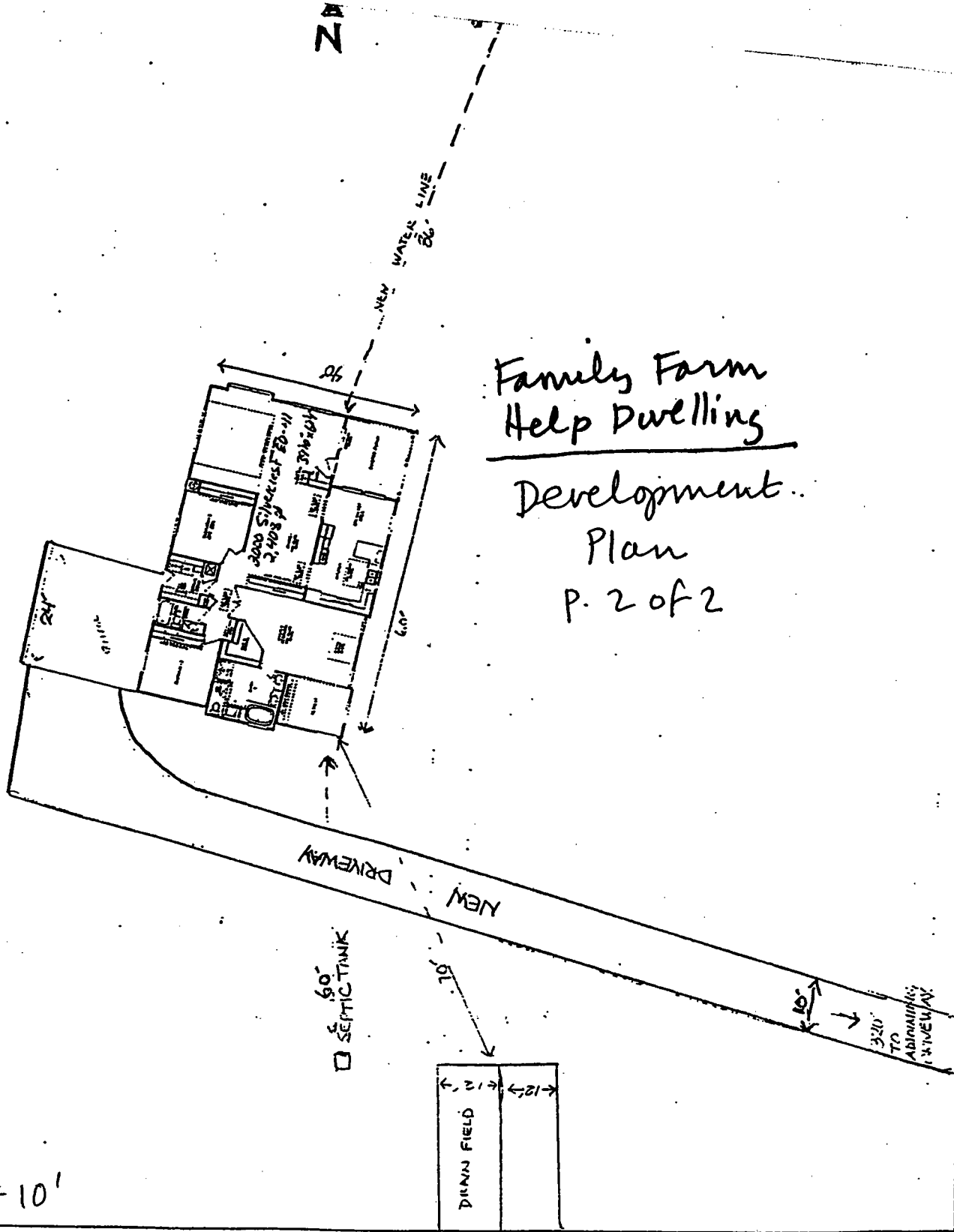


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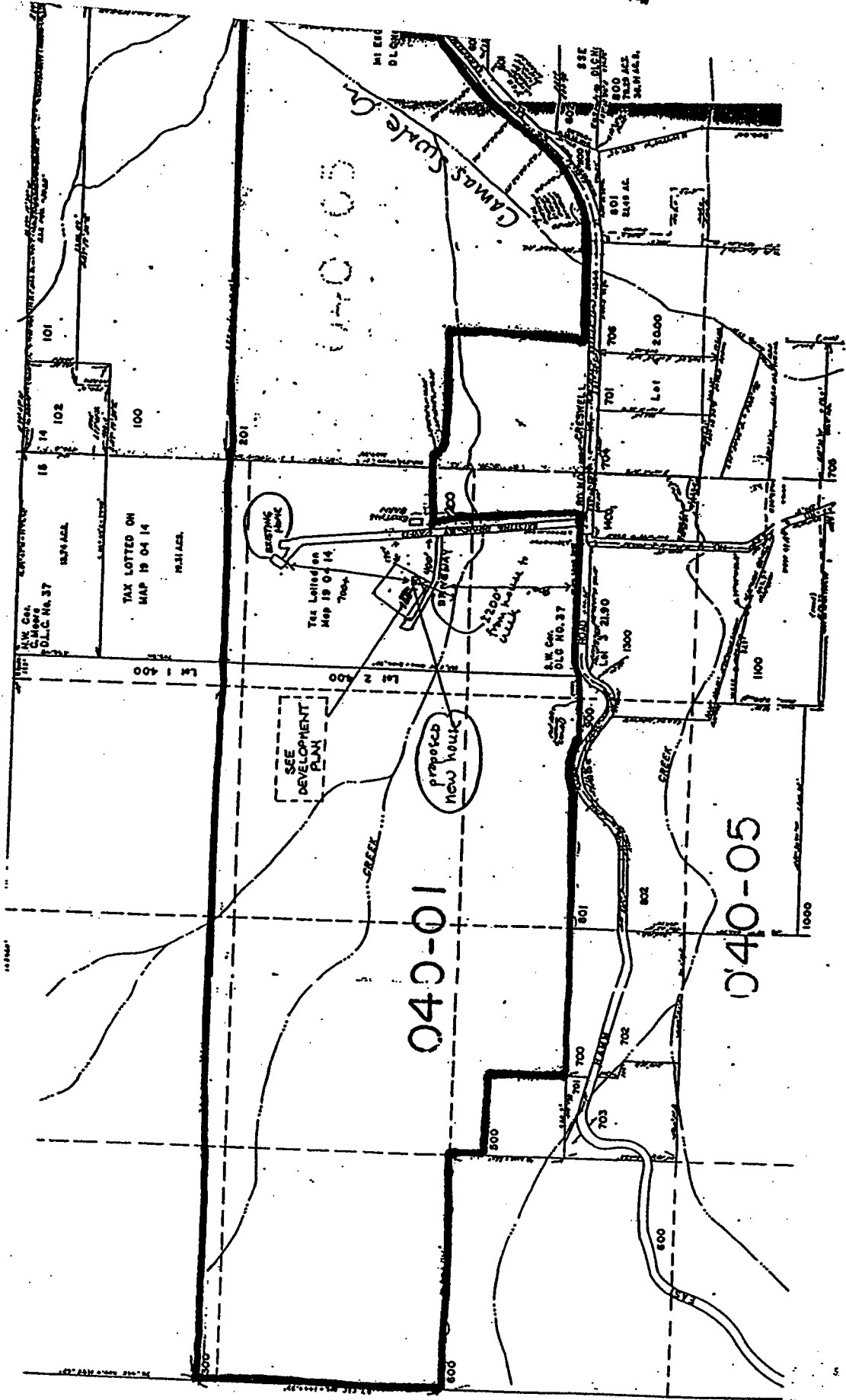
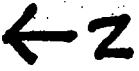


Family Farm
Help Dwelling
Development..
Plan
P. 2 of 2

1" = 10'

200'

Exhibit B
PA00-5878
P. 2 of 2



See Map 19 04

Exhibit B PA00-5878 p. 1 of 2

Date Rec'd: June 19, 2000
Deemed Complete (Date Accepted): July 26, 2000
Date Issued: September 23
Days Waived: 7
Total Processing Days: 59



PLANNING DIRECTOR APPROVAL OF A LAND USE DECISION
For a Family Member Farm Dwelling in the Exclusive Farm Use Zone
Staff Report

Report Date:	September 11, 2000
Department File:	PA 00-5878
Property Owner:	Geoffrey and Kaikilani Walsh
Applicant:	Geoffrey and Kaikilani Walsh
Property Location:	30257 Camas Swale Rd., Creswell, OR
Assessor's Maps & Tax Lots:	19-04-14 #201 and 19-04-15 #300
Acreage:	Approximately 320 acres
Base Zone:	Exclusive Farm Use, 40-acre minimum (E-40) and Impacted Forest (F-2)
Combining Zone:	Floodplain (/FP)
Comprehensive Plan:	Rural Comprehensive Plan (/RCP)
Staff Planner:	Florence Davis, 541/682-2059

I. PROPOSAL

Planning Director approval of a Special Use Permit, to allow a family member farm dwelling in the Exclusive Farm Use Zone, pursuant to Oregon Administrative Rules (OAR) 660-33-120 and 660-33-130(9), and the siting and development standards of Lane Code 16.212(8).

II. BACKGROUND INFORMATION

On June 19, 2000, an application for a family member farm dwelling was submitted to Lane County Land Management Division. On July 13, 2000 the application was reviewed and put on hold for the submittal of additional, required information. The applicant submitted a waiver of processing timelines, valid until August 7, 2000, in order to provide the requested information. The information was submitted and the application was accepted as complete on July 26, 2000.

On August 9, 2000, referral responses were solicited from relevant agencies and service providers, and surrounding property owners. No comments were received from neighboring property owners. Comments from agencies and service providers, as they relate to the applicable criteria, are incorporated in the findings and decision below.

III. PROJECT DESCRIPTION

- The subject property is Parcel 2 of land division M 638-78, and is approximately 320 acres.
- The western half of the property is identified as Map 19-04-15 Tax Lot #300, and is zoned Impacted Forest (F-2).



- The eastern half of the property is identified as Map 19-04-14 Tax Lot #201, and is zoned Exclusive Farm Use, 40-acre minimum (E-40).
- The proposed development will be located on the eastern half of the property, within the area zoned E-40.
- There is one existing dwelling on the property, also located within the area zoned E-40. The dwelling was constructed in 1979 according to County Assessment and Taxation records.
- The existing dwelling has a site address of 30257 Camas Swale Road, Creswell.
- Vehicular access is provided by an existing driveway, which is connected to Camas Swale Road, a paved, county-maintained road.
- The existing dwelling was authorized by Lane County Land Management Division, under the review and approval of BP 79-0358.
- Camas Swale Creek, a Class I rated stream travels north and south across the eastern portion of the property.
- The parcel is owned by Geoffrey and Kaikilani Walsh, who reside in the existing dwelling and raise livestock and commercial trees on the property.
- The family farm help dwelling will be placed in conjunction with the existing commercial activities on the property, in order to allow the Walsh's daughter and son-in-law to provide on-site assistance with the farm operation.
- Per page 3 of the applicant's written submittal (Exhibit D), approximately 207 acres are planted with fir trees, 97 acres are in livestock (cattle), 20 acres are in hay production, 20 acres are planted with poplars, and 10 acres are in residential use.
- A site plan, showing the location of the existing and proposed development is attached as Exhibit B.

IV. APPROVAL CRITERIA & FINDINGS OF FACT

The request is being evaluated per the criteria found in OAR 660-033-120 and 660-033-130(9) and Lane Code 16.212(8). Criteria language is in boldface type, followed by the Findings of Fact.

OAR 660-033-120 (Table 1): A dwelling on property used for farm use located on the same lot or parcel as the dwelling of the farm operator, and occupied by a grandparent, grandchild, parent, child, brother or sister of the farm operator or the farm operator's spouse, whose assistance in the management of the farm use is or will be required by the farm operator.

The family member dwelling will be located on Parcel 2 of land division M 638-78, the same legal lot as the dwelling of the farm operator. Both dwellings will also be located on the portion of the parcel identified as Map 19-04-14, Tax Lot #201.

The farm operators, Geoffrey and Kaikilani Walsh, live in the existing dwelling and manage a livestock and woodlot operation on the subject property. Their daughter and son-in-law, Robin and Gaylen Franklin, will occupy the proposed dwelling. According to the applicant's submittals, the Walsh's require the Franklin's assistance with the management of their farm operation.

