

PASSED

IN THE BOARD OF COUNTY COMMISSIONERS OF LANE COUNTY, OREGON

**ORDINANCE NO. PA 1211 [IN THE MATTER OF ADOPTING A CONFORMITY
[DETERMINATION AMENDMENT PURSUANT TO RCP
[GENERAL PLAN POLICIES – GOAL 2, POLICY 27a.ii. AND
[GOAL 4, POLICY 15 TO REZONE 34.2 ACRES FROM
[NONIMPACTED FOREST LAND (F-1, RCP) TO IMPACTED
[FOREST LAND (F-2, RCP) FOR A PARCEL IDENTIFIED ON
[LANE COUNTY ASSESSOR’S MAP 21-01-30 AS TAX LOT
[300, AND ADOPTING SAVINGS AND SEVERABILITY
[CLAUSES. (File: PA 04- 5252, Everett).**

WHEREAS, the Board of County Commissioners of Lane County, through enactment of Ordinance No. PA 1192 and amended thereafter, has adopted the Conformity Determination Amendment process as Goal 2, Policy 27 of the General Plan Policies which is a component of the Lane County Rural Comprehensive Plan; and

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

WHEREAS, on March 29, 2004, a Conformity Determination Amendment application (PA 04-5252 Everett) was submitted to Lane County proposing a zone change from Nonimpacted Forest Land (F-1, RCP) to Impacted Forest Land (F-2, RCP) pursuant to RCP General Plan Policies - Goal Two, Policy 27.a.ii. and Goal 4, Policy 15; and

WHEREAS, the Lane County Planning Commission reviewed the proposal in a public hearing on August 3, 2004; and

WHEREAS, the Lane County Planning Commission on October 5, 2004, recommended approval of an interpretation of Goal Two, Policy 27.a.ii., and recommended approval of the proposed zone change; and

WHEREAS, the proposal was reviewed at a public hearing with the Lane County Board of Commissioners on March 30, 2005; and

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

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

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

Section 1. Tax lot 300 of Lane County Assessor’s map 21-01-30 is rezoned from Nonimpacted Forest Land F-1, RCP (Lane Code 16.210) to Impacted Forest Land F-2, RCP (Lane Code 16.211), such territory depicted on Official Zoning Plot 509 and further identified as Exhibit “A” attached and incorporated herein.

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

The prior policies, zoning base designations and plan diagram base designations repealed or changed 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 thereof.

ENACTED this 20th day of April, 2005.

