

LANE COUNTY PLANNING COMMISSION

STAFF REPORT

HEARING DATE: February 17, 2009

FILE No. 06-5888

REPORT DATE: February 10, 2009

I. APPLICATION DESCRIPTION

A. Owner/Applicant:

Ravin Ventures, LLC
Ramon Fisher, President
Ed Fisher, interest holder
P.O. Box 751
Oakridge, Or. 97463

Agent:

Kim O'Dea
Law Office of Bill Kloos, PC
375 W. 4th St., Suite 204
Eugene, Or. 97401

B. Proposal

Proposed Minor Amendment to the Rural Comprehensive Plan, of a 78 acre portion of a 126 acre parcel, from an Agricultural Land Designation to Forest Land and Rezone from E-40/RCP Exclusive Farm Use Zone to F-2/RCP Impacted Forest Lands Zone.

II. RECOMMENDATION

Based on information in the submittal, and this report, staff recommends:

1. Approval of the Plan Amendment from Agricultural Land to Forest Land.
2. Denial of the zone change from E-40/Exclusive Farm Use to F-2/Impacted Forest Lands. The appropriate zone designation appears to be F-1/Nonimpacted Forest Lands.

III. SITE AND PLANNING PROFILE

A. Background

This application was originally submitted in May of 2006, and scheduled for a hearing before the Planning Commission on April 17, 2007. The original proposal included all 126 acres of the parcel (tax lot 700, Map 16-01-08). The staff report recommended denial of the rezone portion of the request, based on an interpretation of a Goal 4 RCP policy¹ by the Board of Commissioners, which the Applicant had failed to utilize. The application was withdrawn before the hearing.

In September of 2008, a revised application was submitted. Of note was the revision of the proposal to include only the 78 easternmost acres of the subject parcel. The remaining 48

¹ See BCC Ordinance No. PA 1236, Symbiotics, included as Applicant's Exhibit PP.

BCC - Attad. # 3-54699.

westernmost acres is not part of this proposal, and will retain its Plan/zone designation of Agricultural Land/E-40.

The 78 acres of land which is the subject of the revised proposal will be referred to as the “subject property” throughout this report. It is located on the west side of Marcola Rd., Springfield. Please refer to the Applicant’s submittal for further details. That submittal includes a location map, zone map, aerial photo, addressing map, etc.

A dwelling is found on the eastern end of the parcel, near Marcola Road.

B. Zoning

Located on Plots 499 & 511. Zoned E-40/RCP Exclusive Farm Use Zone.

C. Site Characteristics

The site fronts Marcola Road, and rises to the west. The subject property is on the east side of the Coburg Hills and can be described as a foothill thereof. Again, refer to the Applicant’s submittal and exhibits for further background data.

D. Surrounding Area

Refer to the color zoning map attached to this report (Attachment #^). The subject parcel is bordered by resource zoned land, except to the east, across Marcola Road, and to the extreme NE, where RR-5 zoned land is found. E-40 zoned land is found adjacent on the south. This differs from the Applicant’s assertion (p.4) that “[t]he subject property is surrounded by Forest designation and exception area”. Also, see page 10 of the submittal; “The subject property is an E-40 parcel [sic] in a sea of Forest and RR Exception area land.”

E. Services

Fire: Mohawk RFPD
Police: County, State
Water & Sewer: On site septic and well
School: Marcola School District #79J
Power: Emerald PUD
Access: Marcola Rd. (County)

F. Referral Comments Received:

No comments on the revised proposal have been received as of the writing of this report.

IV. APPROVAL CRITERIA & ANALYSES

A. Character of the Request

The proposal is a Minor Amendment pursuant to Lane Code 16.400(6)(h) and involves a rezoning subject to LC 16.252.

Rural Comprehensive Plan policies affecting the proposal, as well as Plan amendment and rezoning criteria, are recited and discussed in the applicant's statements attached to this Staff Report, and so will not be repeated here, except for the RCP Policy discussion below.

No exception to any Goal, resource or otherwise, is necessary. This is simply a proposed change from one resource designation to another.

B. Evaluation

Describing a history of commercial forest use, staff agrees with the Applicant that the subject property should be amended to a Forest Lands designation. However, staff's analysis concludes that the proper zoning designation is F-1 (Nonimpacted Forest Lands), not F-2 (Impacted Forest Lands), as maintained by the Applicant.

This revised application was submitted in September of 2008. In August of 2006, the Lane County Board of Commissioners adopted Ordinance No. 1236 (aka the *Symbiotics* case, Applicant's Exhibit PP). That ordinance states the Board's interpretation and position concerning RCP Goal 4 (Forest), policy 15. Policy 15 describes the characteristics which distinguish F-1 zoned land from F-2 zoned land. This ordinance is critical to an analysis of this application, as it supercedes the previous interpretations of policy 15. Ordinance 1236 is binding upon all rezone requests involving policy 15. The Planning Commissioners are especially advised to read pages 7-16 of the Findings.

Two subsequent rezones from F-1 to F-2 employed Ordinance 1236. The first is PA 06-6054, the *Dockum* case (June 2007). The second is PA 06-6170, the *Lining* case (affirmed by LUBA, April 2008). Rezones such as these, without the need for a change in Plan designation, are initially reviewed by the Hearings Official. *Dockum* was denied, and *Lining* approved. Both decisions were appealed to the Board, which elected not to hear either appeal.

In the course of deciding whether or not to hear an appeal, the Board must decide whether to simply affirm the Hearings Official's decision, or, explicitly adopt any and all interpretations made by the Hearings Official (LC 14.600(2)(d))². While the Board chose to simply affirm both decisions, the interpretations and rulings made in those cases can be instructive in reviewing other F-1 to F-2 proposals. The decision for both cases is attached to this report.

Together, Ordinance 1236, PA 06-6054, and PA 06-6170, each with distinctive fact patterns, give insight as to how to evaluate RCP Goal 4, policy 15.

Original vs. Revised submittal

As already stated, the main change between the original and the revised application is the change to include only the easternmost 78 acres of tax lot 700 in the proposal.

The revised submittal includes a five page letter dated September 10, 2008 and titled "Applicant's Response to Staff Report", referring to the original staff report produced on April 10, 2007. This missive criticizes a referral response received from County Transportation Planning on April 3, 2007, requesting that road issues be examined, because the 126 acre parcel contained six legal lots and could potentially add (five) dwellings subsequent to the proposal being approved. Planning

² (d) If the decision of the Board is to not have a hearing, the Board order shall specify whether or not the Board expressly agrees with or is silent regarding any interpretations of the comprehensive plan policies or implementing ordinances made by the Hearings Official in the decision being appealed. The Board order shall affirm the Hearings Official decision.

staff is also cited for "...putting the cart before the horse..." in concern over the Applicant's original assertions that no further development opportunities would result from an approval of the proposal. Those assertions, contained in the original submittal, are as follows:

- p. 3: "Because the parcel already contains a dwelling, it is considered developed and not likely eligible for further development."
- p. 3: "Furthermore, the proposal neither results in any development approvals nor increases development opportunities."
- p. 22: "The subject plan change and zone change do not increase development opportunities on the subject site. 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."
- p. 27: "There is no additional residential development allowed by this application."

In the report of April 10, 2007, Planning staff requested that the Applicant "...eliminate staff's confusion as to the accuracy of the statements quoted above, and, if unable to do so, strike them from the record."

The Applicant evidently noted the request, as the wording in the current revision was changed slightly. The changes are noted below, using *italics*.

- p. 3: "Because the parcel already contains a dwelling, it is considered developed and not likely eligible for further *outright* development."
- p. 3: "Furthermore, the proposal neither results in any development approvals nor increases development opportunities." (*This statement was eliminated entirely in the revision*)
- p. 21: "The subject plan change and zone change do not increase *outright* development opportunities on the subject site. As discussed above, the subject property is already developed with a residence. Under F-2 zoning, the applicant is not entitled to any *outright* dwellings."
- p. 26: "There is no additional *outright* residential development allowed by this application."

By the above revisions, the Applicant downplays the potential for additional development (dwellings), using technically correct language. While no new dwellings would be allowed on the subject property *outright*, the potential still exists to place multiple template dwellings per LC 16.211(5). It is difficult to understand why the Applicant is currently critical of staff for making comments based on the Applicant's own original misleading statements, especially when those statements have been now been revised and staff and the Planning Commission have been instructed to disregard the original text submittal.

In any event, the present focus is on RCP Goal 4, policy 15. This policy lists the characteristics of F-1 and F-2 land. It is customary to designate land to the zone which most matches the characteristics listed in this policy.

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

- a. A conclusion that characteristics of the land correspond more closely to the characteristics of the proposed zoning than the characteristics of the other forest zone. The

zoning characteristics referred to are specified below in subsections b and c. This conclusion shall be supported by a statement of reasons explaining why the facts support the conclusion.

The Applicant is correct in asserting that *Symbiotics* instructs us to equate the land being proposed with “ownership” as it appears in policy 15. The Applicant has chosen to scale down the proposal from the original 126 acres, to 78 acres. No explanation has been provided, other than to state (p.1) that after reviewing *Symbiotics*, the “...applicant acknowledged that a different scope would be required”. However, the findings in the *Symbiotics* case also acknowledge the need “...to exercise discretion on a case-by-case basis”.

Symbiotics was groundbreaking in that prior to that decision, the county required that land proposed for rezoning be a legal lot. In *Symbiotics*, a 37.5 acre portion of a much larger 970.7 acre parcel (legal lot) was proposed for rezoning. However, in that case, the rezoning was requested under a “conformity determination” (RCP Goal 2, policy 27.a.vii) to cure an omission wherein the subject property had no assigned zone. In addition, the other sections of the parcel were distinct from the subject property, containing a reservoir or different facilities. No such distinction has been offered in the present case, to explain why the dividing line between the 78 and 48 acre portions was drawn where it was.

In the *Dockum* case, the Applicant proposed to rezone only a 38 acre portion of a 118 acre parcel. The proposal had been down scaled after an initial attempt to rezone the entire parcel failed meet policy 15, and was denied. While the Applicant appealed the (2nd) denial based on *Symbiotics*, the hearings Official noted that no explanation was offered as to why an amount less than the entire parcel was proposed for rezoning. Selection of less than the entire parcel also created conflict with some of the language found in policy 15, such as in 15.b.2. A similar conflict in the present proposal is detailed under that standard below. Barring no explanation by the Applicant as to why the portion of the parcel was selected (failure to carry the burden of proof), the Hearings Official denied the request.

In the *Lininger* case, the subject parcel was split zoned, with an approximate one acre panhandle zoned RR (Rural Residential). However, a finding was made that a Goal 4 policy (forestland) did not pertain to residential land, and the rezoning of the remainder of the parcel was accepted. This case withstood an appeal to LUBA, and was affirmed in its entirety (LUBA No. 2007-189).

Lacking an explanation as to why the present proposal was downscaled to a portion of the property less than the entire parcel, the Planning Commission could recommend denial of the rezone portion of the request using similar logic as in the *Dockum* case. This would result in an F-1 designation for the 78 acres (assuming the Commission agrees that the Plan change portion is acceptable).

Staff proceeds with comments below on the F-1.F-2 “characteristics”, using 78 acres as the subject property. Analysis under an entire 126 acre parcel scenario is not provided, as the proposal does not contain that scenario information to critique.

(F-1)

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

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

The 78 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.**

Ordinance 1236 addresses this policy on page 10 of its Findings:

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

The Applicant addresses this policy on page 32 of the submittal. The Applicant asserts that the finding in the *Symbiotics* case should apply to this case also, that is, that this standard focuses on the subject (38 acre) property only. The *Dockum* case is instructive here (see p.7 of that decision). The Hearings Official stated as follows:

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

“A statement crucial to the application of Policy 15.b.(2) is found on page 8 of the Findings of Fact and Conclusions of Law of Ordinance 1236. This statement is as follows (*emphasis mine*):

‘We find that the term ‘ownerships contained in the criteria of RCP Goal 4 Policy 15 should be considered as including only the land being proposed for rezoning (*unless other qualifiers in a particular characteristic compels a different result*) because of the introductory language in Policy 15 and that the finding constitutes a reasonable interpretation of the term ‘ownerships’ as contained in that policy.’

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

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

A similar fact pattern as in *Dockum* applies to the present case. The remainder of tax lot 700 is contiguous with and in the same ownership as the subject property. The two portions of tax lot 700

are essentially homogenous. No qualifiers have been offered which distinguish the subject property from the remainder of the parent 116 acre parcel.

As such, this standard favors an F-1 designation.

