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HERSHNER HUNTER^{LLP}

STEVE CORNACCHIA
scornacchia@hershnerhunter.com

June 3, 2005

Lane County Department of Land Management
ATTN: Thom Lanfear
125 E. 8th Avenue
Eugene, OR 97401

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

Dear Mr. Lanfear:

Please place this correspondence in the record of PA 04-6308. This correspondence provides additional information regarding the requirements of ORS 197.247 for the re-designation of the subject property to Marginal Lands.

The original application materials, including all information relating to the income and productivity tests of the statute, were based upon an analysis of only the subject property (consisting of 102.61 acres). That analysis was based upon research of Lane County records for 1983 ownership of all properties adjacent to the subject property and within one-quarter mile of the perimeter of the subject property. The income and productivity tests of the statute, however, require an analysis of three of the five years between 1978 and 1983. Further research regarding ownership of property in the relevant vicinity indicates that the owner of the subject property (TL 106) in 1983 (Michael and Betty Jo Morrissey) also owned an additional 12.339 acres adjacent to TL 106 (TLs 100, 102, 104, 107 and 600). Pursuant to the 1997 Lane County Board of Commissioners Interpretation for Marginal Lands, the afore-mentioned additional adjacent land must also be analyzed for the income and productivity tests of the statute. That additional analysis is provided below.

ORS 197.247(1)(a) Farm Income (Less than \$20,000 annually, three years between 1978-1983):

The applicant provided an agricultural production capability analysis of the subject property by Paul E. Day, Agricultural Consultant, in the original application. That analysis concluded

that the subject property was not suitable for agricultural use beyond grazing and pasture, primarily based upon the fact that no source of irrigation water is available for use on the property. Mr. Day's conclusion is also based upon the fact that the majority of the soils on the property are non-agricultural soils. The additional 12.339 acres contain nearly 5 acres of non-agricultural soil and 7 acres of agricultural soil. The same lack of a source of irrigation water exists on the additional acreage and the same conclusion is reached that grazing and pasture were the most suitable of agricultural uses thereon during the applicable period provided by the statute.

For the Theoretical Maximum Income From Cattle, applying a liberal standard of 6 AUM to the entire additional acreage, only adds 74.034 annual AUM to the 394.668 total calculated by Mr. Day. That total, divided by 12, produces an annual AUM of 39 animal units per year. Applying the dollar sales per cow figures of Mr. Day in Table 4 (\$368.76, \$444.07, and \$451.60), the resultant annual income remains below the \$20,000 annual gross income threshold of the statute. As Mr. Day points out, it is not practical to assume that the entire property was available for grazing and that a realistic projection of the grazing use of the property results in calculations approximately half that of the theoretical maximum income from cattle. In either analysis and set of calculations, the theoretical and practical income from the entire 114.949 acres still does not exceed the \$20,000 annual gross income test of the statute.

ORS 197.247(1)(a) Forest Income (Less than \$10,000 annually over growth cycle):

The original application contained the forest income analysis of the applicant's professional forester, Marc Setchko. Mr. Setchko analyzed the subject property and concluded that it was capable of producing \$5,773 in forest income annually over the growth cycle. The following calculations are provided for the additional 12.339 acres and demonstrate, using Mr. Setchko's methodology, that the total 114.949 acres was capable of producing \$6,650.36 in forest income annually over the growth cycle. Those calculations are as follows:

31 Coburg Silty Clay Loam – 2.634 acres @ 10,208 bd.ft./ac.	26,888 bd.ft.
75 Malabon Silty Clay Loam – 3.2 acres @ 34,191 bd.ft./ac.	109,411 bd.ft.
96 Newberg Loam – 1.83 acres @ 29,252 bd.ft./ac.	53,531 bd.ft.
118 Salem Gravelly Silt Loam - .054 acres @25,443 bd.ft./ac.	<u>1,374 bd.ft.</u>
107C Philomath Silty Clay – 3.80 acres @7,067 bd.ft./ac.	26,854 bd. ft.
138 E Witzel Very Cobbly Loam - .956 acres @10,994 bd.ft./ac.	10,510 bd.ft.
	228,568 bd.ft.
Total bd.ft. for 102.61 acres (Setchko report) =	1,257,678 bd. ft.
Total bd.ft. for 12.339 acres =	<u>228,568 bd.ft.</u>
Total bd.ft. for entire 114.949 acres =	1,486,246 bd.ft.

Total Volume – 1,486.246 MBF (thousand board feet)

594.48 MBF of 2 SAW @ \$255/MBF	\$151,592
743.12 MBF of 3 SAW @ \$215/MBF	\$159,771
148.62 MBF of 4 SAW @ \$200/MBF	<u>\$29,724</u>
	\$341,087

\$341,087 divided by 50 years = \$6,821.74 annually

ORS 197.247(1)(b)(C) Soil Classifications (Predominantly Classes V-VIII):

Calculations in the original application, using the 1997 Lane County Soil Ratings, demonstrated that the soils of the subject property consist of 41.21% Class I-IV soils and 58.79% Class V-VIII soils. A subsequent calculation, adding in the soil classifications of the additional 12.339 acres and using the classifications in the Agricultural Capability Classification System in use by the U.S. Department of Agriculture Soil Conservation Service on October 15, 1983, demonstrates that the soils of the subject property consist of 26% Class I-IV soils and 74% Class V-VIII soils. (Applying the 1997 Lane County Soil Ratings listings of Class III and Class IV for the soil map units of 43C and 43E, respectively, produces an outcome of 47% Class I-IV soils and 53% Class V-III for the entire 114.949 acres. That outcome is provided merely for comparison as the statute requires the use of classifications in use in 1983, which were Class VI for both 43C and 43E.) The percentage of soil composition for the additional 12.339 acres is taken from the Lane County RLID system and copies of that system's report for the five additional tax lots comprising the 12.339 acres are attached hereto and incorporated herein by this reference.

ORS 197.247(1)(b)(C) Forest Production Capability (Less than 85 cu./ft./ac./yr.):

Exhibit G of the original application contains the forest production capability analysis of Mr. Setchko. Mr. Setchko's report only addressed the 102.61 acres of the subject property. Using the 1997 Lane County Soil Ratings, the Green Sheets, and the Lane County Soil Ratings taken from the Office of the State Forester Memorandum as provided in the Setchko report, the forest production capability of the entire 114.949 acres, expressed in cubic feet per acre per year is 80.700 cu./ft./ac./yr., which remains below the 85 cu./ft./ac./yr. threshold of the statute. The calculations rendering that capability are as follows:

Soil Unit	Acres	Species	Cf/Ac/Yr	Total Cu. Ft. Productivity
31	2.631	DF	65	171.015
75	3.201	DF	180	576.180
96	1.829	DF	154	281.670

107C	3.653	DF	45	164.385
118	.054	DF	162	8.748
138E	<u>.756</u>	DF	70	<u>52.920</u>
	12.339			1,254.918

Adding the additional 1,254.918 cu./ft./ac./yr. to Mr. Setchko's total for the subject property and dividing by the total 114.949 acres produces the 80.700 cu./ft./ac./yr. figure provided above.

1,254.918 plus 8,021.478 = 9,276.396 cu./ft./ac./yr.
9,276.396 cu./ft./ac./yr. divided by 114.949 acres = 80.700 cu.ft./ac./yr.

Conclusion.

The inclusion of the additional 12.339 acres to the subject property's 101.61 acres in the analysis of the ORS 197.247 income and productivity tests do not change the final conclusion that the subject property qualifies for Marginal Land designation. The information contained herein demonstrates that the subject property, and when applicable, adjacent property, was not capable of producing \$20,000 and \$10,000 respectively from farm and forest operations thereon during the applicable period, consisted of predominantly Class V-VIII soils and is not capable of producing 85 cubic feet per acre per year of merchantable timber. The subject property meets the requirements of ORS 197.247 for designation to Marginal Lands.

Best regards,



STEVE CORNACCHIA

PSC:psc
Enclosures

Cc: client (w/o enclosures)

LANE COUNTY REGIONAL LAND INFORMATION DATABASE

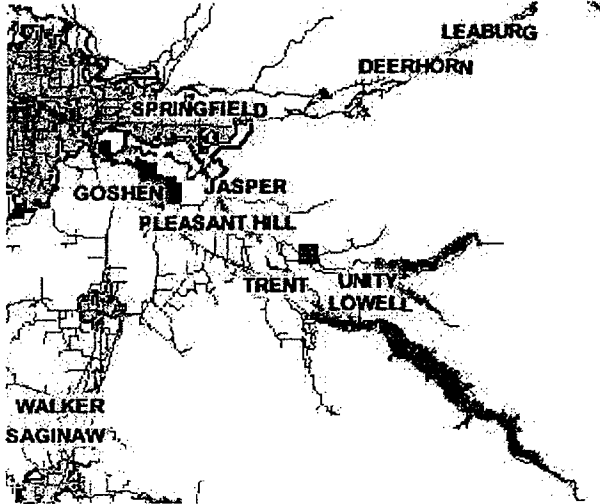
Site Address: 38965 JASPER LOWELL RD

Map & Tax Lot #: 18-01-33-00-00104

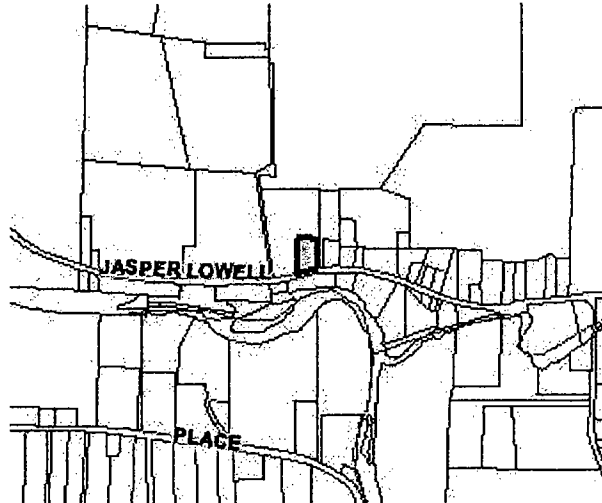
Special Interest Code:

A & T Account #: 0558088

Vicinity Map



Detail Map



Site Address State Plane Coordinates

X-Coord: 4310382

Y-Coord: 844294

Site Address Information

House	Suffix	Predir.	Street Name	PostDir.	Street Type	Unit Type	Unit
38965			JASPER LOWELL		RD		
			Mailing City		State	Zip Code	Zip+4
			FALL CREEK	OR	97438	9706	H065
			Create Date: 1983-08-09		Update Date:		

Land Use

Land use information has not been field verified.

Land Use Code and Description:

Code: 1111 Description: SINGLE FAMILY HOUSING

Use Code and Description:

S SINGLE FAMILY

Zoning

Please verify zoning information with local jurisdiction. Lane County overlay zones are not currently shown in RLID.

Zoning Jurisdiction:

Code: LC Description: LANE COUNTY

Parent Zone 1:

RR5 RURAL RESIDENTIAL 5 ACRE MIN

Boundary Information

General

Incorporated City Limits:

Urban Growth Boundary:

Fire Protection Providers:

LWF LOWELL RFPD

Plan Designation:

Node:

N

2000 Census Tract:

1600

2000 Block Group:

3

Year Annexed:

Annexation #:

2004 Transportation Analysis Zone: 512

Approximate Acreage: 1.23

Approximate Square Footage: **53,579**

Environmental Findings

Please verify environmental information with local jurisdiction.

Metro Flood Hazards:

Metro Wetlands:

FEMA Flood Hazard Zones

Note: Some parcels may extend onto adjacent FIRM maps. Registration between parcel boundaries and flood hazard zones is approximate. Community numbers are based on the current city limits and may not reflect boundaries at the date of map publication. Consult FIRM maps or appropriate authority.

FIRM Map Number:

Community Number:

Post - FIRM Date:

Panel Printed? (Y/N):

41039C1680F

415591

1985-12-18

Y

Code:

Description:

X

Areas determined to be outside of 500-year flood.

X5

Areas of 500-year flood, areas of 100-year flood with average depths of less than 1 foot or with drainage areas less than 1 square mile, and areas protected by levees from 100-year flood.

Soils

Soil Map Unit Number:

Soil Type Description:

Percentage of Tax Lot:

96

NEWBERG LOAM

52

75

MALABON SILTY CLAY LOAM

47

31

COBURG SILTY CLAY LOAM

1

Schools

Code:

Name:

District:

71

LOWELL

Elementary School:

Middle School:

High School:

Service Districts

LTD Service Area:

LTD Ride Source:

Ambulance District:

EC Area: EAST/CENTRAL

Provider: **SPRINGFIELD DEPT OF FIRE & LIFE SAFETY**

Emerald People's Utility District:

3

Soil Water Conservation District:

EAST LANE

Soil Water Conservation District

Zone:

0

Political Districts

Election Precinct:

100102

County Commissioner District:

5

County Commissioner:

State Representative District:

7

State Representative Name:

BRUCE HANNA

City Council Ward:

City Councilor Name:

State Senate District:

4

State Senator:

FLOYD PROZANSKI

LCC Board Zones:

4

EWEB Commissioner District:

Lane County Assessor's Office | Account Number: 0558088 | Map & Tax Lot: 18-01-33-00-00104

Property Owner

Owner1 Name: **CHOMYN PATRICIA G**

Owner Address: **38965 JASPER LOWELL RD**

City

State

Country

Zip Code

FALL CREEK OREGON UNITED STATES 97438

Owner2 Name: WINKLER ROBERT ALLEN
 Owner Address: 38965 JASPER LOWELL RD

City State Country Zip Code
 FALL CREEK OREGON UNITED STATES 97438

Taxpayer

Taxpayer Name: WINKLER ROBERT ALLEN
 Taxpayer Address: 38965 JASPER LOWELL RD

City State Country Zip Code
 FALL CREEK OREGON UNITED STATES 97438

Property Legal Description

Township: 18 Range: 01 Section: 33 Quarter: 00
 Subdivision Type: Subdivision Name: Division/Phase:
 Lot/Tract/Unit Number: TL 00104
 Subdivision Number:
 Recording Number:

Property Value and Taxes

	Land Value	Improvement Value	Total Value	
	Real Market	Real Market	Real Market	Assessed
2004	56,722	130,960	187,682	187,682
2003	56,161	129,660	185,821	185,821
2002	52,002	142,480	194,482	194,482
2001	51,600	201,030	252,630	215,497
2000	46,070	248,180	294,250	209,220
1999	48,490	217,700	266,190	203,126
1998	40,410	176,990	217,400	197,210
1997	40,410	195,390	235,800	191,466
1996	38,120	168,660	206,780	206,780
1995	34,040	178,700	212,740	212,740

187,682 0 0
Taxable Value Exemption Amount Regular (EAR) Frozen Assessed Value (FZNPU)

Tax Year	Tax (See Explanation of Tax)
2004	2,013.15
2003	2,035.09
2002	2,121.18
2001	2,583.35
2000	2,290.31
1999	2,237.15
1998	2,144.93
1997	2,156.67
1996	2,061.60
1995	2,125.92

Explanation of Tax

The tax shown is the amount certified in October, unless a value change has been processed on the property. Value changes typically occur as a result of appeals, clerical errors and omitted property. The owner either initiates the change, as in the case of appeals, or is notified by the department, in the case of clerical errors and omitted property. The amount shown is the full amount of tax for the year indicated and does not include any discounts offered, payments made, interest owing, or previous years owing.

