Oregon
Theodore R. Kulongoski, Governor

Department of Land Conservation and Development
635 Capitol Street, Suite 150
Salem, OR 97301-2540
(503) 373-0050
Fax (503) 378-5518
www.lcd.state.or.us

NOTICE OF ADOPTED AMENDMENT

11/05/2013

TO: Subscribers to Notice of Adopted Plan or Land Use Regulation Amendments

FROM: Plan Amendment Program Specialist

SUBJECT: Lane County Plan Amendment
DLCD File Number 003-12

The Department of Land Conservation and Development (DLCD) received the attached notice of adoption. Due to the size of amended material submitted, a complete copy has not been attached. A Copy of the adopted plan amendment is available for review at the DLCD office in Salem and the local government office.

Appeal Procedures*

DLCD ACKNOWLEDGMENT or DEADLINE TO APPEAL: Monday, November 18, 2013

This amendment was submitted to DLCD for review prior to adoption pursuant to ORS 197.830(2)(b) only persons who participated in the local government proceedings leading to adoption of the amendment are eligible to appeal this decision to the Land Use Board of Appeals (LUBA).

If you wish to appeal, you must file a notice of intent to appeal with the Land Use Board of Appeals (LUBA) no later than 21 days from the date the decision was mailed to you by the local government. If you have questions, check with the local government to determine the appeal deadline. Copies of the notice of intent to appeal must be served upon the local government and others who received written notice of the final decision from the local government. The notice of intent to appeal must be served and filed in the form and manner prescribed by LUBA, (OAR Chapter 661, Division 10). Please call LUBA at 503-373-1265, if you have questions about appeal procedures.

*NOTE: The Acknowledgment or Appeal Deadline is based upon the date the decision was mailed by local government. A decision may have been mailed to you on a different date than it was mailed to DLCD. As a result, your appeal deadline may be earlier than the above date specified. NO LUBA Notification to the jurisdiction of an appeal by the deadline, this Plan Amendment is acknowledged.

Cc: Mark Rust, Lane County
Jon Jinings, DLCD Community Services Specialist
Katherine Daniels, DLCD Farm/Forest Specialist
Ed Moore, DLCD Regional Representative

<paa> YA

FORM 2 DLCD Notice of Adoption

This Form 2 must be mailed to DLCD within **20-Working Days after the Final Ordinance is signed** by the public Official Designated by the jurisdiction and all other requirements of ORS 197.615 and OAR 660-018-000

☐ In person ☐ electronic ☐ mailed

DATE STAMP: SHUTTLE OCT 29 2013 For Office Use Only

Jurisdiction: **Lane County**

Local file number: **509-PA 11-05502**

Date of Adoption: **10/15/2013**

Date Mailed: **10/25/2013** (23)

Was a Notice of Proposed Amendment (Form 1) mailed to DLCD? ☒ Yes ☐ No Date: 1/12/2012 (20)

☐ Comprehensive Plan Text Amendment

☒ Comprehensive Plan Map Amendment

☐ Land Use Regulation Amendment

☒ Zoning Map Amendment

☐ New Land Use Regulation

☐ Other:

Summarize the adopted amendment. Do not use technical terms. Do not write "See Attached".

Plan amendment and rezone of 123 acres of E-40, Agricultural land to a Plan/Zone designation of Marginal Lands.

Does the Adoption differ from proposal? Please select one

Yes, in that a "Site Review" suffix has been added to the adopting Ordinance to better ensure domestic water availability.

Plan Map Changed from: **Agricultural** to: **Marginal Land**

Zone Map Changed from: **E-40/Exclusive Farm Use** to: **Marginal Land with Site Review**

Location: **18S-04W-13, tax lot 1300** Acres Involved: **123**

Specify Density: Previous: **40 ac.** New: **10/20 ac.**

Applicable statewide planning goals:

1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19
☒	☒	☒	☒	☒	☒	☐	☐	☐	☐	☒	☒	☐	☐	☐	☐	☐	☐	☐

Was an Exception Adopted? ☐ YES ☒ NO

Did DLCD receive a Notice of Proposed Amendment...

35-days prior to first evidentiary hearing?	☒ **Yes**	☐ **No**
If no, do the statewide planning goals apply?	☐ **Yes**	☐ **No**
If no, did Emergency Circumstances require immediate adoption?	☐ **Yes**	☐ **No**

DLCD File No. 003-12 (19147) [17665]

DLCD file No. _____

Please list all affected State or Federal Agencies, Local Governments or Special Districts:

Lane County, DLCD

Local Contact: **Jerry Kendall** Phone: **(541) 682-4057** Extension:

Address: **PW/LMD; 3050 N. Delta Hwy.** Fax Number: **541-682-3947**

City: **Eugene** Zip: **97408-1636** E-mail Address: **jerry.kendall@co.lane.or.us**

ADOPTION SUBMITTAL REQUIREMENTS

This Form 2 must be received by DLCD no later than 20 working days after the ordinance has been signed by the public official designated by the jurisdiction to sign the approved ordinance(s)

per ORS 197.615 and OAR Chapter 660, Division 18

1. This Form 2 must be submitted by local jurisdictions only (not by applicant).
2. When submitting the adopted amendment, please print a completed copy of Form 2 on light **green paper if available.**
3. Send this Form 2 and **one complete paper copy** (documents and maps) of the adopted amendment to the address below.
4. Submittal of this Notice of Adoption must include the final signed ordinance(s), all supporting finding(s), exhibit(s) and any other supplementary information (ORS 197.615).
5. Deadline to appeals to LUBA is calculated **twenty-one (21) days** from the receipt (postmark date) by DLCD of the adoption (ORS 197.830 to 197.845).
6. In addition to sending the Form 2 - Notice of Adoption to DLCD, please also remember to notify persons who participated in the local hearing and requested notice of the final decision. (ORS 197.615).
7. Submit **one complete paper copy** via United States Postal Service, Common Carrier or Hand Carried to the DLCD Salem Office and stamped with the incoming date stamp.
8. Please mail the adopted amendment packet to:

ATTENTION: PLAN AMENDMENT SPECIALIST
DEPARTMENT OF LAND CONSERVATION AND DEVELOPMENT
635 CAPITOL STREET NE, SUITE 150
SALEM, OREGON 97301-2540

9. **Need More Copies?** Please print forms on **8½ -1/2x11 green paper only if available.** If you have any questions or would like assistance, please contact your DLCD regional representative or contact the DLCD Salem Office at (503) 373-0050 x238 or e-mail **plan.amendments@state.or.us**.

BEFORE THE BOARD OF COMMISSIONERS OF LANE COUNTY, OREGON

ORDINANCE NO. PA 1296	**IN THE MATTER OF AMENDING THE RURAL COMPREHENSIVE PLAN TO REDESIGNATE LAND FROM "AGRICULTURAL" TO "MARGINAL LAND" AND REZONING THAT LAND FROM "E-40/EXCLUSIVE FARM USE" TO "ML/SR MARGINAL LAND WITH SITE REVIEW", 123 ACRES; AND ADOPTING SAVINGS AND SEVERABILITY CLAUSES (file 509-PA 11-05502; Suess Co.)**

WHEREAS, the Board of County Commissioners of Lane County, through enactment of Ordinance PA 884, has adopted Land Use Designations and Zoning for lands within the planning jurisdiction of the Lane County Rural Comprehensive Plan; and

WHEREAS, Lane Code 16.400 sets forth procedures for amendment of the Rural Comprehensive Plan, and Lane Code 16.252 sets forth procedures for rezoning lands within the jurisdiction of the Rural Comprehensive Plan; and

WHEREAS, in July of 2011, application no. 509-PA11-05502 was made for a minor amendment to redesignate approximately 123 acres of land, Map 18-04-13, tax lot 1300, from "Agriculture" to "Marginal Land" with a concurrent request to rezone the property from "E-40/Exclusive Farm Use" to "ML/SR Marginal Land with Site Review"; and

WHEREAS, the Lane County Planning Commission reviewed the proposal in public hearings on March 6 and March 20, 2012, and deliberated and recommended denial on April 17, 2012; and

WHEREAS, the evidence in the record, as supplemented in the hearing before the Board of Commissioners, indicates that the proposal meets the requirements of Lane Code Chapter 16, and other requirements of state and local law; and

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

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

1. The Lane County Rural Comprehensive Plan is amended by redesignating Tax Lot 1300, Map 18-04-13, from "Agriculture" to "Marginal Land". The area being redesignated is depicted on the Official Lane County Plan Map 1804, attached hereto as Exhibit "A" and incorporated herein. Excluded from the redesignation of the entire Tax Lot is the 14,574 sq ft of land added to Tax Lot 1300 by property line adjustment in 1998, via Instrument no.

9828981, Lane County Official Records.

2. Tax lot 1300, Map 18-04-13, is rezoned from "E-40/Exclusive Farm Use" to "ML/SR Marginal Land with Site Review". Excluded from the rezoning of the entire Tax Lot is the 14,574 sq ft of land added to Tax Lot 1300 by property line adjustment in 1998, via Instrument no. 9828981, Lane County Official Records. The area being rezoned is depicted on Zoning Map 1804, attached hereto as Exhibit "B" and incorporated herein. The exclusive reason for the addition of the Site Review overlay is to assure compliance with the following development standards.

(a) For any dwelling not served by the Eugene Water and Electric Board district, to ensure adequate domestic supply, no unit of land on the subject property will be approved for a dwelling building permit without the owner having a statement from a registered geologist stating that the dwelling can be served by a tested, existing well that produces a supply adequate for a dwelling.

(b) For any dwelling not served by the Eugene Water and Electric Board district, to promote the sustainability of each domestic well and minimize the risk of interference with surrounding wells, no building permit will be issued for any dwelling absent a recorded covenant, enforceable by the county, other owners of the subject property, and any owners association: (a) limiting any well pump capacity to 0.5 gpm; and (b) requiring a 1,500 gallon storage tank in connection with any proposed dwelling.

(c) To promote fire protection, any building permit application must demonstrate that the building site, building plans and site plans comply with the standards in LC 16.211(8)(c) (Fire Siting Standards), (d) (Domestic Water Supplies) and (e) (Fire Safety Design Standards for Roads and Driveways) in effect on the date of enactment of this ordinance, and that continued compliance with these standards is enforceable by the county, other owners of the subject property, and any owners' association through covenants recorded against the property.

(d) An applicant must demonstrate that the requirements in (a), (b) and (c) above can be met at the time the building permit application is filed based on objectively determinable facts. The Land Management Division's review of the building permit application is administrative and not subject to appeal. The Land Management Division may charge the standard fee for the on-site verification for (c) above for each permit issued.

(e.) No dwelling permit will be issued for the subject property without evidence of a recorded covenant, enforceable by the county and other owners of the subject property, limiting the use of any well on the subject property to domestic purposes.

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

FURTHER, the Board of County Commissioners adopts the ESEE (Economic, Social, Environment and Energy) analysis set forth in Exhibit "D" to comply fully with Statewide Planning Goal 5.

The prior designation and zone repealed 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 hereof.

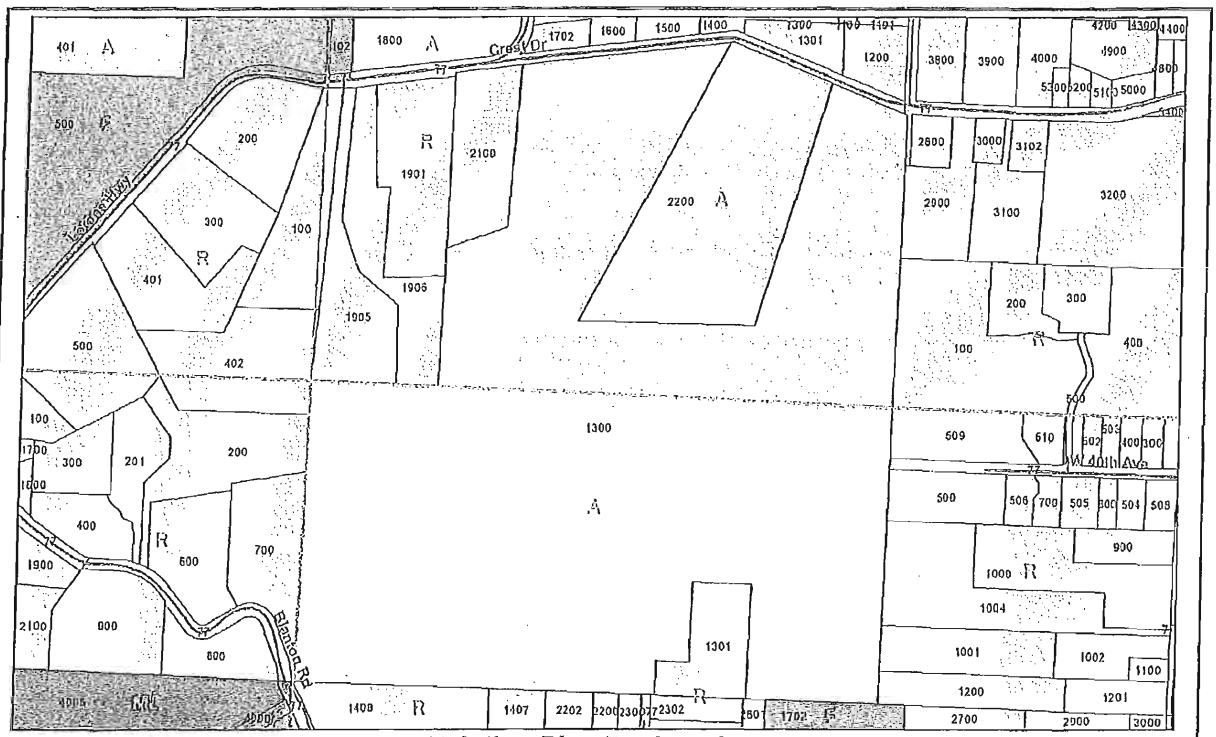
ENACTED this 15th day of October, 2013.

Sid Leiken, Chair,
Lane County Board of Commissioners

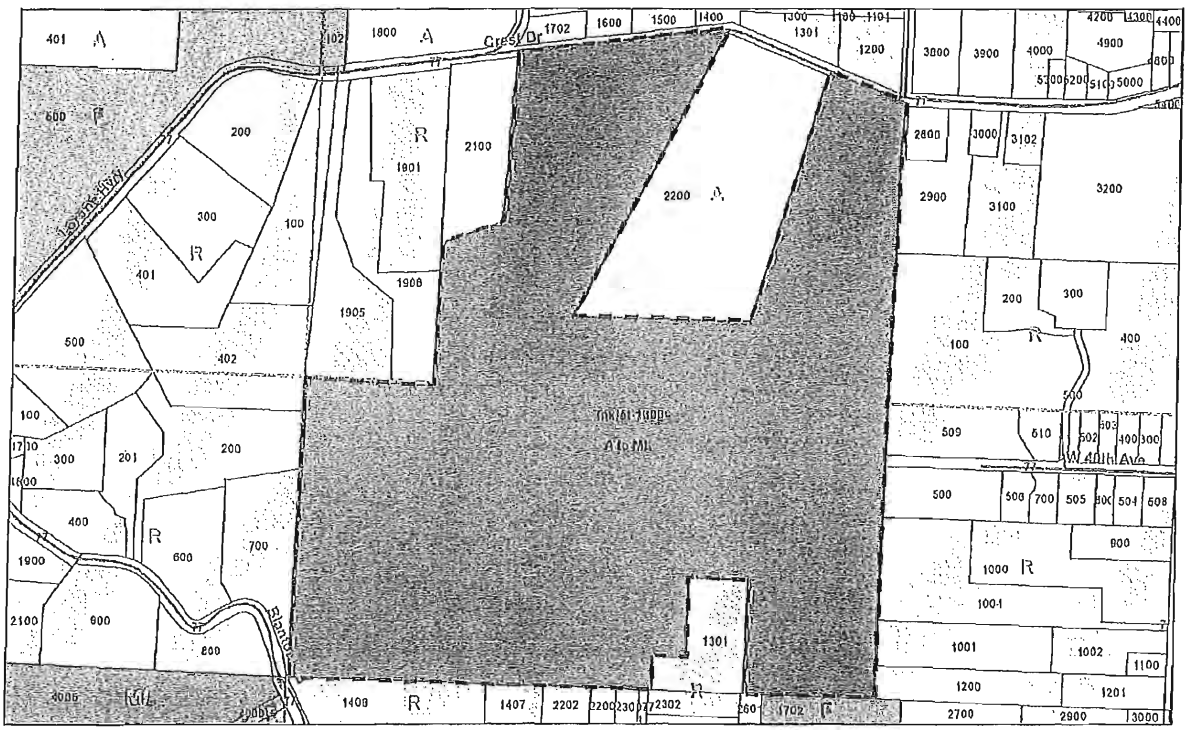
Recording Secretary for this Meeting of the Board

APPROVED AS TO FORM
Date 10-10-13 Lane County
OFFICE OF LEGAL COUNSEL

Exhibit A



Existing Plan Designation

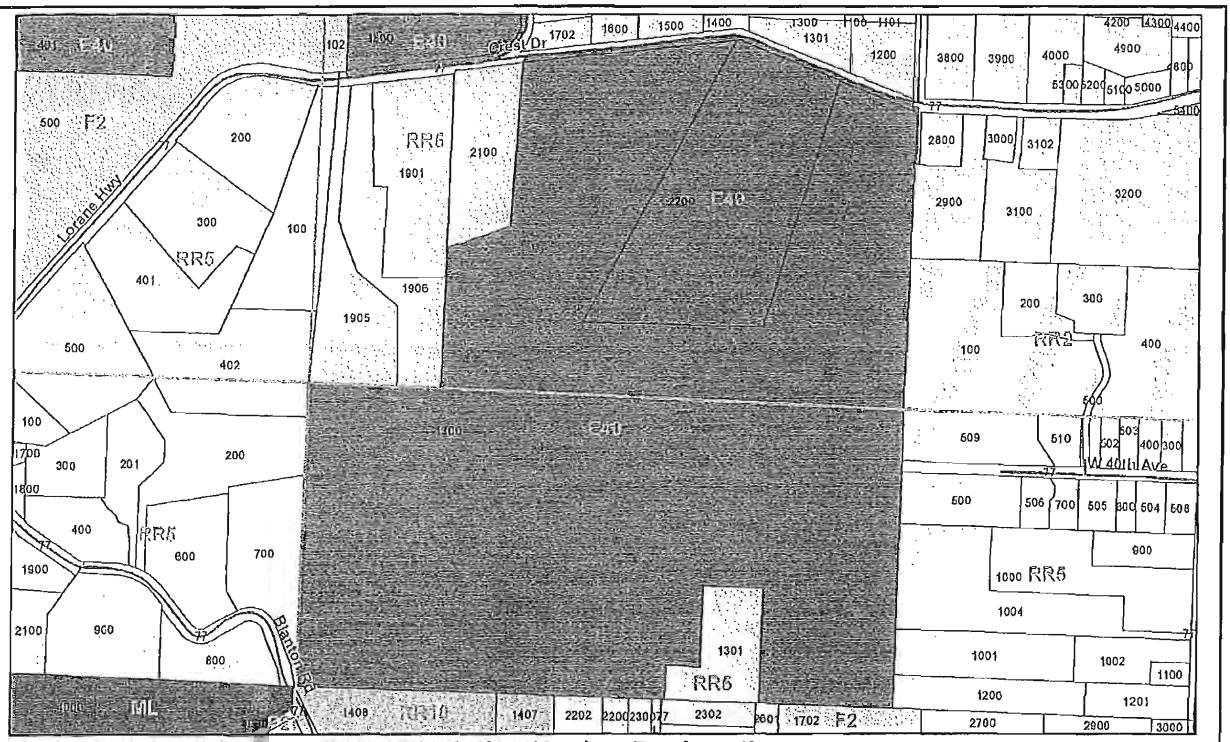


Change being enacted by No. 509-PA 11-05502 on Official Plan Map 1804

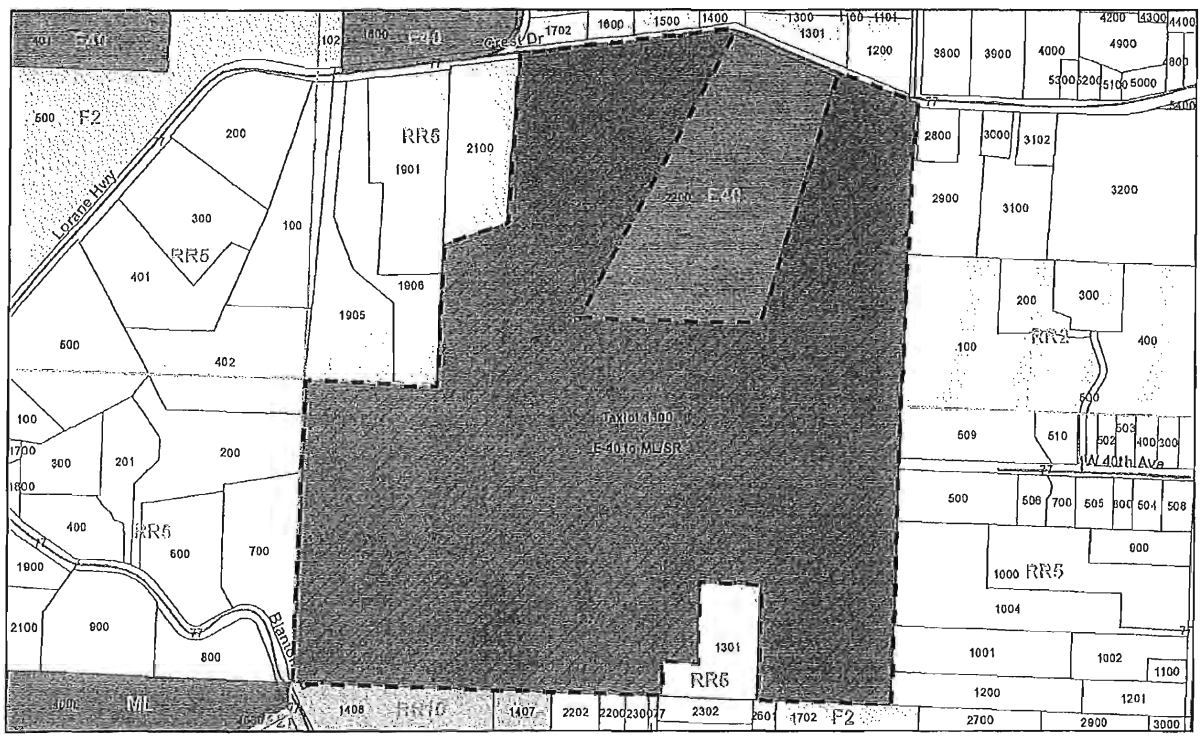
N

0 600 1,200 Feet

Exhibit B



Existing Zoning Designation



Change being enacted by No. 509-PA 11-05502 on Official Zone Map 1804

N

0 600 1,200 Feet

Exhibit C: Blanton Tract Marginal Lands Supporting Findings

Supplemental Findings addressing issues following County Board Hearing

Ensuring domestic well sustainability

As discussed below, the applicant demonstrated the aquifer is adequate to supply the use, which is the standard that must be met. There was, however, considerable discussion about domestic well sustainability and noninterference with other wells – that is, how to maximize the likelihood that a lot proposed for development will have a successful domestic well that will continue to produce an adequate supply and not interfere with neighboring wells. Ralph Christensen, R.G., explained that over pumping increases aquifer drawdown in the surrounding area and damages the well that is being pumped. See Lttr from R. Christensen, R.G. to B. Kloos (June 3, 2013). Based on the recommendations of Mr. Christensen, the Site Review overlay zone will be applied to require:

1. To ensure adequate domestic supply, no unit of land on the subject property will be approved for a dwelling building permit without the owner having a statement from a Registered Geologist stating that the dwelling can be served by a tested, existing well that produces a supply adequate for a dwelling.

2. To promote the sustainability of each domestic well and minimize the risk of interference with surrounding wells, no building permit will be issued for any dwelling absent a recorded covenant, enforceable by the county, other owners of the subject property, and any owners association: (a) limiting any well pump capacity to 0.5 gpm; and (b) requiring a 1,500 gallon storage tank in connection with any proposed dwelling.

Meeting these requirements is intended to be demonstrated at the time of building permit application based on objectively determinable facts.

Promoting fire protection

County Board deliberations addressed issues of rural fire protection on Marginal Lands. The Marginal Lands Zone, LC 16.214, does not include dwelling siting standards for fire protection. The Impacted Forest Zone, LC 16.211, in contrast, contains robust standards for fire protections. These include: LC 16.211(8)(c) (Fire Siting Standards); LC 16.211(8)(d)(Domestic Water Supplies); and LC 16.211(8)(e)(Fire Safety Design Standards for Roads and Driveways). To promote fire safety, the Board incorporates the F-2 fire standards list above into the siting of any dwelling on the subject property

Site Review overlay zone will be applied to require a showing, at the time of building permit issuance, that:

1. The proposed building site, building plans and site plans comply with the standards in LC 16.211(8)(c), (d) and (e); and

2. Compliance with these standards is enforceable by the Land Management Division, other owners of the subject property and any owners' association through covenants recorded against the property.

With these additional protections, any residences developed on the property will meet the same fire protection standards as F-2 dwellings. Furthermore, the protections will be enforceable by neighbors in the future.

Adequacy of groundwater supply

The primary issue here is whether there is an adequate groundwater supply for the potential number of units. This issue is posed by LC 16.400(8)(a)(iii)(bb), which is a plan amendment standard, requiring "[a] Availability of public and/or private facilities and services to the area of the amendment, including transportation, water supply and sewage disposal;"

This issue is addressed in the Finding below, at Part III.B., which reflects evidence submitted to the Planning Commission, largely from Ralph Christensen, Senior Geologist, at EGR&Associates. He examined well logs in a four-square mile area in this neighborhood, including for many wells drilled since 1992. He also conducted a "water balance" study of the aquifer, which compares the amount of water going into the aquifer, mainly from precipitation, with the amount of water going out. His analysis, which the Board adopts, appears in EGR's March 14, 2012 letter. Its conclusion is:

> The studied area has low transmissivity and yield for water supply relative to even other bedrock areas of Lane County. Even so, the large parcel size of the Marginal Land designations is such that overtaxing the aquifer and causing an adverse impact on surrounding property owners is highly improbable. It is possible to have an individual well interfere with another individual well, but that will not be an aquifer- wide problem, but an isolated incident, which can be resolved under the rules governing Oregon water rights. Finally, and most importantly, it can be expected that wells in this area will go dry as the wells age, and particularly those wells that are used hard (storage helps alleviate this). However, the aquifer will not be depleted, as the transmissivity seen in this area is sufficiently low that a well, or series of wells, cannot dewater a significant area because water cannot move with sufficient ease through the aquifer for that to happen. Finally, the recharge to the area is sufficient to recover the groundwater that is pumped out several times over. Those wells which lose flow can reasonably be expected to be replaceable by a new well, and that new well will have a static level comparable to the one seen in the initial well. However, as can be seen in the well log data, the potential yield from that well could vary widely.

Considerable opposing evidence on water supply was submitted to the Board. Most notable was written and oral testimony submitted on May 21 by Jonathan Williams, R.G., of Groundwater Science Applications, White City, Oregon.

The Williams testimony is premised on the assumption that two code standards apply to this decision that do not, in fact, apply. See Lttr from J. Williams to J. Kendall (May 21, 2013) at 1-

2. One standard is the no "significant adverse impacts" standard of LC 16.290(5)(a). This standard applies to certain discretionary uses on Rural Residential lands. It is not incorporated into the standards for this plan/zone change to Marginal Lands. The other is the aquifer testing study requirement in LC 13.050(13)(c)(i), which by its terms applies at the time of any proposed land division. Neither of these standards applies to this plan/zone change decision.

Mr. Williams' misunderstanding may derive from the letter from opponents' attorney, Anne Davies, dated May 21. See Lttr from A. Davies to County Board (May 21, 2013) at 4. That letter looks to language in RCP Goal 11 Policy 6.j. which says that "[s]ervice levels for land designated marginal lands include levels consistent with service levels for Rural Residential outside a community designation * * * *" She then jumps to the list of standards for certain discretionary uses listed in the RR zone – at LC 16.290(5). It is there that she finds the "no significant adverse impacts" standard. This "no significant adverse impacts standard" does not apply to dwellings permitted in the RR zone, only to a short list of discretionary uses. It is too far a stretch to start with the very general language in RCP Goal 11 Policy 6.j. and then draw into this policy the approval standards for some discretionary uses allowed in the RR zone.

Mr. Williams' critique is focused on the 1992 pump test of the well on the Blanton property done by Ray Walter Engineering and documented on Feb. 7, 1992. This pump test was relied in part by EGR&Associates to document the aquifer characteristics. The Williams letter provides a detailed negative critique of the 1992 pump test documentation.

EGR&Associates responded in detail to the Williams critique. See Lttr from R. Christensen, EGR&Associates to B. Kloos (June 3, 2013). The June 3 EGR letter also responded to questions from the County Board about water supply and preserving wells, and it responded to individual neighbors' documentation of their historic well problems.

The June 3 EGR letter responded point by point to the 13 criticisms of the pump test in the Williams letter. The major theme is that the adequacy of the water supply is determined by the water budget analysis, not by a well pump test. The Board agrees with the EGR responses.

The June 3 EGR letter also showed the four-square mile area in which the well analysis, summarized in the EGR March 14, 2012 letter. The area is shown on page one.

The June 3 EGR letter also took a close look at the properties of four neighboring owners whose reported difficulties with wells were summarized in the Williams letter. These owners are McKenzie, Funk, Harrang, and Taylor. The size and proximity of these neighboring properties is summarized in the Table on page 2 of the EGR letter. The Taylor property is to the north and inside the EWEB service boundary. The other three owners are to the south and outside the EWEB service boundary. The distance from the subject property to these three dwellings ranges from about 238 feet (McKenzie) to about 1,202 feet (Harrang).

In response to a question from Commissioner Bozievich, the June 3 EGR letter calculated the drawdown from a well, pumping at 0.5 gpm, at the perimeter of a 10-acre lot – a distance of 330 feet. The calculated drawdown is 1.5 feet. June 3 EGR Lttr at 2-3. This approval is being conditioned to limit well pumps to 0.5 gpm.

The June 3 EGR letter reaches three basic conclusions: (1) "[R]echarge that goes into the ground on just 2 acres in the vicinity of the subject property is sufficient to meet the annual water needs of a dwelling using the conservative 650 gpd in year round water use. Therefore, 10 acre parcels will produce excess groundwater above the needs of a dwelling on that parcel. The carrying capacity of this aquifer is greater than the demands of the potential dwelling units. * * * * Parcels could actually be much smaller and not deplete the aquifer." (2) "Pumping for residential use on the subject property has a very low probability of causing any significant adverse impact on * * * existing users * * * *" Lttr at page 2. (3) "Mr. Williams agrees that the values presented by Mr. Walters and EGR for transmissivity are reasonable for the area." Lttr at page 6. "The aquifer will not be depleted by this development because the transmissivity seen in this area is sufficiently low that a well, or even a series of well, cannot dewater the aquifer to any significant extent beyond the immediate vicinity of the well." Lttr at 6.

The Board adopts the conclusions of EGR above. The Board also adopts EGR's summary conclusion and recommendations for wells and storage, from page 7:

> My recommendation for management of wells on this project would be the same as my recommendation for management of any domestic well in this neighborhood. Limit the size of the well pump to 0.5 gpm, and require each dwelling to have above ground storage of about 1500 gallons. This will provide the adequate protection for the continued utility of each well so equipped. It is also minimize the potential for interference between wells. These measures are not needed to ensure an adequate supply of groundwater; the adequacy of the supply is inherent in the water budget. This will promote the utility of individual wells.

Individual opponents and the attorney for the Blanton opponents summarized their recollection about what Mr. Christensen said about groundwater at this location in the 1990-1992 proceeding on a different application for a more dense "nonresource" development proposal. EGR June 3 Lttr at 5 item 9. Mr. Christensen objected to this hearsay being used in place of his current, direct, written testimony. The Board concurs.

In summary, the relevant issue on groundwater is one of supply versus demand for the subject property. The applicant has shown that the supply exceeds the demand by several times. The Board has imposed conditions that will ensure a well will be available for each dwelling, minimize the potential for well interference, and promote the sustainability of each well.

Goal 5 Big Game Issue

In Part III.C. of these findings, under RCP Goal Five: Flora and Fauna Policy 11, the question is raised whether Goal 5 must be applied directly.

The policy is:

> **RCP Goal Five: <u>Flora and Fuana</u>, Policy 11:**

Oregon Department of Fish and wildlife recommendations on overall residential density for protection of big game shall be used to determine the allowable number of residential units within regions of the County. Any density above that limit shall be considered to conflict with Goal 5 and will be allowed only after resolution in accordance with OAR 660-16-000. The County shall work with Oregon Department of Fish and wildlife officials to prevent conflicts between development and Big Game Range through land use regulation in resource areas, siting requirements and similar activities which are already a part of the County's rural resource zoning program.

The assumption in the findings below is that this policy must be applied directly, and a full Goal 5 ESEE analysis accompanies this decision. The ESEE analysis acknowledges the basic conflict between residences in rural areas and big game. The conclusion is to allow the increment of additional conflict that would accompany the new residential uses because the general neighborhood is already substantially degraded as big game habitat. This characterization of the big game value of the neighborhood is based on a site inspection by a Big Game Environmental Specialist. See Lttrs from Brian Meiering, Environmental Specialist, Schirmer Satre Group (Nov. 30. 2013) and (June 4, 2013).

Staff has correctly noted that the County in the past has not applied Goal 5 directly in making plan and zone changes to ML. The assumption has been that the plan and zone change is from one resource designation (either Ag or Forest) to another resource designation (ML), and, as with the Forest and Agriculture designations, compliance with Goal 5 applies to development density that is allowed by the zoning – 10 or 20-acre parcels in the case of the ML designation. Under this view, the first sentence of Policy 11, which invokes the ODFW density recommendations (80 acres for Major big game and 40 acres for Peripheral big game) is a target "within regions of the County," not a standard for individual sites. The policy as a whole is a directive to the county to continue working with the ODFW when amending land use regulations in resource areas. The Board adopts this reading of Policy 11.

The ESEE analysis supporting this decision is adopted as a contingency, in the event that the Board's reading of Policy 11 is not correct, or if for any other reason Goal 5 applies directly to this decision. If no ESEE is needed, the findings therein are otherwise adopted as supportive findings.

Related Big Game Issues

A May 21 memorandum from Mr. Reeder questioned whether the ML residences would force more big game into the adjacent urban areas. The June 4 letter from Environmental Specialist Meiering explained that big game already move across the UGB line for a number of reasons, and adding the potential number of ML residences will not noticeably affect the existing pattern.

The May 21 memorandum from Mr. Reeder also questions whether the ML development will cause a negative snowballing effect on big game. The June 4 Meiering letter explains why it will not:

> The second full paragraph of page 3 [of the Reeder letter] introduces a discussion related to avoiding a decision which impacts "Major Big Game Range" and which could perpetuate negative impacts. In my November 30, 2012 memo to your office I noted how the property of interest already fits more appropriately within the "Peripheral Big Game Range" and "Impacted Big Game Range" designations. Please note that surrounding land use was not my only consideration. This professional opinion was based on several field visits to the site, analysis of aerial photography, consideration of limited ODFW survey data and consideration of surrounding land uses. I believe negative impacts will not be generated if the ML applications are approved. That is because the subject properties are already a part of a large neighborhood that is significantly degraded in terms of its habitat value for Big Game. Development of the subject property with rural residential uses similar in density to the surrounding land will not trigger a spread of the lower quality habitat.

The Board adopts the conclusions of the applicant's big game expert Meiering. These match his conclusions stated in the ESEE analysis.

Issues related to Marginal Land statutory test for forestry

Use of the 50-year growth cycle: Goal One Coalition challenges the use of a 50-year growth cycle for timber in applying the eighty-five cubic feet of merchantable timber per acre per year standard and the $10,000 per year income standard. See Lttr from Attny Malone to J. Kendall (May 21, 2013). As explained in the June 5 letter from consulting forester Marc Setchko, this Board has previously determined that the 50-year growth cycle is the correct growth cycle to use, and LUBA has affirmed the use of the 50-year growth cycle in litigation brought by LandWatch Lane County. See *Walker v. Lane County*, 53 Or LUBA 374 (No. 2006-138, 2007).

Goal One Coalition also makes the related argument that the forestry income analysis assumed sale for sawmill logs, rather than peeler logs of grades "1P, 2P or 3P," and the peeler logs are more valuable. See Lttr from Attny Malone to J. Kendall (June 4, 2013) at 6. As Consulting Forester Setchko explains, the peeler logs are from old growth timber, and that assumption is not consistent with a 50-year growth cycle. Lttr from M. Setchko to County Board (June 6, 2013) at 1 (submitted on June 11).

Focus on Douglas fir versus other species of merchantable timber: The Blanton neighbors challenged the exclusive use of Douglas fir as the species for determining whether the site is capable of producing 85 cf/ac/yr of merchantable timber. See Lttr from Attny Davies to County Board (May 21, 2013) at 2; Lttr from Attny Malone to J. Kendall (June 4, 2013) at 6. Mr. Setchko explained that Douglas fir was used, rather than any other species, because Douglas fir has the highest growth rates at these sites and the highest income potential because it is the most valuable tree species that will grow at these sites. Using Douglas fir generates the highest numbers for potential volume and income, for the reasons explained by Mr. Setchko. See Lttrs from M. Setchko to County Board (June 5, 2013) at page 3 item 4, and (June 6, 2013) at 1 para 3.

Relevance from income of logging on Blanton site: The Blanton neighbors point to the 1990 estimated revenue from 1989 logging on the Blanton site as evidence countering the Setchko calculation of income potential from forestry operations on the site. See Lttr from Attny Davies to County Board (May 21, 2013) at 1-2. Mr. Setchko addressed this evidence. See Lttr from M. Setchko to County Board (June 5, 2013) at page 2 item 2. He explained that estimated revenue from particular logging events is not particularly relevant to applying the income test for marginal lands. It does not address the capability of the site to produce revenue on an annual basis over the 50-year growth cycle. It is not based on log prices in the relevant time period – 1978 to 1982. Marginal land is intended to produce timber and revenue from timber harvest, as it is resource land. Opponents' evidence of 1990 logging revenue does not undermine the applicant's evidence showing that the income and productivity standards for forestry are met.

Blanton clear cutting without reforestation: Attorney Malone alleges that the Blanton site, contrary to law, was not replanted after harvesting in the 1980s. Lttr from Attny Malone to J. Kendall (June 4, 2013) at 2 para B. Whatever the merits of this allegation, it is not relevant to the productivity issue, which is based on the acreage and the quality of the soils for timber production.

Existing farm or forest operation: Attorneys Malone and Davies critique the Setchko forestry analysis for each site because it did not consider contiguous land in the same ownership. Lttr from Attny Davies to County Board (May 21, 2013) at 2; Lttr from Attny Malone to J. Kendall (May 21, 2013) at 3. Contiguous land in the same ownership during the relevant period (1978-1982) must be considered in the analysis, as explained in *Walker v. Lane County*, 53 Or LUBA 374, 382 (No. 2006-138, 2007). For each of the three applications, the applicant has demonstrated, with letters from family members of the property owner, that no contiguous land was owned during the relevant period and that the properties were not a part of larger farm or forest operation. Goal One questions whether the assertions by these family members is accurate; however, Goal One provides no evidence that the family members' evidence is not accurate.

Potential farm or forest operation: Attorney Malone, on behalf of Goal One Coalition, asserts that the marginal land test requires looking at "potential" farm and forest operations that could include adjacent land in other ownerships. Lttr from Attny Malone to J. Kendall (May 21, 2013) at 3-4. The notion is the adjacent lands in other ownerships needs be considered in applying the test. This is incorrect. The focus of the test under the statute is on a "farm operation" or "forest operation." There is no need to post hypothetical farm or forest operations using other resource land in other ownerships. Under this theory, all adjacent resource land in the county would constitute a single operation for purposes of applying the test.

What soils tables to use

Attorney Malone on behalf of Goal One asserts that the applicant used the wrong soils tables to determine agricultural capability; the applicant should have used the same soils tables used by Forester Setchko to do his forest capability analysis. See Lttr from Attny Malone to J. Kendall (June 4, 2013) at 3. This reflects a fundamental misunderstanding of the rules. The Marginal Lands statute prescribes using the SCS soils tables and classifications from 1983 (published in 1987) to determine agricultural capability. Those were the same soils tables used in 1992

County Board decision denying the nonresource plan change for the Blanton site, but finding that the site is not Agricultural Land based on the soil types. In an earlier case brought by the Goal One Coalition LUBA explained what soils data must be used in a Marginal Land application to determine agricultural capability. See *Just v. Lane County*, 49 Or LUBA 456 (2005). That is what the applicant did here.

The soils analysis done for the Blanton site for the 1992 Nonresource application documented the soils on site, as mapped by the then SCS, as being 100% Class VI soils, based on the 1987 publication. Exhibit G to the Application, "Agriculture Capability Analysis," Cascade Earth Sciences (April 1, 1991) at page 1, para 2.2. and page 4 para 4.1. The CES study lists each soil type present. Relevant portions of the SCS publication, including description sheets for each soil type, were submitted by the Applicant on June 11. In reviewing the county's 1992 nonresource decision LUBA confirmed "that there is no dispute that the property is not agricultural land under Goal 3." *Westfair Assoc. Partnership v. Lane County*, 25 Or LUBA 729, 732 (1993). In summary, based on the soils ratings of the SCS in 1983, as published in 1987, all soils on the site are Class VI.

