



# 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

## AMENDED NOTICE OF ADOPTED AMENDMENT

September 11, 2007



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 008-06

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: September 21, 2007**

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  
Jerry Kendall, Lane County

<paa> n

**FORM 2**

**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

(See reverse side for submittal requirements)

DEPT OF

SEP 04 2007

LAND CONSERVATION AND DEVELOPMENT

Jurisdiction: LANE COUNTY Local File No.: PA06-6170  
(If no number, use none)

Date of Adoption: 8-29-07 Date Mailed: 8-31-07  
(Must be filled in) (Date mailed or sent to DLCD)

Date the Notice of Proposed Amendment was mailed to DLCD: 11-16-07

- Comprehensive Plan Text Amendment
- Land Use Regulation Amendment
- New Land Use Regulation
- Comprehensive Plan Map Amendment
- Zoning Map Amendment
- Other: \_\_\_\_\_  
(Please Specify Type of Action)

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

REZONE OF 80 ACRES FROM "F-1 NON-IMPACTED FOREST LANDS" (L.C.16.210) TO "F-2 IMPACTED FOREST LANDS" (LC16.211).

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: NA to NA

Zone Map Changed from: F-1/RCP to F-2/RCP

Location: 185-04W-33 #6200 Acres Involved: 80

Specify Density: Previous: 80 New: 80

Applicable Statewide Planning Goals: —

Was an Exception Adopted? Yes:  No:

DLCD File No.: 008-06 (15694)

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: \_\_\_\_\_

LANE COUNTY

Local Contact: JERRY KENDALL Area Code + Phone Number: 541-682-4057

Address: PSB/LMD 125 F 8th AVE. City: EUGENE

Zip Code+4: 97401+2926 Email Address: JERRY.KENDALL@CO.LANE  
.OR.US

### 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 this Notice of Adoption must include the text of the amendment plus adopted findings and supplementary information.
5. The deadline to appeal will not 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 [Mara.Ulloa@state.or.us](mailto:Mara.Ulloa@state.or.us) - ATTENTION: PLAN AMENDMENT SPECIALIST.

FOR ASSESSMENT  
AND TAXATION  
ONLY

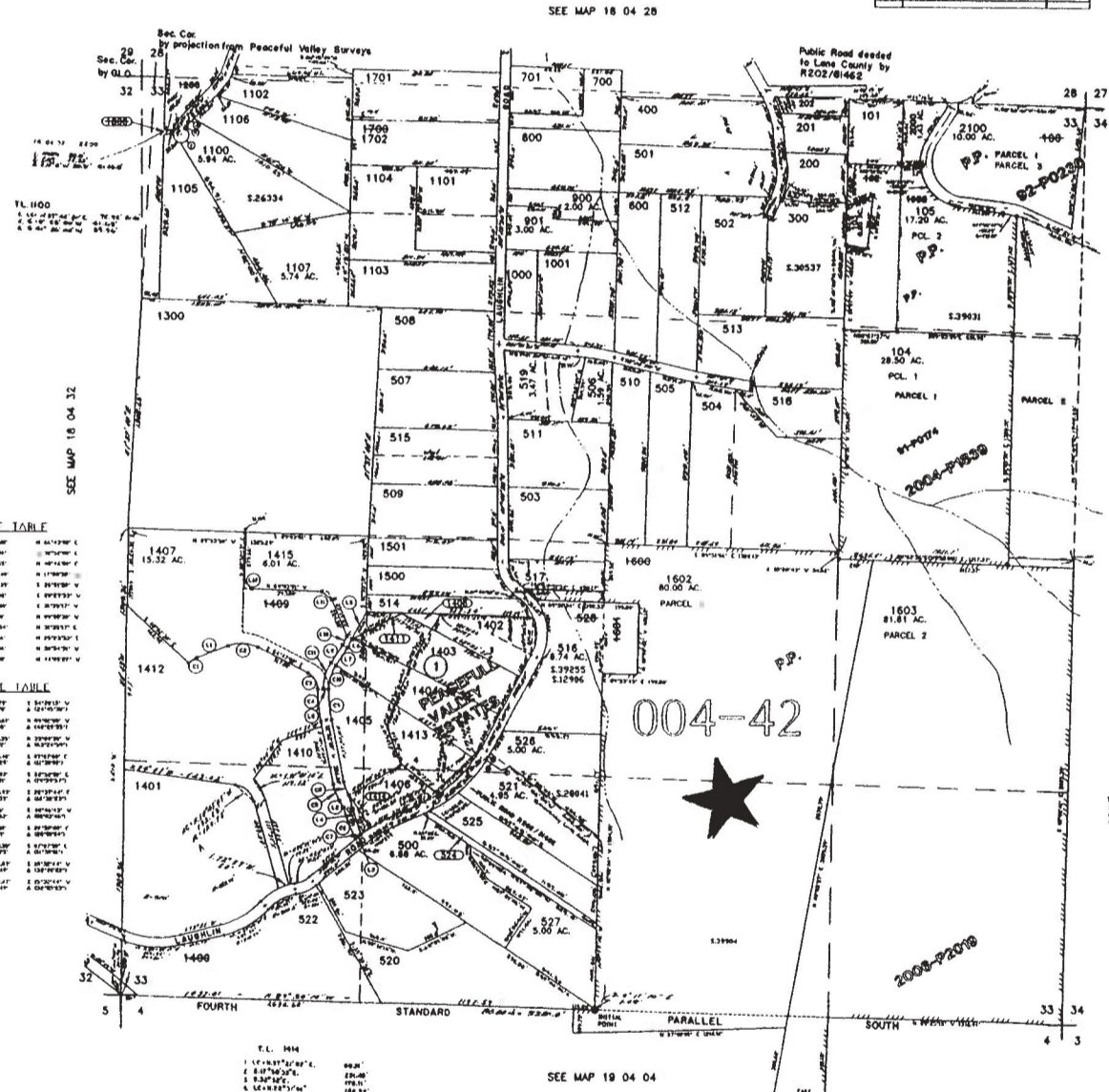
SECTION 33 T.18S. R.4W. W.M.  
LANE COUNTY

