

" EXHIBIT V "

STEP 6 PROPERTY LINE ADJUSTMENT

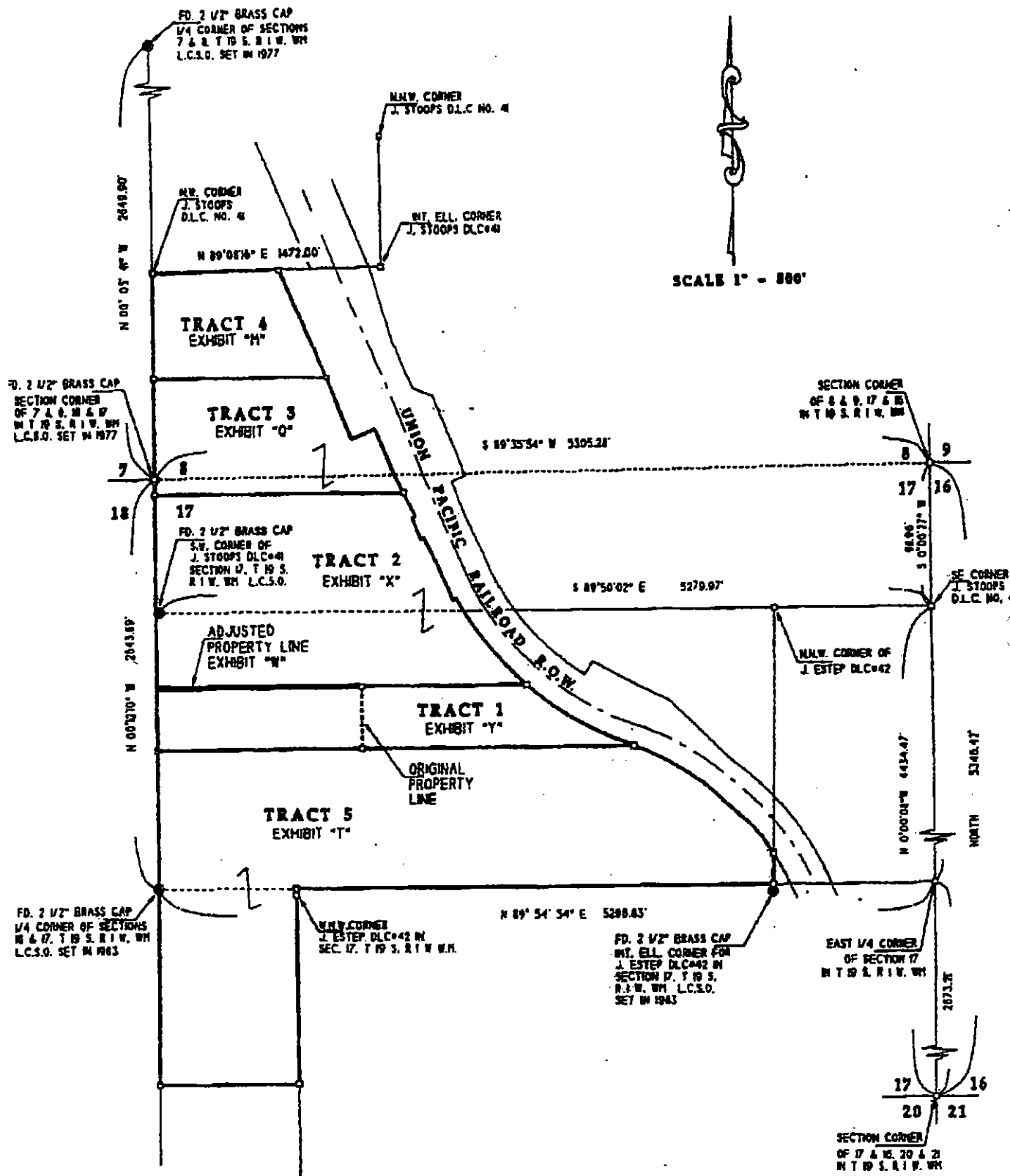


EXHIBIT "W"

LEGAL DESCRIPTION FOR THE ADJUSTED PROPERTY LINE BETWEEN THE BOUNDARY OF TRACT 1 AFTER THE SECOND ADJUSTMENT AND THE BOUNDARY OF TRACT 2 AFTER THE THIRD ADJUSTMENT

Beginning at a point on the east/west center section line of Section 17 in Township 19 South, Range 1 West of the Willamette Meridian, said point being North 89° 54' 54" East 1320 feet from the brass cap marking the west one-quarter corner of Section 17 in said Township 19 South, Range 1 West of the Willamette Meridian thence leaving the east/west center section line of said Section 17 and running parallel to the west line of the Northwest one-quarter of said Section 17 North 00° 12' 10" West 1320 feet more or less to a point on the north line of the south one-half of the northwest one-quarter of said Section 17, said point being the True Point of Beginning; thence along the north line of the south one-half of the northwest one-quarter of said Section 17 West 1320 feet more or less to a point on the west line of the northwest one-quarter of said Section 17 and there ending, all in Lane County, Oregon.

EXHIBIT "X"

LEGAL DESCRIPTION FOR THE REVISED BOUNDARIES TRACT 2 FOURTH ADJUSTMENT

Beginning at the northwest corner of the south one-half of the northwest one-quarter of Section 17 in Township 19 South, Range 1 West of the Willamette Meridian; thence along the west line of the northwest one-quarter of said Section 17 North 00° 12' 10" West 1220 feet more or less to a point which bears South 00° 12' 10" East 100.00 feet from the brass cap marking the section corner common to Sections 7, 8, 17 & 18 in Township 19 South, Range 1 West of the Willamette Meridian; thence leaving said west line and running parallel to the south line of the J. Stoops D.L.C. No. 41 in Township 19 South, Range 1 West of the Willamette Meridian South 89° 50' 02" East 1620 feet more or less to a point on the west margin of the Union Pacific Railroad right of way; thence southeasterly along the west margin of the Union Pacific Railroad right of way to a point marking the intersection of the west margin of the Union Pacific Railroad right of way and the north line of the south one-half of the northwest one-quarter of Section 17 in Township 19 South, Range 1 West of the Willamette Meridian; thence leaving said west margin and running along the north line of the south one-half of the northwest one-quarter of said Section 17 West 2350 feet more or less to the point of beginning, all in Lane County, Oregon

EXHIBIT "Y"

LEGAL DESCRIPTION FOR THE REVISED BOUNDARIES

TRACT 1

THIRD ADJUSTMENT

Beginning at a point on the west line of the northwest one-quarter of Section 17 in Township 19 South, Range 1 West of the Willamette Meridian said point being North 00° 12' 10" West 900.00 feet from the brass cap marking the west one-quarter corner of Section 17 in Township 19 South, Range 1 West of the Willamette Meridian; thence leaving said west line and running parallel to the east/west center section line of said Section 17 North 89° 54' 54" East 3100 feet more or less to a point on the west margin of the Union Pacific Railroad right of way; thence northwesterly along the west margin of the Union Pacific Railroad right of way and the north line of the south one-half of the northwest one-quarter of Section 17 in Township 19 South, Range 1 West of the Willamette Meridian; thence leaving said west margin and running along the north line of the south one-half of the northwest one-quarter of said Section 17 West 2350 feet more or less to a point on the west line of the northwest one-quarter of said Section 17; thence leaving said north line and running along the west line of the northwest one-quarter of said Section 17 South 00° 12' 10" East 420 feet more or less to the point of beginning, all in Lane County, Oregon

EXHIBIT "AA"

**LEGAL DESCRIPTION FOR THE ADJUSTED PROPERTY LINE
BETWEEN THE BOUNDARY OF TRACT 1 AFTER THE THIRD ADJUSTMENT
AND THE BOUNDARY OF TRACT 2 AFTER THE FOURTH ADJUSTMENT**

Beginning at a point on the west line of the northwest one-quarter of Section 17 in Township 19 South, Range 1 West of the Willamette Meridian, said point being South 00°12'10" East 740.50 feet from the brass cap marking the section corner common to Sections 7, 8, 17 & 18 of Township 19 South, Range 1 West of the Willamette Meridian; thence parallel with the south line of the J. Stoops D.L.C. No. 41 in Township 19 South, Range 1 West of the Willamette Meridian South 89°50'02" East 2030 feet more or less to a point on the west margin of the Union Pacific Railroad right of way and there ending, all in Lane County, Oregon

EXHIBIT "BB"

**LEGAL DESCRIPTION FOR THE REVISED BOUNDARIES
TRACT 2
FINAL ADJUSTMENT**

Beginning at a point on the west line of the northwest one-quarter of Section 17 in Township 19 South, Range 1 West of the Willamette Meridian, said point being South 00°12'10" East 740.50 feet from the brass cap marking the section corner common to Sections 7, 8, 17 & 18 of Township 19 South, Range 1 West of the Willamette Meridian; thence along the west line of the northwest one-quarter of said Section 17 North 00°12'10" West 640.50 feet to a point which bears South 00°12'10" East 100.00 feet from the brass cap marking the section corner common to Sections 7, 8, 17, & 18 in Township 19 South, Range 1 West of the Willamette Meridian; thence leaving said west line and running parallel to the south line of the J. Stoops D.L.C. No. 41 in said Township and Range South 89°50'02" East 1620 feet to a point on the west margin of the Union Pacific Railroad right of way; thence southeasterly along the west margin of the Union Pacific Railroad right of way to a point which bears South 89°50'02" East from the point of beginning; thence North 89°50'02" West 1940 feet more or less to the point of beginning, all in Lane County, Oregon.

EXHIBIT "CC"

LEGAL DESCRIPTION FOR THE REVISED BOUNDARIES TRACT 1 FOURTH ADJUSTMENT

Beginning at a point on the west line of the northwest one-quarter of Section 17 in Township 19 South, Range 1 West of the Willamette Meridian said point being North 00°12'10" West 900.00 feet from the brass cap marking the west one-quarter corner of Section 17 in Township 19 South, Range 1 West of the Willamette Meridian; thence continuing along the west line of the northwest one-quarter of said Section 17 North 00°12'10" West 1003 feet more or less to a point which bears South 00°12'10" East 740.50 feet from the brass cap marking the section corner common to Sections 7, 8, 17 & 18 in Township 19 South, Range 1 West of the Willamette Meridian; thence leaving said west line and running parallel to the south line of the J. Stoops D.L.C. No. 41 in said Township and Range South 89°50'02" East 1940 feet more or less to a point on the west margin of the Union Pacific Railroad right of way; thence southeasterly along the west margin of the Union Pacific Railroad right of way to a point which bears North 89°54'54" East from the point of beginning; thence South 89°54'54" West 3100 feet more or less to the point of beginning, all in Lane County, Oregon.

" EXHIBIT DD "

STEP 8 PROPERTY LINE ADJUSTMENT

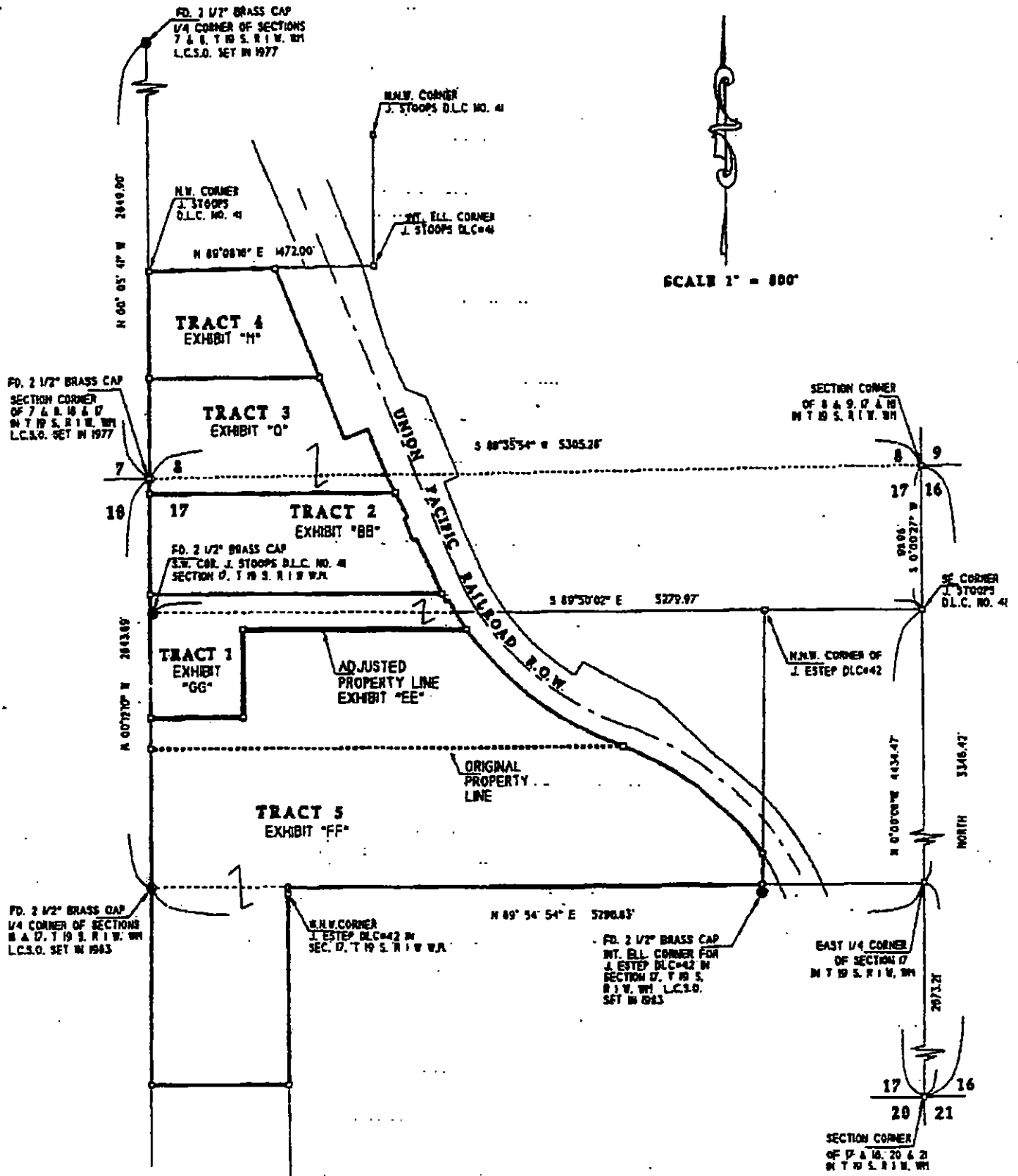


EXHIBIT "EE"

LEGAL DESCRIPTION FOR THE ADJUSTED PROPERTY LINE BETWEEN THE BOUNDARY OF TRACT 1 AFTER THE FOURTH ADJUSTMENT AND THE BOUNDARY OF TRACT 5 AFTER THE SECOND ADJUSTMENT

Beginning at a point on the west line of the northwest one-quarter of Section 17 in Township 19 South, Range 1 West of the Willamette Meridian, said point being North 00°12'10" West 1100.00 from the brass cap marking the west one-quarter corner of said Section 17; thence leaving said west line and running parallel to the south line of the J. Stoops D.L.C. No. 41 in Township 19 South, Range 1 West of the Willamette Meridian South 89°50'02" East 608.12 feet; thence parallel to the west line of the northwest one-quarter of said Section 17 North 00°12'10" West 573.18 feet; thence parallel to the south line of the J. Stoops D.L.C. No. 41 South 89°50'02" East 1500 feet more or less to a point on the west margin of the Union Pacific Railroad right of way and there ending, all in Lane County, Oregon.

EXHIBIT "GG"

LEGAL DESCRIPTION FOR THE REVISED BOUNDARIES TRACT 1 FINAL ADJUSTMENT

Beginning at a point on the west line of the northwest one-quarter of Section 17 in Township 19 South, Range 1 West of the Willamette Meridian, said point being North 00°12'10" West 1100.00 from the brass cap marking the west one-quarter corner of said Section 17; thence leaving said west line and running parallel to the south line of the J. Stoops D.L.C. No. 41 in Township 19 South, Range 1 West of the Willamette Meridian South 89°50'02" East 608.12 feet; thence parallel to the west line of the northwest one-quarter of said Section 17 North 00°12'10" West 573.18 feet; thence parallel to the south line of the J. Stoops D.L.C. No. 41 South 89°50'02" East 1500 feet more or less to a point on the west margin of the Union Pacific Railroad right of way; thence northwesterly along the west margin of the Union Pacific Railroad right of way to a point which bears South 89°50'02" East from a point on the west line of the northwest one-quarter of said Section 17, said last referenced point being South 00°12'10" East 740.50 feet from the section corner common to Sections 7, 8, 17 & 18 in Township 19 South, Range 1 West of the Willamette Meridian; thence leaving said west margin of the Union Pacific Railroad right of way and running North 89°50'02" West 1940 feet more or less to a point on the west line of the northwest one-quarter of said Section 17, said point being South 00°12'10" East 740.50 feet from the section corner common to Sections 7, 8, 17 & 18 of said Township and Range; thence along the west line of the northwest one-quarter of said Section 17 South 00°12'10" East 803 feet more or less to the point of beginning, all in Lane County, Oregon.

EXHIBIT "FF"

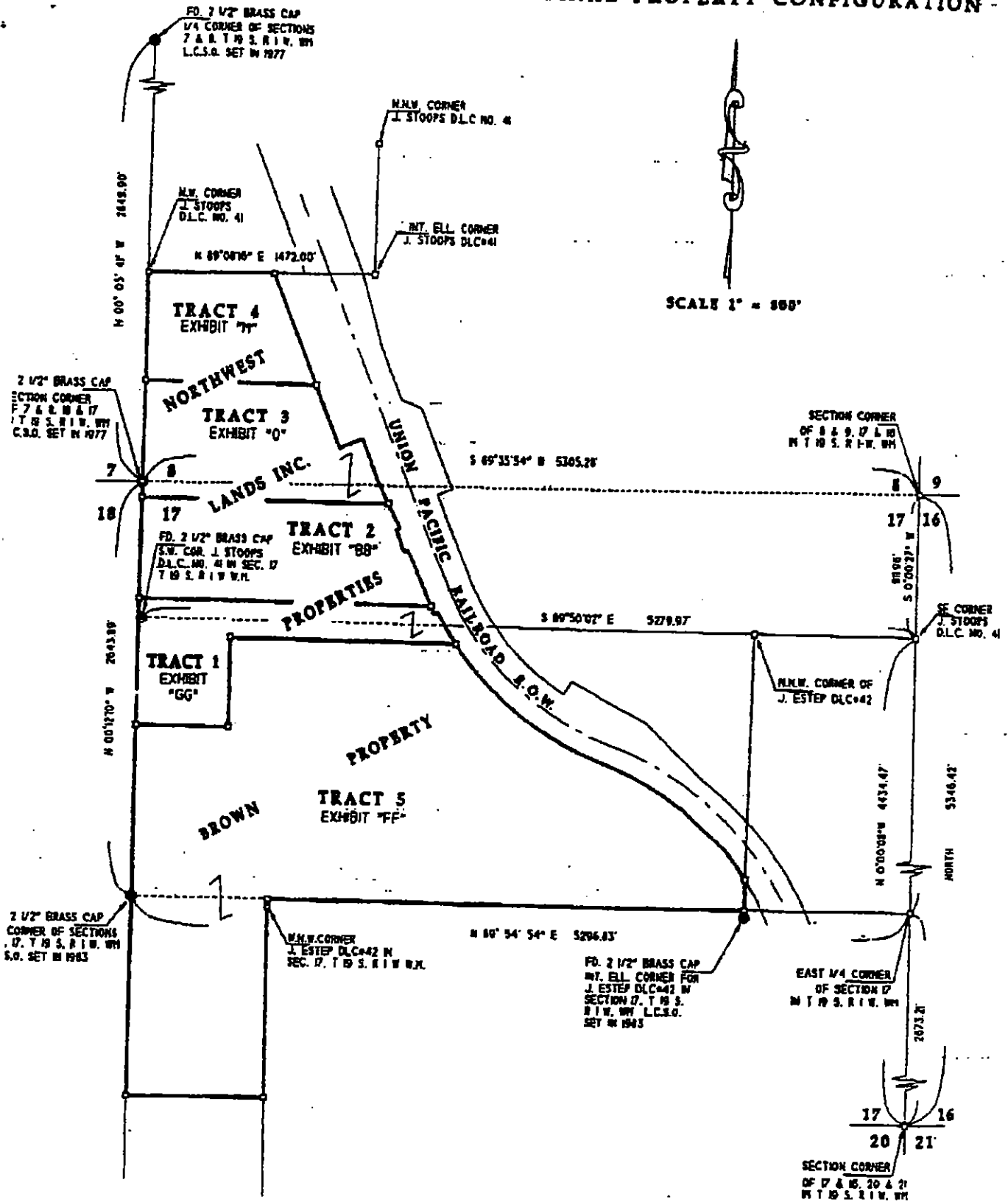
**LEGAL DESCRIPTION FOR THE REVISED BOUNDARIES
TRACT 5
FINAL ADJUSTMENT**

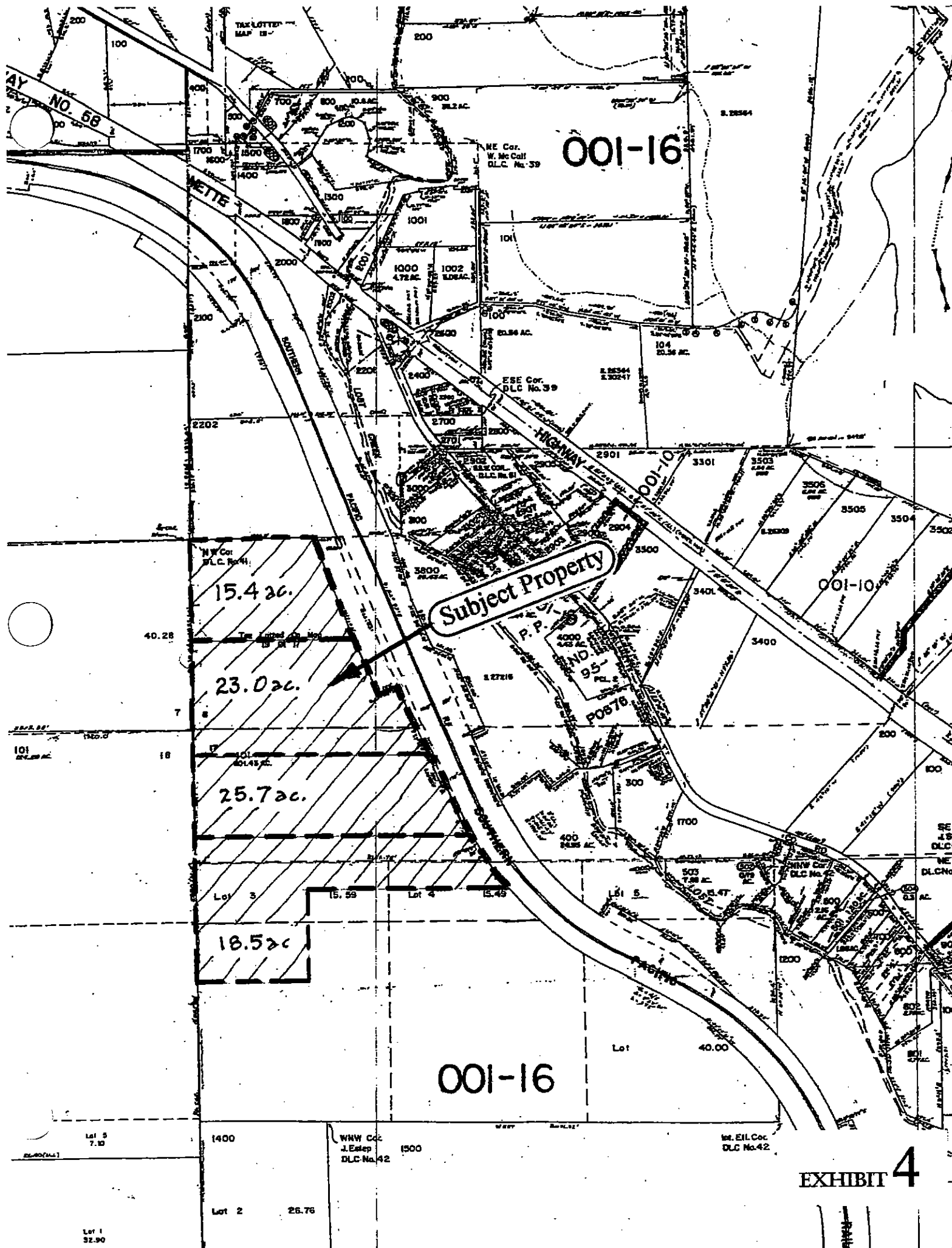
Lot 2 of Section 17 in Township 19 South, Range 1 West of the Willamette Meridian, all in Lane County, Oregon.

