



Oregon

Theodore R. Kulongoski, Governor

Department of Land Conservation and Development

635 Capitol Street, Suite 150

Salem, OR 97301-2540

(503) 373-0050

Fax (503) 378-5518

www.lcd.state.or.us



NOTICE OF ADOPTED AMENDMENT

05/27/2011

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

FROM: Plan Amendment Program Specialist

SUBJECT: Linn County Plan Amendment
DLCD File Number 002-09

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

Appeal Procedures*

DLCD ACKNOWLEDGMENT or DEADLINE TO APPEAL: Tuesday, June 14, 2011

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

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

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

Cc: Deborah Pinkerton, Linn County
Jon Jinings, DLCD Community Services Specialist
Katherine Daniels, DLCD Farm/Forest Specialist
Ed Moore, DLCD Regional Representative

<paa> YA



FORM 2

DLCD

Notice of Adoption

This Form 2 must be mailed to DLCD within **5-Working Days after the Final Ordinance is signed** by the public Official Designated by the jurisdiction and all other requirements of ORS 197.615 and OAR 660-018-000

In person electronic mailed

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DEPT OF

MAY 25 2011

**LAND CONSERVATION
AND DEVELOPMENT**
For Office Use Only

Jurisdiction: **Linn County**

Local file number: **BC08-0004**

Date of Adoption: **5/24/2011**

Date Mailed: **5/24/2011**

Was a Notice of Proposed Amendment (Form 1) mailed to DLCD? Yes No Date: 2/26/2009

Comprehensive Plan Text Amendment

Comprehensive Plan Map Amendment

Land Use Regulation Amendment

Zoning Map Amendment

New Land Use Regulation

Other:

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

The Linn County Board of Commissioners approved an amendment of the Comprehensive Plan map designation from Rural Residential Reserve-Farm Forest to Non Resource and an amendment of the zoning map designation from Farm/Forest (F/F) to Non Resource-5 acre minimum (NR-5) on a 15.00-acre property. This adoption was for the remand hearing from LUBA on one assignment of error.

Does the Adoption differ from proposal? No, no explanation is necessary

Plan Map Changed from: **Rural Res. Reserve/Farm Forest** to: **Non Resource**

Zone Map Changed from: **Farm/Forest (F/F)** to: **Non Resource-5 acre minimum (NR-5)**

Location: **T12S, R2W, Section 27, Tax Lot 1000**

Acres Involved: **15**

Specify Density: Previous:

New:

Applicable statewide planning goals:

1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19
<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Was an Exception Adopted? YES NO

Did DLCD receive a Notice of Proposed Amendment...

45-days prior to first evidentiary hearing? Yes No

If no, do the statewide planning goals apply? Yes No

If no, did Emergency Circumstances require immediate adoption? Yes No

DLCD file No. _____

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

Local Contact: **Deborah Pinkerton**

Phone: (541) 967-3816 Extension: 2367

Address: P O Box 100

Fax Number: 541-926-2060

City: Albany

Zip: 97321-

E-mail Address: dpinkerton@co.linn.or.us

ADOPTION SUBMITTAL REQUIREMENTS

This Form 2 must be received by DLCD no later than 5 working days after the ordinance has been signed by the public official designated by the jurisdiction to sign the approved ordinance(s)

per ORS [197.615](#) and [OAR Chapter 660, Division 18](#)

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

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

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

<http://www.oregon.gov/LCD/forms.shtml>

Updated April 22, 2011



LINN COUNTY PLANNING AND BUILDING DEPARTMENT

Robert Wheeldon, Director

Room 114, Linn County Courthouse
PO Box 100, Albany, Oregon 97321
Phone 541-967-3816 Fax 541-926-2060
www.co.linn.or.us

NOTICE OF FINAL DECISION

CASE BC08-0004

APPLICANT Bob Morris et al.

**RESOLUTION/
ORDER** 2011-009

ORDINANCE 2011-010

REQUEST Bob Morris filed an application for a *Comprehensive Plan* map and zoning map amendment to amend the *Comprehensive Plan* map designation on 15.00 acres, described as Tax Lot 1000 on map T12S, R2W, Section 27, from Rural Residential Reserve/Farm Forest to Non-Resource and amend the zoning map designation from Farm/Forest (F/F) to Non-Resource-5 acre minimum (NR-5). The Linn County Board of Commissioners approved the proposal and the decision was appealed to the Land Use Board of Appeals (LUBA). LUBA remanded the decision as one assignment of error was sustained. LUBA found that: "the county must first consider the data that OAR 660-006-0010 and 660-006-0005(2) obligate the county to consider." The remand hearing was to obtain information to address the one assignment of error.

BOARD OF COMMISSIONERS ACTION The Board unanimously voted to approve the proposal.

If you wish to appeal this decision, an appeal must be filed with the Land Use Board of Appeals (LUBA) within 21 days from the date this notice is mailed.

Appeals to LUBA must be filed in accordance with ORS 197.830. If you have any questions about this process, you should contact LUBA in Salem.

Ordinance 2011-010 and Resolution and Order No. 2011-090 may be reviewed at the office of the Linn County Clerk, Room 205, Linn County Courthouse; that office is open from 8:30 a.m. to 5:00 p.m., Monday through Friday, except legal holidays. Copies of the ordinance and resolution and order are available in the office of the Linn County Clerk. A fee to cover copying costs will be charged.

Handwritten signature of Robert Wheeldon in black ink.

Robert Wheeldon
Director

Handwritten date "5/24/11" in black ink.

Date

C: John Brosy
Friends of Linn County
Department of Land Conservation and Development

BEFORE THE BOARD OF COUNTY COMMISSIONERS
FOR LINN COUNTY

IN THE MATTER OF AN ORDINANCE) AMENDING THE LINN COUNTY ZONING MAP) AND THE LINN COUNTY COMPREHENSIVE) PLAN MAP; T12S, R2W, SECTION 27, TAX) LOT 1000; AND AMENDING ORDINANCE) NO. 2009-206)	ORDINANCE NO. 2011-010 (Amending Code) (Planning and Building Department; BC08-0004)
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WHEREAS, Bob Morris et al filed an application for a *Comprehensive Plan* map amendment and zoning map amendment to amend the *Comprehensive Plan* designation on 15.00 acres, described as Tax Lot 1000 on map T12S, R2W, Section 27, from Rural Residential Reserve/Farm Forest to Non-Resource and amend the zoning map designation from Farm/Forest (F/F) to Non-Resource-5 acre minimum (NR-5);

WHEREAS, Following public review, on May 27, 2009, the Board of County Commissioners for Linn County (the Board) adopted Resolution and Order No. 2009-205 and Ordinance No. 2009-206, approving the application;

WHEREAS, The decision of the Board of County Commissioners in this matter was appealed to the Land Use Board of Appeals (LUBA);

WHEREAS, LUBA issued its decision on November 9, 2009 (James Just v. Linn County, LUBA No. 2009-068), which was not appealed;

WHEREAS, The Linn County Board of Commissioners (Board) held a duly noticed hearing on remand at 10:00 a.m. on December 8, 2010 to consider testimony on the proposed amendment to the Linn County zoning map and the Linn County *Comprehensive Plan* map;

WHEREAS, The Board having read the proposed ordinance and having received and considered the oral and written public testimony presented prior to and at the hearing; and

WHEREAS, The findings in support of this ordinance are attached to Resolution and Order No. 2011-009 and entitled Exhibit 1, (BC08-0004 Decision Criteria, Findings and Conclusions on Remand); and, now, therefore, be it

Ordained by the Linn County Board of Commissioners, That:

Section 1. Map Amendment. Appendix 1, Zoning map, following LCC Chapter 920 [see LCC 920.010(B)] be amended to designate a 15.00-acre property identified as Tax Lot 1000 on Assessor map T12S, R2W, Section 27, Linn County, Oregon, as being zoned Non Resource – 5 acre minimum (NR-5) and amend LCC Chapter 905 (Land Use Element Code), Appendix 2 (Comprehensive Plan map) to designate the 15.00 acres as having a Linn County *Comprehensive Plan* map designation of Non Resource.

Section 2. Savings clause. Repeal of a code section or ordinance shall not revive a code section or ordinance in force before or at the time the repealed code section or ordinance took effect. The repeal shall not affect a punishment or penalty incurred before the repeal took effect, nor a suit, prosecution, or proceeding pending at the time of the repeal for an offense committed under the repealed code section or ordinance.

Section 3. Severability. Invalidity of a section or part of a section of this ordinance shall not affect the validity of the remaining sections or parts of sections.


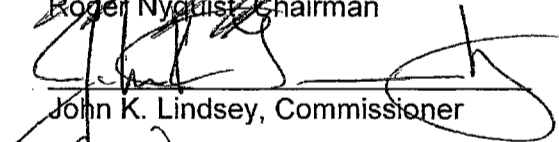
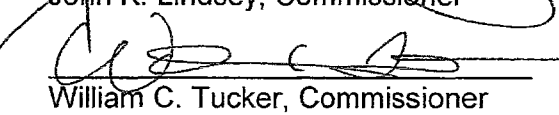
Section 4. Effective date. To protect the health, safety, and welfare of the citizens of Linn County, this ordinance shall take effect following adoption.

Section 5. Codification. Following adoption, this ordinance shall be codified pursuant to LCC Chapter 120.

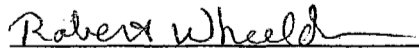
Public reading held May 2011.
 Adopted and passed May 2011.
 The effective date of this Ordinance shall be May 24, 2011.

BOARD OF COUNTY COMMISSIONERS FOR LINN COUNTY


Signed May 24, 2011.

		Voting	
		For	Against
Steve Druckenmiller, Linn County Clerk Recording Secretary	 Roger Nyquist, Chairman		
By _____	 John K. Lindsey, Commissioner	X	
	 William C. Tucker, Commissioner	X	

APPROVED AS TO CONTENT:


 Robert Wheeldon
 Linn County Planning and Building Director

APPROVED AS TO FORM:


 Deputy County Attorney for
 Linn County

BEFORE THE BOARD OF COUNTY COMMISSIONERS

FOR LINN COUNTY OREGON

IN THE MATTER OF A COMPREHENSIVE)
PLAN MAP AND ZONING MAP AMENDMENT)
APPLICATION BY BOB MORRIS ET AL)
TO AMEND THE COMPEHENSIVE PLAN MAP)
AND ZONING MAP DESIGNATIONS ON A)
15.00-ACRE PROPERTY IDENTIFIED AS TAX)
LOT 1000 ON MAP T12S, R2W, SECTION 27)
AND AMENDING RESOLUTION NO. 2009-205)

RESOLUTION &
ORDER NO. 2011-009
Planning and Building Department
(BC08-0004)
(Findings and Conclusions)

WHEREAS, Bob Morris et al filed an application for a *Comprehensive Plan* map amendment and zoning map amendment to amend the *Comprehensive Plan* designation on 15.00 acres, described as Tax Lot 1000 on map T12S, R2W, Section 27, from Rural Residential Reserve/Farm Forest to Non-Resource and amend the zoning map designation from Farm/Forest (F/F) to Non-Resource-5 acre minimum (NR-5);

WHEREAS, Following public review, on May 27, 2009, the Board of County Commissioners for Linn County (the Board) adopted Resolution and Order No. 2009-205 and Ordinance No. 2009-206, approving the application;

WHEREAS, The decision of the Board of County Commissioners in this matter was appealed to the Land Use Board of Appeals (LUBA);

WHEREAS, LUBA issued its decision on November 9, 2009 (James Just v. Linn County, LUBA No. 2009-068), which was not appealed;

WHEREAS, On December 8, 2010, the Board held a duly noticed hearing on remand, and considered the meaning of LUBA's Order and other testimony;

WHEREAS, The Board held the record open for 12 days to receive written rebuttal from the applicant, and the Board accepted said written testimony into the record;

WHEREAS, After considering all testimony and evidence previously submitted, the Board reached a consensus that the proposed *Comprehensive Plan* map amendment and zoning map amendment be approved on remand;

WHEREAS, The findings in support of this decision to approve the proposed *Comprehensive Plan* map amendment and zoning map amendment on remand are attached hereto as Exhibit 1 (BC08-0004 Decision Criteria, Findings and Conclusions on Remand); and now, therefore, be it

RESOLVED, That the Board of County Commissioners for Linn County adopt the Findings as set forth in Exhibit 1 (BC08-0004 Decision Criteria, Findings and Conclusions on Remand) and re-approve the *Comprehensive Plan* map amendment and zoning map amendment; and

ORDERED, That the Linn County Zoning map and the Linn County *Comprehensive Plan* map be prepared by county staff for amendment to designate a 15.00-acre property (Tax Lot 1000 on map T12S, R2W, Section 27), Linn County, Oregon, as being zoned Non Resource-5 acre minimum (NR-5) and designated Non Resource on the Linn County *Comprehensive Plan* map.

Resolved this 24th day of May 2011.

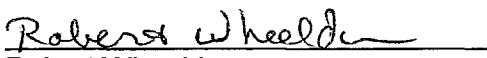
BOARD OF COUNTY COMMISSIONERS
FOR LINN COUNTY


Roger Nyquist, Chairman


John K. Lindsey, Commissioner


William C. Tucker, Commissioner

APPROVED AS TO CONTENT:


Robert Wheeldon
Director, Linn County Planning and Building

APPROVED AS TO FORM:

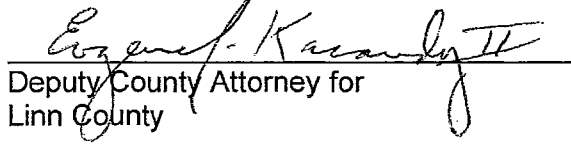

Deputy County Attorney for
Linn County

EXHIBIT 1

BC08-0004

DECISION CRITERIA, FINDINGS, AND CONCLUSIONS ON REMAND

The following findings of fact support a decision to approve the application. These findings are based on the record of public input developed by the county and submitted to LUBA in LUBA No. 2009-068, and additional public input on remand:

1. The five pages of original findings by the Board in Resolution No. 2009-205 are reconfirmed.
2. The Board adopts by reference the Planning and Building Department staff report submitted in this matter (attached as Exhibit 2), as additional findings for approval.
3. As indicated by the staff report, LUBA's remand order required "the county must first consider the data that OAR 660-006-0010 and 660-006-0005(2) obligate the county to consider."
4. A limited remand hearing was held on this matter December 8, 2010 and continued for written rebuttal until December 21, 2010. Written rebuttal to written comments submitted by Friends of Linn County was accepted by the Board on December 21, 2010 (attached as Exhibit 3). The applicant's representative, John Brosy, has proposed that the County Board of Commissioners adopt these findings, to address LUBA's concerns, and to re-approve the application.
5. Supplemental findings submitted by John Brosy are attached as Exhibit 4.

EXHIBIT 2
PLANNING AND BUILDING DEPARTMENT STAFF REPORT

STAFF REPORT

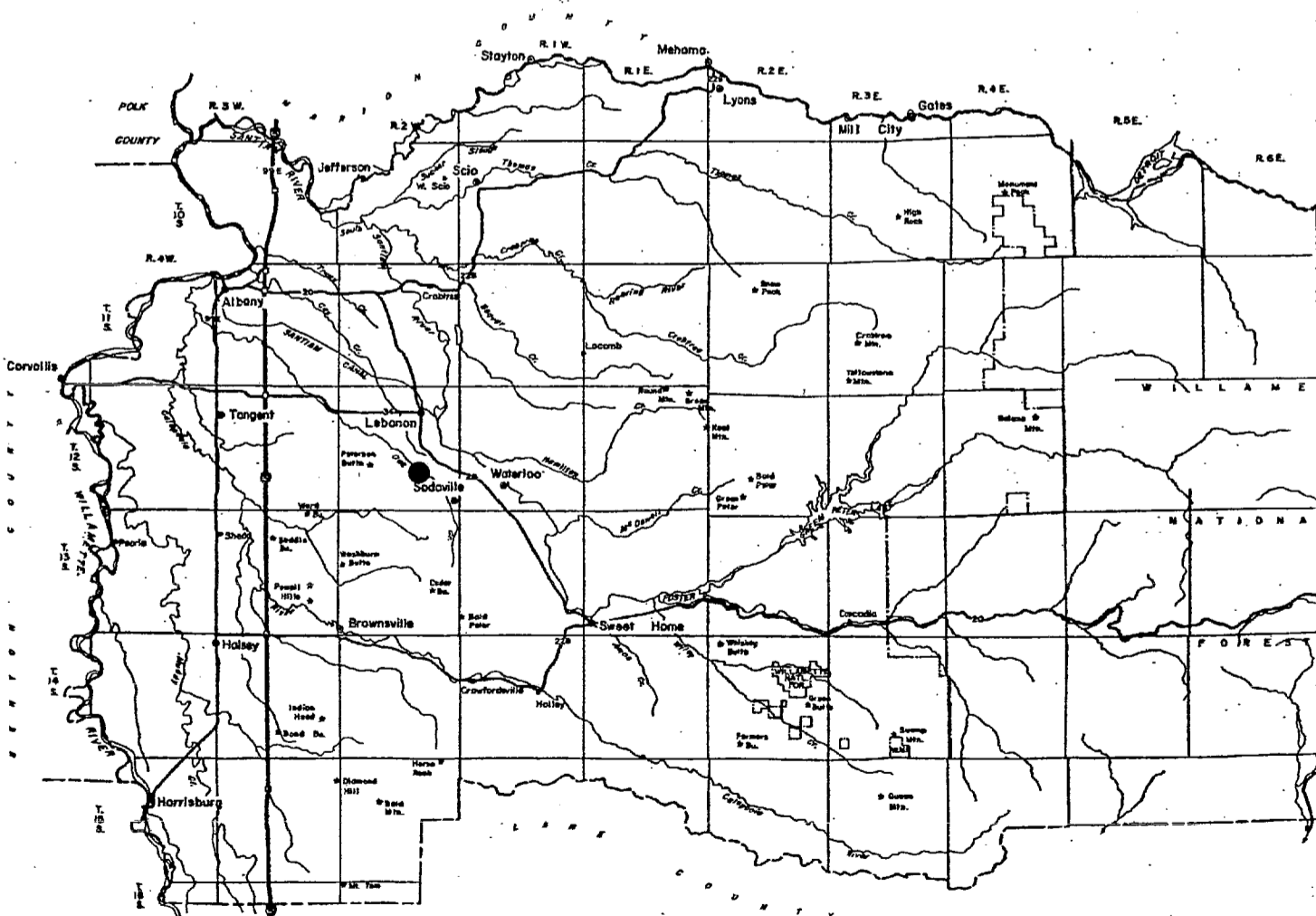
December 8, 2010

TO: Linn County Board of Commissioners

FROM: Linn County Planning and Building Department

RE: BC08-0004; Resolution and Order No. 2009-205; Ordinance No. 2009-206. A public hearing to consider the Land Use Board of Appeals (LUBA) remand (LUBA No. 2009-068, November 9, 2009) of Linn County's May 27, 2009 decision regarding an application by Bob Morris et al. for a *Comprehensive Plan* map amendment to amend the *Comprehensive Plan* map designation on 15.00 acres from Rural Residential Reserve/Farm Forest to Non-Resource and amend the zoning designation on the 15.00 acres from Farm/Forest (F/F) to Non-Resource-5 acre minimum (NR-5). The property is identified as Tax Lot 1000 on map T12S, R2W, Section 27 and has an address of 36848 Rock Hill Drive, Lebanon Oregon. The property is located on the south side of Rock Hill Drive, about 1/8 mile west of its intersection with SW Fifth Street, and about 3/4 mile south of the city limits of Lebanon. LCC 921.822(A), 921.874(A), and 905.960 and the Oregon Statewide Planning Goals contain applicable decision criteria. A copy of the complete proposal and application is available for review or purchase in the Linn County Planning and Building Department office during normal business hours.

The scope of this hearing is limited to the assignment of error sustained by LUBA. Specifically, LUBA found that: "the county must first consider the data that OAR 660-006-0010 and 660-006-0005(2) obligate the county to consider." Written and oral testimony is therefore limited to information required by OAR 660-006-0010 and 660-006-0005(2). Other described component parts of the proposal are approved and are not under review.



I. INTRODUCTION

A. PROJECT SUMMARY AND ANALYSIS

The applicant is proposing to amend the Linn County *Comprehensive Plan* map designation from Rural Residential Reserve/Farm Forest to Non-Resource and amend the zoning map designation from Farm/Forest (F/F) to Non-Resource-5 acre minimum (NR-5) on his 15.00 acres located along Rock Hill Drive. One dwelling would be an allowed use on a separate 5.00-acre parcel.

The F/F zoning district has an 80-acre minimum size standard for creating new parcels. The proposed NR-5 zoning designation would allow an application to create up to three, 5.00-acre parcels and up to two additional home sites. The potential to create new parcels and to develop each with a home site is dependent on a number of factors, including suitability for sewage disposal, potable water availability, terrain, access requirements, and compliance with other applicable property development standards.

The Non-Resource Plan and zoning designations were adopted into County Code in April 2004 in order to recognize property that does not meet the definition of agricultural land in Statewide Planning Goal 3; and does not meet the definition of forest land in Statewide Planning Goal 4. If a property is not subject to Goal 3 or Goal 4, an exception to these statewide planning goals is not required to designate the property as Non-Resource land in the Linn County *Comprehensive Plan*.

The Linn County Planning Commission held a public hearing on this proposal on April 14, 2009. After accepting public testimony and reviewing the proposal, the Commission voted four to two to recommend approval of the request. Commissioners McKinney, Furtwangler, Johnson, and Jorgensen voted for the request and Commissioners Magnuson and Walsh voted against the proposal. The Board of Commissioners held a public hearing on the proposal on May 6, 2009 and unanimously voted to approve the proposal. Ordinance No. 2009-206 (Exhibit A) and Resolution and Order No. 2009-205 (Exhibit B) are the decision documents approving the *Comprehensive Plan* map amendment and zoning map amendment.

The Board's approval was appealed to the Land Use Board of Appeals (LUBA) by Jim Just. LUBA remanded the decision to Linn County on November 9, 2009 on one of two assignments of error. LUBA concluded Linn County had not adequately addressed Oregon Administrative Rule (OAR) 660-006-0010 and OAR 660-006-0005(2) (Exhibit C) as it relates to protecting the property as forest land (Goal 4). LUBA denied the second assignment of error and concluded Linn County had adequately shown that the property is not agricultural land protected by Goal 3.

B. DECISION CRITERIA

LCC 921.822(A), 921.874(A), and 905.960 and the Oregon Statewide Planning Goals contain the applicable decision criteria for a *Comprehensive Plan* map and zoning map amendment application. These are all identified in Exhibit B, Resolution and Order No. 2009-205. In addition, OAR 660-006-0010 and OAR 660-006-0005(2) contain information on inventorying forest lands. Only the required information in the OARs needs to be addressed in the remand hearing.

OAR 660-006-0005

(2) "Cubic Foot Per Acre" means the average annual increase in cubic foot volume of wood fiber per acre for fully stocked stands at the culmination of mean annual increment as reported

by the USDA Natural Resource Conservation Service (NRCS) soil survey information, USDA Forest Service plant association guides, Oregon Department of Revenue western Oregon site class maps, or other information determined by the State Forester to be of comparable quality. Where such data are not available or are shown to be inaccurate, an alternative method for determining productivity may be used. An alternative method must provide equivalent data as explained in the Oregon Department of Forestry's Technical Bulletin entitled "Land Use Planning Notes Number 3 dated April 1998" and be approved by the Oregon Department of Forestry.

OAR 660-006-0010

Governing bodies shall include an inventory of "forest lands" as defined by Goal 4 in the comprehensive plan. Lands inventoried as Goal 3 agricultural lands or lands for which an exception to Goal 4 is justified pursuant to ORS 197.732 and taken are not required to be inventoried under this rule. Outside urban growth boundaries, this inventory shall include a mapping of average annual wood production capability by cubic foot per acre (cf/ac). If site information is not available then an equivalent method of determining forest land suitability must be used. Notwithstanding this rule, governing bodies are not required to reinventory forest lands if such an inventory was acknowledged previously by the Land Conservation and Development Commission.

The applicant's representative, John Brosy, has submitted information to address the Oregon Administrative Rules. It is attached as Exhibit D.

C. EXISTING AND PROPOSED CONDITIONS

- | | |
|---|---|
| 1. Zoning designation: Farm/Forest (F/F) | 1. Zoning designation: Non-Resource-5 acre minimum (NR-5) |
| 2. Plan designation: Rural Residential Reserve/Farm Forest | 2. Plan designation: Non-Resource |
| 3. Parcel: T12S, R2W, Section 27, Tax Lot 1000; 15.00 acres | 3. Parcel: No change with this application. Future divisions would be possible. |
| 4. Access: Frontage on Rock Hill Drive | 4. Access: No change |
| 5. Land use: One dwelling, outbuilding, trees, hay and grass. | 5. Land use: No change with this application. Two future dwellings could be authorized; one on each of the two future additional parcels. |

D. ZONING AND DEVELOPMENT BACKGROUND

This land has been zoned Farm/Forest (F/F) since January 1985. Between March 22, 1972 and September 2, 1980, the land was zoned Exclusive Farm Use (EFU). Between September 2, 1980 and January 1985, the land was zoned Rural Residential-5 acre minimum (RR-5).

There have been six other land use actions that have affected this property. They are as follows:

- CP-19-84/85 was reviewed and approved in January 1985 when Linn County amended the *Comprehensive Plan* map designation from Rural Residential to Rural Residential Reserve/Farm Forest and rezoned the property to Farm/Forest from Rural Residential-5 acre minimum (RR-5).
- CU-80-84/85 was approved in June 1985 by the Planning and Building Department, was for a veterinary office as a home occupation conditional use permit.

- CU-51-91/92 was for a nonresource related land division, a resource related land division, a resource related conditional use permit and a major land partition to create a 10+ acre nonresource related parcel and a 30+ resource related parcel from a 40.25-acre property and locate a resource related dwelling on the 30+ acres. The Linn County Planning Commission denied the request, which was then appealed to the Linn County Board of Commissioners. The Board, on August 5, 1992, voted to remand the application back to the Planning Commission for further consideration. There is no information as to whether the Planning Commission held any additional hearing on the proposal.
- CU-8-92/93 was for a nonresource related conditional use permit, a nonresource related land division and a major land partition to create a 10+ acre nonresource related parcel and a 30+ acre nonresource related parcel from an existing 40.29-acre property and locate a nonresource related dwelling on the 30+ acres. The Planning Commission approved the proposal on September 15, 1992. The partition was completed and two parcels resulted.
- PLA-26-96/97 (property line adjustment) was approved by the Planning and Building Department on February 10, 1997, whereby tax lot 1000 was increased in size by five acres and a 26.11-acre property (tax lot 1006) was reduced by five acres. These two tax lots were authorized through CU-8-92/93.
- BC00-0004 was denied by the Board of Commissioners on May 15, 2001. Robert Morris had requested a *Comprehensive Plan* map amendment to change the plan designation on the 15 acres from its current designation to Rural Residential and change the zoning designation from Farm/Forest (F/F) to Rural Residential-5 acre minimum (RR-5).

II. PHYSICAL CHARACTERISTICS OF PROPERTY

A. SOIL TYPES

Soils. The following is based upon information in the National Resources Conservation Service (NRCS), formerly the Soil Conservation Service (SCS), publication Soil Survey of Linn County Area, Oregon, July, 1987:

Soil Type	HVFL type	SCS type	% of parcel	# of acres	Cu ft/ ac/yr
34E Dixonville	--	IV	11.35	1.70	115
79C Philomath	--	VI	46.22	6.93	45
104E Witzel	--	VI	15.80	2.37	106
8 Bashaw	2	IV	26.63	4.00	0
TOTAL			100%	15.00	931.35

A soils map is attached as Exhibit E.

- B. TOPOGRAPHY** – The property has an elevation difference of approximately 80 feet between the northwest corner, which has an elevation of about 390 feet above MSL, and the southeast corner of the 15 acres, which has an elevation of about 470 feet above MSL. A contour map is attached as Exhibit F.

- C. **NATURAL FEATURES AND IMPROVEMENTS** – The property contains a dwelling, an outbuilding, a well and a sewage disposal system. There are about two acres of trees on a relatively steep slope that separates the northern five acres from the southern 10 acres of the property.
- D. **NATURAL AND/OR GEOLOGIC HAZARDS** - Tax lot 1000 is not within any designated base flood area. No mass movement topography is identified on the property in the Environmental Geology of Western Linn County, Oregon.

III. ENVIRONMENTAL FACTORS

- A. **WILDLIFE HABITAT** – The property is not located within any identified big game habitat area and there are no inventoried sensitive fish or riparian habitats on the property.
- B. **WETLANDS** – The property does not contain any inventoried wetlands.

IV. AVAILABILITY OF PUBLIC FACILITIES AND SERVICES

- A. **FIRE** - Fire protection is provided by the Lebanon Rural Fire Protection District.
- B. **POLICE** - The Linn County Sheriff's Department provides police protection.
- C. **SCHOOL** - The parcel lies within the Lebanon School District, the Linn Benton Lincoln Education Service District and the Linn Benton Community College District.
- D. **OTHER DISTRICTS** - This parcel is within the Linn Soil and Water Conservation District.
- E. **SEWAGE DISPOSAL** – The Linn County Environmental Health Program has approved two sites on the 15 acres for sewage disposal systems; in the middle and south portions of the property. Environmental Health has no records for the existing dwelling and sewage disposal system at the north end of the property.
- F. **WATER SUPPLY** – There is an existing well on the property, according to the applicant, however, specific information regarding quality or quantity has not been provided. The applicant has provided well logs for area wells. These wells produce between 12 and 70 gallons of water per minute and are between 86 feet and 285 feet deep. The applicant has stated that holding tanks (for water storage) are not uncommon in the vicinity.
- G. **ACCESS** – The property has about 385 feet of frontage on Rock Hill Drive, a paved surface county road.

V. NOTICE TABLE AND PROCEDURE

A. NOTICE

Property owners within 1000 feet of the boundaries of the property were provided notice of this application. There are 36 property owners within the notification area. The following agencies have been provided notice and responded before this report was written.

AGENCIES	PROVIDED	RESPONDED	AGENCIES	PROVIDED	RESPONDED
Environmental Health	x		Linn County Parks		
Linn County Assessor	x		Linn Bldg. Official/Floodplain	x	
Linn County Road Dept.	x		Linn County Sheriff		
Linn County Surveyor			Linn GIS	x	
Dept. Environ. Quality			DOGAMI		
Div. State Lands			Or. Dept. of Trans.		
State Parks Department			Dept. Land Cons. & Dev.	x	
Or. Fish & Wildlife			Or. State Hwy. Division		
Linn SWCD			Ag. Extension Service		
RFPD: Lebanon	x		City:		
Dept. of Water Resources			Or. Dept. of Forestry	x	
School Dist:			Other: St. Fire Marshal	x	

B. PROCEDURE

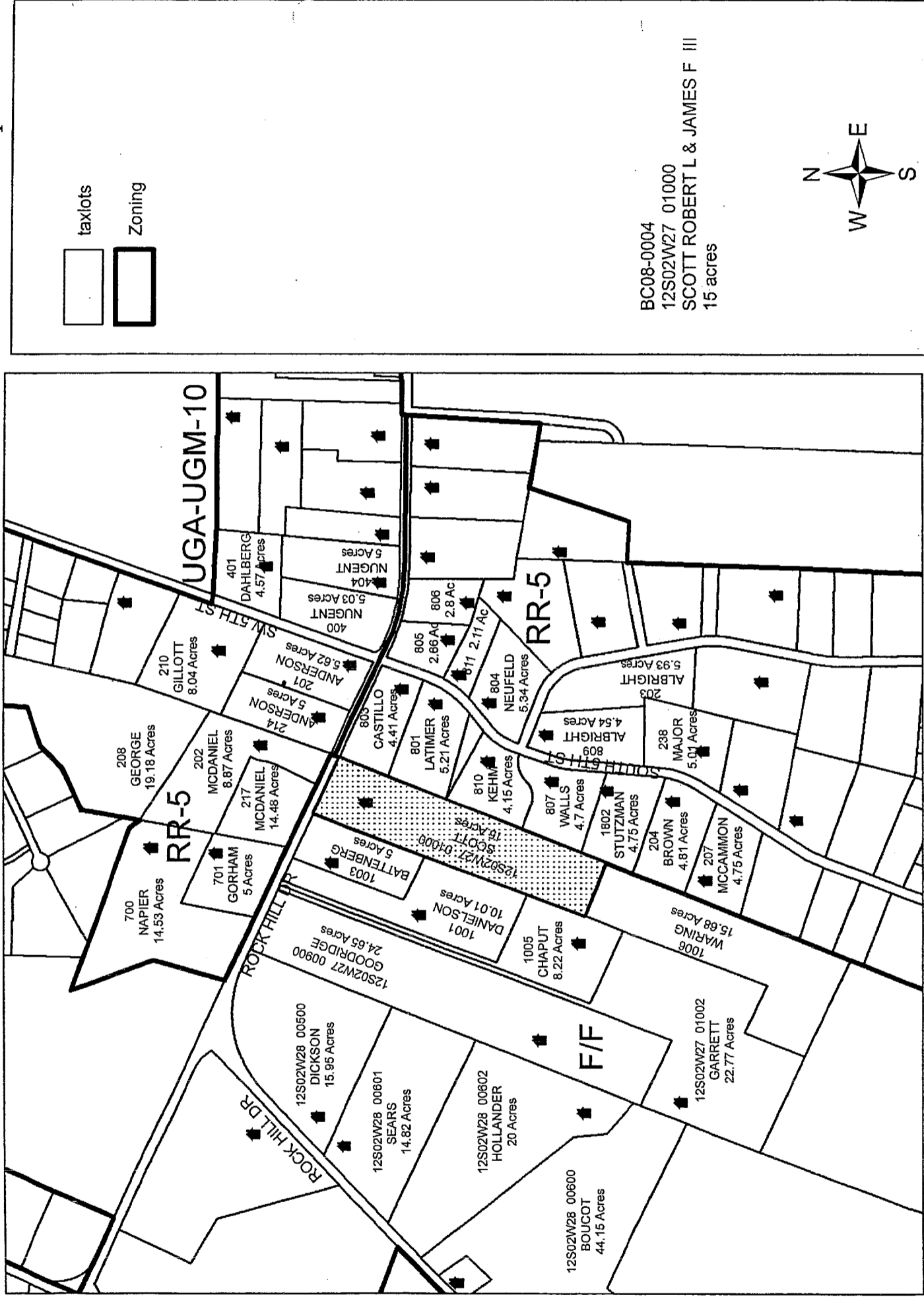
The Board of Commissioners must hold at least one public hearing on the above matter to take testimony from the applicant and interested parties. All testimony must be directed toward the one issue on remand. Failure to raise an issue before the close of the record or failure to provide statements or evidence sufficient to afford the decision maker(s) and the parties an adequate opportunity to respond to each issue raised precludes an appeal based on that issue. If additional documents or evidence are provided by any party, the Board may allow a continuance or leave the record open to allow the parties a reasonable opportunity to respond. Prior to the conclusion of the initial evidentiary hearing, any participant may request an opportunity to present additional evidence or testimony regarding the application. The Board shall grant the request by either (a) continuing the public hearing or (b) leaving the record open for additional written evidence or testimony. If the Board grants a continuance, the hearing shall be continued to a date, time, and place certain at least seven days from the initial hearing.

VI. EXHIBITS

- A. Ordinance No. 2009-206
- B. Resolution and Order No. 2009-205
- C. LUBA decision, LUBA No. 2009-068
- D. Applicant's Information
- E. Soils map of T12S, R2W, Section 27, Tax Lot 1000
- F. Contour map of T12S, R2W, Section 27, Tax Lot 1000
- G. Land Use Planning Notes Number 3X April 1998

Linn County Planning & Building Department

Notice Map



Date: 10/28/2010

EXHIBIT A

Ordinance No. 2009-206

BEFORE THE BOARD OF COUNTY COMMISSIONERS

FOR LINN COUNTY

IN THE MATTER OF AN ORDINANCE)
AMENDING THE LINN COUNTY ZONING MAP)
AND THE LINN COUNTY COMPREHENSIVE)
PLAN MAP)

ORDINANCE NO. 2009-206
(Amending Code)
(Planning and Building
Department; BC08-0004)

WHEREAS, The Linn County Board of Commissioners (Board) advertised notice that it would consider a proposed amendment to the Linn zoning map and the Linn County *Comprehensive Plan* map on May 6, 2009;

WHEREAS, At 10:00 a.m., on May 6, 2009, the Board conducted a regularly scheduled and duly advertised public hearing, considered the proposed amendment for the zoning map and *Comprehensive Plan* map;

WHEREAS, The Board having read the proposed ordinance and having received and considered the oral and written public testimony presented prior to and at the hearing; and

WHEREAS, The findings in support of this ordinance are attached to Resolution and Order No. 2009-205 and entitled Exhibit 1, (BC08-0004 Decision Criteria, Findings and Conclusions); and, now, therefore, be it

Ordained by the Linn County Board of Commissioners, That:

Section 1. Map Amendment. Appendix 1, Zoning map, following LCC Chapter 920 [see LCC 920.010(B)] be amended to designate a 15.00-acre property identified as Tax Lot 1000 on Assessor map T12S, R2W, Section 27, Linn County, Oregon, as being zoned Non Resource – 5 acre minimum (NR-5) and amend LCC Chapter 905 (Land Use Element Code), Appendix 2 (Comprehensive Plan map) to designate the 15.00 acres as having a Linn County *Comprehensive Plan* map designation of Non Resource.

