

TABLE 1

SOIL TYPES ON THE MOSHOFSKY PROPERTY

<u>Soil Symbol</u>	<u>Soil Name</u>	<u>SCS Capability Class</u>	<u>Woodland Site Class</u>
500C	Chehulpum Silt Loam 3-12% slopes	VIe	0
375S	Dixonville-Philomath-Hazelair Complex 12-35% slopes.	VIe	0
492D	Willakenzie Clay Loam 20-30% slopes	IVe	III
374C	Dixonville-Philomath-Hazelair Complex 3-12% slopes	VIe	0
408C	Dixonville Silty Clay Loam 3-12% slopes	IIIe	IV
475C	Panther Silty Clay Loam 2-12% slopes	VIw	0
415C (414C)	Philomath Cobbly Silty Clay 3-12% slopes	VIe	0
90A	McAlpin Silty Clay Loam 0-30% slopes	IIw	III
440S	Witzel Very Cobbly Loam 3-30% slopes	VI s	IV
120A	Pengra Silt Loam 1-4% slopes	IIIw	0
431C	Steiwer Loam 12-20% slopes	IVe	0
521C	Hazelair Silty Clay Loam 7-20% slopes	IVe	IV
441K	Witzel Very Cobbly Loam 30-75% slopes	VII s	IV
430B	Steiwer Loam 3-12% slopes	IIIe	0

- 3) No particular soil type dominates the subject property, it is rather a mixture of all the soil types in the preceding table. Although the soils are not predominantly Class I-IV, this property meets the criteria of "other lands suitable for farm use" under Goal 3. These criteria define other lands which are suitable for farm use taking into consideration soil fertility, suitability for grazing, climatic conditions, irrigation potential, existing land use patterns, technological and energy inputs and accepted farming practices. Each of these factors as they pertain to the subject property are addressed below.

Soil Fertility

The soil types upon the subject property as listed in Table 1 do not consist of a dominance of Class I-IV soils and therefore most areas on the property are not suitable for intensive agriculture. On the other hand, use of the property as pastureland for cattle grazing has been possible and the soils do support this type of low intensity agricultural activity.

Suitability for Grazing

The subject property is suitable for grazing activities as demonstrated by the history of cattle grazing upon this property by Mark Minty. Mr. Minty intends to continue leasing the property for cattle grazing purposes in the future.

Climatic Conditions

Favorable climatic conditions allow for the growth of perennial grasses and grazing of cattle for most of the year.

Irrigation Potential

The use of the subject property as pastureland does not require irrigation.

Existing Land Use Patterns

Land use patterns west of Spencer Butte surrounding the subject property do not conflict with the use of this land for cattle grazing purposes. There are several homesites developed adjacent to the subject property along South Willamette Street and Camas Lane, however the subject property extends westwards for over a mile from these homesites and cattle grazing is not a conflicting land use. Other lands surrounding the subject property on the north, south and west are relatively undeveloped and exist in large parcels. Thus, cattle grazing is compatible with all surrounding land uses.

ITEM # 3

Technological and Energy Inputs

There have been no technological or energy inputs necessary to make the subject property acceptable pastureland for cattle grazing.

Accepted Farming Practices

The 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 are conducted according to accepted farming practices.

The seven factors described above provide evidence that the use of the subject property is consistent with the "other land suitable for agriculture" definition under Goal 3. Thus the Agricultural Land District (A-2) is more appropriate than the F-2 District.

GOAL 4 - Forest Lands

The LCDC Policy Manual discusses the interrelationship between the agricultural and forestry goals in Section IV.B.2. When lands meet both the agricultural and forest lands definitions, as in this application, an exception is not required to show why one resource designation is chosen over another. Comprehensive Plans need only to document the factors identified in Goals 3 and 4 that were used to select an agricultural or forest designation. Although pockets of the subject property have marginal woodland potential, an analysis of Goal 3 and 4 criteria, and prior use of the property for cattle grazing, demonstrate that the predominant value of the property is for agriculture. Therefore, the proposed zone change from F-2 to A-2 would be most appropriate for this property.

The factors identified in Goals 3 and 4 were considered in evaluating the predominant value of this property as agricultural rather than forest land. As stated in the Goal 3 discussion, the soils are not predominantly Class I-IV but the property should be considered as "other lands suitable for farm use" as defined within the Goal. The factors taken into consideration within the Goal 3 discussion for "other lands which are suitable for farm use" were weighed against the factors included under the definition for forest lands within Goal 4. These factors are compared here.

Goal 3 - Other Agricultural Lands

Soil fertility
Suitability for grazing
Climatic conditions
Irrigation potential
Existing land use patterns
Technological and energy inputs
Accepted farming practices

Goal 4 - Forest Lands

Commercial forest lands
Needed for watershed protection
Needed for fish and wildlife habitat
Needed for recreation
Protection of vegetative cover
Urban buffers and wind breaks
Livestock habitat
Scenic corridors

Findings indicated that the factors under "other agricultural lands", as described in the Goal 3 discussion, outweigh the factors considered under the Goal 4 definition of forest lands as described below.

Commercial Forest Lands

The majority of this property has no woodland suitability and those pockets of soil with woodland potential and tree growth will not be altered by a zone change to A-2. The property will remain in use as rangeland for cattle.

Needed for Watershed Protection

All existing forest land on the subject property and the Spencer Creek watershed will remain unaltered.

Needed for Fish and Wildlife Habitat

Fish and wildlife habitat will not be affected.

Needed for Recreation

The subject property is in private ownership and therefore not available for recreational activities by the public.

Protection of Vegetative Cover

Vegetative cover will not be altered anymore than it has been in the past by cattle grazing.

Urban Buffers and Wind Breaks

The subject property is located just outside the Urban Growth Boundary and therefore, the existing forest land might be considered as an urban buffer. Any value this forest cover may have as an urban buffer will not be affected by the proposed zone change. Forest land needed as a wind break is not applicable here.

Livestock Habitat

The predominant use of the subject property will be for cattle grazing and although the grassland areas of the property are most valuable for this purpose, the additional values of the forest land areas for shade and protection from inclement weather will be retained.

Scenic Corridors

All aesthetic values of the property will be retained by the proposed zone change.

Evaluation of these forest lands criteria demonstrate their relevance to the subject property; however, due to the predominance of the property as open grassland and its history of use for cattle grazing, the agricultural factors considered under Goal 3 are most important for the property and A-2 zoning is most appropriate. As stated in the LCDC Policy Manual, documentation of

ITEM # 3

factors identified in Goals 3 and 4 that were used to determine whether the land is agricultural or forest land is all that is required to show why one resource designation is chosen over the other. It has been the approach of this application to follow this methodology in order to demonstrate that the proposed zone change from F-2 to A-2 is most appropriate when considering the language of Goals 3 and 4 vs. the characteristics of the subject property.

Furthermore, it should be stressed that all forest land upon this property will be retained as it is now and use of the property will remain in cattle grazing; thus, there is no threat to Goal 4 inherent to this application.

GOAL 5 - Open Spaces, Scenic and Historic Areas and Natural Resources

The purpose of Goal 5 is "to conserve open space and protect natural and scenic resources." Identification and designation of resource areas occurs as the result of a site specific analysis which involves identifying the location, quantity and quality of particular sites pursuant to the requirements of OAR 660-16-000 adopted by LCDC. This evaluation occurs during the comprehensive planning process and depending on the importance of a particular site or area may result in a conflict resolution analysis which measures the social, economic, environmental and energy consequences of protecting land for open space, scenic or historic purposes against utilizing it for other conflicting uses.

The zone change proposed in this application would not change the continued use of this property for cattle grazing and would not alter its retention for resource use. All open space, scenic and historic values and natural resources which may exist on the site will be retained.

GOAL 6 - Air, Water and Land Resources Quality

This zone change application complies with Goal 6 as it does not affect air, water and land resources quality. No development is proposed by this application and there will be no violations of state or federal environmental quality statutes, rules and standards.

GOAL 7 - Areas Subject to Natural Disasters and Hazards

The purpose of Goal 7 is "to protect life and property from natural disasters and hazards." Since no development is proposed by this application, Goal 7 is not applicable.

GOAL 8 - Recreational Needs

This Goal is "to satisfy the recreational needs of the citizens of the state and visitors." Because the subject property is in private ownership, Goal 8 is not applicable.

GOAL 9 - Economy of the State

The purpose of Goal 9 is "to diversify and improve the economy of the state." Although not directly applicable to this request because it is not designated for commercial or industrial use, cattle grazing upon the subject property is utilizing the property's agricultural potential.

GOAL 10 - Housing

Not applicable.

GOAL 11 - Public Facilities and Services

Not applicable.

GOAL 12 - Transportation

Not applicable.

GOAL 13 - Energy Conservation

Not applicable.

GOAL 14 - Urbanization

Not applicable.

GOAL 15 - Willamette River Greenway

Not applicable.

GOAL 16 - Estuarine Resources

Not applicable.

GOAL 17 - Coastal Shorelands

Not applicable.

GOAL 18 - Beaches and Dunes

Not applicable.

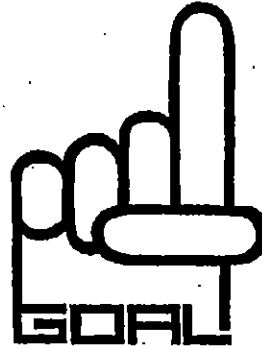
GOAL 19 - Ocean Resources

Not applicable.

ITEM # 3

GOAL ONE COALITION

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



February 23, 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 relating to the agricultural use of the property during the relevant 1978-82 period.

Lane County Order No. LCPC 82-8-10-3 approved the rezoning of the subject property, identified as 24-18-04 TL 300, from F-2 to A-2. The 8/10/82 Staff Report at p. 1 states, in relevant part:

"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."

ORS 197.247(1)(a) asks whether the proposed marginal land was used as part of a farm operation for three out of the five years preceeding January 1, 1983. It appears that the subject property was in fact part of the Minty farm operation during 1978, 1979, 1980, and 1982 – four out of the five relevant years.

GOAL ONE COALITION

The remaining question then is: did the Minty farm operation produce \$20,000 or more in annual gross income? There is no evidence in the record addressing that issue.

It is the applicant's burden to establish compliance with the applicable approval criteria. In the absence of substantial evidence establishing compliance with the "farm income" test of ORS 197.247 (1991 edition), the application cannot be approved.

Goal One and Mr. Just request notice and a copy of any decision and findings regarding this matter.

Respectfully submitted,

Jim Just
Executive Director

Lane County Planning Department
Attn: Jerry Kendall
125 East 8th Ave.
Eugene, OR 97401

2-23-05

RE: Zoning application of Karen Dahlen

Commissioners:

The neighbors around the property in this application have several concerns about the proposed change to marginal land status that would allow extensive development on this property. However, Ms. Dahlen and Mr. Cornachia have stated that the intention is to place 11 dwellings (including the existing home of Ms. Dahlen) on the 322 acres in question. Despite our concerns, we think that the plan of 10 additional homes, if the property is zoned marginal, would not be as severe an impact as the allowable 32 dwellings.

Ms. Dahlen and Mr. Cornachia have stated they intend to place a covenant, or deed restriction disallowing any further subdivision beyond the 10 new home sites. *We have been told that the way to insure this is to have the Lane County Commissioners place this stipulation in any ordinance they create regarding rezoning or subdivision development.* If this is done, the neighborhood would not object to this plan providing the proposed lot sizes are not further subdivided.

At the hearing on February 15th it was stated by Mr. Cornachia that factual testimony carries much more weight than anecdotal comments. Many people in this area have lived here for years and have a great deal of experience on what happens to resources such as water. There are some instances where wells went dry at exactly the time that a neighbor's well was drilled. Mr. Christensen states that this is improbable because there are not fissures of water that could be shared. However, neighbors say it has happened, and there is no scientific evidence that there are not fissures of water. Our main concerns still remain regarding this very water-restricted area and our wish is to preserve as much forest/agricultural land and water resources as possible.

Thank you for your consideration.

Neighborhood signatures on the next page.

PC #10-219-

Ann Woeste 84487 Murdock Rd 97405

Doris S. Walker 85861 S. Willamette 97405

Hubert S. Reed 31212 CAMAS LANE 97405

Harry F. Wolcott 85711 S. Willamette 97405

Eui Vance 31408 Camas Ln 97405

Madra Jordan 31451 Camas Ln 97405

Gerri O'Rourke Maggard 85782 S. Willamette 97405

Steve Maggard " " "

Janet A. Reeves 85809 S. Willamette 97405

Chit Brown 31479 Camas Ln. 97405

Mary Powers 31479 Camas Ln. 97405

William G. Gemmel 84505 911 Murdock Road 97405

Robert R. Bennett 85334 S. Willamette 97405

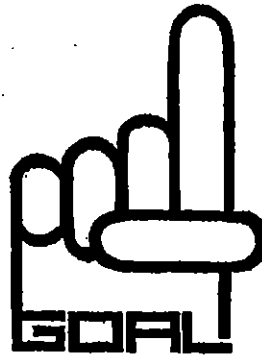
Margaret K. Bennett 85334 S. Willamette St. 97405

Jim Petit 85448 S. Willamette 97405

2-28-05

GOAL ONE COALITION

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



February 25, 2005

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

RECD FEB 28 2005

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 relating to the forest use of the property during the relevant 1978-82 period.

The Dahlens bought the subject property from Ed and Art Moshofsky in the early 1990s after the Moshofskys harvested timber from the site. As shown on the attached deed, the Moshofskys bought the property in 1997. Also as shown in attached documents, the Moshofskys have for decades conducted a timber operation, owning forest lands and mills in various places in Oregon. The subject site was part of a very large timber and sawmill business.

The Moshofskys owned Fort Hill Lumber Company from 1961-1991. They owned Whipple and Moshofsky Lumber Co. from 1972-1993. They owned Moshofsky Enterprises from 1976-1990. The University of Oregon approved naming a building after Ed Moshofsky, noting that Moshofsky Enterprises was their umbrella corporation within the timber industry.

In 1991 Fort Hill Lumber Company was sold to Hampton Resources, Inc. Yamhill County records show Hampton Resources owns at least 71 forest parcels in Yamhill County alone. Some of these must have been acquired from Fort Hill Lumber Company as part of the sale.

ORS 197.247(1)(a) asks whether the proposed marginal land was used as part of a forest operation for three out of the five years preceeding January 1, 1983. It appears that the subject

10711-120.

GOAL ONE COALITION

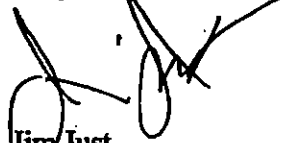
property was in fact part of an extensive Moshofsky timber operation during the relevant period.

