

IN THE BOARD OF COUNTY COMMISSIONERS OF LANE COUNTY, OREGON

ORDINANCE NO. PA 1212 [ IN THE MATTER OF ADOPTING A CONFORMITY  
[ DETERMINATION AMENDMENT PURSUANT TO RCP  
[ GENERAL PLAN POLICIES – GOAL 2, POLICY 27 AND  
[ GOAL 4, POLICY 15 TO REZONE 83.58 ACRES FROM  
[ NONIMPACTED FOREST LAND (F-1, RCP) TO IMPACTED  
[ FOREST LAND (F-2, RCP) FOR FOUR PARCELS  
[ IDENTIFIED AS TAX LOTS 4100 (15.69 ACRES) AND 4200  
[ (23.19 ACRES) ON LANE COUNTY ASSESSOR’S MAP 19-01-  
[ 08, AND TAX LOTS 1800 (26.01 ACRES) AND 401 (18.69  
[ ACRES) ON LANE COUNTY ASSESSOR’S MAP 19-01-17,  
[ AND ADOPTING SAVINGS AND SEVERABILITY  
[ CLAUSES. (File: PA 04- 5276, Kronberger).

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 04-5276 Kronberger) 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 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 denial of the proposed zone changes; 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 lots 4100 and 4200 of Lane County Assessor’s map 19-01-08, and tax lot 401 and 1800 of Lane County Assessor’s map 19-01-17 are 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 518 and further identified as Exhibit “A” attached and incorporated herein.

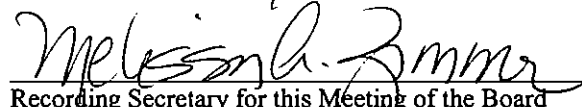
**FURTHER**, although not a part of this Ordinance, the Board of County Commissioners adopts the findings in support of this action as set forth in the attached Exhibit "B".

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 15<sup>th</sup> day of June, 2005.

