W.17.6.

SUPPLEMENTAL MATERIAL

SECOND ADDENDUM TO AGENDA COVER MEMO

DATE: February 28, 2005 (Date of Agenda Cover Memo)
March 16, 2005 (Date of First Addendum)
March 16, 2005 (Date of First Reading)
March 28, 2005 (Date of Second Addendum)
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. SUBMITTAL INTO THE RECORD

On March 28, 2005, Jim Just (Goal One Coalition) submitted the attached written testimony into the record. The testimony is in response to the Agenda Cover Memo dated February 28, 2005, and the applicant's written testimony dated March 25, 2005 that the applicant delivered directly to the Board of Commissioners on that date.

II. ATTACHMENT

A. Written testimony from Jin Just, Goal One Coalition, dated March 28, 2005.

FILE # PA 1212
EXHIBIT # 94

GOAL ONE COALITION

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March 28, 2005

Lane County Board of Commissioners
125 East 8th Avenue
Eugene, OR 97401

RE: PA 04-5276 (Ordinance No. PA 1211), Kronberger

Commissioners:

The Goal One Coalition (Goal One) is a nonprofit organization whose mission is to provide assistance and support to Oregonians in matters affecting their communities. The Coalition is appearing in these proceedings at the request of and on behalf of LandWatch Lane County and its membership residing in Lane County. Mr. Just is representing Goal One, LandWatch Lane County, and himself.

I. Introduction

The applicant Darrin Kronberger, Northwest Lands, seeks an approval of a Conformity Determination Zone Amendment to redesignate 83.58 acres of land from Nonimpacted Forest Land (F-1, RCP) to Impacted Forest Land (F-2, RCP). The subject properties are identified in the staff report as Map 19-01-08 TLs 4100 (15.69 acres) and 4200 (23.19 acres) and 19-01-17 TLs 1800 (26.01 acres) and 401 (18.69 acres). The four parcels were originally created by metes and bounds descriptions on individual deeds recorded during the period 1887-1917.

Zoning was applied to the subject property in 1984. At that time, the subject property was part of a larger TL 400, which lay on both sides of the Southern Pacific Railroad right-of-way. The portion west of the railroad was initially to be zoned F-2 but, during the acknowledgment process and at the insistence of the Department of Land Conservation and Development, Ordinance No. PA 891 re-designated the land west of the railroad F-1. In 1992 the western portion was sold off and became the 118.83 acre Tax Lot 401. In 2003, the sale and reconfiguration of the 118.83 acre parcel resulted in the southern 36.23 acres being incorporated into Mr. Brown's larger holdings and the remainder of TL 401 assuming its present configuration. As the 2003 property line adjustments did not comply with state law, a new series of property line adjustments were executed and recorded in 2005.

This application was filed on April 2, 2004. In deeds dated July 28, 2004 and recorded March 14, 2005 Mr. Kronberger conveyed three of the four subject parcels to: MLK LLC; CJK LLC.; and AJK Ventures. The principals behind the corporations have not been disclosed.

The subject property contains no dwellings. Timber on the property was harvested in stages beginning in 1993 and ending in 2000. The property has been reforested.

II. Applicable criteria

The proposed zone change is a Minor Amendment subject to LC 16.400(6)(h) criteria and LC 16.252 processes. Two provisions of Plan Goal 2 Policy 27.a have been identified as applicable criteria:

> "*Goal Two – Policy 27:* Errors or Omissions. Lane County will annually initiate and process applications to correct identified errors or omissions in the RCP Official Plan and Zoning Plots resulting from the Official Plan or Zoning Plots not recognizing lawfully existing (in terms of zoning) uses or from inconsistencies between the Official Plan and Zoning Plots. Changes to correct errors or omissions 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 Errors or Omission Policy may include one or more of the following:
>
> "* * *
>
> "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." (Emphasis added.)
>
> "* * *
>
> "iv. Correction of a scrivener error on an adopted Official Plan or Zoning Plot."

Goal Four, Policy 15 is then relevant to the application of Policy 27.a.ii:

> "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 if 80 acres or larger in size.
"(3) Predominantly ownerships contiguous, to other lands utilized for commercial forest or commercial farm uses.
"(4) Accessed by arterial roads or roads intended primarily for forest management.
"(5) Primarily under commercial forest management.

