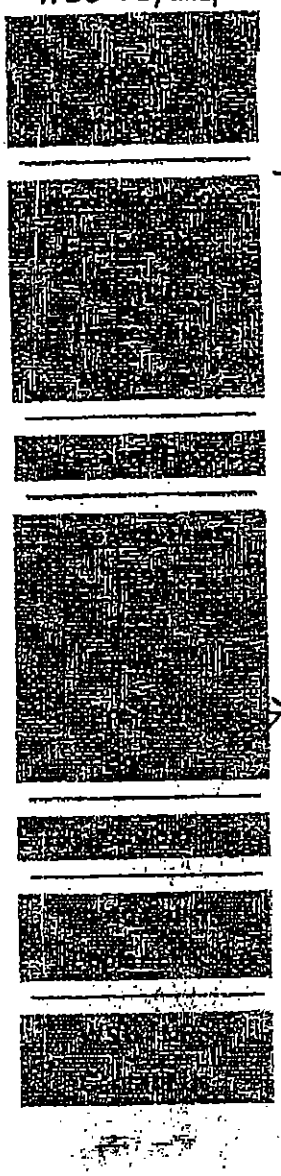
Washington State University

WSU-Puyallup

[redacted] Hybrid Poplar Research Program



Managing Plantations:

Plantation management needs to address several concerns:

* 1) weed control
* 2) need for fertilizer
* 3) thinning and pruning where appropriate; and
* 4) protection against animals, insects and diseases.

The following discussion is intended to introduce you to the different aspects of managing hybrid poplar plantation. For further details please refer to "High Yield Poplar Plantations the Pacific Northwest."

Weed Control -

If the grower does not control weeds and grass adequately, hybrids will grow slowly and may not survive. Furthermore, weeds and grasses provide cover to voles, which can girdle and kill trees as old as 4 years. Growers usually control weeds in plantations by combining cultivation and herbicides, starting with a chemical spray before or soon after planting.

A number of effective weed control treatments that employ herbicides are used. The Pacific Northwest Weed Control Handbook lists the most commonly used materials and is updated annually. Refer herbicide questions to your Cooperative Extension agent.

Fertilization -

A vigorous plantation takes up as much as 200 lb of nitrogen (N) per acre per year. However, from 50 to 150 lb of N per acre per year is generally the rate applied. On fertile soils, including some old pastures, the nitrogen released from soil organic matter can be sufficient to carry the plantation for several years without need for added fertilizer. Usually fertilizer is not broadcast before planting or applied during the first year of growth.

Appearance of plants can indicate need for nitrogen. Leaves of nitrogen deficient plants are generally smaller, light green and sometimes even yellowish. When nitrogen deficien the entire leaf becomes a uniform light green or yellow. Need for other nutrients has not been demonstrated in western Washington. However, zinc fertilization can be very beneficial on calcareous soils east of the Cascades.

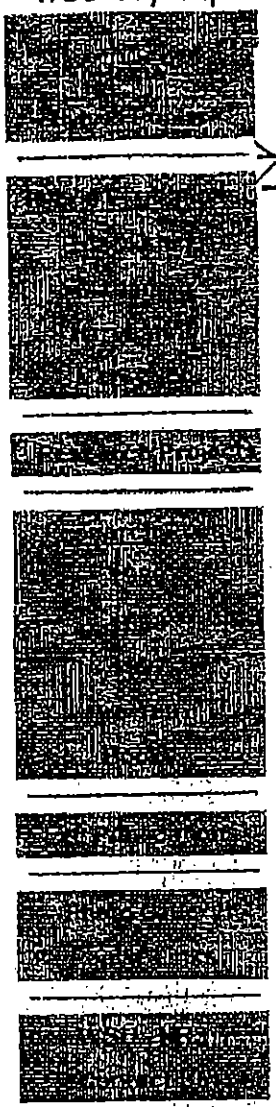
7-2

Thinning and Pruning -

For all but biomass harvests, practice early thinning to one stem per stump before the second growing season; extra stems can be used for cuttings. Thinning or partial harvest of trees later in the life of the plantation may be desirable to make space for larger, better formed trees for lumber or plywood. Clear, knot free wood adds value to such trees. For that reason, pruning of branches starting as early as year 1 or 2 in plantations for lumber plywood may be advisable.

Washington State University
WSU-Puyallup

[redacted] Hybrid Poplar Research Program



Harvesting Plantations

One important advantage of intensive culture of plantations is the suitability of such plantations for mechanized harvest. Considerable effort has been made in developing ne machines and in modifying existing equipment for more efficient harvest of short rotation material. Growers should consider the harvest operation in planning the layout and spaci of biomass plantations. This section briefly discusses harvest options. For a more in dep discussion please refer to "High Yield Hybrid Poplar Plantations in the Pacific Northwest."

Small Scale Plantations -

Recommendations for establishment and culture of smaller plantations are similar to thos for commercial plantations. The major difference in operations between large and small plantations is in the harvesting scale. Felling in a small scale harvest is generally done w a chain saw.

Larger Plantations -

Although harvest in large plantations can involve highly efficient yarding equipment, chainsaws are an option for felling trees. Most harvesting presently underway in the Northwest uses conventional feller bunchers and grapple skidders.

Soil and Plant Considerations in harvest timing -

Harvesting in the dormant season is desirable under two situations. The first occurs whe resprouting is needed. Dormant season harvests give the most consistent and vigorous resprouting. The second is where year-round supply of wood is required, such as for a pl mill. Soild suited for these plantations may not support harvesting equipment during wet periods without sustaining compaction. Considerable effort is required to restore puddlec and compacted soil to former productivity.

7-3

EXHIBIT 8

Step 6. Calculate periodic annual increment (PAI)

The average annual volume growth of a timber stand measured over a specific period is its periodic annual increment (PAI). This figure is useful because volume growth per acre can vary substantially as the stand ages. The PAI of either board-foot or cubic-foot volumes can be calculated for any period, but 5- or 10-year periods are most common. Calculate PAI:

Periodic annual increment = (Total volume/acre at end of period – Total volume/acre at beginning of period) ÷ Number of years in the period

PAI can measure previous growth or project future growth. Core samples enable you to take measurements back from the present, and your calculated growth projection factor enables you to estimate a future periodic annual increment. This enables you to determine how your stand is growing by taking a "snapshot" in time.

Hypothetical ideal harvest time

Foresters have a long tradition of analyzing timber stand growth. Figure 5 shows the growth pattern for Douglas-fir, but the pattern for even-age stands tends to be similar for all tree species.

From analyses and long experience, foresters have derived the general rule that when PAI falls below MAI, the timber stand is "mature"—that is, it has passed its peak of wood growth production in the biological sense. Thus, the stand might be harvested if growth rate is the overriding factor in the harvest decision.

The point where the PAI line crosses the MAI line also is the highest value for MAI. This point, therefore, is referred to as *culmination* of MAI. The stand will continue to add volume after this point but at a slower rate than before. Thus, by comparing estimates of PAI and MAI, we can test whether our stands are biologically mature. Thinning stands can boost the growth of residual trees and delay the culmination of MAI.

Often, factors such as cash flow or market cycles dictate a timber harvest before or after culmination of MAI. By combining this biological information with financial analysis, you can tailor your management decisions to your own situation and objectives.

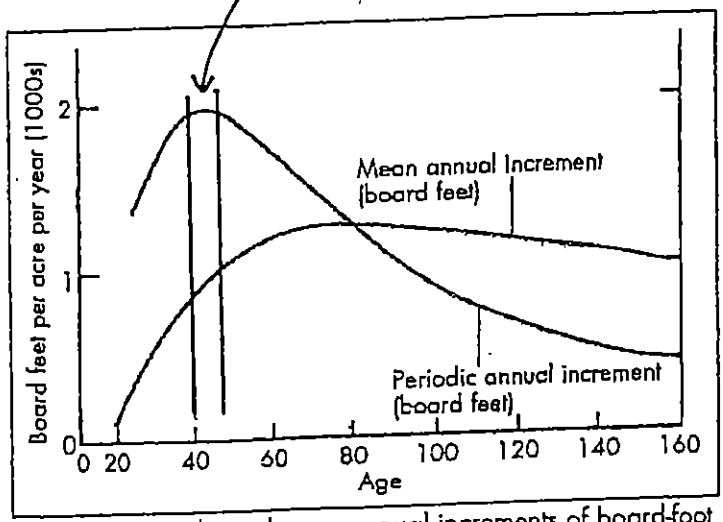


Figure 5.—Periodic and mean annual increments of board-foot volume for Douglas-fir, showing culmination of mean annual increment at about 80 years. Absolute age of culmination varies, but the pattern in this graph is similar for all species. Adapted from McArdle et al., *The Yield of Douglas Fir in the Pacific Northwest*, USDA Technical Bulletin 201, 1961.

Where to go from here

Good stand information is essential to making the decisions necessary for managing your woodland property. Stand measurements are critical to logging and marketing options. They are also important as indicators of a stand's health and vigor and its susceptibility to insect and disease problems. And, measurements might be important in deciding whether a harvest operation will generate the desired cash flow.

Measurements taken according to the procedures described here are suitable for understanding how a timber stand may develop over time; however, they're no substitute for professional timber appraisals or inventories done by foresters.

If you want to refine these techniques or to study timber growth further, contact your Extension forestry agent for possible opportunities.

GOAL ONE
EXHIBIT NUMBER

Ex 3-13

EXHIBIT 9

PONDEROSA AND SUGAR PINE LOGS

(Pinus ponderosa and Pinus lambertiana)

Peeler Ponderosa & Sugar Pine

Logs shall be old growth and suitable for the rotary cutting of clear, uniform-colored face stock veneer to an amount of not less than 50% of the NET scale. Such logs shall meet at least the following minimum exterior characteristics:

Gross Diameter – 30 inches.
Gross Length – 17 feet.
Surface – 100% clear.
Annual Ring Count – 8 per inch.
Slope of Grain – Not to exceed:
1½" per foot on logs 30" thru 50" diameter.
2½" per foot on logs 51" and over.

Peeler Blocks Ponderosa & Sugar Pine

Logs of Peeler Quality under 17" in length shall be graded as Peeler Blocks with the volume extended on the log scale basis. Peeler Blocks shall meet all the other minimum specifications required of Peeler grade logs.

No. 1 Sawmill Ponderosa & Sugar Pine

Logs shall be old growth and suitable for the manufacture of D select and Better lumber to an amount of not less than 50% of the NET scale. Such logs shall meet at least the following minimum exterior characteristics:

Gross Diameter – 30 inches.
Gross Length – 16 feet.
Surface – 90% clear.
Annual Ring Count – 8 per inch.
Slope of Grain – Not to exceed:
1½" per foot on logs 30" thru 50" diameter.
2½" per foot on logs 51" and over.

No. 2 Sawmill Ponderosa & Sugar Pine

Logs shall be old growth and suitable for the manufacture of D select and Better lumber to an amount of not less than 35% of the NET scale. Such logs shall meet at least the following minimum exterior characteristics:

Gross Diameter – 24 inches. LARGE, OLD TREE
Gross Length – 12 feet.
Surface – 75% clear.
Annual Ring Count – 8 per inch.
Slope of Grain – Not to exceed 3" per foot.

No. 3 Sawmill (Shop Grade) Ponderosa & Sugar Pine

Logs shall be old growth and suitable for the manufacture of No. 2 Shop and Better lumber to an amount of not less than 50% of the NET scale. Such logs shall meet at least the following minimum exterior characteristics:

Gross Diameter – 24 inches.
Gross Length – 12 feet.
Surface – 50% clear (collectively), with knots spaced to allow 6'-long clear cuttings.
Annual Ring Count – 8 per inch.
Slope of Grain – Not excessive.

No. 4 Sawmill Ponderosa & Sugar Pine

Logs shall be suitable for the manufacture of No. 2 Common (Sterling) and Better lumber to an amount of not less than 50% of the NET scale. Such logs shall meet at least the following minimum exterior characteristics:

Gross Diameter – 12 inches.
Gross Length – 12 feet.
Surface – Sound, tight knots, not to exceed 2½" diameter. Any larger knots shall be spaced same as No. 3 Sawmill (Shop) logs.

No. 5 Sawmill Ponderosa & Sugar Pine

Logs shall be suitable for the manufacture of No. 3 Common (Standard) and Better grades of lumber to an amount of not less than 33⅓% of the GROSS scale. Such logs shall meet at least the following minimum exterior characteristics:

Gross Diameter – 6 inches.
Gross Length – 12 feet.

No. 6 Sawmill Ponderosa & Sugar Pine

Logs shall be suitable for the manufacture of No. 3 Common (Standard) and Better grades of lumber to an amount of not less than 33⅓% of the GROSS scale. Such logs shall meet at least the following minimum exterior characteristics:

Gross Diameter – 5 inches.
Gross Length – 12 feet.
Minimum Volume – 10 board feet NET scale.

9-1

DOUGLAS FIR PEELER LOGS
(Psuedotsuga menziesii)

No. 1 Peeler Douglas Fir

Logs shall be suitable for rotary cutting of clear, uniform-colored face stock veneer to an amount of not less than 50% of the NET scale. Such logs shall meet at least the following minimum exterior characteristics:

Gross Diameter – 30 inches.
Gross Length – 17 feet.
Surface – 90% clear. May include logs with not more than two (2) knots.
Annual Ring Count – 8 per inch.
Slope of Grain – Not to exceed 3" per foot.
Heart off-Center – Allowable to the extent that required recovery can be met.

No. 2 Peeler Douglas Fir.

Logs shall be suitable for rotary cutting of clear, uniform-colored face stock veneer to an amount of not less than 35% of the NET scale. Such logs shall meet at least the following minimum exterior characteristics:

Gross Diameter – 30 inches.
Gross Length – 17 feet.
Surface – 75% clear. May include logs with not more than two (2) knots.
Annual Ring Count – 8 per inch.
Slope of Grain – Not to exceed 3" per foot.
Heart off-Center – Allowable to the extent that required recovery can be met.

No. 3 Peeler Douglas Fir.

Logs shall be suitable for rotary cutting of veneer center core, cross core, backs and better to an amount equal to 100% of the NET scale. Such logs shall meet at least the following minimum exterior characteristics:

Gross Diameter – 24 inches.
Gross Length – 17 feet.
Surface – Limited to knot indicators, not more than 1½" in diameter. The maximum number of knot indicators should not exceed an average of one per foot of log length. Knot indicators ½ inch and under in diameter shall not be considered a determining factor. This grading may include a log with not more than two knots.
Annual Ring Count – 6 per inch.
Slope of Grain – Not to exceed 3" per foot.
Heart off-Center – Allowable to the extent that required recovery can be met.

9-2

DOUGLAS FIR PEELER BLOCKS

Logs of Peeler quality under 17' but not less than 4' in length shall be graded as Peeler Blocks with the volume extended on log scale basis. No 1, No. 2, and No. 3 Peeler Blocks must meet the same grade requirements as the similar grade of Peeler logs as to minimum diameter, annual ring count, slope of grain, and grade recovery requirements.

DOUGLAS FIR SAWMILL LOGS

No. 1 Sawmill Douglas Fir

Logs shall be suitable for the manufacture of B and Better lumber to an amount of not less than 50% of the NET scale. Such logs shall meet at least the following minimum exterior characteristics:

Gross Diameter – 30 inches.
Gross Length – 16 feet.
Surface – 90% clear.
Annual Ring Count – 8 per inch.
Slope of Grain – Not to exceed 3" per foot.

No. 2 Sawmill Douglas Fir

Logs shall be suitable for the manufacture of (1) Construction and Better grades of lumber to an amount of not less than 65% of NET scale, or (2) B and Better or equivalent grades of lumber to an amount of not less than 25% of the NET scale. Such logs shall meet at least the following minimum exterior characteristics:

Gross Diameter – 12 inches.
Gross Length – 12 feet.
Minimum Volume – 60 board feet NET scale.
Surface – Sound, tight knots, not to exceed 2½" in diameter. Any larger knots, knot clusters, and burls shall be so distributed as to permit the required recovery.
Slope of Grain – Not to exceed:
2" per foot on logs 12" thru 20"
3" per foot on logs 21" thru 35"
4" per foot on logs 36" thru 50"
5" per foot on logs 51" and over.

