

W.T.C.
SUPPLEMENTAL MATERIAL

SUPPLEMENTAL MEMO

DATE OF MEMO: July 10, 2006
TO: Board of County Commissioners
FROM: Jerry Kendall ^{JK} Land Management Division
RE: **ORDINANCE NO. PA 1231 -- IN THE MATTER OF AMENDING THE RURAL COMPREHENSIVE PLAN TO REDESIGNATE LAND FROM "AGRICULTURAL" TO "MARGINAL LAND" AND REZONING OF THAT LAND FROM "E-40/EXCLUSIVE FARM USE" TO "ML/SR" ("MARGINAL LAND WITH SITE REVIEW"), AND ADOPTING SAVINGS AND SEVERABILITY CLAUSES (file PA 04-6092, Dahlen)**

Scheduled board date for fourth reading/deliberation is July 12, 2006.

Background:

The Board conducted the 2nd reading and public hearing on April 19. The record was left open for Applicant's final written rebuttal. However, the rebuttal contained new evidence, so at the 3rd reading, the Board reopened the record to accept that evidence, and to allow any party to comment on the same and for Applicant's final rebuttal, thus precluding procedural problems.

Jim Just of the Goal One Coalition subsequently submitted materials on June 14 (Attachment #1). The Applicant had until June 21 to provide final rebuttal, but chose not to do so. The record is now closed, and the Board is to deliberate and vote on the proposal.

Staff has reviewed the Goal One submittal of June 14, and found that the issues raised therein have already been adequately addressed in the Applicant's findings submitted on May 10 (Attachment #2, and previously provided to the Board via supplemental memo dated May 22).

Comment on findings:

The Board may recall that staff took issue with the Applicant's original findings regarding the interpretation of ORS 197.247(1)(a) and an aspect of the Board's 1997 guideline for Marginal Lands. Compare items #3 and #4 on page 15 of staff's recommended findings (Attachment #3) with the same numbered items on page 16-17 of the Applicant's proposed findings (Attachment #2). Other than these changes, staff's version is essentially identical with the Applicant's.

The staff dispute with the Applicant's findings in regards to the above items was previously discussed in the Agenda Cover Memo dated March 20, 2006, and at the 2nd reading, and so is not repeated herein. Please refer to page 5-7 of that memo, for that discussion.

Since the Applicant's subsequent and revised findings of May 10 retained their original position in regard to the two above items, staff accordingly edited those items, reverting to the same wording offered by staff in the prior staff version.

Conclusion:

Staff recommends approval of the proposal, using the staff generated findings (Attachment #3).

Please contact me at x4057 if you have any questions or comments.

Attachments:

1. Jim Just submittal of 6-14-06—30pp.
2. Applicant's findings of 5-10-06—28pp.
3. Staff's recommended findings—27pp.

GOAL ONE COALITION



Goal One is Citizen Involvement

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

JUN 14 2006

June 14, 2006

RE: PA 04-6092, Dahlen marginal lands application: response to new evidence submitted

Dear Commissioners:

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 Lu Walker, 85861 S. Willamette, Eugene, OR 97405 and Jim Just as individuals.

I. Response to issues raised in Setchko letter of May 4, 2006.

A. Stocking levels

Mr Setchko argues that establishing fully stocked stands of timber on the subject property would be "difficult" due to conditions existing on the subject property. Mr. Setchko fails to explain what "fully stocked" means.

Stocking levels differ depending on the potential productivity of the soils present: stocking standards are higher for more productive soils, and lower for less productive soils.¹ ODF's

¹ "Reforestation," *Forest Practice Notes* Number 2 (Revised), Forest Practices Program, Oregon Department of Forestry, December 1994, p. 3. See Exhibit 5.

OAR 629-610-0020 establishes reforestation stocking standards that vary depending on the potential productivity of the soils present, as follows:

- "(4) For Cubic Foot Site Class I, II and III forestlands (capable of producing at least 120 cubic feet per acre per year at culmination of mean annual increment), the minimum tree stocking standards are:
 - "(a) 200 free to grow seedlings per acre; or
 - "(b) 120 free to grow saplings and poles per acre; or
 - "(c) 80 square feet of basal area per acre of free to grow trees 11-inches DBH and larger; or
 - "(d) An equivalent combination of seedlings, saplings and poles, and larger trees as calculated in section (7) of this rule.

GOAL ONE COALITION

Mr. Setchko states that Goal One's calculations "inflate" the income potential of the forest operation "by anywhere from 40-60%." Goal One has used the grading assumptions for Douglas-fir and ponderosa pine suggested by Mr. Setchko himself, for both Douglas-fir and ponderosa pine; Mr. Setchko now attacks his own assumptions and calculations. Mr. Setchko points out the difficulties with available tables and data, but does not offer any of his own. He complains that the tables used to determine yield in board feet are "east side" tables that assume 16' log lengths, yet then contradictorily argues that west side mills that won't accept ponderosa pine require 32' logs.

It is the applicant's burden to establish that the criteria are met. An applicant cannot rely on the absence or inadequacy of information to support findings of compliance. If the applicant's expert believes the data and evidence provided by Goal One is inadequate, it is not sufficient for the applicant to attempt to discredit that data and evidence. The applicant must provide substantial evidence concerning yield and income potential for ponderosa pine.

Even if Mr. Setchko's objections were to be substantiated, his conclusions do not refute Goal One's conclusions that the property is capable of exceeding the \$10,000 income threshold for marginal land. Mr. Setchko argues that Goal One has overstated potential income by "anywhere from 40-60%." Even if Mr. Setchko's most extreme estimate were substantiated and found to be accurate and the property was capable of producing only 40% of the income shown in Goal One's analysis, the forest operation would exceed the \$10,000 threshold even assuming a 50-year growth cycle: $\$26,576$ (Goal One's figure) $\times .40 = \$10,304$. A 60-year cycle would yield $\$32,147 \times .40 = \$12,859$. A 100-year cycle would yield $\$40,878 \times .40 = \$16,351$.

The income calculations provided by Mr. Setchko do not consider ponderosa pine. ORS 197.247 requires that "merchantable timber" be considered. Ponderosa pine is considered to be merchantable timber in Oregon and specifically in the Willamette Valley.² Any inquiry into the income potential of a forest operation must consider potential income from managing for ponderosa pine on appropriate soils.

Mr. Setchko has argued that the grading assumptions used by Goal One are too optimistic, and that a more realistic "camprun" price for ponderosa pine (assuming 10% 4S, 70% 5S and 20% 6S) "for the time period" would be \$190/mbf. Mr. Setchko does not explain what he means by "for the time period." In the previous paragraph he concedes: "In a 100-year rotation it is possible to have a high percentage of 4S, in a 50 or 60 year rotation the percentage of 4S would be extremely small, most likely less than 20% is for lower." Mr. Setchko has not included any information in the record to support his assertions regarding grades that could be expected to be realized.

² See Exhibit 1, email from Kevin Birch, ODF Senior Policy Analyst, Forest Resources Planning, to Jim Just, Executive Director, Goal One Coalition; and Exhibit 2, "Efforts well underway to reestablish ponderosa pine in the Willamette Valley," *Forest Log, Newsletter of the Oregon Department of Forestry*, Spring 2006, pp. 10-11. As the *Forest Log* article points out, ponderosa pine, once abundant in the Willamette Valley, has declined, in part due to extensive harvesting following settlement in the 1850s. The article recognizes that, as there is little current supply, logs must be shipped to the eastside or to southern Oregon. However, commercial plantings now account for more than one million trees per year. The article recognizes that as these trees mature a local market will develop: "As the millions of currently planted trees come on line in 30-40 years, this new raw material should stimulate a better market."

The productivity information available on the NRCS website is based on a 50-year site index. This is not the same thing as a 50-year rotation. A 50-year site index is the expected average height of a tree of the subject species at 50 years of age. A 100-year site index is the expected average height of a tree of the subject species at 100 years of age. Volume in cf/ac/yr is measured at culmination of mean annual increment, not at an arbitrary 50 or 100 years of age.³

The 50-year site index tables on the NRCS website assume CMAI for cf/ac/yr productivity for Douglas-fir is generally reached at 90 years of age, not 50.⁴ The 100-year tables show a CMAI somewhat dependent on forestland productivity – CMAI is reached at a slightly older age in less productive soils than for soils with a site index of 90 or above.

Importantly, CMAI as pertains to cf/ac/yr productivity is not the same as CMAI for maximizing yield. CMAI age for scribner board feet/ac/yr varies more as a function of soil productivity than CMAI for cf/ac/yr productivity, from 160 years for the least productive soils to as little as 90 years for the most productive soils.

The same patterns are seen for ponderosa pine: CMAI for cf/ac/yr productivity is age 60 for the least productive soils, decreasing to age 40 for the most productive soils. CMAI for bf/ac/yr productivity is age 200 for the least productive soils, decreasing to age 90 for the most productive soils.

In all cases, CMAI for bf/ac/yr is much greater than for cf/ac/yr productivity. This intuitively makes sense, because there is better yield for lumber, and less waste, from larger logs.

To maximize income rather than cf/ac/yr productivity over the growth cycle, a forest operator would harvest at CMAI for bf/ac/yr. There may be many reasons a forest operator might choose to harvest at a different point in the growth cycle – cash flow needs, price spikes or dips, need to keep employees busy or a mill operating, financing of land transactions, etc. However, the inquiry required by ORS 197.247(1)(a) requires that the operation's *capability* to produce income be determined. That an operator might choose not to maximize average annual gross income over the growth cycle is not relevant.

D. Dixonville-Hazelair-Philomath complex

Mr. Setchko states that the Dixonville-Hazelair-Philomath unit is “a complex because it is too difficult to separate.” Mr. Setchko erroneously refers to this unit as a “soil type” rather than a “map unit.”

The NRCS *Soil Survey of Lane County Area, Oregon (Soil Survey)* at p. 21 states:

“Some map units are made up of two or more major soils or miscellaneous areas. These map units are complexes.

“A complex consists of two or more soils or miscellaneous areas in such an intricate pattern or in such small areas that they cannot be shown separately on the maps. The

³ See Exhibit 3, “Culmination of Mean Annual Increment for Commercial Forest Trees of Oregon,” *Technical Notes*, U.S. Department of Agriculture Soil Conservation Service, June 1986.

⁴ See Exhibit 3-2 – 3-5, CMAI tables for Douglas fir, and 3-6 – 3-9 for ponderosa pine. See also Exhibit 4, an excerpt from the NRCS *Soil Survey of Douglas County Area, Oregon*, published in 2004, which also uses CMAI 90 for 50-year site index tables and CMAI 60 for 100-year site index tables.

GOAL ONE COALITION

It is the applicant's burden to establish through substantial evidence in the record that the income and productivity tests are met. The applicant has failed to do so. Therefore the application must be denied.

Goal One and other parties whose addresses appear in the first paragraph of this letter request notice and a copy of any decision and findings regarding this matter.

