



Oregon
Theodore R. Kulongoski, Governor

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



NOTICE OF ADOPTED AMENDMENT

11/05/2013

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

FROM: Plan Amendment Program Specialist

SUBJECT: Lane County Plan Amendment
DLCD File Number 002-12

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

Appeal Procedures*

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

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

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

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

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

<paa> YA



FORM **2**

DLCD

Notice of Adoption

In person electronic mailed

SHUTTLE

DATE
STAMP

DEPT OF

OCT 29 2013

For Office Use Only

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

Jurisdiction: **Lane County**

Local file number: **509-PA 11-05501**

Date of Adoption: **10/1/2013**

Date Mailed: **10/25/2013**

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

Comprehensive Plan Text Amendment

Comprehensive Plan Map Amendment

Land Use Regulation Amendment

Zoning Map Amendment

New Land Use Regulation

Other:

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

Plan amendment and rezone of 31 acres of F-2, Forest land to a Plan/Zone designation of Marginal Lands.

Does the Adoption differ from proposal? Please select one

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

Plan Map Changed from: **Forest**

to: **Marginal Land**

Zone Map Changed from: **F-2/Impacted Forest Lands**

to: **Marginal Land with Site Review**

Location: **18S-04W-11, tax lot 500**

Acres Involved: **31**

Specify Density: Previous: **80 ac.**

New: **10/20 ac.**

Applicable statewide planning goals:

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

Was an Exception Adopted? YES NO

Did DLCD receive a Notice of Proposed Amendment...

35-days prior to first evidentiary hearing?

Yes No

If no, do the statewide planning goals apply?

Yes No

If no, did Emergency Circumstances require immediate adoption?

Yes No

DLCD file No. 002-12 (19146) [17664]

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

Lane County, DLCDC

Local Contact: **Jerry Kendall**

Phone: (541) 682-4057 Extension:

Address: **PW/LMD; 3050 N. Delta Hwy.**

Fax Number: **541-682-3947**

City: **Eugene**

Zip: **97408-1636**

E-mail Address: **jerry.kendall@co.lane.or.us**

ADOPTION SUBMITTAL REQUIREMENTS

This Form 2 must be received by DLCDC no later than 20 working days after the ordinance has been signed by the public official designated by the jurisdiction to sign the approved ordinance(s) per ORS 197.615 and OAR Chapter 660, Division 18

1. This Form 2 must be submitted by local jurisdictions only (not by applicant).
2. When submitting the adopted amendment, please print a completed copy of Form 2 on light **green paper if available**.
3. Send this Form 2 and one complete paper copy (documents and maps) of the adopted amendment to the address below.
4. Submittal of this Notice of Adoption must include the final signed ordinance(s), all supporting finding(s), exhibit(s) and any other supplementary information (ORS 197.615).
5. Deadline to appeals to LUBA is calculated **twenty-one (21) days** from the receipt (postmark date) by DLCDC of the adoption (ORS 197.830 to 197.845).
6. In addition to sending the Form 2 - Notice of Adoption to DLCDC, 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 DLCDC 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 DLCDC regional representative or contact the DLCDC Salem Office at (503) 373-0050 x238 or e-mail **plan.amendments@state.or.us**.

BEFORE THE BOARD OF COMMISSIONERS OF LANE COUNTY, OREGON

ORDINANCE NO. PA 1295

IN THE MATTER OF AMENDING THE RURAL COMPREHENSIVE PLAN TO REDESIGNATE LAND FROM "FOREST" TO "MARGINAL LAND" AND REZONING THAT LAND FROM "F-2/IMPACTED FOREST LANDS" TO "ML/SR MARGINAL LAND WITH SITE REVIEW", 31 ACRES; AND ADOPTING SAVINGS AND SEVERABILITY CLAUSES (file 509-PA 11-05501; Suess Family Health & Welfare Trust)

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

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

WHEREAS, in July of 2011, application no. 509-PA 11-05501 was made for a minor amendment to redesignate approximately 31 acres of land, Map 18-04-11, tax lot 500, from "Forest" to "Marginal Land" with a concurrent request to rezone the property from "F-2/Impacted Forest Lands" to "ML/SR Marginal Land with Site Review"; and

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

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

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

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

1. The Lane County Rural Comprehensive Plan is amended by redesignating that Tax Lot 500, Map 18-04-11, from "Forest" to "Marginal Land". The area being redesignated is depicted on the Official Lane County Plan Map 1804, attached hereto as Exhibit "A" and incorporated herein.
2. Tax lot 500, Map 18-04-11, is rezoned from "F-2/Impacted Forest Land" to "ML/SR Marginal Land with Site Review". The area being rezoned is depicted on the Official Lane County Zoning Map 1804, attached hereto as Exhibit "B" and incorporated herein. The exclusive reason for the addition of the Site Review overlay is to assure compliance with the following development standards.

- (a) To ensure adequate domestic supply, no unit of land on the subject property will be approved for a

dwelling building permit without the owner having a statement from a registered geologist stating that the dwelling can be served by a tested, existing well that produces a supply adequate for a dwelling.

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

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

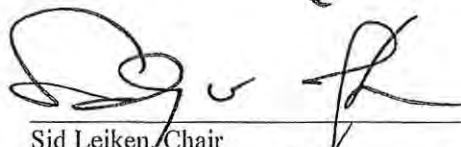
(d) An applicant must demonstrate that the requirements in (a), (b) and (c) above can be met at the time the building permit application is filed based on objectively determinable facts. The Land Management Division's review of the building permit application is an administrative action and not subject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

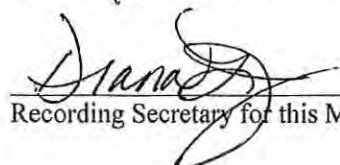
FURTHER, although not a part of this Ordinance, the Board of County Commissioners adopts in support of this action the Findings set forth in Exhibit "C" attached.

The prior designation and zone repealed by this Ordinance remain in full force and effect to authorize prosecution of persons in violation thereof prior to the effective date of this Ordinance.

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

ENACTED this 5th day of October, 2013.


Sid Leiken, Chair
Lane County Board of Commissioners


Recording Secretary for this Meeting of the Board

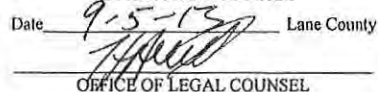
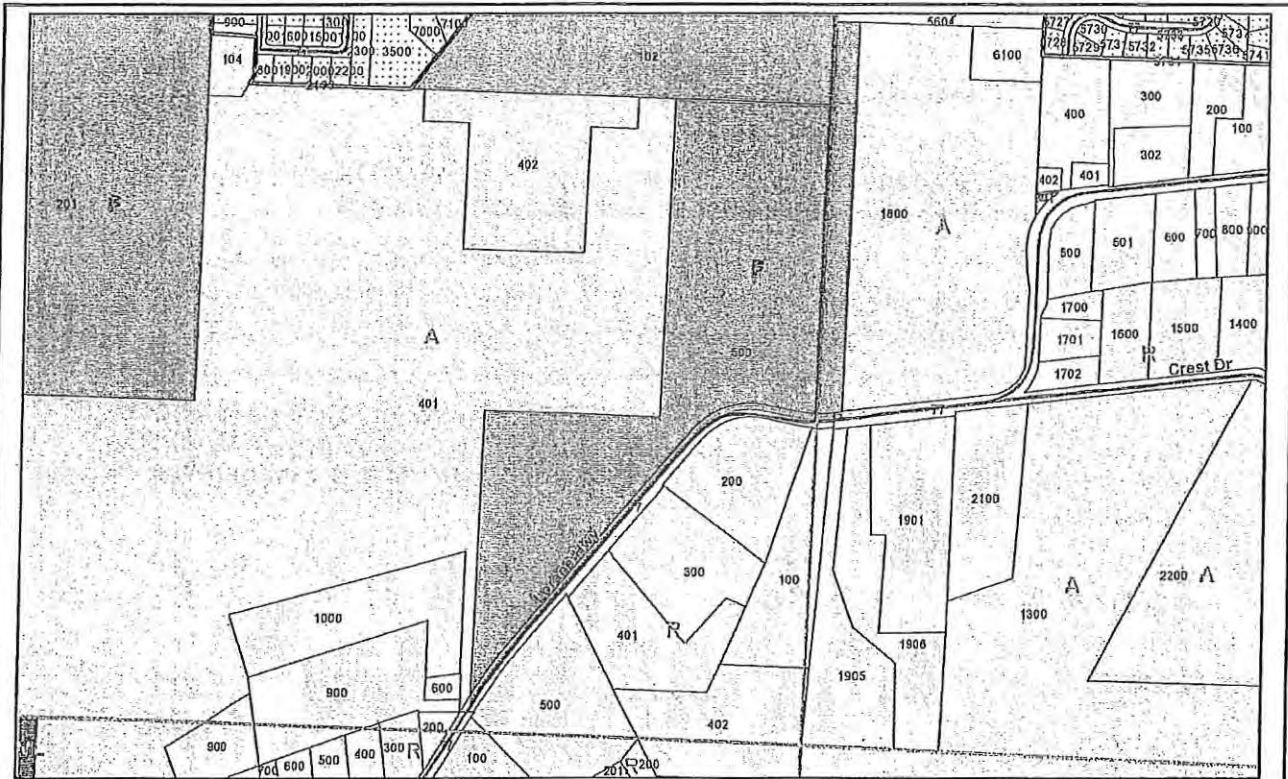
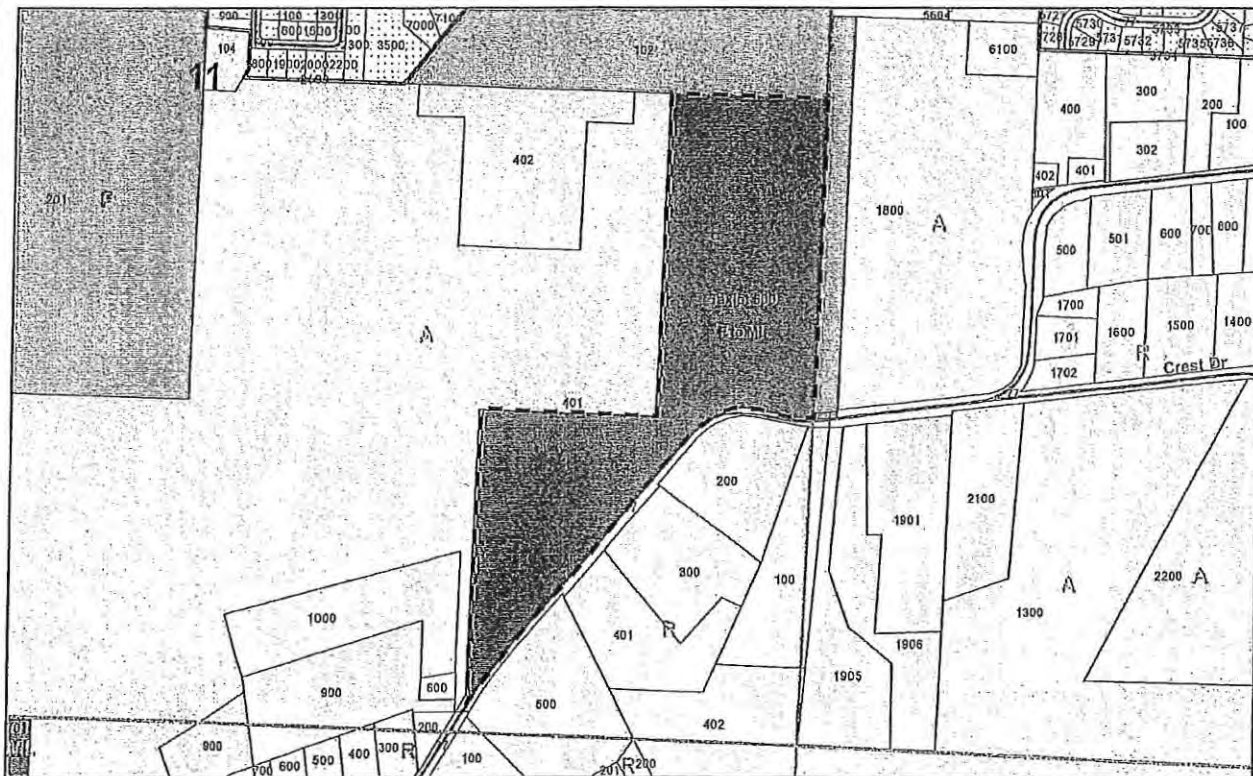
APPROVED AS TO FORM
Date 9-5-13 Lane County