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

Refer to page 33 of the Applicant's submittal for their response to this standard. In addressing this standard, the Applicant takes an approach that up to this point has not been attempted in a forest rezone application. Refer to Table F on page 34 of the submittal. The basic logic of their argument is to draw a distinction between big commercial timber companies with holdings all over the county with individual landowners who do not have large holdings elsewhere in the county. For example, Rosboro Lumber owns 65 acres of land contiguous to the subject property, and 292 other holdings (throughout the county), totaling over 2,000 acres. The logic is that because Rosboro has large holdings in forest production, it is to be considered "commercial forest" per policy 15.b.(3). Conversely, since the other properties contiguous with the subject property do not have extensive holdings throughout the county in forest production, they are not "commercial forest" per this policy. Since, by this logic, Rosboro Lumber is the only large commercial forest holder contiguous to the subject property, the subject property is not *predominantly* contiguous to other lands utilized for commercial forest uses, and an F-2 designation is justified. This logic is flawed. It implies that a very large parcel contiguous to the subject property, conscientiously managed for commercial timber use, but having no holdings elsewhere in the county, would not be considered a commercial forest endeavor. By extension, it also implies that small woodlot owners, which comprise a valuable segment of the Lane County forest holdings and forest economy, are not engaged in commercial forest use.

It is noted that 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.

In *Symbiotics*, the subject property was sandwiched between a reservoir and Rural Residential lands. The map of such sufficed to document that no commercial forest uses took place contiguous to the subject property.

In the *Lininger* case, the Applicant documented that statistically, the subject property was abutted by Rural Residential land, or forest zoned land which was not, for reasons explained in the findings (see p. 12 of that decision) engaged in commercial forest use. The few properties that were so engaged were not a majority (predominance), either by parcel count or percent of perimeter of subject property they abutted.

In the *Dockum* case, (p. 8), the Hearings Official relied on a tried and true method... noting if the property in question was receiving some form of forest tax deferral. In the present case, ALL of the properties listed in Applicant's Table F which are contiguous to the subject property are receiving forest tax deferral on ALL of the acreage (information from Dave Evans, Lane County Assessment & Taxation Property Appraiser, see file record email of Feb. 9, 2009). This indicates an F-1 zone characteristic for the subject property.

It is noted that Applicant's Table F is flawed in that Rosboro Lumber sold tax lot 200 to High Mountain Investment on May 2, 2007. Likewise, J. Paschelke formed an LLC and sold his property

to it on December 30, 2008. No documentation of the holdings of High Mountain Investment or Paschelke's LLC (Ranch & 120 LLC) is on record.

(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 flawed logic as in the 5.b.(3) standard above in determining that the subject property is not involved in commercial forest use.

According to tax records (information from Dave Evans, Lane County Assessment & Taxation Property Appraiser, see file record email of Feb. 10, 2009), 33.0 acres of tax lot 700 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.

The subject property appears to be managed for commercial forest use, and, under this standard, should have an F-1 designation.

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

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

These F-2 characteristics are mostly the converse of the F-1 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 ownership of Ravin Ventures LLC consists of 126 acres. No qualifying circumstances differentiating the subject property from the remainder of tax lot 700 is on record. See also the similar *Dockum* decision at page 9. This standard favors an F-1 zone designation for the property.

(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.

See page 38-39 for the Applicant's response.

In regards to this standard, the findings for *Symbiotics* notes (p.10 of 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.

Using GIS, staff measured the subject property, and found it to have a perimeter of 8,120'. Of that, 4,281' abut tracts which are over 80 acres in size (such tracts being tax lots 200, 400 abutting on the north, owned by High Mt. Inv., and a minimum of 106 acres. Abutting on the south, tax lot 500, 87 acres owned by Ranch & 120 LLC. Neither of these tracts contains a dwelling). The percent of the perimeter abutted by these tracts equals 52.7% of the perimeter. This methodology is similar to that used in the *Dockum* case (p.9). This calculation favors an F-1 designation.

The ordinance 1236 does not shed 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.

(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, the subject property exhibits two of the four characteristics of property that should be zoned non-impacted forest land (F-1).

Policy 15 requires a conclusion that the characteristics of the land correspond more closely to the characteristics of the proposed zoning than the characteristics of the other forest zone. In the present case, the subject property represents three of the five characteristics of Non-Impacted Forest Land and half of the characteristics that would denote Impacted Forest Land. This would favor an F-1 designation.

V. CONCLUSION

A. Summary and Recommendation

While the Plan amendment portion of the proposal to Forest Land appears warranted, overall the proposed rezoning is not consistent with the Lane Code and the Rural Comprehensive Plan. An F-1, Nonimpacted Forest Lands designation appears to be more justified than an F-2 designation.

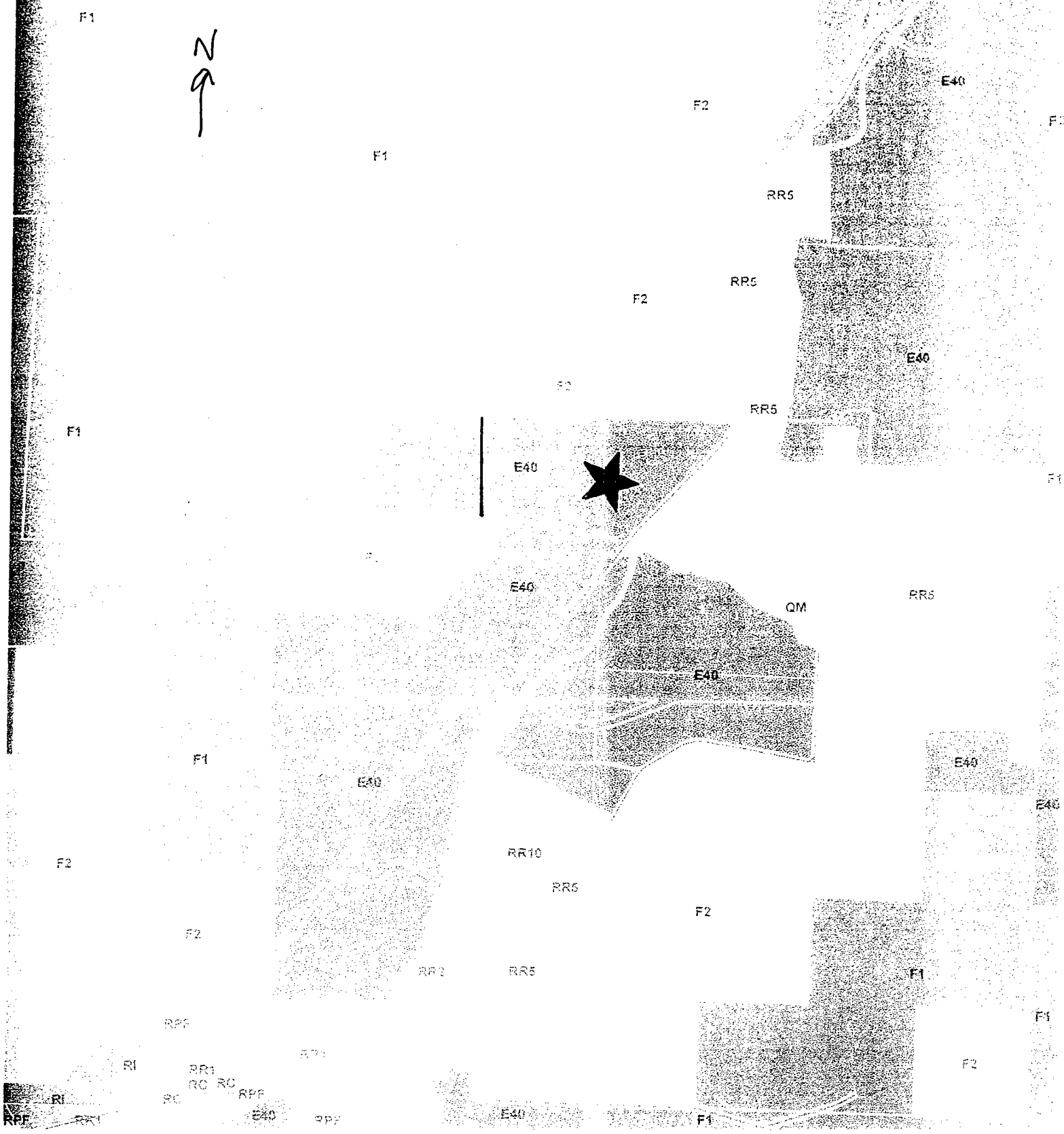
B. Attachments provided to the Planning Commission:

1. Applicants Submittal (previously provided) → note : *forward after attach 4*
2. Zone map, color (GIS generated) *-JK*
3. PA 06-6170 Lininger decision
4. PA 06-6054 Dockum decision *10-26-09*

C. Materials to be Part of the Record

1. Staff Report and attachments.
2. Applicant's statement with all exhibits.
3. File PA 06-5888
4. Property file for Map 16-01-08, tax lot 700
5. Lane Code Chapter 14 and sections 16.210, 16.211, 16.212, 16.252 and 16.400.

ZONE MAP



LANE COUNTY HEARINGS OFFICIAL

REQUEST FOR THE REZONING OF A PORTION OF PARCEL #1 OF
PARTITION 2006-P2019 FROM NONIMPACTED FOREST LAND (F-1)
TO IMPACTED FOREST LAND (F-2)

Application Summary

Tom Lininger/Merle Weiner, 930 E. 37th, Eugene, Or. 97405. Tax lot 1602 (portion of), Assessor's Map 18-04-33. Request to change the zoning of 80 acres of land from Non-Impacted Forest Lands (F-1/RCP) to Impacted Forest Lands (F-2/RCP).

Parties of Record

See Attachment "A".

Application History

Hearing Date: January 18, 2007
(Record Held Open Until March 15, 2007)

Decision Date: May 30, 2007 (Revised June 18, 2007; Revised July 16, 2007)

Appeal Deadline

An appeal must be filed within 10 days of the issuance of a final order on this rezoning request, using the form provided by the Lane County Land Management Division. The appeal will be considered by the Lane County Board of Commissioners.

Statement of Criteria

LC 16.210
LC 16.211
LC 16.252
Rural Comprehensive Plan (RCP)

Procedural Issues

Mr. Neal Miller, in a January 22, 2007 electronic message to myself, requested that I recuse myself because of bias. Examples of bias given were the time limitations placed upon speakers testifying in opposition during the January 18, 2007 hearing when none were placed on the applicant, modification of decisions after behind-the-scenes discussion with planning staff, and allegedly previous pro-development zone change decisions. First, Mr. Miller is correct in his allegation that the applicant is treated differently at the public hearing. Because the applicant carries the burden of proof, no time constraints are usually placed their testimony although this is not offered *carte*

blanche and exceptions are made in cases of excessively redundant and irrelevant testimony. Most applicants wish to explain why they have submitted their application and the applicant in this case was no different. However, subsequent speakers were encouraged to direct their testimony towards the approval criteria and to avoid allegations going to the motives or character of the applicant. At the January 22 hearing a previous speaker was essentially warned to wind up his testimony as it was becoming redundant and not directed to the approval criteria. This speaker had already spoken for over five minutes. Mr. Miller took umbrage in this action. Mr. Miller mistakes bias for crowd control. The audience was informed that they had the opportunity to request that the record be held open and, in fact, it was held open until March 15, 2007.

Second, I did pull back my May 9, 2005 decision in PA 04-5746 regarding a request for a modification to a riparian setback. The re-issuance, issued on May 12, 2005, was based upon the recognition by myself that the section of the May 9 decision regarding compliance with Lane Code 16.253(3)(b) was erroneous. There was no private meeting regarding the determination to rework this part of the decision and the modification did not change the decision to affirm the Planning Director's decision as I had already found that the application complied with Lane Code 16.253(3)(c). A determination of compliance with (3)(b) was not necessary.

Finally, if Mr. Miller had taken the time to do a little research he would have discovered that there is a published record of all my decisions that is available on request. Had he done his homework Mr. Miller would have discovered that I have heard five requests regarding the rezoning of Nonimpacted Forest Land to Impacted Forest Land. I have approved three applications, including this one, and have denied two.

In conclusion, I deny any bias concerning this or other rezoning hearing that I have participated in. I strive to apply the approval criteria both impartially and consistently and believe that I have done so in this case. Had I not I am sure this decision would have taken far fewer pages to write.

Findings of Fact

1. The property subject to this application, hereinafter referred to as the "subject property," can be identified as tax lot 1602, assessor's map 18-04-33. The subject property lies southwest of Eugene in a neighborhood known as Peaceful Valley and is owned by Merle Weiner, one of the applicants. Prior to Ms. Weiner's ownership, the subject property was part of a 242-acre parcel owned by Roseboro Timber Company. In 2006, after being clear-cut in part, the parcel was partitioned¹ into three parcels: the subject property, Parcel 1, which is 80.6 acres in size; Parcel 2, which is 81.2 acres in size; and Parcel 3, which is 80 acres in size. The ownership of the three parcels is held by different family members and therefore they do not constitute a tract. All but 0.6 acres of Parcel 1 is zoned F-1.

¹ #2006-P2019.

The 0.6 acres is represented by tax lot 528, which is zoned RR-10 and provides access to the subject property from Laughlin Road.

