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AGENDA COVER MEMO

DATE: February 28, 2005 (Date of Memo)
March 16, 2005 (Date of First Reading)
March 30, 2005 (Date of Second Reading / Public Hearing)

TO: LANE COUNTY BOARD OF COMMISSIONERS

FROM: Public Works Department/Land Management Division

PRESENTED BY: Bill Sage, Associate Planner

AGENDA ITEM TITLE: ORDINANCE NO. PA 1212 - IN THE MATTER OF ADOPTING A CONFORMITY DETERMINATION AMENDMENT PURSUANT TO RCP GENERAL PLAN POLICIES – GOAL 2, POLICY 27 a.ii., GOAL 2, POLICY 27 a.vii. AND GOAL 4, POLICY 15 TO REZONE 83.58 ACRES FROM NONIMPACTED FOREST LAND (F-1, RCP) TO IMPACTED FOREST LAND (F-2, RCP) FOR FOUR PARCELS IDENTIFIED AS TAX LOTS 4100 (15.69 ACRES) AND 4200 (23.19 ACRES) ON LANE COUNTY ASSESSOR’S MAP 19-01-08, AND TAX LOTS 1800 (26.01 ACRES) AND 401 (18.69 ACRES) ON LANE COUNTY ASSESSOR’S MAP 19-01-17, AND ADOPTING SAVINGS AND SEVERABILITY CLAUSES. (File: PA 04- 5276, Kronberger).

I. ISSUE

The applicant, Darren Kronberger, seeks an approval of a Conformity Determination Amendment by the Board of County Commissioners for the redesignation of 83.58 acres of land from Nonimpacted Forest Land (F-1, RCP) to Impacted Forest Land (F-2, RCP). The 83.58 acres were a portion of “tax lot 400” as depicted on Lane County Assessor’s Map 19-01-17 circa 1984, which included the recorded metes and bounds descriptions for four parcels originally created during the period of 1887 to 1917. The four subject parcels were reconfigured in 2002-2003 through property line adjustments of the four original metes and bounds descriptions.

The applicant submitted an application (PA 04-5276) on April 4, 2004 requesting consideration under two circumstances of Goal Two Policy 27:

1. *Goal Two, Policy 27 a.vii - Correction of an inconsistency between the text of an order or ordinance adopted by the Board of Commissioners and an Official Plan or Zoning Diagram.*
2. *Goal Two - Policy 27 a ii., and Goal Four – Policy 15, which are reproduced below:*

Goal Two - Policy 27 a. ii. - Failure to zone a property Impacted Forest Land (F-2, RCP), where maps used by staff to designate the property Nonimpacted Forest Land (F-1, RCP)

zone did not display actual existing legal lots adjacent to or within the subject property, and had the actual parcelization pattern been available to County staff, the Goal 4 policies would have dictated the F-2 zone.

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

- a. A conclusion that characteristics of the land correspond more closely to the characteristics of the proposed zoning than the characteristics of the other forest zone. The zoning characteristics referred to are specified below in subsections b. and c. This conclusion shall be supported by a statement of reasons explaining why the facts support the conclusion.*
- b. Non-impacted Forest Land Zone (F-1, RCP) Characteristics:*
 - (1) Predominantly ownerships not developed by residences or nonforest uses.*
 - (2) Predominantly contiguous ownerships of 80 acres or larger in size.*
 - (3) Predominantly ownerships contiguous to other lands utilized for commercial forest or commercial farm uses.*
 - (4) Accessed by arterial roads or roads intended primarily for forest management. Primarily under commercial forest management.*
- c. Impacted Forest Land Zone (F-2, RCP) Characteristics:*
 - (1) Predominantly ownerships developed by residences or nonforest uses.*
 - (2) Predominantly ownerships 80 acres or less in size.*
 - (3) Ownerships general contiguous to tracts containing 80 acres and residences and/or adjacent to developed or committed areas for which an exception has been taken in the Rural Comprehensive Plan.*
 - (4) Provided with a level of public facilities and services, and roads, intended primarily for direct services to rural residences.*

II. ANALYSIS

Goal Two, Policy 27 a. states *Circumstances qualifying for consideration by the Board of Commissioners under the Conformity Determination Policy may include one or more of the following:* The policy includes eight circumstances under which an application could be processed.

As stated in **I. ISSUES** above, the applicant has requested review under two of the eight circumstances. Option 1 relies on Policy 27 a. vii. *circumstances*. Option 2 relies on Policy 27 a. ii. *circumstances*. The following staff analysis is presented for the two options.