  
Chair, Lane County Board of County Commissioners

  
Recording Secretary for this Meeting of the Board

APPROVED AS TO FORM

Date 3-9-2005 Lane County

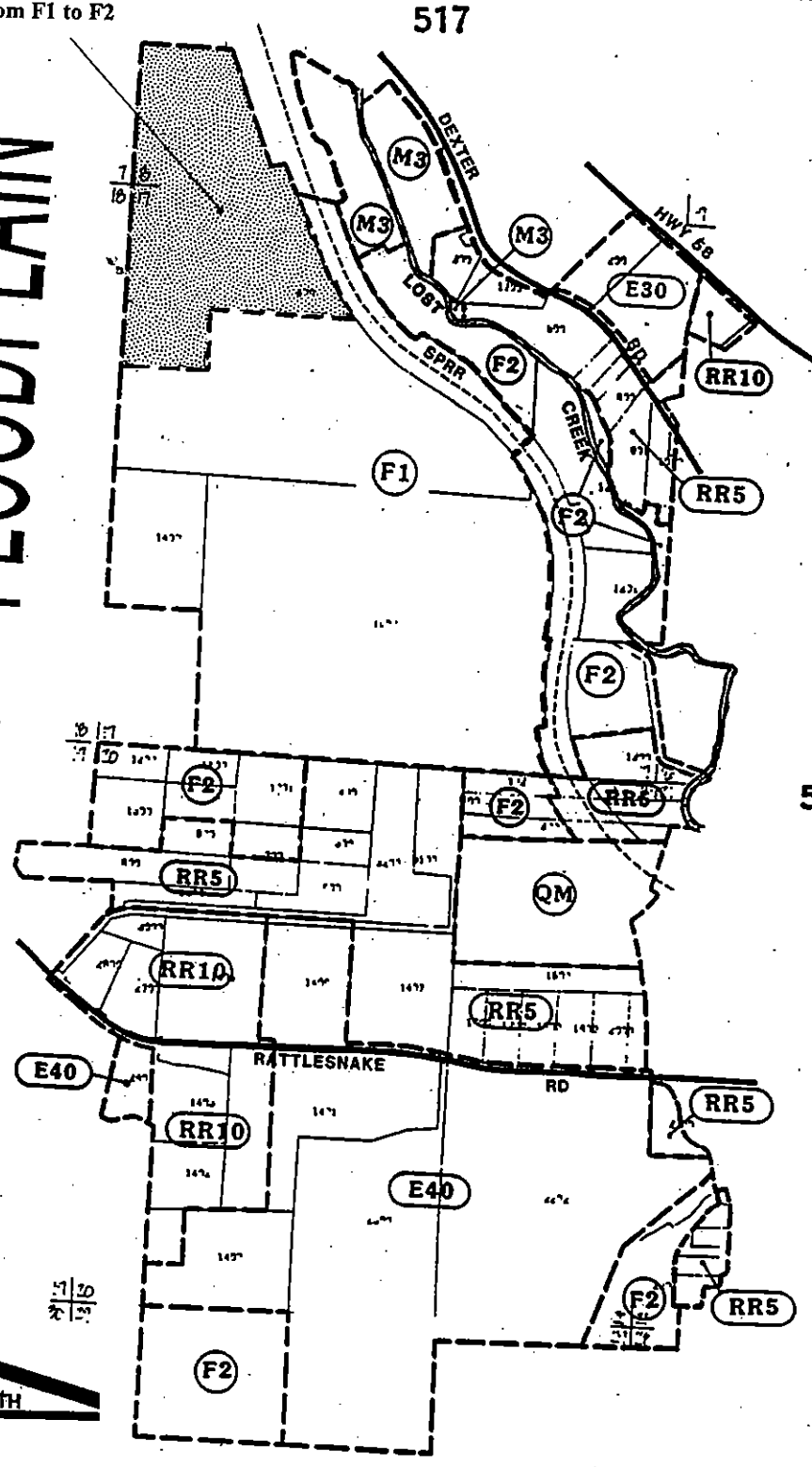
  
OFFICE OF LEGAL COUNSEL

Zone change  
from F1 to F2

# FLOODPLAIN

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

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



county	<b>OFFICIAL ZONING MAP</b>		<b>PLOT# 518</b>
	Township Range Section 19 01 17 / 19 01 20		
ORIGINAL ORD. # _____ PA 884	DATE 2/29/1984	FILE # _____	
AMENDMENT # 1 ORD. # _____ PA 992	DATE 1/18/91	FILE # _____	

**Ordinance no. PA 1212**

**Exhibit "B"**

**Findings of Fact and Conclusions of Law**

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**Exhibit "B"****Findings of Fact and Conclusions of Law****I. OVERVIEW OF THE SUBJECT PROPERTY**

The subject property consists of four legal lots in separate ownerships ranging in size from 15.69 acres to 26.01 acres and totaling 83.58 acres. The lots lie east of Rattlesnake Road near the Communities of Trent and Dexter. The property originally consisted of four separate legal lots verified by Lane County LMD in 2001 totaling 202.41 acres. In 2003, the four legal lots were reconfigured to the north and 118.83 acres was sold to an adjoining owner to the south.

The property was originally zoned F-2 Impacted Forest Land in early 1984, and then rezoned to F-1 Non-impacted Forest Land later in the year along with two adjacent tax lots to the south. The result was an island of F-1 zoning in a sea of "Developed and Committed" rural residential, commercial and industrial "Exception Areas." There are 263 parcels of ten acres or less within one mile of the subject property and more than 65 dwellings in the nearby area. The subject property abuts existing F-2 zoned land on the north and west.

The property is accessed by a County collector road and non-exclusive ingress-egress easement and is served by a full range of rural residential level public facilities and services.

The property is largely composed of ridge summits with hill and foot slopes falling away in all directions. In general, the property has imperfect drainage, poor infiltration and other soil factors that do not lend themselves to large-scale, industrial forestry. The property has been deemed appropriate for small woodland management. The applicant sought a rezone to F-2 zoning under the Conformity Determination process set forth in the Rural Comprehensive Plan at Goal 2, Policy 27.

These, and other pertinent facts, are described below and are verified by substantial evidence in the record relied on by the Board of County Commissioners in reaching the decision to rezone the property to F-2

**II. CRITERIA FOR REZONING BY CONFORMITY DETERMINATION**

This application was submitted under the "Conformity Determination" process. The Lane County Rural Comprehensive Plan (RCP) – 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 Diagram and Zoning Plot Maps resulting from the Official Plan or Zoning Plot Maps not recognizing lawfully existing (in terms of the zoning) uses or from inconsistencies between the Official Plan and Zoning Plot Maps.

The Conformity Determination process requires that changes to correct nonconformities shall comply with the procedures and requirements, as applicable, of Lane Code Chapter 12 (Comprehensive Plan), Chapter 14 (Application Review and Appeal Procedures), and Chapter 16 (Land Use and Development Code).

This application involves a change from F-1 to F-2, both of which are designated "Forest Lands" by the Comprehensive Plan. Because a change to the Plan Diagram is not involved, the provisions of Lane Code Chapter 12 and Lane Code 16.400 (Plan amendments) are not involved.

Because a zone change is involved, however, the provisions of Lane Code 16.252(2) (zone change criteria) are applicable.

Lane Code 16.252(2) requires that zone changes: a) achieve the general purpose of Chapter 16, b) shall not be contrary to the public interest, and c) be consistent with the specific purposes of the zone classification proposed (in this case, F-2 at Lane Code 16.211(1), and applicable Rural Comprehensive Plan elements and components.

