

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

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 additional dwellings. Uses allowed in the F-2 zoning district are similar to those allowed in the E-40 zoning district. Therefore, the proposed zone change and plan change will have no impact on the watershed, surface waters or groundwater resources in the area.

Keeping the area in Forest use, rather than clearing and plowing for agriculture, protects water resources by minimizing runoff; minimizing agricultural water needs; and minimizing agricultural chemical migration into the watershed.

Riparian Resources: The *Flora & Fauna Working Paper (1982)* and *Addendum (1983)* inventories Riparian resources. Riparian areas are inventoried to include all land within 100 feet of the banks of a Class 1 stream. Addendum at 7. There are no Class I streams on the subject property. The Mohawk River, a Class I stream, is approximately 125 to 200 feet from the subject property at its closest point. Furthermore, Marcola Road separates the subject property from the river. See Exhibit E. In any case, the proposed redesignation and rezoning 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 outright dwellings. Uses allowed in the F-2 zoning district are similar to those allowed in the E-40 zoning district. Therefore, the proposed zone change and plan change will have no impact on the Mohawk River or its riparian resources, as defined.

Keeping the area in Forest use, rather than clearing and plowing for agriculture, protects riparian resources by minimizing runoff; minimizing agricultural water needs; maintaining flora and fauna cover and habitat, and minimizing agricultural chemical migration into the watershed.

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

Sensitive Fish and Waterfowl Areas: The inventory of these sites appears in the Flora & Fauna Working Paper Addendum at 1-4. The subject property is not included on the inventory.

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

Big Game Range: The plan classifies the entire county into three categories of Big Game Range: Major, Peripheral, and Impacted. See Flora & Fauna Working Paper at 23-25, Addendum at 14.

This application would affect Big Game Range because the entire county is mapped as some form of big game habitat. In practical terms, however, no conflict from this proposal is apparent. The proposed redesignation and rezoning 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 outright dwellings. Uses allowed in the F-2 zoning district are similar to those allowed in the E-40 zoning district. Therefore, the proposed zone change and plan change will have no impact on Big Game.

Keeping the area in Forest use, rather than clearing and plowing for agriculture, protects game resources by minimizing water and wetland pollution from runoff and agricultural water while maintaining flora and fauna cover and habitat.

(3) Goal 5 Program to Meet the Goal for Resources Present.

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

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

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

Goal 6: Air, Water and Land Resources Quality

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

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

Goal 6 protects the quality of land, air and water resources. The focus is on discharges from future development in combination with discharges from existing development. State and federal environmental standards are the benchmark for protection. Where there are state or federal standards for quality in air sheds or river basins, then the carrying capacity, nondegradation, and continued availability of the resources are standards.

The subject property is currently developed with a single residence and managed as a Commercial Forest operation. Historically it has been used for Forest operations, a permitted use under the existing Ag designation. Because the proposed designation of Forest matches the existing and historic use, there will be no impacts to land, water or air quality.

Goal 7: Areas Subject to Natural Disasters and Hazards.

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

The phrase “areas of natural disasters and hazards” means “areas that are subject to natural events that are known to result in death or endanger the works of man, such as stream flooding, ocean flooding, ground water, erosion and deposition, landslides, earthquakes, weak foundation soils and other hazards unique to local or regional areas.” OAR 660-15-000. There are no such areas known on the subject property subject property.

Goal 8: Recreational Needs

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

destination resorts.

The overriding purpose of Goal 8 is to address all recreational needs, but its primary focus is on siting and developing destination resorts, defined in Goal 8 as "self-contained development[s] providing visitor-oriented accommodations and developed recreational facilities in a setting with high natural amenities."

Goal 8 is not directly applicable to this proposal.

Goal 9: Economic Development

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

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

Goal 10: Housing

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

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

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

Goal 11: Public Facilities and Services

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

Urban and rural development shall be guided and supported by types and levels of urban and rural public facilities and services appropriate for, but limited to, the needs and requirements of the urban, urbanizable, and rural areas to be served. A provision for key facilities shall be included in each plan. Cities or counties shall develop and adopt a public facility plan for areas within an urban growth boundary

containing a population greater than 2,500 persons. To meet current and long-range needs, a provision for solid waste disposal sites, including sites for inert waste, shall be included in each plan. In accordance with ORS 197.180 and Goal 2, state agencies that provide funding for transportation, water supply, sewage and solid waste facilities shall identify in their coordination programs how they will coordinate that funding with other state agencies and with the public facility plans of cities and counties.

“Public facilities and services” is defined in the Statewide Planning Goals to include: “[p]rojects, activities and facilities which the planning agency determines to be necessary for the public health, safety and welfare.” The Goal 11 Rule defines a “public facility.” “A public facility includes water, sewer, and transportation facilities, but does not include buildings, structures or equipment incidental to the direct operation of those facilities.” OAR 660-11-005(5).

Goal 11 addresses facilities and services in urban and rural areas. The subject property is “resource” land and will remain rural after this approval. The subject proposal does not provide for any rural or urban development. Therefore, Goal 11 does not apply.

Resource designations have no required minimum level of services. However, Table E lists the services now available to the subject property.

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

Service	Provider
Fire	Marcola Rural Fire Protection District
Police	Lane County Sheriff and State Police
Schools	Marcola School District
Access	Marcola Road, a County Minor Arterial
Electric	Emerald People’s Utility District
Telephone	Qwest Communications
Solid Waste	Sanipac
Sewer	Individual Septic System for existing dwelling
Water	Well for existing dwelling

Goal 12: Transportation

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

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

Goal 12 is implemented through the Goal 12 Rule (OAR 660-12) adopted in 1991. The Rule has a section that specifically addresses proposals such as this – amendments to acknowledged comprehensive plans and implementing regulations. OAR 660-12-060(1) provides that any such amendments that “significantly affect a transportation facility shall assure that allowed land uses are consistent with the identified function, capacity, and level of service of the facility.”

There is no additional outright residential development allowed by this application. Therefore, the application will not affect a transportation facility. The rule spells out clearly what constitutes a “significant affect.” OAR 660-12-060(2) states:

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

- (a) Changes the functional classification of an existing or planned transportation facility;**
- (b) Changes standards implementing a functional classification system;**
- (c) Allows types or levels of land uses which would result in levels of travel or access which are inconsistent with the functional classification of a transportation facility; or**
- (d) Would reduce the level of service of the facility below the minimum acceptable level identified in the TSP.**

The proposed redesignation/rezone will not trigger this section of the rule because it does not provide for any additional development. The site is developed with a single residence. It is not entitled to any additional development.

Goal 13: Energy Conservation

To conserve energy.

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

This goal is not directly applicable to individual land use decisions. Rather, its focus is on the adoption and the amendment of land use regulations.¹⁷

Goal 14: Urbanization

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

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

Goal 15: Willamette River Greenway

Goal 16: Estuarine Resources

Goal 17: Coastal Shorelands

Goal 18: Beaches and Dunes

Goal 19: Ocean Resources

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

IV. COMPLIANCE WITH RURAL COMPREHENSIVE PLAN POLICIES

Any plan and zone change must comply with the relevant Rural Plan Policies. This requirement is based in statutes (ORS 197.175(2)), the Rural Plan Policies themselves (see, e.g. Rural Plan Policies at page 6), and the Lane Code (see, e.g., LC 16.400(6)(h)). This section, therefore, addresses the apparently relevant elements of the Rural Plan Policies. It is organized by Goal. Where possible to avoid duplicative discussion, reference is made to the discussion

¹⁷ See Brandt v. Marion County, 22 Or LUBA 473, 484 (1991), aff'd in part, rev'd in part, 112 Or App 30 (1992).

under the Statewide Planning Goals. However, the following discussion regarding the relationship between Goals 3 and 4 bears repeating.

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. The proper resource designation for the “duel” lands is left up to the local jurisdiction so long as the factors underlying the designation choice are identified.

As discussed more specifically under Goals 3 and 4 above, the subject property meets the definition of both forest land and agricultural land. The Lane County Rural Comprehensive Plan Agricultural Working Paper documents the factors used to select Farm or Forest designation on land that meets the definition of both. See Exhibit J. Each of those factors is discussed in detail 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 duel qualification. However, when determining whether a property should be designated Forest or Ag, the key is not whether the property meets or furthers the policies under the RCP, but whether the property meets the factors established in the Plan for choosing between Forest or Ag.

The Agricultural Land Working Paper states,

“Agricultural/Forestry Goal Interrelationship

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

- a. *Identify Agricultural and Forest Lands Goal definitions and inventories*

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

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

Identify: The applicant has identified and addressed the proper definitions of farm and forest lands. In short, farm land is land consisting predominantly of Class I through IV soils. Forest land is land capable of producing 50 cu.ft./acre/year of timber fiber. As shown in Tables C and D above, the subject property meets both definitions.

Segregate: By filing this application, the applicant is separating the subject property from single resource property for consideration.

Evaluate Goal Factors: Goal 3 and 4 factors are thoroughly addressed in Section III, above. The analysis of Goal 3 factors shows that while the subject property meets the “soils” test of Ag land, it does not meet the “other suitable lands,” “necessary lands,” or “farm unit” tests. The analysis of Goal 4 factors shows that the subject property meets the “productivity” test for Forest lands and likely the “necessary lands” and the “other resource” tests. Just viewing the Goals 3 and 4 factors alone shows that the subject property is more appropriately designated Forest land.

Evaluate Local Circumstances: There is no exact definition of “local circumstances” in the Lane County RCP. The applicant interprets this provision to mean an evaluation of the subject property and surrounding designations, uses and land use patterns. Tables A and B and accompanying text, see pages 4 through 13 above, establish these factors for all properties in the surrounding area. That discussion is hereby incorporated. In summary, the subject parcel is located in a sea of Forest land and RR exception area land. See Exhibit E.

The subject property is currently and has historically been used for timber production. It is in both Forest and Small Tract Forest Land tax deferral. The property was most recently logged by the applicant in 2002. It is now regenerating for future harvests. Based on 2002 tree stump and site conditions, the site was also logged between 1955 and 1960. There is no evidence that the subject property has ever been in farm use, as defined by the statute.

Designation: The predominant designation by **lot/parcel** in the surrounding area is Residential (63%) followed by Forest (25%). The predominant designation, **by acreage**, in the surrounding area is Forest (72%). The predominant designation of **adjacent parcels by acreage** is Forest

(88%). See Table B, above, for a more in depth analysis.

Use: The predominant use by **lot/parcel** in the surrounding area is residential (58%) followed by forestry (34%). The predominant use, **by acreage**, in the surrounding area is forestry (88%). The predominant use of **adjacent parcels by acreage** is forestry (94%). See Table B, above, for a more in depth analysis.

In summary, all evidence indicates that the subject property is currently used for forestry and is surrounded by forestry. Evidence further indicates that the subject property has historically been used for forestry. The property is not suited for farm use. Because the property is in forestry, it would be difficult and expensive to convert the property to farm use. Conversion would require tree removal and major cultivation. Such conversion is generally unfeasible. Furthermore, farm uses are not common in the surrounding area.

Goal Three: Agricultural Lands

Policy 8:

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

This policy has been interpreted by the Board of Commissioners, and the interpretation has been upheld on appeal. This policy addresses only conflicts that will result in a significant change in or a significant increase in the cost of accepted farming practices. When conflicts of this magnitude might result, the proposed rezoning must be conditioned to reduce the potential conflicts below the level that will result in a significant change or significant increase in the cost of accepted agricultural practices.¹⁸

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

Goal Four: Forest Lands

Policy 1:

Conserve forest lands by maintaining the forest land base and protect the state's

¹⁸ Gutoski v. Lane County, 34 Or LUBA 219, 225 n4 (1998), aff'd 155 Or App 369, 963 P.2d 145 (1998).

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

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

This policy implements Statewide Planning Goal 4 by defining “forest lands” and requiring they be used consistent with the goal. The subject property qualifies as Forestland. See discussion in connection with Statewide Planning Goal 4 above. Therefore, the proposed plan change/zone change from AG/E-40 to Forest/F-2 furthers this policy by adding additional land to the State’s forest land base.

Policy 2:

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

The proposal is for a designation change from AG to Forest and a zone change from E-40 to F-2. The F-2 designation is supported by the general characteristic specified in Policy 16 below. Because the subject property is justified as being zoned Impacted, this policy has been met.

Policy 3:

Prohibit residence on Non-Impacted Forest Lands except for the maintenance, repair or replacement of existing dwellings.

Because the subject property is already developed with a residence, this policy further supports a zoning of F-2 Impacted Forestlands.

Policy 16:

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

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

Characteristics of the land, not the ownership of it, control the analysis. (See Exhibit S - Ord. PA 1236, pg. 8). Focus is on the subject property and the land in the immediate vicinity. Legal lot status is irrelevant. Ownership means, 'land being proposed for rezoning.' This can be an entire property or a portion of it. Where it is a portion of a larger lot, analysis is limited to the portion under consideration for rezone. See Ord. PA 1236, page 9 – 10. The critical focus of the analysis is on the property proposed for rezoning and the characteristics that property has that mitigate toward consideration of applying F-1 or F-2. See Ord PA 1236, page 9.

The analysis under Goal Four, Policy 15 does not required a precise mathematical computation since the focus is on all the characteristics and whether, on balance, the land proposed for rezoning more closely corresponds to the F-1 or F-2 characteristics. (See Exhibit S - Ord. PA 1236, pg. 10)

- b. **Non-impacted Forest Land Zone characteristics:**

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

The County has determined that this provision focuses on the subject property itself (not surrounding property) and whether it is developed with residences or nonforest uses. See Exhibit P and S. The absence of residential development or other nonforest use is a characteristic of F-1 zoning.