Option 1 - *Correction of an inconsistency between the text of an order or ordinance adopted by the Board of Commissioners and an Official Plan or Zoning Diagram.*

The applicant's argument in support of this circumstance is found on pages 4-5 of Attachment "B" Application PA 04-5276 Conformity Determination Amendment (Kronberger) and is reproduced in part, below:

"The subject property is a possible candidate for this category because of an inconsistency between a map and a list of tax lots that were exhibits to an ordinance changing the zoning of certain properties from F-2 to F-1."

“In 1984 the subject property was part of tax lot 400 on Assessor’s Map 19-01-17. Tax lot 400 was zoned F-2 in Ordinance No. PA 884, which established the Rural Plan designations in 1984. Later that year zoning designations were changed on various parcels in Ordinance No. PA 891. This ordinance states,

“The following parcels are redesignated and rezoned as set forth on the interim Plan Designation and Zoning Maps attached as Exhibit “A”, and further delineated in attached Exhibit “C”.”

“The hand-outlined map found in Exhibit “A” of Ordinance No. PA 891 shows the zoning on Tax lot 400 to be changed to F-1. Exhibit “C” which the ordinance language says “further delineates” the affected tax lots does not list Tax lot 400.”

“Arguably, by the language of the ordinance itself, Exhibit “C” would be the more precise document showing the Tax Lots that were rezoned. Because Tax Lot 400 was not listed, one could find that the zoning was never changed from F-1 to F-2.”

“The applicant does not rely on this argument to support the case for F-2. It is offered primarily as a corroboration of the fact that the case was close between F-1 and F-2 even with the limited information available in 1984. A further discussion of this argument is found at Exhibit 7.”

The applicant’s three pages of supporting arguments and four pages of documentation are included as “Exhibit 7” in Attachment “B” to this Memo.

The applicant also submitted final rebuttal into the record on September 21, 2004, which is included as Attachment “C” to this Memo. The final rebuttal summarizes the applicant’s findings and conclusions regarding the inconsistency between the 1984 Ordinance No. PA 891 diagram on the plot map and the text of the exhibit with the listing of tax lots.

Jim Just representing Goal One Coalition submitted written testimony at the public hearing on August 3, 2004, which is included as Attachment “H” to this Memo. Mr. Just’s submittal challenges the applicant’s findings and conclusions under Goal 2, Policy 27 a.vii. *circumstances* for consideration of a zone change on pages 7 and 8 and with documentation in his report.

During the Planning Commissions (LCPC) deliberations on October 5, 2004, staff provided the LCPC with a Deliberations Check List addressing Policy 27.a.ii. that is included as Attachment “D” to this Memo.

Planning Commission Recommendation

In the October 5, 2004 deliberations, the Planning Commission deliberated on the merits of the applicant’s request for a zone change based on *Policy 27 a.vii. Correction of an inconsistency between the text of an order or ordinance adopted by the Board of Commissioners and an Official Plan or Zoning diagram*” and unanimously voted to send a recommendation to the Board of Commissioners for denial of the request pursuant to this specific *circumstance, Policy 27 a.vii.*

After the Board has reviewed the four Attachments referenced and heard public testimony on March 30th, it will be left with the decision as to which document, map or text, prevails. It is at this juncture that the Board will need to replicate the intent of the Board of Commissioners in

1984 when they directed staff to the mark the map and prepare the text. This exercise will necessitate that the 2005 Board review the record and determine whether tax lot 400 of TRS 19-01-17 was predominantly characterized as F1 Nonimpacted Forest Land or as F2 Impacted Forest Land. To arrive at that decision the Board will need to review the Goal 4, Policy 15 b. and c. *Characteristics* for each designation that are presented on pages 7-12 of this agenda cover memo under the heading **“2. Do the circumstances of this particular proposal predominantly (more closely) comply with Goal 4 –Policy 15.b., for retaining the Nonimpacted Forest Land (F-1) zoning designation; or Policy 15.c., for granting the request for the Impacted Forest Land (F-2) zoning designation?”**

Based on the current Board’s determination of which designation (F-1 or F-2) was most likely intended by the 1984 Board, the Board will need to adopt one of the following two decisions:

- (1) The 82.6-acre subject tract, a portion of tax lot 401 of TRS 19-01-17 (circa 1984) including the four subject parcels, was designated as Nonimpacted Forest Land (F-1, RCP). The discrepancy between the interim zoning diagram in Exhibit “A” of Ordinance No. PA 891 and the listing of the affected parcels in Exhibit “C”, is found in favor of the diagram pursuant to the current Board of Commissioner’s review of the record and 1984 Board’s intent, and Goal Four, Policy 15 characteristics.**
- (2) The 82.6-acre subject tract, a portion of tax lot 401 of TRS 19-01-17 (circa 1984) including the four subject parcels, was designated as Impacted Forest Land (F-2, RCP). The discrepancy between the interim zoning diagram in Exhibit “A” of Ordinance No. PA 891, and the absence of the subject tract in listing of parcels in Exhibit “C” of Ordinance No. PA 891, is found in favor of the text by virtue of the expressed intent of affected parcels being “further delineated” in the text of the ordinance pursuant to the current Board of Commissioner’s review of the record and 1984 Board’s intent, and Goal Four, Policy 15 characteristics.**

Option 2 *Goal Two - Policy 27 a. ii. - Failure to zone a property Impacted Forest Land (F-2, RCP), where maps used by staff to designate the property Nonimpacted Forest Land (F-1, RCP) zone did not display actual existing legal lots adjacent to or within the subject property, and had the actual parcelization pattern been available to County staff, the Goal 4 policies would have dictated the F-2 zone.*

Two questions form the basis for the Board’s making a decision on Option 2:

- 1. Did the 1887-1917 conveyance of properties result in lawfully created parcels (legal lots) in 1984 when zoning designations were adopted for the land?**
- 2. Do the circumstances of this particular proposal predominantly (more closely) comply with Goal 4 –Policy 15.b., for retaining the Nonimpacted Forest Land (F-1) zoning designation; or Policy 15.c., for granting the request for the Impacted Forest Land (F-2) zoning designation?**

The first of the two questions will be resolved based on standards and only requires objective information to determine the answer. Primarily, were there property descriptions (metes and bounds) lawfully created and recorded within the larger tax lot 401 of TRS 19-01-17 at the time zoning designations were applied in 1984? If so, were these “legal lots” properly reconfigured

which resulted in the four descriptions that are now identified as tax lots 4100 and 4200 of TRS 19-01-08 and tax lots 401 and 1800 of TRS 19-01-08.

The second question is more subjective and requires a determination by the Board of Commissioners as to whether or not the characteristics of the subject properties and the surrounding development support a determination that the four parcels merit an Impacted Forest Land (F-2) or Nonimpacted Forest Land (F-1) designation.

The following analysis deals with those two questions in order.

1. Did the 1887-1917 conveyance of properties result in lawfully created parcels (legal lots) in 1984 when zoning designations were adopted for the land?

LMD staff processed six Legal Lot Verifications in 2000 to identify the discrete parcels within tax lot 401 of TRS 19-01-17, circa 1887-1917. The verifications are included in the applicant's submittal, Attachment "D" Land Use Application PA 04-5276, as "Exhibit B" to "Exhibit 3".

LMD staff has compiled a summary of the verifications below and illustrated the metes and bounds descriptions on "Attachment A" - Assessors Maps TRS 19-01-08 and 19-01-17 with 1887-1917 parcels in the staff report to the LCPC dated July 15, 2004, which is included as Attachment "E" to this Memo. Acreages are staff's estimates of the land in each description.

Parcel	Application No.	Dated of Creation and Recording	Acreage	Color
A-E.	PA 00-5673/5674	April 6, 1917 -- Book 5, Page 222	200+ acres	All colored areas
B.	PA 00-6493	February 8, 1896 -- Book 41, Page 3	69+ acres	Purple/stripe
C.	PA 00-6495	November 15, 1902 -- Book 59, Page 114	27+ acres	Yellow
D.	PA 00-6494	February 4, 1903 -- Book 56, Page 221	78+ acres	Pink
E.	PA 00-6492	December 5, 1887 -- Book T, Page 350	26+ acres	Blue

Each of the parcels (A-E) identified above were superimposed on "Attachment A" over the current tax lots identified by Assessment & Taxation on the two composite A&T Maps: 19-01-08 and 19-01-17.

