

AGENDA COVER MEMO

T.O.B.

DATE: October 26, 2009 (Date of Memo)
November 10, 2009 (Date of First Reading)
December 2, 2009 (Date of Second Reading/Public Hearing)

TO: LANE COUNTY BOARD OF COMMISSIONERS

DEPT.: Public Works Department/Land Management Division

PRESENTED BY: Jerry Kendall^{JK}/Land Management Division

AGENDA ITEM TITLE: FIRST READING AND SETTING SECOND READING AND PUBLIC HEARING/ORDINANCE NO PA 1266 -- IN THE MATTER OF AMENDING THE RURAL COMPREHENSIVE PLAN TO REDESIGNATE LAND FROM "AGRICULTURAL" TO "FOREST" AND REZONING THAT LAND FROM "E-40/EXCLUSIVE FARM USE" TO "F-1/NONIMPACTED FOREST LANDS"; AND ADOPTING SAVINGS AND SEVERABILITY CLAUSES (FILE PA 06-5888; Ravin Ventures LLC)

I. MOTION

1. November 10, 2009: I MOVE APPROVAL OF THE FIRST READING OF ORDINANCE NO. PA 1266 AND SETTING THE SECOND READING AND PUBLIC READING FOR DECEMBER 2, 2009, AT 1:30 P.M. IN HARRIS HALL, PUBLIC SERVICE BUILDING.

2. December 2, 2009: ALTERNATIVE MOTIONS AFTER THE SECOND READING/PUBLIC HEARING.

A. I MOVE TO SET A THIRD READING AND DIRECT STAFF TO REVISE THE PROPOSED FINDINGS TO ADDRESS APPLICABLE APPROVAL CRITERIA PER THE BOARD'S DIRECTION, AND DIRECT STAFF TO RETURN WITH A REVISED ORDINANCE FOR THE BOARD'S CONSIDERATION AND ACTION.

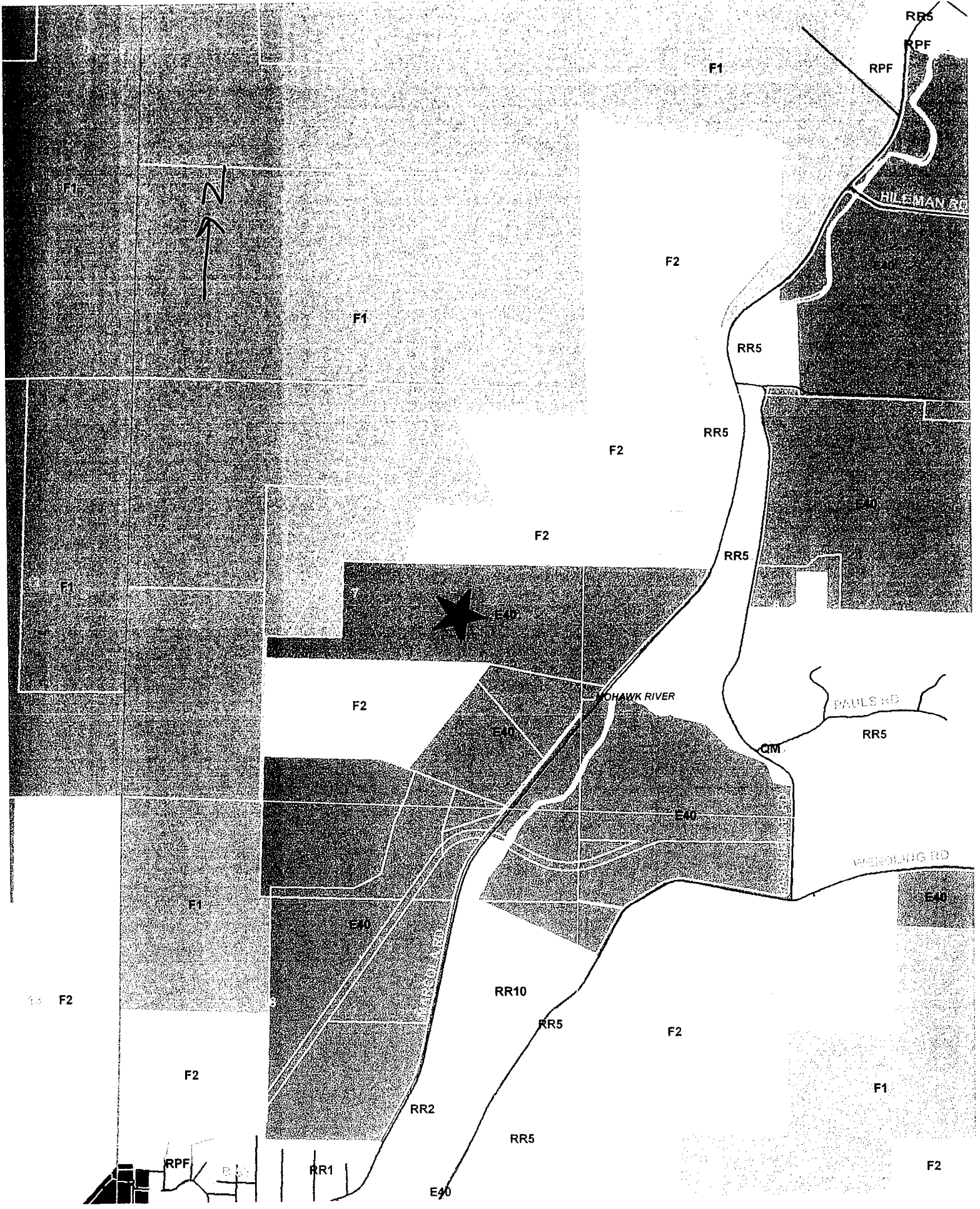
OR

B. I MOVE TO APPROVE THE APPLICATION AND ENACT ORDINANCE NO. PA 1266 BASED ON THE APPLICANT'S OCTOBER 9, 2009 FINDINGS.

OR

C. I MOVE TO TENTATIVELY DENY THE APPLICATION AND DIRECT STAFF TO PREPARE AN ORDER WITH FINDINGS FOR FINAL ACTION, SETTING FORTH THE BOARD'S REASONS FOR DENYING THE APPLICATION.

II. ISSUE OR PROBLEM



CURRENT ZONE MAP

A privately-initiated minor amendment to the Rural Comprehensive Plan (RCP), and companion rezoning request, has been recommended for approval by the Lane County Planning Commission. This Ordinance sets the matter before the Board for adoption or denial.

III. DISCUSSION

A. Background

This application has been revised several times. In May of 2006, the original application proposal was made to redesignate a 126 acre parcel of land, located at 92922 Marcola Road, Marcola, from "Agricultural" to "Forest" land, and rezone it from "E-40/Exclusive Farm Use" to "F-2/Impacted Forest Lands". The parcel is identified as tax lot 700 of Map 16-01-08. A hearing with the Planning Commission was scheduled for April 17, 2007, but the Applicant withdrew the proposal the day before the hearing. The withdraw was based on the Applicant's failure to address the Board's latest interpretation of RCP Goal 4, policy 15, as per Board Ordinance No. PA 1236, *Symbiotics*, which was enacted in August, 2006. Policy 15¹ outlines the characteristics of F-1 versus F-2 zoned land, and is the crux of the dispute in this application.

A revised application was submitted in September, 2008. Of note was the revision of the proposal to include only the easternmost 78 acres of the subject parcel. The remaining 48 westernmost acres were to retain the Agriculture/E-40 designation. The Planning Commission conducted a public hearing on February 17, 2009. Before the record closed on March 31, the Applicant agreed with staff that the creation of a split Plan designation of Agriculture/Forest was not ideal. In addition, in their submittal of March 3, 2009, the Applicant stated that "...the applicant is not opposed to F-1 zoning for the entire 126 acre parcel".

On April 21, 2009, the Planning Commission unanimously (8-0) recommended approval of the modified request, recommending a Forest plan designation, with an F-1 zone designation, for the entire 126 acre parcel.

B. Analysis

The application is being made pursuant to Lane Code 16.400, which governs amendments to the RCP, and LC 16.252, which governs rezoning actions. The proposal is also subject to compliance with the Statewide Planning Goals, RCP Goals and policies, the General Purpose Statements of LC 16.003, as well as the purpose of the F-1 ordinance, LC 16.210. Since the proposal replaces one resource designation for another, no exceptions to any of the statewide goals is required.

This current request proposes to convert the entire 126 acres of land from farm to forest land, with a rezone to F-1. Doing so would enable development of the parcel to those

¹ The Applicant often and mistakenly refers to this policy as "policy 16" rather than "policy 15" throughout their submittals.

uses allowable in the F-1 zone, LC 16.210, and OAR 660-006. No new dwellings are allowed in the F-1 zone.

The Applicant has never disclosed, nor to staff's knowledge is obligated to disclose, what specific plans they have for the property. However, during the period in which the F-2 zone designation was being sought, the Applicant claimed that further development, primarily additional dwellings, could not occur if the F-2 zoning was granted. As reflected in the attached materials provided to the LCPC, staff noted that there were "...at least five..." separate legal lots within tax lot 700 (update: there are six legal lots). As such, staff was obliged to inform the LCPC that there was the potential to adjust parcel lines and gain additional "template dwellings" per LC 16.211(5). There is currently one dwelling on the property. The Board is advised that if the F-1 zone designation is granted, the Applicant still has the option to adjust the boundaries of the six legal lots and apply for a zone change to F-2. Such a zone change, without the need for a concurrent plan change, is processed at the Hearings Official level.

RCP Goal 4, policy 15

As stated earlier, the Applicant and staff are in agreement that the proposed plan designation change to Forest land is warranted. The major point of dispute was over the zone change portion of the proposal. Until the end of the open record period, the Applicant desired an F-2 zone designation. Only upon the last submittal to the Planning Commission did the Applicant express that a zone change to F-1 was acceptable.

The focus of dispute is over the proper analysis of the RCP Goal 4, policy 15, which describes the characteristics of F-1 and F-2 zoned land. Subsection 15.b. of the policy lists five characteristics of F-1 zoned land. Subsection 15.c lists four characteristics of F-2 zoned land. The uncontested and historic practice has been to evaluate the specific facts against each characteristic, with the majority tally determining the proper zone designation. In the draft findings prepared by the Applicant and attached to the Ordinance, the Applicant concludes that the proposal meets 3 of the 5 characteristics of F-1 land, and 2 of the 4 characteristics of F-2 zoned land, warranting an F-1 designation. Staff does not disagree with the tally and outcome, but has concerns over the analysis presented in the draft findings. This concern is not limited to the current proposal before the Board, but also for the precedent it would set if sanctioned by the Board. What follows is a comparison of the analysis of policy 15 offered by the Applicant against staff's understanding of how the policy might be interpreted and analyzed. The Board may select either approach, or offer its own clarification as to how policy 15 is to be interpreted.

The Applicant's proposed findings describe Policy 15 starting on page 24.

Policy 15 is cited in **boldface** type below, with staff comments following.

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

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

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

(F-1)

b. Non-impacted Forest Land Zone (F-1/RCP) characteristics:

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

The 126 acre subject property contains a dwelling near Marcola Road, apparently built in 1900. Both staff and the Applicant agree that this favors an F-2 zone designation.

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

Although this standard was contested when the proposal was limited to a 78 acre portion of the parcel, the controversy has become moot in light of the Applicant's willingness to have the entire parcel redesignated. Basically stated, the earlier proposal offered no rationale as to why the "line" demarcating the 78 easternmost acres from the remaining 48 western acres was drawn. Please refer to that discussion on page 6 of the LCPC Staff Report of 2-10-09 (Attachment 3). Again, because that issue is now moot, it is not discussed further herein.

At 126 acres, the subject parcel has the characteristic of F-1 zoned land. Neither staff nor the Applicant disagrees on this issue.

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

Although both staff and the Applicant reach the same outcome under this standard (i.e., that the parcel matches this standard and that an F-1 zone is warranted), they differ in their analysis. This difference in approach requires direction from the Board.

The record is uncontested in that no commercial farm use occurs in the vicinity.

The Applicant reasons (p. 26) that adjacent ownerships which include Weyerhaeuser and Rosboro Lumber Company qualify as contiguous land used for commercial forest purposes because they have extensive landholdings throughout the county. According to the Applicant, this, together with the fact that such corporations are on an Oregon Department of Revenue annual list of "large-scale industrial timber owners" qualifies those adjacent ownerships under the above standard.

The above logic was discussed in detail by staff on page 7 of the LCPC Staff Report of 2-10-09 (Attachment 3). Since the proposal has been modified since that time, the explanation in that report has not been simply repeated in this memo. However, it is worth a reading by the Board.

Both Weyerhaeuser and Rosboro own land adjacent to the subject parcel. These holdings comprise multiple tax lots which exceed 80 acres. For example, the adjacent Weyerhaeuser tract contains a minimum of 900+ acres (Map 16-01-07, #202, 400, 299, & 800; 16-02-12 #201, 16-02-13 #100, 16-01-18 #603). Staff accepts Weyerhaeuser as qualifying under the above standard by virtue of its adjacent tract holding and in actual physical relationship to the subject property, which exceeds the 80 acre threshold. The Applicant reasons that it should be so accepted because Weyerhaeuser has extensive holding throughout the county and is on the Dept. of Revenue list. The distinction sets an important precedent.

As noted in the original LCPC staff Report (Attachment 3, p.7), the large timber companies such as Rosboro, Weyerhaeuser, Bohemia, McDougal's etc, have Real Estate sections which are involved with developing their holdings for residential use. According to the Applicant's logic, an abutting residential subdivision owned by the McDougal's would be considered a "commercial forest use" within the context of this standard.

Staff's findings to the LCPC also noted that except for tax lot 600 (Map 16-01-07), a small property bordering the subject parcel for a length of 688', all adjacent properties are receiving forest tax deferral on all of their acreage². In addition, staff notes that aerial photos in the record show these lands to be covered with timber and contain logging roads. The Applicant downplays these qualifiers. See for example, Table F (findings, p.28), in the description for the land owned by Ranch & 120 LLC. The notation for this property states:

"Given the limited number of holdings and amount of land owned and in forest production, this property's status is uncertain. However, absent evidence to the contrary, the Board is considering the property to be in commercial use".

The Ranch & 120 LLC owns 87 acres adjacent to the subject parcel. All of it is receiving forest tax deferral. It appears heavily timbered. While having forest tax deferral is not a guarantee of commercial timber management it is an indicator of such, especially when covering all of the acreage. Forest tax deferral is a helpful indicator of active timber management. Staff finds this logic more appealing, and has been used in past decisions. The Applicant's position is that this ownership is not on the Dept. of Revenue timber holders list, but, lacking evidence to the contrary, is to be considered in commercial use.

Staff seeks the Board's direction in interpreting this section of policy 15. Although of lesser importance in light of the latest revision to 126 acres and proposed F-1 zoning,

² Except US Government land, which is tax exempt.

the staff reference to the *Dockum* and *Lininger* cases mentioned throughout the staff memos to the LCPC may be instructive to the Board, and merit reading.

Under this standard, the subject property has the characteristics of F-1 zoned property.

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

The subject property is accessed by Marcola Road, an arterial road. The Applicant and staff agree that this standard favors an F-2 designation.

(5) Primarily under commercial forest management.

The Applicant uses the same logic as in the 5.b.(3) standard above in determining that the subject property is involved in commercial forest use. Refer to page 28 of the proposed findings.

According to the *Symbiotics* case, this standard refers to the subject property.

According to tax records (information from Dave Evans, Lane County Assessment & Taxation Property Appraiser, file record email of Feb. 10, 2009), 33.0 acres of the subject property is receiving deferred forestland special assessment. Of the remainder, 92.228 acres is in “non-specially” assessment, and one acre in residential assessment for the homesite. In addition, the record reflects that the subject parcel was logged in 2002 and between 1955-1960, additional evidence of commercial forest management.

Also, the Applicant testified (p.6, revised submittal of 9-9-09), that “[T]he subject property is approximately 78 acres of reforested timberland.” “The property has a history of being logged. It was most recently logged by the applicant in 2002. It is currently in forest regeneration. Prior to that, it was logged in approximately 1955-1960 (based on 2002 tree stump and site conditions).”

For the same reasons as under policy 5.b.(3), staff seeks Board guidance as to whether the Applicant’s, or staff’s reasoning should be utilized under this standard.

The subject property appears to be managed for commercial forest use, and, this standard favors an F-1 designation. Both staff and the Applicant reach this same conclusion.

In summary, the subject property exhibits three of the five characteristics of property that indicate it should be zoned non-impacted forest land (F-1).

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

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

The Applicant and staff agree that since the subject property contains a dwelling, this standard favors an F-2 zone designation.

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

The Applicant and staff agree that at 126 acres, the subject parcel does not have this characteristic, warranting an F-1 designation under this standard.

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

Please refer to page 30 of the proposed findings for the Applicant's response. The Applicant chooses a "generally contiguous" area which results in a "tract count" which would indicate F-2 zoning, but an "acreage count" that would indicate an F-1 designation.

Staff took a simpler approach, looking at the adjacent tracts, which turn out to be over 80 acres and without dwellings, except for one adjacent side to the east of the subject property. That side is across Marcola Road, and consist of small residential tax lots. Staff found this approach in accord with his understanding of the Board's ruling in Ordinance 1236 (*Symbiotics*). Staff's reasoning is paraphrased below from the memo to the LCPC dated 3-17-09 (within Attachment 4 to this memo).

In regards to this standard, the findings for *Symbiotics* notes (p.10 of Ordinance 1236 Findings):

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

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

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

Attachment 3 to this memo is a GIS map showing the location of dwellings (one dot per dwelling) in the vicinity of the subject property. It is noted that none of the properties listed under 15.b.(2) & (3) above, and incorporated under this standard by reference, contain a dwelling. As shown on the GIS map, the majority of the dwellings in developed and committed areas (RR zoned) occur on the east side of Marcola Road, and in any event, adjacent on one side of the subject property.

The subject property is generally contiguous to tracts containing MORE than 80 acres and WITHOUT residences. The “adjacent” residences on developed and committed lands are found only on one adjacent side of the subject property.

The decision in Symbiotics and ordinance No. PA 1236 does not give precise direction for this standard for the particular situation of the proposal under consideration. As with the other standards, the Planning Commission and in turn the Board of Commissioners will need to make their own conclusion.

Whereas the properties generally contiguous are larger than 80 acres, without dwellings, and that the developed and committed residences are on one adjacent side, this standard has not been met by the proposal, and staff recommends an F-1 designation.