Section 2. Savings clause. Repeal of a code section or ordinance shall not revive a code section or ordinance in force before or at the time the repealed code section or ordinance took effect. The repeal shall not affect a punishment or penalty incurred before the repeal took effect, nor a suit, prosecution, or proceeding pending at the time of the repeal for an offense committed under the repealed code section or ordinance.

Section 3. Severability. Invalidity of a section or part of a section of this ordinance shall not affect the validity of the remaining sections or parts of sections.

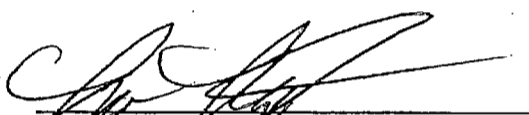
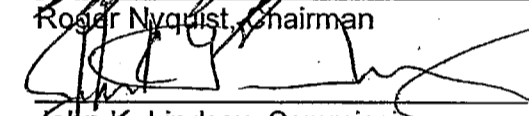
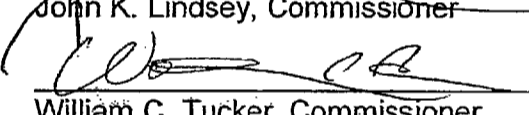
Section 4. Effective date. To protect the health, safety, and welfare of the citizens of Linn County, this ordinance shall take effect following adoption.

Section 5. Codification. Following adoption, this ordinance shall be codified pursuant to LCC Chapter 120.

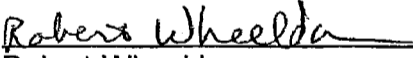
Public reading held May 6, 2009.
Adopted and passed May 6, 2009.
The effective date of this Ordinance shall be May 27, 2009.

BOARD OF COUNTY COMMISSIONERS FOR LINN COUNTY

Signed May 27, 2009.

		Voting	
		For	Against
Steve Druckemiller, Linn County Clerk Recording Secretary	 Roger Nyquist, Chairman	<input checked="" type="checkbox"/>	<input type="checkbox"/>
By _____	 John K. Lindsey, Commissioner	<input checked="" type="checkbox"/>	<input type="checkbox"/>
	 William C. Tucker, Commissioner	<input checked="" type="checkbox"/>	<input type="checkbox"/>

APPROVED AS TO CONTENT:


Robert Wheeldon
Linn County Planning and Building Director

APPROVED AS TO FORM:

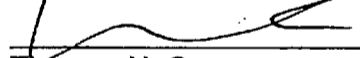

Thomas N. Corr
Linn County Legal Counsel

EXHIBIT B

Resolution and Order No. 2009-205

BEFORE THE BOARD OF COUNTY COMMISSIONERS
FOR LINN COUNTY OREGON

IN THE MATTER OF A COMPREHENSIVE)
PLAN MAP AND ZONING MAP AMENDMENT)
APPLICATION BY BOB MORRIS ET AL)
TO AMEND THE COMPEHENSIVE PLAN MAP)
AND ZONING MAP DESIGNATIONS ON A)
15.00-ACRE PROPERTY IDENTIFIED AS TAX)
LOT 1000 ON MAP T12S, R2W, SECTION 27)

RESOLUTION &
ORDER NO. 2009-205
Planning and Building Department
(BC08-0004)
(Findings and Conclusions)

WHEREAS, The Board of County Commissioners for Linn County (Board) conducted a duly advertised public hearing on May 6, 2009, for the purpose of considering the matter of a proposed zoning map amendment and *Comprehensive Plan* map amendment that would amend the zoning map designation and the *Comprehensive Plan* map designation on 15.00 acres identified as Tax Lot 1000 on map T12S, R2W, Section 27;

WHEREAS, The proposed zoning map amendment and *Comprehensive Plan* map amendment had been previously considered by the Linn County Planning Commission at a duly advertised meeting on April 14, 2009 and who, by a vote of four to two, voted to recommend approval to the Board;

WHEREAS, The Board, after considering all testimony and evidence submitted, voted to recommend the proposed zoning map amendment and *Comprehensive Plan* map amendment be adopted; and

WHEREAS, The findings in support of the proposed zoning map amendment and *Comprehensive Plan* map amendment are attached hereto as Exhibit 1 (BC08-0004 Decision Criteria, Findings and Conclusion); and now therefore, be it

RESOLVED, That the Board of County Commissioners for Linn County approve the Findings and Conclusions as set forth in Exhibit 1 (BC08-0004 Decision Criteria, Findings and Conclusions); and

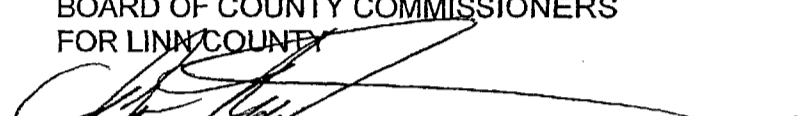
ORDERED, That the Linn County Zoning map and the Linn County *Comprehensive Plan* map be prepared by county staff for amendment to designate a 15.00-acre property (Tax Lot

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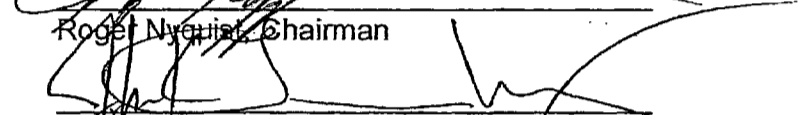
1000 on map T12S, R2W, Section 27), Linn County, Oregon, as being zoned Non Resource-5 acre minimum (NR-5) and designated Non Resource on the Linn County *Comprehensive Plan* map.

Resolved this 27th day of May 2009.


BOARD OF COUNTY COMMISSIONERS
FOR LINN COUNTY



Roger Nyquist, Chairman

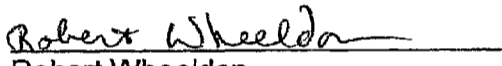


John K. Lindsey, Commissioner



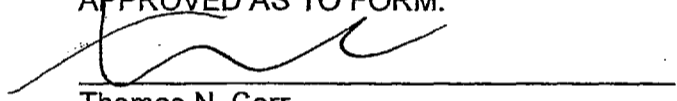
William C. Tucker, Commissioner

APPROVED AS TO CONTENT:



Robert Wheeldon
Director, Linn County Planning and Building

APPROVED AS TO FORM:



Thomas N. Corr
Linn County Legal Counsel

EXHIBIT 1

DECISION CRITERIA, FINDINGS, AND CONCLUSIONS

I. DECISION CRITERIA

The applicable decision criteria are found in LCC 921.822(A), 921.874(A), and 905.960, and the Oregon Statewide Planning Goals.

II. FINDINGS

CRITERION: When a Zoning Map or Land Development Code text amendment is necessary due to a proposed *Comprehensive Plan* amendment, only findings and conclusions responding to the *Comprehensive Plan* amendment criteria for decision are necessary to amend the Zoning Map or Code text provisions.

CRITERION: When a Zoning Map or Land Development Code text amendment is necessary due to a proposed *Comprehensive Plan* amendment, only findings and conclusions responding to the *Comprehensive Plan* amendment criteria for decision are necessary to amend the Zoning Map or Code text provisions.

CRITERION: The amendment is consistent with and does not alter the intent of applicable section (s) of the *Comprehensive Plan*.

FACTS: The applicant has submitted information to address the *Comprehensive Plan* sections, which is attached as Exhibit A. In addition, the applicant submitted a letter from William H. Roach, Senior Forester with Jackson and Prochnau, Inc. to address the definition of forestland as stated in the Oregon Statewide Planning Goals. Mr. Roach states in the letter "The applicant has had an extensive soil survey conducted by professional soil scientists. The results indicate a productive capacity below what could be considered commercial timberland for the vast majority of the parcel. Soils are rated as cubic foot-side class VI or site index 60 (100 year basis)." He goes on to state "My experience working with Witzel and Philomath soils is confirmed by the soil survey. These soils are thin, rocky, and have very low moisture holding capacity. Reforestation is difficult and costly with poor survival which often requires more than one planting to achieve full stocking. No viable commercial forest uses could be carried out on this property." Mr. Roach's complete letter is attached as Exhibit B.

ANALYSIS: This criterion has been met.

CRITERION: The amendment will be compatible with adjacent uses and will not adversely impact the overall land use pattern in the area.

FACTS: Property immediately east of the applicant's 15.00 acres is zoned Rural Residential-5 acre minimum (RR-5). These adjacent properties are typically four to five acres in size and are each developed with a dwelling. The properties to the immediate west of the applicant's property are zoned Farm/Forest (F/F) and were created through the partitioning process under previously repealed zoning ordinances. The properties

are five to 22+ acres in size. Some of the properties were created when the zoning was RR-5; prior to January 1985 when the zoning was changed to F/F. Dwellings on these properties were approved as nonresource related dwellings after the zoning was changed to F/F and Linn County's *Comprehensive Plan* (resource zones) was in compliance with the Statewide Planning Goals. The property to the south was originally approved as a nonresource related parcel in 1992. Property to the north, across Rock Hill Drive, is zoned RR-5 and each adjacent property is developed with a dwelling.

Land about 1/3 mile south of the applicant's 15.00 acres is over 76 acres in size and is about ¾ forested. The land between the applicant's property and the timber land has been approved as a non-resource related parcel.

The applicant states there are 27 dwellings within ½ mile of the applicant's property and that there are 11 properties that are adjacent to the subject property. Ten of the 11 properties are developed with dwellings. The applicant further states there are four Rural Residential exception areas within the vicinity of his 15.00 acres.

The applicant's proposal would apply a NR-5 zoning district to the property, which would allow the creation of five-acre parcels (a total of three), and the addition of two dwellings.

ANALYSIS: This criterion has been met. The land use pattern in the area is generally smaller residential parcels in both the RR-5 and F/F zoning districts and most of the properties are developed with a dwelling. The forested land south of the applicant's property would be adequately buffered from future development on the applicant's property by the intervening property.

CRITERION: The amendment, if within an adopted urban growth boundary, is in substantial conformity with the *Comprehensive Plan* and implementing ordinances of an affected city.

FACTS: The property is not located within an adopted urban growth boundary.

ANALYSIS: This criterion has been met.

CRITERION: The amendment will not have a significant adverse impact on a sensitive fish or wildlife habitat.

FACTS: The property is not located within any identified big game habitat area and there are no identified sensitive fish or riparian habitat on the property.

ANALYSIS: Because there are no identified habitats on the applicant's 15.00 acres, this criterion has been met.

CRITERION: The amendment will not have a significant adverse impact upon the provision of public facilities including police and fire protection, sanitary facilities and storm drainage facilities.

FACTS: The property is located within the Lebanon Rural Fire Protection District and police protection is provided by the Linn County Sheriff's Department. Rock Hill Drive, a county road, provides access to the property. Sanitary facilities are provided by an

existing subsurface sewage disposal system serving the existing dwelling. Two other sites have been approved by the Linn County Environmental Health Program for two additional sewage disposal systems on the 15.00 acres. Storm drainage is provided by ditches within the county road (Rock Hill Drive) right-of-way and other natural drainage on the property.

This proposal, if approved, would allow the provision of two additional parcels and two additional dwellings receiving services and using existing infrastructure. The County Road Department has been provided notice of the proposal, but has not yet commented on the request. Rock Hill Drive is a paved surface county road in good condition.

The Lebanon Fire District was also provided notice of the request and has not yet responded. The 15.00 acres is located within the fire district and as such, supports the fire district through the payment of taxes. If the applicant is successful with this application and is allowed to divide the property in the future, those additional properties will also pay taxes to the Lebanon Fire District to provide fire protection.

In addition, through the payment of property taxes and other imposed taxes, the Sheriff's Department and the Road Department receive funds to provide services and maintain infrastructure. Any division of the property and additional development will be subject to those taxes.

ANALYSIS: This criterion has been met.

CRITERION: The amendment will not have a significant adverse impact upon the transportation facilities.

FACTS: The applicant's property has about 385 feet of frontage on Rock Hill Drive, a paved-surface county road. There is one existing driveway from the 15.00 acres onto the county road. The applicant has indicated that no additional driveways are proposed onto the county road. Should additional development be permitted, a shared driveway would provide access to all three potential parcels and development. If approved, this proposal could result in the addition of only two permanent dwellings. The Linn County Road Department was provided notice of the proposal, but no comments have been received. The Road Department regulates the access onto county roads and would have the opportunity to determine where any new, if any, access points could occur on Rock Hill Drive. The Road Department would also review any additional development using an existing access point.

ANALYSIS: This criterion has been met.

CRITERION: The presence of any development limitations including geologic hazards, flood hazards or water quality or quantity will not have a significant adverse affect on land uses permitted through the amendment.

FACTS: The applicant's property is not located within any area subject to either a geologic hazard or a flood hazard. The applicant has provided well logs for area wells, but not for the well on the applicant's property. These wells produce between 12 and 70 gallons of water per minute and are between 86 feet and 285 feet deep. The wells in the well logs were drilled between 1992 and 1999. The applicant has stated that holding

tanks (for water storage) are not uncommon in the vicinity. No quality information has been provided.

ANALYSIS: The applicant has demonstrated that there is an adequate supply of domestic water in the area. There is no indication of a concern with the quality of the water in the well logs provided.

CRITERION: An exception to the statewide planning goals is not required. If required, then findings have been prepared to meet the exception criteria.

FACTS: An exception is not required.

ANALYSIS: This criterion has been met.

CRITERION: The amendment is consistent with the statewide planning goals.

FACTS: The applicant has provided information to address the Goals, which is attached as Exhibit A.

ANALYSIS: The Goals have been met.

Non-Resource Lands Policies

- (A) Linn County shall provide for the appropriate and orderly development of Non-Resource lands while minimizing potential conflicts with other land uses.
- (B) Land designated Non-Resource should have conditions that permit development with a limited exposure to geological hazards or a 100-year flood.
- (C) Land designated Non-Resource should be located or have the capability to be included in a rural fire protection district.
- (D) Land designated Non-Resource should have favorable conditions for location of subsurface waste disposal systems and for supplying adequate amounts of potable water.
- (E) Land designated Non-Resource should have access to a county road with sufficient capacity to accommodate additional development.
- (F) The Non-Resource Plan designation is implemented with two Non-Resource zoning districts that are distinguished only by minimum property size standards. The NR-5 zone has a 5-acre minimum property size for new units of land and the NR-10 zone has a 10-acre minimum property size for new units of land.
- (G) The NR-5 (5-acre minimum for new units of land) district is applied to suitable areas in order to maintain a rural development pattern reasonably compatible with nearby resource and non-resource lands. When applied near agricultural and forest resource areas, the 5-acre size standard will maintain an adequate buffer to minimize potential conflicts.
- (H) The NR-10 (10-acre minimum for new units of land) district is applied to suitable areas where larger property sizes are necessary to maintain a rural development pattern reasonably compatible with nearby resource and non-resource lands, or where larger property sizes are necessary to meet residential suitability characteristics such as groundwater availability, septic suitability, or access standards. When applied near agricultural and forest resource areas, the 10-acre size standard will maintain an adequate buffer to minimize potential conflicts.

- (I) New public sewer and water systems may not be established within the NR zone unless the County determines that a health hazard exists pursuant to DEQ or Oregon Health Division procedures and criteria. A new or extended public water or sewer system is appropriate in the rural areas only when needed to protect the public's health and safety.
- (J) A comprehensive plan and zoning map amendment must be approved before property designated Agricultural Resource or Farm/Forest can be amended to a Non-Resource Plan map designation. In addition to the LCC plan amendment criteria, the following criteria (Statewide Planning Goal and Administrative Rule resource land definition) must be met:
 - (1) The land is not predominantly SCS Class I, II, III and IV soils.
 - (2) The land is not intermingled with or adjacent to SCS Class I-IV land within the same farm unit.
 - (3) The land is not suitable for farm use taking into consideration;
 - (a) Soil fertility;
 - (b) Suitability for grazing;
 - (c) Climatic conditions;
 - (d) Existing and future availability of water for farm irrigation purposes;
 - (e) Existing land use patterns;
 - (f) Technological and energy inputs required; or
 - (g) Accepted farming practices.
 - (4) The land is not necessary to permit farm practices to be undertaken on adjacent or nearby agricultural lands.
 - (5) The land is not suitable for commercial forest uses including adjacent or nearby lands which are necessary to permit forest operations or practices on commercial forest lands or other forested lands that maintain soil, air, water and fish and wildlife resources.
- (K) An exception to Statewide Planning Goals 3 and 4 is not required to support a plan map amendment to a Non-Resource Plan designation when detailed and factual evidence shows that the lands are not farm or forest lands as defined in the Goals.
- (L) Notwithstanding the provisions of LCC 905.120(G) and LCC 905.330(G), conversion of lands designated as Agricultural Resource or Farm/Forest in the Comprehensive Plan to a Non-Resource Plan designation does not require an exception to Statewide Planning Goal 3 or Goal 4.
- (M) Applying the Non-Resource designation on isolated tracts surrounded by farm or forest lands shall be discouraged if it is shown that a non-resource designation would adversely affect existing farm or forest uses.
- (N) Only land designated Agricultural Resource, Farm/Forest, Agricultural Resource-Rural Residential Reserve or Farm/Forest-Rural Residential Reserve are eligible for a map amendment to Non-Resource.

III. CONCLUSION

Sufficient information is available for the Board of Commissioners to conclude the proposal as modified is consistent with the applicable decision criteria and the Oregon Statewide Planning Goals.

EXHIBIT A
Applicant's Information



161 High St. SE, Suite 224
Salem, Oregon 97301
phone 503.316.1842
fax 503.362.2541
portland 503.703.7305

September 29, 2008

Linn County Planning & Building Department
Room 114, Linn County Courthouse
Albany, Oregon 97321

**Re: Comprehensive Plan and Zone Change Application
Robert Morris, et al, Property, Lebanon Area**

Dear Planning & Building Department:

The following application is a request to change the County Comprehensive Plan and zoning designation for a 15-acre property approximately one mile south of Lebanon. The property is owned by Robert and Dorena Morris, James and Jannette M. Scott, and Robert L. Scott and is identified as tax lot 1000 of Section 27 on Linn County Assessor's map T12S, R2W. The property is approximately 800 ft. west of the intersection of Rock Hill Drive and South Fifth Road, on the south side of Rock Hill Drive. For convenience, our application refers to the parcel as the "Morris site" or "Morris property".

The existing Plan and zone designation is *Farm/Forest*. The proposed Plan designation is *Non-Resource* and the proposed zone designation is *Non-Resource five-acre minimum (NR-5)*.

The County application forms for the Comprehensive Plan change and zone change are identified as Applicant's Exhibit 1 and 2.

General Background

On April 28, 2004, the Linn County Board of Commissioners passed three ordinances, #'s 04-041, 04-042 and 04-043. These ordinances amended the text of the land use element of the County's Comprehensive Plan to create a new Non-Resource Plan map designation, and two new zoning designations, which are NR-5, Non-Resource five-acre minimum and NR-10, 10-acre minimum. The County only changed the Comprehensive Plan and zoning code texts, and left the actual mapping of the Non-Resource areas up to property owners via individual, site by site Plan and zone change applications.

This individual property request and analysis process is described in LCC 905.930 (C):

It is not expected that many parcels will meet the criteria to be designated non-resource. Ideally, objective criteria would identify the location of non-resource land. Unfortunately, the identification of non-resource land is based largely on subjective criteria. This means the identification of non-resource lands can only be achieved on a case-by-case basis. Geographic information systems (GIS) mapping can identify parcels that do not have productive farm or forest soils. However, the definition of farm and forestland (previously cited) requires more analysis than just soil types. Soils maps can be an initial screening tool used to identify potential non-resource lands, but further study considering all of the resource land definition factors is required as part of an application to change a plan designation.

The Non-Resource districts (NR-5 and NR-10) were added into the class of "Rural Development Zones," listed in LCC 927.300, by Linn County in 2004.

A previous recent land use application made by Mr. Morris was to change his property to the Rural Residential Plan and zone designations. That application and subsequent appeals were made prior to the County's adoption of the Non-Resource Plan and zone texts in April 2004. **The primary issue in the appeals was the Statewide Goal 3 and Goal 4 exception process. That exception process is not now required or a part of this application for the Non Resource Plan designation.**

In this application, italics are added to County Plan and zoning code text to distinguish those excerpts from the applicant's information and proposed findings.

Linn County went through a lengthy Comprehensive Plan acknowledgement process with the State during 1980-1985. The Residential and Farm/Forest Plan designations were established on the area properties at the time of the Plan's adoption. The subject property was part of a single 36-acre unit of land when the Farm/Forest designation was applied in the Comprehensive Plan. After the adoption of the Plan, three parcels to the east of the subject property were created as non-resource parcels and approved for non-resource dwellings in 1982. In 1992 the subject property was divided from the property to the south to create two non-resource parcels of 10 and 26 acres, respectively. A property line adjustment was approved between the two parcels in 1997 resulting in the current 15-acre configuration.

Property Description

The Morris property, which comprises 15 acres, is positioned on a gentle slope in the rocky hills approximately one mile south of the City of Lebanon, off Rock Hill Drive. Please see Applicant's Exhibit 3, an aerial photo of the site and vicinity.

One single-family dwelling with a barn and well are located on the northernmost 1/3 of the property closest to Rock Hill Drive. The dwelling is set back from the road approximately 410 feet. Directly south of the dwelling the site is a sloped wooded area and further south is unused native grassland on shallow, rocky soil.

The land use pattern and the visual orientation of the Morris property is definitely rural residential. The site is separated from larger, more productive farm sites to west by three smaller non-farm properties with homes. To the east are rural-residential zone lands with dwellings. Please Applicant's Exhibit 4 which is a compilation of tax lot maps of this immediate vicinity showing the relatively small parcel sizes that accommodate rural residential uses and not resource (agricultural or forestry) uses. Also please see Applicant's Exhibit 5 and 6, which are zoning maps for the site and the vicinity.

The shape of the property is rectangular. There is a grove of trees behind the dwelling located on a slope that separates the northern 1/3 from the southern 2/3 of the site. The grove serves as a visible barrier, marking the transition from the good soils in the front 1/3 of the property to the poorer soils in the back 2/3.

Please refer to Applicant's Exhibit 7, which is a soils classification map. According to the USGS Soil Survey for Linn County, approximately 65 percent of the property is Class VI soil and 35 percent is Class IV soil. As shown on the soil survey map included in the application, all of the Class IV soils are located in the front (roadside) five-acre portion of the property, which is already developed with a home site. The back ten-acre portion of the property, where the Class VI soils are located, consists of shallow soils with some exposed rocks and low-value grasses.

Of the site's Class VI soils, approximately one quarter is classified as 104E Witzel very cobbly loam. The remaining three quarters are classified as 79C Philomath cobbly silty clay. Cobbly soil material, as defined by the NRCS, is material that is 15 to 35 percent, by volume, rounded or partially rounded rock fragments 3 to 10 inches in diameter. Very cobbly soil material is 35 to 60 percent of these rock fragments, and extremely cobbly soil material is more than 60 percent. Please see the soil classification mapping in this application. The soils are described in more detail later in this application. Observation of the site is consistent with the SCS soil mapping. The entire back 2/3 of the site consists of shallow, well-drained soils. Depth to bedrock is typically only 20 inches or less. Please also see a specific soils analysis for this site by Agronomic Analytics (Applicant's Exhibit 8).

Two acres have been in timber deferral since 1991. This is the hardwood woodlot on the slope immediately south of the existing dwelling. The remaining 13 acres have no farm or forest tax deferral.

Vicinity Description

There are 27 residences within 1/4 mile of the Morris site on parcels ranging from 2.6 – 16.4 acres with most between 4 – 5 acres. Of the 11 properties adjacent to and surrounding the subject property, 10 are developed with home sites. **None of the small parcels in this immediate vicinity are actual farms.** The small parcel pattern on this hill is a result of the original rural residential zoning prior to the County Comprehensive Plan adoption in the early 1980's including specific exceptions taken by the County in the county-wide Plan adoption process. Also, some small parcels that have FF zoning were given individual exceptions through the different (more liberal) exception process that existed in the County prior to 1993. Two nearby County-initiated exception areas are shown on Applicant's Exhibit 11 and 12.

The adjoining property across Rock Hill Drive to the north has land uses including grass seed production on a 14 acre parcel zoned R/R. This parcel also contains one dwelling and a small, 1-2 acre fenced pasture or poor grassland vegetation. The adjoining property to the south consists of apparently idle pasture. The adjoining properties to the east all are residential uses in the RR-5 zone. Acreage not devoted to dwellings on these properties is generally used as homeowner landscaping and some hobby pasturing. The adjoining properties to the west consist of three parcels ranging from 5 to 10 acres each and all represent residential use along with very part-time or hobby agricultural use, if any. All of these three parcels to the west were created under previous Rural Residential zoning.

The Morris site is approximately one mile south of the City limits of Lebanon and one half mile from the Urban Growth Boundary. The close proximity of the City limits of Lebanon to the north is shown on Applicant's Exhibit 5. Forest Conservation and Management (FCM) lands one mile to the south are separated from this site and the adjacent dwellings along Rock Hill Drive by poor Class VI soils and an established residential pattern. Much of the surrounding vicinity has Class VI soils similar to the Morris property. Please refer to the soil map of the vicinity included with this application. The other soils in this vicinity include Class IV Bashaw, Class IV Dixonville, and Class III Conser. Generally, the higher value soils lie downhill to the west and northwest of this parcel.

Conformance with Linn County Plan Standards: Non-Resource Lands

Title 9 of the Linn County Code is titled Community Development. Chapter 905, which is called Land Use Element Code, now includes Section "XII. Non-Resource Lands."

Background – Non-Resource Lands

LCC905.900 is titled *Non-resource lands; background*. Paragraph (A) describes the importance of farming and forestry to the county's history, culture and economy, and notes that the Comprehensive Plan established a framework to manage productive farm and forestland for future generations.

LCC905.900 (D) explains that the County planning process leading up to the adoption of the 1980 plan did not include any discussion or evaluation of non-resource land because at that time, land use regulations provided a process to evaluate and review poor or non-productive resource property on a case by case land use basis. In those days a home could be built on low quality F/F zoned land if certain criteria were met. That system gave property owners an opportunity to receive land use approvals for a non-resource dwelling, so no additional remedies were then considered necessary.

LCC905.900 (E) continues by noting the significant change in statewide land use rules regarding rural lands since adoption of the County's Comprehensive Plan in 1985:

Since the 1985 county land use plan was adopted, the statewide land use rules have changed. The opportunity to partition land or build homes on poor EFU and F/F zoned land has diminished. Maintaining a resource designation on property that is not productive is an unfair burden to the owner. It is appropriate to establish policies and procedures for the identification and possible conversion of some resource zoned land to a non-resource designation.

As the application will demonstrate, the Morris property is poorly suited for farm or forest uses allowed in the F/F (Farm and Forest) zone. Maintaining a resource designation (F/F) that has proven to be as unsuitable and unproductive for those uses as the Morris site is certainly unfair. The limited nature of the soil configuration and the parcel pattern of the adjacent properties indicate that the Morris property will continue to be unproductive for those uses in the future, as well. This application will also show that is not necessary to have this F/F designation on the Morris property to protect other farm or forest activities in this vicinity.

This application represents an opportunity to take a much closer and detailed look at the specific physical attributes of this property. This degree of detail was not possible during the County-wide Comprehensive Planning process. The non-resource plan amendment process asks a more fundamental question than the Statewide Goal 3 and 4 exceptions process. That is, should the site ever have been accurately described as FIF Land in the first place?

Resource Lands – Description

LCC905.910 is titled *Resource lands; description*. It is clear from the description that the Morris property should not be classified as Resource Lands. Section (A) states:

Resource lands are farm and forestlands that can support agricultural and forest production as defined in Statewide Planning Goals 3 and 4. Goal 3 defines agricultural land as predominantly Class I, II, III and IV soils as identified in the Soil Capability Classification System of the United States Natural Resources Conservation Service. Agricultural land includes other land that is suitable for farm use taking into consideration soil fertility, suitability for grazing, climatic conditions, existing and future availability of water for farm irrigation purposes, existing land-use patterns, technological and energy inputs required, or accepted farming practices.

Response:

The Goal 3 definition of agricultural lands does not provide a description of what qualifies as “*predominantly Class I, II, III and IV soils*”. In the case of the Morris property (tax lot 1000), approximately 2/3 of the site has been identified as Class VI soils on mapping by the United States Natural Resources Conservation Service’s (formerly Soil Conservation Service) Soil Survey of Linn County Oregon. Therefore, we assert that the 15-acre parcel as a whole is comprised *predominantly* of Class VI soils and poorly suited for agricultural production land as defined by Statewide Planning Goals 3 (Agricultural Lands).

Nearly all the Class IV soils are located on the northernmost 5 acres, between the existing dwelling and the county road. Thus, the portion of the property not already committed to residential use is entirely covered by Class VI soils. The Linn County Soil Survey states that the two types of Class VI soils appearing on the Morris property are poorly suited for both timber production and agricultural use. These two Class VI soils are Philomath 79C and Witzel 104E. These two soils are very similar, sharing such characteristics as high rock content and shallow depth to bedrock.

According to the NRCS report associated with their soil mapping, the Philomath Series soils occurring on this site are shallow and well drained. The typical soil horizon begins with a very dark brown cobbly silty clay layer 0-4 inches in depth. The “cobbly” description relates to the blocky structures (sometimes referred to as “clods”). The cobbly pieces are hard, firm, slightly sticky and slightly plastic. Even in this shallowest layer, the soil is typically 5 to 35 percent coarse fragments. This is a very distinct layer. The next layer down, about 15 inches in depth, is very dark brown clay to very dark grayish brown. It is similar to the top layer except harder, firmer, very sticky and very plastic. It also typically consists of 5 percent weathered gravel. The bottom layer is defined as weathered basalt, making depth to bedrock around 19 inches. This constitutes a shallow and generally poor soil.

The NRCS soil survey previously referenced describes Philomath soils as having significant limitations even for grazing of livestock due to the high clay content, cobbles on the surface and the shallow depth to bedrock. The use of farm equipment is also limited, according to the same NRCS report, because of the stones on the surface and the slope. The NRCS report further cautions that conducting field operations when the soil is

wet reduces tilth (also described as "till-ability") and destroys structure, resulting in increased runoff and erosion.

Similarly, according to the NRCS report associated with their soil mapping, the Witzel Series soils occurring on this site are shallow, but well drained. The typical soil horizon begins with a dark brown to very dark grayish brown cobbly loam layer 0-5 inches in depth. The cobbly pieces are slightly hard, friable (easily pulverized), slightly sticky and slightly plastic. Even in this shallowest layer, the soil is typically 20 percent gravel and 35 percent cobbles. The next layer down, 5-16 inches in depth, is dark brown, very cobbly clay loam to very dark grayish brown. It is similar to the top layer except has a weak, very fine subangular blocky structure. It also typically consists of 20 percent gravel and 35 percent cobbles. The bottom layer is defined as basalt (rock). Depth to hard bedrock is 12-20 inches. Like the condition of the Philomath series, this description of the Witzel series constitutes a very shallow and generally poor soil.

The NRCS soil survey additionally describes Witzel soils as having significant limitations for farming and even for grazing of livestock because of the significant slope and the droughtiness of the soils. The soil in this soil survey unit is droughty because of low rainfall in summer and shallow depth to bedrock. Lack of sufficient moisture limits the amount of fertilizer that can be added to the soil for plants, including forage plants. The use of farm equipment is also limited, according to the same NRCS report, because of the stones on the surface and the slope. The NRCS report further cautions that grazing when the soil is moist results in compaction of the surface layer, poor tilth, and excessive runoff.

As clearly depicted by the NRCS report, the two Class VI soils appearing on the Morris property share very similar characteristics, severely limiting their suitability for forestry production and agricultural use considering fertility, suitability for grazing and climatic conditions.

Another description of resource land involves existing and future availability of water for farm irrigation purposes. Residential well use has some peaks throughout the year, but it is a relatively steady use year round, unless there is a major amount of watering of yards, etc. The availability of water for agricultural purposes requires major draws during the warm growing season. This is a different type of use that often requires higher yield wells. Also, holding tanks are not uncommon in this vicinity for residential use. Holding tanks are not as practical for agricultural use because of the need for higher peak uses and much larger holding tanks than are typically used for residences.

The shallow soil on the Morris property may also cause erosion problems if there is a reliance on heavy irrigation for crops. As previously mentioned, the soils on the Morris property are typically well drained, but shallow and inclined to erosion under wet conditions. The conclusion is that irrigation using on-site wells, even if adequate water is available, is not practical. Overall, the similar limitations of the 79C Philomath and 104E

Witzel soils occurring on the southern 2/3 of this site make it not practical for agricultural purposes.

Additionally, the existing land-use pattern does not match up with land suitable for farm use. This point will be thoroughly established further in the application.

LCC 905.910 (B) states:

Agricultural land also includes land that is necessary to permit farm practices to be undertaken on adjacent or nearby agricultural lands. Land in capability classes other than Class I through IV soils that is adjacent to or intermingled with lands in capability Class I through IV soils within a farm unit are agricultural lands even though this land may not be cropped or grazed. Agricultural land does not include land within urban growth boundaries or land within Goal 3 or Goal 4 exception areas.

Response:

Please refer to the attached soil classification map. This site is not intermingled with lands in capability Class I through IV. In fact, much of the surrounding area is class VI soil. Sizable acreages on all sides of the Morris property are soil class VI.

Much of the non-class VI soil in this vicinity is within the R/R-5 zoned area to the north and east of the Morris property. This is not included as agricultural land as defined and expressed in 905.910 (B), above.

The Morris property is physically bounded on the east and north by an existing exception area zoned R/R-5. There are also existing residences west and southwest of the proposed dwelling site on small adjacent parcels in the F/F zone. Predominate poor soil along with the established surrounding land-use pattern leave the Morris property no opportunity for combining the subject property with adjacent land to create a larger agricultural operation. The Morris property is isolated from large farms to the west by rural residential uses (please refer to the aerial photograph).

Any farm practices on adjacent or nearby agricultural lands will still be undertaken on adjacent or nearby agricultural lands without any difficulty. The preponderance of Class VI soils in the vicinity, the proximity of the exception area to the north and the east and the area to the west and southwest near fully devoted to residential use already limits commercial agricultural practice here. As mentioned, the Morris site is isolated from large farm uses on the west by adjacent rural residential uses (F/F zoned but rural residentially used).

No existing agricultural uses rely on the Morris site for access, and the addition of two home sites on the southern 10 acres of the Morris site could only have a very minor

impact on any adjoining uses of any kind. The conclusion is that changing the designation of this one particular tax lot (1000) will not hinder forest or farm activity on adjacent or nearby agricultural lands.

905.910 (C) states:

Land designated in the Agricultural Resource and Farm/Forest plan designations are zoned Exclusive Farm Use (EFU) and Farm/Forest (F/F). Approximately 400,000 acres are zoned for farm and other uses allowed in the EFU and F/F zones. EFU zoned land is located mostly on the valley floor and the F/F land is located more in the foothills.

Response:

This is a descriptive paragraph that explains the broad pattern of resource plan designations. This paragraph is not meant to be read as a standard. The closer, site specific analysis of this individual property for the Non-Resource designation is enabled by the procedures found in the Non-Resource Lands Section of the County's Land Use Element Code, beginning at 905.900.

905.910 (D) states:

Linn County has mostly productive farm and forestland. Unproductive lands that are intermingled within a farm or forest unit or are necessary to support farm or forest practices are considered resource lands.

Response:

The unproductive lands on this property are not intermingled within a farm or forest unit. They are also not necessary to support farm or forest practices. All adjacent properties except one are in residential use. The idle parcel to the south has the same poor soils as the subject property and is not in active farm or forest use. Although there are lands with better soils in farm use across Rock Hill Drive, these are developable lands in the R/R zone, and in any case are not part of a farm unit with the subject property.

The best soils on the property are located on the northernmost 5 acres, between the existing residence and the county road. This area is currently idle grassland and will remain so. The rest of the property slopes upward into the area of poor soils, which cover nearly all the remaining 10 acres. These 10 acres are suitable only for limited pasturing, but are too small and unproductive for grasses to manage livestock successfully. Furthermore, because of the dwellings on nearly all adjacent properties, as well as the prevalence of poor soils on those properties, there is no opportunity to combine this area with other agricultural land for combined management.

There are no commercial farming activities taking place on adjacent lands. The nearest commercial timber stand is located one quarter mile from the subject property's southern line; at a point where the soils change to Bellpine silty clay loam. The Bellpine soil is highly productive for Douglas-fir (site index of 120), but all soils between the subject property and the commercial forestland are poorly suited for timber production.

Because of the soils, location, size and configuration, the subject property is not intermingled within or necessary to support farm or forest practices, the subject property should not be considered resource lands.