OFFICE OF LEGAL COUNSEL

Exhibit A



Existing Plan Designation



Change being enacted by No. 509-PA 11-05501 on Official Plan Map 1804

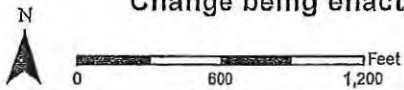
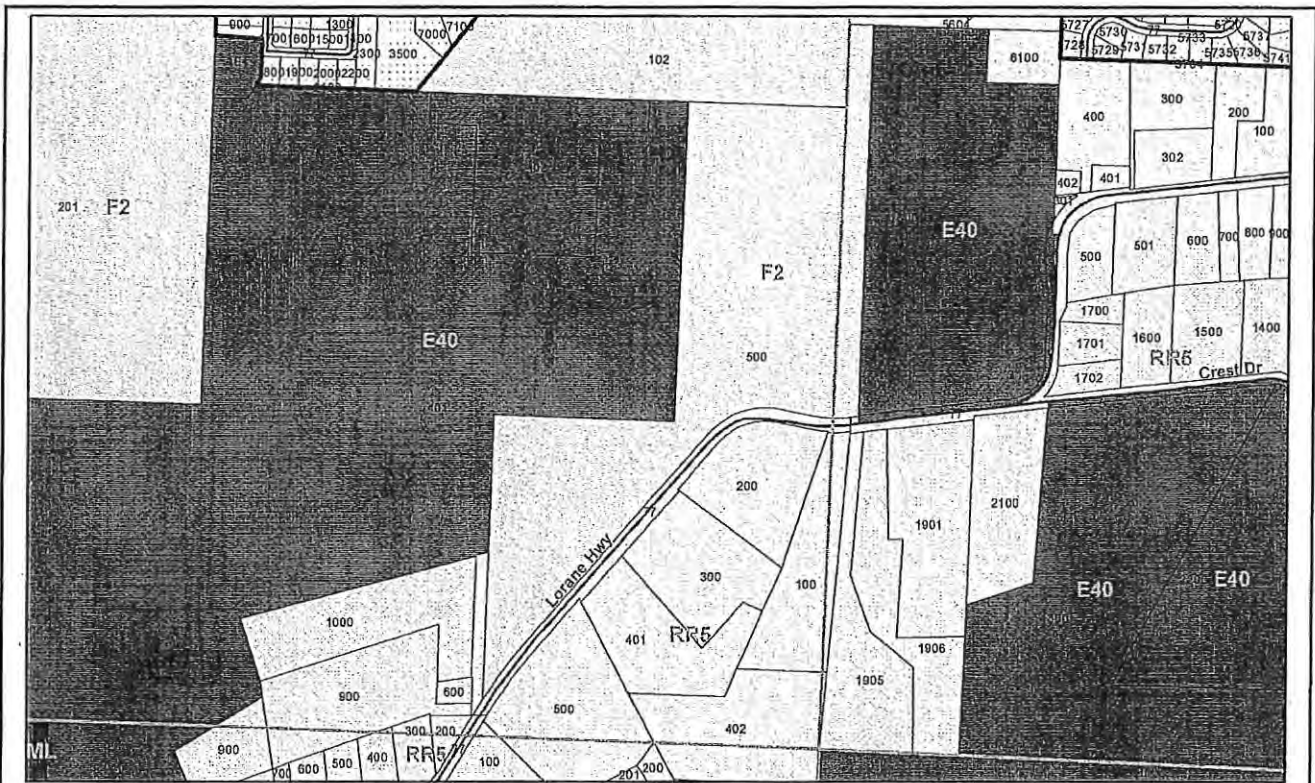
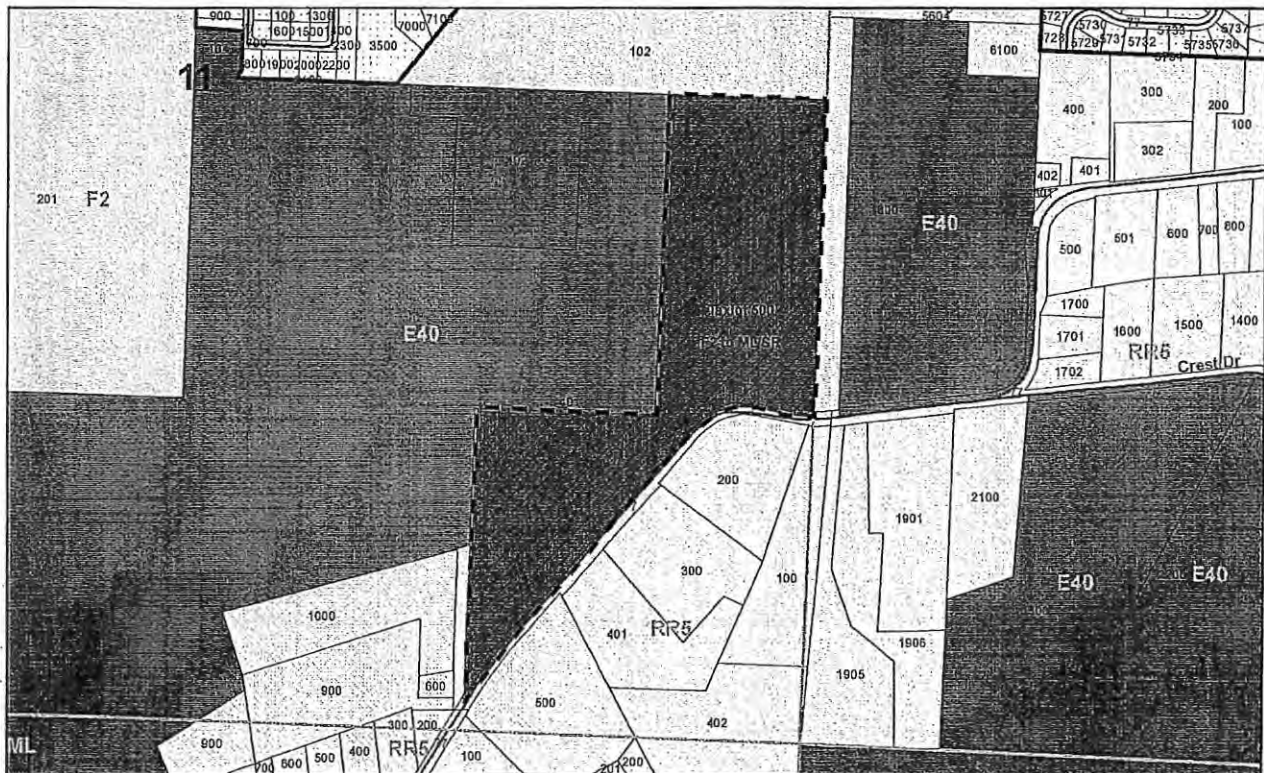


Exhibit B



Existing Zoning Designation



Change being enacted by No. 509-PA 11-05501 on Official Zone Map 1804

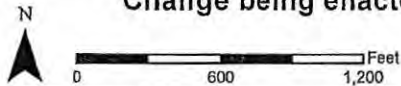


Exhibit C: Kohnen Tract Marginal Lands Supporting Findings

Supplemental Findings addressing issues following County Board Hearing:

Ensuring domestic well sustainability

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

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

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

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

Promoting fire protection (all applications):

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

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

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

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

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

Adequacy of groundwater supply (all applications).

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

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

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

one seen in the initial well. However, as can be seen in the well log data, the potential yield from that well could vary widely.

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

The Williams testimony is premised on the assumption that two code standards apply to this decision that do not, in fact, apply. See Ltr from J. Williams to J. Kendall (May 21, 2013) at 1-2. One standard is the no "significant adverse impacts" standard of LC 16.290(5)(a). This standard applies to certain discretionary uses on Rural Residential lands. It is not incorporated into the standards for this plan/zone change to Marginal Lands. The other is the aquifer testing study requirement in LC 13.050(13)(c)(i), which by its terms applies at the time of any proposed land division. Neither of these standards applies to this plan/zone change decision.

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

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

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

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

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

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

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

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

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

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

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

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

Goal 5 Big Game Issue

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

The policy is:

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

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

Staff has correctly noted that the County in the past has not applied Goal 5 directly in making plan and zone changes to ML. The assumption has been that the plan and

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

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

Related Big Game Issues

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

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

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

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

Issues related to Marginal Land statutory test for forestry

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

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

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

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

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

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

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

What soils tables to use

Attorney Malone on behalf of Goal One asserts that the applicant used the wrong soils tables to determine agricultural capability; the applicant should have used the same soils tables used by Forester Setchko to do his forest capability analysis. See Ltrr from Attny Malone to J. Kendall (June 4, 2013) at 3. This reflects a fundamental misunderstanding of the rules. The Marginal Lands statute prescribes using the SCS soils tables and classifications from 1983 (published in 1987) to determine agricultural capability. Those were the same soils tables used in 1992 County Board decision denying the nonresource plan change for the Blanton site, but finding that the site is not Agricultural Land based on the soil types. In an earlier case brought by the Goal One Coalition LUBA explained what soils data must be used in a Marginal Land application to determine agricultural capability. See *Just v. Lane County*, 49 Or LUBA 456 (2005). That is what the applicant did here.

Public Interest Standard

The findings below explain that this application is in the public interest if it otherwise meets the standards stated in the plan and the code for making the requested changes. To the extent that opponents have raised other issues that are not directly related to an approval standard, the Board considers those as raising a public interest issue, but rejects those as a basis for denying the application.

Consistency with Purposes of ML Zone

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

Purpose. The Marginal Lands Zone (ML-RCP) is intended to:

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

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

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

With respect to subsection (b), the rezoning will provide opportunities for more people to live in a rural environment and conduct farm and forestry uses on low value resource land. This follows from the finding above, that there dwelling will be allowed on somewhat smaller lots. This standard does not compel owners to conducts farm or forest uses. It provides the opportunity for that.

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

ML designation and expansion of the UGB

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

Basic Findings Addressing Applicable Standards:

I. Summary of the Proposal

This application proposes to change the Rural Comprehensive Plan (RCP) designation from Forest to Marginal Lands and the zoning from F-2, Impacted Forest, to ML, Marginal Lands, for about 31 acres of land located on the north side of Lorane Highway, near but not adjacent to the Eugene Urban Growth Boundary (UGB). The property appears on zoning map 1804.

With this approval, the property potentially could be approved with a single residence potentially served by EWEB.

Exhibit references are to exhibits in the application narrative.

A. Availability of Marginal Land Designation

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

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

“Before turning to the specific arguments, we provide a background concerning the marginal lands statutory scheme and its application in Lane County. Enacted in 1983, the marginal lands statute, ORS 197.247 (1991), permitted counties to authorize procedures for designation of certain land as “marginal land” and to permit certain uses on it that otherwise would not be permitted, if the land met certain specified criteria. The criteria at issue in the present case are found in ORS 197.247(1) (1991):

* * * *

Although the legislature repealed the marginal land statute in 1991, it enacted a statute to permit counties that had adopted marginal land procedures under that statute to continue to apply them. ORS 215.316. Lane County was one of the counties that had adopted marginal land procedures, and it has continued to utilize ORS 197.247 (1991) to designate land as marginal land.” [Footnote omitted] 216 Or App at 86-87.

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

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

B. Subject Property: Location; Ownership; History

This property is Assessor’s Map 18-04-11, TL 500. Basic information about the subject property is provided in the RLID Detailed Property report, attached as Exhibit A. RLID shows the property as 31.6 acres in size, zoned F-2, and vacant.

Relevant deed history is documented in Exhibit C. Kenneth Kohnen acquired the property in 1968. He sold the property to West Fair Associates in 1992. West Fair Associates transferred the property to Suess Family Health & Welfare Trust in 2009.

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

Page 1 of the Setchko Report describes the property:

The subject parcel is ±31.57 acres in size (see Exhibits 1&2). Terrain throughout the site is gentle to moderate, with slopes ranging from 5-35%. Clumps of timber are growing along the northern edge; the high point of the parcel. South of the timbered area, the terrain slopes down to a creek running southeast to southwest through the southern portion of the parcel. The area between the creek and timber is grassland over thin, rocky soils with scattered hardwoods growing on a south to southwest exposure. The creek is bordered by wetland areas, which cover several acres of the south portion of the tract. The parcel is composed of three soil types (see Exhibit 3). Over three quarters of the parcel is composed of the Panther silty clay loam (Soil Type 102C), most of the remainder of the parcel is Philomath cobbly silty clay (Soil Type 108C&F), both of these are poor forestland soils. The third soil type is Ritner cobbly silty clay loam (Soil Type 113E). This is a good forestland soil; it is in the northwest corner of the parcel where most of the standing timber is. However, the high water table and wetland conditions, combined with the thin, rocky soils covering most of the areas outside the northwest corner, are not good growing conditions for conifers.

Hardwood species including cottonwood, ash and oak are the predominant tree species on the parcel. The predominant conifer on the parcel is Douglas-fir; other species include ponderosa pine and incense cedar. Almost all of these trees are in the northern portion, growing in the Ritner soil type. Multiple brush species are present, including blackberry, scotch broom, poison oak, rose, hazel and vine maple.

C. The Neighborhood: Uses and Impacts

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

In general, this application is in a neighborhood that is a mix of Rural Residential, Forest, Agriculture, and Marginal Land designations.

The Kohnen tract is adjacent to Agriculture, Forest, and Rural Residential lands on its perimeter. The adjacent Agricultural and Forest lands are not developed. However, due to their size and zoning, each potentially could be developed with a dwelling. The Rural Residential lands adjacent to the south, across Lorane Highway, are developed with rural residences in a fairly dense pattern.

The requested ML designation of this property would allow the development of dwellings pursuant to LC 16.214(6).

D. Public Facilities and Services

This site is vacant and adjacent to Lorane Highway on its south. The RLID Detailed Property Report, Exhibit A, describes services. Fire protection is by Bailey-Spencer RFPD; ambulance is Eugene Fire & EMS; LTD provides bus service; EPUD is the electric provider; the school district is 4-J; the eastern half of this acreage is in the service area of EWEB, which absorbed the service area of the Hillside Water District. See EWEB map in Exhibit E. There is an EWEB main on Lorane Hwy at the southeast corner of this property.

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

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

During the five relevant years, this property was owned by Kenneth Kohnen and was vacant. The daughter of Kenneth Kohnen, Mary Smith, has documented the use of

the property during the 1978 through 1982 calendar years. She explains that her father was an accountant, not a farmer or forester. The subject property was not put to any farm use and was not managed for forest use during the time he owned it – 1968 to 1992. See Exhibit D, Ltr from M. Smith (April 13, 2011).