Public Interest Standard

To the extent that the opposition has raised objections based on the "public interest" standard in LC 16.252(2), such as well water delivery systems and the potential for inclusion of the property into the Urban Growth Boundary, these objections have been satisfactorily addressed in these findings. In that all of the standards for a Plan Amendment and Zone change to Marginal Lands have been met, the Board finds the proposal to be in the public interest.

Consistency with Purposes of ML Zone

Opponents assert that the rezoning to ML is not consistent with the "Purposes" of the ML zone stated in LC 16.214(1). See Lttrs from Attny M. Reeder (May 21, 2013) page 3, (June 4, 2013) page 5, 7. The purpose is:

> ***Purpose.*** *The Marginal Lands Zone (ML-RCP) is intended to:*
> *(a) Provide an alternative to more restrictive farm and forest zoning.*
> *(b) Provide opportunities for persons to live in a rural environment and to conduct intensive or part-time farm or forest operations.*
> *(c) Be applied to specific properties consistently with the requirements of ORS 197.005 to 197.430 and the policies of the Lane County Rural Comprehensive Plan.*

The rezoning will be consistent with each of these very generally stated standards.

With respect to subsection (a), the rezoning will provide an alternative to more restrictive farm and forest zoning. The ML remains resource land, but it will allow division for dwellings at 10 or 20 acres, depending on the adjacent zoning. This is less restrictive than the standards for dwelling development on Ag or Forest land.

With respect to subsection (b), the rezoning will provide opportunities for more people to live in a rural environment and conduct farm and forestry uses on low value resource land. This follows

from the finding above, that there dwelling will be allowed on somewhat smaller lots. This standard does not compel owners to conducts farm or forest uses. It provides the opportunity for that.

With respect to subsection (c), this rezoning is being made consistent with the relevant standards in state law and the Rural Comprehensive Plan.

ML designation and expansion of the UGB

In connection with all three applications it was asserted that a ML designation would increase the likelihood that the subject properties would be included in the UGB. See Lttrs from Attny M. Reeder to County Board (May 21, 2013) at 4 and (June 4, 2013) at 5; Lttr from Attny A. Davies to County Board (May 21, 2013) at 7. Even if the subject property were to be considered for inclusion in the UGB, the County Board would have to co-adopt such changes, and, acting in the capacity as elected officials, would consider the broader public interest through that decision making process at that time.

Allegations of farm use of Blanton tract

Attorney Malone summarizes the anecdotal testimony from neighbors Mr. Tishman and Mr. Taylor about sheep and cattle being grazed on the Blanton site. This was offered as evidence of its history in farm use. Lttr from Attny Malone to J. Kendall (June 4, 2013) at 4-5, para D.

The applicant put these allegations in context and demonstrated, consistent with the original application, that there has been no farm use of the property, including during the relevant period, 1978 through 1982. See Lttr from J. Suess to J. Kendall (June 11, 2013). The Suess letter explains, in summary:

- About 15 years ago a rancher put longhorn cattle on the property for less than three months. They were removed for lack of feed; they never returned.

- After the 1989 logging goats were put on the property to rid it of back berries. Goats were used instead of mechanical clearing. They were not managed as a farm use.

- At about the same time, a tenant in a trailer on the property turned loose pot-bellied pigs and pet sheep she acquired as pets. These ran free on the property, causing a nuisance for neighbors, as they remained on the property after the tenant left. As abandoned animals they became sick and starving and attracted coyote, cougar and bear, thus triggering complaints from the neighbors. The "wild sheep incident" referred to by Mr. Taylor references an escape by one of these feral animals. Ultimately, a neighbor was permitted to shoot them and remove them for meat.

The evidence provided by the owner supports the applicant's position that the Blanton site was not in farm use during the relevant period (1978-1982) or at any other during the current ownership, which began in 1965.

Basic Findings Addressing Applicable Standards:

I. Summary of the Proposal

This application proposes to change the Rural Comprehensive Plan (RCP) designation from Agriculture to Marginal Lands and the zoning from E-40, Exclusive Farm Use, to ML, Marginal Lands, for about 123 acres of land located on the south side of Crest Drive. The site's frontage on Crest Drive extends from Chambers Street on the east to Blanton Road on the west. The property appears on zoning map 1804.

If this application is approved, and considering the 10-20 acre minimum parcel size of LC 16.214(6), the property potentially could be developed with 12 residences, some served by EWEB, and some served by wells.

Exhibit references are to exhibits in the application narrative.

A. Availability of Marginal Land Designation

The Marginal Lands designation is a resource designation that recognizes a much lower quality of resource soils and, therefore, allows residential development at 10 or 20-acre densities. A 1983 statute allowed counties to opt into Marginal Lands. Only two counties did so.

The Court of Appeals, in *Herring v. Lane County*, 216 Or App 84, 171 P3d 1025 (2007), summarized the availability of Marginal Lands:

> "Before turning to the specific arguments, we provide a background concerning the marginal lands statutory scheme and its application in Lane County. Enacted in 1983, the marginal lands statute, ORS 197.247 (1991), permitted counties to authorize procedures for designation of certain land as "marginal land" and to permit certain uses on it that otherwise would not be permitted, if the land met certain specified criteria. The criteria at issue in the present case are found in ORS 197.247(1) (1991):
>
> * * * *
>
> Although the legislature repealed the marginal land statute in 1991, it enacted a statute to permit counties that had adopted marginal land procedures under that statute to continue to apply them. ORS 215.316. Lane County was one of the counties that had adopted marginal land procedures, and it has continued to utilize ORS 197.247 (1991) to designate land as marginal land." [Footnote omitted] 216 Or App at 86-87.

The County Board, in its 1997 interpretation implementing the Marginal Land Statute, also recognized:

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

B. Subject Property: Location; Ownership; History

This property is Assessor's Map 18-04-13, TL 1300. Basic information about the subject property is provided in the RLID Detailed Property report, attached as Exhibit A. RLID shows the property as 123.21 acres in size, zoned E-40, and vacant.

Relevant deed history is documented in Exhibit C. The property was originally acquired by Suess Co in 1965, and was about 142 acres in size at that time. See Exhibit C.2. Acreage was taken out of the original tract in 1970 and 1973 to reduce the tract to about 123 acres. In 1998 a property line adjustment deed was entered with the adjacent neighbor to the west. See Exhibit C.1. The property line adjustment deed conveyed a sliver of land (14,574 sq ft) to the Suess tract, as described in Exhibit C.1, Ex. A. This sliver of land is not a part of this application, because it was not part of the Suess tract during the 1/1/1978 to 1/1/1983 period. The property line adjustment deed also conveyed a smidgen of land (10,155 sq ft) to the Hoffman tract, as described in Exhibit C.1, Ex. C. This smidgen of land is not a part of this application because it is no longer a part of the Suess tract. However, the small area is included in the analysis herein because it was a part of the Suess tract during the 1/1/1978 to 1/1/1983 period.

In summary, this request is for ML designation of the present area of TL 1300, less the 14,574 sq ft acquired by the 1998 property line adjustment deed.

This property was examined in great detail in 1990-1992, when the owner applied to have the entire site redesignated Nonresource and rezoned to Rural Residential (RR-5). That application file was PA 3437-90. The County Board denied the application, finding that the property was Forest land, and the owner appealed the denial to the Land Use Board of Appeals. See *Westfair Assoc. Partnership v. Lane County*, 25 Or LUBA 729 (1993). A copy of the LUBA opinion appears as Exhibit F to this application. LUBA explained that the record shows that the property is not Agricultural land in the meaning of Goal 3 because less than half the property is SCS Class I-IV soils.[1] But LUBA upheld the county's determination that the site was forest land in the

[1] The LUBA opinion explained, at 25 Or LUBA at 732:

"Even though the subject property is presently planned and zoned for agricultural use, there is no dispute that the property is not agricultural land under Goal 3. fn 1: Apparently less than 50% of the subject property is made up of SCS Class I-IV soils. Neither party contends the subject property is "agricultural land" as that term is defined in Goal 3."

meaning of a county plan policy that reflected an earlier version of Goal 4. Therefore, LUBA upheld the county denial.

The 1992 proceeding included a detailed mapping of the soils on the site. Data from 21 test borings were used to supplement the published SCS maps, air photos, and other data. The soils mapping is documented in "Agricultural Capability Analysis," by Cascade Earth Sciences, Ltd, (April 1, 1991). A copy of the CES Report is attached as Exhibit G hereto. It was this study that supported the county's conclusion, as reflected in the LUBA opinion, that the property is predominantly composed of soils in Classes V and worse.

Exhibit B to this application is the Report of Consulting Forester, Marc E. Setchko. Note that the Setchko Report contains a summary cover letter and Exhibits 1 through 10. Exhibit 1 to the Setchko Report is a detailed air photo of the subject property.

Page 1 of the Setchko Report describes the property:

> The subject parcel was ±123.70 acres in size during the years of 1978-83; in 1998 a lot line adjustment increased this to 123.80 acres, the current acreage of the parcel (see Exhibits 1, 2 & 3). Terrain throughout the site is gentle to moderate, with slopes ranging from 5-30%. A gently rolling ridge in the middle of the south portion of the parcel is the highest point on the property. The primary exposure is to the north. The parcel is composed of three major soil types (see Exhibit 4). Over three quarters of the parcel is composed of the Dixonville-Philomath-Hazelair complex (Soil Type 43C&E). The other two soils present are Panther silty clay loam (Soil Type 102C) and Philomath silty clay (Soil Type 107C). None of these soils are good forestland soils. Large portions of the parcel are grassland, and have always been grassland. A majority of the grassland areas have thin soils with exposed rock. Some of these areas are wet year round, due to the high water table. None of these conditions are conducive to the growth of conifers.
>
> Less than half of the parcel was forested in 1989, when the standing merchantable timber was cut. These areas are now covered with blackberry, scotch broom, other brush species and scattered conifer reproduction. The primary tree species currently growing on the parcel is Douglas-fir. There are a few scattered incense cedar and ponderosa pine. Hardwood species, primarily oak, intermixed with some madrone, are also present. Cottonwood and ash are abundant in the wet areas, particularly along the eastern boundary of the property, which has a creek running south to north. Other brush species present are poison oak, rose, hazel and vine maple.

C. The Neighborhood: Uses and Impacts

The subject property is shown on the air photo of the vicinity, which appears on the cover of the application. A more detailed air photo appears as Exhibit 1 of the Setchko Report, which is Exhibit B hereto.

The county plan map and zoning maps that follow immediately show the three companion applications in context. In general, the three companion applications are in a neighborhood that is a mix of Rural Residential, Forest, Agriculture, and Marginal Land designations.

The Blanton tract is imbedded in surrounding Rural Residential lands. The LUBA opinion describes the site as "surrounded by parcels designated Rural Residential. 25 Or LUBA at 731, Exhibit F.. That statement is not totally accurate. There is a tiny part of the perimeter in the southeast corner that borders on F-2 property. That F-2 frontage is 500feet in length. In addition, tax lot 2200, which projects into the subject property from the north, is zoned E-40.

Because it is largely surrounded by RR-5 zoning, this tract could, for the most part, be divided into 10-acre parcels under ML zoning. A 20-acre parcel would have to adjoin the F-2 and E-40 zoning.

D. Public Facilities and Services

This site is vacant of dwellings and adjacent to Crest Drive on its north. The RLID Detailed Property Report, Exhibit A, describes services. Fire protection is by Bailey-Spencer RFPD; ambulance is Eugene Fire & EMS; LTD provides bus service; EPUD is the electric provider; the school district is 4-J; the northern third of the site is in the service area of EWEB, which absorbed the service area of the Hillside Water District. See EWEB map and City of Eugene letter in Exhibit E. The northern 30% of this site is inside the EWEB service area. EWEB explains that there are two mains at the north property line. One on the east, at the intersection of Chambers and Crest Drive, and one on the west, at the intersection of Crest and Lorane Hwy.

II. Standards in Marginal Lands Statute: ORS 197.247 (1983):

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

During the five relevant years, this property was owned by Suess Co and was vacant. See deeds in Exhibit C. In the 1990 proceeding seeking a Nonresource designation the owner documented that the property had not been used for any farm use for at least the previous 15 years, which would include the relevant period here – 1978 through 1982. An updated letter dated June 11, 2013, from John Suess, was provided for the record.

Furthermore, the subject property was not capable of producing $10,000 in annual gross income from a forest operation during the 1978 through 1982 calendar years. Documentation supporting this conclusion appears in Exhibit B, the Report of Consulting Forester, Marc E. Setchko. The Setchko Report was updated at the conclusion of the Planning Commission proceeding to reflect the most recent Lane County soils data on productivity. Note that the Setchko Report contains a summary cover letter and Exhibits 1 through 10. The Setchko Report shows that the annual gross income from a forestry operation ranges between $3,721 per year and $5,295 per year,

depending on which of the five years log prices is used for the calculation. In summary, the potential income ranges between about 37% and 53% of the minimum income needed to meet the test.

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

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

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

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

The subject property meets the soils test in (C) above. Documentation supporting this conclusion appears in Exhibit B, the Report of Consulting Forester, Marc E. Setchko. Note that the Setchko Report contains a summary cover letter and Exhibits 1 through 10. Exhibit 4 of the Setchko Report is an LCOG Soils Map. It shows that all four soil types are Class VI, based on the 1983 SCS classification.

The Setchko Report includes the published soil maps. In addition, as explained above, the 1992 proceeding included a detailed mapping of the soils on the site. Data from 21 test borings were used to supplement the published SCS soils maps, air photos, and other data. The soils mapping is documented in "Agricultural Capability Analysis," by Cascade Earth Sciences, Ltd, (April 1, 1991). A copy of the CES Report is attached as Exhibit G hereto. It was this study that supported the county's conclusion, as reflected in the LUBA opinion, that the property is predominantly composed of soils in Classes V and worse.

The Setchko Report also documents that the subject property is capable of producing 45 cubic feet of merchantable timber per acre per year. This is about half of the threshold amount of 85 cubic feet that qualifies for Marginal Land.

III. Plan Amendment Standards in Lane Code and Rural Comprehensive Plan:

A. LC 16.400(6)(h)(iii):

(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.

This is a "Minor Amendment" to the plan because it amends only the plan diagram. The relevant standards are addressed above and below.

(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

The current plan designation was applied to the property in 1984, with the recognition that the property might qualify for Marginal Lands, based on an individual application. This is that application for this property. By showing that the site qualifies for Marginal Land the applicant is demonstrating that the existing plan designation is not correct.

(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

Neither of the above applies.

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

The Marginal Land Statute and RCP policies anticipate both Agricultural Land and Forest Land being redesignated as Marginal Land, if standards are met. The description of the Marginal Lands plan designation, under Goal Eleven of the RCP, says: "Lands that satisfy the requirements of ORS 197.246 may be designated Marginal Lands in accordance with other Plan policies." A Marginal Lands application that complies with these plan policies implements the RCP.

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

The County Board should find that if a tract of land qualifies for a Marginal Land designation then it is desirable, appropriate and proper to apply that designation.

Opponents at the Planning Commission suggest that the purposes of the ML-RCP zone, LC 16.214(1), are relevant to compliance with this standard. Those purposes are:

16.214 Marginal Lands Zone (ML-RCP).
(1) Purpose. The Marginal Lands Zone (ML-RCP) is intended to:
(a) Provide an alternative to more restrictive farm and forest zoning.

(b) Provide opportunities for persons to live in a rural environment and to conduct intensive or part-time farm or forest operations.
(c) Be applied to specific properties consistently with the requirements of ORS 197.005 to 197.430 and the policies of the Lane County Rural Comprehensive Plan.

The purposes of the ML zone are of marginal or no relevance to a requested plan change. However, the plan amendment is consistent with each purpose stated in this section, and as explained throughout this report.

(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.

There are no policies in the RCP that conflict with this amendment. As discussed elsewhere, there are policies in the RCP that support and encourage Marginal Land designation for qualified property.

(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.

As noted immediately above, the change in plan designation for this tract is compatible with all relevant plan policies, in particular, RCP Goal 3, Agricultural Lands, Policy 14, and RCP Goal 4, Forest Lands, Policy 3, both of which allow the ML designation for qualified property. The County Board confirmed in its 1997 interpretation, quoted at the start of this statement, that Marginal Lands are resource lands that are intended for occupancy with limited rural residential development.

B. Additional Amendment Standards at LC 16.400(8):

(8) <u>Additional Amendment Provisions.</u> 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.***

This is a "minor" plan amendment. No plan text is being changed. No goal exception is being approved. The change is from one resource plan designation to another.

(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.

This is a minor amendment, initiated by the owner, with payment of the application fee.

(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.

The proposal is described in the whole of this application.

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

These standards have been addressed 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;

The proposed Marginal Land designation will maintain the resource character of the property. However, it will allow low density residential development on the subject property, where there now is none. The subject property will have 10 and 20 acre parcels with residences. The immediately surrounding property is already developed much more densely than the subject property. The adjacent neighbors on the perimeter who have Rural Residential zoning occupy parcels that range in size from .78 to 9.63acres in size. The average size of the adjacent Rural Residential tax lots is 3.40 acres. When the subject property is developed it will generate the same kinds of externalities as the adjacent Rural Residential uses – noise, lights, stormwater, septic discharges, traffic and the like. However, these impacts will be less intense than the impacts generated by the existing adjacent uses, due to 10 and 20-acre parcels that will be developed on the subject property. Based on the June 18 letter from Access Engineering, developing 12 units on the subject property will generate 9 a.m. peak hour trips – well within the capacity of Crest Drive and not noticeable to neighbors. See Exhibit H.

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

See discussion above in I.D., which also draws from the RLID Detailed Property Report in Exhibit A. Much of this site is in the EWEB service area, as shown in Exhibit E. A total of 12 lots and dwellings potentially could be developed under the ML designation. It can be served by the same rural services and facilities that serve the Rural Residential uses in the immediate

neighborhood that effectively surround the site. Dwellings would be served by onsite septic systems, including sand filter systems where necessary.

The northern 30% of the site is within the EWEB water service district. See Exhibit E. The balance of the site not served by EWEB would be served by private wells. This neighborhood is in a groundwater limited area, as mapped by Lane County. However, there is adequate groundwater to serve the handful of residences on the site that would be developed outside (to the south of) the EWEB service area. This fact is supported by the pump test study done in 1992 in support of the 1990 application for a Nonresource designation. See Exhibit D: Ground Water Test for Map 18-04-13, TL 1300 (Ray Walter Engineering)(Feb. 7, 1992), filed with Lane County in PA 3437-90. That study pumped a well on site while measuring impacts on three off-site monitoring wells to the north, west, and south. That study concluded the aquifer is adequate to support 15 to 20 additional residences.

Several residents living near the Blanton site expressed concerns about the impact of more residential development on their domestic wells. Some residents related long histories of problems with specific wells. Ralph Christensen, Senior Geologist with EGR & Associates, conducted a detailed analysis of well logs in the general vicinity and also analyzed the 1992 pump test by Ray Walter Engineering of the well on the Blanton Site. The EGR report was presented to the Planning Commission. Particular focus was on the 123-acre "Blanton" property, which was the subject of much negative testimony about water at the March 6 Planning Commission hearing. See Exhibit D hereto.

The EGR analysis shows that the area has a low transmissivity and correspondingly low well yields. Even so, the large minimum parcel size required for the Marginal Lands designation keeps the carrying capacity well within safe parameters for this rural density. The aquifer will not be depleted by this development because the transmissivity seen in this area is sufficiently low that a well, or even a series of wells, cannot dewater the aquifer to any significant extent beyond the immediate vicinity of the well. Furthermore, recharge on 10-acre size parcels would be sufficient, several times over, to recover all the water that is pumped per year.

In summary, there is a groundwater supply under this property adequate to support development of the site at a 10-acre density, and use of wells on the property should not negatively impact wells on surrounding property that may be used for domestic water supply. The analysis of the pump test data for the existing well on the Blanton site, and the well logs in the surrounding four-square mile area, indicates that the Blanton well could safely supply water for about 43 dwellings at 650 gpd on an annual basis. Groundwater supply is adequate for the level of development allowed by this application..

(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;

In response to the Staff Report and concerns raised by neighbors, the applicant prepared a full Goal 5 analysis in support of this proposal. See Exhibit I (also attached as Exhibit D to the ordinance). The ESEE analysis is adopted together with this plan amendment, and is summarized

below as part of the discussion of the Statewide Planning Goals. The Goal 5 analysis adequately addresses the impacts related to this standard.

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

No natural hazards have been identified or inventoried on the subject property.

(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;

These criteria are not applicable; Marginal Lands is a resource designation.

C. Plan Amendment Standards in the Rural Comprehensive Plan:

RCP Goal Three: Agricultural Lands, Policy 14:
Land may be designated as marginal land if it complies with the following criteria:
a. The requirements of ORS 197.247, and

Compliance with the statute is addressed in Part II above.

b. Lane County General Plan Policies, Goal 5, Flora and Fauna, policies numbered 11 and 12.

Policies 11 and 12 are discussed below.

RCP Goal Four: Forest Lands, Policy 1:
Conserve forest lands 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.

This proposal will conserve forest lands because the ML zone is a resource zone.

RCP Goal Four: Forest Lands, Policy 3:
Forest lands that satisfy the requirements of ORS 197.247 (1991 Edition), may be designated as Marginal Lands and such designations shall also [be] made in accordance with other Plan policies. Uses and land division allowed on Marginal Lands [and] shall be those allowed by ORS 197.247 (1991 Edition).

This policy contains the word "may." Redesignation to Marginal Lands is discretionary. However, if an application for Marginal Land designation otherwise meets the state and county standards, then the redesignation is justified.

RCP Goal Four: Forest Lands, Policy 12:
Encourage the conversion of under-productive forest lands through[s]ilvicultural practices and reforestation efforts.

This is a generally stated, nonmandatory policy that is not contrary to this proposal, as the ML designation is a resource designation.

RCP Goal Five: Flora and Fuana, Policy 11:
Oregon Department of Fish and wildlife recommendations on overall residential density for protection of big game shall be used to determine the allowable number of residential units within regions of the County. Any density above that limit shall be considered to conflict with Goal 5 and will be allowed only after resolution in accordance with OAR 660-16-000. The County shall work Oregon Department of Fish and wildlife officials to prevent conflicts between development and Big Game Range through land use regulation in resource areas, siting requirements and similar activities which are already a part of the County's rural resource zoning program.

Compliance with this plan policy was a major source of controversy in the proceeding before the Planning Commission. In previous Marginal Land designations the County Board has found that the county and the ODFW have implemented Policy 11 through application of county land use regulations, siting requirements, and other elements of the county's rural resource zoning program. That is, residential densities that will be allowed by the Marginal Land designation (10 acres per unit in this instance) will not exceed any limits recommended by the ODFW, as directed by RCP Goal 5, Flora and Fauna, Policy 11. Opponents have argued that the subject property, like all property in the county, is inventoried as some level of Big Game Habitat, and ODFW density limitations apply, absent a full Goal 5 analysis. As a precaution, the applicant has prepared a full Goal 5 analysis for all significant Goal 5 resources potentially on the site. That analysis is appended to the application and summarized in the Statewide Planning Goals analysis below. If Goal 5 is triggered by this policy, then the Goal 5 analysis has been done, and this policy is complied with.

Potential impacts on big game was a recurring theme in these companion ML applications. This issue addressed in detail in the ESEE analysis. However, a short summary is appropriate here.

This site, along with the other two companion sites proposed for Marginal Land designation in the same neighborhood, were examined by an environmental specialist in connection with these applications. The research included a site visit. The evaluation was documented in a November 30, 2012 letter, which is in the record of the applications. The study concluded, for each site:

> "However, in my opinion, developing the tax lots in question with low density residential uses (in the range of one unit per 10 or 20-acre lot sizes) would not have an appreciable adverse impact on big game populations in the neighborhood

that these tax lots share or in Lane County as a whole. This conclusion is based primarily on the existing low density residential development pattern in the immediate neighborhood and the much higher residential development pattern in the city adjacent to the north." Lttr from Brian Meiering, Environmental Specialist, Schirmer Satre Group (Nov. 30. 2013) at page 3.

RCP Goal Five: Flora and Fauna, Policy 12:
If uses are identified (which were not previously identified in the Plan) which would conflict with a Goal 5 resource, an evaluation of the economic, social, environmental and energy consequences shall be used to determine the level of protection necessary for the resource. The procedure outlined in OAR 660-16-000 will be followed.

The low density Rural Residential uses that would be allowed on this property are similar to those in the surrounding neighborhood, thus potentially generating the same types of conflicts with inventoried Goal 5 resources. These are evaluated in connection with the Goal 5 analysis below. This policy is, therefore, complied with.

RCP Goal Eleven: Public Facilities, Policy 1:
Lane County shall provide an orderly and efficient arrangement for the provision of public facilities, services and utilities. Designation of land into any given use category either initially or by subsequent plan amendment, shall be consistent with the minimum level of services established for that category

The proposal is consistent with this policy, as explained in connection with Statewide Planning Goal 11 below.

RCP Goal Eleven: Public Facilities, Policy 2:
Any increases in the levels of public facilities and services generated by the application of new or revised land use designations within an area shall, to the extent practicable, be financed and maintained by revenues generated within or as a result of those designated land uses. Those land uses benefiting from increased levels of public facilities or services shall be expected to provide a significant share of the costs associated with providing such facilities and services, recognizing that in some instances, resources for such provision must be obtained on a widespread geographic or revenue basis and may involve capital investments exceeding the immediate needs of the area being served.

The proposal is fully consistent with this policy. As explained in connection with Statewide Planning Goal 11 below, development allowed by this proposal will be served primarily by on-site facilities and services. The use, if served by EWEB water, will pay for that service. No public road improvements are triggered by this proposal.

RCP Goal Eleven: Public Facilities, Policy 6:
Service levels for lands designated marginal lands include levels consistent with service levels for Rural Residential outside a Community designation: i.e., schools, on-site or community sewage disposal, individual or community water supply, electrical service, telephone service, rural level of fire and police protection, reasonable access to solid waste disposal facility.

The discussion below in connection with Statewide Planning Goal 11 demonstrates compliance with this policy.

IV. Application of the Statewide Planning Goals:

Goal 1 – Citizen Involvement: To develop a citizen involvement program that insures the opportunity for citizens to be involved in all phases of the planning process.

Goal 1 is a process goal. This proposal complies with Goal 1 because it will be processed as a quasi-judicial application through the county's acknowledged public process for individual plan and zone changes. This process includes public hearings before the Planning Commission and the County Board.

Goal 2 – Land Use Planning : PART I – PLANNING: To establish a land use planning process and policy framework as a basis for all decisions and actions related to use of land and to assure an adequate factual base for such decisions and actions.

Part I of Goal 2 requires local governments to establish processes and policies for land use decisions. That process is in place. Part II of Goal 2 authorizes exceptions to the goals – land use decisions that are not in compliance with the goals under certain circumstances. Statutes also describe when exceptions are authorized. See ORS 197.732. This application complies with Goal 2 because it is being processed under the county plan and code and because no exception to any resource goal is proposed.

Goal 3 – Agricultural Lands: To preserve and maintain agricultural lands. Agricultural lands shall be preserved and maintained for farm use, consistent with existing and future needs for agricultural products, forest and open space and with the state's agricultural land use policy expressed in ORS 215.243 and 215.700.

Marginal Land is a resource designation. Land that is plan designated as Marginal Land is consistent with Goal 3 or Goal 4 or both. The subject property has been determined by the county and confirmed by LUBA, in previous litigation, as not being Agricultural land.

Goal 4 – Forest Land: To conserve forest lands by maintaining the forest land base and to 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.

Marginal Land is a resource designation. Land that is plan designated as Marginal Land is consistent with Goal 3 or Goal 4 or both.

Goal 5 – Open Spaces, Scenic and Historic and Natural Resources: To conserve open space and protect natural and scenic resources.

A complete Goal 5 analysis is included with the supporting materials and is intended to be adopted as an amendment to the plan in connection with the county approval. See Exhibit I to Supporting Statement. Part A of the analysis summarizes what Goal 5 requires. Part B identifies the inventoried and acknowledged Goal 5 resources that are on the subject property, as reflected in county plan documents and inventories. The subject property is inventoried as having water resources and big game range. Part C is the ESEE analysis for the resources that are present. The conclusion is to allow the potentially conflicting use – very low density rural residential use. The complete Goal 5 analysis satisfies the Goal 5 requirements.

Goal 6 – Air, Water and Land Resource Quality: To maintain and improve the quality of the air, water and land resources of the state.

All waste and process discharges from future development, when combined with such discharges from existing developments shall not threaten to violate, or violate applicable state or federal environmental quality statutes, rules and standards. With respect to the air, water and land resources of the applicable air sheds and river basins described or included in state environmental quality statutes, rules, standards and implementation plans, such discharges shall not (1) exceed the carrying capacity of such resources, considering long range needs; (2) degrade such resources; or (3) threaten the availability of such resources.

Goal 6 protects the quality of land, air and water resources. The focus is on discharges from future development in combination with discharges from existing development. State and federal environmental standards are the benchmark for protection. Where there are state or federal standards for quality in air sheds or river basins, then the carrying capacity, nondegradation, and continued availability of the resources are standards.

The subject property is currently vacant and unused. It has no history of agricultural use.

The residential dwellings would generate septic wastes. A precondition to any residential use, however, will be the development of individual septic systems meeting state standards. The soils on the subject property are suitable for one or more types of septic systems that meet state standards. In the poorest soil conditions sand filter systems can be used. The availability of the state standards as a precondition to residential development ensures that the future use will comply with Goal 6.

Goal 7 – Areas Subject to Natural Disasters or Hazards: To protect life and property from natural disasters and hazards.

Developments subject to damage or that could result in loss of life shall not be planned nor located in known areas of natural disasters and hazards without appropriate safeguards. Plans shall be based on an inventory of known areas of natural disaster and hazards.

The phrase "areas of natural disasters and hazards" means "areas that are subject to natural events that are known to result in death or endanger the works of man, such as stream flooding, ocean flooding, ground water, erosion and deposition, landslides, earthquakes, weak foundation soils and other hazards unique to local or regional areas." OAR 660-15-000. There are no such

areas known on the subject property. The elevation of the site in the South Hills near Eugene avoids any potential flood hazards. None of the soil types present is described as being prone to landslides in the *SCS Lane County Soil Survey.*

Goal 8 – Recreational Needs: To satisfy the recreational needs of the citizens of the state and visitors and, where appropriate, to provide for the siting of necessary recreational facilities including destination resorts.

The overriding purpose of Goal 8 is to address all recreational needs, but its primary focus is on siting and developing destination resorts, defined in Goal 8 as "self-contained development[s] providing visitor-oriented accommodations and developed recreational facilities in a setting with high natural amenities."

Goal 8 is not directly applicable to this proposal. No destination resort is proposed. Furthermore, the subject property is not used for public recreational purposes and is not designated on any county plan as intended for that purpose in the long run.

Goal 9 – Economy of the State: To provide adequate opportunities throughout the state for a variety of economic activities vital to the health, welfare, and prosperity of Oregon's citizens.

Goal 9 is focused on commercial and industrial development. The Goal 9 Rule, OAR 660-09, is explicitly limited to areas within urban growth boundaries. This goal does not apply to rural residential uses in a Marginal Land designation.

Goal 10 – Housing: To provide for the housing needs of citizens of the state.

Buildable lands for residential use shall be inventoried and plans shall encourage the availability of adequate numbers of needed housing units at price ranges and rentlevels which are commensurate with the financial capabilities of Oregon households and allow for flexibility of housing location, type and density.

Goal 10, like its implementing rule, OAR 660-008, is geared primarily to housing issues inside urban growth boundaries. The goal's definition of "buildable lands," for example, is limited to lands in urban and urbanizable areas. This site is outside any UGB.

Goal 11 – Public Facilities and Services: To plan and develop a timely, orderly and efficient arrangement of public facilities and services to serve as a framework for urban and rural development.

Urban and rural development shall be guided and supported by types and levels of urban and rural public facilities and services appropriate for, but limited to, the needs and requirements of the urban, urbanizable, and rural areas to be served. A provision for key facilities shall be included in each plan. Cities or counties shall develop and adopt a public facility plan for areas within an urban growth boundary containing a population greater than 2,500 persons. o meet current and long-range needs, a provision for solid waste disposal sites, including sites for inert waste, shall be included in each plan. In accordance with ORS 197.180 and Goal 2,

state agencies that provide funding for transportation, water supply, sewage and solid waste facilities shall identify in their coordination programs how they will coordinate that funding with other state agencies and with the public facility plans of cities and counties.

Goal 11 addresses facilities and services in urban and rural areas. The subject property is "rural" land and will remain rural after this approval, as discussed in connection with Goal 14.

"Public facilities and services" is defined in the Statewide Planning Goals to include: "[p]rojects, activities and facilities which the planning agency determines to be necessary for the public health, safety and welfare." The Goal 11 Rule defines a "public facility." "A public facility includes water, sewer, and transportation facilities, but does not include buildings, structures or equipment incidental to the direct operation of those facilities." OAR 660-11- 005(5).

The *Rural Plan Policies* describe the minimum level of services for Marginal Land areas in rural Lane County. The services are: schools, on-site sewage disposal, individual water supply system, electrical service, telephone service, rural level of fire and police protection, reasonable access to solid waste disposal. See Goal 11, Policy 6.j. The services now available to the subject property, or proposed to be developed, include:

Table: Rural Public Facilities, Existing or Proposed

Service	Provider
Fire	Bailey-Spencer RFPD
Police	Lane County Sheriff and State Police
Schools	Eugene School District 4J
Access	Crest Drive, a County Rural Major Collector at this point
Electric	EPUD
Telephone	Qwest Communications
Solid Waste	Private
Sewer	Individual Septic Systems (Proposed)
Water	EWEB and private wells

Goal 12 – Transportation: To provide and encourage a safe, convenient and economic transportation system.

A transportation plan shall (1) consider all modes of transportation including mass transit, air, water, pipeline, rail, highway, bicycle and pedestrian; (2) be based upon an inventory of local, regional and state transportation needs; (3) consider the differences in social consequences that would result from utilizing differing combinations of transportation modes;

(4) avoid principal reliance upon any one mode of transportation; (5) minimize adverse social, economic and environmental impacts and costs; (6) conserve energy; (7) meet the needs of the transportation disadvantaged by improving transportation services, (8) facilitate the flow of goods and services so as to strengthen the local and regional economy; and (9) conform with local and regional comprehensive land use plans. Each plan shall include a provision for transportation as a key facility.

Goal 12 is implemented through the Goal 12 Rule (OAR 660-12) adopted in 1991. The Rule has a section that specifically addresses proposals such as this – amendments to acknowledged comprehensive plans and implementing regulations. OAR 660-12-060(1) provides that any such amendments that "significantly affect a transportation facility shall assure that allowed land uses are consistent with the identified function, capacity, and level of service of the facility."

The threshold question, therefore, is whether the residential development potentially allowed by this application would significantly affect a transportation facility. The rule spells out clearly what constitutes a "significant affect." OAR 660-12-060(2) states:

> *A plan or land use regulation amendment significantly affects a transportation facility if it:*
>
> *(a) Changes the functional classification of an existing or planned transportation facility;*
>
> *(b) Changes standards implementing a functional classification system;*
>
> *(c) Allows types or levels of land uses which would result in levels of travel or access which are inconsistent with the functional classification of a transportation facility; or*
>
> *(d) Would reduce the level of service of the facility below the minimum acceptable level identified in the TSP.*

The proposed Marginal Land designation will not trigger this section of the rule. It will not have a significant effect on Crest Drive as measured by any of the four standards listed above. Based on the June 18 letter from Access Engineering, full development of this site will generate only 9 a.m. peak hour trips, which is well within the capacity of Crest Drive. Hence the proposed changes comply with Goal 12.

Goal 13 -- Energy Conservation: To conserve energy.

Land and uses developed on the land shall be managed and controlled so as to maximize the conservation of all forms of energy, based on sound economic principles.

This goal is not directly applicable to individual land use decisions. Rather, its focus is on the adoption and the amendment of land use regulations. See *Brandt v. Marion County*, 22 Or LUBA 473, 484 (1991), *aff'd in part, rev'd in part*, 112 Or App 30 (1992).

Goal 14 – Urbanization: To provide for an orderly and efficient transition from rural to urban land use.

Goal 14 is not applicable. The Marginal Lands plan designation is a resource designation. The proposal is to change from one resource plan designation to another. Furthermore, the residential density allowed in the ML zoning is either 10 acres or 20 acres per unit. If the plan designation and zoning were considered to be a "rural" use rather than a "resource" use, this density range has been determined by the Supreme Court to be "rural" in character, not "urban." *1000 Friends of Oregon v. DLCD (Curry County)*, 301 Or 447, 501, 724 P2d 268 (1986). Therefore, a Marginal Land designation can never run afoul of Goal 14.

Goals 15 to 19 – Willamette Greenway and Coastal Goals

These five goals are not applicable as they deal with resources that are not present on the subject property.

V. Zone Changes Standards in Lane Code – LC 16.252

(2) Criteria. Zonings, rezonings and changes in the requirements of this chapter shall be enacted to achieve the general purpose of this chapter and shall not be contrary to the public interest. In addition, zonings and rezonings shall be consistent with the specific purposes of the zone classification proposed, applicable Rural Comprehensive Plan elements and components, and Statewide Planning Goals for any portion of Lane County which has not been acknowledged for compliance with the Statewide Planning Goals by the Land Conservation and Development Commission. Any zoning or rezoning may be effected by Ordinance or Order of the Board of County Commissioners or the Hearings Official in accordance with the procedures in this section.

{[A]chieves the general purpose of this chapter – LC 16.003}

> *16.003 Purpose.*
> *This chapter is designed to provide and coordinate regulations in Lane County governing the development and use of lands to implement the Lane County Rural Comprehensive Plan. To these ends, it is the purpose of this chapter to:*
> *(1) Insure that the development of property within the County is commensurate with the character and physical limitations of the land and, in general, to promote and protect the public health, safety, convenience and welfare.*
> *(2) Protect and diversify the economy of the County.*
> *(3) Conserve the limited supply of prime industrial lands to provide sufficient space for existing industrial enterprises and future industrial growth.*
> *(4) Conserve farm and forest lands for the production of crops, livestock and timber products.*
> *(5) Encourage the provision of affordable housing in quantities sufficient to allow all citizens some reasonable choice in the selection of a place to live.*

(6) Conserve all forms of energy through sound economical use of land and land uses developed on the land.
(7) Provide for the orderly and efficient transition from rural to urban land use.
(8) Provide for the ultimate development and arrangement of efficient public services and facilities within the County.
(9) Provide for and encourage a safe, convenient and economic transportation system within the County.
(10) Protect the quality of the air, water and land resources of the County.
(11) Protect life and property in areas subject to floods, landslides and other natural disasters and hazards.
(12) Provide for the recreational needs of residents of Lane County and visitors to the County.
(13) Conserve open space and protect historic, cultural, natural and scenic resources.
(14) Protect, maintain, and where appropriate, develop and restore the estuaries, coastal shorelands, coastal beach and dune area and to conserve the nearshore ocean and continental shelf of Lane County.

This approval will achieve the general purposes of Chapter 16 and not be contrary to the public interest. There are 14 purpose statements in LC 16.003. These statements are very general in content. The balance of the standards in the plan and the code that govern this redesignation are much more specific. If this application meets the specific standards that apply, then it is fair to conclude that it will also be consistent with the general purpose statements and be in the public interest.

{[C]onsistent with the specific purposes of the zone classification proposed – ML 16.214(1).}

Purpose. The Marginal Lands Zone (ML-RCP) is intended to:
(a) Provide an alternative to more restrictive farm and forest zoning.
(b) Provide opportunities for persons to live in a rural environment and to conduct intensive or part-time farm or forest operations.
(c) Be applied to specific properties consistently with the requirements of ORS 197.005 to 197.430 and the policies of the Lane County Rural Comprehensive Plan.

This approval is fully consistent with these general purpose statements, as supported in the balance of these materials.

Exhibit D: Blanton Tract ESEE Analysis

IN SUPPORT OF
SUESS APPLICATION: BLANTON SITE (121 ACRES); PA 11-5502
PLAN CHANGE FROM AGRICULTURE TO MARGINAL LANDS
ZONE CHANGE FROM EFU-40 TO ML

Goal 5
Open spaces, scenic and historic areas, and natural resources.

To conserve open space and protect natural and scenic resources.

A. What Goal 5 requires.

Goal 5 requires the county to inventory the locations, quality and quantity of certain natural resources. Where no conflicting uses are identified, the inventoried resources shall be preserved. Where conflicting uses are identified, the economic, social, environmental and energy consequences of the conflicting uses shall be determined and programs developed to achieve the goal.

Goal 5 is implemented through the Goal 5 Rule adopted by the LCDC in 1996. The Rule appears in OAR Chapter 660, Division 23: Procedures and Requirements for Complying with Goal 5. The Rule applies to "post-acknowledgment plan amendments" or "PAPAs,"[1] such as this application.[2] The Division 23 Rule replaces the Division 16 Rule.[3]

When a local government undertakes a PAPA, it is not required to do an entire Goal 5 analysis from scratch. The local government's obligation to do a Goal 5 analysis, and the scope of the Goal 5 analysis that is required, has been the subject of considerable caselaw development, which has been distilled into the applicability provisions of the Goal 5 Rule. Particularly relevant are subsection (3) and (4) of OAR 660-023-0250, which state:

> (3) Local governments are not required to apply Goal 5 in consideration of a PAPA unless the PAPA affects a Goal 5 resource. For purposes of this section, a PAPA would affect a Goal 5 resource only if:

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[1] OAR 660-23-0010(5) states:

> "PAPA" is a "post-acknowledgment plan amendment." The term encompasses actions taken in accordance with ORS 197.610 through 197.625, including amendments to an acknowledged comprehensive plan or land use regulation and the adoption of any new plan or land use regulation. The term does not include periodic review actions taken in accordance with ORS 197.628 through 197.650.