2. The subject property is not developed by a residence or nonforest use. Preliminary legal lot status for tax lot 1600, assessor's map 18-04-33 and tax lot 401, assessor's map 19-04-04 was verified through PA 05-5498 and PA 04-6236 by the Lane County Planning Director on April 26, 2005. Notice of this decision was mailed to property owners that were entitled to notice and no appeals were filed during the appeal period that ended May 10, 2005.
3. An examination of the assessor's maps of the area surrounding the subject property indicates that there are between 50 and 60 parcels roughly within 2,000 feet of the subject property. Of these properties, 18 parcels share a common boundary with the subject property. Of these 18 properties, eleven are occupied with residences. These eleven parcels constitute 55 percent of the subject property's perimeter. The following is a description of the 18 contiguous parcels, arranged according to orientation to the subject property:

Western boundary (37.7% of total) – all tracts smaller than 80 acres

Tax lot 400: The total size of the tract is 40.4 acres, and it is occupied with a residence. The frontage along the subject property is 108.7 feet (1.3% of the subject property's total perimeter) and it is zoned F-2.

Tax lot 520: The total size of the tract is 8.94 acres, and it is occupied with a residence. The frontage along the subject property is 115.88 feet (1.3% of the subject property's total perimeter) and it is zoned RR-10.

Tax lots 524, 525 & 527 (commonly owned): The total size of the tract is slightly over 10 acres, and tax lot 525 is occupied with a residence that is less than 100 feet from the subject property. The frontage along the subject property is 688.26 feet (8% of the subject property's total perimeter) and all of these tax lots are zoned RR-10.

Tax lot 521: The total size of the tract is 4.95 acres and it is occupied with a residence. The frontage along the subject property is 277.26 feet (3.2% of the Subject property's total perimeter) and it is zoned RR-10.

Tax lot 526: The total size of the tract is 5 acres, and it is occupied with a residence that is about 150 feet and downhill from the subject property. The frontage along the subject property is 591.17 feet (6.8% of the subject property's total perimeter) and it is zoned RR-10.

Tax lots 516 & 1601 (commonly owned): The total size of the tract is 8.74 acres and tax lot 516 is occupied with a residence. The frontage along the subject

property is 1150.83 feet (13.3% of the subject property's total perimeter). Tax lot 516 is zoned RR-10 and tax lot 1601 is zoned F-1. Tax lot 1601 is a 400-foot by 200-foot rectangular-shaped parcel that is 1.84 acres in size. It is appurtenant to the 6.9-acre parcel of RR-10 zoned land on which Marie Matsen and Karla Rice own and reside. Ms. Matsen and Ms. Rice acquired the 1.84-acre piece in exchange for granting driveway access through their property to a prior owner of the subject property. Tax lot 1601 acquired its F-1 zoning due to its origins in tax lot 1600, not due to any commercial forestry activities conducted by Ms. Matsen and Ms. Rice. They acquired tax lot 1601 for the purpose of insulating their residence from the subject property. Ms. Rice and Ms. Matsen "use tax lot 1601 solely as a buffer, not for commercial forestry" and do not intend to harvest any trees on tax lot 1601 for commercial purposes.²

Tax lot 528: This 0.6-acre driveway is owned by Applicant Merle Weiner and is zoned RR-10. It does not have a residence. The frontage along the subject property is 60.6 feet (0.7% of the subject property's total perimeter).

Tax lots 503 & 517 (commonly owned): The total size of the tract is 7.31 acres and tax lot 517 is occupied with a residence. The frontage along the subject property is 269.52 feet (3.1% of the subject property's total perimeter) and the two tax lots are zoned RR-10.

Northern boundary (17.4 % of total) – all tracts smaller than 80 acres

Tax lot 510: The total size of the tract is 5.06 acres, it is occupied with a residence, and is zoned RR-10. The frontage along the subject property is 218.19 feet (2.5% of the subject property's total perimeter).

Tax lot 505: The total size of the tract is 5.12 acres, it occupied with a residence, and it is zoned RR-10. The frontage along the subject property is 231.89 feet (2.7% of the subject property's total perimeter).

Tax lot 504: The total size of the tract is 13.91 acres, it is occupied with a residence, and it is zoned F-2. The frontage along the subject property is 860.25 feet (9.9% of the subject property's total perimeter). The owners of tax lot 504 are Larry and Joan Banfield. Ms. Banfield's affidavit (Appendix "U" to the applicants rezoning application) explains the noncommercial use of this parcel. Ms. Banfield and her husband primarily use the property "for residential purposes."³ Throughout the 30 years in which they have owned tax lot 504, Mr. and Ms. Banfield "have never sold any trees" nor have they held themselves out to the public as a forestry business. They have never incorporated nor filed business tax returns for a forestry operation and they have never tried to write off the

² See September 23, 2005 affidavit of Karla Rice (Appendix "A" to applicants' submission.)

³ See January 29, 2007 affidavit of Joan Banfield (Appendix "U" to applicants' submission.)

purchase of forestry-related equipment as a business expense on their tax returns. According to Ms. Banfield, the function of the trees on tax lot 504 is to provide a buffer between the Banfields' residence and the Subject Property to the south. Tax lot 504 is not in forest tax deferral.

Tax lot 104: The total size of the tract is 28.5 acres, it is occupied with a residence and it is zoned F-2. The frontage along the subject property is 200 feet (2.3% of the subject property's total perimeter).

Southern boundary (14% of total) – one tract exactly 80 acres in size

Newly partitioned Parcel 3: Parcel 3 is 80 acres in size, does not have a residence and is zoned F-2 and has been designated as a State-certified habitat conservation zone where commercial forestry is not allowed. The frontage along the subject property is 1210.12 feet (14% of the subject property's total perimeter).

Eastern boundary (30.9% of total) – one tract exceeding 80 acres in size

Newly partitioned Parcel 2: Parcel 2 is 81.2 acres in size, is not occupied with a residence, and is zoned F-1. The frontage along the subject property is 2672.79 feet (30.9% of the subject property's total perimeter).

4. The subject property receives police protection from the Lane County Sheriff and Oregon State Police. Electricity is available from the Lane Electric Coop and telephone service is provided by Qwest. The subject property is located within the boundary of the Eugene School District #4J. An on-site well and septic tank are proposed. Solid waste collection is provided to the area by Countryside Disposal and Ecosystems Transfer and Recycling.

Access to the subject property is via tax lot 528 to Laughlin Road, functionally classified as a rural local road by the Lane County Transportation System Plan (TSP).⁴ Lane Code 15.010(18(e) states that local roads are "intended solely for the purpose of providing access to adjacent properties." An examination of the Lane County Official Zoning Map (Plot #299) indicates that 42 parcels have frontage on Laughlin Road. Three of these 42 parcels are zoned F-2 and the remainder are zoned RR-10. Laughlin Road is 1.26 miles in length and appears to serve about 40 residences.

The subject property receives fire protection from Lane County Fire District #1. The District's Prevention Coordinator inspected the subject property in 2004 and found that the grade of the driveway was within the specifications of Lane Code

⁴ I have taken official notice of Appendix B: County Roads Inventory of the Lane County Transportation System Plan, adopted via Ordinance 1202 on May 5, 2004.

16.211(8)(e)(iv) (grade). The driveway also was found to meet Code standards for width and turn-around requirements.⁵

5. Assessor's Map 18-04-33 is listed in the Lane Manual 13.010(2)(b)(i) as being water quantity limited for "built upon or committed" lands subject to R-1 zoning. The area surrounding the subject property is underlain by the Fisher Formation, which is known for its restricted well yields. The poor permeability of the strata means that water must be removed slowly but also indicates that the aquifer is protected from overdraft. In areas with this type of geology, wells on parcels of five acres in size or larger have little chance of significantly impacting a well on adjacent property or depleting the aquifer.⁶
6. Ms. Wiener has recorded a declaration pledging that she will not pursue commercial forestry on the subject property⁷ and the Lane County Department of Assessment and Taxation has agreed to eliminate the subject property's forest tax exemption.⁸ Currently, the applicants are growing diverse species of trees, including hardwoods, on the subject property.
7. A large number of residents in the area surrounding the subject property have voiced their concerns regarding the aerial spraying of herbicides on the subject property during its tenure under ownership of Rosboro Lumber. (Appendix "G" to the Applicants' rezoning application.)
8. Parcel #3 abuts the southern border of the subject property and is owned by the applicant Tom Lininger. It is subject to a recorded declaration forbidding commercial forestry use, has been converted to a state-certified Wildlife Habitat Conservation and Management Zone, and has been assessed under this zone beginning in the 2006-2007 tax year. The applicants are planting new trees on Parcel #3 and are managing its existing vegetation in consultation with a wildlife biologist. They are also working to conserve a seasonal creek on this southern parcel.
9. Applicants are the largest-scale private users of mulch mats in Lane County and have extended this practice to all three of the parcels that comprise Partition 2006-P2019. Mulch mats are essentially swatches of mulch manually placed around tree seedlings to protect the seedling from competing grasses and weeds.
10. The subject property and Parcels #2 and #3 have experienced hunting-related incidents of trespass in the past. Signs have not been effective in diminishing this activity and there has been at least one incident of confrontation between the

⁵ See Appendix "n" of the applicants' submission.

⁶ See January 30, 2007 letter from Ralph Christensen to Merle Weiner. (Appendix "X" to applicants' submission.)

⁷ Appendix "D" to the Applicants' rezoning application.

⁸ See Appendices "E" and "F" of the applicants' application for rezoning.

applicants and a hunter. The presence of hunters represents a safety danger that may deter forest crews from commercial forest operations on Parcel #2 as well as non-commercial forest operations the subject property and Parcel #3 during hunting season.

11. About 80 percent of the soil on the subject property is Bellpine Silty Clay Loam, which has a Douglas Fir site index of 115 and a cubic foot/acre/year rating of 163. Lesser amounts of Witzel Very Cobbly Loam and Dixonville-Philomath-Hazelair Complex are also present.

Decision

THE LININGER/WEINER REQUEST (PA 06-6170) FOR THE REZONING OF A PORTION OF PARCEL NO. #1 OF PARTITION 2006-P2019 IS APPROVED.

Justification for the Decision (Conclusion)

Lane Code 16.252(2) This section of the Code establishes the basic requirements for the proposed rezoning. Section 16.252(2) requires that rezoning be consistent with the general purposes of Chapter 16, not be contrary to the public interest, and be consistent with the purposes of the proposed zoning classifications and the Lane County Rural Comprehensive Plan elements.

A. Consistency with the general purposes of Chapter 16 of the Lane Code.

Lane Code 16.003 sets out 14 purposes of Chapter 16. Arguably, the only relevant purpose statements found in Lane Code 16.003(4) are as follows:

- (1) *Insure that the development of property within the County is commensurate with the character and physical limitations of the land and, in general, to promote and protect the public health, safety, convenience and welfare.*

The applicants' proposal is premised upon the limitations placed on the subject property by its adjacency to dense residential development. The close proximity of neighbors has dictated that forest management on the subject property and Parcels #2 and Parcel #3 be conducted through labor-intensive techniques utilizing non-chemical methods. This strategy requires on-site management due to the substantial amount of work required to maintain a sustainable forestry strategy and to protect the public health and safety from such traditional industrial forestry management techniques as aerial herbicide spraying.

- (4) *Conserve farm and forest lands for the production of crops, livestock and timber products.*

The record is clear that traditional industrial methods of timber management on the remaining portions of the Partition 2006–P2019, such as the aerial spraying of herbicides, are impractical because of the proximity of residential use. The applicants have adopted a management strategy on Parcel #2 (as well as on the subject property and Parcel #3 for non-commercial forest management) that emphasizes non-chemical control of competing vegetation and have spent hundreds of hours implementing this strategy. This type of forest management involves labor-intensive techniques such as the use of mulch mats and manual removal of scotch broom and blackberries. The application of low-impact forestry methods also serves as a controlled laboratory experiment for the large-scale use of mulch mats.

The applicants have pointed to examples of trespass by hunters and others that could discourage work crews for safety reasons and that increase fire danger. It is expected that the presence of a dwelling would decrease the threat of trespass and increase access for emergency vehicles through the upgrade to existing logging roads.

- (7) *Provide for the orderly and efficient transition from rural to urban land use.*

There are a number of residences within 100 to 150 feet of the subject property. The Lane Code contemplates a buffer between F-1 land and residences of at least 500 feet. The applicants' rezoning proposal would create a buffer of F-2 land between the residential neighbors to the west and the applicants' F-1 land to the east. In this manner the applicants' proposal would allow for "an orderly and efficient transition" from residential land to forestland.

- (13) *Conserve open space and protect historic, cultural, natural and scenic resources.*

Applicant Lininger owns Parcel #3 that abuts the southern border of the subject property and have converted this parcel to a state-certified Wildlife Habitat Conservation and Management Zone. On this parcel, the applicants are planting new trees and managing existing vegetation in consultation with a wildlife biologist. The applicants are also working to conserve a seasonal creek on this southern parcel. The applicants' residence on the subject property will further their conservation efforts on the southern parcel.