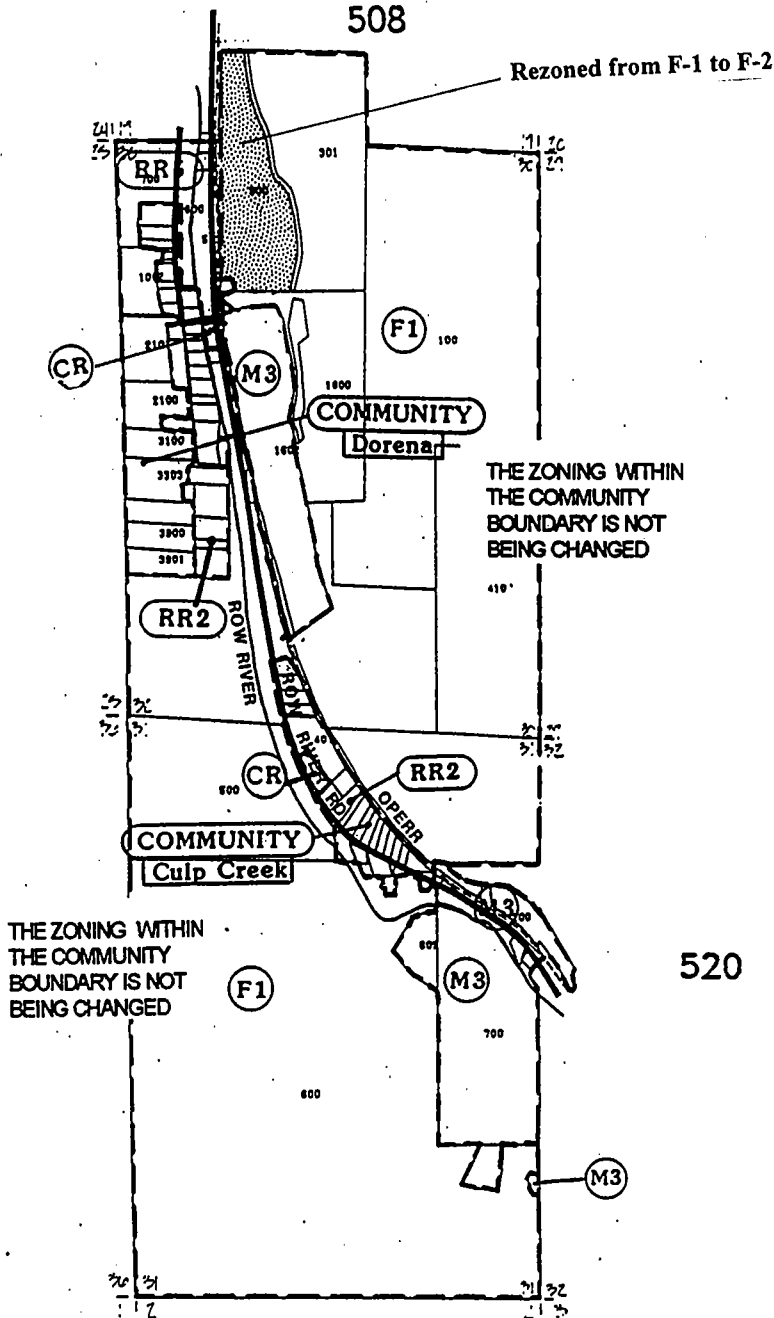
Anna Morrison
Chair, Lane County Board of County Commissioners

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

APPROVED AS TO FORM

Date 3-9-2005 Lane County

Stephen J. Cooper
OFFICE OF LEGAL COUNSEL



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

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



OFFICIAL ZONING MAP

PLOT# 509

Township Range Section

21 01 30

21 01 31

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

SION # ORD. # DATE FILE #

Ordinance No. PA 1211
Exhibit "B"
Findings of Fact

Finding 1. Rural Comprehensive Plan – General Plan Policies: Goal Two, Policy 27 provides a conformity determination amendment process for the correction of identified plan or zoning designations in the RCP Official Plan and Zoning Plots resulting from the Official Plan or Zoning Plots not recognizing lawfully existing (in terms of the zoning) uses or from inconsistencies between the Official Plan and Zoning Plots.

Finding 2. Lane Code 16.252(1): This section of Lane Code requires that as the Rural Comprehensive Plan for Lane County is implemented, changes in zone and other requirements of this chapter will be by ordinances.

Finding 3. Lane Code 16.252(2) requires that rezoning shall be consistent with the specific purposes of the zone classification proposed and Statewide Planning Goals. Based on the findings below, Ordinance No. PA 1211 complies with applicable state laws and Statewide Planning Goals.