[2] OAR 660-023-0250(2) states, in part: "The requirements of this division are applicable to PAPAs initiated on or after September 1, 1996."

[3] See OAR 660-023-0250(1).

(a) The PAPA creates or amends a resource list or a portion of an acknowledged plan or land use regulation adopted in order to protect a significant Goal 5 resource or to address specific requirements of Goal 5;

(b) The PAPA allows new uses that could be conflicting uses with a particular significant Goal 5 resource site on an acknowledged resource list; or

(c) The PAPA amends an acknowledged UGB and factual information is submitted demonstrating that a resource site, or the impact areas of such a site, is included in the amended UGB area.

(4) *Consideration of a PAPA regarding a specific resource site, or regarding a specific provision of a Goal 5 implementing measure, does not require a local government to revise acknowledged inventories or other implementing measures, for the resource site or for other Goal 5 sites, that are not affected by the PAPA,* regardless of whether such inventories or provisions were acknowledged under this rule or under OAR 660, Division 16.

The *italicized* language above is particularly applicable here. The provisions above reflect caselaw stating that where a county is amending acknowledged plan and zoning designations, the county must address Goal 5 if any of the area proposed for change encompasses lands included on the county's inventory of Goal 5 resources.[4] The county need not go through the Goal 5 conflict resolution process for alleged Goal 5 resources that are not on the acknowledged Goal 5 inventory.[5]

The initial Goal 5 question, therefore, is whether the subject property includes any significant Goal 5 resources inventoried in the acknowledged county plan.

As historical background, the county's Goal 5 program is reflected in its Rural Comprehensive Plan Policies document, as supported by its related Working Papers from the early 1980s. The county's Goal 5 program was initially acknowledged in 1984. See Compliance Acknowledgment Order 84-ACK-201 (Oct. 3, 1984). That Order was appealed and eventually remanded by the Supreme Court. See *1000 Friends of Oregon v. LCDC (Lane County)*, 305 Orr 384, 752 P2d 271 (1988). However, the Goal 5 program was upheld in that review. There were two DLCD Staff Reports that reviewed the Goal 5 program, initially finding shortcomings in the first review and then finding compliance. The first DLCD Staff Report was dated July 19, 1984 (hereafter July 19, 1984 DLCD Staff Report.). The Goal 5 review therein begins at page 124. The second DLCD Report was dated September 12, 1984. (hereafter Sept. 12, 1984 DLCD Staff Report.) The Goal 5 review therein begins at page 23.

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[4] See Urquhart v. Lane Council of Governments, 80 Or App 176, 721 P2d 870 (1986); Plotkin v. Washington County, 165 Or App 246, 997P2d 226 (2000); Waugh v. Coos County, 26 Or LUBA 300, 310-12 (1993); 1000 Friends of Oregon v. Yamhill County, 27 Or LUBA 508, 522 (1994).

[5] Davenport v. City of Tigard, 23 Or LUBA 565 (1992).

B. Inventoried and acknowledged Goal 5 Resources on the Subject Property.

The paragraphs below address the acknowledged Goal 5 resource inventories. Consistent with the "Applicability" provisions in OAR 660-023-0250, the Goal 5 process will be applied here only for those Goal 5 resources inventoried in the acknowledged plan that are known to be present on the subject property.

Historic Resources: The acknowledged list of historic resources is listed as "Historic Sites or Sites." The subject property is not on the list.

Mineral and Aggregate Resources: Mineral and aggregate sites are listed in several appendices in the *Mineral and Aggregate Working Paper*. The subject property is not listed in any of the appendices.

Energy: The subject property is not listed on any county inventory of sites to be protected for energy production.

Water Resources: The *Water Resources Working Paper (1982)* inventories the following water resources which include or potentially include the subject property: Watersheds (specifically the Spencer Creek (Basin 14), which is a tributary to the Long Tom River (Basin 7); Surface Waters; and Groundwater. See also the summary for the water resources program in the July 19, 1984 DLCD Staff Report at 173. County data show Spencer Creek north of the property on the other side of Crest Drive; the data also show a tributary to Spencer Creek adjacent to the east property line. There is groundwater onsite.

Riparian Resources: The *Flora & Fauna Working Paper (1982) and Addendum (1983)* inventories Riparian resources. Riparian areas are inventoried to include all land within 100 feet of the banks of a Class 1 stream. *Addendum* at 7. There are no Class I streams on the subject property.

Wetland Resources: At the time the *Flora & Fauna Working Paper* was prepared, the U.S. Fish and Wildlife Service had not completed its National Wetlands Inventory ("NWI") mapping for the entire county. As a result, the county Goal 5 wetlands inventory was limited to five "major wetlands" areas, which do not include the subject property. Consideration of adding other "minor wetland" areas to the inventory was deferred by the county to a later date, to follow completion of the NWI mapping. County reconsideration has not yet occurred. Thus, the county plan inventory of wetland resources does not include any such resources on the subject property.

Although the acknowledged county inventory of wetlands remains truncated, the NWI has been completed. The NWI maps show no wetlands on the subject property. Notwithstanding the county's failure to inventory more than the five major wetland areas as Goal 5 resources, all wetland areas, including mapped and unmapped wetlands, are protected by federal and state law. They are protected from filling as "waters of the United States" under 33 USC §1344 and as "waters of the State" under ORS 196.800(14).

Sensitive Fish and Waterfowl Areas: The inventory of these sites appears in the *Flora*

& Fauna Working Paper Addendum (1983) at 1-4. The subject property is not included on the inventory.

Natural Areas: The inventory of these sites appears in the *Flora & Fauna Working Paper* at 26-32. The subject property is not included on the inventory.

Big Game Range: The plan classifies the entire county into three categories of Big Game Range, using an ODFW classification: Major, Peripheral, and Impacted. See *Flora & Fauna Working Paper* at 23-25, *Addendum* at 14. The Wildlife Habitat Maps (Dec. 1980) were adopted as part of the plan and introduced into this record.

Major Big Game Range "supports the majority of big game," generally on "sparsely developed commercial forest land." See *Flora & Fauna Working Paper* at 23. Peripheral Big Game Range generally is in the foothills area "between commercial forest land and valley floors." These areas support substantial big game populations. *Id.* Impacted Big Game Range areas are other areas that "have existing levels of land use which preclude future wildlife management options." *Id.* "Impacted range has essentially been 'written off' for big game management." *Id.* at 24.

The ODFW's Big Game maps in the plan are generalized. All lands in the county that are "committed" to nonresource use, and hence zoned for rural residential use, are considered to be "Impacted" for purposes of Big Game, which means they have been written off in terms of Big Game value, and conflicting uses are permitted. See *Flora & Fauna Working Paper* at 24 para 1; *Addendum* at 14 para 5. Because the committed lands are generally small, they appear on the ODFW Big Game maps in areas that are otherwise mapped as Major or Peripheral Big Game areas. *Id.* The status of committed lands as areas where all conflicting uses are allowed is also confirmed in the July 19, 1984 DLCD Staff Report at 149 para 1: "Developed and committed exception areas are considered impacted, and the County has decided that conflicting uses should be permitted in those areas."

The county uses ODFW recommended densities as a general standard for identifying conflicts. See *Flora & Fauna Working Paper* at 24 para 6:

> "The primary conflict to big game, as mentioned earlier is residential use at certain densities. ODFW has recommended overall residential densities for Peripheral Big Game Range at one dwelling unit per 40 acres; for Major Big Game Range at one dwelling unit per 80 acres. Therefore, to restate the conflict: overall residential density greater than one dwelling unit/40 acres in Peripheral Range and one dwelling unit/80 acres in Major Range conflicts with habitat for big game."

The county elaborates on this rule of thumb in the *Working Paper* and *Addendum* at 14 para 1.

> "Although this is a useful index, officials of the ODFW stress the fact that a mere 'numbers game' is not the optimum manner to deal with conflicts to the Big Game Range resource. While overall densities are important indicators of conflict, the manner in which these densities occur can either create worse conflict or reduce that which already exists."

Based on all of the above, the Big Game maps show the subject property to be Peripheral Big Game range that is essentially surrounded by Impacted Big Game Range. Essentially all of the property surrounding this site (with the exception of only a smidgen at the southeast corner) is mapped as "committed land" that is zoned for Rural Residential use. It is, therefore, land that is considered Impacted, is written off for Big Game Range, and conflicting uses are allowed. The subject property is effectively an island in the middle of an Impacted area.

A final word is in order about Goal 5, Big Game Range, and the Marginal Lands designation. In the county acknowledgment process, the DLCD disposed of specific objections that the avenue in the plan and code for Marginal Land designations violated Goal 5, for failure to address big game habitat. The DLCD denied this objection. It found that statutes require the goals to be applied in connection with ML designations, and it found that RCP Goal 5, Flora and Fauna Policy 11 explicitly requires applying Goal 5 if the ODFW density recommendations will not be met. See July 19, 1984 DLCD Staff Report at 160-161, Response to Objections 2 and 4.

C. ESEE Decision Process for Inventoried Goal 5 Resources Present.

The basic requirements for conducting the conflicts analysis and developing a program for inventoried and acknowledged resources is spelled out in OAR 660-023-0040. The introductory provisions in OAR 660-023-0040(1)[6] explain that there are four steps in the ESEE process, that the county has discretion in how it proceeds through the process so long as it completes each step, and that the analysis need not be lengthy or complex. The result should create a clear understanding of the conflicts and the consequences. The four steps in the ESEE process are:

(a) Identify conflicting uses;

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[6] OAR 660-023-0040(1) provides:

> Local governments shall develop a program to achieve Goal 5 for all significant resource sites based on an analysis of the economic, social, environmental, and energy (ESEE) consequences that could result from a decision to allow, limit, or prohibit a conflicting use. This rule describes four steps to be followed in conducting an ESEE analysis, as set out in detail in sections (2) through (5) of this rule. Local governments are not required to follow these steps sequentially, and some steps anticipate a return to a previous step. However, findings shall demonstrate that requirements under each of the steps have been met, regardless of the sequence followed by the local government. The ESEE analysis need not be lengthy or complex, but should enable reviewers to gain a clear understanding of the conflicts and the consequences to be expected. The steps in the standard ESEE process are as follows:
>
> (a) Identify conflicting uses;
>
> (b) Determine the impact area;
>
> (c) Analyze the ESEE consequences; and
>
> (d) Develop a program to achieve Goal 5.

(b) Determine the impact area;

(c) Analyze the ESEE consequences; and

(d) Develop a program to achieve Goal 5.

The Goal 5 Rule provides additional instructions on how to conduct each of the four steps listed above. The approach taken here will be to address each of the Goal 5 resources inventoried on the site in the acknowledged plan (Big Game Range and three Water Resources) and conduct the four-step analysis. Big Game Range will be addressed first. The full text of Goal 5 Rule instructions relating to each of the four steps will be quoted in footnotes in connection with the Big Game analysis.

1. ESEE Analysis for Big Game Range

As noted above, the acknowledged county plan inventories Big Game Range as a significant Goal 5 resource. The County has not yet completed the Goal 5 process for this resource. The plan documents declined to simplify the issue of conflict identification to a matter of densities for individual development sites, and instead deferred the issue to future work between the county and the ODFW. "The County should continue to work with the ODFW to resolve the issue of Big Game designation and protection in a mutually acceptable manner -- including the involvement of that agency in land use regulation development." *Flora & Fauna Working Paper Addendum* at 14. Thus, the County has not yet completed the Goal 5 process for Big Game Habitat. At this point, the County has recognized that the resource is significant, it has recognized that there are several degrees of significance (by mapping the entire county into three alternative zones -- Major, Peripheral, and Impacted), and it has deferred the balance of the Goal 5 analysis to a later date.

The ESEE analysis must be conducted for Big Game Range because this is a post-acknowledgment plan amendment that would allow new uses (very low density rural residential) that could conflict with Big Game Range. OAR 660-023-0250(3)(b).

(a) Identify Conflicting Uses

The approach to identifying conflicting uses is stated in OAR 660-023-0040(2).[7] The existing

[7] OAR 660-023-0040(2) states:

> Identify conflicting uses. Local governments shall identify conflicting uses that exist, or could occur, with regard to significant Goal 5 resource sites. To identify these uses, local governments shall examine land uses allowed outright or conditionally within the zones applied to the resource site and in its impact area. Local governments are not required to consider allowed uses that would be unlikely to occur in the impact area because existing permanent uses occupy the site. The following shall also apply in the identification of conflicting uses:
>
> (a) If no uses conflict with a significant resource site, acknowledged policies and land use regulations may be considered sufficient to protect the resource site. The determination that there are no conflicting uses must be based on the applicable zoning rather than ownership of the site. (Therefore, public ownership of a site does not by itself support a conclusion that there are no

and potential conflicting uses with Big Game Range must be determined. This requires looking at the uses allowed by the proposed ML zoning that are likely to be developed.

Residential uses at certain densities conflict with big game management in Peripheral and Major Big Game Range. "Impacted Range has essentially been 'written off' for big game management." *Flora & Fauna Working Paper (1982)* at 24. The plan identifies this conflict when overall residential densities reach certain levels in Peripheral and Major Big Game Range. However, the plan declines to resolve conflicts by setting density limits. *Flora & Fauna Working Paper Addendum (1983)* at 14.

At this site the ML zoning would allow about 10 rural residential dwellings.

(b) Determine the Impact Area

The approach to determining the impact area is stated in OAR 660-023-0040(3).[8] Here the impact area for the PAPA is the entire 121-acre area of the subject property itself, since the entire county is mapped as being in one of the three big game areas. As noted above, the generalized Wildlife Habitat Maps (Dec. 1980) adopted as part of the plan show the subject property entirely in the Peripheral Big Game category.

It is worth noting, for purposes of this analysis, that the subject property is part of an island of Peripheral Big Game range that is effectively surrounded by Impacted Big Game range. Land zoned for Rural Residential use is committed to Nonresource use, is inventoried as Impacted, has been written off for any habitat value, and is an area where conflicting uses are to be allowed. The surrounding residential development is dense. As noted in the applicant's March 5, 2012 letter to the Planning Commission, the average size of the Rural Residential tax lots adjacent to the subject property is 3.40 acres.

This adjacent and nearby development would degrade the value of the habitat on the subject property, such that it might be remapped as Impacted. However, remapping of big game range is, by definition, beyond the scope of analysis done in connection with a PAPA.

(c) Analyze the ESEE Consequences

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conflicting uses.)

(b) A local government may determine that one or more significant Goal 5 resource sites are conflicting uses with another significant resource site. The local government shall determine the level of protection for each significant site using the ESEE process and/or the requirements in OAR 660-023-0090 through 660-023-0230 (see OAR 660-023-0020(1)).

[8] OAR 660-023-0040(3) states:

Determine the impact area. Local governments shall determine an impact area for each significant resource site. The impact area shall be drawn to include only the area in which allowed uses could adversely affect the identified resource. The impact area defines the geographic limits within which to conduct an ESEE analysis for the identified significant resource site.

The approach to analyzing the ESEE consequences is stated in OAR 660-023-0040(4).[9] "'ESEE consequences' are the positive and negative economic, social, environmental, and energy (ESEE) consequences that could result from a decision to allow, limit, or prohibit a conflicting use." OAR 660-023-0010(2). The County must analyze the ESEE consequences of allowing, limiting, or prohibiting the conflicting rural residential uses.

The common context for analyzing the alternatives of allowing, limiting or prohibiting the conflicting use (residential development at a 20-acre or 10-acre density) is the existing development pattern on the surrounding property and its impact on big game management. As noted above, with the exception of a single parcel of Forest land near the southeast corner, the subject property is part of an island of Peripheral Big Game land that is surrounded by a very large area of Impacted Big Game range. The surrounding land is inventoried as Impacted range due to its "committed land" status, despite its generalized mapping as Peripheral range.

The adjacent and nearby Rural Residential lands have been written off by the county plan for big game range values. All of the immediately adjacent and nearby land has been developed with residential uses on small parcels that average only a small fraction of the 10 and 20-acre parcels that would be allowed under the ML zoning for the subject property.

Economic Consequences: Allowing the subject property to be developed with rural residential uses at a 10 to 20-acre density would have short term economic impacts in terms of construction activity during the build out of subdivision infrastructure and individual residences. In the long term it would increase the property value at this site with attendant impacts on tax revenues. It is unclear, however, whether there would be a net increase in value countywide.

The impacts of the 10 and 20-acre rural residential uses on big game resources would be nominal, for the reason that the subject property is effectively an island in a sea of land that already has been determined to have no value as habitat. What is important for Big Game is having large contiguous acres of undisturbed forest land. That does not exist here.

Prohibiting the rural residential use completely would have no economic consequences, as distinct from the status quo. The subject property is vacant and not being managed for any agricultural, forest, or other uses.

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[9] OAR 660-023-0040(4) states:

> Analyze the ESEE consequences. Local governments shall analyze the ESEE consequences that could result from decisions to allow, limit, or prohibit a conflicting use. The analysis may address each of the identified conflicting uses, or it may address a group of similar conflicting uses. A local government may conduct a single analysis for two or more resource sites that are within the same area or that are similarly situated and subject to the same zoning. The local government may establish a matrix of commonly occurring conflicting uses and apply the matrix to particular resource sites in order to facilitate the analysis. A local government may conduct a single analysis for a site containing more than one significant Goal 5 resource. The ESEE analysis must consider any applicable statewide goal or acknowledged plan requirements, including the requirements of Goal 5. The analyses of the ESEE consequences shall be adopted either as part of the plan or as a land use regulation.

Social Consequences: Allowing the residential use would mean that this site would be developed with uses that are similar to the rural residential uses that surround the property. The difference is that residential development of the subject property would be much less dense than on the surrounding property. Prohibiting the residential uses would maintain the status quo.

Environmental Consequences: Allowing the ML zoning means the subject property would remain higher quality habitat than the land that surrounds it. It would have some residential development, but at a much lower density than exists on all the surrounding land.

This site, along with the other two companion sites proposed for Marginal Land designation in the same neighborhood, were examined by an environmental specialist in connection with these applications. The research included a site visit. The evaluation was documented in a November 30, 2012 letter, which is in the record of the applications. The study concluded, for each site:

> "However, in my opinion, developing the tax lots in question with low density residential uses (in the range of one unit per 10 or 20-acre lot sizes) would not have an appreciable adverse impact on big game populations in the neighborhood that these tax lots share or in Lane County as a whole. This conclusion is based primarily on the existing low density residential development pattern in the immediate neighborhood and the much higher residential development pattern in the city adjacent to the north." Lttr from Brian Meiering, Environmental Specialist, Schirmer Satre Group (Nov. 30. 2013) at page 3.

Energy Consequences: The net impacts on energy consumption countywide might be negligible or zero if this site attracts rural residential development that might otherwise locate elsewhere in the rural county. Prohibiting the residential use would maintain the status quo.

(d) Develop a program to achieve Goal 5 for Big Game Range

The proposed program to achieve the goal is to allow the conflicting low density residential use that would come with the ML designation. The subject property is located in the middle of a very large acreage that has been written off as Big Game habitat. Allowing 10 and 20 acre parcel in this island area will have no appreciable effect on Big Game habitat in this part of the county.

2. ESEE Analysis for Groundwater Resources

The acknowledged county plan identifies groundwater as a Goal 5 resource. See *Water Resources Working Paper (1982)* at 10. It identifies groundwater as "extremely valuable as a direct resource of drinking water for individuals and communities, a source of irrigation water for livestock and crops, and as a base source of water for lakes and streams." *Id.* at 10. As with Big Game Range, the plan inventories this resource as being present throughout the county. It maps the quantity of groundwater available into five general categories which reflect geographic regions. It also notes that groundwater quality is limited by natural and human induced factors.

Groundwater will be the source for domestic water supply for about two-thirds of the subject

property, with the balance at the north end of the site being served by EWEB.

(a) Identify Conflicting Uses

The county plan identifies two groundwater resource conflicts – development in quantity limited aquifers and in areas of polluted groundwater. *Id.* at 11 states:

> Two groundwater conflicts have been identified – development in quantity limited aquifers and development in areas where groundwater quality may be polluted, either naturally or from human induced means. An ESEE analysis as per administrative rule regarding Goal 5 is presented for each of these conflicts.

The county plan conducts a full ESEE analysis for development in water quantity and water quality limited aquifers, and it adopts a program that resolves the conflicts and achieves the goal. With respect to quantity, the plan resolves that residential development and other uses requiring groundwater should be allowed if a showing is made that water will be available for a forseeable period in the future. The program calls for strengthening the standards in the subdivision ordinance and for formally designating groundwater quantity limited areas. The land division provisions in the zoning code have been amended accordingly. *Id.* at 12-13. Standards have been adopted in the code for demonstrating adequate quantities of water in connection with rezoning that would create the potential for land division. See LC 13.050(13)(a)-(d). Certain sections in the county have been identified in the Lane Manual as having limited groundwater quantity. See Lane Manual, as referenced in LC 13.050(13)(c)(i). The subject property is identified by the county as having a limited groundwater quantity.

With respect to groundwater quality, the plan identifies the conflict as "[d]evelopment in an aquifer limited in quality by arsenic, salt, iron, sulfer, landfill leachate or sewage." *Id.* at 13. It resolves the conflict by allowing the potential for development in water quality limited area, but ensuring that information about the nature and extent of the quality limitations is recorded and provided to landowners. *Id.* at 14-15. The subject property is not identified as having limited groundwater quality.

The obligation is to identify potential conflicting uses – that is, uses allowed outright under the proposed zoning that would conflict with a significant Goal 5 resource. See OAR 660-023-0040(2), quoted in footnote 7 above. The county's acknowledged plan has identified the scope of this comparison. The uses allowed are residential uses. According to the *Water Resources Working Paper (1982)*, the allowed use conflicts if it is proposed in an area identified as having limited groundwater quantity or quality. The subject property, which is the impact area for purposes of the rule, is identified in the plan and implementing regulations as being groundwater quantity or quality limited. Hence, the proposed rezoning would result in a conflicting use. That is, the potential residential development that would be allowed by this rezoning could cause a conflicting use with the groundwater resource under the acknowledged plan.

To further understand the potential scope of the conflict, the ground water aquifer was tested to determine whether it is adequate to support the residential density that would be allowed on this site by ML zoning. An existing well on the subject property was previously pump tested in 1992, in connection with a proposal to rezone the property to RR-5 density. The results of that

pump test were analyzed by EGR & Associates using modern analytic techniques. The results of that analysis are reported in a March 14, 2012 report by EGR. The key finding of that study, in terms of conflicting use analysis, is that the potential dwellings will withdraw from the aquifer on site far less water than is recharged to the aquifer on an annual basis. This finding, based on actual study, supports a finding that residential development will not be a conflicting use in terms of groundwater resources. The EGR study provides considerable detail. The introductory summary is:

> "As per your request on behalf of your client, EGR & Associates, Inc. (EGR) has reviewed the file and the groundwater situation regarding the three properties involved in the Marginal Land applications referenced above. Particular focus is on the 123-acre "Blanton" property, which was the subject of much negative testimony about water at the March 6 Planning Commission hearing."
>
> "We found the area has a low transmissivity and correspondingly low well yields. Even so, the large minimum parcel size required for the Marginal Lands designation keeps the carrying capacity well within safe parameters for this rural density. The aquifer will not be depleted by this development because the transmissivity seen in this area is sufficiently low that a well, or even a series of wells, cannot dewater the aquifer to any significant extent beyond the immediate vicinity of the well. Furthermore, recharge on 10-acre size parcels would be sufficient, several times over, to recover all the water that is pumped per year."
>
> "In summary, there is a groundwater supply under this property adequate to support development of the site at a 10-acre density, and use of wells on the property should not negatively impact wells on surrounding property that may be used for domestic water supply. To be a bit more specific, our analysis of the pump test data for the existing well on the Blanton site, and the well logs in the surround four-square mile area, indicates that the Blanton well could safely supply water for about 43 dwellings at 650 gpd on an annual basis."

(b) Compliance with Acknowledged Plan and Implementing Regulations

Under the Goal 5 Rule, when no conflicting uses are identified with a significant resource site, compliance with the acknowledged policies and land use regulations is sufficient. "If no uses conflict with a significant resource site, acknowledged policies and land use regulations may be considered sufficient to protect the resource site." OAR 660-023-0040(2)(a). Both the *Rural Plan Policies* and the *Lane Code* contain policies and standards relevant to water supply.

Rural Plan Policies, Water Resources Policy 3 makes adequacy of groundwater supply a major issue in plan and zone changes. Water Resources Policy 5 requires new land use designations to be commensurate with aquifer capabilities. *Lane Code* 16.004(4) requires that any rezoning that will allow more parcelization be preceded by proof of long term water supply, as required by the standards in the subdivision ordinance, *Lane Code* 13.050(13)(a)-(d). In areas of the county that are not designated in the Lane Manual as having limited groundwater quantity or quality, proof of adequacy of water can be based on either a pump test or a well log. LC 13.050(13)(d).

The EGR groundwater analysis summarized above demonstrates compliance with the applicable plan and code standards for water supply in groundwater limited areas.

3. ESEE Analysis for Surface Water Resources and Watershed Resources

The acknowledged county plan identifies surface water and watersheds as Goal 5 resources. See *Water Resources Working Paper (1982)* at 3-10. The working paper states that is difficult to separate the discussion of watersheds from that of surface water. Hence, the two will be addressed together here.

By "watershed," the working paper refers to areas of drainage basins that drain to a particular point of use. As defined in the working paper, "the area which drains to a domestic water supply is correctly termed a watershed, even if it is much smaller than a basin." *Id.* at 3. The working paper maps drainage basins in the county, but not watersheds, since a watershed is a function of where water is being used. The subject property is located in the Spencer Creek basin of the Long Tom Basin. See *id.* at Map 2 and Appendix B. According to the working paper, the subject property would be in the "watershed" for any domestic user of water downstream of the intermittent streams on the subject property. The working paper recognizes that "[t]he entire County is within one or more categories of watersheds, and all ranges of quality may be found." *Id.* at 5.

The "quality" discussion in the plan recognizes that watersheds play vital roles in individual and municipal water supplies, fish and wildlife habitat, water quality, flood protection, among others. *Id.* at 5. The "quantity" discussion in the plan recognizes that a range of uses, such as soil compaction, removal of vegetation, and increase in impervious surfaces, among others, affect the amount of water that is retained in a watershed and the amount that runs off. *Id.*

Only one conflict is identified by the plan's ESEE analysis as a watershed conflict, as opposed to a surface water or groundwater conflict. That is "contamination or possible contamination of surface water supplies used for domestic purposes." *Id.* at 5. See also July 19, 1984 DLCD Staff Report at 174. The plan found two places where that conflict exists. One is from forestry related practices on federal, state and private timber lands. The other is from residential development in the Clear Lake area, which is in the watershed of the Heceta Water District. *Id.* at 5-6. The plan conducts no ESSE analysis for forestry practices for the reason that the county has so little control over these practices. And it conducts no ESEE analysis of the Clear Lake situation due to inadequate data. *Id.* at 5-6.

The working paper maps drainage basins and lists the principal streams in Lane County. As noted above, the subject property is located in the Spencer Creek basin of the Long Tom River Basin. See *id.* at Map 2 and Appendix B. The subject property is not adjacent to Spencer Creek. There are no mapped streams or intermittent streams on the subject property, as shown on the USGS Topographic Maps.

The working paper recognizes that the quality of surface waters throughout the county is affected adversely by a range of factors, only some of which are under county control. *Id.* at 7-8. Its discussion of stream water quantity is limited to a description of flow regulation in rivers and streams by federal agencies with storage and flood control responsibilities. *Id.* at 8-9.

The working paper identifies a number of activities that conflict with water quality in streams, but states that the impacts of these activities are largely beyond county land use control. Examples included in the working paper's discussion include: water release schedules from federal reservoirs, state water rights regulation that contributes to over appropriation, nonpoint pollution from forest practices regulated by the state, nonpoint pollution from agricultural practices, and urban runoff from cities.

The working paper conducts no ESEE analysis of the problems above. "[T]hese are not considered as conflicts in the Goal 5 sense as they do not result from County planning or zoning actions, and generally cannot be resolved in that manner." *Id.* at 10.

(a) Identify Conflicting Uses

The county program found only one conflict that is specifically a watershed conflict, and not a surface or groundwater conflict. That is contamination or possible contamination of surface water supplies used for domestic purposes. However, the county did no ESEE analysis for this potential conflict, recognizing that the problem is substantially outside its jurisdiction to resolve, lying instead with state and federal authorities. See July 19, 1984 DLCD Staff Report at 174-175.

The county found a number of conflicts for protection of surface waters of the county, but concluded that these are not the consequence of county actions, but rather of state and federal regulatory schemes. State and federal agency programs listed included federal reservoirs, state water rights laws, state forest practices regulations, and DEQ clean water regulations. Hence, the county conducted no ESEE analysis for surface waters.

In summary, potential impacts of very low density rural residential development on watersheds and surface waters are not conflicts identified in the acknowledged Goal 5 program. Furthermore, some might argue that multiple smaller ownerships of this larger parcel might encourage small scale farming, as compared the site remaining unused, and farm use might impact the watershed and surface waters. However, Goal 5 Rule does not require considering the impacts of agricultural uses. "Local governments are not required to consider agricultural practices as conflicting uses." OAR 660-23-0010(1).

In summary, under the acknowledged Goal 5 program for watershed and surface water resources, there are no recogonized conflicting uses associated with the potential low density rural residential uses associated with this proposal.

End

LIST OF EXHIBITS FOR BLANTON MARGINAL LANDS APPLICATION

A. RLID Detailed Property Report

B. Report of Consulting Forester, Marc E. Setchko (6 pages with Exhibits 1 to 10)

Exhibit 1:	Air Photo showing subject property
Exhibit 2:	Assessor's Map: 18-04-13, TL 1300
Exhibit 3:	Survey of Lot Line Adjustment in 1998
Exhibit 4:	LCOG Soils Map: 18-04-13, TL 1300
Exhibit 5:	Or Dept Forestry, "Land Use Planning Notes, No. 3, April 1998, Updated for Clarity April 2010
Exhibit 6:	Lttr from D. Morman, Director, Forest Resources Planning Program, Dept of Forestry, to K. Howe, Lane County Land Management Division (Nov. 21, 2008)
Exhibit 7:	Lane County Forest Soil Ratings
Exhibit 8:	Lane County Soil Ratings for Forestry and Agriculture, Lane County Land Management Division (Aug. 1997), page 2
Exhibit 9:	Douglas fir Empirical Yield Table
Exhibit 10:	Douglas fir Log Prices 1978-1982, 1983

C. Relevant Deeds for Property

C.1. Property Line Adj. Deed, Instrument No. 9828981 (April 21, 1998)
C.2. Scott and Suess Construction to Suess Co, Inst. 19902 (Sept. 8, 1970)
C.3. Clark to Scott and Suess Construction, Instrument No. 9059 (June 4, 1965).

D. Lttr from EGR & Associates, Inc. to B. Kloos (March 14, 2012), including Ground Water Test for Map 18-04-13, TL 1300 (Ray Walter Engineering)(Feb. 7, 1992), filed with Lane County in PA 3437-90 (but excluding other lengthy exhibits)

E. EWEB Service Area Information

E.1. Map of EWEB service area
E.2. Lttr fom C. Czerniak, Planner, City of Eugene, to M. Scurlock (June 25, 1990) and attached map.

F. *Westfair Assoc. Partnership v. Lane County*, 25 Or LUBA 729 (1993).

G. "Agricultural Capability Analysis," by Cascade Earth Sciences, Ltd, (CES) (April 1, 1991), filed with Lane County in PA 3437-90 as Exhibit 21

H. Lttr from M. Weishar, Access Engineering, to B. Kloos (June 18, 2012)

I. Goal 5 ESEE Analysis for incorporation into comprehensive plan

↳ SEE 'D' ATTACHED TO ORDINANCE

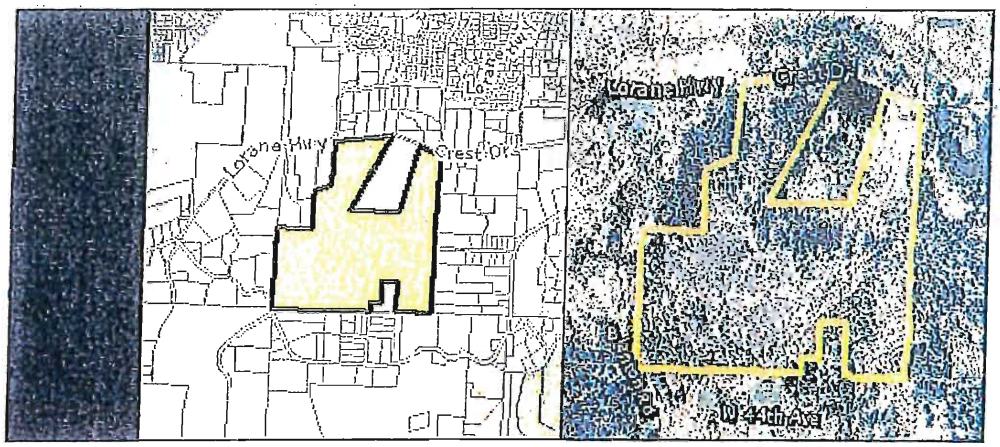
Detailed Property Report

Site Address N/A
Map & Taxlot# 18-04-13-00-01300
SIC N/A
Tax Account# 0731248

Property Owner 1
SUESS CO
1183 W 15TH AVE
EUGENE, OR 97402

Approx. taxlot acreage 123.21
Tax account acreage 123.80

Map & Taxlot # 18-04-13-00-01300



Improvements

No assessor photos, assessor sketches or building characteristic information is available for this tax account.

Site Address Information

No site address associated with this tax account number

General Taxlot Characteristics

Geographic Coordinates

X 4231301 **Y** 864835 (State Plane X,Y)
Latitude 44.0099 **Longitude** -123.1228

Zoning

Zoning Jurisdiction Lane County

Parent Zone E40 EXCLUSIVE FARM USE (40 ACRE MINIMUM)

Land Use

General Land Use

Code	Description
T	Timber

Taxlot Characteristics

Incorporated City Limits	none
Urban Growth Boundary	none
Year Annexed	N/A
Annexation #	N/A
Approximate Taxlot Acreage	123.21
Approx Taxlot Sq Footage	5,367,028
2000 Census Tract	5400
2000 Census Block Group	3
Plan Designation	AGRICULTURE
Eugene Neighborhood	N/A
Metro Area Nodal Dev Area	No
Eugene Historic Property Name	N/A
Historical Landmark?	No
National Historical Register?	No

EXHIBIT A

Detailed Land Use

Code	Description
8310	Timberlands

Service Providers

Fire Protection Provider	Eugene #1 RFPD
Ambulance Provider	Eugene Fire & EMS
Ambulance District	WC
Ambulance Service Area	West/Central
LTD Service Area?	Yes
LTD Ride Source?	No
Soil Water Cons. Dist/Zone	UPPER WILLAMETTE / 0
Emerald People's Utility District	N

Environmental Data

FEMA Flood Hazard Zone(s)

Code	Description
X	Areas determined to be outside of 500-year flood.

FIRM Map Number	41039C1138 F
Community Number	data not available
Post-FIRM Date	data not available
Panel Printed?	No

Soils

Soil Map Unit#	Soil Type Description	% of Taxlot	Ag Class 1	Hydric
102C	PANTHER SILTY CLAY LOAM, 2 TO 12 PERCENT SLOPES	18%	6	Yes
107C	PHILOMATH SILTY CLAY, 3 TO 12 PERCENT SLOPES	3%	6	No
108F	PHILOMATH COBBLY SILTY CLAY, 12 TO 45 PERCENT SLOPES	0%	6	No
43C	DIXONVILLE-PHILOMATH-HAZELAIR COMPLEX, 3 TO 12 PERCENT SLOPES	17%	3	No
43E	DIXONVILLE-PHILOMATH-HAZELAIR COMPLEX, 12 TO 35 PERCENT SLOPES	62%	4	No

Schools

	Code	Name
School District	4J	EUGENE
Elementary School	503	Adams
Middle School	4554	Arts & Tech. Academy
High School	540	Churchill

Political Districts

Election Precinct	100084	State Representative District	8
City Council Ward	N/A	State Representative	Paul R Holvey
City Councilor	N/A	State Senate District	4
County Commissioner District	5 (East)	State Senator	Floyd Prozanski

County Commissioner	Faye Stewart
EWEB Commissioner	N/A
LCC Board Zone	4

Liens

RLID does not contain any lien data for this jurisdiction

Building Permits

RLID does not contain any building permit data for this jurisdiction

Land Use Applications

RLID does not contain any landuse application data for this jurisdiction

Petitions

RLID does not contain any petition data for this jurisdiction

Tax Statements (current and previous tax years)

ACCOUNT#: 0731248
View tax statement(s) for: **2010 2009**

Owner/Taxpayer

Owners

Owner	Address	City/State/Zip
SUESS CO	1183 W 15TH AVE	EUGENE, OR 97402

Taxpayer

Party Name	Address	City/State/Zip
SUESS CO	1183 W 15TH AVE	EUGENE, OR 97402

Data source: Lane County Assessment and Taxation

Account Status

Status Active Account Current Tax Year

Account Status	none
Remarks	none
Special Assessment Program	N/A

Data source: Lane County Assessment and Taxation

General Tax Account Information

Tax Account Acreage	123.80
Fire Acres	N/A
Property Class	400 TRACT, VACANT

Statistical Class	N/A
Neighborhood Code	20663
Category	Land and Improvements

Data source: Lane County Assessment and Taxation

Township-Range-Section / Subdivision Data

Subdivision Type	N/A	Subdivision Name	N/A	Subdivision Number	N/A
Phase	N/A	Lot/Tract/Unit #	TL 01300	Recording Number	N/A

Data source: Lane County Assessment and Taxation

Property Values & Taxes

The values shown are the values certified in October unless a value change has been processed on the property. Value changes typically occur as a result of appeals, clerical errors and omitted property. The tax shown is the amount certified in October. This is the full amount of tax for the year indicated and does not include any discounts offered, payments made, interest owing or previous years owing. It also does not reflect any value changes.

	Real Market Value (RMV)			Total Assessed Value	Tax
Year	Land	Improvement	Total		
2010	$284,270	$0	$284,270	$205,240	$2,403.27
2009	$287,142	$0	$287,142	$199,262	$2,414.08
2008	$281,512	$0	$281,512	$193,458	$2,344.44
2007	$251,350	$0	$251,350	$187,823	$2,288.96
2006	$201,080	$0	$201,080	$182,352	$2,058.64
2005	$160,860	$0	$160,860	$160,860	$1,706.47
2004	$160,860	$0	$160,860	$160,860	$1,516.28
2003	$156,000	$0	$156,000	$156,000	$1,601.26
2002	$156,000	$0	$156,000	$156,000	$1,672.66
2001	$225,316	$0	$225,316	$171,884	$1,977.95
2000	$118,330	$0	$118,330	$75,555	$ 940.43
1999	$117,160	$0	$117,160	$73,354	$ 811.05
1998	$98,450	$0	$98,450	$98,450	$1,023.62
1997	$96,520	$0	$96,520	$96,520	$1,039.15
1996	$153,770	$0	$153,770	$90,210	$ 897.80
1995	$134,890	$0	$134,890	$79,130	$ 769.05

Current Year Assessed Value	$205,240
Less Exemption Amount *	N/A
Taxable Value	**$205,240**

* Frozen Assessed Value

Data source: Lane County Assessment and Taxation

Tax Code Area & Taxing Districts

Tax Code Area (Levy Code) for current tax year 00406

Taxing Districts for TCA 00406	EUGENE RURAL FIRE PROTECTION DISTRICT 1 EUGENE SCHOOL DISTRICT 4J LANE COMMUNITY COLLEGE LANE COUNTY LANE EDUCATION SERVICE DISTRICT

Data source: Lane County Assessment and Taxation

Sales & Ownership Changes

No sales or ownership change data available.

Data source: Lane County Assessment and Taxation

Marc E. Setchko
CONSULTING FORESTER

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

FOREST PRODUCTIVITY AND INCOME ANALYSIS
For
Martin C. Peets

SUBJECT PARCEL: BLANTON TRACT: ASSESSORS MAP NO. 18-04-13
Tax Lot 1300, totaling ±123.70 acres

This report updates and replaces the original report from February, 2011. The updated report uses the most current soils data from the August 2011 Update from Lane County.

QUALIFICATIONS: Society of American Foresters Certified Professional Forester (#2953), with 32 years of experience including 22 years as a consultant, with Bachelor of Science (Cal Poly, SLO) and Master of Forestry (Oregon State) Degrees. As a consultant I have extensive experience in all phases of forestry, including preparation of forest management plans, handling the administration of these plans and maximizing the return to my clients. My productivity analyses are based on sound and "reasonable" forest management practices, with the ultimate goal of establishing fully stocked stands of conifer.

I. INTRODUCTION

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

1. The subject property is not capable of producing 85 cu.ft./ac./yr. of merchantable timber volume. This has been determined by Lane County, and the State of Oregon, to be the measuring parameter for marginal soils west of the Cascade Range; as defined in ORS 197.247 (1)(b)(C).

2. The income generated from the subject property averages less than $10,000/year, based on 1978 through 1982 log prices. This level of income meets the following statutory test for Marginal Lands: ORS 197.247 (1)(a): The proposed marginal land was not managed, during three of the five calendar year preceding January 1, 1983, as a forest operation capable of producing an average, over the growth cycle, of $10,000 in annual gross income.