Account Status

- Active for the 2004 Tax Year
- New Account Scheduled to be Active for the 2005 Tax Year
- Locally Assessed
- Pending Seg/Merge
- Pending Value Change
- Delinquency
- Delayed Foreclosure
- Bankruptcy
- Code Split Indicator

Remarks:

Special Assessment Program (if applicable)

Code:	Description:
General Information	
Property Class: 401	TRACT, IMPROVED
Statistical Class: 140	CLASS 4 SINGLE FAMILY HOME
Neighborhood Code: 50964	
Property Use Type:	
Account Type: RP	
Category: LAND AND IMPROVEMENTS	
Mortgage Company Name:	
Total Acreage for this Account: 1.05	
Fire Acres:	

2004 Tax Code Area (Levy Code): 07106 Lane County Assessment and Taxation 2004-2005 Measure 50 Billing Rates

**EMERALD PEOPLES UTILITY DISTRICT
 LANE COMMUNITY COLLEGE
 LANE COUNTY
 LANE EDUCATION SERVICE DISTRICT
 LOWELL RURAL FIRE PROTECTION DISTRICT
 LOWELL SCHOOL DISTRICT 71**

Sales Information

Sales Date:	Sales Price:	Grantor:	Grantee:	Instrument #:	Analysis Code:	Mult Acct?:
09-08-1997		CHOMYN, PATRICIA G		9706789800	6	
04-04-1995	200,000	MORRISSEY, BETTY JANE		9501926000	L	

Manufactured Structures

Building 1 Characteristics

<u>Account:</u> 0558088	<u>Map & Tax Lot:</u> 18-01-33-00-00104		
	<u>Roofstyle:</u> GABLE	<u>Bedrooms:</u>	4
<u>Building Type:</u> 41 STAT 140	<u>Roof Cover:</u> COMP SHINGLE MEDIUM	<u>Full Baths:</u>	2
<u>Class:</u> 4-	<u>Heating:</u> BASEBOARD	<u>Half Baths:</u>	1
<u>Actual Year Built:</u> 1970	<u>Exterior Wall:</u> WOOD BOARD & BATTEN	<u>Fireplaces:</u>	YES
<u>Effect Year Built:</u> 1970	<u>Depreciation:</u> 18	<u>Percent Improv. Complete:</u>	100
<u>Floor</u>	<u>Base Area</u>	<u>Finished Area</u>	<u>Parking Area</u>
<u>Basement:</u>		<u>Bsmt Gar sqft:</u>	
<u>First:</u>	1632	<u>Att Gar sqft:</u>	288
<u>Second:</u>	756	<u>Att Port sqft:</u>	
<u>Attic:</u>		<u>Det Gar sqft:</u>	
		<u>Driveway Sqft:</u>	

TOTAL

2388 **2388 Paved Patio Sqft:**
[Search Results](#) | [New Property Search](#) | [Applications Menu](#)

1204

LANE COUNTY REGIONAL LAND INFORMATION DATABASE

Site Address:

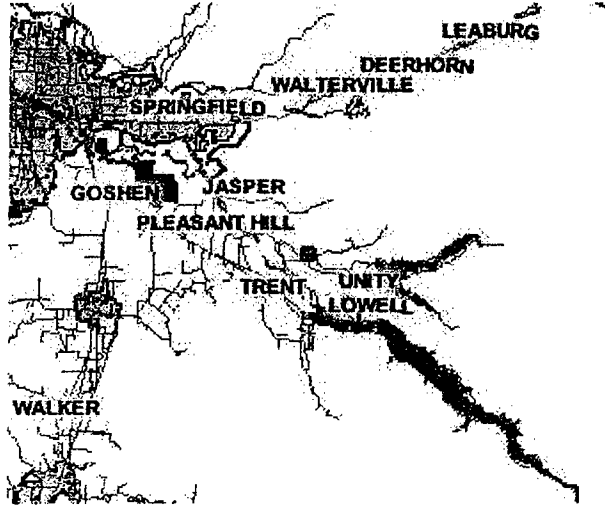
Map & Tax Lot #: 18-01-33-00-00600

Special Interest Code:

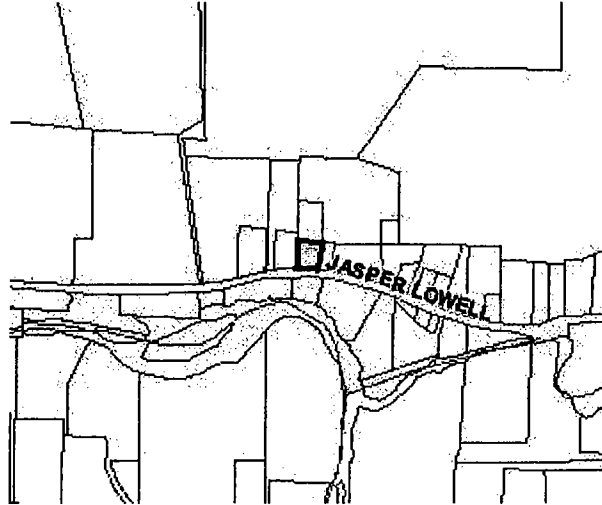
A & T Account #: 0558161

[Tax Map](#)
[View Tax Map](#)
[Convert to PDF Document](#)

Vicinity Map



Detail Map



Site Address State Plane Coordinates

X-Coord: 4310741

Y-Coord: 844279

Land Use

Land use information has not been field verified.

Land Use Code and Description:

Code: 9100

Description: VACANT, UNUSED, UNDEVELOPED LAND

Use Code and Description:

V

VACANT

Zoning

Please verify zoning information with local jurisdiction. Lane County overlay zones are not currently shown in RLID.

Zoning Jurisdiction:

Code: LC

Description: LANE COUNTY

Parent Zone 1:

RR5

RURAL RESIDENTIAL 5 ACRE MIN

Boundary Information

General

Incorporated City Limits:

Urban Growth Boundary:

Fire Protection Providers:

LWF

LOWELL RFPD

Plan Designation:

Node:

N

2000 Census Tract:

1600

2000 Block Group:

3

Year Annexed:

Annexation #:

2004 Transportation Analysis Zone: 512

Approximate Acreage: 0.60

Approximate Square Footage: 26,136

Environmental Findings

Please verify environmental information with local jurisdiction.

Metro Flood Hazards:

Metro Wetlands:

FEMA Flood Hazard Zones

Note: Some parcels may extend onto adjacent FIRM maps. Registration between parcel boundaries and flood hazard zones is approximate. Community numbers are based on the current city limits and may not reflect boundaries at the date of map publication. Consult FIRM maps or appropriate authority.

FIRM Map Number: **41039C1680E** Community Number: **415591** Post - FIRM Date: **1985-12-18** Panel Printed? (Y/N): **Y**

Code: **X** Description: **Areas determined to be outside of 500-year flood.**
X5 **Areas of 500-year flood, areas of 100-year flood with average depths of less than 1 foot or with drainage areas less than 1 square mile, and areas protected by levees from 100-year flood.**

Soils

Soil Map Unit Number:	Soil Type Description:	Percentage of Tax Lot:
75	MALABON SILTY CLAY LOAM	58
96	NEWBERG LOAM	32
118	SALEM GRAVELLY SILT LOAM	9
138E	WITZEL VERY COBBLY LOAM, 3 TO 30 PERCENT SLOPES	1

Schools

District: **71** Name: **LOWELL**

Elementary School:

Middle School:

High School:

Service Districts

LTD Service Area:

LTD Ride Source:

Ambulance District: **EC** Area: **EAST/CENTRAL** Provider: **SPRINGFIELD DEPT OF FIRE & LIFE SAFETY**

Emerald People's Utility District: **3**

Soil Water Conservation District: **EAST LANE**

Soil Water Conservation District Zone: **0**

Political Districts

Election Precinct: **100102**

County Commissioner District: **5**

County Commissioner:

State Representative District: **7**

State Representative Name: **BRUCE HANNA**

City Council Ward:

City Councilor Name:

State Senate District: **4**

State Senator: **FLOYD PROZANSKI**

LCC Board Zones: **4**

EWEB Commissioner District:

Lane County Assessor's Office | Account Number: 0558161 | Map & Tax Lot: 18-01-33-00-00600

Property Owner

Owner1 Name: **DREISBACH MARTIN**

Owner Address: **39005 JASPER LOWELL RD**

City	State	Country	Zip Code
FALL CREEK	OREGON	UNITED STATES	97438

Owner2 Name: **ELLIOTT MARY D**

Owner Address: **39005 JASPER LOWELL RD**

City	State	Country	Zip Code
FALL CREEK	OREGON	UNITED STATES	97438

Taxpayer

Taxpayer Name: **DREISBACH MARTIN**
 Taxpayer Address: **39005 JASPER LOWELL RD**

City	State	Country	Zip Code
FALL CREEK	OREGON	UNITED STATES	97438

Property Legal Description

Township: **18** Range: **01** Section: **33** Quarter: **00**
 Subdivision Type: Subdivision Name: Division/Phase:
 Lot/Tract/Unit Number: **TL 00600**
 Subdivision Number:
 Recording Number:

Property Value and Taxes

	Land Value	Improvement Value	Total Value	
	Real Market	Real Market	Real Market	Assessed
2004	20,215	0	20,215	13,305
2003	20,015	0	20,015	12,917
2002	18,533	0	18,533	12,541
2001	18,350	0	18,350	12,176
2000	16,380	0	16,380	11,821
1999	17,240	0	17,240	11,477
1998	14,370	0	14,370	11,143
1997	13,820	0	13,820	10,818
1996	13,820	0	13,820	13,820
1995	12,020	0	12,020	12,020

13,305	0	0
<u>Taxable Value</u>	Exemption Amount Regular (EAR)	Frozen Assessed Value (FZNPU)

Tax Year	Tax (See Explanation of Tax)
2004	154.47
2003	152.87
2002	147.86
2001	146.23
2000	129.40
1999	126.40
1998	125.33
1997	121.85
1996	137.79
1995	120.12

Explanation of Tax

The tax shown is the amount certified in October, unless a value change has been processed on the property. Value changes typically occur as a result of appeals, clerical errors and omitted property. The owner either initiates the change, as in the case of appeals, or is notified by the department, in the case of clerical errors and omitted property. The amount shown is the full amount of tax for the year indicated and does not include any discounts offered, payments made, interest owing, or previous years owing.

Account Status

- Active for the 2004 Tax Year
- New Account Scheduled to be Active for the 2005 Tax Year
- Locally Assessed

- Pending Seg/Merge
- Pending Value Change
- Delinquency
- Delayed Foreclosure
- Bankruptcy
- Code Split Indicator

Remarks:

Special Assessment Program (if applicable)

Code:	Description:
General Information	
Property Class: 100	RESIDENTIAL, VACANT
Statistical Class:	
Neighborhood Code: 50964	
Property Use Type:	
Account Type: RP	
Category: LAND AND IMPROVEMENTS	
Mortgage Company Name:	
Total Acreage for this Account: 0.56	
Fire Acres:	

2004 Tax Code Area (Levy Code): 07106 Lane County Assessment and Taxation 2004-2005 Measure 50 Billing Rates

EMERALD PEOPLES UTILITY DISTRICT
 LANE COMMUNITY COLLEGE
 LANE COUNTY
 LANE EDUCATION SERVICE DISTRICT
 LOWELL RURAL FIRE PROTECTION DISTRICT
 LOWELL SCHOOL DISTRICT 71

Sales Information

Sales Date:	Sales Price:	Grantor:	Grantee:	Instrument #:	Analysis Code:	Mult Acct?:
06-18-2001		DREISBACH, MARTIN	DREISBACH MARTIN	2001- 38166	6	Y
08-04-2000		DREISBACH MARTIN J	DREISBACH MARTIN	2000-045046	6	Y
07-07-2000	155,000	BROWN OLIVER A JR/ROOF BECKY	DREISBACH MARTIN J	2000-044290	K	Y
09-09-1998		BROWN, OLIVER A JR		9807366900	6	
01-20-1993	83,000	MOTHERWAY, KENNETH		93- 408000	R	
01-11-1993	65,000	EGGIMANN, TERESA		93- 407900	K	
08-14-1992	65,000	SHAMBLIN, ARCHIE W		93- 407800	C	
01-13-1992	75,000	BEESON, MARVIN ROLLAND & DIONELLA H&		92- 496100	R	

Manufactured Structures

[Search Results](#) | [New Property Search](#) | [Applications Menu](#)

LANE COUNTY REGIONAL LAND INFORMATION DATABASE

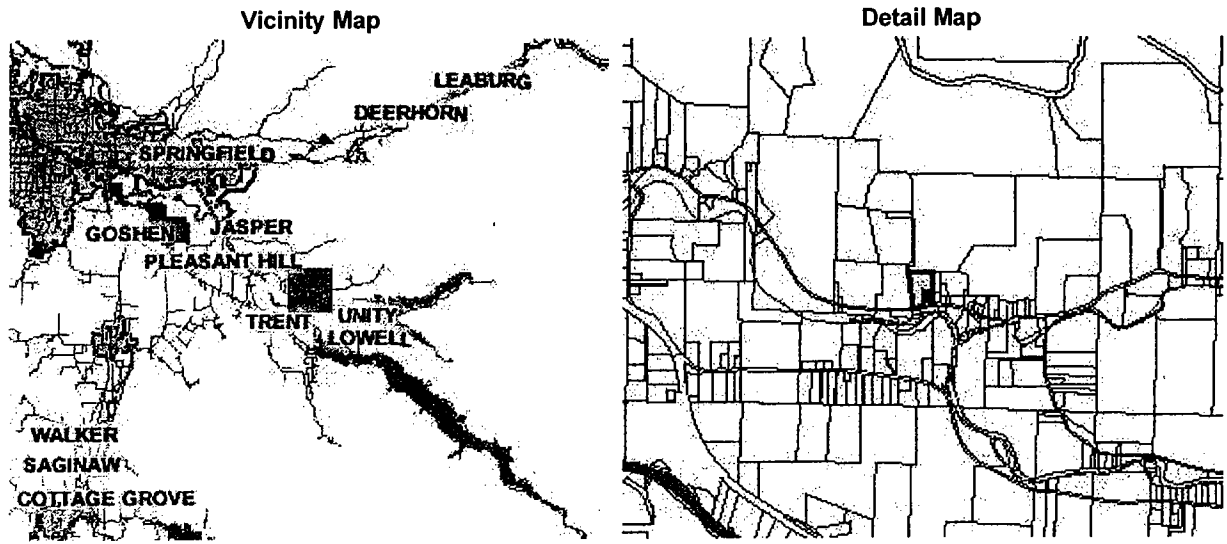
Site Address:

Map & Tax Lot #: 18-01-33-00-00107

Special Interest Code:

A & T Account #: 1546272

[Tax Map](#)
[View Tax Map](#)
[Convert to PDF Document](#)



Site Address State Plane Coordinates

X-Coord: 4310234

Y-Coord: 844545

Land Use

Land use information has not been field verified.

Land Use Code and Description:

Code: 8040

Description: PASTURE, COWS, SHEEP, CATTLE

Use Code and Description:

A

AGRICULTURE

Zoning

Please verify zoning information with local jurisdiction. Lane County overlay zones are not currently shown in RLID.

Zoning Jurisdiction:

Code: LC

Description: LANE COUNTY

Parent Zone 1:

F2

IMPACTED FOREST LANDS

Boundary Information

General

Incorporated City Limits:

Urban Growth Boundary:

Fire Protection Providers:

LWF

LOWELL RFPD

Plan Designation:

Node:

N

2000 Census Tract:

1600

2000 Block Group:

3

Year Annexed:

Annexation #:

2004 Transportation Analysis Zone: 512

Approximate Acreage:

7.39

Approximate Square Footage:

321,908

Environmental Findings

Please verify environmental information with local jurisdiction.

