

BEFORE THE BOARD OF COUNTY COMMISSIONERS OF LANE COUNTY, OREGON

ORDINANCE NO. PA 1346

IN THE MATTER OF AMENDING THE RURAL COMPREHENSIVE PLAN TO REDESIGNATE LAND FROM "AGRICULTURAL LAND" TO "FOREST LAND", AND TO REZONE LAND FROM "EXCLUSIVE FARM USE (E-40)" TO "IMPACTED FOREST LAND (F-2)," AND ADOPTING SAVINGS AND SEVERABILITY CLAUSES (File No. 509-PA15-05828; Applicant: Frontier Land Co. LLC)

WHEREAS, the Board of County Commissioners of Lane County, through enactment of Ordinance No. PA 884, adopted land use designations and zoning for lands within the planning jurisdiction of the Lane County Rural Comprehensive Plan; and

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

WHEREAS, on December 18, 2015, Application File 509-PA15-05828 was made for a minor amendment to the Rural Comprehensive Plan to redesignate a 77.1 acre property identified as Assessor's Map and Tax Lot 17-06-28-00-00600 from "Agricultural Land" to "Forest Land," with a concurrent request to rezone the property from "Exclusive Farm Use (E-40) to "Impacted Forest Land (F-2)"; and

WHEREAS, the Lane County Planning Commission reviewed the proposal in a public hearing on April 18, 2017, deliberated, and voted in support of forwarding the matter to the Board with a recommendation for approval; and

WHEREAS, evidence exists within the record indicating that the proposal complies with the requirements of Lane Code Chapter 16 and the requirements of applicable state and local law and is consistent with applicable policies of the Rural Comprehensive Plan; and

WHEREAS, the Board of County Commissioners has conducted a public hearing on October 10, 2017 and is now ready to take action.

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

Section 1. The Official Lane County Rural Comprehensive Plan is amended to redesignate Assessor's Map and Tax Lot 17-06-28-00-00600, from "Agricultural Land" to "Forest Land." This is depicted on the Official Lane County Plan maps and further identified as **Exhibit "A"** attached and incorporated herein.

Section 2. The Official Lane County Zoning Map is amended to change the zoning of Assessor's Map and Tax Lot 17-06-28-00-00600 from "Exclusive Farm Use (E-40) to

"Impacted Forest Land (F-2)." This is depicted on the Official Lane County Zone maps and further identified as **Exhibit "B"** attached and incorporated herein.

FURTHER, although not a part of this Ordinance, the Board of County Commissioners adopts Findings of Fact and Conclusions of Law as set forth in **Exhibit "C,"** provided in support of this action.

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

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

ENACTED this 10th day of October, 2017



Pat Farr, Chair
Lane County Board of County Commissioners

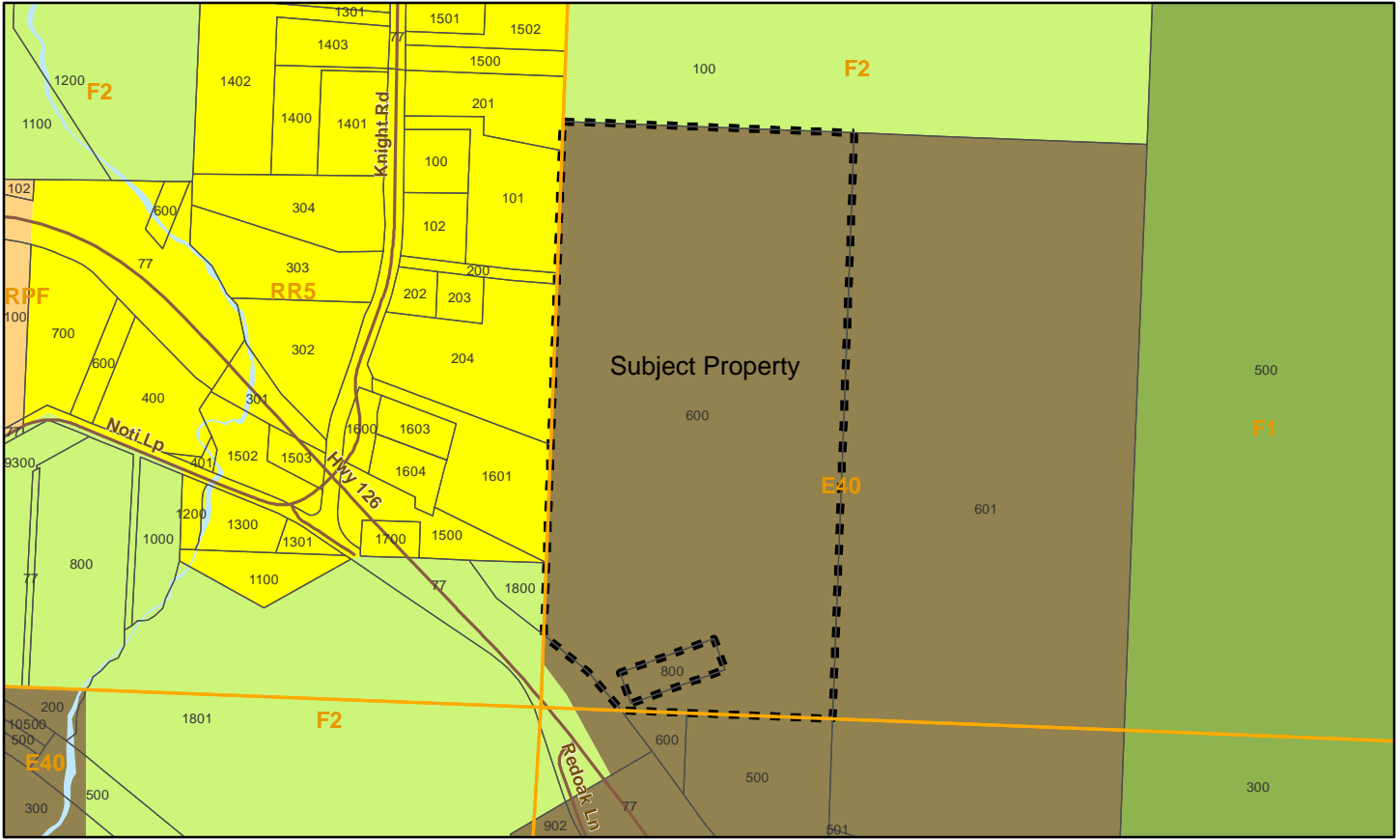


Recording Secretary for this Meeting of the Board

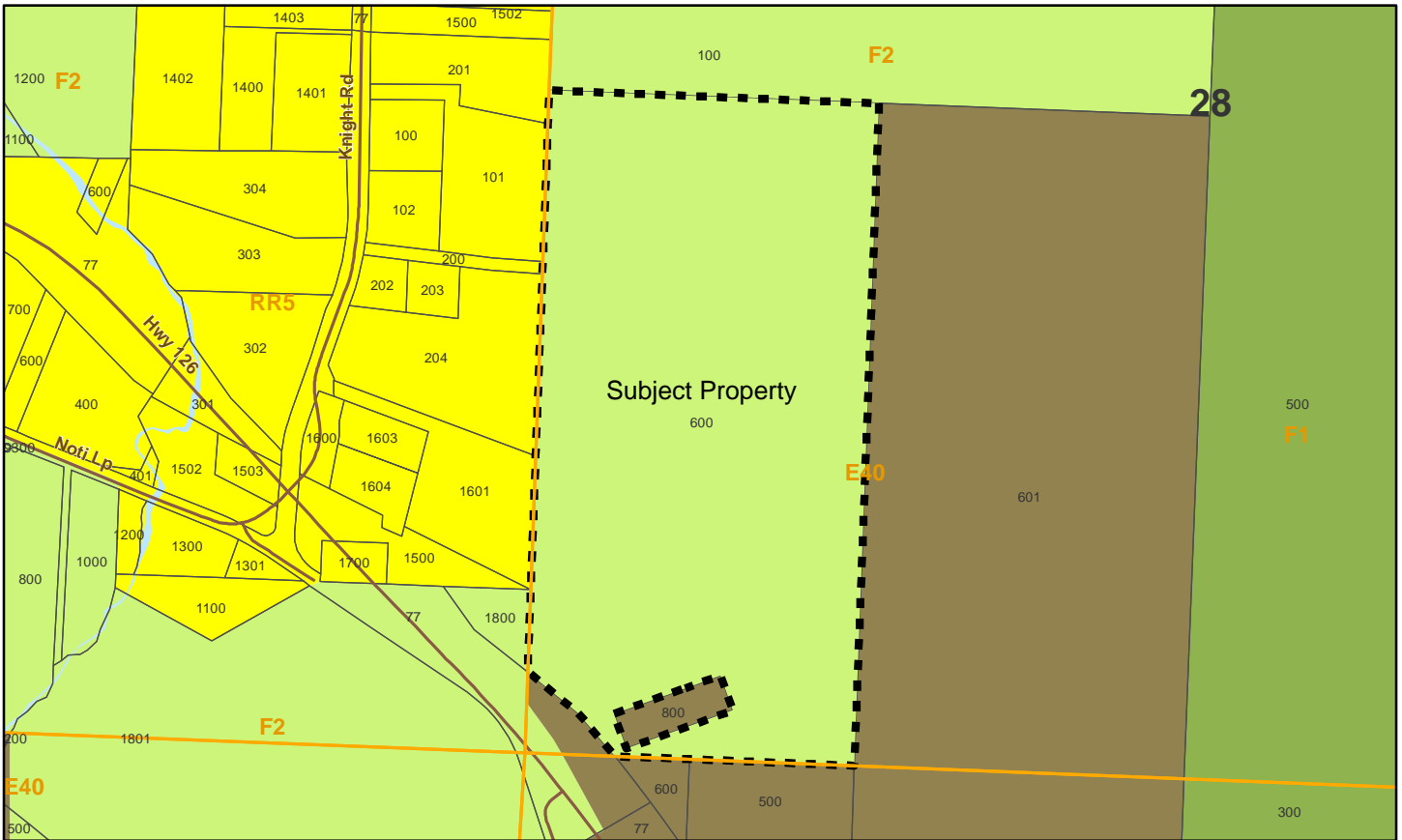
APPROVED AS TO FORM
Date 9-18-17 Lane County



OFFICE OF LEGAL COUNSEL



Existing Zoning



Proposed Zoning

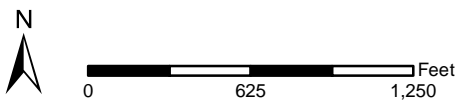


EXHIBIT C
ORDINANCE NO. PA 1346
FINDINGS OF FACT AND CONCLUSIONS OF LAW

I. PROPOSAL DESCRIPTION

A. Owner/Applicant

Agent

Frontier Land Co, LLC 569 Emerald Parkway Creswell, OR 97426	Kim O’Dea Law Office of Bill Kloos, PC 375 West 4 th St., Ste. 204 Eugene, OR 97401 (541) 954-0095
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B. Proposal

This proposal is a request to redesignate 77.1 acres of land designated Agricultural Lands to Forest Lands and rezone the same from E-40 to F-2.

In summary, the parcel is 77.1 acres located adjacent to the community of Noti. The property has no history of agricultural use. It has been in forest use since at least 1985, and is too steep for agricultural use. Comprehensive Plan Designation: The property qualifies as both Agricultural Lands and Forest Lands under State law. As such, it can be designated either provided the factors used to determine the designation are identified. The Lane County Rural Comprehensive Plan Agricultural Working Paper documents the factors used to select Agricultural or Forest Land designation on land that meets the definition of both. Historic use and site conditions support Forest Lands designation. Zoning: Based on the surrounding area and the property itself, the applicant asserts that the property meets only 20% of the characteristics for being zoned F-1, but meets 75% of the characteristics for being zoned F-2 and therefore, F-2 zoning is supported.

The subject property is forest land by topography and current and historic use. It is an E-40 zoned parcel that has never been in agricultural production. This proposal seeks a Forest Lands designation, which would be consistent with the use of the parcel, surrounding designations and uses and topography. If the application is approved, the subject property would be designated Forest Lands on the Rural Comprehensive Plan and zoned Impacted Forest Lands (F-2).

