

LANE COUNTY HEARINGS OFFICIAL  
REQUEST FOR THE ZONE CHANGE OF TAX LOT 3800,  
ASSESSOR'S MAP 16-06-INDEX, FROM F-1 TO F-2

DECISION ON RECONSIDERATION

(CONTESTED)

Application Summary

Tony West and Tammie West, P.O. Box 24, Blachley, OR. Tax Lot 3800, Assessor's map 16-06- Index Request to rezone the property from Nonimpacted Forest Land (F-1/RCP) to Impacted Forest Lane (F-2/RCP).

Parties of Record

Tony West  
Charles Lake  
Connie Ewing

Tammie West  
Adam Uminski  
Ronald Raymond

Thomas Miller  
Jerry Berg

Application History

Hearing Date: August 26, 1999

Report Date: September 17, 1999

Reconsideration Date: September 27, 1999 (record open until October 25, 1999)

Decision on Reconsideration: November 2, 1999

Appeal Date

November 12, 1999

Lane County Board of Commissioners

Statement of Criteria

Lane Code 16.003

Lane Code 16.252

Lane Code 16.211

Lane County Rural Comprehensive Plan

Findings of Fact

1. The property subject to this application, hereinafter referred to as the "subject property," is located on the north side of Poodle Creek Road, approximately 1/2 mile west of the intersection of Poodle Creek Road and Highway 36. Access to

the property is from Poodle Creek Road. The subject property is also identified as tax lot 3800, assessor's map 16-06-Index. The subject property is 118.72 acres in size. Much of the parcel was clear-cut in the spring of 1998. Portions of the subject parcel have been replanted, and some of the slash has been removed after the clear-cut.

2. The subject property is designated Nonimpacted forest land in the Lane County Rural Comprehensive Plan and is currently zoned F-1.
3. The subject property is an inverted "L" shape. Within the fold of the L to the south and to the east of the subject property are two smaller parcels, zoned F-1. To the east of the L end of the subject parcel is a parcel zoned E40. Touching the northeastern corner of the subject property is a parcel zoned F-2. Immediately to the north of the subject parcel is a parcel zoned F-1. To the west of the subject parcel and to the northwest of the parcel are F-2 zoned parcels. To the south of the subject parcel are several residential parcels. Poodle Creek Road comes from the south to intersect the southern border of the subject property approximately one third of the way across the inverted leg of the L shaped parcel. To the west of the meeting with Poodle Creek Road the subject property abuts one small parcel and touches the northeast corner of another small parcel zoned RR5. Across Poodle Creek Road south of the subject property are three parcels zoned RR10. Further south along Poodle Creek Road from the subject property, in the near vicinity there are additional rural residential parcels. To the east of the RR10 parcels, although only touching a corner of the subject property and separated by Poodle Creek Road is a parcel zoned PR.
4. Residences in the area are all south and east of the subject property. The two F-1 properties to the southwest both have structures on them, and both persons reside on both parcels. The larger of the two parcels is owned and used by the Cascadian Bowmen of Eugene. The rural residential parcels to the south of the subject property adjacent to the subject property all contain residences. These four residences are within exception areas that contain several other residences on property not adjacent, but still near the subject property. The property zoned PR is used as a Lutheran Retreat center. It is identified as having two residences on the property. To the east of the subject property, there are residences mainly located along Highway 36. The large e40 property to the west of the subject property has a residence located on the opposite side of highway 36, approximately 1000 feet east of the subject property. The F-2 parcel that touches the northeast corner of the subject property has a residence on the property near the corner that touches the subject property. Of the four parcels that touch some portion of the eastern boundary of the parcel, all four have structures, three of them dwellings. The properties to the north and west do not contain residences.
5. Including properties touching on a corner of the subject property, the subject property touches on or is immediately across Poodle Creek Road from 15 parcels. Ten of these are resource use designated, five contain structures. The subject

property touches on or is immediately across Poodle Creek Road from five D&C properties, containing five residences. The parcels are as follows:

Map/lot #	Acres	Zoning	Structures
16-06-28/900	38.97	E40	1 residence
16-06-29/3900	29.90	F-1	1 res., other structures
16-06-29/3901	7.83	F-1	1 res.
16-06-32/100	38.99	PR	2 res.
16-06-32/101	1.58	RR5	1 res.
16-06-32/102	10.8	RR10	1 res.
16-06-32/103	9.39	RR10	1 res.
16-06-32/105	9.39	RR10	1 res.
16-06-32/302	2.58	RR5	1 res.
16-06-29/3600	60	F-2	no
16-06-29/3601	30	F-2	no
16-06-29/3700	160	F-1	no
16-06-29/3501	90	F-1	no
16-06-28/500	30+	F-2	1 res.
16-06-28/100	20+	F-2	no

6. The subject property receives fire protection from the Lane Rural Fire District and police protection from the Lane County Sheriff and Oregon State Police Departments. Electricity is available from Blachley-Lane Electric Coop, and US West provides telephone service. The subject property is within the Junction City School District #69. The subject property is composed of multiple soil types. Belpine silty clay loams (11E; 11D and 11C) make up 61 percent of the soil, followed by Dupee Silt loam composing 24 percent of the subject property. Other forms of silty clay loams comprise the remainder of the soil types on the property.

### Decision

THE REQUEST (PA 99-5789) FOR THE REZONING OF TAX LOT 3800, ASSESSOR'S MAP 16-06-Index, FROM F-1 TO F-2 IS DENIED.

### Justification for the Decision (Conclusion)

#### I. ZONE CONFORMITY

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

1. **Conformity with the Rural Comprehensive Plan.**

The Lane County Rural Comprehensive Plan contains several policies in the Goal 4 element that apply to the proposed rezoning.

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

The proposed change in zoning may not significantly affect the use of the subject property for forest production. While the F-2 standard allows some non-forest uses (including dwellings), these are only allowed under conditions that include restrictions on reducing forest uses. Applicants introduced evidence of some vandalism on the subject property. Much of the vandalism results from trespassing, and affects the forest productivity of the land by damaging the replanted trees. Applicants suggest that a dwelling on the property would reduce the vandalism and trespassing. It is not clear, however, that the presence or absence of a dwelling counts as a factor in this criteria. No forest management plan is submitted showing the necessity for a dwelling. No evidence of the comparative cost of other steps, such as better gates, selective fencing on the trespass routes and so forth has been offered. The general policy is that a dwelling or dwellings in the area impacts forest use in an adverse fashion.

Applicants are seeking to create conditions where a dwelling can be approved on the theory that a dwelling will protect the property from other impacts of development in the area. The problem is that the code regards dwellings in the area as the most significant of the negative impact on forest property.

It is not possible to allow the redesignation and limit the uses thereafter to forest management uses. Non-forest dwellings, and other marginally related forest uses are allowed on F-2 land. Redesignation will open up the possibility of some non-forest use, but not to such an extent that it argues strongly one way or the other.

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

This policy appears to make reference to the policies set forth in Policy 16.

**Policy 16** Lands designated within the Rural Comprehensive Plan as forest land shall be zoned Non-Impacted (F-1/RCP) or Impacted Forest Land (F-2/RCP). A

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

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

(b) Non-impacted Forest Land Zone characteristics:

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

Applicant suggests that this criteria should be read in a manner similar to the Rural Residential rezoning process. The language of the Comprehensive Plan does not support this suggestion. This language was developed to describe the process of designating large areas as one type of zone or another. When it is applied in a rezoning context, the focus is, for this criteria, on the individual parcel itself, not the characteristics of the surrounding area. In this case, the subject property is not developed by a nonforest use and has no residence on it. It therefore meets the criteria to remain zoned F-1.

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

This criteria can be read in several ways. The measure of divisible Non-impacted Forest Land is 80 acres (see policy 7). For the initial decision concerning the zoning district, the question was whether most of the parcels in the prospective zone were contiguous to each other and were in ownerships of 80 acres or larger. Therefore, this criteria is looking at whether the predominant characteristic of properties that are contiguous to the subject parcel is that the parcels are 80 acres or larger in size. Some of the large tracts have been divided, so that the predominant characteristic of the contiguous properties, resource and non-resource parcels, is that they are of less than 80 acres in size. In this case, the parcelization is such that this criteria points to rezoning the property.

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

Applicant wanted to rely on an inference that the surrounding resource designated parcels are not being used for commercial uses because most of these parcels are smaller than the 160 acre minimum parcel size for F-1 parcels in the Lane Code. This inference was not supported by the evidence. Some of the parcels in the area were designated for natural resource use, and there is no evidence that they are not being used for commercial farm or forest use. If there is any inference to be drawn from the designation of surrounding property, it is that the resource land is being used according to the designated purpose, which is commercial farm or forest use.

As noted in the 1989 Addendum to Working Paper, the parcel size is not definitive of commercially viable use. These speculations are not going to resolve the question. The only evidence introduced was that most of the properties in the area are receiving a farm or forest tax deferral. The evidence indicates that the predominant utilization of the

resource designated properties in the area is for commercial forest or farm use. The evidence is that the parcels to the south of the subject property, including the bowmen's property and the PR property used for a retreat, are not used for commercial forest or farm uses. Something less than half of the borders of the subject property are contiguous to property about which there is evidence that the properties are not being used for commercial forest or farm use. Something more than half of the boundary is contiguous to property about which the best presumption is that it is being used for commercial farm or forest use.

Applicants introduced evidence that the parcels to the east of the subject property are currently being managed for forest use, but that the owners intend to use the property for residences sometime in the future. The presence of residences does not necessarily mean that the property will not continue to be used for forest purposes. It also does not matter what speculative uses might be applied to adjacent properties. The criteria looks at the contemporary uses. The evidence indicates that this property is currently in forest use. This criteria points in the direction of maintaining the designation as F-1.

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

Poodle Creek Road is classified as a Major Collector road. Therefore this criteria suggests the property should be redesignated.

**(5) Primarily under commercial forest management.**

Applicants argue that, because the property was logged before it was sold to them, it was not subject to commercial forest management. Applicants also assert that they intend to return the property to forest management.

The timber that was harvested was sold. The applicants intend to keep the tax deferral on the property and manage it for commercial forestry purposes. Therefore, the subject property, to which this criteria refers, is primarily under commercial forest management.

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

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

This criteria is the mirror image of criteria (b)(1). In this case, the property is not developed with residential or nonforest uses and therefore the evidence does not support redesignation.

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

The wording of this criteria points to the individual parcel, different from the criteria of (b)(2). This individual parcel is larger than 80 acres, therefore this criteria suggests retaining the F-1 designation.

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

The subject property is contiguous to an exception area. Several of the resource parcels that are contiguous to the subject parcel are less than 80 acres and contain residences. However, the majority of the land area surrounding the subject parcel is composed of tracts without residences, even if they are smaller than 80 acres. This criteria points very weakly in favor of redesignation.

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

The subject property has access to the level of service normally provided to rural residences, including road access. This criteria supports redesignation.

The decisive criteria is contained in subsection a quoted above. It states:

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.

These characteristics are not clearly written so that they can easily apply to a question of redesignation. They were written to describe the original designation process, which looks at larger swaths of territory.

In this case the characteristics of the land correspond to some of the characteristics of F-1 land and to some of the characteristics of F-2 land. Of the five F-1 characteristics, three suggest retaining the F-1 zoning, in varying degrees of strength. Two of the five F-1 characteristics point in favor of redesignation. The balance is barely in the direction of retaining the existing designation.

Of the four F-2 criteria, the evidence is evenly split, with two pointing in each direction. The basic question underlying all these criteria is: is this property so impacted by adverse developments that it cannot be used for traditional non-impacted forest uses. The applicants want to say yes, that traditional forest uses cannot be carried out on the property. The evidence they introduce is not as strong as they wish. Vandalism is a fact of life. It may reduce the economic value of the F-1 designation, but it would do the same for the F-2 property. Occasional trespasses are not likely to be eliminated by a residence located in the middle of this large parcel, even though the trespassing may be reduced.

The additional evidence that the parcels to the west have been rezoned does not compel a similar result here. If those properties had had dwellings built on them, and if the

dwelling were non-farm dwellings in the immediate proximity of the subject parcel, then there might be grounds for redesignation of this parcel. That is not, however, the case.

Rezoning requires that the original process of designation be revisited to see if the factors that originally supported designation as F-1 have changed to such an extent that a change to F-2 is now justified. The answer here is that there is at best very weak and divided evidence on the issue. In the absence of strong evidence of a change so that it can be said that this property clearly is now impacted, the law favors retaining the existing designation. The request for redesignation must be denied.

Policy 16 requires a conclusion that the characteristics of the land correspond more closely to the characteristics of the proposed zoning than the characteristics of the other forest zone. This subject property is on the edge of land that has been removed from resource designation. The subject property is impacted by its proximity to development, but measured by the criteria listed in Policy 16, the property has characteristics of both F-2 and F-1 in nearly equal balance. The evidence does not strongly support retaining or altering the designation. At this time the designation as F-1 land must remain because the proposed redesignation does not meet the requirement that the characteristics of the property correspond more closely to the characteristics of F-2 than of F-1.

### Conclusion

The proposed rezoning is not consistent with the Lane Code and the Rural Comprehensive Plan. Although the criteria are somewhat obscure and the applicant is burdened with difficult matters of proof, the bottom line is that the application failed to show that the relevant criteria were met. It is unfortunate to deny an application because the evidence is close enough to be in the marginal area where rezoning might not violate the criteria, but where the evidence is that maintaining the existing designation also complies with the requirements of the code, but that is the nature of land use in Oregon. Truly close calls result in a denial.

