



Oregon

Theodore R. Kulongoski, Governor

Department of Land Conservation and Development

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Web Address: <http://www.oregon.gov/LCD>



NOTICE OF ADOPTED AMENDMENT

December 7, 2006

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

FROM: Mara Ulloa, Plan Amendment Program Specialist

SUBJECT: Lane County Plan Amendment
DLCD File Number 004-05

The Department of Land Conservation and Development (DLCD) received the attached notice of adoption. 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: December 21, 2006

This amendment was submitted to DLCD for review 45 days 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 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.**

Cc: Doug White, DLCD Community Services Specialist
Ron Eber, DLCD Farm/Forest Specialist
Thom Lanfear, Lane County

<paa> ya



FORM 2

DEPT OF

DEC 01 2006

DLCD NOTICE OF ADOPTION

This form must be mailed to DLCD within 5 working days after the final decision
per ORS 197.610, OAR Chapter 660 - Division 18

LAND CONSERVATION
AND DEVELOPMENT

(See reverse side for submittal requirements)

Jurisdiction: LANE COUNTY Local File No.: PA 04-6308
(If no number, use none)

Date of Adoption: NOV. 29, 2006 Date Mailed: 11-30-06
(Must be filled in) (Date mailed or sent to DLCD)

Date the Notice of Proposed Amendment was mailed to DLCD: AUGUST 15, 2005

☐ Comprehensive Plan Text Amendment ☒ Comprehensive Plan Map Amendment
☐ Land Use Regulation Amendment ☒ Zoning Map Amendment
☐ New Land Use Regulation ☐ Other: _____
(Please Specify Type of Action)

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

REDESIGNATE LAND FROM "FOREST" TO "MARGINAL LAND"
AND REZONING THAT LAND FROM "F2 / IMPACTED FOREST LANDS"
TO "ML / MARGINAL LAND"

Describe how the adopted amendment differs from the proposed amendment. If it is the same, write "Same." If you did not give notice for the proposed amendment, write "N/A."

SAME

Plan Map Changed from : FOREST to MARGINAL LAND

Zone Map Changed from: F2 to ML

Location: 18-01-33 #106 Acres Involved: 102 ACRES

Specify Density: Previous: _____ New: _____

Applicable Statewide Planning Goals: 3, 4

Was an Exception Adopted? Yes: _____ No: ☒

DLCD File No.: 004-05(14603)

Did the Department of Land Conservation and Development receive a notice of Proposed

Amendment **FORTY FIVE (45) days prior to the first evidentiary hearing.** Yes: ☒ No: ☐

If no, do the Statewide Planning Goals apply. Yes: ☐ No: ☐

If no, did The Emergency Circumstances Require immediate adoption. Yes: ☐ No: ☐

Affected State or Federal Agencies, Local Governments or Special Districts: NONE

Local Contact: THOM LANFEAR Area Code + Phone Number: 541-682-4054

Address: 125 E 8TH AVE LAND MANAGEMENT DIVISION

City: EUGENE Zip Code+4: 97431-2926

ADOPTION SUBMITTAL REQUIREMENTS

This form **must be mailed** to DLCD **within 5 working days after the final decision**
per ORS 197.610, OAR Chapter 660 - Division 18.

1. **Send this Form and TWO (2) Copies of the Adopted Amendment to:**
ATTENTION: PLAN AMENDMENT SPECIALIST
DEPARTMENT OF LAND CONSERVATION AND DEVELOPMENT
635 CAPITOL STREET NE, SUITE 150
SALEM, OREGON 97301-2540
2. Submit **TWO (2) copies** the adopted material, if copies are bounded please submit **TWO (2) complete copies** of documents and maps.
3. **Please Note:** Adopted materials must be sent to DLCD not later than **FIVE (5) working days** following the date of the final decision on the amendment.
4. Submittal of of this Notice of Adoption must include the text of the amendment plus adopted findings and supplementary information.
5. The deadline to appeal will be extended if you submit this notice of adoption within five working days of the final decision. Appeals to LUBA may be filed within **TWENTY-ONE (21) days** of the date, the "Notice of Adoption" is sent to DLCD.
6. In addition to sending the "Notice of Adoption" to DLCD, you must notify persons who participated in the local hearing and requested notice of the final decision.
7. **Need More Copies?** You can copy this form on to 8-1/2x11 green paper only ; or call the DLCD Office at (503) 373-0050; or Fax your request to:(503) 378-5518; or Email your request to Larry.French@state.or.us - ATTENTION: PLAN AMENDMENT SPECIALIST.

BEFORE THE BOARD OF COUNTY COMMISSIONERS OF LANE COUNTY, OREGON

ORDINANCE NO. PA 1235) IN THE MATTER OF AMENDING THE RURAL COMPREHENSIVE
) PLAN TO REDESIGNATE LAND FROM "FOREST" TO "MARGINAL
) LAND" AND REZONING THAT LAND FROM "F-2/IMPACTED
) FOREST LANDS" TO "ML/MARGINAL LAND", AND ADOPTING
) SAVINGS AND SEVERABILITY CLAUSES (file PA 04-6308; Dennis)

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 November 2004, application no. PA 04-6308 was made for a minor amendment to redesignate tax lot 106 of map 18-01-33, from "Forest Land" to "Marginal Land" and concurrently rezone the property from "F-2/Impacted Forest Lands" to "ML/Marginal Land"; and

WHEREAS, the Lane County Planning Commission reviewed the proposal in public hearing of December 6, 2005, conducted deliberations on April 4, 2006, and on that date forwarded the matter to the Board with a recommendation for denial; and

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

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

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

Section 1. The Lane County Rural Comprehensive Plan is amended by the redesignation of tax lot 106 of map 18-01-33, from "Forest Land" to "Marginal Land," such territory depicted on Plan Plot 527 and further identified as Exhibit "A" attached and incorporated herein.

Section 2. Tax lot 106 of map 18-01-33, is rezoned from "F-2/Impacted Forest Lands" (Lane Code 16.211) to "ML/Marginal Land" (Lane Code 16.214), such territory depicted on Rural Zoning Plot 527 and further identified as Exhibit "B" attached and incorporated herein.

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

The prior designation and zoning 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 effect the validity of the remaining portions hereof.

ENACTED this 29th day of November, 2006.