Requests for a plan amendment from Agricultural Lands to Forest Lands must comply with the Statewide Planning Goals, the Rural Comprehensive Plan, and Lane Code. The findings below address each relevant standard.

The subject proposal removes no resource land from the County's inventory. It replaces one resource designation with another. Furthermore, the proposal neither directly results in any development approvals nor increases outright development opportunities. Land divisions in the forest zones are more difficult than in the E-40 zone because minimum lot size is 80 acres in the proposed F-2 zone rather than 40 acres under current E-40 zoning. At 77.1 acres, the subject property is not large enough to qualify for a land division under the Forest Lands designation. The proposed Forest Lands designation and F-2 zoning might allow for a dwelling on a single tract of land, if other standards of Lane Code 16.211 can be met. Staff note that per legal lot verifications file nos. PA06-06837, PA14-05432, and PA14-05670, the subject property contains three (3) legal lots. Furthermore, the proposed designation reflects the past, current, and continued use of the property.

II. SITE AND PLANNING PROFILE

A. Location

Map 17-06-28, TL 600, hereafter referred to as the "subject property" or "property."

The subject property is approximately 77.1 acres located north of Hwy 126 just east of the community of Noti. The west line of the subject property borders the rural unincorporated community of Noti.

B. Zoning

The subject property is currently designated Agricultural Lands and zoned Exclusive Farm Use (E-40).

C. Site Characteristics/History

On December 18, 2015, the applicant filed a request to redesignate the subject property from Agricultural Lands to Forest Lands and rezone the subject property from Exclusive Farm use (E-40) to Impacted Forest Lands (F-2). The application was deemed complete on February 27, 2017.

The Planning Commission held a hearing on the application on April 18, 2017 and unanimously recommended approval of the proposal. The hearing was duly noticed.

Staff note that per legal lot verifications file nos. PA06-06837, PA14-05432, and PA14-05670, the subject property contains three (3) legal lots. The proposed plan change and zone change do not affect the boundaries of the lot, and therefore do not affect the status of legal lots.

The subject property is located on the side of a hill. It contains a saddle towards the center of the property. From there, land slopes downward to the north, south, and west, and steeply upward to the east. A 1.5-acre cemetery that is not owned by the applicant sets on its own lot within the subject property. The cemetery is not part of this application or the subject property. There are no dwellings on the subject property.

The applicant purchased the subject property in December 2015. Prior to that, McDougal Bros Investments owned the property. Prior to that, various entities of the Goodman family owned the property since at least 1993. The property had been logged and regenerated prior to the applicant's purchase. In 2013-14, the property was logged by McDougal Bros Investments. It was replanted and is in regeneration. Prior to that, based on stump analysis, it was logged in roughly 1985. There is no evidence that property has ever been used for farm use. See historic aerial photos dating from 1994. The 2014 Aerial photo shows the property as forested or in forest rejuvenation. No grazing or cultivated soils are apparent on the aerial photos.

D. Organization, Summary and Introduction

These findings are organized according to the kinds of standards that apply. Following the Site and Planning Profile, four additional parts address the Statewide Planning Goals, Rural Comprehensive Plan Policies, Lane Code 16.400 criteria for plan changes, and Lane Code 16.252 criteria for zone changes, respectively. Because the goals provide the most comprehensive set of standards, the evidence and legal argument is presented as comprehensively as possible in connection with the discussion of the goals. Whenever possible, in order to avoid repetition, reference is made back to the goal discussion when addressing the non-goal standards.

1. State and Local Law Authorize Resource Designations.

Statewide Planning Goal 3 and the Goal 3 Rule define "Agricultural Land" and require that it be preserved for farm use. Statewide Planning Goal 4 and the Goal 4 Rule define "Forest Lands," require it to be conserved, and allow it to be put to the limited range of uses stated in the Rule. Both types of lands are "resource lands." As defined by LCDC, "Resource Land" is any land within the definition of Goal 3 (Agricultural Land), Goal 4 (Forest Land),

Goal 16 (Estuarine Resources); Goal 17 (Coastal Shorelands); or Goal 18 (Beaches and Dunes). See OAR 660-004-0005(2). “Nonresource Land” is any land that is not within the definition of one of the goals listed above. See OAR 660-004-0005(3).

2. Description of Subject Property and Adjacent and Nearby Area.

This section describes the subject property in summary terms and the adjacent and nearby land in more detail. The purpose is to provide a factual context for the balance of the findings. It is especially relevant to Section IV – Compliance with Rural Comprehensive Plan.

In general terms, this area is in the hills near the rural unincorporated community of Noti. The site has soils that qualify it as both Forest and Agricultural Lands, as further described below.

Per OAR 660-015-0000(4) and RCP Goal 4 Policy 1, forest land shall include lands which are suitable for commercial forest uses including adjacent or nearby lands which are necessary to permit forest operations or practices and other forested lands that maintain soil, air, water, and fish and wildlife resources (emphasis added). “Adjacent and nearby” as used in the Comprehensive Plan and OARs with respect to designation is not defined in the statute, rules or local code. For the purpose of evaluating whether the subject property qualifies for Forest Lands designation, the applicant has evaluated lands with a boundary line common to the subject property and lands within approximately 1,000 feet of the subject property. The terms ‘nearby’ and ‘surrounding’ and ‘adjacent’ are not defined and are site specific based on natural features, topography and character of the area. The determination of these areas is area specific. The applicant has chosen roughly 1,000 feet in this case because this area captures the character of the surrounding area that is largely defined by its proximity to the community of Noti, Hwy 126, roads, and streams. To go farther (e.g. to 2,000 feet) only captures more of the same. In fact, to go farther in this case does little more than to capture additional RR land (small and developed parcels), further supporting the proposed zone change to F-2.

It is worth noting that because the applicant finds that the property qualifies as Forest Land because it is suitable for commercial forest uses, the applicant does not further evaluate “adjacent and nearby” with respect to OAR 660-015-0000(4) and RCP Goal 4 Policy 1. The applicant evaluates the adjacent and nearby area with respect to OAR 660-006-0015(2) and the Lane County Agricultural Land Working Paper.

With respect to F-1/F-2 zoning, Ordinance PA 1236 defines “contiguous” to mean “having

at least one common boundary line greater than eight feet in length. Tracts of land under the same ownership and which are intervened by a street *** shall not be considered contiguous.” The ordinance goes on to clarify that “generally contiguous” means general area, which goes beyond “contiguous” and looks to the “general area of the land begin proposed *** The analysis is intended to venture beyond the only contiguous properties with common property lines. Ordinance PA 1236, page 10.

The Ordinance defines “adjacent” to mean general vicinity, stating that the term adjacent looks “*even further beyond the nearby tracts or across intervening right of way to acknowledge the impact of development within developed and committed exception areas in the general vicinity of the land being proposed for rezoning. It is a broader look at the complete tapestry of uses and development, particularly nonresource uses, in the general area. It does not depend on contiguity for that consideration.*” Ordinance 1236, Page 10.

Based on these interpretations and definitions, the applicant believes that the approximate 1,000 foot perimeter used for “adjacent and nearby” with respect to “designation” is also consistent with “adjacent” and “generally contiguous” with respect to zoning for this application.

The subject property is approximately 77.1 acres in size of reforested timberland. It is undeveloped. The property has a history of being logged. It was most recently logged in 2013-2014. It has been replanted pursuant to the Oregon Forest Practices Act and is currently in forest regeneration. Prior to that, it was logged in approximately 1985 (based on 2014 tree stump and site conditions). There is no evidence that the property has ever been in “agricultural use” as defined by the statute.

The property is roughly rectangular in shape. It rises from about 500 feet in elevation at the north and south to about 560 feet at the saddle in the middle. The east rises slightly higher to 600 feet.

As discussed more fully below in response to Goals 3 and 4, a majority of the soils on the site have an Agricultural Capability rating of I through IV and therefore the property qualifies as Agricultural Land. The subject site also meets the County’s acknowledged definition of forest lands by containing soils capable of producing more than 50 cu/ft/acre of wood fiber.

Table A (below) summarizes uses, designation, and zoning in the general area/vicinity (which includes “adjacent and nearby,” “generally contiguous” and “adjacent”). The table also includes the subject property. To determine zoning, the applicant used official County zoning maps. To determine designation, the applicant relied on zoning and RLID data

sheets. To determine acreage and presence of a dwelling, the applicant relied on RLID data sheets. To determine use, the applicant relied on RLID data sheets, aerial photos, site visits and site photos.

Whether a property is in “forest use” is relevant to designation. Whether a property is in “commercial forest use” is relevant to zoning, which is addressed later in this document.

RLID shows that the subject property is in Forest Tax Deferral. The deferral requires the property to be in forest use. RLID also describes the subject property as Timber and Timberlands. The site photographs confirm that the property is in forest management and that there is no farming. Photos prior to logging show the entire property treed.

**TABLE A
ADJACENT AND NEARBY LAND**

	Map & Tax Lot	Location In relation to subject property	Zoning/ Designation	Size	Dwelling?	Use¹ Use RLID data and aerial	Comments² Ownership: Deferral status:
S	17-06-28, TL 600	SUBJECT PROPERTY	E-40/Ag.	77.1 ac.	No	Timberlands	Frontier Land Co. LLC Forest Deferral
1	17-06-28-24, TL 100	North (adjacent)	F-2/F	68.04 ac.	Yes	SF, Farming, Timberlands	Jess A. James Farm and Forest Deferral
2	17-06-28, TL 601	East (adjacent)	E-40/Ag.	99.28 ac.	No	Timberlands	Goracke Bros. Forest Deferral
3	17-06-33, TL 500	South (adjacent)	E-40/Ag.	11.59 ac.	No	Timberlands	McDougal Bros. Inc Forest Deferral
4	17-06-33, TL 600	South (adjacent)	E-40/Ag.	1.23 ac.	No	Timberlands	McDougal Bros. Inc. Forest Deferral
5	17-06-28, TL 800	Internal (adjacent)	E-40/Ag.	1.52	No	Cemetery (other)	Sailor Pioneer Cemetery. No deferral
	Hwy 126	South (adjacent)	NONE	n/a	No	Hwy ROW (other)	ODOT No resource deferrals
6	17-06-29-	West	F-2/F	1.48	No	Timberlands	McDougal Bros. Inc

¹ Use of the site was determined by Assessment and Taxation data (including ownership, land use category, property classification and tax deferral status); aerial photos and site visits (including photos). Where Assessment and Taxation showed tax deferral, the classification of the deferral was used to determine overall use. () indicates the use category given to each property for calculation purposes; (F) Forestry; (A) Agriculture/farm use; (R) Residential; (O) Other.

² Tax Deferral data and ownership is based on RLID. For explanation of the “too far removed” comment, see Table Summary below. In summary, in some cases some properties, despite their proximity to the subject property, are too far removed to be part of the character of the ‘surrounding area’ and are therefore not included in calculations.

