

BEFORE THE BOARD OF COMMISSIONERS OF LANE COUNTY, OREGON

ORDINANCE NO. PA 1286) IN THE MATTER OF AMENDING THE RURAL COMPREHENSIVE
) PLAN TO REDESIGNATE LAND FROM "AGRICULTURAL"
) TO "FOREST" AND REZONING THAT LAND FROM "E-
) 30/EXCLUSIVE FARM USE" TO "F-2/IMPACTED FOREST
) LANDS"; AND ADOPTING SAVINGS AND SEVERABILITY
) CLAUSES (FILE PA 08-5837; Demanett)

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

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

WHEREAS, in June 2008, application no. PA 08-5837 was made for a minor amendment to redesignate a portion of tax lot 200, Map 20-03-04, from "Agriculture" to "Forest", with a concurrent request to rezone the property from "E-30/Exclusive Farm Use" to "F-2/Impacted Forest Lands;" and

WHEREAS, the Lane County Planning Commission reviewed the proposal in a public hearing on December 1, 2009, deliberated on April 6, 2010, and recommended approval of the proposed amendment and rezoning as requested; and

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

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

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

Section 1. The Lane County Rural Comprehensive Plan is amended by the redesignation of tax lot 200, Map 20-03-04, from "Agriculture" to "Forest," such area being depicted on Official Lane County Plan Map 2003 and further identified on a portion of that map in Exhibit "A" attached and incorporated herein.

Section 2. Tax lot 200, Map 20-03-04, is rezoned from "E-30/Exclusive Farm Use" (Lane Code 16.212), to "F-2/Impacted Forest Lands" (Lane Code 16.211), such area being depicted on Official Lane County Zoning Map 2003 and further identified on a portion of that map in Exhibit "B" attached and incorporated herein.

FURTHER, although not a part of this Ordinance, the Board of County Commissioners adopts Findings as set forth in Exhibit "C" attached, in support of this action.

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

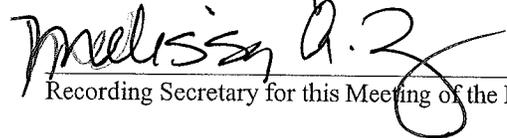
If any section, subsection, sentence, clause, phrase or portion of this Ordinance is for any reason held

invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision, and such holding shall not affect the validity of the remaining portions hereof.

ENACTED this 14th day of March, 2012.



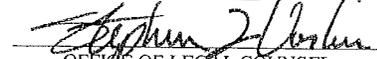
Chair, Lane County Board of Commissioners



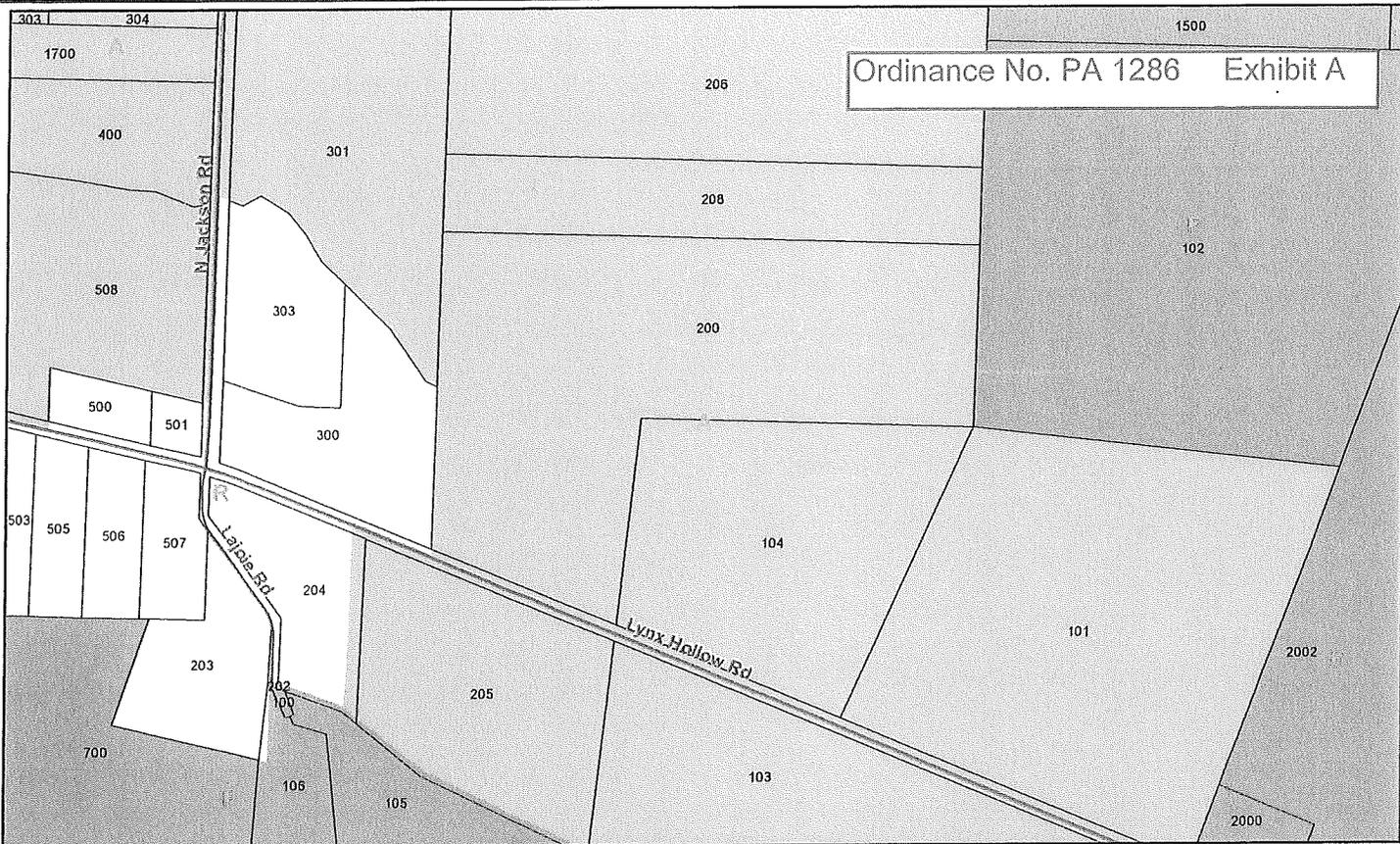
Recording Secretary for this Meeting of the Board