The applicant has provided documentation and LMD staff have determined that in 1984 there were four lawfully created parcels within the metes and bounds of tax lot 401 of TRS 19-01-17, which the Assessment and Taxation Maps at the time *did not display actual existing legal lots adjacent to or within the subject property, and had the actual parcelization pattern been available to County staff, the Goal 4 policies would have dictated the F-2 zone.*

The subject parcels or "current tax lots", as reconfigured by a series of property line adjustments in 2002-2003, depict the applicant's proposed four legal lots (A, B, C, and D) which consist of the 83.58 acres the applicant proposes to rezone to Impacted Forest Land (F-2). The reconfigured tax lots appear on the Assessor's Maps TRS 19-01-08 and TRS 19-01-17. Refer to "Attachment B" - Assessors Maps TRS 19-01-08 and 19-01-17 with 2003 parcels to the staff report to the LCPC dated July 15, 2004, which is included as Attachment "E" to this Memo. The reconfiguration resulted in the following parcels and tax lots:

Old Parcel	New TRS Map - Tax lot -	Acreage	Color
B	19-01-08, tax lot 4100	15.69 acres	Purple

C.	19-01-08,	tax lot 4200	23.19 acres	Yellow
D.	19-01-17,	tax lot 1800	26.01 acres	Pink
E.	19-01-17,	tax lot 401	18.69 acres	Blue
A.	19-01-17,	tax lot 1400	117.61 acres	White (consolidated with the northern boundary of tax lot 1400 of TRS 19-01-17 to the southwest. No separate legal lot status).

The applicant's Property Line Adjustment Deed and diagrams documenting an eight-step process to accomplish the above boundary line adjustments is enclosed, as "Exhibit C" to "Exhibit 3" in Attachment "B": Land Use Application PA 04-5276. These documents were recorded in Lane County Deeds and Records on January 6, 2003 and the metes and bounds descriptions of the reconfigured parcels were adjusted on the Assessment & Taxation TRS 19-01-08 and 19-01-17 maps in 2003 in conformance with the "Final Property Configurations" as depicted on "Exhibit HH" of Exhibit "3" to Exhibit "C" of the applicant's submittal, Attachment "B".

During the LCPC public hearing on August 3, 2004, the reconfigured parcels were challenged due to the "eight-step process" in a single Property Line Adjustment Deed as executed on December 30, 2002 by the applicant and other participating property owners and recorded by the applicant on January 6, 2003. The challenge was based on a Land Use Board of Appeals (LUBA) decision in Warf vs. Coos County LUBA No. 2002-87 that had been handed down on January 7, 2003, the day following the recording of the applicant's property line adjustments. The challenge expressed was that the reconfigured parcels, tax lots 4100 and 4200 of Assessor's map 19-01-08 and tax lots 401 and 1800 of Assessor's map 19-01-17 were not valid legal lots due to the series of property line adjustments that had been accomplished in one deed. The argument was that each separate movement of a property line needed to be accomplished in a separate property line adjustment deed and until such time as the reconfigurations complied with the requirement, the "parcels could not be the subject of a rezoning application.

Staff does not have the legal expertise to accept or deny this challenge. Staff will instead rely on the LMD and A&T actions outlined above on pages 4 through 6 and this summary:

- Four legal lots were verified in 2002 by LMD to be within a portion of the 1984 tax lot "401" of TRS 19-01-17.
- A property line adjustment with the property owner to the south of "401" was executed and 117 acres conveyed to that ownership in 2002-2003.
- The remaining 83+ acres of tax lot "401" were reconfigured using the available status of the four legal lots in 2002-2003 and recorded in Lane County Deeds and Records.
- Lane County Assessment & Taxation redrafted the Assessor maps 19-01-08 and 19-01-17 in 2003 to depict the four reconfigured, metes and bounds descriptions and designated each with a tax lot number(4100, 4200, 401, 1800).
- The 83+ acres within the four reconfigured parcels are the subject of this rezone request.

The Board may wish to review this issue with County Counsel at the public hearing.

A second challenge was raised at the August 3, 2004 LCPC public hearing concerning the "legal lot" status in 1984 of the four original parcels that were verified by the LMD legal lot determinations in 2000.

- a. Were the verified descriptions of the four discrete parcels actually “legal lots” at the time Lane County adopted the zoning designation by Ordinance No. PA 884 on February 29, 1984?**

During the Lane County Planning Commission public hearing on August 3, 2004, oral testimony was entered into the record claiming that contiguous parcels were merged into one legal lot on January 1st of the calendar year 1984. The testimony further asserted that since the subject parcel was one of several contiguous parcels under one ownership on January 1st, 1984, it therefore did not have discrete status on February 29th, 1984. Thus even though the 1984 maps *did not display actual existing legal lots adjacent to or within the subject property*, the four subject parcels within the subject tract could not qualify for consideration of a zone change because they were not separate legal lots at the time they were given the designations of F1 in 1984 and thus could not be considered for qualification under Policy 27.a.ii for a zone change to F2.

