

IN THE BOARD OF COUNTY COMMISSIONERS OF LANE COUNTY, OREGON

ORDINANCE NO. PA 889 ) IN THE MATTER OF AMENDING ORDINANCE  
 ) NO. PA 883 ENTITLED THE LANE COUNTY  
 ) GENERAL PLAN POLICIES, AN  
 ) ELEMENT OF THE LANE COUNTY RURAL  
 ) COMPREHENSIVE PLAN, AND ADOPTING A  
 ) SAVINGS AND SEVERABILITY CLAUSE .

WHEREAS, the Board of County Commissioners submitted the Rural Comprehensive Plan for acknowledgment on March 1, 1984, and

WHEREAS, since submittal, a number of objections to the Plan have been received. In addition, DLCDD staff have identified certain deficiencies in the Plan, now, therefore,

THE BOARD OF COUNTY COMMISSIONERS OF LANE COUNTY ORDAINS AS FOLLOWS:

1. Goal #2, Policy #16 - delete "or as parks and recreation".

2. Goal #2, Policy #21 - change the time period specified in Errors and Omissions from December 31, 1984 to June 30, 1985.

3. Goal #2 - add Policy #24 as follows:

"Cluster subdivisions shall be deemed appropriate to a rural area when the following criteria are satisfied:

"1. Consistent with the intent and requirements of OAR 660-14-040(2) and (3), a showing must be made that the development will not represent an urban population or demand an urban level of facilities and services. For purposes of meeting this standard, affirmative findings must be made addressing the following:

"a. The level of development represented by the development cannot be reasonably accommodated through the expansion of an existing urban growth boundary or by intensification of development at an existing rural center.

"b. The long-term environmental, economic, social and energy consequences resulting from the development, considering measures designed to mitigate negative impacts, are appropriate to the rural area. Factors to be considered include whether the size of the development is appropriate to the proposed rural area and whether the air, water, energy and land resources of the surrounding area are adequate to serve and are not adversely affected by the development.

- "c. The proposed development is compatible with or can be made compatible with adjacent uses considering:
    - "(1) Whether the development detracts from the ability of existing cities and service districts to provide services, and
    - "(2) Whether the potential for continued resource management of the land, at present levels surrounding and nearby the development is assured.
  - "d. An appropriate level of rural facilities and services are available or can be provided in a timely and efficient manner.
  - "e. The approval of the development is coordinated with affected jurisdictions and is consistent with the comprehensive plans of the affected jurisdictions and the Lane County Rural Comprehensive Plan.
- "2. The development will not:
- "a. Generate traffic which will exceed the carrying capacity, as defined by Lane Code Chapter 15, of adjacent public and private roads.
  - "b. Necessitate a higher level of police service than presently provided to the surrounding area.
  - "c. Occur within one mile of an existing urban growth boundary and/or share any urban service provided within a neighboring urban growth boundary.
  - "d. On the whole require an urban level of service.
- "3. Reasonable assurances must be provided that the cluster shall not generate students in excess of the capacity of affected facilities within the appropriate school district.
- "4. The development represents a concentration of people who generally reside and work in the area.
- "5. Deed restrictions which ensure that community water and sewer systems shall remain viable and under private ownership shall be required. Cluster subdivisions which propose to form or use a public water or sewer system shall not be allowed.
- "6. Cluster subdivisions shall be limited to residential use. No commercial or industrial uses will be allowed within existing or proposed cluster subdivisions.
- "7. All cluster subdivisions must be within an existing Rural Fire Protection District.
- "8. No other identifiable substantial increase of a public service shall be necessitated by the approval of a cluster subdivision."

3a. Goal #2 - add Policy #24 as follows:

"1. Consistent with the requirements of state land use Goals 11 (services and facilities) and 14 (urbanization), and recognizing that the goals do not forbid all public services or any increases in public services in rural areas, a showing is made that the development will not be urban or require urban levels of facilities and services. For purposes of meeting this standard, affirmative findings must be made that:

"a. The long-term environmental, economic, social and energy consequences resulting from the development considering positive impacts and measures designated to mitigate negative impacts and measures designed to mitigate negative impacts, are appropriate to the rural area. Factors to be considered include whether the size of the development is appropriate to the area, needs for rural housing, and whether the air, water, energy, and land resources of the surrounding area are adequate to serve and are not materially impaired by the development.

"b. The proposed development is compatible with or can be made compatible with adjacent uses, recognizing that compatibility is a matter of degree and that the goals do not insulate rural areas from all impacts of new rural development, and considering the following:

"(1) Whether the development detracts materially from the ability of existing cities and service districts to provide services, and

"(2) Whether the potential for continued resource management of area lands at existing levels is substantially impaired.

"c. An appropriate level of rural, public facilities and services are available or can be provided in a timely and efficient manner.

"d. The approval of the development is coordinated with affected jurisdictions and is consistent with all applicable comprehensive plans and with the Lane County Rural Comprehensive Plan.

"2. The development will not:

"a. Generate traffic which will exceed the capacity, as defined by Lane Code Chapter 15, of adjacent public and private roads as designated in the Lane County Transportation Plan.

*deleted &  
revised by  
Board action  
J. D. Hayes  
9 Aug 84*

*Approved  
of District Board  
Board acting  
9/10/88*

- "b. Necessitate an urban level of police service.
- "c. Require extensions of urban levels of sewer and water beyond any urban growth boundary.
- "3. Deed restrictions which ensure that community water sewer systems shall remain viable and under private ownership shall be required. Cluster subdivisions which propose to form or use a public water or sewer system shall not be allowed.
- "4. Cluster subdivisions shall be limited to residential uses and rural levels of other uses.
- "5. All cluster subdivisions must be within a Rural Fire Protection District before occupancy.
- "6. No other increase of public services to urban levels shall be necessitated by the approval of a cluster subdivision."

4. Goal #2 -add Policy #25 as follows:

"Outside of designated 'Community' areas, all changes to Plan Diagram designations shall be evaluated through the County's Plan Amendment procedure (LC 16.400) and approval based upon fulfillment of criteria therein."

5. Goal #2 - add Policy #26 as set forth in Exhibit "A".

6. Goal #2 - add Policy #27 which states: "Exceptions to resource goals shall be required for transmission line right-of-ways when in excess of fifty (50) feet."

7. Add to the Developed and Committed Working Papers as set forth in Exhibit "B".

8. Goal #4, Policy #11a - delete "if adjacent to other Non-Impacted Forest Lands."

9. Goal #4, Policy #12 - delete in its entirety and insert the following:

"Area requirements for Impacted Forest Land must be adequate to conserve forest land for impacted farm and forest uses and be consistent with the following criteria:

(a) Except as provided in subsection (b) below, for the creation of a woodlot for the purpose of the propagation or harvesting of a forest product, the minimum area shall be at least 20 acres and that which is consistent with the Douglas Fir cubic foot site indexes and minimum area computations promulgated by the Oregon Department of Forestry and specified below and additional area to accommodate a homesite, access and fire breaks and a logical parcel layout and use of the parcel. There shall be presented for each application sufficient factual documentation to verify that each proposed tract meets the above requirements.

Cubic Foot Site Class	Potential Yield Cu.Ft./Acre/Yr.	Acreage Minimum
6	20-49-cf/ac	6±
5	40-8±-cf/ac	43
4	85-119 cf/ac	3±
3	120-16± cf/ac	24
2	165-22± cf/ac	17
2	165-22± cf/ac	17

- "(b) To substantially limit any adverse impacts upon commercial forest management which might result from land divisions and subsequent residential development (accessory and necessary to commercial forest management) a minimum area of 80 acres shall be required for the division of large forest tracts:
- "(i) zoned F-2
  - "(ii) containing at least 160 acres
  - "(iii) for the creation of lots or parcels adjacent to F-1, RCP zoned lands.
- "(c) Deviation from the standards specified in 12(a) and 12(b) above for a 40-acre parcel on impacted forest land to be used for farm use may be allowed. Proposed residences for such parcels shall be accessory to commercial farm use and shall be allowed only if consistent with accessory dwelling standards in the EFU zone.
- "(d) Deviation from the standard specified in 12(a) and 12(b) above of the impacted forest land for the creation of a parcel not smaller than 20 acres may be allowed when at least 19 acres of the parcel being created are currently managed or planned to be managed by a farm management plan for a farm operation consisting of one or more of the following: berries, grapes or horticultural specialties. A temporary mobile home which is accessory to the farm management may be conditionally located upon the farm parcel for a reasonable length of time to allow for substantial implementation of the farm management plan. Upon evidence that the farm management plan has been substantially implemented, the mobile home may be allowed on a permanent basis or may be converted to a permanent dwelling.
- "(e) Lot line adjustments consistent with the definition of "divide" in LC 161090 are permissible.
- "(f) Land divisions for non-farm or non-forest dwellings as per EFU standards."

10. Goal #4, Policy #19 - add the following:

"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

- "i. Predominantly ownerships not developed by residences or nonforest uses.
- "ii. Predominantly contiguous ownerships of 80 acres or larger in size.
- "iii. Predominantly ownerships contiguous, to other lands utilized for commercial forest or commercial farm uses.
- "iv. Accessed by arterial roads or roads intended primarily for forest management.
- "v. Primarily under commercial forest management.

"c. Impacted Forest Land Zone (F-1, RCP) Characteristics

- "i. Predominantly ownerships developed by residences or nonforest uses
- "ii. Predominantly ownerships 80 acres or less in size
- "iii. 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.
- "iv. Provided with a level of public facilities and services, and roads, intended primarily for direct services to rural residences."

11. Add to Forest Lands Working Papers as set forth in Exhibit "C"

12. Add to the Addendum to the Forest Lands Working Papers as set forth in Exhibit "D".

13. Goal #11, Policies #1 and #2 - delete Policies #1 and #2 and insert the following:

- 1. Lane County shall provide an orderly and efficient arrangement for the provision of public facilities, services and utilities. Designation of land into any given use category, either initially or by subsequent plan amendment, shall

be consistent with the minimum level of services established for that category. (See attached Appendix A.)

Change the numbers of the remaining policies as follows:

- Change the effective #3 to #2.
- Change the effective #4 to #3.
- Change the effective #5 to #4.
- Change the effective #6 to #5.

Adopt the attached Exhibit "E" as Policy #6, Appropriate Levels of Service in Rural Areas.

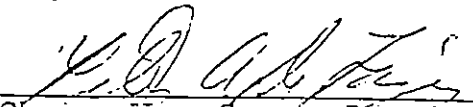
The policies repealed by this Ordinance remain in full force and effect to authorize prosecution of persons in violation thereof prior to the effective date of this Ordinance.