The subject property is developed with a homestead dwelling constructed in 1900. Therefore, the subject property does not meet this F-1 characteristic.

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

Response: Under Ordinance PA 1236 (Exhibit S), the focus is on the subject property and any underlying contiguously held properties. Contiguous is defined as,

“Having at least one common boundary line greater than eight feet in length. Tracts of land under the same ownership and which are intervened by a street *** shall not be considered contiguous. *** The intent of this provision is to look within the land being proposed for rezoning to determine whether or not that land being proposed for rezoning

consists of contiguous land owned by the applicant that is 80-acres or larger in sizes.” (Ord. PA 1236, pg. 10).

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

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

The subject property is 78 acres of contiguous ownership. Therefore, the subject property does not meet this F-1 characteristic.

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

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

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

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

Based on the above, commercial forest use leans toward public lands and lands that are large scale and in industrial forest operator control and ownership. Examples of lands that fall squarely under the umbrella of “large scale industrial forest land” include lands owned by Rosboro Lumber Co. (292 holdings and more than 2,000 acres of land in forest use in Lane County); Weyerhaeuser (1668 holdings and more than a 100 thousand acres of land in forest use in Lane County); Davidson Industries (200 holdings and more than 2,000 acres of land in forest use in Lane County); Seneca Lumber (168 holdings and more than

1,000 acres of land in forest use in Lane County); and McDougal Bros (92 holdings and more than 1,000 acres of land in forest use in Lane County). See Exhibit TT. This is just a sample. There are hundreds of similar industrial forest land companies holding property in Lane County.

The Oregon Department of Revenue keeps a yearly list of large-scale industrial timber owners. That list is included as Exhibit TT. Of the adjacent property owners, only Rosboro is on the list. See Exhibit TT.

Having commercial farm/forest uses on property adjacent to the subject property is a characteristic of F-1 zoning.

There are seven properties adjacent to the subject property. See Exhibits EE and Table A, above. The details are set out in Table F below. Only one of the contiguous properties is in commercial forest use. None are in commercial farm use.

Table F
 Contiguous Property and Commercial Use

Tax Lot	Ownership	Parcel size	Holdings in Lane County Parcels/acres Ex. TT	Comments
TL 200	Rosboro Lumber Co.	65 acres	292 parcels/more than 2,000 acres	Given the number of holdings and amount of land in forest production in Lane County, and given the fact that Rosboro is included on the state's list, this property is part of a large scale industrial operation and should be considered to be in commercial forest use.
TL 700 (west portion)	Ravin Ventures, LLC	40 acres	4 parcels/200 acres.	Given the limited number of holdings and amount of land owned and in forest production, this property is not part of a large scale industrial operation and should not be considered to be in commercial forest use. This is a small-scale, non industrial use.
TL 500	J. Paschelke	85 acres	5 parcels/217	Given the limited number of

			acres	holdings and amount of land owned and in forest production, this property is not part of a large scale industrial operation and should not be considered to be in commercial forest use. This is a small-scale, non industrial use.
TL 601	J. Paschelke	.68 acres	5 parcels/217 acres	Given the limited number of holdings and amount of land owned and in forest production, this property is not part of a large scale industrial operation and should not be considered to be in commercial forest use. Furthermore, this parcel is too small to be in commercial forest use.
800(west portion)	Dustrude	8.19 (mostly on other side of road)	1 parcel/8 acres	Zoned RR5; developed with a residence. No forest use.
Marcola Road	Lane County			Road. No forest use.
TL 600	Christoffersen	1.86	1 parcel/1.86 acre	Zoned RR5; developed with a residence. No forest use.

Based on the above, of the seven contiguous properties, one is in commercial forest use and six are not.

Therefore, the subject property does not meet this F-1 characteristic.

It is worth noting that even if TLs 700 (west) and 500 are considered to be in commercial forest use, the subject property still does not meet this F-1 characteristic because, even then, only three of the seven are in commercial forest use.

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

Response: The County has determined that this provision focuses on the subject property and the type of access to it. See Exhibit PP. Access by an arterial road or forest management road is a characteristic of F-1 zoning.

The subject property has direct access to Marcola Road, a local collector. The purpose of Marcola road is to move traffic from Hwy 228 to Springfield and to support local residential transportation. Therefore, the subject property does not meet this F-1 characteristic.

“(5) Primarily under commercial forest management.”

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

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

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

Based on the above, commercial forest use leans toward public lands and lands that are large scale and in industrial forest operator control and ownership. Examples of lands that fall squarely under the umbrella of “large scale industrial forest land” include lands owned by Rosboro Lumber Co. (292 holdings and more than 2,000 acres of land in forest use in Lane County); Weyerhaeuser (1668 holdings and more than a 100 thousand acres of land in forest use in Lane County); Davidson Industries (200 holdings and more than 2,000 acres of land in forest use in Lane County); Seneca Lumber (168 holdings and more than 1,000 acres of land in forest use in Lane County); and McDougal Bros (92 holdings and more than 1,000 acres of land in forest use in Lane County). See Exhibit TT. This is just a sample. There are hundreds of similar industrial forest land companies holding property in Lane County.

The Oregon Department of Revenue keeps a yearly list of large-scale industrial timber owners. That list is included as Exhibit TT. Ravin Ventures is not on the list.

Having commercial farm/forest uses on the subject property is a characteristic of F-1 zoning.

TL 700 (east portion)	Ravin Ventures, LLC	78 acres	4 parcels/200 acres.	Given the limited number of holdings and amount of land owned and in forest production and given that Raven Ventures is not included on the state's list, this property is not part of a large scale industrial operation and should not be considered to be in commercial forest use. This is a small-scale, non industrial use.
-----------------------------	---------------------------	----------	-------------------------	---

Because the owner of the subject property has a small amount of forest production land and holdings, the property is not in large scale industrial operation. It does not meet this F-1 requirement.

F-1 Zoning Test

Non-impacted Forest Land Zone (F-1, RCP) Characteristics	Does the Subject Property Meet this Element?
<i>1. Predominantly Ownerships not developed by residences or nonforest uses</i>	No. The property is developed with a residence.
<i>2. Predominantly contiguous, ownerships of 80 acres or larger in size</i>	No. The property is less than 80 acres
<i>3. Predominantly ownership contiguous, to other lands utilized for commercial forest or commercial farm uses.</i>	No. Only one contiguous ownership out of seven are utilized for commercial forest or farm uses
<i>4. Accessed by arterial roads or roads intended primarily for forest management.</i>	No. Adjacent to Marcola Road, a local county road.
<i>5. Primarily under commercial forest management.</i>	No. The property is small-scale nonindustrial land and is therefore not in commercial forest use.
CONCLUSION	Should not be zoned F-1 because it none of the characteristics (0 of 5)

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

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

Response: The County has determined that this provision focuses on the subject property itself (not surrounding property) and whether it is developed with residences or nonforest uses. See Exhibits PP. A property developed with residence or other nonforest use is a characteristic of F-2 zoning. This criterion is a mirror of Policy 16(b)(1).

The subject property is developed with a residence constructed in 1900. See Exhibits GG and I. It is currently occupied. Therefore, the subject property meets this F-2 characteristic.

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

Response: The County has determined that this provision focuses on the subject property itself (not surrounding property) and its size. See Exhibit PP. Property containing 80 acres or less is a characteristic of F-2 zoning.

The subject property is 78 acres, smaller than 80 acre threshold. Therefore, the subject property meets this F-2 characteristic.

Please note that the Board of County Commissioners has already determined that portions of property can be rezoned. Ordinance 1236, Pages 9-10 and 14, attached as Exhibit PP.

“(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.”

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

Ordinance 1236 interprets “generally contiguous” to mean in the general area. See page 10 of the Ordinance. Exhibit PP. The distance can be pushed in some or all directions and can cross roads, streams and other barriers. (Ord. PA 1236, pg. 10). How wide and how far is determined on a case by case basis. (Ord. PA 1236, pg. 10). This provision is two fold: F-2 should be applied (1) where adjacent and nearby properties are less than 80-acres and developed, or (2) where adjacent or nearby properties are within a developed or committed exception area.

Ordinance 1236 interprets “adjacent” to mean general vicinity. 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.

Generally Contiguous Tracts: There are 34 tracts that are “generally contiguous,” as the term is addressed in Section I.D, page 5 above. These tracts are included in Table A, above. Of the 34 generally contiguous tracts, 24 (71%) are less than 80 acres and contain a dwelling.

Developed and Committed Tracts: The subject property is adjacent to a developed and committed exception area to the northeast, east and southeast. There are 34 tracts in the “general vicinity,” as the term is address in Section I.D, page 5 above. Of the 34 tracts, 24 (71%) are in developed and committed exception areas.

In summary, of 34 “generally” contiguous tracts, 71 percent are less than 80 acres and contain a dwelling and 71 percent are in a developed and committed exception areas. Therefore, the subject property meets this F-2 characteristic.

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

Response: The County Board has determined that this provision focuses on the subject property itself (not surrounding property) and access to services. See Exhibit PP. In Lane County, rural services typically include: power, road access, telephone, police, ambulance, fire, and schools. Not typically included are public stormwater, public water or public sewer.

The subject property has direct access onto Marcola Road, a local county road. Power and telephone services are already connected to the site to serve the existing dwelling. The site is served by the Mohawk Rural Fire Protection District, the Lane County Sheriff’s Department, the State police department, Mohawk ambulance services and the Marcola School district. See discussion under Goal 11. In summary, the subject property is already developed with a residence which has access to power, transportation facilities, telephone, police, ambulance, fire and schools. Therefore, the subject property meets this F-2 characteristic.

F-2 Zoning Test

F-2 Zoning Criteria	Does the Subject Property Meet this Element?
Predominantly ownerships developed by residences or nonforest uses.	Yes. Property is developed with a residence

Predominantly ownerships 80 acres or less in size.	Yes. Parcel is 78 acres in size.
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.”	Yes. Of the 34 “generally contiguous” tracts, 24 are less than 80 acres with a dwelling; 24 are in developed and committed exception areas.
Provided with a level of public facilities and services, and roads, intended primarily for direct services to rural residences.	Yes. The area is highly developed. The property is adjacent to Marcola Road with access to power, cable, DSL, police, fire and emergency services. And is near the communities of Marcola and Mabel.
CONCLUSION	The subject property should be zoned F-2 because it meets four of the four F-2 characteristics (4 of 4)

Based on the above analysis, the “characteristics of the land correspond more closely to the characteristic of the proposed zoning [F-2] than the characteristics of the other forest zone [F-1].” The subject property meets none of the F-1 characteristics, and meets four of the four F-2 characteristics. Therefore, F-2 zoning is supported.

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

Flora and Fauna Policy 7:

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

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

No other Comprehensive Plan policies apply.

V. COMPLIANCE WITH LANE CODE CRITERIA FOR PLAN CHANGES

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

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

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

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

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

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

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

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

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

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

- (v-v) otherwise deemed by the Board, for reasons briefly set forth in its decision, to be desirable, appropriate or proper.**

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

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

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

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

“Agricultural/Forestry Goal Interrelationship

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

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

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

Compliance with individual policies in the Rural Plan Policies is discussed thoroughly

above.

- (dd) For Minor Amendments as defined in LC 16.400(8)(a) below, the Plan amendment or component is compatible with the existing structure of the Rural Comprehensive Plan, and is consistent with the unamended portions or elements of the Plan.**

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

LC 16.400(8): Additional Amendment Provisions.

- (a) Amendments to the Rural Comprehensive Plan shall be classified according to the following criteria:**
- (i) Minor Amendment. An amendment limited to the Plan Diagram only and, if requiring an exception to the Statewide Planning Goals, justifies the exception solely on the basis that the resource land is already built upon or is irrevocably committed to other uses not allowed by an applicable goal.**

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

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

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

This description has been provided throughout this supporting statement.

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

The required analysis is provided above.

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

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

See detailed discussion in Section II, above. To summarize, the subject property is located in a sea of Forest land. Furthermore, it is adjacent to an RR exception area. Some of these uses are on land planned and zoned for resource use, and others are on land that is planned and zoned for Nonresource uses. See Tables A and B and supporting narrative, above.

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

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

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

This discussion appears in detail in other parts of this statement. The proximate natural resources to consider are those that are identified as Goal 5 resources in the comprehensive plan. The impact on these resources is discussed as part of the Goal 5 analysis above.

This proposal will have no adverse impact on proximate resource lands because the subject property will remain in resource designation and zoning.

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

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

(gg) For a proposed amendment to a nonresource designation or a Marginal Lands designation, an analysis responding to the criteria for the respective request as cited in the Plan document entitled, "Working Paper: Marginal Lands" (Lane County, 1983).

This provision is not applicable.

V. COMPLIANCE WITH LANE CODE CRITERIA FOR ZONE CHANGES

This proposal requests a change from E-40 zoning to F-2 zoning. LC 16.252 sets out standards for zone changes. The facts relevant to the zone change standards are largely redundant with the facts relevant to plan policies and the Statewide Planning Goals. The LC 16.252 standards are stated here and addressed, with appropriate references to other parts of this narrative.

LC 16.252(2): Criteria.

Zonings, rezonings and changes in the requirements of this Chapter shall be enacted to achieve the general purpose of this Chapter and shall not be contrary to the public interest. In addition, zonings and rezonings shall be consistent with the specific purposes of the zone classification proposed, applicable to Rural Comprehensive Plan elements and components, and Statewide Planning Goals for any portion of Lane County which has not been acknowledged by the Land Conservation and Development Commission. Any zoning or rezoning may be effected by Ordinance or Order of the Board of County Commissioners, the Planning Commission or the Hearings Official in accordance with the procedures of this section.

