BEFORE THE BOARD OF COMMISSIONERS OF LANE COUNTY, OREGON

ORDER NO: 16-09-27-05 IN THE MATTER OF ELECTING WHETHER OR NOT TO HEAR AN APPEAL OF A HEARINGS OFFICIAL'S DECISION APPROVING A ZONE CHANGE FROM NON-IMPACTED FOREST (F-1) TO IMPACTED FOREST (F-2); ASSESSOR'S MAP 18-05-23, TAX LOT 103 (FILE NO. 509-PA16-05388/MARR).

WHEREAS, the Lane County Hearings Official has made a determination that a request to change the zoning of a portion of a property from Non-Impacted Forest Lands (F-1) to Impacted Forest Lands (F-2) is consistent with Lane Code 16.252(2) and Rural Comprehensive Plan Goal 4 Forest Lands Policy 15, in Department File No. 509-PA16-05388; and

WHEREAS, the Lane County Planning Director has received an appeal of the Hearings Official’s decision to the Board of County Commissioners pursuant to LC 14.515(3)(f)(ii); and

WHEREAS, the Lane County Hearings Official has affirmed his decision on the application after reviewing the appeal in File No. 509-PA16-05388; and

WHEREAS, Lane Code 14.600 provides the procedure and criteria that the Board follows in deciding whether or not to conduct an on the record hearing for an appeal of a decision by the Hearings Official; and

WHEREAS, the Board of County Commissioners has reviewed this matter at a public meeting of the Board.

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

1. That the appeal does not comply with the criteria of Lane Code 14.600(3) and arguments on the appeal should therefore not be considered. Findings in support of this decision are attached as Exhibit "A."

2. That the Lane County Hearings Official decision dated August 11, 2016, the letter affirming the decision dated August 26, 2016, and the letter dated September 7, 2016, clarifying the Hearings Official’s findings in the Final Order on the matter, attached as Exhibit "B," that found relevant approval criteria are met, are affirmed and adopted by the Board of County Commissioners as the County's final decision. The Board of County Commissioners has reviewed the appeal and the Hearings Official decision and expressly agrees with and adopts the interpretations of Lane Code 16.252(2) and Rural Comprehensive Plan Goal 4 Forest Lands Policy 15 made by the Hearings Official in the decision.

ADOPTED this 27th day of September, 2016.

Faye Stewart, Chair
Lane County Board of Commissioners

APPROVED AS TO FORM
Date 9-20-16
Lane County
OFFICE OF LEGAL COUNSEL
ORDER EXHIBIT "A"

FINDINGS IN SUPPORT OF THE ORDER

1. The property subject of this application, hereinafter referred to as the "subject property," can be identified as tax lot 103, assessor's map 18-05-23 and is zoned Non-Impacted Forest Lands (F-1) and Impacted Forest Lands (F-2). It is about 19.23 acres in size is comprised of sloping topography ranging from four percent to over 25 percent and is occupied with a 5,300 square foot dwelling. The dwelling is located primarily in the F-1 zone although the northeast corner is located within the F-2 zone.

2. The subject property is a final legal lot per File No. PA 05-5271 and PA 05-5273 and is subject to a forest tax deferral. No designated Class I streams are located on or adjacent to the subject property. No flood hazard areas are identified on the subject property by the Flood Insurance Rate Map (FIRM). The National Wetland Inventory identifies a riverine wetland along the western and eastern property boundaries; however, Lane County GIS does not identify any wetlands within the subject property.

3. Contiguous properties are designated Forest on the Rural Comprehensive Plan. Tax lot 500 to the west is designated Public Facility (PF). Properties to the northwest of the subject property and south of Erickson Road are designated Residential. Properties beyond that to the west, north of Erickson Road, and to the south of Erickson Road and to the east of the subject property are designated Agriculture. The subject property is bordered by tax lots 106, 107, 108, 105 and 100. The first three of these properties are zoned F-2 and are occupied with a residence. Tax lot 105 is split zoned, with the majority of the property being zoned F-1 and the northern portion of the property being zoned F-2. Tax lot 100 is zoned F-1. The other two properties are vacant. The portion of the subject property that is the focus of the zone change is surrounded on three sides by property zoned F-1 and one side, the north, by the remainder of the subject property, which is zoned F-2.