The remaining question then is: was the Moshofsky timber operation capable of producing an average, over the growth cycle, of \$10,000 in annual gross income? While the applicant has not provided any evidence in the record addressing that issue, from the attached documents it would appear that the answer is clearly "yes."

It is the applicant's burden to establish compliance with the applicable approval criteria. In the absence of substantial evidence establishing compliance with the "forest income" test of ORS 197.247 (1991 edition), the application cannot be approved.

Goal One and Mr. Just request notice and a copy of any decision and findings regarding this matter.

Respectfully submitted,



Jim Just
Executive Director

Summary

The University of Oregon requests an exception to Oregon Administrative Rule (OAR) 580-050-0025 regarding the naming of buildings after a living person. The OAR provides that an exception may be made if "the donor contributes a substantial share of the cost of construction or if other unusually meritorious reasons exist."

Staff Report to the Board

Officials at the University of Oregon have forwarded to the Office of Finance and Administration a request to name the new athletic indoor Practice Facility the "Ed Moshofsky Sports Center" in honor of Ed Moshofsky. The Indoor Practice Facility is currently under construction and is expected to be completed in early 1998.

Mr. Moshofsky has long been associated with the University of Oregon, having graduated from the College of Business in 1943. During his college days at the UO, he was an active student, lettering in varsity football and serving as a member of the Delta Psi fraternity and Friars Honorary. He has been inducted into the University's Order of the Emerald.

Ed and Elaine Moshofsky are former co-owners of Moshofsky Enterprises, an umbrella corporation within the timber industry that was founded by the Moshofsky family. Mr. Moshofsky also served as chairman and CEO of Fort Hill Lumber Company as a partner of Whipple and Moshofsky Lumber Company.

The Moshofskys have committed \$2 million for the construction of an indoor practice facility, approximately one-sixth of the total cost.

Staff Recommendation to the Board

Staff recommends that the new Indoor Practice Facility be named the Ed Moshofsky Sports Center in honor of Ed Moshofsky, a strong supporter of the University.

Company Name:

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- + Industry Comparison *
- + Business Associations *

Moshofsky Enterprises

Report Date: 21-Feb-2005

* Included with the purchase of this Competitive Intelligence report

- Competitive Intelligence

Company:	Moshofsky Enterprises
Firm Type:	Private Company, Headquarters Location
Address:	PO Box 2107
City / State / Zip:	Lake Oswego, OR97035-0034
Country:	United States
Main Phone:	(503)292-8861
Employees (Verification Letter):	2
Sales:	\$0.60 M SALES
FYE:	31-DEC-03
Year Founded:	1952
Primary SIC:	5031 Lumber, Plywood And Millwork
Primary NAICS:	423310 Lumber, Plywood, Millwork, and Wood Panel Merchant Wholesalers
Updated:	20-SEP-04

- + Contacts *
- + Overview *
- + Divisions & Subsidiaries *
- + Industry Comparison *
- + Business Associations *

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Search for similar companies

Find Articles related to this company

Business Registry Business Name Search

Business Entity Names returned for:

Name: MOSHOFSKY

Using: Exact Words in Any Word Order

02-21-200

16:01

New Search

Record No	Entity Type	Entity Status	Registry Number	Name Status	Name	Assoc Search
1	DBC	INA	082738-80	CUR	MARY MOSHOFSKY INC.	
2	DBC	INA	065994-19	CUR	MOSHOFSKY ENTERPRISES, INC.	
3	DBC	INA	117068-19	CUR	MOSHOFSKY ENTERPRISES, INC.	
4	DLLC	ACT	663782-83	CUR	MOSHOFSKY LAND COMPANY, LLC	
5	DBC	INA	573208-80	CUR	MOSHOFSKY MORTGAGE, INC.	
6	DBC	ACT	187773-83	CUR	MOSHOFSKY TRUSS COMPANY	
7	ABN	ACT	456865-81	CUR	MOSHOFSKY/PLANT CREATIVE SERVICES	
8	DPC	INA	070042-86	CUR	STEPHEN P. MOSHOFSKY, CPA, P.C.	
9	DLP	INA	001284-39	CUR	WHIPPLE & MOSHOFSKY LUMBER CO.	

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Business Registry Business Name Search

New Search

Business Entity Data

02-21-2008
15:52

Registry Nbr	Entity Type	Entity Status	Jurisdiction	Registry Date	Duration Date	Renewal Date
065994-19	DBC	INA	OREGON	02-03-1961		
Entity Name MOSHOFSKY ENTERPRISES, INC.						
Foreign Name						

New Search

Associated Names

Type	PPB	PRINCIPAL PLACE OF BUSINESS				
Addr 1	2850 SW LAKEVIEW BLVD					
Addr 2						
CSZ	LAKE OSWEGO	OR	97035	0000	Country UNITED STATES OF AMERICA	
Type	AGT	REGISTERED AGENT			Start Date	Resign Date
Name	ARTHUR	R	MOSHOFSKY			
Addr 1	2850 SE LAKEVIEW BLVD					
Addr 2						
CSZ	LAKE OSWEGO	OR	97035		Country UNITED STATES OF AMERICA	
Type	MAL	MAILING ADDRESS				
Addr 1	PO BOX 2107					
Addr 2						
CSZ	LAKE OSWEGO	OR	97035	0446	Country UNITED STATES OF AMERICA	
Type	PRE	PRESIDENT				
Name	ARTHUR	R	MOSHOFSKY			
Addr 1	2850 SW LAKEVIEW BLVD					
Addr 2						
CSZ	LAKE OSWEGO	OR	97035		Country UNITED STATES OF AMERICA	
Type	SEC	SECRETARY				
Name	ELAINE		MOSHOFSKY			
Addr 1	5406 NW HEWETT					
Addr 2						
CSZ	PORTLAND	OR	97221		Country UNITED STATES OF AMERICA	

Business Registry Business Name Search

New Search

Business Entity Data

02-21-200
16:04

Registry Nbr	Entity Type	Entity Status	Jurisdiction	Registry Date	Duration Date	Renewal Date
001284-39	DLP	INA	OREGON	05-23-1972		05-23-1993
Entity Name WHIPPLE & MOSHOFKY LUMBER CO.						
Foreign Name						

New Search

Associated Names

Type	ORK RECORDS OFFICE			Country	UNITED STATES OF AMERICA
Addr 1	2041 SW 58 AVE.				
Addr 2					
CSZ	PORTLAND	OR	97225		

Type	AGT	REGISTERED AGENT	Start Date	Resign Date
Name	ARTHUR	R	MOSHOFKY	
Addr 1	2850 SW LAKEVIEW BLVD			
Addr 2				
CSZ	LAKE OSWEGO	OR	97035	Country UNITED STATES OF AMERICA

Type	GNP	GENERAL PARTNER	Start Date	Resign Date
Name	ARTHUR	R	MOSHOFKY	
Addr 1	2850 SW LAKEVIEW BLVD			
Addr 2				
CSZ	LAKE OSWEGO	OR	97035	Country UNITED STATES OF AMERICA

Type	GNP	GENERAL PARTNER	Start Date	Resign Date
Name	EDWARD	W	MOSHOFKY	
Addr 1	7260 SW NORTHVALE WAY			
Addr 2				
CSZ	PORTLAND	OR	97225	Country UNITED STATES OF AMERICA

New Search

Name History

Business Entity Name	Name Type	Name Status	Start Date	End Date
WHIPPLE & MOSHOFKY LUMBER CO.	EN	CUR	05-29-1917	

Please read before ordering Copies.

Business Registry Business Name Search

02-21-2005
15:58

New Search

Business Entity Data

Registry Nbr	Entity Type	Entity Status	Jurisdiction	Registry Date	Duration Date	Renewal Date
117068-19	DBC	INA	OREGON	09-13-1976		
Entity Name MOSHOFSKY ENTERPRISES, INC.						
Foreign Name						

New Search

Associated Names

Type	PPB	PRINCIPAL PLACE OF BUSINESS	
Addr 1	2041 SW 58TH AVE		
Addr 2	PO BOX 25446		
CSZ	PORTLAND	OR 97228	Country UNITED STATES OF AMERICA

Type	AGT	REGISTERED AGENT	Start Date	Resign Date
Name	EDWARD	W MOSHOFSKY		
Addr 1	2041 SW 58TH AVE			
Addr 2				
CSZ	PORTLAND	OR 97221	Country	UNITED STATES OF AMERICA

Type	MAL	MAILING ADDRESS	
Addr 1	PO BOX 25446		
Addr 2			
CSZ	PORTLAND	OR 97225	Country UNITED STATES OF AMERICA

Type	PRE	PRESIDENT	
Name	ARTHUR	R MOSHOFSKY	
Addr 1	2850 SW LAKEVIEW BLVD		
Addr 2			
CSZ	LAKE OSWEGO	OR 97034	Country UNITED STATES OF AMERICA

Type	SEC	SECRETARY	
Name	EDWARD	W MOSHOFSKY	
Addr 1	7260 SW NORTHVALE		
Addr 2			
CSZ	PORTLAND	OR 97225	Country UNITED STATES OF AMERICA

New Search

Name History

Business Entity Name	Name	Name	Start Date	End Date

Business Registry Business Name Search

New Search

Business Entity Data

02-21-200
16:00

Registry Nbr	Entity Type	Entity Status	Jurisdiction	Registry Date	Duration Date	Renewal Date
254993-85	ABN	ACT		07-11-1991		
Entity Name FORT HILL LUMBER COMPANY						
Foreign Name						
Affidavit? N						

New Search

Associated Names

Type	PPB	PRINCIPAL PLACE OF BUSINESS	
Addr 1	8900 FORT HILL RD		
Addr 2			
CSZ	WILLAMINA	OR 97396	Country UNITED STATES OF AMERICA

The Authorized Representative address is the mailing address for this business.

Type	REP	AUTHORIZED REPRESENTATIVE	Start Date	06-12-1997	Resign Date
Name	STEVE	ZIKA			
Addr 1	9400 SW BARNES RD STE #400				
Addr 2					
CSZ	PORTLAND	OR 97225	Country	UNITED STATES OF AMERICA	

Type	REG	REGISTRANT	
Of Record	089503-13	HAMPTON LUMBER MILLS, INC.	
Addr 1			
Addr 2			
CSZ			Country

New Search

Name History

Business Entity Name	Name Type	Name Status	Start Date	End Date
FORT HILL LUMBER COMPANY	EN	CUR	07-11-1991	

Please read before ordering Copies.

New Search

Summary History

Image Date	Action	Transaction Date	Effective Date	Status	Name/Agent Change	Dissolved By
06-03-						

WARRANTY DEED

RONALD P. SYMONS, ROY M. RUSCH and DEXTER C. MAUST Grantors, convey and warrant to ANTHONY R. MOSHORSKY and EMILY RANE MOSHORSKY, husband and wife, and EDWARD W. MOSHORSKY and EDLINE W. MOSHORSKY, husband and wife, certain real property, free and clear of encumbrances except as specifically set forth herein, more particularly described as follows:

See Exhibit "A" attached hereto and incorporated herein by this reference,

subject to and excepting:

B 6:7 1977

1. Rights of the public in and to that part line within the bounds of County Road No. 436 on the easterly side of the property.
2. As disclosed by the tax roll the premises herein described have been classified for farm use. At any time that said land is disqualified for such use the property will be subject to additional taxes or penalties and interest.

The true and actual consideration for this conveyance is TWO HUNDRED EIGHTY-THREE THOUSAND FORTY EIGHT DOLLARS (\$283,048.00).

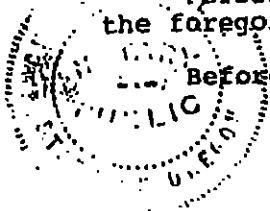
DATED this 27 day of May, 1977.

Ronald P. Symons
 Ronald P. Symons
Roy M. Rusch
 Roy M. Rusch
Dexter C. Maust
 Dexter C. Maust

STATE OF OREGON)
) ss.
 County of Multnomah

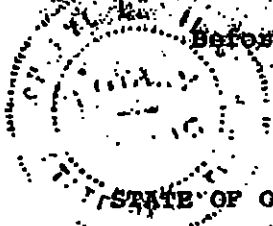
Personally appeared RONALD P. SYMONS and acknowledged the foregoing WARRANTY DEED to be his voluntary act.

Before me this 27 day of May, 1977.



Cheryl J. Williams
 Notary Public for Oregon
 My Commission Expires: 9/12/80

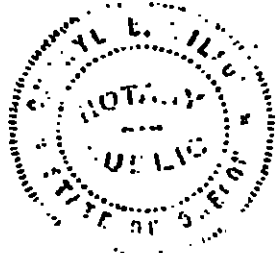
Notary Public for Oregon
My Commission Expires: [scribble]



STATE OF OREGON)
County of Multnomah) ss.

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

Before me this 27 day of May, 1977.



Charles L. [Signature]
Notary Public for Oregon
My Commission Expires: 2/28/80

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

27-10-11

The Southwest quarter of the Northeast quarter;
the Southeast quarter; the Northwest quarter
of the Southeast quarter; the South half of the Northwest
quarter of Section 19, Township 18 South, Range 4 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 Northeast quarter
721.0 feet South of the Northeast corner of said Southwest
quarter of the Northeast quarter; thence West 16.0 rods; thence
South 10.0 rods; thence East 10.0 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 19,
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

REC'D FEB 28 2005

Jerry Kendall
PSB/MLC
125 E. 8th Ave.
Eugene, OR 97401

Mr. Kendall,

I am against the proposed zoning changes on the Dalhen Property. I have been a lawn less resident and forest land owner less than 1/2 mile from the Dalhen property for more than 30 years and would like to challenge some of their contentions.

1. Ms. Dahlen's attorney stated that the aerial photos indicated the land was of questionable value for production of marketable timber. In order for agricultural land to bear fruit one needs to plant crops, in this case, trees. Regardless of the soil condition, the trees need to be cultivated and protected from deer and drought. Neighbors who have replanted trees and placed netting around their trees do have tree growing. There were not tree planted. or nurtured. So of course, they didn't grow as the aerial photographs clearly show.

2. The water supply in this area is the major concern. One of my neighbors drilled a 300 ft. dry well within fifty feet of my 180 foot deep, 7 gallons/minute well. He drilled again 100 feet west of his first site and got enough water to fill his swimming pool and water a large lawn, without adversely affecting my water. That was 30 years ago. He doesn't water his lawn any more, and trucks in water when he has to refill his pool. I moved down the hill 1000 ft. and drilled another well which was adequate until another neighbor drill a lawn irrigation well uphill 1200 feet to the south of us. The very day they struck water, our water turn brown with enough sediment that we had to invest in a water filtration system, and our water supply was severely diminished. Apparently, they hit the same vein or fissure that supplied our well. They decided not to use that particular well as it's water was too muddy for them, and our restricted water supply is a constant concern.

