

SUPPLEMENTAL MATERIAL

W. 17.9.

FIRST ADDENDUM TO AGENDA COVER MEMO

DATE: February 28, 2005 (Date of Agenda Cover Memo)
March 16, 2005 (Date of First Reading)
March 28, 2005 (Date of First Addendum)
March 30, 2005 (Date of Second Reading / Public Hearing)

TO: LANE COUNTY BOARD OF COMMISSIONERS

FROM: Public Works Department/Land Management Division

PRESENTED BY: Bill Sage, Associate Planner

AGENDA ITEM TITLE: ORDINANCE NO. PA 1211 - IN THE MATTER OF ADOPTING A CONFORMITY DETERMINATION AMENDMENT PURSUANT TO RCP GENERAL PLAN POLICIES – GOAL 2, POLICY 27 a.ii. AND GOAL 4, POLICY 15 TO REZONE 34.2 ACRES FROM NONIMPACTED FOREST LAND (F-1, RCP) TO IMPACTED FOREST LAND (F-2, RCP) FOR A PARCEL IDENTIFIED ON LANE COUNTY ASSESSOR'S MAP 21-01-30 AS TAX LOT 300, AND ADOPTING SAVINGS AND SEVERABILITY CLAUSES. (File: PA 04- 5252, Everett).

I. SUBMITTAL INTO THE RECORD

On March 28, 2005, Jim Just (Goal One Coalition) submitted the attached written testimony into the record.

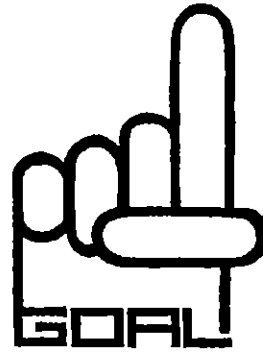
This agenda item is the first of three Conformity Determination Amendment proposals to be heard on March 30, 2005.

II. ATTACHMENT

A. Written testimony from Jin Just, Goal One Coalition, dated March 28, 2005.

GOAL ONE COALITION

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March 28, 2005

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

RE: PA 04-5252, Everett

Commissioners:

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

I. Introduction

This request is to redesignate 34.29 acres identified as Map 21-01-30 TL 401 from Nonimpacted Forest Land (F-1, RCP) to Impacted Forest Land (F-2, RCP). The owner of the subject property is Earl Everett. Mr. Everett purchased the property on August 21, 2003 from McDougal Bros., Inc., a timber and forest products company with Lane County offices located at 38437 Dexter Rd, Dexter, OR, 97431 and at 33977 N. Hampton Rd, Goshen.

In 1984 when the county-wide legislative zoning was done, the subject property was owned by Bohemia Lumber Company and was part of a large contiguous acreage under Bohemia Lumber Company ownership. Bohemia later became Willamette Industries, which was in turn purchased by Weyerhaeuser in 2002. The Bohemia Lumber Company ownership was zoned F-1 except for a part containing a mill that was zoned industrial.

II. Applicable criteria

The proposed zone change is a Minor Amendment subject to LC 16.400(6)(h) criteria and LC 16.252 processes. Staff has identified the following provisions of the Lane County Rural Comprehensive Plan as applicable to the zone change request:

“Goal Two – Policy 27: Errors or Omissions. Lane County will annually initiate and process applications to correct identified errors or omissions in the RCP Official Plan and Zoning Plots resulting from the Official Plan or Zoning Plots not recognizing

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lawfully existing (in terms of zoning) uses or from inconsistencies between the Official Plan and Zoning Plots. Changes to correct errors or omissions shall comply with the procedures and requirements of Lane Code Chapter 12 (Comprehensive Plan), Chapter 14 (Application Review and Appeal Procedures), and Chapter 16 (Land Use & Development Code), except as provided for in 27 c. and d. below.

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

“* * *

“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 if 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.
- “(5) 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.”

The Staff Report states that there are only two issues to be addressed in determining whether the application can be approved under Policy 27.a.ii:

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1. Does the pre-1984 parcelization pattern include the subject property as a lawfully created parcel (legal lot)?
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?

Staff is not correct in stating that the inquiry is or can be limited to these two issues. Staff misstates the second question, implying that the question is whether the subject property *now* more closely resembles F-1 or F-2 characteristics. As the inquiry asks whether an *error or omission* was made when zoning was first assigned, the relevant question is whether the subject property *in 1984* had characteristics more closely resembling those of F-1 or F-2 lands.

