

closer to 75 percent. He added that once the property had been designated as marginal lands there could still be forestry activities on the land.

Mr. Becker said he was interested in the productivity test for forest products on the land.

Mr. Cornacchia said the land was incapable of producing 85 cubic feet of timber per acre per year.

Johnny Watson said he owned property north and west of the property in question. He urged the commission to ask for documentation on the income gained from forestry on the land. He said the property had been logged in 1997 and there had been no serious effort to replant the land. He noted that he had logged his adjacent property in 1995 and had replanted trees. He said when the land was logged the timber had been taken and the slash had been left on the land. He reiterated his urging that the commission demand documentation on the volume of timber cut.

Trish Chonya, 38965 Jasper Road, said there was no way to determine well production on the land since there was no electricity to run a pump. She also said that there should be a check for hazardous waste material on the land. She said she had seen an oil sheen during logging activities. She added that there had been a huge dump site on the property that the county had made the land owners remove. She said logging activity had wrecked all the natural drainage on the site.

Ms. Chonya noted that there were still some big trees on the property and questioned how an income test criteria could be met if the land was not reforested after it was logged.

Robert Winkler, spoke as the owner of nearby property, when the property was logged in 1997 a large amount of water runoff from the site had gone through his pasture. He raised concern over an oil sheen on the water coming from the property in question that had come from barrels stored on the site. He added that there was no way for a well to be tested on the land because there had been no electricity on the site. That there had never been attempt to reforest the land after it had been logged. He said a road had been created that destroyed all natural drainage and affected his property with flooding. He said he had called the county about the problems and nothing was done. He questioned how the area could produce trees if it was not replanted.

Sherry Perry, 38975 Jasper Lowell Road, said marginal land that was not producing may not be producing because it had not been farmed. She said the question that should be addressed was whether it was marginal land that could not produce timber or was not producing because it had never been replanted. She said there had been no attempt to replant the property. She said land had been marginalized by removing all of the marketable timber and not replanting or attempting to raise a new crop. She said she was still not sure that at least 50 percent of the potential marginal land consisted of lots of 20 acres or less near the perimeter. She urged the commission to look into the manner very closely.

Tim McMann, 38885 Jasper Lowell Road, owned the land to the west of the property. He said there were abandoned mobile homes, cars, and a boat on the property and expressed his frustration that the 'junk' had not been removed.

Nina Lovenger, 40093 Little Fall Creek Road, spoke in opposition to the rezoning. She said in order to address the income tests for the property it was first necessary to establish the marginal land boundaries. She said the applicant asserted that a 1994 property line adjustment established the legal lot status for tax

lot 106. She said by state statute a property line adjustment could not create a lot or parcel and could not serve to have legally created tax lot 106. She said state law required that property line adjustments be accomplished by re-plat procedures or local procedures providing for the recording of the deed showing the property line adjustment had been done. She said no legal property line adjustment had been done so it was not possible to tell the configuration of the marginal lands in question. She said since no legal property line adjustment had been done the original configuration of the land was what had to be considered. She added that no partition of parcels was ever approved. She said tax lots 100 and 106 should be reviewed together as one lot. She said there was no evidence in the record on which to base a determination. She urged denial of the application. She submitted written material into the record.

Laurie Segel, 1192 Lawrence, spoke on behalf of Land Watch Lane County, said ORS 197.247(1)(b)(A) required that 50 percent of the proposed marginal land in parcels lower than 20 acres in size be within a quarter mile of the perimeter. She maintained that the land was one parcel and the applicant had fundamentally misconstrued the parcelization test. She said the test required that the line be drawn a quarter mile from the perimeter of the subject property and all lots or parcels within or partially within the area be identified, and the size of the lot or parcels determined. She said the total area of all the lots and parcels within or partially within the test area were required to be determined. She said if the total area of all lots or parcels of less than 20 acres was greater than 50 percent of the test area then the land could be zoned marginal. She said a great majority of the land in the test area consisted of lots or parcels greater than 20 acres. She said lots or parcels of less than 20 acres constituted only 11 percent of the land in the study area. She said the application did not meet the parcelization test criteria and needed to be denied. She requested that the record be left open for an additional week.

Jim Just, Executive director of the Goal One Coalition, said OAR 660-006-0010 required that forest inventory information use available site data and the data had to be expressed in terms of site index of cubic feet per acre per year. He said the applicant had not provided any data in terms of site index but simply referred to marketable timber. He said the applicant had not addressed productivity for any tree species other than Douglas Fir. He said ponderosa pine could be grown on the land and suggested that ponderosa pine would produce 102 cubic feet per acre per year. He urged denial of the application.

In response to a question from Mr. Becker regarding the differences between timber production figures shown by the applicant and the Goal One Coalition, Mr. Just said the difference was that the data was taken from the Lane County ratings for Soil and Agriculture which was a publication is based on NRCS data and not Soil Conservation Service data. He said the published data from the Soil Conservation Service was based on a 100 year index. He said the NRCS data used a 50 year site index so productivity data would appear differently.

In response to a question from Ed Becker regarding which data should be used for the application, Mr. Lanfear said in the applicant's submittal there was a Board direction that the 50 year growth cycle be used for standardization. He acknowledged that there was an option could be used if substantiated by compelling scientific evidence.

Clark Anderson 38931 Jasper/Lowell Road, said he owned the parcel to the west of the subject property raised concern that the property in question would not have enough water to serve development.

Martin Dryspont 39005 Jasper Lowell Road, said he had never seen any activity on the land and questioned how the land could be judged to non productive when there had not been any activity on it.

Mr. Carmichael called for applicant rebuttal.

Mr. Cornacchia said the applicant had provided more than adequate information on the water on the site. He reiterated that the application incorporated information on a 100 well report that was used in the current application and had also been used to approve a previous application.

Regarding criteria for productivity, Mr. Cornacchia said the question that was whether the land was managed in a way that could produce the required number of dollars. He said nothing in the opposing testimony refuted the information provided by the applicant regarding income tests. He said anecdotal testimony did not refute the expert testimony desired.

Regarding the issue of soil complex, Mr. Cornacchia said the Goal One Coalitions material was a rehash of testimony used in a previous case, (Carver). He said the Land Use Board of Appeals, LUBA, was emphatic that nothing had been shown that NRCS had changed its methodologies. He acknowledged that Mr. Just disagreed with NRCS and Lane County and lane county soil ratings. He stressed that there needed to be common ratings and classifications. He said a property could not be divided in component soils and be rated individually.

Regarding soil ratings from Ponderosa Pine instead of Douglas Fir, Mr. Cornacchia referred to a report from a forester (Mark Sedgco) He read from the report of a previous case who said; "Mr. Just then states a site index of 104 from establishing and managing ponderosa pine in the Willamette Valley from an internet source." He stressed that Mr. Sedgco had established credentials in forestry that Mr. Just did not have and that the commission must weigh expert testimony heavier than anecdotal material. He said the website data cited by Mr. Just stated on the webpage that the data was from a very small sample and should not be used until more long term data could be connected. He said the issue came down to the fact that other marketable species cited by the opposition would not grow as fast or as well as Douglas fir in western Oregon. He said Douglas Fir was the indicator species for forest income in the area since other species would not produce the same volume in the same amount of time.

Mr. Cornacchia called attention to the soils map included in the applicant's report, (Exhibit 7). He said the map was produced by Lane Council of Governments and was one of those used as a standard in Lane County.

Mr. Carmichael called for staff comment.

Mr. Lanfear noted that the water study provided by the applicant would be submitted into the record.

Regarding the Carver decision that focused on soil ratings, Mr. Lanfear said he would put a copy of that decision into the record.

In response to a question from Ms. Nichols regarding the accuracy of the soils maps produced by LCOG, Mr. Lanfear said the categorization was done by aerial photography and was the best rating that could be used by county staff.

In response to a question from Ms. Arkin regarding the trailers on the property were inhabited, Mr. McMann said the trailers were not inhabited but were filled with garbage.

In response to a question from Ms. Arkin regarding whether there was any evidence in the record regarding a hazardous spill on the property, Mr. Lanfear said he would speak with the compliance officer and see if there was any information on file.

In response to a question from Ms. Arkin regarding exhibit C issue seven in the application regarding parcelization, Mr. Lanfear said at the time the report was written there was disagreement with DLCD about the area to be used to look at parcelization. He said DLCD wanted to go around the outside of any parcel that fell within the quarter mile which produced a very different result. He said the way the rule had been read in the past was that 50 percent of the proposed marginal lands application had to be less than 20 acres in size.

In response to a question from Mr. Zdzenicki regarding lot line adjustments and staff's response of Ms. Lovenger's testimony, Mr. Lanfear said he had looked at the ownership of the land in 1981, which was the relevant period, and found out that the former owner of the property owned tax lots 107, 100, 102, 104, and 600. He said some time after that date tax lot 106 had been sold of separately. He said there was some question of legality regarding that sale. He said there had been a legal lot verification on tax lots 102 and 104 and adjusted the boundaries. He said two property line adjustments to add 100 and 102 and 107 and 104. He said he did not know why the assessor had drawn them as separate tax lots since they were under common ownership. He said during the process the board had adopted findings that said the four tax lots represented to legal lots. He said tax lot 106 had been determined as a legal lot when the boundary line had been established for the legally existing parcels. He said when tax lot 106 had been sold off to the applicant the issue had been solved by establishing property line adjustment deeds which the Board of County Commissioners had recognized as legal.

In response to a question from Mr. Becker regarding reforestation and whether the property actually was required to be reforested within a certain amount of time, Mr. Cornacchia said that was not part of the approval criteria. He stressed that the applicant had provided productivity through soil analysis to determine what the soil could produce.