Respectfully submitted,

/s/ Jim Just

Jim Just
Executive Director

EXHIBIT 2

FOREST • LOG

NEWSLETTER OF THE OREGON DEPARTMENT OF FORESTRY • SPRING 2006



Inside:

Ponderosa pine in the
Willamette Valley

Oregonians are committed to
coho habitat

Board adds invasive species,
certification to priorities

Adaptive management and
State Forests

City of Tigard is a Tree City USA

Fire Safety

Efforts well underway to reestablish ponderosa pine in the Willamette Valley

Cynthia Orlando, ODF Public Affairs Specialist

Since 1850, the presence of Willamette Valley ponderosa pine has declined due to harvesting, land conversion for urban and agricultural uses, and forest succession. It is also thought that the exclusion of fire from the valley has allowed other species to thrive, and has prevented the regeneration of ponderosa pine.

In 1996, concern about the dwindling supply of native Willamette Valley ponderosa pine and the realization that the local source could not be replaced with eastside sources led to the formation of the *Willamette Valley*

common along rivers and sloughs on some fairly wet sites. Valley ponderosa pine is currently being planted on very dry sites, as well as on wet sites where Douglas-fir does not do well. Like other conifers, it responds well to weeding and fertilization, but is not tolerant of certain common herbicides, so care needs to be taken in applying chemicals around new plantings.

The potential to grow ponderosa pine on soils that are considered marginal for other tree species is significant. Thousands of potential planting sites exist across the Willamette Valley, and in many areas, pine plantations can coexist quite well with livestock grazing or other rural land uses. By planting pine, farmers and small family forestland owners are hoping to reap substantial economic and ecological benefits in future years.

One thing is certain: the genetics of ponderosa found west of the Cascades is different from that of its counterpart in Eastern Oregon. "If you plant ponderosa west of the Cascades, make sure you're not using an eastern seed source because your trees will start to die out in 20 - 25 years," says Bob McNitt, executive director of the Willamette Valley Ponderosa Pine Conservation Association. Indeed, a study done near Corvallis indicates that while trees grown from eastern seed sources may survive 15 to 20 years, they aren't likely to reach mature size and may become carriers for all sorts of pine pests.

Planting

Make sure your site is free of weeds and grass for the first few years. Competing vegetation puts moisture stress on newly planted trees and is a primary cause of plantation failure. Whether you use herbicides, mulch mats, or hoeing, you must control vegetation to ensure the seedlings' survival and growth. An adequate weed-free space around each tree generally is thought to be a radius of about two to three feet for the first three years. Common spacing for newly

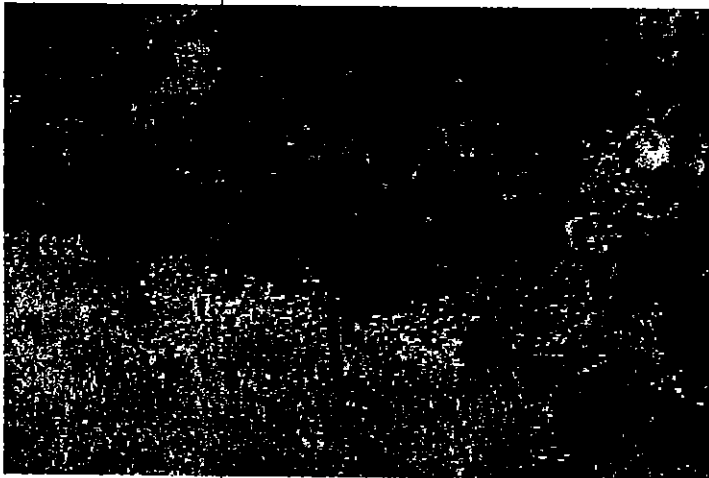


Photo by Mike Barsotti, ODF

Foreground — Valley ponderosa pine saplings established on a Yamhill County farm as part of a thirty-six acre FRT project. The project also included establishment of Douglas-fir on a field and restoration of an Oregon white oak site.

Ponderosa Pine Conservation Association (WVPPCA). This group seeks to reestablish the native strain of Willamette Valley ponderosa pine for genetic conservation and future timber, wildlife, and urban uses.

One of the first projects WVPPCA members undertook was the mapping of ponderosa pine stands found throughout the Willamette Valley. The association has mapped more than 900 stands between Beaverton and Cottage Grove. Willamette Valley ponderosa pine seems to reach its maximum growth potential on the deep, well-drained farm sites near the Willamette Valley floor, and generally, native pine are found only at elevations below 1,000 feet. Ponderosa pine is commonly associated with oaks on drier sites and is

TECHNICAL NOTES

34-C-OR

U.S. DEPARTMENT OF AGRICULTURE

Portland, Oregon

SOIL CONSERVATION SERVICE

FORESTRY NO. 2 Revised

June 1986

CULMINATION OF MEAN ANNUAL INCREMENT FOR COMMERCIAL FOREST TREES OF OREGON

The productivity of a particular soil is of considerable importance to land managers. The most common expression of productivity on forestland is site index (total height of trees in the dominant crown canopy at a base age, usually 50 or 100 years). Service employees recognize the significance of site index in relative terms, that is, land with a site index of 160 is more productive than site index 140, but less productive than site index 180. However, most technical materials refer to site index without explaining what it represents in terms of cubic feet or board feet volumes.

The attached tables, express site index in such a way it can be related to volumes. It is necessary, for comparative purposes, to use a method that expresses one value for each site index. The method chosen is culmination of mean annual increment (CMAI).

This age or point may be thought of as the most efficient time to harvest as far as tree growth is concerned. Other factors, such as stumpage values, taxes, interest rates, and management objectives affect the "art" of choosing when to harvest.

In the following tables, the culmination of mean annual increment (CMAI) and the age when it occurs is shown for the corresponding site indices. For example, using a site index of 156 for Douglas-fir, the following volumes can be expressed:

1. A 60 year old stand will produce 165 cubic feet volume per acre per year at CMAI, or 9,900 (60x165) total cubic feet volume.
2. A 100 year old stand will produce 780 board feet (Scribner) volume per acre per year at CMAI or 78,000 (100x780) total board feet volume.

CHAI FOR DOUGLAS FIR

100 YR. TABLE
(PSME)
790-MEARDLE

SCRIBNER

(INTER. 1/8")

SITE INDEX	100 YR. TABLE (PSME)		790-MEARDLE		SCRIBNER (INTER. 1/8")		WEST SIDE 50 YR. (PSME)		EAST SIDE 50 YR. (PSME)	
	CU.M./HA./YR.	TOTAL IBD.FT./AC./YR.	AGE	TOTAL IBD.FT./AC./YR.	AGE	TOTAL IBD.FT./AC./YR.	CU.M./HA./YR.	TOTAL IBD.FT./AC./YR.	CU.M./HA./YR.	TOTAL IBD.FT./AC./YR.
90	70	4.9	60	199	160	373	110	116	90	104
91	72	5.0	60	206	160	382	110	118	90	107
92	73	5.1	60	212	160	391	110	120	90	109
93	74	5.2	60	219	160	401	110	122	90	112
94	75	5.3	60	225	160	410	110	123	90	114
95	77	5.4	60	232	160	420	110	125	90	117
96	78	5.5	60	238	160	429	110	128	90	120
97	79	5.5	60	244	150	438	110	130	90	122
98	81	5.7	60	251	150	448	110	132	90	125
99	82	5.7	60	258	150	457	110	134	90	127
100	84	5.9	60	265	150	467	100	136	90	130
101	85	5.9	60	273	150	478	100	138	90	133
102	86	6.0	60	280	150	490	100	140	90	136
103	88	6.2	60	288	150	501	100	141	90	139
104	89	6.2	60	296	150	512	100	143	90	142
105	91	6.3	60	304	150	524	100	145	90	145
106	92	6.4	60	312	150	535	100	147	90	148
107	94	6.6	60	320	140	547	100	149	90	151
108	95	6.6	60	329	140	558	100	150	90	154
109	97	6.8	60	337	140	569	100	152	90	157
110	98	6.9	60	345	140	581	100	154	90	160
111	100	7.0	60	354	140	594	100	156	90	160
112	101	7.1	60	363	140	606	100	158	90	160
113	103	7.2	60	372	130	619	100	160	90	160
114	105	7.3	60	381	130	631	100	162	90	160
115	106	7.4	60	390	130	644	90	163	90	163
116	108	7.6	60	399	130	656	90	167	90	167
117	110	7.7	60	408	130	669	90	169	90	169
118	111	7.8	60	418	130	681	90	171	90	171
119	113	7.9	60	427	130	694	90	173	90	173
120	115	8.0	60	437	120	710	90	175	90	175
121	116	8.1	60	446	120	723	90	176	90	176
122	118	8.3	60	456	120	736	90	178	90	178
123	119	8.3	60	465	120	749	90	180	90	180
124	121	8.5	60	475	120	762	90	182	90	182
125	122	8.5	60	485	120	776	90	184	90	184
126	124	8.7	60	494	120	789	90	186	90	186
127	125	8.7	60	504	120	802	90	188	90	188
128	127	8.9	60	513	120	815	90	190	90	190
129	128	9.0	60	523	120	828	90	191	90	191

11 CMAI FOR DOUGLAS FIR

100 YR. TABLE
(PSME)
790-MCARDLE

SITE INDEX	DU.FT./ AC./YR.	CU.M./ HA./YR.	TOTAL AGE	SUBSCRIBER AC./YR.	TOTAL AGE	INTER. 1/8"	
						BD.FT./ AC./YR.	TOTAL AGE
170	181	12.7	60	904	100	1285	80
171	182	12.7	60	912	100	1295	80
172	183	12.8	60	921	100	1305	80
173	184	12.9	60	930	100	1315	80
174	185	12.9	60	938	100	1325	80
175	186	13.0	60	946	100	1336	80
176	187	13.1	60	955	100	1346	80
177	188	13.2	60	964	90	1356	80
178	189	13.2	60	973	90	1366	80
179	190	13.3	60	982	90	1376	80
180	191	13.4	60	991	90	1386	80
181	192	13.4	60	1000	90	1395	80
182	193	13.5	60	1009	90	1404	80
183	194	13.6	60	1018	90	1413	80
184	194	13.6	60	1027	90	1422	80
185	195	13.6	60	1036	90	1431	80
186	196	13.7	60	1044	90	1440	80
187	197	13.7	60	1053	90	1449	80
188	198	13.9	60	1062	90	1458	80
189	199	13.9	60	1071	90	1467	80
190	200	14.0	60	1080	90	1476	80
191	201	14.1	60	1088	90	1484	80
192	202	14.1	60	1097	90	1493	80
193	202	14.1	60	1105	90	1501	80
194	203	14.2	60	1114	90	1509	80
195	204	14.3	60	1122	90	1518	80
196	205	14.3	60	1131	90	1526	80
197	206	14.4	60	1139	90	1534	80
198	207	14.5	60	1148	90	1542	80
199	208	14.6	60	1156	90	1551	80
200	208	14.6	60	1164	90	1559	80
201	209	14.6	60	1173	90	1567	80
202	210	14.7	60	1181	90	1575	80
203	211	14.8	60	1189	90	1583	80
204	211	14.8	60	1198	90	1591	80
205	212	14.8	60	1206	90	1599	80
206	213	14.9	60	1214	90	1607	80
207	214	15.0	60	1223	90	1615	80
208	214	15.0	60	1231	90	1623	80
209	215	15.0	60	1239	90	1631	80
210	216	15.1	60	1248	90	1639	80

CHAI FOR PONDEROSA PINE

100 YR. TABLE
(PIPO)
600-MEYER

SCRIBNER

INTER. 1/8"

