W.8.a

SUPPLEMENTAL MATERIAL

Fourth Addendum to
Agenda Cover Memo

DATE: April 14, 2004

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

At the conclusion of the public hearing on March 30, 2005, The Board of Commissioners left the record open for submittal of written testimony through April 13, 2005. During that period, five submittals were received from citizens and two submittals from the applicant in response to the testimony heard or submitted during the hearing and post-hearing submittals. The seven "exhibits" are attached and the record is closed.

Third Reading and Deliberations by the Board are scheduled for May 4, 2005.

II. ATTACHMENTS

Exhibit 119.	April 4, 2005	Written testimony dated March 31, 2005: Gwen Farnsworth with 2 attachments (4 pp).
Exhibit 120.	April 4, 2005	Written testimony dated March 2005: Dianne Davis, Sharon Latimer, Jo Dunnick, Judith Danielson, and Lee E. Riley.
Exhibit 121.	April 4 2005	Written testimony – no date: Tommy Wells and William Howe.
Exhibit 122.	April 12, 2005	Written testimony – no date: Merle Brown (1 page) with attachment (3 pages).
Exhibit 123.	April 12, 2005	Written testimony dated April 11, 2005 -- Gwen Farnsworth (5 pages) interspersed with nine attachments in support of statements (11 pages).
Exhibit 124.	April 13, 2005	Applicant's cover letter: Al Couper (agent) to LMD Sage.
Exhibit 125.	April 13, 2005	Applicant's Response to New Material (3/30/05 – 4/13/05) (8 pages).

1212
EXHIBIT 119 (4pp)

March 31, 2005

REC'D APR 04 2005

Lane County Commissioners:

There have been many errors submitted into the record in this case, including one I made on exhibit 112, moving some lot numbers one lot north. So, for the record, here are the facts: (Acreages are approximate because they appear different on different documents.)

The Warren family purchased property in the Dexter area in 1954. It included land on both sides of the railroad, with a house and mill on the east side, and a deeded railroad crossing to the 226 acres on the west side. The entire property was accessed from the old Willamette Hwy. (Dexter Rd.). The roads created on the property by and for logging activities were substantially the same as shown on exhibit 111 except that they ended at the borders of the Warrens' property. In the 1970s Warrens deeded their railroad crossing back to Southern Pacific, cutting off all legal access to the property west of the tracks. Erosion and vegetation reduced the dirt roads so that by 1984 they were little more than trails used mostly by local horseback riders. Warrens purchased 64.5 acre lot 190107-2400 in 1974 in order to have access to their timber property, but did not put the road in from Rattlesnake until 1992.

Since before 1980 there has been no access to any property on Rattlesnake Rd. from the Dexter side of the railroad tracks, so the inevitable parcelization and development of Hwy. 58 and Dexter Rd. are irrelevant to this case. Properties on south Rattlesnake are almost entirely larger acreages devoted to farm and forest uses, unlike the small residential lots on Dexter Rd.

In July 1992 Warrens sold their timber land to Dexter Forest Fibre. The $93,750 purchase price included the 226 acres west of the railroad as well as about 50 acres east of the tracks, but not the farm land with house and other buildings, which was sold a year later to a separate family. The entire timber tract was logged in 1993-94 by Willamette Valley Chip and Log Sales, which along with Dexter Forest Fibre, was controlled by Fred McCulloch Jr. (now deceased) and Wade Doak. The tract was reforested in 1995 and sold to Northwest Lands (Kronberger) in March 2000 for $362,500 (approx. $1313/acre). Again, the price included all 276 acres on both sides of the railroad.

Late in 2000 Northwest Lands shifted ownership of some of the property to Pat Kronberger. A legal lot verification was performed on former lot 400 in early 2001, resulting in four lots on that parcel. Lots 190108-2100 and -2202 were already separate tax lots, zoned F2 because Warrens appealed their designation as F1 in 1984. Since they did not appeal tax lot 400 it remained F1. Sixteen acre lot 2202 was sold late in 2000 for $153,500 (approx. $9605/acre) as a house lot. The 9.5 acre lot 2100 was sold this year for $154,750 (approx. $16306/acre), also as a house lot.

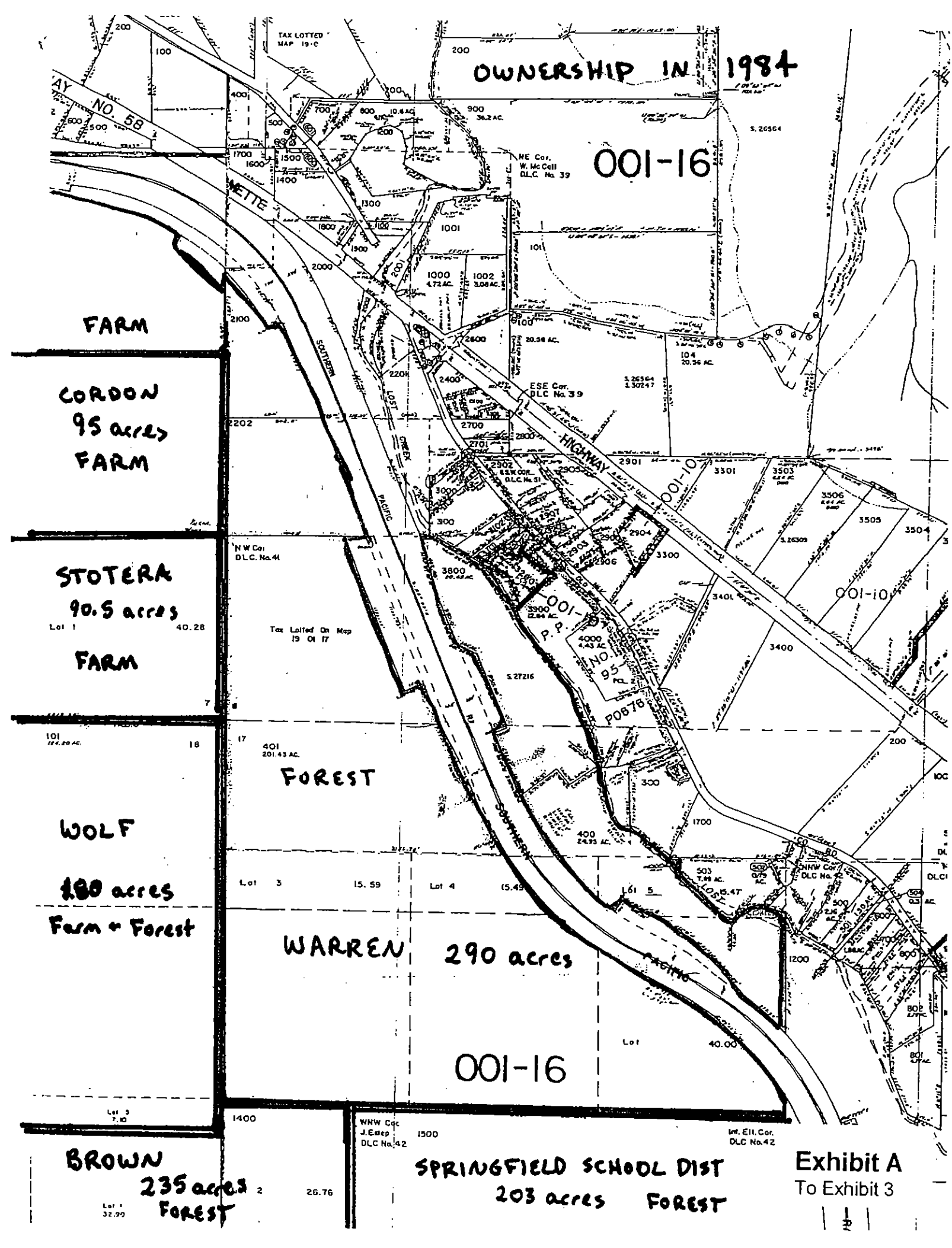
In 2002, Browns' offer to buy a portion of the 201 acre tax lot 401 led to Kronbergers doing a complex series of lot line adjustments. 112 acres of the southern portion of lot 401 was added to lot 1400, already owned by Brown, for $195,825 ($1750/acre). The remaining portion of lot 401 became the "subject property."

This application was originally filed in March 2004, but it wasn't until 7/28/04 that the new lots were deeded to separate LLCs as part of Kronbergers' "estate planning." Regardless of the initials appearing on the deeds, the entire subject property still belongs to the Kronberger family.

Respectfully submitted,

Gwen Farnsworth

Gwen Farnsworth
82747 Rattlesnake Rd.
Dexter OR 97431


OWNERSHIP IN 1984
001-16
FARM
CORDON
95 acres
FARM
STOTERA
90.5 acres
FARM
WOLF
180 acres
Farm + Forest
FOREST
WARREN 290 acres
001-16
BROWN
235 acres
FOREST
SPRINGFIELD SCHOOL DIST
203 acres FOREST
Exhibit A
To Exhibit 3

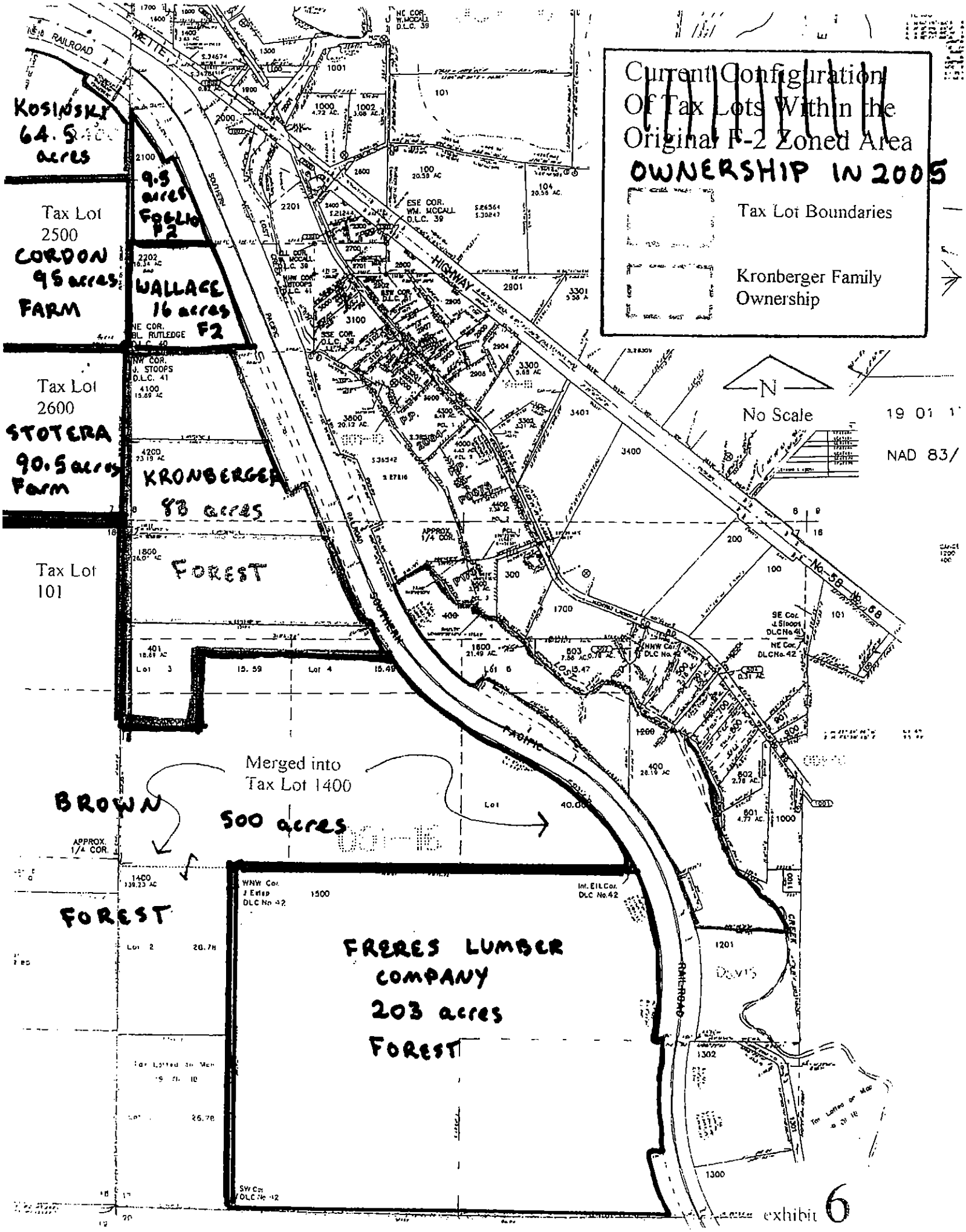

Current Configuration
Of Tax Lots Within the
Original F-2 Zoned Area
OWNERSHIP IN 2005
Tax Lot Boundaries
Kronberger Family
Ownership
N
No Scale
NAD 83/
KOSINSKI
64.5 acres
Tax Lot
2500
9.5
acres
FOGLIO
F2
CORDON
95 acres
FARM
WALLACE
16 acres
F2
Tax Lot
2600
STOTERA
90.5 acres
Farm
KRONBERGER
98 acres
Tax Lot
101
FOREST
Merged into
Tax Lot 1400
BROWN
500 acres
FOREST
FRERES LUMBER
COMPANY
203 acres
FOREST
exhibit 6