General purposes of Chapter 16:

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

Purpose of F-2 Zone:

The F-2 zone is intended to preserve forestland in Lane County while recognizing that some forest lands are better than others. The proposed zoning is consistent with these stated purposes of the zone by recognizing that the subject property lies in a heavily developed area and is more appropriately zoned F-2.

Rural Comprehensive Plan Criteria:

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

Lane Code Criteria:

LC 16.004(4):

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

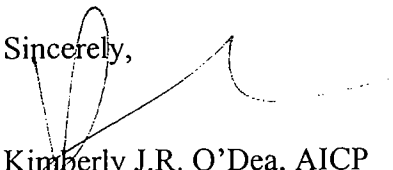
The request is a rezone from E-40 to F-2. These zoning districts both implement resource designations. The rezone will not result in any additional parcelization. In fact, the minimum lot size for partitions and subdivision is larger in the F-2 zoning district than in the E-40 district.

IV. CONCLUSION:

The subject property qualifies as both Agricultural land and Forest land based on soils and productivity. The Statewide Planning Goals give equal weight and value to Forest lands and Ag lands. Lands that qualify as both can be given either designation so long as the factors used to determine the designation are identified. See OAR 660-006-0015(2). The factors that Lane County used to determine the designation of these dual lands are identified in the Agricultural Working Paper of the Lane County Comprehensive Plan. See Exhibit J. The main factor requires an evaluation of (1) local circumstances and (2) Goal factors. Local circumstances, which include the existing and past use of the subject property and surrounding land usage, zoning and designation, establish that the subject property is more properly designated Forest. Goal factors establish that the subject property meets both Goal 3 and Goal 4 factors and is therefore properly designated as either. Therefore, because the subject property meets Goal 4 factors and because local circumstances establish that the property is more properly designated Forest, the proposed redesignation should be approve.

Whether Forest designated land should be zoned F-1 or F-2 is determined by Forest Policy 16 in the Rural Comprehensive Plan. An evaluation of these policies establishes that the subject property is properly zoned F-2, rather than F-1. Therefore, the proposed rezone to F-2 should be approved.

Sincerely,



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

USGS 2 km E of Marcola, Oregon, United States_01 Jul 1973

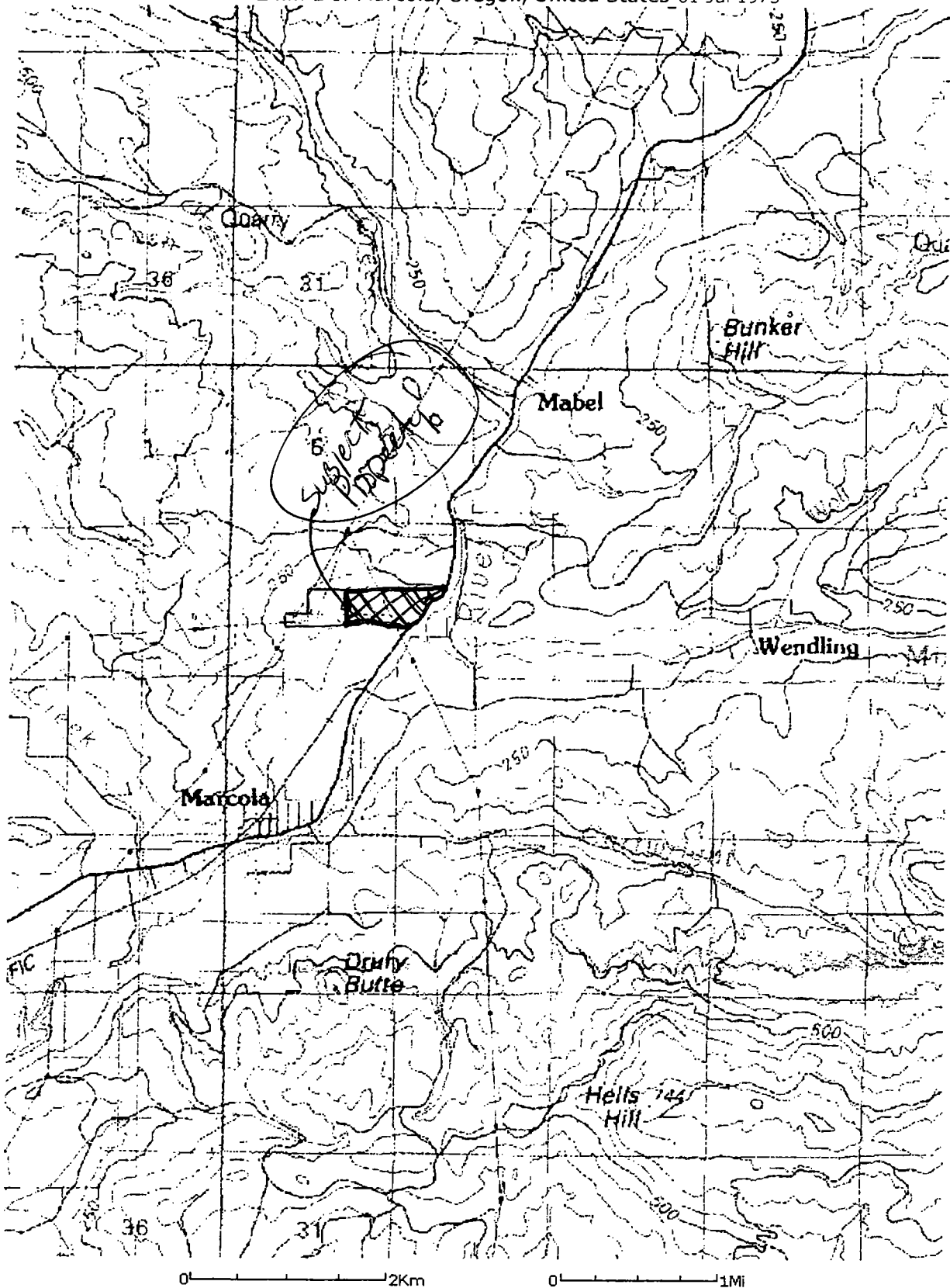
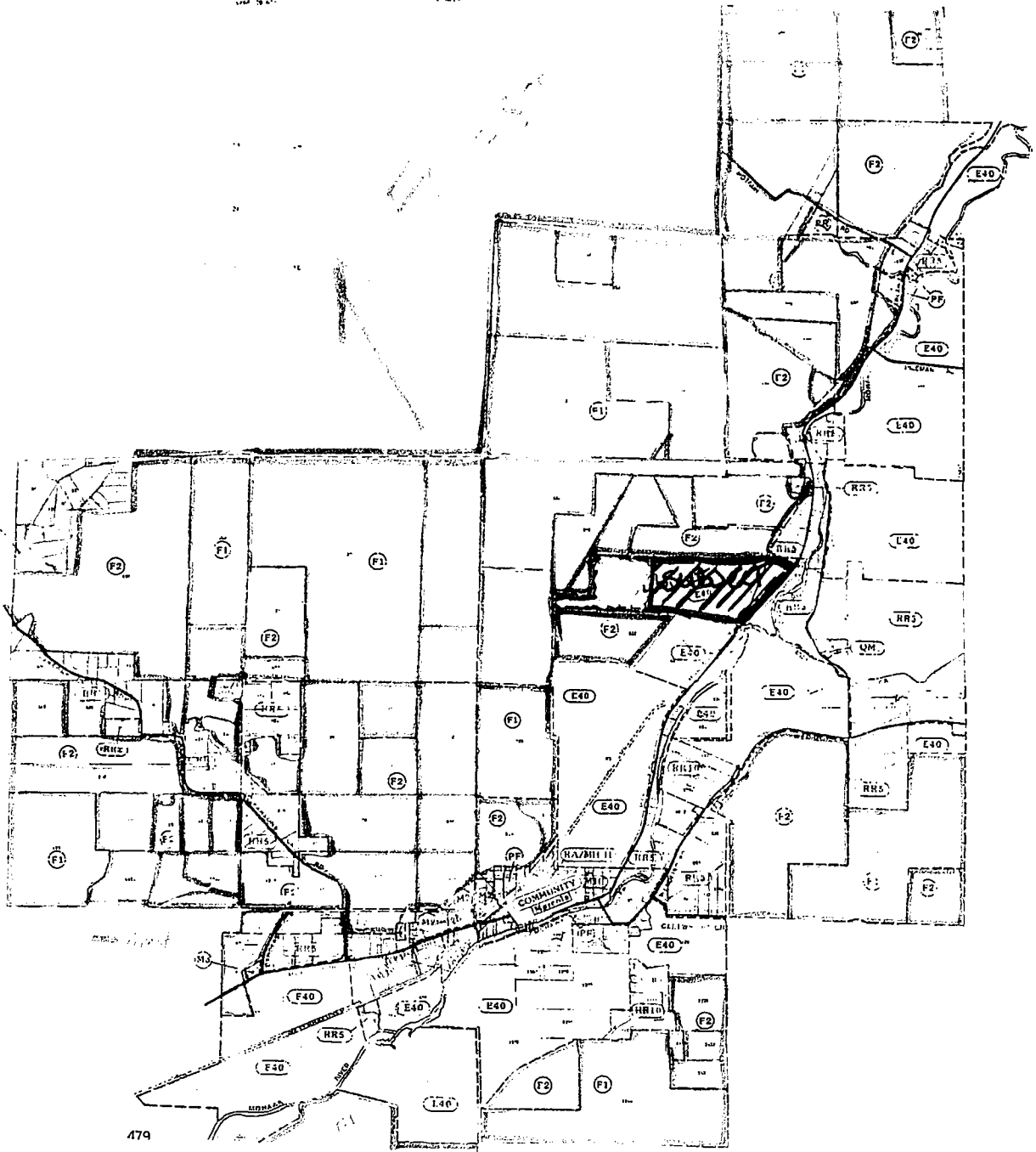


Image courtesy of the U.S. Geological Survey
 © 2004 Microsoft Corporation **Terms of Use** **Privacy Statement**

Supplemental
 BB₂

466

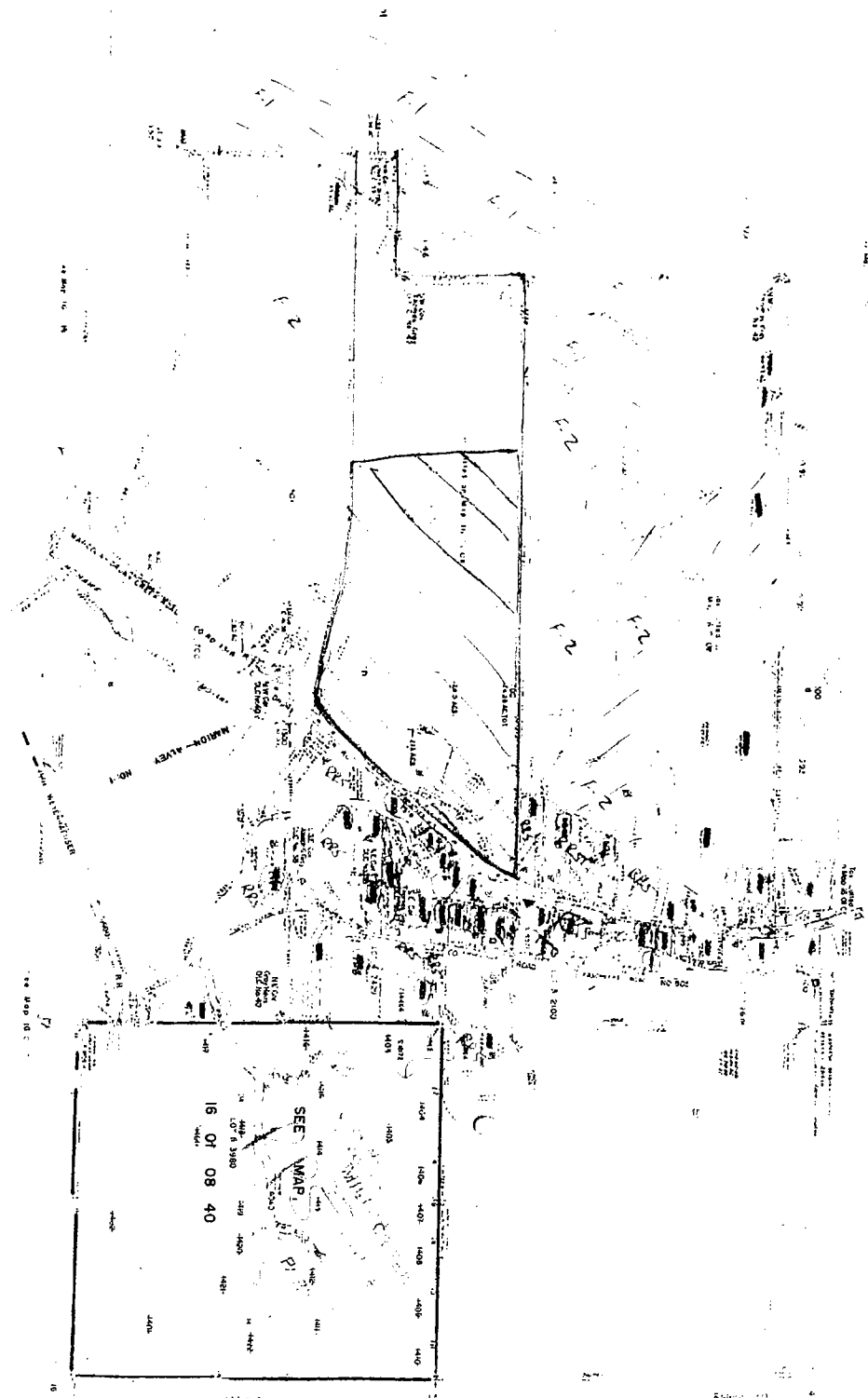


479

See Oversized Exhibit

Supplemental
EXHIBIT E1
AMENDED

*See
Resized
Exhibit*



Section 7 T16S R1WMM
LANE COUNTY

Section 8 T16S R1WMM
LANE COUNTY

SEE MAP
16 OF 08 40

16 OF 08

EXHIBIT EE 2

Lot 2

10.92

Lot 1

S 87° 57' E
915.6

1100.3
48.53 AC

N 59° 33' 40" W
3036.9'

NW Cor.
Thomas Gray
D.L.C. No. 42

65.39 AC. TOT.

Lot 3 32.00

SOUTH 28.00' ± = 1888.00'
E. N. 01° 07' E 1089.44'

Transmission Line Easement
F-1
N 10° 21' 10" E
3221.2'

1000 Ft Line

N 87° 55' 52" W - 955.88'

N 87° 57' 30" W

52.25 ACS.

F-1

F-2

π 200

ALBERT TRANSMISSION LINE

Lot 4 29.00

77.76'
N 88° 02' 50" W

S. 88° 17' 31" E. 3148.47'
EAST 3155.40'

1463 + 15 Fc

979±
11.46

23 ac

π 700
West Pochon

18 ac

Tax Lotted on Map 16 01 08

SW Cor.
Thomas Gray
D.L.C. No. 42

079-02

1438 ± 49.9' Fc
85.92 AC.