LMD staff researched State and County archives to determine the factual basis for land use and land division law and regulations during the period of 1983 through 1986. A staff report on the results of the research was provided the Lane County Planning Commission (LCPC) on October 1, 2004. The report chronicled the Lane Code 13 and Lane Code 16 definitions during the period 1983-1986; the passage of House Bill 2381 in 1985 clarifying ORS 92; and Lane County’s adoption of Ordinance No. 10-86, Ordinance 11-86 and Ordinance PA 921 in 1986 in response to the legislative action. The report is attached as Attachment “F” to this Memo.

The LCPC reviewed the policy language in a work session and deliberations on October 5, 2004, and approved an interpretation concerning the “legal lot” issue of Policy 27.a.ii. for forwarding to the Board along with their recommendation on this application. The motion “applied a common sense interpretation to the 1983-1986 definition for “legal lot” in Lane Code Chapter 13 and 16, based on the clarification of ORS 92 by HB 2381 in 1985, and Lane County’s adoption of three ordinances in 1986 in response to the enactment of HB 2381, that discrete parcels created lawfully by recorded deed or real estate contract prior to the 1983-1986 period were not merged during that period, and were during that period and are today, discrete legal lots.”

- b. Do the subject parcels qualify it for consideration under Goal 4, Policy 15 characteristics as Impacted Forest Land (F2)?**

The LCPC interpretation provided the foundation to determine that the tract identified as tax lot “401” of TRS map 19-01-17 in this application (PA 04-5276), included four legal lots in 1984 at the time of adoption of the Rural Comprehensive Plan and the designation of the subject acreage as Nonimpacted Forest Land (F1), and qualified for further review under Goal Four, Policy 15.

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- 2. Do the circumstances of this particular proposal predominantly (more closely) comply with Goal 4 –Policy 15.b., for retaining the Nonimpacted Forest Land (F-1) zoning designation; or Policy 15.c., for granting the request for the Impacted Forest Land (F-2) zoning designation?**

Zoning designations on the surrounding lands are:

- adjacent lands to the north in Section 8 (Plot #517) are designated Impacted Forest Land Use (F2);
- adjacent lands to the northwest in Section 7 (Plot #506) are designated Exclusive Farm Use (E40);
- adjacent lands to the west and southwest in Section 18 (Plot #507) are designated Impacted Forest Land (F-2);
- adjacent lands to the south and southeast in Section 17 (Plot # 518) are designated Nonimpacted Forest Land (F-1);
- adjacent lands to the east in Section 17 (Plot # 518) are designated Impacted Forest Land (F-2), Heavy Industrial (M3), and Rural Residential (RR5 - RR10).

A composite of four Zoning Plot Maps with the zoning districts color-coded was included as “Exhibit 1” in the applicant’s Land Use Application PA 04-5276. Refer to Attachment “B” to this Memo.

Goal Four – Policy 15. c. Impacted Forest Land Zone (F-2, RCP) Characteristics, to be considered in determining whether or not the four subject parcels should be rezoned to F2 or retained as F1, are presented in *italic* text below. A summary of the facts in the record are provided for each *Characteristic*.

To arrive at a decision on this rezone request, the Board of Commissioners will need to decide whether or not the applicant’s parcels are predominantly (51%) described as either F1 or F2 lands in each of the four *characteristics*. The *Characteristics* for 15.b. (F-1) and 15.c. (F-2) are presented together below with a summary of the record pertaining to each.

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

or,

F-2: (1) Predominantly ownerships developed by residences or nonforest uses.

None of the four subject parcels are developed with a residence. Surrounding properties have the following development history:

<u>Direction</u>	<u>TRS</u>	<u>Tax Lot</u>	<u>Address</u>
North	19-01-08	2202	83401 Rattlesnake Road
Northwest	19-01-07	2500	83369 Rattlesnake Road
West	19-01-07	2600	83261 Rattlesnake Road
Northeast	19-01-08	Within the developed & committed exception area #517-2 to the northeast and east, there are eleven residences between the Southern Pacific Railroad right-of-way and Dexter Road. The Lane County “Dexter Shop” is also adjacent to Dexter Road to the east.	
Southeast	19-01-17	Within the developed & committed exception area #517-2 to the southeast and east, there are eighteen residences between the Southern Pacific Railroad right-of-way and Dexter Road.	
South	19-01-17	Tax lot 1400 (Parcel “E”) is vacant.	