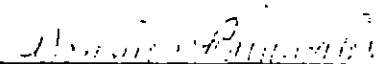
The Board reserves the right to delete any portion of this Ordinance prior to final adoption.

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

While not part of this Ordinance, we adopt the findings in support of this Ordinance as set forth on attached Exhibit "F".

Enacted this 9<sup>th</sup> day of August, 1984.

  
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Chair, Lane County Board of  
Commissioners

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

Background:

Soil mapping units were prepared by the County Soil Scientist in close cooperation with the Soil Conservation Service (SCS) by combining field checked aerial photographs and USGS 1:30,000 foot base maps. The resulting maps provide specific detailed soils information. The various soil characteristics and capability ratings are listed in the OR Soil S-1 Forms, "OR-1's".

An average Site Index was determined by the SCS based on the "OR-1's" from which was calculated a cubic foot site class (see "A Technique for Mapping Forest Land by Site Productivity Using Soil Survey Information", Oregon State Department of Forestry, 1978) as per Goal #4's ~~to~~ ~~the~~ ~~minimum~~ requirement.

The Site Index is an expression of the productive potential or capability of forest land. These site indices are usually grouped into site quality classes, i.e. cubic foot site classes (CFSC). (see attached)

Appendix IV of the Forest Lands Working Paper lists the soil types inventoried within Lane County that constitute the forest lands having CFSC 2 through 5. The inconsistency arises in the definition of "commercial" forest land, p.8 of the Forest Lands Working Paper, March, 1982, and p. 5 of the Addendum to the Working Paper: Forest Lands, 1982:

"'Commercial' forest land (land-capable of producing crops of industrial wood in excess of 20 cubic feet per acre of annual growth)"

The use of this "commercial" forest land definition came from the State's application of a National Standard for inventory purposes. The inappropriateness of the National Standard in Lane County is indicated in the following table of Site Class VI forest land in Lane County:

Size Class VI Forest Land in Lane County\*

Ownership	Species	Acreage	Volume (cu. ft.)
Forest Industry	-	0	0
Other Private	-	0	0
Willamette N.F.	-	0	0
Umpqua N.F.	-	0	0
Siuslaw N.F.	hardwoods	900	2,336
State & Other Pub.	hardwoods	1,630	3,700
<b>Total</b>		<b>2,430</b>	<b>6,036</b>

\* Source: 1980 Oregon Timber Supply and Assessment  
Oregon State Forestry Dept., December, 1980.

In addition the Oregon Forest Practices Act applies to commercial operations and as per OAR 629-24-501 (The Reforestation Requirements of the FPA for the Oregon Northwest Region):

"Lands Affected. Any lands which come within the definition of forest land and which are capable of a mean annual production of at least 50 cubic feet per acre at culmination as determined by Site Index tables contained in ..."

Summary:

- 1) Since Lane County has inventoried its forest lands as per Goal #4 and has mapped Forest Land CFSC 2-5 with CFSC 5 defined as forest land capable of producing crops of industrial wood in excess of 50 or more cubic feet per acre of annual growth; and
- 2) Since the acreage inventoried by the 1980 Oregon Timber Supply and Assessment identified a relatively small amount (less than 2,500 acres) of land in Lane County with productivity ratings of less than 50 cubic feet per acre; and
- 3) Since the SCS Soil Interpretive Sheets for Lane County do not provide information indicating the potential forest productivity below CFSC 5; and
- 4) Since the Oregon Forest Practices Act applies to commercial operations and identifies the lands affected by OAR 629-24-501 as capable of at least 50 cubic feet per acre of annual growth;

Staff Recommends the following:

- 1) Amend the definition of "commercial" forest land p.3 of the Forest Lands Working Paper, March, 1982, and p.5 of the Addendum to the Working Paper: Forest Lands, 1982, to read as follows:

... "Commercial" forest land (land capable of producing crops of industrial wood in excess of 50 cubic feet per acre of annual growth..."

- 2) Appendix I of the Forest Lands Working Paper, March, 1982, lists Lane County Forest Soils and their corresponding CFSC rating as of that date. As more current information regarding forest soils becomes available, Lane County should rely upon the most current Soils Data and Soils Interpretations as utilized by the US Dept. of Agriculture Soil Conservation Service.

## XII. Appendix II - Cubic Foot Site Classes

### Forest Land Site Class and Cubic Foot Site Class System

Site index is the unit of measure which foresters use to indicate the potential productivity of a given area. Site index is calculated separately for every species. The most commonly used system in western Oregon is the 100-year site index for Douglas-fir.

Site index 140 means that the soils and climate in the area described will enable Douglas-fir trees to grow 140 feet tall in 100 years.

Practical application of much site estimation work requires grouping into broad classes. Therefore, Douglas-fir site indexes are grouped into site classes as follows:

Site Class	V			IV		III			II		I	
Site Index	150	140	130	120	110	100	90	80	70	60	50	40

Site index is only a measure of the ability of the area to grow trees--in this case Douglas-fir trees. It is not related to the ability of the soil to produce apples, beans, or wheat. Neither is it related to the ability of the soil to accommodate roads or septic tanks. Site class is very important for long-term investors, but other factors can make even the best sites very difficult and unprofitable to manage for timber production. These include:

1. Poor stocking (not enough trees).
2. Poor condition (brush, weed trees, diseased trees).
3. Poor access.
4. Steep ground.
5. Unfavorable zoning or environmental constraints.
6. Unfavorable taxation.

Site index reflects the combined effects of soil and climate on tree height growth--but not diameter growth. Diameter growth varies with tree spacing--hence, the desirability of proper spacing at any given age.

Wood growth can also be expressed in cubic feet per acre per year. This expression is grouped into cubic foot site class. The relationship between site index and cubic foot site class for Douglas Fir is shown on the following table:

Site Class	V			IV		III			II		I						
	50	60	70	80	90	100	110	120	130	140	150	160	170	180	190	200	210
Potential Yield Cubic Feet/Acre	20	25-30		30-34		35-44		45-54		55-64		65-74		75-84		85-94	
Cubic Foot Site Class	7	6		5		4		3		2		1		0			

Soils information, including site index for forest soils, is available for many areas. Contact the Soil Conservation Service or Lane County Department of Environmental Management for information about your soils.

Note: Information taken from Oregon State University Extension Service Publications.

- 1) In support of the proposed Comprehensive Plan developed in 1982 the Lane County Landowners Association provided written testimony that the minimum land division size of 40 acres in the F-1 Zone represented an acreage that could be an operationally and economically manageable unit within the industry. At that time the F-1 Zone proposal allowed dwellings on parcels down to that minimum size.  
(See attached letter dated November 23, 1982.)
- 2) The Addendum to the Forest Lands Working Paper dated November, 1983, justifies the 40 acre minimum land division from the data which show a significant number of parcels and amount of acreage that represent that size class within the industrial forest land ownership.

The following excerpt is from Suggested Policy XI. 1) of the Addendum to the Forest Lands Working Paper:

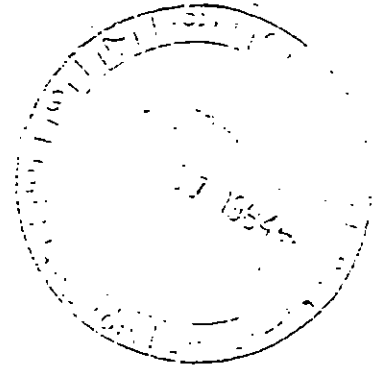
"92% of the industrial forest land acreage that lies on parcels less than 80 acres in size occurs on parcel sizes between the range of 40 to 80 acres, with approximately 25% of that area occurring at the 40 acre parcel size category. "

"75% of the number of parcels in the industrial owned forest land that lies on parcels less than 80 acres in size occurs on parcel sizes between the range of 40 to 80 acres, with approximately 28% of the number of parcels occurring within that range at the 40 acre parcel size category."

- 3) The letter received June 21, 1984, from the Lane County Landowners Association reiterates their former position in support of the 40 acre minimum land division standard noting that under the current proposal the F-1 Zone excludes residences.  
(See copy attached.)
- 4) In addition, preliminary data from the computerized zoning file of the current F-1 proposal indicate that of the parcels zoned F-1 that are between 40 and 80 acres in size, 27% of the acreage occurs on parcels of the 40 acre size class which represents 33% of the number of parcels between 40 and 80 acres in size.

Lane County Landowners Association  
P. O. Box 1613  
Eugene, OR 97440

Mr. Jim Mann, Senior Planner  
Land Management Division  
Lane County  
125 E. 3rd Avenue  
Eugene, OR 97401



Dear Jim:

On November 23, 1982 we submitted a letter to Mr. Vern Belk (copy attached) regarding commercial timber management on 40 acre parcels on F-1 forestland. At that time we felt that 40 acres was an economically feasible size to manage and we still support that premise.

The latest F-1 Forestland Zone proposes to exclude dwellings and to allow for a 40 acre minimum parcel size. When we submitted our letter in 1982, the then F-1 Zone proposed to allow for a dwelling on 40 acre minimum parcels. We see no reason to alter our opinion of the management feasibility on 40 acres because of this change.

As we alluded to in our original letter, a commitment to forest management is the key, whether on 40 acres or 400 acres, whether using your own labor or contracting the work, whether gaining a sole means of support or the prospect of partial support. We are entering a new era in forestland ownership where land owners understand the benefits that can be derived from timber as a renewable resource. The protection of the commercial forestland base in Lane County will not be diluted because of a 40 acre minimum in the F-1 Zone but, rather, will probably be enhanced by this commitment.

Sincerely,

*Carl F. Ehler*

Carl F. Ehler  
Chairman

CFE/jp

Lane County Landowners Association  
P. O. Box 1613  
Eugene, OR 97440

November 23, 1982

Mr. Vern Deik:  
Senior Planner, Lane County  
Lane County Courthouse/Public Service Bldg.  
125 E. 3th Avenue  
Eugene, OR 97401

Dear Mr. Deik:

The purpose of the Lane County Important Forest Land District (F-1) is, by definition, specifically written to recognize the importance of the commercial forest lands within the County, to encourage the commercial management of these lands, to conserve forest land for forest uses, and to protect commercial forest lands from intrusion of non-compatible uses. It is the county's policy to protect forestry operations from conflicting land uses. Lane County's use of three distinct forest zones (F-1, F-2 and F-3) recognizes the varying land use patterns, parcels and resultant intensity of forest management practices which are or can be applied to different types of forest land within the County.

With the above in mind, the County has determined that the minimum area for the division of land within F-1, the truly intensive forest management zone, shall be 40 acres. The Lane County Landowners Association, representative of the industrial timber companies and members of the Oregon Small Woodlands Association with ownership approximating 50 percent of the privately held land in Lane County, supports this acreage as an economically and operationally manageable unit. In addition, we would suggest that government lots approximating 40 acres be included.