100 YR. TABLE
(PIPO)
520-ALEXANDER

50 YR. TABLE
(LADD)
265-SCHMIDT

CHAI FOR LODGEPOLE PINE

100 YR. TABLE
(PIPO)
520-ALEXANDER

INTER. 1/8"

50 YR. TABLE
(LADD)
265-SCHMIDT

SITE INDEX	CU. M. / HA. / YR.		TOTAL BD. FT. / AGE		INTER. 1/8"		TOTAL CU. FT. / AC. / YR.		CU. M. / HA. / YR.		TOTAL AGE		CU. M. / HA. / YR.		TOTAL AGE	
	CU. M. / HA. / YR.	CU. M. / HA. / YR.	BD. FT. / AGE	BD. FT. / AGE	BD. FT. / AGE	BD. FT. / AGE	CU. FT. / AC. / YR.	CU. FT. / AC. / YR.	CU. M. / HA. / YR.	CU. M. / HA. / YR.	AGE	AGE	CU. M. / HA. / YR.	CU. M. / HA. / YR.	AGE	AGE
70	55	3.8	172	160	232	130	59	4.1	101	90	7.1	70				
71	56	3.9	177	160	240	130	60	4.2	103	90	7.2	70				
72	58	4.1	182	160	247	130	61	4.3	105	90	7.3	70				
73	59	4.2	188	160	253	130	62	4.3	107	90	7.5	70				
74	60	4.2	193	160	263	130	63	4.4	109	90	7.6	70				
75	62	4.3	198	160	270	130	64	4.5	111	90	7.8	70				
76	63	4.4	203	160	278	130	65	4.5	113	90	7.9	70				
77	64	4.5	209	160	285	130	66	4.6	116	90	8.1	70				
78	65	4.5	214	160	293	130	67	4.7	118	90	8.3	70				
79	67	4.7	219	160	300	130	68	4.8	120	90	8.4	70				
80	69	4.8	225	150	313	110	69	4.8	122	90	8.5	70				
81	70	4.9	232	150	321	110	70	4.9								
82	72	5.0	238	150	330	110	71	5.0								
83	74	5.2	245	150	339	110	72	5.0								
84	75	5.2	252	150	347	110	73	5.1								
85	77	5.4	258	150	356	110	74	5.2								
86	78	5.5	265	150	365	110	75	5.2								
87	80	5.6	271	150	373	110	76	5.3								
88	82	5.7	278	150	382	110	77	5.4								
89	83	5.8	284	150	391	110	78	5.5								
90	85	5.9	292	150	403	100	79	5.5								
91	87	6.1	300	150	413	100	80	5.6								
92	88	6.2	308	150	423	100	81	5.7								
93	90	6.3	316	150	433	100	82	5.7								
94	92	6.4	324	150	443	100	83	5.8								
95	94	6.6	332	150	453	100	84	5.9								
96	96	6.7	340	150	463	100	85	6.0								
97	97	6.8	348	150	473	100	86	6.1								
98	99	6.9	356	150	483	100	87	6.1								
99	101	7.1	364	150	493	100	88	6.2								
100	102	7.1	372	120	507	90	89	6.2								
101	104	7.3	381	120	519	90	90	6.3								
102	106	7.4	390	120	530	90	91	6.4								
103	108	7.6	399	120	542	90	92	6.4								
104	110	7.7	408	120	554	90	93	6.5								
105	112	7.8	417	120	566	90	94	6.6								
106	114	8.0	426	120	578	90	95	6.6								
107	116	8.1	435	120	590	90	96	6.7								
108	118	8.3	444	120	602	90	97	6.8								
109	120	8.4	453	120	614	90	98	6.9								

CHAI FOR PONDEROSA PINE									
100 YR. TABLE									
(PIPO)									
600-MEYER									
SCRIBNER									
SITE INDEX	CU.FT./AC./YR.	CU.M./HA./YR.	TOTAL AGE	TOTAL AGE	TOTAL AGE	TOTAL AGE	INTER. 1/8" BD.FT./AC./YR.	TOTAL AGE	TOTAL AGE
150	210	14.7	40	991	90	1289	70	70	70
151	212	14.8	40	1006	90	1307	70	70	70
152	215	15.0	40	1022	90	1325	70	70	70
153	217	15.2	40	1037	90	1343	70	70	70
154	220	15.4	40	1052	90	1361	70	70	70
155	222	15.5	40	1068	90	1379	70	70	70
156	224	15.7	40	1083	90	1397	70	70	70
157	227	15.9	40	1098	90	1416	70	70	70
158	229	16.0	40	1114	90	1434	70	70	70
159	232	16.2	40	1129	90	1452	70	70	70
160	234	16.4	40	1134	90	1472	60	60	60

Table 8.--Forestland Productivity--Continued

Soil name and map symbol	Common trees	Potential productivity*												
		Site index (50-year)	Annual growth	CMAI age	Site index (100-year)	Total yield (Scribner)	Yr	Bd ft/acre	Yr	Annual growth	CMAI age			
			Ft ³ /acre	Yr					Ft ³ /acre	Yr				
7F:														
Acker-----	Douglas fir**	92***	120	90	124***	57,000	120	121	60					
Norling-----	Douglas fir**	90***	116	90	121***	53,500	120	116	60					
8E-----	Douglas fir**	99	134	90	131	59,600	110	131	60					
Atring	Grand fir-----	---	---	---	---	---	---	---	---					
8F, 8G-----	Douglas fir**	99	134	90	131	59,600	110	131	60					
Atring	Grand fir-----	---	---	---	---	---	---	---	---					
9G-----	Douglas fir**	86***	109	90	116***	51,900	130	108	60					
Atring														
10E, 10F, 10G:														
Atring-----	Douglas fir**	99	134	90	131	59,600	110	131	60					
	Grand fir-----	---	---	---	---	---	---	---	---					
Larmine-----	Douglas fir**	82***	102	90	112***	50,800	140	101	60					
11F, 11G:														
Atring-----	Douglas fir**	99	134	90	131	59,600	110	131	60					
	Grand fir-----	---	---	---	---	---	---	---	---					
Larmine-----	Douglas fir**	82***	102	90	112***	50,800	140	101	60					
Rock outcrop.														
12F, 12G:														
Atring-----	Douglas fir**	99	134	90	131	59,600	110	131	60					
	Grand fir-----	---	---	---	---	---	---	---	---					
Vermisa-----	Douglas fir**	88	113	90	111	49,600	140	100	60					
	Grand fir-----	---	---	---	---	---	---	---	---					
13G:														
Atring-----	Douglas fir**	93	122	90	123	55,800	120	119	60					
	Pacific madrone-----	---	---	---	---	---	---	---	---					
Vermisa-----	Douglas fir**	81	100	90	107	44,800	140	94	60					
	Pacific madrone-----	---	---	---	---	---	---	---	---					

4-2

See footnotes at end of table.

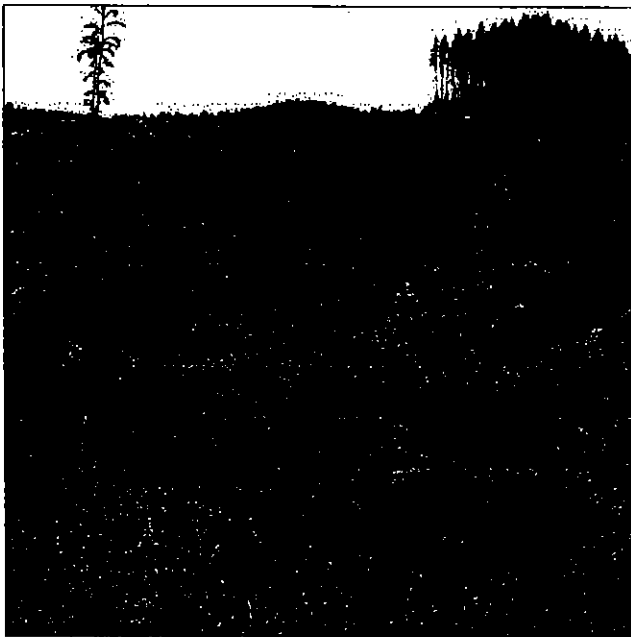
was below those levels before the operation. This means landowners often must reforest following salvage harvests and conversions of underproducing stands. The rules also specify some new procedures for operations involving forest incentive programs, and developing forestlands to non-forest uses.

Landowner Responsibility

The reforestation rules hold landowners, not operators, responsible for reforesting their lands after forest operations. Landowners will be expected to understand and apply the rules. This technical note is designed to help landowners in that task. Local FPFs will be able to offer limited assistance, such as sharing of rule information and some technical information, but landowners needing further help should contact qualified consulting foresters or other professional foresters for advice. Landowners should be aware that *planning for reforestation before harvesting operations begin* will be necessary to comply with the rules. In addition, landowners need to know that if the department identifies a reforestation rule violation, the landowner will be ordered to comply with the rules, and may be assessed a civil penalty of up to \$5,000.

"Free to Grow" Trees

The concept of a "free to grow" tree or stand of trees is important for understanding the reforestation rules. "Free to grow" means a tree or a stand of well-distributed trees that are of acceptable species, are of good form, and have a high probability of remaining vigorous, healthy and dominant over undesired, competing vegetation.



In general, an FPF will consider a tree "Free to Grow" if:

- (a) It is not severely damaged by insects, disease, fire, wildlife, weather or logging;
- (b) It exhibits the potential for continued height growth, consistent with the normal growth for the species on similar sites;
- (c) It has at least one-third of the tree height in full, live crown; and
- (d) It is taller than, and out-competing any grass, shrubs, or undesired trees growing within a ten-foot radius from the tree.

What Lands are Subject to the Reforestation Rules?

Any land which is rated as Cubic Foot Site Class I, II, III, IV, V or VI forest land is subject to the requirements of the reforestation rules. These are forest lands that are capable of growing at least 20 cubic feet of wood fiber on an acre in a year. In eastern Oregon, very high elevation timber stands or stands dominated by juniper trees probably do not meet this standard. In western Oregon, 94 percent of the privately owned forest lands are capable of growing at least 20 cubic feet per acre per year. Less productive westside forest lands are located primarily in interior southwest Oregon and are often intermingled with more productive lands.



Landowners should become familiar with the productivity of their forest lands. Site productivity may be determined directly by tree growth and stocking measurements throughout the operation area or determined indirectly using applicable USDA Soil Conservation Service soil survey information, USDA Forest Service plant association guides, Oregon Department of Revenue western Oregon site class maps, or other information of comparable quality. Consult a professional forester if you are unsure how to determine the productivity of your land.

Example Using Stocking Equivalents:

A partial cut harvest unit on Site IV forest land contains the following tree stand after the operation:

Average number of seedlings per acre	= 35
Average number of saplings and poles per acre	= 8
Average square feet of basal area per acre of trees 11-inches DBH and larger	= 15

1 seedling = 0.6 saplings and poles = 0.4 square feet of basal area of 11-inch DBH and larger trees; therefore:

$$8 \text{ saplings and poles per acre} / 0.6 = 13 \text{ seedling equivalents}$$

$$15 \text{ sq. ft. of basal area per acre} / 0.4 = 38 \text{ seedling equivalents}$$

$$35 + 13 + 38 = 86 \text{ seedling equivalents already present}$$

One hundred and twenty-five (125) seedlings or equivalent larger trees is the minimum stocking standard for Site IV land; therefore, establishment of an additional 39 free to grow seedlings per acre is required on this site [39 = 125 - (35 + 13 + 38)].

