

BEFORE THE BOARD OF COUNTY COMMISSIONERS OF LANE COUNTY, OREGON

ORDINANCE NO. PA 1358

IN THE MATTER OF AMENDING THE RURAL COMPREHENSIVE PLAN TO REDESIGNATE LAND FROM "AGRICULTURAL" TO "MARGINAL LAND" AND REZONE THAT LAND FROM "EXCLUSIVE FARM USE (E-40)" TO "MARGINAL LAND (ML/SR) WITH SITE REVIEW", ADOPTING SUPPLEMENTAL FINDINGS TO ADDRESS DEFICIENCIES OF COUNTY ORDINANCE NO. PA 1317 AS IDENTIFIED IN THE LAND USE BOARD OF APPEALS REMAND OF THE COUNTY DECISION (LUBA No. 2016-019) WITH SITE REVIEW AND ADOPTING SAVINGS AND SEVERABILITY CLAUSES (File No. 509-PA12-05208; Applicant, Iverson)

WHEREAS, Lane Code 16.400 sets forth procedures to amend the Rural Comprehensive Plan, and Lane Code 16.252 sets forth procedures for rezoning lands within the jurisdiction of the Rural Comprehensive Plan; and

WHEREAS, on April 2012, application No. 509-PA12-05208 was made for a minor amendment to redesignate Tax Lot 3508 of Map 18-02-29, from "Agriculture Land" to "Marginal Land" and to concurrently rezone the property from "E-40/Exclusive Farm Use" to "ML/SR Marginal Land With Site Review"; and

WHEREAS, the Lane County Planning Commission reviewed the proposal in a public hearing and deliberated on October 21, 2014, and forwarded the matter to the Board with a recommendation for approval; and

WHEREAS, on February 9, 2016, the Lane County Board of Commissioners conducted a hearing and voted to approve the application and adopted Ordinance No. PA 1317 to implement the proposed plan amendment and zone change; and

WHEREAS, a timely appeal of the County's decision to adopt Ordinance No. PA 1317 was filed with the Land Use Board of appeals; and

WHEREAS, the LUBA remanded the County's decision back to the County on June 13, 2016; and

WHEREAS, on November 29, 2016, the applicant requested further processing of the LUBA remand prior to the 180 day deadline to request local proceedings; and

WHEREAS, evidence exists within the record, including supplemental findings to address assignments of error identified in the LUBA remand, indicating that the proposal meets the requirements of Lane Code Chapter 16, and the requirements of applicable state and local law; and

WHEREAS, on December 12, 2017, the Board of County Commissioners conducted a public hearing on the matter; and

WHEREAS, the Board held a 3rd reading and deliberated on January 23, 2018, and moved to set a 4th reading to add a condition of approval to limit development to three (3) dwellings within the 85 acre subject property and add the Site Review (SR) suffix; and

WHEREAS, the Board held a 4th reading on February 27, 2018, and is now ready to take action.

NOW, THEREFORE, the Board of County Commissioners of Lane County Ordains as follows:

Section 1. The Lane County Rural Comprehensive Plan is amended to redesignate Tax Lot 3508 of map 18-02-29, from "Agricultural Land" to "Marginal Land". This is depicted on the Official Lane County Plan maps and further identified as Exhibit "A" attached and incorporated herein.

Section 2. The Lane County Official Zoning Map is amended to change the zone of Tax Lot 3508 of Map 18-02-29, from "E-40/Exclusive Farm Use Zone" to "ML/SR" "Marginal Land with Site Review". This is depicted on the Official Lane County Zone maps and further identified as Exhibit "B" attached and incorporated herein. The exclusive purpose of the Site Review suffix is to limit development to three (3) dwellings within the 85 acre subject property.

FURTHER, although not a part of this Ordinance, the Board of County Commissioners adopts Findings of Fact and Conclusions of Law as set forth in Exhibit "C" attached, in support of this action and supplemental Findings of Fact and Conclusions of Law necessary to address deficiencies identified in the Land Use Board of Appeals Remand of the County decision *LandWatch Lane County v. Lane County and Jordan Iverson and Margaret Iverson*, LUBA No. 2016-019, Included as Exhibit "D".

The prior designation and zone repealed by this Ordinance remain in full force and effect to authorize prosecution of persons in violation thereof prior to the effective date of this Ordinance.

If any section, subsection, sentence, clause, phrase or portion of this Ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion constitutes a separate, distinct and independent provision, and such holding does not affect the validity to the remaining portions hereof.

ENACTED this 27th day of February, 2018.



Jay Bozievich, Chair
Lane County Board of County Commissioners

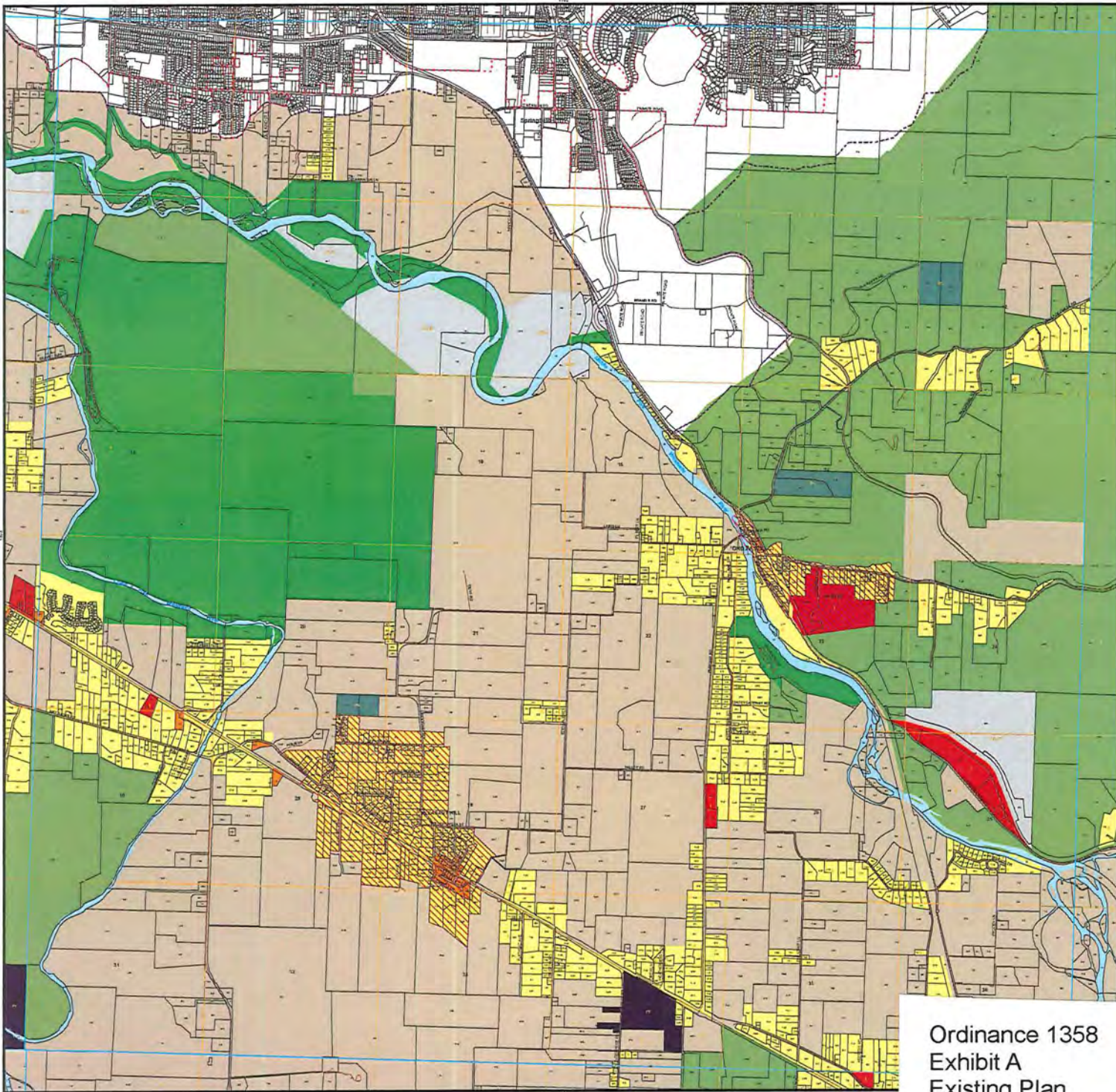


Recording Secretary for this Meeting of the Board

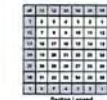
APPROVED AS TO FORM
Date 2-27-18 Lane County



OFFICE OF LEGAL COUNSEL



Township 18 South, Range 02 West



RCP Plan Designations

- F - Forest
- A - Agricultural
- ML - Marginal
- C - Commercial
- I - Industrial
- R - Residential
- NRES - Non Resource
- P - Parks
- AR - Airport
- NRCA - Natural Resource Conservation Area
- NRM - Natural Resource - Mineral
- NRW - Natural Resource - Wildlife
- E - Estuary
- DR - Destination Resort
- PF - Public Facility

- UGB - Urban Growth Boundary
- City Limits
- Communities: Rural, Urban
- Township Range
- Sections
- Metro Plan Boundary
- Parcels
- Roads
- Surface Water

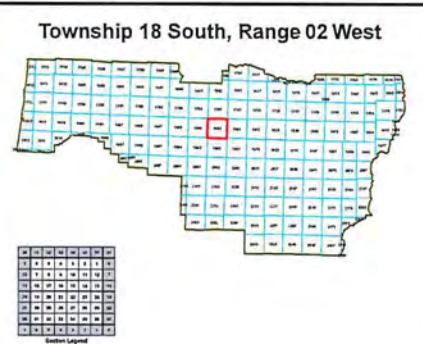
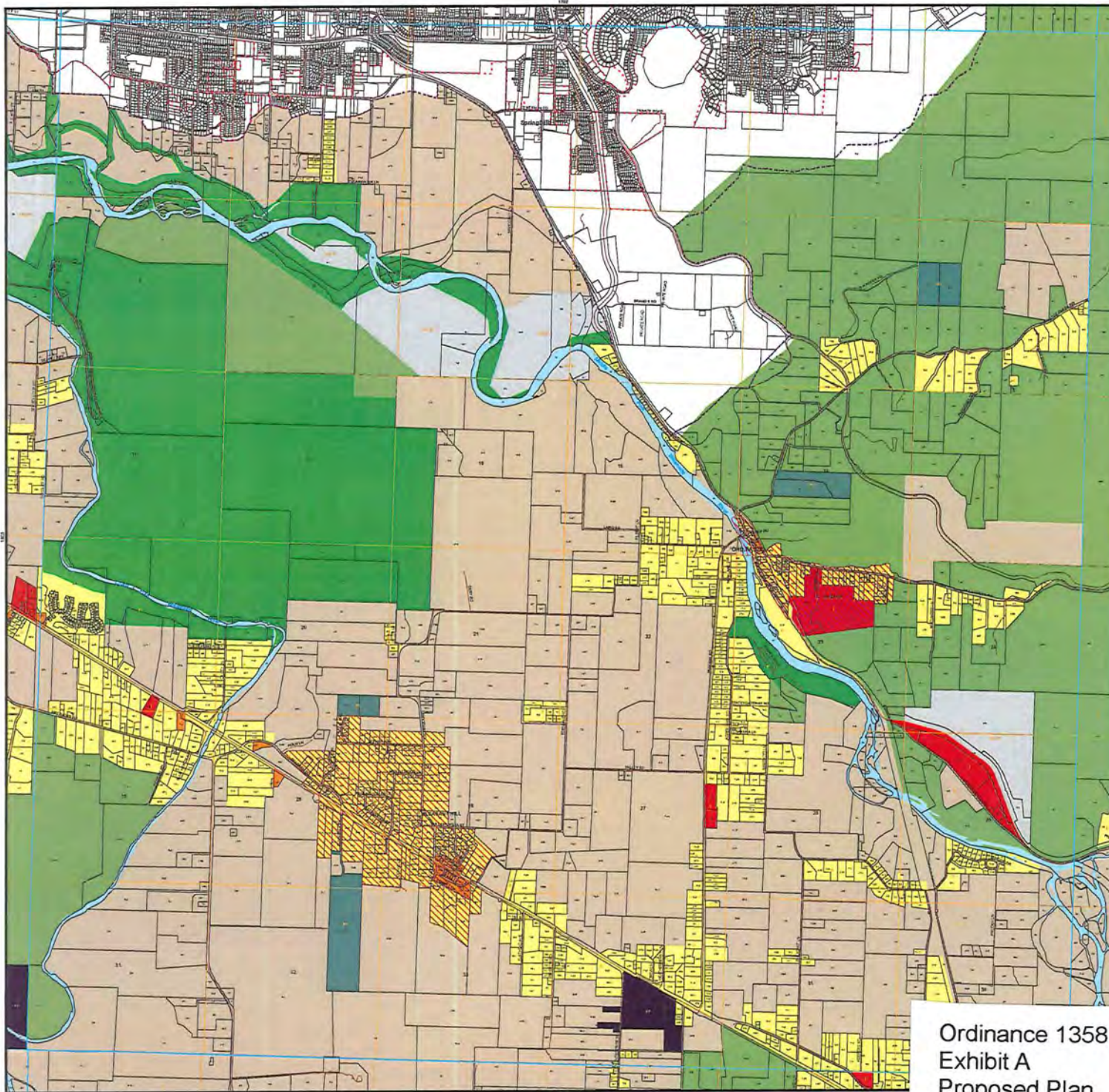
ORIGINAL ADOPTING ORDINANCE NUMBER: ORD.PA1246

Revision	Ordinance or Order Number	Date Effective	Planning Action Number	Revision Description
1	ORD.PA1246	July 11, 2008	NA	Map Adopted
2	NA	Oct 10, 2008	NA	Map of Ordinance 1246
3	ORD.PA 1283	July 4, 2013	PA11-6592	Map of Ordinance 1283
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Ordinance 1358
Exhibit A
Existing Plan

Official Lane County
Plan Map



- RCP Plan Designations**
- F - Forest
 - A - Agricultural
 - ML - Marginal
 - C - Commercial
 - I - Industrial
 - R - Residential
 - NRES - Non Resource
 - P - Parks
 - AIR - Airport
 - NR CA - Natural Resource Conservation Area
 - NR M - Natural Resource : Mineral
 - NR W - Natural Resource : Wildlife
 - E - Estuary
 - DR - Destination Resort
 - PF - Public Facility

- UGB - Urban Growth Boundary
- City Limits
- Communities: Rural, Urban
- Township Range
- Sections
- Metro Plan Boundary
- Parcels
- Roads
- Surface Water

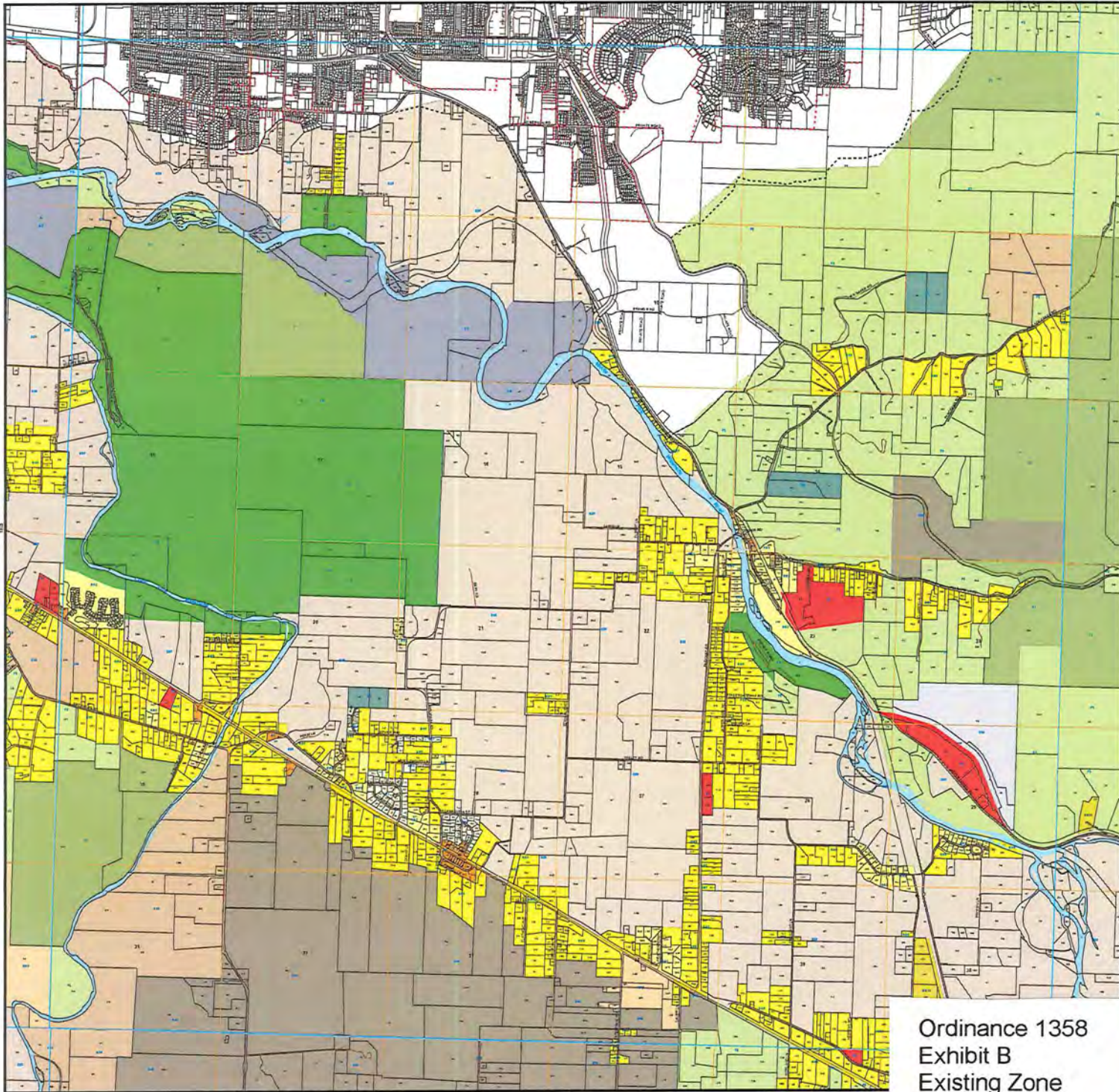
ORIGINAL ADOPTING ORDINANCE NUMBER: ORD.PA1246

Revision	Ordinance or Order Number	Date Effective	Planning Action Number	Revision Description
1	ORD.PA1246	July 11, 2008	NA	Map Adopted
2	NA	Oct 10, 2008	NA	
3	ORD.PA 1293	July 4, 2013	PA11-6592	
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Ordinance 1358
Exhibit A
Proposed Plan

**Official Lane County
Plan Map**



Township 18 South, Range 02 West



- Zoning**
- F1 - Non-Imposed Forest
 - F2 - Imposed Forest
 - E25 - Exclusive Farm Use (25 acre minimum)
 - E30 - Exclusive Farm Use (30 acre minimum)
 - E40 - Exclusive Farm Use (40 acre minimum)
 - E50 - Exclusive Farm Use (50 acre minimum)
 - ML - Marginal Lands
 - RC - Rural Commercial
 - RI - Rural Industrial
 - LI - Light Industrial
 - OI - General Industrial
 - RPF - Rural Public Facility
 - R1 - Rural Residential (1 acre minimum)
 - R2 - Rural Residential (2 acre minimum)
 - RSARES - Non-Resource (2 acre minimum)
 - R3S - Rural Residential (3 acre minimum)
 - RSARES - Non-Resource (3 acre minimum)
 - R10 - Rural Residential (10 acre minimum)
 - RSARES - Non-Resource (10 acre minimum)
 - RSARES - Non-Resource (15 acre minimum)
 - PS - Park and Recreation
 - RPS - Rural Park and Recreation
 - AO - Airport Operation
 - CSPP - Clear Lake Withdrawn Protection Area
 - NR - Natural Resource
 - NE - Natural Escrow
 - DR - Driveway Easement
 - OM - Quarry and Mining Operation
 - SG - Sand, Gravel and Rock Products
 - SGCP - Sand, Gravel and Rock Products Combining Processing
 - C6 - Rural Commercial
 - C2 - Neighborhood Commercial
 - C1 - Commercial
 - WI - Light Industrial
 - PF - Public Facility

- UGB Township Range Parcels Surface Water
 City Limits Sections Roads

ORIGINAL ADOPTING ORDINANCE NUMBER: ORD_PA1246

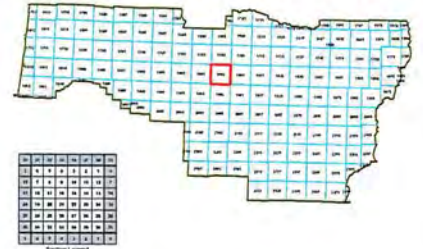
Revision	Ordinance or Order Number	Date Effective	Planning Action Number	Revision Description
1	ORD_PA1246	July 11, 2008	NA	Map Adopted
2	NA	Oct 10, 2008	NA	Map Withdrawn
3	NA	March 8, 2011	NA	Map Withdrawn
4	ORD_PA 1284	July 4, 2013	PA11-6092	Map Withdrawn
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Ordinance 1358
Exhibit B
Existing Zone

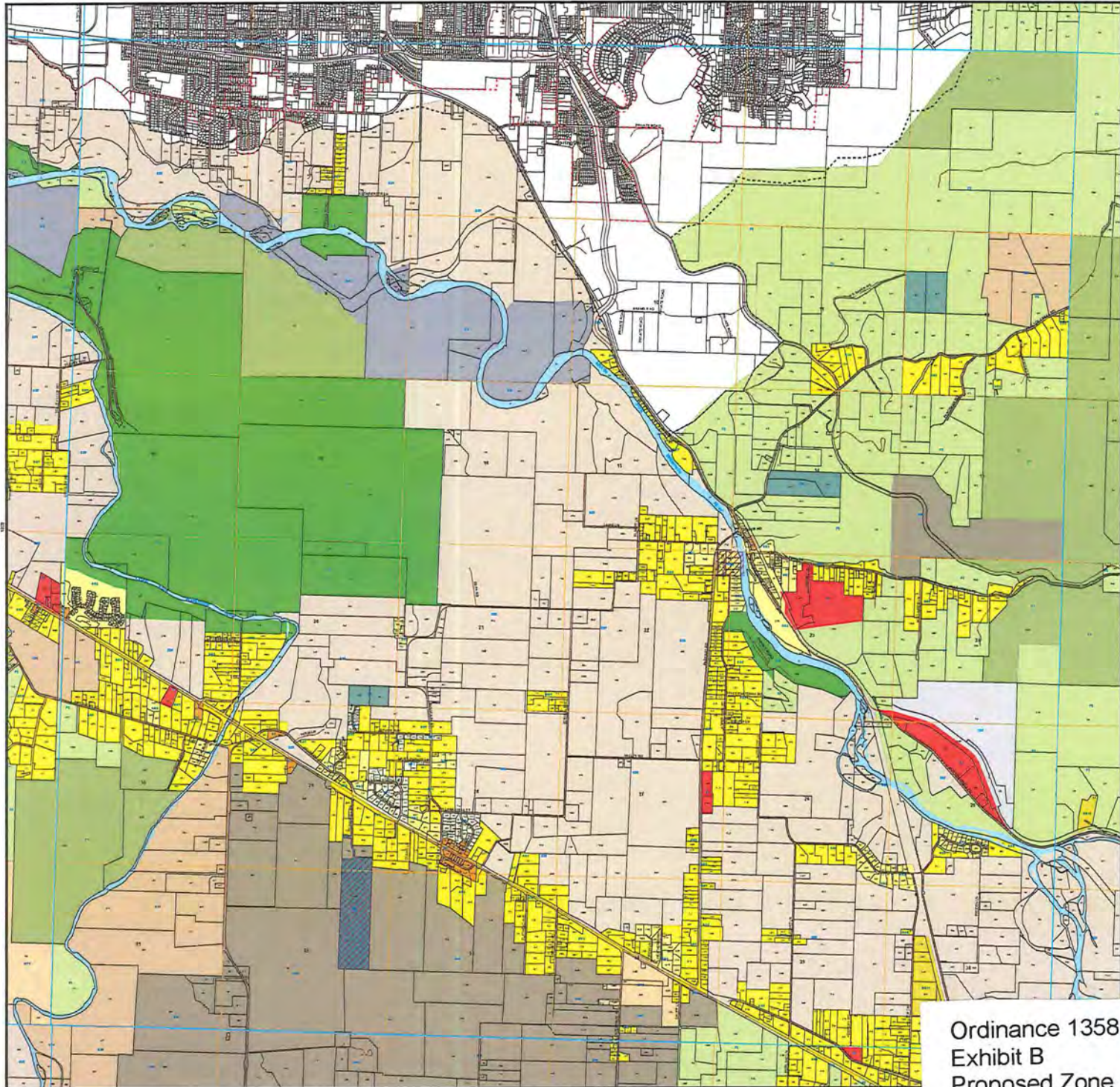
**Official Lane County
Zoning Map**

Township 18 South, Range 02 West



Zoning

- F1 - Nonincorporated Forest
 - F2 - Incorporated Forest
 - CD0 - Exclusive Farm Use (20 acre minimum)
 - CD5 - Exclusive Farm Use (25 acre minimum)
 - CD10 - Exclusive Farm Use (30 acre minimum)
 - CD50 - Exclusive Farm Use (50 acre minimum)
 - M - Marginal Lands
 - RC - Rural Commercial
 - RI - Rural Industrial
 - LI - Light Industrial
 - GI - General Industrial
 - RPF - Rural Public Facility
 - RR1 - Rural Residential (1 acre minimum)
 - RR2 - Rural Residential (2 acre minimum)
 - RR2AES - Non Resource (2 acre minimum)
 - RR3 - Rural Residential (5 acre minimum)
 - RR3AES - Non Resource (5 acre minimum)
 - RR10 - Rural Residential (10 acre minimum)
 - RR10AES - Non Resource (10 acre minimum)
 - RR15AES - Non Resource (15 acre minimum)
 - PE - Park and Recreation
 - EPS - Rural Park and Recreation
 - AO - Airport Operations
 - CUOP - Clear Lake Watershed Protection Area
 - NR - Natural Resource
 - NE - Natural Estuary
 - DR - Driftless River
 - QM - Quarry and Mining Operations
 - SO - Sand, Gravel and Rock Products
 - SSGP - Sand, Gravel and Rock Products Conditioning Processing
 - CC - Rural Commercial
 - CC1 - Neighborhood Commercial
 - CC2 - Commercial
 - LI - Light Industrial
 - PF - Public Facility
- UGB Township Range
 Parcels
 Surface Water
 City Limits
 Sections
 Roads



ORIGINAL ADOPTING ORDINANCE NUMBER:		ORD.PA1246		
Revision	Ordinance or Order Number	Date Effective	Planning Action Number	Revision Description
1	ORD.PA1246	July 11, 2008	NA	Map Adopted
2	NA	Oct 10, 2008	NA	
3	NA	March 8, 2011	NA	
4	ORD.PA 1284	July 4, 2013	PA11-0092	Plan for Quarry which was adopted during the hearing process
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Ordinance 1358
Exhibit B
Proposed Zone

Official Lane County
Zoning Map

FINDINGS OF FACT AND CONCLUSIONS OF LAW FOR ORDINANCE
NO. PA 1317

BEFORE THE BOARD OF COUNTY COMMISSIONERS OF
LANE COUNTY, OREGON

IN THE MATTER OF AMENDING THE RURAL COMPREHENSIVE PLAN TO REDESIGNATE LAND FROM "AGRICULTURAL" TO "MARGINAL LAND" AND REZONE THAT LAND FROM "EXCLUSIVE FARM USE (E-40)" TO "MARGINAL LAND (ML/SR) WITH SITE REVIEW", AND ADOPTING SAVINGS AND SEVERABILITY CLAUSES (File 509-PA12-05208)

I. **Applicant/Owner:** Margaret Iverson and Iverson Living Trust
1872 Willamette St.
Eugene, OR. 97401

Applicant's Representative: Bill Kloos
Law Office of Bill Kloos, PC
375 W. 4th Avenue, Suite 204
Eugene, OR. 97401

II. **PROPOSAL**

Lane County Land Management Division received an application for a Plan Amendment and concurrent Zone Change from the owner/applicant requesting an amendment to the Lane County Rural Comprehensive Plan (RCP). The applicant's request is to redesignate the land from Agricultural to Marginal Land and to rezone from Exclusive Farm Use (E-40) Zone to Marginal Lands Zone (ML/SR) with Site Review (refer to Attachment 1, Exhibits A & B for existing and proposed plan/zone maps). The Lane County Planning Commission's discussion on addition of Site Review suffix is addressed below in section III.C.

The Lane County Planning Commission (LCPC) unanimously recommended the Board of County Commissioners approve the request. The application is now before the Board for a public hearing and decision.

III. BACKGROUND

A. Nature of Request

This request is a Plan Amendment / Zone Change application request to amend the acknowledged Lane County Rural Comprehensive Plan (RCP) from Agricultural Land to Marginal Land, and change the zoning classification from Exclusive Farm Use (E-40) Zone to Marginal Land Zone.

This is a quasi-judicial Plan Amendment request. The decision must be based on approval criteria, findings of fact and the evidence in the official record of the proceedings. The Plan Adoption or Amendment process is through Planning Commission recommendation and Board action, both with public hearing(s) (conducted pursuant to LC 14.300 Hearing procedure). The criteria consists of the Marginal Land ORS law (section IV.A.), Lane Code Plan Amendment/Zone Change criteria (section IV.B.), Lane County Rural Comprehensive Plan (RCP, section IV.C), Goal 5 ESEE Analysis (section IV.D.), and the Oregon Statewide Planning Goals (section IV.E.).

Approval of this request will allow division of the subject property into four 20 acre minimum parcels. During the LCPC hearing the applicant agreed to the LCPC recommendation to add a site suffix that conditions the property to a maximum four houses (equivalent to a four (4) twenty (20) acre minimum parcel outcome) on the subject property.

The land division process is a separate land use application and is not part of the proposal currently before the Board.

B. Subject Property Information and Nearby Area

The subject property is an irregular configured approximately 85 acre flag lot off of Highway 58. The property consists of one tax lot referred to as "the subject property" (refer to Exhibit 1, vicinity map). The property is a legal lot as it was partitioned in 2011, related to a Measure 49 Land Partition application (files 509-PA07-05951 and final partition 509-PA10-05762), as Parcel 3 of Partition Plat 2011-P2486 (refer to Exhibit 2).

The property is zoned Exclusive Farm Use (E-40) Zone (refer to Exhibit 3, existing zoning map) governed by Lane Code Ch. 16.212. The subject property is just south of and adjacent to the boundaries of the Rural Community of Pleasant Hill. Properties to the north are zoned Rural Residential (RR-5) Zone, and properties to the south, east, and west are all zoned E-40. The subject property is bisected in the northern area by Papenfus Creek which is mapped 100 year Floodplain near the creek bed (refer to Exhibit 4, 2013 aerial photo with

floodplain). Papenfus Creek is not a regulated Class 1 Stream, however there are mapped wetlands mostly located just south of the creek.

The 2013 aerial photos (refer to Exhibit 4, 2013 aerial photo) shows the property to the west appears to be in active farm use, properties to the east appears forested, and properties to the north zoned RR-5 contain dwellings and outbuildings. The property ranges in elevation from approximately 520 feet to 640 feet Mean Sea Level(MSL). There is a single family dwelling already on the property which access off Sunny Hill Lane, a private access easement off of Highway 58.

C. Lane County Planning Commission Action

The application was presented to the Lane County Planning Commission for evaluation and recommendation at a public hearing on October 21, 2014 (refer to LCPC Minutes, Exhibit 5). The item was originally scheduled for LCPC hearing in November and December 2012, but was pulled by the applicant. The applicant requested the application to be placed on hold for three primary reasons: need for a soils evaluation review, need for Economic, Social, Environmental, and Energy (ESEE) analysis addressing Goal 5 issues including Big Game Habitat, and the applicant wanted to await the outcome of other zone changes applications to Marginal Lands zoning unrelated to this proposal. During the LCPC hearing, they recommended approval in an eight to zero vote. With the recommendation to add a /SR Site Review suffix limiting the property to four dwellings. The Site Review suffix was also recommended by staff during the LCPC hearing, driven by the agent's discussion of the Goal 5 ESEE analysis (refer to ESEE discussion in Section IV.D.). Throughout the ESEE analysis the agent bases his findings on an assumption of four total dwellings being built on the subject property should this application be approved.

The Marginal Lands zone allows parcel sizes of 10 or 20 acres per LC 16.214(6), with a permitted use allowance of one dwelling per parcel under LC 16.214(2)(b). This could result in eight dwellings on the 85 acre property. Since the agent used a maximum of four dwellings to justify meeting the ESEE Big Game Habitat needs, the proposal needs to be explicitly limited to sustain the logic of the applicant's arguments.