APPROVED AS TO FORM

Date 10-17-2006 lane county

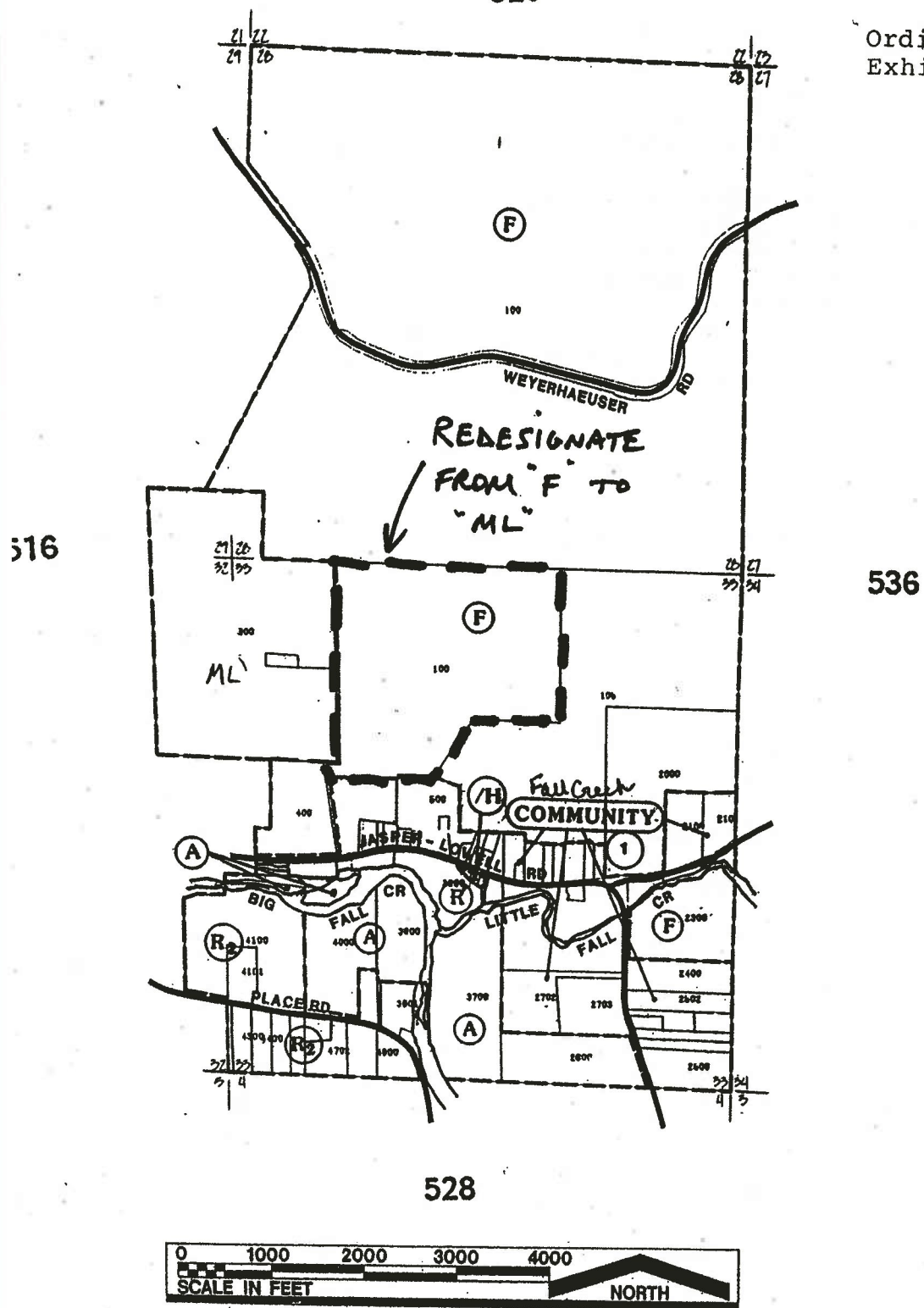
Stephen J. Cohen
OFFICE OF LEGAL COUNSEL

Bill Weyer
Chair, Lane County Board of County Commissioners

Melissa A. Zin
Recording Secretary for this Meeting of the Board

ORDINANCE NO. PA 1235 / IN THE MATTER OF AMENDING THE RURAL COMPREHENSIVE PLAN TO REDESIGNATE LAND FROM "FOREST" TO "MARGINAL LAND" AND REZONING THAT LAND FROM "F-2/IMPACTED FOREST LANDS" TO "ML/MARGINAL LAND", AND ADOPTING SAVINGS AND SEVERABILITY CLAUSES (file PA 04-6308; Dennis)

Ordinance No. PA 1235
Exhibit "A"



ne county

OFFICIAL PLAN MAP

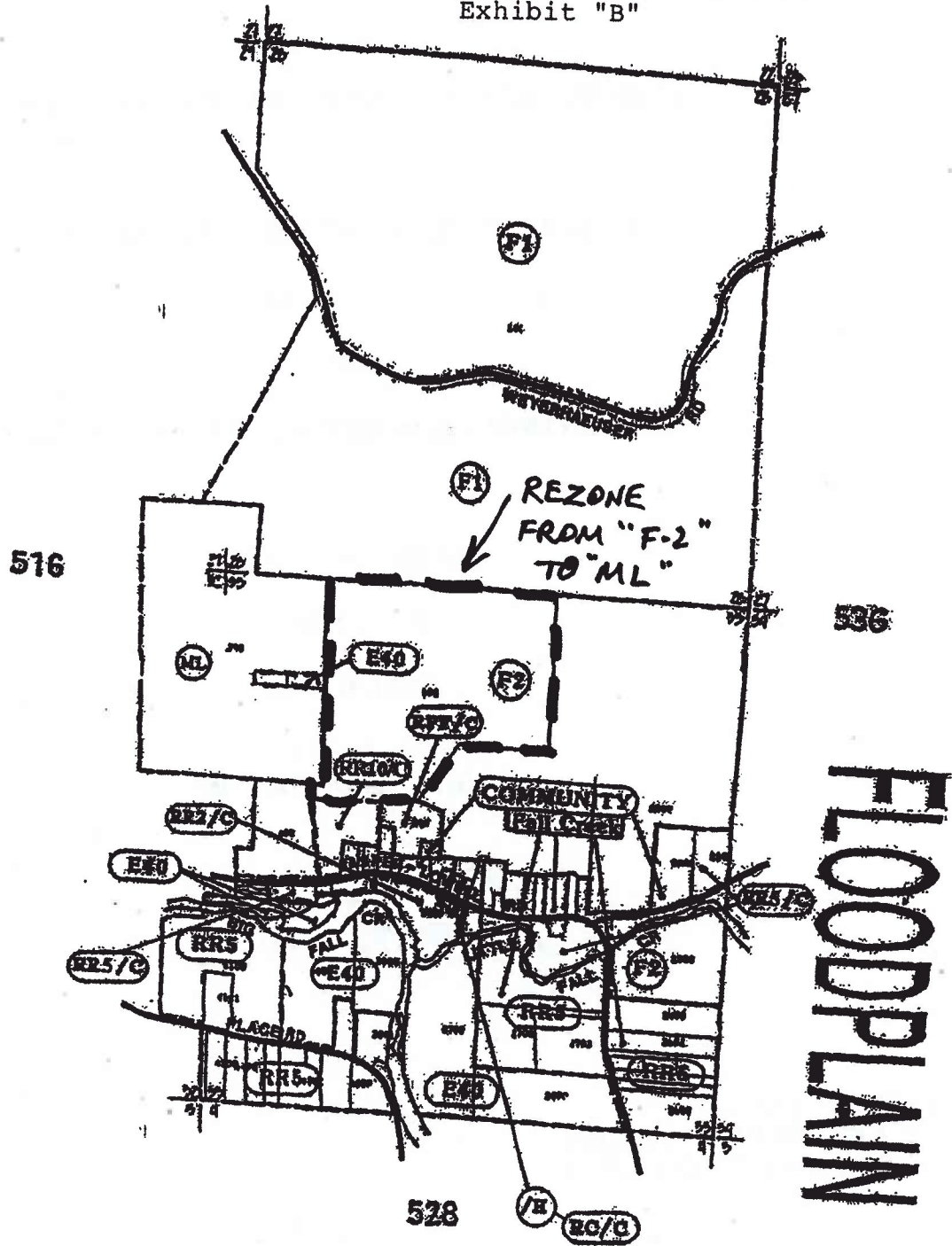
PLOT# 527

Township Range Section
18 01 28 / 18 01 33 ()

ORIGINAL ORD. # PA 884 DATE 2/29/1984 FILE #

VISION # 2 ORD. # PA1076 DATE 9 / 25 / 95 FILE # PA0658-95

Ordinance No. PA 1235
Exhibit "B"



county	0 1000 2000 3000 4000 SCALE IN FEET	NORTH	PLOT# 527
	OFFICIAL ZONING MAP		
	Township, Range, Section 18 01 28		16 01 33
SIGNAL ORD. # PA 884 DATE 2/29/1984 FILE #			
SION # 3 ORD. # PA1076 DATE 9/25/95 FILE # PA0858-95			