Mr. Carmichael acknowledged that there had been a request to leave the record open for an additional week. He said there would have to be an additional week to address any new material that had been submitted as well as time for the applicant to rebut information submitted.

Mr. Zdzenicki, seconded by Mr. Sullivan, moved to keep the written record for one week, with deliberations tentatively scheduled for January 17. The motion passed unanimously.

Mr. Carmicheal thanked those who testified at the hearing.

The meeting adjourned at 9 pm.
(Recorded by Joe Sams)

LANE COUNTY PLANNING COMMISSION

Staff Report

Hearing Date: December 6, 2005

File PA 04-6308

Report Date: November 28, 2005



LAND MANAGEMENT DIVISION

http://www.LaneCounty.org/PW_LMD/**I. PROPOSAL****A. Applicant / Owner:**

Carol Dennis
P.O. Box A
Port Orford, OR 97465

Agent:

Steve Cornacchia
180 East 11th Avenue
Eugene, OR 97401

B. Proposal

Request for a Rural Comprehensive Plan Amendment to redesignate 102.69 acres from "Forest" (F) to "Marginal Land" (ML) and rezone from "Impacted Forest Lands (F-2)" to "Marginal Lands (ML)" pursuant to Lane Code 16.400 and 16.252.

II. RECOMMENDATION

This proposal appears to meet applicable approval criteria and guidelines. Staff recommends:

- 1.) Approval of the Plan Amendment from Agricultural land to Marginal Land, and
- 2.) Approval of the Zone change from E-40 to ML.

III. SITE AND PLANNING PROFILE**A. Location**

Map 18-01-33 Taxlot 106

B. Zoning

F-2/Impacted Forest Lands Zone. Plot 527.

C. Site Characteristics

The property consists of a legal lot with a total area of 102.69 acres. The property is located north of the Community of Fall Creek, north of Jasper-Lowell Road. Refer to page 4 and exhibits of applicant's statement for more detail on the property and surroundings.

D. Surrounding Area

Land to the north is zoned Non-Impacted Forest Lands (F-1); to the east, Impacted Forest Lands (F-2); to the south, Rural Residential (RR-10) and Rural Public Facility (RPF); and to the west Exclusive Farm Use (E-40) and Marginal Lands (ML).

E. Services

Fire: Lowell RFPD
Police: County, State
Sewer and Water: On-site

School District: Lowell District #71
Power: EPUD
Access: Private easements from Jasper-Lowell Rd. (County)

F. Referral Comments Received

No comments from agencies or private citizens were received as of the writing of this report.

IV. CRITERIA AND ANALYSES

A. Character of the Request

The proposal is a Minor Amendment pursuant to Lane Code 16.400(6)(h) and Oregon state law concerning the designation of Marginal Land (1991 ORS 197.247). State statutory standards invoked by this application are as follows:

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

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

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

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

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

Also effective on the decision are several County criteria from Lane Code 16.400, having to do with adoption of a Plan amendment and information required to be developed in support of the request. The applicant's Statement (attached) recites the appropriate local and state standards and applies them to the proposal.

Approval of the Plan amendment and rezoning could result in a minimum of 5 parcels of 20 acres each as authorized in the Marginal Lands (ML) zone, Lane Code 16.214. A potential for 8 parcels is identified by the applicant. Parcel size is limited to a 20-acre minimum for all parcels adjacent to the resource lands (F-1, F-2, E40) to the north, east

and west and 10-acre parcels can be authorized next to the lands to the west and south (ML, RR-5, and RPF). It needs to be noted here that approval of the Plan amendment/rezone does not constitute approval of land division, which is a separate administrative process involving conditions of approval and notice to neighboring landowners. No potential development plan for the parcels has been submitted.

B. Analysis

The following comments can be made with respect to the evidence supplied in support of the action. The application must comply with the "Income Test" portion of the statute [ORS 197.247(1)(a)] and one or more of the other tests found in ORS 197.247(1)(b): (A), (B) or (C). The applicant has chosen to show conformity with both the "Productivity test" (C) and the "Parcelization Test" (A) although it is necessary to meet only one of those tests.

1. Income Tests

The review required by this criterion must include all property that makes up a farm or forestry operation during the five years prior to January 1, 1983. The original submittal analyzed only the subject property without consideration for the additional adjacent properties under common ownership during that period of time. The additional taxlots 100, 102, 104, 107 and 600 comprise an additional 12 acres to the south of the subject property. The original submittal was revised to include this acreage in the supplemental submittal of June 3, 2005.

The former owner of the property between 1978 and 1983 is deceased and the current owner purchased the property in 1987. During the applicable time period, the applicant states that he did not witness any farm operations on the subject property and it was not managed as part of a farm operation that produced \$20,000 or more in annual gross income. The application also provides objective evidence in Exhibit E, examining the property's capabilities for farm uses. The report by Paul Day analyzes the potential for farming on the property and concludes that grazing, hay production, or crop production could not generate over \$20,000 annual gross income during the relevant time period.

The property was apparently managed for forestry operations during the relevant time period as evidenced by the reference to logging operations in the Setchko report (applicant's exhibit "G"). The forestry consultant's report and the supplemental submittal dated June 3, 2005 determine that the operation was capable of producing only \$6,821.74 in gross annual income over a 50 year cycle based on the existing soil types. This income capability is below the required \$10,000 standard.

2. Productivity Tests

The forester estimates the parcel's capability at 78.175 cubic feet per acre annual, which is under the 85 cubic foot per acre annual statutory limit for ML designation. The supplemental submittal adds the additional 12 acres under common ownership during the relevant time period to the calculations to determine that the property was capable of producing only 80.7 cu.ft./ac./yr., still below the 85 cu.ft./ac./yr. standard for Marginal lands designation.

Agricultural capability of the property is addressed on page 16 of the original application and page 3 of the supplemental submittal. According to this information, 74% of soils on the property fall within agricultural capability classification V through VIII -- soils which qualify for Marginal Land status.

3. Parcelization Test

In the original submittal Exhibit H, the applicant has identified 38 parcels wholly or partially within ¼ mile of the perimeter of the subject property. 29 of the parcels (76%) are smaller than 20 acres which meets the required 50% standard.

4. Policy Analysis.

Reference is made in the application to Lane County RCP policy 3, Goal 4, as follows:

Forest Lands that satisfy the requirements of ORS 197.247 may be designated as Marginal Lands and such designations shall also be made in accordance with other Plan Policies. Uses and land divisions allowed on Marginal Lands shall be those allowed by ORS 197.247.

Within the applicant's statement is a discussion of applicable plan policies as required above; the statement concludes that policy compliance is achieved. Compliance with ORS 197.247 is satisfied by the Marginal Lands tests discussed earlier in this staff report.

4. Lane Code Requirements.

The remainder of the submittal satisfactorily addresses compliance with the code aspects such as: fulfilling the purpose of the ML zone as found in LC 16.214(1); the Plan Amendment requirements of LC 16.400; and the rezone requirements of LC 16.252. Staff agrees with the statements as presented.

IV. CONCLUSIONS

A. **Summary Comments**

If the Commission concurs with the applicant's arguments, a recommendation for approval to the Board of Commissioners is appropriate. Approval can be founded in Lane Code 16.400(h)(iii)(iv-iv), *necessary to provide for the implementation of adopted Plan Policy or elements*. The element in question is that portion of the Plan authorizing Marginal Lands.