The subject parcels were harvested of timber between 1993 and 2000 and were reforested at a rate of 200 trees per acre. The harvest was an option for the parcels under the Forest Practices Act and the reforestation was a requirement for either F-2 or F-1 designated land under the same Act.

F-1: (2) Predominantly contiguous, ownerships of 80 acres or larger in size.

or

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

The acreage for each of the four parcels created during the period of 1887 – 1902, as shown on “Attachment A” of Attachment “E” to this Memo and summarized on page 5 above, was:

Parcel B. (69+ acres), Parcel C (27+ acres), Parcel D (78+ acres), and Parcel E (26+ acres).

All of the original parcels were less than 80 acres which today is the minimum division standard in both the F-1 and F-2 Forest Land Zones.

F-1: (3) Predominantly ownerships contiguous to other lands utilized for commercial forest or commercial farm uses.

or,

F-2: (3) Ownerships generally contiguous to tracts containing 80 acres and residences and/or adjacent to developed or committed areas for which an exception has been taken in the Rural Comprehensive Plan.

To the north are two F-2 parcels (2100 and 2202 of TRS 19-01-08), 9.49 and 15.48 acres in size respectively, and the nearest one (tax lot 2202), is developed with a residence.

The subject parcels are also located 2,800 feet south of the unincorporated rural community of Trent; 200-300 feet west of the developed & committed exception Area #517-2, and 2,500 feet northwest of the unincorporated rural community of Dexter.

Exception Area #517-2 is closest and consists of 52 properties with 65 residences including several industrial mill sites, a commercial business, and public facilities. An exception to Goals 3 and 4 was adopted in 1989 for Area #517-2 that included 224.6 acres with an average acreage of 4.3 acres. It is separated from the subject parcels by the 200-foot wide right-of-way of the Southern Pacific Railroad.

Lands to the north consist of properties in the F-2 zone. Lands to the east across the railroad right-of-way are zoned Rural Industrial RI (M2 Light Industrial and M3 Heavy Industrial on the Plot Maps) zones that are each less than forty acres in size.

Two properties (tax lots 2500 and 2600 of TRS 19-01-07) to the northwest and west are zoned E40 and are each approximately 100 acres in size.

One property to the west (tax lot 101 of TRS 19-01-18) is vacant, zoned F-2, and 124.2 acres.

Approximately 118 acres of the original tax lot 401 was consolidated with tax lot 1400 of TRS 19-01-17 to the south by property line adjustment deed between Northwest Lands Inc (owner of tax lot 401 of TRS 19-01-17) and Merle S. Brown (owner of tax lot 1400 of TRS 19-01-17) on December 30, 2002 and recorded on January 6, 2003. Refer to Parcel “A” on “Attachment B” of Attachment “E” to this Memo which is zoned F-1. With the addition of tax lot 401 to tax lot 1400, Parcel “A” is now 139.23 acres.

F-1: (4) Accessed by arterial roads or roads intended primarily for forest management. Primarily under commercial forest management. (* See note below)

or,

F-2: (4) Provided with a level of public facilities and services, and roads, intended primarily for direct services to rural residences.

Rural services are currently provided to the residential development in the area by:

- Emerald People's Utility District -- electrical,
- Pleasant Hill School District #1 – elementary and secondary education,
- Dexter Rural Fire Protection District – fire and ambulance service,
- Lane County Sheriff – police protection.

Public road access to the existing rural residences to the north, west, and south is provided by Rattlesnake Road, Lobo Lane, and Kimball Road.

Direct access to the subject parcels is by easement from Rattlesnake Road that is classified as a Rural Major Collector

(*) Prior to 1998, printings of this policy included an "(5)" in front of "Primarily under commercial forest management". At some point thereafter the "(5)" was omitted as a typo in Policy 4 revisions adopted by the Board and the two sentences appeared combined under one subsection (4) in current editions. The Board can elect to consider the "(5)" as a stand-alone *Characteristic* as it appeared 1984-1998. Staff will bring text revisions to the Board to correct the typo in Goal 4, Policy 15 at a future date. In the original version the text read as cited below without any corresponding characteristic in the F-2 *Characteristics*:

F-1: (5) Primarily under commercial forest management.