Despite the posting of "no hunting" signs throughout the applicants' property, trespassers continue to hunt on the subject property and on the

adjacent Wildlife Habitat Conservation and Management Zone. Living on the subject property will place the applicants in the best position to protect the wildlife on the property from hunters.

The proposed rezoning is consistent with applicable purposes of Chapter 16 of the Lane Code.

B. Not be contrary to the public interest.

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

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

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

OAR 660-006-0000(1) states that the purpose of the Forest Lands Goal is to conserve forest lands and to carry out the legislative policy of ORS 215.700. ORS 215.700 states a policy to provide certain owners of less productive land an opportunity to build a dwelling on their land and to limit the future division of and the siting of dwellings upon the state's more productive resource land.

While the soil characteristics of the subject property appear to be homogeneous to those of Parcels #2 and #3, the purpose of the rezoning is to allow the more intensive commercial forestry management of Parcel #2 and for the non-commercial (wildlife habitat conservation) forestry management of Parcel #3. Oregon Administrative Rule 660-006-0025(1) provides that "[U]ses related to and in support of forest operations" and "[U]ses to conserve soil, air and water quality and to provide for fish and wildlife resources" are general types of uses allowed in a forest environment and, under subsections (2) and (3), are allowed outright on forest land.

For the above-described reasons, the proposed rezoning is consistent with Sections 16.210 and 16.211 of the Lane Code.

D. Conformity with the Rural Comprehensive Plan.

The subject property is designated "Forest Lands" by the Rural Comprehensive Plan. Goal #4 Policies #15(b) and (c) describe the characteristics of F-1 and F-2 properties, respectively. Policy #15(a) implies that the zoning should reflect a conclusion that the characteristics of the land correspond more closely to the characteristics of the proposed zoning (F-2) than the characteristics of the other forest zone (F-2).

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

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

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

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

This policy refers to the policies set forth in Policy 15.

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

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

The opponents argue that tax lot 528, the 0.6-acre driveway owned by Ms. Weiner, should be combined with the subject property in this rezoning because it was created through an illegal lot line adjustment and because the two parcels are under the same ownership.

First, I do not agree with the opponents that *Maxwell v. Lane County*⁹ is dispositive in this case. Central to the satisfaction of the rezoning approval standards in *Maxwell* was the counting of qualifying parcels within applicable exception areas. The Court of Appeals, reasoning that the term “parcel” had a legal definition under the Lane Code, then determined that the legality of the creation of those parcels was a relevant consideration in the rezoning process. In the present case, the rezoning criteria of RCP Goal 2, Policy 11 and its implementing Order 88-2-10-14 are not applicable. Second, I do not believe that the criteria of RCP Goal 4, Policy 15 require the consideration of legal lot status. Rather, the primary inquiry is into ownership patterns.

The tract sold to the applicants in 2005 had been previously reconfigured through a property line adjustment. This adjustment did not reduce the parent parcel below 80 acres and it (the adjustment) was subject to a final legal lot determination that was properly noticed per Lane Code 13.020. In addition, the applicants’ 2006 partition of that tract into its current three-parcel configuration was properly noticed. Both of these actions have achieved final land use decision status and there are no approval criteria that allow them to be collaterally attacked in this proceeding.

Second, RCP Goal 4, Policy 15 concerns lands currently designated as forest land by the RCP. It does not concern nor does it include criteria for the conversion of residentially zoned land to forest land. Tax lot 528 is zoned RR-10 and cannot be considered in the analysis of the proposed rezoning of Parcel 1 to F-2 Non-impacted Forest Land.

b. Non-impacted Forest Land Zone characteristics:

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

In the application of RCP Goal 4 Policy 15 in Ordinance No. PA 1236, the Board of County Commissioners interpreted the use the term “ownerships” to apply only to the property subject to the rezoning. In the present case, the subject property is the only parcel owned by Ms. Weiner that is zoned F-1. The applicants’ concede that the subject property is not developed with a residence or other non-forest use. The application is consistent with this characteristic of non-impacted forest lands.

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

⁹ *Maxwell v. Lane County*, 178 Or. App. 210 (2001), modified on other grounds, 179 O. App. 409 (2002).

The subject property is 80 acres in size. As discussed above, RCP Forest Lands Policy 15 only applies to property designated as forest lands by the comprehensive plan and therefore even though tax lot 528 is under the same ownership as the subject property it cannot be merged with the subject property for purposes of this criterion.

Whether because of sloppy draftsmanship or careless intent, Policy 15.b.(2) and 15.c.(2) create an incongruity in that a parcel exactly 80 acres in size meets both criterion. The applicants have offered what they term as a “split-zone alternative” where only 79 acres of the subject property would be subject to the rezoning request. For the reasons that I articulated in the *Dockum* case¹⁰ I do not favor this approach nor do I believe this strategy is necessary.

The application is consistent with this characteristic of non-impacted forest lands.

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

Some opponents have argued that the growing of a commercial tree species is, *per se*, a commercial forest use. This statement is inconsistent with Statewide Planning Goal 4 and OAR 660-006-0025(1), which specifically recognizes that forest lands include lands that are used to “conserve soil, water fish and wildlife resources, agricultural and recreational opportunities appropriate in a forest environment...” in addition to commercial forest operations. The presence or absence of a commercial tree species is but one component in determining the presence of a commercial forest use. The definition of “commercial” connotes an aspect of profit. Thus, an operation where a landowner plants and nurtures a tree species to create a forest environment but only occasionally sells trees as an incidental aspect of that operation (i.e. after thinning for safety purposes or after the removal of trees subject to windfall or disease) should not be considered as a commercial forest operation. There must be a primary intent to harvest and sell trees and that intent must be divined from the actions of the landowner as well as the characteristics of the forest land.

¹⁰ Lane County Hearings Official, *Application of Floyd & Connie Dockum* (PA 06-6054) March 29, 2007, pg. 8.

The subject property is bordered by 18 parcels, at least 15 of which are not utilized for commercial forest or commercial farm use. These 15 parcels represent over 60 percent of the perimeter of the subject property.

The subject property does not meet this characteristic of Non-Impacted Forest Lands.

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

The subject property is accessed by Laughlin Road, a public county road. An examination of the county's official zoning map for the area surrounding the subject property shows that about 42 parcels have frontage on Laughlin Road. All but three of these parcels are zoned for residential use (RR-10).

While the record contains no direct evidence regarding a specific "intent" regarding the use of Laughlin Road, Lane Code 15.010(18)(e) makes it clear that local roads are intended to provide access to adjacent properties. The primary intent is therefore is to provide access to whatever uses occur on adjacent properties. In the present case, the overwhelmingly primary use of Laughlin Road is to provide access to residentially-zoned properties.

The property does not meet this characteristic of Non-Impacted Forest Lands.

(5) Primarily under commercial forest management.

The subject property has been logged in the recent past and its soils are suitable for the commercial management of trees. However, in past years many adjacent and nearby property owners have raised serious concerns about the proposed application of industrial forest management practices (i.e. aerial herbicide spraying) to the subject property. I believe both the applicants and their neighbors would agree that traditional commercial forest management is impractical on the subject property.

The applicants have taken affirmative steps to manage the subject property for conservation and non-commercial forestry purposes. To this end, non-commercially-viable tree species have been planted and labor-intensive, herbicide-free methods of noxious vegetation control have been employed. In addition, the subject

property is subject to a deed restriction that prohibits commercial forestry and the Lane County Department of Assessment and Taxation has agreed to remove the property from its special assessment program for forest land.

The applicants have gone beyond the utterance of platitudes regarding their intent to remove the subject property from commercial forest management practices. I believe that these affirmative steps demonstrate that the subject property no longer can be considered as being primarily under commercial forest management.

In summary, the subject property only exhibits two of the five characteristics of property that characterize land that should properly be zoned non-impacted forest land.

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

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

The applicants' concede that the subject property is not developed with a residence or other non-forest use. The application is therefore inconsistent with this characteristic of non-impacted forest lands.

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

As explained above, the size of the subject property is consistent with this characteristic as well as Policy 15.b.(2), above.

(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.

The subject property abuts 13 tracts, 11 of which are under 80 acres in size. These tracts are comprised of 18 parcels, 11 of which are zoned RR-10. Rural residential zoning is applied to exception areas (nonresource land) that are devoted to rural housing.¹¹ In addition, there are between 50 and 60 parcels within 2,000 feet of the subject property. An "eyeball" assessment of the official zoning map of this area indicates that the vast majority of these

¹¹ Lane County Rural Comprehensive Plan, Land Use Policy 11.

parcels are less than 80 acres in size. In addition, a large number of these parcels are zoned RR-10, including Peacefull Valley Estates, a residential subdivision located about 400 feet to the west.

The subject property meets this characteristic of Impacted Forest Lands.

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

One opponent has argued that the term “provided” should be interpreted to mean that the subject property actually has those facilities and services in place rather than merely having access to them. While not disputing that this criterion could have been written more clearly, I do not believe that it should be read so narrowly.

The Policy #6 of the RCP’s Goal Eleven: Public Facilities and Services chapter describes minimum service levels for various land designations. Inexplicably, no description is provided for Impacted Forest Land but a reading of descriptions for other designations reveals that the phrase “public facilities and services” includes schools, electrical service, telephone service, a rural level of fire and police protection, and reasonable access to a solid waste facility.

The subject property lies within a rural fire protection district, a school district and the service area of the Lane County Sheriff’s Department. Under the interpretation suggested, the subject property would not qualify as being provided with fire, police or school service unless the fire district was currently providing emergency services to the property, a child living on the property was enrolled in a School District 4J school and a representative of the Sheriff’s Department was on the property. This is an oversimplification, of course, but it illustrates the difficulty in applying such a conservative interpretation to this criterion.

A better interpretation is that “provided” means reasonably accessible and I believe that this is consistent with the Board of Commissioners interpretation of RCP Goal Four Policy 15.c.(4).¹² Electrical and telephone utilities, for instance, are normally made available via the local road system. Properties that have direct

¹² Lane County Board Ordinance PA 1236 (Oct. 26, 2006), Findings of Fact at page 16.

access to the local road system therefore have direct access to those services and thus those services can be considered to be provided to the property. As a corollary, if a property does not have access to the local road system then the fire district, for example, cannot provide emergency service and that service cannot be considered to be “provided” to the property. In the present case, the subject property has direct access¹³ to Laughlin Road via tax lot 528, which is a part of the same legal lot that comprises the subject property. There is no practical or legal impediment to the provision of the full range of rural public facilities and services provided along Laughlin Road to the subject property.

It has also been suggested that this criterion requires that the applicants show the intent behind the construction of Laughlin Road. I must agree with the applicants’ interpretation of legislative construction that the placement of the comma after the word “roads” indicates the phrase “intended primarily for direct services to rural residences” modifies “public facilities and services” as well as roads.

The question then is whether the public services and the road are intended primarily for direct services to rural residences. In regard to Laughlin Road, it is only 1.26 miles in length and is classified as a rural local road. Lane Code 15.010(18)(e) states that local roads are solely intended to provide access to adjacent properties. In this respect, ninety-two percent of the 42 parcels adjacent to (having frontage on) Laughlin Road are zoned RR-10. Most of these parcels are developed with residences. As stated above, Parcel 1, which includes the subject property, has frontage on Laughlin Road.

The subject property, as well as the other properties in the area that have access to Laughlin Road, has access to a full range of services normally available to a rural residence, including police and fire coverage, school, electricity, telephone, and solid waste disposal. To a large degree, the public facilities and services available in the area and Laughlin Road are utilized by rural residences. For this reason, I believe that the subject property meets this characteristic of Impacted Forest Lands.

¹³ Under LC 15.135(2)(a), the subject property is considered to have legal access to a County Road because it was the creature of an approved land division.

The subject property has three of the four characteristics that the RCP has ascribed to Impacted Forest Lands.

Policy 15 requires a conclusion that the characteristics of the land correspond more closely to the characteristics of the proposed zoning than the characteristics of the other forest zone. In the present case, the subject property exhibits two of the five characteristics of Non-Impacted Forest Land and three of the four characteristics that would denote Impacted Forest Land. On this basis of this analysis, the rezoning of the subject property to F-2 Impacted Forest Land is consistent with RCP Forest Land Policy 15.

Conclusion

The proposed rezoning is consistent with applicable criteria of the Lane Code and the Rural Comprehensive Plan.

Respectfully Submitted,

Gary Darnielle
Lane County Hearings Official

EXHIBIT A

PA 06-6054
DOCKUM

**LANE COUNTY HEARINGS OFFICIAL
REQUEST FOR THE REZONING OF TAX LOT 104,
ASSESSOR'S MAP 16-03-35**

Application Summary

Floyd & Connie Dockum, P.O. Box 5176, Helena, MT 59601. Tax lot 3800, Assessor's Map 16-06-00. Request to change the zoning of 38 acres of a 118-acre parcel from Non-Impacted Forest Lands (F-1/RCP) to Impacted Forest Lands (F-2/RCP).