Respectfully Submitted,



Milo Mecham  
Lane County Hearings Official



# EXHIBIT A

PA 0039-91  
February 25, 1991  
Page 1 of 5

## LANE COUNTY HEARINGS OFFICIAL APPROVAL OF A REZONING OF TAX LOT 409, ASSESSOR'S MAP 16-09-25 FROM F-1 NON-IMPACTED FOREST DISTRICT TO F-2 IMPACTED FOREST DISTRICT

(UNCONTESTED)

### Application Summary

Andrew Park, 91955 Deadwood Creek Road, Deadwood, OR 97430. Request for a rezoning of tax lot 409, assessor's map 16-09-25 from F-1 to F-2.

### Parties of Record

Andrew Park

### Application History

Hearing Date: February 21, 1991

Decision Date: February 25, 1991

Appeal Deadline: March 7, 1991

### Statement of Criteria

Lane County Rural Comprehensive Plan  
Lane Code 16.210  
Lane Code 16.211

### Findings of Fact

1. The property subject to the proposed rezoning, hereinafter referred to as "the subject property," can be identified as tax lot 409, assessor's map 16-09-25, and is located at the intersection of Deadwood Creek Road and Deadwood Loop Road, north of Highway 36. The subject property is 35.5 acres in size and is currently vacant. The applicant characterizes the property as having deep, rich soil and as excellent forest land. The property is currently half logged.
2. The subject property is designated as Forest Lands by the Rural Comprehensive Plan and is zoned F-1 Non-Impacted Forest Lands.
3. The subject property consists of 16D & 16H Bohanon Gravelly Loam and 112G Preacher-Bohanon Slickrock Complex. These are excellent soils for forest production. About 60 percent of the soils are of the Bohanon Gravelly Loam.
4. The subject property receives fire protection from the Oregon State Police and the Lane County Sheriff's Department and fire protection from the Swisshome/Deadwood Rural Fire Protection District. Telephone is provided by the Pioneer Telephone Cooperative and

electricity is available from the Blachly-Lane Electric Cooperative. Water and sewerage would be provided through individual, on-site systems. Access is on to the Deadwood Creek Road. The subject property lies within the Mapleton School District.

5. There are fourteen parcels that border or are very close to the border of the subject property. Eight of the parcels have dwellings on them and all but one are under 80 acres in size. Nine of the parcels are less than 20 acres in size, 3 are between 20 and 50 acres in size and one is between 50 and 65 acres in size. One parcel, tax lot 301, is larger than 80 acres in size. The parcels to the south, tax lots 302, 304 and 305 abut F-1 zoned land in excess of 80 acres and could not be rezoned to F-2.
6. The subject property does not lie within a flood hazard area and no natural hazards have been identified.

### Decision

THE REQUEST (PA 0039-91) TO REZONE TAX LOT 409, ASSESSOR'S MAP 16-09-25 FROM F-1 TO F-2 IS APPROVED

### Justification for the Decision (Conclusion)

#### I. PLAN CONFORMITY

The subject property is designated "Forest Lands" by the Rural Comprehensive Plan. Goal #4 Policies #19(b) and (c) describe the characteristics of F-1 and F-1 properties, respectively. Policy #19(a) implies that the zoning should reflect a conclusion that the characteristics of the land correspond more closely to the characteristics of the proposed zoning (F-1) than the characteristics of the other forest zone (F-1).

#### Policy #19(b) Non-Impacted Forest Land Zone

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

The subject property is not developed by a residence or nonforest use although eight of the fourteen surrounding parcels are developed with a residence. The subject property shares this characteristic.

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

Only one parcel, tax lot 301 to the south, is 80 acres or larger in size. The subject parcel does not share this characteristic.

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

The applicant and staff infer from surrounding parcel sizes that there are no contiguous lands utilized for commercial forest or commercial farm uses. However, the applicant notes (Page 3, item 1) that "Most ownerships are for residences and farm land." It also seems that the F-1 zoning on the parcels to the south would create an inference that they might be

managed for commercial forest use, especially in conjunction with the larger F-1 zoned parcels located further south. The conclusion that subject property is contiguous to lands not predominantly utilized for commercial forest or commercial farm uses is probably correct but clearly the evidence does not support the magnitude of predominance that is inferred.

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

The subject property is accessed by Lower Deadwood Creek Road, a Minor Collector, and by Deadwood Loop Road, a local access road.

- (5) **Primarily under commercial forest management**

The subject property is currently being logged by the applicant but not at a commercial level.

**Policy #19(c) Impacted Forest Land Zone**

- (1) **Predominantly ownerships developed with residences or nonforest use.**

The parcel is not developed with a residence or a nonforest use.

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

The property is 35 acres in size and meets this test.

- (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.**

All but one of the surrounding fourteen parcels is less than 80 acres in size and eight of these parcels are developed with residences. The subject property meets this characterization.

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

The subject property has access to a full range of services normally available to a rural residence, including rural fire protection, electricity and telephone. The subject property also is adjacent to two paved, public roads.

The subject property meets at least three of the five characteristics attributed to property that should be zoned F-1 and three out of the four characteristics ascribed to F-2 zoned property. The Hearings Official believes that in the present case the size of the subject property and the fact that the predominate lot size in the area is 20 acres or less are the most important factors. It appears unlikely that the subject property can be used in conjunction with a large commercial forestry operation even though intensive management of the subject property for forestry purposes is quite feasible. Given this situation, it is likely that the subject property will not be intensively managed

for forestry unless the applicant is allowed to construct a dwelling on it. The recent changes in the F-2 District allow only forestry-related dwellings and require a forest management plan. Given these facts, it appears that the subject property more closely fits the Rural Comprehensive Plan's profile of F-2 land.

## II. ZONE CONFORMITY

Lane Code 16.252(2) requires that rezonings be consistent with the general purposes of Chapter 16, not be contrary to the public interest, be consistent with the general purposes of the proposed zoning district and be consistent with applicable Rural Comprehensive Plan elements.

### 1. Consistent with the general purposes of Chapter 16

The following general purposes statements of Lane Code 16.003 are arguably applicable to the proposed rezoning:

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

The proposed zoning district is designated as forest land but recognizes that smaller forest parcels normally require a dwelling to ensure that they are managed efficiently.

- (2) **To facilitate the adequate and efficient provision of transportation, water, sewerage, schools, parks and other public improvements.**

A full range of rural services are available to the subject property and reflect that the area bordering the subject property on the west, north and east are heavily impacted by residential development.

- (4) **To secure from fire, panic, flood, and other dangers.**

The subject property is not within a flood hazard area and no other natural hazards are present. The property lies within a rural fire protection district.

### 2. Not contrary to the public interest.

It is the intent of the Forest Lands policies of the Rural Comprehensive Plan that lands with the potential for forest management be allowed to realize that potential and that forest lands that are limited by size and residential impacts may have to be occupied with a dwelling before their potential can be met.

- (3) **Consistency with the proposed zone.**

The purpose of the Impacted Forest Lands Zone, as stated by Lane Code 16.211(1), is to implement the forest land policies of the Lane County Rural Comprehensive Plan, that recognize that forest lands impacted by nonforest uses should be treated differently than nonimpacted forest lands, and to conserve forest land for forest uses. A rezoning will formally implement the above-state recognition of the Rural Comprehensive Plan and the

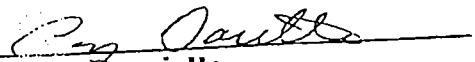
placement of a forest-related dwelling on the subject property will allow the most efficient forest management of that property.

(4) **Conformity with the Comprehensive Plan.**

The analysis in the PLAN CONFORMITY section of this decision affirmatively concludes that a rezoning to F-2 best reflects the character of the subject property.

The Hearings Official concludes that the proposed rezoning is consistent with applicable approval criteria of Lane Code Chapter 10.

Respectfully Submitted,

  
Gary Darnielle  
Lane County Hearings Official

# Land Use Application



ST/PROPOSAL FOR: Legal Lot Verification

FILE NO. PA-00-5822  
 ACTION ALL FILE 370

**LOCATION** (PLEASE PRINT)

16 01 08 700

TOWNSHIP RANGE SECTION 1/4 SECTION TAX LOT SUBDIVISION / PARTITION LOT / PARCEL BLOCK  
 E-40 126+

ZONED TAX CODE PLOT # ACERAGE

92885 Marcola Road, Marcola, OR 97454

LOCATION ADDRESS

Yes: farmhouse, detached (old) garage, shop/storage garage

STRUCTURES NOW ON PROPERTY

**APPLICANT / AGENT**

H. Andrew Clark, Agent for Ed and Lilli Fisher

June 7, 2000

NAME (PLEASE PRINT) DATE

P.O. Box 1147

686-8833

ADDRESS PHONE

Eugene, OR

97440-1147

CITY ZIP

**OWNER**

Ed and Lilli Fisher

NAME (PLEASE PRINT) DATE

85816 Parklane Circle

741-7935

ADDRESS PHONE

Marcola Hill, OR

97455

CITY ZIP

DO YOU OWN ADJACENT PROPERTY? Yes  No   
 MAP, PARCEL NUMBER

Township	Range	Section	1/4 Section	Tax Lot
Township	Range	Section	1/4 Section	Tax Lot
Township	Range	Section	1/4 Section	Tax Lot

WATER PUBLIC  ON-SITE WELL  COMMUNITY SYSTEM N/A

SEWAGE PUBLIC  ON-SITE SEPTIC  COMMUNITY SYSTEM \_\_\_\_\_

ROAD STATE  COUNTY  PUBLIC  EASEMENT

FIRE DISTRICT Marcola SCHOOL DISTRICT \_\_\_\_\_

POWER COMPANY \_\_\_\_\_ PHONE COMPANY \_\_\_\_\_

(We) have completed all the attached application requirements and certify that all statements are true and accurate to the best of my (our) knowledge and belief. I am (We are) so authorized to submit this application as evidenced by the signature of the owner below.

OWNER Signature [Signature] Date 6/7/00  
 APPLICANT Signature \_\_\_\_\_ Date \_\_\_\_\_

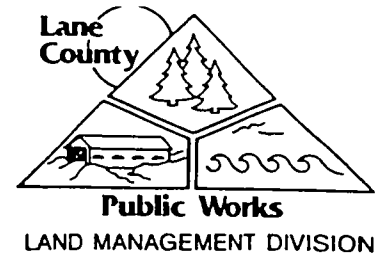
**An accurate Plot Plan must be attached. Ask for a sample Plot Plan**

SPECIFIC SECTION OF LANE CODE REQUIRING THIS APPLICATION

RELATED PERMIT #

STAFF COMMENTS: TR. 700 IS A LEGAL LOT, BUT IT MAY CONTAIN AS MANY AS 5 L.L.'S, ACCESS FROM CO. RD # 1318

EDM 10/2/2000



Date: OCT. 2, 2000

APPLICANT: ANDRZEJ CLARK  
P.O. BOX 1147  
EUGENE, OR. 97440-1147

OWNER: ED & LILL FISHER  
85816 PARKLANE CIRCU  
PLEASANT HILL, OR. 97455

PA: 00-5822

RE: Report and Verification of a Legal Lot  
Tax Map: 11-01-08-00 Taxlot: 700

A more exact description by reference to Deed or Land Sales Contract  
is REEL 103-57 D / 18536.

Based upon the Findings provided in this report, the above referenced property  
constitutes a legal lot, which means:

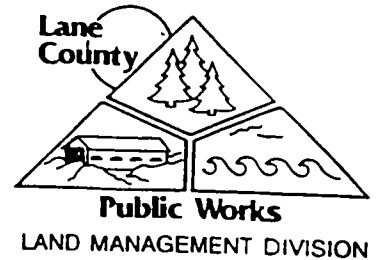
1. Ownership to this property may be conveyed with the assurance that such a conveyance would not require approval by Lane County land division regulations; and
2. Lane County recognizes this property as a legally separate unit of land for the purposes of development. Development would still be subject to applicable zoning, sanitation, access and building regulations.

#### Findings

1. The subject property was created as a separate parcel on JULY 29 1957.  
See attached instruments REEL 103-57 D / 18536
2. The creation of the subject property as a separate parcel complied with all effective land division, zoning and comprehensive plan regulations, and it therefore constitutes a legal lot:
  - a. Land division regulations:

When the subject parcel was created, there were not land division regulations in effect to govern its creation. Lane County did not adopt applicable regulations for this kind of division until MARCH 26 1975.

There were land division regulations in effect governing the creation of this parcel, and the creation of this parcel was specifically exempted by these regulations from compliance because \_\_\_\_\_



b. Zoning regulations:

- ] When the subject parcel was created, there were no zoning regulations in effect at this time. The zoning for this property was adopted on NOV. 8 1977.
- [ ] ] When the subject parcel was created, there were the following zoning regulations in effect which the parcel complied with because \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

c. Additional Comments:

TL-700 IS A LEGAL LOT, BUT IT MAY  
CONTAIN MORE THAN ONE LEGAL LOT.  
PLEASE SEE ENCLOSED MAP FOR LOCATION.  
THIS PARCEL HAS ACCESS FROM COUNTY  
ROAD NO. 1318. THIS LEGAL LOT VERIFICATION  
REVISES THE PREVIOUS DETERMINATION  
SEE P2 996134.