EAST 41.46 CHS = 2736.36'

F-2

501

43.0 Fc.

11° 00' E - 1423.6'

S 53° 12' 50" E

S 80° 35'

49.00
17.42
16.22

West
Cor
No. 42

otted on
16 01 08

2 ACS.

F-2
F-2
F-2

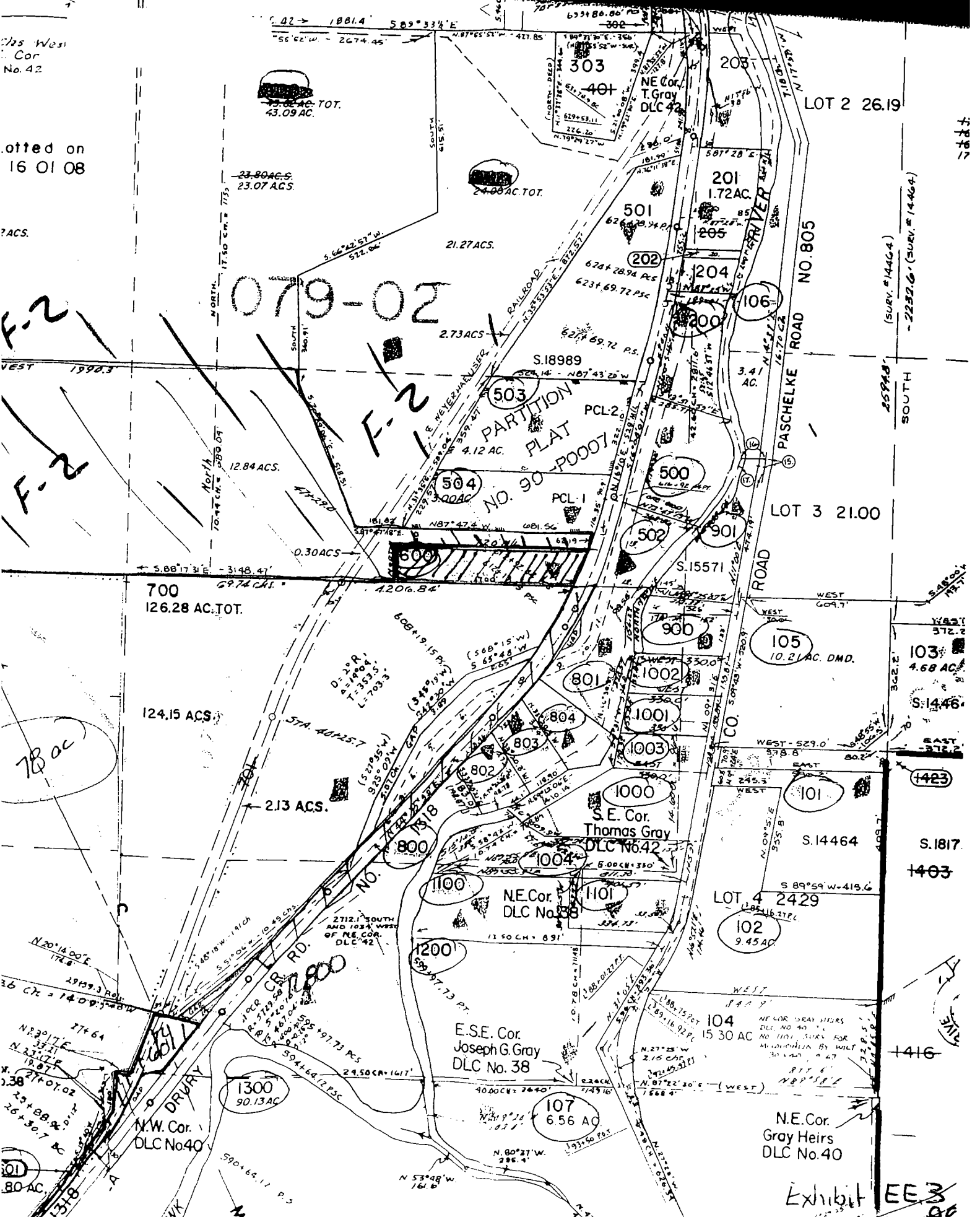
78 ac

80 AC.

079-02

F-2

PARTITION
PLAT
NO. 90-0007



LOT 2 26.19

LOT 3 21.00

LOT 4 24.29

Exhibit EE 3
90

7887

(SURV. # 14464)
- 2239.6' (SURV. # 14464)

25948'

362.2'

362.2'

409.7'

409.7'

409.7'

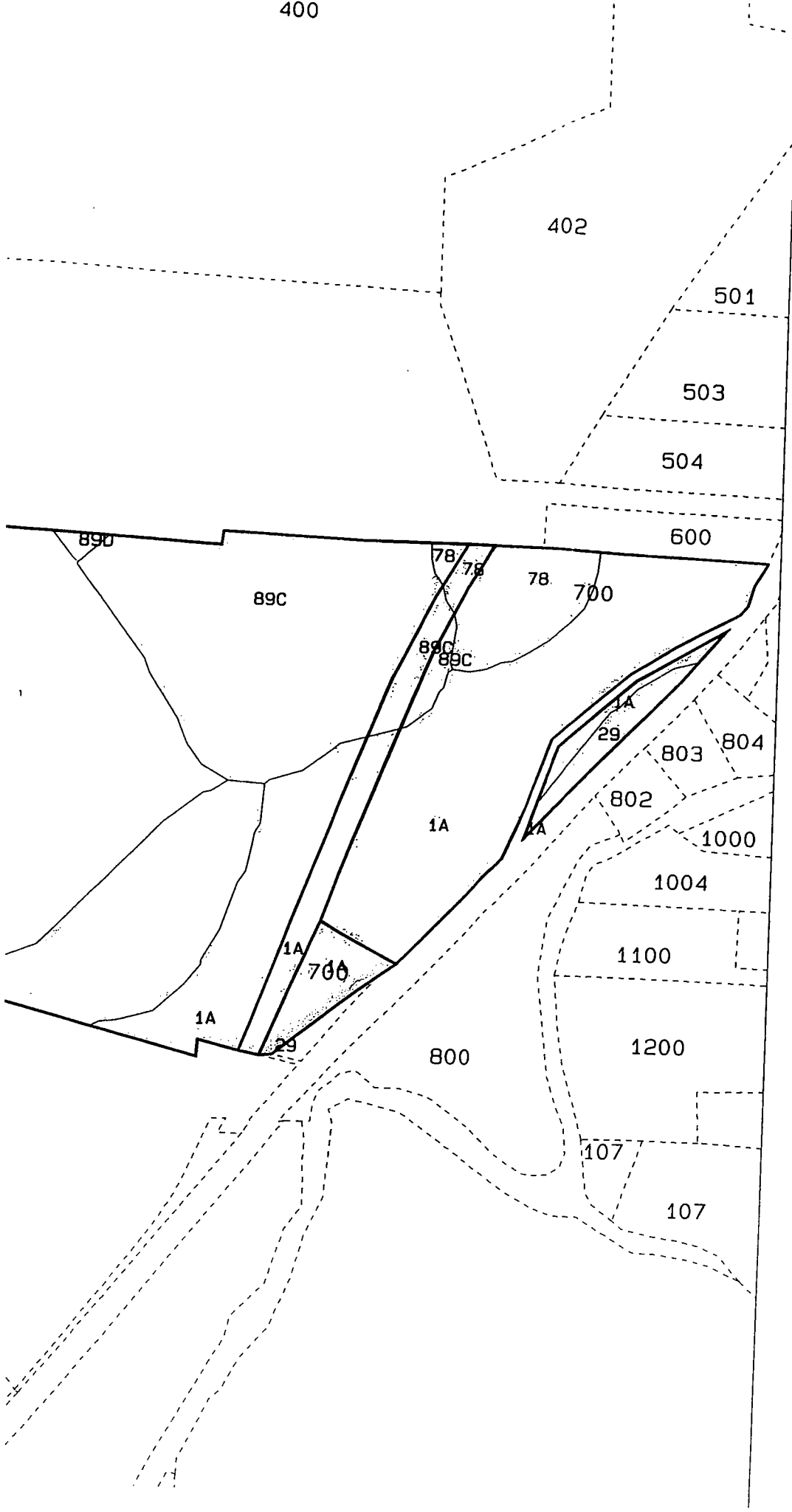
409.7'

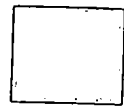
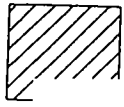


SOIL MAP UNITS IN ACRES
FOR MAP 16010800 LOT 700

MAP UNIT SYMBOL	AREA IN ACRES	PERCENT	SOIL NAME	COMPONENT NAME	AGRICULTURE CAPABILITY CLASS
52D	32.4 32.068		HAZELAIR SILTY CLAY LOAM, 7 TO 20 PERCENT SLOPES	HAZELAIR	4
89C	12.501		NEKIA SILTY CLAY LOAM, 2 TO 12 PERCENT SLOPES	NEKIA	3
⁷⁸ .3	13.410		MCALPIN SILTY CLAY LOAM	MCALPIN	2
89D	0.163		NEKIA SILTY CLAY LOAM, 12 TO 20 PERCENT SLOPES	NEKIA	3
1A	18.974		ABIQUA SILTY CLAY LOAM, 0 TO 3 PERCENT SLOPES	ABIQUA	1
29	0.884		CLOQUATO SILT LOAM	CLOQUATO	2

TOTAL 78 ACRES

Supplemental
EXHIBIT FF

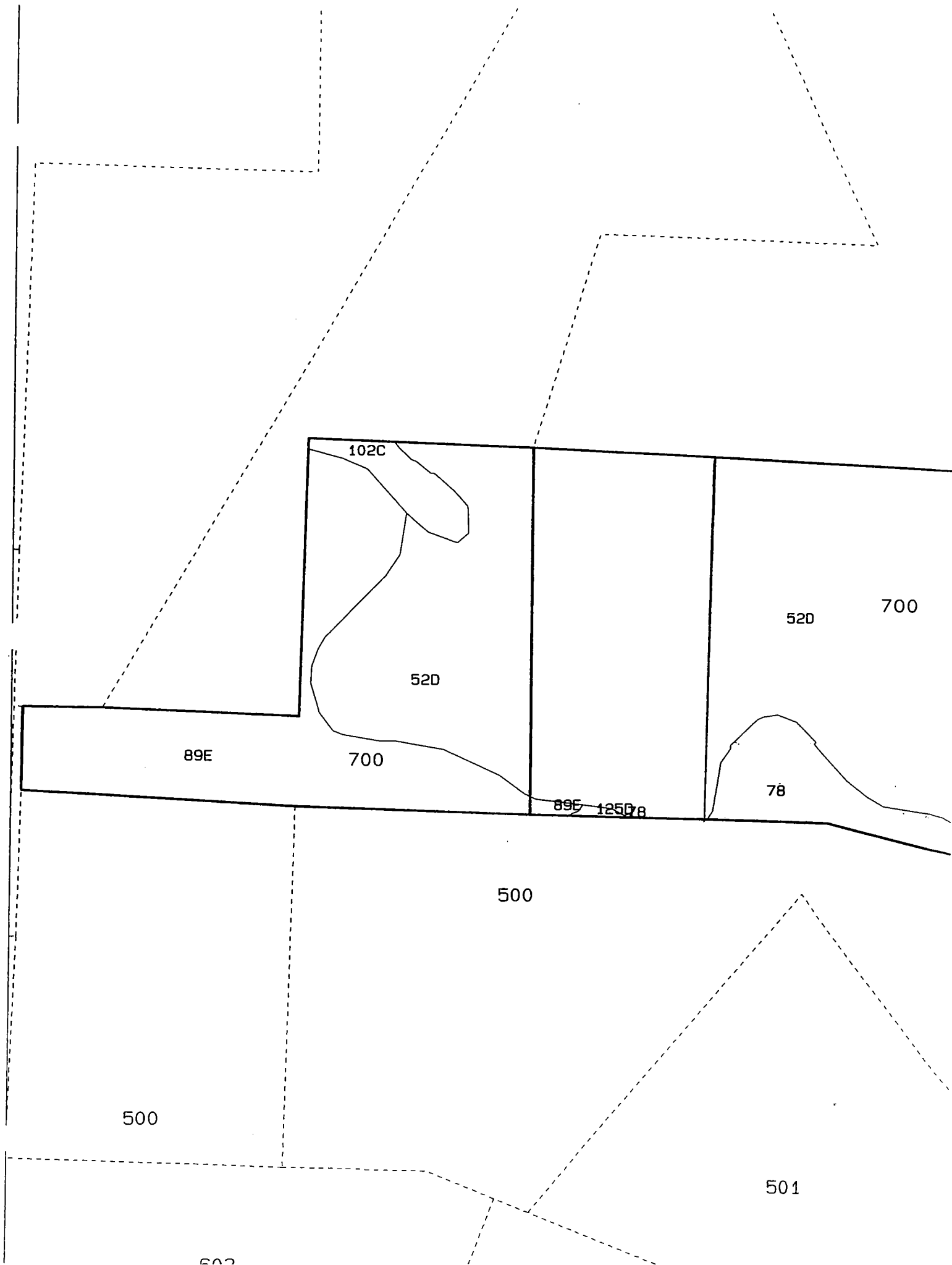


-  High Value
-  Hi-val if dr
-  Kim O'D
-  750'