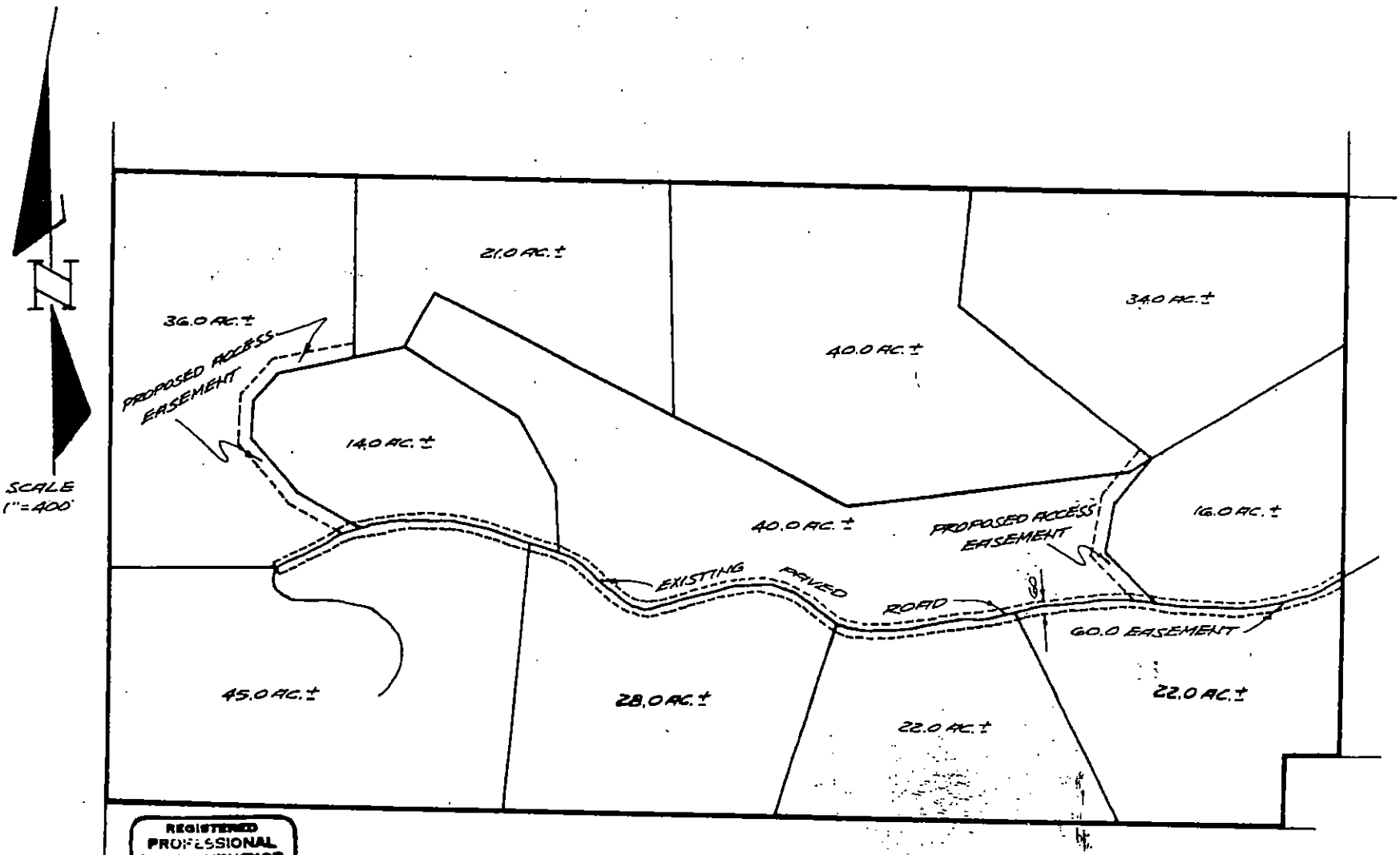
No. 3 Sawmill Douglas Fir

Logs shall be suitable for the manufacture of Standard and Better grades of lumber to an amount of not less than 33⅓% of the GROSS scale. Such logs shall

EXHIBIT "L"

PROPOSED PARCELING MAP FOR KAREN DAHLEN

TAX LOT 300 MAP NO. 18-04-24
LANE COUNTY, OREGON
AUGUST 19, 2004



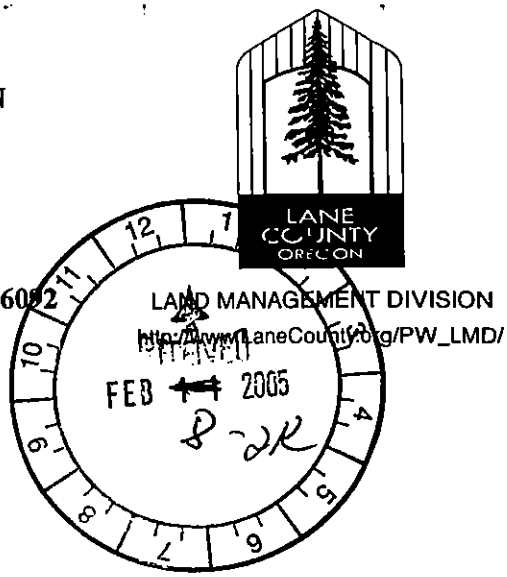
REGISTERED PROFESSIONAL LAND SURVEYOR
Charles W. Guile
OREGON
JULY 9, 1994
CHARLES W. GUILE
472
6/30/2005

CHARLES W. GUILE & ASSOCIATES, CO.
Land Surveying
82 Centennial Loop
Eugene, OR 97401

2003-03B

LANE COUNTY PLANNING COMMISSION

Staff Report



Hearing Date: February 15, 2005

File PA 04-6082

Report Date: February 8, 2005

I. PROPOSAL

A. Owners/Applicant:

Karen A. Dahlen Trust
85800 S. Willamette St.
Eugene, Or. 97405

Agent:

Steve Cornacchia
180 E. 11th Ave.
Eugene, Or. 97401

B. Proposal

1.) Plan Amendment to redesignate 322[1] acres of land from "Agricultural Land" to "Marginal Land," and rezone from E-40/Exclusive Farm Use to ML/Marginal Land, pursuant to Lane Code 16.400 and 16.252.

2.) Provide notice of legal lot determination PA 04-5860[2], which formed the subject parcel after a lot line adjustment.

If approved, the rezoning would allow the applicant to apply for a subdivision, with a maximum buildout potential of 32-ten acre lots[3]. Land division approval is **not** part of the proposal before the Planning Commission.

II. RECOMMENDATION

Although the submittal appears to warrant a recommendation of approval, staff withholds his opinion until he is able to review and comment on a submittal received on February 8[4], in

---

[1] The applicant has stated that the size of the subject parcel is 322 acres. However, legal lot determination PA 04-5860 states the acreage to be 316.55 acres. The applicant is requested to comment on this discrepancy at the hearing. It is noted that the provided soils data, applicant's exhibit "G", is for a 322-acre parcel.

[2] PA 04-5860 has been entered into the record in its entirety by staff.

[3] The applicant states that the intention is to subdivide into a maximum of 11 parcels, of acreage ranging from 14-45 acres per lot. Refer to applicant's schematic exhibit "L", and p.4-5 of the text submittal. The applicant proposes to warrant such limitation by a deed restriction. This device is not acceptable, as the county is not party to a deed restriction; and such restriction can be changed in the future. In addition, no draft instrument of any type has been provided. It is also noted that the aquifer study, exhibit E, and the traffic impact analysis, exhibit C, demonstrate compliance at the maximum (32 lot) buildout. Thus, without adequate warranty in the file record, staff must assume a maximum buildout potential.

[4] See attachment #7 to this report.

Occ #5 - 84 pp.

opposition to the request. Staff is expected to have a recommendation for the Commission in time for the hearing.

III. SITE AND PLANNING PROFILE

A. Location

Map 18-04-24, tax lot 300

B. Zoning

E-40/Exclusive Farm Use. Plot 334

C. Subject Property & Surrounding Area

The property, which is subject to this Plan Amendment/Rezone application, is reported to consist of 322 acres of land located on the west side of S. Willamette St., just north of the entrance to Spencer Butte Park. The parcel was created via a lot line adjustment with a parcel adjacent to the east (Map 18-03-19, tax lot 1300), also owned by the applicant. Please refer to attachment #1 (the second page labeled "After") for a map of the subject parcel and nearby vicinity. See the original submittal (previously mailed to the Planning Commissioners) for further background information.

Note: "Exhibits" refer to those materials supplied by the applicant and attached to the original submittal. "Attachments" are those materials later added by staff. This includes attachment #6, consisting of supplemental information provided by the applicant. In addition, attachment #7 is a submittal from Mr. Jim Just of the Goal One Coalition. Although Mr. Just was kind enough to provide draft comments on February 1, the attachments were not included. The final draft (attachment #7), with its attachments, arrived late on the same day this report was being written, too late for a thorough reading by staff. Staff will have some comment on the Goal One submittal in time for the hearing, and the applicant is expected to as well.

D. Services

Fire:	Eugene RFPD #1
Police:	County, State
Sewer and Water:	Proposed On-site
School District:	Eugene 4-J
Power:	Lane Electric Coop
Access:	Private road to S. Willamette St.[5]

E. Referral Comments Received

Transportation Planning/Bill Morgan/12-22-04:
See exhibit #2 for this referral response. The county engineer concluded that the provided traffic analysis (exhibit C) was adequate and meets the requirements of LC 15.

[5] Since the applicant also owns the parcel to the east (Map 18-03-19 #1300), which fronts S. Willamette St., no difficulty in construction of an easement is anticipated. Such easement will need to meet the easement requirements of LC 15. The easement can be reviewed during the subdivision phase.

State Watermaster/Mike Mattick/2-7-05:
See attachment #3. While taking issue with some of the contents of the aquifer study (exhibit E), Mr. Mattick concludes, "...that there is adequate water in [sic] area to support a dwelling per 10 acre lot."

Department of Assessment & Taxation/Dave Evans/2-7-05:
See attachment #4. Mr. Evans states that the subject parcel has 316 of its acres in forest tax deferral. This information was obtained at the request of Commissioner Arkin. Staff notes that such tax deferral does not indicate whether or not the parcel could gross $10,000 annual in timber or is capable of producing at least 85 cu.ft. of merchantable timber /ac annual, as required by ORS 197.247(1)(a) or (b)(A), respectively.

****** No other responses were received as of the writing of this report*****

IV. CRITERIA AND ANALYSES

A. Marginal Land proposals are primarily governed by the 1991 version of ORS 197.247. In addition, in March 1997, the Lane County Board of Commissioners gave direction to staff on how to interpret and administer ML applications. That five page document is provided as attachment #5.

The agent has recited and addressed the applicable standards, including ORS 197.247, the March 1997 Board document, goals, and Lane Code requirements. Refer to the applicant's submittal, as well as attachment #6, the supplemental materials.

Essentially, qualification for a ML designation is a two-fold test. Any proposal for a ML designation must first comply with the "income test" requirement found in ORS 197.247(1)(a), recited below. It basically requires the applicant to document that the proposed ML land is less than "commercial-grade" stature for farm or forest use during a 5-year period preceding 1983. This examination must include any lands, which might have been a part of such farm or forest operation at that time.

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

1. Income Tests

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

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

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

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

It is noted that information on the subject parcel was previously provided to this office in conjunction with the subdivision, file PA 03-5657, of the applicant's contiguous parcel to the east, Map 18-03-19, tax lot 1300. LC 16.214(6) allows a ML zoned parcel to be subdivided into 10 acre minimum lots if such lots are not adjacent to resource zoned land (F-1, F-2, & EFU), or, if adjacent to such lands, they (the resource lands) "qualify" as marginal land pursuant to ORS 197.247. Note that such "qualification" does not mean that those lands were actually changed to ML, but rather that enough evidence was provided for the subdivision file record so that staff could conclude that the land "qualified" as ML. Such was the case for the current subject tax lot. It was found to be capable of only $7,193 annual gross income, below the $10,000 standard. Refer also to pages 14-15 of the applicant's submittal, and the exhibits mentioned therein.

2. Productivity Test

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

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

Per page 15 of the submittal, 58.79% of the parcel consists of soils in agricultural capability class V-VIII.

Regarding the 85 cubic foot standard for "merchantable timber, refer to pages 16-17 of the submittal, and its attendant exhibits. Using various productivity tables, the applicant concludes that the overall productivity is still below the 85 cu.ft./ac./annual standard.

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

Regarding Goal 6, water quality, it is noted that the subject property is within a water quality/quantity limited area (Spencer Creek watershed) per LM. 13.010. This is discussed on page 8 of the submittal. As required by LC 16.004(4) and LC 13.050(13), the applicant has provided an aquifer study performed by EGR & Associates. The study

(included herein) concludes domestic water availability for up to the maximum buildout of 32 lots. As previously stated in the "referral responses" above, the State Watermaster's office has reviewed the aquifer test, and agrees with its conclusion.

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

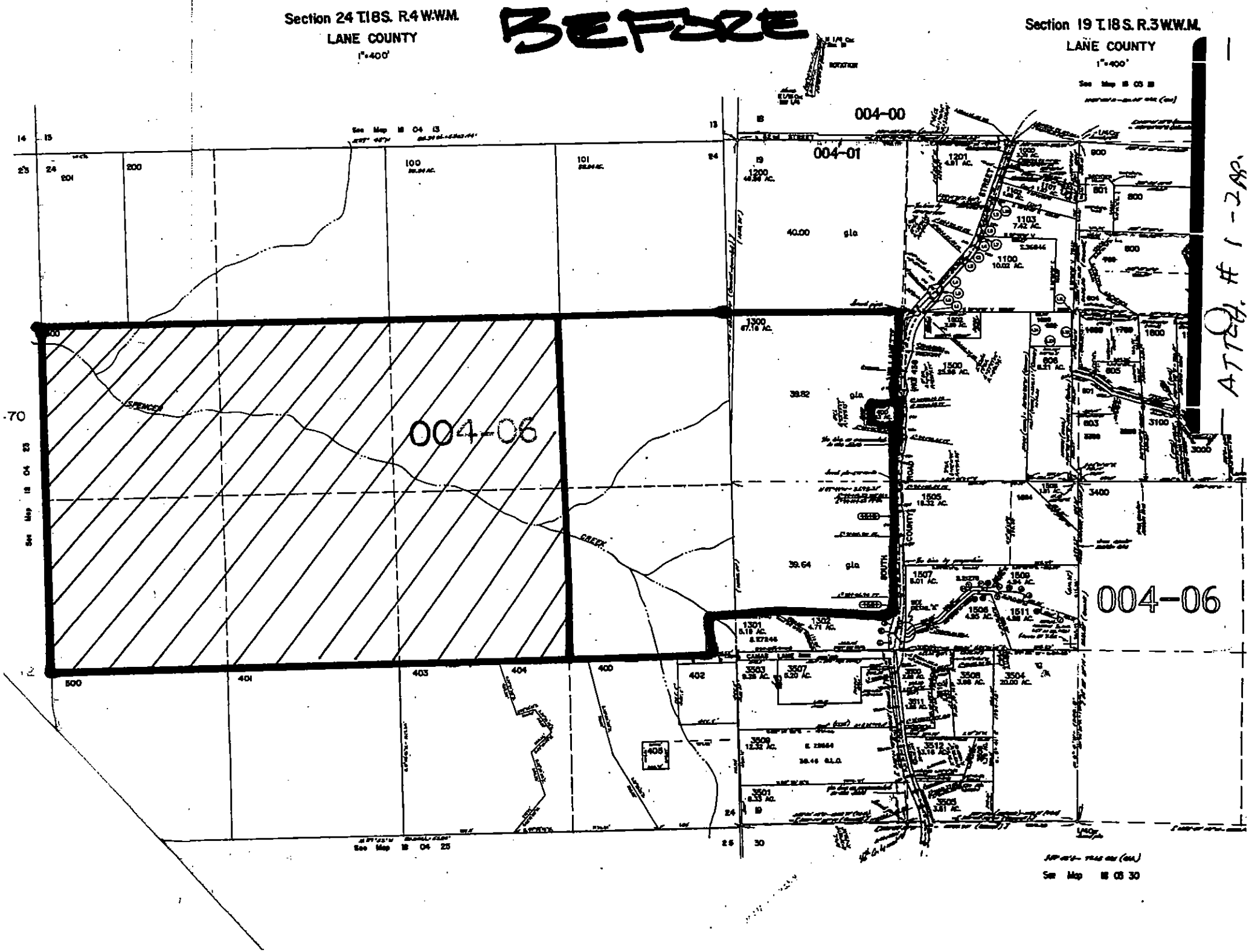
IV. CONCLUSION

A. Summary Comments

The submittal appears to qualify the subject property for a recommendation for approval to a ML designation. However, a 33-page document in objection to the request was received on the same day this report was issued, too late to analyze. Staff, as well as the applicant, is expected to comment on that submittal at the hearing. Until then, no recommendation is made.

B. Attachments to this Staff Report

1. "Before" & "After" maps of lot line adjustment (from PA 04-5860--2p.
2. Transportation planning response of 12-22-04—1p.
3. State Watermaster's response of 2-7-05—2pp.
4. Tax Assessor's response of 2-7-05 on deferral status—2pp.
5. March 1997 "guideline" for ML applications—5pp.
6. Applicant's supplement of 2-3-05—34pp.
7. Goal One Coalition objections of 2-8-05—33pp.