Metro Flood Hazards:

Metro Wetlands:

FEMA Flood Hazard Zones

Note: Some parcels may extend onto adjacent FIRM maps. Registration between parcel boundaries and flood hazard zones is approximate. Community numbers are based on the current city limits and may not reflect boundaries at the date of map publication. Consult FIRM maps or appropriate authority.

FIRM Map Number: 41039C1680F	Community Number: 415591	Post - FIRM Date: 1985-12-18	Panel Printed? (Y/N): Y
Code: AE X X5	Description: Areas of 100-year flood, base flood elevations determined. Areas determined to be outside of 500-year flood. Areas of 500-year flood, areas of 100-year flood with average depths of less than 1 foot or with drainage areas less than 1 square mile, and areas protected by levees from 100-year flood.		

Soils

Soil Map Unit Number:	Soil Type Description:	Percentage of Tax Lot:
107C	PHILOMATH SILTY CLAY, 3 TO 12 PERCENT SLOPES	46
31	COBURG SILTY CLAY LOAM	24
75	MALABON SILTY CLAY LOAM	21
96	NEWBERG LOAM	5
138E	WITZEL VERY COBBLY LOAM, 3 TO 30 PERCENT SLOPES	4

Schools

District:	Code:	Name:
	71	LOWELL
Elementary School:		
Middle School:		
High School:		

Service Districts

LTD Service Area:

LTD Ride Source:

Ambulance District:	EC	Area: EAST/CENTRAL	Provider: SPRINGFIELD DEPT OF FIRE & LIFE SAFETY
Emerald People's Utility District:	3		
Soil Water Conservation District:	EAST LANE		
Soil Water Conservation District Zone:	0		

Political Districts

Election Precinct:	100102
County Commissioner District:	5
County Commissioner:	
State Representative District:	7
State Representative Name:	BRUCE HANNA
City Council Ward:	
City Councilor Name:	
State Senate District:	4
State Senator:	FLOYD PROZANSKI
LCC Board Zones:	4
EWEB Commissioner District:	

Lane County Assessor's Office | Account Number: 1546272 | Map & Tax Lot: 18-01-33-00-00107

Property Owner

Owner1 Name: CHOMYN PATRICIA G

Owner Address: 38965 JASPER LOWELL RD

City	State	Country	Zip Code
FALL CREEK	OREGON	UNITED STATES	97438

Owner2 Name: WINKLER ROBERT ALLEN

Owner Address: 38965 JASPER LOWELL RD

City	State	Country	Zip Code
FALL CREEK	OREGON	UNITED STATES	97438

Taxpayer

Taxpayer Name: WINKLER ROBERT ALLEN
 Taxpayer Address: 38965 JASPER LOWELL RD

City	State	Country	Zip Code
FALL CREEK	OREGON	UNITED STATES	97438

Property Legal Description

Township: 18 Range: 01 Section: 33 Quarter: 00
 Subdivision Type: Subdivision Name: Division/Phase:
 Lot/Tract/Unit Number: TL 00107
 Subdivision Number:
 Recording Number:

Property Value and Taxes

	Land Value	Improvement Value	Total Value	
	Real Market	Real Market	Real Market	Assessed
2004	6,496	0	6,496	3,833
2003	6,432	0	6,432	3,721
2002	5,956	0	5,956	3,613
2001	4,506	0	4,506	3,508
2000	3,806	0	3,806	84
1999	4,010	0	4,010	80
1998	3,340	0	3,340	82
1997	3,340	0	3,340	80
1996	3,150	0	3,150	100
1995	2,810	0	2,810	100

3,833	0	0
<u>Taxable Value</u>	Exemption Amount Regular (EAR)	Frozen Assessed Value (FZNPU)

Tax Year	Tax (See Explanation of Tax)
2004	195.65
2003	86.51
2002	85.63
2001	84.95
2000	15.69
1999	56.65
1998	56.70
1997	56.68
1996	18.73
1995	11.41

Explanation of Tax

The tax shown is the amount certified in October, unless a value change has been processed on the property. Value changes typically occur as a result of appeals, clerical errors and omitted property. The owner either initiates the change, as in the case of appeals, or is notified by the department, in the case of clerical errors and omitted property. The amount shown is the full amount of tax for the year indicated and does not include any discounts offered, payments made, interest owing, or previous years owing.

Account Status

- Active for the 2004 Tax Year
- New Account Scheduled to be Active

for the 2005 Tax Year

- Locally Assessed
- Pending Seg/Merge
- Pending Value Change
- Delinquency
- Delayed Foreclosure
- Bankruptcy
- Code Split Indicator 1546280 1546280

Remarks:

2001 Postponed Farm Tax \$108.35 prepaid for 11/15/04

Special Assessment Program (if applicable)

Code:	Description:
General Information	
Property Class: 401	TRACT, IMPROVED
Statistical Class:	
Neighborhood Code: 50964	
Property Use Type:	
Account Type: RP	
Category: LAND AND IMPROVEMENTS	
Mortgage Company Name:	
Total Acreage for this Account: 1.50	
Fire Acres: 1.5	

2004 Tax Code Area (Levy Code): 07101 Lane County Assessment and Taxation 2004-2005 Measure 50 Billing Rates

- EMERALD PEOPLES UTILITY DISTRICT
- LANE COMMUNITY COLLEGE
- LANE COUNTY
- LANE EDUCATION SERVICE DISTRICT
- LOWELL SCHOOL DISTRICT 71

Sales Information

Sales Date: Sales Price: Grantor: Grantee: Instrument #: Analysis Code: Mult Acct?:

Manufactured Structures

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LANE COUNTY REGIONAL LAND INFORMATION DATABASE

Site Address:

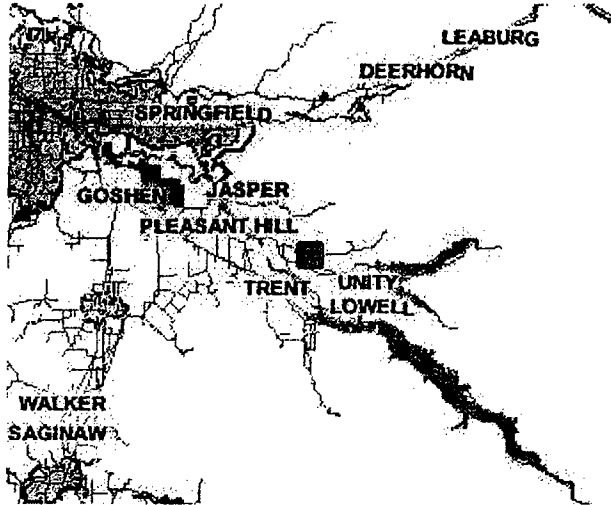
Map & Tax Lot #: 18-01-33-00-00100

Special Interest Code:

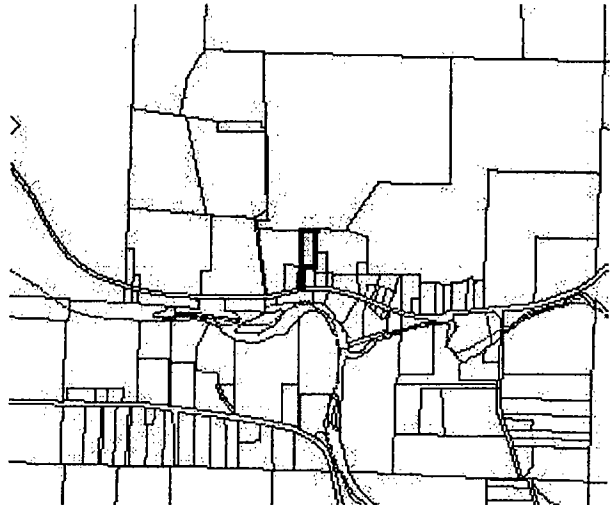
A & T Account #: 0558047

[Tax Map](#)
[View Tax Map](#)
[Convert to PDF Document](#)

Vicinity Map



Detail Map



Site Address State Plane Coordinates

X-Coord: 4310575

Y-Coord: 844570

Land Use

Land use information has not been field verified.

Land Use Code and Description:

Code: 8040

Description: PASTURE, COWS, SHEEP, CATTLE

Use Code and Description:

Code: A

Description: AGRICULTURE

Please verify zoning information with local jurisdiction. Lane County overlay zones are not currently shown in RLID.

Zoning

Zoning Jurisdiction:

Code: LC

Description: LANE COUNTY

Parent Zone 1:

Code: F2

Description: IMPACTED FOREST LANDS

Parent Zone 2:

Code: RR10

Description: RURAL RESIDENTIAL 10 ACRE MIN

Boundary Information

General

Incorporated City Limits:

Urban Growth Boundary:

Fire Protection Providers:

Code: LWF

Description: LOWELL RFPD

Plan Designation:

Node:

Code: N

2000 Census Tract:

Code: 1600

2000 Block Group:

Code: 3

Year Annexed:

Annexation #:

2004 Transportation Analysis Zone: 512

Approximate Acreage: 2.30

Approximate Square Footage: 100,188

Environmental Findings

Please verify environmental information with local jurisdiction.

Metro Flood Hazards:

Metro Wetlands:

Note: Some parcels may extend onto adjacent FIRM maps. Registration between parcel boundaries and flood

FEMA Flood Hazard Zones

hazard zones is approximate. Community numbers are based on the current city limits and may not reflect boundaries at the date of map publication. Consult FIRM maps or appropriate authority.

FIRM Map Number: **41039C1680E** Community Number: **415591** Post - FIRM Date: **1985-12-18** Panel Printed? (Y/N): **Y**

Code: **X** Description: **Areas determined to be outside of 500-year flood.**
X5 **Areas of 500-year flood, areas of 100-year flood with average depths of less than 1 foot or with drainage areas less than 1 square mile, and areas protected by levees from 100-year flood.**

Soils

Soil Map Unit Number:	Soil Type Description:	Percentage of Tax Lot:
31	COBURG SILTY CLAY LOAM	37
75	MALABON SILTY CLAY LOAM	26
138E	WITZEL VERY COBBLY LOAM, 3 TO 30 PERCENT SLOPES	19
107C	PHILOMATH SILTY CLAY, 3 TO 12 PERCENT SLOPES	11
96	NEWBERG LOAM	7

Schools

District: **71** Name: **LOWELL**
 Elementary School:
 Middle School:
 High School:

Service Districts

LTD Service Area:
 LTD Ride Source:
 Ambulance District: **EC** Area: **EAST/CENTRAL** Provider: **SPRINGFIELD DEPT OF FIRE & LIFE SAFETY**
 Emerald People's Utility District: **3**
 Soil Water Conservation District: **EAST LANE**
 Soil Water Conservation District Zone: **0**

Political Districts

Election Precinct: **100102**
 County Commissioner District: **5**
 County Commissioner:
 State Representative District: **7**
 State Representative Name: **BRUCE HANNA**
 City Council Ward:
 City Councilor Name:
 State Senate District: **4**
 State Senator: **FLOYD PROZANSKI**
 LCC Board Zones: **4**

EWEB Commissioner District:

Lane County Assessor's Office | Account Number: 0558047 | Map & Tax Lot: 18-01-33-00-00100

Property Owner

Owner1 Name: **PERRY SHERRY ANN**
 Owner Address: **38975 JASPER LOWELL RD**

City	State	Country	Zip Code
LOWELL	OREGON	UNITED STATES	97438

Taxpayer

Taxpayer Name: **PERRY SHERRY ANN**

Taxpayer Address: 38975 JASPER LOWELL RD

City: **LOWELL** State: **OREGON** Country: **UNITED STATES** Zip Code: **97438**

Property Legal Description

Township: **18** Range: **01** Section: **33** Quarter: **00**
 Subdivision Type: Subdivision Name: Division/Phase:
 Lot/Tract/Unit Number: **TL 00100**
 Subdivision Number:
 Recording Number:

Property Value and Taxes

	Land Value	Improvement Value	Total Value	
	<u>Real Market</u>	<u>Real Market</u>	<u>Real Market</u>	<u>Assessed</u>
2004	3,215	0	3,215	2,181
2003	3,184	0	3,184	2,117
2002	2,949	0	2,949	2,055
2001	2,920	0	2,920	1,995
2000	2,610	0	2,610	1,937
1999	2,750	0	2,750	1,881
1998	2,290	0	2,290	1,826
1997	2,290	0	2,290	58
1996	2,160	0	2,160	70
1995	1,930	0	1,930	60
	2,181	0	0	
	<u>Taxable Value</u>	Exemption Amount Regular (EAR)	Frozen Assessed Value (FZNPU)	

Tax Year	Tax (See Explanation of Tax)
2004	35.81
2003	35.36
2002	34.85
2001	34.47
2000	31.01
1999	33.70
1998	33.60
1997	18.49
1996	18.53
1995	7.75

Explanation of Tax

The tax shown is the amount certified in October, unless a value change has been processed on the property. Value changes typically occur as a result of appeals, clerical errors and omitted property. The owner either initiates the change, as in the case of appeals, or is notified by the department, in the case of clerical errors and omitted property. The amount shown is the full amount of tax for the year indicated and does not include any discounts offered, payments made, interest owing, or previous years owing.

Account Status

- Active for the 2004 Tax Year
- New Account Scheduled to be Active for the 2005 Tax Year
- Locally Assessed
- Pending Seg/Merge
- Pending Value Change
- Delinquency
- Delayed Foreclosure
- Bankruptcy

© Code Split Indicator **1084274**

Remarks:

Potential Additional Tax; 98 Postponed Farm Tax \$74.92

Special Assessment Program (if applicable)

Code:	Description:
General Information	
Property Class: 400	TRACT, VACANT
Statistical Class:	
Neighborhood Code: 50964	
Property Use Type:	
Account Type: RP	
Category: LAND AND IMPROVEMENTS	
Mortgage Company Name:	
Total Acreage for this Account: 1.03	
Fire Acres: 1.03	

2004 Tax Code Area (Levy Code): 07101 Lane County Assessment and Taxation 2004-2005 Measure 50 Billing Rates

**EMERALD PEOPLES UTILITY DISTRICT
 LANE COMMUNITY COLLEGE
 LANE COUNTY
 LANE EDUCATION SERVICE DISTRICT
 LOWELL SCHOOL DISTRICT 71**

Sales Information

Sales Date:	Sales Price:	Grantor:	Grantee:	Instrument #:	Analysis Code:	Mult Acct?:
07-18-2003	188,000	GAGE KELLY G & MARIE L	PERRY SHERRY ANN	2003- 68739	K	Y

Manufactured Structures

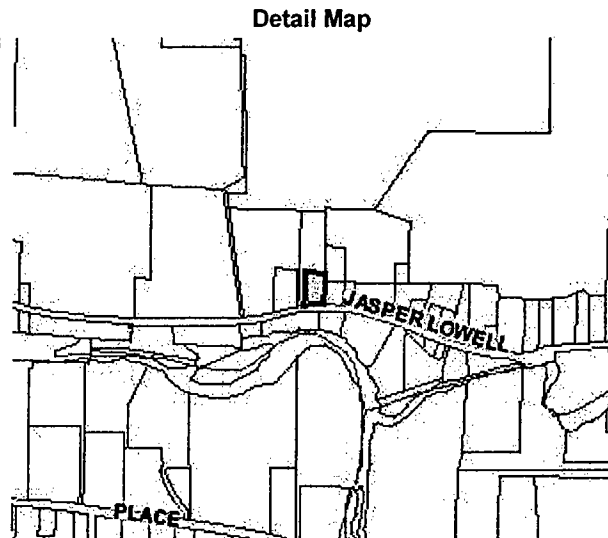
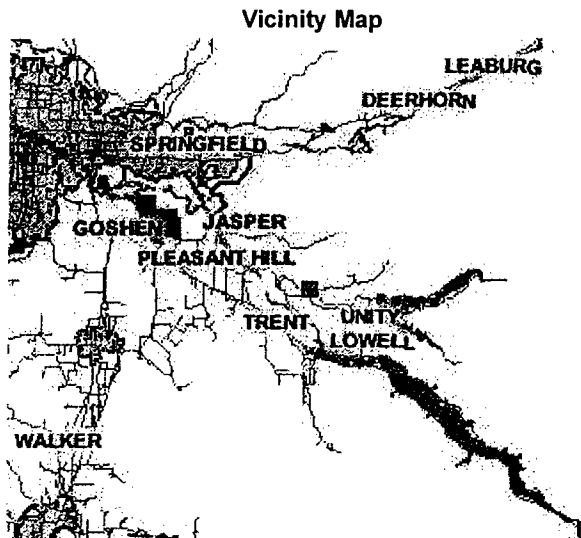
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LANE COUNTY REGIONAL LAND INFORMATION DATABASE

Site Address: **38975 JASPER LOWELL RD**
 Map & Tax Lot #: **18-01-33-00-00102**
 A & T Account #: **0558062**

Special Interest Code:

Tax Map View Tax Map Convert to PDF Document



Site Address State Plane Coordinates

X-Coord: **4310560**

Y-Coord: **844298**

Site Address Information

House	Suffix	Predir.	Street Name	PostDir.	Street Type	Unit Type	Unit
38975			JASPER LOWELL		RD		
	Mailing City		State	Zip Code	Zip+4	Carrier Route	
	FALL CREEK		OR	97438	9706	H065	
	Create Date: 1983-08-09			Update Date:			

Land Use

Land use information has not been field verified.