Parties of Record

Floyd & Connie Dockum	Becki Kammerling
Eban Fodor	Jan Wilson, Goal One Coalition
Lauri Segel, LandWatch Lane County	Nena Lovinger
Tom and Diana Larsen	Myriam Iribarren
Gary Hewitt	Bob Gresham
Mona Linstromberg	Frank Blair
Tom Largsen	

Application History

Hearing Date: November 16, 2006
(Record Held Open Until December 11, 2006)

Decision Date: March 29, 2007

Appeal Deadline

An appeal must be filed within 10 days of the issuance of a final order on this rezoning request, using the form provided by the Lane County Land Management Division. The appeal will be considered by the Lane County Board of Commissioners.

Statement of Criteria

LC 16.210
LC 16.211
LC 16.252
RCP Policies, Goal 4 (Forest Land)

Findings of Fact

1. The property subject to this application, hereinafter referred to as the "subject property," can be identified as tax lot 3800, Assessor's Map 16-06-00. The applicant proposes that the southern 38 acres of the subject property be rezoned to F-2 and that the residual 80 acres remain F-1. The subject property has a

perimeter of about 1670 feet, 626 feet of which is contiguous to a parcel of 80 acres in size or larger.

The subject property is comprised of sloping topography ranging from 4% to 20%. All timber was clear-cut harvested from tax lot 3800 in the spring of 1998 although it is not clear whether it was ever replanted. Eighty-one percent of this tax lot is occupied by soils with a forest capability range of 162-184 cu. Ft./ac./yr. and the soils of portion of tax lot 3800 to be rezoned to F-2 have a mean site site index for Douglas fir of between 155 and 165.¹ The property to the west, north and east are heavily forested.²

2. The subject property is not developed by a residence or nonforest use. Dusky Creek traverses the property in a northwest to southeast direction but is not classified as a Class I Stream within the Rural Comprehensive Plan. No wetlands or flood hazard areas are identified on the subject property by the National Wetlands Inventory and the Flood Insurance Rate Map (FIRM) respectively. The property is designated as Major Big Game Range (Deer and Elk Winter Range Habitat). Legal Lot status for the entirety of tax lot 3800 has been verified under PA 99-5790.
3. Properties contiguous to the subject property are as follows: To the north is tax lot 3700, a 159-acre parcel zoned F-1 owned by Paul and Norma Templeton. This property is under forest tax deferral. Contiguous to the subject property on the east and southeast, respectively, are tax lot 900, assessor's map 16-06-28, a 78-acre parcel occupied with a residence, zoned E-40 and owned by Paul V. Templeton, and tax lots 3900 and 3901. Tax lot 3900 is zoned F-1, is 29.5 acres in size, and is under a small tract forestland tax deferral. It is owned by an archery club (Cascadian Bowmen). This company also owns tax lot 1100, assessor's map 16-06-28, a 17.5 acre parcel adjacent to tax lot 3900 on the east. Tax lot 3901 is owned by Donald Meyer, is zoned F-1 and is 8.4 acres in size. It is occupied with a residence.

On the south, across Poodle Creek Road, are properties zoned Rural Residential RR-10 and RR-5. Tax lots 3601 and 3600, adjacent to the west of the subject property, are zoned Impacted Forest Lands (F-2) and are 30 and 60 acres in size, respectively, and are owned by the Evans Family Trust. These tax lots are under forest tax deferral.

Lane Code 16.090 defines "contiguous" as "having at least one common boundary line greater than eight feet in length." By this definition, there are five parcels contiguous to the subject property as Poodle Creek Road makes the parcels to the south non-contiguous. Of the 13 tracts that are generally

¹ See attachment "B" (NRCS Soils Map for Property) of applicant's submission.

² See aerial photograph of subject property taken 6/20/02, Attachment "A" of applicant's submission.

contiguous³ to tax lot 3800, eleven are less than 80 acres in size and ten have a residence. These ten tracts occupied with a dwelling can be identified as tax lots 302, 101, 102, 103, 105, 100, assessor's map 16-06-32; tax lot 3901, assessor's map 16-06-00; and tax lots 1100, 900, and 500, assessor's map 16-06-28.

4. The subject property receives fire protection from Lane Rural Fire/Rescue District and police protection is by the Lane County Sheriff and Oregon State Police. Electricity is available from the Blachly Lane Cooperative and telephone service is provided by Qwest. The subject property is located within the boundary of the Junction City School District #69. An on-site well and septic tank are proposed.

Access to the subject property is from Poodle Creek Road, a Rural Major Collector. Lane County Roads Inventory⁴ (Pg B-53) lists Poodle Creek Road as having a paved surface of 26 feet and as being 6.77 miles in length. Lane Code 15.703(3)(a) lists the minimum right-of-way widths for rural arterial and collector roads shall be 80 feet in two-lane sections. At the minimum right-of-way, Poodle Creek Road is about 66 acres in area. The actual right-of-way width of Poodle Creek Road is not in the record.

5. Assessor's Map 16-06-00 is not listed in the Lane Manual 13.010(2)(a)(ii) as being water quantity limited.

Decision

THE DOCKUM REQUEST (PA 06-6054) FOR THE REZONING OF A PORTION OF TAX LOT 3800, ASSESSOR'S MAP 16-06-00, IS DENIED.

Justification for the Decision (Conclusion)

Lane Code 16.252(2) This section of the Code establishes the basic requirements for the proposed rezoning. Section 16.252(2) requires that rezoning be consistent with the general purposes of Chapter 16, not be contrary to the public interest, and be consistent with the purposes of the proposed zoning classifications and the Lane County Rural Comprehensive Plan elements.

A. Consistency with the general purposes of Chapter 16 of the Lane Code.

Lane Code 16.003 sets out 14 purposes of Chapter 16. Arguably, the only relevant purpose statement is found in Lane Code 16.003(4) that states:

- (4) *Conserve farm and forest lands for the production of crops, livestock and timber products.*

³ "Generally contiguous" is defined as properties that share a common boundary, touch the subject property at a corner point, or are separated from the subject property by a road.

⁴ Appendix B of the Lane County Transportation System Plan

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

B. Not be contrary to the public interest.

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

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

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

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

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

D. Conformity with the Rural Comprehensive Plan.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- b. **Non-impacted Forest Land Zone characteristics:**
- (1) **Predominantly ownerships not developed by residences or nonforest uses.**

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

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

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

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

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

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

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

"We find that the term "ownerships" contained in the criteria of RCP Goal 4 Policy 15 should be considered as including only the land being proposed for rezoning (*unless other qualifiers in a particular characteristic compels a different result*) because of the introductory language in Policy 15 and that the finding constitutes a reasonable

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

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

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

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

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

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

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

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

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

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

(5) Primarily under commercial forest management.

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

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

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

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

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

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

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

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

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

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

Tax lot 3800 meets this characteristic of Impacted Forest Lands.

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

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


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

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

Conclusion

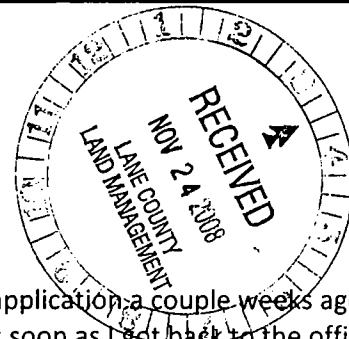
The proposed rezoning is not consistent with the Lane Code and the Rural Comprehensive Plan.

Respectfully Submitted,


Gary Darnielle
Lane County Hearings Official

Kimberly J.R. O'Dea

From: Kimberly J.R. O'Dea [kimodea@landuseoregon.com]
Sent: Monday, November 17, 2008 3:05 PM
To: 'jerry.kendall@co.lane.or.us'
Subject: Fisher Plan Change Zone Change PA 06-5888



Jerry:

I dropped off the additional copies of the original application and supplemental application a couple weeks ago. I apologize for not giving you a head's up. I was supposed to sent you an e-mail as soon as I get back to the office, but it then slipped my mind.

Carol dropped off the "renotice" fee on the 31st of October.

Tomorrow, Carol will be dropping off replacement exhibits for Exhibits C and SS. Exhibit C contains updated A&T maps that are cleaner and clearer. Exhibit SS is a cleaned up legal description of the property proposed for rezone and plan change. I am providing 20 copies. If you need more, just let me know.

Kim

Kimberly Joy-Ritterbush O'Dea, A.I.C.P., M.C.R.P.
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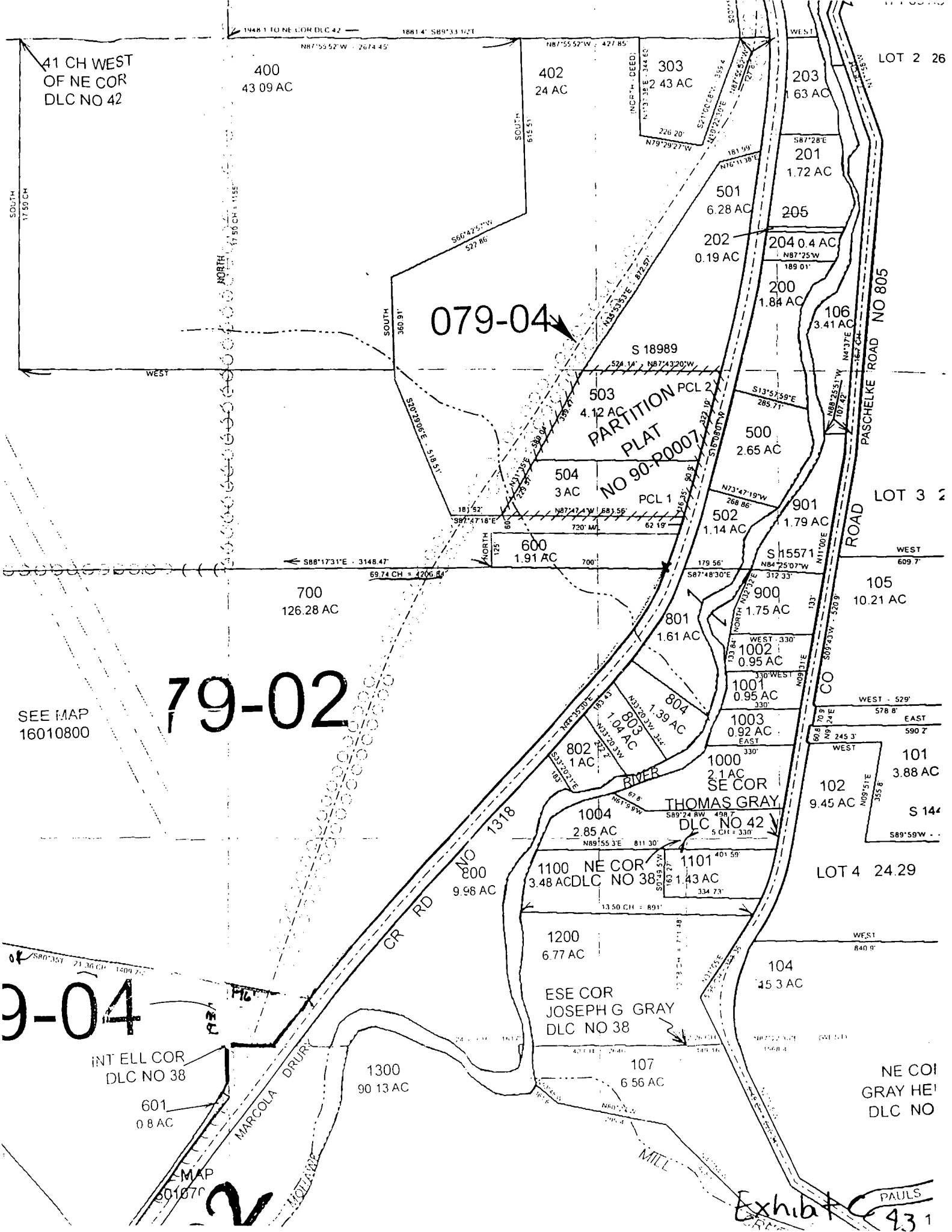
*LCPC A 11/17/08 #1
To staff report
2-10-09 39*

Legal Description of Property being Rezoned.

The easterly-most 78 acres of the following described tract of land:

Beginning at a point on the West line of the Joseph G. Gray Donation Land Claim No. 38, Notification No. 7500, in Township 16 South, Range 1 West of the Willamette Meridian, 45.07 chains North of the Southwest corner of said claim; and running thence North 4.33 chains to the Northwest corner of said claim; thence East 14.09 chains to the Southwest corner of the Thomas Gray Donation Land Claim No. 42, of the same Township; thence North 14.66 chains; thence East 69.74 chains to the Westerly line of the County road, thence southwest along the Western Right-of-Way of County Road 1318 (as existing in 2008), more or less, to a point 2.92 chains North and 2.66 chains East of the Northwest corner of the heirs of Samuel Gray Donation Land Claim No. 40; thence North 80 45' West 21.36 chains; thence West 41.46 chains to the Place of Beginning, in Lane County, Oregon.