Section 24 T.18S. R.4 W.W.M.
LANE COUNTY
1"=400'
BEFORE
Section 19 T.18 S. R.3 W.W.M.
LANE COUNTY
1"=400'
004-00
004-01
004-06
004-06
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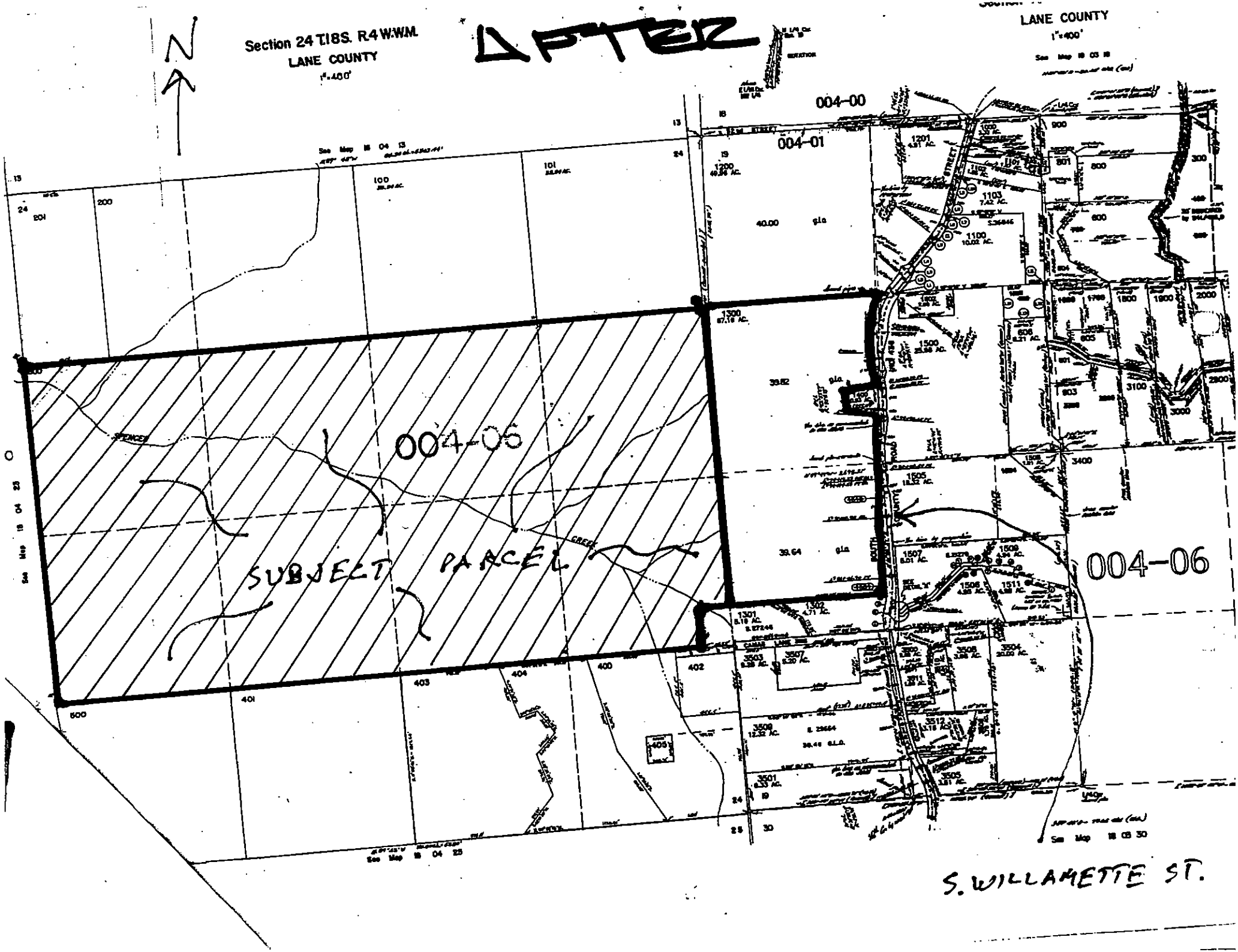

AFTER
Section 24 T.18S. R.4 W.W.M.
LANE COUNTY
1"=400'
LANE COUNTY
1"=400'
004-00
004-01
004-06
SUBJECT PARCEL
004-06
S. WILLAMETTE ST.

#168

Faxed on 2-8-05 (duplicate) 18-04-24

December 22, 2004

Mr. Steve Cornachia, Attorney
Herschner Hunter LLP
180 E. 11th Ave.
Eugene, OR 97401

RE: Dahlen, PA 04-6092

Dear Mr. Cornacchia:

I have reviewed the transportation-related information for the Dahlen plan amendment/zone change application to re-designate land from Agriculture to Marginal Lands (plan designation) and from E-40 to ML (zoning). I found the proposed findings to be complete from a transportation planning perspective as follows:

The application correctly identified the state land use requirements - i.e., state land use goal 12, Transportation, and the applicable requirements, namely OAR 660-012-0060 ("TPR").

The findings include an analysis provided by an Oregon certified engineer with expertise in traffic engineering and are certify-stamped. The findings address the requirements in the Lane County TSP regarding level of service and v/c ratios, for a 20 year planning horizon. They conclude that the traffic impacts are within the limits allowed by the state TPR and the County's TSP.

Therefore it is my opinion that the required transportation-related requirements for the plan amendment/zone change application have been adequately addressed in the traffic impact analysis.

The existing driveway that will serve the proposed development was permitted for a residence in 1997 by the County's Right-of-Way Management Facility Permit section, under permit number 970400. According to the permit records, the driveway work was found to be complete and in compliance with Lane County's requirements and specifications. Please note that the driveway will be reviewed for serving additional lots with regard to applicable road standards when a subdivision application is submitted. Standards found in LC 15.055 and 15.706 apply to new private easements in land divisions.

Please contact me if I can provide any additional information at this time.

Sincerely,

Bill Morgan

Bill Morgan, PE
Senior Transportation Engineer
541.682.6932
bill.morgan@co.lane.or.us

ATTCH. #2 -1A.

KENDALL Jerry

From: MATTICK Mike (OR)
Sent: Monday, February 07, 2005 3:30 PM
To: KENDALL Jerry
Subject: Fwd: Dahlen Aquifer Analysis Report

Hi Jerry,

I took the report to Salem a couple of weeks ago. A staff Hydrogeologist, Marc Norton, reviewed it. His email comments are below.
Before that, you once asked me if the report met the requirements of the code. From a picky standpoint, I don't think it does because the ordinance says the aquifer test **must** include a **storage coefficient**; the report says one could not be calculated because the observation well was not affected by the test. So, maybe they should have drilled a well that would be affected by the test well. That could get very expensive. What if the next well proved to not be affected also? How many would they need to drill?

So, disregarding that, I'd stand by my earlier review, concurring that there is adequate water in area to support a dwelling per 10 acre lot.
Marc also concludes that:with the proposed lot size, there should be little or no interference unless wells are drilled close to each other across property lines.

X-Sender: nortonma@mailhub.wrd.state.or.us
X-Mailer: QUALCOMM Windows Eudora Version 5.1.1
Date: Tue, 01 Feb 2005 16:25:20 -0800
To: Michael Mattick <Michael.J.MATTICK@wrd.state.or.us>
From: Marc Norton <Marc.A.NORTON@wrd.state.or.us>
Subject: Dahlen Aquifer Analysis Report
X-Spam-Checker-Version: SpamAssassin 2.63 (2004-01-11) on
kettle.wrd.state.or.us
X-Spam-Status: No, hits=0.0 required=5.0 tests=none autolearn=ham version=2.63
X-Spam-Level:

Mike,

I read through the report and looked at some of the information in the back. The one thing I would point out, is that I could not find and information on the "observation well" in the report. In the early report on the test. Ralph indicates that the observation well is in a different aquifer and that is why there was no impact during the test.

In the recent letter report, that information is left out which leads the reader to believe that the impacts did not reach the observation well. The reality is that the test does not show that. We do not know how far out the cone of depression extended.

I also noticed that the well did not recover in the same amount of time the well was pumped. This is not a good sign. The well had only recovered about half of the drawdown after being allow to recover for 11 hours, 2 hours longer than the pumping period. Ideally,

ATTCH. # 3 -2B.

the well should have fully recovered in this amount of time.

Large storage tanks for each well with low yields will help to minimize over pumping. Otherwise, with the proposed lot size, there should be little or no interference unless wells are drilled close to each other across property lines.

Hope this helps.

Marc

Lastly, I'd like to do Pisqua once a week kind of regulatly,
MM

+==========+
| Michael J. Mattick email to: Michael.J.Mattick@wrd.state.or.us |
| Watermaster District 2 |
| Voice: (541)-682-3620 FAX: (541)-746-1861 |
| Oregon Water Resources Department Web page: http://oregon.gov/OWRD/ |
| |
| Office located at: |
| Central Lane Justice Court |
| 220 N 5th St. |
| Springfield, Oregon 97477 |
+==========+

KENDALL Jerry

From: KENDALL Jerry
Sent: Monday, February 07, 2005 5:06 PM
To: EVANS Dave W
Subject: RE: tax deferral status

Thanks Dave. That will do it. I appreciate your time. Will let you know if I need more in the future (I need to digest this all).

-----Original Message-----
From: EVANS Dave W
Sent: Monday, February 07, 2005 4:36 PM
To: KENDALL Jerry
Subject: RE: tax deferral status

Jerry – this property became Designated Forestlands (that is, forestlands by application) in 1992. The owner at the time of application was Arthur R. Moshofsky. It appears (but I'm not absolute on this without further research) the current owners purchasers the property in 1997.

Let me know if you need more information.

Dave

-----Original Message-----
From: KENDALL Jerry
Sent: Monday, February 07, 2005 12:58 PM
To: EVANS Dave W
Subject: RE: tax deferral status

Thanks Dave. If you can get the circulars, fine, but they are not critical. It's more the tax deferral status I'm after.

-----Original Message-----
From: EVANS Dave W
Sent: Monday, February 07, 2005 12:11 PM
To: KENDALL Jerry
Subject: RE: tax deferral status

Hi Jerry, here is some info I can get to you quickly:

I didn't get a copy of the notice for PA 04-6092.

Map 18-04-24-00, tax lot 00300 is in two accounts due to tax code split; account #0736759 contains 182.85 acres and it is all in Forest Deferral. Account #1001492 has 133.50 acres in Forest Deferral and 2 – 1 acre home sites, for a total of 318.35 acres in the tax lot.

It has been in forest deferral since at least 1995; I will need to do some research and get back to you for prior years. I will go back to 1990 if that sounds alright.

I will forward copies to you of the Dept. of Revenue Information Circulars for special assessment of farmland in an EFU and Non-EFU zones. The forestland program(s) have gone through so many changes in the last 4 to 6 years that there aren't any current circulars. I can forward you some of these if and when we receive some but I don't know when that might be.

Dave

-----Original Message-----
From: KENDALL Jerry
Sent: Monday, February 07, 2005 9:59 AM
To: EVANS Dave W
Subject: tax deferral status

— ATTCH. #4 – 2pp. —

Hi Dave.

I'm doing a Plan amendment/zone change, PA 04-6092 (let me know if you did not get notice), 320 acres going from EFU to ML (proposed, that is).

It is map 18-04-24 #300.

I need some farm/forest deferral info.

Is it getting any?

Acreage breakdown on each?

If getting a deferral, when was such applied for? Also, more specifically, a commissioner wants to know if any deferral was applied for "during the last 15 years".

Lastly, if you have handouts on farm/forest deferral programs that your office administers, can you courier me copies?

I would need this info by next Monday at the latest.

Thanks for your help.

Jerry Kendall/Associate Planner
email: Jerry.Kendall@co.lane.or.us
ph: 541-682-4057
FAX: 541-682-3947

March 1997

Supplement to Marginal Lands Information Sheet

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

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

ISSUE 1: What is the Marginal Lands concept?

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

ISSUE 2: Definition of "Management".

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

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

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

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

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

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

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

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

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

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

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

ISSUE 6: Weight of evidence.

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

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

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

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

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

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

INFORMATION SHEET

REQUIREMENTS FOR MARGINAL LAND DESIGNATION AND ZONING

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

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

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

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

> *The land must not have been managed during thereof the five calendar years between January 1, 1978 and January 1, 1983, as part of a farming operation which produced $20,000 or more in annual gross income, or as part of a forest operation capable of producing an average, over the growth cycle, of $10,000 in annual gross income. Statistical information compiled by Oregon State University Extension service or other similar emperical data may be used to demonstrate income capability.*
>
> *In addition to the above, the land must meet one of the following tests:*
>
> a. *At least 50% of the area of the proposed Marginal Land, plus the lots or parcels all or partially located within 1/4-mile of the perimeter of the proposed Marginal Land, consists of lots or parcels 20 acres or less in size as of July 1, 1983. Lands within an adopted Urban Growth Boundary are not to be included in this calculation. Those lots or parcels which are adjacent and of common ownership* are to be considered one lot or parcel (lots or parcels separated by a public road are not considered adjacent).*
>
> **Owned by the same person, parents, children, sisters, brothers or spouses, separately or in tenancy in common, or ownership being transferred from one of those listed to another.*
>
> b. *The proposed Marginal Land is located within an area of not less than 240 acres, of which at least 60% (by area) is made up of lots or parcels of 20 acres or less in size as of July 1, 1983. Lands within an adopted Urban Growth Boundary and/or lands within an area to which an exception has been adopted to Goal 3 or 4 (e.g., a Developed and Committed area) by the County are not to be included in the above calculation. Parcel ownership provisions as stated in "a" above also apply to this test.*
>
> c. *The proposed Marginal Lands is composed predominantly (more than 50%, by area) of soils in capability classes V through VIII in the Agricultural Capability Classification System used by the U.S. Department of Agriculture Soil Conservation Service, and is not capable of producing 85 cubic feet of merchantable timber per acre per year.*

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

Submittal Requirements

1. Completed General Land Use Application Form.

2. Completed Plan Amendment Application Form.

3. A statement (affidavit) certifying that the property in the application has not been used for *farming* purposes per the condition in the statutory "income test."

4. A soils report, indicating soils types, acres of each, agricultural capability classification and forest land cubic foot site class ratings for the property. This will be used to determine if the property meets the *forest land* "income test," and will also be used if optional test "c" in the statute is selected for use by the applicant. See "soils test" below.

5. If optional tests "a" or "b" in the statute -- location of the property with respect to neighboring parcels -- are selected for use by the applicant, up-to-date assessor's maps showing parcels by size and ownership, within the areas designated by the statute, must be submitted with the application.

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

Soils Test:

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

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

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

1. Number of acres of the property in each applicable CFSC category;

2. Percentage of acreage within each category (divide the acres of the property within each category by the acreage maximum for each category);

3. Add the percentages. Maximum is exceeded if percentage is 100 or more, and property does not qualify for Marginal Land designation.

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

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

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

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

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

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

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

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

(b) Only one lot or parcel exists if:

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

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

(C) The interests are held by relatives described in subparagraph (B) of this paragraph, one relative held the interest in the adjacent lots or parcels before transfer to another relative.

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

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

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

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

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

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

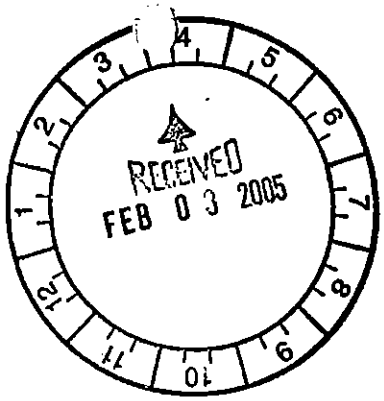
(7) The amended goals shall permit counties to authorize the uses on and divisions of marginal land set out in ORS 215.317 and 215.327.

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

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

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

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



HERSHNER HUNTER LLP

STEVE CORNACCHIA
scornacchia@hershnerhunter.com

February 3, 2005

Jerry Kendall
Lane County Land Management Division
Public Service Building
125 E. 8th Avenue
Eugene, OR 97401

Re: Karen Dahlen (PA 04-6092)
Our File No. 22186.30005

Dear Jerry:

Enclosed herewith are copies of documents and materials from PA 03-5657, the subdivision application approved by the Lane County Planning Director on June 15, 2004. We incorporated PA 03-5657 into the application materials for PA 04-6092 and requested that Lane County include the incorporated PA 03-5657 into the record of PA 04-6092. You have requested that we produce specific materials from PA 03-5657 that we wish to have incorporated into the record of PA 04-6092. The following copies of documents and materials are enclosed pursuant to that request and consistent with our request for incorporation and inclusion in the subject record:

- The preliminary subdivision application for Tax Lot 18-03-19-00-1300, without enclosures (many of which are reproduced and included in the subject application);
- March 4, 2004, correspondence from this office to you, without enclosure (the Marc Setchko enclosure to that correspondence is presently in the record as an enclosure to the subject application;
- The June 15, 2004, Lane County Planning Director Administrative Approval of PA 03-5657.