Lane Code 16.252(2) further requires that changes in zone designation will be by ordinances.

Because all of rural Lane County has been acknowledged for compliance with the Statewide Planning Goals (Goals) by the Oregon State Land Conservation and Development Commission (LCDC), compliance with the Goals is not a requirement.

RCP – Goal 2, Policy 27(a) provides that circumstances qualifying for consideration by the Board of Commissioners may include one or more of eight listed categories. This application was made and asserted under the following two categories:

*27.a.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 dictated the F-2 zone.*

*27.a.vii. – Correction of an inconsistency between the text of an order or ordinance adopted by the Board of Commissioners and an Official Plan or Zoning diagram.*

Once an application is deemed to meet any of the eight categories, the inquiry shifts to one of determining the correct zoning classification using the relevant criteria as applied to the specific facts. As explained in more detail below, the relevant facts for determining the correct zoning classification are the currently existing facts.

Three policies of the Rural Comprehensive Plan are deemed applicable to the designation of Forest Lands. Goal 4, Policy 1 deals with conservation of forest lands. Goal 4 policies 2 and 15 deal with the identification of impacted (F-2) and nonimpacted (F-1) lands. Each will be described and applied in more detail in section V. below.

The RCP Goal 4 policies for distinguishing between F-1 and F-2 lands focus on whether the subject property is developed with residences or non-forest uses, whether the subject property and “generally contiguous” lands are predominately ownerships of 80 acres or less, whether the property is “generally contiguous to residences and ‘developed or committed’ areas,” whether the property is provided with a level of access and public facilities and services intended for direct services to rural residences and whether the subject property and contiguous ownerships are primarily under commercial forest management. The specific wording of these standards is spelled out and applied to the relevant facts in Section V. below.

### III. PROCESS HISTORY

The Conformity Determination process and Lane Code Chapters 14 and 16 together allow an application to be submitted by a party with an ownership interest in the subject property. They further require a properly noticed public hearing by the Lane County Planning Commission (LCPC) with a resulting recommendation to the Board of County Commissioners (BCC) followed by a properly noticed de novo public hearing by the BCC. The BCC is the ultimate Approval Authority. The Rural Comprehensive Plan, Goal 2: Policy 3, requires that “[a]ll products of the County Planning Process shall be made available for public review and comment and shall be adopted through the hearing process.” Pursuant to those laws and policies, the following events occurred:

- On July 14, 2004, a legal ad was published in *The Register Guard*, providing notice of the LCPC 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 LCPC conducted a public hearing on the proposed Conformity Determination Amendment (PA 04-5276) Ordinance No. PA 1212 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 circumstances of Goal Two, Policies 27.a.ii. and 27.a.vii:
- 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.vii. and forwarded a recommendation to the Board of County Commissioners for denial of the Conformity Determination Amendment request (PA 04-5276). The LCPC decision was based on a conclusion that text errors were more likely to occur than map errors and did not expressly apply the Goal 4 Policies.
- 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 04-5276) Ordinance No. PA 1212 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 *circumstance* of Goal Two, Policy 27.a.ii. and Goal Four, Policy 15 *characteristics*, or Goal Two, Policy 27 a.vii. *circumstance*.
- On May 4, 2005, the Board of County Commissioners deliberated and by a majority of 3 to 2 tentatively approved the requested zone change from F-1 to F-2 subject to the preparation and adoption of Findings of Fact and Conclusions of Law in support of Ordinance No. PA 1212. As part of that decision, the Board of County Commissioners adopts, as its own, the LCPC interpretation of RCP Policy 27.a.ii. 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.

#### IV. THE RECORD

The record in this matter consists of: 1) Application, 2) the testimony and evidence received before, during and following the LCPC public hearing on August 3, 2004, 3) the deliberations of the LCPC on October 5, 2004 including findings of fact, conclusions and recommendation to the Board of Commissioners (BCC), 4) the testimony and evidence received before, during and after the BCC public hearing on March 30, 2005, 5) the BCC deliberations of May 4, 2005, 5) Ordinance No. PA 1212 including these findings, and 6) the LMD files on this matter.

## V. APPLICATION OF THE CRITERIA TO THE FACTS

### Qualification for Consideration Under Conformity Determination

As noted above, the first step of Conformity Determination is to determine whether the application qualifies for further consideration under any one or more of the eight categories listed at RCP – Goal 2, Policy 27. a. The two categories asserted in the application and subsequent applicant statements were:

*27.a.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 dictated the F-2 zone.*

*27.a.vii. – Correction of an inconsistency between the text of an order or ordinance adopted by the Board of Commissioners and an Official Plan or Zoning diagram.*

Evidence was presented by the applicant indicating both that “maps used by staff to designate property Nonimpacted Forest Land (F-1, RCP) zone did not display actual existing legal lots adjacent to or within the subject property,” and also that there was an inconsistency between the text of an ordinance adopted by the Board of Commissioners and an Official Plan or Zoning diagram.