Furthermore, the subject property was not capable of producing \$10,000 in annual gross income from a forest operation during the 1978 1982 calendar years. Documentation supporting this conclusion appears in Exhibit B, the Report of Consulting Forester, Marc E. Setchko. The Setchko Report was updated at the conclusion of the Planning Commission proceeding to reflect the most recent Lane County soils data on productivity. Note that the Setchko Report contains a summary cover letter and Exhibits 1 through 10. The Setchko Report shows that the annual gross income from a forestry operation ranges between \$1,044 per year and \$1,486 per year, depending on which of the five years log prices is used for the calculation. In summary, the potential income ranges between about 10% and 15% of the minimum income needed to meet the test.

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

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

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

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

The subject property meets the soils test in (C) above. Documentation supporting this conclusion appears in Exhibit B, the Report of Consulting Forester, Marc E. Setchko. Note that the Setchko Report contains a summary cover letter and Exhibits 1 through 10. Exhibit 3 of the Setchko Report is an LCOG Soils Map. It shows that all four soil types are Class VI.

The Setchko Report also documents that the subject property is capable of producing 49.15 cubic feet of merchantable timber per acre per year. This is about half of the threshold amount of 85 cubic feet that qualifies for Marginal Land.

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

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

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

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

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

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

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

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

*(ii-ii) necessary to fulfill an identified public or community need for the intended result of the component or amendment; or
(iii-iii) necessary to comply with the mandate of local, state or federal policy or law; or*

Neither of the above applies.

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

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

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

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

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

16.214 Marginal Lands Zone (ML-RCP).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

The proposal is described in the whole of this application.

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

These standards have been addressed above.

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

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

The proposed Marginal Land designation will maintain the resource character of the property. However, it will allow low density residential development on the subject property, where there now is none. The subject property has the potential for up to three residences per LC 16.214(6). The immediately surrounding property is in resource use with very low density residential uses. When the subject property is developed it will generate the same kinds of externalities as the nearby residential

uses – noise, lights, stormwater, septic discharges, traffic and the like. However, these impacts will be no greater than the impacts generated by the existing adjacent uses.

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

See discussion above in I.D., which also draws from the RLID Detailed Property Report in Exhibit A. Much of this site is in the EWEB service area, as shown on Exhibit E. A maximum of three dwellings on this site would be allowed by the ML designation per LC 16.214(6). It can be served by the same rural services and facilities that serve the Rural Residential uses in the neighborhood. It has potential access to EWEB water. The dwellings potentially allowed on this site would be served with onsite septic.

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

In response to the Staff Report, the applicant prepared a full Goal 5 analysis in support of this proposal. See Exhibit F. The ESEE analysis is adopted together with this plan amendment, and is summarized below as part of the discussion of the Statewide Planning Goals. The Goal 5 analysis adequately addresses the impacts related to this standard.

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

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

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

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

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

C. Plan Amendment Standards in the Rural Comprehensive Plan:

RCP Goal Three: Agricultural Lands, Policy 14:

Land may be designated as marginal land if it complies with the following criteria:

a. The requirements of ORS 197.247, and

Compliance with the statute is addressed in Part II above.

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

Policies 11 and 12 are discussed below.

RCP Goal Four: Forest Lands, Policy 1:

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

Forest land shall include lands which are suitable for commercial forest uses including adjacent or nearby lands which are necessary to permit forest operations or practices and other forested lands that maintain soil, air, water, and fish and wildlife resources.

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

RCP Goal Four: Forest Lands, Policy 3:

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

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

RCP Goal Four: Forest Lands, Policy 12:

Encourage the conversion of under-productive forest lands through[s]ilvicultural practices and reforestation efforts.

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

RCP Goal Five: Flora and Fauna, Policy 11:

Oregon Department of Fish and Wildlife recommendations on overall residential density for protection of big game shall be used to determine the allowable number of residential units within regions of the County. Any density above that limit shall be considered to conflict with Goal 5 and will be allowed only after resolution in accordance with OAR 660-16-000. The County shall work Oregon Department of

Fish and wildlife officials to prevent conflicts between development and Big Game Range through land use regulation in resource areas, siting requirements and similar activities which are already a part of the County's rural resource zoning program.

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

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

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

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

RCP Goal Five: Flora and Fauna, Policy 12:

If uses are identified (which were not previously identified in the Plan) which would conflict with a Goal 5 resource, an evaluation of the economic, social, environmental and energy consequences shall be used to determine the level of

protection necessary for the resource. The procedure outlined in OAR 660-16-000 will be followed.

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

RCP Goal Eleven: Public Facilities, Policy 1:

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

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

RCP Goal Eleven: Public Facilities, Policy 2:

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

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

RCP Goal Eleven: Public Facilities, Policy 6:

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

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

IV. Application of the Statewide Planning Goals:

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

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

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

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

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

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

Goal 4 – Forest Land: To conserve forest lands by maintaining the forest land base and to protect the state's forest economy by making possible economically efficient forest practices that assure the continuous growing and harvesting of forest tree species as the leading use on forest land consistent with sound management of soil, air, water, and fish and wildlife resources and to provide for recreational opportunities and agriculture.

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

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

A complete Goal 5 analysis is included with the supporting materials and is intended to be adopted as an amendment to the plan in connection with the county approval.

Part A of the analysis summarizes what Goal 5 requires. Part B identifies the inventoried and acknowledged Goal 5 resources that are on the subject property, as reflected in county plan documents and inventories. The subject property is inventoried as having water resources and big game range. Part C is the ESEE analysis for the resources that are present. The conclusion is to allow the potentially conflicting use – very low density rural residential use. The complete Goal 5 analysis satisfies the Goal 5 requirements.

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

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

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

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

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

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

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

The phrase “areas of natural disasters and hazards” means “areas that are subject to natural events that are known to result in death or endanger the works of man, such as stream flooding, ocean flooding, ground water, erosion and deposition, landslides, earthquakes, weak foundation soils and other hazards unique to local or regional areas.” OAR 660-15-000. There are no such areas known on the subject property. The elevation of the site in the South Hills near Eugene avoids any potential flood hazards. None of the soil types present is described as being prone to landslides in the *SCS Lane County Soil Survey*.

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

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

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

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

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

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

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

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

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

Urban and rural development shall be guided and supported by types and levels of urban and rural public facilities and services appropriate for, but limited to, the needs and requirements of the urban, urbanizable, and rural areas to be served. A provision for key facilities shall be included in each plan. Cities or counties shall develop and adopt a public facility plan for areas within an urban growth boundary containing a population greater than 2,500 persons. To meet current and long-range needs, a provision for solid waste disposal sites, including sites for inert waste, shall be included in each plan. In accordance with ORS 197.180 and Goal 2, state agencies that provide funding for transportation, water supply, sewage and solid waste facilities shall identify in their coordination programs how they will coordinate that funding with other state agencies and with the public facility plans of cities and counties.

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

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

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

Table: Rural Public Facilities, Existing or Proposed	
Service	Provider
Fire	Bailey-Spencer RFPD
Police	Lane County Sheriff and State Police
Schools	Eugene School District 4J
Access	Lorane Hwy, a County Rural Major Collector at this point
Electric	EPUD
Telephone	Qwest Communications

Solid Waste	Private
Sewer	Individual Septic Systems (Proposed)
Water	EWEB or private well

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

A transportation plan shall (1) consider all modes of transportation including mass transit, air, water, pipeline, rail, highway, bicycle and pedestrian; (2) be based upon an inventory of local, regional and state transportation needs; (3) consider the differences in social consequences that would result from utilizing differing combinations of transportation modes; (4) avoid principal reliance upon any one mode of transportation; (5) minimize adverse social, economic and environmental impacts and costs; (6) conserve energy; (7) meet the needs of the transportation disadvantaged by improving transportation services, (8) facilitate the flow of goods and services so as to strengthen the local and regional economy; and (9) conform with local and regional comprehensive land use plans. Each plan shall include a provision for transportation as a key facility.

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

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

A plan or land use regulation amendment significantly affects a transportation facility if it:

(a) Changes the functional classification of an existing or planned transportation facility;

(b) Changes standards implementing a functional classification system;

(c) Allows types or levels of land uses which would result in levels of travel or access which are inconsistent with the functional classification of a transportation facility; or

(d) Would reduce the level of service of the facility below the minimum acceptable level identified in the TSP.

The proposed Marginal Land designation will not trigger this section of the rule. It will not have a significant effect on Lorane Highway as measured by any of the four standards listed above. Hence the proposed changes comply with Goal 12.

Goal 13 -- Energy Conservation: To conserve energy.

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

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

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

Goal 14 is not applicable. The Marginal Lands plan designation is a resource designation. The proposal is to change from one resource plan designation to another. Furthermore, the residential density allowed in the ML zoning is either 10 acres or 20 acres per unit. If the plan designation and zoning were considered to be a "rural" use rather than a "resource" use, this density range has been determined by the Supreme Court to be "rural" in character, not "urban." *1000 Friends of Oregon v. DLCD (Curry County)*, 301 Or 447, 501, 724 P2d 268 (1986). Therefore, a Marginal Land designation cannot run afoul of Goal 14.

Goals 15 to 19 -- Willamette Greenway and Coastal Goals

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

V. Zone Changes Standards in Lane Code – LC 16.252

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

or Order of the Board of County Commissioners or the Hearings Official in accordance with the procedures in this section.

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

16.003 Purpose.

This chapter is designed to provide and coordinate regulations in Lane County governing the development and use of lands to implement the Lane County Rural Comprehensive Plan. To these ends, it is the purpose of this chapter to:

- (1) Insure that the development of property within the County is commensurate with the character and physical limitations of the land and, in general, to promote and protect the public health, safety, convenience and welfare.*
- (2) Protect and diversify the economy of the County.*
- (3) Conserve the limited supply of prime industrial lands to provide sufficient space for existing industrial enterprises and future industrial growth.*
- (4) Conserve farm and forest lands for the production of crops, livestock and timber products.*
- (5) Encourage the provision of affordable housing in quantities sufficient to allow all citizens some reasonable choice in the selection of a place to live.*
- (6) Conserve all forms of energy through sound economical use of land and land uses developed on the land.*
- (7) Provide for the orderly and efficient transition from rural to urban land use.*
- (8) Provide for the ultimate development and arrangement of efficient public services and facilities within the County.*
- (9) Provide for and encourage a safe, convenient and economic transportation system within the County.*
- (10) Protect the quality of the air, water and land resources of the County.*
- (11) Protect life and property in areas subject to floods, landslides and other natural disasters and hazards.*
- (12) Provide for the recreational needs of residents of Lane County and visitors to the County.*
- (13) Conserve open space and protect historic, cultural, natural and scenic resources.*
- (14) Protect, maintain, and where appropriate, develop and restore the estuaries, coastal shorelands, coastal beach and dune area and to conserve the nearshore ocean and continental shelf of Lane County.*

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

specific standards that apply, then it is fair to conclude that it will also be consistent with the general purpose statements and be in the public interest.

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

Purpose. The Marginal Lands Zone (ML-RCP) is intended to:

(a) Provide an alternative to more restrictive farm and forest zoning.

(b) Provide opportunities for persons to live in a rural environment and to conduct intensive or part-time farm or forest operations.

(c) Be applied to specific properties consistently with the requirements of ORS 197.005 to 197.430 and the policies of the Lane County Rural Comprehensive Plan.

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

Exhibit D: Kohnen Tract ESEE Analysis

**IN SUPPORT OF
SUESS APPLICATION: KOHNEN SITE (31.6 ACRES); PA 11-5501
PLAN CHANGE FROM FOREST TO MARGINAL LANDS
ZONE CHANGE FROM F-2 TO ML**

Goal 5

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

To conserve open space and protect natural and scenic resources.

A. What Goal 5 requires.

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

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

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

(3) Local governments are not required to apply Goal 5 in consideration of a

¹ OAR 660-23-0010(5) states:

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

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

³ See OAR 660-023-0250(1).

PAPA unless the PAPA affects a Goal 5 resource. For purposes of this section, a PAPA would affect a Goal 5 resource only if:

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

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

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

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

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

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

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

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

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

then finding compliance. The first DLCD Staff Report was dated July 19, 1984 (hereafter July 19, 1984 DLCD Staff Report.). The Goal 5 review therein begins at page 124. The second DLCD Report was dated September 12, 1984. (hereafter Sept. 12, 1984 DLCD Staff Report.) The Goal 5 review therein begins at page 23.

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

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

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

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

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

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

Riparian Resources: The *Flora & Fauna Working Paper (1982) and Addendum (1983)* inventories Riparian resources. Riparian areas are inventoried to include all land within 100 feet of the banks of a Class 1 stream. *Addendum* at 7. There are no Class I streams on the subject property; Spencer Creek is not inventoried as a Class I stream.

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

Although the acknowledged county inventory of wetlands remains truncated, the NWI has been completed. The NWI maps show a large wetland area on the subject property, associated with KOHNEN TRACT ML ORDINANCE: Ex. D – ESEE ANALYSIS – Page 3

Spencer Creek, along the southern half of the property. Notwithstanding the county's failure to inventory more than the five major wetland areas as Goal 5 resources, all wetland areas, including mapped and unmapped wetlands, are protected by federal and state law. They are protected from filling as "waters of the United States" under 33 USC §1344 and as "waters of the State" under ORS 196.800(14).

Sensitive Fish and Waterfowl Areas: The inventory of these sites appears in the *Flora & Fauna Working Paper Addendum (1983)* at 1-4. The subject property is not included on the inventory.

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

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

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

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

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

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

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

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

Based on all of the above, the Big Game maps show the northwest corner of the subject property to be Major Big Range, and the balance of the property to be Peripheral Big Game. Peripheral Big Game range is adjacent to the east and west. Adjacent to the south and southwest is Impacted Big Game range, due to the committed land status and RR-5 zoning.