(Example assumes all trees are healthy, undamaged, and well distributed)

Live conifer trees 11 inches DBH and larger left standing in harvested areas to meet the Forest Practices Act's green tree and snag retention requirements may also be counted towards meeting the tree stocking standards if the trees are free to grow.

Table 2 provides approximate conversions between trees per acre and tree spacing when evaluating trees less than 11-inches DBH. For trees 11-inches DBH and larger, **Table 3** (opposite) provides approximate conversions between trees per acre, tree spacing, and basal area per acre.

Landowners should be aware that if planting is planned, the number of planted seedlings will usually need to be higher than the applicable seedling levels listed in these rules because some seedlings may die between planting and the free to grow deadline.

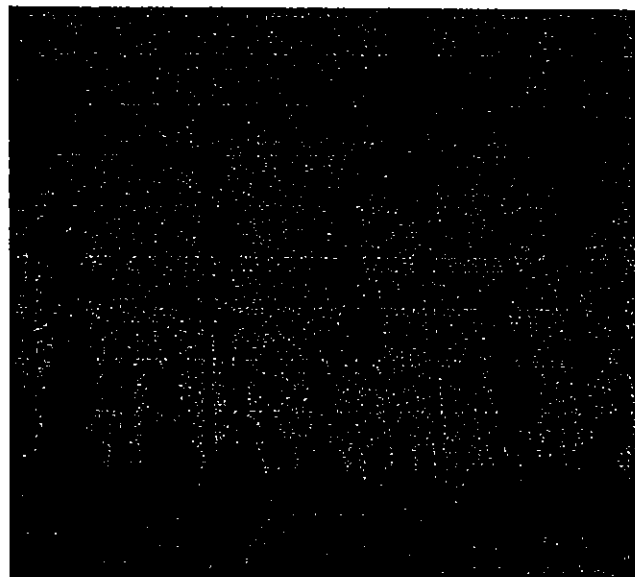
The reforestation rules provide flexibility for forest practices foresters and landowners to tailor reforestation requirements to site-specific situations. Landowners may submit plans for alternate practices that do not conform to the reforestation stocking levels established under these rules. Such plans may be approved if the FPF determines that there is a high probability that the purpose of the reforestation rules will be achieved.

Using Natural Reforestation Methods

Natural reforestation methods may be the best means to meet a variety of resource management objectives on some forestlands. Successful natural reforestation requires careful, flexible, site-specific pre-harvest planning and post-harvest monitoring. On Cubic Site Class VI forestlands and in wetlands, the use of silvicultural systems that promote natural reforestation and the

TABLE 2: Relationship Between Trees Per Acre and Average Tree Spacing

Trees per acre	Average spacing between tree centers (in feet)
200	15
125	19
120	19
100	21
75	24
60	27



ever comes first. "Completion of the operation" means harvest activities have been completed to the extent that an operation area will not be further disturbed. FPFs may require reforestation on a logical portion of a harvest unit even if activities on other portions of the operation are continuing.

Once the compliance period begins, the landowner must begin reforestation, including any necessary site preparation, within 12 months. If artificial reforestation is planned, the landowner must complete planting or seeding within 24 months. By the end of the sixth full calendar year, the landowner must have established an adequately stocked, free to grow stand of trees.

When natural reforestation methods are planned, the time limits for evidence of successful germination and for establishing a free to grow stand of trees, which

for the site, will be established in the approved written plan.

If reforestation cannot be accomplished within the specified time due to circumstances determined by the forest practices forester to be beyond the landowner's control, the time to accomplish reforestation may be extended. Examples of such circumstances include:

- (a) Nursery failure;
- (b) Inadequate seedling availability following salvage harvesting;
- (c) Extreme drought;
- (d) Insect infestation;
- (e) State smoke management restrictions on the burning of slash;
- (f) Wildfire or disease damage; or
- (g) Severe wildlife damage that could not be reasonably anticipated or controlled by the landowner.

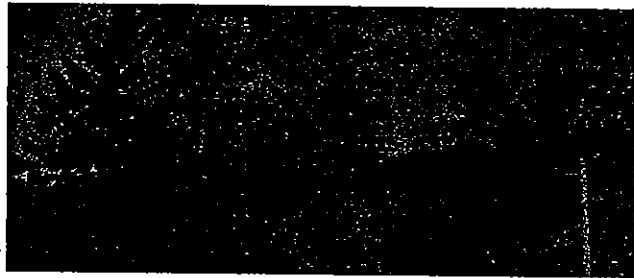
The following situations are examples of where extensions will *not* be granted:

- (a) Failure of artificial reforestation efforts is due to landowner's failure to secure appropriate seed or seedlings following the harvest of free to grow trees. Exceptions may be granted for salvage harvests that the landowner could not anticipate.
- (b) Natural reforestation failures are due to inadequate seed sources or poor seed crops in the years immediately after an operation.
- (c) Failures on harsh reforestation sites resulting from harvest area design or competing vegetation.
- (d) Wildlife damage that could have reasonably been anticipated and controlled, such as from mountain beavers. *

Tree Species Suitable for Reforestation

Tree species are acceptable for artificial reforestation, natural reforestation, and as residual tree stocking based on all of the following criteria:

- (a) The species must be ecologically suited to the planting site;
- (b) The species must be capable of producing logs, fiber, or other wood products suitable in size and quality for the production of lumber, sheeting, pulp or other commercial forest products; and
- (c) The species must be marketable in the foreseeable future.



Native species will generally be considered "ecologically suited" and the preferred reforestation species.

Up to 20 percent of required tree stocking may be met by using free to grow hardwood trees remaining after harvest. Prior approval by the FPF is required before more than 20 percent of the required stocking may be met with residual, post-operation hardwood trees.

Landowners are encouraged to reforest with a mixture of acceptable tree species where appropriate to reduce the risk of insect and disease losses and to promote stand diversity.

Seedlings or seeds used for artificial reforestation should be from seed sources that are genetically adapted to the growing site. If local seed sources are not available, landowners should not use off-site seeds or seedlings that may result in poor survival. A delay while waiting for appropriate seedlings is preferable to planting off-site stock.

When a landowner intends to plant or seed a tree species not native to the operation area, the landowner must obtain prior approval of a written plan which describes the tree species and how it will be used to meet the reforestation requirements. Information in the plan must include:

- (a) The tree species that will be used;
- (b) Evidence that the species is ecologically suited to the planting site;
- (c) Evidence that the species is capable of producing commercial forest products that will be marketable in the foreseeable future; and

ATTACHMENT

DIVIDE

FINDINGS OF FACT AND CONCLUSIONS OF LAW

for

MINOR AMENDMENT OF THE LANE COUNTY

RURAL COMPREHENSIVE PLAN

and

ZONE CHANGE FROM EXCLUSIVE FARM USE

to

MARGINAL LAND

PA 04-6092

KAREN A. DAHLEN TRUST

P.O. BOX 5687

Eugene, OR 97405-0687

Submitted by:

P. STEVEN CORNACCHIA

HERSHNER HUNTER, LLP

BCC ATTCH. # 2-28/18.

1. EVIDENCE.

- 1.1 Application materials dated September 15, 2004, with exhibits;
- 1.2 Lane County Planning Commission Staff Report with attachments;
- 1.3 Marc Setchko Report, dated February 15, 2005.
- 1.4 Correspondence from Steve Cornacchia, dated April 19, 2005, with exhibits, including March 27, 2005, Setchko report;
- 1.5 Correspondence from Steve Cornacchia, dated May 24, 2005;
- 1.6 Correspondence from Steve Cornacchia, with exhibits, dated July 18, 2005;
- 1.7 Correspondence from Steve Cornacchia, dated July 25, 2005, with attachments, including a copy of LUBA Decision No. 2005-029, James Just v. Lane County (Carver) and affidavits of Art Moshofsky and Mark Minty;
- 1.8 Agronomic Analytics Dahlen Property Soil Investigation Report;
- 1.9 Correspondence, with exhibits, from Steve Cornacchia, dated September 29, 2005;
- 1.10 Correspondence, with exhibits, from Steve Cornacchia, dated May 9, 2006.

2. INTRODUCTION.

The property that is the subject of this application consists of a 316-acre parcel located immediately south of, but not adjacent to, the Eugene city limits and the Eugene-Springfield Metropolitan Plan Urban Growth Boundary, west off of Willamette Street. This application is for approval of a Minor Plan Amendment to the Lane County Rural Comprehensive Plan (RCP) diagram to designate the subject property from Agriculture to Marginal Lands, and a concurrent Lane County zoning map amendment from Exclusive Farm Use (EFU 30) to Marginal Lands (MLRCP).

3. BACKGROUND INFORMATION

(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

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

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

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

4.2 Lane Code 16.400(6)(i) provides that 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 Official's consideration need not occur.

4.3 Lane Code 16.400(6)(h)(iii)(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.

(1) Goal 1 - Citizen Involvement.

To ensure the opportunity for citizen involvement in all phases of the planning process.

Lane County has provided written notice of the proposed amendments and public hearings before its planning commission and board of commissioners in conformance with ORS 197.763. The information included in the notices conforms with ORS 197.763 (2) and (3) and enabled citizens to identify and comprehend the issues and to participate in a public process prior to final action by the county. Referral notices were also mailed to all federal, state, and private organizations as required by state law and Lane Code. The proposed amendments have been processed in a manner that assures full compliance with Goal 1.

(2) 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 the use of land and to assure an adequate factual base for such decisions and actions.

preserved and/or protected. The proposed amendments will not conflict with any Goal 5 resources.

(6) Goal 6 - Air, Water and Land Resources Quality.

To maintain and improve the quality of the air, water and land resources of the state.

Goal 6 requires that air, land and water resources of the state be maintained and improved by assuring that future development, in conjunction with existing development, does not violate applicable state and federal environmental quality standards, and does not exceed the carrying capacity of local air sheds, degrade land resources or threaten the availability of such resources. Lane County has sufficient regulatory measures in place so as to ensure that existing land use activities, as well as any future development on the site, will not produce any unanticipated impacts resulting from the proposed amendments.

The subject property lies within an area identified as a "broad areas of very limited groundwater" area in Lane Manual 13.010 and the availability of water commensurate with the proposed development of the subject property is demonstrated by the analysis and conclusions of EGR and Associates, Inc. (EGR). The results of the aquifer analysis by EGR, dated July 27, 2004, are provided as evidence by the attachment of the analysis to the original application as Exhibit E.

In that aquifer analysis EGR concludes that there is sufficient water available for domestic use from the aquifer for all of the proposed parcels without adverse effects to neighboring wells. The record contains no other evidence from professional consultants that the analysis and conclusion of EGR is inaccurate or in error. The EGR report is sufficient and substantial evidence of the availability of water on the subject property and within its vicinity and demonstrates that application approval would be consistent with Goal 6.

The proposed amendments will not produce results that will be in conflict or inconsistent with the purpose and intent of Goal 6. The proposed amendments change the use designation on the subject property and any additional uses or change of use will require compliance with Lane County's existing regulatory system and measures.

(7) Goal 7 - Areas subject to Natural Disasters and Hazards.

To protect life and property from natural disasters and hazards.