Ordinance No. PA 1235
Exhibit "C"

FINDINGS OF FACT AND CONCLUSIONS OF LAW

for

MINOR AMENDMENT OF THE LANE COUNTY

RURAL COMPREHENSIVE PLAN

and

ZONE CHANGE FROM IMPACTED FOREST LAND

to

MARGINAL LAND

PA 04-6308

CAROL DENNIS

**P.O. BOX A
PORT ORFORD, OR 97465**

**Submitted by:
P. STEVEN CORNACCHIA
HERSHNER HUNTER, LLP**

Applicant: Carol (Sutton) Dennis
P.O. Box A
Port Orford, OR 97465

Property Owner: Carol (Sutton) Dennis

Property Location: Immediately north of the unincorporated community of Fall Creek

Assessor's Map and Lot: Assessor's Map No. 18-01-33, Tax Lot 106

Current County Zoning: Impacted Forest Land (F-2)

Attorney-Consultant: P. Steven Cornacchia
Hershner Hunter
180 E. 11th Avenue
Eugene, Oregon 97401

1. INTRODUCTION.

The applicant is requesting approval of an amendment of the Lane County Rural Comprehensive Plan (RCP) to re-designate the subject property from Impacted Forest Land (F-2) to Marginal Lands (ML) and an amendment of the RCP map to re-designate the subject property from Forestry to Marginal Lands.

2. BACKGROUND INFORMATION

2.1 General Site Description.

The property subject to this application consists of one parcel, approximately 102.69 acres in size, located in the vicinity of the unincorporated community of Fall Creek, north of Jasper-Lowell Road. The subject property is described as Tax Lot 106 of Lane County Assessor's Map No. 18-01-33. On October 6, 1994, the subject property was determined by Lane County to be a legal lot.

The subject property contains predominantly (80%) Class V-VIII soils, with no High Value agricultural soils, and is not capable of producing at least 85 cubic feet of merchantable timber per acre per year.

The subject property contains approximately 102.69 acres of predominantly open meadows and rock outcroppings. Ribbons of rock exist throughout the meadows where soil is extremely shallow and rock lies just beneath the surface. Approximately three acres of incense cedar are growing in a copse in the southwest portion of the property. The northern boundary of the property contains scattered, multi-aged Douglas-fir, incense cedar and ponderosa pine trees. The property slopes northwesterly from its northern boundary.

Property adjacent to the western boundary of the subject property is zoned Marginal Lands (ML), having been re-designated as Marginal Lands in PA 00-6304 (Donnelly). Property adjacent to the south boundary of the subject property consists of small parcels, all zoned for non-resource use and many of which are included within the unincorporated community of Fall Creek. Tax Lot 18-01-28-101 is adjacent to the north boundary of the subject property and is zoned Non-impacted Forest Land (F-1). Tax Lot 18-01-33-105 is adjacent to the east boundary of the subject property and is zoned Impacted Forest Land (F-2). Tax Lot 18-04-24-100 is adjacent to the northeast boundary of the subject property and is also zoned Impacted Forest (F-2).

The subject property receives the following public services: Lowell School District 71 (schools); Emerald Peoples' Utility District (electrical power); Lowell Rural Fire Protection District 1 (fire and ambulance); Qwest (telephone); LTD (bus service); Lane County Sheriff's Department and Oregon State Police.

2.2 **Description of Proposed Amendments.** The application before Lane County is for approval of the following:

a. An amendment to the county's comprehensive plan and map designating the subject property as Marginal Lands and re-zoning it to Marginal Lands (ML).

b. The Lane County Board of Commissioners also finds as follows:

3. **PLAN AMENDMENT CRITERIA OF LANE CODE 16.400**

The following criteria apply to amendments of the comprehensive plan:

3.1 Lane Code 16.400(6)(h)(iii) (Method of Adoption and Amendment) provides that the Board may amend or supplement the Rural Comprehensive Plan upon making the following findings

(aa) For Major and Minor Amendments as defined in LC 16 400(8)(a) below, the Plan component or amendment meets all applicable requirements of local and state law, including Statewide Planning Goals and Oregon Administrative Rules

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

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

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

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

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

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

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

3.2 Lane Code 16.400(6)(i) provides that a change of zoning to implement a proposed Plan amendment may be considered concurrently with such amendment. In such case, the Board shall also make the final zone change decision, and the Hearings Official's consideration need not occur.

3.3 Lane Code 16.400(6)(h)(iii)(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.

3.3.1 Goal 1 - Citizen Involvement.

To ensure the opportunity for citizen involvement in all phases of the planning process.

Lane County has provided written notice of the proposed amendments and public hearings before its planning commission and board of commissioners in conformance with ORS 197.763. The information included in the notices conforms with ORS 197.763 (2) and (3) and enabled citizens to identify and comprehend the issues and to participate in a public process prior to final action by the county. Referral notices were also mailed to all federal, state, and private organizations as required by state law and Lane Code. The proposed amendments have been processed in a manner that assures full compliance with Goal 1.

3.3.2 Goal 2 - Land Use Planning

To establish a land use planning process and policy framework as a basis for all decisions and actions related to the use of land and to assure an adequate factual base for such decisions and actions.

Goal 2 establishes a land use planning process and policy framework as a basis for all land use decisions, and requires development of an adequate factual base to support those decisions. A minor change is one that does not have significant effects beyond the immediate area of change, and is based on special studies or information. The justification for the specific change must be established by substantial evidence in support of the conclusion that the applicable criteria have been met.

Lane County has adopted a comprehensive land use plan amendment process with specific standards that must be addressed to justify a minor change. Substantial compliance with the plan amendment criteria in Lane Code (LC) 16.400 constitutes compliance with the applicable provisions. This plan amendment must also address and satisfy the criteria set forth in ORS 197.247 (1991 ed.). This application is supported by substantial evidence upon which the Lane County Board of Commissioners conclude that the applicable criteria have been met.

3.3.3 Goal 3 - Agricultural Land.

To preserve and maintain agricultural lands.

The subject property is not agricultural land as defined by Goal 3. It contains soils predominantly classified as Class V-VII by the Soil Conservation Service and is of low

suitability for farming as discussed in Section 3.4 below. Accordingly, this decision is consistent with Goal 3.

3.3.4 Goal 4 - Forest Lands.

To preserve forest lands for forest use.

The subject property is not suitable for growing and sustaining Douglas-fir or other less merchantable tree species as discussed more fully in Section 3.4 below. No other species would grow as fast on the subject property or be as valuable and merchantable as Douglas-fir. Zoning the property for Marginal Lands maintains the property in a resource zone and capable of being used for limited, marginal, resource uses. The subject property's suitability for growing and sustaining merchantable tree species is discussed more fully in Section 3.4 below. Accordingly, this decision is consistent with Goal 4.

3.3.5 Goal 5 - Open Space, Scenic and Historic Areas, and Natural Resource.

To conserve open space and protect natural and scenic resources.

Goal 5 is not applicable to this request. There has previously been a legislative determination by Lane County, as embodied in the acknowledged Lane County Rural Comprehensive Plan, that no Goal 5 resources exist on subject site. The subject property has not been included in any inventory of needed open space or scenic areas defined by Goal 5, nor has it been identified in the comprehensive plan as having any historic, cultural or natural resources which need to be preserved and/or protected. The proposed amendments will not conflict with any Goal 5 resources.