Land Use Code and Description:	Code:	Description:
Land Use Code and Description:	1150	MOBILE HOME - NOT IN MOBILE HOME PARK
Use Code and Description:	N	MOBILE HOME

Zoning

Please verify zoning information with local jurisdiction. Lane County overlay zones are not currently shown in RLID.

Zoning Jurisdiction:	Code:	Description:
Zoning Jurisdiction:	LC	LANE COUNTY
Parent Zone 1:	RR5	RURAL RESIDENTIAL 5 ACRE MIN

Boundary Information

General

Incorporated City Limits:		
Urban Growth Boundary:		
Fire Protection Providers:	LWF	LOWELL RFPD
Plan Designation:		
Node:	N	
2000 Census Tract:	1600	
2000 Block Group:	3	
Year Annexed:		
Annexation #:		
2004 Transportation Analysis Zone:	512	
Approximate Acreage:	0.82	

Approximate Square Footage: **35,719**

Environmental Findings Please verify environmental information with local jurisdiction.

Metro Flood Hazards:

Metro Wetlands:

FEMA Flood Hazard Zones

Note: Some parcels may extend onto adjacent FIRM maps. Registration between parcel boundaries and flood hazard zones is approximate. Community numbers are based on the current city limits and may not reflect boundaries at the date of map publication. Consult FIRM maps or appropriate authority.

FIRM Map Number: **41039C1680F** Community Number: **415591** Post - FIRM Date: **1985-12-18** Panel Printed? (Y/N): **Y**

Code: **X** Description: **Areas determined to be outside of 500-year flood.**
X5 **Areas of 500-year flood, areas of 100-year flood with average depths of less than 1 foot or with drainage areas less than 1 square mile, and areas protected by levees from 100-year flood.**

Soils

Soil Map Unit Number:	Soil Type Description:	Percentage of Tax Lot:
96	NEWBERG LOAM	57
75	MALABON SILTY CLAY LOAM	43

Schools

District:	Code:	Name:
71	71	LOWELL

Elementary School:

Middle School:

High School:

Service Districts

LTD Service Area:

LTD Ride Source:

Ambulance District: **EC** Area: **EAST/CENTRAL** Provider: **SPRINGFIELD DEPT OF FIRE & LIFE SAFETY**

Emerald People's Utility District: **3**

Soil Water Conservation District: **EAST LANE**

Soil Water Conservation District Zone: **0**

Political Districts

Election Precinct: **100102**

County Commissioner District: **5**

County Commissioner:

State Representative District: **7**

State Representative Name: **BRUCE HANNA**

City Council Ward:

City Councilor Name:

State Senate District: **4**

State Senator: **FLOYD PROZANSKI**

LCC Board Zones: **4**

EWEB Commissioner District:

Lane County Assessor's Office | Account Number: 0558062 | Map & Tax Lot: 18-01-33-00-00102

Property Owner

Owner1 Name: **PERRY SHERRY ANN**

Owner Address: **38975 JASPER LOWELL RD**

City	State	Country	Zip Code
LOWELL	OREGON	UNITED STATES	97438

Taxpayer

Taxpayer Name: **PERRY SHERRY ANN**

Taxpayer Address: **38975 JASPER LOWELL RD**

City: **LOWELL** State: **OREGON** Country: **UNITED STATES** Zip Code: **97438**

Property Legal Description

Township: **18** Range: **01** Section: **33** Quarter: **00**
 Subdivision Type: Subdivision Name: Division/Phase:
 Lot/Tract/Unit Number: **TL 00102**
 Subdivision Number:
 Recording Number:

Property Value and Taxes

	Land Value		Improvement Value		Total Value	
	<u>Real Market</u>		<u>Real Market</u>		<u>Real Market</u>	<u>Assessed</u>
2004	42,899		89,430		132,329	92,866
2003	42,475		85,170		127,645	90,161
2002	39,329		78,860		118,189	87,535
2001	38,940		74,400		113,340	84,985
2000	34,770		91,850		126,620	82,510
1999	36,600		80,570		117,170	80,107
1998	30,500		65,500		96,000	77,774
1997	30,500		65,500		96,000	75,509
1996	28,770		64,920		93,690	93,690
1995	25,690		7,150		32,840	32,840
	92,866		0		0	
	<u>Taxable Value</u>		Exemption Amount Regular (EAR)		Frozen Assessed Value (FZNPU)	

Tax Year	Tax (See Explanation of Tax)
2004	1,078.14
2003	1,067.06
2002	1,032.05
2001	1,020.63
2000	903.23
1999	882.27
1998	874.77
1997	850.52
1996	934.09
1995	328.17

Explanation of Tax

The tax shown is the amount certified in October, unless a value change has been processed on the property. Value changes typically occur as a result of appeals, clerical errors and omitted property. The owner either initiates the change, as in the case of appeals, or is notified by the department, in the case of clerical errors and omitted property. The amount shown is the full amount of tax for the year indicated and does not include any discounts offered, payments made, interest owing, or previous years owing.

Account Status

- Active for the 2004 Tax Year
- New Account Scheduled to be Active for the 2005 Tax Year
- Locally Assessed
- Pending Seg/Merge
- Pending Value Change
- Delinquency

- Delayed Foreclosure
- Bankruptcy
- Code Split Indicator

Remarks:

Special Assessment Program (if applicable)

Code:		Description:
General Information		
Property Class:	409	TRACT, MANUFACTURED STRUCTURE
Statistical Class:	190	MANUFACTURED HOME ON REAL PROPERTY
Neighborhood Code:	50964	
Property Use Type:		
Account Type:	RP	
Category:	LAND AND IMPROVEMENTS	
Mortgage Company Name:		
Total Acreage for this Account:	0.76	
Fire Acres:		

2004 Tax Code Area (Levy Code): 07106 Lane County Assessment and Taxation 2004-2005 Measure 50 Billing Rates
EMERALD PEOPLES UTILITY DISTRICT
LANE COMMUNITY COLLEGE
LANE COUNTY
LANE EDUCATION SERVICE DISTRICT
LOWELL RURAL FIRE PROTECTION DISTRICT
LOWELL SCHOOL DISTRICT 71

Sales Information

Sales Date:	Sales Price:	Grantor:	Grantee:	Instrument #:	Analysis Code:	Mult Acct?:
07-17-2003	188,000	GAGE KELLY G & MARIE L	PERRY SHERRY ANN	2003- 68739	Y	Y
05-26-1995	49,900	MORRISEY, BETTY JANE	XX	9503120000	L	N

Manufactured Structures

Building 1 Characteristics

<u>Account:</u>	0558062	<u>Map & Tax Lot:</u>	18-01-33-00-00102
		<u>Roofstyle:</u>	NOT AVAILABLE Bedrooms:
<u>Building Type:</u>	11 MANUFACTURED STRUCTURE	<u>Roof Cover:</u>	Full Baths:
<u>Class:</u>		<u>Heating:</u>	Half Baths:
<u>Actual Year Built:</u>		<u>Exterior Wall:</u>	Fireplaces:
<u>Effect Year Built:</u>	1995	<u>Depreciation:</u>	Percent Improv. Complete: 100
<u>Floor</u>	<u>Base Area</u>	<u>Finished Area</u>	<u>Parking Area</u>
Basement:		Bsmt Gar sqft:	
First:		Att Gar sqft:	
Second:		Att Port sqft:	
Attic:		Det Gar sqft:	
		Driveway Sqft:	
TOTAL		Paved Patio Sqft:	

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APPLICATION

Applicant: Carol (Sutton) Dennis
P.O. Box A
Port Orford, OR 97465

Property Owner: Carol (Sutton) Dennis

Property Location: Immediately north of the unincorporated community of Fall Creek and Jasper-Lowell Road.

Assessor's Map and Lot: Assessor's Map 18-01-33, Tax Lot 106. A copy of the Assessor's map is attached as Exhibit A. The legal description of the subject property is attached as Exhibit B.

Current County Zoning: Impacted Forest Land (F-2)

Attorney-Consultant: P. Steven Cornacchia
Hershner Hunter, LLP
180 E. 11th Avenue, Eugene, Oregon 97401.

Submission Date: _____, 2004

Table of Contents

	Page
Applicant	1
Property Owner.....	1
Property Location.....	1
Assessor's Map and Lot	1
Submission Date	1
1.0 INTRODUCTION.	4
2.0 BACKGROUND INFORMATION.	4
2.1 General Site Description.	4
2.2 Description of Proposed Amendments.	5
2.3 List of Exhibits:.....	5
3.0 RURAL COMPREHENSIVE PLAN AMENDMENT CRITERIA	5
3.1 Plan Amendment Criteria of Lane Code 16.400.....	5
3.1.1 Lane Code 16.400(6)(h)(iii)(aa).....	6
3.1.1.1 Goal 1 - Citizen Involvement.....	6
3.1.1.2 Goal 2 - Land Use Planning.....	6
3.1.1.3 Goal 3 - Agricultural Land.....	7
3.1.1.4 Goal 4 - Forest Lands.....	7
3.1.1.5 Goal 5 - Open Space, Scenic and Historic Areas, and Natural Resources.	7
3.1.1.6 Goal 6 - Air, Water and Land Resources Quality.	8
3.1.1.7 Goal 7 - Areas subject to Natural Disasters and Hazards.	8
3.1.1.8 Goal 8 - Recreational Needs.	8
3.1.1.9 Goal 9 - Economy of the State,.....	8
3.1.1.10 Goal 10 - Housing.....	9

3.1.1.11	Goal 11 - Public Facilities and Services.	9
3.1.1.12	Goal 12 - Transportation.	9
3.1.1.13	Goal 13 - Energy Conservation.....	10
3.1.1.14	Goal 14 - Urbanization.....	10
3.1.1.15	Goal 15 - Willamette River Greenway.	11
3.1.1.16	Goal 16 - Estuarine Resources.	11
3.1.1.17	Goal 17 - Coastal Shorelines.....	11
3.1.1.18	Goal 18 - Beaches and Dunes.	12
3.1.1.19	Goal 19 - Ocean Resources.....	12
3.1.2	Lane Code 16.400(6)(h)(iii)(bb)	12
3.1.3	Lane Code 16.400(6)(h)(iii)(cc).....	18
3.1.3.1	GOAL ONE: CITIZEN INVOLVEMENT	18
3.1.3.2	GOAL TWO: LAND USE PLANNING	18
3.1.3.2.1	Policy 25: Changes to Plan Diagram	18
3.1.3.3	GOAL THREE: AGRICULTURAL LANDS	19
3.1.3.4	GOAL FOUR: FOREST LANDS	19
3.1.3.4.1	Policy 1: Conservation of forest lands	19
3.1.3.5	GOAL FIVE: OPEN SPACES, SCENIC AND HISTORIC AREAS AND NATURAL RESOURCES	19
3.1.3.5.1	Policy 3: Adequacy of water supply	19
3.1.3.5.2	Policy 5: Land use designation commensurate with groundwater aquifer capacities.....	19
3.1.3.6	GOAL SIX: AIR, WATER AND LAND RESOURCES.....	20
4.0	Zone Change Criteria of Lane Code 16.252	20
4.1	Lane Code 16.252(2) (Criteria).....	21
5.0	CONCLUSION.....	22

1.0 INTRODUCTION.

The applicant is requesting approval of an amendment of the Lane County Rural Comprehensive Plan (RCP) to re-designate the subject property from Impacted Forest Land (F-2) to Marginal Lands (ML) and an amendment of the RCP map to re-designate the subject property from Forestry to Marginal Lands.

2.0 BACKGROUND INFORMATION.

2.1 General Site Description.

The property subject to this application consists of one parcel, approximately 102.69 acres in size, located in the vicinity of the unincorporated community of Fall Creek, north of Jasper-Lowell Road. The subject property is described as Tax Lot 106 of Lane County Assessor's Map No. 18-01-33. On October 6, 1994, the subject property was determined by Lane County to be a legal lot. A copy of the county correspondence providing that determination is attached as Exhibit C.

The subject property contains predominantly (80%) Class V-VIII soils, with no High Value agricultural soils, and is not capable of producing at least 85 cubic feet of merchantable timber per acre per year. The subject property is one of at least 39 parcels within 1/4 mile of the perimeter of it that existed in 1983, of which more than 50% (31) were less than or equal to 20 acres in size in 1983.

The subject property contains approximately 102.69 acres of predominantly open meadows and rock outcroppings. Ribbons of rock exist throughout the meadows where soil is extremely shallow and rock lies just beneath the surface. Approximately three acres of incense cedar are growing in a copse in the southwest portion of the property. The northern boundary of the property contains scattered, multi-aged Douglas-fir, incense cedar and ponderosa pine trees. The property slopes northwesterly from its northern boundary.

Property adjacent to the western boundary of the subject property is zoned Marginal Lands (ML), having been re-designated as Marginal Lands in PA 00-6304 (Donnelly). Property adjacent to the south boundary of the subject property consists of small parcels, all zoned for non-resource use and many of which are included within the unincorporated community of Fall Creek. Tax Lot 18-01-28-101 is adjacent to the north boundary of the subject property and is zoned Non-impacted Forest Land (F-1). Tax Lot 18-01-33-105 is adjacent to the east boundary of the subject property and is zoned Impacted Forest Land (F-2). Tax Lot 18-04-24-100 is adjacent to the northeast boundary of the subject property and is also zoned Impacted Forest (F-2).

The subject property receives the following public services: Lowell School District 71 (schools); Emerald Peoples' Utility District (electrical power); Lowell Rural Fire Protection District 1 (fire and ambulance); Qwest (telephone); LTD (bus service); Lane County Sheriff's Department and Oregon State Police.