In general, properties to the south of the subject property are zoned Non-Impacted Forest Lands (F-1). Properties to the north are zoned Impacted Forest Lands (F-2). Tax lot 500 to the west is zoned RFP, Rural Public Facility. Properties to the northwest of the subject property and south of Erickson Road are zoned RR-5 Rural Residential. Properties beyond that to the west, north of Erickson Road, and to the south of Erickson Road and to the east of the subject property are Zoned E-40 Exclusive Farm Use.

4. Within an area of 1,000 feet surrounding the subject property are 12 parcels, several of which are part of a tract. Within this area are eight tracts, five (63 percent) of which are less than 80 acres in size and contain a dwelling.

An additional analysis of a 2,000 feet area surrounding the subject property added to the 12 aforementioned parcels six parcels zoned F-1, only one of which is larger than 80 acres. Of these six parcels, four were contained in tracts that are smaller than 80 acres. The 2,000-foot analysis area also includes 13 parcels zoned Exclusive Farm Use (E-40), only two of which are larger than 80 acres, and seven parcels zoned Rural Residential (RR-5). The percentage results are similar to the 1,000-foot analysis area.

In summary, the 2,000-foot analysis area contained 36 parcels; 13 of which are zoned EFU; 7 are zoned rural residential, seven are zoned RR-5 and nine are zoned F-1. Within this area, there are two parcels larger than 80 acres; tax lot 105 and tax lot 300 (assessor’s map 18-05-13-00); and the Nick Skrepetos tract that is 237 acres in size and includes tax lot 105. In terms of parcels designated as Forest Lands, the analysis is similar to the Applicant’s 1,000-foot analysis area except that the 2000-foot analysis area picks up the Skrepetos tract, which the former 1,000-foot analysis area did not. The larger area contains rural residentially-zoned and EFU-zoned parcels, most of which appear to be developed.
5. The subject property receives police protection from the Lane County Sheriff and Oregon State Police. It is served by Lane County Rural Fire Protection District #1 and Northwest/Central ambulance services. Access to power and transportation facilities are also available in the vicinity. Evidence to this fact is that the property is developed with an existing single-family residential dwelling approved as a Forest Template Dwelling.

6. The average forest productivity for the entire property to be 113.3 cu.ft./ac./yr.

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* From Lane County Soil Ratings for Forestry and Agriculture document (LCOG, August 1997)

7. The subject property has access to Erickson Road, a Rural Minor Collector, via access easement(s). The area served by Erickson Road includes properties developed with a mix of uses, including farm and forest uses and residential development. The private access road serving the subject property from Erickson Road also provides access to adjacent parcels (tax lot 106 and 107) developed with residential dwellings. The private access road is paved, lined with street trees, and secured with a private access gate.

8. On May 10, 2016, the applicant submitted a request for a Zone Change from Non-Impacted Forest Lands (F-1) to Impacted Forest Lands (F-2) to Lane County Land Management Division. On June 8, 2016, staff reviewed the application materials and deemed the application complete.

On June 15, 2016, notice of public hearing was published in the Register Guard and mailed to the applicant, agent, and owners within 750 feet of the exterior boundaries of the contiguous property ownership. On June 22, 2016, a sign was posted on the subject property informing of the public hearing. On July 7, 2016, the Lane County Hearings Official conducted a public hearing on the matter. The record was held open until August 4, 2016. The Lane County Hearings Official issued a decision approving the application on August 11, 2016. Notice of the Hearings Official decision was mailed to the applicant, owner, and all other parties of record on August 12, 2016.

9. On August 23, 2016, LandWatch Lane County submitted a timely appeal and requested that the Board of County Commissioners not conduct a hearing on the appeal and deem the Hearings Officer’s decision the final decision of the County, pursuant to LC 14.515(3)(ii).

10. On August 26, 2016, the Hearings Official reviewed the appeal and affirmed his decision without further consideration pursuant to LC 14.535(1). In the affirmed decision, the Hearings Official clarified findings to Rural Comprehensive Plan Goal 4 Forest Lands Policy 15(b)(3). On September 7, 2016, the Hearings Official provided a letter clarifying findings in his August 11, 2016 Final Order.

11. Ordinance PA 1236 findings state that “it will remain for the Board of Commissioners to exercise discretion on a case-by-case basis, in making a final determination on how wide and how far that assessment pursuant to Policy 15.c.(3) would need to reach to provide a factual basis in arriving at a decision to approve or deny a request for rezoning. In all cases, the analysis under Goal 4, Policy 15 does not require a precise mathematical computation since the focus is on all the characteristics and whether, on balance, the land proposed for rezoning more closely corresponds to the F-1 or F-2 characteristics.” Pursuant to Rural Comprehensive Plan Goal 4 Forest Lands Policy 15(c)(3), the
applicant has analyzed nearby and adjacent lands within a general area of 1,000 feet or less of the subject property. The Hearings Official’s findings to Policy 15(c)(3) based on a 2,000 foot analysis area are based on and specific to the fact pattern of this application.