3.3.6 Goal 6 - Air, Water and Land Resources Quality.

To maintain and improve the quality of the air, water and land resources of the state.

Goal 6 requires that air, land and water resources of the state be maintained and improved by assuring that future development, in conjunction with existing development, does not violate applicable state and federal environmental quality standards, and does not exceed the carrying capacity of local air sheds, degrade land resources or threaten the availability of such resources. Lane County has sufficient regulatory measures in place so as to ensure that existing land use activities, as well as any future development on the site, will not produce any unanticipated impacts resulting from the proposed amendments.

The proposed amendments will not produce results that will be in conflict or inconsistent with the purpose and intent of Goal 6. The proposed amendments change the use designation on the subject property and any additional uses or change of use will require compliance with Lane County's existing regulatory system and measures.

3.3.7 Goal 7 - Areas subject to Natural Disasters and Hazards.

To protect life and property from natural disasters and hazards.

No areas containing or prone to natural disasters or natural hazards have been identified on the subject property.

3.3.8 Goal 8 - Recreational Needs.

To satisfy the recreational needs of the citizens of the state.

Goal 8 is not applicable to this request. There has previously been a legislative determination by Lane County, as embodied in the acknowledged Lane County Rural Comprehensive Plan, that no Goal 8 resources exist on subject site. The subject property has not been included in any inventory of recreational needs as defined by Goal 8. The proposed amendments will not conflict with any Goal 8 resources.

3.3.9 Goal 9 - Economy of the State..

To diversify and improve the economy of the state.

Goal 9 is directed towards the comprehensive plans of the state's political subdivisions. Lane County's Rural Comprehensive Plan has been acknowledged by the Land Conservation and Development Commission. Goal 9 is primarily focused on commercial and industrial development within urban areas. OAR 660-009-0010(1) specifically limits the application of Goal 9 to comprehensive plans for areas within urban growth boundaries. Goal 9 is not directly applicable to rural residential use in a non-resource designation.

Approval of the subject application will allow the subject property to be developed with a maximum of eight additional home sites. Goal 9 has limited, if any, applicability to the subject application.

3.3.10 Goal 10 – Housing.

To provide for the housing needs of the citizens of the state.

Approval of this application would result in the development of up to eight additional dwellings on the subject property. Approval of this application would be consistent with Goal 10.

3.3.11 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 development.

The subject property receives the following public services: Lowell School District 4J(schools); Emerald Peoples' Utility District (electrical power); Lowell Rural Fire District 1 (fire and ambulance); Qwest (telephone); LTD (bus service); Lane County Sheriff's Department and

Oregon State Police. While Goal 11 is couched in terms of "urban development," approval of the application will not result in any urban level of development in a rural area. Approval of the application will result in the creation of 10-acre and larger parcels which have been legislatively determined to be rural in nature and not constituting urban use. The subject property has access to the full range of public services specified for Communities in RCP Goal 11: Public Facilities and Services, Policy 6.j. No additional public facilities and services will be required beyond the current level. The public services identified above are adequate to serve the level of rural uses that the application envisions and provide the demonstration of consistency with Goal 11.

3.3.12 Goal 12 – Transportation.

The intent of Goal 12 is implemented through the provisions of the State Transportation Planning Rule (TPR) (OAR 660, Division 12), which was adopted by LCDC in 1991.

OAR 660-012-0060(1) requires that amendments to functional plans, acknowledged comprehensive plans, and land use regulations which 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.

To determine whether the proposed amendments will significantly affect a transportation facility, the TPR lists specific criteria against which the proposed amendments are to be evaluated. The TPR provides that 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 (Transportation System Plan).

The Board finds that the approval of the proposal cannot result in any of the four situations provided by the TPR criteria listed above. Development of 8 parcels with dwellings will produce typically 10 trips per day for each parcel, resulting in a total trip per day count of approximately 80. Jasper-Lowell Road, a rural major collector, will not experience a change in its functional classification as a result of an additional 80 trips per day and the total trips per day are not inconsistent for a rural major collector and will not reduce the level of service below the minimum acceptable level identified in the TSP (Transportation System Plan).

3.3.13 Goal 13 - Energy Conservation..

To conserve energy.

Goal 13 requires that land uses maximize conservation of all forms of energy based on sound economic principles. It is implemented by local plans and regulations that control location, orientation and density of development to minimize net energy consumption. Any development on the subject property will be subject to those rules.

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

OAR 660-004-0040(2)(c)(G) specifically exempts marginal land from the provisions of Goal 14 and its implementing rules. The rule specifically states that it does not apply to marginal land. Upon application approval the subject property will be designated marginal land. Therefore, Goal 14 has little, if any, application to this application.

The entire ownership of the applicant is within an area committed to rural uses, both resource and non-resource in nature, as designated and provided by Lane Code and the acknowledged Lane County Rural Comprehensive Plan. No urban uses are contemplated as a result of approval of this application. No extension of urban services is necessary as a result of approval of this application. Approval of this application will not change the uses made on the subject parcel from rural to urban.

The uses on the subject parcels resulting from approval of this application would be resource and rural residential, both of which are rural in nature. The uses are not considered urban by the code in its implementation of the acknowledged Lane County Rural Comprehensive Plan. Therefore, approval of this application would not result in the establishment of urban land use or urban land use in transition from rural land use.

All parcels resulting from approval of the subject application shall be no less than 10 acres in size which will not prevent further urban development in the future if the subject property is included within the UGB of a Lane County city.

Approval of the application will not result in any level of urbanization of the subject property or the surrounding area and, therefore, is consistent with Goal 14 as the goal may be relevant to the application.

3.3.15 Goal 15 - Willamette River Greenway

To protect, conserve, enhance and maintain the natural, scenic, historical, agricultural, economic and recreational qualities of lands along the Willamette River as the Willamette River Greenway.

The subject property is not located within the Willamette River Greenway. Goal 15 is not applicable to this application.

3.3.16 Goal 16 - Estuarine Resources.

To recognize and protect the unique environmental, economic, and social values of each estuary and associated wetlands; and

To protect, maintain, where appropriate develop, and where appropriate restore the long-term environmental, economic, and social values, diversity and benefits of Oregon's estuaries.

The subject property contains no estuarine resources. Goal 16 is not applicable to this request.

3.3.17 Goal 17 - Coastal Shorelines*To conserve, protect, where appropriate, develop and where appropriate restore the resources and benefits of all coastal shorelines, recognizing their value for protection and maintenance of water quality, fish and wildlife habitat, water-dependent uses, economic resources and recreation and aesthetics.*

The subject property contains no coastal shorelines. Goal 17 is not applicable to this request.

3.3.18 Goal 18 - Beaches and Dunes

To conserve, protect, where appropriate develop, and where appropriate restore the resources and benefits of coastal beach and dune areas.

The subject property contains no beaches or dunes. Goal 18 is not applicable to this request.

3.3.19 Goal 19 - Ocean Resources

To conserve the long-term values, benefits, and natural resources of the nearshore ocean and the continental shelf.

The subject property contains no ocean resources. Goal 19 is not applicable to this request.

3.4 Lane Code 16.400(6)(h)(iii)(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 Plan; or

The subject property was designated Forestry and zoned Impacted Forest Land (F-2) as part of the Lane County Rural Comprehensive Plan adoption process in 1984. Nonetheless, it was so designated and zoned pursuant to County policy which determined that lands that might qualify as marginal lands should be addressed subsequently on a case-by-case basis pursuant to policies in the RCP and the statutory criteria in ORS 197.247(1991 ed).

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

Not applicable.

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

Not applicable.