2.2 Description of Proposed Amendments.

The application before Lane County is for approval of the following:

1. An amendment to the county's comprehensive plan and map designating the subject parcel as Marginal Lands and re-zoning it to Marginal Lands.

2.3 List of Exhibits:

- Exhibit A - Assessor's Map
- Exhibit B - Legal Description
- Exhibit C - Lane County Correspondence (Legal Lot Determination)
- Exhibit D - Board Interpretation
- Exhibit E - Paul Day Agriculture Capacity Review
- Exhibit F - LCOG Soils Listings and Map
- Exhibit G - Marc Setchko Forestry Report
- Exhibit H - Listing of Parcels Within 1/4-mile of Subject Property
- Exhibit I - Map of Parcels Within 1/4-mile of Subject Property
- Exhibit J - Official Record of Descriptions of Real Properties
- Exhibit K - Lane County Soil Ratings for Forestry and Agriculture
- Exhibit L - Marc Setchko Ponderosa Pine Analysis

3.0 RURAL COMPREHENSIVE PLAN AMENDMENT CRITERIA

3.1 Plan Amendment Criteria of Lane Code 16.400.

- A. **Lane Code 16.400(6)(h)(iii) (Method of Adoption and Amendment) provides that the Board may amend or supplement the Rural Comprehensive Plan upon making the following findings:**

(aa) For Major and Minor Amendments as defined in LC 16 400(8) (a) below, the Plan component or amendment meets all applicable requirements of local and state law, including Statewide Planning Goals and Oregon Administrative Rules

(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

(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.

3.1.1 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.

3.1.1.1 Goal 1 - Citizen Involvement.

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

Chapter Fourteen of the Lane Code provides for a notification and participation process for all quasi-judicial land use matters. Notices of public evidentiary hearings are required to be published in a newspaper of general circulation in the county in conformance with ORS 197.763. By providing the notices required by state law and the Lane Code and the public evidentiary hearings before its planning commission and board of commissioners, Lane County satisfies the requirements and intent of Goal 1.

3.1.1.2 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.

Lane County has adopted a comprehensive land use plan amendment process with specific standards that must be addressed to justify a minor change. Substantial compliance with the plan amendment criteria in Lane Code (LC)16.400 constitutes compliance with applicable provisions. This plan amendment must also address and satisfy the criteria set forth in ORS 197.247 (1991 ed.). This application is supported by substantial evidence upon which the Lane County Planning Commission and the Lane County Board of Commissioners may conclude that the applicable criteria have been met.

3.1.1.3 Goal 3 - Agricultural Land

To preserve and maintain agricultural lands.

The subject property is not agricultural land as defined by Goal 3. According to the U.S. Department of Agriculture Soil Conservation Service Soil Survey of Lane County, the subject property contains predominantly Class V-VIII soils and is of low suitability for farming as discussed in Section 3.1.2 below. Accordingly, approval of this application would be consistent with Goal 3.

3.1.1.4 Goal 4 - Forest Lands.

To preserve forest lands for forest use.

The subject property is not suitable for growing and sustaining Douglas-fir or other less merchantable tree species as discussed more fully in Section 3.1.2 below. No other tree species would grow as fast on the subject property or be as valuable and merchantable as Douglas-fir. Zoning the property as Marginal Lands maintains the property in a resource zone and capable of being used for limited, marginal, resource uses. The subject property's suitability for growing and sustaining merchantable tree species is discussed more fully in Section 3.1.2 below. Accordingly, approval of this application would be consistent with Goal 4.

3.1.1.5 Goal 5 - Open Space, Scenic and Historic Areas, and Natural Resources.

To conserve open space and protect natural and scenic resources.

Goal 5 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 5 resources exist on subject property. The subject property has not been included in any inventory of needed open space or scenic areas defined by Goal 5, nor has it been identified in

the RCP as having any historic, cultural or natural resources which need to be preserved and/or protected. The proposed amendment will not conflict with any Goal 5 resources.

3.1.1.6 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 amendment.

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

3.1.1.7 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.

3.1.1.8 Goal 8 - Recreational Needs.

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

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

3.1.1.9 Goal 9 - Economy of the State.

To diversify and improve the economy of the state.

Goal 9 is directed towards the comprehensive plans of the state's political subdivisions. Lane County's Rural Comprehensive Plan has been acknowledged by the Land Conservation and Development Commission. Goal 9 is not applicable to this application beyond a demonstration that the application is consistent with the Goal 9 policies of the plan. Approval of this application will allow the subject property to be developed to a maximum of eight parcels with dwellings.

3.1.1.10 Goal 10 - Housing.

To provide for the housing needs of the citizens of the state.

Approval of this application would result in the development of a maximum of eight parcels with dwellings on the subject property. Approval of this application would be consistent with Goal 10.

3.1.1.11 Goal 11 - Public Facilities and Services.

To plan and develop a timely, orderly and efficient arrangement of public facilities and services to serve as a framework for urban development.

The subject property receives the following public services: Lowell School District 4J(schools); Emerald Peoples' Utility District (electrical power); Lowell Rural Fire District 1 (fire and ambulance); Qwest (telephone); LTD (bus service); Lane County Sheriff's Department and Oregon State Police. While Goal 11 is couched in terms of "urban development," approval of the application will not result in any urban level of development in a rural area. Approval of the application will result in the creation of 10-acre and larger parcels which have been legislatively determined to be rural in nature and not constituting urban use. The subject property has access to the full range of public services specified for Communities in RCP Goal 11: Public Facilities and Services, Policy 6.j. No additional public facilities and services will be required beyond the current level. The public services identified above are adequate to serve the level of rural uses that the application envisions and provide the demonstration of consistency with Goal 11.

3.1.1.12 Goal 12 - Transportation.

To provide and encourage a safe, convenient and economic transportation system.

The intent of Goal 12 is also 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 amendment 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 applicant submits that the approval of the proposal cannot result in any of the four situations provided by the TPR criteria listed above. Development of a maximum of eight parcels with dwellings will produce typically 10 trips per day for each parcel, resulting in a total trip per day count of 80. Jasper-Lowell Road, a rural major collector, will not experience a change in its functional classification as a result of an additional 80 trips per day and the total trips per day are not inconsistent for a rural major collector and will not reduce the level of service below the minimum acceptable level identified in the TSP (Transportation System Plan).

Approval of the application will be consistent with the intent and purposes of Goal 12.

3.1.1.13 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.

Approval of this application would be consistent with Goal 13.

3.1.1.14 Goal 14 - Urbanization.

To provide for an orderly and efficient transition from rural to urban land use.

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

RCP. No urban uses are contemplated as a result of approval of this application. No extension of urban services is necessary as a result of approval of this application. Approval of this application will not change the uses made on the subject parcel from rural to urban.

The uses on the subject parcels resulting from approval of this application could include agriculture, forestry and rural residential use, all of which are rural in nature. The uses contemplated by this application (resource and rural residential uses) are all permitted uses of the ML zone as provided by Lane Code. The uses are not considered urban by the code in its implementation of the acknowledged RCP. Therefore, approval of this application would not result in the establishment of urban land use or urban land use in transition from rural land use.

All parcels resulting from approval of the subject application shall be no less than 10 acres in size which will not prevent further urban development in the future if the subject property is included within an urban growth boundary.

Approval of this application is consistent with Goal 14.

3.1.1.15 Goal 15 - Willamette River Greenway.

To protect, conserve, enhance and maintain the natural, scenic, historical, agricultural, economic and recreational qualities of lands along the Willamette River as the Willamette River Greenway.

The subject property is not located within the Willamette River Greenway. Goal 15 is not applicable to this application.

3.1.1.16 Goal 16 - Estuarine Resources.

To recognize and protect the unique environmental, economic, and social values of each estuary and associated wetlands; and

To protect, maintain, where appropriate develop, and where appropriate restore the long-term environmental, economic, and social values, diversity and benefits of Oregon's estuaries.

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

3.1.1.17 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.

3.1.1.18 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.

3.1.1.19 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.

3.1.2 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 Forestry and zoned Impacted Forest Land (F-2) as part of the Lane County Rural Comprehensive Plan 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(1991 ed).

(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 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, the staff and 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 copy of which is attached as Exhibit D. The Board interpretation clarifies how the Marginal Lands statute and criteria are to be applied in specific situations by addressing seven issues and providing policy direction for each. As discussed in this application, the Board interpretation has particular relevance to this application in the context of evaluating the site's ability to grow merchantable timber.

ORS 197.247(1) (1991 ed.) provides the following criteria:

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

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

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

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

(C) The proposed marginal land is composed predominately of soils in capability classes V through VIII in the Agricultural Capability Class Classification System in use by the United States Department of Agriculture Conservation Service on October 15, 1983, and is not capable of producing fifty cubic feet of merchantable timber per acre per year in those counties east of the summit of the Cascade Range and eighty-five cubic feet of merchantable timber per acre per year in those counties west of the summit of the Cascade Range.

ORS 197.247(b) requires that the applicant demonstrate that one of the three tests provided in sub-paragraphs (A)-(C) is met. The applicant has chosen to demonstrate that at least two of the three tests are met. If Lane County finds that either of the tests has been met then it may approve the application. The applicant has addressed subsections (a) and (b)(A)&(C) of the statute for demonstrating that the subject property is suitable for Marginal Lands designation. The following text addresses each of those criteria:

ORS 197.247(1)(a):

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. The applicant purchased the subject property in 1987 and the prior owner, who owned the property during the applicable period, is deceased. Accordingly, the applicant is unable to provide actual income figures for any farm operations during the applicable period. The applicant, however, is familiar with the use of the subject property during the applicable period, having viewed and researched the subject property for purchase during the applicable period. During that period, the applicant witnessed no farm operations, including the raising of row crops, orchards or livestock, occurring on the subject property during the applicable period. Furthermore, the applicant has attempted to establish and maintain a filbert orchard and has seeded portions of the property for a grass/hay crop and has been uniformly and consistently unsuccessful—both attempts at establishing such farm use could not be maintained and sustained.

In response to the applicant's lack of personal knowledge of the income, if any, generated by farm operations on the subject property during the applicable period, the applicant provides the analysis and conclusions of Agricultural Consultant Paul E. Day. Mr. Day is a prior agricultural specialist with the Oregon State University Extension Office and is qualified to issue an opinion regarding the agricultural productivity of the subject property. Mr. Day has produced an "Agricultural Capacity Review" of the subject property, dated September 23, 2004. His review is attached as Exhibit E.

Mr. Day concludes, for a variety of reasons, that the subject property could not have been managed as part of a farming operation that produced at least \$20,000 in annual gross income during any three years of the applicable period. He concludes that the production of row or specialty crops was not possible or practicable due to lack of available water and appropriate soils. He further concludes that, based upon the soil located on the subject property, cattle production would have been the most likely and most productive agricultural use of the property. He opines that even in a theoretical situation where the entire acreage was devoted to cattle production, it could not have produced \$20,000 in gross income in any of the applicable years. Mr. Day's conclusions demonstrate that the subject property qualifies for Marginal Lands designation and use because it could not have produced the requisite income from farm operations during the applicable period.

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

To demonstrate that the subject property was not managed during the subject period as part of a forest operation capable of producing an average, over the growth cycle, of \$10,000 in annual gross income, the applicant provides the professional testimony of a consulting forester, Marc Setchko. Mr. Setchko provides an analysis of the timber-growing potential of the subject property and concludes that the subject property could not have been managed during the subject time period 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 an analysis and conclusion. Mr. Setchko's opinion was based on a detailed analysis of the subject property's existing soils, as detailed by the Lane Council of Governments (LCOG) (whose soil map and listing of soils is attached as Exhibit F), their ability to grow merchantable timber and conversion of that growth potential into dollars based upon Douglas-fir log prices of 1983. Mr. Setchko's methodology for determining forest income capability is dictated by the Board interpretation (Direction for Issue 4.). Mr. Setchko's analysis uses a fifty-year growth cycle as directed by the Board interpretation (Direction for Issue 5.) Mr. Setchko uses Douglas-fir log prices because Douglas-fir is the most valuable of all merchantable tree species and generates the most income of all tree species.

Mr. Setchko's analysis and conclusions include ratings for all soils on the subject property and discussion of other issues relevant to the discussion of ORS 197.247(a). Mr. Setchko's analysis is attached as Exhibit G. Mr. Setchko concludes that, at best, the subject property would have been capable of generating an annual gross income from merchantable timber of only \$5,773. Mr. Setchko's analysis and conclusion support a finding that the subject property was not capable of being managed as a part of a forest operation that produced an average, over the growth cycle, of \$10,000 in annual gross income.

ORS 197.247(1)(b)(A):

At least 50% of the area of the subject property, plus the lots or parcels all or partially located within 1/4-mile of the perimeter of the subject property, consisted of lots or parcels 20 acres or less in size of July 1, 1983.

On July 1, 1983, 38 parcels, as defined by the statute and including the subject property, were located partially or in whole within 1/4 mile of the perimeter of the subject property. Adjacent parcels under common ownership on July 1, 1983, are counted as one parcel. Of those 38 parcels, 29 consisted of parcels 20 acres or less in size on that date. Nine parcels were larger than 20 acres in size on that date. A listing of all 38 parcels is attached as Exhibit H. A depiction of the 1/4-mile perimeter of the subject property, including all parcels currently located partially or in whole within that perimeter, drawn on 8 1/2"x11" Lane County Assessor's Map No.s 18-01-28, 32 &33, is attached as Exhibit I. Exhibit H contains a narrative description of those parcels shown on Exhibit I that describes the size and ownership of the parcels (on July 1, 1983) that places them in either category (20 acres and below or above 20 acres in size). The Official Record of Descriptions of Real Property of the Lane County Assessor's Office for all 38 parcels are attached together as Exhibit J. The description cards provide the parcel size for each of the 38 parcels on July 1, 1983. The information provided in Exhibits H, I and J provide evidence that, on July 1, 1983, significantly more than 50 % of the parcels within the test area

consisted of parcels 20 acres or less in size. Those exhibits are substantial evidence supporting a finding that the ORS 197.247(1)(b)(A) test is met.

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

The subject property is composed predominately of soils in capability classes V through VIII in the Agricultural Capability Classification System in use by the United States Department of Agriculture Soil Conservation Service on October 15, 1983.

Based upon the LCOG soils map and soils listing for the subject property, the capability classes of soils can be determined by the Lane County Soil Ratings for Forestry and Agriculture, dated August 1997, and prepared by LCOG. A copy of that Lane County/LCOG document is attached as Exhibit K. The document contains a preface on Page 1 that states: The Lane County Land Management Division, with technical assistance from Lane Council of Governments, compiled this data to assist the public in preparing land use applications. The Natural Resources Conservation Service (NRCS) reviewed the data and methodology.” The data contained in the document varies slightly from data contained in the Agricultural Capability Classification System in use by the United States Department of Agriculture Soil Conservation Service on October 15, 1983, but not in a manner that significantly changes the outcome of the calculations regarding percentage of capability classes. The slight variance is discussed below.

By using the Lane County/LCOG document’s capability classifications listed with each soil type, a calculation of the percentage of soils in capability classes I-IV and the percentage of soils in capability classes V-VIII can be determined. Soils of the subject property are composed of 41.21% class I-IV soils and 58.79% class V-VIII soils. The noted variance in data in the document relates to the two soil complexes found on the subject property, Dixonville-Philomath-Hazelair complex, 3-12% slopes (43C) and Dixonville-Philomath-Hazelair complex, 12-35% slopes (43E). 43C is listed as Agricultural Capability Class III and 43E is listed as Agricultural Capability Class IV in the Lane County/LCOG document. In previous Soil Conservation Service (SCS) publications, particularly the 1987 publication of 1981 data, 43C and 43E are both listed as Class VI. Using the earlier classifications SCS classifications the calculations would have produced an even higher percentage of Class V-VIII soils than is calculated using the Lane County/LCOG document.