Both staff and the Applicant conclude that the subject property warrants an F-1 designation under this standard. The Board can express its preference as to which method it would prefer in findings to be adopted.

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

The subject property has access to a full range of services normally available to a rural residence, including police and fire coverage, school, electricity, telephone, access, and solid waste disposal and therefore meets this characteristic of Impacted Forest Lands (F-2). Both the Applicant and staff agree that this standard favors an F-2 zone designation.

In summary, while staff and the Applicant reach the same conclusions in their respective analysis, their methodology differs greatly. The Board will need to decide as to whether to accept the findings as proposed, or if it wishes to direct staff to draft revised findings which more closely reflect staff's analysis. In the alternative, the Board can offer their own guidance as to how the contested sections of RCP Goal 4, policy 15 should be analyzed.

Lane County Planning Commission Action

The LCPC deliberated on April 21, 2009, and unanimously (8-0) recommended approval of the plan change to Forest land, with a concurrent zone change to F-1 for the 126 acre parcel. Their reasoning is described in the attached minutes of that meeting.

In addition to description offered in the minutes, the CD recording is available to the Board of Commissioners upon request (please call J. Kendall at x4057).

Applicant's October 9, 2009 Proposed Findings: General Comments

If the Board decides that the Applicant's proposed findings of October 9, 2009 are adequate, staff would still prefer the opportunity to correct some typos and minor items within. Staff will be ready to comment on these items at the hearing, and, if acceptable to the Board, the findings could be adopted at the close of the hearing and at the same reading.

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

C. Alternatives/Options

1. Direct staff to revise the proposed findings to address the applicable approval criteria as so directed by the Board, and for staff to return with the revised ordinance for the Board's adoption, once the findings have been determined to be satisfactory.
2. Approve the application based on the Applicant's October 9, 2009 findings.
3. Tentatively deny the application and direct staff to prepare an Order with findings for final action, setting forth the Board's reasons for denying the application.

D. Recommendation

Staff recommends option 1 above.

E. Timing

The Ordinance does not contain an emergency clause.

IV. IMPLEMENTATION/FOLLOW-UP

Notice of action will be provided to DLCDC and the Applicant.

V. ATTACHMENTS

1. Ordinance PA 1266 with exhibits--41 total pp.
Exhibit A: Existing/Proposed Plan Map—1p.
Exhibit B: Existing/Proposed Zone Map—1p.
Exhibit C: Applicant's October 9, 2009, Findings—37pp.
2. LCPC minutes of 2-17-09 and 4-21-09—18pp.
3. LCPC Staff Report dated 2-17-09--546pp.
4. LCPC supplemental staff memos of 3-17-09, & 4-14-09, with attachments—68pp.
5. Applicant's summary statement to the Board³, dated 6-9-09—3pp.

³ Note: The Applicant originally submitted draft findings on 6-9-09. They were subsequently revised and resubmitted on 10-9-09.

BEFORE THE BOARD OF COMMISSIONERS OF LANE COUNTY, OREGON

ORDINANCE NO. PA 1266) IN THE MATTER OF AMENDING THE RURAL COMPREHENSIVE
) PLAN TO REDESIGNATE LAND FROM "AGRICULTURAL"
) TO "FOREST" AND REZONING THAT LAND FROM "E-
) 40/EXCLUSIVE FARM USE" TO "F-1/NONIMPACTED FOREST
) LANDS"; AND ADOPTING SAVINGS AND SEVERABILITY
) CLAUSES (FILE PA 06-5888; RAVIN VENTURES, LLC)

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

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

WHEREAS, in May 2006, application no. PA 06-5888 was made for a minor amendment to redesignate a portion of tax lot 700, Map 16-01-08, from "Agriculture" to Forest, with a concurrent request to rezone the property from "E-40/Exclusive Farm Use" to "F-2/Impacted Forest Use;" and

WHEREAS, in March 2009, the above application was supplemented to instead request a minor amendment to redesignate all of tax lot 700, Map 16-01-08, from "Agriculture" to Forest, with a concurrent request to rezone the property from "E-40/Exclusive Farm Use" to "F-1/NonImpacted Forest Use;" and

WHEREAS, the Lane County Planning Commission reviewed the proposal in public hearings on February 7, 2009, and April 21, 2009, and recommended approval of the proposed amendment and rezoning as requested; and

WHEREAS, the evidence in the record indicates that the proposal meets the requirements of Lane Code Chapter 16, and other requirements of state and local law;

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

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

Section 1. The Lane County Rural Comprehensive Plan is amended by the redesignation of tax lot 700, Map 16-01-08, from "Agriculture" to "Forest," more particularly described as that property conveyed in Instrument No. 98-78231, Lane County Official Records, such area being depicted on Official Lane County Plan Map 1601 and further identified on a portion of that map in Exhibit "A" attached and incorporated herein.

Section 2. Tax lot 700, Map 16-01-08, is rezoned from "E-40/Exclusive Farm Use (Lane Code 16.212), to "F-1/NonImpacted Forest Use" (Lane Code 16.210), more particularly described as that property conveyed in Instrument No. 98-78231, Lane County Official Records, such area being depicted on Official Lane County Zoning Map 1601 and further identified on a portion of that map in Exhibit "B" attached and incorporated herein.

FURTHER, although not a part of this Ordinance, the Board of County Commissioners adopts Findings as

ORDINANCE NO. PA 1266/IN THE MATTER OF AMENDING THE RURAL COMPREHENSIVE PLAN TO REDESIGNATE LAND FROM "AGRICULTURAL" TO "FOREST" AND REZONING THAT LAND FROM "E-40/EXCLUSIVE FARM USE" TO "F-1/NONIMPACTED FOREST LANDS"; AND ADOPTING SAVINGS AND SEVERABILITY CLAUSES (FILE PA 06-5888; RAVIN VENTURES, LLC)

set forth in Exhibit "C" attached, in support of this action.

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

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

ENACTED this ____ day of _____, 2009.

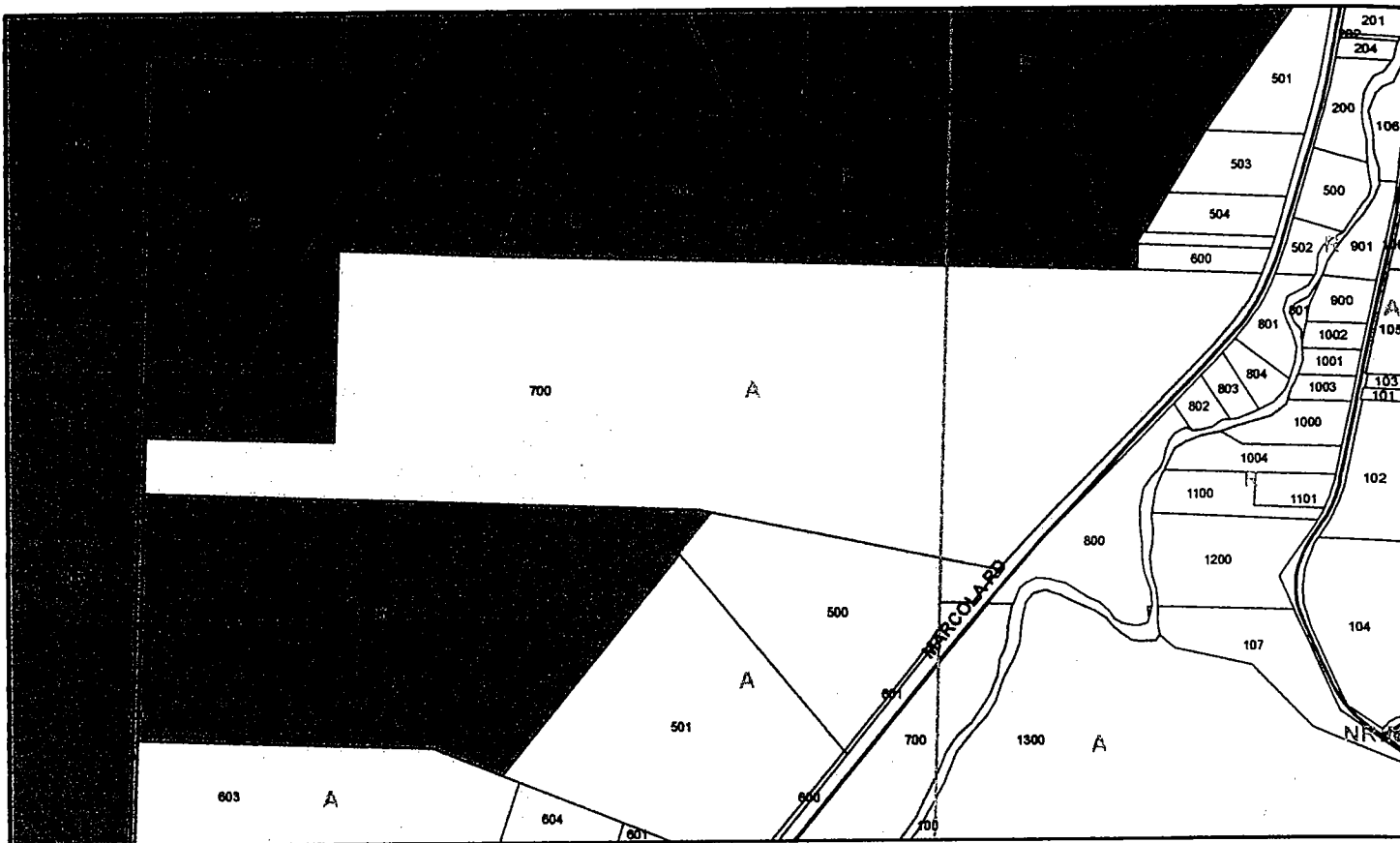
Chair, Lane County Board of Commissioners

Recording Secretary for this Meeting of the Board

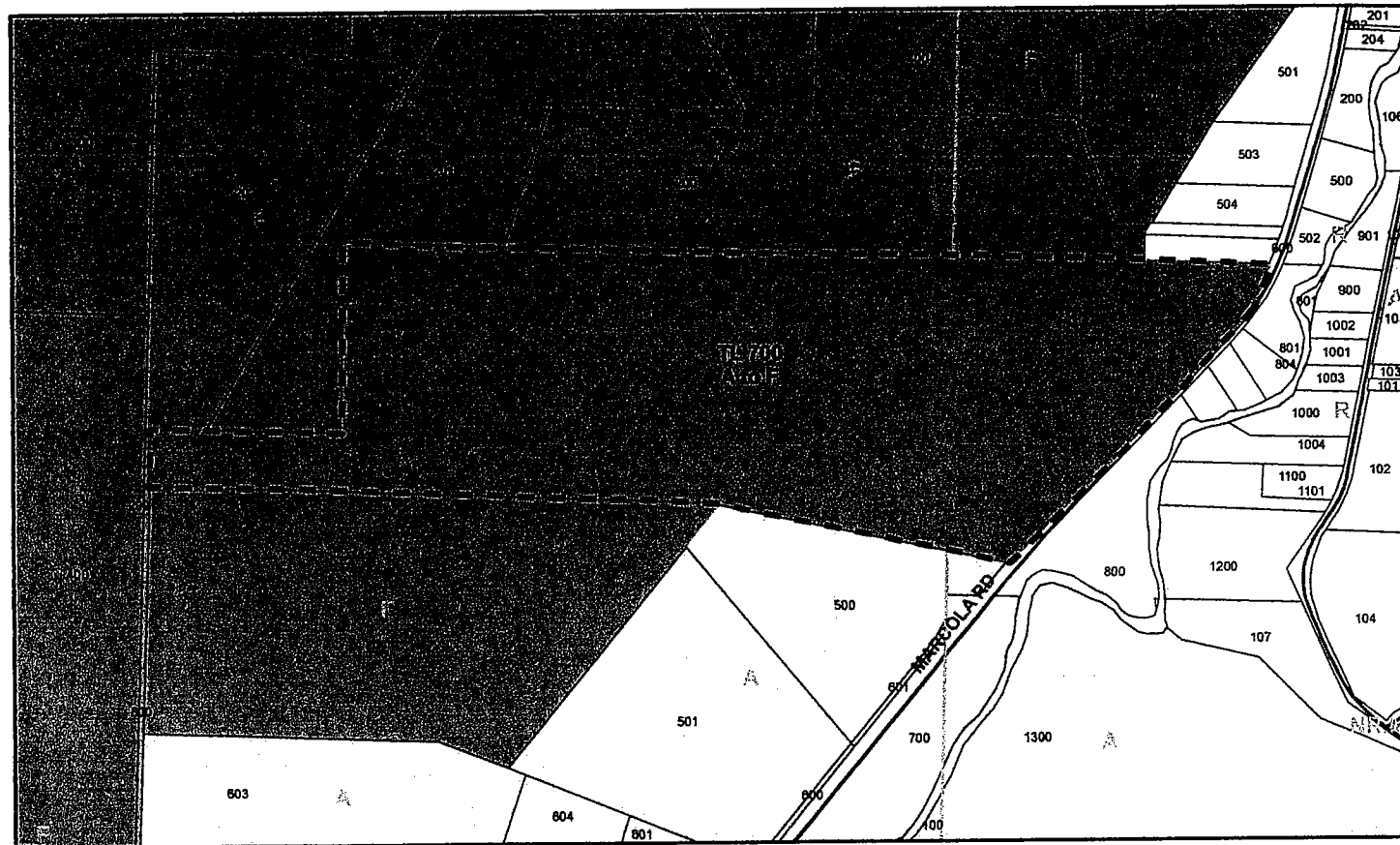
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Date 11-3-2009 Lane County

