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AGENDA COVER MEMO



DATE: May 29, 2007 (Date of Memo)
June 13, 2007 (Date of Meeting)

TO: Lane County Board of Commissioners

DEPT.: Public Works Department

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

PRESENTED BY: Thom Lanfear, Associate Planner, Land Management Division

AGENDA ITEM TITLE: Order No. 07-_____ In the Matter of Electing Whether or Not to Hear Arguments on an Appeal of a Hearings Official's Decision Denying a Request to Change the Zoning of 38 acres of a 118-acre Parcel From Non-Impacted Forest Lands (F-1) to Impacted Forest Lands (F-2) as Provided by Lane Code 16.252. (file PA 06-6054 / Dockum)

I. MOTION

MOVE TO ADOPT THE ORDER ESTABLISHING THE BOARD'S ELECTION TO NOT HEAR ARGUMENTS IN AN APPEAL OF THE HEARINGS OFFICIAL'S DECISION AND TO AFFIRM THE HEARINGS OFFICIAL'S INTERPRETATION OF LANE CODE ON THE RECORD.

II. ISSUE OR PROBLEM

An appeal to the Board contesting a Hearings Official decision has been received by the Director. The decision denies a request to change the zoning of 38 acres of a 118-acre parcel from Non-Impacted Forest Lands (F-1) to Impacted Forest Lands (F-2) as provided by Lane Code 16.252. Pursuant to Lane Code 14.600, the Board must now decide whether or not to hear the appeal by applying criteria set forth in the Code.

III. DISCUSSION

A. Background

1. The property, hereafter referred to as the "subject property," is located north of Noti on Poodle Creek Road. It can be identified as tax lot 3800, assessor's map 16-06-00. The subject property is located within the Rural Comprehensive Plan boundary. It is 118 acres in size and is zoned Non-Impacted Forest Lands (F-1) on Zoning Plot 138A.
2. In the form of application PA 06-6054, Floyd & Connie Dockum submitted an application in June of 2006 to Lane County to change the zoning of a 118-acre parcel from Non-Impacted Forest Lands (F-1) to Impacted Forest Lands (F-2) as provided by Lane Code 16.252. The applicant revised the request on October 23, 2006 to rezone only a 38-acre portion of the property to F-2.

3. The Hearings Official hearing was held on November 16, 2006. The record was left open for new submittals until November 27 to allow the submittal of additional information and evidence by any party. It was followed by a one week period to allow responses to the new material in the record. Final rebuttal by the applicant was allowed until December 11, 2006.
4. On March 29, 2007, the Hearings Official issued a decision which denied the request for a rezoning of a 38-acre portion of the subject property from Non-Impacted Forest Lands (F-1) to Impacted Forest Lands (F-2).
5. A timely appeal of the Hearings Official decision was filed by the applicants, Floyd & Connie Dockum on April 9, 2007. On April 12, the Hearings Official affirmed his decision.

B. Elective Board Review Procedure

The Elective Board Review Procedure in Lane Code 14.600(2)(c) and (d) provides the Board with three options:

- To hear the appeal on-the-record,
- To not hear the appeal and to remain silent on the Hearings Official's decision, or
- To not hear argument in the appeal but to expressly agree with any interpretations of the comprehensive plan policies or implementing ordinances made by the Hearings Official in the decision being appealed and affirm the Hearings Official's decision.

The applicable subsections of Lane Code are:

LC14.600(2)(c) The Board shall specify whether or not the decision of the Board is to have a hearing on the record for the appeal and shall include findings addressing the decision criteria in LC 14.600(3) below. If the Board's decision is to have a hearing on the record for the appeal, the Board order shall also specify the tentative date for the hearing on the record for the appeal and shall specify the parties who qualify to participate in the hearing on the record for the appeal.

LC14.600(2)(d) If the decision of the Board is to not have a hearing, the Board order shall specify whether or not the Board expressly agrees with or is silent regarding any interpretations of the comprehensive plan policies or implementing ordinances made by the Hearings Official in the decision being appealed. The Board order shall affirm the Hearings Official decision.

If the Board's decision is to hear arguments on the appeal, then the Board must adopt an Order and findings specifying the tentative date for a hearing and the parties who qualify to participate in a hearing on the record for the appeal. Such an Order is not attached here and will need to be produced if the Board elects to hear.

In order for the Board to hear the appeal, the Decision Criteria of LC 14.600(3) requires that one or more of the four criteria cited below, be satisfied:

(3) ***Decision Criteria.*** A decision by the Board to hear the appeal on the record must conclude the issue raised in the appeal to the Board could have been and was raised before the close of the record at or following the final evidentiary hearing and must comply with one or more of the following criteria:

- a) *The issue is of Countywide significance.*
- b) *The issue will reoccur with frequency and there is a need for policy guidance.*
- c) *The issue involves a unique environmental resource.*
- d) *The Planning Director or Hearings Official recommends review.*

C. Analysis.

Character of the Appeal.

The issues raised in the appeal include disagreement with the Hearings Official decision with regards to the following items:

- application and interpretation Goal 4 Policy 15 as adopted by the Board in Ordinance PA 1236 (Symbiotics);
- application of the Lane Code definitions;
- analysis of the evidence in the record; and
- procedural errors regarding evidence, applicable definitions, and findings of fact.

The appellant has identified seven (7) assignment of error in the appeal submittal:

FIRST ASSIGNMENT OF ERROR

The Hearings Official erred by not correctly applying the clear and explicit findings adopted by the Board of Commissioners in Ordinance P A-1236 as they relate to the definition of the term "ownerships" in Goal 4, Policy 15 of the Lane County Rural Comprehensive Plan. The Hearings Official exceeded his authority by generating and applying a new interpretation that is not found in the law. The appropriate definition can be found in the findings for PA-1236 (see pages 8-10 of Exhibit C for PA-1236). Here it states that the term "ownerships" as used in Policy 15 should include "only the land being proposed for rezoning." This definition is re-affirmed in PA-1236 under findings related to Policy 15(b)(2) (see page 11 of Exhibit C for PA-1236) where F-2 zoning is applied to a 37.5-acre portion of a larger 970-acre parcel.

The Hearings Official states that the Board's definition should not apply in the current case because "geography and usage" are not the same as in PA-1236. However, geography and usage are not relevant to the characteristic in Policy 15(b)(2), which is land area.

Using the definition approved by the Board in Ordinance PA-1236, the ownership consists of the 38.7 -acre subject property and results in a finding under Policy 15(b)(2) that the characteristics of the land for the subject property correspond more closely to those of the proposed F-2 zoning. This conclusion is supported by the Staff Report, the Land Use Application, and by supplemental testimony submitted into the record by the Applicant's representative on December 5, 2006.

SECOND ASSIGNMENT OF ERROR

The Hearings Official erred by not correctly tabulating properties contiguous to the subject property. In applying the characteristic in Policy 15(b)(3), the Hearings Official incorrectly omits all properties to the south of the subject property. Property south of the subject property includes tax lot 101, a 1.58-acre parcel zoned RR-5 and containing a dwelling. Depending on which of the two possible interpretations of the Lane Code definition for "contiguous" presented in the Application is applied, from one to four additional properties are contiguous to the south side of the subject property (see Application pages 14-15 and Table 3 on page 16).

We believe that properties on the south side of Poodle Creek Road are contiguous to the subject property according to the definition for "contiguous" in LC 16.090. This includes tax lots 100, 102, 103, and 105. This interpretation results in a total of nine properties that are contiguous to the subject property.

The only other possible interpretation of the definition for "contiguous" is that the roadway itself constitutes property and that the subject property is therefore contiguous to a road. In this case the road must be counted as one of the contiguous properties. This alternative interpretation results in a total of six properties that are contiguous.

THIRD ASSIGNMENT OF ERROR

The Hearings Official erred in his application of Policy 15(b)(3) by ignoring evidence in the record showing that contiguous tax lots 3900 and 3901 are not being "utilized for commercial forest or commercial farm uses."

The Hearings Official relied solely on the "forest deferral" tax status of tax lot 3900 to conclude that this property was being utilized for commercial forest uses. In doing so, he ignored evidence in the Application describing land uses in the surrounding area (see Application, page 10) and also ignored evidence submitted into the record as supplemental testimony by the Applicant's representative on December 5, 2006 (see page 3 of testimony).

As documented in the record, a forest tax deferral does not constitute evidence of commercial forestry, since no proof or evidence of forest management activity is required to obtain this tax status. The record shows that tax lot 3900 is being used by an archery club (Cascadian Bowmen) for wide range of club activities that do not include commercial forest uses. The record also shows that tax lot 3901 is a 7.8-acre parcel developed with a dwelling that has no tax deferral and is not being utilized for commercial forest or farm uses.

FOURTH ASSIGNMENT OF ERROR

The Hearings Official erred in his conclusion that, under the characteristic in Policy 15(b)(3), the subject property fits the characteristic of F-1 land.

As presented under the Second and Third Assignments of Error, there are nine properties that are contiguous to the subject property. These contiguous properties are listed in Table 3 (page 16) of the Application. Only two of the nine contiguous properties are being utilized for commercial forest or farm use. Therefore, the subject property does not meet the characteristic of F-1 land in Policy 15(b)(3).

Even if the more restrictive interpretation of "contiguous" used in the Staff Report is applied, only two of six contiguous properties are being utilized for commercial forest or farm use. Therefore, the subject property does not meet the characteristic of F-1 land in Policy 15(b)(3) regardless of which interpretation of "contiguous" is applied.

FIFTH ASSIGNMENT OF ERROR

The Hearing Official erred in his methodology by considering F -1 land characteristics separately from F-2 land characteristics and thereby double counting identical characteristics in Policy 15(b) and Policy 15(c).

As specified in Policy 15(a), the characteristics found in subsections (b) and (c) must be weighed together to make an overall determination as to whether the characteristics of the land correspond more closely to F-1 or to F-2 zoning.

The characteristic in Policy 15(b)(1) is whether or not the subject property is developed with a residence or non-forest use. Policy 15(c)(1) is merely the inverted statement of the same characteristic. Therefore, these two subsections, (b)(1) and (c)(1), are identical and to avoid double counting the same characteristic, they should be treated as a single characteristic. Similarly, the characteristic in Policy 15(b)(2) is identical to Policy 15(c)(2) and should also be treated as a single characteristic.

If the characteristics of the land are compared, and duplicate characteristics are not counted twice, the subject property meets five of the F-2 characteristics and only two of the F-1 characteristics of Policy 15 (see chart in Exhibit A). Therefore, the subject property most closely corresponds to F-2 impacted forest land and should be zoned accordingly.

SIXTH ASSIGNMENT OF ERROR

The Hearings Official failed to recognize the validity and purpose of split zoning in Lane County, in spite of the fact that it is expressly authorized in Goal 4, Policy 15 of the Lane County Rural Comprehensive Plan. Under Policy 15(a), it states that the "characteristics of the land" shall determine the appropriate zoning. The characteristics of the 38.7-acre subject property correspond closely to impacted F-2 land, and are very different than those of the remaining 80 acres which correspond closely to non-impacted F-1 land. The split zoning takes into consideration the different characteristic that exist. Contrary to statements by the Hearings Official, split zoning does not parcelize, subdivide or "carve up" the land (Decision, page 7). In this instance, split zoning achieves a primary purpose of land zoning: to promote compatibility and harmony among land uses.

SEVENTH ASSIGNMENT OF ERROR

The Hearings Official made procedural errors in the process of reaching his decision:

- The Hearings Official's decision introduces and applies new evidence that can not be found in the public record for the case. This new evidence consists of property ownerships, parcel acreage and farm/forest uses of parcels surrounding the subject property. The relevance, source and accuracy of this new evidence is not identified in the decision. Examples of evidence not found in the record include ownerships and lot sizes in Finding #3 and the land area of Poodle Creek Road in Finding #4.*

• *The Hearings Official makes four "findings of fact" in his decision, but fails to identify which findings apply to his conclusions, as required. The result is that the Hearings Official's conclusions do not appear to be adequately supported by facts in the record.*

• *The Hearings Official incorrectly applies two different definitions for the word "tract" as it is used in Policy 15(c)(3). He initially cites the Lane Code definition, but then cites and applies the definition found in the Oregon Revised Statutes. Only one definition can apply. The Rural Comprehensive Plan is Lane County law and the Lane Code interprets and implements the RCP. Therefore, the appropriate definition is the one found in Lane Code.*

If, pursuant to Lane Code 14.600(2)(d), the Board agrees with the Hearings Official's decision and affirmation of his decision, it is then appropriate not to hear arguments on the appeal and to adopt the attached Order affirming and adopting the Hearings Official's justification for the decision, findings of fact, and conclusions of law as written in his decision of March 29, 2007.

If on the other hand the Board concludes that further interpretation of issues raised in the appeal is necessary, then it is appropriate to schedule an on the record hearing as authorized by Lane Code 14.600(2)(c) and conducted pursuant to Lane Code 14.600. A new Order with Findings will be needed in lieu of the attached Order.

Analysis of Election to Hear Criteria.

Each Lane Code 14.600(3)(a)-(d) election-to-hear criterion is presented below with the Director's analysis.

a. *The issue is of Countywide significance.*

The issues raised in the appeal to the Board involving the application of Goal 4 Policy 15 to assign the appropriate forest zoning district (F-1 or F-2) to a particular property may be of Countywide significance. This Policy was the subject of interpretation by the Board of Commissioners in the adoption of Ordinance PA 1236 (Symbiotics). The issues on appeal are how to apply that Policy to allow the application of the forest zones in a split zoned fashion to rezone a subject property. The Hearings Official has distinguished this proposal from the Symbiotics application, determined that one forest zone must be applied to the entire subject property, and denied the applicant's request to zone a 38-acre portion of a 118-acre F-1 parcel to F-2. Given the amount of land in Lane County that is zoned Non-Impacted Forest Lands (F-1), the Board may want to hear this appeal to review the Hearings Official application of the Board interpretation of this Policy. If the Board decides to not hear the appeal, then the Board should specify in the Order that it adopts the Hearings Official interpretation of Goal 4 Policy 15.