The subject property is not capable of producing eighty-five cubic feet of merchantable timber per acre per year. 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. In other recent Marginal Lands applications, Goal One Coalition argues that many other species of trees must be analyzed. Mr. Setchko’s opinion includes an analysis of the species listed by Goal One Coalition and concludes that they are either not merchantable, or would not produce an annual volume equal to Douglas-fir. Goal One Coalition has provided no substantial evidence in those other applications to refute or contradict Mr. Setchko’s professional opinion regarding the merchantability and productivity of those particular species. Furthermore, Goal One Coalition has provided no authority or foundation for its arguments regarding soil ratings, productivity or tree 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. In supplemental testimony for PA 02-5838 (Ogle-Child), dated September 8, 2004, Mr. Setchko opines 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 analysis and conclusions regarding the productivity and merchantability of each of the three species (pages 6-9 of his testimony) is attached as Exhibit L. His conclusions mirror his earlier attached opinion 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.

Conclusion: The subject property qualifies under ORS 197.247(1) (1991 ed.) as Marginal Lands 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 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) At least 50 percent of the subject property, plus the lots or parcels at least partially located within one-quarter mile of the perimeter of the subject property, consists of lots or parcels 20 acres or less in size on July 1, 1983;
- (d) It is composed predominantly of soils in agricultural capability classes V through VIII, and
- (e) It is not capable of producing 85 cubic feet of merchantable timber per acre per year.

Substantial evidence has been provided, particularly the various Day and Setchko reports and the analysis contained therein, and the parcel information, to support each of the above conclusions.

(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 determine that approval of the application is desirable, appropriate and proper and would be a demonstration of good public policy.

3.1.3 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. This application 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 qualified professional consultants. 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:

3.1.3.1 GOAL ONE: CITIZEN INVOLVEMENT

Notice to affected property owners and evidentiary hearings provided by Lane County will ensure that the application meets and supports the citizen involvement goal and policies of the comprehensive plan.

3.1.3.2 GOAL TWO: LAND USE PLANNING

3.1.3.2.1 Policy 25: Changes to Plan Diagram

This application for amendment of the Plan Diagram designation 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 3 of this application.

3.1.3.3 GOAL THREE: AGRICULTURAL LANDS

The applicant has demonstrated that the subject property is not agricultural land as defined by Goal 3 and, accordingly, approval of this application is consistent with Goal 3.

3.1.3.4 GOAL FOUR: FOREST LANDS

3.1.3.4.1 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, as demonstrated in other sections of it, is consistent with and supports Policy 1 of Goal 4 of the RCP.

3.1.3.5 GOAL FIVE: OPEN SPACES, SCENIC AND HISTORIC AREAS AND NATURAL RESOURCES

3.1.3.5.1 Policy 3: Adequacy of water supply

The adequacy of water supply for the proposed development of the subject property is discussed in Section 3.1.3.5.2 below.

3.1.3.5.2 Policy 5: Land use designation commensurate with groundwater aquifer capacities

The subject property and the local Fall Creek watershed are not within an area identified in Lane Manual 13.010 as an area of limited quantity or quality of groundwater. A domestic well exists on the subject property and produces between 25 and 50 gallons of water per minute (gpm). Lane County Application No. PA 00-6304 (Donnelly) includes a Well Data Summary Report as Exhibit "P" and is incorporated herein by reference as though fully set forth. That report was prepared by Casey Jones Well Drilling, Pleasant Hill, Oregon, for 101 wells in Sections 32, 33 and 34 of Township 18 Range 1 W. That reports concludes that the area produces an average and median water production of 17 gpm and 15 gpm, respectively. PA 00-6304 also containsevidence that two wells exist on the adjacent property that produce 4.5 gpm and 30 gpm, respectively. That evidence is also incorporated herein as though fully set forth. Such evidence

demonstrates that the maximum of eight parcels possible on the subject property will have an adequate supply of water for residential use and such use will not have a negative effect on the domestic water use of adjacent property.

3.1.3.6 GOAL SIX: AIR, WATER AND LAND RESOURCES

Goal Six considerations have been discussed in Section 3.1.3.5.2 of this application and are applicable to this section.

3.1.4 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 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 smaller tracts than are required in the better resource lands. The criteria in the law define which lands may be designated as marginal. Evidence for this position is found in the legislative history and the fact that marginal lands are recognized in both Statewide Goal 3 - Agricultural Lands and Goal 4 - Forest Lanes."

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

Based on the evidence provided in this application which addresses and satisfies the criterion in ORS 197.247 (1991 ed.) and the above-referenced RCP resource policies, approval of the plan amendment would be compatible with the existing structure of the acknowledged RCP and is consistent with the unamended portions and elements of the RCP.

4.0 Zone Change Criteria of Lane Code 16.252

4.1 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 Rural Comprehensive Plan elements and components, and Statewide Planning Goals for any portion of Lane County which has not been acknowledged for compliance with the Statewide Planning Goals by the Land Conservation and Development Commission. Any zoning or rezoning may be effected by Ordinance or Order of the Board of County Commissioners, the Planning Commission or the Hearings Official in accordance with the procedures in this section.

Approval of the plan amendment would result in a change in zoning of the subject property from Impacted Forest Land to 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 this application.

The proposed 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 to aid the economy;
- 3) It will conserve farm and forest lands by locating residential opportunities within a resource zone that allows limited residential development in concert with resource use;
- 4) It will aid in the provision of affordable housing that allows a reasonable selection of a place to live;
- 5) It will provide for the orderly and efficient transition from rural to urban lands and the efficient provision of public facilities and services; and
- 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.

The proposed 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 a majority 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 intensive or part-time farm or forest operations. It would be applied to property in accordance with Lane Code Chapter 16 criteria and procedures, RCP plan policies and criteria in ORS 197.247 (1991 ed.).

5.0 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 proposal and provides Lane County with the appropriate foundation from which to approve the proposed plan amendment and re-zoning. The application contains substantial evidence to support the finding and conclusion that it meets and satisfies all of the relevant criteria required for approval.

EXHIBIT A

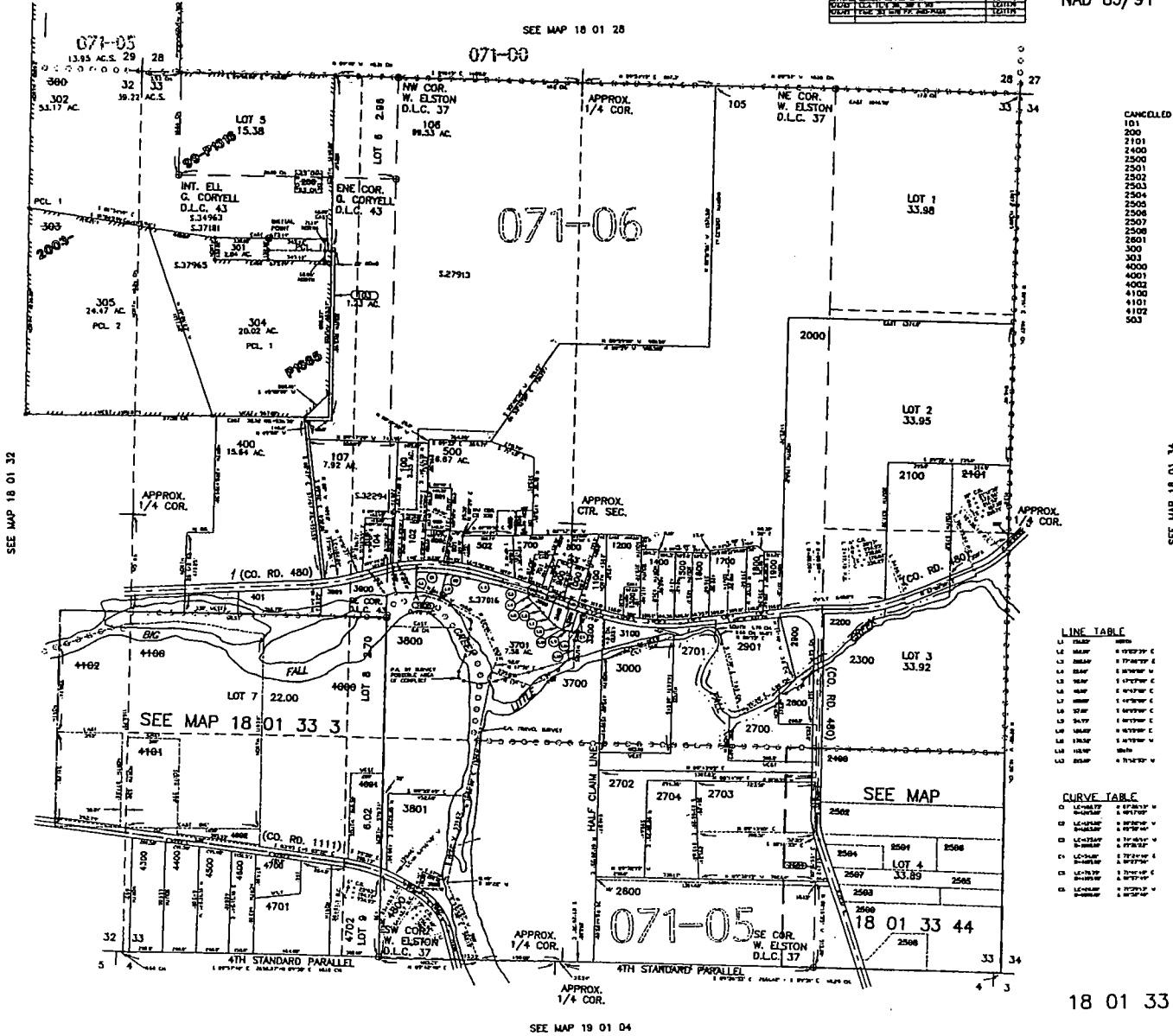
FOR ASSESSMENT
AND TAXATION
ONLY

SEC. 33 T.18S. R.1W. W.M.
LANE COUNTY
SCALE 1" = 400'

18 01 33

NAD 83/91

DATE	REVISION	BY
12/21/01	REVISED TO SHOW 2000	LS/STW
12/21/01	REVISED TO SHOW 2000	LS/STW
12/21/01	REVISED TO SHOW 2000	LS/STW
12/21/01	REVISED TO SHOW 2000	LS/STW
12/21/01	REVISED TO SHOW 2000	LS/STW
12/21/01	REVISED TO SHOW 2000	LS/STW
12/21/01	REVISED TO SHOW 2000	LS/STW
12/21/01	REVISED TO SHOW 2000	LS/STW
12/21/01	REVISED TO SHOW 2000	LS/STW



SEE MAP 18 01 32

SEE MAP 18 01 34

- CANCELLED
- 101
 - 200
 - 2181
 - 2400
 - 2500
 - 2501
 - 2502
 - 2503
 - 2504
 - 2505
 - 2506
 - 2507
 - 2508
 - 2601
 - 303
 - 303
 - 4000
 - 4001
 - 4002
 - 4100
 - 4101
 - 4102
 - 503

LINE TABLE

LINE	DESCRIPTION
L1	1/4 COR. W. ELSTON
L2	1/4 COR. W. ELSTON
L3	1/4 COR. W. ELSTON
L4	1/4 COR. W. ELSTON
L5	1/4 COR. W. ELSTON
L6	1/4 COR. W. ELSTON
L7	1/4 COR. W. ELSTON
L8	1/4 COR. W. ELSTON
L9	1/4 COR. W. ELSTON
L10	1/4 COR. W. ELSTON

CURVE TABLE

LINE	DESCRIPTION
C1	1/4 COR. W. ELSTON
C2	1/4 COR. W. ELSTON
C3	1/4 COR. W. ELSTON
C4	1/4 COR. W. ELSTON
C5	1/4 COR. W. ELSTON
C6	1/4 COR. W. ELSTON
C7	1/4 COR. W. ELSTON
C8	1/4 COR. W. ELSTON
C9	1/4 COR. W. ELSTON
C10	1/4 COR. W. ELSTON

18 01 33

SEE MAP 19 01 04

EXHIBIT B

A parcel of land situated in Section 33, Township 18 South, Range 1 West, of the Willamette Meridian, being a portion of that certain tract of land described in Deed Reel 627R, Instrument No. 738439, and being more particularly described as follows: Beginning at the 3/4" iron pipe marking the Northwest corner of the land formerly owned and occupied by School District No. 67, as originally described in Deed Book 215, Page 486, and referred to in said deed recorded in Reel 627R, Instrument No. 738439, Lane County Oregon Deed Records; from said 3/4" iron pipe, run thence South 0° 19' 50" East, 20.00 feet to a 5/8" iron rod; thence North 89° 47' 20" West, 743.96 feet to a 5/8" iron rod as described in that certain Boundary Line Agreement and Quitclaim Deed recorded in Reel 1463R, Instrument No. 8725257, Lane County Oregon Deed Records, thence North 9° 02' West along the line described in said Boundary Line Agreement & Quitclaim Deed, 146.6 feet, more or less, to the South line of that certain tract of land conveyed by Leninger to Lawrence and recorded in Book 263, Page 335, Lane County Oregon Deed Records; thence East along said South line, 148.0 feet to the Southeast corner of said Lawrence tract; thence North along the East line of said Lawrence tract, 2048 feet to the North line of Section 33 in said Township and Range; thence South 89° 45' East, along said North Section line, 1489 feet to the North one-quarter corner of said Section 33; thence North 89° 54' 15" East, along said North Section line 807.30 feet to a 5/8" iron rod set in County Survey File No. 26756; thence South 0° 11' 56" East, 1571.59 feet to a 5/8" iron rod also set in said County Survey File No. 26756; thence North 89° 59' West, 908.50 feet to a 5/8" iron set in a mound of stones; thence South 33° 41' 30" West, 721.13 feet to a 1/2" iron pipe on the North line of said property formerly owned and occupied by School District No. 67; thence North 89° 47' 20" West along said North line 364.47 feet to the Point of Beginning, all in Lane County, Oregon.

EXCEPTING THEREFROM a road as set forth in deed from Mary S. Neet, a widow, recorded November 14, 1945, in Book 302, Page 415, Lane County Oregon Deed Records, described as follows, to-wit: A roadway 20.0 feet wide along the Westerly line of the above described tract beginning at the cemetery entrance 1029.0 feet South and 1489.0 feet North 89° 45' West of the 1/4 section corner between Sections 28 and 33; thence South and following the West boundary of said tract to the Springfield-Lowell County Road.

EXHIBIT C



October 6, 1994

Deloy Dennis
P.O. Box 1066
Fall Creek, OR. 97438

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

RE: 18-01-33-00-00106 - Legal Lot Status

Dear Mr. & Mrs. Dennis:

This letter is a follow-up to Mr. Hoglund's letter dated June 22, 1994. At that time Taxlot 106 was not considered a legal lot by Lane County. It was created in 1987 without benefit of a partition approval as required by adopted land division regulations. Lane County considered Taxlot 100 and 106 together as one legal lot.

Property line adjustments recently completed by Mr. and Mrs. Morrissey have changed the legal lot status for Taxlot 106. Lane County now considers Taxlot 106 to be a separate legal lot. It is now recognized as a legally separate unit of land for the purposes of development. Development would still be subject to the applicable zoning, sanitation, access and building regulations.