12. The Board interpreted in Ordinance PA 1236 Rural Comprehensive Plan Goal 4 Policy 15 as it relates to a request for Impacted Forest (F-2) zoning, and the Hearings Official’s decision relies upon and is consistent with those Board interpretations. Ordinance PA 1236 is incorporated herein by reference.

13. In order for the Board to hear arguments on the appeal, Lane Code 14.600(3) requires one or more of the following criteria to be found by the Board to apply to the appeal:
   • The issue is of Countywide significance.
   • The issue will reoccur with frequency and there is a need for policy guidance.
   • The issue involves a unique environmental resource.
   • The Planning Director or Hearings Official recommends review.

14. The Board finds that the issues raised in this appeal are not of countywide significance. Issues in this appeal concerning application criteria and Rural Comprehensive Plan Forest Lands Goal 4 Policy 15 have been interpreted by the Board in Ordinance PA 1236 and by the adoption of the Hearings Official’s decision and interpretations in this application. Procedural issues raised in this appeal are specific to the application proceedings.

15. The Board finds that the issues involved in this appeal will not reoccur with frequency and that there is not a need for further policy guidance. Zone Change applications from F-1 to F-2 are not amongst the most common land use application made to the County. When issues regarding Rural Comprehensive Plan Goal 4 Forest Policy 15 are presented, the Board’s adopted interpretations in Ordinance PA 1236 provide guidance. Should issues regarding Lane Code 16.210 and 16.211 purpose statements, as they pertain to Lane Code 16.252(2), be raised in the future, the Hearings Official’s decision provides reasonable interpretation.

16. The Board finds that the subject property does not constitute a unique environmental resource. The property does not contain any unique or notable environmental resources, nor does it contain any regulated water bodies, rivers, creeks, or wetlands identified by the Lane County Rural Comprehensive Plan.

17. The Planning Director does not recommend review of the appeal on the record for the reasons cited above.

18. To meet the requirements of Lane Code 14.600(2)(b), the Board is required to adopt a written decision and order electing to have a hearing on the record for the appeal or declining to further review the appeal.

19. The Board has reviewed this matter at its meeting of September 27, 2016, finds that the appeal does not comply with the criteria of Lane Code Chapter 14.600(3), declines further review, and elects not to hold an on the record hearing for the appeal.

20. The Board affirms and adopts the Lane County Hearings Official decision dated August 11, 2016, the letter affirming the decision dated August 26, 2016, and the letter dated September 7, 2016, clarifying the Hearings Official’s findings in the Final Order on the matter that found relevant approval criteria are met, as the County’s final decision in this matter, and expressly agrees with and adopts the interpretations of Lane Code 16.252(2) made by the Hearings Official in the decision.
CERTIFICATE OF MAILING

509-PA16-05388
MARR/O'DEA
08/12/2016 – HEARINGS OFFICIAL’S DECISION

This is to certify that I, Lisa Lansbery, mailed Notification of

[Redacted]

To the person(s) shown on the attached copy of mailing label &/or attached letter & delivered said
information to the authorized for the US Post Office in Springfield, Oregon on

Date Mailed: 8/12/16

End of Comment Period: 8/24/16

Appeal Deadline: 8/24/16

Hearing Date: [Signature]

LISA LANSBERY

NOTE: Surrounding property owners listed are "the owners of record of all property on the most recent
property tax assessment rolls" on RLID as per Lane Code 14.300(3)(d). If a tax lot appears on the
notice list & there are no corresponding addresses than the tax records have not been updated;
therefore, these property owners were not notified.
August 11, 2016

Ms. Lydia McKinney, Manager
Lane County Land Management Division
Public Service Building
125 E. 8th Ave.
Eugene, OR 97401

Re: Marr request (PA 16–05388) for the rezoning of a portion of tax lot 103, assessor’s map 18–05–23 from F–1 to F–2.

Dear Ms. McKinney:

Please find the Lane County Hearings Official’s decision approving the Marr request (PA 16–05388) for the rezoning of the portion of tax lot 103, assessor’s map 18–05–23 that is currently F–1 Non–impacted Forest Lands to F–2 Impacted Forest Lands.