The other issues raised in the appeal submittal are case specific and do not appear to rise to the level of Countywide significance.

b. *The issue will reoccur with frequency and there is a need for policy guidance.*

The application of Goal 4 Policy 15 to assign the appropriate forest zoning district (F-1 or F-2) to a particular property may reoccur with frequency. This Policy was the subject of interpretation by the Board of Commissioners in the adoption of Ordinance PA 1236

(Symbiotics). The Hearings Official has used the Board interpretations of Goal 4 Policy 15 to determine that one forest zone must be applied to the entire subject property and denied the applicant's request to rezone a 38-acre portion of a 118-acre F-1 parcel to F-2. The Hearings Official has applied the Board policy direction as articulated in Ordinance PA 1236 and determined that the particular fact pattern in this application warrants the retention of the F-1 Zone to the entire subject property. Hearing the appeal is appropriate if the Board wants to review the Hearings Official application of the policy. If the Board decides to not hear the appeal, then the Board should specify that it adopts the Hearings Official interpretations of Goal 4 Policy 15 found in the decision.

The other issues raised in the appeal submittal are case specific and do not appear to generate the need for policy guidance.

c. The issue involves a unique environmental resource.

No unique environmental resources have been identified in the appeal issues.

d. The Planning Director or Hearings Official recommends review.

Neither the Hearings Official nor the Planning Director recommends review of the appeal.

D. Options

1. To hear the appeal on the record;
2. To not hear arguments on the appeal and to remain silent on the Hearings Official's decision and interpretations; or
3. To not hear arguments on the appeal, affirm the Hearings Official's decision, and to expressly agree with any interpretations of the comprehensive plan policies or implementing ordinances made by the Hearings Official in the decision being appealed.

E. Recommendation

Option 3 is recommended.

F. Timing

If the Board elects to hear the appeal, a date for an on-the-record hearing will need to be established following adoption of an Order electing to hear.

IV. IMPLEMENTATION/FOLLOW-UP

Notify the parties of the Board decision to adopt the attached Order, or

If the Board elects to hear the appeal, a new Order and Findings will need to be prepared for adoption, and notice of a hearing given, as soon as possible.

V. ATTACHMENTS

1. Board Order electing to not hear the appeal, with Exhibits "A" (findings) and "B" (Hearings Official Decision, March 29, 2007 with affirmation of decision, April 12, 2007).
2. Appeal of Hearings Official March 29, 2007 decision, dated April 9, 2007, with arguments.
3. Maps illustrating location of property.

More background information can be supplied if needed. If an on-the-record appeal hearing is scheduled, a complete copy of the record with all evidence will be made available to the Board.

IN THE BOARD OF COMMISSIONERS OF LANE COUNTY, OREGON

Order No. (In the Matter of Electing Whether or Not to Hear
(Arguments on an Appeal of a Hearings Official's Decision
(Denying a Request to Change the Zoning of 38 acres of a
(118-acre Parcel From Non-Impacted Forest Lands (F-1) to
(Impacted Forest Lands (F-2) as Provided by Lane Code
(16.252. (file PA 06-6054 / Dockum)

WHEREAS, the Lane County Hearings Official has made a decision on application PA 06-6054;
and

WHEREAS, the Lane County Planning Director has accepted an appeal of the Hearings
Official's Decision to the Board of County Commissioners pursuant to LC 14.515; and

WHEREAS, the Lane County Hearings Official has affirmed his decision on applications PA
06-6054; and

WHEREAS, Lane Code 14.600 provides the procedure and criteria which the Board follows in
deciding whether or not to conduct an on the record hearing for an appeal of a decision by the Hearings
Official; and

WHEREAS, the Board of County Commissioners has reviewed this matter at a public meeting
of the Board; NOW

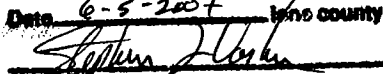
THEREFORE, BE IT ORDERED the Board of County Commissioners of Lane County finds
and orders as follows:

1. That the appeal does not comply with the criteria of Lane Code Chapter 14.600(3) and
arguments on the appeal should therefore not be considered. Findings in support of this
decision are attached as Exhibit "A".
2. That the Board of County Commissioners expressly agrees with the interpretations of the
comprehensive plan policies or implementing ordinances made by the Hearings Official
in the decision attached as Exhibit "B" and declines further review.
3. That the Lane County Hearings Official decision dated March 29, 2007, attached as
Exhibit "B" and incorporated here by this reference is affirmed and adopted by the Board
of County Commissioners as its final decision.

DATED this _____ day of June, 2007.

Faye Stewart, Chair
Lane County Board of County Commissioners

APPROVED AS TO FORM

Date 6-5-2007 Lane County

OFFICE OF LEGAL COUNSEL

FINDINGS IN SUPPORT OF THE ORDER

1. The property, hereafter referred to as the "subject property," is located north of Noti on Poodle Creek Road. It can be identified as tax lot 3800, assessor's map 16-06-00. The subject property is located within the Rural Comprehensive Plan boundary. It is 118 acres in size and is zoned Non-Impacted Forest Lands (F-1) on Zoning Plot 138A.
2. In the form of application PA 06-6054, Floyd & Connie Dockum submitted an application in June of 2006 to Lane County change the zoning of a 118-acre parcel from Non-Impacted Forest Lands (F-1) to Impacted Forest Lands (F-2) as provided by Lane Code 16.252. The applicant revised the request on October 23, 2006 to rezone only a 38-acre portion of the property to F-2.
3. The Hearings Official hearing was held on November 16, 2006. The record was left open for new submittals until November 27 to allow the submittal of additional information and evidence by any party. It was followed by a one week period to allow responses to the new material in the record. Final rebuttal by the applicant was allowed until December 11, 2006.
4. On March 29, 2007, the Hearings Official issued a decision which denied the request for a rezoning of a 38-acre portion of the subject property from Non-Impacted Forest Lands (F-1) to Impacted Forest Lands (F-2).
5. A timely appeal of the Hearings Official decision was filed by the applicants, Floyd & Connie Dockum on April 9, 2007. On April 12, the Hearings Official affirmed his decision.
6. In order for the Board to hear arguments on the appeal, Lane Code 14.600(3) requires one or more of the following criteria to be found by the Board to apply to the appeal:
 - *The issue is of Countywide significance.*
 - *The issue will reoccur with frequency and there is a need for policy guidance.*
 - *The issue involves a unique environmental resource.*
 - *The Planning Director or Hearings Official recommends review.*
7. The Board of Commissioners finds that the appeal involves a set of circumstances and a fact pattern particular to the subject property. The Board further finds no issues of Countywide significance raised in the appeal.
8. The Board of Commissioners finds that the issues associated with this appeal may reoccur within the County on occasion during the application of Rural Comprehensive Plan Goal 4 Policy 15 to requests for rezoning of Forest Lands. However, additional policy guidance from the Board is not necessary in that the Board is satisfied with the reasoning and findings of the Hearings Official with respect to the application of the RCP Policy. No further policy guidance from the Board is necessary at this time.
9. The Board of Commissioners finds that the subject property is not a unique environmental resource.
10. Neither the Planning Director nor the Hearings Official recommends review.

11. To meet the requirements of Lane Code 14.600(2)(b), the Board is required to adopt a written decision and order electing to have a hearing on the record for the appeal or declining to further review the appeal.
12. The Board has reviewed this matter at its meeting of June 13, 2007 and finds that the appeal does not comply with the criteria of Lane Code Chapter 16.600(3), and elects to not hold an on the record hearing.

BEFORE THE HEARINGS OFFICIAL OF LANE COUNTY, OREGON

**Final Order in PA 06-6054
Approving a Rezoning From F-1 to F-2**

The Lane County Hearings Official finds as follows:

1. The following application for a change of zone was accepted by the Lane County Land Management Division on June 9, 2006:

Floyd & Connie Dockum (PA 06-6054)
Portion of tax lot 3800, assessor's map 16-06-00
Approval of a change in zoning from F-1 to F-2
2. The application was initiated and submitted in accordance with Lane Code 14.050. Timely and sufficient notice of the zone change hearings under Chapter 14 of the Lane Code has been provided.
3. On November 16, 2006, a public hearing on the zone change request was held. The planning department staff notes and recommendation together with the testimony and submittals of persons testifying at the hearing have been considered and are part of the record of this proceeding.
4. Further consideration has been given to and administrative notice taken of the provisions of the Lane County Rural Comprehensive Plan and all applicable special purpose/functional plans, planning related policies and refinement plans.
5. On the basis of this record, the requested zone change, as modified, was found to be inconsistent with the applicable criteria set forth in Forest Lands Policy #15 of the Lane County Rural Comprehensive Plan and 16.252 of the Lane Code. This general finding is supported by the specific findings of fact and the conclusions of law set out in Exhibit A, adopted March 29, 2007, to this order.

NOW, THEREFORE, based upon the above findings and the record in this proceeding, IT IS HEREBY ORDERED THAT:

The application for rezoning is **denied**.

Denial dated this 29th day of March, 2007.

This action will become final and effective on the 10th day following the denial date above.

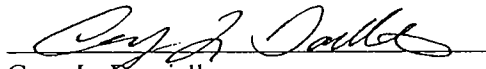

Gary L. Barnielle
Lane County Hearings Official

EXHIBIT A

LANE COUNTY HEARINGS OFFICIAL REQUEST FOR THE REZONING OF TAX LOT 104, ASSESSOR'S MAP 16-03-35

Application Summary

Floyd & Connie Dockum, P.O. Box 5176, Helena, MT 59601. Tax lot 3800, Assessor's Map 16-06-00. Request to change the zoning of 38 acres of a 118-acre parcel from Non-Impacted Forest Lands (F-1/RCP) to Impacted Forest Lands (F-2/RCP).

Parties of Record

Floyd & Connie Dockum	Becki Kammerling
Eban Fodor	Jan Wilson, Goal One Coalition
Lauri Segel, LandWatch Lane County	Nena Lovinger
Tom and Diana Larsen	Myriam Iribarren
Gary Hewitt	Bob Gresham
Mona Linstromberg	Frank Blair
Tom Larsen	

Application History

Hearing Date: November 16, 2006
(Record Held Open Until December 11, 2006)

Decision Date: March 29, 2007

Appeal Deadline

An appeal must be filed within 10 days of the issuance of a final order on this rezoning request, using the form provided by the Lane County Land Management Division. The appeal will be considered by the Lane County Board of Commissioners.

Statement of Criteria

LC 16.210
LC 16.211
LC 16.252
RCP Policies, Goal 4 (Forest Land)

Findings of Fact

1. The property subject to this application, hereinafter referred to as the "subject property," can be identified as tax lot 3800, Assessor's Map 16-06-00. The applicant proposes that the southern 38 acres of the subject property be rezoned to F-2 and that the residual 80 acres remain F-1. The subject property has a

perimeter of about 1670 feet, 626 feet of which is contiguous to a parcel of 80 acres in size or larger.

The subject property is comprised of sloping topography ranging from 4% to 20%. All timber was clear-cut harvested from tax lot 3800 in the spring of 1998 although it is not clear whether it was ever replanted. Eighty-one percent of this tax lot is occupied by soils with a forest capability range of 162–184 cu. Ft./ac./yr. and the soils of portion of tax lot 3800 to be rezoned to F–2 have a mean site site index for Douglas fir of between 155 and 165.¹ The property to the west, north and east are heavily forested.²

2. The subject property is not developed by a residence or nonforest use. Dusky Creek traverses the property in a northwest to southeast direction but is not classified as a Class I Stream within the Rural Comprehensive Plan. No wetlands or flood hazard areas are identified on the subject property by the National Wetlands Inventory and the Flood Insurance Rate Map (FIRM) respectively. The property is designated as Major Big Game Range (Deer and Elk Winter Range Habitat). Legal Lot status for the entirety of tax lot 3800 has been verified under PA 99–5790.
3. Properties contiguous to the subject property are as follows: To the north is tax lot 3700, a 159–acre parcel zoned F–1 owned by Paul and Norma Templeton. This property is under forest tax deferral. Contiguous to the subject property on the east and southeast, respectively, are tax lot 900, assessor’s map 16–06–28, a 78–acre parcel occupied with a residence, zoned E–40 and owned by Paul V. Templeton, and tax lots 3900 and 3901. Tax lot 3900 is zoned F–1, is 29.5 acres in size, and is under a small tract forestland tax deferral. It is owned by an archery club (Cascadian Bowmen). This company also owns tax lot 1100, assessor’s map 16–06–28, a 17.5 acre parcel adjacent to tax lot 3900 on the east. Tax lot 3901 is owned by Donald Meyer, is zoned F–1 and is 8.4 acres in size. It is occupied with a residence.

On the south, across Poodle Creek Road, are properties zoned Rural Residential RR–10 and RR–5. Tax lots 3601 and 3600, adjacent to the west of the subject property, are zoned Impacted Forest Lands (F–2) and are 30 and 60 acres in size, respectively, and are owned by the Evans Family Trust. These tax lots are under forest tax deferral.

Lane Code 16.090 defines “contiguous” as “having at least one common boundary line greater than eight feet in length.” By this definition, there are five parcels contiguous to the subject property as Poodle Creek Road makes the parcels to the south non–contiguous. Of the 13 tracts that are generally

¹ See attachment “B” (NRCS Soils Map for Property) of applicant’s submission .

² See aerial photograph of subject property taken 6/20/02, Attachment “A” of applicant’s submission.

contiguous³ to tax lot 3800, eleven are less than 80 acres in size and ten have a residence. These ten tracts occupied with a dwelling can be identified as tax lots 302, 101, 102, 103, 105, 100, assessor's map 16-06-32; tax lot 3901, assessor's map 16-06-00; and tax lots 1100, 900, and 500, assessor's map 16-06-28.

