

SUPPLEMENTAL MATERIAL

SUPPLEMENTAL MEMO

W. 17.a.

DATE OF MEMO: July 13, 2004

TO: Board of County Commissioners

FROM: Jerry Kendall/^{JK}Land Management Division

RE: SECOND READING AND PUBLIC HEARING/Ordinance No. PA 1210/In the Matter of Amending the Rural Comprehensive Plan to Redesignate Land From "Agricultural" to "Marginal Land" and Rezoning That Land From "E-40/Exclusive Farm Use" to "M1/Marginal Land", and Adopting Savings and Severability Clauses (File PA 02-5838; Ogle). (NBA & PM 6/23/04)

Scheduled board date for second reading/public hearing, July 14, 2004

Two attachments were discovered missing from the Agenda Cover Memo packet dated June 7, 2004.

Missing Attachment #2 is the LCPC Staff Report dated December 30, 2003. Missing Attachment #3 are the LCPC Minutes of January 20 and March 2, 2004.

Both attachments are included herein.

The LCPC staff report was included as is customary. However, it is noted that voluminous materials were entered into the record since the production of that report, and that those materials were included as part of Ordinance No. PA 1210, already provided to the Board.

Whereas the original attachment #2 has always been in the file record, the LCPC minutes, attachment #3, were reproduced today from sources other than the file record. While staff is not aware of any party having requested access to the file record since the close of the LCPC deliberation, any party who claims to have wanted to examine the minutes, but could not because of their absence, could request a continuance at the Board's public hearing.

Also attached is a letter (L. Hildreth & M. Herring) in opposition to the proposal, received today.

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

Attachments:

- LCPC Staff Report dated December 30, 2003. [Applicant's statements are now part of the Ordinance Exhibit "C".]
- LCPC Minutes of January 20 & March 2*, 2004.
- Letter in opposition, L. Hildreth & M. Herring, received 7-13-04.

*Draft. Not yet approved by the Planning Commission.

LANE COUNTY PLANNING COMMISSION

Staff Report



Hearing Date: January 6, 2004

File PA 02-5838

Report Date: December 30, 2003

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

I. PROPOSAL

A. Owners/Applicants:

Brad & Julie Ogle (tl 303)
3103 Timberline Dr.
Eugene, Or. 97405

Agent:

Derek Jaros
31030 Foxridge Ln.
Eugene, Or. 97405

Mark & Cindy Childs (tl 304)
3101 Timberline Dr.
Eugene, Or. 97405

B. Proposal

Plan Amendment to redesignate 73.74 acres of a 113.74-acre tract of land from "Agricultural Land" to "Marginal Land," and rezone from E-40/Exclusive Farm Use to ML/Marginal Land, pursuant to Lane Code 16.400 and 16.252. If approved, the rezoning would allow the applicants to apply for land divisions of the tract into a mix of ten and twenty-acre parcels, with a dwelling on each. Maximum buildout would be limited to nine total dwellings and parcels. Land division approvals are **not** part of the proposal before the Planning Commission.

II. RECOMMENDATION

No recommendation is made at this time. Staff is awaiting review of the Forester's report (applicant's exhibit "P") by the Oregon Department of Forestry. As explained in the "analysis" section below, one method for calculating forest productivity indicates that the tract was capable of grossing over \$10,000 in timber revenue during the five-year period preceding 1983. If DOF staff sustains this indication, the proposal would fail to meet the standard of ORS 197.247(1)(a).