Sincerely,

Gary L. Darnelle
Lane County Hearings Official

CC: Amber Bell (file)
BEFORE THE HEARINGS OFFICIAL OF LANE COUNTY, OREGON

Final Order in PA 16–05388
Approving a Rezoning of Property Zoned F–1 to F–2

The Lane County Hearings Official finds as follows:

1. The following application for a change of zone was accepted by the Lane County Land Management Division on May 10, 2016:

   Jeannie Marr (PA 16–05388)
   Tax lot 103, Assessor’s Map 18–05–23–00
   Request for F–1 to F–2 zoning

2. The application was initiated and submitted in accordance with Lane Code 14.050. Timely and sufficient notice of the zone change hearings under Chapter 14 of the Lane Code has been provided.

3. On July 7, 2016 a public hearing on the zone change request was held. The planning department staff notes and recommendation together with the testimony and submittals of persons testifying at the hearing have been considered and are a part of the record of this proceeding.

4. Further consideration has been given to and administrative notice taken of the provisions of the Lane County Rural Comprehensive Plan and all applicable special purpose/functional plans, planning related policies and refinement plans.

5. On the basis of this record, the requested zone change was found not to be consistent with the applicable criteria set forth in the Lane County Rural Comprehensive Plan and Section 16.252 of the Lane Code. This general finding is supported by the specific findings of fact and the conclusions of law set out in Exhibit A, adopted August 11, 2016, to this order.

NOW, THEREFORE, based upon the above findings and the record in this proceeding, IT IS HEREBY ORDERED THAT:

The application for rezoning is approved on this date, the 11th day of August, 2016.

This action will become final and effective on the 12th day following the approval date above.

Gary L. Darnielle
Lane County Hearings Official
LANE COUNTY HEARINGS OFFICIAL

REQUEST FOR A REZONING FROM NONIMPACTED FOREST LAND (F-1) TO IMPACTED FOREST LAND (F-2)

Application Summary

Jeannie Marr, 27530 Erickson Road, Eugene, Or. 97401. Tax lot 103, Assessor’s Map 18-05-23. Request to change the zoning of a portion (6 acres +/-) of this property from Non-Impacted Forest Lands (F-1/RCP) to Impacted Forest Lands (F-2/RCP).

On May 10, 2016, an application for a Zone Change was submitted to the Lane County Land Management Division. On June 15, 2016, notice of public hearing was published in the Register Guard and mailed to the applicant, agent, and owners within 750 feet of the exterior boundaries of the contiguous property ownership. On June 22, 2016, a sign was posted on the subject property informing of the public hearing. At the time of staff report preparation, no comments have been received.

Parties of Record

Jeannie Marr                 Kim O’Dea                 LandWatch Lane County
Michael Farthing            Sean Malone

Application History

Hearing Date: July 7, 2016
(Record Held Open Until August 4, 2016)

Decision Date: August 11, 2016

Appeal Deadline

An appeal must be filed within 12 days of the issuance of a final order on this rezoning request, using the form provided by the Lane County Land Management Division. The appeal will be considered by the Lane County Board of Commissioners.

Statement of Criteria

LC 16.210 & 16.211
LC 16.252
Rural Comprehensive Plan (RCP); Forest Lands Policy 15
Findings of Fact

1. The property subject to this application, hereinafter referred to as the “subject property,” can be identified as tax lot 103, assessor’s map 18–05–23 and is zoned F–1 Non–impacted Forest Lands and F–2 Impacted Forest Lands. It is about 19.23 acres in size is comprised of sloping topography ranging from 4% to over 25% and is occupied with a 5,300 square foot dwelling. The dwelling is located primarily in the F–1 zone although the northeast corner is located within the F–2 zone.

The subject property is a final legal lot per File No. PA 05–5271 and PA 05–5273 and is subject to a forest tax deferral. No designated Class I streams are located on or adjacent to the subject property. No flood hazard areas are identified on the subject property by the Flood Insurance Rate Map (FIRM). The National Wetland Inventory identifies a riverine wetland along the western and eastern property boundaries; however, Lane County GIS does not identify any wetlands within the subject property.