It is our belief that a small parcel can be economically managed on a commercial basis. Certainly industrial timberland owners and the larger small woodland owners can successfully manage separate parcels of this size. An individual with a single 40 acre parcel, given the commitment and capital, can also manage it on an economic basis. With proper forest management, a parcel of this size will pay its way over the long term. The parcel may not generate sufficient income to provide a sole means of support to the owner, but there is nothing in the goals and guidelines that requires this. Many forestland owners live and work in town and manage their property on weekends, partly as a recreational activity. Others hire professional consultants to manage it for them.

Lane County and the Lane County Landowners Association are committed to protecting our commercial timberland base. We do not believe that a 40 acre parcel in an area which meets the criteria for F-1 zoning will have a deleterious effect on this commitment.

Sincerely,

*Carl F. Ehlen*

Carl F. Ehlen, Chairman  
Lane County Landowners Association  
P. O. Box 1613  
Eugene, OR 97440

LEGISLATIVE FINDINGS IN SUPPORT OF PA 889

EXHIBIT F

GOAL 2 POLICY CHANGES

1. Deletion of "...or as parks and recreation.." from Policy #16. Prior to amendment, Policy #16 allowed park and recreation uses in non-resource areas. This language is being eliminated to help prevent urban uses from occurring in rural areas.

Lane County has adopted a Park and Recreation Zone (PR-RCP) and has applied it to rural lands. Uses permitted outright are split into two categories: (1) uses permitted in all areas zoned PR; and (2) uses permitted only within an exception area.

The following uses were formerly permitted outright on resource lands zoned PR (LC 16.215(2)), but uses a) b) c) d) and f) are now permitted subject to reasonable standards.

(a) General Recreation Parks including picnic areas, camping grounds, hiking trails, playfields, bathing beaches and other similar outdoor, manmade recreation facilities.

(b) Leisure and Ornamental Parks largely for scenic or ornamental purposes, including monuments, statues (sic) beaches and children's play facilities.

(c) Group or Organized Camps for children and adults which may include any of the above uses and activities and other uses and activities, such as swimming pools, meeting halls, sleeping shelters, cafeterias and shelters for indoor recreation.

(d) Recreation vehicle parking spaces in conjunction with any of the above three permitted uses.

(e) One residence on the subject property for a caretaker.

(f) Marine terminals and associated areas that are primarily for recreational marine craft, excluding sale or land storage of marine craft, but including any incidental sale of gas or minor repair.

(g) Forest Uses.

(h) Farm Uses.

(i) Nonresidential uses necessary and accessory to the uses listed above such as:

(i) Fire prevention, detection and suppression facilities.

(ii) Access roads and roads for management and safety.

(iii) Storage buildings.

(iv) A carport or garage in conjunction with #5 above.

(v) Restroom, washroom or shower facilities.

(vi) Offices.

Uses permitted outright on resource lands are generally the same type of uses allowed under ORS 215.213(2)(3), which are:

Community centers owned and operated by a governmental agencies or a nonprofit community organization, hunting and fishing preserves, parks playgrounds and campgrounds.

Uses allowed outright in resource areas zoned PR are consistent with ORS 215.213(2)(e). The amendment to the PR zone provides standards required by that statute.

Minor betterments and general park improvements are uses which may be allowed outright in resource areas. However, uses such as RV parks, recreational marinas, and large recreational development require, at a minimum, standards to assure that these types of uses are compatible with existing uses and minimize impacts to resource lands.

The uses permitted in the PR zone under subsection (2) are primarily recreation oriented and were modeled after ORS 215.213(2) uses. ORS 215.213(2) was used as a model so that the PR zone would qualify as a limited resource zone. However, ORS 215.213(2) was not followed in its entirety, because it requires "reasonable standards," limited to resource areas consistent with ORS 215.213(2). Those standards are not necessary for PR uses in a committed area since the commitment has already eliminated most resource compatibility concerns.

2. Enlargement of the "Errors and Omissions" time period in Policy #21 to June 30, 1985.

Consistent with a prior finding of Lane County that an "Errors and Omissions" policy was necessary to correct problems which may have occurred in the planning process, the county finds that the original time limitation was not adequate to allow for discovery and application for correction of errors resulting from refinements necessitated by DLCD review and LCDC acknowledgment. Therefore, the "Errors and Omissions" "window" has been extended an additional six months.

3. Addition of Policy #24 to provide criteria by which cluster subdivisions may be measured to determine whether they are appropriate for the area.

In its staff report dated June 29, 1984, DLCD staff stated:

"Lane County Cluster Subdivision provision allows for the creation of urban uses and urban levels of development in rural areas. Statewide Planning Goals define rural land as lands outside UGBs and are: (a) Non-urban agricultural, forest or open space lands or (b) other lands suitable for sparse settlement, small farms or acreage homesites with no or hardly any public

services, and which are not suitable, necessary or intended for urban use. The Cluster Subdivision Provision allows development at urban densities and with urban uses (i.e., multifamily dwellings) in rural areas, including exception areas and nonresource areas. Conceivably, a 500 acre parcel could accommodate 500 units on small lots, with the remainder of the parcel in "common open space." This would be an urban subdivision at this point. The County must amend the ordinance to define levels of development appropriate to these rural areas (see Goal 11). The clustering provisions must be designed to not permit urban uses in rural areas." (page 50.)

Recognizing that the determination of when a development will be considered "urban" as opposed to "rural" requires a case by case analysis after balancing many factors, the County had added policy #24 to specify criteria which will be considered in the balancing process.

In order that the clustering provisions not permit urban uses in rural areas, a study must be made to determine the question of "what is urban." For that reason, OAR 660-14-040, LCDC Administrative Rule for Application of the Statewide Planning Goals to the Incorporation of New Cities has been referenced as a guideline for urban development with the intent that the opposite result be reached by an application for a cluster subdivision. Affirmative findings must show that the level of development cannot be reasonably accommodated in another area, that ESE consequences are appropriate to the area, that the development is compatible with adjacent uses, that an appropriate level of rural facilities can be provided and that approval is coordinated with affected jurisdictions and consistent with those comprehensive plans and that of Lane County.

The factors to be considered and weighed are traffic, police services, school district capacity, sewer and water system provisions and viability, and fire protection. In addition, the cluster subdivision must not be within a mile of an existing urban growth boundary or share services with a neighboring community, it must be composed in general of residents of the area, be limited to residential use and not substantially increase public services. These limitations on cluster subdivision adequately limit the size of the subdivision without establishing an arbitrary "cap."

Policy #24 is specifically referred to in Lane Code Chapters 13 and 16 to insure compliance with its provisions.

4. Addition of Policy #25 to require that all changes of Plan Diagram designations outside of designated "Community" areas be evaluated through LC 16.400.

Development in areas with "Community" designations must be justified by LCDC "need" or "committed land" exceptions. This requirement is not specifically stated with respect to lands

outside of areas of "Community" designations. In order to ensure that development outside of "Community" areas is justified by "need" or "committed land" exceptions, any such development can occur only after applying for and receiving a rural comprehensive plan amendment pursuant to LC 16.400 which includes Planning Commission review and recommendation as well as Board of Commissioners review and decision. A change from one resource category (i.e., farm to forest) also requires a plan amendment to assure relevant resource goals are addressed.

5. Addition of Policy #26, providing that each land use designation be implemented by one or more zoning districts and setting forth those designations/districts. This list clearly defines which zoning districts are intended to implement each plan designation. This eliminates any confusion as to what criteria should apply when requesting a comprehensive plan and zoning designation amendment.

6. Addition of Policy #27 which requires exceptions to resource goals for the transmission line rights-of-way in excess of 50' wide. The County finds that transmission lines the rights-of-way require widths in excess of 50' qualify as an area which would require a Goal 2, Part II exception if they are to be placed in a resource zone. This would insure that interference from utility lines and their rights-of-way would be minimized and placed in areas least suitable for farm or forest production. This amendment is a recognition of the fact that a utility easement 50' or greater in width is a use of the property which may conflict with resource uses. This amendment is consistent with LCDC's position on the Coos County Review.

7. This amendment is to identify which parcels zoned PR are within built and committed areas. The findings of fact relating to the built and committed nature of these areas are contained within Exhibit B of PA 884, Volumes I and II. This amendment is a clarification of which properties are zoned PR and located in areas for which an exception has already been taken.

#### GOAL 4 POLICY AMENDMENTS

1. Deletion of "...if adjacent to other Non-Impacted Forest Lands..." from Policy #11a. This is a deletion of a requirement of an F-1 40 acre minimum lot size for purposes of land division if the parcel is adjacent to other F-1 parcels. This requirement was specified in the policy but not in the zoning ordinance. Since the working papers indicate that a 40 acre minimum lot size for purposes of land division is the F-1, non-impacted forest zone, is appropriate, the requirement that the parcel be adjacent to other F-1 parcels is superfluous and, being inconsistent with the zoning criteria, should be removed.

2. Deletion of Policy 12 and substitution of new Policy 12. The major change in this policy is the addition of paragraph (b) which specifies into what parcel sizes lands zoned F-2 which are adjacent to F-1 lands may be divided. The F-2 tract must contain

at least 160 acres, divided such that the resultant parcel adjacent to the non-impacted forest land be no less than 80 acres. As stated in the policy, this restriction on division will limit adverse impacts on non-impacted forest land and management thereof by providing a "buffer" between an F-2 residence and the F-1 timber stands. The 80 acre parcel size is based upon the analysis of forest value versus residential value as contained in the Addendum to the Forest Lands Working Paper.

3. Addition to Policy #19 of precise criteria to be followed in deciding whether land designated "Forest" in the comprehensive plan should be zoned Impacted (F-2) or Non-Impacted (F-1) Forest Land. The County finds that, by applying the criteria specified, a zoning decision may be made on a quasi-judicial basis by a hearings officer by order, as opposed to requiring an amendment of the ordinance. If there is a question as to the correctness of the decision, an appellate tribunal will be able to review the findings of the Hearings Officer vis-a-vis the criteria specified in the policy to determine whether the decision should be affirmed, remanded or reversed, thus assuring adequate protection of resource land and obviating the procedures required by a plan amendment. The criteria are based upon the forest land, impacted and nonimpacted, characteristics in the Working Paper Addendum and within the RCP Goal and Policies.