Based on the above findings, the application is consistent with this criterion.

OAR 660-033-0130(9): To qualify, a dwelling shall be occupied by persons whose assistance in the management and farm use of the existing commercial farming operation is required by the farm operator. The farm operator will continue to play a predominant role in the management and farm use of the farm. A farm operator is a person who operates a farm, doing the work and making the day-to-day decisions about such things as planting, harvesting, feeding and marketing.

Geoffrey and Kaikilani Walsh require the assistance of their daughter and son-in-law, Robin and Gaylen Franklin, in the management of their livestock and woodlot operation. The Franklins will provide assistance in all aspects of the family farming operation and reside in the proposed farm help dwelling.

According to their submittal, Geoffrey and Kaikilani Walsh will continue to play the dominant role in managing the farm operation, however, due to health problems, some assistance is required. The Franklins will maintain fencing and care for livestock, as well as help maintain security. The applicant further addresses the above criterion on pages 14 and 15 of the written submittal (Exhibit D) and the applicant's statements are incorporated here by reference.

The applicants submitted a letter from Thomas R. Griggs, a Certified Public Accountant, dated July 26, 2000 and attached as Exhibit C. Planning Department staff reviewed this submittal on August 1, 2000 and determined that the letter provides sufficient evidence of a commercial farm operation on the subject property.

Based upon the above findings, the application is consistent with this criterion.

OAR 660-033-0130(30): The County governing body or its designate shall require as a condition of approval of a single-family dwelling under ORS 215.213, 215.383 or 215.284 or otherwise in a farm or forest zone, that the landowner for the dwelling sign and record in the deed records for the county a document binding the landowner, and the landowner's successors in interest, prohibiting them from pursuing a claim for relief or cause of action alleging injury from farming or forest practices for which no action or claim is allowed under ORS 30.939 or 30.937.

Prior to approval of a building permit, the applicant shall submit a copy of a recorded *Farm/Forest Management Agreement* to the Land Management Division.

Based upon this condition as applied, the application is consistent with this criterion.

VI. SITING STANDARDS

The proposed residence will be sited to balance the setback standards of LC 16.212(8)(a) with the siting requirements and application approval criteria specified elsewhere in LC 16.212, to minimize adverse impacts upon forest uses and to assure optimal siting of residences consistent with the purpose of the Exclusive Farm Use Zone, as follows:

(ii) Residences to be sited upon all other tracts shall be sites as follows:

~~(aa) where possible, in consideration of the dimensions and topography of the tract, at least 500 feet from the adjoining lines of the property zoned F-1 and 100 feet from the adjoining lines of property zoned F-2 or EFU.~~

(bb) On the least valuable farm or forest areas of the tract or located near residences on other tracts.

The subject property is not located within an area designated as big game range, according to County adopted wildlife maps.

Per the applicant's written submittal and the approved site plan, the proposed dwelling will be located more than 500 feet from any property line. In addition, the proposed dwelling will be located in an open area that has historically been used for pasture. An existing driveway will serve the proposed new dwelling, which will be located closer to the road and neighboring residences than the existing dwelling.

Based upon the above findings, the proposed dwelling is consistent with these criteria.

16.212(8)(b) Property Line Setbacks: No structure other than a fence or sign shall be located closer than:

- (i) 20 feet from the planned right-of-way of a State road, County road or a local access public road specified in Lane Code Chapter 15; and**
- (ii) 20 feet from an existing right-of-way of a State road, County road or a local access public road; and**
- (iii) 10 feet from all other property lines except as provided below.**

Per the approved site plan (Exhibit B), these setback requirements will be met.

16.212(8)(c): Class I Stream Riparian Setback Area. The riparian setback area shall be the area between a line 100 feet above and parallel to the ordinary high water of a Class I stream designated for riparian vegetation protection in the Rural Comprehensive Plan. No structure other than a fence shall be located closer than 100 feet from the ordinary high water of a Class I stream designated for riparian vegetation protection by the Rural Comprehensive Plan. A modification to the riparian setback standard for a structure may be allowed provided the requirements of LC 15.253(3) are met.

Camas Swale Creek, a Class I stream, travels north/south across the eastern portion of the property. Per the approved site plan, the proposed development will be located further than 100 feet from the ordinary high water level of Camas Swale Creek. Therefore, the above setback requirement will be met.

16.212(8)(d): Maintenance, Removal, and Replacement of Indigenous Vegetation within the Riparian Setback Area. Maintenance, removal and replacement of indigenous vegetation within the riparian setback area along Class I streams designated for riparian vegetation protection by the Rural Comprehensive Plan must comply with the provisions of LC 16.253(2).

Per the approved site plan (Exhibit B) this standard is not applicable.

LC 16.244 Floodplain Requirements: The proposed dwelling location is outside the 100-year flood hazard area, per Community Panel #415591-1625F; effective June 2, 1999.

LC 16.005(4) Sensitive Bird Habitat Protection: The proposed dwelling location has not been identified as a unique wildlife habitat.

ORS 215.418 Wetlands: The proposed dwelling location does not appear to contain any wetlands per National Wetlands Inventory Map Cottage Grove N.W. 4.

Legal Lot: The subject property is Parcel 3 of county partition M 638-78, and therefore is recognized as a legal lot.

Access: Access to this parcel is from Camas Swale Road via an existing driveway. Camas Swale Road is a paved County maintained road and is functionally classified as a major collector road with a 70' planned right-of-way and a 20' additional setback (LC 15.027).

A Facility Permit is required for any construction within the right-of-way of roads under County jurisdiction (LC 15.205-1). This includes but is not limited to, such construction as driveway approaches, street improvements and utility placements. Driveway approaches to paved roads must be paved.

Storm Water Runoff: Public Road and Right-of-Way Policies, Lane Manual 15.515 Drainage

1. Roadside ditches and other drainage facilities shall be designed solely to promote drainage of the roadway without interfering with natural waterways. Whenever a road crosses a natural channel or waterway, culverts shall be installed to maintain the natural waterflow. Such natural waterway shall be identified by survey of the topography and/or aerial photography of surrounding terrain.
2. Water shall not be diverted from a natural channel down a roadside ditch unless it appears beneficial to a new road construction project, in which case the Department of Public Works shall first enter an agreement with the affected property owners regarding the proposed diversion.
3. Roadside ditches shall not be used as channels for water diverted from property, except through Facility Permit issued to the landowner on application to the Director, Department of Public Works.

V. DECISION

The proposed Special Use Permit for a farm-related family member dwelling meets the provisions and criteria of OAR 660-33-120 and 660-33-130(9), and the applicable siting standards of Lane Code, and is approved, subject to all conditions of approval.

VI. EXHIBITS

Exhibit A - Conditions of Approval

Exhibit B - Approved Site Plan

Exhibit C - Letter from Thomas R. Griggs dated July 26, 2000

Exhibit D - Applicant's Written Submittal

Enclosures

Farm/Forest Management Agreement

Facility Permit Application

EXHIBIT A
Conditions of Approval
PA 00-5878

**Questions about these conditions will not be handled at the public service counter.
Please contact Florence Davis at 541/682-2059 with any questions unless noted otherwise.**

Approval of this request is supported by findings of fact that establish compliance with all applicable criteria. This Special Use Permit is subject to the following conditions of approval.

1. Approval of Permit PA 00-5878 is valid for a two-year period from Sept. 26, 2000 the final date of approval until Sept. 26, 2002, the expiration date of this approval. Lane County may grant a one-year extension period of up to 12 months if:
 - (a) An applicant makes a written request for an extension of the development approval period;
 - (b) The request is submitted to the county prior to the expiration of the development approval period;
 - (c) The applicant states reasons that prevented the applicant from beginning or continuing development within the approval period;
 - (d) The county determines that the applicant was unable to begin or continue development during the approval period for reasons which the applicant was not responsible.

Approval of an extension granted under this rule is an administrative decision, is not a land use decision as described in ORS 197.015 and is not subject to appeal as a land use decision. Additional one-year extensions may be authorized where applicable criteria for the decision have not changed.

2. The improvement locations and specifications shall be as represented by the applicant in the written submittal and approved site plan (Exhibit B) unless modified by the Planning Director. Any modification may be subject to new notice and opportunity to comment, and may require an application to Modify Planning Director Conditions of Approval with the required processing fee at the discretion of the Planning Director.

- 3P00
1489
3. The applicant shall apply for a building permit for the family farm help dwelling, before the expiration of this permit approval, as noted in condition #1 above.

- ok
FD
4. Prior to the issuance of a building permit, the applicant shall submit a signed statement, documenting that the property owner fully understands the conditions under which the building permit is being approved.

- ok
FD
5. Prior to the issuance of a building permit, the applicant shall, completed, notarize, and record the enclosed *Farm and Forest Management Agreement with an attached "Exhibit A" depicting the legal description of the property (which must be recorded together with the Agreement)*, binding the landowner, and the landowner's successors in interest, prohibiting them from pursuing a claim for relief or cause of action alleging injury from farming or forest practices for which no action or claim is allowed under ORS 30.936 or 30.937. (A legal description may be obtained from the Lane County Assessment and Taxation office if needed.)

3/2
FD

6. Prior to the issuance of a building permit, the applicant shall submit a copy of an approved Facility Permit for any construction within the right-of-way of roads under County jurisdiction (LC 15.205-1). This includes but is not limited to, such construction as driveway approaches or street improvements. Driveway approaches to paved roads are required to be paved. If access to this parcel is to be relocated, the existing access must be removed under Facility Permit authority. The applicant shall construct any driveway improvements required.

(Please contact the Lane County Right-of-Way Management Section, Permits Unit, at 541/682-6902 with questions about Facility Permits).

7. The proposed development shall meet all applicable building and sanitation requirements.

For informational purposes, it is the applicants' responsibility to ensure that all-applicable federal, state, and local regulations are met.

8. **The establishment of a second residence on the property may not be used for future justification of a land division. Lane County shall not approve any subdivision or partition of a parcel in the Exclusive Farm Use Zone for which a second residence has been approved.**

9. The following is provided for informational purposes as an **Advisory Notice**: Section 93.040(1) of the Oregon Revised Statutes requires the following statement to be included in the body of any instrument transferring or contracting to transfer fee title to real property:

"THIS INSTRUMENT WILL NOT ALLOW USE OF THE PROPERTY DESCRIBED IN THIS INSTRUMENT IN VIOLATION OF APPLICABLE LAND USE LAWS AND REGULATIONS. BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON ACQUIRING FEE TITLE TO THE PROPERTY SHOULD CHECK WITH THE APPROPRIATE CITY OR COUNTY PLANNING DEPARTMENT TO VERIFY APPROVED USES AND TO DETERMINE ANY LIMITS ON LAWSUITS AGAINST FARMING OR FOREST PRACTICES AS DEFINED IN ORS 30.930."

This Oregon Law disclosure requirement serves a constructive purpose. Approval of a residence for this property is contingent upon compliance with the conditions of the special use permit, and **any future owners of the subject property need to understand and adhere to these conditions. This disclosure statement should alert the cautious and potential purchaser to inquire with the Lane County Land Management Division about the conditions of this special use permit.**

Called
11/20/01



LANE COUNTY PERMIT

Permit No: BP011809
Type: Bldg Permit--Residential
Sub-Type: Agricultural Structure

Job Address: 30257 CAMAS SWALE RD CRE

Status: APPROVED
Applied: 10/17/2001
Approved: 11/19/2001
Issued:
Expiration:

Parcel No: 19-04-14-00-00201

Applicant: BOWERS JAMES
Owner: WALSH KAIKILANI K TE

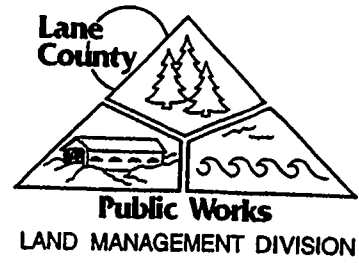
Description of Work: AG BUILDING FOR MACHINERY

Total Permit Fees ...:	\$487.60
Total Payments	\$427.60
Balance Due	\$60.00

Permission is hereby given to commence the above described work, according to the conditions hereon and in accordance with the approved plans and specifications pertaining thereto, subject to compliance with Lane County ordinances and laws of the State of Oregon.