Opposition testimony asserted that the legal lots actually existing in 1984 could not have been recognized by Lane County because of certain wording in the Lane Code that appeared to merge the four legal lots into a single legal lot.

The BCC, by accepting as its own the LCPC recommendation regarding legal lots noted above, finds that there were four legal lots within the subject property, and others within the vicinity that were not identified on the maps used by staff in 1984. As a result, the BCC concludes that the application is eligible for further consideration as to the proper zoning.<sup>1</sup>

### Identification of F-2 and F-1 Forest Lands Using the Goal 4 Policies

The BCC takes notice that subject property is already designated “forest lands” by the Rural Comprehensive Plan (RCP) and that the designation will not change when the property is zoned F-2.

<sup>1</sup> The Board’s tentative motion included both a finding that the maps used by staff did not display actual existing legal lots and a conclusion that the Goal 4 policies would have dictated F-2 zoning. For clarity, these findings separate those two decisions into separate sections. The first deals with the map errors, the second with the determination of the proper zoning. Because a property need qualify under only one Conformity Determination category, it is unnecessary for the Board to find an inconsistency between the ordinance and map that established F-1 zoning on the subject property. The Board does, however, take notice that the Planning Commission’s consideration was based on a finding that such an inconsistency did exist.

As noted above, the choice between F-1 and F-2 is governed by three RCP policies. They are Goal 4, Policies 1, 2 and 15. Facts demonstrating that these policies are met are set forth immediately below. The zone change is also governed by criteria contained in Lane Code 16.252(2). Facts related to those criteria are set forth in Section V. below.

*Goal 4, 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.*

The BCC finds that the evidence demonstrates that this zone change will not adversely affect the economic efficiency of forest practices on the subject property. In fact, it will enhance the opportunity to make the property productive. Specifically, this property is part of a small, isolated area of F-1 zoned land. There are 263 parcels ten acres or less within one mile from the subject property. That parcelization pattern currently impacts the ability to perform large-scale industrial forest practices.

The BCC further finds that F-2 zoning will continue to conserve the land for forest use because only forest-compatible uses are allowed. Given the lack of highly productive soils and other site factors described by the evidence, the Board believes that forest practices that are uneconomical for an offsite manager could be carried out economically by a resident small woodland owner using more labor-intensive methods.

Based on the above facts, the BCC concludes that this zone change is consistent with RCP - Goal 4, Policy 1.

*Goal 4, Policy 2. Forest lands will be segregated into two categories, Non-impacted and Impacted and these categories shall be defined and mapped by the general characteristics specified in the Non-Impacted and Impacted Forest Land Zones General Characteristics.*

This policy refers to the characteristics set forth in Goal 4, Policy 15 that are applied to this application below. The record indicates uncontested evidence that these policies were crafted and used at a time when zoning was being established for the entire rural portion of Lane County.

The BCC finds that, in subsequent cases where individual parcels were rezoned, the Lane County Hearings Officials have commented that the criteria are not ideally suited for small-scale application. They note that the criteria were intended to look at entire neighborhoods or "large swaths" of land. The Board rejects the assertion that the Goal 4 criteria are restricted to considering only those parcels actually adjoining the subject property.

The BCC finds that this commentary by the Hearings Official is especially relevant to this case. As noted elsewhere, the subject property is adjacent to three parcels larger than 80 acres. They lie to the immediate west and south. If one looks one tier of lots further,

however, they will see hundreds of small parcels virtually surrounding the property, many with dwellings and zoned for Rural Residential use, all of which impact the ability of the subject property to be managed for large-scale industrial forestry. As explained below, it is appropriate to consider this neighborhood contextual pattern when applying the Policy 15 criteria.

#### **Application of the Specific Goal 4, Policy 15 Criteria.**

In cooperation with the Oregon State Department of Land Conservation and Development (DLCD), Lane County adopted a matrix of criteria to distinguish between F-2 and F-1 Forest Lands. The BCC takes notice that these criteria were adopted as Rural Comprehensive Plan Goal 4 - Policy 15 as follows in part:

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

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

The following sections set forth each of the specific Goal 4, Policy 15 criteria followed by a recitation of the evidence found to be true and relied on by the Board of Commissioners.<sup>2</sup>

#### *b. Non-impacted Forest Land Zone (F-1, RCP) Characteristics:*

*(1) Predominantly ownerships not developed by residences or non-forest uses.*

Past Hearing Official decisions in requests to rezone property from F-1 to F-2 have applied this criterion to the subject property itself. The four legal lots within the subject property have no dwellings or non-forest uses on them. The BCC concludes that these facts taken alone support F-1 zoning. The Board notes, however, that the staff report documents the presence of 32 dwellings and a Lane County shop within the nearby area. This wider look at development patterns may be more in line with the original intent of the Goal 4 criteria to look at both the subject property and its surrounding context.

