

W. H. a.

AGENDA COVER MEMO

Memorandum Date: March 24, 2008
Agenda Date: April 9, 2008
TO: Lane County Board of Commissioners
DEPARTMENT: Public Works Department, Land Management Division
PRESENTED BY: Jerry Kendall/Associate Planner

TITLE: IN THE MATTER OF ADOPTING SUPPLEMENTAL FINDINGS TO ORDINANCE No. PA 1237, AMENDING THE RURAL COMPREHENSIVE PLAN TO REDESIGNATE LAND FROM "AGRICULTURAL" TO "MARGINAL LAND" AND REZONING THAT LAND FROM "E-40/EXCLUSIVE FARM USE" TO "ML/SR" ("MARGINAL LAND WITH SITE REVIEW") (file PA 05-5985; Ogle).

I. MOTION

Move approval of the proposed Order with Exhibits A and B.

II. AGENDA ITEM SUMMARY

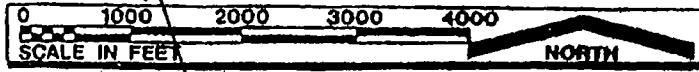
Through Ordinance No. PA 1237, the Board amended the Lane County *Rural Comprehensive Plan* (RCP) and redesignated 73+ acres of land from a plan designation of "Agricultural" land to "Marginal Land" and from a zoning designation of "E-40/Exclusive Farm Use" to "ML/SR Marginal Land with Site Review". The Site Review (/SR) suffix was added to assure that any subsequent subdivision did not exceed nine lots as supported by the aquifer study. The property is identified as Map 18-04-11, tax lots 303 and 304. The northernmost 40 acres was already zoned Marginal Lands at that time. The ordinance was enacted by the Board of County Commissioners on October 18, 2006. That action was appealed to the Oregon Land Use Board of Appeals (LUBA), which affirmed the county's decision. An appeal to the Oregon Court of Appeals was filed, and the proposal was subsequently remanded back to LUBA and in turn to Lane County for action on one issue. This item presents the Board with a response to the Court of Appeals remand.

III. BACKGROUND/IMPLICATIONS OF ACTION

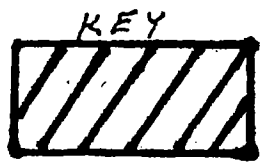
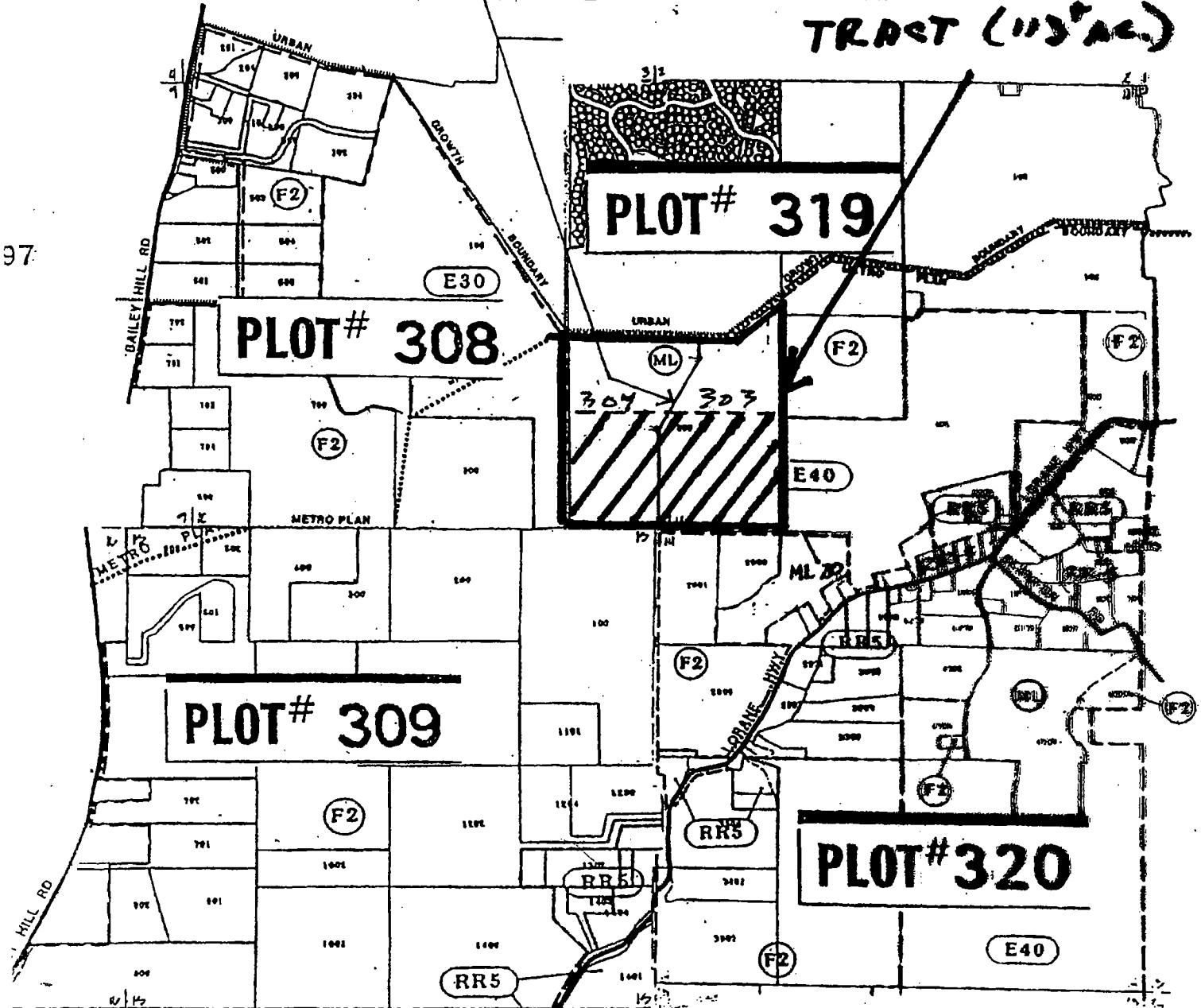
A. Board Action and Other History

On July 13, 2005, agents for the owners made application for this minor amendment to the Rural Comprehensive Plan, following up on a similar application involving the same property initiated in 2002. The Board approved the latest request on October 18, 2006 by enacting Ordinance No. PA 1237. That action was appealed to the Oregon Land Use Board of Appeals (LUBA) and on June 14, 2007, LUBA issued its decision affirming the county decision in its entirety. That decision was then appealed to the Oregon Court of Appeals, which issued its decision on November 7, 2007. The appeals court disagreed with LUBA and remanded the decision on one issue only: the proper way to compute the "forest operation annual gross income capability" standard found in ORS 197.247(1)(a)(1991 version).

APPROXIMATE
PARCEL BOUNDARY BETWEEN TAX LOT 303 + 304.



TRACT (115 AC.)



KEY
"SUBJECT PROPERTY" (73 AC.)

Not directly related to the remand issue but worth mention is the change of ownership that has occurred since the original application in 2002 and the reapplication in 2005. On June 14, 2004, the Ogles sold tax lot 304 to Michael Wolfe (via Warranty Deed 2004-047427). On November 6, 2007, Mr. Wolfe sold 30 acres of tax lot 304 to the City of Eugene (via Property Line Adjustment Deed 2007-075546). The 30 acres was combined with an adjoining tax lot owned by the city, to be utilized as part of the Ridgeline trail system park. Staff became aware of the ownership changes on March 13, 2008. The attorney currently representing the applicants in this proposal, Steve Cornacchia, has been requested to provide evidence or signed statements from the city and Mr. Wolfe, explicitly stating that they concur with pursuing the completion of PA 05-5985. Securing the signatures has been delayed by the availability of the parties during Spring break. Mr. Cornacchia can present the signatures at the hearing. However, previous staff phone contact with city staff (on March 14) indicates that the city is in favor of completion of this item. Likewise, it appears the sale to Mr. Wolfe contemplated the plan amendment/rezone would be carried to completion by Mr. Ogle to take full advantage of the change.

Assuming the new owners offer no objection to the completion of PA 05-5985, the change in ownership appears to have no direct bearing on this application. As detailed below, the remand is limited to the management of the 73+ acre subject property as part of a forest operation capable of producing an average, over the growth cycle, of \$10,000 in annual gross income during three of the five calendar years preceding 1983.

B. Analysis

A Marginal Lands proposal must comply with ORS 197.247 (1991 version). A successful application must pass a two-tier test, the first portion is known as the “income test”, the second is the “productivity test”. Only the income capability test portion regarding forest operation income potential during the five-year period preceding 1983 was remanded.

The pertinent provision of ORS 197.247(1)(a) (1991) reads as follows:

The proposed marginal land was not managed, during three of the five calendar years preceding January 1, 1983, as part of a farm operation that produced \$20,000 or more in annual gross income or a forest operation capable of producing an average, over the growth cycle, of \$10,000 in annual gross income. (Emphases added.)

In 1997, the Board issued guidelines for the evaluation of Marginal Lands proposals. The guideline advised that 1983 timber prices be utilized in evaluating forest income. The Court of Appeals¹ disagreed, stating that the provision above clearly instructs that the calculation of the potential gross annual income analysis focus on the log prices in the five calendar years preceding January 1, 1983.