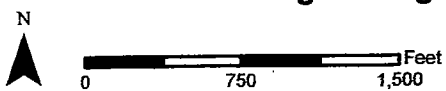

OFFICE OF LEGAL COUNSEL

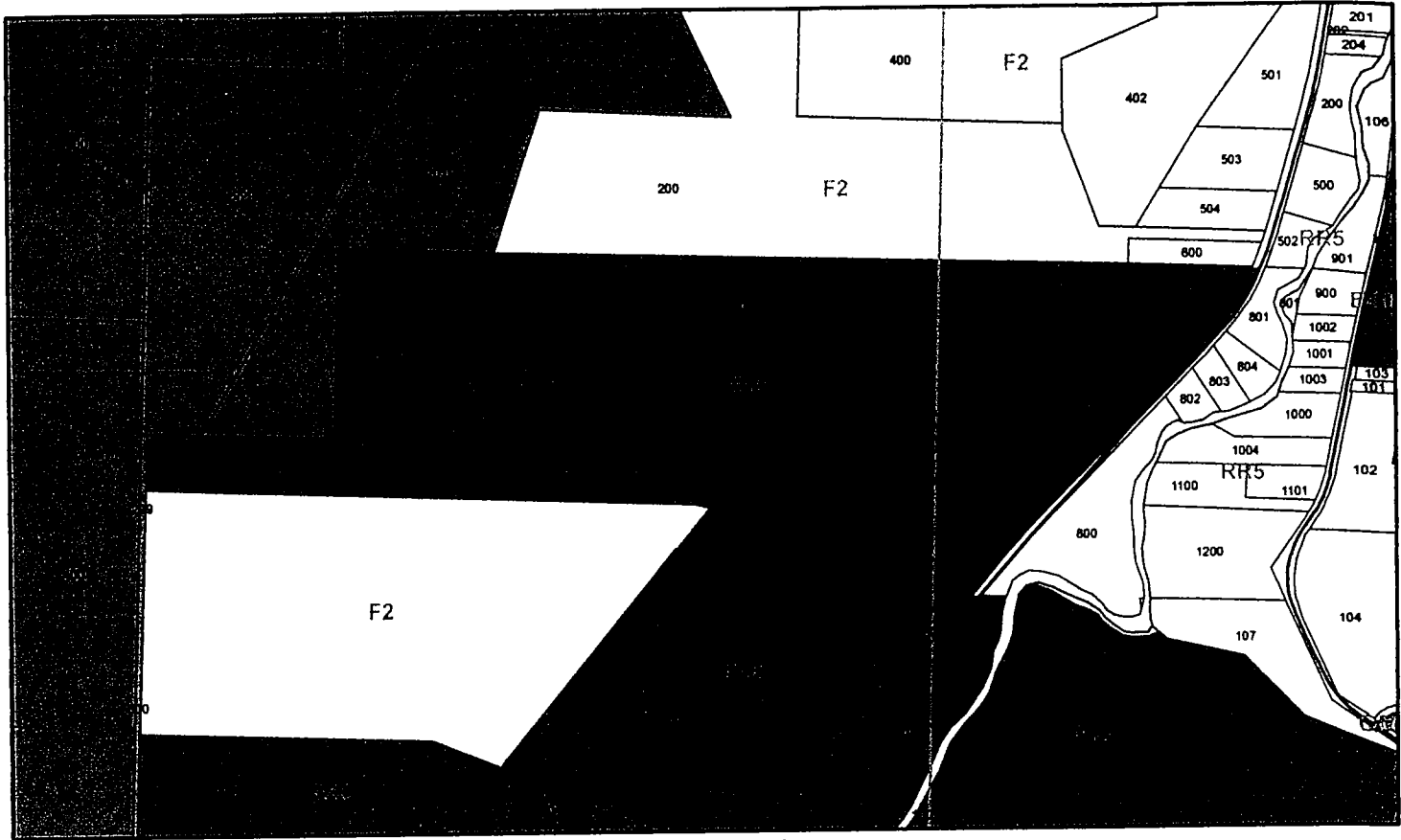


Existing Plan Designation

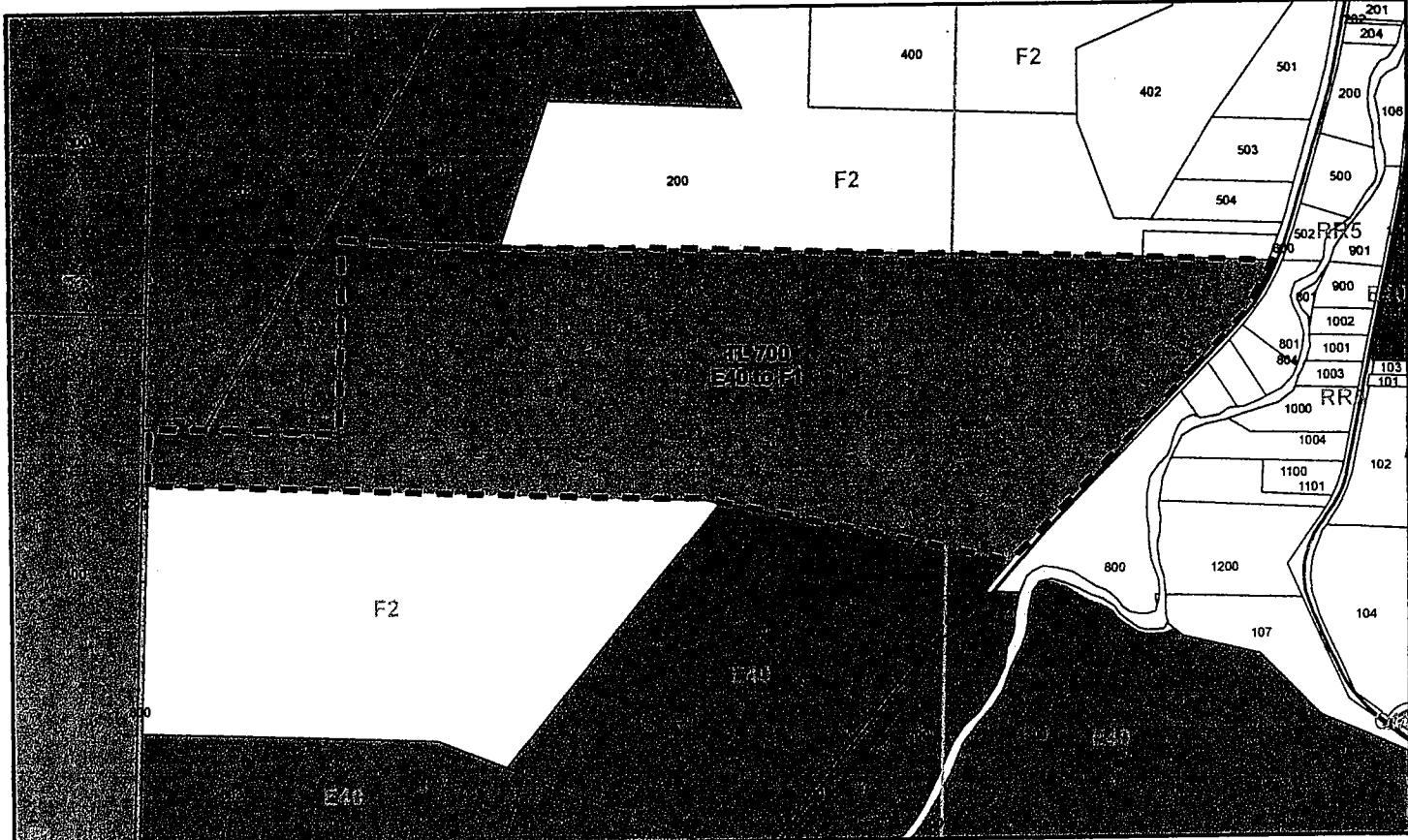


Change being enacted by PA 06-5888 on Official Plan Map 1601

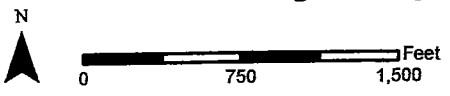




Existing Zoning



Change being enacted by PA 06-5888 on Official Zone Map 1601



**FINDINGS AND CONCLUSIONS
IN SUPPORT OF
RAVIN VENTURES, LLC
PLAN CHANGE FROM AGRICULTURE TO FOREST
ZONE CHANGE FROM EFU-40 TO F-1**

I. INTRODUCTION

1. This decision approves a plan change to Nonimpacted Forest (from Agriculture) and a zone change to F-1 (from EFU-40) for about 126 acres of land in the Mohawk Valley just north of the community of Marcola. The property is roughly rectangular in shape. It lies adjacent to the west of Marcola Road.
2. In these findings the full text of the relevant standards appears in **bold** face font without quotation marks. The findings and conclusions addressing the standards appear in regular font.
3. These findings make reference to supporting materials in the record.
4. The balance of Part I. addresses the subject property and surrounding property in general, as these facts are relevant to all of the following sections.
5. Part II. addresses the Statewide Planning Goals. These are the most general standards that apply to plan and zone amendments. Hence, the findings are most extensive here. Where possible, to reduce redundancy, the findings that address nongoal standards refer back to the relevant goal findings.
6. Part III. addresses the *Rural Comprehensive Plan Policies*.
7. Part IV. addresses the Lane Code criteria for Plan amendments.
8. Part V. addresses the Lane Code criteria for zone changes.

Summary of Proposal:

9. The applicant request a plan change from Farm land to Forest land on the theory that the land has historically been and is currently in forest use. No farming has ever taken place on the parcel. A concurrent zone change is also requested from E-40 to F-1.
10. The subject property is owned by Ravin Ventures, LLC. The subject property as a whole is a legal lot. The property is developed with one single-family residence constructed in approximately the 1920's. The property has been used for forestry throughout its history.

11. Requests for plan change to Forest must comply with the Statewide Planning Goals, the Rural Comprehensive Plan, and the county zoning code. The standards in the goals, the plan, and the code are diverse. They overlap somewhat. These findings address each relevant standard with support from maps, air photos, documents, and other materials.
12. This property qualifies for a Forest designation based on current and historic use.

Legal Authority for Forest Designation and Related NonImpacted Forest Zoning.

13. Goal 3 and the Goal 3 Rule define “Agricultural Land” and require that it be preserved for farm use. Goal 4 and the Goal 4 Rule define “Forest Lands,” require it to be conserved, and allow it to be put to the limited range of uses stated in the Rule.
14. The Lane County Rural Comprehensive Plan Policies (“*Rural Plan Policies*”) recognize that resource land should be given the same weight and that use should determine whether the lands are Forest or Farm. The plan provisions generally track the authorization in the LCDDC Rules. RCP Goal 4, Policy 16 says that lands that qualify for Forest designation shall be zoned either F-1 or F-2, based on consideration of a list of factors and other plan policies.

Description of Subject Property and Adjacent and Nearby Area.

15. This section describes the subject property in summary terms and the adjacent and nearby land in more detail. The purpose is to provide a factual context for the balance of the findings. Reference is made to plan and zone designations, parcelization, and land uses.
16. In general terms, this area is in the foothills on the east side of the Coburg Hills near the rural unincorporated community of Marcola. The site has soils that qualify it as both forest and farm land.
17. “Adjacent and nearby” as used in the Comp Plan and OARs with respect to designation is not defined in the statute, rules or local code. The Board defines it to mean lands with a boundary line common to the subject property (if the common line is a road, then the lands across the road are considered adjacent) and lands within 1,000 feet of the subject property. However, there are several properties within 1,000 feet of the subject property that are separated from the subject property by two county roads and the Marcola River. The applicant believes that these properties do little to influence or represent the character of the surrounding area because they are separated from the subject property by too many barriers. These properties are not included as “adjacent and nearby.”
18. With respect to F-1/F-2 zoning, Ordinance PA 1236 defines “contiguous” to mean “having at least one common boundary line greater than eight feet in length. Tracts of land under the same ownership and which are intervened by a street *** shall not be

considered contiguous.” The ordinance goes on to clarify that “generally contiguous” means general area, which goes beyond “contiguous” and looks to the “general area of the land being proposed *** The analysis is intended to venture beyond the only contiguous properties with common property lines.

19. Ordinance 1236 defines “adjacent” to mean general vicinity, stating that the term adjacent looks *“even further beyond the nearby tracts or across intervening right of way to acknowledge the impact of development within developed and committed exception areas in the general vicinity of the land being proposed for rezoning. It is a broader look at the complete tapestry of uses and development, particularly nonresource uses, in the general area. It does not depend on contiguity for that consideration.”*
20. Based on these interpretations and definitions, the 1,000 foot perimeter used for “adjacent and nearby” with respect to “designation” is also consistent with “adjacent” and “generally contiguous” with respect to zoning.
21. The subject property is approximately 126 acres of reforested timberland. It is developed with a homestead (pre-land use regulation) dwelling that is located near Marcola Road. The property has a history of being logged. It was most recently logged by the applicant in 2002. It is currently in forest regeneration. Prior to that, it was logged in approximately 1955-1960 (based on 2002 tree stump and site conditions). There is no evidence that the property has ever been in “agricultural use” as defined by the statute.
22. The property is roughly rectangular in shape. It rises from about 700 feet in elevation at the east to about 750 feet at the west. It is traversed by a BPA power line and an abandoned railroad right-of-way. There is a well and septic system on the site to serve the existing dwelling.
23. As discussed more fully in connection with Goals 3 and 4, a majority of the soils on the site have an Agricultural Capability rating of I through IV and therefore the property qualifies as Agricultural Land. The subject site also meets the county’s acknowledged definition of forest lands by containing soils capable of producing more than 50 cu/ft/acre of wood fiber.
24. Table A of the applicant’s submission, which is hereby incorporated, identifies uses, designation, and zoning in the general area/vicinity (which includes “adjacent and nearby,” “generally contiguous” and “adjacent”). The table also includes the subject property. In summary, Table A establishes that there are 38 properties that are adjacent and nearby. Of those 38 properties, 25% are designated Forest, 11% are designated Agriculture, and 63% are designated Residential. Of those 38 properties, 34% are in forestry use, none are in agricultural use, 58% are in residential use and 8% are in “other” use. The 38 adjacent and nearby properties include approximately 771 acres. Of the 771 acres, 72% are in Forest designation, 22% are in Agricultural designation and 9% are in Residential designation. Of the 800 acres, 88% are in forestry use, none are in

agricultural use, 7% are in residential use and 5% are in “other” use.

25. RLID shows that the subject property is in Forest Tax Deferral and in Small Tract Forestland Option Deferral. Both deferrals require the property to be in forest use. RLID also describes the subject property as Timber and Timberlands. The site photographs and aerial photographs confirm that the property is in forest management and that there is no farming. The owner has confirmed that the small field is not in “farm use,” as defined by the statute.

II. COMPLIANCE WITH STATEWIDE PLANNING GOALS.

1. Amendments to local plans and code must comply with the Statewide Planning Goals. ORS 197.175(2)(A). For individual applications like this, compliance with relevant goals must be addressed by the County. This Part addresses each relevant goal and explains why the proposal complies. This decision complies with the goals; no goal exceptions are taken.

Goal 1: Citizen Involvement

To develop a citizen involvement program that insures the opportunity for citizens to be involved in all phases of the planning process.

2. Goal 1 is a process goal. This proposal complies with Goal 1 because it will be processed as a quasi-judicial application through the county’s acknowledged public process for individual plan and zone changes. This process includes public hearings before the Planning Commission and the County Board.

Goal 2: Land Use Planning

3. Part I of Goal 2 requires local governments to establish processes and policies for land use decisions.

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

4. Part II of Goal 2 authorizes exceptions to the goals – land use decisions that are not in compliance with the goals under certain circumstances. Statutes also describe when exceptions are authorized. See ORS 197.732.
5. This application complies with Goal 2 because it is being processed under the county plan and code and because no exception to any resource goal is proposed. The application is simply trading one resource designation for another because the land better fits one category based on use and capability.

Goals 3 and Goal 4: The Relationship Between Goals 3 and 4.

6. OAR 660-006-0015(2) states,
When lands satisfy the definition requirements of both agricultural land and forest land, an exception is not required to show why one resource designation is chosen over another. The plan need only document the factors that were used to select an agricultural, forest, agricultural/forest, or other appropriate designation.
7. The “agricultural land” designation and the “forest land” designation are both resource designations. The designations have equal weight and importance to the State of Oregon. Through the above Rule, LCDC has acknowledged that many lands will qualify as both Forest and Ag land. For lands that qualify as both, LCDC will support either designation so long as the factors used to determine designation are identified. This issue is further discussed under Section III, below, where the designation policies are reviewed specifically.
8. As discussed more specifically under Goals 3 and 4 below, the subject property meets the definition of both forest land and agricultural land. The Lane County Rural Comprehensive Plan Agricultural Working Paper documents the factors used to select Farm or Forest designation on land that meets the definition of both. Each of those factors is discussed in detail in Section III, below. Based on those factors, the subject property should be designated Forest land.
9. Because the subject property qualifies as both Ag and Forest land under Goal 3 and Goal 4, many of the RCP policies addressing Goal 3 are met by the subject property and many of the Goal 4 RCP policies are met by the subject property. It is inherent in the property’s dual qualification. However, when determining whether a property should be designated Forest or Ag, the key is not whether the property meets or furthers the policies under the RCP, but whether the property meets the factors established in the Plan for being Forest or Ag. These factors are discussed in Section III, below.

Goal 3: Agricultural Lands

To preserve and maintain agricultural lands. Agricultural lands shall be preserved and maintained for farm use, consistent with existing and future needs for agricultural products, forest and open space and with the State's agricultural land use policy expressed in ORS 215.243 and 215.700.

10. Goal 3 defines “Agricultural Land” as follows:

Agricultural Land -- in western Oregon is land of predominantly Class I, II, III and IV soils and in eastern Oregon is land of predominantly Class I, II, III, IV, V and VI soils as identified in the Soil Capability Classification System of the United States

Soil Conservation Service, and other lands which are suitable for farm use taking into consideration soil fertility, suitability for grazing, climatic conditions, existing and future availability of water for farm irrigation purposes, existing land-use patterns, technological and energy inputs required, or accepted farming practices. Lands in other classes which are necessary to permit farm practices to be undertaken on adjacent or nearby lands, shall be included as agricultural land in any event.

More detailed soil data to define agricultural land may be utilized by local governments if such data permits achievement of this goal.

11. The LCDC has elaborated on the definition of Agricultural Land in its rules. OAR 660-033-0020. There are four parts to the relevant definition in the rule. Each part of the definition is addressed separately here.

OAR 660-033-0020(1)(a): [Predominant Soil Types]

"Agricultural Land" as defined in Goal 3 includes:

Lands classified by the U.S. Soil Conservation Service (SCS) as predominantly Class I-IV soils in Western Oregon and I-VI soils in Eastern Oregon;

12. Goal 3 requires that SCS soils data be used to classify the soils, but it allows soils data in the published maps to be refined with more detailed onsite investigation. OAR 660-033-0030(6). The applicant is relying on SCS soils data.
13. The published SCS soils maps show nine types of soil on this site. The soils are included in Table C, below. Based on Table C, the site qualifies as Agricultural Land under this part of the test because 99% of the soils on the site are in soil Classes I-IV.

**TABLE C
SOILS
AGRICULTURAL CAPABILITY CLASS**

SOIL TYPE	ACRES	PERCENT	AG. CAPABIL. CLASS	FOREST PRODUCTIVITY	
				LMD ¹	Dept. of Forestry ² By soil type/by acreage ³
					By soil type By acreage

¹ Lane County Soil Ratings for Forestry and Agriculture (based on NRCS data).

² Department of Forestry Forest Lands Soils Ratings (1990 revisions).

³ The first number is the Forest Productivity for the soil type per acre per year (cu.ft./acre/year). The second number is the Forest Productivity for the soil type based on the number of acres of the soil (cu.ft./year).

					(cu.ft./acre/ yr)	(cu.ft./yr)
102 C Panther SCL, 2% to 12% slopes	1.7	1.326	VI	No info. ⁴	45	76.5
52D Hazelair SCL, 7% to 20% slopes	65	51.089	IV	No info.	40	2600
89E Nekia SCL, 20% to 30% slopes	14	11.289	IV	160	159	2226
89C Nekia SCL, 2% to 12% slopes	13	9.856	III	160	159	2067
78 McAlpin SCL	13	10.572	II	No Info.	169	2197
89D Neckia SCL, 12% to 20% slopes	.2	.129	III	160	159	31.8
1A Abiqua SCL, 0% to 3% slopes	19	14.958	I	203	161	3059
29 Cloquato SL	.9	.697	II	No Info.	120	108
125D Steiwer L, 12% to 20% slopes	.12	.086	IV	No Info.	30	3.6
	126.92	100%	99% Class I-IV		Site Productivity Approx. 97.45 cu.ft/acre/yr	

OAR 660-033-0020(1)(a): [Other Suitable Lands]:

(B) Land in other soil classes that is suitable for farm use as defined in ORS 215.203(2)(a), taking into consideration soil fertility; suitability for grazing; climatic conditions; existing and future availability of water for farm irrigation purposes; existing land use patterns; technological and energy inputs required; and accepted farming practices;

14. This part of the test focuses on lands, which have predominantly nonagricultural soils, and inquires into whether they are nevertheless suitable for farm use. It is commonly called the “other suitable lands” test. A list of seven factors must be considered. The suitability for farm use must consider the potential for use in conjunction with adjacent or nearby land.⁵ The history of the site in farm use would be relevant to its current

⁴ “No Info.” corresponds with the “none” designation on the Lane County Soils Rating data sheets. It indicates that map units lack site index information on Douglas fir. No site index has been collected by the NRCS due to lack of suitable sties or lack of time and/or funds.

⁵ See *DLCD v. Curry County*, 28 Or LUBA 205, 208-09 (1994), *aff’d* 132 Or App 393 (1995); *Kaye/DLCD v. Marion County*, *supra*, 23 Or LUBA at 481-62 (interpreting identically worded previous Goal 3 administrative rule OAR 660-05-005(1)(b)).

suitability,⁶ but not determinative.⁷

15. It has been established that the subject property qualifies as Agricultural land under the “soils test,” above. Therefore, it is not necessary to address this standard.

OAR 660-033-0020(1)(a)(C): [Land needed to permit farming practices on adjacent/nearby agricultural lands]

Land that is necessary to permit farm practices to be undertaken on adjacent or nearby agricultural lands.

16. This part of the test focuses on adjacent and nearby agricultural lands. However, it has been established that the subject property qualifies as Agricultural land under the “soils test,” above. It is not necessary to address this standard.
17. It is worth noting that the subject property is not necessary to permit farm practices to be undertaken on adjacent property. First, the adjacent property to the south is largely in timber production. Second, even if it were to be farmed, designation of the site as forest lands, another resource designation, would not have any impact on the ability to farm the adjacent land. The two uses have been defined to be compatible. See OAR 660-006-0015(2).

OAR 660-033-0020(1)(b): [Farm unit test]:

Land in capability classes other than I-IV/I-VI that is adjacent to or intermingled with lands in capability classes I-IV/I-VI within a farm unit, shall be inventoried as agricultural lands even though this land may not be cropped or grazed;

18. This part of the test focuses on lands which are predominantly nonagricultural soils, and inquires into whether they are adjacent to or intermingled with better lands within a “farm unit.” It is commonly called the “farm unit” test. If the subject property is not a part of a “farm unit,” then this test does not apply.
19. It has already been determined that the subject property meets the definition of farm land under the “soils test,” above. Therefore, this standard need not be addressed.
20. It is worth noting that the subject property is not part of a farm unit because: the subject property is not adjacent to any other land in the same ownership; it is not jointly managed

⁶ See *Clark v. Jackson County*, 17 Or LUBA 594, 606 (1990)(past use of the property for grazing as part of larger operation is relevant to its current suitability for farm use).