910.910 (E) states:

As defined in Goal 4, forest resource lands are lands that are suitable for commercial forest uses including adjacent or nearby lands which are necessary to permit forest operations or practices; and other forest lands that maintain soil, air, water and fish and wildlife resources. Nearly two-thirds of Linn County (approximately 930,000 acres) has a plan map designation of Forest Resource and is zoned Forest Conservation and Management (FCM). The United States government or forest industry corporations own most of the Forest Resource area. The FCM zone is applied almost exclusively to corporate and publicly owned forestland. County zoning regulations do not permit new dwellings on FCM land. A smaller area of privately owned forestland is designated and zoned F/F.

Response:

This property is not suitable for and is isolated from commercial forest uses, as previously described. There are no streams on the property and no known sensitive fish or wildlife habitats in the vicinity. FCM zoned lands are not part of this application.

Please also refer to our response to Statewide Goal 5, later in this application.

Non-Resource Lands - Description

Linn County Code Section 905.920 is titled "Non-resource lands; description."

LCC905.920 states:

- (A) "Non-Resource" land in Linn County is land that is not subject to Statewide Planning Goal 3 or 4 (OAR 660-04-005(3)). Non-resource land is not suitable for agricultural or forest use based upon the following criteria which as summarized from the goals and administrative rules:

(1) *The land is not predominantly SCS Class I, II, III and IV soils.*

Response:

Please see previous response to 905.910(A). Two-thirds of the Morris property is class VI soils. The land is therefore not predominantly SCS Class I, II, III and IV soils.

The only high-value soil on this site (northern 1/3 of the property) will continue to be associated with the existing dwelling and pasture uses.

(2) *The land is not intermingled with or adjacent to SCS Class I-IV land within the same farm unit.*

Response:

The Morris property is not intermingled with land with better soils that are part of the same farm unit. All adjacent properties except one are in residential use. The idle parcel to the south is in the same poor soils as the subject property and is not in farm use. Although lands with better soils in farm use exist across Rock Hill Drive, to the north, these are developable lands in the R/R zone. In any case, these lands are not part of a farm unit with the subject property.

Please refer to the soil classification map and to previous response to 905.910 (B & D).

(3) *The land is not suitable for farm use taking into consideration:*
(a) *Soil fertility*

Response:

Please note that there are two kinds of Class VI soils occurring on this site. The largest part of the Morris site is Philomath 79C as described in the NRCS mapping and report for Linn County and previously described in response to LCC905.910 (A). The NRCS soil survey describes significant limitations with Philomath soils even for grazing of livestock because of the high clay content, cobbles on the surface and the shallow depth to bedrock. The use of farm equipment is also limited, according to the same NRCS report, because of the stones on the surface and the slope. The NRCS report further cautions that conducting field operations when the soil is wet reduces tilth and destroys structure, resulting in increased runoff and erosion.

The other Class VI soil occurring on the site is Witzel 104E. The Witzel soil has similar limitations to those attributed above to Philomath soil. The NRCS soil survey states that depth to hard bedrock and effective rooting depth are (only) 12 to 20 inches. This is a particular problem for viable forest growth. The hazard of erosion is slight to high. NRCS also states that the main agricultural purpose for this soil type (104E Witzel) is for native pasture. This means that other forage grasses are difficult to sustain. When

grazing is attempted, the main limitation is droughtiness. The soil in this unit is droughty because of low rainfall in summer and shallow depth to bedrock. Lack of sufficient moisture limits the amount of fertilizer that can be used by plants. (Only) a small amount of fertilizer can be applied in fall to take advantage of the moisture available in winter. Stones on the surface limit the use of equipment.

These characteristics as observed and reported by NRCS, lead to the clear conclusion that the soil fertility, a general measure of several factors, is low. The "resource-worthy" soils only constitute 35% of the site and are located on the portion of property where the current dwelling already exists.

(b) Suitability for grazing;

Response:

NRCS cautions that grazing when the Philomath and Witzel soils are moist results in compaction of the subsurface layer, poor tilth (the physical condition of soil as related to tillage, seedbed preparation, seedling emergence and root penetration), and excessive runoff. Additionally, the local experience is that much of the grasses are low-yield (slow growing). The conclusion is that this site is not suitable for effective, commercial use.

(c) Climatic conditions;

Response:

The droughty characteristics of the soil previously described relate to climatic conditions. NRCS notes that the annual average precipitation is 40 to 60 inches, and average annual air temperature is 52 to 54 degrees F, and the average frost-free period is 165 to 210 days. The shallowness of the Philomath and Witzel soils coupled with their rock content means that available water is not held long enough in the soil horizon to promote good plant growth.

(d) Existing and future availability of water for farm irrigation purposes;

Response:

Well logs for the area indicate enough groundwater for low-density, rural-residential uses. However, the limitations of water for irrigation purposes were discussed in response to LCC 905.910 (A), earlier in this application. Beside the potential seasonal peak use/supply issue, there are several practical problems posed for irrigating this kind of terrain, as mentioned by the NRCS report. These significant problems were discussed previously. Adding only two additional homesites in this vicinity should not have any

discernable impact on existing wells, and the likelihood of practical-depth wells for this property is good. Evidence of this is shown by Applicant's Exhibit 10, which are well logs for wells used by residents in this immediate vicinity.

(e) Existing land use patterns;

Response:

The subject property is bounded on the east and north by an existing exception area zoned R/R-5. In fact, there are four exception areas in the vicinity surrounding the Morris site. Each of these exception areas represents the conclusion of a process of intentional decisions by the County to label the designated areas as committed to Rural Residential use. Information concerning the four exception areas surrounding the Morris property is depicted in the table below.

	Exception Area Name	Zoning	Existing Tax Lots	Max Potential Lots	Existing Residences	Max Potential Residences
L-12	Butte Creek Estates	RR-5	54	58	46	57
L-13	Agate Hills	RR-5	91	92	75	89
L-23	Rock Hill Road	RR-5	47	51	39	51
L-25	Blueberry Hill	RR-2.5 RR-5	33	35	30	35
Totals			225	236	190	232

Dwellings on the applicant's property will be compatible with adjacent uses. The amendment will not adversely impact the overall land use pattern in the area. As the applicant's property is surrounded by a combination of existing R/R-5 exception area and by residences created under previous Rural Residential zoning, the proposed residence is therefore a continuation of established land use pattern.

Furthermore, if the meaning of "overall land use pattern" is stretched to include the large acreages to the west and south in F/F and EFU, there will still be no adverse impact from two new dwellings buffered on nearly all sides by existing residential properties. This site is isolated from other resource area land by soil and land-use patterns. The existing land use pattern in this vicinity clearly indicates that the Morris property should receive the Non-resource Plan and zone designation.

(f) Technological and energy inputs required; or

Response:

The practical difficulty of cultivating this site (see NRCS comments regarding tillage) is significant. Extensive terracing is expensive to construct and maintain, and to date, no crops are raised in this area that warrant that kind of major physical site alteration. The rocky soils reduce the practicability of grazing as well as increases the energy required to have a practical farm use. The Witzel soil has significant limitations for fertilizing, as noted by the NRCS report. Massive fertilization is specifically discouraged by the NRCS report, in part because of the shallow soil and the steep terrain. This is also an energy input issue that makes this property a Non-resource site. The rapid drainage means irrigation water would not stay in the upper soil layers long enough to promote effective water use or plant growth.

Also note that the front 1/3 is separated from the back 2/3 by a sloping woodlot area, dividing the 15-acre property into two distinct smaller fields. This makes cultivation and harvesting less economical, for large modern equipment and crop techniques.

(g) Accepted farming practices.

Response:

The significant cautionary observations by NRCS regarding standard farming limitations have been raised previously in this application.

(4) The land is not necessary to permit farm practices to be undertaken on adjacent or nearby agricultural lands.

Response:

As has been previously described, the subject property is bounded on the east and north by existing R/R-5 zoned lands. There are no commercial farming activities taking place on adjacent lands to west or south. The F/F lands to the south are in fact smaller rural residential parcels that are from the standpoint of agriculture, hobby farms at the very best. Resource uses exist only much farther south and west. The result is that agricultural lands "nearby" will not be affected by changing this site to NR (non-resource).

Additionally, there will still be no adverse impact to the large acreages to the west and south in F/F and EFU from new dwellings buffered on nearly all sides by existing residential properties.

Finally, as the agricultural lands to the west already have adequate road access, no roads are needed for them through the Morris property.

(5) The land is not suitable for commercial forest uses including adjacent or nearby lands, which are necessary to permit forest operations, or practices on commercial forest lands or other forested lands that maintain soil, air, water and fish and wildlife resources.

Response:

As described by the NRCS soil descriptions, the droughty soils here are ill suited for seedling establishment and timber production. The woodlot (2 acres) is too small in itself to be considered a good resource site (individually). The woodlot is apt to be maintained as such after two home sites are developed for the southerly 10 acres of this site. There is ample room to locate homesites away from the wooded slope. Statewide Goal 5 type values will remain intact as a result.

Outside of the woodlot portion of the site, the Soil Survey states that both the Philomath and Witzel Class VI soils are poorly suited for timber production (Site Index of 90 on the basis of a 50-year site curve for the Witzel). The Linn County Soil Survey's description of Witzel 104E soils emphasized potential erosion issues for logging this site. It also said stones on the surface can interfere with felling, yarding, and other operations involving the use of equipment. High seedling mortality caused by the droughtiness of the surface layer, can be expected especially on south- and southwest-facing slopes. For this site, most of the south ten acres (behind the existing house) slopes to the west. The large number of rock fragments in the soil limits seedling survival. The NRCS soil descriptions continue in noting that roots are restricted by the shallow depth to bedrock, subjecting mature trees to windthrow.

LCC 905.920 (B) explains that Non-resource land does not include exception areas where the resource land goals (Goals 3 and 4) have already been found not to apply. The Morris property is not in an exception area but is immediately adjacent to R/R-5 and exception areas established by Linn County in 1985 during the adoption of the Comprehensive Plan. That code section also mentions how Non-resource land can be designated residential through a plan amendment process. That does not pertain to this application. The section finishes with a statement saying non-resource land is likely to be undeveloped land that would not qualify through the exception process. That is true for the Morris property, as a previous request to qualify through the exception process was unsuccessful (county file # BCC 00-0004).

Code Section 905.920 (C) states:

The changing nature of the land use regulatory system was not foreseen when the 1980 comprehensive plan was adopted. It is now appropriate to more carefully determine whether existing EFU or F/F zoned land is accurately designated. Amending the county land use plan by adding a non-resource map designation

and policy section is the first step in this process. Non-resource Plan policies are intended to guide the public and county decision makers through the review and possible identification of non-resource land. It is expected that a substantial amount of information will be needed to demonstrate that property presently designated either EFU or F/F should be rezoned to a non-resource designation. Based upon the number of acres zoned EFU and F/F and the complex resource land definitions, it is unrealistic to proactively study and identify which land may be non-resource. It is more practical for landowners to make application for a plan amendment to a non-resource designation. County planning staff can assist with the application process, but the applicant is responsible for providing adequate information to justify changing the plan map and zoning designations.

Response:

This code section describes this application process for this specific property. This application constitutes the substantial amount of information needed to demonstrate that the Morris property, presently Planned and zoned F/F, should be re-planned and zoned to Non-resource and NR-5.

Section 905.920(D) includes criteria for the non-resource plan designation:

An appropriate use for non-resource land is low-density rural residential development when it is shown that residential suitability characteristics are met. Low-density residential development means the opportunity to build homes on new five or ten acre parcels. Building homes on existing parcels is also appropriate on non-resource land. Suitability factors to be considered when designating non-resource land are:

(1) Compatibility with the land use pattern in the surrounding area;

Response:

Land use compatibility has been discussed previously in this application. There are 27 residences within 1/4 mile of the subject property. Furthermore, the Morris site is practically surrounded by existing residences on every side. The only direction there is no residence existing is between the subject property and the adjacent resource lands is to the south. In this narrow corridor there are no commercial agricultural operations, and the nearest commercial timber stand occurs one quarter mile from the subject property boundary where the soil pattern changes. Overall, there are eleven properties adjacent to the subject property, counting properties across Rock Hill Drive. Ten either contain a dwelling created under previous Rural Residential zoning or are currently in an R/R-5 exception area, and are eligible for one or more dwellings. Therefore, three total dwellings on these 15 acres will be compatible with adjacent uses and the existing land use pattern. Granting the Morris property the non-resource plan designation is compatible with the land use pattern in the surrounding area.

If the NR-5 zone is granted, the applicant will apply for a land division for a total of three parcels (5 acres each) on the 15-acre parcel. These lot sizes will be compatible with the R/R-5 exception area immediately to the north and the east.

(2) Subsurface sewage disposal suitability;

Response:

The one existing dwelling on this site is using a County-approved septic tank and drain field. This application includes copies of septic site evaluations for two new sites on tax lot 1000. The Linn County Environmental Health Program (EHP) submitted written comments that state EHP "has approved three sites on the property for residential sewage disposal systems". Please also see Applicant's Exhibit 9, which includes the Septic Tank/Drain Field approvals for this property granted by Linn County.

There will be care to site the drain fields and replacement drain fields on the most gradual slopes, as shown on the drainfield locations approved by the County. County Sanitarian staff is very knowledgeable about drain field characteristics and often require different treatment methods such as sand filters, if the specific site situation requires.

(3) Domestic water supply availability;

Response:

This application indicates there is an existing home and well on the subject property. Well logs for the area indicate adequate local groundwater resources. The application includes well logs for seven wells on six adjacent properties. The pump tests on these wells indicate yields from 12 gal/min to 70 gal/min (Applicant's Exhibit 10).

(4) Adequacy of road access;

Response:

The property has 382 feet of road frontage on Rock Hill Drive. There is an existing driveway access onto the property along the western property boundary. In the event the proposal is approved and a partition is reviewed, an access assessment recognition review would be conducted as part of the partitioning process. The proposed Plan and zone amendment will not require the creation of any new county roadways. Only a private driveway will be required to serve the two new dwellings.

The Morris property is bounded on the north by Rock Hill Drive, a fully improved and maintained County road which adequately serves the large number of existing residential properties established along it and on nearby roads. Rock Hill Drive is well-maintained County road connecting the southern outskirts of Lebanon with the major route to Brownsville to the south and Sodaville and Highway 20 to the east. Rock Hill Drive is

fully capable of absorbing the very small percentage traffic increase resulting from approval of the two additional dwellings. The road access point is also adequate to accommodate this proposed Plan and zone change, is well maintained and has adequate vision clearance.

The Linn County Road Department will submit written comments concerning specific driveway, drainage and access requirements.

(5) Availability of fire protection service;

Response:

The Lebanon Rural Fire Protection District serves this area. For the previous case (BC 00-0004). Mark Wilson, Fire Marshall, Lebanon Fire District, submitted a list of Lebanon Fire District development requirements for this property. In the event this proposal is approved and development initiated on the property, all permits would be required to satisfy the requirements of the Lebanon Fire District.

(6) Limited exposure to natural hazards; and

Response:

Tax lot 1000 is not within any flood plain, as mapped by the Federal Emergency Management Administration (FEMA). No mass movement topography is identified on the properties in the Environmental Geology of Western Linn County, Oregon, published by the State Department of Geology and Mineral Industries (DOGAMI).

(7) No significant impact on resource lands in the surrounding area.

Response:

Please see the response to LCC 905.910 (B) and (D), earlier in this application.

Section 905.920(E):

The non-resource land amendment review process will consider whether the applicant's property is non-resource and if so whether it is appropriate to permit low-density residential development.

Response:

That is the purpose of this application.

905.950 Goals for non-resource lands

- (A) The purpose of the Non-Resource Plan designation is to permit low-density residential development in suitable locations while minimizing potential conflicts with farming and forestry uses.*
- (B) The Non-Resource designation is intended to more accurately define the agricultural or forest capability of land presently identified as resource land.*
- (C) A Non-Resource Comprehensive Plan designation shall only be approved when adequate written evidence has been presented in a public hearing that demonstrates that all applicable criteria have been met.*

Response:

The minimal potential conflicts with farming and forestry uses and zoned lands have been described throughout this application. The potential for conflict is very low due to the established land-use pattern on adjacent properties, the property's isolation from other resource uses and roadway access that is non-conflicting with resource uses.

As mentioned earlier, this specific site analysis is the county's opportunity to more accurately define the true agricultural and forest capability of this specific property. The capability for both kinds of resource uses here has been demonstrated to be very low.

The third paragraph (905.950 (C)) refers to this application process.

905.960 Policies for non-resource lands

- (A) Linn County shall provide for the appropriate and orderly development of Non-Resource lands while minimizing potential conflicts with other land uses.*

Response:

The minimal potential conflicts with other resource-zoned lands have already been well established in this application. There will also be minimal potential conflicts with adjacent properties. The Morris site has adequate frontage on Rock Hill Drive to extend a private drive for two ownerships (jointly used private roadway). Rock Hill Drive is a County roadway that is paved to county rural roadway standards and in good condition. Other details regarding the improvement of access to the new parcels enabled by this Plan and zone change will be reviewed and approved through the County's subsequent land division process. The good existing quality of Rock Hill Drive and the small incremental impact two additional homesites will have on the overall use of that County road certainly will have only a minimal impact on the nearby residences.

- (B) Land designated Non-Resource should have conditions that permit development with a limited exposure to geologic hazards or a 100-year flood.*

Response:

(F) The Non-Resource Plan designation is implemented with two Non-Resource zoning districts that are distinguished only by minimum property size standards. The NR-5 zone has a 5-acre minimum property size for new units of land and the NR-10 has a 10-acre minimum property size for new units of land.

Response:

This application is for the NR-5 zoning.

(G) The NR-5 (5-acre minimum for new units of land) district is applied to suitable areas in order to maintain a rural development pattern reasonably compatible with nearby resource and non-resource lands. When applied near agricultural and forest areas, the 5-acre size standard will maintain an adequate buffer to minimize potential conflicts.

Response:

The five-acre zoning will be most compatible with the adjacent properties. The area to the north and east is R/R-5 zoning. The residences in the exception area to the west and southwest sit on parcels ranging from 5-10 acres in size.

The good county road conditions and good site access, coupled with the existing neighborhood development pattern all indicate that NR-5 is the most appropriate zoning choice.

(H) The NR-10 (10-acre minimum for new units of land) district is applied to suitable areas where larger property sizes are necessary to maintain a rural development pattern reasonably compatible with nearby resource and non-resource lands, or where larger property sizes are necessary to meet residential suitability characteristics such as groundwater availability, septic suitability, or access standards. When applied near agricultural and forest resource areas, the 10-acre size standard will maintain an adequate buffer to minimize potential conflicts.

Response:

It has already been established that the NR-5 zone will be most compatible in the neighborhood dominated by the R/R-5 zoned area lots. The conditions for groundwater availability, septic suitability and access for the five, rather than ten-acre minimum parcel size has already been established. The NR-10 option is reserved for non-resource land with very limited or otherwise challenging site constraints such as roadway access. No such limitations exist here, so NR-5 is the most appropriate zone.

- (I) *New public sewer and water systems may not be established within the NR zone unless the County determines that a health hazard exists pursuant to DEQ or Oregon Health Division procedures and criteria. A new or extended public water or sewer system is appropriate in the rural areas only when needed to protect the public's health and safety.*

Response:

No public sewer or water systems are proposed or are necessary for the Morris property.

- (J) *A comprehensive plan and zoning map amendment must be approved before property designated Agricultural Resource or Farm/Forest can be amended to a Non-Resource Plan map designation. In addition to the LCC plan amendment criteria, the following criteria (Statewide Planning Goal and Administrative rule resource and land definition) must be met:*
- (1) *The land is not predominantly SCS Class I, II, III and IV soils.*
 - (2) *The land is not intermingled with or adjacent to SCS Class I-IV land within the same farm unit.*
 - (3) *The land is not suitable for farm use taking into consideration:*
 - (a) *Soil fertility;*
 - (b) *Suitability for grazing;*
 - (c) *Climatic conditions;*
 - (d) *Existing and future availability of water for farm irrigation purposes;*
 - (e) *Existing land use patterns;*
 - (f) *Technological and energy inputs required; or*
 - (g) *Accepted farming practices.*
 - (4) *The land is not necessary to permit farm practices to be undertaken on adjacent or nearby agricultural lands.*
 - (5) *The land is not suitable for commercial forest uses including adjacent or nearby lands that are necessary to permit forest operations or practices on commercial forest lands or other forested lands that maintain soil, air, water and fish and wildlife resources.*

Response:

These are the same criteria as found at LCC 905.920, *Non-resource lands; description (A)(1) through (5)*. Please refer to the individual responses to those identical criteria that appear previously in this application.

- (K) *An exception to Statewide Planning Goals 3 and 4 is not required to support a plan map amendment to a Non-Resource Plan designation when detailed and factual evidence shows that the lands are not farm or forest lands as defined in the Goals.*

Response:

This is a procedural code section regarding statewide law and rules. Our application presents the factual evidence that the Morris property is not farm or forest lands (resource lands) as defined in the statewide Goals.

(L) Notwithstanding the provisions of LCC 905.120(G) and LCC 905.330(G), conversion of lands designated as Agricultural Resource or Farm/Forest in the Comprehensive Plan to a Non-Resource Plan designation does not require an exception to Statewide Planning Goal 3 or 4.

Response:

This is also a procedural code section relating to the Linn County Code and Statewide Goals. Linn County's Non-Resource Plan text was acknowledged by the State of Oregon in 2004.

(M) Applying the Non-Resource designation on isolated tracts surrounded by farm or forest lands shall be discouraged if it is shown that a non-resource designation would adversely affect existing farm or forest uses.

Response:

The Morris property is not surrounded by farm or forest lands. Please refer to the map showing vicinity parcel sizes (Applicant's Exhibit 4). Lands to the north and east are primarily developed as R/R-5 zoning. Applicant's Exhibit 6 shows the zoning pattern for this general vicinity. Immediately adjacent lands to the west and southwest are residential lots. The idle parcel to the south is in the same poor soils as the subject property and is not in any existing farm use. The relative isolation of the Morris site from resource uses has also been previously described. Designating these 15 acres as Non-Resource will not adversely affect existing farm or forest uses, primarily because the Morris property is already isolated from those actual farm or forest uses.

(N) Only land designated Agricultural Resource, Farm/Forest, Agricultural Resource-Rural Residential Reserve or Farm/Forest-Rural Residential Reserve are eligible for a map amendment to Non-Resource.

Response:

This property is currently designated Farm/Forest, so is therefore eligible for the map amendment to Non-Resource that is requested.

Besides the specific Non-Resource Plan and zone standards, Linn County Code also includes general Plan Map amendment criteria, at Section 921.874:

- (A) *To approve a plan map amendment, findings shall be made that:*
(1) *The amendment is consistent with and does not alter the intent of applicable section(s) of the Comprehensive Plan;*

The applicable sections of the Comprehensive Plan are the Farm/Forest Lands Policies (LCC 905.330), and the Non-Resource Lands Policies (LCC 905.060). The Non-Resource Lands Element of the Comprehensive Plan is discussed separately in this proposal.

Linn County Comprehensive Plan Farm/Forest Lands Policies

LCC 905.330 Farm/Forest Lands Policies include:

1. *Linn County shall adopt zoning that will maintain the resource orientation of Farm/Forest Lands.*

Response:

How the remaining Farm/Forest lands in the general vicinity of this application will remain viable and basically undisturbed or unchanged has been discussed elsewhere in this application. The established land-use pattern on adjacent properties already isolates the Morris property from other Farm/Forest uses in this vicinity. The Morris property is not in any farm or forest production, except grass mowing once a year and forest deferral tax status on two acres of the 15. The tracts of land enabled by this application (five acre minimum) will allow only low-density residential development that can co-exist with wildlife habitat. The low density residential development enabled by this proposed Plan change will have no impact on the resource orientation of the remaining Farm/Forest lands in this part of Linn County. This is because the Morris site is almost completely surrounded by rural residential, not resource uses.

2. *Impacts on the local economy will be assessed before comprehensive plan amendments are approved to change a Farm/Forest designation to a development designation.*

Response:

Impacts on the local economy have discussed throughout this application. As mentioned, the Morris property is not in any significant farm or forest production. The great difficulties and impracticalities of any such production have been discussed at length in

6. *The Linn County Comprehensive Plan will be reviewed and updated when the county soil survey is completed.*

Response:

This refers to the County's legislative process, and does not pertain to this quasi-judicial land use application.

7. *Linn County will complete cubic foot site class mapping of forest land as part of the first comprehensive plan update following completion of the county soil survey.*

Response:

This is a directive to Linn County government, and does not pertain to this application.

8. *The division of land in the Farm/Forest plan designation shall be regulated to insure that the land base will be suitable for the intended uses. Application for the subdivision of resource land zoned EFU, F/F, or FCM shall only be accepted to create parcels for farm or forest use.*

Response:

This is an application to change the Comprehensive Plan designation from Farm/Forest to Non-Resource, so this requirement regarding division of land within the Farm/Forest plan designation does not pertain to the Morris application.

9. *Before a solid waste disposal site, dam or reservoir may be approved, a plan amendment and a goal #2 exception shall be required.*

Response:

The policy does not pertain to this application because none of those land uses are proposed.

10. *Development of a major facility shall be compatible with surrounding land uses and shall not have a significant negative impact on the overall land use pattern in the area.*

Response:

This application does not involve a "major facility" as defined by the Linn County Comprehensive Plan, so this policy does not pertain to the Morris application.

11. Linn County recognizes the value of the Agricultural Land Evaluation and Site Assessment (LESA) system as a planning tool. This system aids in rating the agricultural value of land and determining its relative suitability for agricultural use. The LESA system is described in a Western Rural Development Center publication entitled, Adopting the Agricultural Land Evaluation and Site Assessment (LESA) System in the Pacific Northwest, wrdc 26, February 1984. The LESA methodology used is described in an unpublished paper entitled "The Use of Agricultural Land Evaluation and Site in Linn County, Oregon" by Pease, et al. Al. This paper is included as an appendix to the Agricultural Lands Background report. The county will use the LESA system as a means to analyze agricultural land use issues in current and long-range planning cases.

Response:

This "planning tool" is not required in the current Linn County requirements for this Plan and zone change application. A similar kind of analysis is included in the current Plan and zone change process required by Linn County.

(2) *The amendment will be compatible with adjacent uses and will not adversely impact the overall land use pattern in the area;*

Response:

Compatibility with adjacent uses and the overall land use pattern in the area has been addressed elsewhere in this application. The proposed 5-acre parcels will be compatible with the R/R-5 zone and uses to the north and east, and 5-10 acre rural/residential uses to the west.

(3) *The amendment, if within an adopted urban growth boundary, is in substantial conformity with the Comprehensive Plan and implementing ordinances of an affected city;*

Response:

This property is outside the urban growth boundary of the City of Lebanon, so the policy does not pertain to this application.

(4) The amendment will not have a significant adverse impact on a sensitive fish or wildlife habitat;

Response:

No sensitive fish or wildlife habitat is identified on the property in the *Linn county Comprehensive Plan Wildlife Habitat Inventory*. Also, there is adequate land to site two additional dwellings without disturbing the two acres of woodland habitat on the site. Those two wooded acres may provide a limited amount of wildlife habitat.

(5) The amendment will not have a significant adverse impact upon the provision of public facilities including police and fire protection, sanitary facilities and storm drainage facilities;

Response:

The property is located with the Lebanon Fire Protection District and Linn County Sheriff protection. The property has access to a county road for fire and police protection services. The Linn County Environmental Health Division has approved the property for two additional sites for residential sewage disposal systems. As the property is developed for residential use, the proposed dwellings will be located a significant distance from Rock Hill so that storm water flowing from the impervious surfaces associated with the dwellings will be absorbed into the ground or the natural drainage-ways before reaching adjacent properties. In other words, there will be no significant increase to the storm drainage burden. Overall, the development of the Morris property will result in no significant adverse impacts on police or fire protection, sanitary facilities or storm drainage.

(6) The amendment will not have significant adverse impact upon the transportation facilities;

Response:

The subject property is bounded on the north by Rock Hill Drive. Rock Hill Drive is a fully improved and maintained County road which adequately serves the large number of existing residential properties established along it and on nearby roads.

The property has frontage on Rock Hill Drive, an existing county road built to County rural road standards and in good condition. The specific method of extending access to future homesites will be approved by Linn County as part of the land division process. Because only two additional dwellings will be enabled by the proposed zone change, there will be no significant negative impact to Rock Hill Drive. Linn County Public Works will also receive notice and have the opportunity to comment on this Plan and zone change application.

(7) The presence of any development limitations including geologic hazards, flood hazards or water quality or quantity will not have a significant adverse affect on land uses permitted through the amendment;

Response:

There are no known limitations associated with water quality or quantity in the area. Please refer to the previous responses and attachments related to well water. The applicant does not have any negative information regarding water quality problems. There are no development limitations (geologic hazards, flood hazards or water quality or quantity) that would have an adverse effect on future land uses permitted by this application. The site is not within any mapped flood plain or geologic hazard area. This standard is met because the property does not contain any adverse developmental limitations for low-density (five acre minimum lot) development.

(8) An exception to the statewide planning goals is not required. If required, then findings have been prepared to meet the exception criteria; and...

Response:

Please refer to the specific language of Linn County Title 9, Community Development, Section XII, Non-Resource Lands, 905.960, titled Policies for non-resource lands, subsection (K). Linn County expressly removed the requirement to take a statewide goal 3 or 4 exception when they adopted Ordinance No 04-041, 042 and 043. DLCD participated in the County's legislative process described earlier in this application and acknowledged this addition to the County Plan and zoning code. There are further references to removing the need for the exception process in those County ordinances. References to other statewide goals appear later in this application.

(9) The amendment is consistent with the statewide planning goals.

Response:

As noted, the statewide planning goals are addressed separately, further in this application.

Non-Resource (NR) Zoning District

To implement the Non-Resource Plan designation, Linn County also created NR Zoning Districts in 2004 (adopted as Ordinance 04-042 and 04-043). The NR zoning districts are NR-5 (five acre minimum parcel size) and NR-10 (ten acre minimum parcel size). NR-5

and NR-10 became part of a group of categories called Rural Development Zone (927.300).

Linn County Code Subsection 929.910 is the *Statement of purpose* for the Non-resource zoning district(s).

- (A) The purpose of the Non-resource (NR) zoning district shall be:*
(1) To implement the Non-resource Plan designation.

Response:

This application includes the request to place the Non-resource Plan designation on the Morris property, as well as the request for the NR-5 zone. Procedurally, the County must approve the Non-resource Plan designation before the NR-5 zone.

- (2) To permit low-density residential development in suitable locations while reducing potential conflicts with agricultural and forestry.*

Response:

This site is a suitable location for low-density residential development, and potential conflicts with existing agricultural and forestry zoning and practices will be minimal. Those issues have been addressed throughout this application narrative.

- (B) The NR zoning district is composed of two zoning districts which are distinguished only by minimum property size standards.*
(C) One non-resource zoning district is not interchangeable with another non-resource zoning district without approval through the procedural processes described in LCC 921.800 to 921.840 and the non-resource land policies in the Comprehensive Plan.

Response:

This application is for the Non-resource Plan designation and the NR-5 zone.

LCC 929.920 is a list of land uses allowed outright in the Non-resource zones. The list includes *(1) One single-family dwelling or one manufactured dwelling per authorized unit of land.*

That is the purpose of this application. The applicant wants the ability to create additional homesites on separate authorized units of land, up to the NR-5 density limit. Linn County procedures require that the actual land division process be separate and subsequent to a Plan and zone change application.

LCC 934.610 establishes property size, width, and depth standards. Subsection (E) includes a table describing size, width, and depth standards for properties in the NR-5 zoning district:

Size	5 acres
Width	290 ft.
Depth	290 ft.
Width (adjoining an FCM zoning district)	500 ft.
Depth (adjoining an FCM zoning district)	500 ft.

(Does not abut FCM zoning)

Response:

The applicant is aware of the dimensional requirements of future parcels in the NR-5 zone. Those standards will be met when a request or requests for land divisions are made, subsequent to this application.

Access standards for NR-5 parcels are found at LCC 934.620. Subsection (A) states: All new lots or parcels in the Rural Development Zone shall have access to a public road. The new parcels will have access to Rock Hill Drive via a joint easement along the west edge of the site. As mentioned earlier, the Rural Development Zone includes a group of zoning districts including NR. The minimum public road frontage for NR properties is 30 feet. The Morris property has 382 feet of road frontage onto Rock Hill Drive.

The property coverage standard for the NR-5 zone is found at LCC 934.625 (B). The maximum coverage for the principal building and all accessory buildings and structures shall not exceed 20 percent of the total property area in the NR zone. For any future new lots (not part of this land use application), that standard should be easily met with such a large, five-acre minimum sized lot. One dwelling on five acres will almost certainly cover considerably less than 20% of the 5-acre site. The likelihood is that the actual property coverage will be considerably less and similar to the other dwellings and accessory buildings on the other parcels in this vicinity.

Minimum front yard setbacks for all structures in the NR zone are: 30 feet from the front line, or 60 feet from the center of the road, whichever is greater. For the Morris site, the minimum side and rear yard setbacks are 10 feet from the residential zoning district (RR 2.5) properties on the east, and none for sides that abut the adjacent F/F zone sides (B).

LCC 934.635 includes setbacks from riparian habitat. The minimum building setback for NR zoned parcels is 50 feet. However, no riparian habitat exists within or abutting the Morris property.

LCC 934.640 includes maximum building height for the NR zone. The standard is 35 feet or 2 stories, excluding daylight basements, whichever is greater. This also will pertain to future dwellings on future lots that are not part of this application.

Other standards for the NR zone that may or may not pertain to future dwellings on future lots enabled by this application but not part of this application are: landscaping (934.645), sign standards (934.650), artificial lighting (934.652), off-road parking standards (934.655), and screening and material storage standards (934.660).

STATEWIDE GOALS

Goal #1, Citizen Involvement

This goal primarily addresses Linn County's obligation for public notice and opportunity for hearings. The County's legislative process for establishment of the Non-Resource Plan and zone designations involved ample and numerous opportunities for citizen involvement in 2003 and 2004. For this specific property application, there will be hearings before the County Planning Commission and Board of Commissioners. In each case, property owners within 1000 feet of the Morris property will be notified prior to each hearing, as prescribed by Linn County code.

Notice will also be provided to several government agencies including the Linn County Building Official, the Linn County Road Department, the Lebanon Fire Protection District, the Linn County Sheriff's Department and the Lebanon Public School District.

Goal #2, Land Use Planning

Linn County's Comprehensive Plan and implementing ordinances have all been acknowledged by the State of Oregon. These County documents establish a procedure to amend the Comprehensive Plan map and zoning map. This application complies with the County's requirements for this type of land use action. The Non-Resource Plan and zones were added to Linn County law in 2004, and those additions to Linn County law have been acknowledged by the state.

Goal #3, Agricultural Lands

Linn County Non-Resource lands are not subject to Statewide Planning Goal 3. Please refer to LCC 905.920(A) Non-Resource lands; description.

Goal #4, Forest Lands

Linn County Non-Resource lands are not subject to Statewide Planning Goal 4. Please refer to LCC 905.920(A) Non-Resource lands; description.

Goal #5, Open Spaces, Scenic and Historic Areas and Natural Resources

The purpose of Goal 5 is to protect natural resources and conserve scenic and historic areas and open spaces. The protected resources include riparian corridors, wetlands, wildlife habitat, scenic rivers and waterways, groundwater, recreation trails, natural areas, wilderness areas, minerals, energy sources, cultural and historic areas, scenic areas, and open space. The Morris property does not contain any identified open spaces, scenic or historic areas or natural resources as mapped by Linn County. The property does contain

groundwater, but the property is not in a Groundwater Management Area, and well logs from nearby and adjacent properties indicate that groundwater is available. Due to a hill, the southernmost ten acres cannot be viewed from any of the nearby public roads and, therefore, does not contribute to scenic open space. Because of the surrounding residential development, the property cannot be made part of any significant block of open space or put to recreational use. There will be no change in the property's contribution to the resource preservation policy contemplated by Goal 5 if it is rezoned. Rezoning is therefore consistent with Goal 5.

It is likely that much, or most of the five-acre parcel areas will remain in an undeveloped condition. This will enable occasional wildlife grazing in the large areas between the homes and therefore help protect the peripheral elk and deer winter range. Also as noted, the woodlot will likely remain intact. This provides some local habitat.

Goal #6, Air Water and Land Resources Quality

With regard to residential development, this Goal states residential use should be allowed "only where approvable sewage disposal alternatives have been identified". All the surrounding residential properties utilize fully functional septic and sewage disposal systems. The applicant has already received septic approval for the proposed new homesites. This requirement of the Goal is therefore met. The incremental increase in air discharges associated with home heating systems for two additional dwellings will be imperceptible when considered with the numerous dwellings already established in the area. There are no anticipated impacts on water quality associated with the proposal. Due to the absence of streams on the property, and due to the distance of the proposed dwellings from the ditches along Rock Hill Road, there is no likelihood of increased sedimentation or increased runoff due to the construction of homes. Any increase in runoff from the impervious surfaces associated with the dwellings will be reabsorbed into the ground before reaching adjacent properties.

Goal #7, Areas Subject to Natural Disasters and Hazards

This property is not within any designated flood plains, as mapped by the Federal Emergency Management Agency (FEMA), as per FEMA Community Panel (map) Number 310136 0025 B.