APPROVED AS TO FORM

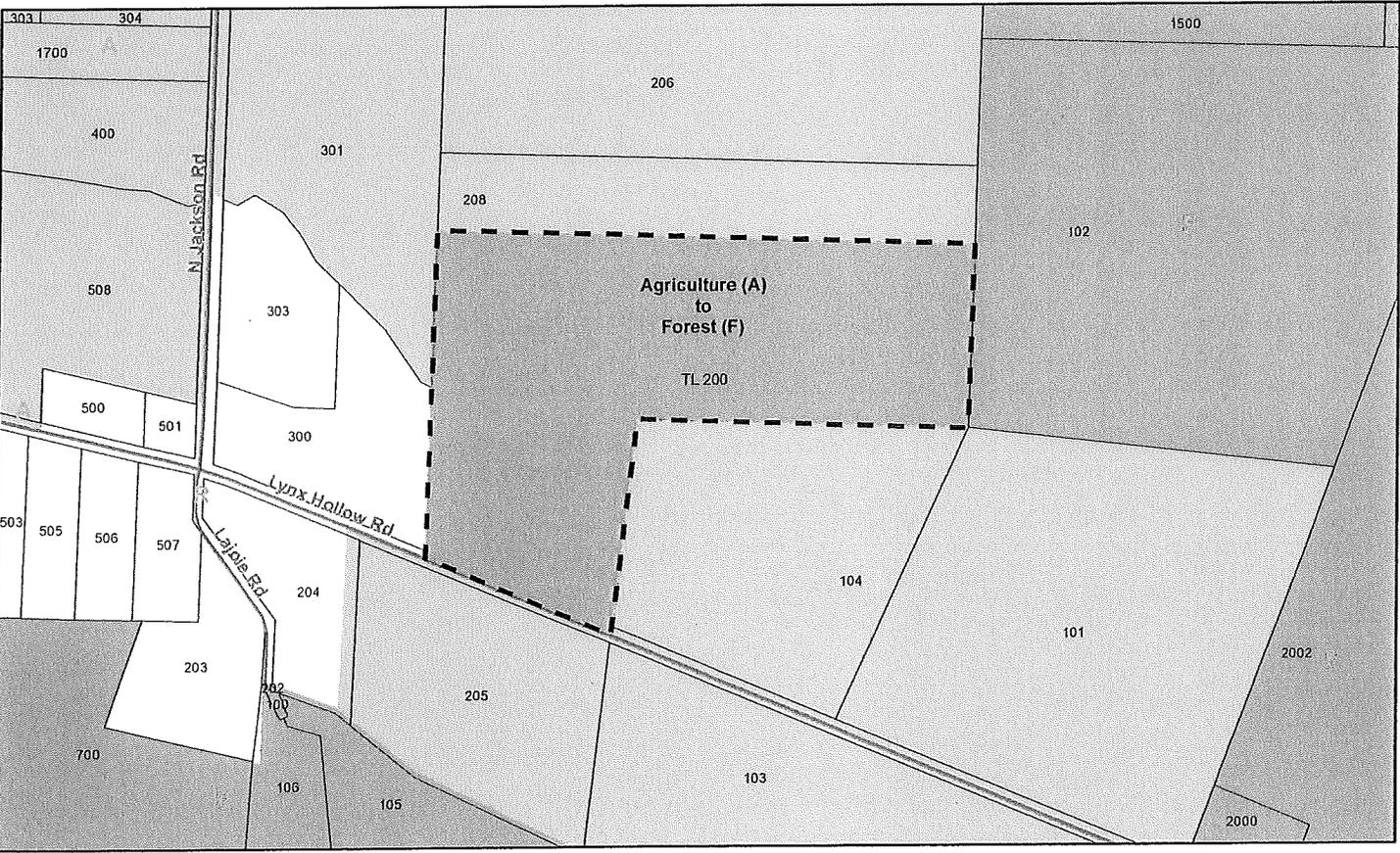
Date 12-10-2011 Lane County



OFFICE OF LEGAL COUNSEL

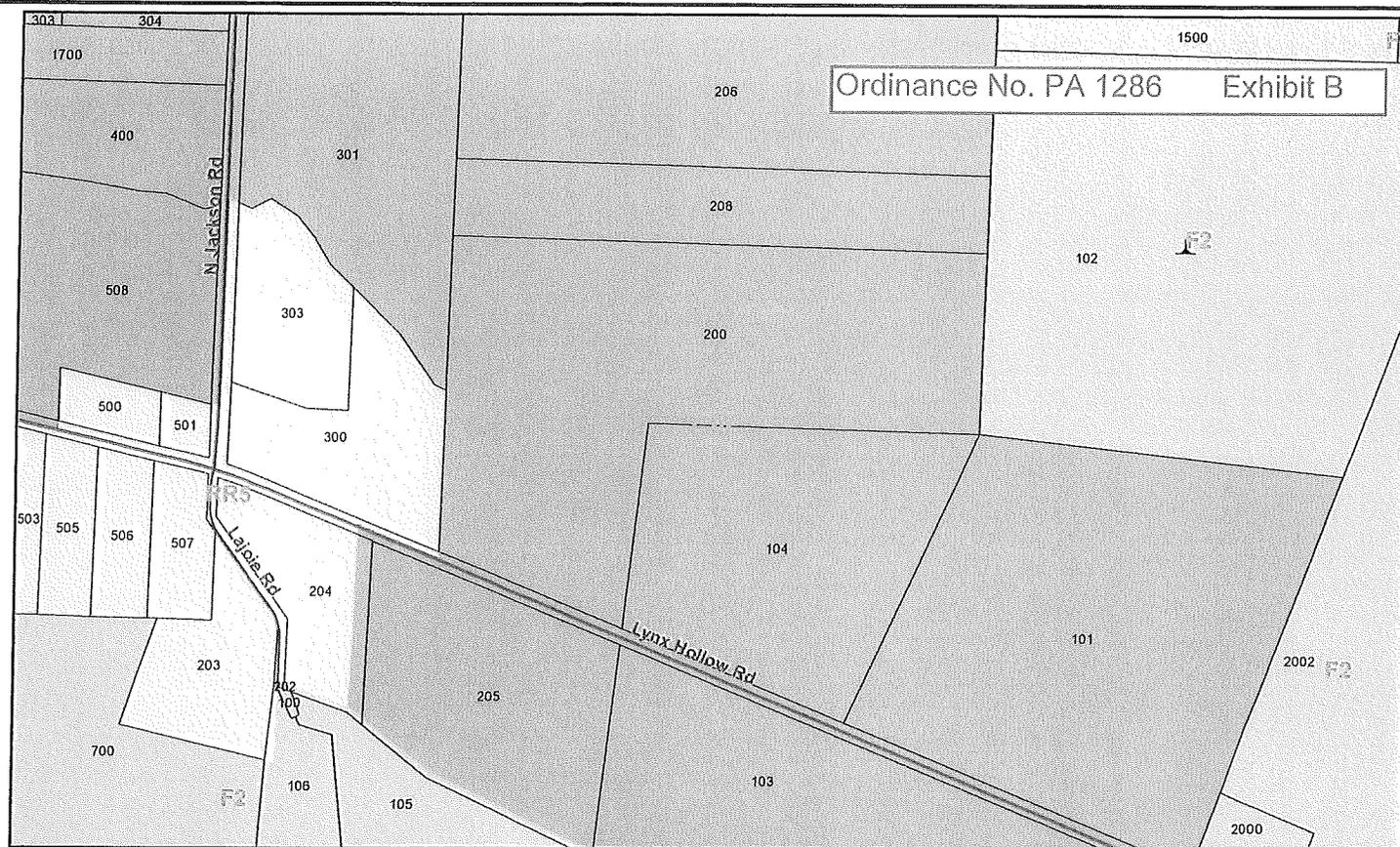


Existing Plan Designation



Change being enacted by No. PA 08-5873 on Official Plan Map 2003





Existing Zoning



Change being enacted by No. PA 08-5837 on Official Zone Map 2003



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

IN THE MATTER OF A COMPREHENSIVE PLAN AMENDMENT TO)
REDESIGNATE LAND FROM "AGRICULTURE" LAND TO "FOREST")
LAND AND A ZONE CHANGE FROM "E30/EXCLUSIVE FARM USE")
TO "F2/IMPACTED FOREST LANDS" AND ADOPTING SAVINGS AND)
SEVERABILITY CLAUSES (FILE PA 08-5837; DEMANETT))

**FINDINGS OF FACT AND CONCLUSIONS OF LAW
IN THE MATTER OF ORDINANCE NO. PA 1286**

Applicant/ Owner: Sam Demanett
83122 Cloverdale Rd
Creswell, OR 97426

Agent: Thom Lanfear
Lanfear Consulting LLC
541 Willamette St., Suite 401
Eugene, OR 97401

I. A. PROPOSAL

Request for approval of a Minor Plan Amendment to the Rural Comprehensive Plan (RCP) to redesignate 32.5 acres from "Agriculture" Land to "Forest" Land and a corresponding zone change from "Exclusive Farm Use (E30)" to "Impacted Forest Land (F-2)".

II. SITE AND PLANNING PROFILE

A. Location

The subject property is located on the north side of Lynx Hollow Road about 1 mile west of Highway 99. The 32.5 acre subject property is comprised of two legal lots identified as tax lot 200 on assessor's map 20-03-04.

B. Zoning

The property has a Plan designation of "Agriculture" within the Rural Comprehensive Plan and zoned Exclusive Farm Use (E30) consistent with the designation.

C. Site Characteristics

The subject property consists of generally flat to moderate slopes with some steeper land (30% - 50%) to the northeast. The land is bisected by Hill Creek, a Class I Stream. Substantial wetlands area has been identified on the property by the Natural Resources Conservation Service (NRCS) report dated July 16, 2004. More detailed analysis of the forestry and agricultural characteristics of the property are found in the report prepared by a professional forester dated January 31, 2008 and a report prepared by an agricultural consultant prepared on October 15, 2009.

Improvements on the property consist of a rocked logging road running generally northward crossing Hill Creek on a bridge, an old barn in poor condition, remnants of a livestock fence, and a small portable shed. The property was logged and reforested in 1994 - 1995. A young stand of sapling and pole sized Douglas Fir trees are now growing in the logged area. The applicant's forestry consultant has verified that the parcel currently meets or exceeds the stocking requirements of the Forest Practices Act. In recent years goats and sheep have been grazed to control blackberry and weed growth with very limited success. A Wildlife Habitat Conservation and Management Plan has been approved by Oregon Department of Fish and Wildlife to protect and manage the wildlife habitat on the property on April 23, 2009.