Building Official (or approved delegee):

Date: 11/19/2001



Land Use Review

Permit No: BP 01-1809 Parcel No: 19-04-14-00-00201

Description of Work: AG Bldg

Zoning: E40/FP/RCP Comments: LC16.212(2)(K) Farm use bld. 149.23ac

Willamette Greenway: n/a Flood Hazard Area: 70 SSP 10-22 - prop. site located outside flood hazard area. NOFP Sensitive Wildlife Habitat: N Access: N/A Legal Lot Status: N/A NWI Wetlands on Site: N CG NW4 10/24/2001-SSP

Required Setbacks from:

Centerline of Road Right-of-way: feet Front: feet Side: * feet Rear: * feet Additional Road Right-of-Way: feet Riparian: feet *Locate per approved site plan dated 11/02/01

Conditions:

AG Building may ONLY be used for farm purposes.

FEES: BP Planning Review \$275 Sanitation Permit FP: 50.00 Wetlands: TOTAL: \$275

Land Use Approved: Y Additional Planning Conditions Attached: N

Planner Signature: SSH Date: 11/02/01

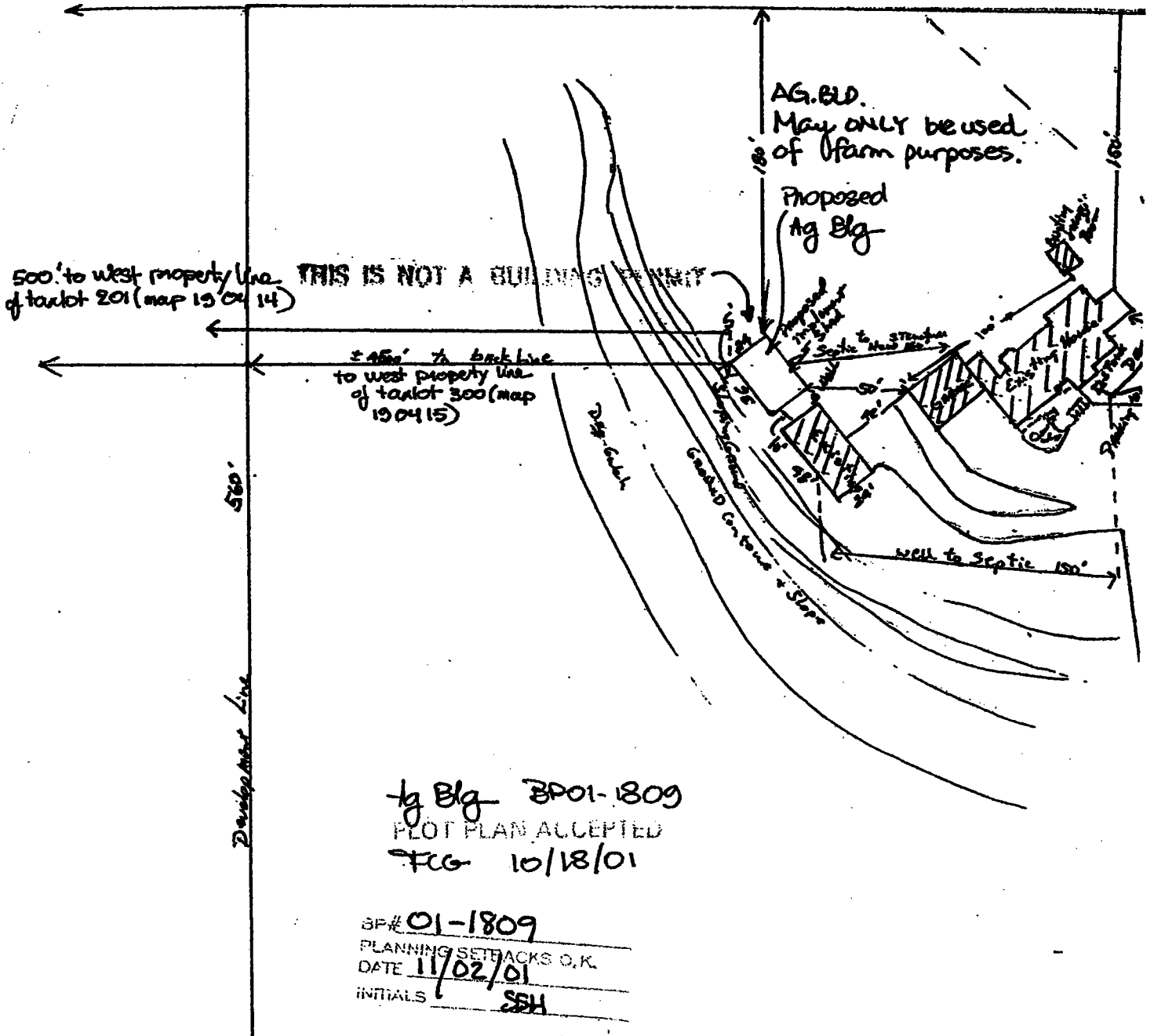
PLOT PLAN SL

Use this sheet

Owner: <i>Kirti Walsh</i>	OWNER ADDRESS: <i>30257 Camas Swale Rd</i>
INE #: <i>H-895-4A62</i>	<i>Creswell, Oregon</i>
	<i>97426</i>

Taxlot #: *19 04 14 00201*

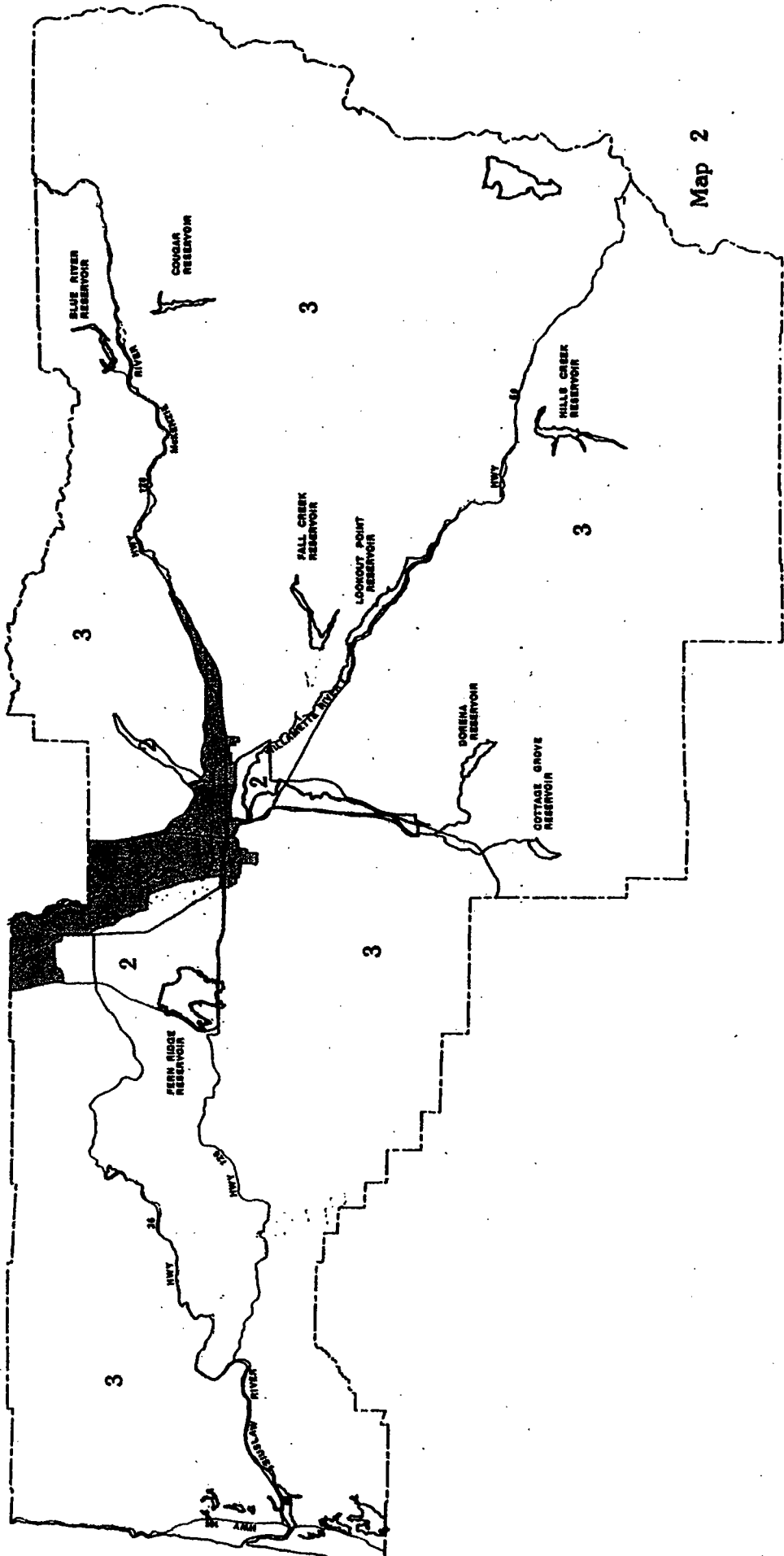
1" = 80'



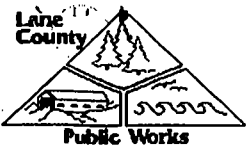
Ag Bldg BP01-1809
PLOT PLAN ACCEPTED
FC 10/18/01

BP# 01-1809
PLANNING SETBACKS O.K.
DATE 11/02/01
INITIALS SHH

ASSESSMENT & TAXATION AGRICULTURAL RENT ZONES



INFORMATION COMPILED FROM LAKE
COUNTY ASSESSMENT & TAXATION DEPT.



PAC DA

LANE COUNTY RECEIPT

RECEIPT NUMBER: **R05000368**

01-18-2005

PLANNING ACTION #: **PA055060**

TYPE: Conformity Determination Amend
SITE ADDRESS: 30257 CAMAS SWALE RD CRE
PARCEL: 19-04-14-00-00201
APPLICANT: MANN JAMES
PO BOX 51081
EUGENE OR
97405
541-514-3051

Type	Method	Description	Amount
Payment	Check	3358	1,210.00

	Description	Current Pymt
2000	New Technology Fee	10.00
2100	Administrative Fee	150.00
3050	Planning Plan Amendments	1,000.00
3065	Long Range Planning Surc	50.00

PAID BY: **GEOFFREY WALSH**

DATE: September 9, 2005 (Date of Memo)
September 20, 2005 (Date of Public Hearing)

TO: LANE COUNTY PLANNING COMMISSION

FROM: Public Works Department/Land Management Division
Bill Sage, Associate Planner

AGENDA ITEM TITLE: Ordinance No. PA 1225 -- In the Matter of Adopting a Conformity Determination Amendment Pursuant to RCP General Plan Policies – Goal Two, Policy 27. a. iii., Amending the Plan Designation from Agriculture (A) to Forest (F) and the Zoning Designation from Exclusive Farm Use (E40) to Impacted Forest Land (F2) for a Portion (26 Acres) of Tax Lot 201 of Lane County Assessor Map 19-04-14, and Adopting Savings and Severability Clauses. (File: PA 05-5060 Walsh).

I. ISSUE

The applicant, Kaikilani Walsh Trust, seeks approval for the redesignation of 26 acres of tax lot 201 of TRS 19-04-14 from Exclusive Farm Use (E40, RCP) to Impacted Forest Land (F-2, RCP).

Amendment criteria for a zone change from Exclusive Farm Use (E40, RCP) to Impacted Forest Land (F-2, RCP) are found in Goal Two - Policy 27 a. iii., which are reproduced below:

Goal Two - Policy 27 a. iii. A property actively managed primarily as either an agricultural or forestry operation in 1984 and since, and a resource designation other than the primary use was adopted on an Official Plan or Zoning Plot in 1984.

II. FINDINGS OF FACT AND CONCLUSIONS OF LAW

The attached PA 05-5060 record provides the documentation for the following review. The applicant's eleven supporting findings of fact and conclusions of law are included on page 4 of the application that is attached as Attachment "B" to this agenda cover memo.