- a. Statewide Planning Goal 2 requires, "Opportunities shall be provided for review and comment by citizens during the preparation, review and revision of plans and implementation ordinances." Lane County provided the opportunities identified below for citizens to review and comment on the preparation, review and revision of Ordinance No. PA 1211. These opportunities were adequate to comply with Goal 2.
 - On July 14, 2004, a legal ad was published in *The Register Guard*, providing notice of the Lane County Planning Commission public hearings in Harris Hall of the Lane County Public Service Building on August 3, 2004.
 - On July 15, 2004, LMD mailed to the Oregon Department of Land Conservation and Development (DLCD) a notice of the public hearing and pending adoption, and two copies of the proposed conformity determination amendment.
 - On August 3, 2004, the Lane County Planning Commission (LCPC) conducted a public hearing on the proposed Conformity Determination Amendment (PA 04-5252) Ordinance No. PA 1211 requesting consideration of a change in zoning designation from Nonimpacted Forest Land (F-1, RCP) to Impacted Forest Land (F-2, RCP) pursuant to the qualifying criterion of Goal Two, Policy 27.a.ii.:
 - ii. *Failure to zone a property Impacted Forest Land (F-2, RCP), where maps used by staff to designate the property Nonimpacted Forest Land (F-1, RCP) zone did not display actual existing legal lots adjacent to or within the subject property, and had the actual parcelization pattern been available to County staff, the Goal 4 policies would have indicated the F-2 zone.*
and, the defining characteristics for F-1 and F-2 lands pursuant to RCP General Plan Policies, Goal Four, Policy 15.
 - On October 5, 2004, the Lane County Planning Commission (LCPC) deliberated in a work session on the policy issue of what constituted a "legal lot" for the purposes of land use actions in 1984, which included qualifying for consideration under Rural Comprehensive Plan – General Plan Policy Two - Policy 27.a.ii.
 - On October 5, 2004, the LCPC approved a motion by unanimous vote (7-0) to apply a common sense interpretation to the 1983-1986 definition for "legal lot" in Lane Code Chapter 13 and 16, based on the clarification of ORS 92 with the enactment of HB 2381 in 1985 by the Oregon Legislative Assembly, and Lane County's adoption of three ordinances in 1986 (Ordinance No. 10-86, Ordinance No. 11-86, and

Ordinance PA 921), that contiguous, discrete parcels created lawfully by recorded deeds or real estate contracts prior to the 1983-1986 period were not merged during that period, and were during that period and are today, discrete legal lots.

- On October 5, 2004, the LCPC reviewed the merits of the proposed amendment application pursuant to Goal Two, Policy 27.a.ii. and Goal Four, Policy 15. The LCPC made the following findings and conclusions:
 1. The LCPC determined that the subject parcel, tax lot 300 of TRS map 21-01-30, was a legal lot in 1984 at the time of adoption of the Rural Comprehensive Plan and the designation of the subject property as Nonimpacted Forest Land (F1), and qualified for further review under Goal Four, Policy 15.
 2. Pursuant to Goal Four, Policy 15b.(1) - the record supports a determination that the “ownerships”, subject and/or adjacent, are predominantly developed with residences or nonforest uses, thus F-2 Impacted Land was justified under this characteristic.
 3. Pursuant to Goal four, Policy 15c.(2) - the record supports a determination that the “ownerships”, subject and/or adjacent, are predominantly ownerships 80 acres or less in size, thus F-2 Impacted was justified under this characteristic.
 4. Pursuant to Goal Four, Policy 15c.(3) - the record supports a determination that the subject parcel is contiguous to tracts containing less than 80 acres and residences and adjacent to two developed or committed areas for which an exception has been taken in the Rural Comprehensive Plan, thus Impacted Forest Land (F2) was justified under this characteristic.
 5. Pursuant to Goal Four, Policy 15c.(4) - the record supports a determination that the subject parcel is provided with a level of public facilities and services, and roads, intended primarily for direct services to rural residences. Thus, Impacted Forest Land (F2) was justified under this characteristic.
 6. Based on the findings and conclusions on the legal lot status and for each of the four characteristics of (F2) lands reviewed above pursuant to RCP General Plan Policies - Goal Four, Policy 15 (a) – (c), the Lane County Planning Commission unanimously approved a recommendation to the Board of Commissioners that the predominant characteristics of the subject parcel indicated the parcel should be designated as F2 Impacted Forest Land Zone.
- On March 2, 2005, a legal ad was published in *The Register Guard* providing notice of the BCC public hearing in Harris Hall of the Lane County Public Service Building at 1:30 PM on March 30, 2005.
- On March 30, 2005, the Board of County Commissioners conducted a public hearing on the proposed Conformity Determination Amendment (PA 04-5252) Ordinance No. PA 1211 requesting consideration of a change in zoning designation from Nonimpacted Forest Land (F-1, RCP) to Impacted Forest Land (F-2, RCP) pursuant to the qualifying criterion of Goal Two, Policy 27.a.ii. and Goal Four, Policy 15.
- b. Ordinance No. PA 1211 acknowledges the written testimony and documentation, and citizen comments received during the LCPC public hearings on August 3, 2004, and submitted into the official record thereafter.
- c. Ordinance No. PA 1211 acknowledges the deliberations of the LCPC on October 5, 2004, and their findings of fact, conclusions, and recommendation to amend the zoning designation of the subject property, tax lot 300 of Lane County Assessor’s Map 21-01-30, from Nonimpacted Forest Land (F1) to Impacted Forest Land (F2), and the Board of County Commissioners adopts the LCPC findings of fact and conclusions as their own.
- d. Ordinance No. PA 1211 acknowledges citizen testimony and evidence received during the Lane County Board of Commissioners public hearing on March 30, 2005. Based on