Exhibit SS 40



41 CH WEST
OF NE COR
DLC NO 42

400
43.09 AC

402
24 AC

303
43 AC

203
1.63 AC

LOT 2 26

079-04

79-02

SEE MAP
16010800

9-04

INT ELL COR
DLC NO 38

601
0.8 AC

MAP
1601070

2

1200
6.77 AC

ESE COR
JOSEPH G GRAY
DLC NO 38

1300
90.13 AC

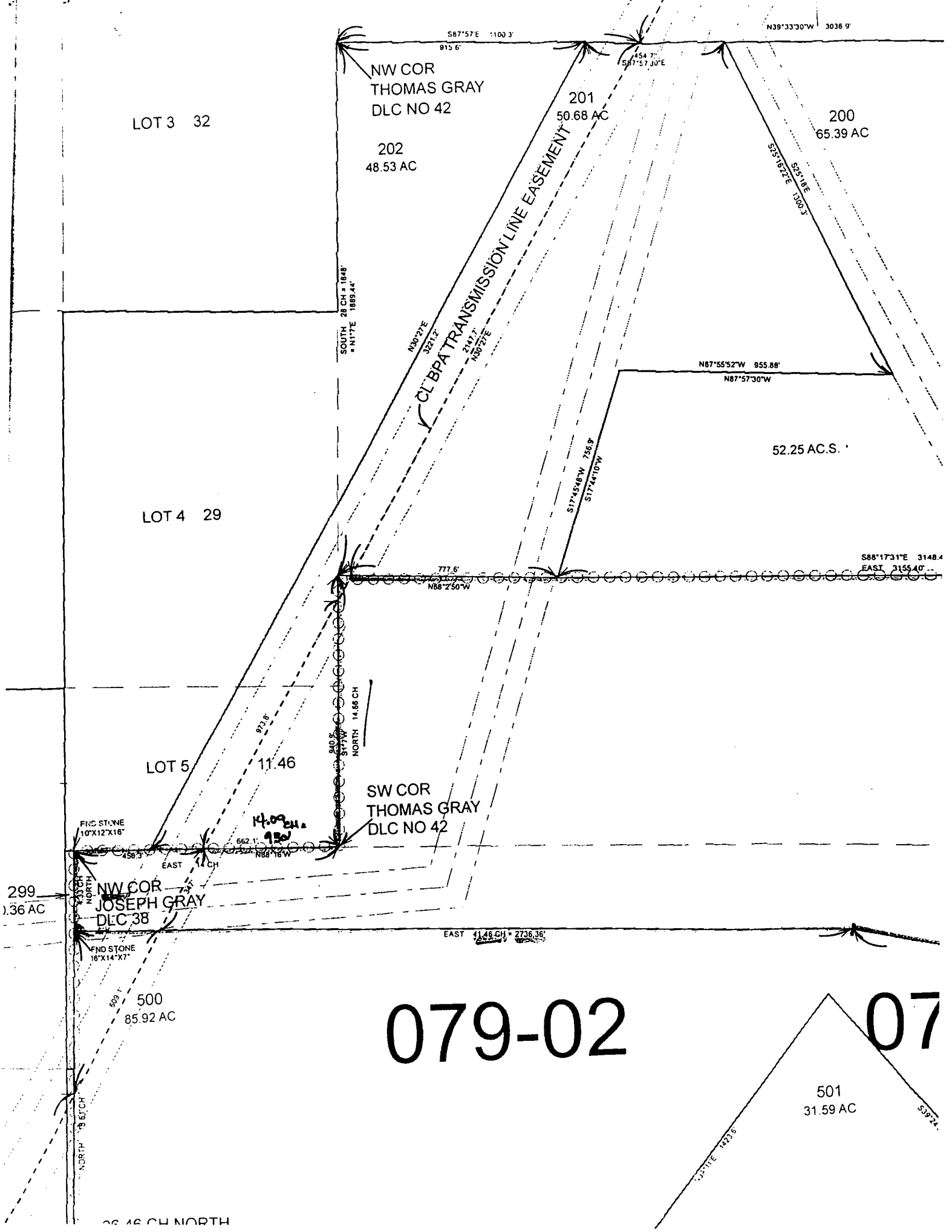
107
6.56 AC

104
45.3 AC

LOT 4 24.29

NE COR
GRAY HE'
DLC NO

Exhibit
931



LOT 3 32

NW COR
THOMAS GRAY
DLC NO 42

202
48.53 AC

201
50.68 AC

200
65.39 AC

LOT 4 29

52.25 AC.S.

LOT 5

SW COR
THOMAS GRAY
DLC NO 42

NW COR
JOSEPH GRAY
DLC 38

299
1.36 AC

500
85.92 AC

501
31.59 AC

079-02

07

26.46 CH NORTH

SOUTH 24.3 CH = 1848'
= N117E 1889.44'

N80°27'E
322.12'

CL BPA TRANSMISSION LINE EASEMENT

S17°45'48"W 756.9'
S17°44'10"W

N87°55'52"W 955.88'
N87°57'30"W

771.6'
N88°2'50"W

S88°17'31"E 3148.4'
EAST 3155.40'

14.09 CH = 930'

EAST 41.46 CH = 2736.36'

FNC ST. W/NE
10'X12'X16'

FND STONE
16'X14'X7'

NORTH 18.61 CH

N37°11'E 1423.5'

S39°21'

S87°57'E 1100.3'
915.6'

N39°33'30"W 3036.9'

454.7'
S87°57'30"E

S35°15'22"E 1300.3'
S25°18'E

973.8'
S17°44'10"W
NORTH 14.86 CH

458.3'
EAST 11 CH

509.1'

662.1'
N88°18'W

LAW OFFICE OF BILL KLOOS, PC

OREGON LAND USE LAW

375 W. 4th STREET, SUITE 201
EUGENE, OR 97401
PHONE (541) 954-0095
FAX (541) 343-8702
E-MAIL KIMODEA@LANDUSEOREGON.COM

September 18, 2008

Attn: Jerry Kendall
Land Management Division
125 E 8th Ave
Eugene, OR 97401



Re: Fisher Plan Change and Zone Change Application
Map 16-01-08, portion of tax lot 700

Dear Mr. Kendall:

Please find attached six copies of the supplemental narrative and supplemental exhibits for the above referenced application. Also attached are six copies of the applicant's "Response to Staff Report."

Because the scope of the application has changed to reflect Ordinance 1236, the applicant would greatly appreciate a supplemental staff report from staff prior to the City Council hearing.

Thank you,

A handwritten signature in black ink, consisting of a large, stylized loop followed by a long horizontal stroke.

Kimberly J.R. O'Dea, AICP
Attorney at Law

APPLICANT'S RESPONSE TO STAFF REPORT

September 10, 2008

*Submitted
9/13/08*

Board of County Commissioners
Attn: Jerry Kendall
Land Management Division
125 E 8th Ave
Eugene, OR 97401

FILE COPY

Re: Fisher Plan Change and Zone Change Application
Map 16-01-08, portion of tax lot 700

Dear Commissioners:

Please accept this letter as a response to the staff report dated April 10, 2007.

To reflect findings, guidance and interpretations in Ordinance PA 1236, applicant is shrinking the scope of the original application. The scope of the original application is reduced so that the area of rezone is the east 78 acre portion of tax lot 700. The narrative has been updated to reflect the reduced scope and the interpretations of Ordinance PA 1236.

A. Transportation Planning Comments

1. LC 16.400(8)(c)(iii)(bb) applies to plan amendments (designation), not Code amendments (zoning). This is made clear by the provision itself,

*"Minor [plan] amendment proposals initiated by an applicant shall provide adequate documentation to allow complete evaluation of the proposal ***. Unless waived *** the applicant shall supply documentation concerning the following: *** (iii) An assessment of the probably impacts of implementing the proposed [plan] amendment, including the following: *** (bb) availability of public and/or private facilities and services to the area of the [plan] amendment, including transportation ***." (emphasis added)*

Staff is basing her concerns on zoning. This is inappropriate.

The proposed plan amendment is from Agriculture to Forest; from one resource designation to another. There are no outright development opportunities allowed based

on designation in the Farm and Forest categories. As addressed in the narrative, the site is served by or able to be served by all public facilities. The nearby area is highly developed. The property abuts Marcola Road, a County road. Staff has not identified any transportation issues specific to Marcola Road that would result from the redesignation. That is because none exist.

This code provision is more relevant when changing from a resource designation to a nonresource designation, where the designation itself allows for more dense development. That is not the case here.

2. LC 16.400(8)(c)(iii)(bb) speaks to the availability of public and/or private facilities and services to the area of the [plan] amendment. This is made clear by the provision itself,

*“(bb) availability of public and/or private facilities and services to the area of the [plan] amendment, including transportation ***.” (emphasis added)*

Staff attempts to replace the term “availability” with “adequacy.” This is not allowed.

The narrative establishes that the site abuts Marcola Road, a county road. Therefore, public transportation facilities are available to the plan change area.

3. In one fell swoop, staff attempts to approve a zone change, numerous property line adjustments and numerous Forest Template Applications. Lane Code Chapter 15 is not applicable to a Plan Amendment.

As established above, LC 16.400(8)(c)(iii)(bb) applies only to plan amendments. Staff gives relevance to past legal lot determinations, then presumes that F-2 zoning will be approved, then presumes to know the applicant’s “intent” and “development scale,” then presumes that the numerous property line adjustments that would be necessary to make the referenced legal lots buildable will all be approved, then presumes that at least six forest template dwelling applications will be approved. That’s at least seven land use decisions! ...and a lot of presumption.

Of course, all of these presumptions are improper. But more importantly, the road improvements standards of Chapter 15 cannot be applied to this plan change because compliance is not an approval criterion. Chapter 15 is triggered by development. As discussed above, a plan change from Farm to Forest does not approve or allow any additional development.

Staff has placed the cart far before the horse. Staff’s statement that “the plan

amendment/zone change is the last opportunity to effectively and equitably require transportation facilities that adequately serve all parcels,” is not accurate. As established above, the applicant must apply for many additional land use decisions before the site qualifies for any additional development. Most of those permits are conditional and discretionary, making the odds of approval impossible to predict. Chapter 15 will be addressed when it becomes an applicable approval standard.

Furthermore, staff’s concerns regarding future possible development is confusing because the property is developable as is, without a plan change or a zone change. As currently Planned and Zoned, the subject property qualifies for possible developed. Just as with F-2 zoning, with enough property line adjustments and land use applications, each legal lot can be developed with either a farm dwelling or a nonfarm dwelling. See LC 16.212. The potential for development already exists.

B. Policy 5 – Prohibit residences on Non-Impacted Forest Lands except for the maintenance, repair or replacement of existing dwellings.

Staff misreads this policy. This is a zoning policy, not a designation policy. Furthermore, it only applies to Non-Impacted Forest Lands (F-1).

There is a single forestland designation in Lane County: Forest (See Comprehensive Plan). There are two zoning districts that implement that designation: F-1 Non-Impacted Forest Land and F-2 Impacted Forest Lands (See Lane Code Chapter 16). The purpose of this policy is to ensure that new residences are prohibited on lands determined through the Comprehensive Plan process (See Policy 15) to be zoned F-1. To respond to this policy, the County prohibited new dwellings in the F-1 zone of Lane Code Chapter 16.

The applicant addresses Policy 15 in great detail in the narrative. The facts establish that the subject property is more correctly zoned F-2 – Impacted Forest Land. As such, Policy 5 does not apply.

In addition to Policy 5, staff takes issue with the applicant’s position that the parcel is not eligible for further development. This issue is not relevant to any application criteria. However, the applicant is happy to clarify.

First, staff is again confusing designation with zoning. Changing from Farm designation to Forest designation provides no additional development opportunities. Resource designations, by themselves, do not permit development. This might be different if the proposal was from a resource designation to a nonresource designation, such as rural residential, where the designation itself allows for outright development. But that is not

the proposal here.

Second, Planning Staff makes the same mistake as Transportation staff in putting the cart far before the horse. Even if F-2 zoning is approved, there is no outright permitted residential development allowed in the F-2 zone. See LC 16.211(2). As discussed above, before any residential development could occur on this property, the applicant would need many property line adjustments, many post property line adjustment legal lot verification approvals and many template dwelling application approvals. All are land use decisions subject to appeal. All of the template dwelling applications are Conditional Use Permits that are discretionary. All of the property line adjustments are subject to State Law requirements.

The applicant's statement that the proposed zone change/plan change results in no additional residential development opportunities is accurate. If approved, the applicant is not entitled to a single additional dwelling based on the approval.

Finally, staff's concerns over future development are misguided because the property is potentially developable as currently planned and zoned. As discussed above in response to Transportation Planning, with enough property line adjustments and land use permits, each legal lot could be developed with either a nonfarm dwelling or a farm dwelling. The proposed plan change/zone change does not result in additional development opportunities because the development opportunities already exist.