SCALE 1" = 400'

SEE MAP 18 04 28

NO.	OWNER	ACRES	REMARKS
1001	LANE COUNTY	10.00	PARCEL 1
1002	LANE COUNTY	17.20	PARCEL 2
1003	LANE COUNTY	28.50	PARCEL 3
1004	LANE COUNTY	81.81	PARCEL 4

18 04 33  
NAD 83/91



LINE TABLE

LINE NO.	BEARING	DISTANCE	REMARKS
1	N 89° 58' 00" E	15.32 AC.	1407
2	S 89° 58' 00" W	6.01 AC.	1415
3	N 89° 58' 00" E	15.32 AC.	1501
4	S 89° 58' 00" W	6.01 AC.	1500
5	N 89° 58' 00" E	15.32 AC.	1409
6	S 89° 58' 00" W	6.01 AC.	1408
7	N 89° 58' 00" E	15.32 AC.	1406
8	S 89° 58' 00" W	6.01 AC.	1405
9	N 89° 58' 00" E	15.32 AC.	1403
10	S 89° 58' 00" W	6.01 AC.	1402
11	N 89° 58' 00" E	15.32 AC.	1401
12	S 89° 58' 00" W	6.01 AC.	1400

CURVE TABLE

LINE NO.	BEARING	DISTANCE	REMARKS
13	N 89° 58' 00" E	15.32 AC.	1407
14	S 89° 58' 00" W	6.01 AC.	1415
15	N 89° 58' 00" E	15.32 AC.	1501
16	S 89° 58' 00" W	6.01 AC.	1500
17	N 89° 58' 00" E	15.32 AC.	1409
18	S 89° 58' 00" W	6.01 AC.	1408
19	N 89° 58' 00" E	15.32 AC.	1406
20	S 89° 58' 00" W	6.01 AC.	1405
21	N 89° 58' 00" E	15.32 AC.	1403
22	S 89° 58' 00" W	6.01 AC.	1402
23	N 89° 58' 00" E	15.32 AC.	1401
24	S 89° 58' 00" W	6.01 AC.	1400

CANCELLED  
100  
102  
1300  
1400  
1408  
1700  
1800  
1801  
1800  
528

SEE MAP 18 04 34

TABLE  
1. 1000 AC. PARCEL 1  
2. 17.20 AC. PARCEL 2  
3. 28.50 AC. PARCEL 3  
4. 81.81 AC. PARCEL 4

SEE MAP 18 04 04

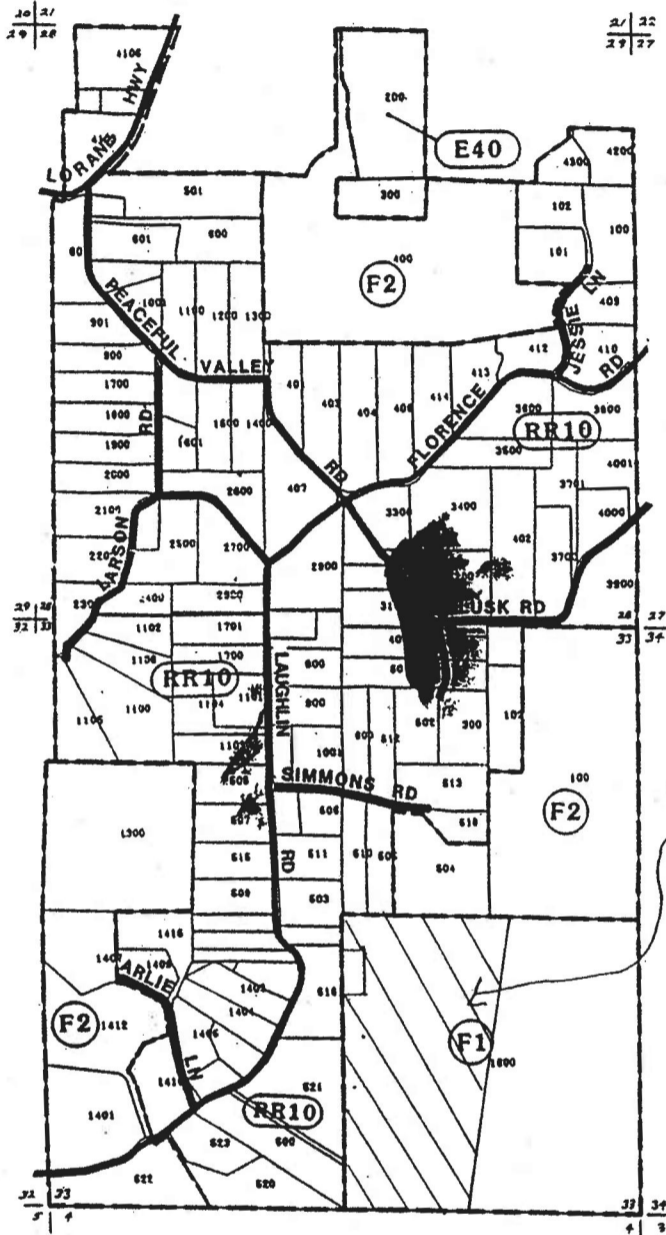
18 04 33

298

286

310

300



FROM  
F-1/ACP  
TO  
F-2/ACP

The zones on this map are changed as follows:  
 From: RG, RA ~~RA~~ To: RR2  
 From: CR, C1, C2, & C3 To: RC Rural Commercial  
 From: M1, M2, & M3 To: R1 Rural Industrial  
 From: PF To: RPF Rural Public Facility  
 From: PR To: RPR Rural Park & Recreation



The RR zones on this map are changed as follows:  
 FROM: RR LC 16.231 TO: RR LC 16.290  
 The RR zone parcel size remains the same.