No mass movement topography is identified on the property in the Environmental Geology of Western Linn County, Oregon or the "Geologic Hazards Map of the Albany Quadrangle," State of Oregon Department of Geology and Mineral Industries.

Goal #8, Recreational Needs

This property is not planned for any recreational site by Linn County or any other agency with land use planning authority. This property is also not adjacent to any existing or planned public recreational site.

Goal #9, Economy of the State

This Goal does not specifically apply to individual land use applications. However, the change in the Plan and zoning designations will enable dwellings to be constructed that will provide construction jobs. Approving this request will have only an incremental, but positive effect on the amount of permanent employment in this area.

Goal #10, Housing

If the Non-Resource Plan and zone designations are approved, land divisions to create additional homesites will be requested. Statewide goal #10 is mostly directed at actions required of local government (Linn County). However, this proposal will enable more homesites in a rural neighborhood near Lebanon where demand appears to remain strong.

Goal #11, Public Facilities and Services

The property is located within the Lebanon Fire Protection District. Access to future dwellings will be designed in accordance with that district's standards. The property is served by Linn County Sheriff. There are no public water or sewer services serving the immediate vicinity. The existing facilities and services are in place and will not be perceptibly impacted by the proposed amendment.

The property is also located within the Lebanon Public School District boundaries. No known capacity issues exist in this part of the Lebanon district. The school district was notified of earlier land use requests on the Morris property, and did not respond unfavorably.

Goal #12, Transportation

The transportation system relevant to the proposed amendment is the system of rural county roads serving the area. The primary roads are Rock Hill and South Fifth, both of which are fully improved paved County roads. These roads are fully capable of handling the traffic associated with the rural residential use in the area. The addition of two dwellings made possible by the proposed amendment will result in only a minor increase in the traffic volume. There will be no significant impact on the safety, efficiency, or economic vitality of the transportation system.

Goal #13, Energy

This goal provides direction to governmental agencies including Linn County, and does not apply directly to individual land use requests.

Goal #14, Urbanization

Goal #14 is *To provide for an orderly and efficient transition from rural to urban use.* This goal does not pertain to this land use application because the site is outside any urban growth boundary and does not request or require the establishment of any new special district for utilities or services. Statewide Goal 14 also does not pertain, because the proposal is for the Non-Resource Plan designation and NR-5 zoning district, and not a Rural Residential zoning district, such as RR-2.5 or RR-5.

The legislation that added the Non-resource Comprehensive Plan designation to the Linn County Plan followed all notification and hearing requirements, including an extensive period for agency and public comments. DLCD commented during that legislative process, as did other agencies, special interest groups and individual citizens. Statewide Goal 14 pertains to rural residential land designations, but the Non-resource Plan designation as drafted and adopted by Linn County is really a third general type of Plan designation – neither Resource or Residential. Goal 14 clearly pertains to many Linn County Comprehensive Plan designations, but not to the Non-resource Plan designation.

Goal #15, Willamette River Greenway

This property is not located within or is near the Willamette River Greenway. This Goal therefore does not apply.


Goal #16, #17, #18 and #19, Estuarine Resources, Coastal Shorelands, Beaches and Dunes, and Ocean Resources

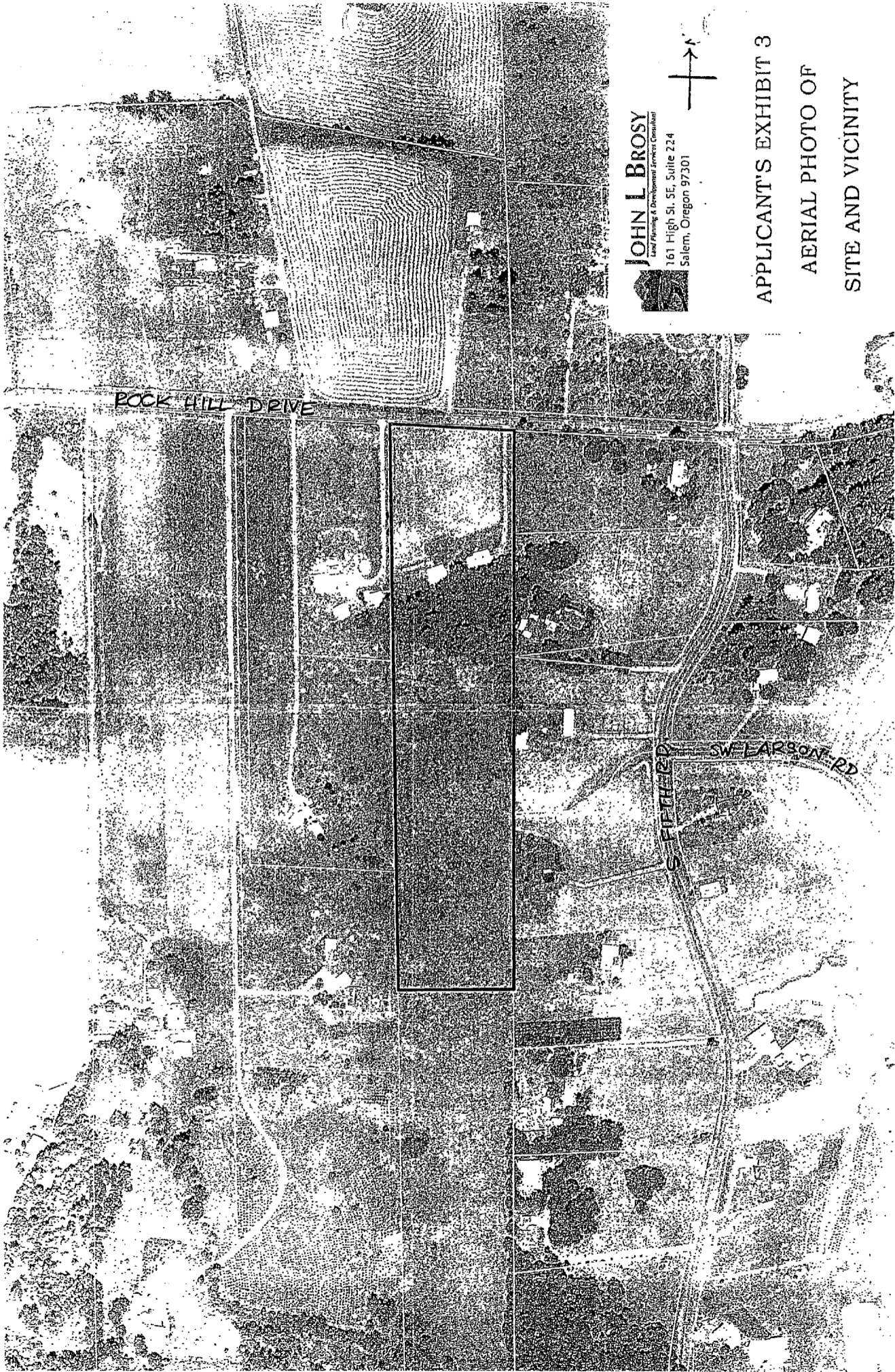
None of the features described in these goals occur in Linn County. These goals therefore do not apply to this application.

CONCLUSION

This narrative and proposed findings of fact, together with the attachments, provide sufficient grounds for granting the Comprehensive Plan change to Non-resource and the zone change to NR-5.

Respectfully submitted,


John L. Brosy
Planning Consultant for the Applicants

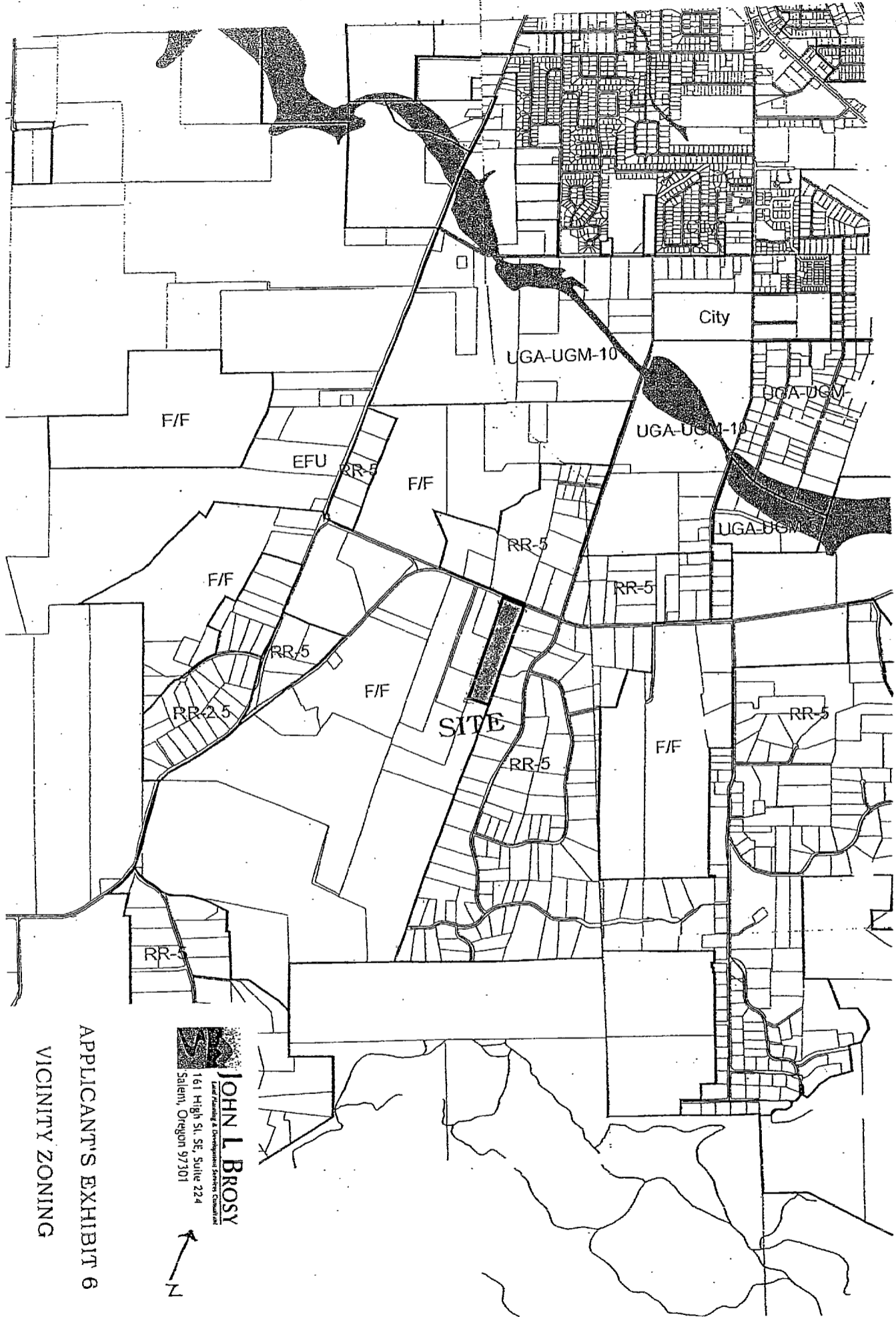


JOHN L. BROSY
Land Planning & Development Services Corporation
161 High St., SE, Suite 224
Salem, Oregon 97301



APPLICANT'S EXHIBIT 3

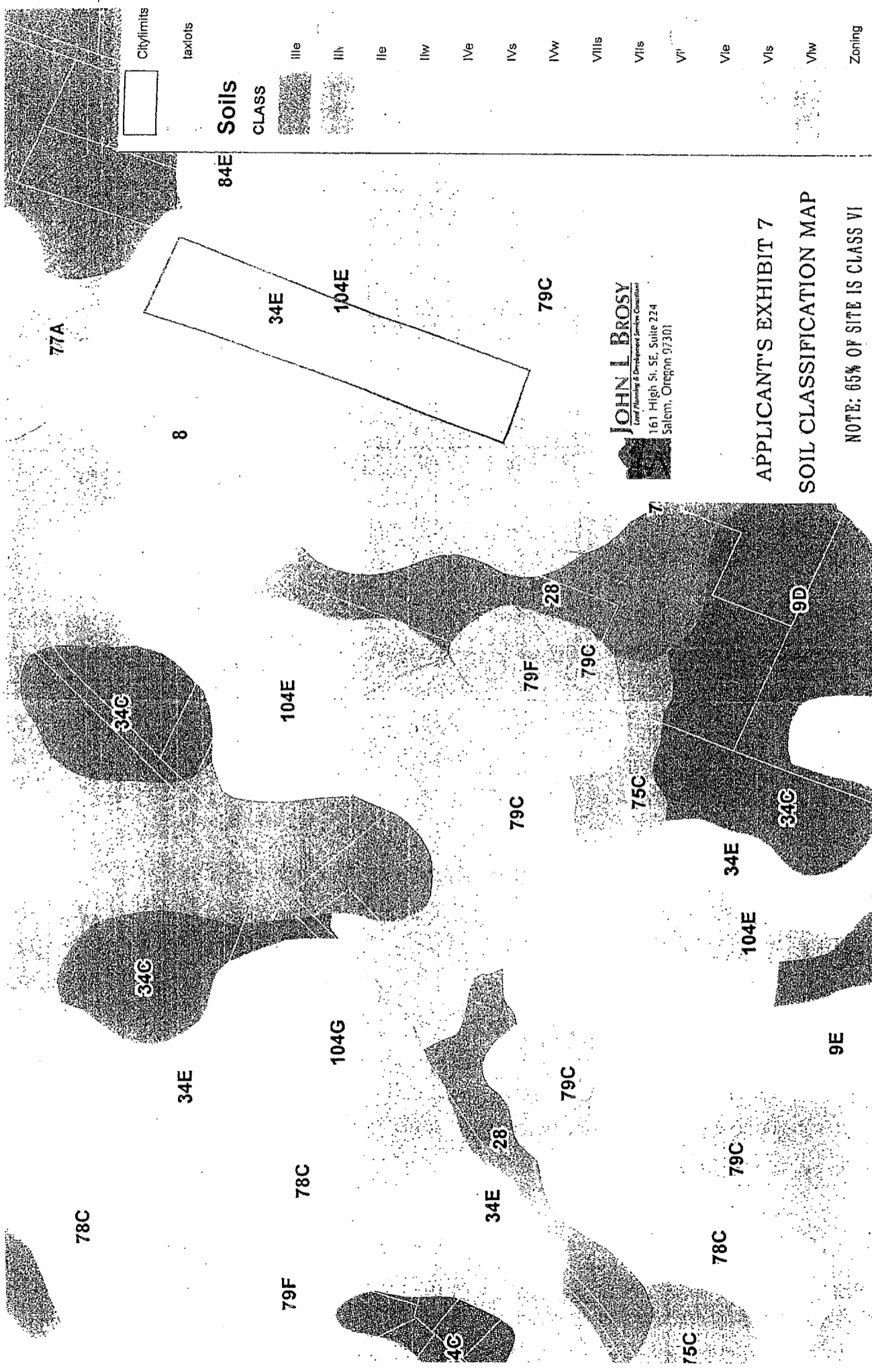
AERIAL PHOTO OF
SITE AND VICINITY



JOHN L. BROSY
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APPLICANT'S EXHIBIT 6
 VICINITY ZONING



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**APPLICANT'S EXHIBIT 7
 SOIL CLASSIFICATION MAP**

NOTE: 65% OF SITE IS CLASS VI



Agronomic Analytics

P.O. Box 10861
Eugene, Oregon 97440
541-684-8000

Report, Observations, and Recommendations

Introduction:

Attorney for the operators contacted *Agronomic Analytics* to conduct a site investigation to determine if the soils mapped on their property showed any variation from the published soil survey. *Agronomic Analytics* was also engaged to interpret soils information and provide estimates of the productive capacity of the tract. *Agronomic Analytics* conducted a field visit on March 20, 2001.

Agronomic Analytics examined the site for the following factors:

- Soil depth (actual and variation from published values)
- Soil pH
- Soil moisture holding capacity (as influenced by soil texture)
- Present land use (kind of vegetation and condition)
- Environmental factors (aspect, slope, hydrology, other conditions)

This report contains a summary of the observations made during the site investigation, an interpretation of the results, and conservative estimates of the returns that can be expected from various agricultural enterprises. Recommendations are also given on the expected costs of inputs (fertilizer, liming, and gopher control) which would be necessary to supply in order for the property to be managed to its highest potential.

Field Descriptions:

Field Name	Use	Predominant Aspect	Predominant Soil	Septic Limitations
Field A	Pasture	Flat		
Field B	Pasture	Northwest aspect	Witzel very cobbly loam	Severe, stones and depth to bedrock
Field C	Pasture	West & Northwest aspect	Philomath cobbly silty clay	Severe, depth to bedrock

Soil Descriptions:

Soil Name	Capability Class	Native Vegetation	Available Soil Moisture	Pasture Yield (AUM)	Forest Productivity (>60 yrs.)
Witzel very cobbly loam (3 - 30 % slopes)	VIs	Douglas-fir, Oregon white oak, ponderosa pine, poison-oak, grasses	3.7 inches	2 - nonirrigated	6,360 ft ³
Philomath cobbly silty clay (3 - 12% slopes)	VIs	Douglas-fir, Oregon white oak, poison-oak, wild rose, grasses	1.9 inches	1-2 - nonirrigated (Soil is actually unrated. This represents an estimate based upon field visit.)	-

Explanation of Ratings:

Capability class - A classification of a soil's limitations and potential. Ranges from I to VIII, with I the best and VIII the worst. The soils on this property are ranked:

- VIs - Soils that have severe limitations that make them generally unsuitable for cultivation. The 's' indicates that the soil is mainly limited due to shallowness, droughtiness, and/or stoniness.

Pasture yield (AUM) - Animal-Unit-Month: the amount of forage or feed required to feed one animal unit (one cow, one horse, one mule, five sheep, or five goats) for 30 days. So for example, to feed one horse for one year requires 12 AUMs (1 Animal Unit x 12 Months). If the pasture is rated at 2 AUMs then 6 acres will be required to supply the feed and forage needs for one horse for one year (12 Animal Unit Months / 2 Acres) either as pasture or hay. If a 15 acre property had an average AUM rating of 2 AUMs/acre then the total available AUMs available would be 30 AUMs. This would produce enough forage to feed 2.5 horses (or 12.5 sheep) for the entire year. The above assumes that the pastures are being managed to a high level of productivity with proper

liming, fertilization, and weed control. Anything less will significantly reduce the AUMs available and/or the amount of forage available.

Forest Productivity - The amount of harvestable timber produced after 60 years.

Productive Capacity:

Field	Acres	Total Available AUM's	Tons of Hay	No. of Sheep	No. of Cows	Forest Yield
B	5	10	10	4.2	.8	31,800 ft ³
C	10	20	20	8.3	1.7	-
Total	15	30	30	12.5	2.5	31,800 ft ³

Note: Available AUMs are based on a high level of management utilizing proper fertilization, liming, rest/rotation, weed control, and proper stocking rate.

Expected Rates of Return:

Product	Return(\$)/unit	No. of Units	Total Return
Sheep	\$150./ewe	12.5	\$1,875
Cows	\$900./cow-calf	2.5	\$2,250
Hay	\$80./ton	30 tons	\$2,400
Timber	\$575./MBF	382 MBF	\$219,650

Note: Returns per unit are based on general averages, these prices are highly variable, subject to supply and demand, and dependent upon the quality of the product. Note especially that the timber price is the amount received after 60 years, in Net Present Value the amount shown is equivalent to \$20,880. in today's dollars or \$348./yr for 60 years.

Findings:

Detailed descriptions of the individual sample sites can be found on the site evaluation forms. Soils conform to the mapped data in the published Linn County Area Soil Survey (1987, USDA Soil Conservation Service). The Witzel very cobbly loam exhibited slightly greater variability in the observed depth than that reported in the published soil survey. These slightly greater depths might serve to increase water holding capacity and consequently improve productive capacity very slightly. Texture and stoniness in the field were as reported in the soil survey.

The two soils on the fields examined are currently being used to their highest best use. The productive value of the two pastures could be improved through the use of moderate fertilization, liming, and weed control. The Philomath cobbly silty clay is unrated for available AUM's in the soil survey and the numbers used above are based upon my best field judgement.

The two soils are absolutely unsuitable for cultivation and production of any agronomic (grass seed, small grains, row crop), high value fruit and vegetable, or nursery crops. They are best suited for pasture or low to medium quality hay production. The Philomath cobbly silty clay is unrated for timber production indicating how poorly suited this soil is for long-term production.



Agronomic Analytics

P.O. Box 10861
Eugene, Oregon 97440
541-684-8000

Site Evaluation

Name: Jay Faulkoner Date: 3/27/01 Field # C Sample # 2

Climate:

Air Drainage: Good Solar Radiation: Open and unobstructed
Wind: Predominately due west to southwest Precipitation: 40 to 60 inches average
Temperature: Average air temp. 52 to 54 degrees F

Site Characteristics:

Topography: Gently Rolling Elevation: 460 ft. above sea level Slope: 6% average at sample site, 8% down the channels. Aspect: Predominantly West & Northwest with some areas of south facing slopes.

Soil Characteristics:

Series: Philomath cobbly silty clay Texture: Cobbly silty clay, dark brown. Subsurface is a clay, very dark brown to very dark grayish brown.

Variations: Sample site conforms to series description with the depth to bedrock varying between 10 inches to 20 inches at sample pits and auger holes. Series description notes depth to bedrock at 12 to 20 inches.

Drainage: Undrained Permeability: Slow

Ponding: No ponding evident, no standing water in sample pits in this field.

Restrictive Layers: Shallow depth to bedrock limits rooting depth, no mottling present.

Soil Depth: Top soil to 5 to 6 inches, subsoil to 18 inches, dark yellow clay, fractured, soft bedrock at 18 inches, large cobbles present.

Water Holding Capacity: Top 20 inches - approximately 1.9 inches.

PH: 5.5

Nutrients Not checked N P K B

Vegetation:

Present Vegetation: Permanent pasture vegetation.

Hydrophyllic Plants: Small seepy area along west edge of field two thirds of the way between north fence and south fence.

Limiting Factors:

Soil: Shallow depth to bedrock, erosion hazard slight to moderate with increasing severity as cover is removed. Limited water holding capacity. Limited moisture availability limits amount of fertilizer application.

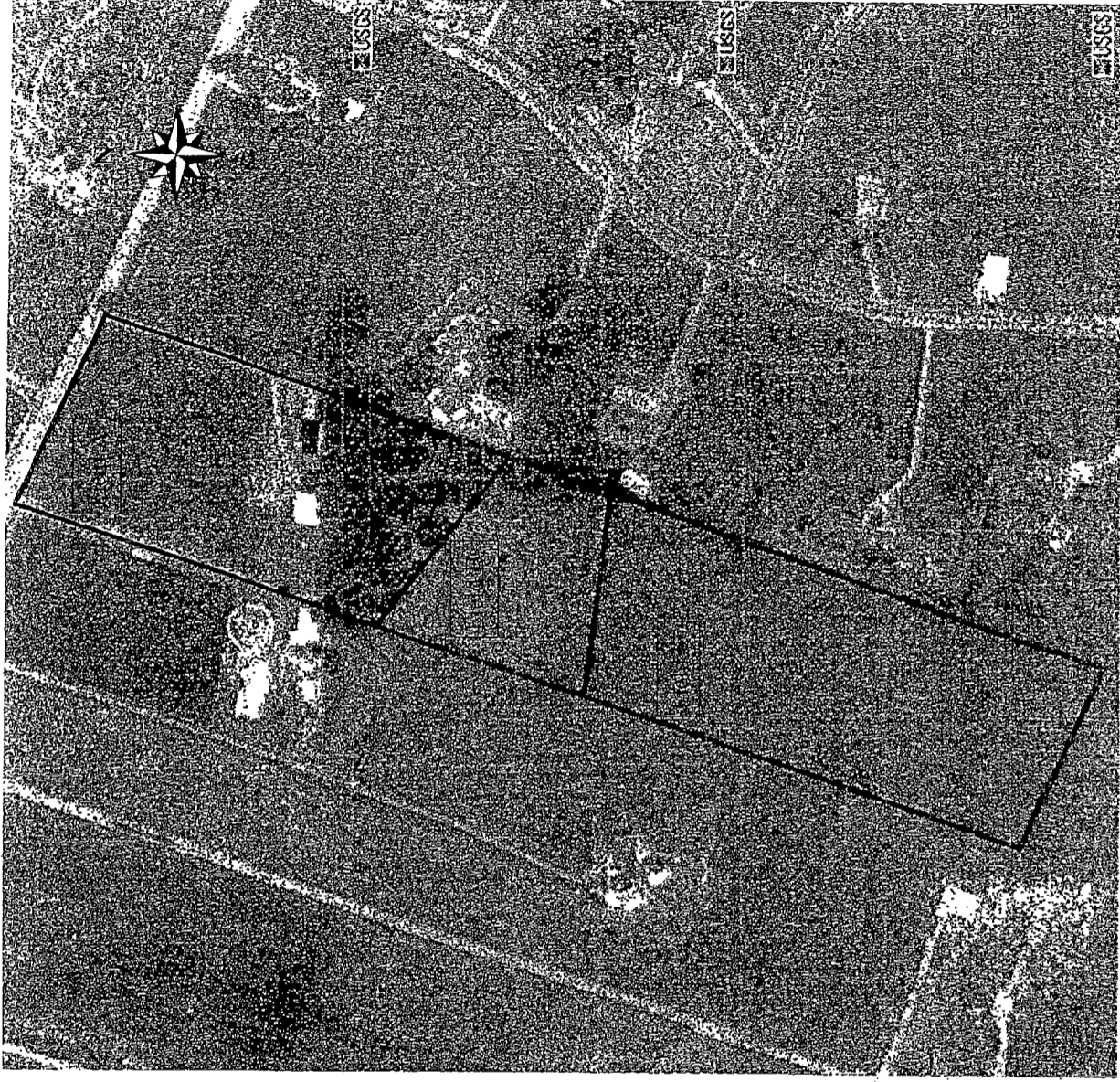
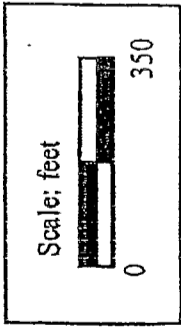
Growing Degree Days: Not calculated, northerly slopes will have cooler conditions.

Frost Hazard: Average frost free period is 165 to 210 days with this site tending towards the longer period due to its being at the lower elevation for this soil series.

Notes: The soil in this field is a Philomath cobbly silty clay. The Philomath soil conforms to the series description. The field observations of the soil were made utilizing

Faulkoner
Site Investigation
Agronomic Analytics

- Field Descriptions:
Field # - Field A
Sample Pits - ⊙
Auger Holes - ⊕
Seepy Areas - **

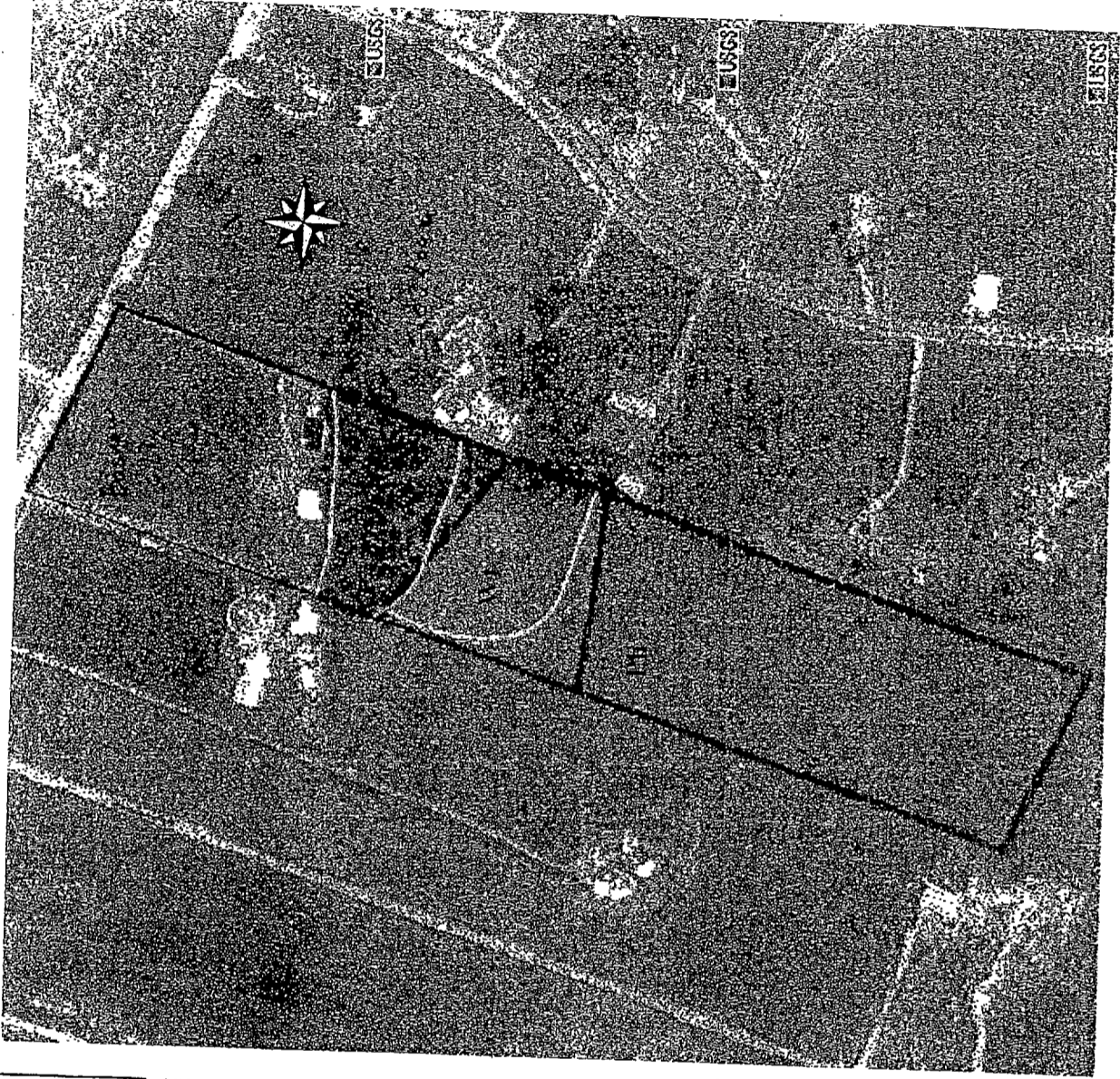


1 meter resolution

Faulkner
Site Investigation
Agronomic Analytics

Soils Key:
Ph - Philomath cobbly silty clay (3 to 12 % slopes)
Wt - Witzel very cobbly loam (3 to 30 % slopes)

Possible
Inclusions:
Jony sil
Nekia sil
Ritner cobbly sil



County Courthouse, Room 115
PO Box 100 Albany, OR 97321

Linn County Department of Health Services
Environmental Health Program

Phone (541) 967-3821
Fax (541) 926-206
Rec. # 26138

REPORT OF EVALUATION FOR ON-SITE SEWAGE DISPOSAL

(Technical Report - This is not a Permit)

Applicant: MORRIS, ROBERT

Map PIN: 12S02W27 01000

Site Location: The southwest corner of this map lot is located approximately 413 feet east and 435 feet north of the southwest corner of section 27.

Subdivision:

Block:

Lot:

Lot Designation: A: Middle site

Property Size: 15 Acres

Zoning: FF

Sewer Available:

System Capacity: 450 gallons / day : Four (4) bedroom single family dwelling.

This approval is limited to residential strength wastewater.

Existing Tank: NA

Test Water-Tightness:

Required Tank Capacities (gallons): Septic: 1000 Dosing: 500 (if needed)

Effluent Filter Required:

System Requirements

Initial Disposal Area

Replacement Disposal Area

System Type:	Standard	Sand Filter w/ shallow disposal trenches
Min Trench Depth:	24 inches	10 inches
Max Trench Depth:	26 inches	12 inches
Sizing Ratio:	150 feet / 150 gallons	50 feet / 150 gallons
Sizing Criteria:	Soil Group C / high water table	Sand Filter Effluent
Total Trench Length:	450 feet	150 feet

Curtain Drain Required: Min Curtain Drain Depth: NA inches

Inspection of System Stakeout Required: Prior to permit issuance for self installers

See attached table of required setbacks. All site developments must adhere to the listed setbacks, or this report may be invalidated.

System may only be installed when soils are dry, generally June through October. Installation during other times of the year may be considered on a case by case basis.

Keep disposal trenches as shallow as possible. A sand filter is required for the replacement system due to the variable nature of the soil. More test pits may demonstrate that the replacement area is suitable for a standard system.

WARNINGS:

Any alteration of the natural conditions in the area approved for the on-site system or replacement area may void this approval. This approval is given on the basis that the lot or parcel described will not be further partitioned or subdivided and that conditions on subject or adjacent properties have not been altered in any manner which would prohibit issuance of a permit in accordance with O.R.S. 454.605 through 454.755 and Administrative Rules of the Environmental Quality Commission. Any such subdivision, partitioning or alteration may void this report.

This document is a technical report for on-site sewage disposal only. It may be converted to a permit only if, at the time of application, the parcel has been found to be compatible with applicable LCDC-Goals. The Statement of Compatibility may be made on the attached form or its equivalent. Authorized Agent approval is required before a construction permit can be issued. This report is valid until an on-site sewage disposal system is installed pursuant to a construction permit obtained from Linn County Environmental Health, or until earlier cancellation, pursuant to Commission rules, with written notice thereof by the Department of Environmental Quality to the owners according to Department records or the County Tax records. Subject to the foregoing, this report runs with the land and will automatically benefit subsequent owners.