4. The subject property receives fire protection from Lane Rural Fire/Rescue District and police protection is by the Lane County Sheriff and Oregon State Police. Electricity is available from the Blachly Lane Cooperative and telephone service is provided by Qwest. The subject property is located within the boundary of the Junction City School District #69. An on-site well and septic tank are proposed.

Access to the subject property is from Poodle Creek Road, a Rural Major Collector. Lane County Roads Inventory⁴ (Pg B-53) lists Poodle Creek Road as having a paved surface of 26 feet and as being 6.77 miles in length. Lane Code 15.703(3)(a) lists the minimum right-of-way widths for rural arterial and collector roads shall be 80 feet in two-lane sections. At the minimum right-of-way, Poodle Creek Road is about 66 acres in area. The actual right-of-way width of Poodle Creek Road is not in the record.

5. Assessor's Map 16-06-00 is not listed in the Lane Manual 13.010(2)(a)(ii) as being water quantity limited.

Decision

THE DOCKUM REQUEST (PA 06-6054) FOR THE REZONING OF A PORTION OF TAX LOT 3800, ASSESSOR'S MAP 16-06-00, IS DENIED.

Justification for the Decision (Conclusion)

Lane Code 16.252(2) This section of the Code establishes the basic requirements for the proposed rezoning. Section 16.252(2) requires that rezoning be consistent with the general purposes of Chapter 16, not be contrary to the public interest, and be consistent with the purposes of the proposed zoning classifications and the Lane County Rural Comprehensive Plan elements.

A. Consistency with the general purposes of Chapter 16 of the Lane Code.

Lane Code 16.003 sets out 14 purposes of Chapter 16. Arguably, the only relevant purpose statement is found in Lane Code 16.003(4) that states:

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

³ "Generally contiguous" is defined as properties that share a common boundary, touch the subject property at a corner point, or are separated from the subject property by a road.

⁴ Appendix B of the Lane County Transportation System Plan

The proposed rezoning on the subject property would reduce the amount of land zoned F-1 by 32 percent and expose the remaining property zoned F-1 to the likelihood of an adjacent nonforest dwelling, the stated intent of the applicant. Commercial forest management of the 80-acre remainder would become more difficult, especially because access to that portion of the subject property would have to be through the rezoned portion. The applicant has not shown how the proposed rezoning is consistent with this general purpose statement of Chapter 16 of the Lane Code.

B. Not be contrary to the public interest.

The public interest is best expressed by the Rural Comprehensive Plan. The overall intent of the Forest Land policies is encourage the preservation of forest land, to properly characterize F-1 lands and to protect those lands through accurate zoning and through the consolidation of ownerships. The best determinate of the public interest is therefore a showing of consistency with Forest Lands Policy #15 of the Rural Comprehensive Plan, addressed below in "D."

C. Consistent with Sections 16.210 and 16.211 of the Lane Code.

The joint purpose of the F-2 and F-1 Districts is to implement the forest land policies of the Lane County Rural Comprehensive Plan and to conserve forest land for forest uses consistent with Statewide Planning Goal #4, OAR 660-006 and ORS 215.700 through .755. Consistency with the Lane County Rural Comprehensive Plan is addressed in "D," below.

OAR 660-006-0000(1) states that the purpose of the Forest Lands Goal is to conserve forest lands and to carry out the legislative policy of ORS 215.700. ORS 215.700 states a policy to provide certain owners of less productive land an opportunity to build a dwelling on their land and to limit the future division of and the siting of dwellings upon the state's more productive resource land. In the present case, the record indicates that the soils of the property to be rezoned have a uniformly high forest productivity rating and it contains no evidence that surrounding development has or will interfere with forest management practices on the either the property to be rezoned or tax lot 3800 as a whole.

For the above-described reasons, the proposed reconfiguration is not consistent with Sections 16.210 and 16.211 of the Lane Code.

D. Conformity with the Rural Comprehensive Plan.

The subject property is designated "Forest Lands" by the Rural Comprehensive Plan. Goal #4 Policies #15(b) and (c) describe the characteristics of F-1 and F-2

properties, respectively. Policy #15(a) implies that the zoning should reflect a conclusion that the characteristics of the land correspond more closely to the characteristics of the proposed zoning (F-2) than the characteristics of the other forest zone (F-2).

The Lane County Rural Comprehensive Plan contains several policies in the Goal Four element that apply to the proposed rezoning.

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

This policy appears to be advisory in nature and not directly applicable to the rezoning at hand.

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

This policy appears to make reference to the policies set forth in Policy 15.

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

- a. **A conclusion that characteristics of the land correspond more closely to the characteristics of the proposed zoning than the characteristics of the other forest zone. The zoning characteristics referred to are specified below in subsections b and c. This conclusion shall be supported by a statement of reasons explaining why the facts support the conclusion.**

The first issue, and one that is determinative to the success of this rezoning request, is the definition of the term "land." Relying upon the discussion of "ownership" in the Findings of Fact supporting Ordinance PA 1236,⁵ the applicant proposes, and the staff concurs, that the term "land" refers to the portion of the subject property that is proposed for rezoning. I do not

⁵ Ordinance PA 1236, adopted August 20, 2006 was supported by Findings of Fact that interpreted the provisions of Rural Comprehensive Plan Forest Lands Policy #15.

believe that this was the definition embraced by the Board of Commissioners. The term “ownerships” is used in Sections b. (1) – (3) and c. (1) – (3) of Policy 15. The question considered by the Board was whether the term described the environment (i.e. ownership pattern) around the subject property or the subject property itself. The Board determined that the latter interpretation was correct. For instance, in applying its interpretation of Policy 15.b.(1) to Planning Action (PA) 06–5476, the Board held that the phrase “*predominantly ownerships not developed by residences or non-forest uses*” was to be measured against the property to be rezoned and not whether property was, for instance, one of several properties of common ownership within a tract. This is consistent with a determination that the “subject property” is the “land” against which the characteristics of F–1 and F–2 properties must be measured against. However, tax lot 3800 is the smallest unit of “ownership” that is divisible absent the application of split zoning.

The findings supporting Ordinance PA 1236 expressly acknowledge that the application of Policy 15 may result in split zoning.⁶ I believe, however, that this interpretation must be read extremely narrowly in order to avoid the creation of a loophole that could threaten the viability of Non–Impacted Forest Land zoning throughout the county.

Tax lot 3800 is under single ownership and comprises one legal lot. A request for split zoning is inherently different from that of a situation where an entire parcel is subject to a rezoning request. The concept of split zoning, as applied by the applicant and sanctioned by staff, has the dangerous potential of allowing Non–Impacted Forest Land to be carved up through rezoning based upon geographical vagaries that do not take into account the commercial viability of the property as a whole.

For this reason and for reasons explained below, I believe that the Policy #15 analysis of appropriate forest zoning should be applied to the entirety of tax lot 3800.

b. Non-impacted Forest Land Zone characteristics:

- (1) Predominantly ownerships not developed by residences or nonforest uses.**

In the application of RCP Goal 4 Policy 15 in Ordinance No. PA 1236, the Board of County Commissioners interpreted the use the term “ownerships” to apply only to the property subject to the

⁶ See the last line of the second full paragraph of the Findings of Fact and Conclusions of Law (Ordinance PA 1236), pg. 8.

rezoning. However the Board seemed to leave open the possibility that the characteristics of forestland may warrant a different conclusion. Tax lot 3800 is not developed with a residence nor is it occupied by nonforest uses so regardless of whether the term "ownership" is applied to the entire parcel or the portion of tax lot 3800 subject to this rezoning request, this characteristic of Non-impacted Forest Land zoning is met.

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

Staff and the applicant have interpreted Ordinance No. PA 1236 to mean that the term "ownership" is to be applied to the portion of the subject property that is subject to the rezoning. I find this interpretation, in the context of this rezoning request, to be inconsistent with the plain language of Policy 15.b.(2), with the intent of Policy 15.a. and with the plain meaning of "contiguous."

Section (a) of Policy 15 requires that the rezoning inquiry examine whether the characteristics of the "land" correspond more closely to the characteristics of the proposed zoning than the characteristics of the other forest zone. To apply the term "contiguous, ownerships" to a portion of property that is otherwise a stand-alone, legal lot essentially makes the criterion meaningless. That is, there is no initial baseline from which to measure compliance as "contiguous ownerships" would be whatever size (and location) an applicant wishes the rezoned parcel to be. Further, despite the applicant's intent to carve up an otherwise homogeneous parcel, the bisected portions are still under the same ownership and still contiguous.

A statement crucial to the application of Policy 15.b.(2) is found on page 8 of the Findings of Fact and Conclusions of Law of Ordinance No. PA 1236.⁷ This statement is as follows (*emphasis mine*):

"We find that the term "ownerships" contained in the criteria of RCP Goal 4 Policy 15 should be considered as including only the land being proposed for rezoning (*unless other qualifiers in a particular characteristic compels a different result*) because of the introductory language in Policy 15 and that the finding constitutes a reasonable

⁷ Exhibit C., Findings of Fact and Conclusions of Law, Ordinance No. PA 1236 (August 20, 2006)

interpretation of the term “ownerships” as contained in that policy.”

Ordinance No. PA 1236 concerned the application of RCP Goal 4 Policy 15 to property that, because of an oversight, had no zoning. Further, the property subject to the rezoning was fundamentally different, both in terms of geography and usage, from the remainder of its contiguous ownership, which was essentially used as a reservoir and supporting facilities (dam). In the present case, tax lot 3800 is homogeneous in nature and there is little to distinguish the property subject to the rezoning from the remainder of its parent tax lot.

I find that Policy 15.b(2) must be applied to the whole of tax lot 3800 and therefore the characteristics of that property are consistent with this criterion.

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

Tax lot 3800 is bordered by five contiguous ownerships, not counting Poodle Creek Road. Three of these ownerships, tax lots 3601 and 3600 (Evans Family Trust), tax lot 3700 (Paul and Norma Templeton), and tax lot 3900 (Cascadian Bowman) are under some form of forest deferral. Further, tax lots 3700, 3900 and 3901 are zoned F-1. The characteristics of tax lot 3800 are consistent with this criterion.

Even if the portion of tax lot 3800 subject to the rezoning request were to be considered as the “ownership,” there would still be three contiguous ownerships utilized for commercial forest or commercial farm uses: the remainder of tax lot 3800 used for commercial forestry, tax lot 3900 to the east owned and used by the Cascadian Bowmen, and tax lot 3600 (7 acres) to the west. The 38.17 acres of the subject property does not meet this characteristic of Non-Impacted Forest Lands.

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

The subject property is accessed by Poodle Creek Road, a public county road with a functional classification of “Rural Major Collector.” In rural areas, major collectors provide connections from outlying areas to the arterial system (primarily state highways). This road serves the rural residents of the Poodle

Creek area, including the Developed and Committed Area across from the subject property, and provides access to State Highway 126 on the south end and State Highway 36 on the north end. Neither tax lot 3800 nor the portion of that tax lot subject to the rezoning request is accessed by an arterial road or a road intended primarily for forest management. The property does not meet this characteristic of Non-Impacted Forest Lands.

(5) Primarily under commercial forest management.

The tax lot 3800 is zoned F-1, is under a forest deferral and contains soils with a forest capability range of 162 – 184 cu. ft./ac./yr. on 81% of its area. Timber was harvested by the clear-cut method in 1998 although it does not appear that it has been replanted. Tax lot 3800 has been treated as a single forest management unit in the recent past and failure to adhere to State Forestry replanting regulations does not change this fact. The entire tax lot exhibits this characteristic of Non-Impacted Forest Lands.

In summary, tax lot 3800 exhibits four of the five characteristics of property that should be zoned non-impacted forest land.

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

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

Neither tax lot 3800 nor the portion of that tax lot subject to the rezoning request is developed by a residence or nonforest use and therefore this characteristic of Impacted Forest Lands is not present.

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

Tax lot 3800 is 118 acres in size and therefore does not meet this characteristic of Impacted Forest Lands.

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

Lane Code 16.090 defines “tract” as a lot or parcel. ORS 215.010(2) defines “tract” as “one or more contiguous lots or

parcels under the same ownership.” Using the statutory definition, Tax lot 3800 is contiguous on the west and north to tracts that exceed 80 acres in size. Staff defines the term “generally contiguous” as comprising all properties that share any length of common boundary, touch the subject property boundary at a corner point, and include the first tier of parcels immediately across the road to the south. This interpretation adds an additional 11 tracts of less than 80 acres in size, of which 10 are developed with one or more residences (clockwise from the northeast: tax lots 500, 900, 1100, 3900, 3901, 100, 105, 103, 102, 101, 302).

Tax lot 3800 meets this characteristic of Impacted Forest Lands.

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

Tax lot 3800, including the portion of this property subject to the rezoning request, has access to a full range of services normally available to a rural residence, including police and fire coverage, school, electricity, telephone, access, and solid waste disposal and therefore meets this characteristic of Impacted Forest Lands.

Tax lot 3800 has half the characteristics that characterize Impacted Forest Lands.

Policy 15 requires a conclusion that the characteristics of the land correspond more closely to the characteristics of the proposed zoning than the characteristics of the other forest zone. In the present case, the “land” represents four of the five characteristics of Non-Impacted Forest Land and half of the characteristics that would denote Impacted Forest Land.

Conclusion

The proposed rezoning is not consistent with the Lane Code and the Rural Comprehensive Plan.