ane county



OFFICIAL ZONING MAP

PLOT# 299

Twnshp Range Section  
18 04 28

18 04 33

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

REVISION # ORD #

PASSEL

IN THE BOARD OF COMMISSIONERS OF LANE COUNTY, OREGON

ORDER NO.  
07-8-29-14

) IN THE MATTER OF ELECTING WHETHER OR NOT  
) TO HEAR AN APPEAL OF A HEARINGS  
) OFFICIAL'S DECISION APPROVING  
) AN APPLICATION FOR REZONING PROPERTY FROM  
) F-1 TO F-2 (File PA 06-6170/Lininger)

WHEREAS, the Lane County Hearings Official has made a decision approving a rezone request from F-1/Nonimpacted Forest Lands to F-2/Impacted Forest Lands, PA 06-6170; and

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

WHEREAS, the Lane County Hearings Official has affirmed his decision on application PA 06-6170; and

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

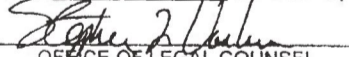
WHEREAS, the Board of County Commissioners has reviewed this matter at a public meeting of the Board; NOW

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

1. That the appeal does not comply with the criteria of Lane Code Chapter 14.600(3) and arguments on the appeal should therefore not be considered. Findings in support of this decision are attached as Exhibit "A".
2. That the Lane County Hearings Official decision dated July 16, 2007, attached as Exhibit "B", is affirmed.

DATED this 29th day of August, 2007.

  
\_\_\_\_\_  
Chair, Lane County Board of Commissioners

APPROVED AS TO FORM  
Date 8-29-2007 Lane County  
  
\_\_\_\_\_  
OFFICE OF LEGAL COUNSEL

**FINDINGS IN SUPPORT OF THE ORDER**

1. Property involved in this action is 80 acres of land identified as tax lot 1602, map 18-04-33, located on the east side of Laughlin Road, and approximately ½ mile north of Fox Hollow Road. The property is designated F-1/Nonimpacted Forest Lands by the Rural Comprehensive Plan, Zone Plot Map #299.
  2. In the form of application PA 06-6170, the property owner in June 2006 requested Lane County Hearings Official approval of a rezone request, from F-1/Nonimpacted Forest Lands to F-2/Impacted Forest Lands, per LC 16.252.
  3. A hearing before the Lane County Hearings Official was held on January 18, 2007.
  4. On May 30, 2007, the Hearings Official issued a decision approving the rezone request.
  5. A timely appeal of the Hearings Official decision was filed on June 11, 2007; the appeal was accepted by the Director and forwarded to the Hearings Official.
  6. On June 15, 2007, the Applicant requested that the Order and Findings approving the rezone be revised by the Hearings Official to better reflect evidence already in the record. The Hearings Official subsequently issued a revised Order and Findings on June 18, 2007, and affirmed his decision.
  7. On July 2, 2007, the Applicant requested that they be allowed to submit recalculations of statistics challenged by the Appellant on June 28. The revised calculations were minor and did not affect the previous Findings. On July 16, 2007, the Hearings Official issued a second revision of the Order and Findings. The Appellant was provided the opportunity to modify their appeal, but declined.
  8. The appeal states that the Hearings Official rendered a decision which exceeded his jurisdiction, misinterpreted Lane Code, Ordinance No. PA 1236, and state law.
  9. In order for the Board to hear arguments on the appeal, Lane Code 14.600(3) requires one or more of the following criteria to be found by the Board to apply to the appeal:
    - *The issue is of Countywide significance.*
    - *The issue will reoccur with frequency and there is a need for policy guidance*
    - *The issue involves a unique environmental resource.*
    - *The Planning Director or Hearings Official recommends review.*
  10. The Board of Commissioners finds that the issues raised in the appeal concerning the Lane County RCP Goal 4, policy 15, Ordinance No. PA 1236, Lane Code and state law are adequately dealt with in the Hearings Official's decision of July 16, which was affirmed by the Hearings Official previously on June 18. The Board finds that the Hearings Official's treatment of this law is appropriate and thus the Board finds that further evaluation is not necessary. The Board further finds no issues of Countywide significance remain.
  11. The Board of Commissioners finds that the issues associated with this appeal do not occur within the County "with frequency" during consideration of rezones from F-1 to F-2. Only six such applications have been filed since 1984. Additional policy guidance from the Board is not necessary.
  12. The Board of Commissioners finds that tax lot 1602 is an 80 acre parcel which is not a unique environmental resource.
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13. Neither the Planning Director nor the Hearings Official recommends review of this appeal.
  14. To meet the requirements of Lane Code 14.600(2)(b), the Board is required to adopt a written decision and order electing to have a hearing on the record for the appeal or declining to further review the appeal.
  15. The Board has reviewed this matter at its meeting of August 29, 2007, and finds that the appeal does not comply with the criteria of Lane Code Chapter 16.600(3), and elects to not hold an on the record hearing.
  16. The Hearings Official's decision is affirmed.
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**BEFORE THE HEARINGS OFFICIAL OF LANE COUNTY, OREGON**

**Final Order in PA 06-6170  
Approving a Rezoning From F-1 to F-2**

The Lane County Hearings Official finds as follows:

1. The following application for a change of zone was accepted by the Lane County Land Management Division on June 30, 2006:  
  
Tom Lininger & Merle Weiner (PA 06-6170)  
Portion of Parcel 3 of P 2006-2019, assessor's map 18-04-33 **Plot 299**  
Approval of a change in zoning from F-1 to F-2
2. The application was initiated and submitted in accordance with Lane Code 14.050. Timely and sufficient notice of the zone change hearings under Chapter 14 of the Lane Code has been provided.
3. On January 18, 2007, a public hearing on the zone change request was held. The planning department staff notes and recommendation together with the testimony and submittals of persons testifying at the hearing have been considered and are part of the record of this proceeding.
4. Further consideration has been given to and administrative notice taken of the provisions of the Lane County Rural Comprehensive Plan and all applicable special purpose/functional plans, planning related policies and refinement plans.
5. On the basis of this record, the requested zone change was found to be consistent with the applicable criteria set forth in the Lane County Rural Comprehensive Plan and Section 16.252 of the Lane Code. This general finding is supported by the specific findings of fact and the conclusions of law set out in Exhibit A, adopted May 30, 2007, revised June 18, 2007 and July 16, 2007, to this order. Exhibit B to this order depicts the property subject to this rezoning approval.