III. SITE AND PLANNING PROFILE

A. Location

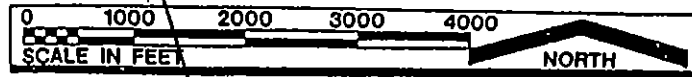
Map 18-04-11, tax lots 303 & 304

B. Zoning

E-40/Exclusive Farm Use. Plot 319



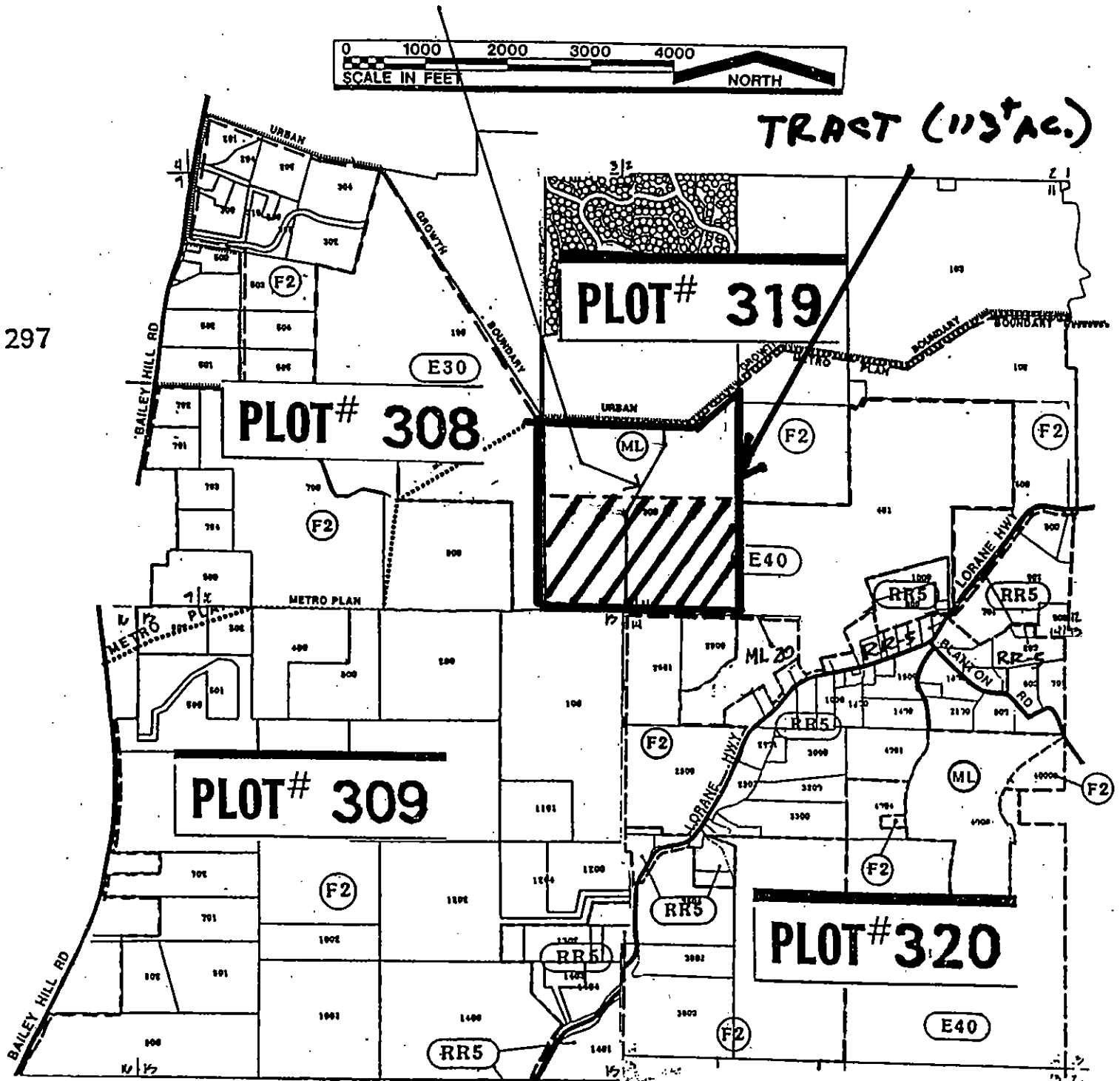
APPROXIMATE
PARCEL BOUNDARY BETWEEN TAX LOT 303+304.



TRACT (113⁺ AC.)

297

33



KEY



→ "SUBJECT PROPERTY" (73⁺ AC.)

C. Proposal Summary

The property, which is subject to this Plan Amendment/Rezone application, consists of 73.7 acres within a 113.7 acre tract of land. The tract is composed of two parcels, which are under separate ownership. Tax lot 304 is parcel #1 of Plat No. 94-P0510, while tax lot 303 is parcel #2 of the same plat. Therefore, within the context of this report, the terms "tax lot" and "parcel" is interchangeable. Refer to the map on the preceding page for the location. In addition, the submittal contains many illustrative exhibits, and is also attached to this report.

In 1992, via PA 0221-92, the northernmost 40 acres of the tract were successfully changed from E-40 to ML. The present application seeks to rezone the remainder of the tract to ML. This change would allow for a subsequent division of the tract into a mix of 10 or 20-acre parcels, with a dwelling on each. The provided aquifer study concludes sufficient water availability for a maximum of nine dwellings, including the two existing dwellings. This limitation of nine total parcels will be incorporated into the Board ordinance, if approval is warranted.

D. Subject Property & Surrounding Area

(See map, prior page). The subject tract is found adjacent and south of Eugene's Urban Growth Boundary, approximately 1/2 mile northwesterly from the intersection of Lorane Highway and Blanton Road. Access is via private easement, linking the tract to Timberline Drive to the north. The tract is at a crest in a ridge, with the majority of the land having a southern exposure. One dwelling is found on each of the two parcels, and is located within the ML zoned portion of the tract.

Aside from the UGB adjacent on the north, the tract is bordered by farm or forest zoned lands, with some ML zoning found adjacent to the southeast.

E. Services

Fire: Bailey-Spencer RFPD
Police: County, State
Sewer and Water: On-site
School District: Eugene 4-J
Power: EWEB
Access: Via private easement to Timberline Dr.

F. Referral Comments Received

As of the date of this report, no referral responses have been received, other than one noting that no inventoried wetlands are found on the subject property.