Respectfully Submitted,



Gary Barnielle
Lane County Hearings Official

ILCOGS Lane Council of Governments

99 East Broadway, Suite 400, Eugene, Oregon 97401-3111 (541) 682-4283 Fax: (541) 682-4099 TTY: (541) 682-4567

April 12, 2007

Mr. Kent Howe, Director of Planning
Lane County Land Management Division
125 E. 8Th Ave.
Eugene, OR 97401

Re: *Appeal of Hearings Official decision in Dockum (PA 06-6054)*

Dear Mr. Howe:

On March 29, 2007 I issued a decision reversing the Planning Director's decision to approve the Dockum request for the rezoning of tax lot 3800, Assessor's Map 16-06-00. Upon a review of these appeals, I find that the allegations of error have been adequately addressed in my decision and that a reconsideration of that decision is not warranted.

The applicants confuse the term "contiguous" with the phrase "generally contiguous." Poodle Creek Road is a county road and absent information to the contrary the road must be assumed to be under public ownership. It is therefore an intervening ownership which makes the properties on the other side of the road non-contiguous to the subject property. I refer the applicant to *Lovinger v. Lane County*, 206 Or App 557 (2006), *rev. den.* 342 Or 254 (2006). The information regarding Poodle Creek Road was extracted from Chapter 15 of the Lane Code, of which I took official notice. The analysis of the road was placed into the decision to make the point that it might represent a property that was 80 acres or larger, depending upon the size of the right-of-way and therefore relevant to the rezoning analysis. However, the information regarding the size of the right-of-way was not present in the record and no determination on that issue was made. What is relevant is that the applicant did not supply the analysis and therefore the question cannot be answered.

The applicants argue that the findings of Ordinance PA 1236 are "clear and explicit" and that the Hearings Official failed to follow this clear interpretation. While I would disagree that the findings are so unequivocal, the findings of Ordinance Pa 1236 (*page cited in the decision*) allowed for the definition of "ownerships," as used to interpret Forest Lands Policy #15, to be modified if other qualifiers were identified. I found those qualifiers to be present.

The applicants also object to the inclusion of tax lots 3900 and 3901 in the inventory of properties counted as being "*contiguous to other land utilized for commercial forest or*

commercial farm uses.” While the applicants are correct that forest tax deferral status is a superficial indication of actual forest management, that was the only specific evidence in the record on this issue. The appellants had pointed out that the lack of commercial forest management on the two parcels in question was speculation by the applicant and despite the applicant’s December 5, 2007 supplemental submission, that statement was still accurate with the closure of the record. Rather than theorizing about the minimum acreage or gross sales necessary to qualify an operation as a commercial forest use, the applicants need only have gotten a statement from the owners of the two properties about whether the properties by themselves, or in conjunction with adjacent or nearby properties, were managed in a commercial forest operation. In the same vein, neighbors familiar with the use of the two tax lots could have been deposed about their observations regarding the presence of commercial forestry activities. Lacking direct evidence in rebuttal to the issue raised by the appellants, I was unable to find that the applicants had carried his burden of providing affirmative evidence demonstrating that Forest Lands Policy 15.b.(3) had been satisfied.

Accordingly, on the authority of Lane Code 14.535(1), I shall affirm my March 29, 2007 decision without further consideration. Please advise interested parties of this decision.

Sincerely,



Gary L. Darnielle
Lane County Hearings Official

cc: Thom Lanfear (file)

LAND MANAGEMENT DIVISION



APPEAL OF A HEARINGS OFFICIAL DECISION

PUBLIC WORKS DEPARTMENT 125 E 8th AVENUE, EUGENE OR 97401

Planning: 682-3807 Building: 682-3823 Sanitation: 682-3754

For Office Use Only: FILE # PA066054A CODE: BCAPEAL FEE: \$3,490Appellant: Floyd + Connie Dockum TRMailing address: P.O. Box 5176, Helena, MT 59601Phone: 406-458-1038 Email: fdockum@bresnan.netSignature: Floyd Dockum Connie DockumAppellant's Representative: Eben Fodor, Fodor + AssociatesMailing address: 394 E. 32nd Ave, Eugene OR 97405Phone: 345-8246 Email: Eben@FodorandAssociates.comSignature: Eben V. Fodor

Required submittals. Your appeal application will be rejected if it does not contain all the required information.

1. A copy of the decision being appealed, with the department file number. File # PA 066054
2. The \$3,490 appeal fee, payable to Lane County. (See the reverse side for important fee information)
3. Indicate the deadline to submit the appeal. (Found in the Hearing Official's Decision) April 9, 2007
4. Check one of the items below to identify your party status with the right to appeal the Hearings Official's decision:

- I am the owner or contract purchaser of the subject property;
- I am the applicant for the subject application;
- Prior to the decision by the Hearings Official, I submitted written testimony into the record
- I am not one of the persons mentioned above, but wish to appeal the Hearings Official's decision for the reasons explained in my letter.

5. A letter that addresses each of the following three standards:
 - a. The reason(s) why the decision of the Hearings Official was made in error or why the Hearings Official should reconsider the decision;
 - b. An identification of one or more of the following general reasons for the appeal, or request for reconsideration:
 - The Hearings Official exceeded his or her authority;
 - The Hearings Official failed to follow the procedure applicable to the matter;
 - The Hearings Official rendered a decision that is unconstitutional;
 - The Hearings Official misinterpreted the Lane Code, Lane Manual, State Law, or other applicable criteria.
 - c. The Hearings Official should reconsider the decision to allow the submittal for additional evidence not in the record that addresses compliance with the applicable standards or criteria.
6. Any additional information in support of your appeal.

FODOR & ASSOCIATES

Community Planning Consulting

Appeal to the Lane County Board of Commissioners of the Hearings Official's Decision in the Zone Change Request for 38.7 Acres from F1 (non-impacted forest) to F2 (impacted forest), PA 066054

Date Submitted: April 9, 2007

Appellant:

This appeal of the decision in PA 066054 is submitted on behalf of Floyd and Connie Dockum, who are also the applicants.

Types of Errors:

This appeal is made under Lane Code Chapter 14 based on the following types of errors, as explained in greater detail below:

- The Hearings Official exceeded his jurisdiction;
- The Hearings Official failed to follow the procedure applicable to the matter;
- The Hearings Official misinterpreted the Lane Code or Manual, State Law (statutory or case law) or other applicable criteria.

Specific Assignments of Error:

FIRST ASSIGNMENT OF ERROR

The Hearings Official erred by not correctly applying the clear and explicit findings adopted by the Board of Commissioners in Ordinance PA-1236 as they relate to the definition of the term "ownerships" in Goal 4, Policy 15 of the Lane County Rural Comprehensive Plan. The Hearings Official exceeded his authority by generating and applying a new interpretation that is not found in the law. The appropriate definition can be found in the findings for PA-1236 (see pages 8-10 of Exhibit C for PA-1236). Here it states that the term "ownerships" as used in Policy 15 should include "only the land being proposed for rezoning." This definition is re-affirmed in PA-1236 under findings related to Policy 15(b)(2) (see page 11 of Exhibit C for PA-1236) where F-2 zoning is applied to a 37.5-acre portion of a larger 970-acre parcel.

The Hearings Official states that the Board's definition should not apply in the current

case because “geography and usage” are not the same as in PA-1236. However, geography and usage are not relevant to the characteristic in Policy 15(b)(2), which is land area.

Using the definition approved by the Board in Ordinance PA-1236, the ownership consists of the 38.7-acre subject property and results in a finding under Policy 15(b)(2) that the characteristics of the land for the subject property correspond more closely to those of the proposed F-2 zoning. This conclusion is supported by the Staff Report, the Land Use Application, and by supplemental testimony submitted into the record by the Applicant’s representative on December 5, 2006.

SECOND ASSIGNMENT OF ERROR

The Hearings Official erred by not correctly tabulating properties contiguous to the subject property. In applying the characteristic in Policy 15(b)(3), the Hearings Official incorrectly omits all properties to the south of the subject property. Property south of the subject property includes tax lot 101, a 1.58-acre parcel zoned RR-5 and containing a dwelling. Depending on which of the two possible interpretations of the Lane Code definition for “contiguous” presented in the Application is applied, from one to four additional properties are contiguous to the south side of the subject property (see Application pages 14-15 and Table 3 on page 16).

We believe that properties on the south side of Poodle Creek Road are contiguous to the subject property according to the definition for “contiguous” in LC 16.090. This includes tax lots 100, 102, 103, and 105. This interpretation results in a total of nine properties that are contiguous to the subject property.

The only other possible interpretation of the definition for “contiguous” is that the roadway itself constitutes property and that the subject property is therefore contiguous to a road. In this case the road must be counted as one of the contiguous properties. This alternative interpretation results in a total of six properties that are contiguous.

THIRD ASSIGNMENT OF ERROR

The Hearings Official erred in his application of Policy 15(b)(3) by ignoring evidence in the record showing that contiguous tax lots 3900 and 3901 are not being “utilized for commercial forest or commercial farm uses.”

The Hearings Official relied solely on the “forest deferral” tax status of tax lot 3900 to conclude that this property was being utilized for commercial forest uses. In doing so, he ignored evidence in the Application describing land uses in the surrounding area (see Application, page 10) and also ignored evidence submitted into the record as supplemental testimony by the Applicant’s representative on December 5, 2006 (see

page 3 of testimony).

As documented in the record, a forest tax deferral does not constitute evidence of commercial forestry, since no proof or evidence of forest management activity is required to obtain this tax status. The record shows that tax lot 3900 is being used by an archery club (Cascadian Bowmen) for wide range of club activities that do not include commercial forest uses. The record also shows that tax lot 3901 is a 7.8-acre parcel developed with a dwelling that has no tax deferral and is not being utilized for commercial forest or farm uses.

FOURTH ASSIGNMENT OF ERROR

The Hearings Official erred in his conclusion that, under the characteristic in Policy 15(b)(3), the subject property fits the characteristic of F-1 land.

As presented under the Second and Third Assignments of Error, there are nine properties that are contiguous to the subject property. These contiguous properties are listed in Table 3 (page 16) of the Application. Only two of the nine contiguous properties are being utilized for commercial forest or farm use. Therefore, the subject property does not meet the characteristic of F-1 land in Policy 15(b)(3).

Even if the more restrictive interpretation of “contiguous” used in the Staff Report is applied, only two of six contiguous properties are being utilized for commercial forest or farm use. Therefore, the subject property does not meet the characteristic of F-1 land in Policy 15(b)(3) regardless of which interpretation of “contiguous” is applied.

FIFTH ASSIGNMENT OF ERROR

The Hearing Official erred in his methodology by considering F-1 land characteristics separately from F-2 land characteristics and thereby double counting identical characteristics in Policy 15(b) and Policy 15(c).

As specified in Policy 15(a), the characteristics found in subsections (b) and (c) must be weighed together to make an overall determination as to whether the characteristics of the land correspond more closely to F-1 or to F-2 zoning.

The characteristic in Policy 15(b)(1) is whether or not the subject property is developed with a residence or non-forest use. Policy 15(c)(1) is merely the inverted statement of the same characteristic. Therefore, these two subsections, (b)(1) and (c)(1), are identical and to avoid double counting the same characteristic, they should be treated as a single characteristic. Similarly, the characteristic in Policy 15(b)(2) is identical to Policy 15(c)(2) and should also be treated as a single characteristic.

If the characteristics of the land are compared, and duplicate characteristics are not counted twice, the subject property meets five of the F-2 characteristics and only two of the F-1 characteristics of Policy 15 (see chart in Exhibit A). Therefore, the subject property most closely corresponds to F-2 impacted forest land and should be zoned accordingly.

SIXTH ASSIGNMENT OF ERROR

The Hearings Official failed to recognize the validity and purpose of split zoning in Lane County, in spite of the fact that it is expressly authorized in Goal 4, Policy 15 of the Lane County Rural Comprehensive Plan. Under Policy 15(a), it states that the “characteristics of the land” shall determine the appropriate zoning. The characteristics of the 38.7-acre subject property correspond closely to impacted F-2 land, and are very different than those of the remaining 80 acres which correspond closely to non-impacted F-1 land. The split zoning takes into consideration the different characteristics that exist. Contrary to statements by the Hearings Official, split zoning does not parcelize, subdivide or “carve up” the land (Decision, page 7). In this instance, split zoning achieves a primary purpose of land zoning: to promote compatibility and harmony among land uses.

SEVENTH ASSIGNMENT OF ERROR

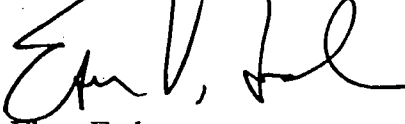
The Hearings Official made procedural errors in the process of reaching his decision:

- The Hearings Official’s decision introduces and applies new evidence that can not be found in the public record for the case. This new evidence consists of property ownerships, parcel acreage and farm/forest uses of parcels surrounding the subject property. The relevance, source and accuracy of this new evidence is not identified in the decision. Examples of evidence not found in the record include ownerships and lot sizes in Finding #3 and the land area of Poodle Creek Road in Finding #4.
- The Hearings Official makes four “findings of fact” in his decision, but fails to identify which findings apply to his conclusions, as required. The result is that the Hearings Official’s conclusions do not appear to be adequately supported by facts in the record.
- The Hearings Official incorrectly applies two different definitions for the word “tract” as it is used in Policy 15(c)(3). He initially cites the Lane Code definition, but then cites and applies the definition found in the Oregon Revised Statutes. Only one definition can apply. The Rural Comprehensive Plan is Lane County law and the Lane Code interprets and implements the RCP. Therefore, the appropriate definition is the one found in Lane Code.

Conclusion:

Based on the above errors, the Hearings Official incorrectly denied the application. The zone change request should be approved.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Eben Fodor", written in a cursive style.