II. SITE INFORMATION

The subject parcel was ±123.70 acres in size during the years of 1978-83; in 1998 a lot line adjustment increased this to 123.80 acres, the current acreage of the parcel (see Exhibits 1, 2 & 3). Terrain throughout the site is gentle to moderate, with slopes ranging from 5-30%. A gently rolling ridge in the middle of the south portion of the parcel is the highest point on the property. The primary exposure is to the north. The parcel is composed of three soil types (see Exhibit 4). Over three quarters of the parcel is composed of the Dixonville-Philomath-Hazelair complex (Soil Type 43C&E). The other two soils present are Panther silty clay loam (Soil Type 102C) and Philomath silty clay (Soil Type 107C). None of these soils are good forestland soils. Large portions of the parcel are grassland, and have always been grassland. A majority of the grassland areas have thin soils with exposed rock. Some of these areas are wet year round, due to the high water table. None of these conditions are conducive to the growth of conifers.

EXHIBIT B

Less than half of the parcel was forested in 1989, when the standing merchantable timber was cut. These areas are now covered with blackberry, scotch broom, other brush species and scattered conifer reproduction. The primary tree species currently growing on the parcel is Douglas-fir. There are a few scattered incense cedar and ponderosa pine. Hardwood species, primarily oak, intermixed with some madrone, are also present. Cottonwood and ash are abundant in the wet areas, particularly along the eastern boundary of the property, which has a creek running south to north. Other brush species present are poison oak, rose, hazel and vine maple.

III. RESULTS OF PRODUCTIVITY AND INCOME CALCULATIONS

PRODUCTIVITY – Cubic feet per acre per year growth.

The timber productivity (cu.ft./ac./yr.) figures for Douglas-fir were obtained from a combination of sources approved by the Oregon Department of Forestry (see Exhibit 5). These sources are 1) August 1997 *Lane County Soil Ratings for Forestry and Agriculture* produced by the Lane County Council of Governments, 2) February 8, 1990, *Forest Lands Soils Ratings* – Revisions produced by the Oregon Department of Forestry for the Oregon Department of Land Conservation and Development except where superseded by the August 1997 *Lane County Soils Ratings for Forestry and Agriculture*, and 3) January 27, 1989 forest soils rating submitted to the Oregon Department of Land Conservation and Development by the Oregon Department of Forestry except where superseded by the February 8, 1990 *Forest Lands Soils Ratings* and the August 1997 *Lane County Soils Ratings for Forestry and Agriculture*. No further review or approval of site productivity determinations are needed when these data sources are used.

By summing up the cubic foot per acre per year productivity (growth of the timber stand) of each soil type, and dividing by the total acreage, an average per acre productivity figure for the entire parcel can be calculated.

Douglas-fir was used because it is the dominant conifer species on the property and will grow in pure stands. All of the productivity figures shown on the sources listed above assume a fully stocked stand of the tree species being measured. Grand fir could possibly grow on this site; however, none exists on the parcel. Grand fir does not grow in pure stands; it is a minor species which grows intermixed with Douglas-fir. The only other species suited to this site are incense cedar and ponderosa pine. There are a few of each scattered about the parcel. Incense cedar does not grow as fast as Douglas-fir, therefore it was not considered. Ponderosa pine, which will grow in pure stands, was not considered because there are no credible growth tables for Willamette Valley Pine (see Exhibit 6, page 3). In western Oregon locations, such as the parcel in question, Douglas-fir is the dominant species, even though ponderosa pine is growing on the site. Hardwood species, such as oak and madrone are slow growing; alder, which is a fast growing tree, will not grow on the site due to moisture (rainfall) constraints.

Therefore, Douglas-fir shall be used for productivity calculations.

Douglas-fir cubic foot productivity numbers are available for all of the above listed soils. The numbers shown below were obtained from the aforementioned tables (see above). Since the productivity numbers, of some soils, vary from table to table, the protocol described above was followed to obtain specific cubic foot production numbers. The calculations shown below are based on the acreage of the parcel as it existed in 1978-1983.

SOIL RATINGS for Douglas-fir (see Exhibit 7)

Soil Unit	Acres	Site Index	Cf/Ac Per Yr	Total Cu.Ft. Productivity
43C Dixonville-Philomath-Hazelair complex	21.05	NA	45	947.25
43E Dixonville-Philomath-Hazelair complex	76.66	NA	45	3,449.7
102C Panther silty clay loam	22.28	NA	45	1,002.60
107C Philomath silty clay	3.71	NA	45	166.95
	123.70			5,566.5

Total – 5,566.5 cu.ft. ÷ 123.70 acres = 45.0 cubic feet per acre per year

It should also be noted that the above figure is higher than the growth **actually** occurring on the parcel. A field inspection of the site confirms this.

Due to the existing conditions (shallow soils, high water table, riparian area), the growth shown above could only be obtained under the most optimistic conditions. Even with active forest management it is doubtful these productivity levels could be obtained. This growth would only be possible if the entire parcel were covered with fully stocked stands. There is no evidence to show that trees have ever grown in the grassland areas.

In summary, even if fully stocked stands existed on the entire parcel, **it is incapable of producing 85 cf/ac/yr.**

INCOME TEST – Average revenue per year over the growth cycle.

The income test must be calculated for the parcel as it existed for the five calendar years preceding January 1, 1983. The income is based on the value of the **potential volume** that the parcel can produce. This is determined by the total board feet in the timber stands on the parcel at 50 years of age. This time span was adopted as the standard, by a consensus of the Marginal Lands Information Sheet. **This time span has been reaffirmed by LUBA.**

Merchantable timber volume, in board feet per acre, for each soil type is needed for the income test. Income calculations are based on **dollars per thousand scaled board feet, not cubic feet.** That is the manner in which the vast majority of conifer and hardwood logs are purchased. An exception to this is the junk wood or tops that are purchased by the ton (at a lower price than scaled wood), which is a weight, not a scaled measurement. Hardwoods sold for pulp are also purchased by the ton as well. Currently, there is no mill in the northwest purchasing anything based on cubic foot measurements.

Douglas-fir is the only species considered for the income test, because it is the most valuable **merchantable** tree species which will grow on this site. It is also the predominant species on the parcel. Alder, red and incense cedar have values similar to, or higher than Douglas-fir; incense cedar is the only one of these species present on the parcel. Neither red or incense cedar grow in pure stands; they grow intermixed with other species. Even if they did grow in pure stands, cedar trees have such a high taper (the trees grow like upside carrots, rather than poles), that each individual tree will not produce the measured board foot, or cubic foot, volume that a Douglas-fir tree will. While alder will grow in pure stands it does not produce anywhere near the volume per acre that Douglas-fir will. Even planted, and managed, red alder stands will not produce anywhere near the volume per acre that Douglas-fir will.

Measured, or scaled, board foot volume is the number a mill uses for payment when purchasing logs. Therefore, even if these species were used to calculate income for the parcel, the considerably lower volumes per acre would result in a lower total dollar figure.

For all of the above reasons Douglas-fir is used for the income test.

VOLUME CALCULATIONS – Douglas-fir board foot volumes per acre, for fully stocked stands at 50 years, were used. Empirical Yield Tables, calculated using King's 50 year site class index, were used to obtain a scribner board foot volume, per acre, for each soil type. Adding all the soil types together will give a total volume for the entire parcel. A total value is calculated using these total volume figures; then divided by 50 (fifty year rotation) to obtain the average income per year that the parcel is capable of generating. For a soil with a known site index number this is simply a matter of using the tables to obtain a board foot per acre volume.

The approved tables (discussed earlier) show Site Index numbers for many of the Lane County soil types. However, no site index numbers are shown for any soils with productivity ratings of 100 cf/ac/yr or less; which includes all of the soils on the subject parcel. The lowest site index shown for a soil in the tables is SI100 (Soil Type 37). The corresponding cubic foot production is 136 cf/ac/yr. This soil has the lowest cubic foot productivity number shown with a corresponding site index number. Any soil with a lower cubic foot productivity number will not show a site index number in the tables. The productivity numbers for better soils increase geometrically, not linearly. Therefore, a soil with the lowest cubic foot productivity number, which also has a corresponding site index number, is the most appropriate to use when looking at soils with even lower productivity numbers. A proportion ratio can then be calculated, by comparing the cubic foot production of the soils on the subject parcel with the above cubic foot production. Even this number will err on the high side from a productivity standpoint, due to the geometric nature of the productivity curve. The calculated proportion ratio can then be applied to the volume obtained from site index 100 in the Empirical Yield Tables. In this manner a board foot volume per acre can be calculated for the soils in question.

Cupola cobble loam (Soil Type 37) with a site index of 100 (see Exhibit 8) will produce 19,972 board feet per acre at 50 years of age (see Exhibit 9), assuming fully stocked stands. The corresponding cubic foot production is 136 cf/ac/yr. The calculations for obtaining a volume per acre at 50 years, for the soils on the subject property, are shown below.

43C – DPH Complex	45 cf/ac/yr ÷ 136 cf/ac/yr = .33 X 19,972 bf/ac = 6,591 bf/ac
43E – DPH Complex	45 cf/ac/yr ÷ 136 cf/ac/yr = .33 X 19,972 bf/ac = 6,591 bf/ac
102C – Panther	45 cf/ac/yr ÷ 136 cf/ac/yr = .33 X 19,972 bf/ac = 6,591 bf/ac
107C – Philomath	45 cf/ac/yr ÷ 136 cf/ac/yr = .33 X 19,972 bf/ac = 6,591 bf/ac

The total potential volume, at 50 years, can now be calculated for the entire parcel.

Volume Total for Entire 123.7 acres			Total Volume (Board Feet)
43C – Dixonville-Philomath-Hazelair complex	21.05 ac @	6,591 bf/ac	138,741
43E – Dixonville-Philomath-Hazelair complex	76.66 ac @	6,591 bf/ac	505,266
102C – Panther silty clay loam	22.28 ac @	6,591 bf/ac	146,847
107C – Philomath silty clay	3.71 ac @	6,591 bf/ac	24,453
Totals	123.70 ac		815,307

INCOME PROJECTIONS YEAR BY YEAR

The following calculations will show the average gross income for each year from 1978 through 1982, as well as the average price for those five years. The highest log prices occurred from the first quarter of 1980 and continued through the third quarter of 1981 (see Exhibit 10). The calculations presented below will show that the **highest** possible average gross income per year would be obtained using 1980 log prices. Furthermore, since the log prices remained the same throughout the entire year, the calculations for 1980 would also show the highest possible average gross income if only the highest quarters were used.

A 50 year old stand on good site ground should have approximately 40% 2 SAW, 50% 3 SAW and 10% 4 SAW. On poor sites the percentage of 2 SAW would most likely be 30% or less. However, for the following calculations these percentages will be used; in order to err on the high (or optimistic) side. See Exhibit 10 for the prices shown below.

1978 Total Volume – 815.31 MBF (thousand board feet)

326.12 MBF of 2 SAW @ $276/MBF	$ 90,009
407.66 MBF of 3 SAW @ $235/MBF	95,800
81.53 MBF of 4 SAW @ $190/MBF	15,491
Total Projected Gross Revenue	$201,300

AVERAGE GROSS INCOME -- $201,300 ÷ 50 YEARS = **$4,026/YEAR**

1979 Total Volume – 815.31 MBF (thousand board feet)

326.12 MBF of 2 SAW @ $338/MBF	$110,229
407.66 MBF of 3 SAW @ $296/MBF	120,667
81.53 MBF of 4 SAW @ $269/MBF	21,932
Total Projected Gross Revenue	$252,828

AVERAGE GROSS INCOME -- $252,828 ÷ 50 YEARS = **$5,057/YEAR**

1980 Total Volume – 815.31 MBF (thousand board feet)

326.12 MBF of 2 SAW @ $354/MBF	$115,446
407.66 MBF of 3 SAW @ $310/MBF	126,375
81.53 MBF of 4 SAW @ $281/MBF	22,910
Total Projected Gross Revenue	$264,731

AVERAGE GROSS INCOME -- $264,731 ÷ 50 YEARS = **$5,295/YEAR**

1981 Total Volume – 815.31 MBF (thousand board feet)

326.12 MBF of 2 SAW @ $346/MBF	$112,838
407.66 MBF of 3 SAW @ $292/MBF	119,037
81.53 MBF of 4 SAW @ $263/MBF	21,443
Total Projected Gross Revenue	$253,318

AVERAGE GROSS INCOME -- $253,318 ÷ 50 YEARS = **$5,066/YEAR**

1982 Total Volume – 815.31 MBF (thousand board feet)

326.12 MBF of 2 SAW @ $267/MBF	$ 87,074
407.66 MBF of 3 SAW @ $208/MBF	84,793
81.53 MBF of 4 SAW @ $174/MBF	14,186
Total Projected Gross Revenue	$186,053

AVERAGE GROSS INCOME -- $186,053 ÷ 50 YEARS = **$3,721/YEAR**

1978-1982 AVERAGE Total Volume – 815.31 MBF (thousand board feet)

326.12 MBF of 2 SAW @ $316/MBF	$103,054
407.66 MBF of 3 SAW @ $268/MBF	109,253
81.53 MBF of 4 SAW @ $235/MBF	19,160
Total Projected Gross Revenue	$231,467

AVERAGE GROSS INCOME -- $231,467 ÷ 50 YEARS = **$4,629/YEAR**

All of these calculations show that the property is incapable of producing more than $10,000 per year in income.

IV. CONCLUSION

The analyses presented show conclusively that this property will not support a merchantable stand of timber, of sufficient production capability, to meet or exceed the Marginal Lands Income and Cubic Foot Productivity Statutes (ORS 197.247).

1) The subject property produces **45.00 cubic feet per acre per year.** This is less than 85 cu.ft./ac./yr. of merchantable timber production, the parameter used in those counties west of the summit of the Cascade Range, as that term is defined in ORS 477.001(21).

2) The estimated gross income would have ranged from a low of $186,053 in 1982 to a high of $264,731 in 1980. **The average annual gross income would have ranged from a low of $3,721/year in 1982 to a high of $5,295/year in 1980. These figures are based on a 50 year rotation of fully stocked stands of timber covering the entire parcel.** All of the above figures are less than $10,000/year, therefore the property meets the statutory test for Marginal Lands: ORS 197.247(1)(a) "The proposed marginal land was not managed during three of the five calendar years preceding January 1, 1983, as part of a forest operation capable of producing an average, over the growth cycle, of $10,000 in annual gross income".

All of the data used in these analyses are from Oregon Department of Forestry approved sources. The findings presented here meet all of the parameters for marginal land designation, as outlined by Lane County statutes. Several of the parameters, such as the 50 year growth cycle to harvest, have been reaffirmed by LUBA.

In summary, I find from the specific site conditions present, empirical yield tables, NRCS data, Lane County data, Oregon Department of Forestry data and experience with similar lands, that this property is poorly suited to the production of merchantable timber and use as land for forestry purposes. The parcel is marginal from a forest production standpoint.

Sincerely,

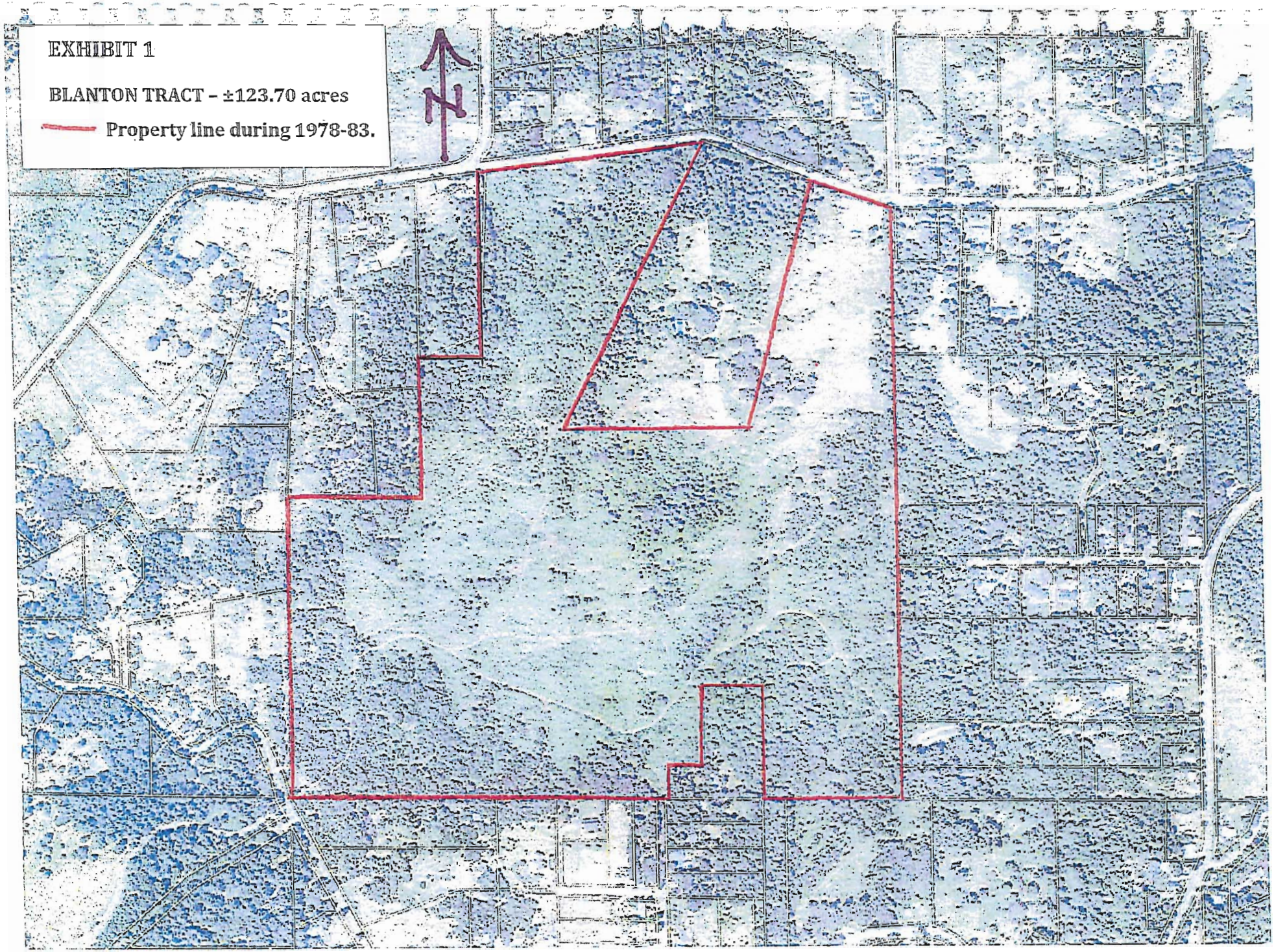


EXHIBIT 1
BLANTON TRACT – ±123.70 acres
Property line during 1978-83.
N

18-04-13
TL 1300

FOR ASSESSMENT AND TAXATION ONLY

SW1/4 SEC.12 T.18S. R.4W. W.M.
DETAIL MAP NO. 1
LANE COUNTY
SCALE 1" = 200'

SEE MAP 18 04 12 3

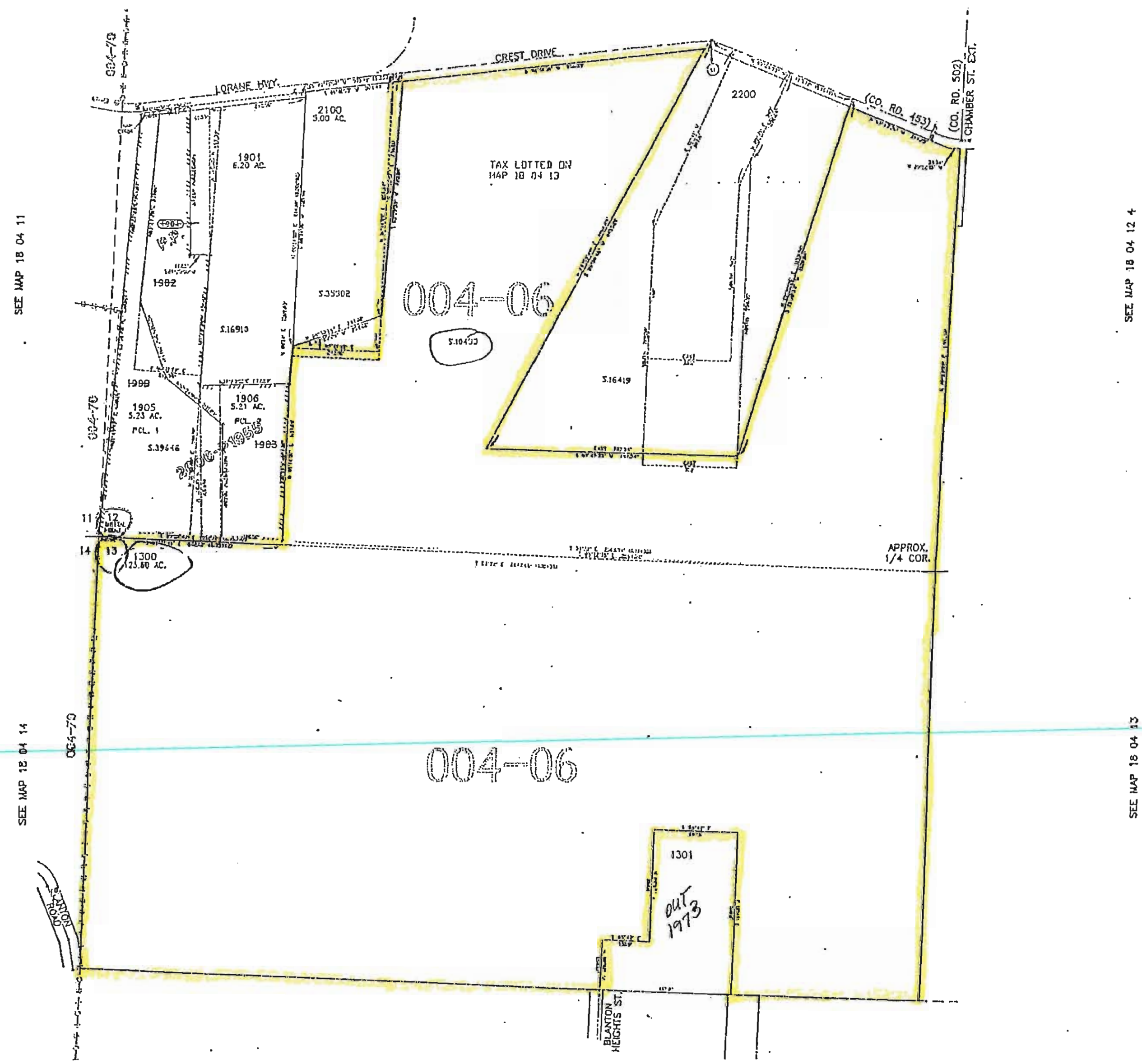
18 04 12 3
DETAIL MAP NO. 1
NAD 27

EXHIBIT 2

Property line as it existed in 1978-83.

CANCELLED
1900
1902
1903
1904

LINE TABLE



PROJECT: BLANTON

SEE MAP 18 04 13

18 04 13
DETAIL MAP NO.

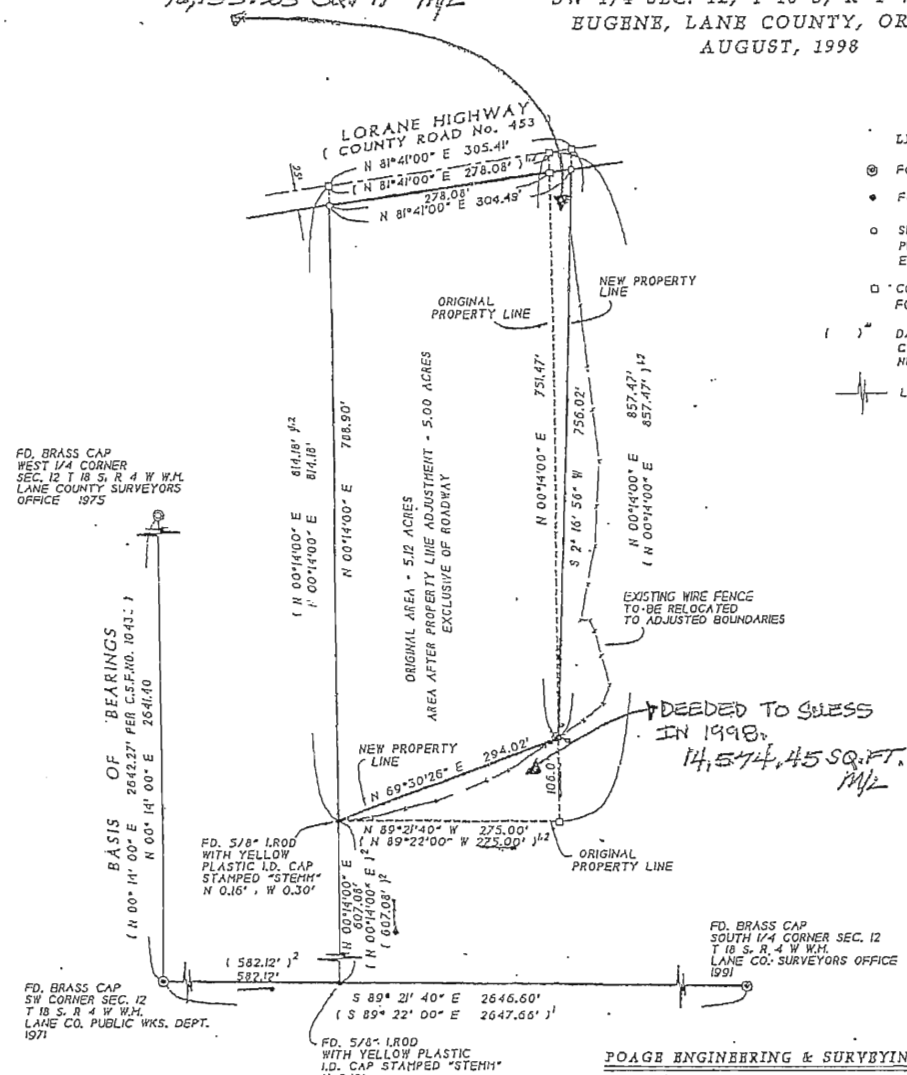
EXHIBIT 3

Survey of lot line adjustment in 1998.

LANE COUNTY SURVEYORS OFFICE
C.S. FILE NO. 35582
FILING DAT. 21 AUG. '98
C

PROPERTY LINE ADJUSTMENT SURVEY
FOR
HOFFMAN / SUESS
SW 1/4 SEC. 12, T 18 S, R 4 W, W.M.
EUGENE, LANE COUNTY, OREGON
AUGUST, 1998

SCALE : 1" = 100'



LEGEND

- ◉ FOUND BRASS CAP AS NOTED.
- • FOUND MONUMENT AS NOTED.
- o SET 5/8" x 30" REBAR WITH YELLOW PLASTIC I.D. CAP STAMPED "POAGE ENG. & SURV. INC."
- □ COMPUTED POINT. NO MONUMENT FOUND OR SET.
- ( )" DATA OF RECORD WITH END NOTE CORRESPONDING TO A REFERENCE NUMBER AS SHOWN.
- LINE NOT DRAWN TO SCALE

REFERENCES

1. C.S.F. No. 10433 HUTCHISON 1959
2. DEED RECORDED ON REEL 618, INSTR. No. 34170 LANE COUNTY OREGON DEED RECORDS

NARRATIVE:

THIS SURVEY WAS PERFORMED AT THE REQUEST OF THE OWNERS TO ESTABLISH AN ADJUSTED BOUNDARY LINE BETWEEN THEIR TWO PARCELS. THE ORIGINAL SUESS TRACT IS ALIQUONT PARTS OF SECTION 12 AND SECTION 13 IN TOWNSHIP 18 SOUTH, RANGE 4 WEST OF THE WILLAMETTE MERIDIAN AS DESCRIBED IN A DEED RECORDED JUNE 25, 1965 RECEPTION NO. 9059 LANE COUNTY OREGON DEED RECORDS OF WHICH THE HOFFMAN TRACT IS AN EXCEPTION TO THE SUESS PROPERTY AS DESCRIBED IN A WARRANTY DEED RECORDED JULY 25, 1984 RECEPTION NO. 80-28322 LANE COUNTY OREGON DEED RECORDS. THIS SURVEY DOES NOT ATTEMPT TO ESTABLISH THE BOUNDARIES OF THE SUESS TRACT. THE PURPOSE OF THIS SURVEY IS TO ESTABLISH AND DEMARCATE THE ADJUSTED BOUNDARY BETWEEN THE TWO PARTIES. THE BASIS OF BEARING IS DEFINED BY THE WEST LINE OF THE SOUTHWEST 1/4 OF SECTION 12 IN TOWNSHIP 18 SOUTH, RANGE 4 WEST OF THE WILLAMETTE MERIDIAN. THE WEST LINE OF SAID SOUTHWEST 1/4 OF SECTION 12 WAS ESTABLISHED BY HOLDING THE POSITION OF THE FOUND BRASS CAPS MARKING THE SOUTHWEST CORNER OF SAID SECTION 12 AND THE WEST 1/4 CORNER OF SAID SECTION 12. THE SOUTH LINE OF SAID SECTION 12 WAS ESTABLISHED BY THE FOUND BRASS CAPS MARKING THE SOUTHWEST CORNER OF SAID SECTION 12 AND THE SOUTH 1/4 CORNER OF SAID SECTION 12. THE SOUTHWEST CORNER OF THE HOFFMAN TRACT WAS ESTABLISHED AT THE RECORD DIMENSION OF 507.08 FEET MEASURED NORTHERLY PARALLEL TO THE WEST LINE OF SAID SECTION 12 FROM A POINT ON THE SOUTH LINE OF SECTION 12, SAID POINT BEING AT THE RECORD DIMENSION OF 582.12 FEET EAST OF THE SOUTHWEST CORNER OF SECTION 12. THE SOUTH AND EAST BOUNDARIES OF THE HOFFMAN PROPERTY ARE COMMON TO THE SUESS PROPERTY AND THESE BOUNDARIES WERE THEN ADJUSTED UPON COMMON AGREEMENT OF THE OWNERS AS SHOWN HEREON.

REGISTERED
PROFESSIONAL
LAND SURVEYOR
OREGON
JULY 13, 1984
JONATHAN A. OAKES
2105
EXPIRES: DECEMBER 31, 1998

ASSESSOR'S MAP No. 18-04-12-3 TAX LOT 2100

POAGE ENGINEERING & SURVEYING, INC.
P.O. BOX 2537 • EUGENE, OREGON 97402 • (503) 485-4343
JOB No. 2567, DWN. BY JAO\2567LALGCD, DATE: 7-97

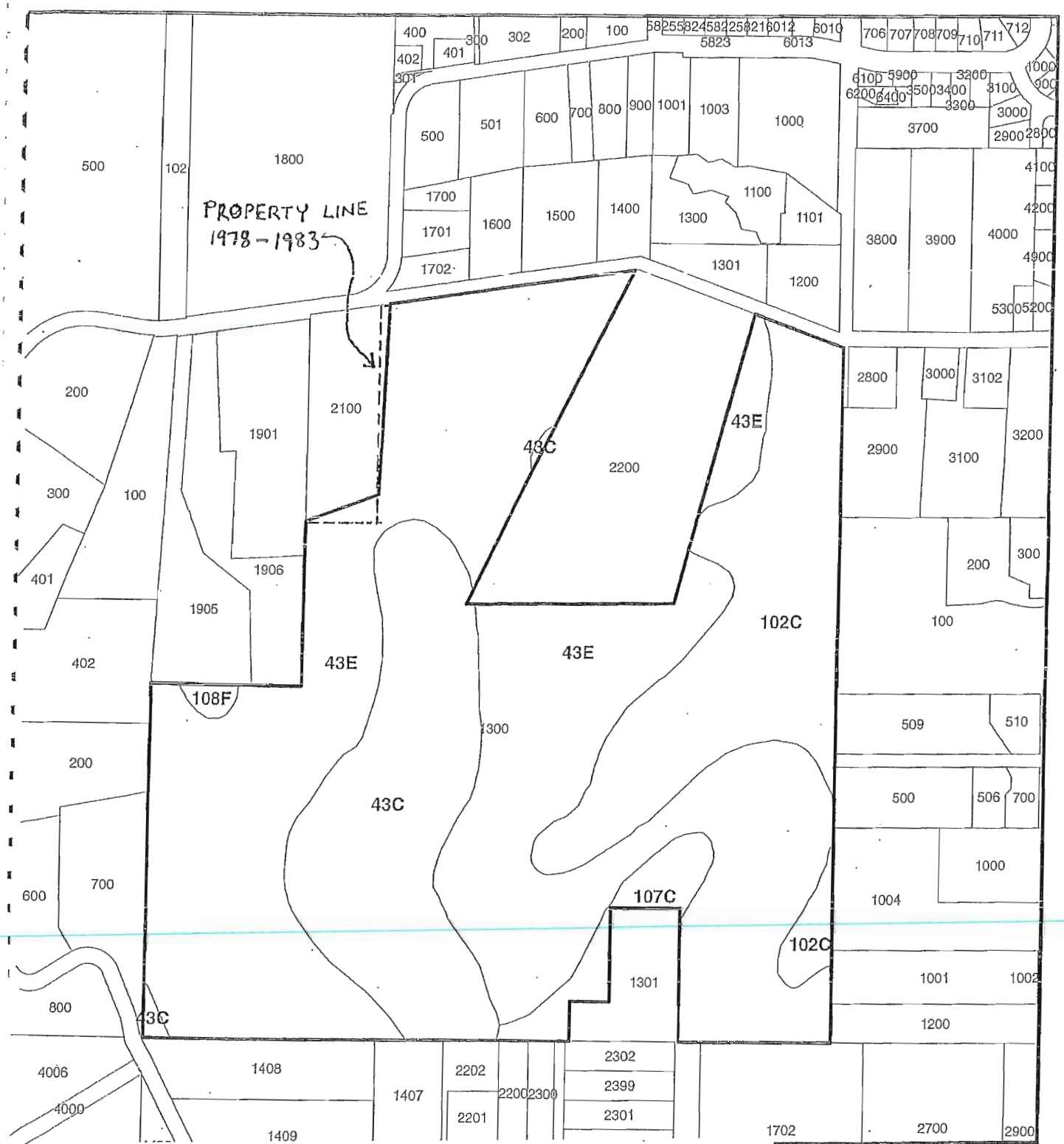


EXHIBIT 4

BLANTON TRACT (during the years 1978-83)

43C Dixonville-Philomath-Hazelair Complex, 3-12%	**21.05 acres**
43E Dixonville-Philomath-Hazelair Complex, 12-35%	**76.66 acres**
102C Panther silty clay loam, 2-12%	**22.28 acres**
107C Philomath silty clay, 3-12%	**3.71 acres**
	123.70 acres

TAXLOT
18-04-13-00-01300

- High Value Soils
- High Value if Drained
- High Value if Protected
- Potential High Value

1:6,000

EXHIBIT 5

LAND USE PLANNING NOTES

Number 3 April 1998
Updated for Clarity April 2010

"STEWARDSHIP IN FORESTRY"

PURPOSE: These technical notes have been developed by the Oregon Department of Forestry (ODF) to help landowners and local governments when they must use an alternative to the USDA Natural Resource Conservation Service (NRCS) Soil Survey or other established data sources to determine the productivity of forestland. Under Oregon Administrative Rules (OAR) 660-006-0005, where sources of data referenced in the rule are not available or are shown to be inaccurate, an alternative method for determining productivity that provides equivalent data may be used. These notes describe the methodologies that the Department of Forestry approves, provides information necessary to use the methodologies and gives direction to counties in evaluating forest productivity reports. Background information is also included to answer commonly-asked questions about forest productivity rating systems. These technical notes and the related tables can be found on the Oregon Department of Forestry's website at:
http://egov.oregon.gov/ODF/STATE_FORESTS/FRP/RP_Home.shtml#Land_Use_Planning.

Please note the Department of Forestry does not measure forest site productivity for landowners. The Department's involvement is focused on establishing a list of approved data sources and methodologies other than those cited in the administrative rule. The Department of Forestry will not issue findings on whether these data sources or alternate methodologies have been employed correctly or if the resulting forest site productivity determinations are accurate. The Department of Forestry is not responsible for verifying field measurements.

Included on page 9 of this guide is a flowchart, which provides a visual aid for counties to step through the process of determining site productivity. Each box in the flowchart is labeled with a number that corresponds to the step and section providing guidance on that topic in these Land Use Planning Notes.

OAR 660-006-0005 (3) Site Productivity Sources are adequate to determine cubic

Step 1: Using Established Data Sources

Forest landowners who would like to demonstrate its forestland productivity or who question the productivity of their property - whether they wish to have it rezoned for development, want approval for template dwellings, or for another reason - must use established data sources to provide information on soils

The Department of Forestry has concluded that to avoid potential confusion and inconsistent productivity determinations it is important for the department to establish a hierarchy of preferences for the site productivity data listed in OAR 660-006-0005 (2) and (3). In order of preference, the department's hierarchy is as follows:

A. Natural Resource Conservation Service soil surveys[1]
B. Oregon Department of Revenue Western Oregon site class maps
C. USDA Forest Service plant association guides
D. Other existing data sources determined by the State Forester to be of equal or better quality to Items A, B, and C
E. Alternate methods to develop site productivity data based on direct tree measurements and calculations using applicable Douglas-fir, western hemlock, or ponderosa pine site tables, with priority given to the species among these three that dominates the area being evaluated
F. Alternate methods based on direct tree measurements and calculations using other native forest tree species site tables
G. Site-specific soil surveys.

When NRCS soil survey information is available, it should always be considered first when making forest land site productivity determinations. Where the county determines that NRCS or other established data sources approved by the State Forester are available and accurate for determining site productivity at the scale of the tract of interest, the county planning department must make its decision using these data.

If data from an approved established data source (A, B, or C above) do not exist or is shown through site-specific documentation to be inaccurate for determining site productivity at the scale of the tract of interest, only then should other information determined to be of comparable quality by the State Forester (D above) be consulted. These will normally include published data on forest soils or tree measurements. To date, other published forest soils information that has been determined to be of comparative quality includes, but is not limited to, the following:

- August 1997 *Lane County Soil Ratings for Forestry and Agriculture* produced by the Lane County Council of Governments.
- February 8, 1990, *Forest Lands Soils Ratings* – Revisions produced by the Oregon Department of Forestry for the Oregon Department of Land Conservation and Development (applicable to Benton, Lane, Linn, Marion, Polk, and Yamhill Counties except in Lane County where superseded by the August 1997 *Lane County Soils Ratings for Forestry and Agriculture*).
- January , 27, 1989 forest soils rating submitted to the Oregon Department of Land Conservation and Development by the Oregon Department of Forestry (applicable to Benton, Clackamas, Clatsop, Columbia, Hood River, Lane, Lincoln, Linn, Marion, Multnomah, Polk, Tillamook, Washington, and Yamhill Counties except where superseded by the February 8, 1990 *Forest Lands*

[1] Web Soil Survey: Soil Survey Staff, Natural Resources Conservation Service, United States Department of Agriculture. Web Soil Survey. Available online at http://websoilsurvey.nrcs.usda.gov/ -- last accessed April 29, 2010. Also see Published Soil Surveys for Oregon available online at: http://soils.usda.gov/survey/printed_surveys/state.asp?state=Oregon&abbr=OR -- last accessed April 30, 2010.

Soils Ratings and in Lane County where superseded by the August 1997 *Lane County Soils Ratings for Forestry and Agriculture*)

These documents can be found on the Oregon Department of Forestry's website at: http://egov.oregon.gov/ODF/STATE_FORESTS/FRP/RP_Home.shtml#Land_Use_Planning and may be updated over time as new information becomes available.

Additional information may be assessed and approved by the State Forester on a case by case basis for comparability of quality.

Applicant may use approved ODF methodology for determining Site Index.

Step 2: Alternate Methodologies

Where the published site productivity data described above in Step 1 are not available, or when the county determines that it is inaccurate for determining site productivity at the scale of the tract of interest, the alternate methods for determining site productivity described below may be used. [Note: Existence of data listed in Step 1 does not prohibit a landowner from retaining a professional forester or professional soils classifier to measure the productivity of the land if they believe the published data are inaccurate. In such cases, the county must determine which data source it will use in making its decision.]

Alternate methodologies used to measure site productivity must be consistent with the provisions of this Land Use Planning Note and must be considered in the following order:

a. Alternate methods based on direct tree measurements and calculations using applicable Douglas-fir, western hemlock, or ponderosa pine site tables. The tables may also be used for grand fir, Sitka spruce, and Jeffrey pine, as indicated in Step #4 and Attachment A.
b. If none of these six species are present, the next step is to consider using site tables for other tree species.
c. If no adequate trees are present to measure for site productivity, the last available method is to conduct site-specific soil surveys without direct tree measurements.

Where tree measurements are undertaken, a professional forester who is either registered as a full member in good standing with the Association of Consulting Foresters of America or Certified by the Society of American Foresters should be retained by the landowner to take tree measurements and prepare a report.

Consistent and credible site productivity determinations are an important facet of the land use planning process. Attempts to consider a variety of methods simultaneously in hope of arriving at a "preferred" site productivity determination are to be avoided.

EXHIBIT 6

Oregon

Theodore R. Kulongoski, Governor

Department of Forestry
State Forester's Office
2600 State Street
Salem, OR 97310
503-945-7200
FAX 503-945-7212
TTY 503-945-7213 / 800-437-4490
http://www.odf.state.or.us

"STEWARDSHIP IN FORESTRY"

November 21, 2008

Mr. Kent Howe
Lane County Land Management Division
125 E 8th Street
Eugene, Oregon 97401

Dear Mr. Howe:

I am writing to clarify the Oregon Department of Forestry's responsibilities related to specific elements of Oregon Administrative Rule 660-006-0005 (2) and (3). This letter is intended to address recent Lane County public inquiries regarding this administrative rule and was developed following consultations with the Oregon Department of Land Conservation and Development and the Oregon Department of Justice.