the evidence in the record before the Board, the following supplemental findings of fact are included in this Exhibit B:

1. For the reasons described by the Lane County Planning Commission and in this finding of fact, the subject property meets F2 zone characteristic (1), "Predominantly ownerships developed by residences or nonforest uses." A residence was built on the subject property in approximately 1920 (as shown in Applicant's Attachment 15) and existed on the subject property in 1978 (as shown by Applicant's Attachment 4) and until it was burned-down in 1981 (as shown by applicant's Attachment 13). On March 14, 1983, Lane County approved land use application DSP 83-036 to, "allow A-2 special permit for a dwelling (replace house that burned in 1981)". This evidence shows that, prior to the subject property being zoned F1 on February 29, 1984, the owners of the subject property had established the residential use of part of the subject property the right a dwelling to replace the house that burned. When the subject property was zoned F1 on February 29, 1984, the following Lane County Goal 2, General Plan Policy, was in effect and is in effect today, "17. Lane County shall recognize and incorporate into the Lane County Comprehensive Plan all prior land use applications approved since January 1980 with respect to Statewide Planning Goals to the extent legally possible." This policy applies to the valid land use permit for the subject property, DSP 83-036 and to this request. In applying this policy to this application, the Board recognizes that the owners of the subject property had maintained their residential use of the subject property with the approval of DSP 83-036 and that the use had not change merely because the house had burned.
2. Evidence in the record demonstrates that on February 29, 1984, when the subject property was zoned F1, the subject property was not developed for forest uses. The 1979 aerial photo in Attachment 4 shows that the subject property had a dwelling on it and was in use as pasture. The 2000 aerial photo in Attachment 4 shows that the subject property is predominantly not in forest use. For the reasons described by the Lane County Planning Commission and in this finding of fact, the subject property meets F2 zone characteristic (3), "Ownerships generally contiguous to tracts containing less than 80 acres and residences and/or adjacent to developed or committed areas for which an exception has been taken in the Rural Comprehensive Plan." The subject property is contiguous to two exception areas. One committed area is the Community of Dorena that is on the opposite side of Row River Road and is contiguous to the subject property on the south side where the adjacent RR5 zoned TL 1500 Row River Baptist church (built in 1945) is located. The other committed area is located on the north side where the adjacent RR10 zoned TL 1401 with an existing dwelling is located. The NE corner of the subject property is adjacent to TL 1400 that is zoned F2 and has a mobile home on it according to the addressing map included as Applicant's Attachment 10. On the south side is TL 1607 that according to Applicant's Attachment 2 is owned by M.L. Kyrl and is part of a 2.63 acre and 41.83 acre ownership that includes M3 zoned property with an industrial building and mobile home on it. On the east side the subject property is adjacent to TL 301 owned by Weyerhaeuser Co. that is zoned F1 and is vacant forest land.