Information regarding the soils found on the property is contained within the record. All of the soils considered high value farmland are also considered to be commercial forest soils. There are two other soil types found on the property: #89F Nekia and #130 Waldo. The 2.9 acres of Nekia soil is a Class VIe Agricultural Capability Class but has a high forest productivity rating of 160 cu. ft. / acre / year. The 9.4 acres of Waldo soil has an Agricultural Capability Rating of Class IIIw but the majority of it is classified as wetlands (6+ acres) and it contains a large portion of the riparian corridor of Hill Creek.

D. Surrounding Area

As described in detail later in these findings under Goal 4 Policy 15, there are 7 tracts "generally contiguous" to the subject property. Each is less than 80 acres in size and six of the seven are developed with residences. Properties to the north, northwest, and south are zoned Exclusive Farm Use. Properties to the east are zoned Impacted Forest Lands. The parcel contiguous to the west is zoned Rural Residential as part of the Developed and Committed Area 387-1 for which an exception has been taken in the Rural Comprehensive Plan. Resource use in the immediate area consists primarily of timber production and grazing.

E. Services & Resources

Fire:	South Lane Fire & Rescue
Police:	County, State
Water & Sewer:	None currently. Would be private well and septic system(s)
School:	South Lane School District
Power:	Emerald People's Utility District
Access:	Lynx Hollow Rd. (County)
Class I Stream:	Hill Creek
Floodplain:	The property is not located within the 100-year flood hazard area as determined by Flood Insurance Rate Map (FIRM) Panel 41039C2085F effective June 2, 1999.
Historical:	none identified on the subject property
Archaeological:	none identified on the subject property
Sensitive Habitat:	The property is within the Peripheral Big Game Range
Water Quantity:	The property is not located within a water quantity limited area.
Wetlands:	Wetlands (12.3 acres) have been identified by the NRCS

III. PLAN AMENDMENT APPROVAL CRITERIA AND FINDINGS OF FACT

Lane Code 16.400(6)(h)(iii): The Board may amend or supplement the Rural Comprehensive Plan upon making the following findings:

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

Finding of Fact:

This application proposes to amend the RCP from Agriculture Land to Forest Land. The applicant has provided findings that address the applicable requirements of the Lane Code, Rural Comprehensive Plan policies and Statewide Planning Goals. This proposal has been submitted in a manner consistent with the requirements and provisions of OAR Division 660.