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

The application for rezoning is APPROVED.

Approval dated this 16th day of July, 2007.

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

  
Gary L. Darnielle  
Lane County Hearings Official

# EXHIBIT A

## LANE COUNTY HEARINGS OFFICIAL

### REQUEST FOR THE REZONING OF A PORTION OF PARCEL #1 OF PARTITION 2006-P2019 FROM NONIMPACTED FOREST LAND (F-1) TO IMPACTED FOREST LAND (F-2)

#### Application Summary

Tom Lininger/Merle Weiner, 930 E. 37<sup>th</sup>, Eugene, Or. 97405. Tax lot 1602 (portion of), Assessor's Map 18-04-33. Request to change the zoning of 80 acres of land from Non-Impacted Forest Lands (F-1/RCP) to Impacted Forest Lands (F-2/RCP).

#### Parties of Record

See Attachment "A".

#### Application History

Hearing Date: January 18, 2007  
(Record Held Open Until March 15, 2007)

Decision Date: May 30, 2007 (Revised June 18, 2007; Revised July 16, 2007)

#### Appeal Deadline

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

#### Statement of Criteria

LC 16.210  
LC 16.211  
LC 16.252  
Rural Comprehensive Plan (RCP)

#### Procedural Issues

Mr. Neal Miller, in a January 22, 2007 electronic message to myself, requested that I recuse myself because of bias. Examples of bias given were the time limitations placed upon speakers testifying in opposition during the January 18, 2007 hearing when none were placed on the applicant, modification of decisions after behind-the-scenes discussion with planning staff, and allegedly previous pro-development zone change decisions. First, Mr. Miller is correct in his allegation that the applicant is treated differently at the public hearing. Because the applicant carries the burden of proof, no time constraints are usually placed their testimony although this is not offered *carte*

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*blanche* and exceptions are made in cases of excessively redundant and irrelevant testimony. Most applicants wish to explain why they have submitted their application and the applicant in this case was no different. However, subsequent speakers were encouraged to direct their testimony towards the approval criteria and to avoid allegations going to the motives or character of the applicant. At the January 22 hearing a previous speaker was essentially warned to wind up his testimony as it was becoming redundant and not directed to the approval criteria. This speaker had already spoken for over five minutes. Mr. Miller took umbrage in this action. Mr. Miller mistakes bias for crowd control. The audience was informed that they had the opportunity to request that the record be held open and, in fact, it was held open until March 15, 2007.

Second, I did pull back my May 9, 2005 decision in PA 04-5746 regarding a request for a modification to a riparian setback. The re-issuance, issued on May 12, 2005, was based upon the recognition by myself that the section of the May 9 decision regarding compliance with Lane Code 16.253(3)(b) was erroneous. There was no private meeting regarding the determination to rework this part of the decision and the modification did not change the decision to affirm the Planning Director's decision as I had already found that the application complied with Lane Code 16.253(3)(c). A determination of compliance with (3)(b) was not necessary.

Finally, if Mr. Miller had taken the time to do a little research he would have discovered that there is a published record of all my decisions that is available on request. Had he done his homework Mr. Miller would have discovered that I have heard five requests regarding the rezoning of Nonimpacted Forest Land to Impacted Forest Land. I have approved three applications, including this one, and have denied two.

In conclusion, I deny any bias concerning this or other rezoning hearing that I have participated in. I strive to apply the approval criteria both impartially and consistently and believe that I have done so in this case. Had I not I am sure this decision would have taken far fewer pages to write.

#### **Findings of Fact**

1. The property subject to this application, hereinafter referred to as the "subject property," can be identified as tax lot 1602, assessor's map 18-04-33. The subject property lies southwest of Eugene in a neighborhood known as Peaceful Valley and is owned by Merle Weiner, one of the applicants. Prior to Ms. Weiner's ownership, the subject property was part of a 242-acre parcel owned by Roseboro Timber Company. In 2006, after being clear-cut in part, the parcel was partitioned<sup>1</sup> into three parcels: the subject property, Parcel 1, which is 80.6 acres in size; Parcel 2, which is 81.2 acres in size; and Parcel 3, which is 80 acres in size. The ownership of the three parcels is held by different family members and therefore they do not constitute a tract. All but 0.6 acres of Parcel 1 is zoned F-1.

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<sup>1</sup> #2006-P2019.

The 0.6 acres is represented by tax lot 528, which is zoned RR-10 and provides access to the subject property from Laughlin Road.

2. The subject property is not developed by a residence or nonforest use. Preliminary legal lot status for tax lot 1600, assessor's map 18-04-33 and tax lot 401, assessor's map 19-04-04 was verified through PA 05-5498 and PA 04-6236 by the Lane County Planning Director on April 26, 2005. Notice of this decision was mailed to property owners that were entitled to notice and no appeals were filed during the appeal period that ended May 10, 2005.
3. An examination of the assessor's maps of the area surrounding the subject property indicates that there are between 50 and 60 parcels roughly within 2,000 feet of the subject property. Of these properties, 18 parcels share a common boundary with the subject property. Of these 18 properties, eleven are occupied with residences. These eleven parcels constitute 55 percent of the subject property's perimeter. The following is a description of the 18 contiguous parcels, arranged according to orientation to the subject property:

Western boundary (37.7% of total) – all tracts smaller than 80 acres

*Tax lot 400:* The total size of the tract is 40.4 acres, and it is occupied with a residence. The frontage along the subject property is 108.7 feet (1.3% of the subject property's total perimeter) and it is zoned F-2.

*Tax lot 520:* The total size of the tract is 8.94 acres, and it is occupied with a residence. The frontage along the subject property is 115.88 feet (1.3% of the subject property's total perimeter) and it is zoned RR-10.

*Tax lots 524, 525 & 527 (commonly owned):* The total size of the tract is slightly over 10 acres, and tax lot 525 is occupied with a residence that is less than 100 feet from the subject property. The frontage along the subject property is 688.26 feet (8% of the subject property's total perimeter) and all of these tax lots are zoned RR-10.