The four subject parcels were part of a timber harvest of tax lot 400 (201.43 acres) in 1993 by a prior owner. Tax lot 400 was replanted under the Forest Practices Act at a ratio of 200 seedlings to the acre.

Written testimony and documentation in the record addressing Goal 2, Policy 27 a.ii. and a.vii. circumstances and Goal 4, Policy 15.b. and 15.c. characteristics.

During the August 3, 2004 LCPC public hearing, written testimony in opposition to the zone change was presented by Merle Brown and Gwen Farnsworth and also signed by John Barguess, Penelope Brown and Robert Burton. The packet of materials is included as Attachment "G" to this Memo. The reproduction of the photographs accompanying their cover letter are in large format 18" x 24" and only six copies have been forwarded to the five Commissioners and the Board Secretary. The originals are available in Land Management Division for review by other parties by contacting Bill Sage (541 682-3772).

Jim Just representing Goal One Coalition submitted written testimony at the public hearing on August 3, 2004, which is included as Attachment "H" to this Memo. Mr. Just's submittal challenges the applicant's findings and conclusions under Goal 2, Policy 27 a.ii. and a.vii.

circumstances for consideration of a zone change, and Goal 4, Policy 15 b. and c. *characteristics* for rezoning the subject parcels.

Lauri Segel representing 1000 Friends of Oregon submitted written testimony at the public hearing on August 3, 2004, which is included as Attachment "I" to this Memo. Ms. Segel's submittal challenges the applicant's findings and conclusions under Goal 2, Policy 27 a.ii. *circumstances* for consideration of a zone change, and Goal 4, Policy 15 b. and c. *characteristics* for rezoning the subject parcels.

Thom Lanfear submitted written testimony into the record on August 12, 2004, which is included as Attachment "J" to this Memo. Mr. Lanfear's submittal addresses the "legal lot" issue of 1984 and the execution of the property line adjustment deed executed by the applicants and recorded on January 6, 2003 and the *Warf vs. Coos County* LUBA decision on January 7, 2003. Mr. Lanfear also raises the question as to whether the Board of Commissioners or the Lane County Hearings Official is the proper authority to review zone changes from F-1 to F-2.

Merle Brown submitted written testimony into the record on August 16, 2004, which is included as Attachment "K" to this Memo. Mr. Brown's submittal addresses logging practices in the area and on his timberland holdings to the south and southwest of the subject properties.

The applicant submitted correspondence and eight supplemental documents into the record on August 17, 2004, which is included as Attachment "L" to this Memo.

The applicant also submitted rebuttal argument into the record on September 7, 2004, in support of the application and it is included as Attachment "M" to this Memo.

Three ordinances adopted by the Board in 1986 and a copy of the "Definitions" in Lane Code 13 circa 1978, were placed in the record by staff prior to the LCPC deliberations on October 5, 2004 and included as Attachments "N", "O", "P" and "Q":

- Attachment "N" -- Ordinance PA 921: re-enacting RCP Policy 21 (Error & Omissions).
- Attachment "O" -- Ordinance PA 10-86: adopting definitions in Chapter 13 (Lane Code).
- Attachment "P" -- Ordinance PA 11-86: adopting definitions in Chapter 16 (Lane Code).
- Attachment "Q" -- Land Divisions, Lane Code 13.010 – 13.020 Definitions, October 1978.

Staff has also included two attachments for the Board's review concerning *Warf vs. Coos County*:

- Attachment "R" -- *Warf vs. Coos County, LUBA 2002-010, April 18, 2002.*
- Attachment "S" -- *Warf vs. Coos County, LUBA 2002-087, January 7, 2003.*

Lane County Planning Commission

The Planning Commission did not deliberate on the Goal 2, Policy 27 a.ii. *circumstance* for consideration under the "*Characteristics*" of Goal 4, Policy 15. This omission resulted from Bill Sage (staff) making a literal interpretation of the expressed statements in the applicant's final rebuttal dated September 21, 2004. Staff interpreted the statements to mean the applicant intended to rely solely on the "inconsistency between a map and text" *circumstance* of Policy 27 a.vii. The applicant's consultant has charged that staff acted in error and misinterpreted his intention. In the week following the deliberations, staff offered the applicant the option to return to the LCPC to continue deliberations under Goal 2, Policy 27 a.ii. and Goal 4, Policy 15, which the applicant declined. The applicant indicated a preference to continue on to the Board of Commissioners who are the ultimate authority in deciding on this zone change application.