SUBJECT PROPERTY

Exhibit FF

Scale 1:4800



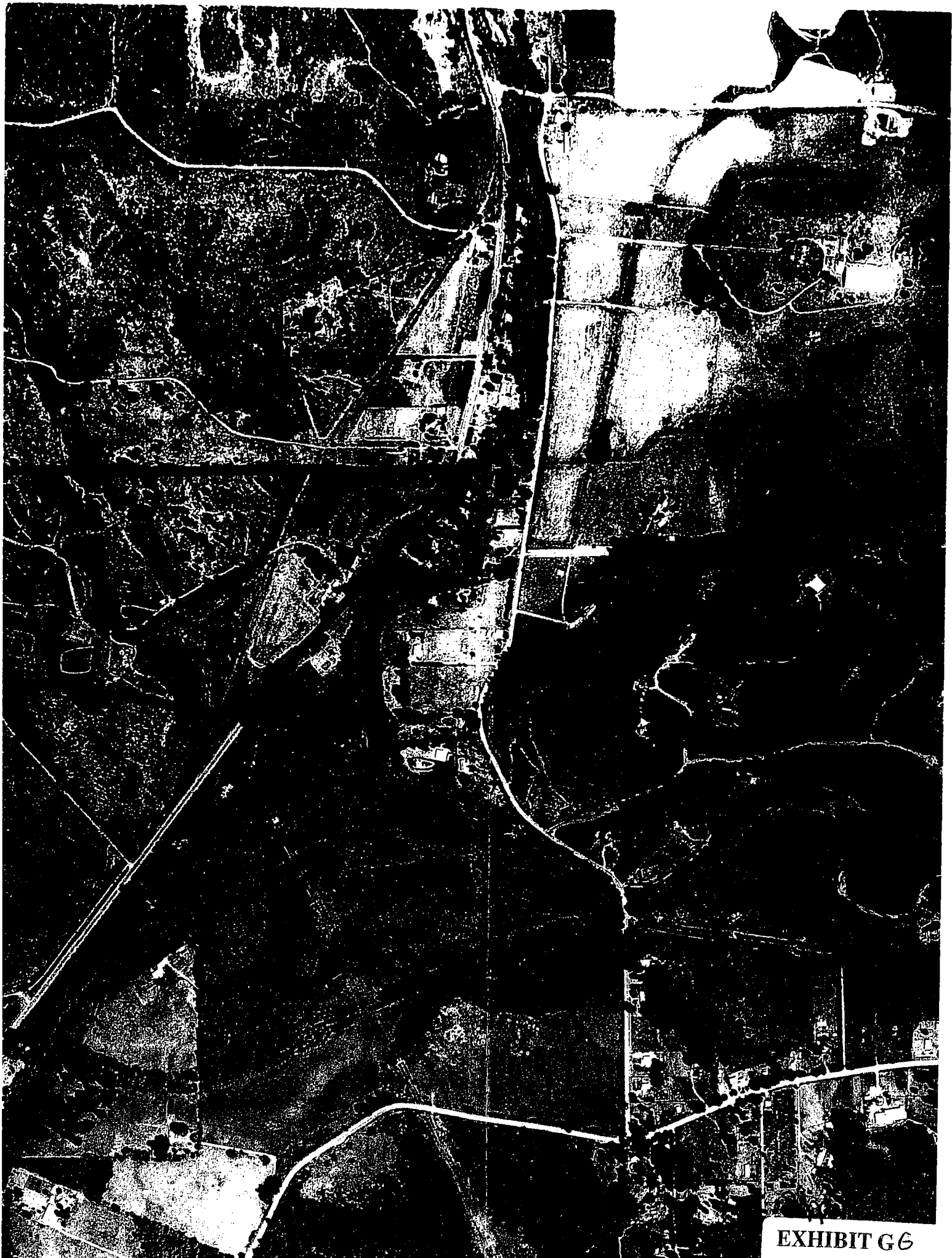
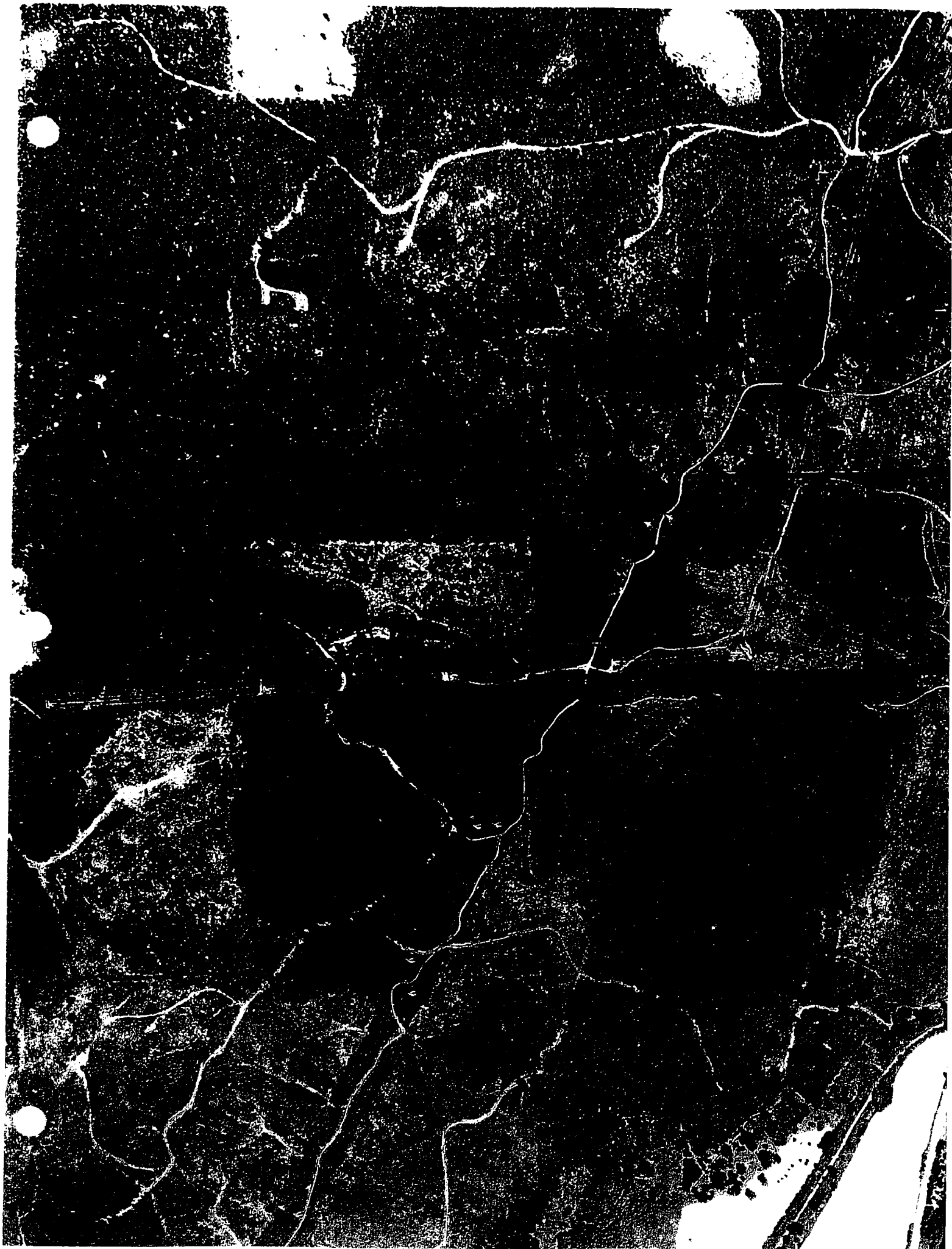


EXHIBIT G6



PROPERTY REPORT - LANE COUNTY

Account # 4210181

Map, Tax Lot, & SIC # 16-01-08-00-00800

Site Address:	
Owner Name & Address: Dustrude Ray O & Ida M 92885 Marcola Rd Marcola , OR 97454	Taxpayer Name & Address: Dustrude Ray O & Ida M 92885 Marcola Rd Marcola , OR 97454
Multiple Owners? No.	
Additional Account Numbers for this Tax Lot & SIC: 0028736, 1178795	

Approximate Tax Lot Acres	8.19 356,756'	Subdivision Name:		School District:	Marcola
Inc City:		Phase:		Elem	Marcola
UGB:		Lot #		Middle	Marcola
Census Tr/BlkGrp:	0200/2	Recording #		High	Mohawk

Zoning: Parent/Overlay	RR5
Statistical Class:	190 Manufactured Home On Real Property
Land Use:	9101 Broadleaf Brush
Property Class:	409 Tract, Manufactured Structure

Property Value and Taxes

	Land Value Real Market	Improvement Value Real Market	Total Value Real Market	Assessed
2007	\$0	\$80,520	\$80,520	\$59,872
2006	\$0	\$76,690	\$76,690	\$58,128

2007 Taxable Value
\$ 59,872

2007 Taxes
\$570.82

Tax Code Area
07902

Two Most Recent Sales

Date	Price	Grantor	Grantee	Instrument #
------	-------	---------	---------	--------------

Manufactured Structure

Model Year:	1994	Make:	Fleetwood
Serial Number:	16229	Plate Number:	X229233
Length:	58	Width:	24
Model:			

Comments:

*This report extracts commonly used information from the Detailed Property Report. Click here for the full Detailed Property Report.

Ex I
103

PROPERTY REPORT - LANE COUNTY

Account # 0028736

Map, Tax Lot, & SIC # 16-01-08-00-00800

Site Address: 92885 MARCOLA RD MARCOLA OR 97454	
Owner Name & Address: Dustrude Ray O & Ida M 92885 Marcola Rd Marcola , OR 97454	Taxpayer Name & Address: Dustrude Ray O & Ida M 92885 Marcola Rd Marcola , OR 97454
Multiple Owners? No.	
Additional Account Numbers for this Tax Lot & SIC: 1178795, 4210181	

Approximate Tax Lot Acres	8.19 356,756'	Subdivision Name:		School District:	Marcola
Inc City:		Phase:		Elem	Marcola
UGB:		Lot #	TL 00800	Middle	Marcola
Census Tr/BlkGrp:	0200/2	Recording #		High	Mohawk

Zoning: Parent/Overlay	RR5
Statistical Class:	
Land Use:	1150 Mobile Home - Not In Mobile Home Park
Property Class:	409 Tract, Manufactured Structure

Property Value and Taxes

	Land Value Real Market	Improvement Value Real Market	Total Value Real Market	Assessed
2007	\$102,857	\$0	\$102,857	\$34,340
2006	\$77,922	\$0	\$77,922	\$33,340
	2007 Taxable Value \$ 34,340	2007 Taxes \$300.66	Tax Code Area 07904	

Two Most Recent Sales

Date	Price	Grantor	Grantee	Instrument #
------	-------	---------	---------	--------------

Residential Building # 0 (of 0) Characteristics

	Square feet	Base	Finished	
Year Built:				Bsmt Garage Sqft
Bedrooms				Att Garage Sqft
Full Baths				Det Garage Sqft
Half Baths				Att Carport Sqft
% Improvmt Complete				
	Basement			
	First			
	Second			
	Attic			
	Total			

Comments:

*This report extracts commonly used information from the Detailed Property Report. Click here for the full Detailed Property Report.

PROPERTY REPORT - LANE COUNTY

Account # 0028702

Map, Tax Lot, & SIC # 16-01-08-00-00600

Site Address: 93000 MARCOLA RD MARCOLA OR 97454	
Owner Name & Address: Christoffersen Merina E 93000 Marcola Rd Marcola , OR 97454	Taxpayer Name & Address: Christoffersen Merina E 93000 Marcola Rd Marcola , OR 97454
Multiple Owners? No.	
Additional Account Numbers for this Tax Lot & SIC:	

Approximate Tax Lot Acres	1.86 81,022'	Subdivision Name:		School District:	Marcola
Inc City:		Phase:		Elem	Marcola
UGB:		Lot #	TL 00600	Middle	Marcola
Census Tr/BlkGrp:	0200/2	Recording #		High	Mohawk

Zoning: Parent/Overlay	RR5
Statistical Class:	190 Manufactured Home On Real Property
Land Use:	1111 Single Family Housing
Property Class:	409 Tract, Manufactured Structure

Property Value and Taxes

	Land Value Real Market	Improvement Value Real Market	Total Value Real Market	Assessed
2007	\$169,880	\$99,470	\$269,350	\$114,052
2006	\$128,697	\$94,730	\$223,427	\$110,730

2007 Taxable Value
\$ 114,052

2007 Taxes
\$1,087.37

Tax Code Area
07902

Two Most Recent Sales

Date	Price	Grantor	Grantee	Instrument #
10-31-2002	\$148,500	Wechter Carolyn S & Tracy K	Christoffersen Merina E	20-02-085010
07-25-1996	\$134,900	Mc Lean, Robert A & Lisa M H&W		96-05063200

Residential Building # 1 (of 2) Characteristics 21 stat 110 or 120

		Square feet		
		Base	Finished	
Year Built:	1930	Basement		Bsmt Garage Sqft
Bedrooms	1	First	704 704	Att Garage Sqft
Full Baths	1	Second		Det Garage Sqft
Half Baths		Attic		Att Carport Sqft
% Improvmt Complete	100	Total	704 704	

Comments:

*This report extracts commonly used information from the Detailed Property Report. Click here for the full Detailed Property Report.