Staff has requested review of the aquifer study and the forester's report by the State Watermaster's Office and the Oregon Department of Forestry (DOF), respectively. Because of the holidays, it is uncertain if the Watermaster's Office will be able to respond by the hearing. It is hoped, however, that the DOF will have comments by January 6.

G. Erratum

A line of soils data is missing from the list on bottom of page 3 of the applicant's submittal. The #81D *McDuff Clay Loam* was omitted. The 6.643 acres of this soil has an Agricultural Site Class of 6; a Forestry Site Class of 112; and a Cubic Ft. per Ac./Yr. rating of 158.

IV. CRITERIA AND ANALYSES

- A. Marginal Land proposals are primarily governed by the 1991 version of ORS 197.247, attached to this report. In addition, in March 1997, the Lane County Board of Commissioners gave direction to staff on how to interpret and administer ML applications. That four page document is also provided as an attachment.

The agent has diligently recited and addressed the applicable standards, including ORS 197.247, the March 1997 Board document, goals, and Lane Code requirements. Refer to the applicant's submittal, attached in full to this report.

Essentially, qualification for a ML designation is a two-fold test. Any proposal for a ML designation must first comply with the "income test" requirement found in ORS 197.247(1)(a), recited below. It basically requires the applicant to document that the proposed ML land is less than "commercial-grade" stature for farm or forest use during a 5-year period preceding 1983. This examination must include any lands, which might have been a part of such farm or forest operation at that time. Since the parcels were not yet created, the entire tract (113 ac.) must be examined.

The second part of the test contains three options, two of which are "parcelization" tests, which have not been selected by the applicant (these are described in the attached ORS 197.247(1)(b)(A) and (B)). Instead, the applicant has chosen the option under ORS 197.247(1)(b)(C), recited below. Commonly known as the "productivity test", the applicant is required to demonstrate that the farm soil capability is predominantly class V-VIII (on a I-VIII scale), and that per acre, the proposed land cannot produce, on average, more than 85 cubic feet of merchantable timber annually.

1. Income Tests

ORS 197.247(1)(a) reads as follows:

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.

Farm income standard is met.

Per the direction given in the March 1997 Board document, the applicant has provided an affidavit (exhibit "O") from a party who owned the property during the five years preceding 1983, attesting that the proposed marginal land (i.e., the subject property), was not part of a farm operation that produced \$20,000 or more annual gross farm income. Staff accepts this "farm income" portion of the statute test, as it meets the Board directive.

Forest income standard compliance is questionable.

The forest income test, as presented in the submittal, is of concern. It requires that during the same time period, the proposed marginal land was not managed, by itself or in conjunction with other land, as a forest operation, which could generate over \$10,000, gross annual income from timber revenue.

The "proposed marginal land" is tax lots 303 and 304, minus the 40 acres already zoned ML. Unlike for the farm income; the forest income standard is not so easily addressed. The Board offers two options for documenting that the forest test has been met. Refer to the Board direction paper of March 1997.

The first method, not selected by the applicant, is described on the last page of the Board direction paper (under "Soils test"). The soils data in this "soils test" are the result of productivity studies performed during Comp Plan acknowledgement. The more productive the soils, the more revenue generated per acre. In 1983, a commercial level of forest operation was considered to be one that could generate \$10,000 annual gross income. For example, if a tract contained 64 acres of cubic foot site class 6 soils, it could generate \$10,000 in timber revenue, and was considered of commercial stature.

According to this method, staff would conclude that the forest income test has not been met. Following the three steps outlined in the Board paper, and utilizing the soils data found in the forester's report (applicant's exhibit "P", p.2):

Step 1. - There are 18.98 acres of soils in cubic foot site class (CFSC) 3 (the #81D *McDuff*, and the #113C, E, & G *Ritner*). There are 7.08 acres of soils in CFSC 5 (the #43C & E *Dixonville*). There are 87.68 acres of CFSC 6 soils (the #102C *Panther*, the #107C & F *Philomath*, and the #125C *Steiwer*).

Step 2. - Of the entire tract, .791 is CFSC 3 (5.6ac. + 13.38 ac. = 18.9 ac/24); .16465 is CFSC 5 (6.64 ac. + .44 ac. = 7.08 ac/43); and 1.37 is CFSC 6 (14.68 ac. + 39.61 ac. + 30.2 ac. + 3.19 ac. = 87.68 ac./64).

Step 3. - Adding .791 + .16465 + 1.37, we get 2.33. In other words, the tract can potentially generate $2.33 \times \$10K = \$23,256$ annually in timber gross revenue. Thus, according to this test, the \$10,000 standard has been exceeded, and the land proposed for the ML designation does not qualify.

It is noted that with the 87+ acres of CFSC 6 soils alone, the standard is exceeded, as only 64 acres of such soils are required to produce \$10,000.

Staff notes that on page 3 of the opening submittal text, the agent lists the *Panther*, *Philomath*, and *Steiwer* soils as having no cubic ft./ac./yr. rating. Assuming for the moment that this set of facts is correct, and utilizing the 3-step process above, (eliminating the 87.68 acres of those soils), the "percentage" comes in at just below 100%, at .955 or 95%, barely passing the test.

