

**CUBIC FOOT PRODUCTIVITY
CLASSES**

<u>CODE</u>	<u>POTENTIAL YIELD-MEAN ANNUAL INCREMENT</u>
1	225 or more cuft/ac/yr
2	165 to 224 cuft/ac/yr
3	120 to 164 cuft/ac/yr
4	85 to 119 cuft/ac/yr
5	50 to 84 cuft/ac/yr

Cubic foot productivity class was developed to compare the relative productivity of different soils. Other measures which might be used to compare different parcels, such as site class or site index, are not consistent between species and authors. Site class is commonly used on the west side to describe the productivity of Douglas-fir forests, but site class is only used for Douglas-fir and not for other species. Site index is calculated as tree height divided by tree age at a base age of 100 or 50. Since on the same area, in the same length of time, different species grow to different heights, site index is not consistent between species.

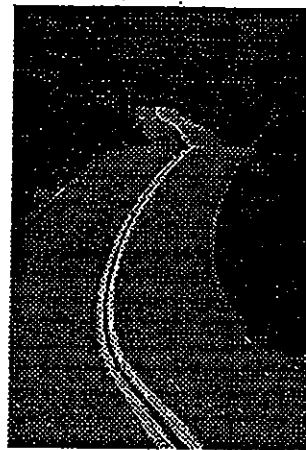
For example cubic foot productivity class III can produce between 120 and 164 cubic feet per acre per year from a fully stocked natural stand. In the next column is a comparison with several species and site indexes.

**CUBIC FOOT PRODUCTIVITY
CLASS 3
(120 - 164 cuft/ac/yr)**

Site-Index Equal to Productivity Class III

Douglas-fir (100 yr Site Index)	130 - 160
Western Hemlock (100 yr Site Index)	100 - 110
Ponderosa Pine (100 yr Site Index)	120 - 130
White Fir (50 yr Site Index)	60 - 70
Engelmann Spruce (50 year Site Index)	80 - 90

Another advantage of using cubic foot productivity class is that the ratings are available for most forestland without professional assistance. The published soil surveys contain a rating which can be used by county planners or private landowners to rate productivity and using the information does not require visiting the site or taking measurements.



Why don't we use board feet instead of cubic feet?

Cubic foot volume is a form of measurement commonly used in forestry research and forest management planning. It is a physical measurement based upon the actual volume of wood. On the other hand, board foot volume is based upon a series of rules. The board foot rules were developed to try to determine the amount of lumber which could be sawed (at that time) from a range of different diameter logs. Although its predictive abilities are out of date (1 board foot of log now produces from 1.7 - 2 board feet of lumber), board foot rules continue to be the most common measure used to buy and sell logs in the Northwest. The problem with converting cubic feet to board feet is that the conversion factor is not a constant. Because board foot volume is determined by a rule, one cubic foot of wood from a log with a scaling diameter (small end diameter) of 6 inches contains 3.32 board feet, while one cubic foot of wood from a log with a scaling diameter (small end diameter) of 30 inches contains 6.86 board feet. Therefore as the average diameter of a stand increases in size, the board foot/cubic foot ratio of the stand also increases. To complicate matters further, the length of the logs cut from the tree effects the conversion from cubic feet to board feet. Since trees are tapered and board foot is measured from the small end of the log, cutting the tree into different length logs changes the number of board feet contained in the tree. Because of this difference, the exact number of board feet contained in a stand of timber cannot be determined without knowing how the trees will be bucked into logs.

Because the board feet contained in a stand of timber depends on the average diameter of the stand and the way the trees are bucked into logs, the ratio of board feet to cubic feet is not constant. Comparisons such as soil productivity are much easier to make based upon a constant volume measure such as cubic feet. That is why it is more commonly used in the more technical forestry applications.

General Procedures to Challenge the Site Productivity Listed in the Soil Survey

Before deciding to use an alternative method of measuring the productivity of forestland, documentation should be produced showing that an attempt has been made to use the soil survey and either the soil(s) in question have no rating, or reasons exist indicating that the soil survey may be inaccurate. Where either of these two circumstances exist, a soil scientist from the USDA Natural Resource Conservation Service (NRCS, formerly SCS) should be contacted.

In many cases soils that are primarily used for agriculture were not given ratings for forestry. However, this does not mean they are not capable of growing trees. On the contrary, they may be highly productive, and a NRCS soil scientist may be able to provide a rating of that soil's forest capability. An NRCS soil scientist should also be able to advise you about the procedures used to conduct the soil survey and the accuracy of that survey as it relates to the property and soils in question. The advice received may save both the land owner and local official time and money.

Because the soil survey is not site specific information, The Department of Forestry has agreed to approve methods that would allow a land owner to use site specific information to determine the productivity of the land when applying for a dwelling or other land use decision.

The process should work something like this:

1. The Department of Forestry has approved a methodology for calculating site productivity (the details are described below in this document). When the landowner contacts the county with concerns about the productivity rating of their property, they are provided with information about the required methodology.
2. The landowner must have an independent, knowledgeable person, like a consulting forester, measure the trees on the property and calculate the cubic foot site class using the approved methods. Plots must be taken to measure the productivity of each different soil type and aspect on the property. The consultant must use care when selecting site trees to obtain an accurate measurement, and the consultant's report must provide adequate detail to determine whether the approved methods were followed.
3. The consultant shall provide a copy of the report to the county to use in making land use decisions. If the county has

questions about whether the consultant followed the methodology, the Department of Forestry may need to review the report. However, because this is a land use decision, the county must make the final decision to accept or reject the work of the consultant.

Methodology Approved by the Department of Forestry for Calculating Site Productivity

The Department of Forestry does not measure sites for landowners. The landowner needs to have an independent qualified person, such as a consulting forester, take the measurements and calculate the cubic foot site class. The methodology the Department of Forestry 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, PNW Range and Experiment Station*. Equivalent published methodology is more widely available from a Weyerhaeuser research paper, by King². These papers describe how to select site-trees and calculate site index. A second paper, from the US Department of Agriculture³, uses site index information

²King, James E. 1966. Site index curves for Douglas-fir in the Pacific Northwest. Weyerhaeuser Forestry Paper No. 8. Weyerhaeuser Forestry Research Center, Centralia, WA.

³USDA. 1986. Culmination of mean annual increment for commercial forest trees of Oregon.

(continued on next page)

as determined from on-site measurements to reference a set of cubic foot productivity tables. We approve this method because it is based on site specific measurements and it will produce results that are consistent with the Soil Survey.

A summary of the methodology and the necessary tables to calculate site class for the three most common forest types are included below. The methods listed in this paper can be used in combination with other published site index and yield tables if 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 the land has been selectively harvested in the past, most or all of the dominant trees in the stand may have been removed. Basing site index calculations on the remaining trees, grown in lower crown positions,

Technical Note No. 2. USDA, Soil Conservation Service, Portland, OR. (Note: the SCS - Soil Conservation Service is now the NRCS - Natural Resource Conservation Service)

will not accurately measure site productivity. In some cases it may be difficult to find enough site trees on the property to accurately determine productivity. 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 the parcel is a forest site and 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 in OAR 603-80-0040 (3). This survey must provide detailed information on the soil types represented on the property.

General Rules for Selecting Site Trees

1. If possible, use the species that dominates the area. Height from 15 to 20 dominant and co-dominant trees and age counts on about 10 trees should be sufficient to determine site index if the area is homogeneous. Additional plots will need to be taken to represent different soil types and aspects across the property.
2. You may select site trees of different species as long as they use the same site table.

3. Site index should not vary by more than 20 or 30 between site trees (as indicated on each site table), unless the difference can be explained by actual site variation. Use the site index tables below to compare site measurements.
4. If you select Douglas-fir or grand fir site trees use the site tree selection method for King's Douglas-fir table, outlined below. For other site tree species, use the site tree selection criteria for other species.

Method for Selecting Site Trees for King's Site Index Table

(Use for Douglas-fir and grand fir)

1. Within the plot area, locate an approximately circular area that encompasses 25 trees (the "site index clump") and that is representative of the site being sampled. When there is a choice, favor well-stocked areas over sparse areas. When counting trees, include only Douglas-fir with normally-formed tops; do not include understory trees that are both younger and shorter than the general crown canopy.
2. Of these 25 trees, select the 5 with the largest dbh as site trees.
3. Any site tree with a clear history of suppression should be rejected, and the next largest tree selected if it is suitable. However, you may select a suppressed tree over a shorter, suppression-free tree of

the same age.

4. If a 25-tree clump is not available, a smaller clump may be used. You should still limit the site tree subsample to the 1/5 of the trees in the clump with the largest dbh unless this gives you less than three site trees.

Method for Selecting Site Trees for Other Site Index Tables

1. Select trees that are or have been free from suppression for their entire lives. A tree that has been suppressed will have closely-spaced annual growth rings on all or part of its increment core.
2. Select dominant trees.
3. Trees less than 50 years old are undesirable if older trees are available. For ponderosa pine, trees 60 to 120 years old are most desirable.
4. Site trees should be evenly distributed across the plot area.
5. Select trees that show no signs of top-out, such as crooks or forks, unless these trees are taller than normally-formed trees of the same dbh.
6. If no suitable site trees are available from the property, select dominant trees from a nearby area with the same general aspect, elevation, and soil type. Note the location of the site trees in your report.

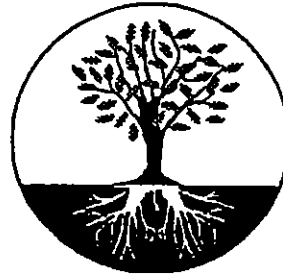
Site Tables:

Depending on the species of site tree selected, use the appropriate table to determine site index.

1. King's Douglas-fir table. Use for Douglas-fir and grand fir.
2. Barnes western hemlock table. Use for western hemlock and Sitka spruce.
3. Meyer's ponderosa pine table. Use for ponderosa pine and Jeffrey pine. Use this table when in stands that are predominantly pine, or when pine site trees are all that are available (except in the Willamette Valley).

How to use site tables:

The following site index tables are "upper limit tables." This means that when a tree height indicates a site index that falls between two site indices listed you should use the higher one. Example: Site tree is Douglas-fir, 75 years old at breast height, 115 feet tall. King's Douglas-fir site index table indicates that a height of 115 feet at age 75 falls between site index 80 and 90. Site index is therefore 90.

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*McK on 1-23-04
from Brad Ogle
- Marc Ogle - revised
to reflect 50 yr cycle.*

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EXHIBIT 4
50-yr cycle

FOREST PRODUCTIVITY ANALYSIS

for

Brad Ogle and Mark Childs

SUBJECT PARCEL: ASSESSORS MAP NO. 18-04-11
Tax Lots 303 & 304, totalling ±113.76 acres.

I. INTRODUCTION

An evaluation of the site, as described above, from a timber productivity and income producing standpoint is reviewed in this analysis. The analysis will determine if:

- 1) The subject property produces less than 85 cu. ft./ac./yr. of conifer timber volume. This has been determined by Lane County to be the measuring parameter for marginal soils.
- 2) The income generated averages less than \$10,000/year, based on 1978 through 1983 log prices. If this is the case, the property meets the following statutory test for Marginal Lands: ORS 197.247 (1)(a) "The proposed marginal land was not managed during three of the five calendar years preceding January 1, 1983, as part of a ... forest operation capable of producing an average, over the growth cycle, of \$10,000 in annual gross income."

The above figures can be calculated by:

1. Using actual cutout data from when any logging was done on the parcel.
2. Using a combination of the 1) Lane County Soil Ratings for Forestry & Agriculture (August, 1997), 2) U.S. Dept. of Agriculture SCS Data, as presented in the Soil Survey of Lane County Area, 3) Lane County Soil Ratings taken from the Office of the State Forester Memorandum (Feb. 8, 1990 General File 7-1-1) and 4) estimates of growth from the CMAI (Culmination of Mean Annual Increment) FOR DOUGLAS-FIR Table and the Empirical Yield Tables for the Douglas-fir Zone, Washington Department of Natural Resources by Charles Chambers and Franklin Wilson.

II. SITE INFORMATION

The subject parcel is 113.74 acres in size, with 11.8 acres in B.P.A. easement corridors (see Exhibit 1). The site aspect is south to southwest with slopes of 10-45%. Grasses, blackberry, poison oak and scrub white oak cover most of the property, with exposed bedrock, broken rock and cobbly soils prevalent throughout the parcel. There are also scattered Douglas-fir, ponderosa pine and incense cedar, left from previous logging activities. An LCOG soil survey confirms SCS map data, which shows the parcel is composed of seven different soil types (see Exhibits 2 and 3). Over half of the property (≈69.8 acres) is underlaid with Philomath silty clay (Soil Type 107C) and Philomath cobbly silty clay (Soil Type 108F). These soil types are extremely poor for growing conifers. The remaining portions of the parcel are underlaid with Dixonville-Philomath-Hazelair complex (Soil Types 43C and E), McDuff clay loam (Soil Type 81D), Panther silty clay loam (Soil Type 102C), Ritner cobbly silty clay loam (Soil Types 113C, E and G) and Steiwer loam (Soil Type 125C). Of these soil types, only the McDuff clay loam and Ritner cobbly silty clay loam are good soils for growing conifer, and these particular soil types only cover approximately 19 acres of the entire parcel.





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The Lane County Soil Ratings for Forestry and Agriculture (see Exhibit 4) show a 100 year site class rating for only two of these soil types, the McDuff clay loam and the Ritner cobbly silty clay loam. A cu.ft./ac./yr. figure is also shown for these two soil types; only a cu.ft./ac./yr. figure is shown for the Dixonville-Philomath-Hazelair complex, it does not have a site class rating. The remaining soil types are very poor conifer growing soils and are not assigned any forestland site class rating, in the Lane County Soil Ratings. The cu.ft./ac./yr. growth, for these soil types, was obtained from the soil ratings shown in the Office of the State Forester Memorandum (see Exhibit 5). All of these soils are incapable of producing 85 cu.ft./ac./yr., the parameter used by Lane County for determining marginal soils.

III. RESULTS OF PRODUCTIVITY AND INCOME CALCULATIONS

CUBIC FEET PER YEAR PER ACRE GROWTH

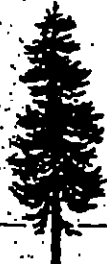
The parcel was logged over the last ten years, before the current owners purchased the property. They have no records of the amount of timber removed. Therefore, the calculations of growth were taken from the tables cited above and the potential income calculated from these figures. In order to obtain a yearly growth figure, in cu.ft./ac. for the entire parcel, the production potential of the different soil types was first calculated for the acres within each soil type. This will give a weighted figure for each soil type and can then be divided by the total acres for an overall average. These calculations are shown below.

Soil Type	Acres	Cu.Ft./Ac./Yr.	ΣCu.Ft.
43C Dixonville-Philomath-Hazelair complex	6.64	54 Cu.Ft./Ac.	358.56 Cu.Ft.
43E Dixonville-Philomath-Hazelair complex	.44	63 Cu.Ft./Ac.	27.72 Cu.Ft.
81D McDuff clay loam	5.60	158 Cu.Ft./Ac.	884.80 Cu.Ft.
102C Panther silty clay loam	14.68	45 Cu.Ft./Ac.	660.60 Cu.Ft.
107C Philomath silty clay	39.61	45 Cu.Ft./Ac.	1,782.45 Cu.Ft.
108F Philomath cobbly silty clay	30.20	45 Cu.Ft./Ac.	1,359.00 Cu.Ft.
113C, E & G Ritner cobbly silty clay loam	13.38	149 Cu.Ft./Ac.	1,993.62 Cu.Ft.
125C Steiwer loam	3.19	30 Cu.Ft./Ac.	95.7 Cu.Ft.
Totals	113.74		7,162.45 Cu.Ft.

Average Growth Potential — 113.74 Acres ÷ 7,162.45 Cu.Ft. = 62.97 Cu.Ft./Ac./Yr.

AVERAGE GROSS ANNUAL INCOME GENERATED PER YEAR THROUGH A COMPLETE ROTATION

Since no cutout records are available, the Empirical Yield Tables were used to obtain total volume per acre in scribner board feet volume, the measurement needed in order to calculate income potential. These yield tables are calculated using King's 50 year site class index. Since the Lane County Soil Ratings for Forestry and Agriculture are based on McArdle's 100 year site index rating, these ratings must be converted first. Using the 50 year Site Index ratings, for each different soil type, the volume per acre for each soil type can be calculated. Adding all the soil types together will give a total for the entire parcel. A fifty year rotation (growth cycle to final harvest) was used. This time span was adopted as the standard, by a consensus of the Board of Commissioners in March 1997, and is included in the Supplement to the Marginal Lands Information Sheet.