The point being, that any additional households in this area will potentially affect their neighbors' water if they should unfortunately hit the same fissure or vein, and no hydrologist has a map of where those fissure are located.

3. If the property in discussion is reclassified with 10 acres minimum, there is a potential for an additional 30 houses in the area, which in the voice of experience, is beyond the capability of the land to support the extra sewage drainage and water use.

4. Ms. Dahlen contends that she plans to limit the number and size of the parcels. BUT with the reclassification there is nothing to prevent a future developer from buying several large parcels, and sub-dividing them to the newly rezoned limit. I have no objections to their plan, just the reclassification.

Jim Petit *Jim Petit*
Chairman of Eugene Rural Fire Protection Dist. #1

PC#12-1A.

HERSHNER HUNTER

STEVE CORNACCHIA
scornacchia@hershnerhunter.com

April 19, 2005

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

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

Dear Commissioners:

We represent Karen Dahlen regarding PA 04-6092. This letter provides the Lane County Planning Commission, and the record of this proceeding, with additional testimony and evidence regarding the provisions of ORS 197.247, specifically the farm and forest income tests (ORS 197.247(1)(a) and the forest productivity test (ORS 197.247(1)(a)). Opponents of the application have recently raised several issues regarding the tests and this letter provides the applicant's response to the arguments contained in those issues.

Recently raised issues include the following:

- **The applicant's demonstration of compliance with the forest income test is incomplete because it does not include an analysis of the adjoining 67 acres in common ownership (Moshofsky) during the 1978-1983 test period of ORS 197.247(1)(a);**
- **The affidavits of Mr. Moshofsky, dated April 15, 1997 and December 17, 2003, did not take into account the grazing of cattle that occurred on the subject property during the 1978-1983 test period;**

PC #13 - 2/12

- **The applicant's demonstration of compliance with the forest income test did not include all Moshofsky-owned property and mills existing during the 1978-1983 test period.**

ORS 197.247(1)(a) forest income test analysis of entire 387.65 acres in common ownership during the 1978-1983 test period.

In response to this issue, the applicant requested that the consulting forester, Marc Setchko, conduct an additional forest income analysis of the subject property, to include the entire 387.65 acres of common ownership in 1983. Enclosed herewith are copies of a report issued by Marc Setchko, dated March 27, 2005. In that report Mr. Setchko calculates the average gross annual income of the property through a complete rotation. He calculates what the forest operation on the subject property was capable of, in terms of income, based on actual stocking of the property during the 1978-1983 period. His calculation is based upon the actual volume of timber removed from the property in 1990 by Mr. Moshofsky (Mr. Moshofsky's affidavit of that timber removal, dated March 15, 2005, is attached hereto as Exhibit A) and a timber cruise of the remaining portion of the property containing stands of merchantable Douglas Fir conducted by Mr. Setchko. Included in Mr. Setchko's report is a map of the property with areas of timber harvest and existing stands of merchantable Douglas Fir delineated. Mr. Setchko's earlier reports, currently in the record of this proceeding, and incorporated herein by this reference, demonstrate that significant portions of the property have not had any merchantable trees growing thereon for at least 50 years, due primarily to the steep, rock-laden, barren slopes of the northern portion of the property and the continually moist bottom land throughout the middle of the property. Those areas of the property contain poor soils for timber production (138G, 52 D, and 28C) as shown in Mr. Setchko's numerous reports in the record of this proceeding. The record of this proceeding includes aerial photos of the property, dated back to 1952, that display that those same areas have been devoid of any trees, merchantable or otherwise, long before the 1978-1983 period and continue to this day to be devoid of trees. Mr. Setchko was not required to make any assumptions on stocking levels in his analysis and calculations—he used the actual condition of the property during the applicable time period and its ability, at that time, to produce forest income over the growth cycle of the merchantable stands of timber existing at that time.

The applicant asserts that the income capability of the property in this case can be calculated by actual stocking conditions of the property before, during and after the applicable 1978-1983 period. Mr. Setchko's analysis and calculations of the actual timber available for harvest, throughout the growing cycle, demonstrates that the entire property was and is not capable of producing over \$10,000.00 in annual income over the growing cycle from a forest operation.

Grazing of cattle on the subject property during the period 1978-1983.

Mr. Moshofsky's earlier affidavits regarding the absence of farm operations on the subject property during the period 1978-1983 did not take into account an informal agreement with a third party that allowed a limited number of cattle to graze upon the subject property. Mr. Moshofsky has clarified the earlier affidavits with his affidavit, dated March 15, 2005 (Exhibit A). In that affidavit, Mr. Moshofsky makes it very clear that the cattle grazing occurred for the purpose of establishing a human presence on the property during his absence, apparently to dissuade trespassing and interloping on the property during that absence. Mr. Moshofsky's affidavit also demonstrates that the grazing of the cattle never produced anywhere near \$20,000.00 in annual income. Mr. Moshofsky's testimony that he did not manage the property for any other farm use during the 1978-1983 period and that the cattle grazing never produced \$20,000.00 in annual income demonstrates the applicant's compliance with the ORS 197.247(1)(a) income test for farm operations. In other words, at no time during the applicable period did any farm operation actually produce more than \$20,000.00 annually. Therefore, the property was not managed as part of a farm operation capable of producing that same amount and the test of the statute is satisfied.

All Moshofsky-owned property and mills existing in the world during the 1978-1983 test period must be included in the application of the income test.

Goal One Coalition raised this issue in its letter to the Commission, dated February 25, 2005. The letter provides no authority for the proposition that the legislature intended the statute to cover all land and industrial operations, wherever located on the planet, of an individual in the analysis of what the subject property could contribute to the forestry economy of the state. The legislative history of the statute is clear that the legislature was attempting to address certain properties and their ability to contribute significantly within a snapshot in time (using the 1978-1983 time period). Lane County's 1997 interpretation of the statute, currently in the record as Exhibit D. to the application, provides that "the law creates a general presumption that all **contiguous** land owned during 1978-82 was part of the owner's 'operation' (emphasis added)." The interpretation includes no direction that non-contiguous property or operations of the applicant be considered in the income analysis. Lane County has consistently required Marginal Lands applicants to address the income tests on a contiguous property basis only. That requirement is an objective criteria authorized by ORS 197.247(5).

Not only has Lane County not required that all of the applicant's lands or operations in other counties or states be considered in the analysis, but to do so is so unreasonably beyond what the legislature intended to require in the statute. If the legislature had intended such a result, which could place worthless property (from a resource perspective) of a larger, non-contiguous, ownership in a totally unusable condition, it would have stated such an intent in

the body of the statute. Goal One's assertion that the income capability analysis of a particular piece of property must include all other lands and operations owned by the property owner defeats the intent of the legislature to capture particular, non-contributing, properties and to allow both residential and resource use of them through application of the Marginal Lands statute. Goal One's assertion in this issue is without any legal foundation, is supported by no substantial evidence of its requirement and should be rejected by the Commission.

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

This issue is included in the February 22, 2005, Goal One Coalition letter to the Commission and is a restatement of its assertion earlier in the proceeding. The applicant has addressed this issue in our letter to the Commission, dated February 15, 2005, and incorporates, by this reference, the responses therein. Mr. Setchko has responded to the arguments of Goal One Coalition in his letters contained in the record of this proceeding, dated February 23, 2004, April 8, 2004, February 15, 2005, and March 27, 2005 (a copy of which is enclosed herewith).

Once again, as we asserted in our earlier letter, Goal One Coalition is either confusing forest productivity with forest income capability or is deliberately attempting to confuse the proceedings by making both of the ORS 197.247 tests (income capability of subparagraph (1)(a) and forest productivity of subparagraph (1)(b)(C)) into productivity tests that require using the same evidentiary basis for analysis. The tests and the manner in which compliance with the tests is demonstrated are separate and distinct. Not only are these Goal One Coalition assertions confusing to the proceeding, they are without merit. Furthermore, its assertion on page 3 of its letter is just plain wrong. It states "The subject property is designated as forest land and is zoned for forest use." No, it is not. It is designated as agricultural land and zoned Exclusive Farm Use. Goal One Coalition's incorrect assertion in this issue only serves to confuse the proceedings and, like the remainder of its assertions, must be rejected as unfounded, unsupported and without merit.

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

Goal One Coalition is correct in asserting that the calculation of the annual gross income for the ORS 197.245(1)(a) income test can be accomplished by the use of timber values. However, it is incorrect in its assertion that the calculation must use timber prices other than 1983 prices.

Mr. Setchko used 1983 Douglas-fir log prices and volumes in his calculation of the projected gross forest operation income of the proposed marginal land. In this case Mr. Setchko is the

qualified expert with 27 years of forest management experience, including 17 years as a private consultant and a Master's Degree in Forestry. Goal One Coalition has not established that it has any experience or credentials in forest management. Furthermore, it has not provided any testimony from a qualified expert in forest management to support its assumptions and conclusions.

Lane County, in response to and in reliance upon *DLCD v. Lane County*, 23 Or LUBA 33 (1992), issued its interpretations of the Marginal Lands statutes in the Board of Commissioners' 1997 Supplement to Marginal Lands Information Sheet. A copy of the supplement and the information sheet is in the record of this proceeding. It is a binding policy statement providing guidance and direction to applicants, staff, the public and to the Lane County Planning Commission and Board of Commissioners regarding the statute. The Board direction stated in ISSUE 4 of the supplement provides:

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

Board's Direction:

The legislative intent of the “management and income test” of the Marginal Lands

Law was to identify those lands which were not, at the time the Marginal Lands law was enacted (1983), making a “significant contribution” to commercial forestry. Therefore, it is appropriate and statistically valid to use the following methodology:

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

The Board's direction to use 1983 prices was an essential and reasonable approach to determining the productivity of forest lands at that time and obviates the need to make annual adjustments for inflation as the years go by (by adjusting the \$10,000 income figure). That direction is also consistent with the statute. ORS 197.247(5) provides:

“A county may use statistical information compiled by the Oregon State University Extension Service **or other objective**

criteria to calculate income for the purposes of paragraph (a) of subsection (1) of this section.” (Emphasis added)

In Issue No. 4 of the 1997 Interpretation Lane County established the timber price criteria for addressing the income test of the statute. The timber price criteria is an objective criteria with an adequate and reasonable foundation. The establishment of the timber price criteria is an act authorized by the Oregon Legislature by its enactment of the legislation creating the statute.

Ignoring the authority to use objective criteria granted to the county by the Oregon Legislature, Goal One Coalition wants the analysis process of the income test to change to favor its opposition to the designation of lands as Marginal Lands. While it opines that the analysis should use ever-changing (and ever-increasing) timber prices, usually increasing over time with inflation, it does not suggest that the \$10,000 income threshold of the statute also be adjusted over time for inflation. Taking the Goal One Coalition argument to its most ridiculous conclusion, eventually inflation will drive timber prices to a point when no land would be able to meet the \$10,000 test. Even the strictest reading of the statute results in a conclusion that the Oregon Legislature did not intend for a gradual and eventual phasing-out of the Marginal Lands designation process over time as inflated timber prices outstripped the \$10,000 income test. That same strict reading results in a reasonable conclusion that, by including the time period and income threshold in the statute, the Legislature was establishing the base criteria (setting the goal posts) for the analysis as a snapshot in time (1978-1983) which corresponds to the 1983 session that created the Marginal Lands statute. As the county states in its interpretation, “the legislative intent of the ‘management and income test’ of the Marginal Lands Law was to identify those lands which were not, at the time the Marginal Lands law was enacted (1983), making a ‘significant contribution’ to commercial forestry.” To suggest that the Legislature intended for the goal posts to move every time the nation experienced an inflationary period and for those goal post to eventually be torn down as a result of inflation is as “absurd” as Goal One Coalition’s description of the county’s interpretation.

Mr. Setchko’s use of 1983 prices to determine average annual gross income is consistent with Lane County interpretations and policy and is directed by the Board of Commissioners’ binding local level policy statement in the aforementioned supplement. Using the objective criteria established by Lane County pursuant to the statute, Mr. Setchko has determined that the subject property was not capable of being managed for forest operations producing at least \$10,000 in annual gross income. Mr. Just has provided no evidence that contradicts Mr. Setchko’s conclusions.

The use of 1983 log prices in the income test has been adequately and reasonably explained by the applicant, the forester and Lane County. The argument suggesting otherwise is without foundation, support or merit and should be rejected for those reasons.

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

In Issue No. 4 of the 1997 Interpretation, Lane County established the rotation criteria for addressing the income test of the statute. The rotation criteria is an objective criteria with an adequate and reasonable foundation. The establishment of the rotation criteria is an act authorized by the Oregon Legislature by its enactment of the legislation creating the statute. That act is authorized by ORS 197.247(5) and is consistent with the statute. (See earlier discussion of the use of 1983 timber prices)

The accompanying property line adjustment cannot be approved.

This issue was raised by Goal One Coalition in its letter to the Commission, dated February 22, 2005. Once again, Goal One Coalition has asserted an issue and failed to provide any legal foundation, authority or substantial evidence to support its assertion. It tries to use ORS 92.190(3) to support its argument that Lane County did not meet applicable approval criteria in approving the legal lot determination of the subject property as configured pursuant to the property line adjustment. However, while Lane County issued a legal lot determination, it did not approve of the adjustment, and is not required to regulate or approve that or any other property line adjustment. Goal One Coalition makes a huge leap from that Lane County legal lot action to asserting that Lane County must approve property line adjustments and must approve them in a manner prescribed by Oregon statutory provisions (ORS Chapter 92). That assertion is without merit. Goal One Coalition's reliance on ORS 92.190(3) to support its assertion is misplaced. The statute does not require local government regulation or approval of property line adjustments. What it says is that during a county's approval of an adjustment it may use certain procedures. In other words, if a county regulates and approves adjustments it may perform that regulatory function in a certain way. It does not say, and no Oregon statute says, that a county is required to regulate or approve such adjustments.

Lane County does not regulate property line adjustments and is not required to do so by Oregon law. Goal One Coalition is without any legal authority to support its assertion otherwise.

Conclusion

Throughout the record of this proceeding, and with the inclusion therein of the information and argument contained herein, the applicant has demonstrated that the designation of subject property as Marginal Land complies with ORS 197.247 and all other applicable criteria. Throughout the proceeding Goal One Coalition has presented issues and arguments that are without legal foundation, are not supported by substantial evidence and are without

Lane County Planning Commission
April 19, 2005
Page 8

merit. Therefore, the Commission should recommend to the Lane County Board of Commissioners that the application be approved.