As detailed in the findings attached to the enclosed Board Order, the applicant’s professional forester, Marc Setchko, had already entered into the record price calculations for all the years preceding 1983. The alternative calculations were not included as a basis for the action taken in the county’s adopted findings. Instead, the Board relied upon calculations using only the 1983 timber prices.

¹ See *Herring v. Lane County*, 54 Or LUBA 417, *rev’d and rem’d* 216 Or App 84, 91, 171 P3d 1025 (2007), attached to the enclosed Order.

The applicant now reintroduces the pre-1983 timber prices for the Board's adoption in the enclosed findings. Although ORS 197.247(1)(a) only requires data showing gross annual income potential of \$10,000 for any three of the five years prior to 1983, data for all five years has been provided. The findings conclude that the subject tract was not capable of exceeding the \$10,000 gross annual income threshold for any of the five years. The income calculation was as follows:

1978:	\$5,565
1979:	\$6,989
1980:	\$7,318
1981:	\$7,003
1982:	\$5,143

Mr. Setchko's computations in support are attached as exhibits to the findings.

C. Alternatives / Options

1. Adopt the Order with Exhibits A and B.
2. Amend the Order or Exhibit B
3. Do not adopt the Order and provide additional direction on the remand.

D. Recommendation

Option 1.

E. Timing

The Order will be effective immediately.

IV. IMPLEMENTATION/FOLLOW-UP

Notice of action will be provided to DLCD and the applicant.

V. ATTACHMENTS

Order with Exhibits A and B.

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

ORDER No. 08-

) **IN THE MATTER OF ADOPTING SUPPLEMENTAL**
) **FINDINGS TO ORDINANCE No. PA 1237, AMENDING**
) **THE RURAL COMPREHENSIVE PLAN TO REDESIG-**
) **NATE LAND FROM "AGRICULTURAL" TO**
) **"MARGINAL LAND" AND REZONING THAT**
) **LAND FROM "E-40/EXCLUSIVE FARM USE"**
) **TO "ML/SR" ("MARGINAL LAND WITH SITE RE-**
) **VIEW") (file PA 05-5985; Ogle).**

WHEREAS, on October 18, 2006, by means of Ordinance No. PA 1237 the Board of County Commissioners amended the Lane County *Rural Comprehensive Plan* (RCP) by the redesignation of approximately 73.7 acres of land identified as portions of Map 18-04-11, tax lots 303 and 304 from "Agricultural" land to "Marginal Land" and rezoning that land from "E-40/Exclusive Farm Use" to "ML/SR/Marginal Lands with Site Review"; and

WHEREAS, that action was appealed to the Oregon Land Use Board of Appeals (LUBA) which on June 14, 2007, affirmed the county's decision; and

WHEREAS, the LUBA decision was appealed to the Oregon Court of Appeals, which on November 7, 2007, issued its decision upholding the LUBA decision on all but one of the issues raised by the petitioners and remanding the decision based on that one issue as described in the Oregon Court of Appeals decision attached as Exhibit "A" and incorporated herein; and

WHEREAS, in response to the Oregon Court of Appeals and LUBA remands, supplemental findings and analysis based on evidence in the record, which is attached hereto as Exhibit "B" and incorporated herein, has been prepared containing additional information regarding compliance with the "forest income" standard of ORS 197.247(1)(a) (1991 version); and

WHEREAS, the Board of County Commissioners has reviewed the record and is now ready to take action based upon the evidence and testimony in the record.

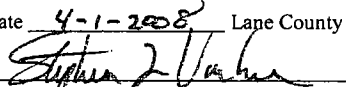
NOW THEREFORE, IT IS HEREBY ORDERED that the findings previously adopted in support of Ordinance No. PA 1237 are further supplemented as described in Exhibit "B" attached and incorporated here by this reference to establish that the findings and evidence in the record confirms the changes to the Lane County *Rural Comprehensive Plan* and zoning designations adopted by that ordinance conform with the "forest income" standard of ORS 197.247(1)(a) (1991 version).

ADOPTED this 9th day of April, 2008.

Chair, Lane County Board of Commissioners

APPROVED AS TO FORM

Date 4-1-2008 Lane County



OFFICE OF LEGAL COUNSEL

FILED: November 7, 2007

IN THE COURT OF APPEALS OF THE STATE OF OREGON

MARK HERRING,
LESLIE HILDRETH, JESSE ULLOA,
and JOANNE ULLOA,

Petitioners,

v.

LANE COUNTY,

Respondent.

Land Use Board of Appeals
2006203;
A136155

Argued and submitted August 28, 2007.

Jannett Wilson argued the cause for petitioners. With her on the brief was Goal One Coalition.

H. Andrew Clark argued the cause for respondent. With him on the brief were Stephen L. Vorhes and Lane County Office of Legal Counsel.

Before Haselton, Presiding Judge, and Armstrong and Rosenblum, Judges.

HASELTON, P. J.

Reversed and remanded to LUBA with instructions to remand to county for further proceedings.

HASELTON, P. J.

Petitioners seek review of a LUBA decision affirming respondent Lane County's amendment of its Rural Comprehensive Plan to change the designation of certain property from "agricultural" to "marginal land." As explained below, although we agree with some aspects of LUBA's decision, we conclude that the case must be remanded to the county due to its erroneous calculation, pursuant to ORS 197.247(1)(a) (1991), of whether the property was part of a forest operation capable of producing \$10,000 in annual gross income.

The land in question is a 74-acre portion of a piece of property consisting of two tax lots that was originally part of a 114-acre parcel that was designated agricultural land and zoned for agricultural use at the edge of Eugene's urban growth boundary. In 1992, the northernmost 40 acres of the property were declared marginal lands and rezoned. The

present case stems from an application by the owner in 2005 to change the designation of the southernmost 74 acres to marginal land and to rezone that portion of the property as well. ⁽¹⁾ In response to that application, the county amended its Rural Comprehensive Plan to designate the property as "marginal land." Petitioners, who appeared before the county, appealed the county's decision to LUBA, arguing that the county erred in several respects. LUBA upheld the county's decision, and petitioner seeks judicial review.

Before turning to the specific arguments, we provide a background concerning the marginal lands statutory scheme and its application in Lane County. Enacted in 1983, the marginal lands statute, ORS 197.247 (1991), permitted counties to authorize procedures for designation of certain land as "marginal land" and to permit certain uses on it that otherwise would not be permitted, if the land met certain specified criteria. The criteria at issue in the present case are found in ORS 197.247(1) (1991):

"(a) The proposed marginal land was not managed, *during three of the five calendar years preceding January 1, 1983*, as part of a farm operation that produced \$20,000 or more in annual gross income or a forest operation capable of producing an average, over the growth cycle, of \$10,000 in annual gross income; and

"(b) The proposed marginal land also meets at least one of the following tests:

"* * * * *

"(C) The proposed marginal land is composed predominantly of soils in capability classes V through VIII in the Agricultural Capability Classification System in use by the United States Department of Agriculture Soil Conservation Service on October 15, 1983, and is not capable of producing * * * eighty-five cubic feet of merchantable timber per acre per year in those counties west of the summit of the Cascade Range, as that term is defined in ORS 477.001(21)."

(Emphasis added.)

Although the legislature repealed the marginal land statute in 1991, it enacted a statute to permit counties that had adopted marginal land procedures under that statute to continue to apply them. ORS 215.316. ⁽²⁾ Lane County was one of the counties that had adopted marginal land procedures, and it has continued to utilize ORS 197.247 (1991) to designate land as marginal land.

In 1997, the Lane County Board of Commissioners issued a directive concerning how it would apply ORS 197.247 (1991) ("the 1997 directive"). The 1997 directive, which is central to our review, provides, in pertinent part:

"The legislative intent of the 'management and income test' of the Marginal Lands Law was to identify those lands which were not, at the time the Marginal Lands law was enacted (1983), making a 'significant contribution' to commercial forestry. Therefore, it is appropriate and statistically valid to use the following methodology:

"1. Based on the best information available regarding soils, topography, etc., determine the optimal level of timber production for the tract assuming reasonable management.

"2. Assume that the stand was, in 1983, fully mature and ready for harvest.

"3. Using the volumes calculated in step (1), and 1983 prices, calculate the average gross annual income over the growth cycle."

Returning to the particular circumstances of this case, we draw the following facts concerning the land from the county's unchallenged findings. The land in question was designated for agricultural use and zoned E-40 (Exclusive Farm Use - 40-acre minimum) in the county's Rural Comprehensive Plan, but has never been planted in crops. A limited amount of grazing has occurred on the property, but it did not qualify as part of a "farm operation" under the first clause of ORS 197.247(1)(a) (1991). The land consists mostly of south-facing slopes, and the soil is entirely Class VI and VII and, thus, is unsuitable for farming practices. A considerable portion of the property has very shallow soils, and aerial photos establish that trees have not grown over a large portion of the land for approximately 80 years. Easements for power lines run over approximately 10 acres of the land.