Assuming that four parcels were created by the recording of a deed in 1921, it appears that the contiguous Bohemia ownerships were subsequently consolidated. Further, the question of whether the subject property was a “legal lot” is not determinative, as the required inquiry is to *ownerships*, not “legal lots.” It is undisputed that the subject property was under one, much larger ownership at the time zoning was applied in 1984. Even if four legal lots rather than one are found to exist, parcelization in itself is not relevant and would not have dictated that the subject land be zoned F-2 rather than F-1.

The applicant argues that current conditions are relevant to the required inquiry. The Staff Report seems to implicitly adopt applicant’s position. This position is not correct: the relevant question asks whether an error or omission was made when the original zoning was assigned. The purpose of Policy 27 is to correct identified errors or omissions “resulting from the Official Plan or Zoning Plots not recognizing lawfully existing (in terms of zoning) uses or from inconsistencies between the Official Plan and Zoning Plots.” Policy 27 does not address changes in circumstances or conditions. A failure to anticipate later, unforeseen changes in circumstances or conditions simply cannot be considered an “error or omission” and could not constitute, at the time of original zoning, a failure to recognize lawfully *existing* uses or inconsistencies between the plan and zoning maps.

1. The subject property was part of a larger single tract in 1983-84.

PA 884, effective 2/29/84, was the seminal ordinance that applied Rural Comprehensive Plan and Zone designations throughout Lane County. Zoning of the subject property was established by the adoption of PA 891, which became effective on September 12, 1984.

The applicable regulations governing land divisions during the relevant time period from September 14, 1983 through February 1984 were found in Lane Code Chapter 13, adopted by the Board of Commissioners in Ordinance No. 16-83.

Lane Code 13.010 contained the following definitions:

“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.

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“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.”

It is clear that any division of the subject property that occurred in 1921 did not create lots or parcels; any units of land created were created by deed rather than by subdivision or partition. The subject property, because it was under a common ownership that included contiguous lands, was thus considered part of a larger single tract in 1984. Because the definition of tract includes “unsubdivided or partitioned land under the same ownership,” the subject property would have been considered one tract even had any units of land been created by partition.

Lane Code Chapter 16 also, in 1984, contained definitions relevant to the issues before this Board. LC Chapter 16 was first adopted on February 29, 1984 in Ordinance No. 1-84. Ordinance No. 1-84 was revised on September 12, 1984. It provides, in relevant part:

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

“* * *

“(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 unsubdivided or unpartitioned land under the same ownership shall constitute a single legal lot.*” (Emphasis added.)

“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.”

Thus if a tract of land under the same ownership consisted of more than one unit of land (other than lots or parcels) it was considered by Lane Code Chapter 16 to be one “legal lot” in 1984. The adoption of Ordinance 1-84 had the effect of consolidating contiguous ownerships of units of land other than lots or parcels.

Staff argues that this was done in error, that Lane County was not required by statute and did not have a mandate from the Legislature to consolidate development rights. However, the language of the ordinance is plain, clearly showing the intent of the Board of Commissioners to consolidate ownerships other than lots or parcels. The county had the authority to consolidate units of land that were not lots or parcels, and it did so.

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The subject property and contiguous lands under Bohemia ownership constituted one legal lot in 1984, when the F1 zone was applied to the subject property. The subject property was also part of a tract consisting of the contiguous Bohemia ownership. It is the Bohemia ownership that is the appropriate focus of the inquiry required by Goal 2 Policy 27 and Goal 4 Policy 15.

III. No “error or omission” was made because in 1984 the characteristics of the subject property more closely corresponded to the characteristics of F-1 than to those of F-2 lands.

As discussed above, even if the subject parcel was considered a legal lot in 1984 is not relevant to any determination of whether an error or omission was made in 1984 when the TL 300 was zoned F-1. Three of the four factors regarding both F-1 and F-2 lands address *ownerships*, not parcels. The remaining factor addresses the level of public services provided to the subject property.

In 1984 TL 300 was under a larger common ownership of Bohemia Inc. The analysis required by Goal 4 Policy 27 must be based on that ownership, not on the actual or presumed existence of legal lots within that ownership. It is the applicant’s burden to establish the extent of the Bohemia ownership in 1984, when the initial zoning determination was made; and to explain how that ownership pattern more closely resembled the characteristics of F2 lands rather than F1 lands.