Finally, the LCPC recommended a condition requiring the applicant to record a Farm/Forest Management Agreement prior to the Board review to which the applicant agreed. This was based on a comment staff received from an adjacent property owner concerning the need to protect their farm operations. The Farm/Forest Easement is a recorded document which is intended to protect a property owner's right to farm and protect against related nuisance lawsuits.

D. Financial and/or Resource Considerations

The applicant's request for a Plan Amendment/Zone Change is a fee-for-service land use application that is processed in the Land Management Division by planning staff and the Planning Director. There are no foreseeable financial or staff resource considerations related to the applicant's proposal.

IV. CRITERIA & ANALYSIS

A. Marginal Land ORS's Criteria

Marginal Land proposals are primarily governed by the 1991 version of ORS 197.247 (refer to Exhibit 6). Lane County is one of two Oregon counties that have adopted the Marginal Lands Plan/Zone designations. Lands that are designated as "marginal lands" are considered a subset of resource lands, but are allowed as smaller tracts in which dwellings are a permitted use pursuant to Marginal Land zone under Lane Code 16.214(2)(b).

Marginal Land law has changed since its inception in Lane County in 1984 (Ordinance 884). Lane County Marginal Lands cases have been appealed to Land Use Board of Appeals and beyond, often resulting in remands back to the County with changing methodology of Marginal Lands applications. As a result and as mentioned previously above, to eliminate multiple interpretations and offer guidance, in March 1997 the Lane County Board of Commissioners issued a Supplement to Marginal Lands Information Sheet (Exhibit 7) summarizing the seven issues that changed policy.

Essentially, qualification for a marginal land designation is a two-fold test. Any proposal must comply with the income test, and a parcelization test or productivity test. The applicant chose to do the income test and productivity test for this application.

The examination must include any lands, which might have been part of such farm or forest operations during the five year time period of 1978-1982 (established by ORS 197.247(1)(a)). The land owned and managed as verified by staff included an approximately 122 acre property owned by Margaret Iverson (current owner) during the five year time period. In 1982 the property was divided (M-Partition M201-80) into two parcels, Parcel 1 at approximately 118 acres, and parcel 2 at approximately four acres with the original homestead. The then 122 acre ownership consisted of what are now Tax Lots 3502, 3504, 3505, 3507, 3506, 3508, 3600, 3601, 3602, & 3603. Currently, the subject property is considered a legal lot as Parcel 3 of 2011-P 2486 (refer to Exhibit 2).

1. Income Test

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 farm operation that produced \$20,000 or more in annual gross income or a forest operation capable of producing an average, over growth cycle, of \$10,000 in annual gross income.

Farm Income - The applicant has provided an affidavit (Exhibit 8) from Margaret Iverson, who owned the then 122 acre property during the five years preceding 1983. The affidavit attests the proposed marginal land was not part of a farm operation that produced \$20,000 or more annual gross farm income. Staff accepts this evidence as it meets the Board directive.

Forest Income – The applicant hired a professional forester (Marc Setchko) to conduct this analysis and submitted a report (Exhibit 9, forester report). Mr. Setchko calculated average gross incomes for each year with the highest log prices in 1981 at \$9,881 and the lowest log prices in 1982 at \$6,945 (Exhibit 9 pages 5-7). These calculations show the property did not exceed the maximum \$10,000 annual gross income during the five year time period.

Due to the evidence in the record, the Board finds the criterion above is met.

2. Productivity Test

ORS 197.247(1)(b)(C) The proposed Marginal Land is composed predominantly of soils in capability classes V through VIII in the Agricultural Capability Classification system used by the U.S. Department of Agriculture Soil Conservation Service, and is not capable of producing 85 cubic feet of merchantable timber per acre per year.

Agricultural Capability Classification - According to Natural Resources Conservation Service data using their Web Soil Survey tool, the then 122 acre property contained approximately 74% Class 2-4 soils (refer to Exhibit 10). The term "*predominantly*" in relation to Marginal Lands applications means 51%>. As such, the applicant hired a professional soil scientist (Gary Kitzrow) to conduct a soils analysis (refer to Exhibit 11, soils report) using field methodologies. Mr. Kitzrow concluded that the property contains 73.7% Class 4-8 soils, and 26.3% Class 2-4 soils (refer to Exhibit 12, soils map for total acreage).

A new administrative rule (OAR 660-033-0030 & 0045 Identifying Agricultural Land) took effect in 2010, requiring that in cases where soils data is presented that is different from those listed in the standard NRCS source, that the study needs to be first vetted by Department of Land Conservation & Development (DLCD). The purpose of the DLCD staff review is to ensure that an adequate and

consistent methodology is used by the professional in the soils analysis. LMD staff determined this OAR applied to this soils analysis. As such, the applicant submitted their Soils Assessment application to DLCD.

When DLCD reviewed the soils assessment, they requested additional information from the agent. DLCD concluded the methodology of the soil report was deficient. However, DLCD stated that the County had the option of whether or not to accept the reports on its own accord. Because the reports accepted during the partition process, had previously been peer reviewed by another soils scientist, and that the calculations were revised by the Registered Engineer, the County accepted the reports. This was supported by County Counsel. Counsel indicated that the property does not meet the definition of agricultural land, but rather is a subset of resource farm land. Lands designated as "Marginal Lands" are still considered a subset of resource land that is marginally productive due to low productive soil capability or impact from other land uses (pg. 2 Legislative History, Exhibit 6). Therefore, the legal trigger of OAR 660-033-0020(1)(a)(A) is not activated, a key item requiring soils review by DLCD.

Merchantable timber - The applicant hired a professional forester (Marc Setchko) to conduct this analysis and submitted a report (Exhibit 9). Mr. Setchko concluded the property is incapable of producing 85 cubic/acre/year. (Exhibit 8 pgs. 2-3) of merchantable timber.

In summary, the Board finds the Marginal Land application meets the ORS criterion above.

B. Lane Code Plan Amendment / Zone Change Criteria

1. Lane Code Ch. 16.400(6)(h) Method of Adoption and Amendment:

(i) The adoption or amendment of a Rural Comprehensive Plan component shall be by Ordinance.

If approved, the adoption of the RCP amendments shall be by Ordinance.

(ii) The adoption or amendment shall be concurrent with an amendment to LC 16.400(4) above. In the case of a Rural Comprehensive Plan adoption, the Code amendment shall place such Plan in the appropriate category. In the case of a Rural Comprehensive Plan amendment, the Code amendment shall insert the number of the amending Ordinance.

The adoption is concurrent with an amendment to category (a) listed in LC 16.400(4). The Code Amendment will insert the number of the amending Ordinance within the document.

(iii) The Board may amend or supplement the Rural Comprehensive Plan upon making the following findings:

(aa) For Major and Minor Amendments as defined in LC 16.400(8)(a) below, the Plan component or amendment meets all applicable requirements of local and state law, including Statewide Planning Goals and Oregon Administrative Rules.

This request is classified as a Minor Plan Amendment as it is a change request to the Plan diagram (map) only and not a change in RCP text. Findings on applicable local and state law, including Statewide Planning Goals are addressed in this section.

(bb) For Major and Minor Amendments as defined in LC 16.400(8)(a) below, the Plan amendment or component is:

(i-i) necessary to correct an identified error in the application of the Plan; or

The applicant states by showing that the property qualifies for Marginal Land designation, the applicant is essentially demonstrating that the existing plan designation of Agriculture is not correct and in error.

(ii-ii) necessary to fulfill an identified public or community need for the intended result of the component or amendment; or

(iii-iii) necessary to comply with the mandate of local, state or federal policy or law; or

Neither of the above applies.

(iv-iv) necessary to provide for the implementation of adopted Plan policy or elements; or

The property is currently designated Agriculture, thus RCP Goal 3 applies (see Section IV.C. for RCP findings). The marginal land statute and RCP policies (Goal 3 Policy 14) anticipate that Agricultural land can be redesignated as marginal land. Also, the description of the Marginal Lands plan designation, under Goal 11 of the RCP, states: "Land that satisfy the requirements of ORS 197.246 may be designated Marginal Lands in accordance with other Plan policies." A Marginal Lands application that complies with these Plan policies implements the RCP.

(v-v) otherwise deemed by the Board, for reasons briefly set forth in its decision, to be desirable, appropriate or proper.

The County Board finds that if a tract of land qualifies for Marginal Lands designation then it is desirable, appropriate and proper to apply that designation.

(cc) For Minor Amendments as defined in LC 16.400(8)(a) below, the Plan Amendment or component does not conflict with adopted Policies of the Rural Comprehensive Plan, and if possible, achieves policy support.

Findings of consistency with the RCP policies are addressed below under RCP Policies, section IV.C.

(dd) For Minor Amendments as defined in LC 16.400(8)(a) below, the Plan Amendment or component is compatible with the existing structure of the Rural Comprehensive Plan, and is consistent with the unamended portions or elements of the Plan.

Findings of consistency with the RCP policies are addressed below under RCP Policies, section IV.C.

(i) A change of zoning to implement a proposed Plan amendment may be considered concurrently with such amendment. In such case, the Board shall also make the final zone change decision, and the Hearings Officials consideration need not occur.

The application proposal is a Plan Amendment and concurrent Zone Change request. As such, the item was not required to go before the Hearing Official for consideration. The item's title, review, and motion to action identifies that the review and decision is for a concurrent Plan Amendment and Zone Change request.

2. Lane Code 16.400(8) Additional Amendment Provisions. In addition to the general procedures set forth in LC 16.400(6) above, the following provisions shall apply to any amendment of Rural Comprehensive Plan components:

(a) Amendments to the Rural Comprehensive Plan shall be classified according to the following criteria:

(i) Minor Amendment. An amendment limited to the Plan Diagram only and, if requiring exception to Statewide Planning Goals, justifies the exception solely on the basis that the resource land is already built upon or is irrevocably committed to other uses not allowed by an applicable goal.

(ii) Major Amendment. Any Amendment that is not classified as a minor amendment.

This is a minor plan amendment request. No Plan text is proposed to be changed. No Goal exception is being requested. The change is from one resource Plan designation to another.

(b) Amendment proposals, either minor or major, may be initiated by the County or by individual application. Individual application shall be subject to a fee established by the Board and submitted pursuant to LC 14.050.

This is a minor amendment, initiated by the owner, with payment of the application fee.

(c) Minor amendment proposals initiated by an applicant shall provide adequate documentation to allow complete evaluation of the proposal to determine if the findings required by LC 16.400(6)(h)(iii) above can be affirmatively made. Unless waived in writing by the Planning Director, the applicant shall supply documentation concerning the following:

(i) A complete description of the proposal and its relationship to the Plan.

The proposal is described in whole within the application.

(ii) An analysis responding to each of the required findings of LC 16.400(6)(h)(ii) above.

This was addressed above.

(iii) An assessment of the probable impacts of implementing the proposed amendment, including the following:

(aa) Evaluation of land use and ownership patterns of the area of the amendment;

The proposed Marginal Land designation will maintain the resource character of the property. However, it will allow for low density residential development of the subject property. There is currently one dwelling on the property. Approval of this request will allow division of the subject property into 20 acre minimum parcels/lots, a four parcel outcome. During the LC Planning Commission hearing the applicant agreed to the LCPC recommendation to add a site suffix that conditions that the property can only contain maximum 4 houses (equivalent to a four (4) twenty (20) acre minimum parcel outcome) on the subject property. This intensity is comparable to or less dense than the surrounding Rural Residential density in the Pleasant Hill area.

(bb) Availability of public and/or private facilities and services to the area of the amendment, including transportation, water supply and sewage disposal;

The following rural services are available to the property:

Fire:	Pleasant Hill Rural Fire Protection District
Police:	County/State
Sewer/water:	Proposed on-site septic/well
School District:	Pleasant Hill
Power:	EPUD
Access:	Sunny Hill Lane, a private access easement off of Highway 58

(cc) Impact of the amendment on proximate natural resources, resource lands or resource sites, including a Statewide Planning Goal 5 "ESEE" conflict analysis where applicable;

The applicant conducted an ESEE analysis; refer to section 2.G.d. for discussion.

(dd) Natural hazards affecting or affected by the proposal:

The RCP Goal 7 states natural hazards inventory are contained in the 1982 Natural Hazards Working Paper. Potential hazards inventoried on this property include Natural Resource Conservation Service (NRCS) soil data and the Flood Insurance Rate maps. While the application stated no natural hazards have been identified or inventoried on the subject property, potential for flooding does exist according to the current mapped Flood Zone A near the north portion of the subject property along Papefnus Creek (refer to Floodplain Map, Exhibit 4). Other natural hazards such as earthquakes, landslide, erosion, and deposition are not inventoried (Natural Hazards Working Paper, pg. 4) for this property.

As for potential flooding, any development proposed (roads, structures, land division) shall comply with the current county floodplain management regulations in LC 16.244, which will require a floodplain permit prior to any development to ensure the applicable regulations are adhered to.

(ee) For a proposed amendment to a nonresidential, nonagricultural or nonforest designation, an assessment of employment gain or loss, tax revenue impacts and public service/facility costs, as compared to equivalent factors for the existing uses to be replaced by the proposal;

(ff) For a proposed amendment to a nonresidential, nonagricultural or nonforest designation, an inventory of reasonable alternative sites now appropriately designated by the Rural Comprehensive

Plan, within the jurisdictional area of the Plan and located in the general vicinity of the proposed amendment;

These criteria are not applicable; the Board had found that Marginal Land is considered a resource designation.

(gg) For a proposed amendment to a Nonresource designation or a Marginal Land designation, an analysis responding to the criteria for the respective request as cited in the Plan document entitled, "Working Paper: Marginal Lands" (Lane County, 1983).

The standards listed in the Marginal Lands Working paper cite Senate Bill 237 in 1983 (Marginal Lands Working Paper, pgs. 4-7). The Marginal Lands law was amended in 1991 and the Working Paper was never amended. As such, the appropriate criteria to base the Marginal Lands Plan Amendment is derived from state law under ORS 197.247 (Marginal Lands ORS criteria, refer to findings of consistency under section G.2.a.) and guided by RCP Goal 3, Policy 14 and RCP Goal 4, Policy 4 (refer to findings of consistency under section IV.C.).

3. Lane Code 12.050 Method of Adoption and Amendment:

(1) The adoption of the comprehensive plan or an amendment to such plan shall be by an ordinance.

The method of adoption is by a proposed ordinance.

(2) The Board may amend or supplement the comprehensive plan upon a finding of:

- (a) an error in the plan; or**
- (b) changed circumstances affecting or pertaining to the plan; or**
- (c) a change in public policy; or**
- (d) a change in public need based on a reevaluation of factors affecting the plan; provided, the amendment or supplement does not impair the purpose of the plan as established by LC 12.005 above.**

The above criterion is duplicative of LC 16.400(6)(h)(iii)(bb), refer to findings above.

4. Lane Code 16.252 Procedures for Zoning, Rezoning, and Amendments to the RCP:

(1) Purpose. As the Rural Comprehensive Plan for Lane County is implemented, changes in zone and other requirements of this chapter will be required. Such Amendments shall be made in accordance with the procedures of this section.

(2) Criteria. Zonings, rezonings and changes in the requirements of this chapter shall be enacted to achieve the general purpose of this chapter and shall not be contrary to the public interest. In addition, zonings and rezonings shall be consistent with the specific purposes of the zone classification proposed, applicable Rural Comprehensive Plan elements and components, and Statewide Planning Goals for any portion of Lane County which has not been acknowledged for compliance with the Statewide Planning Goals by the Land Conservation and Development Commission. Any zoning or rezoning may be effected by Ordinance or Order of the Board of County Commissioners or the Hearings Official in accordance with the procedures in this section.

The applicant's agent attests the approval of this request will achieve the general purpose of this chapter and will not be contrary to the public interest. There are 14 general purpose statements in LC 16.003. The agent states that if the application proposal meets the standards that govern the redesignation of the property, then the Board finds it is reasonable to conclude that the application will meet the general purpose statements and be in the public interest.

(3) Initiation/Application. (c) By Applicant. Application for the zoning or rezoning of properties may be made by any person as provided in LC 14.050.

The initiation of the application was originally done by Boyd Iverson in 2012. Since his recent passing, his son Jordan Iverson has taken over as the applicant on this application submittal. Jordan Iverson is a person with legal interest in the property meeting the standard in LC 14.050(1)(a) as shown in the submitted property owner authorization form and proof of executorship in the application materials.

In summary, the Board finds the LC Plan Amendment / Zone change standards are met.

C. Rural Comprehensive Plan (RCP) Policies

RCP Goal 3, Policy 14 state:

Land may be designated as marginal land if it complies with the following criteria:

a. The requirements of ORS 197.247 (1991 edition), and

Findings of consistency with ORS 197.247 (1991 ed.) are addressed in section IV.A. above.

b. Lane County General Plan Goal 5, Flora and Fauna, policies numbered 11 & 12.

Findings of consistency with Goal 5. Flora and Fauna are addressed below under RCP Goal 5 policy.

RCP Goal 4, Forest Lands Policy 1 state:

Conserve forest lands by maintaining the forest lands base and protect the state's forest economy by making possible economically efficient forest practices that assure the continuous growing and harvesting of forest tree species as the leading use on forest land consistent with sound management of soil, air, water and fish and wildlife resources and to provide for recreational opportunities and agriculture. Forest land shall include lands which are suitable for commercial forest uses including adjacent or nearby lands which are necessary to permit forest operations or practices and other forested lands that maintain soil, air, water, and fish and wildlife resources.

The proposal will conserve forest lands because the Marginal Lands zone is a resource zone. Farm and forest operations are permitted uses in the Marginal Lands zone in order to allow continued opportunities to conduct farm or forest operations on lands zoned Marginal Lands.

RCP Goal 4, Forest Lands Policy 3 state:

Forest lands that satisfy the requirements of ORS 197.247 (1991 ed), may be designated as Marginal Lands and such designations shall also be made in accordance with other Plan policies. Uses and land divisions allowed on Marginal Lands shall be those allowed under ORS 197.247 (1991 ed).

Findings of consistency with ORS 197.247 (1991 ed.) are addressed in section IV.A. above.

RCP Goal 4, Forest Lands Policy 12 state:

Encourage the conversion of under-productive forest lands through silvicultural practices and reforestation efforts.

Farm and forest operations are permitted uses in the Marginal Lands zone in order to allow continued opportunities to conduct farm or forest operations on lands zoned Marginal Lands.

RCP Goal 5, Flora and Fauna Policies 11 & 12 state:

11. Oregon Department of Fish and Wildlife recommendations on overall residential density for protection of big game shall be used to determine the allowable number of residential units within regions of the County. Any density above that limit shall be considered to conflict with Goal 5 and will be allowed only after resolution in accordance with OAR660-16-000. The County shall work with Oregon Department of Fish and Wildlife officials to prevent conflicts between development and big game Range through land use regulation in resource areas, siting requirements and similar activities which are already a part of the County's rural resource zoning program.

In previous Marginal Land applications the County Board found that the County and the ODFW have implemented Policy 11 through application of county land use regulations, siting requirements, and other elements of the County's rural resource zoning program. That is, residential densities that will be allowed by the Marginal Land designations (20 acre per unit in this instance) will not exceed any limits recommended by the ODFW, as directed by RCP Goal 5, Flora and Fauna, Policy 11.

However, beginning with the Suess Marginal Lands applications, an economic, social, environmental, and energy (ESEE) analysis was completed in connection with Marginal Lands zone change requests and is now considered normal requirement, for Marginal Lands applications. As such, refer to Policy 12 & RCP Goal 5 ESEE Analysis sections below for further discussion.

12. If uses identified (which were not previously identified in the Plan) which would conflict with a Goal 5 Resource, an evaluation of the economic, social, environmental, and energy consequence shall be used to determine the level of protection necessary for the resource. The procedure is outlined in OAR 660-16-000 will be followed.

Beginning with the Suess Marginal Land applications/decision, the applicant has conducted an economic, social, environmental, and energy (ESEE analysis) analysis in connection with the Marginal Land application analysis. The ESEE analysis is considered necessary because the analysis was not done on this subject property in the 1984 RCP adoption. Now with this submittal, the applicant has conducted the ESEE analysis related to certain Goal 5 Resources addressed in the Goal 5 ESEE Analysis section below.

In summary, the Board finds the application demonstrates compliance with the RCP policies above.

D. Goal 5 ESEE Analysis

Goal 5 requires the County to inventory the locations, quality and quantity of certain natural resources. Where no conflicting uses are identified, the inventoried resources shall be preserved. Where conflicting uses are identified, the economic, social, environmental and energy consequences shall be determined and programs developed to achieve the goal.

The applicant is not required to do an entire Goal 5 analysis. Particularly relevant is OAR 660-023-0250 subsections (3) & (4), where a county is amending an acknowledged plan and zoning designations, the applicant must address Goal 5 if any of the area proposed for change encompasses lands included on the county's inventory of Goal 5 resources. The Goal 5 question, therefore, is whether the subject property includes any significant Goal 5 resources inventoried in the acknowledged county plan.

Goal 5 resources could include: Open Spaces, Scenic, and Historic Areas and Natural areas, Historic Resources, Mineral & Aggregate Resources, Flora & Fauna, Energy, Big Game Habitat, Water Resources including Wetlands, Floodplain.

The property is not designated as Open Space, Historic Area/Structure, Historic Resources, Energy resources, or a Significant Mineral & Aggregate Resource as inventoried in the Rural Comprehensive Plan. As such, the applicant's analysis on Goal 5 ESEE was related to Big Game Habitat, Flora & Fauna, and Water Resources, wetlands, floodplain, and archeological sites in the area.

Big Game Habitat

The property is inventoried as Big Game Habitat in the RCP. There are three classifications of Big Game range, "Major Big Game", "Impacted Big Game," and Peripheral Big Game." The subject property contains Impacted and Peripheral Big Game classifications (refer to Exhibit 13, Big Game Habitat Map). Major Big Game is the most "wild" and valuable, generally found on federal land with large forest holdings, and touching the valley in some of the foothills. None of this designation is found on the subject property. The intermediate range is Peripheral Big Game Range and covers approximately 35 acres of the property. The property then transitions into the Impacted Big Game Range which covers approximately 49 acres of the property. This latter range includes the cities of Lane County and rural areas of unincorporated communities such as nearby Pleasant Hill. While the Impacted Big Game Range does not have much or any protection, the other two do.

The agent presented his case modeled after the Sues Marginal Lands applications. One of the major differences in the two cases is the current

application does not contain Major Big Game range generally given to lands containing Oak savannah habitat. According to conversations that staff had with ODF&W during the Suess applications, oak savannah need protection because they are excellent habitat for deer, and once deer are present their predators will follow, such as bobcat, bear, and especially cougars. There is no oak savannah on the subject property according to the applicant (Boyd Iverson). Furthermore, the applicant concludes that limiting the presence of four total dwellings on the 85 acre subject property will not create a conflict with Black Tailed Deer, as they favor the open and cleared habitat present on the property. By claiming no conflict (through reliance of numerous publications), along with limiting development to maximum of four total dwellings (via a Site Review /SR Zone suffix), the agent can assert that Goal 5 has been met in regards to Big Game Habitat. Therefore, the Board finds that the record demonstrates the ESEE analysis is acceptable in relation to Big Game Habitat.

Flora and Fauna

The Goal 5 Flora and Fauna findings of consistency were addressed above under section G.2.c., RCP Goal 5, Flora and Fauna Policies 11 & 12, and Big Game Habitat.

Water Resources

The acknowledged county plan identifies surface water and watersheds as Goal 5 resources. The Water Resources Working Paper (1982 Version, pgs 3-10) state that it is difficult to separate the discussion of watersheds from that of surface water. Hence, the two will be addressed here.

By "watershed," the working paper refers to areas of drainage basins that drain to a particular point of use. As defined in the working paper, "the area which drains to a domestic water supply is correctly termed as watershed, even if it is much smaller than a basin (1982 Version, pg 3). The working paper maps drainage basins in the County, but not watersheds, since a watershed is a function of where water is being used. According to the working paper, the subject property would be in the "watershed" for any domestic user of water downstream of the intermittent streams on the subject property. The working paper recognizes that the entire County is within one or more categories of watersheds, and all ranges may be found (1982 Version, pg. 5).

The quality discussion in the plan recognizes that watersheds play vital role in individual and municipal water supplies, fish and wildlife habitat, water quality, flood protection, among others. The quantity discussion in the plan recognizes that a range of uses such as soil compaction, removal of vegetation, and increase in impervious surfaces, among others, affect the amount of water that is retained in the watershed and the amount that runs off.

Only one conflict is identified by the plans ESEE analysis as a watershed conflict, as opposed to a surface water or groundwater conflict. That is "contamination or possible contamination of surface water supplies used for domestic purposes" (1982 Version, pg. 5). The plan identifies two places where that conflict exists. One is from forestry related practices on federal, state, and private timber lands. The other is from residential development in the Clear Lake area, which is the watershed district at the coast in the Heceta Water District. The plan conducts no ESEE analysis for forestry practices for the reason that the county has so little control over these practices.

The working paper maps drainage basins and lists the principle streams in Lane County. There is a creek running through the property named Papenfus Creek and is shown in the USGS Topographic maps. However, this stream is not a Class 1 classified stream, nor is it listed as a principle stream in the working paper.

The working paper recognizes that the quality of surface waters throughout the county is affected adversely by a range of factors, only some of which are under county control. Its discussion of stream water quantity is limited to a description of flow regulations in rivers and streams by federal agencies with storage and flood control responsibilities (1982 Version, pgs. 8-9).

The working paper identifies a number of activities that conflict with water quality in streams, but states that the impacts of these activities are largely beyond County land use control. Examples in the working paper's discussion include: water release schedules from federal reservoirs, state water rights regulation that contribute to over appropriation, nonpoint pollution from forest practices regulated by the state, nonpoint pollution from agricultural practices, and urban runoff from cities.

The working paper concludes no ESEE analysis of the problems listed above. "These are not considered as conflict in the Goal 5 sense as they do not result from County planning or zoning actions, and generally cannot be resolved in that manner" (1982 Version, pg. 10).

The County program found only on conflict that is specifically a watershed conflict, and not a surface or groundwater conflict. That is contamination or possible contamination of surface water supplies use for domestic purposes. However the County did no ESEE analysis for this potential conflict, recognizing that the problem is substantially outside its jurisdiction to resolve, relying instead on state and federal authorities.

State and federal agency programs listed included federal reservoirs, state water rights laws, state forest practices regulations, and DEQ clean water regulations. Hence, the County conducted no ESEE analysis for surface waters.

Potential impacts of very low density rural residential development on watersheds and surface water are not conflicts identified in the acknowledged Goal 5 program. During the LC Planning Commission hearing the applicant agreed to the LCPC recommendation to add a site review suffix that conditions that the property to a maximum of four houses (equivalent to a four (4) twenty (20) acre minimum parcel outcome) on the subject property. Furthermore, some might argue that multiple smaller ownerships of this larger parcel might encourage small scale farming, as compared with the site remaining unused, and farm use might impact the watershed and surface waters. However, Goal 5 rule does not require considering the impacts of the agricultural uses. "Local governments are not required to consider agricultural practices as conflicting uses." OAR 660-23-0010(1).

In summary, under the acknowledged Goal 5 plan for watershed and surface water resources, the Board finds there are no recognized conflicting uses associated with the potential low density rural residential uses associated with this proposal.

Other Goal 5 Resources

The subject property does contain mapped Wetlands, Floodplain, and may contain Archeological Sites in the area. The applicants ESEE analysis concludes that those resources are protected by existing Lane Code regulations or other state agencies. For example, wetlands are regulated by Oregon Department of State Lands, archeological sites are monitored by Oregon State Historic Preservation Office, and any development in the floodplain is regulated by Lane Code 16.244, which would require a permit prior to any fill or structures proposed in the floodplain near Papenfus Creek. The agent concludes these resources are already protected by existing regulations and existing agencies.

The Board finds these explanations to be reasonable and satisfactory, and agree Goal 5 has been met for these resources.

E. Statewide Planning Goals

Goal 1 – Citizen Involvement: To develop a citizen involvement program that ensures the opportunity for citizens to be involved in all phases of the planning process.

There are multiple opportunities for the public to participate in this application process. The application was formally noticed (750' around the subject property) to adjacent property owners and agencies prior to the Lane County Planning Commission and the Lane County Board of Commissioners public hearings. Publication of both hearings was given to the Register Guard requesting the application be noticed in the Legal Ad section. Additionally, siting of the application request was posted at the entrance of the subject property prior to

both hearings. During the hearings, the public is given an opportunity to give public testimony or submit written material to the record. The application is also appealable to the Land Use Board of Appeals. The Board finds the Plan Amendment / Zone Change is consistent with Goal 1.

Goal 2 - Land Use Planning: To establish a land use planning process and policy framework as a basis for all decisions and actions related to use of land and to assure an adequate factual base for such decisions and actions.

The land use process for this Plan Amendment is a quasi-judicial process. This type of review requires findings of fact, public hearings, and an adopted Ordinance. Criteria and findings for this process were discussed in sections above found in LC 16.400(6)(h), & (8), LC 12.050, LC 16.252, LC 14.050, pursuant to De Novo public hearing procedures under LC 14.300.

Policy framework applicable to this application request was addressed under RCP findings in section IV.C. The Board finds the Plan Amendment / Zone Change is consistent with Goal 2.

Goal 3 – Agricultural Lands: To preserve and maintain agricultural lands. Agricultural lands shall be preserved and maintained for farm use, consistent with existing future needs for agricultural products, forest and open space and with the state’s agricultural land use policy expressed in ORS 215.243 and 215.700.

Marginal Land is a subset of resource lands designation. Land that is plan designated as Marginal Land is consistent with Goal 3 or Goal 4 or both. Farm and forest operations are explicit permitted uses in the Marginal Lands zone (under LC 16.214(2)(d), (e), & (f)) in order to allow continued opportunities to conduct farm or forest operations on lands zoned Marginal Lands. The Board finds the Plan Amendment / Zone Change is consistent with Goal 3.

Goal 4 - Forest Lands: To conserve forest lands by maintaining the forest land base and to protect the state's forest economy by making possible economically efficient forest practices that assure the continuous growing and harvesting of forest tree species as the leading use on forest land consistent with sound management of soil, air, water, and fish and wildlife resources and to provide for recreational opportunities and agriculture.

Marginal Land is a subset of resource lands designation. Land that is plan designated as Marginal Land is consistent with Goal 3 or Goal 4 or both. Farm and forest operations are explicit permitted uses in the Marginal Lands zone (under LC 16.214(2)(d), (e), & (f)) in order to allow continued opportunities to conduct farm or forest operations on lands zoned Marginal Lands. The Board finds the Plan Amendment / Zone Change is consistent with Goal 4.

Goal 5 - Open Spaces, Scenic and Historic and Natural Resources: To conserve open space and protect natural and scenic resources.

The applicant submitted a Goal 5 ESEE analysis for the impacts of this proposal on acknowledged Goal 5 resources present on-site. The Goal 5 Analysis is discussed in section IV.D. above. The Board finds the Plan Amendment / Zone Change is consistent with Goal 5

Goal 6 - Air, Water and Land Resource Quality: To maintain and improve the quality of the air, water, and land resources of the state.

Goal 6 protects the quality of land, air, and water resources. The focus is on discharges from future development in combination with discharges with existing development. State and federal environmental standards are the benchmark for protection. Where there are state or federal standards for quality in air sheds or river basins, then the carrying capacity, non-degradation, and continued availability of the resources are the standards. The availability of these standards as a precondition to residential development ensures that the future use will comply with Goal 6. The Board finds the Plan Amendment / Zone Change is consistent with Goal 6.

Goal 7 – Areas Subject to Natural Disasters or Hazards: To protect life and property from natural disasters and hazards.

Developments subject to damage or that could result in loss of life shall not be planned nor located in known areas of natural disasters and hazards without appropriate safeguards. Plans shall be based on an inventory of known areas of natural disaster and hazards.

The subject property does contain mapped Wetlands, Floodplain, NRCS Soils data, and may contain Archeological Sites in the area. The applicants ESEE analysis concludes that those resources are protected by existing Lane Code regulations or other state agencies. For example, wetlands are regulated by Oregon Department of State Lands, archeological sites are monitored by Oregon State Historic Preservation Office, and any development in the floodplain is regulated by Lane Code 16.244, which would require a permit prior to any fill or structures proposed in the floodplain near Papenfus Creek. The agent concludes these resources are already protected by existing regulations or existing agencies.

Other natural hazards such as earthquakes, landslide, erosion, and deposition are not inventoried (Natural Hazards Working Paper, pg. 4) for this property. The Board finds the Plan Amendment / Zone Change is consistent with Goal 7.