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

ORS 197.247 (1991 ed.) authorizes counties to designate land as marginal land. Lane County has acted to utilize this authority through the adoption of RCP Goal 3, Policy 14 and Goal 4, Policy 3. Those policies require an applicant for a marginal lands designation and zoning to address and satisfy the requirements of ORS 197.247 (1991 ed.) and applicable Lane County policies and requirements. The subject application is implementing policies in the RCP which allow qualified resource lands to be designated as Marginal Lands rather than Agriculture or Forest.

In order to aid applicants, county planning staff and the general public in addressing the marginal lands criteria, the Lane County Board of Commissioners, in 1997, adopted an interpretation of and supplement to the County's marginal lands information sheet ("the Board interpretation") a copy of which has been made a part of the record of this decision. The Board interpretation clarifies how the marginal lands statute and criteria are to be applied in specific situations by addressing seven issues and providing policy direction for each. As discussed in these findings, the Board interpretation has particular relevance to this application in the context of evaluating the site's ability to grow merchantable timber.

ORS. 194.247(1) (1991 ed.) provides the following criteria:

(a) The proposed marginal land was not managed, during the 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 on average, over the growth cycle, of \$10,000 in annual gross income; and

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

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

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

(C) The proposed marginal land is composed predominately of soils in capability classes V through VIII in the Agricultural Capability Class Classification System in use by the United States Department of Agriculture 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.

The applicant has addressed subsections (a) and (b)(C) of the statute for demonstrating that the subject property is suitable for Marginal Lands designation. The following findings address each of those criteria:

ORS 197.247(1)(a):

It is found that the applicant has demonstrated that the subject property was not managed, during three of the five calendar years preceding January 1, 1983, as part of a farm operation that produced \$20,000 or more in annual gross income. The applicant purchased the subject property in 1987 and the prior owner, who owned the property during the applicable period, is deceased. Accordingly, the applicant is unable to provide actual income figures for any farm operations during the applicable period. The applicant, however, is familiar with the use of the subject property during the applicable period, having viewed and researched the subject property for purchase during the applicable period. During that period, the applicant witnessed no farm operations, including the raising of row crops, orchards or livestock, occurring on the subject property during the applicable period. Furthermore, the applicant has attempted to establish and maintain a filbert orchard and has seeded portions of the property for a grass/hay crop and has been uniformly and consistently unsuccessful—both attempts at establishing such farm use could not be maintained and sustained.

In response to the applicant's lack of personal knowledge of the income, if any, generated by farm operations on the subject property during the applicable period, the applicant provides the analysis and conclusions of Agricultural Consultant Paul E. Day. Mr. Day is a prior agricultural specialist with the Oregon State University Extension Office and is qualified to issue an opinion regarding the agricultural productivity of the subject property. Mr. Day has produced an "Agricultural Capacity Review" of the subject property, dated September 23, 2004. His review is attached as Exhibit E to the application.

Mr. Day concludes, for a variety of reasons, that the subject property could not have been managed as part of a farming operation that produced at least \$20,000 in annual gross income during any three years of the applicable period. He concludes that the production of row or specialty crops was not possible or practicable due to lack of available water and appropriate soils. He further concludes that, based upon the soil located on the subject property, cattle production would have been the most likely and most productive agricultural use of the property. He opines that even in a theoretical situation where the entire acreage was devoted to cattle production, it could not have produced \$20,000 in gross income in any of the applicable years. Mr. Day's conclusions demonstrate that the subject property qualifies for Marginal Lands designation and use because it could not have produced the requisite income from farm operations during the applicable period.

Furthermore it is found that the applicant has demonstrated that the subject property was not managed as part of a forest operation that produced an average, over the growth cycle, of \$10,000 in annual gross income.

To demonstrate that the subject property was not managed during the subject period as part of a forest operation capable of producing an average, over the growth cycle, of \$10,000 in annual gross income, the applicant provides the professional testimony of a consulting forester, Marc Setchko. Mr. Setchko provides an analysis of the timber-growing potential of the subject property and concludes that the subject property could not have been managed during the subject time period as a forest operation capable of producing an average, over the growth cycle, of \$10,000 in annual gross income. Mr. Setchko, with both professional credentials and 27 years of experience, is highly qualified to render such an analysis and conclusion. Mr. Setchko's opinion was based on a detailed analysis of the subject property's existing soils, as detailed by the Lane Council of Governments (LCOG) (whose soil map and listing of soils is attached as Exhibit F to the application), their ability to grow merchantable timber and conversion of that growth potential into dollars based upon Douglas-fir log prices of 1983. Mr. Setchko's methodology for determining forest income capability is dictated by the Board interpretation (Direction for Issue 4.). Mr. Setchko's analysis uses a fifty-year growth cycle as directed by the Board interpretation (Direction for Issue 5.) Mr. Setchko uses Douglas-fir log prices because Douglas-fir is the most valuable of all merchantable tree species and generates the most income of all tree species.

Mr. Setchko's analysis and conclusions include ratings for all soils on the subject property and discussion of other issues relevant to the discussion of ORS 197.247(a). Mr. Setchko's analysis is attached as Exhibits G and L to the application and is supplemented by his further testimony, dated June 3, 2005. Mr. Setchko concludes that, at best, the subject property would have been capable of generating an annual gross income from merchantable timber of only \$6,821.74. Mr. Setchko's analysis and conclusion support a finding that the subject property was not capable of being managed as a part of a forest operation that produced an average, over the growth cycle, of \$10,000 in annual gross income.

ORS 197.247(1)(b)(C)

The applicant has demonstrated, through use of the 1987 SCS Soil Survey of Lane County Area, Oregon, (1987 Soil Survey) that the subject property contains predominately classes V-VIII in the Agricultural Capability Class Classification System in use by the United States Department of Agriculture Conservation Service on October 15, 1983. The applicant has further demonstrated, with the inclusion of the Lane County Agricultural Lands Working Paper of the Lane Rural Comprehensive Plan ("Working Paper") published in November 1981, and its 1983 Addendum, the cover page and forward of the 1987 Soil Survey and the forward of the 1987 Soil Survey currently posted on the NRCS web site, that the soil map units and soil classifications contained in the 1987 Soil Survey were the classifications of the SCS system in use on October 15, 1983.

Based upon the LCOG soils map and soils listing for the subject property, the capability classes

of soils can be determined by the Lane County Soil Ratings for Forestry and Agriculture, dated August 1997, and prepared by LCOG. A copy of that Lane County/LCOG document is attached as Exhibit K to the application. The document contains a preface on Page 1 that states: "The Lane County Land Management Division, with technical assistance from Lane Council of Governments, compiled this data to assist the public in preparing land use applications. The Natural Resources Conservation Service (NRCS) reviewed the data and methodology." The data contained in the document varies slightly from data contained in the Agricultural Capability Classification System in use by the United States Department of Agriculture Soil Conservation Service on October 15, 1983, but not in a manner that significantly changes the outcome of the calculations regarding percentage of capability classes. The slight variance is discussed below.

By using the Lane County/LCOG document's capability classifications listed with each soil type, a calculation of the percentage of soils in capability classes I-IV and the percentage of soils in capability classes V-VIII can be determined. Soils of the subject property are composed of 41.21% class I-IV soils and 58.79% class V-VIII soils. The noted variance in data in the document relates to the two soil complexes found on the subject property, Dixonville-Philomath-Hazelair complex, 3-12% slopes (43C) and Dixonville-Philomath-Hazelair complex, 12-35% slopes (43E). 43C is listed as Agricultural Capability Class III and 43E is listed as Agricultural Capability Class IV in the Lane County/LCOG document. In previous Soil Conservation Service (SCS) publications, particularly the 1987 publication of 1981 data, 43C and 43E are both listed as Class VI. Using the earlier classifications SCS classifications the calculations would have produced an even higher percentage of Class V-VIII soils than is calculated using the Lane County/LCOG document.