A. Factor 1:

“Predominantly ownerships not developed by residences or nonforest uses.”

or

“Predominantly ownerships developed by residences or nonforest uses.”

In 1984 the ownership was predominantly in forest uses. The subject property was purchased by Bohemia Inc. in 1975. A letter dated February 23, 1983 from Bohemia Inc. to the Lane County Planning Department states that, although the subject 34.29 acre parcel contained an approximately 5 acre area that had been and hopefully would continue to be used as a homesite, there was no house on TL 300 after November 1982, when a farm house on the property burned down. That letter also concludes: “it is our [Bohemia’s] intent to retain this ownership indefinitely.”

Although a mobile home placement permit dated March 15, 1983 is provided, there is no evidence in the record establishing that the mobile home was in fact sited on the subject property, or the date on which a mobile home was sited. The purpose of the mobile home is not discussed; it is not established that the mobile home was not for forest management purposes. The Staff Report states that a mobile home was “removed from the subject parcel sometime thereafter [1983] and the parcel is currently vacant.” The Staff Report states at p. 6 that “[t]he subject parcel, tax lot 300, was developed with a residence from 1922 through 1983[.]”

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It is not established that at the time the F1 zone was applied to the subject property in 1984 the subject property was developed with a residence and was not in forest use.

Even if a dwelling existed on the subject property in 1984, that does not establish that any area of the subject property other than the 5 acre area used as a home site was erroneously zoned F1 rather than F2. Goal 4 Policy 16 clearly anticipates and authorizes split zoning. Even if it is determined that the five acre area is developed with a residence, that fact would not justify a determination that the rest of the subject property was developed with residences.

Factor 1 dictates that the F-1 zone would have been imposed on TL 300, except perhaps for the five acre area containing the dwelling site.

B. Factor 2:

“Predominantly contiguous ownerships of 80 acres or larger in size.”

or

“Predominantly ownerships 80 acres or less in size.”

The subject TL 301 was part of a contiguous ownership in 1984. The size of that ownership has not been established in the record, but certainly far exceeded 80 acres in size. Factor 2 dictates that the F-1 zone would have been imposed on TL 300.

This factor clearly looks at the ownerships of the subject area. In the context of the errors and omissions policy, the question is whether the ownership pattern of the area proposed for zoning would, in 1984, have led to a decision to zone the property F-1 or F-2. The subject area was, in 1984, undisputedly part of a much larger ownership used for commercial forest purposes.

Staff and the applicant err in stating that the relevant inquiry under this criterion is the predominant characteristics of properties that are contiguous to the subject property. Factor 2 asks whether the contiguous ownerships under consideration for zoning are greater or less than 80 acres in size. Factor 3 addresses the characteristics of lands contiguous to the subject ownership.

Staff and the applicant err in equating parcelization with ownerships. The subject area was under one much larger ownership in 1984.

Staff and the applicant further err in examining parcelization patterns as of 2002. The relevant period is 1984, when the Board of Commissioners is purported to have erred in applying the F-2 rather than the F-1 zone.

C. Factor 3:

“Predominantly ownerships contiguous to other lands utilized for commercial forest or commercial farm uses.”

or

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“Ownerships general (sic) 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.”

TTL 300 is predominantly contiguous to other lands used for commercial forest uses in 1984. The applicant's information addresses current ownerships. For purposes of Plan Policy 27, the relevant date is 1984 when the error was alleged to have been made.

TL 300 is contiguous to the following F-1 zoned units of land to the east: 21-01-30 TL 301, 54.56 acres; 21-01-30 TL 1600, 34.43 acres; 21-01-30 TL 1605, 1.65 acres. The ownership of 21-01-30 TLs 100, 101, and 1606 farther to the east is not discussed, nor is the ownership of 21-01-19 TLs 100, 200, 300, 400, 1400, 1500, or 1600, which are large contiguous units of land to the north and east. It would seem that these properties were used for commercial forest purposes. The ownership of those parcels in 1984 is not discussed in the applicant's materials. It appears that the ownership was Georgia Pacific or its successor in interest Bohemia Lumber Company, which had large timberland holdings in the area.