2. Contiguous properties are designated Forest on the Rural Comprehensive Plan. Tax Lot 500 to the west is designated Public Facility (PF). Properties to the northwest of the subject property and south of Erickson Road are designated Residential. Properties beyond that to the west, north of Erickson Road, and to the east of the subject property are designated Agriculture. Specifically, the subject property is bordered by tax lots 106, 107, 108, 105 and 100. The first three of these properties are zoned F–2 and are occupied with a residence. The other two properties are zoned F–1 and are vacant. The portion of the subject property that is the focus of the zone change is surrounded on three sides by property zoned F–1 and one side, the north, by the remainder of the subject property, which is zoned F–2.

In general, properties to the south of the subject property are zoned F–1, Nonimpacted Forest Lands. Properties to the north are zoned F–2, Impacted Forest Lands. Tax Lot 500 to the west is zoned RFP, Rural Public Facility. Properties to the northwest of the subject property and south of Erickson Road are zoned RR–5 Rural Residential. Properties beyond that to the west, north of Erickson Road, and to the south of Erickson Road and to the east of the subject property are Zoned E–40 Exclusive Farm Use.

Within an area of 1,000 feet surrounding the subject property are 12 parcels, several of which are part of a tract. Within this area are 8 tracts, five (63 percent) of which are less than 80 acres in size and contain a dwelling.

Upon the Hearings Official's request, the Applicant enlarged this area to a diameter of 2,000 feet. The larger data area added six parcels zoned F–1, only one of which is larger than 80 acres. Of these six parcels, four were contained in tracts that were smaller than 80 acres. The larger area also included 13 parcels zoned E–
40, only two of which were larger than 80 acres. The larger analysis area also contained 7 parcels zoned rural residential. The percentage results are similar to the 1,000-foot analysis area.

In summary, the 2,000-foot analysis area contained 36 parcels; 13 of which are zoned EFU; 7 are zoned rural residential, seven are zoned FR-2 and nine are zoned F-1. Within this area, there is two parcels larger than 80 acres; tax lot 105 and tax lot 600 (assessor’s map 18–05–13–00); and the Nick Skrepetos tract that is 237 acres in size and includes tax lot 105. In terms of parcels designated as Forest Lands, the analysis is similar to the Applicant’s 1,000-foot analysis area except that the 2000-foot analysis area picks up the Skrepetos tract which the former area did not. The larger area contains rural residentially-zoned and EFU-zoned parcels, most of which appear to be developed.

3. The subject property receives police protection from the Lane County Sheriff and Oregon State Police. It is served by Lane County Rural Fire Protection District #1 and Northwest/Central ambulance services. Access to power and transportation facilities are also available in the vicinity. Evidence to this fact is that the property is developed with an existing single-family residential dwelling approved as a Forest Template Dwelling.

4. The average forest productivity for the entire property to be 113.3 cu.ft./ac./yr.

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<th>TABLE 1</th>
<th>% of Property</th>
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* From Lane County Soil Ratings for Forestry and Agriculture document (LCOG, August 1997)

5. The subject property has access to Erickson Road, a Rural Minor Collector, via access easement(s). The area served by Erickson Road includes properties developed with a mix of uses, including farm and forest uses and residential development. The private access road serving the subject property from Erickson Road also provides access to adjacent parcels (Tax Lot 106 and 107) developed with residential dwellings. The private access road is paved, lined with street trees, and secured with a private access gate.

Decision

THE MARR REQUEST (PA 16–05388) FOR THE REZONING OF TAX LOT 103, ASSESSOR’S MAP 18–05–23 FROM F–1 TO F–2 IS APPROVED.
Justification for the Decision (Conclusion)

Before I address the pertinent approval criteria, I feel that I must address LandWatch Lane County's conclusion that the application for the zone change must be denied because the Applicant's purpose for the zone change, that the existing structure straddles the boundary line between the adjacent F-1 and F-2 zoning districts, is incorrect. The Applicant does not have to give a reason for the zone change and the intent behind filing an application for a zone change is irrelevant.

Lane Code 16.252(2) This section of the Code establishes the basic requirements for the proposed rezoning. Section 16.252(2) requires that rezoning be consistent with the general purposes of Chapter 16, not be contrary to the public interest, and be consistent with the purposes of the proposed zoning classifications and the Lane County Rural Comprehensive Plan elements.

A. Consistency with the general purposes of Chapter 16 of the Lane Code.

Lane Code 16.003 sets out 14 purposes of Chapter 16. The Applicant argues that purpose statements are not approval criteria. The statement is generally correct except when it isn't. In the present case it isn’t, as Lane Code 16.252(2) incorporates the general purposes statements of Chapter 16 as approval criteria.