	40, TL1800	(adjacent)		ac.			Forest Deferral
7	17-06-29-40, TL1500	West (adjacent)	RR5/R	3.39 ac.	No	Hwy. R-O-W (other)	OR Dept of Transportation No Deferral
8	17-06-29-40, TL 1601	West (adjacent)	RR5/R	5.92 ac.	Yes	SF Timberlands	Dick and Myrna Zitek No Deferral
9	17-06-29-40, TL 204	West (adjacent)	RR5/R	9.10 ac.	No	Timberlands	Thomas Michael Sweeney Forest Deferral
10	17-06-29-40, TL 200	West (adjacent)	RR5/R	0.82 ac.	No	Private Road (other)	McDougal Bros. Investments No Deferral
11	17-06-29-40, TL 101	West (adjacent)	RR5/R	5.96 ac.	Yes	SF Timberlands	Tracy Cardwell No Deferral
12	17-06-29-40, TL 201	West (adjacent)	RR5/R	4.14 ac.	Yes	SF Timberlands	Jane Rodriguez No Deferral
13	17-06-28-23, TL 100	North	F-2/F	11.49 ac.	Yes	SF, Farming, Vacant land	Eric and Lorrie Normann No Deferral
14	17-06-33, TL 501	East	E-40/Ag.	19.12 ac.	No	Timberlands	Goracke Bros. Forest Deferral
15	17-06-33, TL 400	East	F-1/F	5.16	Yes (2)	SF, Timberlands	Caswell, Joint Rev. Living Trust No Deferral
16	17-06-33, TL 1100	Southeast	E-40/Ag.	13.40	Yes	SF, Farming	Kyle Boettger No Deferral
17	17-06-33, TL 1101	Southeast	E-40/Ag.	11.96	No	Vacant (Other)	ODOT No Deferral
18	17-06-33, TL 1000	South	E-40/Ag.	6.85	No	Vacant (Other)	ODOT No Deferral
19	17-06-33, TL 902	South	E-40/Ag.	3.00	Yes	MH, Vacant	Sarah and Jeremey Gilmore No Deferral
20	17-06-33, TL 900	South	E-40/Ag.	31.27	No	Farming	Joe Pulone Farm Deferral
21	17-06-29-40, TL 1801	Southwest	F-2/F	58.02	Yes	SF, Farming	Too Many Radishes, LLC Farm Deferral
22	17-06-29-40, TL 1100	West	RR5/ R	2.53	Yes	SF	John Quayle Allen No Deferral
23	17-06-29-40, TL 1301	West	RR-5/ R	0.58	Yes	SF	Jennifer Maldonado; Noah Bourassa No Deferral
24	17-06-29-40, TL	West	RR-5/ R	0.98	No	Highway (other)	ODOT No Deferral

	1700						
25	17-06-29-40, TL 1603	West	RR-5/R	1.36	Yes	MH	James and Olivia Tankersley No Deferral
26	17-06-29-40, TL 1604	West	RR-5/R	1.60	Yes	MH	John and Brenda Wittwer No Deferral
27	17-06-29-40, TL 1600	West	RR-5/R	1.02	No	Highway (other)	ODOT No Deferral
28	17-06-29-40, TL1503	West	RR-5/R	0.97	No	Highway (other)	ODOT No Deferral
29	17-06-29-40, TL 302	West	RR-5/R	5.00	Yes	SF	Donald and Deborah Corcoran No Deferral
30	17-06-29-40, TL 303	West	RR-5/R	5.23	Yes	SF	Donald and Deborah Corcoran No Deferral
31	17-06-29-40, TL 304	West	RR-5/R	5.28	Yes	Vacant	Robert and Stacey Steward No Deferral
32	17-06-29-40, TL 202	West	RR-5/R	0.95	No	SF	Kenneth and Patricia Kalinowski No Deferral
33	17-06-29-40, TL 203	West	RR-5/R	0.99	Yes	MH	Kenneth and Patricia Kalinowski No Deferral
34	17-06-29-40, TL 100	West	RR-5/R	1.91	Yes	SF	Susan Varner No Deferral
35	17-06-29-40, TL 102	West	RR-5/R	2.00	Yes	SF	Ronald and Myra Turbeville No Deferral
36	17-06-29, TL 1400	West	RR-5/R	2.46	No	Vacant	Aaron and Kellie Duncan No Deferral
37	17-06-29, TL 1401	West	RR-5/R	3.23	Yes (2)	SF	Aaron and Kellie Duncan No Deferral
38	17-06-29, TL 1403	West	RR-5/R	2.36	Yes	MH	De La Cruz Hernan Torres No Deferral
39	17-06-29, TL 1402	Northwest	RR-5/R	6.98	Yes	SF, Farming	Glen and Sarah Naegeli No Deferral
40	17-06-29, TL 1301	Northwest	RR-5/R	9.95	Yes	SF, Farming	James and Kelly Spichtig No Deferral
41	17-06-29, TL 300	Northwest	RR-5/R	15.08	Yes	SF, Farming	Ida Mae Templeton No Deferral
42	17-06-29, TL 1500	Northwest	RR-5/R	1.87	Yes (2)	SF, Timberlands	William B. Sharp Jr. No Deferral

43	17-06-29, TL 1501	Northwest	RR-5/ R	2.77	Yes	MH, Timberlands	Robert A. Minicucci No Deferral
44	17-06-29, TL 1502	Northwest	RR-5/ R	3.85	Yes	SF, Farming	Denise M. Ryle Forest Deferral
45	17-06-29, TL 1300	Northwest	RR-5/ R	4.34	No	Farming	Jackelene Robinson Urell No Deferral
46	17-06-29, TL 204	Northwest	RR-5/ R	4.90	Yes	SF	Dennis C. Difeo No Deferral
47	17-06-29, TL 100	North	RR-5/ R	0.46	Yes	SF	Joseph and Colleen Wait No Deferral
48	17-06-28, TL 300	North	RR-5/R and F2/F	31.62	Yes	SF, Timberlands	Fox Family Joint Trust Small Tract Forestland Option

**TABLE B
SUMMARY OF SURROUNDING AREA BY ACRES AND PERCENTAGE**

	Properties within approximately 1,000 feet (Using Table A data)
PROPERTIES ADJACENT AND NEARBY	
Number of adjacent and nearby properties as defined by the applicant; total number of acres	48 parcels totaling 493.01 acres.
Number and percentage of the adjacent and nearby properties that are in each Comprehensive Plan designation ; with corresponding acreage	6 Forest parcels (12%), totaling 175.81 acres 10 Agricultural parcels (21%), totaling 199.22 acres 32 Residential parcels (67%), totaling 117.98 acres
Number and percentage of the adjacent and nearby properties that are in each general use category ; with corresponding acreage. See Footnote 3	7 Forestry/timber (15%), totaling 173.42 acres 3 Ag/farming (6%), totaling 157.33 acres 30 Residential (62 %), totaling 134.75 acres 8 Other (17%), totaling 27.51 acres
PROPERTIES ADJACENT	
Number of adjacent properties as defined by the applicant; total number of acres	12 parcels totaling 212.47 acres. (The Hwy is also adjacent).
Number and percentage of the adjacent properties that are in each Comprehensive Plan designation ; with corresponding acreage	2 Forest parcels (17%), totaling 69.52 acres 4 Ag parcels (33%), totaling 113.62 acres 6 Residential parcels (50%), totaling 29.33 acres
Number and percentage of the adjacent properties that are in each general use category ; with corresponding acreage. See Footnote 3.	5 Forestry/timber (42%), totaling 122.68 acres 1 Ag/farming (8%), totaling 68.04 acres 3 Residential (25%), totaling 16.02 acres 3 Other (25%), totaling 5.73 acres

3 Where a parcel has a use category that includes residential and either farming or forestry, the parcel was characterized as residential only if it had no deferral and was less than 15 acres. Otherwise, it was characterized as either farming or forestry. If a parcel had a use category of both farming and forestry, it was characterized by deferral type or aerial.

There are 48 adjacent and nearby properties. By Comprehensive Plan designation, six (12%) are Forest; ten (21%) are Agriculture; and 32 (65%) are Residential. However, many of the Agriculture designated properties are in forest use. Based on use, seven (15%) are in forest use; three (6%) are in farming use; 30 (62%) are in residential use and eight (17%) are in ‘other’ uses.

There are 12 adjacent parcels, not including Hwy 126. By Comprehensive Plan designation, two (17%) are Forest; four (33%) are Agriculture; and six (50%) are Residential. However, three of the Agriculture designated properties are used for other purposes. Based on use, five (42%) are in forest use; one (8%) are in farming use; three (25%) are in residential use and 3 (25%) are in ‘other’ uses.

III. COMPLIANCE WITH STATEWIDE PLANNING GOALS.

Amendments to local plans and code must comply with the Statewide Planning Goals. ORS 197.175(2)(A). For individual applications like this, compliance with relevant goals must be addressed by the county. This Part addresses each relevant goal and explains why the proposal complies. This application requires no goal exceptions.

Goal 1: Citizen Involvement

To develop a citizen involvement program that insures the opportunity for citizens to be involved in all phases of the planning process.

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

Goal 2: Land Use Planning

Part I of Goal 2 requires local governments to establish processes and policies for land use decisions.

To establish a land use planning process and policy framework as a basis for all decisions and actions related to use of land and to assure an adequate factual base for such decisions and actions.

Part II of Goal 2 authorizes exceptions to the goals – land use decisions that are not in compliance with the goals under certain circumstances. Statutes also describe when exceptions are

authorized. See ORS 197.732.

This application complies with Goal 2 because it is being processed under the County’s adopted comprehensive plan and Lane Code and because no exception to any resource goal is proposed. The application is simply trading one resource designation for another because the land better fits one category based on use and capability.

Goals 3 and Goal 4: The Relationship Between Goals 3 and 4.

OAR 660-006-0015(2) states,

When lands satisfy the definition requirements of both agricultural land and forest land, an exception is not required to show why one resource designation is chosen over another. The plan need only document the factors that were used to select an agricultural, forest, agricultural/forest, or other appropriate designation.

The “agricultural land” designation and the “forest land” designation are both resource designations. The designations have equal weight and importance to the State of Oregon. Through the above Rule, LCDC has acknowledged that many lands will qualify as both Forest and Agricultural land. For lands that qualify as both, LCDC will support either designation so long as the factors used to determine designation are identified. This issue is further discussed below where the designation polices are reviewed specifically.

As discussed more specifically under Goals 3 and 4 below, the subject property meets the definition of both forest land and agricultural land. The Lane County Rural Comprehensive Plan (RCP) Agricultural Working Paper documents the factors used to select Agricultural or Forest Land designation on land that meets the definition of both. Each of those factors is discussed in detail below. Based on those factors, the subject property should be designated Agricultural Lands.

Because the subject property qualifies as both Agricultural and Forest Land under Goal 3 and Goal 4, many of the RCP policies addressing Goal 3 are met by the subject property and many of the Goal 4 RCP policies are met by the subject property. It is inherent in the property’s dual qualification. Per Lane Code 16.400(6)(h)(iii)(cc), the Plan amendment must not conflict with adopted Policies of the Rural Comprehensive Plan and, if possible, achieve support. However, when determining whether a property should be designated Forest or Agricultural, the key is whether the property meets the factors established in the Plan for being Forest or Agricultural. These factors are discussed below.

Goal 3: Agricultural Lands

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

Goal 3 defines "Agricultural Land" as follows:

Agricultural Land -- in western Oregon is land of predominantly Class I, II, III and IV soils and in eastern Oregon is land of predominantly Class I, II, III, IV, V and VI soils as identified in the Soil Capability Classification System of the United States Soil Conservation Service, and other lands which are suitable for farm use taking into consideration soil fertility, suitability for grazing, climatic conditions, existing and future availability of water for farm irrigation purposes, existing land-use patterns, technological and energy inputs required, or accepted farming practices. Lands in other classes which are necessary to permit farm practices to be undertaken on adjacent or nearby lands, shall be included as agricultural land in any event.

More detailed soil data to define agricultural land may be utilized by local governments if such data permits achievement of this goal.

The LCDC has elaborated on the definition of Agricultural Land in its rules. OAR 660-033-0020. There are four parts to the relevant definition in the rule. Each part of the definition is addressed separately here.

OAR 660-033-0020(1)(a): [Predominant Soil Types]

"Agricultural Land" as defined in Goal 3 includes:

(A) Lands classified by the U.S. Soil Conservation Service (SCS) as predominantly Class I-IV soils in Western Oregon and I-VI soils in Eastern Oregon;

Goal 3 requires that SCS soils data be used to classify the soils, but it allows soils data in the published maps to be refined with more detailed onsite investigation. OAR 660-033-0030(5). The applicant is relied on SCS soils data.

The published SCS soils maps show six types of soil on this site. The soils are included in Table C, below. Based on Table C, the site qualifies as Agricultural Land under this part of the test because 100% of the soils on the site are in soil Classes I-IV.