"c. Impacted Forest Land Zone (F-2, RCP) Characteristics
"(1) Predominantly ownerships developed by residences or nonforest uses.
"(2) Predominantly ownerships 80 acres or less in size.
"(3) Ownerships generally contiguous to tracts containing less than 80 acres and residences and/or adjacent to developed or committed areas for which an exception has been taken in the Rural Comprehensive Plan.
"(4) Provided with a level of public facilities and services, and roads, intended primarily for direct services to rural residences."

III. Discussion

A. Policy 27.a.ii

The Staff Report states that there are only two issues to be addressed in determining whether the application can be approved under Policy 27.a.ii:

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?

Staff is not correct in stating that the inquiry is or can be limited to these two issues. Staff misstates the second question, implying that the question is whether the subject property *now* more closely resembles F-1 or F-2 characteristics. As the inquiry asks whether an *error or omission* was made when zoning was first assigned, and whether the disclosure of the actual parcelization pattern *would have* resulting in F-2 zoning rather than F-1 zoning, the relevant question is whether the subject property *in 1984* had characteristics more closely resembling those of F-1 or F-2 lands.

Assuming that four units of land were created as of 1917, it appears that these four units of land were subsequently consolidated. Further, the question of whether one or four "legal lots" exist is not determinative, as the required inquiry is to *ownerships*, not "legal lots." It is undisputed that the subject property was under one, much larger ownership at the time zoning was applied in 1984. Even if four legal lots rather than one are found to exist, parcelization in itself is not relevant and would not have dictated that the subject land be zoned F-2 rather than F-1.

The applicant argues that current conditions are relevant to the required inquiry. The Staff Report seems to implicitly adopt applicant's position. This position is not correct: the relevant question asks whether an error or omission was made when the original zoning was assigned. The purpose of Policy 27 is to correct identified errors or omissions "resulting from the Official Plan or Zoning Plots not recognizing lawfully existing (in terms of zoning) uses or from inconsistencies between the Official Plan and Zoning Plots." Policy 27 does not address changes in circumstances or conditions. A failure to anticipate later, unforeseen changes in circumstances or conditions simply cannot be considered an "error or omission" and could not constitute, at the time of original zoning, a failure to recognize lawfully *existing* uses or inconsistencies between the plan and zoning maps.

1. Even if the subject property contained four parcels that had been created by 1917, the subject property constituted a single tract in 1983-84.

PA 884, effective 2/29/84, was the seminal ordinance that applied Rural Comprehensive Plan and Zone designations throughout Lane County. Zoning of the subject property was established by the adoption of PA 891, which became effective on September 12, 1984.

The applicable regulations governing land divisions during the relevant time period from September 14, 1983 through February 1984 were found in Lane Code Chapter 13, adopted by the Board of Commissioners in Ordinance No. 16-83.

Lane Code 13.010 contained the following definitions:

"Lot. A unit of land that is created by a subdivision of land.
"Parcel. A unit of land that is created by a partitioning of land.
"Partition Land. Divide an area or tract of land into two or three parcels within a calendar year when such area or tract of land exists as a unit or contiguous unit of land under single ownership at the beginning of such year.
"Subdivide Land. To divide an area or tract of land into four or more lots within a calendar year when such area or tract of land exists as a unit or contiguous units of land under a single ownership at the beginning of such year.
"Tract. A lot, parcel or unsubdivided or unpartitioned land under the same ownership. Contiguous units of unsubdivided or partitioned land under the same ownership shall be considered a single tract."

It is clear that any division of the subject property that occurred by 1917 did not create lots or parcels; any units of land created were created by deed rather than by subdivision or partition. The subject property, because it was under one ownership, was thus considered a single tract. Because the definition of tract includes "partitioned land under the same ownership," the subject property would have been considered one tract even had any units of land been created by partition.

It is equally clear that any division of the subject property ("tract") would have required either a partition or a subdivision. Under Lane Code Chapter 13, the subject property, which was under one ownership, constituted a single tract.