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

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

The basic requirements for conducting the conflicts analysis and developing a program for inventoried and acknowledged resources is spelled out in OAR 660-023-0040. The introductory provisions in OAR 660-023-0040(1)⁶ explain that there are four steps in the ESEE process, that

⁶ OAR 660-023-0040(1) provides:

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

- (a) Identify conflicting uses;
- (b) Determine the impact area;
- (c) Analyze the ESEE consequences; and
- (d) Develop a program to achieve Goal 5.

the county has discretion in how it proceeds through the process so long as it completes each step, and that the analysis need not be lengthy or complex. The result should create a clear understanding of the conflicts and the consequences. The four steps in the ESEE process are:

- (a) Identify conflicting uses;
- (b) Determine the impact area;
- (c) Analyze the ESEE consequences; and
- (d) Develop a program to achieve Goal 5.

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

1. ESEE Analysis for Big Game Range

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

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

(a) Identify Conflicting Uses

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

⁷ OAR 660-023-0040(2) states:

and potential conflicting uses with Big Game Range must be determined. This requires looking at the uses allowed by the proposed ML zoning that are likely to be developed. For this site that would be one dwelling unit on the entire 31 acres.

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

At this site the ML zoning would allow one rural residential dwelling.

(b) Determine the Impact Area

The approach to determining the impact area is stated in OAR 660-023-0040(3).⁸ Here the impact area for the PAPA is the entire 31-acre area of the subject property itself, since the entire county is mapped as being in one of the three big game areas. As noted above, the generalized Wildlife Habitat Maps (Dec. 1980) adopted as part of the plan show the subject property substantially in the Peripheral Big Game category, with a small area of Major Big Game area in the northwest corner.

It is worth noting, for purposes of this analysis, that the subject property is in an area of relatively

Identify conflicting uses. Local governments shall identify conflicting uses that exist, or could occur, with regard to significant Goal 5 resource sites. To identify these uses, local governments shall examine land uses allowed outright or conditionally within the zones applied to the resource site and in its impact area. Local governments are not required to consider allowed uses that would be unlikely to occur in the impact area because existing permanent uses occupy the site. The following shall also apply in the identification of conflicting uses:

(a) If no uses conflict with a significant resource site, acknowledged policies and land use regulations may be considered sufficient to protect the resource site. The determination that there are no conflicting uses must be based on the applicable zoning rather than ownership of the site. (Therefore, public ownership of a site does not by itself support a conclusion that there are no conflicting uses.)

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

⁸ OAR 660-023-0040(3) states:

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

dense residential development and small parcels. The Eugene UGB is very close to the north. Adjacent to the south of the property are committed lands that extend to the east, west and south, and comprise hundreds of acres of Impacted Big Game habitat, due the dense residential development. Looking at the larger picture, this site is a part of an island of several hundred acres that is completely surrounded by urban development on the north, rural residential zoning on the east and south, and ML zoning on the west. This adjacent and nearby development degrades the value of the habitat on the subject property.

(c) Analyze the ESEE Consequences

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

The common context for analyzing the alternatives of allowing, limiting or prohibiting the conflicting use (residential development at a 20-acre or 10-acre density) is the existing development pattern on the surrounding property and its impact on big game management. As noted above, the subject property is part of an island of Big Game land that is surrounded by the city on the north, rural residential land on the east and south (Impacted Big Game range), and Marginal Lands on the west.

The adjacent and nearby Rural Residential lands have been written off by the county plan for big game range values. The urban land is also written off. In summary, the immediately adjacent neighborhood to the island of which the subject property is a part has been developed or parcelized to the point where it has little or no value as Big Game habitat.

Economic Consequences: Allowing the subject property to be developed with a single rural residential use would have short term economic impacts in terms of construction activity during the build out of subdivision infrastructure and individual residences. In the long term it

⁹ OAR 660-023-0040(4) states:

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

would increase the property value at this site with attendant impacts on tax revenues. It is unclear, however, whether there would be a net increase in value countywide.

The impacts of the single residential use on big game resources would be nominal, for the reason that the subject property is part of an island in a sea of land that already has been determined to have little or no value as habitat. What is important for Big Game is having large contiguous acres of undisturbed forest land. That does not exist here.

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

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

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

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

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

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

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

The proposed program to achieve the goal is to allow the conflicting low density residential use, a single dwelling, that would come with the ML designation. The subject property is located in an area that has very limited value as Big Game habitat, due to existing development. Allowing one dwelling on the subject property will have no appreciable effect on Big Game habitat in this part of

the county.

2. ESEE Analysis for Groundwater Resources

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

Groundwater will not be the source for domestic water supply for the single dwelling allowed by the ML zoning on this site. A substantial portion of this site is within the EWEB service area, therefore, groundwater will not be used, and there is no potential conflict with this Goal 5 resource.

3. ESEE Analysis for Surface Water Resources and Watershed Resources

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

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

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

Only one conflict is identified by the plan’s ESEE analysis as a watershed conflict, as opposed to a surface water or groundwater conflict. That is “contamination or possible contamination of surface water supplies used for domestic purposes.” *Id.* at 5. See also July 19, 1984 DLCD Staff Report at 174. The plan found two places where that conflict exists. One is from forestry related practices on federal, state and private timber lands. The other is from residential development in

KOHNEN TRACT ML ORDINANCE: Ex. D – ESEE ANALYSIS – Page 10

the Clear Lake area, which is in the watershed of the Heceta Water District. *Id.* at 5-6. The plan conducts no ESSE analysis for forestry practices for the reason that the county has so little control over these practices. And it conducts no ESEE analysis of the Clear Lake situation due to inadequate data. *Id.* at 5-6.

The working paper maps drainage basins and lists the principal streams in Lane County. As noted above, the subject property is located in the Spencer Creek basin of the Long Tom River Basin. See *id.* at Map 2 and Appendix B. Spencer Creek runs through the property adjacent to the north site of Crest Drive.

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

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

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

(a) Identify Conflicting Uses

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

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

In summary, potential impacts of very low density rural residential development on watersheds and surface waters are not conflicts identified in the acknowledged Goal 5 program. Furthermore, some might argue that multiple smaller ownerships of this larger parcel might encourage small scale farming, as compared the site remaining unused, and farm use might impact the watershed and surface waters. However, Goal 5 Rule does not require considering the

impacts of agricultural uses. “Local governments are not required to consider agricultural practices as conflicting uses.” OAR 660-23-0010(1).

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

End

LIST OF EXHIBITS FOR KOHNEN MARGINAL LANDS APPLICATION

- A. RLID Detailed Property Report
- B. Report of Consulting Forester, Marc E. Setchko (6 pages with Exhibits 1 to 10)
 - Exhibit 1: Air Photo showing subject property
 - Exhibit 2: Assessor's Map: 18-04-11, TL 500
 - Exhibit 3: LCOG Soils Map: 18-04-11, TL 500
 - Exhibit 4: Or Dept Forestry, "Land Use Planning Notes, No. 3, April 1998, Updated for Clarity April 2010
 - Exhibit 5: Ltrr from D. Morman, Director, Forest Resources Planning Program, Dept of Forestry, to K. Howe, Lane County Land Management Division (Nov. 21, 2008)
 - Exhibit 6: Lane County Forest Soil Ratings
 - Exhibit 7: Lane County Soil Ratings for Forestry and Agriculture, Lane County Land Management Division (Aug. 1997), page 5
 - Exhibit 8: Lane County Soil Ratings for Forestry and Agriculture, Lane County Land Management Division (Aug. 1997), page 2
 - Exhibit 9: Douglas fir Empirical Yield Table
 - Exhibit 10: Douglas fir Log Prices 1978-1982, 1983
- C. Relevant Deeds for Property
 - C.1. C. Robert Suess to Suess Family Health & Welfare Trust, Instr. 053282 (9/16/2009)
 - C.2. Kenneth Kohnen to West Fair Assoc., Instr. 9155776 (11/13/1992)
 - C.3. Vernon Iverson to Kenneth Kohnen, Instrument 29897 (6/24/1968)
 - C.4. Fred Dauber to Vernon Iverson and Kenneth Kohnen, Instr. 7611276 (6/7/1968)
- D. Ltrr from M. Smith to B. Kloos (April 13, 2011)(documenting use of property)
- E. EWEB Service Area Map
- F. Goal 5 ESEE analysis to be incorporated in to the comprehensive plan.

↳ D, ATTACHED TO ORDINANCE

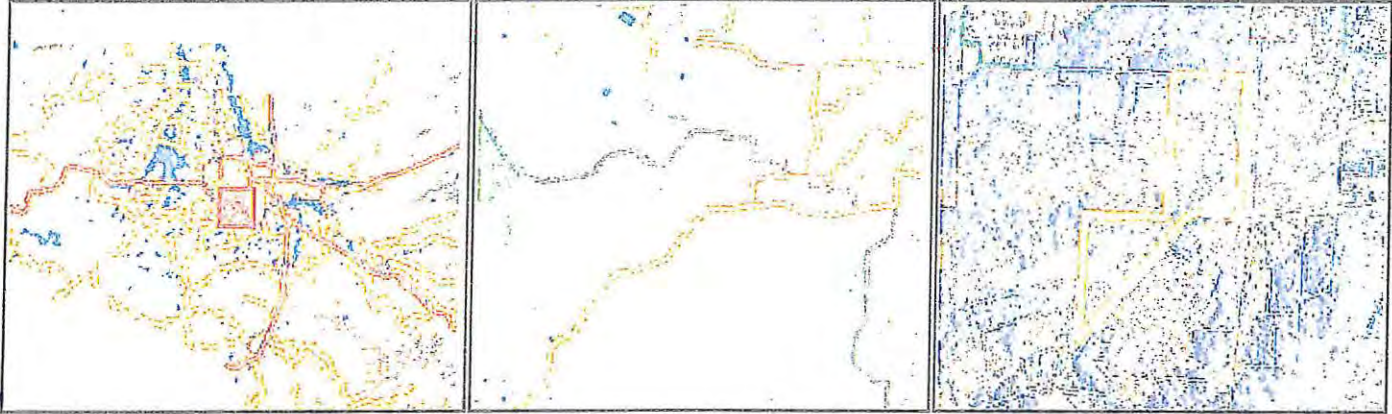
Detailed Property Report

Site Address N/A
 Map & Taxlot #18-04-11-00-00500
 SIC N/A
 Tax Account # 0724680

Property Owner 1
 SUESS FAMILY HEALTH & WELFARE TRUST
 1183 W 15TH AVE
 EUGENE, OR 97402

Approx. taxlot acreage 31.61
 Tax account acreage 31.57

Map & Taxlot # 1804110000500



General Taxlot Characteristics

Geographic Coordinates

State Plane (X-Y)
 X 4229322 Y 866610
 Latitude/Longitude
 Latitude 44.0146 Longitude -123.1306

Zoning

Zoning Jurisdiction Lane County
 Parent Zone F2 IMPACTED FOREST

Land Use

General Land Use
 Code Description
 V Vacant
 Detailed Land Use
 Code Description
 9100 Vacant, Unused, Undeveloped Land

Taxlot Characteristics

Incorporated none
 City Limits
 Urban Growth none
 Boundary
 Year Annexed N/A
 Annexation # N/A
 Approximate Taxlot Acreage 31.61
 Approx Taxlot Sq Footage 1,376,932
 2000 Census Tract 4402
 2000 Census Block Group 1
 Plan Designation FOREST
 Eugene Neighborhood N/A
 Metro Area No
 Nodal Dev Area
 Eugene Historic N/A
 Property Name
 Historical Landmark? No
 National Historical Register? No

EXHIBIT A

Service Providers

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

Environmental Data

FEMA Flood Hazard Zone(s)

CodeDescription

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

FIRM Map Number 41039C1120 F ([tif](#) | [pdf](#))
 Community Number data not available
 Post-FIRM Date data not available
 Panel Printed? No

Soils

Soil Map Unit Number	Soil Type Description	% of Taxlot	Ag Class	Hydric
102C	PANTHER SILTY CLAY LOAM, 2 TO 12 PERCENT SLOPES	77%	6	Yes
108C	PHILOMATH COBBLY SILTY CLAY, 3 TO 12 PERCENT SLOPES	3%	6	No
108F	PHILOMATH COBBLY SILTY CLAY, 12 TO 45 PERCENT SLOPES	16%	6	No
113E	RITNER COBBLY SILTY CLAY LOAM, 12 TO 30 PERCENT SLOPES	4%	6	No

Schools

School	CodeName
School District	4J <u>EUGENE</u>
Elementary School	508 <u>Crest Drive</u>
Middle School	4554 <u>Arts & Tech. Academy</u>
High School	540 <u>Churchill</u>

Political Districts

Election Precinct	100004	State Representative	8
City Council Ward	N/A	District	
City Councilor	N/A	State Representative	<u>Paul Holvey</u>
County Commissioner District	1	West State Senate District	4
County Commissioner	<u>William Fleenor</u>	State Senator	<u>Floyd Prozanski</u>
EWEB Commissioner	N/A		
LCC Board Zone	4		

Tax Statements (current and previous tax years)

ACCOUNT#: 0724680

View tax statement(s) for: 2010 2009

Owner/Taxpayer

Owners

Owner	Address	City/State/Zip
SUESS FAMILY HEALTH & WELFARE TRUST	1183 W 15TH AVE	EUGENE, OR 97402

Taxpayer

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

Data source: Lane County Assessment and Taxation

Account Status

Status Active Account Current Tax Year

Account Status	none
Remarks	none
Special Assessment Program	N/A

Data source: Lane County Assessment and Taxation

General Tax Account Information

Tax Account Acreage	31.57
Fire Acres	N/A
Property Class	400 TRACT, VACANT
Statistical Class	N/A
Neighborhood Code	20663
Category	Land and Improvements