*Tax lot 521:* The total size of the tract is 4.95 acres and it is occupied with a residence. The frontage along the subject property is 277.26 feet (3.2% of the Subject property's total perimeter) and it is zoned RR-10.

*Tax lot 526:* The total size of the tract is 5 acres, and it is occupied with a residence that is about 150 feet and downhill from the subject property. The frontage along the subject property is 591.17 feet (6.8% of the subject property's total perimeter) and it is zoned RR-10.

*Tax lots 516 & 1601 (commonly owned):* The total size of the tract is 8.74 acres and tax lot 516 is occupied with a residence. The frontage along the subject

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property is 1150.83 feet (13.3% of the subject property's total perimeter). Tax lot 516 is zoned RR-10 and tax lot 1601 is zoned F-1. Tax lot 1601 is a 400-foot by 200-foot rectangular-shaped parcel that is 1.84 acres in size. It is appurtenant to the 6.9-acre parcel of RR-10 zoned land on which Marie Matsen and Karla Rice own and reside. Ms. Matsen and Ms. Rice acquired the 1.84-acre piece in exchange for granting driveway access through their property to a prior owner of the subject property. Tax lot 1601 acquired its F-1 zoning due to its origins in tax lot 1600, not due to any commercial forestry activities conducted by Ms. Matsen and Ms. Rice. They acquired tax lot 1601 for the purpose of insulating their residence from the subject property. Ms. Rice and Ms. Matsen "use tax lot 1601 solely as a buffer, not for commercial forestry" and do not intend to harvest any trees on tax lot 1601 for commercial purposes.<sup>2</sup>

*Tax lot 528:* This 0.6-acre driveway is owned by Applicant Merle Weiner and is zoned RR-10. It does not have a residence. The frontage along the subject property is 60.6 feet (0.7% of the subject property's total perimeter).

*Tax lots 503 & 517 (commonly owned):* The total size of the tract is 7.31 acres and tax lot 517 is occupied with a residence. The frontage along the subject property is 269.52 feet (3.1% of the subject property's total perimeter) and the two tax lots are zoned RR-10.

Northern boundary (17.4 % of total) – all tracts smaller than 80 acres

*Tax lot 510:* The total size of the tract is 5.06 acres, it is occupied with a residence, and is zoned RR-10. The frontage along the subject property is 218.19 feet (2.5% of the subject property's total perimeter).

*Tax lot 505:* The total size of the tract is 5.12 acres, it occupied with a residence, and it is zoned RR-10. The frontage along the subject property is 231.89 feet (2.7% of the subject property's total perimeter).

*Tax lot 504:* The total size of the tract is 13.91 acres, it is occupied with a residence, and it is zoned F-2. The frontage along the subject property is 860.25 feet (9.9% of the subject property's total perimeter). The owners of tax lot 504 are Larry and Joan Banfield. Ms. Banfield's affidavit (Appendix "U" to the applicants rezoning application) explains the noncommercial use of this parcel. Ms. Banfield and her husband primarily use the property "for residential purposes."<sup>3</sup> Throughout the 30 years in which they have owned tax lot 504, Mr. and Ms. Banfield "have never sold any trees" nor have they held themselves out to the public as a forestry business. They have never incorporated nor filed business tax returns for a forestry operation and they have never tried to write off the

<sup>2</sup> See September 23, 2005 affidavit of Karla Rice (Appendix "A" to applicants' submission.)

<sup>3</sup> See January 29, 2007 affidavit of Joan Banfield (Appendix "U" to applicants' submission.)

purchase of forestry-related equipment as a business expense on their tax returns. According to Ms. Banfield, the function of the trees on tax lot 504 is to provide a buffer between the Banfields' residence and the Subject Property to the south. Tax lot 504 is not in forest tax deferral.

*Tax lot 104:* The total size of the tract is 28.5 acres, it is occupied with a residence and it is zoned F-2. The frontage along the subject property is 200 feet (2.3% of the subject property's total perimeter).

Southern boundary (14% of total) – one tract exactly 80 acres in size

*Newly partitioned Parcel 3:* Parcel 3 is 80 acres in size, does not have a residence and is zoned F-2 and has been designated as a State-certified habitat conservation zone where commercial forestry is not allowed. The frontage along the subject property is 1210.12 feet (14% of the subject property's total perimeter).

Eastern boundary (30.9% of total) – one tract exceeding 80 acres in size

*Newly partitioned Parcel 2:* Parcel 2 is 81.2 acres in size, is not occupied with a residence, and is zoned F-1. The frontage along the subject property is 2672.79 feet (30.9% of the subject property's total perimeter).

4. The subject property receives police protection from the Lane County Sheriff and Oregon State Police. Electricity is available from the Lane Electric Coop and telephone service is provided by Qwest. The subject property is located within the boundary of the Eugene School District #4J. An on-site well and septic tank are proposed. Solid waste collection is provided to the area by Countryside Disposal and Ecosystems Transfer and Recycling.

Access to the subject property is via tax lot 528 to Laughlin Road, functionally classified as a rural local road by the Lane County Transportation System Plan (TSP).<sup>4</sup> Lane Code 15.010(18(e) states that local roads are "intended solely for the purpose of providing access to adjacent properties." An examination of the Lane County Official Zoning Map (Plot #299) indicates that 42 parcels have frontage on Laughlin Road. Three of these 42 parcels are zoned F-2 and the remainder are zoned RR-10. Laughlin Road is 1.26 miles in length and appears to serve about 40 residences.

The subject property receives fire protection from Lane County Fire District #1. The District's Prevention Coordinator inspected the subject property in 2004 and found that the grade of the driveway was within the specifications of Lane Code

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<sup>4</sup> I have taken official notice of Appendix B: County Roads Inventory of the Lane County Transportation System Plan, adopted via Ordinance 1202 on May 5, 2004.