EXHIBIT # 1212
EXHIBIT # 120

March, 2005

REC'D APR 04 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

Dianne Davis

Sharon Fatemi

JO Dunnick

Judith Davidson

Lee E. Riley

FILE # PA 1212
EXHIBIT # 121

REC'D APR 04 2005

Dear Lane County Board of Commissioners,

I am writing as a concerned landowner and neighbor to the parcels under consideration for rezoning per Ordinance No. PA 1212.
I feel it is a travesty and a insult to all of us average citizens who must follow land use laws that are so complex they are mind boggling and to allow changes to those laws for any one with a high powered attorney and deep pockets to have those same laws that govern us changed to suit their needs. The properties in question (tax lots 4100 and 4200 on Lane County Assessor's Map 19-01-08 and lots 1800 and 401 on County Assessor's Map 19-01-17) were purchased with the sole intent to have the zoning changed for the purpose of development.
The applicant purchased the above properties, changed their configuration and deeded them individually to separate LLCs created for family members does not change the fact that the property was knowingly purchased as F1 forest land and had always previously been owned and managed as a single unit.
Commissioner Stewart, your seat was one based in part on your promotion of the concept of sound stewardship of our land resources and on your promise to listen to ALL of your constituents. I trust you to be an honorable elected official and will adhere to those promises.

Sincerely,

Tammy Wells

William Howe

William Howe

April 12, 2005

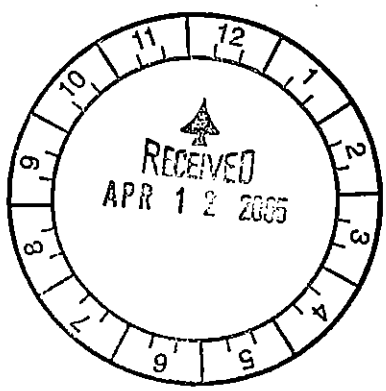
FILE # PA 1212
EXHIBIT # 122

Dear Commissioners:

At the March 30 hearing Mr. Couper said I lied in my statement: "They apparently acquired a 26 acre lot I have owned since 1963...." If they hadn't acquired it first, how could they have quitclaimed it back to me, as the attached deed states? But, as I said in the same statement, my lawyer assured me that it was legal. Even Mr. Couper will admit that the applicant could not have adjusted the lines as he did without using my property.

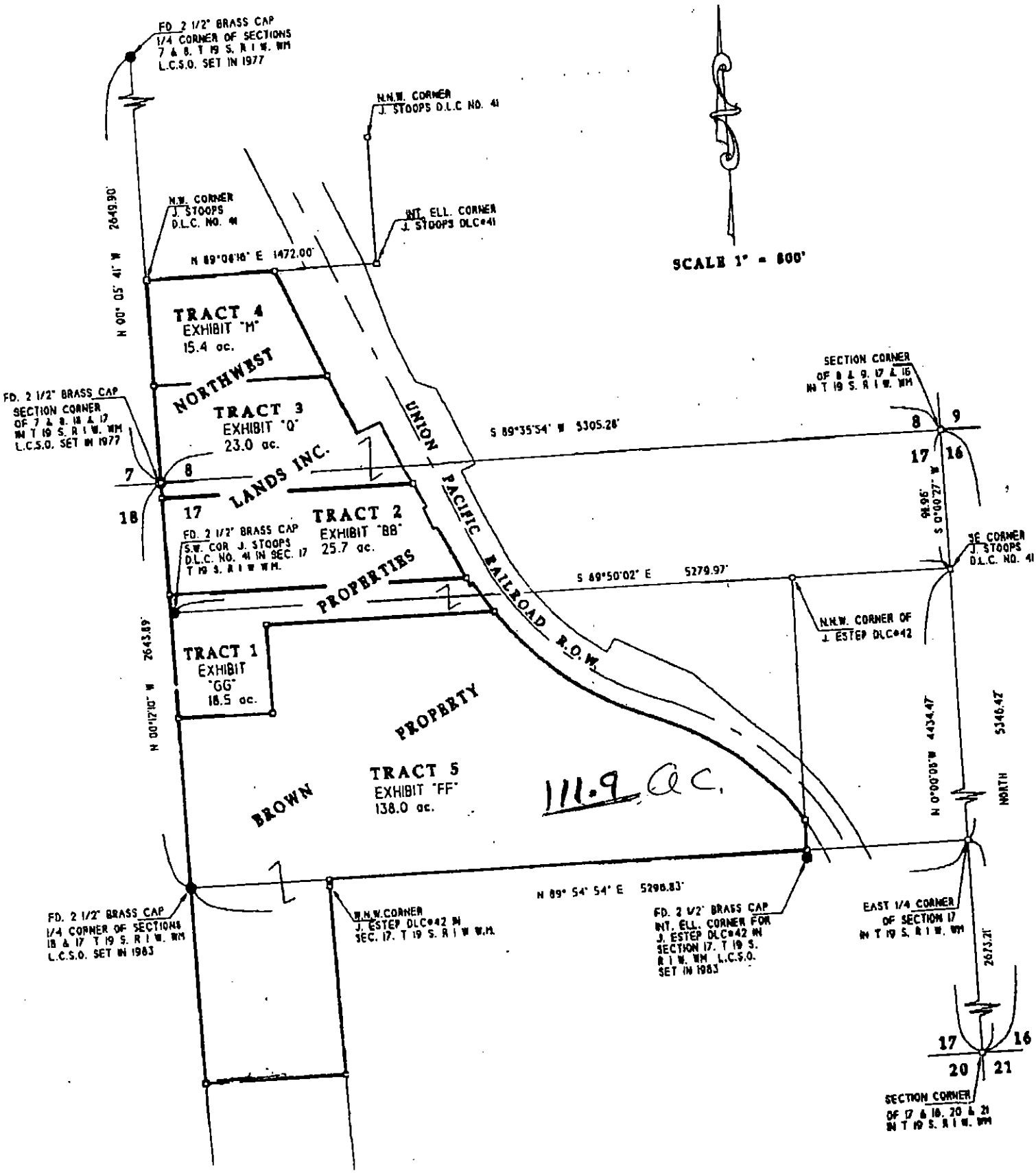
The record also implies throughout that I initiated the lot line adjustments. Nothing could be further from the truth. I never even knew such a thing was possible until it was all done. All my wife and I did was offer to buy all or part of "the Warren property."

Merle S. Brown



" EXHIBIT HH "

FINAL PROPERTY CONFIGURATION



A

190103/WPT/50-15633
part of 19 01 17 00 00401
TA#1484474
part of 19 01 17 00 01400
TA#819241

30
10
11

Division of Chief Deputy Clerk
Lane County Deeds and Records

2003-000996

$151.00

00376058200300009960260269

01/06/2003 10:32:49 AM

RPR-DEED Cnt=1 Stn=6 CASHIER 05
$130.00 $11.00 $10.00

PROPERTY LINE ADJUSTMENT DEED

WHEREAS: Northwest Lands Inc., an Oregon corporation (NORTHWEST) is the owner of a tract of real property located in the Northwest 1/4 of Section 17 and the Southwest 1/4 of Section 8 all in Township 19 South, Range 1 West of the Willamette Meridian and being shown on Assessor's Map No. 19-01-17 as Tax Lot No. 401

WHEREAS: Merle S. Brown (BROWN) is the owner of a tract of real property located in the Southwest 1/4 of Section 17 in Township 19 South, Range 1 West of the Willamette Meridian and being shown on Assessor's Map No. 19-01-17 as Tax Lot No. 1400

WHEREAS: NORTHWEST acquired title to their property under that certain warranty deed recorded April 14, 2000, Instrument No. 2000021329 of the Lane County Oregon Deed Records. The legal description of the subject property is described as Parcel III of the aforementioned warranty deed.

WHEREAS: Parcel III of the aforementioned warranty deed was found to contain four separate legal lots under Lane County Planning Action No.00-6492 through No. 00-6495 and are referred to herein as Tract1, Tract 2, Tract 3 and Tract 4

The legal description for the **Tract 1** property prior to this property line adjustment is contained in a Bargain and Sale deed recorded December 6, 1887 in Book T, Page 350 of the Lane County Oregon Deed and Records Office

The legal description for the **Tract 2** property prior to this property line adjustment is contained in a Bargain and Sale deed recorded February 17, 1903 in Book 56, Page 221 of the Lane County Oregon Deed and Records Office

The legal description for the **Tract 3** property prior to this property line adjustment is contained in a Warranty deed recorded February 4, 1903 in Book 56, Page 221 of the Lane County Oregon Deed and Records Office

The legal description for the **Tract 4** property prior to this property line adjustment is contained in a Warranty deed recorded February 3, 1896 in Book 41, Page 3 of the Lane County Oregon Deed and Records Office

DECLARATION OF PROPERTY LINE ADJUSTMENT

Northwest Lands Inc., 37012 Wheeler Road, Pleasant Hill, OR 97455 (Grantor)
Merle S. Brown 82747 Rattlesnake Creek Road, Dexter, OR 97431 (Grantee)
After recording return to: Western Pioneer Tittle, Cottage Grove, OR 97424
Until a change is requested, mail all tax statements to: no change
CONSIDERATION: OTHER CONSIDERATION OR VALUE GIVEN

Exhibit C
To Exhibit 3

After Recording Return To
Western Pioneer Title Co.
PO Box 10146
Eugene, OR 97440

WHEREAS: BROWN acquired title to their property under that certain warranty deed recorded August 11, 1972 Reception No. 13178 and is referred to herein as Tract 5.

The legal description of the Tract 5 property prior to this adjustment is as follows:

Lot 2 of Section 17, Township 19 South, Range 1 West of the Willamette Meridian

An illustration of the boundaries of Tracts 1-5 prior to this property line adjustment is shown on attached "Exhibit A"

WHEREAS: NORTHWEST and BROWN wish to adjust the common boundaries between these five tracts to create a more usable configuration of the individual tracts and still maintain the legal lot status of the individual tracts.

THEREFORE: By and through this instrument NORTHWEST and BROWN agree to adjust the common boundaries of Tracts 1-5 in an eight (8) step process as outlined herein to comply with Lane County Land Use Regulations and the provisions of OR 92.190(4). To accomplish the property line adjustment NORTHWEST quitclaim and releases all rights to that certain property lying south of that certain line described on attached Exhibit "EE" to BROWN.