Lane Code Chapter 16 also, in 1984, contained definitions relevant to the issues before this Board. LC Chapter 16 was first adopted on February 29, 1984 in Ordinance No. 1-84. Ordinance No. 1-84 was revised on September 12, 1984. It provides, in relevant part:

> "Legal lot. A tract of land which has been legally created in compliance with Lane County land division regulations and ORS Chapter 92:
>
> "* * *
>
> "(4) A tract of land created as a result of a deed or real estate sales contract, which was not created as a result of (1)-(3) above, but which at the date the conveyance occurred, the creation of the tract was not subject to any Lane County land division regulations. *However, contiguous units of unsubdivided or unpartitioned land under the same ownership shall constitute a single legal lot."* (Emphasis added.)
>
> "Tract. A lot, parcel or unsubdivided or unpartitioned land under the same ownership. Contiguous units of unsubdivided or partitioned land under the same ownership shall be considered a single tract."

Thus if a tract of land under the same ownership consisted of more than one unit of land (other than lots or parcels) it was considered by Lane Code Chapter 16 to be one "legal lot" in 1984. The adoption of Ordinance 1-84 had the effect of consolidating contiguous ownerships of units of land other than lots or parcels.

Staff argues that this was done in error, that Lane County was not required by statute and did not have a mandate from the Legislature to consolidate development rights. However, the language of the ordinance is plain, clearly showing the intent of the Board of Commissioners to consolidate ownerships other than lots or parcels. The county had the authority to consolidate units of land that were not lots or parcels, and it did so.

The subject property constituted one legal lot in 1984. The preliminary legal lot determinations cannot be finalized as a part of this proceeding.

2. In 1984 the subject property was a single ownership and constituted a single tract and a single legal lot.

Even if the subject property was comprised of four units of land rather than one in 1984, that fact is not relevant to the inquiry required by Plan Goal 4 Policy 15. Plan Goal 4 Policy 15 lists the factors that are to be considered. Three of the four factors regarding both F-1 and F-2 lands address *ownerships,* not units of land.

In 1984 the subject property was part of a larger 262.98 acre TL 400 which lay on both the west and the east side of the railroad right-of-way. TL 400 was owned by Steve and Virginia Warren; that ownership continued from before 1963 until the property was sold to Dexter Forest Fiber/Willamette Chip Log, Fred McCullough and Wade Doak, around 1990. The property was logged off and then sold to Northwest Lands Inc., Darrin Kronberger.

In 1984 the Warrens ran a commercial forestry operation. A lumber mill was located on the eastern portion of TL 400. In addition to TL 400, the Warrens owned a number of additional

contiguous properties as part of their commercial timber operation. Those properties can be found Exhibit 1 of the application. Starting at the northwest corner of the ownership and proceeding clockwise around TL 401, the common ownership, with current zoning noted, consisted of least the following: TL 2400, 64 acres, E-40; 19-01-08 TL 2100 9.49 acres, F-2; 19-01-08 TL 2202, 16.34 acres, F-2; TL 3800, 23.87 acres, M-3; TL 3900, 12.84 acres, M-3 (these two M-3 parcels contained the mill site); TL 1600, 21.49 acres, F-2; and a number of unidentified F-2 parcels, including at least TL 400, 22 acres, and 1200, 20 acres, along the eastern boundary of the railroad right-of-way, including areas to the east of Lost Creek, extending south to the RR-6 parcel. The total acreage of this common ownership exceeded 450 acres.

The parent TL 400 was under a common ownership. The analysis required by Goal 4 Policy 27 must be based on that ownership, not on the actual or presumed existence of legal lots within that ownership.

3. In 1984 the characteristics of the subject property more closely resembled the characteristics of F-1 land rather than F-2 lands.

The applicant is requesting that only a portion of the property as it was configured in 1984 be rezoned from F-1 to F-2. Because the inquiry asks whether a mistake was made when the original zoning was applied, the area as it was configured in 1984 will be considered in examining the characteristics of contiguous or adjacent lands.

a. Factor 1:

"Predominantly ownerships not developed by residences or nonforest uses."

or

"Predominantly ownerships developed by residences or nonforest uses."

No residences existed on the subject property in 1984, nor do any residences currently exist on the subject property or on any part of the pre-1991 TL 400. Factor 1 dictates that the F-1 zone would have been imposed on the subject property.

The applicant at his Goal 4 Analysis, p. 6 concedes that the property proposed for rezoning does not exhibit this F-2 characteristic.

