

W. S. A.

**THIRD ADDENDUM TO
AGENDA COVER MEMO**

DATE: March 31, 2005

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. SUBMITTALS INTO THE RECORD DURING THE PUBLIC HEARING

During the public hearing yesterday, March 30, 2005, sixteen documents were entered into the record. The submittals include written testimony from multiple parties, one aerial photograph, and two displays of photographs. Reproductions of the submittals are attached as "Exhibits".

II. EXHIBITS

- "Exhibit 98" - Written testimony from Lauri Segel, 1,000 Friends of Oregon, dated March 30, 2005 (2 pp).
- "Exhibit 99" - Written testimony from Robert Emmons, Land Watch Lane County, dated March 30, 2005 (2pp).
- "Exhibit 100" - Written testimony from Merle Brown, received March 30, 2005.
- "Exhibit 101" - Written testimony from Kenneth Zettle, Sheryl Zettle, Tara King, Kevin King, Marvin Zettle, and Margaret Zettle, dated March 2005.
- "Exhibit 102" - Written testimony from Pat Wilson, Steve Wilson, and Bruce W. Brown, dated March 2005.
- "Exhibit 103" - Written testimony from Ernest G. Niemi and Wanda Kay Niemi, dated March 29, 2005.
- "Exhibit 104" - Written testimony from Clif Trolin and Diane Trolin, dated March 29, 2005.
- "Exhibit 105" - Written testimony from Kataryn Walker, dated March 2005.
- "Exhibit 106" - Written testimony from Dan Rosenquist and Dorothy Overman, dated March 29, 2005.
- "Exhibit 107" - Written testimony from Jane K. Van Dursen, Catherine A. Williams, J. Aho, and O. Adam, dated March 29, 2005.

- “Exhibit 108” - Written testimony from Guy Harshbarger (Chief) Dexter Rural Fire District, dated March 30, 2005 (2 pp.).
- “Exhibit 109” - Written testimony from Merle S. Brown, Gwendolyn Farnsworth, Robert E. Burton, Howard Rooks, Lisa M. Rooks, and Edward Thompson, dated March 2005.
- “Exhibit 110” - Written testimony from Gavin Thompson and Michele Thompson, dated March 2005.
- “Exhibit 111” - Aerial photograph, date unknown, submitted by Gwendolyn Farnsworth, March 30, 2005.
- “Exhibit 112” - 8 ½ x 14 sheet with four photographs and notations, submitted by Gwendolyn Farnsworth, March 30, 2005.
- “Exhibit 113” - 8 ½ x 14 sheet with four photographs and notations, submitted by Gwendolyn Farnsworth, March 30, 2005.



534 SW Third Avenue, Suite 300, Portland, OR 97204 • (503) 497-1000 • fax (503) 223-0073 • www.friends.org

Southern Oregon Office • P.O. Box 2442 • Grants Pass, OR 97528 • phone/fax (541) 474-1155

Willamette Valley Office • 388 State Street, Suite 604 • Salem, OR 97301 • (503) 371-7261 • fax (503) 371-7596

Lane County Office • 1192 Lawrence • Eugene, OR 97401 • (541) 431-7059 • fax (541) 431-7078

Central Oregon Office • P.O. Box 8813 • Bend, OR 97708 • (541) 382-7557 • fax (541) 382-7552

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P.A. NO. 1212

DATE 3/30/05 EXHIBIT NO. 98

March 30, 2005

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

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

Commissioners:

The following comments are submitted on behalf of 1000 Friends of Oregon.

The applicant 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). Zoning was applied in 1984, and timber on the property has been harvested in stages beginning in 1993 and ending in 2000. The property has been reforested.

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 RCP (Rural Comprehensive Plan) Goal 2 Policy 27.a have been identified as applicable criteria, those being sub (ii) and (iv).

Subsequently, Goal Four, Policy 15, i.e. the analysis of the appropriate zoning (F1 vs. F2) is then relevant to the application of Policy 27.a.ii.