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Once a total volume at harvest age has been calculated, the average gross annual income can be found by dividing the total revenue at the time of harvest by the number of years in the rotation. Since the Empirical Yield Tables are based on Douglas-fir volumes, Douglas-fir log prices were used. This should also give the highest figure because Ponderosa pine has never been worth as much as Douglas-fir and incense cedar has only recently approached Douglas-fir prices.

Using industry-recognized price information from the Oregon State Department of Forestry Quarterly Report of Douglas-fir log prices for 1983, the gross worth of a fully stocked stand on this parcel can be calculated, for the time period required by the Marginal Lands Statute ORS 197.247 (1)(a). By calculating a gross worth based on a fully stocked stand of Douglas-fir, a maximum gross worth scenario for the applicant can be shown.

CALCULATIONS:

Site Index Ratings from Tables (see Exhibits 6, 7 and 8)

	100 Year Site Index	50 Year Site Index
McDuff clay loam	112	98
Ritner cobbly silty clay loam	107	95

Dixonville-Philomath-Hazelair complex - no Site Index given due to multiple soil types

- Panther silty clay loam - poorly suited for conifer growth, no Site Index given
- Philomath silty clay - poorly suited for conifer growth, no Site Index given
- Philomath cobbly silty clay - poorly suited for conifer growth, no Site Index given
- Ritner cobbly silty clay loam - poorly suited for conifer growth, no Site Index given
- Steiwer loam - poorly suited for conifer growth, no Site Index given

The soil types above which have no Site Index given were assigned a Site Index in order to obtain a growth figure from the Empirical Yield Tables. This was accomplished by comparing the Cu.Ft./Ac./Yr. figures shown in the Lane County Soil Ratings for Forestry and Agriculture or the Lane County Soil Ratings taken from the Office of the State Forester Memorandum (see calculations shown in previous section) with the Cu.Ft./Ac./Yr. figures shown in the CMAI (Culmination of Mean Annual Increment) FOR DOUGLAS-FIR Tables. From these comparisons it can be seen that the Cu.Ft./Ac./Yr. figures, for the five soil types not assigned a Site Index, do not even equal the figures shown for the lowest site class shown on the tables. Therefore, for the purposes of this analysis, the volume figures from the lowest site class shown on the tables, Site Class 70, will be used for these five soil types. This will actually show a higher volume projection than could be expected on the site, but will serve the purpose needed for this analysis. These calculations are shown below.

McDuff clay loam - 5.6 acres @ 19,019 bd.ft./ac.* =	106,506 bd.ft.
Ritner cobbly silty clay loam - 13.38 acres @ 17,591 bd.ft./ac.* =	235,368 bd.ft.
Remaining soil types - 94.76 acres @ 8,115 bd.ft./ac.* =	768,977 bd.ft.
Total	1,110,851 bd.ft.

*See Exhibit 9.



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A 50 year old stand on this site should have approximately 40% 2 SAW, 50% 3 SAW and 10% 4 SAW. If anything, these grade estimates err on the high side. In all probability there would be less 2 SAW and more 4 SAW. However, these figures are used to represent the highest possible log price scenario for the applicant.

Total Volume - 1,110.85 MBF (thousand board feet)

444.34 MBF of 2 SAW @ <u>\$255/MBF</u> **	\$113,307
555.43 MBF of 3 SAW @ <u>\$215/MBF</u> **	119,417
111.08 MBF of 4 SAW @ <u>\$200/MBF</u> **	<u>22,216</u>
Total Projected Gross Revenue	\$254,940

**See Exhibit 10.

AVERAGE GROSS INCOME -- \$254,940 ÷ 50 YEARS = \$5,099/YEAR

IV. CONCLUSION

The analysis presented shows conclusively that this property will not support a merchantable stand of timber, of sufficient production capability, to meet or exceed the Marginal Lands Income test:

- 1) The subject property produces less than 85 cu. ft./ac./yr. of conifer timber volume; only 62.97 cubic feet. The above mentioned figure has been determined by Lane County to be measuring parameter for marginal soils.
- 2) The estimated gross income based on a 50 year rotation for the 113.74 acre site would have been \$254,940 in 1983. The average annual gross income would have been \$5,099/year. Because \$5,099 is less than \$10,000/year, the property meets the following statutory test for Marginal Lands: ORS 197.247 (1)(a) "The proposed marginal land was not managed during three of the five calendar years preceding January 1, 1983, as part of a ... forest operation capable of producing an average, over the growth cycle, of \$10,000 in annual gross income."

In summary, I find from the specific site conditions present, empirical yield tables, SCS data, Lane County Data and experience with similar lands, that this property is ill suited to the production of timber and use as land for forestry purposes. It is my opinion that this parcel should be classified as marginal land.

Sincerely,

Marc E. Setchko



FOREST PRODUCTIVITY ANALYSIS

for

Brad Ogle and Mark Childs

**EXHIBIT P
FORESTER'S REPORT**

60 yr cycle
EXHIBIT 5

SUBJECT PARCEL: ASSESSORS MAP NO. 18-04-11
Tax Lots 303 & 304, totalling ±113.76 acres.

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5-2

The Lane County Soil Ratings for Forestry and Agriculture (see Exhibit 4) show a 100 year site class rating for only two of these soil types, the McDuff clay loam and the Ritner cobbly silty clay loam. A cu.ft./ac./yr. figure is also shown for these two soil types; only a cu.ft./ac./yr. figure is shown for the Dixonville-Philomath-Hazelair complex, it does not have a site class rating. The remaining soil types are very poor conifer growing soils and are not assigned any forestland site class rating, in the Lane County Soil Ratings. The cu.ft./ac./yr. growth, for these soil types, was obtained from the soil ratings shown in the Office of the State Forester Memorandum (see Exhibit 5). All of these soils are incapable of producing 85 cu.ft./ac./yr., the parameter used by Lane County for determining marginal soils.

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Average Growth Potential — 113.74 Acres ÷ 7,162.45 Cu.Ft. = 62.97 Cu.Ft./Ac./Yr.

AVERAGE GROSS ANNUAL INCOME GENERATED PER YEAR THROUGH A COMPLETE ROTATION

Since no cutout records are available, the Empirical Yield Tables were used to obtain total volume per acre in scribner board feet volume, the measurement needed in order to calculate income potential. These yield tables are calculated using King's 50 year site class index. Since the Lane County Soil Ratings for Forestry and Agriculture are based on McArdle's 100 year site index rating, these ratings must be converted first. Using the 50 year Site Index ratings, for each different soil type, the volume per acre for each soil type can be calculated. Adding all the soil types together will give a total for the entire parcel. A sixty year rotation (growth cycle to final harvest) was used, this time span being a reasonable rotation age on this site class, which is very poor. A 40 to 50 year rotation would be used on a better site class.





Once a total volume at harvest age has been calculated, the average gross annual income can be found by dividing the total revenue at the time of harvest by the number of years in the rotation. Since the Empirical Yield Tables are based on Douglas-fir volumes, Douglas-fir log prices were used. This should also give the highest figure because Ponderosa pine has never been worth as much as Douglas-fir and incense cedar has only recently approached Douglas-fir prices.

Using industry-recognized price information from the Oregon State Department of Forestry Quarterly Report of Douglas-fir log prices for 1983, the gross worth of a fully stocked stand on this parcel can be calculated, for the time period required by the Marginal Lands Statute ORS 197.247 (1)(a). By calculating a gross worth based on a fully stocked stand of Douglas-fir, a maximum gross worth scenario for the applicant can be shown.

CALCULATIONS:

Site Index Ratings from Tables (see Exhibits 6, 7 and 8)

	100 Year Site Index	50 Year Site Index
McDuff clay loam	112	98
Ritner cobbly silty clay loam	107	95

Dixonville-Philomath-Hazelair complex - no Site Index given due to multiple soil types.

Panther silty clay loam - poorly suited for conifer growth, no Site Index given

Philomath silty clay - poorly suited for conifer growth, no Site Index given

Philomath cobbly silty clay - poorly suited for conifer growth, no Site Index given

Ritner cobbly silty clay loam - poorly suited for conifer growth, no Site Index given

Steiwer loam - poorly suited for conifer growth, no Site Index given

The soil types above which have no Site Index given were assigned a Site Index in order to obtain a growth figure from the Empirical Yield Tables. This was accomplished by comparing the Cu.Ft./Ac./Yr. figures shown in the Lane County Soil Ratings for Forestry and Agriculture or the Lane County Soil Ratings taken from the Office of the State Forester Memorandum (see calculations shown in previous section) with the Cu.Ft./Ac./Yr. figures shown in the CMAI (Culmination of Mean Annual Increment) FOR DOUGLAS-FIR Tables. From these comparisons it can be seen that the Cu.Ft./Ac./Yr. figures, for the five soil types not assigned a Site Index, do not even equal the figures shown for the lowest site class shown on the tables. Therefore, for the purposes of this analysis, the volume figures from the lowest site class shown on the tables, Site Class 70, will be used for these five soil types. This will actually show a higher volume projection than could be expected on the site, but will serve the purpose needed for this analysis. These calculations are shown below.

McDuff clay loam - 5.6 acres @ 27,953 bd.ft./ac.* =	156,537 bd.ft.
Ritner cobbly silty clay loam - 13.38 acres @ 26,012 bd.ft./ac.* =	348,041 bd.ft.
Remaining soil types - 94.76 acres @ 12,572 bd.ft./ac.* =	<u>1,191,323 bd.ft.</u>
Total	1,695,901 bd.ft.

*See Exhibit 9.





5-4

A 60 year old stand on this site should have approximately 40% 2 SAW, 50% 3 SAW and 10% 4 SAW. If anything, these grade estimates err on the high side. In all probability there would be less 2 SAW and more 4 SAW. However, these figures are used to represent the highest possible log price scenario for the applicant.

Total Volume - 1,695.90 MBF (thousand board feet)

678.36 MBF of 2 SAW @ \$255/MBF**	\$172,982
847.95 MBF of 3 SAW @ \$215/MBF**	182,309
169.59 MBF of 4 SAW @ \$200/MBF**	<u>33,918</u>

Total Projected Gross Revenue \$389,209

**See Exhibit 10.

AVERAGE GROSS INCOME - \$389,209 ÷ 60 YEARS = \$6,487/YEAR

IV. CONCLUSION

The analysis presented shows conclusively that this property will not support a merchantable stand of timber, of sufficient production capability, to meet or exceed the Marginal Lands Income test:

- 1) The subject property produces less than 85 cu. ft./ac./yr. of conifer timber volume; only 62.97 cubic feet. The above mentioned figure has been determined by Lane County to be measuring parameter for marginal soils.
- 2) The estimated gross income based on a 60 year rotation for the 113.74 acre site would have been \$389,209 in 1983. The average annual gross income would have been \$6,487/year. Because \$6,487 is less than \$10,000/year, the property meets the following statutory test for Marginal Lands: ORS 197.247 (1)(a) "The proposed marginal land was not managed during three of the five calendar years preceding January 1, 1983, as part of a ... forest operation capable of producing an average, over the growth cycle, of \$10,000 in annual gross income."

In summary, I find from the specific site conditions present, empirical yield tables, SCS data, Lane County Data and experience with similar lands, that this property is ill suited to the production of timber and use as land for forestry purposes. It is my opinion that this parcel should be classified as marginal land.

Sincerely,

Marc E. Sechko



EXHIBIT 6

Current log prices Compared to 1983 prices for selected grades

Source:

Oregon Department of Forestry
Forest Management Division, Salem
503-945-7381

http://www.odf.state.or.us/divisions/management/asset_management/logprices/logP404.HTML

LOG PRICES Domestically Processed Logs (Delivered to a mill; "Pond Value")

2004 4th QUARTER

REGION 1 - NORTHWEST OREGON &

WILLAMETTE

Species & Grade	4th QUARTER 2004	Setchko	x 1983 price
Douglas-Fir	POND VALUE	1983	
1P	\$ 1050		
2P	\$ 925		
3P	\$ 770		
SM	\$ 695		
2S	\$ 615	\$ 255	2.41
3S	\$ 585	\$ 215	2.72
4S	\$ 540	\$ 200	2.70
3S(12"+)	\$ 290		
SC	\$ 235		
Utility	\$ 55		

EXHIBIT 7

LOG PRICES 1983-2004¹

Douglas Fir, grade 2S, 1st Quarter, Region 1 (Northwest Oregon & Willamette)

83	84	85	86	87	88	89	90	91	92	93	94	95	96	97	98	99	00	01	02	03	04
258	255	245	250	240	295	360	490	365	490	825	740	705	710	690	590	610	660	535	545	550	605

¹ Source: ODF Timber Sales, Log Price & Scaling Information, delivered to a mill, "pond value."
http://www.odf.state.or.us/divisions/management/asset_management/LOGPPAGE.asp

SUPPLEMENTAL MEMO

Date of Memo: May 31, 2005
To: Lane County Planning Commission
From: Jerry Kendall/Associate Planner (682-4057) JK
Re: PA 04-6092: Plan Amendment & Zone change to Marginal Lands for K. Dahlen



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

I. Background

The evidentiary hearing by the Planning Commission for this item was held on February 15th. Because of the submittal of new materials at the hearing, the Commission closed the public hearing and granted a continuance request, leaving the record open until March 15. During this open record period, materials were entered into the record which contradicted information provided in the original submittal. For example, it became apparent that the former owner (Art Moshofsky) also owned the 67 acre tax lot adjacent on the east, tax lot 1300 of Map 18-03-19, in addition to the claimed 320 acre subject property, tax lot 300 of Map 18-04-24 (hereafter these parcels are referred to by tax lot number only). This information triggered the need for additional analysis by the Applicant, and an extension of the open record period was requested. The Planning Director granted the Applicant's request. Parties were notified that the record was left open for submittal of written materials in the following manner:

- Until April 19 for any party to comment on any aspect of the proposal;
- Until May 10 for any party to comment on materials that came in during the period above;
- And, until May 24 for the applicant's final rebuttal.

The record closed as of May 24. **The Planning Commission will deliberate on June 7.**

All of the above materials, which include those provided or mentioned to the Commission at the hearing, are attached as exhibits to this report, 16 in all. The exhibits are in chronological order of receipt, the earliest (#1) on top. Also included for reference as Exhibit #17 is the 1997 Board guideline for evaluating Marginal Lands applications. This exhibit was part of the original application submittal.

II. Submittal Highlights

Contiguous Ownership

During the initial open record period, staff discovered that the subject parcel, tax lot 300, was the subject of a rezone application in 1982. Refer to exhibit #8. The owner at that time, Mr. Art Moshofsky, sought to rezone tax lot 300 from F-2, Forest Land to an agricultural zoning of A-2, Agriculture District (the phraseology of the zones may sound a bit unfamiliar, as the "updated" zones of the Rural Comprehensive Plan were not in place until Plan acknowledgement in 1984).

The rezone application states that 25 head of cattle were run on the parcel, leased to a Mr. Minty, and that the adjacent tax lot 1300 to the east, which Mr. Moshofsky also owned, was "...used as part of the total cattle grazing operation" (p.1). The rezone submittal further states (p.4) that "[T]he lessee of the subject property, Mr. Minty, operates the C&M Livestock Company and is an experienced rancher with years of cattle grazing experience. Mr. Minty has chosen to lease this property *because of its suitability for farm use and his operations* (emphasis added) are conducted according to accepted farming practices".

The rezone application (p.2) also states that "...this property has been used for farm use as defined by ORS 215.203", apparently contradicting the affidavit dated December 17, 2003 by Mr. Moshofsky (this affidavit is located within attached exhibit #13).

As shown in the email attached to Exhibit #8, the Applicant was alerted of this rezone and solicited for comments.

In response, (see Exhibit #13, p.3), the Applicant offers an updated affidavit dated March 15, 2005, in which Mr. Moshofsky clarifies the earlier affidavits by stating that the "...purpose in allowing the grazing was to create an activity and human presence on the property in our absence", and further states that the "... Consideration received for allowing the grazing was the activity and presence and annual fence repair...", which "...never exceeded \$1000 in annual value". None of the affidavits make reference to the 67 acre tax lot 1300. Mr. Moshofsky goes on to state that the "subject property" was not managed "...as part of a farm operation capable of producing \$20,000 in annual income".

In the final rebuttal (Exhibit #16), the Applicant states that they "...continue to rely on the 1997 interpretation which provides that all operations on contiguous property must be analyzed in the income calculations". The interpretation referred to is a guideline provided by the Board of Commissioners, and is found attached as Exhibit #17.

The Applicant also addresses this issue in the aforementioned Exhibit #13 (p.3). In arguing that the farm and forest operations analysis should be limited only to the subject property and any contiguous property in the same ownership, thereby excluding the need to examine nearby but not contiguous properties, the Applicant quotes from the 1997 guideline: "...the law creates a general presumption that all contiguous land owned during 1978-82 was part of the owner's 'operation'". What the Applicant does not explain is the context in which that quote is found. See Exhibit #17, page 1, under "Issue 3". This issue does not raise the scenario presented in the current application, but instead responds to the question as to whether a parcel split off from a larger parent parcel should be considered as part of the farm/forest operation. The situation in the present application, that is, as to whether an examination of non-contiguous properties which were part of the farm or forest operation, need be considered, has, to staff's knowledge, never been raised in previous Marginal Lands applications.

