

IN THE BOARD OF COUNTY COMMISSIONERS OF LANE COUNTY, OREGON

ORDINANCE NO. PA 1236 [ IN THE MATTER OF ADOPTING A CONFORMITY  
 [ DETERMINATION AMENDMENT PURSUANT TO RCP  
 [ GENERAL PLAN POLICIES – GOAL TWO, POLICY 27.a.vii.  
 [ AND GOAL FOUR, POLICY 15, ADOPTING THE PLAN  
 [ DESIGNATION OF FOREST (F) AND THE ZONING  
 [ DESIGNATION OF IMPACTED FOREST LAND (F2) FOR 37.5  
 [ ACRES LOCATED IN SECTION 32, TOWNSHIP 20, RANGE 2  
 [ WEST, WILLAMETTE MERIDIAN, AND IDENTIFIED AS A  
 [ PORTION OF TAX LOT 1700 OF LANE COUNTY ASSESSOR  
 [ MAP 21-02-06, AND ADOPTING SAVINGS AND  
 [ SEVERABILITY CLAUSES. (File: PA 06- 5476, Symbiotic LLC,  
 [ USACOE).

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 24, 2006, a Conformity Determination Amendment application (PA 06-5476 Symbiotic LLC, USACOE) was submitted to Lane County proposing a plan designation of Forest (F) and a zoning designation of Impacted Forest Land (F-2, RCP) pursuant to RCP General Plan Policies - Goal Two, Policy 27.a.vii. and Goal 4, Policy 15; and

WHEREAS, the Lane County Planning Commission reviewed the proposal in a public hearing on June 20, 2006; and

WHEREAS, the Lane County Planning Commission on June 20, 2006, recommended approval of the proposed plan and zoning designations; and

WHEREAS, the proposal was reviewed at a public hearing with the Lane County Board of Commissioners on August 2, 2006; 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. The Lane County Rural Comprehensive Plan is amended by adding a designation for a 37.5 acre portion of tax lot 1700 of Lane County Assessor’s map 21-02-06 and additional lands consisting of adjoining road and railroad right-of-way as Forest (F), such territory depicted on Official Plan Plot 453 and further identified as Exhibit “A” attached and incorporated herein.

Section 2. A 37.5 acre portion of tax lot 1700 of Lane County Assessor's map 21-02-06 and additional lands consisting of adjoining road and railroad right-of-way are zoned Impacted Forest Land F-2, RCP (Lane Code 16.211), such territory depicted on Official Zoning Plot 453 and further identified as Exhibit "B" attached and incorporated herein.

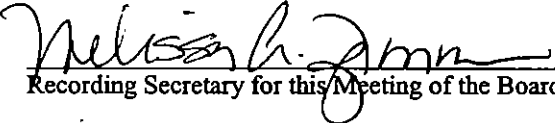
**FURTHER**, although not a part of this Ordinance, the Board of County Commissioners adopts the findings in support of this action as set forth in the attached Exhibit "C".

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 20<sup>th</sup> day of AUGUST, 2006.

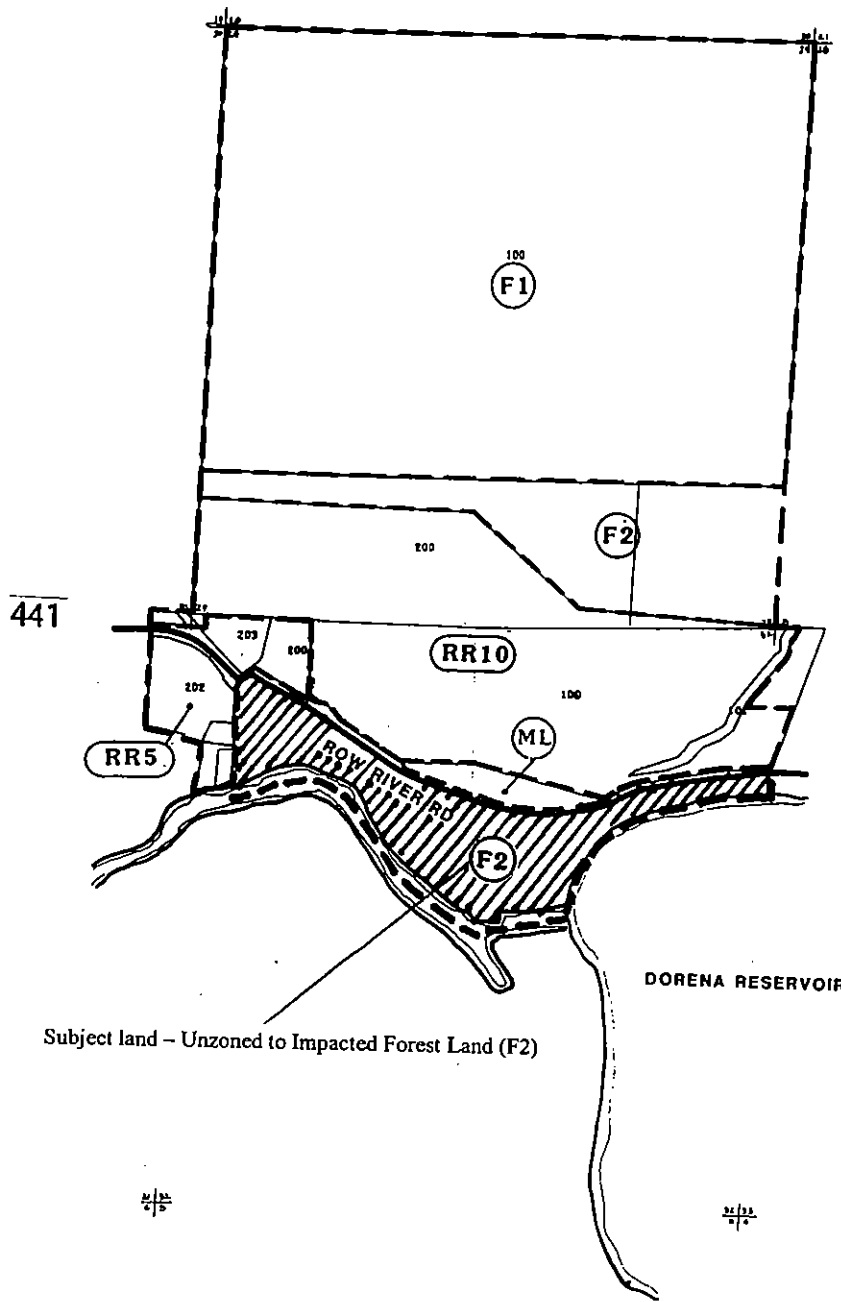
  
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Chair, Lane County Board of County Commissioners