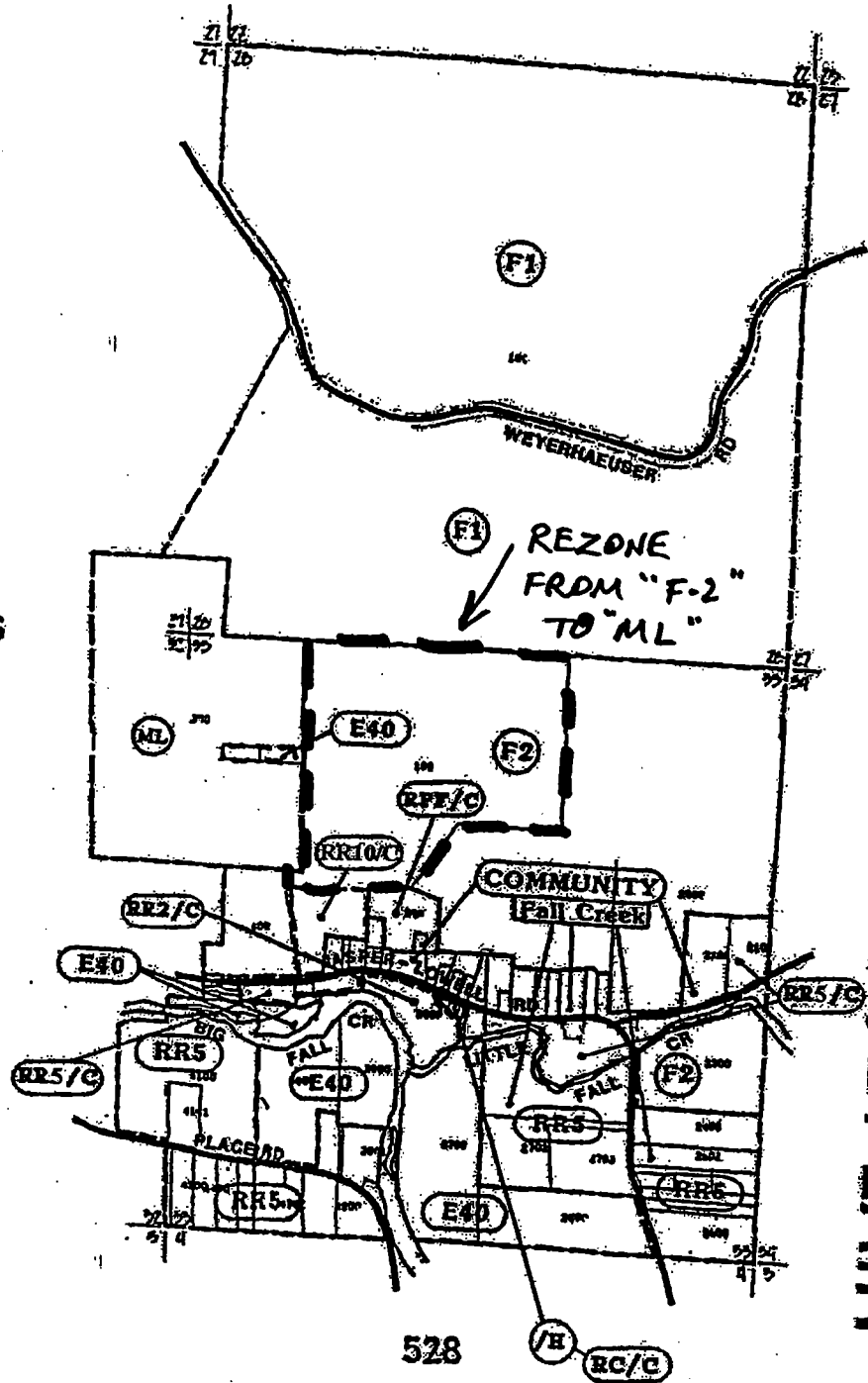
B. **Attachments to this Staff Report**

1. Notice maps
2. Applicant's statement with exhibits

18 01 33

516

536



FLOODPLAIN

county

SCALE IN FEET 0 1000 2000 3000 4000

NORTH

OFFICIAL ZONING MAP

PLOT# 527

Township Range Section
18 01 28 / 18 01 33

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

SION # 3 ORD # PA1076 DATE 9/25/95 FILE # PA0658-95

HERSHNER HUNTER
LLP

STEVE CORNACCHIA
scornacchia@hershnerhunter.com

December 20, 2005

HAND DELIVERED

Lane County Planning Commission
ATTN: Thom Lanfear
125 E. 8th Avenue
Eugene, OR 97401

Re: Re: PA 04-6308 (Sutton)
Our File No. 30607.30002

Dear Commissioners:

We represent Carol (Sutton) Dennis regarding the above-mentioned plan amendment. On behalf of our client we submit the following information as a response to the correspondence received by Lane County from opponents of the plan amendment following the public hearing on December 6, 2005.

We believe that, in general, the correspondence can be divided into several common issues, most of which were presented through oral testimony during the public hearing. We believe that most of the issues raised by the testimony and subsequent testimony are not issues that are relevant to the approval criteria for the proposed plan amendment. In those instances where the issues may be relevant, we believe that the applicant has adequately addressed those issues in the original application and supporting documents.

We will respond to the correspondence by addressing the issues presented in the correspondence.

- 1. Harvesting of timber on the subject property.** Several opponents have raised an issue about the amount of timber harvested on the subject property by the applicant. The opponents argue that the applicant has not demonstrated the timber productivity of the subject property because the applicant has not provided the amount of timber harvested from it. The applicant **has** demonstrated the timber productivity of the subject property (its lack of capability of producing 85 cubic feet of merchantable timber per acre per year) through the expert analysis of forester Marc Setchko, dated June, 2004, and included as Exhibit G to the original application. Mr. Setchko

provides an overview of the subject property and the fact that less than half of the property is forested:

“The Dixonville-Philomath-hazelair complex, Philomath silty clay and Witzell very cobbly loam are poor tree growing soils; the rock out-cropWitzel complex is an extremely poor tree growing soil, with the rock outcrop portions incapable of supporting trees. Natural meadows and rock outcroppings cover over half of the parcel. There are ribbons of rock through the meadows exposed by winter runoff channels.”

“Approximately three acres of incense cedar are growing in a clump in the southwest portion of the parcel. The other timbered area is on the hill along the northern boundary and the northeast portion of the property. There are approximately 40-45 acres of scattered, multi-aged Douglas-fir, ponderosa pine and incense cedar trees.”

Mr. Setchko also testified that the applicant had conducted a light selective thinning:

“It has been several years since any logging activities were undertaken on the property; the last logging completed was a light selective thinning. There was not much timber growing on the parcel at that time; currently the majority of the timber left is either premerchantable size or of poor form and health.”

Mr. Setchko states that his analysis is based upon “the specific site conditions present, empirical yield tables, SCS data, Lane County Data and experience with similar lands.” He concludes that the subject property could produce 1,257.68 MBF (thousand board feet) over a 50-year growing cycle. That amount of yield would produce an average gross income of \$5,773 per year. He further concludes, based upon his analytical methodology (using empirical tables, SCS and Lane County Data) that the subject property is not capable of producing more than 85 cubic feet per acre per year. The applicant did not provide the amount of the actual harvest of the selective thinning because it was not relevant to Mr. Setchko’s analytical methodology (using empirical tables and SCS and Lane County data) for determining the **productivity capability** of the property. Since the public hearing, the applicant has determined that approximately 195 MBF was harvested from the property during the selective thinning. 195 MBF represents less than 15% of the amount of timber that Mr. Setchko concluded the property could produce over a 50-year growing cycle. Mr. Setchko’s report, based upon his personal observations of the property,

demonstrates that the applicant selectively thinned the subject property, that little merchantable timber was growing on the property at that time, and that over 50% of the property was not forested and incapable of sustaining tree growth.

In conclusion, we submit that the issue of timber productivity is adequately addressed through Mr. Setchko's analysis. The amount of harvest from the selective thinning, while irrelevant to Mr. Setchko's analysis, actually adds credence to Mr. Setchko's analysis and conclusion.

2. **Replanting of the subject property.** Several opponents testified that they believed the applicant did not attempt replanting even though the application contains that information. The testimony is as if the belief was fact (either drawn from another opponent's testimony during the public hearing or drawn from what neighbors "have seen going on") and totally ignores the applicant's testimony and that of Mr. Setchko who, based upon his personal observations of the property, states in his report that "the owners have planted new conifer seedlings more than once to establish new stands of trees, their efforts have been thwarted by extremely high mortality rates." Mr. Setchko has the experience and credentials to be considered an expert in forestry. His personal observations of the replanting efforts must be given more weight than the observations of neighbors without such experience and credentials. If the observations of the neighbors were the result of trespass (rather than merely viewing the property from their own property), then those observations merely support Mr. Setchko's (and the applicant's) testimony that replanting was attempted but was not successful. That testimony further supports Mr. Setchko's analysis that the subject property "is ill suited to the production of merchantable timber and use as land for forestry purposes."

We further submit that the issue of replanting is not relevant to the applicable criteria that must be addressed by the applicant and the planning commission in this proceeding.

3. **The applicant's attorney has inappropriately dismissed anecdotal information from neighbors as irrelevant to the work of the commission.** Applicants always run the risk of offending opponents by pointing out to the commission that expert testimony from credentialed and experienced practitioners constitutes substantial evidence when the only contrary evidence is of opponents' unsupported doubts. Nonetheless, LUBA has found that testimony of a witness who is not shown to be qualified by education or experience to evaluate evidence and draw conclusions concerning a highly technical and complex subject raises substantial evidence concerns, particularly when that testimony is contradicted by expert or agency testimony. (See *Concerned Citizens v. Jackson County*, 33 Or LUBA 70 (1997)). The applicant has provided expert testimony regarding the resource income and

productivity of the subject property. The applicant has provided testimony regarding replanting. The applicant's expert (Setchko) has testified regarding the harvesting and replanting. While we again point out that the income and productivity issues are relevant to the applicable criteria and that harvesting and replanting are not necessarily relevant to the applicable criteria, the opponents have not provided any technical or expert support for their testimony on any of those issues. Consequently, Lane County does apply substantial evidence to support its conclusion that the property qualified as Marginal Land under ORS 197.247 when it chooses the applicant's personal testimony and the applicant's expert testimony over the unsupported, anecdotal, evidence of opponents.

The opponents have offered much testimony that paints the applicant in a very unfavorable light. However, a close examination of that testimony shows that the testimony is anecdotal and unsupported by any applicable agency or expert testimony. The applicants have testified that hazardous materials have been stored and leak on the subject property. However that testimony provides no evidence that Lane County, Oregon Department of Environmental Quality or the U.S. Environmental Protection Agency have issued any correspondence or citations regarding the opponents' claims. The applicant can testify that the only substance stored on the subject property was re-claimed oil in barrels that eventually leaked after being shot full of holes by trespassers and that were removed by the applicant following notice from neighbors and Lane County. The opponents have testified that the "hillsides around Fall Creek are covered with lush stands of timber." But that testimony is not supported by any expert testimony and is not contrary to the soil and slope conditions of the subject property that the applicant's expert has testified extensively on. The opponents testify that their neighbors' property was flooded due to the actions of the applicant but the testimony is not supported by any geological or hydrological evidence nor is it supported by any finding of an agency or court of law that flooding actually occurred and that the flooding was the fault of the applicant. These are examples of unsupported, lay opinions and speculation that do not serve as substantial evidence when contradicted by expert testimony.

We provided the foregoing examples of unsupported, anecdotal, testimony to demonstrate the difference between it and expert testimony, drawn from experience and credentials. In all matters and issues that are relevant to the applicable criteria, the applicant has provided the county with credible expert testimony that is supported by experience and credentials. The opponents have not.

In conclusion, we submit that the applicant has met the burden of proof for demonstrating that the subject property (like the adjacent property to the west) qualifies for Marginal Lands designation under ORS 197.247. The applicant has met that burden with the analysis and

Lane County Planning Commission
December 20, 2005
Page 5

conclusions of expert witnesses. Accordingly, the plan amendment should be approved by Lane County.