Send To Printer Back To TerraServer Change to 11x17 Print Size Show Grid Lines Change to Landscape

USGS 2 km NE of Marcola, Oregon, United States 01 Jul 1988

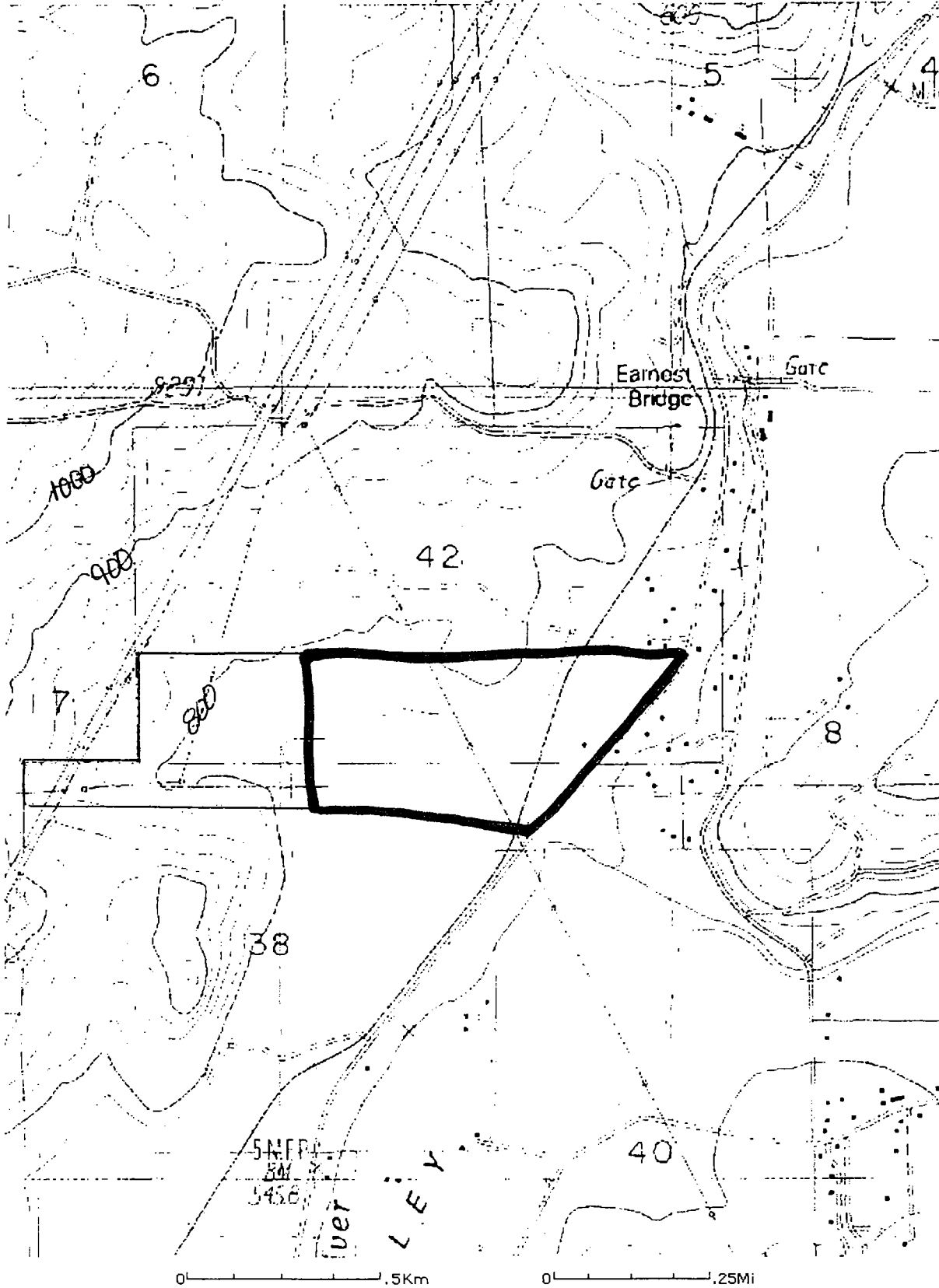


Image courtesy of the U.S. Geological Survey

© 2004 Microsoft Corporation.

Terms of Use

Privacy Statement

Supplemental
EXHIBIT KK

106

FINDINGS OF FACT AND CONCLUSIONS OF LAW

for

A CONFORMITY DETERMINATION AMENDMENT
PURSUANT TO RCP GENERAL PLAN POLICIES – GOAL TWO, POLICY 27. a. vii.

ADOPTING THE PLAN DESIGNATION OF FOREST (F)
AND THE ZONING DESIGNATION OF IMPACTED FOREST LAND (F-2)
FOR 37.5 ACRES LOCATED IN SECTION 32, TOWNSHIP 20, RANGE 2 WEST,
WILLAMETTE MERIDIAN, AND IDENTIFIED AS A PORTION OF TAX LOT 1700 OF
LANE COUNTY ASSESSOR MAP 21-02-06

and

ADOPTING SAVINGS AND SEVERABILITY CLAUSES

APPLICATION NO. PA 06-5476

ORDINANCE NO. PA 1236

Applicant: Symbiotics, LLC
Owner : U.S. Army Corp of Engineers
Applicant's Agent: Erik Steimle
Ecosystems Research Institute
Applicant's Attorney: Paul Vaughan
Hershner Hunter, LLP

FINDINGS OF FACT AND CONCLUSIONS OF LAW

In support of our adoption and enactment of Ordinance No. PA 1236, we make the following findings of fact and conclusions of law.

GENERAL FINDINGS AND CONCLUSIONS:

The property subject to this Conformity Determination Amendment (the Subject Property) is located north of the centerline thread of the Row River, south of Row River Road and east of the Developed and Committed Exception Area Plot #453-R1 (which exception area is located east of the intersection of Row River Road and Shoreline Drive). The property includes the Dorena Dam and spillway. The eastern boundary of the property extends south of Row River Road and north of the shoreline of Dorena Reservoir to the eastern boundary of Official Plan Plot # 453 and Official Zoning Plot #453 as depicted on Attachment "A" and Attachment "B", respectively. The property includes the right-of-way of the Oregon Pacific Electric Railroad (OPERR) and the southern right-of-way of Row River Road within Official Zoning Plot # 453. The property is approximately six miles east of Cottage Grove and is outside of the City of Cottage Grove urban growth boundary.

The Subject Property includes an approximately 37.5 acre portion of a 970.71-acre parcel owned by the U.S. Army Corp of Engineers (ACOE) that is tax lotted on Assessor's Map 21-02-06-00 as Tax Lot 1700. The 970.71-acre ACOE parcel was developed between approximately 1942 and 1949 with the Dorena Dam which impounded waters of the Row River and created the Dorena Reservoir, which occupies most of the 970.71 acre ACOE parcel.

On August 29, 1978, Lane County enacted Ordinance No. 688 that zoned lands within the Row River-London Subarea that included the Subject Property. The Subject Property was zoned FF-20 (Farm-Forest District-20 acre minimum parcel size) pursuant to that 1978 ordinance. A portion of the ACOE parcel immediately south of the Subject Property was included within the Public Reserve (PR) zone described in Lane Code Chapter 10, which is a zone that allows such uses as public parks, playgrounds, hunting and fishing lodges, government buildings and other intensive, non-forest uses and the rest was zoned FF-20.

In 1984, Lane County enacted Ordinance No. 884 with the stated intent of applying new Rural Comprehensive Plan designations and zoning (Lane Code Chapter 16) to all land outside of urban growth boundaries. Although the ordinance applied new RCP designations and zoning to surrounding properties, there was an apparent oversight with respect to the ACOE parcel—the ordinance failed to apply any RCP designation or zoning to any portion of the ACOE parcel, including the Subject Property. Although that might suggest that the Subject Property is still subject to the FF-20 (Lane Code Chapter 10) zoning applied to it in 1978 pursuant to Ordinance No. 688, 1984 Ordinance No. 884 went beyond merely applying new designations and zoning to properties described in the ordinance—Section 2 of the ordinance (with exceptions not relevant here) specifically repealed all prior plan and zone designations. As a result, we find that 1984 Ordinance No. 884 caused the ACOE parcel that includes the Subject Property to be stripped of any RCP designation and to become unzoned.

LCDC has acknowledged Lane County's Rural Comprehensive Plan and implementing regulations that included the designations and zoning applied by 1984 Ordinance No. 884. Since the 1984 ordinance did not apply any designation or zoning to the Subject Property, arguably the use and development of the Subject Property is not regulated by Lane County zoning ordinances. However, where a property is not subject to any zoning district, it is unclear what, if any, standards apply to the use and development of the property. In order to fill that vacuum and clarify the situation, Symbiotics filed an application for a Conformity Determination requesting that Lane County apply a plan designation and zoning of Impacted Forest Land (F-2, RCP) to the Subject Property. That resource designation, which does not require that the county take a Goal exception, is consistent with the FF-20 designation and zoning that was applied to the Subject Property in 1978 but subsequently repealed in 1984. It is also consistent with the aerial photographs attached as Appendix D to the application that show the current use of the Subject Property.

GENERAL PLAN POLICIES: GOAL TWO – POLICY 27:

The Lane County Rural Comprehensive Plan includes General Plan Policies specific to each of the Statewide Planning Goals One through Nineteen as they are implemented in Lane Code. Goal Two policies address Land Use Planning, which includes amendment processes for the Plan and Zoning designations of all properties within the rural lands of Lane County. Policy 27 of Goal Two pertaining to Conformity Determinations provides for the processing of a Conformity Determination Amendment by the Planning Commission and the Board of Commissioners for specific properties when a citizen, public agency or LMD staff shows that the plan and/or zoning designations satisfy one of the eight criteria set out in Policy 27.a.i.-viii.

a. Circumstances qualifying for consideration by the Board of Commissioners under the Conformity Determinations Policy may include one or more of the following:

i. Lawful, structural development existing prior to September 12, 1984 and use of the structures at the time qualified as an allowable use in a developed & committed zone designation other than that designated for the land on an Official Plan or Zoning Plot.

ii. Inappropriate Non-impacted Forest Land (F-1, RCP-zoning designation, where criteria of RCP Forest Land Policy 15 indicate that Impacted Forest Land (F-2, RCP) zoning designation is more suitable.

iii. A property was actively managed primarily as either an agricultural or forestry operation in 1984 and since, and a resource designation other than the primary, use was adopted on an Official Plan or Zoning Plot in 1984.

iv. Correction of a scrivener error on an adopted Official Plan or Zoning Plot.

v. Correction of an incompatible split-zoning of a legal lot resulting from a survey boundary line error that was discovered after September 12, 1984.

vi. *Compliance by a public jurisdiction or agency with a deed restriction on public land.*

vii. *Correction of an inconsistency between the text of an order or ordinance adopted by the board of Commissioners and an Official Plan or Zoning diagram.*

viii. *A circumstance other than as listed in Policy 27. a.i.-vii. above, which the Planning Commission elects to forward a favorable recommendation for consideration by the Board of Commissioners.*

We find that a Conformity Determination Amendment applicable to the Subject Property is appropriate under and consistent with General Plan Policy: Goal Two – Policy 27.a.vii. As stated in the General Findings, pursuant to 1978 Lane County Ordinance No. 688, the Subject Property was zoned FF-20 (Farm-Forest District–20 acre minimum parcel size). However, in 1984, Lane County enacted Ordinance No. 884 which effectively removed any RCP designation from the Subject Property and caused the property to become unzoned. Although the 1984 ordinance was enacted with the stated intent of applying new Rural Comprehensive Plan designations and zoning (Lane Code Chapter 16) to *all land outside of urban growth boundaries*, through an apparent oversight, the ordinance failed to apply any new RCP designation or zoning to the Subject Property. The property was simply omitted from the designation/zoning maps attached to the ordinance. Moreover, to compound the oversight, the 1984 ordinance specifically *repealed all prior plan and zone designations*. This is exactly the type of oversight and circumstances that the Conformity Determinations Policy was intended to address. This Conformity Determination Amendment restores a forestland resource designation to the Subject Property and zoning consistent therewith in accordance with the Lane County Rural Comprehensive Plan Goal 4: Forest Land - Policy 15 criteria discussed below. We also note that Subsection e. of Policy 27 recognizes that a Conformity Determination Amendment may be initiated by a private applicant in addition to being initiated by the county and find that the subject application was appropriately initiated by the applicant in accordance with that subsection.

We find that this Conformity Determination Amendment is a Minor Amendment pursuant to Policy 27.a.vii and Lane Code 16.400(6)(h) and involves applying a plan and zoning designation subject to Lane Code 16.252 processes. We find that no exception to any Statewide Goal, resource or otherwise, is necessary, and that this Minor Amendment is consistent with all applicable Statewide Goals. This Minor Amendment merely corrects an oversight—it causes currently undesignated and unzoned land to be designated for forest resource use and zoned Impacted Forest Land (F-2) in accordance with the county's Goal 4: Forest Land – Policy 15.