"This is a preliminary indication that the above referenced property, as further designated on the enclosed map, is a legal lot. The decision that this property constitutes a legal lot will be made at the time of the first permit or application action where a legal lot is required. If the boundaries of this legal lot have changed at the time of a permit or application which requires a legal lot, a new Legal Lot Verification will be required."

Sincerely,

A large, stylized handwritten signature in black ink, appearing to read "D. G. Nickell".

D. G. NICKELL P.L.S.O.  
Engineering Associate  
541-682-3989

ATTACHMENTS

CC: TRS File

537



of Grantor for and in consideration of the sum of \$100 and other  
them held do hereby, bargain, sell and convey unto

HAY O. DUSTRUDE and LIDA M. DUSTRUDE, husband and wife  
the following described premises, to-wit:

017208 (5)  
CR 1-21-X (2)

Tract #1  
Beginning at a point on the West line of the Joseph A. Gray Donation  
Land Claim No. 30, Notification No. 7300, in Township 15 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 14.39 chains to the Southwest corner of  
the Thomas Gray Donation Land Claim No. 42, of the same Township Range  
North 14.66 chains; thence East 89.74 chains to the westerly line of the  
County road; thence South 4° 57' West 2.28 chains; thence South 85° 58' 11"  
West 8.85 chains; thence South 40° 20' West 2.20 chains; thence South  
25° 38' West 5.37 chains; thence South 30° 24' West 2.64 chains; thence South  
31° 06' West 10.45 chains; thence South 48° 13' West 1.21 chains to a point  
8.92 chains North and 2.66 chains East of the Northwest corner of the NE 1/4  
of Samuel Gray Donation Land Claim; thence North 30° 41' West 21.30 chains  
thence West 31.46 chains to the place of beginning, in Lane County, Oregon

Tract #2  
That portion of the following described premises lying and being on  
the West side of the Kohnaw River; beginning at a point 20 chains South from  
the Northeast corner of the Thomas Gray Donation Land Claim; thence running  
South 14.50 chains; thence West 5 chains; thence West 12 chains; thence West  
22 chains to the center of the County road on the West side of the Kohnaw  
River; thence up the road in a northerly course to a point due West of  
the place of beginning; thence East 5.25 chains to the place of beginning,  
in Section 9, Township 10 South Range 1 West of the Willamette Meridian, in  
Lane County, Oregon



TO HAVE AND TO HOLD the said premises, with their appurtenances, unto the said Grantee S  
their heirs and assigns forever.  
And the said Grantor S do hereby covenant to and with the said Grantee S, their heirs and assigns  
that they the owners in fee simple of said premises; and that they are free from all encumbrances

and that they will warrant and defend the same from all lawful claims whatsoever.  
IN WITNESS WHEREOF, they have hereunto set their hands and seals this  
day of July A.D. 1957

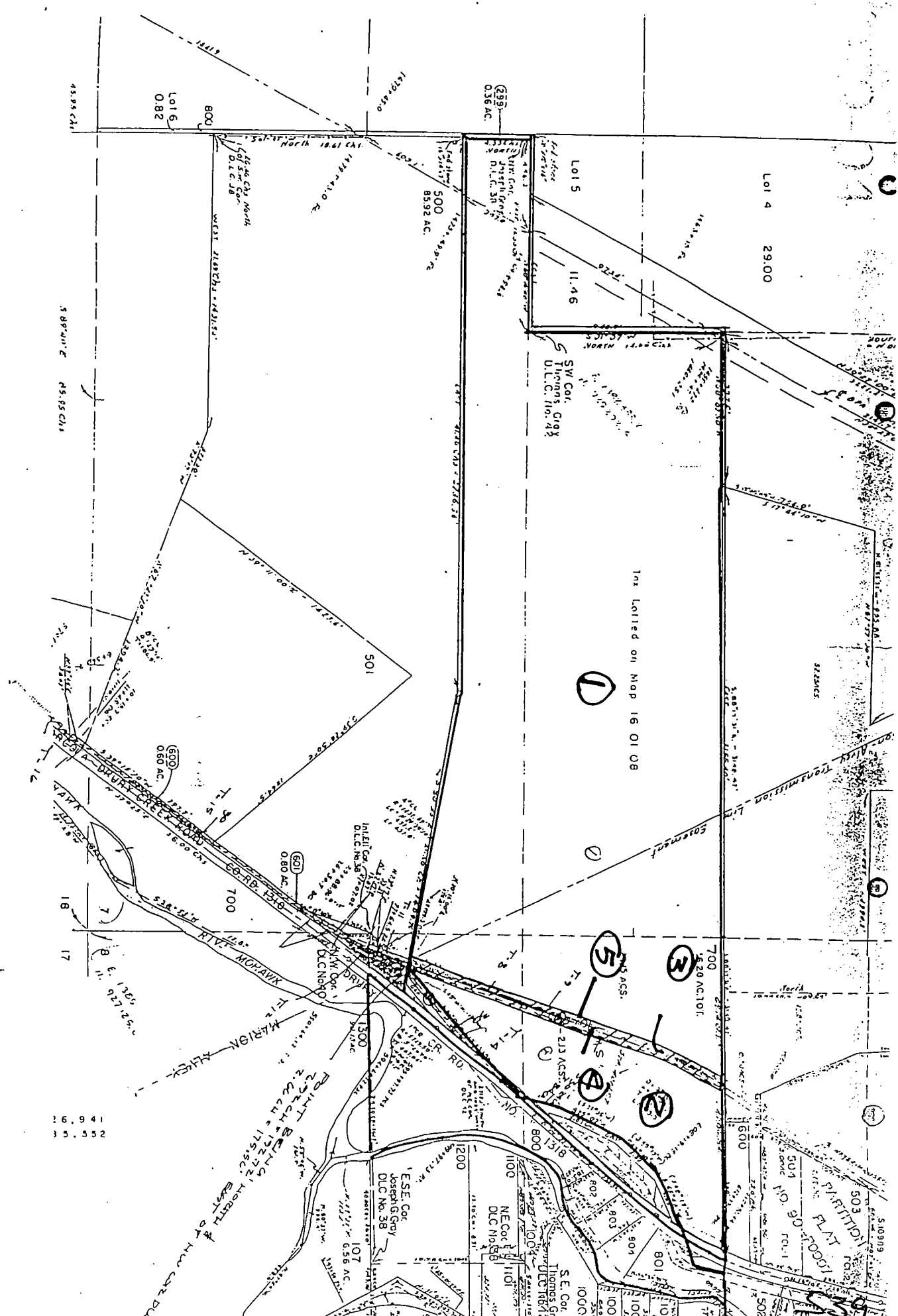
(SEAL) Elizabeth Austin (SEAL)  
(SEAL) J. B. Austin (SEAL)  
(SEAL) (SEAL)

California  
STATE OF CALIFORNIA, COUNTY OF Siskiyou  
Be it remembered that on this 29th day of July, 1957 personally appeared  
me, a Notary Public in and for said county, the within named

Elizabeth J. B. Austin  
to me personally known to be the identical person as described in and she executed the within instrument and  
acknowledged to me that she executed the same freely and voluntarily for the uses and purposes therein  
named.

Witness my hand and seal this day and year last above written.  
My Commission Expires  
Max. 6th 1958  
Lucas M. Natta  
Notary Public for Oregon  
California





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Map Lotted on Map 16 01 08

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# Land Use Application



REQUEST / PROPOSAL FOR:

Legal lot Verification

FILE NO. PA-99-6134  
 ACTION ALLV FEE \$ 370-

LOCATION (PLEASE PRINT)  
16 01 08 700  
 TOWNSHIP RANGE SECTION 1/4 SECTION TAX LOT SUBDIVISION / PARTITION LOT / PARCEL BLOCK  
E-40  
 ZONE D TAX CODE PLOT # ACERAGE 126 +  
92885 MARCOLA RD MARCOLA OREGON 97454  
 LOCATION ADDRESS  
YES - FARMHOUSE, DETACHED (OLD) GARAGE SHOP/STORAGE GARAGE  
 STRUCTURES NOW ON PROPERTY

APPLICANT / AGENT  
ED & LILLI FISHER  
 NAME (PLEASE PRINT) DATE 8- -99  
85816 PARKLANE CIRCLE  
 ADDRESS (501) 741-7935  
PLEASANT HILL, OR.  
 CITY 97455  
 ZIP

OWNER  
(SAME)  
 NAME (PLEASE PRINT) DATE  
 PHONE  
 CITY ZIP

DO YOU OWN ADJACENT PROPERTY? Yes  No

MAP, PARCEL NUMBER

Township	Range	Section	1/4 Section	Tax Lot

WATER PUBLIC  ON-SITE WELL  COMMUNITY SYSTEM N/A  
 SEWAGE PUBLIC  ON-SITE SEPTIC  COMMUNITY SYSTEM  
 ROAD STATE  COUNTY  PUBLIC  EASEMENT   
 FIRE DISTRICT MARCOLA SCHOOL DISTRICT  
 POWER COMPANY PHONE COMPANY

I (We) have completed all the attached application requirements and certify that all statements are true and accurate to the best of my (our) knowledge and belief. I am (We are) so authorized to submit this application as evidenced by the signature of the owner below.

Lilli A Fisher Date \_\_\_\_\_ APPLICANT Signature Date

**An accurate Plot Plan must be attached. Ask for a sample Plot Plan**

SPECIFIC SECTION OF LANE CODE REQUIRING THIS APPLICATION

STAFF COMMENTS: NOT A LEGAL LOT DON 9/22/99

TALKED TO LILLI ON 10/1/99 ABOUT RE ADJ. #  
ABOUT 3 LEGAL LOTS DON

RELATED PERMIT # MILWAUKEE

RECEIVED BY  
LAND MANAGEMENT

JUN 7 2000  
AM 7,8,9,10,11,12,1,2,3,4,5,6 PM

Gleaves  
Swearingen  
Larsen  
Potter  
Scott  
& Smith LLP



ATTORNEYS  
AT LAW

June 6, 2000

Donald Nickell  
Lane County Land Management Division  
Public Service Building  
125 East 8th Avenue  
Eugene, OR 97401

Re: Legal Lot Verification Application, for property located  
at Tax Lot 700, 16-01-08 (File No. PA-99-6134)

Dear Don:

Toward the end of last year, you issued a decision denying legal lot status for the referenced property. Your decision was necessarily based on the limited information before you at the time. Based on our recent discussions, I have done some additional research and enclose with this letter copies of additional relevant deeds. On behalf of Ed and Lilli Fisher, we ask that you consider this letter and enclosed deeds as a supplement to the legal lot verification application, the file number of which is referenced above.

#### Tax Lot 700

The focus of the information provided in this letter and accompanying deeds is on tax lot 700, which is the approximate 126-acre parcel lying west of the county road known as Drury Creek Road, and the 60-foot-wide right-of-way that runs from the north to the south boundary line of tax lot 700.

The roughly 126-acre parcel was conveyed from JB and Elizabeth Austin to Ray and Ida Dustrude by deed recorded August 2, 1957, Reel 103-57D, Deed No. 18536. The particular property is identified on the deed as Tract #1.

Phone:  
(541) 686-8833  
Fax:  
(541) 345-2034

975 Oak Street  
Suite 800  
Eugene, Oregon  
97401-3156

Mailing Address:  
P.O. Box 1147  
Eugene, Oregon  
97440-1147

Email:  
info@orbustlaw.com  
Web-Site:  
www.orbustlaw.com

Frederick A. Batson  
Jon V. Buerstatte  
H. Andrew Clark  
Joshua A. Clark  
Michael E. Farthing  
A. J. Giustina  
Vernon D. Gleaves  
Thomas P. E. Herrmann  
Todd R. Johnston  
Kristin E. Kernutt  
Stephen O. Lane  
William H. Martin  
Laura T. Z. Montgomery  
Chad C. Potter  
Standlee C. Potter  
Ian T. Richardson  
Martha J. Rodman  
Douglas R. Schultz  
Malcolm H. Scott  
James V. Shepherd  
Bruce E. Smith  
James W. Spickerman  
Arlen C. Swearingen  
Kurt Wanless

This parcel was later conveyed from the Dustrudes to Ed and Lilli Fisher by deed dated 9/29/98, Deed No. 9878231. This parcel is identified as Parcel 1 on the 1998 deed and it excepts out of the parcel description the 60-foot right-of-way between the north and south boundary lines of the larger lot.

### **The 60-Foot Right-of-Way**

The 60-foot right-of-way was, apparently, first created by deed dated 5/19/60, Reel 153-61D, Deed No. 228. By this deed, the Dustrudes conveyed to Weyerhaeuser Company the 60-foot right-of-way between the north and south boundary lines of the parcel acquired by the Dustrudes from the Austins in 1957 (Tract #1 of Deed 18536).

As you know, there were two conveyances of 5-foot-wide sections of the right-of-way in 1961. By deed recorded April 17, 1961, Reel 171-61D, Deed No. 29270, Weyerhaeuser Company conveyed to the Dustrudes a 5-foot-wide strip of the east edge of the 60-foot right-of-way. Shortly thereafter, by deed recorded on the same day, Deed No. 29271, the Dustrudes conveyed to Weyerhaeuser Company a matching 5-foot-wide strip of property lying on the abutting western edge of the 60-foot right-of-way.