ATTCH. # 6 - 3488.

Please contact me if you have any questions regarding this matter.

Best regards,

STEVE CORNACCHIA

PSC:ss
Enclosures
Cc: Karen Dahlen (w/o enclosures)

Preliminary Subdivision Application
Lane Code Chapter 16.050

Owner: Karen Dahlen
Address: P.O. Box 5687
Eugene, OR 97405
Telephone: 431-3892

Agents for Owner:

Jim Belknap
Territorial Land Company
P.O. Box 865
Cottage Grove, OR 97424

Phone: 942-9141

Steve Cornacchia
Hershner, Hunter, Andrews, Neill & Smith, LLP
P.O. Box 1475
Eugene, OR 97440-1475
Phone: 686-8511

Subject Property: Tax Map 18-03-19, Tax Lot 1300, see Exhibit A.
Acreage: 67.16 acres
Zoning: Marginal Land (ML)
Zoning Plot: 348, see Exhibit B
Tax Code: 004-06

Proposal: This application is to gain approval of a subdivision of the subject property into five lots, varying in size from 10 to approximately 21 acres. See proposed Subdivision Plan at Exhibit C.

(1) Conformity with the Comprehensive Plan

All divisions shall conform with the Comprehensive Plan for Lane County and any applicable City Comprehensive Plan.

The subject property lies outside the Urban Growth Boundary for the City of Eugene and the Metro Plan Boundary, thus is not subject to any applicable City Comprehensive Plan.

The application is in conformance with the Lane County Comprehensive Plan. Under Goal Three, Agricultural Lands, the county's comprehensive plan provides in policy number 14 that land may be designated as marginal land if it complies with the requirements of ORS 197.247 and Lane County General Plan Policies, Goal 5, Flora and Fauna, policies number 11 and 12. Under Goal Four, Forest Lands, policy number 3 stipulates that "Forest lands that satisfy the requirements of ORS 197.247 may be designated as Marginal Lands and such designations shall also be made in accordance with other Plan policies. ***Uses and land divisions allowed on Marginal Lands shall be those allowed by ORS 197.247."*** (Emphasis added)

In 1984 under PA-0940 the subject property was re-zoned to Marginal Land. Through the designation of the subject property as Marginal Land, the property was shown to comply with the respective state statute and county general plan policy.

ORS 197.247(7) provides that "The amended goals shall permit counties to authorize the uses on and divisions of marginal land set out in ORS 215.317 and 215.327." ORS 215.317, Permitted uses on marginal land, provides "(1) A county may allow the following uses to be established on land designated as marginal land under ORS 197.247 (1991 Edition) (d) One single-family dwelling on a lot or parcel created under ORS 215.327 (1) or (2)."

Under ORS 215.327, Divisions of marginal land. "A county may allow the following divisions of marginal land:

(1) Divisions of land to create a parcel or lot containing 10 or more acres if the lot or parcel is not adjacent to land zoned for exclusive farm use or forest use or, if it is adjacent to such land, the land qualifies for designation as marginal land under ORS 197.247 (1991 Edition).

(2) Divisions of land to create a lot or parcel containing 20 or more acres if the lot or parcel is adjacent to land zoned for exclusive farm use and that land does not qualify for designation as marginal land under ORS 197.247 (1991 Edition)."

As provided in the Comprehensive Plan, "Uses and land divisions allowed on Marginal Lands shall be those allowed by ORS 197.247." The proposed division of the subject property conforms to the requirements of ORS 197.247.

(2) Conformity with the Zoning

All divisions shall comply with all specifications of the applicable zoning requirements in Lane Code

Under Lane Code 16.214(6) Area. Land in a Marginal Land zone may be divided as follows:

(a) Into lots or parcels containing at least 10 acres if the lots or parcels are not adjacent to land zoned Exclusive Farm Use (E), Nonimpacted Forest Land (F-1), Impacted Forest Land (F-2), or if it is adjacent to such land, the land qualifies for designation as marginal land pursuant to ORS Chapter 197.

(b) Into lots or parcels containing 20 acres or more if the lots or parcels are adjacent to land zoned Exclusive Farm Use (E), Nonimpacted Forest Land (F-1), Impacted Forest Land (F-2), and that land does not qualify for designation as marginal land pursuant to ORS Chapter 197.

Counties are authorized under ORS 197.247(1)(a) and (b)(C) (1991 Edition) to designate land as marginal land if the land meets the following criteria:

"The proposed marginal land was not managed, during three of the five calendar years preceding January 1, 1983, as part of a farm operation that produced $20,000 or more in annual

gross income or a forest operation capable of producing an average, over the growth cycle, of $10,000 in annual gross income; and ... is composed predominantly of soils in capability classes V through VIII in the Agricultural Capability Classification System in use by the United States Department of Agriculture Soil Conservation Service on October 15, 1983, and is not capable of producing fifty cubic feet of merchantable timber per acre per year in those counties east of the summit of the Cascade Range and eighty-five cubic feet of merchantable timber per acre per year in those counties west of the summit of the Cascade Range, as that term is defined in ORS 477.001 (21)."

Qualification of adjacent property as Marginal Land.

As depicted in Exhibit A, to the north of the subject property is Tax Lot 18-03-19-00-1200. This parcel is 49.71 acres, as described by the Lane County Department of Assessment and Taxation, and is zoned F2. That parcel was not managed, during three of the five calendar years preceding January 1, 1983, as part of a farm operation that produced $20,000 or more in annual gross income. That parcel has been owned since January 1, 1978 by Bernard and Sybil Peters and they have provided a statement that no agricultural use has been made of the parcel throughout the period of their ownership (see statement of Sybil Peters, dated June 2, 2003, attached hereto as Exhibit D and incorporated herein by this reference). As demonstrated below, that parcel contains soils with forest land capability of only 23.9538 cubic feet per acre per year, rendering it incapable of management producing at least $10,000 in annual gross income of the growth cycle. 56.693% of the soils are in Soil Class V-VIII. The Soil Conservation Service Map provided by the Lane Council of Governments shown at Exhibit E sets out the following soils capabilities for Tax Lot 18-03-19-1200:

Acres	% of Parcel	Soil Type	Agricultural Capability	Forest Capability		Total Forest Capability
3.141	6.319%	43E Dixonville-Philomath-Hazelair Complex	IV	63	X 3.141 =	197.883
24.079	48.441%	102C Panther	VI	0		0
18.385	36.998%	43C Dixonville-Philomath-Hazelair Complex	III	54	X 18.385 =	992.790

Acres	% of Parcel	Soil Type	Agricultural Capability	Forest Capability	Total Forest Capability
3.075	6.186%	138E Witzell	VI	0	0
49.707 ac	100%				1,190.673 cf/ac/yr

1,190.673 total Cubic Feet / 49.7Acres = 23.9538 Cubic Feet per Acre per Year Average

As depicted in Exhibit F, to the east of the subject property is Tax Lot 18-04-24-300. This parcel is 320.49 acres, as represented by the Lane County Department of Assessment and Taxation, and is zoned EFU40. This parcel was not managed, during three of the five calendar years preceding January 1, 1983, as part of a farm operation that produced $20,000 or more in annual gross income. The parcel was owned between January 1, 1978 and January 1, 1983, by four individuals including Art Moshofsky. On April 15, 1997, Mr. Moshofsky issued a statement that during that period of ownership the parcel was not managed as part of a farm operation (see statement of Art Moshofsky, dated April 15, 1997, attached hereto as Exhibit G and incorporated herein by this reference).

As demonstrated below, Tax Lot 18-04-24-300 contains soils with a forest land capability of 26.4011 cubic feet per acre per year, rendering it incapable of management producing at least $10,000 in annual gross income over the growth cycle. In addition, 188.429 acres are in Class V through VIII soils, or 58.793% of the parcel.

Attached at Exhibit H is the Soil Conservation Service Map and accompanying soil index key, provided by the Lane Council of Governments for Tax Lot 300. The summation of the soils capability for this lot is as follows:

Acres	% of Parcel	Soil Type	Agricultural Capability	Forest Capability	Total Forest Capability
28.514	8.897 %	43E Dixonville-Philomath-Hazelair Complex	IV	63 X 28.514 =	1796.382
79.842	24.912%	28C Chehulpum	VI	0	0
37.011	11.548 %	138G	VI	0	0

Witzell

Acres	% of Parcel	Soil Type	Agricultural Capability	Forest Capability	Total Forest Capability
.371	.116 %	113C Ritner	IV	149 X .371 =	55.279
27.256	8.504 %	138E Witzell	VI	0	0
10.161	3.171 %	43C Dixonville-Philomath-Hazelair Complex	III	54 X 10.161 =	548.694
13.864	4.326 %	52D Hazelair	IV	0	0
34.574	10.788 %	102C Panther	VI	0	0
9.042	2.821 %	125C Steiwer	III	0	0
12.157	3.793 %	41C Dixonville	III	152 X 12.157 =	1847.86
27.358	8.536 %	135E Willakenzie	IV	154 X 27.358 =	4213.132
15.009	4.683 %	78 McAlpin	II	0	0
11.637	3.631%	105A Pengra	III	0	0
9.746	3.041%	108C Philomath	VI	0	0
3.950	1.233 %	125D	IV	0	0

Acres	% of Parcel	Soil Type	Agricultural Capability	Forest Capability	Total Forest Capability
0 (trace)	negligible	113	VI		
320.492 ac	100 %				8,461.347 cf/ac/yr

8,461.347 total Cubic Feet / 320.492 Acres = 26.4011 Cubic Feet per Acre per Year Average

As depicted in Exhibit A, to the south of the subject property are Tax Lots 18-03-19-00-1301 and 1302, which are zoned RR10, see Exhibit B.

As depicted in Exhibit A, adjoining the subject property at its eastern boundary is Tax Lot 18-03-19-00-1400, a small lot zoned F2, and South Willamette Street, County Road No. 2249 (shown as County road No. 436 in the Lane County Tax Assessor's map at Exhibit A). Across South Willamette Street are Tax Lots 18-03-19-1500 (25.98 acres) and 18-03-19-00-1505 (18.32 acres), both zoned F2, and Tax Lot 18-03-19-00-1507, which is zoned RR10. (Refer to Exhibit B for zoning confirmation).

Tax Lots 18-03-19-1400, 1500 and 1505 are of sufficient forestland capability that the parcels would not qualify as Marginal Land, accordingly, any parcels created in the subdivision that abut these three F2 zoned lots will be required to be 20 acres or larger.

The area of the subject property that abuts Tax Lots 18-03-19-1301, 1302 and 1507 can be divided into parcels of 10 or more acres as these three lots are zoned RR10, not being a farm or forestland designation.

The area of the subject property that abuts Tax Lots 18-03-19-00-1200 and 18-04-24-300 can be divided into parcels of 10 or more acres as these two lots meet the criteria for designation as Marginal Land.

As shown in the preliminary subdivision plan, Lot 1 is projected to be approximately 21.19 acres and will adjoin Tax Lots 18-03-1400, 1500 and 1505. Lots 2, 3, 4 and 5 will be 10.01 acres, 10.02 acres, 12.84 acres and 12.82 acres, respectively, and will abut the RR10 zoned parcels or the parcels that would qualify for Marginal Land designation. This proposed division complies with the requirements of Lane Code 16.214.

(3) Relation to Adjoining Road Systems

A subdivision, replat or partition shall provide for the continuation of major and secondary roads existing in adjoining subdivisions, replats or partitions, or for their proper projections when adjoining property is not subdivided, replatted or partitioned, and such streets shall be of a width not less than the minimum requirements for roads set forth in Lane Code, Chapter 15. Where the approving authority determines that topographic conditions make such continuation or conformance impractical, exceptions may be made as provided in Lane Code 13.080.

The subject property adjoins South Willamette Street, County Road No. 2249. Access onto South Willamette Street will be by an existing private roadway that enters as depicted in Exhibit C. The road that is proposed to serve the development is to be a private road, located within a 60 foot wide easement area. Reciprocal beneficial and burdening easements will be placed on the five lots of the development, as well as the adjoining land to the west, Tax Lot 18-04-24-00-300. The road to serve the subject property and westerly adjoining property (Tax Lot 300) is presently constructed to a private road standard, being a 16 foot wide asphalt surface. A joint use and maintenance agreement will be incorporated into conditions, covenants and restrictions that will be applied to the lots of the development. No adjoining property other than the referenced Tax Lot 18-04-24-00-300 will be benefitted by the use of the road.

(4) Redevelopment Plan

(a) In subdividing or partitioning tracts of land into large lots which at some future time could be further divided, the Director may require that parcels, lots or blocks shall be of such size and shape, be so designed and meeting such building site restrictions as will provide for extension and opening of streets at intervals which will permit a subsequent division of any parcel or lot into smaller sizes which shall have the minimum lot frontage on a street.

(b) Any person dividing tracts of land into large parcels or lots which at some future time could be further divided and still meet the minimum area requirement of the zone in which the land is located, shall provide suitable road access to each created parcel or lot so that the future development of each parcel or lot shall provide access for the redevelopment parcels or lots.

(c) The County may require that special development recommendations and/or restrictions on the location of buildings be made a matter of public record when it is deemed necessary to ensure that redivision may take place in conformity with the purpose of this Chapter. If the restrictions are considered permanent, they may be recorded by separate document.

(d) Redevelopment plans may be required to show compliance to Lane Code 13.050(4)(a), (b) and (c) above prior to preliminary approval.

No redevelopment plan is submitted with this application for subdivision as the parcels created can not be further divided under existing zoning.

(5) Access

(a) Lots or parcels shall have verifiable access by way of a road, either County, local access (public) or an easement. Verifiable access shall meet the following criteria:

(I) Each lot or parcel abuts on the road for a distance of at least 20 feet.

(ii) There is a legal right appurtenant to the lots or parcels to use the road for ingress and egress. A legal right to use an easement may be evidenced by : 1) an express grant or reservation of an easement in a document recorded with the County Recorder, 2) a decree or judgement issued by a court of competent jurisdiction, 3) an order of the board establishing a statutory way of necessity or gateway road, or 4) an express easement set forth in an approved and recorded subdivision or partition.

(iii)The road provides actual physical access to the lots or parcels.

(b) County and local access - public roads used as access to lots or parcels shall be designed and developed according to the standards of Lane Code, chapter 15 and Lane Manual, Chapter 15.

(c) Easements used as access to lots or parcels shall meet the following criteria:

(I) There shall be no more than four lots, parcels or unsubdivided or unpartitioned tracts of land accessed by any portion of the easement, except that more than four lots in a subdivision or partition may be accessed by easement. This restriction may be modified through compliance with the variance section of this Chapter.

(iii) Easement shall not be approved if the road is presently needed or is likely to be needed for access to adjacent properties or to be utilized for a County or public road in the normal development of the area.

(iii) The minimum width of easement shall be 20 feet.

(iv) All approved documents creating a private access easement shall provide for the installation, construction and maintenance thereof of all public utilities and facilities which are now or may in the future be needed for the area abutting the road and the surrounding area.

(v) The county may require such improvements as are reasonably necessary to provide safe and adequate access to the lot or parcel.

(vi) A lot or parcel abutting a railroad or limited access road right-of-way may require special consideration with respect to its access requirements.

(vii) Any easement approved as a private access easement shall be documented on a form acceptable to the Department and shall contain the minimum following information: grantor and grantee; description of the dominant and servient tenements; description of the intent or purpose of the easement and a statement of maintenance responsibility.

(viii) All approved easements shall be recorded.

(ix) If the County determines that the access and transportation needs of the public would be better served if the private access easement being considered would be established as a public road, it may require that a public road dedication be made to a length and width deemed sufficient by the Department of Public Works.

As previously discussed in Section (3), access to the various parcels shall be over the presently constructed 16 foot wide private road, lying within a 60 foot wide easement. The easement shall be a part of the final plat as it is recorded. As depicted in Exhibit C, all lots within the subdivision have substantially greater than 20 feet of frontage on the proposed roadway. The existing electrical and telephone service lies within the proposed easement area, running alongside the presently constructed road. The criteria stipulated in Sections (4a) through (4c) above are stipulated to be included within the easement document, a final copy of which shall be submitted for review and approval prior to recording.

(d) For the portion of a panhandle tract used as access to the main portion of the tract, the County may require such road improvements and design as are necessary to provide safe and adequate access to the main portion of the tract.

This provision is not applicable to the proposed subdivision.

(6) Control Strip

The County may require that a strip of land contiguous to a road be dedicated or deeded to the public for the purpose of controlling access to or the use of a lot or parcel for the purposes specified by Lane Code 13.050(6)(a) through (e).

It is not anticipated that a control strip will be required in this subdivision proposal.

(7) Utility and Watercourse Easement

(a) Utility easements. The dedication of easements for the placement of overhead or underground utilities, including, but not limited to, electric power, communication facilities, sewer lines, water lines and gas lines shall be required where necessary.