  
\_\_\_\_\_  
Recording Secretary for this Meeting of the Board

APPROVED AS TO FORM

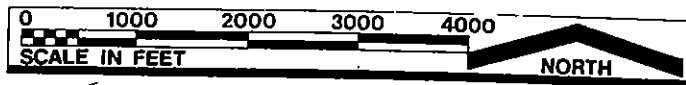
Date 7-13-2006 Lane County

  
\_\_\_\_\_  
OFFICE OF LEGAL COUNSEL



Subject land - Unzoned to Impacted Forest Land (F2)

FLOODPLAIN



lane county



OFFICIAL ZONING MAP

PLOT# 453

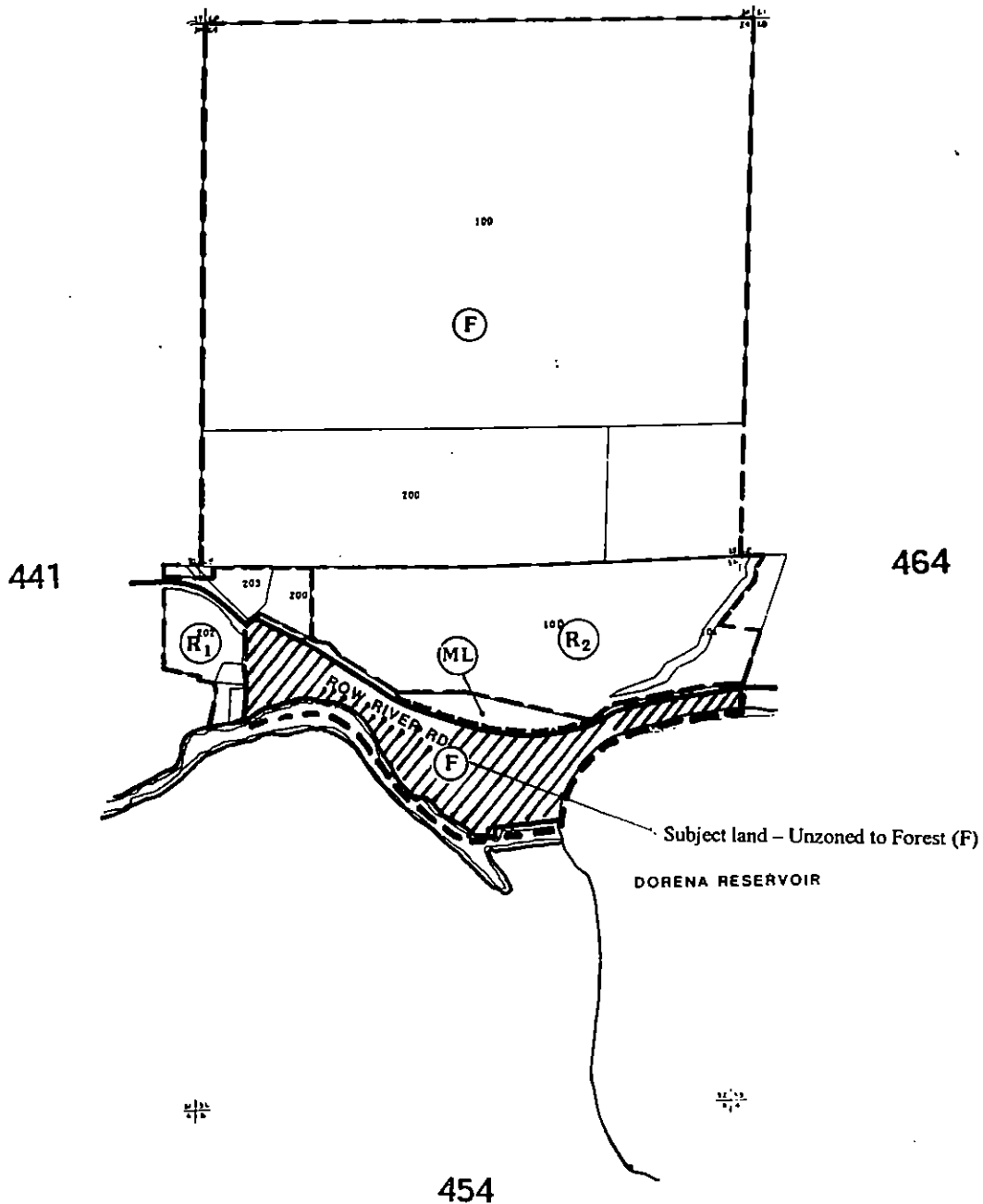
Township Range Section

20 02 29

20 02 32

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

REVISION # T ORD # PA 911



lane county

**OFFICIAL PLAN MAP**

**PLOT # 453**

Township Range Section  
 20 02 29 / 20 02 32 ( )

ORIGINAL ORD. # PA 884 DATE 2/29/1984 FILE # \_\_\_\_\_  
 REVISION # 1 ORD # PA 911 DATE 3/14/86 FILE # \_\_\_\_\_

FINDINGS OF FACT AND CONCLUSIONS OF LAW

for

A CONFORMITY DETERMINATION AMENDMENT  
PURSUANT TO RCP GENERAL PLAN POLICIES – GOAL TWO, POLICY 27. a. vii.