Due to obvious time constraints, the following comments address just two of the shortcomings of this proposal:

I. Incorrect Application of 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, but misstates the second question by implying that the inquiry is whether the subject property *now* more closely resembles F-1 or F-2 characteristics. ***The correct inquiry is whether an error or omission was made when zoning was first assigned***, and the relevant question is whether the subject property in 1984 had characteristics more closely resembling those of F-1 or F-2 lands.

The applicant argues that current conditions are relevant to the required inquiry, and the Staff Report seems to implicitly adopt this position. 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, and should 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."

II. Misstatement of the applicable inquiry regarding whether "one or four legal lots" exist

The question of whether one or four "legal lots" exist is not determinative, as the required inquiry is to *ownerships*, not "*legal lots*." 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 Goal 4 Policy 15. 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.**

However, even with consideration of the assumption that four units of land were created as of 1917, it appears that these four units of land were subsequently consolidated, and that the subject property constituted a single tract in 1983-84. 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 could not have dictated that the subject land be zoned F-2 rather than F-1.

CONCLUSION

The requirements of Policy 27(a)(ii) are not satisfied, and the requested rezoning may not be approved. Additionally, 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. Even with the assumption that the western portion of TL 400 is comprised of four legal lots, that fact could not have dictated F-2 zoning.

1000 Friends of Oregon requests copies of any notice of decision, decision and findings in this matter.

Respectfully submitted,

Lauri Lepp
Lane County Planning Advocate

P.A. NO. 1212DATE 3/30/05 EXHIBIT NO. 99

March 30, 2005

Commissioners:

As a board member and on behalf of LandWatch Lane County I offer the following observations as context for the applications you are considering today.

Contrary to preconceived opinions about LandWatch's motives, our position is that policies and procedures must be lawfully implemented. Our position has always been that unlawful application of policies and procedures used to promote approval of development and/or zone changes and plan amendments is unfair and should be challenged

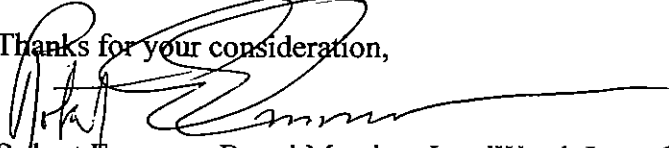
It is not unusual for applicants and applicant's agents to promote themselves as experts in an effort to discount the testimony of advocacy groups and neighbors. But being an expert is one thing, and being lawful is another. While we expect our experts to be lawful in the application of policy and procedures, it is not fair to totally discount the comments of neighbors and advocacy organizations just because the 'experts' declare their position as dominant.

Now, here are a few examples from the past year that do more than suggest that approvals of staff and the Board are being made on some other basis than the applicable criteria according to code, statute and policy.

- In June, 2004, the BCC approved the Grant application (PA 01-5875) requesting a redesignation from 'Agricultural Land' to 'Nonresource' and a concurrent rezone from E-30 to Rural Residential. LandWatch and the Goal One Coalition opposed this request based on the substantive argument that the subject parcel was clearly agricultural land. Although Goal One was well prepared in the presentation of legal arguments about the historic existence of a farm unit, recommendation of approval was nonetheless summarily issued. This decision was subsequently appealed to LUBA, which resulted in a REVERSAL on the farm unit issue.
- In December 2004, with a tentative denial already delivered by the BCC, the agent in the Ogle application (PA 02-5838), withdrew the request for amending the RCP to redesignate and rezone 73.76 acres of land from 'agricultural land/E-40 Exclusive Farm Use, to "Marginal Land/ML Marginal Lands.' Considering that the BCC denial was not what staff was recommending, and considering that the denial may not have been based solely on applicable criteria, the question of why the applicant's agent withdrew the application should not be ignored. The applicant and staff maintained throughout the proceedings that the application complied with all applicable criteria, although opponents pointed out what the deficiencies were. With the applicant so certain about meeting the applicable criteria, why wouldn't he take his case to LUBA, a much more affordable venue than, say, a local appeal of a hearing's official decision?
- Finally, in January of this year, the BCC approved a request to amend the RCP to redesignate land from 'forest' to 'marginal land' and a concurrent rezone from 'F-2/Impacted forest lands' to 'ml/marginal land' (Carver, PA 03-5901). Again, opponents prepared well-documented testimony that pointed to problems associated with the applicant's methodology for establishing productivity of the subject parcel. While opponents' testimony was clear in pointing out the specific problem with the applicant's productivity analysis, little or no consideration was given to the opponent's position. The BCC approval has been appealed to LUBA, and a hearing date is pending.