Goal 8 – Recreational Needs: To satisfy the recreational needs of the citizens of the state and visitors and, where appropriate, to provide for the siting of necessary recreational facilities including destination resorts.

The purpose of Goal 8 is to address all recreational needs. Goal 8 is not directly applicable to this proposal. No destination resort is proposed. Furthermore, the subject property is not used for public recreational purposes and is not designated on any county plan as intended for that purpose in the long run. The Board finds Goal 8 is not applicable with the Plan Amendment / Zone Change application.

Goal 9 - Economy of the State: To provide adequate opportunities throughout the state for a variety of economic activities vital to the health, welfare, and prosperity of Oregon's citizens.

Goal 9 is focused on commercial and industrial development. The Goal 9 rule, OAR 660-09, is explicitly limited to areas within urban growth boundaries. This goal does not apply to rural residential uses in a Marginal Lands designation. The Board finds Goal 9 is not applicable with the Plan Amendment / Zone Change application.

Goal 10 – Housing: To provide for the housing needs of the citizens of the state.

Goal 10, like its implementing rule OAR 660-008, is geared to housing issues inside urban growth boundaries (UGB). The goal does not apply because this site is outside the UGB. The Board finds Goal 10 is not applicable with the Plan Amendment / Zone Change application.

Goal 11 – Public Facilities and Services: To plan and develop a timely, orderly and efficient arrangement of public facilities and services to serve as a framework for urban and rural development.

Goal 11 addresses facilities in urban and rural areas. The subject property is rural and will remain rural should this application obtain approval. "Public facilities and services" is defined in the Statewide Planning Goals to include: "projects, activities and facilities which the planning agency determines to be necessary for the public health, safety, and welfare." The Goal 11 Rule defines a public facility and includes water, sewer, transportation facilities, but does not include buildings, structures, or equipment incidental to the direct operation of those facilities.

The RCP policies describe the minimum level of services for Marginal Land areas in rural Lane County. The services are: schools, on-site sewage disposal, individual water supply system, electrical service, telephone service, rural level of fire and police protection, and reasonable access to solid waste disposal (RCP Goal 11 policy 6.j.) The services now available to the subject property, or proposed to be developed, include:

Fire – Pleasant Hill RFPD

Police – Lane County Sheriff and State Police

Schools – Pleasant Hill
Access – Sunny Lane to Hwy 58
Electric – EPUD
Telephone – Quest Communications
Solid Waste – Private
Sewer – Individual Septic System
Water – Private wells

The Board finds the Plan Amendment / Zone Change is consistent with Goal 11.

Goal 12 – Transportation: To provide and encourage a safe, convenient and economic transportation system.

Goal 12 is implemented through the Goal 12 Rule (OAR 660-12 adopted in 1991). The rule has a section that specifically addressed proposals such as this – amendments to acknowledged comprehensive plans and implementing regulations. OAR 660-12-060(1) provides that any such amendments that “significantly affect a transportation facility shall assure that allowed land uses are consistent with the identified function, capacity, and level of service of the facility.”

The question, therefore, is whether the residential development potentially allowed by this application would significantly affect a transportation facility. The rule spells out clearly what constitutes a “significant affect,” OAR 660-12-060(2) states:

A plan or land use regulation amendment significantly affects a transportation facility if:

(a) Changes the functional classification of an existing or planned transportation facility;

(b) Changes standards implementing a functional classification system;

(c) Allows types or levels of land uses which would result in levels of travel or access which are inconsistent with the functional classification of a transportation facility; or

(d) Would reduce the level of service of the facility below the minimum acceptable level identified in the TSP.

The property is accessed off of Sunny Hill Lane which connects to State Highway 58. Both Hwy 58 and Sunny Hill Lane are under the jurisdiction of Oregon Department of Transportation (ODOT). It appears 12 properties take access off of Sunny Hill Lane. There are no County roads adjacent to the subject property so the proposed Plan Amendment/Zone Change is unlikely to impact the County

road transportation system according to comments received the Lane County Transportation Planning staff.

During the notice for the public hearing of the Planning Commission, staff did not receive a response from ODOT. ODOT will have another opportunity to comment on the land partition process should this application obtain approval.

The Marginal Lands zone allows parcel sizes of 10 or 20 acre per LC 16.214(6), with a permitted use allowance of one dwelling per parcel under LC 16.214(2)(b), which could then result in eight dwellings on the 85 acre property. Since the agent uses a maximum of four dwellings as part of his justification in meeting the ESEE Big Game Habitat needs, the proposal needs to be explicitly limited via a Site Review suffix to sustain the logic of the applicant's arguments. As such, the applicant/agent agreed to staffs and the LCPC recommendation to add a site review suffix that conditions the property only contain maximum four houses (equivalent to a four (4) twenty (20) acre minimum parcel outcome) on the subject property.

Therefore, the maximum number of increased user on the road would be four parcels. The proposed Marginal Land designation does not trigger this section of rule. It will not have a significant effect on Highway 58 as measured by the standards above. The Board finds the Plan Amendment / Zone Change is consistent with Goal 12.

Goal 13 – Energy Conservation: To conserve energy.

This goal is not directly applicable to individual land use decision. Rather, its focus is on the adoption and the amendment of land use regulations. See *Brandt v. Marion County*, 22 Or LUBA 473, 484 (1991), *aff'd in part, rev'd in part*, 112 Or App 30 (1992). The Board finds Goal 13 is not applicable with the Plan Amendment / Zone Change application.

Goal 14 – Urbanization: To provide for an orderly and efficient transition from rural to urban land use.

Goal 14 is not applicable. The Marginal Lands plan designation is a resource zone designation. The proposal is to change from one resource plan designation to another. Furthermore, the residential density allowed in the Marginal Lands zoning is either 10 or 20 acres per unit. The plan designation and zoning were considered to be a "rural" use rather than a "resource" use, determined by the Supreme Court to be "rural" in character, not "urban." *1000 Friends of Oregon v. DLCD (Curry County)*, 301 Or 447, 501, 724 P2d 268 (1986). Therefore, the Board finds the Marginal Lands application does not run afoul of Goal 14.

Goals 15 - 19 Willamette River Greenway and Coastal Goals

These five goals are not applicable as they deal with resources that are not present on the subject property. The Board finds Goals 15-19 are not applicable with the Plan Amendment / Zone Change application.

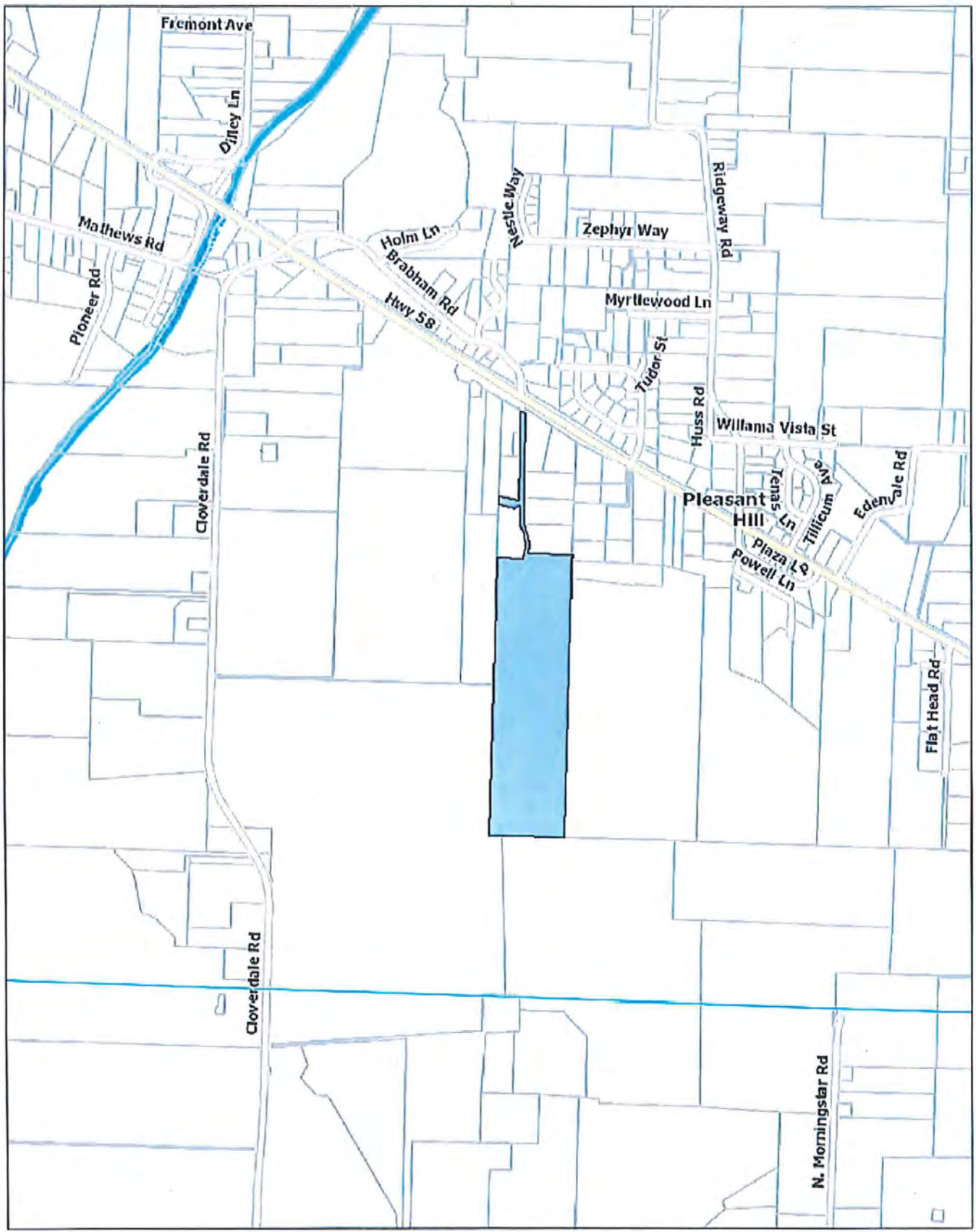
IV. SUMMARY

The Board finds that the application has met the approval criteria. The criteria for a minor amendment have been addressed for the Marginal Land ORS law (section IV.A.), Lane Code Plan Amendment/Zone Change criteria (section IV.B.), Lane County Rural Comprehensive Plan (RCP, section IV.C), Goal 5 ESEE Analysis (section IV.D.), and the Oregon Statewide Planning Goals (section IV.E.). The Planning Director finds the criteria have been met and can recommend approval. Additionally, the Lane County Planning Commissioners voted unanimously to recommend approval of the request.

In conclusion, the Board approves this request.

V. EXHIBITS

1. Vicinity Map
2. Subject Property Partition Plat 2011-P2486
3. Existing Zoning Map
4. Aerial Photo with Floodplain, 2013
5. LCPC Minutes (Approved December 16, 2014, Item B.2.)
6. Marginal Land ORS Criteria (1991 Version)
7. Marginal Lands Information Sheet
8. Affidavit from property owner
9. Applicant's Professional Forrester Report
10. NRCS Soil Data/Map
11. Applicant's Professional Soil Report
12. Existing Soils Map from Soil Scientist
13. Big Game Habitat Map



The information on this map was derived from digital databases or the Lane County regional geographic information system. Lane County does not accept any responsibility for errors, omissions or positional accuracy in the digital data or the underlying records. Careful plan designation, zoning, etc. for specific parcels should be confirmed with the appropriate agency. There are no warranties, expressed or implied, accompanying this product. However, no liability of any nature will be appreciated.



Vicinity Map
 Lane County, Oregon **EXHIBIT 1**

LAND PARTITION PLAT No. 2011-P2486

A MEASURE 49 PARTITION
PURSUANT TO

MEASURE 49 FINAL ORDER AND HOME SITE AUTHORIZATION #E129750

A REPLAT OF PARCEL 2, LAND PARTITION PLAT No. 91-P0069

SE 1/4 SEC. 29 & NE 1/4 SEC. 32, T 18 S, R 2 W W.M.

LANE COUNTY, OREGON

FEBRUARY 5, 2011

LANE COUNTY SURVEYORS OFFICE

C.S. FILE NO. 42071

FILING DATE 25 Mar '11

C

RECORDED

DATE 25 Mar '11

COUNTY CLERK

BY *JAB*

Lane County Clerk and Records 2011-014467

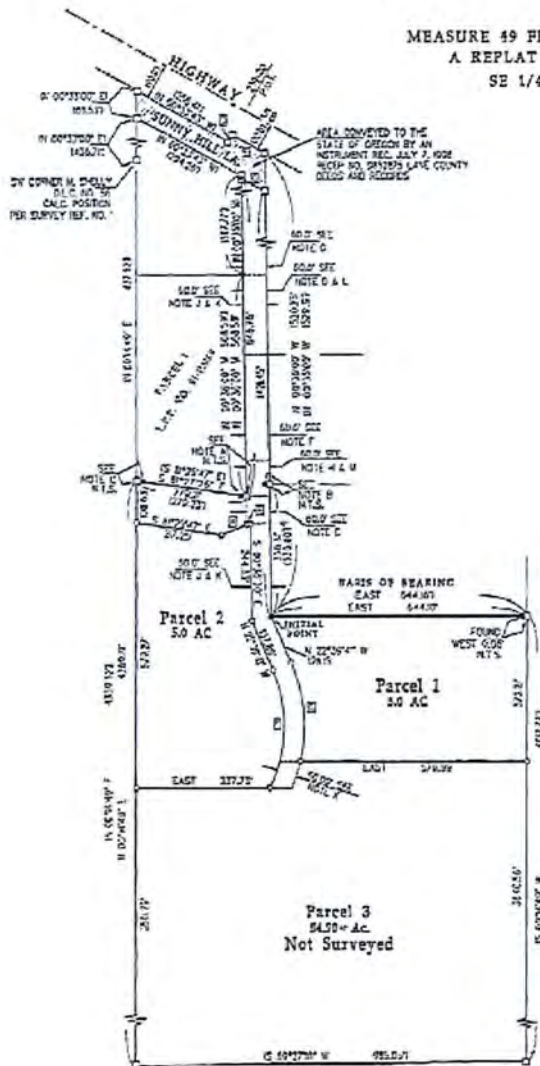
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225.00 216.00 211.00 215.00



SCALE: 1" = 200'

REFERENCES

1. C.S.F. No. 25488	ROBERTS 1961
2. C.S.F. No. 27485	ANDREWS 1978
3. C.S.F. No. 24841	ANDREWS 1920
4. C.S.F. No. 27438	ROBERTS 1926

ADDITIONAL COURSES

SEQUENT	BEARING	DIST.	PLAT	AL	DELTA
1	N 69°55'20" E	68.45'	---	---	TANGENT
2	N 14°24'00" E	10.00'	---	---	TANGENT
3	S 45°54'48" E	254.92'	420.00'	199.00'	25°20'00"
4	N 29°25'17" E	130.601'	---	---	TANGENT
5	S 60°23'42" E	64.00'	---	---	TANGENT
6	S 60°23'42" E	62.979'	---	---	TANGENT
7	S 73°25'48" W	303.47'	370.00'	50.60'	49°20'18"
8	S 67°54'18" E	67.75'	---	---	TANGENT

NOTES

- A. FOUND 5/8" REBAR WITH YELLOW PLASTIC CAP STAMPED 'ANDREWS PLS 820' N 8°20'20" W 820' PLS 820'
- B. FOUND 1/4" REBAR WITH YELLOW PLASTIC CAP STAMPED 'ROBERTS PLS 8039' S 89°24'00" N 81' PLS 81'
- C. FOUND 5/8" REBAR WITH YELLOW PLASTIC CAP STAMPED 'ANDREWS PLS 526' S 89°25'00" E 526'
- D. PRIVATE 60.0 FOOT ACCESS EASEMENT AND MAINTENANCE AGREEMENT RECORDED MARCH 14, 1956 RECFP. NO. 8005343 LANE COUNTY OREGON OFFICIAL RECORDS
- E. PRIVATE 60.0 FOOT ACCESS EASEMENT AND MAINTENANCE AGREEMENT RECORDED MAY 19, 1956 RECFP. NO. 8005811 LANE COUNTY OREGON OFFICIAL RECORDS
- F. PRIVATE 60.0 FOOT ACCESS EASEMENT AND MAINTENANCE AGREEMENT RECORDED MAY 19, 1956 RECFP. NO. 8005814 LANE COUNTY OREGON OFFICIAL RECORDS
- G. PRIVATE 60.0 FOOT ACCESS EASEMENT AND MAINTENANCE AGREEMENT RECORDED OCTOBER 10, 1950 RECFP. NO. 6642003 LANE COUNTY OREGON OFFICIAL RECORDS
- H. PRIVATE 60.0 FOOT ACCESS EASEMENT AND MAINTENANCE AGREEMENT RECORDED NOVEMBER 20, 1949 RECFP. NO. 6657355 LANE COUNTY OREGON OFFICIAL RECORDS
- I. PRIVATE VARIABLE WIDTH ACCESS EASEMENT AND MAINTENANCE AGREEMENT ACROSS PARCEL 3 FOR THE BENEFIT OF PARCEL 1 RECORDED 25 March 2011 RECFP. NO. 2011-14467 LANE COUNTY OREGON OFFICIAL RECORDS
- J. PRIVATE VARIABLE WIDTH ACCESS EASEMENT AND MAINTENANCE AGREEMENT ACROSS PARCEL 3 FOR THE BENEFIT OF PARCEL 2 RECORDED 25 March 2011 RECFP. NO. 2011-14468 LANE COUNTY OREGON OFFICIAL RECORDS
- K. PRIVATE 60.0 FOOT ACCESS EASEMENT AND MAINTENANCE AGREEMENT RECORDED MARCH 14, 1956 RECFP. NO. 8005343 LANE COUNTY OREGON OFFICIAL RECORDS
- L. PRIVATE 60.0 FOOT ACCESS EASEMENT AND MAINTENANCE AGREEMENT RECORDED AUGUST 7, 1979 RECFP. NO. 047948 LANE COUNTY OREGON OFFICIAL RECORDS

REGISTERED
PROFESSIONAL
LAND SURVEYOR
Jonathan A. Oakes
OREGON
JAN 2, 1984
JONATHAN A. OAKES
2011
EXPIRES 06/01/2013

FOAGE ENGINEERING & SURVEYING, INC.
P.O. BOX 1287 • SUDBURY, OREGON 97152 • (503) 483-9111
103 NW 37th, DMH, ST 1403/2844845491545/CND, DATE: 01-11

LANE COUNTY PLANNING FILE
NO. 3 PA 07-001 & PA 07-1439
ACCESSOR'S MAP No. 11-02-18-01 PL 002813

PLUTTER - AIR DESIGN JET BOND
INC - 88 456401 88
FILM - ALE CHANGING 88-24

EXHIBIT 2

LAND PARTITION PLAT No. **2011-P2486**

A MEASURE 49 PARTITION
PURSUANT TO

MEASURE 49 FINAL ORDER AND HOME SITE AUTHORIZATION #E129750

A REPLAT OF PARCEL 2, LAND PARTITION PLAT No. 91-P0069

SE 1/4 SEC. 29 & NE 1/4 SEC. 32, T 18 S., R 2 W W.M.

LANE COUNTY, OREGON

FEBRUARY 5, 2011

LANE COUNTY SURVEYORS OFFICE

C.S. FILE NO. 2011

FILING DATE 25 Mar 11

Lane County Clerk
Lane County Deeds and Records



PROPERTY CALL STUCK COMPUTER ON
253.00 210.00 211.00 212.00

RECORDED
DATE 25 Mar 11

COUNTY CLERK
BY: [Signature]

APPROVALS:

[Signature] LANE COUNTY PLANNING DIRECTOR
DATE MAR 24, 2011

[Signature] LANE COUNTY SURVEYOR
DATE 3-25-11
[Signature] LANE COUNTY ASSESSOR
DATE 3-25-11

SURVEYOR'S CERTIFICATE

I, Jonathan A. Ode, a Registered Professional Land Surveyor, do hereby certify that I have carefully surveyed and marked with proper monuments the herein described plat, that the initial point is a permanent monument, that the monument is located as described and in accordance with the plat and that I have accurately measured the tract of land upon which this plat is laid out as follows:

PARCEL 2 OF LAND PARTITION PLAT NO. 91-P0069 AS PLATTED AND RECORDED JANUARY 26, 1991 IN THE LANE COUNTY OREGON PARTITION PLAT FILES IN LANE COUNTY, OREGON, IS BEING REPLATED AND RECORDED PURSUANT TO MEASURE 49 FINAL ORDER AND HOME SITE AUTHORIZATION #E129750 IN THE STATE OF OREGON BY AND THROUGH THE OFFICIAL DEPARTMENT OF TRANSPORTATION BY AN INSTRUMENT RECORDED JULY 7, 1994 RECORDED NO. 91-0069 IN LANE COUNTY OREGON DEED RECORDS, IN LANE COUNTY, OREGON.

[Signature]
JONATHAN A. ODE, L.S. NO. 225

NARRATIVE

THE SURVEY WAS CONDUCTED AS THE RESULT OF THE DIVISION OF THE COUNTY OF OREGON, COUNTY OF LANE, BEING A REGISTERED PROFESSIONAL LAND SURVEYOR, DOING BUSINESS AS ODE SURVEYING, INC., HAS BEEN COMMISSIONED BY THE DEPARTMENT OF TRANSPORTATION TO REPLAT AND RECORDE PARCEL 2 OF LAND PARTITION PLAT NO. 91-P0069 AS PLATTED AND RECORDED JANUARY 26, 1991 IN THE LANE COUNTY OREGON PARTITION PLAT FILES IN LANE COUNTY, OREGON, IS BEING REPLATED AND RECORDED PURSUANT TO MEASURE 49 FINAL ORDER AND HOME SITE AUTHORIZATION #E129750 IN THE STATE OF OREGON BY AND THROUGH THE OFFICIAL DEPARTMENT OF TRANSPORTATION BY AN INSTRUMENT RECORDED JULY 7, 1994 RECORDED NO. 91-0069 IN LANE COUNTY OREGON DEED RECORDS, IN LANE COUNTY, OREGON.

DECLARATION

I, Jonathan A. Ode, a Registered Professional Land Surveyor, do hereby declare that I have personally surveyed and marked with proper monuments the herein described plat, that the initial point is a permanent monument, that the monument is located as described and in accordance with the plat and that I have accurately measured the tract of land upon which this plat is laid out as follows:

[Signature]
JONATHAN A. ODE, L.S. NO. 225

ACKNOWLEDGMENT

STATE OF OREGON

COUNTY OF LANE

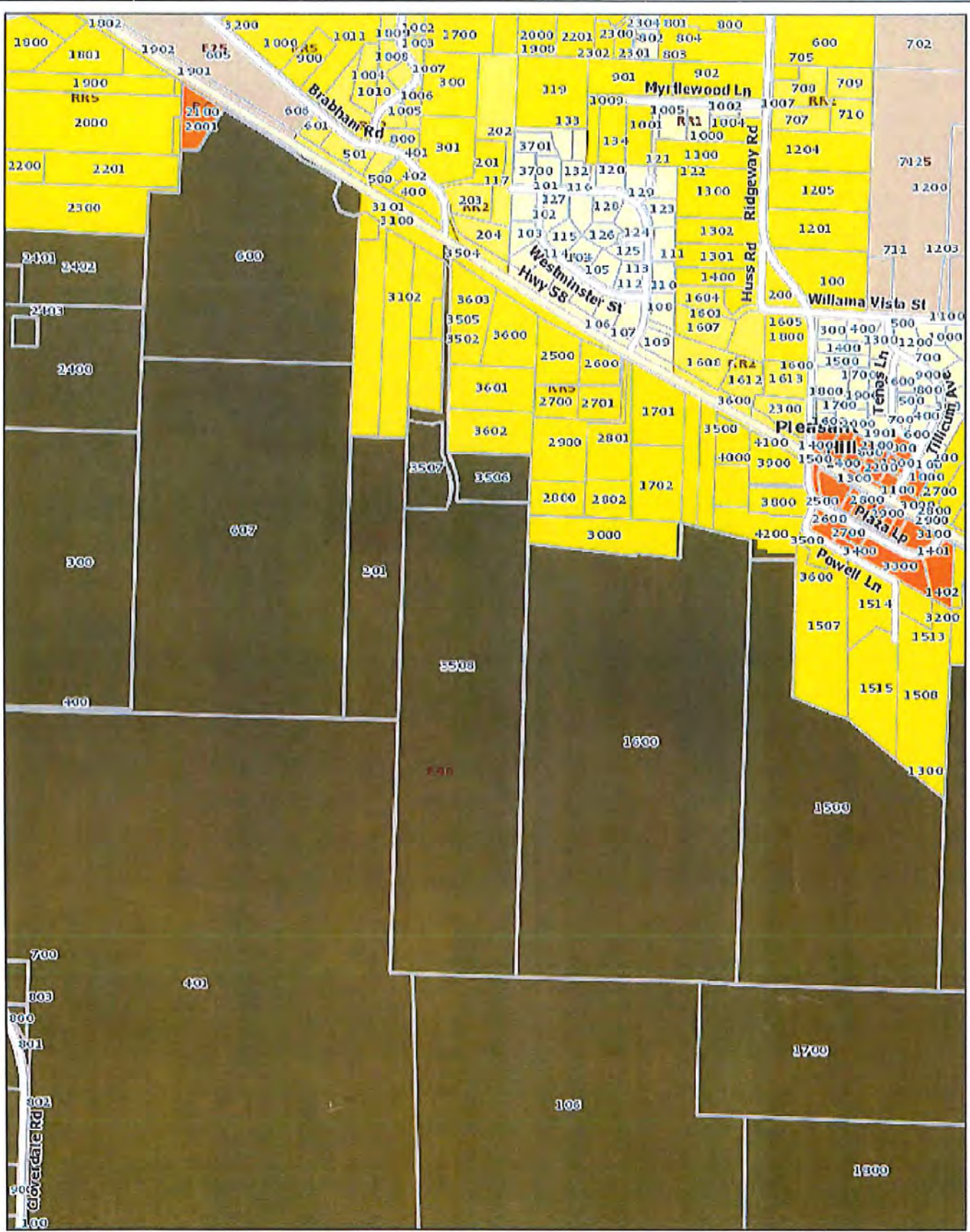
I, Jonathan A. Ode, a Registered Professional Land Surveyor, do hereby certify that I have personally surveyed and marked with proper monuments the herein described plat, that the initial point is a permanent monument, that the monument is located as described and in accordance with the plat and that I have accurately measured the tract of land upon which this plat is laid out as follows:

[Signature]
JONATHAN A. ODE, L.S. NO. 225

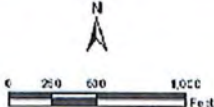


REGISTERED
PROFESSIONAL
LAND SURVEYOR
[Signature]
JONATHAN A. ODE, L.S. NO. 225
COUNTY OF OREGON
JONATHAN A. ODE'S
COUNTY OF OREGON
POAGE ENGINEERING & SURVEYING, INC.
P.O. BOX 2107 - SUCCASA, OREGON 97141 (541) 942-1189
103 N. 27th, Suite 37 JARDINE/MAZDA/PLAZA, SUITE 37-11

LANE COUNTY PLANNING HILL
NO. 2 PA 21-5171 & PA 01-6439
ASSESSOR'S MAP No. 1840-2104E PL 001515
PLAT NO. 2011-P2486
FILED IN RECORDS BOOK 26



The information on this map was derived from digital databases on the Lane County regional geographic information system. Care was taken in the creation of this map, but it is provided "as is". Lane County cannot accept any responsibility for errors, omissions or potential accuracy in the digital data or the underlying records. Current plan designations, zoning, etc., for specific parcels should be reviewed with the appropriate agency. There are no warranties, expressed or implied, accompanying this product. However, notification of any errors will be appreciated.

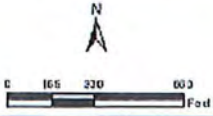


Existing Zone Map
Lane County, Oregon

EXHIBIT 3



The information on this map was derived from digital databases on the Lane County regional geographic information system. Care was taken in the creation of this map, but it is provided "as is". Lane County cannot accept any responsibility for errors, omission or distortion necessary in the digital data or the underlying records. Current plan designations, zoning, etc., for specific parcels should be confirmed with the appropriate agency. There are no warranties, expressed or implied, accompanying this product. However, notification of any errors will be appreciated.



Floodplain Map
Lane County, Oregon

EXHIBIT 4

MINUTES

Lane County Planning Commission
Lane County Customer Service Center—3050 North Delta Highway
Eugene, Oregon

October 21, 2014
5:30 p.m.

PRESENT: Ryan Sisson, Chair; Larry Thorp, Vice Chair; Charles Conrad, Dwight Coon, Randy Hledik, Nancy Nichols, James Peterson, Gary Rose, Lane County Planning Commissioners; Matt Laird, Keir Miller, Jerry Kendall, Deanna Wright, Lane County staff; Bill Kloos, Mike Farthing, visitors.

ABSENT: None.

Mr. Sisson convened the Lane County Planning Commission (LCPC) at 5:35 p.m.

A. WORK SESSION

1. Approval of Minutes: September 16, 2014

Hearing no objections, Mr. Sisson deemed the minutes approved as submitted.

2. Metro Plan Enabling Amendments and Proposed Amendments to Lane Code chapter 12 to Codify and Implement Metro Plan chapter IV Process Changes Adopted in 2013 by Ordinance No. PA1300

Mr. Miller provided a PowerPoint presentation and an overview of an agenda packet document entitled *LCPC Briefing Memo*, dated *October 9*. There were three items before the Lane County Planning Commission (LCPC) to implement proposed Metro Plan changes: 1) amendments to the Eugene-Springfield Metropolitan Area General Plan (Metro Plan) and Map, 2) amendments to Lane Code Chapter 12.200-12.245 to implement proposed Metro Plan changes, and 3) co-adoption of the Eugene and Springfield Development Code amendments substantially similar to Lane Code Chapter 12.200-12.245. These amendments were part of project to allow the cities more autonomy within a framework of cooperative regional planning that began over a year ago with the support of the Lane County Board of Commissioners. Mr. Miller reviewed background information, which included the requirements of House Bill (HB) 3337 and ORS 197.304. Proposed Ordinance Number PA1313 and its Exhibits included amendments that ensure each city can establish city-specific plans independently of each other and that such plans supplant specific portions of the Metro Plan for that city. The proposed Ordinance included explanations of the past, current and future status of the Metro Plan as cities conducted independent planning, and changed or removed text that would no longer be applicable or would raise policy concerns.

In response to Mr. Hledik's question whether the jurisdictional boundary was coterminous with the Urban Growth Boundary (UGB), Mr. Miller said that was true only of property east of I-5. Lane County will initiate a coterminous process west of I-5 after the City of Eugene (COE) determines its expansion needs. HB 3337 required all boundaries to be clarified, whereas the current "blog maps"

were not parcel specific. The proposed amendments did not represent any changes to the amount of property within each jurisdiction's inventory or to land designation changes.

Mr. Miller said LCPC reviewed policy level changes a year ago during joint hearings on Chapter 4 Metro Plan amendments, and the proposed procedural amendments were the next step in that process. Ordinance No. 14-12 included changes to Lane Code Chapter 12 to ensure alignment with the Metro Plan in the areas of conflict resolution, references to "regional impact", amendment types, and joint approvals required for UGB amendments along or across 1-5.

Mr. Laird distributed a revised agenda for the October 23, 2014, joint Planning Commissions' meeting which showed a later start time of 7:00 p.m., and a document entitled *Agenda/Order of Proceedings*. All three decision-making bodies were required to adopt "substantively identical" amendments. He emphasized that both cities' 2015 work plans were dependent on the amendments moving forward to the joint elected officials joint meeting on November 10, 2014.

In response to Mr. Hledik's question, Mr. Miller said the staff would continue to contact their respective jurisdictions on specific projects, consistent with existing ORS 190 intergovernmental agreements.

In response to Mr. Hledik's question on policies deleted from the Metro Plan, such as those related to annexations not contiguous or cooperative monitoring, Mr. Keir confirmed that individual jurisdictions were expected to incorporate deleted policies into their respective comprehensive plans and assume those responsibilities.

Mr. Laird commented that the Metro Plan was being amended to accommodate one city's ability to adopt, for example, its own comprehensive plan elements, while the other city continued to use the shared land inventory until it adopts its own comprehensive plan. It will take several years for the cities to work through the entire process. During the interim, the Metro Plan language was transitional. Ultimately, each city would have a comprehensive plan and the Metro Plan would focus on transportation and public facilities.

In response to Mr. Coon, Mr. Laird said HB 3337 required separation of the original "shared" land inventory and policies used by both cities, and establishment of separate UGBs and comprehensive plans. In addition, each city had joint agreements with the county. This was the norm throughout Oregon. When the City of Springfield UGB became coterminous, the Metro Plan designations were re-designated to corresponding rural comprehensive plan designations through joint hearings of the county and city planning commissions.