STEP 1: Involving the common property line between the original boundaries of Tract 1 as described in the aforementioned instrument and the original boundaries of Tract 2 as described in the aforementioned instrument. An illustration of the property line adjustment appears on Exhibit "B" contained herein.

The legal description of the adjusted property line is shown on attached Exhibit "C". Following this property line adjustment, the legal description for the revised boundaries of Tract 1 is shown on the attached Exhibit "D". Following this lot line adjustment, the legal description for the revised boundaries of Tract 2 is shown on the attached Exhibit "E".

STEP 2: Involving the common property line between the revised boundaries of Tract 2 as described on attached Exhibit "E" and the original boundaries of Tract 5 as described herein. An illustration of the property line adjustment appears on Exhibit "F" contained herein.

The legal description of the adjusted property line is shown on attached Exhibit "G". Following this property line adjustment, the legal description for the revised boundaries of Tract 1 is shown on the attached Exhibit "I". Following this lot line adjustment, the legal description for the revised boundaries of Tract 5 is shown on the attached Exhibit "H".

STEP 3: Involving the common property line between the original boundaries of Tract 3 as described in the aforementioned instrument and the original boundaries of Tract 4 as described in the aforementioned instrument. An illustration of the property line adjustment appears on Exhibit "J" contained herein.

The legal description of the adjusted property line is shown on attached Exhibit "K". Following this property line adjustment, the legal description for the revised boundaries of Tract 3 is shown on the attached Exhibit "L". Following this lot line adjustment, the legal description for the revised boundary and final configuration of Tract 4 is shown on the attached Exhibit "M".

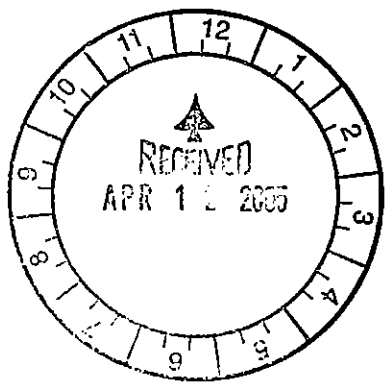
Lane County Board of Commissioners

April 11, 2005

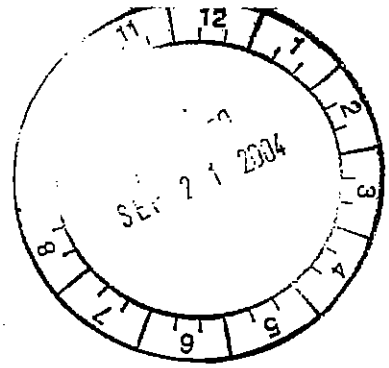
RE: PA 04-5276, Ord. No. 1212 - Kronberger

Commissioners:

Staff erred in suggesting that he caused confusion at the October 5 Planning Commission work session. The applicant's final rebuttal dated September 21, 2004 clearly implied he was giving up on Goal 2 Policy 27.a.ii.-failure to recognize legal lots in 1984. Staff so stated to the commission several times. Applicant made a case for being heard under Policy 27.a.vii. instead. That is, until that tack also failed to bring the result he desired. In fact, staff has been very lenient in letting this applicant bring any and all arguments regardless of their relevance to the original application.



Al Cooper & Associates
PROFESSIONAL LAND PLANNING
2258 Harris Street
Eugene, OR 97405
541/484-7314 (office & fax)
couplan@ordata.com



Lane County Planning Commission
c/o Bill Sage
Lane County Land Management Division
Courthouse/PSB
125 East 8th Avenue
Eugene, OR 97401

FILE # PA 04-5276
EXHIBIT # 47

September 21, 2004

RE: Applicant's Final Rebuttal (PA 04-5276, Ord. No. 1211 – Kronberger)

Dear Mr. Sage:

Please accept this as the applicant's final rebuttal in response to certain new information placed in the record on August 19th and September 2nd of this year.[1]

Some of that new information is related to an issue concerning whether the Kronberger application is properly before the Planning Commission. That issue consists of an argument that the Kronberger case did not qualify under an "Errors or Omissions" criteria dealing with whether there were actual legal lots in existence in 1984 that were not displayed on the maps used by staff to designate property as either F-1 or F-2 in 1984.[2]

That argument has evolved into a complex, technical analysis of state and local laws dealing with the definitions of "tract" and "legal lot," and raising questions regarding the interaction of state and local laws and the interface between real estate transaction law and land use law.

Before going further, the applicant wishes to make a key point: However interesting that argument is, it is irrelevant to the fundamental question of whether the Kronberger application can be heard under "Errors or Omissions." The reason is simple: the Kronberger application qualifies fully under another "Errors or Omissions" criteria.

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[1] For a list, see your e-mail to all parties of September 8, 2004.

[2] That particular criteria is found at RCP Goal Two, Policy 27. a. ii. It states: "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."

That criterion is found at RCP Goal Two, Policy 27. a. vii. It states:

> *"a. Circumstances qualifying for consideration by the Board of Commissioners under the Errors or Omission Policy may include one or more of the following:*
>
> ". . .
>
> *"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."*

Substantial evidence in the record fully supports compliance with this criterion. In summary, the evidence is as follows.

The subject property was originally zoned F-2 by Ordinance No. PA 884, effective February 29, 1984. Figure 1 on Exhibit A to this statement describes that area. It consisted of three tax lots – 400, 1400 and 1600.

A later ordinance (PA 891, enacted September 12, 1984) contains conflicting maps and text. The ordinance text states as follows:

> *"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.'"*

Exhibit "C," to PA 891 is a typed list of specific list of tax lots rezoned by the ordinance. Under the category of F-1 to F-2, it lists tax lots 1400 and 1600, but not tax lot 400. The text, including Exhibit "C," is directly inconsistent with the eventual Official Zoning Map, which indicates F-1 zoning for all three tax lots. Figure 2 on Exhibit A to this statement shows the area to be rezoned to F-1 as "further delineated" by Exhibit "C" to Ordinance PA 891.

The map exhibit to Ordinance PA 891, upon which the Official Zoning Map was based, portrays the same area as originally zoned F-2 by Ordinance No. PA 884. That is the area shown in Figure 1 on Exhibit A to this statement. Thus, the text and map are inconsistent in a way that can only be resolved by action of the Planning Commission and Board.

In summary, it must be emphasized that there are many routes into the Errors or Omissions process. The application in this case discussed three of them, including the "failure to display actual legal lots" route.[3] Recent information regarding County law has made that route problematical. It is not necessary for Planning Commission use that route for, however, for consideration of this application. It is enough to simply recognize the inconsistency between the ordinance text and map as set forth above.

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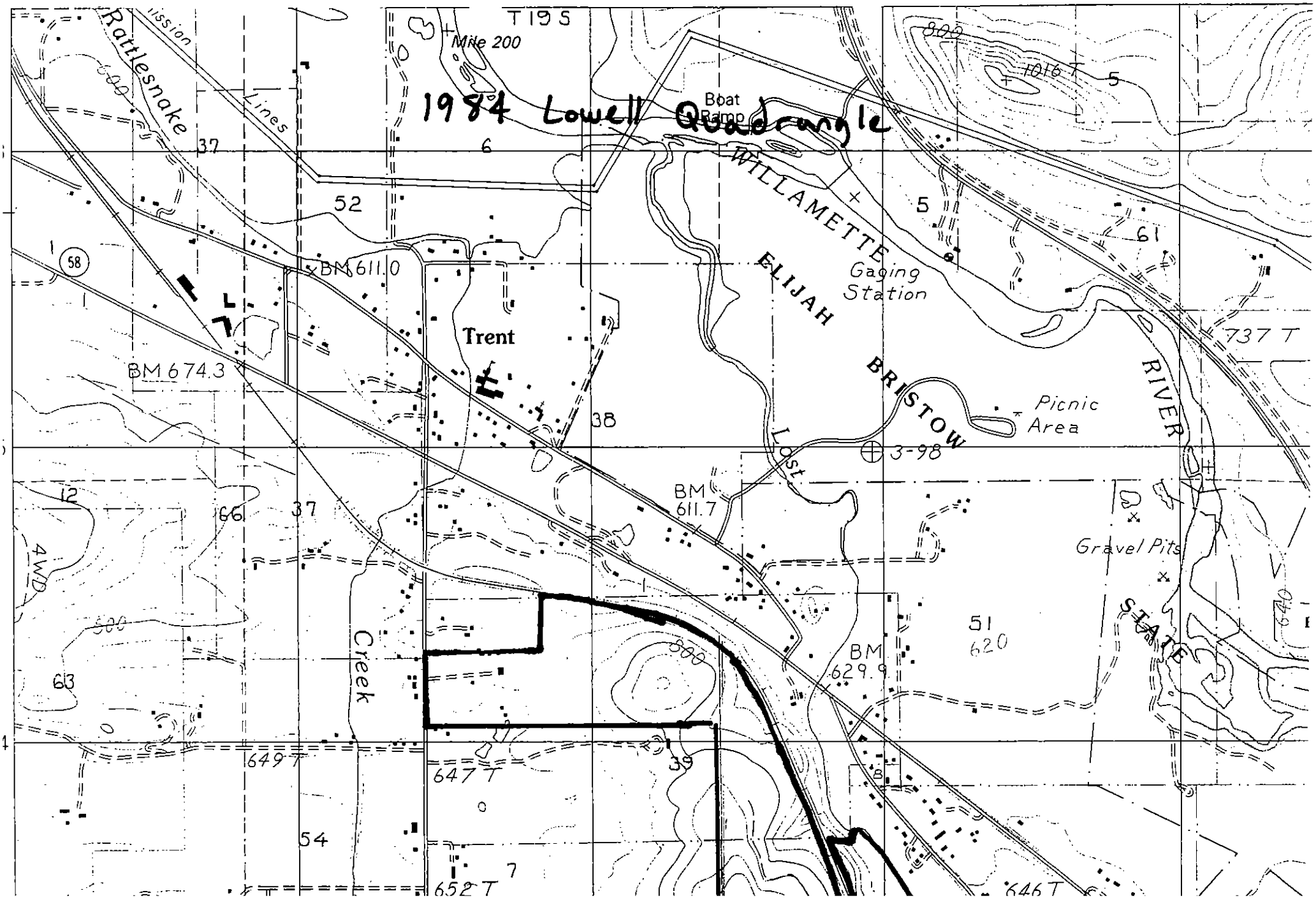
[3] In addition to the "inconsistency between the text of an ordinance and the Official Zoning Map" and "failure to display actual legal lots," the application discussed the "catchall" criteria of Policy 27. a. viii, which allows the Planning Commission a recommendation to the Board of Commissioners for reasons not set forth in the specific list of Policy 27. a. i.-vii.