⁷ See *1000 Friends of Oregon v. WASCO County Court*, 80 Or App 525, 531, 723 P2d 1039 (1986) (Affirming decision that former grazing lands proposed for annexation are not suitable for farm use. “Also, there is no presumption that the land is agricultural land simply because of its previous agricultural use. Previous use is merely one factor for the county to consider in reaching its conclusion about the land’s current condition.”).

for farm use with any adjacent land; and it has not been so managed in its history.

Goal 4: Forest Lands

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

Forest lands are those lands acknowledged as forest lands as of the date of adoption of this goal amendment. Where a plan is not acknowledged or a plan amendment involving forest lands is proposed, forest land shall include lands which are suitable for commercial forest uses including adjacent or nearby lands which are necessary to permit forest operations or practices and other forested lands that maintain soil, air, water and fish and wildlife resources.

21. The second paragraph of Goal 4 defines "Forest Lands." Because a plan amendment is proposed, the second sentence of paragraph two is the operable definition. There are three parts to the definition: (1) Lands suitable for commercial forest uses; (2) adjacent and nearby lands necessary to permit forest operations or practices; and (3) other forested lands that maintain certain natural resources. Each part of the definition is addressed below.

[F]orest land shall include lands which are suitable for commercial forest uses.

22. The term "commercial forest uses" is not defined in any statute, goal, or rule. However, Lane County adopted a definition for the term in its plan, and the plan was acknowledged by the LCDC. Forest land is land that is capable of producing crops of industrial wood in excess of 50 cubic feet per acre of annual growth. Commercial forest types of trees include: Douglas fir, hemlock/cedar/spruce, other conifers, and deciduous trees.⁸

⁸ Lane County's definition of "commercial forest uses" was the central issue and the subject of extensive discussion in Holland v. Lane County, 16 Or LUBA 583 (1988). LUBA summarized the relevant provisions of the acknowledged county plan as follows:

The county adopted the following definition of "commercial forest land" as part of its "Working Paper: Forest Lands; March, 1982" (Forest Lands Paper) and "Addendum to Working Paper: Forest Lands; November, 1983" (Forest Lands Addendum) documents.

"Commercial' forest land [is] land capable of producing crops of industrial wood in excess of 50 cubic feet per acre of annual growth."

Ordinance No. 889, Ex. C. The Forest Lands Paper, at 10, contains an inventory of "Acres of Commercial Forest Land by Cubic Foot Site Class, Forest Type and Ownership." This table recognizes the following commercial forest types – "Douglas fir," "hemlock/cedar/spruce," "other conifers" and "deciduous."

16 Or LUBA at 586 [footnotes omitted].

23. Productivity data for wood fiber is available from a number of sources. The Lane County Soil Ratings, published by the Lane County Land Management Division in 1997, summarizes federal data on wood productivity by soil types, but only for Douglas fir. Productivity data for the full range of commercial forest trees recognized by Lane County has been published by the Oregon Dep't of Forestry in its 1990 Forestry Dep't Ratings. Both sources of data are summarized in Table D, below. The data from 1990 Forestry Dep't Ratings is the more useful because it addresses all commercial tree species.
24. For each soil type shown in the Soils Map in the record as being present on subject property, Table D displays the acreage data and the commercial tree species productivity, based on the 1990 Forestry Dep't Ratings and the LMD ratings. Of the nine types of soil present on the property, six are capable of producing substantially more than 50 cubic feet of wood fiber per acre annually. Based on soils, the subject property is capable of producing 97.45 cu.ft./acre/year of timber. The subject property, therefore, qualifies as Forest Land under this part of the test.

**TABLE D
SOILS
FOREST PRODUCTIVITY**

SOIL TYPE	ACRES	PERCENT	FOREST PRODUCTIVITY		
			LMD ⁹	Dept. of Forestry ¹⁰ By soil type/by acreage ¹¹	
				By soil type (cu.ft./acre/ yr)	By acreage (cu.ft./yr)
102 C Panther SCL, 2% to 12% slopes	1.7	1.326	No info. ¹²	45	76.5
52D Hazelair SCL, 7% to 20% slopes	65	51.089	No info.	40	2600
89E Nekia SCL, 20% to 30% slopes	14	11.289	160	159	2226
89C Nekia SCL, 2% to 12% slopes	13	9.856	160	159	2067
78 McAlpin SCL	13	10.572	No	169	2197

⁹ Lane County Soil Ratings for Forestry and Agriculture (based on NRCS data)

¹⁰ Department of Forestry Forest Lands Soils Ratings (1990 revisions)

¹¹ The first number is the Forest Productivity for the soil type per acre per year (cu.ft./acre/year). The second number is the Forest Productivity for the soil type based on the number of acres of the soil (cu.ft./year)

¹² "No Info." Corresponds with the "none" designation on the Lane County Soils Rating data sheets. It indicates that map units lack site index information on Douglas fir. No site index has been collected by the NRCS due to lack of suitable sites or lack of time and/or funds.

			Info.		
89D Neckia SCL, 12% to 20% slopes	.2	.129	160	159	31.8
1A Abiqua SCL, 0% to 3% slopes	19	14.958	203	161	3059
29 Cloquato SL	.9	.697	No Info.	120	108
125D Steiwer L, 12% to 20% slopes	.12	.086	No Info.	30	3.6
	126.92	100%		Site Productivity Approx. 97.45 cu.ft/acre/yr	

(2) [A]djacent or nearby lands which are necessary to permit forest operations or practices.

25. This part of the test inquires into whether the subject property must be kept in a resource designation in order to allow forest operations or practices to continue on adjacent or nearby lands.
26. There are approximately 771 nearby and adjacent acres consisting of 38 nearby and adjacent parcels. Approximately 72 % of those acres are designated Forestland and 88% of those acres are in forest use. See Finding 24 of Section I, above. The subject property is in a sea of nearby land designated Forest. Thus, not only does the subject property's soils qualify for the Forest designation, but the subject property, though perhaps not "necessary," is highly desirable to enable adjacent and nearby lands to continue forest operations.

(3) [O]ther forested lands that maintain soil, air, water and fish and wildlife resources.

27. The targeted resources (soil, air, water and fish and wildlife resources) are generally not present on the subject property. There are no perennial streams or permanent water bodies. There is some relationship between the tree cover and air quality. The soil resources on the site have been exhaustively described. The existing tree cover (and root systems) are helpful in maintaining soil on site because of slope. The wildlife resources are similar throughout the area in terms of range of species and occurrence, without respect to whether the land is vacant or developed.

Goal 5: Open spaces, scenic and historic areas, and natural resources.

To conserve open space and protect natural and scenic resources.

28. Goal 5 requires the county to inventory the locations, quality and quantity of certain natural resources. Where no conflicting uses are identified, the inventoried resources

shall be preserved. Where conflicting uses are identified, the economic, social, environmental and energy consequences of the conflicting uses shall be determined and programs developed to achieve the goal.

29. Where a county is amending acknowledged plan and zoning designations, as here, the county must address Goal 5 if any of the area proposed for change encompasses lands included on the county's inventory of Goal 5 resources.¹³ The county need not go through the Goal 5 conflict resolution process for alleged Goal 5 resources that are not on the acknowledged Goal 5 inventory.¹⁴ The initial Goal 5 question, therefore, is whether the subject property includes any Goal 5 resources inventoried in the acknowledged county plan.

Goal 5 Resources on the Subject Property.

30. The paragraphs below address the acknowledged Goal 5 resource inventories.

Historic Resources:

31. The acknowledged list of historic resources is listed as "Historic Sites or Sites." The subject property is not on the list.

Mineral and Aggregate Resources:

32. Mineral and aggregate sites are listed in several appendices in the Mineral and Aggregate Working Paper. The subject property is not listed in any of the appendices.

Energy:

33. The subject property is not listed on any county inventory of sites to be protected for energy production.

Water Resources:

34. The *Water Resources Working Paper (1982)* inventories the following water resources which include or potentially include the subject property: Watersheds (specifically the Mohawk River watershed, a tributary to the McKenzie River and Willamette Basin); Surface Waters, including the Mohawk River, which lies, at its closest point, approximately 150 to 200 feet to the east of the subject property's most eastern boundary (across Marcola Road); and Groundwater.

¹³ See *Urquhart v. Lane Council of Governments*, 80 Or App 176, 721 P2d 870 (1986); *Plotkin v. Washington County*, 165 Or App 246, 997 P2d 226 (2000); *Waugh v. Coos County*, 26 Or LUBA 300, 310-12 (1993); *1000 Friends of Oregon v. Yamhill County*, 27 Or LUBA 508, 522 (1994).

¹⁴ *Davenport v. City of Tigard*, 23 Or LUBA 565 (1992).

35. The proposed redesignation and rezoning does not, by itself, create additional development on the subject property. As discussed above, the subject property is already developed with a residence. Under F-1 zoning, the applicant is not entitled to any additional dwellings. Uses allowed in the F-1 zoning district are similar to those allowed in the E-40 zoning district. Therefore, the proposed zone change and plan change will have no impact on the watershed, surface waters or groundwater resources in the area.
36. Keeping the area in Forest use, rather than clearing and plowing for agriculture, protects water resources by minimizing runoff; minimizing agricultural water needs; and minimizing agricultural chemical migration into the watershed.

Riparian Resources:

37. The Flora & Fauna Working Paper (1982) and Addendum (1983) inventories Riparian resources. Riparian areas are inventoried to include all land within 100 feet of the banks of a Class I stream. There are no Class I streams on the subject property. The Mohawk River, a Class I stream, is approximately 125 to 200 feet from the subject property at its closest point. Furthermore, Marcola Road separates the subject property from the river. The proposed redesignation and rezoning does not, by itself, create additional development on the subject property. As discussed above, the subject property is already developed with a residence. Under F-1 zoning, the applicant is not entitled to any additional dwellings. Uses allowed in the F-1 zoning district are similar to those allowed in the E-40 zoning district. Therefore, the proposed zone change and plan change will have no impact on the Mohawk River or its riparian resources, as defined.
38. Keeping the area in Forest use, rather than clearing and plowing for agriculture, protects riparian resources by minimizing runoff; minimizing agricultural water needs; maintaining flora and fauna cover and habitat, and minimizing agricultural chemical migration into the watershed.

Wetland Resources:

39. At the time the Flora & Fauna Working Paper was prepared, the U.S. Fish and Wildlife Service had not completed its National Wetlands Inventory (“NWI”) mapping for the entire county. As a result, the county’s Goal 5 wetlands inventory was limited to five “major wetlands” areas, which do not include the subject property. Consideration of adding other “minor wetland” areas to the inventory was deferred by the county to a later date, to follow completion of the NWI mapping, but the reconsideration has not yet occurred. Thus, the county plan inventory of wetland resources does not include any such resources on the subject property.

Sensitive Fish and Waterfowl Areas:

40. The inventory of these sites appears in the Flora & Fauna Working Paper Addendum at 1-4. The subject property is not included on the inventory.

Natural Areas:

41. The inventory of these sites appears in the Flora & Fauna Working Paper at 26-32. The subject property is not included on the inventory.

Big Game Range:

42. The plan classifies the entire county into three categories of Big Game Range: Major, Peripheral, and Impacted. Flora & Fauna Working Paper at 23-25, Addendum at 14.
- (i) This application would affect Big Game Range because the entire county is mapped as some form of big game habitat. In practical terms, however, no conflict from this proposal is apparent. The proposed redesignation and rezoning does not, by itself, create additional development on the subject property. As discussed above, the subject property is already developed with a residence. Under F-1 zoning, the applicant is not entitled to any additional dwellings. Uses allowed in the F-1 zoning district are similar to those allowed in the E-40 zoning district. Therefore, the proposed zone change and plan change will have no impact on Big Game.
43. Keeping the area in Forest use, rather than clearing and plowing for agriculture, protects game resources by minimizing water and wetland pollution from runoff and agricultural water while maintaining flora and fauna cover and habitat.

Goal 5 Program to Meet the Goal for Resources Present.

44. As described above, the following Goal 5 resources inventoried by the county are present on the subject property: Water Resources, including watersheds, surface water, and groundwater; and Big Game Range. This application includes a Goal 5 ESEE analysis for each of these resources. The Goal 5 analysis for each resource tracks, as closely as possible, the county's acknowledged Goal 5 analysis for each resource included in working papers. What is summarized here, for each resource, is the applicant's proposed "program to achieve the Goal," which is the end product anticipated by the goal and the Goal 5 Rule. See OAR Chapter 660, Division 23.

Water Resources:

45. The proposed program to achieve the goal is to allow the use because it is not conflicting. The proposed redesignation from Ag to Forest maintains the property in a Resource designation. Therefore, there are no conflicts.

Big Game Range:

46. The proposed program to achieve the goal is to allow the use because it is not conflicting. The proposed redesignation from Ag to Forest maintains the property in a Resource designation. Therefore, there are no conflicts.

Goal 6: Air, Water and Land Resources Quality

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

All waste and process discharges from future development, when combined with such discharges from existing developments shall not threaten to violate, or violate applicable state or federal environmental quality statutes, rules and standards. With respect to the air, water and land resources of the applicable air sheds and river basins described or included in state environmental quality statutes, rules, standards and implementation plans, such discharges shall not (1) exceed the carrying capacity of such resources, considering long range needs; (2) degrade such resources; or (3) threaten the availability of such resources.

47. Goal 6 protects the quality of land, air and water resources. The focus is on discharges from future development in combination with discharges from existing development. State and federal environmental standards are the benchmark for protection. Where there are state or federal standards for quality in air sheds or river basins, then the carrying capacity, nondegradation, and continued availability of the resources are standards.
48. The subject property is currently developed with a single residence and managed in forestry. Historically it has been used for forestry, a permitted use under the existing Ag designation. Because the proposed designation of Forest matches the existing and historic use, there will be no impacts to land, water or air quality.

Goal 7: Areas Subject to Natural Disasters and Hazards.

To protect life and property from natural disasters and hazards.

Developments subject to damage or that could result in loss of life shall not be planned nor located in known areas of natural disasters and hazards without appropriate safeguards. Plans shall be based on an inventory of known areas of natural disaster and hazards.

49. The phrase “areas of natural disasters and hazards” means “areas that are subject to natural events that are known to result in death or endanger the works of man, such as stream flooding, ocean flooding, ground water, erosion and deposition, landslides, earthquakes, weak foundation soils and other hazards unique to local or regional areas.”

OAR 660-15-000. There are no such areas known on the subject property subject property.

Goal 8: Recreational Needs

To satisfy the recreational needs of the citizens of the state and visitors and, where appropriate, to provide for the siting of necessary recreational facilities including destination resorts.

50. The overriding purpose of Goal 8 is to address all recreational needs, but its primary focus is on siting and developing destination resorts, defined in Goal 8 as "self-contained development[s] providing visitor-oriented accommodations and developed recreational facilities in a setting with high natural amenities."
51. Goal 8 is not directly applicable to this proposal.

Goal 9: Economic Development

To provide adequate opportunities throughout the State for a variety of economic activities vital to the health, welfare, and prosperity of Oregon's citizens.

52. Goal 9 is focused on commercial and industrial development. The Goal 9 Rule, OAR 660-09, is explicitly limited to areas within urban growth boundaries. This goal is not directly applicable to this proposal.

Goal 10: Housing

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

Buildable lands for residential use shall be inventoried and plans shall encourage the availability of adequate numbers of needed housing units at price ranges and rent levels which are commensurate with the financial capabilities of Oregon households and allow for flexibility of housing location, type and density.

53. Goal 10, like its implementing rule, is geared primarily to housing issues inside urban growth boundaries. The goal's definition of "buildable lands," for example, is limited to lands in urban and urbanizable areas. This site is outside any UGB. This goal is not applicable to this proposal.

Goal 11: Public Facilities and Services

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

Urban and rural development shall be guided and supported by types and levels of urban and rural public facilities and services appropriate for, but limited to, the needs and requirements of the urban, urbanizable, and rural areas to be served. A provision for key facilities shall be included in each plan. Cities or counties shall develop and adopt a public facility plan for areas within an urban growth boundary containing a population greater than 2,500 persons. To meet current and long-range needs, a provision for solid waste disposal sites, including sites for inert waste, shall be included in each plan. In accordance with ORS 197.180 and Goal 2, state agencies that provide funding for transportation, water supply, sewage and solid waste facilities shall identify in their coordination programs how they will coordinate that funding with other state agencies and with the public facility plans of cities and counties.

54. "Public facilities and services" is defined in the Statewide Planning Goals to include: "[p]rojects, activities and facilities which the planning agency determines to be necessary for the public health, safety and welfare." The Goal 11 Rule defines a "public facility." "A public facility includes water, sewer, and transportation facilities, but does not include buildings, structures or equipment incidental to the direct operation of those facilities." OAR 660-11-005(5).
55. Goal 11 addresses facilities and services in urban and rural areas. The subject property is "resource" land and will remain rural after this approval. The subject proposal does not provide for any rural or urban development. Therefore, Goal 11 does not apply.
56. Resource designations have no required minimum level of services. However, Table E lists the services now available to the subject property.

**Table E
Rural Public Facilities, Existing or Proposed**

Service	Provider
Fire	Marcola Rural Fire Protection District
Police	Lane County Sheriff and State Police
Schools	Marcola School District
Access	Marcola Road, a County Minor Arterial
Electric	Emerald People's Utility District
Telephone	Qwest Communications

Solid Waste	Sanipac
Sewer	Individual Septic System for existing dwelling
Water	Well for existing dwelling

Goal 12: Transportation

To provide and encourage a safe, convenient and economic transportation system.

A transportation plan shall (1) consider all modes of transportation including mass transit, air, water, pipeline, rail, highway, bicycle and pedestrian; (2) be based upon an inventory of local, regional and state transportation needs; (3) consider the differences in social consequences that would result from utilizing differing combinations of transportation modes; (4) avoid principal reliance upon any one mode of transportation; (5) minimize adverse social, economic and environmental impacts and costs; (6) conserve energy; (7) meet the needs of the transportation disadvantaged by improving transportation services, (8) facilitate the flow of goods and services so as to strengthen the local and regional economy; and (9) conform with local and regional comprehensive land use plans. Each plan shall include a provision for transportation as a key facility.