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

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

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

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

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

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

Finding of Fact:

This amendment is found to be consistent with Plan amendment standard (i-i) or (v-v) above. The subject property has a predominance of soil qualities that fall within the Goal definitions of both farm and forest lands thereby requiring the evaluation of the local circumstances to determine the appropriate designation. Either designation has been determined by LCDC to be acceptable without taking an exception to the other Goal. The Plan designation of "Agriculture" applied to the property in the 1984 Rural Comprehensive Plan adoption process occurred in the absence of any detailed information regarding the actual resource use of the property or consideration of the limitations on potential farm activity presented by the extensive wetlands on the property. For these reasons, it can be considered an error in the application of the Plan.

The subject property is forested, and as shown in the agricultural suitability review completed for the site by Paul E. Day on October 15, 2009, it would be uneconomic and impracticable to convert to agricultural use. The cost of clearing the trees and stumps from the site, in combination with the lack of irrigation water and the inability to drain the wetland areas, make it impracticable and infeasible to use the subject property for agricultural purposes. The forestry report completed for the site on January 31, 2008 has determined that the subject property has soils suitable for timber production and has a well established stand of timber that meets the requirements of the Forest Practices Act. The additional management of the property with an approved wildlife habitat plan conforms to the stated forest uses in the Forest Lands Goal. Redesignating and rezoning the subject property for forest use accurately reflects the current and past use of the site. In this manner, it is appropriate to apply the proper Plan designation of "Forest Lands" that

corresponds to the primary resource use of the parcel consistent with standard (v-v) above.

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

Finding of Fact:

There are four (4) applicable Rural Comprehensive Plan policies that provide support for this application:

Goal 3 Policy 2

In Agricultural Rent zones 1 and 2 preference will be given to Goal 3. In Rent Zone 3, unless commercial agricultural enterprises exist, preference will be given to Goal 4.

This Policy provides direction to the situation presented in the subject application where a choice must be made to apply the most appropriate resource designation: a Goal 3 "Agriculture" designation or a Goal 4 "Forest" designation. Agricultural Rent Zones were identified in the Agricultural Lands Working Paper adopted by Ordinance No. PA 883 on February 29, 1984. Page 25 of that Working Paper explains that the basis for establishing the zones is water availability, predominant soil type, and distance to market. The subject property is located within Agricultural Rent Zone 3 as shown on the Map II from the Working Paper. As stated in the Working Paper, less than favorable conditions exist in all or some of the three determining factors within Zone 3. This policy supports the designation of "Forest" on the subject property since a commercial agricultural enterprise does not exist.

Goal 3 Policy 3

Reserve the use of the best agricultural soils exclusively for agricultural purposes.

Goal 3 states "Agricultural Land – in western Oregon is land predominantly Class I, II, III, and IV soils". Agricultural capability classes are designated by Roman numerals I through VIII. The numerals indicate progressively greater limitations and narrower choices for practical use. The relevant capability classes are defined as follows:

- Class I soils have few limitations that restrict their use.
- Class II soils have moderate limitations that reduce the choice of plants or that require moderate conservation practices.
- Class III soils have severe limitations that reduce the choice of plants or that require special conservation practices, or both.
- Class IV soils have very severe limitations that reduce the choice of plants or that require very careful management, or both.

This RCP policy acknowledges that some agricultural soils are better than others and the "best" should be reserved exclusively for agricultural purposes. The subject property does not contain any Class I soils and only 1% Class II soils (RLID). Consideration of the Kitzrow report only yields 17% of Class II soils present on the property. In the hierarchy of the 4 Classes of soils defined as "Agricultural Land" in Goal 3, a Class I soil can surely be considered the best, and possibly also Class II soils, but Class III or IV soils are not considered to be the "best" agricultural soils since they are described as soils with "severe limitations". The Board finds that the subject property does not contain a predominance of the "best" agricultural soils that need to be reserved exclusively for agricultural uses.

Goal 3 Policy 8

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

The applicant has demonstrated that the subject property is resource land that is subject to both Goal 3 & 4 and requests the most appropriate Plan and Zone designations be applied. The zoning districts that implement both Goal 3 & 4 Plan designations minimize residential activities by limiting the development of residences to resource-related dwellings consistent with the resource use of the property. Forest and agricultural lands are compatible, with few exceptions, and it is intended that their management practices be able to coexist while conserving those resource lands without conflict. Either designation has been determined by LCDC to be acceptable without taking an exception to the other Goal. This is reflected in the provisions for "propagation or harvesting of a forest product" as a permitted use in the farm zone [Lane Code 16.212(3)(b)], and "farm use" as a permitted use in both forest zones [Lane Code 16.211(2)(d) & LC 16.210(2)(d)]. The Board finds that a change in Plan designation from "Agriculture" to "Forest", and application of the F-2 Zone to the subject property, does not conflict with this policy.

Goal 2 Policy 27

Conformity Determinations. Lane County will annually initiate and process applications to correct identified plan or zoning designations in the RCP Official Plan and Zoning Plots resulting from the Official Plan or Zoning Plots not recognizing lawfully existing (in terms of the zoning) uses or from inconsistencies between the Official Plan and Zoning Plots. Changes to correct nonconformities shall comply with the procedures and requirements of Lane Code Chapter 12 (Comprehensive Plan), Chapter 14 (Application Review and Appeal Procedures), and Chapter 16 (Land Use & Development Code), except as provided for in 27 c. and d., below.

- a. Circumstances qualifying for consideration by the Board of Commissioners under the Conformity Determinations Policy may include one or more of the following:
 - iii. A property was actively managed primarily as either an agricultural or forestry operation in 1984 and since, and a resource designation other than the primary use was adopted on an Official Plan or Zoning Plot in 1984.

Although the current application is being initiated by the property owner and not the County, this application can be characterized as a request for a determination that the resource use of the property conforms more to a forest lands designation than an agricultural lands designation. The policy illustrates the intention within the Plan to apply zoning designations that conform to the primary management use of a property in 1984 and since. The subject property has been managed primarily for forest uses¹ (timber production, livestock grazing, and wildlife habitat) during that time period, which supports

¹ Lane Code 16.090 Forest Uses. Are (1) the production of trees and the processing of forest products; (2) open space, buffers from noise and visual separation of conflicting uses; (3) watershed protection and wildlife and fisheries habitat; (4) soil protection from wind and water; (5) maintenance of clean air and water; (6) outdoor recreational activities and related support services and wilderness values compatible with these uses; and (7) grazing land for livestock.

the designation of the property as forest lands. Evidence of this activity submitted by the applicant is substantiated by the letter from the adjacent property owner to the north that describes the construction of an access road, logging, and subsequent replanting of the property in 1994 - 1995.