Conclusion

During the March 30th public hearing, the Board will be asked to consider policy issues concerning the ownership of contiguous land in 1984 and the period of ownership that should be considered in an application pursuant to Goal 2, Policy 27 a.ii. *circumstances* and Goal 4, Policy 15 *characteristics*. The Attachments included at the end of this Memo provide the background for your consideration.

The public hearing on March 30, 2005, will hopefully provide more clarity on the policy issues and whether the applicant's four parcels predominantly represent the F-1 Nonimpacted Forest Land *characteristics* of Goal 4, Policy 15.b., or the F-2 Impacted Forest Land *characteristics* of Goal 4, Policy 15.c. Based on the attached record and following the public testimony, the Board will need to consider the policy issue in "A" below, and make a determination as to which of the two zoning designations should apply in "B" below:

A. Which time period and what ownership is most pertinent to the Board's review of the "characteristics":

- In 1984, when the four original legal lots (200+ acres) were represented on Assessor's map TRS 19-01-17 as part of a single ownership as "tax lot 400" of TRS 19-01-17, 200+ acres in size; or
- In 2000, when LMD determined that there were four original legal lots within tax lot 401 (200+ acres) of TRS 19-01-17 and were reconfigured in 2002-03 into the four subject parcels (83.58 total acres) under the current ownership?

B. Do the *characteristics* of the applicable subject tract or ownership as determined by the Board in "A" above, predominantly (more closely) comply with:

- Goal 4 –Policy 15.b., *characteristics* for retaining the Nonimpacted Forest Land (F-1) zoning designation; or
- Policy 15.c., *characteristics* for granting the request for the Impacted Forest Land (F-2) zoning designation?

III. IMPLEMENTATION AND FOLLOW-UP

A. Alternatives/Options

1. Approved Ordinance No. PA 1212.
2. Do not approve Ordinance No. PA 1212.
3. Direct staff to provide additional findings and documentation.

B. Staff Recommendation

The Board of Commissioners is faced with a lengthy and complex record and on the balance of the evidence it could find to either change the zoning of the property to F-2 Impacted Forest Land or retain of the F-1 Nonimpacted Forest Land designation. It is a situation where the findings addressing the subjectivity of the criteria (Policy 27 a. *circumstances* and Policy 15 *characteristics*) could support either decision.

C. Timing

If approved by the Board, Ordinance No. PA 1212 will go into effect 30 days from the date of adoption.

D. Notice

Notice of the action will be provided to DLCD and parties with standing.

VI. ATTACHMENTS

- A. Ordinance No. PA 1212.
- B. Application PA 04-5276 Conformity Determination Amendment (Kronberger).
- C. Applicant's Final Rebuttal; September 21, 2004.
- D. LCPC Deliberations Check List (PA 04-5276); October 5, 2004.
- E. Staff Report to LCPC (PA 04-5276); July 15, 2004.
- F. Staff Report to LCPC (PA 04-5252, PA 04-5276) RE: Goal Two, Policy 27a.ii.; October 1, 2004.
- G. Written testimony: G. Farnsworth, M. Brown, J. Barguess, P. Brown and R. Burton; August 3, 2004.
- H. Written testimony: Jim Just/Goal One Coalition; August 3, 2004.
- I. Written testimony: Laurie Segel/1,000 Friends of Oregon; August 3, 2004.
- J. Written testimony: Thom Lanfear; August 12, 2004.
- K. Written testimony: Merle Brown; August 16, 2004.
- L. Written testimony: Applicant (Al Couper); August 16, 2004.
- M. Written testimony: Applicant (Al Couper); September 7, 2004.
- N. Ordinance PA 921: re-enacting RCP Policy 21 (Error & Omissions).
- O. Ordinance PA 10-86: adopting definitions in Chapter 13 (Lane Code).
- P. Ordinance PA 11-86: adopting definitions in Chapter 16 (Lane Code).
- Q. Land Divisions, Lane Code 13.010 – 13.020 Definitions, October 1978.
- R. *Warf vs. Coos County, LUBA 2002-010, April 18, 2002.*
- S. *Warf vs. Coos County, LUBA 2002-087, January 7, 2003.*
- T. Lane County Planning Commission Minutes: August 3, 2004
- U. Lane County Planning Commission Minutes: October 5, 2004.