The record is clear that both tax lots 300 and 1300 were leased for the raising of at least 25 head of cattle annual by the owner of the "C&M Livestock Company". The record is also clear that the subject property was leased by the company "...because of its suitability for farm use and his operations" ("his" referring to Mr. Minty). This may be read to imply that the C&M Livestock Company conducted farm operations elsewhere. ORS 197.247(1)(a) does not limit the farm/forest operation to that conducted by the former owner, nor does it limit the inquiry to contiguous property (refer also to Exhibit #15, p.2, in which Mr. Just cites ORS 174.010 pertaining to the general rule for the construction of statutes). Staff would have appreciated a discussion by the Applicant concerning the nearby farm operations (or lack thereof) by the C&M Livestock Company. The file record contains no discussion about attempts to contact the company.

Staff agrees with the opponent Mr. Just in that the \$1000 annual "consideration" paid for use of the property does not respond to the question raised by ORS 197.247(1)(a), that is, whether or not the "...proposed marginal land was not managed ...as part of a farm operation that produced \$20,000 or more in annual gross income...". The Applicant appears to have failed to carry the burden of proof in regards to this standard.

In Exhibit #11, Mr. Just has provided evidence that Mr. Moshofsky was part owner of the Fort Hill Lumber Company from 1961-1991. Mr. Just contends that the (900,000 board feet) timber harvest which occurred on the subject property in 1990 was "...in fact part of an extensive Moshofsky timber operation during the relevant period". However, staff notes that the record contains no documentation that the 1990 harvest was performed by the Fort Hill Lumber

Company. Exhibit #1 includes DOF/Dept. of Revenue information for the 1990 harvest that does not list the company on the notice. With no straightforward evidence that the 1990 harvest was conducted by the company, coupled with Mr. Setchko's forest income analysis concluding that both tax lots were only capable of generating \$7,447 annual gross, staff fails to conclude that there is a reasonable expectation that the two tax lots were part of a larger forest operation during 1978-82.

Forest Income

Regarding the \$10,000 forest income standard, Mr. Just maintains that current timber prices should be utilized, that a 60 year harvest cycle is more appropriate than the 50 year cycle employed by the applicant, that the Applicant failed to use DOF approved methodology, etc. While staff agrees that on appeal, LUBA will give no deference to the county in the interpretation of state law, the Applicant has followed the 1997 Board guideline (Exhibit #17) in using a 50 year cycle, 1983 prices, and employed Mr. Setchko for an "...on site evaluation...weightier evidence than published data". The Applicant has followed the Board guideline in these regards.

Miscellaneous items

Other objections to the applicant's analysis do not appear to have much validity. For example, see Exhibit #1 regarding aquifer concerns. The Applicant's aquifer study, while deemed to contain methodologically deficiencies, has been supported in its conclusion of adequate water by the State Watermaster's Office in an email previously provided and part of the file record.

Other objections by opposing parties appear to have been adequately addressed in the file record.

III. Conclusion

Staff maintains that the Applicant has failed their burden of proof in addressing the farm income standard of ORS 197.247(1)(a), in that no discussion of other nearby farm operations conducted by the C&M Livestock Company is on record. If the Planning Commission agrees, than a recommendation for denial of the proposal is warranted.

IV. Attached Exhibits (dates reflect when the material was received):

1. 2-10-05, letter opposed, M. McMillen, w/attachments—35pp.
2. 2-14-05, letter opposed, S. Wolling—1p.
3. 2-15-05, well log data, A. Gemmell—2pp.
4. 2-15-05, Applicant's letter, w/attachments --21pp.
5. 2-15-05, letter opposed, L. Segel/1000 Friends—3pp.
6. 2-22-05, letter opposed, J. Just, w/attachments—27pp.
7. 2-22-05, neutral letter, C. & M. Bowers—2pp.
8. 2-23-05, staff submittal, '82 rezone request—14pp.
9. 2-23-05, letter opposed, J. Just, --2pp.
10. 2-23-05, letter from 15 neighbors—2pp.
11. 2-28-05, letter opposed, J. Just, w/attachments—12pp.
12. 2-28-05, letter opposed, J. Petit—1p.
13. 4-19-05, Applicant's letter, w/attachments—21pp.
14. 4-19-05, letter, D. DuPriest, for A. Gemmell—1p.
15. 4-21-05, letter opposed, J. Just—3pp.
16. 5-24-05, Applicant's final rebuttal—3pp.
17. 1997 Board guideline on Marginal Lands—2pp.

6-2-2000

7-17-38

BLM

12

0-0-EUG

18-61.1-33



DAHLEN PROPERTY
T18S-R4W-SEC 24

EXHIBIT 5

2000 PHOTO

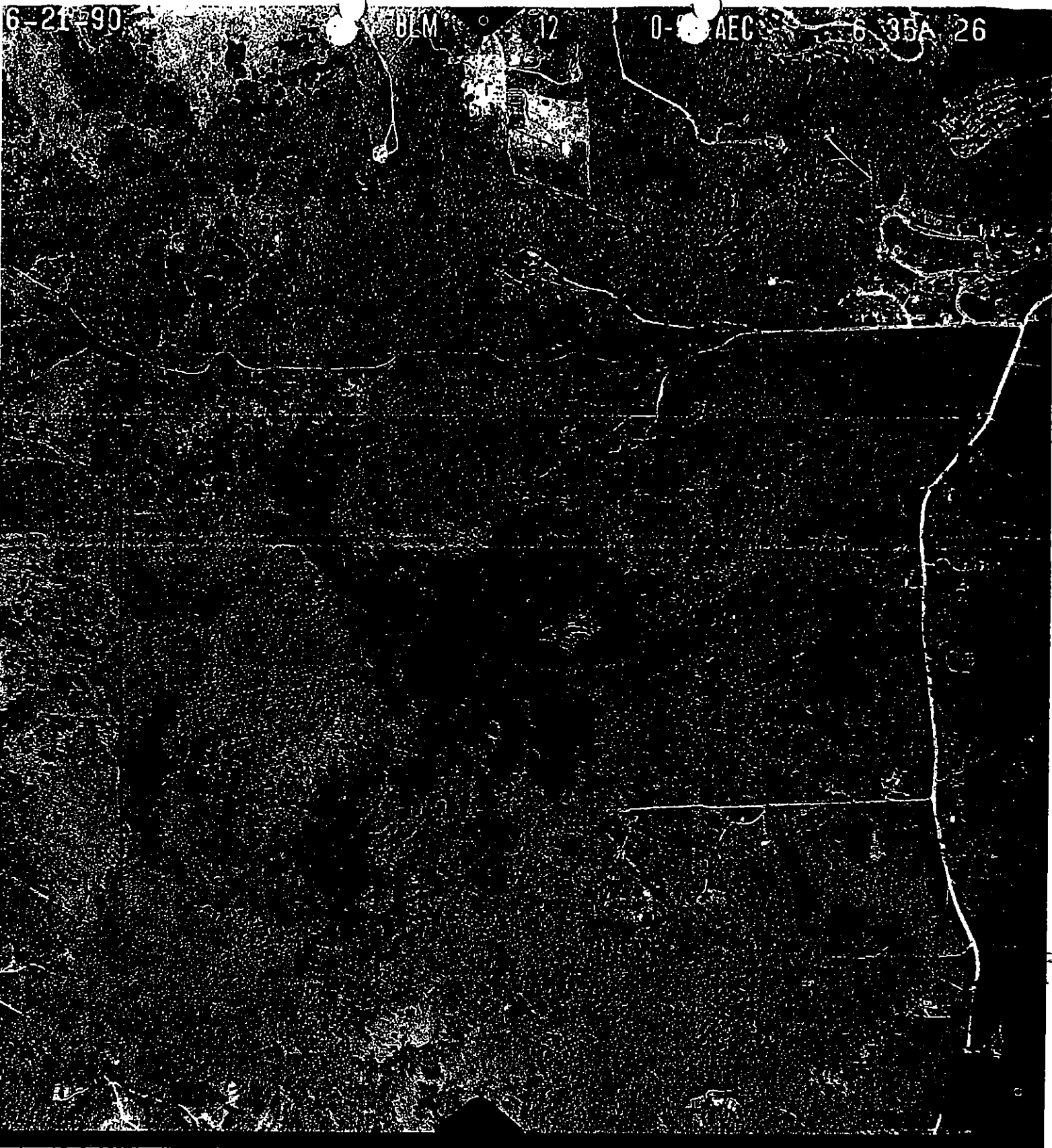
6-21-90

BLM

12

0-9 AEC

6 35A 26



DAHLEN PARCEL
T18S-R4W-SEC 24
EXHIBIT 3

1990 PHOTO

6-21-90

BLM

12

0-AEC

6-35A-26



DAHLEN PARCEL
T18S-R4W-SEC 24
EXHIBIT 3
1990 PHOTO

-79

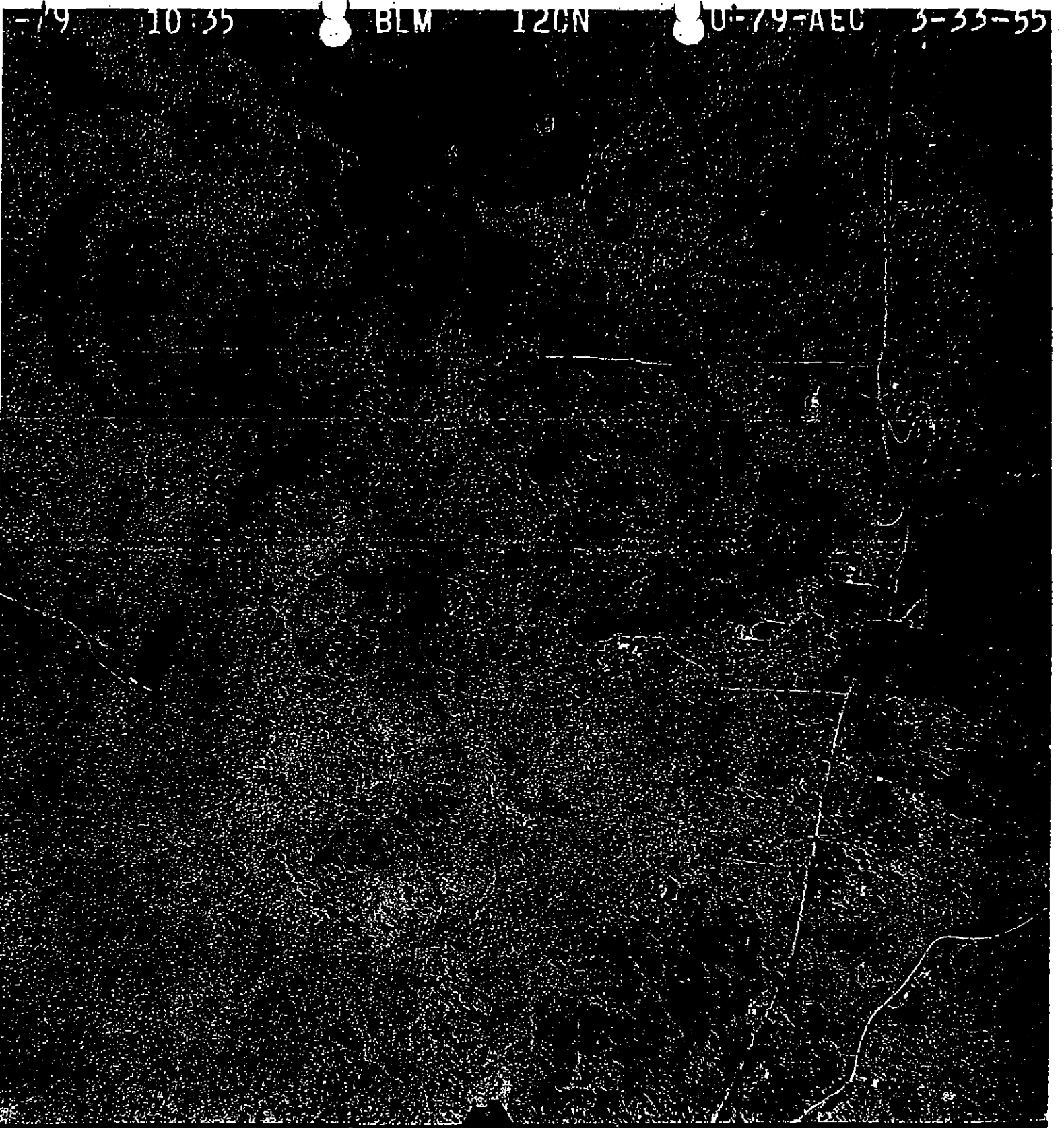
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120N

0-79-AEC

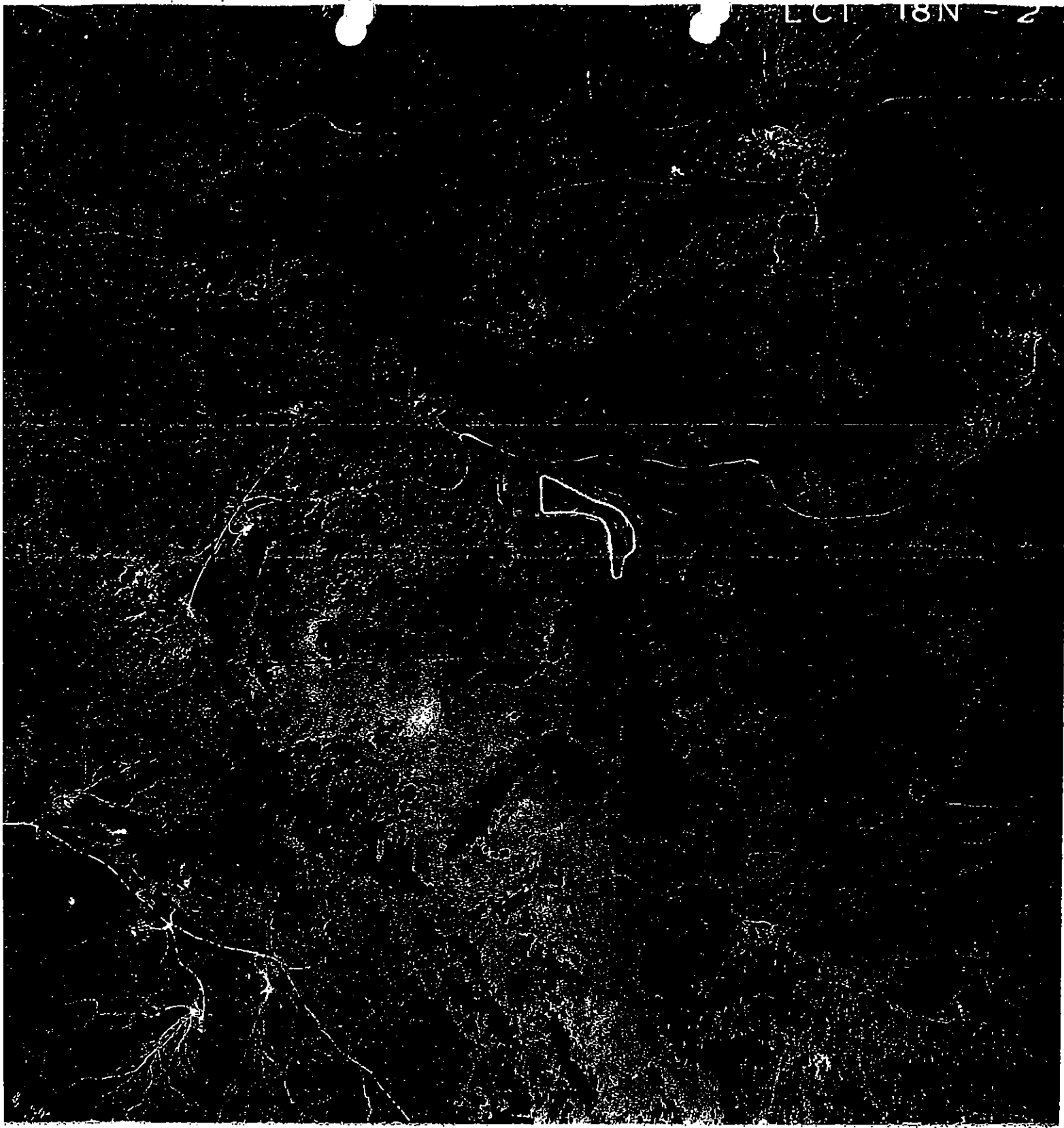
3-33-55



DAHLEN PARCEL
T18S-R4W-SEC 24

EXHIBIT 2

1979 PHOTO



DAHLEN PROPERTY
T18S-R4W SEC 24

EXHIBIT 1

1952 PHOTO

Hendrickson Well Drilling, Inc.