III. ANALYSIS

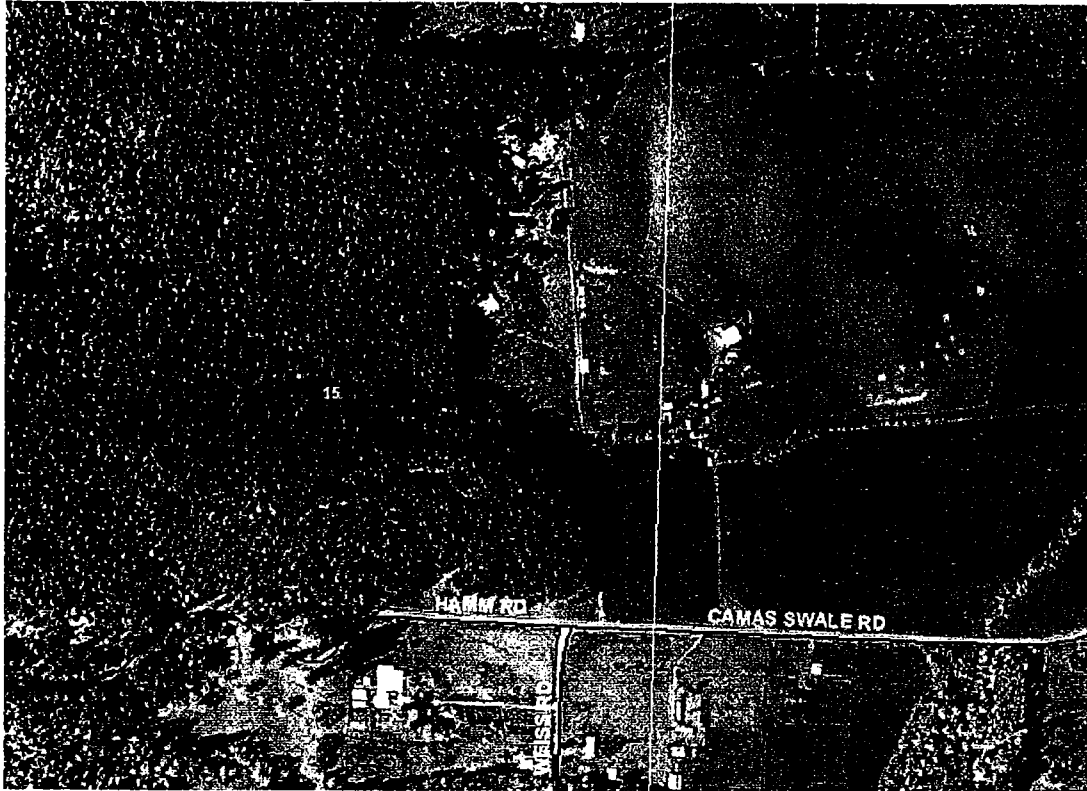
Staff has reviewed the record and found it to be supportive of the request for amendment of the Plan designation from Agriculture (A) to Forest (F) and the Zoning designation from Exclusive Farm Use (E40) to Impacted Forest Land (F2).

Notice of the LCPC public hearing was mailed to the surrounding property owners by U.S. mail on September 1, 2005. Notice of the public hearing was posted on the subject property on September 1, 2005. A legal ad was published in the Eugene Register Guard on August 31, 2005.

No response from these notices has been received by LMD staff, and no additional evidence has been presented into the record from any other party of interest.

In addition to the applicant's documentation, staff has provided the 2004 aerial photograph of the subject properties.

** 2004 Aerial photograph depicting the 26-acre portion of tax lot 201, TRS map 19-04-14 proposed for designation as Forest Land and F2 Impacted Forest Land in conformance with the 168 acres of the contiguously owned tax lot 300, TRS 19-04-15, to the west.*



III. LANE COUNTY PLANNING COMMISSION RECOMMENDATION

Motion: The Lane County Planning Commission acknowledges the Findings of Fact #1 - #11 and conclusion of law of the applicant as presented on page 4 of the applicant's submittal. Based on these findings and conclusions, the Planning Commission recommends that the Board of Commissioners approve Ordinance No. PA 1225.

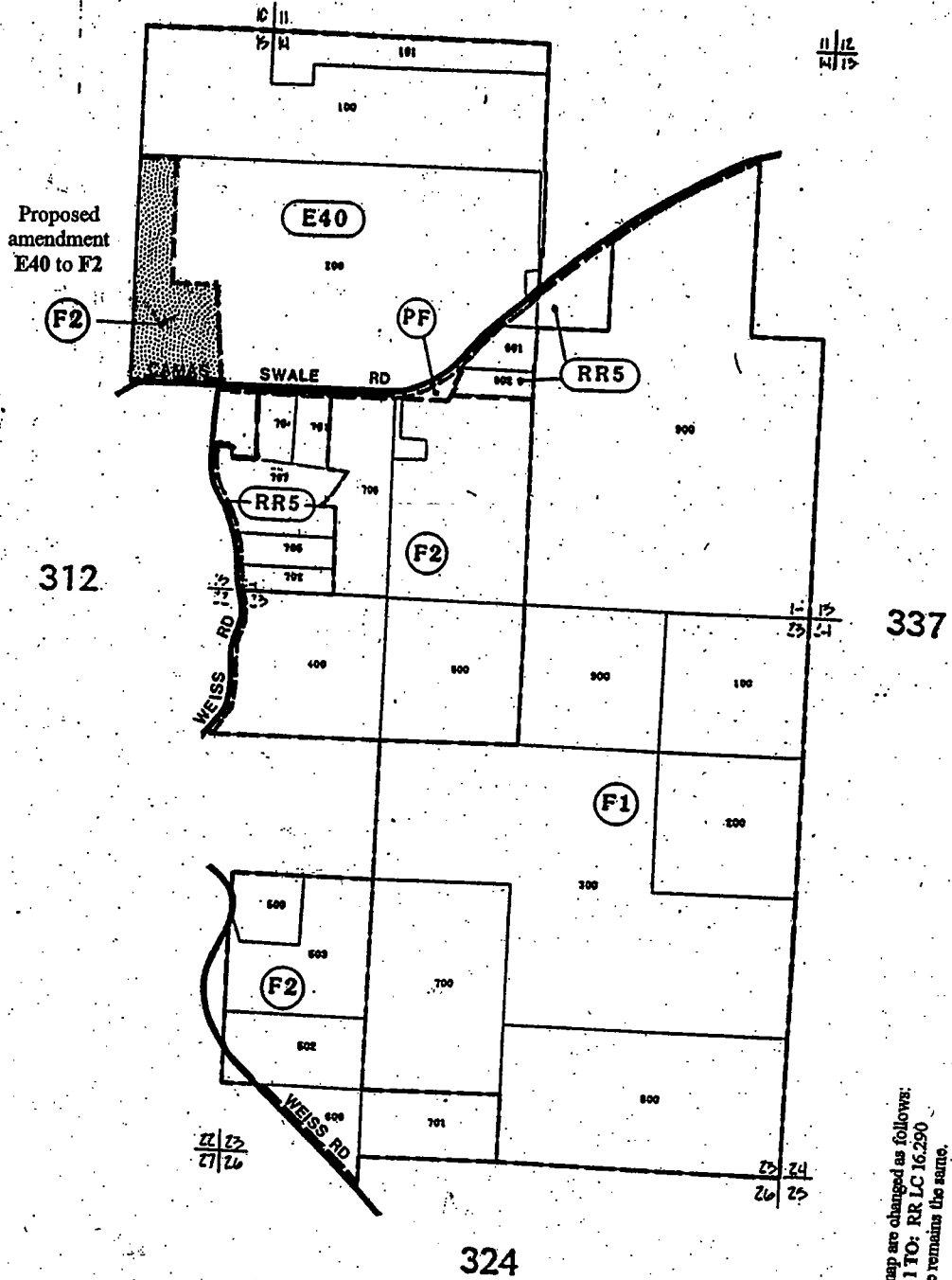
IV. OPTIONS

1. Recommend approval of Ordinance No. PA 1225.
2. Recommend denial of Ordinance No. PA 1225.
3. Direct staff to provide additional findings and documentation.

V. ATTACHMENTS

- A. Official Plan and Zoning Plots 323.
- B. Application PA 05-5060 Conformity Determination Amendment (Walsh).

322



The zones on this map are changed as follows:
 From: RG, RA To: RR2
 From: CR, C1, C2, & C3 To: RC Rural Commercial
 From: M1, M2, & M3 To: R1 Rural Industrial
 From: PF To: RPF Rural Public Facility
 From: PR To: RPR Rural Park & Recreation



The RR zones on this map are changed as follows:
 FROM: RR LC 16.231 TO: RR LC 16.290
 The RR zone parcel size remains the same.

the county



OFFICIAL ZONING MAP

PLOT# 323

Township Range Section
 19 04 14

19 04 23

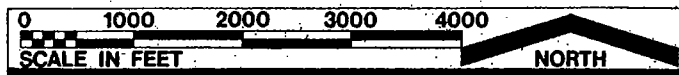
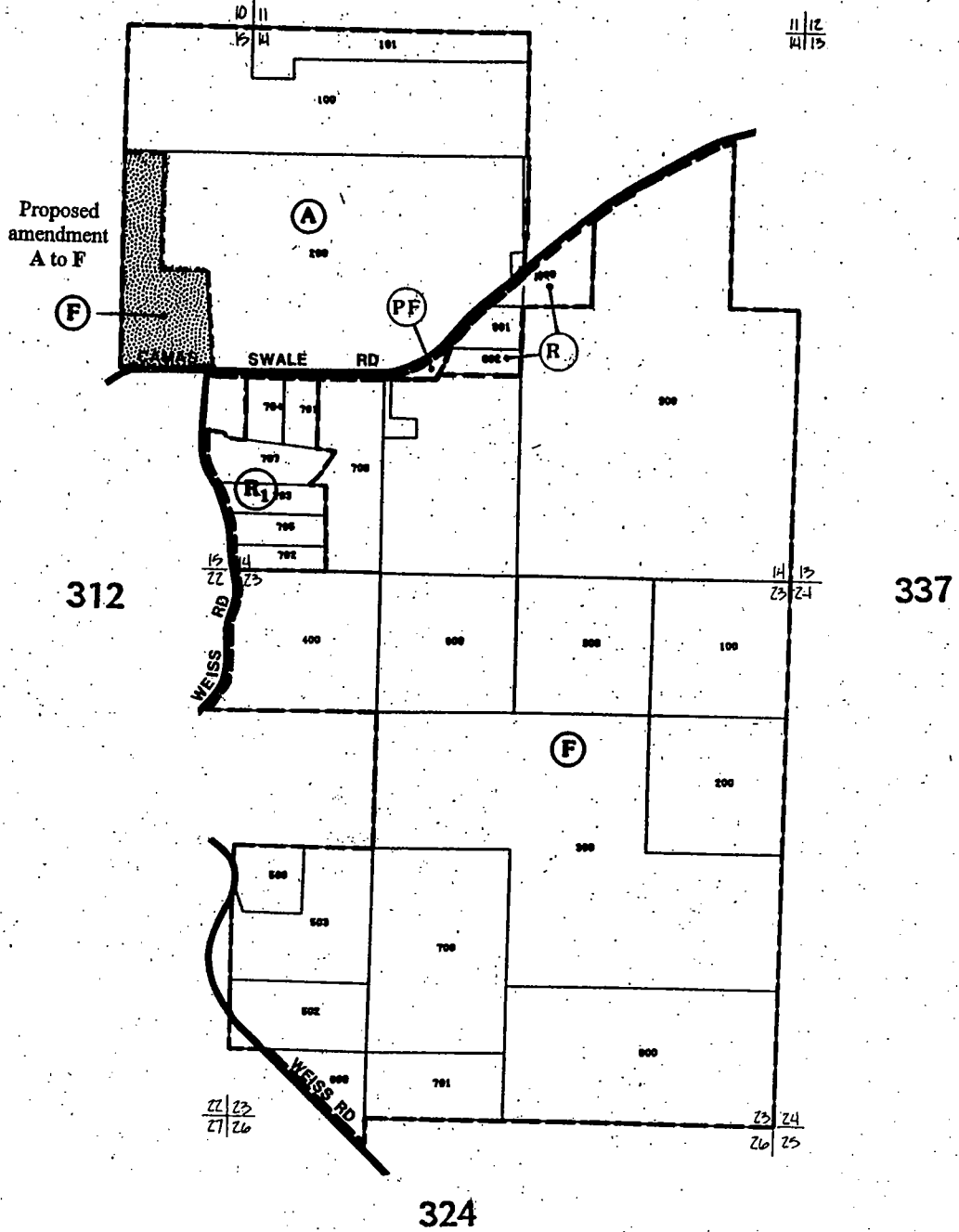
ORIGINAL ORD. # PA 884

DATE 2/29/1984 FILE #

VISION # 1 ORD # PA 888

DATE 7/17/01

322



lane county



OFFICIAL PLAN MAP

PLOT # 323

Township Range Section

19 04 14

19 04 23

ORIGINAL ORD. # PA 884 DATE 2/29/1984 FILE #

REVISION # 1 ORD # PA 888 DATE 7/17/84 FILE #

DATE: November 28, 2005
TO: Lane County Planning Commission
FROM: Bill Sage LMD
RE: Ordinance No. PA 1225 (File: PA 05-5060 Walsh).