Nevertheless, the Board direction paper allows the option for a forester to provide a more specific analysis, which the applicant has chosen to do. In exhibit "P", the forester (Mr. Setchko) concludes that the 113-acre tract has an average cubic foot/ac/yr. rating of 62.97. This translates to a CFSC of 5. Staff notes that according to the table on the last page of the Board paper, it takes only 43 acres of CFSC soils to produce \$10,000 annul

gross income. Yet utilizing a complex set of calculations involving a combination of a different set of soils data and industry "SAW" level ratings, the forester concludes that only \$6,487 annual can be generated, meeting the test.

In light of staff analysis under the first option, and the seeming discrepancy between the average 62.97 cu.ft./ac./yr rating for 113+ acres and the conclusion that such would generate only \$6,487 annual income, staff is skeptical. Whereas the forester's report relies in part on timber industry nomenclature and methodology, staff sought objective, expert assistance, and contacted the West Lane Office of the Oregon Department of Forestry. Staff spoke with Mr. Paul Clemants, who initially shared staff skepticism. As a result, exhibit "P" was sent to the DOF, and a written response is anticipated in time for this hearing.

2. Productivity Test

The applicable portion of ORS 197.247(1)(b)(C) reads as follows:

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

In this regard, staff is in agreement with the applicant that the "productivity test" has been met.

Unlike the income tests, this provision requires an examination of the "proposed Marginal Land" only, meaning the 73.74 acre portion of the 113+ acre tract. The applicant shows (p.2) that the portion of tax lot 303 being proposed for the ML designation is entirely composed of soils with an agricultural site class capability of VI & VIII. In addition, the same portion of tax lot 303 is capable of producing, on average, only 11.96 cubic ft./ac./year.

The portion of tax lot 304 (p.3) is shown to consist entirely of soils with an agricultural site class capability of VI, and an average of 48.38 cubic ft./ac./year.

The "productivity test" has been met.

B. In addition to ORS 197.247, any plan amendment must address state and local laws, including state goals.

Regarding Goal 5, water resources, it is noted that the subject property is within a water quality/quantity limited area (Spencer Creek watershed) per LM. 13.010. This is discussed on page 8 of the submittal. As required by LC 16.004(4) and LC 13.050(13), the applicant has provided an aquifer study performed by EGR & Associates. The study (included herein) concludes domestic water availability for up to nine domestic wells. While staff accepts the study on face value, it has been referred to the State Watermasters Office for review and their concurrence with the conclusion. As stated previously, if this proposal is approved, a limitation of none parcels out of the 113+ acre tract would be incorporated into the Board ordinance.

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

IV. CONCLUSIONS

A. Summary Comments

The forester's report (exhibit "P") has been referred to the Department of Forestry for review and comment. Until such comments are received, staff cannot be sure that the forest "income test" of ORS 197.247(1)(a) has been met.

B. Attachments to this Staff Report (in addition to the map on the 2nd p.)

1. ORS 197.247 (1991 version)-1p.
2. March 1997 Supplement to ML Information Sheet—4pp.
3. Applicant's statement with exhibits.

C. Materials to be part of the Record

1. This staff report and attachments.
2. File PA 02-5838 and PA 0221-92
3. Lane Code Chapter 14 and sections 16.212, 16.214, 16.252 and 16.400.

197.247 Amendment of goals; marginal lands designation; effect on applicability of goals. (1) In accordance with ORS 197.240 and 197.245, the commission shall amend the goals to authorize counties to designate land as marginal land if the land meets the following criteria and the criteria set out in subsections (2) to (4) of this section:

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

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

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

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

(C) The proposed marginal land is composed predominantly of soils in capability classes V through VIII in the Agricultural Capability Classification System in use by the United States Department of Agriculture Soil Conservation Service on October 15, 1983, and is not capable of producing fifty cubic feet of merchantable timber per acre per year in those counties east of the summit of the Cascade Range and eighty-five cubic feet of merchantable timber per acre per year in those counties west of the summit of the Cascade Range, as that term is defined in ORS 477.001 (21).

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

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

(b) Only one lot or parcel exists if:

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

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

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

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

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

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

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

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

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

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

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

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

(9) Any amendments to local government plans and regulations resulting from amendments to goals required by subsection (1) of this section shall become effective only after approval by the commission under ORS 197.251 or 197.610 to 197.855. [1983 c.826 §2]

197.250 Compliance with goals required. Except as otherwise provided in ORS 197.245, all comprehensive plans and land use regulations adopted by a local government to carry out those comprehensive plans and all plans, programs, rules or regulations affecting land use adopted by a state agency or special district shall be in compliance with the goals within one year after the date those goals are approved by the commission. [1973 c.80 §32; 1977 c.664 §19; 1981 c.748 §29a; 1983 c.827 §56a]

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

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

LCPC ATTCH #2-48.