57. Goal 12 is implemented through the Goal 12 Rule (OAR 660-12) adopted in 1991. The Rule has a section that specifically addresses proposals such as this – amendments to acknowledged comprehensive plans and implementing regulations. OAR 660-12-060(1) provides that any such amendments that “significantly affect a transportation facility shall assure that allowed land uses are consistent with the identified function, capacity, and level of service of the facility.”
58. The proposed redesignation and rezoning does not, by itself, create additional development on the subject property. As discussed above, the subject property is already developed with a residence. Under F-1 zoning, the applicant is not entitled to any additional dwellings. Therefore, the application will not affect a transportation facility. The rule spells out clearly what constitutes a “significant affect.” OAR 660-12-060(2) states:

A plan or land use regulation amendment significantly affects a transportation facility if it:

- (a) Changes the functional classification of an existing or planned transportation facility;**

- (b) **Changes standards implementing a functional classification system;**
 - (c) **Allows types or levels of land uses which would result in levels of travel or access which are inconsistent with the functional classification of a transportation facility; or**
 - (d) **Would reduce the level of service of the facility below the minimum acceptable level identified in the TSP.**
59. The proposed redesignation/rezone will not trigger this section of the rule because the proposed redesignation and rezoning does not, by itself, create additional development on the subject property. As discussed above, the subject property is already developed with a residence. Under F-2 zoning, the applicant is not entitled to any additional dwellings.

Goal 13: Energy Conservation

To conserve energy.

Land and uses developed on the land shall be managed and controlled so as to maximize the conservation of all forms of energy, based on sound economic principles.

60. This goal is not directly applicable to individual land use decisions. Rather, its focus is on the adoption and the amendment of land use regulations.¹⁵

Goal 14: Urbanization

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

61. The subject proposal keeps the parcel in Resource designation. Therefore, there is no transition. This goal does not apply.

Goal 15: Willamette River Greenway

Goal 16: Estuarine Resources

Goal 17: Coastal Shorelands

Goal 18: Beaches and Dunes

Goal 19: Ocean Resources

62. These five goals are not applicable as they deal with resources that are not present on the subject property.

III. COMPLIANCE WITH RURAL COMPREHENSIVE PLAN POLICIES

¹⁵ See *Brandt v. Marion County*, 22 Or LUBA 473, 484 (1991), aff'd in part, rev'd in part, 112 Or App 30 (1992).

1. Any plan and zone change must comply with the relevant *Rural Plan Policies*. This requirement is based in statutes (ORS 197.175(2)), the *Rural Plan Policies* themselves (see, e.g. *Rural Plan Policies* at page 6), and the *Lane Code* (see, e.g., LC 16.400(6)(h)). This section, therefore, addresses the relevant elements of the *Rural Plan Policies*. It is organized by Goal. Again, where possible to avoid duplicative discussion, reference is made to the findings made under the Statewide Planning Goals.
2. Any plan and zone change must comply with the relevant Rural Plan Policies. This requirement is based in statutes (ORS 197.175(2)), the Rural Plan Policies themselves (see, e.g. Rural Plan Policies at page 6), and the Lane Code (see, e.g., LC 16.400(6)(h)). This section, therefore, addresses the apparently relevant elements of the Rural Plan Policies. It is organized by Goal. Where possible to avoid duplicative discussion, reference is made to the discussion under the Statewide Planning Goals. However, the following discussion regarding the relationship between Goals 3 and 4 bears repeating.
3. **OAR 660-006-0015(2) states,**

When lands satisfy the definition requirements of both agricultural land and forest land, an exception is not required to show why one resource designation is chosen over another. The plan need only document the factors that were used to select an agricultural, forest, agricultural/forest, or other appropriate designation.
4. The “agricultural land” designation and the “forest land” designation are both resource designations. The designations have equal weight and importance to the state of Oregon. Through the above Rule, LCDC has acknowledged that many lands will qualify as both Forest and Ag land. The proper resource designation for the “duel” lands is left up to the local jurisdiction so long as the factors underlying the designation choice are identified.
5. As discussed more specifically under Goals 3 and 4 above, the subject property meets the definition of both forest land and agricultural land. The Lane County Rural Comprehensive Plan Agricultural Working Paper documents the factors used to select Farm or Forest designation on land that meets the definition of both. Each of those factors is discussed in detail below. Based on those factors, the subject property should be designated Forest land.
6. Because the subject property qualifies as both Ag and Forest land under Goal 3 and Goal 4, many of the RCP policies addressing Goal 3 are met by the subject property and many of the Goal 4 RCP policies are met by the subject property. It is inherent in the property’s duel qualification. However, when determining whether a property should be designated Forest or Ag, the key is not whether the property meets or furthers the policies under the RCP, but whether the property meets the factors established in the Plan for choosing between Forest or Ag.

7. The Agricultural Land Working Paper states,

"Agricultural/Forestry Goal Interrelationship

In an inventory of agricultural lands and forest lands there will by many instances where land will meet Goal definition for both categories. According to [Led's] policy, farm and forest uses are compatible and either designation may be made without taking an exception to the other goal. The factors used to select a designation need to be documented in the Plan. The policies within the Plan will support one designation over another depending on the situation. The county should consider the following items in addressing overlapping lands:

- a. Identify Agricultural and Forest Lands Goal definitions and inventories*
- b. Segregate overlapping lands from single resource lands*
- c. Apply evaluations of local circumstances and Goal factors to overlapping land to determine appropriate designation*
- d. Designate overlapping lands as agricultural, forest or agricultural/forest through Plan policies and diagrams*
- e. Protect designated lands for appropriate uses through the zoning ordinance and other implementing measures.*

It is intended that agricultural and forest practices be able to coexist without mutual interference while conserving those resource lands.

8. **Identify:** The applicant has identified and addressed the proper definitions of farm and forest lands. In short, farm land is land consisting predominantly of Class I through IV soils. Forest land is land capable of producing 50 cu.ft./acre/year of timber fiber. As shown in Tables C and D above, the subject property meets both definitions.
9. **Segregate:** By filing this application, the applicant is separating the subject property from single resource property for consideration.
10. **Evaluate Goal Factors:** Goal 3 and 4 factors are thoroughly addressed in Section II, above. The analysis of Goal 3 factors shows that while the subject property meets the "soils" test of Ag land, it does not meet the "other suitable lands," "necessary lands," or "farm unit" tests. The analysis of Goal 4 factors shows that the subject property meets the "productivity" test for Forest lands and likely the "necessary lands" and the "other resource" tests. Just viewing the Goals 3 and 4 factors alone shows that the subject property is more appropriately designated Forest land.
11. **Evaluate Local Circumstances:** There is no exact definition of "local circumstances" in the Lane County RCP. The applicant interprets this provision to mean an evaluation of the subject property and surrounding designations, uses and land use patterns. Tables A and B and accompanying text of the applicant's narrative establish these factors for all

properties in the surrounding area. That discussion is hereby incorporated. In summary, the subject parcel is located in a sea of Forest land and RR exception area land.

12. The subject property is currently and has historically been used for timber production. It is in both Forest and Small Tract Forest Land tax deferral. The property was most recently logged by the applicant in 2002. It is now regenerating for future harvests. Based on 2002 tree stump and site conditions, the site was also logged between 1955 and 1960. There is no evidence that the subject property has ever been in farm use, as defined by the statute.
13. **Designation:** The predominant designation by **lot/parcel** in the surrounding area is Residential (63%) followed by Forest (25%). The predominant designation, **by acreage**, in the surrounding area is Forest (72%). The predominant designation of **adjacent parcels by acreage** is Forest (84%). Tables A and B and accompanying text of the applicant's narrative, hereby incorporated, establish the facts.
14. **Use:** The predominant use by **lot/parcel** in the surrounding area is residential (58%) followed by forestry (34%). The predominant use, **by acreage**, in the surrounding area is forestry (88%). The predominant use of **adjacent parcels by acreage** is forestry (94%). Tables A and B and accompanying text of the applicant's narrative, hereby incorporated, establish the facts.
15. In summary, all evidence indicates that the subject property is currently used for forestry and is surrounded by forestry. Evidence further indicates that the subject property has historically been used for forestry. The property is not suited for farm use. Because the property is in forestry, it would be difficult and expensive to convert the property to farm use. Conversion would require tree removal and major cultivation. Such conversion is generally unfeasible. Furthermore, farm uses are not common in the surrounding area.

Goal Three: Agricultural Lands

Policy 8:

Provide maximum protection to agricultural activities by minimizing activities, particularly residential, that conflict with such use. Whenever possible planning goals, policies and regulations should be interpreted in favor of agricultural activities.

16. This policy has been interpreted by the Board of Commissioners, and the interpretation has been upheld on appeal. This policy addresses only conflicts that will result in a significant change in or a significant increase in the cost of accepted farming practices. When conflicts of this magnitude might result, the proposed rezoning must be conditioned to reduce the potential conflicts below the level that will result in a

significant change or significant increase in the cost of accepted agricultural practices.¹⁶

17. No conflicts are apparent between the proposed rezoning and any adjacent or nearby agricultural activity. There are no farming activities on adjacent land. Land directly south, while zoned E-40, is in forest production and in forest tax deferral. See Table B of applicant's narrative, hereby incorporated.

Goal Four: Forest Lands

Policy 1:

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

Forest land shall include lands which are suitable for commercial forest uses including adjacent or nearby lands which are necessary to permit forest operations or practices and other forested lands that maintain soil, air, water, and fish and wildlife resources.

18. This policy implements Statewide Planning Goal 4 by defining "forest lands" and requiring they be used consistent with the goal. The subject property qualifies as Forestland. See discussion in connection with Statewide Planning Goal 4 above. Therefore, the proposed plan change/zone change from AG/E-40 to Forest/F-1 furthers this policy by adding additional land to the State's forest land base.

Policy 2:

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

19. The proposal is for a designation change from AG to Forest and a zone change from E-40 to F-1. The F-1 designation is supported by the general characteristic specified in Policy 16 below. Because the subject property is justified as being zoned Nonimpacted, this policy has been met.

Policy 3:

Prohibit residence on Non-Impacted Forest Lands except for the maintenance,

¹⁶ Gutoski v. Lane County, 34 Or LUBA 219, 225 n4 (1998), aff'd 155 Or App 369, 963 P.2d 145 (1998).

repair or replacement of existing dwellings.

20. The subject property is already developed with a residence. No additional dwellings are permitted under the F-1 zone. This policy further supports a zoning of F-1 NonImpacted Forestlands.

Policy 16:

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

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

21. The Board has determined that the characteristics of the land, not the ownership of it, control the analysis. (See Ord. PA 1236). Focus is on the subject property and the land in the immediate vicinity. Legal lot status is irrelevant. Ownership means, 'land being proposed for rezoning.' This can be an entire property or a portion of it. Where it is a portion of a larger lot, analysis is limited to the portion under consideration for rezone. The critical focus of the analysis is on the property proposed for rezoning and the characteristics that property has that mitigate toward consideration of applying F-1 or F-2.
22. The Board has determined that the analysis under Goal Four, Policy 15 does not require a precise mathematical computation since the focus is on all the characteristics and whether, on balance, the land proposed for rezoning more closely corresponds to the F-1 or F-2 characteristics. (See Ord. PA 1236)

Non-impacted Forest Land Zone characteristics:

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

23. The County Board has determined that this provision focuses on the subject property itself (not surrounding property) and whether it is developed with residences or nonforest uses. The absence of residential development or other nonforest use is a characteristic of F-1 zoning.
24. The subject property is developed with a homestead dwelling constructed in approximately the 1920's. Therefore, the subject property does not meet this F-1

characteristic.

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

25. The Board determined in Ordinance PA 1236 that the focus is on the subject property and any underlying contiguously held properties. Contiguous is defined as,

“Having at least one common boundary line greater than eight feet in length. Tracts of land under the same ownership and which are intervened by a street *** shall not be considered contiguous. *** The intent of this provision is to look within the land being proposed for rezoning to determine whether or not that land being proposed for rezoning consists of contiguous land owned by the applicant that is 80-acres or larger in sizes.” (Ord. PA 1236, pg. 10).

26. In other words, if the property being proposed for rezoning contained within it four parcels all owned by the same owner, and each of the parcels was 21 acres, then the land proposed for rezoning would contain 84 acres. But if the property proposed for rezoning was a 40-acre portion of a larger 160 acres parcel or a 40 acre lot contiguous to four 20-acre parcels owned by the applicant, review is restricted to the 40-acre subject property.

27. Being a large, contiguously held property is a characteristic of F-1 zoning.

28. The subject property is 126 acres of contiguous ownership. Therefore, the subject property meets this F-1 characteristic.

“(3) Predominantly ownership contiguous, to other lands utilized for commercial forest or commercial farm uses.”

29. The Board has determined that this provision focuses on property adjacent to (contiguous to) the subject property, and whether it is utilized for commercial forest/farm uses. While not conclusive, the following factors can be considered in determining whether surrounding uses are being utilized for farm/forest use: parcel size, tax deferral, and other factual information. However, the determination of whether a property is in “commercial” farm or forest use is weighed against a different set of standards.

30. The County has interpreted Policy 15 as being “crafted as a means to distinguish large-scale industrial forest land from small-scale non-industrial forest land.” Ordinance 1236, page 8.

31. *“Forest lands less than 80 acres in size and developed with residential uses or other nonforest uses, generally received Impacted Forest land (F2) [zoning]. Public forested lands and larger commercially managed forest lands, forest lands that were not impacted by nonforest uses, particularly in the ownership of industrial forest operators, were [zoned] as Nonimpacted Forest Lands (F-1).”* Ordinance 1236, Page 9. Emphasis

added.

32. Based on the above, commercial forest use leans toward public lands and lands that are large scale and in industrial forest operator control and ownership. Examples of lands that fall squarely under the umbrella of “large scale industrial forest land” include lands owned by Rosboro Lumber Co. (292 holdings and more than 2,000 acres of land in forest use in Lane County); Weyerhaeuser (1668 holdings and more than a 100 thousand acres of land in forest use in Lane County); Davidson Industries (200 holdings and more than 2,000 acres of land in forest use in Lane County); Seneca Lumber (168 holdings and more than 1,000 acres of land in forest use in Lane County); and McDougal Bros (92 holdings and more than 1,000 acres of land in forest use in Lane County). See Exhibit TT of applicant’s submission. This is just a sample. There are hundreds of similar industrial forest land companies holding property in Lane County.
33. The Oregon Department of Revenue keeps a yearly list of large-scale industrial timber owners. That list is included as Exhibit TT of applicant’s submission.
34. Being on the Department of Revenue’s list and have large holdings is an obvious indicator that a parcel is in commercial forest operation. However, parcels that are not on the list and not part of large holdings can still be considered to be in commercial forest operation if other facts support such a determination.
35. Having commercial farm/forest uses on property adjacent to the subject property is a characteristic of F-1 zoning.
36. There are nine properties adjacent to the subject property. See Table F below. Five of the contiguous properties are in commercial forest use without question. The status of TL 500 is uncertain. However, lacking evidence to the contrary, the available evidence (such as past practices and tax deferral) indicates that TL 500 is in commercial forest use. None of the adjacent parcels are in commercial farm use.
37. Given that six of the nine adjacent parcels (67%) are in commercial forest use, the subject property meets this F-1 characteristic.

Table F
Contiguous Property and Commercial Use

Tax Lot	Ownership	Parcel size	Findings
TL 200 16-01-07	Rosboro Lumber Co.	65 acres	Given the number of holdings and amount of land in forest production in Lane County, and given the fact that Rosboro is included on the state’s list, this property is part of a large scale industrial operation. This property is in commercial forest use.
TL 201	US	51.4 acres	Given the number of holdings and amount of land in

16-01-07	Government		forest production in Lane County, and given the fact that the US Government is a known commercial producer of wood fiber, this property is part of a large scale industrial operation. This property is in commercial forest use.
TL 202 16-01-07	Weyerhaeuser Co.	48.3	Given the number of holdings and amount of land in forest production in Lane County, and given the fact that Weyerhaeuser is included on the state's list, this property is part of a large scale industrial operation. This property is in commercial forest use.
TL 400 16-01-07	Weyerhaeuser Co.	103.54	Given the number of holdings and amount of land in forest production in Lane County, and given the fact that Weyerhaeuser is included on the state's list, this property is part of a large scale industrial operation. This property is in commercial forest use.
TL 299 16-01-07	Weyerhaeuser Co.	.51	Given the number of holdings and amount of land in forest production in Lane County, and given the fact that Weyerhaeuser is included on the state's list, this property is part of a large scale industrial operation. This property is in commercial forest use.
TL 500 16-01-07	Ranch & 120, LLC (J. Paschelke)	85 acres	Given the limited number of holdings and amount of land owned and in forest production, this property's status is uncertain. However, absent evidence to the contrary, the Board is considering the property to be in commercial forest use.
TL 601 16-01-08	Ranch & 120, LLC (J. Paschelke)	.68 acres	This parcel is not in forest production and is not treed. The property does not have a history of being logged. This property is not in commercial forest use.
TL 600 16-01-08	Christoffersen	1.86	Zoned RR5; developed with a residence. No forest use. This property is not in commercial forest use.
Marcola Road	County		Road. No forest use. This property is not in commercial forest use.

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

38. The County Board has determined that this provision focuses on the subject property and the type of access to it. Ordinance No. 1236. Access by an arterial road or forest management road is a characteristic of F-1 zoning.
39. The subject property has direct access to Marcola Road, a local collector. The purpose of Marcola road is to move traffic from Hwy 228 to Springfield and to support local residential transportation. Therefore, the subject property does not meet this F-1

characteristic.

“(5) Primarily under commercial forest management.”