On January 16, 1990, Reel 1611R, Deed No. 9002025, Weyerhaeuser conveyed the 60-foot right-of-way to 3 Cs Investment Co. Parcel 8 of Deed No. 9002025 describes the 60-foot-wide right-of-way created by Deed No. 228 in 1960, and excepts from the description the 5-foot-wide strip conveyed to the Dustrudes in 1961 by Deed No. 29270. Parcel 9 of Deed No. 9002025, conveys to 3 Cs the 5-foot-wide strip acquired by Weyerhaeuser from the Dustrudes in 1961 by Deed No. 29271. On January 23, 1992, Reel 1740R, Deed 9204020, 3 Cs conveyed the 60-foot right-of-way to the Dustrudes. As the property description on Deed No. 9204020 indicates, it conveys to the Dustrudes all of the former Weyerhaeuser railroad right-of-way acquired by 3 Cs by virtue of Deed No. 9002025.

Finally, the 60-foot right-of-way was conveyed from the Dustrudes to Ed and Lilli Fisher in 1998 by Deed 9878231. As the property description for Parcel IV in the 1998 deed indicates, it conveys to the Fishers the right-of-way as described in Deed 9002025.

Additionally, Parcel III describes the 5-foot-wide strip held by the Dustrudes.

### **Summary**

In my opinion, the conveyances described above had the following effects: In 1957, the approximate 126-acre parcel existed as one lot owned by the Dustrudes by virtue of Deed 18536. The original parcel was divided in 1960 when the Dustrudes sold to Weyerhaeuser Company the 60-foot-wide easement, which stretched from the north to the south boundary of the prior existing parcel. At that point, the Dustrudes had two legal lots, one to the west of the right-of-way and one to the east. Additionally, because the 60-foot right-of-way was created as a fee simple interest rather than an easement, it existed as a separate legal lot owned by Weyerhaeuser Company.

In 1961, the 5-foot-wide strip conveyed from Weyerhaeuser Company to the Dustrudes by Deed 29270 created a third legal lot owned by the Dustrudes. Similarly, the conveyance of the western 5-foot strip to Weyerhaeuser Company created a separate legal lot owned by Weyerhaeuser. Therefore, at that time, within the original boundaries of tax lot 700, the Dustrudes had three legal lots and Weyerhaeuser had two.

In 1990, the two legal lots owned by Weyerhaeuser (the 5-foot strip and the original 60-foot right-of-way) were conveyed to 3 Cs. 3 Cs then conveyed the property on to the Dustrudes. Therefore, the deed from the Dustrudes to Ed and Lilli Fisher (Deed 9878231) conveyed the Dustrudes' three separate legal lots, as well as the two legal lots formerly owned by Weyerhaeuser Company. By my calculation, there currently exist at least five separate legal lots within the boundaries of the 126-acre parcel originally created back in 1957.

As we have previously discussed, there may be additional legal lots that were created over time on the eastern edge of tax lot 700 near the county road. However, the time necessary to interpret the often confusing deeds is not warranted and I have, therefore, not undertaken that task.

Donald Nickell

June 6, 2000

Page 4

In light of the additional information enclosed, it is our hope that you will see fit to reconsider your prior decision. If you have any questions or concerns, or need additional information, do not hesitate to contact me.

Very truly yours,

A handwritten signature in black ink, appearing to read 'H. Andrew Clark', with a long horizontal flourish extending to the right.

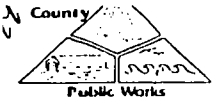
H. Andrew Clark

[aclark@orbuslaw.com](mailto:aclark@orbuslaw.com)

jca

Enclosures

cc: Ed and Lilli Fisher (w/enc)  
James W. Spickerman



# LANE COUNTY RECEIPT

06-07-2000

RECEIPT NUMBER: R00002651

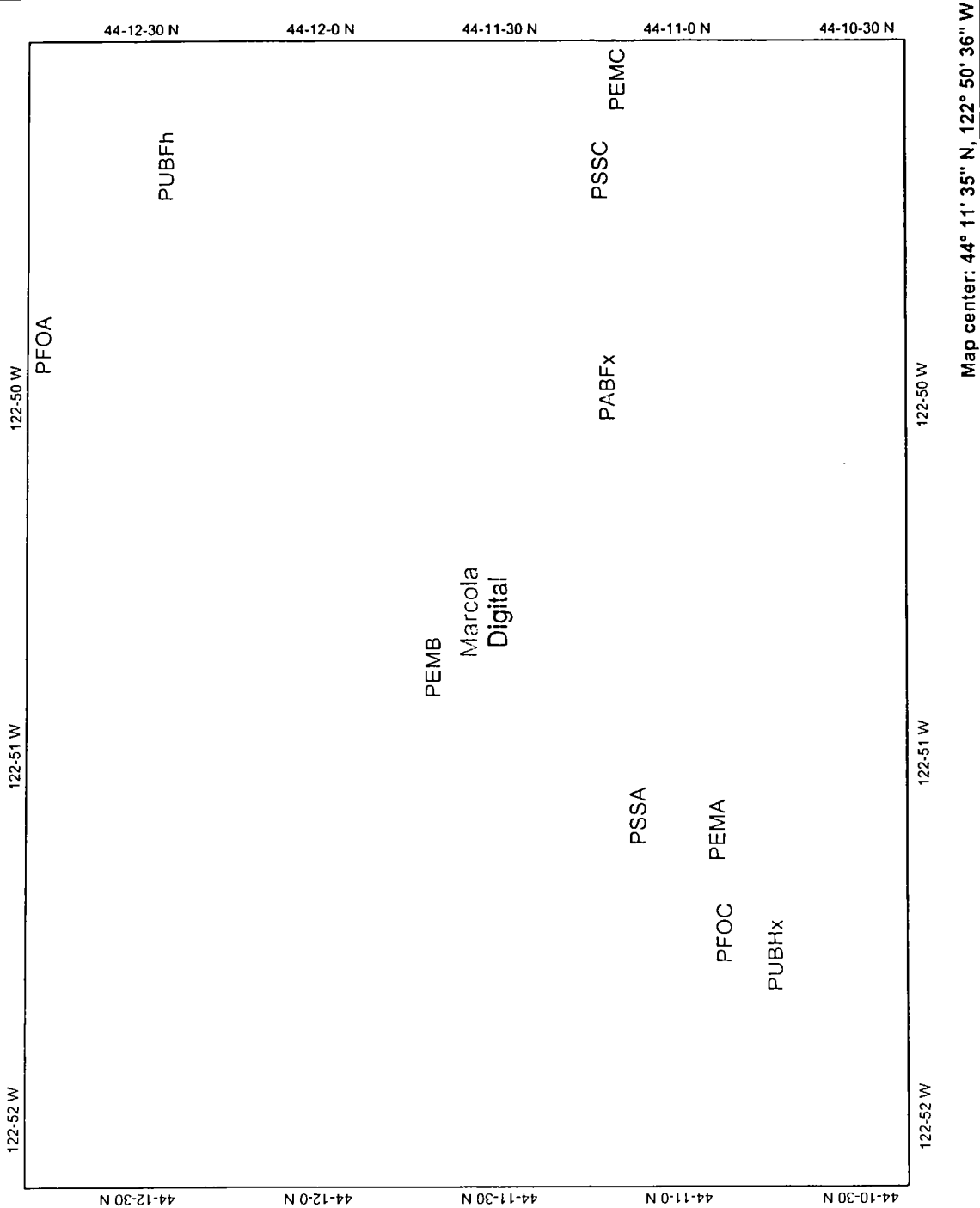
PLANNING ACTION #: PA005822  
TYPE: LEGAL LOT VERIFICATION  
SITE ADDRESS:  
PARCEL: 16-01-08-00-00700  
APPLICANT: FISHER EDWARD B & LILLI A  
85816 PARK LANE CIRCLE  
PLEASANT HILL OR 97455

Type	Method	Description	Amount
Payment	Check	1920	370.00

	Description	Current Pymt
2000	New Technology Fee	10.00
2100	Administrative Fee	45.00
3060	Planning Admin Approvals	300.00
3065	Long Range Planning Surc	15.00



# USFWS NWI Wetlands



**Legend**

- Interstate
- Major Roads
- Other Road
- Interstate
- State highway
- US highway
- Roads
- Cities
- USGS Quad Index 24K
- Lower 48 Wetland Polygons
- Estuarine and Marine Deepwater
- Estuarine and Marine Wetland
- Freshwater Emergent Wetland
- Freshwater Forested/Shrub Wetland
- Freshwater Pond
- Lake
- Other
- Riverine
- Lower 48 Available Wetland Data
- Non-Digital
- Digital
- No Data
- Scan
- NHD Waterbodies
- NHD Streams
- Counties 100K
- Urban Areas 300K
- States 100K
- South America
- North America

Scale: 1:42,310

This map is a user generated static output from an Internet mapping site and is for general reference only. Data layers that appear on this map may or may not be accurate, current, or otherwise reliable. THIS MAP IS NOT TO BE USED FOR NAVIGATION.

**Date of Memo:** April 14, 2009

**To:** Lane County Planning Commission

**From:** Jerry Kendall/Associate Planner (682-4057) JK

**Re:** PA 06-5888: Minor Plan Amendment and Zone Change from "Agricultural" to "Forest" Lands and from "E-40/Exclusive Farm Use" to "F-2/Impacted Forest Lands" for Map 16-01-08, tax lot 700; 92922 Marcola Rd., Springfield, Or.

**LCPC deliberation on April 21, 2009, 5:30 PM, BCC Conference Room**

Please refer to Attachment 1 for a summary of the chronology for this application.

As discussed in Attachment 1, staff still recommends a Plan designation to Forest Land, and that the rezone be to F-1/Nonimpacted Forest Land for the entire 126 acre parcel. As expressed in Attachment 2, the Applicant has expressed that if the Planning Commission accepts staff's interpretation of RCP Goal 4, policy 15, then "...the applicant is not opposed to F-1 zoning for the entire 126-acre parcel".

At the hearing of February 17, two commissioners asked staff to respond to three issues.

- Commissioner Dignam inquired about the issue of split zoning, since the Applicant was asking that only the east 78 acres of the parcel be changed.

The Rural Comprehensive Plan does not offer much discussion concerning this item. Mention of the topic is made at LC 16.252(9)(b)(vii), but that provision concerns the proper way to discern exactly where the zone boundary is located when a property is already split zoned.

The determination of the appropriateness of implementing a split zone designation on a property defaults to the crux of this proposal, RCP Goal 4 policy 15. As maintained by staff throughout, when the proposal is analyzed in light of policy 15, the outcome is negative for the original 78-acre/F-2 scenario, and affirmative for a plan/zone designation of Forest/F-1 for the entire 126-acre parcel.

- Commissioner Dignam also asked staff to provide a summary of the *Lininger*, *Dockum*, and *Symbiotics* cases and their relevancy to this proposal.

As staff explains in March 17 memo, a closer look at the *Symbiotics* case (aka Ordinance PA 1236), touted as exclusively applicable by the Applicant, actually serves to not justify the Applicant's 78- acre F-2 proposal.

The three cases are illustrative in that the subject properties under consideration have different characteristics. The decisions for the three cases have been

BCC ATTCH.#4-68AA

previously provided. Staff suggests a close reading of the cases, and a review of the comments pertaining to those cases which were made in the original staff report, and in the March 17 staff memo.

- Lastly, Commissioner Sullivan asked if the (Applicant's) failure to offer a rationale as to why the "line" was drawn as proposed "...was a make or break" for the proposal.

In essence, yes. How the proposal is addressed under policy 15 is the determinative factor. Staff has maintained that analysis of the property under policy 15 results in a recommendation of F-1 zoning being applied to the entire 126-acres. Staff sees no findings that justify F-2 zoning on either the east 78-acres, or the entire 126-acre parcel.

**In conclusion, staff recommends:**

- 1.) That a Forest land plan designation be applied to the entire 126-acre parcel.**
- 2.) That an F-1/Nonimpacted Forest Lands zone designation be applied to the entire 126-acre parcel.**

**Attachments:**

1. Staff analysis, dated 3-17-09. Included within its 5 attachments are the Applicant's submittals of 2-17-09 and 3-3-09.—66 pp.
2. Applicant's final rebuttal statement, dated 3-30-09.—1p.

**Date:** March 17, 2009

**To:** Lane County Planning Commission

**From:** Jerry Kendall/Associate Planner (682-4057) JK

**Re:** PA 06-5888/Plan Amendment /Zone Change for Ravin Ventures, LLC

**Background:**

The Planning Commission held a public hearing on this matter on February 17. At the end of the hearing, the record was left open in the following manner:

- Until March 3 for the Applicant to submit written materials on any aspect of the proposal.
- Until March 17 for staff to respond to materials that were submitted during the period above.
- Until March 31 for Applicant's final rebuttal.
- The Planning Commission is to then deliberate and forward a recommendation to the Board on April 21.

This memo represents staff's comments on the Applicant's submittal of March 3. In addition, it offers comments in response to the Applicant's submittal provided at the hearing.

**Analysis:**

Applicant's submittal of 2-17-09

The Applicant submitted a four page statement dated 2-17-09 at the hearing. It is attached to this memo.