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.)

INFORMATION SHEET

REQUIREMENTS FOR MARGINAL LAND DESIGNATION AND ZONING

In response to state legislation, Lane County has adopted a Marginal Lands Plan designation and zoning district, both of which are to be applied on a case-by-case basis. This Information Sheet explains the requirements of the designation/zone, and what must be supplied to the County in order to justify an application.

Adopted policies concerning the state Agricultural Lands Goal (Goal 3) and Forest Lands Goal (Goal 4) state as follows:

(Agricultural)(Forest) lands that satisfy the requirements of ORS 197.247 may be designated as Marginal Lands and such designations shall also be made in accordance with other Plan policies. Uses and land divisions allowed on Marginal Lands shall be those allowed by ORS 197.247 (Agricultural Policy #14, Forest Policy #3)

Lane County's application of the Marginal Lands designation/zone is spelled out in the Working Paper: Marginal Land (1983) document, which explains and cites ORS 197.247. In order for property to receive the designation and the zoning district of "ML", it must meet the following tests:

The land must not have been managed during thereof the five calendar years between January 1, 1978 and January 1, 1983, as part of a farming operation which produced \$20,000 or more in annual gross income, or as part of a forest operation capable of producing an average, over the growth cycle, of \$10,000 in annual gross income. Statistical information compiled by Oregon State University Extension service or other similar empirical data may be used to demonstrate income capability.

In addition to the above, the land must meet one of the following tests:

- a. *At least 50% of the area of the proposed Marginal Land, plus the lots or parcels all or partially located within 1/4-mile of the perimeter of the proposed Marginal Land, consists of lots or parcels 20 acres or less in size as of July 1, 1983. Lands within an adopted Urban Growth Boundary are not to be included in this calculation. Those lots or parcels which are adjacent and of common ownership* are to be considered one lot or parcel (lots or parcels separated by a public road are not considered adjacent).*
- *Owned by the same person, parents, children, sisters, brothers or spouses, separately or in tenancy in common, or ownership being transferred from one of those listed to another.*
- b. *The proposed Marginal Land is located within an area of not less than 240 acres, of which at least 60% (by area) is made up of lots or parcels of 20 acres or less in size as of July 1, 1983. Lands within an adopted Urban Growth Boundary and/or lands within an area to which an exception has been adopted to Goal 3 or 4 (e.g., a Developed and Committed area) by the County are not to be included in the above calculation. Parcel ownership provisions as stated in "a" above also apply to this test.*
- c. *The proposed Marginal Lands is composed predominantly (more than 50%, by area) of soils in capability classes V through VIII in the Agricultural Capability Classification System used by the U.S. Department of Agriculture Soil Conservation Service, and is not capable of producing 85 cubic feet of merchantable timber per acre per year.*

All Marginal Land applications will be considered pursuant to the County's Plan Amendment process (Lane Code 16.400). Applications must be for entire legal lots or parcels.

Submittal Requirements

1. Completed General Land Use Application Form.
2. Completed Plan Amendment Application Form.
3. A statement (affidavit) certifying that the property in the application has not been used for farming purposes per the condition in the statutory "income test."
4. A soils report, indicating soils types, acres of each, agricultural capability classification and forest land cubic foot site class ratings for the property. This will be used to determine if the property meets the forest land "income test," and will also be used if optional test "c" in the statute is selected for use by the applicant. See "soils test" below.
5. If optional tests "a" or "b" in the statute -- location of the property with respect to neighboring parcels -- are selected for use by the applicant, up-to-date assessor's maps showing parcels by size and ownership, within the areas designated by the statute, must be submitted with the application.

A filing fee will be assessed upon application. All information will be verified by County staff. Pre-application meetings are recommended. False or inaccurate information may be cause for invalidation of the application. It is the applicant's responsibility to provide the necessary data to allow processing of the application.

Soils Test:

In order for the forest land "income test" to be met, the following formula must be applied:

<u>Cubic Foot Site Class</u>	<u>Maximum Acreage Allowed</u>
2 (165-224 cf/a/y)	Seventeen Acres (17)
3 (120-164 cf/a/y)	Twenty-four Acres (24)
4 (85-119 cf/a/y)	Thirty-four Acres (34)
5 (50-84 cf/a/y)	Forty-three Acres (43)
6 (20-49 cf/a/y)	Sixty-four Acres (64)

If the property falls into more than one of the above categories, determine the maximum acreage allowed by stating:

1. Number of acres of the property in each applicable CFSC category;
2. Percentage of acreage within each category (divide the acres of the property within each category by the acreage maximum for each category);
3. Add the percentages. Maximum is exceeded if percentage is 100 or more, and property does not qualify for Marginal Land designation.

M I N U T E S

Lane County Planning Commission
Harris Hall - Lane County Courthouse

January 20, 2004
7:00 pm.