**TABLE C – Soils for Tract
Map 17-06-28, TL 600**

Soil	Acreage	Percentage	Ag. Class	Wood Fiber Productivity cu.ft./ac/yr (cu.ft/yr)
63C – Jory SCL 2-12%	31.6	41%	II (HV)	NRCS est. 178 (5,624.8)
11D – Bellpine SCL 12-20%	23.1	30%	III (HV)	NRCS est. 163 (3,765.3)
45C – Dupee SL 3-20%	14.6	19%	III (non HV)	ODF est. 70 (1,022)
11E – Bellpine SCL 20-30%	0.78	1%	IV (HV)	NRCS est. 163 (127.14)
11C – Bellpine SCL 3-12%	6.9	9%	III (HV)	NRCS est. 163 (1,124.71)
	77.1	100%	Predom HV	Average = 151 Total = (11,663.95)

The subject tract is 100% Class I-IV soils, and is comprised of 82% High Value soils. The tract qualifies as Agricultural Land. As such, the other portions of the Agricultural Lands test need not be addressed.

OAR 660-033-0020(1)(a): [Other Suitable Lands]:

(B) Land in other soil classes that is suitable for farm use as defined in ORS 215.203(2)(a), taking into consideration soil fertility; suitability for grazing; climatic conditions; existing and future availability of water for farm irrigation purposes; existing land use patterns; technological and energy inputs required; and accepted farming practices;

This part of the test focuses on lands, which have predominantly nonagricultural soils, and inquires into whether they are nevertheless suitable for farm use. It is commonly called the “other suitable lands” test. A list of seven factors must be considered. The suitability for farm use must consider the potential for use in conjunction with adjacent or nearby land.⁴ The history of the site in farm use would be relevant to its current suitability,⁵ but not determinative.⁶

⁴ See DLCD v. Curry County, 28 Or LUBA 205, 208-09 (1994), aff’d 132 Or App 393 (1995); Kaye/DLCD v. Marion County, supra, 23 Or LUBA at 481-62 (interpreting identically worded previous Goal 3 administrative rule OAR 660-05-005(1)(b)).

⁵ See Clark v. Jackson County, 17 Or LUBA 594, 606 (1990)(past use of the property for grazing as part

It has been established that the subject property qualifies as Agricultural Land above under the “soils test,” above. Therefore, it is not necessary to address this standard.

OAR 660-033-0020(1)(a)(C): [Land needed to permit farming practices on adjacent/nearby agricultural lands]

Land that is necessary to permit farm practices to be undertaken on adjacent or nearby agricultural lands.

This part of the test focuses on adjacent and nearby agricultural lands. However, it has been established that the subject property qualifies as Agricultural Land under the “soils test,” above. It is not necessary to address this standard.

It is worth noting that the subject property is not necessary to permit farm practices to be undertaken on adjacent property. First, the adjacent property to the south is largely in timber production. Second, even if it were to be farmed, designation of the site as forest lands, another resource designation, would not have any impact on the ability to farm that adjacent land. The two uses have been defined to be compatible. See OAR 660-006-0015(2).

OAR 660-033-0020(1)(b): [Farm unit test]:

Land in capability classes other than I-IV/I-VI that is adjacent to or intermingled with lands in capability classes I-IV/I-VI within a farm unit, shall be inventoried as agricultural lands even though this land may not be cropped or grazed;

This part of the test focuses on lands which are predominantly nonagricultural soils, and inquires into whether they are adjacent to or intermingled with better lands within a “farm unit.” It is commonly called the “farm unit” test. If the subject property is not a part of a “farm unit,” then this test does not apply.

It has already been determined that the subject property meets the definition of farm land under the “soils test,” above. Therefore, this standard need not be addressed.

of larger operation is relevant to its current suitability for farm use).

⁶ See 1000 Friends of Oregon v. WASCO County Court, 80 Or App 525, 531, 723 P2d 1039 (1986) (Affirming decision that former grazing lands proposed for annexation are not suitable for farm use. “Also, there is no presumption that the land is agricultural land simply because of its previous agricultural use. Previous use is merely one factor for the county to consider in reaching its conclusion about the land’s current condition.”).

It is worth noting that the subject property is not part of a farm unit because: the subject property is not adjacent to any other land in the same ownership; it is not jointly managed for farm use with any adjacent land; and it has not been so managed in its history.

Goal 4: Forest Lands

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

Forest lands are those lands acknowledged as forest lands as of the date of adoption of this goal amendment. Where a plan is not acknowledged or a plan amendment involving forest lands is proposed, forest land shall include lands which are suitable for commercial forest uses including adjacent or nearby lands which are necessary to permit forest operations or practices and other forested lands that maintain soil, air, water and fish and wildlife resources.

The second paragraph of Goal 4 defines “Forest Lands.” Because a plan amendment is proposed, the second sentence of paragraph two is the operable definition. There are three parts to the definition: (1) Lands suitable for commercial forest uses; (2) adjacent and nearby lands necessary to permit forest operations or practices; and (3) other forested lands that maintain certain natural resources.

(1) [F]orest land shall include lands which are suitable for commercial forest uses.

The term “commercial forest uses” is not defined in any statute, goal, or rule. However, Lane County adopted a definition for the term in its comprehensive plan, and the plan was acknowledged by the LCDC. Forest Land is land that is capable of producing crops of industrial wood in excess of 50 cubic feet per acre of annual growth. Commercial forest types of trees include: Douglas fir, hemlock/cedar/spruce, other conifers, and deciduous trees.⁷

⁷ Lane County’s definition of “commercial forest uses” was the central issue and the subject of extensive discussion in Holland v. Lane County, 16 Or LUBA 583 (1988). LUBA summarized the relevant provisions of the acknowledged county plan as follows:

The county adopted the following definition of “commercial forest land” as part of its “Working

Productivity data for wood fiber is available from a number of sources. The Lane County Soil Ratings for Forestry and Agriculture, published by the Lane County Land Management Division in 1997, updated in 2011, summarizes federal and state data on wood productivity by soil types, for the full range of commercial forest trees recognized. For each soil type shown in the Soils Map and on the RLID printout as being present on subject property, Table C displays the acreage data and the commercial tree species productivity.

Based on the table, the subject tract is capable of producing 151 cu.ft./acre/year of wood fiber, well above the 50 cu.ft./ac/yr threshold. See Table C, above. The tract qualifies as Forest Land. As such, the other portions of the forest lands test need not be addressed.

(2) [A]djacent or nearby lands which are necessary to permit forest operations or practices.

Because the parcel qualifies as Forest Land under (1), this standard need not be addressed.

(3) [O]ther forested lands that maintain soil, air, water and fish and wildlife resources.

Because the parcel qualifies as Forest Land under (1), this standard need not be addressed.

Goal 5: Open spaces, scenic and historic areas, and natural resources.

To conserve open space and protect natural and scenic resources.

A. What Goal 5 requires.

Paper: Forest Lands; March, 1982" (Forest Lands Paper) and "Addendum to Working Paper: Forest Lands; November, 1983" (Forest Lands Addendum) documents.

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

Ordinance No. 889. The Forest Lands Paper, at 10, contains an inventory of "Acres of Commercial Forest Land by Cubic Foot Site Class, Forest Type and Ownership." This table recognizes the following commercial forest types – "Douglas fir," "hemlock/cedar/spruce," "other conifers" and "deciduous."

16 Or LUBA at 586 [footnotes omitted].

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

Goal 5 is implemented through the Goal 5 Rule adopted by the LCDC in 1996. The Rule appears in OAR Chapter 660, Division 23: Procedures and Requirements for Complying with Goal 5. The Rule applies to “post-acknowledgment plan amendments” or “PAPAs,”⁸ such as this application.⁹ The Division 23 Rule replaces the Division 16 Rule.¹⁰

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

(3) Local governments are not required to apply Goal 5 in consideration of a PAPA unless the PAPA affects a Goal 5 resource. For purposes of this section, a PAPA would affect a Goal 5 resource only if:

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

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

⁸ OAR 660-23-0010(5) states:

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

⁹ OAR 660-023-0250(2) states, in part: “The requirements of this division are applicable to PAPAs initiated on or after September 1, 1996.”

¹⁰ See OAR 660-023-0250(1).

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

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

The *italicized* language above is particularly applicable here. The provisions above reflect caselaw stating that where a county is amending acknowledged plan and zoning designations, the county must address Goal 5 if any of the area proposed for change encompasses lands included on the County's inventory of Goal 5 resources.¹¹ The County need not go through the Goal 5 conflict resolution process for alleged Goal 5 resources that are not on the acknowledged Goal 5 inventory.¹²

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

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

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

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

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

¹¹ See Urquhart v. Lane Council of Governments, 80 Or App 176, 721 P2d 870 (1986); Plotkin v. Washington County, 165 Or App 246, 997P2d 226 (2000); Waugh v. Coos County, 26 Or LUBA 300, 310-12 (1993); 1000 Friends of Oregon v. Yamhill County, 27 Or LUBA 508, 522 (1994).

¹² Davenport v. City of Tigard, 23 Or LUBA 565 (1992).

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

Water Resources: The Water Resources Working Paper (1982) inventories the following water resources which include or potentially include the subject property: Watersheds and Groundwater.

Riparian Resources: The *Flora & Fauna Working Paper (1982) and Addendum (1983)* inventories Riparian resources. Riparian areas are inventoried to include all land within 100 feet of the banks of a Class 1 stream. There are no Class I streams on the subject property or within 100 feet.

Wetland Resources: At the time the *Flora & Fauna Working Paper* was prepared, the U.S. Fish and Wildlife Service had not completed its National Wetlands Inventory (“NWI”) mapping for the entire county. However, the NWI shows no wetlands on the subject property.

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

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

Big Game Range: The plan classifies the entire county into three categories of Big Game Range: Major, Peripheral, and Impacted. See *Flora & Fauna Working Paper* at 23-25, *Addendum* at 14.

The *Working Paper* and *Addendum* discuss conflicts between residential and big game uses in general terms. However, they explicitly decline to simplify the issue of conflict identification to a matter of densities for individual development sites, and instead defer the issue to future work between the county and the ODFW. “The County should continue to work with the ODFW to resolve the issue of Big Game designation and protection in a mutually acceptable manner -- including the involvement of that agency in land use regulation development.” *Addendum* at 14. It appears, therefore, that the County formally deferred applying this part of Goal 5 when adopting its plan.

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

The basic requirements for conducting the conflicts analysis and developing a program for

inventoried and acknowledged resources is spelled out in OAR 660-023-0040. The introductory provisions in OAR 660-023-0040(1)¹³ explain that there are four steps in the ESEE process, that the County has discretion in how it proceeds through the process so long as it completes each step, and that the analysis need not be lengthy or complex. The result should create a clear understanding of the conflicts and the consequences. The four steps in the ESEE process are:

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

The Goal 5 Rule provides additional instructions on how to conduct each of the four steps listed above. The approach taken here will be to address each of the Goal 5 resources inventoried on the site in the acknowledged plan (Big Game Range and two Water Resources (groundwater and watershed) and conduct the four-step analysis.

However, in summary, the proposed change is from Agriculture Land to Forest Land. Uses

13 OAR 660-023-0040(1) provides:

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

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

allowed in these zones are the same or similar in nature and impact. Furthermore, the subject property is already being used and managed for forest use. As such, there are no conflicting uses resulting from the redesignation/rezone and the ESEE analysis need not be done.

The below is provide as additional information.

1. ESEE Analysis for Big Game Range

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

The ESEE analysis is not necessary for Big Game Range. Although this is a post-acknowledgment plan amendment, uses allowed under the F-2 zone are similar to uses allowed under the E-40 zone, and therefore there is no increased conflict. OAR 660-023-0250(3)(b). Regardless, the applicant has addressed the elements below.

(a) Identify Conflicting Uses

The approach to identifying conflicting uses is stated in OAR 660-023-0040(2).¹⁴ The existing

¹⁴ OAR 660-023-0040(2) states:

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

(a) If no uses conflict with a significant resource site, acknowledged policies and land use regulations may be considered sufficient to protect the resource site. The determination that there

and potential conflicting uses with Big Game Range must be determined. This requires looking at the uses allowed by the proposed F-2 zoning that would be likely developed.