During the LCPC public hearing on September 20, 2005, the Commission heard oral testimony from the applicant in support of (Jim Mann, agent for Kaikilani K. Walsh Trust) and one party in opposition to (Lauri Segel, 1,000 Friends) the proposed plan amendment and zone change. The LCPC also received written testimony in opposition (Jim Just, Goal One Coalition) to the proposed amendment. The public hearing was closed and the record was left open for submittal of written testimony from September 20, 2005 through October 18, 2005. Under LCPC instructions, three submittals were received during the period. The LCPC received copies of these documents as they were submitted into the record. They are attached again to this staff report for convenience as Attachments "A", "B" and "C":

- On October 3, 2005, Jim Just of Goal One Coalition submitted Attachment "A", dated September 30, 2005.
- On October 6, 2005, Lauri Segel of 1,000 Friends of Oregon submitted Attachment "B", dated September 20, 2005.
- On October 11, 2005, Jim Mann representing Mr. and Mrs. Walsh submitted Attachment "C" - dated October 11, 2005.

Staff has reviewed the record, both oral and written, recommends approval of the applicant's request, and provides the following motion, findings of fact and conclusions for consideration by LCPC as a recommendation to be forwarded to the Board of County Commissioners.

Motion

The Lane County Planning Commission recommends the Lane County Board of Commissioners approve Ordinance No. PA 1225 (PA 05-5060 Walsh) and adopt the following findings of fact and conclusions in support.

Findings of Fact

1. The lawfully created parcel subject to this application, hereinafter referred to as the "subject parcel" is identified as Parcel #2 of the approved and recorded partition M638-78 (Geoffrey L. Walsh) which received final land use approval from the Land Development Review Committee and was recorded in Lane County Deeds and Records on March 16, 1979.
2. Partition M638-78 created two parcels. The subject parcel, Parcel #2, was created as a 323.7-acre metes and bounds description and was designated by Lane County Assessment & Taxation Department as two tax lots with a contiguous tax lot boundary line aligned north to south along the section line between eastern one-half of Section 15 and the western one-half of Section 14. The two tax lots can be identified as TRS 19-04-15, tax lot 300 (approximately 172.63 acres in size) and TRS 19-04-14, tax lot 201 (approximately 151.4 acres in size). Parcel #1 of partition M638-78 was created as a 20-acre parcel and can be identified as TRS 19-04-14, tax lot 200, (approximately 20.85 acres in size).

The 323.7 subject parcel (Parcel #2) and the 20.85-acre parcel (Parcel #1) are managed as the "Walsh Ranch". In the Planning Director's approval of the family farm help dwelling on tax lot 201 in 2000, the record indicates that "approximately 207 acres are planted with fir trees, 97 acres are in livestock (cattle), 20 acres are in hay production, 20 acres are planted with poplars, and 10 acres are in residential use." The current record indicates that the 172.68 acres of tax lot 300 and approximately 26 acres of tax lot 201 are managed as a 198.68-acre conifer plantation.

3. The subject parcel (Parcel #2 of M38-78), tax lots 300 and 201, received Plan and Zoning designations when Lane County adopted the Lane County Rural Comprehensive Plan and Official Plan and Zoning Maps – Plots No. 312 and No. 323, which were acknowledged by Oregon Land Conservation and Development Commission in 1984. The western portion of the subject parcel (tax lot 300) within Section 15, received a Plan designation of Forest (F) and a Zoning designation of Impacted Forest Land (F2) on Official Plan and Zoning Maps, Plot No. 312, respectively. The eastern portion of the subject parcel (tax lot 201) within Section 14, received a Plan designation and a Zoning designation of Agriculture (A) and Exclusive Farm Use (E40) on Official Plan and Zoning Maps, Plot No. 323, respectively. Parcel #1 of M638-78, tax lot 200, within Section 14, received a Plan designation and a Zoning designation of Agriculture (A) and Exclusive Farm Use (E40), on Official Plan and Zoning Maps, Plot No. 323, respectively.

By these adopted and acknowledged Plan and Zoning Map designations, the subject parcel, approximately 323.7 acres, was split zoned Impacted Forest Land (F2) and Exclusive Farm Use (E40) in Ordinance No. PA 884 on February 29, 1984. The Plan and Zoning designations for the subject parcel were not appealed and became a final land use decision on March 29, 1984.

4. The applicant's have requested amended of the common line between the Impacted Forest Land (F2) and the Exclusive Farm Use (E40) zoning designations to be moved to the east so that the F2 designation includes the actively managed stand of trees within tax lot 201. The area proposed for amendment from E40 to F2 is approximately 26 acres in size as depicted in the record of PA 05-5060, Exhibit 1 – PA 05-5060 Application for a Conformity Determination, Illustrations 3 and 4, page 3. The stand of trees within the 26-acre site consist of maturing conifers in excess of 30 years in age as depicted in the 1979 aerial photograph and the 2000 aerial photograph included in Exhibit 1, Attachment E, pages 1 and 2 of the official record (PA 05-5060)
5. Tax lot 300 of the subject parcel and the proposed 26-acre site are heavily forested as depicted in the 1979 and 2000 aerial photographs referenced in Finding 4. above, and the 2004 aerial photograph in Exhibit 13 Staff Report to LCPC, page 2, September 9, 2005, of the PA 05-5060 record and actively managed as a forest management unit by contract between the applicant and Golden Eagle Forestry, Inc. Photographs of the forested 26-acre area proposed for re-designation are included in Exhibit 1 – PA 05-5060 Application for a Conformity Determination, Attachment F – The Walsh Ranch Photographs 1-4, pages 1 and 2. The forest management practices from 1979 to 2005 included commercial thinning, replanting under the Forest Practices Act (FPA), abatement of competitive species within the plantations, and management of the unit for fiber production under the FPA. Current forest management practices as attested to in the PA 05-5060 record by the contractor, Golden Eagle Forestry, Inc., include ""Our plan and work (already in process) is to do a third thin on the 150 acres of timber by harvesting the dead, dying, defective and overripe trees for a healthy, attractive forest with skid (clean) trails for horsebacking, ATV's and walking." (PA 05-5060, Exhibit 4, March 23, 2005). Ongoing forest management practices are attested to in Exhibit 1, Attachment I, 10-20-04.

LMD staff (Bill Sage, Associate Planner) inspected the subject parcel on September 1, 2005 and confirmed that commercial thinning and competitive understory clearing were underway and log

decks were present within the 26- acres of tax lot 201 that is proposed for re-designation from E40 to F2.

6. Lane Code Chapter 16 provides for residential development on the subject parcel in both the E40 zoning designation on tax lot 201, as implemented by Lane Code 16.212, and the F2 zoning designation on tax lot 300, as implemented by Lane Code 16.211.

Tax lot 201 is developed with a primary residence constructed in 1979 per building permit LC 358-79. Tax lot 201 is also developed with a Family Farm Help Dwelling per a special use permit PA 00-5878 approved on September 14, 2000 in compliance with LC 16.212(2)(1) and (8) criteria and standards and constructed per building permit BP 01-1809 in 2001.

Tax lot 300 of the subject parcel is vacant. The applicant's seek to develop the F2 portion of the subject parcel with a residence for a family member to manage the forest resources of the subject parcel. A family member of the Kaikilani K. Walsh Trust could qualify for a residence on tax lot 300 of the subject property within the F2 zone under the provisions of LC 16.211(7) Large Tract Dwelling. If the Trust transfers tax lot 300 to a single family member then under land use law the "tract" limitation is lifted and subsection (7) provides for one single-family dwelling or manufactured dwelling on a tract of 160 acres or more. The subject parcel already includes 172.68 acres (RLID calculation) in the split zoned, F2 portion, tax lot 300. Adding the proposed 26 acres to the 172.68 represents a consolidation of the forest management unit into a 198.68-acre tract. It would not provide an opportunity to develop the forest land with a residence that the applicant's do not already have. Adding the proposed 26 acres to the F2 designation does not provide any division opportunity to the applicants that they do not already have as a right under State law and Lane Code. The minimum parcel size for land division in the F2 zone is 80 acres. The current 172.68 acres allows for two parcels to be created out of the acreage under the minimum density standard. Adding the 26 acres to the 172.68 acres does not increase the number of potential parcels.

7. As attested to in the oral record at the LCPC public hearing, the applicant's seek to conserve the forest management acreage to the greatest degree possible without impacts from the construction of access roads, driveways, and fuel breaks around a residence and accessory buildings. The applicant's preferred choice is to site the large-tract forest dwelling within the 26-acre area proposed for the F2 designation. This complies with the Siting Standards for Dwellings, Structures and other Uses in Lane Code 16.211(8)(a)(i) and (ii):

(a) Setbacks. Residences, dwellings or manufactured dwellings and structure shall be sited as follows:

- (i) Near dwellings or manufactured dwellings on other tracts, near existing roads, on the most level part of the tract, on the least suitable portion of the tract for forest use and at least 30 feet away from any ravine, ridge or slope greater than 40 percent;*
- (ii) With minimal intrusion into forest areas undeveloped by nonforest uses; . . .*

Under the applicant's preferred siting option within the rezoned 26 acres, the large tract dwelling would utilize the access road that currently serves the two dwellings on tax lot 201; be sited near the two existing dwellings; and allow overlap of the required primary and secondary fuel breaks with the developed residential sites reducing the amount of forested area required for those purposes in a more isolated site to the west in tax lot 300.

8. The Board of County Commissioners acting as the elected officials of the citizens of Lane County had the authority in 1984 to conclude whether resource lands should be designated Farm or Forest and the level of development that was considered to be appropriate for the land being reviewed and

the surrounding lands. The County Commissioners exercised their discretion in 1984 under the criteria and standards of current Goal 4, Policy 15 for the subject parcel and the surrounding forest land parcels and designated the western 172 acres of the subject parcel impacted Forest Land and Impacted Forest Land (F2). The Board of County Commissioners also exercised their discretion in designating 29 tax lots and 681.38 acres of land as Impacted Forest Land (F2) in a block of properties on the Official Zoning Maps – Plot No. 312 and Plot No. 323. In Attachment “A” and Attachment “C”, the record includes references to nineteen tax lots. An overview of the Board of Commissioners discretionary action in 1984 can be further understood by viewing the lands as a whole in the configuration that was designated as Impacted Forest Land (F2) at the time. The western portion of the subject parcel is the northwestern corner of the F2 block which extends south across Hamm Road, east across Weiss Road and Napper Road and south of Camas Swale Road, and continues south 2,800 feet along the western right-of-way and 4,200 feet along the eastern right-of-way. The block of land extends east of Weiss Road for a distance of 1,800 feet and envelopes a developed & committed exception area composed of Rural Residential RR5 properties. The block of F2 land includes properties in four sections: 19-04-14, 19-04-15, 19-04-22 and 19-04-23. They are identified below:

TRS	Tax Lot	Acreeage	Zoning	Address	Developed
19-04-14,	706	25.53	F2	30394 Camas Swale Road, Creswell	-unk-
19-04-14,	800	100.44	F2	30420 Camas Swale Road, Creswell	-unk-
19-04-14,	801	21.49	F2	30426 Camas Swale Road, Creswell	1968
19-04-15,	300	172.68	F2		
19-04-15,	500	4.96	F2	29907 Hamm Road, Creswell	2000
19-04-15,	700	4.75	F2	29983 Hamm Road, Creswell	1950
19-04-15,	701	1.66	F2		
19-04-15,	702	6.34	F2	29926 Hamm Road, Creswell	1973
19-04-15,	703	4.71	F2	29908 Hamm Road, Creswell	1957
19-04-15,	801	4.65	F2	30047 Hamm Road, Creswell	1990
19-04-15,	802	31.93	F2	30112 Hamm Road, Creswell	1998
19-04-15,	900	0.85	F2	30133 Hamm Road, Creswell	1979
19-04-15,	1100	9.96	F2	82920 Weiss Road, Creswell	1993
19-04-15,	1200	7.00	F2	82864 Weiss Road, Creswell	1977
19-04-15,	1201	8.08	F2	82900 Weiss Road, Creswell	1973
19-04-15,	1300	20.32	F2	83036 Weiss Road, Creswell	1995
19-04-15,	1400	5.09	F2	83021 Weiss Road, Creswell	1975
19-04-22,	102	12.24	F2	82818 Weiss Road, Creswell	1998
19-04-22,	103	11.44	F2	82786 Weiss Road, Creswell	1959
19-04-22,	104	11.32	F2	82744 Weiss Road, Creswell	1992
19-04-22,	500	78.01	F2	82732 Weiss Road, Creswell	1976
				82631 Weiss Road, Creswell	1977
19-04-22,	601	1.05	F2	82592 Napper Road, Creswell	1940
19-04-22,	602	1.61	F2	82566 Napper Road, Creswell	1972
19-04-23,	400	46.19	F2		
19-04-23,	500	9.35	F2	82571 Weiss Road, Creswell	1997
19-04.23,	502	18.62	F2		
19-04-23,	503	30.47	F2	82535 Weiss Road, Creswell	1977
19-04-23,	600	10.24	F2	82385 Weiss Road, Creswell	1973
19-04-23	701	20.40	F2		
Total acreage					681.38
Properties					29
Residences					25

The subject parcel is adjacent to or separated by a road from the properties (tax lots) listed below:

TRS	Tax Lot	Acreage	Zoning	Address	Developed
To the north of E40 portion of subject parcel:					
19-04-14	100	70.36	E40	30549 Camas Swale Road, Creswell	1994
19-04-14	400	0.81	E40	30545 Camas Swale Road, Creswell	1973
To the north of the F2 portion of the subject parcel:					
19-04-15	100	112.36	F1	(Seneca Jones Timber Co.)	
To the west of the F2 portion of the subject parcel:					
19-04-00	500	604.76	F1	(Guistina Land and Timber Co.)	
To the southwest of the F2 portion of the subject parcel:					
19-04-15	600	120.00	F1	(US Bureau of Land Management)	
To the south of the F2 portion of the subject parcel:					
19-04-15,	500	4.96	F2	29907 Hamm Road, (north side-Hamm)	2000
19-04-15,	700	4.75	F2	29983 Hamm Road, (north side-Hamm)	1950
19-04-15,	701	1.66	F2	(north side-Hamm)	
19-04-15,	702	6.34	F2	29926 Hamm Road, (south side-Hamm)	1973
19-04-15,	703	4.71	F2	29908 Hamm Road, (south side-Hamm)	1957
19-04-15,	801	4.65	F2	30047 Hamm Road, (north side-Hamm)	1990
19-04-15,	802	31.93	F2	30112 Hamm Road, (south side-Hamm)	1998
19-04-15	900	0.85	F2	30133 Hamm Road, (north side-Hamm)	1979
To the south of the 26-acre area of subject parcel proposed for zone change:					
19-04-15,	1300	20.32	F2	83036 Weiss Road, (south side-Hamm)	1995
19-04-15,	1400	5.09	F2	83021 Weiss Road, (south side-Hamm)	1975
To the south of the E40 portion of the subject parcel:					
19-04-14,	701	5.22	RR5	30356 Camas Swale Road, (south-Camas)	1993
19-04-14,	704	5.26	RR5	30306 Camas Swale Road, (south-Camas)	1970
19-04-14,	706	25.53	F2	30394 Camas Swale Road, (south-Camas)	-unk-
19-04-14,	801	21.49	F2	30426 Camas Swale Road, (south-Camas)	1968
Further to the east of the E40 portion of the subject parcel:					
19-04-11	106	184.64	E40	30701 Camas Swale Road, (north-Camas)	-unk-
19-04-14	400	0.55	E40	30545 Camas Swale Road, (north-Camas)	1973
19-04-14	2000	1.29	E40	(access road panhandle)	
To the southeast of the E40 portion of the subject parcel:					
19-04-14	600	1.39	RR5	30538 Camas Swale Road, (south-Camas)	1987
19-04-14	601	5.36	RR5	30498 Camas Swale Road, (south-Camas)	1979
19-04-14	602	4.28	RR5	30494 Camas Swale Road, (south-Camas)	1993
19-04-14	1100	1.23	RPF	30450 Camas Swale Road, (south-Camas)	-unk-
				*Creswell Rural Fire Protection District station.	

A composite of the Official Zoning Maps Plot No. 312 and Plot No. 323 are attached as Attachment "D" depicting the subject parcel and the surrounding area within Sections 14, 15, 22 and 23 of Township 19 Range 04.

- Goal One Coalition (Jim Just), in written testimony dated September 30, 2005 (Exhibit # 22, official record PA 05-5060) and attached as Attachment "A" to this memorandum, claims that designating the 26 acres of the subject parcel from E40 to F2 requires review under the Rural Comprehensive Plan General Plan Policies, Goal 4, Policy 15 to determine whether the 26 acres should be rezoned F1 Nonimpacted Forest Land or F2 Impacted Forest Land.

The Board of County Commissioners has no obligation to review Goal 4, Policy 15 in the exercise of moving a common line between the Impacted Forest Land Zone (F2) and the Exclusive Farm Use Zone (E40). That level of evaluation was already completed by the Board of County Commissioners in 1984 and the evaluation resulted in the subject parcel being split zoned with 172.68 acres designated F2 and 151.02 acres designated as E40. There is no rationale for assuming or requiring that the movement of a zoning line to the east across the forested 26 acres of the subject parcel would warrant the questioning of that evaluation. The Board acted, notice was provided to interested parties including 1,000 Friends of Oregon, the evaluation and designation were not challenged in 1984, and the designations became final decisions on the 323.7-acre, subject parcel. The Board of County Commissioners and the citizens of Lane County have a common understanding that final decisions that have been evaluated under a specific policy such as Goal 4, Policy 15 in 1984, remain as final decisions under the protection of state law and local ordinances unless the property owner were to request or consent to an amendment. To consider designating a 26-acre portion of the subject parcel from E40, which provides for development rights in conjunction with farm uses, to F1, which is the most restrictive zoning designation in Lane Code with virtually no development rights, is to provide a threshold for a Ballot Measure 37 claim.

The adjacent zoning designations to the 26-acre forested area of the subject parcel proposed for inclusion in the F2 zoned portion is bordered by E40 Exclusive Farm Use land to the east (tax lot 201 of TRS 19-04-14) and north (tax lot 100 of TRS 19-04-15), F2 land to the west (tax lot 300 of TRS 19-04-15), and F2 land to the south (tax lots 1300 and 1400 of TRS 19-04-15). The northwestern corner point of tax lot 201 and the northern boundary of tax lot 300 of the subject parcel are adjacent to F1 Impacted Forest Land (tax lot 100 of TRS 19-04-14).

The Board of County Commissioners accept the applicant's request for relocation of the common boundary between the F2 Impacted Forest Land acreage and E40 Exclusive Farm Use acreage of the subject parcel as a rational exercise in making a determination of where the forest and agricultural management units of the subject parcel actually existed in the 1979, 2000 and 2004 aerial photographs in the record and conforming the zoning districts to those resource uses as a practical application of the zoning designations rather than an arbitrary division along a tax lot line.

10. The applicant's consultant, James Mann LLC, felt compelled in his final rebuttal in Attachment "C to address Goal One Coalition's (Jim Just) analysis and conclusions in Attachment "A", regarding Goal 4, Policy 15 criteria and standards. Mr. Mann's rebuttal has referenced Mr. Just's data, added pertinent facts, provided supporting documentation, and drawn conclusions in support of the applicant's request for adjusting the F2 zoning boundary to the east within the subject parcel.

Goal 4, Policy 15 includes four criteria or standards that were applicable in 1984 to determine whether a lot or parcel with a Forest plan designation was zoned F1 Nonimpacted Forest Land or F2 Impacted Forest Land.

15. *Lands designated within the Rural Comprehensive Plan as forest land shall be zoned Non-Impacted Forest Land (F-1, RCP) or Impacted Forest Land (F-2, RCP). A decision to apply one of the above zones or both of the above zones in a split zone fashion shall be based upon:*
 - a. *A conclusion that characteristics of the land correspond more closely to the characteristics of the proposed zoning than the characteristics of the other forest zone. The zoning characteristics referred to are specified below in subsections b and c. This conclusion shall be supported by a statement of reasons explaining why the facts support the conclusion.*
 - b. *Non-impacted Forest Land Zone (F-1, RCP) Characteristics:*
 - (1) *Predominantly ownerships not developed by residences or nonforest uses.*

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

The applicant's documentation in the record and staff evaluation support the findings and conclusions of the applicant as expressed on pages 2 and 3 in the applicant's final rebuttal (Exhibit # 28 in the PA 05-5060 record) dated October 11, 2005, and reproduced below with staff annotations.

The analysis of the Goal 4, Policy 15 characteristics for determining whether forested land is Nonimpacted (F1) or Impacted (F2) forest land requires four decisions based on (1) the level of development on the subject ownership, (2) acreage of the subject ownership, (3) acreage of the surrounding tracts generally contiguous to the subject ownership and proximity to developed and committed exception areas, and (4) the level of available public facilities and services.

These four general factors are paired below from corresponding criteria or standards in subsection "b." and "c." of Goal 4, Policy 15, followed by findings of fact from the applicant's final rebuttal and staff's annotations.

Factor 1: b. (1) *Predominantly ownerships not developed by residences or nonforest uses.* (F1), or
c. (1) *predominantly ownerships developed by residences or nonforest uses.* (F2)

Finding of Fact:

The applicants ownership consists of two parcels created as "Parcel #1" and "Parcel #2" of Partition M638-78 recorded in Lane County Deeds and Records on March 16, 1979 (Reel 980R, Inst. 7915364. "Parcel #2" is the 323.7-acre metes and bounds description of the subject parcel consisting of two tax lot 201 of TRS 19-04-14 (172.63 acres) and tax lot 300 of TRS 19-04-15 (151.4 acres). Parcel #1 of partition M638-78 was created as a 20-acre parcel and can be identified as TRS 19-04-14, tax lot 200, (20.85 acres). Tax lot 200 is enveloped by tax lot 201 on the western, northern and eastern boundaries and abuts Camas Swale Road to the south.

The subject parcel (Parcel #2) is developed with two lawfully existing residences. The primary residence constructed in 1979 per building permit LC 358-79 and has an assigned rural address of 30257 Camas Swale Road, Creswell, OR 97426. The second residence was constructed in 2001 per building permit BP 01-1809 as a Family Farm Help Dwelling authorized by special use permit PA 00-5878 on September 14, 2000, and has an assigned rural address of 30255 Camas Swale Road, Creswell, OR 97426. Both of the residences are located in the E40 zoning district and neither is located within the 26-acre area that is subject to this conformity determination application. Parcel #1 of M638-78 has been developed with residential use in 1942 with the current residence constructed 1970 with an assigned rural address of 30311 Camas Swale Road, Creswell, OR 97405.

Conclusion:

The Board of County Commissioners finds that the subject ownership is developed with three lawfully existing residences finds in favor of a designation of Impacted Forest Land (F2) for the 26-acre subject area pursuant to Policy 15.c.(1) criterion.

- Factor 2: b. (2) *Predominantly contiguous, ownerships of 80 acres or larger in size.* (F1), or
c. (2) *Predominantly ownerships 80 acres or less in size.* (F2)

Finding of Fact:

As documented in the finding of fact above, the subject ownership including both the subject parcel (Parcel #2) and the contiguous parcel (Parcel #1) is 343.68 acres in size.

Conclusion:

The Board of County Commissioners finds that the subject ownership is a contiguous ownership over 80 acres in size and finds in favor of a designation of Nonimpacted Forest Land (F1) for the 26-acre subject area pursuant to Policy 15.b.(2) criterion.

- Factor 3: b. (3) *Predominantly ownerships contiguous to other lands utilized for commercial forest or commercial farm uses.* (F1), or
c. (3) *Ownerships generally contiguous to tracts containing less than 80 acres and residences and/or adjacent to developed or committed areas for which an exception has been taken in the Rural Comprehensive Plan.* (F2)

Finding of fact:

Goal One Coalition identified 10 properties on page 4 of its written testimony dated September 30, 2005 (Exhibit 22, official record PA 05-5060) that it considered "contiguous" to the subject parcel. Refer to Attachment "A". In the applicant's final rebuttal (Exhibit 28, official record PA 05-5060), the applicant provided additional data on the ten properties and concluded that six of the 10 were less than 80 acres in size. The applicant also found that five of the six were developed with a residence.