Eben Fodor
Principal

Attachments:

- Exhibit A – Summary of Classification Characteristics
- Exhibit B – Board Ordinance PA 1236
- Copy of Decision in PA-066054
- Payment of Appeal Fee

Exhibit A

**Summary of Forest Land Classification Characteristics
from Rural Comprehensive Plan**

Characteristics from Policy 15 (paraphrased)	F1	F2
<i>Non impact Forest Land Zone Characteristics:</i>		
15(b)(1) ..not developed by residences..	✓	
15(b)(2) ..80 acres or larger in size.		✓
15(b)(3) Predominantly...contiguous to commercial farm/forest lands.		✓
15(b)(4) Accessed by arterial or forest management road.		✓
15(b)(5) Primarily under commercial forest management	✓	
<i>Impacted Forest Land Zone Characteristics:</i>		
15(c)(1) ..developed by residences...	(✓)	
15(c)(2) ..80 acres or less in size.		(✓)
15(c)(3) ...generally contiguous to tracts less than 80 acres and residences and/or adjacent to D&C lands.		✓
15(c)(4) Provided with public facilities and services...		✓

(✓) = duplicate characteristic

IN THE BOARD OF COUNTY COMMISSIONERS OF LANE COUNTY, OREGON

**ORDINANCE NO. PA 1236 [IN THE MATTER OF ADOPTING A CONFORMITY
[DETERMINATION AMENDMENT PURSUANT TO RCP
[GENERAL PLAN POLICIES – GOAL TWO, POLICY 27.a.vii.
[AND GOAL FOUR, POLICY 15, ADOPTING THE PLAN
[DESIGNATION OF FOREST (F) AND THE ZONING
[DESIGNATION OF IMPACTED FOREST LAND (F2) FOR 37.5
[ACRES LOCATED IN SECTION 32, TOWNSHIP 20, RANGE 2
[WEST, WILLAMETTE MERIDIAN, AND IDENTIFIED AS A
[PORTION OF TAX LOT 1700 OF LANE COUNTY ASSESSOR
[MAP 21-02-06, AND ADOPTING SAVINGS AND
[SEVERABILITY CLAUSES. (File: PA 06- 5476, Symbiotic LLC,
[USACOE).**

WHEREAS, the Board of County Commissioners of Lane County, through enactment of Ordinance No. PA 1192 and amended thereafter, has adopted the Conformity Determination Amendment process as Goal 2, Policy 27 of the General Plan Policies which is a component of the Lane County Rural Comprehensive Plan; and

WHEREAS, Lane Code 16.252 sets forth procedures for rezoning of lands within the jurisdiction of the Rural Comprehensive Plan; and

WHEREAS, on March 24, 2006, a Conformity Determination Amendment application (PA 06-5476 Symbiotic LLC, USACOE) was submitted to Lane County proposing a plan designation of Forest (F) and a zoning designation of Impacted Forest Land (F-2, RCP) pursuant to RCP General Plan Policies - Goal Two, Policy 27.a.vii. and Goal 4, Policy 15; and

WHEREAS, the Lane County Planning Commission reviewed the proposal in a public hearing on June 20, 2006; and

WHEREAS, the Lane County Planning Commission on June 20, 2006, recommended approval of the proposed plan and zoning designations; and

WHEREAS, the proposal was reviewed at a public hearing with the Lane County Board of Commissioners on August 2, 2006; and

WHEREAS, evidence exists within the record indicating that the proposal meets the requirements of Lane Code Chapter 16, and the requirements of applicable state and local law; and

WHEREAS, the Board of County Commissioners has conducted a public hearing and is now ready to take action;

NOW, THEREFORE, the Board of County Commissioners of Lane County Ordains as follows:

Section 1. The Lane County Rural Comprehensive Plan is amended by adding a designation for a 37.5 acre portion of tax lot 1700 of Lane County Assessor’s map 21-02-06 and additional lands consisting of adjoining road and railroad right-of-way as Forest (F), such territory depicted on Official Plan Plot 453 and further identified as Exhibit “A” attached and incorporated herein.

Section 2. A 37.5 acre portion of tax lot 1700 of Lane County Assessor's map 21-02-06 and additional lands consisting of adjoining road and railroad right-of-way are zoned Impacted Forest Land F-2, RCP (Lane Code 16.211), such territory depicted on Official Zoning Plot 453 and further identified as Exhibit "B" attached and incorporated herein.

FURTHER, although not a part of this Ordinance, the Board of County Commissioners adopts the findings in support of this action as set forth in the attached Exhibit "C".

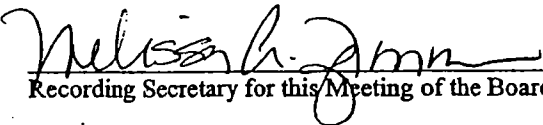
The prior policies, zoning base designations and plan diagram base designations repealed or changed by this Ordinance remain in full force and effect to authorize prosecution of persons in violation thereof prior to the effective date of this Ordinance.

If any section, subsection, sentence, clause, phrase or portion of this Ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision, and such holding shall not affect the validity of the remaining portions thereof.

ENACTED this 20th day of August, 2006.



Chair, Lane County Board of County Commissioners



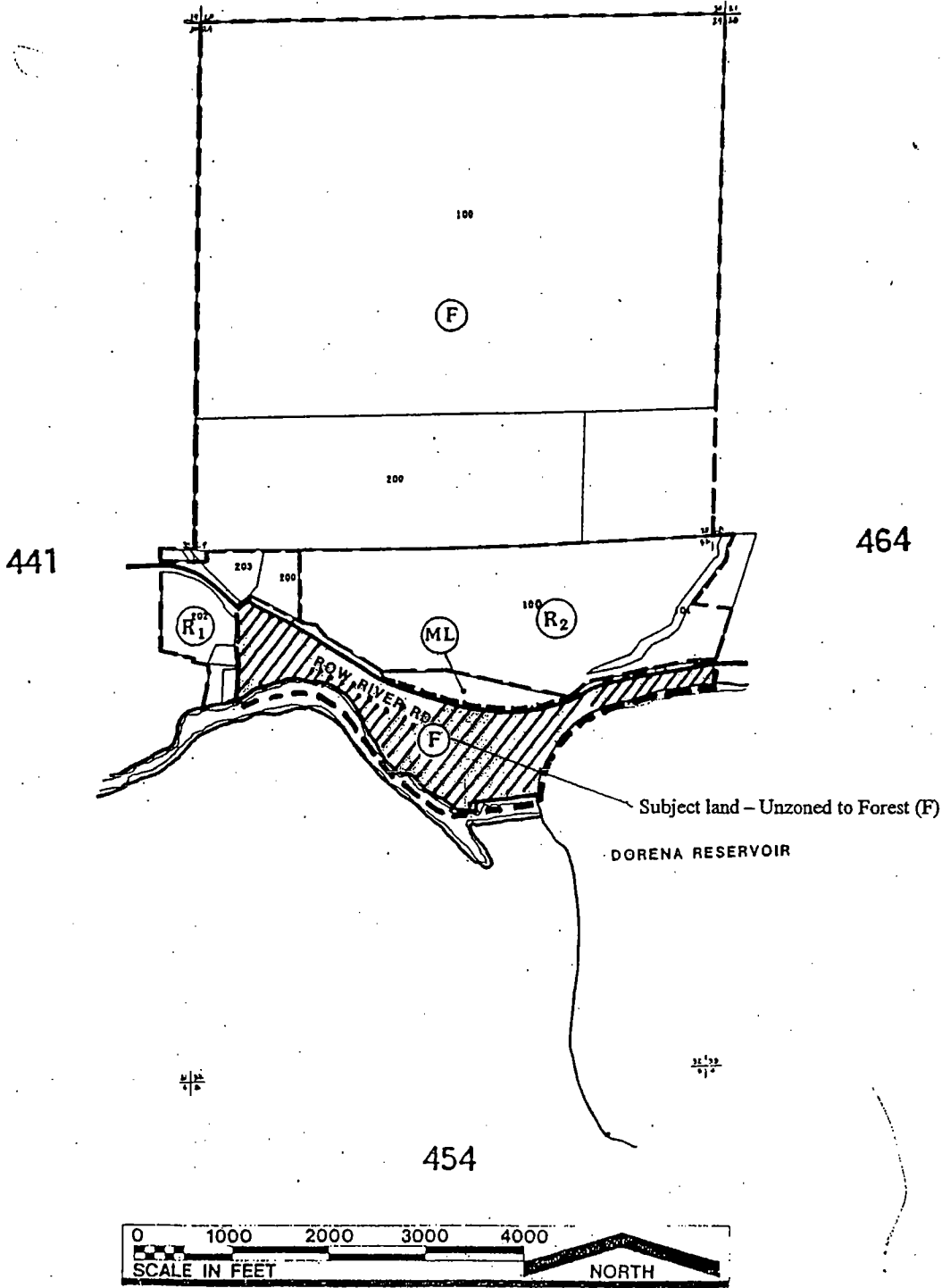
Recording Secretary for this Meeting of the Board

APPROVED AS TO FORM

Date 7-13-2006 Lane County



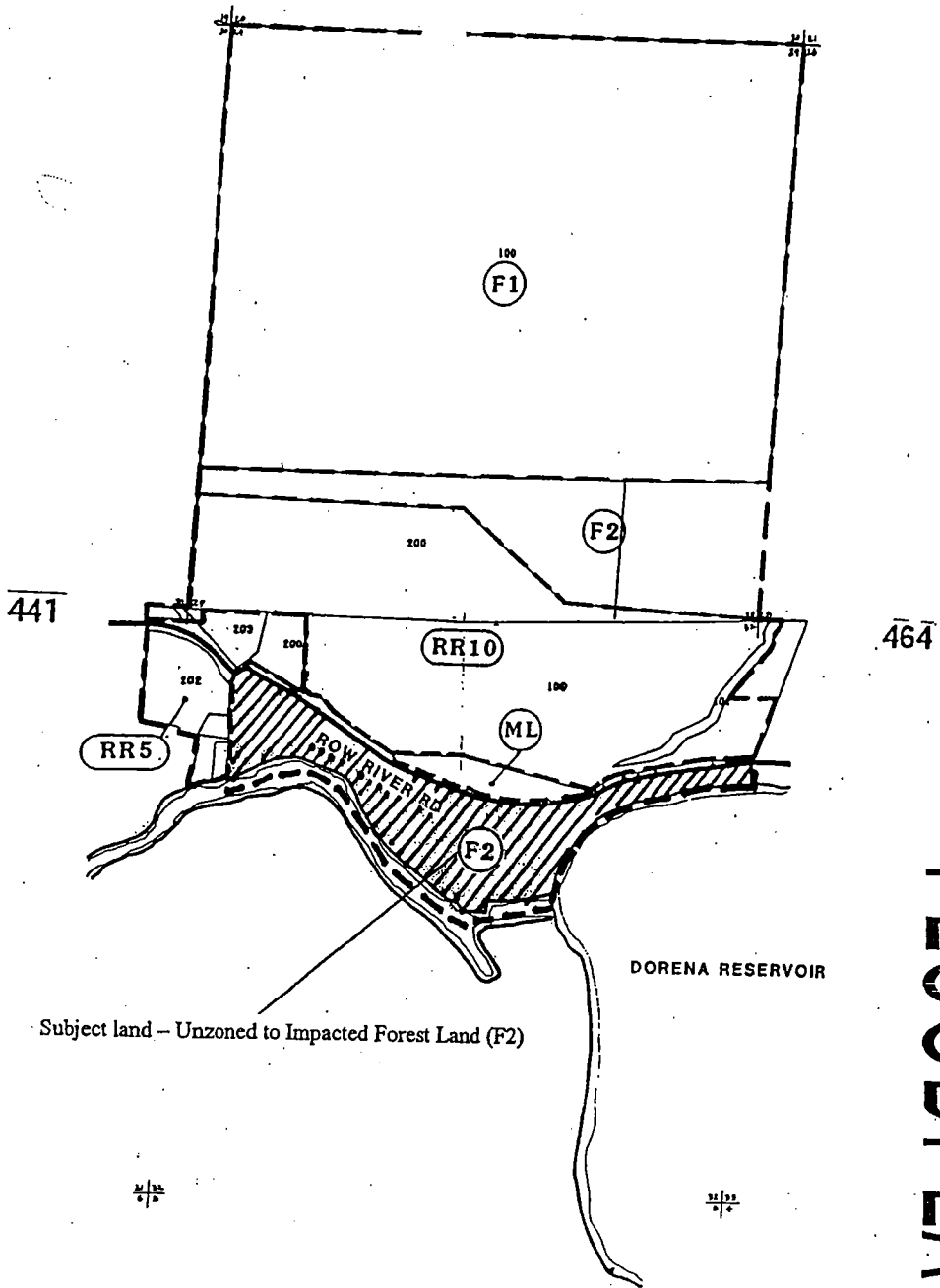
OFFICE OF LEGAL COUNSEL



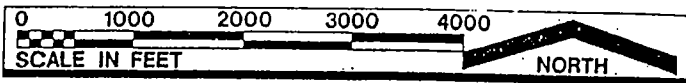
the county **OFFICIAL PLAN MAP** **PLOT # 453**

Twnshp Range Section
 20 02 29 / 20 02 32 ()

ORIGINAL ORD. # PA 884 DATE 2/29/1984 FILE # _____
 DIVISION # 1 ORD # PA 911 DATE 3/14/86 FILE # _____



FLOODPLAIN



ie county



OFFICIAL ZONING MAP

PLOT # 453

Township Range Section
 20 02 29 / 20 02 32 ()

ORIGINAL ORD. # PA 884 DATE 2/29/1984 FILE #
 VISION # T ORD # PA 911 DATE 3/14/86 FILE #

FINDINGS OF FACT AND CONCLUSIONS OF LAW

for

**A CONFORMITY DETERMINATION AMENDMENT
PURSUANT TO RCP GENERAL PLAN POLICIES – GOAL TWO, POLICY 27. a. vii.**

**ADOPTING THE PLAN DESIGNATION OF FOREST (F)
AND THE ZONING DESIGNATION OF IMPACTED FOREST LAND (F-2)
FOR 37.5 ACRES LOCATED IN SECTION 32, TOWNSHIP 20, RANGE 2 WEST,
WILLAMETTE MERIDIAN, AND IDENTIFIED AS A PORTION OF TAX LOT 1700 OF
LANE COUNTY ASSESSOR MAP 21-02-06**

and

ADOPTING SAVINGS AND SEVERABILITY CLAUSES

APPLICATION NO. PA 06-5476

ORDINANCE NO. PA 1236

Applicant: Symbiotics, LLC

Owner : U.S. Army Corp of Engineers

Applicant's Agent: Erik Steimle
Ecosystems Research Institute

Applicant's Attorney: Paul Vaughan
Hershner Hunter, LLP

FINDINGS OF FACT AND CONCLUSIONS OF LAW

In support of our adoption and enactment of Ordinance No. PA 1236, we make the following findings of fact and conclusions of law.