16.211(8)(e)(iv) (grade). The driveway also was found to meet Code standards for width and turn-around requirements.<sup>5</sup>

5. Assessor's Map 18-04-33 is listed in the Lane Manual 13.010(2)(b)(i) as being water quantity limited for "built upon or committed" lands subject to R-1 zoning. The area surrounding the subject property is underlain by the Fisher Formation, which is known for its restricted well yields. The poor permeability of the strata means that water must be removed slowly but also indicates that the aquifer is protected from overdraft. In areas with this type of geology, wells on parcels of five acres in size or larger have little chance of significantly impacting a well on adjacent property or depleting the aquifer.<sup>6</sup>
6. Ms. Wiener has recorded a declaration pledging that she will not pursue commercial forestry on the subject property<sup>7</sup> and the Lane County Department of Assessment and Taxation has agreed to eliminate the subject property's forest tax exemption.<sup>8</sup> Currently, the applicants are growing diverse species of trees, including hardwoods, on the subject property.
7. A large number of residents in the area surrounding the subject property have voiced their concerns regarding the aerial spraying of herbicides on the subject property during its tenure under ownership of Rosboro Lumber. (Appendix "G" to the Applicants' rezoning application.)
8. Parcel #3 abuts the southern border of the subject property and is owned by the applicant Tom Lininger. It is subject to a recorded declaration forbidding commercial forestry use, has been converted to a state-certified Wildlife Habitat Conservation and Management Zone, and has been assessed under this zone beginning in the 2006-2007 tax year. The applicants are planting new trees on Parcel #3 and are managing its existing vegetation in consultation with a wildlife biologist. They are also working to conserve a seasonal creek on this southern parcel.
9. Applicants are the largest-scale private users of mulch mats in Lane County and have extended this practice to all three of the parcels that comprise Partition 2006-P2019. Mulch mats are essentially swatches of mulch manually placed around tree seedlings to protect the seedling from competing grasses and weeds.
10. The subject property and Parcels #2 and #3 have experienced hunting-related incidents of trespass in the past. Signs have not been effective in diminishing this activity and there has been at least one incident of confrontation between the

<sup>5</sup> See Appendix "n" of the applicants' submission.

<sup>6</sup> See January 30, 2007 letter from Ralph Christensen to Merle Weiner. (Appendix "X" to applicants' submission.)

<sup>7</sup> Appendix "D" to the Applicants' rezoning application.

<sup>8</sup> See Appendices "E" and "F" of the applicants' application for rezoning.

applicants and a hunter. The presence of hunters represents a safety danger that may deter forest crews from commercial forest operations on Parcel #2 as well as non-commercial forest operations the subject property and Parcel #3 during hunting season.

11. About 80 percent of the soil on the subject property is Bellpine Silty Clay Loam, which has a Douglas Fir site index of 115 and a cubic foot/acre/year rating of 163. Lesser amounts of Witzel Very Cobbly Loam and Dixonville-Philomath-Hazelair Complex are also present.

### **Decision**

THE LININGER/WEINER REQUEST (PA 06-6170) FOR THE REZONING OF A PORTION OF PARCEL NO. #1 OF PARTITION 2006-P2019 IS APPROVED.

### **Justification for the Decision (Conclusion)**

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

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

Lane Code 16.003 sets out 14 purposes of Chapter 16. Arguably, the only relevant purpose statements found in Lane Code 16.003(4) are as follows:

- (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.*

The applicants' proposal is premised upon the limitations placed on the subject property by its adjacency to dense residential development. The close proximity of neighbors has dictated that forest management on the subject property and Parcels #2 and Parcel #3 be conducted through labor-intensive techniques utilizing non-chemical methods. This strategy requires on-site management due to the substantial amount of work required to maintain a sustainable forestry strategy and to protect the public health and safety from such traditional industrial forestry management techniques as aerial herbicide spraying.

- (4) *Conserve farm and forest lands for the production of crops, livestock and timber products.*
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The record is clear that traditional industrial methods of timber management on the remaining portions of the Partition 2006–P2019, such as the aerial spraying of herbicides, are impractical because of the proximity of residential use. The applicants have adopted a management strategy on Parcel #2 (as well as on the subject property and Parcel #3 for non-commercial forest management) that emphasizes non-chemical control of competing vegetation and have spent hundreds of hours implementing this strategy. This type of forest management involves labor-intensive techniques such as the use of mulch mats and manual removal of scotch broom and blackberries. The application of low-impact forestry methods also serves as a controlled laboratory experiment for the large-scale use of mulch mats.

The applicants have pointed to examples of trespass by hunters and others that could discourage work crews for safety reasons and that increase fire danger. It is expected that the presence of a dwelling would decrease the threat of trespass and increase access for emergency vehicles through the upgrade to existing logging roads.

- (7) *Provide for the orderly and efficient transition from rural to urban land use.*

There are a number of residences within 100 to 150 feet of the subject property. The Lane Code contemplates a buffer between F-1 land and residences of at least 500 feet. The applicants' rezoning proposal would create a buffer of F-2 land between the residential neighbors to the west and the applicants' F-1 land to the east. In this manner the applicants' proposal would allow for "an orderly and efficient transition" from residential land to forestland.

- (13) *Conserve open space and protect historic, cultural, natural and scenic resources.*

Applicant Lininger owns Parcel #3 that abuts the southern border of the subject property and have converted this parcel to a state-certified Wildlife Habitat Conservation and Management Zone. On this parcel, the applicants are planting new trees and managing existing vegetation in consultation with a wildlife biologist. The applicants are also working to conserve a seasonal creek on this southern parcel. The applicants' residence on the subject property will further their conservation efforts on the southern parcel.

Despite the posting of "no hunting" signs throughout the applicants' property, trespassers continue to hunt on the subject property and on the

adjacent Wildlife Habitat Conservation and Management Zone. Living on the subject property will place the applicants in the best position to protect the wildlife on the property from hunters.

The proposed rezoning is consistent with applicable purposes of Chapter 16 of the Lane Code.

**B. Not be contrary to the public interest.**

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

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

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

OAR 660-006-0000(1) states that the purpose of the Forest Lands Goal is to conserve forest lands and to carry out the legislative policy of ORS 215.700. ORS 215.700 states a policy to provide certain owners of less productive land an opportunity to build a dwelling on their land and to limit the future division of and the siting of dwellings upon the state's more productive resource land.