Two applications before you today (Kronberger and Everett) are requesting approval of a zone change from F-1 to F-2 based on the position that an error in zoning was made in 1984. The most obvious problem with the implementation of the county's Errors and Omissions policy (Goal 2, Policy 27) as the mechanism to rectify these supposed errors in zoning is that staff, and the applicant, have based the inquiry about 'conditions' of F-1 vs. F-2 zoning on the two subject parcels on current conditions, rather than on the conditions that existed in 1984 when the alleged errors were made. This technical point alone supports a recommendation of denial, since clearly an error made in 1984 could not consider what conditions to expect in 2005. Additionally, the more substantive issues related to the F-1 vs. F-2 test clearly show that in fact the Kronberger and Everett applications for rezones from F-1 to F-2 cannot be approved.

Thanks for your consideration,



Robert Emmons, Board Member, LandWatch Lane County
40093 Little Fall Creek Road
Fall Creek, OR 97438

INVESTED 5/30/05
LIST

We were astonished by the way Northwest Lands used Lane County ordinances to maneuver when we purchased 112 of the original 201 acres of Tax Lot 400. They apparently acquired a 26 acre lot I have owned since 1963, and then quit-claim deeded it back to me with the 112 acres attached, so they could say they still had four legal lots. But, we were assured it was all perfectly legal, so we went along in order to at least save the 112 acres as forest land.

That's what ordinary citizens usually do - go along. Developers can afford to hire lawyers who work full time learning the nuances of all the land use laws. They know they stand to make a bundle of money in the process. Meanwhile we, the concerned citizens, spend our own money, and take time from work and family to fight to preserve resource and recreation land such as this. None of us have any hope of recouping a penny, regardless of the outcome. We just do it to maintain better use of the land, and a better quality of life for everyone.

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P.A. NO. 1212

DATE 3/30/05 EXHIBIT NO. 100

Merle S. Brown

Merle S. Brown

RECEIVED AT HEARING

3/30/05 WRG

P.A. NO. 1212

March, 2005

DATE 3/30/05 EXHIBIT NO. 101

Dear County Commissioners,

We strongly resent the fact that our public officials have made land use laws so complex that the average citizen is often forced to acquiesce to whatever the county decides to do. Meanwhile anyone with enough money and the right attorney who has connections to county officials can turn prime resource land into wasteland and develop it as they please.

Last year the people of Oregon and Lane County voted against ill-advised zone changes. This applicant bought the "subject property" with the express intent of changing the zoning on it. Just because he found four previously ignored legal lots, changed their configuration to suit his fancy, and deeded them individually to separate LLCs created for various family members, does not change the fact that he knew the property was F1 forest land. And that it had always previously been owned and managed as a single unit.

Mr. Stewart, you recently won your seat based, at least in part, on your promotion of the concept of sound stewardship of resource land, and on your promise to listen to all of your constituents. We trust you will honor those promises.

Sincerely,
Concerned Dexter area neighbors

Kenneth A Zettle
Sheryl Zettle

Tara King
Kevin Roy

Marvin Zettle
Margaret Zettle

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3/30/05 wa.

P.A. NO. 1212

March, 2005

DATE 3/30/05 EXHIBIT NO. 102

Dear County Commissioners,

We strongly resent the fact that our public officials have made land use laws so complex that the average citizen is often forced to acquiesce to whatever the county decides to do. Meanwhile anyone with enough money and the right attorney who has connections to county officials can turn prime resource land into wasteland and develop it as they please.