Staff's analysis mistakenly looks at dwellings on surrounding parcels. In determining whether the ownerships under consideration for zoning are or are not developed for residences or nonforest uses, this factor looks at the ownershipships under consideration, not at surrounding ownerships. Additionally, Staff erroneously considers the present development pattern, not the development pattern in 1984.

b. Factor 2:

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

or

"Predominantly ownerships 80 acres or less in size."

The subject property is a contiguous area that was under one ownership in 1984. That contiguous ownership was 262.98 acres, and was part of an even larger contiguous ownership substantially exceeding 300 acres in size. Factor 2 dictates that the F-1 zone would have been imposed on the subject property.

Like Factor 1, Factor 2 clearly looks at the ownerships of the subject area. In the context of the errors and omissions policy, the question is whether the ownership pattern of the area proposed for zoning would, in 1984, have led to a decision to zone the property F-1 or F-2. The subject area was, in 1984, undisputedly part of a much larger ownership used for commercial forest purposes.

Staff errs in suggesting that the size of the four "parcels" created during the period 1887-1902 is relevant. First, the units of land are not parcels. Second, the unit of inquiry is "ownerships," not lots, parcels or other units of land. Third, the subject property constituted a single tract. Fourth, the subject property constituted a single legal lot.

The applicant errs in suggesting that the size of ownerships outside the area proposed for rezoning is relevant to Factor 2. Contiguous properties are considered in Factor 3.

The applicant further errs in equating parcelization with ownerships. The subject area was in one ownership in 1984, as part of a much larger ownership; was in one ownership in July 6, 2003, when the property line adjustment deed was recorded; and remained in one ownership until recently. The relevant period is 1984, when the Board of Commissioners are purported to have erred in applying the F-2 rather than the F-1 zoning.

c. Factor 3:

> **"Predominantly ownerships contiguous to other lands utilized for commercial forest or commercial farm uses."**
>
> **or**
>
> **"Ownerships general (sic) 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."**

At its northwestern corner, the subject property is contiguous to 19-01-07 TL 2500. TL 2500 is an approximately 100 acre parcel zoned E-40 and was used commercially to produce cattle and timber.

19-01-08 TL 2202 is contiguous to the subject property to the north. As previously discussed, it was part of a larger commercial timber operation.

The properties contiguous to the subject property along its eastern boundary contained the mill site and other forested property, and were also part of the commercial forest use.

TL 1500, 200 acres, borders the subject property along its southern boundary. This forested property was owned by the Springfield School District and used for high school forestry

programs by the Pleasant Hill School District. This constituted a commercial forest use. The property was sold to Freres Timber Company of Lyons, Oregon in the late 1990s.

At the southeastern corner, the subject property is contiguous to 1400. Merle Brown owned and continues to own TL 1400 and the adjacent TL 1402, and uses the properties for commercial forestry. In 1984 Mr. Brown's ownerships totaled 230 acres.

Along its western boundary, it appears that the subject property was contiguous with 19-01-18 TLs 1400, and 101, 124.20 acres. The exact acreage of TL 1400 is not indicated on the assessor's map, but it appears to be about 145.80 acres. These properties were owned by Ray and Betty Wolf, and were used for commercial forestry. This ownership totaled approximately 270 acres. These properties are zoned F-2.

19-01-07 TL 2600, approximately 100 acres, is also contiguous to the subject property's western boundary. This property has historically been used for commercial farm and forest uses, including sheep and timber.

Thus available evidence establishes that the subject property was an ownership that was *entirely* contiguous to other lands utilized for commercial forest or commercial farm uses in 1984.

The applicant errs in considering "the surrounding area within one mile." Plan Policy 15 requires that *contiguous* lands and ownerships be considered. Non-contiguous lands are not relevant to the Plan Policy 15 inquiry.

The applicant also errs in identifying current uses, rather than those existing in 1984. Since the applicant is alleging that an error was made in 1984, his burden is to demonstrate that, in 1984, evidence would support a finding that the subject land is more appropriately zoned F-2 than F-1. Evidence as to uses existing in 2004 would not have been available and is not relevant to such an inquiry.

The area proposed for rezoning is not contiguous to any exception areas. There is no evidence provided as to the existence of residences on contiguous properties in 1984.