Under point #3 of this submittal, the Applicant raises the topic of "[T]he development issue and transportation". The statement provided is a bit confusing in that the "staff" person referred to is not identified. If it refers to the comments offered by Transportation Planning (Celia Barry) on 4-3-07, those comments were based on assertions made by the Applicant in the original submittal of 5-18-06. That original submittal was replaced by a revision dated 9-9-08, in which the Applicant instructs (p.1) that "...this narrative statement is intended to replace the original narrative statement in its entirety". Ms. Barry did not offer a referral response to the revision. This situation was discussed on pages 3-4 of the LCPC Staff Report dated 2-10-09, and is not repeated herein. The fact remains that the 126 acre parcel contains a minimum of five legal lots. A rezone to F-2 would allow the potential of lot line adjustments of those legal lots, and the subsequent application for template dwelling applications per LC 16.211(5). Rezone to F-1 would not. There may be some potential for dwellings under the current EFU zone, but it is unlikely all five legal lots would qualify for dwellings. Staff has never asserted that dwellings are "permitted" in the F-2 zone. Template dwellings are not a "permitted" use, but a land use decision process in which stated standards are to be met. For the Applicant to state that "[T]here are no additional residential development opportunities afforded through this PC/ZC" continues the confusion perpetrated by the Applicant throughout the application.

*A Tech #1 - 66 pg.  
(for staff memo of 7-14-09)*

Under point #4, the Applicant takes issue with the reliance of staff on the *Dockum* case. As stated in the LCPC staff report of 2-10-09, that case contains a fact pattern similar to the present case, and so was considered instructive by staff. It does not appear to staff that the Hearings Official “went rogue” in regards to Ordinance No. PA 1236, the *Symbiotics* case. The Hearings Official simply applied reasonable logic in evaluating a set of circumstances and evidence that was not the same as in *Symbiotics*. Some of the specific findings in *Symbiotics* also provide similar guidance for this case.

Under point #6.a., the Applicant states that if the LCPC rezones the property to F-1, “...it will take a legal home and make it illegal”. This is a false statement. If the property is rezoned to F-1, the existing (1900 built) dwelling would become a lawful non-conforming use. Maintenance, repair and replacement would be an outright permitted use. In addition, in the event that the F-2 zone is obtained, there would be no need to have the dwelling “...made legal through a special use permit” as claimed by the Applicant.

Under point #6.c., the Applicant states “[E]VERY PIECE OF F-2 LAND IN THE COUNTY HAS A FOREST DEFERRAL” (emphasis is theirs). This is a false statement. Refer to the email response, attachment #4 to this memo. It is from David Evans, Farm/Forest Appraiser for the Lane County Department of Assessment & Taxation.

The remaining substantive points raised in the statement of 2-17-09 are also raised in the Applicant’s submittal of 3-3-09, and are discussed below. The subjective statements raised by the Applicant in “Summary 1” on page 4 are protected speech under the First Amendment. Staff urges the LCPC to focus on the provided analysis.

#### Applicant’s submittal of 3-3-09

The proposal consists of two parts: a change in the Plan designation of the property, and a change in the Zone designation.

#### Plan Designation

The proposal before the Planning Commission at the hearing of February 17 was for the easternmost 78 acres of Map 16-01-08, tax lot 700 to be redesignated from Agricultural Land to Forest Land. There has been no dispute over the stated history of timber harvesting on the 126 acre tax lot (two harvests, in 2002 and 1955-1960), and the forest tax deferral being received on 33 of its 126 acres. In addition, there is no documentation of past or present farm use of the property in the record.

There was mention by the Applicant at the hearing of the option to redesignate the entire 126 acre parcel to a Forest Land plan designation. Since the proposal was not noticed for the entire parcel, staff discussed this option with Legal Counsel on 3-10-09. It was concluded that any risk of procedural error would be nominal, as any objection could be raised and addressed at the second hearing by the Board of Commissioners. Wherein documentation has been entered into the record that the entire parcel has a history of forest use, and that a split Agricultural Land/Forest Land designation may prove awkward, staff recommends that the entire 126 acre parcel be designated as Forest Land.

The Applicant addresses the Plan designation requirements on pages 18-39 of the submittal. Since staff does not dispute that the proper designation is Forest Land, no further analysis is provided. Any “fine tuning” of the eventual findings, such as to accommodate the entire 126 acres, can be made during the Board hearing process and prior to the adoption of a proposed ordinance.

### Zone Designation

If the LCPC recommends that the entire 126 acre parcel be Plan designated as Forest Land, the issue then becomes what zone designation is most appropriate, F-1 or F-2.

The revised submittal of 9-9-08 and all subsequent submittals by the Applicant address the easternmost 78 acres of the 126 acre parcel. The Applicant has expressed agreement to the idea of rezoning the western 48 acres to F-1. This will require some revision of the findings when the issue comes before the Board, but does not appear to be problematic. The focus of contention has been over the proper designation of the easternmost 78 acres.

The Applicant addresses the zone change requirements on pages 3-17 in the submittal of 3-3-09. The arguments presented are basically a reiteration of those made in the revised submittal of 9-9-08. The focus is on RCP policy 15 (the submittal refers to this policy as #16, a typo. The policy number citation has been changed to “15” throughout this report, when quoting the Applicant). That policy is recited in **boldface** type below, followed by staff analysis. If the proposal numerically meets more of the F-2 characteristics under policy 15 b. & c., then an F-2 zone designation is warranted, and conversely for a F-1 designation.

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

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

**(F-1)**

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

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

The 78 acre subject property contains a dwelling near Marcola Road, apparently built in 1900. Both staff and the Applicant agree that this favors an F-2 zone designation.

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

The Applicant continues to rely exclusively on Ordinance 1236, the *Symbiotics* case. The Applicant asserts that *Symbiotics* dictates that under policy 15.b.(2), one should examine only the land being proposed for the rezoning, in the present case, the easternmost 78 acres of tax lot 700. According to the Applicant, since the land proposed for the rezoning is 78 acres, obviously less than 80 acres, the subject property does not meet this F-1 characteristic, warranting an F-2 designation. On page 5, the Applicant, referring to the *Symbiotics* case, and in support of their position of examining only the 78 acres, states that “[T]he Board’s finding under Policy 15.b(2) did not contain an analysis of the difference between the 37.5 acre portion of the ACOE property and the remaining ‘adjacent’ ACOE property. The Board simply limited its review to the ‘land proposed for rezoning’, regardless of other adjacent ownership.” This does not appear to be the case for *Symbiotics*. On page 11 of that decision (copy previously provided in the Applicant’s packet of 9-9-08) under the finding for policy 15.b.(2), the Board found:

“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 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.”

The “parent parcel” for the *Symbiotics* proposal was 970+ acres in size. In the preceding finding (also on p.11), the Board differentiated the uses taking place on that large parcel as three distinct areas; Dorena Reservoir, a campground/recreation area, and the “subject property”, consisting of a road and railroad right-of-way, a dam, and spillway, on 37.5 acres. Thus the *Symbiotics* case did consider the other contiguous portions of the parent parcel, but concluded that the subject property was distinct, and could be considered on its own merits under 15.b.(2). It is noted that in *Symbiotics*, the findings under this standard also contain mention of acreages of contiguous properties which were not under the same ownership (ACOE) as the parent parcel. The conclusion (p.12) was that both the 37.5 subject property and other contiguous ownerships were less than 80 acres in size, warranting an F-2 designation for the subject property. No such distinction or finding had been made by the Applicant in the present case. Therefore, and as detailed on pages 6-7 of the LCPC staff report of 2-10-09, staff cited the *Dockum* case, which was denied by the Hearings Official, as the Applicant had made no attempt to differentiate the subject property from the contiguous remainder of the parent parcel as was done in the *Symbiotics* case. Please refer to the LCPC report for those details.

The Applicant maintains that there is no need to examine the western 48 acres of the parent parcel under 15.b.(2), stating (p.6) “Neither the plain language of the standard nor the Board’s interpretation of the qualifiers ‘compel’ the applicant to find a substantive difference between the area proposed for rezoning and the rest of the tract”. Nevertheless, the Applicant proceeds (p.7) to explain that the subject property was “...chosen out of the larger tract” based on the claim that nearby residences, the Marcola River, wind direction,

the well traveled Marcola Road, etc., make spraying and commercial forest use of the 78 acres problematic.

If the Applicant relies on examination of the 78 acre subject property alone in addressing 15.b.(2), staff maintains that the proposal matches the F-1 characteristic per the explanation provided above (i.e., in *Symbiotics* the Applicant did examine contiguous property, and in *Dockum* the Applicant did not, and the application was denied as a result).

Staff notes that the Applicant testified (p.6, revised submittal of 9-9-09), that “[T]he subject property is approximately 78 acres of reforested timberland.” The Applicant further states “[T]he property has a history of being logged. It was most recently logged by the applicant in 2002. It is currently in forest regeneration. Prior to that, it was logged in approximately 1955-1960 (based on 2002 tree stump and site conditions).” Staff also added into the record documentation that 33 acres of the parent parcel is in forest deferral. The Applicant’s current claim that nearby roads, rivers, wind direction, public road, and nearby dwellings pre-empt commercial forest use is curious, and did not appear to hamper the two previous loggings or reforestation.

As explained in the LCPC staff report, staff finds that the subject property (78 acres) is in contiguous ownership with the western (48 acre) portion of tax lot 700, totaling 126 acres. There is no evidence in the record of the contiguous ownerships being logically separated into areas devoted to nonforest uses similar to the *Symbiotics* decision findings. Being larger than 80 acres, the contiguous ownerships that include the subject property has an F-1 characteristic under this standard.

In addition, as previously mentioned, the *Symbiotics* case also examined contiguous properties. In the present case, the subject parcel is, except for its eastern property line, contiguous to tracts greater than 80 acres in size. The east property line is bordered by Marcola Road, rendering the land to its east non-contiguous.

These tracts include:

- 16-01-07 #200 & 16-01-08 #400, owned by High Mtn. Inv. and totaling 106.9 ac.<sup>1</sup>
- 16-01-07 #201, #300, owned by the US Gov. and totaling 206.8 ac.
- 16-01-07 #202, #400, 16-02-12 #201, 16-02-13 #100, 16-01-18 #603 owned by Weyerhaeuser and totaling 931.4 ac.
- 16-01-07 #500, owned by Ranch & 120 LLC, totaling 87.0 ac.

Refer to attachment #5 of this memo for an overview map, followed by Section maps for the above properties.

Whereas the subject property is contiguous to its remaining western portion (48 acres) and totals 126 acres, and, whereas all of the contiguous properties in ownership different

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<sup>1</sup> Map 16-01-08 #600 is 1.9 acres, owned by High Mtn. Inv. and M. Christofferson, and borders the subject parcel for 668’ at its NE corner. Since two parties own this property, it is considered in different ownership and not part of the tract of land owned by High Mtn. Inv. alone.



then the subject property are over 80 acres (except #600 as footnoted below), the proposal warrants a F-1 designation under this characteristic.

This standard favors an F-1 designation.

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

The Applicant uses the same argument as described on page 7 of the LCPC staff report of 2-10-09. Staff does not accept the Applicant's logic for the same reasons. Please refer to that staff report.

In addition, staff takes note that tax lots 601 and 800 as listed in the Applicant's Table F are not contiguous to the subject property. Tax lot 601 does not share a common boundary with the subject property. Neither does tax lot 800, as it is located on the east side of Marcola Road, the road intervening and thus does not meet the definition of "contiguous" as found in LC 16.090.<sup>2</sup>

Staff enters under this standard the contiguous tracts noted above:

- 16-01-07 #200 & 16-01-08 #400, owned by High Mtn. Inv. and totaling 106.9 ac.
- 16-01-07 #201, #300, owned by the US Gov. and totaling 206.8 ac.
- 16-01-07 #202, #400, 16-02-12 #201, 16-02-13 #100, 16-01-18 #603 owned by Weyerhaeuser and totaling 931.4 ac.
- 16-01-07 #500, owned by Ranch & 120 LLC, totaling 87.0 ac.

Except for the US Government owned land, all of the above large acreage is receiving forest tax deferral (the US Gov. is exempt) and would appear to be utilized for commercial forest uses. It is noted that the Applicant (p.8) states after a meeting with staff<sup>3</sup>, "...staff now acknowledges that forest deferral status is not a factor when determining whether a property is in 'commercial' forest use". At best, staff would acknowledge it is not the only relevant factor and by itself would not determine the outcome. As stated in the LCPC staff report of 2-10-09, forest tax deferral has been historically used as an indicator of commercial forest use. Forest use of the above listed properties and the subject parcel is also evident from the aerial photo submitted with the Applicant's original submittal, Exhibit G. The aerial shows these properties as either clearcut, timbered, or in reforestation. Logging roads are apparent.

The Applicant mentions (p.11) that staff used a perimeter measurement (in the LCPC staff report). The Applicant advises the use of "number of adjacent parcels". The operative word in this standard is "contiguous". In the *Symbiotics* case, the findings include discussion of properties which were contiguous to the subject property. This

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<sup>2</sup> Contiguous. 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.

<sup>3</sup> On 2-25-09. Attending were Bill Kloos and Kim O'Dea from the Law Office of Bill Kloos, Kent Howe/Planning Director and Jerry Kendall/Associate Planner.

discussion includes tracts (contiguous property under the same ownership). The staff list above is comprised of tracts of land contiguous to the subject property, under forest tax deferral, and apparently in active timber management. Except for the aforementioned Map 16-01-08 #600 which is not listed above and is contiguous to the subject property for only 668', the listed tracts comprise all of the properties contiguous with the subject property.