77483 South 6th Street
Cottage Grove, OR 97424
(541) 942-0843 FAX (541) 767-9820
CCB#68857 WWC#1553 DEQ#36884

Invoice

Date	Invoice #
9/10/2004	7331

Bill To	Work Performed At <i>LOT #2</i>
Karen Dahlen P.O. Box 5687 Eugene, OR 97405	85804 Willamett St. Eugene, OR 97405 <i>1st Well</i>

Terms	Completion Date	P.O. Number	Rep	Due Date
	9/8/2004			9/10/2004

Description	Quantity	Rate	Amount
6" Open Hole Drilling	120	10.00	1,200.00
6" Casing	21	12.00	252.00
Surface Seal		200.00	200.00
4" PVC Liner	120	3.00	360.00
Permit	1	125.00	125.00
6" Well Cap	1	20.00	20.00

Total	\$2,157.00
Payments/Credits	\$0.00
Balance Due	\$2,157.00

Any unpaid balance will accrue interest at a rate of 18% per annum or 1.5% per month.

*#2083
9-20-04*

STATE OF OREGON
WATER SUPPLY WELL REPORT
(as required by ORS 537.763)

(WELL I.D.) # L 72677
 (START CARD) # 170162

Instructions for completing this report are on the last page of this form.

(1) OWNER: Well Number
 Name Karen Dahlen
 Address 85804 Willamette St.
 City Eugene State OR Zip 97405

(2) TYPE OF WORK
 New Well Deepening Alteration (repair/recondition) Abandonment

(3) DRILL METHOD:
 Rotary Air Rotary Mud Cable Auger
 Other

(4) PROPOSED USE:
 Domestic Community Industrial Irrigation
 Thermal Injection Livestock Other

(5) BORE HOLE CONSTRUCTION:
 Special Construction approval Yes No Depth of Completed Well 120 ft.
 Explosives used Yes No Type _____ Amount _____

HOLE			SEAL			Sacks or pounds
Diameter	From	To	Material	From	To	
10"	0	19'	Bentonite	0	19'	10 Sacks
6"	19'	140'				

How was seal placed: Method A B C D E
 Other Poured
 Backfill placed from _____ ft. to _____ ft. Material _____
 Gravel placed from _____ ft. to _____ ft. Size of gravel _____

(6) CASING/LINER:

Diameter	From	To	Gauge	Steel	Plastic	Welded	Threaded
Casing: 6"	+2'	19'	250	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Liner: 4"	0	140'		<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

(7) PERFORATIONS/SCREENS:

Perforations Method Saw
 Screens Type _____ Material _____

From	To	Slot size	Number	Diameter	Tele/pipe size	Casing	Liner
40'	120'	1/8"	60	4"	SDR 26	<input type="checkbox"/>	<input checked="" type="checkbox"/>

(8) WELL TESTS: Minimum testing time is 1 hour

Pump Bailer Air Flowing Artesian

Yield gal/min	Drawdown	Drill stem at	Time
150	total	140'	1 hr.

Temperature of water 56 Depth Artesian Flow Found _____
 Was a water analysis done? Yes By whom _____
 Did any strata contain water not suitable for intended use? Too little
 Salty Muddy Odor Colored Other _____
 Depth of strata: _____

(9) LOCATION OF WELL by legal description:
 County Lane Latitude 43 58.555 Longitude 123 08.594
 Township 18 S Range 03 W W.M.
 Section 19 1/4 1/4
 Tax Lot 1300 Lot _____ Block _____ Subdivision _____
 Street Address of Well (or nearest address) _____

(10) STATIC WATER LEVEL:
0 ft. below land surface. Date 9/8/04
 Artesian pressure _____ lb. per square inch. Date _____

(11) WATER BEARING ZONES:
 Depth at which water was first found 75'

From	To	Estimated Flow Rate	SWL
75'	80'	150 gal/min	0

(12) WELL LOG:
 Ground Elevation _____

Material	From	To	SWL
Top Soil	0'	3'	
Brown Clay	3'	12'	
Blue Grey Sandstone	12'	120'	

Date started 9/8/04 Completed 9/8/04

(unbonded) Water Well Constructor Certification:
 I certify that the work I performed on the construction, alteration, or abandonment of this well is in compliance with Oregon water supply well construction standards. Materials used and information reported above are true to the best of my knowledge and belief.
 WWC Number 1800
 Signed _____ Date 9/9/04

(bonded) Water Well Constructor Certification:
 I accept responsibility for the construction, alteration, or abandonment work performed on this well during the construction dates reported above. All work performed during this time is in compliance with Oregon water supply well construction standards. This report is true to the best of my knowledge and belief.
 WWC Number 1553
 Signed _____ Date 9/9/04

START CARD

NOTICE OF BEGINNING OF WELL CONSTRUCTION
(as required by ORS 537.762)

FAXED
9/8/04

1st Well

This form must be completed and the original mailed or delivered to the Water Resources Department, 725 Summer Street NE Suite A, Salem OR 97301-1271 for all new construction, conversion, alteration, deepening and abandonments. This original must be mailed or delivered before work is commenced. A \$125 fee shall accompany the original for all new well construction, conversion, and deepening (make checks payable to the Water Resources Department). In addition, the constructor shall provide a legible copy of this notice to the region office within which the well is being constructed, converted, altered, deepened, or abandoned using one of the following methods: (a) by regular mail no later than three (3) calendar days (72 hours) prior to commencement of work; (b) by hand delivery, during regular office hours before work is commenced; or (c) by FAX before work is commenced. If method (c) is used, a legible copy of the start card shall also be mailed or delivered to the region office no later than the day work is commenced. The Water Resources Commission has authority to impose civil penalties for failure to submit the required \$125 fee with the start card, for failure to submit the \$125 fee in a timely manner, and for failure to timely submit start cards.

Owner's name and mailing address: KAREN DAHLEN P.O. BOX 5687 EUGENE OR 97405
Home Phone: (541) 431-3892
Work Phone: ()

Type of work: Fee New Construction No Fee Alteration (Repair/Recondition)
Required: Conversion Required: Abandonment Orig. Start
 Deepening Orig. Start Card No. _____

Proposed Commencement Date: 9/8/04

Existing or Proposed Well Depth: 100' Diameter: 6" Original Well ID. Label Number: _____

Use: Domestic Community (Public System) Industrial Irrigation
 Thermal Injection Monitoring Other _____

Proposed Well Location:
County LANE Township 18 S Range 3 W Section 19 Tax Lot 1300
North or South East or West

1/4 _____ 1/4 _____ On Latitude _____ Longitude _____

Street Address of well, if not assigned, nearest address:
8580A WILLAMETTE ST EUGENE, OR

We have read the back of this form and the information provided is accurate to the best of our knowledge.

Owner/Agent Name _____ Bonded Water Supply/Monitor Well Constructor Name 1553
Date Signed _____ Company HENDERSON STEEL DRILLING License No. 9/8/04
Date Signed _____ Date Signed _____

OWNER PLEASE NOTE: This is not a water right application. The owner is responsible for obtaining a water right through the Water Resources Department, if required. The Oregon Health Division requires plans to be submitted and approved prior to construction if the well is to be used as a public system.

ADDITIONAL IMPORTANT INFORMATION ON BACK.

**STATE OF OREGON
WATER SUPPLY WELL REPORT**
(as required by ORS 537.763)

(WELL I.D.) # L 72678
(START CARD) # 170161

Instructions for completing this report are on the last page of this form.

(1) OWNER: Well Number _____
Name Karen Dahlen
Address 65804 Wilamette St.
City Eugene State OR Zip 97405

(2) TYPE OF WORK
 New Well Deepening Alteration (repair/recondition) Abandonment

(3) DRILL METHOD:
 Rotary Air Rotary Mud Cable Auger
 Other _____

(4) PROPOSED USE:
 Domestic Community Industrial Irrigation
 Thermal Injection Livestock Other _____

(5) BORE HOLE CONSTRUCTION:
Special Construction approval Yes No Depth of Completed Well 200 ft.
Explosives used Yes No Type _____ Amount _____

HOLE.		SEAL					
Diameter	From To	Material	From To	Sacks or pounds			
10"	0 19'	Bentonite	0 19'	9 Sacks			
6"	19' 200'						

How was seal placed: Method A B C D E
 Other Poured
Backfill placed from _____ ft. to _____ ft. Material _____
Gravel placed from _____ ft. to _____ ft. Size of gravel _____

(6) CASING/LINER:

Diameter	From To	Gauge	Steel	Plastic	Welded	Threaded
Casing: 6"	+2' 19'	250	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Liner: 4"	0 200'		<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

Final location of shoe(s) _____

(7) PERFORATIONS/SCREENS:

Perforations Method Saw
 Screens Type _____ Material _____

From To	Slot size	Number	Diameter	Tele./pipe size	Casing	Liner
20' 200'	1/8"	150	4"	SDR 26	<input type="checkbox"/>	<input checked="" type="checkbox"/>

(8) WELL TESTS: Minimum testing time is 1 hour

Pump Bailer Air Flowing Artesian

Yield gal/min	Drawdown	Drill stem at	Time
10	total	200'	1 hr.

Temperature of water 58 Depth Artesian Flow Found _____
Was a water analysis done? Yes By whom _____
Did any strata contain water not suitable for intended use? Too little
 Salty Muddy Odor Colored Other _____
Depth of strata: _____

(9) LOCATION OF WELL by legal description:
County Lane Latitude 43 58.483 Longitude 123 08.489
Township 18 S Range 03 W WM.
Section 19 1/4 1/4
Tax Lot 1300 Lot _____ Block _____ Subdivision _____
Street Address of Well (or nearest address) Same

(10) STATIC WATER LEVEL:
25 ft. below land surface. Date 9/9/04
Artesian pressure _____ lb. per square inch. Date _____

(11) WATER BEARING ZONES:
Depth at which water was first found: 80

From	To	Estimated Flow Rate	SWL
80'	85'	10 gal/min	25'

(12) WELL LOG:
Ground Elevation _____

Material	From	To	SWL
Top Soil	0	3'	
Brown Clay	3'	10'	
Blue Gray Sandstone	10'	200'	25

Date started 9/9/04 Completed 9/9/04

(unbonded) Water Well Constructor Certification:
I certify that the work I performed on the construction, alteration, or abandonment of this well is in compliance with Oregon water supply well construction standards. Materials used and information reported above are true to the best of my knowledge and belief.
WWC Number 1880
Signed _____ Date 9/9/04

(bonded) Water Well Constructor Certification:
I accept responsibility for the construction, alteration, or abandonment work performed on this well during the construction dates reported above. All work performed during this time is in compliance with Oregon water supply well construction standards. This report is true to the best of my knowledge and belief.
WWC Number 1553
Signed _____ Date 9/9/04

Hendrickson Well Drilling, Inc.

Invoice

77483 South 6th Street
Cottage Grove, OR 97424
(541) 942-0843 FAX (541) 767-9820
OCB#68857 WWC#1553 DEQ#36884

Date	Invoice #
9/10/2004	7332

Bill To	Work Performed At LOT #3
Karen Dahlen P.O. Box 5687 Eugene, OR 97405	85804 Willamett St. Eugene, OR 97405 2nd Well

Terms	Completion Date	P.O. Number	Rep	Due Date
	9/9/2004			9/10/2004

Description	Quantity	Rate	Amount
5" Open Hole Drilling	200	10.00	2,000.00
6" Casing	21	12.00	252.00
Surface Seal		200.00	200.00
Permit	1	125.00	125.00
6" Well Cap	1	20.00	20.00
4" PVC Liner	200	3.00	600.00

Total	\$3,197.00
Payments/Credits	\$0.00
Balance Due	\$3,197.00

Any unpaid balance will accrue interest at a rate of 18% per annum or 1.5% per month.

#2083
9-20-04

START CARD
NOTICE OF BEGINNING OF WELL CONSTRUCTION
 (as required by ORS 537.762)

2nd WELL

This form must be completed and the original mailed or delivered to the Water Resources Department, 725 Summer Street NE Suite A, Salem OR 97301-1271 for all new construction, conversion, alteration, deepening and abandonments. This original must be mailed or delivered before work is commenced. A \$125 fee shall accompany the original for all new well construction, conversion, and deepening (make checks payable to the Water Resources Department). In addition, the constructor shall provide a legible copy of this notice to the region office within which the well is being constructed, converted, altered, deepened, or abandoned using one of the following methods: (a) by regular mail no later than three (3) calendar days (72 hours) prior to commencement of work; (b) by hand delivery, during regular office hours before work is commenced; or (c) by FAX before work is commenced. If method (c) is used, a legible copy of the start card shall also be mailed or delivered to the region office no later than the day work is commenced. The Water Resources Commission has authority to impose civil penalties for failure to submit the required \$125 fee with the start card, for failure to submit the \$125 fee in a timely manner, and for failure to timely submit start cards.

Owner's name and mailing address: KAREN DANLEN P.O. BOX 5687 EUGENE, OR 97405
 Home Phone: (541) 431-3892
 Work Phone: ()

Type of work: Fee New Construction No Fee Alteration (Repair/Recondition)
 Required: Conversion Abandonment Orig. Start
 Deepening Orig. Start Card No. _____

Proposed Commencement Date: 9/9/04

Existing or Proposed Well Depth: 100' Diameter: 6" Original Well I.D. Label Number: _____

Use: Domestic Community (Public System) Industrial Irrigation
 Thermal Injection Monitoring Other _____

Proposed Well Location:
 County LANE Township 18 S Range 3 W Section 19 Tax Lot 1300
 1/4 _____ 1/4 _____ Or Latitude _____ Longitude _____

Street Address of well, if not assigned, nearest address:
85804 WILLAMETTE ST EUGENE, OR 97405

We have read the back of this form and the information provided is accurate to the best of our knowledge.

Owner/Agent Name _____ Bonded Water Supply/Monitor Well Constructor Name HEYNE & SON WELL DRILLING License No. 1553
 Date Signed _____ Company _____ Date Signed _____

OWNER PLEASE NOTE: This is not a water right application. The owner is responsible for obtaining a water right through the Water Resources Department, if required. The Oregon Health Division requires plans to be submitted and approved prior to construction if the well is to be used as a public system.
ADDITIONAL IMPORTANT INFORMATION ON BACK.



534 SW Third Avenue, Suite 300, Portland, OR 97204 • (503) 497-1000 • fax (503) 223-0073 • www.friends.org

Southern Oregon Office • P.O. Box 2442 • Grants Pass, OR 97528 • phone/fax (541) 474-1155

Willamette Valley Office • 388 State Street, Suite 604 • Salem, OR 97301 • (503) 371-7261 • fax (503) 371-7596

Lane County Office • 120 West Broadway • Eugene, OR 97401 • (541) 431-7059 • fax (541) 431-7078

Central Oregon Office • P.O. Box 8813 • Bend, OR 97708 • (541) 382-7557 • fax (541) 382-7552

February 15, 2005

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

RE: PA 04-6092, Dahlen Marginal Lands Application

Commissioners:

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, issued by the Board of Commissioners in March 1997, for interpreting and administering marginal lands provisions. Because the provisions being applied are provisions of state statute, no deference is due or will be given to local interpretations of ORS 197.247.¹

The following comments address the income test requirements found in ORS 197.247(1)(a), specifically those requiring that the applicant prove the subject land was not managed during 3 of the 5 calendar years prior to January 1, 1983 . . . as part of a forest operation capable of producing an average of \$10,000 in annual gross income over the growth cycle.

Use Of A 50-Year Growth Cycle

The applicant uses a 50-year growth cycle to justify their position that the subject property, identified in the application as 18-04-24 TL 300, is not capable of meeting the income test for forest operations. The use of a 50-year growth cycle is predicated on a Board Directive in its

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)."

RECEIVED AT HEARING

P.A. NO. _____

DATE. _____

PC # 5-318

March 1997 Supplement to *Marginal Lands Information Sheet*, specifically Issue 5 titled: "What 'growth cycle' should be used to calculate gross annual income?". However, Board policy does not trump provisions of state statutes, and Lane County interpretation or application of ORS 197.247 or any of its terms or concepts will be due or receive no deference.²

Further, 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."³ 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.

Interestingly, the applicant's forestry consultant, in a related case involving an adjacent property with similar soils and characteristics, 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. The applicant's forestry consultant has failed to justify why using a management practice that would result in substantially less income could be considered reasonable.

Use Of 1983 Prices

The use of 1983 prices has not been justified and is not appropriate. LUBA has explained how the forest income test is to be applied – *DLCD v. Lane County (Ericsson)*, 23 Or LUBA 33, 36 (1992).⁴

² *Marquam Farms Corp. v. Multnomah County*, 35 Or LUBA 392, 403 (1999) (ORS 197.829)

³ "[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 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.