4. Addition to Forest Lands Working Papers of information regarding soil mapping, soil characteristics and capability ratings, and site classes within Lane County. As stated in Exhibit C, there is an inconsistency in the definition of "commercial" forest land in the main Working Paper and the addendum to that paper. The County finds that the national production standard of 20 cubic foot/acre (which is used by the state for inventory purposes) should not be the definition of "Commercial" forest land within Lane County and that the standard should be the same as that specified in the Oregon State Forest Practices Act, i.e., 50 cubic foot/acre, for the reasons set forth in Exhibit C.

5. Addition to addendum to Forest Lands Working Papers of the information contained in Exhibit D. The findings relating to this information are set forth on page 1 of that exhibit.

#### GOAL 11 POLICY CHANGES

1. Deletion of Policies 1 and 2 and substitution of new policy detailed in the ordinance.

The DLCDC staff report dated June 29, 1984, required the following policy change:

"Adopt a plan policy which specifies the appropriate levels of service for rural areas, including unincorporated minor development centers and rural service centers." Based upon the information contained in the Public Facilities Working Paper, appropriate

service levels for rural development have been devised and incorporated into the revised Goal 11 policy #1 contained within this ordinance.

## FORESTRY GOAL LEGISLATIVE FINDINGS

Goal #4 provides:

"GOAL: To conserve forest lands for forest uses.

"Forest land shall be retained for the production of wood fibre and other forest uses. Lands suitable for forest uses shall be inventoried and designated as forest lands. Existing forest land uses shall be protected unless proposed changes are in conformance with the comprehensive plan.

"In the process of designating forest lands, comprehensive plans shall include the determination and mapping of forest site classes according to the United States Forest Service manual "Field Instructions for integrated Forest Survey and Timber Management Inventories - Oregon, Washington and California, 1974."

"Forest Lands -- are (1) lands composed of existing and potential forest lands which are suitable for commercial forest uses; (2) other forested lands needed for watershed protection, wildlife and fisheries habitat and recreation; (3) lands where extreme conditions of climate, soil and topography require the maintenance of vegetative cover irrespective of use; (4) other forested lands in urban and agricultural areas which provide urban buffers, wind breaks, wildlife, and fisheries habitat, livestock habitat, scenic corridors and recreational use.

"Forest Uses -- are (1) the production of trees and the processing of forest products; (2) open space, buffers from noise, and visual separation of conflicting uses; (3) watershed protection and wildlife and fisheries habitat; (4) soil protection from wind and water; (5) maintenance of clean air and water, (6) outdoor recreational activities and related support services and wilderness values compatible with these uses; and (7) grazing land for livestock."

### FINDINGS

1. The Forest Land working paper and addendum are incorporated as if fully set forth herein. The following discussion addresses only the issues where the ultimate policy choice is at variance with the draft working papers.

2. Dwellings. During the public comment stage of this Plan's development, substantial opposition to the limitations on locating dwellings on Impacted Forest Land (F-2) arose. In reviewing available options, the Planning Commission and Board of County Commissioners were aware of the following factors:

a. The specification of permissible forest uses, as expressed in the Goal itself, is quite limited. Despite this limitation, two appellate court cases allow uses not enumerated in the Goal. See Shadybrook Environ. Protect. Assn. v. Washington Co., 61 Or App 474 (1983), rev. den., 294 Or 682 (1983), where the

court authorized nonforest (rock quarry) uses in a forest zone. See also, Publishers' Paper Co. v. Benton Co., 63 Or App 636 (1982), which authorizes nonforest dwelling in forest land when certain conditions are met.

b. Lane County forest zones have been subject to legal challenges in the past and LCDC and LUBA directed that nonforest uses, such as dwellings, be allowed only if "necessary and accessory to" an enumerated forest use. Lamb v. Lane County, 7 Or LUBA 137 (1983). Neither LUBA nor LCDC defined "necessary and accessory to".

c. During 1983, LCDC attempted to prescribe, via a proposed Administrative Rule, under what circumstances a dwelling would be permitted. The draft Rule of February 17, 1973 proposed that if a dwelling were allowed that it must be a use "accessory" to the forest use. No such Administrative Rule was ever adopted.

d. Approximately 92 percent of Lane County's forest land is either in industrial or public ownership. This land has been zoned F-1, Nonimpacted Forest Land. The implementing measures under this zone are quite specific and uses are strictly limited. For example, dwellings, except for replacement and statutory lots of record, are not allowed.

e. Forest Management Plan. Land designated F-2, while impacted by nonforest activities, are nevertheless lands capable of significant forest production. Lane County wishes to enhance forest management on these parcels. The method selected is to allow dwellings only when two things occur: A Forest Management Plan is submitted demonstrating how the dwelling will enhance forest production and a tax deferral or equivalent stocking is achieved. The second condition will be discussed in detail later. With regard to whether a Forest Management Plan, was a viable criterion to help meet the "necessary and accessory to" standard, we received conflicting evidence. At least one individual testified that dwellings interfered with and adversely affected Forest Management. No specific data arising from Lane County on this issue was submitted. In contrast to this testimony, numerous owners of F-2 parcels testified that they managed their forest from their home and were able to enhance forest production thereon. They testified in detail about being able to work on the land in the evenings and on weekends thinning, fertilizing, etc. Also, numerous citizens pointed to the small tree farmer of the year who managed the winning parcel in question, 22 acres, from his home on the subject property. Finally, we note that Forest Management from the homesite has been a tradition in Lane County for many years without any requirement of Forest Management Plans or tax deferrals. Because of the conflict in testimony as to the impact of dwellings, we elect to continue the basic pattern, but formalize actual practice by conditioning the dwelling on the Forest Management Plan -- by this technique, we can be assured of enhanced production and thereby help confirm that the dwelling is necessary and accessory to Forest Management. New dwellings for nonforest purposes on land suitable for commercial forest production are not allowed.

f. Tax deferral/minimum stocking. The second condition for a dwelling in the F-2 District requires that the applicant either obtain a tax deferral or meet a minimum stocking requirement.

In Lane County, forest tax deferrals are available under two programs -- ORS 312.157 to .375 is the Western Oregon Forest Land and Severance Tax and ORS 321.705 to .765 is for the Western Oregon Small Tract Optional Tax. The purpose of both these tax programs is to reduce annual property tax costs until harvest in order to make it economically feasible to hold the timber for a full cycle. See ORS 321.262 and 321.710. The effect of the program is to create an incentive for increasing Forest Management. Both programs are commenced via an application. Forest Management Plans demonstrating how minimum stocking requirements are to be achieved or have been achieved are prerequisite to the deferral. See ORS 321.358, ORS 321.720, OAR 629-23-110 and OAR 629-23-310. A review of the statutes and Administrative Rules thereunder demonstrate that the tax deferral has two effects:

1. Generally a Forest Management Plan is required which, when implemented, enhances forest production.
2. If the owner fails to maintain Forest Management, declassification is required. In addition, under the Western Oregon Small Tract Option, the State Forester must verify satisfactory Forest Management every five years.

An additional requirement of the program guaranteeing proper Forest Management is the requirement that the owner/applicant certify that he or she is holding the parcel for the predominant purpose of growing and harvesting timber of a merchantable species.

The exception to the deferral option, to issue the applicant a temporary mobile home permit and up to five years to establish minimum stocking on the parcel their option, has the same effect as the deferral in that not only is minimum stocking required, but the approval period (up to five years) is long enough to ensure continued viability of the forest crop.

In conclusion, because of (1) the limited resource affected (approximately eight percent of forest resource in Lane County), (2) the requirement of a Forest Management Plan, and (3) the requirement of tax deferral and/or establishment of forest stocking requirements, we find that allowing dwellings in the F-2 zone will enhance forest production. When authorized in this manner, the dwellings are incidental and subordinate to Forest Management, and we have met the requirement that dwellings only be allowed, if necessary and accessory to Forest Management.

In fact, we find these two criterion are superior as they create a continuing incentive to manage for forest purposes. The ongoing criterion, such as tax deferrals and minimum stocking, go farther to enhance forest production, than one-shot criteria that can be nullified merely by the sale of the parcel.

## DIVISIONS IN F-2 IMPACTED FOREST LAND

Division standards in the F-1 Zone remain as discussed in the working paper and need no further discussion. F-2 Division standards did change in response to public testimony and an explanation is required.

The 1983 Legislature, revised Oregon law to provide that dwellings may be allowed on any woodlot operated in conjunction with the farm operation if the parcel is capable of producing \$10,000 in gross income over the growth cycle (ORS 215.213(2)(b(A)(B))). When this revision was adopted, the Legislature was aware of Goal #4's requirement to conserve forest land for commercial forest uses. Reading the Goal and the statutory revision together, we find that the Legislature has determined that \$10,000/year gross income over the growth cycle meets the standard of the Goal. Further, that similar treatment of impacted forest land in Lane County will result in consistent treatment of forest land and farm woodlots. In fact, this land is very similar. Impacted Forest Land is, by its nature, forest land affected by nonforest uses, i.e. farms. It is often located in transition areas between EFU and Nonimpacted Forest Land. Furthermore, such a standard is objective and certain. Objectivity and certainty are two land use criteria we wish to use whenever possible.

In addition, we believe the legislative standard is very logical. \$10,000 gross income per year over a growth cycle is a significant economic unit. As such, our experience leads us to conclude that the marketplace will cause the owner of such land to conserve its use for forest purposes. We find that an asset worth \$10,000/year over a growth cycle will not be left idle, but will be used for forest purposes. As such, the legislative standard meets the Goal.

This conclusion is supported by the Oregon property tax laws. The two programs, the Western Oregon Forest Land and Severance Tax (ORS 321.257 to .375) and Western Oregon Small Tract Optional Tax (ORS 321.705 to .765) create substantial incentives for Forest Management. Property once placed in the program is subject to substantial back taxes if not continuously managed for forest purposes. See ORS 321.760 and 321.372. If an owner elects not to apply for the designation on the parcel, the property, by definition, will have a very significant true cash value. An asset capable of \$10,000/year gross income is very valuable. Substantial annual carrying costs exist if the deferral programs are not used. Our experience leads us to conclude that the vast majority of owners of newly created parcels will, therefore, apply for the deferral or continue in the program as the taxes are too high otherwise.

Based upon the nature of the division standard, which only allows creation of economically viable commercial units, we find the purpose of the Goal is fulfilled.

We selected the \$10,000 standard based upon a memorandum from the office of the State Forester, Dave Stere to Mike Rupp of DLCD, dated September 22, 1983. We note the current economic conditions reflect very low timber values. By adopting the standard of September 22, 1983, we have selected a standard which produces far larger acreages than market conditions just a few years ago would have produced. The State Forester's memorandum is attached hereto as an exhibit.

Our experience further indicates that most soil types in Lane County in lands zoned F-2 have a cubic foot site class of Class 3, 4 and 5. As a consequence, parcel sizes of 40 acres and larger will be, in fact, the parcel sizes actually allowed.