The applicant retained a consulting forester, Marc Setchko, to make the necessary calculations of whether the land in question would qualify as marginal land pursuant to ORS 197.247 (1991), as interpreted by the 1997 directive. As described in the county's findings, Setchko

"presented an analysis of the timber growing potential of the Subject Property which established that it could not be managed as a forest operation capable of producing an average, over the growth cycle, of \$10,000 in annual gross income. This conclusion was based on a detailed analysis of the existing soils and on-site growing conditions, their ability to grow timber (Douglas fir) and conversion of that growth potential into dollars based upon log prices in 1983. This methodology is dictated by the [1997 directive]."

Petitioners raised a variety of challenges to the correctness of the methodology prescribed by the 1997 directive and to Setchko's methodology and results, which they reiterated before LUBA and reprise on judicial review. The county rejected those challenges, found Setchko's opinion to be persuasive, and relied on it extensively in concluding that the land should be designated marginal land:

"We find Mr. Setchko's written analysis of the income potential for the Subject Property to be very persuasive for a number of reasons. First, Mr. Setchko's projection for income is, as a practical matter, virtually impossible to attain because it assumes a fully stocked stand of a single species. This is not realistic for this site because of the large areas of grassland and exposed rock which are not capable of growing stands of timber. Further, there is at least 9-10 acres of the site that is directly under major power lines (BPA and EWEB) which, due to provisions of the recorded easements, are not allowed to grow trees of any type. Therefore, we recognize that Mr. Setchko's estimate of \$5,173 per year as the projected income for this site over a 50-

year growth cycle is, as Mr. Setchko concludes, 'extremely difficult, if not impossible, to reach.'

Specifically, in response to petitioners' arguments that Setchko's analysis was inadequate because it failed to comply with OAR 660-006-0010's directive concerning methods of determining forest land suitability, the county indicated, first, that Setchko's reports did satisfy the rule and, second, that, in any event, OAR 660-006-0010 (and the related rule OAR 660-006-0005(2)) were not directly applicable to marginal land determinations under ORS 197.247 (1991). Accordingly, the county concluded that the applicant's evidence demonstrated that the land should be designated as marginal land.

Petitioners appealed to LUBA, asserting that the county erred in concluding that the property could qualify as marginal land as defined in ORS 197.247 (1991). In particular, petitioners argued that the county (1) erroneously failed to utilize the criteria found in OAR 660-006-0010⁽³⁾ to make its determination of the amount of merchantable timber the property could produce as required by ORS 197.247(1)(b)(C) (1991); (2) erred in basing its determination about whether the property was part of a forest operation that could produce "an average, over the growth cycle, of \$10,000 in annual gross income," ORS 197.247(1)(a) (1991), in 1983 timber prices; and (3) further erred in making that calculation based on a presumed 50-year timber growth cycle.

With respect to OAR 660-006-0010, LUBA agreed with petitioners that that rule applied in this context. LUBA concluded that "[d]esignating forest lands as marginal lands and amending the comprehensive plan designations and zoning for those lands from one Goal 4 designation/zone to another Goal 4 designation/zone is a modification of the county Goal 4 inventory." However, LUBA further concluded that the county's determination that OAR 660-006-0010 did not apply was not reversible error, because the county specifically found that Setchko had employed a methodology that, in fact, complied with OAR 660-006-0010 and related rules.

As to the county's use of 1983 timber prices for making its determination pursuant to ORS 197.247(1)(b)(C) (1991), LUBA followed its own precedent from *Just v. Lane County*, 49 Or LUBA 456 (2005). In *Just*, LUBA affirmed the county's decision to use 1983 timber prices, pursuant to the methodology set out in the 1997 directive.

Finally, LUBA concluded that the county's decision to use a 50-year growth cycle to calculate a forest operation's average annual income under ORS 197.247(1)(a) (1991) was appropriate. LUBA also rejected additional arguments by petitioners that are not at issue on judicial review, and affirmed the county's decision.

Petitioners seek judicial review of LUBA's affirmance of the county's decision. We write only to address petitioners' arguments concerning the applicability of OAR 660-006-0010 in the present circumstances and to consider whether the use of the 1983 timber prices is consistent with the statutory directive of ORS 197.247(1)(b)(C) (1991). We reject petitioner's remaining arguments without discussion.

As to OAR 660-006-0010, petitioners assign error to LUBA's "harmless error" holding--that is, that the county's conclusion that the rule does not apply was, albeit erroneous, harmless, given the county's further finding that, in all events, Setchko's methodology did comport with that rule. Petitioners acknowledge that the county did find that the

methodology used by Setchko comported with the rule, but assert that that finding was conclusory and not backed up by any evidence in the record of any comparison of the consultant's methodology to those required by the Department of Forestry.

The county responds with two alternative arguments. First, the county asserts that, contrary to LUBA's conclusion, OAR 660-006-0010 does not apply in this context. That is, the county contends that it was correct in the first instance. Second, the county argues that, even if the rule does apply, LUBA's "harmless error" determination must be sustained because petitioners' challenge is, in effect, a substantial evidence challenge and LUBA correctly determined that the county's finding was supported by substantial evidence.

We agree with the county that OAR 660-006-0010 does not, in fact, apply in these circumstances. Consequently, we do not reach and address the question of whether LUBA's "harmless error" rationale comported with substantial evidence review.

OAR 660-006-0010 provides:

"Governing bodies shall include an inventory of 'forest lands' as defined by Goal 4 in the comprehensive plan. *Lands inventoried as Goal 3 agricultural lands* or lands for which an exception to Goal 4 is justified pursuant to ORS 197.732 and taken *are not required to be inventoried under this rule*. Outside urban growth boundaries, this inventory shall include a mapping of forest site class. If site information is not available then an equivalent method of determining forest land suitability must be used. Notwithstanding this rule, governing bodies are not required to reinventory forest lands if such an inventory was acknowledged previously by the Land Conservation and Development Commission."

(Emphasis added.)

As noted above, LUBA concluded that the rule applied to the present situation on the theory that a change "from one Goal 4 designation/zone to another Goal 4 designation/zone is a modification of the county Goal 4 inventory." Although that proposition may well be correct in the abstract, the problem with applying it to the present case, as the county points out, is that the land at issue here was not, in fact, included in the county's Goal 4 inventory in the first instance. Rather, the county asserts--and the record confirms--that the land was included in the county's Goal 3 inventory as "agricultural land." Thus, we agree with the county that OAR 660-006-0010, by its own terms, does not apply. We thus reject petitioners' first assignment of error.

Petitioners next argue that LUBA erred in upholding the county's use of 1983 prices in making its determination of potential gross income under ORS 197.247(1)(a) (1991). As noted, the county relied on its 1997 directive, which directs that the calculation of "average gross annual income over the growth cycle" under ORS 197.247(1)(a) (1991) be made using "1983 prices." See ___ Or App at ___ (slip op at 3). LUBA concluded that the statute gave the county "some latitude" in how to perform the calculation required by ORS 197.247(1)(a) (1991), reasoning that the statute is silent as to how a county is to determine whether a forest operation is "capable of producing an average, over the growth cycle, of \$10,000 in annual gross income."

On judicial review, the county first posits that LUBA's rationale was correct, because counties' "reasonable interpretations" of state statutes should be upheld. Suffice it to say that the authorities that the county invokes for that "reasonable interpretation" proposition do not support it. The question is simply one of statutory construction, to which we apply the well-known methodology for discerning legislative intent. We determine that intent by applying the principles of *PGE v. Bureau of Labor and Industries*, 317 Or 606, 610-12, 859 P2d 1143 (1993), first examining the text of the statute in context, and, if that inquiry is inconclusive, then turning to legislative history and other aids to construction.

Here, the county argued, and LUBA agreed, that ORS 197.247(1)(a) (1991) did not give precise instructions as to how to make a calculation of potential annual gross income with respect to a "forest operation." The statutorily prescribed methodology with respect to a farm operation is, in contrast, unambiguous and straightforward: Was the land part of a farm operation "*that produced*" a specified amount (\$20,000) of annual gross income "during three of the five calendar years preceding January 1, 1983"? Conversely, the application of the statute to a forest operation is potentially problematic in at least two respects. First, it is predicated on a determination of earning *capacity--i.e.*, whether the operation was "capable of producing" a certain annual gross income--rather than whether it actually did so. Second, the forest operation's potential annual gross income is to be determined by "averag[ing], over the growth cycle." The growth cycle of a forest, obviously, does not correlate to "the five calendar years preceding January 1, 1983," much less to "three of the five calendar years preceding January 1, 1983."

LUBA recognized those methodological difficulties, observing:

"For forest operations, the question is whether the subject property was managed as part of a forest operation during three of five years between 1978 and 1982 that was *capable* of producing an average annual gross income, over the growth cycle. Because forest operations do not produce annual revenue, the analysis of forest operations is necessarily more hypothetical than for farm operations, and the significance of the five-year period is less clear. The statute is simply silent as to how that five-year period is applied in determining whether the forest operation is 'capable of producing an average, over the growth cycle, of \$10,000 in annual gross income.'"

(Emphasis in original.) LUBA went on to conclude that the county's reliance, in the 1997 directive, on the 1983 prices represented a reasonable and permissible resolution of those difficulties:

"The legislature adopted the marginal lands statute in mid-1983, and it is reasonable to assume that the \$10,000 threshold is expressed in 1983 dollars, not \$10,000 in 1978 dollars or an average of dollar values during the years 1978-82. If so, then it also seems reasonable to assume that the legislature did not intend to preclude use of 1983 log prices to determine whether the forest operation exceeds the \$10,000 threshold."