Best regards,

A handwritten signature in black ink, appearing to read "Steve Cornacchia". The signature is fluid and cursive, with the first name "Steve" being more prominent.

STEVE CORNACCHIA

PSC:ss

Cc: client

TO: LAKE COUNTY PLANNING COMMISSION
LAND MANAGEMENT DIVISION

12/13/05

ATTN: MR. THOM LANFAR

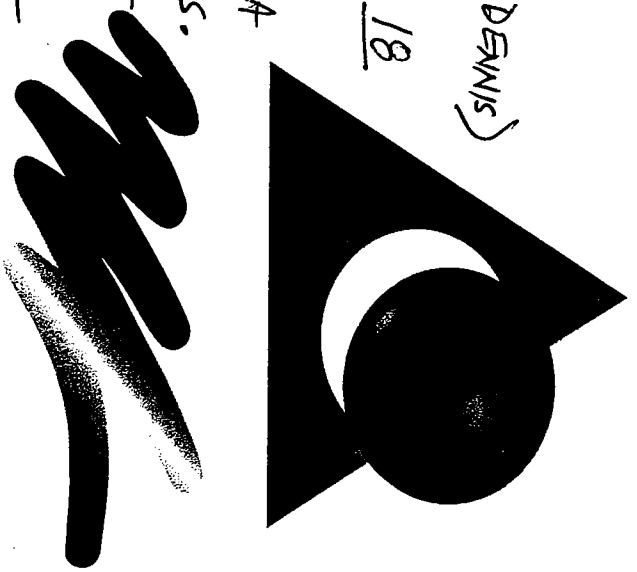
RE: CASE # PA 04-6308 (CAROL DENNIS)

PLEASE ENTER THE ENCLOSED 18
PHOTOGRAPHS INTO THE RECORD
REGARDING THE APPLICATION FOR A
REZONING REQUEST BY CAROL DENNIS.

THESE PHOTOGRAPHS WILL SUPPORT
MY TESTIMONY GIVEN TO THE
COMMISSION ON DECEMBER 6, 2005

CONCERNING THE ABSOLUTE LACK OF ANY
MEANINGFUL EVIDENCE TO PROPERLY MANAGE THIS LAND,
ESPECIALLY THE FUTURE TO REPLANT AFTER LOGGING
THE ACRES. I TOOK ALL THESE PHOTOGRAPHS ON
12/11/05.

THANK YOU, ~~Robert A. Winkler~~ (Robert A. Winkler)



NOTATIONS ON BACK
OF EACH PHOTOGRAPH

12-13-05A11:42 RCVD

TO: LANE COUNTY PLANNING & COMMISSION
LAND MANAGEMENT DIVISION

ATTN: MR. THOM LANFAR

RE: CASE # PA 04-6308 (CAROL DENNIS)

PLEASE ENTER THE ENCLOSED 18
PHOTOGRAPHS INTO THE RECORD
REGARDING THE APPLICATION FOR A
RE-ZONING REQUEST BY CAROL DENNIS.

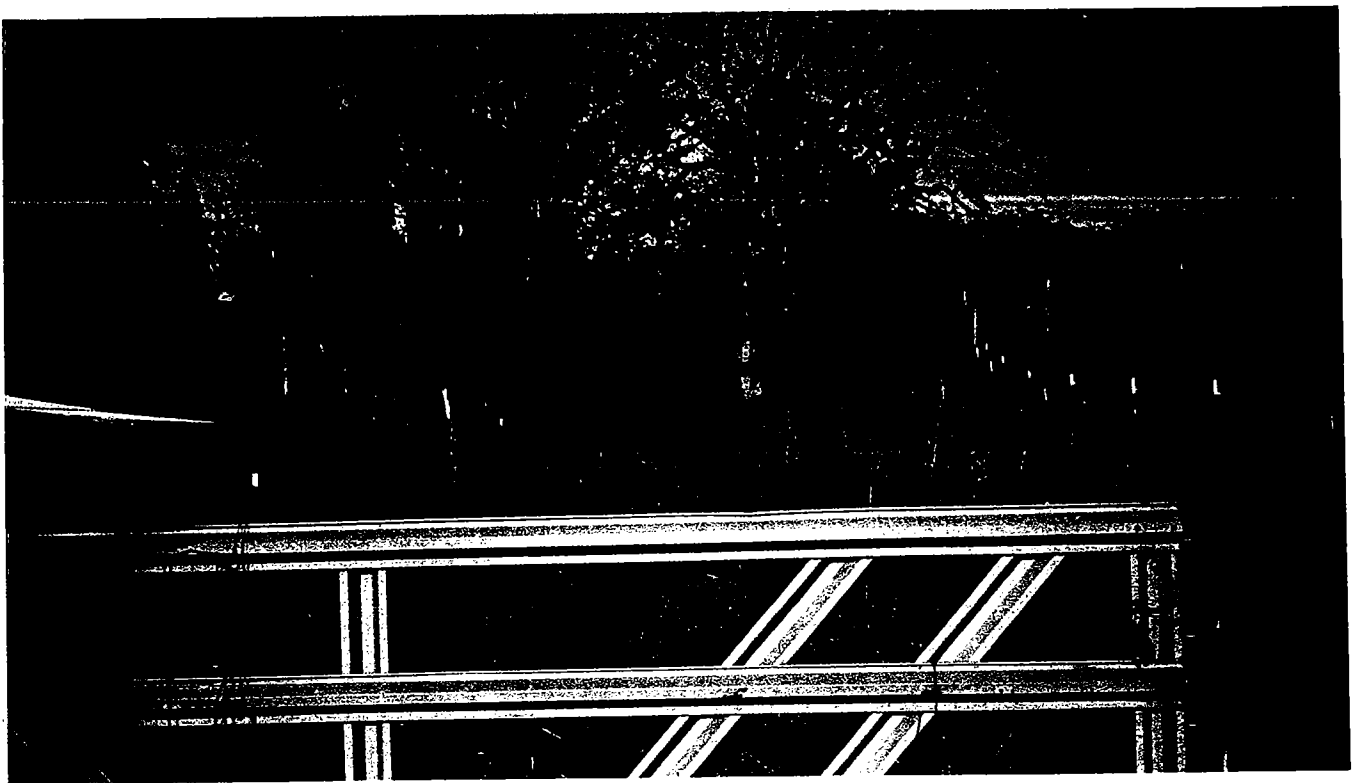
THESE PHOTOGRAPHS WILL SUPPORT
MY TESTIMONY GIVEN TO THE
COMMISSION ON DECEMBER 6, 2005
CONCERNING THE ABSOLUTE LACK OF ANY
MEANINGFUL EFFORT TO PROPERLY MANAGE THIS LAND,
ESPECIALLY THE FAILURE TO REPLANT AFTER LOGGING
THE ACRES. I TOOK ALL THESE PHOTOGRAPHS ON

12/11/05. THANK YOU, ~~Robert A. Winkler~~ (ROBERT A. WINKLER)

12/13/05

12-13-05A11:42 RCVD

NOTATIONS ON BACK
OF EACH PHOTOGRAPH



EL25 P001

77+02 DNRNN+15-- 1132

PHOTO #1: SHOWS CONDITION OF
THE ACCESS ROAD LEADING TO THE
DENNIS PROPERTY VIA THE RECORDED
EASEMENT ALONG THE EAST PROPERTY
LINE OF THE PROPERTY OWNED BY
SHERRY PERRY - 38975 JASPER-LOWELL RD
* PHOTO TAKEN BY ROBERT WINKLER

NOTE: ALL PHOTOGRAPHS WERE TAKEN ON 12/11/05



EL25 P001

PHOTO #2: TAKEN FROM THE TOP
OF THE ACCESS ROAD LEADING TO THE
DENNIS PROPERTY. PHOTO TAKEN BY
ROBERT WINKLER LOOKING BACK
TO THE POSITION IN FRONT OF GATE
THAT PHOTO #1 WAS TAKEN.



EL25 F001

22+02 DMFNN+15-- 1133

Photo #3: TAKEN FROM WEST
PROPERTY BOUNDARY OF THE
DENNIS PROPERTY SHOWING THE
CURRENT CONDITION OF THE ACRES
OWNED BY AMY DONNELLY.

PHOTO TAKEN BY ROBERT WINKLER



9-25 F001

22+02 DNFNN+15-- 1133

PHOTO #4: TAKEN 180° FROM
THE SAME SPOT THAT PHOTO #3
WAS TAKEN SHOWING THE
CURRENT CONDITION OF THE DENNIS
PROPERTY.