⁴ "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."

LUBA 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. After all, pricing is only relevant at the end of the growth cycle when timber is harvested and sold. In *Ericsson*, Lane County made its decision based on current prices, not 1983 prices. LUBA found that methodology acceptable and affirmed the county's decision.

example: seedlings planted in 1981 would appreciate in price over their 60 year or so growth cycle

Current timber prices are substantially higher than 1983 prices, as timber prices throughout the mid-1980s were at historic lows. In fact, current prices for the three grades used in the applicant's consulting forester's calculations are more than two times higher than 1983 prices. Thus, using current pricing would result in an average annual gross income substantially exceeding the \$10,000 threshold to qualify as marginal land.

While averaging timber prices over the appropriate growth cycle might be considered acceptable, 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.

Conclusion

The preceding comments identify two specific deficiencies with this application.

- 1) The applicant's consulting forester has failed to assume reasonable forest management practices in relying on a 50-year growth cycle.
- 2) In calculating potential income over the growth cycle, the applicant's consultant has failed to consider pricing over the growth cycle, using neither current pricing, average pricing, or any methodology that takes into account how timber harvesting is responsive to market signals.

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

Alternatively, if an appropriate growth cycle and pricing over the growth were considered, the annual average gross income would easily exceed the \$10,000 threshold.

Thank you for your consideration of these comments.

Lauri Segel

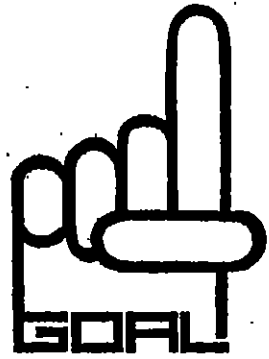
Lauri Segel
Lane County Advocate

Because of these reasons, the request to redesignate the subject parcel from Forest Land to Marginal Land.

rec'd 2-22-05

GOAL ONE COALITION

39625 Almen Drive
Lebanon, Oregon 97356
Phone: 541-258-6074
Fax: 541-258-6810
goal1@pacifier.com



February 22, 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.

This purpose of this letter is to provide additional testimony and to respond to material submitted by the applicant's representatives at the Planning Commission hearing of February 15, 2005.

1. Mr. Setchko does not provide substantial evidence concerning forest productivity.

In his letter of February 15, 2005 Mr. Setchko provides six tables of forest productivity for the subject property. The first was not prepared by Mr. Setchko, and assigns zero productivity to the majority of soil units. The other five tables show forest productivity ratings for the subject property ranging from 67.091 to 77.266 cf/ac/yr. Mr. Setchko states that forest productivity ratings are "average" ratings for the soil units, meaning that the ratings already take into consideration the range of productivity within a particular soil type.

Mr. Setchko letter concedes that he does not use these productivity ratings in his calculations of potential income from timber operations over the growth cycle.¹ Rather, he took 1/10 acre plots on 138 acres of the subject property, counted stumps left from a clear-cut, and calculated

¹ The 2/15/05 letter does not address the 78.561 acres of rated soils for which Mr. Setchko's income calculations are based on NRCS cf/ac/yr ratings.

PC #6 ~ 27pp

GOAL ONE COALITION

that this 138-acre area could support 48.6 stumps per acre. He then rounded this number up to 50 to calculate income potential.²

Mr. Setchko states that his methodology is the standard methodology for establishing stocking rates. However, it is not acceptable methodology for measuring site productivity. The methodology used by Mr. Setchko does not comply with ODF standards for measuring site productivity. That methodology is set forth in ODF's *Land Use Planning Notes*, which is appended to Goal One's letter of 2/15/2005. In summary, approved methodology requires measuring of actual timber growth for each soil type and aspect of a site. If that cannot be done because acceptable site trees are not present, soil survey methodology is required to accurately assess the site productivity.³ Mr. Setchko has not measured site trees and calculated site productivity using that data. He has not conducted a soil survey, nor is he a soil scientist qualified to do so.

Mr. Setchko states that the stands that existed before logging were established by natural regeneration, and concedes that management could possibly increase the stocking levels. He states that current stocking levels are lower than previous stands, confirming that management practices influence stocking rates. He states that the area could be sprayed for grass and brush control and replanted, and concedes that this could increase stocking rates. He notes that grass, brush and animals adversely affect the ability of seedlings to grow. Mr. Setchko does not dispute that accepted management practices can address these issues. Mr. Setchko argues that such practices would be "prohibitively expensive" and that there is a limit to how much time, effort and money could be spent. Mr. Setchko does not provide cost estimates for such measures on the subject property, or provide any evidence whatsoever of why such measures would be so much more costly on the subject property than on other lands as to make grass, brush and animal control measures "unreasonable."

Mr. Setchko states that establishment of trees on natural or native grasslands is difficult because grasses compete fiercely with seedlings for water. However, any reasonable timber management practices would include measures to control competing vegetation around newly planted trees, which are essential for good survival and growth.⁴ Grass, brush and animal control are a normal part of timber management. Reforestation projects routinely control grasses to ensure that seedlings get adequate moisture; would control brush to give seedlings space and light; and would take measures to control rodents (removing grass or even wrapping stems to prevent girdling) and deer (bud caps or tubes to prevent browsing).⁵

On p. 6 Mr. Setchko repeats his assertion that ponderosa pine grows poorly with high mortality rates in areas with saturated soils or swampy areas, and that such conditions exist "throughout the lower elevations of the Dahlen parcel." Such areas are not delineated on any map; it is not possible to tell from evidence in the record the actual extent of such areas.

² This methodology was used for approximately 138 acres. Thus Mr. Setchko's income calculations assume that the remaining 104 acres have zero productivity. See Mr. Setchko's "Forest Productivity Analysis for Dahlen Trust, Subject Parcel: Assessor's Map No. 18-04-24 Tax Lot 300, totaling ± 320.492 acres, p. 4.

³ Oregon Department of Forestry, *Land Use Planning Notes* Number 3, April 1998, p. 5.

⁴ *Pacific Northwest Weed Management Handbook*, 2003 edition, Oregon State University.

⁵ "Successful Reforestation: An Overview," *The Woodland Woodbook*, EC 1498, OSU Extension Service, April 2002., pp. 2, 6. See Exhibit 1.

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Regardless, ponderosa pine is found in such areas, as well as areas with shallow, rocky soils such as those that are stated to exist elsewhere on the subject property. OSU Extension Forester Rick Fletcher states:

"Native ponderosas are commonly found on three general soil types:

"1. Poorly drained, heavy clay soils on the Valley bottom or in the low foothills.

"2. Shallow, rocky clay soils in the Valley foothills.

"3. Well-drained, sandy soils in the flood plain of the Willamette River and its tributaries.

"These soil types represent the low end of growth potential for ponderosa pine. It grows better on soils with good drainage and depth,"⁶

Western redcedar and cottonwood are also listed as a species which tolerate poor drainage or some standing water. Red alder is listed as a species for use in riparian areas.⁷

Mr. Cornacchia cites *DLCD v. Lane County (Ericsson)*, 23 OR LUBA 33 (1992) for the proposition that soils and soil productivity are not dispositive of the capability of the parcel to produce trees and, therefore, of whether the parcel can generate the specified income over the growth cycle. In that case, LUBA explained that the county must analyze the capability of the subject land to produce the requisite income over the growth cycle, assuming the use of reasonable management practices. However, in that case, the consulting forester conducted an on-site evaluation to determine the volume of timber located on the property prior to partial harvesting, and then analysed the property's timber volume potential *if it were fully stocked*. *Ericsson* at 37-38. That is not the case here. Rather, Mr. Setchko has assumed that 104 acres have zero productivity, and that 138 acres are not fully stocked.

Mr. Cornacchia dismisses *Potts v. Clackamas County*, 42 Or LUBA 1 (2002) as not relevant because it is a "nonresource lands" case and not a marginal lands case. *Potts* is about how forest productivity is to be determined for forest land under Goal 4 and its implementing administrative rule. The subject property is designated as forest land and is zoned for forest use. The current application is for a plan amendment involving forest lands. Goal 4 and OAR 660 Division 6 apply, and *Potts* is relevant to this case.

2. Mr. Setchko fails to explain his use of a 50-year growth cycle.

Mr. Setchko does not dispute that the use of a 60-year growth cycle would result in 27.2% greater average annual income over the growth cycle than would the use of a 50-year growth cycle. By using a 60-year cycle, based on Mr. Setchko's income calculation – which assumes zero productivity for 104 acres, which assumes limited stocking of 138 acres, and which uses historically low pricing – average income over the growth cycle would increase to \$9,150.

⁶ Fletcher et al., *Establishing and Managing Ponderosa Pine in the Willamette Valley*, "EM 8805, OSU Extension Service, May 2003, p. 3.

⁷ "Selecting and Buying Quality Seedlings," *The Woodland Workbook*, "EC 1196, OSU Extension Service, November 1999, p. 2. See Exhibit 2.

GOAL ONE COALITION

This level of income approaches the \$10,000 statutory level at which the subject property would no longer qualify as marginal land. If acceptable methodology were to be used to calculate productivity, average income over the growth cycle would easily exceed \$10,000.

Information provided by the U.S. Department of Agriculture confirms that the use of a 50-year growth cycle does not reflect reasonable management practices. It provides tables which relate site index to volumes, and uses the method of "culmination of mean annual increment" (CMAI). CMAI is explained as follows:

"This age or point may be thought of as the most efficient time to harvest as far as tree growth is concerned. Other factors, such as stumpage values, taxes, interest rates, and management objectives affect the 'art' of choosing when to harvest."⁸

In the tables, culmination of mean annual increment and the age when it occurs is shown for the corresponding site indexes. CMAI differs depending upon the volume measure used. For example, for Douglas-fir, site index 156, if the objective is to maximize cf/ac/yr, CMAI occurs at age 60. If the objective is to maximize Scribner board feet volume, CMAI occurs at age 100.⁹

The selection of a growth cycle cannot be arbitrarily set at 50 years, but must be related to management objectives and must be shown to reflect reasonable management practices.

3. Mr. Setchko fails to explain the use of 1983 prices.

As explained in the Goal One letter of 2/15/05, current timber prices are substantially higher than 1983 prices, as timber prices throughout the mid-1980s were at historic lows. Timber prices in the late 1980s and early 1990s were even higher.

It is not reasonable to assume that all timber would be harvested and sold in 1983, as the use of 1983 prices would require. ORS 197.247 requires consideration of average annual income over the growth cycle. That growth cycle could be 60 years or longer. If a property were reforested in 1980, a harvest would not occur until perhaps 2030 or 2040. Assuming that 1983 prices would be obtained in 2030 or 2040 is not only unsubstantiated – it's absurd.

It would be particularly inappropriate to assume 1983 pricing in this case, when the subject property was in fact logged in 1990 as stated by Mr. Setchko in his report. Any calculation of average annual gross income over the growth cycle must consider, at least as a component of that calculation, the prices actually obtained by the timber operation in 1990.

Current prices for Douglas-fir 2S and 3S are approximately 2 ½ times the 1983 prices used by Setchko in his income calculations. Thus using current prices – without making any other adjustments for the 104 acres assumed to have zero productivity, the 138 acres assumed to not be fully stocked, or for the use of a 50- rather than a more reasonable 60-year growth cycle –

⁸ "Culmination of Mean Annual Increment for Commercial Forest Trees of Oregon," *Technical Notes*, Technical Note No. 2 Forestry, U.S. Department of Agriculture Soil Conservation Service, June 1986. See Exhibit 3.

⁹ *Technical Notes* p. 1. See Exhibit 3.

GOAL ONE COALITION

the average gross annual income over the growth cycle would be \$18,000. This is well in excess of the \$10,000 threshold for marginal land.

Re-calculating income using a 60-year growth cycle results in an average gross annual income of \$22,875. If productivity of the 104 acres assumed to have zero productivity and the productivity of a fully stocked stand on the 138 acre area were to be considered, average gross annual income over the growth cycle would be considerably higher.

4. The timber operation during the 1978-82 period included the adjoining 67.16 acre parcel identified as 18-03-19 TL 1300. The income potential of that property must also be considered in determining average gross annual income over the growth cycle.

The subject parcel, identified as 18-04-24 TL 300, abuts along its eastern border a parcel identified as 18-03-19 TL 1300. Art Moshofsky also owned 18-04-24 TL 300 during the period January 1, 1978 through January 1, 1983. See Exhibit 4. County recorder records indicate that 18-03-19 TL 1300 was acquired by Art Moshofsky in 1977 and continued under his ownership until 1991. See Exhibit 5. 18-04-24 TL 300 and 18-03-19 TL 1300 were under common ownership or control during the relevant 1978-1982 period.

Oregon Department of Forestry records indicate that a forestry operation was conducted on both 18-04-24 TL 300 and 18-03-19 TL 1300 in 1990. See Exhibit 6.

18-04-24 TL 300 and 18-03-19 TL 1300 were under common ownership and were constituents of one timber operation during the relevant 1978-1982 period. Potential average gross annual income over the growth cycle from the entire operation must be considered. As there is not substantial evidence in the record addressing the income potential from the entire timber operation, the application cannot be approved.

5. The accompanying property line adjustment cannot be approved.

The Staff Report of February, 8, 2005 states that one element of the current proposal is to "[p]rovide notice of legal lot determination PA 04-5860, which formed the subject parcel after a lot line adjustment." Thus the effect of an approval of PA 04-6092 would be to "finalize" the "preliminary" legal lot determination and the lot line adjustment.

Regarding the lot line adjustment, PA 04-5860 made the following finding:

"The requirements of the state law for property line adjustment per ORS Chapter 92 has been completed. Enclosed are copies of the recorded documents and recorded survey map on [illegible]. Parcel does not appear to have any legal access."

This finding is not correct, and cannot be adopted or affirmed as part of any decision regarding PA 04-6092.

ORS 92.190(3) provides:

GOAL ONE COALITION

"The governing body of a city or county may use procedures other than replatting procedures in ORS 92.180 and 92.185 to adjust property lines as described in ORS 92.010(11), as long as those procedures include the recording, with the county clerk, of conveyances conforming to the *approved* property line adjustment as surveyed in accordance with ORS 92.060(7)." (Emphasis added.)

Lane County has not and does not propose to use procedures to adjust the subject property line which include the recording, with the county clerk, of conveyances conforming to the *approved* property line adjustment as surveyed in accordance with ORS 92.060(7). Therefore Lane County must use the replatting procedures in ORS 92.180 and 92.185 to adjust the subject property line.

ORS 92.180 provides:

"Each agency or body authorized to approve subdivision or partition plats under ORS 92.040 shall have the same review and approval authority over *any* proposed replat of a recorded plat."

ORS 92.185 provides, in relevant part:

"The act of replatting shall allow the reconfiguration of lot or parcels and public easements within a recorded plat. * * * [R]eplats will act to vacate the platted lots or parcels and easements within the replat area[.]"

* * *

"(3) Notice, consistent with the governing body of a city or county approval of a tentative plan of a subdivision plat, shall be provided by the governing body to the owners of property adjacent to the exterior boundaries of the tentative subdivision replat.

* * *

"(6) A replat shall comply with all subdivision provisions of this chapter and all applicable ordinances and regulations adopted under this chapter."

Lane County has adopted provisions governing partition plats and replats. LC Chapter 13 governs land divisions, with the purpose of providing "conformity with the comprehensive plan regarding patterns for the development and improvement of Lane County." LC 13.050 establishes standards and criteria which a replat must meet, including conformity with the comprehensive plan (Plan). Property line adjustments thus must consider conformity with applicable Plan policies.

LC 13.100 requires that an application be filed for a preliminary partition plan. LC 13.120 provides that a decision on the preliminary plan is subject to Director approval pursuant to LC 14.100. LC 14.100(4) requires that notice of decision be mailed to the applicant, to all parties, to all neighborhood or community organizations, and to adjacent property owners. LC 13.300

GOAL ONE COALITION

requires an application for final approval. LC 13.310 establishes criteria for final approval. LC 13.310(3) provides:

"Final partition plans . . . shall be considered finally approved by the Director when the Director's signature and dates thereof have been written on the face of the maps and plats and when the maps or plats have been recorded."

These provisions of LC Chapter 13 apply to the subject property line adjustment. No application for a preliminary or final partition plan has been submitted or reviewed. Applicable approval criteria have not been identified. Compliance with relevant provisions of the Lane County Rural Comprehensive Plan, Lane Code, and the provisions of LC Chapter 13 identified above has not been addressed or established. Therefore the property line adjustment cannot be approved.