Please note that previous Department of Forestry policy position statements or technical findings contained in the May 23, 2008, letter from former Department of Forestry Private Forests Chief Ted Lorensen to Goal One Coalition Executive Director Jim Just that are in conflict with this letter are hereby rescinded and replaced with the policy statements and technical findings articulated here. All other statements in that correspondence remain valid.

Applicable Administrative Rule Language:

OAR 660-006-0005 (2) and (3) state:

> 2) "Cubic Foot Per Acre" means the average annual increase in cubic foot volume of wood fiber per acre for fully stocked stands at the culmination of mean annual increment as reported by the USDA Natural Resource Conservation Service (NRCS) soil survey information, USDA Forest Service plant association guides, Oregon Department of Revenue western Oregon site class maps, *or other information determined by the State Forester to be of comparable quality. Where such data are not available or are shown to be inaccurate, an alternative method for determining productivity may be used. An alternative method must provide equivalent data as explained in the Oregon Department of Forestry's Technical Bulletin entitled "Land Use Planning Notes Number 3 dated April 1998" and be approved by the Oregon Department of Forestry."*
>
> (3) "Cubic Foot Per Tract Per Year" means the average annual increase in cubic foot volume of wood fiber per tract for fully stocked stands at the culmination of mean annual increment as reported by the USDA Natural Resource Conservation Service (NRCS) soil survey information, USDA Forest Service plant association guides, Oregon Department of Revenue western Oregon site class maps, *or other information determined by the State Forester to be of comparable quality. Where such data are not available or are shown to be inaccurate, an alternative method for determining productivity may be used. An alternative method must provide equivalent data as explained in the Oregon Department of Forestry's Technical Bulletin entitled "Land Use Planning Notes Number 3 dated April 1998" and be approved by the Oregon Department of Forestry."* (Emphasis added)

Using the Best Possible Forest Site Productivity Information:

The administrative rule, in combination with *Land Use Planning Technical Note Number 3*, establishes a hierarchy of forest site productivity information that should be considered in land use decisions subject to the rule. Listed in order of preference, the information sources are:

1. Data sources cited specifically in the administrative rule;
2. Other existing data sources determined by the State Forester to be of comparable quality to the data sources cited specifically in the administrative rule;
3. Alternate methods to develop site productivity data based on direct tree measurements and calculations using applicable Douglas-fir, western hemlock, or ponderosa pine site tables, with priority given to the species among these three that dominates the area being evaluated;
4. Alternate methods based on direct tree measurements and calculations using other native forest tree species site tables; or
5. Site-specific soil surveys.

Applicable existing data from USDA Natural Resource Conservation Service (NRCS) soil survey information, USDA Forest Service plant association guides, Oregon Department of Revenue western Oregon site class maps should always be consulted and used first (Tier 1). If these three data sources are determined by the county and/or NRCS to be inaccurate or do not exist, only then should other applicable, existing data sources determined to be of comparable quality by the State Forester be consulted (Tier 2). Alternate methods for collecting new site productivity data are only needed when data from these first two tiers are determined by the county and/or NRCS to be inaccurate or do not exist. To be approved by the Department of Forestry such alternate methodologies must be consistent with the methodologies described or contemplated in the technical note. Alternate methods based on direct tree measurements and calculations using applicable Douglas-fir, western hemlock, or ponderosa pine site tables (Tier 3) should be considered before using site tables for other tree species (Tier 4) or site-specific soil surveys without direct tree measurements (Tier 5).

Consistent and credible site productivity determinations should be an important facet of the land use planning process. To meet that objective, this hierarchy should be adhered to. Attempts to consider a variety of methods simultaneously in hope of finding a "preferred" site productivity determination should be avoided.

Lane County Data Sources of Comparable Quality

The State Forester has determined the following existing site productivity data sources to be of comparable quality to the data sources cited specifically in the administrative rule when applied on appropriate locations in Lane County:

1. February 8, 1990, *Forest Lands Soils Ratings – Revisions* produced by the Oregon Department of Forestry
2. Undated *Lane County Forest Soils Ratings* based on published Soil Conservation Service data and the February 9, 1990, Oregon Department of Forestry report
3. August 1997 *Lane County Soil Ratings for Forestry and Agriculture* produced by the Lane County Council of Governments

No further Department of Forestry review or approval of site productivity determinations are needed when these data sources are used.

Ponderosa Pine in the Willamette Valley

In most western Oregon locations where both Douglas-fir and ponderosa pine are present, Douglas-fir will be the dominant species and, therefore, whenever possible that species should be used for selecting site trees. In infrequent cases where ponderosa pine is the dominant species in western Oregon, *Land Use Planning Technical Note Number 3* states that Meyer's ponderosa pine site table may be used in calculations of site productivity. However, the technical note also states Meyer's site table must not be used for ponderosa pine in the Willamette Valley. For the purpose of implementing this section of the technical note, the Department of Forestry will rely on the definition provided in OAR 660-033-0020 (12) in which "Willamette Valley" means "Clackamas, Linn, Marion, Multnomah, Polk, Washington and Yamhill Counties and that portion of Benton and Lane Counties lying east of the summit of the Coast Range."

The Department of Forestry has not been able to locate credible site index or yield tables for ponderosa pine applicable in the Willamette Valley. In a May 23, 2008, letter, Ted Lorensen noted that the department had used tables for ponderosa pine from Douglas County for the Forest Resource Trust, and that in the current absence of standard tables, ODF "would likely approve of methodology using the pine tables for Douglas County and appropriate interpolation." However, the Department of Forestry has since determined that interpolation of either Douglas County or Eastern Oregon ponderosa pine yield tables for the more highly productive Willamette Valley would not be technically sound.

Instead, energy should be focused on obtaining or developing, if possible, technically credible Willamette Valley-specific ponderosa pine site index tables. The Department of Forestry is willing to work cooperatively with county governments, Oregon State University Forestry Extension, forest landowners, and other parties to develop such information. Until a credible Willamette Valley ponderosa pine site table becomes available and is acknowledged in a revised ODF Technical Note, the Department of Forestry's position is that it is inappropriate to use ponderosa pine to determine site productivity for under OAR 660-006-0005

(2) and (3) in the Willamette Valley and use of such methodologies cannot be approved by the agency.

Outside the Willamette Valley, Meyer's ponderosa pine site table may continue to be used on sites where ponderosa pine is the dominate species and the Tier 1 and Tier 2 site productivity data sources cited above are determined by the county and/or NRCS to be inaccurate or do not exist.

Stockable Area

Cubic foot site productivity determinations assume fully stocked stands. In this context, "stockable area" means the proportion of an area that can be physically stocked with trees. Rock outcrops, impervious soils, or high water tables are examples of factors that may result in less than 100 percent of the site being stockable. The technical note anticipates this issue by referencing the USDA Forest Service Pacific Northwest Research Station *Field instructions for forest surveys in Washington, Oregon, and Northern California* where consideration of stockable area factors are addressed. Upon request by a county government, the Department of Forestry will evaluate and consider approval of reductions in site productivity from fully stocked stand levels based on such factors.

Limits on Department of Forestry Approvals

As stated in the technical note, the Department of Forestry does not measure site productivity for landowners. The Department of Forestry's involvement in site productivity determinations applicable to Oregon Administrative Rule 660-006-0005 (2) and (3) is in evaluating the quality of existing data sources other than those cited in the rule and evaluating alternative methodologies with respect to the technical note. The Department of Forestry will not issue findings on whether these data sources or alternate methodologies have been employed correctly or if the resulting site productivity determination are accurate. The Department of Forestry is not responsible for verifying field measurements.

Oregon Forest Practices Act Minimum Site Productivity Requirements for Reforestation

While not directly applicable to land use planning decisions, Department of Forestry believes it is important to note the Oregon Board of Forestry has established that all forestlands with a site productivity of at least 20 cubic feet per acre per year shall be subject to the reforestation requirements of the Oregon Forest Practices Act. Other technical references use 20 cubic feet per acre per year as the minimum threshold for defining commercial forestland. Local governments are encouraged to consider this information when establishing site productivity standards for land use planning processes.

In summary, the content of this letter is intended to further explain, and not alter, the requirements of Oregon Administrative Rule 660-006-0005 (2) and (3) and *Land Use Planning Technical Note Number 3.* Please contact me if you have any questions. If unresolved issues continue to arise, clarifying changes to the administrative rule and/or the Technical Note may eventually be necessary and the Department of Forestry will work together with county governments, the Oregon Department of Land Conservation and Development, and other interested parties on such changes.

Sincerely,

David Morman, Director
Forest Resources Planning Program

cc: Katherine Daniels, DLCD
Carmel Bender, DLCD
Michele Logan, DOJ

EXHIBIT 7

Lane County Soil Ratings for Forestry

August 2011 Update

Map Symbol	Soil Map Unit	NRCS Site Index	NRCS Cu. Ft./ Acre/Year	ODOF Cu. Ft./ Acre/Year	Notes
21E	Bullards-Ferrelo loams, 12 - 30% slopes	No rating	---	est. 80	
21G	Bullards-Ferrelo loams, 30 - 60% slopes	No rating	---	est. 80	
23	Camas-Urban land complex	No rating	---	est. 20	
24	Chapman loam	No rating	---	est.140	
25	Chapman-Urban land complex	No rating	---	est. 100	
26	Chehalis silty clay loam, occasionally flooded	No rating	---	est. 100	
27	Chehalis-Urban land complex	No rating	---	est. 90	
28C	Chehulpum silt loam, 3 - 12% slopes	No rating	---	est. 40	
28E	Chehulpum silt loam, 12 - 40% slopes	No rating	---	est. 40	
29	Cloquato silt loam	No rating	---	est. 120	
30	Cloquato-Urban land complex	No rating	---	est. 100	
31	Coburg silty clay loam	No rating	---	est. 100	
32	Coburg-Urban land complex	No rating	---	est. 90	
33	Conser silty clay loam	No rating	---	est. 45	
34	Courtney gravelly silty clay loam	No rating	---	est. 40	
36D	Cumley silty clay loam, 2 - 20% slopes	114	162	---	
37C	Cupola cobbly loam, 3 - 12% slopes	100	136	---	
37E	Cupola cobbly loam, 12 - 30% slopes	100	136	---	
38	Dayton silt loam, clay substratum	No rating	---	est. 40	
39E	Digger gravelly loam, 10 - 30% slopes	102	140	---	
39F	Digger gravelly loam, 30 - 50% slopes	102	140	---	
40H	Digger-Rock outcrop complex, 50 - 85% slopes	No rating	---	114	
41C	Dixonville silty clay loam, 3 - 12% slopes	109	152	---	
41E	Dixonville silty clay loam, 12 - 30% slopes	109	152	---	
41F	Dixonville silty clay loam, 30 - 50% slopes	109	152	---	
42E	Dixonville-Hazelair-Urban land complex, 12 - 35% slopes	No rating	---	est. 35	
43C	Dixonville-Philomath-Hazelair complex, 3 - 12% slopes	No rating	---	est. 45	
43E	Dixonville-Philomath-Hazelair complex, 12 - 35% slopes	No rating	---	est. 45	
44	Dune land	No rating	---	---	No trees expected
45C	Dupee silt loam, 3 - 20% slopes	No rating	---	est. 70	
46	Eilertsen silt loam	133	199	---	
47E	Fendall silt loam, 3 - 30% slopes	125	184	---	

Lane County Soil Ratings for Forestry

August 2011 Update

Map Symbol	Soil Map Unit	NRCS Site Index	NRCS Cu. Ft./ Acre/Year	ODOF Cu. Ft./ Acre/Year	Notes
101	Oxley-Urban land complex	No rating	---	est. 60	
102C	Panther silty clay loam, 2 - 12% slopes	No rating	---	est. 45	
103C	Panther-Urban land complex, 2 - 12% slopes	No rating	---	est. 40	
104E	Peavine silty clay loam, 3 - 30% slopes	125	184	---	
104G	Peavine silty clay loam, 30 - 60% slopes	125	184	---	
105A	Pengra silt loam, 1 - 4% slopes	No rating	---	est. 45	
106A	Pengra-Urban land complex, 1 - 4% slopes	No rating	---	est. 30	
107C	Philomath silty clay, 3 - 12% slopes	No rating	---	est. 45	
108C	Philomath cobbly silty clay, 3 - 12% slopes	No rating	---	est. 45	
108F	Philomath cobbly silty clay, 12 - 45% slopes	No rating	---	est. 45	
109F	Philomath-Urban land complex, 12 - 45% slopes	No rating	---	est. 20	
110	Pits	No rating	---	---	No trees expected
111D	Preacher loam, 0 - 25% slopes	128	190	---	
111F	Preacher loam, 25 - 50% slopes	128	190	---	
112G	Preacher-Bohannon-Slickrock complex, 50 - 75% slopes	No rating	---	185	
113C	Ritner cobbly silty clay loam, 2 - 12% slopes	107	149	---	
113E	Ritner cobbly silty clay loam, 12 - 30% slopes	107	149	---	
113G	Ritner cobbly silty clay loam, 30 - 60% slopes	107	149	---	
114	Riverwash	No rating	---	---	Highly variable; on-site determination required
115H	Rock outcrop-Kilchis complex, 30 - 90% slopes	No rating	---	34	
116G	Rock outcrop-Witzel complex, 10 - 70% slopes	No rating	---	21	
117E	Salander silt loam, 12 - 30% slopes	125	184	---	
118	Salem gravelly silt loam	No rating	---	est. 130	
119	Salem-Urban land complex	No rating	---	est. 100	
120B	Salkum silt loam, 2 - 6% slopes	116	167	---	
121B	Salkum silty clay loam, 2 - 8% slopes	116	167	---	
121C	Salkum silty clay loam, 8 - 16% slopes	116	167	---	
122	Saturn clay loam	123	180	---	
123	Sifton gravelly loam	124	182	---	
124D	Slickrock gravelly loam, 3 - 25% slopes	137	209	---	
124F	Slickrock gravelly loam, 25 - 50% slopes	137	209	---	
125C	Steiwer loam, 3 - 12% slopes	No rating	---	est. 30	

EXHIBIT 8

Lane County Soil Ratings for Forestry

August 2011 Update

Map Symbol	Soil Map Unit	NRCS Site Index	NRCS Cu. Ft./ Acre/Year	ODOF Cu. Ft./ Acre/Year	Notes
21E	Bullards-Ferrelo loams, 12 - 30% slopes	No rating	---	est. 80	
21G	Bullards-Ferrelo loams, 30 - 60% slopes	No rating	---	est. 80	
23	Camas-Urban land complex	No rating	---	est. 20	
24	Chapman loam	No rating	---	est.140	
25	Chapman-Urban land complex	No rating	---	est. 100	
26	Chehalis silty clay loam, occasionally flooded	No rating	---	est. 100	
27	Chehalis-Urban land complex	No rating	---	est. 90	
28C	Chehulpum silt loam, 3 - 12% slopes	No rating	---	est. 40	
28E	Chehulpum silt loam, 12 - 40% slopes	No rating	---	est. 40	
29	Cloquato silt loam	No rating	---	est. 120	
30	Cloquato-Urban land complex	No rating	---	est. 100	
31	Coburg silty clay loam	No rating	---	est. 100	
32	Coburg-Urban land complex	No rating	---	est. 90	
33	Conser silty clay loam	No rating	---	est. 45	
34	Courtney gravelly silty clay loam	No rating	---	est. 40	
36D	Cumley silty clay loam, 2 - 20% slopes	114	162	---	
37C	Cupola cobbly loam, 3 - 12% slopes	100	136	---	
37E	Cupola cobbly loam, 12 - 30% slopes	100	136	---	
38	Dayton silt loam, clay substratum	No rating	---	est. 40	
39E	Digger gravelly loam, 10 - 30% slopes	102	140	---	
39F	Digger gravelly loam, 30 - 50% slopes	102	140	---	
40H	Digger-Rock outcrop complex, 50 - 85% slopes	No rating	---	114	
41C	Dixonville silty clay loam, 3 - 12% slopes	109	152	---	
41E	Dixonville silty clay loam, 12 - 30% slopes	109	152	---	
41F	Dixonville silty clay loam, 30 - 50% slopes	109	152	---	
42E	Dixonville-Hazelair-Urban land complex, 12 - 35% slopes	No rating	---	est. 35	
43C	Dixonville-Philomath-Hazelair complex, 3 - 12% slopes	No rating	---	est. 45	
43E	Dixonville-Philomath-Hazelair complex, 12 - 35% slopes	No rating	---	est. 45	
44	Dune land	No rating	---	---	No trees expected
45C	Dupee silt loam, 3 - 20% slopes	No rating	---	est. 70	
46	Eilertsen silt loam	133	199	---	
47E	Fendall silt loam, 3 - 30% slopes	125	184	---	

EXHIBIT 9

TABLE 2

DOUGLAS FIR EMPIRICAL YIELD TABLE

SOURCE: For Douglas fir tables 2 through 10, D.N.R. Report No. 20 - May 1971, "Empirical Yield Tables for the Douglas fir Zone" by Charles Chambers, and Franklin Wilson. "Comprehensive Tree Volume Tarif Tables" by Dr. K. J. Turnbull, Gene Little, and Gerald Hoyer, June 1972. Stepwise multiple regression conversion made by Tom Wheatley, Publishers Paper Co., June 1978.

SITE 70

Total Age	Normal Basal Area	Mean Diameter	CVTS	CV4	SV6(32')	C/SCR Ratio
20	---	---	---	---	---	---
26	9	8.25	---	---	---	---
30	38	8.57	517	517	1,185	.436
40	91	9.36	1,874	1,847	4,196	.440
41	96	9.44	2,004	1,963	4,554	.431
50	128	10.11	3,126	3,008	8,115	.371
60	158	10.80	4,275	4,138	12,572	.329
70	182	11.43	5,320	5,196	17,176	.302
80	202	11.98	6,261	6,141	21,544	.285
90	220	12.43	7,099	6,941	25,350	.274
100	235	12.78	7,833	7,574	28,374	.267
110	249	13.01	8,463	8,021	30,405	.264
120	261	13.10	8,989	8,266	31,279	.264
130	273	13.04	9,412	8,297	30,900	.269

TABLE 3

SITE 80

Total Age	Normal Basal Area	Mean Diameter	CVTS	CV4	SV6(32')	C/SCR Ratio
20	---	---	---	---	---	---
26	26	8.52	269	269	633	.425
30	55	8.91	921	921	1,614	.570
40	108	9.87	2,479	2,330	5,870	.397
41	113	9.96	2,630	2,467	6,342	.389
50	146	10.79	3,934	3,707	11,118	.333
60	175	11.65	5,285	5,060	17,062	.297
70	199	12.45	6,532	6,330	23,187	.273
80	219	13.17	7,675	7,473	29,038	.257
90	237	13.79	8,715	8,454	34,240	.247
100	252	14.31	9,651	9,251	38,541	.240
110	266	14.71	10,482	9,842	41,709	.236
120	279	14.97	11,211	10,216	43,565	.235
130	290	15.08	11,835	10,365	44,000	.236

TABLE 4

SITE 90

Total Age	Normal Basal Area	Mean Diameter	CVTS	CV4	SV6(32')	C/SCR Ratio
20	---	---	---	---	---	---
26	49	8.91	777	777	1,351	.575
30	77	9.36	1,506	1,426	2,708	.526
40	128	10.49	3,256	2,985	8,393	.356
41	132	10.60	3,425	3,145	9,019	.349
50	165	11.57	4,902	4,591	15,209	.302
60	193	12.60	6,444	6,160	22,777	.270
70	217	13.56	7,883	7,630	30,483	.250
80	236	14.44	9,217	8,949	37,795	.237
90	254	15.23	10,448	10,087	44,347	.227
100	269	15.90	11,576	11,016	49,807	.221
110	283	16.45	12,599	11,726	53,977	.217
120	295	16.87	13,519	12,204	56,690	.215
130	306	17.14	14,335	12,432	57,813	.215

DOUGLAS FIR EMPIRICAL YIELD TABLE

TABLE 5

SITE 100

Total Age	Normal Basal Area	Mean Diameter	CVTS	CV4	SV6(32')	C/SCR Ratio
20	17	8.53	85	85	335	.254
26	70	9.33	1,324	1,236	2,561	.483
30	97	9.85	2,130	1,913	4,601	.416
40	146	11.14	4,071	3,703	11,450	.323
41	150	11.27	4,259	3,886	12,248	.317
50	181	12.39	5,909	5,541	19,972	.277
60	209	13.59	7,643	7,325	29,247	.250
70	232	14.71	9,273	8,982	38,528	.233
80	252	15.75	10,799	10,468	47,294	.221
90	269	16.69	12,222	11,750	55,131	.213
100	284	17.53	13,541	12,805	61,760	.207
110	297	18.24	14,756	13,624	66,922	.204
120	310	18.81	15,867	14,190	70,448	.201
130	321	19.24	16,875	14,502	72,234	.201

TABLE 6

SITE 110

Total Age	Normal Basal Area	Mean Diameter	CVTS	CV4	SV6(32')	C/SCR Ratio
20	30	8.74	327	327	666	.491
26	83	9.63	1,688	1,494	3,299	.453
30	109	10.23	2,574	2,253	5,812	.388
40	158	11.69	4,717	4,275	14,125	.303
41	162	11.83	4,926	4,482	15,074	.297
50	194	13.11	6,757	6,345	24,305	.261
60	222	14.47	8,693	8,344	35,244	.237
70	245	15.76	10,525	10,200	46,141	.221
80	264	16.97	12,253	11,863	56,425	.210
90	281	18.09	13,878	13,304	65,675	.203
100	296	19.09	15,398	14,503	73,549	.197
110	310	19.97	16,815	15,448	79,836	.193
120	322	20.72	18,129	16,126	84,358	.191
130	333	21.31	19,338	16,528	86,957	.190

TABLE 7

SITE 120

Total Age	Normal Basal Area	Mean Diameter	CVTS	CV4	SV6(32')	C/SCR Ratio
20	51	9.11	819	770	1,355	.568
26	101	10.10	2,294	1,961	4,810	.408
30	126	10.77	3,257	2,821	7,992	.353
40	173	12.39	5,592	5,093	18,116	.281
41	177	12.55	5,820	5,324	19,255	.277
50	208	13.98	7,823	7,389	30,132	.245
60	235	15.50	9,951	9,588	42,783	.224
70	258	16.96	11,974	11,611	55,265	.210
80	277	18.33	13,894	13,424	66,954	.200
90	294	19.60	15,710	14,992	77,437	.194
100	309	20.76	17,423	16,297	86,410	.189
110	322	21.80	19,031	17,334	93,643	.185
120	334	22.70	20,536	18,091	98,946	.183
130	345	23.45	21,937	18,561	102,187	.182

EXHIBIT 10

DOUGLAS FIR LOG PRICES 1978-1982, 1983

REGION 1 - WESTERN OREGON UNIT
Reporting format: ODF reporting as of 4th quarter 1981
Source: Oregon Department of Forestry Forest Management Division
http://www.odf.state.or.us/divisions/management/asset_management/logprices/logP483.HTM

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

1978

Douglas-Fir Grade	Quarter 1st	2nd	3rd	4th	Average
#1P	$ 460	475	475	475	471
#2P	$ 415	435	435	435	430
#3P	$ 358	389	389	389	381
SM	$ 283	338	338	338	324
#2S	$ 242	287	287	287	276
#3S	$ 191	250	250	250	235
#4S	$ 161	200	200	200	190
SC	$ 125	157	157	157	149
Utility	$ 70	80	80	80	78

1979

Douglas-Fir Grade	Quarter 1st	2nd	3rd	4th	Average
#1P	$ 531	531	584	584	555
#2P	$ 476	476	523	523	500
#3P	$ 425	425	467	467	446
SM	$ 385	385	423	423	404
#2S	$ 322	322	354	354	338
#3S	$ 282	282	310	310	296
#4S	$ 256	256	281	281	269
SC	$ 160	160	176	176	168
Utility	$ 90	90	99	99	95

1980

Douglas-Fir Grade	Quarter 1st	2nd	3rd	4th	Average
#1P	$ 584	584	584	584	584
#2P	$ 523	523	523	523	523
#3P	$ 467	467	467	467	467
SM	$ 423	423	423	423	423
#2S	$ 354	354	354	354	354
#3S	$ 310	310	310	310	310
#4S	$ 281	281	281	281	281
SC	$ 176	176	176	176	176
Utility	$ 99	99	99	99	99

1981

Douglas-Fir Grade		Quarter 1st	2nd	3rd	4th	Average
#1P	$	584	584	584	648	648
#2P	$	523	523	523	550	550
#3P	$	467	467	467	439	439
SM	$	423	423	423	390	415
#2S	$	354	354	354	323	346
#3S	$	310	310	310	238	292
#4S	$	281	281	281	208	263
SC	$	176	176	176	212	185
Utility	$	99	99	99	104	100

1982

Douglas-Fir Grade		Quarter 1st	2nd	3rd	4th	Average
1P	$	600	512	512	512	534
2P	$	510	439	439	439	457
3P	$	425	370	370	370	384
SM	$	375	316	316	316	331
2S	$	295	258	258	258	267
3S	$	225	202	202	202	208
4S	$	190	169	169	169	174
SC	$	190	164	164	164	171
Utility	$	90	123	123	123	115
CR (2S & better)	$	--	303	303	303	303
CR (2S, 3S, and 4S)	$	--	243	243	243	243

1983

Douglas-Fir Grade		Quarter 1st	2nd	3rd	4th	Average
1P	$	512	505	505	505	507
2P	$	439	410	425	425	425
3P	$	370	325	340	340	343
SM	$	316	275	285	285	290
2S	$	258	250	255	255	255
3S	$	202	210	215	215	211
4S	$	169	195	200	200	191
SC	$	164	130	140	140	144
Utility	$	123	75	75	75	87
CR (2S & better)	$	303	--	--	--	303
CR (2S, 3S, and 4S)	$	243	240	240	240	241

DOUGLAS FIR LOG PRICES 1978-1982, 1983

DF Grade	1978-1982 Average	1983 Average	%+	% -
1P	$ 558	507		- 9.1%
2P	$ 492	425		-13.6%
3P	$ 423	343		-18.9%
SM	$ 379	290		-23.5%
2S	$ 316	255		-19.3%
3S	$ 268	211		-21.3%
4S	$ 235	191		-18.7%
SC	$ 170	144		-15.3%
Utility	$ 97	87		-10.3%
CR (2S & better)	$ 303	303		n/c
CR (2S, 3S, and 4S)	$ 243	241		- 0.8%
Average*	$ 326	273	19.4**	-16.3

*In the absence of information concerning distribution of grades, it is not possible to assign the different grades their proper weight in calculating an overall average. This calculation assigns each grade equal weight, with the exception of the CR grades which were used only during the years 1982 and 1983 years and are not included.

** % by which 1978-82 prices exceed 1983 prices

RETURN TO CASCADE TITLE CO. CT - 213085

35
15
20

Send tax statements to:

Same as current

9828981

After recording, return to:

Friendly Attorney Service for
Michael P. Kearney,
260 Country Club Rd., #210
Eugene, OR 97401

PROPERTY LINE ADJUSTMENT DEED

WILLIAM J. HOFFMAN and JAN T. HOFFMAN, husband and wife, herein called "HOFFMAN", and C. ROBERT SUESS and HELEN S. SUESS dba SUESS CO., a Washington Partnership, herein called "SUESS" are entering into this Deed to agree on the property line separating their parcels to comply with the provisions of ORS 92.190(4). The reference to the legal description of HOFFMAN's property prior to this adjustment is contained in the Statutory Warranty Deed recorded on July 24, 1986, as Reception Number 8628322 in the Lane County Oregon Deed Records.

The reference to the legal description of the property owned by SUESS just prior to this adjustment is contained on the attached Exhibit "B". The reference to the original recorded document which contained the SUESS property is a Quit Claim Deed dated June 1, 1976 recorded June 14, 1976, reception number 7629052, reel number 799. Each of the parties is conveying a portion of their property to the other.

The description of the property hereby conveyed by HOFFMAN to SUESS pursuant to this devise is described on the attached Exhibit "A".

The description of the property hereby conveyed by SUESS to HOFFMAN pursuant to this devise, is described on the attached Exhibit "C".

The portion of the legal description which depicts the new adjusted line between the parties' property is underlined on the attached Exhibit "D".

The legal description for the HOFFMAN property following this lot line adjustment and the conveyances between the parties is described on the attached Exhibit "D".

The legal description for the SUESS property following this lot line adjustment and the conveyances between the parties is described on the attached Exhibit "E".

The true consideration for this conveyance is [illegible] of property.

3093APR.21'98H07REC 35.00
3093APR.21'98H07PFUND 10.00
3093APR.21'98H07A&T FUND 20.00

DATED this 7 day of Nov., 1997.

William J. Hoffman
WILLIAM J. HOFFMAN

Jan T. Hoffman
JAN T. HOFFMAN

EXHIBIT C
C.1.

9828981

SUESS CO, a Washington Partnership

By: _____
C. ROBERT SUESS, Partner

By _____
HELEN S. SUESS, Partner

STATE OF OREGON)
: ss.
County of Lane)

Personally appeared before me this 7 day of NOV, 1997, the above named WILLIAM J. and JAN T. HOFFMAN, husband and wife, and acknowledged the foregoing instrument to be their voluntary act and deed.

_____
Notary Public for OREGON
My Commission Expires: 4-19-2000

OFFICIAL SEAL
MICHAEL P. KEARNEY
NOTARY PUBLIC-OREGON
COMMISSION NO. 050599
MY COMMISSION EXPIRES APRIL 19, 2000

STATE OF Oregon)
: ss.
County of Lane)

Personally appeared before me this 12th day of February, 1997, C. ROBERT SUESS and HELEN S. SUESS, partners in SUESS CO, a Washington partnership and acknowledged the foregoing instrument to be its voluntary act and deed.

_____
NOTARY PUBLIC FOR Oregon
My Commission Expires: 10-12-99

OFFICIAL SEAL
KAY F ALLEN
NOTARY PUBLIC - OREGON
COMMISSION NO. 043304
MY COMMISSION EXPIRES OCT. 12, 1999

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

9828981

LEGAL DESCRIPTION FOR LANDS TO BE CONVEYED FROM HOFFMAN TO SUESS

BEGINNING AT THE SECTION CORNER COMMON TO SECTIONS 11, 12, 13 & 14 IN TOWNSHIP 18 SOUTH, RANGE 4 WEST OF THE WILLAMETTE MERIDIAN; THENCE ALONG THE LINE BETWEEN SAID SECTIONS 12 AND 13 SOUTH 89°21'40" EAST 582.12 FEET; THENCE LEAVING SAID LINE AND RUNNING PARALLEL WITH THE SECTION LINE BETWEEN SECTIONS 11 & 12 NORTH 00°14'00" EAST 607.08 FEET TO THE SOUTHWEST CORNER OF THAT CERTAIN TRACT OF LAND DESCRIBED IN A DEED RECORDED JULY 28, 1986, RECEPTION NO. 86-28322 LANE COUNTY, OREGON DEED RECORDS; SAID POINT BEING THE TRUE POINT OF BEGINNING; THENCE ALONG THE SOUTH LINE OF SAID LAST DESCRIBED TRACT, PARALLEL WITH THE LINE BETWEEN SECTIONS 12 & 13 SOUTH 89°21'40" EAST 275.00 FEET TO THE SOUTHEAST CORNER OF SAID LAST DESCRIBED TRACT; THENCE ALONG THE EAST LINE OF SAID LAST DESCRIBED TRACT PARALLEL WITH THE SECTION LINE BETWEEN SECTIONS 11 & 12 NORTH 00°14'00" EAST 106.00 FEET THENCE LEAVING SAID EAST LINE AND RUNNING SOUTH 69°30'26" WEST 294.02 FEET TO THE TRUE POINT OF BEGINNING ALL IN LANE COUNTY, OREGON.

CONTAINING 14574.45 SQ. FT. MORE OR LESS

EXHIBIT A PAGE ONE

9828981

LEGAL DESCRIPTION FOR ORIGINAL SUESS PARCEL

THE SOUTH 1/2 OF THE SOUTHWEST 1/4 OF SECTION 12 AND THE NORTH 1/2 OF THE NORTHWEST 1/4 OF SECTION 13 IN TOWNSHIP 18 SOUTH, RANGE 4 WEST OF THE WILLAMETTE MERIDIAN, ALL IN LANE COUNTY, OREGON.

ALSO: COMMENCING AT THE NORTHWEST CORNER OF SAID SOUTH 1/2 OF THE SOUTHWEST 1/4 OF SAID SECTION 12 AND RUNNING THENCE SOUTH 89°40'00" EAST 40.00 CHAINS; THENCE NORTH 73°00'00" WEST 13.88 CHAINS; THENCE SOUTH 82°00'00" WEST 27.14 CHAINS TO THE PLACE OF BEGINNING, THE LAST TWO COURSES BEING IN THE CENTER OF THE COUNTY ROAD, IN LANE COUNTY, OREGON.

EXCEPT: BEGINNING AT THE NORTHWEST CORNER OF THE SOUTH 1/2 OF THE SOUTHWEST 1/4 OF SAID SECTION 12; THENCE RUNNING SOUTH 20 CHAINS; THENCE EAST 8.82 CHAINS; THENCE NORTH 22 CHAINS MORE OR LESS TO THE CENTER OF THE COUNTY ROAD; THENCE SOUTH 82°00'00" WEST ALONG THE CENTER OF THE COUNTY ROAD TO THE PLACE OF BEGINNING, ALL IN LANE COUNTY, OREGON.

ALSO EXCEPT: BEGINNING AT THE SECTION CORNER COMMON TO SECTIONS 11, 12, 13, AND 14 IN TOWNSHIP 18 SOUTH, RANGE 4 WEST OF THE WILLAMETTE MERIDIAN; THENCE ON THE SECTION LINE BETWEEN SECTIONS 12 AND 13 SOUTH 89°22'00" EAST 582.12 FEET; THENCE PARALLEL TO THE SECTION LINE BETWEEN SECTIONS 11 AND 12 NORTH 00°14'00" EAST 607.08 FEET TO THE TRUE POINT OF BEGINNING, THENCE CONTINUING ALONG A LINE PARALLEL TO THE SECTION LINE BETWEEN SECTIONS 11 AND 12 NORTH 00°14'00" EAST 814.18 FEET TO A POINT IN THE CENTER LINE OF LORANE HIGHWAY; THENCE ALONG THE CENTER LINE OF LORANE HIGHWAY NORTH 81°41'00" EAST 278.08 FEET; THENCE LEAVING SAID CENTERLINE AND RUNNING ALONG A LINE PARALLEL TO THE SECTION LINE BETWEEN SECTIONS 11 AND 12 SOUTH 00°14'00" WEST 857.44 FEET; THENCE PARALLEL TO THE SECTION LINE BETWEEN SECTIONS 12 AND 13 NORTH 89°22'00" WEST 275.00 FEET TO THE TRUE POINT OF BEGINNING, ALL IN LANE COUNTY, OREGON.

EXHIBIT B PAGE end

9828981

LEGAL DESCRIPTION FOR LANDS TO BE CONVEYED FROM SUESS TO HOFFMAN

BEGINNING AT THE SECTION CORNER COMMON TO SECTIONS 11, 12, 13 & 14 IN TOWNSHIP 18 SOUTH, RANGE 4 WEST OF THE WILLAMETTE MERIDIAN; THENCE ALONG THE LINE BETWEEN SAID SECTIONS 12 AND 13 SOUTH 89°21'40" EAST 582.12 FEET; THENCE LEAVING SAID LINE AND RUNNING PARALLEL WITH THE SECTION LINE BETWEEN SECTIONS 11 & 12 NORTH 00°14'00" EAST 607.08 FEET TO THE SOUTHWEST CORNER OF THAT CERTAIN TRACT OF LAND DESCRIBED IN A DEED RECORDED JULY 28, 1986, RECEPTION NO. 86-28322 LANE COUNTY, OREGON DEED RECORDS; THENCE ALONG THE SOUTH LINE OF SAID LAST DESCRIBED TRACT, PARALLEL WITH THE LINE BETWEEN SECTIONS 12 & 13 SOUTH 89°21'40" EAST 275.00 FEET TO THE SOUTHEAST CORNER OF SAID TRACT; THENCE ALONG THE EAST LINE OF SAID LAST DESCRIBED TRACT PARALLEL WITH THE SECTION LINE BETWEEN SECTIONS 11 & 12 NORTH 00°14'00" EAST 106.00 FEET TO THE TRUE POINT OF BEGINNING; THENCE RUNNING NORTH 2°16'56" EAST 756.02 FEET TO A POINT IN THE CENTER OF LORANE HIGHWAY; THENCE ALONG THE CENTER LINE OF LORANE HIGHWAY SOUTH 81°41'00" WEST 27.33 FEET TO THE NORTHEAST CORNER OF THAT CERTAIN TRACT OF A LAND DESCRIBED IN A DEED RECORDED JULY 28, 1986 RECEPTION NO. 86-28322 OF THE LANE COUNTY OREGON DEED RECORDS; THENCE LEAVING THE CENTER LINE OF LORANE HIGHWAY AND RUNNING ALONG THE EAST LINE OF SAID LAST DESCRIBED TRACT SOUTH 00°14'00" WEST 751.47 FEET TO THE TRUE POINT OF BEGINNING, ALL IN LANE COUNTY, OREGON.

CONTAINING 10155.23 SQ. FT. MORE OR LESS

EXHIBIT C PAGE ewt

9828981

LEGAL DESCRIPTION FOR REVISED HOFFMAN LANDS

BEGINNING AT THE SECTION CORNER COMMON TO SECTIONS 11, 12, 13 & 14 IN TOWNSHIP 18 SOUTH, RANGE 4 WEST OF THE WILLAMETTE MERIDIAN; THENCE ALONG THE LINE BETWEEN SAID SECTIONS 12 AND 13 SOUTH 89°21'40" EAST 582.12 FEET; THENCE LEAVING SAID LINE AND RUNNING PARALLEL WITH THE SECTION LINE BETWEEN SECTIONS 11 & 12 NORTH 00°14'00" EAST 607.08 FEET TO THE SOUTHWEST CORNER OF THAT CERTAIN TRACT OF LAND CONVEYED TO WILLIAM J. HOFFMAN AND JAN T. HOFFMAN AS DESCRIBED IN A DEED RECORDED JULY 28, 1986, RECEPTION NO. 86-28322 LANE COUNTY, OREGON DEED RECORDS, SAID POINT BEING THE TRUE POINT OF BEGINNING; THENCE NORTH 69°30'26" EAST 294.02 FEET TO A POINT WHICH BEARS NORTH 00°14'00" EAST 106.00 FEET FROM THE SOUTHEAST CORNER OF SAID HOFFMAN TRACT; THENCE NORTH 2°16'56" EAST 756.02 FEET TO A POINT IN THE CENTER LINE OF LORANE HIGHWAY; THENCE ALONG THE CENTERLINE OF LORANE HIGHWAY SOUTH 81°41'00" WEST 27.33 FEET TO THE NORTHEAST CORNER OF SAID HOFFMAN TRACT; THENCE CONTINUING ALONG THE CENTERLINE OF LORANE HIGHWAY SOUTH 81°41'00" WEST 278.08 FEET TO THE NORTHWEST CORNER OF SAID HOFFMAN TRACT; THENCE LEAVING THE CENTERLINE OF LORANE HIGHWAY AND RUNNING ALONG THE WEST LINE OF SAID HOFFMAN TRACT SOUTH 00°14'00" WEST 814.18 FEET TO THE TRUE POINT OF BEGINNING, ALL ON LANE COUNTY, OREGON

THAT PORTION DESCRIBING THE ADJUSTED PROPERTY LINE IS UNDERLINED IN THE FOREGOING LEGAL DESCRIPTION.

CONTAINING 5.18 ACRES MORE OR LESS

EXHIBIT D PAGE end

9828981

LEGAL DESCRIPTION FOR REVISED BOUNDARY
SUESS PARCEL

THE SOUTH 1/2 OF THE SOUTHWEST 1/4 OF SECTION 12 AND THE NORTH 1/2 OF THE NORTHWEST 1/4 OF SECTION 13 IN TOWNSHIP 18 SOUTH, RANGE 4 WEST OF THE WILLAMETTE MERIDIAN, ALL IN LANE COUNTY, OREGON.

ALSO: COMMENCING AT THE NORTHWEST CORNER OF SAID SOUTH 1/2 OF THE SOUTHWEST 1/4 OF SAID SECTION 12 AND RUNNING THENCE SOUTH 89°40'00" EAST 40.00 CHAINS; THENCE NORTH 73°00'00" WEST 13.88 CHAINS; THENCE SOUTH 82°00'00" WEST 27.14 CHAINS TO THE PLACE OF BEGINNING, THE LAST TWO COURSES BEING IN THE CENTER OF COUNTY ROAD, IN LANE COUNTY, OREGON.

EXCEPT: BEGINNING AT THE NORTHWEST CORNER OF THE SOUTH 1/2 OF THE SOUTHWEST 1/4 OF SAID SECTION 12; THENCE RUNNING SOUTH 20 CHAINS; THENCE EAST 8.82 CHAINS; THENCE NORTH 22 CHAINS MORE OR LESS TO THE CENTER OF THE COUNTY ROAD; THENCE SOUTH 82°00'00" WEST ALONG THE CENTER OF THE COUNTY ROAD TO THE PLACE OF BEGINNING, ALL IN LANE COUNTY, OREGON.