August L. Hagan

EHS

7-31-2010

Linn Co. Env. Health
(Office)

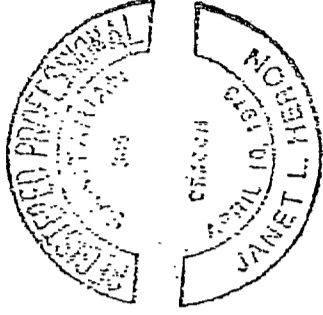
County Courthouse, Room 115
PO Box 100 Albany, OR 97321

Linn County Department of Health Services
Environmental Health Program

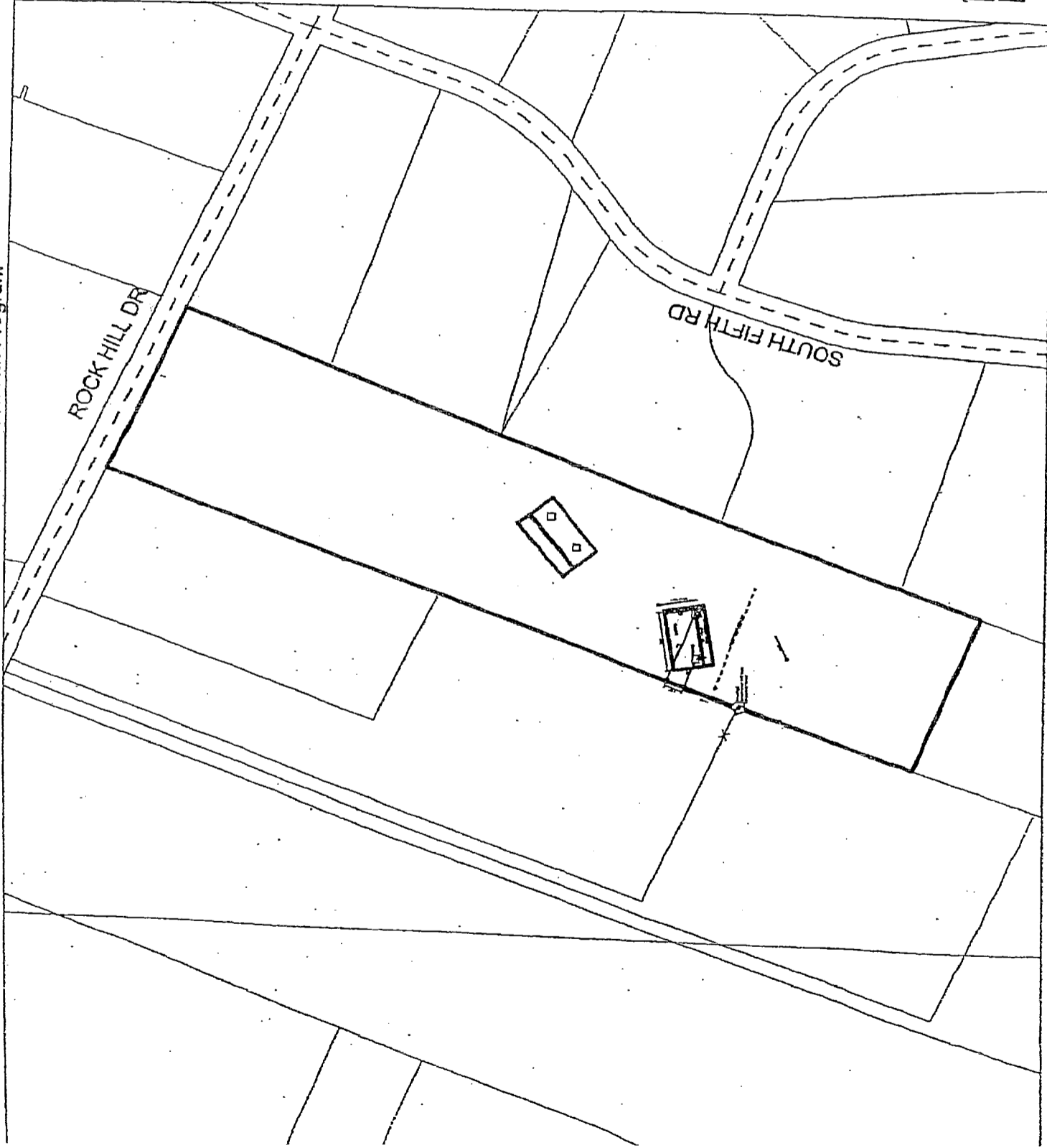
Phone (541) 957-3821
Fax (541) 926-2060

SITE EVALUATION PLOT PLAN

Property ID: 12S02W27 01000
Rec. #: 26138
Date Produced: 07/28/00



- Lot 12S02W27 01000
- Sections
- Road Centerlines
- County Map Lots
- Disposal Areas
- Test Pits



Linn County Department of Health Services
Environmental Health Program

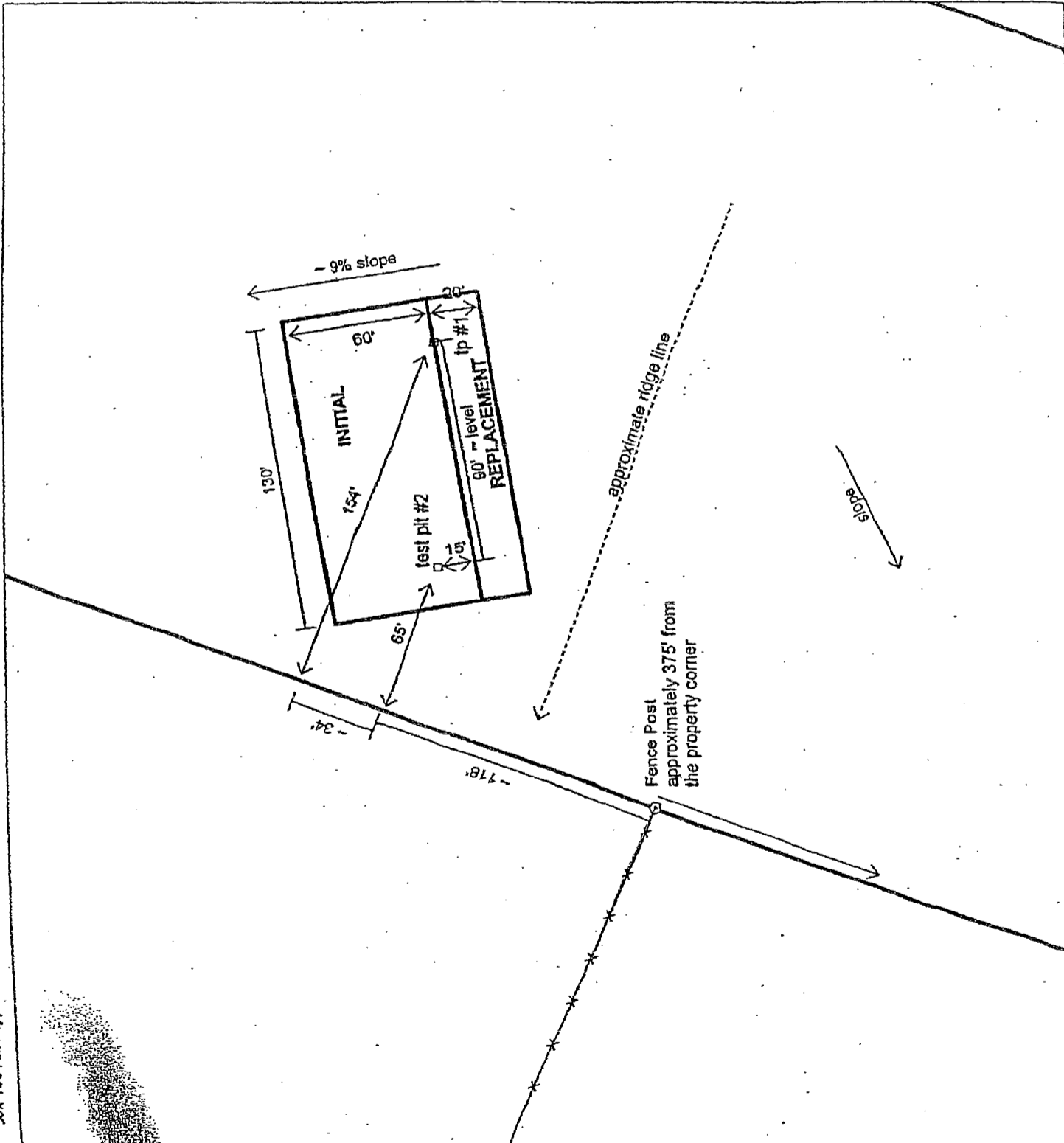
Courthouse, Room 110
Box 100 Albany, OR 97321

Phone (541) 967-3821
Fax (541) 926-2060

SITE EVALUATION PLOT PLAN

Property ID: 12S02W27 01000
Rec. #: 26138
Date Produced: 07/28/00

"South" site



- Lot 12S02W27 01000
- Sections
- Road Centerlines
- County Map Lots
- Disposal Areas
- Test Pits

Well Log Report - Page 1 of 1

Township: 12S, Range: 2W, Section: 27, Well Log ID: NONE, Taxlot: 1002

Click on the column heading to re-sort the results. Click on Well Log to view image. Click here if you are having problems

Well Log	T-R-S/ Q-QQ	Taxlot	Street of Well	Owner	Company	Well Type	First Water	Completed Depth	Static Water Level	Yield	Completed Date	Bonded Constructor	Starcard	Well Id #	Construction Type										
LINN 4022	12S-2W-27	1002		GARRETT, LEROY		W	123	144	31	18	7/29/1993	NUGENT, CHARLES D	54564		<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

Go to page: 1

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[Return to GRID Query Screen](#)

Well Log Report - Page 1 of 1

Township: 12S, Range: 2W, Section: 27, Well Log ID: NONE, Taxlot: 1005

Click on the column heading to re-sort the results, Click on Well Log to view image, Click here if you are having problems

Well Log	T-R-S-Q-QQ	Taxlot	Street of Well	Owner	Company	Well Type	First Water	Completed Depth	Static Water Level	Yield	Completed Date	Bonded Constructor	Starcard	Well Id #	Construction Type						
JINN 2167	12S-2W-27	1005		CHAPUT, DAVID		W	55	86	18	12	4/20/1994	NUGENT, CHARLES D	64818		<input checked="" type="checkbox"/> New	<input type="checkbox"/> Abandon	<input type="checkbox"/> Deepen	<input type="checkbox"/> Record	<input type="checkbox"/> Repair	<input type="checkbox"/> Conversion	<input checked="" type="checkbox"/> Domestic

Go to page: 1

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Well Log Report - Page 1 of 1

Township: 12S, Range: 2W, Section: 27, Well Log ID: NONE, Taxlot: 1003

Click on the column heading to re-sort the results, Click on Well Log to view image, Click here if you are having problems

Well Log	T-R-S/Q-QQ	Taxlot	Street of Well	Owner	Company	Well Type	First Water	Completed Depth	Static Water Level	Yield	Completed Date	Bonded Constructor	Starcard	Well Id #	Construction Type	Domestic
LINN 52682	12S-2W- 27 SW-SW	1003	36816 ROCK HILL DR	BATTENBERG, CHUCK		W	82	120	32	90	8/31/1999	NUGENT, CHARLES D NUGENT DRILLING CO.	124187	35162	<input checked="" type="checkbox"/> New <input type="checkbox"/> Abandon <input type="checkbox"/> Deepen <input type="checkbox"/> Record <input type="checkbox"/> Repair <input type="checkbox"/> Conversion <input checked="" type="checkbox"/> Domestic	X

Go to page: 1

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Well Log Report - Page 1 of 1

Township: 12S, Range: 2W, Section: 27, Well Log ID: NONE, Taxlot: 800

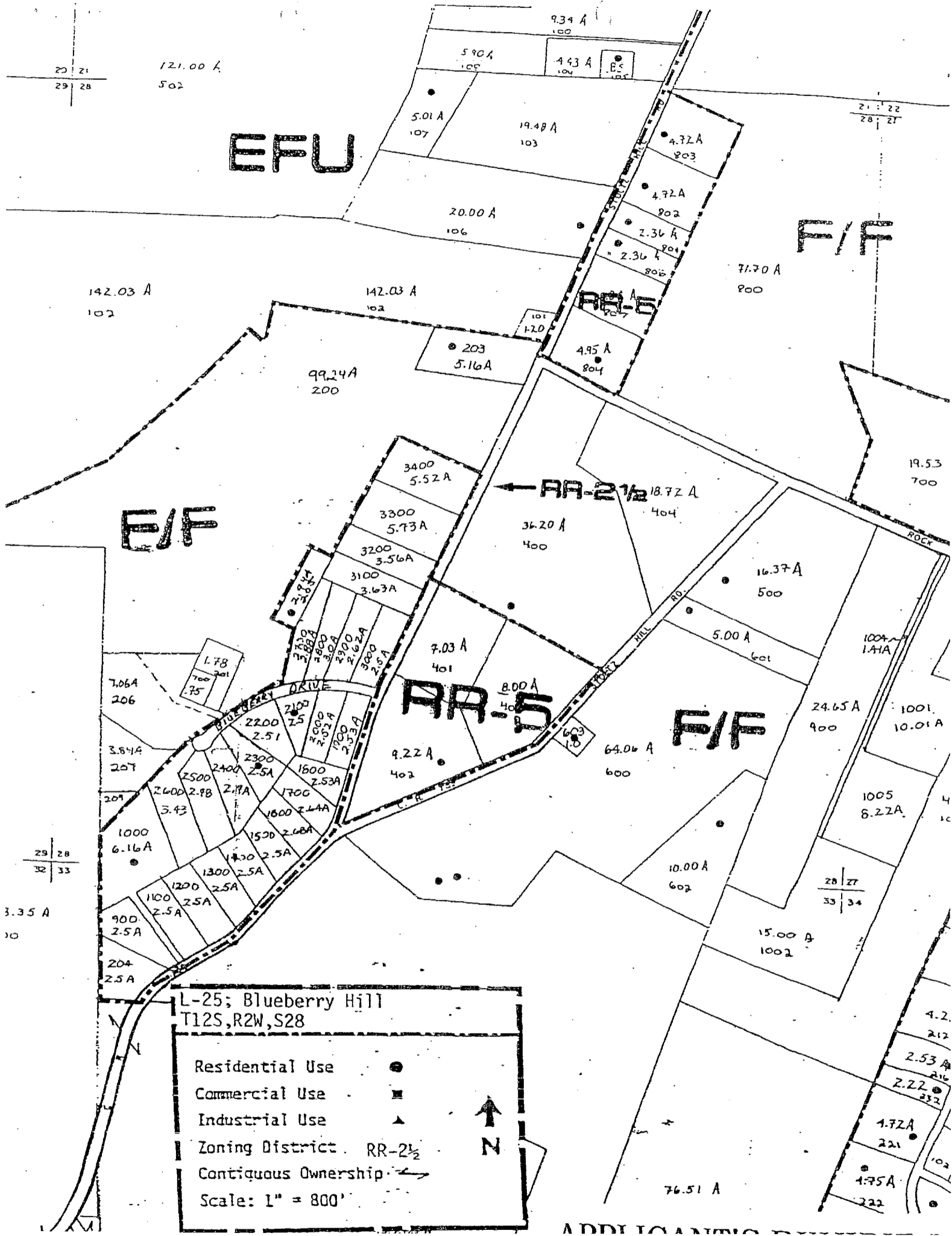
Click on the column heading to re-sort the results. Click on Well Log to view image. Click here if you are having problems

Well Log	T-R-S/Q-Q	Taxlot	Street of Well	Owner	Company	Well Type	First Water	Completed Depth	Static Water Level	Yield	Completed Date	Bonded Constructor	Startcard	Well Id #	Construction Type						
LINN 50709	12S-2W- 27 SW-SE	800	31038 LARSON RD	PLINSKI, THOMAS		W	260	285	66	70	10/12/1996	NUGENT, CHARLES D NUGENT DRILLING CO.	86838	6686	New	Abandon	Deepen	Record	Repair	Conversion	Domestic

Go to page: 1

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L-25; Blueberry Hill
 T12S, R2W, S28

Residential Use ●
 Commercial Use ■
 Industrial Use ▲

Zoning District RR-2 1/2
 Contiguous Ownership ←

Scale: 1" = 800'

↑
N

ADDITIONAL INFORMATION

EXHIBIT B

Letter from William H. Roach
of
Jackson and Prochnau, Inc.

JACKSON & PROCHNAU
INCORPORATED
CONSULTING FOREST ENGINEERS
PROFESSIONAL FORESTERS CERTIFIED APPRAISERS REGISTERED PROFESSIONAL ENGINEERS

Mr. John L. Brosy
Land Planning and Development Services
161 High Street, SE
Suite 224
Salem, Oregon 97301

May 4, 2009

RE: Morris Non-resource Application

Dear Mr. Brosy,

As requested, I have reviewed the record of the Morris non-resource application, the staff report, and the comments from Jim Just. I have specific comments relating whether the Morris property meets the Goal 4 definition of forestland as stated in Oregon's Statewide Planning Goals.

The fifteen acre subject parcel contains 2 acres of timber under tax deferral since 1991, with the remaining acreage being non-stocked with trees. The applicant has had an extensive soil survey conducted by professional soil scientists. The results indicate a productive capacity below what could be considered commercial timberland for the vast majority of the parcel. Soils are rated as cubic foot site class VI or site index 60 (100 year basis). I have estimated the potential monetary return from a future harvest of timber from the Morris parcel. I have assumed that the parcel would be planted with Ponderosa Pine and grown to maturity. Harvest volume at 80 years is estimated to be 4.5MBF/acre from published yield tables. I have also used a 10 year average for log prices considering the current depressed market. Logging costs include hauling the logs to the closest pine mills in operation in Southern Oregon. I have valued the timber using the growth discount method which calculates the present value of future harvests. The calculation is shown as Exhibit A. Results indicate that the timber would be a losing investment due to the long holding period and low harvest volume. The negative value of the potential future harvest is directly attributable to the poor growing conditions found on the Morris parcel. Results illustrate that subject lands are not suitable for commercial forest uses. My experience working with Witzel and Philomath soils is confirmed by the soil survey. These soils are thin, rocky, and have very low moisture holding capacity. Reforestation is difficult and costly with poor survival which often requires more than one planting to achieve full stocking. No viable commercial forest uses could be carried out on this property.

A change in subject zoning to non-resource designation would not adversely affect the function of adjoining forestlands. Low density housing on the Morris

409 S.E. ERMINE ST., ALBANY, OR 97321. PH (541) 926-3320 . FX (541) 926-3917
6230 CAPITOL BLVD SE, TUMWATER, WA 98501 PH (360) 352-9680 FX (360) 352-9499

parcel would not necessitate any changes in forest use on any adjacent forest parcels or in any way affect the ability of those parcels to continue to function as forest parcels. The property does not block access to other forestlands.

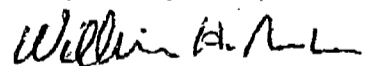
The concern for a timberland manager is determining whether or not the excavation of roads and structural foundations would cause landslides or excess sedimentation in nearby streams. There are no streams on the property and there are no bodies of water that could contain fish at any time of the year. There is no reason to believe the subject parcel must remain in forest use to maintain soil, water, air, fish and wildlife habitat. The proposed non-resource use would likely result in less erosion or soil disturbance than if it were forced into commercial forest production. The thin rocky soils would be subject to compaction from ground based harvest equipment. In contrast, low density housing would impact a comparatively minor percentage of subject lands, and essentially preserve the native attributes.

From a forestry standpoint, the characteristics of the subject property fit the description of non-resource lands very well. Predominant soil types are not in the SCS classes I-IV. Subject lands are primarily composed of SCS class VI soils. As previously discussed, the land is not suitable for commercial uses. This is directly related to the very low productive timber capacity indicated from the soil survey. The surrounding area is typified by relatively small lot owner occupied ranches and woodlots. This would be highly compatible with applicants desire to develop low density housing on the subject parcel.

I have conducted many forestry related activities on small private parcels in our area including timber harvesting, cruising, appraisals and marketing. I have often seen the pride of ownership on low density parcels. Owners typically enhance the profile of their property by employing methods that are not cost effective from a commercial standpoint. While there may be some tree growing benefits to employing these methods, they do not equate or translate to the definition of resource lands under the Linn County Land Use Element Code. Rather they translate to an amenity value to the landowner where livability is enhanced, and the natural system is allowed to evolve relatively undisturbed.

As a natural resource manager it makes sense to site low density housing on non-productive lands. The Morris parcel is an excellent candidate for non-resource status.

Respectfully Submitted,



William H. Roach
Senior Forester
Jackson and Prochnau, Inc.

JACKSON & PROCHNAU
INCORPORATED
CONSULTING FOREST ENGINEERS
PROFESSIONAL FORESTERS REGISTERED PROFESSIONAL ENGINEERS CERTIFIED APPRAISERS

William Roach

Education:

- 1973-1977 Lewis and Clark College - 4 years American Literature.
1985-1988 Oregon State University-BS. Forest Management.
October 1994 Duke University School of the Environment
- Forest Appraisal curriculum
 - Tree Farm Inspector – American Tree Farm System.
-

Employment:

- 1989 – Present: **Forester for Jackson & Prochnau, Inc.**
- Duties include appraisal writing, research and analysis.
 - Expert witness testimony and timber trespass analysis.
 - Tree farm management, timber cruising and timber sale layout.
 - Contract administration and surveying.
 - Performed forestry consulting services for the following major clients:
Weyerhaeuser Co.; Plum Creek; Forest Capital Partners; Georgia Pacific; Murphy Company; Swanson Group LLC; Green Crow; Lone Rock; Starker Forests; Silver Butte Timber Co.; Rough and Ready Lumber Co.; Indian Hills; Port Blakely; Roseburg Forest Products; Washington State Dept. of Natural Resources; Internal Revenue Service; Confederated Tribes of the Warm Springs Indians; Quinault Indian Nation; Seneca Lumber Co.; Oregon State University Foundation; Bank of America; Pioneer Trust; BLM; US Department of Justice.
- May '88-Oct '89: **Wild West Logging Inc.**
- Timber Faller
 - Also some experience running a loader, cat and yarder.
- 1987-1988: **McDonald Dunn State Forest,**
- Crew Foreman,
 - Tree Planting Inspector,
 - Supervised 12 workers for thinning, slashing, herbicide application, tree planting and trail construction.
- 1980-1985: **Reforestation Contractor-self-employed,**
- Completed USFS contracts;
 - Pre-commercial thinning,
 - slash piling, slash burning, fireline construction, trail construction.
- 1977-1980: **Forestry Technician**
- USFS trail crew foreman for Estacada and Ripplebrook RS,
-

EXHIBIT C
LUBA No. 2009-068

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BEFORE THE LAND USE BOARD OF APPEALS
OF THE STATE OF OREGON

JAMES JUST,
Petitioner,

NOV09'09 AM10:57 LUBA

vs.

LINN COUNTY,
Respondent,

and

ROBERT B. MORRIS, JAMES F. SCOTT, III,
JEANETTE M. SCOTT and ROBERT L. SCOTT,
Intervenors-Respondents.

LUBA No. 2009-068

FINAL OPINION
AND ORDER

Appeal from Linn County.

James Just, Lebanon, filed the petition for review and argued on his own behalf.

Thomas N. Corr, County Counsel, Albany, filed a joint response brief and represented respondent. With him on the brief were Wallace W. Lien and Wallace W. Lien, P.C.

Wallace W. Lien, Salem, filed a joint response brief and argued on behalf of intervenors-respondents. With him on the brief were Wallace W. Lien, P.C. and Thomas N. Corr.

HOLSTUN, Board Member; BASSHAM, Board Chair; RYAN, Board Member, participated in the decision.

REMANDED 11/09/2009

You are entitled to judicial review of this Order. Judicial review is governed by the provisions of ORS 197.850.

1 Opinion by Holstun.

2 **NATURE OF THE DECISION**

3 Petitioner appeals a county decision that approves comprehensive plan and zoning
4 map amendments for a 15-acre parcel.¹

5 **MOTION TO INTERVENE**

6 Robert B. Morris, James F. Scott, III, Jeanette M. Scott and Robert L. Scott, the
7 applicants below, move to intervene on the side of the respondent in this appeal. There is no
8 opposition to the motion and it is granted. Because respondent and intervenors filed a joint
9 response brief, we refer to them together as respondents.

10 **INTRODUCTION**

11 The subject 15-acre property is located a short distance south of the City of Lebanon
12 urban growth boundary in an area that includes mixed rural residential and farm and forest
13 uses. Goal 3 (Agricultural Lands) and Goal 4 (Forest Lands) provide that lands that qualify
14 as agricultural lands or forest lands must be protected for farm or forest uses. Prior to the
15 challenged decision, the comprehensive plan map designation for the subject 15-acre parcel
16 was Rural Residential Reserve-Farm/Forest and the zoning map designation was
17 Farm/Forest. The county's Farm/Forest designations are applied to property that is suitable
18 for both agricultural and forest uses. Linn County Code (LCC) 928.600.² The challenged
19 decision changes those designations to Non-Resource (comprehensive plan map) and Non
20 Resource – 5-acre minimum (NR-5) (zoning map). In approving those map changes the

¹ The decision that is before us in this appeal includes Ordinance 2009-206 and Resolution and Order No. 2009-205. Those documents appear at Record 2-5. The resolution adopts Exhibit 1 as findings. Exhibit 1 appears at Record 6-10. Exhibit 1 appears to adopt Exhibits A and B as additional findings. Exhibit A appears at Record 11-68; Exhibit B appears at Record 69-73.

² LCC 928.600 provides in part:

“The purpose of the Farm/Forest (F/F) zoning district is:

“(A) to preserve land suitable for agricultural and forest uses[.]”

1 county found that the subject property does not qualify as either agricultural lands or forest
2 lands. Petitioner challenges those findings in this appeal.

3 **REPLY BRIEF**

4 Our rules authorize reply briefs to respond to "new matters in the respondent's brief."
5 OAR 661-010-0039. Petitioner moves for permission to file a reply brief to respond to new
6 matters raised in respondents' brief. In their response brief, respondents challenge
7 petitioner's standing and LUBA's jurisdiction in this matter. Those challenges both qualify
8 as new matters, and petitioner's request for permission to file a reply brief is granted. *Boom*
9 *v. Columbia County*, 31 Or LUBA 318, 319 (1996).

10 **JURISDICTION**

11 The notice of intent to appeal in this matter provides the following description of the
12 appealed decision:

13 "Notice is hereby given that petitioner intends to appeal that land use decision
14 of respondent identified as 'Resolution and Order No. 2009-205, Planning and
15 Building Department (PD08-0004).' Notice of Adoption was mailed on May
16 29, 2009. The county's decision approved a Comprehensive Plan map
17 amendment and zoning map amendment on a 15.00-acre property identified as
18 12S-2W-27 Tax Lot 1000. The amendments changed the planning and zoning
19 designations from Farm/Forest to Non Resource. The county's Notice of
20 Adoption is attached as Exhibit 'A.'"

21 The county's Notice of Adoption that is attached to petitioner's notice of intent to appeal and
22 referenced above as Exhibit A identifies the same 15-acre property and the same zoning and
23 plan map amendment, but it identifies two decisions, Resolution and Order No. 2009-205 and
24 Ordinance No. 2009-206. While petitioner's notice of intent to appeal specifically refers to
25 Resolution and Order No. 2009-205, it makes no mention of Ordinance 2009-206.

26 Respondents argue that because petitioner's notice of intent to appeal makes no
27 explicit reference to Ordinance 2009-206, petitioner's notice of intent to appeal should be
28 understood to challenge only Resolution and Order No. 2009-205. Respondents argue
29 Resolution and Order No. 2009-205 is only an interlocutory order that adopts the findings

1 that support the map amendments and directs the planning staff to prepare amendments to the
2 comprehensive plan and zoning maps, whereas Ordinance 2009-206 is the document that
3 actually adopted the disputed comprehensive plan and zoning map amendments.
4 Respondents contend that Resolution and Order No. 2009-205 is not the county's final
5 decision regarding the requested comprehensive plan and zoning map amendments.
6 According to respondents, Ordinance 2009-206 is the county's final decision on the
7 amendments. Because ORS 197.015(10)(a) requires that a land use decision be the local
8 government's "final decision or determination," respondents contend LUBA does not have
9 jurisdiction to review Resolution and Order No. 2009-205 and this appeal must be dismissed.

10 Respondents' jurisdictional challenge is based on a hyper-technical reading of
11 petitioner's notice of intent to appeal that fails to give effect to all of petitioner's description
12 of the appealed decision. While petitioner's notice of intent to appeal might be wrong about
13 whether Resolution and Order No. 2009-205 actually adopted the new comprehensive plan
14 and zoning map amendments for the 15-acre parcel, petitioner's notice of intent to appeal
15 clearly describes the appealed decision as the "county's decision [that] approved a
16 Comprehensive Plan map amendment and zoning map amendment on a 15.00-acre property
17 identified as 12S-2W-27 Tax Lot 1000." Resolution and Order No. 2009-205 adopts findings
18 and directs preparation of amended maps; Ordinance 2009-206 adopts the amended maps.
19 Resolution and Order No. 2009-205 and Ordinance 2009-206 were adopted on the same day,
20 May 27, 2009.³ The county sent a single notice of adoption for Order No. 2009-205 and
21 Ordinance 2009-206, and that county notice of adoption was attached to petitioner's notice of
22 intent to appeal. Therefore, while the body of the notice of intent to appeal itself may not
23 have expressly referenced Ordinance 2009-206, the attached county notice of decision did

³ Since Resolution and Order No. 2009-205 and Ordinance 2009-206 were adopted on the same day, it is not clear to us why the county adopted Resolution and Order No. 2009-205 to adopt findings and direct preparation of map amendments that had already been prepared. As far as we can tell the county could just as easily have drafted Ordinance 2009-206 to adopt the supporting findings and the amended maps.

1 reference Ordinance 2009-206. The record submitted by the county in this appeal includes
2 both Resolution and Order No. 2009-205 and Ordinance 2009-206. While petitioner's
3 noticed of intent to appeal might be wrong in identifying Resolution and Order No. 2009-205
4 as the document that actually adopted the comprehensive plan and zoning map amendments
5 there was no confusion that it was the comprehensive plan and zoning map amendments that
6 petitioner wished to appeal. If petitioner were to move to amend the notice of intent to
7 appeal to strike the reference to Resolution and Order No. 2009-205 and insert in its place a
8 reference to Ordinance 2009-206 to correct the mistaken reference, we would grant the
9 motion. But we see no need to require such a pointless formality, only to correct what is at
10 most a harmless error that caused no prejudice and confused no one. Petitioner's notice of
11 intent to appeal made it sufficiently clear that it was the comprehensive plan and zoning map
12 amendments that petitioner wished to appeal.

13 **STANDING**

14 Respondents contend that because petitioner appeared below on behalf of the
15 organization Friends of Linn County, he did not make a personal appearance on his own
16 behalf, which is required by ORS 197.830(2) for petitioner to have standing to bring this
17 appeal to LUBA in his individual capacity.⁴ We set our respondents' argument below:

18 "Petitioner brings this matter in his individual capacity, however, besides a
19 passing reference to him appearing on his own behalf (Rec. pp. 180) all of his
20 presentation is made on behalf of Friends of Linn County. The letter in which
21 he states that he is also appearing on his own behalf is written on Friends of
22 Linn County letterhead, and is signed by petitioner as 'president' of Friends of

⁴ As relevant, ORS 197.830(2) provides:

"Except as provided in ORS 197.620 (1) and (2), a person may petition [LUBA] for review of
a land use decision or limited land use decision if the person:

"* * * * *

"(b) Appeared before the local government, special district or state agency orally or in
writing."

1 Linn county and makes no signature of him in his own capacity. Looking
2 reasonably at the presentation by petitioner, the only logical conclusion that
3 can be arrived at is that petitioner appeared in this proceeding only in his
4 capacity as President of Friends of Linn County, and not individually.”
5 Respondents’ Brief 2-3.

6 A six-page letter appears at Record 180-85. As respondents correctly point out, that
7 letter is on “Friends of Linn County” letterhead and includes the following closing:

8 “Jim Just
9 President” Record 185.⁵

10 The first paragraph of that letter provides:

11 “Friends of Linn County (FOLC) is a charitable organization whose mission is
12 to protect, preserve, and enhance the livability and sustainability of Linn
13 County’s farms, forests and cities. FOLC is appearing in these proceedings on
14 behalf of its membership in Linn County. *Mr. Just, 39625 Almen Drive,*
15 *Lebanon OR 97355, is also appearing on his own behalf.”* Record 180
16 (emphasis added).

17 The emphasized language is sufficient to make it clear that the letter is intended as a written
18 appearance by both Mr. Just and Friends of Linn County. The fact that the letter’s closing
19 does not separately identify Mr. Just in his individual capacity does not matter.⁶ We might
20 feel differently if county law required that a letter that purports to constitute an appearance by
21 more than one organization or person be signed and be signed separately by every
22 organization and person who seeks to appear through the letter, but respondents do not argue
23 that the county has adopted such a requirement.

24 Petitioner has standing to bring this appeal in his individual capacity.

⁵ While the letter includes the quoted closing, the copy of the letter in the record is unsigned.

⁶ In fact, as we just noted, the copy of the letter that is in the record does not bear the written signature of Mr. Just in either his individual capacity or his capacity as president of Friends of Linn County.

1 **FIRST ASSIGNMENT OF ERROR**

2 In his first assignment of error, petitioner challenges the county's findings that the
3 subject property does not qualify as forest land, subject to protection under Goal 4. Goal 4
4 requires that counties conserve forest lands for forest and related uses. As relevant in this
5 appeal, forest lands include land that is: "*suitable for commercial forest uses including*
6 *adjacent or nearby lands which are necessary to permit forest operations or practices and*
7 *other forested lands that maintain soil, air, water and fish and wildlife resources.*" (Emphasis
8 added.)⁷ Petitioner contends that in determining whether the subject 15-acre parcel is
9 "suitable for commercial forest uses" the county failed to properly apply OAR 660-006-0010
10 and 660-006-0005(2).

11 **A. The County Must Consider the Data Described in OAR 660-006-0010 and**
12 **660-006-0005(2)**

13 OAR 660-006-0010 describes how local governments are to go about inventorying
14 forest lands.⁸ OAR 660-006-0010 requires that a Goal 4 inventory "shall include a mapping
15 of average annual wood production capability by cubic foot per acre (cf/ac)." Although OAR
16 660-006-0010 does not expressly say so, the required cf/ac/yr information presumably must
17 be used in determining whether property qualifies as forest land. OAR 660-006-0005(2)
18 defines "Cubic Foot Per Acre."⁹ OAR 660-006-0005(2) requires that in determining the

⁷ Petitioner's arguments before LUBA are directed at the emphasized language in the Goal 4 forest lands definition.

⁸ OAR 660-006-0010 provides in part:

"Governing bodies shall include an inventory of 'forest lands' as defined by Goal 4 in the comprehensive plan. Lands inventoried as Goal 3 agricultural lands or lands for which an exception to Goal 4 is justified pursuant to ORS 197.732 and taken are not required to be inventoried under this rule. Outside urban growth boundaries, *this inventory shall include a mapping of average annual wood production capability by cubic foot per acre (cf/ac)*. If site information is not available then an equivalent method of determining forest land suitability must be used. * * *"

⁹ OAR 660-006-0005(2) provides:

1 wood fiber productivity of soils, expressed as cubic feet per acre per year (cf/ac/yr), NRCS
2 soil survey information or other information establishing cf/ac/yr that the state forester finds
3 to be comparable must be used. Alternatively, if cf/ac/yr data are not available or are
4 inaccurate, an alternative method that provides equivalent data as described in a Department
5 of Forestry technical bulletin may be approved by the Department of Forestry.

6 As we explained in *Anderson v. Lane County*, 57 Or LUBA 562, 572 (2008), the
7 current language of OAR 660-006-0010 and 660-006-0005(2) was adopted to “clarify and
8 limit the types of data that may be relied upon in determining forest productivity[.]” We are
9 not prepared to say that the data described in OAR 660-006-0010 and 660-006-0005(2) are
10 the only data that can be considered in determining whether property qualifies as forest lands,
11 but that data must be considered. Petitioner’s arguments to the county below included the
12 following:

13 “Applicant has not addressed * * * OAR 660-006-0010 or 660-006-0005(2) or
14 provided forest capability information expressed as cf/ac/yr.

15 “Applicant has not met his burden of proof to establish that the subject
16 property is not forest land protected by Goal 4. Applicant must provide an
17 evaluation of the subject property that establishes the potential forest
18 productivity of the property measured in cf/ac/yr. Applicant must rely on
19 ODF-accepted data sources or, if such data is not available, must use an
20 alternative method providing equivalent data as explained in the Oregon
21 Department of Forestry’s Technical bulletin entitled ‘Land Use Planning
22 Notes Number 3 dated April 1998’ and approved by the Oregon Department
23 of Forestry.”

24 “* * * * *

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

1 “Published, ODF-approved forest productivity data establishes that the subject
2 property is capable of producing 57 cf/ac/yr of wood fiber. Therefore the
3 subject property is forest land protected by Goal 4. The requested plan and
4 zoning map amendments may not be approved.” Record 185.

5 As far as we can tell, although the applicant presented a great deal of expert testimony
6 in support of his position that the subject 15 acres are not suitable for commercial forest use,
7 the applicant did not submit the data required by OAR 660-006-0010 or 660-006-0005(2).
8 Petitioner argued below that if the data required by OAR 660-006-0010 or 660-006-0005(2)
9 are used, the soils on the subject property are capable of producing 57 cf/ac/yr. Petitioner
10 takes the position that soils with that level of productivity are suitable for commercial forest
11 use. In support of that argument, petitioner submitted correspondence from the Oregon
12 Department of Forestry. The Oregon Department of Forestry has not adopted a cf/ac/yr
13 threshold for determining whether land is properly viewed as forest land under Goal 4, but
14 the correspondence notes that “forestlands with a site productivity of at least 20 cubic feet per
15 acre per year [are] subject to the reforestation requirements of the Oregon Forest Practices
16 Act [and o]ther technical references use 20 cubic feet per acre per year as the minimum
17 threshold for defining commercial forestland.” Record 194. A May 6, 2009 planning staff
18 report appears to take the position that the subject 15 acres would produce 931.35 cubic feet
19 of wood fiber per year or approximately 62 cubic feet per acre per year.¹⁰ Despite the fact
20 that petitioner argued that OAR 660-006-0010 and 660-006-0005(2) require that the county
21 consider the cf/ac/yr data from NRCS and despite the fact that both petitioner and planning
22 staff provided similar cf/ac/yr figures for the property, the county’s decision does not
23 consider, in any express way, the cubic feet per acre per year data required by OAR 660-006-

¹⁰ We may be misreading the table prepared by planning staff, and the cubic feet per acre per year data used by petitioner and planning staff are not the same. On remand the county needs to resolve which data are correct.

1 0010 and 660-006-0005(2) in making its decision in this matter. Based on that failure,
2 remand is required.¹¹

3 **B. OAR 660-006-0010 and 660-006-0005(2) Do Not Include Bright-Line**
4 **Thresholds**

5 Although we agree with petitioner that OAR 660-006-0010 and 660-006-0005(2)
6 require that the county consider the cf/ac/yr data that those rules require to be considered, we
7 do not agree with petitioner's suggestion that productivity of 57 cf/ac/yr or 62 cf/ac/yr means
8 that the subject property is suitable for commercial forest use as a matter of law. For some
9 purposes, the Oregon Department of Forestry appears to believe that productivity of at least
10 20 cf/ac/yr is indicative of land that is suitable for commercial forest use. However, although
11 the Land Conservation and Development Commission (LCDC) requires that cf/ac/yr data be
12 considered in determining whether to inventory land as suitable for commercial forest use, it
13 has not established a threshold or thresholds for the level of cf/ac/yr productivity that
14 qualifies land as suitable for commercial forest use. LUBA's cases on that question similarly
15 have not established bright-line productivity standards. For example, where a property's soils
16 are capable of producing 20 cf/ac/yr of wood fiber, LUBA concluded that level of
17 productivity, is not sufficient, in and of itself, to establish that the property *is suitable* for
18 commercial forest use. *Palmer v. Lane County*, 44 Or LUBA 334, 339 (2003). On the other
19 hand, LUBA also concluded in *Palmer* that a finding that a property's soils are not sufficient
20 to produce 50 cf/ac/yr was not adequate, by itself, to establish that the property *is not suitable*
21 for commercial forest use. *Id.* Similarly, LUBA held that a county erred by finding that a 25-
22 acre portion of a 111-acre parcel was not suitable for commercial forest use, simply because
23 its soils were only capable of producing 63 cf/ac/yr. *Waugh v. Coos County*, 26 Or LUBA
24 300, 313-14 (1993). In a 1998 decision, LUBA pointed out that no "particular level of

¹¹ Although the county's decision adopts a number of documents by reference, *see* n 1, it does not adopt the staff report as findings to support the challenged decision.