No areas containing or prone to natural disasters or natural hazards have been identified on the subject property.

(8) Goal 8 - Recreational Needs.

To satisfy the recreational needs of the citizens of the state.

The intent of Goal 12 is implemented through the provisions of the State Transportation Planning Rule (TPR) (OAR 660, Division 12), which was adopted by LCDC in 1991.

OAR 660-012-0060(1) requires that amendments to functional plans, acknowledged comprehensive plans, and land use regulations which 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.

To determine whether the proposed amendments will significantly affect a transportation facility, the TPR lists specific criteria against which the proposed amendments are to be evaluated. The TPR provides that a plan or land use regulation amendment significantly affects a transportation facility if it:

- (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 (Transportation System Plan).

The Board finds that the approval of the proposal cannot result in any of the four situations provided by the TPR criteria listed above. Development of 11 parcels with dwellings will produce typically 10 trips per day for each parcel, resulting in a total trip per day count of approximately 110. Willamette Street, a major collector, will not experience a change in its functional classification as a result of an additional 110 trips per day and the total trips per day are not inconsistent for a major collector and will not reduce the level of service below the minimum acceptable level identified in the TSP (Transportation System Plan).

The engineering firm Branch Engineering has analyzed the traffic impact resulting from approval of the application and has concluded that it would not have a significant impact on transportation facilities.

Application approval is consistent with Goal 12.

(13) **Goal 13 - Energy Conservation..**

To conserve energy.

Goal 13 requires that land uses maximize conservation of all forms of energy based on sound economic principles. It is implemented by local plans and regulations that control location, orientation and density of development to minimize net energy consumption. Any development on the subject property will be subject to those rules.

The subject property contains no estuarine resources. Goal 16 is not applicable to this request.

(17) **Goal 17 - Coastal Shorelines***To conserve, protect, where appropriate, develop and where appropriate restore the resources and benefits of all coastal shorelines, recognizing their value for protection and maintenance of water quality, fish and wildlife habitat, water-dependent uses, economic resources and recreation and aesthetics.*

The subject property contains no coastal shorelines. Goal 17 is not applicable to this request.

(18) **Goal 18 - Beaches and Dunes**

To conserve, protect, where appropriate develop, and where appropriate restore the resources and benefits of coastal beach and dune areas.

The subject property contains no beaches or dunes. Goal 18 is not applicable to this request.

(19) **Goal 19 - Ocean Resources**

To conserve the long-term values, benefits, and natural resources of the nearshore ocean and the continental shelf.

The subject property contains no ocean resources. Goal 19 is not applicable to this request.

4.4 Lane Code 16.400(6)(h)(iii)(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 Plan; or

The subject property was designated Agriculture and zoned EFU 30 as part of the Lane County Rural Comprehensive Plan (RCP) adoption process in 1984. Nonetheless, it was so designated and zoned pursuant to County policy which determined that lands that might qualify as marginal lands should be addressed subsequently on a case-by-case basis pursuant to policies in the RCP and the statutory criteria in ORS 197.247.

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

Not applicable.

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

Not applicable.

It is found that the applicant has demonstrated that the subject property 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. Art Moshofsky and members of his family owned the subject property during and throughout the period between 1978 and 1983. Mr. Moshofsky has provided several affidavits, that demonstrate that the subject property 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. In his affidavits, Mr. Moshofsky has provided evidence that the only farm use made of the subject property during the applicable period was the intermittent and limited grazing of cattle, usually less than 25 head at any one time, by C&M Livestock Company. The grazing was the product of an informal agreement between Mr. Moshofsky and the company that provided that the company would graze a limited number of cattle on the property in exchange for fence maintenance and the human presence of the company. The company's presence on the property provided some security at the time for Mr. Moshofsky, who was an absentee owner residing in Portland faced with trespass and vandalism problems on the subject property. Mr. Moshofsky testified that at no time did monetary consideration between the parties for the grazing exceeded \$1000 annually. Mark Minty, a partner in C&M Livestock Company during that period, provided testimony in an affidavit in the record that Mr. Moshofsky's description of the activity and the agreement of the parties was accurate and that the company did not own or manage any property adjacent to, contiguous with or in the vicinity of the subject property. Mr. Minty also testified that it is his opinion that the subject property is of marginal value for grazing or other agricultural production and could not be managed as part of a farm operation capable of producing \$20,000 in gross income annually.

Furthermore it is found that the applicant has demonstrated that the subject property was not managed as part of a forest operation that produced an average, over the growth cycle, of \$10,000 in annual gross income.

The applicant's forester, Marc Setchko, provided an analysis to the record of the timber-growing potential of the subject property and concluded that the subject property could not be managed as a forest operation capable of producing an average, over the growth cycle, of \$10,000 in annual gross income. Mr. Setchko, with both professional credentials and 27 years of experience, is highly qualified to render such any analysis and conclusion.

Mr. Setchko's opinion was based on a detailed analysis of the existing soils, their ability to grow timber (primarily Douglas-fir) and conversion of that growth potential into dollars based upon log prices in 1983. Mr. Setchko's methodology is dictated by the Board interpretation (Direction for Issue 4). Mr. Setchko's analysis used a fifty-year growth cycle as directed by the Board interpretation (Direction for Issue 5).

Mr. Setchko, in his report dated March 27, 2005, conducted a forest income analysis of the subject property that included the entire 387.65 acres of common Moshofsky ownership in 1983. In that report Mr. Setchko calculated the average gross annual income of the property through a complete growth and harvest rotation. He calculated what the forest operation on the subject property was capable of, in terms of income, based on actual stocking of the property during the

throughout the growing cycle, demonstrates that the entire property was and is not capable of producing over \$10,000.00 in annual income over the growing cycle from a forest operation.

Goal One Coalition has challenged the applicant's demonstration that the subject property meets the agriculture and forest income tests of the statute. The Board finds that the challenges by Goal One Coalition are without legal foundation and do not include any supporting professional opinion regarding agriculture or forest income of the subject property and, therefore, are without merit.

The specific challenges of Goal One Coalition, which cover both ORS 197.247(1)(a) and (b)(C), are discussed and rejected as without merit as follows:

1. The income test "forest operation" has not been addressed.

Goal One Coalition argues that the applicant has not conducted any analysis of the "income-producing capability" of the proposed marginal lands using "current timber values" to calculate the potential gross income over the growth cycle. Goal One Coalition is correct in asserting that the calculation of the annual gross income for the ORS 197.247(1)(a) income test can be accomplished by the use of timber values. However, it is incorrect in its assertion that the calculation must use "current timber values."

Goal One Coalition references language in *DLCD v. Lane County (Ericcson)*¹ that mentions that "current prices" were used in the calculations of the Ericcson application. In that case, however, the use of a particular year's prices was not at issue and LUBA made no determination regarding such use. What the decision in Ericcson did establish, in addition to affirming Lane County's approval of a Marginal Lands re-zoning application, was that on-site evaluation of forest productivity by a qualified expert is weightier evidence than published data or that provided by individuals not qualified as experts in forest management.

Mr. Setchko used 1983 Douglas-fir log prices and volumes in his calculation of the projected gross forest operation income of the proposed marginal land. In this case Mr. Setchko is the qualified expert with 27 years of forest management experience, including 17 years as a private consultant and a Master's Degree in Forestry. Goal One Coalition has not established that it has any experience or credentials in forest management. Furthermore, it has not provided any testimony from a qualified expert in forest management to support its assumptions and conclusions.

Lane County, in response to and in reliance upon Ericcson, issued its interpretations of the Marginal Lands statutes in the Board of Commissioners' 1997 Supplement to Marginal Lands Information Sheet. A copy of the supplement and the information sheet was provided to the record of this decision. It is a binding policy statement providing guidance and direction to applicants, county planning staff, the public and to the Lane County Planning Commission and

¹ 23 Or LUBA 33 (1992)

not capable of meeting the specified \$10,000 threshold averaged over the growth cycle. Both the “farm operation” and “forest operation” prongs of the test are specifically linked to January 1, 1983.”

2. Mr. Setchko fails to explain his use of a 50-year growth cycle.

In ISSUE 5 of its 1997 Supplement, Lane County adopted the use of a 50-year growth cycle as the usual standard. Jim Just assigned that policy as an assignment of error in *Just v. Lane County* and LUBA rejected his arguments in that assignment and affirmed the county’s use of the 50-year growth cycle. It is found that the policy remains valid today and that the applicant’s use of a 50-year growth cycle in calculating forest income complied with the policy and adequately demonstrated, in part, that the forest income test had been appropriately met.

3. All Moshofsky-owned property and milling operations throughout the world during the 1978-83 test period must be included in the calculations for the forest income test

Goal One Coalition raised this issue in its letter to the Lane County Planning Commission, dated February 25, 2005. The letter provides no authority for the proposition that the legislature intended the statute, and particularly the forest income test, to be applied to all land and industrial operations of an individual, wherever located on the planet, in the analysis of what the subject property could contribute to the forestry economy of the state. Lane County’s 1997 supplement, ISSUE 3, provides that “the law creates a general presumption that all **contiguous** land owned during 1978-82 was part of the owner’s ‘operation’ (emphasis added).” The interpretation includes no direction that non-contiguous property or operations of the applicant be considered in the income analysis. Lane County has consistently required Marginal Lands applicants to address the income tests on a contiguous property basis only. That requirement is an objective criteria authorized by ORS 197.247(5).

Not only has Lane County historically not required that all of an applicant’s lands or operations in other locations not contiguous, adjacent or nearby the application’s subject property be considered in the analysis, but to do so would be unreasonably beyond what the legislature intended to require in the statute. If the legislature had intended such a result, which could place worthless property (from a resource perspective) of a larger, non-contiguous, ownership in a totally unusable condition, it would have stated such an intention in the body of the statute. Goal One’s assertion that the income capability analysis of a particular piece of property must include all other lands and operations owned by the property owner, regardless of its location and relationship to the subject property and regardless of whether it was managed as a part of those other lands and operations, defeats the intent of the legislature to capture particular, non-contributing, properties and to allow both residential and resource use of them through application of the Marginal Lands statute. It appears more reasonable that the legislature intended the analysis to be of the subject property; to require that the analysis combine the subject property with other non-contiguous and non-related property defeats the overall intent of the legislation to identify those lands which are unproductive and not contributing to the

The second part of Goal One Coalition's second argument is that "(A)n evaluation of a property's capacity for forest production must consider productivity for all merchantable forest tree species, not just Douglas-fir." Mr. Setchko has provided an analysis of the species that Goal One Coalition argues are "merchantable" and concludes that a majority of those species are not "merchantable." He further concludes that all other species that may be merchantable grow sufficiently slower than Douglas-fir on the subject soils and that they would not produce at least 85 cu.ft./ac./yr. on the subject property. Mr. Setchko includes that analysis in each of his "Forest Productivity Analysis" that were provided to the record in support of the application. Mr. Setchko's experience and expertise provides the conclusion that many of the species, especially KMX and hybrid poplar, have no established market and are, therefore, not merchantable. His overall conclusion is that if the proposed marginal land is not capable of producing an average of \$10,000 in annual gross income from Douglas-fir, then there are no other merchantable tree species that could produce any more than the calculated figures that he has provided in his analysis for Douglas-fir. Goal One Coalition has not provided any credible or scientific evidence that contradicts or conflicts with the findings and conclusion of the Setchko reports. It is found that the applicant, through the evidence provided by Mr. Setchko's reports, has demonstrated that the subject property is not capable of producing more than 85 cu.ft./ac./yr. of merchantable timber.