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

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

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

**(5) Primarily under commercial forest management.**

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

According to tax records (information from Dave Evans, Lane County Assessment & Taxation Property Appraiser, see file record email of Feb. 10, 2009), 33.0 acres of tax lot 700 is receiving deferred forestland special assessment. Of the remainder, 92.228 acres is in "non-specially" assessment, and one acre in residential assessment for the homesite. In addition, the record reflects that the subject parcel was logged in 2002 and between 1955-1960, additional evidence of commercial forest management.

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

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

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

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

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

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

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

See Applicant's response on page 13.

The ownership of Ravin Ventures LLC consists of 126 acres. No convincing and qualifying circumstances differentiating the subject property from the remainder of tax lot 700 is on record. Refer also to the discussion under 15.b.(2) above. See also the similar *Dockum* decision at page 9. This standard favors an F-1 zone designation for the property.

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

See page 13-15 for the Applicant's response.

The findings described in the *Symbiotics* case and as originally quoted in the LCPC staff report is repeated below.

In regards to this standard, the findings for *Symbiotics* notes (p.10 of Findings): *Policy 15.c.(3) does not use the term "contiguous" to determine the same relationship between the land proposed for rezoning and the tapestry of uses and development in the surrounding area. Policy 15.c.(3) uses "generally contiguous" in a broader sense that looks beyond the definition of "contiguous" to determine if "tracts" owned by other property owners in the general area of the land being proposed for rezoning are less than 80 acres in size and developed with residences. The analysis is intended to venture beyond the only contiguous properties with common property lines. In some instances, common sense may push that analysis a distance in some or all directions to fully assess the characteristics of the surrounding uses and development particularly when considering a "tract".*

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

*This interpretation affirms the Lane Code 16.090 definition of "contiguous" as it is used in Policy 15.b.(2) and 15.b.(3) in the assessment of F-1 characteristics. It also makes clear that "generally contiguous" as used in Policy 15.c. (3) is different and broader in meaning and application when assessing the F-2 characteristics. It will remain for the Board of Commissioners to exercise discretion on a case-by-case basis, in making a final determination on how wide and how far that assessment pursuant to Policy 15.c.(3) would*

*need to reach to provide a factual basis in arriving at a decision to approve or deny a request for rezoning. In all cases, the analysis under Goal Four, Policy 15 does not require a precise mathematical computation since the focus is on all the characteristics and whether, on balance, the land proposed for rezoning more closely corresponds to the F-1 or F-2 characteristics.*

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

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

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

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

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

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

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

Whereas the proposal only meets 2 of 5 of the F-1 characteristics, and 2 of 4 of the F-2 characteristics, staff recommends an F-1 zone designation be applied to the subject 78 acre property.

**Attachments:**

1. Applicant’s submittal of 2-17-09—4pp.
2. Applicant’s submittal of 3-3-09—39pp (text) & 6 pages of RLID data
3. GIS generated map showing dwellings in the vicinity of the subject property—1p.
4. Email response, D.Evans, County Farm/Forest Appraiser, dated 3-17-09—1p.
5. GIS vicinity map & tax maps—6pp.

LAW OFFICE OF BILL KLOOS, PC

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February 17, 2009

Lane County Planning Commission  
Attn: Jerry Kendall  
Land Management Division  
125 E 8<sup>th</sup> Ave  
Eugene, OR 97401

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

Dear Commissioners:

Please accept this letter as a list of speaking points that address the revised staff report. The applicant will focus on the revised submittal only.

1. **Request to continue the hearing (or, in the alternative, leave the record open for seven days):** The applicant did not receive the staff report until Friday late in the day. Based on the envelope, it was mailed Thursday. The County was not open on Monday. The applicant desires to make written responses to the staff report. However, the applicant cannot do so at this time because it was not possible to do a thorough review of the *Dockum* decision prior to the hearing. The *Dockum* case is a hearings official case and is, at best, instructive. While I recognize that the Planning Commission only gives a recommendation to the Board, I want that recommendation to be based on solid facts and correct law. Therefore, I request that this hearing be continued until next month to afford time to address the issues in writing, to provide adequate time for the planning commission to review that submission, and to allow another conversation on the issue. The applicant has been very cooperative with the planning Director regarding our placement on the agenda. We have been moved SEVERAL times. I am hoping that good will has been created and that the request to continue will be granted. However, if the planning commission decides not to grant the request, the applicant requests that the record be left open for 14 days.
2. Given the above, I will speak to what I can orally and follow up with a written response.
3. **The development issue and transportation.** There are no additional residential development opportunities afforded through this PC/ZC. This is a well established fact that staff uses often. I am not sure why, suddenly, staff fails to recognize it. As zoned, the applicant cannot place a house on the property without a special use permit. There are no

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P.A. NO. 6-5888

DATE 2-17-09 EXHIBIT NO. \_\_\_\_\_

ATTACHMENT 1

-480

“permitted” dwellings in the E-40 zone. As proposed, the case is exactly the same. There are no “permitted” dwellings in the F-2 zone. It is that simple, no matter how complicated staff might wish it to be. It is not a “technicality,” it is a fact.

4. **The Dockum case.** Staff relays his interpretation of *Dockum*. Unfortunately, the applicant has not had time to adequately review the decision. However, based on a cursory reading, staff’s characterization appears to be correct. The HO went rogue by largely ignoring the Board’s findings in Ordinance 1236. The case should be given no “instructive” weight. It is for the Board to correct its mistakes, if any were made, not the HO.
5. **Forest Designation.** Everyone agrees the property should be designated as Forest. This is a step in the correct direction.
6. **Zoning Characteristics**
  - a. **Residences on site.** Staff and the applicant agree that the site is developed. This is an F-2 characteristic. If the Planning Commission zones this property F-1, it will take a legal home and make it illegal. There are no provisions in the F-1 zone for dwellings, even with a special use permit. At least in the F-2 zone, the dwelling could be made legal through a special use permit. A zoning designation of F-1 would make the parcel less in compliance with the plan and code than it is now. In short, the F-1 zone would create a nonconforming use that cannot be corrected.
  - b. **Subject property and 80 acre threshold.** Only 78 acres is proposed for rezone, regardless of the holding. This is consistent with the *Symbiotics* Case. In the *Dockum* case, the hearing official decided that the Board was unwise in its decision and altered it without justification. This is not “instructive.” This is overreaching on the hearings official’s part. The only case that applies directly is the *Symbiotics* case (Ordinance 1236 decided by the Board). In that case, a portion of a legal lot was allowed. There was no instruction in the case that required a special finding to allow a partial rezone. Allowing a portion of a property to be rezoned is consistent with County policy. Lane County embraces split zoning. The Board specifically acknowledged this in Ordinance 1236 (page 8). County policy recognizes that sometimes the best use of a piece of property is reflected by split zoning because of site conditions or circumstances. The subject property is such a property. The area surrounding the eastern portion of the property is highly impacted by dense development and Marcola Road. It makes sense for this area to be zoned “impacted” forestland. The western portion of the property is not impacted and is appropriately zoned F-1.

c. **Commercial Forest and Farm use.** The focus is on the term “*commercial*.” Staff’s assertion that the “tried and true” method of looking to deferral status is the right approach is incorrect. In fact, that method falls apart when faced with the reality. First, it conflicts with the purpose of the zoning districts. Second, the “tried and true” method has already been voided by the Board.

Conflict with zoning district. This standard is a F-1/F-2 standard, meaning it is intended to show a difference between the two districts. EVERY PIECE OF F-2 LAND IN THE COUNTY HAS A FOREST DEFERRAL. I would challenge staff to find differently. Of course that is the case. The purpose of both the F-1 and F-2 zoning districts is to promote forestry. Growing and harvesting trees (forestry) is the only requirement for forest deferral. This does nothing to distinguish F-1 from F-2 zoning ... it is a commonality between the two and was intended to be so. Obviously, “commercial” forestry was intended to show a difference. Therefore, it must be something more than just growing and harvesting trees (a use that is allowed outright and by purpose statement in both districts). The Board has already recognized this.

The Board has already voided the “tried and true” method: In Ordinance 1236, the Board to great pains to look at this issue. What they found is addressed on page 33 of the applicant’s submittal. The HO blatantly disregarded this finding in *Dockum*. The HO had no authority to do so, just as staff had no authority to do so in the staff report. Thus, the case should be given no weight whatsoever. The applicant’s method makes an attempt at complying with the interpretation. The method is supported by the language in the decision. It may be that a slightly different approach is warranted. But what is obvious is that staff’s “tried and true” method is dead. It cannot be the standard on which this application is decided.

c. **Generally Contiguous.** Staff’s method conflicts with the *Symbiotics* case and the plain language of the Plan. Ordinance 1236 speaks directly to this issue, and staff ignores it. The ordinance says that generally contiguous goes beyond contiguous and looks at the “general area.” Staff fails to do this. Instead, staff looks to “abutting” property. “Abutting” is not the “general area.” “Abutting” is “contiguous.”

The applicant's submission looks to the "general area," as required. The review establishes that the property meets this F-2 characteristic because it is highly impacted by houses and exception areas. The 1,000 foot review area is supported by the *Lininger* decision and other "vicinity" and "general area" decisions.

**Summary 1:** It seems that both staff and the hearings official have decided that the Board is not the body with final judgment powers. Instead, they feel that they are better equipped to do so. They seem comfortable replacing the Board's judgment with their own. This is not the way it works. Because the HO substituted his own judgment for that of the Board, I would urge the Planning Commission to give little weight to the decision and instead rely on Ordinance 1236.

**Summary 2:** If we assume that each of staff's interpretations is correct, the outcome is 60% in favor of F-1 zoning and 50% in favor of F-2 zoning. Pretty close when dealing with percentage increments of 20 and 25, but still favoring F-1. But throw out staff inaccurate reading of (c)(3) regarding "generally contiguous and you end up with an outcome of 60% in favor of F-1 and 75% in favor of F-2. You get to F-2 without ever deciding what "commercial forestry" is.

I hereby request that the hearing be held open until next month to allow the applicant time to respond to the staff report. In the alternative, if the Commission will not grant the hold-over request, please leave the record open for 14 days.

While the subject application is limited to the 78 acre eastern-portion of the property, the applicant acknowledges that, prior to the application being amended to reflect the ordinance, both staff and the applicant reviewed the entire tract. Therefore, the applicant would not object to the Planning Commission making a Forest designation recommendation for the entire tract (since the analysis has been done) and then a F-1/F-2 zoning district recommendation.

Sincerely,

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



**LAW OFFICE OF BILL KLOOS, PC**

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

March 3, 2009

Lane County Planning Commission  
Attn: Kent Howe, Planning Director  
Land Management Division  
125 E 8<sup>th</sup> Ave  
Eugene, OR 97401

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

Dear Commissioners:

Please accept this letter as supplemental evidence in support of the attached plan change and zone change application. This letter responds to Staff's and the Commissioner's questions and comments at the February 17<sup>th</sup> hearing. All references to the "Applicant's Supplemental Application" refer to the Applicant's September 9, submission.

The proposal is to re-designate property from Agriculture to Forest and rezone property from E-40 to F-2.

The letter is organized into two parts. Part 1 addresses compliance with F-1/F-2 Zone Change Criteria. Part 2 addresses compliance with Forest Plan Change criteria. Draft findings are included in each.

The application and proposal in front of the Planning Commission is for a 78-acre portion of land. However, per our meeting with staff, the planning department feels that the entire parcel is better designated Forest and that the west portion is suited for F-1 zoning. Though this is not in front of the Planning Commission at the applicant's

request, the rational makes sense. If staff desires to make such findings, the applicant does not object. Support for staff's findings can be found in the original application filed in 2006, which continues to be part of the record.

Based on the findings below, 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. 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

***PART 1:***  
***FINDINGS OF COMPLIANCE WITH CRITERIA APPLICABLE  
TO ZONE CHANGES***

**I. Zone Change Criteria**

The Zone Change Criteria of the RCP and the Code were addressed in depth in the applicant's September 9<sup>th</sup> Supplemental Narrative. The nuts and bolts of the zone change criteria are found in RCP Policy 16, which is readdressed below in response to Staff's and the Planning Commission's concerns.

In short, Policy 16 sets out characteristics. Five characteristics are associated with F-1 zoning and four characteristics are associated with F-2 zoning. Whether a property should be zoned F-1 or F-2 is determined by which factors are present. The County gives each factor the same weight. The County has interpreted compliance with this provision to be a simple check-list percentage analysis, meaning that if a property meets 50% of the factors for being zoned F-2 and 60% of the factors for being zoned F-1, the property is properly zoned F-1.

For clarity, the applicant addresses each factor below and provides a summary table for both F-1 and F-2 characteristics.

**A. COMPLIANCE WITH POLICY 16 OF THE RCP**

***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 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 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 the conclusion.***

**FINDING:** Characteristics of the land, not the ownership of it, control the analysis. See Ord. PA 1236, pg. 8. Focus is on the subject property and the land in the immediate vicinity. The County acknowledges that legal lot status is not a factor in determining compliance with Policy 16. See Ordinance 1236, page 9. This was true when initial zoning was applied in the early 80's and continues to be true today. If legal lot status

were a factor, there would be thousands of unzoned parcels in the County.

The County provides for and allows split zoning under the plain language of the RCP. As quoted from the first paragraph of Policy 16, above,

*“A decision to apply one of the above zones or both the above zones in a split zoned fashion shall be based upon: [Policy 16 characteristics].”*  
(Emphasis added).

Ownership means, “land being proposed for rezoning.” This can be an entire property or a portion of it, as discussed above. 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 16 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 Ord. PA 1236, pg. 10).