Goal 4, Policy 1

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

The primary resource use of the subject property is timber production which reflects the fact that the majority of the subject property soils are better suited for forestry than agriculture. Although the extensive wetlands inhibit the ability to farm the property by prohibiting ditching, tiling or placement of fill to improve the drainage, the wetlands are part of an approved Wildlife Habitat Conservation and Management Plan for the protection of the wildlife resources consistent with Goal 4.

Goal 4, Policy 15 provides direction to determine which zoning district should be applied to lands designated as forest land: Non-Impacted (F-1 zone) or Impacted (F-2). As addressed in detail later in these findings for the zone change analysis, the characteristics of the subject property meet the requirements for designation as Impacted Forest Land (F-2).

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

Finding of Fact:

The proposed plan amendment involves a change of the plan diagram from Agriculture Land to Forest Land. It is a minor plan amendment and does not require taking exception to any of the Statewide Planning Goals. Approval of this amendment does not conflict with unamended portions of the plan and is therefore consistent with the plan.

Lane Code 16.400(8)(a): Amendments to the Rural Comprehensive Plan shall be classified according to the following criteria:

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

Finding of Fact:

This application requests an amendment to the Plan Diagram only, changing the Plan designation from "Agriculture" Land to "Forest" Land. No exceptions to the Statewide Planning Goals are required, as both of these designations are resource oriented. This amendment is classified as a Minor amendment.

Lane Code 16.400(8) (c): Minor amendment proposals initiated by an applicant shall provide adequate documentation to allow complete evaluation of the proposal to

determine if the findings required by Lane Code 16.400 (6)(h)(iii) above can be affirmatively made. Unless waived in writing by the Planning Director, the applicant shall supply documentation concerning the following:

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

Finding of Fact:

This application requests an amendment to the Rural Comprehensive Plan Diagram to change the Plan designation from "Agriculture" Land to "Forest" Land to reflect the current and past resource use of the property. The existing use of the subject property is forest use, as reflected in the property's forested state. The proposed Forest Land designation is applied to the property through an evaluation of the information in the record that the subject property qualifies as forest land and would be uneconomic to convert it to agricultural use.

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

Finding of Fact:

The required analysis is addressed above.

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

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

Finding of Fact:

There are seven (7) tracts "generally contiguous" to the subject property. Each is less than 80 acres in size and six of the seven are developed with residences. Properties to the north, northwest, and south are zoned Exclusive Farm Use (E30). Properties to the east are zoned Impacted Forest Lands (F-2). The parcel contiguous to the west is zoned Rural Residential (RR-5) as part of the Developed and Committed Area 387-1 for which an exception has been taken in the Rural Comprehensive Plan. Resource use in the immediate area consists primarily of timber production and grazing. The proposed amendment maintains the existing use of the subject property for resource production (timber).

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

Finding of Fact:

Access is provided by Lynx Hollow Road, a paved, county maintained road. Fire protection is provided by Southern Lane County Rural Fire Protection District and all utilities necessary to support the continued resource use of the property are present.

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

Finding of Fact:

The Rural Comprehensive Plan does not identify any historic, archaeological, sensitive wildlife habitat, or mineral and aggregate sites on or near the subject property. The County's wildlife inventory indicates the property is located within a peripheral big game

range area. No apparent conflict exists with Goal 5 resources and therefore an ESEE analysis is not applicable to this amendment. The request does not remove the property from a resource designation or change the current resource use of the property.

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

Finding of Fact:

No dangerous conditions or natural hazards have been identified on the property. The property is not located within the 100-year flood hazard area as determined by Flood Insurance Rate Map (FIRM) Panel 41039C2085F effective June 2, 1999.

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

Finding of Fact:

This standard is inapplicable to this request to change the resource designation of the property from "Agriculture" to Forest".

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

Finding of Fact:

This standard is inapplicable to this request to change the resource designation of the property from "Agriculture" to Forest".

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

Finding of Fact:

This standard is inapplicable to this request to change the resource designation of the property from "Agriculture" to Forest".

IV. STATEWIDE PLANNING GOALS

The following applicable statewide planning goal statements have been summarized. The Oregon Land Conservation and Development Commission Goals and Guideline are incorporated herein by reference, except as noted.

GOAL 1 Citizen Involvement

Requires citizens and affected public agencies be provided an opportunity to comment on the proposed amendment and zone change. Notification of scheduled public hearings in the form of mailed public notice has been sent by Lane County to affected agencies, including the Oregon Department of Land Conservation and Development, and to owners of record within 750 feet of the subject property. The Lane County Planning Commission, the designated Citizen Involvement Program Committee, held a public hearing on the proposal on December 1, 2009. At their April 6, 2010 meeting, the Planning Commission passed a motion by a vote of 5-3 to recommend approval of the requested Plan designation change to the Board of Commissioners. The motion to recommend approval of the zone change designation was 4 votes in support, 1 in opposition, and 3 abstentions.

GOAL 2 Land Use Planning

Goal 2 establishes a land use planning process and policy framework as a basis for all land use decisions, and requires the development of an adequate factual base to support these decisions. A minor change is one that does not have significant effect beyond its immediate area, and is based on special studies or information. The justification for the particular change must be established.

Lane County has adopted a comprehensive land use plan amendment process, including specific standards that must be addressed to justify a minor change. Substantial compliance with LC 16.400, RCP Amendments (addressed in these findings) constitutes compliance with applicable provisions of Goal 2.

GOAL 3 Agricultural Lands

Goal 3 strives to preserve and maintain agricultural lands. In western Oregon, agricultural land consists of predominantly Class I through IV soils as identified by the National Resources Conservation Service (NRCS), and other lands which are suitable for farm use, taking into consideration soil fertility, grazing suitability, climatic conditions, existing and future availability of water for farm irrigation purposes, existing land use patterns, required technological and energy inputs, or accepted farming practices. Lands in other soil classes will be included as agricultural lands if they are necessary to permit farm practices to be undertaken on adjacent or nearby lands.

The NRCS Soil Survey of Lane County as contained within the Regional Land Information Database (RLID) maintained by the Lane Council of Governments identifies 62% of soils on subject property are designated high value soils that fall within Agricultural Capability Class II - IV. Another 29% of the property, identified as soil type Waldo (130), has a Class III agricultural capability classification but is not classified as a high-value soil. This soil unit is considered a hydric soil which corresponds to the extensive wetlands found there. There is only one small area of Class II soils (Salkum 121B) found in the southwest corner of the property, approximately .3 acres in size. The resource management of the areas that contain the remaining Class III soils (Nekia) is timber production as befitting Class III soils that have severe limitations that reduce the choice of plants or that require special conservation practices, or both.