III. CONCLUSION

Mr. Setchko has not provided substantial evidence to establish forest productivity for soils not given a productivity rating for forestry in available NRCS data, nor has he established that the methodology used to generate alternative data for the 138 acre area is accepted or approved by the Department of Forestry. Assuming that 104 acres have zero productivity for timber production is not acceptable methodology and does not provide substantial evidence.

Mr. Setchko has failed to assume reasonable forest management practices in relying on a 50-year growth cycle and on 1983 prices.

For these reasons, Mr. Setchko's methodology does not provide substantial evidence concerning potential forest productivity, upon which any calculation of average gross annual income over the growth cycle must be based.

His conclusion that the average gross income over the growth cycle would be below \$10,000 is improperly based on the use of 1983 prices and is contradicted by substantial evidence in the record regarding actual timber operations on the subject property.

Mr. Setchko's conclusion that the average gross income over the growth cycle would be below \$10,000 does not consider the income potential from the adjacent 67.16 acre parcel that was under common ownership or control and was part of the timber operation.

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. The property line adjustment that is part of the current proposal cannot be approved.

Respectfully submitted,


Jim Just
Executive Director

EXHIBIT 10.1

Why reforest? Well, for one thing, it's the law. Reforestation is required when timber harvesting reduces the number of trees below specified stocking* levels (see EC 1194, *Oregon's Forest Practice Rules*). You must complete reforestation within 24 months after completing a harvest operation. Depending on site productivity, at least 100 to 200 seedlings per acre must be established. In addition, seedlings must be well distributed across the area and "free to grow" (vigorous and above competing vegetation) within 6 years.

In general, commercial tree species suited for your site conditions are acceptable species for reforestation. Contact your local Oregon Department of Forestry office about your particular reforestation situation.

Because reforestation is labor intensive and expensive, planning is essential to assure success. Lack of attention to any one step can result in costly reforestation failures.

Site preparation

The first thing to consider is the condition of the planting site. This includes the kind of vegetation present, soil type, aspect (compass direction the slope faces), and even the kinds of animals that might damage your trees.

Site characteristics are important because they affect critical site resources—water, light, temperature, and nutrients—necessary for seedling survival and growth.

Site preparation has three major objectives:

- Reduce the amount of vegetation that competes with tree seedlings
- Reduce habitat of animals that damage (browse and/or clip) seedlings
- Create plantable spots

Water is the most critical factor for seedling survival and growth, particularly

* Stocking is the number of trees in a forest. Usually this is expressed as trees per acre or some relative measure—well-stocked, fully stocked, overstocked, understocked.

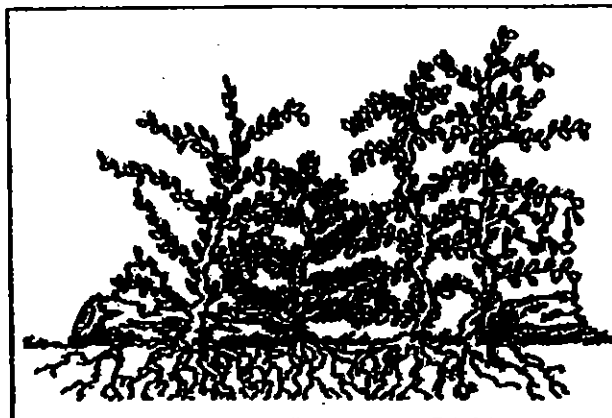


Figure 1.—Shrubs crowding a tree seedling.

the first few years after seedlings are planted. Grass, shrubs, and larger weeds are obvious competitors for moisture and light (Figure 1). It's important to remember that the root systems of grass and other vegetation are very extensive, spreading well beyond the aboveground portion of the plant.

Grass also provides habitat for meadow mice, voles, and gophers, which can severely damage or kill tree seedlings. You must keep grass away from newly planted seedlings for a few years to reduce habitat for these animal species.

Several methods or combinations of methods are available to prepare sites for planting. Costs depend on site conditions, methods used, existing vegetation, and amount of logging debris or slash. See EC 1188, *Site Preparation: An Introduction for the Woodland Owner*.

Mechanical methods

If there is a lot of slash or brush, you may need to use mechanical (tractor) or manual methods to create planting spots as well as to reduce brush competition. Heavy slash can make it difficult to plant an area and can pose a fire hazard. Disadvantages of mechanical methods are that they can remove topsoil, compact soil, and encourage grass and other vegetation to reestablish.

Burning also can reduce slash and brush competition, but it can be difficult to control. You first must move the slash into piles so you can control the fire more

Care and handling

Keep seedlings cool (34 to 40°F) and moist and handle them gently at all times. When transporting seedlings to the planting site, keep them away from direct sunlight and cover them with a reflective tarp. Store extra seedlings temporarily in a shaded, cool spot at the planting site until needed. Do not allow seedlings to freeze.

Tools and planting

Special long-bladed shovels, planting spades, planting hoes (called hoedads), or power augers are used to plant seedlings. Planting holes should be deep enough to accommodate roots. Plant the seedling so its roots spread downward in the planting hole and are not crammed in, forming "J-roots." Plant seedlings upright so that all roots are well covered, and firm the soil around roots to eliminate air pockets. Avoid mixing any organic debris, such as rotten wood, branches, or needles, in the planting hole.

Fertilizing seedlings at planting time is not recommended under most conditions. Soil fertility usually is adequate. Fertilization actually may harm seedlings by burning the roots, encouraging excessive top growth, or by encouraging the growth of weeds that compete with seedlings.

If you hire a planting contractor, obtain and check references first. Names of local contractors may be available from an OSU Extension forester or the Oregon Department of Forestry. It is important to monitor tree planters to be sure they do a good job.

Planting costs vary with site conditions, size of seedling, spacing, and availability of planting crews. Costs may range from 25 to 45 cents per seedling or roughly from \$100 to \$200 per acre. This includes the costs of seedlings and labor.

Seedling protection

If populations of deer, elk, gophers, or mountain beavers are large, you may need to protect newly planted seedlings. To deter deer and elk, you can place protective devices (Figure 4) around seedlings or use repellents. Control gophers by baiting and trapping; mountain beavers usually are

trapped to control their populations. For specific information on animal damage protection, see:

- EC 1144, *Controlling Mountain Beaver Damage in Forest Plantations*
- EC 1201, *Understanding and Controlling Deer Damage in Young Plantations*
- EC 1255, *Controlling Pocket Gopher Damage to Conifer Seedlings*
- EC 1256, *Controlling Vole Damage to Conifer Seedlings*

On south-facing slopes, seedlings may be damaged or killed by intense sunlight and heat. Shading the seedling's lower stem with shade cards (available commercially or homemade) can improve seedling survival on these harsh sites, particularly if there is little shade from stumps, logs, and slash.

Plantation maintenance

Once seedlings are planted, additional maintenance often is needed to ensure their continued survival and growth. A systematic walk through the plantation each year can reveal whether seedlings are alive and growing well and whether action is needed to control weeds or protect trees from animal damage.

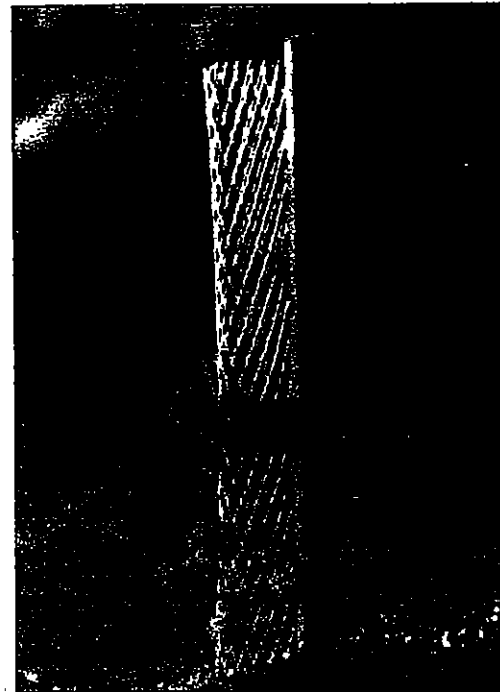


Figure 4.—A vexar tube protects against browsing deer.

EXHIBIT 2

Table 1.—Relative performance ratings for various tree species in climatic regions of western Oregon.

Coast	Tree performance						Comments
	Level of use ¹	Growth ²	Shade tolerance ³	Big game damage ⁴	Frost ⁵	Drainage ⁶	
Douglas-fir	5	5	2	3	2	1	Good on most forest sites with good soil and drainage. Control brush before it overtops seedlings.
Western hemlock	3	5	5	3	3	2	Will tolerate more brush competition than Douglas-fir.
Western redcedar	2	4	4	2	1	4	Good in areas with high water table. Can be browsed heavily.
Grand fir	2	5	3	3	4	4	Good on moist sites.
Sitka spruce	1	5	4	2	5	3	Good only near coast. Spruce tip weevil is a serious pest.
Shore pine	1	1	1	5	5	5	Grows on droughty sand or hardpan sites. Good early growth but slower long-term growth.
Noble fir	1	3	3	4	4	1	For timber planting above 2,000 feet in the Coast Range.
Red alder	1	3	1	3	3	3	Used in riparian and root-rot areas.
.....							
Willamette Valley Cascades— west slopes	Level of use ¹	Growth ²	Shade tolerance ³	Big game damage ⁴	Frost ⁵	Drainage ⁶	Comments
Douglas-fir	4	5	2	3	2	2	Brush and grass control is important.
Noble fir	2	3	3	4	4	2	Used above 1,500 feet elevation; avoid clay soils.
Grand fir	1	4	3	3	4	3	Good for valley uplands where game damage can be a problem.
Western redcedar	1	3	4	2	1	4	Do not plant on poorly drained clay soils.
Ponderosa pine	1	3	1	5	4	1	Good on sandy soils or clay soils that become droughty in summer.
Western hemlock	1	3	5	3	3	2	Used on north-facing sites.
Cottonwood	1	4	1	3	1	5	Used on river bench alluvial soils.

¹Level of reforestation use 5 = planted on more than 90% of the sites; 1 = infrequently planted

²Height and volume growth 5 = superior; 1 = slow/poor

³Shade tolerance 5 = able to grow well with overstory shade; 1 = requires full sunlight

⁴Big game damage 5 = infrequently browsed by deer or elk; 1 = frequently browsed

⁵Frost resistance 5 = high resistance to low temperatures; 1 = easily damaged by frost

⁶Drainage 5 = tolerates poor drainage or some standing water for short periods; 1 = requires well-drained soils

TECHNICAL NOTES

U.S. DEPARTMENT OF AGRICULTURE

Portland, Oregon

SOIL CONSERVATION SERVICE

FORESTRY NO. 2 Revised

June 1986

CULMINATION OF MEAN ANNUAL INCREMENT FOR COMMERCIAL FOREST TREES OF OREGON

The productivity of a particular soil is of considerable importance to land managers. The most common expression of productivity on forestland is site index (total height of trees in the dominant crown canopy at a base age, usually 50 or 100 years). Service employees recognize the significance of site index in relative terms, that is, land with a site index of 160 is more productive than site index 140, but less productive than site index 180. However, most technical materials refer to site index without explaining what it represents in terms of cubic feet or board feet volumes.

The attached tables, express site index in such a way it can be related to volumes. It is necessary, for comparative purposes, to use a method that expresses one value for each site index. The method chosen is culmination of mean annual increment (CMAI).

This age or point may be thought of as the most efficient time to harvest as far as tree growth is concerned. Other factors, such as stumpage values, taxes, interest rates, and management objectives affect the "art" of choosing when to harvest.

In the following tables, the culmination of mean annual increment (CMAI) and the age when it occurs is shown for the corresponding site indices. For example, using a site index of 156 for Douglas-fir, the following volumes can be expressed:

1. A 60 year old stand will produce 165 cubic feet volume per acre per year at CMAI, or 9,900 (60x165) total cubic feet volume.
2. A 100 year old stand will produce 780 board feet (Scribner) volume per acre per year at CMAI or 78,000 (100x780) total board feet volume.

DATA FOR DOUGLAS FIR

100 YR. TABLE
(PINE)
790-HEARDLE

SCRIBNER

100 YR. TABLE (PINE) 790-HEARDLE
INTER. 1/8" TOTAL 1/8" TOTAL
CU. FT. / CU. M. / TOTAL 1/8" TOTAL
AC. / YR. AGE AC. / YR. AGE AC. / YR. AGE AC. / YR. AGE

AGE	CU. FT. / AC. / YR.	CU. M. / HA. / YR.	TOTAL 1/8" AGE	INTER. 1/8" AC. / YR.	TOTAL 1/8" AGE	NEST SIDE 50 YR. (PINE) 790-KING	CU. FT. / AC. / YR.	CU. M. / HA. / YR.	TOTAL 50 YR. AGE	EAST SIDE 50 YR. (PINE) 745-COCHRAN	CU. FT. / AC. / YR.	CU. M. / HA. / YR.	TOTAL 50 YR. AGE
10	58	4.1	70	146	160	79	5.5	6.2	90	29	2.0	2.1	116
11	60	4.2	70	151	160	81	5.6	6.3	90	30	2.1	2.2	115
12	61	4.3	70	156	160	83	5.8	6.4	90	32	2.2	2.3	115
13	62	4.3	70	162	160	84	5.9	6.5	90	34	2.4	2.4	114
14	63	4.4	70	167	160	86	6.0	6.6	90	35	2.4	2.5	114
15	64	4.4	70	172	160	87	6.2	6.7	90	36	2.5	2.6	113
16	65	4.5	70	178	160	89	6.3	6.8	90	38	2.7	2.7	112
17	67	4.7	70	183	160	91	6.5	6.9	90	40	2.8	2.8	112
18	68	4.8	70	189	160	94	6.6	7.0	90	41	2.9	2.9	111
19	69	4.8	70	194	160	96	6.7	7.1	90	42	2.9	3.0	111
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3/2/54

CMAI FOR DOUGLAS FIR

100 YR. TABLE
(P&M)
790-MEARDLE

SITE INDEX	100 YR. TABLE (P&M)		790-MEARDLE		795-KING		765-COCHRAN	
	CU. FT. / AC. / YR.	CU. M. / HA. / YR.	TOTAL DB. FT. / AGE	INTER. DB. FT. / AC. / YR.	CU. FT. / AC. / YR.	CU. M. / HA. / YR.	CU. FT. / AC. / YR.	CU. M. / HA. / YR.
90	70	4.9	199	375	110	8.1	104	7.3
91	72	5.0	206	382	110	8.2	107	7.5
92	73	5.1	212	391	110	8.4	109	7.6
93	74	5.2	219	401	110	8.5	112	7.8
94	75	5.3	228	410	110	8.6	114	8.0
95	77	5.4	232	420	110	8.8	117	8.2
96	78	5.5	238	429	110	9.0	120	8.4
97	79	5.5	244	438	110	9.1	122	8.5
98	81	5.7	251	448	110	9.2	125	8.7
99	82	5.7	258	457	110	9.4	127	8.9
100	84	5.9	265	467	100	9.5	130	9.1
101	85	5.9	273	478	100	9.6	133	9.3
102	86	6.0	280	490	100	9.8	136	9.5
103	88	6.2	288	501	100	9.9	139	9.7
104	89	6.2	296	512	100	10.0	142	9.9
105	91	6.3	304	524	100	10.1	145	10.1
106	92	6.4	312	535	100	10.3	148	10.3
107	94	6.6	320	547	100	10.4	151	10.6
108	95	6.6	329	558	100	10.5	154	10.8
109	97	6.8	337	569	100	10.6	157	11.0
110	98	6.9	345	581	100	10.8	160	11.2
111	100	7.0	354	594	100	10.9		
112	101	7.1	363	606	100	11.0		
113	103	7.2	372	619	100	11.2		
114	105	7.3	381	631	100	11.3		
115	106	7.4	390	644	90	11.4		
116	108	7.6	399	656	90	11.7		
117	110	7.7	408	669	90	11.8		
118	111	7.8	418	681	90	11.9		
119	113	7.9	427	694	90	12.1		
120	115	8.0	437	710	90	12.2		
121	116	8.1	446	723	90	12.3		
122	118	8.3	456	736	90	12.5		
123	119	8.3	465	749	90	12.6		
124	121	8.5	475	762	90	12.7		
125	122	8.5	485	775	90	12.9		
126	124	8.7	494	789	90	13.0		
127	125	8.7	504	802	90	13.1		
128	127	8.9	513	815	90	13.2		
129	128	9.0	523	828	90	13.4		