PRESENT: Mark Herbert, Chair;; Jacque Betz, Chris Clemow, Steve Dignam, Marion Esty, Juanita Kirkham, Vincent Martorello, members; Jerry Kendall, Kent Howe, Staff; Kim O'Dea, Law Offices of Bill Kloos, Jozef Zdznehski, Guest

ABSENT:

Mr. Herbert convened the meeting at 7 pm.

I. PUBLIC COMMENT

There were no members of the public wishing to speak.

II. PUBLIC HEARING

- A. PA 02-5838 / Plan Amendment and Zone Changes from E-40 Exclusive Farm Use to Marginal Lands/ 18-04-11, Tax Lots 303 & 304, Location: 3101 Timberline Drive, Eugene, 73 out of 113.7 acres. Owners: B. Ogle, M. Childs, Agent: Derek Jeros**

Mr. Herbert opened the public hearing.

Jerry Kendall provided the staff report. He said the land in question was a total of 113.7 acres. He said the top 40 acres of the land was successfully zoned for Marginal Lands in the early 1990's without an appeal. He said the current proposal was to rezone the remaining portions to Marginal Lands. He said this could result in a maximum of nine parcels with a dwelling on each. He said this would include the two existing dwellings.

Mr. Kendall said the surrounding zoning was F-2, Farm Use, and Marginal Lands.

Mr. Kendall said there had been four submittals in response to the staff report from the Goal One Coalition, a letter in opposition from Dr. Jay Chapel, an E-mail from one of the State Water Masters, and a referral letter from the Department of Revenue. He said staff was going to ask for a continuance of the hearing to be able to review all of the submittals.

Mr. Kendall said there were findings that adequate water existed on the property to support nine dwellings. He read the criteria for two tests to be done on the property to show cause to zone for Marginal Lands. He said there was an income test where the applicant needed to prove that the entire tract in the five years prior to 1983 was not managed as part of a farm operation that grossed \$20,000. He said there was also a forest income test that was needed to document that the tract was not managed as part of a forest operation in the five years prior to 1983 and did not gross \$10,000. He said staff's concern was with the forest income test. He noted that the soils on the parcels had soils classified as 1-4 and did not produce 85 cubic feet per

year. He said he had referred the issue to the department of forestry when he had come up with a figure of \$23,000 gross per year and the forester who had assessed the land had come up with a figure of \$6,000 per year. He said it did not take high quality soils to produce \$10,000 per year gross.

Mr. Kendall said the forester who had assessed the land had used Douglas Fir when assessing the merchantable timber for the income test. He said staff felt that other merchantable tree species needed to be examined. He also noted that the forester had used a 60 year cycle versus a 50 year rotation. He reiterated that staff desired a continuance of the public hearing to be able to review the lately submitted material and answers from the Department of Forestry.

In response to a question from Mr. Martorello regarding whether all the lots were all one parcel, Mr. Kendall said that the tract was partitioned into two parcels after the first rezone was successful.

In response to a question from Mr. Martorello regarding whether productivity of the soil was the reason for the division, Mr. Kendall said the original proposal was for the entire tract of land and because of local opposition the request had been changed at the last minute to include only the northern most 40 acres.

Mr. Herbert called for testimony from the applicant.

Derek Jeros, said that the land had been one parcel. He said staff's recommendation had been to move forward with classifying the entire parcel as Marginal Lands. He said it was only due to opposition from neighbors that the final proposal included only the top 40 acres. He stressed that the original application had been for the entire site and that proposal had been approved by county staff.

He noted that he also had not had time to review the materials submitted in response to the staff report. He said he would like time to review those materials.

Mr. Jaros said the soil reports had been done with the most conservative analysis. He said the highest income capabilities had been used for the income test and cubic foot test. He said he had personally used the tests required by the County and had come up with lower numbers than the ones submitted because the ones submitted had used the highest income capabilities.

In response to a question from Mr. Dignam regarding whether the forester who surveyed the site came out personally to do the inspection, Mr. Jaros said he had and said he had also walked the site in detail. He noted that LCOG had mapped the exact soil types on the site.

Mr. Herbert called for testimony from those in opposition.

Nena Lovenger, 40093 Little Fall Creek Road, outlined the requirements of the productivity test from ORS 197.247. She said the applicant's data was inadequate because it failed to look at both parcels in their entirety and to look at all kinds of marketable timber. She noted that it was only portions of the land that should be counted as marginal. She said her testimony was covered in the written testimony submitted by the Goal One Coalition which also contained supporting documentation and references to specific portions of the land in question.

Leslie Hildrith, 86460 Lorane Highway, spoke in opposition to the proposal. She said the application listed a soils classification that was unsuitable for farming. She said she and her associates operated farm operations on the same class soils.

Ms. Hildrith said the property was in a watershed that had a limited water supply that would not support development without affecting nearby aquifers. She said irrigation needs for city properties could not be used for rural parcels. She said operations on marginal lands all used more water than existing development. She noted that arsenic was present in many of the wells in the area and noted that treating water for arsenic contamination reduced the usable amount by 2/3.