We agree with LUBA's overarching observation that the statutory text, when viewed in context, does not provide precise guidance as to how the calculation concerning gross annual income of forest operations is to be performed. However--and contrary to LUBA's affirmance of the county's reliance on 1983 prices--the statute is *not* unclear as to what

years' timber prices are relevant to the calculation.

To reiterate, ORS 197.247(1)(a) (1991) provides:

"The proposed marginal land was not managed, *during three of the five calendar years preceding January 1, 1983*, as part of a farm operation that produced \$20,000 or more in annual gross income or a forest operation capable of producing an average, over the growth cycle, of \$10,000 in annual gross income."

(Emphasis added.) The pertinence of "the five calendar years preceding January 1, 1983" is clear with respect to calculating the annual gross income of a farm operation: To qualify as marginal land, the land must not have been managed, during any three of the five years before January 1, 1983, as part of a farm operation that produced \$20,000 or more in annual gross income in those years. Thus, if the land was managed as part of a farm operation in 1978, 1979, 1980, 1981, and 1982, and annual gross income exceeded \$20,000 only in the latter two years, the land would satisfy the marginal lands "farm operation" income (or lack of income) criterion of ORS 197.247(1)(a) (1991).

The qualifying phrase "the five calendars years preceding January 1, 1983" applies equally, and functionally, to the statutorily prescribed calculation with respect to forest operation-related income. That is so because, as a matter of syntax, the legislature employed a parallel structure, rendering that qualifying phrase equally applicable to both farm and forest income. *See* Bryan A. Garner, *A Dictionary of Modern American Usage* 479 (1998) (Parallelism: "By phrasing parallel ideas in parallel grammatical constructions, you show the reader how one idea relates to another."); *cf. Priest v. Pearce*, 314 Or 411, 415-16, 840 P2d 65 (1992) (parallel construction in separate sentences of same constitutional provision indicated references were to same subject matter).

Given that principle of parallel construction, the statutory text provides that the calculation of potential annual gross income of a forest operation, like that for a farm operation, is to be based on the five calendar years preceding January 1, 1983--*i.e.*, 1978, 1979, 1980, 1981, and 1982. Although the statute is silent on some aspects of how one is to determine what a forest operation could potentially have produced in annual gross income in those particular years, it is explicit as to the years on which that calculation must be based. ⁽⁴⁾ Certainly, nothing in the text or context of the statute suggests that 1983 prices--prices for the year *following* January 1, 1983--are properly considered in determining compliance with the marginal lands income requirement. In sum, ORS 197.247(1)(a) (1991) unambiguously requires that the calculation of potential annual gross income be based on the five calendar years preceding 1983, rather than on 1983. ⁽⁵⁾

We note, finally, that, in rejecting petitioners' challenge to reliance on the 1983 timber prices, LUBA made an additional observation, suggestive of an alternative basis for affirmance:

"In any case, as the county notes, the applicants' consulting forester made an alternative calculation that used the 1978-82 log prices suggested by petitioners. While the result was higher than using 1983 log prices, the average annual income still fell below \$10,000."

LUBA concluded that petitioners' arguments "provide no basis for remand."

To the extent that the county suggests on judicial review that LUBA's ultimate conclusion may be affirmed based on that alternative rationale, we disagree. Evidence in the record indicates that Setchko did, indeed, make alternative calculations of annual gross income based on 1978 through 1982 log prices. However, the county's findings were not based on those calculations; instead, the county's approval of the application was expressly based on Setchko's calculations that used 1983 prices. Given our respective review functions, and given that the county never purported to rely on Setchko's alternative calculations, neither we nor LUBA can affirm on an alternative basis that there is other evidence in the record which might, if accepted by the local decision-maker, have been sufficient to support its initial determination. *See Newcomer v. Clackamas County*, 92 Or App 174, 184-85, 758 P2d 369, *adh'd to as modified on recons*, 94 Or App 33, 764 P2d 927 (1988) (court will not presume that county would have made a finding that it did not, in fact, make).

Reversed and remanded to LUBA with instructions to remand to county for further proceedings.

1. The property's owner is not a party to this proceeding.

Return to previous location.

2. ORS 215.316 provides, in pertinent part, that "a county that adopted marginal lands provisions under ORS 197.247 (1991 Edition) * * * may continue to apply those provisions."

Return to previous location.

3. The text of OAR 660-006-0010 is set out below. ___ Or App at ___ (slip op at 7).

Return to previous location.

4. That is to say, the statute may well be ambiguous as to some details of how the legislature intended the potential annual income to be calculated, such as whether the legislature intended the calculation to be based on trees hypothetically harvested in 1978 through 1982 or, perhaps, on the projected value of trees actually existing on the land in 1978 through 1982. Those questions, however, are not presented in this case, and ambiguities in one aspect of a statute do not necessarily render all aspects of a statute ambiguous.

Return to previous location.

5. We note, parenthetically, that the limited legislative history on this point confirms that construction. See, e.g., Tape Recording, House Committee on Energy and Environment, SB 237, Apr 25, 1983, Tape 260, Side A (testimony of Richard Benner) (indicating that, for the income test, "you use the five-year period preceding the effective date of the Act"); *id.* (statement of Committee Chair Darlene Hooley) (the income test involves "averaging of gross income in three of the five years preceding the effective date of this Act--1983").

Return to previous location.



Home

**Remand Response and Supplemental Findings
Supporting Ordinance No. PA 1237 Amending
Lane County Rural Comprehensive Plan and
Zone Designations of the Subject Property.**

In support of our adoption and enactment of Ordinance No. PA 1237, we make the following findings of fact and conclusions of law.

Introduction

On October 18, 2006, the Board of County Commissioners enacted Ordinance No. PA 1237 and amended the Lane County Rural Comprehensive Plan diagram to re-designate portions of that certain property described as Tax Lots 303 and 304 of Lane County Assessor's Map No. 18-04-11 from Agriculture to Marginal Land and amend the Lane County zoning map from Exclusive Farm Use (EFU 40/RCP) to Marginal Lands (ML/RCP), with Site Review. That action was appealed to the Oregon Land Use Board of Appeals (LUBA) and on June 14, 2007, LUBA issued its decision upholding the county action on all of the issues raised by the petitioners. Specifically, LUBA rejected the petitioners' argument that Lane County erred in relying on 1983 log prices in determining that the property is not capable of producing an average annual gross income of \$10,000, pursuant to a 1997 Lane County Board of Commissioners directive describing how the gross income test should be applied. LUBA affirmed Lane County's approach and rejected the petitioners' argument that former ORS 197.247(1)(a) compels the county to instead use log prices from the preceding five-year period from 1978-1982.

The LUBA decision was appealed to the Oregon Court of Appeals. The Court of Appeals held that former ORS 197.247(1)(a) explicitly directs the calculation of potential annual gross income of a forest operation based on the five calendar years preceding January 1, 1983, and does not authorize the county to use 1983 prices in that calculation. The Court of Appeals acknowledged that the applicants' forester, Marc Setchko, had actually calculated the potential gross income using log prices from 1978 to 1982 (in addition to using 1983 log prices pursuant to the 1997 directive) and had concluded that under either methodology the calculation resulted in a potential gross income substantially less than \$10,000 per year. The Court of Appeals, however, also noted that the county's findings of fact supporting its decision did not include Mr. Setchko's calculations based on log prices from 1978 to 1982 (relying solely on the 1983 log prices as provided by the 1997 directive). The Court of Appeals remanded the decision back to LUBA with instructions to remand to Lane County for further proceedings. LUBA subsequently remanded to Lane County, for Lane County to address the forest operation income test using log prices from 1978 through 1982.

In reviewing the LUBA and Court of Appeals decisions and upon the request of the applicant, Lane County Planning Department staff and Lane County Legal Counsel determined the necessity of a remand evidentiary hearing limited in scope to correcting the deficiency that was

the basis for the Court of Appeals' and LUBA's remands. The following additional findings and analysis of the evidence presented during the remand evidentiary hearing provide further support for our adoption of Ordinance No. PA 1237.

Findings and analysis

Former ORS 197.247 allows land in "Marginal Land Counties" to be designated as "Marginal Land" if several criteria are satisfied. One criterion expressed in former ORS 197.247(1)(a), is that "[t]he proposed marginal land was not managed during three of the five calendar years preceding January 1, 1983, as part of a * * * forest operation capable of producing an average, over the growth cycle, of \$10,000 in annual gross income." We found that the applicant had demonstrated that the subject property was not managed, during three of the five calendar years proceeding January 1, 1983, as part of a forest operation capable of producing an average, over the growth cycle, of \$10,000 in annual gross income. The Court of Appeals decision addressed that provision of former ORS 197.247(1)(a) and concluded our decision misconstrued the language of former ORS 197.247(1)(a) when we relied solely upon Mr. Setchko's calculations using only 1983 log prices. The Court of Appeals stated that the statute "unambiguously requires the calculation of potential annual gross income be based on the five calendar years preceding 1983, rather than on 1983".¹

The following supplemental findings and supporting evidence in the record establish that the subject property was not managed, during three of the five calendar years proceeding January 1, 1983, as part of a forestry operation capable of producing an average, over the growth cycle, of \$10,000 in annual gross income.