40. The County Board has determined that this provision focuses on the subject property and whether it is utilized for commercial forest/farm uses. Ordinance No. 1236. While not conclusive, the following factors can be considered in determining whether surrounding uses are being utilized for farm/forest use: parcel size, tax deferral, and other factual information. However, the determination of whether a property is in “commercial” farm or forest use is weighed against a higher set of standards.
41. The County has interpreted Policy 15 as being “crafted as a means to distinguish large-scale industrial forest land from small-scale non-industrial forest land.” Ordinance 1236
42. *“Forest lands less than 80 acres in size and developed with residential uses or other nonforest uses, generally received Impacted Forest land (F2) [zoning]. Public forested lands and larger commercially managed forest lands, forest lands that were not impacted by nonforest uses, particularly in the ownership of industrial forest operators, were [zoned] as Nonimpacted Forest Lands (F-1).”* Ordinance 1236, Page 9.
43. Based on the above, commercial forest management leans toward public lands and lands that are large scale and in industrial forest operator control and ownership. Examples of lands that fall squarely under the umbrella of “large scale industrial forest land” include lands owned by Rosboro Lumber Co. (292 holdings and more than 2,000 acres of land in forest use in Lane County); Weyerhaeuser (1668 holdings and more than a 100 thousand acres of land in forest use in Lane County); Davidson Industries (200 holdings and more than 2,000 acres of land in forest use in Lane County); Seneca Lumber (168 holdings and more than 1,000 acres of land in forest use in Lane County); and McDougal Bros (92 holdings and more than 1,000 acres of land in forest use in Lane County). See Exhibit TT of applicant’s submission. This is just a sample. There are hundreds of similar industrial forest land companies holding property in Lane County.
44. The Oregon Department of Revenue keeps a yearly list of large-scale industrial timber owners. Ravin Ventures is not on the list.
45. Being on the Department of Revenue’s list and having large holdings is an obvious indicator that a parcel is in commercial forest management. However, parcels that are not on the list and not part of large holdings can still be considered to be in commercial forest management if other facts and evidence support such a determination.
46. Having commercial farm/forest uses on the subject property is a characteristic of F-1 zoning.
47. The subject property is approximately 126 acres. Ravin Ventures, LLC, owns four parcel

in Lane County totaling 200 acres. Ravin Ventures does not appear on the Department of Revenues list.

48. Because Ravin Ventures, LLC, has limited holdings in Lane County and because it does not appear on the state's list, the property's commercial forestry status is not obvious. However, absent other evidence to the contrary, the Board considers the subject property to be in commercial forest management based on past and current use of the property, tax status, and history.
49. The subject property meets this F-1 characteristic

F-1 Characteristics Summary

50. In summary, the subject property meets 3 of the 5 characteristics for being zoned F-1.

(c) Impacted Forest Zone characteristics: ****

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

51. The County Board has determined that this provision focuses on the subject property itself (not surrounding property) and whether it is developed with residences or nonforest uses. Ordinance 1236. A property developed with residence or other nonforest use is a characteristic of F-2 zoning.
52. The subject property is developed with a residence constructed in approximately 1920. It is currently occupied. Therefore, the subject property meets this F-2 characteristic.

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

53. The County has determined that this provision focuses on the subject property itself (not surrounding property) and its size. Ordinance 1236.
54. Property containing 80 acres or less is a characteristic of F-2 zoning.
55. The subject property is 126 acres, larger than 80 acre threshold. Therefore, the subject property does not meet this F-2 characteristic.

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

56. The County has determined that the focus of this criterion is on contiguous properties and properties in the “general area.” (Ord. PA 1236, pg. 10).

57. In Ordinance 1236, the Board interprets “generally contiguous” to mean in the general area. See page 10 of the Ordinance. The distance can be pushed in some or all directions and can cross roads, streams and other barriers. (Ord. PA 1236, pg. 10). How wide and how far is determined on a case by case basis. (Ord. PA 1236, pg. 10). This provision is two fold: F-2 should be applied (1) where adjacent and nearby properties are less than 80-acres and developed, or (2) where adjacent or nearby properties are within a developed or committed exception area.
58. Generally Contiguous Tracts: There are 38 tracts that are “generally contiguous,” as defined by the applicant. These tracts are included in Table A of the application narrative, which is hereby incorporated.
59. Twenty four of the 38 generally contiguous tracts (63%) are less than 80 acres and contain a dwelling. This supports a finding that the property meets this F-2 characteristic. Usually, the Board would not look beyond this finding.
60. However, in this particular case, the following facts support a closer look: (1) the large amount of generally contiguous acreage; (2) the large amount of generally contiguous acreage that does not meet the standard (*less than 80 acres and undeveloped*); and (3) the amount of generally contiguous qualifying tracts that lie across multiple barriers. Any one of these facts on its own would not be an issue. The fact that they are all present in this particular case has some weight.
61. There are approximately 771 generally contiguous acres.
62. Of the 771 generally contiguous acres, only 90 acres lie within tracts that are “less than 80 acres and developed with a residence.” This is only 12% of the total “generally contiguous” acreage.
63. Of the 24 generally contiguous tracts that are less than 80 acres and developed, 12 (50%) lie across two substantial barriers: a Local Collector county road and a Class I stream.
64. The acreage within the defined “generally contiguous” area rises to upward of 1,000 acres, and the percentage of those acres that meet the standard is exceptionally small, and the tract count is spread over multiple barriers. When all these factors are present in the same application, the Board feels that acreage, and not just number of tracts, becomes a factor.
65. Based on the above, though the tract count indicates that the subject property meets this F2 characteristic, the acreage total does not. Of the 771 generally contiguous acres, only 12% meet the standard. Therefore, the subject property does not meet this F-2 characteristic.

“(4) Provided with a level of public facilities and services, and roads, intended

primarily for direct services to rural residences.

66. The County Board has determined that this provision focuses on the subject property itself (not surrounding property) and access to services. Ord. 1236. In Lane County, rural services typically include: power, road access, telephone, police, ambulance, fire, and schools. Not typically included are public stormwater, public water or public sewer.
67. The subject property has direct access onto Marcola Road, a local county road. Power and telephone services are already connected to the site to serve the existing dwelling. The site is served by the Mohawk Rural Fire Protection District, the Lane County Sheriff's Department, the State police department, Mohawk ambulance services and the Marcola School district. See discussion under Goal 11. In summary, the subject property is already developed with a residence which has access to power, transportation facilities, telephone, police, ambulance, fire and schools. Therefore, the subject property meets this F-2 characteristic.

F-2 Summary

68. Based on the above, the subject property meets two of the four characteristics for being zoned F-2

Summary Analysis of Policy 16

69. Based on the above analysis, the *"characteristics of the land correspond more closely to the characteristic of the proposed zoning [F-1] than the characteristics of the other forest zone [F-2]."* The subject property meets three of the five F-1 characteristics, and meets two of the four F-2 characteristics. Therefore, F-1 zoning is supported.

Goal Five: Opens Spaces, Scenic and Historic Areas and Natural Resources

Flora and Fauna Policy 7:

Because of incomplete County coverage by, and interpretation of, the National Wetlands Inventory, wetland resources are to be considered "significant" in terms of OAR 660-16-000/025 and placed in "1B" and "1C" categories. Major wetlands designated "1C" resources shall be protected per the "3C" option through a combination of existing County Coastal and Greenway zoning regulations, and federal/state ownership; where these do not occur, an appropriate wetlands zoning district shall be developed and applied. Other wetlands from the National Wetlands Inventory shall be evaluated per "1B" requirements within two years of the date of Plan adoption, and decisions made on the protection or use of the resource. The County shall consider enlarging the list of protected per Goal 5 requirements if it is clearly demonstrated that an unprotected significant wetland(s) is likely to be significantly impacted by a land use action over which the County has jurisdiction.

- 70. See discussion of wetlands resources under Statewide Planning Goal 5. The County has not yet supplemented its inventory of wetlands resources, as anticipated by this policy. The subject property contains no wetland resources inventoried in the county plan. Hence, this policy is not directly applicable to this development proposal. Furthermore, the proposed rezone does not result in any development or uses that would otherwise disturb wetlands. Forest practices on the land are governed by the Forest Practices Act.
- 71. No other Comprehensive Plan policies apply.

IV. COMPLIANCE WITH LANE CODE CRITERIA FOR PLAN CHANGES

- 1. LC 16.400(6)(h) sets out the criteria for amending the county plan designation. Each of the criteria is addressed here. Where a criterion incorporates a Statewide Planning Goal, LCDC Rule, or Rural Plan Policy, reference is made the relevant part of the narrative above so as to avoid repetition.

LC 16.400(6)(h): Method of Plan Adoption and Amendment.

(iii) The Board may amend or supplement the Rural Comprehensive Plan upon making the following findings”

(aa) For Major and Minor Amendments as defined in LC 16.400(8)(a) below, the Plan component or amendment meets all the applicable requirements of local and state law, including Statewide Planning Goals and Oregon Administrative Rules.

- 2. This criterion makes general reference to other sources of standards that apply to plan changes. Those other standards are addressed elsewhere in this narrative.

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

(i-i) necessary to correct an identified error in the application of the Plan; OR

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

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

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

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

be desirable, appropriate or proper.

3. This criterion offers a smorgasbord of policy choices from which the county may select to justify initiating the plan change. At least two are relevant to this application. Item (iv-iv) allows the plan change if it implements the Rural Plan Policies. Goal Four, Policy 1 of the Rural Plan Policies anticipates the preservation of Forest lands by maintaining a forest land base. This proposal implements that policy because the subject property qualifies as forest land under the Goal 4 definition.

4. Item (v-v) invites the county to make plan changes that are desirable, appropriate or proper. This proposal also meets that criterion. Where lands qualify as both farm and forest lands, OAR 660-006-0015(2) states,

When lands satisfy the definition requirements of both agricultural land and forest land, an exception is not required to show why one resource designation is chosen over another. The plan need only document the factors that were used to select an agricultural, forest, agricultural/forest, or other appropriate designation.

5. Furthermore, the Lane County Rural Comprehensive Plan Agricultural Lands working paper, page 6, provides:

“Agricultural/Forestry Goal Interrelationship

*“In an inventory of agricultural lands and forest lands there will by many instances where land will meet Goal definition for both categories. According to [LCDC’s] policy, farm and forest uses are compatible and either designation may be made without taking an exception to the other goal. The factors used to select a designation need to be documented in the Plan. The policies within the Plan will support one designation over another depending on the situation. The county should consider the following items in addressing overlapping lands: ***.”*

6. Those items and the analysis are discussed in detail under Sections II and III, above. The analysis shows that a plan change to Forest is desirable, appropriate and proper based on the review set forth.

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

7. Compliance with individual policies in the Rural Plan Policies is discussed in Section III above.

(dd) For Minor Amendments as defined in LC 16.400(8)(a) below, the Plan amendment or component is compatible with the existing structure of the Rural

Comprehensive Plan, and is consistent with the unamended portions or elements of the Plan.

8. The existing structure of the plan anticipates Resource plan designations. As discussed in Section III above, this designation is also consistent with relevant policies in the Rural Plan Policies.

LC 16.400(8): Additional Amendment Provisions.

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

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

9. This is a minor amendment to the plan which requests a change to the Plan Diagram for the subject property – from Agriculture to Forest. No goal exceptions are requested. This application demonstrates that the subject property is not Agricultural land, but Forest land.

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

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

10. This description has been provided throughout this decision.

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

11. The required analysis is provided above.

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

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

12. See detailed discussion in Sections I and II, above. To summarize, the subject property is located in a sea of Forest land. Furthermore, it is adjacent to an RR exception area.

Some of these uses are on land planned and zoned for resource use, and others are on land that is planned and zoned for Nonresource uses.

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

13. The public facilities and services available or to be provided to the site are discussed in detail above. For a discussion of each facility and service, see the Goal 11 discussion above. For a further discussion of transportation facilities, see the Goal 12 discussion above. In summary, because the site is already developed with a residence, because it is in a highly developed area, and because it is close to the rural communities of Marcola and Mable, all facilities and services are available to the site.

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

14. This discussion appears in detail in other parts of this document. The proximate natural resources to consider are those that are identified as Goal 5 resources in the comprehensive plan. The impact on these resources is discussed as part of the Goal 5 analysis above.
15. This proposal will have no adverse impact on proximate resource lands because the subject property will remain in resource designation and zoning.

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

16. As discussed in connection with Goal 7, the subject property neither contains nor is threatened by any natural hazards.

V. COMPLIANCE WITH LANE CODE CRITERIA FOR ZONE CHANGES

1. This proposal requests a change from E-40 zoning to F-1 zoning. LC 16.252 sets out standards for zone changes. The facts relevant to the zone change standards are largely redundant with the facts relevant to plan policies and the Statewide Planning Goals. The LC 16.252 standards are stated here and addressed, with appropriate references to other parts of this narrative.

LC 16.252(2): Criteria.

Zonings, rezonings and changes in the requirements of this Chapter shall be enacted to achieve the general purpose of this Chapter and shall not be contrary to the public interest. In addition, zonings and rezonings shall be consistent with the specific purposes of the zone classification proposed, applicable to Rural

Comprehensive Plan elements and components, and Statewide Planning Goals for any portion of Lane County which has not been acknowledged by the Land Conservation and Development Commission. Any zoning or rezoning may be effected by Ordinance or Order of the Board of County Commissioners, the Planning Commission or the Hearings Official in accordance with the procedures of this section.

General purposes of Chapter 16:

2. LC 16.003 sets forth 14 broadly-worded purpose statements that include a provision to ensure that development is commensurate with the character and physical limitations of the land. Rezoning from E-40 to F-1 implements the proposed plan amendment to Forest land. The public interest is served by recognizing that the land is Forest land rather than Agricultural land.

Purpose of F-1 Zone:

3. The F-1 zone is intended to preserve prime forestland in Lane County. The proposed zoning is consistent with these stated purposes of the zone by recognizing that the subject property lies is large enough to support commercial forestry.

Rural Comprehensive Plan Criteria:

4. The Rural Plan Policies provide the policy basis for comprehensive plan and implementing regulations, provide direction for land use decisions, and fulfill LCDC planning requirements. Compliance with relevant Comprehensive Plan policies is addressed in Section III, above.

Lane Code Criteria:

LC 16.004(4):

Prior to any rezoning, that will result in the potential for additional parcelization, subdivision or water demands or intensification of uses beyond normal single-family residential water usage, all requirements to affirmatively demonstrate adequacy of long-term water supply must be met as described in LC 13.050(13)(a)-(d).

5. The request is a rezone from E-40 to F-1. These zoning districts both implement resource designations. The rezone will not result in any additional parcelization. In fact, the minimum lot size for partitions and subdivision is larger in the F-1 zoning district than in the E-40 district.

VI. SUPPLEMENTAL FINDINGS TO ADDRESS ISSUES RAISED

[To be prepared after close of hearing before County Board.]

OK
adopted
5-5-09

MINUTES

Lane County Planning Commission
Board of Commissioners Conference Room—125 East 8th Avenue
Eugene, Oregon

February 17, 2009
5:30 p.m.

PRESENT: Lisa Arkin, Chair; Steve Dignam, Todd Johnston, Tony McCown, Nancy Nichols, Howard Shapiro, Jozef Siekiel-Zdzienicki, John Sullivan, Lane County Planning Commissioners; Kent Howe, Stephanie Schulz, Jerry Kendall, Lane County Land Management Division;

ABSENT: Robert Noble, Vice Chair, Lane County Planning Commissioner.

Ms. Arkin convened the work session of the Lane County Planning Commission (LCPC) at 5:35 p.m. Staff and Commissioners introduced themselves.

Public Comment—There was no public comment offered.

WORK SESSION

- Ordinance No. 7-08—DELIBERATION: Lane Code Chapter 10 Amendments and Additional Policy Amendments to the Florence Realization 2020 Comprehensive Plan Prior to Board Co-Adoption of the Plan Under Florence’s Periodic Review Work Program. File No. PA 08-5363 and Ordinance No. PA 1249 (Previous Planning Commission Hearing June 17, 2008, Previous Board of County Commissioners Hearing December 10, 2008).**

Ms. Arkin said Sandra Belson had come from the City of Florence to address the Commission and provide the Commission an opportunity to ask questions prior to deliberations.

Mr. Sullivan stated he had not listened to the recording of the previous Planning Commission discussion on this agenda item. Since it was a legislative matter, he would participate in the discussion if the Planning Commission agreed. He would defer to Planning Commission regarding whether or not he should vote on the matter.

No opposition to his participation was expressed.

Ms. Belson reviewed the project highlights identified in her February 6, 2009 staff memorandum included in the agenda packet for tonight’s meeting.

BCC ATTACH. 2 - 18 pp.

Mr. McCown arrived at 5:40 p.m.

Ms. Belson said the Florence City Council most recently met on January 26, 2009 to discuss potential amendments to Chapters 6 and 14 of the Florence Realization 2020 Comprehensive Plan. Staff recommended a different approach to protection of the North Florence Dual Aquifer at that meeting. The change was a result of comments from the public, the Lane County Planning Commission, and the Board of County Commissioners (BCC). There would be no policy change limiting septic system installation, but rather the focus would be on developing a joint testing and monitoring program. With recent concerns raised by contamination at Heceta Beach, the testing and monitoring program would include the groundwater aquifer as well as surface water that drained toward the beach. Staff had identified those undeveloped properties within the urbanizable area (that area within the urban growth boundary [UGB] that was outside the city limits), and was able to quantify the number of undeveloped tax lots and their general locations. Maps showing these tax lots were provided to the LCPC.

Ms. Belson said Oregon Administrative Rules (OARs) prohibited installation of new septic systems for single-family homes if there was a sanitary sewer system available within 300 feet of the property. There was the potential for approximately an additional 300 new septic systems within the urbanizable area without further land divisions. The City Council was focusing on getting testing requirements in place and setting up a monitoring system. Staff proposed policies that would allow septic systems on the 300 lots unless a problem was identified through the testing system.

Mr. Shapiro noted there had been problems with the Kla-ha-nee development, and asked why it had not been included.

Ms. Belson responded Kla-ha-nee had not been included in the mapping because they were not allowed to install new septic systems, and construction would not be allowed on most of the lots until they hooked up to city sewer. She added Driftwood Shores hooked up to the city sewer because they were concerned and had conducted tests.

Ms. Belson reviewed the City's approach to the urbanizable area, the testing program and housekeeping amendments as outlined in the staff memorandum. The proposed policies would result in fewer code amendments. On January 26, 2008, the City Council directed staff to develop an intergovernmental agreement (IGA) with Lane County Administration and funding of the testing and monitoring program. When the agreement was in place, the City Council would hold a public hearing on the amendments. She recommended that the Planning Commission recommend the Comprehensive Plan Amendments and corresponding Lane Code changes to the BCC. She further recommended that the BCC not make a final decision until the IGA was in place.

Ms. Arkin opened the floor to questions from Commissioners.

Ms. Nichols said caffeine had originally been included in the revised language as a surrogate for prescription drugs, but noted it had been dropped and asked why that had happened.

Ms. Belson agreed to research the issue.

Mr. Johnston opined specific substances would be identified in the IGA.

Responding to a question from Mr. Johnston, Ms. Nichols asked that caffeine specifically be cited in the adopted language as requiring testing.