In response to Ms. Nichols, Mr. Laird said there would be additional issues, such as airport property and park lands, managed through inter-governmental agreements with the COE, as was done with the City of Springfield. COE still needed a parcel specific inventory along the UGB before a more specific UGB was adopted.

Commissioners were encouraged to email any further questions to staff prior to the October 23 joint meeting.

3. Training on Evaluating a Plan Amendment/Zone change request to Marginal Lands

Mr. Kendall referenced a document entitled *Marginal Lands, Training for the Lane County Planning Commission*, dated March 6, 2012. Also distributed was an ORS excerpt entitled *Comprehensive Land Use Planning Coordination, ORS 197.247*. Because Marginal Lands (ML) was a subcategory of Goal 3 and Goal 4, an exception from farm or forest resource land was not required. Mr. Kendall reviewed legislative history, acreage designated and statutory requirements of ORS 197.247, specifically related to income derived from farm operations or forest capability, parcelization and soil quality testing and ML finite determination.

There was discussion of soils analysis related to forest income capability. Mr. Kendall said one or more forest appraisal opinions may vary, but the analysis was site specific and considered the level of evidence provided.

In response to Mr. Peterson, Mr. Kendall confirmed that in Lane County, parcelization or soil quality tests applied to 60 percent of the land area, not the number of lots, and was affirmed by a 1997 Board of County Commissioners (BCC) decision.

Mr. Peterson asked how a 30-year old law cited an accurate dollar value. Mr. Kendall said the dollar amounts were based on use of pre-1983 values, which was vetted through appeal.

Mr. Kendall reviewed ORS 197.247 (1)(b)(C) criteria related to land predominately in capability class V through VIII soils per the USDA Soil Conservation 1983 reference book. A 50-year harvest cycle was the standard used in computing merchantable timber.

Mr. Kendall summarized the seven issues clarified in the BCC March 1997 interpretation related to ML detailed on page four of the Training document.

Mr. Thorp expressed concern that Legislative History in the Training document said *densities shall not exceed 1 dwelling per 20 acres if adjacent to agricultural or forest lands and 1 dwelling per 10 acres elsewhere*, but that restriction was not in the ORS statute.

Mr. Laird commented that Lane Code 16.214.6(a) included the restriction and compliance was part of an administrative review of a land division application. Mr. Thorp requested further discussion of this requirement during review of the application.

In response to Ms. Nichols, Mr. Kendall discussed briefly the outcome of a 2012 ML application referenced as the Suess properties, generally south of the City of Eugene UGB and adjacent to Lorane Highway. A Site Review was applied and the BCC chose not to investigate whether legal lots existed on the properties and may qualify for dwellings.

In response to Mr. Hledik, Mr. Kendall said the Department of Land Conservation and Development (DLCD) reviewed for consistency with the USDA Soil Conservation reference book and required a detailed methodology completed by a soil scientist if a change in soil type was requested.

The Planning Commission took a short break.

B. PUBLIC MEETING

Mr. Sisson convened the meeting at 7:00 p.m.

1. Public Comment

No one wished to provide public comment.

2. **509-PA12-05208: Proposed Amendment and Zone Change to the Rural Comprehensive Plan from Agricultural Land to a Marginal Land designation and from E-40/RCP Exclusive Farm Use (EFU) to ML/RCP Marginal Land. The property is 85+ acres.**

Mr. Sisson announced the application under review and indicated that the Planning Commission's recommendation to the BCC was subject to establishing findings of fact showing compliance with the applicable Comprehensive Plan and Lane Code criteria cited in the Staff Report. Evidence and testimony must be directed toward the approval criteria and testimony, otherwise it was irrelevant to the land use proceeding.

Mr. Sisson called for disclosures of Planning Commission members' ex parte contacts and abstentions due to conflicts of interest or ex parte contacts.

Mr. Thorp reported that he had represented the applicant many years ago but that fact would not affect his ability to be impartial.

No one in the audience wished to challenge Mr. Thorp's report of impartiality.

Mr. Kendall distributed a double-sided document containing an email from Pat Force to Jerry Kendall, dated October 19, 2014, expressing concern for a density increase exceeding three additional dwellings, and a letter from Dennis Griffin, State Archaeologist of the Oregon Parks and Recreation Department, dated October 16, 2014, requesting extreme caution during ground disturbing activities due to a high probability of archaeological sites and remains per State Historic Preservation Office case No. 14-1614.

Mr. Kendall noted that Mr. Iverson was unable to attend the hearing and Mr. Kloos was acting as his representative.

Mr. Kendall reviewed the Staff Report dated October 21, 2014. The original application was submitted in 2012, but Mr. Iverson delayed processing pending a decision on the abovementioned Sues ML application. He reviewed background on soils evaluation and Economic, Social, Environmental and Energy (ESEE) analysis related to Goal 5 Big Game Habitat in detail.

In response to Ms. Nichols, Mr. Kendall said Mr. Iverson's soils evaluation conclusion was completed in 2011 as part of a larger Measure 49 land partition and represented a simple size reduction in acreage by a Registered Engineer. DLCDC determined the original soils evaluation had methodology discrepancies from the Natural Resources Conservation Service's Soil Classification System reference book, but eventually deferred to the county to decide compliance.

In response to Mr. Peterson, Mr. Kendall noted that the 2007 soils type map appeared identical to the 2014 map. Mr. Kendall confirmed the only difference was the removal of two northern five-acre parcels included in the previous partition.

In response to Ms. Nichols, Mr. Kendall said the installation of fencing to prevent game grazing was not regulated beyond setbacks requirements.

In response to Mr. Hledik, Mr. Kendall said Oregon Department of Fish and Wildlife (ODFW) references to 40- and 80-acre densities were broad guidelines and had not been further refined and resolved in the Comprehensive Plan.

In response to Mr. Thorp's question related to Goal 5 and ODFW's approach to Big Game Habitat when the county was 80 percent F-1 zoned, Mr. Kendall said there were no changes to Goal 5. ODFW's approach was not different, but in the case of the Sues property, ODFW expressed concern about oak savannah being a diminishing landscape.

Mr. Kendall reviewed referral comments. Nearby property owners, the Sikoras, requested that Mr. Iverson be required to sign and record a Farm/Forest Management Easement, which protected their rights to continue farm operations and protected against related nuisance lawsuits. Although not specifically a mandated requirement, Mr. Iverson agreed to the agreement in his application, and Rural Comprehensive Plan, Goal 3, Policy 8, supported such protection.

Mr. Kendall reviewed email comments he received from Mr. Force and distributed at the meeting. He confirmed that the application proposed four houses total, one of which existed and was occupied by Mr. Iverson's mother. He indicated he would respond to Mr. Force's comments.

Mr. Kendall reviewed Criteria and Analysis contained in the Staff Report in detail.

The Planning Commission discussed in detail minimum lots sizes and the number of dwellings allowed on 85+ acres. Mr. Iverson based his Goal 5 analysis on a maximum of three new houses, for a total of four houses on the 85+ acres. Mr. Kendall commented that the applicant could argue at the BCC level to increase the density to one house per 10 acres based on the minimum parcel sized allowed by LC 16.214(6)(a), which would allow eight houses, but the ESEE analysis as submitted would not support that number of dwellings.

In response to Mr. Hledik, Mr. Kendall clarified that the minimum lots size between 10 to 20 acres was dependent on adjacent property zoning. He confirmed that although lots sizes were not specified in the application, the number of homes was specific and a /SR Site Review overlay would prompt review of the four-dwelling restriction upon submission of a building permit or an inquiry. Regardless of how many parcels were created, or how many legal lots currently exist, the maximum number of homes allowed would be limited to a maximum of four.

Mr. Peterson said the application contained very specific language indicating the 89.4 acres would be divided into four 20 +/- acre parcels.

Mr. Kendall said there might already be legal lots smaller than 10-acres on the property. If an inquiry or a permit for a fifth dwelling on any portion of the 85+-acre parcel were initiated, the four-dwelling limitation would still apply.

Mr. Hledik expressed concern that if the property adjoined Rural Residential, 10-acre parcels may be allowed.

Mr. Kendall emphasized that a thorough evaluation of the number and size of lots and their configuration occurred during the partition phase and a review of the zone change restrictions would be prompted by the Site Review designation.

In response to Mr. Thorp, Mr. Kendall confirmed that if a parcel was completely surrounded by either rural residential land or land that qualified as ML land, a parcel could be less than 20 acres and as small as 10 acres. A 10-acre parcel in the middle of the 85+-acre parcel may qualify.

In response to Mr. Hledik, Mr. Kendall said to his knowledge, the peripheral Big Game impact designation had no direct connection to soils types, other than certain soil types supported the presence of oak savannah.

Mr. Kendall summarized that the subject application met the ML standards in ORS 197.247, and the requirements of applicable state and local laws, and state goals. Staff recommended approval of the Zone change requested, with a /SR Site Review overlay designation to ensure future compliance with the four-dwelling maximum used in the application to meet Big Game Habitat needs within a ML zone.

Mr. Sisson opened the public hearing at 8:59 p.m.

Bill Kloos, 375 W. 4th Street, Suite 204, Eugene, spoke on the applicant's behalf in support of Staff Report recommendations and conditions. Related to Goal 5 density allowances, he said a 20 acre minimum lot size was correct, and that a 10-acre minimum lot size was allowed during the land division process if no portion of the perimeter of the parcel being created touched any farm or forest resource property. However, a 10-acre parcel adjacent to resource land may be created if it was demonstrated empirically that it would qualify for ML designation. After reviewing the property adjacent to the Iverson property, he said it would not qualify, but in theory, it was possible. As the consultant in the three separate Sues ML applications, he said the largest EFU parcel was 120 acres and was 95 percent surrounded by rural residential properties between three and nine acres in size. The neighbors in opposition to the application enjoyed the empty parcel as a park. A series of conditions were agreed upon and the one appeal filed with the Land Use Board of Appeals was abandoned. Related to Goal 5 Big Game requirements, he said although the ODFW map was inaccurate because the Big Game map extended into residential properties in the South Hills area, minimum parcel size was established in the early 1980's when the Comprehensive Plan went through acknowledgement. The Lane Code specified 20-acre minimums in ML or 10 acres if surrounded by rural residential development, and the assumption was that those densities had been adopted through the state Goal 5 process. His investigation showed that the ML designation and the related densities were never found to be in compliance with Goal 5, which meant that Goal 5 compliance had to be established in the context of requesting a ML designation. The Sues applications each included a 22-page ESEE analysis because there were impacts, regardless of the surrounding development levels. He said that going through the Goal 5 evaluation process was the "new normal". In the Iverson application, the property was open and there were no Big Game conflicts.

In response to Mr. Thorp, Mr. Kloos confirmed that a Farm/Forest Management Easement would be recorded and filed, and that Mr. Iverson intended to have only four homes on the property.

The public hearing was closed at 7:52 p.m.

Mr. Sisson read the following Planning Commission options: 1) to forward a recommendation to the BCC with findings and applicable criteria to support of the proposal, 2) to forward a recommendation to the BCC with findings and applicable criteria to modify the proposal, or 3) to forward a recommendation to the BCC with findings and applicable criteria to not support of the proposal, or 4) to not forward a recommendation.

Mr. Coons indicated he thought the application was straightforward and met all the requirements for an ML designation.

Mr. Hledik said he was satisfied that the application met all criteria required by state and county law, and his concerns related to Big Game analysis and minimum lot size had been answered.

Mr. Conrad said the application met the criteria of ORS 197.247; it was not a farm operation, did not exceed the forest income standard, and met soils standards. He supported a recommendation for approval.

Ms. Nichols said it was a straightforward application and analysis that met all criteria. She supported a recommendation for approval.

Mr. Sisson outlined following findings: 1) the property did not exceed the income test of \$10,000 per year in gross income in forest capability, 2) the property did not exceed the 85 cubic feet standard of merchantable timber, 3) per ODFW the property did not conflict with Big Game and Goal 5 criteria, 4) and a Site Review designation would ensure the property was limited to four houses in the future, and 5) the property owner should be required to sign and notarize a Farm/Forest Management Easement.

Mr. Thorp said the application met the requirements of ORS 197.247, including income limitations and productivity of soils, and based on the information submitted and the staff report the application met Goal 5 requirements. He did not support additional conditions, but said since the applicant proposed only four dwellings and was willing to sign a Farm/Forest Management Agreement, he supported the rezone application with the restriction to four dwellings, and that during the partition process, a Farm/Forest Management Agreement would be required.

Mr. Rose said he agreed with the staff analysis that the application met all necessary criteria. He favored a Farm/Forest Management Agreement be required.

Mr. Peterson said the application was in order and commended Mr. Iverson. He said he would not support a motion unless the Farm/Forest Management Agreement was required.

Mr. Thorp clarified that he was uncomfortable addressing issues in the rezone application that were more appropriately addressed during the partition process. However, because the applicant indicated his intention was to limit the property to four houses, he was comfortable including that in a Site Review suffix.

- Mr. Thorp moved, seconded by Mr. Peterson, that the Planning Commission:
- adopt the findings contained in the Staff Report which confirmed the application met the requirements of ORS 197.247(1)(a) and (b)-C,
 - recommend approval of the Comprehensive Plan rezone and map amendment from Agricultural Land to Marginal Land and EFU to Marginal Land,

- subject to a /SR Site Review overlay which specifically limited the property to four dwellings,
- and with the condition that the applicant sign and record a Farm/Forest Management Agreement prior to BCC review.

Mr. Laird asked the Planning Commission to clarify whether the recommendation for approval required the applicant to file the Agreement prior to going before the BCC, so that it was not left to occur during the partition process and applied to all the property.

Rather than making a second motion, Mr. Thorp clarified that because the applicant was willing, his motion intended that the Farm/Forest Management Agreement be recorded prior to BCC review. Mr. Peterson agreed that the Agreement was a condition of Planning Commission approval. The motion was read again as above.

The Motion passed unanimously 8:0.

Mr. Sisson adjourned the meeting at 8:12 p.m.

(Recorded by Janis McDonald)

197.247 Amendment of goals; marginal lands designation; effect on applicability of goals. (1) In accordance with ORS 197.240 and 197.246, the commission shall amend the goals to authorize counties to designate land as marginal land if the land meets the following criteria and the criteria set out in subsections (2) to (4) of this section:

(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:

(A) At least 50 percent of the proposed marginal land plus the lots or parcels at least partially located within one-quarter mile of the perimeter of the proposed marginal land consists of lots or parcels 20 acres or less in size on July 1, 1983;

(B) The proposed marginal land is located within an area of not less than 240 acres of which at least 60 percent is composed of lots or parcels that are 20 acres or less in size on July 1, 1983; or

(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 fifty cubic feet of merchantable timber per acre per year in those counties east of the summit of the Cascade Range and 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).

(2) For the purposes of subparagraphs (A) and (B) of paragraph (b) of subsection (1) of this section:

(a) Lots and parcels located within an urban growth boundary adopted by a city shall not be included in the calculation; and

(b) Only one lot or parcel exists if:

(A) A lot or parcel included in the area defined in subparagraph (A) of paragraph (b) of subsection (1) of this section is adjacent to one or more such lots or parcels;

(B) On July 1, 1983, greater than possessory interests are held in those adjacent lots or parcels by the same person, parents, children, sisters, brothers or spouses, separately, or in tenancy in common; and

(C) The interests are held by relatives described in subparagraph (B) of this para-

graph, one relative held the interest in the adjacent lots or parcels before transfer to another relative.

(3) For the purposes of paragraph (b) of subsection (2) of this section:

(a) Lots or parcels are not "adjacent" if they are separated by a public road; and

(b) "Lot" and "parcel" have the meanings given those terms in ORS 92.010.

(4) For the purposes of subparagraph (B) of paragraph (b) of subsection (1) of this section, lots and parcels located within an area for which an exception has been adopted by the county shall not be included in the calculation.

(5) A county may use statistical information compiled by the Oregon State University Extension Service or other objective criteria to calculate income for the purposes of paragraph (a) of subsection (1) of this section.

(6) Notwithstanding the fact that only a certain amount of land is proposed to be designated as marginal for the purposes of establishing the test area under subparagraph (A) of paragraph (b) of subsection (1) of this section, any lot or parcel that is within the test area and meets the income test set out in paragraph (a) of subsection (1) of this section may be designated as marginal land.

(7) The amended goals shall permit counties to authorize the uses on and divisions of marginal land set out in ORS 215.317 and 215.327.

(8) The provisions of this section shall not affect the applicability of any goal, except the goals on agricultural and forest lands, to a land use decision.

(9) Any amendments to local government plans and regulations resulting from amendments to goals required by subsection (1) of this section shall become effective only after approval by the commission under ORS 197.251 or 197.610 to 197.855. [1983 c.824 §2]

197.250 Compliance with goals required. Except as otherwise provided in ORS 197.245, all comprehensive plans and land use regulations adopted by a local government to carry out those comprehensive plans and all plans, programs, rules or regulations affecting land use adopted by a state agency or special district shall be in compliance with the goals within one year after the date those goals are approved by the commission. [1973 c.80 §32; 1977 c.864 §19; 1981 c.748 §29a; 1983 c.827 §56a]

197.251 Compliance acknowledgment; commission review; rules; limited acknowledgment; compliance schedule. (1) Upon the request of a local government, the commission shall by order grant, deny or

1991

March 1997

Supplement to Marginal Lands Information Sheet

**BOARD OF COUNTY COMMISSIONERS DIRECTION REGARDING THE
INTERPRETATION AND ADMINISTRATION OF MARGINAL LANDS
APPLICATIONS**

On February 26, 1997, the Lane County Board of Commissioners reviewed the state Marginal Lands law and developed responses to several issues in the law needing clarification for purposes of administration by Lane County. Those issues are identified below, followed by the direction provided by the Board. Any application for the Marginal Land designation within the Lane County Rural Comprehensive Plan's jurisdiction must be in compliance with the Board's directions. Refer to the Marginal Lands Information Sheet, or to Oregon Revised Statutes 197.247 (1991 laws), for an explanation of the law itself.

ISSUE 1: What is the Marginal Lands concept?

Board's Direction:

The Board recognized that marginal land is intended to be a sub-set of resource land, *i.e.*, there are "prime" resource lands and "marginal" resource lands. The marginal lands are to be available for occupancy and use as smaller tracts than are required in the better resource lands. The criteria in the law define which lands may be designated as marginal. Evidence for this position is found in the legislative history and the fact that marginal lands are recognized in both Statewide Goal 3 - Agricultural Lands and Goal 4 - Forest Lands.

ISSUE 2: Definition of "Management".

When considering forest land, the entire growth cycle must be considered for evidence of management. This is because even the best managed forest operations may have nothing occurring on the land during the five-year window (1978 - 1982) stated in the marginal lands statute (ORS 197.247(1)(a)(1991 Edition). For farm operations, however, it is hard to conceive of an operating farm on which nothing occurred for five years.

Board's Direction :

No evidence of human activity on the land is required for forest land to be "managed". The conscious decision not to convert the land to another use is enough evidence of management to meet the statutory intent, provided there is a significant amount of merchantable or potentially merchantable trees on the property. Likewise, evidence of timber harvest since 1978 would suffice to show management even if there were no trees currently on the property. For farm land, no evidence of farm use during the 5-year statutory window would indicate that land was not managed for farm use.

ISSUE 3. Managed "as part of" a (farm or forest) operation during (1978-1982).

Does this phrase in ORS 197.247(1)(a)(1991) mean, for example, that if a large timber company owned and managed a 2000 acre tract during the five-year window, and then sold someone a 40 acre portion of non-forest land in 1985, that 40 acres would not be eligible for Marginal Lands designation?

Board's Direction :

The Board found that the law creates a general presumption that all contiguous land owned during 1978-82 was part of the owner's "operation". That presumption could be rebutted, however, by substantial evidence

that the parcel in question was not, in fact, a "contributing part" of the operation. The applicant would bear the burden of producing such evidence.

ISSUE 4: What price data should be used to calculate gross annual income for forest lands?

Board's Direction :

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.

ISSUE 5: What "growth cycle" should be used to calculate gross annual income?

Board's Direction :

The consensus of the Board was that a 50-year growth cycle should be adopted as the usual standard, with the option that another standard could be used if substantiated by compelling scientific evidence presented by the applicant. The Board's choice was based on evidence that the USDA Natural Resource Conservation Service has adopted the 50-year cycle for rating soil productivity, plus the administrative ease of having a standardized figure.

ISSUE 6: Weight of evidence.

One of the main holdings of the Ericsson case, which arose in Lane County, is that on-site evaluation by a qualified expert is weightier evidence than published data. Given this ruling, what is the appropriate role of the parcelization table in Lane Code 16.211(10)(b) and the legislative findings for Goal 4 of the Rural Comprehensive Plan as an income standard?

Board's Direction :

As a matter of administrative ease, and in the absence of other substantial evidence, the parcelization test could still be used. It is one method of identifying the acreage required of a given forest capability classification to achieve the \$10,000 income standard.

ISSUE 7: Ambiguities in the parcelization tests of ORS 197.247(1)(b)(A) & (B).

Is the parcelization test measuring the percent of an area (acreage) or the percent of the number of parcels a "parcel count"? If the test in ORS 197.247(1)(b)(A) is an area test, does the percentage requirement apply to the acreage or to the number of parcels that lie wholly or partly within the 1/4 mile of the subject tract?

Board's Direction :

Regard the tests in ORS 197.247(1)(b)(A) & (B) as "area" tests with the difference being that (A) specifies an area including the subject parcel and land within 1/4 mile and uses a 50% small lot test, whereas (B) increases the area to a minimum of 240 acres but raises the small lot test to 60%.

(Note: This is the position adopted by Lane County in the Jackson case. In that case, Lane County ruled that the area was limited to the 1/4-mile line, whereas DLCD argued that the area line should expand to include the entirety of any parcel partly located within the 1/4 mile boundary. DLCD threatened to appeal the Jackson case on that basis, but did not do so.)



MARGINAL LANDS

TRAINING FOR THE LANE COUNTY PLANNING COMMISSION

I. BACKGROUND

- A. Legislative History
- B. Acreage Designated
- C. Statutory Requirements
 - 1. Management and Income Test
 - 2. Parcelization or Soil Quality Test
- D. Qualifying Lands are Finite
- E. Board Direction Regarding Interpretation and Administration

II. SUMMARY OF SEVEN ISSUES

- 1) What is the Marginal Lands concept?
- 2) Definition of "Management"
- 3) Managed "as part of" a (farm or forest) operation during 1978 - 1982
- 4) What price data should be used to calculate gross annual income for forest lands?
- 5) What growth cycle should be used to calculate gross annual income?
- 6) Determining Forest Productivity
- 7) Ambiguities in the parcelization tests of ORS 197.247(1)(b)(A) & (B)

LCPC Training
March 6, 2012

I. BACKGROUND

A. Legislative History

The Legislature authorized Marginal Lands in 1983 through Chapter 826 Or Laws, 1983, codified as ORS 197.247. Lands that are "marginally productive", due to low productive capability or impact from other land uses, are not considered as productive resource lands that would otherwise be designated Exclusive Farm Use or Forest Land. Resource use of these lands is considered "marginal" and use of these lands shall be very low density rural residences, part time farming, forestry and similar activities. Densities shall not exceed 1 dwelling per 20 acres if adjacent to agricultural or forest lands and 1 dwelling per 10 acres elsewhere.

In addition to defining Marginal Lands, the 1983 legislation made several amendments to the nonfarm uses that are permitted in an Exclusive Farm Use zone. If a county elects to use the marginal lands designation, it must also adhere to the amended form of permitted EFU uses (ORS 215.213). If the Marginal Lands category is not used, then the permitted EFU uses may remain as they existed in the past (ORS 215.283). The primary thrust of the changes is to be more specific (clear and objective) as to the circumstances under which dwellings, either farm related or nonfarm related, may be allowed on resource lands.

Lands designated as "Marginal Lands" are still considered "Resource Lands". In addition to the farm and forest resource use of these lands, a single family dwelling is an outright permitted use. Whether the changes are more restrictive or rather are simply less ambiguous and less subject to varying applications is a matter of individual interpretation.

B. Acreage Designated

Lane County legislatively adopted policy provisions for Marginal Lands and designated 1,244 acres as Marginal Lands in the 1984 adoption of the Lane County Rural Comprehensive Plan using rationale and analysis provided in the Marginal Lands Working Paper. The Land Conservation and Development Commission acknowledged Lane County's Marginal Lands provisions and the Plan and zoning designations as meeting the Statewide Planning Program requirements.

During the intervening 29 years, 25 applications have justified an additional 1,990 acres to be designated as Marginal Lands. This equates to an average annual designation of approximately 75 acres. The total acreage of lands designated Marginal Lands in Lane County represents less than 0.1 of 1% of Lane County.

C. Statutory Requirements

The Marginal Lands redesignation process consists of satisfying two of three parameters: a management and income test; and either a parcelization test (a measure of surrounding development) or a demonstration of poorer soil quality.

1. **Management and Income Test:** In general terms, the rezoning process requires a demonstration that the proposed marginal land was not managed as part of a farm operation grossing \$20,000 annual income or a forest operation capable of producing \$10,000 annual gross income over the growth cycle for 3 of the 5 calendar years proceeding January 1, 1983.
2. **Parcelization or Soil Quality Test:** In addition, the proposed marginal lands must meet one of the following tests: 1) 50% of the proposed marginal land plus the properties within ¼ mile consists of lots or parcels less than 20 acres in size; or 2) the proposed marginal land is within an area of at least 240 acres of which at least 60% consists of lots or parcels 20 acres or less in size; or 3) the proposed marginal land is composed predominantly of Agriculture Capability Class V through VIII soils, and is not capable of producing 85 cubic feet of merchantable timber per acre per year.

D. Qualifying Lands are Finite

These provisions came about in 1983 and the Legislature wanted to ensure that the lands qualifying as Marginal Lands were finite and the designation of Marginal Lands would not allow additional lands to qualify or have a "creeping effect". So, the legislature established a metric system that is locked in time. The first test is one of an income capability 3 of the 5 calendar years proceeding January 1, 1983. The second test locks in the parcelization pattern that existed on July 1, 1983, or land with Agriculture Capability Classification System in use by the US Dept. of Agriculture Soil Conservation Service on October 15, 1983, for determining agriculture soil capability or volume of wood fiber production capability.

E. Board Direction Regarding Interpretation and Administration

In February of 1996 and 1997 the Lane County Board of Commissioners reviewed the state Marginal Lands law and discussed responses to seven issues in the law in light of subsequent new information about the law and LUBA or appellate court decisions. Those discussions were collected and published as the direction provided by the Board in the March 1997 Supplement to Marginal Lands Information Sheet. The Board's 1997 direction is provided in the Summary of Seven Issues section below and is in *Italics*.

Any application for Marginal Lands designation within the Lane County Rural Comprehensive Plan's jurisdiction must be in compliance with the Board's direction. Since then, applicants have used their understanding of the law and the Supplement to the Marginal Lands Information Sheet to prepare proposals for consideration by Lane County. Use of those resources has always been dependant upon reasonable interpretation of the statute and other applicable law as it has developed. Any proposal requires a public hearing before the Lane County Planning Commission and they forward a recommendation to the Board of County Commissioners.

II. SUMMARY OF SEVEN ISSUES

Seven issues were clarified in the Board's March 1997 interpretation and are summarized below:

1) What is the Marginal Lands concept? *Marginal Lands are considered a subset of resource land; i.e., there are "prime" resource lands and "marginal" resource lands. The marginal lands are to be available for occupancy and use as smaller tracts than are required in the better resource lands. The criteria in the law define which lands may be designated as marginal. Evidence for this position is found in the legislative history and the fact that marginal lands are recognized in both statewide planning Goal 3 – Agricultural Lands and Goal 4 – Forest Lands.*

2) Definition of "Management". *When considering forest land, the entire growth cycle must be considered for evidence of management. This is because even the best managed forest operations may have nothing occurring on the land during the five-year window (1978-1982). However, for farm operations it is hard to conceive of an operating farm on which nothing occurred for five years.*

No evidence of human activity on the land is required for forest land to be "managed" as part of a forest operation. The conscious decision not to convert the land to another use is enough evidence of management to meet the statutory intent, provided there is a significant amount of merchantable or potentially merchantable trees on the property. Likewise, evidence of timber harvest since 1978 would suffice to show management even if there were no trees currently on the property. However, for farm land, no evidence of farm use during the 5-year statutory window would indicate that land was not managed for farm use.

3) Managed "as part of" a (farm or forest) operation during 1978-1982. *All lands owned or managed by an individual or other entity as part of a farm or forest operation during the period 1978 through 1982 shall be considered in addressing the "income" tests established by ORS 197.247(1)(a) (1991 ed.)*

As LUBA explained in *Walker v. Lane County (Dahlen)*, 53 Or LUBA 374, 381 (2007), a farm operator can manage land that he does not own. A farm or forest operator can also manage non-contiguous lots or parcels as part of an "operation."

In that case, LUBA held the inquiry cannot be limited to contiguous lands:

"ORS 197.247(1)(a) contains no express limits on the geographic scope of a "farm operation;" the term is not limited by any other word or words, such as "in the vicinity," "contiguous to," "adjacent to," or "nearby."

"* * *

"The county misconstrued the language of ORS 197.247(1)(a) when it limited the inquiry to C & M's farm operations that were close in geographic scope to the subject property."

The above Board interpretation is generally consistent with the cited LUBA ruling, and is a mandated standard which became effective per that ruling in 2007. It has already been implemented in two ML remand cases, regarding farm operations (Dennis & Dahlen). While the LUBA ruling was only over farm operations, LUBA actually made the standard applicable to both – they agreed the evidence did not establish the property had been managed as part of a larger forest operation. The 1997 Supplement addressed both and established a presumption that all contiguous land was part of an operation and required the applicant to establish that it was not a contributing part of the operation.

4) What price data should be used to calculate gross annual income for forest lands? *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.*

Average prices over the 1978-82 period shall be used to determine potential forest operation income for purposes of identifying Marginal Lands once the optimal timber production level has been determined. This standard is a result of a Court of Appeals ruling in 2007, and is now mandatory.

In *Herring v. Lane County*, 216 Or App 84, 95 (2007), the Court of Appeals has held that 1983 prices may not be used in applying the "income" test:

"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."

Again, this standard is a result of a Court of Appeals ruling in 2007, and is now mandatory. It has already been implemented upon remand (ex. Dennis).

5) What forest growth cycle should be used to calculate gross annual income? *The consensus of the Board found that a 50-year growth cycle should be adopted as the usual standard, with the option that another standard could be used if substantiated by compelling scientific evidence presented by the applicant. The Board's choice was based on evidence that the USDA Natural Resource Conservation Service has adopted the 50-year cycle for rating forest soil productivity, plus the administrative ease of handling a standardized figure.*

The Marginal Lands provisions requires the income-producing capability of a forest operation to be determined and authorizes counties to use "statistical information" or other "objective criteria" to calculate income. Published Culmination of Mean Annual Increment (CMAI) tables used by ODF and NRCS give forest productivity in cubic feet per acre per year (cf/ac/yr). Such CMAI tables provide "objective criteria" that the statute authorizes counties to rely upon. The Board can obtain objective advice from the Oregon Department of Forestry regarding this issue.

6) Determining Forest Productivity: *ORS 197.247(1)(b)(C) (1991 ed.) establishes a two-prong productivity test. First, the proposed marginal land must be composed predominantly (>50%) of soils in capability classes V through VII in the Agricultural Capability Classification System in use by the United States Department of Agriculture Soil Conservation Service on October 15, 1983. Second, the proposed marginal land must not be capable of producing 85 cf/ac/yr of merchantable timber. The determination of potential forest site productivity shall include a mapping of average annual wood production capability by cubic feet per acre per year (cf/ac/yr). If published site information is not available, then an equivalent method of determining forest land suitability must be used as set forth in OAR 660-006-0005(2) utilizing the expertise of the Natural Resource Conservation Service or the Oregon Department of Forestry or Oregon Department of Agriculture.*

LCDC in 2008 amended OAR 660-006-0010 to clarify that forest productivity be determined by soil mapping of average annual wood production capability by cubic feet per acre (cf/ac); and also amended OAR 660-006-0005(2) to specify acceptable data sources. If the specified published data are not available or are shown to be inaccurate, an alternative method for determining productivity may be used. An alternative method must provide equivalent data as explained in the Oregon Department of Forestry's Technical Bulletin entitled "Land Use Planning Notes Number 3 dated April 1998 and be approved by the Oregon Department of Forestry.