The applicant concedes that commercial farm or forest uses predominate on adjacent properties, and therefore that Factor 3 dictates that the F-1 zone would have been imposed on the area currently identified as TL 401.

d. Factor 4:

"Accessed by arterial roads or roads intended primarily for forest management. Primarily under commercial forest management."

or

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

The Staff Report notes that, prior to 1998, printings of this policy included a "5" in front of "Primarily under commercial forest management" and states that omitting the "5" is a continuing typo. Any discrepancy does not appear to be significant.

The subject property was not accessed by an arterial road in 1984, and is not so accessed today. A private road used for timber management reached from Rattlesnake Road through TL 2400 to TL 2100 and perhaps to TL 2202. Around 1990, the private logging road was extended to the subject area to allow timber harvesting. At the eastern boundary, an easement provides access across the railroad right-of-way to the mill site. That easement no longer exists. Any roads providing access to the subject area that existed in 1984, or today, were intended primarily for forest management purposes.

There is currently no electrical service, telephone service, or any other public utility provided to the subject area. As no roads exist which provide access to the site, no other public services, including police, fire, schools, or reasonable access to solid waste disposal facilities are currently available to the subject area.

Factor 4 dictates that the F-1 zone would have been imposed on the subject property in 1984.

4. In 2005 the characteristics of the subject property more closely resemble the characteristics of F-1 land rather than F-2 lands.

The applicant argues that Policy 27 can be interpreted to require or allow an analysis of the characteristics of the area proposed for rezoning based on the *current* characteristics of the subject property and the surrounding area. As discussed above, Policy 27 and Policy 27(2)(ii) relate to errors and omissions made when zoning was first imposed and to conditions existing at that time, not to current conditions.

Nevertheless, even should current characteristics be considered, a review of the characteristics of the subject land and the surrounding area leads to the conclusion that the characteristics of the land correspond more closely to the characteristics of the F-1 zone rather than the F-2 zone.

a. Factor 1:

"Predominantly ownerships not developed by residences or nonforest uses."

or

"Predominantly ownerships developed by residences or nonforest uses."

At the time the application was filed the subject area was under one ownership. It currently is apparently under four ownerships. No residences currently exist on the subject lands. Factor 1 dictates that the F-1 zone is appropriate for the subject property.

The applicant at his Goal 4 Analysis, p. 6 concedes that the property proposed for rezoning does not exhibit this F-2 characteristic.

Staff's analysis mistakenly looks at dwellings on surrounding parcels. In determining whether the ownerships under consideration for zoning are or are not developed for residences or

nonforest uses, this factor looks at the ownerships under consideration, not at surrounding ownerships.

b. Factor 2:

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

or

"Predominantly ownerships 80 acres or less in size."

Like Factor 1, Factor 2 clearly looks at the ownerships of the subject area. The subject area is a contiguous area that was part of single much larger ownership in 1984. The subject area remained under one ownership until 2005, when it was broken up into four ownerships by the applicant himself.

In the context of the errors and omissions policy, the question is whether the county made a mistake in zoning the property F-1 rather than F-2. The county cannot have made a mistake, because the property remained under one ownership until March 14, 2005. The applicant himself is responsible for breaking up the ownership, and cannot claim that the county made an error or omission in not recognizing that he would do so or in not rewarding him for doing so.

The purpose of Policy 27 is to offer landowners a less expensive way to change zoning than the normal zone change procedure, when the existing zoning was the result of an error by the county. It would be contrary to the purpose of Policy 27 to allow the policy to be exploited and abused by applicants to not only avoid the normal rezoning process, but to reward him for breaking up large ownerships of commercial forest lands.

The applicant errs in suggesting that the size of ownerships outside the area proposed for rezoning is relevant to Factor 2. Contiguous properties are considered in Factor 3.

Factor 2 dictates that the F-1 zone is appropriate for the subject property.

c. Factor 3:

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

or

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

The subject property is predominantly contiguous to other lands utilized for commercial forest or commercial farm uses. The applicant concedes at p. 2 of his Executive Summary dated March 30, 2005 and at p. 6 of Exhibit 11 of his March 31, 2004 Application that commercial farm or forest uses predominate on adjacent properties. At its northwestern corner, the subject

property is contiguous to 19-01-07 TL 2500. TL 2500 is an approximately 100 acre parcel zoned E-40 and is used commercially to produce cattle and timber.