ALSO: Beginning at the brass cap marking the west one-quarter corner of Section 17 in Township 19 South, Range 1 West of the Willamette Meridian; thence along the west line of the northwest one-quarter of said Section 17 North 00°12'10" West 1100.00 feet; thence leaving said west line and running parallel to the south line of the J. Stoops D.L.C. No. 41 in Township 19 South, Range 1 West of the Willamette Meridian South 89°50'02" East 608.12 feet; thence parallel to the west line of the northwest one-quarter of said Section 17 North 00°12'10" West 573.18 feet; thence parallel to the south line of the J. Stoops D.L.C. No. 41 South 89°50'02" East 1500 feet more or less to a point on the west margin of the Union Pacific Railroad right of way; thence southeasterly along the west margin of the Union Pacific Railroad right of way to a point the intersection of the west margin of the Union Pacific Railroad right of way and the east line of the William McCall D.L.C. No. 39 in Township 19 South, Range 1 West of the Willamette Meridian; thence leaving said west margin and running along the east line of the William McCall D.L.C. No. 39 South 150 feet more or less to a point marking the intersection of the east line of the William McCall D.L.C. 39 and the east/west center section line of said Section 17; thence leaving said east line and running along the east/west center section line of said Section 17 South 89°54'54" West 3960 feet more or less to the point of beginning, all in Lane County, Oregon.

" EXHIBIT HH "

FINAL PROPERTY CONFIGURATION







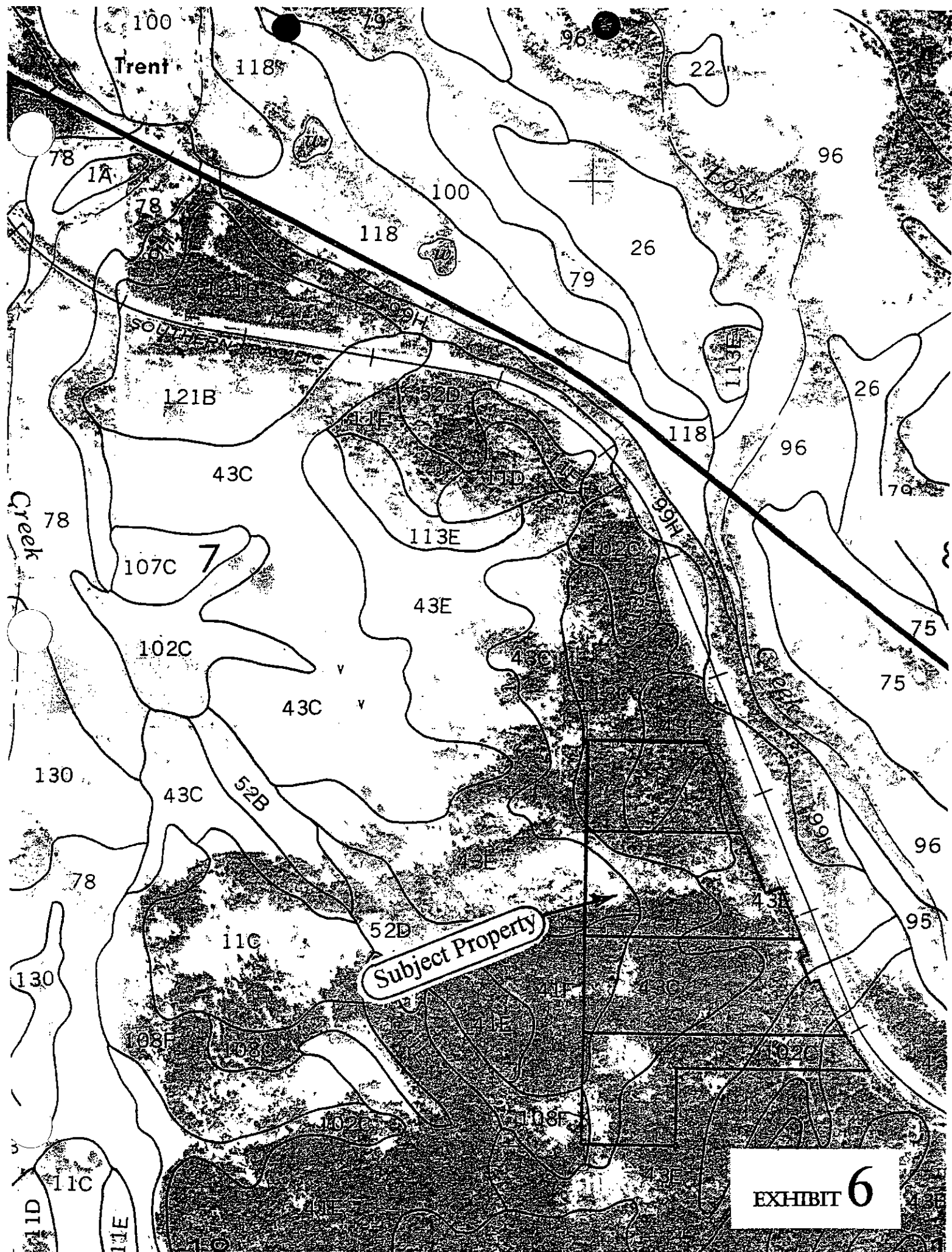


Exhibit 6b

Darren Kronberger
Rattlesnake Road Property

Soils Analysis

Soil Name/Map Unit	% Slope	Agri. Capability	Forest Capability (ft ³ /ac./yr.)	Site Index	Acreage	Percent
Dixonville silty clay loam 41F	30-50	VIe	130	109	6.00	7.26
Dixonville-Philomath-Hazelair Complex 43C	3-12	VIe	45	***	24.00	29.06
Dixonville-Philomath-Hazelair Complex 43E	12-35	VIe	63	***	34.60	41.89
Panther silty clay loam 102C	2-12	VIw		none	6.00	7.26
Philomath cobbly silty clay 108F	12-45	VIe		none	1.00	1.21
Ritner cobbly silty clay loam 113C	2-12	IVs	149	107	<u>11.00</u>	<u>13.32</u>
					82.60 ac	100.00%

*** Indicates soil complexes with multiple site indices. Refer to the ft³/ac/yr column for a composite volume rating for the complex.

"None" Indicates soil map units that lack site index information on Douglas Fir.

Source: "Lane County Soil Ratings for Forestry and Agriculture," Lane County LMD and LCOG (August 1997)

Acreages were measured from the 1987 SCS "Soil Survey of Lane County Area" using a K&E Model 4236 planimeter.

Exhibit 7

Zoning History

Evidence exists for the proposition that the original F-2 zoning was never changed. That evidence consists of a discrepancy between a map and a list of specific tax lots that are exhibits to a 1984 ordinance changing certain zoning from F-2 to F-1.

The starting point is Official Zoning Map Plot 518, which shows an area south and west of the Southern Pacific Railroad to be zoned F-1 Nonimpacted Forest Land. See Exhibit A to this exhibit.

Pursuant to LC 16.014(3)(d), the Official Map lists the adoption ordinance as PA 884, effective 2/29/84. Pursuant to LC 16.014(3)(e), it also lists a revision as PA 992, effective 1/18/91. No further ordinance revision numbers appear on the map.

PA 884 is the seminal ordinance that applied Rural Comprehensive Plan and Zone designations throughout Lane County. That ordinance designated the westerly portion of Tax Lot 400 and two tax lots to the south (1400 and 1500) as F-2 Impacted Forest Lands. See Exhibit B to this exhibit.

The second entry on the Official Zoning Map is the aforementioned Ordinance PA 992. As noted above, that ordinance changed the plan and zone designations on the easterly portion of Tax Lot 400 from M-3 to F-2. That change is irrelevant to the present inquiry because it affected only property on the east side of the Southern Pacific Railroad.

Another ordinance, not listed on the Official Map, made further changes to Plan and Zone designations throughout the county and in the subject property. It is Ordinance No. PA 891, which was enacted in response to comments by the Oregon Department of Land Conservation and Development (DLCD) in staff reports dated June 28 and July 19, 1984. PA 891 was enacted on September 12, 1984.

PA 891 contains two conflicting exhibits. The first is a map that shows the subject property and a large area to the south bounded by a dark black line. Within the line is the letter "F" and, toward the top, the symbol "F-2." Below the F-2 symbol, in a darker line, is the symbol "F-1." See Map Exhibit C to this exhibit.

The second exhibit is a list of specific tax lots that were redesignated from F-2 to F-1. That list includes Tax Lots 1400 and 1500 but not Tax Lot 400. See Exhibit D to this exhibit. Thus, the area map and the tax lot list are not in agreement.

Based on the rule that specific ordinance provisions control general provisions, the tax lot list may be the most authoritative evidence of current zoning. It shows that tax lot 401 is still zoned F-2.

In dealing with this evidence, one might wish for a rule that states that written provisions control map provisions. No such provisions are found, however, in the Lane County Rural Comprehensive Plan or Zoning Ordinance. And, no such rule exists as a principle of case law.

Cases dealing with "maps" versus "text" generally are a fact-specific examination of whether the map in each case is of sufficient scale to be definitive. For example, in DLCD v. City of Gold Beach, 43 Or LUBA 319 (2002), the Board stated, in dicta, that a line on a map at a scale of 1" = 800' would create an ambiguity on the ground of between 25 and 50 feet.

Here the map exhibit to Ordinance No. PA 891 is at a scale of approximately 1" = 1100' and the line, while thick, is not ambiguous enough to resolve the question posed in this case.

Cases dealing with "general" versus "specific" ordinance provisions, however, are helpful and can be used to settle this matter. Typically, those cases apply a standard canon of construction, which holds that "specific" provisions control "general" provisions.

That principle has been codified for statutes at ORS 174.020(2), which states: "*When a general and particular provision are inconsistent, the latter is paramount to the former so that a particular intent controls a general intent that is inconsistent with the particular intent.*" This statute has been followed in several cases. See e.g. Hanson v. Abrasive Engineering & Mfg., 317 378, 856 P2d 625 (1993) (ORS provision in conflict with the Oregon Evidence Code).

The present case deals with two provisions of an ordinance that are in conflict rather than two provisions of a statute. The principle of statutory construction noted above has general application, however, and has been applied to resolve conflicting sections of a zoning ordinance. See e.g. Sparks v. City of Bandon, 30 Or LUBA 69 (Specific zoning ordinance provision regarding notice controls general provision.)

As applied to this case, the ambiguous map describes a general area in which change is to occur. The list of tax lots, which the ordinance says "further delineates" the change, is the controlling provision that identifies the actual specific changes. The result is that Tax Lot 400 (now 401) west of the SPRR was left F-2 and Tax Lots 1400 and 1500 were changed to F-1

The conclusion reached above might be sufficient to resolve this matter. It is strengthened by another relevant principle contained in ORS 174.020(1)(a), which states: "*In the construction of a statute, a court shall pursue the intention of the legislature if possible.*"

The cases are in accord. See State ex rel. Nilsen v. Hayes, 20 Or App 135, 530 P.2d 1264 (1975) (The primary rule of statutory construction is to ascertain legislative intent.)

The question then is: "What did Lane County intend with respect to the westerly portion of Tax Lot 400 (now 401) when it passed Ordinance No. PA 891"

The best clue comes from the preamble to the ordinance itself, in the aforementioned reference to the objections raised by the DLCD in staff reports dated June 29, 1984 and July 12, 1984¹. Under Oregon Law, because of the power granted to the LCDC through the "acknowledgement" process, local governments typically acquiesce to the requirements of the LCDC as expressed in staff reports as well as commission orders.

The primacy of one level of government over another was described in an Oregon Supreme Court that has never been overturned. See Biggs v. McBride, 17 Or 640, 21 P 88 (1889). (Constitutional question of legislative versus executive powers.)

In Biggs, the Court held that, when a power has been exercised by one department of the government for a long time, and such exercise has been constantly acquiesced in by the other departments as well as the people, such practical construction is of great weight in doubtful cases, and should not be lightly regarded in any case. As noted above, Lane County, along with other local governments in Oregon, has typically acquiesced to DLCD requests.

A key question, then, is what did DLCD have in mind when it asked Lane County to rezone certain types of land from F-2 to F-1.

Reference to the actual DLCD staff reports discloses that the chief concern was the misapplication of F-2 zoning to large parcels. Examples cited were: Map 272 – 590 acres of a large forest/grazing operation, Map 275 – 636 acres on farm deferral, Map 430 – 878 acres, and Map 432 – "Some very large parcels."

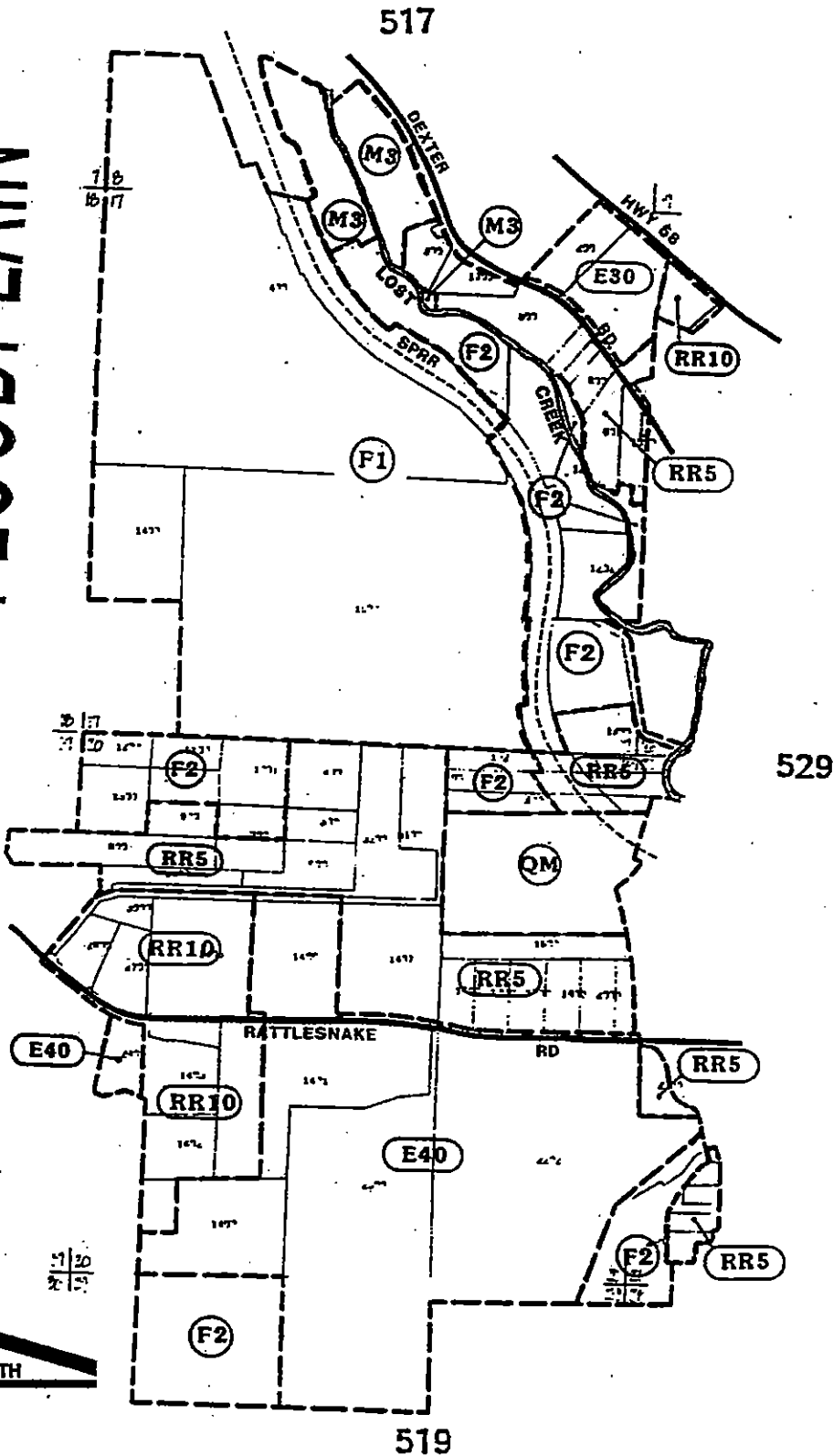
By contrast, the relevant portion of Tax Lot 400 (now 401) was 201.38 acres. While not dispositive in itself, the notion that DLCD seemed concerned about very large acreages being zoned F-2 adds weight to the other arguments particularly when coupled with knowledge we have now regarding small legal lots within the subject property.

In conclusion, the evidence shows an ordinance with map indicating a change from F-2 to F-1 for Tax Lot 400 and a specific list of rezoned tax lots indicating that the zoning was not changed. While not conclusive evidence that Tax Lot 400 remains F-2, it is, at the very least, evidence that the call between the two forest zones was close even with the limited information available in 1984.

¹ In fact, the July 12, 1984 report dealt only with Goal 2 non-resource land, Goal 5 and Goal 15. A later report, dated September 12, 1984 also dealt with the F-1 versus F-2 issue and is discussed in this letter.