Data source: Lane County Assessment and Taxation

Township-Range-Section / Subdivision Data

Subdivision Type	N/A	Subdivision Name	N/A	Subdivision	N/A
				Number	
Phase	N/A	Lot/Tract/Unit #	TL 00500	Recording	N/A
				Number	

Data source: Lane County Assessment and Taxation

Property Values & Taxes

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

Real Market Value (RMV)

Total Assessed Value Tax

Year	Land	Improvement	Total		
2010	\$150,823	\$0	\$150,823	\$56,119	\$ 696.89
2009	\$152,347	\$0	\$152,347	\$54,484	\$ 681.49
2008	\$149,360	\$0	\$149,360	\$52,897	\$ 661.83
2007	\$133,358	\$0	\$133,358	\$51,356	\$ 638.75
2006	\$106,687	\$0	\$106,687	\$49,860	\$ 634.11
2005	\$85,350	\$0	\$85,350	\$48,408	\$ 607.55
2004	\$77,591	\$0	\$77,591	\$46,998	\$ 572.91
2003	\$74,607	\$0	\$74,607	\$45,629	\$ 556.97
2002	\$64,876	\$0	\$64,876	\$44,300	\$ 561.03
2001	\$67,580	\$0	\$67,580	\$43,010	\$ 511.62
2000	\$63,750	\$0	\$63,750	\$41,757	\$ 513.54
1999	\$46,840	\$0	\$46,840	\$40,541	\$ 441.69
1998	\$39,360	\$0	\$39,360	\$39,360	\$ 402.98
1997	\$38,590	\$0	\$38,590	\$38,590	\$ 409.30
1996	\$38,590	\$0	\$38,590	\$38,590	\$ 380.13
1995	\$42,880	\$0	\$42,880	\$42,880	\$ 429.27

Current Year Assessed Value \$56,119
Less Exemption Amount * N/A
Taxable Value \$56,119
Frozen Assessed Value *

Data source: Lane County Assessment and Taxation

Tax Code Area & Taxing Districts

Lane County Assessment & Taxation Billing Rate Document





Tax Code Area (Levy Code) for current tax year 00470


Taxing Districts for TCA 00470

BAILEY SPENCER RURAL FIRE PROTECTION DIS
EUGENE SCHOOL DISTRICT 4J
LANE COMMUNITY COLLEGE
LANE COUNTY
LANE EDUCATION SERVICE DISTRICT

Data source: Lane County Assessment and Taxation

Sales & Ownership Changes

Sale Date	Sale Price	Doc #	Image	Analysis Code	Multiple Accts?	Grantor(s)	Grantee(s)
09/16/2009	\$0	2009-53282		8	No	SUESS C ROBERT	SUESS FAMILY HEALTH & WELFARE TRUST
09/11/2007	\$0	2007-63381		8	No	SUESS CO	SUESS C ROBERT
01/14/2002	\$0	2002-3425		8	Yes	SUESS CHARLES R & SHARON L ETAL	SUESS CO
10/08/1993	\$45,000	1993-64593		7	data not available	SUESS, C ROBERT SR	data not available

11/13/1991	\$74,200	1991-55776		0	data not available	KOHNEN, KENNETH H	data not available
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Data source: Lane County Assessment and Taxation



Marc E. Setchko
CONSULTING FORESTER

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

FOREST PRODUCTIVITY AND INCOME ANALYSIS

For

Martin C. Peets

SUBJECT PARCEL: KOHNEN TRACT: ASSESSORS MAP NO. 18-04-11

Tax Lot 500, totaling ±31.57 acres

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

I. INTRODUCTION

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

1. The subject property is not capable of producing 85 cu.ft./ac./yr. of merchantable timber volume. This has been determined by Lane County, and the State of Oregon, to be the measuring parameter for marginal soils west of the Cascade Range, as defined in ORS 197.247 (1)(b)(C).
2. The income generated from the subject property averages less than \$10,000/year, based on 1978 through 1982 log prices. This level of income meets the following statutory test for Marginal Lands: ORS 197.247 (1)(a): The proposed marginal land was not managed, during three of the five calendar year preceding January 1, 1983, as a forest operation capable of producing an average, over the growth cycle, of \$10,000 in annual gross income.

II. SITE INFORMATION

The subject parcel is ±31.57 acres in size (see Exhibits 1&2). Terrain throughout the site is gentle to moderate, with slopes ranging from 5-35%. Clumps of timber are growing along the northern edge; the high point of the parcel. South of the timbered area, the terrain slopes down to a creek running southeast to southwest through the southern portion of the parcel. The area between the creek and timber is grassland over thin, rocky soils with scattered hardwoods growing on a south to southwest exposure. The creek is bordered by wetland areas, which cover several acres of the south portion of the tract. The parcel is composed of three soil types (see Exhibit 3). Over three quarters of the parcel is composed of the Panther silty clay loam (Soil Type 102C), most of the remainder of the parcel is Philomath cobbly silty clay (Soil Type 108C&F), both of these are poor forestland soils. The third soil type is Ritner cobbly silty clay loam (Soil Type 113E). This is a good forestland soil; it is in the northwest corner of the parcel where most of the standing timber is. However, the high water table and wetland conditions, combined with the thin, rocky soils covering most of the areas outside the northwest corner, are not good growing conditions for conifers.



Hardwood species including cottonwood, ash and oak are the predominant tree species on the parcel. The predominant conifer on the parcel is Douglas-fir; other species include ponderosa pine and incense cedar. Almost all of these trees are in the northern portion, growing in the Ritner soil type. Multiple brush species are present, including blackberry, scotch broom, poison oak, rose, hazel and vine maple.

III. RESULTS OF PRODUCTIVITY AND INCOME CALCULATIONS

PRODUCTIVITY - Cubic feet per acre per year growth.

The timber productivity (cu.ft./ac./yr.) figures for Douglas-fir were obtained from a combination of sources approved by the Oregon Department of Forestry (see Exhibit 4). These sources are 1) August 1997 *Lane County Soil Ratings for Forestry and Agriculture* produced by the Lane County Council of Governments, 2) February 8, 1990, *Forest Lands Soils Ratings - Revisions* produced by the Oregon Department of Forestry for the Oregon Department of Land Conservation and Development except where superseded by the August 1997 Lane County Soils Ratings for Forestry and Agriculture, and 3) January 27, 1989 forest soils rating submitted to the Oregon Department of Land Conservation and Development by the Oregon Department of Forestry except where superseded by the February 8, 1990 Forest Lands Soils Ratings and the August 1997 Lane County Soils Ratings for Forestry and Agriculture. No further review or approval of site productivity determinations are needed when these data sources are used.

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

Douglas-fir was used because it is the dominant conifer species on the property and will grow in pure stands. All of the productivity figures shown on the sources listed above assume a fully stocked stand of the tree species being measured. Grand fir could possibly grow on this site; however, none exists on the parcel. Grand fir does not grow in pure stands; it is a minor species which grows intermixed with Douglas-fir. The only other species suited to this site are incense cedar and ponderosa pine. Both of these species are growing on the parcel. Incense cedar does not grow as fast as Douglas-fir, therefore it was not considered. Ponderosa pine, which will grow in pure stands, was not considered because there are no credible growth tables for Willamette Valley Pine (see Exhibit 5, page 3). In western Oregon locations, such as the parcel in question, Douglas-fir is the dominant species, even though ponderosa pine is growing on the site. Hardwood species, such as oak and madrone are slow growing; alder, which is a fast growing tree, will not grow on the site due to moisture (rainfall) constraints.

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

Douglas-fir cubic foot productivity numbers are available for all of the above listed soils. The numbers shown below were obtained from the aforementioned tables (see above). Since the productivity numbers, of some soils, vary from table to table, the protocol described above was followed to obtain specific cubic foot production numbers.

SOIL RATINGS for Douglas-fir (see Exhibits 6&7)

Soil Unit	Acres	Site Index	Cf/Ac Per Yr	Total Cu.Ft. Productivity
102C Panther silty clay loam	24.31	NA	45	1,093.95
108C Philomath cobbly silty clay	0.95	NA	45	42.75
108F Philomath cobbly silty clay	5.05	NA	45	227.25
113E Ritner cobbly silty clay loam	<u>1.26</u>	107	149	<u>187.74</u>
	31.57			1,551.69

Total – 1,551.69 cu.ft. ÷ 31.57 acres = 49.15 cubic feet per acre per year

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

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

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

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

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

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

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

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

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

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

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

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

102C - Panther $45 \text{ cf/ac/yr} \div 136 \text{ cf/ac/yr} = .33 \times 19,972 \text{ bf/ac} = 6,591 \text{ bf/ac}$
 108C&F - Philomath $45 \text{ cf/ac/yr} \div 136 \text{ cf/ac/yr} = .33 \times 19,972 \text{ bf/ac} = 6,591 \text{ bf/ac}$

Ritner cobbly silty clay loam (Soil Type 113E) with a site index of 107 will produce 23,005 board feet per acre at 50 years of age (see Exhibit 9), assuming fully stocked stands.

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

Volume Total for Entire 31.57 acres	Total Volume (Board Feet)
102C – Panther silty clay loam	24.31 ac @ 6,591 bf/ac 160,227
108C - Philomath cobbly silty clay	0.95 ac @ 6,591 bf/ac 6,261
108F – Philomath cobbly silty clay	5.05 ac @ 6,591 bf/ac 33,285
113E – Ritner cobbly silty clay loam	<u>1.26 ac @ 23,005 bf/ac 28,986</u>
Totals	31.57 ac 228,759

INCOME PROJECTIONS YEAR BY YEAR

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

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

1978 Total Volume - 228.76 MBF (thousand board feet)

91.50 MBF of 2 SAW @ \$276/MBF	\$25,254
114.38 MBF of 3 SAW @ \$235/MBF	26,879
22.88 MBF of 4 SAW @ \$190/MBF	<u>4,347</u>
Total Projected Gross Revenue	\$56,480
AVERAGE GROSS INCOME -- \$56,480 ÷ 50 YEARS = \$1,130/YEAR	

1979 Total Volume - 228.76 MBF (thousand board feet)

91.50 MBF of 2 SAW @ \$338/MBF	\$30,927
114.38 MBF of 3 SAW @ \$296/MBF	33,856
22.88 MBF of 4 SAW @ \$269/MBF	<u>6,155</u>
Total Projected Gross Revenue	\$70,938
AVERAGE GROSS INCOME -- \$70,938 ÷ 50 YEARS = \$1,419/YEAR	

1980 Total Volume - 228.76 MBF (thousand board feet)

91.50 MBF of 2 SAW @ \$354/MBF	\$32,391
114.38 MBF of 3 SAW @ \$310/MBF	35,458
22.88 MBF of 4 SAW @ \$281/MBF	<u>6,429</u>
Total Projected Gross Revenue	\$74,278
AVERAGE GROSS INCOME -- \$74,278 ÷ 50 YEARS = \$1,486/YEAR	

1981 Total Volume - 228.76 MBF (thousand board feet)

91.50 MBF of 2 SAW @ \$346/MBF	\$31,659
114.38 MBF of 3 SAW @ \$292/MBF	33,399
22.88 MBF of 4 SAW @ \$263/MBF	<u>6,017</u>
Total Projected Gross Revenue	\$71,075
AVERAGE GROSS INCOME -- \$71,075 ÷ 50 YEARS = \$1,422/YEAR	

1982 Total Volume - 228.76 MBF (thousand board feet)

91.50 MBF of 2 SAW @ \$267/MBF	\$24,431
114.38 MBF of 3 SAW @ \$208/MBF	23,791
22.88 MBF of 4 SAW @ \$174/MBF	<u>3,981</u>

Total Projected Gross Revenue \$52,203

AVERAGE GROSS INCOME -- \$52,203 ÷ 50 YEARS = **\$1,044/YEAR**

1978-1982 AVERAGE Total Volume - 228.76 MBF (thousand board feet)

91.50 MBF of 2 SAW @ \$316/MBF	\$28,914
114.38 MBF of 3 SAW @ \$268/MBF	30,654
22.88 MBF of 4 SAW @ \$235/MBF	<u>5,377</u>

Total Projected Gross Revenue \$64,945

AVERAGE GROSS INCOME -- \$64,945 ÷ 50 YEARS = **\$1,299/YEAR**

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

IV. CONCLUSION

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

1) The subject property produces **49.15 cubic feet per acre per year**. This is less than 85 cu.ft./ac./yr. of merchantable timber production, the parameter used in those counties west of the summit of the Cascade Range, as that term is defined in ORS 477.001(21).

2) The estimated gross income would have ranged from a low of \$52,203 in 1982 to a high of \$74,278 in 1980. **The average annual gross income would have ranged from a low of \$1,044/year in 1982 to a high of \$1,486/year in 1980. These figures are based on a 50 year rotation of fully stocked stands of timber covering the entire parcel.** All of the above figures are less than \$10,000/year, therefore the property meets the statutory test for Marginal Lands: ORS 197.247(1)(a) "The proposed marginal land was not managed during three of the five calendar years preceding January 1, 1983, as part of a forest operation capable of producing an average, over the growth cycle, of \$10,000 in annual gross income".