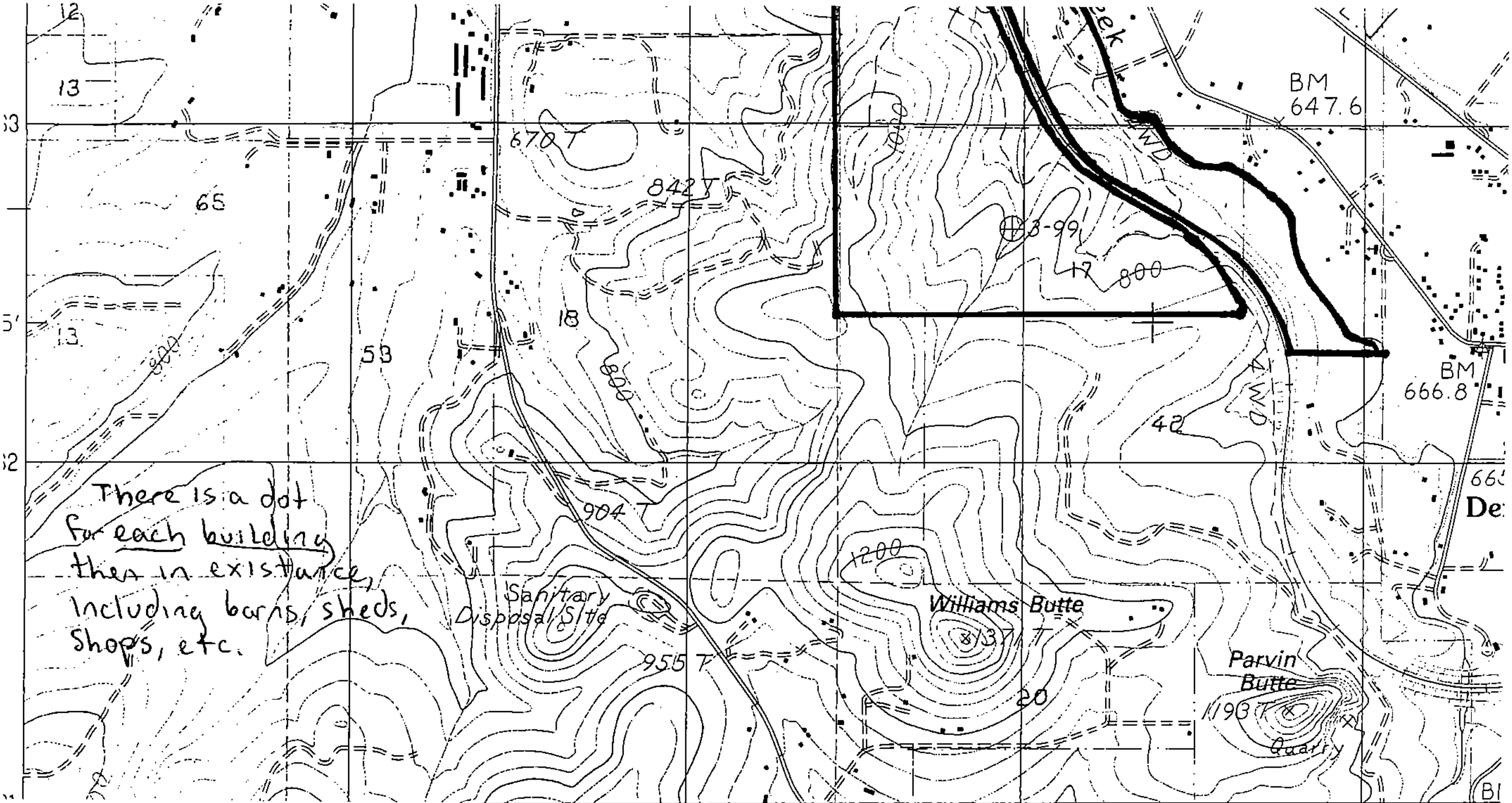
Jim Just made errors in the acreages on exhibit 94 dated March 28, 2005, but the substance of his arguments is correct. The subject property was part of one tax lot in one even larger ownership in 1984. It was entirely forested and had no residences or non-forest uses. The entire Rattlesnake Creek area was cut over in the 1940s. Neighboring tax lot 19 01 18 101 was commercially harvested and replanted in the early 1980s. Portions of tax lot 19 01 17 1500 were commercially cut and replanted in the 1970s and 1980s, and the rest is being cleared right now. All of tax lot 19 01 17 401 including the subject property, was clear-cut and replanted in the mid 1990s. Former tax lot 19 01 17 1400 and adjoining property have been commercially thinned approximately every three to five years since the mid 1970s. Commercial management is decided by the owner, not dictated by the zoning so each operation has been different, from one or two people with chain saws and a bulldozer, to a logging crew with a giant tree-mowing machine and a "deliminator;" from clearing brush with a machete, to large brush-cutters or aerial spraying. The entire area, except that currently being cut, has been certified at 200 trees per acre, and the trees are growing quite well in most cases. Fortunately they don't read soil analyses.

In 1984 the subject property was part of a contiguous ownership of over 300 acres. It was contiguous to other ownerships all also substantially over 80 acres, and the railroad. Today the only contiguous ownership smaller than 80 acres is 16 acre tax lot 19 01 08 2202 which borders the subject property on the north. It was sold by Kronbergers to another family in November 2000. The subject property is itself still over 80 acres. At the time of this application it was all deeded to Kronbergers' company Northwest Lands. Now, in spite of various initials on various deeds created in July 2004, it still, admittedly, belongs entirely to the Kronberger family.

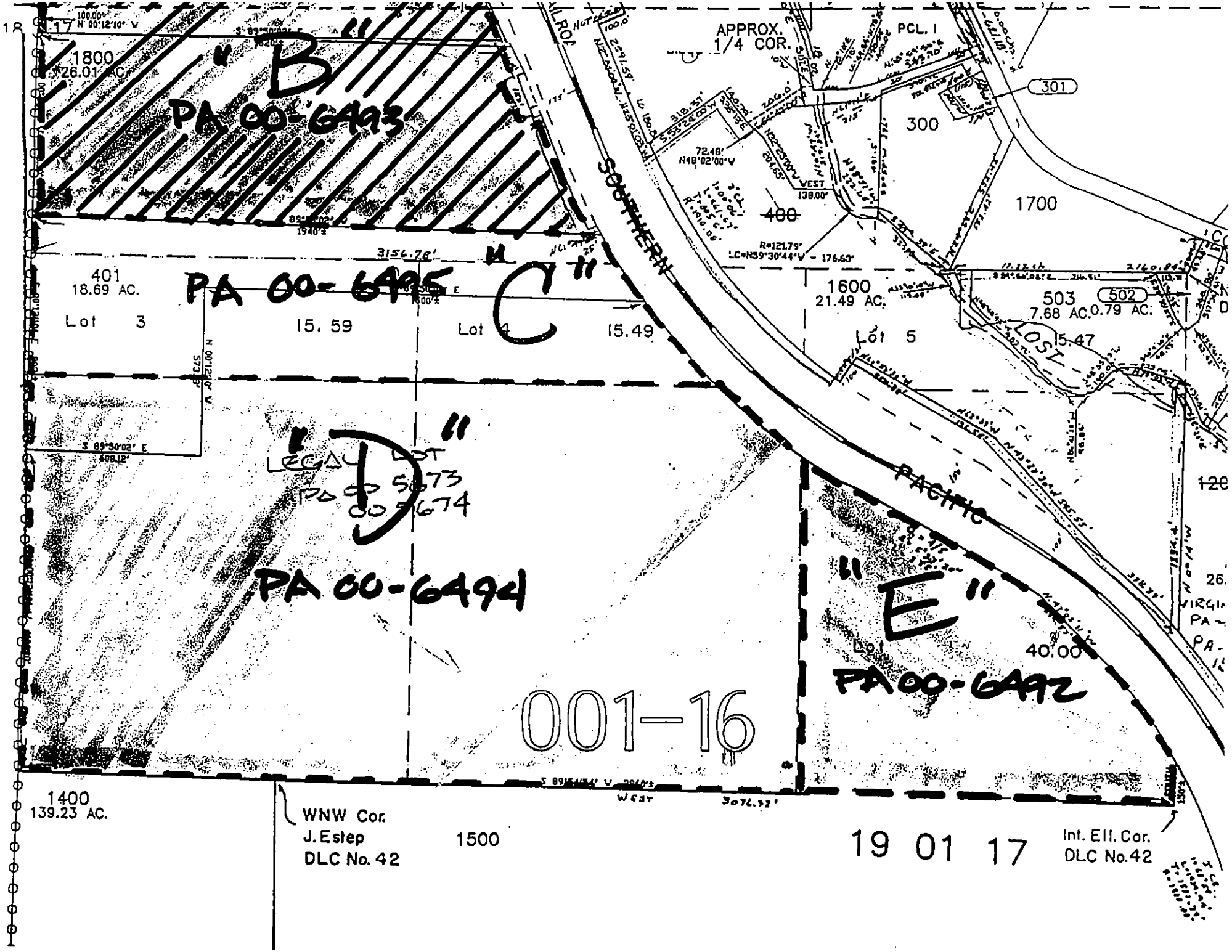
All of the ownerships contiguous to the subject property are utilized for commercial farm or commercial forestry purposes, as they were in 1984. The railroad cuts the subject property off completely from the residences on Dexter Rd., which are not relevant to this application. Far from being an "island of F-1 in a sea of rural residential, commercial, and industrial zoning," the subject property is part of well over 400 contiguous acres of F-1 land. In fact the "island" contains over 800 acres in forestry deferral and over 300 acres in farm deferral. It is separated from large swaths of other F-1 land only by a few residential lots along Rattlesnake Rd.

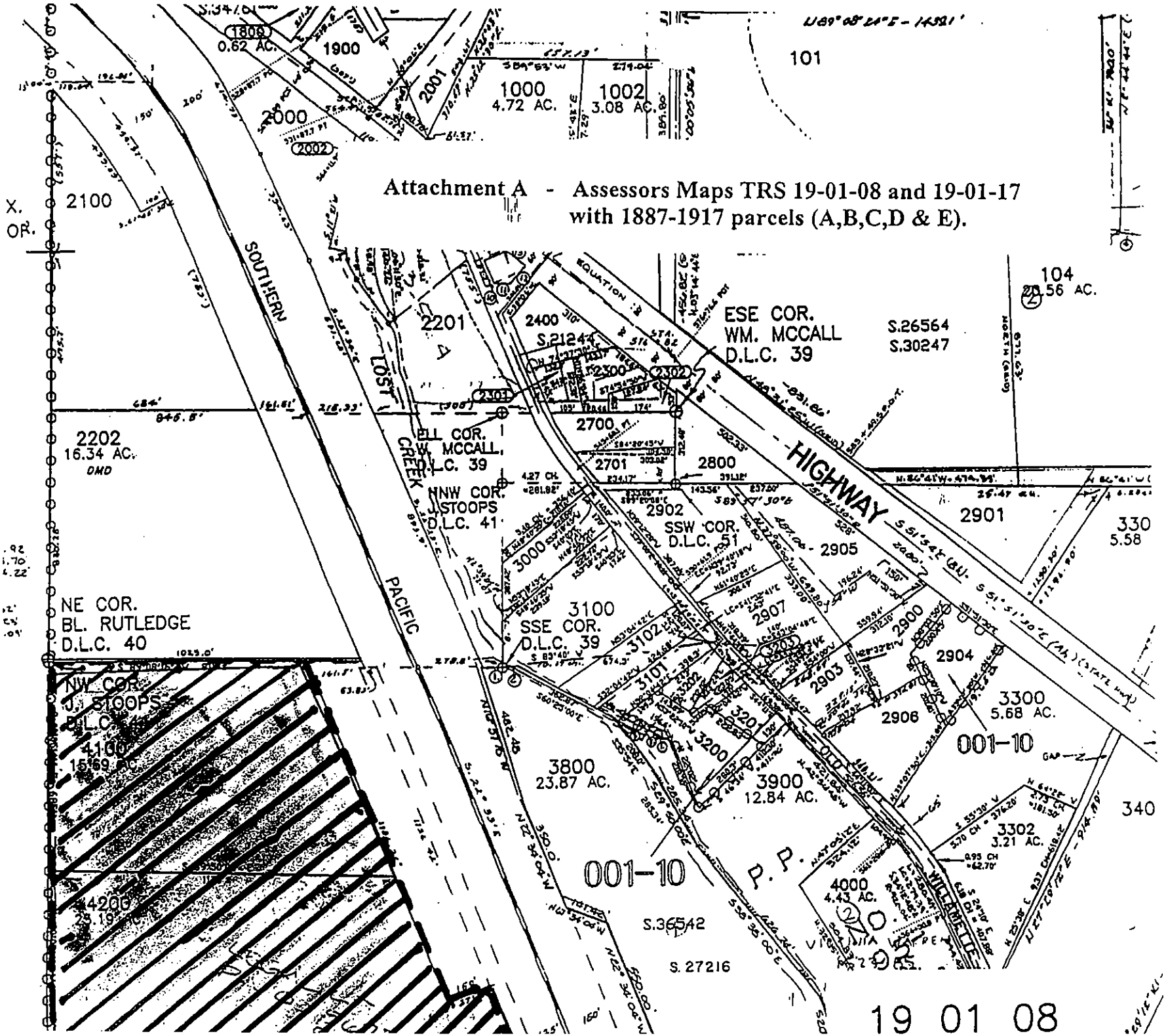
In 1984 the subject property was not accessed by any roads at all. Its owners had acquired additional acreage fronting on Rattlesnake Creek Rd. so they could access it if they chose. The fact that they did not choose to drive motorized vehicles on their property does not imply that they were not managing it as a commercial forest. In 1992 an easement was conveyed, and a road built, for the purpose of logging the subject property. Kronbergers declared a 60 foot easement over pioneered roadways to serve all of their property west of the railroad in 2001. However the road in from Rattlesnake Rd. to their property line remains over half a mile of 30 foot wide easement, with a requirement for two gates or cattle guards.