1 cf/ac/year” is determinative in determining whether land qualifies as “‘forest land’ under
2 Goal 4,” and questioned whether “a potential yield of 48.48 cf/ac/yr is ‘below acceptable
3 commercial productivity rates,’ or why, if so, the property is not suitable for commercial
4 forestry.” *Dept. of Transportation v. Coos County*, 35 Or LUBA 285, 294 n 5, *rev’d and*
5 *rem’d on other grounds* 158 Or App 568, 976 P2d 68 (1998).

6 Our cases suggest that land with a productivity of less than 20 cf/ac/yr may be
7 unsuitable for commercial forest use unless there are factors that compensate for the land’s
8 relatively low productivity.¹² But land in a middle range from a low of approximately 40
9 cf/ac/yr to a high of approximately 80 cf/ac/yr is unlikely to be unsuitable for commercial
10 forest use unless there are additional factors that render those moderately productive soils
11 unsuitable for commercial forest use. Rural land with a wood fiber productivity of over 80
12 cf/ac/yr is almost certainly suitable for commercial forest use, even if there are limiting
13 factors.

14 While not directly applicable here, we note that the cf/ac/yr productivity of property is
15 used in the exclusive farm use zoning statutes to more strictly limit non-resource use of lands
16 with high wood fiber productivity, as compared to lands with moderate or poor wood fiber
17 productivity. Although those statutes are not written in terms of suitability for commercial
18 forest use, they are at least some indication that the legislature may view the productivity
19 level that is indicative of land that is suitable for commercial forest use to be approximately
20 20 cf/ac/yr in Eastern Oregon and approximately 50 cf/ac/yr in Western Oregon. For
21 example, ORS 215.263(4)(b)(D)(i) requires that new parcels proposed for nonfarm dwellings
22 in Western Oregon outside the Willamette Valley not be capable of producing “50 cubic feet
23 per acre per year of wood fiber[.]” That suggests that the legislature believes property in

¹² For example, if a small parcel that produces fewer than 20 cf/ac/yr is currently covered with trees and part of a much larger tract of highly productive forest land, that parcel is almost certainly suitable for commercial forest use.

1 Western Oregon outside the Willamette Valley that is capable of producing 50 cf/ac/yr is
2 worthy of protection from nonfarm dwellings. In eastern Oregon, ORS 215.263(5)(b)(D)(i)
3 requires that new parcels for nonfarm dwellings not be capable of producing “more than * * *
4 20 cubic feet per acre per year of wood fiber[.]” ORS 215.263(5)(b)(D)(i) suggests that the
5 legislature believes that property in Eastern Oregon that is capable of producing at least 20
6 cf/ac/yr is worthy of protection from nonfarm dwellings. ORS 215.284(4) authorizes
7 counties in the Willamette Valley to approve new parcels for nonfarm dwellings if certain
8 criteria are met. One of those criteria requires that the parcel be “composed of at least 95
9 percent soils not capable or producing 50 cubic feet per acre per year of wood fiber.” ORS
10 215.284(4)(a)(C). ORS 215.284(4)(a)(C) suggests that the legislature believes that property
11 in the Willamette Valley that is capable of producing at least 50 cf/ac/yr is worthy of
12 protection from nonfarm dwellings.

13 ORS 215.750 sets out standards for what are referred to as forest template dwellings.
14 Under ORS 215.750(1) the required level of parcelization within a 160-acre template to
15 qualify for a forest template dwelling in Western Oregon increases as the productivity of the
16 soils increases from “0 to 49 cubic feet per acre per year” (three parcels) to “50 to 85 cubic
17 feet per acre per year of wood fiber” (seven parcels) to “more than 85 cubic feet per acre per
18 year of wood fiber” (eleven parcels). ORS 215.750 provides some idea of what the
19 legislature believes to be forest lands of low, moderate and high productivity in Western
20 Oregon. ORS 215.750(2) sets out a similar regulatory scheme for forest template dwellings
21 in Eastern Oregon where productivity ranges from “0 to 20 cubic feet per acre per year,” “21
22 to 50 cubic feet per acre per year” and “more than 50 cubic feet per acre per year.”

23 **C. Other Factors Can be Considered**

24 Finally, petitioner appears to argue that the decision about whether land qualifies as
25 suitable for commercial forest use must be based *solely* on the data described in OAR 660-
26 006-0010 and 660-006-0005(2), and cannot consider other factors. We do not agree. It may

1 be that the cf/ac/yr productivity for a parcel using the data required by OAR 660-006-0010
2 and 660-006-0005(2) could be so high that the parcel is suitable for commercial forest use as
3 a matter of law or that it could be so low that the parcel is unsuitable for commercial forest
4 use as a matter of law. But this does not appear to be such a case, because the evidence in the
5 record suggests the soils' productivity is approximately 60 cf/ac/yr. If the county on remand
6 determines that the cf/ac/yr productivity of the 15 acres is not determinative, by itself, the
7 county may consider the other factors that bear on the suitability of the 15 acres for
8 commercial forest use. Based on the arguments presented in this appeal, we believe at least
9 some of the factors that the county considered in reaching the challenged decision can be
10 considered. It seems likely that LCDC intended that the data described by OAR 660-006-
11 0010 and 660-006-0005(2) to be the only direct measures of wood fiber productivity that can
12 be considered in determining whether the subject property is suitable for commercial forest
13 use.¹³ But the suitability of the subject property for commercial forest use could also be
14 affected by a number of on-site and off-site physical impacts and limitations that are not
15 accurately reflected in or accounted for in the data described by OAR 660-006-0010 and 660-
16 006-0005(2).¹⁴ We see no reason why the county could not consider those impacts and
17 limitations in making its decision on remand. But the county must first consider the data that
18 OAR 660-006-0010 and 660-006-0005(2) obligate the county to consider. We therefore
19 remand the decision so that the county may do so.

¹³ Therefore, because it appears that cf/ac/yr data from the NRCS is available for the soils on the property, the county should not have relied on the applicant's contention that the subject property is "cubic foot site class VI or site index 60 (100 year basis)," Record 74, since the rules appear to require that NRCS cf/ac/yr data be used if available.

¹⁴ For example, the county appears to have relied heavily on the presence of the existing dwelling on the property and adjoining rural residences and the relative isolation of the subject property from larger parcels in commercial forest use. If the soils on the 15-acre parcel are otherwise suitable for commercial forest use, those factors alone likely would not be sufficient to support a finding that the parcel is thereby rendered unsuitable for commercial forest use. But if the residence on the property, the adjoining residences and the property's separation from nearby commercial forests would make it difficult or impossible to carry out the forest practices necessary to engage in commercial forestry on the 15-acre parcel, those difficulties along with the parcel's other limitations might support a finding that the parcel is unsuitable for commercial forest use.

1 The first assignment of error is sustained.

2 **SECOND ASSIGNMENT OF ERROR**

3 Goal 3 requires that the county protect rural agricultural lands. As defined by Goal 3,
4 in Western Oregon agricultural lands include the following:

5 “[L]and of predominantly Class I, II, III and IV soils * * * as identified in the
6 Soil Capability Classification System of the United States Soil Conservation
7 Service, and *other lands which are suitable for farm use taking into*
8 *consideration soil fertility, suitability for grazing, climatic conditions, existing*
9 *and future availability of water for farm irrigation purposes, existing land-use*
10 *patterns, technological and energy inputs required, or accepted farming*
11 *practices. Lands in other classes which are necessary to permit farm practices*
12 *to be undertaken on adjacent or nearby lands, shall be included as agricultural*
13 *land in any event.” (Emphasis added.)*

14 OAR 660-033-0020(1)(a)(B) sets out the same seven factors that are identified in the
15 italicized language in Goal 3.¹⁵ In his second assignment of error, petitioner challenges the
16 adequacy of the county’s findings concerning these seven factors and the evidentiary support
17 for those findings. We set out the county’s relevant findings regarding these factors before
18 turning to the parties’ arguments.

19 **A. The County’s Findings Regarding the OAR 660-033-0020(1)(a)(B)**
20 **Factors**

21 **1. Soil Fertility**

22 The county’s soil fertility findings point out that there are two Class VI soils that
23 make up two-thirds of the property, Philomath and Witzel. The findings explain the
24 limitations posed by those soils:

25 “* * * The NRCS soil survey describes significant limitations with Philomath
26 soils even for grazing of livestock because of the high clay content, cobbles on

¹⁵ OAR 660-033-0020(1)(a)(B) provides that agricultural lands include the following:

“Land in other soil classes that is suitable for farm use as defined in ORS 215.203(2)(a), taking into consideration soil fertility; suitability for grazing; climatic conditions; existing and future availability of water for farm irrigation purposes; existing land use patterns; technological and energy inputs required; and accepted farming practices[.]”

1 the surface and the shallow depth to bedrock. The use of farm equipment is
2 also limited, according to the same NRCS report, because of the stones on the
3 surface and the slope. The NRCS report further cautions that conducting field
4 operations when the soil is wet reduces tith and destroys structure, resulting
5 in increased runoff and erosion.

6 "The other Class VI soil occurring on the site is Witzel 104E. The Witzel soil
7 has similar limitations to those attributed above to Philomath soil. * * * When
8 grazing is attempted, the main limitation is droughtiness. The soil in this unit
9 is droughty because of low rainfall in summer and shallow depth to bedrock.
10 Lack of sufficient moisture limits the amount of fertilizer that can be used by
11 plants. * * * Stones on the surface limit the use of equipment.

12 "These characteristics as observed and reported by NRCS, lead to the clear
13 conclusion that the soil fertility, a general measure of several factors, is low.
14 The 'resource-worthy' soils only constitute 35% of the site and are located on
15 the portion of the property where the current dwelling already exists." Record
16 22-23.

17 **2. Suitability for Grazing**

18 The county adopted the following findings:

19 "NRCS cautions that grazing when the Philomath and Witzel soils are moist
20 results in compaction of the subsurface layer, poor tith (the physical condition
21 of soil as related to tillage, seedbed preparation, seedling emergence and root
22 penetration), and excessive runoff. Additionally, the local experience is that
23 much of the grasses are low-yield (slow growing). The conclusion is that this
24 site is not suitable for effective, commercial use." Record 23

25 **3. Climactic Conditions**

26 The findings note the droughty character of the soils, and conclude as follows:

27 "The shallowness of the Philomath and Witzel soils coupled with their rock
28 content means that available water is not held long enough in the soil horizon
29 to promote good plant growth." *Id.*

30 **4. Existing and Future Availability of Water for Farm Irrigation**

31 The findings explain that while there is sufficient groundwater for rural residential
32 needs, there are practical problems with obtaining enough water to meet the demand for
33 irrigation in the summer. Record 23-24.

1 **5. Existing Land Use Pattern**

2 The findings explain that there are a number of areas close to the subject property for
3 which exceptions to Goals 3 and 4 have been adopted. A map that is included at page 79 of
4 the record shows that the subject property is a rectangle approximately 2000 feet long and
5 400 feet wide with approximately 400 feet of frontage on Rock Hill Road and the parcel's
6 long dimension running generally south from Rock Hill Road. Developed rural residential
7 lots adjoin the entire length of the 2000-foot eastern parcel line and the 2000-foot western
8 parcel line. Additional rural residential development is present on the parcels to the north
9 across Rock Hill Road. The findings go on to explain:

10 "Dwellings on the applicant's property will be compatible with adjacent uses.
11 The amendment will not adversely impact the overall land use pattern in the
12 area. As the applicant's property is surrounded by a combination of existing
13 R/R-5 exception area and by residences created under previous Rural
14 Residential zoning, the proposed residence is therefore a continuation of
15 established land use pattern." Record 24.

16 Finally, the county's findings conclude that because the subject property is separated from
17 larger farm and forest uses to the west and south and separated from those uses by existing
18 residential development, the two new dwellings that would be made possible by the
19 challenged decision would not have adverse impacts on those farm and forest uses.

20 **6. Technological and Energy Inputs Required**

21 The findings note that farming the subject property is complicated by the location of
22 the existing house on the front one-third of the property where the only good soils are located
23 and the existing two-acre woodlot in the middle of the property that divides the remaining
24 two-thirds of the property with poor soils. The findings explain that energy inputs to farm the
25 property would be high and the poor soils mean that the resulting production would not
26 justify the cost of such inputs. Record 25.

27 **7. Accepted Farming Practices**

28 In addressing this factor, the county's findings simply refer to earlier findings:

1 “The significant cautionary observations by NRCS regarding standard farming
2 limitations have been raised previously in this application.” Record 25.

3 **B. Waiver**

4 As earlier noted, in his second assignment of error, petitioner challenges the adequacy
5 of the county’s findings regarding the OAR 660-033-0020(1)(a)(B) factors and the
6 evidentiary support for those findings. Under ORS 197.763(1), issues that are raised to
7 LUBA in an appeal of a quasi-judicial land use decision must first be raised prior to the close
8 of the final evidentiary hearing before the local government.¹⁶ Under ORS 197.835(3) our
9 scope of review is limited to issues that were raised before the county during its proceedings
10 below.¹⁷ Respondents contend that petitioner raised no issue below concerning the OAR
11 660-033-0020(1)(a)(B) factors, and that failing to do so petitioner has waived his right
12 challenge the county’s findings concerning those factors or their evidentiary support.¹⁸

13 When respondents raise a waiver defense under ORS 197.763(1) and 197.835(3),
14 LUBA relies on the petitioner to identify where the issue was raised below. *Holloway v.*
15 *Clatsop County*, 52 Or LUBA 644, 662 (2006), *aff’d* 210 Or App 467, 151 P3d 961 (2007);
16 *Davenport v. City of Tigard*, 27 Or LUBA 243, 247 (1994); *Wethers v. City of Portland*, 21
17 Or LUBA 78, 92 (1991). Although petitioner filed a reply brief to respond to respondents’

¹⁶ ORS 197.763(1) provides:

“An issue which may be the basis for an appeal to the Land Use Board of Appeals shall be raised not later than the close of the record at or following the final evidentiary hearing on the proposal before the local government. Such issues shall be raised and accompanied by statements or evidence sufficient to afford the governing body, planning commission, hearings body or hearings officer, and the parties an adequate opportunity to respond to each issue.”

¹⁷ ORS 197.835(3) sets out the following limit on LUBA’s scope of review:

“Issues shall be limited to those raised by any participant before the local hearings body as provided by ORS 197.195 or 197.763, whichever is applicable.”

¹⁸ Respondents’ waiver arguments appear in footnotes in their brief: Soil Fertility/Grazing (Respondents’ Brief 13, n 8), Climate/Water (Respondent’s Brief 17, n 12), Land Use Patterns (Respondent’s Brief 18, n 15), Technological and Environmental Inputs (Respondent’s Brief 20, n 17), Accepted Farming Practices (Respondent’s Brief 22 n 18).

1 jurisdictional and standing challenges, petitioner did not respond to respondents' waiver
2 argument in the reply brief. Petitioner's only response to respondents' waiver argument was
3 at oral argument, and we limit our consideration to that response.

4 Petitioner first argues that the applicant himself raised the issue of compliance with
5 the OAR 660-033-0020(1)(a)(B) factors by submitting the proposed findings addressing
6 those factors that were ultimately adopted by the county. Record 20-23. If we understand
7 petitioner's argument correctly, it would allow an opponent in a quasi-judicial land use
8 matter to make a minimal appearance to achieve standing and then sit back and say nothing
9 while an applicant produces evidence and argument concerning the applicable approval
10 criteria. The opponent could then appeal the decision to LUBA and for the first time argue
11 that the application does not comply with the applicable approval criteria. That is not how
12 the "raise it or waive it" requirement in ORS 197.763(1) and 197.835(3) works. The only
13 "issue" that the *applicant* raised below is that the subject property *is not agricultural land*,
14 based on the OAR 660-033-0020(1)(a)(B) factors. For petitioner to preserve his right to
15 assign error to the county's findings concerning the OAR 660-033-0020(1)(a)(B) factors and
16 the evidentiary support for those findings, petitioner or some other party must have taken the
17 position that one or more of those factors supports a conclusion that the subject property
18 qualifies as "other lands which are suitable for farm use" that qualify for protection as
19 agricultural lands. The applicant's application did not raise that issue. The applicant's
20 application only took the position that the subject property *does not qualify* as "other lands
21 which are suitable for farm use" that qualify for protection as agricultural lands.

22 Petitioner also argues that he raised the issue presented in the second assignment of
23 error at Record 180 and 184. The only issue that petitioner raised below concerning the OAR
24 660-033-0020(1)(a)(B) factors appears at Record 184 and is set out below:

25 "The applicant has not addressed compliance with * * * OAR 660-033-
26 0020(1)(a)(B) * * * or established that the subject property is not

1 predominantly composed of Class I-IV soils or land 'otherwise suitable for
2 farm use.'

3 *** ** *

4 "NRCS data shows that 75% of the soils on the subject property are
5 commonly used for farm uses including hay, pasture, grass seed, and grain.
6 Applicant has not explained why the soils on the subject property are not
7 similarly suitable for farm use." Record 184.

8 In applying the "raise it or waive it" requirement imposed by ORS 197.763(1) and
9 197.835(3), we do not require the same level of specificity that is required to preserve issues
10 in judicial proceedings, but issues must be raised with sufficient specificity to give the local
11 government fair notice of those issues. *Boldt v. Clackamas County*, 107 Or App 619, 623,
12 813 P2d 1078 (1991). The above language from page 184 of the record is sufficient to raise
13 the issue that the subject property should be considered "other lands which are suitable for
14 farm use" that must be protected as agricultural lands, based on "soil fertility," "suitability for
15 grazing" and "accepted farm practices" (factors 1, 2 and 7 above). But the above is not
16 sufficient to preserve petitioner's right to challenge the county's findings concerning
17 "climatic conditions," "existing and future availability of water for irrigation purposes,"
18 "existing land use patterns," or "technological and energy inputs required" (factors 3, 4, 5 and
19 6 above).

20 **C. Petitioner's Challenges to the County's Findings Regarding the OAR 660-**
21 **033-0020(1)(a)(B) Factors**

22 A detailed discussion of petitioner's challenges is not required. Given enough inputs
23 and effort, almost any rural land can be made to produce a farm crop or forage for grazing.
24 Depending on how the question is approached and the assumptions that are made, estimates
25 of that productivity may be large or small. As is usually the case in appeals concerning the
26 "other lands which are suitable for farm use" prong of the Goal 3 definition of agricultural
27 lands, the applicant emphasizes the factors that complicate farm use of the property, factors
28 which in some cases also led to the soils being classified Class V or worse. Petitioner

1 emphasizes that, even with those constraints, it is possible to grow forage on the soils that are
2 present and graze farm animals on that forage for at least part of the year. Based on our
3 review of the parties' arguments and limiting our review to factors 1, 2 and 7, the subject
4 property seems to be close to the line that divides "other [predominantly Class V or worse]
5 lands which are suitable for farm use" from predominantly Class V or worse soils that are not
6 suitable for farm use. Given the prominent role that preservation of farm land plays in
7 Oregon's land use planning program, our cases have generally erred on the preservation side
8 in close cases. See *Wetherell v. Douglas County*, 54 Or LUBA 678, 682 (2007) (that land is
9 only suitable for seasonal grazing does not mean that the land is not "suitable for grazing" as
10 that term is used in the OAR 660-033-0020(1)(a)(B) definition of agricultural land); *Riggs v.*
11 *Douglas County*, 37 Or LUBA 432, 4442-43 (1999) (parcel that might not be suitable for
12 farm use by itself may be suitable for farm use in conjunction with other nearby parcels);
13 *Clark v. Jackson County*, 17 Or LUBA 594, 606 (1989) (past use of property for grazing is a
14 substantial obstacle to finding the property is unsuitable for grazing). But here the county
15 appears to have relied in significant part on other OAR 660-033-0020(1)(a)(B) factors,
16 including the lack of potential for irrigation, the impact of residential development on the 15-
17 acre parcel and the impact of adjoining residential development that nearly surrounds the 15-
18 acre parcel. Petitioner waived his right to challenge those aspects of the county's decision.
19 We believe those factors could reasonably lead the county to conclude that the subject 15-
20 acre parcel does not qualify as "other [predominantly Class V or worse] lands which are
21 suitable for farm use," notwithstanding the minimal suitability of the soils for grazing.

22 The second assignment of error is denied.

23 The county's decision is remanded.

Certificate of Mailing

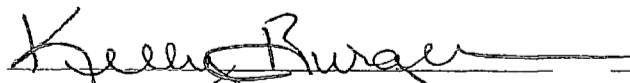
I hereby certify that I served the foregoing Final Opinion and Order for LUBA No. 2009-068 on November 9, 2009, by mailing to said parties or their attorney a true copy thereof contained in a sealed envelope with postage prepaid addressed to said parties or their attorney as follows:

James Just
39625 Almen Drive
Lebanon, OR 97355

Thomas N. Corr
Linn County Counsel/DDA
104 SW 4th , Room 123
P.O. Box 100
Albany, OR 97321

Wallace W. Lien
Wallace W. Lien PC
1775 32nd Place NE, Suite A
Salem, OR 97303

Dated this 9th day of November, 2009.


Kelly Burgess
Paralegal

Debra A. Frye
Executive Support Specialist

EXHIBIT D
Applicant's Information



161 High St. SE, Suite 224
Salem, Oregon 97301
phone 503.316.1842
fax 503.362.2541
portland 503.703.7305

Oct.11, 2010

Linn County Board of Commissioners
c/o County Planning Division
300 SW 4th Avenue
Albany, OR 97321
Delivered



**Re: County File # BC09-0004
Morris Non-Resource Comprehensive Plan and Zone Change
Return of LUBA Remand Case**

Dear Board of Commissioners:

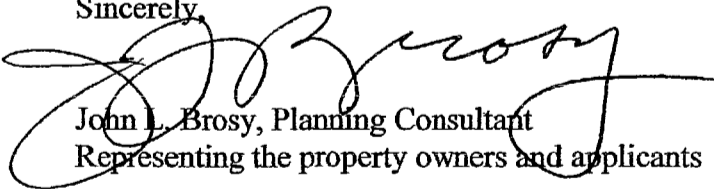
In 2009, the County Board of Commissioners approved a Comprehensive Plan and zone change to the Non-Resource Plan designation and the NR-5 zone. That action was appealed to the State Land Use Board of Appeals (LUBA) by James Just. On November 11, 2009, LUBA remanded the County decision back to the Board of Commissioners.

Jim Just contended two assignments of error. LUBA denied one relating to agriculture, but remanded to the Board on one assignment of error relating to forest productivity. We carefully reviewed the Remand order, and asked Jackson & Prochnau, Inc., Consulting Forest Engineers and Bill Roach, a senior forester with that firm, to review the LUBA decision and conduct a report and productivity analysis using the Oregon Administrative Rule (OAR) sections that LUBA said had not been adequately considered in the earlier Linn County proceedings.

We now present the Jackson & Prochnau report, dated March 10, 2010, and consider it a thorough response to the LUBA remand issues. We believe that the report is as complete as LUBA required, and the conclusions remain that the property proposed for the Non-Resource Plan and zone designation meet the approval standards. The report is as thorough and conclusive on the subject of forest productivity as County and State law require.

We respectfully request that the Board of Commissioners review LUBA's remand order and our response to the remand, and approve the application once again.

Sincerely,



John L. Broszy, Planning Consultant
Representing the property owners and applicants

**Attached: Jackson & Prochnau Report of March 10, 2010
Resume of William H. Roach, Senior Forester**

JACKSON & PROCHNAU
INCORPORATED
CONSULTING FOREST ENGINEERS
PROFESSIONAL FORESTERS CERTIFIED APPRAISERS REGISTERED PROFESSIONAL ENGINEERS

Mr. John L. Brosy
Land Planning and Development Services
161 High Street, SE
Suite 224
Salem, Oregon 97301

March 10, 2010

RE: Morris Non-Resource Application (BC09-0004)

Dear Mr. Brosy,

I have reviewed the remand order from the Land Use Board of Appeals (LUBA no. 2009-068) issued on November 9, 2009. The following report addresses the issues of the remand as stated in LUBA's "First Assignment of Error". Forest Productivity on the subject parcel will be estimated using the most current acceptable data as specified under OAR 660-006-0005(2). Forest productivity shall be expressed as the average annual wood production capability in cubic feet per acre at culmination of mean annual increment (cf/ac/yr), as provided by OAR 660-006-0010. Following establishment of average productive capacity for the subject parcel, discussion will focus on whether attributes of the subject parcel meet Oregon's Goal 4 definition of forestland. Finally discussion will focus on whether the subject meets the criteria for non-resource designation.

Site Description

The subject parcel contains approximately 15.0 acres per Linn County records and is described as Tax Lot 1000, Section 27, Township 12 South, Range 2 West of the Willamette Meridian. The property has an address of 36848 Rock Hill Drive and is situated approximately 1/3 of a mile South of the Lebanon Urban Growth Area (UGA). The property is currently zoned Farm/Forest (FF). There is an occupied house on the parcel and a small barn.

Vegetation consists mainly of native pasture species of various grasses and forbes. There are approximately 2 acres of well stocked mature Oregon white oak with a few scattered Douglas fir. One or two Ponderosa pine are also present. The patch of trees lies on a 30% North slope just South of the dwelling and barn. All tree species present are of poor form and could only be marketed as pulp logs. Oak pulp logs command the lowest prices of any tree species in our area with current price levels at or below production costs. It appears that the fields on either side of the trees are limited to hay or natural grasses, and are probably cut once a year for fire protection purposes. The southern field grasses are much thinner than the northern field.

Forest Productivity

Observations of the subject parcel indicate the site to be poorly suited to timber production. The field located North of the dwelling lies on bottom land that at the time of my investigation showed areas of standing water. High water was also observed in the field on the southwestern end of the parcel. There are also signs of a failed attempt to grow Christmas trees. The standing water is indicative of poorly drained soils that would prohibit growth of native coniferous species, especially Douglas fir that does not like "wet feet". The patch of timber is also indicative of a dry site. This is evidenced by the domination of oak, and the inability of fir or pine to dominate. The timbered area appears to have grown up naturally, and shows no signs of ever being logged. Other dry site indicators include the presence of poison oak and native rose species.

Investigation into the NRCS database confirms my observations. The 4 soil types found on the property are all listed as ill suited to the production of Douglas fir with soils that are characteristically slow to permeate water, and with low water holding capacity. Following is a listing of the 4 soil types and the amount of area each occupies on the subject parcel:

8 Bashaw silty clay, 4 acres, 26.67% of parcel area
34E Dixonville silty clay loam, 1.7 acres, 11.33% of parcel area
79C Philomath cobbly silty clay, 6.93 acres, 46.20% of parcel area
104E Witzel very cobbly loam, 2.37 acres, 15.80% of parcel area

The record for this case shows that the subject parcel's productive capacity has been attempted to be mapped by both Linn County and Mr. Jim Just who is affiliated with "Friends of Linn County". There is a discrepancy in their findings. I have reconciled the differences. Rather than discuss the differences, I will follow the protocol for mapping productive capacity of the Morris parcel. Based on OAR 660-006-0005 (3) I have used the hierarchy of forest site productivity information that should be considered in land use decisions:

1. USDA Natural Resource Conservation Service (NRCS) soil survey information.
2. USDA Forest Service plant association guides
3. Oregon Department of Revenue (DOR) western Oregon site class maps
4. Other information determined by the State Forester to be of comparable quality

The NRCS soil survey data rates only one of the four soils identified on the subject parcel. This is the Dixonville component showing a rating of 157 cu ft/ac/yr (see Exhibit 1). The rating is based on 6 plots (only one of which was located in Linn County see Exhibit 2) and shows a site index range of 85-131 and a cu ft/ac/yr range of 100-165. Of the 6 NRCS plots utilized, 4 were textured as silty clay loam (as is the subject parcel). The average capacity using these 4 plots is 105 cu ft/ac/yr. It is unknown whether the 3 unrated soils are non-productive, or whether data does not exist for them. The 3 other soils were originally rated in the 1987 NRCS data, but the ratings were

subsequently removed from the data base for unknown reasons. Thus data from the NRCS soil web survey are incomplete and inconclusive.

I have also investigated the USDA Forest Service "Field Guide to the Forested Plant Associations of the Westside Central Cascades of Northwest Oregon". There are 2 reasons why the field guide could not be utilized for this project:

1. Data is based on plant associations found in natural stands. Only the Dixonville site is forested, the other 3 soil types are grasses. The understory of the timbered area contains invasive species, ie. Himalaya Berry and others. This is most likely the result of the small size of the area (only 2 acres). This could prevent the plant associations that are normal to the Dixonville soils, and that are needed to successfully utilize the key in the field guide.
2. Oak communities are not yet classified and are therefore absent from the field guide. The data set in the field guide was primarily obtained from timbered areas in the western Cascades. Very few marginal sites in the valley or foothills have been sampled. Thus, utilization of the plant association field guide for the Morris property would be totally inconclusive.

The third data set in the hierarchy was also investigated. These are the DOR western Oregon site class maps that were developed mainly in the 1960's for the old ad valorem timber taxes. Site class was estimated by State Foresters on a 40 acre basis. For example, if a section was sampled, each of the sixteen 40 acre components of the section would be sampled, and a site class would be established for each 40. The DOR map covering the subject parcel area (T12S, R2W) was obtained (see Exhibit 3). No entries were found within about one-half mile of the Morris parcel. Data for the subject parcel is absent and therefore the DOR maps are of no use for establishing productive capacity ratings. Many of these marginal sites were never sampled because these properties were never taxed as timberland. The DOR maps may be used as a general guide on other projects, but they do not contain the kind of detail that is often needed for land use decisions.

The next data set in the hierarchy consists of "other information determined by the State Forester to be of comparable quality". I have obtained an ODF document that contains revisions of forest land soils ratings for Linn County. This is a similar but different document than was used by Jim Just in his petition. Mr. Just utilized revisions from Lane County and cited soils that were not the same as those found on the subject property. The revisions for Linn County are intended to fill the gaps of unrated soils found in the NRCS soil survey data base. The gaps are numerous, especially for land with marginal forest productivity as with the Morris parcel. The revisions were sent to the various counties in February 1990 by the Director of Forest Resource Planning. This document is found in the Addendum of this report and is marked as Exhibit 4.

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Each of the 4 soil types found on the subject parcel are cited and rated in the revisions. Following are the forest productive capacity ratings for the 4 soils in question expressed as cu ft/ac/yr at culmination of mean annual increment:

1. Bashaw silty clay, 0 productivity –the document states “soils are not rated where data indicate that tree growth does not occur on the soil”.
2. Dixonville silty clay loam, 115 cu ft/ac/yr
3. Philomath cobbly silty clay, 45 cu ft/ac/yr
4. Witzel very cobbly loam, 106 cu ft/ac/yr

The above data is used to establish forest productive capacity for the subject parcel. The revision definitively covers all soil types found on the subject parcel and are approved by the State Forester. It is the most consistent and complete data set that is approved. Calculation of average productive capacity follows:

Soil Type	Acres	% of Parcel	Cu ft/ac/yr
8 Bashaw silty clay	4.00	26.67	0
34E Dixonville sily clay loam	1.70	11.33	115
79C Philomath cobbly silty clay	6.93	46.20	45
104E Witzel very cobbly loam	2.37	15.80	106
Totals	15.00	100.00	50.6

The indicated average productive capacity for the Morris parcel is 50.6 cu ft/ac/yr at culmination of mean annual increment.

Goal 4: Forest Lands

Oregon’s Statewide Planning Goal 4: Forest Lands states that “forest land shall include lands which are suitable for commercial uses including adjacent or nearby lands which are necessary to permit forest operations or practices...” The subject parcel is presently zoned Farm/Forest (FF) and as such Planning Goal 4 applies. The FF zone allows for small scale timber operations. These operations should be commercially feasible. Thus, the ordinary operations of harvesting, site preparation and reforestation should offer the landowner a chance at a profit. The following discussion considers the elements of normal forest operations on the Morris parcel, and whether or not they are feasible.

Harvest Operations

Approximately 2 acres of the Morris parcel are currently timbered with mature Oregon white oak. The remaining acreage is unstocked and has been used for hay or pasture (north field). Harvesting the oak woodlot would not offer the landowner a chance at a profit. Oak pulp logs are currently selling for \$22/ton which is below production costs. This area would need to be cleared, prepped and planted with commercial conifer species for any chance at a commercially viable tree farm.

Although the average productive capacity has been estimated at 50.6 cu ft/ac/yr, it would be incorrect to assume that the productive capacity would be evenly distributed over the entire 15 acre parcel. The Bashaw and Philomath soils could not support commercial timber species to maturity in a time period that would offer a return on investment. The Bashaw series is estimated to be totally nonproductive in terms of timber. Even if seedlings could be established on these lands (only at great expense) the time to maturation would make the project unfeasible.

This leaves the 1.7 acres of Dixonville and the 2.37 acres of Witzel as possible areas where revenue could be generated from commercial harvest of timber. Although there are apparent conflicts involving harvest due to the present land use pattern in the area (this will be discussed later in this report), for the sake of argument, it is assumed that the 4.07 acre area could be successfully planted with Douglas fir and brought to maturity. Published yield tables indicate that total harvest volume at 60 years would be 69 MBF or 16.8 MBF/acre. The growth discount procedure (Exhibit 5) indicates that the present value of the proposed future timber harvest would be a loser (-\$113). Thus, it would not be profitable to plant the area and grow the trees to maturity.

The land use pattern currently existing in the Morris parcel area is restrictive of normal forestry practices that are needed to successfully manage the parcel. There are 27 dwellings within ½ mile of the subject parcel. There are also 11 adjacent properties, 10 of which have dwellings. The parcel is also within 1/3 of a mile South of the Lebanon Urban Growth Area (UGA). There are RR-5 developments on two sides of the subject parcel (see Exhibit 6).

Slash Abatement

Following harvest, accumulated slash on the site would need to be removed to reduce wildfire danger and expose bare soil for planting. The normal and most cost effective method of removal is burning. Chipping or burial are expensive alternatives that would not be cost effective. The Morris parcel lies on the very edge of ODF jurisdiction with Rock Hill Drive as the boundary. ODF Sweet Home (541-367-6108) was contacted regarding burning slash on the subject parcel. ODF indicates that because of its location, the Morris parcel would be "limited for forest use". It is very probable that burning slash would be prohibited due to the risk of smoke intrusions in nearby residential areas. Under ideal conditions the burning process would be lengthy. First the slash would be piled into small piles. If burning were allowed, only a few small piles could be ignited at once and only under perfect weather conditions: gentle northwest winds with no inversion layers. All piles would have to be extinguished by sunset. Regulators would include ODF, Lebanon Fire District and Salem DEQ. Authorities and the public are extremely sensitive to smoke intrusions and there are numerous other reasons that slash burning could be denied on the Morris property. For example, if there is a day care center within 1 mile of the burn area, burning would be prohibited outright. In short, the burning would be considered a nuisance to the public with too many possible negative impacts. Smoke intrusion violations can carry a fine of \$15,000 plus expenses.

Site Preparation and Reforestation

All of the soils present on the Morris parcel are described on the NRCS soil survey site. They are all listed as "poorly suited" for mechanical site preparation (piling slash and brush with mechanized equipment). This is largely due to "stickiness and high plasticity" of the soils. When disturbed, these soils form a layer where water infiltration is restricted and water holding capacity is reduced. Piling slash with mechanized equipment would increase seedling mortality and possibly affect the long term productivity of the site. The alternative would be to hand pile the slash, which would be very costly.

All soils on the site are rated as "poor" for hand and mechanical planting except for the Witzel soil which is "moderately" suited to hand planting. Here again, stickiness and plasticity are the main factors. There are no alternatives to these methods other than natural seeding. Thus, high seedling mortality can be expected with a minimum of two interplants to achieve reasonable stocking.

The Bashaw soil is listed as susceptible to "frequent flooding" during winter and spring months. Flooding would prohibit establishment and growth of commercial timber species. In short, due to soil and water conditions on the site, the normal methods of site preparation and reforestation would incur costs that are abnormally high and may also reduce productive capacity and lengthen rotation ages.

Chemical Herbicide and Pesticide Applications

These are common applications when reforesting sites in northwestern Oregon. They often successfully rid the site of harmful competing vegetation and plant eating insects. The applications often occur in more remote mountainous areas of the County and pose minimal effects since they are often applied only once or twice over a long term rotation of 50 years or so. However, near urban areas, these applications can pose an immediate threat to the public through either direct contact (from wind drift) or infiltration into local water supplies. Considering the number of dwellings in the immediate area of the Morris parcel, and the possibility of further development in the future, herbicide and pesticide applications would be impracticable. There have been high profile and costly law suits where public exposure to chemical applications has occurred. Considering the possible liability of such applications, it would not be feasible to conduct spraying operations on the Morris parcel. Manual removal of competing vegetation or insects is very costly and generally not thorough enough to be successful.