Electrical and telephone service is currently in place alongside the existing constructed road, with

easements in favor of the utility providers. All services are underground. In the event additional or upgraded service is required in the course of the development such services will be provided in the easement area.

(b) Watercourse easements. When a partition or subdivision is traversed by a watercourse, such as a drainageway, channel or stream, there shall be provided a storm-water or drainage easement conforming substantially with the lines of the watercourse, and of such design and development as may be deemed necessary to accommodate reasonable anticipated future development within the drainage area.

An intermittent stream drains through the northern portion of the subject property and an easement for unrestricted drainage will be provided in the final subdivision plat. The easement will affect Lots 1 and 2.

(8) Pedestrian and Bicycle Ways

When necessary for public convenience, safety or as may be designated on an adopted master bike plan, the County may require that pedestrian or bicycle ways be improved and dedicated to the public. Such pedestrian and bicycle ways may be in addition to any standard sidewalk requirements of Lane Code, Chapter 15, Roads. Pedestrian and bicycle ways shall be not less than six feet in width and be paved with asphaltic concrete or portland cement concrete.

As the proposed road to benefit the lots of the subdivision is to be a private road with limited access, no sidewalks or bicycle way is proposed to be constructed in the development.

(9) Dangerous Areas

Any area determined by the Director to be dangerous for road or building development by reasons of geological conditions, unstable subsurface conditions, groundwater or seepage conditions, floodplain, inundation or erosion or any other dangerous conditions shall not be divided or used for development except under special consideration and restriction as specified by Lane Code 13.050(9).

No dangerous areas are believed to exist on the subject property. The property is not within the floodplain and is not subject to inundation or unusual erosion hazards.

(10) Grading, Excavation and Clearings

Grading and clearing of any portion of a division by mechanical equipment for road and/or development purposes may be restricted or regulated either at the time of tentative plan approval or final approval if there is a finding that such grading or clearing presents a real threat of pollution, contamination, silting of water bodies or water supplies, erosion and slide damage, or alteration of natural drainage patterns in the area.

No threat of pollution, contamination, silting of water bodies or erosion and slide damage has been identified in the proposed subdivision.

(11) Land for Public Purposes

When a public agency has demonstrated through a capital improvement program that it has definite plans to acquire a specified portion of a proposed division for a needed public use, and there is reasonable assurance demonstrating that steps will be taken within 90 days of preliminary approval to acquire the land, then the County may require that these portions of the division be reserved for public acquisition for a period not exceeding 90 days from the date of preliminary approval.

The applicant is not aware of any lands having been identified as needed for public use.

(12) Sewerage Facilities

Lots and parcels for which the applicable zoning districts permit residences, or for which residences are contemplated, shall be served by either an approved public or community sewerage facility or be suitable for an approved individual disposal facility.

All lots within the subdivision are anticipated to be served by individual sewage disposal facilities (ie, septic systems).

(13) Water Supply

Lots and parcels shall be served by an approved public, community or individual water system.

All lots within the subdivision are anticipated to be served by individual private wells. An aquifer study has been completed by EGR and Associates. The aquifer study is attached at Exhibit I.

(14) Additional Cluster Subdivision Requirements

The land in a cluster subdivision not platted as a building lot shall be secured and maintained as private open space and recreation area by covenant or association prepared by the applicant and approved the Director or County Counsel.

The proposed development is not a cluster subdivision and no open space is planned in the development.

Conformance with Legal Lot Verification Requirements for Land Division Applications

The property that is the subject of this subdivision application has been confirmed as a Legal Lot under PA 03-_____, a copy of which is attached hereto at Exhibit J.

Index to Exhibits

HERSHNER, HUNTER, ANDREWS, NEILL & SMITH, LLP
LAW OFFICES

180 East 11th Avenue
P.O. Box 1475
Eugene, Oregon 97440
Telecopy (541) 344-2025
Telephone (541) 686-8511

STEVE CORNACCHIA
scornacchia@hershnerhunter.com

March 4, 2004

Jerry Kendall
Lane County Land Management Division
Courthouse Public Service Building
125 E. 8th Avenue
Eugene, OR 97401

Re: Applicant's Response to Goal One Coalition
PA 03-5657 (Dahlen)
Our File No. 22186 30004

Dear Mr. Kendall:

Enclosed herewith is a written response prepared by Marc E. Setchko, Consulting Forester. Mr. Setchko, on behalf of Karen Dahlen, is responding to the written testimony of Goal One Coalition, prepared by Mr. Jim Just, and dated February 5, 2004, regarding the forest capability of property described by assessor map 18-04-24 TL 300 ("subject property").

Mr. Just's correspondence is directed at Mr. Setchko's Forest Productivity Analysis ("Analysis"), which was submitted to Lane County for entry into the record of PA 03-5657 in support of the subject subdivision application. The Analysis demonstrated that the subject property is not capable of producing 85 cu/ft/yr of merchantable timber and was not managed as a forest operation capable of producing an average of $10,000 annual gross income over the growth cycle.

Productivity Analysis.

Mr. Just argues that Mr. Setchko's original Analysis is not a complete analysis of forest productivity because it does not contain an analysis of the site's soil capability for producing timber species other than Douglas Fir. Mr. Just attaches his own analysis of the site' s capability based upon his assertion that the analysis should include productivity ratings for species such as KMX, Hybrid Poplar and Ponderosa Pine. Mr. Just apparently draws his ratings from assumptions that KMX and Hybrid Poplar are "merchantable" for the purposes of the analysis of whether the site is "capable of producing 85 cubic feet of ***merchantable*** timber per acre per

year[1]. Mr. Just assumes that Hybrid Poplar has a productivity rating of 350 cf/ac/yr and that KMX could be produced at twice the volume of wood fiber produced by Douglas Fir. Mr. Just provides no Oregon Department of Forestry authority or foundation for his assumptions.

Mr. Setchko, however, in his response, provides a variety of analytical tables using both Lane County soil ratings and ratings from Oregon Department of Forestry that contain ratings for all soils of the site. Mr. Setchko even goes as far as to provide a table that includes ratings for Ponderosa Pine (both Mr. Just's and those from the Office of State Forester) and Mr. Just's assumptions regarding ratings for McAlpin soils (even though for an income calculation it would be worth substantially less that Douglas Fir). Regardless of the ratings used, all of Mr. Setchko' s tables demonstrate that the site is not capable of producing 85 cf/ac/yr of merchantable timber.

More important than the demonstration produced by the analytical tables is Mr. Setchko's professional opinion regarding the merchantability of the tree species that Mr. Just argues should be included in the analysis. It is Mr. Setchko's professional opinion that Douglas Fir is the most valuable of all tree species in a commercial sense. He opines that KMX and Hybrid Poplar have no commercial market and no commercial value. He opines that red alder and red cedar will not grow on the site. He opines that alder will not grow on the site. He also includes an analysis of the difficulty in growing or marketing black cottonwood, Oregon ash, Oregon white oak, maple and other conifers. It is his opinion that Douglas Fir, as the most marketable species and the species most likely to grow on portions of the subject property, will produce the most and will bring the highest market price of all tree species. Any attempt at including other species, in his opinion, would only serve to lower the capability rating and the gross annual income of the property.

Mr. Setchko's analytical tables, using both Lane County (SCS) Soil Ratings and Oregon Department of Forestry ratings, and professional reasoning for using Douglas Fir as the most valuable and merchantable species, combine to further confirm his original analysis and to further demonstrate that the subject property is not capable of producing 85 cf/ac/yr of merchantable timber.

Mr. Setchko's conclusion regarding the forest capability of the subject property is based upon the aforementioned calculations and his physical review of the subject property. His conclusion includes his findings from his site visits and his on-the-ground analysis of forest management on the site. His conclusion is consistent with those reached on many parcels in the South Hills area that are now designated "Marginal Land." Much of the land in the South Hills area is similar in that it contains poor soil and has not been extensively managed for farm or commercial forestry purposes.

1983 Timber Prices.

Mr. Just argues that Mr. Setchko must use "current timber values" to calculate the gross annual forest income of the site. Mr. Setchko references language in *DLCD v. Lane County* (Ericcson)[2]

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

that mentions that "current prices" were used in the calculations of the Ericcson application. In that case, however, the use of a particular year's prices was not at issue and LUBA made no determination regarding such use. What the decision in Ericcson did establish, in addition to affirming Lane County's approval of a Marginal Lands re-zoning application, was that on-site evaluation of forest productivity by a qualified expert is weightier evidence than published data or that provided by individuals not qualified as experts in forest management. In this case Mr. Setchko is the qualified expert with 27 years of forest management experience, including 17 years as a private consultant and a Master's Degree in Forestry. Mr. Just has not established that he has any experience or credentials in forest management. Furthermore, Mr. Just has not provided any testimony from a qualified expert in forest management to support his assumptions and conclusions.

Lane County, in response to and in reliance upon Ericcson, issued its interpretations of the Marginal Lands statutes in the Board of Commissioners' 1997 Supplement to Marginal Lands Information Sheet. A copy of the supplement and the information sheet is enclosed. It is a binding policy statement providing guidance and direction to applicants, staff, the public and to the Lane County Planning Commission and Board of Commissioners regarding the statute. The Board direction stated in ISSUE 4 of the supplement provides:

> **"ISSUE 4: <u>What price date should be used to calculate gross annual income for forest lands?</u>**
>
> **Board's Direction:**
> The legislative intent of the "management and income test" of the Marginal Lands
> Law was to identify those lands which were not, at the time the Marginal Lands law was enacted (1983), making a "significant contribution" to commercial forestry. Therefore, it is appropriate and statistically valid to use the following methodology:
>
> 1. Based on the best information available regarding soils, topography, etc., determine the optimal level of timber production for the tract assuming reasonable management.
>
> 2. Assume that the stand was, in 1983, fully mature and ready for harvest.
>
> 3. Using the volumes calculated in step (1), and **1983 prices**, calculate the average gross income over the growth cycle." (Emphasis added)

The Board's direction to use 1983 prices was an essential and reasonable approach to determining the productivity of forest lands at that time and obviates the need to make annual adjustments for inflation as the years go by (by adjusting the $10,000 income figure).

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[2] 23 Or LUBA 33 (1992)

Mr. Setchko's use of 1983 prices to determine average annual gross income is consistent with Lane County policy and is directed by the Board of Commissioners' binding local level policy statement in the aforementioned supplement. Using 1983 prices, Mr. Setchko has determined that the subject property was not capable of being managed for forest operations producing at least $10,000 in annual gross income.

Conclusion.

Mr. Setchko's response buttresses his earlier Analysis and further demonstrates that the subject property is not capable of producing 85 cu/ft/yr of merchantable timber and was not managed as a part of a forest operation capable of producing an average, over the growth cycle, of $10,000 in annual gross income. Mr. Setchko is a qualified expert that has supported his conclusions with on-site evaluation and analytical calculations based upon SCS (NRCS) and Oregon Department of Forestry soil capability ratings. His conclusion is that of a qualified expert that is supported by comprehensive and detailed reports that address the applicable criteria.

Respectfully submitted,

/s/Steve Cornacchia

Steve Cornacchia

PSC:ss
Enclosures

cc: Karen Dahlen (with enclosures)
Marc Setchko (w/o enclosures)
Jim Belknap (with enclosures)

LANE COUNTY PLANNING DIRECTOR

ADMINISTRATIVE APPROVAL

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

Report Date: June 15, 2004 File No: PA 03-5657

I. PROPOSAL DESCRIPTION

A. Applicant:
Jim Belknap
P.O. Box 865
Cottage Grove, OR 97424

Owner:
Karen Dahlen
P.O. Box 5687
Eugene, OR 97405

Agent:
Steve Cornacchia
P.O. Box 1475
Eugene, OR 97440-1475

B. Proposal: Request for Planning Director Approval to subdivide a 67-acre parcel into five lots of 10 acres, 10 acres, 13 acres, 13 acres and 21 acres within the Marginal Lands (ML) Zone as provided by Lane Code 16.214(6)(a) and LC 13.050.

II. DECISION

Tentative approval of the request subject to conditions shown on attached Exhibit "A."

III. BACKGROUND AND SITE INFORMATION

A. Site Description:

1. Property Description: 18-03-19 #1300, 67.16 acres in size, located south of Eugene, west of Spencer Butte Park on the west side of Willamette Street. The property is a legal lot, verified by PA 03-5632. The property is currently undeveloped.
2. Zoning:ML Marginal Lands Zone

B. Surrounding Area and Zoning

The property is bordered on the north and east by properties zoned F-2. The property is bordered on the west by properties zoned Exclusive Farm Use. The property is bordered on the south by properties zoned RR-10.

C. Services

Power: Lane Electric Cooperative
Sewer: proposed individual sewage disposal
Water: proposed wells
School: 4J Eugene
Fire: Eugene RFPD

D. Referral Responses

Transportation Planning:

Access to the proposed lots is from South Willamette Street via a private access easement. South Willamette Street is a paved, County maintained road. It is functionally classified with a planned right-of-way of 70 feet (LC 15.027) Collectors and arterials are subject to access management guidelines (LC 15.045). In this case, the single, shared private access easement would meet the criteria. A Facility Permit is required.
A Facility Permit is required for any construction within the right-of-way of roads under County jurisdiction (LC 15.205-1). This includes, but is not limited to, such construction as driveway approaches, driveway culverts or street improvements. No work is to be performed within the right-of-way prior to issuance of a Facility Permit. Driveway approaches to paved roads are required to be paved. A Facility Permit is required for the driveway approach, in order to ensure that the portion of the approach that lies within the right-of-way of South Willamette Street meets current County standards. Driveway culverts are to be built to County standards. Driveway culverts are to be built to County standards. This includes, but is not limited to, a minimum culvert size of 12" inside diameter. Exact specifications for culverts will be listed on the required Facility Permit. All conditions of Facility Permit(s) must be completed.

County Surveyor:

1. The subject property is not located within the incorporated city limits of any city.
2. This office could not locate any previous formal divisions of the subject property. The proposed development is to result in five lots.
3. The proposed lots are to be accessed via a proposed private shared 60-foot wide access easement from Willamette Street South. This access easement must be surveyed with monuments placed along the right of way to define the easement.
4. Willamette Street South, County Road 2249, was altered in 1996 with a variable width right-of-way, the minimum width being 30 feet from centerline, as said road adjoins the subject property.

5. Any necessary access permits or Facility permits for a new road and connection, or traffic control devises should be processed through the County Transportation Planning Section. These permits should be processed concurrently with the Lane County Planning approval process.
6. Surveyor should make certain the fence near the west line of Tax Lot 1400 is removed as per CSF Number 38032.
7. A survey and monumentation of the newly proposed plat is required per O.R.S. Chapter 92. The Final Plat must be prepared by a Registered Professional Land Surveyor in compliance with Lane Code and O.R.S. Chapter 92.
8. Lane County Rural Addressing should be contacted at 682-3992 after plat filing to insure that correct addresses have been assigned to the newly created lots.
9. Any wetlands, natural reserves, floodplain or geological hazard areas which exist onsite must be clearly shown on the Final Plat; a map of restricted use areas, as an alternative, with proper notification of affected lot owners, may be attached to C.C.&R.'s and filed with the plat. (LC 13.050(9)). Any existing drainage ways should be clearly shown on the.
10. Proof of Ownership must be provided by subdivision guarantee prior to the time of filing (must be dated within 30 days of the date of filing).
11. No name is currently being reserved for this development; any proposed name or change in name should be referred to: Ryan Erickson, PLS, Lane County Surveyor's Office; Phone 682-3633, in order to insure that it is acceptable and to prevent it being used by other developments.

State Fish & Wildlife:

No response received.

IV. APPROVAL CRITERIA AND ANALYSIS

Approval is subject to satisfaction of the provisions of the Rural Comprehensive Plan (RCP), the Marginal Lands Zone, and requirements of Lane Code Chapter 13 (Land Divisions).

A. Conformity with the Rural Comprehensive Plan (RCP):

The Plan Designation for this property is Marginal Lands.

B. Conformity with the Applicable Zoning District:

The request is subject to LC 16.214 area standards:

(6) Area. Land in a Marginal Land zone may be divided as follows:

(a) Into lots or parcels containing at least 10 acres if the lots or parcels are not adjacent to land zoned Exclusive Farm Use (E), Nonimpacted Forest Land (F 1), Impacted Forest Land (F 2), or if it is adjacent to such land, the land qualifies for designation as marginal land pursuant to ORS Chapter 197.

(b) Into lots or parcels containing 20 acres or more if the lots or parcels are adjacent to land zoned Exclusive Farm Use (E), Nonimpacted Forest Land (F 1) or Impacted Forest Land (F 2), and that land does not qualify as marginal land pursuant to ORS Chapter 197.