19-01-08 TL 2202 is contiguous to the subject property to the north. As previously discussed, it has historically been part of a larger commercial timber operation. As the applicant concedes, it apparently remains in commercial forest use. It is receiving forest deferral. TL 2202 contains a residence. The acreage is not noted.

The properties to the east of the subject property contained the mill site and other forested property, and were also historically part of the commercial forest use. These properties do not share a common boundary line with the subject property only because of the intervening railroad right-of-way. The applicant concedes that TL 401 is in commercial forest use. The applicant also concedes that TL 400 is forested and is receiving forest deferral. TL 400 is 24.95 acres and contains a residence.

TL 1500, 200 acres, borders the subject property along its southern boundary. This forested property was owned by the Springfield School District and used for high school forestry programs by the Pleasant Hill School District. This constituted a commercial forest use. The property was sold to Freres Timber Company of Lyons, Oregon in the late 1990s. Thus the property remains in commercial forest use.

At the southeastern corner, the subject property is contiguous to 1400. Merle Brown owned and continues to own TL 1400 and the adjacent TL 1402, and uses the properties for commercial forestry. In 1984 Mr. Brown's ownerships totaled 230 acres. The current acreage of the Brown tract has not been provided.

Along its western boundary, it appears that the subject property is contiguous with 19-01-18 TLs 1400, and 101, 124.20 acres. The exact acreage of TL 1400 is not indicated on the assessor's map, but it appears to be about 145.80 acres. These properties were and appear to be currently owned by Ray and Betty Wolf, and were and are used for commercial forestry. This ownership totales approximately 270 acres. These properties are zoned F-2.

19-01-07 TL 2600, approximately 100 acres, is also contiguous to the subject property's western boundary. This property has historically been and is currently used for commercial farm and forest uses, including sheep and timber. It is receiving farm and forest deferral.

Thus available evidence establishes that the subject area is predominantly contiguous to other lands utilized for commercial forest or commercial farm uses. Contiguous tracts are predominantly larger than 80 acres.

The applicant errs in considering "the surrounding area within one mile." Plan Policy 15 requires that *contiguous* lands and ownerships be considered. Non-contiguous lands are not relevant to the Plan Policy 15 inquiry.

"Generally contiguous" cannot be interpreted to include lands that are *not* contiguous. LC 16.090 specifically defines "contiguous" to mean "sharing a common boundary":

> "Having at least one common boundary line greater than eight feet in length. * * *"

The area proposed for rezoning is not contiguous to any exception areas. There is no evidence provided as to the existence of residences on contiguous properties in 1984.

The applicant concedes that commercial farm or forest uses predominate on adjacent properties, and therefore that Factor 3 dictates that the F-1 zone would have been imposed on the area currently identified as TL 401.

d. Factor 4:

"Accessed by arterial roads or roads intended primarily for forest management. Primarily under commercial forest management."

or

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

The Staff Report notes that, prior to 1998, printings of this policy included a "5" in front of "Primarily under commercial forest management" and states that omitting the "5" is a continuing typo. Whether this is error or not, the criteria that must be applied is the one that exists in the code. However, whether or not the second sentence of Policy 15.b(4) is listed as an independent factor does not seem to be significant.

The subject property is not accessed by an arterial road. A private road used for timber management reaches from Rattlesnake Road through TL 2400 to TL 2100 and perhaps to TL 2202. Around 1990, the private logging road was extended to the subject area to allow timber harvesting. The Staff Report states that this access is by easement; it is not public access. It is not clear how a private easement can be classified as a "Rural Major Collector," or what the significance of such classification might be. Applicant is incorrect in characterizing staff comments as "the property is not accessed by logging roads." Any roads providing access to the subject area were and are intended primarily for forest management purposes.

Applicant is incorrect in stating that the full range of rural facilities and services are available to the subject property, and that staff agrees that this is the case. There is currently no electrical service, telephone service, or any other public utility provided to the subject area. As no public roads exist which provide access to the site, no other public services, including police, fire, schools, or reasonable access to solid waste disposal facilities are currently available to the subject area. Police protection and schools are not "intended primarily for direct services to rural residences" existing on the subject property.