FLOODPLAIN

The zones on this map are changed as follows:
 From: CR, RA, ~~RM~~ To: R12
 From: CR, C1, C2, & C3 To: RC Rural Commercial
 From: M1, M2, & M3 To: R1 Rural Industrial
 From: PF To: RPP Rural Public Facility
 From: PR To: RPP Rural Park & Recreation



The RR zones on this map are changed as follows:
 FROM: RR LC 16.231 TO: RR LC 16.250
 The RR zone parcel size remains the same.

the county



OFFICIAL ZONING MAP

PLOT# 518

Township Range Section

19 01 17

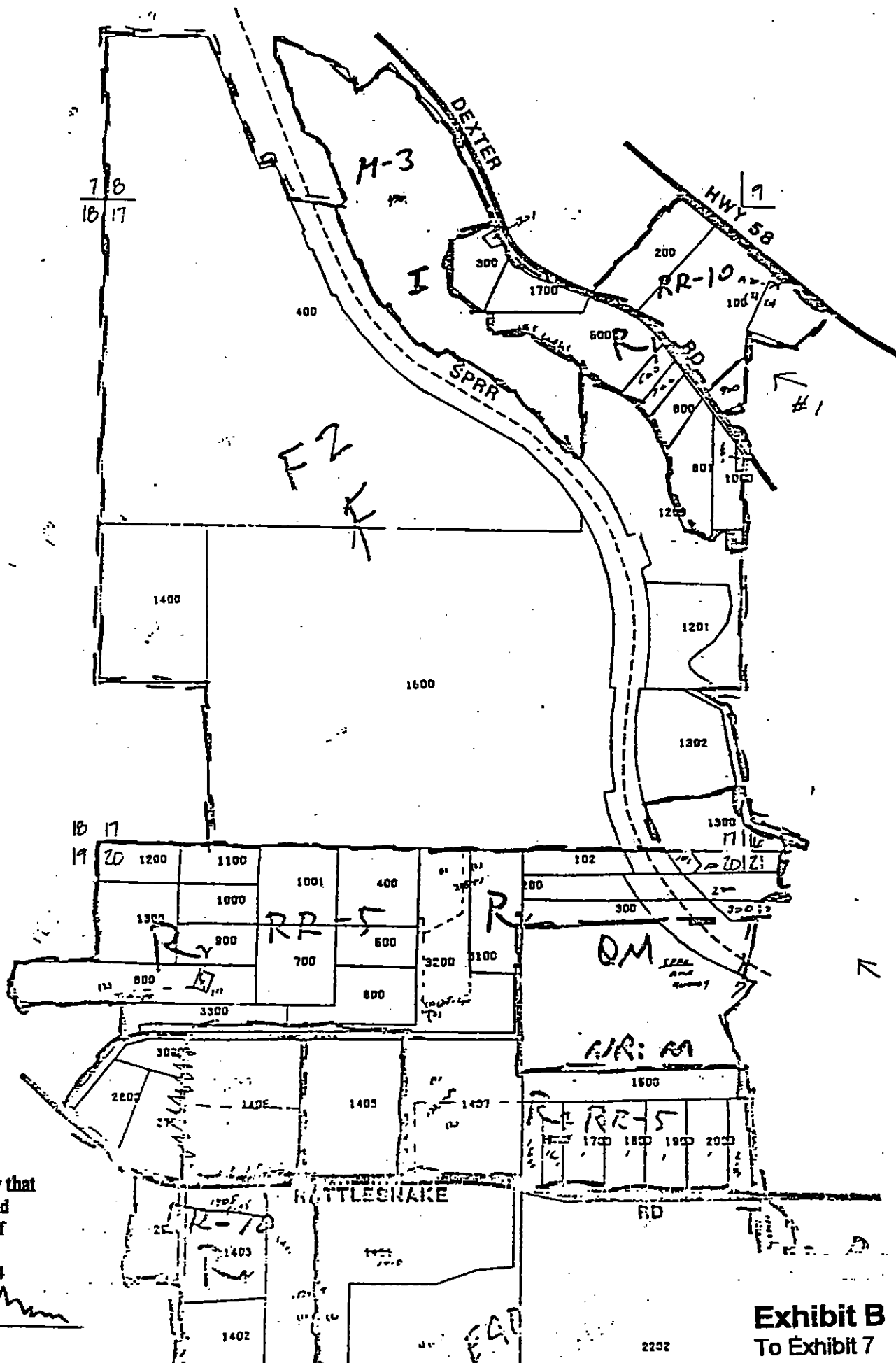
19 01 20

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

REVISION # 1 ORD. # PA 992 DATE 1/18/91 FILE #

Exhibit A
 To Exhibit 7

517



**This is to certify that
This is a true and
accurate copy of
Exhibit "A" to
Ord. No. PA 884**

James A. Mann

Exhibit B
To Exhibit 7

DATE- 09/12/84
TIME- 12:43:12

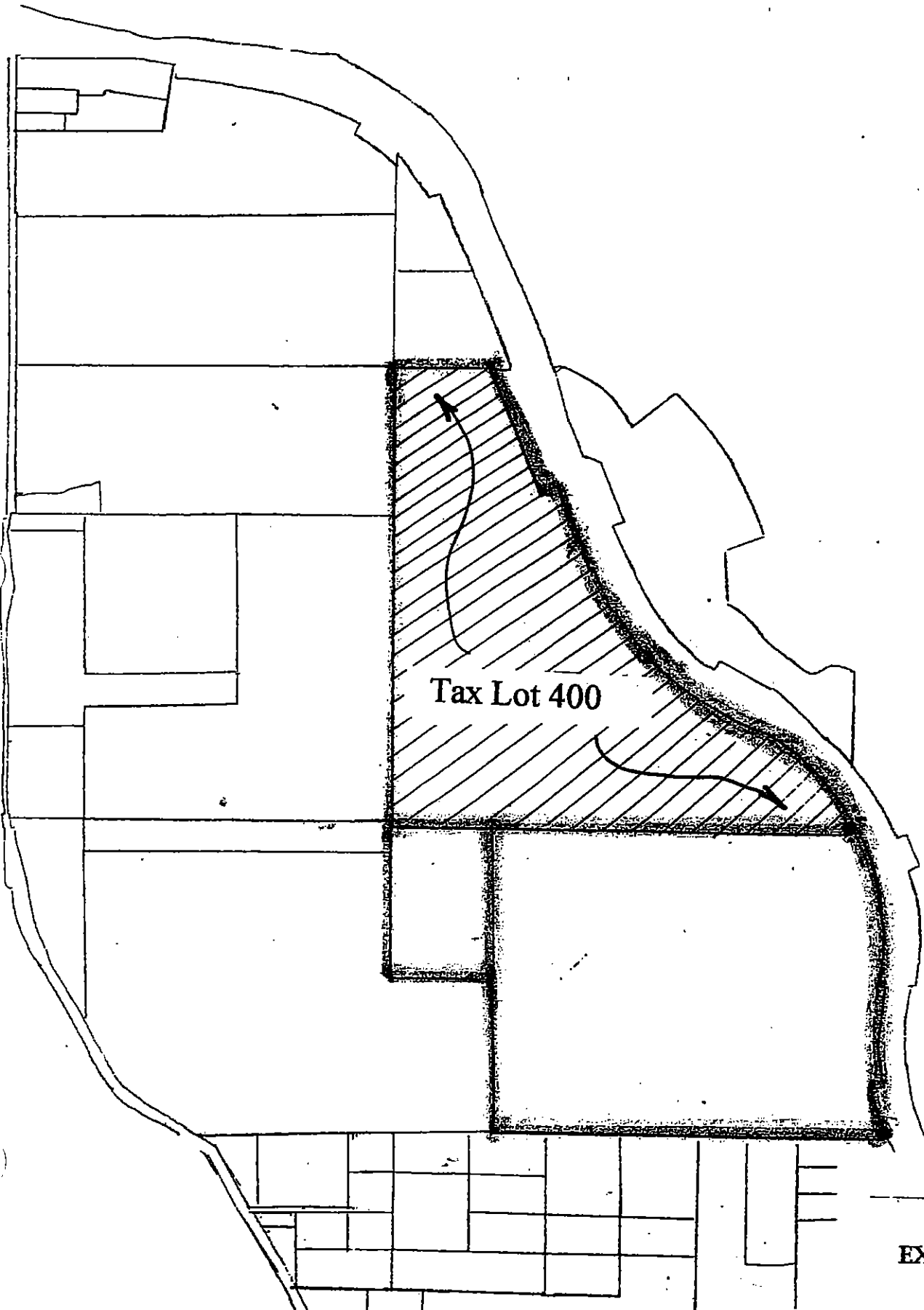
***** LANE COUNTY COMPREHENSIVE PLAN PROJECT *****
***** ORDINANCE PA 891 EXHIBIT C *****
***** LEGISLATIVE REZONES *****
***** LAND MANAGEMENT DIVISION / DEPT. OF PUB. WORKS *****

ORIGINAL ZONE 03-01-84
REVISED ZONE 09-12-84
CHANGES SINCE 08-09-84

MAPLOT	PLOTNO	ORIGINAL ZONE	REVISED ZONE	CHANGES SINCE
1811270000400	052A	F2	E40	
1811270000400	052A	F2	F1	
1811270000500	052A	F2	F1	
1811270000600	052A	F2	F1	
1811270000700	052A	F2	E40	
1811270000800	052A	F2	F1	
1811280000100	048B	F2	F1	
1811280000100	048B	F2	E40	
1811280000600	048B	F2	F1	
1811280000600	048B	F2	E40	
1812020000203	021	F2	F1	
1812020000203	021	F2	NR	
1812020000205	021	F2	F2	
1812020000205	021	F2	F2	
1812020000400	021	F2	NR	
1812020000403	021	F2	NR	
1812020000403	021	ML	ML	
18120200001200	021	ML	NR	
1812110000200	021	ML	F2	
1901030001700	537	F2	F2	
1901040001000	528	F2	F1	
1901090000100	528	F2	F1	
1901100000300	537	F2	F1	
1901170001400	518	F2	F1	
1901170001600	518	F2	F1	
1901290000300	519	F2	F1	
1902040000200	461	F2	F1	
1902070000600	439	RR5	L40	
1902070001200	439	RR5	E40	
1902180000000	440	CHNGE	GRNVY	
1902190000700	440	F2	L40	
1902190000800	440	F2	F1	
1902200000300	451	F2	L40	
1902200000300	451	F2	F2	
1902280001100	453	F2	F2	
1903050000200	366	F2	L40	
1903050000400	366	F2	E40	
1903050000400	365	F2	E40	
1903060000100	350	F2	E40	
1903060000300	350	F2	E40	
19032400001100	367	F2	F1	
1903210000200	385	F2	F1	
19032200001601	400	RR10	E30	
1903250000200	430	F2	F1	
19032600000000	417	CHNGE	GRNVY	
19032700001300	401	F2	E30	
1903280000101	366	F2	E30	

TAX LOT 400 DOES
NOT APPEAR ON
THIS LIST.

**Legal Lots Assumed to
Exist in 1984**



**Legal Lots Actually in
Existence in 1984**

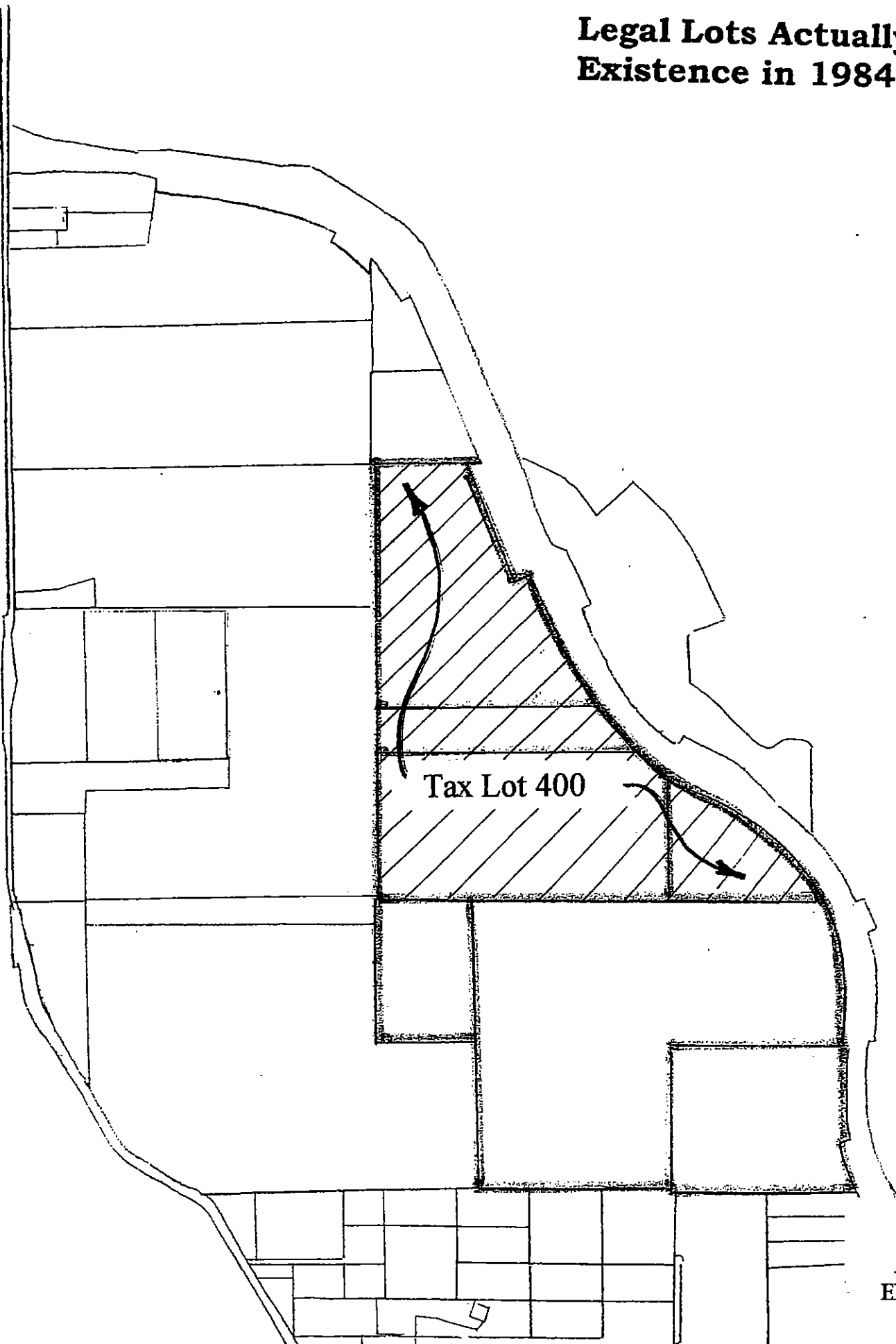


Exhibit 11

Goal 4 Analysis

The subject property is designated "forest Lands" by the Rural Comprehensive Plan (RCP). RCP Goal 4 Policies 1, 2, and 16 are applicable to this application and are met as explained below.

Policy 1. Conserve forest lands by maintaining the forest land base and protect the state's forest economy by making possible economically efficient forest practices that assure the continuous growing and harvesting of forest tree species as the leading use on forest land consistent with sound management of soil, air, water, and fish and wildlife resources and to provide for recreational opportunities and agriculture.

The proposed zone change will not adversely affect the economic efficiency of forest practices on the subject property. This property is part of an isolated, small area of F-1 zoned land. The 263 parcels within one mile from the subject property already impact this segment of F-1 zoned property. See zoning Maps at Exhibits 1 and 2 to the Application.

A zone change from F-1 to F-2 will continue to conserve the land for forest use. Considering the lack of highly productive soils for forestry on the subject property, these parcels may be more efficiently managed by an on-site, small woodlot owner. See soils information at Exhibit 6 to the Application. Forest practices that are uneconomical for an offsite manager could potentially be carried out economically by the small woodlot owner.

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

This policy refers to the characteristics set forth in Policy 16 that are set forth and applied to this application below.

Policy 16. Lands designated within the Rural Comprehensive Plan as Forest Land shall be zoned Non-Impacted Forest Lands (F-1, RCP) or Impacted Forest Lands (F-2, RCP). A decision to apply one of the above zones or both of the above zones in a split zone fashion shall be based upon:

- a. A conclusion that characteristics of the land correspond more closely to the characteristics of the proposed zoning than the characteristics of the other forest zone. The zoning characteristics referred to are**

specified below in subsections b. and c. This conclusion shall be supported by a statement of reasons explaining why the facts support the conclusion.

b. Non-impacted Forest Land Zone (F-1, RCP) Characteristics:

(1) Predominantly ownerships not developed by residences or non-forest uses.

Past Hearing Official decisions in requests to rezone property from F-1 to F-2 have applied this criterion to the subject property itself. Thus, the four legal lots within the subject property have this F-1 characteristic in that they have no dwellings or non-forest uses on them.

(2) Predominantly contiguous ownerships of 80 acres or larger in size.

When this standard was originally implemented in 1984, it was applied to the "area" under consideration for zoning. Almost always, those 'areas' contained several tax lots and ownerships. The issue was whether the "area" was made up of contiguous large ownerships. If so, it merited F-1 zoning.

Consistent application of this standard to this case would seem to require examination of just the subject property because that is the relevant "area" under consideration for rezoning. The subject property, which consists of four legal parcels all substantially smaller than 80 acres, would therefore be found to not possess this F-1 characteristic.

This provision, however, has not been applied as described above for consideration of single-parcel rezones. There have been three Hearings Official Decisions for F-1 to F-2 zone change applications since 1984.¹ Each decision looked at properties contiguous to the subject property rather than at the subject property itself. The area proposed for rezoning in those three decisions apparently contained only one legal lot, perhaps causing the hearings official to look at the adjacent parcels as well. In this case, however, the subject property contains four legal parcels and should be treated similar to the method used in 1984. As discussed below, this approach is consistent with recently adopted Goal 2, Policy 27, which recognizes the significance of legal lots within, as well as adjacent to, the subject property.

The confusion in how to best apply this standard is reflected in the most recent F-1 to F-2 decision, in which the Hearings Official commented: *"These characteristics are not clearly written so that they can easily apply to a question of redesignation. They were written to describe the original designation process, which looks at larger swaths of territory."*

¹ (West: PA 99-5789, Baker-Fisk: PA 1057-91, and Park: PA 0039-91).

This applicant suggests that it is appropriate to look at both the subject property and the adjacent contiguous parcels.² Logically, both will have an impact on whether the property is better suited to large-acreage industrial forestry or to smaller-scale woodland operation. Contiguous properties, if in smaller parcels, can have an acknowledged chilling effect on large-scale industrial forest practices. Likewise, when the subject parcel itself is composed of small legal lots, they may be sold to individual owners and used as small woodlands without running afoul of any land use policy or law. Either way, the result is not the type of large scale, industrial forestry associated with F-1 zoning.

Adjacent Parcel Analysis³

As shown below, looking at just adjoining parcels, the subject property is split between F-1 and F-2 characteristics

The subject property's contiguous parcels to the west are Tax Lot 2600 (97.06 acres) and Tax Lot 101 (124 acres). To the south, Tract 5 – Brown Property is 138 acres. These three parcels would fall into the "over 80 acres" category.

Tax Lot 2202 to the north is 16.9 acres. A Southern Pacific Railroad right-of-way borders the subject property to the east. A previous hearings official decision suggests that the applicant must look beyond the railroad right-of-way.⁴ East of the Railroad lie Tax Lot 3800 (20.43 acres) and Tax Lot 400 (24.95 acres). Thus, there are three contiguous parcels in the "under 80 acres" category. See large-scale parcelization map at Exhibit A to this exhibit.

At this point, the analysis is indeterminate; half of the contiguous ownerships are larger than 80 acres and half are smaller

When the four legal parcels within the subject property are added to the equation, there are 7 parcels under 80 acres and three parcels over eighty acres.

Based on these facts, the Hearings Official can find and conclude that the subject parcel does not exhibit this F-1 characteristic.

² In fact, this is actually built into the criteria further down at Policy 16 (c) (2), which has consistently been held to apply to the subject property itself.

³ Note: Following legal lot verification in 2002, the internal boundaries of the subject property were adjusted and the southern tract was sold to an adjoining owner. The resultant property configuration is shown on Exhibit 3 to the Application. Because the Lane County Assessor's office is several years behind in conforming tax lot maps to actual ownership, the tax lot maps shown as exhibits to this application do not reflect actual ownership. For this analysis, the portion adjoining the subject property on the south will be referred to as "Tract 5 – Brown Property."

⁴ See the Baker-Fisk decision (PA 1057-91).

The significance of legal lots within the subject property is reflected in the following Policy recently adopted as part of RCP Goal 2, Policy 27:

"c. Identified failure to zone F-2, where maps used by staff to designate F-1 did not display actual existing legal lots adjacent to or within the subject property, and had the actual parcelization pattern been available to County staff, the Goal 4 policies would have dictated the F-2 zone."

This policy recognizes the fact that legal lots can be sold in complete conformity with land use laws and policies and then used in ways that impact large-scale industrial forestry

Under the above policy, not only are ownerships significant, but also so are legal lots. In this case, the facts reinforce the notion that the subject property is impacted. Significantly more legal parcels or lots exist in the vicinity of the subject parcel than were known in 1984.

First of all, there are four legal parcels on the subject property—where the original working maps show it to be only one parcel. See legal lot verifications at Exhibit 3 to the Application. Secondly, Tax Lot 1500 contains two legal parcels, rather than just the one that was considered in the zoning process in 1984. See Description Card for Tax Lot 1500 at Exhibit B to this exhibit. Finally, a partition was approved in 1985 that divided the industrially zoned parcel east of the railroad right-of-way into three parcels. These are now known as Tax Lots 3800, 400, 3900, and 4000 on Map No. 19-01-17. See PA 1523-85.

Surrounding Area Analysis

At this point it is obvious that the area being considered for zoning in 1984 was more highly parcelized than the working map showed and should have been zoned F-2 as were the extensive areas to the west, southwest and north. See map showing Legal Lots Assumed to Exist in 1984 and Map showing Legal Lots Actually in Existence in 1984 at Exhibits C and D to this exhibit.

Further reinforcement of this finding comes from examination of an area larger than those parcels just strictly "contiguous." The language in Policy 16 above suggests that one should look beyond just those "contiguous" parcels. Policy 16 uses phrases such as "predominantly ownerships," "predominantly contiguous ownerships," and "generally contiguous" all of which suggest that a narrow look at contiguous properties was not the intent of the policy-makers.

Looking at the surrounding area, the subject property exists in the context of a neighborhood that includes two communities (Trent and Dexter) and that forms a ring of rural residential and industrial properties virtually surrounding the subject property. See zoning maps at Exhibits 1 and 2 to the Application. See again

Parcelization Map at Exhibit A. Exhibit A shows that within a one-mile radius from the perimeter of the subject property there are 658 parcels. Of those, 263 parcels are less than 10 acres, 61 are between 10 and 80 acres, and only 10 parcels are over 80 acres.

Of the 10 parcels over 80 acres, two are zoned RPR - Rural Parks and Recreation, three are zoned EFU - Exclusive Farm Use, two are zoned F-2 - Impacted Forest Land and three are zoned for F-1 - Non-Impacted Forest Land. It is important to note that the subject property, the two contiguous F-2 zoned parcels and the two contiguous F-1 zoned properties are a virtual island surrounded by rural residential, industrial, and small EFU zoned properties.

In conclusion, whether considering the subject property itself, the subject property plus its contiguous parcels, or the subject property and the surrounding area within one mile, it is clear that the area under consideration for rezoning does not have the F-1 characteristic of being "predominantly contiguous ownerships of 80 acres or larger in size."

(3) Predominantly ownerships contiguous to other lands utilized for commercial forest or commercial farm uses.

The lands contiguous to the subject property vary in their uses. To the north lies Tax Lot 2202, which contains a residence and is zoned F-2. This property is on forest deferral and appears to be growing trees. One can presume this is a small commercial operation.