We find that evidence in the record demonstrates that the subject property was not managed, during three of five calendar years preceding January 1, 1983, as part of a forestry operation capable of producing an average, over the growth cycle, of \$10,000 in annual gross income.

On April 9, 2008, we conducted a remand evidentiary hearing that was limited in scope to correcting the deficiency that was the basis for the Court of Appeals remand—whether the subject property was managed during three of the five years preceding January 1, 1983 as a forest operation capable of producing an average of \$10,000, over the growth cycle in annual gross income. We find, based upon the evidence produced at the remand evidentiary hearing, that it was not.

At the April 9, 2008, remand evidentiary hearing, the applicant produced substantial evidence that the forest operation on the subject property was not capable of producing an average of \$10,000, over the growth cycle, in annual gross income during three of the five calendar years preceding January 1, 1983. That substantial evidence was in the form of stated and written testimony from the applicant and from Mr. Setchko, which testimony is incorporated herein by this reference. Copies of the written testimony are attached to these supplemental findings.

¹ *Herring v. Lane County*, 54 Or LUBA 417, *rev'd and rem'd* 216 Or App 84, 91, 171 P3d 1025 (2007).

Mr. Setchko testified that, based upon his original July 2005, analysis and calculations, the subject property was not capable of producing \$10,000 in annual gross forest income during any of the five years preceding January 1, 1983. His written report provides calculations of forest capability, using log prices from each of the five years from 1978 through 1982. Mr. Setchko concludes that based on log prices of each year, the subject property was capable of producing \$5,565 in 1978, \$6,989 in 1979, \$7,318 in 1980, \$7,003 in 1981 and \$5,143 in 1982. The evidence submitted by Mr. Setchko is a mirror image of the evidence he provided to Lane County in the original hearing and discussed by the Court of Appeals. However, as the Court of Appeals noted, our earlier decision was not expressly based on this evidence, but instead was based solely on income calculations using 1983 log prices. The opponents stated in the original hearing before us that Lane County should use log prices from the 1978-82 period rather than 1983 to make the calculations. They made that same argument to LUBA and to the Court of Appeals. Mr. Setchko's conclusions above use the methodology that the opponents have asserted throughout the public process of this application.

We find Mr. Setchko's testimony persuasive on the question of whether the subject property was managed during three of the five years preceding January 1, 1983, as a forest operation capable of producing an average of \$10,000, over the growth cycle, in annual gross income during the relevant time period. Therefore, we find that the subject property was not managed as part of a forest operation capable of producing \$10,000 or more in annual gross income in three of the five years preceding January 1, 1983. Based upon evidence in the record we find that the applicant has demonstrated that the requirements of former ORS 197.247 are fulfilled and that the subject application for marginal land designation of the subject property should be approved as being consistent with applicable law. Accordingly, we adopt these supplemental findings as further support for our previous decision to approve the application and amend the plan and zoning designation of the subject property.



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December 7, 2007

**AMMENDMENT TO
FOREST PRODUCTIVITY ANALYSIS
for
Brad Ogle**

**SUBJECT PARCEL: ASSESSORS MAP NO. 18-04-11
Tax Lots 303 & 304, totaling ±113.74 acres.**

RESULTS OF INCOME CALCULATIONS

From original analysis dated July, 2005; exhibits mentioned are in original report, new exhibits are included with this ammendment.

The calculations assume fully stocked Douglas-fir stands on the entire parcel. The stands currently on the parcel are not fully stocked and large portions of the parcel have not grown **any trees** for as far back as aerial photos have been taken. An aerial photo record of the parcel show no trees growing in the 1930's (see Exhibits 5-1, 5-2 and 5-3). The calculations also include areas under the powerlines where the power companies will not allow trees to grow to merchantable size. In some cases Christmas tree growth is allowed, as long as they are cut long before reaching merchantable size or height. However, in order to present the most optimistic calculations, I have assumed full stocking throughout the entire parcel. In this manner it can be seen that any lower stocking would, by default, meet the criteria.

Site Index Ratings from Tables (see Exhibits 6-1 and 6-2)	50 Year Site Index
McDuff clay loam (81D)	112
Ritner cobbly silty clay loam (113 C, E & G)	107
Dixonville-Philomath-Hazelair complex - no Site Index given due to multiple soil types, poorly suited for conifer growth	
Panther silty clay loam - poorly suited for conifer growth, no Site Index given	
Philomath silty clay - poorly suited for conifer growth, no Site Index given	
Philomath cobbly silty clay - poorly suited for conifer growth, no Site Index given	
Steiwer loam - poorly suited for conifer growth, no Site Index given	

A board foot volume per acre can be obtained from the Empirical Yield Tables for soil types which have a Site Index number (see Exhibit 4-2). Board foot volumes for the remaining soils were obtained by comparing the cubic foot productivity figures for these soils (soil types with no Site Index number) with the productivity figures for soils with Site Index numbers. The productivity analysis presented in this report presents Douglas-fir cubic foot per acre per year numbers for all the soils in question, except for the Philomath silty clay (107C) and Philomath cobbly silty clay (108F). These soils use ponderosa pine productivity figures (see Productivity discussion). The Douglas-fir productivity number for both of these soils is the same; 45 cu.ft./ac./yr. (see Exhibits 7-1 and 7-2). Through comparison, a ratio can be used to obtain a board foot per acre volume for all the soils. For the base numbers I used the average of the two soils with Site Index numbers and volume figures from the above mentioned table.

McDuff clay loam	158 cf./ac./yr.	25,470 bd.ft./ac.*
Ritner cobbly silty clay loam	<u>149 cf./ac./yr.</u>	<u>23,005 bd.ft./ac. *</u>
Average	$307 \div 2 = 153.5$ cf./ac./yr.	$48,475 \div 2 = 24,238$ bd.ft./ac.



CALCULATIONS OF OTHER SOIL TYPES

Example: Panther silty clay loam - 45 cf./ac./yr.** ÷ 153.5 cf./ac./yr. = .293

.293 X 24,238 bd.ft./ac. = 7,102 bd.ft./ac./yr. for Panther silty clay loam

*See Exhibit 4-2. **See Productivity Table page 10.

This procedure can then be used on all of the remaining soil types which have no site index numbers. The volume figures obtained are presented in the table shown below.

Volume Total for Entire 113.74 acres	Total Volume (Board Feet)
43C Dixonville-Philomath-Hazelair complex -- 6.64 ac. @ 8,527 bd.ft./ac.	56,619
43E Dixonville-Philomath-Hazelair complex -- .44 ac. @ 9,948 bd.ft./ac.	4,377
81D McDuff clay loam -- 5.60 ac. @ 25,470 bd.ft./ac.	142,632
102C Panther silty clay loam -- 14.68 ac. @ 7,106 bd.ft./ac.	104,316
107C Philomath silty clay -- 39.61 ac. @ 7,106 bd.ft./ac.	281,469
108F Philomath cobbly silty clay -- 30.20 ac. @ 7,106 bd.ft./ac.	214,601
113C, E & G Ritner cobbly silty clay loam -- 13.38 ac. @ 23,005 bd.ft./ac.	307,807
125C Steiwer loam -- 3.19 ac. @ 4,737 bd.ft./ac.	<u>15,111</u>
Total	113.74 ac. 1,126,932

A 50 year old stand on this site should have approximately 40% 2 SAW, 50% 3 SAW and 10% 4 SAW. If anything, these grade estimates err on the high side. In all probability there would be less 2 SAW and more 4 SAW. However, these figures are used to represent the highest possible log price scenario for the applicant.

Total Volume - 1,126.93 MBF (thousand board feet)

450.77 MBF of 2 SAW @ <u>\$255/MBF*</u>	\$114,946
563.47 MBF of 3 SAW @ <u>\$215/MBF*</u>	121,146
112.69 MBF of 4 SAW @ <u>\$200/MBF*</u>	<u>22,538</u>

Total Projected Gross Revenue \$258,630

*See Exhibit 8.

AVERAGE GROSS INCOME -- \$258,630 ÷ 50 YEARS = \$5,173/YEAR

The income shown above used 1983 log prices (from the highest quarter of that year); all of the preceding information is reprinted from my original analysis. It is presented again to show how the productivity numbers for the entire parcel were calculated. All of the income projections shown below use the productivity, i.e., timber volume, numbers presented in the original analysis, with only the yearly log prices changed.

INCOME PROJECTIONS YEAR BY YEAR (See Exhibit A for Log Prices Used)

The following calculations will show the average gross income for each year from 1978 through 1982, as well as the average price for those five years. The highest log prices occurred from the first quarter of 1980 and continued through the third quarter of 1981 (see Exhibit A). The calculations presented below will show that the **highest possible** average gross income per year would be obtained using 1980 log prices. Furthermore, since the log prices remained the same throughout the entire year, the calculations for 1980 would also show the highest possible average gross income if only the highest quarters were used.