21-01-19 TL is also contiguous to TL 300 at its northern boundary. The property is currently zoned F-2. The zoning in 1984 is not discussed, nor has the ownership and use in 1984 has not been identified

21-01-30 TL 1607, zoned F-1, is adjacent to the subject property at its southern boundary. A 80.92 acre area identified as 21-01-30 TL 1602, zoned M-3 and containing a mill site, is contiguous with TL 1607. A mill site is a forest use under OAR 660-006-0025(4)(a). Ownership of TLs 1602 and 1607 was almost certainly Georgia Pacific or its successor in interest Bohemia Lumber Company. A church on the .32 acre 21-01-30 TL 1500, zoned RR-5, is also contiguous to the subject property at its southwest corner.

21-01-30 TL 4700, 3.46 acres, is contiguous to the subject property along its western boundary.

The applicant errs in considering the parcelization pattern of nearby properties in the community of Dorena. Factor 3 looks only at contiguous ownerships. TL 300 was not adjacent to or contiguous with the community of Dorena which lies on the opposite side of Row River Road and is separated from the subject property not only by the road, but by TL 4700.

TL 300 was contiguous to other lands utilized for commercial forest or commercial farm uses along its northern, eastern and southern boundaries. There is no information provided about the ownership or use of TL 4700.

There is no evidence provided as to the existence of residences on contiguous properties in 1984.

The applicant concedes that commercial farm or forest uses predominate on adjacent properties, and therefore that Factor 3 dictates that the F-1 zone would have been imposed on the area currently identified as TL 401.

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D. Factor 4:

“Accessed by arterial roads or roads intended primarily for forest management. Primarily under commercial forest management.”

or

“Provided with a level of public facilities and services, and roads, intended primarily for direct services to rural residences.”

The subject area was isolated from Row River Road by the OP&E railroad tracks. A road shown as TL 200 on the east provided access to the Bohemia lands.

The dwelling site had access to City of Cottage Grove water service and was provided with electricity until the dwelling was destroyed by fire in 1982. The record does not show whether water and electric service were provided to the property in 1984. Residential access was apparently from Row River Road, crossing the railroad right of way. The county in PA 03-6005 determined that the subject property has no legal access; a discussion of the legal status of the access in 1984 is not found in the record. A Bureau of Land Management road and other roads used for forest management purposes are found to the east of the subject property. No discussion of other public services is found in the record.

Factor 4 dictates that the F-1 zone would have been imposed on the TL 300 in 1984.

IV. In 2005 the characteristics of the subject property more closely resemble the characteristics of F-1 land rather than F-2 lands.

The applicant argues that Policy 27 can be interpreted to require or allow an analysis of the characteristics of the area proposed for rezoning based on the *current* characteristics of the subject property and the surrounding area. As discussed above, Policy 27 and Policy 27(2)(ii) relate to errors and omissions made when zoning was first imposed and to conditions existing at that time, not to current conditions.

Nevertheless, even should current characteristics be considered, a review of the characteristics of the subject land and the surrounding area leads to the conclusion that the characteristics of the land correspond more closely to the characteristics of the F-1 zone rather than the F-2 zone.

A. Factor 1:

“Predominantly ownerships not developed by residences or nonforest uses.”

or

“Predominantly ownerships developed by residences or nonforest uses.”

The subject ownership does not contain a dwelling. The applicant at p. 5 of his submittal of March 29, 2004 concedes that, regarding this factor, “the subject parcel meets the characteristic of a non-impacted ownership rather than an impacted ownership.”

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B. Factor 2:

“Predominantly contiguous ownerships of 80 acres or larger in size.”

or

“Predominantly ownerships 80 acres or less in size.”

This factor clearly looks at the ownerships of the subject area, while considering contiguous units of land under the same ownership as a single combined ownership.

Staff and the applicant err in stating that the relevant inquiry under this criterion is the predominant characteristics of properties that are contiguous to the subject property. Factor 2 clearly asks whether the contiguous ownerships under consideration for zoning are greater or less than 80 acres in size. Factor 3 addresses the characteristics of lands outside of but contiguous to the area being considered for zoning.

Staff and the applicant err in equating parcelization with ownerships.

The subject area is 34.29 acres. Regarding Factor 2, the subject property more closely resembles F-2 lands rather than F-1 lands.

C. Factor 3:

“Predominantly ownerships contiguous to other lands utilized for commercial forest or commercial farm uses.”

or

“Ownerships general (sic) 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.”

Factor 3 looks at the use of contiguous lands. LC 16.090 specifically defines “contiguous” to mean “sharing a common boundary”:

“Having at least one common boundary line greater than eight feet in length. * * *”

Thus units of land not sharing a common boundary are not considered contiguous. Units of land separated by a road cannot be considered contiguous under the county’s definition.