Ms. Arkin asked what the relationship of the technical memorandum in the LCPC packet was to the policy amendments and to the IGA. She asked if it was merely informative.

Ms. Belson responded the technical memorandum was a recommendation from GSI, consultant to the City Council, as a starting point of the development of the IGA. Although it was intended to be informative, it was not required. She added the City of Florence welcomed suggestions from Lane County on what should be tested for.

Responding to a question from Mr. Dignam regarding the adoption process for the Comprehensive Plan, Ms. Schulz said the public records at both the Lane County Planning Commission and elected officials' levels were closed. The Planning Commission record was held open until February 6, 2009, in order for the City of Florence to complete its work that was now the study proposal that the City Council wanted to implement. Back in December 2008, the BCC held the written record open until March 4, 2009, and scheduled a third reading/fourth reading and deliberations for April 8, 2009. No additional hearings were scheduled. She added the Planning Commission could recommend additional time for a public hearing.

Mr. Dignam asked if Lane County staff felt the requirements for a public hearing had been met, considering the City of Florence's proposed changes.

Ms. Schulz opined the requirements had been met, because although no additional public hearings were scheduled, the LCPC record had been held open for additional time.

Responding to a question from Mr. Siekiel-Zdzienicki, Ms. Belson said the City Council intended to hold another public hearing regarding the monitoring program and study approach.

Mr. Shapiro expressed concern that the water flowing west and south through the aquifer by Clear Lake would contaminate the aquifer. Thus, it was important that the water be tested at the source.

Ms. Belson said Clear Lake was outside the UGB, adding if a site was outside of the UGB it was outside the scope of the Florence Comprehensive Plan. However, the City was developing an application to the federal Environmental Protection Agency (EPA) for a grant that would fund more test wells than were shown on the map. Heceta Water District was a partner in the application and had identified other test well locations in addition to seeking testing of Clear Lake. It was likely Lane County would also be a partner to the grant application. The EPA grant application included \$50,000 to pay for Lane County staff involvement in the testing and monitoring, with no match from the County.

Responding to a question from Mr. Siekiel-Zdzienicki regarding a sewer line on the recently annexed section of Rhododendron Drive, Ms. Belson said there were two pump stations to serve Fawn Ridge. The sewer line continues to Driftwood Shores although a pump station had not yet been built, so Driftwood Shores is not yet connected to Florence's sewer system.

In response to Mr. Siekiel-Zdzienicki, Ms. Belson stated Policy 5 was in response to concerns of the Heceta Water District to ensure they would be included in a review and comment process, and their comments would be considered part of the public record. Policy 4 was in the 1988 Comprehensive Plan and brought forward to the current proposed plan. The two policies said the City would send referrals to Lane County and Heceta Water District on any annexation applications.

Ms. Arkin said Policy 12 addressed sewage and chemicals, and asked why no testing for water level was included in the testing process.

Ms. Belson stated water level had a greater impact on septic systems, noting that when water levels were high, septic systems could not drain. Water level did not impact water quantity available. It was important to know how high the water level was because it affected how quickly contaminants were getting into the aquifer.

Ms. Arkin said the issue of up to approximately 300 septic systems being added to the area, and whether there should be stipulations about the type of septic systems allowed in the aquifer had been discussed by the Planning Commission previously. She asked if the City could stipulate what type of drain fields would be allowed.

Ms. Belson said the City and the County could have those stipulations. Based upon the public comments, some of the alternative systems did a better job and were more expensive. The City had decided to back off from requiring improved on-site treatment or required connections and instead put in place a testing program that could ultimately require alternative septic systems.

Responding to a question from Mr. Shapiro, Ms. Belson said the City of Florence did not currently regulate septic systems.

Responding to a question from Mr. McCown regarding unfunded mandates, Mr. Howe said Lane County staff involvement in the testing and monitoring would occur only if the EPA grant was awarded and provided \$50,000 for Lane County staff participation.

Ms. Belson added the City of Florence would not take on the whole testing and monitoring burden if EPA did not provide grant funding.

Ms. Schulz stated the EPA grant application was to be considered by the BCC this week.

Mr. Dignam, seconded by Ms. Nichols, moved to reopen the record until one week after the Florence City Council met to discuss. Mr. Dignam accepted Ms. Arkin's friendly amendment to reopen the record until one week after the Florence City Council took action on the Comprehensive Plan. The motion passed unanimously, 8:0.

Ms. Arkin asked for closing comments from Commissioners.

Ms. Nichols was happy with the progress and hoped there would be testing that would address caffeine or some other marker for septic tanks.

Mr. McCown was also happy with the progress. He saw policy as a long lasting document, and it was important to have the value of the testing and the practical side of funding mesh.

Mr. Shapiro thought the City was moving in the right direction. Once the IGA was signed, he wanted to see more testing at the source of the aquifer and financed by the City of Florence, Lane County and the Heceta Water District.

Mr. Siekiel-Zdzienicki was glad to see the City of Florence responding to the public and the LCPC. He expressed his appreciation to Ms. Belson for her hard work. He wanted to ensure that the Heceta Water District was of enough importance in the IGA.

Ms. Belson stated the City of Florence had no authority to require the Heceta Water District to enter into the IGA, but hoped they would. The Chair of the Water District's Board of Directors had testified in support of the Comprehensive Plan and the Water District agreed unanimously to participate in the EPA grant application.

Mr. Sullivan supported the work that was submitted for the February 26, 2009 City Council meeting. He hesitated on the other work because he was not present when Mr. Nelson testified with the technical memorandum. He was concerned about surface water monitoring and response actions, and had not realized the City of Florence had E. coli in its water. It was no longer a problem of the future, but was a problem of the present.

Mr. Johnston echoed comments from other Commissioners. He noted progress had been significant and said he appreciated the patience of Florence staff with the various groups they had to work with. It was worthy that Policies 12 and 13 be as specific as possible without compromising flexibility down the road. Getting specific line items for testing as recommended by GSI as well as including caffeine and other chemicals would be useful. It would be worth reaching out to local water watch groups.

Mr. Dignam supported the ordinance as it was presented. The issue had generated a significant amount of public comment and testimony. He echoed Mr. Sullivan's concerns that members of the public did not want to hook up to a sewage system. However, he viewed water quality as a more important issue than the public concern and he was concerned that the LCPC had paid too much attention to the public concerns on this matter. He did not want to see the water quality in one area of the County deteriorate. The system established for testing provided the flexibility to step in if needed. He did not believe reviewing the draft IGA was a role for the LCPC and he had no interest in seeing it.

Ms. Arkin expressed her appreciation for the responsiveness of the staff. She was glad to see the testing program and an IGA that would provide specific language on the criteria and protocols for running the testing program being developed. She agreed with Mr. Dignam's comments regarding the importance of water quality to maintain quality of life and the ability to be healthy. She echoed Mr. Shapiro's comments and recommended to the City of Florence and Lane County that Lane County should require monitoring on county lands that were part of the general aquifer. She also wanted to see testing for pharmaceuticals in the water. She recommended that the City look at the building code and consider requiring a certain quality of septic system for new systems in the area despite the concern that people may consider it an economic burden. There were many things

in the building code that could be considered burdensome but were considered accepted as necessary for safety.

Ms. Arkin closed the work session at 6:50 p.m.

PUBLIC HEARING

- 1. PA08-5888—Minor Plan Amendment and Zone Change from “Agricultural” to “Forest” Lands and from “E-40/Exclusive Farm Use” to “F-2/Impacted Forest Lands” for the east 78 acres of a 126 acre parcel.**

Map 16-01-08, Tax Lot 700
Address: 92922 Marcola Road, Springfield, Oregon
Owner: Ravin Ventures, LLC
Applicant: Ed Fisher
Agent: Kim O’Dea

Ms. Arkin convened the public hearing of the Lane County Planning Commission (LCPC) at 7:00 p.m. Staff, Commissioners and visitors introduced themselves.

Mr. Johnston stated he had a potential conflict of interest and would not participate in the discussion or deliberation.

Mr. Kendall offered the staff report. The application was originally submitted in May 2006, and scheduled for a public hearing before the LCPC on April 17, 2007. The original proposal included all 126 acres of the parcel. Staff recommended denial of the rezone portion of the request, based on an interpretation of a Goal 4 RCP policy by the Board of County Commissioners (BCC), which the applicant had failed to utilize. The application was withdrawn before the public hearing. In September 2008, a revised application which included only the 78 easternmost acres of the subject parcel was submitted. The remaining 48 westernmost acres were not part of the proposal before the LCPC, and would retain its plan/zone designation of Agricultural Land/E-40. The 78 acres of land which was the subject of the revised proposal was located on the west side of Marcola Road in Springfield. A dwelling was located on the eastern end of the parcel, near Marcola Road.

Mr. Kendall stated the applicant was making two requests. The first request was changing the plan designation from agricultural land to forest land, for which the application met the criteria. The second request was to determine whether the correct zoning was F-1, Non-impacted Forest Lands, or F-2, Impacted Forest Lands. There were three applicable cases, the Symbiotics case, the Dockum case, and the Lininger case, which were described in the staff report. Mr. Kendall reviewed the Policy 15 characteristics as cited in the staff report.

Mr. Kendall said staff recommended approval of the plan change to Forest Land, with a zone designation of F-1, Non-impacted Forest Lands.

Mr. Sullivan said the term “development” was used several times in the staff report, and asked if the LCPC should consider the potential for development in making a decision.

Mr. Kendall stated there were five legal lots on the subject property. If the site was zoned F-2, there was a potential that five additional dwellings could be constructed.

Mr. Dignam noted the staff report indicated the subject property had three of the five characteristics of F-1 land and two of the four characteristics of F-2 land. He asked if a scorecard approach had been used to evaluate those characteristics.

Mr. Kendall explained the methodology, saying it had been past practice that held up on appeal which had never been challenged at the Land Use Board of Appeals (LUBA) and was supported by the BCC. A scorecard approach had not been previously used, but rather the determination was based on a simple majority of meeting the F-1 and F-2 characteristics.

Responding to a question from Ms. Nichols, Mr. Kendall said staff would evaluate a proposal that contained delineation of the site by drawing lot lines. However, the staff analysis had determined the site did not meet the F-2 characteristics.

In response to Ms. Arkin, Mr. Kendall said the property was logged sometime during the late 1950's to mid 1960's, and again during 2004-2006. He stated there were no Oregon Department of Forestry tickets, and the logging date determination was based upon a level of evidence, noting there was no evidence to the contrary.

Kimberly O'Dea provided the applicant's report. She distributed the following documents:

- Letter dated February 17, 2009 to the Lane County Planning Commission and Jerry Kendall, from Kimberly J.R.O'Dea, regarding Fisher Plan change and Zone Change Application Map 16-01-08, portion of tax lot 700.
- Zoning Criteria matrix.

Ms. O'Dea asserted the staff report related to this request was the most flawed she had seen in a long time because it relied on a case rather existing law. She asked that the hearing be moved forward to March 2009, or the record left open for fourteen days to enable her to address the staff report. She provided a history of the case, noting that the application was filed before Ordinance 1236 was enacted, which changed the way the County viewed the F-1 to F-2 characteristics and resulted in the applicant withdrawing their application. She then applied Symbiotics as written to the current case. She acknowledged the past record that dealt with the entire property was still part of the record, but was now less relevant. She said the Planning Commission could recommend that the entire site be zoned F-1 and the applicant would not fight that. The property should never been zoned agricultural land and had never been used for agriculture, as it was very hilly and the soil was rocky.

Ms. O'Dea said she received the staff report on Friday, February 13, 2009, and had not had sufficient time to review it. She wanted to make a written response to the staff report and show why the Dockum decision should not be considered by the Planning Commission in its recommendation to the BCC.

Ms. O'Dea reviewed the following issues:

- Development and transportation—Ms. O'Dea said there was nothing that changed on the property from the current zoning E-40 which contained five legal lots. None of the legal lots were developable because none of them were big enough. Even if the lots were developable, there was no outright permitted use, and this did not change in the F-2 zone. Construction would require property line adjustments, post property line adjustment legal lot verifications, and special use decisions. She asserted plan and zone changes gave the property no more development potential. While there were several ways to get homes in the E-40 and F-2 zones, there was no way to put homes in the F-1 zone. Chapter 15, which addressed transportation, and related road improvements, would only need to be considered when Chapter 16, which addressed land use permits, was raised.
- Dockum case—The Hearings Official ignored the BCC's findings in Ordinance 1236. She said the case should be given no instructive weight, as it was for the BCC to correct its mistakes, if any were made, and not the Hearings Official.
- Forest Designation—Everyone agreed the property should be designated as Forest.
- Zoning Characteristics
 - Residences on site—There were no provisions in F-1 for dwellings even with a special use permit. A zoning designation of F-1 would make the parcel less in compliance with the plan and code that it was currently, and would create a non-conforming use that could not be corrected. In the F-2 zone, the dwelling could be made legal with a special use permit.
 - Subject property and 80 acre threshold—Seventy eight acres were proposed for rezone and which was consistent with the Symbiotics case. In the Dockum case, the Hearings Official altered the BCC's decision without justification, which was overreaching. The Symbiotics case was the only one that applied in this situation.
 - Commercial Forest and Farm use—The staff assertion that the tried and true method of looking to deferral status as the right approach was incorrect. That method conflicted with the purpose of the zoning districts and had been voided by the BCC.
- Generally Contiguous—The staff method conflicted with the Symbiotics case and the language of the Plan. Ordinance 1236 said that “generally contiguous” went beyond “contiguous” and looked at the “general area”. Staff looked to “abutting” property which was not the “general area”, but rather “contiguous”. The applicant's submission looked to the “general area” as required. The review established that the property met the F-2 characteristic because it was impacted by houses and exception areas. The 1,000 foot review area was supported by the Lininger decision and other “vicinity” and “general area” decisions.

Ms. O'Dea urged the Planning Commission to rely on Ordinance 1236 rather than the Hearings Official's decision. She added F-2 was applicable without deciding what “commercial forestry” meant. She stated while the subject application was limited to the 78 acre eastern portion of the property, the applicant acknowledged that, prior to the application being amended to reflect the ordinance, staff and the applicant reviewed the entire tract. The County in the past embraced split zoning. The applicant would not object to the Planning Commission making a Forest designation recommendation for the entire tract and then an F-1/F-2 zoning district recommendation.

Mr. Siekiel-Zdzienicki asked why the applicant was requesting the zone change, since commercial forestry was allowed under the current zoning.

Ms. O'Dea said it was the right of every citizen to look at the zoning of their property to determine whether the zoning was done correctly.

Responding to a question from Mr. Sullivan, Ms. O'Dea reaffirmed the applicant would not argue against a recommendation by the Planning Commission to zone the entire property F-1.

Mr. Kendall clarified Ms. O'Dea intended to include the full 126 acres when she stated entire property, which she affirmed.

Mr. Sullivan noted in Ordinance 1236, the BCC suggested that a road created non-contiguous property. He asked if that narrowed the scope of the argument. He asked if the intent of Ordinance 1236 was to address "contiguous" as ownership rather than "contiguous" as properties.

Ms. O'Dea said Ordinance 1236 spoke to contiguous, which showed up in several other standards. The BCC went beyond its authority with the "generally contiguous" property, which allowed you to jump roads. The ordinance was specific from criteria to criteria.

Mr. Johnston left at 7:00 p.m.

Responding to Ms. Arkin, Mr. Kendall said staff would consult with legal counsel and the Planning Director to determine if a procedural error would be created by changing the proposal, especially in lieu of the fact that staff had been instructed to ignore the original text submittal which considered the entire property. The applicant was now saying that one option was to rezone the entire property F-1 but there was no analysis to support that action.

Ms. O'Dea said her original submittal, which included the analysis, looked at the entire property, and was in the record. Amendment of the application to respond to Symbiotics contained enough information to create a clean process.

Responding to a question from Mr. Dignam regarding Ms. O'Dea's statement that the County embraced split zoning, Mr. Kendall said he would need to research the issue before commenting. He understood split zoning came up more in partitioning law.

Ms. O'Dea said in her experience in Lane County zoning lines had never been a concern with property line adjustments.

In response to Ms. Arkin, Mr. Kendall said property lot line adjustments were a Planning Director decision and only went to the Hearings Official on appeal. He added it would be to the applicant's advantage to rewrite the application. The applicant had said the County could use the old application, which implied for only certain aspects, that had not been identified.

Ms. O'Dea iterated the application before the Commission was for 78 acres, but the applicant would not object if the entire 126 acres was rezoned.

Mr. Dignam averred it was the applicant's responsibility to tell the Commission whether it wanted 78 or 126 acres to be considered.

Ms. O'Dea said the application before the Commission was for 78 acres, which was what the applicant wanted the Commission to look at.

Mr. Siekiel-Zdzienicki noted no one had signed up to speak at the public hearing and no additional written material had been submitted, thus he saw no reason to hold the public hearing open as requested by Ms. O'Dea.

Ms. Arkin found the application confusing because of underlying issues, such as taking 78 acres which was less than 80 acres, what would happen to the back section, and the issue that perhaps there were parts of the property that were closer to the road that were better suited for the kind of rezoning that was being discussed.

Mr. Dignam said the Commission should give consideration to the applicant's request to continue the public hearing. He was uncomfortable as a Planning Commissioner to have conflicting precedents, and asked staff to provide guidance on working through the process.

Ms. O'Dea said she was comfortable with closing the public hearing.

Responding to a question from Ms. Nichols regarding the relationship of the Planning Commission recommendation and the BCC's decision regarding the Symbiotics case, Mr. Kendall said Symbiotics did not have a monopoly on how to instruct one on how to view zone changes as he stated in his staff report. Staff acknowledged there were different fact patterns in the three cases (Symbiotics, Dockum and Lininger) cited, and staff choose the fact pattern that was closest to the current case.

Ms. Arkin asked Mr. Kendall for rebuttal.

Mr. Kendall asked the Planning Commission to affirm that the hearing portion would be closed tonight, the record would be left open for two weeks for the applicant to submit, followed by two weeks for staff to respond to the submittal, followed by two weeks for applicant rebuttal. The Planning Commission would meet on April 21, 2009 for deliberation.

Mr. Sullivan failed to understand the staff position that failure to explain the downsizing was grounds to designate F-1. He asked staff to respond in the written report.

Mr. Dignam, seconded by Mr. McCown, to leave the record open for two weeks, followed by two weeks for staff response, followed by two weeks for applicant's final rebuttal, with all periods measured from 5:00 p.m. February 17, 2009, and deliberation on April 21, 2009. The motion passed unanimously, 7:0.