ADOPTING THE PLAN DESIGNATION OF FOREST (F)  
AND THE ZONING DESIGNATION OF IMPACTED FOREST LAND (F-2)  
FOR 37.5 ACRES LOCATED IN SECTION 32, TOWNSHIP 20, RANGE 2 WEST,  
WILLAMETTE MERIDIAN, AND IDENTIFIED AS A PORTION OF TAX LOT 1700 OF  
LANE COUNTY ASSESSOR MAP 21-02-06

and

ADOPTING SAVINGS AND SEVERABILITY CLAUSES

APPLICATION NO. PA 06-5476

ORDINANCE NO. PA 1236

Applicant: Symbiotics, LLC  
Owner : U.S. Army Corp of Engineers  
Applicant's Agent: Erik Steimle  
Ecosystems Research Institute  
Applicant's Attorney: Paul Vaughan  
Hershner Hunter, LLP

## FINDINGS OF FACT AND CONCLUSIONS OF LAW

In support of our adoption and enactment of Ordinance No. PA 1236, we make the following findings of fact and conclusions of law.

### GENERAL FINDINGS AND CONCLUSIONS:

The property subject to this Conformity Determination Amendment (the Subject Property) is located north of the centerline thread of the Row River, south of Row River Road and east of the Developed and Committed Exception Area Plot #453-R1 (which exception area is located east of the intersection of Row River Road and Shoreline Drive). The property includes the Dorena Dam and spillway. The eastern boundary of the property extends south of Row River Road and north of the shoreline of Dorena Reservoir to the eastern boundary of Official Plan Plot # 453 and Official Zoning Plot # 453 as depicted on Attachment "A" and Attachment "B", respectively. The property includes the right-of-way of the Oregon Pacific Electric Railroad (OPERR) and the southern right-of-way of Row River Road within Official Zoning Plot # 453. The property is approximately six miles east of Cottage Grove and is outside of the City of Cottage Grove urban growth boundary.

The Subject Property includes an approximately 37.5 acre portion of a 970.71-acre parcel owned by the U.S. Army Corp of Engineers (ACOE) that is tax lotted on Assessor's Map 21-02-06-00 as Tax Lot 1700. The 970.71-acre ACOE parcel was developed between approximately 1942 and 1949 with the Dorena Dam which impounded waters of the Row River and created the Dorena Reservoir, which occupies most of the 970.71 acre ACOE parcel.

On August 29, 1978, Lane County enacted Ordinance No. 688 that zoned lands within the Row River-London Subarea that included the Subject Property. The Subject Property was zoned FF-20 (Farm-Forest District-20 acre minimum parcel size) pursuant to that 1978 ordinance. A portion of the ACOE parcel immediately south of the Subject Property was included within the Public Reserve (PR) zone described in Lane Code Chapter 10, which is a zone that allows such uses as public parks, playgrounds, hunting and fishing lodges, government buildings and other intensive, non-forest uses and the rest was zoned FF-20.

In 1984, Lane County enacted Ordinance No. 884 with the stated intent of applying new Rural Comprehensive Plan designations and zoning (Lane Code Chapter 16) to all land outside of urban growth boundaries. Although the ordinance applied new RCP designations and zoning to surrounding properties, there was an apparent oversight with respect to the ACOE parcel—the ordinance failed to apply any RCP designation or zoning to any portion of the ACOE parcel, including the Subject Property. Although that might suggest that the Subject Property is still subject to the FF-20 (Lane Code Chapter 10) zoning applied to it in 1978 pursuant to Ordinance No. 688, 1984 Ordinance No. 884 went beyond merely applying new designations and zoning to properties described in the ordinance—Section 2 of the ordinance (with exceptions not relevant here) specifically repealed all prior plan and zone designations. As a result, we find that 1984 Ordinance No. 884 caused the ACOE parcel that includes the Subject Property to be stripped of any RCP designation and to become unzoned.

LCDC has acknowledged Lane County's Rural Comprehensive Plan and implementing regulations that included the designations and zoning applied by 1984 Ordinance No. 884. Since the 1984 ordinance did not apply any designation or zoning to the Subject Property, arguably the use and development of the Subject Property is not regulated by Lane County zoning ordinances. However, where a property is not subject to any zoning district, it is unclear what, if any, standards apply to the use and development of the property. In order to fill that vacuum and clarify the situation, Symbiotics filed an application for a Conformity Determination requesting that Lane County apply a plan designation and zoning of Impacted Forest Land (F-2, RCP) to the Subject Property. That resource designation, which does not require that the county take a Goal exception, is consistent with the FF-20 designation and zoning that was applied to the Subject Property in 1978 but subsequently repealed in 1984. It is also consistent with the aerial photographs attached as Appendix D to the application that show the current use of the Subject Property.

#### **GENERAL PLAN POLICIES: GOAL TWO – POLICY 27:**

The Lane County Rural Comprehensive Plan includes General Plan Policies specific to each of the Statewide Planning Goals One through Nineteen as they are implemented in Lane Code. Goal Two policies address Land Use Planning, which includes amendment processes for the Plan and Zoning designations of all properties within the rural lands of Lane County. Policy 27 of Goal Two pertaining to Conformity Determinations provides for the processing of a Conformity Determination Amendment by the Planning Commission and the Board of Commissioners for specific properties when a citizen, public agency or LMD staff shows that the plan and/or zoning designations satisfy one of the eight criteria set out in Policy 27.a.i.-viii.