1. Agricultural and forest uses are allowed in both the existing and proposed zones. Residential uses are in EFU and F-2, and all residential uses in both zones require a land use permit subject to review and approval by the Director. In short, uses allowed in the Agricultural and Forest zones are the same or very similar in type and impact. As such, there is no increased conflict with big game management in Peripheral and Major Big Game Range. “Impacted Range has essentially been ‘written off’ for big game management.” *Flora & Fauna Working Paper (1982)* at 24. The plan identifies this conflict when overall residential densities reach certain levels in Peripheral and Major Big Game Range. However, the plan declines to resolve conflicts by setting density limits. *Flora & Fauna Working Paper Addendum (1983)* at 14. In any case, residential use densities will not increase under the F-2 zone because residential opportunities are limited in a manner similar to the existing EFU zone.

(b) Determine the Impact Area

The approach to determining the impact area is stated in OAR 660-023-0040(3).¹⁵ Here the impact area for the PAPA is the entire area of the subject property itself, since the entire county is mapped as being in one of the three big game areas.

It is worth noting that the surrounding area is predominantly rural residential in use and nature. See Table A and Table B. This adjacent and nearby development degrades the value of the habitat on the subject property.

(c) Analyze the ESEE Consequences

are no conflicting uses must be based on the applicable zoning rather than ownership of the site. (Therefore, public ownership of a site does not by itself support a conclusion that there are no conflicting uses.)

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

15 OAR 660-023-0040(3) states:

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

The approach to analyzing the ESEE consequences is stated in OAR 660-023-0040(4).¹⁶ “‘ESEE consequences’ are the positive and negative economic, social, environmental, and energy (ESEE) consequences that could result from a decision to allow, limit, or prohibit a conflicting use.” OAR 660-023-0010(2). The County must analyze the ESEE consequences of allowing, limiting, or prohibiting the conflicting rural residential uses.

Based on the above, there are no conflicting uses from a rezone from EFU to F-2. Allowed uses are substantially the same. As such, there are no ESEE consequences.

Economic Consequences: Allowing the subject property to be developed with forestry uses would have no economic consequences. The property is already being managed for forestry uses.

Social Consequences: Allowing the subject property to be developed with forestry uses would have no social consequences. The property is already being managed for forestry uses.

Environmental Consequences: Allowing the subject property to be developed with forestry uses would have no environmental consequences. The property is already being managed for forestry uses.

Energy Consequences: Allowing the subject property to be developed with forestry uses would have no energy consequences. The property is already being managed for forestry uses.

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

The proposed program to achieve the goal is to allow the conflicting any conflicting use because

¹⁶ OAR 660-023-0040(4) states:

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

the property has the same value for Big Game after the rezone as it did before. The new zoning and permitted uses do not change the character or substantially degrade the range.

2. ESEE Analysis for Groundwater Resources

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

While dwellings are allowed in both the EFU and Impacted Forest Lands zones, they are not permitted outright in either. Forest use is permitted in the existing EFU zone, and the site is currently being managed for forestry. As such, a change to F-2 does impact groundwater.

(a) Identify Conflicting Uses

The acknowledged County plan identifies two groundwater resource conflicts – development in quantity limited aquifers and in areas of polluted groundwater. *Id.* at 11 states:

Two groundwater conflicts have been identified – development in quantity limited aquifers and development in areas where groundwater quality may be polluted, either naturally or from human induced means. An ESEE analysis as per administrative rule regarding Goal 5 is presented for each of these conflicts.

The acknowledged County plan conducts a full ESEE analysis for development in water quantity and water quality limited aquifers, and it adopts a program that resolves the conflicts and achieves the goal. In this case, uses allowed under the existing zone are similar in nature and impact to uses allowed in the F-2 zone.

The obligation is to identify potential conflicting uses – that is, uses allowed outright under the proposed zoning that would conflict with a significant Goal 5 resource. See OAR 660-023-0040(2), quoted in footnote 7 above. In this case, because uses allowed outright are the same or similar in both resource zones, there are no conflicting uses.

(b) Compliance with Acknowledged Plan and Implementing Regulations

Under the Goal 5 Rule, when no conflicting uses are identified with a significant resource site,

compliance with the acknowledged policies and land use regulations is sufficient. “If no uses conflict with a significant resource site, acknowledged policies and land use regulations may be considered sufficient to protect the resource site.” OAR 660-023-0040(2)(a). These findings addressed applicable policies and regulations. Therefore, no further analysis is needed.

3. ESEE Analysis for Surface Water Resources and Watershed Resources

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

By “watershed,” the working paper refers to areas of drainage basins that drain to a particular point of use. As defined in the working paper, “the area which drains to a domestic water supply is correctly termed a watershed, even if it is much smaller than a basin.” *Id.* at 3. The working paper maps drainage basins in the county, but not watersheds, since a watershed is a function of where water is being used. The working paper recognizes that “[t]he entire County is within one or more categories of watersheds, and all ranges of quality may be found.” *Id.* at 5.

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

Only one conflict is identified by the plan’s ESEE analysis as a watershed conflict, as opposed to a surface water or groundwater conflict. That is “contamination or possible contamination of surface water supplies used for domestic purposes.” *Id.* at 5. The plan found two places where that conflict exists. One is from forestry related practices on federal, state and private timber lands. The other is from residential development in the Clear Lake area, which is in the watershed of the Heceta Water District. *Id.* at 5-6. The plan conducts no ESEE analysis for forestry practices for the reason that the County has so little control over these practices. And it conducts no ESEE analysis of the Clear Lake situation due to inadequate data. *Id.* at 5-6.

The working paper maps drainage basins and lists the principal streams in Lane County. The subject property is located in a drainage basin at Map 2.

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

streams by federal agencies with storage and flood control responsibilities. *Id.* at 8-9.

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

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

(a) Identify Conflicting Uses

As stated above, there are no conflicting uses. The change is Agricultural to Forest and outright uses allowed in the EFU zone are the same or similar in type and impact. The property is already being used and managed for forest use.

(b) Determine the Impact Area

The immediate impact area of the proposed use is the subject property.

(c) Analyze the ESEE Consequences

As noted above, there are no conflicting uses because the allowed uses are the same or similar on Agricultural/EFU and Forest/Impacted Forest zoned land. In addition, the property is already developed with forestry uses and is being managed for forestry. Because there are no conflicting uses, there are no economic, social, energy or environmental consequences.

(d) Develop a program to achieve Goal 5 for Watersheds and Surface Water Resources

The proposed program to achieve the goal is to allow the change because there are no conflicting uses that result from a rezoned from EFU to F-2.

4. ESEE Analysis for Wetlands

The acknowledged County plan does not identify any wetlands on the subject property. Analysis is limited to acknowledged resources. Therefore, no ESEE is required.

5. Goal 5 analysis additional summary findings

Local governments are not required to apply Goal 5 in consideration of a PAPA unless the PAPA affects a Goal 5 resource. For purposes of this section, a PAPA would affect a Goal 5 resource only if: *** (b) *The PAPA allows new uses that could be conflicting uses with a particular significant Goal 5 resource site on an acknowledged resource list; or* ***. For an ESEE to be required, the use must conflict with the resource.

Under OAR 660-23-0040(1), “*The ESEE need not be lengthy or complex* ***.” Here, the applicant took the position that an ESEE was not required because there is no conflict. The applicant then followed-up with a precautionary ESEE that addressed the requirements of Division 23.

Only two resources were identified: Water (Watershed/Groundwater) and Big Game. The applicant has maintained that because uses in the F-2 zone are similar to uses in the EFU zone (resource uses), they do not conflict with any of the identified natural resources and a Goal 5 analysis is not needed.

The proposal is from one resource zone to another (EFU to F-2). The subject property is already in forest use. The uses allowed in each zone are similar in nature and impact. Other properties in the area are zoned F-2. Even if uses in the F-2 zone are different enough to have independent impacts, the ESEE analysis establishes that they do not conflict with Goal 5 resources.

Water:

Table D below identifies uses allowed in the F-2 and EFU zones that could impact water. Both zones have the potential to be water intensive. There is no evidence that uses in the F-2 zone are more water intensive than uses in the EFU zone. Aquatic farming, irrigation of farm crops, water intake facilities and mining in the F-2 zone all have the potential to be extremely water intensive, limited only by water rights and availability. Aquatic farming, irrigation of farm crops, water bottling, mining, and wineries in the EFU zone all have the potential to be water intensive, as well. There is no inherent increase in water usage or contamination that comes with F-2 uses. Therefore, there is no conflict.

Table D

Uses that potentially impact water in F-2	Uses that potentially impact water in EFU zone
Farm uses (all, including	Farm uses (all, including

aquatics) and processing	aquatics) and processing
Water intake facilities	Water bottling
Gas and oil exploration	Gas and oil exploration
Solid waste facilities	Composting facilities; solid waste facilities
Reservoirs	Reservoirs
Aggregate and mineral exploration	Aggregate and mineral exploration
Mining	Mining
Youth camps	
Dwellings	Dwellings
Forest uses (including processing)	Forest uses
	Winery

Big Game:

The subject property is Peripheral Big Game. Uses allowed in the EFU and F-2 zones are so similar that there is no conflict. See Table D. If big game will travel through a composting facility or winery, they may travel through a solid waste facility or mining operation. Because there is no “conflict,” an ESEE was not required. Again, despite this finding, the applicant prepared a complete ESEE analysis that concluded that Goal 5 was met.

Goal 6: Air, Water and Land Resources Quality

To maintain and improve the quality of the air, water and land resources of the State.

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

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

standards for quality in air sheds or river basins, then the carrying capacity, nondegradation, and continued availability of the resources are standards.

The subject property is vacant and in forest production. Historically, it has been used for forest operations, a permitted use under the existing Agricultural designation. Because the proposed designation of Forest matches the existing and historic use, there will be no impacts to land, water or air quality.

Goal 7: Areas Subject to Natural Disasters and Hazards.

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

The phrase “areas of natural disasters and hazards” means “areas that are subject to natural events that are known to result in death or endanger the works of man, such as stream flooding, ocean flooding, ground water, erosion and deposition, landslides, earthquakes, weak foundation soils and other hazards unique to local or regional areas.” OAR 660-15-000. There are no such areas known on the subject property subject property.

Goal 8: Recreational Needs

To satisfy the recreational needs of the citizens of the state and visitors and, where appropriate, to provide for the siting of necessary recreational facilities including destination resorts.

The overriding purpose of Goal 8 is to address all recreational needs, but its primary focus is on siting and developing destination resorts, defined in Goal 8 as "self-contained development[s] providing visitor-oriented accommodations and developed recreational facilities in a setting with high natural amenities." Goal 8 is not directly applicable to this proposal.

Goal 9: Economic Development

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

Goal 9 is focused on commercial and industrial development. The Goal 9 Rule, OAR 660-09, is explicitly limited to areas within urban growth boundaries. This goal is not directly applicable to

this proposal.

Goal 10: Housing

To provide for the housing needs of citizens of the State.

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

Goal 10, like its implementing rule, is geared primarily to housing issues inside urban growth boundaries. The goal's definition of "buildable lands," for example, is limited to lands in urban and urbanizable areas. This site is outside any UGB. This goal is not applicable to this proposal.

Goal 11: Public Facilities and Services

To plan and develop a timely, orderly and efficient arrangement of public facilities and services to serve as a framework for urban and rural development.

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

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

Goal 11 addresses facilities and services in urban and rural areas. The subject property is

“resource” land and will remain rural after this approval. The subject proposal does not provide for any rural or urban development. Therefore, Goal 11 does not apply.

Resource designations have no required minimum level of services. However, Table E lists the services now available to the subject property.

**Table E
Rural Public Facilities, Existing or Proposed**

Service	Provider
Fire	Lane County Rural Fire Protection District #1
Police	Lane County Sheriff and State Police
Schools	Fern Ridge School District 28J
Access	Hwy 126, a major arterial and Knight Rd, a local road
Electric	Blachly-Lane Utility District
Telephone	Century Link Communications
Solid Waste	Private
Sewer	Individual Septic System, should development occur
Water	Well, should development occur

Goal 12: Transportation

To provide and encourage a safe, convenient and economic transportation system.

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

with local and regional comprehensive land use plans. Each plan shall include a provision for transportation as a key facility.