In conclusion, because the parcel created is a significant economic unit, it is, by definition, a viable commercial forest parcel, and the division standard meets Goal #4's requirement to retain forest land for forest purposes.

#### FARM USES IN AREAS OF MIXED FARM AND FOREST USES

1. We incorporate by reference the memorandum from County Counsel to the Board of County Commissioners and Planning Commission dated December 9, 1983, copy attached and adopt the same as if fully set forth therein.

Water Impoundments, LC 16.211(2)(d). The proposed standard was 1,000 acre feet. However, we found this area to be too large. We, therefore, specified that impoundments of greater than 100 feet should be moved to the conditional use category so that they would be subject to review prior to approval.

Class I Stream Setbacks and Maintenance, Removal and Replacement of Riparian Vegetation, LC 16.211(9)(b) and (c). These standards were revised consistent with the flora and fauna working paper addendum and comments from the Department of Fish and Wildlife.



Forestry Department

OFFICE OF STATE FORESTER

2600 STATE STREET, SALEM, OREGON 97310 PHONE 378-2550

9/22/83

MEMORANDUM

SUBJECT: INFORMATION FOR MARGINAL LANDS DESIGNATION

TO: Mike Rupp - LCDC

FROM: Dave Stere

DATE: September 22, 1983

Minimum Acreage to Produce \$10,000 Annual  
Gross Income Over the Growing Cycle\*

Cu.Ft. Site Index	Predominant Species	
	Westside Douglas-fir (AC)	Eastside D-F/True fir Pond Pine (AC)
6 (20-49 cf/ac)	64	86 67
5 (50-84 cf/ac)	43	53 44
4 (85-119 cf/ac)	34	43 36
3 (120-164 cf/ac)	24	
2 (165-224 cf/ac)	17	

\* Minimum acreage of the forest operation is sensitive to produce price as delivered by producer. Comparable to the pricing of agricultural products.

DHS:jp

10000/yr / 8 90 ...

MEMORANDUM

December 9, 1983

TO: BOARD OF COUNTY COMMISSIONERS, WEST LANE COUNTY PLANNING  
COMMISSION and LANE COUNTY PLANNING COMMISSION

FROM: WILLIAM A. VAN VACTOR, County Counsel

RE: AGRICULTURAL USES ON FOREST LAND.

FACTS.

Lane County has tentatively adopted the following policy pursuant to LCDC Goals 3 and 4.

"In agricultural Rent Zones 1 and 2 preference will be given to Goal 3. In Rent Zone 3, unless commercial agricultural enterprises exist, preference will be given to Goal 4."

This policy is based upon the inventory of actual farming practices in Lane County. As can be seen on the attached exhibit (p. 29 of the working paper on agricultural lands) in Rent Zones 1 and 2 traditional agricultural activities predominate, i.e., orchards, grain, hay, etc. Whereas, in Zone 3, woodlots and cattle predominate. Per LCDC Goal 4, these are forest uses. This policy is, therefore, supported by Lane County's inventory. During the discussion of the implications of this policy, a question arose involving the difference in permissible uses between LCDC Goal 3 and Goal 4 in Rent Zone 3. This is important because if agriculture management practices predominate a broader range of uses may be possible, see ORS 215.213. In contrast, the policy quoted above standing alone appears to imply that only forest uses may be allowed even if farm uses predominate.

QUESTION PRESENTED.

In Rent Zone 3, may Lane County allow the uses specified in ORS 215.213(1), (2) and (3) when commercial agricultural practices predominate?

ANSWER.

Yes. If a policy to that effect is placed in the Goal 3 and 4 working papers, and the forest zone makes these uses conditional upon the satisfaction of certain criteria.

DISCUSSION.

The essence of this question is generally discussed in the context of the interrelationship of LCDC Goals 3 and 4. Several

counties have handled this issue by developing policies and zoning districts for areas of mixed agriculture and forest uses. Upon first reading of Lane County policies, it appears we have not done this. Instead, based upon the data collected, the policies recommend two forest zones, the first F-1 is characterized by industrial forest uses. Agricultural activity is generally not present. Accordingly, this question would not arise in the F-1 zone and application of this issue to this zone needs no further discussion. However, with regard to F-2, the first characteristic listed in the working paper is that it may in fact be managed for either forest or farm uses. See p. 27, Forest lands working paper.

It would, therefore, appear that the inventory and data collected apparently supports a mixed forest/agricultural zone in Lane County. In the alternative, the F-2 zone uses could be expanded to allow certain agricultural uses when agricultural practices predominate.

Assuming the practices are generally applicable throughout F-2 areas, the F-2 zoning district could provide under its uses section a provision that specifies that when agricultural uses "predominate" some of the uses specified in ORS 215.213, copy attached, may conditionally occur.

In addition, criteria to determine whether agricultural use is in fact predominant would be necessary. Two criteria come to mind. The first is whether the agricultural practices predominate on the land itself, i.e. over 50% of the land area. Second, whether gross revenue from accepted farming practices exceed gross income from forest practices. Specifically, I am envisioning a criterion that gross income from generally accepted farming practices must exceed the gross income from forest practices.

This legal conclusion is based upon a reading of LCDC's position expressed in Coos County's acknowledgment review. A fair reading of that acknowledgment order is that ORS 215.213 uses in a mixed farm/forest zone is permissible if conditioned. In the order, LCDC directed Coos County to:

"Amend forest policy 5 and the FF-40 zone (and the zone replacing the SW-10 zone) to require that dwellings authorized in these zones are either accessory and necessary to forest uses or comply with provisions equivalent to ORS 215.213(3)." [Emphasis added].

This conclusion is also bolstered by the Department of Land Conservation Development final recommendation to LCDC on the Goal 4 administrative rule. Their final proposed rule provided:

"(2) For areas with mixed agricultural and forest uses, uses allowed are only those provided for in ORS

Chapter 215.203, 215.213(1), (2), (3) and those uses allowed under Subsection (3) of this section [forest practices. Nonfarm and nonforest uses listed in ORS Chapter 215.213(1) and (2), if allowed, must be subject to review. Review standards for these uses must include the standards in ORS Chapter 215.213(3)(a), (b) and (c), amended in the local ordinance to also address forest uses and forest practices. Nonfarm and nonforest dwellings may be authorized subject to the review standards in ORS 215.213(3) and appropriate additional provisions required by Subsection (4) of this section. A dwelling may be found to be a forest dwelling in this zone where the parcel size and other requirements (e.g., forest management plan, expenditures on forest management, full stocking of areas not adequately stocked in a commercial species, etc.) assure forest management of the parcel.

"\* \* \*

"(4) Additional siting\* and fire safety standards must be applied to ensure that dwellings provided for in Subsections (2) and (3)(b) of this rule meet the requirements of the Goal. Examples included:

"(a) Siting standards to require buffering from adjacent commercial ownerships, clustering near roads and existing dwellings, deed restrictions or siting on the least productive land on the parcel; and

"(b) Fire safety requirements regarding adequate access, appropriate building materials, adequate water supply or a fuel free buffer."

Accordingly, you have legal discretion to amend the Goal 3 and 4 policies, to provide for ORS 215.213 uses on F-2 forest (Renc Zone3) land when the use is dominated by accepted agricultural practices. The implementation measure in the F-2 zone will need to conform to the portions of the above-quoted acknowledgment order and draft administrative rule.

LANE COUNTY OFFICE OF LEGAL COUNSEL

By 

WILLIAM A. VAN VACTOR, County Counsel

WAVV:bj

cc. ROY BURNS, Manager  
Land Management Division

- l. Pasture - cattle and sheep
- m. Pasture - dairy products
4. The vast majority of farms have more than one product type. Typically, different associations of product types occur within different areas (rent zones), as will be indicated below.
5. Plotting the location of the reported types of agricultural products on a map of this County reveals a vague pattern of spatial concentration of agricultural types. Overlaying Assessment and Taxation Rent Zones helps define a pattern. In order to quantify the character of the distribution of agricultural types, product types within each rent zone were ranked according to: 1) number of occurrences and 2) total acreage, for all farms and for farms indicating a majority of products sold to processors. The following is a comparison of the above-noted data (product types are listed in decreasing order of occurrence and acreage for the upper one-half of the respective listing):

#### Associations For All Farms Reporting

##### Rent Zone 1

Frequency: Orchards, Grain, Vegetables, Field Crops, Hay - Cattle\*, Woodlot  
 Acreage: Grain, Grass Seed, Vegetables, Field Crops, Orchards, Woodlot, Other Seed

##### Rent Zone 2

Frequency: Orchards, Hay, Grain, Cattle, Woodlot, Small Fruit - Vegetables  
 Acreage: Grain, Grass Seed, Orchard, Hay, Woodlot, Vegetables, Field Crops

##### Rent Zone 3

Frequency: Woodlot, Cattle, Hay, Orchard, Grain, Small Fruit - Miscellaneous  
 Acreage: Woodlot, Cattle, Hay, Grass Seed, Grain

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\* For the purpose of describing spatial concentrations of types of agriculture, Assessment and Taxation Rent Zones are considered a valid system inasmuch as: 1) it is based on an intimate knowledge of farming practices, 2) it has been developed over many years, allowing annual adjustments in rates within more or less fixed boundaries, and 3) it reflects economic conditions.

215.185. (1) In case a building or other structure is, or is proposed to be, located, constructed, maintained, repaired, altered, or used, or any land is, or is proposed to be, used, in violation of an ordinance or regulation designed to implement a comprehensive plan, the governing body of the county or a person whose interest in real property in the county is or may be affected by the violation, may, in addition to other remedies provided by law, institute injunction, mandamus, abatement, or other appropriate proceedings to prevent, temporarily or permanently enjoin, abate, or remove the unlawful location, construction, maintenance, repair, alteration, or use. When a temporary restraining order is granted in a suit instituted by a person who is not exempt from furnishing bonds or undertakings under ORS 22.010, the person shall furnish undertaking as provided in ORCP 82 A.(1).

(2) The court may allow the prevailing party reasonable attorney fees and expenses in a judicial proceeding authorized by this section that involves a dwelling approved to relieve a temporary hardship. However, if the court allows the plaintiff reasonable attorney fees or expenses, such fees or expenses shall not be charged to the county if the county did not actively defend itself or the landowner in the proceeding.