The Setchko report concludes that the subject property is not capable of producing eighty-five cubic feet of merchantable timber per acre per year. Mr. Setchko's report also contains an analysis of other tree species. Mr. Setchko's opinion includes an analysis of the species listed by Goal One Coalition in public testimony and concludes that they are either not merchantable, or would not produce an annual volume and income equal to Douglas-fir. Goal One Coalition has provided no substantial evidence to effectively refute or contradict Mr. Setchko's professional opinion regarding the merchantability and productivity of those particular species. Mr. Setchko opines that all other merchantable tree species would either not grow on the soils of the subject property or would not produce a volume in cubic feet that would equal the growth rate of Douglas-fir. Mr. Setchko, in his analysis of the productivity of various tree species, provides a professional and scientific foundation to the reasoning of the SCS/NRCS in using Douglas-fir as the indicator species for productivity on Western Oregon soils.

Mr. Setchko, in response to continuing arguments made by Goal One Coalition in other Marginal Lands plan amendment applications, prepared an analysis of the Goal One Coalition's arguments regarding the productivity of Ponderosa Pine. Mr. Setchko opines that Goal One Coalition has misapplied and misused information from various internet publications to conclude that Ponderosa Pine has a much higher productivity potential on Western Oregon soils than is accurate and than can be scientifically verified. Mr. Setchko, in response to continuing arguments made by Goal One Coalition in other applications, prepared an analysis of the Goal One Coalition's arguments regarding the productivity and merchantability of Ponderosa Pine, Hybrid Poplar and KMX in the Willamette Valley. That analysis, dated September 8, 2004, and May 4, 2006, includes Mr. Setchko's opinion that Goal One Coalition has misapplied and misused information from various internet publications to conclude that Ponderosa Pine, Hybrid Poplar and KMX have a much higher productivity potential on Western Oregon soils than is accurate and than can be scientifically verified. His conclusions in his Ponderosa Pine analyses

University Extension Service, EM 8805, May 2003, which contains caveats that expressly limit its application.

- The opponents' conversion tables are difficult to understand. Lane County is unable to follow the analysis and to validate the numbers in the chart for Ponderosa Pine productivity.
- Mr. Setchko, a credible forestry expert, has addressed the issue in his testimony that, in addition to an analysis based upon his personal experience and training, Ponderosa Pine is worth considerably less money and has the same or slower growth rate as Douglas Fir and that the opponents have not provided any substantial evidence to refute his conclusions regarding the productivity of Ponderosa Pine in Western Oregon or upon the subject property.

Mr. Setchko's analysis and conclusions regarding the productivity of the subject property sufficiently and adequately demonstrates that the subject property is not capable of producing at least 85 cubic feet of merchantable timber per acre per year over the growing cycle.

Goal One Coalition has challenged the applicant's demonstration that the subject property meets the forest productivity test of the statute. The Board finds that the challenges by Goal One Coalition are without legal foundation, do not include any supporting professional opinion regarding forest productivity of the subject property that refutes the conclusions reached by Mr. Setchko, and, therefore, are without merit.

Other opponent challenges are discussed and rejected as without merit as follows:

1. The "forest operation" income test must be calculated by using timber prices for years prior to 1983.

Mr. Setchko used 1983 Douglas-fir log prices and volumes in his calculation of the projected gross forest operation income of the proposed marginal land. In this case Mr. Setchko is the qualified expert with 27 years of forest management experience, including 17 years as a private consultant and a Master's Degree in Forestry. Opponents have not established that they have any experience or credentials in forest management. Furthermore, they have not provided any testimony from a qualified expert in forest management to support their assumptions and conclusions.

Lane County, in response to and in reliance upon Ericcson, issued its interpretations of the Marginal Lands statutes in the Board of Commissioners' 1997 Supplement to Marginal Lands Information Sheet. A copy of the supplement and the information sheet was provided to the record of this decision. It is a binding policy statement providing guidance and direction to applicants, county planning staff, the public and to the Lane County Planning Commission and Board of Commissioners regarding the statute. The Board direction stated in ISSUE 4 of the supplement provides:

2. Mr. Setchko fails to explain his use of a 50-year growth cycle.

In ISSUE 5 of its 1997 Supplement, Lane County adopted the use of a 50-year growth cycle as the usual standard. Jim Just assigned that policy as an assignment of error in *Just v. Lane County* and LUBA rejected his arguments in that assignment and affirmed the county's use of the 50-year growth cycle.

The Board direction stated in ISSUE 5 of the supplement provides:

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 upon 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.

It is found that the policy remains valid today and that the applicant's use of a 50-year growth cycle in calculating forest income complied with the policy and adequately demonstrated, in part, that the forest income test had been appropriately met.

3. The applicant has not established that the subject parcel is not capable of producing 85 cu.ft./ac./yr. of merchantable timber.

Goal One Coalition argues two points within this argument. First it argues that the applicant's consulting forester, Mr. Setchko, has not applied a sanctioned methodology for determining forest productivity.

Mr. Setchko used information generated by Lane County and the Oregon State Forester's office consistent with LCDC regulations for providing such ratings. Mr. Setchko calculated the forest productivity capability of the subject property using the same sources of ratings that were used in the Carver application (the subject of *Just v. Lane County* referred to hereinabove). Those sources of ratings and the use of the ratings were affirmed by LUBA in that decision. Mr. Setchko applied a rating to each of the soils of the proposed marginal land and concluded that the proposed marginal land produces less than 85 cu.ft./ac./yr. of merchantable timber.

The second part of Goal One Coalition's second argument is that "(A)n evaluation of a property's capacity for forest production must consider productivity for all merchantable forest tree species, not just Douglas-fir." Mr. Setchko has provided an analysis of the species that Goal One Coalition argues are "merchantable" and concludes that a majority of those species are not "merchantable." He further concludes that all other species that may be merchantable grow sufficiently slower than Douglas-fir on the subject soils and that they would not produce at least

- (d) it is not capable of producing 85 cubic feet of merchantable timber per acre per year.

It is found that substantial evidence in the record, primarily, but not limited to, the Setchko reports, exists to support each of the above conclusions. No documentation, expert testimony or other substantial evidence has been submitted to the record that refutes or contradicts that evidence with regard to the resource capabilities of the subject property as measured by the statutory standards and criteria in ORS 197.247.

For the reasons set forth above, the Board finds that the policies in the RCP, specifically RCP Goal 3, Policy 14 and RCP Goal 4, Policy 3, authorize and allow certain qualified resource lands to be designated and zoned marginal lands. Approval of this application implements those policies which have been acknowledged by the Land Conservation and Development Commission to be in conformity with Statewide Planning Goals and ORS 197.247 (1991 ed.).

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

The totality of this application's response to and treatment of applicable criteria, coupled with the benefits accruing to both the public and the applicant as demonstrated in this application, provides the Lane County Board of Commissioners with adequate foundation and reason to find that approval of the application is desirable, appropriate and proper and would be a demonstration of good public policy.

4.5 Lane Code 16.400(6)(h)(iii)(cc).

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

There are no policies in the adopted and acknowledged RCP that conflict with this request for plan amendment. As discussed in the previous section, there are policies in the RCP that specifically support and encourage approval of marginal lands applications for qualified property. The subject property addresses and satisfies the marginal lands criteria that are set forth in ORS 197.247 (1991 ed.).

Approval of this plan amendment is also consistent with the Board's interpretation of the Marginal Lands statute (ORS 197.247 (1991 ed.)) and its application to individual requests for plan amendment. The application is supported by detailed and thorough analysis and testimony provided by a qualified and experienced forester. The analysis and testimony was produced and provided in conformance with direction provided by the Board's interpretation.

Other RCP policies that may be relevant to this decision are as follows:

- (1) **GOAL ONE: CITIZEN INVOLVEMENT.**

“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 small 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.”

Marginal lands are resource lands that are intended for occupancy with limited rural residential development.

Based on the evidence in the record which addresses and satisfies the criterion in ORS 197.247 (1991 ed.) and the above-referenced RCP resource policies, the Board concludes that approval of the subject plan amendment is compatible with the existing structure of the acknowledged RCP and is consistent with the unamended portions and elements of the RCP.

4.7 Zone Change Criteria of Lane Code 16.252 Lane Code 16.252(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 to Rural Comprehensive Plan elements and components, and Statewide Planning Goals for any portion of Lane County which has not been acknowledged by the Land Conservation and Development Commission. Any zonings or rezonings may be effected by Ordinance or Order of the Board of County Commissioners, the Planning Commission or the Hearings Official in accordance with the procedures of this section.

This decision results in a change from Exclusive Farm Use to ML Marginal Lands. The facts relevant to the zone change standards are largely redundant with the facts relevant to plan policies and the Statewide Planning Goals and have been addressed in preceding sections of these findings of fact and are incorporated into these findings by this reference.

This zone change is consistent with the general purposes of LC Chapter 16 as set forth in LC 16.003 in that:

- 1) In conformity with various development rules discussed above, the subject property will be developed commensurate with the character and physical limitations of the land and will thus promote the health, safety and general welfare of the built environment;
- 2) It will provide home construction opportunities that will aid the economy;

ATTACHMENT

DIVIDE

ORDINANCE NO. PA 1231 – Exhibit C
FINDINGS OF FACT AND CONCLUSIONS OF LAW
for
MINOR AMENDMENT OF THE LANE COUNTY
RURAL COMPREHENSIVE PLAN
and
ZONE CHANGE FROM EXCLUSIVE FARM USE
to
MARGINAL LAND
PA 04-6092
KAREN A. DAHLEN TRUST
P.O. BOX 5687
Eugene, OR 97405-0687

*BCC ATTCH. #3 -
27pp.*

1. EVIDENCE.

- 1.1 Application materials dated September 15, 2004, with exhibits;
- 1.2 Lane County Planning Commission Staff Report with attachments;
- 1.3 Marc Setchko Report, dated February 15, 2005.
- 1.4 Correspondence from Steve Cornacchia, dated April 19, 2005, with exhibits, including March 27, 2005, Setchko report;
- 1.5 Correspondence from Steve Cornacchia, dated May 24, 2005;
- 1.6 Correspondence from Steve Cornacchia, with exhibits, dated July 18, 2005;
- 1.7 Correspondence from Steve Cornacchia, dated July 25, 2005, with attachments, including a copy of LUBA Decision No. 2005-029, James Just v. Lane County (Carver) and affidavits of Art Moshofsky and Mark Minty;
- 1.8 Agronomic Analytics Dahlen Property Soil Investigation Report;
- 1.9 Correspondence, with exhibits, from Steve Cornacchia, dated September 29, 2005;
- 1.10 Correspondence, with exhibits, from Steve Cornacchia, dated May 9, 2006.

2. INTRODUCTION.

The property that is the subject of this application consists of a 316-acre parcel located immediately south of, but not adjacent to, the Eugene city limits and the Eugene-Springfield Metropolitan Plan Urban Growth Boundary, west off of Willamette Street. This application is for approval of a Minor Plan Amendment to the Lane County Rural Comprehensive Plan (RCP) diagram to designate the subject property from Agriculture to Marginal Lands, and a concurrent Lane County zoning map amendment from Exclusive Farm Use (EFU 30) to Marginal Lands (MLRCP).