Evidence in the record confirms that the subject property has soil qualities that fall within the Goal definitions of both farm and forest lands requiring the evaluation of the local circumstances to determine the appropriate designation. Forest and agricultural lands are compatible, with few exceptions, and it is intended that their management practices be able to coexist while

conserving those resource lands without conflict. Either designation has been determined by LCDC to be acceptable without taking an exception to the other Goal.

With respect to the subject property, the historic and current use of the property is for forest production with a greater percentage of commercial forest soils (71%) present than high-value farmland soils (61%). Although the property is comprised of a greater amount of soils within Agricultural Capability Classes I – IV (91%), the additional area (29%) that makes up that amount is identified as Waldo (130) which is not considered high-value, is severely limited by the presence of identified wetlands, and contains the riparian corridor of Hill Creek. The record demonstrates that the areas identified with high-value soils correspond directly to those areas identified with commercial forest soils with the notable exception of the eastern end of the property containing Nekia (89F). The 2.9 acres of Nekia soil is Agricultural Capability Class VI but is very productive forest soil with a forest productivity rating of 160 cu. ft./acre/year.

In summary, the property contains a predominance of soils that qualify the land for either designation of "Agriculture" or "Forest". As directed by RCP Goal 3 Policy 2, preference should be given to Goal 4 in this Agricultural Rent Zone (3). The appropriate designation should be the one that reflects the current and historic resource use of the property for timber production and the greater amount of area suitable for commercial forest use (71%) than the area suitable for agriculture as high-value soils (62%). The application of the "Forest Lands" designation to the subject property under Goal 4, and the continued use of the property for timber production do not conflict with Goal 3.

GOAL 4 Forest Lands

Goal 4 requires the preservation and conservation of forest land and forest uses. Forest land is defined by Statewide Planning Goal 4 as:

- 1) lands composed of existing and potential forest lands which are suitable for commercial forest uses;**
- 2) other forested lands needed for watershed protection, wildlife and fisheries habitat and recreation;**
- 3) lands where extreme conditions of climate, soil and topography require the maintenance of vegetative cover irrespective of use;**
- 4) other forested lands in urban and agricultural areas which provide urban buffers, windbreaks, wildlife and fisheries habitat, livestock habitat, scenic corridors and recreational use.**

Lane County has defined commercial forest soils as those with a forest productivity rating greater than 50 cu.ft./acre/year in Board Order 84-9-12-3 and Exhibit "C" of Ordinance No. PA 889.. The NRCS Soil Survey of Lane County as contained within the Regional Land Information Database (RLID) maintained by the Lane Council of Governments identifies 15.6 acres (48%) of the subject property with soil productivity ratings greater than 149 cu.ft./acre/year. An additional 7.5 acres (23%) is comprised of soil (Natroy) with a productivity rating of 60 cu.ft./acre/year as estimated in the 1990 State Forester Memorandum. The total acreage with commercial forest soils is therefore 23.1 acres (71%). The property has been determined by a professional forester that it meets the stocking requirements of the Forest Practices Act. There is a history of logging in 1994, expenditure of funds for an access road to harvest the timber on the property, and replanting in 1995. Recent attempts have also been made to control brush on the property. The forest management of the subject property is substantiated by the property owner to the north who conducted timber operations on his property at the same time.

In conjunction with the forest management of the subject property, the current owners have an approved wildlife habitat conservation and management plan with ODFW on the entire property which is consistent with the values stated above under Goal 4 for forest lands designation.

Evidence in the record confirms that the subject property has soil qualities that fall within the Goal definitions of both farm and forest lands requiring the evaluation of the local circumstances to determine the appropriate designation. Forest and agricultural lands are compatible, with few exceptions, and it is intended that their management practices be able to coexist while conserving those resource lands without conflict. Either designation has been determined by LCDC to be acceptable without taking an exception to the other Goal. As directed by RCP Goal 3 Policy 2, preference should be given to Goal 4 in this Agricultural Rent Zone (3).

In summary, the subject property qualifies for the designation of "Forest Lands" because a greater area of the subject property is suitable for commercial forest use than agricultural use, the current and historic resource use of the property is for timber production, and the establishment of a Wildlife Habitat Conservation and Management plan on the property falls within the definition of forest land in Statewide Planning Goal 4.

GOAL 5 Open Spaces, Scenic and Historic Areas and Natural Resources

Goal 5 requires the conservation of open space and the protection of numerous natural, cultural, historic and scenic resources. The goal applies to the following resources: riparian corridors, water and riparian areas and fish habitat, wetlands, wildlife habitat, mineral and aggregate resources, energy sources, natural areas, scenic views and sites, open space, groundwater resources, wilderness areas, historic resources, cultural areas, Oregon recreational trails, federal wild and scenic waterways and state scenic waterways. OAR 660-023-0010 and 0020 includes definitions, standards and specific rules applicable to each Goal 5 resource inventoried for conservation under the goal.

The following Goal 5 resources are appropriately considered by a countywide legislative inventory planning process: Federal wild and scenic rivers, Oregon scenic waterways, approved Oregon recreational trails, natural areas, wilderness areas, mineral and aggregate resources, energy sources, historic resources, open space, and scenic views and sites.

The following Goal 5 resources are determined to apply or be applicable to the site, given the requirements of each resource: wetlands, wildlife habitat and riparian resources. The application contains the following information in response to the above factors determined to be applicable to the subject property.

- 1) **Wetlands:** The Natural Resources Conservation Service has identified and mapped wetlands in the western portion of the property in the report dated July 16, 2004. No development is proposed within any jurisdictional wetlands on the subject property. State and Federal wetlands regulations restrict the property owners' ability to drain the wetlands portions of the property through ditching or tiling for agricultural purposes.
- 2) **Wildlife habitat:** There are no county inventories or specific site evidence that indicates the subject property is necessary to be preserved for wildlife to meet their requirements for food, water, shelter, reproduction, wildlife migration corridors, big game winter range, and/or nesting or roosting sites. The property has an approved Wildlife Habitat

Conservation and Management Plan that documents there are no Federal Threatened and Endangered Species or State of Oregon Sensitive Species present on the property.

- 3) **Riparian resources:** The subject property is traversed by Hill Creek which is designated as a Class I Stream on the Lane County Inventory. There is an existing bridge crossing over the stream at the southeast boundary of the property. The continued resource use of the property for timber purposes does not require any alteration of the crossing or impacts to the riparian corridor throughout the property. Development is restricted within the 100' riparian corridor except for forestry activities subject to the State Forest Practices Act.

GOAL 6 Air, Water and Land Resource Quality

Goal 6 is intended to maintain and improve the quality of the air, water and land resources of the State. This goal is generally implemented during the comprehensive planning process. As it pertains to site-specific development, it requires that adequate protective measures are taken to ensure the maintenance of air, water and land quality.