3-4

TE DEX	100 YR. TABLE (PSME)			790-HEARDE			795-KING		
	CU.FT./ AC./YR.	CU.M./ HA./YR.	TOTAL AGE	INTER. 1/8" BD. FT./ AC./YR.	TOTAL AGE	CU.FT./ AC./YR.	CU.M./ HA./YR.	TOTAL AGE	
30	129	9.0	60	532	110	841	193	13.5	90
31	131	9.2	60	542	110	853	195	13.6	90
32	133	9.3	60	552	110	865	197	13.8	90
33	134	9.4	60	562	110	877	199	13.9	90
34	136	9.5	60	572	110	889	201	14.0	90
35	138	9.7	60	581	110	901	203	14.2	90
36	139	9.7	60	591	110	914	207	14.3	90
37	140	9.8	60	601	110	927	209	14.4	90
38	142	9.9	60	611	110	940	210	14.7	90
39	144	10.1	60	621	110	953	212	14.8	90
40	145	10.1	60	631	110	966	214	15.0	90
41	146	10.2	60	640	110	978	216	15.1	90
42	148	10.3	60	649	110	990	218	15.2	90
43	149	10.4	60	658	110	1002	220	15.4	90
44	150	10.5	60	667	110	1014	222	15.5	90
45	152	10.6	60	676	110	1026	224	15.6	90
46	153	10.7	60	686	100	1037	226	15.8	90
47	154	10.8	60	695	100	1049	227	15.9	90
48	156	10.9	60	705	100	1061	229	16.0	90
49	157	11.0	60	714	100	1073	231	16.2	90
50	158	11.1	60	724	100	1085	233	16.3	90
51	159	11.1	60	733	100	1096	235	16.4	90
52	161	11.3	60	743	100	1106	237	16.6	90
53	162	11.3	60	752	100	1117	239	16.7	90
54	163	11.4	60	762	100	1127	241	16.8	90
55	164	11.5	60	771	100	1138	243	17.0	90
56	165	11.5	60	780	100	1148	244	17.1	90
57	167	11.7	60	790	100	1159	246	17.2	90
58	168	11.8	60	799	100	1169	248	17.4	90
59	169	11.8	60	809	100	1180	250	17.5	90
60	170	11.9	60	818	100	1190	252	17.6	90
61	171	12.0	60	827	100	1200			
62	172	12.0	60	836	100	1209			
63	173	12.1	60	844	100	1219			
64	174	12.2	60	852	100	1228			
65	176	12.3	60	861	100	1238			
66	177	12.4	60	870	100	1247			
67	178	12.5	60	879	100	1257			
68	179	12.5	60	887	100	1266			
69	180	12.6	60	895	100	1276			

3-5

CHAI FOR DOUGLAS FIR

100 YR. TABLE
(PSME)
790-HEARDE

SITE INDEX	CU. FT. / AC. / YR.	CU. M. / HA. / YR.	TOTAL AGE	SCRIBNER AGE	TOTAL AGE	INTER. 1/8" BD. FT. / AC. / YR.	TOTAL AGE																												
								181	182	183	184	185	186	187	188	189	190	191	192	193	194	195	196	197	198	199	200	201	202	203	204	205	206	207	208
170	181	12.7	60	904	100	1285	180																												
171	182	12.7	60	912	100	1298	180																												
172	183	12.8	60	921	100	1308	180																												
173	184	12.9	60	930	100	1312	180																												
174	185	12.9	60	938	100	1323	180																												
175	186	13.0	60	946	100	1334	180																												
176	187	13.1	60	955	100	1346	180																												
177	188	13.2	60	964	90	1356	180																												
178	189	13.2	60	973	90	1366	180																												
179	190	13.3	60	982	90	1376	180																												
180	191	13.4	60	991	90	1386	180																												
181	192	13.4	60	1000	90	1395	180																												
182	193	13.5	60	1009	90	1404	180																												
183	194	13.6	60	1018	90	1413	180																												
184	195	13.6	60	1027	90	1422	180																												
185	196	13.6	60	1036	90	1431	180																												
186	197	13.7	60	1044	90	1440	180																												
187	198	13.7	60	1053	90	1449	180																												
188	199	13.9	60	1062	90	1458	180																												
189	199	13.9	60	1071	90	1467	180																												
190	200	14.0	60	1080	90	1476	180																												
191	201	14.1	60	1088	90	1484	180																												
192	202	14.1	60	1097	90	1493	180																												
193	203	14.1	60	1105	90	1501	180																												
194	204	14.2	60	1114	90	1509	180																												
195	205	14.3	60	1122	90	1518	180																												
196	206	14.3	60	1131	90	1526	180																												
197	207	14.4	60	1139	90	1534	180																												
198	208	14.5	60	1148	90	1542	180																												
199	208	14.6	60	1156	90	1551	180																												
200	209	14.6	60	1164	90	1559	180																												
201	210	14.6	60	1173	90	1567	180																												
202	211	14.7	60	1181	90	1575	180																												
203	211	14.8	60	1189	90	1583	180																												
204	212	14.8	60	1198	90	1591	180																												
205	213	14.9	60	1206	90	1599	180																												
206	214	14.9	60	1214	90	1607	180																												
207	214	15.0	60	1223	90	1615	180																												
208	215	15.0	60	1231	90	1623	180																												
209	215	15.0	60	1239	90	1631	180																												
210	216	15.1	60	1248	90	1639	180																												

EXHIBIT 4

AFFIDAVIT

State of Oregon
County of Lane

Before me this day personally appeared Art Moshofsky, who, first being duly sworn, deposes and says:

Exhibit G

I owned property located in Lane County, Oregon described as Assessor's Map Number 18-04-24, tax lot 00300, during the period from January 1, 1978 through January 1, 1983. Said property is shown on attached Exhibit A which is made a part of this affidavit.

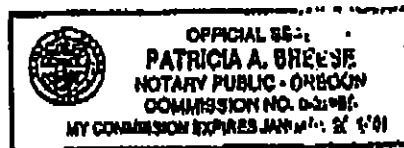
At no time during that period was the above described property managed as part of a farm operation. By "farm operation" I mean the raising, harvesting or processing of any crop or livestock with the intent of making a profit in money. Farm operation also means land which is laying fallow as part of any farm-related government program.

The property was not assessed as farm land for ad valorem property tax purposes during the above described time period.

Art Moshofsky

Sworn to and subscribed before
me this 15th day of December
1997

Patricia A. Brees
Notary Public
State of Oregon
My commission expires 1/20/2001



18633

OFFICE RECORD OF DESCRIPTIONS OF REAL PROPERTIES
OFFICE OF COUNTY ASSESSOR LANE COUNTY, OREGON

CODE NO. 4-01

MAP NO. 18.03.19	TAX LOT NO. 2 1300	SECTION 010 19	TOWNSHIP 18	RANGE 3W	W.M. 4-25-0
ACCOUNT	NUMBER	SECTION	TOWNSHIP	RANGE	W.M.
LOT NO.	BLOCK NO. LLA	ADDITION 5M 03564	2003-036962		CITY 036963

LEGAL DESCRIPTION	DEED RECORD		ACRES
	DATE OF ENTRY	DEED NUMBER	
SW $\frac{1}{4}$ NW $\frac{1}{4}$; NW $\frac{1}{4}$ SW $\frac{1}{4}$ Except Tax Lot 1400 (2 1) containing 1.00 A.	1952	Reg. 59530 445/495	79.46
Less 1.23 acres in road	1960	R140 78758	78.46
	1966	R269/11907	77.23
1967	R293/57362 R293/57363		
1967	R296/62304 R296/62305		
NW $\frac{1}{4}$ of the SW $\frac{1}{4}$; SW $\frac{1}{4}$ of the NW $\frac{1}{4}$ of Sec. 19, T18S, R3W of the W.M. in Lane County, Oregon. EXCEPTING THEREFROM: the followings: Beginning at the NE cor. of the SW $\frac{1}{4}$ of the NW $\frac{1}{4}$ of said Section 19; thence South along the center of roadway along the East line of said SW $\frac{1}{4}$ of the NW $\frac{1}{4}$, 721.0 feet; thence West 16.00 rods; thence South 10.00 " " East 16.00 " " North 10.00 " to the POB in Lane County, Oregon.	1970	R472/99238 (Pass)	
	1971	R480/6562 6563 R480/6564 6565	
	1973	R632/14380 R632/14381	
	1977	R851/36311*	77.23
Containing m/l Less: 0.23 ac. in County Rd. #436. (1968) Cont. m/l Acreage Correction (1968) Cont. m/l	1991bs	R1735/9162228	77.00
Except: 8.41 ac to 1301 by R751/28944 in 1975.	1997wd	R2268/9712441 wd	76.22
	2003wd	2002-10368 9712642	
Containing more or less			67.81
EXCEPT: 0.65 ac out to Willamette St by R1310/ 8433089 & 8433090 for 1985. Cont. m/l			67.36

*does not read as above but is included within

EXHIBIT 5

7736311

STATE OF OREGON

County of Multnomah

99.

Personally appeared ROY M. RUSCH and acknowledged the foregoing WARRANTY DEED to be his voluntary act.

Before me this 22 day of May, 1977



Christ S. Wilson
Notary Public for Oregon
My Commission expires: 7/2/80

STATE OF OREGON

County of Multnomah

95.

Personally appeared DEXTER C. MAUST and acknowledged the foregoing WARRANTY DEED to be his voluntary act.

Before me this 22 day of May, 1977.



Christ S. Wilson
Notary Public for Oregon
My Commission expires: 7/2/80

Until further notice the tax statements to be sent to:
Arthur R. Moshofsky
2041 S.W. 58th
Portland, Oregon 97221

5-4
7736311

Parcel 1

The Northeast quarter of the Southeast quarter and the Southeast quarter of the Northeast quarter of Section 24, Township 18 South, Range 4 West of the Willamette Meridian, and the Northwest quarter of the Southwest quarter and the Southwest quarter of the Northwest quarter of Section 19, Township 18 South, Range 3 West of the Willamette Meridian, in Lane County, Oregon;

EXCEPT THEREFROM the following: Beginning at a point on the East line of the Southwest quarter of the Northwest quarter 721.0 feet South of the Northeast corner of said Southwest quarter of the Northwest quarter; thence West 16.0 rods; thence South 10.0 rods; thence East 16.0 rods; thence North 10.0 rods to the place of beginning, in Lane County, Oregon;

ALSO EXCEPT any part lying Easterly of the center line of South Willamette Street, in Lane County, Oregon.

Parcel 2

The Southwest quarter of the Northeast quarter; the Northwest quarter of the Southeast quarter; the South half of the Northwest quarter and the North half of the Southwest quarter of Section 24, Township 18 South, Range 4 West of the Willamette Meridian, in Lane County, Oregon;

ALSO EXCEPT from Parcel 1 and Parcel 2 the following:

Beginning at the intersection of the centerline of Willamette Street (County Road No. 436) and the South line of the Northeast 1/4 of the Southwest 1/4 of Section 19, Township 18 South, Range 3 West of the Willamette Meridian; thence West 1452.0 feet along the South line of the Northeast 1/4 of the Southwest 1/4; the Northwest 1/4 of the Southwest 1/4 of Section 19 and the Northeast 1/4 of the Southeast 1/4 of Section 24, Township 18 South, Range 4 West of the Willamette Meridian; thence North 300.0 feet; thence East to the center line of Willamette Street (County Road No. 436); thence Southerly along the center line of said Willamette Street to the place of beginning, in Lane County, Oregon.

Exhibit A

CT-131610

02/1/2005
5-5

736311

State of Oregon,
County of Lane—ss.

I, D.M. Penfold, Director of the Department of General Services, in and for the said County, do hereby certify that the within instrument was received for record at

1977 JUN 15 AM 11 20

Reel
851 R
Lane County OFFICIAL RECORDS.

D.M. Penfold, Director of the Department of General Services.

D.M. Penfold
Director

5-5

10
100

9162228

BARGAIN & SALE DEED

ARTHUR R. MOSHOFSKY and EMILY JANE MOSHOFSKY, Grantors, convey to ARTHUR R. MOSHOFSKY and EMILY JANE MOSHOFSKY, Trustees, U/A dated June 6, 1991, Grantees, the following described real property located in the State of Oregon, County of Lane, to-wit:

An undivided one-half (1/2) interest in and to the property described on Exhibit "A" attached hereto, which property is located in Lane County, Oregon.

TO HAVE AND TO HOLD the above-described real property unto said Grantees, as Trustees, forever.

The true and actual consideration paid Grantors for this transfer stated in terms of dollars is none, as the underlying consideration is estate planning.

THIS INSTRUMENT WILL NOT ALLOW USE OF THE PROPERTY DESCRIBED IN THIS INSTRUMENT IN VIOLATION OF APPLICABLE LAND USE LAWS AND REGULATIONS. BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON ACQUIRING FEE TITLE TO THE PROPERTY SHOULD CHECK WITH THE APPROPRIATE CITY OR COUNTY PLANNING DEPARTMENT TO VERIFY APPROVED USES.

Dated this 15 day of September, 1991.

Arthur R. Moshofsky
Arthur R. Moshofsky

Emily Jane Moshofsky
Emily Jane Moshofsky

STATE OF OREGON)
) ss.
County of Multnomah)

718DEC.24'91M04REC 10.00
718DEC.24'91M04PFLND 10.00
718DEC.24'91M04MAT FLD 20.00

Personally appeared ARTHUR R. MOSHOFSKY and EMILY JANE MOSHOFSKY, and acknowledged the foregoing instrument to be their voluntary act and deed on this 15 day of September, 1991.

Before me:

Robert J. [Signature]
Notary Public for Oregon
My Commission Expires: 10/19/92

AFTER RECORDING RETURN TO:

RUSSITA R. BIRDAUS
ATTORNEY AT LAW
SUITE 1100 BANK OF AMERICA
500 S.W. COMMERCIAL ST.
PORTLAND, OR 97204

SEND TAX STATEMENTS TO:

Arthur and Jane Moshofsky
2850 S.W. Lakewood Blvd.
Lake Oswego, OR 97035

9162228

7736311

Parcel 1

The Northeast quarter of the Southeast quarter and the Southeast quarter of the Northeast quarter of Section 24, Township 18 South, Range 4 West of the Willamette Meridian, and the Northwest quarter of the Southwest quarter and the Southwest quarter of the Northwest quarter of Section 19, Township 18 South, Range 3 West of the Willamette Meridian, in Lane County, Oregon;

EXCEPT THEREFROM the following: Beginning at a point on the East line of the Southwest quarter of the Northwest quarter 721.0 feet South of the Northeast corner of said Southwest quarter of the Northwest quarter; thence West 16.0 rods; thence South 10.0 rods; thence East 16.0 rods; thence North 10.0 rods to the place of beginning, in Lane County, Oregon;
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9162228

Exhibit A

State of Oregon,
County of Lane—ss.
I, the County Clerk, in and for the said
County, do hereby certify that the within
instrument was received for record at

21 DEC 91 11 59

Recd 1735A

Lane County OFFICIAL RECORDS
Lane County Clerk

By *John E. Finner*
County Clerk

CT-131610

EXHIBIT 6

State of Oregon
Department of Forestry
Notification of Operations

Notification Number: 90-781-1146

District: West Lane
Office: Veneta

County: Lane
WOSTOF:

Date Received: 6/07/90
Time Received: 1605

15 Day Waiting Period Waived: 6/01/90
By Forest Practices Forester: Phil Hufstader

[X] - Notice has been given to the State Forester that an operation will be conducted on the lands described herein (ORS 527.670).

[X] - A permit to Operate Power Driven Machinery is issued for the lands described herein (ORS 477.625). EXPIRES THE END OF THE CALENDAR YEAR.

[] - A permit to Clear Rights-of-Way is issued for the lands described herein (ORS 477.685).

[X] - Notice has been given to the State Forester and the Department of Revenue of the intent to harvest timber (ORS 321.550).

Operator: Jerry Sparks

2009 West Hills Rd. Philomath, OR 97370 929-3159

Land Owner: Edward W & EH Arthur R & EJ Moshofsky

2041 S. W. 58th Portland, OR 97221 292-8861

Timber Owner: Edward W & EH Arthur R & EJ Moshofsky

2041 S. W. 58th Portland, OR 97221 292-8861

***** NOTICE *****

You are hereby advised that the State Forester has determined the following protected resources are located within or adjacent to your operation area.