Last year the people of Oregon and Lane County voted against ill-advised zone changes. This applicant bought the "subject property" with the express intent of changing the zoning on it. Just because he found four previously ignored legal lots, changed their configuration to suit his fancy, and deeded them individually to separate LLCs created for various family members, does not change the fact that he knew the property was Fl forest land. And that it had always previously been owned and managed as a single unit.

Mr. Stewart, you recently won your seat based, at least in part, on your promotion of the concept of sound stewardship of resource land, and on your promise to listen to all of your constituents. We trust you will honor those promises.

Sincerely,
Concerned Dexter area neighbors

(*Pat & Wilson*)
Steve Wilson
80805 COST CREEK RD
DEXTER OR 97431

Bruce W. Brown
Bruce W. Brown
82753 Rattlesnake Cr. Rd
Dexter, OR. 97431

3/3/05.

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P.A. NO. 1212

DATE 3/30/05 EXHIBIT NO. 103

29 March 2005

Lane County Board of Commissioners
Lane County Courthouse
Eugene, Oregon

Dear County Commissioners;

We encourage you to reject the current request for a change in zoning that would allow development of four lots on Williams Butte, near Dexter: Lots # 4100 and #4200 (19-01-08); as well as #1800 and #401 (19-01-17).

We believe the requested change in land use would unravel the fabric of land-use plans hammered out over many years, constrict the county's supply of valuable natural resources, and compromise the efficiency of public services and facilities.

Sincerely,

 
Ernest G. Niemi and Wanda Kay Niemi

82311 Hanna Road
Dexter, Oregon 97431

3/30/05

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P.A. NO. 1212

DATE 3/30/05 EXHIBIT NO. 104

29 March 2005

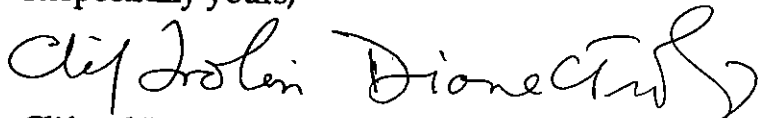
Dear County Commissioners:

We ask that you vote to support the decision of the Lane County Planning Commission rejecting the request for a change in zoning on the following four lots in the Dexter area: #4100 and #4200 (19-01-08); #1800 and #401 (19-01-17). Your Planning Commission recognized that the proposed change in zoning from F-1 and the subsequent development of this land was not in the best interest of Lane County. We agree with their decision and hope that you will as well.

We believe that the requested change in land-use is ill advised in that it will encourage the unraveling of the overall land-use policy of this area, a policy that wisely continues to support private timber production and farming in Lane County. Furthermore, additional development in the Rattlesnake Road area could compromise the safety of this entire area by further stressing its public services and infrastructure: fire protection, road usage and safety, water table levels, to name a few.

Please preserve the integrity of our rural community by voting against the request to change the zoning of this property from its present F-1 status.

Respectfully yours,



Clif and Diane Trolin
82085 Hanna Road
Dexter, OR 97431

3/30/05

RECEIVED AT HEARING

P.A. NO. 1212

March, 2005

DATE 3/30/05 EXHIBIT NO. 105

Dear County Commissioners,

We strongly resent the fact that our public officials have made land use laws so complex that the average citizen is often forced to acquiesce to whatever the county decides to do. Meanwhile anyone with enough money and the right attorney who has connections to county officials can turn prime resource land into wasteland and develop it as they please.

Last year the people of Oregon and Lane County voted against ill-advised zone changes. This applicant bought the "subject property" with the express intent of changing the zoning on it. Just because he found four previously ignored legal lots, changed their configuration to suit his fancy, and deeded them individually to separate LLCs created for various family members, does not change the fact that he knew the property was F1 forest land. And that it had always previously been owned and managed as a single unit.

Mr. Stewart, you recently won your seat based, at least in part, on your promotion of the concept of sound stewardship of resource land, and on your promise to listen to all of your constituents. We trust you will honor those promises.

