.97	12,253	11,863	56,425	.210
90	281	18.09	13,878	13,304	65,675	.203
100	296	19.09	15,398	14,503	73,549	.197
110	310	19.97	16,815	15,448	79,836	.193
120	322	20.72	18,129	16,126	84,358	.191
130	333	21.31	19,338	16,528	86,957	.190

SITE CLASS 109 23,872

TABLE 7

SITE 120

Total Age	Normal Basal Area	Mean Diameter	CVTS	CV4	SV6(32')	C/SCR Ratio
20	51	9.11	819	770	1,355	.568
26	101	10.10	2,294	1,961	4,810	.408
30	126	10.77	3,257	2,821	7,992	.353
40	173	12.39	5,592	5,093	18,116	.281
41	177	12.55	5,820	5,324	19,255	.277
50	208	13.98	7,823	7,389	30,132	.245
60	235	15.50	9,951	9,588	42,783	.224
70	258	16.96	11,974	11,611	55,265	.210
80	277	18.33	13,894	13,424	66,954	.200
90	294	19.60	15,710	14,992	77,437	.194
100	309	20.76	17,423	16,297	86,410	.189
110	322	21.80	19,031	17,334	93,643	.185
120	334	22.70	20,536	18,091	98,946	.183
130	345	23.45	21,937	18,561	102,187	.182

EXHIBIT 4

## LOG PRICES - 3rd Quarter 1983

WEST OREGON, SANTIAM, LANE, FOREST GROVE, TILLAMOOK AND ASTORIA UNITSDouglas-Fir

#1P		\$505
#2P		425
#3P		340
SM		285
#2S	*	255
#3S	*	215
#4S		200
SC		140
Utility		75
CR		240

Hemlock

P	\$375
SM	260
#2S	220
#3S	190
#4S	175
Utility	65
CR	190

EXHIBIT  
5Spruce

SM	\$255
#2S	230
#3S	180
#4S	160
Utility	45

W. R. Cedar

#1S	\$390
#2S	380
#3S	310
#4S	230
CR	330
Worn	135

Alder

Sawlogs CR	\$190
Pulp	125