*a. Circumstances qualifying for consideration by the Board of Commissioners under the Conformity Determinations Policy may include one or more of the following:*

*i. Lawful, structural development existing prior to September 12, 1984 and use of the structures at the time qualified as an allowable use in a developed & committed zone designation other than that designated for the land on an Official Plan or Zoning Plot.*

*ii. Inappropriate Non-impacted Forest Land (F-1, RCP-zoning designation, where criteria of RCP Forest Land Policy 15 indicate that Impacted Forest Land (F-2, RCP) zoning designation is more suitable.*

*iii. A property was actively managed primarily as either an agricultural or forestry operation in 1984 and since, and a resource designation other than the primary, use was adopted on an Official Plan or Zoning Plot in 1984.*

*iv. Correction of a scrivener error on an adopted Official Plan or Zoning Plot.*

*v. Correction of an incompatible split-zoning of a legal lot resulting from a survey boundary line error that was discovered after September 12, 1984.*

vi. *Compliance by a public jurisdiction or agency with a deed restriction on public land.*

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.*

viii. *A circumstance other than as listed in Policy 27. a.i.-vii. above, which the Planning Commission elects to forward a favorable recommendation for consideration by the Board of Commissioners.*

We find that a Conformity Determination Amendment applicable to the Subject Property is appropriate under and consistent with General Plan Policy: Goal Two – Policy 27.a.vii. As stated in the General Findings, pursuant to 1978 Lane County Ordinance No. 688, the Subject Property was zoned FF-20 (Farm-Forest District–20 acre minimum parcel size). However, in 1984, Lane County enacted Ordinance No. 884 which effectively removed any RCP designation from the Subject Property and caused the property to become unzoned. Although the 1984 ordinance was enacted with the stated intent of applying new Rural Comprehensive Plan designations and zoning (Lane Code Chapter 16) to *all land outside of urban growth boundaries*, through an apparent oversight, the ordinance failed to apply any new RCP designation or zoning to the Subject Property. The property was simply omitted from the designation/zoning maps attached to the ordinance. Moreover, to compound the oversight, the 1984 ordinance specifically *repealed all prior plan and zone designations*. This is exactly the type of oversight and circumstances that the Conformity Determinations Policy was intended to address. This Conformity Determination Amendment restores a forestland resource designation to the Subject Property and zoning consistent therewith in accordance with the Lane County Rural Comprehensive Plan Goal 4: Forest Land - Policy 15 criteria discussed below. We also note that Subsection e. of Policy 27 recognizes that a Conformity Determination Amendment may be initiated by a private applicant in addition to being initiated by the county and find that the subject application was appropriately initiated by the applicant in accordance with that subsection.

We find that this Conformity Determination Amendment is a Minor Amendment pursuant to Policy 27.a.vii and Lane Code 16.400(6)(h) and involves applying a plan and zoning designation subject to Lane Code 16.252 processes. We find that no exception to any Statewide Goal, resource or otherwise, is necessary, and that this Minor Amendment is consistent with all applicable Statewide Goals. This Minor Amendment merely corrects an oversight—it causes currently undesignated and unzoned land to be designated for forest resource use and zoned Impacted Forest Land (F-2) in accordance with the county’s Goal 4: Forest Land – Policy 15.

#### **CONFORMITY DETERMINATION AMENDMENT – GENERAL PROCEDURES:**

*Lane Code 16.400(6) Plan Adoption or Amendment – General Procedures. The Rural Comprehensive Plan or any component of such Plan, shall be adopted or amended in accordance with the following procedures:*

\* \* \* \* \*

*(h) Method of Adoption and Amendment.*

*(i) The adoption or amendment of a Rural Comprehensive Plan component shall be by Ordinance.*

*(ii) The adoption or amendment shall be concurrent with an amendment to LC 16.400(4) above. In the case of a Rural Comprehensive Plan adoption, the Code amendment shall place such Plan in the appropriate category. In the case of a Rural Comprehensive Plan amendment, the Code amendment shall insert the number of the amending Ordinance.*

*(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.*

*(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*

*(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*

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

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

*(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.*

*(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.*

*(i) A change of zoning to implement a proposed Plan amendment may be considered concurrently with such amendment. In such case, the Board shall also*

*make the final zone change decision, and the Hearings Official's consideration need not occur.*

We find that this Minor Amendment is adopted by ordinance as required by Lane Code 16.400(6)(h)(i).

We find that pursuant to LC 16.400(6)(h)(iii)(bb)(i-i), Ordinance No. PA 1236 is a Minor Amendment (processed as a Conformity Determination Amendment) necessary to correct an identified error in the application of the Plan. In this case, the discovery of unzoned land in the rural area of Lane County and the intent to apply the appropriate resource designation in conformity with similar actions at the time of adoption of the Rural Comprehensive Plan in 1984.

As noted above, the Conformity Determination Amendment applicable to the Subject Property is appropriate under and consistent with General Plan Policy: Goal Two – Policy 27.a.vii. We also find that the amendment is compatible with the existing structure of the Rural Comprehensive Plan, and is consistent with the unamended portions or elements of the Plan. We also incorporate herein our findings and conclusions set out below addressing Lane County Rural Comprehensive Plan Goal 4: Forest Land - Policy 15.

We also find that a change of zoning to implement the Conformity Determination Amendment was considered concurrently with the amendment, and the Board has made the final zone change decision from unzoned land to Impacted Forest Land (F-2) zoning. Accordingly, we find and conclude that the Hearings Official's consideration need not occur.

#### **ADDITIONAL LANE CODE PROCEDURES FOR PLAN AMENDMENT:**

Portions of Lane Code 16.400(8) are also applicable to the amendment process.

##### *Lane Code 16.400(8) Additional Amendment Provisions.*

*(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.*

(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.*

(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.*

(ii) *An analysis responding to each of the required findings of LC 16.400(6)(h)(ii) 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;*

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

(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;*

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

(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;*

(gg) *For a proposed amendment to a Nonresource designation or a Marginal Land designation, an analysis responding to the criteria for the respective request as cited in the Plan document entitled, "Working Paper: Marginal Lands" (Lane County, 1983).*

We find that this amendment is a Minor Amendment because it is limited to the Plan Diagram only and does not require an exception to any Statewide Planning Goal.