Best regards,

/s/Steve Cornacchia

STEVE CORNACCHIA

PSC:ss
Enclosures

Cc: Karen Dahlen (with enclosures)



Marc E. Setchko
CONSULTING FORESTER

870 Fox Glenn Avenue
Eugene, Oregon 97405
Phone: (541) 344-0473
FAX: (541) 344-7791

March 27, 2005

**FOREST PRODUCTIVITY
& INCOME ANALYSIS**
for
Dahlen Trust

SUBJECT PARCEL:

**ASSESSORS MAP NO. 18-04-24, TL #300: ±320.492 acres and
ASSESSORS MAP NO. 18-03-19, TL #1300: ±67.16 acres**

QUALIFICATIONS: Society of American Foresters Certified Professional Forester (#2953), with 27 years of experience including 17 years as a consultant, with Bachelor of Science (Cal Poly, SLO) and Master of Forestry (Oregon State) Degrees. As a consultant I have extensive experience in all phases of forestry, including drawing up forest management plans, handling the administration of these plans and maximizing the return to my clients. My productivity analyses are based on sound and "reasonable" forest management practices. This includes carrying out activities in a manner which generates a long term profit, rather than a loss. There are management activities which could be carried out which could benefit a forest operation but result in a loss to the owner. For these reasons all productivity analyses must be conducted from the standpoint of "reasonable forest management" practices.

I. SUMMARY

An evaluation of the site, from a timber productivity and income producing standpoint is reviewed in this analysis, in order to determine if the parcel meets the criteria for marginal lands designation. The analysis will show that the subject property qualifies for the following reasons:

1. The income generated from the subject property averages less than \$10,000/year, based on 1978 through 1983 log prices. This level of income 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 income test must be calculated for the entire parcel (±387.65 acres), which includes both tax lots (#300 & #1300), as it existed for the five calendar years preceding January 1, 1983.

2. The subject property produces less than 85 cu.ft./ac./yr. of merchantable timber volume. This has been determined by Lane County, and the State of Oregon, to be the measuring parameter for marginal soils west of the Cascade Range, as defined in ORS 197.247 (1) (b) (C).

The productivity test must be calculated on the parcel, or portion(s) of the parcel, which is being submitted for marginal land designation. On the Dahlen parcel this includes tax lot #300, totaling ±320.492 acres. This test was addressed in my February 15, 2005, letter submitted previously.

Six tables are presented in my February 15, 2005, letter; these tables show a productivity range of 26 to 77 cubic feet per acre per year for the parcel. Goal One also submitted a table showing a productivity of 71 cubic feet per acre per year. To sum up; seven tables have been submitted regarding the potential productivity of the Dahlen parcel, all of them show the parcel is not capable of 85 cubic feet per acre per year.

II. RESULTS OF INCOME CALCULATIONS

Average Gross Annual Income Through A Complete Rotation

The income figures were calculated using the following data:

1. The actual timber volume growing on the property. These figures were obtained by two methods. Using actual cutout (scaled, or measured, volume removed) data from when past logging was done on the parcel and cruising (the method for measuring the merchantable volume in a stand of timber) the standing trees to determine the volume that is **actually** growing on the parcel at the present time. This cutout volume and the cruised volume were added together to calculate the total volume for the entire parcel. The volume figures obtained by these methods are expressed in thousand board feet (MBF).

The income test can only be calculated using volume figures expressed in thousands of board feet, because this is how timber is purchased by mills buying timber. Although some timber is purchased by the ton, this is primarily low value pulpwood. Timber is not purchased by the cubic foot, the measurement used for potential productivity of a soil.

The actual recorded cutout data from logging conducted approximately 14 years ago is available and will be submitted by Mr. Steve Cornacchia. This data can then be combined with the volume left on the property at the present time to come up with a total merchantable volume on the parcel.

Ideally all of the merchantable timber should be cruised at the same point in time, preferably at rotation age. However, since a large portion of the timber was logged in the past (1990-91), the volume removed then must be added to the volume left at the present time. This should actually show considerably **more** volume than existed at the time of logging, due to 14 years of growth adding merchantable volume onto the remaining trees. This means the totals used for this analysis are actually **higher** than what the volume would be if the entire property had been cruised **before** any logging took place. In other words, the figures shown below are much more optimistic than if the merchantable volume was calculated at a single point in time. The trees logged 14 years ago were 45-60 years old; the trees cruised at the present time are 50-70 years old. This type of age variation is normal, even in stands which were originally planted in the same year. This is due to natural seeding in, mortality and trees replacing other trees. Using these numbers will present a figure representative of a 50 year rotation, the standard accepted by Lane County.

For the total board foot volume I have used a combination of the recorded volume logged and the cruised volume from a March, 2005 timber cruise of the entire parcel. The areas logged and cruised are delineated on the aerial photo attached as Exhibit 1.

Total Merchantable Volume:

Douglas-fir -- 900 MBF (thousand board feet) logged by Moshofsky (see Exhibit 2)
711 MBF from timber cruise completed in March, 2005 (see Exhibit 3)
Ponderosa Pine -- 34 MBF from timber cruise completed in March, 2005 (see Exhibit 3)

For the 900 MBF logged by Moshofsky I have used the breakdowns listed below for grades.

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 - Logged Volume - Douglas-fir -- 900 MBF (thousand board feet)

360 MBF of 2 SAW @ <u>\$255/MBF*</u>	\$ 91,800
450 MBF of 3 SAW @ <u>\$215/MBF*</u>	96,750
90 MBF of 4 SAW @ <u>\$200/MBF*</u>	<u>18,000</u>
Total Gross Value	\$206,550

*See Exhibit 4.

The value for the merchantable volume still growing on the parcel was determined by using the grade breakout from a timber cruise completed in March, 2005 (see Exhibit 2). To present the most optimistic scenario possible I have lumped the rough 3M grade (which is worth approximately 40% of the 2M grade) with the 3M grade. This will show a higher value than what a mill would have paid, because a large portion of the timber on the property is rough, lower value wood. This is typical of stands growing on poor sites (such as the Dahlen parcel), with hardwoods such as oak scattered throughout the conifers. Conifer growing intermixed with high percentages of hardwoods are much more likely to be deformed from growing up through the hardwoods and have large limbs due to high numbers of open grown trees. The highest quality wood comes from fully stocked pure stands of conifer. The rocky (in many areas boulder fields are present on the surface) areas and shallow, poor soils are not conducive to growing pure stands of conifer. There are many hardwoods, the majority of which are noncommercial, which will outcompete conifers in this type of growing condition.

Total Volume - Cruised Volume - Douglas-fir -- 711 MBF (thousand board feet)

173.2 MBF of 2 SAW @ <u>\$255/MBF*</u>	\$ 44,166
435.8 MBF of 3 SAW @ <u>\$215/MBF*</u>	93,697
102.0 MBF of 4 SAW @ <u>\$200/MBF*</u>	<u>20,400</u>
Total Gross Value	\$158,263

*See Exhibit 4.

Total Volume - Cruised Volume - Ponderosa Pine -- 33.9 MBF

20.5 MBF of 4 SAW @ <u>\$250/MBF*</u>	\$ 5,125
13.0 MBF of 5 SAW @ <u>\$180/MBF*</u>	2,340
0.4 MBF of 6 SAW @ <u>\$150/MBF*</u>	<u>60</u>
Total Gross Value	\$7,525

*See Exhibit 4.

The above three totals are then added together to arrive at a total volume for the entire parcel.

TOTAL GROSS VALUE OF LOGGED AND CRUISED VOLUME: \$372,338

AVERAGE GROSS INCOME -- $\$372,338 \div 50 \text{ YEARS} = \underline{\$7,447/\text{YEAR}}$

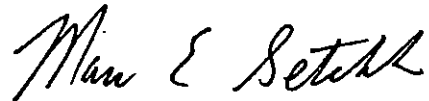
III. CONCLUSION

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) Total gross income for 1983 was based on the volume of rotation aged merchantable timber which was logged 14 years ago, and adding the remaining standing merchantable timber (most of which is currently 55 to 70 years old) together. From these figures it can be seen that the gross income for the entire 387.652 acre site would have been \$372,338 in 1983. The average annual gross income would have been \$7,447/year. Because \$7,447 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, from the data collected on the merchantable volume growing on the above described parcel, this property is ill suited to the production of merchantable timber and use as land for forestry purposes. It is my opinion that this parcel should be classified as marginal land.

Sincerely,



**TIMBER CRUISE
DAHLEN PROPERTY**

Prepared
for
Karen Dahlen

Prepared by
Marc E. Setchko
Consulting Forester
March 25, 2005

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

(1st QUARTER PRICES, GRANTS PASS UNIT)

1983

Ponderosa Pine

Feeler		\$ 575
1S		\$ 495
SM		\$ 300
2S		\$ 400
3S		\$ 280
4S		\$ 250
5S	★ ★	\$ 180
6S	★ ★	\$ 150
CR		\$ 260
Utility		\$ 80

LOG PRICES - 3rd Quarter 1983

WEST OREGON, SANTIAM, LANE, FOREST GROVE, TILLANOOK AND ASTORIA UNITS

Douglas-Fir

#1P		\$505
#2P		425
#3P		340
SM		285
#2S		255
#3S	★ ★	215
#4S	★ ★	200
SC		140
Utility		75
CR		240

EXHIBIT 4

Heimlock

P		\$375
SM		260
#2S		220
#3S		190
#4S		175
Utility		65
CR		190

Spruce

SM		\$255
#2S		230
#3S		180

6-2-2000

DEM

12



0-0 EUG

18-61.1-33



EXHIBIT 1

DAHLEN PROPERTY
 T18S-R4W-SEC 24
 T18S-R3W-SEC 19
 EXHIBIT 5

-  AREAS CRUISED MARCH, 2005
-  HARDWOOD (NONCOMMERCIAL) AREAS
- AREAS LOGGED IN 1990-91

2000 PHOTO

AFFIDAVIT

STATE OF OREGON)
County of Clackamas)

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

1. I owned property located in Lane County, Oregon, described as Assessor's Map No. 18-04-24, tax lot 0300, during the period from January 1, 1978 through January 1, 1983.

2. On December 17, 2003, I signed an Affidavit that stated: "At no time during the period stated in paragraph 1. above was the above described property managed as part of a farming operation. By "farm operation" I mean the employment of the subject property for the primary purpose of obtaining a profit in money. By "farm operation" I also mean all uses and activities defined as "farm use" and "current employment" of land in ORS 215.203(2)."

3. This affidavit clarifies that affidavit, a copy of which is attached hereto and by this reference incorporated herein.

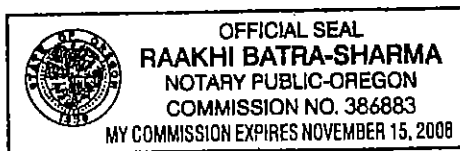
4. During the aforementioned time period I allowed a third party to graze a limited number of cattle on the subject property. The number of cattle was limited and never exceeded 25 head. My purpose in allowing the grazing was to create an activity and human presence on the property in our absence. The consideration received for allowing the grazing was the activity and presence and annual fence repair. In the years that I accepted a nominal payment for the grazing, the payment and the other stated consideration never exceeded \$1,000 in annual value. At no time during the aforementioned time period was the subject property managed as part of a farm operation capable of producing \$20,000 in annual income.

5. In 1990 I harvested 900,000 board feet of Douglas Fir on the subject property.

Art Moshofsky
Art Moshofsky

Personally appeared the above-named Art Moshofsky, being duly sworn, who signed this affidavit in my presence as his voluntary act and deed.

Before me this 15th day of March, 2005.



Raakhi Batra
Notary Public for Oregon
My commission expires: Nov 15, 2008

AFFIDAVIT

State of Oregon
County of Lane

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

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 April 1997.

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

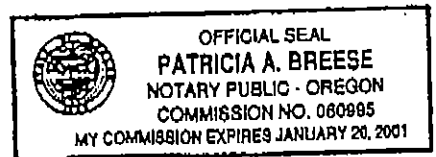
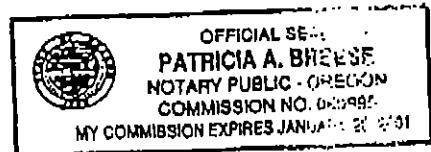


EXHIBIT A
EXHIBIT "F"

AFFIDAVIT

STATE OF OREGON)
) ss.
County of Lane)

I, Art Moshofsky, after being duly sworn, depose and say:

1. I owned property located in Lane County, Oregon, described as Assessor's Map No. 18-04-24, tax lot 0300, during the period from January 1, 1978 through January 1, 1983.

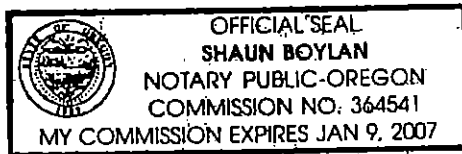
2. At no time during the period stated in paragraph 1. above was the above described property managed as part of a farming operation. By "farm operation" I mean the employment of the subject property for the primary purpose of obtaining a profit in money. By "farm operation" I also mean all uses and activities defined as "farm use" and "current employment" of land in ORS 215.203(2).

3. This affidavit is consistent with and further clarifies that affidavit of mine, dated April 15, 1997, a copy of which is attached hereto and by this reference incorporated herein.

Art Moshofsky

Art Moshofsky

SIGNED AND SWORN to before me this 17 day of December, 2003, by Art Moshofsky.



Shaun Boylan

Notary Public for Oregon
My commission expires: 1/9/07



Marc E. Setchko
CONSULTING FORESTER

870 Fox Glenn Avenue
Eugene, Oregon 97405
Phone: (541) 344-0473
FAX: (541) 344-7791

March 27, 2005

Lane County Planning Commission

RE: Lane County File #PA 04-6092, Dahlen; Response to Goal One Coalition Letter dated February 22, 2005

Members of the Planning Commission:

In conjunction with my Forest Productivity Analysis, completed in December, 2003, I have enclosed the following written response to a letter written by Jim Just of Goal One Coalition, dated February 22, 2005. I have addressed each issue as presented in the letter, most of which I have already addressed in my analysis. I am answering these questions as a qualified, Society of American Foresters Certified Professional Forester (#2953), with 27 years of experience including 17 years as a consultant, with Bachelor of Science (Cal Poly, SLO) and Master of Forestry (Oregon State) Degrees. As a consultant I have extensive experience in drawing up forest management plans, handling the administration of these plans and the merchandising of logs to maximize the return to my clients.

Following are responses to questions raised in Goal One Letter:

On page 1, Mr. Just states (in his most recent letter, dated February 22, 2005) that I do not use my productivity ratings (for cubic foot projections) in my calculations of potential income. This statement is confusing, as cubic foot projections are not used for income calculations; only merchantable timber volume is used for income calculations.