While the soil characteristics of the subject property appear to be homogeneous to those of Parcels #2 and #3, the purpose of the rezoning is to allow the more intensive commercial forestry management of Parcel #2 and for the non-commercial (wildlife habitat conservation) forestry management of Parcel #3. Oregon Administrative Rule 660-006-0025(1) provides that "[U]ses related to and in support of forest operations" and "[U]ses to conserve soil, air and water quality and to provide for fish and wildlife resources" are general types of uses allowed in a forest environment and, under subsections (2) and (3), are allowed outright on forest land.

For the above-described reasons, the proposed rezoning is consistent with Sections 16.210 and 16.211 of the Lane Code.

**D. Conformity with the Rural Comprehensive Plan.**

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The subject property is designated "Forest Lands" by the Rural Comprehensive Plan. Goal #4 Policies #15(b) and (c) describe the characteristics of F-1 and F-2 properties, respectively. Policy #15(a) implies that the zoning should reflect a conclusion that the characteristics of the land correspond more closely to the characteristics of the proposed zoning (F-2) than the characteristics of the other forest zone (F-2).

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

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

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

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

This policy refers to the policies set forth in Policy 15.

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

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

The opponents argue that tax lot 528, the 0.6-acre driveway owned by Ms. Weiner, should be combined with the subject property in this rezoning because it was created through an illegal lot line adjustment and because the two parcels are under the same ownership.

First, I do not agree with the opponents that *Maxwell v. Lane County*<sup>9</sup> is dispositive in this case. Central to the satisfaction of the rezoning approval standards in *Maxwell* was the counting of qualifying parcels within applicable exception areas. The Court of Appeals, reasoning that the term “parcel” had a legal definition under the Lane Code, then determined that the legality of the creation of those parcels was a relevant consideration in the rezoning process. In the present case, the rezoning criteria of RCP Goal 2, Policy 11 and its implementing Order 88-2-10-14 are not applicable. Second, I do not believe that the criteria of RCP Goal 4, Policy 15 require the consideration of legal lot status. Rather, the primary inquiry is into ownership patterns.

The tract sold to the applicants in 2005 had been previously reconfigured through a property line adjustment. This adjustment did not reduce the parent parcel below 80 acres and it (the adjustment) was subject to a final legal lot determination that was properly noticed per Lane Code 13.020. In addition, the applicants’ 2006 partition of that tract into its current three-parcel configuration was properly noticed. Both of these actions have achieved final land use decision status and there are no approval criteria that allow them to be collaterally attacked in this proceeding.

Second, RCP Goal 4, Policy 15 concerns lands currently designated as forest land by the RCP. It does not concern nor does it include criteria for the conversion of residentially zoned land to forest land. Tax lot 528 is zoned RR-10 and cannot be considered in the analysis of the proposed rezoning of Parcel 1 to F-2 Non-impacted Forest Land.

**b. Non-impacted Forest Land Zone characteristics:**

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

In the application of RCP Goal 4 Policy 15 in Ordinance No. PA 1236, the Board of County Commissioners interpreted the use the term “ownerships” to apply only to the property subject to the rezoning. In the present case, the subject property is the only parcel owned by Ms. Weiner that is zoned F-1. The applicants’ concede that the subject property is not developed with a residence or other non-forest use. The application is consistent with this characteristic of non-impacted forest lands.

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

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<sup>9</sup> *Maxwell v. Lane County*, 178 Or. App. 210 (2001), modified on other grounds, 179 O. App. 409 (2002).

The subject property is 80 acres in size. As discussed above, RCP Forest Lands Policy 15 only applies to property designated as forest lands by the comprehensive plan and therefore even though tax lot 528 is under the same ownership as the subject property it cannot be merged with the subject property for purposes of this criterion.

Whether because of sloppy draftsmanship or careless intent, Policy 15.b.(2) and 15.c.(2) create an incongruity in that a parcel exactly 80 acres in size meets both criterion. The applicants have offered what they term as a “split-zone alternative” where only 79 acres of the subject property would be subject to the rezoning request. For the reasons that I articulated in the *Dockum* case<sup>10</sup> I do not favor this approach nor do I believe this strategy is necessary.

The application is consistent with this characteristic of non-impacted forest lands.

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

Some opponents have argued that the growing of a commercial tree species is, *per se*, a commercial forest use. This statement is inconsistent with Statewide Planning Goal 4 and OAR 660-006-0025(1), which specifically recognizes that forest lands include lands that are used to “conserve soil, water fish and wildlife resources, agricultural and recreational opportunities appropriate in a forest environment. . .” in addition to commercial forest operations. The presence or absence of a commercial tree species is but one component in determining the presence of a commercial forest use. The definition of “commercial” connotes an aspect of profit. Thus, an operation where a landowner plants and nurtures a tree species to create a forest environment but only occasionally sells trees as an incidental aspect of that operation (i.e. after thinning for safety purposes or after the removal of trees subject to windfall or disease) should not be considered as a commercial forest operation. There must be a primary intent to harvest and sell trees and that intent must be divined from the actions of the landowner as well as the characteristics of the forest land.

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<sup>10</sup> Lane County Hearings Official, *Application of Floyd & Connie Dockum* (PA 06-6054) March 29, 2007, pg. 8.

The subject property is bordered by 18 parcels, at least 15 of which are not utilized for commercial forest or commercial farm use. These 15 parcels represent over 60 percent of the perimeter of the subject property.

The subject property does not meet this characteristic of Non-Impacted Forest Lands.

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

The subject property is accessed by Laughlin Road, a public county road. An examination of the county's official zoning map for the area surrounding the subject property shows that about 42 parcels have frontage on Laughlin Road. All but three of these parcels are zoned for residential use (RR-10).

While the record contains no direct evidence regarding a specific "intent" regarding the use of Laughlin Road, Lane Code 15.010(18)(e) makes it clear that local roads are intended to provide access to adjacent properties. The primary intent is therefore is to provide access to whatever uses occur on adjacent properties. In the present case, the overwhelmingly primary use of Laughlin Road is to provide access to residentially-zoned properties.