Sincerely,
Concerned Dexter area neighbors

Karayne Walker
82061 host valley ln
Dexter, OR 97431

3/30/05

29 March 2005

Lane County Board of Commissioners
Lane County Courthouse
Eugene, Oregon

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P.A. NO. 1212

DATE 3/30/05 EXHIBIT NO. 106

Re: Development of Lots #4100 and #4200 (19-01-08) and #1800 and #401 (19-01-17)

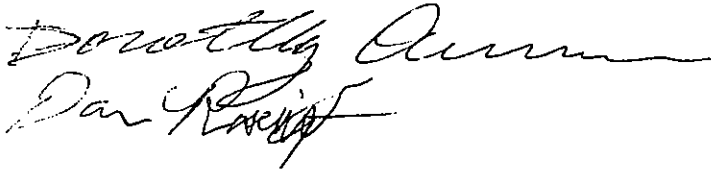
Dear County Commissioners:

As residents of Dexter, we are concerned about the requested change in zoning concerning the four lots on Williams Butte (identified above) in the Dexter area. We understand that the Planning Commission voted against this change and request that you follow their recommendation.

Our concern is that the requested change would strongly and negatively affect infrastructure in this area—fire protection and other public services, traffic, county facilities, the supply of finite natural resources, etc.—and would negatively impact the fundamentals of land-use plans that have been developed over years.

Please reject the requested change in zoning that would allow development on those four lots.

Thank you,



Dan Rosenquist
Dorothy Overman
81284 Lost Creek Rd.
Dexter, OR 97431

3/30/05

82233 Rattlesnake Road
Dexter, OR 97431

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P.A. NO. 1212

DATE 3/30/05 EXHIBIT NO. 107

March 29, 2005

Lane County Board of Commissioners
Lane County Courthouse
Eugene, Oregon

Regarding: the development of Williams Butte Lots #4100 and #4200 (19-01-08)
and #1800 and #401 (19-01-17)

Dear County Commissioners:

We are writing to request that you reject the requested change in zoning that would permit development of the four above-mentioned lots on Williams Butte.

As Dexter neighbors of this property, we are concerned about the impact this development would have on the area—from public services such as fire protection to traffic, county facilities, and the supply of natural resources. We feel an equal concern that this change would damage the basic land use plans developed over many years.

The Planning Commission voted against this change, and we request that you honor and follow their recommendation.

Please reject the requested change in zoning.

Sincerely,

Jane K. Van Dusen
Catherine A Williams
J. Aho
O. Adam

3/30/05

Dexter Rural Fire District

P.O. Box 67
82781 Barbre Rd.
Dexter, Oregon 97431

Ph.: (541) 937-3045
Fax: (541) 937-2296
E-mail; Chief@dexterrfpd.org
Web page: www.dexterrfpd.org
Tax ID. #93 0750161

March 30, 2005

Lane County Board of Commissioners

Re: Ordinance # PA 1212
(PA 04-5276 Kronberger)

RECEIVED AT HEARING
P.A. NO. 1212
DATE 3/30/05 EXHIBIT NO. 108

Commissioners

While the Dexter Rural District is not apposed to development of the rural lands within its District boundaries, we must make sure all parties are aware of the consequences of any development in reference to fire protection/medical response. We receive taxes to protect structures and medical responses only. The Oregon Department of Forestry receives taxes to protect your land and resources.

Our current ISO (Insurance Service Organization) rating is a 7 for those residences living with in 5 miles of a fire station. This is measured via roadway. Anything outside of the 5-mile range will be rated at an 8b with a higher cost for fire insurance. The last residence on the access road into these lots are approximately 4.5 miles from Dexter Station 1 and 5.5 miles from the Pleasant Hill Station 1. Depending on where the residential structures are located on the property 3 for sure possible 4 of them will be out side of the 5-mile marker.

How does this affect the District? It increases our response time in the event of a fire and increases the actual dollar loss. Being in the urban interface this increases the possibility of a fire spreading to adjacent structures or properties. Which in turn increases the owner's liability. One way to reduce this would be to build an additional fire station closer. At this time is not an option due to budgetary restrictions and we actually would not need it if there were no structures on the land. The other way would be for the resident to include sprinklers in the structures, this depends on their insurance company.