1984 Lowell Quadrangle
T19S
Mile 200
Boat Ramp
Rattlesnake
Lines
WILLAMETTE
Gaging Station
ELIJAH
BRISTOW
RIVER
Trent
BM 611.0
BM 674.3
BM 611.7
BM 629.9
Picnic Area
3-98
Gravel Pits
STATE
Creek
4WD
58
1016 T
737 T
649 T
647 T
652 T
646 T
620


BM
647.6
BM
666.8
Williams Butte
Parvin
Butte
Quarry
Sanitary
Disposal Site
670
842
904
955
800
1200
17
18
42
20
53
65
13
3-99
4WD
There is a dot
for each building
then in existance,
Including barns, sheds,
Shops, etc.

1986


"B"
PA 00-6493
"C"
PA 00-6495
"D"
LEGAL LOT
PA 00-6494
"E"
PA 00-6492
001-16
1800
26.01 AC.
401
18.69 AC.
Lot 3
15.59
Lot 4
15.49
1600
21.49 AC.
Lot 5
15.47
503
7.68 AC.
502
0.79 AC.
300
1700
400
APPROX.
1/4 COR.
PCL. 1
301
SOUTHERN PACIFIC
LOST
1400
139.23 AC.
1500
WNW Cor.
J. Estep
DLC No. 42
19 01 17
Int. Ell. Cor.
DLC No. 42


Attachment A - Assessors Maps TRS 19-01-08 and 19-01-17
with 1887-1917 parcels (A,B,C,D & E).
SOUTHERN PACIFIC
LOST CREEK
HIGHWAY
ESE COR. WM. MCCALL D.L.C. 39
S.26564
S.30247
NE COR. BL. RUTLEDGE D.L.C. 40
NW COR. J. STOOPS D.L.C. 41
NNW COR. J.STOOPS D.L.C. 41
SSW COR. D.L.C. 51
SSE COR. D.L.C. 39
ELL COR. W. MCCALL D.L.C. 39
2202 16.34 AC.
3800 23.87 AC.
3900 12.84 AC.
3300 5.68 AC.
3302 3.21 AC.
4000 4.43 AC.
1000 4.72 AC.
1002 3.08 AC.
001-10
S.36542
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Easement
Rattlesnake

2400 19-1-7

3100 2302 19-1-8

400 19-1-17

30-
10-
20-

FILE # PA 91-5276
EXHIBIT # QS-A

JUL 24 1992

WPTCO 100786/50-65911.5

9241358

CONVEYANCE OF ROADWAY EASEMENT

KNOW ALL MEN BY THESE PRESENTS, for a valuable consideration the receipt of which is hereby acknowledged, VIRGINIA M. WARREN (Grantor) does hereby grant, bargain, sell and convey unto WILLAMETTE VALLEY CHIP & LOG SALES, INC, an Oregon corporation, (Grantee) a perpetual non-exclusive easement and right-of-way for ingress and egress and road purposes (roadway) to be used in common with Grantor, her successors and assigns of the Servient Estate, over and across the following described Servient Estate: 4727JUL.24'92#01REC 30.00

A strip of land, 30.0 feet wide, being the southerly 30.0 feet of that certain tract of land conveyed to Michael E. Warren and Virginia M. Warren, husband and wife, by warranty deed, recorded on Reel 1657, Reception No. 9047886, Lane County Oregon Deed Records, said strip of land being more particularly described as follows: 4727JUL.24'92#01PFUND 10.00

over 2400

BEGINNING at a point which is South 1376.10 from the Northwest corner of the William McCall Donation Claim No. 39, in Township 19 South, Range 1 West of the Willamette Meridian, said beginning point being the southwest corner of said Warren tract, thence East 3309.90 feet along the south line of said Warren tract to the southeast corner of said Warren tract; thence North 30.00 feet along the east line of said Warren tract; thence West 3309.90 feet parallel with the south line of said Warren tract; thence South 30.00 feet to the point of beginning, all in Lane County, Oregon. 4727JUL.24'92#01A&T FUND 20.00

The Roadway Easement and rights and privileges herein granted are for the full use and purposes above stated by the Grantee, its licensees, permittees, and successors and assigns for the benefit of the Dominant Estate described on Schedule A, attached hereto, consisting of parcels I, II and III, to which this Easement is and shall be appurtenant and shall run with the title thereto:

Grantor, for herself and her successors and assigns, by her execution hereof, and Grantee, by its acceptance and recordation of this Easement, for itself and its successors and assigns, hereby agree as follows:

1. Grantee, its successors and assigns, shall construct a road at whatever road grade, foundation and surface is desired by Grantee.

2. After construction of the road, Grantee, its successors and assigns, shall continuously maintain the roadway in reasonable condition and repair.

3. The roadway shall not be blocked or otherwise obstructed by any persons entitled to the use thereof, except as reasonably necessary in the immediate act of using the roadway for vehicular travel and for maintenance and repair.

9241358

4. Grantee shall continuously maintain and replace, as reasonably needed, a metal gate and cattle guard sufficient to restrain cattle at the west terminus of the roadway at the junction with Rattlesnake Road, Lane County Road No. 1331.

5. Grantee shall construct and continuously maintain a metal gate sufficient to restrain cattle at a point 250 feet east from the point of beginning of the roadway at the junction with Rattlesnake Road. This gate shall be closed at all times, except when temporarily opened for vehicular passage whenever Grantor, her successors and assigns, are running cattle, livestock or other farm animals adjacent to the roadway on the south side thereof.

TO HAVE AND TO HOLD this Easement and roadway unto the Grantee, its permittees, licensees, heirs and assigns forever.

Grantor covenants and warrants that she is lawfully seized and possessed of the land described in the Easement herein granted, and has the full right, power and authority to execute this conveyance, and that she will defend the title to the Easement conveyed hereby and quiet enjoyment hereof against all claims and demands of all persons whomsoever.

The true consideration for this conveyance is other value.

Dated this 24 day of July, 1992.

Virginia M. Warren
VIRGINIA M. WARREN

State of Oregon)
) ss.
County of Lane)

Personally appeared the above-named Virginia M. Warren and acknowledged the foregoing instrument to be her voluntary act and deed. Before me this 24 day of July, 1992.

Linda L. Schmale
Notary Public for Oregon
My Commission Expires: _____

OFFICIAL SEAL
LINDA L. SCHMALE
NOTARY PUBLIC-OREGON
COMMISSION NO. 010485
MY COMMISSION EXPIRES JUL 01, 1994

If an error was made in the zoning in 1984, it was in not zoning more of the surrounding commercial forest property F-1. As the Planning Commission unanimously decided on October 5, 2004, there was no error on the working zone maps. They commented that they had often had to correct text, and almost never had to correct maps. Warrens could have appealed the zoning of tax lot 401 in 1984, as they did on lots 2100 and 2202, if they had perceived an error. Since they didn't, we must assume that they knew F-1 was the correct zoning, and had no plans to have it otherwise.

All of the above criteria prove that the subject property was obviously F-1 in 1984, and remains so today.

In response to a question from Mr. Dignam regarding the reason why the same checklist was not being used, Mr. Sage said the applicant had made a case for both sides. He added that in the final rebuttal there was a desire to use the "mapping error" criteria policy.

Mr. Dignam clarified that it was staff's intent that the matter be evaluated under the discrepancydiscrepancy between map and text policy.

Mr. Herbert commented that the staff recommendation was going against the policy discussion in the first hour of the meeting. He said the error was made in the text & should properly remain F1.

Mr. Becker said he was also convinced that the land should remain zoned F1.

Mr. Carmichael said, in this instance, there appears to have been an intent to dupe the commission. He said any rational person could see that F1 was what the land should be appropriately zoned. He said the property should stay F1, but noted that there should be a process for the applicant to return in the future.

Mr. Dignam asked what data Mr. Herbert's comments were based on.

Mr. Herbert called attention to "Figure 1" of the map. He said "Figure 2" showed that tax lot 400 had not been included in that. He said if the sole criteria was to decide whether the map or the code text was wrong, then he thought it was a text error.

In response to the comments made by Mr. Carmichael, Mr. Herbert said planning consultants had to advocate for their clients within the context of the law. He said he had to look at the spirit of the intent at the time of the zoning.

Mr. Dignam said he was inclined to support the map under the approach taken by Mr. Herbert. He said he found several aspects of the application that could in the future lead him to support changing the zoning to F2 but not under the criteria used for the decision that evening.

> Mr. Dignam, seconded by Mr. Herbert, moved to forward a recommendation to the Board of County Commissioners for denial of a conformity determination amendment to the Rural Comprehensive General Plan Policies - Goal 2, Policy 27(a)(vii) to redesignate 82.6 acres from non impacted Forest land (f-1, RCP) to Impacted Forest Land (F-2 RCP) for a portion of the parcel identified on the Lane County Assessor's Map 19-01-17 as tax lot 401.
>
> The motion passed unanimously.