ODF considers the sources identified in OAR 660-006-0005(2) to be "tiered":

"The Land Conservation and Development Commission's Goal 4 rule (OAR 660-006-0005 (2) and (3), in combination with the Oregon Department of Forestry Technical Bulletin: *Land Use Planning Notes Number 3* (1998) referenced in the LCDC rule, establish a hierarchy of forestland site productivity information that are to be considered by counties in land use decisions subject to the rule. Listed in order of preference, the information sources are"

1. Data sources cited specifically in the administrative rule;
2. Other existing data sources determined by the State Forester to be of comparable quality to the data sources cited specifically in the administrative rule;
3. Alternative methods to develop site productivity data based on direct tree measurements and calculations; or
4. Site-specific soil surveys."

ISSUE 7: Ambiguities in the parcelization tests of ORS 197.247(1)(b)(A) & (B).

The Marginal Lands parcelization tests requires the total area of all of the lots or parcels falling all or partially within ¼ mile to be considered together with all of the proposed marginal lands. If the total area of all lots or parcels smaller than 20 acres equals 50% or more of that total area, the parcelization test is met. The alternative parcelization test increases the area to a minimum of 240 acres, but raises the small lot or parcel test to 60%.

ORS 197.247(1)(b)(A) & (B) (1991 ed.) establish "area" tests as an alternative to the productivity test of 197.247(1)(b)(C):

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

"(A) At least 50 percent of the proposed marginal land plus the lots or parcels at least partially located within one-quarter mile of the perimeter of the proposed marginal land consists of lots or parcels 20 acres or less in size on July 1, 1983;

"(B) The proposed marginal land is located within an area of not less than 240 acres of which at least 60 percent is composed of lots or parcels that are 20 acres or less in size on July 1, 1983[.]"

The statutory language directs that the total area of all of the *lots or parcels* falling all or partially within ¼ mile must be considered together with all of the proposed marginal lands. If the total area of all lots or parcels smaller than 20 acres equals 50% or more of that total area, the parcelization test is met.



Marc E. Setchko
CONSULTING FORESTER

RECEIVED AUG 17 2015

870 Fox Glenn Avenue
Eugene, Oregon 97405
Phone: (541) 344-0473
FAX: (541) 344-7791

FOREST PRODUCTIVITY AND INCOME ANALYSIS
for
Boyd Iverson
AUGUST 3, 2015

SUBJECT PARCEL: SUNNYHILL LANE : ASSESSORS MAP NO. 18-02-29&32
Tax Lots #3502, #3506, #3507, #3508, #3600, #3601, #3602 and #3603
Totalling ±118.29 acres

I. INTRODUCTION

An evaluation of the site, from a timber productivity and income producing standpoint, is presented in this analysis, to determine if the parcel meets the criteria for a marginal lands designation. The analysis demonstrates that the subject property qualifies for the following reasons:

1. The subject property is not capable of producing 85 cu.ft./ac./yr. of merchantable timber volume. This has been determined by Lane County, and the State of Oregon, to be the measuring parameter for marginal soils west of the Cascade Range, as defined in ORS 197.247 (1)(b)(C).
2. The income generated from the subject property averages less than \$10,000/year, based on 1978 through 1982 log prices. This level of income 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 year preceding January 1, 1983, as a forest operation capable of producing an average, over the growth cycle, of \$10,000 in annual gross income.

II. SITE INFORMATION

The subject parcel is ±118.29 acres in size (see Exhibits 1&2). A good portion of the property is flat, with low lying wet areas, a mapped wetland and delineated floodplain. A creek runs through the wetland area, running east to west. The remaining terrain is gentle to moderately sloped, with a few short pitches of 30-35%. Clumps of conifer trees are growing in the northwest and northeast corners, and on the small knoll in the south portion, up against the east boundary. Virtually all of the conifer is in these three areas. Most of the parcel has a south to southwest exposure. The parcel is composed of nine soil types and a small body of water (see Exhibit 3). Cupola cobbly loam (Soil Type 37C&E) covers approximately 27% of the parcel. Added together, Dixonville silty clay loam (Soil Type 41C), Ritner cobbly silty clay loam (Soil Type 113C,E&G), and Salkum silty clay loam (Soil Type 121C), cover ≈31% of the parcel. All four of the aforementioned soils are good forestland soils. The remaining ±42% of the parcel is composed of Hazelair silty clay loam (Soil Type 52B), Panther silty clay loam (Soil Type 102C), Philomath silty clay (Soil Type 107C), Rock outcrop-Witzel complex (Soil Type 116G) and Witzel very cobbly loam (Soil Type 138G). All of these are poor forestland soils; soil type 116G is primarily rock, with some grass and brush the primary vegetation in this area.

The predominant trees on the parcel are hardwoods; the most prevalent is ash. Cottonwood, maple and oak are also present. The primary conifer is Douglas-fir; incense cedar and a trace of ponderosa pine are also present. Multiple brush species are present; including blackberry, scotch broom, poison oak, rose, hazel and vine maple.



III. RESULTS OF PRODUCTIVITY AND INCOME CALCULATIONS

PRODUCTIVITY – Cubic feet per acre per year growth.

The timber productivity (cu.ft./ac./yr.) figures for Douglas-fir were obtained from the August 2011 (with June 2012 Revisions) *Lane County Soil Ratings for Forestry and Agriculture* produced by the Lane County Council of Governments. No further review or approval of site productivity determinations are needed when this data source is used.

By summing up the cubic foot per acre per year productivity (growth of the timber stand) of each soil type, and dividing by the total acreage, an average per acre productivity figure for the entire parcel can be calculated.

Douglas-fir was used because it is the dominant conifer species on the property and will grow in pure stands. All of the productivity figures shown on the source listed above assume a fully stocked stand of the tree species being measured. A few grand fir seedlings are growing on the parcel. However, grand fir does not grow in pure stands; it is a minor species which grows intermixed with Douglas-fir. The only other species suited to this site are incense cedar and ponderosa pine. Both of these species are present on the parcel. Incense cedar does not grow as fast as Douglas-fir, therefore it was not considered. Ponderosa pine, which will grow in pure stands, was not considered because there are no credible growth tables for Willamette Valley Pine (see Exhibit 4, page 3). In western Oregon locations, such as the parcel in question, Douglas-fir is the dominant species, even though ponderosa pine is growing on the site. Hardwood species, such as oak and madrone are slow growing; alder, which is a fast growing tree, will not grow on the site due to moisture (rainfall) constraints.

Therefore, Douglas-fir shall be used for productivity calculations.

Douglas-fir cubic foot productivity numbers are available for all of the above listed soils. The numbers shown below were obtained from the aforementioned table (see above). A wetland, floodplain and an area with a wetland in a flood plain were excluded. The wetland on the parcel has been documented, and published, in the National Wetland Inventory Data Base (see Exhibit 5). The actual size of the wetland is larger than the area shown in the National Inventory. However, since this is the area officially deemed a wetland by the appropriate government agency, it is the area used for this analysis. Since conifer trees will not grow in a wetland, with the possible exception of a scattered tree or two, the delineated area was given a **conifer** productivity rating of zero. Conifers **cannot** tolerate standing water; the wetland on this parcel is composed of ash and some cottonwoods. Neither of these species is a merchantable tree species.

The floodplain area (delineated by FEMA, see Exhibit 5) was excluded for similar reasons. A high water table, saturated soils, exposed rock, shallow soil depths to rock and/or clay create soil conditions with shallow **effective rooting depths, which is different from the absolute depth of the soil**. In many cases these conditions completely restrict roots from penetrating deep into the soil. Trees have deep rooting habits; the depth of the soil defines the volume of growing space for tree roots above some restricting layer, such as bedrock, a claypan or other horizon of low permeability and/or a **high water table**. Root growing space has been used as an indicator of site productivity more than most physical factors because it can be measured with some accuracy in the field and it is an integrator of many other factors important on tree growth. Shallow soils, with a smaller volume of soil available to tree roots, have an obvious direct influence on tree growth and a considerable indirect effect as it influences available water storage capacity, nutrient availability, and aeration. These factors slow tree growth, as well as root development and anchorage against windthrow. Trees in shallow, wet soils are much more prone to windthrow.

Floodplain areas, with standing water during portions of the year and a high water table (close to the surface), simulate the same growing conditions as shallow soil. All of these factors create extremely difficult (if not impossible) conditions for establishment of conifers.

A small pond (.57 acre), the original homestead barns (.58 acre) and the original roadway to the barns (2.06 acres) were also given zero productivity (see Exhibits 2&3). The barns and road were in long before the time period being looked at, i.e., 1978-1982.

The ratings shown below reflect the 7.81 acres of wetland, 12.88 acres of floodplain and 2.7 of wetland within a floodplain on the parcel. Within these delineated areas are 8.89 acres of Soil Type 37C, 0.77 acre of Soil Type 52B, 8.8 acres of Soil Type 102C, 4.03 acres of Soil Type 113E&G, 0.13 acre of Soil Type 116G and 0.77 acre of Soil Type 138G (see Exhibit 5)

SOIL RATINGS for Douglas-fir (see Exhibit 6)

Soil Unit	Acres	Site Index	Cf/Ac Per Yr	Total Cu.Ft. Productivity
37C Copola cobbly loam	13.58	100	136	1,846.88
37E Copola cobbly loam	9.90	100	136	1,346.40
41C Dixonville silty clay loam	4.94	109	152	750.88
52B Hazelair silty clay loam	5.79	NA	40	231.60
102C Panther silty clay loam	7.43	NA	45	334.35
107C Philomath silty clay	11.47	NA	45	516.15
113C Ritner cobbly silty clay loam	3.00	107	149	447.00
113E Ritner cobbly silty clay loam	1.46	107	149	217.54
113G Ritner cobbly silty clay loam	1.99	107	149	296.51
116G Rock outcrop-Witzel complex	4.52	NA	21	94.92
121C Salkum silty clay loam	18.86	116	167	3,149.62
138G Witzel very cobbly loam	8.75	NA	70	612.50
Wetland	7.81	NA	NA	0.00
Floodplain	12.88	NA	NA	0.00
Floodplain and Wetland	2.70	NA	NA	0.00
Barns	0.58	NA	NA	0.00
Roadway	2.06	NA	NA	0.00
Water - Pond	0.57	NA	NA	0.00
	<u>118.29</u>			<u>9,844.35</u>

Total - 9,844.35 cu.ft. ÷ 118.29 acres = 83.22 cubic feet per acre per year

It should also be noted that the above figure is higher than the growth actually occurring on the parcel. A field inspection of the site confirms this.

Due to the existing conditions (exposed rock, shallow, rocky soils, high water table, wetland area and floodplain zone), the growth shown above could only be obtained under the most optimistic conditions. Even with active forest management it is doubtful these productivity levels could be obtained. This growth would only be possible if the entire parcel were covered with fully stocked stands. There is no evidence to show that trees have ever grown in the grassland areas. Virtually all of the conifers growing at the present time are in the areas covered with the better forestland soils.

In summary, even if fully stocked stands were growing on all portions of the parcel, which are capable of growing trees, **it is incapable of producing 85 cf/ac/yr.**

INCOME TEST - Average revenue per year over the growth cycle.

The income test must be calculated for the parcel as it existed for the five calendar years preceding January 1, 1983. The income is based on the value of the **potential volume** that the parcel can produce. This is determined by the total board feet in the timber stands on the parcel at 50 years of age. This time span was adopted as the standard, by a consensus of the Marginal Lands Information Sheet. **This time span has been reaffirmed by LUBA.**

Merchantable timber volume, in board feet per acre, for each soil type is needed for the income test. Income calculations are based on **dollars per thousand scaled board feet, not cubic feet.** That is the manner in which the vast majority of conifer and hardwood logs are purchased. An exception to this is the junk wood or tops that are purchased by the ton (at a lower price than scaled wood), which is a weight, not a scaled measurement. Hardwoods sold for pulp are also purchased by the ton as well. Currently, there is no mill in the northwest purchasing anything based on cubic foot measurements.

Douglas-fir is the only species considered for the income test, because it is the most valuable **merchantable** tree species which will grow on this site. It is also the predominant species on the parcel. Alder, red and incense cedar have values similar to, or higher than Douglas-fir; incense cedar is the only one of these species present on the parcel. Neither red or incense cedar grow in pure stands; they grow intermixed with other species. Even if they did grow in pure stands, cedar trees have such a high taper (the trees grow like upside carrots, rather than poles), that each individual tree will not produce the measured board foot, or cubic foot, volume that a Douglas-fir tree will. While alder will grow in pure stands it does not produce anywhere near the volume per acre that Douglas-fir will. Even planted, and managed, red alder stands will not produce anywhere near the volume per acre that Douglas-fir will.

Measured, or scaled, board foot volume is the number a mill uses for payment when purchasing logs. Therefore, even if these species were used to calculate income for the parcel, the considerably lower volumes per acre would result in a lower total dollar figure.

For all of the above reasons Douglas-fir is used for the income test.

VOLUME CALCULATIONS - Douglas-fir board foot volumes per acre, for fully stocked stands at 50 years, were used. Empirical Yield Tables, calculated using King's 50 year site class Index, were used to obtain a scribner board foot volume, per acre, for each soil type. Adding all the soil types together will give a total volume for the entire parcel. A total value is calculated using these total volume figures; then divided by 50 (fifty year rotation) to obtain the average income per year that the parcel is capable of generating. For a soil with a known site index number this is simply a matter of using the tables to obtain a board foot per acre volume.

The approved tables (discussed earlier) show Site Index numbers for many of the Lane County soil types. However, no site index numbers are shown for any soils with productivity ratings of 100 cf/ac/yr or less; which includes several of the soils on the subject parcel. The lowest site index shown for a soil in the tables is S1100 (Soil Type 37). The corresponding cubic foot production is 136 cf/ac/yr. This soil has the lowest cubic foot productivity number shown with a corresponding site index number. Any soil with a lower cubic foot productivity number will not show a site index number in the tables. The productivity numbers for better soils increase geometrically, not linearly. Therefore, a soil with the lowest cubic foot productivity number, which also has a corresponding site index number, is the most appropriate to use when looking at soils with even lower productivity numbers.

A proportion ratio can then be calculated, by comparing the cubic foot production of the soils on the subject parcel with the above cubic foot production. Even this number will err on the high side from a productivity standpoint, due to the geometric nature of the productivity curve. The calculated proportion ratio can then be applied to the volume obtained from site index 100 in the Empirical Yield Tables. In this manner a board foot volume per acre can be calculated for the soils in question.

Cupola cobbly loam (Soil Type 37) with a site index of 100 will produce 19,972 board feet per acre at 50 years of age (see Exhibit 7), assuming fully stocked stands. The corresponding cubic foot production is 136 cf/ac/yr. The calculations for obtaining a volume per acre at 50 years, for the soils on the subject property, are shown below.

52B - Hazelair	$40 \text{ cf/ac/yr} \div 136 \text{ cf/ac/yr} = .29 \times 19,972 \text{ bf/ac} = 5,792 \text{ bf/ac}$
102C - Panther	$45 \text{ cf/ac/yr} \div 136 \text{ cf/ac/yr} = .33 \times 19,972 \text{ bf/ac} = 6,591 \text{ bf/ac}$
107C - Philomath	$45 \text{ cf/ac/yr} \div 136 \text{ cf/ac/yr} = .33 \times 19,972 \text{ bf/ac} = 6,591 \text{ bf/ac}$
116G - Rock/Witzel	$21 \text{ cf/ac/yr} \div 136 \text{ cf/ac/yr} = .15 \times 19,972 \text{ bf/ac} = 3,084 \text{ bf/ac}$
138G - Witzel	$70 \text{ cf/ac/yr} \div 136 \text{ cf/ac/yr} = .51 \times 19,972 \text{ bf/ac} = 10,280 \text{ bf/ac}$

Dixonville silty clay loam (Soil Type 41), with a site index of 109, will produce 23,872 board feet per acre at 50 years of age, Ritner cobbly silty clay loam (Soil Type 113), with a site index of 107, will produce 23,005 board feet per acre at 50 years of age and Salkum silty clay loam (Soil Type 121), with a site index of 116, will produce 27,801 board feet per acre (see Exhibit 7).

The total potential volume, at 50 years, can now be calculated for the entire parcel.

Volume Total for 118.29 acres

		Total Volume (Board Feet)
37C - Copola cobbly loam	13.58 ac @ 19,972 bf/ac	271,220
37E - Copola cobbly loam	9.90 ac @ 19,972 bf/ac	197,723
41C - Dixonville silty clay loam	4.94 ac @ 23,872 bf/ac	117,928
52B - Hazelair silty clay loam	5.79 ac @ 5,792 bf/ac	33,536
102C - Panther silty clay loam	7.43 ac @ 6,591 bf/ac	48,971
107C - Philomath silty clay	11.47 ac @ 6,591 bf/ac	75,599
113C - Ritner cobbly silty clay loam	3.00 ac @ 23,005 bf/ac	69,015
113E - Ritner cobbly silty clay loam	1.46 ac @ 23,005 bf/ac	33,587
113G - Ritner cobbly silty clay loam	1.99 ac @ 23,005 bf/ac	45,780
116G - Rock outcrop-Witzel complex	4.52 ac @ 3,084 bf/ac	13,962
121C - Salkum silty clay loam	18.86 ac @ 27,801 bf/ac	524,327
138G - Witzel very cobbly loam	8.75 ac @ 10,280 bf/ac	89,950
Wetland	7.81 ac @ 0 bf/ac	0
Floodplain	12.88 ac @ 0 bf/ac	0
Floodplain and Wetland	2.70 ac @ 0 bf/ac	0
Barns	0.58 ac @ 0 bf/ac	0
Roadway	2.06 ac @ 0 bf/ac	0
Water - Pond	0.57 ac @ 0 bf/ac	0
Totals	118.29 acres	1,521,598

INCOME PROJECTIONS YEAR BY YEAR

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 8).

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.

A 50 year old stand on good site ground should have approximately 40% 2 SAW, 50% 3 SAW and 10% 4 SAW. On poor sites the percentage of 2 SAW would most likely be 30% or less. However, for the following calculations these percentages will be used; in order to err on the high (or optimistic) side. See Exhibit 8 for the prices shown below.

1978 Total Volume - 1,521.6 MBF (thousand board feet)

608.6 MBF of 2 SAW @ \$276/MBF	\$167,974
760.8 MBF of 3 SAW @ \$235/MBF	178,788
152.2 MBF of 4 SAW @ \$190/MBF	<u>28,918</u>

Total Projected Gross Revenue \$375,680

AVERAGE GROSS INCOME -- \$375,680 ÷ 50 YEARS = **\$7,514/YEAR**

1979 Total Volume - 1,521.6 MBF (thousand board feet)

608.6 MBF of 2 SAW @ \$338/MBF	\$205,707
760.8 MBF of 3 SAW @ \$296/MBF	225,297
152.2 MBF of 4 SAW @ \$269/MBF	<u>40,942</u>

Total Projected Gross Revenue \$471,946

AVERAGE GROSS INCOME -- \$471,946 ÷ 50 YEARS = **\$9,439/YEAR**

1980 Total Volume - 1,521.6 MBF (thousand board feet)

608.6 MBF of 2 SAW @ \$354/MBF	\$215,444
760.8 MBF of 3 SAW @ \$310/MBF	235,848
152.2 MBF of 4 SAW @ \$281/MBF	<u>42,768</u>

Total Projected Gross Revenue \$494,060

AVERAGE GROSS INCOME -- \$494,060 ÷ 50 YEARS = **\$9,881/YEAR**

1981 Total Volume - 1,521.6 MBF (thousand board feet)

608.6 MBF of 2 SAW @ \$346/MBF	\$210,576
760.8 MBF of 3 SAW @ \$292/MBF	222,154
152.2 MBF of 4 SAW @ \$263/MBF	<u>40,029</u>

Total Projected Gross Revenue \$472,759

AVERAGE GROSS INCOME -- \$472,759 ÷ 50 YEARS = **\$9,455/YEAR**

1982 Total Volume - 1,521.6 MBF (thousand board feet)

608.6 MBF of 2 SAW @ \$267/MBF	\$162,496
760.8 MBF of 3 SAW @ \$208/MBF	158,246
152.2 MBF of 4 SAW @ \$174/MBF	<u>26,483</u>

Total Projected Gross Revenue \$347,225

AVERAGE GROSS INCOME -- \$347,225 ÷ 50 YEARS = **\$6,945/YEAR**

1978-1982 AVERAGE Total Volume - 1,521.6 MBF (thousand board feet)

608.6 MBF of 2 SAW @ \$316/MBF	\$192,318
760.8 MBF of 3 SAW @ \$268/MBF	203,894
152.2 MBF of 4 SAW @ \$235/MBF	<u>35,767</u>
Total Projected Gross Revenue	\$431,979

AVERAGE GROSS INCOME -- \$431,979 ÷ 50 YEARS = \$8,640/YEAR

All of these calculations show that the property is incapable of producing more than \$10,000 per year in income.

IV. CONCLUSION

The analyses presented show conclusively that this property will not support a merchantable stand of timber, of sufficient production capability, to meet or exceed the Marginal Lands Income and Cubic Foot Productivity Statutes (ORS 197.247).

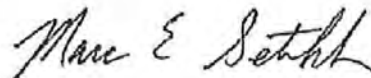
1) The subject property produces **83.22 cubic feet per acre per year**. This is less than 85 cu.ft./ac./yr. of merchantable timber production, the parameter used in those counties west of the summit of the Cascade Range, as that term is defined in ORS 477.001(21).

2) The estimated gross income would have ranged from a low of \$347,225 in 1982 to a high of \$494,060 in 1980. **The average annual gross income would have ranged from a low of \$6,945/year in 1982 to a high of \$9,881/year in 1980. These figures are based on a 50 year rotation of fully stocked stands of timber covering the entire parcel.** All of the above figures are less than \$10,000/year, therefore the property meets the 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".

All of the data used in these analyses are from Oregon Department of Forestry approved sources. The findings presented here meet all of the parameters for marginal land designation, as outlined by Lane County statutes. Several of the parameters, such as the 50 year growth cycle to harvest, have been reaffirmed by LUBA.

In summary, I find from the specific site conditions present, empirical yield tables, NRCS data, Lane County data, Oregon Department of Forestry data and experience with similar lands, that this property is poorly suited to the production of merchantable timber and use as land for forestry purposes. The parcel is marginal from a forest production standpoint.

Sincerely,



Certified Forester #2953

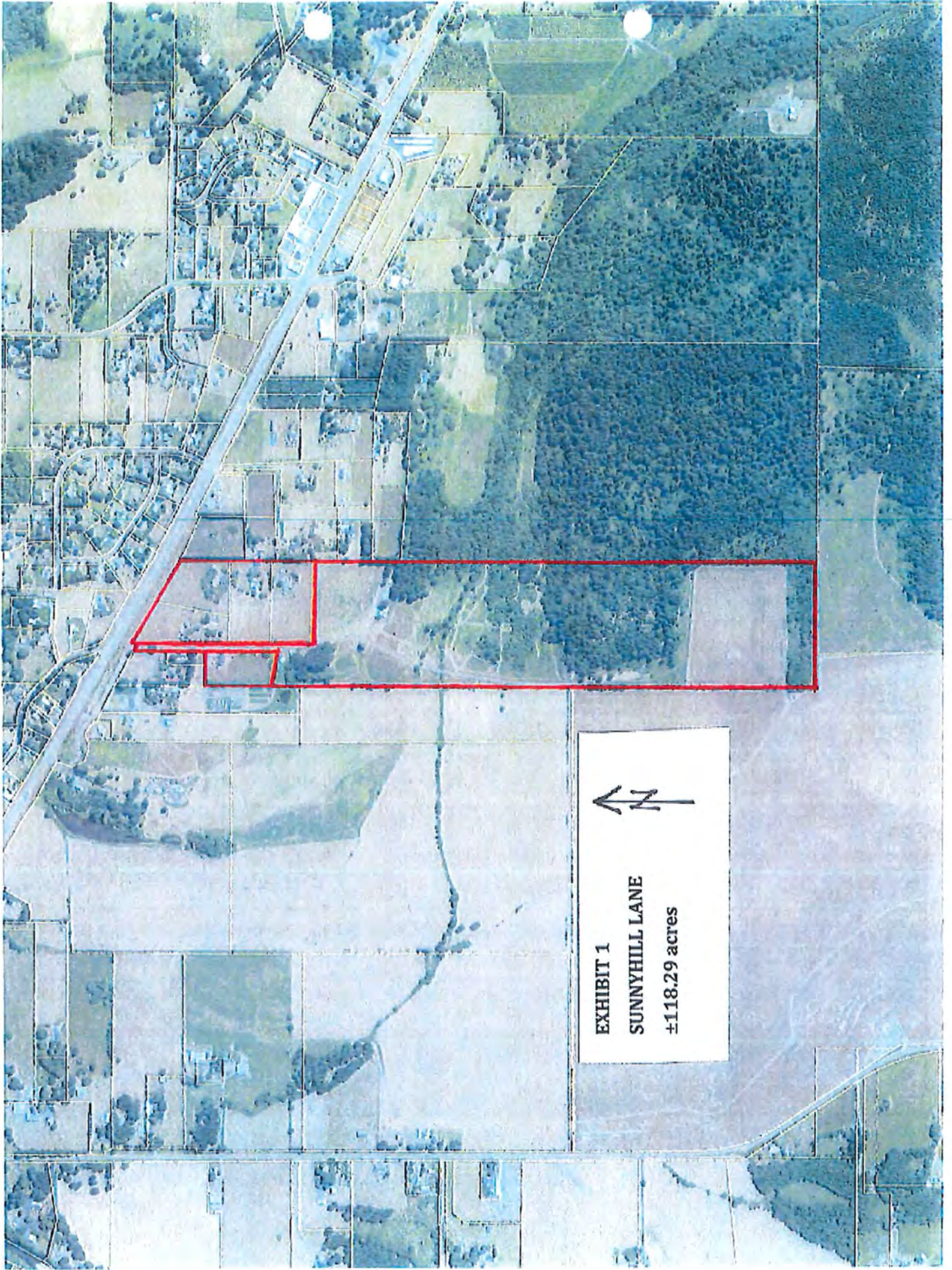


EXHIBIT 1
SUNNYHILL LANE
±118.29 acres

SECTION 29 T.18S. R.2W. W.M.
Lane County
1" = 400'

FOR ASSESSMENT AND
TAXATION ONLY

- DE DATA
18022900
- CANCELLED
- 2901
 - 2902
 - 2903
 - 2904
 - 2905
 - 2906
 - 2907
 - 2908
 - 2909
 - 2910
 - 2911
 - 2912
 - 2913
 - 2914
 - 2915
 - 2916
 - 2917
 - 2918
 - 2919
 - 2920

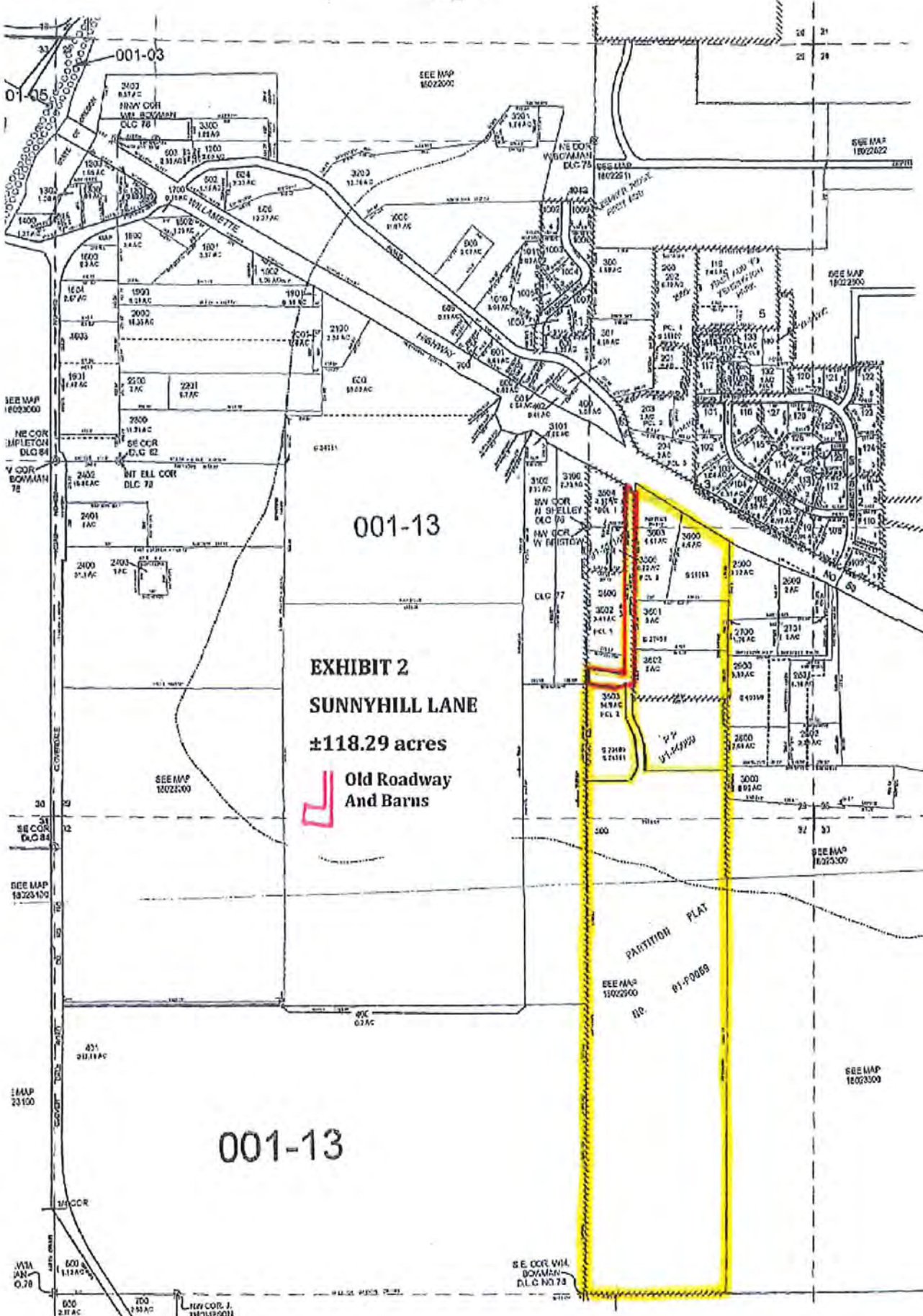


EXHIBIT 2
SUNNYHILL LANE
 ±118.29 acres
 Old Roadway
 And Barns

PARTITION PLAT
 SEE MAP 18022900
 NO. 01-0069

001-13

RECORD
BOOK 1240 P. 8 11/18/07
18022900-1240 P. 8 11/18/07

RECORD
BOOK 1240 P. 8 11/18/07
18022900-1240 P. 8 11/18/07

SEE MAP 18023000

SEE COR. W. BOWMAN D.L.C. NO. 73

SEE COR. J. THOMPSON

SEE MAP 18023100

SEE MAP 18023100

SEE COR. D.C. 84

SEE MAP 18023000

SEE MAP 18023000

SEE MAP 18022900

SEE MAP 18022900

SEE MAP 18022900

Iver_Lon Property Total Acreage Map

Legend

Unsuited, Non-resource Farm Units

Cupola	37C -	22.47 Acres
Cupola	37E -	9.90 Acres
Panther	102C -	16.23 Acres
Philomath	107C -	11.47 Acres
Rock-O-Witzel	116G -	4.65 Acres
Ritner	113G -	2.95 Acres
Ritner	113C -	3.58 Acres
Ritner	113E -	5.11 Acres
Witzel	138G -	9.52 Acres
Water	W -	0.57 Acres
Sub-total Acreage =		86.45
		73.1% of total

Suited, Resource Farm Units

Salkum	121C -	20.34 Acres
Dixonville	41C -	4.94 Acres
Hazelair	52B -	6.56 Acres
Sub-total Acreage =		31.84
		26.9%

Total Acreage = 118.29 Acres

EXHIBIT 3

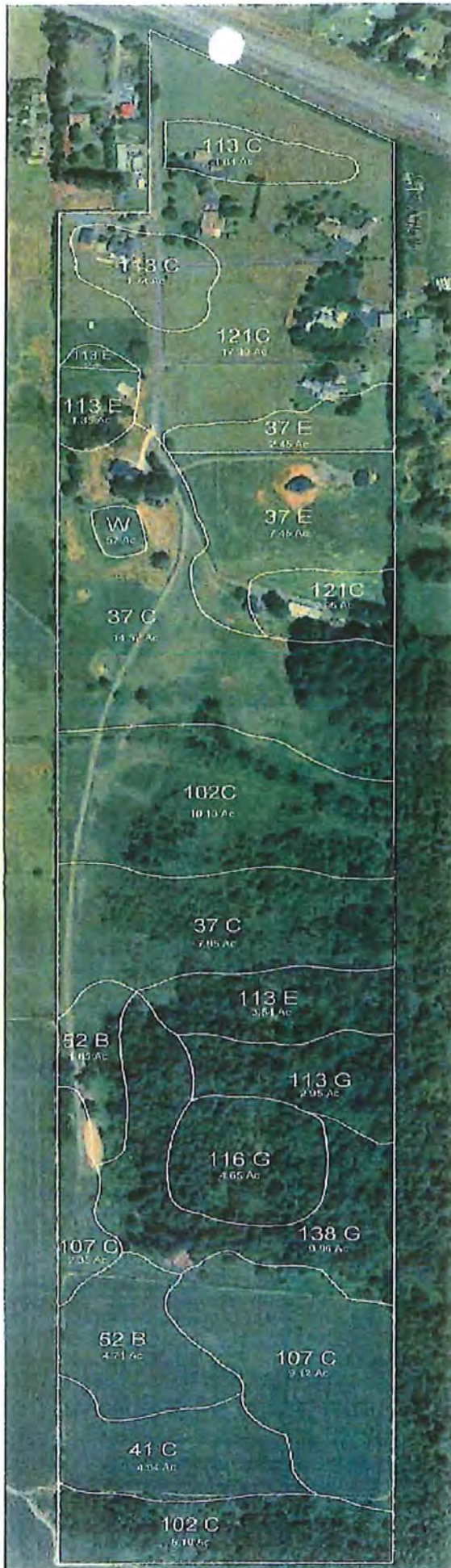


EXHIBIT 4



Oregon

Theodore R. Kulungoski, Governor

November 21, 2008

Department of Forestry

State Forester's Office

2600 State Street

Salem, OR 97310

503-945-7200

FAX 503-945-7212

TTY 503-945-7213 / 800-437-4490

<http://www.odf.state.or.us>



OREGON DEPARTMENT OF FORESTRY

Mr. Kent Howe
Lane County Land Management Division
125 E 8th Street
Eugene, Oregon 97401

Dear Mr. Howe:

I am writing to clarify the Oregon Department of Forestry's responsibilities related to specific elements of Oregon Administrative Rule 660-006-0005 (2) and (3). This letter is intended to address recent Lane County public inquiries regarding this administrative rule and was developed following consultations with the Oregon Department of Land Conservation and Development and the Oregon Department of Justice.