GENERAL FINDINGS AND CONCLUSIONS:

The property subject to this Conformity Determination Amendment (the Subject Property) is located north of the centerline thread of the Row River, south of Row River Road and east of the Developed and Committed Exception Area Plot #453-R1 (which exception area is located east of the intersection of Row River Road and Shoreline Drive). The property includes the Dorena Dam and spillway. The eastern boundary of the property extends south of Row River Road and north of the shoreline of Dorena Reservoir to the eastern boundary of Official Plan Plot # 453 and Official Zoning Plot # 453 as depicted on Attachment "A" and Attachment "B", respectively. The property includes the right-of-way of the Oregon Pacific Electric Railroad (OPERR) and the southern right-of-way of Row River Road within Official Zoning Plot # 453. The property is approximately six miles east of Cottage Grove and is outside of the City of Cottage Grove urban growth boundary.

The Subject Property includes an approximately 37.5 acre portion of a 970.71-acre parcel owned by the U.S. Army Corp of Engineers (ACOE) that is tax lotted on Assessor's Map 21-02-06-00 as Tax Lot 1700. The 970.71-acre ACOE parcel was developed between approximately 1942 and 1949 with the Dorena Dam which impounded waters of the Row River and created the Dorena Reservoir, which occupies most of the 970.71 acre ACOE parcel.

On August 29, 1978, Lane County enacted Ordinance No. 688 that zoned lands within the Row River-London Subarea that included the Subject Property. The Subject Property was zoned FF-20 (Farm-Forest District-20 acre minimum parcel size) pursuant to that 1978 ordinance. A portion of the ACOE parcel immediately south of the Subject Property was included within the Public Reserve (PR) zone described in Lane Code Chapter 10, which is a zone that allows such uses as public parks, playgrounds, hunting and fishing lodges, government buildings and other intensive, non-forest uses and the rest was zoned FF-20.

In 1984, Lane County enacted Ordinance No. 884 with the stated intent of applying new Rural Comprehensive Plan designations and zoning (Lane Code Chapter 16) to all land outside of urban growth boundaries. Although the ordinance applied new RCP designations and zoning to surrounding properties, there was an apparent oversight with respect to the ACOE parcel—the ordinance failed to apply any RCP designation or zoning to any portion of the ACOE parcel, including the Subject Property. Although that might suggest that the Subject Property is still subject to the FF-20 (Lane Code Chapter 10) zoning applied to it in 1978 pursuant to Ordinance No. 688, 1984 Ordinance No. 884 went beyond merely applying new designations and zoning to properties described in the ordinance—Section 2 of the ordinance (with exceptions not relevant here) specifically repealed all prior plan and zone designations. As a result, we find that 1984 Ordinance No. 884 caused the ACOE parcel that includes the Subject Property to be stripped of any RCP designation and to become unzoned.

LCDC has acknowledged Lane County's Rural Comprehensive Plan and implementing regulations that included the designations and zoning applied by 1984 Ordinance No. 884. Since the 1984 ordinance did not apply any designation or zoning to the Subject Property, arguably the use and development of the Subject Property is not regulated by Lane County zoning ordinances. However, where a property is not subject to any zoning district, it is unclear what, if any, standards apply to the use and development of the property. In order to fill that vacuum and clarify the situation, Symbiotics filed an application for a Conformity Determination requesting that Lane County apply a plan designation and zoning of Impacted Forest Land (F-2, RCP) to the Subject Property. That resource designation, which does not require that the county take a Goal exception, is consistent with the FF-20 designation and zoning that was applied to the Subject Property in 1978 but subsequently repealed in 1984. It is also consistent with the aerial photographs attached as Appendix D to the application that show the current use of the Subject Property.

GENERAL PLAN POLICIES: GOAL TWO – POLICY 27:

The Lane County Rural Comprehensive Plan includes General Plan Policies specific to each of the Statewide Planning Goals One through Nineteen as they are implemented in Lane Code. Goal Two policies address Land Use Planning, which includes amendment processes for the Plan and Zoning designations of all properties within the rural lands of Lane County. Policy 27 of Goal Two pertaining to Conformity Determinations provides for the processing of a Conformity Determination Amendment by the Planning Commission and the Board of Commissioners for specific properties when a citizen, public agency or LMD staff shows that the plan and/or zoning designations satisfy one of the eight criteria set out in Policy 27.a.i.-viii.

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

i. Lawful, structural development existing prior to September 12, 1984 and use of the structures at the time qualified as an allowable use in a developed & committed zone designation other than that designated for the land on an Official Plan or Zoning Plot.

ii. Inappropriate Non-impacted Forest Land (F-1, RCP-zoning designation, where criteria of RCP Forest Land Policy 15 indicate that Impacted Forest Land (F-2, RCP) zoning designation is more suitable.

iii. A property was actively managed primarily as either an agricultural or forestry operation in 1984 and since, and a resource designation other than the primary, use was adopted on an Official Plan or Zoning Plot in 1984.

iv. Correction of a scrivener error on an adopted Official Plan or Zoning Plot.

v. Correction of an incompatible split-zoning of a legal lot resulting from a survey boundary line error that was discovered after September 12, 1984.

vi. *Compliance by a public jurisdiction or agency with a deed restriction on public land.*

vii. *Correction of an inconsistency between the text of an order or ordinance adopted by the board of Commissioners and an Official Plan or Zoning diagram.*

viii. *A circumstance other than as listed in Policy 27. a.i.-vii. above, which the Planning Commission elects to forward a favorable recommendation for consideration by the Board of Commissioners.*

We find that a Conformity Determination Amendment applicable to the Subject Property is appropriate under and consistent with General Plan Policy: Goal Two – Policy 27.a.vii. As stated in the General Findings, pursuant to 1978 Lane County Ordinance No. 688, the Subject Property was zoned FF-20 (Farm-Forest District–20 acre minimum parcel size). However, in 1984, Lane County enacted Ordinance No. 884 which effectively removed any RCP designation from the Subject Property and caused the property to become unzoned. Although the 1984 ordinance was enacted with the stated intent of applying new Rural Comprehensive Plan designations and zoning (Lane Code Chapter 16) to *all land outside of urban growth boundaries*, through an apparent oversight, the ordinance failed to apply any new RCP designation or zoning to the Subject Property. The property was simply omitted from the designation/zoning maps attached to the ordinance. Moreover, to compound the oversight, the 1984 ordinance specifically *repealed all prior plan and zone designations*. This is exactly the type of oversight and circumstances that the Conformity Determinations Policy was intended to address. This Conformity Determination Amendment restores a forestland resource designation to the Subject Property and zoning consistent therewith in accordance with the Lane County Rural Comprehensive Plan Goal 4: Forest Land - Policy 15 criteria discussed below. We also note that Subsection e. of Policy 27 recognizes that a Conformity Determination Amendment may be initiated by a private applicant in addition to being initiated by the county and find that the subject application was appropriately initiated by the applicant in accordance with that subsection.

We find that this Conformity Determination Amendment is a Minor Amendment pursuant to Policy 27.a.vii and Lane Code 16.400(6)(h) and involves applying a plan and zoning designation subject to Lane Code 16.252 processes. We find that no exception to any Statewide Goal, resource or otherwise, is necessary, and that this Minor Amendment is consistent with all applicable Statewide Goals. This Minor Amendment merely corrects an oversight—it causes currently undesignated and unzoned land to be designated for forest resource use and zoned Impacted Forest Land (F-2) in accordance with the county's Goal 4: Forest Land – Policy 15.

CONFORMITY DETERMINATION AMENDMENT – GENERAL PROCEDURES:

Lane Code 16.400(6) Plan Adoption or Amendment – General Procedures. The Rural Comprehensive Plan or any component of such Plan, shall be adopted or amended in accordance with the following procedures:

(h) Method of Adoption and Amendment.

(i) The adoption or amendment of a Rural Comprehensive Plan component shall be by Ordinance.

(ii) The adoption or amendment shall be concurrent with an amendment to LC 16.400(4) above. In the case of a Rural Comprehensive Plan adoption, the Code amendment shall place such Plan in the appropriate category. In the case of a Rural Comprehensive Plan amendment, the Code amendment shall insert the number of the amending Ordinance.

(iii) The Board may amend or supplement the Rural Comprehensive Plan upon making the following findings:

(aa) For Major and Minor Amendments as defined in LC 16.400(8)(a) below, the Plan component or amendment meets all applicable requirements of local and state law, including Statewide Planning Goals and Oregon Administrative Rules.

(bb) For Major and Minor Amendments as defined in LC 16.400(8)(a) below, the Plan amendment or component is:

(i-i) necessary to correct an identified error in the application of the Plan;
or

(ii-ii) necessary to fulfill an identified public or community need for the intended result of the component or amendment; or

(iii-iii) necessary to comply with the mandate of local, state or federal policy or law; or

(iv-iv) necessary to provide for the implementation of adopted Plan policy or elements; or

(v-v) otherwise deemed by the Board, for reasons briefly set forth in its decision, to be desirable, appropriate or proper.

(cc) For Minor Amendments as defined in LC 16.400(8)(a) below, the Plan amendment or component does not conflict with adopted Policies of the Rural Comprehensive Plan, and if possible, achieves policy support.

(dd) For Minor Amendments as defined in LC 16.400(8)(a) below, the Plan amendment or component is compatible with the existing structure of the Rural Comprehensive Plan, and is consistent with the unamended portions or elements of the Plan.

(i) A change of zoning to implement a proposed Plan amendment may be considered concurrently with such amendment. In such case, the Board shall also

make the final zone change decision, and the Hearings Official's consideration need not occur.

We find that this Minor Amendment is adopted by ordinance as required by Lane Code 16.400(6)(h)(i).

We find that pursuant to LC 16.400(6)(h)(iii)(bb)(i-i), Ordinance No. PA 1236 is a Minor Amendment (processed as a Conformity Determination Amendment) necessary to correct an identified error in the application of the Plan. In this case, the discovery of unzoned land in the rural area of Lane County and the intent to apply the appropriate resource designation in conformity with similar actions at the time of adoption of the Rural Comprehensive Plan in 1984.

As noted above, the Conformity Determination Amendment applicable to the Subject Property is appropriate under and consistent with General Plan Policy: Goal Two – Policy 27.a.vii. We also find that the amendment is compatible with the existing structure of the Rural Comprehensive Plan, and is consistent with the unamended portions or elements of the Plan. We also incorporate herein our findings and conclusions set out below addressing Lane County Rural Comprehensive Plan Goal 4: Forest Land - Policy 15.

We also find that a change of zoning to implement the Conformity Determination Amendment was considered concurrently with the amendment, and the Board has made the final zone change decision from unzoned land to Impacted Forest Land (F-2) zoning. Accordingly, we find and conclude that the Hearings Official's consideration need not occur.

ADDITIONAL LANE CODE PROCEDURES FOR PLAN AMENDMENT:

Portions of Lane Code 16.400(8) are also applicable to the amendment process.

Lane Code 16.400(8) Additional Amendment Provisions.

(8) Additional Amendment Provisions. In addition to the general procedures set forth in LC 16.400(6) above, the following provisions shall apply to any amendment of Rural Comprehensive Plan components.

(a) Amendments to the Rural Comprehensive Plan shall be classified according to the following criteria:

(i) Minor Amendment. An amendment limited to the Plan Diagram only and, if requiring an exception to Statewide Planning Goals, justifies the exception solely on the basis that the resource land is already built upon or is irrevocably committed to other uses not allowed by an applicable goal.

(ii) Major Amendment. Any amendment that is not classified as a minor amendment.

(b) *Amendment proposals, either minor or major, may be initiated by the County or by individual application. Individual applications shall be subject to a fee established by the Board and submitted pursuant to LC 14.050.*

(c) *Minor amendment proposals initiated by an applicant shall provide adequate documentation to allow complete evaluation of the proposal to determine if the findings required by LC 16.400(6)(h)(iii) above can be affirmatively made. Unless waived in writing by the Planning Director, the applicant shall supply documentation concerning the following:*

(i) *A complete description of the proposal and its relationship to the Plan.*

(ii) *An analysis responding to each of the required findings of LC 16.400(6)(h)(ii) above.*

(iii) *An assessment of the probable impacts of implementing the proposed amendment, including the following:*

(aa) *Evaluation of land use and ownership patterns of the area of the amendment;*

(bb) *Availability of public and/or private facilities and services to the area of the amendment, including transportation, water supply and sewage disposal;*

(cc) *Impact of the amendment on proximate natural resources, resource lands or resource sites, including a Statewide Planning Goal 5 "ESEE" conflict analysis where applicable;*

(dd) *Natural hazards affecting or affected by the proposal;*

(ee) *For a proposed amendment to a nonresidential, nonagricultural or nonforest designation, an assessment of employment gain or loss, tax revenue impacts and public service/facility costs, as compared to equivalent factors for the existing uses to be replaced by the proposal;*

(ff) *For a proposed amendment to a nonresidential, nonagricultural or nonforest designation, an inventory of reasonable alternative sites now appropriately designated by the Rural Comprehensive Plan, within the jurisdictional area of the Plan and located in the general vicinity of the proposed amendment;*

(gg) *For a proposed amendment to a Nonresource designation or a Marginal Land designation, an analysis responding to the criteria for the respective request as cited in the Plan document entitled, "Working Paper: Marginal Lands" (Lane County, 1983).*

We find that this amendment is a Minor Amendment because it is limited to the Plan Diagram only and does not require an exception to any Statewide Planning Goal.