The subject parcel is located along the northern right-of-way of Camas Swale Road and directly across the right-of-way from two developed and committed (D&C) exception areas identified as Plot No. 323-1 and Plot No. 323-2.

Using only the results of the analysis for the 10 selected properties would indicate that application would qualify under Policy 15 c. (3) above for designation as Impacted Forest land (F2). However, other "tracts" are "generally contiguous" to the subject parcel and have been omitted from the analysis because they are located across the public right-of-way of Camas Swale Road. Goal One Coalition interprets "contiguous" to mean the same as "generally contiguous" when an obvious distinction must exist between the two. Lane Code 16.090 includes a definition for "contiguous" to mean "Having at least one common boundary line greater than eight feet in length. Tracts of land under the same ownership and which are intervened by a street (local access, public, County, State or Federal street) shall not be considered contiguous." This definition was adopted to determine when an ownership pattern qualified as a "tract" to identify which lots or parcels qualified for or were limited in development provisions of zoning regulations. For that specific purpose, Lane County adopted the standard in LC 16.090 for establishing the yardstick for contiguous ownership of subject

properties. For example, identical legal owners on the deeds for two parcels sharing eight feet of common boundary line constitute a tract for development purposes. If a particular use was restricted under Lane Code to only one per tract and one of two parcels was developed with the use, the other parcel could not be approved for the same use as long as both parcels were in the identical legal ownership. The term “generally contiguous” goes beyond the “eight-foot” yardstick and this intent is clear in the criterion which includes “*and/or adjacent to developed or committed areas*” as a determining factor in Policy 27 c. (3) as to whether an ownership would qualify as F2 or F1. The “generally contiguous” wording indicates a broader meaning than provided for in LC 16.090 and points to “*and/or adjacent*”. A common sense interpretation would be “adjacent” with the definition of “adjacent properties may or may not be in actual contact with each other and they may be separated by a public road, but they are not separated by an intervening property.” Thus the analysis would look across the 60-foot right-of-way of Camas Swale Road and identify the 11 properties along the southern boundary of the subject parcel to conclude the cumulative impacts of the development pattern to or from the management of the subject parcel resources. It seems illogical or perhaps unreasonable to not include these properties aligned from west to east another the southern right-of-way of Hamm Road and Camas Swale Road in the analysis of Policy 15.c.(3). The complete listing of the 23 properties “adjacent” to the subject parcel are identified below:

TRS	Tax lot	Acreage	Zone	Address	Developed
19-04-14	100	70.36	E40	30549 Camas Swale Road, Creswell	1994
19-04-15	100	112.36	F1	(Seneca Jones Timber Co.)	
19-04-00	500	604.76	F1	(Guistina Land and Timber Co.)	
19-04-15	600	120.00	F1	(US Bureau of Land Management)	
19-04-15,	500	4.96	F2	29907 Hamm Road, (north side-Hamm)	2000
19-04-15,	700	4.75	F2	29983 Hamm Road, (north side-Hamm)	1950
19-04-15,	701	1.66	F2	(north side-Hamm)	
19-04-15,	801	4.65	F2	30047 Hamm Road, (north side-Hamm)	1990
19-04-15,	802	31.93	F2	30112 Hamm Road, (south side-Hamm)	1998
19-04-15	900	0.85	F2	30133 Hamm Road, (north side-Hamm)	1979
19-04-15,	1300	20.32	F2	83036 Weiss Road, (south side-Hamm)	1995
19-04-15,	1400	5.09	F2	83021 Weiss Road, (south side-Hamm)	1975
19-04-14,	701	5.22	RR5	30356 Camas Swale Road, (south-Camas)	1993
19-04-14,	704	5.26	RR5	30306 Camas Swale Road, (south-Camas)	1970
19-04-14,	706	25.53	F2	30394 Camas Swale Road, (south-Camas)	-unk-
19-04-14,	801	21.49	F2	30426 Camas Swale Road, (south-Camas)	1968
19-04-14	600	1.39	RR5	30538 Camas Swale Road, (south-Camas)	1987
19-04-14	601	5.36	RR5	30498 Camas Swale Road, (south-Camas)	1979
19-04-14	602	4.28	RR5	30494 Camas Swale Road, (south-Camas)	1993
19-04-14	1100	1.23	RPF	30450 Camas Swale Road, (south-Camas)	-unk- *Creswell Rural Fire Protection District station.
19-04-11	106	184.64	E40	30701 Camas Swale Road, (north-Camas)	-unk- *property extends north into Section 11.
19-04-14	400	0.55	E40	30545 Camas Swale Road, (north-Camas)	1973
19-04-14	2000	1.29	E40	(access road panhandle)	

Four of the 23 identified properties are over 80 acres in size and *utilized for commercial forest or commercial farm uses* under the criterion of Policy 15.b.(3). Nineteen of the 23 identified properties are less than 80 acres in size and 14 of the 19 are developed with residences and one is developed with a rural fire station.

Two developed and committed exception areas (Plot No. 323-1 and Plot 323-2) are adjacent along the southern boundary of the subject parcel.

Tax lots 701 and 704 of Assessor's Map TRS 19-04-14 within D&C Exception Area No. 323-1 abut Camas Swale Road to the north and tax lots 702, 703, 705, 707 and 709 within D&C Exception Area No. 323-1 abut Weiss Road to the west. In 1989, the Board of Commissioners adopted the boundaries of D&C 323-1, which in turn were acknowledged by Oregon Land Conservation and Development Commission to include six parcels and seven dwellings with a total acreage of 39.9 acres and an average parcel size of 6.65 acres. All of the parcels are zoned Rural Residential (RR5).

Tax lots 600, 601, 602, 1000 and 1100 of Assessor's Map TRS 19-04-14 within D&C Exception Area No. 323-2 abut Camas Swale Road to the north. In 1989, the Board of Commissioners adopted the boundaries of D&C 323-2, which in turn were acknowledged by Oregon Land Conservation and Development Commission to include five parcels and three dwellings with a total acreage of 20.6 acres and an average parcel size of 4.12 acres. Four of the parcels are designated Rural Residential (RR5) and the fifth parcel, tax lot 1100, was conveyed to the Creswell Fire Department in 1988, designated Rural Public Facility (RPF) by Board Order 88-7-13-24, and the fire station was constructed per BP 1943-88 in 1988.

Conclusion:

The Board of County Commissioners finds in favor of a designation of Impacted Forest Land (F2) for the 26-acre subject area pursuant to Policy 15.c.(3) criterion.

- Factor 4:** b. (4) *Accessed by arterial roads or roads intended primarily for forest management. Primarily under commercial forest management. (F1), or*
c. (4) *Provided with a level of public facilities and services, and roads, intended primarily for direct services to rural residences. (F2)*

Finding of Fact:

Camas Swale Road is classified as a "Rural Major Collector (Fed)" (County Road No. 695) and extends approximately 6.25 miles from the City of Creswell UGB, west to the intersection with Weiss Road on the southern boundary and at midpoint along the subject parcel. At that point it assumes the name, Hamm Road, and continues approximately four miles to the southwest to an intersection with Territorial Highway. It provides access for one fire station and 18 residential driveways to properties aligned along the southern boundary of the subject parcel. It passes through five developed and committed exception areas between Creswell and Territorial Highway and is the east-west collector for traffic from Weiss Road, Tolman Road, Clayton Road, Mickelson Road, Sher Khan Road, Danville Road, DeBerry Road, Howe Lane, and Florence Avenue, all of which service rural residential development. It has an average daily volume of 2,950 trips.

The subject parcel receives electrical services from Emerald Peoples Utility District and fire and emergency ambulance service from Cottage Grove Fire & Ambulance Department and the Creswell Fire Department. It receives police protection from the Lane County Sheriffs Department and is within the Creswell School District 40.

Development of the two residences on the subject parcel utilized individual onsite wells and subsurface sanitation disposal systems.

Conclusion:

The Board of County Commissioners finds in favor of a designation of Impacted Forest Land (F2) for the 26-acre subject area pursuant to Policy 15.c.(4) criterion.

11. 1,000 Friends of Oregon's written testimony submitted into the record on October 6, 2005 (Exhibit #24, official record PA 05-5060) and attached to this memorandum as Attachment "B", raises the following challenges to the authority of Lane County Board of Commissioners to amend Rural Comprehensive Plan and Zoning designations:

"I. Applicable Criteria" (pages 1-2, Attachment "B")

1,000 Friends' statements: The 1,000 Friends' testimony raises the question as to whether Goal 4, Policy 15 is applicable to the applicant's request for adjustment of the common line between the F2 and E40 district boundaries.

Response: This subject is addressed in Findings of Fact No. 9 and 10, above.

"II. Procedural requirements" (pages 2-3, Attachment "B")

1,000 Friends' statement: "This application is not part of and does not result from an annual Lane County initiated review process. Therefore it is not appropriate to use the standards and procedures of Goal 2 Policy 27 to review this application." (page 2, Attachment "B")

Response: The applicant's request for a conformity determination amendment was submitted on January 18, 2005 and designated for processing as PA 05-0560. The applicant's agent was notified on January 24, 2005, that through an apparent scrivener error, a portion of the submitted findings was incomplete and required attention. The applicant supplemented the record on June 1, 2005. The application, PA 05-5060, complied with the submittal standards, was deemed complete by LMD staff, and after compliance with the formal notice requirements, was scheduled for public hearing before the Lane County Planning Commission on September 20, 2005. Under the Board's direction, staff shall continue to process conformity determination applications pursuant to Goal 2 Policy 27 as expeditiously as possible.

1,000 Friends' statement: "This application is incomplete. This is because the requirements of Goal 4 Policy 15 have not been identified or addressed. As such, the application should be rejected." (page 3, Attachment "B")

Response: This subject is addressed in Findings of Fact No. 9 and 10, above.

"III. Substantive standards and criteria" (pages 3-4, Attachment "B")

1,000 Friends' statement: "The only basis for invoking Goal 2 Policy 27 is that the 1984 zoning did not recognize a lawfully existing use." (page 3, Attachment "B").

Response: The opponent apparently paraphrases the opening statement in Policy 27: *Conformity Determinations. Lane County will annually initiate and process applications to correct identified plan or zoning designations in the RCP Official Plan and Zoning Plots resulting from the Official Plan or Zoning Plots not recognizing lawfully existing (in terms of the zoning) uses or from inconsistencies between the Official Plan and Zoning Plots.*

Goal 2, Policy 27 b. i.-viii. provides for eight circumstances under which a Conformity Determination application could be filed by a property owner for review by the Board of Commissioners. Only three of the eight circumstances include any reference to a specific date, time period, or time line for consideration. Policy 27 provides equal opportunity for a private citizen or public agency to seek amendment of a zoning designation for a number of reasons in an attempt to insure that the Rural Comprehensive Plan remains a dynamic plan capable of responding to circumstances that warrant action. The circumstance within Policy 27 b. iii., which the applicant has applied under, states: *A property was actively managed primarily as either an agricultural or forestry operation in 1984 and since, and a resource designation other than the primary use was adopted on an Official Plan or Zoning Plot in 1984.* A “property” is not the same thing as a “lot” or “parcel” which have a narrower definition reflecting the manner of creation. This property is a specific piece of land or real estate. The land, in this case, is the 198.63-acre forest management unit that includes the subject 26 acres. Documentation in the record of PA 05-5060 has established the forest management practices in 1979 and over a 26-year period of time into 2005.

Consideration under Policy 27 is not restricted to just recognizing “a lawfully existing use”. The Policy’s eight circumstances review the status of “structural development” and “use of the structure” (b. i.); amendment of a forest zoning designation (b. ii.); amendment of farm to forest designations (b. iii.); correction of scrivener errors (b. iv.); recognition of survey boundary line errors (b. v.); compliance with deed restrictions (b. vi.); inconsistencies between text and diagrams (b. vii.); and finally, another a circumstance not provided for in b. i.-vii., the LCPC can review a unique request and elect to forward a favorable recommendation to the Board of County Commissioners.

1,000 Friends’ statement: “The unit of inquiry for this application should be the subject parcel. In fact, Goal 2 Policy 27 asks if ‘[a] property was actively managed primarily as either an agricultural or forestry operation in 1984 and since [.]’ This establishes that the parcel is the unit of inquiry. State law also requires a full-parcel rather than a sub-parcel analysis.” (page 3, Attachment “B”).