9-25 F001

PHOTO TAKEN BY ROBERT WINKLER



EL25 P001

22+01 DNBNN+15-- 1133

PHOTO #5: TAKEN NEAR EAST
PROPERTY LINE OF THE DENNIS PROPERTY
SHOWING CONDITION OF ACRESAGE OF
THE *RANCH ON THE EAST SIDE (*RHINEHAG
(PROPERTY LINE IS BEYOND THE OLD
BARN WHERE THE CLEARED PASTURE
BEGINS, PHOTO TAKEN BY ROBERT ANKERT)

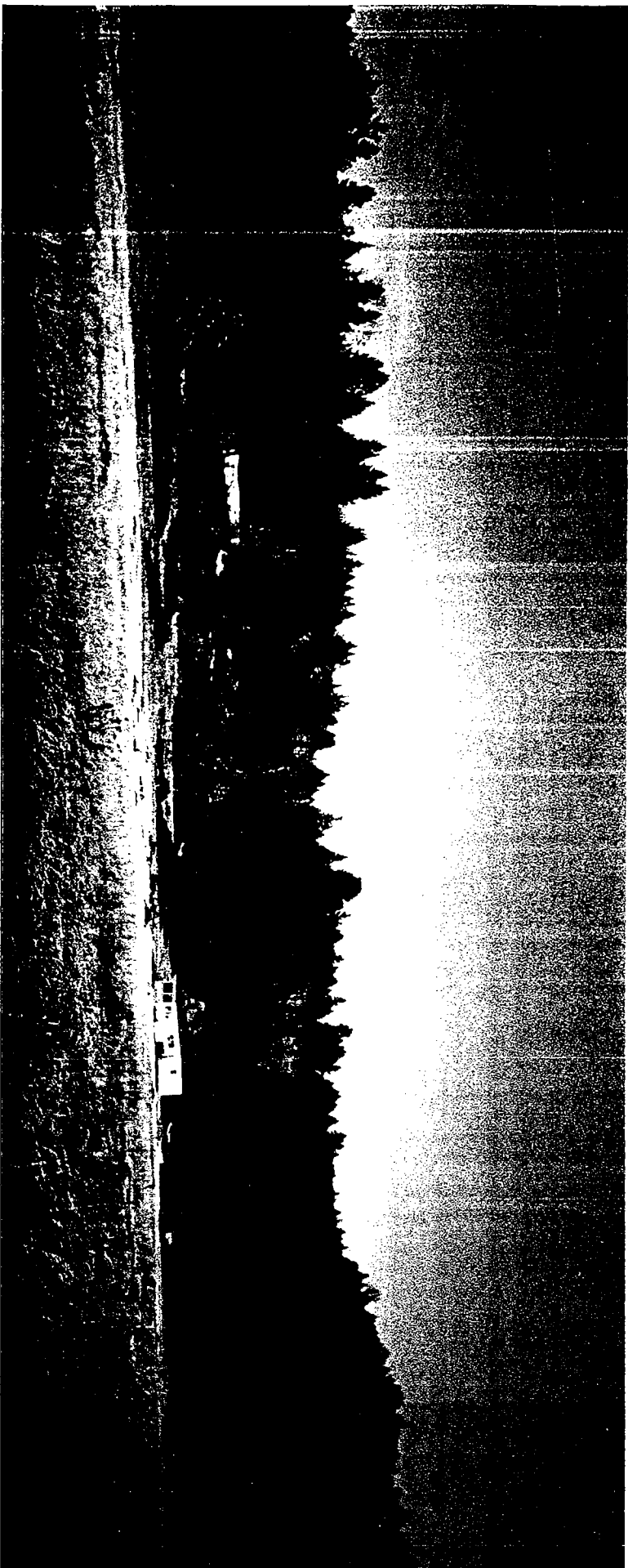


EL25 P001

22+02 ONDNN+15-- 1133

PHOTO #6: TAKEN NEAR THE EAST-
PROPERTY LINE OF THE DENNIS
PROPERTY LOOKING WEST.

PHOTO TAKEN BY ROBERT WINKLER



EL25 0001

22+03 DIFNN+15-- 1133

PHOTO ~~SH~~ SHOWING TWO OLD
ABANDONED SINGLE WIDE MOBILE
HOMES THAT ARE BOTH FILLED
WITH TRASH (LOCATED ON DENNIS
ROAD)
PHOTO TAKEN BY ROBERT WINKLER



EL25 P001

22+0'

PHOTO #8: A CLOSER VIEW OF
HOUSE MOBILE HOME WITH A
ROTTING BOAT IN FOREGROUND.
(SEE PHOTO #7)

PHOTO TAKEN BY ROBERT WINKLER



EL25 P001

22+02 ANNUAL 15-- 1170

PHOTO #9; CLOSER VIEW OF
WPPER MOBILE (SHOWN IN PHOTO
#7) HOME THAT IS ALSO
FILLED WITH TRASH.

PHOTO TAKEN BY ROBERT WINKLER



EL25 P001

22-01 DNDNN+15-- 1132

PHOTO #10: CLOSE-UP PHOTO
OF MOBILE HOME SHOWN IN
PHOTO #9.

419-076

PHOTO TAKEN BY ROBERT WINKLER



EL25 POF

PHOTO #11: ABANDONED
TRAVEL TRAILER LOCATED NEAR
MOBILE HOME SHOWN IN PHOTO #9

PHOTO TAKEN BY ROBERT WINKLER



EL25 P001

22+02 DNDNN+15-- 1133

PHOTO #12: SHOWS TWO OLD
ABANDONED PICKUP TRUCKS
NEAR TRAVEL TRAILER SHOWN IN
PHOTO #11.

PHOTO TAKEN BY ROBERT WINKLER



8125 PQ01

22404 DNDNN+15-- 1133

PHOTO #13: Shows old rusting
FARMING EQUIPMENT ON
DENNIS PROPERTY.

PHOTO TAKEN BY ROBERT WINKLER



EL25 P001

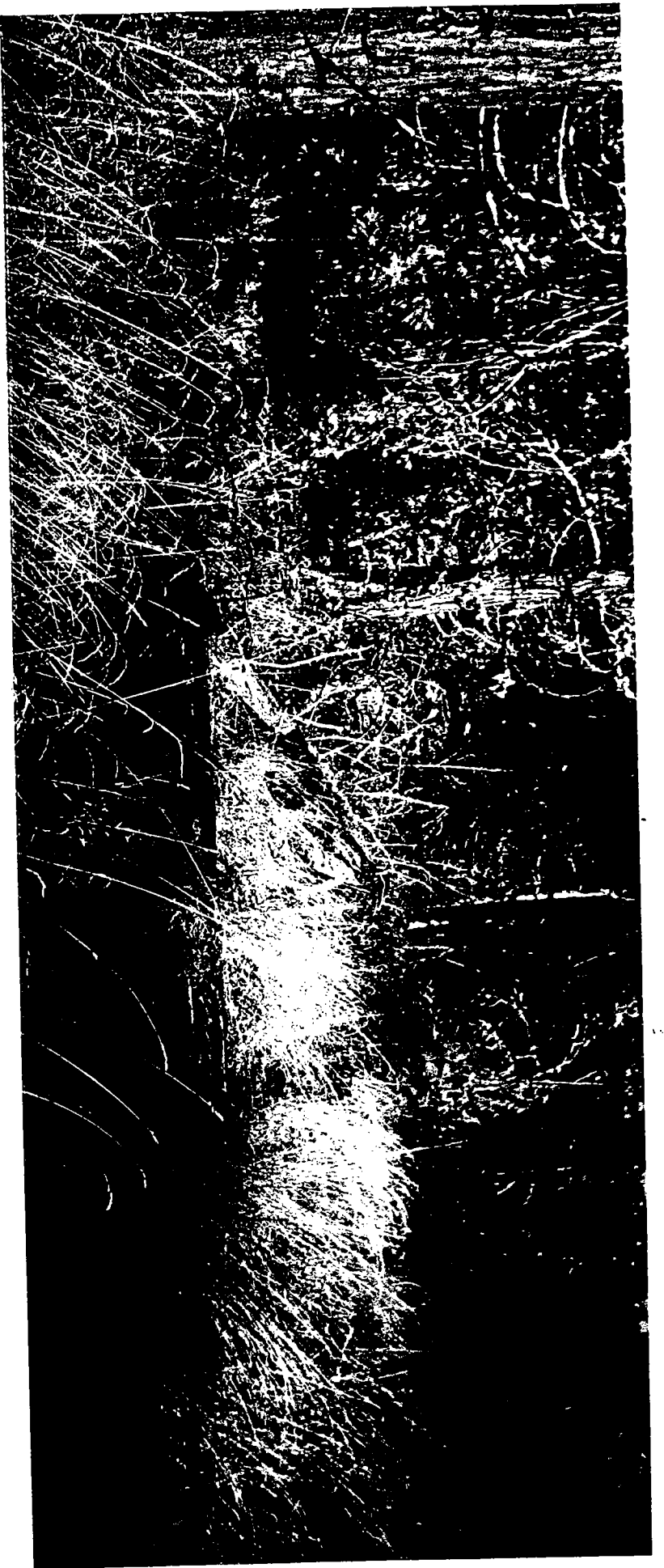
22+05 ENFNN+15-- 1133

PHOTO #1A: SHOWS SLASH
& OTHER VEGETATION THAT WAS
NOT CLEARED AFTER BEING LOGGED

(NOT REPLANTED)

471 007 000

PHOTO TAKEN BY ROBERT WINKLER



EL25 P001

22+05 DNDN+15-- 1172

PHOTO #15; SHOWS SLASH &
OTHER VEGETATION THAT WAS NOT
CLEARED AFTER BEING LOGGED.

(NOT REPLANTED)

PHOTO TAKEN BY ROBERT WINKLER

EL25 P001

22+05 DNF

PHOTO #16: SHOWS SLASH AND
OTHER VEGETATION THAT WAS NOT
CLEARED AFTER BEING LOGGED.

(NOT REPLANTED)

PHOTO TAKEN BY ROBERT WINKLER





EL25 P001

22+02 DMCNH

PHOTO #17: SHOWS SLASH AND
OTHER VEGETATION THAT WAS NOT
CLEARED AFTER BEING LOGGED.

(NOT REPLANTED)

PHOTO TAKEN BY ROBERT WILKIE



9125 EGG1

22+02 NNDN

PHOTO # 18: THIS PHOTO IS REPRESENTATIVE
OF THE ACRES THAT WAS LOGGED IN
1997?-1998?. THE LOGGED AREAS HAVE
BEEN OVERGROWN WITH BLACKBERRY AND
SCOTS BROOM. WHOEVER LOGGED THIS PROPERTY
JUST CAME IN, CUT DOWN THE BIGGEST TREES,
AND BASICALLY TRASHED EVERYTHING ELSE.