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

There is no additional outright residential development allowed by this application. Therefore, the application will not affect a transportation facility. The rule spells out clearly what constitutes a “significant affect.” OAR 660-12-060(1) states:

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

“(a) Change the functional classification of an existing or planned transportation facility (exclusive of correction of map errors in an adopted plan);

(b) Change standards implementing a functional classification system; or

(c) Result in any of the effects listed in paragraphs (A) through (C) of this subsection based on projected conditions measured at the end of the planning period identified in the adopted TSP. As part of evaluating projected conditions, the amount of traffic projected to be generated within the area of the amendment may be reduced if the amendment includes an enforceable, ongoing requirement that would demonstrably limit traffic generation, including, but not limited to, transportation demand management. This reduction may diminish or completely eliminate the significant effect of the amendment.

(A) Types or levels of travel or access that are inconsistent with the functional classification of an existing or planned transportation facility;

(B) Degrade the performance of an existing or planned transportation facility such that it would not meet the performance standards identified in the TSP or comprehensive plan; or

(C) Degrade the performance of an existing or planned transportation facility that is otherwise projected to not meet the performance standards identified in the TSP or comprehensive plan.”

The proposed redesignation/rezone will not trigger this section of the rule because it does not

provide for any additional development. Transportation Planning staff reviewed this proposal and per their January 19, 2017 email concur with the applicant's Goal 12 analysis in the application that there is no "significant affect" on the transportation facility.

Goal 13: Energy Conservation

To conserve energy.

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

This goal is not directly applicable to individual land use decisions. Rather, its focus is on the adoption and the amendment of land use regulations.¹⁷

Goal 14: Urbanization

To provide for an orderly and efficient transition from rural to urban land use.

The subject proposal keeps the parcel in Resource designation. There, there is no transition. This goal does not apply.

Goal 15: Willamette River Greenway

Goal 16: Estuarine Resources

Goal 17: Coastal Shorelands

Goal 18: Beaches and Dunes

Goal 19: Ocean Resources

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

IV. COMPLIANCE WITH RURAL COMPREHENSIVE PLAN POLICIES

Any plan and zone change must comply with the relevant Rural Comprehensive Plan (RCP) Policies. This requirement is based in statutes (ORS 197.175(2)), the RCP policies themselves (see, e.g. Rural Plan Policies at page 6), and Lane Code (see, e.g., LC 16.400(6)(h)). This section,

¹⁷ See Brandt v. Marion County, 22 Or LUBA 473, 484 (1991), aff'd in part, rev'd in part, 112 Or App 30 (1992).

therefore, addresses the apparently relevant elements of the RCP policies. It is organized by Goal. Where possible to avoid duplicative discussion, reference is made to the discussion under the Statewide Planning Goals. However, the following discussion regarding the relationship between Goals 3 and 4 bears repeating.

OAR 660-006-0015(2) states,

When lands satisfy the definition requirements of both agricultural land and forest land, an exception is not required to show why one resource designation is chosen over another. The plan need only document the factors that were used to select an agricultural, forest, agricultural/forest, or other appropriate designation.

The “agricultural land” designation and the “forest land” designation are both resource designations. The designations have equal weight and importance to the state of Oregon. Through the above Rule, LCDC has acknowledged that many lands will qualify as both Forest and Agricultural land. The proper resource designation for the “duel” lands is left up to the local jurisdiction so long as the factors underlying the designation choice are identified.

As discussed more specifically under Goals 3 and 4 above, the subject property meets the definition of both Forest Land and Agricultural Land. The Lane County RCP Agricultural Working Paper documents the factors used to select Agricultural or Forest designation on land that meets the definition of both. Each of those factors is discussed in detail below. Based on those factors, the subject property should be designated Forest Land.

Because the subject property qualifies as both Agricultural under Goal 3 and Forest Land under Goal 4, many of the RCP policies addressing Goal 3 and many of the RCP policies addressing Goal 4 are met by the subject property. It is inherent in the property’s duel qualification. However, when determining whether a property should be designated Forest or Agricultural, the key is not whether the property meets or furthers the policies under the RCP, but whether the property meets the factors established in the Plan for choosing between Agricultural or Forest.

The Agricultural Land Working Paper states,

“Agricultural/Forestry Goal Interrelationship

In an inventory of agricultural lands and forest lands there will by many instances where land will meet Goal definition for both categories. According to [Led’s] policy, farm and forest uses are compatible and either designation may be made without taking an exception to the other goal. The factors used to select a designation need to be documented in the Plan. The policies within the Plan will support one designation over another depending on the situation. The county

should consider the following items in addressing overlapping lands:

- a. Identify Agricultural and Forest Lands Goal definitions and inventories*
- b. Segregate overlapping lands from single resource lands*
- c. Apply evaluations of local circumstances and Goal factors to overlapping land to determine appropriate designation*
- d. Designate overlapping lands as agricultural, forest or agricultural/forest through Plan policies and diagrams*
- e. Protect designated lands for appropriate uses through the zoning ordinance and other implementing measures.*

It is intended that agricultural and forest practices be able to coexist without mutual interference while conserving those resource lands.

Identify: The applicant has identified and addressed the proper definitions of farm and forest lands. In short, farm land is land consisting predominantly of Class I through IV soils. Forest land is land capable of producing 50 cu.ft./acre/year of timber fiber. As shown in Tables C and D above, the subject property meets both definitions.

Segregate: By filing this application, the applicant is separating the subject property from single resource property for consideration.

Evaluate Goal Factors: Goal 3 and 4 factors are thoroughly addressed in Section III, above. The analysis of Goal 3 factors shows that the subject property meets the “soils” test of Agricultural land, and “other suitable lands,” “necessary lands,” or “farm unit” tests have not and need not be addressed. The analysis of Goal 4 factors shows that the subject property meets the “productivity” test for Forest lands, and “necessary lands” and the “other resource” tests have not and need not be addressed.

Evaluate Local Circumstances: There is no exact definition of “local circumstances” in the Lane County RCP. The applicant has evaluated the subject property and surrounding designations, uses and land use patterns. Tables A and B and accompanying text, see pages above, establish these factors for all properties in the surrounding area. That discussion is hereby incorporated. In summary, the subject parcel is located in a sea of Forest and Rural Residential exception area land.

The subject property is currently and has historically been used for timber production. It is in Forest tax deferral. The property was most recently logged by the applicant in 2014. It is now regenerating for future harvests. Based on tree stump and site conditions, the site was also logged somewhere near 1985. There is no evidence that the subject property has ever been in farm use, as

defined by the statute.

The predominant designation by lot/parcel in the surrounding area is Residential (67%) followed by Agriculture (21%) and Forest (12%). See Table B. However, many of the agriculturally zoned properties are in forest use. See aerial photographs. The predominant use by lot/parcel in the surrounding area is residential (62%) followed by forestry (15%). The predominant use by acreage is Forestry.

The topography of the subject property is that of a steep hillside. Based on topography alone, the parcel is not suitable for typical farming activities.

In summary, all evidence indicates that the subject property is currently used for forestry and is surrounded by forestry and agriculture. Evidence further indicates that the subject property has historically been used for forestry. The property is not suited for farm use based on topography and existing and historic use. Because the property is in forestry, it would be difficult and expensive to convert the property to farm use. Conversion would require tree removal and major cultivation. Such conversion is generally unfeasible. Furthermore, farm uses are not common in the surrounding area and the topography of the parcel does not lend itself to farming. It is a hill.

Goal Three: Agricultural Lands

Policy 2: 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

The property is in Rent Zone 3. There is no agricultural activity of any kind on the property. Based on RLID, there is no commercial agricultural enterprise on the property. The allows preference to be given to Goal 4 – Forest Lands, which supports the redesignation and rezoning.

Policy 3: Reserve the use of the best agricultural soils exclusively for agricultural purposes.

If this policy is applicable, considering Class I as having the highest and best agricultural value and Class VIII having almost no agricultural value, the property has no Class I soils and only 41% Class II soils. Therefore, it is not comprised of the “best” agricultural soils.

Policy 8:

Provide maximum protection to agricultural activities by minimizing activities, particularly residential, that conflict with such use. Whenever possible planning

goals, policies and regulations should be interpreted in favor of agricultural activities.

This policy has been interpreted by the Board of Commissioners, and the interpretation has been upheld on appeal. This policy addresses only conflicts that will result in a significant change in or a significant increase in the cost of accepted farming practices. When conflicts of this magnitude might result, the proposed rezoning must be conditioned to reduce the potential conflicts below the level that will result in a significant change or significant increase in the cost of accepted agricultural practices.¹⁸

The subject property has been in forest use for at least 50 years. The change in zoning and designation does not affect its use. Therefore, the rezoning and redesignation will result in no conflicts between the proposed rezoning and any adjacent or nearby agricultural activity. Furthermore, with the exception of some incidental farming to the north, there is no farming on adjacent land. Land directly east, while zoned E-40, are in forest production and in forest tax deferral. See Table B, above. Land directly south, while zoned E-40, is in small scale forestry.

Goal Four: Forest Lands

Policy 1:

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

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

This policy implements Statewide Planning Goal 4 by defining “forest lands” and requiring they be used consistent with the goal. The subject property qualifies as Forest Lands and Agricultural land. See discussion in connection with Statewide Planning Goal 4 above. Given that the subject property qualifies as Forest Lands, the proposed plan change/zone change from Agricultural/E-40 to Forest/F-2 furthers this policy by adding additional land to the State’s forest land base.

¹⁸ Gutoski v. Lane County, 34 Or LUBA 219, 225 n4 (1998), aff’d 155 Or App 369, 963 P.2d 145 (1998).

Policy 2:

Forest lands will be segregated into two categories, Non-impacted and Impacted and these categories shall be defined and mapped by the general characteristic specified in the Non-Impacted and Impacted Forest Land Zones General Characteristics

The proposal is for a designation change from Agricultural to Forest and a zone change from E-40 to F-2. The F-2 designation is supported by the general characteristic specified in Policy 15 below. Because the subject property is justified as being zoned Impacted, this policy has been met.

Policy 5:

Prohibit residence on Non-Impacted Forest Lands except for the maintenance, repair or replacement of existing dwellings.

The proposal is for F-2 (Impacted Forest Lands) designation. As such, this policy does not apply.

Policy 15:

Lands designated within the Rural Comprehensive Plan as forest land shall be zoned Non-impacted Forest Lands (F-1, RCP) or Impacted Forest Lands (F-2, RCP). A decision to apply one of the above zones or both the above zones is a split zone fashion shall be based upon:

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

Characteristics of the land, not the ownership of it, control the analysis. (Ord. PA 1236, pg. 8). Focus is on the subject property and the land in the immediate vicinity. Legal lot status is irrelevant. Ownership means, “land being proposed for rezoning.” This can be an entire property or a portion of it. Where it is a portion of a larger lot, analysis is limited to the portion under consideration for rezone. Ord. PA 1236, page 9 – 10. The critical focus of the analysis is on the property proposed for rezoning and the characteristics that property has that mitigate toward consideration of applying F-1 or F-2. Ord PA 1236, page 9.

The analysis under Goal Four, Policy 15 does not required a precise mathematical computation since the focus is on all the characteristics and whether, on balance, the land proposed for rezoning more closely corresponds to the F-1 or F-2 characteristics. (Ord. PA 1236, pg. 10)

b. Non-impacted Forest Land Zone characteristics:

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

The County has determined that this provision focuses on the subject property itself (not surrounding property) and whether it is developed with residences or nonforest uses. The absence of residential development or other nonforest use is a characteristic of F-1 zoning.

The subject property is vacant.

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

Under Ordinance PA 1236, the focus is on the subject property and any underlying contiguously held properties. Contiguous is defined as,

“Having at least one common boundary line greater than eight feet in length. Tracts of land under the same ownership and which are intervened by a street *** shall not be considered contiguous. *** The intent of this provision is to look within the land being proposed for rezoning to determine whether or not that land being proposed for rezoning consists of contiguous land owned by the applicant that is 80-acres or larger in sizes.” (Ord. PA 1236, pg. 10).

Being a large, contiguously held property is a characteristic of F-1 zoning.

The subject property is 77.1 acres of contiguous ownership. Therefore, the subject property does not meet this F-1 characteristic.