Arguably, the only relevant purpose statement to the proposed rezoning is found in Lane Code 16.003(4) and is as follows:

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

The overall intent of the Forest Land policies is to encourage the preservation of forest land, to properly characterize F-1 lands, and to protect those lands through accurate zoning. While rezoning from F-1 to F-2 may in general increase the likelihood of a property to be developed with a residential use, the subject property is already developed with a single family dwelling. Additionally, the proposed zoning will not allow for additional parcelization of the subject property or construction of an additional dwelling. The proposed rezoning will not change the subject property’s potential for the production of crops, livestock or timber products.

I conclude that the proposed rezoning is consistent with applicable purposes of Chapter 16 of the Lane Code.
B. Not be contrary to the public interest.

The public interest is best expressed by a showing of consistency with the Rural Comprehensive Plan (RCP). The overall intent of the Forest Land policies of the RCP is to encourage the preservation of forestland, to properly characterize F-1 lands and to protect those lands through accurate zoning and through the consolidation of ownerships. There is some discussion about whether the split zoning of the subject property was an error. There is no evidence to support that contention in the record and this zone change request must show an affirmative compliance with the criteria of Lane Code 16.252(2), which requires a showing that the zone change is not contrary to public interest. As stated above, the best determinate of the public interest is a showing of consistency with the Rural Comprehensive Plan; in particular Forest Lands Policy #15, addressed below in “D.”

C. Consistent with Sections 16.210 and 16.211 of the Lane Code.

The purpose statements F–2 and F–1 zoning districts are largely redundant; both focus on the implementation of the forest land policies of the Lane County Rural Comprehensive Plan and the conservation of forest land for forest uses consistent with Statewide Planning Goal #4, OAR 660–006 and ORS 215.700 through .755. Consistency with the Lane County Rural Comprehensive Plan is addressed in “D,” below.

OAR 660-006-0000(1) states that the purpose of the Forest Lands Goal is to conserve forestlands and to carry out the legislative policy of ORS 215.700. ORS 215.700 states a policy to provide certain owners of less productive land an opportunity to build a dwelling on their land and to limit the future division of and the siting of dwellings upon the state’s more productive resource land. The subject property is too small to be considered “commercial” forest land and there is no evidence that it has been used in the past in conjunction with property managed as “commercial” forest land. Finally, it is already occupied by a dwelling and further division of the property is prohibited.

Sixty-three percent of the soils on the subject property can be considered to have a high forest productivity (in the range of 154 cu. ft./ac./yr.) and thirty–seven percent qualify for the lowest productivity standard in OAR 660–006–0027(3)(a) for a template forest dwelling. The average forest productivity level for the tract is 113.2 cu. ft./ac./yr., a figure that exceeds the highest productivity level necessary for a template dwelling. In summary, the soils on the subject property can be considered to be “good” and sufficiently productive as to support a conclusion, based solely on soil productivity, that they can be categorized as being the more

See OAR 660–006–0027(3)(c)
productive resource land in western Oregon.

A determination of whether a property should be zoned F-1 or F-2, however, is based on more than just soil productivity. Other factors such as the density of surrounding development, the size of the parcel, the presence of a dwelling, and the opportunity to be combined with nearby commercial forest management operations are relevant. The portion of the property zoned F-1 is quite small; probably about six acres in size. It is surrounded on three sides by tax lots 105 and 100, two parcels that are part of a F-1 zoned tract (tax lots 100, 101, 105, 600, 601 and 605) owned by Nick Skrepitos that is almost 237 acres in size and, for the most part, is under forest tax deferral.

I believe that the most important factor in the determination of the property forest zoning of the subject property is whether it is already impacted by residential development. The three properties to the north of the subject property are occupied with residences and the portion of the subject property to be rezoned is also occupied by a residence. The existence of a dwelling on the property is significant as it represents one of the primary differences between F-1 and F-2 property. The land is a small piece of property that is already directly impacted with residential development, a factor that also diminishes any reasonable chance that it could be managed with an adjacent commercial forest operation.

For the above-described reasons, I believe that the proposed rezoning is consistent with Sections 16.210 and 16.211 of the Lane Code.

D. Conformity with the Rural Comprehensive Plan.

The subject property is designated "Forest Lands" by the Rural Comprehensive Plan. Goal #4 Policies #15(b) and (c) describe the characteristics of F-1 and F-2 properties, respectively. Policy #15(a) implies that the zoning should reflect a conclusion that the characteristics of the land correspond more closely to the characteristics of the proposed zoning (F-2) than the characteristics of the other forest zone (F-2).