Please note that previous Department of Forestry policy position statements or technical findings contained in the May 23, 2008, letter from former Department of Forestry Private Forests Chief Ted Lorensen to Goal One Coalition Executive Director Jim Just that are in conflict with this letter are hereby rescinded and replaced with the policy statements and technical findings articulated here. All other statements in that correspondence remain valid.

Applicable Administrative Rule Language:

OAR 660-006-0005 (2) and (3) state:

2) "Cubic Foot Per Acre" means the average annual increase in cubic foot volume of wood fiber per acre for fully stocked stands at the culmination of mean annual increment as reported by the USDA Natural Resource Conservation Service (NRCS) soil survey information, USDA Forest Service plant association guides, Oregon Department of Revenue western Oregon site class maps, or other information determined by the State Forester to be of comparable quality. Where such data are not available or are shown to be inaccurate, an alternative method for determining productivity may be used. An alternative method must provide equivalent data as explained in the Oregon Department of Forestry's Technical Bulletin entitled "Land Use Planning Notes Number 3 dated April 1998" and be approved by the Oregon Department of Forestry."

(3) "Cubic Foot Per Tract Per Year" means the average annual increase in cubic foot volume of wood fiber per tract for fully stocked stands at the culmination of mean annual increment as reported by the USDA Natural Resource Conservation Service (NRCS) soil survey information, USDA Forest Service plant association guides, Oregon Department of Revenue western Oregon site class maps, or other information determined by the State Forester to be of comparable quality. Where such data are not available or are shown to be inaccurate, an alternative method for determining productivity may be used. An alternative method must provide equivalent data as explained in the Oregon Department of Forestry's Technical Bulletin entitled "Land Use Planning Notes Number 3 dated April 1998" and be approved by the Oregon Department of Forestry." (Emphasis added)

Using the Best Possible Forest Site Productivity Information:

The administrative rule, in combination with *Land Use Planning Technical Note Number 3*, establishes a hierarchy of forest site productivity information that should be considered in land use decisions subject to the rule. Listed in order of preference, the information sources are:

1. Data sources cited specifically in the administrative rule;
2. Other existing data sources determined by the State Forester to be of comparable quality to the data sources cited specifically in the administrative rule;
3. Alternate methods to develop site productivity data based on direct tree measurements and calculations using applicable Douglas-fir, western hemlock, or ponderosa pine site tables, with priority given to the species among these three that dominates the area being evaluated;
4. Alternate methods based on direct tree measurements and calculations using other native forest tree species site tables; or
5. Site-specific soil surveys.

Applicable existing data from USDA Natural Resource Conservation Service (NRCS) soil survey information, USDA Forest Service plant association guides, Oregon Department of Revenue western Oregon site class maps should always be consulted and used first (Tier 1). If these three data sources are determined by the county and/or NRCS to be inaccurate or do not exist, only then should other applicable, existing data sources determined to be of comparable quality by the State Forester be consulted (Tier 2). Alternate methods for collecting new site productivity data are only needed when data from these first two tiers are determined by the county and/or NRCS to be inaccurate or do not exist. To be approved by the Department of Forestry such alternate methodologies must be consistent with the methodologies described or contemplated in the technical note. Alternate methods based on direct tree measurements and calculations using applicable Douglas-fir, western hemlock, or ponderosa pine site tables (Tier 3) should be considered before using site tables for other tree species (Tier 4) or site-specific soil surveys without direct tree measurements (Tier 5).

Consistent and credible site productivity determinations should be an important facet of the land use planning process. To meet that objective, this hierarchy should be adhered to. Attempts to consider a variety of methods simultaneously in hope of finding a "preferred" site productivity determination should be avoided.

Lane County Data Sources of Comparable Quality

The State Forester has determined the following existing site productivity data sources to be of comparable quality to the data sources cited specifically in the administrative rule when applied on appropriate locations in Lane County:

1. February 8, 1990, *Forest Lands Soils Ratings - Revisions* produced by the Oregon Department of Forestry
2. Undated *Lane County Forest Soils Ratings* based on published Soil Conservation Service data and the February 9, 1990, Oregon Department of Forestry report
3. August 1997 *Lane County Soil Ratings for Forestry and Agriculture* produced by the Lane County Council of Governments

No further Department of Forestry review or approval of site productivity determinations are needed when these data sources are used.

Ponderosa Pine in the Willamette Valley

In most western Oregon locations where both Douglas-fir and ponderosa pine are present, Douglas-fir will be the dominant species and, therefore, whenever possible that species should be used for selecting site trees. In infrequent cases where ponderosa pine is the dominant species in western Oregon, *Land Use Planning Technical Note Number 3* states that Meyer's ponderosa pine site table may be used in calculations of site productivity. However, the technical note also states Meyer's site table must not be used for ponderosa pine in the Willamette Valley. For the purpose of implementing this section of the technical note, the Department of Forestry will rely on the definition provided in OAR 660-033-0020 (12) in which "Willamette Valley" means "Clackamas, Linn, Marion, Multnomah, Polk, Washington and Yamhill Counties and that portion of Benton and Lane Counties lying east of the summit of the Coast Range."

The Department of Forestry has not been able to locate credible site index or yield tables for ponderosa pine applicable in the Willamette Valley. In a May 23, 2008, letter, Ted Lorensen noted that the department had used tables for ponderosa pine from Douglas County for the Forest Resource Trust, and that in the current absence of standard tables, ODF "would likely approve of methodology using the pine tables for Douglas County and appropriate interpolation." However, the Department of Forestry has since determined that interpolation of either Douglas County or Eastern Oregon ponderosa pine yield tables for the more highly productive Willamette Valley would not be technically sound.

Instead, energy should be focused on obtaining or developing, if possible, technically credible Willamette Valley-specific ponderosa pine site index tables. The Department of Forestry is willing to work cooperatively with county governments, Oregon State University Forestry Extension, forest landowners, and other parties to develop such information. Until a credible Willamette Valley ponderosa pine site table becomes available and is acknowledged in a revised ODF Technical Note, the Department of Forestry's position is that it is inappropriate to use ponderosa pine to determine site productivity for under OAR 660-006-0005

(2) and (3) in the Willamette Valley and use of such methodologies cannot be approved by the agency.

Outside the Willamette Valley, Meyer's ponderosa pine site table may continue to be used on sites where ponderosa pine is the dominant species and the Tier 1 and Tier 2 site productivity data sources cited above are determined by the county and/or NRCS to be inaccurate or do not exist.

Stockable Area

Cubic foot site productivity determinations assume fully stocked stands. In this context, "stockable area" means the proportion of an area that can be physically stocked with trees. Rock outcrops, impervious soils, or high water tables are examples of factors that may result in less than 100 percent of the site being stockable. The technical note anticipates this issue by referencing the USDA Forest Service Pacific Northwest Research Station *Field Instructions for forest surveys in Washington, Oregon, and Northern California* where consideration of stockable area factors are addressed. Upon request by a county government, the Department of Forestry will evaluate and consider approval of reductions in site productivity from fully stocked stand levels based on such factors.

Limits on Department of Forestry Approvals

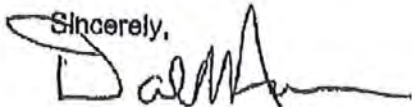
As stated in the technical note, the Department of Forestry does not measure site productivity for landowners. The Department of Forestry's involvement in site productivity determinations applicable to Oregon Administrative Rule 660-006-0005 (2) and (3) is in evaluating the quality of existing data sources other than those cited in the rule and evaluating alternative methodologies with respect to the technical note. The Department of Forestry will not issue findings on whether these data sources or alternate methodologies have been employed correctly or if the resulting site productivity determination are accurate. The Department of Forestry is not responsible for verifying field measurements.

Oregon Forest Practices Act Minimum Site Productivity Requirements for Reforestation

While not directly applicable to land use planning decisions, Department of Forestry believes it is important to note the Oregon Board of Forestry has established that all forestlands with a site productivity of at least 20 cubic feet per acre per year shall be subject to the reforestation requirements of the Oregon Forest Practices Act. Other technical references use 20 cubic feet per acre per year as the minimum threshold for defining commercial forestland. Local governments are encouraged to consider this information when establishing site productivity standards for land use planning processes.

Mr. Kent Howe
November 21, 2008
Page 5

In summary, the content of this letter is intended to further explain, and not alter, the requirements of Oregon Administrative Rule 660-006-0005 (2) and (3) and *Land Use Planning Technical Note Number 3*. Please contact me if you have any questions. If unresolved issues continue to arise, clarifying changes to the administrative rule and/or the Technical Note may eventually be necessary and the Department of Forestry will work together with county governments, the Oregon Department of Land Conservation and Development, and other interested parties on such changes.

Sincerely,


David Morman, Director
Forest Resources Planning Program

cc: Katherine Daniels, DLCD
Carmel Bender, DLCD
Michele Logan, DOJ

SOILS CLASSIFICATION MAP

FOR

PARCEL 3 OF LAND PARTITION PLAT 2011-P2486

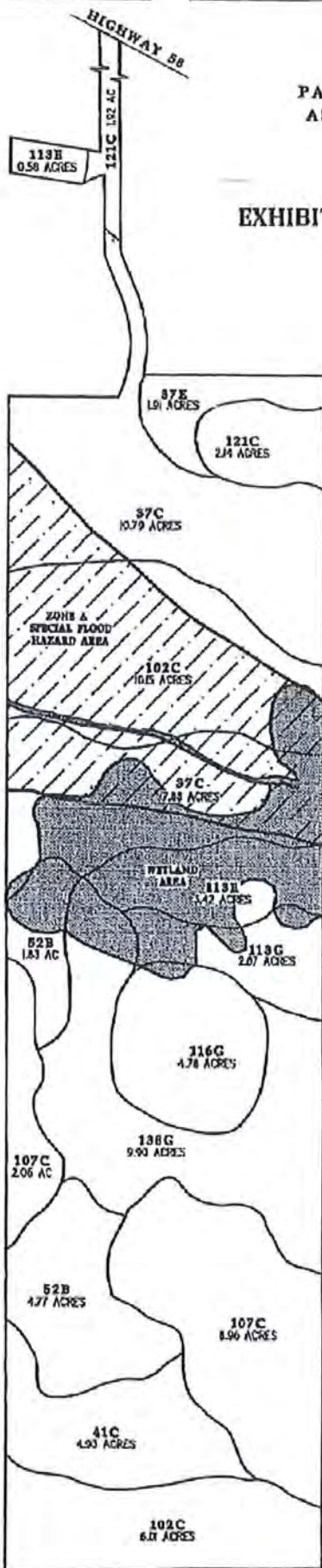
ASSESSOR'S MAP NO. 18-02-29 Tax Lot No. 3508

LANE COUNTY OREGON

APRIL 24, 2015

PAGE 2 of 2

EXHIBIT 5



SCALE 1" = 300'



AREA BREAKDOWN

FLOODPLAIN EXCLUSIVE 12.86 Ac.


37C CUPOLA	4.91 Ac.
102C PANTHER	7.97 Ac.

WETLAND EXCLUSIVE 7.81 Ac.

37C CUPOLA	2.11 Ac.
52B HAZLAIR	0.77 AC
116G ROCK-O-WITZBL	0.13 AC
113B RITNER	3.07 AC
113G RITNER	0.96 AC
113G WITZEL	0.77 AC

FLOODPLAIN/WETLAND AREA 2.70 Ac.

37C CUPOLA	1.87 Ac.
102C PANTHER	0.83 Ac.

 WETLAND AREA AS PLOTTED FROM THE NWI MAPS AVAILABLE FROM THE U.S. FISH AND WILDLIFE SERVICE.

 SPECIAL FLOOD HAZARD BOUNDARY AS INTERPOLATED FROM FEMA COMMUNITY PANEL NO. 4039C0655-F BEARING AN EFFECTIVE DATE OF JUNE 2, 1993.

BY MY SIGNATURE BELOW, I HEREBY CERTIFY THAT I HAVE ACCURATELY PLOTTED THE LIMITS OF THE SOIL TYPES (AS DETERMINED BY GARY RYZROW OF GROWING SOILS ON THE SUBJECT PROPERTY (ASSESSOR'S MAP NO. 18-02-29, TAX LOT 3508), HAVE ACCURATELY CALCULATED THE LAND AREA OF EACH SOIL TYPE ON THE PROPERTY, AND HAVE ACCURATELY CALCULATED THE RESULTING PROPORTION OF SUITABLE VS UNSUITABLE SOILS AS A PERCENTAGE OF THE TOTAL LAND AREA CONTAINED WITHIN THE SUBJECT PARCEL.

REGISTERED
PROFESSIONAL
LAND SURVEYOR

Jonathan A. Dakes

OREGON
JULY 12, 1984
JONATHAN A. DAKES
2825

EXPIRES: DECEMBER 31, 2016

EXHIBIT 6



**Lane County
Land Management Division**

August 2011 Update

PREPARED BY
LCOG
LANE COUNCIL OF GOVERNMENTS

Lane County Soil Ratings for Forestry
August 2011 Update

Map Symbol	Soil Map Unit	NRCS Site Index	NRCS Cu. Ft./ Acre/Year	ODOF Cu. Ft./ Acre/Year	Notes
21E	Bullards-Ferrelo loams, 12 - 30% slopes	No rating	---	est. 80	
21G	Bullards-Ferrelo loams, 30 - 60% slopes	No rating	---	est. 80	
23	Camas-Urban land complex	No rating	---	est. 20	
24	Chapman loam	No rating	---	est. 140	
25	Chapman-Urban land complex	No rating	---	est. 100	
26	Chehalis silty clay loam, occasionally flooded	No rating	---	est. 100	
27	Chehalis-Urban land complex	No rating	---	est. 90	
28C	Chehulpum silt loam, 3 - 12% slopes	No rating	---	est. 40	
28E	Chehulpum silt loam, 12 - 40% slopes	No rating	---	est. 40	
29	Cloquato silt loam	No rating	---	est. 120	
30	Cloquato-Urban land complex	No rating	---	est. 100	
31	Coburg silty clay loam	No rating	---	est. 100	
32	Coburg-Urban land complex	No rating	---	est. 90	
33	Conser silty clay loam	No rating	---	est. 45	
34	Courtney gravelly silty clay loam	No rating	---	est. 40	
36D	Cumley silty clay loam, 2 - 20% slopes	114	162	---	
→ 37C	Cupola cobbly loam, 3 - 12% slopes	100	136	---	
→ 37E	Cupola cobbly loam, 12 - 30% slopes	100	136	---	
38	Dayton silt loam, clay substratum	No rating	---	est. 40	
39E	Digger gravelly loam, 10 - 30% slopes	102	140	---	
39F	Digger gravelly loam, 30 - 50% slopes	102	140	---	
40H	Digger-Rock outcrop complex, 50 - 85% slopes	No rating	---	114	
→ 41C	Dixonville silty clay loam, 3 - 12% slopes	109	152	---	
41E	Dixonville silty clay loam, 12 - 30% slopes	109	152	---	
41F	Dixonville silty clay loam, 30 - 50% slopes	109	152	---	
42E	Dixonville-Hazelair-Urban land complex, 12 - 35% slopes	No rating	---	est. 35	
43C	Dixonville-Philomath-Hazelair complex, 3 - 12% slopes	No rating	---	est. 45	
43E	Dixonville-Philomath-Hazelair complex, 12 - 35% slopes	No rating	---	est. 45	
44	Dune land	No rating	---	---	No trees expected
45C	Dupee silt loam, 3 - 20% slopes	No rating	---	est. 70	
46	Eilertsen silt loam	133	199	---	
47E	Fendall silt loam, 3 - 30% slopes	125	184	---	

Lane County Soil Ratings for Forestry
August 2011 Update (with June 2012 revision)

Map Symbol	Soil Map Unit	NRCS Site Index	NRCS Cu. Ft./ Acre/Year	ODOF Cu. Ft./ Acre/Year	Notes
50G	Formader-Hembre-Klickitat complex, 50 - 80% slopes	No rating	---	170	
51B	Haflinger-Jimbo complex, 0 - 5% slopes	No rating	---	161	
→ 52B	Hazelair silty clay loam, 2 - 7% slopes	No rating	---	est. 40	
52D	Hazelair silty clay loam, 7 - 20% slopes	No rating	---	est. 40	
53	Heceta fine sand	No rating	---	est. 20	
54D	Hembre silt loam, 5 - 25% slopes	127	188	---	
54G	Hembre silt loam, 25-60% slopes	127	188	---	
55E	Hembre-Klickitat complex, 3 - 30% slopes	No rating	---	170	
55G	Hembre-Klickitat complex, 30 - 60% slopes	No rating	---	168	
56	Holcomb silty clay loam	No rating	---	est. 100	
58D	Honeygrove silty clay loam, 3 - 25% slopes	122	178	---	
58F	Honeygrove silty clay loam, 25 - 50% slopes	122	178	---	
59E	Hullt loam, 2 - 30% slopes	121	176	---	
59G	Hullt loam, 30 - 60% slopes	121	176	---	
61	Jimbo silt loam	121	176	---	
62B	Jimbo-Haflinger complex, 0 - 5% slopes	No rating	---	167	
63C	Jory silty clay loam, 2 - 12% slopes	122	178	---	
63D	Jory silty clay loam, 12 - 20% slopes	122	178	---	
63E	Jory silty clay loam, 20 - 30% slopes	122	178	---	
65G	Kilchis stony loam, 30 - 60% slopes	90	116	---	
65H	Kilchis stony loam, 60 - 90% slopes	90	116	---	
66D	Kinney cobbly loam, 3 - 20% slopes	122	178	---	
67F	Kinney cobbly loam, 20 - 50% north slopes	122	178	---	
67G	Kinney cobbly loam, 50 - 70% north slopes	122	178	---	
68F	Kinney cobbly loam, 20 - 50% south slopes	122	178	---	
68G	Kinney cobbly loam, 50 - 70% south slopes	122	178	---	
69E	Kinney cobbly loam, slump, 3 - 30% slopes	122	178	---	
70E	Klickitat stony loam, 3 - 30% slopes	112	158	---	
71F	Klickitat stony loam, 30 - 50% north slopes	112	158	---	
71G	Klickitat stony loam, 50 - 75% north slopes	112	158	---	
72F	Klickitat stony loam, 30 - 50% south slopes	112	158	---	
72G	Klickitat stony loam, 50 - 75% south slopes	112	158	---	
73	Linslaw loam	No rating	---	est. 80	
74B	Lint silt loam, 0 - 7% slopes	117	169	---	
74C	Lint silt loam, 7 - 12% slopes	117	169	---	
74D	Lint silt loam, 12 - 20% slopes	117	169	---	
74E	Lint silt loam, 20 - 40% slopes	117	169	---	
75	Malabon silty clay loam	No rating	---	est. 65	
76	Malabon-Urban land complex	No rating	---	est. 50	

Lane County Soil Ratings for Forestry
August 2011 Update

Map Symbol	Soil Map Unit	NRCS Site Index	NRCS Cu. Ft./ Acre/Year	ODOF Cu. Ft./ Acre/Year	Notes
→ 101	Oxley-Urban land complex	No rating	---	est. 60	
→ 102C	Panther silty clay loam, 2 - 12% slopes	No rating	---	est. 45	
103C	Panther-Urban land complex, 2 - 12% slopes	No rating	---	est. 40	
104E	Peavine silty clay loam, 3 - 30% slopes	125	184	---	
104G	Peavine silty clay loam, 30 - 60% slopes	125	184	---	
105A	Pengra silt loam, 1 - 4% slopes	No rating	---	est. 45	
→ 106A	Pengra-Urban land complex, 1 - 4% slopes	No rating	---	est. 30	
→ 107C	Philomath silty clay, 3 - 12% slopes	No rating	---	est. 45	
108C	Philomath cobbly silty clay, 3 - 12% slopes	No rating	---	est. 45	
108F	Philomath cobbly silty clay, 12 - 45% slopes	No rating	---	est. 45	
109F	Philomath-Urban land complex, 12 - 45% slopes	No rating	---	est. 20	
110	Pits	No rating	---	---	No trees expected
111D	Preacher loam, 0 - 25% slopes	128	190	---	
111F	Preacher loam, 25 - 50% slopes	128	190	---	
112G	Preacher-Bohannon-Slickrock complex, 50 - 75% slopes	No rating	---	185	
↔ 113C	Ritner cobbly silty clay loam, 2 - 12% slopes	107	149	---	
↔ 113E	Ritner cobbly silty clay loam, 12 - 30% slopes	107	149	---	
↔ 113G	Ritner cobbly silty clay loam, 30 - 60% slopes	107	149	---	
114	Riverwash	No rating	---	---	Highly variable; on-site determination required
115H	Rock outcrop-Kilchis complex, 30 - 90% slopes	No rating	---	34	
116G	Rock outcrop-Witzel complex, 10 - 70% slopes	No rating	---	21	
117E	Salander silt loam, 12 - 30% slopes	125	184	---	
118	Salem gravelly silt loam	No rating	---	est. 130	
119	Salem-Urban land complex	No rating	---	est. 100	
120B	Salkum silt loam, 2 - 6% slopes	116	167	---	
121B	Salkum silty clay loam, 2 - 8% slopes	116	167	---	
↔ 121C	Salkum silty clay loam, 8 - 16% slopes	116	167	---	
122	Satum clay loam	123	180	---	
123	Sifton gravelly loam	124	182	---	
124D	Slickrock gravelly loam, 3 - 25% slopes	137	209	---	
124F	Slickrock gravelly loam, 25 - 50% slopes	137	209	---	
125C	Steiber loam, 3 - 12% slopes	No rating	---	est. 30	

Lane County Soil Ratings for Forestry
August 2011 Update

Map Symbol	Soil Map Unit	NRCS Site Index	NRCS Cu. Ft./ Acre/Year	ODOF Cu. Ft./ Acre/Year	Notes
125D	Steiwer loam, 12 - 20% slopes	No rating	---	est. 30	
125F	Steiwer loam, 20 - 50% slopes	No rating	---	est. 30	
126F	Tahkenitch loam, 20 - 45% slopes	124	182	---	
126G	Tahkenitch loam, 45 - 75% slopes	124	182	---	
127C	Urban land-Hazelair-Dixcnville complex, 3 - 12% slopes	No rating	---	est. 45	
128B	Veneta loam, 0 - 7% slopes	108	150	---	
129B	Veneta Variant silt loam, 0 - 7% slopes	124	182	---	
130	Waldo silty clay loam	No rating	---	est. 45	
131C	Waldport fine sand, 0 - 12% slopes	No rating	---	29	
131E	Waldport fine sand, 12 - 30% slopes	No rating	---	29	
131G	Waldport fine sand, 30 - 70% slopes	No rating	---	29	
132E	Waldport fine sand, thin surface, 0 - 30% slopes	No rating	---	29	
133C	Waldport-Urban land complex, 0 - 12% slopes	No rating	---	est. 20	
134	Wapato silty clay loam	No rating	---	---	
135C	Willakenzie clay loam, 2 - 12% slopes	110	154	---	
135D	Willakenzie clay loam, 12 - 20% slopes	110	154	---	
135E	Willakenzie clay loam, 20 - 30% slopes	110	154	---	
135F	Willakenzie clay loam, 30 - 50% slopes	110	154	---	
136	Willanch fine sandy loam	No rating	---	est. 40	
138E	Witzel very cobbly loam, 3 - 30% slopes	No rating	---	70	
→ 138G	Witzel very cobbly loam, 30 - 75% slopes	No rating	---	70	
139	Woodburn silt loam	No rating	---	est. 170	
140	Yaquina loamy fine sand	No rating	---	---	
141	Yaquina-Urban land complex	No rating	---	est. 45	
2024A	Malabon silty clay loam, rarely flooded, 0 - 3% slopes	123	180	---	Best available data
2025A	Coburg silty clay loam, rarely flooded, 0 - 3% slopes	No rating	Est. 100	---	No data available; the estimate is for Coburg map unit 31, a similar soil
2208B	McAlpin silty clay loam, 3 - 6% slopes	144	222	---	
2718E	Jory-Nekia complex, 20 - 30% slopes	122	178	---	Data is for the Jory component only
2733C	Willakenzie loam, 2 - 12% slopes	112	158	---	
2733E	Willakenzie loam, 2 - 12% slopes	110	157	---	

EXHIBIT 7

DOUGLAS FIR EMPIRICAL YIELD TABLE

SOURCE: For Douglas fir tables 2 through 10, D.M.R. Report No. 20 - May 1971, "Empirical Yield Tables for the Douglas fir Zone" by Charles Chambers, and Franklin Wilson, "Comprehensive Tree Volume Tariff Tables" by Dr. K. J. Turnbull, Gene Little, and Gerald Hoyer, June 1972. Stepwise multiple regression conversion made by Tom Wheatley, Publishers Paper Co., June 1978.

SITE 70

Total Age	Normal Basal Area	Mean Diameter	CVTS	CV4	SV6(32')	C/SCR Ratio
20	---	---	---	---	---	---
26	9	8.25	---	---	---	---
30	38	8.57	517	517	1,185	.436
40	91	9.36	1,874	1,847	4,196	.440
41	96	9.44	2,034	1,963	4,554	.431
50	128	10.11	3,126	3,008	6,115	.371
60	158	10.00	4,275	4,138	12,572	.329
70	182	11.43	5,320	5,196	17,176	.302
80	202	11.98	6,261	6,141	21,544	.285
90	220	12.43	7,099	6,941	25,350	.274
100	235	12.78	7,833	7,574	28,374	.267
110	249	13.01	8,463	8,021	30,405	.264
120	261	13.10	8,989	8,256	31,279	.264
130	273	13.04	9,412	8,297	30,500	.268

TABLE 3

SITE 80

Total Age	Normal Basal Area	Mean Diameter	CVTS	CV4	SV6(32')	C/SCR Ratio
20	---	---	---	---	---	---
26	26	9.52	269	269	633	.425
30	55	8.91	921	921	1,614	.570
40	108	9.87	2,479	2,330	5,870	.397
41	113	9.96	2,630	2,467	6,342	.389
50	146	10.79	3,934	3,707	11,118	.333
60	175	11.65	5,285	5,060	17,062	.297
70	199	12.45	6,532	6,330	23,187	.273
80	219	13.17	7,675	7,473	29,038	.257
90	237	13.79	8,715	8,454	34,240	.247
100	252	14.31	9,651	9,251	38,541	.240
110	266	14.71	10,482	9,842	41,709	.236
120	279	14.97	11,211	10,216	43,565	.235
130	290	15.00	11,835	10,365	44,000	.236

TABLE 4

SITE 90

Total Age	Normal Basal Area	Mean Diameter	CVTS	CV4	SV6(32')	C/SCR Ratio
20	---	---	---	---	---	---
26	49	8.91	777	777	1,351	.575
30	77	9.36	1,505	1,426	2,708	.525
40	128	10.49	3,256	2,905	8,393	.356
41	132	10.60	3,425	3,145	9,019	.349
50	165	11.57	4,902	4,591	15,209	.302
60	193	12.60	6,444	6,160	22,777	.270
70	217	13.56	7,883	7,630	30,483	.250
80	236	14.44	9,217	8,949	37,795	.237
90	254	15.23	10,448	10,087	44,347	.227
100	269	15.90	11,576	11,016	49,807	.221
110	281	16.45	12,599	12,726	53,977	.217
120	295	16.87	13,519	12,204	56,590	.215
130	306	17.14	14,335	12,432	57,613	.215

DOUGLAS FIR EMPIRICAL YIELD TABLE

TABLE 5
SITE 100

Total Age	Normal Basal Area	Mean Diameter	CVIS	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	145	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

SITE INDEX 100

SITE INDEX 23,005 B.D.F.

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SITE INDEX 23,872 B.D.F.

TABLE 6
SITE 110

Total Age	Normal Basal Area	Mean Diameter	CVIS	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	15,398	14,503	73,549	.197
110	310	19.97	16,815	15,448	79,836	.193
120	322	20.72	18,129	16,126	84,358	.191
130	333	21.31	19,338	16,528	86,957	.190

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SITE INDEX 27,801

116

B.D.F.T.

TABLE 7
SITE 120

Total Age	Normal Basal Area	Mean Diameter	CVIS	CV4	SV6 (32')	C/SCR Ratio
20	51	9.11	819	770	1,355	.568
26	101	10.10	2,294	1,961	4,010	.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

EXHIBIT 8

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	\$ 359	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

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

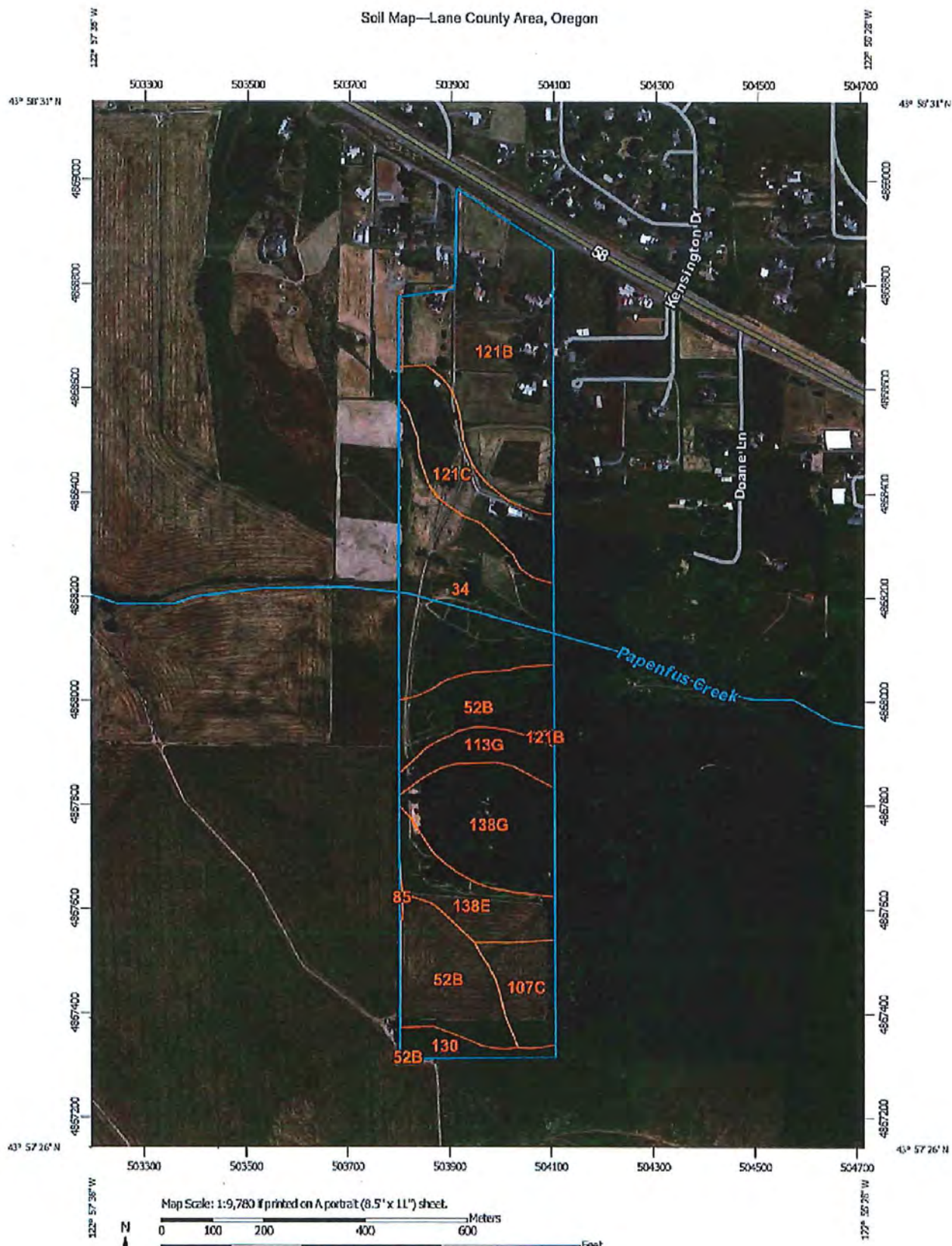
DOUGLAS FIR LOG PRICES 1978-1982, 1983

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

Soil Map—Lane County Area, Oregon







































Natural Resources
Conservation Service

Web Soil Survey
National Cooperative Soil Survey

11/24/2015
Page 1 of 3

EXHIBIT 10

MAP LEGEND

 Area of Interest (AOI)	 Spot Area
Soils	 Stony Spot
 Soil Map Unit Polygons	 Very Stony Spot
 Soil Map Unit Lines	 Wet Spot
 Soil Map Unit Points	 Other
Special Point Features	 Special Line Features
 Blowout	Water Features
 Borrow Pit	 Streams and Canals
 Clay Spot	Transportation
 Closed Depression	 Rails
 Gravel Pit	 Interstate Highways
 Gravelly Spot	 US Routes
 Landfill	 Major Roads
 Lava Flow	 Local Roads
 Marsh or swamp	Background
 Mine or Quarry	 Aerial Photography
 Miscellaneous Water	
 Perennial Water	
 Rock Outcrop	
 Saline Spot	
 Sandy Spot	
 Severely Eroded Spot	
 Sinkhole	
 Slide or Slip	
 Sodic Spot	

MAP INFORMATION

The soil surveys that comprise your AOI were mapped at 1:20,000. Please rely on the bar scale on each map sheet for map measurements.