We further find that the applicant submitted a complete application in compliance with the requirements of Lane Code 16.400(8)(b). The Planning Director waived the requirement for the applicant to supply documentation concerning Lane Code 16.400(8)(c)(iii)(aa)-(gg), above. We

find that waiver to be appropriate because this Minor Amendment is a Conformity Determination Amendment to correct an inconsistency between the text of 1984 Ordinance No. 884 adopted by the Board of Commissioners and the Official Plan and Zoning diagram; and because the amendment applies a forest resource designation to forest land and does not require any exception to any Statewide Goal.

We find that similar resource lands designated as Farm Forest 20 (FF20) within Plot # 453 from 1976 to 1984, and amended by the Board of Commissioners in February 1984 by 1984 Ordinance No. 884, were predominantly designated for forest use and zoned Impacted Forest Land (F-2). Specifically, the zoning designations for lands within the vicinity of the subject property were illustrated on Attachment "D" to the staff report. Lands designated from 1976 to 1984 as FF20 were predominantly amended to Impacted Forest Land (F-2). We also find, based on the evidence in the record, that the Subject Property is predominantly forested, that it is not in a farm use, and that it is appropriately designated for forest use.

**FINDINGS OF FACT AND CONCLUSIONS OF LAW REGARDING APPLYING THE RURAL COMPREHENSIVE PLAN DESIGNATION AND ZONING OF IMPACTED FOREST LAND (F-2, RCP) TO THE SUBJECT PROPERTY:**

We find that the county previously recognized that the Subject Property is forest resource land when it enacted 1978 Lane County Ordinance No. 688. A forest resource land designation is also consistent with what is shown by the evidence in the record including the aerial photographs of the Subject Property that are attached to the application.

We find that the primary issue to be decided in connection with this Conformity Determination Amendment (which will restore a forest resource designation and zoning to the Subject Property) is whether the designation and zoning should be Non-Impacted Forest Lands (F-1, RCP) or Impacted Forest Lands (F-2, RCP). We find unequivocally that the Subject Property qualifies for an Impacted Forest Lands (F-2, RCP) designation and zoning under the applicable criteria.

Lane County Rural Comprehensive Plan Goal 4: Forest Land - Policy 15 sets out the criteria for deciding whether forest land shall be designated and zoned as Non-impacted Forest Lands or Impacted Forest Lands as follows:

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

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

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

- (2) *Predominantly contiguous, ownerships of 80 acres or larger in size.*
  - (3) *Predominantly ownerships contiguous, to other lands utilized for commercial forest or commercial farm uses.*
  - (4) *Accessed by arterial roads or roads intended primarily for forest management.*
  - (5) *Primarily under commercial forest management.*
- c. *Impacted Forest Land Zone (F 2, RCP) Characteristics*
- (1) *Predominantly ownerships developed by residences or non-forest uses.*
  - (2) *Predominantly ownerships 80 acres or less in size.*
  - (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.*
  - (4) *Provided with a level of public facilities and services, and roads, intended primarily for direct services to rural residences.*

A review of the evidence and testimony, including the objections raised around terms contained in this policy makes it clear that the focus of the analysis must be on the property proposed for forest land zoning. For reasons that become clear when each of the various portions of the policy are addressed, most of the assessment of property or the area beyond the boundaries of the property proposed for zoning comes through the expression of the characteristics of each zone and does not rely on a precise definition of the term “ownerships” as either a “legal lot or parcel” or a “tract” of land since the primary focus is on the land that is the subject of the zoning request itself. For that reason we reject the assertion that the term means more than the Subject Property.

We find that the term “ownerships” contained in the criteria of RCP Goal 4 Policy 15 should be considered as including only the land being proposed for rezoning (unless other qualifiers in a particular characteristic compels a different result) because of the introductory language in Policy 15 and that finding constitutes a reasonable interpretation of the term “ownerships” as contained in that policy. Such an interpretation is consistent with the text, context, purpose and intent of Policy 15. Sub-paragraph a. of Policy 15 states that a decision to apply one of the zones (or both in a split zone fashion) shall be based upon:

- “a. A conclusion that **characteristics of the land** correspond more closely to the characteristics of the proposed zoning than the characteristics of the other forest zone.” (Emphasis added)

The characteristics of the land, not the ownership of it, control the analysis. Policy 15 was crafted as a means of distinguishing large-scale industrial forest land from small-scale non-industrial forest land in the present and for the foreseeable future. The policy was intended to provide an analysis of the size and use of the subject property and of the land in the immediate

vicinity. Size and use of land constitute the four sets of characteristics of each type of forest land required by Policy 15 to be analyzed and compared. The listed characteristics do not include any reference to the determination of a particular type of ownership or whether contiguous properties owned by the same person or entity constitute one or more ownerships. The critical focus of the analysis is on the property proposed for rezoning and the characteristics that property has that mitigate toward consideration of applying F-1 or F-2 zoning.

The term "ownership" as used in Goal Four, Policy 15, has been utilized to identify different lands and the uses thereon, which are to be considered in making an evaluation of whether a F-1 or F-2 designation is warranted for the land under consideration for zoning. This was due to the need to look within the subject land to identify the development and uses present and to partially look beyond those boundaries to the lands in the general vicinity and identify the existing resource or nonresource uses and development on the surrounding lands. It really amounted to identifying a singular pattern within a more expansive tapestry.

When Goal Four, Policy 15 was originally adopted in 1984 as a component of the General Plan Policies of the Rural Comprehensive Plan, the two planning commissions and the Board of Commissioners were applying the "characteristics" of Policy 15(b) and (c) in a broad matrix designed to (1) acknowledge development existing at the time on specific properties; and (2) analyze those commitments of specific lands in context with a broad-brush view or generalized sense of the surrounding parcelization and uses. Forest lands less than 80 acres in size and developed with residential uses or other nonforest uses, generally received Impacted Forest Land (F2) designations. Public forested lands and larger commercially managed, forest lands that were not impacted by nonforest uses, particularly in the ownership of industrial forest operators, were designated as Nonimpacted Forest Lands (F1).