SECTION 6. ORS 215.213 is amended to read:

215.213. (1) The following uses may be established in any area zoned for exclusive farm use:

- (a) Public or private schools, including all buildings essential to the operation of a school.
- (b) Churches.
- (c) The propagation or harvesting of a forest product.
- (d) Utility facilities necessary for public service, except commercial facilities for the purpose of generating power for public use by sale.
- (e) A dwelling on real property used for farm use if the dwelling is:
  - (A) Located on the same lot or parcel, as those terms are defined in ORS 92.010, as the dwelling of the farm operator; and
  - (B) Occupied by a relative, which means grandparent, grandchild, parent, child, brother or sister of the farm operator or the farm operator's spouse, whose assistance in the management of the farm use is or will be required by the farm operator.
- (f) ~~[(The dwellings and other)]~~ Nonresidential buildings customarily provided in conjunction with farm use.
- (g) A dwelling customarily provided in conjunction with farm use if the dwelling is on a lot or parcel that is managed as part of a farm operation not smaller than the minimum lot size in a farm zone with a minimum lot size acknowledged under ORS 197.251.
- ~~[(g)]~~ (h) Operations for the exploration of geothermal resources as defined by ORS 522.005.
- ~~[(h)]~~ (i) A site for the disposal of solid waste that has been ordered to be established by the Environmental Quality Commission under ORS 459.049, together with equipment, facilities or buildings necessary for its operation.
- (j) One mobile home in conjunction with an existing dwelling as a temporary use for the term of a hardship suffered by the existing resident or a relative of the resident.

(2) The following ~~nonfarm~~ uses may be established, *subject to the approval of the governing body or its designate* in any area zoned for exclusive farm use if the use meets reasonable standards adopted by the governing body:

- (a) A dwelling in conjunction with farm use or the propagation or harvesting of a forest product on a lot or parcel that is managed as part of a farm operation or woodlot if the farm operation or woodlot:
  - (A) Consists of 20 or more acres; and
  - (B) Is not smaller than the average farm or woodlot in the county producing at least \$2,500 in annual gross income from the crops, livestock or forest products to be raised on the farm operation or woodlot.
- (b) A dwelling in conjunction with farm use or the propagation or harvesting of a forest product on a lot or parcel that is managed as part of a farm operation or woodlot smaller than required under paragraph (a) of this subsection, if the lot or parcel:
  - (A) Has produced at least \$10,000 in annual gross farm income in two consecutive calendar years out of the three calendar years before the year in which the application for the dwelling was made or is planted in perennials capable of producing upon harvest an average of at least \$10,000 in annual gross farm income; or
  - (B) Is a woodlot capable of producing an average over the growth cycle of \$10,000 in gross annual income.
- ~~[(a)]~~ (c) Commercial activities that are in conjunction with farm use.

[(b)] (d) Operations conducted for the mining and processing of geothermal resources as defined by ORS 522.005 or exploration, mining and processing of aggregate and other mineral resources or other subsurface resources.

[(c)] *Private parks, playgrounds, hunting and fishing preserves and campgrounds.*

[(d)] *Parks, playgrounds or* (e) Community centers owned and operated by a governmental agency or a nonprofit community organization, hunting and fishing preserves, parks, playgrounds and campgrounds.

[(e)] (f) Golf courses.

[(f)] (g) Commercial utility facilities for the purpose of generating power for public use by sale.

[(g)] (h) Personal-use airports for airplanes and helicopter pads, including associated hangar, maintenance and service facilities. A personal-use airport as used in this section means an airstrip restricted, except for aircraft emergencies, to use by the owner, and, on an infrequent and occasional basis, by invited guests, and by commercial aviation activities in connection with agricultural operations. No aircraft may be based on a personal-use airport other than those owned or controlled by the owner of the airstrip. Exceptions to the activities permitted under this definition may be granted through waiver action by the Aeronautics Division in specific instances. A personal-use airport lawfully existing as of September 13, 1975, shall continue to be permitted subject to any applicable regulations of the Aeronautics Division.

[(h)] (i) Home occupations carried on by the resident as an accessory use within dwellings or other buildings referred to in ORS 215.203 (2)(b)(F) or (G).

[(i)] (j) A facility for the primary processing of forest products, provided that such facility is found to not seriously interfere with accepted farming practices and is compatible with farm uses described in ORS 215.203 (2). Such a facility may be approved for a one-year period which is renewable. These facilities are intended to be only portable or temporary in nature. The primary processing of a forest product, as used in this section, means the use of a portable chipper or stud mill or other similar methods of initial treatment of a forest product in order to enable its shipment to market. Forest products, as used in this section, means timber grown upon a parcel of land or contiguous land where the primary processing facility is located.

[(j)] (k) The boarding of horses for profit.

[(k)] (L) A site for the disposal of solid waste approved by the governing body of a city or county or both and for which a permit has been granted under ORS 459.245 by the Department of Environmental Quality together with equipment, facilities or buildings necessary for its operation.

(3) A single-family residential [*dwellings,*] dwelling not provided in conjunction with farm use[,], may be established[,], on a lot or parcel with soils predominantly in capability classes IV through VIII as determined by the Agricultural Capability Classification System in use by the United States Department of Agriculture Soil Conservation Service on the effective date of this 1983 Act. A proposed dwelling is subject to approval of the governing body or its designate in any area zoned for exclusive farm use upon [*a finding that each such proposed dwelling*] written findings showing all of the following:

[(a)] *Is compatible with farm uses described in ORS 215.203 (2) and is consistent with the intent and purposes set forth in ORS 215.243.*

[(b)] *Does not interfere seriously with accepted farming practices, as defined in ORS 215.203 (2)(c), on adjacent lands devoted to farm use.*

[(c)] *Does not materially alter the stability of the overall land use pattern of the area.*

(a) The dwelling or activities associated with the dwelling will not force a significant change in or significantly increase the cost of accepted farming practices on nearby lands devoted to farm use.

[(d)] (b) The dwelling is situated upon generally unsuitable land for the production of farm crops and livestock, considering its terrain, adverse soil or land conditions, drainage and flooding, [*vegetation,*] location and size of the tract. A lot or parcel shall not be considered unsuitable solely because of its size or location if it can reasonably be put to farm use in conjunction with other land. [*; and*]

[(e)] (c) Complies with such other conditions as the governing body or its designate considers necessary.

(4) One single-family dwelling, not provided in conjunction with farm use, may be established in any area zoned for exclusive farm use on a lot or parcel described in subsection (7) of this section that is not larger than three acres upon written findings showing:

(a) The dwelling or activities associated with the dwelling will not force a significant change in or significantly increase the cost of accepted farming practices on nearby lands devoted to farm use;

(b) If the lot or parcel is located within the Willamette Greenway, a floodplain or a geological hazard area, the dwelling complies with conditions imposed by local ordinances relating specifically to the Willamette Greenway, floodplains or geological hazard areas, whichever is applicable; and

(c) The dwelling complies with other conditions considered necessary by the governing body or its designate.

(5) Upon receipt of an application for a permit under subsection (4) of this section, the governing body shall notify:

(a) Owners of land that is within 250 feet of the lot or parcel on which the dwelling will be established; and

(b) Persons who have requested notice of such applications and who have paid a reasonable fee imposed by the county to cover the cost of such notice.

(6) The notice required in subsection (5) of this section shall specify that persons have 15 days following the date of postmark of the notice to file a written objection on the grounds only that the dwelling or activities associated with it would force a significant change in or significantly increase the cost of accepted farming practices on nearby lands devoted to farm use. If no objection is received, the governing body or its designate shall approve or disapprove the application. If an objection is received, the governing body shall set the matter for hearing in the manner prescribed in ORS 215.402 to 215.422. The governing body may charge the reasonable costs of the notice required by paragraph (a) of subsection (5) of this section to the applicant for the permit requested under subsection (4) of this section.

(7) Subsection (4) of this section applies to a lot or parcel lawfully created between January 1, 1948, and July 1, 1983. For the purposes of this section:

(a) Only one lot or parcel exists if:

(A) A lot or parcel described in this section is contiguous to one or more lots or parcels described in this section; and

(B) On July 1, 1983, greater than possessory interests are held in those contiguous lots, parcels or lots and parcels by the same person, spouses or a single partnership or business entity, separately or in tenancy in common.

(b) "Contiguous" means lots, parcels or lots and parcels that have a common boundary, including but not limited to, lots, parcels or lots and parcels separated only by a public road.

(8) A person who sells or otherwise transfers real property in an exclusive farm use zone may retain a life estate in a dwelling on that property and in a tract of land under and around the dwelling.

SECTION 7. ORS 215.263 is amended to read:

215.263. (1) Any proposed division of land included within an exclusive farm use zone resulting in the creation of one or more parcels of land shall be reviewed and approved or disapproved by the governing body or its designate of the county in which *[such]* the land is situated. The governing body of a county by ordinance shall require such prior review and approval for such divisions of land within exclusive farm use zones established within the county.

(2) *[(A)]* The governing body of a county *[initiates a review as provided in subsection (1) of this section, it shall not]* or its designate may approve *[any]* a proposed division of land *[unless]* to create parcels for farm use as defined in ORS 215.203 if it finds:

(a) That the proposed division of land is *[in conformity with the legislative intent set forth in ORS 215.243.]* appropriate for the continuation of the existing commercial agricultural enterprise within the area; or

(b) The parcels created by the proposed division are not smaller than the minimum lot size acknowledged under ORS 197.251.

(3) The governing body of a county or its designate may approve a proposed division of land in an exclusive farm use zone for nonfarm uses, except dwellings, set out in ORS 215.213 (2) or subsection (2) of section 17 of this 1983 Act, whichever is applicable, if it finds that the parcel for the nonfarm use is not larger than the minimum size necessary for the use. The governing body may establish other criteria as it considers necessary.

(4) The governing body of a county may approve a division of land in an exclusive farm use zone for a dwelling not provided in conjunction with farm use only if the dwelling has been approved under ORS 215.213 (3) or subsection (3) of section 17 of this 1983 Act, whichever is applicable.

*[(7)]* (5) This section shall not apply to the creation or sale of cemetery lots, if a cemetery is within the boundaries designated for a farm use zone at the time the zone is established.

*[(4)]* (6) This section shall not apply to divisions of land resulting from lien foreclosures or divisions of land resulting from foreclosure of recorded contracts for the sale of real property.

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DIVISION 23

FOREST TAXATION

[ED. NOTE: Rules 629-23-005 through 629-23-075 were renumbered from Division 43 on 5-1-68 by FB 17.]