3. BACKGROUND INFORMATION

3.1 General Site Description.

The subject property is described as Tax Lot 300 of Lane County Assessor's Map No. 18-04-24. Immediately to the east of the property is located Tax Lot 1300 of Lane County Assessor's Map

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

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

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

4.2 Lane Code 16.400(6)(i) provides that 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 Official's consideration need not occur.

4.3 Lane Code 16.400(6)(h)(iii)(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.

(1) Goal 1 - Citizen Involvement.

To ensure the opportunity for citizen involvement in all phases of the planning process.

Lane County has provided written notice of the proposed amendments and public hearings before its planning commission and board of commissioners in conformance with ORS 197.763. The information included in the notices conforms with ORS 197.763 (2) and (3) and enabled citizens to identify and comprehend the issues and to participate in a public process prior to final action by the county. Referral notices were also mailed to all federal, state, and private organizations as required by state law and Lane Code. The proposed amendments have been processed in a manner that assures full compliance with Goal 1.

(2) 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 the use of land and to assure an adequate factual base for such decisions and actions.

Goal 2 establishes a land use planning process and policy framework as a basis for all land use decisions, and requires development of an adequate factual base to support those decisions. A minor change is one that does not have significant effects beyond the immediate area of change, and is based on special studies or information. The justification for the specific change must be established by substantial evidence in support of the conclusion that the applicable criteria have been met.

Goal 6 requires that air, land and water resources of the state be maintained and improved by assuring that future development, in conjunction with existing development, does not violate applicable state and federal environmental quality standards, and does not exceed the carrying capacity of local air sheds, degrade land resources or threaten the availability of such resources. Lane County has sufficient regulatory measures in place so as to ensure that existing land use activities, as well as any future development on the site, will not produce any unanticipated impacts resulting from the proposed amendments.

The subject property lies within an area identified as a "broad areas of very limited groundwater" area in Lane Manual 13.010 and the availability of water commensurate with the proposed development of the subject property is demonstrated by the analysis and conclusions of EGR and Associates, Inc. (EGR). The results of the aquifer analysis by EGR, dated July 27, 2004, are provided as evidence by the attachment of the analysis to the original application as Exhibit E.

In that aquifer analysis EGR concludes that there is sufficient water available for domestic use from the aquifer for all of the proposed parcels without adverse effects to neighboring wells. The record contains no other evidence from professional consultants that the analysis and conclusion of EGR is inaccurate or in error. The EGR report is sufficient and substantial evidence of the availability of water on the subject property and within its vicinity and demonstrates that application approval would be consistent with Goal 6.

The proposed amendments will not produce results that will be in conflict or inconsistent with the purpose and intent of Goal 6. The proposed amendments change the use designation on the subject property and any additional uses or change of use will require compliance with Lane County's existing regulatory system and measures.

(7) Goal 7 - Areas subject to Natural Disasters and Hazards.

To protect life and property from natural disasters and hazards.

No areas containing or prone to natural disasters or natural hazards have been identified on the subject property.

(8) Goal 8 - Recreational Needs.

To satisfy the recreational needs of the citizens of the state.

Goal 8 is not applicable to this request. There has previously been a legislative determination by Lane County, as embodied in the acknowledged Lane County Rural Comprehensive Plan, that no Goal 8 resources exist on subject site. The subject property has not been included in any inventory of recreational needs as defined by Goal 8. The proposed amendments will not conflict with any Goal 8 resources.

(9) Goal 9 - Economy of the State..

To diversify and improve the economy of the state.

TPR provides that a plan or land use regulation amendment significantly affects a transportation facility if it:

- (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 (Transportation System Plan).

The Board finds that the approval of the proposal cannot result in any of the four situations provided by the TPR criteria listed above. Development of 11 parcels with dwellings will produce typically 10 trips per day for each parcel, resulting in a total trip per day count of approximately 110. Willamette Street, a major collector, will not experience a change in its functional classification as a result of an additional 110 trips per day and the total trips per day are not inconsistent for a major collector and will not reduce the level of service below the minimum acceptable level identified in the TSP (Transportation System Plan).

The engineering firm Branch Engineering has analyzed the traffic impact resulting from approval of the application and has concluded that it would not have a significant impact on transportation facilities.

Application approval is consistent with Goal 12.

(13) Goal 13 - Energy Conservation..

To conserve energy.

Goal 13 requires that land uses maximize conservation of all forms of energy based on sound economic principles. It is implemented by local plans and regulations that control location, orientation and density of development to minimize net energy consumption. Any development on the subject property will be subject to those rules.

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

OAR 660-004-0040(2)(c)(G) specifically exempts marginal land from the provisions of Goal 14 and its implementing rules. The rule specifically states that it does not apply to marginal land. Upon application approval the subject property will be designated marginal land. Therefore, Goal 14 is has little, if any, application to this application.

The entire ownership of the applicant is within an area committed to rural uses, both resource and non-resource in nature, as designated and provided by Lane Code and the acknowledged Lane County Rural Comprehensive Plan. No urban uses are contemplated as a result of

To conserve, protect, where appropriate develop, and where appropriate restore the resources and benefits of coastal beach and dune areas.

The subject property contains no beaches or dunes. Goal 18 is not applicable to this request.

(19) **Goal 19 - Ocean Resources**

To conserve the long-term values, benefits, and natural resources of the nearshore ocean and the continental shelf.

The subject property contains no ocean resources. Goal 19 is not applicable to this request.

4.4 **Lane Code 16.400(6)(h)(iii)(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 Plan; or

The subject property was designated Agriculture and zoned EFU 30 as part of the Lane County Rural Comprehensive Plan (RCP) adoption process in 1984. Nonetheless, it was so designated and zoned pursuant to County policy which determined that lands that might qualify as marginal lands should be addressed subsequently on a case-by-case basis pursuant to policies in the RCP and the statutory criteria in ORS 197.247.

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

Not applicable.

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

Not applicable.

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

ORS 197.247 (1991 ed.) authorizes counties to designate land as marginal land. Lane County has acted to utilize this authority through the adoption of RCP Goal 3, Policy 14 and Goal 4, Policy 3. Those policies require an applicant for a marginal lands designation and zoning to address and satisfy the requirements of ORS 197.247 (1991 ed.) and applicable Lane County policies and requirements. The subject application is implementing policies in the RCP which allow qualified resource lands to be designated as Marginal Lands rather than Agriculture or Forest.

In order to aid applicants, county planning staff and the general public in addressing the marginal lands criteria, the Lane County Board of Commissioners, in 1997, adopted an interpretation of and supplement to the County's marginal lands information sheet ("the Board interpretation") a

with trespass and vandalism problems on the subject property. Mr. Moshofsky testified that at no time did monetary consideration between the parties for the grazing exceed \$1000 annually. Mark Minty, a partner in C&M Livestock Company during that period, provided testimony in an affidavit in the record that Mr. Moshofsky's description of the activity and the agreement of the parties was accurate and that the company did not own or manage any property adjacent to, contiguous with or in the vicinity of the subject property. Mr. Minty also testified that it is his opinion that the subject property is of marginal value for grazing or other agricultural production and could not be managed as part of a farm operation capable of producing \$20,000 in gross income annually.

Furthermore it is found that the applicant has demonstrated that the subject property was not managed as part of a forest operation that produced an average, over the growth cycle, of \$10,000 in annual gross income.

The applicant's forester, Marc Setchko, provided an analysis to the record of the timber-growing potential of the subject property and concluded that the subject property could not be managed as a forest operation capable of producing an average, over the growth cycle, of \$10,000 in annual gross income. Mr. Setchko, with both professional credentials and 27 years of experience, is highly qualified to render such any analysis and conclusion.

Mr. Setchko's opinion was based on a detailed analysis of the existing soils, their ability to grow timber (primarily Douglas-fir) and conversion of that growth potential into dollars based upon log prices in 1983. Mr. Setchko's methodology is dictated by the Board interpretation (Direction for Issue 4). Mr. Setchko's analysis used a fifty-year growth cycle as directed by the Board interpretation (Direction for Issue 5).

Mr. Setchko, in his report dated March 27, 2005, conducted a forest income analysis of the subject property that included the entire 387.65 acres of common Moshofsky ownership in 1983. In that report Mr. Setchko calculated the average gross annual income of the property through a complete growth and harvest rotation. He calculated what the forest operation on the subject property was capable of, in terms of income, based on actual stocking of the property during the 1978-1983 period. His calculation is based upon the actual volume of timber removed from the property in 1990 by Mr. Moshofsky (Mr. Moshofsky's affidavit of that timber removal, dated March 15, 2005, is included in the record) and his timber cruise of the remaining portion of the property containing stands of merchantable Douglas Fir. Included in Mr. Setchko's report is a map of the property with areas of timber harvest and existing stands of merchantable Douglas Fir delineated. Mr. Setchko's earlier reports in the record of this proceeding, and incorporated herein by this reference, demonstrate that significant portions of the property have not had any merchantable trees growing thereon for at least 50 years (and likely 100 years), due primarily to the steep, rock-laden, barren slopes of the northern portion of the property and the continually moist bottom land throughout the middle of the property. Those areas of the property contain poor soils for timber production (138G, 52 D, and 28C) as shown in Mr. Setchko's numerous reports in the record of this proceeding. The record of this proceeding includes aerial photos of the property, dating back to 1952, that display that those same areas have been devoid of any trees, merchantable or otherwise, long before the 1978-1983 period and continue to this day to be devoid of trees. Mr. Setchko was not required to make any assumptions on stocking levels in his

Goal One Coalition argues that the applicant has not conducted any analysis of the “income-producing capability” of the proposed marginal lands using “current timber values” to calculate the potential gross income over the growth cycle. Goal One Coalition is correct in asserting that the calculation of the annual gross income for the ORS 197.247(1)(a) income test can be accomplished by the use of timber values. However, it is incorrect in its assertion that the calculation must use “current timber values.”

Goal One Coalition references language in *DLCD v. Lane County* (Ericcson)¹ that mentions that “current prices” were used in the calculations of the Ericcson application. In that case, however, the use of a particular year’s prices was not at issue and LUBA made no determination regarding such use. What the decision in Ericcson did establish, in addition to affirming Lane County’s approval of a Marginal Lands re-zoning application, was that on-site evaluation of forest productivity by a qualified expert is weightier evidence than published data or that provided by individuals not qualified as experts in forest management.

Mr. Setchko used 1983 Douglas-fir log prices and volumes in his calculation of the projected gross forest operation income of the proposed marginal land. In this case Mr. Setchko is the qualified expert with 27 years of forest management experience, including 17 years as a private consultant and a Master’s Degree in Forestry. Goal One Coalition has not established that it has any experience or credentials in forest management. Furthermore, it has not provided any testimony from a qualified expert in forest management to support its assumptions and conclusions.