The applicant proposes to create 5 lots:

Lot 1 is 21 acres in size and is adjacent to lands zoned F-2 to the east (Willamette Street South) in compliance with subsection (b) above;

Lot 2 is 10 acres in size adjacent to lands zoned F-2 on the north (18-03-19 #1200) and west (18-04-24 #300);

Lot 3 is 10 acres in size and adjacent to lands zoned F-2 to the west (18-04-24 #300);

Lot 4 is 12 acres in size and is internal to the other lots, surrounded by subject property lands zoned Marginal Lands;

Lot 5 is 12 acres in size and adjacent to lands zoned RR-10 on the south (18-03-19 #1301, 1302) and F-2 on the west (18-04-24 #300).

In order to gain approval for lots 2, 3 & 5, the applicant has submitted information that demonstrates the adjacent properties to the north (18-03-19 #1200) and west (18-04-24 #300) qualify for Marginal Lands designation. Staff review of the evidence has concluded that the lands qualify for Marginal Lands designation *pursuant to ORS Chapter 197.*

C. Conformity with Lane Code Chapter 13.050:

Proposed land divisions are subject to the following standards. Each standard is cited, and the proposal is evaluated against it.

(1) Conformity with the Comprehensive Plan. All divisions shall conform with the Comprehensive Plan for Lane County and the following city comprehensive plans:

(a) The comprehensive plan for a small city, if the division site is within an urban growth boundary but outside the city limits.

The property is not located within an urban growth boundary.

(b) The Eugene-Springfield Metropolitan Area Plan and any applicable Special Purpose/Functional Plan or Neighborhood

Refinement/Community Plans, if the division site is within the plan boundaries.

The property is not located within the plan boundary.

Section A above demonstrates compliance with applicable Plan designation and policies.

(2) Conformity with Zoning. All divisions shall comply with the specifications of the applicable zoning requirements in Lane Code, including uses of land, area and dimension requirements, space for off street parking landscaping and other requirements as may be set forth.

Zoning conformity is established as described in Section B above.

(3) Relation to Adjoining Road System.

A subdivision or partition shall provide for the continuation of major and secondary roads existing in adjoining subdivisions or partitions, or for their proper projection when adjoining property is not subdivided or partitioned, and such streets shall be of a width not less than the minimum requirements for roads set forth in Lane Code, Chapter 15.

No adjoining roads exist which require projection into the proposed land division.

(4) Redevelopment Plan. Redevelopment plans may be required for parcels which can be redivided.

Re-division of the proposed lots is not possible under the current zoning.

(5) Access:

(a) Lots or parcels shall have verifiable access by way of a road, either County, local access (public) or an easement. Verifiable access shall meet the following criteria:

(i) Each lot or parcel abuts on the street for a distance of at least 20 feet.

(ii) There is a legal right appurtenant to the lots or parcels to use the road for ingress and egress. A legal right to use an easement may be evidenced by 1) an express grant or reservation of an easement in a document recorded with the County Recorder; 2) a decree or judgment issued by a court or competent jurisdiction; 3) an order of the Board establishing a statutory way of necessity or gateway road, or 4) an express easement set forth in an approved and recorded subdivision or partition.

(iii) The road provides actual physical access to the lots or parcels.

Access is obtained by way of South Willamette St. to a shared easement road. Each lot has a frontage on this road greater than 20 feet in length.

(b) County and local access--public roads used as access to lots or parcels shall be designed and developed according to the standard of Lane Code, Chapter 15 and Lane Manual, Chapter 15.

The existing public road, South Willamette St., is County-maintained and adequate to provide access to this easement.

Lane Code 15.105 Dedication and Improvement Requirements.

(1) Any commercial, industrial, professional, group dwelling, multiple family or community facility use, or a subdivision or partitioning adjoining a road designated by the Master Road Plan as a Type "A" or "C" road shall meet the following minimum standards and requirements for dedication and improvement:

(a) The right-of-way shall be dedicated to the width shown on the Master Road Plan for the length of the frontage or frontages of the parcel to be used for the commercial, industrial, professional, group dwelling, multiple family or community facility use, subdivision or partition, including parking and outside storage areas; and

South Willamette St. is identified as a Type "A" Road in Lane Code 15.027. The existing right-of- way width for South Willamette St. is variable with a minimum of 30 feet from centerline where it abuts the subject property. Lane Code 15.027 "Schedule of Roads" identifies a planned right-of-way width of 70 feet. Dedication to a distance of 35 feet from centerline is required as a condition of approval.

(b) The right-of-way shall be improved by the installation of paving, curbs, gutters, sidewalks, street drainage facilities and other facilities needed for traffic control as may be required by the Lane Code and Director of the Department of Public Works.

Not required at this time.

(c) If at the time of development of the use, partitioning or subdivision it is determined by the Director of the Department of Public Works to be in the best interests of Lane County and in the furtherance of the public

convenience and welfare that construction of the required improvements be deferred, the Director of the Department of Public Works may accept in lieu of the required completion of improvements a performance improvement agreement.

Not applicable.

(c) Easements used as access to lots or parcels shall meet the following criteria:

(i) There shall be no more than four lots, parcels unsubdivided or unpartitioned tracts of land accessed by any portion of the easement, except that more than four lots in a subdivision or partition may be accessed by an easement. This restriction may be modified through compliance with the variance section of this Chapter.

(ii) Easements shall not be approved if the road is presently needed or is likely to be needed for access to adjacent properties or to be utilized for a County or public road in the normal development of the area.

(iii) The minimum width of easements shall be 20 feet.

(iv) All approved documents creating a private access easement shall provide for the installation and construction maintenance thereof of all public utilities and facilities which are now or may in the future be needed for the area abutting the road and the surrounding area.

(v) The County may require such improvements as are reasonably necessary to provide safe and adequate access to the lot or parcel.

(vi) A lot or parcel abutting a railroad or limited access road right-of-way may require special consideration with respect to its access requirements.

(vii) Any easement approved as a private access easement shall be documented on a form acceptable to the Department on a form contain the minimum following information: grantor and grantee; description of dominant and servant tenements, description of the intent or purpose of the easement and a statement of maintenance responsibility.

(viii) All approved easements shall be recorded.

(ix) If the County determines that the access and transportation needs of the public would be better served if the private access easement being considered would be established as a public road, it may require that a public road dedication be made to a length and width deemed sufficient by the Department of Public Works.

A 60 foot wide easement is proposed to be used for access to lots 2 – 5 across lot 1. The total number of lots accessed by the easement is 5 (including adjacent ownership to the west). The need to access an adjacent property exists for the remainder of the owner's property to the west, Map 18-04-24 #300. The need to utilize the easement for a County or public road has not been determined a this time. However, the applicant has demonstrated in this application process that the adjacent property to the west qualifies for Marginal Lands designation. That zoning district allows the parcel to the west to be divided into a potential of 16 lots served by the easement through this property (for a total of 21 or more on the easement). A determination will be made during the review of any future land division of the adjacent property regarding the necessity for the easement to become a public road. A condition of approval requires the easement to include language that when and if needed by a public agency it will be dedicated as a public road.

Safe and adequate access must be provided for individual vehicular needs but also for police, fire and other public service vehicles. In order to provide safe and adequate access to each lot, the easement is required to be developed with a 16 foot wide graveled travel surface with no grade greater than 16%. Implementation of the above standards for travel surfaces, utilities, formatting and recording of documents is achieved through conditions of approval. The easement documents shall identify the need to dedicate the road to the public if requested by the County.

(6) *Control Strip: The County may require that a strip of land contiguous to a road be dedicated or deeded to the public for the purpose of controlling access to or the use of a lot or parcel for any of the following reasons.*

(a) To prevent access to abutting land at the end of a road in order to assure the proper extension of the road pattern and the orderly division of land lying beyond the road.

(b) To prevent access to the side of a road where additional width or improvement is required or future partition or subdivision action is needed.

(c) To prevent access to the side of a road from abutting property that is not part of the division until proportional road construction costs are conveyed to the appropriate developer. The proportional road construction costs must be computed by a licensed engineer and approved by the Department of Public Works. The agreement must be recorded and will not be valid after a period of 10 years.

(d) To prevent access to land unsuitable for development,

(e) To prevent or limit access to roads classified as arterials and collectors.

None of the above conditions exist for this proposal.

(7) Utility and Watercourse Easements.

(a) Utility Easements. The dedication of easements for the placement of overhead or underground utilities, including, but not limited to, electric power, communication facilities, sewer lines, water lines and gas lines shall be required where necessary. Such easements shall be clearly labeled for their intended purpose on all plats and may be located along or centered on parcel or lot lines or elsewhere as determined necessary by the County to provide needed facilities for the present or future development of the area.

The proposed easement will contain provisions for the installation of utilities to serve the lots.

(b) Watercourses. When a partition or subdivision is traversed by a watercourse, such as a drainage way, channel or stream, there shall be provided a storm water or drainage easement conforming substantially with the lines of the watercourse, and of such design and development as may be deemed necessary to accommodate reasonable anticipated future development within the drainage area.

Lots 1 & 2 are traversed by a drainage way that requires a watercourse easement to be shown on the final plat.

(8) Pedestrian and Bicycle Ways. When necessary for public convenience, safety, or as may be designed on an adopted master bike plan, the county may require that pedestrian or bicycle ways be improved and dedicated to the public. Such pedestrian and bicycle ways may be in addition to any standard sidewalk requirements of LC CH 15, Roads. Pedestrian and bicycle ways shall be not less than six feet in width and be paved with asphaltic concrete or portland cement concrete.

This property is not the subject of a master bike plan. Development of the property for residential use does not require pedestrian or bikeways.

(9) Dangerous Areas. Any area determined by the Director to be dangerous for road or building development by reasons of geological conditions, unstable subsurface conditions, groundwater or seepage conditions, floodplain, inundation or erosion or any other dangerous condition shall

not be divided or used for development except under special consideration and restriction. Special consideration and restriction shall consist of a detailed report by a professional engineer stating the nature and extent of the hazard and recommending means of protecting life and property from the potential hazard and/or the County shall impose limitations designed to minimize the known danger on development commensurate with the degree of hazard. Areas of erosion or potential erosion shall be protected from loss of soil and vegetative cover by appropriate means which are compatible with the environmental character, such as restricting grading or building or constructing erosion control devices. Areas of flood plain, water areas and wetlands shall be retained in their natural state to the extent practicable to preserve water quality and protect water retention, overflow and natural functions. Structures will be required to maintain flood elevation consistent with LC 11.500 (Flood Hazard Area) and LC 16.244. Areas of unstable surface or subsurface conditions shall be protected from movement by appropriate means which are compatible with environmental character, such as restricting grading or building or constructing suitable structures. Areas which are located within the designated floodway, unless a permit pursuant to LC 11.525 and LC 16.244 has been granted, shall be restricted from any building development or the installation of any permanent structure. The County may require that special development recommendations and/or restrictions as to location of building or other development be made a matter of public record when it is deemed necessary to ensure proper disposition of the dangerous area. If the restrictions are considered permanent, they shall be shown on the plat, and if temporary in nature, shall be recorded by separate document by the partitioner or subdivider prior to the recording of the plat.

No dangerous or hazardous areas have been identified on these proposed lots.

(10) Grading, Excavation and Clearings. Grading and clearing of any portion of a division by mechanical equipment for road and/or development purposes maybe restricted or regulated either at the time of tentative plan approval or final approval if there is a finding that such grading or clearing presents a real threat of pollution, contamination, silting or water bodies or water supplies, erosion and slide damage, or alteration of natural drainage patterns in the area. In all cases, excessive grading, excavation and clearing shall be avoided when detrimental to soil stability and erosion control. The character of soils for fills and the characteristics of parcels or lots made usable by means of fill shall be suitable for the intended purpose. Grading, clearing and excavation shall comply with the applicable property

development standards and site development requirements of LC Chs. 10 and 16.

Grading, excavation or clearing of the property is not anticipated to generate conditions dealt with by this criterion.

(11) Land for Public Purposes. When a public agency has demonstrated through a capital improvement program that it has definite plans to acquire a specified portion of a proposed division for a needed public use, and there is reasonable assurance demonstrating that steps will be taken within 90 days of preliminary approval to acquire the land, then the County may require that those portions of the division be reserved for public acquisition for a period not exceeding 90 days from the date of preliminary approval.

This property has not been identified for a needed public use.

(12) Sewerage Facilities. Lots and parcels for which the applicable zoning districts permit residences, or for which residences are contemplated, shall be served by either an approved public or community sewerage facility or be suitable for an approved individual sewage disposal facility. Methods of sewage disposal shall be in accordance with and subject to the applicable provisions of Oregon Revised Statutes (ORS); appropriate rules, regulations and policies promulgated under authority of ORS, and all appropriate County ordinances and policies. The establishment of rural sewerage facilities must be consistent with RCP Goal 2 Policy #24 and RCP Goal 11 policies.

Residences are allowable in the ML zone. Each lot will need to qualify for an individual sewage disposal site per Environmental Health Division requirements for allowable uses on the property.
Goal 2 Policy # 24 (now #23) applies only to the establishment of community systems for cluster subdivisions.

(a) Public or Community Sewerage Facilities.

(i) When lots or parcels are located within a reasonable distance of an existing satisfactorily operating and available sewerage system, and it is practical and feasible to connect with and be sewered by said system, the lots or parcels shall connect to the system. Should the existing facilities be unable to service the lots or parcels, individual sewage disposal systems may be considered as an interim measure if soil and other conditions are suitable for their use. If conditions pertaining to the ability of the public or community sewage facility allow connection at a later date, connection will be required under the following

circumstances: a public health hazard exists as defined by OAR Chapter 340-71-130(3), if the reason for not connecting to the public or community system were because of insufficient capacity of the public or community sewerage facility and these conditions cease to exist or if the reason for not connecting to the public or community system is based on engineering considerations such as pumping requirements and gravity sewers become available.

An existing public or community sewerage facility has not been identified within a reasonable distance to the subject property.

(ii) When a new public or community sewerage system is proposed for the division, there shall be submitted for approval a master plan for the sewage collection and disposal system to Lane County and the State Department of Environmental Quality. The master plan shall include at least the following: a conceptual plan for safe collection, treatment and disposal facilities, including preliminary design of sewer lines, treatment units and final disposal, a conceptual plan for providing that the system be under the control of a city or other legal entity which has been formed in compliance with ORS, Chs 45-0 or 451 or a preliminary economic feasibility report.

No new public or community sewerage system is proposed for this property.

(iii) If the lots or parcels are located within an area with an adopted detailed master sewage plan showing the location and depth of community sewers and proposed construction schedule which will eventually serve the lots or parcels, then the applicant shall provide detailed plans, schedule, a cost estimate prepared by a registered professional engineer and a bond to cover these estimated costs. The subject Plan and cost estimate shall have been approved by the Oregon Department of Environmental Quality and Lane County. Individual sewage facilities will be allowed on an interim basis until the system is connected to the community system as approved by the above plan and schedule.

The property is not located within an area with an adopted detailed master sewage plan.

(b) <u>Individual Sewage Facilities</u>. When lots or parcels are to be served by individual sewage disposal systems, there shall be furnished

reasonable proof that each proposed parcel or lot can accommodate an individual sewage disposal system and at least one acceptable replacement area which meets the criteria established by OAR, Chs 340-71-005 to -45. If the individual sewage disposal system and replacement area are to be located partially or wholly off of the lot or parcel for which the system and replacement area are designed to serve, then a variance must first be applied for and may be approved if in compliance with the variance section of this Chapter.

The proposed lots are to be served by individual sewage disposal systems. Proof of ability to accommodate a system and replacement area on each lot can be accomplished by the performance of a site inspection on each vacant lot. This proof shall be submitted prior to final approval of the plat.

(13) *Water Supply. Lots and parcels shall be served by an approved public, community or individual water system. No construction or development work on proposed lots or parcels shall be started until information pertaining to water availability and quality is submitted to and approved by the Department. Water system shall be in accordance with and subject to applicable provisions of ORS, as well as all appropriate rules, regulations and policies promulgated under authority of these statutes, Lane Code and Manual. The establishment of rural water systems shall be consistent with RCP Goal 2 policy #24 and RCP Goal 11 policies.*

(a) Public or Community Water System. The County may require that a new community or public water system be developed to serve lots or parcels when no existing public or community water system is available or suitable for use by the lots or parcels , and individual water systems are not feasible due to the density of the lots or parcels and/or the possibility of problems concerning the long-term availability of adequate quantities of suitable water. Aquifer and quality tests as discussed in LC 13.050(13)(c) below shall be required.

No existing public or community water system is available for use by the proposed lots. The density of the lots does not cause the need to require a community water system for the proposal. The proposed lots are not located within the interior of small acreages that might interfere with the ability to obtain water through the geological formation but instead are adjacent to larger properties to the west (320 acres) and north (40 acres). The long-term availability of adequate quantities of suitable water has been addressed by EGR & Associates in the form of an analysis of existing wells in the area,

the geological formations, and an aquifer study. Staff concludes that a community water system is not required for this proposal and individual water systems are feasible for the proposed lots.