To the west, Tax Lot 2600 appears to be primarily in farm use, with some trees growing on its eastern and southern sides. There are two residences on this parcel. A portion of this property is on forest deferral and the other portion is on farm deferral. Again, one can presume this is a commercial operation at some base level.

Tax Lot 101 is in commercial forest use. This property has been logged in the past and is currently growing a new crop of trees. A portion of the property is also in farm use. This property is on farm/forest deferral.

The Tract 5-Brown property is in forest use including recreational bridal trails. Most of this parcel was originally part Tax Lot 401 and was logged in 1993. Except for areas left intact in buffer zones, this was replanted and is currently growing trees commercially.

The railroad parcels to the east are not in farm or forest use. Looking beyond the railroad, Tax Lot 3800 is an industrial site and is not in farm or forest use.

Tax Lot 400, east of the railroad, contains a residence and trees. This parcel is not in farm use, nor does it appear to be in commercial forest use. This is a thin

24.95-acre parcel that lies between the railroad and Lost Creek. At its northern end lie several roads that provide access to the industrial property to the north. Likely, many of the trees growing on the property are not available for commercial forestry because of the stream running lengthwise down the entire property. In the past, this parcel provided access to the commercial forestry operation on Tax Lot 401 across the railroad, but access across the railroad is no longer available. This parcel is, however, on forest deferral.

In sum, it appears that commercial farm or forest uses predominate on adjacent properties.

(4) Accessed by arterial roads or roads intended primarily for forest management.

The primary access road is Rattlesnake Road, a two-lane major collector county road within a 70-foot right-of-way. According to the County Surveyors records, Rattlesnake Road is neither a farm-to-market road nor a forest road. An easement through Tax Lot 2400, 2100, and 2202 provide access from Rattlesnake Road to the subject property. Thus, the property does not possess this F-1 characteristic.

(5) Primarily under commercial forest management.

The subject property is currently under commercial forest management. The majority of the subject property was logged in 1993. Some smaller portions were logged in 2000. The property has been replanted at a stocking rate of 200 trees per acre. See Aerial Photo at Exhibit 5 to the Application.

c. Impacted Forest Land Zone (F-2, RCP) Characteristics:

(1) Predominantly ownerships developed by residences or non-forest uses.

The subject parcel contains no residences or non-forest uses. The subject property does not exhibit this F-2 characteristic.

(2) Predominantly ownerships 80 acres or less in size.

As noted above, this standard has uniformly been held to apply to the area under consideration for rezoning. As such, the subject property contains four legal lots in separate ownerships, each less than 80 acres. The subject property meets this standard for F-2 designation.

(3) Ownerships generally contiguous to tracts containing less than 80 acres and residences and/or adjacent to developed or committed areas

for which an exception has been taken in the Rural Comprehensive Plan.

Again, as noted above, when only the immediately adjacent property is considered, there are three tracts containing more than 80 acres and three containing less than 80 acres. Of these, three contain residences and one contains an industrial site.

When the four parcels within the subject property are counted, there are 7 tracts less than 80 acres. There are no residences on the subject property, so there are still a total of three residences on adjacent parcels.

As noted elsewhere, when the land use one tier of lots away from the subject property is considered, the subject property is virtually surrounded by developed and committed rural residential and industrial areas.

At any rational level of analysis, the subject exhibits this F-2 characteristic.

(4) Provided with a level of public facilities and services, and roads, intended primarily for direct services to rural residences.

The Lane County Rural Comprehensive Plan, at Goal 11 Public Facilities and Services, Policy 6.b. specifies no minimum service level of public facilities and services for F-2 Impacted Forest Land. The subject property is served by the level specified for Rural Residential lands, i.e.: schools, on-site sewage disposal capability, individual water supply capability, electrical service, telephone service, rural level fire and police protection and reasonable access to a solid waste disposal facility.

Thus the subject property also exhibits this F-2 characteristic

In sum, when looking at all of the above characteristics of F-1 - Non-Impacted Forest Land and F-2 Impacted Forest Land, the subject property shares four characteristics with non-impacted forestlands and five characteristics with Impacted forestlands. Thus the subject property conforms more closely with the proposed F-2 zone than to the F-1.

(Area Within One Mile of Subject Property)

91-100

Exhibit A
To Exhibit 11

#3287-E 1/684-7 OFFICIAL RECORD OF DESCRIPTIONS OF REAL PROPERTIES 190117
OFFICE OF COUNTY ASSESSOR, LANE COUNTY, OREGON 1500

YEAR	TAX LOT NO. 15-1	SECTION 17	TOWNSHIP 19 S.	RANGE E. OR W. 1 W. M.	DEED RECORD VOL. PAGE	ACRES REMAINING
1950						
	BEARING	DISTANCE	BEARING REFERENCE OR LEGAL SUBDIVISION			
			<p>A parcel of land lying in the James Estep D.L.C. No. 42, in Section 17, Township 19 South, Range 1 West of W.M., in Lane County, Oregon, said parcel of land being a portion of the following described property:</p> <p>Beginning at a point in the South line of Section 17, Township 19 South, Range 1 West W.M., 180 rods West of the West bank of Lost Creek, and running thence North 80 rods, thence East parallel with the South line of said Section 17, to the West bank of Lost Creek, thence meandering said West bank in a North-westerly direction to a point 1234.4 feet North of the re-entrant angle of the James Estep D.L.C. No. 42, in said Township and range; thence South along the West line of said claim 1,234.4 feet to the said re-entrant corner, thence West 3,076.92 feet to the West line of most Westerly Northwest corner of said claim, thence South, 2,650 feet along claim line of the Southwest corner thereof, on Section line, and thence East along the South line of said Section 17 to the place of beginning, in Lane County, Oregon.</p> <p>The said parcel of land is all that portion of the foregoing described property lying westerly and Southwesterly of the following described line:</p> <p>Commencing at the re-entrant corner of the James Estep D.L.C. No. 42, in said Township and range, thence North 0° 04' West on the more Northerly West line of said claim a distance of 123.7 feet to the center line of the survey for the relocation of the railroad of the Southern Pacific Company at Engineer's Station L 1154+72.7; thence continuing North 0° 04' West on said claim line</p>			

Exhibit B
To Exhibit 11

OFFICIAL RECORD OF DESCRIPTIONS OF REAL PROPERTIES

OFFICE OF COUNTY ASSESSOR, LANE COUNTY, OREGON

OFFICE OF COUNTY ASSESSOR, CLATSOP COUNTY, OREGON

YEAR	TAX LOT		SECTION 17	TOWNSHIP 10 S.	RANGE E.	OR W. 1 W. M.	DEED RECORD		ACRES REMAINING
	NO. 15-1						VOL.	PAGE	
1959	BEARING	DISTANCE	BEARING REFERENCE OR LEGAL SUBDIVISION						
	SE'ly	674.37 ft	153.22 feet to a point that is 100 feet Northeasterly, when measured radially, from the said center line at Engineer's Station 1153+59.54, said point being the true point of beginning of this description, thence concentric with and 100 feet Northeasterly from the said center line, from a tangent which bears S. 42° 29' 02" East, on the arc of a curve to the right having a radius of 2,010.08 feet a distance of						
	S. 21° 6' 15" E.	533.57 ft	to a point that is 100 feet Northeasterly, when measured radially, from the said center line at Engineer's Station L 1160+00; thence to a point that is 150 feet Easterly, when measured radially, from the said center line at Engineer's Station L 1165+00, thence concentric with and 150 feet Easterly from said center line, from a tangent which bears S. 8° 16' 13" East on a curve to the right having a radius of 2,060.08 feet a distance of						
	S'ly	322.79 ft	to a point opposite Engineer's Station L 1167+99.28 C.C.S.; thence concentric with and 150 feet Easterly from the center line of a decreasing Talbot spiral to the right ($a=4/5$), a distance of						
	S'ly	389.73 ft	to a point opposite Engineer's Station L 1171+74.28 E.C.; thence parallel with and 150 feet Easterly from the said center line to a point on the South line of the above described property.						
	S. 6° 20' W.	90.33 ft							
			Containing more or less						163.40
			Acreage corrected to 168.40 acres Except 11.35 acres in railroad right of way.						
			Cont. more or less						157.05

COKE-CHAPMAN CO., EUGENE, ORE. 93949

#3287-E

OFFICIAL RECORD OF DESCRIPTIONS OF REAL PROPERTY

CODE
NO.

001-00

OLD NUMBER

OFFICE OF COUNTY ASSESSOR LANE COUNTY OREGON

(15-1)

MAP NO. 19 01 17	TAX LOT NO. 1500	119 258 SECTION 17	TOWNSHIP 19 S.	RANGE 1W	W.M.	AERIAL PHOTO
ACCOUNT	NUMBER					
LOT NO.	BLOCK NO.	ADDITION				CITY

INDENT EACH NEW COURSE TO THIS POINT	LEGAL DESCRIPTION	DEED RECORD		ACRES REMAINING
		DATE OF ENTRY	DEED NUMBER	
	A parcel of land lying in the James Estep DLC #42, Sec. 17, T19S, R1W, WM., LCO., sd. parcel of land being a portion of the 'ol. desc. prop: BAP in the S ln. of Sec. 17, T19S, R1W, WM. 180 rds. W of the W bank of Lost Creek, and run th N 80 rds.; th the W bank E parallel with the S ln. of sd. Sec. 17, to the W bank of Lost Creek, th meandering sd. W bank in a re-entrant NW'ly direction to a pt. 1234.4 ft. N of the angle of the James & Rebecca Estep DLC #42, sd T & R, th re-entrant S alg the W ln of sd. Cl. 1234.4 ft. to sd. angle, th W 3.076.92 ft. to the W ln. or most W'ly NW cor. o of sd. Cl., th S 2640 ft. alg Cl ln. of the SW cor. thereof on Sec. ln. and th E alg. the S ln. of sd. Sec. 17 to the POB in LCO. The sd. parcel of land is all that portion of the foregoing desc. prop. lying W'ly of the W bdry ln. of the RR R/W of the SP Co., sd. W bdry ln. being desc. as fols: Com. at the re-entrant cor. of the James Estep DLC #42 in sd. T & R; thence N 0°04'W on the more N'ly W ln. of sd. Cl. a distance of 172.54 ft. to a pt. on the W bdry ln. of sd. RR R/W, sd. pt. being distant 150 ft. W'ly, when measured radially from the ctrln. Sur. for sd. RR and is the true POB of this desc.; th S'ly, from a tangent that bears S32°35'47"E concentric with and 150 ft. W'ly from sd ctrln. Sur., on a curve to the rt. having a radius of 1760.08 ft. (the chord of which curve bears S 15°56'38"E 1008.75 ft.) a dist. of 1022.92 ft. thru an angle of 33°18'17" to a pt. opposite Engr's Sta. L 1167+99.28 C.C.S.; th S'ly concentric with an 150 ft. W'ly from the ctrln. Sur. for sd. RR, sd. ctrln. being a decreasing Talbot spiral to the right (a=4/5), a dist. of 360.27 ft. thru an angle of 5°37'30" to a pt. opposite Engr's Sta. L 1171+74.28 E.C. (the long chord for this ln. bears S 5°29'44" W 360.13 ft) th S 6°20'W parallel to and dist. 150 ft. W'ly from sd. ctrln. Sur., a dist. of 116.31 ft. to a pt. on the	1964 1994WD	R238/47889 R1946/942509	

(SEE OVER)

OFFICIAL RECORD OF DESCRIPTIONS OF REAL PROPERTIES

OLD NUMBER

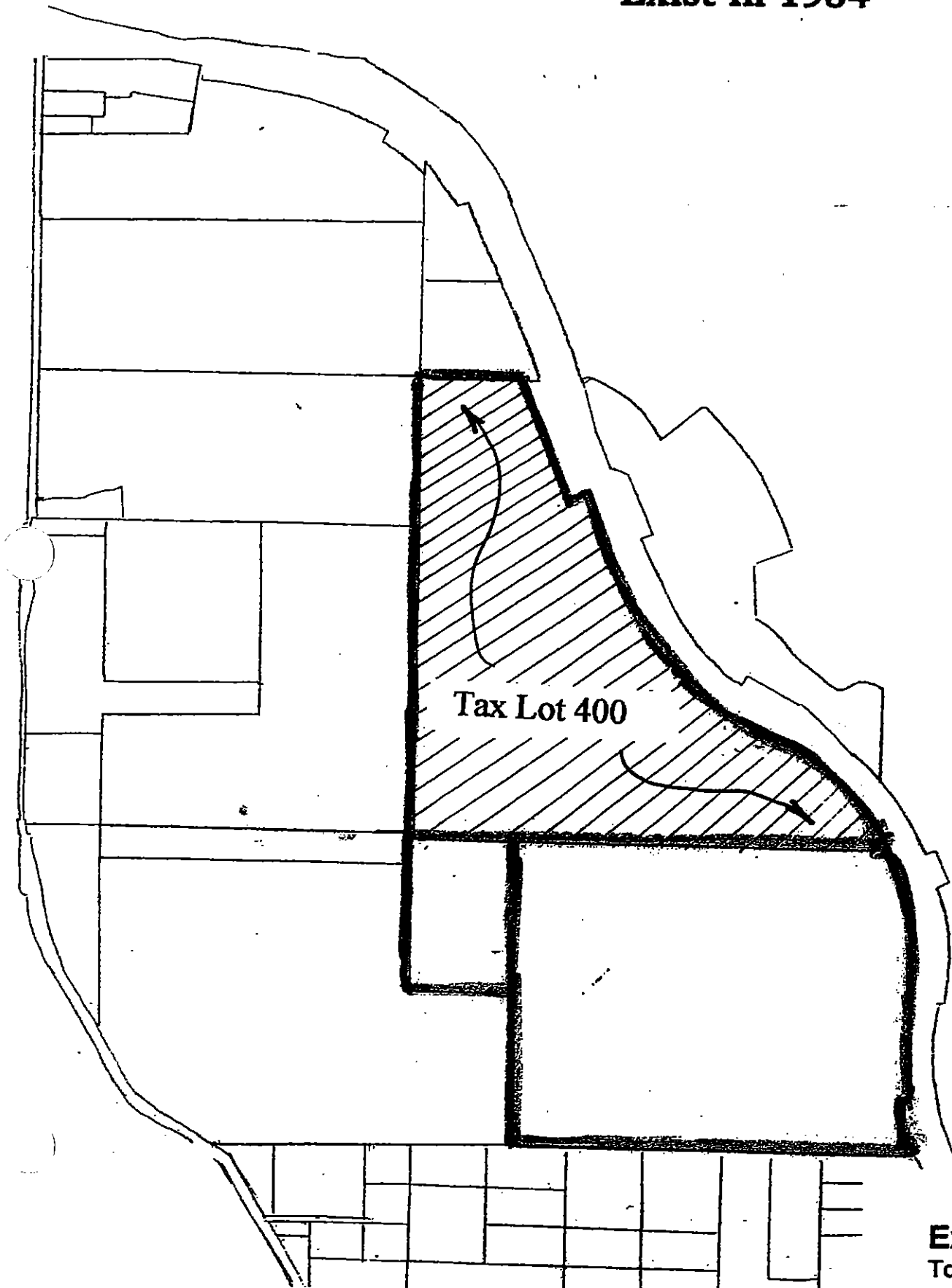
OFFICE OF COUNTY ASSESSOR LANE COUNTY, OREGON

CODE NO.

MAP NO.	TAX LOT NO.	SECTION	TOWNSHIP	S.	RANGE	W.M.	AERIAL PHOTO
ACCOUNT	NUMBER						
LOT NO.	BLOCK NO.	ADDITION				CITY	

INDENT EACH NEW COURSE TO THIS POINT	LEGAL DESCRIPTION	DEED RECORD		ACRES REMAINING
		DATE OF ENTRY	DEED NUMBER	
	<p>S ln. of the foregoing desc. prop. The land above desc. cont. 152.24 ac. m/1</p> <p>A parcel of land lying in Sec. 17, T19S, RLW, WM., in LCO., sd. parcel being a portion of the fol. desc. prop; BAP on the W bank of Lost Creek 5.29 chs. E of the SW cor. of Sec. 16, T19S, RLW,, th West on the S ln. of sd. Secs. 16 & 17, 180 rds. 1320 th N 80 rods, th E parallel to the S ln. of sd. tract to Lost Creek, th SE'ly alg. sd. Lost Creek to the POB, the same being composed of portions of DLC #42 (James & Rebecca Estep) and DLC #43 (Adin G. & Sarah E. McDowell) The sd. parcel of land is all that portion of the foregoing desc. prop. lying W of the W bdry Ln. of the RR R/W of the SP Co., sd. W bdry ln. being a ln that is parallel to, concentric with, and at variable distances W'ly from the fol. desc. ctrln. Sur. for the relocation of the RR of the SP Co.: Com. at the cor. common to Secs. 16,17,20 & 21 T19S, RLW, WM, th N 0°17'W 1320.0 ft. th N88°37'W 965.5 ft. to a pt. on the N ln. of the above desc. prop, sd. pt. being Sta. L 1172+77.6 of sd. ctrln. Sur. and the true POB of this desc.: th S 6°20'W 46.68 ft. to Sta. L 1173+24.28 B.C.S. th S'ly on an incresing Talbot spiral to the left (a = 4/5) a dist. of 375 ft. thru an angle of 5°37'30" to Sta. L 1176+99.28 C.C. th SE'ly on a curve to the left having a rad. of 1910.08 ft. a dist. of 964.72 ft. to a pt. on the S ln. of sd. prop being Sta. L 1186+64, from which station the Sec. cor. common to Secs. 16,17,20 & 21, T19S, RLW bears N 89°34'08" E 750.66 ft. The W bdry of sd. RR R/W is a ln. that is 100 ft. W'ly, measured at Rt. angles from sd. ctrln, between the N bdry of sd. prop. and Sta L 1181+00, and is 200 ft. W'ly from sd. ctrln between Sta L 1181+00 and the S bdry of sd. prop. The land above desc, conts. m/1 47.48 ac. Cont. m/1</p>			199.72

**Legal Lots Assumed to
Exist in 1984**



**Legal Lots Actually in
Existence in 1984**

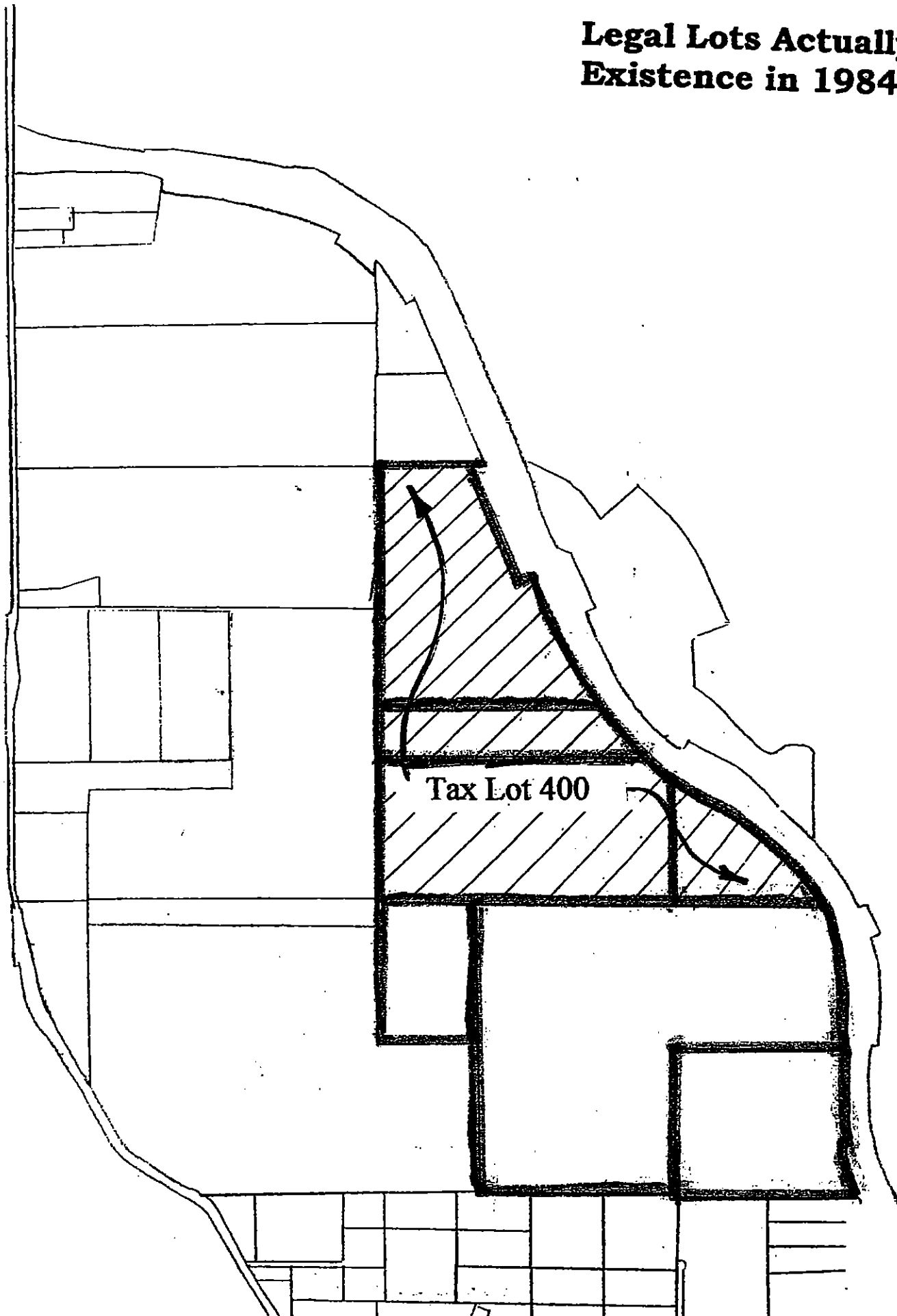


Exhibit 12

Chapter 16 Analysis

Lane Code 16.252(2) states as follows:

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."