The vicinity of the subject property is served by adequate on-site water and sanitation facilities. Resource use of the property does not produce or discharge any product or by-product that would degrade such resources.

GOAL 7 Areas Subject to Natural Disasters or Hazards

The purpose of Goal 7 is to protect life and property from natural hazards. There are no known areas subject to natural disasters or hazards on the subject property. The property is not located within the 100-year flood hazard area as determined by Flood Insurance Rate Map (FIRM) Panel 41039C2085F effective June 2, 1999.

GOAL 8 Recreational Needs

Goal 8 addresses the recreational needs of Oregon residents and visitors. Provisions of this goal are appropriately implemented by a legislative process as part of periodic review of the comprehensive plan. The proposed change from EFU-30 Exclusive Farm Use to F-2 Impacted Forest Land has no impact on Goal 8.

GOAL 9 Economy of the State

The purpose of Goal 9 is to diversify and improve the economy of the State. This goal is primarily applicable to commercial and industrial development, and is not pertinent to this application.

GOAL 10 Housing

Goal 10 is intended to provide for the housing needs of the citizens of the State. This Goal is primarily implemented through the provisions of the RCP.

GOAL 11 Public Facilities and Services

The purpose of Goal 11 is to provide for the planning and development of a timely, orderly and efficient arrangement of public facilities and services to serve as a framework for urban and rural development. A full range of rural services necessary to serve the subject property exists in the area.

GOAL 12 Transportation

The purpose of Goal 12 is to provide and encourage a safe, convenient and economic transportation system. Goal 12 is not oriented towards specific land use actions such as this application. It is intended to consider area-wide models of transportation and is implemented at the comprehensive plan stage.

The property is served by Lynx Hollow Road a county maintained road. The road is classified as a Rural Minor Collector having a minimum right-of-way width of 50 feet and a paved surface of 24 feet. The average daily traffic (ADT) count conducted in 2001 at milepost .03 identified 1000 trips per day. Traffic Impact Analysis is generally not required when the resulting plan designation and zoning will be a resource designation, such as the request for a Forest Lands designation and F-2 Zoning. No effect on the existing County road system is anticipated to result from approval of this application request.

GOAL 13 Energy Conservation

This Goal is more appropriately applied at the comprehensive plan phase, and is therefore not applicable to this application.

GOAL 14 Urbanization

The purpose of Goal 14 is to provide for the orderly and efficient transition from rural to urban land use. The subject property is not located within or adjacent to an urban growth boundary and is therefore not urbanizable. Goal 14 is inapplicable to this application.

GOALS 15 – 19

These Goals are inapplicable to this application as they are geographically oriented and only apply to the Willamette River Greenway and coastal resources.

V. ZONE CHANGE APPROVAL CRITERIA AND FINDINGS OF FACT

Lane Code 16.252(2): Criteria. Zoning, rezoning 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, zoning and rezoning 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 for compliance with the Statewide Planning Goals by the Land Conservation and Development Commission. Any zoning or rezoning may be affected by Ordinance or Order of the Board of County Commissioners, the Planning Commission or the Hearings Official in accordance with the procedures in this section.

Finding of Fact:

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

The purpose of Chapter 16 of the Lane Code is to provide and coordinate regulations concerning development in the county, and to implement the Lane County Rural Comprehensive Plan. Lane Code 16.003 sets forth 14 broadly worded purpose statements that include a provision to insure development is commensurate with the character and physical limitations of the land. Arguably, the only relevant purpose statement is found in Lane Code 16.003(4) that states:

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

The proposed rezoning on the subject property would apply the appropriate zoning district consistent with the existing resource use of the property for the production of timber products.

B. Not be contrary to the public interest.

The public interest is best expressed by a demonstration of conformance with the Rural Comprehensive Plan. The overall intent of the Forest Land policies is to encourage the preservation of forest land, to properly characterize forest lands, and to protect those lands through accurate zoning. Rezoning the subject property from E30 to F-2 implements the proposed change of the Plan designation from Agriculture Land to Forest Land. The public interest is appropriately served by recognizing the subject property is presently growing forest crops and would be impracticable to convert to agricultural use. The best determinate of the public interest is therefore a showing of consistency with Forest Lands Policy #15 of the Rural Comprehensive Plan, addressed below in subsection "D."

Opponents to the application state: "[a]llowing Lane County's planning and zoning policies to be manipulated for the purpose of siting additional nonresource related dwellings is not in the public interest." The Board finds that the applicant is requesting the application of the existing policies to recognize the existing resource use of the property and apply the appropriate Plan designation and zoning district. Both the current and proposed zoning districts authorize the placement of a resource-related dwelling as appropriate to the resource use of the property. Through the legislative process, the State of Oregon has determined that it is in the public interest to allow the siting of a resource dwelling on forest lands in the manner provided by ORS 215.750. The applicant is not requesting approval of any Plan designation that would allow the siting of a "rural residential" dwelling or a "nonresource related" dwelling.

C. Consistent with specific purpose of F-2 Zone (Section 16.211 of the Lane Code).

The purpose of the Impacted Forest Lands Zone (F-2) is to implement the forest land policies of the Lane County Rural Comprehensive Plan and to conserve forest land for forest uses consistent with Statewide Planning Goal #4, OAR 660-006 and ORS 215.700 through .755. Consistency with the Lane County Rural Comprehensive Plan is addressed under the Goal 4 Policy 15 below.

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

In the present case, the record indicates that the majority of soils on the property to be rezoned have a moderate to high forest productivity rating. An analysis below of the subject property and adjoining lands demonstrates that the property corresponds most closely with the characteristics of lands to be designated with F-2 zoning rather than F-1 zoning. The record contains no evidence that surrounding development has or will interfere with forest management practices on the property to be rezoned.

D. Applicable RCP Component

The policies of the RCP serve as the basis of the County Plan, provide direction for land use decisions, and fulfill the mandate of the LCDC Statewide Goals. Goal 4, Policy 2 specifically provides that forest lands will be segregated into two categories, Non-Impacted (F-1) and Impacted (F-2) and these categories shall be defined by their characteristics. Consideration of the appropriate forest zoning district is determined by RCP Goal 4 Policy 15.

Goal 4 Policy 15

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

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

The following analysis of the characteristics of the land below demonstrates that the subject property corresponds more closely to the characteristics (5 of 9) representative of Impacted Forest Lands (F-2) in subsections b and c below. In the present case, the "land" represents three of the five characteristics of Non-Impacted Forest Land and three of the four characteristics that would denote Impacted Forest Land. The determinative characteristics supporting the application of the F-2 Zone are the size of the subject property, the relatively small sizes of the generally contiguous tracts, and the presence of a dwelling on all but one of those tracts.