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

<sup>2</sup> Staff noted, and the Board agreed, that there are actually five F-1 criteria and four F-2 criteria. Because of a typographical error in the current version of the Comprehensive Plan, two of the F-1 criteria are merged into one subsection (subsection b.(4)). For clarity and proper analysis, those two will be discussed separately.

The Board notes that, when this standard was originally implemented in 1984, it was applied to the "area" under consideration for zoning. Almost always, those 'areas' contained multiple tax lots and ownerships. The issue was whether the "area" was made up of contiguous large ownerships. If so, it merited F-1 zoning.

The Board believes that consistent application of this criteria would apply it to just the subject property because that is the relevant "area" under consideration for rezoning. This approach is consistent with facts set forth in the staff report. The subject property consists of four legal ownerships, all substantially smaller than 80 acres. The Board concludes that the property would, therefore, not possess this F-1 characteristic.

Past Hearing Official decisions have, with reluctance, focused on contiguous properties because the area proposed for rezoning in those cases contained only one lot.

This ambiguity in the use of this criterion is reflected in the most recent F-1 to F-2 decision, in which the Hearings Official commented:

*"These characteristics are not clearly written so that they can easily apply to a question of redesignation. They were written to describe the original designation process, which looks at larger swaths of territory."*

The Board believes that it is appropriate to look at both the subject property and the adjacent contiguous parcels.<sup>3</sup> Logically, both will have an impact on whether the property is better suited to large-acreage industrial forestry or to smaller-scale woodland operation. Nearby smaller parcels can have an acknowledged chilling effect on large-scale industrial forest practices. Likewise, when the subject parcel itself is composed of small legal lots, they may be sold to individual owners and used as small woodlands consistent with relevant land use policies and laws. Either way, the result is not conducive to the type of large-scale, industrial forestry associated with F-1 zoning.

#### Adjacent Parcels

If one looks at just adjoining parcels, the result is evenly split between F-1 and F-2 characteristics as shown by the following uncontested facts:

The subject property's contiguous parcels to the west are Tax Lot 2600 (97.06 acres) and Tax Lot 101 (124.20 acres). To the south, Tax Lot 1400 is 139.23 acres. These three parcels would fall into the "over 80 acres" category.

Tax Lot 2202 to the north is 16.54 acres. A Southern Pacific Railroad right-of-way borders the subject property to the east. A previous hearings official decision suggests that one must look beyond the railroad right-of-way. East of the railroad lie Tax Lot 3800 (20.12 acres) and Tax Lot 1600 (21.49 acres). Thus, there are three contiguous parcels in the "under 80 acres" category.

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<sup>3</sup> In fact, this is actually built into the criteria further down at Policy 15 (c) (2), which has consistently been held to apply to the subject property itself.

The Board finds that, at this point, the analysis is indeterminate; half of the contiguous ownerships are larger than 80 acres and half are smaller.

### Subject Parcels

When the four separate ownerships within the subject property are added to the equation, there are seven parcels under 80 acres and three parcels over eighty acres.

Based on these facts, the Board concludes that the subject parcel does not exhibit this F-1 characteristic. The Board takes notice that the staff report applies this criteria to just the subject parcel and notes that all of the parcels are less than 80 acres in size.

In conclusion, whether considering the subject property itself or the subject property plus its contiguous parcels, the Board concludes that the area under consideration for rezoning does not have the F-1 characteristic of being "predominantly contiguous ownerships of 80 acres or larger in size." These facts indicate F-2 zoning.

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

The following uncontested evidence relied on by the Board indicates that the lands contiguous to the subject property vary in their uses. To the north lies Tax Lot 2202, which contains a forest-related dwelling and is zoned F-2. This property is on forest tax deferral and appears to be growing trees. The Board presumes this is a small woodland operation.

To the west, Tax Lot 2600 appears to be primarily in farm use, with some trees growing on its eastern and southern sides. There are two residences on this parcel. A portion of this property is on forest tax deferral and the other portion is on farm tax deferral. Again, the Board presumes this is a commercial operation at some level.

Tax Lot 101 is in commercial forest use. This property has been logged in the past and is currently growing a new crop of trees. A portion of the property is also in farm use. This property is on farm/forest tax deferral.

Tax Lot 1400 to the south is in forest use including recreational trails. Most of this parcel was originally part of Tax Lot 401 and was logged in 1993. Except for areas left intact in buffer zones, this area was replanted and is currently growing trees commercially.