Source of Map: Natural Resources Conservation Service
 Web Soil Survey URL: <http://websoilsurvey.nrcs.usda.gov>
 Coordinate System: Web Mercator (EPSG:3857)

Maps from the Web Soil Survey are based on the Web Mercator projection, which preserves direction and shape but distorts distance and area. A projection that preserves area, such as the Albers equal-area conic projection, should be used if more accurate calculations of distance or area are required.

This product is generated from the USDA-NRCS certified data as of the version date(s) listed below.

Soil Survey Area: Lane County Area, Oregon
 Survey Area Date: Version 12, Sep 18, 2015

Soil map units are labeled (as space allows) for map scales 1:50,000 or larger.

Date(s) aerial images were photographed: Jul 5, 2011—Jul 6, 2011

The orthophoto or other base map on which the soil lines were compiled and digitized probably differs from the background imagery displayed on these maps. As a result, some minor shifting of map unit boundaries may be evident.

Map Unit Legend

Lane County Area, Oregon (OR637)			
Map Unit Symbol	Map Unit Name	Acres in AOI	Percent of AOI
34	Courtney gravelly silty clay loam	23.1	19.7%
52B	Hazelair silty clay loam, 2 to 7 percent slopes	19.4	16.5%
85	Natroy silty clay loam	0.1	0.1%
107C	Philomath silty clay, 3 to 12 percent slopes	5.6	4.8%
113G	Ritner cobbly silty clay loam, 30 to 60 percent slopes	4.7	4.0%
121B	Salkum silty clay loam, 2 to 8 percent slopes	29.0	24.6%
121C	Salkum silty clay loam, 8 to 16 percent slopes	10.4	8.9%
130	Waldo silty clay loam	2.7	2.3%
138E	Witzel very cobbly loam, 3 to 30 percent slopes	8.1	6.9%
138G	Witzel very cobbly loam, 30 to 75 percent slopes	14.5	12.3%
Totals for Area of Interest		117.7	100.0%



G-SEA RECEIVED AUG 17 2015

Growing Soils Environmental Associates

Gary A. Kitzrow, M.S., C.P.S.S./S.C.

Certified Professional Soil Classifier/Certified Professional Soil Scientist

PO Box 225 • Winchester, OR 97495

June 23, 2015

Boyd Iverson

RE: T18S R2W Sec 29 and 32

Please review our 2000, 2007 and 2010 reports regarding this lot of record. In total, 122.81 acres were included in the original parcel but NOT in our original reporting cycles. Our 2000-2010 analyzes comprised 95.41 acres with a published final soil map corresponding to those three study sessions. The final map submitted in 2010 for those 95.41 acres reflects Order I Soil Survey detail in conjunction with USDA-NRCS Soil Survey reporting standards and guidelines. In our original 2000 reporting for this parcel, our scope of work was *limited* to a review and quantification of the NRCS/Lane County mapped High Value farm soils. In that reporting cycle, we DID NOT complete an Order I Soil Survey for the entire subject property. Hence, on page 3 of the 2000 report, we stated that 58 acres (62.3%), of the then specified 93.14 acres, were non-resource and generally unsuited for both farming and agriculture. This percentage was based upon *only* analyzing the *high value* acreage. In our subsequent inventories, 2007 and 2010, we completed the required Order I soil survey as stipulated by the DLCD//Lane County and formatted in USDA-NRCS reporting standards.

We were unaware in the above 2000-2010 reporting cycles that, in fact, actually the total original property acreage comprised 122.81 acres in size. DLCD reporting standards require analysis of *the entire* original 122.81 acres even though 26.76 acres in the extreme northern limits is now under different ownership.

The current 2015 report completed here reflects our recent fieldwork for this northerly 26.76 acres which lies to the contiguous north of the prior reporting area (95.41 acres). Of these 26.76 acres, we concluded the 3.89 acre original homestead (extreme NW corner of original 122.81 ac. parcel) was removed from consideration in this analysis. In the current study we did classify the remaining 22.30 acres to USDA-NRCS and DLCD/Lane County reporting standards and detail. We completed 18 complete soil descriptions for this northerly region. This is about twice the number of descriptions normally required for such detailed, Order I soil survey activities. Due to the developed nature of this northern 21.71 acreage, we completed this phase of the analysis by using augering techniques. We augered and described each of these 18 test locations to a depth exceeding 40" or to a confirmed geological contact.

EXHIBIT 11

USDA Order III Soil Survey-Reporting.

For this northern area, the resource Salkum soil (121C) is the soil exclusively mapped. Other soils mapped in the area include Cupola, Ritner and Hazelair. Of these both Cupola and Ritner are cited as unsuited for both farm and forest crops. Hazelair is suited only for farm crops.

Growing Soils-Current Field Research

Our field research for this current reporting has shown that indeed Salkum is the dominant soil along the northern limits area. However, a distinct and mappable area of unsuited Ritner soils is noted and has been delineated. Cupola soils are only found along the southern limits of the current survey area. Hazelair soils are only confirmed along the southwest limits of the study area near a pond area described in previous reports (2007, 2010).

The geology and geomorphic surfaces within this northerly area are in sharp contrast to areas we have studied and cited in our 2000, 2007 and 2010 reports (due south). Generally, Pependus Creek is the demarcation and geologic contact separating these two distinct geologic areas. Transitional areas due north of this drainage way yield a variety of soils heading north toward a more consistent and homorganic Salkum type set of soil elements. At the southern end our current study area, landforms and soils are more transitional that near Highway 58. Therefore, we have confirmed Cupola and Hazelair soils in this transitional zone.

Once the landforms flatten out and become consistent in the central and northern portion of the current study area, the Salkum soil series becomes very dominant. Nonetheless, areas of resistant bedrock within this northern region yield poorer Ritner soils. Depth to confirmed bedrock or saprolite is a key distinguishing feature separating these two soils. Saprolite is prevalent in the 113 C delineation comprising 3.85 acres within the study area. Hard bedrock is not typically noted within 40" within this mapping unit in this area.

Salkum VS Ritner Series in the Current Study Area

Salkum soils are fine family (>37% clay) and very deep (>60" to bedrock) with little rock (coarse fragments). These soils also have a clay bulge termed argillic horizon. The study area and Salkum soils mapped here are marginal in terms of soil classification and fitting the series concept for several reasons. These include: 1) all profiles classified are fine loamy (18 to 37% clay) in the control section (10 to 40") and NOT the fine family class assigned to the Salkum series; 2). The Salkum soils mapped here are generally deep (40 to 60") and NOT the 60" plus normally always associated with the Salkum soil; 3). Many

of the profiles do not exhibit argillic horizons. Instead they possess Cambic horizons which are defined as developed horizons with development features but not the 20% increase in clay needed to be called an argillic horizon.

Due to the marginal features summarized above for the Salkum series we have delineated for this current study, it makes sense that there will be areas which may fit the series concept for the Ritner soil. Ritner soils are distinctly poorer than modal Salkum soils. For the subject study area, the rock content for the Ritner delineation is much less than normally expected for this soil. Similarly, clay contents are slightly lower but within the range of characteristics for the Ritner series. These soils too show saprolite rather than competent bedrock at the geologic contact. Ritner soils in this area generally show cambic diagnostic horizons although some profiles exhibit incipient argillic horizons as well.

From a *capability class* standpoint, it is critical to distinguish between the resource Salkum and the non-resource Ritner series within the subject property limits. A major distinction is the difference in water holding capacities and absolute rooting depths of both soils. This accounts for the majority of difference in defining one soil as suited for farm and forest production and the other not suited. Both of these mapping units are non-irrigated within the subject study area. Water holding largely defines the length of the growing season for both soils. Salkum soils will supply much more water for crop growth while Ritner soils will cause an early, abrupt end to the growing season due to drought. For the subject property, this is a major reason while our Order I soil survey for the area delineates both soils and treats them independently.

Cupola and Hazelair Soil Series in the Study Area

Within the current study area, the southern limits represent transitional areas. In the 2007 and 2010 reports, we showed the presence of both Cupola and Hazelair soils as you proceed north from the creek. It is easy to see this transition in the field and on photography. We mapped a continuation of these units into the southernmost portion of the current study area. Both of these units end abruptly as the landforms become consistent north.

Cupola soils have ash intrusion and are termed medial in nature. This means they are self-lubricating and can undergo thixotrophy. These soils are classified as Andisols. We mapped these soils along the southeast limits. As the landforms change to convex and become very consistent, the Cupola soils drop out. Many of the Cupola soils are not skeletal (>35% rock fragments) but the upper control section is weakly to moderately

smeary (ash properties). These non-resource soils have limited root space due to a weakly consolidated horizon starting around 25 to 40 inches which is of glacial origin.

Hazelair soils have a major drainage problem and are somewhat poorly drained. They are formed in glacial-lacustrine deposits. They are fine family. These soils are very limited in extent within the current survey area and occur ONLY as inclusions in the extreme SW corner of the study area.

Summary Statement for Current Survey Area

For the current 22.30 acres under review, the vast majority of the landbase is made up of resource, Salkum soils (121C). Of the 22.30 acres mapped, 16.05 or 72.0% of the current study area is comprised of resource and generally suited soils. The remaining 6.25 acres or 28.0% is made up of non-resource and generally unsuited soils including Ritner series 3.78 acres (17.0%) and Cupola series 2.45 acres (11.0%).

Total Acreage Summary Distribution Statement

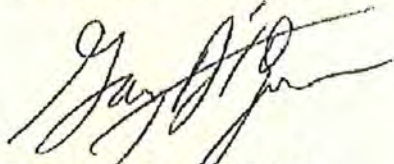
The originally purchased land base for this parcel was 122.75 acres. Other reports show 122.81 acres were originally purchased. We are using the 122.75 acres for the purposes of this report and the past reporting periods. For the purposes of this report and all preceding reports we based all calculations on 118.29 acres. This total acreage for consideration is based upon the 122.75 acres minus the original homestead of (3.89 acres) and the 0.57 acre pond.

WE DID NOT back out the 2.06 acres of confirmed and deeded roadway easement or any out buildings. For continuity purposes, we did not terminate mapping units and delineations along this 60 foot corridor. We recognize that indeed this corridor is unsuited since it is in fact a roadway. However, from a geomorphic and soil mapping unit basis, we must maintain consistency to show trends and geologic breaks in the landscape. It is inappropriate to segregate soil mapping units based upon this type of political designation based upon USDA-NRCS Soil Survey protocols and mapping methodologies. For the purposes of all reporting we considered all acres breaching and intersecting both sides of a given road base access point to be compiled into the relevant individual mapping unit regardless of the disruption presented by the existence of the given roadway easement. For the purposes of this summation reporting, we did not consider the status of this roadway area. We ignored that attribute.

For the parcel as a whole, we mapped and are certifying 118.29 acres for this parcel in accordance with DLCD/Lane County and USDA reporting guidelines. Of the 118.29 acres evaluated for this parcel in 2000, 2007, 2010 and 2015, 73.1% or 86.45 acres are non-resource and generally unsuited for both farm and forest production. Resource and generally suited acres include 31.84 acres or 26.9% of the land base. This tabulation EXCLUDES the 3.89 acres of original homestead.

If we include the original homestead fraction of 3.89 acres for consideration, the total acres under consideration is 122.75 (original homestead 3.89 ac.+ 0.57 ac pond + 118.29 acre land base). In the unsuited category, the total acres of unsuited become 90.45 acres or 73.7% of the total original purchased land base. With or without consideration of the resource status of the original 3.89 acre homestead, this parcel qualifies for marginal land by a strong preponderance. State law requires 51% unsuited and non-resource to qualify a parcel as marginal.

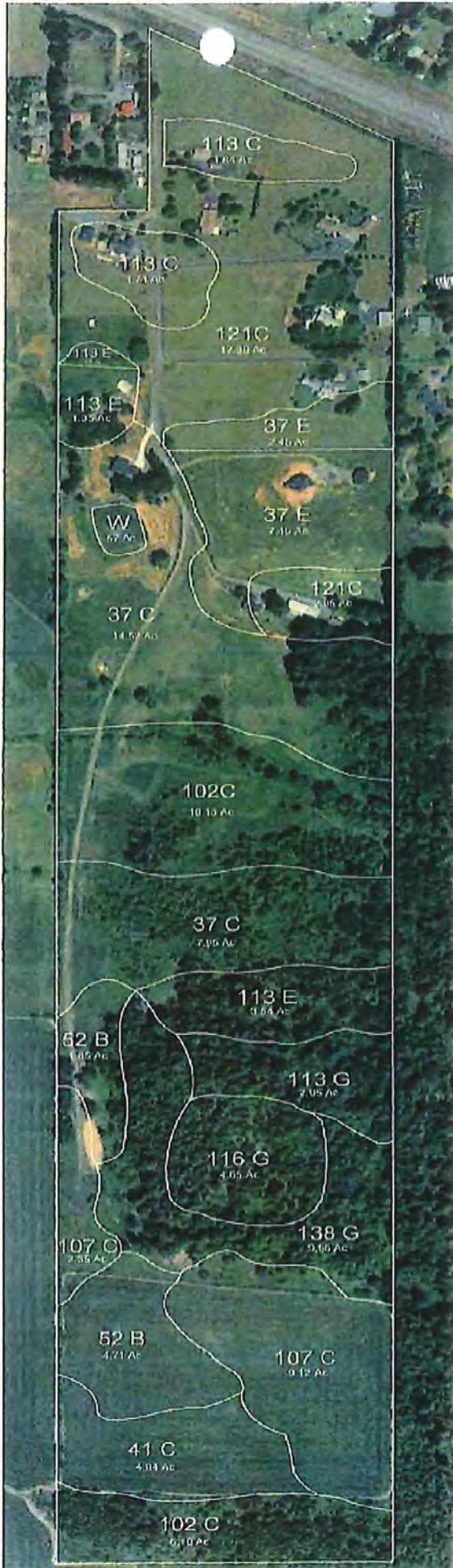
We hereby certify the subject property to be comprised of a preponderance of generally unsuited soils for both farm and forest production. Generally unsuited soils make-up 73.6% of the land base for the entire property



Gary A Kitzrow CPSC/CPSS, M.S.
Certified Professional Soil Classifier/ Certified Professional Soil Scientist
Principal Soil Scientist and Soil Classifier
Growing Soils Environmental Associates (G-SEA)
244 Apple Blossom Ln. Roseburg, OR. 97471
P.O. Box 225 Winchester, Oregon 97495



Ive Lon Property Total Acreage Map



Legend

Unsuited, Non-resource Farm Units

Cupola	37C -	22.47 Acres
Cupola	37E -	9.90 Acres
Panther	102C -	16.23 Acres
Philomath	107C -	11.47 Acres
Rock-O-Witzel	116G -	4.65 Acres
Ritner	113G -	2.95 Acres
Ritner	113C -	3.58 Acres
Ritner	113E -	5.11 Acres
Witzel	138G -	9.52 Acres
Water	W -	0.57 Acres
Sub-total Acreage =		86.45
		73.1% of total

Suited, Resource Farm Units

Salkum	121C -	20.34 Acres
Dixonville	41C -	4.94 Acres
Hazelair	52B -	6.56 Acres
Sub-total Acreage =		31.84
		26.9%

Total Acreage = 118.29 Acres
(Includes roadway)
(Excludes original homestead)



Iverson Property

North Section Acreage Map



Legend

Unsulted, Non-resource Farm Units

Cupola	37E -	2.45 Acres
Ritner	113C -	3.58 Acres
Ritner	113E -	0.22 Acres

Sub-total Acreage = 6.25
28% of total

Suited, Resource Farm Units

Salkum	121C -	16.05 Acres
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Sub-total Acreage = 16.05
72%

Total Acreage North Section = 22.30 Acres
(Includes roadway)





G-SEA

Growing Soils Environmental Associates

Gary A. Kitzrow, M.S., C.P.S.S./S.C.

Certified Professional Soil Classifier/Certified Professional Soil Scientist

PO Box 225 • Winchester, OR 97495

GROWING SOILS - Soil Classification sheets

June 2015

Iverson Property Northern Study Area

Stop #	Horizon	Depth	Color	Texture	Clay %	Structure	Consistence	Smeariness
1	A	0-6	7.5YR 3/2	L	20	1fgr	fr	WS
	BW	6-13	7.5YR 3/3	L	24	1fgr/sbk	fr	WS
	Bt	13-23	7.5YR 5/4	CL	29	1f,msbk	fi	NS
	Bct	23-32	7.5YR 5/4	CL	34	1mcsbk	fi	NS

Atterberg	Coarse Fragment %	Notes
NSNP	<10	DTCR=32"
NSSP	<10	BCT verses Bt2
MSMP	<10	fine loamy
MSMP	<10	Ritner

Stop #	Horizon	Depth	Color	Texture	Clay %	Structure	Consistence	Smeariness
2	A	0-6	7.5YR 3/2	L	22	1fgr	vfr	WS
	BA	6-13	7.5YR 3/3	L	24	1fgr/sbk	fr	WS
	Bt	13-23	5YR 4/4	CL	28	2f,msbk	fi	NS
	Bct	23-35	5YR 5/6	CL	28	1csbk	fi	NS

Atterberg	Coarse Fragment %	Notes
SSNP	<10	DTCR=35"
SSSP	<10	Salkum
SSSP	<10	fine loamy
MSSP	<10	convex

Stop #	Horizon	Depth	Color	Texture	Clay %	Structure	Consistence	Smeariness
3	A	0-6	7.5YR 3/2	L	22	1fgr	vfr	WS
	AB	6-13	7.5YR 3/3	L	24	1fgr/sbk	fr	WS

BW	13-20	5YR 4/4	L	28	2f,msbk	fi	NS
Bt	20-32	7.5YR 5/4	L	28	1csbk	fi	NS
C	32-38	5YR 5/6	L	25	1csbk	fi	NS
Atterberg Coarse Fragment %			Notes				
SSNP	<10		DTCR=40"				
SSSP	<10		low CEC				
SSSP	<10		fine loamy				
MSSP	<10		convex				
SSNP	<10		weak Bt				

Stop #	Horizon	Depth	Color	Texture	Clay %	Structure	Consistence	Smeariness
4	A	0-5	7.5YR 3/2	L	20	1fgr	vfr	WS
	AB	5-12	5YR 4/3	L	24	1fgr/sbk	fr	NS
	Bt	12-25	7.5YR 4/4	CL	28	1f,sbk	fi	WS
	Bt2	23-45	7.5YR 5/6	C	37	1csbk	fi	NS
Atterberg Coarse Fragment %			Notes					
NSNP	<10		DTCR=45"					
WSNP	15							
SSMP	<10		fine loamy					
MSMP	<10		convex					

Stop #	Horizon	Depth	Color	Texture	Clay %	Structure	Consistence	Smeariness
5	A	0-5	7.5YR 3/2	CL	27	1fgr	fi	WS
	AB	5-12	7.5YR 4/3	grL	22	1fsbk	vfr	NS
	Bt	12-25	7.5YR 4/4	CL	28	1f,sbk	fi	WS
	BCt	23-45	7.5YR 5/6	CL	29	1mcsbk	fi	NS
Atterberg Coarse Fragment %			Notes					
MSSP	<10		DTCR=40"					
SSSP	15		possible soil tillage and inversion					
SSSP	<10		fine loamy					
SSSP	<10							

Stop #	Horizon	Depth	Color	Texture	Clay %	Structure	Consistence	Smeariness
6	A	0-6	7.5YR 3/2	L	20	1fgr	vfr	NS
	Bt	6-13	7.5YR 4/3	grL	25	1fgr/sbk	fr	WS
	BCt	13-23	7.5YR 5/6	CL	29	1f,msbk	vfi	NS

	Atterberg Coarse Fragment %	Notes
SSNP	<10	DTCR=7"
SSNP	<10	BCT verses Bt2
MSMP	<10	fine loamy

Stop #	Horizon	Depth	Color	Texture	Clay %	Structure	Consistence	Smeariness
7	A	0-5	7.5YR 3/2	L	20	1fgr	vfr	NS
	BA	5-18	5YR 4/3	L	24	1fgr/sbk	vfr	NS
	Bt	18-27	7.5YR 4/4	CL	35	1f,sbk	vfi	NS
	BCt	23-34	5YR 5/8	SCL	30	1mfsbk	fi	NS

	Atterberg Coarse Fragment %	Notes
NSNP	<10	DTCR=34"
WSNP	15	Ritner
SSMP	<10	fine loamy, ochric
MSMP	<10	convex

Stop #	Horizon	Depth	Color	Texture	Clay %	Structure	Consistence	Smeariness
8	A	0-5	7.5YR 3/2	L	20	1fgr	vfr	NS
	AB	5-12	5YR 4/3	L	24	1fgr/sbk	vfr	NS
	Bt	12-25	7.5YR 4/4	CL	35	1f,sbk	vfi	NS
	BCt	25-34	5YR 5/8	SCL	30	1mfsbk	fi	NS

	Atterberg Coarse Fragment %	Notes
NSNP	<10	DTCR=35"
WSNP	<10	Salkum/Ritner
SSMP	<10	fine loamy, ochric
MSMP	<10	convex

Stop #	Horizon	Depth	Color	Texture	Clay %	Structure	Consistence	Smeariness
9	A	0-5	7.5YR 3/2	L	22	2fgr	vfr	WS
	AB	5-12	7.5YR 4/3	L	22	2fgr	vfr	NS
	Bt	12-29	7.5YR 4/4	HL	27	1m,sbk	fi	NS
	BCt	29-41	5YR 5/6	HL	27	1mcsbk	fi	NS

	Atterberg Coarse Fragment %	Notes
SSNP	<10	DTCR=41"
SSNP	<10	Strong Salkum
SSSP	<10	fine loamy

SSSP <10

Stop #	Horizon	Depth	Color	Texture	Clay %	Structure	Consistence	Smeariness
10	A	0-6	7.5YR 3/2	L	20	1fgr	vfr	NS
	BAT	6-13	5YR 4/3	grL	27	1fgr/sbk	fr	WS
	Bct	13-23	5YR 5/6	CL	30	1f,msbk	vfi	NS

Atterberg	Coarse Fragment %	Notes
SSNP	<10	DTCR>40; SWPD DTmottles=20" DT gley= 24"
SSNP	<10	BCT verses Bt2
MSMP	<10	Hazelair

Stop #	Horizon	Depth	Color	Texture	Clay %	Structure	Consistence	Smeariness
11	A	0-6	7.5YR 3/2	L	20	1fgr	vfr	NS
	BAT	6-13	5YR 4/3	grL	27	1fgr/sbk	fr	WS
	Bct	13-23	5YR 5/6	L	30	1f,msbk	vfi	NS

Atterberg	Coarse Fragment %	Notes
NSSP	<10	DTCR>40 SWPD DTmottles=30"
SSSP	<10	undulating, fine loamy
SSSP	<10	Hazelair inclusion 2nd to landform change

Stop #	Horizon	Depth	Color	Texture	Clay %	Structure	Consistence	Smeariness
13	A	0-7	7.5YR 3/2	L	24	1mfgr	vfr	WS
	BA	5-24	7.5YR 4/3	L	27	1fmgr	fr	WS
	Bt	24-34	5YR 5/4	CL	31	1m,sbk	fi	NS
	Bct	34-44	5YR 5/6	HL	27	1mcsbk	fi	NS

Atterberg	Coarse Fragment %	Notes
SSNP	<10	DTCR=44"
SSNP	<10	Strong Salkum-- Deep NOT V deep
SSSP	<10	fine loamy
SSSP	<10	

Stop #	Horizon	Depth	Color	Texture	Clay %	Structure	Consistence	Smeariness
14	A	0-6	7.5YR 3/2	L	30	1mfgr	fr	WS

BA	6-14	7.5YR 4/3	L	27	1fmgr	fr	WS
BA1	14-36	5YR 5/4	CL	25	1m,sbk	fi	WS
BCt	36-50+5YR 5/6		CL	31	1mcsbk	fi	NS
Atterberg Coarse Fragment %		Notes					
SSNP	<10	DTCR=50+''					
SSNP	<10	Salkum-- Medial props but not Andisol					
SSSP	<10	fine loamy					
SSSP	<10	imperfectly drained- DTM=35''					

Stop #	Horizon	Depth	Color	Texture	Clay %	Structure	Consistence	Smeariness
15	A	0-7	7.5YR 3/2	L	24	1fgr	vfr	NS
	AB	7-12	5YR 4/3	L	23	2fgr	vfr	NS
	BA	12-25	7.5YR 4/4	L	24	1f,sbk	vfi	NS
	Bt	25-39	5YR 5/6	CL	37	1mfsbk	fi	NS
Atterberg Coarse Fragment %		Notes						
SSNP	<10	DTCR=39''						
SSNP	<10	Salkum/Ritner						
SSNP	<10	fine loamy, mollic?						
MSMP	<10	convex -DDX lithologic discontinuity						

Stop #	Horizon	Depth	Color	Texture	Clay %	Structure	Consistence	Smeariness
16	A	0-7	7.5YR 3/2	L	24	1mfgr	vfr	WS
	BA	5-24	5YR 4/3	L	24	1fmgr	fr	WS
	Bt	24-34	5YR 5/4	CL	30	1m,sbk	fi	NS
	BCt	34-44	5YR 5/6	HL	27	1mcsbk	fi	NS
Atterberg Coarse Fragment %		Notes						
SSNP	<10	DTCR=44''						
SSNP	<10	Strong Salkum--						
SSSP	<10	fine loamy, strong argillic						
SSSP	<10							

Stop #	Horizon	Depth	Color	Texture	Clay %	Structure	Consistence	Smeariness
17	A	0-7	7.5YR 3/2	L	24	1fgr	vfr	WS
	AB	7-12	5YR 4/3	L	23	2fgr	vfr	WS
	BA	12-25	7.5YR 4/4	L	24	1f,sbk	vfi	NS
	Bt	30-40	5YR 5/6	CL	35	1mfsbk	fi	NS

Bt 40-50 5YR 5/6 CL 35 1mfsbk fi NS

Atterberg	Coarse Fragment %	Notes
SSNP	<10	DTCR=50"
SSNP	<10	Salkum
SSNP	<10	fine loamy, mollic
MSMP	<10	convex -DDX lithologic discontinuity
MSMP	<10	

Stop #	Horizon	Depth	Color	Texture	Clay %	Structure	Consistence	Smeariness
18	A	0-8	7.5YR 3/2	L	22	1fgr	vfr	NS
	AB	8-12	7.5YR 4/3	L	24	2fgr	vfr	NS
	BA	12-24	7.5YR 4/4	HL	28	1f,sbk	vfi	NS
	Bt	24-39	5YR 5/6	CL	31	1mfsbk	fi	NS

Atterberg	Coarse Fragment %	Notes
SSNP	<10	DTCR=39"
SSNP	<10	Salkum/Ritner fits Ritner best
SSNP	<10	fine loamy, mollic?
MSMP	<10	convex to planar





Iverson Stop 1-Ritner



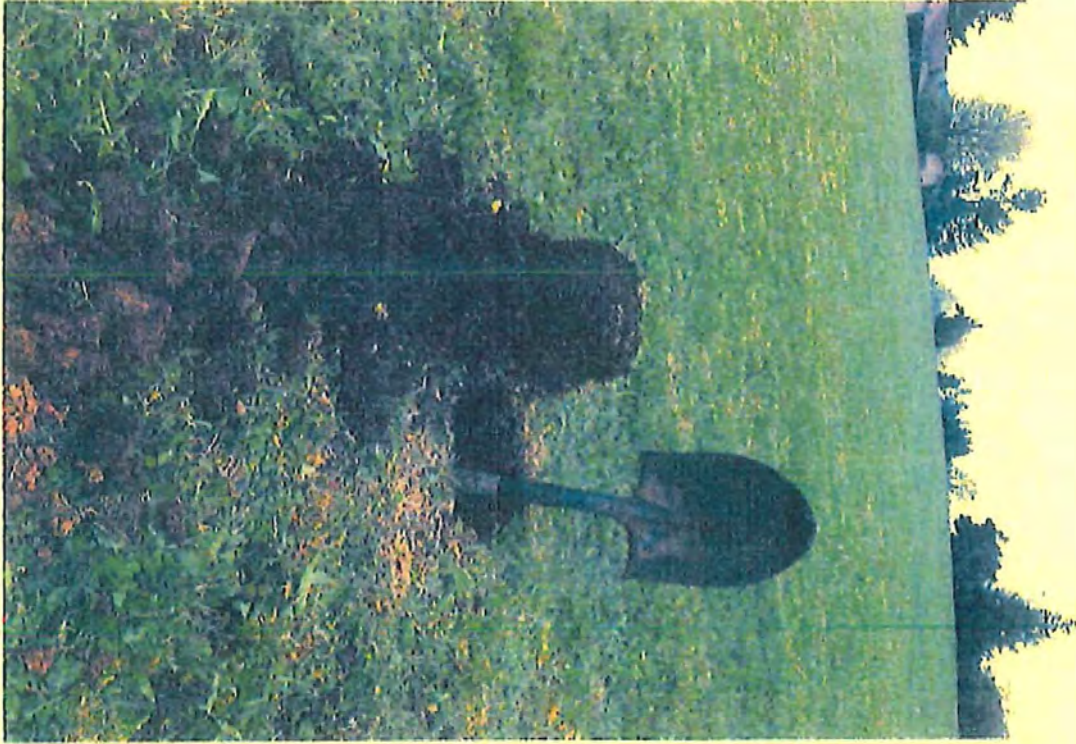
Iverson Stop 2-Salkum



Iverson Stop 3-Salkum north west limits area



Iverson Stop 4-Salkum south central limits area



Iverson Stop 5-Salkum



Iverson Stop 6-Salkum



Iverson Stop 7-Salkum



Iverson Stop 8 Salkum extreme north boundary- borederline Ritner



Iverson Stop 9 -Salkum Fine Loamy, deep



Iverson Stop 10-Salkum



Iverson Stop 11-Salkum border with Hazelair south west limits area



Iverson Stop 12-Ritner Early saprolite, moderately deep



Iverson Stop 14-Ritner Strong Salkum but still fine loamy



Iverson Stop 15 Salkum border with Ritner north central limits area



Iverson Stop 16-Salkum near northwest extreme limits



Iverson Stop 18-Ritner

Ive Lon Property Total Acreage Map

Legend

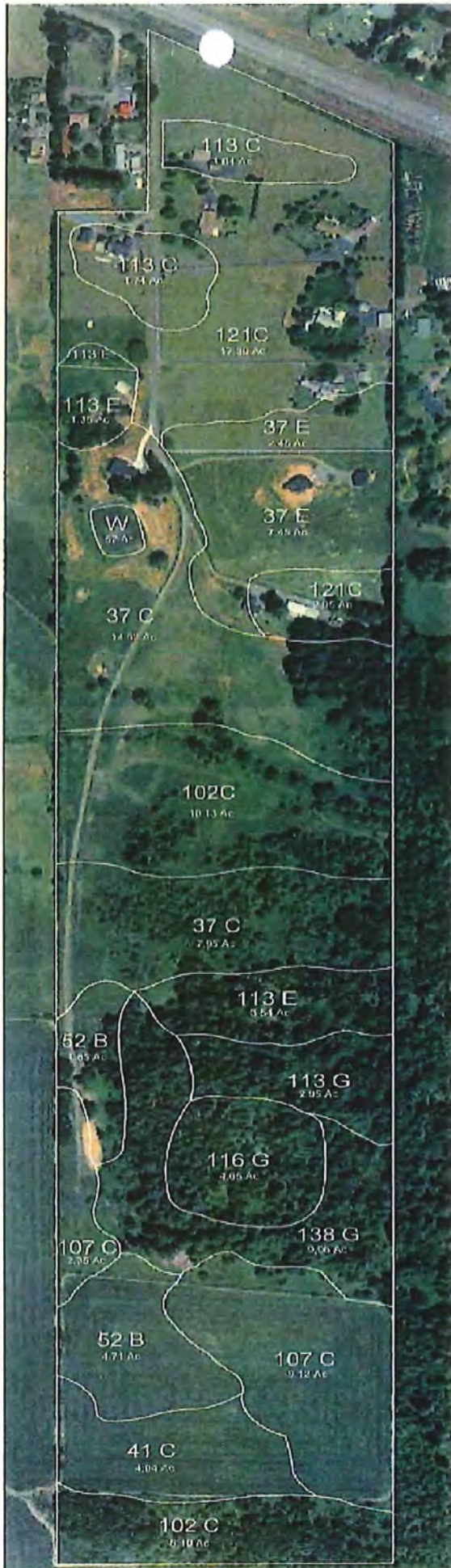
Unsuited, Non-resource Farm Units

Cupola	37C -	22.47 Acres
Cupola	37E -	9.90 Acres
Panther	102C -	16.23 Acres
Philomath	107C -	11.47 Acres
Rock-O-Witzel	116G -	4.65 Acres
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Ritner	113C -	3.58 Acres
Ritner	113E -	5.11 Acres
Witzel	138G -	9.52 Acres
Water	W -	0.57 Acres
Sub-total Acreage =		86.45
		73.1% of total