“(3) Predominantly ownership contiguous, to other lands utilized for commercial forest or commercial farm uses.”

The County has determined that this provision focuses on property adjacent to (contiguous to) the subject property, and whether it is utilized for commercial forest/farm uses. While not conclusive, the following factors can be considered in determining whether surrounding uses are being utilized for farm/forest use: parcel size, tax deferral, and other factual information. However, the determination of whether a property is in “commercial” farm or forest use is

weighed against a different set of standards.

The County has interpreted Policy 15 as being “crafted as a means to distinguish large-scale industrial forest land from small-scale non-industrial forest land.” Ordinance 1236, page 8.

“Forest lands less than 80 acres in size and developed with residential uses or other nonforest uses, generally received Impacted Forest land (F2) [zoning]. Public forested lands and larger commercially managed forest lands, forest lands that were not impacted by nonforest uses, particularly in the ownership of industrial forest operators, were [zoned] as Nonimpacted Forest Lands (F-1).” Ordinance 1236, Page 9. Emphasis added.

Based on the above, commercial forest use leans toward public lands and lands that are large scale and in industrial forest operator control and ownership. Examples of lands that fall squarely under the umbrella of “large scale industrial forest land” include lands owned by Rosboro Lumber Co. (292 holdings and more than 2,000 acres of land in forest use in Lane County); Weyerhaeuser (1668 holdings and more than a 100 thousand acres of land in forest use in Lane County); Davidson Industries (200 holdings and more than 2,000 acres of land in forest use in Lane County); Seneca Lumber (168 holdings and more than 1,000 acres of land in forest use in Lane County); and McDougal Bros Investments, LLC (92 holdings and more than 1,000 acres of land in forest use in Lane County). This is just a sample. There are hundreds of similar industrial forest land companies holding property in Lane County. The Oregon Department of Revenue keeps a yearly list of large-scale industrial timber owners.

Having commercial farm/forest uses on property adjacent to the subject property is a characteristic of F-1 zoning.

There are 13 properties adjacent to the subject property, if you include Hwy 126. The details are set out in Table F below. Only one of the contiguous properties is in commercial forest use. None are in commercial farm use.

Table F
Contiguous Property and Commercial Use

	Tax Lot	Ownership	Parcel size	Holdings in Lane County Parcels/acres Ex. TT	Comments
1	TL 100	Jess A. James	68.01	1/68.01ac	Developed with a house and in farm deferral. Portions of this

					property is not in forest deferral. Given the limited number of holdings and limited amount of land owned, given the that property is not in forest deferral, and given that Jess James is not included on the state's list, this property is not part of a large scale industrial operation and should not be considered to be in commercial forest use. Given the limited number of acres in farm use (1/2 the site), the property is not in commercial farm use.
2	TL 601	Goracke Bros	99.28 acres	2 parcel in forest use/118.4	Given the limited number of forest holdings and limited amount of land in forest production, this property is not part of a large scale industrial operation and should not be considered to be in commercial forest use. Furthermore, Goracke Bros is not on the state's list. This is a small-scale, non industrial use. Regardless of the Goracke Bros status as a commercial farm operator, this parcel is not in commercial farm use.
3	TL 500	McDougal Bros Inc.	1.59 acres	5 in forest zoning/45.66	This parcel is too small to be in commercial forest production. It does not qualify for deferral. It cannot be placed into forest production. It is not in forest use. It is not in farm use
4	TL 600	McDougal Bros Inc.	1.23	4 in forest zoning/45.66	This parcel is too small to be in commercial forest production. It does not qualify for deferral. It cannot be placed into forest

					production. It is not in forest use. It is not in farm use.
5	TL 800	Sailor Pioneer Cemetery	1.52 acres	1/1.52	Cemetery. Not in farm or forest use
6	Hwy 126	State of Oregon ODOT	-	-	Highway. Not in farm or forest use.
7	TL 1800	McDougal Bros Inc.	1.48	5 in forest zoning/45.66	This parcel is too small to be in commercial forest production. It does not qualify for deferral and cannot be put to industrial forest use. It is not in farm use
8	TL 1500	ODOT	3.39	-	Highway dedication; reserved for transportation needs. Not in commercial forest use. It is not in farm use
9	TL 1601	Zitek	5.92	1/5.92	Zoned RR; developed with a house; in residential use. No forest or farm use.
10	TL 204	Sweeney	9.10	1/9.10	Zoned RR; reserved for residential use. Does not qualify for deferral. Not large scale, industrial operation.
11	TL 200	McDougal Bros Investments	.82	Many holdings; industrial operator.	Zoned RR; used as a road; very small; reserved for road or residential use. Not large enough to be large scale, industrial operation regardless of ownership. Not in forest use.
12	TL 101	Cardwell	5.96	1/5.96	Zoned RR; developed with house. In residential use.
13	TL 201	Rodriguez	4.14	1/4.14	Zoned RR; developed with house. In residential use.

Based on the above, of the 13 contiguous properties, none are in commercial forest use. Therefore, the subject property does not meet this F-1 characteristic.

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

This provision focuses on the subject property and the type of access to it. Access by an arterial

road or forest management road is a characteristic of F-1 zoning.

The applicant opines that “roads” are interpreted to include: County roads classified as arterial roads; and forest management roads, such as forest service roads, BLM roads and other such intensive forestry roads that are intended primarily for forest management.

The subject property takes access from Knight Road, a rural road, via an easement across TL 200 owned by McDougal Bros. Investments using an existing roadway. The purpose of Knight Road is to move local traffic and to support local residential access. The property does not have direct access to Hwy 126. There is no existing access road to Hwy 126 and there is no ODOT access permit. The property has not easement rights to use the cemetery road. Based on their interpretation of this F-1 characteristic, the applicant asserts that the subject property does not meet this F-1 characteristic.

“(5)¹⁹ Primarily under commercial forest management.”

The County has determined that this provision focuses on the subject property and whether it is utilized for commercial forest/farm uses. While not conclusive, the following factors can be considered in determining whether surrounding uses are being utilized for farm/forest use: parcel size, tax deferral, and other factual information. However, the determination of whether a property is in “commercial” farm or forest use is weighed against a different set of standards.

The County has interpreted Policy 15 as being “crafted as a means to distinguish large-scale industrial forest land from small-scale non-industrial forest land.” Ordinance 1236, page 8.

“Forest lands less than 80 acres in size and developed with residential uses or other nonforest uses, generally received Impacted Forest land (F2) [zoning]. Public forested lands and larger commercially managed forest lands, forest lands that were not impacted by nonforest uses, particularly in the ownership of industrial forest operators, were [zoned] as Nonimpacted Forest Lands (F-1).” Ordinance 1236, Page 9. Emphasis added.

Based on the above, commercial forest use leans toward public lands and lands that are large scale and in industrial forest operator control and ownership. Examples of lands that fall squarely under the umbrella of “large scale industrial forest land” include lands owned by Rosboro Lumber Co. (292 holdings and more than 2,000 acres of land in forest use in Lane County); Weyerhaeuser (1668 holdings and more than a 100 thousand acres of land in forest use in Lane County); Davidson Industries (200 holdings and more than 2,000 acres of land in forest use in Lane

19 There is a typo in the RCP General Plan Policy 15(b). The second sentence is a separate standard and should be labeled (5).

County); Seneca Lumber (168 holdings and more than 1,000 acres of land in forest use in Lane County); and McDougal Bros Investments (92 holdings and more than 1,000 acres of land in forest use in Lane County). This is just a sample. There are hundreds of similar industrial forest land companies holding property in Lane County.

The Oregon Department of Revenue keeps a yearly list of large-scale industrial timber owners. Frontier Land is not on the list.

Having commercial farm/forest uses on the subject property is a characteristic of F-1 zoning.

TL 600	Frontier Land Co., LLC	77.1 acres	1 parcel in forest use (the subject property)/77.1 acres.	Given the limited number of holdings and land owned and in forest production and given that Frontier Land Co, LLC is not included on the state’s list, this property is not part of a large scale industrial operation and should not be considered to be in commercial forest use. This is a small-scale, non industrial forest use. It will continue in that capacity after the zone change to F-2. The property is not in farm production.
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Because the owner of the subject property has a small amount of forest production land and holdings, the property is not in large scale industrial operation. It does not meet this F-1 requirement.

F-1 Zoning Test

Non-impacted Forest Land Zone (F-1, RCP) Characteristics	Does the Subject Property Meet this Element?
<i>1. Predominantly Ownerships not developed by residences or nonforest uses</i>	Yes. The property is not developed residence.
<i>2. Predominantly contiguous, ownerships of 80 acres or larger in size</i>	No. The property is less than 80 acres.
<i>3. Predominantly ownership contiguous, to other lands utilized for commercial forest or commercial farm uses.</i>	No. None of the contiguous properties are in commercial forest or farm uses.

4. <i>Accessed by arterial roads or roads intended primarily for forest management.</i>	Per applicant, no. Property is accessed by Knight Road, a local county road.
5. <i>Primarily under commercial forest management.</i>	No. The property is small-scale nonindustrial land and is therefore not in commercial forest use.
CONCLUSION	Should not be zoned F-1 because it meets only one of the characteristics (1 of 5) 20%

(c) Impacted Forest Zone characteristics: *”**

“(1) Predominantly ownerships developed by residences or nonforest uses.

The County has determined that this provision focuses on the subject property itself (not surrounding property) and whether it is developed with residences or nonforest uses. A property developed with residence or other nonforest use is a characteristic of F-2 zoning. This criterion is a mirror of Policy 15(b)(1).

The subject property is vacant. Therefore, the subject property does not meet this F-2 characteristic.

“(2) Predominantly ownerships 80 acres or less in size.

The County has determined that this provision focuses on the subject property itself (not surrounding property) and its size. Property containing 80 acres or less is a characteristic of F-2 zoning.

The subject property is 77.1 acres, smaller than 80 acre threshold. Therefore, the subject property meets this F-2 characteristic.

“(3) Ownerships generally contiguous to tracts containing less than 80 acres and residences and/or adjacent to developed or committed areas for which an exception has been taken in the Rural Comprehensive Plan.”

The County has determined that the focus of this criterion is on contiguous properties and properties in the “general area.” (Ord. PA 1236, pg. 10).

Ordinance 1236 interprets “generally contiguous” to mean in the general area. See page 10 of the Ordinance. The distance can be pushed in some or all directions and can cross roads, streams and other barriers. (Ord. PA 1236, pg. 10). How wide and how far is determined on a case by case basis. (Ord. PA 1236, pg. 10). This provision is two fold: F-2 should be applied (1) where adjacent and nearby properties are less than 80-acres and developed, or (2) where adjacent or nearby properties are within a developed or committed exception area.

Ordinance 1236 interprets “adjacent” to mean general vicinity. The term adjacent looks,

“even further beyond the nearby tracts or across intervening right of way to acknowledge the impact of development within developed and committed exception areas in the general vicinity of the land being proposed for rezoning. It is a broader look at the complete tapestry of uses and development, particularly nonresource uses, in the general area. It does not depend on contiguity for that consideration.” Ordinance 1236, Page 10.

Generally Contiguous Tracts: There are 48 tracts that are “generally contiguous,” as the term is addressed above and defined in Ordinance PA 1236. These tracts are included in Table A, above. Of the 48 generally contiguous tracts, 30 (63%) are less than 80 acres and contain a dwelling.

Developed and Committed Tracts: The subject property is adjacent to a developed and committed exception area to the northeast, east and southeast. There are 48 tracts in the “general vicinity,” as the term is addressed above and defined in Ordinance PA 1236. Of the 48 tracts, 32 (67%) are in developed and committed exception areas.

In summary, of 48 “generally” contiguous tracts, 63 percent are less than 80 acres and contain a dwelling and 67 percent are in a developed and committed exception areas. Therefore, the subject property meets this F-2 characteristic.

“(4) Provided with a level of public facilities and services, and roads, intended primarily for direct services to rural residences.

The County Board has determined that this provision focuses on the subject property itself (not surrounding property) and access to services. In Lane County, rural services typically include: power, road access, telephone, police, ambulance, fire, and schools. Not typically included are public stormwater, public water or public sewer.