1978

Total Volume - 1,126.93 MBF (thousand board feet)		
450.77 MBF of 2 SAW @ <u>\$276/MBF</u>		\$124,413
563.47 MBF of 3 SAW @ <u>\$235/MBF</u>		132,415
112.69 MBF of 4 SAW @ <u>\$190/MBF</u>		<u>21,411</u>
Total Projected Gross Revenue		\$278,239
AVERAGE GROSS INCOME -- \$278,239 ÷ 50 YEARS = <u>\$5,565/YEAR</u>		

1979

Total Volume - 1,126.93 MBF (thousand board feet)		
450.77 MBF of 2 SAW @ <u>\$338/MBF</u>		\$152,360
563.47 MBF of 3 SAW @ <u>\$296/MBF</u>		166,787
112.69 MBF of 4 SAW @ <u>\$269/MBF</u>		<u>30,314</u>
Total Projected Gross Revenue		\$349,461
AVERAGE GROSS INCOME -- \$349,461 ÷ 50 YEARS = <u>\$6,989/YEAR</u>		

1980

Total Volume - 1,126.93 MBF (thousand board feet)		
450.77 MBF of 2 SAW @ <u>\$354/MBF</u>		\$159,573
563.47 MBF of 3 SAW @ <u>\$310/MBF</u>		174,675
112.69 MBF of 4 SAW @ <u>\$281/MBF</u>		<u>31,666</u>
Total Projected Gross Revenue		\$365,914
AVERAGE GROSS INCOME -- \$365,914 ÷ 50 YEARS = <u>\$7,318/YEAR</u>		

1981

Total Volume - 1,126.93 MBF (thousand board feet)		
450.77 MBF of 2 SAW @ <u>\$346/MBF</u>		\$155,966
563.47 MBF of 3 SAW @ <u>\$292/MBF</u>		164,533
112.69 MBF of 4 SAW @ <u>\$263/MBF</u>		<u>29,637</u>
Total Projected Gross Revenue		\$350,136
AVERAGE GROSS INCOME -- \$350,136 ÷ 50 YEARS = <u>\$7,003/YEAR</u>		

1982

Total Volume - 1,126.93 MBF (thousand board feet)		
450.77 MBF of 2 SAW @ <u>\$267/MBF</u>		\$120,356
563.47 MBF of 3 SAW @ <u>\$208/MBF</u>		117,202
112.69 MBF of 4 SAW @ <u>\$174/MBF</u>		<u>19,608</u>
Total Projected Gross Revenue		\$257,166
AVERAGE GROSS INCOME -- \$257,166 ÷ 50 YEARS = <u>\$5,143/YEAR</u>		

The 1982 log prices also include a Camp Run (CR) price for 2, 3 and 4 saw. Camp Run prices are not always available, and when they are available, they are only given by **some** of the mills and only for **some** of the logs being purchased. However, to present all scenarios I have included camp run price calculations for the only year shown, 1982.

1982 Camp Run Prices

Total Volume - 1,126.93 MBF @ \$243/MBF \$273,844

AVERAGE GROSS INCOME -- $\$273,844 \div 50 \text{ YEARS} = \underline{\$5,477/\text{YEAR}}$

1978-1982 AVERAGE

Total Volume - 1,126.93 MBF (thousand board feet)

450.77 MBF of 2 SAW @ \$316/MBF \$142,443

563.47 MBF of 3 SAW @ \$268/MBF 151,010

112.69 MBF of 4 SAW @ \$235/MBF 26,482

Total Projected Gross Revenue \$319,935

AVERAGE GROSS INCOME -- $\$319,935 \div 50 \text{ YEARS} = \underline{\$6,399/\text{YEAR}}$

CONCLUSION

The analysis presented shows conclusively that this property will not support a merchantable stand of timber, of sufficient production capability, to meet or exceed the Marginal Lands Income test:

The estimated gross income based on a 50 year rotation for the 113.74 acre site would have ranged from a low of \$258,630 in 1983 to a high of \$365,914 in 1980. The average annual gross income would have ranged from a low of \$5,173/year in 1983 to a high of \$7,318/year in 1980. Because **all of the above figures** are less than \$10,000/year, the property meets the following statutory test for Marginal Lands: ORS 197.247 (1)(a) "The proposed marginal land was not managed during three of the five calendar years preceding January 1, 1983, as part of a ... forest operation capable of producing an average, over the growth cycle, of \$10,000 in annual gross income."

In summary, I find from the specific site conditions present, empirical yield tables, SCS data, Lane County Data and experience with similar lands, that this property is ill suited to the production of merchantable timber and use as land for forestry purposes. It is my opinion that this parcel should be classified as marginal land.

Sincerely,



OGLE 1936 PARCEL
EXHIBIT 5-1



SUBJECT
PROPERTY

F B 25

OGLE PARCEL IN 1947

EXHIBIT S-2



938 - 15 PSX8-15-36 11A2012-15000 WILLAMETTE VALLEY PROJECT OR



OGLE PARCEL IN 1952 (AUGUST PHOTO)

EXHIBIT 5-3

Lane County Soil Ratings for Forestry and Agriculture

Map Symbol	Lane County Soil Map Unit	Douglas Fir Site Index	Cu. Ft./ Acre/ Year	Agricultural Capability Class	High Value Farmland
72F	Klickitat stony loam, 30 - 50% south slopes	112	158	6	
72G	Klickitat stony loam, 50 - 75% south slopes	112	158	7	
73	Linslaw loam	none		3	X ¹
74B	Lint silt loam, 0 - 7% slopes	117	169	3	
74C	Lint silt loam, 7 - 12% slopes	117	169	3	
74D	Lint silt loam, 12 - 20% slopes	117	169	3	
74E	Lint silt loam, 20 - 40% slopes	117	169	4	
75	Malabon silty clay loam	none		1	X
76	Malabon-Urban land complex	none		1	X
77B	Marcola cobbly silty clay loam, 2 - 7% slopes	none		4	
78	McAlpin silty clay loam	none		2	X
79	McBee silty clay loam	none		3	X ²
80F	McCully clay loam, 30 - 35% slopes	118	171	6	
80G	McCully clay loam, 50 - 70% slopes	118	171	7	
<u>81D</u>	<u>McDuff clay loam, 3 - 25% slopes</u>	<u>112</u>	<u>158</u>	6	
81F	McDuff clay loam, 25 - 50% slopes	112	158	6	
81G	McDuff clay loam, 50 - 70% slopes	112	158	7	
82C	Meda loam, 2 - 12% slopes	none		3	X
83B	Minniece silty clay loam, 0 - 8% slopes	none		6	
84D	Mulkey loam, 5 - 25% slopes	none		6	
85	Natroy silty clay loam	none		4	X
86	Natroy silty clay	none		4	X
87	Natroy-Urban land complex	none		4	X
88	Nehalem silt loam	none		2	X
89C	Nekia silty clay loam, 2 - 12% slopes	113	160	3	X
89D	Nekia silty clay loam, 12 - 20% slopes	113	160	3	X
89E	Nekia silty clay loam, 20 - 30% slopes	113	160	4	
89F	Nekia silty clay loam, 30 - 50% slopes	113	160	6	
90	Nekoma silt loam	none		3	
91D	Neskowin silt loam, 12 - 20% slopes	none		6	
91E	Neskowin silt loam, 20 - 40% slopes	none		6	
92G	Neskowin-Salander silt loams, 40 - 60% slopes	none		6	
93	Nestucca silt loam	none		3	
94C	Netarts fine sand, 3 - 12% slopes	none		6	
94E	Netarts fine sand, 12 - 30% slopes	none		6	
95	Newberg fine sandy loam	none		2	X
96	Newberg loam	none		2	X

EXHIBIT 6-1

Lane County Soil Ratings for Forestry and Agriculture

Map Symbol	Lane County Soil Map Unit	Douglas Fir Site Index	Cu. Ft./ Acre/ Year	Agricultural Capability Class	High Value Farmland
97	Newberg-Urban land complex	none		2	X
98	Noti loam	none		4	X
99H	Ochrepts & Umbrepts, very steep	none		--	
100	Oxley gravelly silt loam	none		3	
101	Oxley-Urban land complex	none		3	
102C	Panther silty clay loam, 2 - 12% slopes	none		6	
103C	Panther-Urban land complex, 2 - 12% slopes	none		6	
104E	Peavine silty clay loam, 3 - 30% slopes	125	184	6	
104G	Peavine silty clay loam, 30 - 60% slopes	125	184	6	
105A	Pengra silt loam, 1 - 4% slopes	none		3	X ¹
106A	Pengra-Urban land complex, 1 - 4% slopes	none		3	
107C	Philomath silty clay, 3 - 12% slopes	none		6	
108C	Philomath cobbly silty clay, 3 - 12% slopes	none		6	
108F	Philomath cobbly silty clay, 12 - 45% slopes	none		6	
109F	Philomath-Urban land complex, 12 - 45% slopes	none		6	
110	Pits	none		8	
111D	Preacher loam, 0 - 25% slopes	128	190	6	
111F	Preacher loam, 25 - 50% slopes	128	190	6	
112G	Preacher-Bohannon-Slickrock complex, 50 - 75% slopes	***	188	7	
113C	Ritner cobbly silty clay loam, 2 - 12% slopes	107	149	4	
<u>113E</u>	<u>Ritner cobbly silty clay loam, 12 - 30% slopes</u>	<u>107</u>	<u>149</u>	6	
<u>113G</u>	<u>Ritner cobbly silty clay loam, 30 - 60% slopes</u>	<u>107</u>	<u>149</u>	7	
114	Riverwash	none		8	
115H	Rock outcrop-Kilchis complex, 30 - 90% slopes	***	27	8	
116G	Rock outcrop-Witzel complex, 10 - 70% slopes	***	none	8	
117E	Salander silt loam, 12 - 30% slopes	125	184	6	
118	Salem gravelly silt loam	none		2	X
119	Salem-Urban land complex	none		2	X
120B	Salkum silt loam, 2 - 6% slopes	116	167	2	X
121B	Salkum silty clay loam, 2 - 8% slopes	116	167	2	X
121C	Salkum silty clay loam, 8 - 16% slopes	116	167	3	X
122	Saturn clay loam	123	180	3	
123	Sifton gravelly loam	124	182	3	X
124D	Slickrock gravelly loam, 3 - 25% slopes	137	209	6	
124F	Slickrock gravelly loam, 25 - 50% slopes	137	209	6	
125C	Steiber loam, 3 - 12% slopes	none		3	
125D	Steiber loam, 12 - 20% slopes	none		4*	