The property does not meet this characteristic of Non-Impacted Forest Lands.

**(5) Primarily under commercial forest management.**

The subject property has been logged in the recent past and its soils are suitable for the commercial management of trees. However, in past years many adjacent and nearby property owners have raised serious concerns about the proposed application of industrial forest management practices (i.e. aerial herbicide spraying) to the subject property. I believe both the applicants and their neighbors would agree that traditional commercial forest management is impractical on the subject property.

The applicants have taken affirmative steps to manage the subject property for conservation and non-commercial forestry purposes. To this end, non-commercially-viable tree species have been planted and labor-intensive, herbicide-free methods of noxious vegetation control have been employed. In addition, the subject

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property is subject to a deed restriction that prohibits commercial forestry and the Lane County Department of Assessment and Taxation has agreed to remove the property from its special assessment program for forest land.

The applicants have gone beyond the utterance of platitudes regarding their intent to remove the subject property from commercial forest management practices. I believe that these affirmative steps demonstrate that the subject property no longer can be considered as being primarily under commercial forest management.

In summary, the subject property only exhibits two of the five characteristics of property that characterize land that should properly be zoned non-impacted forest land.

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

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

The applicants' concede that the subject property is not developed with a residence or other non-forest use. The application is therefore inconsistent with this characteristic of non-impacted forest lands.

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

As explained above, the size of the subject property is consistent with this characteristic as well as Policy 15.b.(2), above.

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

The subject property abuts 13 tracts, 11 of which are under 80 acres in size. These tracts are comprised of 18 parcels, 11 of which are zoned RR-10. Rural residential zoning is applied to exception areas (nonresource land) that are devoted to rural housing.<sup>11</sup> In addition, there are between 50 and 60 parcels within 2,000 feet of the subject property. An "eyeball" assessment of the official zoning map of this area indicates that the vast majority of these

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<sup>11</sup> Lane County Rural Comprehensive Plan, Land Use Policy 11.

parcels are less than 80 acres in size. In addition, a large number of these parcels are zoned RR-10, including Peacefull Valley Estates, a residential subdivision located about 400 feet to the west.

The subject property meets this characteristic of Impacted Forest Lands.

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

One opponent has argued that the term “provided” should be interpreted to mean that the subject property actually has those facilities and services in place rather than merely having access to them. While not disputing that this criterion could have been written more clearly, I do not believe that it should be read so narrowly.

The Policy #6 of the RCP’s Goal Eleven: Public Facilities and Services chapter describes minimum service levels for various land designations. Inexplicably, no description is provided for Impacted Forest Land but a reading of descriptions for other designations reveals that the phrase “public facilities and services” includes schools, electrical service, telephone service, a rural level of fire and police protection, and reasonable access to a solid waste facility.

The subject property lies within a rural fire protection district, a school district and the service area of the Lane County Sheriff’s Department. Under the interpretation suggested, the subject property would not qualify as being provided with fire, police or school service unless the fire district was currently providing emergency services to the property, a child living on the property was enrolled in a School District 4J school and a representative of the Sheriff’s Department was on the property. This is an oversimplification, of course, but it illustrates the difficulty in applying such a conservative interpretation to this criterion.

A better interpretation is that “provided” means reasonably accessible and I believe that this is consistent with the Board of Commissioners interpretation of RCP Goal Four Policy 15.c.(4).<sup>12</sup> Electrical and telephone utilities, for instance, are normally made available via the local road system. Properties that have direct

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<sup>12</sup> Lane County Board Ordinance PA 1236 (Oct. 26, 2006), Findings of Fact at page 16



access to the local road system therefore have direct access to those services and thus those services can be considered to be provided to the property. As a corollary, if a property does not have access to the local road system then the fire district, for example, cannot provide emergency service and that service cannot be considered to be “provided” to the property. In the present case, the subject property has direct access<sup>13</sup> to Laughlin Road via tax lot 528, which is a part of the same legal lot that comprises the subject property. There is no practical or legal impediment to the provision of the full range of rural public facilities and services provided along Laughlin Road to the subject property.

It has also been suggested that this criterion requires that the applicants show the intent behind the construction of Laughlin Road. I must agree with the applicants’ interpretation of legislative construction that the placement of the comma after the word “roads” indicates the phrase “intended primarily for direct services to rural residences” modifies “public facilities and services” as well as roads.

The question then is whether the public services and the road are intended primarily for direct services to rural residences. In regard to Laughlin Road, it is only 1.26 miles in length and is classified as a rural local road. Lane Code 15.010(18)(e) states that local roads are solely intended to provide access to adjacent properties. In this respect, ninety-two percent of the 42 parcels adjacent to (having frontage on) Laughlin Road are zoned RR-10. Most of these parcels are developed with residences. As stated above, Parcel 1, which includes the subject property, has frontage on Laughlin Road.

The subject property, as well as the other properties in the area that have access to Laughlin Road, has access to a full range of services normally available to a rural residence, including police and fire coverage, school, electricity, telephone, and solid waste disposal. To a large degree, the public facilities and services available in the area and Laughlin Road are utilized by rural residences. For this reason, I believe that the subject property meets this characteristic of Impacted Forest Lands.

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<sup>13</sup> Under LC 15.135(2)(a), the subject property is considered to have legal access to a County Road because it was the creature of an approved land division.

The subject property has three of the four characteristics that the RCP has ascribed to Impacted Forest Lands.

Policy 15 requires a conclusion that the characteristics of the land correspond more closely to the characteristics of the proposed zoning than the characteristics of the other forest zone. In the present case, the subject property exhibits two of the five characteristics of Non-Impacted Forest Land and three of the four characteristics that would denote Impacted Forest Land. On this basis of this analysis, the rezoning of the subject property to F-2 Impacted Forest Land is consistent with RCP Forest Land Policy 15.

**Conclusion**

The proposed rezoning is consistent with applicable criteria of the Lane Code and the Rural Comprehensive Plan.

**Respectfully Submitted,**

  
**Gary Darnielle**  
**Lane County Hearings Official**