On page 2, Mr. Just says that I state that current stocking levels are lower than previous stands, confirming that management practices influence stocking rates. First, I **did not** make this statement; I stated that current stocking levels of **planted seedlings** could be higher than they are. And, while I stated that management practices can increase stocking levels, I also stated that there is no **guarantee** that stocking levels could be increased.

Mr. Just then states that grass, brush and animal control are a normal part of timber management. On industrial lands I would agree; on private woodlots I wish this was true. Unfortunately, this is a big problem on **too** many private woodlots; which is the reason so many government incentive and cost share programs used to exist. The incentive and cost share programs, which used to be abundant, are only available on a very limited basis today. Consequently thousands of acres of private woodlots are understocked and poorly managed. The primary reason for this is cost; the landowner simply cannot afford to carry out the desired activities. Even on industrial ownerships, where intensive management is the rule, a benefit-cost analysis is conducted before activities are carried out. In summation, cost is a huge determining factor in whether or not activities are completed.

Mr. Just (on pages 2 and 3) then describes in great detail that ponderosa pine can grow on the site. I have not denied this; in fact ponderosa pine is used in my productivity tables. However, for the income test ponderosa pine is not normally considered because it is worth less than Douglas-fir.

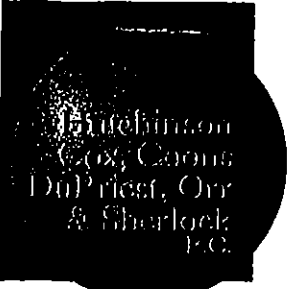


Mr. Just then states that red cedar and cottonwood could grow in the poorly drained areas. First, cottonwood is **not** a merchantable species. Second, red cedar is slow growing and produces a low volume per acre. For both of these reasons, red cedar would simply produce lower numbers than my current analysis presents. He also proposed red alder. This species will not grow on this property, because there is not enough year round moisture.

Sincerely,

Man E Setchell

X



Attorneys and Counselors at Law
Established 1970

Experienced Advice in a Complex World.™

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James K. Coons
John G. Cox
Douglas M. DuPriest
Frank C. Gibson
Stephen A. Hutchinson
Thomas M. Orr
William H. Sherlock

E. Bradley Litchfield
Zack P. Mittge
Patrick L. Stevens
Brian M. Thompson

April 19, 2005

Planning Department
Land Management Division
Lane County Courthouse/PSB
125 East 8th Avenue
Eugene, OR

Hand Delivery April 19, 2005

RE: Dahlen Plan Amendment and Rezone, PA 04-6092
Our Client: Allan A. Gemmell
Our File No. 9843

Dear Planning Department:

This office represents Allan A. Gemmell who owns and resides on property located at 84525 Murdock Road, Eugene, OR 97405, which is in the vicinity of the property proposed to be rezoned. Our client would be adversely affected by the extra traffic on local roads that would likely result from the rezoning (and subsequent subdivision of the property).

Our client's primary concern is that the property not be divided into more than eleven lots. Counsel for the applicant, Mr. Cornacchia, states that his client is prepared to have a restriction to his effect be placed on the property upon approval of the current plan and rezone requests. Our understanding is the applicant has asked (or will be asking) the county to include, as a condition of approval, that the applicant record such a restrictive covenant.

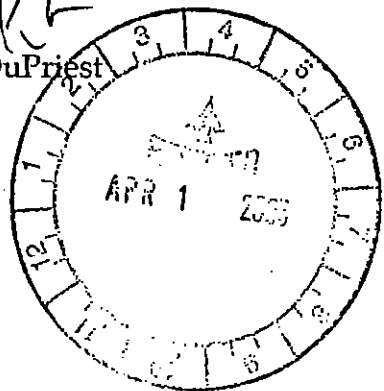
Our client urges the county to include such a condition and restriction and also to specify that a nearby neighbor be given a private right of enforcement of the recorded restriction (in addition to such enforcement rights the County or subsequent owners of the subject property may have). Should you have any questions, please do not hesitate to contact me. Please include this letter in the record of PA 04-6092. Thank you for your courtesies.

Very truly yours,

HUTCHINSON, COX, COONS
DUPRIEST, ORR & SHERLOCK, P.C.

Douglas M. DuPriest
Douglas M. DuPriest

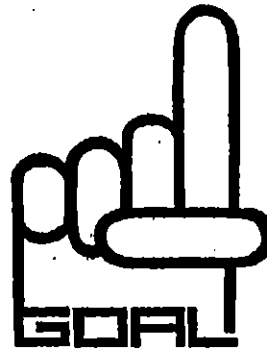
DMD:hs
cc: Steve Cornacchia
Allan A. Gemmell



PC# 14 - 1A -

GOAL ONE COALITION

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



April 21, 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 respond to applicant's submission of April 18, 2005.

1. Forest income test analysis of 387.65 acres in contiguous ownership

The applicant has submitted additional material addressing the income potential of the "forest operation," taking into consideration potential income from the adjoining 67 acres in common ownership (Moshofsky) during the 1978-1982 period.

The calculations of Mr. Setchko repeat the errors of his previous calculations: he assumes a 50-year rotation that demonstrably fails to result in optimum levels of average annual gross income over the growth cycle; he assumes 1983 prices; he fails to consider that ponderosa pine may grow where Douglas-fir won't thrive; and he assumes actual stocking levels rather than potential stocking levels, based on soil productivity data from the NRCS soil survey or from alternative on-site data provided by a soils scientist.

The relevant test under ORS 197.247(1)(a) (1991 edition) is *potential* average annual gross income over the growth cycle. The application of this test must assume management practices that strive to maximize income potential. Actual stocking levels may not reflect potential stocking levels, or the stocking with tree species selected to best match specific site conditions within a property. The statutory directive to consider potential income "over the growth cycle" cannot be read to mandate the use of 1983 prices. The legislature was certainly aware

GOAL ONE COALITION

that a growth cycle might extend from 50 to 100 years or more. If the legislature had wanted to mandate the use of 1983 prices, it could easily have done so.

2. Farm operation income test: cattle grazing on subject property

The applicant concedes that cattle were grazed on the subject property during three out of the five calendar years preceding January 1, 1983, and thus that the property was managed as part of a farm operation. As explained in (3) below, that the farm operation was not that of the owner of the property is not relevant for purposes of ORS 197.247(1)(a) (1991 edition).

The affidavit submitted by Mr. Moshofsky asserts that "the amount of cattle was limited and never exceeded 25 head" and that "the payment and other stated consideration received never exceeded \$1,000 in annual value." From this it is concluded that the subject property was not managed as part of a farm operation capable of producing \$20,000 in annual income.

The amount of money received by Mr. Moshofsky is not relevant to the inquiry required by the statute. The relevant "farm operation" is that of the owner of the cattle, who was leasing the subject property and managing it as part of *his* farm operation.

The nature, extent, and annual gross income of the farm operation of which the subject property was a part must be established. There is no evidence in the record establishing who the manager of the farm operation was; what other landholdings were a part of the farm operation; what activities occurred within the farm operation; or what the annual gross income of that farm operation were. In the absence of such evidence, it cannot be established that the requirements of ORS 197.247(1)(a) (1991 edition) are met.

3. All Moshofsky-owned property must be considered in the application of the forest income test.

Mr. Cornacchia suggests that ORS 197.247(1)(a) can be read to limit the application of the forest income test to *contiguous* land owned during the 1978-82 period. This is not correct.

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

"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 word "contiguous" does not appear in the statute, nor is there any requirement that land be "owned." The requirement is that the land be "managed" as part of a farm or forest operation.

ORS 174.010 sets forth the general rule for the construction of statutes, and provides:

"In the construction of a statute, the office of the judge is simply to ascertain and declare what is, in terms or in substance, contained therein, not to insert what has been omitted, or to omit what has been inserted; and where there are several provisions or particulars such construction is, if possible, to be adopted as will give effect to all."

GOAL ONE COALITION

The construction offered by Mr. Cornacchia would "insert what has been omitted." If the legislature had wanted to limit the inquiry regarding a farm or forest "operation" to contiguous land or to contiguous land under the same ownership, it could easily have done so.

ORS 197.247(1)(a) requires that the nature and extent of the actual forest operation conducted by Mr. Moshofsky during the 1978-82 period must be identified; and that the average annual gross income potential of that operation, over the growth cycle, be determined.

Goal One and Mr. Just request notice and a copy of any decision and findings regarding this matter.

Respectfully submitted,

Jim Just

Jim Just
Executive Director

HERSHNER HUNTER

May 24, 2005

HAND DELIVERED

Lane County Planning Commission
ATTN: Jerry Kendall
125 E. 8th Avenue
Eugene, OR 97401

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

Dear Commissioners:

We represent Karen Dahlen, the applicant, regarding PA 04-6092. This letter provides the Lane County Planning Commission, and the record of this proceeding, with the applicant's rebuttal of additional testimony provided by Goal One Coalition in its letter to the Commission, dated April 21, 2005.

Goal One Coalition argues the following:

The applicant's demonstration of compliance with the forest income test, by the report of Marc Setchko, dated March 27, 2005, is incomplete because it assumes a 50-year rotation, it assumes 1983 log prices, fails to consider Ponderosa Pine and assumes actual stocking levels rather than potential stocking levels.

Mr. Setchko is the applicant's professional forestry consultant and produced the March 27, 2005, as he has produced all of his reports in the record, consistent with the 1997 Lane County interpretation of ORS 197.247. The interpretation contains objective criteria developed by Lane County for use in the income calculations required by the statute. The use of that objective criteria by Lane County is authorized by ORS 197.247(5). Fifty-year rotations are the interpretation's adopted standard as is the use of 1983 log prices. The applicant has responded to this argument regarding the rotation standard and the use of 1983 log prices throughout this proceeding and incorporates herein all previous responses thereto.

The interpretation also directs that applicants "assume the stand was, in 1983, fully mature and ready for harvest. Goal One Coalition argues that the interpretation means to assume

PC #16 - 3 pp.

“potential stocking levels.” Its argument is not consistent with the language of the interpretation. In fact, Mr. Setchko provided the actual harvest (at 1990 maturity levels) and the actual maturity level of the remaining timber on the property in his cruise and then applied 1983 prices to that volume. That volume is obviously higher than it would have been in 1983 and produces an even higher income calculation than if Mr. Setchko had attempted to determine what the actual volume would have been in 1983. Even with the higher volumes, the resultant calculations produced an annual income level below the required \$10,000 threshold of the statute.

The applicant and Mr. Setchko have responded to the Ponderosa Pine argument in earlier submittals to the record in response to earlier Goal One Coalition arguments.

The applicant is required to produce income information from the third party that grazed of cattle on the subject property during the period 1978-1983.

The applicant continues to rely upon the 1997 interpretation which provides that all operations on contiguous property must be analyzed in the income calculations. Goal One Coalition again rejects the direction of the interpretation and argues for a different approach to the calculations. Goal One Coalition’s argument would require an analysis of farm and forestry operations, wherever located by whomever, rather than an analysis of the income-producing capability of the subject property. That approach is inconsistent with the stated purpose of the tests--determining whether the subject property was making a significant contribution to the forest and farm economy of Oregon during the subject period.

All Moshofsky-owned property and mills existing in the world during the 1978-1983 test period must be included in the application of the income test.

The applicant responded to this argument in our correspondence to the Commission, dated April 18, 2005.

Conclusion

Throughout the record of this proceeding, and with the inclusion therein of the information and argument contained herein, the applicant has demonstrated that the designation of subject property as Marginal Land complies with ORS 197.247 and all other applicable criteria. Throughout the proceeding Goal One Coalition has presented issues and arguments that are without legal foundation, are not supported by substantial evidence and are without

Lane County Planning Commission
May 24, 2005
Page 3

merit. Therefore, the Commission should recommend to the Lane County Board of Commissioners that the application be approved.

Best regards,

A handwritten signature in cursive script, appearing to read "Steve Cornacchia".

STEVE CORNACCHIA

PSC:ss

Cc: Karen Dahlen

0

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March 1997

Supplement to Marginal Lands Information Sheet

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

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

ISSUE 1: What is the Marginal Lands concept?**Board's Direction:**

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

ISSUE 2: Definition of "Management".

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

Board's Direction :

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

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

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

Board's Direction :

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

PC # 17-2pp

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

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

Board's Direction :

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

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

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

Board's Direction :

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

ISSUE 6: Weight of evidence.

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

Board's Direction :

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

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

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

Board's Direction :

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

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

MINUTES

Lane County Planning Commission
Harris Hall - Lane County Courthouse

February 15, 2005
7 p.m.

PRESENT: James Carmichael, Vice Chair; Lisa Arkin, Ed Becker, Jacque Betz, Mark Herbert, Jozef Siekiel-Zdzienicki, members; Stephanie Schultz, Jerry Kendall, Lane County Land Management staff; Peter Sorenson, Board of County Commissioners Liaison; Greg Mott, City of Springfield Planning; Susanna Julber, Springfield Development Services;

ABSENT: Marion Esty, Juanita Kirkham, Steve Dignam

I. PUBLIC COMMENT

Mr. Carmichael convened the meeting at 7 pm. Seeing no one wishing to speak he moved on to the public hearing.

II. PUBLIC HEARING: PA 04-6092 Plan Amendment and Zone Change from Agricultural to Marginal Lands

Jerry Kendall provided the staff report. He said the proposal included a final determination on a preliminary legal lot determination from 2004.

Mr. Kendall noted that the property was located on South Willamette Street near the entrance to Spencer Butte Park. He said the application was a zone change from Exclusive Farm Use E-40 to Marginal Land. Built into the proposal was a final determination on a preliminary legal lot that had been created in 2004 from a lot line adjustment. He said the traffic impact analysis was for a full build out of 32 ten acre lots. He submitted an e-mail for the record from the State Water Master which raised an issue with the aquifer study in that there was no coefficient of storage achieved in the report as mandated by Lane Code 13.050(13)(c)(i). He said he was in a quandary because the letter of the code had not been met in terms of showing that coefficient of storage.

Mr. Kendall said the aquifer study concluded that the observation well had not been affected by test wells drilled nearby. He said the costs would mount quickly if many wells had to be drilled to see if there was an effect on the test well. He said the Planning Director had agreed with the Water Master's decision that the aquifer study was sufficient for the planned build out.

Mr. Kendall said he had also heard from the Department of Assessment and Taxation. He said a question had been raised as to whether the property had been receiving farm or forest tax deferrals. He said 316 acres of the property was in farm or forest tax deferral. He said he had asked whether there was a way to conclude from the tax deferral information if the income standards for the property had been met. He said Lane County Land Management could not use tax deferral status to judge whether planning law had been met.

REC #7 - 13 AD.