The railroad parcels to the east are not in farm or forest use. Looking beyond the railroad, Tax Lot 3800 is an industrial site and is not in farm or forest use.

Tax Lot 1600, east of the railroad, contains a residence and trees. This parcel is not in farm use, nor does it appear to be in commercial forest use. It is a narrow, 21.49-acre parcel that lies between the railroad and Lost Creek. At its northern end lie several roads that provide access to the industrial property to the north. Likely, many of the trees growing on the property are not available for commercial forestry because of the stream

running lengthwise down the entire property. In the past, this parcel provided access to the forestry operation on Tax Lot 401 across the railroad. Access across the railroad is no longer available. This parcel is, however, on forest tax deferral.

In sum, the Board finds that commercial farm or forest uses predominate on adjacent properties. These facts indicate F-1 zoning. The Board notes, however, that three of the adjacent parcels are zoned F-2, which is exactly what this applicant seeks.

The Board also notes that the staff report lists facts suggesting that it is appropriate to consider uses beyond just the immediately adjacent property. Within that larger area there are two unincorporated communities, 65 dwellings outside of the communities plus a mixture of commercial industrial and public uses. The Board concludes that these facts support the applicant's position that the subject property lies within a developed area not ideal for F-1 zoning.

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

The Board takes notice that the primary access road is Rattlesnake Road, a two-lane "major collector" county road within a 70-foot right-of-way and that such a road is not an "arterial." According to the County Surveyors records, Rattlesnake Road is neither a farm-to-market road nor a forest road. An easement through Tax Lot 2400, 2100, and 2202 provides unrestricted non-exclusive access from Rattlesnake Road to the subject property. Thus, the Board concludes that the property does not possess this F-1 characteristic.

*(5) Primarily under commercial forest management.*

Uncontested evidence indicates that the subject property is currently under commercial forest management. The majority of the subject property was logged in 1993. Some smaller portions were logged in 2000. The property has been replanted at a stocking rate of 200 trees per acre. The Board concludes that these facts indicate F-1 zoning.

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

*a. Predominantly ownerships developed by residences or non-forest uses.*

The Board finds that the subject parcel contains no residences or non-forest uses and concludes that this fact indicates F-1 zoning. But see comment at b.(1) above regarding nearby dwellings.

*b. Predominantly ownerships 80 acres or less in size.*

The Board notes, as stated above, that this standard has uniformly been held to apply to the area under consideration for rezoning. As such, the evidence relied on by the Board indicates that subject property contains four parcels in separate ownerships, each less than 80 acres. The Board concludes that this fact indicates F-2 zoning.

The opponents have indicated that they agree with the criteria used here but assert that the criteria should be applied to only those facts that existed in 1984. The Board rejects this interpretation based on the following:

- a. To begin, the Conformity Determination process itself expressly states that a basis for changing the zoning would be to reflect "lawfully existing (in terms of the zoning) uses."
- b. It would defy common sense, for example, to rezone property based on a prior commercial or industrial use that had been demolished and replaced by a resource use.
- c. The legislative history of the Conformity Determination process includes a statement that: "*An errors or omission policy (now known as Conformity Determination) policy is a pact between a private property owner and the County to acknowledge existing circumstances and provide relief.*" (Emphasis added.) It also includes a statement from the County Administrator that any resulting re-designation would be a result of "*conforming the zoning to the actual use.*"
- d. The Lane County Hearings Official recently held: "Rezoning requires that the original process of designation be revisited to see if the factors that originally supported designation as F-1 have changed to such an extent that a change to F-2 is now justified." (PA 99-5789 – West) (Emphasis added.)

*c. 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.*

Again, as noted above, when only the immediately adjacent property is considered, there are three tracts containing more than 80 acres and three containing less than 80 acres. Of these, three contain residences and one contains an industrial site.

When the four parcels within the subject property are counted, there are 7 tracts less than 80 acres. There are no residences on the subject property.

The Board believes that, because this criterion is stated as "generally contiguous," it is appropriate to consider the larger, surrounding area just as was done when the original zoning of Lane County was created.

As described below, when the land use one tier of lots away from the subject property is considered, the uncontested evidence shows that the subject property is virtually surrounded by developed or committed rural residential and industrial areas developed as small parcels with residences.

### Surrounding Area Analysis

Evidence relied on by the Board indicates that the area being considered for zoning in 1984 was more highly parcelized than the working map showed and should have been zoned F-2 as were the extensive areas to the west, southwest and north containing parcels smaller than 80 acres.

Uncontested evidence in the record shows that the subject property exists in the context of a neighborhood that includes two communities (Trent and Dexter) and that forms a ring of rural residential and industrial properties virtually surrounding the subject property.