It further found that the applicant has adequately demonstrated, through the evidence provided by Marc Setchko, that the subject property is not capable of producing more than 85 cubic feet per acre per year in merchantable timber.

The Setchko report concludes that the subject property is not capable of producing eighty-five cubic feet of merchantable timber per acre per year. Mr. Setchko's reports also contains his analysis of other tree species. Mr. Setchko's reports include an analysis of the species listed by Goal One Coalition in public testimony and concludes that they are either not merchantable, or would not produce an annual volume equal to Douglas-fir. An opponent, Goal One Coalition, has provided no substantial evidence to refute or contradict Mr. Setchko's professional opinion regarding the merchantability and productivity of those particular species. Furthermore, Goal One Coalition has provided no authority or foundation for its arguments regarding soil ratings, productivity or tree species. Mr. Setchko opines that all other merchantable tree species would either not grow on the soils of the subject property or would not produce a volume in cubic feet that would equal the growth rate of Douglas-fir. Mr. Setchko, in his analysis of the productivity of various tree species, provides a professional and scientific foundation to the reasoning of the SCS NRCS in using Douglas-fir as the indicator species for productivity on Western Oregon soils.

Mr. Setchko, in response to continuing arguments made by Goal One Coalition, prepared an analysis of the Goal One Coalition's arguments regarding the productivity of Ponderosa Pine.

Mr. Setchko opines that Goal One Coalition has misapplied and misused information from various internet publications to conclude that Ponderosa Pine has a much higher productivity potential on Western Oregon soils than is accurate and than can be scientifically verified. Mr. Setchko opines that Goal One Coalition has misapplied and misused information from various internet publications to conclude that Ponderosa Pine, Hybrid Poplar and KMX have a much higher productivity potential on Western Oregon soils than is accurate and than can be scientifically verified. His analysis and conclusions regarding the productivity and merchantability of each of the three species (pages 6-9 of his testimony) is attached as Exhibit L to the application. His conclusions mirror his earlier opinion (Exhibit G to the application) that all other potentially merchantable tree species would either not grow on the soils of the subject property or would not produce a volume in cubic feet that would equal the growth rate of Douglas-fir.

Mr. Setchko originally estimated the parcel's capability at 78.175 cubic feet per acre annual, which is under the 85 cubic foot per acre annual statutory limit for ML designation. The supplemental submittal by the applicant adds the additional 12 acres that were under common ownership during the relevant time period to the calculations to determine that the property was capable of producing 80.7 cu.ft./ac./yr. This figure is still below the 85 cu.ft./ac./yr. standard for Marginal Lands designation.

Goal One Coalition has submitted soils information in Exhibits 43 and 50 which is in opposition to the applicant's conclusion. The analysis concludes that the property is capable of producing 121.6 cu.ft./ac./yr if Ponderosa Pine productivity from the opponents' perspective is considered. Page 8 of 10 of the submittal contains a chart that quantifies the capability ratings to be assigned to each soil type identified on the property. The Goal One Coalition argument assigns higher productivity values for Ponderosa Pine to the soil map units 43C, 43E, 107C, and 138E based upon the assumption that these soils are suitable for Ponderosa Pine species and values should be assigned to individual soil components of the soil complexes found on the subject property. The Ponderosa Pine productivity ratings assigned to the soil map units are apparently taken from a document titled: "Establishing and Managing Ponderosa Pine in the Willamette Valley," Oregon State University Extension Service, EM 8805, May 2003.

Soils forest productivity data can be found in several sources:

- Soil Survey of Lane County Area, Oregon;
- Office of State Forester Memorandum (Exhibit 24);
- Lane County Soil Ratings for Forestry and Agriculture [LCOG] (Exhibit 23).

The Soil Survey contains productivity ratings for soil map units in Lane County, but does not provide forest productivity ratings for soils considered primarily farm soils or composite ratings for soil complex units. The State Forester memo provides ratings for those soils based upon a field review of soil map units in Lane County by State Forestry staff. The Soil Ratings document provides ratings for the soil complexes using a weighted average methodology for the complex-type soil map units. Of the three sources, the Soil Survey is considered the primary source of

soils data for Lane County. The State Forester's ratings for the soils not rated in the Soil Survey is considered the second best source of forest productivity ratings since it was based upon field inspections of sites in Lane County and was produced by the Oregon Department of Forestry. The Soil Ratings document using a weighted average methodology for complex soil map units is considered the next credible forest productivity ratings data for those soil map units.

The Goal One Coalition submittal argues that the Goal 4 provisions found in OAR 660-006-0010 and 660-006-0005 govern the methodology to be used in the assignment of forest productivity ratings for the subject application. However, nothing in the statutory provisions identify these rules as requirements that apply to a Marginal Lands determination or prevent Lane County from determining forest productivity ratings from any credible source. The administrative rules may be useful to use as guidelines when making a determination regarding the appropriate ratings to assign a particular soil map unit, but they are not necessarily governing. LUBA made a footnote to this effect in the *Carver* decision (footnote 11).

Of the 8 soil map units identified on the subject property, there are forest productivity ratings in the Soil Survey for two units only: Dixonville 41C & E.

Dixonville 41C & E

There is no dispute in the record over the ratings for these two soil map units.

116G rock outcrop – Witzel

The rating for this soil map unit has been taken from the State Forester memo by the applicant and is also not in dispute in the record.

The forest productivity ratings for the remaining 5 types of soil map units are in dispute in the record.

113G Ritner

The 149 cu.ft./ac./yr. rating used by the applicant for this unit is derived from the 50-year site index rating in the LCOG publication which lists the latest Natural Resources Conservation Service data as the source. The opponents assign a productivity rating of 175 cu.ft./ac./yr. Both ratings are based upon Douglas Fir species but no source of data is provided by the opponents for the higher rating. It appears that this may just be a typographical error in the table on page 8 of Exhibit 13 since the rating assigned to this soil type is identical to the soil type listed immediately above it.

107C Philomath and 138E Witzel

The productivity capability for these soil map units are rated by the applicant using the State Forester's ratings of 45 and 70 cu.ft./ac./yr. respectively. The opponents maintain that these two soil map units have a higher productivity rating for Ponderosa Pine species with ratings of 175 and 87 cu.ft./ac./yr. respectively. The Ponderosa Pine productivity ratings assigned to the soil map units are apparently taken from "Establishing and Managing Ponderosa Pine in the Willamette Valley," Oregon State University Extension Service, EM 8805, May 2003. The applicant's soil scientist has made a reference to the same document in Exhibit L: "In this (*Goal*

One Coalition) paper it repeatedly states that this data is from a very small sample and should not be used at this time until more long term data can be collected.” (Emphasis added) Goal One Coalition has not produced any evidence that refutes Mr. Setchko’s analysis or conclusions regarding this matter.

43C & E Dixonville Philomath/Hazelair Complexes

The productivity capability for these soil map units are rated by the applicant using the LCOG document ratings of 54 & 63 cu.ft./ac./yr. respectively. The LCOG ratings are based upon a weighted average methodology that uses a zero productivity rating for two of the three components of the complex. The opponents’ submittal assigns ratings to each component of the complex and uses ratings for Ponderosa Pine from the Extension Service document for the components that have not been rated in the Soil Survey. The State Forester has assigned ratings of 45 cf/ac/yr to each of those soil map units. The State Forester’s ratings are more reliable for assigning a rating for Douglas Fir productivity to these soil map units and were found to be suitable in the Carver LUBA decision (see pages 8 – 10 of Exhibit 25). Furthermore, Mr. Setchko has applied the higher LCOG ratings in his analysis that provides an overestimation of productivity for those two soil map units.