CONFORMITY DETERMINATION AMENDMENT – GENERAL PROCEDURES:

Lane Code 16.400(6) Plan Adoption or Amendment – General Procedures. The Rural Comprehensive Plan or any component of such Plan, shall be adopted or amended in accordance with the following procedures:

* * * * *

(h) *Method of Adoption and Amendment.*

(i) *The adoption or amendment of a Rural Comprehensive Plan component shall be by Ordinance.*

(ii) *The adoption or amendment shall be concurrent with an amendment to LC 16.400(4) above. In the case of a Rural Comprehensive Plan adoption, the Code amendment shall place such Plan in the appropriate category. In the case of a Rural Comprehensive Plan amendment, the Code amendment shall insert the number of the amending Ordinance.*

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

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

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

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

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

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

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

(v-v) *otherwise deemed by the Board, for reasons briefly set forth in its decision, to be desirable, appropriate or proper.*

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

(dd) *For Minor Amendments as defined in LC 16.400(8)(a) below, the Plan amendment or component is compatible with the existing structure of the Rural Comprehensive Plan, and is consistent with the unamended portions or elements of the Plan.*

(i) *A change of zoning to implement a proposed Plan amendment may be considered concurrently with such amendment. In such case, the Board shall also*

make the final zone change decision, and the Hearings Official's consideration need not occur.

We find that this Minor Amendment is adopted by ordinance as required by Lane Code 16.400(6)(h)(i).

We find that pursuant to LC 16.400(6)(h)(iii)(bb)(i-i), Ordinance No. PA 1236 is a Minor Amendment (processed as a Conformity Determination Amendment) necessary to correct an identified error in the application of the Plan. In this case, the discovery of unzoned land in the rural area of Lane County and the intent to apply the appropriate resource designation in conformity with similar actions at the time of adoption of the Rural Comprehensive Plan in 1984.

As noted above, the Conformity Determination Amendment applicable to the Subject Property is appropriate under and consistent with General Plan Policy: Goal Two – Policy 27.a.vii. We also find that the amendment is compatible with the existing structure of the Rural Comprehensive Plan, and is consistent with the unamended portions or elements of the Plan. We also incorporate herein our findings and conclusions set out below addressing Lane County Rural Comprehensive Plan Goal 4: Forest Land - Policy 15.

We also find that a change of zoning to implement the Conformity Determination Amendment was considered concurrently with the amendment, and the Board has made the final zone change decision from unzoned land to Impacted Forest Land (F-2) zoning. Accordingly, we find and conclude that the Hearings Official's consideration need not occur.

ADDITIONAL LANE CODE PROCEDURES FOR PLAN AMENDMENT:

Portions of Lane Code 16.400(8) are also applicable to the amendment process.

Lane Code 16.400(8) Additional Amendment Provisions.

(8) Additional Amendment Provisions. In addition to the general procedures set forth in LC 16.400(6) above, the following provisions shall apply to any amendment of Rural Comprehensive Plan components.

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

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

(ii) Major Amendment. Any amendment that is not classified as a minor amendment.

(b) *Amendment proposals, either minor or major, may be initiated by the County or by individual application. Individual applications shall be subject to a fee established by the Board and submitted pursuant to LC 14.050.*

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

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

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

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

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

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

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

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

(ee) *For a proposed amendment to a nonresidential, nonagricultural or nonforest designation, an assessment of employment gain or loss, tax revenue impacts and public service/facility costs, as compared to equivalent factors for the existing uses to be replaced by the proposal;*

(ff) *For a proposed amendment to a nonresidential, nonagricultural or nonforest designation, an inventory of reasonable alternative sites now appropriately designated by the Rural Comprehensive Plan, within the jurisdictional area of the Plan and located in the general vicinity of the proposed amendment;*

(gg) *For a proposed amendment to a Nonresource designation or a Marginal Land designation, an analysis responding to the criteria for the respective request as cited in the Plan document entitled, "Working Paper: Marginal Lands" (Lane County, 1983).*

We find that this amendment is a Minor Amendment because it is limited to the Plan Diagram only and does not require an exception to any Statewide Planning Goal.

We further find that the applicant submitted a complete application in compliance with the requirements of Lane Code 16.400(8)(b). The Planning Director waived the requirement for the applicant to supply documentation concerning Lane Code 16.400(8)(c)(iii)(aa)-(gg), above. We

find that waiver to be appropriate because this Minor Amendment is a Conformity Determination Amendment to correct an inconsistency between the text of 1984 Ordinance No. 884 adopted by the Board of Commissioners and the Official Plan and Zoning diagram; and because the amendment applies a forest resource designation to forest land and does not require any exception to any Statewide Goal.

We find that similar resource lands designated as Farm Forest 20 (FF20) within Plot # 453 from 1976 to 1984, and amended by the Board of Commissioners in February 1984 by 1984 Ordinance No. 884, were predominantly designated for forest use and zoned Impacted Forest Land (F-2). Specifically, the zoning designations for lands within the vicinity of the subject property were illustrated on Attachment "D" to the staff report. Lands designated from 1976 to 1984 as FF20 were predominantly amended to Impacted Forest Land (F-2). We also find, based on the evidence in the record, that the Subject Property is predominantly forested, that it is not in a farm use, and that it is appropriately designated for forest use.

FINDINGS OF FACT AND CONCLUSIONS OF LAW REGARDING APPLYING THE RURAL COMPREHENSIVE PLAN DESIGNATION AND ZONING OF IMPACTED FOREST LAND (F-2, RCP) TO THE SUBJECT PROPERTY:

We find that the county previously recognized that the Subject Property is forest resource land when it enacted 1978 Lane County Ordinance No. 688. A forest resource land designation is also consistent with what is shown by the evidence in the record including the aerial photographs of the Subject Property that are attached to the application.

We find that the primary issue to be decided in connection with this Conformity Determination Amendment (which will restore a forest resource designation and zoning to the Subject Property) is whether the designation and zoning should be Non-Impacted Forest Lands (F-1, RCP) or Impacted Forest Lands (F-2, RCP). We find unequivocally that the Subject Property qualifies for an Impacted Forest Lands (F-2, RCP) designation and zoning under the applicable criteria.

Lane County Rural Comprehensive Plan Goal 4: Forest Land - Policy 15 sets out the criteria for deciding whether forest land shall be designated and zoned as Non-impacted Forest Lands or Impacted Forest Lands as follows:

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

b. Non impacted Forest Land Zone (F-1, RCP) Characteristics:

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

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

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

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

(5) *Primarily under commercial forest management.*

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

(1) *Predominantly ownerships developed by residences or non-forest uses.*

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

(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.*

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

A review of the evidence and testimony, including the objections raised around terms contained in this policy makes it clear that the focus of the analysis must be on the property proposed for forest land zoning. For reasons that become clear when each of the various portions of the policy are addressed, most of the assessment of property or the area beyond the boundaries of the property proposed for zoning comes through the expression of the characteristics of each zone and does not rely on a precise definition of the term “ownerships” as either a “legal lot or parcel” or a “tract” of land since the primary focus is on the land that is the subject of the zoning request itself. For that reason we reject the assertion that the term means more than the Subject Property.

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 finding constitutes a reasonable interpretation of the term “ownerships” as contained in that policy. Such an interpretation is consistent with the text, context, purpose and intent of Policy 15. Sub-paragraph a. of Policy 15 states that a decision to apply one of the 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.” (Emphasis added)

The characteristics of the land, not the ownership of it, control the analysis. Policy 15 was crafted as a means of distinguishing large-scale industrial forest land from small-scale non-industrial forest land in the present and for the foreseeable future. The policy was intended to provide an analysis of the size and use of the subject property and of the land in the immediate

vicinity. Size and use of land constitute the four sets of characteristics of each type of forest land required by Policy 15 to be analyzed and compared. The listed characteristics do not include any reference to the determination of a particular type of ownership or whether contiguous properties owned by the same person or entity constitute one or more ownerships. The critical focus of the analysis is on the property proposed for rezoning and the characteristics that property has that mitigate toward consideration of applying F-1 or F-2 zoning.

The term "ownership" as used in Goal Four, Policy 15, has been utilized to identify different lands and the uses thereon, which are to be considered in making an evaluation of whether a F-1 or F-2 designation is warranted for the land under consideration for zoning. This was due to the need to look within the subject land to identify the development and uses present and to partially look beyond those boundaries to the lands in the general vicinity and identify the existing resource or nonresource uses and development on the surrounding lands. It really amounted to identifying a singular pattern within a more expansive tapestry.

When Goal Four, Policy 15 was originally adopted in 1984 as a component of the General Plan Policies of the Rural Comprehensive Plan, the two planning commissions and the Board of Commissioners were applying the "characteristics" of Policy 15(b) and (c) in a broad matrix designed to (1) acknowledge development existing at the time on specific properties; and (2) analyze those commitments of specific lands in context with a broad-brush view or generalized sense of the surrounding parcelization and uses. Forest lands less than 80 acres in size and developed with residential uses or other nonforest uses, generally received Impacted Forest Land (F2) designations. Public forested lands and larger commercially managed, forest lands that were not impacted by nonforest uses, particularly in the ownership of industrial forest operators, were designated as Nonimpacted Forest Lands (F1).

Prior analysis during the 1970s and the resulting Lane Code Chapter 10 zoning designations which were incorporated into the thirteen subarea plans, contributed to the final decision on a property-by-property basis in 1984. At that time, the need for precise definition of the "ownership" term as legal lot, or parcel or tract was not important because the whole county was the subject of the zoning designation. In considering the present day applications, looking at the area proposed for rezoning generally provides sufficient definition to the term "ownership". In the case of the subject 37.5 plus acres of Ordinance No. PA 1236, the subject land would have been re-designated from FF20 Farm-Forestry to F2 Impacted Forest Land as were other lands with similar characteristics in the area, at the time.

The critical focus of the analysis is on the property proposed for rezoning and the characteristics that property has that mitigate toward consideration of applying F-1 or F-2 zoning. Properties subject to amendments in the past have included portions or combinations of tax lots as metes and bounds descriptions with single owners or multiple owners. Lane Code does not require legal lot determinations as a qualifier for application for a zone change in recognition of the variety of configurations of zoning that might make sense regardless of property boundaries. Legal lot status is a factor that comes into play in subsequent development permits, both planning and building, after a zoning designation has been applied.

*Re: LL
status
for
report*

A reading of Goal Four, Policy 15 interpreting "ownership" to mean "land being proposed for rezoning" seems a reasonable approach that avoids debate over whether the focus should be more than the subject property, beyond the portion of that analysis determined by other text that clearly notes the connection of the subject property to surrounding lands.

Goal Four, Policy 15 uses three terms to define the areas to be reviewed when assessing the surrounding properties as well as the land being considered for rezoning. Those terms are "contiguous", "generally contiguous" and "adjacent".

"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.

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.

We find that the characteristics of the Subject Property do not correspond closely with the Non-impacted Forest Land Zone (F-1, RCP) characteristics:

Policy 15.b.(1):

Predominantly ownerships not developed by residences or non-forest uses.

We find that the Subject Property does not have this characteristic. It consists of road and railroad right-of-way ownerships and a 37.5-acre ownership that are generally in non-forest uses such as the roadways (Row River Road and Spillway Road), the dam and the spillway. Based on this alone, we conclude the Subject Property consists predominantly of ownerships that are developed by non-forest uses.

In addition, the Subject Property is a portion of the 970.71-acre ACOE parcel that is predominantly developed with non-forest uses. Specifically, we also find that most of the area of the ACOE parcel is developed with the Dorena Reservoir. In addition to the reservoir, there are developed improvements on other portions of the parcel including Dorena Dam and related infrastructure (some located on the 37.5-acre portion of the Subject Property) and parks and recreation facilities including those at the Schwarz Park campground and recreation area (located at the base of Dorena Dam on the banks of the Row River) which has restrooms, showers, camp sites and RV sites and those at Baker Bay Park (located on the south side of Dorena Reservoir) which has restrooms, showers, picnic areas, a swimming area, boat ramp, marina, camp sites and RV sites, paved parking areas and recreational commercial facilities. We find that the assessor's records also reflect that there are a number of manufactured structures on the ACOE parcel including a single family dwelling associated with intense non-forest development.

We conclude that the response to this criterion strongly supports our finding, conclusion and decision that the Subject Property be designated and zoned as Impacted Forest Land.

Policy 15.b.(2):

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

The Subject Property is approximately 37.5 acres in size and therefore does not correspond to this characteristic even with the additional area included in the rights-of-way.

With respect to property contiguous to the Subject Property, the tax lots referred to in these findings are shown on Appendix C to the application. We find that that portion of the ACOE parcel located contiguous to the south and east of the Subject Property is larger than 80 acres, although as noted above, the vast majority of that land is developed with non-forest uses, most of it having been developed with Dorena Reservoir.

There is one other property 80 acres or larger in size that is north of the Subject Property and separated from it only by Row River Road and the abandoned railway right-of-way. That property, which consists of two tax lots (Tax Lots 100 and 208), is owned by the Vereck Trust et al. and contains slightly over 207 acres. It is under a different ownership than the Subject Property. In addition, Lane County already designated and zoned that property for Rural Residential (RR-10) use. Furthermore, Lane Code Section 16.090 defines "contiguous" as having one common boundary greater than eight feet in length and the definition makes clear that even if the land is in the same ownership, it is not "contiguous" if it is separated by a public

road. The Vereck Trust property is separated from the Subject Property by Row River Road so it is not technically contiguous for the purpose of analysis under this characteristic.