Review of Assessor's maps shows that within a one-mile radius from the perimeter of the subject property there are 334 parcels. Of those, 263 parcels (79%) are less than 10 acres, 61 are between 10 and 80 acres, and only 10 parcels are over 80 acres.

Of the 10 parcels over 80 acres, two are zoned RPR - Rural Parks and Recreation, three are zoned EFU - Exclusive Farm Use, two are zoned F-2, and three are zoned F-1. The subject property, the two contiguous F-2 zoned parcels and the two contiguous F-1 zoned properties are a virtual island surrounded by rural residential, industrial, and small-scale EFU zoned properties.

Based on these facts, the Board concludes that this criterion indicates F-2 zoning.

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

The Board notes that the Lane County Rural Comprehensive Plan, at Goal 11 Public Facilities and Services, Policy 6.b., specifies no minimum service level of public facilities and services for F-2 Impacted Forest Land. The record shows that the subject property is served by the level specified for Rural Residential lands, i.e.: schools, on-site sewage disposal capability, individual water supply capability, electrical service, telephone service, rural level fire and police protection and reasonable access to a solid waste disposal facility.

Opposition testimony had asserted that not every public facility and service was currently in place on the subject property. The Board notes that prior decisions have established that these services must be "generally available" in the neighborhood but need not be actually in place on the subject property.

Opposing testimony alleged that the access road was inadequate. The Board noted that access sufficiency along with specific service availability would be the subject of further permitting process if some sort of development were applied for, but is not a part of a rezoning process.

The record also shows that Tax Lot 2202, to the north, which is served by the same access road, was recently approved for a forest-related dwelling. That permit indicates approval of the access road by the County Public Works Department and the Dexter RFPD.

Based on the above facts, the Board concludes that this criterion indicates F-2 zoning.

Summary

In sum, when totaling all of the F-1 and F-2 characteristics, a conservative count of the criteria shows that the subject property exhibits four F-1 characteristics and five F-2 characteristics. Thus, the Board concludes that the subject property conforms more closely with the proposed F-2 zone than to the existing F-1 zone.

In addition, as explained below, the case for F-2 zoning is further supported by the rezoning criteria of Lane Code 16.252(2).

**Application of Lane Code, Chapter 16 – Zone Change Criteria**

Lane Code 16.252(2) states as follows:

*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, the Planning Commission or the Hearings Official in accordance with the procedures in this section."*

The relevant individual criteria embodied in the above code section are addressed separately below. As noted above, consistency with the Statewide Goals is not required because there are no unacknowledged areas within Lane County.

**General Purposes of Lane Code Chapter 16.**

The following four general-purpose statements of LC 16.003 are relevant to this application

- a. *Insure that the development of property within the County is commensurate with the character and physical limitations of the land and, in general, to promote and protect the public health, safety, convenience and welfare.*

The Board believes that development patterns are often a good indicator of the character and physical limitations of the land. As noted above, the subject property exists in the context of an area comprised of small tract rural development and two designated communities.

Evidence relied on by the Board indicates that the subject property has been evaluated by experts and deemed to have soils of a low quality for large-scale commercial forestry. Such land, however, may be economically feasible for operation by a small woodland owner. Based on these facts, the Board concludes that F-2 zoning is consistent with this policy.

*b. Protect and diversify the economy of the County.*

The Board believes that economic diversity is encouraged by recognizing that not all lands are suited to large-scale industrial forestry and that more labor-intensive resident management is a productive use of some types of land. This diversity recognizes also that human enterprise can take many legitimate forms. The family forest operation, along with the family farm, has a rightful place in the economic matrix of Lane County.

The Board notes that 84 percent of the Lane County's land area is suited to large-scale industrial forestry and is appropriately zoned F-1. F-2 zoning has been applied to about 5 percent of the land area. As such, the Board believes this change will not set a precedent triggering a major shift from F-1 to F-2 zoning.

According to the "Forest Working Paper" produced by the Lane County Land Management Division, the F-2 area contains roughly 8 percent of the commercial forest land in the County. Other uncontested evidence in the record shows that, in the period from 1968 to 1977, that area produced an average of 4.2 percent of the County's annual timber harvest. In the period 1990 to 2003 it produced an average of 9.4 percent of the annual harvest according to the State Department of Forestry.

Thus, the uncontested evidence in the record shows that F-2 land is fully as productive as F-1. It simply uses different methods. Instead of aerial application of chemicals, for example, the tasks of fertilization and vegetation control are often done by mom, dad and the kids working with backpack sprayers and grub hoes.

The same evidence indicates that the economic significance of private, non-industrial small woodlands has become increasingly important over the last 20 years. Our nation has continued to demand affordable timber products. As the proportion of harvest on federal and state lands has declined, the balance must be made up by private lands.