In terms of the Oregon Revised Statutes that were used to decide such applications, he said an affidavit had been supplied by a former owner saying that the property had not been used by itself or in conjunction with other property to form a farm operation that grossed over \$20,000 per year and that the property was not capable of producing \$10,000 worth of gross income. He said the applicant had concluded that the subject property was not capable of producing \$10,000 in annual gross income during the period in question and added that the forester had reported that the land would only have produced \$8,652 in income during that same period.

Mr. Kendall said the applicant had stated that 58.8 percent of the property was an agricultural rating of 5-8 which was in the poor half of the agricultural capability rating. He said his own study had come to a percentage of 71 percent in the 5-8 range and noted that both assessments met the requirement for proposed zone change.

Regarding whether the subject property was capable of producing 85 cubic feet of merchantable timber, Mr. Kendall said a range of tests had been done and the range of cubic foot capabilities went from a low of 26.4 – 77.26 cubic feet per year. He noted that all were below the threshold criteria.

Mr. Kendall submitted two letters into the record. The first was from Susan Wolling who expressed general concerns over the development with no factual specifics. The second was from Martha McKillan which raised concerns over aquifer studies.

Mr. Kendall said the Goal One Coalition Submittal, date February 9, said the coalition had raised objections over soil types on the property, the forest income test not being thoroughly addressed, and he said he had already noted that the soils could not produce 85 cubic feet per acre per year. He added that all potential species of merchantable timber had been checked to see if they met the income test. He said staff had found that much of the objections were put aside by the definition of merchantable. He said the definition of merchantable and sellable was “fit to be sold, marketable.” He said the applicant’s position was that species other than Douglas Fir were not merchantable on that particular portion of land and went on to say that Douglas Fir was the highest value timber that could be grown on the land in question so if Douglas Fir could not meet the forest income test then others, being of less value, could not either.

Mr. Kendall said the Goal One Coalition had also raised an issue with the 50 year growth cycle. He acknowledged that the Board of Commissioners guideline was different than state law but said he was required to use the 50 year growth cycle rule for market prices in 1983. He reiterated staff were using the Board of County Commissioners’ Guideline to use the 50 year cycle but acknowledged that the Goal One Coalition had opined that current market prices should be used.

In response to a question from Mr. Becker regarding the use of Webster’s Dictionary, Mr. Kendall said staff were instructed by Lane Code to use Webster’s dictionary for terms that were not defined in Lane Code.

Mr. Carmichael explained the hearings process to the audience. He thanked those who intended to participate in the process.

Steve Cornacchia, 180 East 11th, spoke representing the applicant. He submitted written materials into the record that replied to the comments of Jim Just and the Goal One Coalition. He called attention to the submitted material which included a series of aerial photos from 1954-2000. He said the photos were used

by the consultant in his analysis of the property. He said the photos showed that the northern slope of the property had been bare of trees since the 1950s. In addition, he noted that the middle of the property near Spencer Creek also had not grown any trees. He said the points raised by Mr. Just had been addressed in the materials that had already been submitted into the record. He said the photos submitted were a vision of what the legislature had been discussing in 1983 when the Marginal Lands zone was created.

Mr. Cornacchia said the land in question had not contributed to the agricultural or forestry production of Oregon. He said the land in between forest highlands and river bottom land had poor soils that were not conducive to timber or agricultural products. He said marginal lands were intended to be a residence and resource zone where the propagation of agricultural products and timber were secondary.

Mr. Cornacchia said the statutes had four tests to determine whether the property was marginal. He said the land had not been used as a farm operation capable of producing \$20,000 in farm and \$10,000 in forest income. He said the other two parts of the test were addressed in part c. He said the land in question was predominantly composed of class five soils and was not capable of producing \$10,000 of income in 1983 dollars. He said the way the income test was determined was based on the Erickson case and the 1997 interpretation issued by the Board of County Commissioners. He said he had been part of the Carver application and noted that the same methodology had been unanimously approved by the planning commission and had passed with a Board of Commissioners' majority. He stressed that the clear criteria for approval had been met and proven with professionally produced reports.

Mr. Cornacchia said Ralph Christiansen had done the aquifer tests for the area. He said the water sources were unrelated in the south hills. He said there was fractured rock in that area and the water sources were separate and site specific. He said when wells in the area went dry it was because they were over pumped too hard and too long for irrigation and had no relation to other wells drilled by adjacent property owners.

In response to a question from Ms. Arkin regarding the water supply well reports included in the new material submitted, Mr. Cornacchia said the material had been submitted to support the conclusions submitted by EGR Associates and to offer physical proof of the points raised by the applicant. Showing a map of the property, Mr. Cornacchia indicated where the water had been found. He said the applicant had drilled two new producing wells on the property that were unaffected by other nearby wells.

In response to a question from Mr. Becker regarding whether there had been timber logged on the property and whether the forester had any records of the amounts logged, Mr. Cornacchia said some logging had gone on with the previous owner but noted that any records were confidential to that previous owner.

In response to a question from Ms. Betz regarding if the previous owner had any more acreage that was farm and forest land, Mr. Cornacchia said the new owner had purchased the full property.

In response to a question from Mr. Siekiel-Zdziesicki regarding whether Spencer Creek water rights were owned by anyone downstream, Ralph Christiansen, EGR and Associates, said he was almost certain that there was not since ground water did not supply a sufficient amount of water to Spencer Creek. He said there was low flow and low storage in the area and ground water was released slowly. He said this was why wells going dry were not a result of neighbor's wells since it was so hard to move the ground water in the area through the dense soils.

In response to a question from Mr. Siekiel-Zdziesicki regarding where the wells were drilled on the properties in the area, Mr. Christiansen said the wells were drilled near where residences were constructed. He added that, for the area in question, it was just as easy to get water from the top of a hill as it was to drill on flat land.

Mr. Siekiel-Zdziesicki said Mr. Norton had seemed to go back and forth on his aquifer test. Mr. Christiansen responded it was very different to deal with fractured rock aquifers than other types of wells. He said people had trouble with those types of wells because people did not know how to take care of them properly.

In response to a question from Mr. Herbert regarding whether the wells on the specific parcel provided enough water for the property, Mr. Christiansen said there was adequate water for the property.

In response to a question from Mr. Herbert regarding whether a well drilled on a particular property in the area would affect other wells, Mr. Christiansen said, given the nature of the fractured rock aquifers in the area, his answer would be speculation at best.

Mr. Herbert stressed that there was no reason to believe that the land in question could not supply enough water.

In response to a question from Ms. Arkin regarding the dates of aquifer tests that had been done, Mr. Christiansen said the aquifer would not change in 20 or 2000 years. He said wells could change due to mineral buildup, but the aquifer was a geologic state that would change much more slowly.

In response to a question from Ms. Arkin regarding how a fractured rock aquifer would react to a drought situation, Mr. Christiansen said even in poor years the aquifers would fill up by the end of January. He said there would never be a case where the aquifers would not fill up.

Ms. Arkin commented that test wells close to Spencer Creek might be in a different type of aquifer that was not of fractured rock and might affect test results.

Mr. Christiansen responded that Spencer Creek sat on top of bedrock with no alluvial soils and would not affect test wells. He said a well could be drilled that was actually in the creek bed that would draw water that was not from the Spencer Creek riparian area.

In response to a question from Mr. Siekiel-Zdzienicki regarding whether Mr. Christiansen was recommending a storage tank for every lot on the property, Mr. Christiansen said he recommended storage tanks for every well. He stressed that this would extend the life of a well by a significant amount of time.

Jim Belknap, PO Box 865 Cottage Grove, spoke in favor of the zone change. He said he had done a project on the opposite side of Spencer Creek and had developed some very attractive building sites. He said one the wells drilled was within 20 feet of the highest part of the property that drew 95 gallons per minute. He said the two drilled on lower ground drew almost non existent amounts. He said this proved the point raised by Mr. Christiansen. He said the property in question had poor soils that could not produce agricultural or forestry products. He said he had never seen a piece of property that was a better example of marginal lands. He said areas that were logged represented small pockets of Douglas Fir of

lesser quality. He added that forest land was not an accurate description of the property and it would not be wise or suitable to invest money in an effort to make it into forest land.

Mr. Carmichael called for testimony in opposition to the proposal.

Ann Weste, 84487 Murdock Road, said she was not totally opposed to the proposal. She raised concern that if all the land were zoned marginal then more development than what was proposed would occur. She raised concern over potential traffic problems in the area as a result of over development.

Regarding water, Ms. Weste raised concern over adequate water supplies for the planned residences.

Ms. Weste said that the land had been logged at one time and had not been replanted. She commented that if the land was not being managed for forestry and it could not produce timber in significant amounts then the land should not be receiving a timber tax deferral.

In response to a question from Mr. Becker regarding if Ms. Weste knew for a fact that the land had not been replanted after it was logged, she had heard that second hand from another party. She said she did not know if the information came from an official source.

Alan Gemmil, 84525 Murdock, raised concern over adequate water supply for new residences. He said he would like to see additional requirements in the code to ensure that water supplies remained adequate. He also noted that 100 acres of the land in question had been logged previously in the 1990s. He said the well that had been used for the test was dry two months later and said the present status of the wells on the property. He raised concern that with 30 new homes in the area existing wells would go dry.

Louisa Walker, 85861 South Willamette, said much of the property in the area had been logged until the 1930s. She said her property was located across the street from the land in question and noted that she had logged her property in the year 2000. She remarked that, in her opinion, logging could be carried out on the property. She said if the property would have been managed better in the 1930's then it would have produced better timber.

Jan Reeves, 85809 South Willamette, said she also lived across the street from the property in question. She remarked that the land grew beautiful oak trees. She also raised concern over lack of water for the area if more houses were developed.

Joanie Keen, 31553 Willamette Street, said she had purchased her property off Willowdale Heights in 1979 and had subsequently run out of water. She said Mr. Christiansen had been hired to drill a well on her property and had informed her that the density of the ground was too high to support a lot of ground water. She expressed her hope that the proposed new development would not use up all the available water in that area.

In response to a question from Ms. Arkin regarding how that land was related to the land in question, Ms. Keen said her property was west of Eugene and was similar in that it was located not far out of the City limits.

In response to a question from Mr. Becker regarding how water was served to the development to the north of the property in question, Mr. Kendall said that land was served by the City of Eugene.

Jim Just, Goal One Coalition and Land Watch Lane County, noted that the Carver case mentioned by Mr. Cornacchia had been appealed to the Land Use Board of Appeals. He said board policies mentioned by staff were not part of Lane County code, were not land use regulations, were not standards and criteria, and could not be used when approving a land use application.

Mr. Just said the data in the income calculations had been discarded in favor of looking at existing stands of trees. He said all of the areas on the land that did not have trees were not necessarily barren to tree growth. He said the evaluator was not a Soil Scientist and the report he had submitted was not based on any scientific soil survey data. He said the material submitted by Mr. Cornacchia actually *supported* the material submitted by the Goal One Coalition that more substantial evidence was needed. He asked that the record be left open for seven days so new data on forest income could be submitted.

In response to a question from Mr. Becker regarding whether Mr. Just had reviewed the aerial photos submitted by the applicant, Mr. Just he had just seen them that evening.

Mr. Becker said the photos showed that a good part of the property was, in fact, unproductive.

In response to a question from Mr. Becker regarding whether he had walked the property, Mr. Just he had not walked the property but commented that productivity data could not be gotten from an aerial photo. He said a Soil Scientist was needed to verify the data submitted by the applicant. He said he did not have access to the property or the resources to hire a professional Soil Scientist and had to rely on telling the commission why the data submitted by the applicant did not meet legal standards.

Laurie Segel, 1000 Friends of Oregon, 1192 Lawrence Street, said the criteria for designation of Marginal Lands were set out in State Statute and the staff report relied on guidelines from the Board of Commissioners. She said there was no deference due to local interpretations of statute.

Ms. Segel said the income test requirements found in Statute 197.247(1)(a) supported the comments submitted by the Goal One Coalition and 1000 friends of Oregon. She said the 50 year growth was not capable of meeting the income test for forest operations. She said a 50 year growth cycle was predicated on a board directive which did not trump state statutes. She said LUBA had determined that the phrase "capable of producing" in statute required reasonable management practices over the growth cycle. She said reasonable forest management practices would mean choosing an appropriate growth cycle that would result in the highest average annual income. She said the applicants had not proven that a 50 year growth cycle reflected responsible forest management practices. She said the applicant's forestry consultant had worked on a similar case on an adjacent property had produced reports using a 60 year growth cycle that resulted in a higher gross income. She questioned why a 50 year growth cycle was used for the property in question and was considered reasonable by county staff.

Regarding the use of 1983 prices for forest income, Ms. Segel said she felt that the use of 1983 figures was not appropriate.

Ms. Segel said 3 minutes was not adequate to make a case in a public hearing. She submitted written material into the record.

In response to a question from Mr. Siekiel-Zdziesicki regarding whether she believed that the County was doing something illegal, Ms. Segel said it was her position that state statutes did not allow a local interpretation to stand upon higher review.

Jim Gillette said he opposed the proposal for one reason. He said he was trying to turn his land into a park and the applicant was opposing him. He said he would support their application if they supported his. He said his application would increase their property values.

Gerry O'Rourke, 857822 Willamette, raised concern over increases in traffic in the area. She said that 30 families in the area would mean 75 more cars on Willamette Street per day.

Mr. Carmichael called for applicant rebuttal.

Mr. Cornacchia said the opposing testimony was anecdotal and not relevant to the case. He said no professional consultants had spoken in opposition of the data presented.

Mr. Cornacchia said the property had been reforested contrary to the opposing testimony. He said the property had supported *some* forestry activity but stressed that the application did not say forestry could not occur on the land. He said the application was saying that the land could not support forestry in the amount listed in the approval criteria for the application.

Regarding the 50 year growth cycle, Mr. Carmichael said he found it interesting that in the case where the 60 year growth cycle had been used for the income test, Mr. Just and Ms. Segal had testified against the use of that growth cycle and had requested that a 50 year growth cycle be used. He stressed that the 50 year cycle was a reasonable management practice.

In response to a question from Mr. Becker regarding how the opposing side could provide expert testimony if they were refused access to the property in question, Mr. Cornacchia said the opposition had ample opportunity to provide expert testimony that rebutted the professional testimony provided by the applicant. He noted that Mr. Just had received materials regarding the application in question a year previously.

In response to a question from Mr. Herbert regarding whether the consultants testifying for the applicant were paid by Mr. Cornacchia, Mr. Cornacchia stressed that the consultants did not work for his firm and were licensed professionals.

In response to a question from Ms. Arkin regarding whether Mr. Cornacchia knew of any licensed professionals who would work on a pro bono basis for the Goal One Coalition and analyze the applicant's data, Mr. Cornacchia said he would not be put in the position of answering that question. He said it was not appropriate for him to speculate on the question.

In response to a question from Mr. Becker regarding whether it was true that the applicant had to truck in water in spite of having three wells on the property, Mr. Cornacchia said that was not true.