EXHIBIT 6-2

DOUGLAS FIR EMPIRICAL YIELD TABLE

TABLE 5
SITE 100

Total Age	Normal Basal Area	Mean Diameter	CVTS	CV4	SV6 (32')	C/SCR Ratio
20	17	8.53	85	85	335	.254
26	70	9.33	1,324	1,236	2,561	.483
30	97	9.85	2,130	1,913	4,601	.416
40	146	11.14	4,071	3,703	11,450	.323
41	150	11.27	4,259	3,886	12,248	.317
50	181	12.39	5,909	5,541	19,972	.277
60	209	13.59	7,643	7,325	29,247	.250
70	232	14.71	9,273	8,982	38,528	.233
80	252	15.75	10,799	10,468	47,294	.221
90	269	16.69	12,222	11,750	55,131	.213
100	284	17.53	13,541	12,805	61,760	.207
110	297	18.24	14,756	13,624	66,922	.204
120	310	18.81	15,867	14,190	70,448	.201
130	321	19.24	16,875	14,502	72,234	.201

TABLE 6
SITE 110

Total Age	Normal Basal Area	Mean Diameter	CVTS	CV4	SV6 (32')	C/SCR Ratio
20	30	8.74	327	327	666	.491
26	83	9.63	1,688	1,494	3,299	.453
30	109	10.23	2,574	2,253	5,812	.388
40	158	11.69	4,717	4,275	14,125	.303
41	162	11.83	4,926	4,482	15,074	.297
50	194	13.11	6,757	6,345	24,305	.261
60	222	14.47	8,693	8,344	35,244	.237
70	245	15.76	10,525	10,200	46,141	.221
80	264	16.97	12,253	11,863	56,425	.210
90	281	18.09	13,878	13,304	65,675	.203
100	296	19.09	15,396	14,503	73,549	.197
110	310	19.97	16,815	15,448	79,836	.193
120	322	20.72	18,129	15,126	84,358	.191
130	333	21.31	19,338	16,528	86,957	.190

SITE 107 23,005 Bd.
PER ACRE

TABLE 7
SITE 120

Total Age	Normal Basal Area	Mean Diameter	CVTS	CV4	SV6 (32')	C/SCR Ratio
20	51	9.11	819	770	1,355	.568
26	101	10.10	2,294	1,961	4,810	.408
30	126	10.77	3,257	2,821	7,992	.353
40	173	12.39	5,592	5,093	18,116	.281
41	177	12.55	5,820	5,324	19,255	.277
50	208	13.98	7,823	7,389	30,132	.245
60	235	15.50	9,951	9,588	42,783	.224
70	258	16.96	11,974	11,611	55,265	.210
80	277	18.33	13,894	13,424	66,954	.200
90	294	19.60	15,710	14,992	77,437	.194
100	309	20.76	17,423	16,297	86,410	.189
110	322	21.80	19,031	17,334	93,643	.185
120	334	22.70	20,536	18,091	98,946	.183
130	345	23.45	21,937	18,561	102,187	.182

SITE 112 25,470 Bd.
PER ACRE

EXHIBIT 4-2

NUMBERS SHOWN OBTAINED BY INTERPOLATION

LANE COUNTY FOREST SOIL RATINGS

Map Symbol	Soil Name	Site Index [1]	Cubic Foot /Acre/Year [2]
077B	Marcola cob sicl, 2-7%	97	130
078	McAlpin sicl	125	184
079	McBee sicl	119	173
080F	McCully cl, 30-35%	125	184
080G	McCully cl, 50-70%	125	184
081D	McDuff cl, 3-25%	115	163
081F	McDuff cl, 25-50%	115	163
081G	McDuff cl, 50-70%	120	175
082C	Meda l, 2-12%	128	190
083B	Minniece sicl, 0-8%	112	158
084D	Mulkey l, 5-25%	90*	116
085	Natroy sicl	none	60**
086	Natroy sic	none	60**
087	Natroy-Urban land complex	***	40**
088	Nehalem sil	124	182
089C	Nekia sicl, 2-12%	115	163
089D	Nekia sicl, 12-20%	115	163
089E	Nekia sicl, 20-30%	115	163
089F	Nekia sicl, 30-50%	112	158
090	Nekoma sil	140	214
091D	Neskowin sil, 12-20%	109*	152
091E	Neskowin sil, 20-40%	109*	152
092G	Neskowin-Salander sil, 40-60%	***	205**
093	Nestucca sil	99	134
094C	Netarts fs, 3-12%	95	125
094E	Netarts fs, 12-30%	95	125
095	Newberg fsl	110	154
096	Newberg l	110	154
097	Newberg-Urban land complex	***	100**
098	Noti l.	none	30**
099H	Ochrepts & Umbrepts, v. steep	***	130**
100	Oxley gr sil	none	80**
101	Oxley-Urban land complex	***	60**
<u>102C</u>	Panther sicl, 2-12%	none	<u>45**</u>
103C	Panther-Urban land complex, 2-12%	***	40**
104E	Peavine sicl, 3-30%	124	182
104G	Peavine sicl, 30-60%	124	182
105A	Pengra sil, 1-4%	none	45**
106A	Pengra-Urban land complex, 1-4%	***	30**
<u>107C</u>	Philomath sic, 3-12%	none	<u>45**</u>

All ratings are taken from the "Single Phase Interpretation Sheets" (green sheets) published by the Soil Conservation Service (SCS) for the Lane County Area, Oregon except those marked **

All ratings are for Douglar Fir unmanaged, fully stocked stands.

* ratings for additional tree species are listed on SCS green sheets

** These estimated soils ratings are taken from an Office of State Forester Memorandum, February 8, 1990, General File 7-1-1

*** multiple site indices; refer to the cu.ft./acre/yr column for a composite rating for this complex

[1] 50 year base

[2] volume produced at age of culmination

EXHIBIT 7-1

LANE COUNTY FOREST SOIL RATINGS

Map Symbol	Soil Name	[1] Site Index	[2] Cubic Foot /Acre/Year
108C	Philomath cob sic, 3-12%	none	45**
108F	Philomath cob sic, 12-45%	none	45**
109F	Philomath-Urban land complex, 12-45%	***	20**
110	Pits	none	none
111D	Preacher 1, 0-25%	128*	190
111F	Preacher 1, 25-50%	128*	190
112G	Preacher-Bohannon-Slickrock, 50-75%	***	185**
113C	Ritner cob sicl, 2-12%	102*	140
113E	Ritner cob sicl, 12-30%	102*	140
113G	Ritner cob sicl, 30-60%	102*	140
114	Riverwash	none	none
115H	Rock outcrop-Kilchis complex, 30-90%	***	34**
116G	Rock outcrop-Witzel complex, 10-70%	***	21**
117E	Salander sil, 12-30%	125*	184
118	Salem gr sil	114	162
119	Salem-Urban land complex	***	100**
120B	Salkum sil, 2-6%	119	173
121B	Salkum sil, 2-6%	126	186
121C	Salkum sicl, 8-16%	126	186
122	Saturn cl	104	143
123	Sifton gr 1	110	154
124D	Slickrock gr 1, 3-25%	137*	209
124F	Slickrock gr 1, 25-50%	137*	209
125C	Steiwer 1, 3-12%	none	30**
125D	Steiwer 1, 12-20%	none	30**
125F	Steiwer 1, 20-50%	none	30**
126F	Tahkenitch 1, 20-45%	120	175
126G	Tahkenitch 1, 45-75%	112	158
127C	Urban land-Hazelair-Dixonville, 3-12%	***	45**
128B	Veneta 1, 0-7%	108	150
129B	Veneta variant sil, 0-7%	128	190
130	Waldo sicl	none	45**
131C	Waldport fs, 0-12%	90	116
131E	Waldport fs, 12-30%	90	116
131G	Waldport fs, 30-70%	90	116
132E	Waldport fs, thin surf., 0-30%	none	29**
133C	Waldport-Urban land complex, 0-12%	***	20**
134	Wapato sicl	none	none
135C	Willakenzie cl, 2-12%	110	154
135D	Willakenzie cl, 12-20%	110	154

All ratings are taken from the "Single Phase Interpretation Sheets" (green sheets) published by the Soil Conservation Service (SCS) for the Lane County Area, Oregon except those marked **

All ratings are for Douglar Fir unmanaged, fully stocked stands.