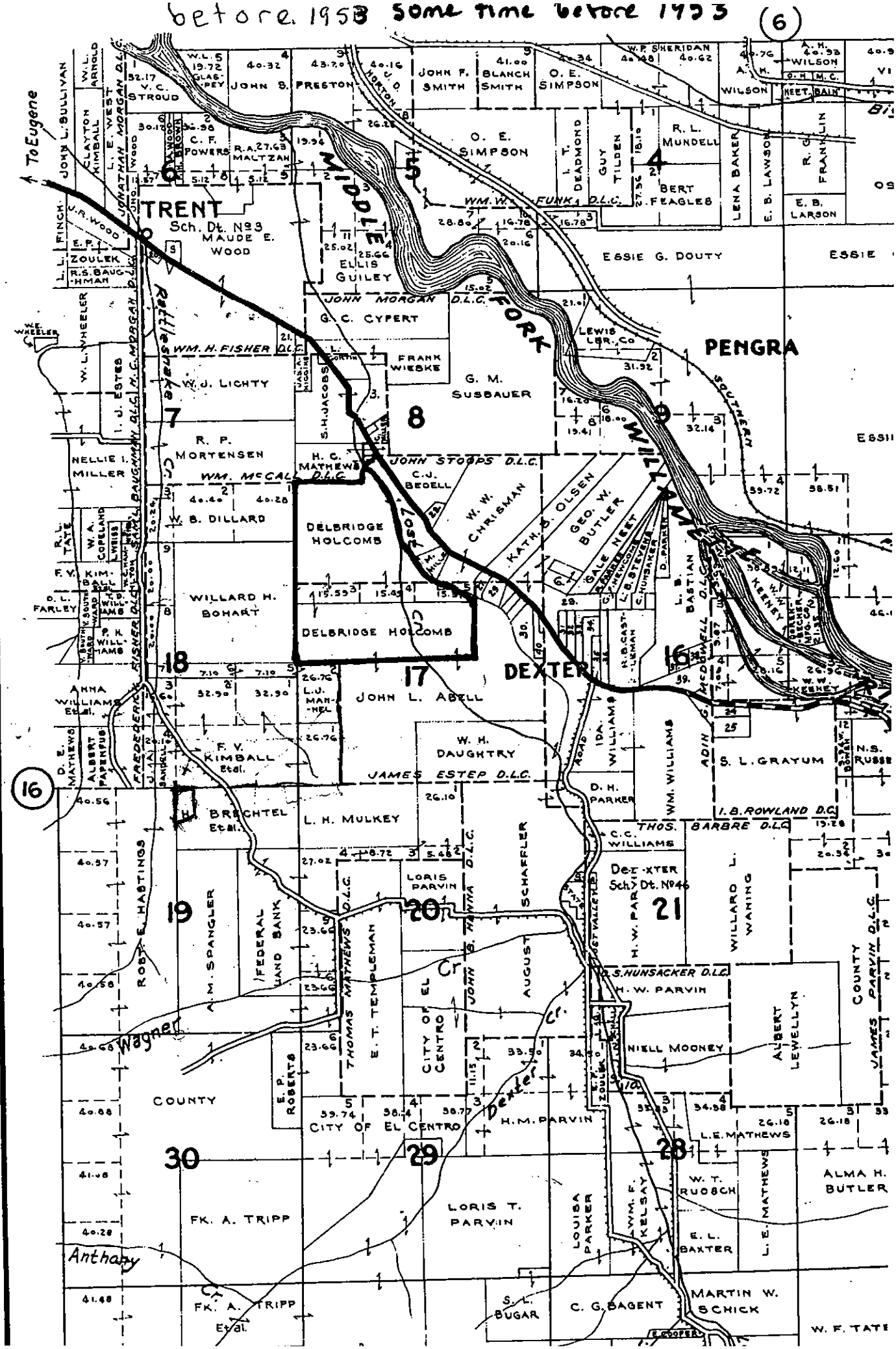
Planning Director Howe said a joint meeting with the Board of County Commissioners was scheduled for November 9 at 5:30 pm. He said Region 2050 would be the topic. He said it would be a dinner work session.

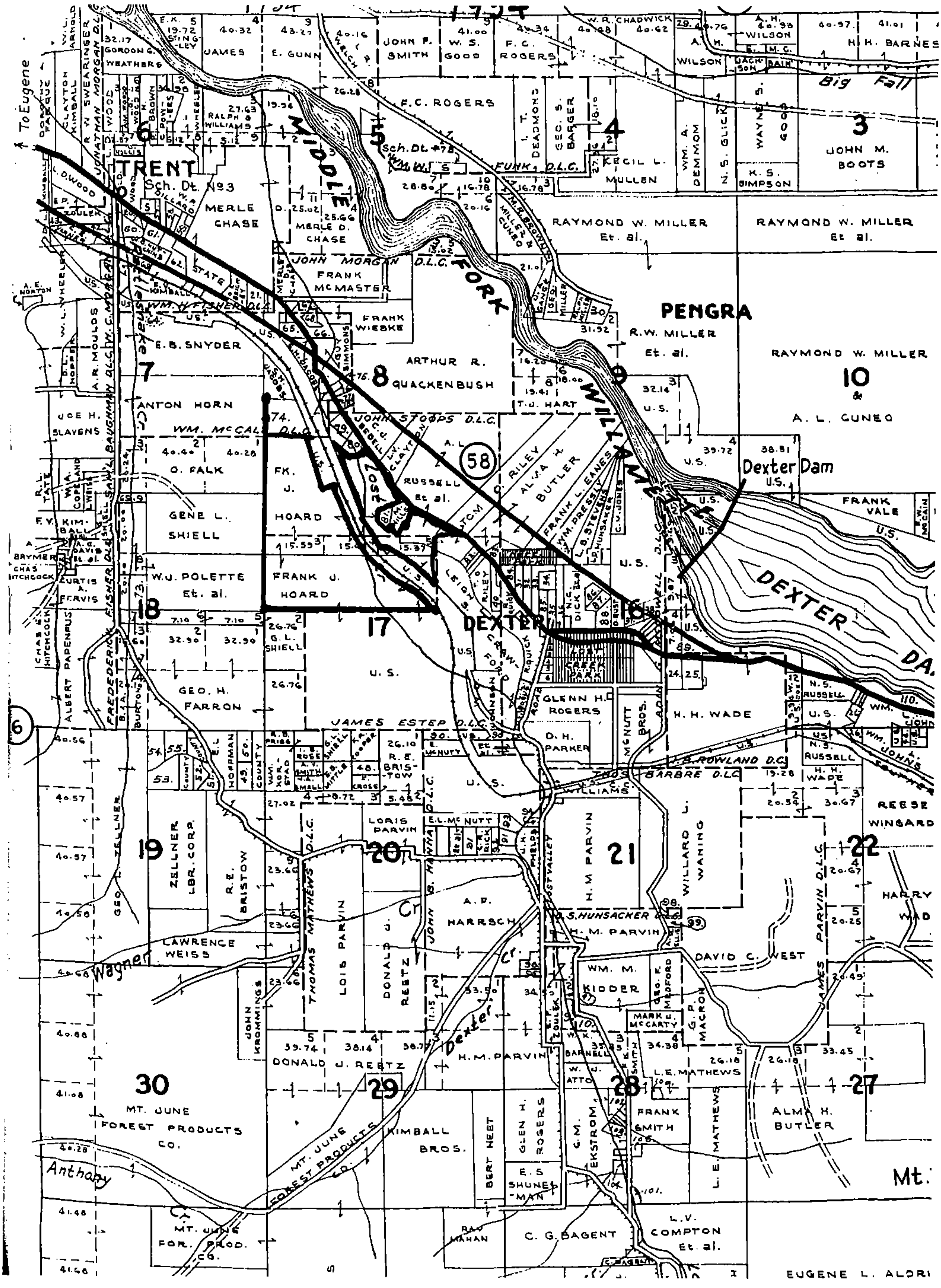
The meeting adjourned at 7 pm.

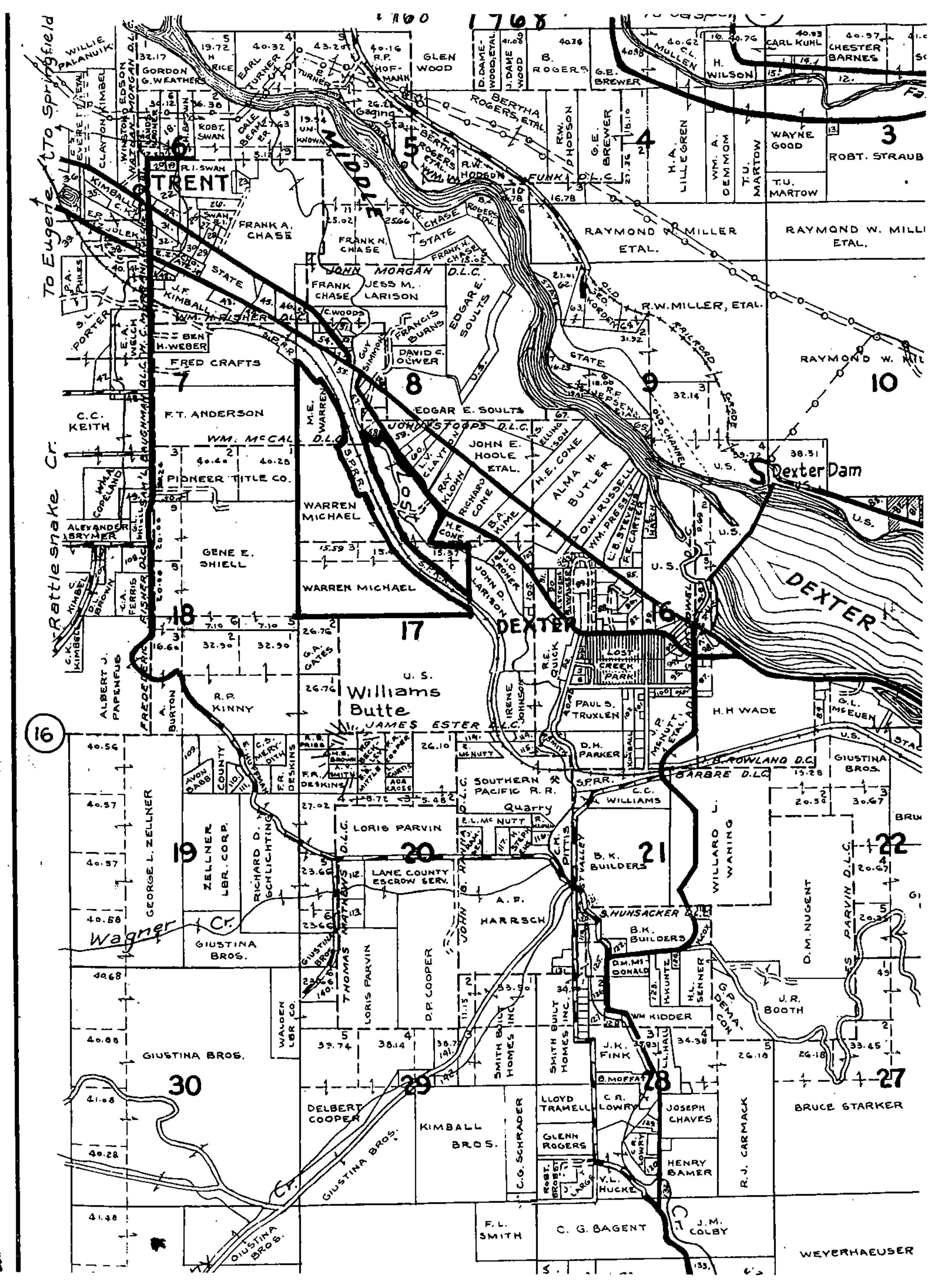
(Recorded by Joe Sams)
C:\User\lcpc031007.wpd

Applicant is correct in noting that F-2 is also a forest zoning. If he and his family wanted to live on his 83 acres to better manage the growing forest it would make some sense. However, he and Lane County have found four historic lots claimed to be 26+ to 78+ acres in size. Actually "lot E" on his assessors map was a 40 acre square until split by the railroad in the mid 1950s, and "lot C" was lots 3, 4, and 5 totaling 46.5 acres when they were sold as one parcel in 1902. The old maps do show tax lot 401 divided into four parts, but not as shown on the tax lot verification. Newer maps seem to show seven divisions. Regardless, all of the lots were under one ownership in one tax lot from at least 1950 until January 2003, and none of them ever contained a permanent building. To say that now means applicant should be able to put a house on each of his new (however legally they were created) lots of 16 to 26 acres is beyond all logic.