The relevant individual criteria embodied in the above code section are addressed separately below. (Note: Consistency with the Statewide Goals is not required because there are no unacknowledged areas within Lane County.

1. General Purposes of Lane Code Chapter 16.

The following general purpose statements of LC 16.003 are arguably relevant to this application

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

Development patterns are often a good indicator of the character and physical limitations of the land. As noted above the subject property exists in the context of an area comprised of small tract rural development.

(2) Protect and diversify the economy of the County.

Diversity is encouraged by the recognition that not all lands are suited to large-scale industrial forestry and that more labor-intensive resident management is a productive use of some types of land.

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

The type of dwelling that would be allowed under F-2 zoning is, by definition, forest related and, therefore conservative of the resource land.

(11) Protect life and property in areas subject to floods, landslides and other natural disasters and hazards.

There are no flood prone areas on the property nor any identified areas of geologic instability. ***The applicant is willing to execute deed covenants requiring that any forest dwelling development would be sited in recognition of any landslide potential identified through normal soils analysis.***

2. Purposes of the F-2 Zone Classification

The purpose of the Impacted Forest Lands Zone, as stated by LC 16.211(1), is to implement the forest land policies of the Lane County Rural Comprehensive Plan. Those policies recognize that forest lands impacted by small tract development and non-forest uses should be treated differently than non-impacted forest lands in order to conserve and better manage land for forest uses. A rezoning will implement those policies by allowing placement of one or more forest-related dwellings on existing legal lots subject to the criteria and standards of the relevant development code provisions.

3. Public Interest

Consistency with the public interest can be met by compliance with the Rural Comprehensive Plan (RCP), which is the basic legislative expression of public land use policy adopted by Lane County. See ORS 197.015(5). Facts supporting the conclusion that this proposal is consistent with the RCP are set forth in Exhibit 11 to the Application.

One of the signal features of the RCP and its implementing ordinances is the recognition that forest lands can be conserved, managed and preserved by resident owner/managers. This real-world philosophy is embodied in the basic bifurcation of forest lands into the "impacted" and "non-impacted" categories, coupled with the ability to place a dwelling on the impacted lands provided certain standards are met.

This concept is embraced by other responsible resource management groups such as the Oregon Small Woodlands Association (OSWA). The OSWA is grassroots organization of more than 2000 members and works cooperatively with the State Department of Forestry the OSU Extension Service. The

organization emphasizes protection, management and enhancement of Oregon's forest resources and supports family ownership as a means of promoting sustainability, bio-diversity and overall good stewardship of forest lands.

The following excerpts from OSWA adopted policy will illustrate the link between forest management practices and on-site resident management:

"Non-industrial private forestry is a stewardship enterprise, and many forest benefits (wildlife habitat, clean water, clean air, open space) accrue to society outside the market place. Oregon's and America's dependence on wood grown on small woodlands continues to increase

"Tree growing is a long-term investment with many risks. As urban-oriented populations move out into previously rural areas there has been an increase in criticism of forestry operations. In some cases this concern has surfaced as local ordinances against forestry practices, including tree harvest, use of legal chemicals, and land use regulations. While OSWA recognizes the legitimate interests of neighbors, there is also a responsibility to assure private property owners the opportunity to benefit from their forestry investments.

"Streams, riparian zones and wetlands are very important to biodiversity in a woodland environment. Protection of soils from erosion and long-term degradation is vital for long-term, sustainable forestry. Prompt reforestation helps protect our resources. We support the application Oregon's forest Practices Act on forestry operations affecting these areas.

"Landowners are concerned that laws designed to limit their liability resulting from trespass, dumping, or public use may not protect them very well in court. Liability insurance has become very expensive. We are also concerned with illegal activities that occur on our forest lands. OSWA also supports other rural programs to help prevent illegal activities and losses by theft and vandalism.

"Many landowners do a better job managing forests when they live on their property. OSWA supports land use laws and regulations that allow for dwellings that provide opportunities to enhance good forest management practices, if such dwellings will not cause conflicts with neighboring forest owners."

Conclusion

Based on the above, the Planning Commission and Board of Commissioners can find that this application meets the Chapter 16 standards for rezoning.



WFS

LANE COUNTY RECEIPT

Copy Reprinted on 04-07-2004 at 10:08:45

04-07-2004

RECEIPT NUMBER: R04001633

PLANNING ACTION #: PA045276

TYPE: Conformity Determination Amend

SITE ADDRESS:

PARCEL: 19-01-17-00-00401

APPLICANT: COOPER AL
2258 HARRIS STREET
EUGENE OR

97405
541-484-7314

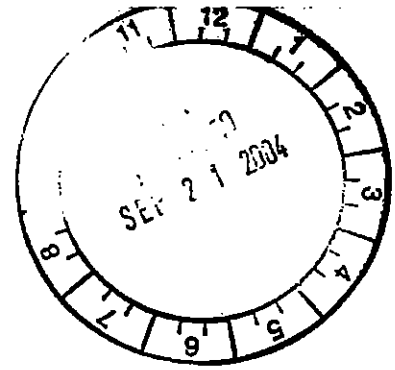
Type	Method	Description	Amount
Payment	Check	918	1,210.00

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

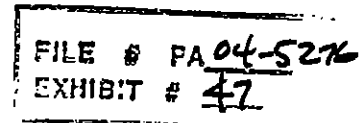
PAID BY: COOPER ALAN

Al Couper & Associates

PROFESSIONAL LAND PLANNING
2258 Harris Street
Eugene, OR 97405
541/484-7314 (office & fax)
couplan@ordata.com



Lane County Planning Commission
c/o Bill Sage
Lane County Land Management Division
Courthouse/PSB
125 East 8th Avenue
Eugene, OR 97401



September 21, 2004

RE: Applicant's Final Rebuttal (PA 04-5276, Ord. No. 1211 – Kronberger)

Dear Mr. Sage:

Please accept this as the applicant's final rebuttal in response to certain new information placed in the record on August 19th and September 2nd of this year.¹

Some of that new information is related to an issue concerning whether the Kronberger application is properly before the Planning Commission. That issue consists of an argument that the Kronberger case did not qualify under an "Errors or Omissions" criteria dealing with whether there were actual legal lots in existence in 1984 that were not displayed on the maps used by staff to designate property as either F-1 or F-2 in 1984.²

That argument has evolved into a complex, technical analysis of state and local laws dealing with the definitions of "tract" and "legal lot," and raising questions regarding the interaction of state and local laws and the interface between real estate transaction law and land use law.

Before going further, the applicant wishes to make a key point: However interesting that argument is, it is irrelevant to the fundamental question of whether the Kronberger application can be heard under "Errors or Omissions." The reason is simple: the Kronberger application qualifies fully under another "Errors or Omissions" criteria.

¹ For a list, see your e-mail to all parties of September 8, 2004.

² That particular criteria is found at RCP Goal Two, Policy 27. a. ii. It states: "Failure to zone a property Impacted Forest Land (F-2, RCP), where maps used by staff to designate the property Nonimpacted Forest Land (F-1, RCP) zone did not display actual existing legal lots adjacent to or within the subject property, and had the actual parcelization pattern been available to County staff, the Goal 4 policies would have dictated the F-2 zone."

That criterion is found at RCP Goal Two, Policy 27. a. vii. It states:

"a. Circumstances qualifying for consideration by the Board of Commissioners under the Errors or Omission Policy may include one or more of the following:

"...

"vii. Correction of an inconsistency between the text of an order or ordinance adopted by the Board of Commissioners and an Official Plan or Zoning Diagram."

Substantial evidence in the record fully supports compliance with this criterion. In summary, the evidence is as follows.

The subject property was originally zoned F-2 by Ordinance No. PA 884, effective February 29, 1984. Figure 1 on Exhibit A to this statement describes that area. It consisted of three tax lots – 400, 1400 and 1600.

A later ordinance (PA 891, enacted September 12, 1984) contains conflicting maps and text. The ordinance text states as follows:

"The following parcels are redesignated and rezoned as set forth on the interim Plan Designation and Zoning Maps attached as Exhibit "A," and further delineated in attached Exhibit "C."

Exhibit "C," to PA 891 is a typed list of specific list of tax lots rezoned by the ordinance. Under the category of F-1 to F-2, it lists tax lots 1400 and 1600, but not tax lot 400. The text, including Exhibit "C," is directly inconsistent with the eventual Official Zoning Map, which indicates F-1 zoning for all three tax lots. Figure 2 on Exhibit A to this statement shows the area to be rezoned to F-1 as "further delineated" by Exhibit "C" to Ordinance PA 891.

The map exhibit to Ordinance PA 891, upon which the Official Zoning Map was based, portrays the same area as originally zoned F-2 by Ordinance No. PA 884. That is the area shown in Figure 1 on Exhibit A to this statement. Thus, the text and map are inconsistent in a way that can only be resolved by action of the Planning Commission and Board.

In summary, it must be emphasized that there are many routes into the Errors or Omissions process. The application in this case discussed three of them, including the "failure to display actual legal lots" route.³ Recent information regarding County law has made that route problematical. It is not necessary for Planning Commission use that route for, however, for consideration of this application. It is enough to simply recognize the inconsistency between the ordinance text and map as set forth above.

³ In addition to the "inconsistency between the text of an ordinance and the Official Zoning Map" and "failure to display actual legal lots," the application discussed the "catchall" criteria of Policy 27. a. viii, which allows the Planning Commission a recommendation to the Board of Commissioners for reasons not set forth in the specific list of Policy 27. a. i.-vii.

Even though the "failure to display actual legal lots" route is unneeded in this case, the applicant has gained some insights into the complexities of the issue which may be of some use in the County's other deliberations. These are presented in Exhibit B to this statement.

Lastly, the new material placed in the record by staff dealt with the question of whether the Errors or Omission process is restricted to a "snapshot" evaluation of the situation as it existed in 1984. The applicant briefed that issue extensively in the submittal of September 7th and will not belabor the point here. Basically, we made two points: (1) common sense would not justify rezoning property in a situation where the original error or omission no longer existed, and (2) the legislative history of the current Errors or Omissions policy is replete with references to the need to look at current facts and criteria.

The new material consisted of Ordinance No. PA 921, enacted September 10, 1986. That ordinance rescinded the original Errors and Omissions policy and replaced with one that was in effect through December 31, 1989.

The usefulness of this material is primarily to track the evolution of County policy since the days of the original Errors and Omissions process. This material shows the intent that Errors and Omissions is more than just a snapshot of what happened in 1984.

That intent can be read from three sections of the 1986 enactment as follows:

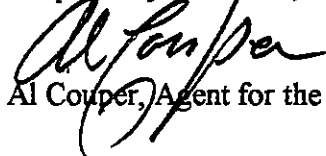
"The County is not compelled to adopt a requested change only upon the basis of it qualifying for consideration herein." (Section B.)

"Inappropriate F-1 zoning, where the criteria of RCP Forest Land Policy 19(c) indicate that F-2 zoning is more suitable;" (Section D.(2))

[Changes in designation must comply with] "the policy and regulatory structure of the RCP; and must comply with current applications of LCDC Statewide Planning Goals, OAR'S and other state law. (Section E. Emphasis added.)

Read together those sections indicate that the County would look at more than just whether the application "qualified" for consideration. That further look was to apply current policy to current facts. That is exactly how the present Policy 27 should also be used.

Respectfully submitted,



Al Couper, Agent for the applicant

cc: Darren Kronberger
Exhibits

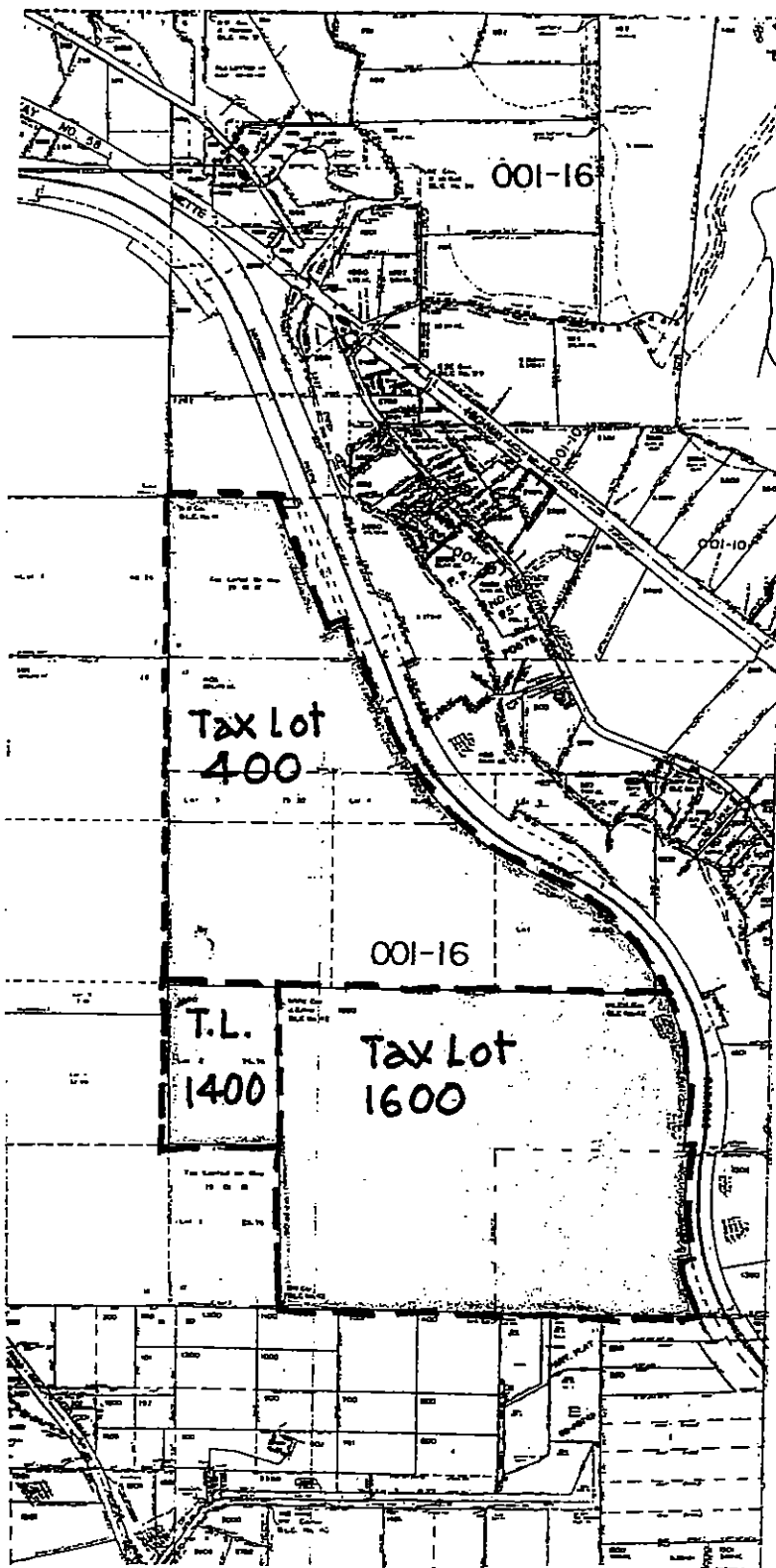


Figure 1

Area rezoned from F-2 to F-1 as shown on the zoning work map exhibit to Ordinance PA 891 (same as the area zoned F-2 by Ordinance PA 884)

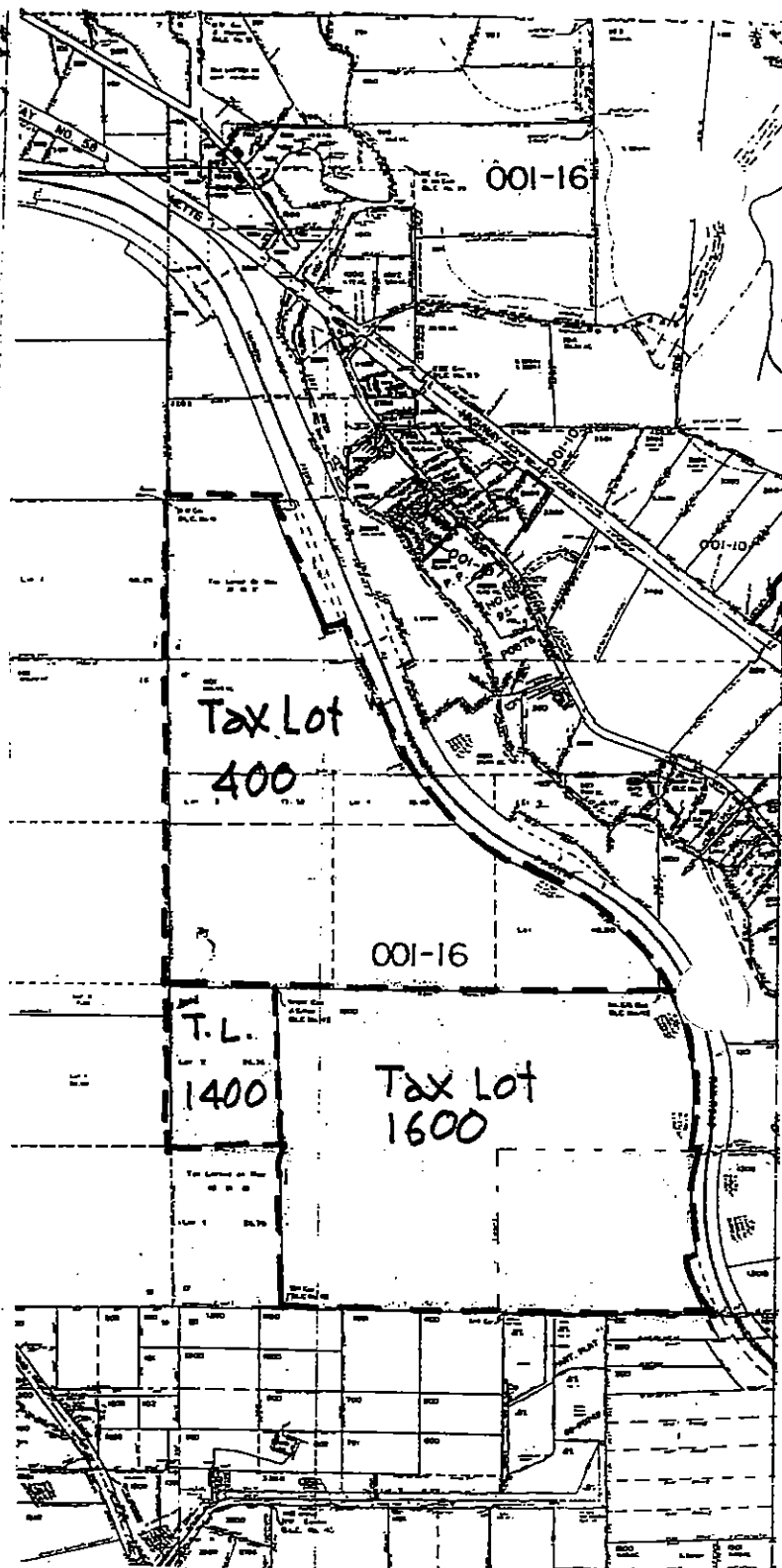


Figure 2

Area rezoned from F-2 to F-1 as described in the text and specific tax lot exhibit of Ordinance PA 891

EXHIBIT A – TEXT-MAP INCONSISTENCY

Was Lane County able to recognize lawfully created units of land in 1984?

Parties to this matter have alleged that Lane County was barred from recognizing discrete, lawfully created units of land (now known as "legal lots") if those units were contiguous and under one ownership in 1984.

This matter was briefed in the applicant's statement of September 7, 2004 and will not be duplicated here.

In summary, the point made in that statement is that several counties, including Lane were misconstruing an ambiguous state law that appeared, among other things, to require contiguous "lots" and "parcels" under the same ownership at the start of a calendar year to be reprocessed as a subdivision or partition before any of the units could be sold within a that calendar year.

House Bill 2381, amending ORS 92.010 and 92.015, was enacted in 1985 to remedy the situation by clarifying that discrete, lawfully created units of land did not magically merge simply by being held in common ownership. See ORS 92.017.

Two interpretations of that law are possible. The one argued by the applicant is that Lane County and some others had it wrong and were told, by HB 2381, to stop the practice. The restrictive practice was in effect only for a short time (1984 through 1986) and has long since been removed. The other version, advocated by some parties to this matter, is that the concept of separate legal lots under one ownership was not possible until passage of HB 2381.

The testimony of Representative Al Young before the Senate Committee on Energy and Natural Resources is instructive. Representative Young was the Chair of the House Committee on Housing and Urban Development, which heard the bill before it moved to the Senate.

At several points in his letter of June 10, 1985, Representative Young states that the proposed legislation would "clarify" the law and "recognize" lawfully created units of land. He also speaks of an intent to guarantee the "salability" of such units. Although there are no modern Oregon cases on point, this intent is consistent with the general principle of real estate transaction law that restrictive land use regulations do not constitute an encumbrance that would render title unmarketable. See, e.g. *Hall v. Risley and Heikkila*, 188 Or 69, 86, 213 P2d 818 (1950).

Representative Young also makes the point that most counties did not take the approach chosen by Lane County. In other words, local governments all over Oregon were allowing lawfully created units of land to be freely bought and sold without going through additional processing.

Which version of the legislation is correct is beyond the scope of this memo, largely because the Kronberger application qualifies for consideration on other grounds.

Two other points are worth mentioning. One is the point raised by Jim Mann, a Senior Planner with Lane County in 1984 and involved with much of the code drafting. Mr. Mann points out, in his letter of September 14, 2004, that the Lane Code definitions of "Tract," "Parcel" and "Lot" that were in effect during much of the time the F-1 and F-2 zoning maps were being prepared dealt narrowly with units created by "subdivision" or "partitioning." In other words, Lane Code was basically silent regarding legal lots created by deed or land sales contract before Lane County regulated land divisions.