We further find that the applicant submitted a complete application in compliance with the requirements of Lane Code 16.400(8)(b). The Planning Director waived the requirement for the applicant to supply documentation concerning Lane Code 16.400(8)(c)(iii)(aa)-(gg), above. We

find that waiver to be appropriate because this Minor Amendment is a Conformity Determination Amendment to correct an inconsistency between the text of 1984 Ordinance No. 884 adopted by the Board of Commissioners and the Official Plan and Zoning diagram; and because the amendment applies a forest resource designation to forest land and does not require any exception to any Statewide Goal.

We find that similar resource lands designated as Farm Forest 20 (FF20) within Plot # 453 from 1976 to 1984, and amended by the Board of Commissioners in February 1984 by 1984 Ordinance No. 884, were predominantly designated for forest use and zoned Impacted Forest Land (F-2). Specifically, the zoning designations for lands within the vicinity of the subject property were illustrated on Attachment "D" to the staff report. Lands designated from 1976 to 1984 as FF20 were predominantly amended to Impacted Forest Land (F-2). We also find, based on the evidence in the record, that the Subject Property is predominantly forested, that it is not in a farm use, and that it is appropriately designated for forest use.

FINDINGS OF FACT AND CONCLUSIONS OF LAW REGARDING APPLYING THE RURAL COMPREHENSIVE PLAN DESIGNATION AND ZONING OF IMPACTED FOREST LAND (F-2, RCP) TO THE SUBJECT PROPERTY:

We find that the county previously recognized that the Subject Property is forest resource land when it enacted 1978 Lane County Ordinance No. 688. A forest resource land designation is also consistent with what is shown by the evidence in the record including the aerial photographs of the Subject Property that are attached to the application.

We find that the primary issue to be decided in connection with this Conformity Determination Amendment (which will restore a forest resource designation and zoning to the Subject Property) is whether the designation and zoning should be Non-Impacted Forest Lands (F-1, RCP) or Impacted Forest Lands (F-2, RCP). We find unequivocally that the Subject Property qualifies for an Impacted Forest Lands (F-2, RCP) designation and zoning under the applicable criteria.

Lane County Rural Comprehensive Plan Goal 4: Forest Land - Policy 15 sets out the criteria for deciding whether forest land shall be designated and zoned as Non-impacted Forest Lands or Impacted Forest Lands as follows:

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

a. A conclusion that characteristics of the land correspond more closely to the characteristics of the proposed zoning than the characteristics of the other forest zone. The zoning characteristics referred to are specified below in subsections b and c. This conclusion shall be supported by a statement of reasons explaining why the facts support the conclusion.

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

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

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

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

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

(5) *Primarily under commercial forest management.*

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

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

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

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

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

A review of the evidence and testimony, including the objections raised around terms contained in this policy makes it clear that the focus of the analysis must be on the property proposed for forest land zoning. For reasons that become clear when each of the various portions of the policy are addressed, most of the assessment of property or the area beyond the boundaries of the property proposed for zoning comes through the expression of the characteristics of each zone and does not rely on a precise definition of the term "ownerships" as either a "legal lot or parcel" or a "tract" of land since the primary focus is on the land that is the subject of the zoning request itself. For that reason we reject the assertion that the term means more than the Subject Property.

We find that the term "ownerships" contained in the criteria of RCP Goal 4 Policy 15 should be considered as including only the land being proposed for rezoning (unless other qualifiers in a particular characteristic compels a different result) because of the introductory language in Policy 15 and that finding constitutes a reasonable interpretation of the term "ownerships" as contained in that policy. Such an interpretation is consistent with the text, context, purpose and intent of Policy 15. Sub-paragraph a. of Policy 15 states that a decision to apply one of the zones (or both in a split zone fashion) shall be based upon:

"a. A conclusion that characteristics of the land correspond more closely to the characteristics of the proposed zoning than the characteristics of the other forest zone." (Emphasis added)

The characteristics of the land, not the ownership of it, control the analysis. Policy 15 was crafted as a means of distinguishing large-scale industrial forest land from small-scale non-industrial forest land in the present and for the foreseeable future. The policy was intended to provide an analysis of the size and use of the subject property and of the land in the immediate

vicinity. Size and use of land constitute the four sets of characteristics of each type of forest land required by Policy 15 to be analyzed and compared. The listed characteristics do not include any reference to the determination of a particular type of ownership or whether contiguous properties owned by the same person or entity constitute one or more ownerships. The critical focus of the analysis is on the property proposed for rezoning and the characteristics that property has that mitigate toward consideration of applying F-1 or F-2 zoning.

The term "ownership" as used in Goal Four, Policy 15, has been utilized to identify different lands and the uses thereon, which are to be considered in making an evaluation of whether a F-1 or F-2 designation is warranted for the land under consideration for zoning. This was due to the need to look within the subject land to identify the development and uses present and to partially look beyond those boundaries to the lands in the general vicinity and identify the existing resource or nonresource uses and development on the surrounding lands. It really amounted to identifying a singular pattern within a more expansive tapestry.

When Goal Four, Policy 15 was originally adopted in 1984 as a component of the General Plan Policies of the Rural Comprehensive Plan, the two planning commissions and the Board of Commissioners were applying the "characteristics" of Policy 15(b) and (c) in a broad matrix designed to (1) acknowledge development existing at the time on specific properties; and (2) analyze those commitments of specific lands in context with a broad-brush view or generalized sense of the surrounding parcelization and uses. Forest lands less than 80 acres in size and developed with residential uses or other nonforest uses, generally received Impacted Forest Land (F2) designations. Public forested lands and larger commercially managed, forest lands that were not impacted by nonforest uses, particularly in the ownership of industrial forest operators, were designated as Nonimpacted Forest Lands (F1).

Prior analysis during the 1970s and the resulting Lane Code Chapter 10 zoning designations which were incorporated into the thirteen subarea plans, contributed to the final decision on a property-by-property basis in 1984. At that time, the need for precise definition of the "ownership" term as legal lot, or parcel or tract was not important because the whole county was the subject of the zoning designation. In considering the present day applications, looking at the area proposed for rezoning generally provides sufficient definition to the term "ownership". In the case of the subject 37.5 plus acres of Ordinance No. PA 1236, the subject land would have been re-designated from FF20 Farm-Forestry to F2 Impacted Forest Land as were other lands with similar characteristics in the area, at the time.

The critical focus of the analysis is on the property proposed for rezoning and the characteristics that property has that mitigate toward consideration of applying F-1 or F-2 zoning. Properties subject to amendments in the past have included portions or combinations of tax lots as metes and bounds descriptions with single owners or multiple owners. Lane Code does not require legal lot determinations as a qualifier for application for a zone change in recognition of the variety of configurations of zoning that might make sense regardless of property boundaries. Legal lot status is a factor that comes into play in subsequent development permits, both planning and building, after a zoning designation has been applied.

A reading of Goal Four, Policy 15 interpreting "ownership" to mean "land being proposed for rezoning" seems a reasonable approach that avoids debate over whether the focus should be more than the subject property, beyond the portion of that analysis determined by other text that clearly notes the connection of the subject property to surrounding lands.

Goal Four, Policy 15 uses three terms to define the areas to be reviewed when assessing the surrounding properties as well as the land being considered for rezoning. Those terms are "contiguous", "generally contiguous" and "adjacent".

"Contiguous", as defined in Lane Code 16.090 definitions, is used in Policy 15.b. (2) and (3) to look for the different characteristics of F-1 land. The text in LC 16.090 provides: "Having at least one common boundary line greater than eight feet in length. Tracts of land under the same ownership and which are intervened by a street (local access, public, County, State or Federal street) shall not be considered contiguous." In the case of 15.b.(2), the intent is to look within the land being proposed for rezoning to determine whether or not that land being proposed for rezoning consists of contiguous land owned by the applicant that is 80 acres or larger in size. In the case of 15.b. (3), the intent is to determine whether other land contiguous to the land being proposed for rezoning is in commercial forest or commercial farm use.

Policy 15.c.(3) does not use the term "contiguous" to determine the same relationship between the land proposed for rezoning and the tapestry of uses and development in the surrounding area. Policy 15.c.(3) uses "generally contiguous" in a broader sense that looks beyond the definition of "contiguous" to determine if "tracts" owned by other property owners in the general area of the land being proposed for rezoning are less than 80 acres in size and developed with residences. The analysis is intended to venture beyond the only contiguous properties with common property lines. In some instances, common sense may push that analysis a distance in some or all directions to fully assess the characteristics of the surrounding uses and development particularly when considering a "tract".

Policy 15.c.(3) also uses the term "adjacent" to look even further beyond the nearby tracts or across intervening right-of-way to acknowledge the impacts of development within developed and committed exception areas in the general vicinity of the land being proposed for rezoning. It is a broader look at the complete tapestry of uses and development, particularly nonresource uses, in the general area. It does not depend on contiguity for that consideration.

This interpretation affirms the Lane Code 16.090 definition of "contiguous" as it is used in Policy 15.b.(2) and 15.b.(3) in the assessment of F-1 characteristics. It also makes clear that "generally contiguous" as used in Policy 15.c. (3) is different and broader in meaning and application when assessing the F-2 characteristics. It will remain for the Board of Commissioners to exercise discretion on a case-by-case basis, in making a final determination on how wide and how far that assessment pursuant to Policy 15.c.(3) would need to reach to provide a factual basis in arriving at a decision to approve or deny a request for rezoning. In all cases, the analysis under Goal Four, Policy 15 does not require a precise mathematical computation since the focus is on all the characteristics and whether, on balance, the land proposed for rezoning more closely corresponds to the F-1 or F-2 characteristics.

We find that the characteristics of the Subject Property do not correspond closely with the Non-impacted Forest Land Zone (F-1, RCP) characteristics:

Policy 15.b.(1):

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

We find that the Subject Property does not have this characteristic. It consists of road and railroad right-of-way ownerships and a 37.5-acre ownership that are generally in non-forest uses such as the roadways (Row River Road and Spillway Road), the dam and the spillway. Based on this alone, we conclude the Subject Property consists predominantly of ownerships that are developed by non-forest uses.

In addition, the Subject Property is a portion of the 970.71-acre ACOE parcel that is predominantly developed with non-forest uses. Specifically, we also find that most of the area of the ACOE parcel is developed with the Dorena Reservoir. In addition to the reservoir, there are developed improvements on other portions of the parcel including Dorena Dam and related infrastructure (some located on the 37.5-acre portion of the Subject Property) and parks and recreation facilities including those at the Schwarz Park campground and recreation area (located at the base of Dorena Dam on the banks of the Row River) which has restrooms, showers, camp sites and RV sites and those at Baker Bay Park (located on the south side of Dorena Reservoir) which has restrooms, showers, picnic areas, a swimming area, boat ramp, marina, camp sites and RV sites, paved parking areas and recreational commercial facilities. We find that the assessor's records also reflect that there are a number of manufactured structures on the ACOE parcel including a single family dwelling associated with intense non-forest development.

We conclude that the response to this criterion strongly supports our finding, conclusion and decision that the Subject Property be designated and zoned as Impacted Forest Land.

Policy 15.b.(2):

Predominantly contiguous, ownerships of 80 acres or larger in size.

The Subject Property is approximately 37.5 acres in size and therefore does not correspond to this characteristic even with the additional area included in the rights-of-way.

With respect to property contiguous to the Subject Property, the tax lots referred to in these findings are shown on Appendix C to the application. We find that that portion of the ACOE parcel located contiguous to the south and east of the Subject Property is larger than 80 acres, although as noted above, the vast majority of that land is developed with non-forest uses, most of it having been developed with Dorena Reservoir.

There is one other property 80 acres or larger in size that is north of the Subject Property and separated from it only by Row River Road and the abandoned railway right-of-way. That property, which consists of two tax lots (Tax Lots 100 and 208), is owned by the Vereck Trust et al. and contains slightly over 207 acres. It is under a different ownership than the Subject Property. In addition, Lane County already designated and zoned that property for Rural Residential (RR-10) use. Furthermore, Lane Code Section 16.090 defines "contiguous" as having one common boundary greater than eight feet in length and the definition makes clear that even if the land is in the same ownership, it is not "contiguous" if it is separated by a public

road. The Verek Trust property is separated from the Subject Property by Row River Road so it is not technically contiguous for the purpose of analysis under this characteristic.

Other property located directly north of the Subject Property (but also separated from it by Row River Road) are smaller than 80 acres: (i) Tax Lot 203 is a 4.85 acre parcel zoned RR-5; (ii) Tax Lot 200 is a 5.8 acre parcel zoned RR-5; and Tax Lot 500 is a 16.20 acre parcel zoned ML (Marginal Lands).

All of the other contiguous properties are much smaller than 80 acres. (See Appendix C to the application.) Those contiguous properties are as follows:

1. Tax Lot 201 – 1.1 acres;
2. Tax Lot 202 – 12.14 acres; and
3. Tax Lot 401 – .97 acres.

In summary, we find that neither the Subject Property itself (which is approximately 37.5 acres in size) nor the properties contiguous to the Subject Property (which are predominantly smaller than 80 acres and not in the same ownership as the Subject Property) correspond more closely to the stated Non-Impacted Forest Land characteristic, thereby supporting our finding, conclusion and decision that the Subject Property be designated and zoned as Impacted Forest Land.

Policy 15.b.(3):

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

As is reflected in the maps attached as Appendix A, Appendix B and Appendix C to the application, the other lands contiguous to the Subject Property are predominantly *not* utilized for commercial forest or commercial farm uses.