before 1958 some time before 1973




To Eugene
TRENT
Sch. Dt. No 3
MERLE CHASE
MERLE D. CHASE
JOHN MORGAN D.L.C.
FRANK McMASTER
FRANK WIESKE
ARTHUR R. QUACKENBUSH
E. B. SNYDER
ANTON HORN
JOE H. SLAVENS
WM. McCALL D.L.C.
JOHN STOOPS D.L.C.
O. FALK
FK. J. HOARD
FRANK J. HOARD
GENE L. SHIELL
W. J. POLETTE Et. al.
F. Y. KIMBALL
A. BRYMER
CHAS HITCHCOCK
CURTIS A. FERVIS
ALBERT PAPENFUS
FREDERICK FISHER D.L.C.
WM. W. FISHER D.L.A.
GEO. H. FARRON
JAMES ESTEP D.L.C.
MIDDLE FORK
WILLAMETTE
DEXTER
Dexter Dam
DEXTER DAM
PENGRA
R. W. MILLER Et. al.
RAYMOND W. MILLER Et. al.
RAYMOND W. MILLER
A. L. CUNEO
FRANK VALE
H. H. WADE
GLENN H. ROGERS
D. H. PARKER
LOST CREEK PARK
JOHN M. BOOTS
KECIL L. MULLEN
K. S. SIMPSON
F. C. ROGERS
JOHN F. SMITH
W. S. GOOD
A. H. WILSON
H. H. BARNES
Big Fall
Sch. Dt. #72
FUNK D.L.C.
E. GUNN
JAMES
GORDON G. WEATHERS
RALPH & WILLIAMS
T. J. HART
RUSSELL Et. al.
ALVA H. BUTLER
58
ZELLNER LBR. CORP.
R. E. BRISTOW
GEO. L. ZELLNER
LAWRENCE WEISS
Wagner
THOMAS MATHEWS D.L.C.
LOIS PARVIN
LORIS PARVIN
DONALD J. REETZ
JOHN B. HANNA D.L.C.
A. P. HARRSCH
H. M. PARVIN
WILLARD L. WANING
THOS BARBRE D.L.C.
J. B. ROWLAND D.C.
REESE WINGARD
HARRY WADE
DAVID C. WEST
JAMES PARVIN D.L.C.
WM. M. KIDDER
J. S. HUNSACKER D.L.C.
JOHN KROMMINGS
Dexter Cr.
MT. JUNE FOREST PRODUCTS CO.
MT. JUNE FOR. PROD. CO.
KIMBALL BROS.
BERT HEET
GLEN I. ROGERS
E. S. SHUNESMAN
G. M. EKSTROM
FRANK SMITH
L. E. MATHEWS
ALMA H. BUTLER
C. G. BAGENT
L. V. COMPTON Et. al.
Anthony Cr.
EUGENE L. ALDRI
6 5 4 3 7 8 9 10 18 17 16 19 20 21 22 30 29 28 27



To Springfield
To Eugene
TRENT
DEXTER
Dexter Dam
Williams Butte
Rattlesnake Cr.
Wagner Cr.
Lost Creek Park
Southern Pacific R.R. Quarry
S.P.R.R.
Old Railroad Grade
Old Channel
Glen Wood
Raymond W. Miller Etal.
R.W. Miller, Etal.
Robt. Straub
Wayne Good
T.U. Martow
Frank A. Chase
Frank N. Chase
John Morgan D.L.C.
Jess M. Larison
Edgar E. Soults
Francis Burns
David C. Olwer
Fred Crafts
F.T. Anderson
C.C. Keith
Wm. McCall D.L.C.
Pioneer Title Co.
Warren Michael
Gene E. Shiell
Alexander Bryner
Albert J. Papenfus
R.P. Kinny
U.S.
James Ester D.L.C.
John E. Hoole Etal.
Alma H. Butler
H.E. Cone
Paul S. Truxlen
H.H. Wade
D.H. Parker
C.C. Williams
B.K. Builders
Willard Waning
D.M. Nugent
Parvin D.L.C.
Giustina Bros.
George L. Zellner
Zellner Lbr. Corp.
Loris Parvin
Lane County Escrow Serv.
A.P. Harrsch
D.P. Cooper
Thomas Mathews
Walden Lbr. Co.
Smith Built Homes Inc.
J.R. Booth
Wm Kidder
Bruce Starker
Delbert Cooper
Kimball Bros.
C.G. Schrader
Lloyd Tramell
Glenn Rogers
Joseph Chaves
Henry Bamer
R.J. Carmack
F.L. Smith
C.G. Bagent
J.M. Colby
Weyerhaeuser
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My husband and I get 16 property tax bills every year. Some are "his," some are "hers," and some are "ours," but we have one forest. We manage it ourselves with the help of a hired forester, his wife, and their 450C John Deere. We can't imagine how we could better manage it by splitting it into 16 pieces. That is why Goal 4 wisely refers to "ownerships" rather than "tax lots." The fact that applicant purposely split his 80+ acres into four lots proves that he never intended to manage it primarily as timber land. If the "forest-related dwellings" on lots 2100 and 2202 are any indication, 20 acres of the 80 will be taken out of timber production. Even if the house sites are on the most marginal land, they still do not fit the Goal 4 policy of conserving forest lands and promoting economically efficient forest practices.

Commissioner Green, you asked why I oppose this application. The land use ordinances and policies repeatedly mention a common sense approach to the rules, and state that they "shall not be contrary to the public interest." You would be hard put to find anyone in this neighborhood who is not concerned about more traffic on already busy Rattlesnake Rd.; more children in already overburdened Pleasant Hill schools; the impact of more wells on our already tenuous water supply, or more septic systems on land that "shows inability to infiltrate and resultant large surface runoff;" more vandalism because of increased access to forest areas; or, most especially, increased risk of fire because of more people and their activities in an area that is not readily accessible to fire fighters.

This application goes against the spirit as well as the letter of Oregon's and Lane County's zoning laws.

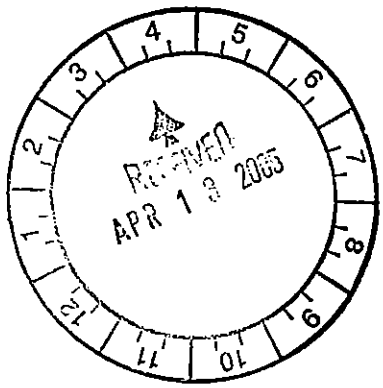
Sincerely,

Gwen Farnsworth

Gwen Farnsworth
82747 Rattlesnake Creek Rd.
Dexter, OR 97431

Al Couper & Associates
PROFESSIONAL LAND PLANNING
2258 Harris Street
Eugene, OR 97405
541/484-7314 (office & fax)
couplan@ordata.com

FILE # PA 1212
EXHIBIT # 124



April 13, 2005

Bill Sage, Associate Planner
Lane Co. Land Mgt. Division
Courthouse/PSB
125 East 8th Avenue
Eugene, OR 97401

RE: Kronberger Conformity Determination (File # PA 04-5276, Ord. # PA 1212)

Dear Bill,

Enclosed is the Applicant's response to new material submitted as part of the Board of Commissioner's hearing of March 30, 2005.

Again, the Kronberger family and I thank you for your careful handling of what turned out to be a complex case.

Very truly yours,

Al Couper

cc: Darren Kronberger

Before the Lane County Board of County Commissioners

Kronberger Conformity Determination (Ord. No. PA 1212)
APPLICANT'S RESPONSE TO NEW MATERIAL

April 13, 2005

Introduction

This statement fulfills the Applicant's duty to respond to material submitted by opponents as part of the Board's public hearing on March 30, 2005.[1]

Before responding directly to new material, it seems appropriate to summarize the key points that have been established so far by testimony and evidence including staff reports:

- Conformity Determination consists of two steps. The first step looks back at 1984 and asks whether something happened that deserves reexamination now.
- If the first step is answered "yes," the second step is to determine whether the current zoning conforms to current facts as measured by the appropriate criteria. (See following for discussion of "current facts versus 1984 facts.)
- This application qualified for Conformity Determination under two of the eight categories available under step one. Those two deal with: 1) whether actual existing legal lots were known in 1984 and, 2) a discrepancy between the text of the ordinance and related map that apparently changed the zoning from F-2 to F-1. A case needs to qualify under only one category to move forward.
- The criteria for determining the correct zoning when the choice is F-1 versus F-2 are found at RCP - Goal 4, Policy 15 and at LC 16.252(2).
- The Goal 4 policies, which emphasize nearby small ownerships, nearby dwellings and rural-type public services and access favor F-2 zoning in this case.
- The LC16.252(2) criteria favor F-2 because F-2 recognizes the unique physical setting of the subject property and because F-2 furthers the public interest by enabling the type of small woodland operation that preserves and nurtures forest land, contributes its full share to the forest economy and recognizes the diversity of the population that desires to live and work outside of a city.

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[1] Included are exhibits 98-113 as listed in the Third Addendum to the Agenda Cover Memo (March 31,2005), the March 28, 2005 testimony from Goal One Coalition, three letters placed in the record on April 4, 2005 and Exhibits 122 and 123 submitted April 12, 2005.

Determination of Eligibility

The Applicant and I wish to thank Bill Sage for explaining how the case became tainted at the Planning Commission level. I refer to the Commission's unfortunate misunderstanding that we had applied under one category and somehow did a "bait and switch" to another. Mr. Sage clarified that we did not do that.

Mr. Sage and Legal Counsel Steve Vorhes correctly noted that the application was submitted, and is eligible for consideration, under two of the eight categories that may be used to determine eligibility under the Conformity Determination process.[2] As we explained in our Executive Summary of March 30, 2005, an applicant must qualify under **only one** of the eight categories. As expressed in the Conformity Determination policy itself: *"Circumstances qualifying for consideration by the Board of Commissioners . . . may include **one or more** of the following:"* (Emphasis added.)

The Board has now received extensive testimony from staff, 1000 Friends of Oregon and others about the legal convolutions of category 27.a.ii. (failure to display actual legal lots) and the related policy changes made by the Board in response to legislative clarification of an ambiguous statute. Although this discussion may be of academic interest to those who enjoy legal complexities, **the Board may ignore it completely in deciding this case. The reason is simple: this case qualifies fully under category 27.a.vii. (map/text inconsistency).**

Planning Commission Action

Contrary to the assertion of Lauri Segel, 1000 Friends of Oregon, the Planning Commission did not apply the proper standards to decide this case. Instead of using the criteria of Goal 4, Policy 15 for distinguishing F-1 from F-2 land and the rezoning criteria at Lane Code 16.252(2), the Planning Commission simply tried to guess whether maps beat text or vice versa. Here is the Commission's reasoning, as captured in the minutes of October 5, 2004:

> *"He (Commissioner Herbert) said if the sole criteria was to decide whether the map or the code text was wrong, then he thought it was a text error."*
>
> *"Mr. Dignam said he was inclined to support the map under the approach taken by Mr. Herbert. He said he found several aspects of the application*

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[2] Category 27.a.ii. states: "Failure to zone a property Impacted Forest Land (F-1, RCP), where maps used by staff to designate the property Nonimpacted Forest Land (F-1,RCP) zone did not display actual 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."

Category 27.a.vii. states: "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.

that could in the future lead him to support changing the zoning to F-2 but not under the criteria used for the decision that evening."

Commissioner Herbert had given no reasons to support his position other than he thought that text errors occurred more often than map errors.

It is not clear why the Planning Commission used such shallow reasoning, but the Board of Commissioners can rectify the matter by simply deciding the case on the merits using the correct criteria. There is no language in the Rural Comprehensive Plan, no statute, no provision of Lane Code and no case law that states whether maps are more accurate than text. This matter can only be determined by the Board by application of the correct criteria.

Purpose and Operation of Conformity Determination

Both 1000 Friends and Goal One Coalition have noted the criteria, but assert that those criteria should be applied to conditions as they existed in 1984, rather than current conditions.[3] This position is contrary to the legislative history of Conformity Determination, and is fundamentally flawed as a matter of common sense. Please consider the following authoritative comments:

One is a comment by the Lane County Hearings Official in a recent case, *"Rezoning requires that the original process of designation be revisited to see if the **factors that originally supported designation as F-1 have changed** to such an extent that a change to F-2 is now justified."* (PA 99-5789 – West) (Emphasis added.)