The subject property has access via Knight Road, a local county road. Power and telephone services are already in the area to serve the rural residential community. The site is served by Lane County Rural Fire Protection District #1, the Lane County Sheriff’s Department, the

State police department, Northwest/Central ambulance services and the Fern Ridge School district. See discussion under Goal 11. The property is adjacent to the community of Noti, which is densely developed. In summary, the subject property has access to power, transportation facilities, telephone, police, ambulance, fire and schools. Therefore, the subject property meets this F-2 characteristic.

F-2 Zoning Test

F-2 Zoning Criteria	Does the Subject Property Meet this Element?
Predominantly ownerships developed by residences or nonforest uses.	No. Property is not developed with a residence
Predominantly ownerships 80 acres or less in size.	Yes. Parcel is 77.1 acres in size.
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.”	Yes. Of the 48 “generally contiguous” tracts, 63% are less than 80 acres with a dwelling; and 67% are in developed and committed exception areas.
Provided with a level of public facilities and services, and roads, intended primarily for direct services to rural residences.	Yes. The area is highly developed. The property has access to Knight Road with access to power, cable, DSL, police, fire and emergency services. It is adjacent to Noti, with access being in Noti, which is predominantly rural residentially developed.
CONCLUSION	The subject property should be zoned F-2 because it meets three of the four F-2 characteristics (3 of 4) 75%

In summary:

Based on the above analysis, the *“characteristics of the land correspond more closely to the characteristic of the proposed zoning [F-2] than the characteristics of the other forest zone [F-1].”* The subject property meets only one of the F-1 characteristics (20%), and meets three of the four F-2 characteristics (75%). Therefore, F-2 zoning is supported.

Goal Five: Opens Spaces, Scenic and Historic Areas and Natural Resources

Flora and Fauna Policy 7:

Because of incomplete County coverage by, and interpretation of, the National Wetlands Inventory, wetland resources are to be considered “significant” in terms of OAR 660-16-000/025 and placed in “1B” and “1C” categories. Major wetlands designated “1C” resources shall be protected per the “3C” option through a combination of existing County Coastal and Greenway zoning regulations, and federal/state ownership; where these do not occur, an appropriate wetlands zoning district shall be developed and applied. Other wetlands from the National Wetlands Inventory shall be evaluated per “1B” requirements within two years of the date of Plan adoption, and decisions made on the protection or use of the resource. The County shall consider enlarging the list of protected per Goal 5 requirements if it is clearly demonstrated that an unprotected significant wetland(s) is likely to be significantly impacted by a land use action over which the County has jurisdiction.

See discussion of wetlands resources under Statewide Planning Goal 5. The County has not yet supplemented its inventory of wetlands resources, as anticipated by this policy. The subject property contains no wetland resources inventoried in the acknowledged County plan. Hence, this policy is not directly applicable to this proposal. Furthermore, this proposal does not result in any development or uses that would otherwise disturb wetlands. Forest practices on the land are governed by the Forest Practices Act.

No other Comprehensive Plan policies appear directly applicable.

V. COMPLIANCE WITH LANE CODE CRITERIA FOR PLAN CHANGES

LC 16.400(6)(h) sets out the criteria for amending the county plan designation. Each of the criteria is addressed here. Where a criterion incorporates a Statewide Planning Goal, LCDC Rule, or Rural Comprehensive Plan policy, reference is made the relevant part of the findings so as to avoid repetition.

LC 16.400(6)(h): Method of Plan Adoption and Amendment.

- (iii) The Board may amend or supplement the Rural Comprehensive Plan upon making the following findings”**
- (aa) For Major and Minor Amendments as defined in LC 16.400(8)(a) below, the Plan component or amendment meets all the applicable requirements of local and state law, including Statewide Planning Goals and Oregon Administrative Rules.**

This criterion makes general reference to other sources of standards that apply to plan changes. These other standards are addressed elsewhere in these findings. In summary, the

proposal is consistent with local and state law, including Statewide Planning Goals and Oregon Administrative Rules.

- (bb) For Major and Minor Amendments as defined in LC 16.400(8)(a) below, the Plan amendment or component is:**
- (i-i) necessary to correct an identified error in the application of the Plan; OR**
 - (ii-ii) necessary to fulfill an identified public or community need for the intended result of the component or amendment; OR**
 - (iii-iii) necessary to comply with the mandate of local, state or federal policy or law; OR**
 - (iv-iv) necessary to provide for the implementation of adopted Plan policy or elements; OR**
 - (v-v) otherwise deemed by the Board, for reasons briefly set forth in its decision, to be desirable, appropriate or proper.**

This criterion offers a smorgasbord of policy choices from which the county may select to justify initiating the plan change. At least two are relevant to this application.

Item (iv-iv) allows plan amendment if it implements the Rural Comprehensive Plan policies. Goal Four, Policy 1 of the Rural Comprehensive Plan policies anticipates the preservation of Forest lands by maintaining a forest land base. This proposal implements that policy because the subject property qualifies as forest land under the Goal 4 definition.

Item (v-v) invites the County to make plan amendments that are desirable, appropriate or proper. This proposal also meets that criterion. Where lands qualify as both Agricultural and Forest Lands, OAR 660-006-0015(2) states,

When lands satisfy the definition requirements of both agricultural land and forest land, an exception is not required to show why one resource designation is chosen over another. The plan need only document the factors that were used to select an agricultural, forest, agricultural/forest, or other appropriate designation.

Furthermore, the Lane County Rural Comprehensive Plan Agricultural Lands working paper, page 6, provides:

“Agricultural/Forestry Goal Interrelationship

*In an inventory of agricultural lands and forest lands there will by many instances where land will meet Goal definition for both categories. According to [LCDC’s] policy, farm and forest uses are compatible and either designation may be made without taking an exception to the other goal. The factors used to select a designation need to be documented in the Plan. The policies within the Plan will support one designation over another depending on the situation. The county should consider the following items in addressing overlapping lands: ***.”*

Those items and the analysis are discussed in detail above. The analysis shows that a plan amendment to Forest is desirable, appropriate and proper based on the review set forth.

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

Compliance with individual policies in the Rural Comprehensive Plan policies is discussed thoroughly above. In conclusion, the proposed plan amendment does not conflict with the applicable policies of the Rural Comprehensive Plan.

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

The existing structure of the plan anticipates Resource plan designations. As discussed above, the proposed Forest designation is also consistent with relevant policies in the Rural Comprehensive Plan policies.

LC 16.400(8): Additional Amendment Provisions.

- (a) Amendments to the Rural Comprehensive Plan shall be classified according to the following criteria:**
- (i) Minor Amendment. An amendment limited to the Plan Diagram only and, if requiring an exception to the Statewide Planning Goals, justifies the exception solely on the basis that the resource land is already built upon or is irrevocably committed to other uses not allowed by an applicable goal.**

This is a minor amendment to the plan which requests amendment to the Plan Diagram for the

subject property only – from Agriculture to Forest. No text amendments are requested. No goal exceptions are requested. Therefore, the requested Plan amendment is a Minor Amendment. This application demonstrates that the subject property is suitable for Forest designation.

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

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

This description has been provided throughout this set of findings.

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

The required analysis is provided above.

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

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

See detailed discussion above. To summarize, the subject property is located in a sea of Forest land. Furthermore, it is adjacent to a Rural Residential exception area. Some of these uses are on land planned and zoned for resource use, and others are on land that is planned and zoned for Nonresource uses. See Tables A and B and findings, above.

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

The public facilities and services available or to be provided to the site are discussed in detail above. For a discussion of each facility and service, see the Goal 11 discussion above. For a further discussion of transportation facilities, see the Goal 12 discussion above. In summary, because the site is in proximity to developed area and adjacent to the rural community of Noti, all facilities and services are available to the site.

(cc) Impact of the amendment on proximate natural resources, resource

lands or resource sites including a Statewide Planning Goal 5 “ESEE” conflict analysis where applicable;

This discussion appears in detail in other parts of this statement. The proximate natural resources to consider are those that are identified as Goal 5 resources in the comprehensive plan. The impact on these resources is discussed as part of the Goal 5 analysis above.

This proposal will have no adverse impact on proximate resource lands because the subject property will remain in resource designation and zoning.

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

As discussed in connection with Goal 7, the subject property neither contains nor is threatened by any natural hazards.

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

This provision is not applicable.

VI. COMPLIANCE WITH LANE CODE CRITERIA FOR ZONE CHANGES

This proposal requests a change from E-40 zoning to F-2 zoning. LC 16.252 sets out standards for zone changes. The facts relevant to the zone change standards are largely redundant with the facts relevant to plan policies and the Statewide Planning Goals. The LC 16.252 standards are stated here and addressed, with appropriate references to other parts of these findings.

LC 16.252(2): Criteria.

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

General purposes of Chapter 16:

LC 16.003 sets forth 14 broadly-worded purpose statements that include a provision to ensure that development is commensurate with the character and physical limitations of the land. The most applicable provisions include:

LC 16.003(4) Conserve farm and forest lands for the production of crops, livestock and timber products.

Rezoning from E-40 to F-2 implements the proposed plan amendment to Forest land. Crops, livestock and timber production are uses allowed on both the E-40 and F-2 lands. Therefore, the rezoning continues preservation and does not conflict. No development is proposed or approved as part of this application.

Not be contrary to the public interest. The public interest is served by recognizing that the land is Forest Land rather than Agricultural Land so that it may be used and managed accordingly. Furthermore, the public interest is served by ensuring that the zoning designation is consistent with the comprehensive plan designation so the property can be properly used and managed. Compliance with RCP 15 is established above.

Purpose of F-2 Zone:

The F-2 zone is intended to preserve forest land in Lane County while recognizing that some forest lands are better than others. The proposed zoning is consistent with these stated purposes of the zone by recognizing that the subject property lies in a heavily developed area and is more appropriately zoned F-2.

Rural Comprehensive Plan Criteria:

The Rural Plan Policies provide the policy basis for comprehensive plan and implementing regulations, provide direction for land use decisions, and fulfill LCDC planning requirements. Compliance with relevant Comprehensive Plan policies is addressed elsewhere in these findings.

Lane Code Criteria:

LC 16.004(4):

Prior to any rezoning, that will result in the potential for additional parcelization, subdivision or water demands or intensification of uses beyond normal single-family

residential water usage, all requirements to affirmatively demonstrate adequacy of long-term water supply must be met as described in LC 13.050(13)(a)-(d).

The request is a rezone from E-40 to F-2. These zoning districts both implement resource designations. While staff note that the subject property contains three legal lots, the zone change will not result in any additional parcelization. In fact, the minimum lot size for partitions and subdivision is larger in the F-2 zoning district than in the E-40 district.

VII. CONCLUSION

Based on the findings above, the post acknowledgement plan amendment to redesignate roughly 77.1 acres of land from Agricultural Land to Forest Land, and to rezone the same from Exclusive Farm Use (E-40) to Impacted Forest Lands (F-2), is APPROVED.

The subject property qualifies as both Agricultural Land and Forest Land based on soils and their productivity for farm and forest use. The Statewide Planning Goals give equal weight and value to Forest Lands and Agricultural Land. Lands that qualify as both can be given either designation so long as the factors used to determine the designation are identified. See OAR 660-006-0015(2). The factors that Lane County used to determine the designation of these dual lands are identified in the Agricultural Lands Working Paper of the Lane County Comprehensive Plan. The main factor requires an evaluation of (1) local circumstances and (2) Goal factors. Local circumstances, which include the existing and past use of the subject property and surrounding land usage, zoning and designation, establish that the subject property is more properly designated Forest. Goal factors establish that the subject property meets both Goal 3 and Goal 4 factors and is therefore properly designated as either. Therefore, because the subject property meets Goal 4 factors and because local circumstances establish that the property is more properly designated Forest, the proposed redesignation is approved.

Whether land designated Forest Lands on the RCP should be zoned F-1 or F-2 is determined by Forest Lands Policy 15 in the Rural Comprehensive Plan. An evaluation of these policies establishes that the subject property is properly zoned F-2, rather than F-1. Therefore, the proposed rezone to F-2 is approved.