Another issue is the access to all the residences on this non-county road. This is the only access and egress for these residences. The possibility of being cut off during a interface fire does exist. Currently the road is barley maintained and the first half-mile has inadequate pullouts for fire apparatus to pass. During a normal winter rain year it has water running across the roadway. With more traffic using the road, the road way will need to be constantly maintained and the possibility of congestion makes for a slower response. This isn't just for fire response but for medical responses also.

It is the intention of the Dexter Fire District to make sure that the developer is aware of these issues up front. Just because we are allowed to redesignate land for structures, doesn't mean it will fit into the current system. It is our concern that after the parcels are sold, that the Dexter Fire District is not put into a defensive position with the landowners. It is our belief that the developer should have the burden of any costs incurred due to the development, not the current taxpayers.

Respectfully

A handwritten signature in black ink that reads "Guy Harshbarger". The signature is written in a cursive style with a large, sweeping "G" and "H".

Guy Harshbarger, Chief
Dexter Fire District

RECEIVED AT HEARING

3/20/05

P.A. NO. 1212

DATE 3/20/05 EXHIBIT NO. 109 March, 2005

Dear County Commissioners,

We strongly resent the fact that our public officials have made land use laws so complex that the average citizen is often forced to acquiesce to whatever the county decides to do. Meanwhile anyone with enough money and the right attorney who has connections to county officials can turn prime resource land into wasteland and develop it as they please.

Last year the people of Oregon and Lane County voted against ill-advised zone changes. This applicant bought the "subject property" with the express intent of changing the zoning on it. Just because he found four previously ignored legal lots, changed their configuration to suit his fancy, and deeded them individually to separate LLCs created for various family members, does not change the fact that he knew the property was F1 forest land. And that it had always previously been owned and managed as a single unit.

Mr. Stewart, you recently won your seat based, at least in part, on your promotion of the concept of sound stewardship of resource land, and on your promise to listen to all of your constituents. We trust you will honor those promises.

Sincerely,
Concerned Dexter area neighbors

Merle S. Brown
Brendolyn D Farnsworth
Robert E. Burton
Howard Rookes
Lisa M. Rookes
Dw. Thompson

3/30/05

RECEIVED AT HEARING

March, 2005

P.A. NO. 1212

DATE 3/30/05 EXHIBIT NO. 110

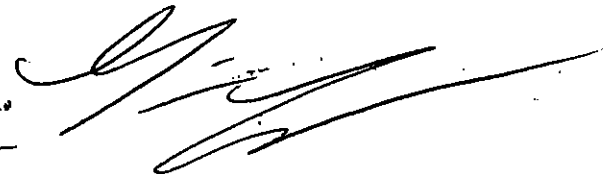
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Sincerely,
Concerned Dexter area neighbors