The previous discussion has shown that the normal sorts of forest management activities in our area are untenable for the Morris parcel. Harvesting timber from the 4.07 acres that is marginally productive would not yield enough timber to generate a profit. Slash abatement, site preparation, reforestation, herbicide and pesticide applications have all been shown to be either untenable or not cost effective. This is a result of the marginally productive ground and the existing and probable future of land

use patterns surrounding the Morris parcel. Development can only be expected to increase over time given the proximity of the Lebanon UGA and build-out of remaining adjacent rural-residential zoned lands. It is often difficult to deal with rural landowners when harvest activities occur next to their property. The interface with urban dwellers can be many times more difficult. When forest management practices common to our area are considered impracticable, then the ability of the landowner to carry out commercial forest uses becomes wholly untenable. Uses that are allowed under Oregon's Statewide Planning Goal 4 are impracticable on the Morris parcel.

Low Level of Impact for Adjoining Forestland

A change in zoning to non-resource designation for the Morris parcel would not adversely affect the function of adjoining forest lands. Properties to the West are Farm/Forest zoned, but there are no stands of commercial timber in the immediate area of the subject parcel. The Morris property does not block access to other forestlands. Low density housing would not necessitate any changes in forest use on any adjacent parcels, or in any way affect the ability of those parcels to continue to function as forest parcels. The only forest lands in the general vicinity are some distance to the south and at considerably higher elevation.

Impact on the quality of soil, air, water and wildlife resources

The concern for a timberland manager is determining whether or not the excavation of roads and structural foundations would cause landslides or excess sedimentation in nearby streams. There are no seasonal or perennial streams located on the Morris parcel. Some seasonal flooding does occur in the field to the North (Bashaw soil). There are no bodies of water on the property that would be expected to contain fish at any time of the year. There is no reason to believe that the subject parcel must remain in forest use to maintain soil, air, water and fish and wildlife habitat. The proposed non-resource use would likely result in less erosion or soil disturbance than if it were forced into commercial forest production. Ground based timber harvesting and site preparation would impact a large percentage of the subject parcel. In contrast, low density housing would impact a comparatively minor percentage of subject lands, and essentially preserve the native attributes.

Non-Resource Designation

From a forestry standpoint, the characteristics of the subject property fit the description of non-resource lands very well. Predominant soil types are not in the SCS classes I-IV. Subject lands are primarily composed of SCS class VI soils. As previously discussed, the land is not suitable for commercial forest uses. This is directly related to the low productive timber capacity and the pattern of use in the surrounding area. The surrounding area is typified by small lot owner occupied ranches/ranchettes (to the West and South), and RR-5 housing (to the North and East). This would be highly compatible with the applicants desire to develop low density housing on the subject parcel.

I have conducted many forestry related activities on small private parcels in our area including timber harvesting, cruising, appraisals, and reforestation. I have often seen the pride of ownership on low density parcels. Owners typically enhance the profile of their property by employing methods that are not cost effective from a commercial standpoint. While there may be some tree growing benefits to employing these methods, they do not equate or translate to the definition of resource lands under the Linn County Land Use Element Code. Rather, they translate to an amenity value to the landowner where livability is enhanced, and the natural system is allowed to evolve relatively undisturbed.

As a natural resource manager, for this circumstance, it makes sense to site low density housing on non-productive or marginally productive lands. The subject property is an excellent candidate for non-resource status.

Respectfully submitted,



William H. Roach
Senior Forester
Jackson and Prochnau, Inc.

JACKSON & PROCHNAU
INCORPORATED
CONSULTING FOREST ENGINEERS
PROFESSIONAL FORESTERS CERTIFIED APPRAISERS REGISTERED PROFESSIONAL ENGINEERS

William Roach

Education:

- 1973-1977 Lewis and Clark College - 4 years American Literature.
1985-1988 Oregon State University-BS. Forest Management.
October 1994 Duke University School of the Environment
- Forest Appraisal curriculum
- Tree Farm Inspector -- American Tree Farm System.
-

Employment:

1989 - Present:

Forester for Jackson & Prochnau, Inc.

- Duties include appraisal writing, research and analysis.
- Expert witness testimony and timber trespass analysis.
- Tree farm management, timber cruising and timber sale layout.
- Contract administration and surveying.
- Performed forestry consulting services for the following major clients:
Weyerhaeuser Co.; Plum Creek; Forest Capital Partners; Georgia Pacific; Murphy Company; Swanson Group LLC; Green Crow; Lone Rock; Starker Forests; Silver Butte Timber Co.; Rough and Ready Lumber Co.; Indian Hills; Port Blakely; Roseburg Forest Products; Washington State Dept. of Natural Resources; Internal Revenue Service; Confederated Tribes of the Warm Springs Indians; Quinault Indian Nation; Seneca Lumber Co.; Oregon State University Foundation; Bank of America; Pioneer Trust; BLM; US Department of Justice.

May '88-Oct '89:

Wild West Logging Inc.

- Timber Faller
- Also some experience running a loader, cat and yarder.

1987-1988:

McDonald Dunn State Forest,

- Crew Foreman,
- Tree Planting Inspector,
- Supervised 12 workers for thinning, slashing, herbicide application, tree planting and trail construction.

1980-1985:

Reforestation Contractor-self-employed,

- Completed USFS contracts;
- Pre-commercial thinning,
- slash piling, slash burning, fireline construction, trail construction.

1977-1980:

Forestry Technician

- USFS trail crew foreman for Estacada and Ripplebrook RS,



EXHIBIT 1

Forest Productivity (Cubic Feet per Acre per Year): Douglas-fir (King 1966 (795))—Linn County Area, Oregon

Forest Productivity (Cubic Feet per Acre per Year): Douglas-fir (King 1966 (795))

Forest Productivity (Cubic Feet per Acre per Year): Douglas-fir (King 1966 (795))— Summary by Map Unit — Linn County Area, Oregon				
Map unit symbol	Map unit name	Rating	Acres in AOI	Percent of AOI
8	Bashaw silty clay		4.6	28.8%
34E	Dixonville silty clay loam, 12 to 30 percent slopes	157.00	1.7	10.8%
79C	Philomath cobbly silty clay, 3 to 12 percent slopes		7.2	44.8%
104E	Witzel very cobbly loam, 3 to 30 percent slopes		2.5	15.6%
Totals for Area of Interest			16.0	100.0%

Description

Forest productivity is the volume of wood fiber that is the yield likely to be produced by the most important tree species. This number, expressed as cubic feet per acre per year and calculated at the age of culmination of the mean annual increment (CMAI), indicates the amount of fiber produced in a fully stocked, even-aged, unmanaged stand.

This attribute is actually recorded as three separate values in the database. A low value and a high value indicate the range of this attribute for the soil component. A "representative" value indicates the expected value of this attribute for the component. For this attribute, only the representative value is used.

Rating Options

Tree: Douglas-fir

Site Index Base: King 1966 (795) 50 YR

Aggregation Method: Dominant Component

Component Percent Cutoff: None Specified

Tie-break Rule: Higher

Interpret Nulls as Zero: No

Exhibit 4 6 pages



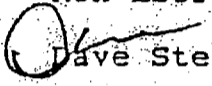
Forestry Department

OFFICE OF STATE FORESTER

2600 STATE STREET, SALEM, OREGON 97310 PHONE 378-2560

Ted Lawrenson
General File 7-1-1

MEMORANDUM

Subj: Forest Lands Soils Ratings - Revisions
To : Ron Eber, Policy Analyst, DLCD
From:  Dave Stere, Director, Forest Resources Planning
Date: February 8, 1990

Attached are revisions to my listing of Forest Soils Productivity Ratings for Lane, Benton, ~~Linn~~, Marion, Polk and Yamhill Counties.

I've revised these ratings based upon the valuable information gained during the field tour in Lane County, and on the vegetational comparisons that we can now make as a result of that information.

I'm certain that more revisions are warranted in other areas and on other soils. As I mentioned to you before, we are ready and willing to make revisions if field-gathered information shows them warranted.

I'll send copies of these revisions to Jerry Latshaw and Herb Huddleston and to the affected Counties.

DS-200

ds-471

2-7-90

LINN COUNTY FOREST SOIL RATINGS

SCS #	SCS Name	(Site Index) Rating	SCS Acreage	Cuft/Ac per yr
007	Awbrig sicl	3	9985	est 40
008	Bashaw sic	3	25635	
010E	Bensley st 1, 2-30%	Medium 110	1915	84
011F	Bensley-Valsetz st 1 s, 30-50%	Medium 112	4470	87
011G	Bensley-Valsetz st 1 B, 50-75%	Medium 112	6855	87
018	Camas gr sl	3	2185	est 40
020C	Chehalém sil, 3-12%	2	675	est 60
022C	Chehulpum sil, 3-12%	3	1215	est 40
022E	Chehulpum sil, 12-35%	3	740	est 40
027	Concord sil	3	10835	
028	Conser sicl	3	9955	est 45
029	Courtney gr sicl	3	8500	est 40
030D	Crabtree st 1, 2-25%	Medium 105	415	71
030F	Crabtree st 1, 25-45%	Medium 105	2070	71
030G	Crabtree st 1, 45-75%	Medium 105	4190	71
033	Dayton sil	3	59075	est 40
035C	Dixonville-Philomath-Hazelair, 3-12%	Low	3935	est 45
035E	Dixonville-Philomath-Hazelair, 12-35%	Low	5215	est 45
036D	Dupee sil, 3-20%	Medium	4100	est 70 *
039	Fluvents-Fluvaquents, nearly level	3	10100	est 60
042H	Harrington-Rock outcrop, 50-90%	Medium 140	2980	85
043B	Hazelair sicl, 2-7%	Low	8000	est 45
043D	Hazelair sicl, 7-20%	Low	5715	est 45
045F	Henline-Yellowstone-Rk Op, 25-50%	Low 84	5495	73
045H	Henline-Yellowstone-Rk Op, 50-90%	Low 84	9395	73
065B	Marcola cob sicl, 2-7%	Medium	1760	est 80
071F	Mulkey 1, 25-50%	Low 110	855	84
077A	Pengra sil, 1-4%	2	2125	est 70
078C	Philomath sic, 3-12%	Low	1205	est 45
079C	Philomath cob sic, 3-12%	Low	2940	est 45
079F	Philomath cob sic, 12-45%	Low	6600	est 45
080	Pits	3	770	
085	Riverwash	3	2275	
086G	Rock outcrop-Orthents, steep	Low	4430	est <20
094B	Stayton sil, 0-7%	Low	915	est 60
095C	Steiber sil, 3-12%	2	795	est 80
095D	Steiber sil, 12-20%	2	850	est 80
095F	Steiber sil, 20-50%	2	635	est 80
096E	Valsetz st 1, 3-30%	Medium 115	615	91
097E	Valsetz-Yellowstone st 1's 3-30%	Low 99	925	79
097H	Valsetz-Yellowstone st 1's, 30-90%	Low 99	3465	79
098	Waldo sicl	3	6800	est 45
099	Wapato sicl	3	4920	
100	Whiteson sil	3	3010	est 45
103C	Witham sic, 2-12%	3	1275	est 45
104E	Witzel v cob 1, 3-30%	Low 115	5600	106
104G	Witzel v cob 1, 30-70%	Low 115	2620	106
105C	Witzel Variant v cob sil, 0-12%	Low	1545	est 100

107E Yellowstone st 1, 3-30%	Low	80	265	65
107H Yellowstone st 1, 30-90%	Low	80	3795	65

* No examples of Forested lands on Dupee soil found...adjacent areas had a productivity rating of (est) 45 cuft/acre/yr. This rating is questionable.

TOTAL - Low & Medium ---- 264,640 acres

001A Abiqua sicl, 0-3%	1		1610	est 150
001B Abiqua sicl, 3-5%	1		340	est 150
002D Acanod sil, 2-25%	High	160	1800	170
003 Amity sil	2		26700	est 130
004D Apt sicl, 2-25%	High	175	8205	186
005F Apt sicl, 25-50% N	High	175	3485	186
006F Apt sicl, 25-50% S	High	135	1560	138
009C Bellpine sicl, 3-12%	High	155	6735	164
009D Bellpine sicl, 12-20%	High	155	9120	164
009E Bellpine sicl, 20-30%	High	155	4695	164
009F Bellpine sicl, 30-50%	High	155	1810	164
012E Blachly cl, 3-30%	High	150	12410	158
013F Blachly cl, 30-50% N	High	165	6335	176
013G Blachly cl, 50-75% N	High	165	3800	176
014F Blachly cl, 30-50% S	High	150	8880	158
014G Blachly cl, 50-75% S	High	150	3580	158
015D Bohannon cob l, 3-25%	High	150	220	158
016B Breidwell sil, 0-7%	2		2495	est 140
017C Bull Run sil, 3-15%	High	170	1675	181
017E Bull Run sil, 15-30%	High	170	1040	181
019 Chapman l	1		7000	est 140
021 Chehalis sicl	1		10895	est 120
023 Clackamas gr sil	2		10300	est 100
024 Clackamas Variant sil	2		2075	est 120
025 Cloquato sil	1		8350	est 120
026 Coburg sicl	1		16165	est 100
031D Cruiser gr l, 3-25%	Medium	140	2925	129
031F Cruiser gr l, 25-50%	Medium	140	2725	129
031G Cruiser gr l, 50-70%	Medium	140	1830	129
032D Cumley sicl, 2-20%	High	155	3005	164
034C Dixonville sicl, 3-12%	Medium	120	3360	115
034E Dixonville sicl, 12-30%	Medium	120	4910	115
034F Dixonville sicl, 30-50%	Medium	120	2535	115
037D Flane gr l, 3-25%	Medium	130	1795	129
037F Flane gr l, 25-50%	Medium	130	2920	129
037G Flane gr l, 50-75%	Medium	130	1875	129
038F Flane-Moe gr l's, 25-50%	Medium	137	3765	140
038G Flane-Moe gr l's, 50-75%	Medium	137	2690	140
040G Harrington-Klickitat, 50-75%, N	High	149	18290	157
041G Harrington-Klickitat, 50-75%, S	High	149	31595	157
044E Henline v st sl, 6-30%	Medium	135	585	122
044F Henline v st sl, 30-55%	Medium	135	2165	122
044G Henline v st sl, 55-80%	Medium	135	2800	122
046 Holcomb sil	2		17530	est 100
047C Honeygrove sicl, 3-12%	High	165	2585	176

047D Honeygrove sicl, 12-25%	High	165	33470	176
048F Honeygrove sicl, 25-50%, N	High	165	8170	176
049F Honeygrove sicl, 25-50%, S	High	155	16580	164
050D Hummington v gr 1, 5-25%	Medium	145	1315	138
050F Hummington v gr 1, 25-50%	Medium	145	4300	138
050G Hummington v gr 1, 50-75%	Medium	145	7565	138
051C Jory sicl, 2-12%	High	155	9415	164
051D Jory sicl, 12-20%	High	155	6025	164
051E Jory sicl, 20-30%	High	155	2205	164
051F Jory sicl, 30-50%	High	155	695	164
052D Keel gr sil, 2-25%	Medium	130	5230	115
052F Keel gr sil, 25-45%	Medium	130	11350	115
052G Keel gr sil, 45-75%	Medium	130	17645	115
053G Kilchis-Harrington, 30-60%	Medium	129	600	129
053H Kilchis-Harrington, 60-90%	Medium	129	6310	129
054D Kinney cob 1, 3-20%	High	180	8630	191
055F Kinney cob 1, 20-50%, N	High	180	9795	191
055G Kinney cob 1, 50-75%, N	High	180	9585	191
056F Kinney cob 1, 20-50%, S	High	180	9200	191
056G Kinney cob 1, 50-70%, S	High	180	3005	191
057E Kinney cob 1, slump, 3-20%	High	180	2300	191
058F Kinney-Klickitat, 20-50%, N	High	171	1795	181
058G Kinney-Klickitat, 50-70%, N	High	171	6885	181
059F Kinney-Klickitat, 20-50%, S	High	163	1690	172
059G Kinney-Klickitat, 50-70%, S	High	163	10655	172
060E Klickitat-Harrington, 3-30%	High	143	2595	149
061F Klickitat-Harrington, 30-50%, N	High	151	2215	158
062F Klickitat-Harrington, 30-50%, S	High	143	6560	149
063 Malabon sicl	1		12350	est 100
064 Malabon Variant 1	1		1095	est 120
066B McAlpin sicl, 3-6%	1		7605	est 150
067 McBee sicl	1		7930	est 150
068F McDuff sicl, 25-50%	High	145	875	152
068G McDuff sicl, 50-75%	High	145	410	152
069B Minniece sicl, 0-9%	Medium	140	445	145
070D Moe gr 1, 3-25%	High	145	9715	152
070F Moe gr 1, 25-50%	High	145	4725	152
072C Nekia sicl, 2-12%	High	150	11110	158
072D Nekia sicl, 12-20%	High	150	9840	158
072E Nekia sicl, 20-30%	High	150	7710	158
072F Nekia sicl, 30-50%	High	145	6440	152
073 Newberg fsl	1		14185	est 150
074H Ochrepts, v steep	2		4005	est 150
075G Panther sicl, 2-12%	3		2640	est 50
076E Peavine sicl, 3-30%	High	160	6215	170
076G Peavine sicl, 30-60%	High	160	8285	170
081D Quartzville sil, 2-25%	High	190	3660	200
082F Quartzville sil, 25-50%, N	High	190	1480	200
082G Quartzville sil, 50-75%, N	High	190	810	200
083F Quartzville sil, 25-50%, S	High	190	2225	200
084E Ritner cob sic, 2-30%	Medium	130	9465	129
084G Ritner cob sic, 30-60%	Medium	130	7165	129
087 Salem gr 1	1		5010	est 140
088B Salkum sicl, 2-8%	High		6540	est 150
088C Salkum sicl, 8-15%	High		2165	est 150
089B Santiam sil, 3-6%	Medium		3240	est 120

090B Saturn cl, 0-5%	High	140	1615	135
091 Saturn Variant sil	High		610	est 120
092 Sifton Variant gr 1	High		1480	est 110
093C Silverton sil, 3-12%	High		290	est 130
101C Willakenzie cl, 2-12%	High	140	2025	145
101D Willakenzie cl, 12-20%	High	140	1060	145
101E Willakenzie cl, 20-30%	High	140	480	145
101F Willakenzie cl, 30-50%	High	140	500	145
102 Willamette sil	1		7125	est 130
106A Woodburn sil, 0-3%	1		30490	est 170
106C Woodburn sil, 3-12%	1		1040	est 170
108H Zango-Dobbins gr 1's, 60-90%	Medium	124	5250	120

Total -- high rating -- 715,855 acres

These soils ratings are based upon published SCS data. Estimates are derived by the Oregon Department of Forestry from comparisons of natural vegetation complex information in published SCS data for soils where the data do not include measured forest productivity information with other soils where such information is available.

Soils marked with numbers are soils where the data are insufficient to make a more-precise determination; or where SCS data indicates that forest growth is unlikely. Soils are not rated where data indicate that tree growth does not occur on the soil.

"3" indicates productivity probably less than 50 cuft/ac/yr
 "2" indicates productivity probably between 50 and 85 cuft/ac/yr
 "1" indicates productivity probably more than 85 cuft/ac/yr

here the soil is given a number rating, the productivity estimate shown is of lower precision than for other productivity estimates.

cc: Roy Burns, Lane Co. Planning Director
Gary Munsterman, Benton Co. Planning Director
Marvin Gloege, Linn Co. Planning Director
Russ Nebon, Marion Co. Planning Director
Dale Jordan, Polk Co. Planning Director
Lynn Steiger, Yamhill Co. Planning Director
Jerry Latshaw, SCS, Portland
Dr. Herb Huddleston, OSU
Dept. of Forestry Local Representatives

~~005106~~

LINN COUNTY
PLANNING AND
BUILDING DEPT.
FEB 9 10 34 AM '90

Exhibit 6

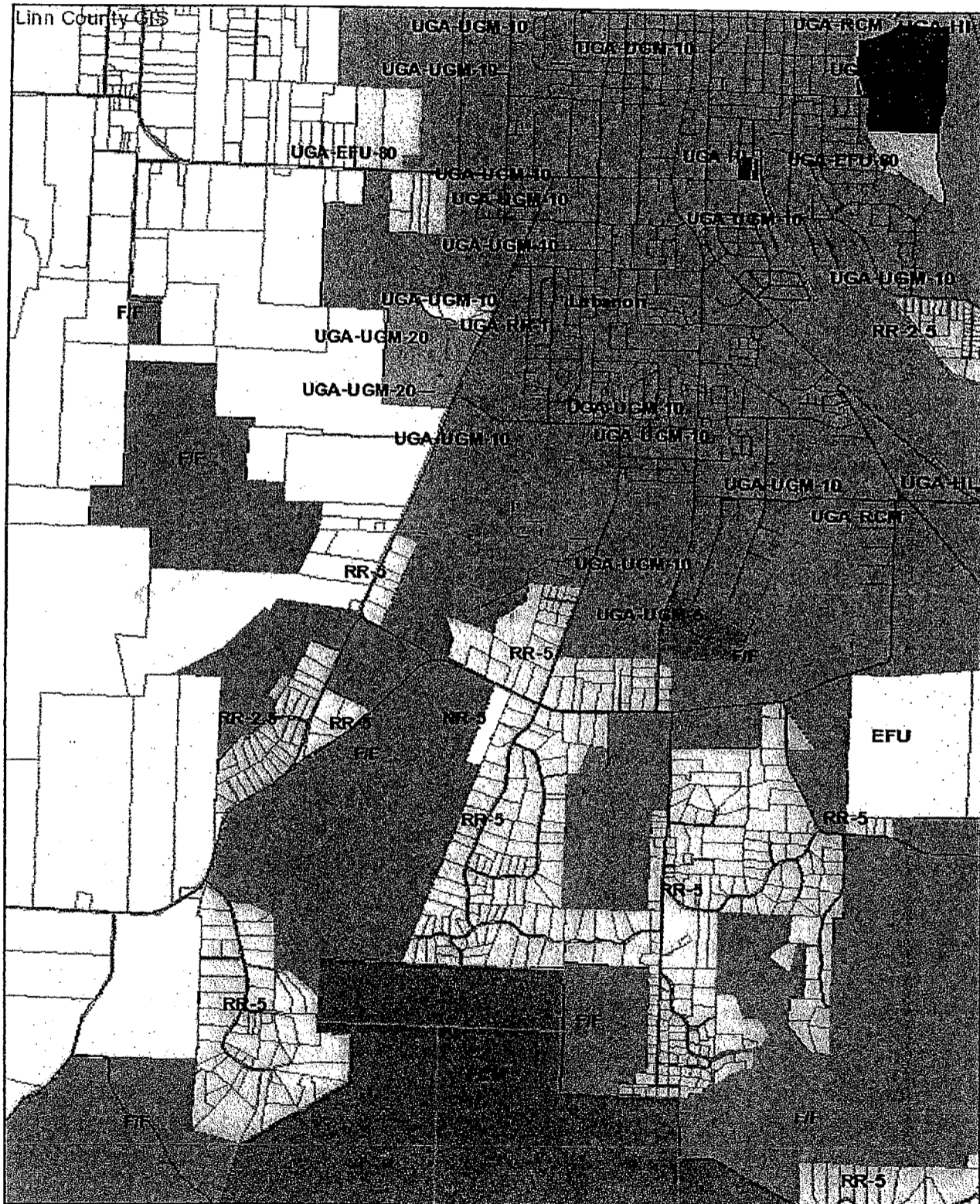


EXHIBIT E

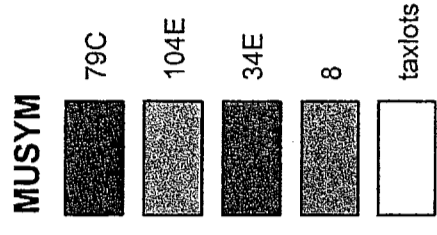
Soils Map

Linn County Planning & Building Department

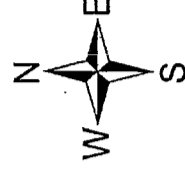
Soils Map



Soils Report



BC08-0004
12S02W27 01000
SCOTT ROBERT L & JAMES F III
15 acres

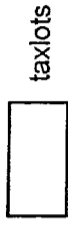
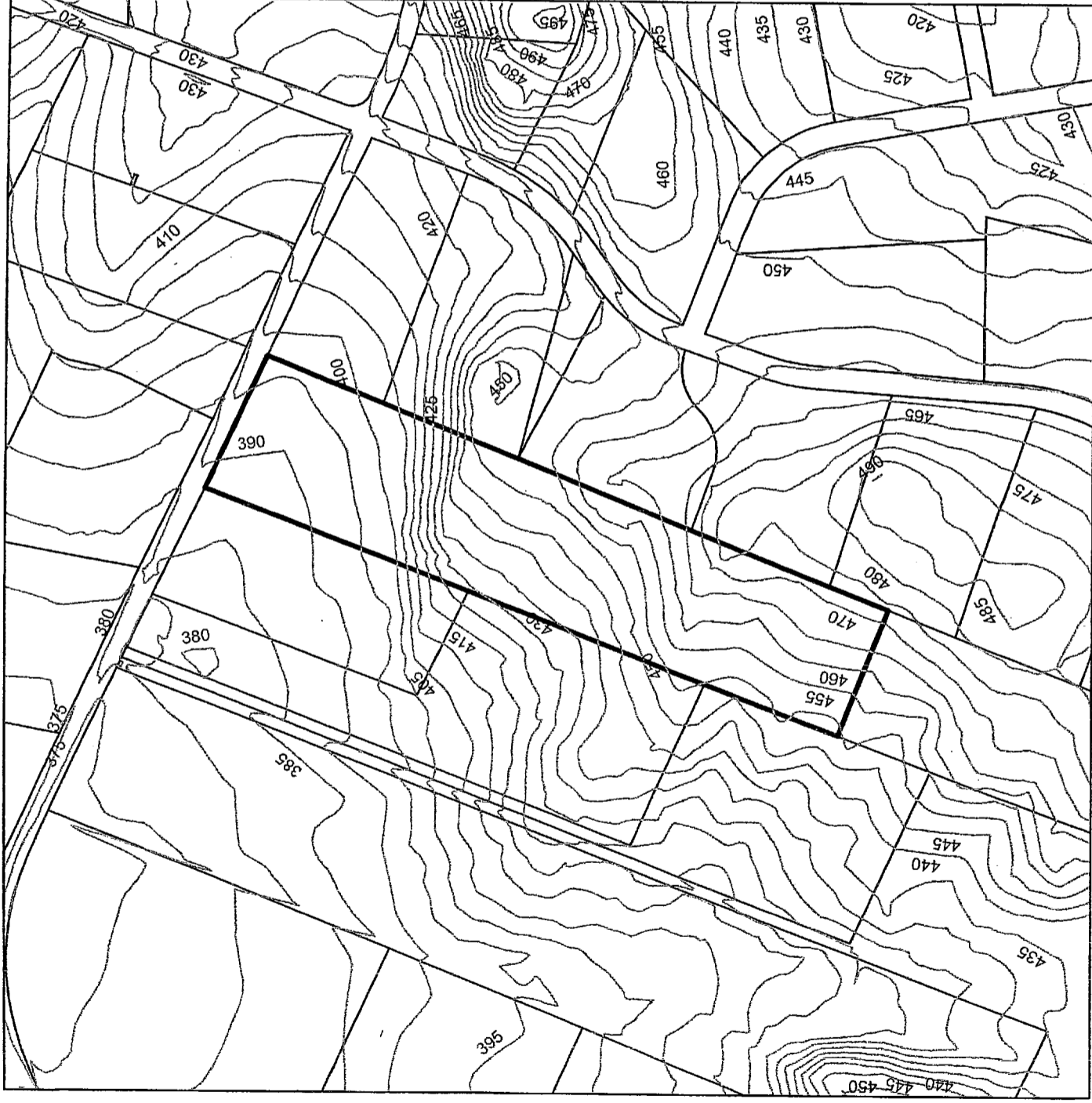


Date: 11/09/2010

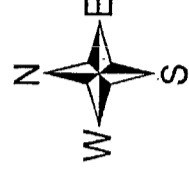
EXHIBIT F
Contour Map

Linn County Planning & Building Department

Contour Map



BC08-0004
12S02W27 01000
SCOTT ROBERT L & JAMES F III
15 acres



Date: 11/09/2010

EXHIBIT G

Land Use Planning Notes Number 3X April 1998

LAND USE PLANNING NOTES <<<<

NUMBER 3 X APRIL 1998



"STEWARDSHIP IN FORESTRY"

PURPOSE: This technical bulletin has been developed to help landowners and local governments when they must use an alternative to the USDA Soil Survey to determine the productivity of forestland. Under OAR 660-06-005 "where SCS data are not available or are shown to be inaccurate, an alternative method for determining productivity may be used. An alternative method must provide equivalent data and be approved by the Department of Forestry." This paper describes the methodology that the Department approves and provides guidance and other information necessary to use that methodology. We have also included some background information to answer some commonly asked questions about the cubic foot productivity class system.



Why use the average annual cubic foot production in land use decisions?

The Department of Forestry advises using the USDA Cubic Foot Productivity Class¹ system, as opposed to other systems of measure, when making land use planning decisions because it measures the relative productivity of the soil, it is not dependent upon the condition of the forest or the species of trees currently growing on the site, and it is more consistent than other measures.

The cubic foot productivity class system ranks soils based upon the mean annual increment measured in cubic feet at the point in time where the culmination of mean annual increment (maximum average annual growth) occurs. This is the average growth rate of the timber over the life of the stand measured at the peak of that average growth rate. The table below shows the potential timber yields of productivity classes 1 - 5 in cubic feet per acre per year (cuft/ac/yr).

¹Field instructions for forest surveys in Washington, Oregon, and Northern California. USDA Forest Service, PNW Range and Experiment Station.

**CUBIC FOOT PRODUCTIVITY
CLASSES**

<u>CODE</u>	<u>POTENTIAL YIELD-MEAN ANNUAL INCREMENT</u>
1	225 or more cuft/ac/yr
2	165 to 224 cuft/ac/yr
3	120 to 164 cuft/ac/yr
4	85 to 119 cuft/ac/yr
5	50 to 84 cuft/ac/yr

Cubic foot productivity class was developed to compare the relative productivity of different soils. Other measures which might be used to compare different parcels, such as site class or site index, are not consistent between species and authors. Site class is commonly used on the west side to describe the productivity of Douglas-fir forests, but site class is only used for Douglas-fir and not for other species. Site index is calculated as tree height divided by tree age at a base age of 100 or 50. Since on the same area, in the same length of time, different species grow to different heights, site index is not consistent between species.

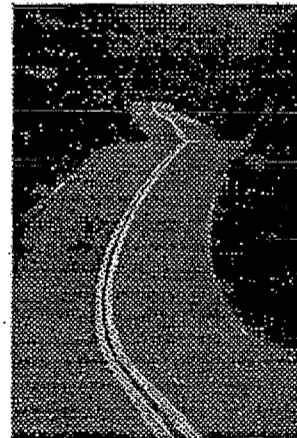
For example cubic foot productivity class III can produce between 120 and 164 cubic feet per acre per year from a fully stocked natural stand. In the next column is a comparison with several species and site indexes.

**CUBIC FOOT PRODUCTIVITY
CLASS 3
(120 - 164 cuft/ac/yr)**

Site Index Equal to Productivity Class III

Douglas-fir (100 yr Site Index)	130 - 160
Western Hemlock (100 yr Site Index)	100 - 110
Ponderosa Pine (100 yr Site Index)	120 - 130
White Fir (50 yr Site Index)	60 - 70
Engelmann Spruce (50 year Site Index)	80 - 90

Another advantage of using cubic foot productivity class is that the ratings are available for most forestland without professional assistance. The published soil surveys contain a rating which can be used by county planners or private landowners to rate productivity and using the information does not require visiting the site or taking measurements.



Why don't we use board feet instead of cubic feet?

Cubic foot volume is a form of measurement commonly used in forestry research and forest management planning. It is a physical measurement based upon the actual volume of wood. On the other hand, board foot volume is based upon a series of rules. The board foot rules were developed to try to determine the amount of lumber which could be sawed (at that time) from a range of different diameter logs. Although its predictive abilities are out of date (1 board foot of log now produces from 1.7 - 2 board feet of lumber), board foot rules continue to be the most common measure used to buy and sell logs in the Northwest. The problem with converting cubic feet to board feet is that the conversion factor is not a constant. Because board foot volume is determined by a rule, one cubic foot of wood from a log with a scaling diameter (small end diameter) of 6 inches contains 3.32 board feet, while one cubic foot of wood from a log with a scaling diameter (small end diameter) of 30 inches contains 6.86 board feet. Therefore as the average diameter of a stand increases in size, the board foot/cubic foot ratio of the stand also increases. To complicate matters further, the length of the logs cut from the tree effects the conversion from cubic feet to board feet. Since trees are tapered and board foot is measured from the small end of the log, cutting the tree into different length logs changes the number of board feet contained in the tree. Because of this difference, the exact number of board feet contained in a stand of timber cannot be determined without knowing how the trees will be bucked into logs.

Because the board feet contained in a stand of timber depends on the average diameter of the stand and the way the trees are bucked into logs, the ratio of board feet to cubic feet is not constant. Comparisons such as soil productivity are much easier to make based upon a constant volume measure such as cubic feet. That is why it is more commonly used in the more technical forestry applications.

General Procedures to Challenge the Site Productivity Listed in the Soil Survey

Before deciding to use an alternative method of measuring the productivity of forestland, documentation should be produced showing that an attempt has been made to use the soil survey and either the soil(s) in question have no rating, or reasons exist indicating that the soil survey may be inaccurate. Where either of these two circumstances exist, a soil scientist from the USDA Natural Resource Conservation Service (NRCS, formerly SCS) should be contacted.

In many cases soils that are primarily used for agriculture were not given ratings for forestry. However, this does not mean they are not capable of growing trees. On the contrary, they may be highly productive, and a NRCS soil scientist may be able to provide a rating of that soil's forest capability. An NRCS soil scientist should also be able to advise you about the procedures used to conduct the soil survey and the accuracy of that survey as it relates to the property and soils in question. The advice received may save both the land owner and local official time and money.

Because the soil survey is not site specific information, The Department of Forestry has agreed to approve methods that would allow a land owner to use site specific information to determine the productivity of the land when applying for a dwelling or other land use decision.

The process should work something like this:

1. The Department of Forestry has approved a methodology for calculating site productivity (the details are described below in this document). When the landowner contacts the county with concerns about the productivity rating of their property, they are provided with information about the required methodology.
2. The landowner must have an independent, knowledgeable person, like a consulting forester, measure the trees on the property and calculate the cubic foot site class using the approved methods. Plots must be taken to measure the productivity of each different soil type and aspect on the property. The consultant must use care when selecting site trees to obtain an accurate measurement, and the consultant's report must provide adequate detail to determine whether the approved methods were followed.
3. The consultant shall provide a copy of the report to the county to use in making land use decisions. If the county has

questions about whether the consultant followed the methodology, the Department of Forestry may need to review the report. However, because this is a land use decision, the county must make the final decision to accept or reject the work of the consultant.

Methodology Approved by the Department of Forestry for Calculating Site Productivity

The Department of Forestry does not measure sites for landowners. The landowner needs to have an independent qualified person, such as a consulting forester, take the measurements and calculate the cubic foot site class. The methodology the Department of Forestry approves to determine the productivity of an area is contained in the *Field instructions for forest surveys in Washington, Oregon, and Northern California. USDA Forest Service, PNW Range and Experiment Station.*

Equivalent published methodology is more widely available from a Weyerhaeuser research paper, by King².

These papers describe how to select site-trees and calculate site index. A second paper, from the US Department of Agriculture³, uses site index information

²King, James E. 1966. Site index curves for Douglas-fir in the Pacific Northwest. Weyerhaeuser Forestry Paper No. 8. Weyerhaeuser Forestry Research Center, Centralia, WA.

³USDA. 1986. Culmination of mean annual increment for commercial forest trees of Oregon.

(continued on next page)

as determined from on-site measurements to reference a set of cubic foot productivity tables. We approve this method because it is based on site specific measurements and it will produce results that are consistent with the Soil Survey.

A summary of the methodology and the necessary tables to calculate site class for the three most common forest types are included below. The methods listed in this paper can be used in combination with other published site index and yield tables if the site is not suited to one of these species. However, the use of other tables or the use of other species to determine site index must be approved by the Department of Forestry on a case by case basis.

Plots must be taken to measure the productivity of each different soil type and aspect on the property. Selection of site-trees (trees selected to determine site index) is a critical part of accurately determining the productivity of the land. To be used, site-trees must have remained in a dominant or co-dominant position throughout their life. If the land has been selectively harvested in the past, most or all of the dominant trees in the stand may have been removed. Basing site index calculations on the remaining trees, grown in lower crown positions,

Technical Note No. 2. USDA, Soil Conservation Service, Portland, OR. (Note: the SCS - Soil Conservation Service is now the NRCS - Natural Resource Conservation Service)

will not accurately measure site productivity. In some cases it may be difficult to find enough site trees on the property to accurately determine productivity. If insufficient dominant trees exist on the property to determine the site index, site-trees may be selected from adjacent properties with the same aspect, elevation, and soil type.

If the parcel is a forest site and no trees are available for site index calculations, or if the site index cannot be determined accurately from the existing timber in the area, then soil survey methodology will be required to accurately assess the site productivity. To map the area and provide site specific data that is more accurate than the USDA Soil Survey will require the landowner to employ a soil scientist to do a higher intensity soil survey. The qualifications and procedures for conducting such a survey are contained in OAR 603-80-0040 (3). This survey must provide detailed information on the soil types represented on the property.