The Lane County Rural Comprehensive Plan contains several policies in the Goal Four element that apply to the proposed rezoning.

Policy 1 Conserve forest land 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.
This policy appears to be advisory in nature and not directly applicable to the rezoning at hand.

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

This policy refers to the standards set forth in Policy 15.

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

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

b. Non-impacted Forest Land Zone characteristics:

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

In its application of RCP Goal 4 Policy 15 in Ordinance No. PA 1236, the Board of County Commissioners interpreted the use the term “ownership” to apply only to the property subject to the rezoning. In terms of this criterion, I would further limit the definition of “ownership” to that portion of the property that is subject to the rezoning. In the present case, the subject property is the only tract owned by the Applicant and the portion of the property that has F–1 zoning is occupied with a residence. The application is inconsistent with this characteristic of Non-impacted Forest Lands.

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

The property subject to this rezoning request is about 19 acres of contiguous ownership in size. The portion of the subject property that is zoned F–1 is about six acres in size. Neither the subject
(3) Predominantly ownerships contiguous to other land utilized for commercial forest or commercial farm uses.

The applicant and staff argues that “commercial forest uses” be considered to be synonymous with industrial forest operations and while I disagree with this interpretation, it is the interpretation adopted by the Board of Commissioners and a Circuit Court judge. While I would question whether the Land Use Board of Appeals would agree with this interpretation, it is the one that I must apply.

The portion of the subject property that is zoned F-1 is bordered on three sides by a tract of land that is zoned F-1 and is vacant. Most of this tract is under forest tax deferral although tax lot 105, which comprises the largest portion of the F-1 zoned perimeter of the subject property, is not. While the Applicant has argued that adjacent parcels are too small to be considered as commercial forest land, the Skrepetos tract is over 230 acres in size. The Applicant has not provided evidence to indicate whether this tract is part of a much larger ownership by Mr. Skrepetos that is being commercially managed for forest production. Thus, we cannot tell whether Skrepetos ownership can be considered as an industrial-scale commercial forest operation such as the Seneca or McDougal owning ships, which are comprised of 1,000 acres.

The Applicant has failed to demonstrate that the subject property meets this characteristic of Non-Impacted Forest Lands.

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

The subject property has access to Erickson Road, a Rural Minor Collector, via access easement(s). The area served by Erickson Road includes properties developed with a mix of uses, including farm and forest uses and residential development. The private access road serving the subject property from Erickson Road also provides access to adjacent parcels (Tax Lots 106 and 107) developed with residential dwellings. The private access road is paved, lined with street trees, and secured with a private access gate. Given that the access road serves residences on adjacent

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2 Case No. 16-09-11508 (State of Oregon, ex rel CJK, LLC v. Lane County)
property, it cannot be concluded that the access easement is granted for primarily forest use. Therefore, the subject property does not satisfy this F–1 characteristic.

(5) Primarily under commercial forest management.

The interpretation adopted by the Board defines "commercial forest management" as being an industrial–strength forest operation, regardless of whether the property is currently managed for commercial purposes or has been commercially managed in the past. By this definition, the subject property is not primarily under commercial forest management.

In summary, the Applicant has demonstrated that the subject property exhibits only one of the five characteristics of property should properly be zoned Non–impacted Forest Land.

c. Impacted Forest Land Zone (F–2, RCP) Characteristics

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

This case is peculiar as the house on the subject property is arguably located in both the F–1 and F–2 zoning districts. The portion of the subject property that is the purpose of this zone change is developed with a residence but so also is the remainder of the subject property. Therefore, the application is consistent with this characteristic of Impacted Forest Lands.

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

The subject property, and the applicant's ownership, is 19.23 acres in size. The portion of the subject property that is proposed for the rezoning is only about six acres in size. Thus, the application is consistent with this characteristic of Impacted Forest Lands.

(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 Applicant has looked at an area within 1,000 feet of the subject property to define what it means to be "generally contiguous." Within this area, there are 12 parcels, several of which are part of a tract. Within this area are 8 tracts, five
percent) of which are less than 80 acres in size and contain a dwelling.

Upon the Hearings Official's request, the Applicant enlarged this area to a diameter of 2,000 feet. The larger data area added six parcels zoned F-1, only one of which is larger than 80 acres. Of these six parcels, four were contained in tracts that were smaller than 80 acres. The larger area also included 13 parcels zoned E-40, only two of which were larger than 80 acres. The larger analysis area also contained 7 parcels zoned rural residential. In summary, the 2,000-foot analysis area contained 38 parcels. It contains 10 tracts and 8 parcels zoned F-1, 14 (78 percent) of which are less than 80 acres in size.