Prior analysis during the 1970s and the resulting Lane Code Chapter 10 zoning designations which were incorporated into the thirteen subarea plans, contributed to the final decision on a property-by-property basis in 1984. At that time, the need for precise definition of the "ownership" term as legal lot, or parcel or tract was not important because the whole county was the subject of the zoning designation. In considering the present day applications, looking at the area proposed for rezoning generally provides sufficient definition to the term "ownership". In the case of the subject 37.5 plus acres of Ordinance No. PA 1236, the subject land would have been re-designated from FF20 Farm-Forestry to F2 Impacted Forest Land as were other lands with similar characteristics in the area, at the time.

The critical focus of the analysis is on the property proposed for rezoning and the characteristics that property has that mitigate toward consideration of applying F-1 or F-2 zoning. Properties subject to amendments in the past have included portions or combinations of tax lots as metes and bounds descriptions with single owners or multiple owners. Lane Code does not require legal lot determinations as a qualifier for application for a zone change in recognition of the variety of configurations of zoning that might make sense regardless of property boundaries. Legal lot status is a factor that comes into play in subsequent development permits, both planning and building, after a zoning designation has been applied.

A reading of Goal Four, Policy 15 interpreting “ownership” to mean “land being proposed for rezoning” seems a reasonable approach that avoids debate over whether the focus should be more than the subject property, beyond the portion of that analysis determined by other text that clearly notes the connection of the subject property to surrounding lands.

Goal Four, Policy 15 uses three terms to define the areas to be reviewed when assessing the surrounding properties as well as the land being considered for rezoning. Those terms are “contiguous”, “generally contiguous” and “adjacent”.

“Contiguous”, as defined in Lane Code 16.090 definitions, is used in Policy 15.b. (2) and (3) to look for the different characteristics of F-1 land. The text in LC 16.090 provides: “Having at least one common boundary line greater than eight feet in length. Tracts of land under the same ownership and which are intervened by a street (local access, public, County, State or Federal street) shall not be considered contiguous.” In the case of 15.b.(2), the intent is to look within the land being proposed for rezoning to determine whether or not that land being proposed for rezoning consists of contiguous land owned by the applicant that is 80 acres or larger in size. In the case of 15.b. (3), the intent is to determine whether other land contiguous to the land being proposed for rezoning is in commercial forest or commercial farm use.

Policy 15.c.(3) does not use the term “contiguous” to determine the same relationship between the land proposed for rezoning and the tapestry of uses and development in the surrounding area. Policy 15.c.(3) uses “generally contiguous” in a broader sense that looks beyond the definition of “contiguous” to determine if “tracts” owned by other property owners in the general area of the land being proposed for rezoning are less than 80 acres in size and developed with residences. The analysis is intended to venture beyond the only contiguous properties with common property lines. In some instances, common sense may push that analysis a distance in some or all directions to fully assess the characteristics of the surrounding uses and development particularly when considering a “tract”.

Policy 15.c.(3) also uses the term “adjacent” to look even further beyond the nearby tracts or across intervening right-of-way to acknowledge the impacts of development within developed and committed exception areas in the general vicinity of the land being proposed for rezoning. It is a broader look at the complete tapestry of uses and development, particularly nonresource uses, in the general area. It does not depend on contiguity for that consideration.

This interpretation affirms the Lane Code 16.090 definition of “contiguous” as it is used in Policy 15.b.(2) and 15.b.(3) in the assessment of F-1 characteristics. It also makes clear that “generally contiguous” as used in Policy 15.c. (3) is different and broader in meaning and application when assessing the F-2 characteristics. It will remain for the Board of Commissioners to exercise discretion on a case-by-case basis, in making a final determination on how wide and how far that assessment pursuant to Policy 15.c.(3) would need to reach to provide a factual basis in arriving at a decision to approve or deny a request for rezoning. In all cases, the analysis under Goal Four, Policy 15 does not require a precise mathematical computation since the focus is on all the characteristics and whether, on balance, the land proposed for rezoning more closely corresponds to the F-1 or F-2 characteristics.

**We find that the characteristics of the Subject Property do not correspond closely with the Non-impacted Forest Land Zone (F-1, RCP) characteristics:**

**Policy 15.b.(1):**

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

We find that the Subject Property does not have this characteristic. It consists of road and railroad right-of-way ownerships and a 37.5-acre ownership that are generally in non-forest uses such as the roadways (Row River Road and Spillway Road), the dam and the spillway. Based on this alone, we conclude the Subject Property consists predominantly of ownerships that are developed by non-forest uses.

In addition, the Subject Property is a portion of the 970.71-acre ACOE parcel that is predominantly developed with non-forest uses. Specifically, we also find that most of the area of the ACOE parcel is developed with the Dorena Reservoir. In addition to the reservoir, there are developed improvements on other portions of the parcel including Dorena Dam and related infrastructure (some located on the 37.5-acre portion of the Subject Property) and parks and recreation facilities including those at the Schwarz Park campground and recreation area (located at the base of Dorena Dam on the banks of the Row River) which has restrooms, showers, camp sites and RV sites and those at Baker Bay Park (located on the south side of Dorena Reservoir) which has restrooms, showers, picnic areas, a swimming area, boat ramp, marina, camp sites and RV sites, paved parking areas and recreational commercial facilities. We find that the assessor's records also reflect that there are a number of manufactured structures on the ACOE parcel including a single family dwelling associated with intense non-forest development.

We conclude that the response to this criterion strongly supports our finding, conclusion and decision that the Subject Property be designated and zoned as Impacted Forest Land.

**Policy 15.b.(2):**

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

The Subject Property is approximately 37.5 acres in size and therefore does not correspond to this characteristic even with the additional area included in the rights-of-way.

With respect to property contiguous to the Subject Property, the tax lots referred to in these findings are shown on Appendix C to the application. We find that that portion of the ACOE parcel located contiguous to the south and east of the Subject Property is larger than 80 acres, although as noted above, the vast majority of that land is developed with non-forest uses, most of it having been developed with Dorena Reservoir.