TL 300 is predominantly contiguous to other lands used for commercial forest uses.

TL 300 is contiguous to the following F-1 zoned units of land owned by Weyerhaeuser to the east: 21-01-30 TL 301, 54.56 acres; 21-01-30 TL 1600, 34.43 acres; 21-01-30 TL 1605, 1.65 acres. The ownership of 21-01-30 TLs 100, 101, and 1606 farther to the east is not discussed, nor is the ownership of 21-01-19 TLs 100, 200, 300, 400, 1400, 1500, or 1600, which are large contiguous units of land to the north and east. It would seem probable that the ownership is also Weyerhaeuser, and that these properties are used for commercial forest purposes.

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A 10.07 ac. unit of land zoned F2, identified as 21-01-19 TL 1404, is contiguous to the subject property along a small portion of its northern boundary. This property contains a dwelling.

Along its southern boundary the subject property is contiguous to an ownership of two units of land: 21-01-30 TLs 1607, 2.63 acres, zoned F-1; and 1602, 80.92 acres, zoned M3. TL 1602 contains a lumber mill. A lumber mill is an appropriate use in a forest environment under OAR 660-006-0025(1)(a). TL 1602 contains a dwelling. However, LC 16.226 does not allow dwellings in the M3 zone except as an accessory use to a use allowed in the zone. Thus the dwelling is not a residence for purposes of this factor, but rather is an accessory use.

A church on the .32 acre 21-01-30 TL 1500, zoned RR-5, is also contiguous to the subject property at its southwest corner.

The applicant errs in considering the parcelization pattern of nearby properties in the community of Dorena. Factor 3 looks only at contiguous ownerships. TL 300 was not adjacent to or contiguous with the community of Dorena which lies on the opposite side of Row River Road and is separated from the subject property not only by the road, but by TL 4700.

The applicant at p. 7 of his submittal of March 29, 2004 concedes that commercial farm or forest uses predominate on contiguous properties, and that Factor 3 therefore dictates that the F-1 zone is appropriate for the subject property.

D. Factor 4:

“Accessed by arterial roads or roads intended primarily for forest management. Primarily under commercial forest management.”

or

“Provided with a level of public facilities and services, and roads, intended primarily for direct services to rural residences.”

The subject area is isolated from Row River Road by the OP&E railroad tracks. PA 03-6005 found that the subject property has no legal access. A road shown as TL 200 on the east provided access to the Bohemia lands. The subject property is not accessed by arterial roads, but rather by roads intended primarily for forest management.

Existing uses on the subject property have not been addressed. Because the subject property has historically been under the ownership and management of timber companies, the property presumably has been logged and reforested in compliance with the forest practices act and thus presumably currently supports forest tree species at ODF required densities. The applicant has not stated whether the subject property is receiving forest tax deferral.

The dwelling site had access to City of Cottage Grove water service and was provided with electricity until the dwelling was destroyed by fire in 1982. There is no evidence in the record suggesting that the subject property is currently receiving or utilizing public water or electricity services.

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Factor 4 dictates that the F-1 zone is appropriate for the subject property.

SUMMARY: the subject property more closely resembles the characteristics of F-1 land rather than F-2 lands.

Review of the Policy 15 factors demonstrates decisively that the characteristics of subject area most closely correspond to F-1 lands rather than F-2 lands:

1. The subject area contains no residences.
2. The subject area is an ownership of less than 80 acres.
3. The subject area is predominantly contiguous to other lands utilized for commercial forest or commercial farm uses.
4. The subject property is not accessed by arterial roads, but rather by roads intended for forest management. The subject property does not have legal access to Row River Road. The subject property is primarily under commercial forest management. The subject property is not currently directly provided with public facilities and services.

The only factor which would justify F-2 rather than F-1 zoning is Factor 2, which addresses existing lot or parcel sizes; three out of the four factors support the conclusion that the characteristics of subject property correspond more closely to F-1 lands rather than F-2 lands.

CONCLUSION

The characteristics of the subject property correspond more closely to F-1 lands rather than F-2 lands, considering either those characteristics as they existed in 1984 or as they exist currently.

Therefore this request to rezone the subject lands from F-1 to F-2 must be rejected.

Mr. Just and Goal One request copies of any notice of decision, decision and findings in this matter.

Respectfully submitted,

/s/ Jim Just

Jim Just
for Goal One Coalition and as an individual