ALSO EXCEPT: BEGINNING AT THE SECTION CORNER COMMON TO SECTIONS 11, 12, 13 & 14 IN TOWNSHIP 18 SOUTH, RANGE 4 WEST OF THE WILLAMETTE MERIDIAN; THENCE ALONG THE LINE BETWEEN SAID SECTIONS 12 AND 13 SOUTH 89°21'40" EAST 582.12 FEET; THENCE LEAVING SAID LINE AND RUNNING PARALLEL WITH THE SECTION LINE BETWEEN SECTIONS 11 & 12 NORTH 00°14'00" EAST 607.08 FEET TO THE SOUTHWEST CORNER OF THAT CERTAIN TRACT OF LAND CONVEYED TO WILLIAM J. HOFFMAN AND JAN T. HOFFMAN AS DESCRIBED IN A DEED RECORDED JULY 28, 1986, RECEPTION NO. 86-28322 LANE COUNTY, OREGON DEED RECORDS, SAID POINT BEING THE TRUE POINT OF BEGINNING; THENCE NORTH 69°30'26" EAST 294.02 FEET TO A POINT WHICH BEARS NORTH 00°14'00" EAST 106.00 FEET FROM THE SOUTHEAST CORNER OF SAID HOFFMAN TRACT; THENCE NORTH 2°16'56" EAST 756.02 FEET TO A POINT IN THE CENTER LINE OF LORANE HIGHWAY; THENCE ALONG THE CENTERLINE OF LORANE HIGHWAY SOUTH 81°41'00" WEST 27.33 FEET TO THE NORTHEAST CORNER OF SAID HOFFMAN TRACT; THENCE CONTINUING ALONG THE CENTERLINE OF LORANE HIGHWAY SOUTH 81°41'00" WEST 278.08 FEET TO THE NORTHWEST CORNER OF SAID HOFFMAN TRACT; THENCE LEAVING THE CENTERLINE OF LORANE HIGHWAY AND RUNNING ALONG THE WEST LINE OF SAID HOFFMAN TRACT SOUTH 00°14'00" WEST 814.18 FEET TO THE TRUE POINT OF BEGINNING, ALL ON LANE COUNTY, OREGON

THAT PORTION DESCRIBING THE ADJUSTED PROPERTY LINE IS UNDERLINED IN THE FOREGOING LEGAL DESCRIPTION.

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

'98 APR 21 PM 2:15

Reel 2410R

Lane County OFFICIAL Records
Lane County Clerk

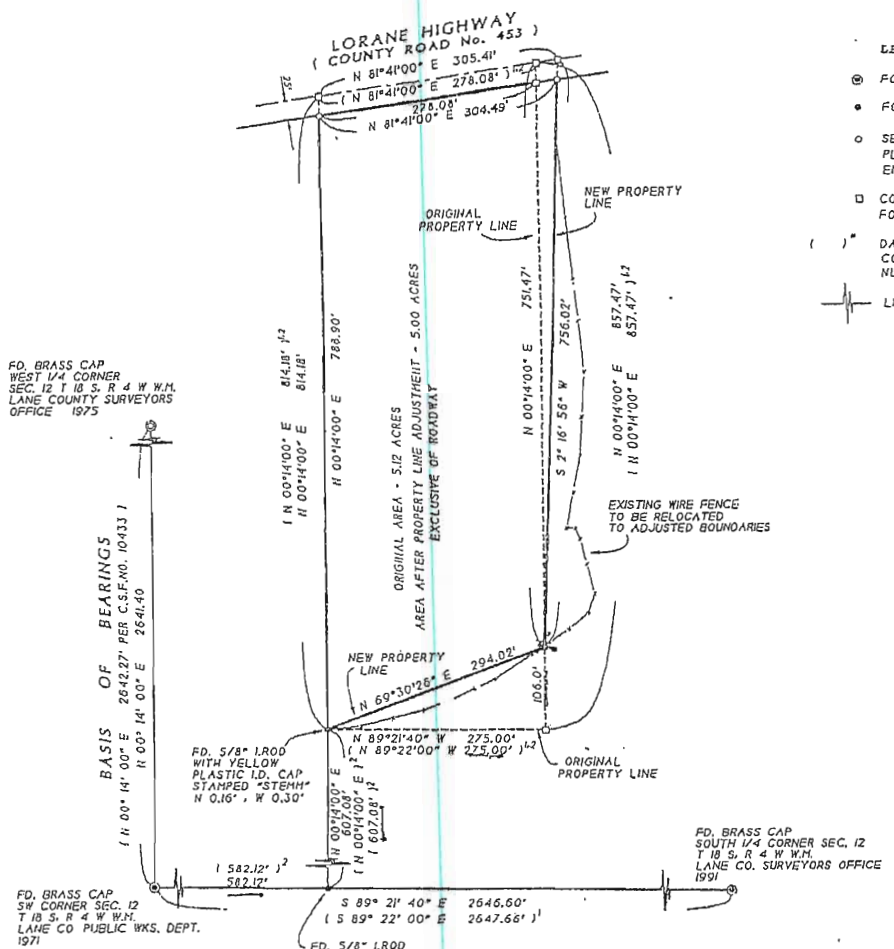
By: Deil S Lindsay
County Clerk

EXHIBIT E PAGE end

LANE COUNTY SURVEYORS OFFICE
C.S. FILE NO. 35382
FILING DAT. 21 Aug. '98 C

PROPERTY LINE ADJUSTMENT SURVEY
FOR
HOFFMAN / SUESS
SW 1/4 SEC. 12, T 18 S, R 4 W, W.M.
EUGENE, LANE COUNTY, OREGON
AUGUST, 1998

SCALE : 1" = 100'



LEGEND

- ⊗ FOUND BRASS CAP AS NOTED.
- • FOUND MONUMENT AS NOTED.
- o SET 5/8" x 30" REBAR WITH YELLOW PLASTIC I.D. CAP STAMPED "POAGE ENG. & SURV. INC."
- □ COMPUTED POINT, NO MONUMENT FOUND OR SET.
- ( )" DATA OF RECORD WITH END NOTE CORRESPONDING TO A REFERENCE NUMBER AS SHOWN.
- LINE NOT DRAWN TO SCALE.

REFERENCES

1. C.S.F. No. 10433 HUTCHISON 1959
2. DEED RECORDED ON REEL 618, INSTR. No. 34170 LANE COUNTY OREGON DEED RECORDS

NARRATIVE

THIS SURVEY WAS PERFORMED AT THE REQUEST OF THE OWNERS TO ESTABLISH AN ADJUSTED BOUNDARY LINE BETWEEN THEIR TWO PARCELS. THE ORIGINAL SUESS TRACT IS ALIQUONT PARTS OF SECTION 12 AND SECTION 13 IN TOWNSHIP 18 SOUTH, RANGE 4 WEST OF THE WILLAMETTE MERIDIAN AS DESCRIBED IN A DEED RECORDED JUNE 26, 1945 RECEPTION NO. 9059 LANE COUNTY OREGON DEED RECORDS OF WHICH THE HOFFMAN TRACT IS AN EXCEPTION TO THE SUESS PROPERTY AS DESCRIBED IN A WARRANTY DEED RECORDED JULY, 26, 1988 RECEPTION NO. 88-28322 LANE COUNTY OREGON DEED RECORDS. THIS SURVEY DOES NOT ATTEMPT TO ESTABLISH THE BOUNDARIES OF THE SUESS TRACT. THE PURPOSE OF THIS SURVEY IS TO ESTABLISH AND DEMARCATE THE ADJUSTED BOUNDARY BETWEEN THE TWO PARTIES. THE BASIS OF BEARING IS DEFINED BY THE WEST LINE OF THE SOUTHWEST 1/4 OF SECTION 12 IN TOWNSHIP 18 SOUTH, RANGE 4 WEST OF THE WILLAMETTE MERIDIAN. THE WEST LINE OF SAID SOUTHWEST 1/4 OF SECTION 12 WAS ESTABLISHED BY HOLDING THE POSITION OF THE FOUND BRASS CAPS MARKING THE SOUTHWEST CORNER OF SAID SECTION 12 AND THE WEST 1/4 CORNER OF SAID SECTION 12. THE SOUTH LINE OF SAID SECTION 12 WAS ESTABLISHED BY THE FOUND BRASS CAPS MARKING THE SOUTHWEST CORNER OF SAID SECTION 12 AND THE SOUTH 1/4 CORNER OF SAID SECTION 12. THE SOUTHWEST CORNER OF THE HOFFMAN TRACT WAS ESTABLISHED AT THE RECORD DIMENSION OF 607.08 FEET MEASURED NORTHERLY PARALLEL TO THE WEST LINE OF SAID SECTION 12 FROM A POINT ON THE SOUTH LINE OF SECTION 12, SAID POINT BEING AT THE RECORD DIMENSION OF 582.12 FEET EAST OF THE SOUTHWEST CORNER OF SECTION 12. THE SOUTH AND EAST BOUNDARIES OF THE HOFFMAN PROPERTY ARE COMMON TO THE SUESS PROPERTY AND THESE BOUNDARIES WERE THEN ADJUSTED UPON COMMON AGREEMENT OF THE OWNERS AS SHOWN HEREON.

REGISTERED PROFESSIONAL LAND SURVEYOR
Jonathan A. Oakes
OREGON
JULY 13, 1984
JONATHAN A. OAKES
2015
EXPIRES: DECEMBER 31, 1998

ASSESSOR'S MAP No. 18-04-12-3 TAX LOT 2100

POAGE ENGINEERING & SURVEYING, INC.
P.O. BOX 2527 * EUGENE, OREGON 97402 * (503) 485-4385
JOB No. 2567, DWN. BY JAO\2567LLAL.GCD, DATE: 8-17

19902

FORM No. 7... QUITCLAIM DEED. (Revised 1958) CT 97382 STEVENS-NESS LAW PUB. CO., PORTLAND, ORE.

KNOW ALL MEN BY THESE PRESENTS, That SCOTT AND SUESS CONSTRUCTION CO., a co-partnership, composed of H. Glen Scott and C. Robert Suess, *in consideration of* none *Dollars,* *to* it *paid by* SUESS CO., a partnership composed of Helen S. Suess and C. Robert Suess, *do ... hereby remise, release and forever QUITCLAIM unto the said* Suess Co. *and unto* its *heirs and assigns all* its *right, title and interest in and to the following described real property, with the tenements, hereditaments and appurtenances, situated in the County of* Lane *, State of Oregon, bounded and described as follows, to-wit:* described on Exhibit "A", attached hereto and by this reference incorporated herein

* The true and actual consideration for this transfer is $ None
This transfer is the result of a change of name

To Have and to Hold the same unto the said Suess Co. its *heirs and assigns forever.*

Witness our *hand*s *and seal*s *this* 8th *day of* September, 1970.

SCOTT AND SUESS CONSTRUCTION CO. (SEAL)

By [signature] C. Robert Suess [signature] (SEAL)

By H. Glenn Scott [signature] (SEAL)

By [signature] (SEAL)
C. Robert Suess, per power of atty. attached as Exhibit "B"

STATE OF OREGON, } ss.
County of Lane } *On this* 8th *day of* September, 1970,

before me, the undersigned, a Notary Public in and for said County and State, personally appeared the within named C. Robert Suess

known to me to be the identical individual described in and who executed the within instrument, and acknowledged to me that he *executed the same freely and voluntarily.*

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal the day and year last above written.

[signature]
Notary Public for Oregon
My Commission expires ...

[Notary seal: NOTARY PUBLIC OREGON]

EXHIBIT C

C.2.

19902

The South 1/2 of the Southwest 1/4 of Section 12 and the North 1/2 of the Northwest 1/4 of Section 13, in Township 18 South, Range 4 West of the Willamette Meridian, in Lane County, Oregon;

ALSO commencing at the Northwest corner of said South 1/2 of the Southwest 1/4 of said Section 12 and running thence South 89° 40' East 40 chains; thence North 73° West 13.88 chains; thence South 82° West 27.14 chains to the place of beginning, the last two courses being in the center of the County Road, in Lane County, Oregon;

EXCEPT: Beginning at the Northwest corner of the South 1/2 of the Southwest 1/4 of said Section 12; thence running South 20 chains; thence East 8.82 chains; thence North 22 chains, more or less, to center of County Road; thence South 82° West along center of County Road to the place of beginning, in Lane County, Oregon;

ALSO EXCEPT THEREFROM the following described tract of land: Beginning at the section corner common to Sections 11, 12, 13 and 14, Township 18 South, Range 4 West of the Willamette Meridian; thence on section line between Sections 12 and 13 South 89° 22' East 582.12 feet; thence parallel to section line between Sections 11 and 12, North 0° 14' East 607.08 feet to the true point of beginning of the following described tract; running thence parallel to section line between Sections 11 and 12, North 0° 14' East 814.18 feet to the center line of Lorane Highway; thence along said centerline North 81° 41' East 278.08 feet; thence leaving said centerline parallel to section line between Sections 11 and 12, South 0° 14' West 857.44 feet; thence parallel to section line between Sections 12 and 13, North 89° 22' West 275.0 feet to the true point of beginning, in Lane County, Oregon.

EXHIBIT "A"

19902

SPECIAL POWER OF ATTORNEY

KNOW ALL MEN BY THESE PRESENTS, That HARVEY GLEN SCOTT, also known as H. G. SCOTT, and FAY M. SCOTT, his wife, so long as he performs his obligations under our AGREEMENT, dated the FIRST day of JUNE, 1966, have made, constituted and appointed, and by these presents do make, constitute and appoint C. ROBERT SUESS our true and lawful attorney for us and in our names, place and stead and for our use and benefit to convey, by statutory quit claim deed to any person, natural or legal, including himself, as provided by the statutes of the State of Washington (and if the document conveys land outside the State of Washington, by a document having the same legal effect as said quit claim deed;) or to encumber, so long as no personal liability attaches to the undersigned; or to enforce our rights or interest; all in and to the following described real property situated in the State of Oregon and in the County of Lane.

Clack pty 1450cm

The South 1/2 of the Southwest 1/4 of Section 12, and the North 1/2 of the Northwest 1/4 of Section 13, in Township 18 South, Range 4 West of the Willamette Meridian, in Lane County, Oregon;

ALSO commencing at the Northwest corner of said South 1/2 of the Southwest 1/4 of said Section 12, and running thence South 89 degrees 40 minutes East 40 Chains; thence North 73 degrees West 13.88 chains; thence South 82 degrees West 27.14 chains to the place of beginning, the last two courses being in the center of the County Road, in Lane County, Oregon;

EXCEPT beginning at the Northwest corner of the South 1/2 of the Southwest 1/4 of said Section 12; thence running South 20 chains; thence East 8.82 chains; thence North 22 chains, more or less, to center of County Road; thence South 82 degrees West along center of County Road to the place of beginning, in Lane County, Oregon.

ALSO EXCEPTING THEREFROM the following described tract of land: Beginning at the section corner common to Sections 11, 12, 13 and 14, Township 18 South, Range 4 West of the Willamette Meridian; thence on Section line between Sections 12 and 13, South 89 degrees 22 minutes East 582.12 feet; thence parallel to Section line between Sections 11 and 12, North 0 degrees 14 minutes East 607.08 feet to the true point of beginning of the following described tract; running thence parallel to Section line between Sections 11 and 12, North 0 degrees 14 minutes East 814.18 feet to the center line of Lorane Highway; thence along said centerline North 81 degrees 41 minutes East 278.08 feet; thence leaving said centerline parallel to Section line between Sections 11 and 12, South 0 degrees 14 minutes West 857.44 feet; thence parallel to Section line between Sections 12 and 13, North 89 degrees 22 minutes West 275.0 feet to the true point of beginning, in Lane County, Oregon.

EXHIBIT "B"

(OVER)

19902

GIVING AND GRANTING unto C. ROBERT SUESS, said attorney, full power and authority to do and perform all and every act and thing whatsoever requisite and necessary to be done as aforesaid as fully to all intents and purposes as we might or could do if personally present, and we hereby ratify and confirm all that he, the said attorney, shall lawfully do or cause to be done, by virtue of these presents.

IN WITNESS WHEREOF, we have hereunto set our hands and seals the FIRST day of JUNE in the year of our Lord one thousand nine hundred and sixty-six.

Signed, Sealed and Delivered in the Presence of)

______________________) Harvey Glen Scott (SEAL)
HARVEY GLEN SCOTT

______________________) Fay M. Scott (SEAL)
FAY M. SCOTT

STATE OF WASHINGTON)
) ss.
COUNTY OF KING)

On this SECOND day of JUNE A. D. 1966, before me, the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared HARVEY GLEN SCOTT, also known as H. G. SCOTT, and FAY M. SCOTT, his wife, to me known to be the individuals described in and who executed the foregoing instrument, and acknowledged to me that they signed and sealed the said instrument as their free and voluntary act and deed for the uses and purposes therein mentioned.

WITNESS my hand and official seal hereto affixed the day and year in this certificate above written.

(Notary seal: NOTARY PUBLIC, STATE OF WASHINGTON)

Edmund [illegible]
Notary Public in and for the State of Washington,
residing at Kirkland

19902
4 5743 Scott + Suess Const Co
4 3087 Scott by atty
4 5829 Suess Fed + atty
4 7251 Suess Co.
4 5829 Suess

State of Oregon,
County of Lane—ss.
I, D. M. Penfold, Director of the Department of Records and Elections, in and for the said County, do hereby certify that the within instrument was received for record at
1970 SEP 14 AM 10 39.0
Reel 497-R
Lane County OFFICIAL Records.
D. M. PENFOLD, Director of the Department of Records & Elections.
By [illegible] Deputy
C29-083-05

6.00

EGR & Associates, Inc.
Engineers, Geologists and Surveyors

2535B Prairie Road
Eugene, Oregon 97402
(541) 688-8322
Fax (541) 688-8087

March 14, 2012

Bill Kloos, Attorney
375 W. 4th, Suite 204
Eugene, OR 97401

RE Marginal Land Applications: PA115500, 115501, 115502

Dear Mr. Kloos:

As per your request on behalf of your client, EGR & Associates, Inc. (EGR) has reviewed the file and the groundwater situation regarding the three properties involved in the Marginal Land applications above. Particular focus is on the 123-acre "Blanton" property, which was the subject of much negative testimony about water at the March 6, 2012 Planning Commission hearing.

We found the area has a low transmissivity and correspondingly low well yields. Even so, the large minimum parcel size required for the Marginal Lands designation keeps the carrying capacity well within safe parameters for this rural density. The aquifer will not be depleted by this development because the transmissivity seen in this area is sufficiently low that a well, or even a series of wells, cannot dewater the aquifer to any significant extent beyond the immediate vicinity of the well. Furthermore, recharge on 10-acre size parcels would be sufficient, several times over, to recover all the water that is pumped per year.

In summary, there is a groundwater supply under this property adequate to support development of the site at a 10-acre density, and use of wells on the property should not negatively impact wells on surrounding property that may be used for domestic water supply. To be a bit more specific, our analysis of the pump test data for the existing well on the Blanton site, and the well logs in the surrounding four-square mile area, indicates that the Blanton well could safely supply water for about 43 dwellings at 650 gpd on an annual basis.

Background

EGR examined available data on groundwater supply to determine the need for performing a new aquifer pump test on the existing well on the Blanton site. After reviewing the existing pump test data from the 1992 pump test performed by the Carter Drilling Company, it is our strong opinion that no appreciable increase in the accuracy of the data could be accomplished by our firm conducting a new test, even using the more sophisticated data collection methods employed today. The professionals at EGR are licensed to practice engineering and geology by the State of Oregon and have more than 20 years experience each with this area specifically, and these issues in particular. Mr. Christensen of EGR, while he was the County Hydrogeologist in the 1980s, was the author of the groundwater ordinances now in the Lane Code Chapter 13.

EXHIBIT D

An aquifer test that yields aquifer values of transmissivity and storage coefficient is testing the aquifer itself, and not so much the well. Transmissivity and storage coefficient are properties of the aquifer (the geologic unit through which water is moving) and do not change over time. They are not even dependent on the different water levels seen in summer and winter, although those differences can affect the performance of an individual well. The purpose of the aquifer test is to determine the aquifer's ability to store and transmit water over a general area around the well being tested. The test determines whether the aquifer is sufficiently permeable to allow water to be gathered to area wells. High transmissivity does not mean that any particular newly drilled well will encounter sufficient water for a dwelling. Hence, a new well in an area with high transmissivity may be a "dry hole". Nor does it mean that a particular well will not experience changes in its ability to produce water over time or seasonally. There are a number of other factors that can cause a well to quit producing water, including precipitate plugging, fouling with clay and rock particles from the well walls, seasonal water table fluctuations, and uncommonly, inference from another well. The one that is least likely, and almost never occurs in this area, is aquifer depletion. This is also a function of lower transmissivity - if you can't move water through the aquifer with ease, it is nearly impossible to dewater the aquifer, even with multiple wells, since each well will overtax its own pumping ability before it overtaxes the aquifer.

There are, however, some things the 1992 Ray Walters report lacked, as we have reviewed it. First, the aquifer pump test lacked a clear indication of the method used to analyze the data and a presentation of that analysis. Second, there was no comparison made between the aquifer test analysis and the wells already drilled in the area (data from area well logs). Third, a gross water balance was not performed to determine if sufficient recharge was occurring in the area to supply the water needs being proposed by development. It is from these three legs of analysis (pump test analysis, well log study, and water balance study) that a reasonable estimation of carrying capacity can be determined.

NOTE: The following shorthand is used in the discussion that follows:

gpd/ft = gallons per minute per foot of aquifer width; a measure of the aquifer's ability to pass water
gpm = gallons per minute; the flow rate of a well
gpm/ft = gallons per minute per foot of drawdown = specific capacity; the ability of a well to produce water

Pump Testing

The pump test was conducted in January of 1992. It was a timed drawdown test of 24 hours duration for pumping, with a 24 hour recovery period. Water levels were recorded every hour on a pumping well and 3 observation wells. Inspection of the data indicates the pumping test was conducted in a reasonable and professional manner. Carter Drilling and Pump service conducted the test. They were an independent 3rd party from the engineer, Ray Walters, who analyzed the test, and the client. In the intervening 20 years since the pump test was conducted there is nothing to indicate the aquifer has changed character. The pump test is designed to measure parameters of the aquifer itself, which is a

geologic unit, in this case composed of bedrock. The bedrock has not changed in 20 years. As a comparison, if these data are no longer usable, then all those historic measurements of temperature used to document global warming should not be used either.

The well was first pumped at 15 gpm and then bumped up to 25.5 gpm; apparently after it was determined the well was not being sufficiently stressed during the test. This makes hand calculation of the results, as was done in 1992, somewhat more difficult. However, with today's computer software the analysis is routine. The data appear typical for aquifer tests performed on fractured bedrock aquifers in this area. The timing during mid-winter did not interfere with the pump test, as the test examines the physical properties of the aquifer, not the water supply from the well, per se. The characteristics of the aquifer will not change, even if the aquifer's water were removed. Put differently, because the purpose of the test is to determine how quickly water will move through the ground, the test could, theoretically, be conducted using gases instead of water.

The two analyses of the pump test come out essentially the same, in hydrogeologic terms. The Ray Walter analysis reported transmissivity at 350 gpd/ft, using hand calculations; our analysis is a bit higher at 491.5 gpd/ft, using a computer program. These are essentially the same value, given that transmissivity can range over more than 10 orders of magnitude in geologic units. Experiments have shown that transmissivity commonly ranges over 3 orders of magnitude, even in what appears to be uniform granular aquifers (material much less variable than the fractured bedrock aquifers found here in Lane County). Computer analysis is generally considered a bit more precise because it uses a program that analyzes drawdown and recovery together, verses the older hand drawn methods which use two analyses, one for drawdown and one for recovery. The calculated transmissivity value is low in the hydrogeology world where transmissivities of greater than 100,000 gpd/ft are commonly seen, but it is a normal value for bedrock aquifers in this area (Lane County), where poorly permeable aquifers are the norm.

Well Logs - Transmissivity

How do these transmissivity values compare with those from other wells in the area of the pump test? Other wells in the area have not had pump tests run on them that are as rigorous as this one, with constant pumping rates and regular timed drawdown readings. However, the well driller does do a flow test of sorts at the time the well is drilled and the driller reports a flow rate and a drawdown for each well. These data are filed with the state as well logs and are available to the public. Examining the well logs allows for an estimate of the transmissivity based upon the specific capacity of the well. Specific capacity is the number of gallons per minute that can be extracted from the well divided by the drawdown from extracting that amount of water.

Specific Capacity is related to transmissivity by: $Q/s = T / (264 \times \text{Log}((0.3 \times T \times t) / (R^2 \times S)))$

Where:

Q = Flow rate from the well
s = Drawdown
Q/s = Specific Capacity (gpm/ft)
T = Transmissivity (gpd/ft)
t = Time of pumping (minutes)
R = Radius of well (feet)
S = Storage Coefficient (dimensionless)

By putting this equation into an iterative program that uses each well's flow rate and drawdown as reported by the well driller, and using as constants the common time of the well being pumped by a well driller of 1 hour, the common radius of 0.25 ft (6 inch pipe), and a common storage coefficient for fractured rock aquifers of 0.0005, then an estimate of the transmissivity can be calculated. When this is done for many wells in an area a general idea of the aquifer's transmissivity can be obtained.

The four (4) square miles that include the Blanton, Kohnen, and Reynolds properties [T18S, R4W, Sections 11, 12, 13, & 14] have 113 well logs in the Oregon Water Resources Department files. The average well transmissivity is 439 gpd/ft, while the median is 195 gpd/ft. Average well yield is 12.5 gpm, while the median is 8 gpm. That the average is significantly above the median indicates a few larger values are increasing the average over what would commonly be expected. The well on the Blanton property is above average in its yield (26 gpm) and about average in its transmissivity of 350 to 491 gpd/ft.

Based on the values listed above, the Blanton well could safely yield 19 to 26 gpm on an annual basis. This is calculated on another equation: $T = (264 \times Q)/\Delta s$ where the variables are as above, and Δs is the drawdown per log cycle when the drawdown is plotted on semi-log paper. We select Δs based upon a maximum safe drawdown (76 feet in this case; static water level down to the first major water source in the well). There are 5.256 log cycles in a year so the 76 feet is divided by the number of log cycles to get the maximum allowable drawdown per log cycle (Δs = 14.46 ft in this case). Feeding this information into the equation along with the transmissivity (T = 350; the lowest value obtained for this well) we get that pumping this well at a rate of 19 gpm will not deplete the aquifer on an annual basis.

A dwelling uses about 350 gpd in an urban/suburban setting including irrigation of an urban/suburban sized yard. As a safety factor, 500 to 650 gpd is used for rural homes. Thus, the Blanton well could safely supply water for about 43 dwellings at 650 gpd on an annual basis. However, other wells drilled in this area to supply homes are much more likely to have yields near 8 gpm and transmissivities near 195 gpd/ft. In fact, some wells can be expected to have even lower yields, but even a well that produces 1/3 gpm can be sufficient to supply a dwelling with domestic water.

Well Log Review

A review of the 113 well logs in the 4 square mile area shows that 31of those wells were drilled since the 1992 pump test was performed. Seventeen (17) of those 31 wells were for geothermal use (for home geothermal units perhaps). Of all 113 wells in the 4 mile square area, 5 wells were reported as dry holes (no production). Another 18 log records had no reported flow, but those included: 9 of the geothermal holes where no flow test was done; well repairs on existing wells; location logs from real estate transactions; and abandonment of previously drilled wells. Thus, there are 82 wells with useable data for transmissivity calculations, plus the 5 wells that are dry holes (6%). In our experience, this area has lower yields, a greater dry hole percentage, and lower transmissivities than similar bedrock areas of Lane County, such as the Gimpl Hill area (well log data in attachments).

Water Balance Calculations

The factors that play into an area's carrying capacity for groundwater are not only how effectively will the aquifer supply water to a well and how easy is it for an area to be dewatered, which are factors directly tied to the transmissivity of the aquifer, but also how much water gets replenished each year into the aquifer and how much is being used by those who are living on top of the aquifer. We call this latter calculation a water balance. It operates just like an accounting system to track your budget at home. There is water coming in (precipitation), and water going out (many natural and human causes). If more goes out than comes in then the aquifer is in deficit. Conversely, if more comes in than is leaving then the aquifer is in excess, and water will leave as surface runoff via springs and seepage.

All water comes to an aquifer as precipitation, either as rainfall or snow. That water then evaporates back into the air, runs off as surface flow, or soaks into the ground. Once in the ground, the water can again leave as evaporation, discharge at a spring becoming surface flow, be transpired by plants, or be pumped by humans out of the ground for use, prior to putting it back into the cycle again. For example, about 84% of all water used in a rural house returns to the ground through the septic system (Waste Disposal Effects on Ground Water, 1980, from a USEPA Congressional Report(1977), citing a 1964 USGS study on household water use).

A soils water balance is used to determine the quantity of precipitation that moves from the surface into the ground. Several methodologies are employed to make such calculations based upon the intent of the authors (agricultural, waste disposal, etc.), but all use the same basic principles. One takes the gross precipitation, subtracts out the immediate and delayed surface runoff, and subtracts out the water lost to evaporation and transpiration by plants; the rest goes into the ground.

Using two different soils water balance methods (one for agriculture and one for landfill use) gives a comparison for determining the amount of precipitation that can be expected to enter the groundwater system. This can then be compared to the expected domestic use, and from that an acreage value can be calculated that matches the recharge value. Average precipitation in the Eugene area from 1939 through 2010 was 45.06 inches per year. This is our soils water balance starting point. The Fenn soils water balance method was developed to estimate recharge through landfills with a soils cover and gives

a recharge rate of 5.34 inches per year. The Thornthwaite-Mather method is for agricultural use and gives a value of 6.13 inches per year.

A third value that can be used is a published value for urban areas. Though such areas have many paved streets and impervious roofs and parking lots, studies have shown a net increase in recharge in many cities due to leaking water mains and sewer collection systems. When these secondary sources are removed, the net recharge from precipitation alone is about 9% of the rainfall, as compared with open areas having 10% to 50% of rainfall becoming groundwater. In the Blanton area, this urban 9% urban recharge value would mean recharge would be as low as 4 inches per year. This sets a lower bound to the possible recharge.

With water use at 650 gpd a household would use 237,250 gallons per year. How many acres would it take to recharge that amount per year, so that use and recharge would be balanced? See the table below:

Recharge Rate	Gallons/acre/year	Acres to Equal Use	Gallons per year - 10 Ac
4.0	108,609	2.18	1,086,090
5.34	144,993	1.64	1,449,930
6.13	166,444	1.43	1,664,440

From this table we can see that even using the most conservative values, a 10-acre parcel of ground has sufficient recharge to cover the anticipated use by a normal residence. Thus, a Marginal Lands designation, which has a minimum lot size of 10 acres, will not over tax the recharge occurring in the area. This does not mean that when development occurs drilling will not result in some dry holes; that remains a distinct possibility. But by re-drilling it is likely sufficient water will be obtained. Some wells will have minimal water (more than 1/3 gpm but less than 1 gpm). This will be sufficient to run a household, but will require storage, and care on outside use of water. Even wells producing up to 5 gpm should be cautious about outside water use. Some will no doubt attempt irrigation if they have a well similar to the one found on the Blanton property. The well may, or may not, support the irrigation use long term; most do not.

Conclusion

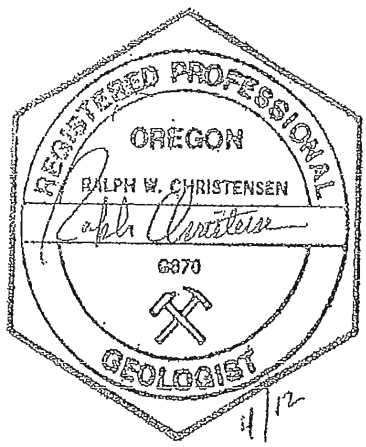
The studied area has low transmissivity and yield for water supply relative to even other bedrock areas of Lane County. Even so, the large parcel size of the Marginal Land designations is such that overtaxing the aquifer and causing an adverse impact on surrounding property owners is highly improbable. It is possible to have an individual well interfere with another individual well, but that will not be an aquifer-wide problem, but an isolated incident, which can be resolved under the rules governing Oregon water rights. Finally, and most importantly, it can be expected that wells in this area will go dry as the wells age, and particularly those wells that are used hard (storage helps alleviate this). However, the aquifer will not be depleted, as the transmissivity seen in this area is sufficiently low that a well, or series of wells, cannot dewater a significant portion of the aquifer because water cannot move with sufficient

ease through the aquifer for that to happen. Finally, the recharge to the area is sufficient to recover the groundwater that is pumped out several times over. Those wells which lose flow can reasonably be expected to be replaceable by a new well, and that new well will have a static level comparable to the one seen in the initial well. However, as can be seen in the well log data, the potential yield from that well could vary widely.

If I can be of any further assistance, please do not hesitate to contact me.

Sincerely,

Ralph Christensen, G-870
Senior Geologist
EGR & Associates, Inc.



LIST OF ATTACHMENTS

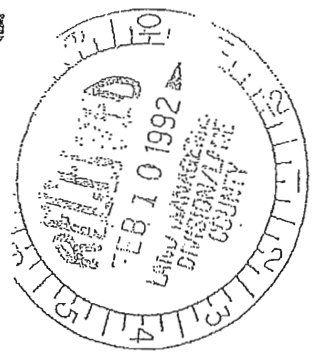
1. Ray Walters Pump Test Report of 1992; with Carter Drilling Data, well log of pumped well, and maps.
2. EGR & Associates, Inc. pump test/aquifer analysis of Ray Walters/Carte Drilling Pump Test including computer calculation sheet, data spreadsheet, and drawdown graphs.
3. Well log listing for T18S R4W Sections 11-14. Includes calculations of Transmissivity and statistical analysis of data on well depths, yield, static water level, and transmissivity.
4. Well log listing for Gimpl Hill area with simple statistics and transmissivity calculations. Covers 10 square miles.
5. Well logs of wells reported to not have any production.
6. Soils Water Balance calculation sheets for Fenn and Thornthwaite-Mather soils water balances, and Climate Summary for Eugene, OR

Ray Walter Engineering

59 COBURG ROAD. SUITE D EUGENE. OREGON 97401

(503) 484-4380

February 7, 1992



TO: Lane County Planning

FORM: Ray V. Walter, PE

SUBJECT: Ground Water - Map 18-04-13, Lot 1300

I have received, reviewed and analyzed the well testing and observation of adjacent wells by Carter's Drilling and Pump Service of January 24 and 25, 1992 for the development. I also went to the site and inspected the test well and adjacent observation wells. The test well is located on Tax Lot 1300, Map 18-04-13 and more precisely described as West of the intersection of Lorane Highway and Chambers Streets. The site is located in the upper Spencer Creek area. An analysis of the test well for the aquifer parameters revealed an aquifer coefficient of transmissivity of 350 gallons per day per foot (gpd/ft) and a storage coefficient of 0.0000184. This is within the normal demand ranges for single family residences.

The personnel performing the well test also observed three other, existing well in the immediate area. The testing had a nil affect on the other wells. Observation Well #1 is located about 500 feet Northeast of the test well and having a ground elevation of 16 feet lower than the test well. Observation Well #2 is located about 590 feet Westerly of the test well and has a ground elevation of about 85 feet higher than the test well. Observation Well #3 is located Southerly about 2,850 feet and about 325 feet above the test well. The observation wells did not react to the test well. The static water level of Observation well #1 progressively raised 2 inches over the first 16 hours of pumping and the dropped one inch to one inch above its initial static level after 24 hours of pump testing. Observation wells #2 and #3 followed a similar trend with Well #2 dropping one inch below its initial reading and Well #3 dropped four inches below its initial reading at the end of the 24 hour test. It appears that the observation wells were effected by actions other than that of the well pump testing being performed

The surrounding areas are now using EWEB water and are not using ground water. The area therefore is not over taxing the water aquifer. The aquifer could very easily provide normal household water demands for a development of 15 to 20 residential units being a relatively low population development for tax lot 1300 with lot sizes of from two to five acres in size. A battery of wells could be developed for a compact development but the total number of units for tax lot 1300 would have to be limited to the aquifer capabilities.

EXHIBIT D

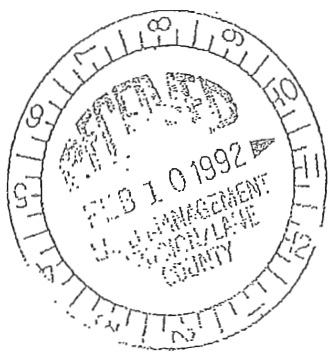
The amount of water demand for each residential unit was estimated as 350 gallons per day (gpd) and very limited irrigation water for each unit. This is a normal water demand for a city residential home site. Land irrigation or high usage demand units would not be acceptable for this development.

I am recommending a relatively low residential development with a limited ground water supply be approval for the site based upon the findings of my evaluation of the water aquifer. The aquifer shows a limited but sufficient permeability for limited development of the site. The adjacent areas are being serviced by domestic water from EWEB water mains and are not placing a demand on the ground water aquifer.

Respectively submitted by

Ray V. Walter, PE

Attachments



AQUAFIR TEST

BOB SUESS / WESTFAIR ASSOCIATES

START DATE 1/24/92

PUMPED WELL		OBSERVATION WELL #1		OBSERVATION WELL #2		OBSERVATION WELL #3	
G.P.M.	FT.- H_2O	TIME	FEET TO H_2O	TIME	FEET TO H_2O	TIME	FEET TO H_2O
	6' 1"		15' 11 3/4"		16' 8 3/4"		8' 3 1/2"
15	13' 1"	8:00	15' 11 3/4"	8:15	16' 8 7/8"	8:30	8' 4 5/8"
15	16' 2"	9:00	15' 11 3/4"	9:15	16' 8 3/4"	9:30	8' 4 5/8"
15	19' 5 1/2"	10:00	15' 11 3/4"	10:15	16' 8 3/4"	10:30	8' 4 5/8"
15	20' 11 1/4"	11:00	15' 11 3/4"	11:15	16' 8 5/8"	11:30	8' 4 3/8"
15	22' 1"	12:00	15' 11 3/4"	12:15	16' 8 1/4"	12:30	8' 4 1/8"
15	23' 2 1/8"	1:00	15' 11 1/2"	1:15	16' 7 3/4"	1:30	8' 3 5/8"
15	24' 1/4"						
INCREASE TO 25 G.P.M.							
25		2:00	15' 11"	2:15	16' 7 1/4"	2:30	8' 3 1/4"
25	32' 6 1/4"	3:00	15' 10 1/2"	3:15	16' 7 1/4"	3:30	8' 3 1/8"
25	35' 7 1/2"	4:00	15' 10 3/8"	4:15	16' 7"	4:30	8' 2 1/8"
25	35' 11 1/4"	5:00	15' 10 3/8"	5:15	16' 7"	5:30	8' 2 1/8"
25	36' 10"	6:00	15' 10"	6:15	16' 5 3/4"	6:30	8' 2"
25.5	38' 4 1/2"	7:00	15' 9 3/4"	7:15	16' 5 1/2"	7:30	8' 2"
25.5	40' 7"	8:00	15' 9 1/2"	8:15	16' 5 3/8"	8:30	8' 1 7/8"
25.5	40' 11"	9:00	15' 9 1/2"	9:15	16' 5 1/2"	9:30	8' 2"
25.5	41' 4"	10:00	15' 9 3/8"	10:15	16' 5 3/4"	10:30	8' 2 1/2"
25.5	41' 3"	11:00	15' 9 1/2"	11:15	16' 6 3/8"	11:30	8' 3 1/4"
25.5	41' 1"	12:00	15' 9 3/4"	12:15	16' 6 7/8"	12:30	8' 3 1/2"
25.5	41' 2"	1:00	15' 9 3/4"	1:15	16' 7"	1:30	8' 4 3/8"
25.5	41' 3"	2:00	15' 9 7/8"	2:15	16' 7 1/4"	2:30	8' 4 5/8"
25.5	41' 1 1/2"	3:00	15' 9 7/8"	3:15	16' 8	3:30	8' 5 1/4"
25.5	41' 2"	4:00	15' 9 7/8"	4:15	16' 8 1/4"	4:30	8' 6"
25.5	41' 11"	5:00	15' 10"	5:15	16' 8 3/4"	5:30	8' 6 1/4"
25.5	42' 6"	6:00	15' 10 1/4"	6:15	16' 9 1/4"	6:30	8' 6 1/2"
25.5	42' 8"	7:00	15' 10 1/4"	7:15	16' 9 1/4"	7:30	8' 6 3/4"
25.5	42' 11"	8:00	15' 10 3/8"	8:15	16' 9 1/2"	8:30	8' 7 1/8"
STOPPED PUMPING		7:50					

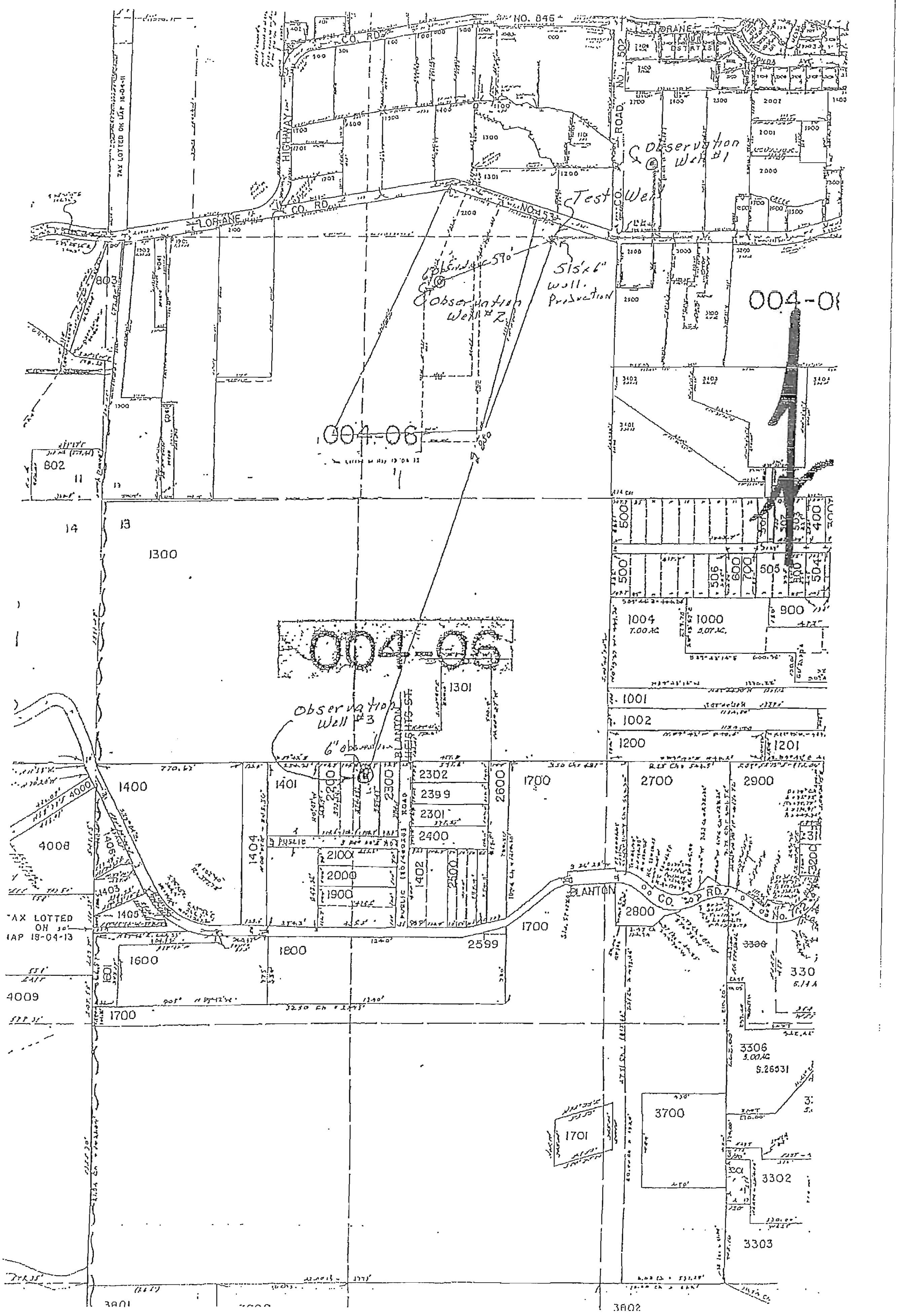
AQUAFIR TEST

BOB SUESS - WESTFAIR ASSOC.