Also, as discussed above, the other land to the north of the Subject Property are not technically “contiguous” because they are separated from the Subject Property by Row River Road. Nevertheless, even if those lands were deemed to be contiguous or connected to the Subject Property under the definition of that term in LC 16.090, not one of those other lands are in the same ownership as the Subject Property or used for commercial forest or commercial farm uses. Those other lands are all zoned and designated for either Rural Residential (RR-5; RR-10) uses or as Marginal Land (ML).

The contiguous lands to the west of the Subject Property are also not used for commercial forest or commercial farm uses. All of those lands are designated and zoned for Rural Residential (RR-5) use, and all are developed with residential dwellings.

The land to the south of the Subject Property across the Row River is that portion of the ACOE parcel that is developed with restrooms, showers, camp sites and RV sites associated with the Schwarz Park campground and recreation area (located at the base of Dorena Dam on the banks of the Row River). We think the intervening ownership of the beds and banks of the river by the state makes this area noncontiguous with the Subject Property. In any case, the entire ACOE parcel became unzoned as a result of 1984 Ordinance No. 884. However, the county previously recognized that the portion of the ACOE parcel south of the Subject Property was not forest resource land when, pursuant to 1978 Ordinance No. 688, it included that property within the

Public Reserve (PR) zone described in Lane Code Chapter 10, which is a zone that allows such uses as public parks, playgrounds, hunting and fishing lodges, government buildings and other intensive, non-forest uses. We find that the land to the south of the Subject Property is not contiguous and is not used for commercial forest or commercial farm uses.

Finally, the contiguous land to the east of the Subject Property is that portion of the ACOE parcel that is developed with Dorena Reservoir, and which is not used for commercial forest or commercial farm uses.

Since the other lands contiguous to the Subject Property are predominantly if not exclusively utilized for purposes other than commercial forest or commercial farm uses, the response to this criterion strongly supports our finding, conclusion and decision that the Subject Property be designated and zoned as Impacted Forest Land.

Policy 15.b.(4):

Accessed by arterial roads or roads intended primarily for forest management.

We find that the Subject Property is not accessed by arterial roads or roads intended primarily for forest management.

Access to the Subject Property is provided by Spillway Road. Spillway Road is classified in the County's Transportation System Plan (TSP) as a Rural Local road to the point it enters the Subject Property, and it provides access to the rural residential development to the west of the Subject Property as well as access at the westerly boundary of the Subject Property. We also find that from the point Spillway Road enters the Subject Property, it is not open to the public. That portion of the road provides access through the Subject Property to the base of Dorena Dam on the northwest bank of the Row River. That portion of the road was built for the purpose of providing access for the operation and maintenance of Dorena Dam; it was not built for the purpose of commercial forestry.

Access to Spillway Road is via Shoreview Drive, which is classified in the TSP as a Rural Major Collector.

Neither Spillway Road nor Shoreview Drive is classified as an arterial road, and neither road is intended primarily for forest management. Accordingly, the response to this criterion also strongly supports our finding, conclusion and decision that the Subject Property be designated and zoned as Impacted Forest Land.

Policy 15.b.:

Primarily under commercial forest management.

We find that the Subject Property is not under commercial forest management. The primary use of the entire ACOE parcel that includes the Subject Property is for the operation and maintenance of Dorena Dam and Reservoir. There is no evidence that the portion of that operation that is on the Subject Property and the right-of-way not owned by ACOE are under commercial forest management. The dam and reservoir provide flood control, irrigation, recreational opportunities, and improved downstream passage. Accordingly, the response to this criterion similarly strongly supports our finding, conclusion and decision that the Subject Property be designated and zoned as Impacted Forest Land.

We find that the characteristics of the subject property do correspond closely with the Impacted Forest Land Zone (F-2, RCP) characteristics:

Policy 15.c.(1):

Predominantly ownerships developed by residences or non-forested uses.

We find that the characteristics of the Subject Property correspond closely with this characteristic. It consists of road and railroad right-of-way ownerships and a 37.5-acre ownership that are generally in non-forest uses such as the roadways (Row River Road and Spillway Road), the dam and the spillway. Based on this alone, we conclude the Subject Property consists predominantly of ownerships that are developed by non-forest uses.

In addition, the Subject Property is a portion of the 970.71-acre ACOE parcel that is predominantly developed with non-forest uses. Almost the entire ACOE parcel is developed with Dorena Reservoir. In addition to the reservoir, there are developed improvements on other portions of the parcel including Dorena Dam and related infrastructure (some located on the 37.5-acre portion of the Subject Property) and parks and recreation facilities including those at the Schwarz Park campground and recreation area (located at the base of Dorena Dam on the banks of the Row River) which has restrooms, showers, camp sites and RV sites and those at Baker Bay Park (located on the south side of Dorena Reservoir) which has restrooms, showers, picnic areas, a swimming area, boat ramp, marina, camp sites and RV sites, paved parking areas and recreational commercial facilities. The assessor's records also reflect that there are a number of manufactured structures on the parcel including a single family dwelling. Moreover, Subject Property is not managed as part of a commercial forest operation and is developed with portions of the Dorena Dam infrastructure and the access roadway that provides access for inspection and maintenance of the dam and the spillway.

In short, the response to this criterion strongly supports our finding, conclusion and decision that the Subject Property be designated and zoned as Impacted Forest Land.

Policy 15.c.(2):

Predominantly ownerships 80 acres or less in size.

While the entire ACOE parcel is much larger than 80 acres, this Conformity Determination only pertains to the Subject Property. The Subject Property includes approximately 37.5 acres of ACOE property and accordingly, the predominant ownership of the Subject Property under consideration is well under the 80-acre threshold. Moreover, as was explained previously, the vast majority of the entire ACOE parcel is developed with non-forest uses, most of the parcel having been developed with Dorena Reservoir and park, camping and recreation facilities. Finally, even if the Subject Property is deemed not to conform to this characteristic because the entire ACOE parcel is larger than 80 acres, this is only one of the four Impacted Forest Land characteristics and we find that the Subject Property corresponds closely with each of the other three Impacted Forest Land characteristics (Policy 15.c.(1), (3) and (4)). In addition, the Subject Property does not closely conform to any of the five Non-Impacted Forest Land characteristics. When considering all the characteristics together, we conclude the Subject Property more closely corresponds to the Impacted Forest Land characteristics.

Policy 15.c.(3):

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

As is reflected in the map attached as Appendix C to the application, the Subject Property is generally contiguous to tracts containing less than 80 acres and residences and/or adjacent to developed or committed areas for which an exception has been taken in the Rural Comprehensive Plan.

As is shown by the map attached as Appendix C to the application, the tracts to the north of the Subject Property are not technically "contiguous" because they are separated from the Subject Property by Row River Road. Nevertheless, except for the tract owned by the Verek Trust et al. that is zoned RR-10 and is part of a rural residential exception area, each of those tracts is substantially smaller than 80 acres: the Richards tract (TL 203) is 4.85 acres; the Bettis tract (TL 200) is 4.85 acres; and the McCarthy tract (TL 500) is 16.20 acres. Furthermore, each of those tracts (except the McCarthy tract that is zoned Marginal Land) is part of an "adjacent" developed and committed area for which an exception has been taken. Finally, except for the Verek Trust tract, each of the other tracts to the north of the Subject Property, including the McCarthy tract, is developed with a residence.

The generally contiguous tracts to the west of the Subject Property are each substantially smaller than 80 acres. In addition, those areas are zoned for Rural Residential (RR-5) use and development and are part of an "adjacent" developed or committed area for which an exception has been taken in the Rural Comprehensive Plan. Finally, all of those tracts are developed with residences.

The "tract" to the south and east of the Subject Property is that portion of the ACOE parcel that to the south of the Subject Property is developed with restrooms, showers, camp sites and RV sites associated with the Schwarz Park campground and recreation area (located at the base of Dorena Dam on the banks of the Row River) and that to the east of the Subject Property is developed with the Dorena Reservoir and the associated Baker Bay Park recreational amenities described in our findings above. That "tract" is larger than 80 acres, but as noted previously, it may be generally contiguous but it is not designated in the RCP and is unzoned.

In short, the majority of the tracts generally contiguous or adjacent to the Subject Property contain substantially less than 80 acres, are developed with residences, and are within developed or committed areas for which an exception has been taken in the Rural Comprehensive Plan. Accordingly, the response to this criterion strongly supports our finding, conclusion and decision that the Subject Property be designated and zoned as Impacted Forest Land.

Policy 15.c.(4):

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

As discussed in our findings in response to Policy 15.b.(4), access to the Subject Property is provided by Spillway Road. Spillway Road is classified in the County's Transportation System Plan (TSP) as a Rural Local road to the point it enters the Subject Property, and it provides access to the rural residential development to the west of the Subject Property as well as access

at the westerly boundary of the Subject Property. Access to Spillway Road is via Shoreview Drive, which is classified in the TSP as a Rural Major Collector. Spillway Road and Shoreview Drive are intended primarily to serve the rural residential development in the area and the Dorena Reservoir parks and recreation areas.

While the Subject Property is not in an urban area and therefore is not served by municipal water or sewer services, we find that it is provided with the following public facilities and services:

1. Emergency Services: Cottage Grove Fire and Ambulance Department;
2. Schools: District 45J – South Lane

The Subject Property also has access to electric utility and telephone service.

In summary, the Subject Property conforms closely to this characteristic which also supports our finding, conclusion and decision that the Subject Property be designated and zoned as Impacted Forest Land.

CONCLUSION REGARDING IMPACTED FOREST LAND ZONE (F-2, RCP) DESIGNATION AND ZONING:

In summary, we find, conclude and decide that the Subject Property does not conform to the Non-Impacted Forest Land Zone (F-1, RCP) characteristics and that the Subject Property does conform more closely to the Impacted Forest Land Zone (F-2, RCP) characteristics. Accordingly, we find, conclude and decide that the Subject Property should, through the enactment of Ordinance No. PA 1236, be designated and zoned Impacted Forest Land (F-2, RCP).

Attachment F
Lane County Assessors Tax Map Composite of Vicinity

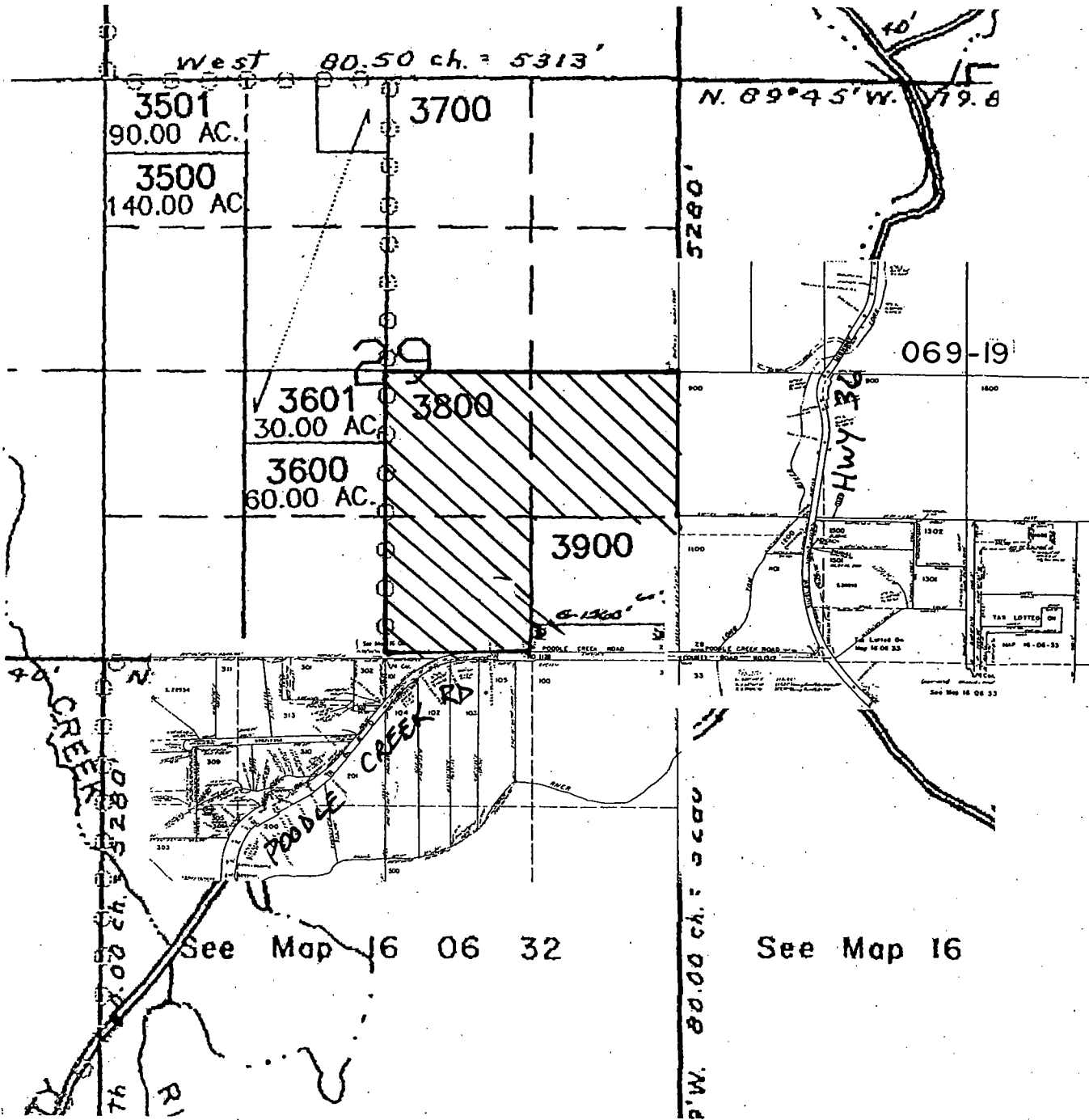


Figure 5: Composite Zoning Map of Surrounding Area