If you have any questions concerning development, Lane County staff is available Monday - Friday from 9:30 a.m. to 4:00 p.m. at the Land Management Division public assistance counter. Land Management is located in the basement of the Public Service Building at 125 East 8th Avenue in Eugene.

Sincerely,

A handwritten signature in cursive script that reads "John S. Petsch".

John S. Petsch
Senior Engineering Associate

Attachments: Copy of Hoglund letter dated 6-22-94

CC: TRS Files
Michael Morrissey
P.O. Box 1021
Fall Creek, OR. 97438

March 1997

Supplement to Marginal Lands Information Sheet

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

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

ISSUE 1: What is the Marginal Lands concept?**Board's Direction:**

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

ISSUE 2: Definition of "Management".

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

Board's Direction :

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

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

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

Board's Direction :

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

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

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

Board's Direction :

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

1. Based on the best information available regarding soils, topography, etc., determine the optimal level of timber production for the tract assuming reasonable management.
2. Assume that the stand was, in 1983, fully mature and ready for harvest.
3. Using the volumes calculated in step (1), and 1983 prices, calculate the average gross annual income over the growth cycle.

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

Board's Direction :

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

ISSUE 6: Weight of evidence.

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

Board's Direction :

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

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

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

Board's Direction :

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

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

AGRICULTURAL CAPACITY REVIEW

Fall Creek Property

Prepared For

Ms. Carol Sutton Dennis

By

Paul E. Day

Agricultural Consultant

September 23, 2004

TABLE OF CONTENTS

	<u>Page</u>
SUMMARY	1
INTRODUCTION	2
FINDINGS	2
Location and Description	2
Improvements	3
Soil Characteristics and Capacities	3
Water	7
Plant Communities	7
History	7
Nearby Lands	7
ANALYSIS	10
Agricultural Tests Required	10
Income Records	10
Theoretical Maximum Grazing Income	10
Practical Maximum Grazing Income	12
Other Grazing Operations	13
Hay Production	13
Crop Production	13
CONCLUSIONS	15
TABLES AND MAPS	
Table 1. Reference Materials Cited	2
Table 2. Soils Inventory	4
Map 1. Soil Distribution by Type	5
Map 2. Soil Distribution by Type and USDA Class	6
Table 3. Hill Soils North of Fall Creek	9
Table 4. Theoretical Maximum Income from Cattle	11
Table 5. Practical Maximum Income from Cattle	11

Date: September 23, 2004

To: Mrs. Carol (Sutton) Dennis
P.O. Box A
Port Orford, OR 97465

From: Paul E. Day, Agricultural Consultant
82631 Barbre Road
Dexter OR 97431-9726

Subject: Sutton Property: Agricultural Capacity Review
Tax Lot: T18S, R1W, Sec. 33, Lot 106

The following information relates to your request (through your attorney, Mr. Steve Cornacchia) that I become familiar with the property referenced above and describe its suitability for agricultural production relative to ML (Marginal Lands) zoning.

I have visited the property, discussed it with your attorney, reviewed maps and aerial photographs of it, reviewed relevant soils information from government sources, and have reviewed information concerning the nature and uses of surrounding land holdings.

My findings are summarized below and detailed on the following pages.

SUMMARY

The Sutton property referenced above has been reviewed for the purpose of evaluating its agricultural capability. Analysis of the findings shows that the property is marginal as an agricultural resource because:

1. A majority of the soils present are classified as class VI and VII (i.e., non-agricultural) soils.
2. Irrigation of crops is not possible due to lack of available water.
3. Production of high value field crops (e.g., sweet corn, snap beans) is not practicable due to lack of appropriate soils and lack of irrigation water.
4. The potential for hay and/or grazing income falls well short of producing \$20,000 per year of gross income and historically has not produced this amount.
5. Surrounding parcels are predominantly either in forest production or are small rural residential holdings. With few exceptions agricultural production is incidental to rural residential uses.

INTRODUCTION

Where references are made to information about soils, climate, etc., the information will be taken from the sources cited in Table 1. Reference Materials Cited. In the text, reference will be made using the following shortened names.

Table 1. Reference Materials Cited

Name	Reference
Setchko Report	<u>Forest Productivity Analysis for Carol Sutton</u> , June 2004. Prepared by Marc E. Setchko, Consulting Forester, Eugene, Oregon
LCOG	Lane Council of Governments, Eugene, Oregon
NRCS Reference	<u>Soil Survey of Lane County Area</u> , Oregon, September 1987. Issued by Soil Conservation Service (now part of Natural Resources Conservation Service – NRCS) of the United States Department of Agriculture.
OAIN	Oregon Agricultural Information Network Department of Agricultural and Resource Economics Oregon State University Corvallis, Oregon

FINDINGS

The subject property was visited on September 7, 2004, to review its capacity for agricultural production. Maps and aerial photographs of the area were reviewed, soil resources, current use, evidence of past use, facilities, plant communities, water resources and adjacent properties were considered. Various aspects of the parcel were discussed with Mr. Cornacchia who represented the current ownership.

Location and Description

The subject property is located at 39191 Jasper-Lowell Road, Fall Creek, OR 97438, just to the north-northwest of the community of Fall Creek, OR. Access to the property is via a sixty foot deeded easement leading to the property from Jasper-Lowell Road. Additional

access is possible using a graveled road leading to a neighboring property that passes by the west side of the subject property.

The configuration of the property is roughly a square with a portion of the southeast corner removed. It slopes generally upward to the north and is drained by seasonal watercourses.

In total, the property consists of approximately 102.6 acres and is currently zoned F2.

The property is covered by a mixture of open meadow, brush, and trees. Trees (fir, pine, cedar) occupy approximately 43 to 48 acres or 42-47% of the acreage (Setchko Report).

Improvements

Improvements to the property are minimal, although it appears that in the past there has been a home site on the property. This includes a domestic well having an estimated capacity of 25 to 50 gallons per minute. At one time the property was fenced but the fencing has not been maintained and currently is not capable of containing livestock. No serviceable outbuildings were noted.

Soil Characteristics and Capacities

In general, the hill soils in this part of Lane County are predominantly non-agricultural soils. The subject property is no exception to this generalized evaluation. An inventory of soils on the subject property (Table 2. Soils Inventory, page four) shows that in excess of 78% of the property is classified as non-agricultural soils. Maps (Map 1. Soil Distribution by Type, page five, and Map 2. Soil Distribution by Type and USDA Class, page six) show the variety of soils by map symbol and by USDA Class distribution.

Eight different soil types existing on the subject property are spread over a total of 19 separate locations (Source: LCOG). Of the eight soil types shown, six consisting of 78.633% of the total property, are listed as having an agricultural capability classification of class VI or VII (i.e., they are not classed as "Agricultural Land" under Goal Three of Oregon's Statewide Planning Goals).

The productive capacity of soils used for grazing is measured in Animal Unit Months (AUMs)¹. Seven soils on the subject parcel have a productivity rating for pasture.² In total, the theoretical productive capacity of the entire property, without exclusions for trees, seasonal streambeds, etc., is projected at 394.668 AUMs which translates (394.668 / 12) to 32.889 animal units of annual forage production capacity. Details are provided in Table 2. Soils Inventory. This would provide a theoretical grazing capacity of 32 to 33

¹ A measure of forage production capacity generally defined as the amount of feed needed to care for a 1000 lb. cow (and her unweaned calf), or the equivalent, for a 30 day period. AUMs divided by 12 = animal units.

² The eighth soil, Rock Outcrop – Witzel Complex (map symbol 116G), has no rating for pasture production or any other crop in the NRCS Reference. It is discussed on pages 128-129 of the NRCS Reference but is not included in Table 5 of the reference which details crop yields for soils capable of agricultural production.

Table 2. Soils Inventory ¹

Sutton Property

Map Symbol	Acres On Property	% Of Property	Soil Name And % Slope	Ag Capability Class	AUMs ² Per Acre	Parcel AUMs Per Yr	Acres Ag Soil Class I-IV	% Ag Soil	Acres Non-Ag Soil Class V-VIII	% Non-Ag Soil
41C	3,297	3.213	Dixonville 3-12%	III	6	19,782	3,297	3.213		
41E	18,627	18.153	Dixonville 12-30%	IV	6	111,762	18,627	18.153		
43C	14,403	14.037	Dixonville-Philomath-Hazelair Complex 3-12%	VI	4	57,612			14,403	14.037
43E	10,845	10.569	Dixonville-Philomath-Hazelair Complex 12-35%	VI	4	43,380			10,845	10.569
107C	13,768	13.418	Philomath 3-12%	VI	4	55,072			13,768	13.418
113G	5,341	5.205	Ritner 30-60%	VII	4	21,364			5,341	5.205
116G ³	14,904	14.525	Rock Outcrop - Witzel Complex 10-70%	VI	0	0,000			14,904	14.525
138E	21,424	20.879	Witzel 3-30%	VI	4	85,696			21,424	20.879
TOTALS	102,809	100.000				394,668	21,924	21.367	80,685	78.633
Parcel Capacity Equals	394,668 AUM/12 months per year			37,969	Animal Units					

¹ Source: Lane Council of Governments.

² A USDA land capability classification scheme in which all soils are rated from Class I to Class VIII. In western Oregon, classes I to IV are deemed suitable for agricultural production; classes V to VIII are non-agricultural.

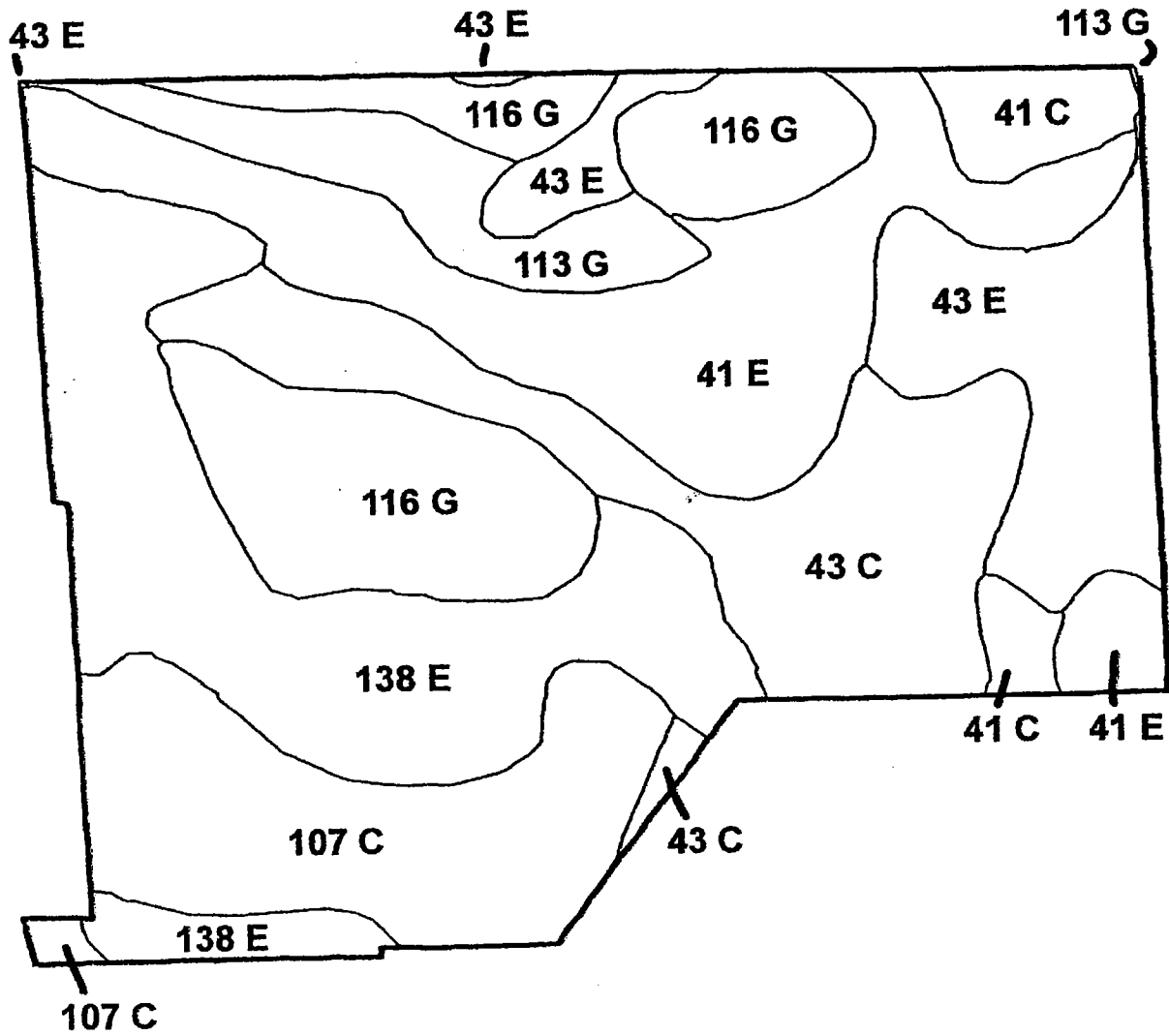
³ A measure of forage productive capacity generally defined as the amount of feed needed to care for a 1000 lb. cow (and her unweaned calf), or the equivalent, for a 30-day period. AUMs divided by 12 = animal units.

⁴ USDA yield projections are based on an assumption of high level management.