The meeting adjourned at 9:40 p.m.

(Recorded by Linda Henry)

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Approved
7-7-09

MINUTES

Lane County Planning Commission
Board of Commissioners Conference Room—125 East 8th Avenue
Eugene, Oregon

April 21, 2009
5:30 p.m.

WORK SESSION

PRESENT: Lisa Arkin, Chair; Robert Noble, Vice Chair; Steve Dignam, Tony McCown, Nancy Nichols, Howard Shapiro, Jozef Siekiel-Zdzienicki, John Sullivan, Lane County Planning Commissioners; Jerry Kendall, Stephanie Schulz, Lane County Land Management Division; Chuck Davis, Springfield Utility Board; Mark Metzger, City of Springfield; Kim O’Dea, Ravin Ventures LLC agent.

ABSENT: Todd Johnston, Lane County Planning Commissioner.

Ms. Arkin convened the work session of the Lane County Planning Commission (LCPC) at 5:35 p.m. Staff and Commissioners introduced themselves.

- 1. PA 06-5888—Minor Plan Amendment and Zone Change from “Agricultural” to “Forest” Lands and from “E-40/Exclusive Farm use” to “F-2/Impacted Forest Lands” for the East 78 Acres of a 126 Acre Parcel (Continued from February 17, 2009 Deliberation Only).**

Map: 16-01-08, tax lot 700
Address: 92922 Marcola Road, Springfield, Oregon
Owner: Ravin Ventures, LLC
Applicant: Ed Fisher
Agent: Kim O’Dea

Mr. Noble declared he had read the record and was ready to deliberate.

Mr. Kendall offered the staff report. He stated the record closed on March 31, 2009 and summarized the information provided to Commissioners in the agenda packet. There was no debate between the applicant and staff that the property, which consisted of the entire 126 acre parent parcel, deserved a forest plan designation. The more contentious issue was whether split zoning was applied and if only the eastern 78 acres were considered for an F-1 or F-2 zone. Staff asserted that the Rural Comprehensive Plan (RCP) Goal 4 Policy 15, had the characteristics of F-1 versus F-2 land. There were five characteristics for F-1 land, of which three were met by this property. Additionally, there were four characteristics for F-2 land, of which two were met by this property. The staff analysis indicated there had been no solid justification for drawing the

line and splitting the zoning, entertaining only the eastern 78 acres. Reading from the applicant's rebuttal, he said, "The applicant believed F-2 zoning for the 78 acres was still justified for reasons set out in previous submissions. However, the applicant did not object to staff's recommendation on page 2 and 3 of the supplemental staff report proposing forest designation and F-1 zoning." Mr. Kendall concluded saying the staff recommendation was F-1 on the entire 126 acres. He opened the floor to questions from Commissioners.

Responding to a question from Mr. Siekiel-Zdzienicki, Mr. Kendall opined a second public hearing would be held before the Lane County Board of County Commissioners (BCC) at which time it would be clarified that the entire 126 acre site was being considered for F-1 zoning.

Responding to Mr. Dignam, Mr. Kendall understood the term "non-specially assessment" was probably a neutral tax deferral status. He concurred there nothing in the record that the 78 acre portion was not involved in logging and replanting.

Responding to a question from Ms. Arkin, Mr. Kendall stated since one of the standards stated that F-1 was generally 80 acres or larger, zoning 48 acres as F-1 and 78 acres as F-2 was contrary to the accepted standards.

In response to Mr. Siekiel-Zdzienicki, Mr. Kendall saw a minimum of five legal lots and there was a potential to adjust the lines and put dwellings on each of the lots. He opined it was disingenuous of the applicant to state there was no development potential on the property.

Mr. Noble asked if the existing dwelling on property would become a non-conforming use if the property was zoned F-2 and what the implications of a non-conforming use were.

Mr. Kendall said the issue had been debated over the years by the BCC, and recalled former County Commissioner Steve Cornacchia saying he did not want to burden people with onerous non-conforming use status in resource zones. Thus, Lane County did not take issue with the size of dwellings.

Mr. Shapiro arrived at 5:55 p.m.

Responding to Mr. Kendall, Mr. Shapiro declared he sat in on previous meetings on this topic.

Mr. Dignam stated Mr. Shapiro should be allowed to vote since no new information had been entered into the record this evening.

Mr. Sullivan, seconded by Mr. Siekiel-Zdzienicki, moved to recommend to the Board of County Commissioners a minor amendment to the Rural Comprehensive Plan of a 78 acre portion of a 126 acre parcel from agricultural land designation to resource forest land and to rezone from EF-40 exclusive farm use to F-1 non-impacted as outlined in PA 06-5888.

Ms. Nichols offered a friendly amendment: "...moved to recommend to the Board of County Commissioners a minor amendment to the Rural Comprehensive Plan of a 78-acre portion of a 126 acre parcel from

agricultural land designation to resource forest land and to rezone from EF-40 exclusive farm use to F-1 non-impacted as outlined in PA 06-5888.”

Mr. Sullivan and Mr. Siekiel-Zdzienicki accepted the friendly amendment.

Mr. Sullivan restated the motion previously seconded by Mr. Siekiel-Zdzienicki. He moved to recommend to the to the Board of County Commissioners a minor amendment to the Rural Comprehensive Plan of a 126 acre parcel from agricultural land designation to resource forest land and to rezone from EF-40 exclusive farm use to F-1 non-impacted as outlined in PA 06-5888.

Mr. Sullivan would vote for the motion because it was consistent with Lane Code Section 12.225 because it was consistent with relevant statewide planning goals. It was a minor plan amendment as outlined in Lane Code Section 14-4 and qualified for forest designation under Goal 4. It was not reducing resource land. Although staff argued that the predominance factor supported F-1 under Policy 16 of the RCP, common sense indicated the argument could be made that the eastern most piece looked more F-2 than F-1. However, having reviewed the predominance issues, he considered applying the predominance factors a common sense move. He did not believe the Planning Commission’s decision could be based on possible future development. After reviewing information in the record, he felt strongly coordinates 1, 2, 3, and 6 should be applied based upon BCC directives.

Mr. Dignam would support the motion although there was little difference between F-1 and F-2 for this case. Based upon the criteria and upon the residence, F-2 applied. The applicant made a strong argument that split zoning was allowed in Policy 15, but the staff argument that there needed to be a logical basis for split zoning was more compelling. The applicant’s argument that the term “predominantly contiguous” allowed flexibility was not specific enough. Mr. Dignam did not agree with the staff argument that only abutting property should be considered, while the applicant argued the general area should be considered, which he supported. When looking at the general area, he saw F-1. Referring to the criteria that predominantly ownerships contiguous to other land utilized for commercial forest or commercial farm uses, he saw no merit in the staff argument that commercial forest use applied only to large users such as Weyerhaeuser or Seneca. He did not agree with the argument that because a site had forest tax deferral it was limited to forest use. While the applicant had raised valid questions regarding the viability of commercial forest use, the applicant had not provided evidence into the record to support a claim of the site not being commercial. Therefore, F-1 was appropriate. F-2 was supported by the criteria of access by arterial roads. Mr. Dignam disagreed with the staff argument that because the site had forest tax deferral it was limited to forest use and did not see that as relevant to the Planning Commission’s decision. Under the commercial forest management criteria, he disagreed with both staff’s and applicant’s argument, but there was nothing else in the record that showed the 78 acres was not under commercial forest management. The only information in the record said that the 78 acres was under commercial forest management. Based upon the evidence in the record he would support the motion.

Mr. Shapiro stated he intended to support the motion.

Mr. Noble agreed with the reasons stated by both Mr. Sullivan and Mr. Dignam, and he would support the motion. The only concern for him was creation of a non-conforming use but staff had allayed those concerns.

Ms. Nichols said she would support the motion, as she saw no logical reason to do otherwise.

Mr. McCown would support the motion, and appreciated the effort of staff and the applicant to make the entire parcel congruent.

Mr. Siekiel-Zdzienicki would support the motion based on F-1 and F-2 criteria. Additionally, the applicant gave no reason for creating the property line they requested, thus creating a 78 acre parcel.

Ms. Arkin would support the motion. She thanked staff for their analysis of the application. She agreed with the points previously raised by Commissioners. She was caught by the request for split zoning that would leave 48 acres "hanging out there" which would set a precedent for small tracts of resource land which had not previously been allowed. She saw not reason to split the lot, opining the choice of where to place the dividing line was arbitrary. Since the land had historically and recently logged, and was currently in forest regeneration, it appeared it was productive forest land. She was troubled about the home since it would be a permitted non-conforming use.

Ms. Arkin called for a vote on the motion.

The motion passed unanimously, 8:0.

Mr. Sullivan encouraged staff to present the dialogue from the motion early in the written presentation to the BCC.

The Planning Commission took a five minute break at 6:15 p.m.

2. PA 09-5109—Map Amendment to Update the Delineation of the Time of Travel Zones (TOTZ) within the Springfield Utility Board's Willamette Wellfield on the Drinking Water Protection Plan Map.

Applicant(s): Springfield and SUB

Agent: Mark Metzger, Springfield Senior Planner

Ms. Schulz introduced Mark Metzger from the City of Springfield and Chuck Davis from the Springfield Utility Board (SUB).

Mr. Metzger offered the staff report which was included in the Staff Memo dated April 14 and 21, 2009, from Stephanie Schulz to the Lane County Planning Commission. He referred to several charts, copies of which were distributed to Planning Commissioners:

- Overview of the Proposed Action.
- Springfield Drinking Water Protection Area Map.

- Willamette Wellfield Protection Area—Former Time of Travel Zones (pre-2008 delineations).
- Willamette Wellfield Protection Area—Amended Time of Travel Zones (Feb 2008 delineations).

Mr. Metzger explained the City of Springfield used wells as the source of the city's drinking water. TOTZ zones are identified in the City's development code. Commercial and industrial developments are required to meet certain criteria regarding certain dangerous chemicals and substances that might pollute ground water. Precautions and restrictions were more stringent for developments closer to the wellfield, and become less stringent in the outer time of travel zones. TOTZ were developed by hydrologists who studied the groundwater. Improvements were made to the Willamette Wellfield in 2007/2008 which changed the hydrology of the wellfield and increased the distance from the well for the one year and five year time of travel zones. The outer boundary of the overlay zone does not change with this proposed amendment.

Mr. Metzger said the Lane County planning commission was reviewing the amendment to make a recommendation to the BCC whether to co-adopt the proposed map amendment to the Springfield Drinking Water Protection Plan by updating the delineation of the Willamette Wellfield in southwest Springfield. The proposal changed the TOTZ for certain properties as described in the Staff Memo. The proposed changes do not usually apply to residential users since they did not use large quantities of highly toxic materials and the proposed changes did not apply to agricultural uses, which by state law, were regulated by the Oregon Department of Agriculture. The Springfield Planning Commission had already taken action to approve the changes. The businesses affected by the changes were primarily within the city limits. Knife River was currently the only industrial user outside of the city limits that was affected by the proposal. The remainder of the land within the Urban Growth Boundary (UGB) was zoned for agricultural use by Lane County. Mr. Metzger said the proposed action was a map change that reflected reality underground regarding the hydrology. The change would affect a portion of the Knife River quarry. SUB had worked with Knife River regarding the impact of the change. There was no opposition offered at Springfield Planning Commission public hearings by Knife River or other entities. The city Planning Commission unanimously approved the proposal.

Mr. Siekiel-Zdzienicki asked if home businesses such as painting contractors, as an example of a business that stored 300 gallons of paint on property in a residential zone, was considered an issue. He asserted this was a practice of some contractors.

Mr. Metzger responded it would become an issue if the City was aware that was happening, but the City was assuming residents were residential dwellers. He added home occupations were allowed in some zones. The purpose of tonight's meeting was not to amend the policy but to amend the map to reflect the changes in hydrology.

Mr. Dignam could find nothing in the record that explained the impact of the proposed action and he could not support the plan unless staff were able to explain the real impact. Even with only one property, there was potential for Goal 9 Economic Development issues if the action precluded further industrial development on impacted properties.

Mr. Metzger asserted *Table 2—Willamette Wellfield TOTZ Amendments Affected Properties and Acreage* in the Staff Memo provided that information. He explained the overlay required that

businesses advise the City on how much hazardous material they had and develop plans for containment, management, and disposal when it became hazardous waste. This did not restrict establishment of any businesses, but it did restrict how they managed their hazardous materials. He reviewed applicable fire code requirements for hazardous materials.

Mr. Dignam stated he would not be able to vote for the proposal until saw a complete list of the restrictions included in Article 17 of the City Code.

Responding to Ms. Nichols, Mr. Davis said existing businesses in the county and outside the city limits were on their own wells, and risked contaminating their own property as well as the City's if they disposed of hazardous materials down their septic tanks. When contamination occurred, it was the responsibility of the Department of Environmental Quality (DEQ) to follow up with the business on managing their clean ups. When the Springfield Planning Commission was developing recommendations for drinking water protections in 1999, they discussed what should be done with existing businesses, but that had not yet been adopted. The City's practices were preventative and focused on education for new and expanding businesses.

Responding to a question from Mr. Noble, Mr. Davis said when the City of Springfield purchased the Willamette Water Company the City acquired the water rights for two wells the company was abandoning. The City moved those water rights to the Willamette Wellfield for justification for use of the well drilled as part of the water treatment plant. By using water from that well, it caused the water to move more quickly in the aquifer. He concurred residential use was not causing any change in the movement of the water. Changes in ground water were caused by the amount pumped by the City for the water treatment plant.

Mr. Noble asked if the sand filtration system extracted any industrial or toxic materials.

Mr. Davis said the purpose of the sand filtration system was to treat the water from the wells.

Noting the Springfield Planning Commission had been involved in the process but the City Council had not been involved in the process, Mr. Sullivan asked what assurances the Lane County Planning Commission would have that the City Council concurred with the Springfield Planning Commission with their recommendation?

Mr. Davis explained there was one process with SUB and one with the Rainbow Water District Board, which included public hearings. The recommendations from those bodies were forwarded to the Springfield Planning Commission.

Mr. Metzger said Springfield ordinances and code gave the authority to make a decision of this type with the Planning Commission. The next higher authority would occur if the decision was appealed. He added there were enforcement provisions in the city code but the City relied heavily on education and the permit process with new development. DEQ became involved in the event of spills.

Mr. Metzger said Knife River wanted to do some new things such as an asphalt batch plant and a cement plant. They engaged SUB and the City early on in the planning process.

Noting the time, Ms. Arkin suspended the work session at 7:00 p.m.

PUBLIC HEARING

PRESENT: Lisa Arkin, Chair; Robert Noble, Vice Chair; Steve Dignam, Tony McCown, Nancy Nichols, Howard Shapiro, Jozef Siekiel-Zdzienicki, John Sullivan, Lane County Planning Commissioners; Jerry Kendall, Stephanie Schulz, Lane County Land Management Division; Chuck Davis, Springfield Utility Board; Mark Metzger, City of Springfield.

ABSENT: Todd Johnston, Lane County Planning Commissioner.

Ms. Arkin opened the public hearing at 7:00 p.m.

1. **PA 09-5109—Map Amendment to Update the Delineation of the Time of Travel Zones (TOTZ) within the Springfield Utility Board's Willamette Wellfield on the Drinking Water Protection Plan Map.**

Applicant(s): Springfield and SUB

Agent: Mark Metzger, Springfield Senior Planner

Ms. Schulz provided the staff report. The City of Springfield and Springfield Utility board (SUB) were requesting consideration of a map amendment to the Springfield Drinking Water Protection Plan which presented the City strategy for providing healthy and safe water to the residents and businesses of Springfield. The proposed map amendment was an update to the plan that revised the delineation of the Willamette Wellfield's "time of travel zones" (TOTZ). The City of Springfield and Lane County had co-adopted the *Springfield Drinking Water Protection Plan (Plan)* in 2004 during the Eugene Springfield Metropolitan Area General Plan (Metro Plan) Periodic Review Process. The Springfield Drinking Water Protection Plan was a refinement plan to the Metro Plan and as such Metro Plan procedures applied. Because the TOTZ of the Wellfield extended beyond the urban growth boundary (UGB), the proposal fell under the two jurisdiction process which included both the City of Springfield and Lane County. She reviewed the notice process. On April 8, 2009, a legal ad was published in the Register Guard notifying interested parties of the upcoming hearing scheduled for this evening. However, notice was not mailed to affected property owners. Therefore, Ms. Schulz recommended that the Planning Commission continue the public hearing to the May 19, 2009 Planning Commission meeting. This would allow time for mailing notice to affected property owners and interested parties, and sending referral to other agencies within the required timeline to provide adequate opportunity for public comment on the proposal.

Mr. Dignam, seconded by Mr. McCown, moved to continue the public hearing to May 19, 2009. The motion passed unanimously, 8:0.

Ms. Arkin reconvened the Planning Commission work session.

Responding to a question from Ms. Arkin, Mr. Metzger said by agreement with Lane County the City of Springfield exercised some planning control and regulation outside of the city limits but

within the UGB. Map amendments and policy changes were first adopted by the City for employment inside the city limits. When applying those same rules outside the city limits in the UGB, the issues were forwarded to the Lane County Planning Commission. Although the Lane County Planning Commission process was different than the City of Springfield's, staff was currently fully able to implement protection measures based on the new map inside the city limits. The permission of the Lane County Planning Commission and BCC was needed to apply those measures outside the city limits.

Ms. Arkin said home businesses were an issue that deserved consideration. She noted pesticide application businesses were allowed in residential areas, which could result in a substantial quantity of water soluble hazardous materials in the one and two year zones. This was an excellent opportunity to consider map amendments, to reassess who may be falling into the new boundary and what kinds of regulatory or educational actions the City of Springfield and SUB could take. She was distressed at the disconnect of the potential of those hazardous materials being put into the drinking water system.

Mr. Davis said those issues had not been ignored. The risk had been assessed when the slow sand filtration treatment process was selected. If a chemical spill got to the plant, SUB needed to be able to respond to that, and did so in several ways which he reviewed. Since there was currently no Lane County process to address the risks, the City was addressing them through education with the Lane County Pollution Prevention Coalition which included the DEQ and Lane County agencies, as well as the cities, the schools, and the watershed councils. The insurance companies worked closely with SUB since it was in everyone's best interests to not spill or leak chemicals which could cause damage to others.

Mr. Siekiel-Zdzienicki noted landscapers were well regulated but homeowners were not.

Ms. Arkin reviewed the Commission's calendar.

The meeting adjourned at 7:30 p.m.

(Recorded by Linda Henry)