Factor 4 dictates that the F-1 zone would have been imposed on the subject property in 1984.

SUMAMRY: the subject property more closely resembles the characteristics of F-1 land rather than F-2 lands.

Review of the Policy 15 factors demonstrates decisively that the characteristics of subject area most closely correspond to F-1 lands rather than F-2 lands:

1. The subject area contains no residences.

2. The subject area consists of ownerships of less than 80 acres only because the applicant sold off three units of land in a transaction recorded March 15, 2005.

3. The subject area is contiguous to other lands utilized for commercial forest or commercial farm uses.

4. The subject area is not accessed by arterial roads, but rather by roads intended for forest management. The subject area is primarily under commercial forest management. The subject property is not directly provided with public facilities and services.

The only factor which might justify F-2 rather than F-1 zoning is Factor 2, which addresses existing lot or parcel sizes. As previously discussed, the existing configuration of the ownerships is quite recent, and is the result of the applicant's own actions. It cannot be ascribed to county error or omission.

B. Policy 27.a.iv: no scrivener error exists on the Official Zoning Map.

The applicant's argument begins with the fact that 1984 Ordinance 884 designated the westerly portion of TL 400 as F-2. Later in 1984 Ordinance 891, enacted in response to DLCD comments, changed the zoning designation for the westerly portion of TL 400 to F-1. The applicant argues that PA 891 contains two conflicting exhibits, the zoning map and the list of affected properties: the map shows the property as F-1, while TL 400 does not appear on the accompanying list at all, and so is not shown as being rezoned from F-2 to F-1. The applicant argues that the Zoning Map is ambiguous; that the list is a "more specific" ordinance provision, and therefore that the list should control rather than the more "general" zoning map.

The applicant also argues that it was the "intent" of the legislative body adopting Ordinance 891 to include only "very large parcels" because that was the concern voiced by DLCD; that the parcel was in fact not a "very large parcel" because it was comprised of four legal lots or parcels; and therefore that the legislative intent could not have been to rezone the subject area from F-2 to F-1.

Applicant's argument fails to recognize that in 1984 the subject property was considered to be a part of a much larger, unitary tract or legal lot. TL 400 did not exist as an independent legal unit of land. Even if there were a failure to specifically list TL 400 on the list of affected properties, such an omission wouldn't matter because TL 400 was merely part of a larger tract and legal lot. The notation "F1" on TL 1500 is sufficient to indicate the zoning on all of the area delineated by the heavy lines on the map. The lighter lines dividing tax lots simply do not indicate ownerships, tracts, or legal lots, which are the relevant units of land for purposes of distinguishing F1 lands from F2 lands.

1. The zoning map is the controlling document.

The adopting Ordinance 891 states, in relevant part:

> "WHEREAS, on March 1, 1984, the Board of County Commissioners submitted its Rural Comprehensive Plan to LCDC for acknowledgment, and

> "WHEREAS, since submittal, objections to the Plan have been received. In addition, DLCD staff have formally advised Lane County in staff reports dated June 28, 1984 and July 19, 1984 that the application of certain Plan Designation and Zone Districts are not supported by the facts in the record, now, therefore,
>
> "THE BOARD OF COUNTY COMMISSIONERS OF LANE COUNTY ORDAINS AS FOLLOWS:
>
> "The following parcels are redesignated and rezoned as set forth an the interim Plan Designation and Zoning Maps attached as Exhibit "A", and further delineated in attached Exhibit "C".[1]

Ordinance 891 clearly states that the rezoned areas are set for in the attached Zoning Maps. The zoning maps adopted by Ordinance 891 and acknowledged by LCDC are the Official Zoning Maps. On the hand-inscribed map labeled Exhibit "A" to Ordinance 891" the western portion of TL 400 is clearly and unambiguously designated F-1, overwriting and superceding the F-2 designation found on the hand-inscribed map labeled "Exhibit "A" to Ordinance 884.