(b) *Individual Water Systems. When lots or parcels are to be served by individual water systems, sufficient evidence shall be submitted to show that each parcel or lot will have available at time of development an adequate supply of potable water which will meet minimum County standards for drinking water. Aquifer and quality tests as discussed in LC 13.050(13)(c) below shall be required.*

Evidence of adequate supply and quality of water has been determined under the standards required in Section (c) below.

(c) *Aquifer and Quality Tests or Geological Evaluation. Aquifer and quality tests or geological evaluation may be required by Lane County for any lot or parcel. These requirements may include, but need not be limited to, evaluation of existing well logs and preparation of a geological report on the area, an evaluation of the site by a professional geologist or full scale aquifer tests as required. In determining the detail of analysis required, the following apply:*

(i) Areas designated by Board order as having problems in the quantity or quality available water as adopted, documented in Lane Manual and filed in the office of the Department shall meet the following requirements for all parcels less than 20 acres in size. The applicant must affirmatively demonstrate, in a manner acceptable to Lane County, that the proposed subdivision/partition is capable of sustaining the development anticipated with sufficient potable water. This demonstration must include, but need not be limited to, aquifer tests. More specifically, the aquifer test shall show coefficient of transmissivity, permeability, storage and specific yield. The bacteriology/chemical tests shall show compliance with standards set by the Oregon State Health Division and Lane County. The test procedure shall utilize standard acceptable practices for aquifer tests using pumped and observation wells and records of static water level, date, clock, elapsed time (in min.), depth of water, drawdown and recovery. Analysis using the non-equilibrium method (or other methods where appropriate) must be performed by a licensed geologist or engineer. A copy of all field notes and test results shall be submitted with the report, together with summary statements which indicate whether the proposed use of the aquifer could

adversely impact the neighboring wells or properties or deplete the aquifer and the general impact of the proposed use.

This property is located within an area designated as a **water quantity** limited area (Spencer Creek Watershed) by Lane Manual 13.010(2)(a)(i). The original submittal for the proposal included a report by EGR & Associates dated April 18, 2003. Comments to the proposal were received from numerous property owners in the vicinity describing water supply problems. These comments and concerns were reviewed and addressed by the applicant's engineer in a report dated December 19, 2003. An additional supplement to the report was submitted on June 1, 2004. The engineer has concluded that the aquifer is not being depleted and there is sufficient water available for the proposed subdivision. Staff finds the engineer's analysis credible regarding the availability of water in the aquifer to support the land division proposal.

This property is located in an area that has been determined to contain elevated levels of arsenic in the groundwater. A note is required to be placed on the final plat identifying this situation.

(d For all areas not designated a problem area by the procedures documented in LC 13.050(13)(a) above, a pump test report or a well log report shall be supplied, unless determined by Lane County to be not necessary. Pump test and well log reports shall be prepared according to the following criteria:

(i) Pump Test. The test shall be a minimum five-hour pumping duration and record the following information: static water level, pumping level, drawdown, recovery, residual drawdown, well yield (pumping rate) and specific capacity. Measurements shall be made before pumping begins, during the pumping phase and during the recovery phase as necessary.

(ii) Well log reports shall include tax map showing the subject property and surrounding area, all well logs of record from adjacent and surrounding properties and the location of the wells on the tax lot map.

This property is located within a water quantity limited area as designated by Lane Manual 13.010(2)(b)(i). Adequate supply of water has been demonstrated by the aquifer test method.

(14) Additional Cluster Subdivision Requirements.

GOAL ONE COALITION

39625 Almen Drive
Lebanon, Oregon 97355
Phone: 541-258-6074
Fax: 541-258-6810
goal1@pacifier.com

February 9, 2005

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

RE: PA 04-6092, Dahlen Marginal Lands Application

Members of the Commission:

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

I. INTRODUCTION

This proposal is to amend the RCP map to redesignate 320.49 acres of land from "Agricultural Lands" to "Marginal Lands," and change the zoning of that land from "Exclusive Farm Use 40" to "Marginal Lands (ML)." The applicant proposes that the subject parcel be subdivided into only 11 parcels following the approval. However, if the applicant could demonstrate that all adjacent property was zoned non-resource, could qualify for re-designation to Marginal Lands, or was otherwise designated for other than resource use, it is possible that 32 10-acre parcels could be developed on the subject property. The applicant proposes to limit the number of potential parcels by deed restriction to 11 parcels until such time as the subject property is included within the Eugene urban growth boundary.

The subject parcel is identified as 18-04-24 TL 300. It is located approximately ½ mile south of the Eugene city limits, west of Willamette Street. The subject property is adjacent to parcels zoned Impacted Forest (F-2) along its southern, northeast, and western boundaries. At the northwest boundary, two adjacent tax lots are zoned Marginal Lands (ML). The 67.16-acre 18-03-19 TL 1300 is adjacent to the subject property along its eastern boundary and is also zoned ML.

ORS 215.327 and LC 16.214 require a minimum parcel size of 20 acres if the parcel is adjacent to land zoned for farm or forest use that would not qualify as marginal land, and otherwise require that parcels be at least 10 acres in size.

The criteria for the designation of marginal land are set out in ORS 197.247 (1991 edition). The Staff Report refers also to Lane County guidelines for interpreting and administering marginal lands provisions, issued by the Board of Commissioners in March 1997. Because the provisions being applied are provisions of state statute, no deference is due or will be given to local interpretations of ORS 197.247.

ORS 197.247 establishes a two-part test for the designation of marginal land. Any proposal for a marginal land designation must first comply with the "income test" requirement of ORS 197.247(1)(a), which requires that the applicant prove that the subject land was not managed, during three of the five calendar years preceding January 1, 1983, as part of a farm operation producing $20,000 in annual gross income or as part of a forest operation capable of producing an average of $10,000 in annual gross income over the growth cycle.[1]

The applicant's statement asserts that the property was not part of a farm operation that produced the required income over the relevant time period, and has submitted an affidavit to that effect. The applicant's statement concedes that the property was managed as a forest operation during the relevant time period, but asserts that the forest operation was not capable of producing an average, over the growth cycle, of $10,000 in annual gross income.

The second part of the marginal land test contains three options. ORS 197.247(1)(b)(A) and (B) are "parcelization" tests, which look at parcel sizes of adjacent and nearby lands. ORS 197.247(1)(b)(C) is the "productivity" test, which requires the applicant to demonstrate that the land is predominantly comprised of soils in capability classes V through VIII and is not capable of producing 85 cf/ac/yr of merchantable timber. The applicant has elected to apply the "productivity" option of the second prong of the marginal lands test.

II. ANALYSIS

Because calculation of average income over the growth cycle depends upon assumptions and evidence related to productivity of the proposed marginal lands, this analysis will first address

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[1] ORS 197.247 (1991 edition) provides, in relevant part:

"(1) In accordance with ORS 197.240 and 197.245, the commission shall amend the goals to authorize counties to designate land as marginal land if the land meets the following criteria and the criteria set out in subsections (2) to (4) of this section:

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

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

"* * *

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

issues related to the "productivity" test of ORS 197.247(1)(b)(C) and then address "income" test issues relating to ORS 197.247(1)(a).

1. Soils on the subject parcel

Soils on the subject property are described below in Table 1.

Table 1: Soils and Productivity for Agriculture and Forestry

Map #	Soil Name	Acres	Area %	Ag. Class	cf/ac/yr
28C	Chehulpum silt loam 3-12%	79.842	24.912	6	40*
41C	Dixonville silty clay loam 3-12%	12.157	3.793	3	152
43C	Dixonville-Philomath -Hazelair complex, 3-12%[2]	20.420	48.399		
	Dixonville	6.126	1.911	3	152
	Philomath	6.126	1.911	6	50*
	Hazelair	4.901	1.529	4	40*
43E	Dixonville-Philomath -Hazelair complex, 12-35%	1.534	3.637		
	Dixonville	0.460	0.144	3	152
	Philomath	0.460	0.144	6	50*
	Hazelair	0.384	0.120	4	40*
52D	Hazelair silty clay loam, 7-20%	13.864	4.326	4	40*, 92**
78	McAlpin silty clay loam, 3-12%	15.009	4.683	2	169*
102C	Panther silty clay loam, 2-12%	34.574	10.788	6	50*
105A	Pengra silt loam, 1-4%	11.637	3.631	3	50*
108C	Philomath cobbly silty clay, 3-12%	9.746	3.041	6	50*, 104**
113C	Ritner cobbly silty clay loam, 2-12%	0.371	0.116	4	149
113E	Ritner cobbly silty clay loam, 12-30%	?[3]	?	6	149
125C	Steiwer loam, 3-12%	9.042	2.821	3	30*
125C	Steiwer loam, 3-12%	3.950	1.233	4	30*
135E	Willakenzie clay loam, 20-30%	27.358	8.536	4	154
138E	Witzel very cobbly loam, 3-30%	27.256	8.504	6	70*
138G	Witzel very cobbly loam, 30-75%	37.011	11.548	6	70*

* Douglas-fir productivity data from Office of State Forester memorandum of January 27, 1989. See Exhibit 1.

[2] The Lane County Soil Survey states: " This unit is 30 percent Dixonville silty clay loam, 30 percent Philomath cobbly silty clay, and 25 percent Hazelair silty clay loam."

[3] This unit appears on the soil map unit list and on the soil map, but no acreage is given.

** Ponderosa pine productivity data from Fletcher et al., *Establishing & Managing Ponderosa Pine in the Willamette Valley,* Oregon State University Extension Service EM 8805, May 2003, p. 12.

From this data, it is clear that the soils on the subject property are predominantly agricultural capability Class V-VIII. The applicant's consulting forester's report does not contain a cf/ac/yr rating for the subject property, nor reveal how the conclusion is reached that the property cannot produce 85 cf/ac/yr of merchantable timber. Productivity can be calculated from the data in Table 1 by multiplying the acreage of each soil unit by its productivity, adding the results, and then dividing the total by the total acreage of the subject property. Potential forest productivity for the subject parcel is thus calculated to be approximately 71 cf/ac/yr.

2. The "forest operation" income test has not been adequately addressed.

ORS 197.247(1)(a) imposes an "income test" that must be met for the subject parcel to be redesignated to marginal land. It must be established that the subject property was not managed during the period 1977-1982 as part of a forest operation capable of producing an average of $10,000 in annual gross income over the growth cycle.

a. The applicant's forest productivity data is inadequate.

It is capability or potential for production, measured as cf/ac/yr of commercial tree species, that is at issue in determining a property's suitability for commercial forest uses. *Potts v. Clackamas County,* 42 Or LUBA 1 (2002).

OAR 660-006-0003(1) provides:

> "OAR Chapter 660, Division 006 applies to all forest lands as defined by Goal 4."

OAR 660-006-0010 provides, in relevant part:

> "Governing bodies shall include an inventory of 'forest lands' as defined by Goal 4[.] * * * If site information is not available then an equivalent method of determining forest site suitability must be used."

OAR 660-006-0005(2) provides:

> "'Cubic Foot Per Acre' means the average annual increase in cubic foot volume of wood fiber per acre for fully stocked stands at the culmination of mean annual increment as reported by the USDA Natural Resources Conservation Service (NRCS). Where NRCS data *are not available or are shown to be inaccurate*, an alternative method for determining productivity may be used. *An alternative method must provide equivalent data and be approved by the Department of Forestry.*" (Emphasis added.)

The applicant's forestry consultant has not provided forest productivity data capable of being expressed as cf/ac/yr for soils on the subject property, except for 78.561 acres of conifer producing forest land. His volume calculations thus exclude approximately 242 acres.

The forestry consultant then assumes that approximately 104 of those 242 acres have zero productivity. It is well established that lack of a soil productivity rating does not mean that a soil has no capability for forest production. The lack of a NRCS rating provides no information, quantitative or otherwise, pertinent to the statutory test of whether a soil is capable of producing defined levels of wood fiber. *Carlson v. Benton County*, 34 Or LUBA 140, 149 (1998).

Using assumptions on stocking rates "from plots taken in the field" the forestry consultant calculates the potential productivity of the remaining approximately 138 acres. No report on field plots is provided. The methodology used does not assess the potential productivity of the soils or reflect reasonable forest management, as it assumes that the existing stocking rate is identical to the potential stocking rate. The actual growth rate of site trees has not been measured, nor has the potential cf/ac/yr productivity of the soils determined.

The methodology used by the applicant's consulting forester does not meet ODF standards. The applicant's forestry consultant has not used ODF-approved methodology to determine forest capability for unrated soils. The Department of Forestry states that the methodology it approves to determine the productivity of an area is contained in the *Field instructions for forest surveys in Washington, Oregon, and Northern California, USDA Forest Service, PNE Range and Experiment Station*[4] An independent, knowledgeable person, such as a consulting forester, must measure the trees on the property and calculate the cubic foot site class using the approved methods. Site trees must be carefully selected, and the consultant's report must provide adequate detail to determine whether the approved methods were followed. ODF approved methodology is summarized in *Land Use Planning Notes* as follows[5]:

> "The methods listed in this paper can be used in combination with other published site index and yield tables is the site is not suited to one of these species. However, the use of other tables or the use of other species to determine site index must be approved by the Department of Forestry on a case by case basis.
>
> "Plots must be taken to measure the productivity of each different soil type and aspect on the property. Selection of site-trees (trees selected to determine site index) is a critical part of accurately determining the productivity of the land. To be used, site-trees must have remained in a dominant or co-dominant position throughout their life. * * * If insufficient dominant trees exist on the property to determine the site index, site-trees may be selected from adjacent properties with the same aspect, elevation, and soil type.
>
> "If no trees are available for site index calculations, or if the site index cannot be determined accurately from the existing timber in the area, then soil survey methodology will be required to accurately assess the site productivity. To map the area and provide site specific data that is more accurate than the USDA Soil Survey will require the landowner to employ a soil scientist to do a higher intensity soil survey. The qualifications and procedures for conducting such a survey are contained

[4] *Land Use Planning Notes*, Number 3, April 1, 1998, p. 4. See Exhibit 3.
[5] *Land Use Planning Notes*, pp. 4-7.

in OAR 603-80-0040(3). This survey must provide detailed information on the soil types represented on the property.[6]

The applicant's attorney argues that Goal 4 and its implementing administrative rules found in OAR 660 Division 6 do not apply to the subject property because the subject property was not acknowledged as forest land on the date Goal 4 was amended, but rather was acknowledged as agricultural land.

The Goal 4 definition of forest land provides:

> "Forest lands are those lands acknowledged as forest lands as of the date of adoption of this goal amendment. Where a plan is not acknowledged *or a plan amendment involving forest lands is proposed, forest lands shall include lands which are suitable for commercial forest uses including adjacent or nearby lands which are necessary to permit forest operations or practices and other forested lands that maintain soil, air, water and fish and wildlife resources.*"

The fact that the county designated the subject property agricultural and place it in an EFU zone does not mean that Goal 4 does not apply to the property. Counties may choose whether to designate land EFU of Forest, where both may be appropriate. "Forest lands," as that term is used in Goal 4, are not limited to lands that have been acknowledged as forest lands. *Dept. of Transportation v. Coos County*, 35 Or LUBA 285 (1998).

Because the applicant's forest consultant does not provide any forest productivity data for soils not rated by the NRCS, there is not substantial evidence in the record upon which to base any determination of potential average annual income over the growth cycle.

b. The use of a 50-year growth cycle has not been justified and is not appropriate.

The applicant uses a 50-year growth cycle to calculate average gross annual income over the growth cycle. This is predicated on the Board's Direction on Issue 5: "What 'growth cycle' should be used to calculate gross annual income?" in its March 1997 *Supplement to Marginal Lands Information Sheet.* No Lane County interpretation or application of ORS 197.247 or any of its terms or concepts will be due or receive any deference upon review. *Marquam Farms Corp. v. Multnomah County*, 35 Or LUBA 392, 403 (1999) (ORS 197.829 does not require that LUBA defer to county interpretations of state statutes).

LUBA has explained that the choice of the phrase "capable of producing" in ORS 197.247(1)(a) requires "reasonable management practices over the growth cycle":

> "[T]he choice of the word "capable" requires the application of an objective test in determining a parcel's potential productivity. In other words, that a particular forest operator may use poor management techniques, and thereby cannot produce the requisite income from the parcel over the growth cycle, would not establish that the parcel was not "capable" of producing the requisite income level over the growth

[6] *Land Use Planning Notes,* p. 5

> cycle. The statutory requirement that the land be "capable" of producing the specified annual income "over the growth cycle" requires an evaluation of the income potential of the property *assuming the utilization of reasonable forest management practices over the growth cycle.*" (Emphasis added). *DLCD v. Lane County (Ericsson),* 23 Or LUBA 33, 36.

Reasonable forest management practices over the growth cycle would include choosing an appropriate growth cycle – one that would result in the highest average annual income over the growth cycle. The applicant and his representatives and experts have not argued that using a 50-year growth cycle reflects reasonable forest management practices. Rather, they rely entirely on the Board's 1997 directive.