Response: The subject parcel was created as a lawful parcel, Parcel #2, 323.7 acres in size, in a recorded partition M638-78 (1979). The subject parcel was split zoned by the Board of County Commissioners in 1984 with the western 172.63 acres being designated as Impacted Forest Land (F2) and eastern 151.4 acres being designated as Exclusive Farm Use (E40). The application requests that the 1984 rationale recognizing the forest management unit to the west and the grazing unit to the east be amended to reflect the actual boundaries of the documented forest unit from 172.63 acres to approximately 198.63 acres and the grazing unit be reduced from 151.4 acres to 125.4 acres. The amending of the acreages between the zones would not provide any additional opportunity to create new parcels in either of the two zoning designations. The F2 zone has a minimum division standard of 80 acres with the creation of two parcels under either 172.63 or 198.63 acres. The E40 zone has a minimum division standard of 40 acres with the creation of three parcels under either the 151.4 acres or the 126.4 acres. Fifty-three percent of the subject parcel is currently designated as Forest and zoned F2. The applicant is requesting that the F2 portion of the subject parcel be expanded to 60.7 percent encompassing the entire forest management unit.

1,000 Friends’ statement: “OAR 660-033-0030(2) does not allow portions of existing parcels that are predominantly class I-IV soils to be analyzed on a sub-parcel basis. Although it is not possible to tell from the available information whether TL 201 is predominantly agricultural soils

or forest soils, it is clear that it is the entirety of the tax lot that is the proper subject of the required inquiry.” (page 4, Attachment “B”).

Response: The review of the amendment request is not solely based on subsection (2) of OAR 660-033-0030 or the definitions for Agricultural Land found in OAR 660-033-0020 that it references. More than one resource zone was considered in 1984 and one than one resource zone is subject to review in this application. The second resource zone is of course, Forest Land, which is implemented in OAR 660-006. Neither OAR or Goal 3 or 4 for that manner trump the other. The purpose of both Goals and their implementing administrative rules is to conserve resource land. OAR 660-0033 addresses the conservation of agricultural land. OAR 660-006 addresses the conservation of forest land. In fact in the *Purpose* statements, OAR 660-006-0000(3) clearly reads:

This rule provides for a balance between the application of Goal 3 “Agricultural Lands” and Goal 4 “Forest Lands”, because of the extent of lands that may be designated as either agricultural or forest land.

OAR 660-006 charges the “governing body” at the local level to make the determination on whether the land is agricultural or forest. To this end, OAR 660-006-0000(2) states:

(2) *To accomplish the purpose of conserving forest lands, the governing body shall:*

(a) *Designate forest lands on the comprehensive plan map as forest lands consistent with Goal 4 and OAR Chapter 660, Division 6.*

The subject parcel, known as the Walsh Ranch, included two sizable resource management units and the Board of County Commissioners in 1984, initially drew the line between the two designations of F2 and E40 down the section line between Sections 14 and 15. The applicant has requested an amendment and the Board has the right under Goal 3 and Goal 4 to amend that line to reflect the well-defined management units within the subject parcel as they were then and continue to be today.

OAR 660-006-0015(2) addresses the issue of which resource designation to apply:

(2) *When lands satisfy the definition requirements of both agricultural and forest land, an exception is not required to show why one resource designation is chosen over another. The plan need only document the factors that were used to select an agricultural, forest, agricultural/forest, or other appropriate designation.*

12. This conformity determination application is a Minor Amendment pursuant to Lane Code 16.400(6)(h) and involves a zone change subject to Lane Code 16.252. No exception to any Goal, resource or otherwise is necessary. This application simply requests a Plan diagram amendment from Agricultural to Forest and a Zoning diagram amendment from Exclusive Farm Use (E40) to Impacted forest Land (F2). The applicant’s documentation in the PA 05-5060 official record [Exhibit 1 -- Application PA 05-5060 (Walsh)] supports the following findings of fact:

- A.. The 1979, 2000 and 2004 aerial photographs in “Attachment E” to Exhibit #1 and Exhibit #13 (LMD staff report 9-9-05) show that the subject 26 acres of tax lot 210 (TRS 19-04-14) of the subject parcel were primarily managed for forestry in 1984 in conjunction with the 172.63 acres of tax lot 300 (TRS 19-04-15) of the subject parcel, and have been primarily managed for forestry since 1984.
- B. The photographs in “Attachment F” to Exhibit #1 show that 198 acres of the subject parcel including the 26-acre area subject to this amendment request are currently being managed for forest-fiber production as evidenced by the maturing stands of conifer trees.

- C. The NRCS soil map and soil data in "Attachment G" shows the 26-acres subject to the PA 05-5060 amendment request are predominately underlain with Bellpine soils (11D with 12-20% slopes and 11F with 30-50% slopes) with a site index of 115 and 163 cubic feet per acre per year forest rating. The northeastern corner of the 26-acres also includes Rock outcrop – Witzel complex soils (116G with 10-70% slopes), which do not have a site index or productivity rating. Soils in the southwestern corner of the 26-acres are underlain with Chehulpum soils (28C with 3-12% slopes and 28E with 12-40% slopes), which do not have a site index or productivity rating. Approximately 95% of the 26 acres are covered with a closed canopy of mature conifers. An estimated 60% of the 26 acres is underlain with Bellpine soils with approximately half being in (11C) and half in 11F.
- D. The NRCS soil map and soil data in "Attachment G" shows the 26-acres subject to the PA 05-5060 amendment request are predominately underlain soils with an Agricultural Capability Class of 6. The analysis by soil type is: Bellpine (11C) – Class 3; Bellpine (11F) – Class 6; Chehulpum (28C) – Class 6; Chehulpum (28E) – Class 6; Rock outcrop/Witzel complex (116G) – Class 8. Only the Bellpine (11C) soils which compose approximately 30% of the 26 acres have Capability Class of higher than 6.
- E. "Attachment Q" of Exhibit 1 is a copy of the "Assessment and Taxation Agricultural Rent Zones" Map 2 and page 25 from the Lane County Agricultural Lands Working Paper. The subject parcel is located in an Agricultural Rent Zone 3 area. Agricultural uses in Rent Zone 3 consist primarily of range land based on three factors: water availability, predominant soil type, and distance to market. Lane County General Plan Policy, Goal 3: Agricultural Lands, Policy 2 states:

2. *In Agricultural Rent Zones 1 and 2 preference will be given to Goal 3. In Rent Zone 3, unless commercial agricultural enterprises exist, preferences will be given to Goal 4.*

The 26-acre area of the subject parcel is in forest use and a Rent Zone 3 Area. The connectivity with the 172.63 acres under common forest management supports amendment of the zoning boundary and is consistent with this Plan Policy.

- F. Lane County General Plan Policy, Goal 4: Forest Lands, Policy 2 states:

2. *Forest lands will be segregated into two categories, Non-impacted and Impacted and these categories shall be defined and mapped by the general characteristics specified in the Non-Impacted and Impacted Forest Land Zones General Characteristics.*

The record has established the fact that 198.63 acres of the 323.7-acre subject parcel are forested and under forest management. 172.63 acres of the forested area were designated Impacted Forest Land (F2) by the Board of County Commissioners in compliance with *Impacted Forest Land Zones General Characteristics* and acknowledged by LCDC in 1984. This request for a conformity determination would add approximately 26 acres to the existing 172.63 acres to bring the entire forested land of the subject parcel into the F2 designation. The applicant's request is consistent with this Plan Policy.

- G. The *General Purpose* statements of Lane Code 16.003(1), (4) and (10) are applicable to this application request:

- (1) *Insure that the development of property within the County is commensurate with the character and physical limitations of the land and, in general, to promote and protect the public health, safety, convenience and welfare.*

(4) Conserve farm and forest lands for the production of crops, livestock and timber products.

(10) Protect the quality of the air, water and land resources of the County.

The applicant's proposal recognizes the current resource management practices and the conservation of significant natural resources present on the subject parcel. Based on the record of PA 05-5060, the Forest Land Designation is more consistent with the existing onsite land uses. To ensure compatibility with surrounding lands, recording of a "Farm/Forest Management Agreement" would be required by the subject parcel owner as a condition of approval for any development authorized in a Special Use Permit decision. The applicant's amendment request is compatible with the General Purpose statements of Lane Code 16.003(1), (4), (10).

The *Purpose* statements of the Impacted Forest Land Zone (F2) in Lane Code 16.211(1) states:

- (1) The purposes of the Impacted Forest Lands Zone (F-2, RCP) are:*
- (a) To implement the forest land policies of the Lane County Rural Comprehensive Plan and the forest land policies of the Eugene/Springfield Metro Plan Area General Plan; and*
 - (b) To conserve forest land for uses consistent with Statewide Planning Goal #4, OAR 660-006 and ORS 215.700 through .755.*

Statewide Planning Goal 4 requires that forest lands be conserved for forest uses. Lane County's Rural Comprehensive Plan Policies and Impacted Forest Land Zone (F2) are acknowledged to be in compliance with Goal 4. Based on the supporting documentation in the record of PA 05-5060, the proposed designation and zoning of the 26-acre area in the subject parcel as Forest Land and Impacted Forest Land Zone (F2) is consistent with Goal 4, OAR 660-006 and ORS 215.700 through .755.

Conclusion

The Lane County Board of Commissioners finds that the preponderance of evidence in the record of PA 05-5060 supports the applicant's request for amendment of the Plan designation from Agricultural (A) to Forest (F) and the Zoning designation from Exclusive Farm Use (E40) to Impacted Forest Land (F2) for the 26-acre subject area of the 198.63-acre portion of the subject parcel, which was primarily in forest management in 1984 and currently is managed primarily as a forest management unit.

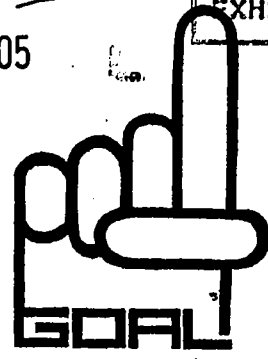
Attachments

- A. Jim Just, Goal One Coalition, dated 9-30-05, received 10-03-05.
- B. 1,000 Friends of Oregon, dated 9-20-05, received 10-06-05.
- C. Jim Mann (for the applicant) dated and received 10-11-05.
- D. Composite: Official Zoning Maps – Plot No. 312 and Plot No. 323.

FILE # PA 05-5060
EXHIBIT # 22
SPR
10/3
ATTORNEYS

GOAL ONE COALITION

REC'D OCT 04 2005



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September 30, 2005

Lane County Planning Commission
Land Management Division
125 East 8th Avenue
Eugene, OR97401

RE: Conformity Determination, PA 05-5060, Walsh

Dear Members of the Commission:

The Goal One Coalition (Goal One) is a nonprofit organization whose mission is to provide assistance and support to Oregonians in matters affecting their communities. Goal One is appearing in these proceedings at the request of and on behalf of its membership residing in Lane County. This testimony is presented on behalf of LandWatch Lane County and its membership in Lane County, the Goal One Coalition, and Jim Just as an individual. The purpose of this letter is to address the issue of whether F1 or F2 zoning is appropriate, should the Planning Commission determine that redesignating the area from Agriculture to Forest is warranted.

I. Nature of the request and site description

The applicant is requesting that the plan map designation of a 26-acre portion of an approximately 151.5-acre parcel be changed from Agriculture (A) to Forest (F) and that the zoning be changed from Exclusive Farm Use (E40, RCP) to Impacted Forest Lane (F-2, RCP). The subject parcel is identified as 19-04-14 TL 201. If the request were to be approved, the subject TL 201 would be split zoned. The property owners also own the adjacent TL 200, 20.85 acres, zoned EFU-40; and 19-04-15 TL 300, approximately 168 acres, designated Forest and zoned F2. The entire 343.7 acre tract is known as the Walsh Ranch. Livestock and commercial trees are raised on the tract. Approximately 207 acres are planted with fir trees, 97 acres are in livestock (cattle), 20 acres are in hay production, 20 acres are planted with poplars, and 10 acres are in residential use. TL 201 contains a single-family dwelling, which was constructed in 1979, with a site address of 30257 Camas Swale Road, Creswell. A family member farm accessory dwelling was approved in 2000 to allow for on-site assistance with the farm operation. It appears that the land containing the dwellings would continue to be designated Agriculture (A) and zoned E40.