Essentially, the Applicant’s “ownership” is bordered by three properties zoned F-2 that are less than 80 acres in size and by one tract of land that is zoned F-1 and exceeds 230 acres in size. Eyeballing an assessor’s map that contains the subject property indicates that the perimeter of the subject property shared with the adjacent Skrepetos tract is pretty even with the amount of its perimeter shared with tax lots 106, 107, and 108. Using the 2,000-foot analysis area, however, it can be seen that within an area “generally contiguous” to the subject property there are only two tracts or parcels greater than 80 acres in size but perhaps a dozen parcels zoned F-2, RR or EFU. Based upon this statistic, it can be concluded that the application is consistent with this characteristic of Impacted Forest Lands.

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

The subject property is served by Lane County Rural Fire Protection District #1, the Lane County Sheriff’s Department, the State police department, and Northwest/Central ambulance services. Access to power and transportation facilities are also available in the vicinity.

The subject property, as well as the other properties in the area that have access to a full range of services normally available to a rural residence, including police and fire coverage, school, electricity, telephone, and solid waste disposal. The application meets this criterion.

The subject property has all of the four characteristics that the RCP has ascribed to Impacted Forest Lands.
Policy 15 requires a conclusion that the characteristics of the land correspond more closely to the characteristics of the proposed zoning than the characteristics of the other forest zone. In the present case, the subject property exhibits only one of the five characteristics of Non-Impacted Forest Land and all of the four characteristics that would denote Impacted Forest Land. On this basis of this analysis, the request for the rezoning of the subject property to F-2 Impacted Forest Land is consistent with RCP Forest Land Policy 15 and must be approved.

**Conclusion**

The proposed rezoning is consistent with applicable criteria of the Lane Code and the Rural Comprehensive Plan.

Respectfully Submitted,

Gary Darnielle
Lane County Hearings Official
August 26, 2016

Ms. Lydia McKinney, Manager
Land Management Division
3050 N. Delta Highway
Eugene, OR 97408

Re: Appeal of Hearings Official decision affirming the Planning Director’s approval of the Marr request (PA 16–05388) for the rezoning of a portion of tax lot 103, assessor’s map 18–05–23.

Dear Ms. McKinney:

On August 11, 2016, I affirmed the Planning Director’s approval of the Marr request (PA 16–05388) for the rezoning of a portion of tax lot 103, assessor’s map 18–05–23 from F–1 Non-Impacted Forest Lands to F–2 Impacted Forest Lands. On August 23, 2016 LandWatch Lane County appealed my decision. Upon a review of this appeal, I find that the allegations of error have been adequately addressed in that decision and that a reconsideration is not warranted.

As a matter of clarification, however, I will address my decision in regard to the third criteria under the Non-Impacted Forest Lands provision of Policy #15 of the Rural Comprehensive Plan’s Forest Lands section. (Page 8 of the August 11 decision) My finding to this criterion was meant to indicate that the Applicant had failed to demonstrate that the subject property was not contiguous to commercial forest uses. That is, a conclusion could not be made that the subject property did not exhibited this characteristic of F–1 zoned Forest Lands.

Accordingly, on the authority of Lane Code 14.535(1), I shall affirm my August 11, 2016 decision without further consideration. Please advise interested parties of this decision.

Sincerely,

[Signature]
Gary L. Danielle
Lane County Hearings Official

cc: Amber Bell (file)
September 7, 2016

Ms. Amber Bell, Planner
Lane County LMD
3050 N. Delta Hwy
Eugene, OR 97401

Re:  Decision in PA 16-05388 (Marr)

It has come to my attention that there was a typographical error in my August 11, 2016 Final Order approving the Marr request for a zone change. The first line in paragraph 5 reads:

"On the basis of this record, the requested zone change was found not to be consistent with the applicable criteria set forth in the Lane County Rural Comprehensive Plan and Section 16.252 of the Lane Code."

This sentence should read as follows:

"On the basis of this record, the requested zone change was found to be consistent with the applicable criteria set forth in the Lane County Rural Comprehensive Plan and Section 16.252 of the Lane Code."

Please advise the parties of this error.

Thank you.

[Signature]
Gary Danielle
Lane County Hearings Official