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

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

Sincerely,



EXHIBIT 1

KOHNEN TRACT - ±31.57 acres

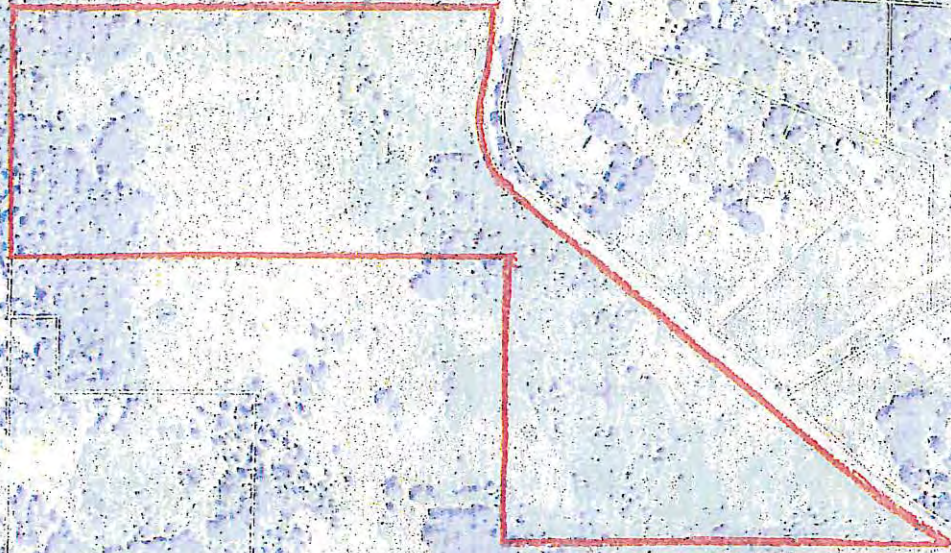


EXHIBIT 2

18-04-11
TL 500

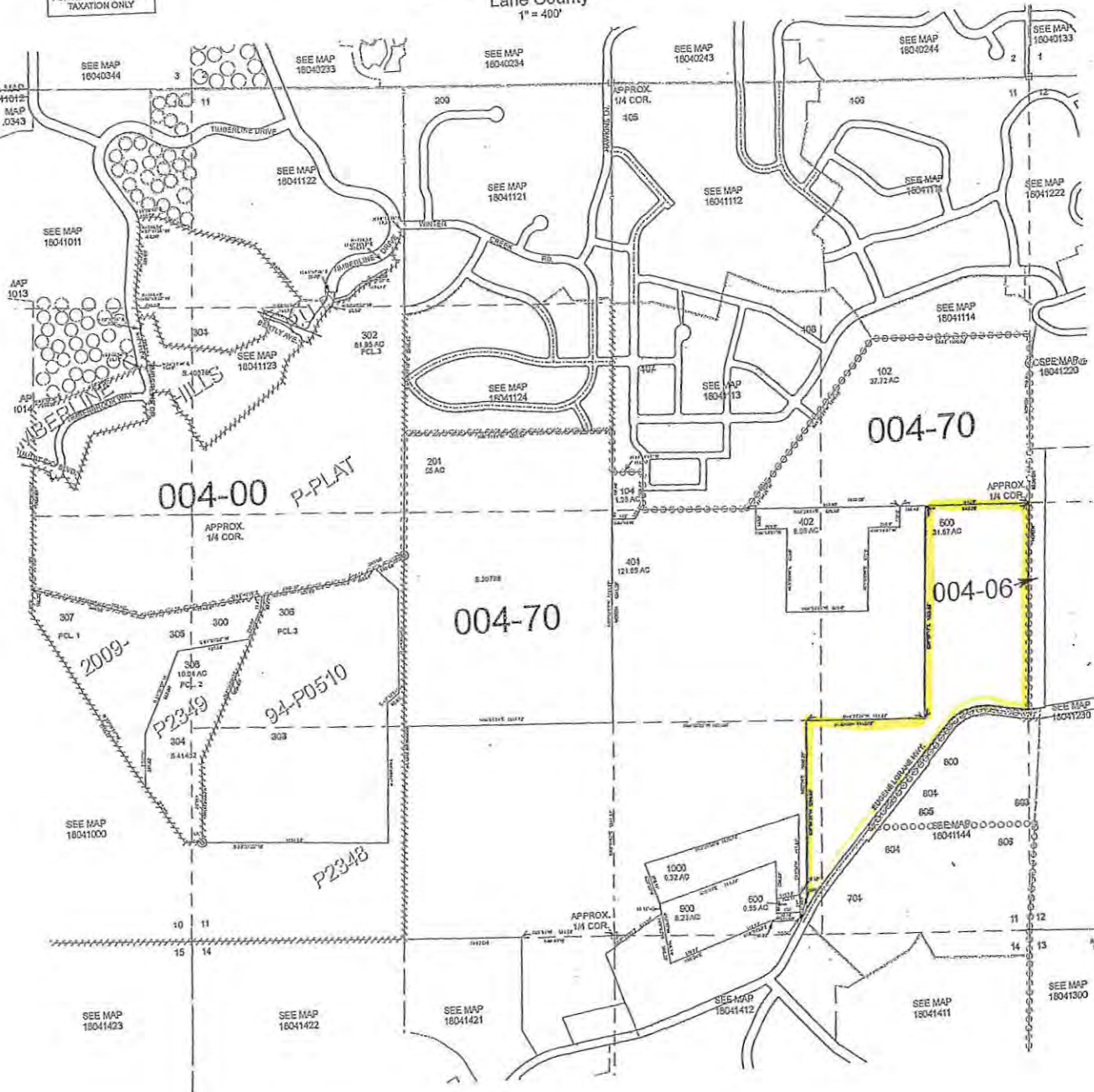
18041100

FOR ASSESSMENT AND TAXATION ONLY

SECTION 11 T.18S. R.4W. W.M.
Lane County
1" = 400'

GIS DATA
6/5/2010 9:57:59 AM: Katesb

- CANCELLED:
- 400
 - 700
 - 100
 - 101
 - 103
 - 105-108
 - 200
 - 300
 - 301
 - 701
 - 800-808
 - 303-305



18041100

PROJECT - LORANE

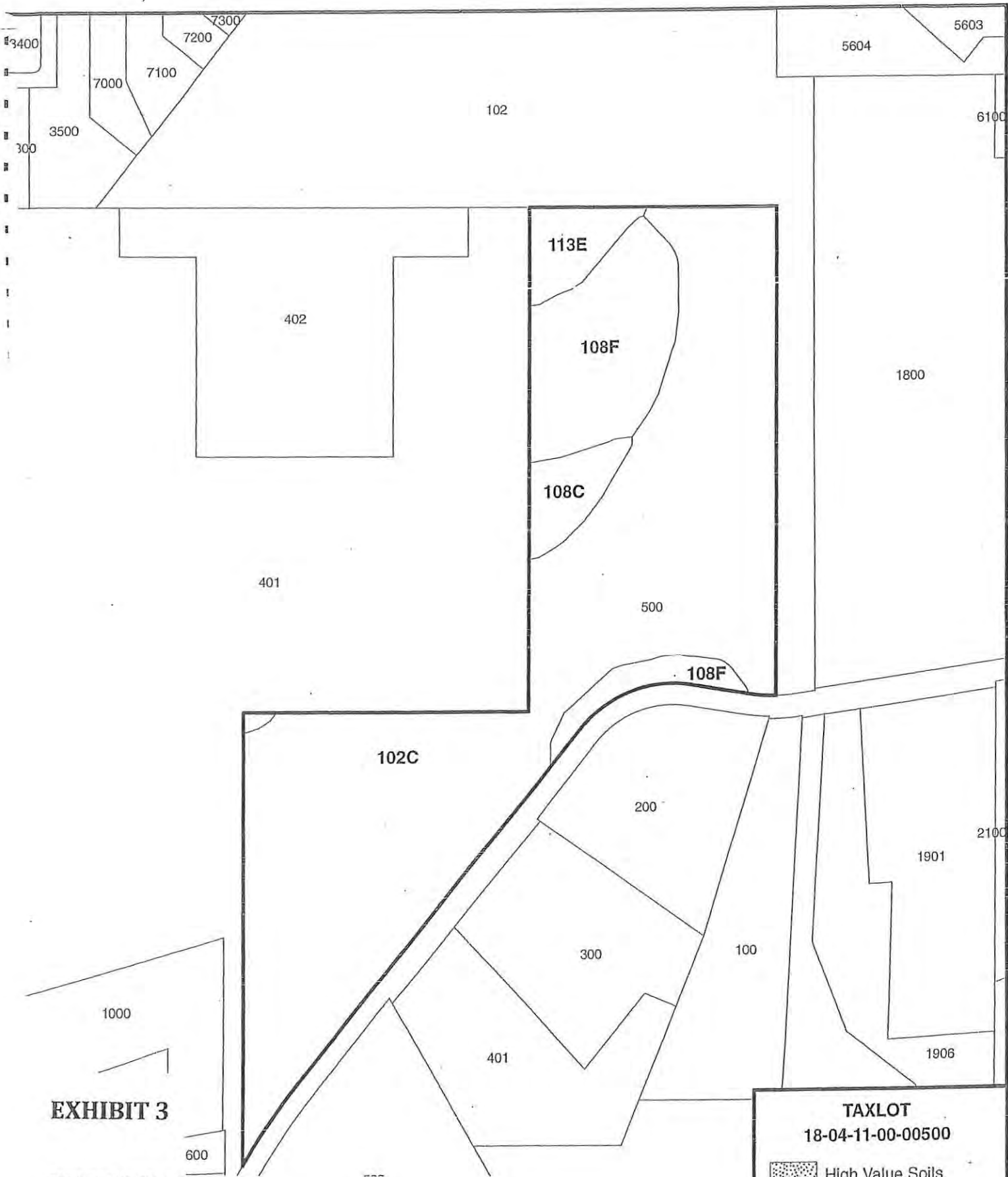






EXHIBIT 3

KOHNEN TRACT

- 102C Panther silty clay loam, 2-12%
- 108C Philomath cobbly silty clay, 3-12%
- 108F Philomath cobbly silty clay, 12-45%
- 113E Ritner cobbly silty clay loam, 12-30%

24.31 acres
 0.95 acres
 5.05 acres
1.26 acres
31.57 acres

TAXLOT
18-04-11-00-00500

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

1:4,000



"STEWARDSHIP IN FORESTRY"

LAND USE PLANNING NOTES

Number 3 April 1998

Updated for Clarity April 2010

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

[http://eqov.oregon.gov/ODF/STATE_FORESTS/FRP/RP_Home.shtml#Land Use Planning](http://eqov.oregon.gov/ODF/STATE_FORESTS/FRP/RP_Home.shtml#Land_Use_Planning).

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

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

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

Step 1: Using Established Data Sources

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

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



Oregon

Theodore R. Kulongoski, Governor

November 21, 2008

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

Department of Forestry

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



"STEWARDSHIP IN FORESTRY"

Dear Mr. Howe:

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

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

Applicable Administrative Rule Language:

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

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

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

Using the Best Possible Forest Site Productivity Information:

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

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

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

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

Lane County Data Sources of Comparable Quality

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

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

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

Ponderosa Pine in the Willamette Valley

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

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

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

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

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

Stockable Area

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

Limits on Department of Forestry Approvals

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


Oregon Forest Practices Act Minimum Site Productivity Requirements for Reforestation

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

Mr. Kent Howe
November 21, 2008
Page 5

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

Sincerely,

A handwritten signature in black ink, appearing to read "D. Morman", written over the word "Sincerely,".

David Morman, Director
Forest Resources Planning Program

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

EXHIBIT 6

LANE COUNTY FOREST SOIL RATINGS

Map Symbol	Soil Name	[1] Site Index	[2] Cubic Foot /Acre/Year
001A	Abiqua sicl, 0-3%	135	203
001B	Abiqua sicl, 3-5%	135	203
002E	Astoria sicl, 5-30%	130	193
003E	Astoria Variant sil, 3-30%	115	163
003G	Astoria Variant sil, 30-60%	115	163
004G	Atring-Rock outcrop complex, 30-60%	***	86**
005	Awbrig sicl	none	40**
006	Awbrig-Urban land complex	***	20**
007B	Bandon sl, 0-7%	105	145
007C	Bandon sl, 7-12%	105	145
007F	Bandon sl, 12-50%	105	145
008	Bashaw c	none	30**
009	Bashaw-Urban land complex	***	20**
010	Beaches	none	none
011C	Bellpine sicl, 3-12%	118	171
011D	Bellpine sicl, 12-20%	118	171
011E	Bellpine sicl, 20-30%	118	171
011F	Bellpine sicl, 30-50%	118	171
012E	Bellpine cob sicl, 2-30%	118	171
013F	Blachly cl, 30-50%	119	173
013G	Blachly cl, 50-70%	119	173
014E	Blachly sicl, 3-30%	127	188
014F	Blachly sicl, 30-50%	127	188
015E	Blachly-McCully cls, 3-30%	***	155
016D	Bohannon gr l, 3-25%	118*	171
016F	Bohannon gr l, 25-50%	118*	171
016H	Bohannon gr l, 50-90%	118*	171
017	Brallier muck, drained	none	none
018	Brallier muck, tidal	none	none
019	Brenner sicl	none	none
020B	Eriedwell cob l, 0-7%	108	150
021B	Bullards-Ferrelo loams, 0-7%	***	80
021C	Bullards-Ferrelo loams, 7-12%	***	80
021E	Bullards-Ferrelo loams, 12-30%	***	80
021G	Bullards-Ferrelo loams, 30-60%	***	80
022	Camas gr sl, occ flooded	none	40**
023	Camas-Urban land complex	---	20**
024	Chapman l	120	175
025	Chapman-Urban land complex	***	100**
026	Chehalis sicl, occ flooded	130	193

All ratings are taken from the "Single Phase Interpretation Sheets" (green sheets) published by the Soil Conservation Service (SCS) for the Lane County Area, Oregon except those marked **

All ratings are for Douglas Fir unmanaged, fully stocked stands.