Ms. Hildrith said all of the properties surrounding the subject property were zoned either F-2, E-30, or E-40 with the exception of one marginal lands parcel adjacent to the southeast corner. She said putting houses on the site would be a huge intrusion to the surrounding lands.

Quoting from the application, Ms. Hildrith said the proposed development would not interfere with or cause change to the nature of the surrounding area. She disagreed with that statement and said a hillside of ten acre parcels would certainly cause a change in the nature and resources of the surrounding area. She suggested an E-30 zoning would be more compatible with surrounding land.

Jim Just, speaking for the Land Watch Lane County, said the forest income test was a two part test which determined whether the land was managed as part of a forest operation during three of the five years from 1978 to 1983 and whether that operation was capable of producing \$10,000 worth of annual growth over that cycle. He said it was undisputed that the property in question had been a single parcel and had been forested and harvested in 1982. He said the applicant relied on the report by Mark Setchko which contained several flaws.

- It considered only income from Douglas Fir
- It unjustifiably used a 60 year cycle
- It erroneously adjusted a supposed 100 site index for the McDuff and Ritner soils.

Mr. Just noted that State law required that income potential consider all marketable timber and not just Douglas Fir. He said Mr. Setchko's report made unrealistic grade assumptions to calculate potential income. He said the estimates were dramatically below industry standards. He said reasonable harvesting and marketing standards would result in higher yields.

Jozef Zdznesiki, 1025 Taylor Street, raised concern over the seeming trend to rezone Farm Lands to Marginal Lands so they could be subdivided and developed. He said the idea of an urban growth boundary was to keep development limited to that area until its growth was maximized. He said allowing rezoning to marginal lands would decimate land use goals.

Jesse Aloa, 86464 Lorane Highway, noted that previous applications, (PA -0221-92, had said that the parcels in question had a notation in the final plat that said that neither parcel would be further divided.

Regarding water tests, Mr Aloa said the entire area ran short of water during the later summer months. He reiterated earlier testimony that it would still take 3 gallons of water to make one gallon of arsenic free water. He added

that the water tests had been done from existing wells in the township. He said he was only concerned with water on the site in question.

Mr. Herbert called for applicant rebuttal.

Mr. Jaros said he had to meet the income test with both of the parcels combined. He stated that if the combined land did not meet the \$10,000 test then, logically, the single parcels could not do it either. He said Lane County's 1997 Soils and Agricultural report had been used to break down cubic foot per acre for each separate parcel. He noted that this was the test required by NRCS and Lane County.

Regarding water availability, Mr. Jaros said the land would be divided into ten acre residential lots that could not legally irrigate more than $\frac{1}{2}$ an acre. He said any more than that would require a whole new set of permits. He stressed that site-specific aquifer tests had been done to meet the criteria for serving residential homes.

Mark Setchko, 870 Fox Glenn Avenue, spoke as the consultant forester who had reviewed the land. He cited some of the trees listed by the opposition as marketable and noted that there was no market for the wood from those trees. He said he had used Douglas fir for his analysis because that was, by far, the highest value species. He said if the \$10,000 figure could not be met with Douglas fir then no other species would make that amount. He added that virtually all timber tables were based on Douglas Fir.

Mr. Setchko said he had classified the soil types and the acreage to 1/1000 of an acre. He said no one was denying that the land had been logged but noted that any figure at all could be used to get a permit to log and no one ever checked to see if that volume had actually been harvested. He said a lot of people got permits to log and no one verified that logging had been done. He added that Lane County had instructed him to use 1983 log prices. He said the reason he had used a 60 year logging rotation for his figures was because, on that site, there was not enough growth to justify logging it until a 60 year cycle had passed. He noted that a 50 year rotation would only lower the figure that he had already submitted.

In response to a question from Mr. Dignam regarding Mr. Setchko's qualifications, Mr. Setchko said he had a BS Degree and a Masters Degree in Forestry. He added that he had been a forestry consultant for 18 years and before that he had been in the forest service for the eight years.

Mr. Kendall reiterated that staff was asking for a continuance.

In response to a question from Mr. Dignam regarding the adequacy of the aquifer and whether it was an issue for staff, Mr. Kendall said it was not an issue for staff.

In response to a question from Mr. Dignam regarding other possible agricultural uses, Mr. Kendall noted that farm use was currently allowed in the existing zone as well as the requested Marginal Land zone.

In response to a question from Mr. Clemow regarding why the staff recommendation had changed from the 1992 application, Mr. Kendall said that every application had to stand on its own merits.

The applicant stated that he was comfortable with moving forward with a decision that evening.

Mr. Kendall suggested one week for written testimony, one week for comments on the materials submitted during the first period, and an additional week for final rebuttal. He said the commission would then deliberate on February.

There was general consensus on the request for a continuance.