Ponderosa Pine

The following observations are instructive on this issue:

- The opponents’ assignment of values to the relevant soil map units is based upon a document titled “Establishing and Managing Ponderosa Pine in the Willamette Valley,” Oregon State University Extension Service, EM 8805, May 2003, that has been shown by Mr. Setchko to have limited applicability and probative value.
- The opponents’ conversion tables provided with the analysis in their Exhibit 13 are difficult to understand but appear to rely upon Exhibit 4, Appendix 4-1. There is no identification of the source of the chart and no sample calculation to follow to verify the values assigned to the soil map units. Lane County is unable to follow the analysis from the values in Exhibit 2 through Appendix 3 tables and Appendix 4-1 to validate the numbers in the chart for Ponderosa Pine productivity. No source is provided for Appendix 4-1;
- Mr. Setchko, a credible forestry expert, has addressed the issue in Exhibits G and L to the application by, in addition to an analysis based upon his personal experience and training, stating that Ponderosa Pine is worth considerably less money and has the same or slower growth rate as Douglas Fir and that the opponents have not provided any substantial evidence to refute his conclusions regarding the productivity of Ponderosa Pine on the subject property.

Mr. Setchko’s analysis and conclusions regarding the productivity of the subject property sufficiently and adequately demonstrates that the subject property is not capable of producing at least 85 cubic feet of merchantable timber per acre per year over the growing cycle.

Goal One Coalition has challenged the applicant's demonstration that the subject property meets the forest productivity test of the statute. The Board finds that the challenges by Goal One Coalition are without legal foundation, do not include any supporting professional opinion regarding forest productivity of the subject property that refutes the conclusions reached by Mr. Setchko, and, therefore, are without merit.

Other opponent challenges are discussed and rejected as without merit as follows:

1. The "forest operation" income test must be calculated by using current timber prices.

Opponents argue that the applicant has not conducted any analysis of the "income-producing capability" of the proposed marginal lands using "current timber values" to calculate the potential gross income over the growth cycle. Opponents reference language in *DLCD v. Lane County* (Ericcson)¹ that mentions that "current prices" were used in the calculations of the Ericcson application. In that case, however, the use of a particular year's prices was not at issue and LUBA made no determination regarding such use. What the decision in Ericcson did establish, in addition to affirming Lane County's approval of a Marginal Lands re-zoning application, was that on-site evaluation of forest productivity by a qualified expert is weightier evidence than published data or that provided by individuals not qualified as experts in forest management.

Mr. Setchko used 1983 Douglas-fir log prices and volumes in his calculation of the projected gross forest operation income of the proposed marginal land. In this case Mr. Setchko is the qualified expert with 27 years of forest management experience, including 17 years as a private consultant and a Master's Degree in Forestry. Opponents have not established that they have any experience or credentials in forest management. Furthermore, they have not provided any testimony from a qualified expert in forest management to support their assumptions and conclusions.

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

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

Board's Direction:

¹ 23 Or LUBA 33 (1992)

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

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

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

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

The Oregon Land Use Board of Appeals affirmed Lane County’s policy of utilizing 1983 log prices in the forest income test analysis. In *Just v. Lane County*, LUBA No. 2005-029, dated June 8, 2005, LUBA affirmed the use of 1983 log prices in another Marginal Lands case and stated:

“Although ORS 197.247(1)(a) does not expressly mandate that counties use 1983 timber prices in applying the gross income test, we agree with the county and intervenor that it implicitly does so. The purpose of the forest operation test is to identify lands that are not capable of meeting the specified \$10,000 threshold averaged over the growth cycle. Both the “farm operation” and “forest operation” prongs of the test are specifically linked to January 1, 1983.”

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

In ISSUE 5 of its 1997 Supplement, Lane County adopted the use of a 50-year growth cycle as the usual standard. Jim Just assigned that policy as an assignment of error in *Just v. Lane County* and LUBA rejected his arguments in that assignment and affirmed the county's use of the 50-year growth cycle.

In ISSUE 5 of its 1997 Supplement, Lane County adopted the use of a 50-year growth cycle as the usual standard. Jim Just assigned that policy as an assignment of error in *Just v. Lane County* and LUBA rejected his arguments in that assignment and affirmed the county's use of the 50-year growth cycle.

The Board direction stated in ISSUE 5 of the supplement provides:

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

Board's Direction:

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

It is found that the policy remains valid today and that the applicant's use of a 50-year growth cycle in calculating forest income complied with the policy and adequately demonstrated, in part, that the forest income test had been appropriately met.

3. The applicant has not established that the subject parcel is not capable of producing 85 cu.ft./ac./yr. of merchantable timber.

Goal One Coalition argues two points within this argument. First it argues that the applicant's consulting forester, Mr. Setchko, has not applied a sanctioned methodology for determining forest productivity.

Mr. Setchko used information generated by Lane County and the Oregon State Forester's office consistent with LCDC regulations for providing such ratings. Mr. Setchko calculated the forest productivity capability of the subject property using the same sources of ratings that were used in the Carver application (the subject of *Just v. Lane County* referred to hereinabove). Those sources of ratings and the use of the ratings were affirmed by LUBA in that decision. Mr. Setchko applied a rating to each of the soils of the proposed marginal land and concluded that the proposed marginal land produces less than 85 cu.ft./ac./yr. of merchantable timber.

The second part of Goal One Coalition's second argument is that "(A)n evaluation of a property's capacity for forest production must consider productivity for all merchantable forest

tree species, not just Douglas-fir." Mr. Setchko has provided an analysis of the species that Goal One Coalition argues are "merchantable" and concludes that a majority of those species are not "merchantable." He further concludes that all other species that may be merchantable grow sufficiently slower than Douglas-fir on the subject soils and that they would not produce at least 85 cu.ft./ac./yr. on the subject property. Mr. Setchko includes that analysis in each of his "Forest Productivity Analysis" that were provided to the record in support of the application. Mr. Setchko's experience and expertise provides the conclusion that many of the species, especially KMX and hybrid poplar, have no established market and are, therefore, not merchantable. His overall conclusion is that if the proposed marginal land is not capable of producing an average of \$10,000 in annual gross income from Douglas-fir, then there are no other merchantable tree species that could produce any more than the calculated figures that he has provided in his analysis for Douglas-fir. Goal One Coalition has not provided any evidence that contradicts or conflicts with the findings and conclusion of the Setchko reports. It is found that the applicant, through the evidence provided by Mr. Setchko's reports, has demonstrated that the subject property is not capable of producing more than 85 cu.ft./ac./yr. of merchantable timber.

Conclusion: The subject property qualifies under ORS 197.247(1) as marginal land because:

- (a) it 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;
- (b) it was not managed as a part of a forest operation during that same time period which was capable of producing an average, over the growth cycle, of \$10,000 in annual gross income;
- (c) it is composed predominantly of soils in agricultural capability classes V through VIII, and
- (d) it is not capable of producing 85 cubic feet of merchantable timber per acre per year.

It is found that substantial evidence in the record, primarily, but not limited to, the Day and Setchko reports, exists to support each of the above conclusions. No documentation, expert testimony or other substantial evidence has been submitted to the record that refutes or contradicts that evidence with regard to the resource capabilities of the subject property as measured by the statutory standards and criteria in ORS 197.247.