The applicant is proposing F-2 zoning on the subject property, which is the eastern 78 acres of TL 700. The characteristics addressed below, the Findings of which are hereby incorporated, establish that the subject property is developed with a residence, is less than 80 acres, is generally contiguous to tracts containing less than 80 acres and residences, is adjacent to developed or committed areas for which an exception has been taken in the Rural Comprehensive Plan, and is provided with a level of public facilities and services and roads intended primarily for direct services to rural residences. The Findings establish that the subject property meets 100% of the characteristics for being zoned F-2. Therefore, it is concluded that characteristics of the land correspond more closely to the characteristic of the F-2 zone than the characteristics of the F-1 zone. As such, this criterion is met.

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

DISCUSSION: The following five criteria are characteristics of F-1 zoned land.

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

FINDING: 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 Ordinance 1236, page 11. The absence of residential development or other

nonforest use is a characteristic of F-1 zoning.

As shown by evidence provided by the applicant, the subject property is developed with a dwelling constructed in approximately 1900. See County Rural Addressing Maps and Assessment and Taxation Property Information Sheets. Therefore, the subject property does not meet this F-1 characteristic.

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

FINDING: Ordinance PA 1236 allows rezoning of a portion of a property. The Board based this position on the first paragraph of Policy 16, which specifically allows for split zoning. The concept of split zoning, by its nature, requires review of a portion of a contiguously held property. The Board could not ignore this policy direction. The Board found:

*“We find that the term “ownerships” contained in the criteria of RCP Goal 4, Policy [16] should be considered as including only the land proposed for rezoning (unless other qualifiers in a particular characteristic compels a different result) because of the introductory language in Policy 16 \*\*\*”* Page 8 of Ordinance 1236.

*“Properties subject to amendments in the past have included portions of or combinations of tax lots as metes and bounds descriptions with single owners or multiple owners. Lane County does not require legal lot determinations as a qualifier for application for a zone change \*\*\*.”*  
Emphasis added.

In Ordinance 1236, the Board went on to find that under Policy 16.b.(2), “the subject property is approximately 37.5 acre in size and therefore does not correspond to this characteristic even with the additional area included in the rights-of-way.” The Board’s finding under Policy 16.b.(2) did not contain an analysis of the difference between the 37.5 acre portion of the ACOE property and the remaining “adjacent” ACOE property. The Board simply limited its review to the “land proposed for rezoning,” regardless of other adjacent ownership.

The Board properly applied the RCP. The Board acknowledged that the RCP allows for split zoning and therefore Policy 16.b.(2) could not be interpreted to exclude rezoning a portion of a property. Instead, the Board acknowledged that rezoning a portion of a property makes sense if the portion proposed for rezoning more closely matches one batch of zoning characteristics over the other. In short, the Board acknowledges that Policy 16.b.(2) is only one of five characteristics of F-1 zoning and that the F-1/F-2 determination is a balancing act. See Ordinance 1236, pg. 10. The Board’s interpretation is supported by the language of 16.b(2) itself, which says, “predominantly” contiguous

ownerships of 80 acres or larger in size. This establishes that sometimes this standard is not universally applicable. In cases where a portion of a property that is less than 80 acres is proposed for rezoning, the determining factor will be other characteristics of the land. Where the area proposed for rezone is larger than 80 acres, this characteristic (along with other stated characteristics) will determine whether the ownership should be zoned F-1 or F-2.

Staff and the Hearings Official take issue with the Board's analysis and findings. Staff asserts that the applicant is compelled to show why the area being rezoned is different from the rest of the property in common ownership. Staff appears to rely on the phrase, "*unless other qualifiers in a particular characteristic compels a different result*) in follow Board language,

*"We find that the term "ownerships" contained in the criteria of RCP Goal 4, Policy [16] should be considered as including only the land proposed for rezoning (unless other qualifiers in a particular characteristic compels a different result) because of the introductory language in Policy 16 \*\*\*"*

There is no justification for either Staff's or the Hearings Official's position. The plain language of the phrase does not impose such a requirement. The phrase does not undermine the Board's logic; it supports it because it says, "look to the other factors." The Board's finding sets out a general rule, and then supplies a limited exception.

The phrase "*unless other qualifiers in a particular characteristic compels a different result*" focuses on "qualifiers" and "characteristics." As used throughout Ordinance 1236 and the RCP Policy 16, "characteristics" refer to the five F-1 characteristics (16.b.(1)-(5)) and four F-2 characteristics (16.c (1) – (4)). Therefore, first you must look at the nine "characteristics." Then you must ask whether a "qualifier" is present that compels a different result. A qualifier is a word or word group that limits, modifies or restricts the meaning of another word or group of words. Almost all of the characteristics have "qualifiers." The qualifiers in 16.b.(2) are "contiguous" and "80 acres and larger in size." Neither of the qualifiers "compels" the applicant to establish why the area proposed for rezone differs from the area not proposed for rezone. In Ord. 1236, the Board explained what "contiguous" means; it means contiguous parcels within the area proposed for rezone. See Ordinance 1236, page 10 and the Applicant's Supplemental Application, Page 33, hereby incorporated. And in Ord. 1236, the Board explained what "80 acres and larger in size" means; it means the size of the land proposed for rezone. See Ord. 1236, pages 9-10. Neither the plain language of the standard nor the Board's interpretation of the qualifiers "compel" the applicant to find a substantive difference between the area proposed for rezoning and the rest of the tract. Neither the hearings official nor staff has explained why, in light of the Board's finding, the applicant is compelled to provide this additional evidence.

Staff seems to infer that the Board's interpretation puts the County's F-1 lands at risk of development. This is not true. Just because an applicant proposes an area less than 78 acres does not mean automatic F-2 zoning. All other RCP characteristics must be considered. The entire purpose of the RCP analysis is to determine whether the property more closely matches one "set" of characteristics. See Policy 16, subsection (a). No one factor is determinative. The RCP makes clear the split zoning is justified.

The applicant has established that no further justification for the 78 acres is required. However, the 78 acres has important characteristics that distinguish it from the balance of the tract ownership. The subject property is impacted by a county road, residential development, exception area land, F-2 and EFU land, the Marcola River and an existing dwelling.

The subject property is adjacent to Marcola Road, a busy and well-traveled road popular with bicyclists and scenic drivers as well as truckers and commuters. The area due east of the subject property is densely developed dwellings, many located within a Developed and Committed Exception Area. See Exhibit EE. The subject property contains an occupied dwelling. See Exhibit I. Property to the south and southeast is zoned for farming. See Exhibit EE. The Marcola River lies almost adjacent to the east. These adjacent and nearby uses make intense "commercial" forestry impracticable on the subject property.

In particular, aerial spraying of herbicides is difficult because of site constraints. Aerial spraying is an important and needed component in commercial forest operations. Control of Scotch Broom, blackberry and other invasive and noxious plants and weeds is necessary in order to secure good growth and fiber return. Such spraying is incompatible with residential and farm uses and open water sources. The issue of "spraying" was addressed in detail in the *Lininger* decision, which is in the record. In short, the Hearings Official concurred that aerial spraying is a necessary component of "commercial" forest operations and that such spraying is incompatible with residential uses.

Winds in the Eugene Springfield area generally blow from west to east, deviating from due east to northeast or southeast. Even in low winds, spray can travel up to 1,000 feet, any gust can send it more than 2,000 feet.

The property slopes to the east. Given that the Marcola River is almost adjacent to the subject property, and given that the Marcola River is a drinking water supply the Marcola area (and for the Metro area by virtue of being a tributary of the McKenzie River), the applicant is also concerned about herbicide runoff.

The subject property boundary was chosen out of the larger tract based on these issues. The west line is approximately 2400 feet from the nearest residence; 2200 feet to the nearest point of the Marcola River; and 500 feet from land zoned EFU. The line was

drawn in an attempt to mitigate the impacts of spraying that will be necessary on the western portion of the tract. The line provides maximum protection to residential dwellings and the river. It also provides some protection to the farmland to the south. It balances protection for the farmland with the fact that the land is currently not in farm production and is likely already impacted by nearby commercial forestry. The boundary errs on the side of protection for residences and water. The western portion of this property is suitable for commercial forestry and F-1 zoning given its surroundings. See Exhibit E. The proposed line attempts to balance the existence of F-2 land to the north and south with the sea of F-1 land to the west, while still maintaining the maximum protection for residents of the area.

As such, the eastern 78 acres is sufficiently different from the remaining tract, by virtue of being highly impacted, to allow the subject rezone. Therefore, the subject ownership is less than 80 acres in size. This F-1 characteristic is not met.

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

FINDING: 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 Ord. 1236. While not conclusive, the following factors can be considered in determining whether surrounding uses are being used 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 16 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 discussion with the County staff and the Planning Director since the February meeting, staff now acknowledges that forest deferral status is not a factor when determining whether a property is in “commercial” forest use. The purpose of both the F-1 and F-2 zone is to grow and harvest trees for a profit, consistent with Goal 4. Tax deferral status is granted on that basis. It is a commonality between the two zoning districts, not a distinction.



Therefore, “commercial” forest use is something more. What this “something more” is is not clearly defined. However, in Ord. 1236, the Board provided direction by stating that F-1 zoning was given to: (1) Public forest lands, (2) larger commercially managed forest lands; (3) forested lands not impacted by nonforest uses; or (4) forest lands in the ownership of industrial forest operators. See above and page 9 of the Ordinance.

Based on the above, commercial forest use leans toward public lands and vacant 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 was provided to the applicant by Lane County Assessment and Taxation in response to the applicant inquiry about the meaning of “industrial forest operators.” The 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 of the Supplemental Narrative. 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/Review Criteria (1) Public forest lands? (2) Larger commercially managed forest lands? (3) Forested lands not impacted by nonforest uses? or (4) Forest lands in the ownership of industrial forest operators?
TL 200	Rosboro	65 acres	292	This lot is “forest land in the ownership

	Lumber Co.  (Sold to High Mtn. Inv. Gp. Durng application period)		parcels/more than 2,000 acres  (42 parcels/about 2500 acres)	of industrial forest operators” despite the fact that it is zoned F-2 and less than 80 acres because (1) Rosboro has a large number of holdings in forest production in Lane County, (2) Rosboro is included on the state’s list.  (This lot is “forest land in the ownership of industrial forest operators” despite the fact that it is zoned F-2 and less than 80 acres because (1) High Mountain has a large number of holdings in forest production in Lane County)
TL 700 (west portion)	Ravin Ventures, LLC	40 acres	4 parcels/200 acres.	This parcel is not in “commercial” forest use because: (1) it is not a “larger” commercially managed forest land (the parcel is less than 80 acres) and (2) Ravin Ventures is not an “industrial forest operator” given its limited holdings of land in forest production.
TL 500	Ranch & 120, LLC (J. Paschelke)	85 acres	4 parcels/217 acres	This parcel is not in “commercial” forest use because: it has already been found to be impacted and assigned a split zoning of F-2/EFU; (2) the forest portion is not a “larger” commercially managed forest land (the F-2 portion is less than 80 acres) and (3) Ranch & 120, LLC is not an “industrial forest operator” given its limited holdings of land in forest production.
TL 601	Ranch & 120, LLC (J. Paschelke)	.68 acres	4 parcels/217 acres	This parcel is not in “commercial” forest use because: it is zoned EFU; (2) the forest portion is not a “larger” commercially managed forest land (the F-2 portion is only .68 acre) and (3) Ranch & 120, LLC is not an “industrial forest operator” given its limited holdings of land in forest production. This parcel is not in “commercial” farm use because there is no farm use on the land.
800(west portion)	Dustrude	8.19 (mostly on other side of road)	1 parcel/8 acres	This parcel is not in “commercial” forest use because: it is zoned RR5, developed with a residence and has no forest use or farm use whatsoever.
Marcola Road	Lane County			This parcel is not in “commercial” forest use because: it is a county road and has no forest use or farm use whatsoever

TL 600	Christoffersen	1.86	1 parcel/1.86 acre	This parcel is not in “commercial” forest use because: it is zoned RR5, developed with a residence and has no forest use or farm use whatsoever.
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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) is considered to be in commercial forest use, the subject property still does not meet this F-1 characteristic because, even then, only two of the seven are in commercial forest use.

The applicant uses number of adjacent parcels. Staff uses lineal feet of adjacent boundary line. Even using staff’s standard, based on the above, of the 8500 lineal feet of adjacent property line, 2600 lineal feet (31%) is in commercial forest use. Even if TLs 700 (west) is considered to be in commercial forest use, that percentage is only increased to 45%.

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

FINDING: The County has determined that this provision focuses on the subject property and the type of access to it. See Ord. 1236. 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.”***

FINDING: The County has determined that this provision focuses on the subject property and whether it is utilized for commercial forest/farm uses. See Ord. 1236. While not conclusive, the following factors can be considered in determining whether surrounding uses are being utilized for farm/forest use: parcel size, tax deferral, and other factual information. However, the determination of whether a property is in “commercial” farm or forest use is weighed against a different set of standards.

The issue of what “commercial forest management” means is addressed under (3) above. That discussion is incorporated here by reference.