The list, which "further delineates" the zone changes, is not part of the county's land use regulations acknowledged by LCDC. That list was never intended to be, and was never, a complete and accurate compilation of every lot or parcel affected by Ordinance 891. The county recognized that the list contained errors and that the Plan Map was the controlling document. Errors on the list were still being corrected many years after 1984.[2]

2. The legislative intent was to rezone the subject area F-1.

Appended to this letter as Exhibit 2 are the relevant portions of DLCD's comments regarding Goal 4 forest lands. These comments note that the relevant Plan provisions are concerned with ownerships rather than lots, with other relevant factors being contiguity with parcels of similar size and uses, development with residences, the provision of public utilities and services suitable for residential development, and road access.[3] As examples, DLCD identified a number of large parcels and ownerships that had been inappropriately zoned F-2.[4]

DLCD concluded:

> "Of all issues raised under this review of Goal 4, the question of misapplication of the County's F-2 zone to lands which are currently managed commercially or of a size to be managed commercially as a forest operations (sic) presents a significant violation of Goal 4 as interpreted by the Commission in a number of Acknowledgment Reviews."

As a remedy, DLCD recommended an implementing measure:

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[1] See Exhibit 1.
[2] See Exhibit 3.
[3] See Exhibit 2-5.
[4] See Exhibit 2, 5-7.

> "3. Amend the County zoning map by rezoning private non-industrial ownerships capable of commercial forest management (including forested portions of commercial farm-forest operations) currently zoned F-2 with an appropriate resource zone. An acceptable forest zone is the F-1 Zone or forest zone containing a minimum lot size of at least 80 acres as justified by the County's 'Forest Working Paper Addendum.'"

Thus DLCD's concern and recommended implementing measure was with ownerships of lands managed commercially or of a size to be managed commercially, not solely with lots or parcels.

As previously discussed, the western portion of TL 400 was part of a much larger commercial forest operation in 1984. If the legislative intent of Ordinance 891 was to respond to DLCD's concerns and comply with DLCD's recommended implementation measures, that intent was to recognize that the western portion of TL 400 was part of a commercial forest operation exceeding 450 acres in size, and to therefore zone the land F-1.

As the applicant concedes and argues in asserting error, the fact that the western portion of TL 400 consisted of four legal lots or parcels was not known to the Board of Commissioners in 1984. Therefore it could not have been the intent of Ordinance 891 to zone that area F-2.

3. The property line adjustments recorded on January 6, 2003 do not comply with applicable law and are therefore invalid and of no effect.

The eight sequential property line adjustment correction deeds executed on August 5th and August 8th, 2004 recorded in Lane County Deeds and Records on August 19, 2004, do not bear the approval of any agent of Lane County, including the county surveyor or the governing body or its designee. The replat procedures of ORS 92.180 and 92.185 were not followed, nor were the criteria complied with, in executing the property line adjustments. The property line adjustments are therefore not in compliance with ORS 92.190.

Because Lane County has not adopted property line adjustment procedures conforming to the requirements of ORS 92.190, property line adjustments must comply with the replat procedures of ORS 92.180 and 92.185. Lane County has implemented the statutory replat procedures in Lane Code Chapter 13. Therefore property line adjustments in general, and the reconfiguration of subject property in particular, must comply with the procedures of LC Chapter 13.

CONCLUSION

Assuming that the western portion of TL 400 is comprised of four legal lots, that fact would not have dictated the F-2 zone. In 1984, the subject area was part of a commercial forest operation exceeding 450 acres in size and was contiguous along its entire boundary with lands used for commercial farm and/or forest uses. The existence of four legal lots or parcels on the western portion of TL 400 does not affect factors of Plan Goal 4 Policy 15. Therefore the requirements Plan Policy 27(a)(ii) are not satisfied, and the requested rezoning may not be approved.

Even if current characteristics of the subject and surrounding area are considered, the characteristics of the subject area more closely resemble F-1 lands rather than F-2 lands.

No scrivener error exists on the Official Zoning Map. The Zoning Map was and is the controlling document; the list relied upon by the applicant is supplementary and subordinate to the Zoning Map. The intent of Ordinance 891 was to rezone lands currently used for commercial forest operations F-1. Therefore the requirements Plan Policy 27(a)(iv) are not satisfied, and the requested rezoning may not be approved.

Therefore this request to rezone the subject lands from F-1 to F-2 must be rejected.

Mr. Just and Goal One request copies of any notice of decision, decision and findings in this matter.

Respectfully submitted,

/s/ Jim Just

Jim Just
for Goal One Coalition and as an individual