Definitions

629-23-005 [FB 5, f. 10-6-59;  
Repealed by FB 31, f. 6-14-72, ef. 7-1-72]

Established Seedlings

629-23-010 [FB 5, f. 10-6-59;  
Repealed by FB 31, f. 6-14-72, ef. 7-1-72]

Application For Permit

629-23-015 [FB 5, f. 10-6-59;  
Repealed by FB 31, f. 6-14-72, ef. 7-1-72]

Reasonable Precautions and Action Necessary to Protect the Residual Stands of Trees and Seed Sources

629-23-020 [FB 5, f. 10-6-59;  
Repealed by FB 31, f. 6-14-72, ef. 7-1-72]

Determination of Forest Type

629-23-025 [FB 5, f. 10-6-59;  
Repealed by FB 31, f. 6-14-72, ef. 7-1-72]

Long Corners, Strips, and Staggered Settings

629-23-030 [FB 5, f. 10-6-59;  
Repealed by FB 31, f. 6-14-72, ef. 7-1-72]

Seed Tree Qualifications

629-23-035 [FB 5, f. 10-6-59;  
Repealed by FB 31, f. 6-14-72, ef. 7-1-72]

Immature and Mature Ponderosa Pine Trees

629-23-040 [FB 5, f. 10-6-59;  
Repealed by FB 31, f. 6-14-72, ef. 7-1-72]

Determination of Lands Unsuitable for the Growing of Timber

629-23-045 [FB 5, f. 10-6-59;  
Repealed by FB 31, f. 6-14-72, ef. 7-1-72]

Seed Source Requirements for Hardwood Type Area and Other Forest Type Areas

629-23-050 [FB 5, f. 10-6-59;  
Repealed by FB 31, f. 6-14-72, ef. 7-1-72]

Substitute Plans for Compliance

629-23-055 [FB 5, f. 10-6-59;  
Repealed by FB 31, f. 6-14-72, ef. 7-1-72]

Agricultural Exemption

629-23-060 [FB 5, f. 10-6-59;  
Repealed by FB 31, f. 6-14-72, ef. 7-1-72]

Completion of Harvesting Operations

629-23-065 [FB 5, f. 10-6-59;  
Repealed by FB 31, f. 6-14-72, ef. 7-1-72]

Example Violations

629-23-070 [FB 5, f. 10-6-59;  
Repealed by FB 31, f. 6-14-72, ef. 7-1-72]

Appeal From Orders

629-23-075 [FB 5, f. 10-6-59;  
Repealed by FB 31, f. 6-14-72, ef. 7-1-72]

Western Oregon Small Tract  
Optional Tax

Management Standards

629-23-110 (1) Purpose. ORS 321.725(1)(d) requires the State Forester to determine if a landowner who is applying to have lands classified under the Western Oregon Small Tract Optional Tax meets minimum forest management standards. ORS 321.732 requires the State Forester to review all classified lands at least every 5 years to insure that classified lands are managed in accordance with the minimum management standards. The following management standards will apply in making these determinations and reviews:

(2) Schedule for Meeting Standards. Forest owners under the Western Oregon Small Tract Optional Tax Program shall proceed to bring their lands into a stocked and not over mature condition within a reasonable time period as determined by the State Forester. Conversion of nonstocked lands and evidence of acceptable management planning on remaining lands will be monitored by the State Forester. At any time the State Forester has reason to believe lands are not being converted to a stocked condition or are not being managed as forest land, the State Forester may require a plan detailing the owner's intention for complying with these management standards. The plan must show that within 5 years the forest land will meet the stocking standards in accordance with section (3) of these administrative rules.

(3) Stocking. Stocked lands are lands which:

(a) Support established and maintained forest trees in accordance with standards of land productivity, minimum density, acceptable species, variance, and prior approval procedures found in the appropriate Regional Administrative Rules of the Forest Practices Act (ORS Chapter 527) OAR 629-24-401, 402, 403, 501, 502, 503, 601, 602, 603. An alternate plan for meeting these standards may be approved by the State Forester; or

(b) Are occupied by a marketable hardwood stand at or above the trees per acre or basal area per acre standards for the applicable region of the Oregon Forest Practices Act (OAR 629-24-402, 502, and 602) and have an average diameter breast height of 6 inches or more. Harvest of marketable hardwoods on other than hardwood sites is required when the average age of the stand, when measured at 4-1/2 feet above ground, reaches 40 years of age. The State Forester may approve a delayed harvest schedule in order to meet merchantability standards or market conditions consistent with the landowners' objectives; or

(c) Are occupied by a marketable hardwood stand on hardwood sites such as stream bottoms and stringers, areas that have not previously supported a conifer stand, and red alder in areas of high *Phellinus Weirii* incidence; or

(d) If trees are being grown for Christmas trees or ornamental purposes, at least 1,000 trees of a marketable species per acre upon initial planting or 500 trees per acre in wild land culture.

(e) Marketable Hardwoods are:

(A) In Benton, Clackamas, Clatsop, Columbia, Lane, Lincoln, Linn, Marion, Multnomah, Polk, Tillamook, Washington, and Yamhill Counties: alder, ash, cottonwood, maple, and oak.

(B) In Hood River County: alder, cottonwood, and maple.

(C) In Coos and Curry Counties: alder, maple, and tanbark oak.

(D) In Douglas County: alder and maple north of Township 25, South, Ranges 1, 2, 3, 7, 8, 9 West; in Township 26

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uth. Ranges 8 and 9 West; and in Township 27 South, Range 8 West.

(4) Over Mature Stands. Over mature stands are:

(a) Even age stands at 90 years of age;

(b) Uneven age stands where trees 90 years and older constitute 10,000 board feet per acre or more.

(5) Maintenance Practices. The landowner must conduct all necessary maintenance practices including site preparation, planting, animal damage control and release to satisfy the above standards. The landowner must provide protection from fire, insect, and disease damage as required in ORS 477, 478, and 527.

Stat. Auth.: ORS Ch. 321 & 526

Hist: FB 51(Temp), f. & ef. 10-13-77; FB 3-1978, f. & ef. 1-6-78; FB 7-1980, f. & ef. 3-5-80; FB 8-1982, f. & ef. 9-10-82

[ED. NOTE: The text of Temporary Rules is not printed in the Oregon Administrative Rules Compilation. Copies may be obtained from the adopting agency or the Secretary of State.]

#### Owner

629-23-120 For purposes of subsection (5) of ORS 321.705, "owner" means legal owner of record, or purchaser under contract, of both the forest land and timber.

Stat. Auth.: ORS Ch. 526

Hist: FB 3-1978, f. & ef. 1-6-78

#### Waiver of Relationship Limitation

629-23-130 Exceptions under subsection (4) of ORS 321.725 will be granted on the basis of evidence submitted to the State Forester at the time of application for classification stating the reason for which the combination of ownership exists.

Stat. Auth.: ORS Ch. 526

Hist: FB 3-1978, f. & ef. 1-6-78

#### Ownership Plat Requirement

629-23-140 Applicants for classification under ORS 321.730 or partial declassification under ORS 321.760 shall submit a copy of the assessor's plat map showing the applicant's forest land ownership by tax lots and the area that is to be classified or declassified.

Stat. Auth.: ORS Ch. 526

Hist: FB 3-1978, f. & ef. 1-6-78; FB 7-1980, f. & ef. 3-5-80; FB 8-1982, f. & ef. 9-10-82

#### Adequate Legal Description

629-23-145 Under ORS 321.725 and ORS 321.760 "adequate legal description" will be based on the United States Public Land Survey, metes and bounds, readily identifiable natural features such as creeks, roads, sharp ridge tops, etc. or a combination of these descriptions. The minimum area that will be considered when an owner requests classification of a portion of the eligible lands within a tax lot will be 10 acres. A landowner requesting classification or declassification of forest land will be responsible for providing to the Department a copy of the legal description and the respective county's tax lot map, showing the boundaries of the forest land to be considered for classification or declassification.

Stat. Auth.: ORS Ch. 321

Hist: FB 2-1980, f. & ef. 1-9-80; FB 8-1982, f. & ef. 9-10-82

#### Processing of Applications

629-23-150 Under ORS 321.730, applications will be processed in the order received by the State Forester. In the event an applicant may become ineligible upon classification of forest land of another owner, the State Forester may require each owner to furnish evidence that the combination of

ownership exists for purposes other than to circumvent the 2,000 acre limitation set forth in ORS 321.725.

Stat. Auth.: ORS Ch. 526

Hist: FB 3-1978, f. & ef. 1-6-78

#### Determination of Land Eligibility

629-23-160 Eligibility under paragraphs (a), (b), and (c) of subsection (1) of ORS 321.725 will be determined as of the time of field examination. Land used for homesites and other nonforest uses must be excluded from forest land certification. Homesites and other nonforest uses are:

(1) Homesite. A homesite occupies that land upon which dwellings and other buildings not related to forest management are constructed and the surrounding land that is not in compliance with the minimum management standards as established by the State Forester.

(2) Nonforest use. Any forest land that is used for other than forest use is ineligible when the other use interferes with, and prevents, the forest land from being in compliance with the minimum forest management standards established by the State Forester.

Stat. Auth.: ORS Ch. 526

Hist: FB 3-1978, f. & ef. 1-6-78; FB 2-1980, f. & ef. 1-9-80; FB 8-1982, f. & ef. 9-10-82

#### Oversize Timber

629-23-165 (1) Under ORS 321.725(1)(b) owners of forest land in western Oregon may elect to classify forest land when the size of the timber on the forest land that predominates is not in excess of eight inches in diameter breast high, outside bark.

(2) For the purpose of this rule the following definitions will apply.

(a) "Main cover" is the major part of a type island that is used by the landowner in making timber management decisions.

(b) "Other cover" is the minor parts of a type island that does not influence timber management decisions.

(c) "Overstory cover" is the small groups and the scattered trees that are substantially larger than the main cover.

(d) "The main cover type island" is made up of primarily main cover but may contain small areas of other cover and overstory cover that cannot be managed as a unit.

(3) The State Forester will certify main cover type islands when the field examination indicates that:

(a) The main cover is made up of trees that are predominantly less than 8 inches diameter breast high outside bark.

(b) The area of the main cover type island is of a size that can be managed as a unit based on topography, the size of the adjacent stands, and the location of the type island in relation to property lines.

(c) The overstory cover cannot be harvested without causing undue damage to the main cover.

(d) The main cover type island does not contain areas of other cover of a size that can be managed as a unit.

Stat. Auth.: ORS Ch. 321 & 526

Hist: FB 7-1980, f. & ef. 3-5-80

#### Minimum Area For Site Class Determination

629-23-170 Under the provisions of ORS 321.745:

(1) Areas smaller than ten acres will not be split into smaller areas for determination of different site classes except that areas of less than 5 contiguous acres within an area of eligible forest land that will not support the minimum stocking requirements will be assigned the site class of the surrounding forest land. Areas of 5 or more contiguous acres that will not support the minimum stocking requirements of the manage-

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ment standards, including power line right of ways, will be assigned site Class V.

(2) Areas larger than ten acres will be split into smaller areas for the application of different site classes only if areas of different site classes larger than ten acres exist.