The applicant's forestry consultant, in a related case involving an adjacent property with similar soils and characteristics, has produced reports finding that the use of a 60-year growth cycle would result in a 27.2% higher average gross annual income over the growth cycle than would the use of a 50-yr growth cycle.[7] The applicant's forestry consultant has failed to explain why using a management practice that would result in substantially less income could be considered reasonable. The evidence establishes that it is not.

c. The use of 1983 prices has not been justified and is not appropriate.

In *DLCD v. Lane County (Ericcson),* 23 Or LUBA 33, 36 (1992), LUBA explained how the forest income test is to be applied:

> "ORS 197.247(1)(a) requires a two part inquiry to determine whether a forest parcel may be designated as "marginal" land. First, the county must determine whether the land was managed as part of a forest operation during three of the five years from 1978 through 1982. * * * Second, ORS 197.247(1)(a) requires the county to determine whether the forest operation in question *is* capable of producing an average of $10,000 in annual gross income over the growth cycle. What occurred on the subject parcel during the 1978-1982 time period is not the sole determinant of the "capability" of the subject parcel to produce trees, because the growth cycle of trees may greatly exceed the specified five year period." (Emphasis added.)

Thus LUBA has held that, for purposes of calculating income, it did not make sense to limit the inquiry to the 1978-1982 period. While not directly addressing the issue of what prices must be used in calculating income, the logic of LUBA's reasoning would require that pricing over the growth cycle be used. The use of the word "is" suggests that current is to be considered, as well as future pricing to the extent foreseeable. After all, pricing is only relevant at the end of the growth cycle when timber is harvested and sold. In *Ericcson,* Lane County made its decision based on current prices, not 1983 prices. LUBA found that methodology acceptable and affirmed the county's decision.

Current timber prices are substantially higher than 1983 prices, as timber prices throughout the mid-1980s were at historic lows. As seen in Exhibit 6, current prices for the three grades used

[7] Compare Exhibit 4, a calculation of average gross annual income over a 50-year cycle, with Exhibit 5, a calculation of average gross annual income for the identical property over a 60-year cycle.

in the applicant's consulting forester's calculations are 2.41, 2.72, and 2.70 times higher than 1983 prices. Using current pricing would result in an average annual gross income substantially exceeding the $10,000 threshold to qualify as marginal land.

Alternatively, averaging timber prices over the appropriate growth cycle might be acceptable. However, reasonable forest management practices include delaying timber harvest when prices are low, and increasing the rate of harvest when prices are high. Therefore using average prices may underestimate actual prices received, as forest managers respond to price signals in their harvesting practices. The average price for grade 2S over the 22 years from 1983 to 2004 was $501, or nearly twice the 1983 price. Recall that Exhibit 6 shows that the increase in price for 3S and 4S was greater than that for 2S. Using an average price over the period rather than the 1983 price used by the applicant's consulting forester would also result in an average annual gross income substantially exceeding the $10,000 threshold to qualify as marginal land.

These results do not account for the potential productivity from land not considered by the applicant's consulting forester because it was assumed to have zero productivity or for potential productivity from land for which the applicant's consulting forester's data is not acceptable; and do not consider that using a 60-year growth cycle rather than a 50-year growth cycle would increase average income by an additional 27.2%.

III. CONCLUSION

The applicant's consulting forester has not provided substantial evidence to establish forest productivity for soils not given a productivity rating for forestry in available NRCS data. The applicant has not established that the methodology used to generate alternative data is accepted or approved by the Department of Forestry.

The applicant's consulting forester has failed to assume reasonable forest management in relying on a 50-year growth cycle.

In calculating potential income over the growth cycle, the applicant has failed to consider pricing over the growth cycle, using neither current pricing, average pricing, or methodology to take into account how timber harvesting is responsive to price signals.

For these reasons, the applicant's consulting forester's methodology does not comply with applicable law, and his conclusion that the average gross income over the growth cycle would be below $10,000 is not supported by substantial evidence in the record.

The requirements of ORS 197.247 have not been met and the request to redesignate the subject parcel from Forest Land to Marginal Land and rezone it from F-2 to ML cannot be approved.

Respectfully submitted,

Jim Just
Executive Director

EXHIBIT 1

NEIL GOLDSCHMIDT
GOVERNOR

Forestry Department

OFFICE OF STATE FORESTER

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

January 27, 1989

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

Dear Craig,

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

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

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

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

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

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

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

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

Sincerely,

Dave

Dave Stere
Forest Resources Planning Director

DHS DS-47

cc: Bob Madsen
Ron Eber
Jerry Latschaw
Herb Huddleston

Attachments
13 county forest soil rating lists

ds-47a 1-11-88

LANE COUNTY - FOREST SOILS RATINGS

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

110	Pits	3		700	
114	Riverwash	3		2050	
115H	Rock Outcrop-Kilchis complex, 30-90%	Low		3950	34
116G	Rock Outcrop-Witzel complex, 10-70%	Low		1480	21
125C	Steiwer l, 3-12%	Low		2790	est 30
125D	Steiwer l, 12-20%	Low		1000	est 30
125F	Steiwer l, 20-50%	Low		1240	est 30
127C	Urban Land-Hazelair-Dixonville, 3-12%	Low		1450	est 45
130	Waldo sicl	3		7550	est 50
131C	Waldport fs, 0-12%	Low	92	1700	29
131E	Waldport fs, 12-30%	Low	92	1000	29
131G	Waldport fs, 30-70%	Low	92	650	29
132E	Waldport fs, thin surf., 0-30%	Low	92	2110	29
133C	Waldport-Urban Land Complex, 0-12%	Low		250	est 20
136	Willanch fsl	3		870	est 40
137F	Winberry v gr l, 10-45%	Low	70	560	48
138E	Witzel v cob l, 3-30%	Med	90	5780	70
138G	Witzel v cob l, 30-75%	Med	90	5520	70
141	Yaquina-Urban land complex	3		260	est 50
142G	Yellowstone-Rock Outcrop, 10-60%	Low	86	1560	38

Total - LOW & MEDIUM ratings -- 293,500 acres

001A	Abiqua sicl, 0-3%	High	152	5210	161
001B	Abiqua sicl, 3-5%	High	152	1230	161
002E	Astoria sil, 5-30%	High	170	3380	181
003E	Astoria Variant sil, 3-30%	High	170	200	181
003G	Astoria Variant sil, 30-60%	High	170	1500	181
007B	Bandon sl, 0-7%	High	138	240	142
007C	Bandon sl, 7-12%	High	138	220	142
007F	Bandon sl, 12-50%	High	138	270	142
011C	Bellpine sicl, 3-12%	High	155	15950	164
011D	Bellpine sicl, 12-20%	High	155	58600	164
011E	Bellpine sicl, 20-30%	High	155	38100	164
011F	Bellpine sicl, 30-50%	High	155	27100	164
012E	Bellpine cob sicl, 2-30%	High	155	4230	164
013F	Blachly cl, 30-50%	High	148	13400	156
013G	Blachly cl, 50-70%	High	148	2960	176
014E	Blachly sicl, 3-30%	High	165	7030	176
014F	Blachly sicl, 30-50%	High	165	8520	176
015E	Blachly-McCully cls, 3-30%	High	147	23000	155
016D	Bohannon gr l, 3-25%	High	155	15800	164
016F	Bohannon gr l, 25-50%	High	155	27770	164
016H	Bohannon gr l, 50-90%	High	155	92000	164
020B	Briedwell cob l, 0-7%	High	135	1780	138
024	Chapman l	1		3800	est 140
025	Chapman-Urban land complex	1		1070	est 100
026	Chehalis sicl, occ flooded	1		9300	est 100
027	Chehalis-Urban land complex	1		700	est 90
029	Cloquato sil	1		5170	est 120
030	Cloquato-Urban land complex	1		230	est 100
031	Coburg sicl	1		13480	est 100
032	Coburg-Urban land complex	1		2740	est*90
035D	Crusier gr cl, 3-25%	High	135	2670	138
035F	Crusier gr cl, 25-50%	High	135	1710	138

035G	Cruiser gr cl, 35-70%	High	135	360	138
036D	Cumley sicl, 2-20%	High	154	34000	163
037C	Cupola cob l, 3-12%	High	124	2530	121
037E	Cupola cob l, 12-30%	High	124	1110	121
039E	Digger gr l, 10-30%	High	145	970	152
039F	Digger gr l, 30-50%	High	145	3730	152
040H	Digger-Rock outcrop complex, 50-85%	High	145	62140	114
041C	Dixonville sicl, 3-12%	High	120	3360	115
041E	Dixonville sicl, 12-30%	High	120	3670	115
041F	Dixonville sicl, 30-50%	High	120	3280	115
046	Eilertsen sil	High	159	1580	169
047E	Fendall sil, 3-30%	High	150	720	158
049E	Formander l, 3-30%	High	162	4690	172
049G	Formander l, 30-60%	High	162	5130	172
050G	Formander-Hembre-Klicitat, 50-80%	High	165	24510	170
051B	Haflinger-Jimbo complex, 0-5%	High	159	1990	161
054D	Hembre sil, 5-25%	High	170	650	181
054G	Hembre sil, 25-60%	High	170	1030	181
055E	Hembre-Klickitat complex, 3-30%	High		1920	170
055G	Hembre-Klickitat complex, 30-60%	High		1760	168
056	Holcomb sicl	1		1560	est 100
057D	Holderman ext cob l, 5-25%	High	120	490	98
057F	Holderman ext cob l, 25-50%	High	120	1900	98
057G	Holderman ext cob l, 50-75%	High	120	1600	98
058D	Honeygrove sicl, 3-25%	High	165	31050	176
058F	Honeygrove sicl, 25-50%	High	165	10430	176
059E	Hullt l, 2-30%	High	165	480	176
059G	Hullt l, 30-60%	High	165	400	176
060D	Hummington gr l, 5-25%	High	145	840	152
060F	Hummington gr l, 25-50%	High	145	1620	152
060G	Hummington gr l, 50-75%	High	145	7530	152
061	Jimbo sil	High	162	2550	173
062B	Jimbo-Haflinger complex, 0-5%	High		590	167
063C	Jory sicl, 2-12%	High	155	4560	164
063D	Jory sicl, 12-20%	High	155	6940	164
063E	Jory sicl, 20-30%	High	155	3130	164
064D	Keel cob cl, 3-25%	High	139	6390	144
064F	Keel cob cl, 35-45%	High	139	9300	144
064G	Keel cob cl, 45-75%	High	139	5060	144
065G	Kilchis st l, 30-60%	High	110	2370	98
065H	Kilchis st l, 60-90%	High	110	7920	98
066D	Kinney cob l, 3-20%	High	150	6970	158
067F	Kinney cob l, 20-50%, N	High	162	9010	172
067G	Kinney cob l, 50-70%, N	High	162	18220	172
068F	Kinney cob l, 20-50%, S	High	150	13710	164
068G	Kinney cob l, 50-70%, S	High	150	7780	164
069E	Kinney cob l, slump, 3-30%	High	168	15530	180
070E	Klickitat st l, 3-30%	High	144	10050	165
071F	Klickitat st l, 30-50%, N	High	156	8350	165
071G	Klickitat st l, 50-75%, N	High	156	37150	145
072F	Klickitat st l, 30-50%, S	High	140	25900	145
072G	Klickitat st l, 50-75%, S	High	140	68800	150
074B	Lint sil, 0-7%	High	160	1120	170
074C	Lint sil, 7-12%	High	160	1510	170
074D	Lint sil, 12-20%	High	160	1860	170
074E	Lint sil, 20-40%	High	160	1920	170

078	McAlpin sicl	High	159	11860	169
079	McBee sicl	1		5200 est	100
080F	McKully cl, 30-50%	High	162	7730	172
080G	McKully cl, 50-70%	High	162	4210	172
081D	McDuff cl, 3-25%	High	142	3010	148
081F	McDuff cl, 25-50%	High	142	3000	148
081G	McDuff cl, 50-70%	High	142	950	148
082C	Meda l, 2-12%	High	161	10650	171
083B	Minniece sicl, 0-8%	High	130	1420	129
084D	Mulkey l, 5-25%	High	143	230	224
088	Nehalem sil	High	174	5950	186
089C	Nekia sicl, 2-12%	High	151	4960	159
089D	Nikia sicl, 12-20%	High	151	15520	159
089E	Nikia sicl, 20-30%	High	151	8760	159
089F	Nikia sicl, 30-50%	High	151	7580	159
090	Nekoma sil	High	180	7170	191
091D	Neskowin sil, 12-20%	High	133	560	205
091E	Neskowin sil, 20-40%	High	133	230	205
092G	Neskowin-Salander sil, 40-60%	High	133	4350	205
093	Nestucca sil	1		5830 est	130
095	Newberg fsl	1		2970 est	150
096	Newberg l	1		4490 est	150
097	Newberg-Urban land complex	1		930 est	100
099H	Ochrepts & Umbrepts, v. steep	1		1070 est	130
104E	Peavine sicl, 3-30%	High	155	68300	164
104G	Peavine sicl, 30-60%	High	155	124810	164
111D	Preacher l, 0-25%	High	181	10950	192
111F	Preacher l, 25-50%	High	181	25600	192
112G	Preacher-Bohannon-Slickrock, 50-75%	High		113500	185
113C	Ritner cob sicl, 2-12%	High	131	2940	131
113E	Ritner cob sicl, 12-30%	High	131	14890	131
113G	Ritner cob sicl, 30-60%	High	131	21340	131
117E	Salander sil, 12-30%	High	133	770	205
118	Salem gr sil	1		7550 est	130
119	Salem-Urban land complex	1		2300 est	100
120B	Salkum sil, 2-6%	High	145	5060	151
121B	Salkum sicl, 2-8%	High	145	5160	151
121C	Salkum sicl, 8-16%	High	145	2160	151
122	Saturn cl	High	162	4210	172
123	Sifton gr l	1		650	
124D	Slickrock gr l, 3-25%	High	194	1850	203
124F	Slickrock gr l, 25-50%	High	194	1500	203
126F	Tahkenitch l, 20-45%	High	156	390	165
126G	Tahkenitch l, 45-75%	High	156	500	165
128B	Veneta l, 0-7%	High	139	11930	144
129B	Veneta Variant sil, 0-7%	High	150	1320	158
135C	Willakenzie cl, 2-12%	High	160	2500	170
135D	Willakenzie cl, 12-20%	High	160	7320	170
135E	Willakenzie cl, 20-30%	High	160	6490	170
135F	Willakenzie cl, 30-50%	High	160	10610	170
139	Woodburn sil	1		215 est	170

Total - HIGH rating -- 1,455,415 acres

EXHIBIT 2

Growth of Willamette Valley Natural Stands[1]

Soil Type	Height	Age	Site Index (50)
Bashaw silty clay loam	98	59	92
Dayton silt loam	84	42	98
Dixonville/Hazelair/Philomath	96	98	63
Dupee silt loam	110	56	101
Hazelair silty clay* loam	93	52	92
McBee silty clay loam	104	59	92
Philomath cobbly, silty clay*	87	42	104
Ritner cobbly silty clay loam	101	54	95
Salem gravelly loam	111	63	93
Waldo silty clay loam	83	41	96
Witzel very cobbly loam	92	98	59

* Indicates an average of more than one site.

[1]From Fletcher et al, *Establishing and Managing Ponderosa Pine in the Willamette Valley,* OSU Extension Service, EM 8805, May 2003, p. 12.

EXHIBIT 3

LAND USE PLANNING NOTES <<<<

NUMBER 3 X APRIL 1998

"STEWARDSHIP IN FORESTRY"

PURPOSE: This technical bulletin has been developed to help landowners and local governments when they must use an alternative to the USDA Soil Survey to determine the productivity of forestland. Under OAR 660-06-005 "where SCS data are not available or are shown to be inaccurate, an alternative method for determining productivity may be used. An alternative method must provide equivalent data and be approved by the Department of Forestry." This paper describes the methodology that the Department approves and provides guidance and other information necessary to use that methodology. We have also included some background information to answer some commonly asked questions about the cubic foot productivity class system.

Why use the average annual cubic foot production in land use decisions?

The Department of Forestry advises using the USDA Cubic Foot Productivity Class[1] system, as opposed to other systems of measure, when making land use planning decisions because it measures the relative productivity of the soil, it is not dependent upon the condition of the forest or the species of trees currently growing on the site, and it is more consistent than other measures.

The cubic foot productivity class system ranks soils based upon the mean annual increment measured in cubic feet at the point in time where the culmination of mean annual increment (maximum average annual growth) occurs. This is the average growth rate of the timber over the life of the stand measured at the peak of that average growth rate. The table below shows the potential timber yields of productivity classes 1 - 5 in cubic feet per acre per year (cuft/ac/yr).

[1]Field instructions for forest surveys in Washington, Oregon, and Northern California. USDA Forest Service, PNW Range and Experiment Station.