Recovery Test.

START DATE Jan. '25

	PUMPED WELL		OBSERVATION WELL #1		OBSERVATION WELL #2		OBSERVATION WELL #3	
E	G.P.M.	FT.- H_2O	TIME	FEET TO H_2O	TIME	FEET TO H_2O	TIME	FEET TO H_2O
	A.M.	26 7 1/2	7:40	15 - 10 1/4	7:45	16 9 1/4	7:55	8 - 7 - 1/4
		24 - 6 3/4	8:40	15 : 11 3/4	8:45	16 - 10	8:55	8 - 7 - 3/8
		23 - 3 1/2						
		21 - 5 1/4	9:40	16 . 1 1/4	9:45	16 - 10 3/8	9:55	8 - 7 5/8
		20' - 6 1/4						
		19 - 10 1/2	10:40	16 - 3/8	10:45	16 - 10 1/2	10:55	8 - 8 1/8
		19' 6	11:40	16 - 3/8	11:45	16 - 10 1/2	11:55	8 - 8 1/4
		18' - 0	12:40	16 3/8	12:45	16 - 10 3/8	12:55	8 - 8 1/4
		16 - 5	1:40	16 1/4	1:45	16 - 10 1/4	1:55	8 - 8 .
		15 - 4	2:40	16 - 1/2	2:45	16 - 10 - 1/2	2:55	8 . 8
		15 - 0	3:40	16 . 5/8	3:45	16 . 10 7/8	3:55	8 8 1/8
		14 . 6	4:40	16 - 3/4	4:45	16 . 11 1/8	4:55	8 . 8 1/4
		13 . 8	5:40	16 - 3/4	5:45	16 - 11 1/8	5:55	8 - 8 1/4
		13 2	6:40	16 - 3/4	6:45	16 - 10 . 5/8	6:55	8 - 8 . 1/4
		13 0	7:40	16 . 3/4	7:45	16 - 10 1/2	7:55	8 - 8
		12 - 5	8:40	16 - 5/8	8:45	16 - 10	8:55	8 . 7 3/4
		12 - 1/4	9:40	16 - 1/2	9:45	16 . 9 3/4	9:55	8 . 7 1/2
		11 . 9	10:40	16 - 3/8	10:45	16 . 9 1/2	10:55	8 - 7 1/4
		11 - 0	11:40	16 1/4	11:45	16 . 9 1/4	11:55	8 . 7 1/4
		10 - 8	12:40	16 . 1/8	12:45	16 - 9 1/4	12:55	8 . 7 1/8
		10 - 2	1:40	16 . - 0	1:45	16 - 9	1:55	8 7 - 0
		9 . 11	2:40	15 . 11 3/4	2:45	16 8 3/4	2:55	8 . 6 7/8
		9 - 10	3:40	15 11 5/8	3:45	16 - 8 5/8	3:55	8 - 6 7/8
		9 - 8 1/2	4:40	15 . 11 1/2	4:45	16 8 - 1/2	4:55	8 - 6 3/4
		9 8	5:40	15 - 11 3/8	5:45	16 8 - 3/8	5:55	8 . 6 3/4
		9 . 7	6:40	15 . 11 . 1/4	6:45	16 - 8 - 1/4	7:55	8 . 6 . 3/4
		9 - 6	7:40	15 - 11 - 0	7:45	16 - 8	8:55	8 - 6 . 5/8



NO. 845
LORANE
CO. RD.
HIGHWAY
NO. 502
ROAD
CO.
Observation Well #1
Test Well
515' x 6" well. Production
Observation Well #2
004-06
004-06
004-06
Observation Well #3
BLANTON
HEIGHTS ST.
BLANTON
CO. RD.
No.
TAX LOTTED ON 30' MAP 18-04-13
803
802
14
13
1300
1301
1400
1401
1404
4000
4008
4009
1403
1600
1700
1800
1801
2100
2000
1900
2200
2300
2302
2399
2301
2400
1402
2500
2600
2599
2700
2800
2900
3300
3306
3700
1701
3301
3302
3303
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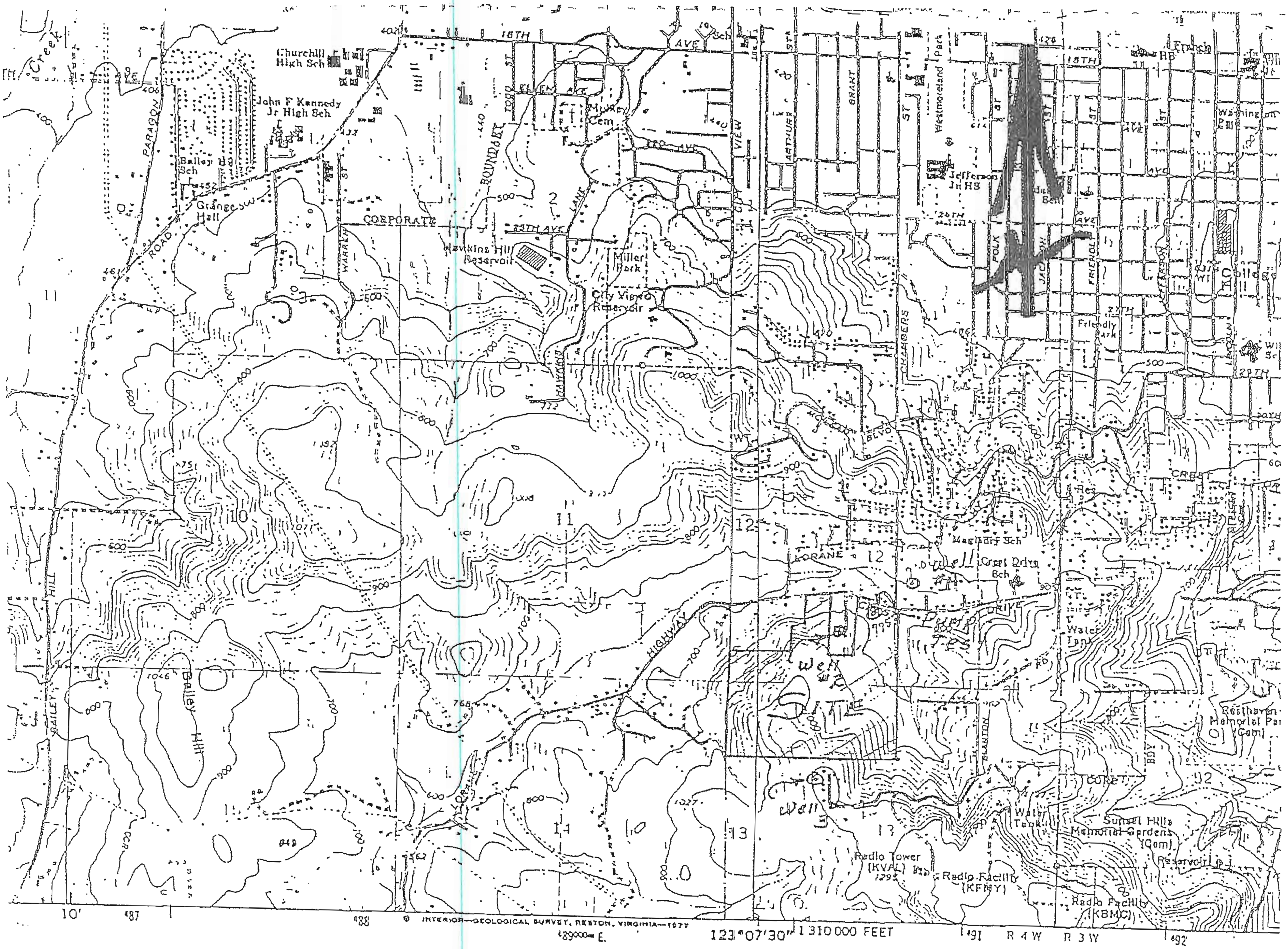
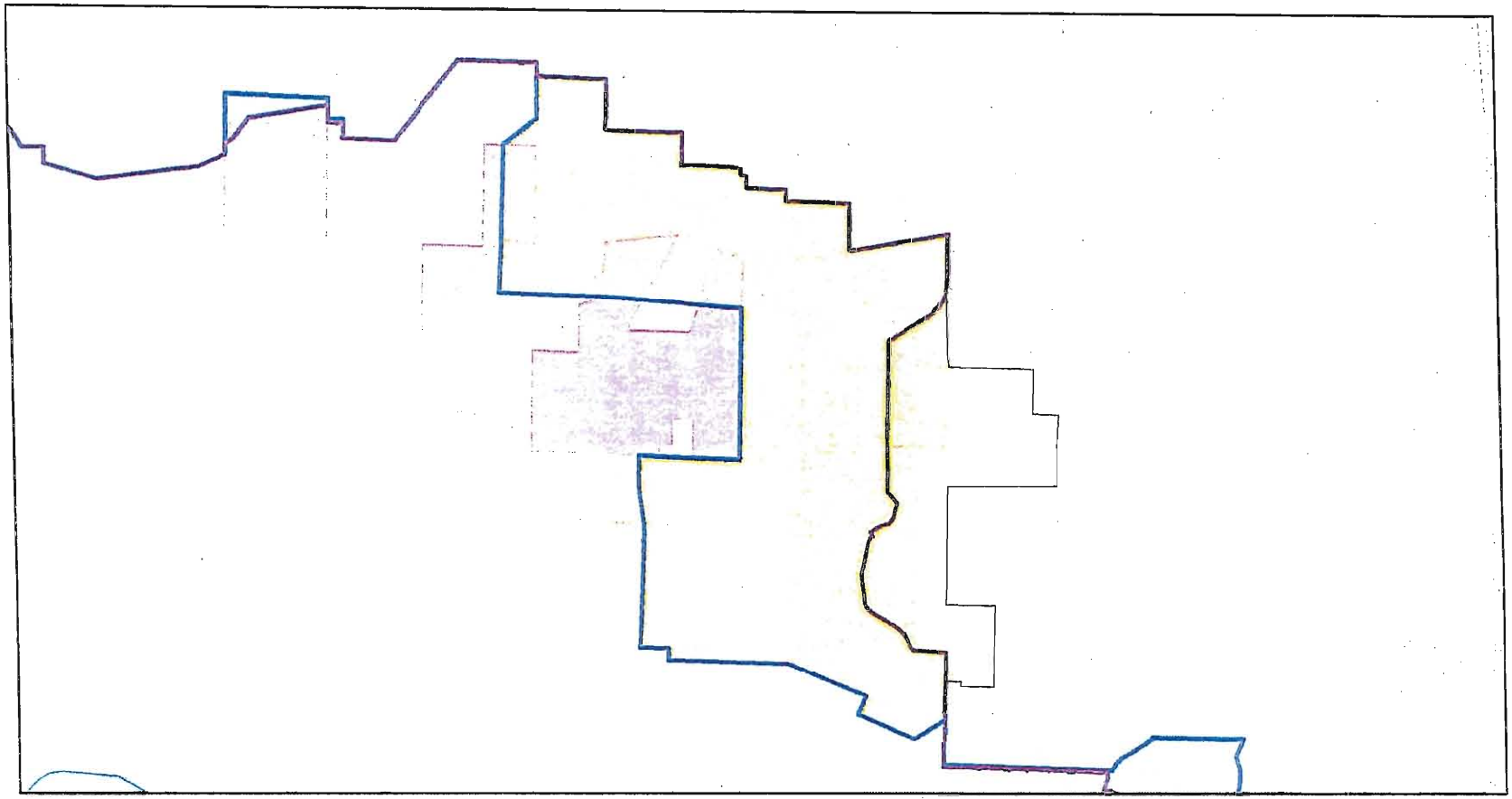
3103


Churchill High Sch
John F Kennedy Jr High Sch
Bailey Hill Sch
Grange Hall
PARAGON
ROAD
18TH
AVE
BOUNDARY
CORPORATE
WARREN
Hawkins Hill Reservoir
Miller Park
City View Reservoir
VIEW
ARTHUR
GRANT
ST
CHAMBERS
Westmoreland Park
Jefferson Jr HS
POLK
JACKSON
FRIENDLY
Friendly Park
JEFFERSON
LINCOLN
McLEAN BLVD
CREST
LORANE
HIGHWAY
Magladry Sch
Crest Drive Sch
DRIVE
Water Tank
BLANTON
Bailey Hill
BAILEY
HILL
Well
Radio Tower (KVAL)
Radio Facility (KFMY)
Radio Facility (KBMC)
Sunset Hills Memorial Gardens (Cem)
Resthaven Memorial Park (Cem)
Reservoir
INTERIOR—GEOLOGICAL SURVEY, RESTON, VIRGINIA—1977
123°07'30"
1 310 000 FEET
489000m E.
R 4 W
R 3 W



N

Developers Proposed Sites

Eugene UGB

EWEB Water Delivery Boundary

City Limits

Eugene

Water Districts

NAME

Hillcrest

The Hillcrest Water District Boundary is for EWEB use only and is not warranted to be accurate for unintended purposes.

Reynolds, Kohnen & Blanton Properties

03/26/2012

EWEB

EXHIBIT E.1

Planning
& Development
Planning

June 25, 1990

City of Eugene
777 Pearl Street
Eugene, Oregon 97401
(503) 687-5481

RECEIVED
JUN 27 1990
SJRJK
ATTORNEYS AT LAW

Mary Scurlock
c/o Johnson & Kloos
767 Willamette Street Suite 203
Eugene, OR 97401

Re: Water Service - 18-04-13 1300

Dear Ms. Scurlock,

This letter is in response to your inquiry regarding extension of Eugene Water and Electric Board (EWEB) water service to tax lot 1300, map 18-04-13. As we discussed, this tax lot is outside the urban growth boundary and the northern portion of the lot is within the boundaries of the dissolved Hillcrest Water District (District). The attached map is a copy from the Lane County Local Government Boundary Commission files and shows the dissolved District in relation to tax lot 1300. Tax lot configurations have changed since this map was created, but the District boundaries remain the same.

In accordance with the agreement between EWEB and the District, water service can be extended to serve existing or new development within the District boundaries as they were at the time of dissolution. No further action is needed by the City or by the Boundary Commission to authorize extension of water to the portion of tax lot 1300 within the District boundaries as shown on the attached map.

The remainder of tax lot 1300, located outside the District boundaries cannot be provided with water service. City Council Resolution #2643 specifies that water service can only be provided to properties outside the urban growth boundary in certain circumstances: 1) to resolve a communicable disease hazard or 2) to service an area located within the boundaries of a dissolved water district.

If you have any questions please contact me at 687-5481.

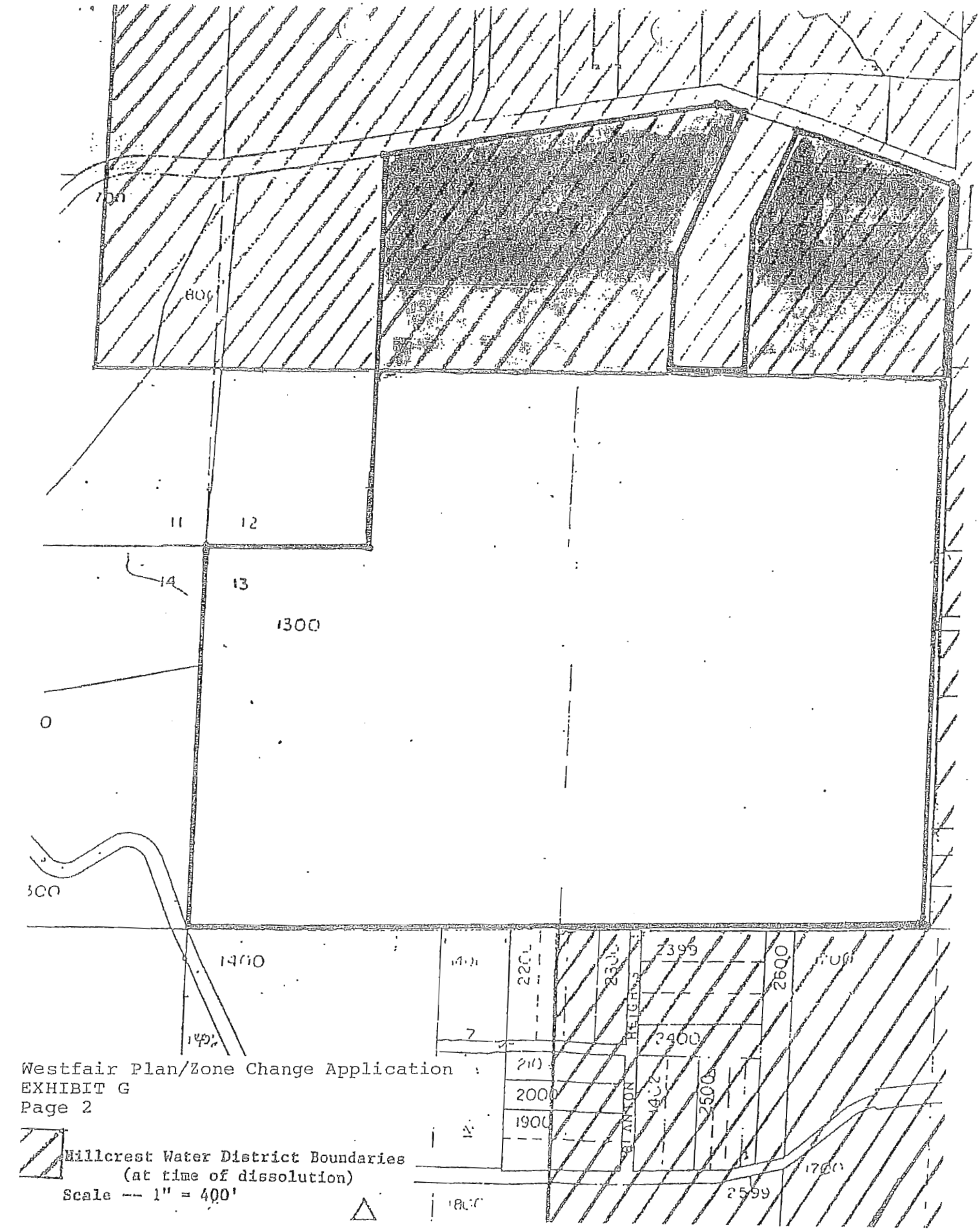
Sincerely,

Catherine J. Czerniak

Catherine J. Czerniak
Planner

cc: Larry Swancutt, EWEB Engineering
Lane County Local Government Boundary Commission

EXHIBIT E.2



Westfair Plan/Zone Change Application
EXHIBIT G
Page 2

Hillcrest Water District Boundaries
(at time of dissolution)
Scale -- 1" = 400'

WESTFAIR ASSOCIATES PARTNERSHIP, and
C. ROBERT SUESS,
Petitioners,

vs.

LANE COUNTY,
Respondent,

and

CREST-BLANTON NEIGHBORS, DUANE FUNK, DAVID FUNK, JAMES HARRANG, NADINE HARRANG, HELEN HOLLYER, PETER VON HIPPEL, and JOSEPHINE VON HIPPEL,
Intervenors-Respondent.

LUBA No. 92-233

Appeal from Lane County.

Michael E. Farthing, Eugene, filed the petition for review and argued on behalf of petitioners. With him on the brief was Gleaves, Swearingen, Larsen, Potter, Scott & Smith.

Stephen L. Vorhes, Assistant County Counsel, Eugene, filed a response brief and argued on behalf of respondent.

Theodore G. Herzog, Portland, filed a response brief and argued on behalf of intervenors-respondent. With him on the brief was Tonkon, Torp, Galen, Marmaduke & Booth.

HOLSTUN, Referee; SHERTON, Chief Referee; KELLINGTON, Referee, participated in the decision.

AFFIRMED 08/16/93

1. **Goal 3 – Agricultural Lands/ Goal 3 Rule – Generally.**

   Goal 4 – Forest Lands/ Goal 4 Rule – Generally.

   Both before and after Statewide Planning Goal 4 was amended in 1990, under Goals 3 and 4 and their implementing rules, land that qualified for protection under both goals could be planned and zoned for either agricultural or forest uses.

EXHIBIT F

2. **Goal 4 – Forest Lands/ Goal 4 Rule – Generally.**

Goal 4 and its implementing rules are minimum standards. To the extent a local government's land use regulations are not inconsistent with the Goal and rule requirements, it may regulate more restrictively than the goal and rules require.

3. **Administrative Law – Interpretation of Law – Effect of Local Government Interpretation.**

Goal 4 – Forest Lands/ Goal 4 Rule – Forest Land Definition.

Comprehensive Plans – Interpretation.

A county may interpret a comprehensive plan provision prohibiting plan map amendments designating "forest lands" for rural development as referring to the definition of "forest lands" contained in Goal 4 when the comprehensive plan provision was adopted. Such an interpretation would not allow development that would otherwise be prohibited by the current version of Goal 4 and, therefore, is not inconsistent with the current version of Goal 4.

4. **Statewide Planning Goals/ LCDC Rules – Compliance With.**

Goal 3 – Agricultural Lands/ Goal 3 Rule – Generally.

Goal 4 – Forest Lands/ Goal 4 Rule – Generally.

Comprehensive Plans – Amendment – Map Amendment: Standards.

Under Goals 3 and 4, designation of property as agricultural on a comprehensive plan map does not carry any inference that the land is not also forest land. Therefore, the principle in *Urquhart v. Lane Council of Governments*, 80 Or App 176, 721 P2d 870 (1986), does not preclude application of Goal 4 to a plan map amendment for such property.

5. **Administrative Law – Adequacy of Findings – Explanation of Rationale.**

Goal 4 – Forest Lands/ Goal 4 Rule – Forest Land Definition.

Comprehensive Plans – Interpretation.

Although a county had in the past applied a predominance test so that a property was not designated forest where less than one half of the property qualified as forest lands, such a test is not required by Goal 4. Findings that explain such a test may result in large parcels containing significant acreage of forest land not being designated for forest use under Goal 4 are adequate to support a decision not to apply the predominance test.

6. **Goal 4 – Forest Lands/ Goal 4 Rule – Generally.**

LUBA Scope of Review – Grounds for Reversal/Remand – Noncompliance with Applicable Law.

Comprehensive Plans – Interpretation.

Use of comprehensive plan forest land division standards as an aid in determining whether a property includes sufficient forest land to be designated in the comprehensive plan for forest uses under Goal 4 is not an improper use of the forest land division standards.

7. **Goal 2 – Land Use Planning – Exceptions/ Exception Rule – Committed.**

Goal 4 – Forest Lands/ Goal 4 Rule – Exceptions to.

Findings which explain that property is not committed to nonresource use, in view of the large undeveloped area of the subject property and the manner in which goal exception standards were construed and applied by LCDC during acknowledgment, are adequate to support a decision denying a request for approval of an irrevocably committed exception to Goal 4.

Opinion by Holstun.

NATURE OF THE DECISION

Petitioners appeal the county's denial of their request that the Lane County Rural Comprehensive Plan (Rural Plan) map designation for a 121-acre parcel be changed from "Agricultural Lands" to "Non-resource" and that the zoning map designation be changed from Exclusive Farm Use (E-40) to Rural Residential (RR-5).

MOTION TO INTERVENE

Crest-Blanton Neighbors, Duane Funk, David Funk, James Harrang, Nadine Harrang, Helen Hollyer, Peter Von Hippel, and Josephine Von Hippel move to invervene on the side of respondents in this appeal. There is no opposition to the motion, and it is allowed.

FACTS

The subject property is located a short distance south of the City of Eugene urban growth boundary (UGB). The property is surrounded by parcels designated Rural Residential. Petitioners asked the county to change the current Rural Plan and zoning map designations to allow development of residences on the property. Petitioners contend the subject property is neither "agricultural land" nor "forest lands," as those terms are defined in Statewide Planning Goals (Goals) 3 (Agricultural Land) and 4 (Forest Lands). For that reason, petitioners argue the property is properly planned and zoned for rural residential use under the Rural Plan. Alternatively, petitioners contend the Rural Plan and zoning map changes are justified because the subject property is irrevocably committed to nonresource use and, therefore, qualifies for an exception to Goals 3 and 4.

The county found the property is forest land and that the property is not irrevocably committed to nonresource uses and, therefore, denied petitioners' request. Petitioners appeal the county's denial of their request, arguing the county misinterpreted the relevant Rural Plan and Statewide Planning Goal requirements and that the county's decision is not supported by adequate findings or substantial evidence. ORS 197.835(7)(a)(C) and (D); OAR 661-10-071(2)(b) and (d).

FIRST ASSIGNMENT OF ERROR

Even though the subject property is presently planned and zoned for agricultural use, there is no dispute that the property is not agricultural land under Goal 3.[1] The parties' dispute in this appeal is limited to whether the subject property qualifies as forest land, subject to protection under Goal 4.

1 Goal 4 was amended by the Land Conservation and Development Commission (LCDC) in 1990. Many of the parties' arguments under the first assignment of error concern whether the pre-amendment or post-amendment versions of Goal 4 and its implementing rules apply to the challenged decision. There are two important points that bear mentioning before we turn to the parties' arguments. First, at all relevant times, both before and after the 1990 Goal 4 amendments, Goals 3 and 4 and their implementing rules allowed property that qualified for protection under *both* of those goals to be planned and zoned for *either* agricultural or forest use. Therefore, the fact that the property was designated "Agricultural Lands" and placed in an exclusive farm use zone does not have any particular bearing on whether the subject property qualifies as "forest lands."

2 Second, regardless of which version of Goal 4 and the Goal 4 implementing rules applies, the goal and rule requirements are *minimum* standards. To the extent a local government does not run afoul of other goal requirements or other applicable legal requirements, a local government may regulate *more* restrictively than the goal requires. *See Von*

[1] Apparently less than 50% of the subject property is made up of SCS Class I-IV soils. Neither party contends the subject property is "agricultural land" as that term is defined in Goal 3.

Lubken v. Hood River County, 104 Or App 683, 687, 803 P2d 750 (1990), *modified* 106 Or App 226, *rev den* 311 Or 349 (1991) (counties may regulate nonfarm uses more restrictively than required by exclusive farm use zoning statutes); *Kola Tepee, Inc. v. Marion County*, 99 Or App 481, 483-84, 782 P2d 955 (1989), *rev den* 309 Or 441 (1990).

Rural Plan Goal 2, Policy 16 provides, in pertinent part, as follows:

> "Where lands are not farm or forest lands, they may be designated on the plan diagram as rural residential or as parks and recreation, provided:
>
> "a. Detailed and factual documentation has been provided indicating that the subject lands are not farm and forest lands as defined by Statewide Planning Goals #3 and #4.
>
> "* * * * * *"

The parties' dispute focuses on the meaning of "forest lands as defined by [Goal 4]," as those words are used in the above quoted Rural Plan policy and on the definition of "forest lands" in current Goal 4. The county determined that the term "forest lands" in the Rural Plan policy carries the definition of that term contained in Goal 4 at the time the Rural Plan policy was adopted in 1984.[2] The county applied that definition to the subject property, and found that the property is suitable for commercial forest use. Consequently, the county concluded the subject property is "forest lands as defined by [Goal 4]" and, therefore, cannot be designated for rural residential development under the Rural Plan policy.

The county also adopted the following findings:

[2] In 1984, Goal 4 defined "forest lands" as follows:

> "Forest lands are (1) lands composed of existing and potential forest *lands which are suitable for commercial forest uses*; (2) other forested lands needed for watershed protection, wildlife and fisheries habitat and recreation; (3) lands where extreme conditions of climate, soil and topography require the maintenance of vegetative cover irrespective of use; (4) other forested lands in urban and agricultural areas which provide urban buffers, wind breaks, wildlife and fisheries habitat, livestock habitat, scenic corridors and recreational use." (Emphasis added.)

"[T]his application must be judged for compliance with the current Statewide [Planning] Goals. In that context, the Board [of Commissioners] concludes that it has the authority to apply, to this decision, a criteria [sic] which may exceed the definition of forest land which the applicant argues is embodied in the new Goal 4 language. In other words, Lane County may treat as 'forest lands' property, such as the subject property, which is not currently designated as forest land in the [Rural Plan]. This belief is grounded in part in the authority provided to Counties under OAR 660-06-010 to protect lands of dual capability (*i.e.* farm and forest) by designation in the [Rural Plan] as either agricultural or forest lands." Record 21.

We understand the above findings to take the position that although the county may not be *required* to consider the subject property as "forest lands" under current Goal 4 requirements for making a decision on the proposed plan amendment, the county may nevertheless *elect* to do so without violating any requirement of Goal 4, as it is currently written. The county defends its ability to consider the forest potential of the subject property by referring to the way lands with both agricultural and forest potential may be planned and zoned under current and past versions of Goals 3 and 4 and their implementing rules.

Petitioners contend the Rural Plan policy is properly interpreted as incorporating the *current* definition of "forest lands" adopted in 1990, several months before the application leading to the challenged decision was submitted to the county.[3] Under that definition, petitioners argue the subject property is not forest lands. Petitioners contend the county misconstrued the applicable law in applying the prior definition of forest lands and in denying the requested Rural Plan and zoning map amendments on the basis that the subject property qualifies as forest lands under that prior definition.[4]

[3] Goal 4, as amended in 1990, defines forest lands as follows:

"Forest lands are those lands acknowledged as forest lands as of the date of this [1990] goal amendment. Where a plan is not acknowledged or a plan amendment involving forest lands is proposed, forest land shall include *lands which are suitable for commercial forest uses* including adjacent or nearby lands which are necessary to permit forest operations or practices and other forested lands that maintain soil, air, water and fish and wildlife resources." (Emphasis added.)

Intervenors-respondent argue that even if the Rural Plan policy incorporates the 1990 Goal 4 definition, the 1990 definition does not limit forest lands to "those lands acknowledged as forest lands as of the date of this [1990] goal amendment" in circumstances where there is a post-acknowledgment plan amendment. According to intervenors-respondent, when a proposed plan amendment involves forest lands, the determination of whether the affected property is forest lands is governed by the second sentence of the current Goal 4 definition of forest lands, quoted above. Since that part of the current definition, like the old definition, includes lands suitable for commercial forest uses, and the county found the subject property is suitable for commercial forest uses, intervenors-respondent contend the county correctly determined the property is subject to protection under Goal 4.

As the county correctly notes in its decision, the challenged decision concerns an amendment to an acknowledged comprehensive plan. Post-acknowledgment plan amendments must comply with the Statewide Planning Goals. ORS 197.175(2)(a); 197.835(4); *1000 Friends of Oregon v. Jackson County*, 79 Or App 93, 718 P2d 753 (1986). Under the interpretation of current Goal 4 suggested by petitioners, the county *could* rely on the first sentence of the current definition of forest lands in Goal 4 and determine the subject property is not "forest lands" because it is not designated as forest land in the acknowledged Rural Plan. Under this interpretation, the county would not consider whether the subject property is suitable for commercial forest use. However, if the interpretation suggested by intervenors-respondent is correct, under the second sentence of the current definition of "forest lands" in Goal 4, in adopting a post-acknowledgment plan amendment the county must determine the subject property is forest land subject to Goal 4 protection, if the subject property is suitable for commercial forest use.

There is considerable question about whether petitioners or intervenors-respondent correctly interpret the cur-

[4] Petitioners' argument that the subject property is not "forest lands" under the current definition of that term in Goal 4 is based almost entirely on the first sentence of the current definition of "forest lands." Because the subject property was designated as *agricultural* rather than *forest* land in the acknowledged Rural Plan when the 1990 Goal 4 amendments were adopted, petitioners contend that ends the inquiry as to whether the subject property is forest lands.

rent Goal 4 definition of "forest lands." However, we need not reach the interpretive issue because we agree with respondent that the county acted within its interpretive discretion in interpreting its Rural Plan policy as incorporating Goal 4 as it existed when the Rural Plan policy was adopted, prior to the 1990 Goal 4 amendments. *Clark v. Jackson County*, 313 Or 508, 515, 836 P2d 710 (1992) ("LUBA is to affirm the county's interpretation of its own ordinance unless LUBA determines that the county's interpretation is inconsistent with express language of the ordinance or its apparent purpose or policy"); *see Goose Hollow Foothills League v. City of Portland*, 117 Or App 211, 843 P2d 992 (1992); *West v. Clackamas County*, 116 Or App 89, 840 P2d 1354 (1992); *Cope v. City of Cannon Beach*, 115 Or App 11, 836 P2d 775 (1992), *aff'd* 317 Or 339 (1993).

3 Construing the Rural Plan policy as referring to the prior version of Goal 4 does not allow development of forest lands that would otherwise be prohibited by the current Goal 4 (under either petitioners' or intervenors' suggested interpretation of the goal) and, therefore, is not inconsistent with current Goal 4. Under the Rural Plan policy and the prior Goal 4 definition of "forest lands," the county properly considered whether the property is suitable for commercial forest use and determined that land which is suitable for commercial forest use cannot be designated on the plan diagram for rural residential development.

One additional point merits comment. Citing *Urquhart v. Lane Council of Governments*, 80 Or App 176, 721 P2d 870 (1986), petitioners suggest the county is bound by the current Agricultural Lands designation for the subject property and may not consider whether the subject property should be protected under Goal 4 in this post-acknowledgment plan amendment proceeding. The reasoning that led the court of appeals to conclude that the post-acknowledgment plan amendment challenged in *Urquhart* need not consider compliance with Goal 5 (Open Spaces, Scenic and Historic Areas, and Natural Resources) does not, in our view, apply with regard to compliance with Goal 4 in the context presented in this case.

Urquhart expresses a limitation or refinement of the requirement that a local government demonstrate a proposed post-acknowledgment plan amendment complies with all applicable statewide planning goals. *See 1000 Friends of Oregon v. Jackson County*, *supra*. In *Urquhart*, the court explained that when approving a post-acknowledgment plan amendment, a local government need not consider whether the affected property should be added to the comprehensive plan Goal 5 resource inventory and protected, where the property was not included on the acknowledged plan's Goal 5 inventory. The court explained as follows:

> "[T]he issue in this case differs from the one in [*1000 Friends of Oregon v. Jackson County*, *supra*]. Here, the affected area was excluded from the inventory before the amendment was enacted, and the amendment does not affect the inventory. Indeed, the converse seems to be true, *i.e.*, the absence of the area from the inventory is what makes it possible for the new designation to be attached to the area without a Goal 5 resolution of the conflict between the area's open space use and University/Research use called for by the amendment. * * *." *Urquhart*, *supra*, 80 Or App at 180.

The court went on to explain that if the site mistakenly had been omitted from the acknowledged Goal 5 inventory, periodic review under ORS 197.640 to 197.647, rather than the post-acknowledgment plan amendment challenged in that appeal, was the appropriate vehicle for correcting that mistake.

4 Petitioners attempt to analogize the county's failure to designate the subject property as forest lands under Goal 4 to the absence of the property in *Urquhart* from the inventory of Goal 5 resource sites. The analogy fails because in *Urquhart* there was reason to assume the property was consciously omitted from the Goal 5 inventory before the plan was acknowledged and, therefore, that the property did not qualify for protection or conservation under Goal 5.[5] On the other hand, here there is no reason to assume the subject property's current "Agricultural Land" designation in the Rural Plan means the property is not forest lands subject to protection under Goal 4. As we have already noted, applicable

[5] Property may be omitted from a Goal 5 inventory because it is not land subject to Goal 5 or because the local government determined that there was not enough information concerning the site to warrant including the site on the Goal 5 inventory. OAR 660-16-000(5)(a). In either event, the local government would not be required to apply the Goal 5 process to properties omitted from the Goal 5 inventory or to conserve or protect such omitted properties.

LCDC administrative rules at all relevant times allowed the county to select a forest or an agricultural plan and zoning designation for lands that qualify as both agricultural and forest lands.[6] The fact that the subject property is designated "Agricultural Lands" in the acknowledged Rural Plan tells us nothing about whether the subject property is forest lands. Therefore, there is nothing in the court's reasoning in *Urquhart* that would preclude the county from applying Goal 4 to the subject plan amendment because of the subject property's "Agricultural Lands" plan designation.

The county found that the subject property is suitable for commercial forest uses. Assuming that finding is supported by substantial evidence, the county's decision that the subject property should not be replanned and rezoned for rural residential use without an exception to Goal 4 is not subject to reversal or remand.[7]

The first assignment of error is denied.

SECOND ASSIGNMENT OF ERROR

The county's findings acknowledge evidence submitted by the applicant in support of its position that the subject property does not qualify as forest lands. That evidence includes 1979 and 1983 reports prepared by J.Q. Tomkins, an engineering geologist, in which he "indicated that the property contained 48 acres of forest land of which 10 acres was called 'prime capacity' and 38 acres were called 'limited capacity.' " Record 22. A second document referred to in the findings as the "Wolf report" concluded that 46% of the subject property

[6] OAR 660-06-010 currently provides as follows:

"* * * Lands inventoried as Goal 3 agricultural lands * * * are not required to be inventoried under OAR 660-06-010. * * * "

OAR 660-06-015(2) currently provides as follows:

"When lands satisfy the definition requirements of both agricultural land and forest land, an exception is not required to show why one resource designation is chosen over another. The plan need only document the factors that were used to select an agricultural, forest, agricultural/forest, or other appropriate designation."

[7] We consider whether the finding is supported by substantial evidence under the second assignment of error below.

(55.66 acres) is capable of producing 115 cubic feet per acre per year.[8] *Id.*

The findings acknowledge that in the past the county has applied a "predominance test," under which properties which do not contain at least 50% forest lands were not inventoried as forest lands or planned and zoned in accordance with Goal 4. However, the findings go on to point out the applicants sold timber on the subject property in 1989 and that opponents of the proposal submitted evidence that the pre-1989 harvest volume on the subject property was between 800 and 1200 million board feet (MBF). The findings note that one of the opponents' experts estimated the pre-1989 harvest volume at approximately 1,166 MBF with a gross income of $513,040 and a net value of $338,140.[9] Record 240.

From the evidence in the record, the board of commissioners adopted the following findings explaining its conclusion that the subject property constitutes forest lands:

> "The Board [of Commissioners] first takes notice of the table of minimum acreage sizes for land divisions at [Lane Code (L.C.)] 16.221(3)(c)(iii) cited in the staff report of March 25, 1991 to the Planning Commission. Although this case does not present a land division issue, the table is useful for another purpose. Specifically, those acreages were adopted to represent the minimum commercially feasible acreage for forest operation on soils of different productivity ratings. Those acreage minimums are based on a memorandum from the Oregon [D]epartment of [F]orestry and were adopted as part of the legislative findings upon which plan acknowledgment was based.
>
> "Using that table, a parcel with a rating of 115 ft.^{3}/acre/year would need only 34 acres to qualify as a commercially feasible forest unit. The 46 percent of the property (55.66 acres) stated

[8] The report also states that part of the property is unusable for forest production because of a trail easement and scenic buffers and fire breaks. The report further discusses limitations on common forest management practices due to proximity of residential uses and concludes that the property is not suitable for commercial forest use. Record 898.