PHOTO TAKEN BY ROBBER WINKLER

12/11/05

Lane County Planning Commission
Land Management Division
125 East 8th Ave.
Eugene, OR 97401

Re: File PA 04-6308 Carol Dennis

To whom it May Concern:

The applicant has requested that the property be redesignated from Forest to Marginal Lands. The applicant indicated that they could not grow trees on the property to harvest, nor was the land able to be farmed.

I have lived on the property immediately south of this parcel for nearly 11 years. During that time the owners have rarely even visited the parcel, certainly have never farmed it. However the first couple of years, from 1995, there were cattle on the property. Since the fences were either in disrepair or non-existent the cattle often roamed away from that parcel. Since the cattle began to wander onto Jasper-Lowell Rd. in front of my neighbor's and my property, and since Jasper-Lowell Rd. is a busy and fast roadway my neighbors and I finally called the Sheriff's office to complain for both the safety of the cattle and drivers. At that time we took video and still pictures of the roaming cattle. We had multiple times prior to the calls to the Sheriff, herded the cattle back to the Dennis' property. The Sheriff indicated that the owners of the cattle could be charge a large fine and that they would be notified. The Sheriff did send a deputy out and he did see the cattle at large. Just a few days after this a stock trailer and people including the owner of the parcel came to the property in the late night and removed the cattle. (I know, I was there) There have been no cattle since that time.

Don Douglas, a resident of Jasper-Lowell Rd., approximately one mile to the west used to hay the open field on that parcel. Don is deceased now, but he told me that he was given permission to just bale and take the hay. However, local hay does have a product value.

The harvesting of the trees on that parcel saw the land changed to now drain down upon the neighbor to the immediate east of our land and onto our land. The slash was never cleaned up and no on EVER retreed this parcel. The land just north of this parcel, owned by Johnny Watson has also been harvested and he has retreed and pictures show this to be viable land for these trees to grow.

After the water was allowed to cascade down upon us we found an oily sheen. We tracked it to many rotting and leaking barrels of what appeared to be hydraulic oils and the like. We contacted the proper authorities and brought them pictures as proof of the hazardous material problems being caused by this dumping. The owners brought in a trailer and removed a great many barrels. On the last trip the trailer broke down and was parked for a time across the street on land belonging to Dennis and Donna McCallum.

Hay is raised and sold of parcels to the east and west of this parcel. Pictures show that with some land management the property is productive in both growing trees and hay.

I believe that the property is perhaps not so much a proper marginal land but has been marginalized by lack of any land management. Allowing the redesignate to marginal land use should also allow no more than the 1 home site per 20 acres, not the 8 sites requested by the applicant.

Thank you for your review of my concerns. If this letter brings forth any questions, please feel free to contact me.

Sincerely,

Patricia Chomyn
38965 Jasper-Lowell Rd.
Fall Creek, OR 97438
541-726-7896

hard copy and pictures under separate snail mail

December 10, 2005

12-13-05A11:40 RCVD

Sherry Ann Perry
38975 Jasper Lowell Road
Fall Creek, OR 97438

Lane County Planning Commission
Land Management Division
125 East Eighth Avenue
Eugene, OR 97401

Mr. Thom Lanfear and members of the Lane County Planning Commission:

Please enter this letter into the record in regard to the application for a rezoning request by Carol Dennis for the property at 39191 Jasper Lowell Road, case PA 04-6308. I attended the hearing of the planning commission held on December 6, in Harris Hall, and spoke briefly (I used up my allotted three minutes), but I didn't have enough time to give all the input I want to submit to you.

During the planning commission hearing the applicant's arrogant and abrasive attorney, Mr. Cornacchia, dismissed anecdotal information from residents of Fall Creek as irrelevant to the work of the commission. But Goal 1 (sec. 3.1.1.1) of the Rural Comprehensive Plan Amendment Criteria 16.400 ("The Plan") states, "To ensure the opportunity for citizen involvement in all phases of the planning process". Our input is germane and merits your consideration.

Goal 2 (sec.3.1.1.2) of "The Plan" is "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*" (emphasis added). To meet this goal you need relevant information from local residents and other interested citizens, and you are entitled to require information from the applicant which is not provided in the application.

Goal 4 (sec 3.1.1.4) of "The Plan" is "To preserve forest lands for forest use". The application states that "The subject property is not suitable for growing and sustaining Douglas-fir or other less merchantable tree species...." However, the owners of the land possess data that may show the *actual* production of the land is higher than the soils study mentioned in the application claims it could be. They *know* how much timber was cut when they harvested it a few years ago!

The owners also know how much money that timber brought in. Mr. Cornacchia informally stated that the owners got \$90, 000.00 for the timber, but he gave no proof for that statement. According to neighbors who knew the former owner, Mr. Morrissey, and who talked with him about the land, the Dennis' purchase of the land was paid for by the sale of the timber. According to these neighbors, the couple owed more than \$90,000.00

to Mr. Morrissey, who took out a judgment against them so that he would get his money from the proceeds of the timber sales first before they could spend it on anything else. The sale probably also paid for the cost of cutting and removing the trees. Was \$90,000.00 the profit after these expenses were paid? The commission should know the answer to these questions, and should have an estimate from a reliable appraiser about the value of the timber still on the property.

Replanting is required in Oregon when land owners harvest timber from their forest property. In their application, Mrs. Dennis states that they made an attempt to re-plant but she offers no proof or evidence that they ever did. All the neighbors say they never observed any new trees being planted or growing. An adequate factual base regarding the veracity of this claim requires that the applicants provide proof as to how much replanting they attempted, such as paid invoices for seedlings or cancelled checks which were paid to workers.

The hillsides around Fall Creek are covered with lush stands of timber. The properties adjoining the subject property are densely covered with tall, healthy trees of several species. Some local property owners who have harvested timber and then properly replanted, including Jonny Watson and Weyerhaeuser, have good stands of new growth. Growing good crops of Douglas-fir and other trees is what the land around Fall Creek seems to do best. The parts of the land in question that may be too rocky or the soil too shallow has successfully been used in the past for grazing cattle and growing hay.

We neighbors do attest to the deplorable condition the land is in now. After trees were cut, the slash was not removed and is still there, creating a fire hazard. Two unoccupied house trailers are slowly deteriorating into the ground, as is an old boat, a large truck stripped of its engine, several pieces of old farming and logging equipment, a rotting shed filled with junk, numerous barrels with uncertain content, and loose coils and strands of wire and falling down fences. The owners have allowed certain persons to dump truckloads of stuff on their land that would have been difficult to dispose of otherwise. These owners have not been good stewards of their land. Furthermore they have been irresponsible in regard to two of their neighbors whose properties are frequently flooded as a result of the logging activities the applicants engaged in: they made no attempt to repair the roadway and drainage canals that were damaged by the logging trucks.

Mr. and Mrs. Dennis have no commitment to the land or to the community near which it is situated. It seems evident that from the beginning they speculated that they would be able to strip the land of its valuable timber, fail to abide by the requirements for proper reforestation, and manipulate the system into re-designating their property so that it could be further exploited by development. It is doubtful that the owners have invested even a single penny in the property beyond what they got from the sale of its timber.

Goal 10 (sec. 3.1.1.10) of "The Plan" is "To provide for the housing needs of the citizens of the state". The application does state that approval would result in eight or more new houses in Fall Creek, but it is also pertinent to realize that there is no housing shortage in Fall Creek or any pressing need for more houses. There are almost always homes along

Jasper Lowell Road or Little Fall Creek Road for sale, and they don't always move quickly. New houses in other parts of Lane County would meet housing needs just as well or better.

Goal 13 (3.1.1.13) of "The Plan" is "To conserve energy". Fall Creek does not have any schools, health clinics, a community center, a library, a day care center, sports playing fields, shopping centers, restaurants, gas stations, automobile repair or service shops, movie theaters, or a cultural center. Fall Creek has very few job opportunities. It does have a tiny convenience store that contains a small post office, and a Christian church. To get to work and to buy almost every service and product they need residents of Fall Creek must drive 10 miles to the outskirts of Springfield or 30 minutes or more to Eugene. Trips into either of these towns use a lot of gas and oil energy.

Goal 14 (3.1.1.14) of The Plan is "To provide for an orderly and efficient transition from rural to urban land use". As the application states, Fall Creek is a rural community. Any housing development in Fall Creek could not possibly enhance its rural qualities. And inconsiderately chopping up lands designated for forest use permanently diminishes the probability that those lands will ever again be used to produce marketable trees or agricultural products.

The application states that "No extension of urban services is necessary as a result of approval of this application". That's a good thing, because there are precious few urban services in Fall Creek to be extended. Fall Creek does not have its own law enforcement officer, and it has only a small volunteer fire department. Most importantly in regard to this application, it has only a couple of paved roads which are maintained by the county or the state.

Fall Creek has two paved roads. Jasper-Lowell Road, after leaving Jasper, makes a sharp left turn after about four miles. This horseshoe-shaped road then proceeds about two miles and goes through the 100-yard length of "downtown" Fall Creek. It then turns right, arching across Little Fall Creek, and then follows Fall Creek for a while before turning back toward Lowell. Little Fall Creek Road continues on from where Jasper Lowell road turns right, and goes for about three miles before dead-ending at Weyerhaeuser land. Most of the houses in Fall Creek are built alongside these two roads. All the other roadways in Fall Creek are private driveways, or gravel roads built along short easements which provide ingress and egress to a small number of houses.

The subject land in this application is not on Jasper Lowell Road or Little Fall Creek Road. The only access to this land is via an easement that goes through my property. This is a 60-foot-wide easement which encompasses a third of my three-acre property. When I bought the property, which already contained the modest manufactured home in which I live, I was aware of the easement but I knew it was to be used only to access a 102-acre piece of forest land and maybe, eventually, to log some of it.