Map 1. Soil Distribution By Type

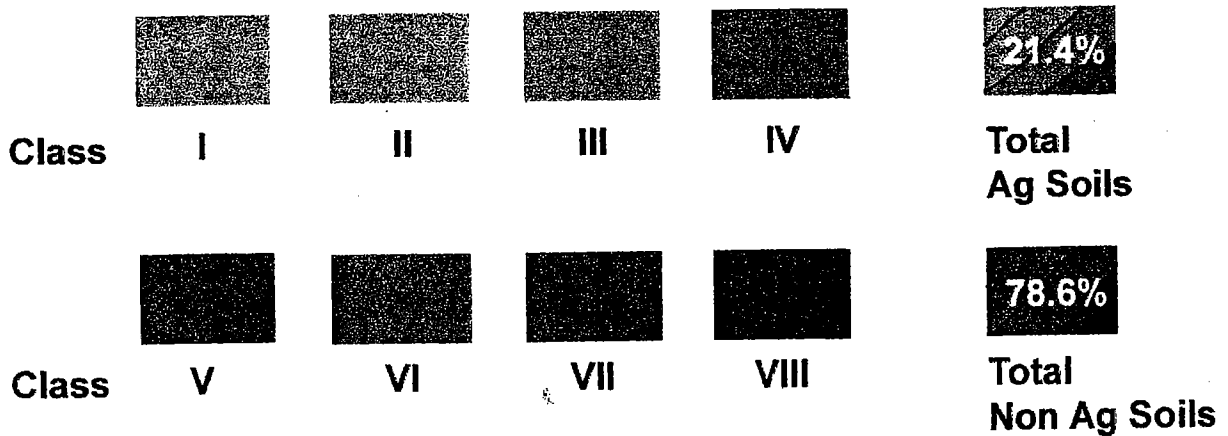
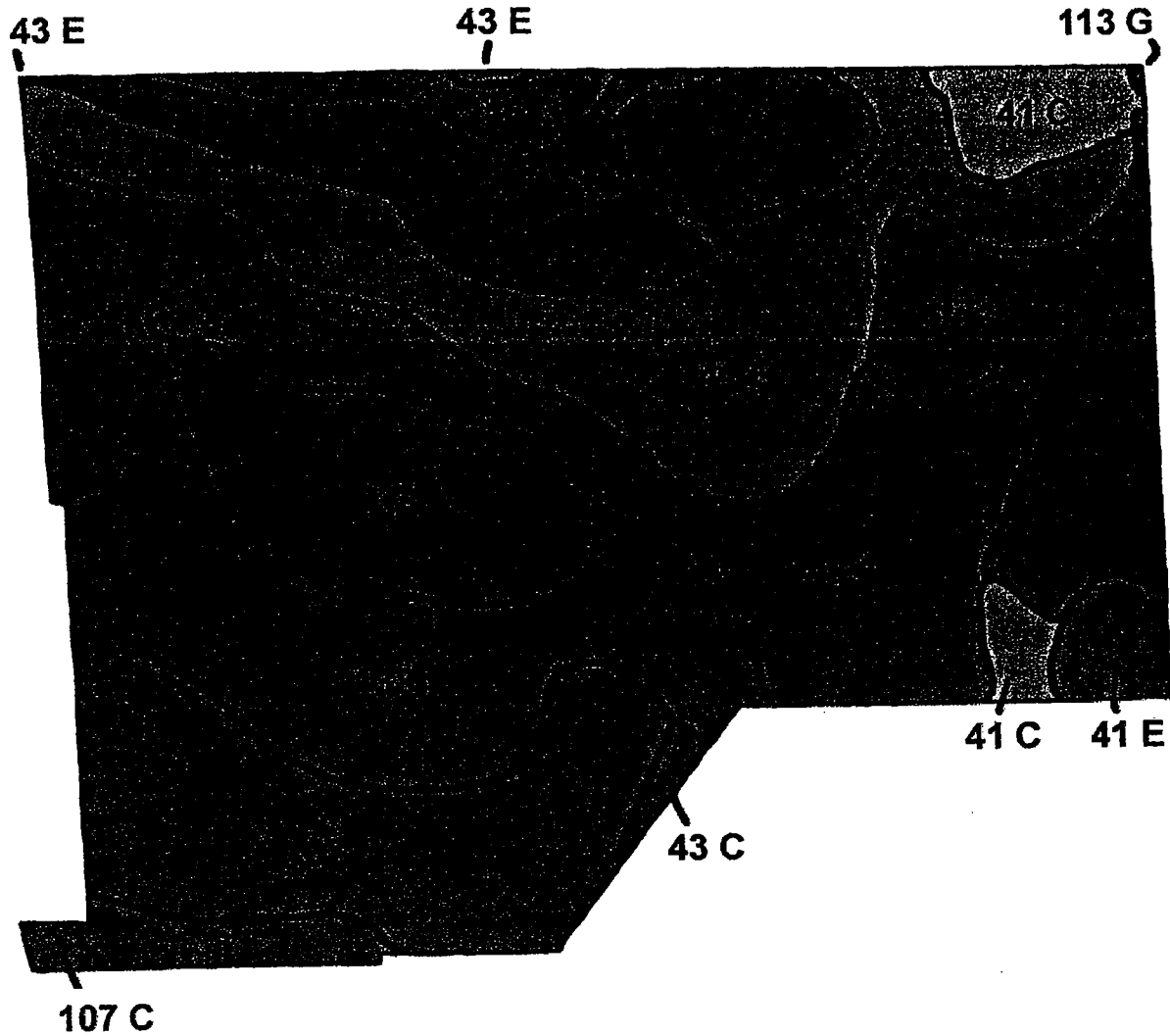
Sutton Property -T185, R1W, Sec. 33, Lot 106

Source: Lane Council of Governments



Map 2. Soil Distribution By Type and USDA Class

Sutton Property -T185, R1W, Sec. 33, Lot 106
 Source: Lane Council of Governments



head of 1000 lb. cattle under high level management. With the exception of the two agricultural soils (Dixonville soils – discussed below) the NRCS Reference lists only pasture as a crop for the soils on this property.

One of the Dixonville soils (41C, 3-12% slope; 3.297 total acres), located in or near the northeast and southeast corners of the property, carries productivity ratings for sweet corn, snap beans, and strawberries (all irrigated) and for filberts and wheat (non-irrigated). The second Dixonville soil (41E, 12-30% slope; 18.627 total acres), located mostly in an arc from the northwest corner to near the northeast corner and in a small patch at the southeast corner, carries productivity ratings for irrigated strawberries and non-irrigated wheat and filberts.

Water

The subject property is drained by shallow seasonal waterways but does not have any permanent streams on it. No ponds, lakes, or reservoirs are found on, adjacent to, or nearby the property that could serve as a source of irrigation water. There are no water rights associated with the property or with Fall Creek which lies to the south of the subject property across intervening properties and a county road. A domestic well said to provide 25 to 50 gallons per minute is located on the property.

Plant Communities

Plant populations on the subject property consist of trees (fir, pine, cedar, white oak, and other hardwoods — see Setchko Report) and a mixture of volunteer species of grasses, brush, etc., in the meadow areas. It is possible that some attempts have been made in the past to establish desirable forage plants on portions of the property but no record of such activity has been discovered.

The appearance of the property is that of a piece of mixed meadow and forest land that has not been actively managed toward any productive agricultural or forestry purpose in recent years.

History

The historical use of the property is uncertain. This is especially true of the period of 1978 through 1982 because the owner during that period, a Mr. Mike Morrissey, is deceased.

Nearby Lands

The predominant land use in the surrounding area appears to be rural residential in the bottomland along Fall Creek and Little Fall Creek. Agricultural activity on these parcels is minimal and appears to be consistent with the rural residential lifestyle

A blueberry farm is located on Big Fall Creek about one or two miles upstream from the subject parcel.

On the ridge land to the north of Fall Creek, most of the land is zoned F1 with a few parcels of F2 and E40. These lands appear to be in use primarily in the production of timber with some associated grazing of cattle.

A listing of 18 soils found on the hills to the north of Fall Creek and surrounding the subject property is presented in Table 3. Hill Soils North of Fall Creek (see page nine). Of the 18 soils listed all but six are non-agricultural (i.e., not in USDA agricultural capability classes I-IV).

In short, the area is mostly in rural residential use near the unincorporated town of Fall Creek. As the land slopes upward to the north the soils are predominantly non-agricultural and substantial parts of the slopes are forested. Sources of water for irrigation are not available for most of these areas. The combined effect of these factors is that little of the nearby land is in farm use and it is extremely unlikely that parcels will be amalgamated into productive farm units.

Table 3. Hill Soils North of Fall Creek ¹

Map Symbol	Name, Texture And Slope	Ag. Capability ² Class
41C	Dixonville, silty clay loam, 3-12%	III
41E	Dixonville, silty clay loam, 12-30%	VI
41F	Dixonville, silty clay loam, 30-50%	VI
43C	Dixonville-Philomath-Hazelair Complex, 3-12%	VI
43E	Dixonville-Philomath-Hazelair Complex, 12-35%	VI
52B	Hazelair, silty clay loam, 2-7%	III
52D	Hazelair, silty clay loam, 7-20%	IV
89C	Nekia, silty clay loam, 2-12%	III
89D	Nekia, silty clay loam, 12-20%	III
89F	Nekia, silty clay loam, 30-50%	VI
107C	Philomath, silty clay, 3-12%	VI
108C	Panther, cobbly silty clay, 3-12%	VI
113C	Ritner, cobbly silty clay loam, 2-12%	IV
113E	Ritner, cobbly silty clay loam, 12-30%	VI
113G	Ritner, cobbly silty clay loam, 30-60%	VII
116G	Rock outcrop-Witzel complex, 10-70%	VII
138E	Witzel, very cobbly loam, 3-30%	VI
138G	Witzel, very cobbly loam, 30-75%	VI

¹ Based on Map 105, USDA Soil Conservation Service Publication Soil Survey of Lane County Area, Oregon, September 1987

² A USDA land capability classification scheme in which all soils are rated from Class I to Class VIII. In western Oregon, classes I to IV are deemed suitable for agricultural production; classes V to VIII are non-agricultural.

ANALYSIS

Agricultural Tests Required

Relative to a designation of Marginal Lands, it is necessary to address the amount of annual gross income produced from managing the property as part of a farming operation between the years of 1978 through 1982 inclusive. This value must be below the amount of \$20,000 for the property to qualify. An additional requirement (one of three options) is that the proposed Marginal Lands area be predominantly (greater than 50%) made up of soils of Class V-VIII by USDA standards (i.e., non-agricultural soils). As noted above and in Table 2, the subject property is over 78% non-agricultural soils.

Income Records

In the situation of the specific property being addressed in this report, it is not possible through farm records, tax returns, etc., to conclusively determine that less than \$20,000 per year was produced in the 1978 through 1982 period. The owner of the property during the required period, Mr. Mike Morrissey, is no longer living and no records from that period have been discovered.

It is possible, however, to approach the issue from the standpoint of whether or not it was possible to produce \$20,000 per year from the subject property given the nature of the agricultural resources available and using historical commodity price information. Price information has been gathered from OAIN and is incorporated in Table 4. Theoretical Maximum Income from Cattle and Table 5. Practical Maximum Income From Cattle (both located on page eleven).

Theoretical Maximum Grazing Income

The following information demonstrates that the \$20,000 limit could not have been met. This will be considered under the assumptions that:

1. The property was being managed with the intent to use all of the acreage on the subject property for production of agricultural commodities (i.e., assumes no trees, buildings, lanes, etc. were present on the land) and
2. High level management was being practiced.

Table 2. Soils Inventory shows the amount of forage production possible under non-irrigated conditions on the soils that are present (assuming high level management). Since no source of irrigation water is available for use on the subject property, irrigated yields have not been projected.

Using yield data from Table 2. Soils Inventory, the theoretical capacity for cattle grazing on the property is 32.9 head of cows (plus their calves prior to weaning).

TABLE 4. THEORETICAL MAXIMUM INCOME FROM CATTLE

Lane County, Oregon 1978 – 1982 Inclusive
Sutton Property

Year	No. Of Cows	\$ Total Sales	\$ Sales Per Cow	Au Per Year	\$ Projected Annual Income
1978	14,500	5,347,000	368.76	32.889	12,128
1979	14,500	7,992,000	551.17	32.889	18,127
1980	15,000	6,661,000	444.07	32.889	14,605
1981	15,000	6,774,000	451.60	32.889	14,853
1982	15,000	7,017,000	467.80	32.889	15,385

- 1 Source: Oregon State University, Dept. Agricultural and Resource Economics, Oregon Agricultural Information Network (OAIN).
- 2 Animal units per year for the parcel. Source: Table 2. Soils Inventory, page 4.

TABLE 5. PRACTICAL MAXIMUM INCOME FROM CATTLE

Lane County, Oregon 1978 – 1982 Inclusive
Sutton Property

Year	No. Of Cows	\$ Total Sales	\$ Sales Per Cow	Au Per Year	\$ Projected Annual Income
1978	14,500	5,347,000	368.76	18.155	6695
1979	14,500	7,992,000	551.17	18.155	10,006
1980	15,000	6,661,000	444.07	18.155	8062
1981	15,000	6,774,000	451.60	18.155	8199
1982	15,000	7,017,000	467.80	18.155	8493

- 1 Source: Oregon State University, Dept. Agricultural and Resource Economics, Oregon Agricultural Information Network (OAIN).
- 2 Adjusted animal units per year for the parcel. Source: Table 2. Soils Inventory, page 4 as modified according to discussion on page 12.

Table 4. Theoretical Maximum Income from Cattle, uses data taken from Oregon State University sources (OAIN) to determine a value for cattle (gross income per cow) in Lane County during the years noted.

Multiplying the capacity of the subject property (32.889 head of cows) by the annual gross income per cow for each year (1978 through 1982) provides the theoretical maximum income from grazing for each year. None of the years in question shows an annual income of \$20,000 or more per year.

Practical Maximum Grazing Income

The preceding analysis reflects an optimal situation in which all of the land is involved in agricultural production. In reality, an amount far lower than the optimal level should be accepted as a practical maximum production level possible for the "window years" of 1978 through 1982.

The justifications for lower levels of gross income are that substantial amounts of the land were occupied by trees and an allowance would need to be made for facilities that would have been used for production of cattle on the subject property.

The Setchko Report notes fir, pine, and cedar trees occupying 43 to 48 acres of the subject property. In addition, white oak trees were noted in unspecified amounts. Using a mid range estimate on the fir, pine, and cedar areas (45 acres), and minimizing the oak areas, the area remaining for forage production is estimated at 57.6 acres. This is further reduced by one acre to allow for the homestead, minimal livestock facilities and a lane leading into the farmstead. The net acreage remaining for forage production then would be 56.6 acres.

Dividing the corrected forage producing acreage by the total acreage ($56.6 / 102.6 = 0.552$) shows that 55.2% of the theoretical carrying capacity defined in Table 2. Soils Inventory, would be the corrected base for grazing cattle on the subject property (i.e., the theoretical 32.889 animal units would be adjusted to 18.155 animal units). The remaining 44.8% of the property is populated by trees of various species or would be used in support of productive activities.

The corrected base of 18.155 animal units has been entered into Table 5. Practical Maximum Income from Cattle. Income amounts were calculated for the corrected forage base using the same methods as described earlier. The practical maximum grazing income for each year in the 1978 through 1982 period ranges from \$6695 to \$10,006 per year — approximately a third to a half of the \$20,000 cap for Marginal Lands designation.

It should be noted that most of the trees are located on the higher quality soils (i.e., the more productive Dixonville soils). This means the forage productivity lost to timber production would have been higher than the average production per acre for the property as a whole. The acreage remaining for forage production therefore is lower in productive capacity than the average for the property as a whole. Because of this, the adjusted level of grazing capacity calculated above is still quite optimistic. A greater downward adjustment could be justified.

A photograph of the subject property in the NRCS Resource (map 105) shows forest areas in the same locations as are currently occupied by trees. The NRCS Resource was issued in September of 1987, and states on the very first page (page "i" of the introductory material) that "Major fieldwork for this soil survey was completed in 1980." Based on this information it is a reasonable conclusion that the trees that occupy a substantial portion of the subject property were in place during the 1978 through 1982 period of concern relative to the Marginal Lands designation.

Other Grazing Operations

The subject property provides, and is surrounded by, excellent coyote habitat. Rural residential areas of this type also typically have problems with free running domestic dogs. Both contribute to predation losses in sheep flocks. Due to the likelihood of heavy predation losses it would be inadvisable to attempt sheep production without incurring the costs of substantial predator control efforts.

Other small ruminants (e.g., goats), free range poultry, etc. would be subject to similar risks.

It is unlikely that grazing enterprises other than cattle would have been attempted on the subject property and there is no evidence of income having been produced from these sources in the 1978 through 1982 period.

Hay Production

Hay is not likely to have been produced in substantial quantity on the subject property due to problems associated with the soils (e.g., shallow soils, rockiness, steep slopes in some areas) and the amounts of agricultural soils that are in forest use.

The soils on the subject property are not suitable for alfalfa production and irrigation water to support alfalfa production is not available on the subject property.

Grass hay would have been limited by the general factors noted earlier. Furthermore, using OAIN data it was found that the best income year (of the 1978 through 1982 period) for grass hay production in Lane County was in 1980. Gross returns per acre amounted to \$149.28. By dividing this amount into \$20,000 it is determined that over 149 acres would need to have been harvested to reach the income cap for Marginal Lands. This amounts to approximately 150% of the total acreage in the subject property and ignores the lower income of the other four years.

It is not possible that the subject property could have produced \$20,000 worth of hay annually in the 1978 through 1982 period.

Crop Production

In the NRCS Reference the Dixonville Soils (Map Symbols 41C, 41E) are rated as having productive capacities for sweet corn, snap beans, strawberries, wheat, and filberts.