The forestry consultant, Mr. Sedgco, said the 50 year growth cycle was a reasonable management practice. He noted that when he had used a 60 year growth cycle in another case, Mr. Just had also objected to that.

In response to a question from Mr. Becker regarding whether the site was reforested, Mr. Sedgco said the current stock met the forest practices act. He said he had no data as to how much land was reforested or how many trees were planted but stressed that the state requirement had been met.

In response to a question from Mr. Becker regarding whether it was his observation that the area had been successfully reforested, Mr. Sedgco said only the portions that had been logged had been reforested and stressed that the areas on the photos that did not have trees shown had never had trees.

In response to a question from Mr. Siekiel-Zdzienicki regarding when the area had last been logged, Mr. Sedgco said it had been in the early 1990's.

Mr. Carmichael closed the hearing to additional comments that evening.

In response to a question from Mr. Carmicheal regarding when deliberation could occur after the request to leave the record open, Mr. Kendall said deliberation could occur at the March 29, 2005 meeting.

Mr. Kendall outlined the process for leaving the record open. He said the record could be left open for two weeks for any comments, and one week for the applicant to provide final rebuttal.

Mr. Siekiel-Zdziesicki, seconded by Mr. Herbert, moved to leave the record open for written comments for two weeks and an additional week for the applicants final rebuttal. The motion passed unanimously.

Mr. Herbert stressed the importance of realizing the fact that the Planning Commission was not an instrument of social policy. He said the commission had an obligation to review the facts under the guidelines it was charged with. He stressed the importance of commissioners remembering their responsibilities and guidelines and that personal values and opinions had to be put aside when work for the commission started. He added that it was important to remember that professional expertise was available to other individuals beside the applicant. He said it was inappropriate to assume that because someone was paid by the applicant that their credibility was in question.

Mr. Siekiel-Zdziesicki said the past experience was also a valuable tool for commissioners.

Mr. Herbert stressed the importance of being conscious of the boundary between testifying and deliberating.

The meeting adjourned at 9 pm.
(Recorded by Joe Sams)

MINUTES

Lane County Planning Commission
BCC Conference Room - Lane County Courthouse

June 7, 2005
7:00 p.m.

PRESENT: Steve Dignam, Chair; James Carmichael, Vice Chair; Lisa Arkin, Ed Becker, Marion Esty, Jozef Zdzienicki, members; Jerry Kendall, Staff

ABSENT: Juanita Kirkham

I. PUBLIC HEARING: Deliberation Only on PA 04-6092: Plan Amendment and Zone Change from "Agricultural" to "Marginal Land" and from "E-40/Exclusive Farm Use" to "ML/Marginal Land for a 322 acre parcel at 18-04-24, tax lot 300, 85800 South Willamette Street, Eugene.

Commissioner Steve Dignam convened the meeting at 7 pm. He called for public comment on items unrelated to the items on the meeting's agenda. Seeing no one wishing to speak he moved the meeting on to the evening's deliberations.

No *ex parte* contacts or conflicts of interest were declared by the commissioners.

Jerry Kendall provided the staff presentation. He noted that the planning commission had a public hearing on the issue on February 15, 2005. He said the record for the hearing had been held open until March 15, 2005 and reported that new information was submitted into the record which contradicted the original submitted material. He said the applicant had asked for more time to submit material and noted that the record had been held open by permission of the Planning Director until May 24. He said the new fact that came to light was that during the five year period of the Marginal Lands Analysis, (1978-1983), the adjacent property was owned concurrently by Mr. Art Moshofsky. He said Mr. Moshofsky had applied for a rezoning of the subject property. He said the 320 acres was leased to a livestock company which raised 25 cattle per year on the two properties. He added that Mr. Moshofsky also owned a timber harvest related company located on the property and said this gave rise to the need for a new analysis of whether all of the property had been used as part of a farm or forest operation.

Mr. Kendall said all the documents submitted since the last hearing were included in the staff report. He said that the evidence showed that cattle had been run on the property. He said staff's recommendation was to not approve the application until the applicant submitted more information on the issue. He said the record for the planning commission public hearing was closed so the applicant would have to supply the needed information for the hearing in front of the Board of County Commissioners. He noted that in all other regards staff was satisfied with the information provided by the applicant.

In response to a question from Mr. Becker regarding the new information and whether the applicant's representative was aware of the newly submitted information during the previously held public hearing and chose not to disclose the information, Mr. Kendall said he could not speak for the applicant on that matter.

In response to a question from Ms. Arkin regarding whether any of the other adjacent land parcels were owned by Mr. Moshofsky, Mr. Kendall said there was nothing in the original submittal to that effect.

In response to a question from Mr. Zdzienicki regarding whether the commission was supposed to make a judgment call as to whether to believe the applicant, Mr. Kendall stressed the importance of looking at the facts in the record. He said to enter into judgment as to whether information was withheld or whether the applicant had an ulterior motive was irrelevant.

Mr. Dignam stressed the importance of looking at the statutes and County guidelines when making a decision.

In response to a question from Mr. Becker regarding the additional information on logging volume and whether it was provided to confirm the forest income test, Mr. Kendall said the additional information had been added to show that the 67 acre parcel had been included in the forest income test.

Mr. Becker said he had asked that very question in the previous public hearing and had been informed by the applicant that the records of previous owners were confidential.

Mr. Becker expressed his frustration with the information submitted by the applicant.

Mr. Becker stressed that he was not saying that anyone purposely provided erroneous information but stressed his frustration with the information provided by the applicant.

Mr. Zdzienicki quoted Lane Code Chapter 13.050(13)(b): *“When lots are parcels or parcels are to be served by individual water systems, sufficient evidence shall be submitted that each lot or parcel will have available at time of development an adequate supply of potable water.”* He noted that one test well had been drilled for the entire 320 acres and questioned whether a test was needed for each of the lots that the property was broken into.

Mr. Kendall said proof would be needed for each lot at the time of the proposed lot layout for a subdivision development but, at the time of the plan amendment phase, the applicant simply had to prove that there was adequate water. He noted that he had given the information submitted by the applicant to the State Water Master who had agreed with the conclusion that the land had adequate water.

Mr. Zdzienicki said he had re-read those statements and commented that there were inconsistencies in the statements made. He added that during the public hearing nearby property owners, opposed to the application, commented on the lack of water in the area.

Mr. Kendall said the commission could make its own decision on the matter but noted that staff had made the conclusion that there was an adequate volume of water. He said adequate water for each lot would be established during the subdivision process.

Ms. Esty said deliberation would be difficult since the information on the record was ambiguous. She suggested that the planning commission should abstain from voting on the matter.

Mr. Kendall said that was an option but suggested that if the information in the record was insufficient for the needs of the planning commission then the applicant had failed to meet its burden of proof and the proposal should be denied.

In response to a question from Mr. Dignam regarding whether Mr. Kendall could see any reason to deny the application based on the water availability study, Mr. Kendall said he could not.

In response to a question from Mr. Dignam regarding staff's recommendation for denial, Mr. Kendall said he had based his recommendation on the need for information on whether a livestock operation had also operated on nearby and adjacent lands and if so how much gross income had been realized.

In response to a question from Mr. Dignam regarding what would happen if that information was unavailable, Mr. Kendall said that there are corporate history documents available and remarked that there was no documentation in the record to show that a reasonable attempt had been made to contact the cattle company that had operated on the land during the time of the Marginal Lands Analysis.

In response to a question from Mr. Becker regarding the reason why the applicant had asserted during the previous public hearing that the land had not contributed anything toward agricultural or forestry production, Mr. Kendall said one of the affidavits on the record had stated that there was no farm use on the property. He said one of the revised affidavits had also described limited farm use on the property.

Mr. Dignam commented that it was certainly possible that new information came up after further analysis by the applicant and stressed that this did not mean that the applicant was aware of the information during the previous public hearing.

In response to a question from Mr. Zdzienicki regarding the original date of the application, Mr. Kendall said the date was September 15, 2004.

In response to a question from Ms. Arkin regarding marginal land law and whether it was actual income information that was needed or potential to produce, Mr. Kendall said actual income for a farm operation and potential income for forestry.

In response to a question from Ms. Arkin regarding whether someone could have had a farm operation and decided not to farm, Mr. Kendall said if there was no farm use taking place during the time in question then it would pass that portion of the Marginal Lands test. He stressed the importance of using the facts in the record to make a decision.

Ms. Arkin said she was trying to reconcile the 1982 application to rezone from forest to agricultural land and the current application to have the land rezoned as marginal lands. She noted that the previous owner had believed that the land could support a farm operation.

Mr. Zdzienicki noted that the owner of the cattle operation that had been run on the land had opined that the land was suitable for a farm operation.

Mr. Carmichael said he was dividing the application into four sections for deliberation.

- Credibility of the Application

Mr. Carmichael said the application was well thought out and expressed his confidence that every effort had been made to provide ample information and bring in expert testimony to address the issues associated with the rezoning. He acknowledged that the information had been submitted in a piecemeal fashion but stressed that the information was submitted and congratulated the applicant for supplying the new material that had come to light.

- Water Availability

Mr. Carmichael noted that there was expert testimony saying that there was ample water but acknowledged that the testimony of adjacent and nearby residents that there was not enough water. He said his inclination was to trust the people who lived around the area.

- Forrest Income Test

Mr. Carmichael said there were questions as to whether the land in question was adequate land for a forest operation.

- Open litigation with Carver

Mr. Carmichael said he wished he knew how the litigation would result because that would be pivotal in his decision on this particular case.

Mr. Carmichael said he would not vote to support the application.

In response to a question from Mr. Becker regarding whether the applicant had actually brought forth the issue of grazing cattle on the land or whether that had been brought up by another group, Mr. Kendall stated the sequence of events was that staff had discovered a previous re-zoning application in the supplemental material and added that one of the neighbors had also submitted information during the open record period that raised the same issues.

Mr. Becker said he would not support the application because the applicant had said there was no forestry or agricultural operations during the period of the marginal lands analysis and the actual fact had turned out differently.

Mr. Zdzienicki said he was concerned over the credibility of the applicants and their experts. He raised concern over the availability of water on the land in question.

Ms. Esty said it would be better to deny the application but to have the people involved learn from the process in hopes that they would re-apply.

Mr. Kendall noted that there would be a clean slate when the matter went before the Board of Commissioners but noted that all the material in the record would be available to the board.

Ms. Arkin said the land in question was valuable. She said the evidence showed that the land had the potential to produce as valuable agricultural or forestry land. She said the burden of proof for marginal lands had not been met.



Mr. Dignam said the applicant had met the requirements of ORS 197.247. He said he placed his faith on technical ability and said the forester who testified was highly qualified. He expressed his belief that the applicant had met the requirements of the forestry income test. He added that the State Water Master had concluded that there was adequate water. He doubted that the owner would lease land for \$1,000 per year if the land had the potential to produce significantly more than that. He said all of the evidence on record for the farm income test showed that the requirements had been met. He stressed that if the farm and forest income tests had been met then the application met the requirements of ORS 197.247. He said the Lane County Planning Commission should follow the guidelines established by Lane County. He said he would support the application if a motion were made.

Mr. Becker, seconded by Ms. Arkin, moved to deny the application. The motion passed 5:1 with Mr. Dignam voting in opposition.

The meeting adjourned at 8 pm.
(Recorded by Joe Sams)



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February 15, 2005

Lane County Planning Commission

RE: Lane County File #PA 04-6092, Dahlen; Response to Goal One Coalition Letter dated February 9, 2005

Members of the Planning Commission:

In conjunction with my Forest Productivity Analysis, completed in December, 2003, I have enclosed the following written response to a letter written by Jim Just of Goal One Coalition, dated February 9, 2005. I have addressed each issue as presented in the letter, most of which I have already addressed in my analysis. I am answering these questions as a qualified, Society of American Foresters Certified Professional Forester (#2953), with 27 years of experience including 17 years as a consultant, with Bachelor of Science (Cal Poly, SLO) and Master of Forestry (Oregon State) Degrees. As a consultant I have extensive experience in drawing up forest management plans, handling the administration of these plans and the merchandising of logs to maximize the return to my clients.

Following are responses to questions raised in Goal One Letter:

Mr. Just states (in his most recent letter, dated February 9, 2005) that my report does not contain a cf/ac/yr rating for the subject property, nor reveal how the conclusion is reached that the property cannot produce 85 cf/ac/yr of merchantable timber. Therefore, I will **repeat** what was in my **original report** and the **subsequent followup analysis**, which was presented to supplement the original report. Apparently Mr. Just did not read any of my reports.

In my original analysis I stated that the Land Management Division of Lane County had previously determined that the above described parcel does not produce more than 85 cu.ft./ac./yr., the standard used to determine if the land meets the criteria for marginal lands status (see letter to Jim Belknap from Jerry Kendall dated October 14, 2003).

Mr. Just previously asserted that just because the NRCS data has no productivity figures does not mean that productivity is zero. Several soils present on the parcel have no rating in the 1997 NRCS soils data. Therefore I used data from the Lane County "Green Sheet" and the State Forester memorandum of January 27, 1989, as well as data presented by Mr. Just to compile the following tables presented below that are in the record as attachments to my supplemental analysis of February 23, 2004.

That supplemental data was included in my response to Goal One Coalition's February 5, 2004, letter, in which Mr. Just made all of the **same statements** he made in his February 15, 2005 letter.

All of the ratings shown below are from Exhibits previously included in my original analysis and/or responses to previous Goal One Letters. Most of these ratings have been presented **several** times. Mr. Just also states that I have only provided data for 78.561 acres. I believe he obtained this acreage from the first table shown below. This was the original table presented by Mr. Belknap in the subdivision application. In response to Goal One's assertion (in the February 5, 2004 letter) that zero cannot be used, I compiled five more tables, using data from several SCS (now NRCS) soils tables.

DEC 28 - 12 PM.



Using 1997 Lane County Soil Ratings for Forestry and Agriculture (NRCS Data). This table was presented in the original subdivision application and was not prepared by me.

Soil Unit	Acres	Species	Site Index	Cf/Ac/Yr	Total Cu.Ft. Productivity
28C	79.842	DF	NA	none	0
41C	12.157	DF	109	152	1,847.864
43C	10.161	DF	NA	54	548.694
43E	28.514	DF	NA	63	1,796.382
52D	13.864	DF	NA	none	0
78	15.009	DF	NA	none	0
102C	34.574	DF	NA	none	0
105A	11.637	DF	NA	none	0
108C	9.746	DF	NA	none	0
113C	0.371	DF	107	149	55.279
125C	9.042	DF	NA	none	0
125D	3.950	DF	NA	none	0
135E	27.358	DF	110	154	4,213.132
138E	27.256	DF	NA	none	0
138G	<u>37.011</u>	DF	NA	none	<u>0</u>
	320.492				8,461.351

Total - 8,461.351 cu.ft. ÷ 320.492 ac. = 26.401 cf./ac./yr.