The other point is that Lane County's own practice was to basically ignore the fact of contiguous ownership. A case in point is that tax lots 2100 and 2202, directly north of the Kronberger ownership, were zoned F-2 in 1984 by Ord. PA 884 and retained that designation despite being in common ownership with the property now owned by the Kronberger family.

FILE # PA 04-5276
EXHIBIT # 56

Deliberations Check List

Date: October 5, 2004
Application: PA 04-5276
Applicant: Darren Kronberger
Agent: Al Couper & Associates
Subject parcel: TRS 19-01-17. tax lot 401 (1984)
Request: Nonimpacted Forest Land F1 to Impacted Forest Land F2
Criteria: Goal Two, Policy 27. a. vii.

In the applicant's final rebuttal submitted by his agent, Al Couper, on September 21, 2004, the applicant requested that the review of the rezoning the 82.6 acres of the subject parcel, a portion of tax lot 401, from F1 Nonimpacted Forest Land to F2 Impacted Forest Land be determined on the merits of the application addressing Goal Two, Policy 27.a.vii. A copy of the final rebuttal was provided LCPC on September 28, 2004 and is also attached as Exhibit "A". The applicable policy provision is:

Goal Two, Policy 27

- a. Circumstances qualifying for consideration by the Board of Commissioners under the Errors or Omission Policy may include one or more of the following:*
- vii. Correction of an inconsistency between the text of an order or ordinance adopted by the Board of Commissioners and an Official Plan or Zoning diagram.*

The PA 04-5276 record provides the basis for the deliberations. The applicant addressed *Policy 27.a.vii.* in the original application as well as in the final rebuttal. Thus, at the applicant's request the LCPC will limit its deliberations to that criterion.

Here are the primary points for review:

1. The subject parcel, tax lot 401 of Assessors map TRS 19-01-17, was 201.43 acres in 1984.
2. The subject parcel was designated as Impacted Forest Land (F-2, RCP) on Zoning Plot #518 by the Board of County Commissioners in Ordinance No. PA 884 on February 29, 1984.
3. The subject property was redesignated Nonimpacted Forest Land (F-1, RCP) on Zoning Plot #518 in Ordinance No. PA 981 on September 12, 1984, along with two other properties to the south, tax lots 1400 and 1600.
4. The text of Ordinance No. PA 891 stated:
The following parcels are redesignated and rezoned as set forth on the interim Plan Designation and Zoning Maps attached as Exhibit "A", and further delineated in attached Exhibit "C".
5. The list of properties in Exhibit "C" of Ordinance No. PA 891, listed tax lots 1400 and 1600 and did not list tax lot 401 as a parcel to be redesignated from F2 to F1.

Copies of Exhibit "A" and Exhibit "C" were provided the LCPC in the applicant's original submittal and the information and exhibits in the final rebuttal illustrate these facts.

The LCPC needs to make a determination on whether the exclusion in the listing of the properties is sufficient to conclude that the intent of the Board of Commissioners was to retain the F2 designation on the subject parcel, tax lot 401, and expressly redesignate the other two properties, tax lots 1400 and 1600, to F1.

The often recited myth that the "diagram" or "map" is always considered to be the final determining factor in the zoning of a property is not always consistent with the intent of the decisions made by a jurisdiction. The evidence for consideration of a discrepancy between a diagram and the text (listing of affected properties) is found in the expressed intent of "vii. *Correction of an inconsistency between the text of an order or ordinance adopted by the Board of Commissioners and an Official Plan or Zoning diagram.*"

The Board of County Commissioners acknowledged that such discrepancies could and most likely would occur in the 650+ Plan and Zoning diagrams of Ordinances No. PA 844 and subsequent revisions to the diagrams including Ordinance No. PA 891, and the more clearly defined listings in the text of the ordinances.

It is a judgment call on whether the circumstances of the site specific designations were intended as one or the other. In this case, was a scrivener error made in the drawing on the zoning diagram or in the typing of the parcel list?

Decision: The evidence in the record supports a finding of fact that:

- [] The subject parcel, an 82.6-acre portion of tax lot 401 of TRS 19-01-17, was designated as Impacted Forest Land (F-2, RCP). The discrepancy between the interim zoning diagram in Exhibit "A" of Ordinance No. PA 891, with the expressed condition that the more detailed and accurate determination of the parcels to be redesignated is found in the listing of parcels in Exhibit "C" of Ordinance No. PA 891, by virtue of being "*further delineated*" in the text of the ordinance.
- [] The subject parcel, an 82.6-acre portion of tax lot 401 of TRS 19-01-17, was correctly designated as Nonimpacted Forest Land (F-1, RCP). The discrepancy between the interim zoning diagram in Exhibit "A" of Ordinance No. PA 891, and the listing of the affected parcels in Exhibit "C", is found in favor of the diagram.

* * *

PA 04-5276
JUL 15 2004
6

Date: July 15, 2004 (Date of Memo)
August 3, 2004 (Date of Public Hearing)
To: Lane County Planning Commission
From: Bill Sage, Associate Planner

Agenda Item Title: PA 04-5276 (Ordinance No. PA 1211): Request for approval of a conformity determination amendment to the Rural Comprehensive Plan (RCP) pursuant to RCP General Plan Policies - Goal Two, Policy 27 a. ii., to redesignate 82.6 acres from Nonimpacted Forest Land (F-1, RCP) to Impacted Forest Land (F-2, RCP) for four parcels within a property identified on Lane County Assessor's Map TRS 19-01-17 as tax lot 401.

Applicant: Darren Kronberger
Agent: Al Couper and Associates

I. ISSUE

The Lane County Rural Comprehensive Plan includes General Plan Policies specific to each of the Statewide Planning Goals One through Nineteen as they are implemented in Lane Code. Goal Two policies address Land Use Planning, which includes amendment processes for the Plan and Zoning designations of all properties within the rural lands of Lane County. Policy 27 Errors or Omissions of Goal Two provides for the processing of a Conformity Determination Amendment by the Planning Commission and the Board of Commissioners of a zoning designation for a specific property(ies) when a citizen, public agency or LMD staff feels the current designation is not supported by historical evidence and findings of fact and that another designation should have been applied to the properties.

The applicant, Darren Kronberger, seeks a recommendation from the Planning Commission to the Board of County Commissioners for the redesignation of 82.6 acres of tax lot 401 of TRS 19-01-17 from Nonimpacted Forest Land (F-1, RCP) to Impacted Forest Land (F-2, RCP). The 82.6 acres subject acres represent four metes and bounds descriptions of parcels that were created in 2002-2003 through property line adjustments from four prior metes and bounds descriptions for four parcels originally created during the period of 1887 to 1917.

This proposal is a Minor Amendment pursuant to Lane Code 16.400(6)(h) and involves a zone change subject to Lane Code 16.252 processes. No exception to any Goal, resource or otherwise, is necessary. This is simply a proposed change from one Forest Land designation to another based on creation history of the parcels and whether the land is better characterized by an Impacted or Nonimpacted designation.

Amendment criteria for a redesignation from Nonimpacted Forest Land (F1) to Impacted Forest Land (F2) are found in Goal Two - Policy 27 a. ii., and Goal Four - Policy 15, which are reproduced below:

Goal Two - Policy 27 a. ii. Failure to zone a property Impacted Forest Land (F-2, RCP), where maps used by staff to designate the property Nonimpacted Forest Land (F-1, RCP) zone did not display actual existing legal lots adjacent to or within the subject property, and had the actual parcelization pattern been available to County staff, the Goal 4 policies would have dictated the F-2 zone.

Goal Four – Policy 15. *Lands designated with the Rural Comprehensive Plan as forest land shall be zoned Non-Impacted Forest Lands (F-1, RCP) or Impacted Forest Lands (F-2, RCP). A decision to apply one of the above zones or both of the above zones in a split zone fashion shall be based upon:*

- a. A conclusion that characteristics of the land correspond more closely to the characteristics of the proposed zoning than the characteristics of the other forest zone. The zoning characteristics referred to are specified below in subsections b and c. This conclusion shall be supported by a statement of reasons explaining why the facts support the conclusion.*
- b. Non-impacted Forest Land Zone (F-1, RCP) Characteristics:*
 - (1) Predominantly ownerships not developed by residences or nonforest uses.*
 - (2) Predominantly contiguous ownerships of 80 acres or larger in size.*
 - (3) Predominantly ownerships contiguous to other lands utilized for commercial forest or commercial farm uses.*
 - (4) Accessed by arterial roads or roads intended primarily for forest management. Primarily under commercial forest management.*
- c. Impacted Forest Land Zone (F-2, RCP) Characteristics:*
 - (1) Predominantly ownerships developed by residences or nonforest uses.*
 - (2) Predominantly ownerships 80 acres or less in size.*
 - (3) Ownerships general contiguous to tracts containing 80 acres and residences and/or adjacent to developed or committed areas for which an exception has been taken in the Rural Comprehensive Plan.*
 - (4) Provided with a level of public facilities and services, and roads, intended primarily for direct services to rural residences.*

II. ANALYSIS

Two questions form the basis for making a decision on the proposal:

1. Does the 1887-1917 parcelization pattern consist of lawfully created parcels (legal lots)?
2. Do the circumstances of this particular proposal predominantly (more closely) comply with Goal 4 –Policy 15.b., for retaining the Nonimpacted Forest Land (F-1) zoning designation; or Policy 15.c., for granting the request for the Impacted Forest Land (F-2) zoning designation?

The first of the two questions will be resolved based on standards and only requires objective information to determine the answer. Primarily, were there property descriptions (metes and bounds) lawfully created and recorded within the larger tax lot 401 of TRS 19-01-17 at the time zoning designations were applied in 1984? If so, were these “legal lots” properly reconfigured which resulted in the four descriptions that are now identified as tax lots 4100 and 4200 of TRS 19-01-08 and tax lots 401 and 1800 of TRS 19-01-08.

The second question is more subjective and requires a determination by the Planning Commission members as to whether or not the characteristics of the subject properties and the surrounding development support a determination that the four properties merit an Impacted Forest (F-2) or Nonimpacted Forest (F-1) designation.

III. DISCUSSION

1. Does the 1887-1917 parcelization pattern consist of lawfully created parcels (legal lots)?

LMD staff processed six Legal Lot Verifications in 2000 to identify the discrete parcels within tax lot 401 of TRS 19-01-17, circa 1887-1917. The verifications are included in the applicant’s

submittal, Attachment "D" Land Use Application PA 04-5276, as "Exhibit B" to "Exhibit 3". Staff has compiled a summary of the verifications below and illustrated the metes and bounds descriptions on Attachment "A" - Assessors Maps TRS 19-01-08 and 19-01-17 with 1887-1917 parcels. Acreages are staff's estimates of the land in each description.

Parcel	Application No.	Dated of Creation and Recording	Acreage	Color
A-E.	PA 00-5673/5674	April 6, 1917 -- Book 5, Page 222	200+ acres	All colored areas
B.	PA 00-6493	February 8, 1896 -- Book 41, Page 3	69+ acres	Purple/stripe
C.	PA 00-6492	November 15, 1902 -- Book 59, Page 114	27+ acres	Yellow
D.	PA 00-6494	February 4, 1903 -- Book 56, Page 221	78+ acres	Pink
E.	PA 00-6492	December 5, 1887 -- Book T, Page 350	26+ acres	Blue

Each of the parcels (A-E) identified above are superimposed on Attachment "A" over the current tax lots identified by Assessment & Taxation on the two composite A&T Maps: 19-01-08 and 19-01-17.

The subject parcels or "current tax lots", as reconfigured by a series of property line adjustments in 2002-2003, depict the applicant's proposed four legal lots (A, B, C, and D) which consist of the 82.6 acres the applicant proposes to rezone to Impacted Forest Land (F-2). The reconfigured tax lots appear on the Assessor's Maps TRS 19-01-08 and TRS 19-01-17. Refer to Attachment "B" - Assessors Maps TRS 19-01-08 and 19-01-17 with 2003 parcels. The reconfiguration resulted in the following parcels and tax lots:

Old Parcel	New TRS Map - Tax lot -	Acreage	Color
B	19-01-08, tax lot 4100	15.69 acres	Purple
C.	19-01-08, tax lot 4200	23.19 acres	Yellow
D.	19-01-17, tax lot 1800	26.01 acres	Pink
E.	19-01-17, tax lot 401	18.69 acres	Blue
A.	19-01-17, tax lot 1400	117.61 acres	White (consolidated with the northern boundary of tax lot 1400 of TRS 19-01-17 to the southwest. No separate legal lot status).

The applicant's Property Line Adjustment Deed and diagrams documenting an eight-step process to accomplish the above boundary line adjustments is enclosed, as "Exhibit C" to "Exhibit 3" in Attachment "D": Land Use Application PA 04-5276. These documents were recorded in Lane County Deeds and Records on January 6, 2003 and the metes and bounds descriptions of the reconfigured parcels were adjusted on the Assessment & Taxation TRS 19-01-08 and 19-01-17 maps in 2003 in conformance with the "Final Property Configurations" as depicted on "Exhibit HH" of Exhibit "3" to Exhibit "C" of the applicant's submittal, Attachment "D".

Conclusion.

The applicant has provided documentation and LMD staff have determined that in 1984 there were four lawfully created parcels within the metes and bounds of tax lot 401 of TRS 19-01-17, which the Assessment and Taxation Maps are the time *did not display actual existing legal lots adjacent to or within the subject property, and had the actual parcelization pattern been available to County staff, the Goal 4 policies would have dictated the F-2 zone.*

2. Do the circumstances of this particular proposal predominantly (more closely) comply with Goal 4 -Policy 15.b., for retaining the Nonimpacted Forest Land (F-1) zoning designation;

or Policy 15.c., for granting the request for the Impacted Forest Land (F-2) zoning designation?

Findings of Fact.

1. The subject properties as depicted on Assessment and Taxation Maps circa 1984 were a portion of a property identified as tax lot 401, of Assessor's Map TRS 19-01-17 and were located to the west of the Southern Pacific Railroad right-of-way and the developed and committed exception area #517-2.
2. The approval of this application would not provide any opportunity for division of any of the four subject parcels since the minimum parcel size in the proposed Impacted Forest Land Zone is 80 acres.
3. The approval of this application could provide an opportunity for development of each of the four subject properties with one dwelling per parcel subject to compliance with Lane Code 16.211(5) and (8) standards and criteria. Development of any of the four parcels would require prior conditional approval by the Planning Director of a Land Use Application.
4. Zoning on the surrounding lands is:
 - adjacent lands to the north in Section 8 (Plot #517) are designated Impacted Forest Land Use (F2);
 - adjacent lands to the northwest in Section 7 (Plot #506) are designated Exclusive Farm Use (E40);
 - adjacent lands to the west and southwest in Section 18 (Plot #507) are designated Impacted Forest Land (F-2);
 - adjacent lands to the south and southeast in Section 17 (Plot # 518) are designated Nonimpacted Forest Land (F-1);
 - adjacent lands to the east in Section 17 (Plot # 518) are designated Impacted Forest Land (F-2), Heavy Industrial (M3), and Rural Residential (RR5 - RR10).

A composite of four Zoning Plot Maps with the zoning districts color-coded was included as "Exhibit 1" in the applicant's Land Use Application PA 04-5276. The composite is reproduced as Attachment "C" - Composite of Lane County Official Zoning Plot Maps 507, 517, 518, and 529 to this staff report.

5. Factors in *Goal Four – Policy 15. c. Impacted Forest Land Zone (F-2, RCP) Characteristics*, to be considered in determining whether or not the subject properties should be rezoned to F2 are:

(1) Predominantly ownerships developed by residences or nonforest uses.

None of the four subject parcels are developed with a residence. Surrounding properties have the following development history:

Direction	TRS	Tax Lot	Address
North	19-01-08	2202	83401 Rattlesnake Road
Northwest	19-01-07	2500	83369 Rattlesnake Road
West	19-01-07	2600	83261 Rattlesnake Road

Northeast	19-01-08	Within the developed & committed exception area #517-2 to the northeast and east, there are eleven residences between the Southern Pacific Railroad right-of-way and Dexter Road. The Lane County "Dexter Shop" is also adjacent to Dexter Road to the east.
Southeast	19-01-17	Within the developed & committed exception area #517-2 to the southeast and east, there are eighteen residences between the Southern Pacific Railroad right-of-way and Dexter Road.
South	19-01-17	Tax lot 1400 (Parcel "E") is vacant.

The subject parcels were harvested of timber between 1993 and 2000 and were reforested at a rate of 200 trees per acre. The harvest was an option for the parcels under the Forest Practices Act and the reforestation was a requirement for either F-2 or F-1 designated land under the same Act.

(2) Predominantly ownerships 80 acres or less in size.

The acreage for each of the four parcels created during the period of 1887 – 1902, as shown on Attachment "A" and summarized in III. DISCUSSION 1., above, was:

Parcel B. (69+ acres), Parcel C (27+ acres), Parcel D (78+ acres), and Parcel E (26+ acres).

All of the original parcels were less than 80 acres which today is the minimum division standard in both the F-1 and F-2 Forest Land Zones.

(3) Ownerships generally contiguous to tracts containing 80 acres and residences and/or adjacent to developed or committed areas for which an exception has been taken in the Rural Comprehensive Plan.

To the north are two F-2 parcels (2100 and 2202 of TRS 19-01-08), 9.49 and 15.48 acres in size respectively, and the nearest one (tax lot 2202), is developed with a residence. The subject parcels are also located south of the unincorporated rural community of Trent; west of the developed & committed exception Area #517-2, and northwest of the unincorporated rural community of Dexter. Exception Area #517-2 is closest and consists of 52 properties with 65 residences including several industrial mill sites, a commercial business, and public facilities. An exception to Goals 3 and 4 was adopted in 1989 for Area #517-2 that included 224.6 acres with an average acreage of 4.3 acres. It is separated from the subject parcels by the 200-foot wide right-of-way of the Southern Pacific Railroad.

Lands to the north and east consist of properties in the F-2 and Rural Industrial RI (M2 Light Industrial and M3 Heavy Industrial on the Plot Maps) zones that are each less than forty acres in size.

Two properties (tax lots 2500 and 2600 of TRS 19-01-07) to the northwest and west are zoned E40 and are each approximately 100 acres in size.

One property to the west (tax lot 101 of TRS 19-01-18) is vacant, zoned F-2, and 124.2 acres.

Approximately 118 acres of the original tax lot 401 was consolidated with tax lot 1400 of TRS 19-01-17 to the south by property line adjustment deed between Northwest Lands Inc (owner of tax lot 401 of TRS 19-01-17)) and Merle S. Brown (owner of tax lot 1400 of TRS

19-01-17) on December 30, 2002 and recorded on January 6, 2003. Refer to Parcel "A" on Attachment "B" which is zoned F-1. With the addition of tax lot 401 to tax lot 1400, Parcel "A" is now 139.23 acres.

(4) Provided with a level of public facilities and services, and roads, intended primarily for direct services to rural residences.

Rural services are currently provided to the area by:

- Emerald People's Utility District – electrical,
- Pleasant Hill School District #1 – elementary and secondary education,
- Dexter Rural Fire Protection District – fire and ambulance service,
- Lane County Sheriff – police protection.

Public road access to the existing rural residences to the north, west, and south is provided by Rattlesnake Road, Lobo Lane, and Kimball Road.

Conclusion

The Planning Commission is faced with a balance of evidence that supports either an amendment to rezone the property to F-2, Impacted forest Land, or the retaining of the F-1 Nonimpacted Forest Land designation. It is a situation where the findings addressing the subjectivity of the criteria fairly equally supports either decision.

The applicant has presented a lengthy analysis of the Rural Comprehensive Plan Policies - Goal 4, Policies 1, 2 and 15 in "Exhibit 11 – Goal 4 Analysis." of Attachment "D" - Land Use Application PA 04-5276. The Planning Commission will need to focus on the applicant's interpretations and arguments in the "Goal 4 Analysis." as the basis for making a decision on which designation, F-1 or F-2, best characterizes the subject parcels.

VI. ATTACHMENTS

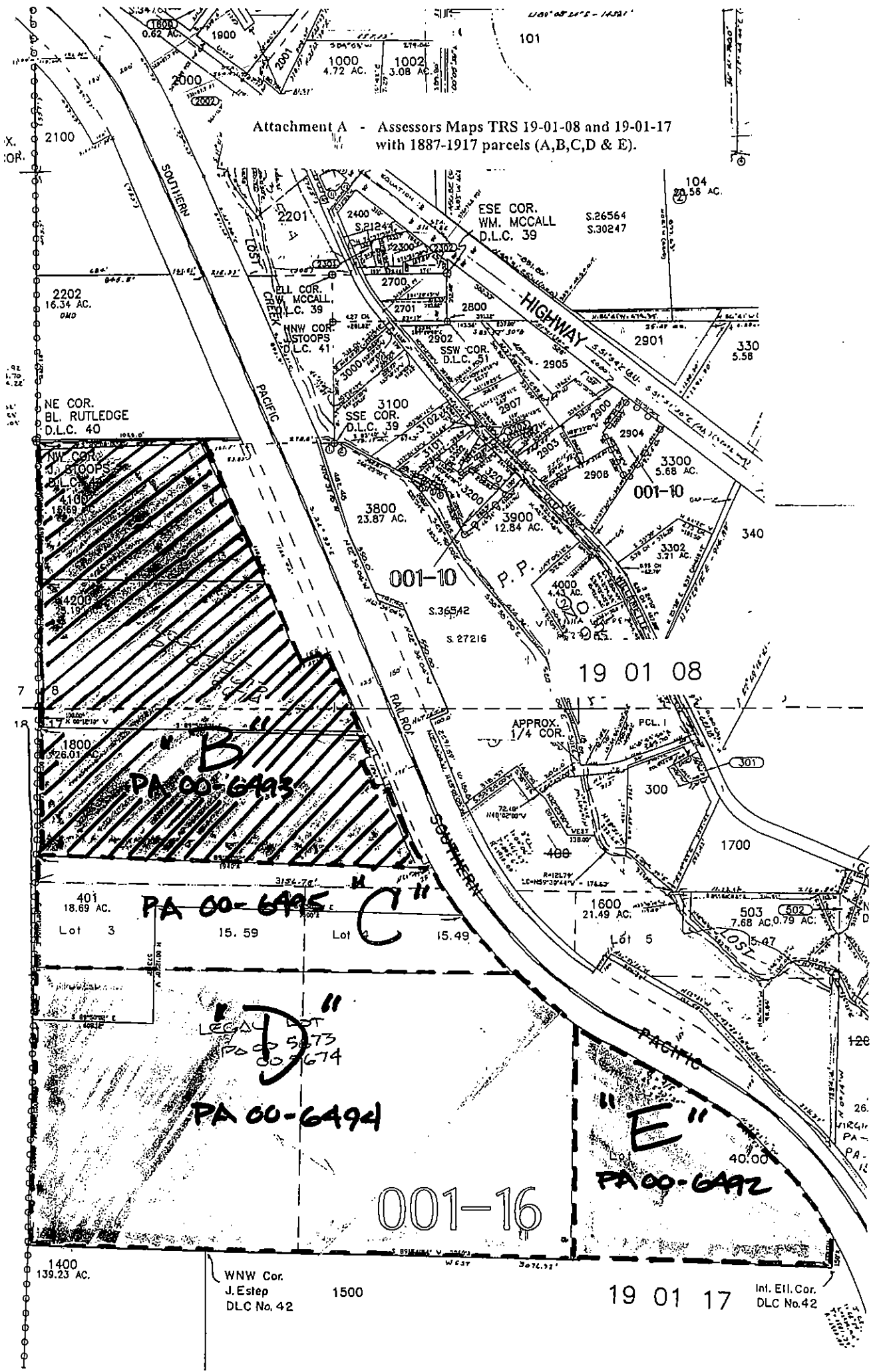
Attachment A - Assessors Maps TRS 19-01-08 and 19-01-17 with 1887-1917 parcels.