B. PA 03-5200/ Plan Amendment & Zone Change from Rural Community and from RC/C-RCP, Rural Commercial to RR-2/C Rural Residential. Map: 17-35-10.1, tax lots 1200, 1203, 1301, & 1304, all within the unincorporated community of Nimrod. Owner: J.B. Finney Jr. (Trustee)

Mr. Herbert opened the public hearing.

Mr. Kendall provided the staff report. He said the hearing was a post acknowledgement plan amendment. He said the application was to change the zone designation from Rural Commercial to Rural Residential which would allow each parcel to have all of the uses allowed in LC 16.292. He said staff had reviewed the application and recommended approval. He said there had been no responses to the staff report.

Mike Farthing, spoke as the applicant's representative. He said the application was very straight forward. He said there would be four legal lots of 1.5 acres. He said the plan was for a single home for each lot.

There was no opposing testimony.

Mr. Herbert closed the hearing.

Mr. Clemow, seconded by Ms. Kirkham, moved to approve Plan Amendment PA 03-5200 as stated in the staff report. The motion passed unanimously.

The meeting adjourned at 9 pm.

(Recorded by Joe Sams)

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4/20/04 Jerry & Thom, Stephen
Please review & return to
me w/corrections Thanks!
Janey

MINUTES

Lane County Planning Commission
Harris Hall
125 East 8th Avenue, Eugene

Done
2/24-20-04
March 2, 2004
7 p.m.

PRESENT: Ed Becker, Jacque Betz, James Carmichael, Chris Clemow, Steven Dignam, Marion Esty, Mark Herbert, Juanita Kirkham, Vincent Martorello, Jerry Kendall, Thom Lanfear, Lane C. Stair

ABSENT: NA

I. APPROVAL OF DECEMBER 2, 2003 MINUTES

Ms. Kirkham convened the meeting at 7 pm. She called for public comment from the audience. Seeing no one wishing to speak she called for approval of the December 2, 2003 minutes.

On page two paragraph six, Mr. Dignam noted that the statement should be inside rather than outside the McKenzie Watershed.

Mr. Clemow, seconded by Mr. Herbert, moved to approve the minutes of December 2, 2004. The motion passed unanimously.

II. CONTINUATION FROM 1/20/04: Deliberation Only on: PA 02-5838 – Plan Amendment and Zone Change from E-40/Exclusive Farm Use to Marginal Lands/ 18-04-11, Tax Lots 300 & 304, 3101 Timberline Drive, Eugene. 113.7 acres Owners: B. Ogle, M. Childs

Ms. Kirkham noted that some commissioners had not been present at the January 20, 2004 meeting. She established that all commissioners were up to date on the available information and material and could reasonably participate in the deliberation.

Jerry Kendall provided the staff report. He noted that a lot of new materials had been submitted at and after the public hearing on January 20. He said staff had been able to determine that the income test requirements had been met by the applicant. He added that the correct site indexes had been used to determine that the growth index requirement was also met. He went on to say that the use of Douglas Fir for the income test was acceptable since other marketable trees were of much less value on the market and could not result in more income than the Douglas fir figures. He said staff were recommending approval of the application.

In response to a question from Mr. Dignam regarding using well water on the site and whether there was adequate water, Mr. Kendall said it had been demonstrated with a large margin of error that there would be enough water to service the nine potential lots.

In response to a question from Mr. Becker regarding whether the nine proposed parcels could be further partitioned, Mr. Kendall said there had been no further plans from the applicant to divide the parcels ~~because of the EFD law~~. He said he doubted if it would happen but could not say with certainty. He noted that the aquifer study would not support more than nine parcels.

In response to a question from Mr. Becker regarding possible liability to the County if the water quality were less than expected, Mr. Kendall said a warning would be placed on the plat to show that there was arsenic present in the water. He added that filters could be used to address the arsenic problem.

Mr. Herbert said all of staff's concerns had been addressed to his satisfaction.

Mr. Herbert, seconded by Ms. Esty, moved to approve the application as submitted by staff.

Mr. Dignam said he would support the motion.

Mr. Martorello said he would support the motion.

The motion passed unanimously.

III. PA 02-6065: Amend the Significant Mineral and Aggregate Resources Inventory of the Lane County Rural Comprehensive Plan to allow mining pursuant to the Goal 5 Oregon Administrative Rules OAR 660-023; and amend the RCP designation from Forest to Natural Resource and rezone lands from F2/Impacted Forest Lands Zone to Quarry and Mine Operations Zone for 40 acres pursuant to Lane Code 16.400 and 16.252; Map: 17-03-03/TL 402, 500; Applicant: Egge Sand & Gravel

Ms. Kirkham called for declarations of ex parte contacts or conflicts of interest. None were declared.

Thom Lanfear provided the staff report. He provided an outline of the Goal 5 rule for the newer commissioners. He said all of the requirements of the state rules were provided in the written staff report.

Mr Lanfear outlined the steps needed for approval of the amendment.

1. Determine if the PAPA information is adequate
2. Determine if the resource site is significant
3. Determine if mining conflicts can be minimized
4. Weigh the ESEE consequences and decide whether to allow mining