Stat. Auth.: ORS Ch. 321 & 526

Hist: FB 3-1978, f. & ef. 1-6-78; FB 7-1980, f. & ef. 3-5-80

#### Calculation of True Cash Values

629-23-180 (1) ORS 321.720 requires the State Forester to determine the true cash values per acre for each site class as defined in ORS 321.745. In determining the true cash values, the State Forester is required by ORS 321.720, subsection (1), to use an income approach that capitalizes the average annual net income over a rotation age including periodic and final harvest. The average annual income will be calculated by the forest rent technique using a normal forest model.

(2) The following definitions and procedures will apply in calculating the true cash values:

(a) "Forest rent" means capitalizing the annual net income from a normal forest model.

(b) "Normal forest model" means a forest with one acre in each age class from one to, and including, rotation age.

(c) "Capitalization" means the process of determining the value, at one point in time, of a series of values arising at subsequent points in time. ORS 321.720 requires that the capitalization rate used in this calculation will be 20 percent for assessment years beginning on or after January 1, 1982 and ending prior to January 1, 1985. This is derived from:

(A) 16.00 % for pure interest and risk;

(B) 1.43 % for property tax;

(C) 2.57 % for other taxes;

(D) 20.00 % **TOTAL RATE.**

(d) For tax years beginning January 1, 1985, the capitalization rate used will be:

(A) 13.00 % for pure interest and risk;

(B) 1.43 % for property tax;

(C) 2.57 % for other taxes;

(D) 17.00 % for total rate.

(e) The normal forest model rotation age for each site class will be:

(A) Site I — 60 years;

(B) Site II — 60 years;

(C) Site III — 70 years;

(D) Site IV — 80 years;

(E) Site V — 90 years.

(f) The volume of timber that the normal forest model is capable of producing under full, reasonable, and current forest management shall be 60 percent of the volume as defined in Table 1d, page 8 of George R. Staebler's "Gross Yield and Mortality Tables for Fully Stocked Stands of Douglas-fir", U.S.D.A. Forest Service, Pacific Northwest Forest and Range Experiment Station Research Paper No. 14, published in 1955. The volume as defined in Table 1d is based on an ideally, fully stocked stand. This administrative rule assumes an 80 percent stocking level. This adjusted volume is further reduced 15 percent for scale, to convert 16' log table volume to 32' log market volumes, and 10 percent for defect and breakage. The total reduction is equal to 40 percent.

(g) The immediate harvest value for timber harvested in the normal forest model will be an average of the Douglas-fir Class 2 values from the Department of Revenue's Value Areas that represent nonindustrial private forest land ownerships using log grades determined by the State Forester to be consistent with the size of timber harvested from the normal forest model. For the purpose of this rule, the State Forester may reduce this calculated immediate harvest value to a value that more closely represents the stumpage value that the

nonindustrial private landowner may expect to receive. The State Forester will consider the following items:

(A) The consumer price index, all items, Portland, Oregon area.

(B) The average length of the contracts that are analyzed by the Department of Revenue.

(C) The value table adjustments that represent the small nonindustrial owners.

(D) The values in thinnings, small isolated tracts, and low volumes per acre that are owned by small nonindustrial owners.

(E) Any other information the State Forester deems pertinent.

(h) The cost of growing timber will include the following activities: site preparation, planting, release, animal control, precommercial thinning, road construction, road maintenance, fire protection, and administration and harvest. According to Table 1, these activities occur annually in managing the normal forest model. The establishment of the representative costs for each item is within the discretion of the State Forester. It will be assumed that these activities will occur according to the schedule set out in Table 1 at the end of this Division.

Stat. Auth.: ORS Ch. 321 & 526

Hist: FB 1-1979, f. & ef. 3-12-79; FB 7-1980, f. & ef. 3-5-80; FB 8-1982, f. & ef. 9-10-82

#### Western Oregon Severance Tax

##### Management Standards

629-23-310 (1) Purpose. Under ORS 321.367, the State Forester must report to the appropriate county assessors all lands designated as forest land under ORS 321.358 which were logged prior to 1973, and fail to meet minimum stocking standards. Excluded from the report are lands which are under an acceptable management plan for achieving the stocking requirements. Also the State Forester is required to determine if lands under the Western Oregon Severance Tax system are being managed as forest land. The following management standards will apply in making the determination and review:

(2) Stocking. Stocked lands are lands which support established and maintained forest trees in accordance with standards of land productivity, minimum density, acceptable species, variances, and prior approval procedures found in the appropriate Regional Administrative Rules of ORS Chapter 527.

(3) Over Mature Stands. Over mature stands are:

(a) Even aged conifer stands at culmination of mean annual increment in board feet Scribner, or 90 years of age, whichever occurs later.

(b) Uneven aged conifer stands, if these stands contain 10,000 board feet or more per acre in mature trees; mature trees are those which have reached culmination of mean annual increment in board feet Scribner or are 90 years old or older, whichever occurs later.

Stands will not be considered over mature if they are being held for purposes of sustained yield or for other management reasons acceptable to the State Forester.

(4) Schedule for Meeting Standards. Forest owners under the Western Oregon Severance Tax program shall proceed to bring their lands into stocked, not over mature condition, within a reasonable time period. Conversion activities of nonstocked lands logged prior to 1973 and evidence of acceptable management planning or remaining lands will be monitored by the State Forester. At any time the State Forester has reason to believe lands are not being converted to a stocked condition or are not being managed as forest land, he may require a plan detailing the owner's intentions for complying with the requirements of ORS 321.367.

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(5) Maintenance Practices. Maintenance practices including site preparation, planting, animal damage control, and release may be needed to meet the above standards. Protection from fire, insect, and disease is also needed as required in ORS 477, 478, and 527.

Stat. Auth.: ORS Ch. 321 & 526

Hist: FB 51(Temp), f. & ef. 10-13-77; FB 3-1978, f. & ef. 1-6-78; FB 6-1980, f. 3-5-80

[ED. NOTE: The text of Temporary Rules is not printed in the Oregon Administrative Rules Compilation. Copies may be obtained from the adopting agency or the Secretary of State.]

**Reporting Underproductive or Unmanaged Forest Land**

629-23-320 (1) Under ORS 321.367, the State Forester must report to the appropriate county assessor the location of all designated forest lands that were logged prior to 1973 and are suitable for growing and harvesting timber and fail to meet the minimum stocking requirements under ORS Chapter 527. The State Forester must also report other unmanaged forest lands.

(2) For the purpose of this rule the following definitions and procedures will apply:

(a) "Just Cause for Inadequate Stocking". The State Forester will consider all evidence presented by the landowner in determining "just cause" for areas of low stocking or non-management. "Just cause" may include recent acquisitions, severe sites, environmental problems or other conditions beyond the control of the owner.

(b) "Acceptable Management Plan". The State Forester will accept all management plans that contain sufficient information to insure that the required stocking or management will be achieved within a reasonable time period. The plan must have:

(A) A legal description of the underproductive or unmanaged lands.

(B) A map showing the location of underproductive or unmanaged lands.

(C) A description of the method(s) for meeting the management standards prescribed by OAR 629-23-310.

(D) A time schedule for completion.

(c) "Reasonable Time". The reasonable time that will be allowed in the owners management plan for achieving the required stocking levels will be based on total ownership. The plan must show that the following percentages of suitable acres of forest land will be in a stocked or managed condition by: 50% within 5 years, 60% within 6 years, 70% within 7 years, and 80% thereafter.

(d) "Unmanaged Forest Land". Forest lands that are not in compliance with the management standards as defined in OAR 629-23-310 will be considered as unmanaged.

(e) "Reportable Units". The State Forester will report units of underproductive forest land and non-managed forest land when:

(A) The underproductive or unmanaged acreage is more than half the tax lot acreage or 20 acres, whichever is less; and

(B) The units are of a size that can be managed as a unit based on topography, the size of the adjacent stands, and the location of the unit in relation to property lines.

(C) There is no acceptable plan that would lead to compliance with OAR 629-23-310.

Stat. Auth.: ORS Ch. 321 & 526

Hist: FB 6-1980, f. & ef. 3-5-80

**Tax Credit**

**Underproductive Forest Land Conversion Tax Credit**

629-23-410 Under ORS 316.094, ORS 317.102, and ORS 318.030 certain taxpayers may claim a tax credit for 10 percent of the costs of reforesting underproductive commercial forest land. For the purpose of this rule the following definitions and procedures will apply:

(1) Commercial forest land means land for which a primary use is the growing and harvesting of forest tree species (ORS 527.620(4)). The forest land in the specific regions which is considered forest land economically suited for reforestation is as follows:

(a) Eastern Oregon Region — All class I and II forest lands classified pursuant to ORS 526.305 — 526.370. Class III forest lands shall not be so considered.

(b) Northwest Oregon Region and Southwest Oregon Region — Any lands which come within the general definition of forest land above and which are capable of a mean annual production of at least 50 cubic feet per acre at culmination as determined by Site Index Tables contained in the Pacific Northwest Forest and Range Experiment Station "Field Instruction for Integrated Forest Survey and Timber Management Inventories in Oregon, Washington, and California, 1971", Appendix, pages VI 25 to VI 36.

(2) Underproductive forest land means:

(a) All commercial forest land that would not require reforestation following an operation as defined by the Forest Practices Act; or

(b) All nonstocked commercial forest land with cover such as brush, grass or fern.

(3) Reforestation project and plantation establishment costs may include labor, supervision, material, and equipment operating costs for the following:

(a) Site preparation;

(b) Planting, or with State Forester approval, seeding;

(c) Release;

(d) Moisture control;

(e) Control of rodent and animal damage.

(4) Project specifications are:

(a) Site preparation. The planting spot for each tree must be free from competing vegetation and slash. This may be accomplished by:

(A) Mechanical — bulldozing, plowing, disking or scalping;

(B) Chemical control — aerial or ground application of various chemicals;

(C) Controlled burning;

(D) Any combination of above.

(b) Planting:

(A) Seedlings must be from a seed source and elevation compatible for the planting area. The seedling size, stem caliper, and root to top ratio must be suited to the project site.

(B) Seedlings will be planted at the same depth as they were in the nursery seed bed with roots straight in the soil.

(C) The planting may be with any species that is acceptable under the Oregon Forest Practices Act.

(D) The planting may occur at any time that the trees are dormant and the ground is not frozen, snow covered, or extremely dry.

(c) Release. The landowner shall use all measures necessary to control competing vegetation to insure survival of the seedlings.

(d) Moisture Control. The landowner shall use all measures necessary to control loss of moisture and increase the chance of survival of the seedlings. This may include a combination of cultivation, mulching, or the use of chemicals.