[9] The expert estimated that 80 of the 121 acres making up the subject property were forest land and stated the property could be used as forest land. Record 45, 240. A second expert testified on behalf of opponents that prior to harvest in 1989 "about 76 acres was covered by a well stocked stand of conifers." Record 239.

> by the applicant's forester to be rated at 115 ft.^{3}/acre/year are above the minimum to be considered commercially viable. * * *
>
> "The record also shows that approximately 60 percent of the property may not be commercially viable for forestry. * * * Whether or not the county is entitled to use the predominance test, the Board [of Commissioners] is skeptical of the test's logic. It could mean, for example, that a 200 acre parcel could be designated as non-forest even though 99 acres contained the finest forest lands in the region. To adopt such a test would create a significant inconsistency with Lane County's existing acknowledged comprehensive plan and implementing regulations. The Board [of Commissioners], therefore, declines to apply the predominance test to the facts of this case.
>
> "* * * * *." Record 23-24.

The board of commissioners then concluded that the subject property is properly viewed as forest land and should retain its resource designation.[10]

Petitioners contend the above findings demonstrate the county arbitrarily refused to apply the "predominance test" and improperly applied inapplicable land division standards. Petitioners further argue the evidence in the record does not support the county's ultimate conclusion that the subject property may properly be viewed as forest land.

A. Predominance Test

In preparing and adopting the Rural Plan in 1984, the county developed working papers to assist in applying the Statewide Planning Goals, including Goal 4. In the case of Goal 4, standards and factors were developed to identify and designate property as forest land. Petitioners argue the Forest Lands Working Paper "defined forest land as sites capable of producing greater that 50 cubic feet of timber per [acre per] year." Petition for Review 20. Petitioners contend that when the property is viewed as a whole, its productivity does not satisfy this 50 cubic foot standard. *Id.* Moreover, petitioners

[10] The county actually concluded that the property "should retain its designation as Forest Land on the [Rural] Plan Diagram." As petitioners correctly note, the current Rural Plan Diagram designation for the subject property is "Agricultural Lands." We understand the county to have concluded that in view of the subject property's potential for forest use, changing the Rural Plan Designation to allow rural residential use would be inappropriate and a resource designation should be retained. The mistaken reference to "Forest Land" is harmless.

contend the county has in the past applied a "predominance test" so that properties such as the subject property that are not predominantly composed of soils with the requisite timber producing capability were not designated forest lands.

Petitioners criticize the county's example of how applying the predominance test could result in designating a 200-acre property with 99 acres of prime forest land as not being forest land. Petitioners provide their own example of how *not* applying the predominance test and relying literally on the county's land division standards could result in a 1000-acre parcel with only 34 acres of forest land being inventoried as forest lands.

5 The difficulty with petitioners' arguments is that the county did explain in the above quoted findings its reasons for not applying the predominance test and its reasons for concluding the property should be considered forest lands despite the limited timber producing capability of much of the property. We do not understand petitioners to argue that Goal 4 requires the county to apply the predominance test. To the extent the county was required to explain its decision not to apply the predominance test in this case, we believe it adequately did so.

This subassignment of error is denied.

B. Land Division Standards

6 As we read the county's decision, it simply used the cited land division standards as an aid in determining whether this parcel contains enough suitable forest land to warrant planning and zoning the entire parcel for forest uses, even though more than one-half of the parcel has limited potential for commercial forest use. We do not read the county's decision as improperly relying on the land division standards for a purpose they were not intended to serve. The findings simply explain that even if the applicants' expert's estimates of the amount of land suitable for forest uses is correct, the area that concededly is suitable for commercial forest uses is significant and would qualify as a commercially viable parcel if viewed in isolation in the context of a land division request. We see no error.

This subassignment of error is denied.

C. Substantial Evidence

Substantial evidence is evidence a reasonable person would accept as adequate to support a decision. *City of Portland v. Bureau of Labor and Ind.*, 298 Or 104, 119, 690 P2d 475 (1984); *Bay v. State Board of Education*, 233 Or 601, 605, 378 P2d 558 (1963); *Van Gordon v. Oregon State Board of Dental Examiners*, 63 Or App 561, 567, 666 P2d 276 (1983); *Braidwood v. City of Portland*, 24 Or App 477, 480, 546 P2d 777 (1976); *Carsey v. Deschutes County*, 21 Or LUBA 118, 123, *aff'd* 108 Or App 339 (1991); *Douglas v. Multnomah County*, 18 Or LUBA 607, 617 (1990).The board of county commissioners relied on evidence supplied both by the applicants and by the opponents in concluding that the subject property has sufficient value for commercial forest use to constitute forest land subject to protection under Goal 4. We agree with respondent and intervenors-respondent that the evidence the county relied upon is sufficient to constitute substantial evidence to support that conclusion. Although the evidence shows the subject property has physical characteristics that significantly limit its value for forest uses and is in close proximity to urban and rural residential uses which further limit its suitability for commercial forest use, we cannot say a reasonable person could not determine that the subject property is properly viewed as forest lands subject to protection under Goal 4.

THIRD ASSIGNMENT OF ERROR

Under this assignment of error, petitioners contend the county erroneously rejected their argument that because the subject property is committed to nonresource uses an exception to Goal 4 should be allowed under ORS 197.732(1)(b) and OAR 660-04-028. In rejecting petitioners' arguments, the county adopted the following findings:

> "The applicant submitted uncontradicted evidence that the subject parcel is surrounded, except for a 500 foot length on the southern border, by land acknowledged by LCDC to be developed or committed to non-resource use and zoned for rural residential uses. [There also is evidence] concerning EWEB water service available to the northern 20 to 30 percent of the property.

> "Both sides agreed that the subject parcel consists of 121 acres in a single ownership, is free of any improvements and is not the site of any land division or conditional use permit approvals.
>
> "The record also contains the written testimony of Harvey Hoglund, Associate Planner, who was responsible for staff work on more than 700 'developed and committed' exception area requests submitted by Lane County to the LCDC between 1989 and 1990. Mr. Hoglund's testimony was that few parcels larger than 20 acres were approved by LCDC under the factors to be considered for an exception as found at OAR 660-04-028(6).
>
> " * * * Based on Mr. Hoglund's testimony, the facts noted above, including the testimony of foresters Wolf and Sahonchik[,] and the Board's own notice of recent exception area experience, the Board [of Commissioners] concludes that the requirements for a 'committed' exception to Goal 4 have not been met." Record 26.

Petitioners argue the above findings show the county's denial of this request for approval of an exception to Goal 4 was based on the county's concern about what LCDC might do, rather than on the applicable criteria. We do not agree.

7 While the findings quoted above do not specifically address each of the criteria for exceptions for "Land Irrevocably Committed to Other Uses" stated in OAR 660-04-028(6), some of the factors that rule requires to be addressed are addressed in the findings. The findings do briefly note existing adjacent committed uses and discuss parcel size, both of which are factors to be considered under OAR 660-04-028(6).[11] Unlike petitioners, we do not read the above quoted findings as improperly "adopting a 20 acre rule" or rejecting the requested exception out of "[f]ear of what LCDC might do * * *." Petition for Review 24. Rather, we read the above findings as expressing the position that in view of the large undeveloped area of the subject property and the manner in which the exception

[11] OAR 660-04-028(6)(a) requires consideration of "[e]xisting adjacent uses." OAR 660-04-028(6)(c) requires consideration of parcel size, and subsection (B) of that section provides as follows:

> " * * * The mere fact that small parcels exist does not in itself constitute irrevocable commitment. Small parcels in separate ownerships are more likely to be irrevocably committed if the parcels are developed, clustered in a large group or clustered around a road designed to serve these parcels. * * * "

standards were construed and applied by LCDC in acknowledging Lane County's Rural Plan, the subject property is not committed to nonresource use.

While the county's findings might have been more detailed, they adequately express reasons why the county believes the applicants failed to demonstrate the subject property is irrevocably committed to nonforest uses. Small parcel size is frequently a basis for requesting an exception and is explicitly recognized in OAR 660-04-028(6) as a factor that may provide support for an exception. The county's denial of the requested exception was based in significant part on the relatively large size and undeveloped nature of the subject property.

With regard to petitioners' arguments concerning the alleged 20-acre rule, we read the county's findings as simply recognizing the view that the court of appeals has taken of irrevocably committed exceptions for some time, *i.e.* that "an exception must be just that — exceptional." *1000 Friends of Oregon v. LCDC (Jefferson County)*, 69 Or App 717, 731, 688 P2d 103 (1984). The county concluded that the applicants had not carried their burden in this case, and we see no error.

This subassignment of error is denied.

The third assignment of error is denied.

The county's decision is affirmed.

WESTFAIR ASSOCIATES

AGRICULTURAL CAPABILITY ANALYSIS

Prepared for:

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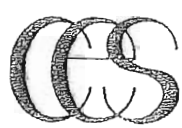

WESTFAIR ASSOCIATES

AGRICULTURAL CAPABILITY ANALYSIS

T18S, R4W
Sec. 12, Tax Lot 1300
Sec. 13, Tax Lot 1300

Prepared by:

Terrance M. Rahe, CPSS
Principal Soil Scientist

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April 1, 1991

Mr. Al Johnson
767 Willamette
Suite 203
Eugene, Oregon 97401

Dear Al,

Enclosed is our completed report on the Westfair property. This report and the attached maps constitute our final product. Original copies of the maps can be made available to you on request.

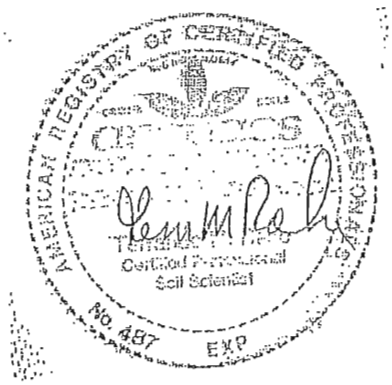
Thank you very much for this opportunity to provide you with services. Please feel free to contact me if you need any additional detail.

Sincerely,

CASCADE EARTH SCIENCES, LTD.

Terrance M. Rahe
Principal

TMR;vs,kjh
Enc.
cc: Al Johnson (1)
file (1)
PN 913006



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EXECUTIVE SUMMARY

Cascade Earth Sciences, Ltd. conducted on-site soil mapping of the Westfair Property located at T18S, R4W, Section 12, Tax Lot 1300 and Section 13, Tax Lot 1300. Twenty-one (21) locations on the property were characterized for soil depth, slope, soil textures and other characteristics which allowed the determination of soil type. Stereo air photos were then utilized to interpret this information and allow mapping of the individual soil series contained in the Dixonville, Philomath Hazelaire Complex. A map was prepared at a scale of 1" = 400'.

Both the original USDA-SCS mapping and the higher intensity map prepared in this study indicate that this site does not possess predominantly class I through IV soils. Detailed analysis of the site's characteristics failed to indicate sufficient justification for retaining the parcel as "other lands necessary to agriculture". The site can not be considered for inclusion in the agricultural resource base on the premise that it is necessary to support adjacent or nearby farm practices since there are no such agricultural practices.

Based upon the findings of this report, it is reasonable to conclude that the Westfair property is not agricultural land as defined by Goal 3 of the Oregon Land Use Regulations and OAR 660-05-005 and therefore need not be preserved for farm use.

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APPENDICES

1.0 INTRODUCTION AND SCOPE

Cascade Earth Sciences, Ltd. (CES) was retained to create a site specific, high intensity soil map of property identified as Tax Lot 1300 on Lane County Tax Assessors map 18-04-13 and Tax Lot 1300 on Assessors map 18-04-12. The Scope of Services included a determination of the percentage of soils in Land Capability Class (LCC) I through IV and LCC VI. The subject property and the surrounding area are shown in Map A.

2.0 EXISTING BACKGROUND INFORMATION

Existing data pertaining to geology, soils and hydrology of this site have been reviewed. Each of these characteristics plays a key role in the suitability of this site for agricultural utilization. This section outlines the existing data which was relied upon in the evaluation of this site.

2.1 Geology

The geology of this site is described in some detail by J.Q. Tomkins, Engineering Geologist in a report on this property. The report is enclosed as Appendix A. Mr. Tomkins indicates that the bedrock is basalt over the entire site and that the residuum which developed above the bedrock is predominantly silts and clays. The general description of this area contained in the Soil Survey of Lane County Area, Oregon, (USDA/SCS, issued September 1987) substantiates Mr. Tomkins general findings.

2.2 Soils

Soil types have been previously mapped and are included within the Soil Survey of Lane County Area, Oregon, 1987. This document maps the majority of this site as Dixonville - Philomath - Hazelair Complex with slopes ranging from 3% to 35% (see Map B). A Complex is created when a number of different soils are so distributed within a mapping area that they can not be separated at the scale used in creating the maps. Review of the soil series descriptions in the published survey and the soil interpretation records (Appendix B) provided basic information used in creating the detailed soil map described in this report (Map C). Methods used in delineation of the soil types are explained in Section 3.2 of this report.

2.3 Hydrology

The hydrology of a site describes its reaction to incident precipitation. The hydrology of a site determines how much of the rainfall is runoff, how much infiltrates into the soil and how much remains available during the dry season to recharge streams and support plant growth.

The soils on this site are described as being relatively shallow, with basalt at depths ranging from the surface to six feet. Rainfall which is stored on this site is largely restricted to the soil rather than the underlying rock layers. The amount of soil moisture which can be stored in these soils is severely limited by soil depth.

The texture of a soil also serves to increase or decrease the moisture holding capacity of a site. Coarse textured soils, such as gravel, hold very little water. Very fine textured soils, such as clays, may hold the water so tightly that plants can not effectively extract it for respiration. Medium textured soils, such as loams and silt loams, offer the greatest available water holding capacity.

Deep, medium textured soils have the greatest available water holding capacity. This site is not described as having either medium textures or deep soil profiles. Table 1 lists the physical properties of the major soils found in the study area.

TABLE 1. Physical Properties of Soils

Soil Name and Map Symbol	Depth	Permeability	Available Water Capacity in In/In
Dixonville silty clay loam 41C, 41E, 41F	0 - 14	0.6 - 2.0	0.18 - 0.21
	14 - 26	.06 - 0.2	0.12 - 0.17
	26+	---	---
Hazelair silty clay loam 52B, 52D	0 - 11	0.6 - 2.0	0.16 - 0.18
	11 - 15	0.2 - 0.6	0.13 - 0.19
	15 - 36	<.06	0.09 - 0.12
	36+	---	---
Philomath silty clay 107C	0 - 6	0.6 - 2.0	0.18 - 0.21
	6 - 14	.06 - 0.2	0.14 - 0.16
	14+	---	---
Philomath cobbly silty clay 108C, 108F	0 - 6	0.6 - 2.0	0.14 - 0.17
	6 - 14	.06 - 0.2	0.14 - 0.16
	14+	---	---
Panther silty clay loam 102C	0 - 10	0.2 - 0.6	0.19 - 0.21
	10 - 42	<.06	0.13 - 0.16
	42+	---	---

Source: Table 13, Soil Survey of Lane County Area Oregon USDA-SCS 1987

Trees and crops are limited by the amount of moisture that can be stored in the soil profile. All of these profiles are either physically, or effectively shallow. For example, Dixonville can only store water in the 26 inches of the soil profile. Under ideal conditions, this profile could store 5 inches of available water or less than 13 percent of the annual precipitation reported for Eugene. The balance of the rainfall will leave the site as either surface or subsurface runoff. Panther soils are only capable of storing about 2 inches of available water or less than 5 percent of the annual precipitation.

The published hydrological data describes a site with a high potential for saturated soil profiles, high runoff rates and droughty crop conditions. These limitations can be expected to contribute to low natural productivity.

3.0 HIGH INTENSITY MAPPING OF THIS SITE

3.1 Purpose

The majority of this site is characterized in the published literature as a Complex (Map B). Additional mapping efforts were conducted on February 4 and 17, 1991. Twenty-one (21) observation points were evaluated to determine soil texture, color, depth and slope. These sites are shown on Map C. The objective of this mapping was to delineate the extent of each soil serie in the complex discussed above.

3.2 Methods

A Mylar and stereo pairs (1989 of aerial photographs) were secured from Western Aerial Cartography (WAC), 520 Conger Street, Eugene, Oregon. All test sites were field located on the base map. Auger holes were prepared using a hand operated Oakfield core sampler. Profile depths were determined by auger rejection and saprolite return. Colors were determined using a Munsel Color Book. Textures were estimated in the field.

The field data was then transferred to a master copy. Contours were established through interpretation of the stereo pairs. Acreage was computed through the use of a Los Angeles Scientific Instrument Co., Inc., model L10 (Serial #75966) compensating polar planimeter. The results were tabulated and are shown in Table 2 and discussed in Section 4.0.

4.0 LAND USE INTERPRETATIONS

Any determination of this sites suitability for agricultural use as defined by Goal 3 and OAR 660-05-005 must address three primary areas:

1. Do the soils have limitations described for Land Capability Classes (LCC) I through IV (as defined by the USDA/SCS in Western Oregon)?

2. Are these other lands of different classes which are suitable for farm use as defined in ORS 215.203 (2)(a), taking into consideration soil fertility; suitability for grazing; climatic conditions; existing and future availability of water for farm irrigation purposes; existing land use patterns; technological and energy inputs required; and accepted farm practices?

3. Are these lands necessary to facilitate farm practices on adjacent or nearby agricultural lands?

Each of these topics is addressed in the following sections.

4.1 Determination of Predominant Capability Class

The customary standard used in this test is whether or not the site predominantly (50%) consists of soils with capability classes of I through IV. A considerable amount of acreage (34,000+ acres) was mapped in Lane County as Dixonville - Philomath - Hazelair Complex. These complexes consist of a mix of defined soils which can not be mapped at the scale used in the soil survey. The end result is a two part test which can be applied to this area.

Part 1

Is the site mapped in the appropriate survey as having predominantly capability class I - IV soils?

Part 2

When the Complex is mapped at higher intensity, does the site then consist predominantly of class I through IV soils?

Part 1 - Test

Review of Map B clearly demonstrates that this property is predominantly class VI soils. The entire site consists of Dixonville - Philomath - Hazelair Complex (43), Panther (102) and Philomath (107) soils. All soils are listed in the Soil Survey of Lane County Area, Oregon as having a capability class of VI. This finding indicates that the site does not consist predominantly of soils with capability class I through IV and would not be suitable for agricultural use under this test.

Part 2 - Test

The test proposed under this part requires the development of a higher order soil survey than the work contained in the published soil survey for Lane County. The primary difference between the survey presented as Map C and the Lane County survey is scale. All soil profile descriptions, listing of inclusions and other descriptors are as published. Even at a larger scale, the map does not display all the inclusions. Examples of this include rock outcrops along the southern portion of the property and several drainageways along the southeast property line [(Philomath class VI) in an area mapped Dixonville class IV)].

The higher intensity mapping is displayed in Map C. Analysis of the distribution of soils is shown in Table 2. Table 2 indicates that only 45.45% of the soils in the higher intensity mapping had a capability class of I through IV. This finding indicates that the capability classification does not support this site as agricultural land even when the Complex is disassociated into its component parts.

Analysis of the single series soil interpretation record included as Appendix B, will demonstrate that this site will be severely limited by fine textured soils, low available water holding capacity, shallow soil profiles, erosion potential and very steep slopes. Analysis of the capability classes generated by these limitations indicates that this site is not predominantly classes I through IV, as mapped in the published USDA - SCS Soil Survey of Lane County Area, Oregon, nor when mapped at the much larger scale used in this analysis.

TABLE 2. Percentage of Site by Capability Class

Name		Symbol	Capability Class	Class I - IV % of Site	Class VI % of Site
Dixonville silty clay loam	3 - 12%	41C	IIIe	1.93	
Dixonville silty clay loam	12 - 30%	41E	IVe	21.10	
Dixonville silty clay loam	30 - 50%	41F	VIe		13.24
Hazelair silty clay loam	2 - 7%	52B	IIIe	16.21	
Hazelair silty clay loam	7 - 20%	52D	IVe	6.25	
Panther silty clay loam	2 - 12%	102C	VIw		4.88
Philomath silty clay	3 - 12%	107C	VIe		29.92
Philomath cobbly silty clay	3 - 12%	108C	VIe		0.06
Philomath cobbly silty clay	12 - 45%	108F	VIe		6.41
				45.49%	54.51%

4.2 Evaluation of this Site as "Other Lands Suitable for Farming"

Goal 3 envisions situations in which the capability class is not I through IV but the soil resource, geographic setting, adjacent land use or some accepted farm practice is such that the site needs to be protected as a valued contribution to the agricultural resource base.

4.2.1 Fertility

Unique fertility conditions do exist in certain areas of Oregon. Soils with high organic content such as the muck soils in Lake Labish in Marion County is an excellent example. Review of the data contained within the Lane County soil survey does not indicate the existence of unique soils suitable for the growth of special crops.

None of the specific site characteristics reviewed during the on-site investigation indicated the potential for unique fertility conditions which would make this site a valuable agricultural resource. The Oregon State University Extension Service produced Agricultural Productivity Ratings for soils of the Willamette Valley (EC 1105, October, 1982). The scope of this document does not include classification of a site such as this one which is not already cleared and able to be utilized for agricultural. To aid in the assessment of the natural fertility of this property, these numbers are offered none the less.

TABLE 3. Productivity Rating by Soil Type

Soil		Native Productivity	Max Dryland Productivity
Dixonville silty clay loam	3 - 12%	48	59
Dixonville silty clay loam	12 - 30%	39	50
Dixonville silty clay loam	30 - 50%	NR	NR
Hazelair silty clay loam	2 - 7%	18	35
Hazelair silty clay loam	7 - 20%	11	28
Panther silty clay loam	2 - 12%	0	16
Philomath silty clay	3 - 12%	15	23
Philomath cobbly silty clay	3 - 12%	.5	16
Philomath cobbly silty clay	12 - 45%	0	10

NR = Not Rated
Source: EC 1105, October 1982

Productivity ratings are scored on a 0 to 100 scale with 100 being the highest. Actual scores for maximum drylands productivity range from 8 to 80 in the Willamette Valley. Many of the important irrigated agricultural soils score in the 60 to 100 range. Review of Table 2 and 3 indicates that none of the soils on this site has a maximum intensive management (dryland) score of 60 or better. Fourty-one percent of the site has a maximum intensive management score below twenty five. Seventy-seven percent of the site has a native productivity rating of less than 20 points.

The above assessment would suggest an absence of natural soil fertility or other unique factors which could support the maintenance of this site for future contribution to the agricultural resource base of Lane County.

4.2.2 Suitability for Grazing

The suitability of a site for grazing depends not only upon the soil resource but the compatibility of surrounding uses. The suitability of a site could also be higher if it were already improved to facilitate such a use. Sites with gentle slopes and well drained soils are better adapted to grazing activities because such natural conditions help control soil compaction and erosion.

TABLE 4. Grazing Potential

Soil		AUM per acre	% of Site
Dixonville silty clay loam	3 - 12%	6	1.92
Dixonville silty clay loam	12 - 30%	6	21.09
Dixonville silty clay loam	30 - 50%	6	13.23
Hazelair silty clay loam	2 - 7%	6	16.20
Hazelair silty clay loam	7 - 20%	7	6.24
Panther silty clay loam	2 - 12%	5	4.87
Philomath silty clay	3 - 12%	4	29.91
Philomath cobbly silty clay	3 - 12%	4	.06
Philomath cobbly silty clay	12 - 45%	4	6.4

Source: Table 5, Soil Survey, Lane County Area Oregon

Table 4 is based on the yields per acre of crops and pasture as rated in the Lane County soil survey. An AUM is an Animal Unit Month or the amount of forage or feed required by 1 cow or 1 horse for 30 days (5 sheep or goats are equal to 1 cow). Good forage sites will

provide 9 - 12 AUM per acre. Review of Table 4 indicates that 6.24% of the site has a score of 7, 52.44% of the site has a score of 6, 4.87% has a score of 5 and 36.37% of the site has a score of 4.

This analysis fails to demonstrate an exceptional condition which merits special recognition of this site as a grazing resource. When this limited potential is reviewed in light of the short grazing period required to protect the site from compaction and erosion then the site is clearly not unique in its suitability for grazing activities. In addition, the adjacent land uses and the potential for predator problems makes the site unsuited for both sheep and cattle production.

4.2.3 Climatic Conditions

Review of Table 1 of the Lane County soil survey (1951-1977) and the NOAA Climatological Data Annual Summary 1989 (Volume 95, No. 13), does not yield information suggesting that this parcel has any unique climatic conditions which would support its inclusion in the agricultural resource base in spite of its low capability classification.

4.2.4 Availability of Water

A parcel which has not historically been farmed is without justification or need of irrigation facilities. No irrigation facilities were observed during the onsite soil survey, none are evident on the aerial photo (Map A). Low yield irrigation wells could be developed and portions of the site could be placed under irrigation. Only slopes of less than 12% would be suited. Only about half of the property could be reasonably irrigated due to slope limitations. Half of the area that has slopes of less than 12% is at the highest elevation on the property. The property does not lie adjacent to a surface water resource suited to irrigation use.

Limitations are placed on this property by its topography, lack of previous preparation for agricultural use and the absence of any existing irrigation resource. There is an absence of any condition which would justify the maintenance of this site in the agricultural resource base due to the existing or future availability of water for farm irrigation purposes.

4.2.5 Existing Land Use Patterns

Review of Map A and on-site data collection demonstrates clearly that the current land use in the area adjoining this property is not agricultural. Residential development virtually surrounds this property. Residential structures look down on the property from the south. Other residences are located across the valley and view this property from the north. The surrounding land uses suggest a potential conflict for the property with agricultural uses.

4.2.6 Technology and Energy Inputs Required

Review of this parcels history, on-site investigation and evaluation of published data cited above does not suggest that this parcel has any unique technological or energy efficient condition which would justify its conversion to and nor sustain its maintenance in the agricultural resource base.

4.2.7 Accepted Farm Practices

Parcels can be located in such a way that their loss from the agricultural resource base would adversely affect adjacent or nearby agricultural activities in a way that would change accepted farm practices. The absence of adjacent agricultural activities eliminates the potential for change of accepted farm practice on adjacent ownerships.

4.2.8 Summary

The analysis described above suggests an absence of any special conditions which might justify the inclusion of a parcel in the agricultural resource base. This parcel can not be described as "other lands which are suitable for farming" as defined in ORS 215.203(2)(a).

4.3 Lands Which are Necessary to Permit Farm Practices to be Undertaken on Adjacent or Nearby Agricultural Lands.

Nearby farming can sometimes be adversely affected by residential development. If development of a parcel for residential use is judged to have sufficient potential for interfering with adjacent agricultural activities then that may serve as justification for maintenance of a property in the agricultural base even if it does not have resource value.

The absence of adjacent agricultural activities and the abundance of adjacent residential uses precludes the need to consider maintaining this parcel in the agricultural resource base in order to protect adjacent agricultural activities. In summary, it does not appear from the above data that nearby farms would be adversely affected by residential development on this property.

5.0 CONCLUSIONS

Soil delineations outlined in the Soil Survey of Lane County Area, Oregon, indicates the soils on this site are predominantly class VI. Detailed soil mapping at a larger scale indicates the presence of some land capability class I through IV soils on this site. This method of analysis also indicates that the soils on this site are predominantly class VI.

Detailed analysis of the site suggests that this parcel can not meet the criteria necessary to justify its classification as "other lands necessary to agriculture". This analysis specifically considered fertility, suitability for grazing, climatic conditions, existing and future availability of water for irrigation, existing land use patterns in the area, technological and energy inputs and accepted farm practices.

The site can not be justified for inclusion in the agricultural resource base based on the premise that it is necessary to support adjacent or nearby agricultural activities since the record is void of evidence that such activities exist.

Based on the evidence outlined in this report, it is reasonable to conclude that the Westfair property is not, despite its current zoning designation, agricultural land as defined by Goal 3 and OAR 660-05-005 and, therefore, need not be preserved for farm use.

CASCADE EARTH SCIENCES, LTD.

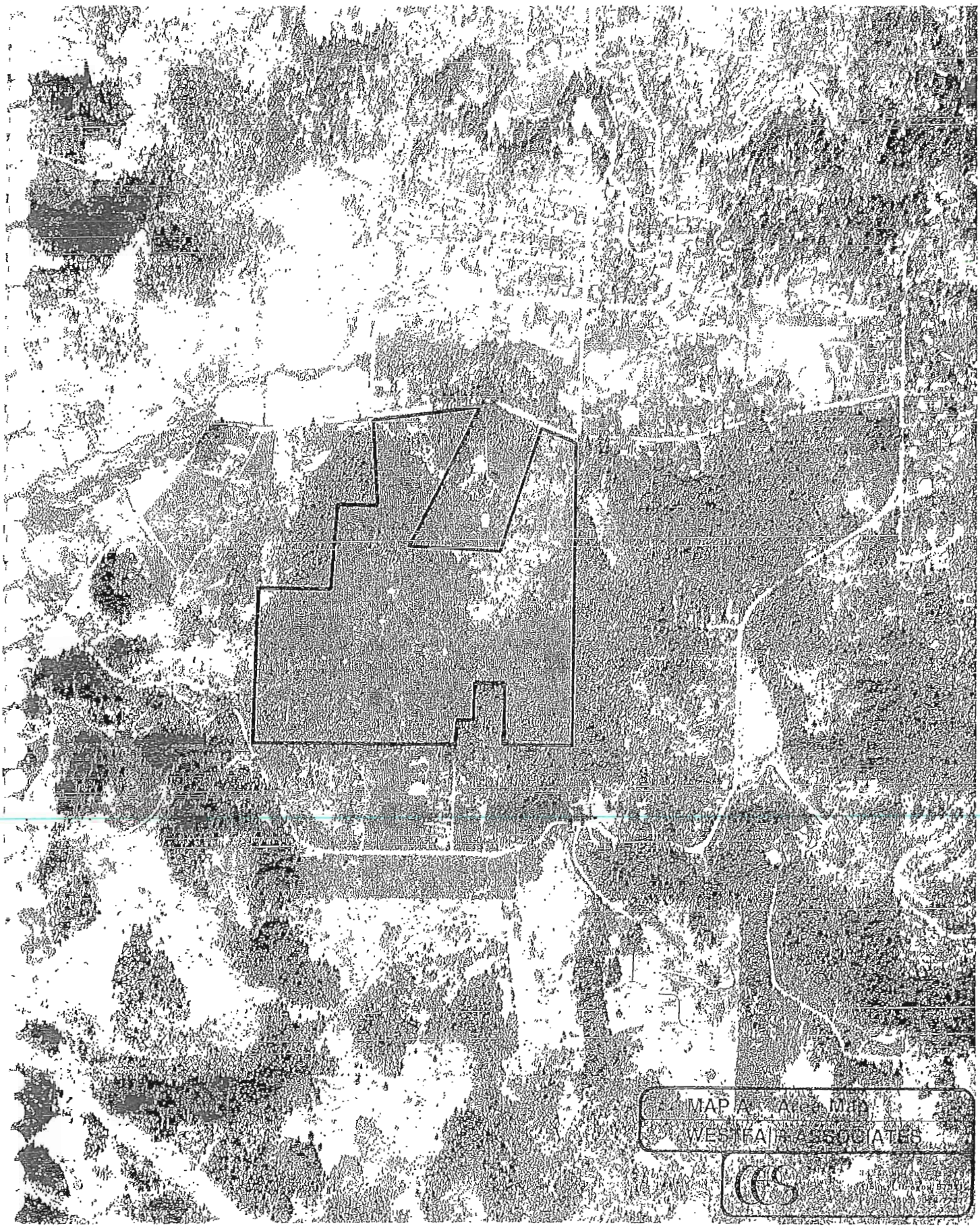
Terrance M. Rahe
Principal Soil Scientist

PN913006

DOC: 202.1

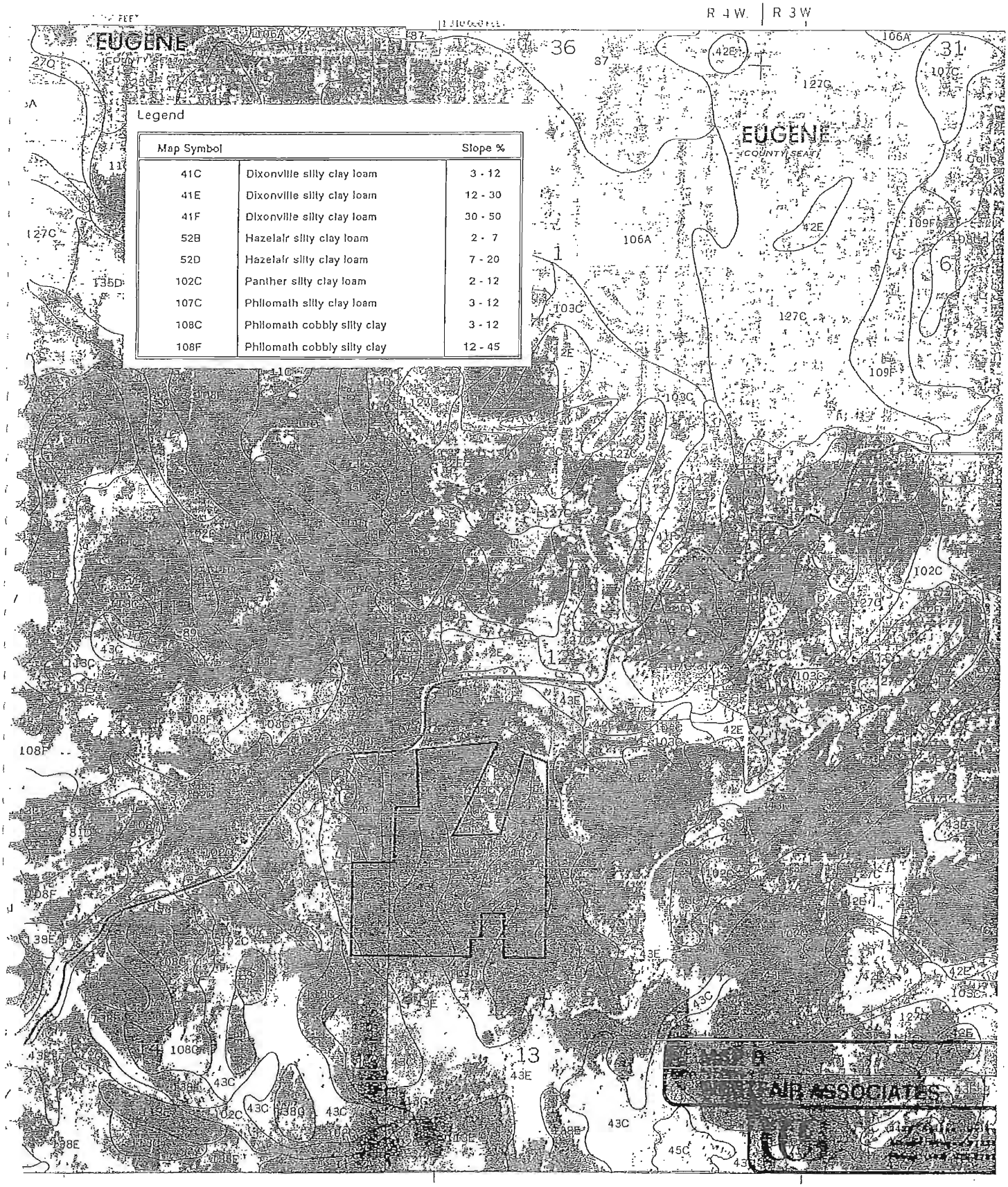
FIGURES

Figure 1. Map A - Aerial Photo



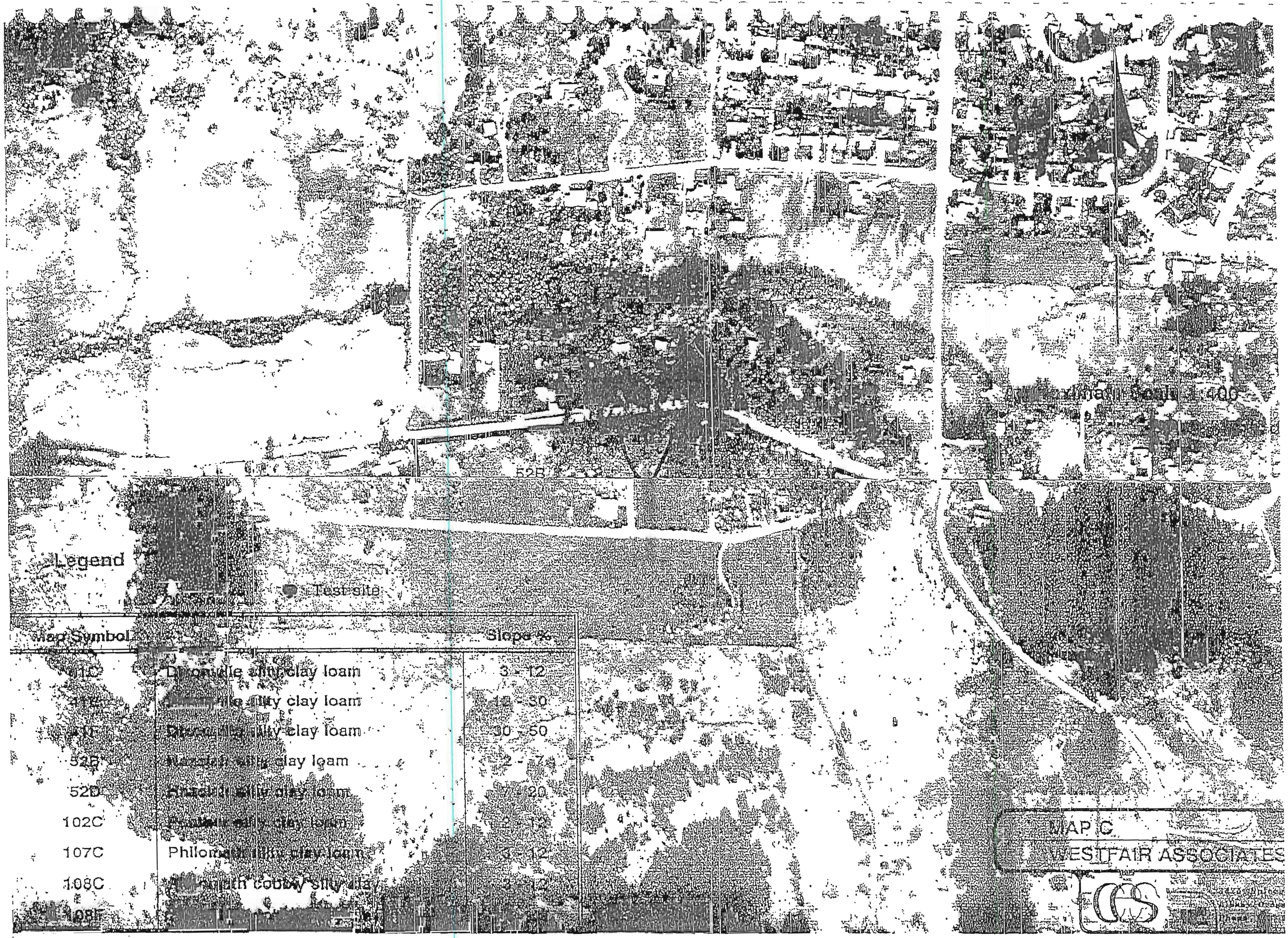
MAP A: Area Map
WESTFAIR ASSOCIATES

Figure 2. Map B - Soil Survey Map



Soil Survey of Lane County Area, Oregon. Sheet numbers 90 & 91.

Figure 3. Map C - CES Soil Map



Legend
Test site
Slope %
3 - 12
silty clay loam
30 - 50
52B
2 - 7
52D
102C
107C
108C
52B
MAP C
WESTFAIR ASSOCIATES

Access Engineering LLC

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Transportation Engineering
Traffic Design
Trip Generation
Access Management
Traffic Counts
Street Lighting

June 18, 2012

Bill Kloos
Law Office of Bill Kloos PC
375 W. 4th Ave., Suite 204
Eugene, OR 97401

Re: Suess Blanton Marginal Lands Application
PA 2011- 5502; Traffic Issues

Dear Mr. Kloos:

You have asked for my assessment of traffic impacts associated with proposed Marginal Lands application above. I have reviewed the map of the site and the basics of the Marginal Lands request. From a traffic standpoint, the essentials are: The proposal is to change about 123 acres from Agricultural to Marginal Land plan designation and to change the zoning to Marginal Lands. That would allow not more than 12 home sites of at least 10 acres each. The site fronts on Crest Drive in the vicinity of the Chambers intersection. The site's frontage on Crest Drive extends from Chambers Street on the east to Lorane Hwy. on the west. Residential traffic from future development would enter Crest Drive at some location along the frontage of the property.

Crest Drive at this point is classified as a county urban major collector. The most recent traffic counts available in this area are from 2011 at a counting station located at just east of Lorane Hwy. The total daily trips are 550. The a.m. peak hour trips have not been counted but would be no more than 55. This is substantially below the capacity of the road.

Twelve rural residential home sites on this property can be assumed to generate at most 120 trips per day, and about 9 trips during the a.m. peak hour. These additional trips remain well within the capacity of the county road. As a practical matter, neighbors in the area would not notice this increment of traffic on the road unless they were standing in one spot, counting traffic, and watching cars come out of the site. In summary, residential development of this site at this density poses no traffic issues.

Sincerely,

REGISTERED PROFESSIONAL ENGINEER
10536
OREGON
JULY 13, 1979
MICHAEL WEISHAR
Renews: 6/30/12

Michael Weishar, PE
Access Engineering LLC

EXHIBIT H