Other property located directly north of the Subject Property (but also separated from it by Row River Road) are smaller than 80 acres: (i) Tax Lot 203 is a 4.85 acre parcel zoned RR-5; (ii) Tax Lot 200 is a 5.8 acre parcel zoned RR-5; and Tax Lot 500 is a 16.20 acre parcel zoned ML (Marginal Lands).

All of the other contiguous properties are much smaller than 80 acres. (See Appendix C to the application.) Those contiguous properties are as follows:

1. Tax Lot 201 – 1.1 acres;
2. Tax Lot 202 – 12.14 acres; and
3. Tax Lot 401 – .97 acres.

In summary, we find that neither the Subject Property itself (which is approximately 37.5 acres in size) nor the properties contiguous to the Subject Property (which are predominantly smaller than 80 acres and not in the same ownership as the Subject Property) correspond more closely to the stated Non-Impacted Forest Land characteristic, thereby supporting our finding, conclusion and decision that the Subject Property be designated and zoned as Impacted Forest Land.

Policy 15.b.(3):

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

As is reflected in the maps attached as Appendix A, Appendix B and Appendix C to the application, the other lands contiguous to the Subject Property are predominantly *not* utilized for commercial forest or commercial farm uses.

Also, as discussed above, the other land to the north of the Subject Property are not technically “contiguous” because they are separated from the Subject Property by Row River Road. Nevertheless, even if those lands were deemed to be contiguous or connected to the Subject Property under the definition of that term in LC 16.090, not one of those other lands are in the same ownership as the Subject Property or used for commercial forest or commercial farm uses. Those other lands are all zoned and designated for either Rural Residential (RR-5; RR-10) uses or as Marginal Land (ML).

The contiguous lands to the west of the Subject Property are also not used for commercial forest or commercial farm uses. All of those lands are designated and zoned for Rural Residential (RR-5) use, and all are developed with residential dwellings.

The land to the south of the Subject Property across the Row River is that portion of the ACOE parcel that is developed with restrooms, showers, camp sites and RV sites associated with the Schwarz Park campground and recreation area (located at the base of Dorena Dam on the banks of the Row River). We think the intervening ownership of the beds and banks of the river by the state makes this area noncontiguous with the Subject Property. In any case, the entire ACOE parcel became unzoned as a result of 1984 Ordinance No. 884. However, the county previously recognized that the portion of the ACOE parcel south of the Subject Property was not forest resource land when, pursuant to 1978 Ordinance No. 688, it included that property within the

Public Reserve (PR) zone described in Lane Code Chapter 10, which is a zone that allows such uses as public parks, playgrounds, hunting and fishing lodges, government buildings and other intensive, non-forest uses. We find that the land to the south of the Subject Property is not contiguous and is not used for commercial forest or commercial farm uses.

Finally, the contiguous land to the east of the Subject Property is that portion of the ACOE parcel that is developed with Dorena Reservoir, and which is not used for commercial forest or commercial farm uses.

Since the other lands contiguous to the Subject Property are predominantly if not exclusively utilized for purposes other than commercial forest or commercial farm uses, the response to this criterion strongly supports our finding, conclusion and decision that the Subject Property be designated and zoned as Impacted Forest Land.

Policy 15.b.(4):

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

We find that the Subject Property is not accessed by arterial roads or roads intended primarily for forest management.

Access to the Subject Property is provided by Spillway Road. Spillway Road is classified in the County's Transportation System Plan (TSP) as a Rural Local road to the point it enters the Subject Property, and it provides access to the rural residential development to the west of the Subject Property as well as access at the westerly boundary of the Subject Property. We also find that from the point Spillway Road enters the Subject Property; it is not open to the public. That portion of the road provides access through the Subject Property to the base of Dorena Dam on the northwest bank of the Row River. That portion of the road was built for the purpose of providing access for the operation and maintenance of Dorena Dam; it was not built for the purpose of commercial forestry.

Access to Spillway Road is via Shoreview Drive, which is classified in the TSP as a Rural Major Collector.

Neither Spillway Road nor Shoreview Drive is classified as an arterial road, and neither road is intended primarily for forest management. Accordingly, the response to this criterion also strongly supports our finding, conclusion and decision that the Subject Property be designated and zoned as Impacted Forest Land.

Policy 15.b.:

Primarily under commercial forest management.

We find that the Subject Property is not under commercial forest management. The primary use of the entire ACOE parcel that includes the Subject Property is for the operation and maintenance of Dorena Dam and Reservoir. There is no evidence that the portion of that operation that is on the Subject Property and the right-of-way not owned by ACOE are under commercial forest management. The dam and reservoir provide flood control, irrigation, recreational opportunities, and improved downstream passage. Accordingly, the response to this criterion similarly strongly supports our finding, conclusion and decision that the Subject Property be designated and zoned as Impacted Forest Land.

We find that the characteristics of the subject property do correspond closely with the Impacted Forest Land Zone (F-2, RCP) characteristics:

Policy 15.c.(1):

Predominantly ownerships developed by residences or non-forested uses.

We find that the characteristics of the Subject Property correspond closely with this characteristic. It consists of road and railroad right-of-way ownerships and a 37.5-acre ownership that are generally in non-forest uses such as the roadways (Row River Road and Spillway Road), the dam and the spillway. Based on this alone, we conclude the Subject Property consists predominantly of ownerships that are developed by non-forest uses.

In addition, the Subject Property is a portion of the 970.71-acre ACOE parcel that is predominantly developed with non-forest uses. Almost the entire ACOE parcel is developed with Dorena Reservoir. In addition to the reservoir, there are developed improvements on other portions of the parcel including Dorena Dam and related infrastructure (some located on the 37.5-acre portion of the Subject Property) and parks and recreation facilities including those at the Schwarz Park campground and recreation area (located at the base of Dorena Dam on the banks of the Row River) which has restrooms, showers, camp sites and RV sites and those at Baker Bay Park (located on the south side of Dorena Reservoir) which has restrooms, showers, picnic areas, a swimming area, boat ramp, marina, camp sites and RV sites, paved parking areas and recreational commercial facilities. The assessor's records also reflect that there are a number of manufactured structures on the parcel including a single family dwelling. Moreover, Subject Property is not managed as part of a commercial forest operation and is developed with portions of the Dorena Dam infrastructure and the access roadway that provides access for inspection and maintenance of the dam and the spillway.

In short, the response to this criterion strongly supports our finding, conclusion and decision that the Subject Property be designated and zoned as Impacted Forest Land.

Policy 15.c.(2):

Predominantly ownerships 80 acres or less in size.

While the entire ACOE parcel is much larger than 80 acres, this Conformity Determination only pertains to the Subject Property. The Subject Property includes approximately 37.5 acres of ACOE property and accordingly, the predominant ownership of the Subject Property under consideration is well under the 80-acre threshold. Moreover, as was explained previously, the vast majority of the entire ACOE parcel is developed with non-forest uses, most of the parcel having been developed with Dorena Reservoir and park, camping and recreation facilities. Finally, even if the Subject Property is deemed not to conform to this characteristic because the entire ACOE parcel is larger than 80 acres, this is only one of the four Impacted Forest Land characteristics and we find that the Subject Property corresponds closely with each of the other three Impacted Forest Land characteristics (Policy 15.c.(1), (3) and (4)). In addition, the Subject Property does not closely conform to any of the five Non-Impacted Forest Land characteristics. When considering all the characteristics together, we conclude the Subject Property more closely corresponds to the Impacted Forest Land characteristics.

Policy 15.c.(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.

As is reflected in the map attached as Appendix C to the application, the Subject Property is 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.

As is shown by the map attached as Appendix C to the application, the tracts to the north of the Subject Property are not technically "contiguous" because they are separated from the Subject Property by Row River Road. Nevertheless, except for the tract owned by the Verek Trust et al. that is zoned RR-10 and is part of a rural residential exception area, each of those tracts is substantially smaller than 80 acres: the Richards tract (TL 203) is 4.85 acres; the Bettis tract (TL 200) is 4.85 acres; and the McCarthy tract (TL 500) is 16.20 acres. Furthermore, each of those tracts (except the McCarthy tract that is zoned Marginal Land) is part of an "adjacent" developed and committed area for which an exception has been taken. Finally, except for the Verek Trust tract, each of the other tracts to the north of the Subject Property, including the McCarthy tract, is developed with a residence.

The generally contiguous tracts to the west of the Subject Property are each substantially smaller than 80 acres. In addition, those areas are zoned for Rural Residential (RR-5) use and development and are part of an "adjacent" developed or committed area for which an exception has been taken in the Rural Comprehensive Plan. Finally, all of those tracts are developed with residences.

The "tract" to the south and east of the Subject Property is that portion of the ACOE parcel that to the south of the Subject Property is developed with restrooms, showers, camp sites and RV sites associated with the Schwarz Park campground and recreation area (located at the base of Dorena Dam on the banks of the Row River) and that to the east of the Subject Property is developed with the Dorena Reservoir and the associated Baker Bay Park recreational amenities described in our findings above. That "tract" is larger than 80 acres, but as noted previously, it may be generally contiguous but it is not designated in the RCP and is unzoned.

In short, the majority of the tracts generally contiguous or adjacent to the Subject Property contain substantially less than 80 acres, are developed with residences, and are within developed or committed areas for which an exception has been taken in the Rural Comprehensive Plan. Accordingly, the response to this criterion strongly supports our finding, conclusion and decision that the Subject Property be designated and zoned as Impacted Forest Land.

Policy 15.c.(4):

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

As discussed in our findings in response to Policy 15.b.(4), access to the Subject Property is provided by Spillway Road. Spillway Road is classified in the County's Transportation System Plan (TSP) as a Rural Local road to the point it enters the Subject Property, and it provides access to the rural residential development to the west of the Subject Property as well as access

at the westerly boundary of the Subject Property. Access to Spillway Road is via Shoreview Drive, which is classified in the TSP as a Rural Major Collector. Spillway Road and Shoreview Drive are intended primarily to serve the rural residential development in the area and the Dorena Reservoir parks and recreation areas.

While the Subject Property is not in an urban area and therefore is not served by municipal water or sewer services, we find that it is provided with the following public facilities and services:

1. Emergency Services: Cottage Grove Fire and Ambulance Department;
2. Schools: District 45J – South Lane

The Subject Property also has access to electric utility and telephone service.

In summary, the Subject Property conforms closely to this characteristic which also supports our finding, conclusion and decision that the Subject Property be designated and zoned as Impacted Forest Land.

CONCLUSION REGARDING IMPACTED FOREST LAND ZONE (F-2, RCP) DESIGNATION AND ZONING:

In summary, we find, conclude and decide that the Subject Property does not conform to the Non-Impacted Forest Land Zone (F-1, RCP) characteristics and that the Subject Property does conform more closely to the Impacted Forest Land Zone (F-2, RCP) characteristics. Accordingly, we find, conclude and decide that the Subject Property should, through the enactment of Ordinance No. PA 1236, be designated and zoned Impacted Forest Land (F-2, RCP).

Legal Description For Area Being Rezoned

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

PARCEL I

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 South 9' 07" West 2.28 chains; thence South 65° 58' West 5.65 chains; thence South 42° 30' West 3.89 chains; thence South 25° 08' West 5.07 chains; thence South 30° 24' West 2.84 chains; thence South 51° 06' West 10.45 chains; thence South 48° 13' West 1.91 chains 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; thence North 80° 45' West 221.36 chains; thence West 41.46 chains to the Place of Beginning, in Lane County, Oregon.

EXCEPT any portion lying within parcels conveyed to Weyerhaeuser Company by instrument Recorded May 25, 1960, Reel 153 R. Instrument No. 228 and by instrument Recorded April 17, 1961, Reel 171 R. Instrument No. 29271, and by instrument Recorded December 1, 1961, Reel 184 R. Instrument No. 52022, Lane County Oregon Records.

ALSO EXCEPT all of the above tracts lying with the County Road.

PARCEL II

All that portion of the following tract of land lying West of County Road No. 1318:

That portion of those certain strips of land Thirty (30) and Forty-five (45) feet in width, respectively, as described under Paragraph numbered "4" on Page 2 of that certain Deed dated May 31, 1960 and Recorded July 1, 1960 under File No. 3451 in Reel 155 D, Lane County Official Records lying South of the North line and said North line projected West of that certain land described as "Tract #2" of that certain Deed to Ray O. Dustrude and Ida M. Dustrude, his wife, dated July ____, 1957 and Recorded August 2, 1957 under File No. 18536 in Reel 103 D, Lane County Official Records, and North of a line extending North 80° 45' West and South 80° 45' East from a point located North 192.72 feet and East 175.56 feet from the most Northerly Northwest corner of the Samuel Gray Donation Land Claim No. 40.

PARCEL III

That portion of Thomas Gray Donation Land Claim No. 42 and of Joseph E. Gray Donation Land Claim No. 38, both being in Township Sixteen (16) South, Range One (1) West, Willamette Meridian, described as follows:

The Easterly Five (5) feet of even width of that certain Sixty (60) foot strip of land heretofore conveyed to Grantor by Deed dated May 19, 1960, and Recorded May 25, 1960, on Reel 153 '60 D under File No. 228, Lane County Official Records.

PARCEL IV

All that portion of the former Weyerhaeuser Railroad right-of-way as conveyed to 3 C's Investment Inc., by deeds Recorded September 12, 1989, Reel 1592R, Reception No. 89 40822 and January 16, 1990, Reel 1611R, Reception No. 90 02025 between the Northerly and Southerly line of Tract 1 as conveyed to Ray O. Dustrude and Ida M. Dustrude, husband and wife, by deed Recorded August 2, 1957, Reel 103R, Reception No. 18536, Lane County Oregon Records. (Lane County Tax Lot No. 16 01 08 00 00700)

Exhibit SS

124