There is one other property 80 acres or larger in size that is north of the Subject Property and separated from it only by Row River Road and the abandoned railway right-of-way. That property, which consists of two tax lots (Tax Lots 100 and 208), is owned by the Verek Trust et al. and contains slightly over 207 acres. It is under a different ownership than the Subject Property. In addition, Lane County already designated and zoned that property for Rural Residential (RR-10) use. Furthermore, Lane Code Section 16.090 defines "contiguous" as having one common boundary greater than eight feet in length and the definition makes clear that even if the land is in the same ownership, it is not "contiguous" if it is separated by a public

road. The Verek Trust property is separated from the Subject Property by Row River Road so it is not technically contiguous for the purpose of analysis under this characteristic.

Other property located directly north of the Subject Property (but also separated from it by Row River Road) are smaller than 80 acres: (i) Tax Lot 203 is a 4.85 acre parcel zoned RR-5; (ii) Tax Lot 200 is a 5.8 acre parcel zoned RR-5; and Tax Lot 500 is a 16.20 acre parcel zoned ML (Marginal Lands).

All of the other contiguous properties are much smaller than 80 acres. (See Appendix C to the application.) Those contiguous properties are as follows:

1. Tax Lot 201 – 1.1 acres;
2. Tax Lot 202 – 12.14 acres; and
3. Tax Lot 401 – .97 acres.

In summary, we find that neither the Subject Property itself (which is approximately 37.5 acres in size) nor the properties contiguous to the Subject Property (which are predominantly smaller than 80 acres and not in the same ownership as the Subject Property) correspond more closely to the stated Non-Impacted Forest Land characteristic, thereby supporting our finding, conclusion and decision that the Subject Property be designated and zoned as Impacted Forest Land.

**Policy 15.b.(3):**

*Predominantly ownerships contiguous, to other lands utilized for commercial forest or commercial farm uses.*

As is reflected in the maps attached as Appendix A, Appendix B and Appendix C to the application, the other lands contiguous to the Subject Property are predominantly *not* utilized for commercial forest or commercial farm uses.

Also, as discussed above, the other land to the north of the Subject Property are not technically “contiguous” because they are separated from the Subject Property by Row River Road. Nevertheless, even if those lands were deemed to be contiguous or connected to the Subject Property under the definition of that term in LC 16.090, not one of those other lands are in the same ownership as the Subject Property or used for commercial forest or commercial farm uses. Those other lands are all zoned and designated for either Rural Residential (RR-5; RR-10) uses or as Marginal Land (ML).

The contiguous lands to the west of the Subject Property are also not used for commercial forest or commercial farm uses. All of those lands are designated and zoned for Rural Residential (RR-5) use, and all are developed with residential dwellings.

The land to the south of the Subject Property across the Row River is that portion of the ACOE parcel that is developed with restrooms, showers, camp sites and RV sites associated with the Schwarz Park campground and recreation area (located at the base of Dorena Dam on the banks of the Row River). We think the intervening ownership of the beds and banks of the river by the state makes this area noncontiguous with the Subject Property. In any case, the entire ACOE parcel became unzoned as a result of 1984 Ordinance No. 884. However, the county previously recognized that the portion of the ACOE parcel south of the Subject Property was not forest resource land when, pursuant to 1978 Ordinance No. 688, it included that property within the

Public Reserve (PR) zone described in Lane Code Chapter 10, which is a zone that allows such uses as public parks, playgrounds, hunting and fishing lodges, government buildings and other intensive, non-forest uses. We find that the land to the south of the Subject Property is not contiguous and is not used for commercial forest or commercial farm uses.

Finally, the contiguous land to the east of the Subject Property is that portion of the ACOE parcel that is developed with Dorena Reservoir, and which is not used for commercial forest or commercial farm uses.

Since the other lands contiguous to the Subject Property are predominantly if not exclusively utilized for purposes other than commercial forest or commercial farm uses, the response to this criterion strongly supports our finding, conclusion and decision that the Subject Property be designated and zoned as Impacted Forest Land.

**Policy 15.b.(4):**

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

We find that the Subject Property is not accessed by arterial roads or roads intended primarily for forest management.

Access to the Subject Property is provided by Spillway Road. Spillway Road is classified in the County's Transportation System Plan (TSP) as a Rural Local road to the point it enters the Subject Property, and it provides access to the rural residential development to the west of the Subject Property as well as access at the westerly boundary of the Subject Property. We also find that from the point Spillway Road enters the Subject Property; it is not open to the public. That portion of the road provides access through the Subject Property to the base of Dorena Dam on the northwest bank of the Row River. That portion of the road was built for the purpose of providing access for the operation and maintenance of Dorena Dam; it was not built for the purpose of commercial forestry.

Access to Spillway Road is via Shoreview Drive, which is classified in the TSP as a Rural Major Collector.

Neither Spillway Road nor Shoreview Drive is classified as an arterial road, and neither road is intended primarily for forest management. Accordingly, the response to this criterion also strongly supports our finding, conclusion and decision that the Subject Property be designated and zoned as Impacted Forest Land.

**Policy 15.b.:**

*Primarily under commercial forest management.*

We find that the Subject Property is not under commercial forest management. The primary use of the entire ACOE parcel that includes the Subject Property is for the operation and maintenance of Dorena Dam and Reservoir. There is no evidence that the portion of that operation that is on the Subject Property and the right-of-way not owned by ACOE are under commercial forest management. The dam and reservoir provide flood control, irrigation, recreational opportunities, and improved downstream passage. Accordingly, the response to this criterion similarly strongly supports our finding, conclusion and decision that the Subject Property be designated and zoned as Impacted Forest Land.

**We find that the characteristics of the subject property do correspond closely with the Impacted Forest Land Zone (F-2, RCP) characteristics:**

**Policy 15.c.(1):**

*Predominantly ownerships developed by residences or non-forested uses.*

We find that the characteristics of the Subject Property correspond closely with this characteristic. It consists of road and railroad right-of-way ownerships and a 37.5-acre ownership that are generally in non-forest uses such as the roadways (Row River Road and Spillway Road), the dam and the spillway. Based on this alone, we conclude the Subject Property consists predominantly of ownerships that are developed by non-forest uses.