Attachment B - Assessors Maps TRS 19-01-08 and 19-01-17 with 2003 parcels.

Attachment C - Composite of Lane County Official Zoning Plot Maps 507, 517, 518, and 529.

Attachment D - Land Use Application PA 04-5276.

Attachment A - Assessors Maps TRS 19-01-08 and 19-01-17
with 1887-1917 parcels (A,B,C,D & E).



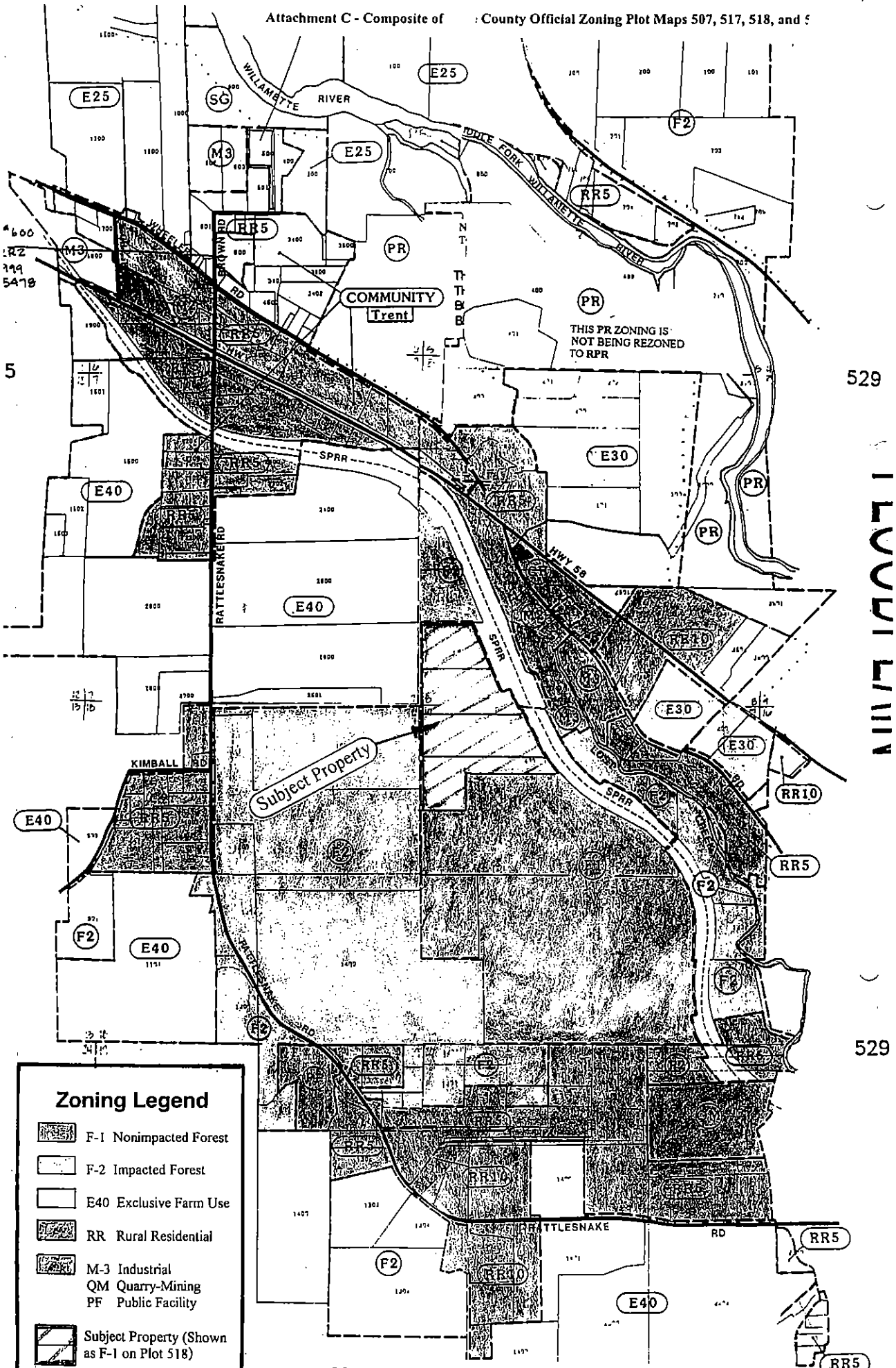
Attachment B - Assessors Maps TRS 19-01-08 and 19-01-17
with 2003 parcels (A,B,C,D & E).

Map details include:
 - Parcel numbers: 1800, 2000, 2100, 2201, 2400, 2600, 2700, 2800, 2901, 2902, 2903, 2904, 2905, 2906, 300, 310, 320, 330, 340, 3800, 3900, 4000, 4200, 401, 503, 502.
 - Acreages: 0.62 AC, 16.34 AC, 20.56 AC, 21.56 AC, 23.19 AC, 23.87 AC, 26.01 AC, 18.69 AC, 21.49 AC, 7.68 AC, 0.79 AC, 139.23 AC, 40.00.
 - Streets: SOUTHERN, PACIFIC, HIGHWAY, P.P., 105TH, 106TH, 107TH, 108TH, 109TH, 110TH, 111TH, 112TH, 113TH, 114TH, 115TH, 116TH, 117TH, 118TH, 119TH, 120TH, 121ST, 122ND, 123RD, 124TH, 125TH, 126TH, 127TH, 128TH, 129TH, 130TH, 131ST, 132ND, 133RD, 134TH, 135TH, 136TH, 137TH, 138TH, 139TH, 140TH, 141ST, 142ND, 143RD, 144TH, 145TH, 146TH, 147TH, 148TH, 149TH, 150TH, 151ST, 152ND, 153RD, 154TH, 155TH, 156TH, 157TH, 158TH, 159TH, 160TH, 161ST, 162ND, 163RD, 164TH, 165TH, 166TH, 167TH, 168TH, 169TH, 170TH, 171ST, 172ND, 173RD, 174TH, 175TH, 176TH, 177TH, 178TH, 179TH, 180TH, 181ST, 182ND, 183RD, 184TH, 185TH, 186TH, 187TH, 188TH, 189TH, 190TH, 191ST, 192ND, 193RD, 194TH, 195TH, 196TH, 197TH, 198TH, 199TH, 200TH, 201ST, 202ND, 203RD, 204TH, 205TH, 206TH, 207TH, 208TH, 209TH, 210TH, 211ST, 212ND, 213RD, 214TH, 215TH, 216TH, 217TH, 218TH, 219TH, 220TH, 221ST, 222ND, 223RD, 224TH, 225TH, 226TH, 227TH, 228TH, 229TH, 230TH, 231ST, 232ND, 233RD, 234TH, 235TH, 236TH, 237TH, 238TH, 239TH, 240TH, 241ST, 242ND, 243RD, 244TH, 245TH, 246TH, 247TH, 248TH, 249TH, 250TH, 251ST, 252ND, 253RD, 254TH, 255TH, 256TH, 257TH, 258TH, 259TH, 260TH, 261ST, 262ND, 263RD, 264TH, 265TH, 266TH, 267TH, 268TH, 269TH, 270TH, 271ST, 272ND, 273RD, 274TH, 275TH, 276TH, 277TH, 278TH, 279TH, 280TH, 281ST, 282ND, 283RD, 284TH, 285TH, 286TH, 287TH, 288TH, 289TH, 290TH, 291ST, 292ND, 293RD, 294TH, 295TH, 296TH, 297TH, 298TH, 299TH, 300TH, 301ST, 302ND, 303RD, 304TH, 305TH, 306TH, 307TH, 308TH, 309TH, 310TH, 311ST, 312ND, 313RD, 314TH, 315TH, 316TH, 317TH, 318TH, 319TH, 320TH, 321ST, 322ND, 323RD, 324TH, 325TH, 326TH, 327TH, 328TH, 329TH, 330TH, 331ST, 332ND, 333RD, 334TH, 335TH, 336TH, 337TH, 338TH, 339TH, 340TH, 341ST, 342ND, 343RD, 344TH, 345TH, 346TH, 347TH, 348TH, 349TH, 350TH, 351ST, 352ND, 353RD, 354TH, 355TH, 356TH, 357TH, 358TH, 359TH, 360TH, 361ST, 362ND, 363RD, 364TH, 365TH, 366TH, 367TH, 368TH, 369TH, 370TH, 371ST, 372ND, 373RD, 374TH, 375TH, 376TH, 377TH, 378TH, 379TH, 380TH, 381ST, 382ND, 383RD, 384TH, 385TH, 386TH, 387TH, 388TH, 389TH, 390TH, 391ST, 392ND, 393RD, 394TH, 395TH, 396TH, 397TH, 398TH, 399TH, 400TH, 401ST, 402ND, 403RD, 404TH, 405TH, 406TH, 407TH, 408TH, 409TH, 410TH, 411ST, 412ND, 413RD, 414TH, 415TH, 416TH, 417TH, 418TH, 419TH, 420TH, 421ST, 422ND, 423RD, 424TH, 425TH, 426TH, 427TH, 428TH, 429TH, 430TH, 431ST, 432ND, 433RD, 434TH, 435TH, 436TH, 437TH, 438TH, 439TH, 440TH, 441ST, 442ND, 443RD, 444TH, 445TH, 446TH, 447TH, 448TH, 449TH, 450TH, 451ST, 452ND, 453RD, 454TH, 455TH, 456TH, 457TH, 458TH, 459TH, 460TH, 461ST, 462ND, 463RD, 464TH, 465TH, 466TH, 467TH, 468TH, 469TH, 470TH, 471ST, 472ND, 473RD, 474TH, 475TH, 476TH, 477TH, 478TH, 479TH, 480TH, 481ST, 482ND, 483RD, 484TH, 485TH, 486TH, 487TH, 488TH, 489TH, 490TH, 491ST, 492ND, 493RD, 494TH, 495TH, 496TH, 497TH, 498TH, 499TH, 500TH, 501ST, 502ND, 503RD, 504TH, 505TH, 506TH, 507TH, 508TH, 509TH, 510TH, 511ST, 512ND, 513RD, 514TH, 515TH, 516TH, 517TH, 518TH, 519TH, 520TH, 521ST, 522ND, 523RD, 524TH, 525TH, 526TH, 527TH, 528TH, 529TH, 530TH, 531ST, 532ND, 533RD, 534TH, 535TH, 536TH, 537TH, 538TH, 539TH, 540TH, 541ST, 542ND, 543RD, 544TH, 545TH, 546TH, 547TH, 548TH, 549TH, 550TH, 551ST, 552ND, 553RD, 554TH, 555TH, 556TH, 557TH, 558TH, 559TH, 560TH, 561ST, 562ND, 563RD, 564TH, 565TH, 566TH, 567TH, 568TH, 569TH, 570TH, 571ST, 572ND, 573RD, 574TH, 575TH, 576TH, 577TH, 578TH, 579TH, 580TH, 581ST, 582ND, 583RD, 584TH, 585TH, 586TH, 587TH, 588TH, 589TH, 590TH, 591ST, 592ND, 593RD, 594TH, 595TH, 596TH, 597TH, 598TH, 599TH, 600TH, 601ST, 602ND, 603RD, 604TH, 605TH, 606TH, 607TH, 608TH, 609TH, 610TH, 611ST, 612ND, 613RD, 614TH, 615TH, 616TH, 617TH, 618TH, 619TH, 620TH, 621ST, 622ND, 623RD, 624TH, 625TH, 626TH, 627TH, 628TH, 629TH, 630TH, 631ST, 632ND, 633RD, 634TH, 635TH, 636TH, 637TH, 638TH, 639TH, 640TH, 641ST, 642ND, 643RD, 644TH, 645TH, 646TH, 647TH, 648TH, 649TH, 650TH, 651ST, 652ND, 653RD, 654TH, 655TH, 656TH, 657TH, 658TH, 659TH, 660TH, 661ST, 662ND, 663RD, 664TH, 665TH, 666TH, 667TH, 668TH, 669TH, 670TH, 671ST, 672ND, 673RD, 674TH, 675TH, 676TH, 677TH, 678TH, 679TH, 680TH, 681ST, 682ND, 683RD, 684TH, 685TH, 686TH, 687TH, 688TH, 689TH, 690TH, 691ST, 692ND, 693RD, 694TH, 695TH, 696TH, 697TH, 698TH, 699TH, 700TH, 701ST, 702ND, 703RD, 704TH, 705TH, 706TH, 70

19 01 08

19 01 17

Int. Ell. Cor.
DLC No.42



Note: This map is a composite of Lane County Official Zoning Plot Maps 507, 517, 518 and 529

F. Staff Report to LCPC (PA 04-5252, PA 04-5276) RE: Goal Two, Policy 27a.ii; October 1, 2004.

DATE: October 1, 2004
TO: Lane County Planning Commission
FROM: Bill Sage
RE: Guidelines for evaluation of RCP Goal Two, Policy 27.a.ii.
FILES: PA 04-5252 (Everett/Mann)
PA 04-5276 (Kronberger/Couper)

This memorandum is intended as guidelines for the Lane County Planning Commission to review and evaluate the policy issues surrounding RCP General Plan Policies, Goal Two, Policy 27.a.ii.

The LCPC needs to adopt a recommendation to the Board of County Commissioners concerning the status of contiguously owned legal lots during the 1984 period of adoption of zoning designations throughout Lane County rural areas.

Criteria

On October 5th, the LCPC will deliberate during the work session on two applications, PA 04-5252 (Everett/Mann) and PA 04-5276 (Kronberger/Couper). Both applications were initially submitted under RCP Goal 2, Policy 27. a. ii:

"(ii). Failure to zone a property Impacted Forest Land (F-2, RCP), where maps used by staff to designate the property Nonimpacted Forest Land (F-1, RCP) zone did not display actual existing legal lots adjacent to or within the subject property, and had the actual parcelization pattern been available to County staff, the Goal 4 policies would have dictated the F-2 zone."

The two applications were heard by the LCPC on August 3rd, and the written record is closed for both applications.

Under Policy 27. a. ii., the LCPC has two decisions to make to recommend approval of an application and one decision to recommend denial.

To find in favor of the request, the application must qualify under (ii) "... did not display actual existing legal lots adjacent to or within the subject property ...", and then prevail under Goal 4, Policy 15. a., which requires:

- "a. A conclusion that characteristics of the land correspond more closely to the characteristics of the proposed zoning than the characteristics of the other forest zone. The zoning characteristics referred to are specified below in subsections b and c. This conclusion shall be supported by a statement of reasons explaining why the facts support the conclusion."*
- b. Non-impacted Forest Land Zone (F-1, RCP) Characteristics:*
 - (1) Predominantly ownerships not developed by residences or nonforest uses.*
 - (2) Predominantly contiguous ownerships of 80 acres or larger in size.*
 - (3) Predominantly ownerships contiguous to other lands utilized for commercial forest or commercial farm uses.*
 - (4) Accessed by arterial roads or roads intended primarily for forest management. Primarily under commercial forest management.*
- c. Impacted Forest Land Zone (F-2, RCP) Characteristics:*
 - (1) Predominantly ownerships developed by residences or nonforest uses.*
 - (2) Predominantly ownerships 80 acres or less in size.*

- (3) *Ownerships generally contiguous to tracts containing less than 80 acres and residences and/or adjacent to developed or committed areas for which an exception has been taken in the Rural Comprehensive Plan.*
- (4) *Provided with a level of public facilities and services, and roads, intended primarily for direct services to rural residences.*

To find against the request, the LCPC could find that the application did not qualify under *Goal 2, Policy 27. a. ii.* for consideration of a zone change; or the application did qualified under *Goal 2, Policy 27. a. ii.* for consideration, but did not qualify under *Goal 4, Policy 15. a-c.* for the requested change.

Policy 15. b. and c. require the LCPC to conclude that the subject properties are predominantly defined by the characteristics of either F1 Nonimpacted Forest Land or F2 Impacted Forest Land. As a matter of clarification, LMD staff wrote an interpretation of what was meant by the term "Predominantly" on May 2, 1985. Based on case law (*5 Or LUBA 206: Still vs. Marion County*), where a test of predominant is required to make a decision, 51% of the criterion or standard being evaluated qualifies.

Both applications (PA 04-5252 and PA 04-5276) have presented findings of fact and documentation addressing the characteristics of the ownerships (as referenced in *Policy 15*) or legal lots (as referenced in *Policy 27*) in 1984. No application can be decided pursuant to *Policy 27.a.ii.*, until a common policy issue is discussed and a recommendation forwarded to the Board of Commissioners concurrently with the individual decision for the application. These two applications have a common factor. The subject parcels for both PA 04-5252 and PA 04-5276 were a portion of larger contiguous ownerships when the zoning designations were adopted by Lane County in 1984,

In Mr. Couper's final rebuttal for PA 04-5276 dated September 21, 2004, he has requested that his applicant's request for zone change be subject to *Policy 27.a.vii.*, "*Correction of an inconsistency between the text of an order or ordinance adopted by the Board of Commissioners and an Official Plan or Zoning Diagram.*" Findings of fact and conclusions were presented in the original application addressing *Policy 27.a.vii.* as well as *Policy 27.a.ii.* LCPC will review those findings and that provision in deliberations on the 5th of October.

Background

Opposition to one of the applications, PA 04-5276, was heard during the August 3, 2004, public hearing based on the opinion that in 1984, Lane Code 13.010 definitions of "tract" disqualified the four legal lots for consideration as F2 land within the metes and boundary of tax lot 401 of TRS 19-01-17 (circa 1984). The cited definition was: "*Tract* was defined as 'A lot, parcel or unsubdivided or unpartitioned land under the same ownership. Contiguous units of unsubdivided or partitioned land under the same ownership shall be considered a single tract.'" (The written testimony from Thom Lanfear dated August 12, 2004, was provided to LCPC as Exhibit "A" in my memorandum dated August 19, 2004). Mr. Lanfear's rationale for disqualification of the four legal lots was identified in his oral testimony on August 3rd as Lane Code Chapter 13. A copy of LD Land Division provided by Mr. Lanfear to me and was received as part of the record and, in turn, I provided it to LCPC and the parties-with-standing as "Exhibit H - LD Land Divisions, Lane County, Oregon, October 1978, "Definitions" Chapter 13.010-13.025", in my correspondence dated August 19th, 2004. Notations on the pages of the "Exhibit H" document indicate it was adopted as Ordinance No. 5-75 on March 26, 1975.

Mr. Lanfear's opinion was that the four legal lots documented by LMD staff in 2000 per legal lot verifications PA 00-6492, PA 00-6493, PA 00-6494, and PA 00-6495 were not "legal lots" in 1984 because they were in one ownership and considered to be a "tract", and thus would have been for the purposes of land-use planning, in this case determining a zoning designation, a "single legal lot".

The referenced "LD Land Divisions, Lane County, Oregon, October 1978" above, does not include a definition for "tract" however there are numerous uses of the phrase "*an area or tract of land*" in the 1975-1978 era document. The phrase closest to the quoted definition is for "*Partition Land*" and reads: "*Partition Land. Divide an area or tract of land into two or three parcels within a calendar year when such area or tract of land exists as a unit or contiguous units of land under single ownership at the beginning of such year . . .*" No definition for "legal lot" is found in "LD Land Divisions, Lane County, Oregon, October 1978".

LCPC must look elsewhere for a determination of what constituted a "legal lot" in February through September of 1984, when the two planning commissions and the Board of Commissioners were adopting zoning designations for rural properties. This requires a trek through the hectic 1983-1984 year when Lane County was adopting multiple ordinances concurrently or shortly after adopting zoning designations on a countywide basis.

1983

Let us begin with the submittal from Jim Mann (agent for PA 04-5252) dated on September 14, 2004, which I forwarded to the LCPC as Exhibit "A" in my memorandum dated September 28, 2004. Mr. Mann states in his written testimony that the applicable regulations in place during the time period from September 14, 1983 through February 1984, were Lane Code Chapter 10 and Lane Code Chapter 13 adopted by the Board of County Commissioners in Ordinance No. 16-83 on September 14, 1983. Ordinance No. 16-83 amended sections of Lane Code 10 (Land Use), Lane Code 13 (Land Divisions), and Lane Code 14 (Application Review and Appeal Procedures). At the time of adoption, which was before adoption of Lane Code 16 for rural areas under the RCP in September 1984, Lane Code 10 applied in the rural areas of Lane County.