I had no idea that there was a even a possibility that a housing development could be built on that forest land (in fact, I was told that there was not), and that my private yard could

become a roadway to service the eight or more homes that would be built on it. I would not have bought the property had I known that. Imagine 80 or more times a day cars barreling through *your* yard, raising dust, destroying the peace and quiet and privacy of your home. They would have round-the-clock access; I wouldn't be able to have a locked gate across the entrance to my driveway off Jasper Lowell Road. That would compromise the security of my home and other property, my horses, my dogs and cat. I'm a 67-year-old widow, living alone, so security *is* a concern. It's a nightmare scenario!

Well-planned urban (and rural) communities have access via public roads to developments within the communities; long-range advance planning for such communities requires a system of public roads and public utilities for all new developments. A sound "... *policy framework* as a basis for all decisions and actions related to the use of land...", in other words.

If and when Lane County decides that it is necessary to destroy some of its forest lands to provide housing for people clamoring to live in Fall Creek, it should first adopt an overall comprehensive land development plan which includes provisions for some new county roads. Adequate land for that purpose should be *purchased* by the county or developers, not confiscated or converted (from the original purpose) from private land owners. I would consider it brutally unfair if the planning commission approved an application for re-designation that will result in developers (who have no alternative plan) converting my private property into a heavily trafficked road to service (for evermore) the several homes that will be built and all the construction activity the development will entail.

Approval of this application would result in further hodge-podge development of rural and forest Lane County lands near Fall Creek. The land adjacent to the applicant's would most likely then be approved for development, and that is another 100 acres of productive forest land gone forever. I think these developments should be put on hold until a need for them has been established and public roads for access to them have been built.

At the planning commission meeting, I asked if Carol Dennis is the sole owner of the property as is stated on the application, and was told that any person who has an interest in the land can file an application for re-designation. Mr. Deloy Dennis, Carol's husband, is also an owner of the land but his name was not on the application. Maybe it's because Mr. Dennis is aware that he has a very bad reputation in Fall Creek. This is because as a non-resident land speculator, he has shown no regard for the land, the neighbors, or the community, so he is not well regarded here. It is known here that his license to practice as a pharmacist was revoked for misconduct that also led to his incarceration.

Mr. Dennis's character is relevant to the application insofar as the veracity of some of the statements in the application is in doubt. For example, was an honest effort made to replant the land, and is there really a water well on the property that produces 25 to 50 gallons of water per minute? Why was so much relevant information left out of the application, such as how much timber was cut and how much money it yielded? Many of the residents of Fall Creek are uncomfortable with the likes of Mr. Dennis deciding the

direction our community will take. They cannot trust what he says regarding his plans for the development, either.

Mr. Jim Just and Goal One will continue to address the questions regarding whether or not the application demonstrates that the legal requirements for re-designation as marginal land have been met. I think Goal One will be able to prove that the criteria have, in fact, not been met. Regardless, I hope you will give careful consideration to the objections put forth by all of us who oppose the re-designation.

I know the work you do as planning commissioners for the county is time consuming and often complicated. I appreciate and commend your willingness to serve in this important capacity. The work you do is serious and has long-term implications for every citizen of Lane County. I hope you will carefully bear in mind all the ramifications of the requested re-designation, and I urge you to deny the application.

Please inform me about the time and place of future meetings of the planning commission regarding this application which are open to the public.

Sincerely,

A handwritten signature in cursive script that reads "Sherry Ann Perry".

Sherry Ann Perry

541 726-7995

sherryperry@aol.com

LANFEAR Thom

From: Hilary Dearborn [hdearbo@yahoo.com]
Sent: Tuesday, December 13, 2005 3:46 PM
To: LANFEAR Thom
Subject: Comment for the record on PA04-6308



2327358121-Dearb
orn comment PA...

Hi Thom,

I'm attaching a letter that I'd like to submit for the record for the above application. Please let me know that you've received it and can read the attachment. Thanks!

Hilary Dearborn
38513 Jasper-Lowell Rd.
Fall Creek, OR 97438

Do You Yahoo!?

Tired of spam? Yahoo! Mail has the best spam protection around
<http://mail.yahoo.com>

DATE: December 13, 2005

FR: Hilary Dearborn
38513 Jasper-Lowell Rd.
Fall Creek, OR 97438

TO: Lane County Planning Commission
125 E. 8th Ave.
Eugene, OR 97401

RE: PA04-6308

My husband and I own property within ¼ mile of the subject parcel, and I'd like to urge the Commission to carefully consider the application for re-designation from Impacted Forest Lands F-2 to Marginal Lands ML for this application. This application does not appear to meet all of the applicable criteria and should be denied.

As a citizen of rural Lane County, I'd like to see that our rural lands continue to be managed for forest and natural resource production in areas where those uses are consistent with the zoning. Management of F-2 rural lands for natural resource production becomes increasingly difficult as marginal lands introduce more houses with increased traffic into the existing roads.

I'd like to emphasize points that my neighbors and others have introduced into the record regarding criteria that have not been met:

- *Goal 2 "...to assure an adequate factual base for such decisions and actions."* The applicant's statement and the report by Mr. Setchko, the consulting forester, do not include an adequate factual base sine he omits mention of the logging operations in the late 1990s from which the owner derived an unknown amount of profit. The relevant calculations would be for timber prices in 1983, however, the factual basis of actual value in the 1990s could have been used to come up with adjusted prices. This factual base was omitted.
- *Goal 4 "To preserve forest lands for forest use."* The applicant contends that "the subject property is not suitable for growing and sustaining Douglas fir..." Neighboring properties with the same or similar soil complexes prove otherwise. The soil descriptions in the Lane County Soil Survey make it clear that at least half of the soils are suited to production of Douglas Fir or Douglas Fir and Ponderosa Pine.
- *Goal 6 "To maintain and improve the quality of air, water quality and land resources of the state."* Air, water quality and land resources will not be maintained and improved through this proposal. The soils are poorly suited to development. All are rated "severe" limitation in all of the Building Site Development categories including for Shallow excavations, Dwellings without basements, Dwellings with basements, Local roads. Almost all of the soils on the site are rated suitable for forest or pasture production, and if utilized properly, air and water quality and land resources could be improved.

- *Goal 11 Public Facilities and Services.* Technically the list of services in the applicant's statement on page 9 may be correct, however the closest LTD bus service is miles away in Lowell and there are no roads that currently serve the property. The Lane County Sheriff's Department is stretched very thin. Public safety in Lane County continues to be underfunded and the Sheriff's Department struggles to meet the existing needs in our rural areas.
- *Marginal Lands Re-designation.* As stated by others in the record, this property does not meet the required criteria for the number of lots within one-quarter mile of the perimeter, or for 60 percent parcels less than 20 acres, or soils of capability classes not capable of producing eighty-five cubic feet of merchantable timber per acre per year as per *ORS 197.247(1)(b)* *The proposed marginal land meets at least one of the following tests: (A), (B) or (C).*
- In addition, the applicant has offered no facts to back up the contention that the proposed zone change will "4) ...aid in the provision of affordable housing that allows a reasonable selection of a place to live or 5) ...provide for the orderly and efficient transition from rural to urban lands and the efficient provision of public facilities and services." Simply stating this does not make it true or show that it will be true.

For these reasons, because this application does not meet all of the applicable criteria, it should be denied.

Thanks for your consideration.

Sincerely,

Hilary Dearborn



LAND MANAGEMENT DIVISION
http://www.LaneCounty.org/PW_LMD/

Land Management Division
Public Service Building
125 East 8th Avenue
Eugene, OR 97401
FAX 541-682-3947

December ¹²/₉, 2005
RESENT

FAX

FAX Message To: Jim Just Thom Lanfear

Work Location: _____

Telephone Number: 541-258-6810

Number of Pages: 5 29 (including this page)

Message: _____

From:

Thom Lanfear Jim Just
Associate Planner
(541) 682-4054
Thom.Lanfear@co.lane.or.us

Thom,
Could you please enter these into the
record? Thanks

*Forestry Department***OFFICE OF STATE FORESTER**

2600 STATE STREET, SALEM, OREGON 97310 PHONE 378-2560

January 27, 1989

Craig Greenleaf, Acting Director
Department of Land Conservation and Development
1175 Court St. NE
Salem OR 97310

Dear Craig,

This transmits forest soil rating data that superceeds data previously sent to your Department by Forestry in July 1988.

During the past 2 years, a major part of our effort in Secondary Lands has been in helping to identify those forest soils with low and medium productivity potentials (those soils that are, from a forest productivity standpoint, suited to be included with "secondary" lands).

As agreed, we have made detailed examinations of the information available to us from the SCS, and applied the expertise of our staff professionals. As a result of those additional examinations, enclosed is our final listing of those soils for all counties from Lane County north and west, and including Hood River County.

Note that the listing shows the SCS soil survey mapping unit numbers as contained in the applicable published soil survey, followed by the soil map unit name, this department's rating of forest productivity for that soil, and the acreage for that mapping unit from the SCS published soil survey. These ratings generally group those soils capable of forest productivities above 85 cubic feet per acre per year (at culmination of mean annual increment) into the "High" rating, those from 50-85 cubic feet per acre per year into the "Medium" rating, and from 20-50 cubic feet per acre per year into the "Low" rating. We have incorporated deductions for inclusions of soils of lower, and/or of higher productivity into our ratings. We also show, where available, the Site Index (height growth indicator) as presented in the SCS published soil survey, and the computed productivity in cubic feet per acre per year where that appears in published SCS data for that soil.