Another is the following staff comment made in a memo to the Board on November 17, 2003: *"An errors or omissions policy is a pact between a private property owner and the County to **acknowledge existing circumstances** and provide relief."* (Note: the name of the policy was later changed to "Conformity Determination to reflect that the task of the Board was to conform the zoning to the existing development.)

In recommending that name change, County Administrator Van Vactor stated that any resulting rezoning would be a result of ***"conforming the zoning to the actual use."***

Lastly, common sense indicates that existing facts must be considered. Consider a case in which the overworked staff in 1984 missed a small cluster of stores and the property was then zoned Exclusive Farm Use (EFU). So far that sounds like a good case for a zone change.

---

[3] Both are mistaken, however, to state that this application is subject to LC 16.400(6)(h). That section applies only to comprehensive plan amendments. This application seeks no change in the comprehensive plan designation. It is "Forest Land" now and will be "Forest Land" if the property is zoned F-2.

But, suppose the businesses failed or burned down 15 years ago and the land is now growing rye grass. Surely no one would consider now rezoning it for commercial use based on conditions that no longer exist.

In this case, many of the current conditions did exist in 1984. That is why your predecessors originally zoned the applicant's land F-2. **Only when it was assumed that the property had to remain in one ownership was it apparently changed to F-1.** Now, in full compliance with relevant real estate and land use laws, the property is in four separate ownerships, all well under the threshold of 80 acres for F-1 zoning.

Response to Goal One Coalition

Goal One Coalition, as represented by Jim Just (Exhibit 94), has made a series of erroneous or incomplete assertions. Those, and the applicant's response, are as follows:

1. First are acreage errors on page 1 of Just's letter of March 28, 2005. When the east half of old tax lot 400 was sold off the remainder was 201.43 acres, not 118.83. When the property (then tax lot 401) was reconfigured, about 118 acres was sold to Mr. Brown, not 36.23.

2. On page 2, Mr. Just correctly lists the legal entities owning the reconfigured legal lots that comprise the subject property. Our report to you, placed in the record on March 24th, indicates that the four parcels are held by entities set up for the benefit of the Kronberger parents and each of their three children. This was a normal part of the family's estate planning process.

3. Mr. Just is completely mistaken to state, on pages 2 and 13, that this application was tendered under the "scrivener error" category of the Conformity Determination process. (Goal Two – Policy 27.a.iv.) It was not. He should have cited Policy 27.a.ii. (failure to identify existing legal lots) and Policy 27.a.vii (inconsistency between the text of the ordinance creating the current zoning and the related zoning map). This mistake is fundamental and results in much of the later flawed reasoning in Mr. Just's letter.

4. Another error is to state, on pages 4 & 5, that the four legal lots that actually existed in 1984 were subsequently consolidated into one legal lot. As explained by the extensive and detailed research by staff, that erroneous conclusion resulted from a temporary wording in Lane Code that resulted from an ambiguous state statute. When the statute was later clarified to indicate that legal lots, once created, do not merge under common ownership, the Lane Code was changed to correctly reflect what had always been clear as a matter of real estate law. As staff indicates in

the Agenda Cover Memo, *"...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 there during that period and are today, discrete legal lots."*

5. Mr. Just is correct to note, on page 5, that the four legal lots were once under one ownership. It is equally correct to state that they could have been sold at any time to separate owners and used without any violation of land use laws. And, as noted elsewhere, the four legal lots are now under separate ownership.

6. On page 6 Mr. Just continues his assertion that large "ownerships" were to have been zoned F-1 according to directions from DLCD, regardless of how many legal lots were contained therein. He then lists eight parcels under one ownership that totaled more than 450 acres. He then defeats his own reasoning by noting that one of the parcels became zoned EFU, two became M-1 and five became F-2. If his position about large ownerships was correct, the County must have made a huge mistake with all of that zoning. Only the subject ownership, which was then 200+ acres was zoned F-1.

7. The remaining analysis of the Goal 4 – Policy 15 criteria (pages 6-12) for distinguishing F-1 and F-2 lands is flawed in two ways. First, as discussed above, it follows the error of looking only at conditions as they existed in 1984 – and failing to recognize actual existing legal lots now under separate ownership. Second, it takes a very narrow view of the criteria. The criteria were created when the entire County outside of urban areas was being zoned. As the Hearings Official has commented, the criteria were intended to consider *"large swaths of land."* When applied more narrowly, they do not reflect that the impacts of large-scale industrial forest practices can travel beyond the immediately adjacent property. Those practices are economically and environmentally appropriate in the true F-1 land, but not where, as in this case, there are hundreds of small parcels and many dwellings in the nearby area. That development pattern would likely impose a significant burden on modern industrial forest practices.

8. On page 9, Mr. Just misapplies the "arterial road" criteria. Arterial roads, such as state highways are a characteristic of F-1 land. The absence of arterial roads indicates F-2, not F-1. He is also wrong in describing the access road to the subject property. It is not a timber easement. It is an unrestricted ingress-egress easement on which anyone can legally travel.

9. Likewise, Mr. Just misapplies the public facility and service criteria. The test has always been whether they are "available to the area," not whether they are all in place on the subject property. In fact, power and telephone service do reach the property. As noted above, the mailman, the sheriff's

deputy, the fire fighter can all drive right to the property. The area also has schools and solid waste disposal service in the immediate area.

10. Lastly, Mr. Just again misstates the law, on page 15, when he asserts that the property line adjustments recently completed to conform to the *Warf* case[4] should have been done under the "replatting" procedures of ORS Chapter 92. A review of the current statutes (copy attached) clearly indicates that "replatting" applies only to the reconfiguration of a "subdivision plat" or "partition plat," neither of which exists in this situation. He is also incorrect to assert that the law requires County approval of property line adjustments. The statute he cites (ORS 92.190) is enabling legislation that allows counties to regulate property line adjustments if they so chose. Lane County currently does not regulate those adjustments. The adjustments in this case were done in full compliance with ORS 92.010(7)(b) and 92.010(11). Legal lot verification does not create legal lots; it merely verifies their existence. Legal lot verification is generally done as a prerequisite to further land use permitting. It is not a criteria or requirement for a change of zoning.

Most of Mr. Just's assertions do not address the applicable criteria. The errors could, therefore, be dismissed as irrelevant. When assessing the credibility of this party, however, the existence of so much misinformation should raise serious doubts regarding his conclusion that this application must be denied.

Response to Other Concerns

Some of the parties have raised concerns about the access easement - for example, that it may have water across it at times or a gate that could be closed. These matters are appropriate for discussion as part of a development permit, but not a zone change.

Likewise, the comments of the Dexter Rural Fire District (Exhibit 108) are informative and would be useful if this were a proposal for a development permit, which it is not. As the Board knows, forest-related dwellings may be allowed in the F-2 zoning district but only when approved through a permit process requiring notice to affected parties and other due process requirements. That process is fully able to require stringent fire safety measures such as adequate road width and grade, turnouts, on-site water supply, sprinkler systems, fire retardant roof, and fire breaks. Also, any new dwellings, if ever allowed, would add value to the fire district's tax base.

Specifically, the Board should note that any new dwelling in an F-2 zoning district must, by state and local law, be a forest-related dwelling. See LC 16.211(5). This means, among other things, that the road must be found to meet the stringent requirements for insuring fire safety. See LC 16.211(8)(c). The code

[4] *Warf v. Coos County*, LUBA No. 2002-087, January 7, 2003

also requires minimum tree stocking levels, location of the dwelling on the least productive soils, signing of a farm-forest management agreement and other requirements not found in residential zoning districts. F-2 is truly a land use designation dedicated to forest management and has been acknowledged as such by LCDC.

The observations of Gwen Farnsworth are off-point. She claims that the small parcelization pattern east of the railroad is irrelevant because there is no direct road access from those parcels to the subject property. This comment misses the point about the "impacts" that define F-2 land. Those impacts, as carefully stated in County policy, are things such as complaints about slash burning or pesticide application. As any forest manager knows, those complaints can come from almost anywhere in the neighborhood when that neighborhood has a general pattern of small parcels and dwellings. In this case there are 263 parcels of less than ten acres within one mile.

Likewise, her attempt to characterize the subject property (plus one to the north) as a family ownership ignores the legal realities. The reality is that legal lots are freely transferable. The four legal lots verified within the subject property could have been lawfully sold to any bone fide purchaser at any time after their creation in the late 1800's and early 1900's - and they could be sold separately by the current owners now. The fact that the Kronbergers are doing estate planning to provide for their children is irrelevant to this application and no one's business but their own.

Lastly, Ms. Farnsworth seriously distorts the facts when she terms the parcel to the north (tax lot 2202) as being used for "housing." That dwelling was approved as a forest-related dwelling pursuant to LC 16.211. The approval was based, among other things, on a stocking report by forestry consultant Frank Brown of Duck Creek Associates showing that minimum stocking requirements were exceeded. Specifically, the survey indicated a free-to-grow stocking level of 226 Douglas fir and 27 Big-leaf maples per acre. The fir trees were planted in 1995 and are now more than ten feet tall. The record shows that 13.9 of the 16.54 acres are in timber production.

The cleared area in Ms. Farnsworth's photograph is the home site plus required fuel breaks. The approval was based on the following, in addition to the above-noted stocking report: 1) recorded access agreement, 2) recorded "Farm and Forest Management Agreement, 3) state-authorized water source, 4) primary and secondary fuel breaks, 5) road and driveway constructed to the standards of LC 16.211(8)(e), 6) location of the dwelling on the least productive soils, 7) spark arresters on all chimneys, 8) fire-retardant roof coverings, and 9) road construction subject to approval of the Dexter Rural Fire District. The record contains a letter of approval from Fire Chief Guy Harshbarger. All of the conditions of approval have been met and the property is taxed as forest land.

All of the remaining testimony appears to have much in common. The primary trait is a failure to address any of the criteria for distinguishing between F-1 and F-2 land.

Merle Brown misstates the facts of his purchase of land from the former owners (Northwest Lands). Northwest Lands did not acquire 26 acres of Mr. Brown's land and then quitclaim it back to him. Mr. Brown is simply not understanding the property line adjustment process by which 118.83 acres was sold to him and merged into a parcel he already owned. He is correct repeating his attorney's advice that the process was "perfectly legal." We could take time to explain the details of those adjustments, but the whole thing is irrelevant to the issue before the Board. Mr. Brown's complaint, and apparently that of some other opponents, is that they can no longer freely ride their horses on the Applicant's property.

Many of the other letters of opposition are form letters from Dexter area residents. None of them mention the criteria of Goal 4, Policy 15 with any specificity. Some of them speak of impacts on community infrastructure without giving any evidence and some make vague reference to "unraveling" of adopted land use plans. As to that assertion, if the Board applies the above noted criteria, it will be following the land use plans, not unraveling them.

Usually I ignore personal comments such as being a "high-priced attorney" (I am not). I do, however, want the Board to understand my credentials. In addition to being a former county planning director, I was raised on a family farm and hold a degree in agricultural economics from OSU. I was one of the first planners to talk to Hector McPherson in 1972-73 when he was promulgating Senate Bill 100. I fully believe in conserving Oregon's farm and forest resources.

Our family purchased a run-down farm (176 acres with a 20 acre woodland) in 1950. I have spent hundreds of hours on a tractor and have known hundreds of days of coming home after school and doing chores. I helped my dad work the land on evenings and weekends. He had to work full-time during the day to support the property restoration. My mother was on the property during the day watching after livestock and preventing vandalism. If we had been required to live in the city and commute to our property, it would likely never have been restored to its present productive condition.

The 2500 members of the Oregon Small Woodlands Association are in a similar situation. Family farms and family forest operations have many similarities in today's society and both make valuable contributions to our culture and economy.

Your careful consideration of this request has been appreciated. You can be confident that the facts and criteria justify a return to F-2 zoning for this property.