Gavin Thompson

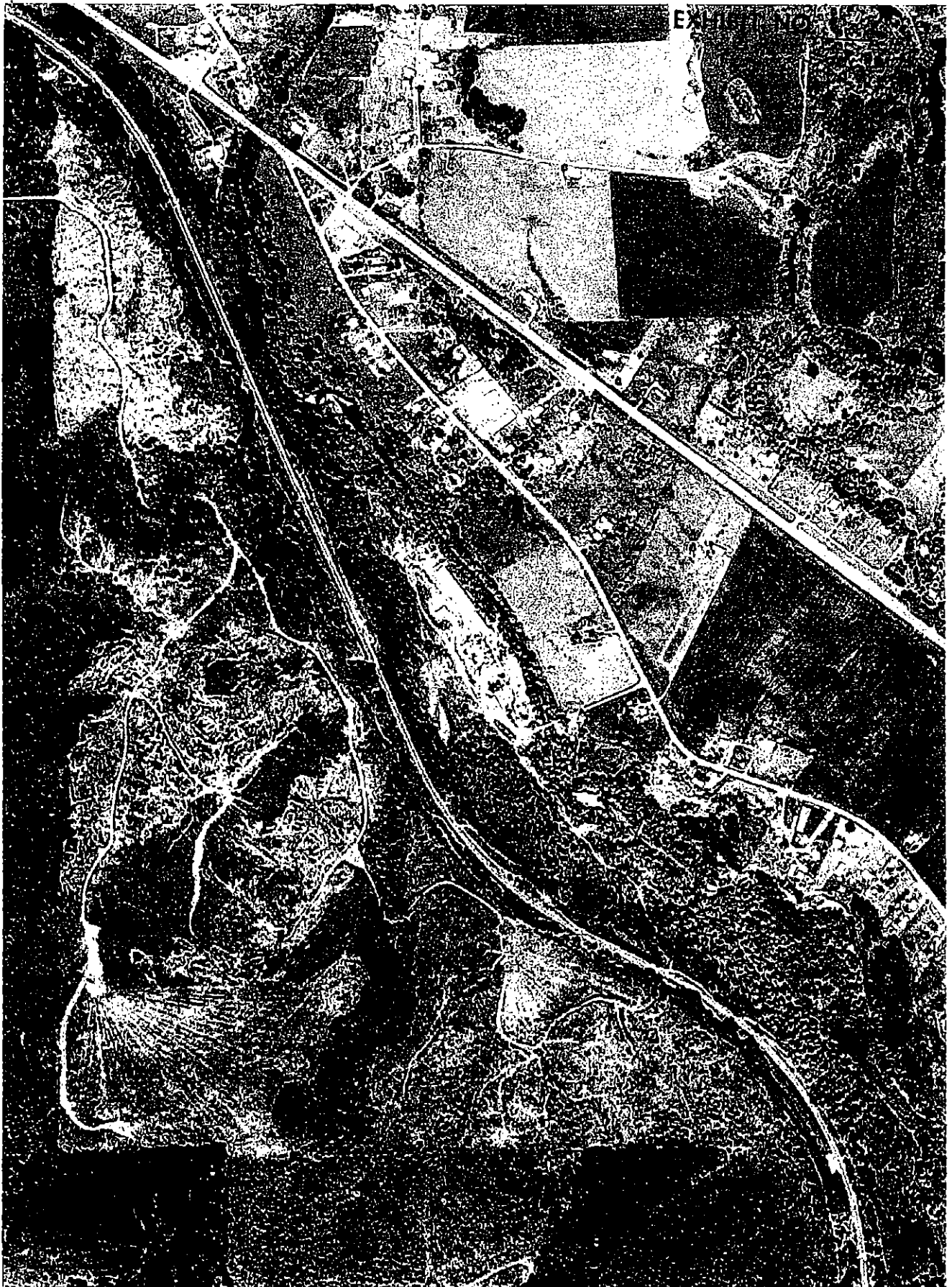
Michelle Thompson
Michelle Thompson

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P.A. NO. 1212

EXHIBIT #

3/20/05
wbr
111

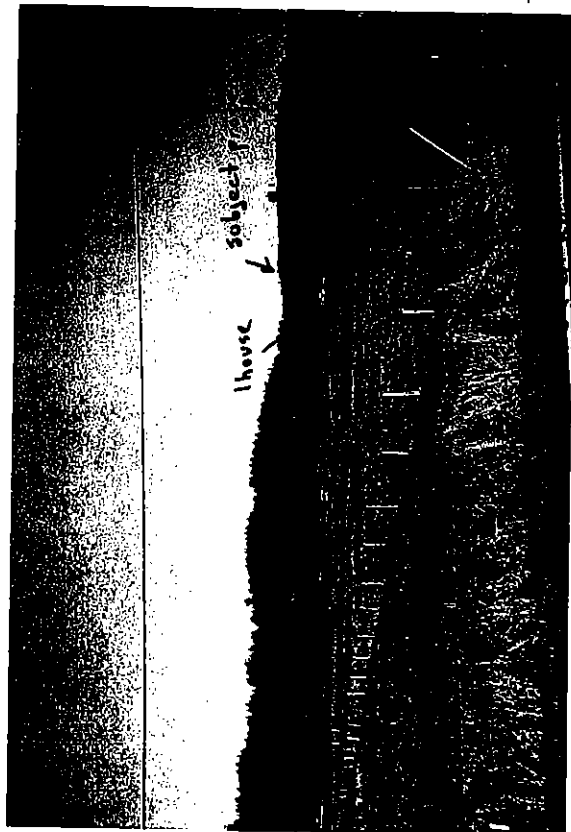


Re. PA1212

3/30/05 WTB



Commercial logging on TL 1500



TL 101 100 acres E-40

Re: PA 1212

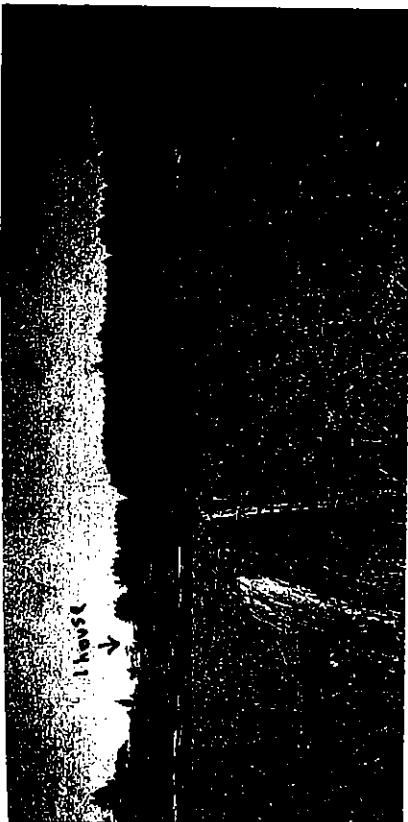
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P.A. NO. 1212

DATE 3/30/05 EXHIBIT NO. 113



Commercial logging on TL 1400 (the original part)