For the reasons set forth above, the Board finds that the policies in the RCP, specifically RCP Goal 3, Policy 14 and RCP Goal 4, Policy 3, authorize and allow certain qualified resource lands to be designated and zoned marginal lands. Approval of this application implements those policies which have been acknowledged by the Land Conservation and Development Commission to be in conformity with Statewide Planning Goals and ORS 197.247 (1991 ed.).

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

The totality of this application's response to and treatment of applicable criteria, coupled with the benefits accruing to both the public and the applicant as demonstrated in this application, provides the Lane County Board of Commissioners with adequate foundation and reason to find that approval of the application is desirable, appropriate and proper and would be a demonstration of good public policy.

3.5 Lane Code 16.400(6)(h)(iii)(cc).

For Minor Amendments as defined in LC 16.400(8)(a), 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 adopted and acknowledged RCP that conflict with this request for plan amendment. As discussed in the previous section, there are policies in the RCP that specifically support and encourage approval of marginal lands applications for qualified property. The subject property addresses and satisfies the marginal lands criteria that are set forth in ORS 197.247 (1991 ed.).

Approval of this plan amendment is also consistent with the Board's interpretation of the Marginal Lands statute (ORS 197.247 (1991 ed.)) and its application to individual requests for plan amendment. The application is supported by detailed and thorough analysis and testimony provided by a qualified and experienced forester. The analysis and testimony was produced and provided in conformance with direction provided by the Board's interpretation.

Other RCP policies that may be relevant to this decision are as follows:

3.5.1 GOAL ONE: CITIZEN INVOLVEMENT.

Notice to affected property owners and evidentiary hearings provided by Lane County ensures that the application meets and supports the citizen involvement goal and policies of the comprehensive plan.

3.5.2 GOAL TWO: LAND USE PLANNING.

3.5.1.1 Policy 25: Changes to Plan Diagram.

This application for amendment of the Plan Diagram designations for the subject property has been evaluated through the county's plan amendment procedure and approval of this application is based upon fulfillment of the criteria of Lane Code 16.400 which is addressed in Section 4 of these findings.

3.5.3 GOAL THREE: AGRICULTURAL LANDS.

There has previously been a legislative determination by Lane County, as embodied in the acknowledged Lane County Rural Comprehensive Plan, that the subject property is not agricultural land and is not High Value Farmland. Nonetheless, consideration of agricultural use of the subject property and application of all relevant criteria regarding agricultural considerations has been adequately provided in the application and during the evidentiary hearings.

3.5.4 GOAL FOUR: FOREST LANDS.

3.5.4.1 Policy 1: Conservation of forest lands.

The primary policy of both the comprehensive plan and statewide planning goals regarding forest lands is the conservation of those lands for multiple forest uses. Approval of this application is consistent with and supports Policy 1 of Goal Four of the Comprehensive Plan.

3.5.5 GOAL FIVE: OPEN SPACES, SCENIC AND HISTORIC AREAS AND NATURAL RESOURCES

3.5.5.1 Policy 3: Adequacy of water supply

The adequacy of water supply for the proposed development of the subject property is discussed in Section 3.5.5.2 below.

3.5.5.2 Policy 5: Land use designation commensurate with groundwater aquifer capacities

The subject property and the local Fall Creek watershed are not within an area identified in Lane Manual 13.010 as an area of limited quantity or quality of groundwater. A domestic well exists on the subject property and produces between 25 and 50 gallons of water per minute (gpm). Lane County Application No. PA 00-6304 (Donnelly) includes a Well Data Summary Report as Exhibit "P" and is incorporated herein by reference as though fully set forth. That report was prepared by Casey Jones Well Drilling, Pleasant Hill, Oregon, for 101 wells in Sections 32, 33 and 34 of Township 18 Range 1 W. That reports concludes that the area produces an average and median water production of 17 gpm and 15 gpm, respectively. PA 00-6304 also contains evidence that two wells exist on the adjacent property that produce 4.5 gpm and 30 gpm, respectively. That evidence is also incorporated herein as though fully set forth. Such evidence demonstrates that the maximum of eight parcels possible on the subject property will have an adequate supply of water for residential use and such use will not have a negative effect on the domestic water use of adjacent property.

3.5.6 GOAL SIX: AIR, WATER AND LAND RESOURCES

Goal Six considerations have been discussed in Section 3.5.5 of this application and are applicable to this section.

3.6 Lane Code 16.400(6)(h)(iii)(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 discussed in previous sections, this plan amendment is consistent with and satisfies the criteria that are referenced and adopted by specific policies in the RCP. Those policies are RCP Goal 3, Agricultural Lands, Policy 14 and RCP Goal 4, Forest Lands, Policy 3 which specifically allow certain, qualified, resource lands to be designated and zoned as marginal lands. Approval of this amendment is consistent with the RCP policies for farm (Goal 3) and forest (Goal 4) lands.

The Board interpretation recognizes this consistency. It states under "ISSUE 1":

"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 small tracts than are required in the better resource lands. The criteria in the law define which lands may be designated as marginal. Evidence for this position is found in the legislative history and the fact that marginal lands are recognized in both Statewide Goal 3 – Agricultural Lands and Goal 4 – Forest Lands."

Marginal lands are resource lands that are intended for occupancy with limited rural residential development.

Based on the evidence in the record which addresses and satisfies the criterion in ORS 197.247 (1991 ed.) and the above-referenced RCP resource policies, the Board concludes that approval of the subject plan amendment is compatible with the existing structure of the acknowledged RCP and is consistent with the unamended portions and elements of the RCP.

3.7 Zone Change Criteria of Lane Code 16.252 Lane Code 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 to Rural Comprehensive Plan elements and components, and Statewide Planning Goals for any portion of Lane County which has not been acknowledged by the Land Conservation and Development Commission. Any zonings or rezonings may be effected by Ordinance or Order of the Board of County Commissioners, the Planning Commission or the Hearings Official in accordance with the procedures of this section.

Approval of the plan amendment would result in a change of zone from Exclusive Farm Use to ML Marginal Lands. The facts relevant to the zone change standards are largely redundant with the facts relevant to plan policies and the Statewide Planning Goals and have been addressed in preceding sections of these findings of fact and are incorporated into these findings by this reference.

This zone change is consistent with the general purposes of LC Chapter 16 as set forth in LC 16.003 in that:

- 1) In conformity with various development rules discussed above, the subject property will be developed commensurate with the character and physical limitations of the land and will thus promote the health, safety and general welfare of the built environment;
- 2) It will provide home construction opportunities that will aid the economy;
- 3) It will conserve other farm and forest lands by locating residential opportunities within a resource zone that allows limited residential development;
- 4) It will aid the provision of affordable housing within the Lane County area by providing reasonable selections for a place to live;
- 5) By virtue of regulations discussed above, it will protect the quality of the land, air and water of the county and will protect life and property in areas subject to flooding.

This zone change is consistent with the purposes of the Marginal Lands Zoning District because it provides an alternative to more restrictive farm and forest zoning and it will allow any of the uses permitted in the Marginal Lands zoning district and thereby provide opportunities for persons to live in a rural environment and to conduct part-time farm or forest operations. It is being applied to property in accordance with Lane Code Chapter 16 criteria and procedures, RCP plan policies and criteria in ORS 197.247 (1991 ed.).

CONCLUSION

This application has addressed the applicable criteria, shown consistency with that criteria, has demonstrated good public policy through the public and private benefits accruing from its proposals.

Based on the substantial evidence presented above and included in the record of this decision, the Board of County Commissioners finds and concludes that the subject application for plan amendment and zone change meets and satisfies all of the relevant criteria and hereby is granted approval.