* ratings for additional tree species are listed on SCS green sheets

** These estimated soils ratings are taken from an Office of State Forester

Memorandum, February 8, 1990, General File 7-1-1

*** multiple site indices; refer to the cu.ft./acre/yr column for a composite rating for this complex

[1] 50 year base

[2] volume produced at age of culmination

LANE COUNTY FOREST SOIL RATINGS

Map Symbol	Soil Name	Site Index [1]	Cubic Foot /Acre/Year [2]
077B	Marcola cob sicl, 2-7%	97	130
078	McAlpin sicl	125	184
079	McBee sicl	119	173
080F	McCully cl, 30-35%	125	184
080G	McCully cl, 50-70%	125	184
081D	McDuff cl, 3-25%	115	163
081F	McDuff cl, 25-50%	115	163
081G	McDuff cl, 50-70%	120	175
082C	Meda l, 2-12%	128	190
083B	Minniece sicl, 0-8%	112	158
084D	Mulkey l, 5-25%	90*	116
085	Natroy sicl	none	60**
086	Natroy sic	none	60**
087	Natroy-Urban land complex	***	40**
088	Nehalem sil	124	182
089C	Nekia sicl, 2-12%	115	163
089D	Nekia sicl, 12-20%	115	163
089E	Nekia sicl, 20-30%	115	163
089F	Nekia sicl, 30-50%	112	158
090	Nekoma sil	140	214
091D	Neskowin sil, 12-20%	109*	152
091E	Neskowin sil, 20-40%	109*	152
092G	Neskowin-Salander sil, 40-60%	***	205**
093	Nestucca sil	99	134
094C	Netarts fs, 3-12%	95	125
094E	Netarts fs, 12-30%	95	125
095	Newberg fsl	110	154
096	Newberg l	110	154
097	Newberg-Urban land complex	***	100**
098	Noti l	none	30**
099H	Ochrepts & Umbrepts, v. steep	***	130**
100	Oxley gr sil	none	80**
101	Oxley-Urban land complex	***	60**
102C	Panther sicl, 2-12%	none	45**
103C	Panther-Urban land complex, 2-12%	***	40**
104E	Peavine sicl, 3-30%	124	182
104G	Peavine sicl, 30-60%	124	182
105A	Pengra sil, 1-4%	none	45**
106A	Pengra-Urban land complex, 1-4%	***	30**
107C	Philomath sic, 3-12%	none	45**

All ratings are taken from the "Single Phase Interpretation Sheets" (green sheets) published by the Soil Conservation Service (SCS) for the Lane County Area, Oregon except those marked **

All ratings are for Douglas Fir unmanaged, fully stocked stands.

* ratings for additional tree species are listed on SCS green sheets

** These estimated soils ratings are taken from an Office of State Forester Memorandum, February 8, 1990, General File 7-1-1

*** multiple site indices; refer to the cu.ft./acre/yr column for a composite rating for this complex

[1] 50 year base

[2] volume produced at age of culmination

LANE COUNTY FOREST SOIL RATINGS

Map Symbol	Soil Name	[1] Site Index	[2] Cubic Foot /Acre/Year
108C	Philomath cob sic, 3-12%	none	45**
108F	Philomath cob sic, 12-45%	none	45**
109F	Philomath-Urban land complex, 12-45%	***	20**
110	Pits	none	none
111D	Preacher l, 0-25%	128*	190
111F	Preacher l, 25-50%	128*	190
112G	Preacher-Bohannon-Slickrock, 50-75%	***	185**
113C	Ritner cob sicl, 2-12%	102*	140
113E	Ritner cob sicl, 12-30%	102*	140
113G	Ritner cob sicl, 30-60%	102*	140
114	Riverwash	none	none
115H	Rock outcrop-Kilchis complex, 30-90%	***	34**
116G	Rock outcrop-Witzel complex, 10-70%	***	21**
117E	Salander sil, 12-30%	125*	184
118	Salem gr sil	114	162
119	Salem-Urban land complex	***	100**
120B	Salkum sil, 2-6%	119	173
121B	Salkum sil, 2-6%	126	186
121C	Salkum sicl, 8-16%	126	186
122	Saturn cl	104	143
123	Sifton gr l	110	154
124D	Slickrock gr l, 3-25%	137*	209
124F	Slickrock gr l, 25-50%	137*	209
125C	Steiber l, 3-12%	none	30**
125D	Steiber l, 12-20%	none	30**
125F	Steiber l, 20-50%	none	30**
126F	Tahkenitch l, 20-45%	120	175
126G	Tahkenitch l, 45-75%	112	158
127C	Urban land-Hazelair-Dixonville, 3-12%	***	45**
128B	Veneta l, 0-7%	108	150
129B	Veneta variant sil, 0-7%	128	190
130	Waldo sicl	none	45**
131C	Waldport fs, 0-12%	90	116
131E	Waldport fs, 12-30%	90	116
131G	Waldport fs, 30-70%	90	116
132E	Waldport fs, thin surf., 0-30%	none	29**
133C	Waldport-Urban land complex, 0-12%	***	20**
134	Wapato sicl	none	none
135C	Willakenzie cl, 2-12%	110	154
135D	Willakenzie cl, 12-20%	110	154

All ratings are taken from the "Single Phase Interpretation Sheets" (green sheets) published by the Soil Conservation Service (SCS) for the Lane County Area, Oregon except those marked **

All ratings are for Douglas Fir unmanaged, fully stocked stands.

* ratings for additional tree species are listed on SCS green sheets

** These estimated soils ratings are taken from an Office of State Forester

Memorandum, February 8, 1990, General File 7-1-1

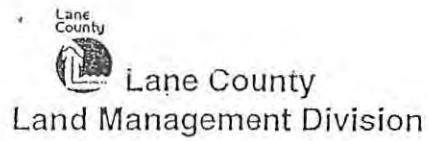
*** multiple site indices; refer to the cu.ft./acre/yr column for a composite rating for this complex

[1] 50 year base

[2] volume produced at age of culmination

EXHIBIT 7

Lane County
Soil Ratings for Forestry
and Agriculture



August 1997

ICOGS Prepared by
Lane Council of Governments

The logo for the Lane Council of Governments (ICOGS) consists of the letters "ICOGS" in a bold, stylized, outlined font. To the right of the logo, the text "Prepared by Lane Council of Governments" is written in a smaller, sans-serif font.

Lane County Soil Ratings for Forestry and Agriculture

ap nbol	Lane County Soil Map Unit	Douglas Fir Site Index	Cu. Ft./ Acre/ Year	Agricultural Capability Class	High Value Farmland
97	Newberg-Urban land complex	none		2	X
98	Noti loam	none		4	X
9H	Ochrepts & Umbrepts, very steep	none		--	
J0	Oxley gravelly silt loam	none		3	
J1	Oxley-Urban land complex	none		3	
2C	Panther silty clay loam, 2 - 12% slopes	none		6	
3C	Panther-Urban land complex, 2 - 12% slopes	none		6	
4E	Peavine silty clay loam, 3 - 30% slopes	125	184	6	
4G	Peavine silty clay loam, 30 - 60% slopes	125	184	6	
5A	Pengra silt loam, 1 - 4% slopes	none		3	X ¹
6A	Pengra-Urban land complex, 1 - 4% slopes	none		3	
7C	Philomath silty clay, 3 - 12% slopes	none		6	
8C	Philomath cobbly silty clay, 3 - 12% slopes	none		6	
8F	Philomath cobbly silty clay, 12 - 45% slopes	none		6	
9F	Philomath-Urban land complex, 12 - 45% slopes	none		6	
0	Pits	none		8	
.D	Preacher loam, 0 - 25% slopes	128	190	6	
.F	Preacher loam, 25 - 50% slopes	128	190	6	
G	Preacher-Bohannon-Slickrock complex, 50 - 75% slopes	***	188	7	
C	Ritner cobbly silty clay loam, 2 - 12% slopes	★ 107	149	★ 4	
E	Ritner cobbly silty clay loam, 12 - 30% slopes	★ (107)	(149) ★	6	
G	Ritner cobbly silty clay loam, 30 - 60% slopes	107	149	7	
4	Riverwash	none		8	
H	Rock outcrop-Kilchis complex, 30 - 90% slopes	***	27	8	
G	Rock outcrop-Witzel complex, 10 - 70% slopes	***	none	8	
E	Salander silt loam, 12 - 30% slopes	125	184	6	
3	Salem gravelly silt loam	none		2	X
1	Salem-Urban land complex	none		2	X
B	Salkum silt loam, 2 - 6% slopes	116	167	2	X
3	Salkum silty clay loam, 2 - 8% slopes	116	167	2	X
1	Salkum silty clay loam, 8 - 16% slopes	116	167	3	X
	Saturn clay loam	123	180	3	
	Sifton gravelly loam	124	182	3	X
1	Slickrock gravelly loam, 3 - 25% slopes	137	209	6	
1	Slickrock gravelly loam, 25 - 50% slopes	137	209	6	
1	Steiwer loam, 3 - 12% slopes	none		3	
1	Steiwer loam, 12 - 20% slopes	none		4*	

EXHIBIT 8

Lane County
Soil Ratings for Forestry
and Agriculture



August 1997

ICOGS Prepared by
Lane Council of Governments

Lane County Soil Ratings for Forestry and Agriculture

Map Symbol	Lane County Soil Map Unit	Douglas Fir Site Index	Cu. Ft./ Acre/ Year	Agricultural Capability Class	High Value Farmland
22	Camas gravelly sandy loam, occasionally flooded	none		4	
23	Camas-Urban land complex	none		4	
24	Chapman loam	none		1	X
25	Chapman Urban land complex	none		1	X
26	Chehalis silty clay loam, occasionally flooded	none		2	X
27	Chehalis-Urban land complex	none		2	X
28C	Chehulpum silt loam, 3 - 12% slopes	none		6*	
28E	Chehulpum silt loam, 12 - 40% slopes	none		6	
29	Cloquato silt loam	none		2	X
30	Cloquato-Urban land complex	none		2	X
31	Coburg silty clay loam	none		2	X
32	Coburg-Urban land complex	none		2	X
33	Conser silty clay loam	none		3	X
34	Courtney gravelly silty clay loam	none		4	X
35D	Cruiser gravelly clay loam, 3 - 25% slopes	140**	145	6	
35F	Cruiser gravelly clay loam, 25 - 50% slopes	140**	145	6	
35G	Cruiser gravelly clay loam, 35 - 70% slopes	140**	145	7	
36D	Cumley silty clay loam, 2 - 20% slopes	114	162	6	
37C	Cupola cobbly loam, 3 - 12% slopes	<u>100</u>	<u>136</u>	6	
37E	Cupola cobbly loam, 12 - 30% slopes	100	136	6	
38	Dayton silt loam, clay substratum	none		4	X
39E	Digger gravelly loam, 10 - 30% slopes	102	140	6	
39F	Digger gravelly loam, 30 - 50% slopes	102	140	6	
40H	Digger-Rock outcrop complex, 50 - 85% slopes	***	114	7	
1C	Dixonville silty clay loam, 3 - 12% slopes	109	152	3	
1E	Dixonville silty clay loam, 12 - 30% slopes	109	152	4	
1F	Dixonville silty clay loam, 30 - 50% slopes	109	152	6	
2E	Dixonville-Hazelair-Urban land complex, 12 - 35% slopes	***	89	4	
3C	Dixonville-Philomath-Hazelair complex, 3 - 12% slopes	***	54	3	
3E	Dixonville-Philomath-Hazelair complex, 12 - 35% slopes	***	63	4	
44	Dune land	none		8	
5C	Dupee silt loam, 3 - 20% slopes	none		3	
16	Eilertsen silt loam	133	199	2	X
7E	Fendall silt loam, 3 - 30% slopes	125	184	6	
8	Fluvents, nearly level	none		--	
9E	Formader loam, 3 - 30% slopes	121	176	6	
9G	Formader loam, 30 - 60% slopes	121	176	6	
9G	Formader-Hembre-Klickitat complex, 50 - 80% slopes	***	176	7	

EXHIBIT 9

TABLE 2

DOUGLAS FIR EMPIRICAL YIELD TABLE

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

SITE 70

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

TABLE 3

SITE 80

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

TABLE 4

SITE 90

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

DOUGLAS FIR EMPIRICAL YIELD TABLE

TABLE 5

SITE 100

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

TABLE 6

SITE 110

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

SITE INDEX 23,005
107 BD.FT./AC.

TABLE 7

SITE 120

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

EXHIBIT 10

DOUGLAS FIR LOG PRICES 1978-1982, 1983

REGION 1 - WESTERN OREGON UNIT

Reporting format: ODF reporting as of 4th quarter 1981

Source: Oregon Department of Forestry Forest Management Division
http://www.odf.state.or.us/divisions/management/asset_management/logprices/logP483.HTM

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

1978

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

1979

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

1980

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

1981

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

1982

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

1983

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

DOUGLAS FIR LOG PRICES 1978-1982, 1983

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

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

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



\$31.00

01102965200900532820020024

09/17/2009 09:55:41 AM

RPR-DEED Cnt=1 Stn=8 CASHIER 02

\$10.00 \$11.00 \$10.00



BARGAIN AND SALE DEED

C. Robert Suess, Grantor, conveys to C. Robert Suess, Trustee of the Suess Family Health and Welfare Trust uad August 5, 2006, Grantee, the following described real property, to wit:

See attached Exhibit "A" incorporated herein by reference for legal descriptions.

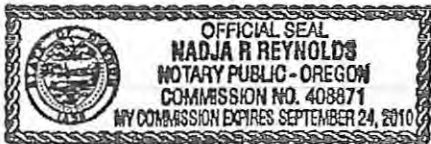
The true consideration for this conveyance is consideration other than money.

Dated: September 16, 2009.

C. Robert Suess

State of Oregon)
County of Lane }ss.