Spencer Creek

David Spilhaus

District Forester

James Brown
State Forester

Ray 2000

6/11/90

62
UNIT INFORMATION
Legal Description

Notification Number: 90-781-1146

Unit Number: 1

Forest Practices: Phil Hufstader
Phone: 935-2283

Timber Sale and/or Number:

Regulated Use Area: WT1
Harvest Tax Number:

FPH Tax Class: B

Operation Starting Date: 6/16/90

Estimated Completion: 9/30/90

TWP	RGE	SEC	N E				N W				S W				S E			
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE
18.0 S	3 W	19						X			X							
18.0 S	4 W	24			X	X		X	X	X	X			X	X			

1994 Board of Forestry
Increase in amount of timber - large and
small

6/11/90

6-3

UNIT INFORMATION
Activity Information

Notification Number: 90-781-1146

Unit Number: 1

Forest Practices: Phil Hufstader
Phone: 935-2283

Timber Sale and/or Number:

Regulated Use Area: WT1

FPH Tax Class: B

Harvest Tax Number:

Operation Starting Date: 6/16/90

Estimated Completion: 9/30/90

Type of Activity:	Method	Acres/Feet	MBF
Clear cut	Ground	50	700
Road construction	Dozer		
Road reconstruction	Dozer		

6/11/90

6:4
UNIT INFORMATION
Site Conditions

Notification Number: 90-781-1146

Unit Number: 1

Forest Practices Forester: Phil Hufstader
Phone: 935-2283

Timber Sale and/or Number:

Regulated Use Area: WT1

FPH Tax Class: B

Harvest Tax Number:

Operation Starting Date: 6/16/90

Estimated Completion: 9/30/90

Site Conditions

Class 1 water within 100 FT
No mass soil movement
Slope of 35% to 65%

REC'D FEB 22 2005

February 18, 2005

Jerry Kendall
Land Management Division
Public Works Dept.
125 East 8th
Eugene, OR 97401

Dear Mr. Kendall:

I am writing about the effort of Karen Dahlen to obtain permission to further sub-divide her property (#18-04-24, tax lot 300) that is adjacent to Willamette Street. We do not oppose her petition, but we feel that before approval is given that the following concerns be addressed. In the testimony given at the meeting on Tuesday evening, Ms. Dalhen's attorney as well as several of the people testifying on her behalf mentioned that there was a large area that has a great deal of moisture. What they were referring to is the area that Spencer Creek runs through, and that is fed by other streams during a normal year. This area had several beaver dams and is the source of water for a number of species of animals. It is in fact a wetlands. We know this from having power of attorney given by a previous owner to watch over the land in terms of dirt bikers, which enabled us to walk over the land and to see the wetland. We feel that the approval of her request for adding new buildings sites should take account of the area that is encompassed in this wetland, and that no building sites be allowed to encroach upon it.

We also want more importance to be given to the testimony of residents of the area about how the drilling of wells does not always conform to the testimony given by the water expert that water exists in discrete pools and that it cannot be drawn off by fissures in the rocks—which was alleged to be based on his scientific understanding of where water can be located. Neighbors have experienced water disappearing from their wells when new wells were drilled nearby. The experience of people living in this area over years should be given more weight than seemingly scientific evidence that represents a single event over a very short period of time. Our neighbor to the North purchased property that had a well that produced 24 gallons a minute and went dry after two months—thus proving wrong the criteria used to judge that the aquifer was adequate. With global warming increasingly evident in the weather patterns, and lower rainfall experienced in this area over recent years, consideration needs to be given to whether 15 new home sites should be allowed to be built on Ms. Dahlen's property. Even though Ms. Dahlen's attorney refuted a neighbor's observation that she had seen a large water container being refilled with city water every Sunday morning, I have also witnessed the water truck coming out of her gate on several occasions as I drove by on Willamette

PC #7-200.

Street. The last was just a couple of months ago. Perhaps her need to obtain city water in this way should be considered in relationship to her claim that there is enough water on the property to support 15 new households.

Sincerely,

C.A. Bowers
C. A. Bowers

Mary K. Bowers
Mary K. Bowers

C. A. Bowers 31479 Camas Lane, Eugene, OR. 97405 <chetbowers@earthlink.net>

KENDALL Jerry

From: KENDALL Jerry
Sent: Wednesday, February 23, 2005 1:22 PM
To: 'Steve Cornacchia'
Subject: Dahlen: old rezone file

Steve: yesterday I discovered an old Plan Amendment/rezone for the Dahlen property. The file is LZC 82-135. I am incorporating it in its entirety into the file record of PA 04-6092.

The applicant was Art Moshofsky. The information in LZC 82-135, which discusses the raising of 25 head of cattle annual on the subject property as well as the 67 acre Dahlen parcel to the east, appears to, at a minimum, refute the "no farm" affidavit signed by Mr. Moshofsky and placed into the record for PA 04-6092, as well as for PA 03-5657, the subdivision of the 67 acre parcel.

Comments?

Please contact Lisa Crawford at 682-3347 if you wish to have copies of the file record made. Otherwise, it is available for your review by calling Lisa or myself.

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

18-4-24
300

IN THE PLANNING COMMISSION OF LANE COUNTY, OREGON

ORDER ADOPTING FINDINGS OF FACT) IN THE MATTER OF AN APPLICATION
ORDER NO. LCPC 82-8-10-3) BY A. & E. Moshofsky
) TO REZONE LAND (LZC 82-135)

THIS MATTER coming before the Commission upon an application by A. & E. Moshofsky (LZC 82-135) to rezone land located on Tax lot(s) 300 in Section 24, Township 18 South, Range 04 West, W.M., and generally depicted on Exhibit "A" attached hereto and incorporated herein by reference, and generally located at Camas Road, from Forest Land (F-2) District to Agriculture (A-2) District and

WHEREAS, the Commission, having considered the request in public hearing on August 10, 1982, is desirous of approving the request by adopting the attached Findings of Fact, now, therefore, it is hereby

ORDERED that in support of the decision to approve the rezoning request, the Commission hereby adopts the Findings of Fact set forth in Exhibit "B", attached hereto.

ADOPTED this 10th day of August, 1982.


Chairman, Lane County Planning Commission

Order Superseded by Appeal to Hearings Official (date of appeal)

_____ by _____

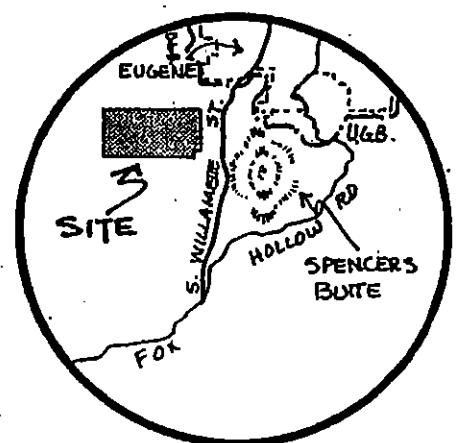
Order Final (effective date) August 23, 1982

In the Matter of an Application by A. E. Moshofsky
to Rezone Land (LZC 82-135)

FINDINGS OF FACT AND CONCLUSIONS

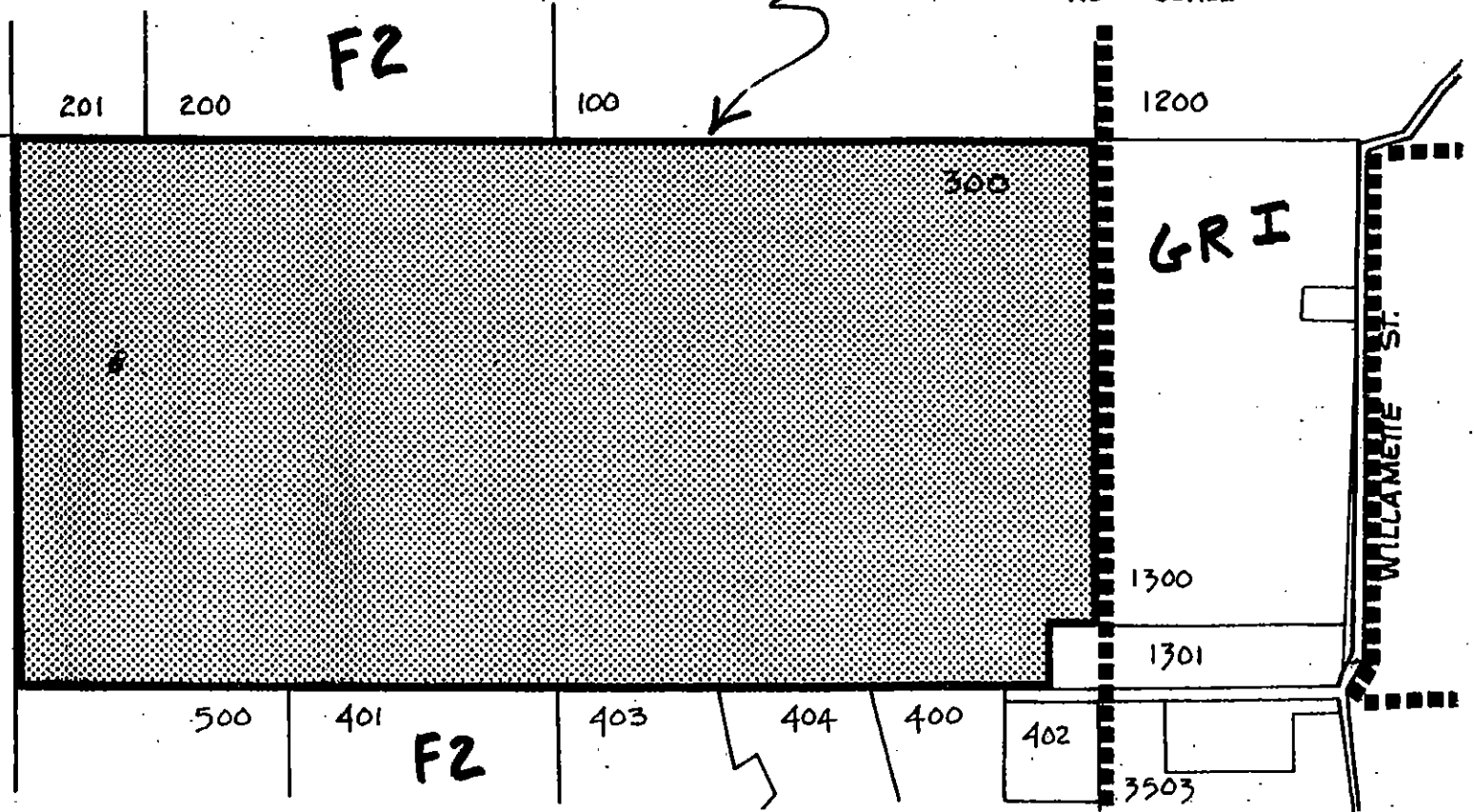
1. A public hearing was held before the Lane County Planning Commission for this application on August 10, 1982. A quorum of Commission members was present. Pedersen & Associates represented the application. Persons were not present who spoke in opposition.
2. That Planning Commission voted to approve this application based on the following findings.
3. Comprehensive Plan - Refer to Staff Report for PZC 82-135 and Applicant's submittal.
4. Statewide Planning Goals - Refer to Staff Report for PZC 82-135 and applicant's submittal.

AREA MAP
PZC 82-135



VICINITY MAP
NO SCALE

SITE OF REQUEST



STAFF REPORT

I. PROPOSAL DESCRIPTION

- A. Applicant: Name: Art & Edward Moshofsky
Address: 2041 S.W. 58th, Portland
- B. Proposal: Rezone 318.3 acres out of a total ownership of 386.11 acres from F-2 to A-2.

II. GENERAL INFORMATION

- A. Location and Site Description Map 18-04-24 Tax lot 300

This property is SW of Eugene via Willamette Street past 52nd Street to Camas Road. The property is flat to rolling grazing ground with some wooded patches. Spencer Creek crosses the site to the east.

- B. Surrounding Area and Zoning

Most adjoining properties to the north, south and west are zoned F-2 and either vacant or grazing lands. Other sites to the east are zoned GR-I and either vacant or in rural residential use.

- C. Services

Fire: Eugene Rural #1
Police: County Sheriff
Access: Via Camas Road (public road) to Willamette Street.

- D. Referral Responses

1. Eugene Planning indicates this site as being outside of the City UGB and Metro Plan area.
2. Building and Sanitation staff indicate need for appropriate permits if development is proposed.

III. APPROVAL CRITERIA AND ANALYSES

- A. Comprehensive Plan

The Spencer Creek Subarea Plan designates this area as "Rural Land II." This designation allows 10-acre homesites. The proposal to rezone to A-2 and its cattle grazing use is a less intensive use than 10-acre homesites. Therefore no conflict with the plan is evident.

- B. Statewide Planning Goals

Goals 3 (Agriculture) and 4 (Forestry) are applicable. Soils on the site are neither predominantly farm or forest capability rated. The applicant is classifying this as other lands suited for agricultural use in spite of the plan designation of rural. The plan did take an exception for areas designated rural lands, however, these have not been acknowledged by LCDC. Therefore, retention of subject property as agricultural grazing land via use of the A-2

zone, will still conform to the LCDC resource Goals since no conversion is occurring. (Refer to applicant's findings for additional discussion.)

IV. FINAL COMMENTS

A. Summary

This rezone is only a change in status (F-2 to A-2) and not a change in intensity. The proposal would also allow for a property tax deferral under exclusive farm use provisions.

B. Recommendation

For approval based on applicant's submittal and staff report.

C. Materials to be Presented at Hearing

1. Staff report and file materials
2. Applicant's findings

D. Attachments to Staff Report

1. Area Map
2. Applicant's findings

ITEM # 3

INTRODUCTION

This application requests a zone change from Forest Land District F-2 to Agricultural Land District A-2 on Tax Lot 300 of Map 18-04-24. This parcel is 318 acres, with 93% of the property designated Rural Land II, 4% designated Rural Land I and 3% designated Natural Resource: Forest Land II by the Spencer Creek Subarea Plan. The primary use of this property has been, and will continue to be, for cattle grazing. The A-2 District is the most appropriate zoning for this parcel due to its history of cattle grazing and soil type.

The subject property was acquired in 1977 by the current owners Ed and Art Moshofsky and since 1975 has been leased to C.H. Minty and his son Mark for the purpose of grazing cattle. The land was not grazed in 1981 because the fence was not adequate. This fence has now been replaced and Mr. Minty is once again leasing this land and plans to raise about 25 head of cattle each year.

A zone change to A-2 would not conflict with the policies of the Spencer Creek Subarea Plan's predominant Rural Land II designation of this property. The existing agricultural use is less intensive than uses allowed in the Rural Land II designation.

The parcel abutting the subject property to the east, Tax Lot 1300 on Map 18-03-19, is in common ownership with the subject property and is used as a part of the total cattle grazing area. Tax Lot 1300 is bordered by South Willamette Street on its eastern side and due to the residentially developed character of many parcels abutting the road it is zoned General Rural I and designated Rural Land I by the Spencer Creek Subarea Plan. This application does not propose any changes in the zoning and plan designation of Tax Lot 1300.

The zone change to A-2 for Tax Lot 300 complies with all Lane County Goals and Policies and specifically those regarding agricultural and forest lands.

The agricultural goals which are to "maintain agriculture as an important segment of the economy" and to "maintain a land resource base which is suitable for agricultural uses and the generation of agricultural products" will be upheld through approval of this application. The agricultural policy to "encourage agricultural activities by preserving and maintaining agricultural lands through the use of exclusive farm use zones" will be precisely achieved through approval of the proposed zone change.

The Lane County Goals protecting forest lands would also be achieved by the proposed zone change as agricultural use of the subject property does not remove forest land from production. The subject property is predominantly pastureland used for cattle grazing which warrants agricultural zoning.

The findings of this application with respect to the Spencer Creek Subarea Plan, Lane County Goals and Policies and Statewide Planning Goals indicate that the proposed zone change is consistent with all applicable planning policies. These findings are discussed below.

ITEM # 3

STATEWIDE PLANNING GOALS

The proposed zone change is in compliance with all applicable Statewide Planning Goals. Although consultation with Lane County Planning Division staff has determined that Goal 3 - Agriculture and Goal 4 - Forest Lands are most applicable to this application, consideration has also been given to each of the other 17 goals.

GOAL 1 - Citizen Involvement

This request is consistent with Goal 1 because it will be considered at a public hearing and advertised as per the requirements of the Lane Code and open for residents of the area to express their opinions.

GOAL 2 - Land Use Planning

This request is consistent with the Spencer Creek Subarea Plan designation and policies adopted in August, 1980. The zoning and use of this property for agricultural purposes does, in fact, encourage a less intensive use of the land than is permitted under the Rural Land II designation of the Spencer Creek Subarea Plan. Since no exception to Statewide Goals is being taken, Goal 2 is not otherwise applicable to this request.

GOAL 3 - Agriculture

The purpose of Goal 3 is "to preserve and maintain agricultural lands" and it is the intention of this application to assure continued farm use of the subject property for this purpose. The proposed zone change from Forest Land District (F-2) to Agricultural Land District (A-2) is appropriate for the following reasons:

- 1) The predominant use of the property since 1975 has been cattle grazing.
- 2) Although the soils are not predominantly Class I-IV, this property has been used for farm use as defined by ORS 215.203.

Soil types on the subject property have SCS Capability Classes of II through VII and thus, it is appropriate that the property be classified under the more marginal characteristics of agricultural land within the A-2 District rather than zoned as Important Agricultural Land (A-1) where soil types are generally rated as "prime" (Class I-IV) or considered "soils of local importance" by the SCS. Table 1 describes the soil types found on the Moshofsky property.

ITEM # 3