C. Policy 15(b)(2) – more than 80 acres

Response: To reflect clarification in Ordinance 1236, the applicant has reduced the scope of the subject plan change/zone change and readdressed criteria. The subject property is less than 80 acres. It therefore does not meet this characteristic for being zoned F-1.

D. Policy 15.(b)(3) – Contiguous to Commercial Uses

Response: To reflect clarification in Ordinance 1236, the applicant has readdressed criteria and reanalyzed responses. Under the new ordinance, staff is correct that the focus is on "contiguous" and that the analysis cannot cross the road under this standard. However, only one of the contiguous properties is in "commercial" forest production and none are in "commercial" farm production. Therefore, the subject property does not meet this characteristic for being zoned F-1.

E. Policy 15(b)(5) Commercial Forest Management

Response: To reflect clarification in Ordinance 1236, the applicant has readdressed criteria and reanalyzed responses. As part of Ordinance 1236, the Board clarified “commercial” uses. Based on that clarification, while the subject property is in forest use (an allowed use under F-2 zoning), it is not in “commercial” forest management. The subject property does not meet this characteristic for being zoned F-1

E. Policy 15(c)(2) – 80 acres or less in size

Response: To reflect clarification in Ordinance 1236, the applicant has reduced the scope of the subject plan change/zone change and readdressed criteria. The subject property is less than 80 acres. It therefore meets this characteristic for being zoned F-2.

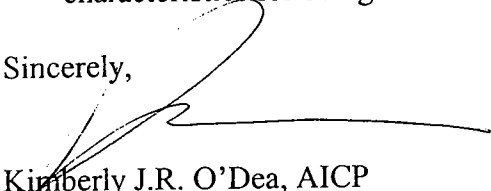
F. Policy 15(c)(3) – Generally contiguous to tracts less than 80 acres with dwellings and/or adjacent to exception areas.

Response: To reflect clarification in Ordinance 1236, the applicant has readdressed criteria and reanalyzed responses. Staff failed to recognize that the Board has interpreted this provision to go beyond contiguous properties. As such, 71% of the tracts in the general area are less than 80 acres with a residence; and 71% of the tracts in the general vicinity are in an exception area. See pages 5 and 39 of the narrative. The subject property therefore meets this characteristic for being zoned F-2.

SUMMARY:

The applicant has reduced the scope of the application and updated narrative responses to reflect findings, conclusions and guidance in PA 1236. The updated narrative establishes that the property is more accurately designated Forestland. The updated narrative establishes that the subject property meets none of the characteristics for being zoned F-1 and all of the characteristics for being zoned F-2.

Sincerely,



Kimberly J.R. O'Dea, AICP
Attorney at Law

**APPLICANT'S SUPPLEMENTAL STATEMENT
TO COUNTY BOARD
IN SUPPORT OF
FOREST PLAN DESIGNATION AND F-2 ZONING
PA 06-5888**

September 9, 2008

FILE COPY

Board of County Commissioners
Attn: Kent Howe
Planning Director
Land Management Division
125 E 8th Ave
Eugene, OR 97401

Re: Fisher Plan Change and Zone Change Application
Map 16-01-08, portion of tax lot 700 PA 06-5888

Dear Commissioners:

Please accept this letter as supplemental evidence in support of the attached plan change and zone change application. The proposal is to re-designate property from Agriculture to Forest and rezone property from E-40 to F-2.

The original application was placed on hold in mid-2007 to address the adoption of Ordinance PA 1236, which clarified applicable criteria. After reviewing the new ordinance, the applicant acknowledged that a different scope would be required.

Based on the interpretations in Ordinance PA 1236, the applicant believes that the west rear portion of tax lot 700 better fits F-1 zoning. However, the central and eastern portions of the property should be zoned F-2. Therefore, the applicant is shrinking the scope of the original application to reflect the Board Ordinance. The scope of the original application is hereby reduced so that the area of rezone is the east 78 acre portion of tax lot 700. The western portion may be addressed at a later date.

The remainder of the narrative has been updated to reflect the reduced scope. To reduce confusion, this narrative statement is intended to replace the original narrative statement in its entirety. However, many of the exhibits submitted with the original narrative remain applicable. They are identified in Section I.C. of this narrative with a single letter and are not being

resubmitted. Please refer to the original submission packet for them. Revised exhibits are identified in Section I.C. of this narrative with a double letter and are being resubmitted. See attached. Supplemental exhibits are identified in Section I.C. of this narrative with a double letter and are attached.

The application first establishes that the subject property is more accurately designated Forest, rather than Farm. See predominantly pages 3 through 32 of the narrative. Second, the application establishes that the subject property is more accurately zoned F-2, rather than F-1. See predominately pages 32 through 38 of the narrative.

I. PROPOSAL DESCRIPTION

A. Owner/Applicant

Agent

Ravin Ventures, LLC Ramon Fisher, President Ed Fisher, interest holder PO Box 751 Oakridge, OR 97463	Kim O'Dea Law Office of Bill Kloos, PC 375 West 4 th St., Ste. 204 Eugene, OR 97401 (541) 954-0095
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B. Proposal

This proposal is a request to redesignate 78 acres of farmland to forestland and rezone the same from E-40 to F-2.

C. Exhibits

- Exhibit A: Application Form
- Exhibit BB: Location Map
- Exhibit C: County Assessment and Taxation Maps
- Exhibit D: Zoning Map
- Exhibit EE: "Adjacent and Nearby/General Vicinity/General Area" Maps
- Exhibit FF: Soils Map
- Exhibit GG: Aerial Photograph
- Exhibit H: RCP Goal 5 Natural Resource Excerpt
- Exhibit I: RLID Property Information Sheets
- Exhibit J: RCP Agricultural Working Paper Excerpt
- Exhibit KK: Topographical Map
- Exhibit L: PDC and Ownership Deeds
- Exhibit M: FIRM Image
- Exhibit N: Site Photographs
- Exhibit O: Rural Addressing Maps
- Exhibit PP: Ordinance 1236
- Exhibit Q: Legal Lot Verification PA 00-5822

- Exhibit R: NWI Map
- Exhibit SS: Legal Description of Subject Property
- Exhibit TT "Industrial Holdings" information

Please note that Exhibits with single letters were submitted as part of the original application, have not been amended and continue to be applicable. Exhibits with double-letters have been amended to reflect the reduced scope of the application and are being resubmitted or are new.

II. SITE AND PLANNING PROFILE

A. Location

Map 16-01-08, a 78 acre portion of Tax lot 700, hereafter referred to as the "subject property" or "property." See Exhibit EE.

Tax lot 700 is a legal lot. See PA 00-5822. See Exhibit Q. The proposed plan change and zone change do not affect the boundaries of the lot, and therefore do not affect its legal status. The subject property, which is a portion of tax lot 700, is approximately 78 acres located west of Marcola Road, approximately one mile north of the unincorporated community of Marcola. See Exhibit BB.

Split zoned properties are allowed in Lane County.

B. Zoning

The subject property is designated farm land and zoned E-40. See Exhibit D.

C. Site Characteristics/History

The subject property is located at the foot of the Coburg Hills and slopes gently upward toward the west. A set of high tension lines cuts diagonally across the property. The eastern portion of the property is bisected by an abandoned railroad right of way and old Marcola Road right-of-way. See Exhibits C and EE. A homestead dwelling is located on the property near Marcola Road. See Exhibit O.

The applicant purchased the subject property in 1998. The property had been logged and regenerated prior to the applicant's purchase. In 2002,

the applicants logged the property. It has been subsequently regenerated. There is no evidence that property has never been used for farm use. The 2000 Aerial photo, included as Exhibit GG, shows the property as forested or in forest rejuvenation. No grazing or cultivated soils are apparent on the aerial photos. See Exhibit GG.

D. Organization, Summary and Introduction

This narrative is organized according to the kinds of standards that apply. Following the Introduction, four additional parts address the Statewide Planning Goals, the Rural Comprehensive Plan Policies, the standards for plan changes, and the standards for zone changes, respectively. Because the goals provide the most comprehensive set of standards, the evidence and legal argument is presented as comprehensively as possible in connection with the discussion of the goals. Whenever possible, in order to avoid repetition, reference is made back to the goal discussion when addressing the non-goal standards. Supporting exhibits are attached to this narrative. A list of exhibits is included on page 2, above.

This applicant seeks a plan change from Agriculture to Forest and a zone change from E-40 to F-2 for approximately 78 acres of land west of Marcola Road and west of the Marcola River. The property is roughly rectangular. It is adjacent to Marcola Road and more specifically described in Exhibit SS. See Exhibits BB and EE for exact location.

Proposal in a Nutshell: The subject property is surrounded by Forest designation and exception area. It is an E-40 parcel in a sea of Forest designation and RR exception areas. See Exhibit EE. This application seeks a Forest designation, which would be consistent with the use of the parcel, surrounding designations and uses and topography. If the application is approved, the subject property would be designated Forest and zoned F-2. Because the parcel already contains a dwelling, it is considered developed and not eligible for further outright development.

Requests for a plan change from Agricultural Land to Forest Land 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. This statement addresses each relevant standard with support from exhibits.

The subject proposal removes no resource land from the County's inventory. It simply replaces one resource designation with another. Furthermore, the proposal neither results in any development approvals nor increases outright development opportunities. The subject property is already developed with a pre-land use regulation dwelling. Land divisions in the Forest zone are more difficult than in the E-40 zone because minimum lot size is 80 acres rather than 40-acres (under current E-40 zoning). At 78 acres, the subject property is not large enough to qualify for a land division under the forest designation. The forest designation and zoning do not allow for additional dwellings on a single tract of land. Furthermore, the proposed designation reflects the

past, current and continued use of the property.

The balance of this Introduction does two things: (A) It summarizes the state and local legal framework that authorizes Forest and Farm designations; and (B) it describes the subject property and the immediately surrounding property in a way that will be relevant to many of the state and local standards that are addressed in detail in the balance of this statement.

A. State and Local Law Authorize Resource Designations.

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. Both types of lands are “resource lands.” As defined by LDCD, “Resource Land” is any land within the definition of Goal 3 (Agricultural Land), Goal 4 (Forest Land), Goal 16 (Estuarine Resources); Goal 17 (Coastal Shorelands); or Goal 18 (Beaches and Dunes). See OAR 660-004-0005(2). “Nonresource Land” is any land that is not within the definition of one of the goals listed above. See OAR 660-004-0005(3).

B. Description of Subject Property and Adjacent and Nearby Area.

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 narrative. It is especially relevant to Section IV – Compliance with the Rural Comprehensive Plan. Reference is made to plan and zone designations, parcelization, and land uses.

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.

“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 applicant therefore 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 there are separated from the subject property by too many barriers. This issue is discussed further below in the “summary of table” section.

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 begin proposed *** The analysis is intended to venture beyond the only contiguous properties with common property lines. See Ordinance PA 1236, page 10.

The Ordinance 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.*” Ordinance 1236, Page 10.

Based on these interpretations and definitions, the applicant believes that 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.

The subject property is approximately 78 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.

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. See Exhibit K. It is traversed by a BPA power line and an abandoned railroad right-of-way. See Exhibits C and EE. There is a well and septic system on the site to serve the existing dwelling.

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.

Table A (below) summarizes 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. To determine zoning, the applicant used official County zoning maps, which are included as Exhibit D. To determine designation, the applicant relied on zoning and RLID data sheets. To determine acreage and presence of a dwelling, the applicant relied on RLID data sheets. To determine use, the applicant relied on RLID data sheets, aerial photos, site visits and site photos. See footnotes 1 and 2. RLID data sheets are included as Exhibit I.

Whether a property is in “forest use” goes to designation. Whether a property is in

“commercial forest use” goes to zoning, which is addressed later in this document.

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. See Exhibit I. RLID also describes the subject property as Timber and Timberlands. The site photographs confirm that the property is in forest management and that there is no farming. The aerial photograph shows much of the property as treed, some of the property in regeneration (the more barren areas), a small portion developed with a dwelling, and a small portion in open field (near the dwelling). The owner has confirmed that the small field is not in “farm use,” as defined by the statute.