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.	This parcel is not in "commercial" forest use because: (1) it is not a "larger" commercially managed forest land (the parcel is less than 80 acres) and (2) Ravin Ventures is not an "industrial forest operator" given its limited holdings of land in forest production.
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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

<b>Non-impacted Forest Land Zone (F-1, RCP) Characteristics</b>	<b>Does the Subject Property Meet this Element?</b>
<i>1. Predominantly Ownerships not developed by residences or nonforest uses</i>	No. The subject property is developed with a residence.
<i>2. Predominantly contiguous, ownerships of 80 acres or larger in size</i>	No. The subject 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 is utilized for <u>commercial</u> 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 <u>commercial</u> forest use.
<b>CONCLUSION</b>	<b>Should not be zoned F-1 because it none of the characteristics (0 of 5)</b>

## F-2 CHARACTERISTICS

### **(c) Impacted Forest Zone characteristics: \*\*\*”**

FINDING: Compliance with the below characteristics is supportive of F-2 zoning.

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

FINDING: 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 Ordinance 1236. A property developed with a residence or other nonforest use is a characteristic of F-2 zoning. This criterion is a mirror of Policy 16(b)(1).

Based on County assessment and taxation data, the subject property is developed with a residence constructed in approximately 1900. It is currently occupied. Therefore, the subject property meets this F-2 characteristic.

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

FINDING: The County has determined that this provision focuses on the subject property itself (not surrounding property) and its size. See Ordinance 1236. Property containing 80 acres or less is a characteristic of F-2 zoning.

The issue of whether an applicant can rezone a portion of a property is addressed in Policy 16.a and 16.b(2) above. Those Findings is hereby incorporated by reference. In short, the County has determined that a portion of a tract can be rezoned. The 78 acre subject parcel is justified.

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

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

FINDING: 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. 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). However, in the *Lininger*

decision, the Hearings Official determined that 2,000 feet was not too far. The applicant has used 1,000 feet which is sufficient to show the extent of the nearby developed and committed lands and the general character of the 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.

This provision is two-fold and is “either/or”: F-2 should be applied (1) where adjacent and nearby properties (properties in the “general area”) are less than 80-acres and developed, or (2) where adjacent or nearby properties (properties in the “general vicinity”) are within a developed or committed exception area.

Generally Contiguous Tracts: As stated above, the applicant has relied on a 1,000 foot boundary to define “generally contiguous.” This is consistent with the Board’s interpretation and the *Lininger* decision. The distance is sufficient to show the character of the surrounding area without going too far. The justification for this distance is discussed in detail on pages 5 -7 of the applicant’s Supplemental Application. There are 34 tracts that are “generally contiguous.” These tracts are included in Table A of the Supplemental Narrative. 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.” 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 both of these F-2 characteristics.

Staff’s attempt to use “abutting tract” is in direct conflict with PA 1236 and the *Lininger* decision. It is not supported by the language of the RCP. Staff’s attempt to use lineal feet of boundary line (instead of number of parcels) falls apart when the analysis goes farther than “abutting,” which it must. The gist of this characteristic is that land near developed land and near developed and committed areas is “impacted.” This necessitates a review of

the number of lots/parcels in the general area, and not lineal feet or acreage. It is not the size of the parcel that gives it impact; it is the developed nature of the parcel.

The subject property is near developed land and “developed and committed exception area” 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.*

FINDING: The County Board has determined that this provision focuses on the subject property itself (not surrounding property) and access to services. See Ord. 1236. In Lane County, rural services typically include: power, road access, telephone, police, ambulance, fire, and schools. Not typically included are public stormwater, public water or public sewer.

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**

<b>F-2 Zoning Criteria</b>	<b>Does the Subject Property Meet this Element?</b>
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 emergencies services. And is near the communities of Marcola and Mabel.
<b>CONCLUSION</b>	<b>The subject property should be zoned F-2</b>

	<b>because it meets four of the four F-2 characteristics (4 of 4)</b>
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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.

**B. FINDINGS OF COMPLIANCE WITH LANE CODE CRITERIA FOR ZONE CHANGES**

FINDING: 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:**

FINDING: 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:**

FINDING: 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:**

FINDING: 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).**

FINDING: 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.

**PART 2:**  
**FINDINGS OF COMPLIANCE WITH PLAN CHANGE**  
**STANDARDS AND CRITERIA**

**A. COMPLIANCE WITH STATEWIDE PLANNING GOALS.**

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

**Goal 1: Citizen Involvement**

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

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

**Goal 2: Land Use Planning**

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

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

FINDING: Part II of Goal 2 authorizes exceptions to the goals – land use decisions that are not in compliance with the goals under certain circumstances. Statutes also describe when exceptions are authorized. See ORS 197.732.

This application complies with Goal 2 because it is being processed under the county plan and code and because no exception to any resource goal is proposed. The application is simply trading one resource designation for another because the land better fits one category based on use and capability.

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

OAR 660-006-0015(2) states,

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

FINDING: The “agricultural land” designation and the “forest land” designation are both resource designations. The designations have equal weight and importance to the State of Oregon. Through the above Rule, LCDC has acknowledged that many lands will qualify as both Forest and Ag land. For lands that qualify as both, LCDC will support either designation so long as the factors used to determine designation are identified. This issue is further discussed under Section III, below, where the designation policies are reviewed specifically.

As discussed more specifically under Goals 3 and 4 below, the subject property meets the definition of both forest land and agricultural land. The Lane County Rural Comprehensive Plan Agricultural Working Paper documents the factors used to select Farm or Forest designation on land that meets the definition of both. See Exhibit J. Each of those factors is discussed in detail in Section IV, below. Based on those factors, the subject property should be designated Forest land.

Because the subject property qualifies as both Ag and Forest land under Goal 3 and Goal 4, many of the RCP policies addressing Goal 3 are met by the subject property and many of the Goal 4 RCP policies are met by the subject property. It is inherent in the property’s dual qualification. However, when determining whether a property should be designated Forest or Ag, the key is not whether the property meets or furthers the policies under the RCP, but whether the property meets the factors established in the Plan for being Forest or Ag. These factors are discussed in Section III, below.

### **Goal 3: Agricultural Lands**

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

Goal 3 defines “Agricultural Land” as follows:

***Agricultural Land -- in western Oregon is land of predominantly Class I, II, III and IV soils and in eastern Oregon is land of predominantly Class I, II, III, IV, V and VI soils as identified in the Soil Capability Classification System of the United States Soil Conservation Service, and other lands which are suitable for farm use taking into consideration soil fertility, suitability for grazing, climatic conditions, existing and***

*future availability of water for farm irrigation purposes, existing land-use patterns, technological and energy inputs required, or accepted farming practices. Lands in other classes which are necessary to permit farm practices to be undertaken on adjacent or nearby lands, shall be included as agricultural land in any event.*

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

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

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

**"Agricultural Land" as defined in Goal 3 includes:**

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

FINDING: Goal 3 requires that SCS soils data be used to classify the soils, but it allows soils data in the published maps to be refined with more detailed onsite investigation. OAR 660-033-0030(6). The applicant is relying on SCS soils data.

The published SCS soils maps show six types of soil on this site. See Exhibit FF. The soils are included in Table C of the applicant's supplemental applicaiton. Based on Table C, the site qualifies as Agricultural Land under this part of the test because 99% of the soils on the site are in soil Classes I-IV.

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

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

FINDING: This part of the test focuses on lands, which have predominantly nonagricultural soils, and inquires into whether they are nevertheless suitable for farm use. It is commonly called the "other suitable lands" test. A list of seven factors must be considered. The suitability for farm use must consider the potential for use in conjunction with adjacent or nearby land.<sup>1</sup> The history of the site in farm use would be relevant to its current suitability,<sup>2</sup> but not

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<sup>1</sup> See DLCD v. Curry County, 28 Or LUBA 205, 208-09 (1994), aff'd 132 Or App 393 (1995);

determinative.<sup>3</sup>

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

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

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

FINDING: This part of the test focuses on adjacent and nearby agricultural lands. However, it has been established that the subject property qualifies as Agricultural land under the “soils test,” above. It is not necessary to address this standard.

It is worth noting that the subject property is not necessary to permit farm practices to be undertaken on adjacent property. First, the adjacent property to the south is largely in timber production. Second, even if it were to be farmed, designation of the site as forest lands, another resource designation, would not have any impact on the ability to farm the adjacent land. The two uses have been defined to be compatible. See OAR 660-006-0015(2).

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

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

FINDING: This part of the test focuses on lands which are predominantly nonagricultural soils, and inquires into whether they are adjacent to or intermingled with better lands within a “farm unit.” It is commonly called the “farm unit” test. If the subject property is not a part of a “farm unit,” then this test does not apply.

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Kaye/DLCD v. Marion County, *supra*, 23 Or LUBA at 481-62 (interpreting identically worded previous Goal 3 administrative rule OAR 660-05-005(1)(b)).

<sup>2</sup> See Clark v. Jackson County, 17 Or LUBA 594, 606 (1990)(past use of the property for grazing as part of larger operation is relevant to its current suitability for farm use).

<sup>3</sup> See 1000 Friends of Oregon v. WASCO County Court, 80 Or App 525, 531, 723 P2d 1039 (1986) (Affirming decision that former grazing lands proposed for annexation are not suitable for farm use. “Also, there is no presumption that the land is agricultural land simply because of its previous agricultural use. Previous use is merely one factor for the county to consider in reaching its conclusion about the land’s current condition.”).

It has already been determined that the subject property meets the definition of farm land under the “soils test,” above. Therefore, this standard need not be addressed.

It is worth noting that the subject property is not part of a farm unit because: the subject property is not adjacent to any other land in the same ownership; it is not jointly managed for farm use with any adjacent land; and it has not been so managed in its history.

#### **Goal 4: Forest Lands**

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

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

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

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

FINDING: The term “commercial forest uses” is not defined in any statute, goal, or rule. However, Lane County adopted a definition for the term in its plan, and the plan was acknowledged by the LCDC. Forest land is land that is capable of producing crops of industrial wood in excess of 50 cubic feet per acre of annual growth. Commercial forest types of trees include: Douglas fir, hemlock/cedar/spruce, other conifers, and deciduous trees.<sup>4</sup>

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<sup>4</sup> Lane County’s definition of “commercial forest uses” was the central issue and the subject of extensive discussion in Holland v. Lane County, 16 Or LUBA 583 (1988). LUBA summarized the relevant provisions of the acknowledged county plan as follows:

The county adopted the following definition of “commercial forest land” as part of its “Working Paper: Forest Lands; March, 1982” (Forest Lands Paper) and “Addendum to Working Paper:

Productivity data for wood fiber is available from a number of sources. The Lane County Soil Ratings, published by the Lane County Land Management Division in 1997, summarizes federal data on wood productivity by soil types, but only for Douglas fir. Productivity data for the full range of commercial forest trees recognized by Lane County has been published by the Oregon Dep't of Forestry in its 1990 Forestry Dep't Ratings. Both sources of data are summarized in Table D, below. The data from 1990 Forestry Dep't Ratings is the more useful because it addresses all commercial tree species.

Based on soils data provided by the applicant in the supplemental narrative, of the six types of soil present on the property, five are capable of producing substantially more than 50 cubic feet of wood fiber per acre annually. Based on soils, the subject property is capable of producing 112 cu.ft/acre/year of timber. The subject property, therefore, qualifies as Forest Land under this part of the test.

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

FINDING: This part of the test inquires into whether the subject property must be kept in a resource designation in order to allow forest operations or practices to continue on adjacent or nearby lands.

There are approximately 800 nearby and adjacent acres and 40 nearby and adjacent parcels. Approximately 72 percent are designated Forestland and 88% are in forest use. Please see Section II.D. and Tables A and B of the applicant's supplemental application for a more detailed analysis of the surrounding area. The subject property is in a sea of nearby land designated Forest. See Exhibit EE. Thus, not only does the subject property's soils qualify for the Forest designation, but the subject property, though perhaps not "necessary," is highly desirable to enable adjacent and nearby lands to continue forest operations.

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

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Forest Lands; November, 1983" (Forest Lands Addendum) documents.

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

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

**resources.**

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

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

**To conserve open space and protect natural and scenic resources.**

**(1) What Goal 5 requires.**

FINDING: Goal 5 requires the county to inventory the locations, quality and quantity of certain natural resources. Where no conflicting uses are identified, the inventoried resources shall be preserved. Where conflicting uses are identified, the economic, social, environmental and energy consequences of the conflicting uses shall be determined and programs developed to achieve the goal.

Where a county is amending acknowledged plan and zoning designations, as here, the county must address Goal 5 if any of the area proposed for change encompasses lands included on the county's inventory of Goal 5 resources.<sup>5</sup> The county need not go through the Goal 5 conflict resolution process for alleged Goal 5 resources that are not on the acknowledged Goal 5 inventory.<sup>6</sup> The initial Goal 5 question, therefore, is whether the subject property includes any Goal 5 resources inventoried in the acknowledged county plan.

**(2) Goal 5 Resources on the Subject Property.**

FINDING: The paragraphs below address the acknowledged Goal 5 resource inventories.

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

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<sup>5</sup> See Urquhart v. Lane Council of Governments, 80 Or App 176, 721 P2d 870 (1986); Plotkin v. Washington County, 165 Or App 246, 997 P2d 226 (2000); Waugh v. Coos County, 26 Or LUBA 300, 310-12 (1993); 1000 Friends of Oregon v. Yamhill County, 27 Or LUBA 508, 522 (1994).

<sup>6</sup> Davenport v. City of Tigard, 23 Or LUBA 565 (1992).



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

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

**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. 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.**

**FINDING:** 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.**

FINDING: 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.**

FINDING: 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.