Note also that we have grouped the soil mapping units into groupings, based on the forest productivity rating alone. Where insufficient information is given (or where insufficient use of the soil mapping unit for forestry exists) on which to base a forestry productivity rating, we have assigned numerical ratings based on our professional judgement, based also on previous input from Jerry Latshaw (SCS) and Herb Huddleston (OSU Extension). In these latter instances, "1" means High productivity is indicated; "2" indicates Medium; "3" indicates Low.

The listing also includes "estimated" productivity ratings based upon the vegetational characteristics and certain soil factors as they appear in SCS published data. We base these estimates on our knowledge of plant ecological relationships and on comparisons with other soils on which SCS has published more complete data.

Note that for Tillamook and Lincoln Counties, less-precise data is available from SCS. Therefore, the information provided may be of lesser utility. Note also that our field organization's work priorities would not permit our making field investigations, nor utilizing their experience in refining productivity estimates as I would have preferred to do.

I hope that this work is of use to you and to the Commission. We will continue to examine the ratings for other counties and to complete that work as soon as possible.

Sincerely,



Dave Stere
Forest Resources Planning Director

DHS DS-47

cc: Bob Madsen
Ron Eber
Jerry Latschaw
Herb Huddleston

Attachments
13 county forest soil rating lists

ds-47a

1-11-88

LANE COUNTY - FOREST SOILS RATINGS

<u>SCS #</u>	<u>SCS Name</u>	(Site Index) <u>Rating</u>	<u>SCS</u> <u>Acreage</u>	<u>Cuft/Ac</u> <u>per yr</u>
004G	Atring-Rock Outcrop Complex, 30-60%	Med 120	1140	86
005	Awbrig sicl	3	9890	est 40
006	Awbrig Urban Land complex	3	350	est 20
008	Bashaw c	3	9650	est 30
009	Bashaw-Urban Land complex	3	350	est 20
010	Beaches	3	1000	
017	Brallier muck, drained	3	1160	
018	Brallier muck, tidal	3	930	
019	Brenner sicl	3	860	
021B	Bullards-Ferrelo loams, 0-7%	Med 144	510	150
021C	Bullards-Ferrelo loams, 7-12%	Med 144	1560	150
021E	Bullards-Ferrelo loams, 12-30%	Med 144	1210	150
021G	Bullards-Ferrelo loams, 30-60%	Med 144	850	150
022	Camas gr sl, occ flooded	3	6370	est 40
023	Camas-Urban land complex	3	600	est 20
028C	Chehulpum sil, 3-12%	3	1970	est 40
028E	Chehulpum sil, 12-40%	3	440	est 40
033	Conser sicl	3	4200	est 50
034	Courtney gr sicl	3	2920	est 40
03B	Dayton, sil, clay sub	3	4280	est 40
042E	Dixonville-Hazelair-Urban Land, 12-35%	Low	640	est 35
043C	Dixonville-Philomath-Hazelair, 3-12%	Med	11480	est 62
043E	Dixonville-Philomath-Hazelair, 12-35%	Med	22990	est 68
044	Dune Land	3	5870	
045C	Dupee sil, 3-20%	Med	20190	est 70
048	Fluvents, Nearly Level	3	9550	
052B	Hazelair sicl, 2-7%	Low	5680	est 40
052D	Hazelair, 7-20%	Low	41510	est 40
053	Heceta fs	3	2010	est 20
073	Linslaw l	2	5700	est 80
075	Malabon sicl	2	15350	est 65
076	Malabon-Urban land complex	2	6420	est 50
077B	Marcola cob sicl, 2-7%	Med	690	est 70
085	Natroy sicl	3	15170	est 60
086	Natroy sic	3	2100	est 60
087	Natroy-Urban Land Complex	3	610	est 40
094C	Netarts fs, 3-12%	Med 80	1060	58
094E	Netarts fs, 12-30%	Med 80	420	58
098	Noti l	3	3860	est 30
100	Oxley gr sil	2	2010	est 80
101	Oxley-Urban land complex	2	870	est 60
102C	Panther sicl, 2-12%	3	8400	est 50
103C	Panther-Urban Land complex, 2-12%	3	440	est 40
105A	Pengra sil, 1-4%	3	5070	est 50
106A	Pengra-Urban land complex, 1-4%	3	780	est 30
107C	Philomath sic, 3-12%	Low	2280	est 50
108C	Philomath cob sic, 3-12%	Low	2280	est 50
108F	Philomath cob sic, 12-45%	Low	7090	est 50
109F	Philomath-Urban land complex, 12-45%	Low	270	est 20

These soils ratings are based upon published SCS data. Estimates are derived by the Oregon Department of Forestry from comparisons of natural vegetation complex information in published SCS data for soils where the data do not include measured forest productivity information with other soils where such information is available.

Soils marked with numbers are soils where the data are insufficient to make a more-precise determination; or where SCS data indicates that forest growth is unlikely.

"3" indicates productivity probably less than 50 cuft/ac/yr
"2" indicates productivity probably between 50 and 85 cuft/ac/yr
"1" indicates productivity probably more than 85 cuft/ac/yr

Where the soil is given a number rating, the productivity estimate shown is of lower precision than for other productivity estimates.



High Meadow Farm

Polled Herefords

Jonny Watson

Martha DeWees, DVM

December 12, 2005

Lane County Planning Commission
125 East 8th Avenue
Eugene, OR 97401

RE: PA04-6308, Dennis

Dear Members of the Commission,

This is our second letter of testimony in this matter. We submitted a letter before the December 6th Planning Commission hearing. Jonny attended that meeting and was pleased to see such a turnout of concerned neighbors. We also appreciate the conscientious attention of the Commission members to all parties at the hearing.

The applicant's attorney was dismissive of anecdotal remarks from Fall Creek residents and neighbors of the applicant's property. Yet, the application relies on the applicant's statements about harvesting timber and replanting after harvest. Their claims must be supported by factual evidence to have any consideration with the Planning Commission. Harvest records should be produced to verify their claims that "there was not much timber growing on the parcel at that time [of harvest]". Similarly the contention that "the owners have planted new conifer seedlings more than once" is an unsubstantiated implication that the applicant has obeyed the law and made serious management efforts to re-establish timber producing trees on the site. This claim is unsupported by fact or neighbors' observation.

The hired forester denigrates Ponderosa pine as an alternative productive species to Douglas-fir. But Weyerhaeuser, the major private forest owner in our area, commonly plants Ponderosa pine in problem soils (either too wet or too dry). We know of two such sites within one mile of the applicant's property. Soils that may not be productive with Douglas-fir can be with Ponderosa pine.

We are impressed by the outpouring of citizen involvement in our neighborhood. We have read Mr. Dreisbach's and Ms. Perry's letters to the Commission and strongly second and support their comments and concerns. We urge you to consider this public response to the Dennis' application.

Respectfully,

Jonny Watson

38533 Jasper-Lowell Road

Fall Creek, OR 97438
746-8329

541-



Martha DeWees

High Meadow Farm

Polled Herefords

Jonny Watson

Martha DeWees, DVM

LANFEAR Thom

From: Jim Just [goal1@pacifier.com]
Sent: Monday, December 12, 2005 5:12 PM
To: LANFEAR Thom
Cc: Lovinger Emmons; SEGEL Lauri (SMTP)
Subject: Dennis, PA 04-6308

Thom,

Please enter the attached letter into the record. Could you also please enter pp. 368-69 of the Soil Survey of Lane County Area, Oregon?

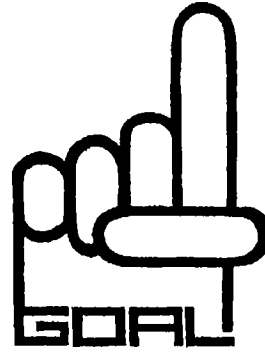
Thanks for your help.

Jim Just, Executive Director
Goal One Coalition
39625 Almen Drive
Lebanon, OR 97355
phone: 541.258.6074
fax: 541.258.6810
www.goal1.org

Championing citizen participation in realizing sustainable communities, economies, and environments

GOAL ONE COALITION

39625 Almen Drive
Lebanon, Oregon 97355
Phone: 541-258-6074
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goal1@pacifier.com



December 12, 2005

Lane County Planning Commission
125 East 8th Avenue
Eugene, OR 97401

RE: PA 04-6308, Dennis; response to new information and issues raised

Dear Members of the Commission:

The Goal One Coalition (Goal One) is a nonprofit organization whose mission is to provide assistance and support to Oregonians in matters affecting their communities. Goal One is appearing in these proceedings at the request of and on behalf of its membership residing in Lane County. This testimony is presented on behalf of LandWatch Lane County and its membership in Lane County, 1192 Lawrence, Eugene OR 97401; Robert Emmons and Nena Lovinger, 40093 Little Fall Creek Road, Fall Creek, OR 97438; the Goal One Coalition; and Jim Just as an individual.

I. Introduction

The purpose of this letter is to respond to issues raised at the hearing of December 6, 2005 and to new evidence introduced into the record subsequent to that hearing.

II. "Legal lot" and property line adjustment issues regarding TL 106

It is not clear from information in the record exactly how or whether the subject TL 106 is a legally created lot or parcel. Since "legal lot" status is not in itself an approval criterion for a marginal lands determination, it is not necessary to make any such determination at this point.

However, it is necessary to first establish the actual boundaries of the legal unit of land and of the ownership as of and prior to January 1, 1983, in order to adequately address the "income" criteria of ORS 197.247(1)(a) (1991 ed.); and on July 1, 1983, in order to address the "parcelization" criteria of ORS 197.247(1)(b)(A) and/or (B). The "productivity" test of ORS 197.247(1)(b)(C) apparently looks at the potential agricultural and forest productivity of the proposed marginal land as it is configured today.

If TL 106 is not a "legal lot" independent of TL 100, this fact would have significance in that the required unit of inquiry for purposes of the productivity test would be the combined TL