In addition, the Subject Property is a portion of the 970.71-acre ACOE parcel that is predominantly developed with non-forest uses. Almost the entire ACOE parcel is developed with Dorena Reservoir. In addition to the reservoir, there are developed improvements on other portions of the parcel including Dorena Dam and related infrastructure (some located on the 37.5-acre portion of the Subject Property) and parks and recreation facilities including those at the Schwarz Park campground and recreation area (located at the base of Dorena Dam on the banks of the Row River) which has restrooms, showers, camp sites and RV sites and those at Baker Bay Park (located on the south side of Dorena Reservoir) which has restrooms, showers, picnic areas, a swimming area, boat ramp, marina, camp sites and RV sites, paved parking areas and recreational commercial facilities. The assessor's records also reflect that there are a number of manufactured structures on the parcel including a single family dwelling. Moreover, Subject Property is not managed as part of a commercial forest operation and is developed with portions of the Dorena Dam infrastructure and the access roadway that provides access for inspection and maintenance of the dam and the spillway.

In short, the response to this criterion strongly supports our finding, conclusion and decision that the Subject Property be designated and zoned as Impacted Forest Land.

**Policy 15.c.(2):**

*Predominantly ownerships 80 acres or less in size.*

While the entire ACOE parcel is much larger than 80 acres, this Conformity Determination only pertains to the Subject Property. The Subject Property includes approximately 37.5 acres of ACOE property and accordingly, the predominant ownership of the Subject Property under consideration is well under the 80-acre threshold. Moreover, as was explained previously, the vast majority of the entire ACOE parcel is developed with non-forest uses, most of the parcel having been developed with Dorena Reservoir and park, camping and recreation facilities. Finally, even if the Subject Property is deemed not to conform to this characteristic because the entire ACOE parcel is larger than 80 acres, this is only one of the four Impacted Forest Land characteristics and we find that the Subject Property corresponds closely with each of the other three Impacted Forest Land characteristics (Policy 15.c.(1), (3) and (4)). In addition, the Subject Property does not closely conform to any of the five Non-Impacted Forest Land characteristics. When considering all the characteristics together, we conclude the Subject Property more closely corresponds to the Impacted Forest Land characteristics.

**Policy 15.c.(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.*

As is reflected in the map attached as Appendix C to the application, the Subject Property is 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.

As is shown by the map attached as Appendix C to the application, the tracts to the north of the Subject Property are not technically “contiguous” because they are separated from the Subject Property by Row River Road. Nevertheless, except for the tract owned by the Verek Trust et al. that is zoned RR-10 and is part of a rural residential exception area, each of those tracts is substantially smaller than 80 acres: the Richards tract (TL 203) is 4.85 acres; the Bettis tract (TL 200) is 4.85 acres; and the McCarthy tract (TL 500) is 16.20 acres. Furthermore, each of those tracts (except the McCarthy tract that is zoned Marginal Land) is part of an “adjacent” developed and committed area for which an exception has been taken. Finally, except for the Verek Trust tract, each of the other tracts to the north of the Subject Property, including the McCarthy tract, is developed with a residence.

The generally contiguous tracts to the west of the Subject Property are each substantially smaller than 80 acres. In addition, those areas are zoned for Rural Residential (RR-5) use and development and are part of an “adjacent” developed or committed area for which an exception has been taken in the Rural Comprehensive Plan. Finally, all of those tracts are developed with residences.

The “tract” to the south and east of the Subject Property is that portion of the ACOE parcel that to the south of the Subject Property is developed with restrooms, showers, camp sites and RV sites associated with the Schwarz Park campground and recreation area (located at the base of Dorena Dam on the banks of the Row River) and that to the east of the Subject Property is developed with the Dorena Reservoir and the associated Baker Bay Park recreational amenities described in our findings above. That “tract” is larger than 80 acres, but as noted previously, it may be generally contiguous but it is not designated in the RCP and is unzoned.

In short, the majority of the tracts generally contiguous or adjacent to the Subject Property contain substantially less than 80 acres, are developed with residences, and are within developed or committed areas for which an exception has been taken in the Rural Comprehensive Plan. Accordingly, the response to this criterion strongly supports our finding, conclusion and decision that the Subject Property be designated and zoned as Impacted Forest Land.

**Policy 15.c.(4):**

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

As discussed in our findings in response to Policy 15.b.(4), access to the Subject Property is provided by Spillway Road. Spillway Road is classified in the County’s Transportation System Plan (TSP) as a Rural Local road to the point it enters the Subject Property, and it provides access to the rural residential development to the west of the Subject Property as well as access

at the westerly boundary of the Subject Property. Access to Spillway Road is via Shoreview Drive, which is classified in the TSP as a Rural Major Collector. Spillway Road and Shoreview Drive are intended primarily to serve the rural residential development in the area and the Dorena Reservoir parks and recreation areas.

While the Subject Property is not in an urban area and therefore is not served by municipal water or sewer services, we find that it is provided with the following public facilities and services:

1. Emergency Services: Cottage Grove Fire and Ambulance Department;
2. Schools: District 45J – South Lane

The Subject Property also has access to electric utility and telephone service.

In summary, the Subject Property conforms closely to this characteristic which also supports our finding, conclusion and decision that the Subject Property be designated and zoned as Impacted Forest Land.

**CONCLUSION REGARDING IMPACTED FOREST LAND ZONE (F-2, RCP) DESIGNATION AND ZONING:**

In summary, we find, conclude and decide that the Subject Property does not conform to the Non-Impacted Forest Land Zone (F-1, RCP) characteristics and that the Subject Property does conform more closely to the Impacted Forest Land Zone (F-2, RCP) characteristics. Accordingly, we find, conclude and decide that the Subject Property should, through the enactment of Ordinance No. PA 1236, be designated and zoned Impacted Forest Land (F-2, RCP).