Suited, Resource Farm Units

Salkum	121C -	20.34 Acres
Dixonville	41C -	4.94 Acres
Hazelair	52B -	6.56 Acres
Sub-total Acreage =		31.84
		26.9%

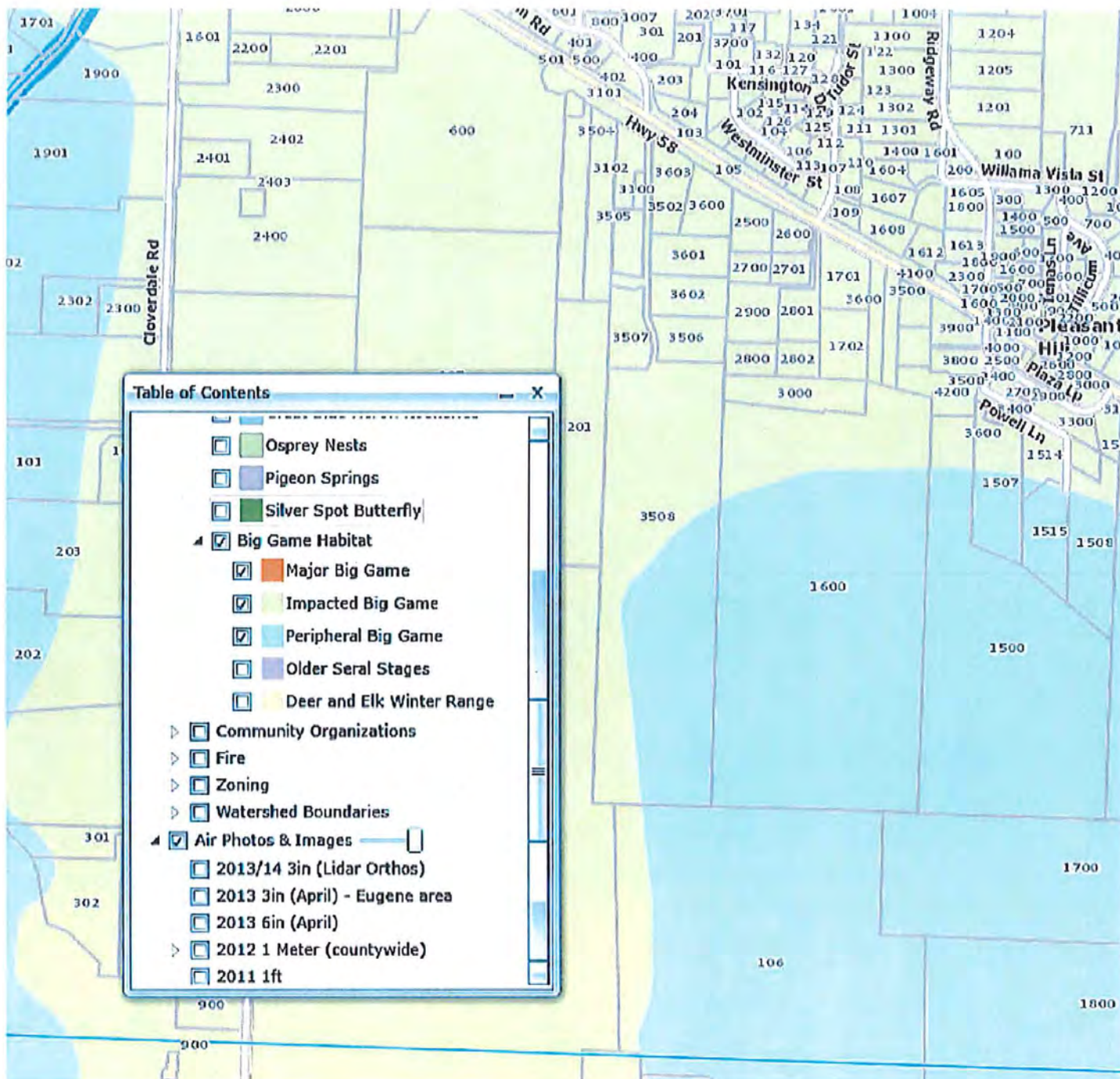
Total Acreage = 118.29 Acres
(Includes roadway)
(Excludes original homestead)



Google earth

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SUPPLEMENT GOAL 5 FINDINGS

**IN SUPPORT OF
IVERSON APPLICATION FOR MARGINAL LAND DESIGNATIONS
ORDINANCE PA 1358; FILE 509-PA12-05208
PLAN CHANGE: AGRICULTURE TO MARGINAL LANDS
ZONE CHANGE: EFU (E-40) TO MARGINAL LAND WITH SITE REVIEW (ML/SR)**

These findings respond to LUBA's remand of the decision above to address shortcomings in the county findings, including the ESEE analysis relating to Big Game resources. LUBA remanded the county decision in *LandWatch Lane County v. Lane County*, __ Or LUBA __ (LUBA No. 2016-019, June 13, 2016).

These findings supplement the county findings and the ESEE analysis adopted with Ordinance. The balance of these findings, and the balance of the ESEE analysis, which were not challenged in the LandWatch appeal, are not intended to be changed in this decision, except to the extent explicitly stated below. The ESEE analysis as a whole is also made a part of the plan and this zoning change, as required by state law.

The LandWatch appeal raised one assignment of error with three sub-assignments. The assignment of error was:

The County misconstrued applicable law and failed to make adequate findings supported by substantial evidence in the whole record with regard to the Goal 5 ESEE analysis of Big Game Range on the subject property.

The three sub-assignments of error were:

The County misconstrued the comprehensive plan and OAR 660-023-0040 when the County determined that there was no conflict with Peripheral Big Game Range with the proposal to place one dwelling on each 20-acre parcel on the property when ODFW recommends one dwelling per 40 acres.

The Respondent failed to make adequate findings with respect to ODFW's recommended residential density limitations in Big Game Range, impacts from increased traffic, and effects from fencing and Parcelization.

The County failed to make findings based on substantial evidence in the whole record when the County found that increased residential densities do not conflict with Peripheral Big Game Range.

On remand from LUBA, the County Board conducted a hearing on December 12, 2017, and heard evidence limited to the issues on remand. At the request of LandWatch, the record was left open

for evidence from all parties for seven days, with rebuttal evidence at 14 days, and final argument from the applicant at 21 days. LandWatch submitted evidence at seven days; the applicant submitted rebuttal evidence at 14 days; the applicant submitted a proposed condition and suggested findings as final argument at 21 days.

During the remand hearing, the attorney for LandWatch summarized his client's objection to allowing a total of four dwelling units on the subject 85 acres on lots of 20 acres or larger. The LandWatch attorney explained that LandWatch would not object to the application if the approval were conditioned to allow only a total of three dwellings on the subject property, instead of four. The Attorney for LandWatch explained, at 25:25 of the webcast recording: "If the Board could come to the conclusion to allow two additional dwellings, there is already an existing dwelling, we would have no further problem with this case."

In response to this settlement offer by LandWatch, the applicant in its final argument proposed the condition the approval suggested by LandWatch. Therefore, based on the settlement offer by LandWatch, this approval is conditioned as follows:

The subject 85 acres plan designated and zoned Marginal Land is limited to the development of two dwelling units in addition to the existing dwelling unit.

Based on the settlement offer by LandWatch, and the applicant's acceptance of that offer via a limiting condition, the County Board expects that the merits of this controversy has been resolved. The balance of these findings address the merits of the three LandWatch assignments of error at LUBA as a precaution.

In response to the three sub-assignments of error, the County finds:

With respect to the first sub-assignment, rezoning the land to allow up to three lots of 20 acres or more in size will conflict with the ODFW density recommendations if a dwelling unit is allowed on Peripheral Big Game Range and the unit of land is under 40 acres in size. The operative standard from the *Flora & Fauna Working Paper* at 24 para 6 is: "Therefore, to restate the conflict: overall residential density greater than one dwelling unit/40 acres in Peripheral Range and one dwelling unit/80 acres in Major Range conflicts with habitat for big game." Even under the settlement condition above, it is possible that the 35 acres of Peripheral Big Game range on this property could be divided such that a part is on a parcel that is under 40 acres in size. Therefore, a conflict with Goal 5 exists, which must be resolved through the Goal 5 process.

With respect to the second sub-assignment of error, findings are made below with respect to residential use, parcelization, traffic, and fencing.

With respect to the third sub-assignment of error, the County has found, as noted above, that residential development of dwellings in Peripheral Big Game Range on lots smaller than 40 acres is a Goal 5 conflict.

Part A below addresses RCP Goal Five: Flora and Fauna Policy 11. Part B below amends the

ESEE analysis to address the conflict issue, including with findings on residential use, parcelization, traffic, and fencing.

A. RCP Goal Five: Flora and Fauna Policy 11 and Policy.

These policies were the subject of the LUBA appeal. The original findings were deficient and are replaced here.

RCP Goal Five: Flora and Fauna, Policy 11:

Oregon Department of Fish and wildlife recommendations on overall residential density for protection of big game shall be used to determine the allowable number of residential units within regions of the County. Any density above that limit shall be considered to conflict with Goal 5 and will be allowed only after resolution in accordance with OAR 660-16-000. The County shall work Oregon Department of Fish and wildlife officials to prevent conflicts between development and Big Game Range through land use regulation in resource areas, siting requirements and similar activities which are already a part of the County's rural resource zoning program.

Compliance with this plan policy was in the LUBA appeal and was a basis for remand. This policy sets a numerical standard for determining whether a conflict exists for Big Game resources. Here the numerical standard is exceeded; therefore a conflict exists, and Goal 5 must be applied directly for Big Game resources.

RCP Goal Five: Flora and Fauna, Policy 12:

If uses are identified (which were not previously identified in the Plan) which would conflict with a Goal 5 resource, an evaluation of the economic, social, environmental and energy consequences shall be used to determine the level of protection necessary for the resource. The procedure outlined in OAR 660-16-000 will be followed.

The plan recognizes that it is “residential use at certain densities” that is the conflicting use with big game. See the *Flora & Fauna Working Paper* at 24 para 6. The plan is explicit that when the density threshold is exceeded then a conflict exists and the Goal 5 process must be applied. However, the residential use is not a newly identified conflicting use. It is fully identified in the plan. Therefore, the need to conduct the Goal 5 analysis is triggered by Policy 11 above, not Policy 12.

B. ESEE Findings relating to Inventoried Goal 5 Big Game Resources on the Subject Property.

Big Game Range: The plan classifies the entire county into three categories of Big Game Range, using an ODFW classification: Major, Peripheral, and Impacted. See *Flora & Fauna Working Paper* at 23-25, *Addendum* at 14. The Wildlife Habitat Maps (Dec. 1980) were adopted as part of the plan.

Major Big Game Range “supports the majority of big game,” generally on “sparsely developed

commercial forest land.” See *Flora & Fauna Working Paper* at 23. Peripheral Big Game Range generally is in the foothills area “between commercial forest land and valley floors.” These areas support substantial big game populations. *Id.* Impacted Big Game Range areas are other areas that “have existing levels of land use which preclude future wildlife management options.” *Id.* “Impacted range has essentially been ‘written off’ for big game management.” *Id.* at 24.

Cultivated farm land is considered Impacted Big Game range. All lands in the county that are “committed” to nonresource use, and hence zoned for rural residential use, are considered to be “Impacted” for purposes of Big Game, which means they have been written off in terms of Big Game value, and conflicting uses are permitted. See *Flora & Fauna Working Paper* at 24 para 1; *Addendum* at 14 para 5. Because the committed lands are generally small, they appear on the ODFW Big Game maps in areas that are otherwise mapped as Major or Peripheral Big Game areas. *Id.* The status of committed lands as areas where all conflicting uses are allowed is also confirmed in the July 19, 1984 DLCD Staff Report at 149 para 1: “Developed and committed exception areas are considered impacted, and the County has decided that conflicting uses should be permitted in those areas.”

The ODFW’s Big Game maps in the plan are generalized. Thus, for example, although more than 10 acres of the subject property is near the southeast corner is shown by air photos to be cultivated farm land, that area is nevertheless mapped as Peripheral Big Game range, even though such land has not value for big game under the ODFW scheme.

The county uses ODFW recommended densities as the general neral standard for identifying conflicts. See *Flora & Fauna Working Paper* at 24 para 6:

“The primary conflict to big game, as mentioned earlier is residential use at certain densities. ODFW has recommended overall residential densities for Peripheral Big Game Range at one dwelling unit per 40 acres; for Major Big Game Range at one dwelling unit per 80 acres. Therefore, to restate the conflict: overall residential density greater than one dwelling unit/40 acres in Peripheral Range and one dwelling unit/80 acres in Major Range conflicts with habitat for big game.”

The county elaborates on this rule of thumb in the *Working Paper* and *Addendum* at 14 para 1.

“Although this is a useful index, officials of the ODFW stress the fact that a mere ‘numbers game’ is not the optimum manner to deal with conflicts to the Big Game Range resource. While overall densities are important indicators of conflict, the manner in which these densities occur can either create worse conflict or reduce that which already exists.”

With respect to the subject property, the Big Game maps show the southeast approximately 35 acres of the property to be Peripheral Big Game, with the balance being Impacted Big Game range. As discussed above, it is also plain from the air photos in the record that more than 10 acres of the area mapped as Peripheral big Game range is actually a cultivated farm field, which under the scheme in the plan is intended to be Impacted Big Game range with no value as game habitat. See

Applicant Graphic 2.

Review of the *Flora and Fauna Working Paper* and *Addendum*, the Rural Comprehensive Plan Policies, and the DLCD compliance report indicate several things:

First, the Goal 5 analysis for Big Game was not entirely finished. For example, the working paper does not include a complete ESEE analysis for Big Game. Residential uses are the identified conflicting use for Big Game, and the ODFW recommended densities were adopted as the means to deal with the conflict. However, the complete ESEE analysis is absent from the working paper. The plan anticipates further work on Big Game by the County and ODFW.

Second, notwithstanding the abridged Goal 5 process for Big Game, the entire plan was acknowledged as being in compliance with Goal 5. See Compliance Acknowledgment Order 84-ACK-201 (Oct. 3, 1984). In the county acknowledgment process, the DLCD disposed of specific objections that the avenue in the plan and code for Marginal Land designations violated Goal 5, for failure to address big game habitat. The DLCD denied this objection. It found that statutes require the goals to be applied in connection with ML designations, and it found that RCP Goal 5, Flora and Fauna Policy 11 explicitly requires applying Goal 5 if the ODFW density recommendations will not be met. See July 19, 1984 DLCD Staff Report at 160-161, Response to Objections 2 and 4.

Third, the *Flora and Fauna Working Paper* identifies residential development as the use that conflicts with Big Game resources. Looking at the working paper and plan policies as a whole, it is more accurate to characterize the recommended ODFW residential densities of 80 acres (Major Big Game) and 40 acres (Peripheral big Game) as being a policy choice that limits the conflicting residential use, rather than the density that fully protects the resource.

C. ESEE Decision Process for Inventoried Goal 5 Resources Present.

The basic requirements for conducting the conflicts analysis and developing a program for inventoried and acknowledged resources is spelled out in OAR 660-023-0040. The introductory provisions in OAR 660-023-0040(1)¹ explain that there are four steps in the ESEE process, that

¹ OAR 660-023-0040(1) provides:

Local governments shall develop a program to achieve Goal 5 for all significant resource sites based on an analysis of the economic, social, environmental, and energy (ESEE) consequences that could result from a decision to allow, limit, or prohibit a conflicting use. This rule describes four steps to be followed in conducting an ESEE analysis, as set out in detail in sections (2) through (5) of this rule. Local governments are not required to follow these steps sequentially, and some steps anticipate a return to a previous step. However, findings shall demonstrate that requirements under each of the steps have been met, regardless of the sequence followed by the local government. The ESEE analysis need not be lengthy or complex, but should enable reviewers to gain a clear understanding of the conflicts and the consequences to be expected. The steps in the standard ESEE process are as follows:

- (a) Identify conflicting uses;

the county has discretion in how it proceeds through the process so long as it completes each step, and that the analysis need not be lengthy or complex. The result should create a clear understanding of the conflicts and the consequences. The four steps in the ESEE process are:

- (a) Identify conflicting uses;
- (b) Determine the impact area;
- (c) Analyze the ESEE consequences; and
- (d) Develop a program to achieve Goal 5.

It is important to recognize that compliance with the Goal does not require meeting a particular threshold for protection of the resource. Once the County conducts an adequate ESEE analysis, the choice about how much protection to afford the resource and how much to allow the conflicting use is a policy choice for the County.

1. ESEE Analysis for Big Game Range

As noted above, the acknowledged county plan inventories Big Game Range as a significant Goal 5 resource. The County has not yet completed the Goal 5 process for this resource. The plan documents declined to simplify the issue of conflict identification to a matter of densities for individual development sites, and instead deferred the issue to future work between the county and the ODFW. "The County should continue to work with the ODFW to resolve the issue of Big Game designation and protection in a mutually acceptable manner -- including the involvement of that agency in land use regulation development." *Flora & Fauna Working Paper Addendum* at 14. Thus, the County has not yet completed the Goal 5 process for Big Game Habitat. At this point, the County has recognized that the resource is significant, it has recognized that there are several degrees of significance (by mapping the entire county into three alternative zones -- Major, Peripheral, and Impacted), and it has deferred the balance of the Goal 5 analysis to a later date, to be determined.

The ESEE analysis must be conducted for Big Game Range because this is a post-acknowledgment plan amendment that would allow new uses (very low density rural residential) that could conflict with Big Game Range. OAR 660-023-0250(3)(b).

(a) Identify Conflicting Uses

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- (b) Determine the impact area;
 - (c) Analyze the ESEE consequences; and
 - (d) Develop a program to achieve Goal 5.

The approach to identifying conflicting uses is stated in OAR 660-023-0040(2).² The existing and potential conflicting uses with Big Game Range must be determined. This requires looking at the uses allowed by the proposed ML zoning that are likely to be developed.

Increment of residential uses: The ML zone is a resource zone, like the existing EFU zone. The working paper identifies a single conflicting use for Big Game Habitat -- residential use. See *Flora & Fauna Working Paper* at 24 para 6.

For this site the conflicting use would be allowing the addition of dwelling units in the Peripheral Big Game Range portion of the site on lots no smaller than 20 acres each. Making the change to ML does not change the kind of conflicting use; it potentially changes the intensity of the conflicting use because more residential uses would be allowed.

A related question is the increment of residential development that must be evaluated in terms of potential impacts on big game. That increment should be the difference between what would be allowed consistent with the ODFW recommendations and what is possible under the ML zoning. If the entirety of the site were Peripheral Big Game Range, the recommendations would allow two dwellings in the footprint of that area. Under the ML zoning, a total of four dwellings would be allowed. There is presently one dwelling, but it is outside the area mapped as Peripheral habitat. Thus, the increment of potential residential impact is one additional dwelling unit. Put differently, the ODFW recommendations allows two dwelling units in the Impact Area, with each unit being on 40 acres or more. The new ML zoning will allow a total of three new units in the Impact Area, each on 20 acres. This potential impact is illustrated in Site Plan Graphic 2. This graphic shows three units in the Impact Area, whereas ODFW recommends only two.

It is also possible to view the increment of impact of this zone change as being two additional lots. There could be two lots of conforming 40-acre size. Instead, with the zone change, there could be

² OAR 660-023-0040(2) states:

Identify conflicting uses. Local governments shall identify conflicting uses that exist, or could occur, with regard to significant Goal 5 resource sites. To identify these uses, local governments shall examine land uses allowed outright or conditionally within the zones applied to the resource site and in its impact area. Local governments are not required to consider allowed uses that would be unlikely to occur in the impact area because existing permanent uses occupy the site. The following shall also apply in the identification of conflicting uses:

(a) If no uses conflict with a significant resource site, acknowledged policies and land use regulations may be considered sufficient to protect the resource site. The determination that there are no conflicting uses must be based on the applicable zoning rather than ownership of the site. (Therefore, public ownership of a site does not by itself support a conclusion that there are no conflicting uses.)

(b) A local government may determine that one or more significant Goal 5 resource sites are conflicting uses with another significant resource site. The local government shall determine the level of protection for each significant site using the ESEE process and/or the requirements in OAR 660-023-0090 through 660-023-0230 (see OAR 660-023-0020(1)).

four lots of nonconforming size.

Fencing: The LandWatch appeal alleges that fencing would be a conflicting use that results from the ML zoning. In the county's view, fencing is not a discrete conflicting use to be evaluated in this ESEE. The working paper identifies residential uses as the conflicting use in Big Game range. Fencing is correctly viewed as a part of the residential conflicting use. More residences generally mean more fencing. Furthermore, the amount of fencing on the property is not a function of the proposed rezoning. Fencing is allowed under either resource zone – EFU or Marginal Land. Furthermore, the site is already fenced around its perimeter and cross fenced at several locations, including in the Impact Area. This is shown in the Applicant's Site Graphic 1.

Traffic: LandWatch also alleges that traffic is a conflicting use with the Impact area. As with fencing, traffic impacts on Big Game are associated with residential uses, which is the identified conflicting use. More residences generally mean more traffic, with associated hazards for Big Game. As with fencing, traffic is allowed on the site, with or without the ML designation. Traffic is a part of the existing farm use and the existing residential use, as is evident from the driveways on the site, including along the entire western boundary. This is shown throughout the record, including on Applicant's Site Graphic 1.

(b) Determine the Impact Area

The approach to determining the impact area is stated in OAR 660-023-0040(3).³ The key sentence in the OAR is: "The impact area shall be drawn to include only the area in which allowed uses could adversely affect the identified resource." Here the protected resource is limited to the approximately 35 acres in the southeast part of the 85-acre site. The balance of the site is in Impacted Big Game Range and, therefore, has been written off in terms of resource protection. It is not in the "impact area."

It is worth noting, for purposes of this analysis, that the subject property is adjacent to an area of relatively dense rural residential development. The community of Pleasant Hill is adjacent to the north. Smaller lots than the subject are adjacent to both the west and the north. The majority of the perimeter of the subject property is Impacted Big Game Range.

(c) Analyze the ESEE Consequences

The approach to analyzing the ESEE consequences is stated in OAR 660-023-0040(4).⁴

³ OAR 660-023-0040(3) states:

Determine the impact area. Local governments shall determine an impact area for each significant resource site. The impact area shall be drawn to include only the area in which allowed uses could adversely affect the identified resource. The impact area defines the geographic limits within which to conduct an ESEE analysis for the identified significant resource site.

⁴ OAR 660-023-0040(4) states:

“ESEE consequences’ are the positive and negative economic, social, environmental, and energy (ESEE) consequences that could result from a decision to allow, limit, or prohibit a conflicting use.” OAR 660-023-0010(2). The County must analyze the ESEE consequences of allowing, limiting, or prohibiting the conflicting rural residential uses.

The common context for analyzing the alternatives of allowing, limiting or prohibiting the conflicting use (residential development at a 20-acre density) is the existing development pattern on the subject and surrounding property and its impact on big game management. The adjacent and nearby Rural Residential lands and other Impacted Big Game Range acreage have been written off by the county plan for big game range values.

Economic Consequences: Allowing the subject property to be developed with additional residential dwellings in the Impact Area, rather than two as recommended by the ODFW, would have short term economic impacts in terms of construction activity during the build out of residential infrastructure and individual residences. In the long term it would increase the property value at this site with attendant impacts on tax revenues. It is unclear, however, whether there would be a net increase in value countywide.

The impacts of the single residential use on big game resources would be nominal, for the reason that the subject property is close to the community of Pleasant Hill, is primarily adjacent to Impact Big Game Range, and contains only 35 acres only 35 acres of mapped habitat, of which more than 10 acres of cultivated farm land with no Big Game range value. What is important for Big Game is having large contiguous acres of undisturbed forest land. That does not exist here.

The Malone letter suggests that the loss of Big Game associated with allowing more units on this site will adversely impact the economy, due to the adverse impact on the hunting industry and the positive impact hunters have on the economy. (Page 3 para 4) The logic is any Big Game numbers foregone by allowing these two residential units will not be available to be killed by hunters. The evidence submitted through the applicant’s expert witness, Brian Meiering, is that allowing this use at this site will not have an appreciable impact on Big Game numbers. This conclusion is based on his site visit and his literature search, including literature referenced by the LandWatch expert, who did not conduct a site visit.

Analyze the ESEE consequences. Local governments shall analyze the ESEE consequences that could result from decisions to allow, limit, or prohibit a conflicting use. The analysis may address each of the identified conflicting uses, or it may address a group of similar conflicting uses. A local government may conduct a single analysis for two or more resource sites that are within the same area or that are similarly situated and subject to the same zoning. The local government may establish a matrix of commonly occurring conflicting uses and apply the matrix to particular resource sites in order to facilitate the analysis. A local government may conduct a single analysis for a site containing more than one significant Goal 5 resource. The ESEE analysis must consider any applicable statewide goal or acknowledged plan requirements, including the requirements of Goal 5. The analyses of the ESEE consequences shall be adopted either as part of the plan or as a land use regulation.

Prohibiting the rural residential use completely would have no economic consequences, as distinct from the status quo. Aside from the existing dwelling, the subject property is vacant.

Social Consequences: Allowing the residential use would mean that this site would be developed with uses that are similar to the rural residential uses in the neighborhood. The difference is that residential development of the subject property would be much less dense than in the immediate neighborhood. Prohibiting the residential uses would maintain the status quo.

Environmental Consequences: Allowing the ML zoning means the subject property would remain higher quality habitat than on the rural residential land nearby. It would have some residential development, but at a much lower density than exists on the adjacent and nearby land. As pointed out in the Meiering letter (Dec. 24), it is not apparent from the professional literature that allowing this density of residential development in a neighborhood like this would have any adverse impact on Big Game.

Energy Consequences: The net impacts on energy consumption countywide might be negligible or zero if this site attracts rural residential development that might otherwise locate elsewhere in the rural county. Prohibiting the residential use would maintain the status quo.

The analysis of the ESEE consequences of the proposed changes and potential conflicting uses is supported by the two reports of the applicant's wildlife biologist, Brian Meiering of Wetlands and Wildlife LLC.

(d) Develop a program to achieve Goal 5 for Big Game Range

The proposed program to achieve the goal is to limit the conflicting residential use, but to a lesser degree than recommended by the ODFW. The ODFW recommendations can be read as allowing a total of two units on the subject property, with each being at least 40 acres in size and including some Peripheral Big Game range in each lot. The proposal here is to allow a total of three units instead of two. This, arguably, is an increment of conflicting use impacts above the amount of conflicting use that ODFW recommends generally. As explained in the Meiering opinion letter, given the nature of the site and the proximity of the residential uses to the north, the addition of one more dwelling in the Impact Area over what is recommended by the ODFW standards can be expected to have minimal adverse impacts on Big Game Range, or, in the opinion of Meiering, not appreciable impacts.

D. Issues raised by LandWatch in the remand proceeding.

The Malone letter contends that this decision is in error because it is an incremental step back from protecting Big Game in a potentially long series of such steps back, as the County accommodates increased population pressure. (Page 2 para 3.) The letter uses the "death by a thousand cuts" metaphor. This is a cumulative effects argument. However, Goal 5 does not require speculation about cumulative effects of other potential decisions.

The Malone letter contends that the boost in residential density will aggravate Big Game traffic collisions on public roads. (Page 3, para 2.) Presumably this refers to Highway 58, as that is the closest public road. Initially, Highway 58 is outside the Impact Area, which is limited to the footprint of the Peripheral Big Game range on the subject property. Furthermore, road hazards for Big Game are not logically a function of adding units to this property. If the units were added somewhere else, say, for example, on committed lands in Pleasant Hill, that would pose the same risk for more road kill as putting the units on this site.

The Malone letter argues that the County has failed to adopt a program to achieve the goal. (Page 4 para 3.) These findings accomplish that. They determine to allow the incremental potential impact on Big Game resources associated with allowing the additional uses, recognizing that those impacts, in the opinion of wildlife biologist Meiering, will not be appreciable. If LandWatch is asserting that the goal requires maintaining a certain level of protection of any resource, then LandWatch misunderstands what the goal requires. Goal 5 requires a competent analysis, but it allows the ultimate policy choice about how much to limit the conflicting use to be made by the County as a policy choice.

The Malone letter argues that allowing these additional units aggravates “rural sprawl.” (Page 4 para 5) The assertion is that residential density is supposed to occur in urban areas. “Rural sprawl” is a term that does not appear in state or county law. Here LandWatch is imposing its own view of what the law should be, not what it is. Residential use is allowed to occur both inside and outside of urban areas -- UGBs. There are state rules for both areas. If preventing rural car trips into urban area were a unique priority in state law, then the state law would allow more density in rural “committed lands,” rather than keeping those densities low.

E. Issues that are beyond the scope of this remand proceeding.

The scope of this remand proceeding is limited to the issues raised in the LUBA appeal. That was a single issue and three sub-issues, all quoted above. The issues raised in the LandWatch submittals to the County Board go beyond the scope of the remand proceeding. This decision is intended to be strictly limited to considering the issues required to be addressed on remand.

The issues listed below is a non-exclusive list of issues considered by the Board to be beyond the scope of this remand proceeding, for the reason that that they were not a basis for LUBA’s remand.

The Malone letter contends that because the County has not completed the Goal 5 process for Big Game, it is not in compliance with Goal 5. (Page 2 para 2.) This issue is outside the scope of the remand proceeding because it was not raised at LUBA. Furthermore, as noted above, although the County Goal 5 program for Big Game may fairly be characterized as incomplete, the County has been acknowledged to be in compliance with all goals, including Goal 5.

The Malone letter challenges the “impact area” used for the ESEE analysis. (Page 3 last para) The LandWatch suggestion is that the impact area should be much larger than the subject property, but does not suggest what the area should be. This issue is outside the

scope of the remand proceeding because it was not raised at LUBA.

The Malone letter asserts that the Goal 5 analysis must be a part of the comprehensive plan or implement regulations. (Page 4 para 2) These findings make the analysis a part of this zoning decision, which is a part of the zoning regulations. However, this issue is outside the scope of the remand proceeding because it was not raised at LUBA.

The assertion in the Malone letter of December 19 that it was error to not explicitly incorporate the ESEE analysis into the county plan or zoning regulations.