Using Lane County "Green Sheet" Soil Ratings (SCS Data).

Soil Unit	Acres	Species	Site Index	Cf/Ac/Yr	Total Cu.Ft. Productivity
28C	79.842	DF	NA	40	3,193.680
41C	12.157	DF	97	130	1,580.410
43C	10.161	DF	NA	45	457.245
43E	28.514	DF	NA	45	1,283.130
52D	13.864	DF	NA	40	554.560
78	15.009	DF	125	184	2,761.656
102C	34.574	DF	NA	45	1,555.830
105A	11.637	DF	NA	45	523.665
108C	9.746	DF	NA	45	438.570
113C	0.371	DF	102	140	51.940
125C	9.042	DF	NA	30	271.260
125D	3.950	DF	NA	30	118.500
135E	27.358	DF	110	154	4,213.132
138E	27.256	DF	NA	70	1,907.920
138G	<u>37.011</u>	DF	NA	70	<u>2,590.770</u>
	320.492				21,502.268

Total - 21,502.268 cu.ft. ÷ 320.492 ac. = 67.091 cf./ac./yr.

Using Office of State Forester Forest Soil Ratings Memorandum (SCS Data).

Soil Unit	Acres	Species	Site Index	Cf/Ac/Yr	Total Cu.Ft. Productivity
28C	79.842	DF	NA	40	3,193.680
41C	12.157	DF	120	115	1,398.055
43C	10.161	DF	NA	45	457.245
43E	28.514	DF	NA	45	1,283.130
52D	13.864	DF	NA	40	554.560
78	15.009	DF	159	169	2,536.521
102C	34.574	DF	NA	45	1,555.830
105A	11.637	DF	NA	45	523.665
108C	9.746	DF	NA	45	438.570
113C	0.371	DF	131	131	48.601
125C	9.042	DF	NA	30	271.260
125D	3.950	DF	NA	30	118.500
135E	27.358	DF	160	170	4,650.860
138E	27.256	DF	90	70	1,907.920
138G	<u>37.011</u>	DF	90	70	<u>2,590.770</u>
	320.492				21,529.167

Total - 21,529.167 cu.ft. ÷ 320.492 ac. = 67.175 cf./ac./yr.

Selecting the highest productivity figures from the three tables presented.

Soil Unit	Acres	Species	Site Index	Cf/Ac/Yr	Total Cu.Ft. Productivity
28C	79.842	DF	NA	40	3,193.680
41C	12.157	DF	109	152	1,847.864
43C	10.161	DF	NA	54	548.694
43E	28.514	DF	NA	63	1,796.382
52D	13.864	DF	NA	40	554.560
78	15.009	DF	125	184	2,761.656
102C	34.574	DF	NA	45	1,555.830
105A	11.637	DF	NA	45	523.665
108C	9.746	DF	NA	45	438.570
113C	0.371	DF	107	149	55.279
125C	9.042	DF	NA	30	271.260
125D	3.950	DF	NA	30	118.500
135E	27.358	DF	160	170	4,650.860
138E	27.256	DF	90	70	1,907.920
138G	<u>37.011</u>	DF	90	70	<u>2,590.770</u>
	320.492				22,815.490

Total - 22,815.490 cu.ft. ÷ 320.492 ac. = 71.189 cf./ac./yr.

Selecting the highest productivity figures from all tables, then including ponderosa pine figures (with no exhibits to show where this figures came from) as presented by Mr. Just, in his February 5, 2004 letter.

Soil Unit	Acres	Species	Site Index	Cf/Ac/Yr	Total Cu.Ft. Productivity
28C	79.842	DF	NA	40	3,193.680
41C	12.157	DF	109	152	1,847.864
43C	10.161	DF	NA	54	548.694
43E	28.514	DF	NA	63	1,796.382
52D	13.864	PP	92	113	1,566.632
78	15.009	DF	125	184	2,761.656
102C	34.574	DF	NA	45	1,555.830
105A	11.637	DF	NA	45	523.665
108C	9.746	PP	104	141	1,374.186
113C	0.371	DF	107	149	55.279
125C	9.042	DF	NA	30	271.260
125D	3.950	DF	NA	30	118.500
135E	27.358	DF	160	170	4,650.860
138E	27.256	DF	90	70	1,907.920
138G	<u>37.011</u>	DF	90	70	<u>2,590.770</u>
	320.492				24,763.178

Total - 24,763.178 cu.ft. ÷ 320.492 ac. = 77.266 cf./ac./yr.

Selecting the highest productivity figures from all tables, then including ponderosa pine figures from the Office of State Forester Forest Soil Ratings Memorandum (SCS Data).

Soil Unit	Acres	Species	Site Index	Cf/Ac/Yr	Total Cu.Ft. Productivity
28C	79.842	DF	NA	40	3,193.680
41C	12.157	DF	109	152	1,847.864
43C	10.161	DF	NA	54	548.694
43E	28.514	DF	NA	63	1,796.382
52D	13.864	PP	92	88	1,220.032
78	15.009	DF	125	184	2,761.656
102C	34.574	DF	NA	45	1,555.830
105A	11.637	DF	NA	45	523.665
108C	9.746	PP	104	110	1,072.060
113C	0.371	DF	107	149	55.279
125C	9.042	DF	NA	30	271.260
125D	3.950	DF	NA	30	118.500
135E	27.358	DF	160	170	4,650.860
138E	27.256	DF	90	70	1,907.920
138G	<u>37.011</u>	DF	90	70	<u>2,590.770</u>
	320.492				24,114.452

Total - 24,114.452 cu.ft. ÷ 320.492 ac. = 75.242 cf./ac./yr.

Mr. Just states I have excluded 242 acres from my calculations. From the tables presented above, it can be seen that **all** of the acreage on the parcel has been included.

All of these tables presented show the subject property produces less than 85 cu. ft./ac./yr. of "merchantable" timber volume. This has been determined by Lane County, and the State of Oregon, to be the measuring parameter for marginal soils.

After stating that an alternative method (to NRCS data and/or Dept. of Forestry methodology) for determining productivity cannot be used, Mr. Just presents estimates of cf/ac/yr data, including productivity numbers with no supporting data. Mr. Just also uses ponderosa pine data from the publication *Establishing & Managing Ponderosa Pine in the Willamette Valley*. In that publication the authors **clearly state** it is preliminary information without a large enough data base to be statistically accurate. The authors further state that use of this data should keep in mind that it was derived, in most instances, from only **one** study site.

Mr. Just has compiled his table from multiple sources, including figures from the 1990 Office of State Forester Memorandum, General File 7-1-1. He has used these figures after **stating** in an earlier rebuttal letter to Lane County (see Lane County File #PA 02-5838, Ogle), that **this file does not exist**.

Mr. Just then presents a table showing the productivity of the parcel to be 71 cf/ac/yr. This brings the total number of tables presented to seven; **all of these tables show conclusively that the parcel will not produce 85 cf/ac/yr.**

Mr. Just then addresses the subject of income calculations for the parcel. He states that I show no report of field plots taken. I walked through the clearcut areas, now growing scattered seedlings, and took 1/10th acre plots, counting the stumps in the plot circle. I then obtained the average number of stumps per plot by dividing the total number of stumps by the total number of plots, giving me an average of 4.86 stumps per plot. I then multiplied that number by 10 (because the plots taken were **1/10th** of an acre) to arrive at a per acre figure; this number is 48.6 stumps per acre, which corresponds to 48.6 trees per acre. I rounded this figure up to 50 trees per acre for my analysis. This method for determining the number of trees per acre is **standard** procedure for calculating stocking levels. The only variation in this procedure is the size of the plot. It is not a methodology for determining forest productivity.

Mr. Just then states that this methodology does not assess the potential productivity of the soils, or reflect reasonable forest management, as it assumes that the existing stocking rate is identical to the potential stocking rate. The stands that existed before the parcel was logged were established by natural regeneration. While management of the stands could **possibly** increase the stocking levels, and therefore the productivity, it is by no means certain. The current stocking levels are even lower than the previous stands, and the parcel was planted after the logging activities. However, the planted seedlings have suffered a high mortality rate. At this point the next thing to do would be to replant, ideally spray for brush and grass control, and continue to carry out other management activities for stand improvement. Even carrying out these activities does not **guarantee** that a fully stocked stand will become established. The seedlings are competing with grass, brush and animals to grow. The soils are poor and the south and west slopes are extremely dry in the summer months, with moisture being a severe limiting factor on this site.

This brings us to the reason so few soils have site index ratings in Lane County's data base. The productivity of the soil itself is only **one** determining factor of a soil's potential site index rating. Other factors include aspect, ground water levels and moisture content, rainfall amounts, temperature averages and variations, slope and elevation. These are the reasons that growth and/or productivity of a tree species growing in a specific soil type are a **reflection** of **all** of the site conditions, not just the soil itself.

Establishing a site index, for a particular soil type, requires large amounts of data from many sites. Collecting this data from high site soils is generally easier than collecting this data from low site soils. The simple reason for this is that stands of trees, and **fully stocked stands**, are relatively easy to find in areas of high site indexes and collect data on. The soil data tables reflect this; most high site soils include a site index number.

This is not the case for poor soils and sites. Poorer sites rarely grow fully stocked stands, and in many cases barely grow trees, making the collection of good data extremely difficult. Stands on south slopes generally consist of widely spaced conifers intermixed with hardwoods. In most cases there is simply not enough moisture to support a fully stocked stand. The existing trees are competing for the limited resources; the end result is fewer trees per acre than a hypothetical fully stocked stand.

The variation within a particular soil type can be large. Given the same soil, trees on a north slope will grow faster than trees on a south slope; trees in an area of high rainfall will grow faster than trees in an area of low rainfall. A good example of this is in the coast range. Trees on the western slopes will grow faster than trees on the eastern slopes in the "rain shadow"; **growing in the same soil type**. Ground water dramatically effects tree growth, in most cases negatively. Two examples of this are Douglas-fir and ponderosa pine. Both of these species grow poorly, with high mortality rates in saturated soils, and/or swampy areas, with high water tables. These conditions exist throughout the lower elevations of the Dahlen parcel. In summation, trees must be able to use available moisture for growth. Just because moisture is present does not always mean it will increase a tree's growth.

These are all of the reasons that a site index number applied to a particular soil is an **average** site index number for the soil type in question. This is why there are many soil types with no site index numbers, simply because not enough data has been collected to assign a site index number to that particular soil type.

For all of the reasons discussed above it is extremely difficult to define the **potential** productivity of one particular soil type. Tables printing potential productivity assume that particular conditions exist within that soil type and a fully stocked stand of healthy trees exists. This does not mean that the projected growth is guaranteed, hence it is called **potential** productivity. This is the reason for boring site trees, calculating stocking levels and measuring the volume (productivity) of trees growing on a specific site. Since tree growth reflects only the potential of the **specific** site they are growing on, the site index obtained from these measurements cannot be applied across the board to a particular soil type.

This is particularly difficult when considering the use of "reasonable management practices" to establish fully stocked stands, capable of achieving the maximum "potential" productivity. As a practicing forester, I have planted lands similar to the Dahlen parcel, in the same soil types, over and over, in an attempt to establish a fully stocked stand. In a high percentage of cases I have not been able to establish a **poorly** stocked stand, due to factors such as drought years and high summer temperatures, particularly on grassy south to southwest aspects similar to the Dahlen parcel. It is especially difficult to establish trees in natural and/or "native" grasslands, because grass is such a fierce competitor for moisture. It is equally difficult to establish trees in swampy wet low areas which appear to be ideal for trees.

An additional note on "reasonable forest management". Mr. Just repeatedly states I have not used or reflected ideas of reasonable forest management. Activities proposed by him would be prohibitively expensive and in many cases would not work regardless. As a practicing forest consultant and forest manager, there is a limit to how much time, effort and money can be spent, and still be considered "reasonable forest management". Timber companies and small woodlot owners cannot spend unlimited amounts of the three mentioned resources. Timber companies operate with long term profits in mind; most small woodland owners do to. While there may be some small woodland owners who manage their forest as a hobby, and operate at a loss, the majority of small woodland owners simply do not have the money to operate in the red. In **no** instance would a prudent forest manager consider losing money to "reasonable forest management".

For all of the above discussed reasons, there are soil types on parcels which cannot achieve the maximum predicted potential productivity. This is the reason that all sites are looked at individually.

CONCLUSION:

An aerial photo history of the property (see Exhibits 1-5) shows many areas of the Dahlen parcel which have not grown any trees in the past 54 years. Historical photos of adjoining properties, as well the subject parcel, show large areas of the southwest hills of Eugene without trees as far back as 1936. One could also make the logical assumption that if no trees existed in 1936, there was most likely a period of time, prior to the photo being taken, when no trees existed as well. Most of these areas have been, and are currently, thin, rocky soils, which are incapable of supporting anything other than grass and the occasional small, scrub oak. Conifers need a soil depth deep enough to support a root system. While the occasional stunted tree can be found growing from a rock cliff, it is not a rapidly growing, productive tree and it is certainly not growing within a fully stocked stand. From many years of experience planting trees, supervising the planting of trees and advising clients, I can state that **there are** areas where establishing a fully stocked stand is impossible. This is especially true in the south hills of Eugene, where large areas have existed as grassland, and/or grassland/mixed oak savannah, for decades.

For purposes of the income capability, the parcel must have been managed during three of five calendar years preceding January 1, 1983. The income generated from a forest operation during that time period must be \$10,000 per year or more. With large areas of the Dahlen parcel devoid of trees, particularly in areas of the Witzel soil (soil type 138) and Chehulpum silt loam (soil type 28), it was not possible during the time period in question to generate \$10,000 per year in income from a forest operation. Another soil type devoid of trees on the Dahlen parcel is the McAlpin silty clay loam (soil type 78). There is too much ground moisture in the area underlain by this soil type. Most conifers cannot tolerate a high water table. All of the above mentioned soils have a rating of none in the 1997 NRCS data. The figures for cubic foot productivity which I used came from older data tables and are **estimates** of **potential** productivity, possible **only** site conditions are conducive to tree growth. The same conditions described above exist today; as a consequence there are **still** no trees in these areas. Nothing has changed, a forest operation could not generate \$10,000 per year in income during the time period in question and can still not generate income from a forest operation today.

For all of the above reasons, combined with 27 years of professional experience and years of trying to manage sites similar to this, I have typed 104 acres of the Dahlen parcel as being incapable of establishing fully stocked stands of productive "**merchantable**" timber. All of the data for my projections are in my original analysis; I will not repeat them here.

Sincerely,