TL 2600 100 acres E-40. One house near the back. They are concerned about their water if more houses are built in the forest behind them

3/30/05
LSP

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P.A. NO. 1212

DATE 3/30/05 EXHIBIT NO. 112



018 017

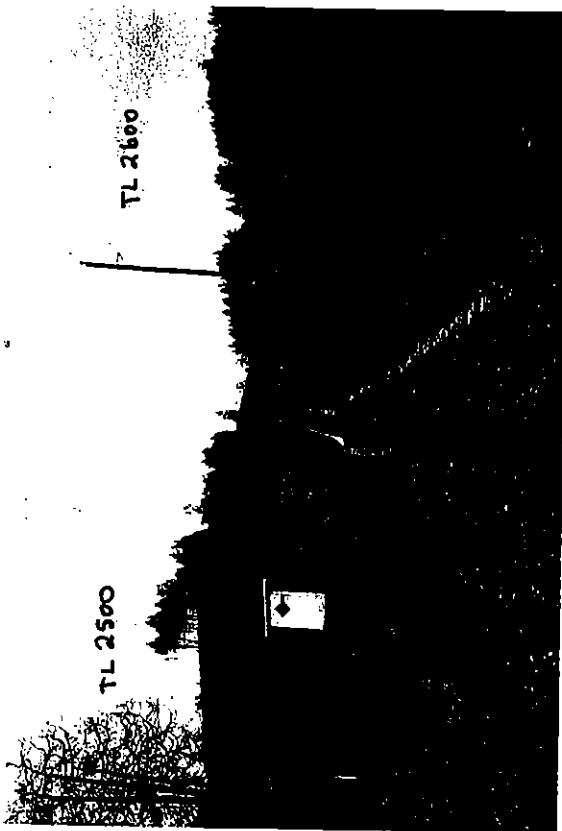


TL 2100 Taken 8 months apart. The trees went grow?

Re: PA1212



TL 2100 - A small woodlot?



TL 2500

TL 2600

The only access to the subject property. If takes off from Rattlesnake Rd. Note the vick crossing where water runs across the road in wet weather.