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

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

This standard applies to the subject property. The subject property is not developed with a residence. The property is primarily in forest uses as those are defined in Lane Code 16.090 including the production of trees and wildlife habitat. This forest lands characteristic favors an F-1 designation for the subject property.

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

This standard applies to the subject property. The subject property consists of 32.5 acres with no contiguous properties in the same ownership. Identification of the contiguous properties occurs under subsection (3) immediately below. This forest lands characteristic favors an F-2 designation for the subject property.

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

Lane Code 16.090 defines "contiguous" as "having at least one common boundary line greater than eight feet in length." By this definition, there are five (5) tracts contiguous to the subject property on the west, north, and east as Lynx Hollow Road makes the parcels to the south non-contiguous.

West

Map 20-03-04 Taxlot 300 is 6.67 acres in size, zoned Rural Residential (RR5) and developed with one residence at 32567 Lynx Hollow Road. The property is owned by Darrold L. Stutz. The property is not in a farm or forest special assessment program (no deferral).

Map 20-03-04 Taxlot 301 is 17.83 acres in size, zoned Exclusive Farm Use (E30) and developed with one residence at 81169 N Jackson Road. The property is owned by Pinster Living Trust. The property is not in a farm or forest special assessment program (no deferral). The property has not been used for grazing or forest for several years.

North

Map 20-03-04 Taxlot 208 is in common ownership with taxlots 206 and 207 to the north. The properties are zoned Exclusive Farm Use (E30) and developed with one residence at 81211 Jackson Road. The properties are owned by Douglas W. & Julie A. Booher. The combined acreage of the properties amounts to 40 acres, of which 38.71 acres are in Designated Forestland (DFL) special assessment.

East

Map 20-03-04 Taxlot 102 is in common ownership with Taxlot 101 to the south, both owned by The Spies Family Revocable Trust. Taxlot 102 is 42.33 acres in size, zoned Impacted Forest Lands (F-2), and undeveloped. The taxlot has been logged and reforested. The taxlot is not in farm or forest special assessment (no deferral). Taxlot 101 is 31.29 acres in size, zoned Exclusive Farm Use (E30), and undeveloped. The taxlot is in EFU zoned farm deferral. The property has been used for grazing by Ron Reynolds who owns adjacent taxlot 104 to the west.

Southeast

Map 20-03-04 Taxlot 104 is 17.51 acres in size, zoned Exclusive Farm Use (E30) and developed with two residences at 32585 and 32595 Lynx Hollow Road. The property is owned by Reynolds Loving Trust. The property is in EFU zoned farm deferral and currently being used to graze 8 cows.

This standard considers if the subject property is contiguous with other land utilized for commercial level forest or farm uses. It appears that three of the five contiguous tracts are being used for a commercial level of resource use. This forest lands characteristic favors an F-1 designation for the subject property.

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

The subject property is accessed by Lynx Hollow Road, a public county road with a functional classification of "Rural Minor Collector", not an arterial road. A minor collector is

a road which gathers traffic within the neighborhood and directs it to a major collector or arterial. This road serves the rural residents of the Lynx Hollow area, including the Developed and Committed Area to the west of the subject property. For these reasons, the subject property is not accessed by an arterial road or a road intended primarily for forest management. This forest lands characteristic favors an F-2 designation for the subject property.

(5) Primarily under commercial forest management.

Tax lot 200 is fully stocked to the requirements of the Forest Practices Act and contains soils with a forest capability range in excess of 50 cu. ft./ac./yr. on 71% of its area (23 acres). Timber was harvested and replanted in 1994 - 1995. This forest lands characteristic favors an F-1 designation for the subject property.

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

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

This standard applies to the subject property. The subject property is not developed with a residence. The property is primarily in forest uses as those are defined in Lane Code 16.090 including the production of trees and wildlife habitat. This forest lands characteristic favors an F-1 designation for the subject property.

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

This standard applies to the subject property. The subject property consists of 32.5 acres with no contiguous properties in the same ownership. Identification of the contiguous properties occurs above under subsection (b)(3). This forest lands characteristic favors an F-2 designation for the subject 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.

The adjacent parcel to the west (Map 20-03-04 Taxlot 300) is zoned Rural Residential as part of the Developed and Committed Area 387-1 for which an exception has been taken in the Rural Comprehensive Plan.

Tracts that could be considered "generally contiguous" to the subject property consist of the five (5) tracts "contiguous" to the subject property identified in subsection (b)(3) above and the two parcels to the south across Lynx Hollow Road identified as taxlots 205 and 103 on Map 20-03-04. As documented below, the two parcels are each less than 80 acres in size and developed with a residence.

Map 20-03-04 Taxlot 205 is 12.48 acres in size and developed with a residence at 32618 Lynx Hollow Road. The property is owned by Preston & Susan K. Nydam.

Map 20-03-04 Taxlot 103 is 40.26 acres in size and developed with a residence at 32664 Lynx Hollow Road. The property is owned by Patricia Ann Riley.

In summary, all seven (7) properties generally contiguous to the subject property are less than 80 acres in size and dwellings are found adjacent on all sides of the subject property

except on one tract to the east (tax lots 102 and 101). The property is also adjacent to Developed and Committed Area 387-1 for which an exception has been taken in the Rural Comprehensive Plan. The Board finds that the subject property is generally contiguous to tracts of less than 80 acres and that those tracts have dwellings. This forest lands characteristic favors an F-2 designation for the subject property.

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

The property has access to a full range of services normally available to a rural residence. The property is within the South Lane Fire & Rescue district, the Emerald People's Utility District, and the South Lane School District. Police services are provided by Lane County Sheriff and the State Police. Road access is provided by Lynx Hollow Road, a County Road. This forest lands characteristic favors an F-2 designation for the subject property.

In summary, the Board finds that the characteristics of the subject property correspond more closely to the characteristics of Impacted Forest Lands (F-2) zone than the characteristics of the Nonimpacted Forest Lands (F-1) zone.

VI. CONCLUSION

The subject property is rural resource land that is forested and impracticable to convert to normal farm activities, as determined by the agricultural suitability review and forestry report completed for the site. The Board finds that redesignating and rezoning the subject property for forest use accurately reflects the most appropriate resource use of the site. The Board finds that the proposal conforms to the requirements of Lane Code 16.400 and Lane Code 16.252 to allow the change in plan designation from "Agriculture" to "Forest" and a change in zoning from "E30" to "F-2" for 32.50 acres of land.