* ratings for additional tree species are listed on SCS green sheets

** These estimated soils ratings are taken from an Office of State Forester Memorandum, February 8, 1990, General File 7-1-1

*** multiple site indices; refer to the cu.ft./acre/yr column for a composite rating for this complex

[1] 50 year base

[2] volume produced at age of culmination

EXHIBIT 7-2

PRODUCTIVITY TABLE

Ponderosa Pine Site Trees Bored on the Parcel:

Breast Height Age	Total Age*	Total Height	Site Index**
47	54	67'	100
48	55	77'	110
47	54	53'	80
52	59	81'	106
53	60	81'	110
47	54	60'	90
52	59	79'	110
46	53	68'	100
50	57	77'	105
48	55	73'	105
			1,016

Throwing out the lowest site index of 80 leaves $936 \div 9 = 104$

*Total age includes adding 7 years, which errs on the optimistic side (see Exhibit 10). You must add between 5 and 10 years to a breast height age; 5 years being Site I ground, 10 years being Site IV ground. The Ogle parcel is **not** Site I ground.

**Interpolated using Meyer's eastern Oregon tables (see Exhibit 11).

From my on site analysis and photo delineation of the soil types (using a light table and overlaying the **Lane County soil maps** on the aerial photos, I have calculated the acreages shown on the following tables. These soil maps are in the record already. To arrive at the acreages shown I used the acres presented by Lane County and took proportions of these acres by dividing the amount of grassland shown on the photo with the acreages presented by the county. Since the counties acreages are the **accepted acreages**, this is a more accurate calculation of acres than using the approximate scale shown on the photo.

I used a figure of 110 cf/ac/yr. for the ponderosa pine growth for this site index of 104 (see Exhibit 9). I have also included a ponderosa pine table from northern California (see Exhibit 12-1), which shows a figure of 108 cf/ac/yr for this site class. This figure was obtained using interpolation (see Exhibit 12-2). I will use the higher figure to error on the optimistic side. The DF productivity figures are from Soil Service and/or NRCS data (see Exhibit 6-1, 6-2 and 7-1).

A total of 24.455 acres of the parcel are thin soils over rock or exposed rock. These areas have not grown trees for as long as aerial photo records have been kept (see Exhibits 1, 5-1, 5-2 and 5-3). It includes a total of 14.74 acres within soil type 107C and 9.715 acres within soil type 108F. I have shown these acres at the bottom of the table.

CALCULATIONS:

Productivity Table for Portions of Tax Lots 303 & 304 Totaling 73.74 Acres

	Acres	Growth/Year	Total Growth
81D McDuff clay loam	5.600	158 Cu.Ft./Ac.	884.800 Cu.Ft.
102C Panther silty clay loam	14.683	45 Cu.Ft./Ac.	660.735 Cu.Ft.
107C Philomath silty clay*	16.389	110 Cu.Ft./Ac.	1,802.790 Cu.Ft.
108F Philomath cobbly silty clay*	2.955	110 Cu.Ft./Ac.	325.050 Cu.Ft.
113E & G Ritner cobbly silty clay loam	9.655	149 Cu.Ft./Ac.	1,438.595 Cu.Ft.
Grassland with exposed rock	24.455	0 Cu.Ft./Ac.	0 Cu.Ft.
Totals	73.737		5,111.97 Cu.Ft.

Average Growth Potential -- $5,111.97 \text{ Cu.Ft.} \div 73.737 \text{ acres} = \underline{\underline{69.327 \text{ Cu.Ft./Ac./Yr.}}}$

LOG PRICES - 3rd Quarter 1983

WEST OREGON, SANTIAM, LANE, FOREST GROVE, TILLAMOOK AND ASTORIA UNITS

Douglas-Fir

#1P			\$505
#2P			425
#3P			340
SM			285
#2S	☆	☆	255
#3S	☆	☆	215
#4S			200
SC			140
Utility			75
CR			240

Hemlock

P			\$375
SM			260
#2S			220
#3S			190
#4S			175
Utility			65
CR			190

EXHIBIT 8

Spruce

SM			\$255
#2S			230
#3S			180
#4S			160
Utility			45

W. R. Cedar

#1S			\$390
#2S			380
#3S			310
#4S			230
CR			330
Wormy			135

Alder

Sawlogs CR			\$190
Pulp			125

EXHIBIT A

DOUGLAS FIR LOG PRICES 1978-1982, 1983

REGION 1 - WESTERN OREGON UNIT

Reporting format: ODF reporting as of 4th quarter 1981

Source: Oregon Department of Forestry Forest Management Division
http://www.odf.state.or.us/divisions/management/asset_management/logprices/logP483.HTM

Domestically Processed Logs (Delivered to a mill; "Pond Value")

1978

Douglas-Fir Grade	Quarter				Average
	1st	2nd	3rd	4th	
#1P	\$ 460	475	475	475	471
#2P	\$ 415	435	435	435	430
#3P	\$ 358	389	389	389	381
SM	\$ 283	338	338	338	324
#2S	\$ 242	287	287	287	276
#3S	\$ 191	250	250	250	235
#4S	\$ 161	200	200	200	190
SC	\$ 125	157	157	157	149
Utility	\$ 70	80	80	80	78

1979

Douglas-Fir Grade	Quarter				Average
	1st	2nd	3rd	4th	
#1P	\$ 531	531	584	584	555
#2P	\$ 476	476	523	523	500
#3P	\$ 425	425	467	467	446
SM	\$ 385	385	423	423	404
#2S	\$ 322	322	354	354	338
#3S	\$ 282	282	310	310	296
#4S	\$ 256	256	281	281	269
SC	\$ 160	160	176	176	168
Utility	\$ 90	90	99	99	95

1980

Douglas-Fir Grade	Quarter				Average
	1st	2nd	3rd	4th	
#1P	\$ 584	584	584	584	584
#2P	\$ 523	523	523	523	523
#3P	\$ 467	467	467	467	467
SM	\$ 423	423	423	423	423
#2S	\$ 354	354	354	354	354
#3S	\$ 310	310	310	310	310
#4S	\$ 281	281	281	281	281
SC	\$ 176	176	176	176	176
Utility	\$ 99	99	99	99	99

Douglas-fir prices

1981

Douglas-Fir Grade	Quarter				Average
	1st	2nd	3rd	4th	
#1P	\$ 584	584	584	648	648
#2P	\$ 523	523	523	550	550
#3P	\$ 467	467	467	439	439
SM	\$ 423	423	423	390	415
#2S	\$ 354	354	354	323	346
#3S	\$ 310	310	310	238	292
#4S	\$ 281	281	281	208	263
SC	\$ 176	176	176	212	185
Utility	\$ 99	99	99	104	100

1982

Douglas-Fir Grade	Quarter				Average
	1st	2nd	3rd	4th	
1P	\$ 600	512	512	512	534
2P	\$ 510	439	439	439	457
3P	\$ 425	370	370	370	384
SM	\$ 375	316	316	316	331
2S	\$ 295	258	258	258	267
3S	\$ 225	202	202	202	208
4S	\$ 190	169	169	169	174
SC	\$ 190	164	164	164	171
Utility	\$ 90	123	123	123	115
CR (2S & better)	\$ --	303	303	303	303
CR (2S, 3S, and 4S)	\$ --	243	243	243	243

1983

Douglas-Fir Grade	Quarter				Average
	1st	2nd	3rd	4th	
1P	\$ 512	505	505	505	507
2P	\$ 439	410	425	425	425
3P	\$ 370	325	340	340	343
SM	\$ 316	275	285	285	290
2S	\$ 258	250	255	255	255
3S	\$ 202	210	215	215	211
4S	\$ 169	195	200	200	191
SC	\$ 164	130	140	140	144
Utility	\$ 123	75	75	75	87
CR (2S & better)	\$ 303	--	--	--	303
CR (2S, 3S, and 4S)	\$ 243	240	240	240	241

DOUGLAS FIR LOG PRICES 1978-1982, 1983

DF Grade	1978-1982 Average	1983 Average	%+	% -
1P	\$ 558	507		- 9.1%
2P	\$ 492	425		-13.6%
3P	\$ 423	343		-18.9%
SM	\$ 379	290		-23.5%
2S	\$ 316	255		-19.3%
3S	\$ 268	211		-21.3%
4S	\$ 235	191		-18.7%
SC	\$ 170	144		-15.3%
Utility	\$ 97	87		-10.3%
CR (2S & better)	\$ 303	303		n/c
CR (2S, 3S, and 4S)	\$ 243	241		- 0.8%
Average*	\$ 326	273	19.4**	-16.3

*In the absence of information concerning distribution of grades, it is not possible to assign the different grades their proper weight in calculating an overall average. This calculation assigns each grade equal weight, with the exception of the CR grades which were used only during the years 1982 and 1983 years and are not included.

** % by which 1978-82 prices exceed 1983 prices