The believes evidence that small woodlands have carried their share of this responsibility. For example, on a statewide basis, small woodlands make up 17% of the state's forest lands and annually produce more than 16% of all timber harvested in the state (Bliss, John C., Sustaining family Forests in Rural Landscapes: Rationale, Challenges, and an Illustration from Oregon, USA, Oregon State University, 2003.)

Based on the above evidence, the Board concludes that the subject property is best suited to making its contribution through F-2 zoning.

*c. Conserve farm and forest lands for the production of crops, livestock and timber products.*

The Board notes that the F-2 zoning designation has been acknowledged by LCDC to be consistent with Statewide Goal 4 – Forest Lands. The type of dwelling that would be allowed under F-2 zoning is, by definition, forest-related and, therefore conservative of the resource land. Therefore, the Board concludes that this criterion has been met.

- d. *Protect life and property in areas subject to floods, landslides and other natural disasters and hazards.*

The uncontested evidence indicates that there are no flood prone areas on the property nor any identified areas of geologic instability. The applicant has expressed a willingness to execute deed covenants requiring that any forest dwelling development would be sited in recognition of any landslide potential identified through normal geological analysis. The Board notes that this type of restriction can be applied as a condition to any subsequent development permit.

#### Consistency with the Purposes of the F-2 Zone Classification

The Board notes that the purpose of the Impacted Forest Lands Zone, as stated by LC 16.211(1), is to implement the forest land policies of the Lane County Rural Comprehensive Plan. Those policies recognize that forest lands impacted by small tract development and non-forest uses should be treated differently than non-impacted forest lands in order to conserve and better manage land for forest uses. As demonstrated throughout these findings, the Board concludes that the subject property fits this situation.

#### Favorable to the Public Interest

Consistency with the public interest can be met by compliance with the Rural Comprehensive Plan (RCP), which is the basic legislative expression of public land use policy adopted by Lane County. See ORS 197.010(11) and 197.015(5). Facts relied on by the Board supporting the conclusion that this proposal is consistent with the RCP are set forth above.

The Board believes that one of the significant features of the RCP and its implementing ordinances is the recognition that forest lands can be conserved, managed and preserved by resident owner/managers. This real-world philosophy is embodied in the basic bifurcation of forest lands into the "impacted" (F-2) and "non-impacted" (F-1) categories, coupled with the ability to place a forest-related dwelling on the impacted lands provided certain standards are met.

The Board notes that this concept is embraced by other well-known and socially responsible resource management groups such as the Oregon Small Woodlands Association (OSWA). Evidence relied on by the Board shows that the OSWA is grassroots organization of more than 2000 members and works cooperatively with the State Department of Forestry, the Cooperative Extension Service and the OSU School of Forestry. The organization emphasizes protection, management and enhancement of Oregon's forest resources and supports family ownership as a means of promoting sustainability, bio-diversity and overall good stewardship of forest lands.

The following excerpts from OSWA adopted policy, as contained in the record in this matter, illustrate the link between forest management practices and on-site resident management:

*“Non-industrial private forestry is a stewardship enterprise, and many forest benefits (wildlife habitat, clean water, clean air, open space) accrue to society outside the market place. Oregon’s and America’s dependence on wood grown on small woodlands continues to increase.*

*“Many landowners do a better job managing forests when they live on their property. OSWA supports land use laws and regulations that allow for dwellings that provide opportunities to enhance good forest management practices, if such dwellings will not cause conflicts with neighboring forest owners.”*

## **VI. Other Opposition Testimony**

As is often the case, the record in this matter contains certain testimony and evidence that either do not address relevant criteria or are not stated with sufficient specificity as to be a rational basis for decision making. Included in the former are errors in stated acreage, incorrect assertions regarding the nature of the application, assertions that property line adjustments require a “replat” process and that the property to the north was developed for “housing.” Examples of the latter are that approval would “unravel adopted land use plans.” The Board concludes that all such testimony and evidence is irrelevant.

## **VII. CONCLUSION**

As noted above, the subject property was originally zoned F-2 in 1984 and then changed to F-1. The evidence shows that, since then, more accurate information is known about the existence of legal lots and residences in the area. The subject property merits F-2 zoning based on the Goal 4 criteria dealing with small-tract parcelization, development in the area and the availability of public facilities and services. The Board finds and concludes that this information qualifies the property for rezoning consideration under the Conformity Determination process.

Also, the evidence presented shows that the economic and social importance of small woodland operation with on-site family management has increased. The Board recognizes the wisdom of its predecessors to create two forest land zoning districts. F-2 zoning provides the best opportunity for the subject property to meet the objectives of Statewide Goal 4. A zone change to F-2 will be consistent and blend nicely with zoning on adjacent lands to the west, north and east.

Based on all of the above, the Board of Commissioners concludes that the most appropriate zoning for the subject property is F-2.

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