General Rules for Selecting Site Trees

1. If possible, use the species that dominates the area. Height from 15 to 20 dominant and co-dominant trees and age counts on about 10 trees should be sufficient to determine site index if the area is homogeneous. Additional plots will need to be taken to represent different soil types and aspects across the property.
2. You may select site trees of different species as long as they use the same site table.

3. Site index should not vary by more than 20 or 30 between site trees (as indicated on each site table), unless the difference can be explained by actual site variation. Use the site index tables below to compare site measurements.
4. If you select Douglas-fir or grand fir site trees use the site tree selection method for King's Douglas-fir table, outlined below. For other site tree species, use the site tree selection criteria for other species.

Method for Selecting Site Trees for King's Site Index Table

(Use for Douglas-fir and grand fir)

1. Within the plot area, locate an approximately circular area that encompasses 25 trees (the "site index clump") and that is representative of the site being sampled. When there is a choice, favor well-stocked areas over sparse areas. When counting trees, include only Douglas-fir with normally-formed tops; do not include understory trees that are both younger and shorter than the general crown canopy.
2. Of these 25 trees, select the 5 with the largest dbh as site trees.
3. Any site tree with a clear history of suppression should be rejected, and the next largest tree selected if it is suitable. However, you may select a suppressed tree over a shorter, suppression-free tree of

the same age.

4. If a 25-tree clump is not available, a smaller clump may be used. You should still limit the site tree subsample to the 1/5 of the trees in the clump with the largest dbh unless this gives you less than three site trees.

Method for Selecting Site Trees for Other Site Index Tables

1. Select trees that are or have been free from suppression for their entire lives. A tree that has been suppressed will have closely-spaced annual growth rings on all or part of its increment core.
2. Select dominant trees.
3. Trees less than 50 years old are undesirable if older trees are available. For ponderosa pine, trees 60 to 120 years old are most desirable.
4. Site trees should be evenly distributed across the plot area.
5. Select trees that show no signs of top-out, such as crooks or forks, unless these trees are taller than normally-formed trees of the same dbh.
6. If no suitable site trees are available from the property, select dominant trees from a nearby area with the same general aspect, elevation, and soil type. Note the location of the site trees in your report.

Site Tables:

Depending on the species of site tree selected, use the appropriate table to determine site index.

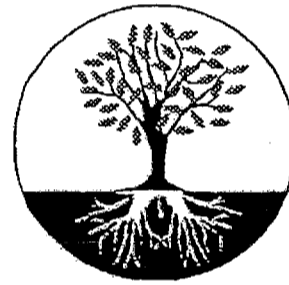
1. King's Douglas-fir table. Use for Douglas-fir and grand fir.
2. Barnes western hemlock table. Use for western hemlock and Sitka spruce.
3. Meyer's ponderosa pine table. Use for ponderosa pine and Jeffrey pine. Use this table when in stands that are predominantly pine, or when pine site trees are all that are available (except in the Willamette Valley).

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How to use site tables:

The following site index tables are "upper limit tables." This means that when a tree height indicates a site index that falls between two site indices listed you should use the higher one. Example: Site tree is Douglas-fir, 75 years old at breast height, 115 feet tall. King's Douglas-fir site index table indicates that a height of 115 feet at age 75 falls between site index 80 and 90. Site index is therefore 90.



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BH AGE	SITE INDEX TABLE										PONDEROSA PINE SITE TABLE													
	40	50	60	70	80	90	100	110	120	130	140	150	40	50	60	70	80	90	100	110	120	130	140	150
30	2.95	10.17	17.39	24.61	31.82	39.04	46.26	53.15	60.37	67.59	74.80	82.02	2.95	10.17	17.39	24.61	31.82	39.04	46.26	53.15	60.37	67.59	74.80	82.02
40	12.14	20.01	27.56	35.43	42.98	50.85	58.40	66.27	73.82	81.69	89.24	97.11	12.14	20.01	27.56	35.43	42.98	50.85	58.40	66.27	73.82	81.69	89.24	97.11
50	20.34	28.54	36.75	44.95	53.15	61.02	69.23	77.43	85.63	93.83	102.03	110.24	20.34	28.54	36.75	44.95	53.15	61.02	69.23	77.43	85.63	93.83	102.03	110.24
60	27.56	36.09	44.62	53.15	61.68	70.21	78.74	87.27	95.80	104.33	112.86	121.39	27.56	36.09	44.62	53.15	61.68	70.21	78.74	87.27	95.80	104.33	112.86	121.39
70	33.45	42.32	51.18	60.04	69.23	78.08	86.94	95.80	104.66	113.52	122.70	131.56	33.45	42.32	51.18	60.04	69.23	78.08	86.94	95.80	104.66	113.52	122.70	131.56
80	38.39	47.57	56.76	65.94	75.46	84.65	93.83	103.35	112.53	121.72	130.91	140.42	38.39	47.57	56.76	65.94	75.46	84.65	93.83	103.35	112.53	121.72	130.91	140.42
90	41.99	51.84	61.35	70.67	80.71	90.22	99.74	109.58	119.09	128.94	138.45	147.97	41.99	51.84	61.35	70.67	80.71	90.22	99.74	109.58	119.09	128.94	138.45	147.97
100	44.95	55.12	64.96	75.13	84.97	95.14	104.99	115.16	125.00	134.84	145.01	154.86	44.95	55.12	64.96	75.13	84.97	95.14	104.99	115.16	125.00	134.84	145.01	154.86
110	47.24	57.41	67.91	78.08	88.58	99.08	109.25	119.75	130.25	140.42	150.92	161.09	47.24	57.41	67.91	78.08	88.58	99.08	109.25	119.75	130.25	140.42	150.92	161.09
120	48.56	59.38	69.88	80.71	91.54	102.36	113.19	123.69	134.51	145.34	156.17	166.99	48.56	59.38	69.88	80.71	91.54	102.36	113.19	123.69	134.51	145.34	156.17	166.99
130	49.21	60.37	71.52	82.68	93.83	104.99	116.14	127.30	138.45	149.61	160.76	171.92	49.21	60.37	71.52	82.68	93.83	104.99	116.14	127.30	138.45	149.61	160.76	171.92
140	50.85	62.34	73.82	85.30	96.78	108.27	119.75	131.23	142.72	154.20	165.68	176.84	50.85	62.34	73.82	85.30	96.78	108.27	119.75	131.23	142.72	154.20	165.68	176.84
150	52.17	63.98	75.79	87.27	99.08	110.89	122.70	134.51	146.33	158.14	169.62	181.43	52.17	63.98	75.79	87.27	99.08	110.89	122.70	134.51	146.33	158.14	169.62	181.43
160	53.48	65.29	77.43	89.57	101.71	113.52	125.66	137.79	149.93	161.74	173.88	186.02	53.48	65.29	77.43	89.57	101.71	113.52	125.66	137.79	149.93	161.74	173.88	186.02
170	54.46	66.93	79.07	91.54	104.00	116.14	128.61	141.08	153.21	165.68	177.82	190.29	54.46	66.93	79.07	91.54	104.00	116.14	128.61	141.08	153.21	165.68	177.82	190.29
180	55.77	68.24	81.04	93.50	106.30	118.77	131.56	144.03	156.82	169.29	182.09	194.55	55.77	68.24	81.04	93.50	106.30	118.77	131.56	144.03	156.82	169.29	182.09	194.55
190	56.76	69.55	82.68	95.47	108.27	121.39	134.19	146.98	160.10	172.90	185.69	198.82	56.76	69.55	82.68	95.47	108.27	121.39	134.19	146.98	160.10	172.90	185.69	198.82
200	57.74	71.19	84.32	97.44	110.56	123.69	137.14	150.26	163.39	176.51	189.63	202.76	57.74	71.19	84.32	97.44	110.56	123.69	137.14	150.26	163.39	176.51	189.63	202.76
210	59.05	72.51	85.96	99.41	112.86	126.31	139.76	153.21	166.67	180.12	193.57	207.02	59.05	72.51	85.96	99.41	112.86	126.31	139.76	153.21	166.67	180.12	193.57	207.02
220	60.04	73.82	87.60	101.38	114.83	128.61	142.39	156.17	169.95	183.40	197.18	210.96	60.04	73.82	87.60	101.38	114.83	128.61	142.39	156.17	169.95	183.40	197.18	210.96
230	61.02	75.13	89.24	103.02	117.13	130.91	145.01	159.12	172.90	187.01	201.11	214.89	61.02	75.13	89.24	103.02	117.13	130.91	145.01	159.12	172.90	187.01	201.11	214.89
240	62.34	76.44	90.55	104.99	119.09	133.53	147.64	162.07	176.18	190.29	204.72	218.83	62.34	76.44	90.55	104.99	119.09	133.53	147.64	162.07	176.18	190.29	204.72	218.83
250	63.32	77.76	92.19	106.63	121.39	135.83	150.26	164.70	179.13	193.90	208.33	222.77	63.32	77.76	92.19	106.63	121.39	135.83	150.26	164.70	179.13	193.90	208.33	222.77
260	64.30	79.07	93.83	108.60	123.36	138.12	152.89	167.65	182.41	197.18	211.94	226.71	64.30	79.07	93.83	108.60	123.36	138.12	152.89	167.65	182.41	197.18	211.94	226.71
270	65.29	80.38	95.47	110.24	125.33	140.42	155.51	170.60	185.37	200.46	215.55	230.64	65.29	80.38	95.47	110.24	125.33	140.42	155.51	170.60	185.37	200.46	215.55	230.64
280	66.27	81.69	96.78	112.20	127.30	142.72	158.14	173.23	188.65	203.74	219.16	234.25	66.27	81.69	96.78	112.20	127.30	142.72	158.14	173.23	188.65	203.74	219.16	234.25
290	67.26	83.00	98.42	113.84	129.59	145.01	160.43	176.18	191.60	207.02	222.44	238.19	67.26	83.00	98.42	113.84	129.59	145.01	160.43	176.18	191.60	207.02	222.44	238.19
300	68.24	84.32	100.07	115.81	131.56	147.31	163.06	178.81	194.55	210.30	226.05	241.80	68.24	84.32	100.07	115.81	131.56	147.31	163.06	178.81	194.55	210.30	226.05	241.80

Allowable difference in site index - 30

COASTAL DOUGLAS-FIR SITE TABLE

BH AGE	SITE INDEX TABLE										HT IN FEET																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																										
	40	50	60	70	80	90	100	110	120	130	140	150	160	170	40	50	60	70	80	90	100	110	120	130	140	150	160	170																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																									
30	32.15	39.04	45.93	52.49	59.38	66.27	73.16	79.72	86.61	93.50	100.07	106.96	113.84	120.41	100.07	106.96	113.84	120.41	127.29	134.18	141.07	147.96	154.84	161.73	168.62	175.51	182.40	189.29	196.18	203.07	209.96	216.84	223.73	230.62	237.51	244.40	251.29	258.18	265.07	271.96	278.84	285.73	292.62	299.51	306.40	313.29	320.18	327.07	333.96	340.84	347.73	354.62	361.51	368.40	375.29	382.18	389.07	395.96	402.84	409.73	416.62	423.51	430.40	437.29	444.18	451.07	457.96	464.84	471.73	478.62	485.51	492.40	499.29	506.18	513.07	519.96	526.84	533.73	540.62	547.51	554.40	561.29	568.18	575.07	581.96	588.84	595.73	602.62	609.51	616.40	623.29	630.18	637.07	643.96	650.84	657.73	664.62	671.51	678.40	685.29	692.18	699.07	705.96	712.84	719.73	726.62	733.51	740.40	747.29	754.18	761.07	767.96	774.84	781.73	788.62	795.51	802.40	809.29	816.18	823.07	829.96	836.84	843.73	850.62	857.51	864.40	871.29	878.18	885.07	891.96	898.84	905.73	912.62	919.51	926.40	933.29	940.18	947.07	953.96	960.84	967.73	974.62	981.51	988.40	995.29	1002.18	1009.07	1015.96	1022.84	1029.73	1036.62	1043.51	1050.40	1057.29	1064.18	1071.07	1077.96	1084.84	1091.73	1098.62	1105.51	1112.40	1119.29	1126.18	1133.07	1139.96	1146.84	1153.73	1160.62	1167.51	1174.40	1181.29	1188.18	1195.07	1201.96	1208.84	1215.73	1222.62	1229.51	1236.40	1243.29	1250.18	1257.07	1263.96	1270.84	1277.73	1284.62	1291.51	1298.40	1305.29	1312.18	1319.07	1325.96	1332.84	1339.73	1346.62	1353.51	1360.40	1367.29	1374.18	1381.07	1387.96	1394.84	1401.73	1408.62	1415.51	1422.40	1429.29	1436.18	1443.07	1449.96	1456.84	1463.73	1470.62	1477.51	1484.40	1491.29	1498.18	1505.07	1511.96	1518.84	1525.73	1532.62	1539.51	1546.40	1553.29	1560.18	1567.07	1573.96	1580.84	1587.73	1594.62	1601.51	1608.40	1615.29	1622.18	1629.07	1635.96	1642.84	1649.73	1656.62	1663.51	1670.40	1677.29	1684.18	1691.07	1697.96	1704.84	1711.73	1718.62	1725.51	1732.40	1739.29	1746.18	1753.07	1759.96	1766.84	1773.73	1780.62	1787.51	1794.40	1801.29	1808.18	1815.07	1821.96	1828.84	1835.73	1842.62	1849.51	1856.40	1863.29	1870.18	1877.07	1883.96	1890.84	1897.73	1904.62	1911.51	1918.40	1925.29	1932.18	1939.07	1945.96	1952.84	1959.73	1966.62	1973.51	1980.40	1987.29	1994.18	2001.07	2007.96	2014.84	2021.73	2028.62	2035.51	2042.40	2049.29	2056.18	2063.07	2069.96	2076.84	2083.73	2090.62	2097.51	2104.40	2111.29	2118.18	2125.07	2131.96	2138.84	2145.73	2152.62	2159.51	2166.40	2173.29	2180.18	2187.07	2193.96	2200.84	2207.73	2214.62	2221.51	2228.40	2235.29	2242.18	2249.07	2255.96	2262.84	2269.73	2276.62	2283.51	2290.40	2297.29	2304.18	2311.07	2317.96	2324.84	2331.73	2338.62	2345.51	2352.40	2359.29	2366.18	2373.07	2379.96	2386.84	2393.73	2400.62	2407.51	2414.40	2421.29	2428.18	2435.07	2441.96	2448.84	2455.73	2462.62	2469.51	2476.40	2483.29	2490.18	2497.07	2503.96	2510.84	2517.73	2524.62	2531.51	2538.40	2545.29	2552.18	2559.07	2565.96	2572.84	2579.73	2586.62	2593.51	2600.40	2607.29	2614.18	2621.07	2627.96	2634.84	2641.73	2648.62	2655.51	2662.40	2669.29	2676.18	2683.07	2689.96	2696.84	2703.73	2710.62	2717.51	2724.40	2731.29	2738.18	2745.07	2751.96	2758.84	2765.73	2772.62	2779.51	2786.40	2793.29	2800.18	2807.07	2813.96	2820.84	2827.73	2834.62	2841.51	2848.40	2855.29	2862.18	2869.07	2875.96	2882.84	2889.73	2896.62	2903.51	2910.40	2917.29	2924.18	2931.07	2937.96	2944.84	2951.73	2958.62	2965.51	2972.40	2979.29	2986.18	2993.07	3000.96	3007.84	3014.73	3021.62	3028.51	3035.40	3042.29	3049.18	3056.07	3062.96	3069.84	3076.73	3083.62	3090.51	3097.40	3104.29	3111.18	3118.07	3124.96	3131.84	3138.73	3145.62	3152.51	3159.40	3166.29	3173.18	3180.07	3186.96	3193.84	3200.73	3207.62	3214.51	3221.40	3228.29	3235.18	3242.07	3248.96	3255.84	3262.73	3269.62	3276.51	3283.40	3290.29	3297.18	3304.07	3310.96	3317.84	3324.73	3331.62	3338.51	3345.40	3352.29	3359.18	3366.07	3372.96	3379.84	3386.73	3393.62	3400.51	3407.40	3414.29	3421.18	3428.07	3434.96	3441.84	3448.73	3455.62	3462.51	3469.40	3476.29	3483.18	3490.07	3496.96	3503.84	3510.73	3517.62	3524.51	3531.40	3538.29	3545.18	3552.07	3558.96	3565.84	3572.73	3579.62	3586.51	3593.40	3600.29	3607.18	3614.07	3620.96	3627.84	3634.73	3641.62	3648.51	3655.40	3662.29	3669.18	3676.07	3682.96	3689.84	3696.73	3703.62	3710.51	3717.40	3724.29	3731.18	3738.07	3744.96	3751.84	3758.73	3765.62	3772.51	3779.40	3786.29	3793.18	3800.07	3806.96	3813.84	3820.73	3827.62	3834.51	3841.40	3848.29	3855.18	3862.07	3868.96	3875.84	3882.73	3889.62	3896.51	3903.40	3910.29	3917.18	3924.07	3930.96	3937.84	3944.73	3951.62	3958.51	3965.40	3972.29	3979.18	3986.07	3992.96	3999.84	4006.73	4013.62	4020.51	4027.40	4034.29	4041.18	4048.07	4054.96	4061.84	4068.73	4075.62	4082.51	4089.40	4096.29	4103.18	4110.07	4116.96	4123.84	4130.73	4137.62	4144.51	4151.40	4158.29	4165.18	4172.07	4178.96	4185.84	4192.73	4199.62	4206.51	4213.40	4220.29	4227.18	4234.07	4240.96	4247.84	4254.73	4261.62	4268.51	4275.40	4282.29	4289.18	4296.07	4302.96	4309.84	4316.73	4323.62	4330.51	4337.40	4344.29	4351.18	4358.07	4364.96	4371.84	4378.73	4385.62	4392.51	4399.40	4406.29	4413.18	4420.07	4426.96	4433.84	4440.73	4447.62	4454.51	4461.40	4468.29	4475.18	4482.07	4488.96	4495.84	4502.73	4509.62	4516.51	4523.40	4530.29	4537.18	4544.07	4550.96	4557.84	4564.73	4571.62	4578.51	4585.40	4592.29	4599.18	4606.07	4612.96	4619.84	4626.73	4633.62	4640.51	4647.40	4654.29	4661.18	4668.07	4674.96	4681.84	4688.73	4695.62	4702.51	4709.40	4716.29	4723.18	4730.07	4736.96	4743.84	4750.73	4757.62	4764.51	4771.40	4778.29	4785.18	4792.07	4798.96	4805.84	4812.73	4819.62	4826.51	4833.40	4840.29	4847.18	4854.07	4860.96	4867.84	4874.73	4881.62	4888.51	4895.40	4902.29	4909.18	4916.07	4922.96	4929.84	4936.73	4943.62	4950.51	4957.40	4964.29	4971.18	4978.07	4984.96	4991.84	4998.73	5005.62	5012.51	5019.40	5026.29	5033.18	5040.07	5046.96	5053.84	5060.73	5067.62	5074.51	5081.40	5088.29	5095.18	5102.07	5108.96	5115.84	5122.73	5129.62	5136.51	5143.40	5150.29	5157.18	5164.07	5170.96	5177.84	5184.73	5191.62	5198.51	5205.40	5212.29	5219.18	5226.07	5232.96	5239.84	5246.73	5253.62	5260.51	5267.40	5274.29	5281.18	5288.07	5294.96	5301.84	5308.73	5315.62	5322.51	5329.40	5336.29	5343.18	5350.07	5356.96	5363.84	5370.73	5377.62	5384.51	5391.40	5398.29	5405.18	5412.07	5418.96	5425.84	5432.73	5439.62	5446.51	5453.40	5460.29	5467.18	5474.07	5480.96	5487.84	5494.73	5501.62	5508.51	5515.40	5522.29	5529.18	5536.07	5542.96	5549.84	5556.73	5563.62	5570.51	5577.40	5584.29	5591.18	5598.07	5604.96	5611.84	5618.73	5625.62	5632.51	5639.40	5646.29	5653.18	5660.07	5666.96	5673.84	5680.73	5687.62	5694.51	5701.40	5708.29	5715.18	5722.07	5728.96	5735.84	5742.73	5749.62	5756.51	5763.40	5770.29	5777.18	5784.07	5790.96	5797.84	5804.73	5811.62	5818.51	5825.40	5832.29	5839.18	5846.07	5852.96	5859.84	5866.73	5873.62	5880.51	5887.40	5894.29	5901.18	5908.07	5914.96	5921.84	5928.73	5935.62	5942.51	5949.40	5956.29	5963.18	5970.07	5976.96	5983.84	5990.73	5997.62	6004.51	6011.40	6018.29	6025.18	6032.07	6038.96	6045.84	6052.73	6059.62	6066.51	6073.40	6080.29	6087.18	6094.07	6100.96	6107.84	6114.73	6121.62	6128.51	6135.40	6142.29	6149.18	6156.07	6162.96	6169.84	6176.73	6183.62	6190.51	6197.40	6204.29	6211.18	6218.07	6224.96	6231.84	6238.73	6245.62	6252.51	6259.40	6266.29	6273.18	6280.07	6286.96	6293.84	6300.73	6307.62	6314.51	6321.40	6328.29	6335.18	6342.07	6348.96	6355.84	6362.73	6369.62	6376.51	6383.40	6390.29	6397.18	6404.07	6410.96	6417.84	6424.73	6431.62	6438.51	6445.40	6452.29	6459.18	6466.07	6472.96	6479.84	6486.73	6493.62	6500.51	6507.40	6514.29	6521.18	6528.07	6534.96	6541.84	6548.73	6555.62	6562.51	6569.40	6576.29	6583.18	6590.07	6596.96	6603.84	6610.73	6617.62	6624.51	6631.40	6638.29	6645.18	6652.07	6658.96	6665.84	6672.73	6679.62	6686.51	6693.40	6700.29	6707.18	6714.07	6720.96	6727.84	6734.73	6741.62	6748.51	6755.40	6762.29	6769.18	6776.07	6782.96	6789.84	6796.73	6803.62	6810.51	6817.40	6824.29	6831.18	6838.07	6844.96	6851.84	6858.73	6865.62	6872.51	6879.40	6886.29	6893.18	6900.07	6906.96	6913.84	6920.73	6927.62	6934.51	6941.40	6948.29	6955.18	6962.07	6968.96	6975.8

Western Hemlock - 263 and Mountain Hemlock - 264¹
 Upper Limits of Site Indices—Dominant and Codominant Trees
 Use for all true firs except white and grand fir and for all cedars except incense

Age years	Site index												Total height in feet					
	40	50	60	70	80	90	100	110	120	130	140	150		160	170	180	190	200
10	2	4	4	4	5	6	6	6	6	8	8	8	9	10	10	11	12	12
20	9	12	14	16	18	20	22	24	26	28	30	32	34	37	39	41	43	43
30	17	21	24	28	32	36	40	44	47	51	55	59	63	66	70	74	78	78
40	23	28	34	39	44	50	54	60	66	70	76	81	86	92	96	102	107	107
50	29	35	42	48	55	61	67	74	80	86	93	99	106	112	118	124	132	132
60	34	41	49	56	64	71	79	86	93	101	108	116	123	131	138	145	153	153
70	37	45	53	61	70	78	86	94	103	111	119	127	136	144	152	160	171	171
80	39	48	57	66	75	84	93	102	110	119	128	137	147	156	164	173	182	182
90	42	52	61	71	80	90	99	108	118	128	137	146	156	165	175	185	194	194
100	45	55	65	75	85	95	105	115	125	135	145	155	165	175	185	195	205	205
110	47	58	68	79	89	99	110	120	131	141	152	162	173	183	194	204	215	215
120	49	60	70	81	92	103	113	124	135	146	156	167	178	189	190	210	221	221
130	50	61	72	83	94	105	116	127	138	149	160	171	183	194	205	216	227	227
140	51	62	74	85	96	107	118	129	141	152	163	174	186	197	208	220	231	231
150	52	63	75	86	97	109	120	131	143	154	166	177	189	200	212	223	235	235
160	52	64	76	87	99	110	121	133	145	156	168	179	191	203	214	226	238	238
180	53	65	77	89	101	112	123	136	148	159	171	183	195	207	219	230	242	242
200	54	66	78	90	102	113	125	138	150	161	173	186	197	210	221	233	245	245
220	54	66	78	90	103	114	127	139	151	163	175	187	199	211	224	235	247	247
240	55	67	79	91	103	115	127	139	152	164	176	188	200	212	225	237	249	249
260	55	67	79	91	104	116	128	140	152	164	176	188	200	213	225	238	250	250
280	55	67	80	92	104	116	128	140	153	165	177	189	201	214	226	239	251	251
300	55	67	80	92	104	117	129	141	153	166	178	190	202	215	227	240	252	252
Cubic-foot site class	7	6	5	4	3	2	1											

¹ Source: Barnes, George H., 1961. USDA Technical Bulletin 1273. PNW Experiment Station.

SITE INDEX	CMAI FOR WESTERN HEMLOCK	CMAI FOR PONDEROSA PINE	CMAI FOR DOUGLAS-FIR
	100 YR. TABLE (TSHE) 990-BARNES	100 YR. TABLE (PIPO) 600-MEYER	WEST SIDE 50 YR. (PSME) 795-KING
	<i>Cu. Ft./Ac./Yr.</i>		
40		30	
41		31	
42		31	
43		32	
44		33	
45		34	
46		34	
47		35	
48		36	
49		37	
50		38	
51		38	
52		39	
53		40	
54		41	
55		42	
56		42	
57		43	
58		44	
59		45	
60		46	
61		47	
62		48	
63		49	
64		50	
65		50	
66		51	
67		52	

SITE INDEX	CMAI FOR WESTERN HEMLOCK	CMAI FOR PONDEROSA PINE	CMAI FOR DOUGLAS-FIR
	100 YR. TABLE (TSHE) 990-BARNES	100 YR. TABLE (FIPO) 600-MEYER	WEST SIDE 50 YR. (PSME) 795-KING
68		53	
69		54	
70		55	79
71		56	81
72		58	83
73		59	84
74		60	86
75		62	89
76		63	91
77		64	93
78		65	94
79		67	96
80		69	98
81		70	100
82		72	102
83		74	103
84		75	105
85		77	107
86		78	109
87		80	111
88		82	113
89		83	114
90		85	116
91		87	118
92		88	120
93		90	122
94		92	123
95		94	125
96		96	128

SITE INDEX	CMAI FOR WESTERN HEMLOCK	CMAI FOR PONDEROSA PINE	CMAI FOR DOUGLAS-FIR
	100 YR. TABLE (TSHE) 990-BARNES	100 YR. TABLE (PIPO) 600-MEYER	WEST SIDE 50 YR. (PSME) 795-KING
97		97	130
98		99	132
99		101	134
100	142	102	136
101	144	104	138
102	145	106	140
103	147	108	141
104	149	110	143
105	151	112	145
106	153	114	147
107	154	116	149
108	156	118	150
109	158	120	152
110	160	122	154
111	162	124	156
112	164	126	158
113	166	128	160
114	168	130	162
115	170	132	163
116	172	134	167
117	174	136	169
118	176	137	171
119	178	139	173
120	180	141	175
121	182	144	176
122	184	146	178
123	186	149	180
124	188	151	182
125	190	154	184

SITE INDEX	CMAI FOR WESTERN HEMLOCK	CMAI FOR PONDEROSA PINE	CMAI FOR DOUGLAS-FIR
	100 YR. TABLE (TSHE) 990-BARNES	100 YR. TABLE (PIPO) 600-MEYER	WEST SIDE 50 YR. (PSME) 795-KING
126	192	156	186
127	194	159	188
128	196	161	190
129	198	164	191
130	200	166	193
131	202	168	195
132	204	170	197
133	205	173	199
134	207	175	201
135	209	177	203
136	211	179	207
137	213	181	209
138	214	183	210
139	216	185	212
140	218	188	214
141	220	190	216
142	222	192	218
143	224	194	220
144	226	197	222
145	228	199	224
146	230	201	226
147	232	203	227
148	234	205	229
149	236	208	231
150	238	210	233
151	240	212	235
152	241	215	237
153	243	217	239
154	244	220	241

SITE INDEX	CMAI FOR WESTERN HEMLOCK	CMAI FOR PONDEROSA PINE	CMAI FOR DOUGLAS-FIR
	100 YR. TABLE (TSHE) 990-BARNES	100 YR. TABLE (PIPO) 600-MEYER	WEST SIDE 50 YR. (PSME) 795-KING
155	246	222	243
156	248	224	244
157	249	227	246
158	251	229	248
159	252	232	250
160	254	234	252
161	256		
162	258		
163	260		
164	262		
165	264		
166	266		
167	268		
168	270		
169	272		
170	274		
171	276		
172	278		
173	279		
174	281		
175	283		
176	285		
177	287		
178	288		
179	290		
180	292		
181	294		
182	296		
183	297		

SITE INDEX	CMAI FOR WESTERN HEMLOCK	CMAI FOR PONDEROSA PINE	CMAI FOR DOUGLAS-FIR
	100 YR. TABLE (TSHE) 990-BARNES	100 YR. TABLE (PPO) 600-MEYER	WEST SIDE 50 YR. (PSME) 795-KING
184	299		
185	301		
186	303		
187	305		
188	306		
189	308		
190	310		
191	312		
192	314		
193	316		
194	318		
195	320		
196	322		
197	324		
198	326		
199	328		
200	330		
201	332		
202	333		
203	335		
204	336		
205	338		
206	340		
207	341		
208	343		
209	344		
210	346		

EXHIBIT 3
WRITTEN REBUTTAL BY APPLICANT



161 High St. SE, Suite 224
Salem, Oregon 97301
phone 503.316.1842
fax 503.362.2541
portland 503.703.7305

Dec. 20, 2010

Linn County Board of Commissioners
300 SW 4th Avenue
Albany, OR 97321
C/o Deborah Pinkerton, County Planning Division
Via E-mail: dpinkerton@co.linn.or.us

**Re: County File # BC09-0004
Morris Non-Resource Comprehensive Plan and Zone Change
Response to Jim Just Letter of 12/2/10
For Board Deliberation and Decision 12/21/10**

Dear Members of the Board:

On Dec. 8, 2010, you held your public hearing on BC09-0004 (Morris). I testified as the land use planning consultant for the applicants. Jim Just of Friends of Linn County did not appear that day. However, staff received a packet from Mr. Just dated Dec. 2, 2010 which was provided to me prior to your hearing on Dec. 8, 2010. You closed the oral testimony that day, and continued the case to December 21, 2010 for deliberation and decision only. You allowed me to respond in writing to Mr. Just's last packet.

No Bright-Line Thresholds in OAR 660-006-0010

Mr. Just continues to look for, or hopes to find a bright-line threshold that can determine whether ours or any property is suitable for commercial forest use as a matter of law. The LUBA order clearly states there is no such specific, cubic feet per acre per year (cf/ac/yr) threshold (First Assignment of Error, Item A., beginning on Page 10, LUBA No. 2009-068). The closer analysis required by the LUBA remand decision was provided by our Professional Forester, William Roach of Jackson and Prochnau.

Hierarchy of Methods

Our (Mr. Roach's) report addresses the hierarchy of analysis methods/sources, including the NRCS Data Base, Plant Association Handbook, the Ad Valorem analysis of productivity of the 1960's, and other relevant data and guides from the State Department of Forestry.

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Wrong Soil Description

Mr. Just chose to use the Lane County, not Linn County description for the 34E Dixonville soil type on this property. The Linn County CU ft/ac/yr rating for this soil type (occurring on 1.7 of our total 15 acre parcel) is 115 CU ft/ac/yr. Just chose to use 157, which is how it is rated in Lane County. This is one reason why Jim Just's numbers and conclusions are at odds with your Linn County planning staff and our professional analysis. Please see Mr. Roach's Exhibit 4 which is revisions to listing of Forest Soils Productivity Ratings for six Counties by the State Department of Forestry in 1990.

"Other Factors"

Mr. Just argues with the LUBA decision that "other factors" may not be considered (please see his point #2, page 7, 12/2/10 letter to the Board). LUBA clearly stated that other factors may be considered besides the data described in OAR 660-006-0010 and 660-006-0005(2). Please see First Assignment Error, Item C. LUBA No. 2009-068, beginning at page 12. We respect the LUBA remand decision and have responded to it. If Mr. Just wants to argue against the LUBA decision on that point, he should have filed an appeal to the State Court of Appeals.

We respectfully request that the Board of Commissioners, using the guidance of the LUBA remand order and our additional forest productivity analysis, approve application for the Non Resource Plan and zone designation once again.

We are available to assist your staff in writing your final order and decision on this matter.

Sincerely,



John L. Brosy, Planning Consultant
Representing the property owners and applicants

EXHIBIT 4
SUPPLEMENTAL FINDINGS

The following issues were addressed by the applicant's consultant, John Brosy, in a letter dated December 20, 2010 and accepted into the record by the Board on December 21, 2011:

- ***No bright-line thresholds in OAR 660-006-0010, as noted by LUBA***
- ***"Hierarchy of Methods" was used by the applicant's Forestry expert, as requested by LUBA***
- ***Use of the wrong County (Lane, not Linn) description for 34E Dixonville soil skewed Friends of Linn County's (Mr. Just's) calculations***
- ***"Other Factors" were also used, as allowed by LUBA***

The following remaining issues have been addressed in the County's record, which include the report by William Roach, a professional forester hired by the applicant, dated March 10, 2010.

Impact of Dixonville soil capability error by Mr. Just

Much of Mr. Just's opposition on pages 3 through 5 of his information is based on his mistake describing the Dixonville unit soils. All soils found on the Morris property are covered in a 1990 report sent to various counties by the State Department of Forestry's Director of Forest Resource Planning. That report revised productivity data for numerous soil types. Mr. Just did not refer to this document, which is the most complete, current and controlling document for use by Oregon counties. Mr. Just mistook the Dixonville unit capability for Linn County with Lane County, which has different characteristics as described in the 1990 report. This mistake seems to be at the core of much of his arguments. This mistake skews the calculations to make the site look potentially more productive than the correct data indicates.

The applicant's forester's report describes this mistake beginning on the last paragraph of page 3 (Roach of Jackson & Prochnau, March 10, 2010). Mr. Roach's productivity table is based on the correct, controlling Department of Forestry document for soil types of Linn County mapped on this property.

"Forest Template Dwellings" not pertinent

Mr. Just notes ORS standards for "forest template dwellings," beginning at paragraph 3 of his page 5, which do not pertain to EFU land. Mr. Just himself admits in his following paragraph that Linn County has not adopted a productivity threshold for "forest land" in its *Comprehensive Plan*, and continues with explaining other things the County does not define for forest lands. These issues are not addressed because they are not in the Linn County *Comprehensive Plan* or zoning code.

Economic Analysis

Mr. Just opposed Mr. Roach's use of an economic analysis of timber productivity. He cites other cases where that kind of analysis by itself was not considered sufficient. But what is different from those other cases is that Mr. Roach considered several factors besides his economic analysis, including the "hierarchy" of methods noted by LUBA. When other available methods are also employed, economic analysis is relevant and allowable. Mr. Roach's report describes several other factors, from his pages 3 through 8 of his March 10, 2010 report.

Oak Trees

Mr. Just argues that the potential for growing oak trees on this site for various purposes was not analyzed. In fact, Mr. Roach's report addresses oak trees on his page 3 (paragraph 4) and page 4 (last paragraph). Mr. Roach explained (page 3) that oak communities are not yet classified and are therefore absent from the (state recognized) field guide. He also described the current value of oak pulp logs, which is below production costs, and the effort required for a commercially viable oak tree farm. Mr. Just wanted the value of oak trees for *firewood* (his page 7, paragraph 1) to be analyzed. Analyzing sites for their harvest value as firewood goes beyond any previously known requirement of analysis. Mr. Roach's analysis did not go there. It seems likely that the firewood market will continue to be supplied by cutting trees from seasonal storm damage losses, from clearing of urban areas and from thinning of private woodlots. Requiring a separate analysis for commercial viability of growing trees for firewood goes beyond the pale of sensible standards.

Impacts of Forest Practices on adjoining properties

Mr. Just states that it is not permissible to identify problems of forest practices adjacent to homes created through separate, previous Goal 3 and Goal 4 exceptions. While there are a number of these homes in the immediate vicinity of the Morris property, there are also a large number of homes nearby on lands zoned rural residential that pre-date the Linn County *Comprehensive Plan*. Mr. Roach's comments on problems associated with slash abatement (smoke), herbicide and pesticide applications (page 5 through page 7). Because a large portion of the adjacent neighborhood is zoned rural residential, Mr. Roach's comments are permissible.

Disagreements with LUBA

Mr. Just comments on his page 9 that LUBA is wrong in allowing "other factors" to be considered in addition to potential forest productivity in determining whether the subject property is suitable for commercial forest uses. He then explains how the legislative history of Goal 4 does not support LUBA's suggestion. However, the County has no choice but to follow the guidance provided by LUBA. LUBA allowed the County to use "other factors". Mr. Roach analyzed "other factors." It would appear that this issue is between Mr. Just and LUBA, and should not involve Linn County.

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