On September 16th, 2009, personally appeared before me C. Robert Suess, who acknowledged the foregoing instrument to be his voluntary act and deed.



Notary Public for Oregon

My commission expires: 9/24/2010

Grantors Address:
P. O. Box 31548
Seattle, WA 98103

Grantees Address:
P. O. Box 31548
Seattle, WA 98103

After Recording Return to:
Cascade Title Co.
811 Willamette St.
Eugene, Oregon 97401

Until a change is requested all tax statements shall be sent to the Grantee.

BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON TRANSFERRING FEE TITLE SHOULD INQUIRE ABOUT THE PERSON'S RIGHTS, IF ANY, UNDER ORS 195.300, 195.301 AND 195.305 TO 195.336 AND SECTIONS 5 TO 11, CHAPTER 424, OREGON LAWS 2007. THIS INSTRUMENT DOES NOT ALLOW USE OF THE PROPERTY DESCRIBED IN THIS INSTRUMENT IN VIOLATION OF APPLICABLE LAND USE LAWS AND REGULATIONS. BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON ACQUIRING FEE TITLE TO THE PROPERTY SHOULD CHECK WITH THE APPROPRIATE CITY OR COUNTY PLANNING DEPARTMENT TO VERIFY THAT THE UNIT OF LAND BEING TRANSFERRED IS A LAWFULLY ESTABLISHED LOT OR PARCEL, AS DEFINED IN ORS 92.010 OR 215.010, TO VERIFY THE APPROVED USES OF THE LOT OR PARCEL, TO DETERMINE ANY LIMITS ON LAWSUITS AGAINST FARMING OR FOREST PRACTICES, AS DEFINED IN ORS 30.930, AND TO INQUIRE ABOUT THE RIGHTS OF NEIGHBORING PROPERTY OWNERS, IF ANY, UNDER ORS 195.300, 195.301 AND 195.305 TO 195.336 AND SECTIONS 5 TO 11, CHAPTER 424, OREGON LAWS 2007.

EXHIBIT C

WARRANTY DEED

Full Report 8-6-68

FOR VALUE RECEIVED VERNON IVERSON and MARGARET IVERSON, husband and wife,

herein referred to as grantors, hereby grant, bargain, sell, and convey unto KENNETH H. KOHNEN, a single person,

an undivided one-half (1/2) interest in

herein referred to as grantee, the following described real property, with tenements, hereditaments, and appurtenances, to wit:

See Exhibit "A" attached hereto and made a part hereof by this reference.

Subject, however, to the interests of Hans F. Gerlach and Nancy A. Gerlach, husband and wife, and their successors, in interest, Fred J. Dauber and Esther Louise Dauber, husband and wife, as the Sellers under a Land Sale Contract wherein the Grantors and the Grantee herein are the purchasers. The Grantee, by his acceptance of this deed, agrees to perform all obligations of the purchasers under said contract and to save the Grantors harmless therefrom.

TO HAVE AND TO HOLD the said premises unto said Grantees, their heirs and assigns forever. And the said Grantors hereby covenant that they are lawfully seized in fee simple of said premises; that they are free from all incumbrances, subject to reservations, restrictions and easements of record and the interests of the Sellers under the above identified Land Sale Contract.

and that they will warrant and defend the above granted premises against all lawful claims whatsoever, except as above stated, and other property.

The true and actual consideration for this transfer is \$ 600.00. The foregoing recital of consideration is true as I verily believe.

Dated: 1968

(Signature) (Seal)

(Signature) (Seal)

Personally appeared the above named

STATE OF OREGON, County of Lane, ss.



and acknowledged the foregoing instrument to be his voluntary act and deed. Before me:

A.D. 1968

Notary Public for Oregon

6-24-68

09897

EXHIBIT A

PARCEL I:

That portion of the following described tract that lies
northerly and westerly of the Eugene-Torana Highway,
beginning at the northeast corner of the southeast 1/4
of the southeast 1/4 of Section 14, Township 18 South,
Range 4 West of the Willamette Meridian, running thence
South 24° West 7.06 chains; thence South 87° 45' West
9.84 chains; thence South 35° West 12.33 chains; thence
North 64° 20' West 9.92 chains; thence South 13° 16' West
9.65 chains; thence North 24° 63' chains; thence South 89°
46' East 21.45 chains to the place of beginning, in Lane
County, Oregon.

PARCEL II:

The EAST 1/2 of the Northeast 1/4 of the Southeast 1/4
of Section 14, Township 18 South, Range 4 West of the
Willamette Meridian, in Lane County, Oregon.



North
E

7.06 CH = 466
1
12.33 CH = 814
9.65 CH = 637
24.63 CH = 1626

Bill A

20850

Handwritten notes and signatures in the upper right quadrant.

State of Oregon
County of Lane
I, the undersigned, Director of the
Department of Records and Elections,
do hereby certify that said County of Lane,
Oregon, shall be a public body within the
meaning of the records act.

1968 JUN 25 PM 2 02

File # 398-R

Lane County Official Records

By RANDOLPH, Director of the
Department of Records & Elections

Signature of Randolph

C-25-003-05

Handwritten notes and signatures in the lower left quadrant.

FOR VALUE RECEIVED

FRED J. DAUBER and ESTHER LOUISE DAUBER, husband and wife

herein referred to as grantors, hereby grant, bargain, sell, and convey unto

VERNON IVERSON and MARGARET IVERSON and KENNETH H. KOHNEN

herein referred to as grantees, the following described real property, with tenements, hereditaments, and appurtenances, to-wit:

Beginning at a stone marking the one-quarter section corner between Sections 11 and 12, Township 18 South, Range 4 West of the Willamette Meridian; thence North 89°59'51" West 662.29 feet along the south line of The Braes Addition to Eugene according to the plat thereof recorded in volume 5 of plats, page 22, records of Lane County, Oregon, to an iron pin marking the northwest corner of the east one-half of the northeast one-quarter of the southeast one-quarter of said Section 11; thence, South 0°00'17" East 1326.85 feet along the west line of the east one-half of the northeast one-quarter of the southeast one-quarter to an iron pin marking the southwest corner thereof; thence, North 89°25'36" West 753.27 feet along the south line of the north one-half of the southeast one-quarter of said Section 11 to a point marked by an iron pin; thence, South 0°04'20" West 1206.89 feet along a line parallel with the east line of said Section 11 to a point on the centerline of the Lorane Highway (being referenced on the ground by an iron pin which bears North 0° 04'20" East 56.50 feet); thence, along the centerline of the Lorane Highway (being 60.00 feet in width) and along the arc of a curve to the right having a radius of 1767.00 feet to a point (being referenced on the ground by an iron pin which bears North 50°10'30" West 30.00 feet) which bears North 35°35'53" East 260.49 feet from the last described point; thence North 39°49'30" East 1201.76 feet continuing along said centerline to a point (being referenced on the ground by an iron pin which bears North 50° 10'30" West 30.00 feet); thence, continuing along said centerline and along the arc of a curve to the right having a radius of 294.69 feet to a point (being referenced on the ground by an iron pin bearing North 9°28'48" East 30.00 feet) which bears North 69°39'09" East 293.15 feet from the last described point; thence, South 80°31' 12" East 146.76 feet continuing along said centerline to a point (being referenced on the ground by an iron pin bearing North 9°29'48" East 30.00 feet); thence, continuing along said centerline and along the arc of a curve to the left having a radius of 477.32 feet to a point (being referenced on the ground by an iron pin bearing North 0°04'20" East 30.00 feet) which bears South 84°59'56" East 74.56 feet from the last described point; thence, North 0°04'20" East 1308.59 feet along the section line between Section 11 and 12 to the point of beginning in Lane County, Oregon.

Dated June 19 68

.....(Seal) Fred J. Dauber (Seal)
(Seal) Esther Louise Dauber (Seal)

Consideration is \$ 26,384.00



Coos
 STATE OF OREGON, County of Lane, ss.
 Personally appeared the above named

FRED J. DAUBER and ESTHER LOUISE DAUBER, husband and wife

and acknowledged the foregoing instrument to be their voluntary act and deed. Before me:

.....
 Notary Public for Oregon
 My commission expires June 14, 1971

7611376

Compliments of
 CASCADE TITLE COMPANY
 Eugene, Oregon
 972 Oak Street
**BARGAIN & SALE
 DEED**

State of Oregon,
 County of Lane, ss.
 I, D. M. Penfold, Director of the
 Department of Records and Elections,
 in and for the said County, do hereby
 certify that the within instrument was
 received for record at

1976 MAR 11 PM 5 00

Reel 785 R

Lane County OFFICIAL Records.
 D. M. PENFOLD, Director of the
 Department of Records & Elections.
 By [Signature] Deputy
 C29-083-05

Return To:

CASCADE TITLE COMPANY

EXHIBIT C
 C.4.

Mary K. Smith
3620 Perini Street
Eugene, OR 97405-1910
Phone: 541-687-1960

April 13, 2011

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

Re: Assessor's Map 18-04-11, TL 500

Dear Mr. Kloos:

You have asked me to summarize the farming and forestry history of the property above. This is that summary to the best of my knowledge.

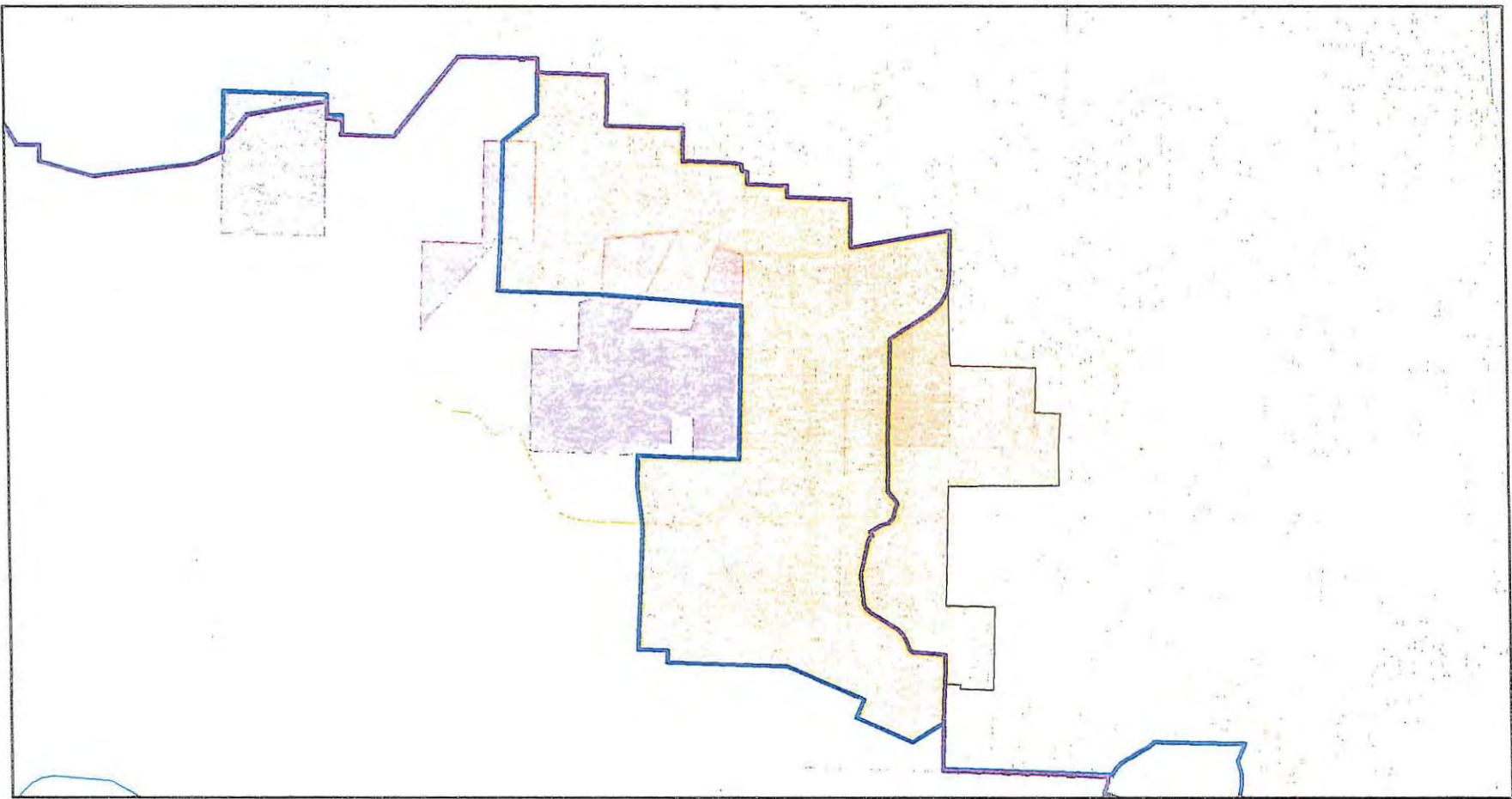
This tract of land, about 30 acres in size, was purchased by my father in the late 1960s; it was sold in the early 1990s. During the time that the property was owned by my father, it was never farmed and it was never managed for forest use. My father was a professional accountant, not a farmer or forester. We never resided on the property. We visited the property and did some work on it. My understanding was that my father bought it as an investment.

Sincerely,



Mary Smith

EXHIBIT D



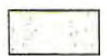
Developers Proposed Sites



Eugene UGB



EWEB Water Delivery Boundary



Hillcrest

City Limits



Eugene

Water Districts

NAME

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

Reynolds, Kohnen & Blanton Properties

03/26/2012

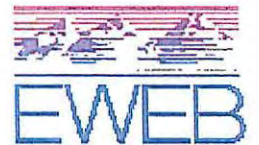


EXHIBIT E.