**TABLE A
 ADJACENT AND NEARBY LAND**

Map & Tax Lot Ex. C	Location In relation to subject property Ex. EE	Zoning/ Desig Ex. D	Acreage Exs. C & I	Dwelling? Exs. I & O	Use ¹	Comments ² Ex. I	Parcel /Ownrshp count	Tract count
16-01-07, TL 200	North (adjacent)	F-2/F	64.27	No	Timberlands/ Forestry (F)	Owned by Rosboro Lumber Company and in Forest Tax Deferral. <u>TL 200 and 400 are a tract</u>	1	1
16-01-07, TL 201	North and West	F-1/F	51.10	No	Publicly Owned Property/ Forestland (F)	Owned by US Government. No special tax assessment.	2	2
16-01-07, TL 202	North and West	F-1/F	48.31	No	Timberlands/ Forestry (F)	Owned by Weyerhaeuser Company. In Forest Tax Deferral. <u>TLs 202, 400, 299 and 800 are a tract.</u>	3	3
16-01-08, TL 700	West (adjacent)	E-40/EFU	48.00	No	Timberlands/ Forestry (F)	Ravin Ventures, LLC. In Forest Tax	4	4

¹ Use of the site was determined by Assessment and Taxation data (including ownership, land use category, property classification and tax deferral status); aerial photos and site visits (including photos). Where Assessment and Taxation showed tax deferral, the classification of the deferral was used to determine overall use. A summary of tax deferrals classifications is included with Exhibit I. RLID data sheets, which include Assessment and Taxation data, are included as Exhibit I. () indicates the use category given to each property for calculation purposes; (F) Forestry; (A) Agriculture/farm use; (R) Residential; (O) Other.

² For Tax Deferral data and ownership, see Exhibit I. For explanation of the “too far removed” comment, see Table Summary below. In summary, these properties, despite their proximity to the subject property, are too far removed to be part of the character of the ‘surrounding area’ and are therefore not included in calculations.

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(west portion)						Deferral		
16-01-07, TL 300	West	F-1/F	159.54	No	Publicly Owned Property/ Forestland (F)	Owned by BLM. No special tax assessment.	5	5
16-01-07, TL 400	West	F-2/F	102.80	No	Timberlands/ Forestry (F)	Owned by Weyerhaeuser Company. In Forest Tax Deferral. <u>TLs 202, 400, 299 and 800 are a tract.</u>	6	
16-01-07, TL 299	West	F-1/F	.57	No	Forestry (F)	Owned by Weyerhaeuser. In Forest Tax Deferral. <u>TLs 202, 400, 299 and 800 are a tract.</u>	7	
16-01-07, TL 800	West and South	F-1/F	1.08	No	Forestry (F)	Owned by Weyerhaeuser. Part of larger tract. <u>TLs 202, 400, 299 and 800 are a tract.</u>	8	
16-01-07, TL 500	South (adjacent)	F-2/ E-40 F/Ag	87.31 (60 in F-2)	No	Forestry (F)	Paschelke. In Small Tract Forestland (STFO ³) tax deferral. <u>TLs 500, 601 and 700 are a tract.</u>	9	6
16-01-07, TL 501	South	E-40 /AG	30.46	No	Brush; vacant idle property ⁴ (O)	BPA owned. No special tax assessment.	10	7
16-01-07, TL 601	South	E-40 /AG	.68	No	Brush; vacant idle property, vacated railroad right-of-way (O)	Paschelke. No special tax assessment. <u>TLs 500, 601 and 700 are a tract.</u>	11	
16-01-07, TL 700	South	E-40 /AG	12.01	No	Brush; Forestry (F)	Paschelke. In STFO Forest Tax deferral. <u>TLs 500, 601 and 700 are a tract.</u>	12	
16-01-08, TL 700 (east portion)	Subject Property	E-40 /AG	(78)	Yes	Forestry (SP)	In Forest Deferral and STFO deferral.		
16-01-08, TL 400	North	F-2 /F	41.74	No	Timberlands/ Forestry (F)	Rosboro Lumber Co. In Forest Tax	13	

³ Small Tract Forestland Option Deferral (a second type of forest deferral for growing timber)

⁴ RLID says "pasture, cows, sheep, cattle." No special tax assessment. Aerial Photo shows parcel in some sort of natural regeneration. Site inspection and photos show the parcel as brush and trees. It appears to be in forest regeneration, but it is hard to tell. However, there is no pasture or farming.

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						Deferral. <u>TLs 200 and 400 are a tract.</u>		
16-01-08, TL 402	North	F-2 /F	23.60	Yes	Forestry with Residential development (F)	Jeffers. In Forest Tax Deferral.	14	8
16-01-08, TL 501	North	RR5 /RR	5.95	Yes (2)	Residential (R)	No special tax assessment.	15	9
16-01-08, TL 503	North	RR5 /RR	4.12	Yes	Residential (R)	No special tax assessment.	16	10
16-01-08, TL 504	North	RR5 /RR	3.03	Yes	Residential (R)	No special tax assessment.	17	11
16-01-08, TL 600	North (adjacent)	RR5 /RR	1.96	Yes	Residential (R)	No special tax assessment.	18	12
16-01-08, TL 200	Northeast	RR5 /RR	1.90	Yes (2)	Residential (R)	No special tax assessment.	19	13
16-01-08, TL 500	Northeast	RR5 /RR	2.73	Yes	Residential (R)	No special tax assessment.	20	14
16-01-08, TL 502	Northeast	RR5 /RR	1.19	Yes	Residential (R)	No special tax assessment.	21	15
16-01-08, TL 900	Northeast	RR5 /RR	1.29	Yes	Residential (R)	No special tax assessment.	22	16
16-01-08, TL 106	Northeast	RR5 /RR	2.80	Yes	Residential (R)	No special tax assessment.	23	17
16-01-08, TL 801	East (Adjacent)	RR-5 /RR	2.56	Yes	Residential (R)	No special tax assessment.	24	18
16-01-08, TL 802	East (Adjacent)	RR-5 /RR	.81	Yes	Residential (R)	No special tax assessment.	25	19
16-01-08, TL 803	East (Adjacent)	RR-5 /RR	.88	Yes	Residential (R)	No special tax assessment.	26	20
16-01-08, TL 804	East (Adjacent)	RR-5 /RR	1.08	Yes	Residential (R)	No special tax assessment.	27	21
16-01-08, TL 800	East (Adjacent)	RR-5 /RR	7.65	Yes	Residential (R)	No special tax assessment.	28	22
16-01-08, TL 901	East	RR-5 /RR	1.57	Yes	Residential (R)	No special tax assessment.	29	23
16-01-08, TL 1000	East	RR-5 /RR	2.63	Yes	Residential (R)	No special tax assessment.	30	24
16-01-08, TL 1001	East	RR-5 /RR	.87	Yes	Residential (R)	No special tax assessment.	31	25
16-01-08, TL 1002	East	RR-5 /RR	.87	Yes	Residential (R)	No special tax assessment.	32	26
16-01-08, TL 1003	East	RR-5 /RR	.86	Yes	Residential (R)	No special tax assessment.	33	27
16-01-08,	East	RR-5	3.20	No	Vacant, idle	No special tax	34	28

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TL 1004		/RR			land. (O)	assessment.		
16-01-08, TL 1100	East	RR-5 /RR	2.75	Yes (2)	Residential (R)	No special tax assessment.	35	29
16-01-08, TL 1101	East	RR-5 /RR	1.42	Yes (2)	Residential (R)	No special tax assessment.	36	30
16-01-08, TL 1200	East	RR-5 /RR	7.25	Yes	Residential (R)	No special tax assessment.	37	31
16-01-08, TL 107	Southeast	RR-5 /RR	7.89	Yes (3)	Forest with dwelling (F)	In Forest Deferral.	38	32
16-01-08, TL 1300	Southeast	E-40 /AG	79.84	No	Forest Production and open land (F)	In Forest Deferral.	39	33
Marcola Road	East (adjacent)	N/A		N/A	N/A	Road	40	34
BPA Marion- Alvey Transmissi on Line Easement	Through	N/A		N/A	N/A			
BPA Main Transmissi on Line Easement	West and Through	N/A		N/A	N/A			
Mohawk River	East	N/A		N/A	N/A	River		
Paschelke Road	East	N/A		N/A	N/A	Road		

The subject property is an E-40 parcel in a sea of Forest and RR Exception area land. See Exhibit EE.

Lots by designation: There are 40 adjacent and nearby properties. Nine and two-thirds (24%) are designated Forest; five and one-third (13%) are designated Agriculture and 24 (60%) are designated Residential.

**TABLE B
 SUMMARY OF SURROUNDING AREA BY ACRES AND PERCENTAGE**

	<p>Properties within 1,000 feet of the subject property, excluding those five properties separated from the subject property by two county roads and the Mohawk River</p> <p>Exs C & I</p>
LOTS AND PARCELS ADJACENT AND NEARBY	
Number of adjacent and nearby properties as defined by the applicant	40
Number and percentage of the adjacent and nearby properties that are in each Comprehensive Plan designation	<p>9 2/3 (25%) Forest</p> <p>4 1/3 (11%) Ag</p> <p>24 (63%) RR</p>
Number and percentage of the adjacent and nearby properties that are in each general use category	<p>13 (34%) Forestry or h.t.</p> <p>0 (0%) Agric.</p> <p>22 (58%) Res.</p> <p>3 (8%) Other</p>
ACREAGE ADJACENT AND NEARBY	
Total number of acres in adjacent and nearby properties	Approx. 800.00 acres

Number of acres in and percentage of adjacent and nearby properties that are in each Comprehensive Plan designation		553.01 (72%) F 180.30 (22%) Ag 67.27 (9%) RR
Number of acres in and percentage of adjacent and nearby properties that are in each general use category		710.00 (88%) Forestry or h.t. 0 (0%) Ag. 56.17 (7%) Res. 34.34 (5%) Other

III. COMPLIANCE WITH STATEWIDE PLANNING GOALS.

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 application requires no goal exceptions.

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.

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

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.

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.

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.

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.

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 polices are reviewed specifically.

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. See Exhibit J. Each of those factors is discussed in detail in Section IV, below. Based on those factors, the subject property should be designated Forest land.

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.

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.

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:

(A) 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;

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.

The published SCS soils maps show six types of soil on this site. See Exhibit FF. 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 ⁵	Dept. of Forestry ⁶ By soil type/by acreage ⁷	
					By soil type (cu.ft./acre/yr)	By acreage (cu.ft./yr)
52D Hazelair SCL, 7% to 20% slopes	32	41%	IV	No info.	40	1280
89C Nekia SCL, 2% to 12% slopes	13	17%	III	160	159	2067
78 McAlpin SCL	13	17%	II	No Info.	169	2197
89D Neckia SCL, 12% to 20% slopes	.2	.2%	III	160	159	31.8
1A Abiqua SCL, 0% to 3% slopes	19	24%	I	203	161	3059
29 Cloquato SL	.9	1%	II	No Info.	120	108
	78	100%	100% Class I-IV		Site Productivity Approx. 112 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;

This part of the test focuses on lands, which have predominantly nonagricultural soils, and

⁵ Lane County Soil Ratings for Forestry and Agriculture (based on NRCS data).

⁶ Department of Forestry Forest Lands Soils Ratings (1990 revisions).

⁷ 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).

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.⁸ The history of the site in farm use would be relevant to its current suitability,⁹ but not determinative.¹⁰

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.

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.

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;

⁸ 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)).

⁹ 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).

¹⁰ 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.”).

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.

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.

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 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.

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.

- (1) [F]orest land shall include lands which are suitable for commercial forest uses.**

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.¹¹

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.

For each soil type shown in the Soils Map (Exhibit FF) 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 six types of soil present on the property, five 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 112 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	AG. CAPABIL. CLASS	FOREST PRODUCTIVITY	
				LMD ¹²	Dept. of Forestry ¹³

¹¹ 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].

					By soil type/by acreage ¹⁴	
					By soil type (cu.ft./acre/yr)	By acreage (cu.ft./yr)
52D Hazelair SCL, 7% to 20% slopes	32	41%	IV	No info.	40	1280
89C Nekia SCL, 2% to 12% slopes	13	17%	III	160	159	2067
78 McAlpin SCL	13	17%	II	No Info.	169	2197
89D Neckia SCL, 12% to 20% slopes	.2	.2%	III	160	159	31.8
1A Abiqua SCL, 0% to 3% slopes	19	24%	I	203	161	3059
29 Cloquato SL	.9	1%	II	No Info.	120	108
	78	100%	100% Class I-IV		Site Productivity Approx. 112 cu.ft/acre/yr	

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

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.

There are approximately 800 nearby and adjacent acres and 40 nearby and adjacent parcels. Approximately 72 percent are designated Forestland and 88% are in forest use. Please see Section II.D. and Tables A and B above for a more detailed analysis of the surrounding area. The subject property is in a sea of nearby land designated Forest. See Exhibit E. 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.

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

¹² Lane County Soil Ratings for Forestry and Agriculture (based on NRCS data).

¹³ Department of Forestry Forest Lands Soils Ratings (1990 revisions).

¹⁴ 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).

developed.

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

To conserve open space and protect natural and scenic resources.

(1) What Goal 5 requires.

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.

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.¹⁵ 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.¹⁶ The initial Goal 5 question, therefore, is whether the subject property includes any Goal 5 resources inventoried in the acknowledged county plan.

(2) Goal 5 Resources on the Subject Property.

The paragraphs below address the acknowledged Goal 5 resource inventories.

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

¹⁵ 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).

¹⁶ Davenport v. City of Tigard, 23 Or LUBA 565 (1992).