Lane County, in response to and in reliance upon Ericcson, issued its interpretations of the Marginal Lands statutes in the Board of Commissioners’ 1997 Supplement to Marginal Lands Information Sheet. A copy of the supplement and the information sheet was provided to the record of this decision. It is a binding policy statement providing guidance and direction to applicants, county planning staff, the public and to the Lane County Planning Commission and Board of Commissioners regarding the statute. The Board direction stated in ISSUE 4 of the supplement provides:

“ISSUE 4: What price date 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 23 Or LUBA 33 (1992)

3. **Additional documentation is required concerning timber companies in which Mr. Moshofsky held financial interest, in order to ascertain if those companies conducted forest operations of which the subject property was part of, and if those operations grossed more than \$10,000 annual during 1978-1983.**

Goal One Coalition raised this issue in its letter to the Lane County Planning Commission, dated February 25, 2005. In that letter, Mr. Just provided documentation of several timber harvesting companies that were in whole or in part, owned by Mr. Moshofsky. The Board finds that such additional information is unnecessary, as the record contains Department of Forestry/Department of Revenue information on the 1990 harvest which occurred on the subject property. That document does not indicate that the harvesting was carried out by any of the companies with which Mr. Moshofsky was affiliated. The Board reasonably concludes that the subject tax lot (#300) and contiguous property (tax lot #1300) was not part of a larger forest operation during the period of 1978-1983.

4. **All income from operations of C&M Livestock Company must be included in the calculations for the agriculture income test.**

Mr. Minty has testified that C&M Livestock Company owned no property contiguous to, adjacent to or nearby the subject property. Mr. Moshofsky testified that he requested that the cattle be grazed on the property to create a presence on the property in his absence and that the consideration for the grazing was primarily in the form of the presence and maintenance of fencing and never in an amount exceeding \$1000 in a particular year. It is found that Mr. Moshofsky, the owner of the property during the five-year period preceeding January 1, 1983, did not manage the property for or as a farm operation beyond the intermittent grazing of a limited number of cattle and that that farm operation did not produce \$20,000 or more in annual gross income. Therefore, it is found that the intermittent grazing of a limited number of cattle on the subject property should be reasonably considered as not contributing significantly to the agricultural economy of the area or state and that the subject property was not managed as part of a farm operation that produced more than \$20,000 in annual income during the subject period.

5. **The applicant has not established that the subject parcel is not capable of producing 85 cu.ft./ac./yr. of merchantable timber.**

Goal One Coalition argues two points within this argument. First it argues that the applicant's consulting forester has not applied a sanctioned methodology for determining forest productivity.

Mr. Setchko used information generated by Lane County and the Oregon State Forester's office consistent with LCDC regulations for providing such ratings.² Mr. Setchko calculated the forest productivity capability of the subject property using the same sources of ratings that were used in the Carver application (the subject of *Just v. Lane County* referred to hereinabove). Those

² See OAR 660-006-0005(2)

misused information from various internet publications to conclude that Ponderosa Pine, Hybrid Poplar and KMX have a much higher productivity potential on Western Oregon soils than is accurate and than can be scientifically verified. His conclusions in his Ponderosa Pine analyses mirror his earlier opinions, provided as evidence herein, that all other potentially merchantable tree species would either not grow on the soils of the subject property or would not produce a volume in cubic feet that would equal the growth rate of Douglas-fir.

Forest soil productivity data can be found in several sources:

- Soil Survey of Lane County Area, Oregon;
- Office of State Forester Memorandum (Exhibit 24);
- Lane County Soil Ratings for Forestry and Agriculture [LCOG] (Exhibit 23).

The Soil Survey contains productivity ratings for soil map units in Lane County, but does not provide forest productivity ratings for soils considered primarily farm soils or composite ratings for soil complex units. The State Forester memo provides ratings for those soils based upon a field review of soil map units in Lane County by State Forestry staff. The Soil Ratings document provides ratings for the soil complexes using a weighted average methodology for the complex-type soil map units. Of the three sources, the Soil Survey is considered the primary source of soils data for Lane County. The State Forester's ratings for the soils not rated in the Soil Survey is considered the second best source of forest productivity ratings since it was based upon field inspections of sites in Lane County and was produced by the Oregon Department of Forestry. The Soil Ratings document using a weighted average methodology for complex soil map units is considered the next credible forest productivity ratings data for those soil map units.

The Goal One Coalition submittal argues that the Goal 4 provisions found in OAR 660-006-0010 and 660-006-0005 govern the methodology to be used in the assignment of forest productivity ratings for the subject application. However, nothing in the statutory provisions identify these rules as requirements that apply to a Marginal Lands determination or prevent Lane County from determining forest productivity ratings from any credible source. The administrative rules may be useful to use as guidelines when making a determination regarding the appropriate ratings to assign a particular soil map unit, but they are not necessarily governing. LUBA made a footnote to this effect in the *Carver* decision (footnote 11).

The opponents maintain that these two soil map units have a higher productivity rating for Ponderosa Pine. The Ponderosa Pine productivity ratings assigned to the soil map units that opponents argue should be used instead are apparently taken from a document titled: "Establishing and Managing Ponderosa Pine in the Willamette Valley," Oregon State University Extension Service, EM 8805, May 2003." Mr. Setchko testified that a complete reading of that document reveals that it repeatedly states that its data is from a very small sample and should not be used at this time until more long term data can be collected. Goal One Coalition has not produced any evidence that refutes Mr. Setchko's analysis or conclusions regarding this matter.

Ponderosa Pine

The following observations are instructive on this issue:

“ISSUE 4: What price date 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 income over the growth cycle.” (Emphasis added)

The Board’s direction to use 1983 prices was an essential and reasonable approach to determining the productivity of forest lands at that time and obviates the need to make annual adjustments for inflation as the years go by (by adjusting the \$10,000 income figure).

Mr. Setchko’s use of 1983 prices to determine average annual gross income is consistent with Lane County policy and is directed by the Board of Commissioners’ binding local level policy statement in the aforementioned supplement. Using 1983 prices, Mr. Setchko has determined that the subject property was not capable of being managed for forest operations producing at least \$10,000 in annual gross income. Opponents have provided no evidence that contradicts or refutes Mr. Setchko’s conclusions.

The Oregon Land Use Board of Appeals affirmed Lane County’s policy of utilizing 1983 log prices in the forest income test analysis. In *Just v. Lane County*, LUBA No. 2005-029, dated June 8, 2005, LUBA affirmed the use of 1983 log prices in another Marginal Lands case and stated:

“Although ORS 197.247(1)(a) does not expressly mandate that counties use 1983 timber prices in applying the gross income test, we agree with the county and intervenor that it implicitly does so. The purpose of the forest operation test is to identify lands that are not capable of meeting the specified \$10,000 threshold averaged over the growth cycle. Both the “farm operation” and “forest operation” prongs of the test are specifically linked to January 1, 1983.”

Productivity Analysis” that were provided to the record in support of the application. Mr. Setchko’s experience and expertise provides the conclusion that many of the species, especially KMX and hybrid poplar, have no established market and are, therefore, not merchantable. His overall conclusion is that if the proposed marginal land is not capable of producing an average of \$10,000 in annual gross income from Douglas-fir, then there are no other merchantable tree species that could produce any more than the calculated figures that he has provided in his analysis for Douglas-fir. Goal One Coalition has not provided any evidence that contradicts or conflicts with the findings and conclusion of the Setchko reports. It is found that the applicant, through the evidence provided by Mr. Setchko’s reports, has demonstrated that the subject property is not capable of producing more than 85 cu.ft./ac./yr. of merchantable timber.

ORS 197.247(1)(b)(C):

The applicant has demonstrated, through use of the 1987 SCS Soil Survey of Lane County Area, Oregon, (1987 Soil Survey) that the subject property contains predominately classes V-VIII in the Agricultural Capability Class Classification System in use by the United States Department of Agriculture Conservation Service on October 15, 1983. The applicant has further demonstrated, with the inclusion of the Lane County Agricultural Lands Working Paper of the Lane Rural Comprehensive Plan (“Working Paper”) published in November 1981, and its 1983 Addendum, the cover page and forward of the 1987 Soil Survey and the forward of the 1987 Soil Survey currently posted on the NRCS web site, that the soil map units and soil classifications contained in the 1987 Soil Survey were the classifications of the SCS system in use on October 15, 1983.

It further found that, in addition to the findings contained in the previous sub-paragraph 5. findings regarding Goal One Coalition arguments, that the applicant has adequately demonstrated, through the evidence provided by Marc Setchko, that the subject property is not capable of producing more than 85 cubic feet per acre per year in merchantable timber.

Conclusion: The subject property qualifies under ORS 197.247(1) as marginal land because:

- (a) it 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;
- (b) it was not managed as a part of a forest operation during that same time period which was capable of producing an average, over the growth cycle, of \$10,000 in annual gross income;
- (c) it is composed predominantly of soils in agricultural capability classes V through VIII, and
- (d) it is not capable of producing 85 cubic feet of merchantable timber per acre per year.

(2) **GOAL TWO: LAND USE PLANNING.**

(a) **Policy 25: Changes to Plan Diagram.**

This application for amendment of the Plan Diagram designations for the subject property has been evaluated through the county's plan amendment procedure and approval of this application is based upon fulfillment of the criteria of Lane Code 16.400 which is addressed in Section 4 of these findings.

(3) **GOAL THREE: AGRICULTURAL LANDS.**

There has previously been a legislative determination by Lane County, as embodied in the acknowledged Lane County Rural Comprehensive Plan, that the subject property is not agricultural land and is not High Value Farmland. Nonetheless, consideration of agricultural use of the subject property and application of all relevant criteria regarding agricultural considerations has been adequately provided in the application and during the evidentiary hearings.

(4) **GOAL FOUR: FOREST LANDS.**

(a) **Policy 1: Conservation of forest lands.**

The primary policy of both the comprehensive plan and statewide planning goals regarding forest lands is the conservation of those lands for multiple forest uses. Approval of this application is consistent with and supports Policy 1 of Goal Four of the Comprehensive Plan.

4.6 **Lane Code 16.400(6)(h)(iii)(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.

As discussed in previous sections, this plan amendment is consistent with and satisfies the criteria that are referenced and adopted by specific policies in the RCP. Those policies are RCP Goal 3, Agricultural Lands, Policy 14 and RCP Goal 4, Forest Lands, Policy 3 which specifically allow certain, qualified, resource lands to be designated and zoned as marginal lands. Approval of this amendment is consistent with the RCP policies for farm (Goal 3) and forest (Goal 4) lands.

The Board interpretation recognizes this consistency. It states under "ISSUE 1":

"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 small 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

5) By its location near the Metro Plan UGB, it will provide for the orderly and efficient transition from rural to urban lands and the efficient provision of public facilities and services;

6) By virtue of regulations discussed above, it will protect the quality of the land, air and water of the county and will protect life and property in areas subject to flooding.

This zone change is consistent with the purposes of the Marginal Lands Zoning District because it provides an alternative to more restrictive farm and forest zoning and it will allow any of the uses permitted in the Marginal Lands zoning district and thereby provide opportunities for persons to live in a rural environment and to conduct part-time farm or forest operations. It is being applied to property in accordance with Lane Code Chapter 16 criteria and procedures, RCP plan policies and criteria in ORS 197.247 (1991 ed.).

CONCLUSION

This application has addressed the applicable criteria, shown consistency with that criteria, has demonstrated good public policy through the public and private benefits accruing from its proposals.

Based on the substantial evidence presented above and included in the record of this decision, the Board of County Commissioners finds and concludes that the subject application for plan amendment and zone change meets and satisfies all of the relevant criteria and hereby is granted approval.