Lane Code 13.010 (per Ordinance No. 16-83) defined five terms pertinent to this discussion.

Lot. *A unit of land that is created by a subdivision of land.*

Parcel. *A unit of land that is created by a partitioning of land.*

Partition Land. *Divide an area or tract of land into two or three parcels within a calendar year when such area or tract of land exists as a unit or contiguous unit of land under single ownership at the beginning of such year.*

Subdivide Land. *To divide an area or tract of land into four or more lots within a calendar year when such area or tract of land exists as a unit or contiguous units of land under a single ownership at the beginning of such year.*

Tract. *A lot, parcel or unsubdivided or unpartitioned land under the same ownership. Contiguous units of unsubdivided or partitioned land under the same ownership shall be considered a single tract.*

The text of the ordinance defined "Tract" as "*Contiguous units of unsubdivided or partitioned land under the same ownership shall be considered a single tract*". The definition and the other four definitions above addressed division of land by either partitioning or subdividing. The relationship between "tract" and "lot" or "parcel" accomplished two purposes:

- (1) Limited partitioning of contiguously owned area or "tract" land within a calendar year to a maximum of three, and
- (2) Required a subdivision plat if four or more were proposed for creation within a calendar year.

The definitions did not address the lawfully created status of existing lots or parcels. It did not mysteriously undo the legally created status of properties on the first of each calendar year that had been created by land sales contract or deed prior to March 26, 1975. It did not invalidate the lawfully created status of existing "lots" or "parcels" of platted and recorded partitions and subdivision. It simply stated that for the purposes of dividing land within a calendar year, the owner of contiguous lands that were not within recorded subdivisions had to consider the whole of the contiguous ownership in determining the number of new metes and bounds descriptions they could plat under a new partition. This was done at the time to curtail the "serial partitioning" of land.

As an example, the practice of "serial" partitions could be illustrated by citizen "Joe Land" filing a partition to create two new 20-acre parcels out of his 160 acres ownership on February 1, 1981 and recording of the plat on May 1, 1981. With the recording of the plat, "Joe Land" then owned three contiguous parcels; two parcels (Parcel 1 and Parcel 2) at 20 acres and one parcel (Parcel 3) at 120 acres. On June 1, 1981, one month later, "Joe Land" would file a second partition plat to create two additional 20-acre parcels out of the 120 acres of Parcel 3 of the previous May 1981 partition. On August 1, 1981, this "second" partition plat is recorded and the end result of the two actions within one calendar year was the creation of four 20-acre parcels and one 80-acre parcel through a series of two partitions for a total of five parcels and thus circumventing the requirements for a subdivision and creating a de facto subdivision. The definitions in Ordinance No. 16-83 simply limited "Joe Land" to one partition with a maximum of three parcels on all contiguously owned land per calendar year or the option of filing a more extensive subdivision plat. It ended "serial partitioning" by requiring that "Joe Land" account for all his contiguous ownerships each year to determine whether he was complying with the subdivision and partition limitation on numbers of newly created parcels. No where do these definitions deny the legal status of lawfully created properties whether they created as *parcels*, *lots*, or lawfully deeded land under applicable regulations.

1984

The next actions by the Board of County Commissioners (BCC) were in 1984. The BCC adopted two ordinances implementing the new Lane Code Chapter 16 in the "rural" areas of Lane County as part of the Rural Comprehensive Plan. The two actions were Ordinance No. 1-84 enacting Lane Code 16 as adopted on February 29, 1984, and Ordinance No. 11-84 revising Lane Code 16 with amendments to Ordinance No. 1-84 as adopted on September 12, 1984.

Ordinance No. 1-84 is attached as Exhibit "A" to this memorandum. At some point between September 1983 and February 1984, some party within LMD decided to create a new term, "legal lot". The new term, "legal lot" in Ordinance No. 1-84 began with "*A tract of land . . .*" in the definitions being proposed for Lane Code Chapter 16. ORS 92 Subdivisions and Partitions did not use the term "legal lot". That was a creation of Lane County in Ordinance No. 1-84. The definition for "legal lot" is found on pages 16-15 and 16-16. The definition of "tract" is found on pages 16-21 and 16-22. Both definitions are reproduced below:

"Legal Lot. A tract of land which has been legally created in compliance with Lane County land division regulations and ORS Chapter 92:

- (1) Any lot within a subdivision plat approved by the Board and recorded with Lane County Clerk.
- (2) Any lot within a minor subdivision plat endorsed and dated by the Secretary of the Lane County Planning Commission.
- (3) Any parcel within a final partition map approved and recorded by Lane County.
- (4) A tract of land created as a result of a deed or real estate sales contract, which was not created as a result of (1)-(3) above, but which at the date the conveyance occurred, the creation of the tract was not subject to any Lane County land division regulations. However, contiguous units of un subdivided or unpartitioned land under the same ownership shall constitute a single legal lot."

"Tract. A lot, parcel or un subdivided or unpartitioned land under the same ownership. Contiguous units of un subdivided or partitioned land under the same ownership shall be considered a single tract."

Lane County's confusion of Oregon Revised Statute (ORS) 92 "single tract" provisions intended for subdivision and partition regulations (Lane Code Chapter 13) and the elimination of serial partitions within a calendar year, were erroneously included in the "definitions" section of Lane Code Chapter 16 for "legal lot". Lane County did not have a mandate from the Legislature or ORS to consolidate development rights of lawfully created properties on the first of each calendar year. And the County erred in assuming it did.

"Legal lots" have been created as discrete metes-and-bounds descriptions in recorded partitions and subdivisions in Lane County during the last century and before. Prior to March 26, 1975, a "legal lots" were also created by the conveyance of a metes-and-bounds by real estate contract or deed that was recorded in Lane County Deed and Records. The metes-and-bounds descriptions created prior to March 26, 1975, were and are today, considered to be "legal lots" for the purposes of re-conveyance under real estate law and land use development under Lane Code Chapter 10 (pre-1984) and since under Lane Code Chapter 16.

If LCPC takes the position that "legal lots" created by deeds or real estate contracts prior to March 16, 1975 were invalid if held in common ownership with an adjacent legal lot or parcel during the passage of the New Year; then there have been truly thousands of illegally developed properties in Lane County during the past 25 years.

The four legal lots per PA 04-5276 verified by LMD in 2000 within the subject parcel, tax lot 401 of TRS 19-01-17, were originally created as four separate conveyances by deeds in 1887, 1896, 1902 and 1903. The four legal lots were bought and sold as recorded metes-and-bounds descriptions and were discrete properties at the time of origin, under a consolidated ownership in 1984, and today.

The legal lot per PA 04-5252 verified by LMD (PA 03-6005) in 2003 for the subject parcel, tax lot 300 of TRS 21-01-30, was originally created by warranty deed on May 9, 1921. The legal lot was bought and sold as the recorded metes and bounds description and was a discrete parcel at the time of origin, under a consolidated ownership in 1984, and today.

In the latter part of 1983 and early 1984, Lane County conducted numerous public hearings to designate land within the rural area and conducted supplemental hearings for the Comprehensive Plan Review amendment requests from over 1,500 landowners of those preliminary designations. The initial Plan Diagrams and Zoning Diagrams were adopted in Ordinance No. PA 884 on

February 29, 1984. Thereafter, Lane County conducted public hearings and adopted Ordinance No. PA 891 on September 12, 1984, that amended Ordinance No. PA 884 in response to DLCD compliance reports dated June 28, 1984 and July 19, 1984. The zoning designations for the subject parcels of PA 04-5252 and PA 04-5276 were adopted with Ordinance No. PA 891.

In summary, nothing in the referenced definitions of Ordinance No. 1-84 had the authority to undo the "legal lot" status of any lawfully created parcel. Any lawfully created parcel was still a discrete metes-and-bounds description, e.g., a legal lot.

The only time the definition of "tract" was intended to be considered was in the event a property owner elected to further divide his contiguously-owned properties. Then all contiguous land was considered for the purpose of division and compliance with the number of parcels within a calendar year came into play to assure the allowable number of newly created parcels did not exceed the maximum.

However, for some unknown reason, the phrase "single tract" was rewritten as "single legal lot". Again, ORS 92 did not use the phraseology "legal lot" or require it to be included in Lane County's land use definitions. ORS 92 simply said abide by the restriction on the number of new parcels or lots a property owner can create by partition in a calendar year. It was an erroneous interpretation in 1984 and it is an erroneous interpretation today.

There is nothing in the definitions to compel the reader to believe that the legal lot status of three or four lawfully created, contiguous properties disappeared on New Year's Eve and on January 1st of each calendar year the prior lawful creation of properties by fifty-year old deeds or contracts were rolled into one "single legal lot" with the prior development rights flushed down the tubes. In fact, property owners in Lane County continued to sell legal metes and bounds descriptions exactly as they had previously acquired them in pre-1983 transactions. The poorly conceived definition of "legal lot" was even more grievous because it arbitrarily singled out property rights of individuals who met the letter of the law prior to March 16, 1975, when it was lawful to create, sell and acquire land by contract or deed. The last category in the definition states, *"(4) A tract of land created as a result of a deed or real property sales contract, which was not created as a result of (1)-(3) above, but which at the date the conveyance occurred, the creation of the tract was not subject to any Lane County land division regulations. However, contiguous units of unsubdivided or unpartitioned land under the same ownership shall constitute a single legal lot."*

1985

The Oregon Legislative Assembly took note of the misinterpretation of ORS 92 by some jurisdictions including Lane County, and passed revisions to the ORS 92 statute in 1985. I provided the legislative history of House Bill 2381 (1985) from the Oregon State Archives to you at the September 7th work session. To understand the legislature's original intent in curtailing "serial partitioning" and the legislature's reaction to some local jurisdiction's misinterpretation of division standards as land use restrictions, you should read re-read Representative Al Young's written testimony before the Senate Committee concerning House Bill 2381. Representative Young's statements included the following:

"The intent of HB 2381 is twofold: First, it clarifies that units of land created under current subdivision and partition regulations remain recognized units of land until their description is lawfully changed, by vacation, replatting or other means; and second, it recognizes units of

land that were lawfully created prior to the enactment of current subdivision and partition statutes."

"As I said, the second element of the bill deals with units of land that were legally created prior to the existence of subdivision and partition statutes. When these statutes were enacted in 1973, they did not address units of land that were created before that date. Neither has legislation since 1973."

"HB 2381 replaces references to specific statutes with language that, essentially, says that if a lot or parcel was created in a lawful manner—meaning according to laws in existence at the time it was created—it is still recognized as a legitimate lot or parcel, and does not need to be reevaluated under current law to be recognized as such."

"An important point I need to make about this bill is that it in no way gives new development rights to anyone. Development of property affected by this bill remains subject to current state and local land use and zoning laws, ordinances and regulations. The practical effect of the bill is to allow units of land that were lawfully created over the years to be sold, and in so doing, provides for equitable treatment of property owners who have not been well treated under current law."

Representative Young acknowledged that some local jurisdictions were using "common sense" in interpreting the statutes and asked the Senate Committee to do the same in enacting HB 2381.

1986

Immediately following the passage of HB 2381, Lane County acted to amend Lane Code to eliminate the misinterpretation in Lane Code Chapter 13 and Chapter 16 definitions. I provided you the memorandum between County Counsel and the Board of Commissioners dated July 30, 1986 and the two ordinances that amended Chapter 13 definitions (Ordinance No. 10-86) and Chapter 16 definitions (Ordinance No. 11-86) adopted on September 10, 1986, as Exhibits "D", "E" and "F" respectively, in my memorandum to LCPC dated August 19, 2004.

The effect of the two ordinances in 1986 was to recognize that a lawfully created property by either contract or deed prior to March 26, 1975, or a parcel in a recorded partition, or a lot in a recorded subdivision, was a discrete "legal lot" pursuant to both Lane Code Chapter 13 and Lane Code Chapter 16. What was lawful in the past is lawful today. There was no caveat in the definitions of either ordinance that said "except between February 1984 and September 1986." Lane County applied common sense, corrected their regulations, and moved on to correct another error in application of the previous definitions. On the same date, the Board of County Commissioners adopted Ordinance PA 921 that repealed the original "Errors or Omission" Policy 21 (Land Use Planning - Goal 2) and re-enacted Policy 21 (Land Use Planning - Goal 2) for a time period from September 10, 1986 through December 31, 1989. A copy of Ordinance PA 921 was provided LCPC at the September 7th work session.

Ordinance PA 921 applied "common sense" to the previous text of Policy 21.c. *"c. Identified failure to zone F-2, where maps used by staff to designate F-1 zone did not display actual existing legal lots adjacent to the subject property, and had the actual parcelization pattern been available to County staff, the Goal 4 policies would have dictated the F-2 zone."* Ordinance PA 921 adopted a revised condition for consideration under Policy 21.D.(2) which eliminated all

references to "maps" or "legal lots" as qualifiers and simply required review under Goal 4, Policy 19(c) (circa 1986) and now Goal 4, Policy 15(c):

"(2) Inappropriate F-1 zoning, where the criteria of RCP Forest Land Policy 19(c) indicate that F-2 zoning is more suitable."

Ordinance PA 921, for one reason or another, none of which are known, "got lost". It was adopted, recorded in Deeds and Records, and in effect for three years. Applications were processed under the re-enacted Policy 21 during the extended time period by two associate planners who are no longer working for Lane County. I have not found any complete paper copies of the RCP General Plan Policies from that period or thereafter that included the re-enacted Policy 21. It did not resurface during the 1989 to 2004 period until I discovered a research note last month in a 1989 application file for the processing of a subsequent Ordinance under the re-enacted Errors and Omission Policy. The signed, original copy of Ordinance PA 921 was located in the County Administration archives of orders and ordinances. Had LMD known of the revised language for Policy 21, we would have included the 1986 text in the implementation of Policy 27.a.ii, in 2004.

Policy decision

The Planning Commission has two options when reviewing the pending applications under Policy 27.a.ii:

1. Apply a strict interpretation of the 1983-1986 definition for "legal lot" in Lane Code Chapter 13 and 16, and make a finding that during that period of time, all discrete metes-and-bounds descriptions lawfully created by deed or real estate contract prior to March 16, 1875, that were held in a contiguous ownership, "lost" their discrete legal lot status on January 1st of each calendar year and were merged into a "single legal lot".
2. Apply a common sense interpretation to the 1983-1986 definition for "legal lot" in Lane Code Chapter 13 and 16, based on the clarification of ORS 92 by HB 2381 in 1985, and Lane County's adoption of three ordinances in 1986 in response to the enactment of HB 2381, that discrete parcels created lawfully by recorded deed or real estate contract prior to the 1983-1986 period were not merged during that period, and were during that period and are today discrete legal lots.

If the Planning Commission elects to apply option #2, then it can rely on the LMD legal lot determinations cited on page 5 of this memorandum for the subject legal lot of PA 04-5252 and the four legal lots of PA 04-5276, and proceed to evaluate the two applications on the merits pursuant to the characteristics of Goal 4, Policy 15.b and c.

Recommendation

A precedent was set in 1986 by the Board of County Commissioners when they adopted the three ordinances to correct a imposed on a select group of property owners in Lane County: When Ordinance No. 10-86, Ordinance No. 11-86 and Ordinance PA 921 were adopted on September 10, 1986, the Board of Commissioners relieved the owners of contiguous legal lots from the three years of unwarranted restrictions. They elected to undo the misinterpretation of ORS Chapter 92 and honor the legal lot status of lawfully created parcels by real estate deeds or contracts. There

had never been any merger of lawfully created, discrete metes-and-bounds descriptions under state law and the County erred in attempting to do so in Ordinance 1-84 in 1984.

- (1) Staff recommends that the LCPC forward a recommendation to the Board of County Commissioners to amend Policy 27.a.ii., to read identical to Policy 21.D.(2):

"(2) Inappropriate F-1 zoning, where the criteria of RCP Forest Land Policy 19(c) indicate that F-2 zoning is more suitable."

- (2) If the LCPC elects to forward the above recommendation, that the LCPC conditionally use the definition for evaluation of the legal lot status of the subject parcels in determining whether or not the parcels qualify for consideration under Goal 4, Policy 15 b. and c.

Once the LCPC has arrived at a decision on the policy issue, LCPC will be in a position to decide on the merits of the singular applications, PA 04-5252 and PA 04-5276, pursuant to Policy 27.a.ii. and Policy 27.a.vii., respectively.

August 3, 2004

RECEIVED AT HEARING

P.A. NO. 04-5276

Planning Commission:

DATE: 8-3-04 EXHIBIT NO. 5 (2pp)

P. 1 OF 2

This is tax lot 2202 directly north of the subject property. Already zoned F-2, it sold in 2000 for \$153,500, when the whole 16 acres still looked approximately like this:

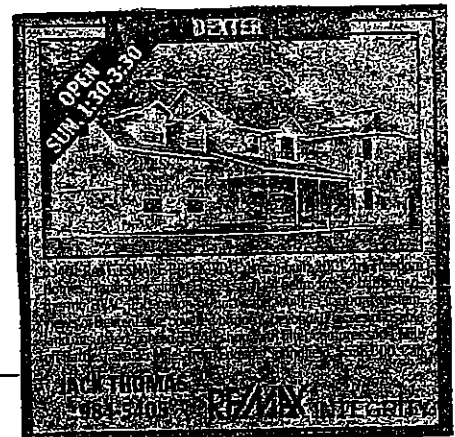


10 year old re-planted forest on lot 2202

The days are long gone when a family can buy cut-over timberland if that is all they can afford, put in a small house, grow a little garden and a few animals, and cut some firewood while they watch the greens grow for the children. Now such land is snatched up by developers for their expensive custom houses. This property is not being managed as a small woodlot. In fact I guarantee that these trees will not live longer than it takes them to obscure the "views of Dexter Lake, covered bridge & beyond."

Dexter neighbors,

Dwain Farnsworth
Merle S. Brown
John Baugress
Pauline R. Brown
Robert Burton



From Register Guard 11-22-03

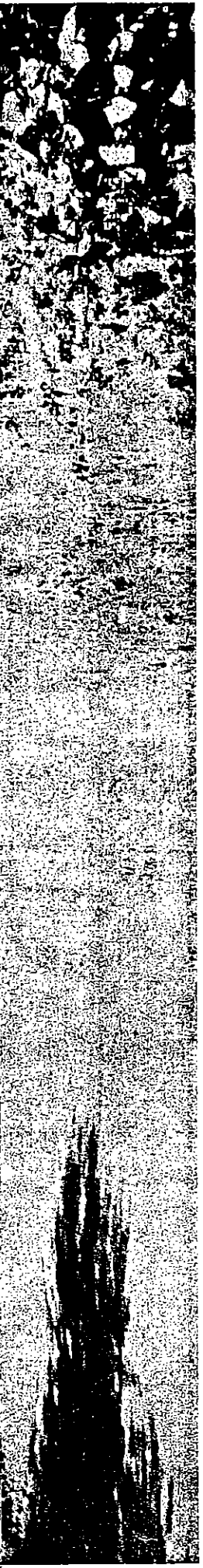
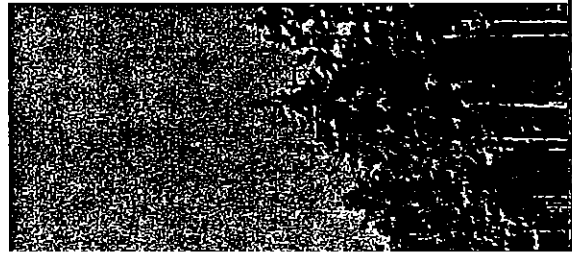


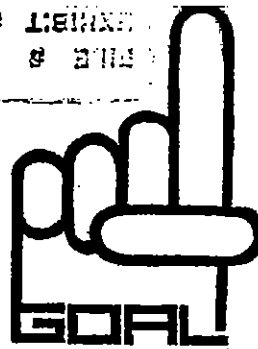
EXHIBIT #5

P. 2 2

GOAL ONE COALITION

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9225-7073 & 2111



August 3, 2004

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

RECEIVED AT HEARING

P.A. NO. 04-5276

DATE: 8-3-04 EXHIBIT NO. 1

(25 pp)

RE: PA 04-5276 (Ordinance No. PA 1211), Kronberger

Members of the Commission:

The Goal One Coalition (Coalition) is a nonprofit organization whose mission is to provide assistance and support to Oregonians in matters affecting their communities. The Coalition is appearing in these proceedings at the request of and on behalf of its membership residing in Lane County. Mr. Just is representing the Coalition, LandWatch Lane County, and himself.

This request is to redesignate 82.6 acres from Nonimpacted Forest Land (F-1, RCP) to Impacted Forest Land (F-2, RCP).

The subject 82.6 acre property is identified as Maps 19-01-08 and 19-01-17 TL 401, and is stated to consist of four parcels that were created in their present configuration through property line adjustments from four prior metes and bounds descriptions for four parcels alleged to have been originally created during the period 1887-1917. The alleged current configuration results in lots of 15.4, 23.0, 25.7 and 18.5 acres. The subject property contains no dwellings. Timber on the property was harvested in stages beginning in 1993 and ending in 2000. The property has been reforested.

Zoning was applied to the subject property in 1984. At that time, the subject property was part of a larger TL 400, which lay on both sides of the Southern Pacific Railroad right-of-way. The portion west of the railroad was zoned F-2. Later that year, at the insistence of the Department of Land Conservation and Development, Ordinance No. PA 891 re-designated the land west of the railroad F-1. In 1992 the western portion was sold off and became the 118.83 acre Tax Lot 401. In 2003, the sale and reconfiguration of the 118.83 acre parcel resulted in the southern 36.23 acres being incorporated into Mr. Brown's larger holdings and the remainder of TL 401 assuming its present alleged configuration.

The proposed zone change is a Minor Amendment subject to LC 16.400(6)(h) criteria and LC 16.252 processes. Applicable amendment criteria include, in relevant part: