

BEFORE THE BOARD OF COUNTY COMMISSIONERS OF LANE COUNTY, OREGON

ORDINANCE NO. PA 1355

IN THE MATTER OF A CONFORMITY DETERMINATION TO RECOGNIZE AND CORRECT AN ERROR IN THE ORIGINAL DESIGNATION AND ZONING OF THE SUBJECT TRACT, AMENDING THE RURAL COMPREHENSIVE PLAN TO REDESIGNATE LAND FROM "FOREST" TO "NATURAL RESOURCE: MINERAL" AND REZONE LAND FROM "NONIMPACTED FOREST LAND (F-1)" TO "QUARRY AND MINE OPERATIONS (QM)", AND ADOPTING SAVINGS AND SEVERABILITY CLAUSES (File No. 509-PA16-05327; Applicant: Weyerhaeuser Co.)

WHEREAS, the Board of County Commissioners of Lane County, through enactment of Ordinance No. PA 1192 and amended thereafter, has adopted the Conformity Determination Amendments process under Goal 2, Policy 27 of the General Plan Policies, which is a component of the Lane County Rural Comprehensive Plan; and

WHEREAS, Lane Code 16.400 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 April 21, 2016, an application was made for a Conformity Determination Amendment (File No. 509-PA16-05327) to re-designate Tax Lot 201 of Map 17-09-30, from "Forest Land" to "Natural Resource: Mineral" and to concurrently rezone from "Nonimpacted Forest Land (F-1)" to "Quarry and Mine Operations (QM)" pursuant to RCP General Plan Policies – Goal Two, Policy 27.a.ii.; and

WHEREAS, the Lane County Planning Commission reviewed the proposal in a public hearing on February 21, 2017; and

WHEREAS, the Lane County Planning Commission deliberated on March 21, 2017, and forwarded the matter to the Board with a recommendation for approval of an interpretation of Goal Two, Policy 27.a.ii., and recommended approval of the proposed plan amendment and zone change; and

WHEREAS, evidence exists within the record indicating that the proposal meets the requirements of Lane Code Chapter 16, and the requirements of applicable state and local law; and

WHEREAS, the Board of County Commissioners has conducted a public hearing and is now ready to take action;

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

Section 1. The Lane County Rural Comprehensive Plan is amended to re-designate Tax Lot 201 of Map 17-09-30, from "Forest Land" to "Natural Resources: Mineral". This is depicted on the Official Lane County Plan maps and further identified as Exhibit "A" attached and incorporated herein.

Section 2. The Lane County Official Zoning Map is amended to change the zone of Tax Lot 201 of Map 17-09-30, from "Nonimpacted Forest Land (F-1)" to "Quarry and Mine Operations (QM)."

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" attached, 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 7th day of November, 2017



Pat Farr, Chair
Lane County Board of County Commissioners

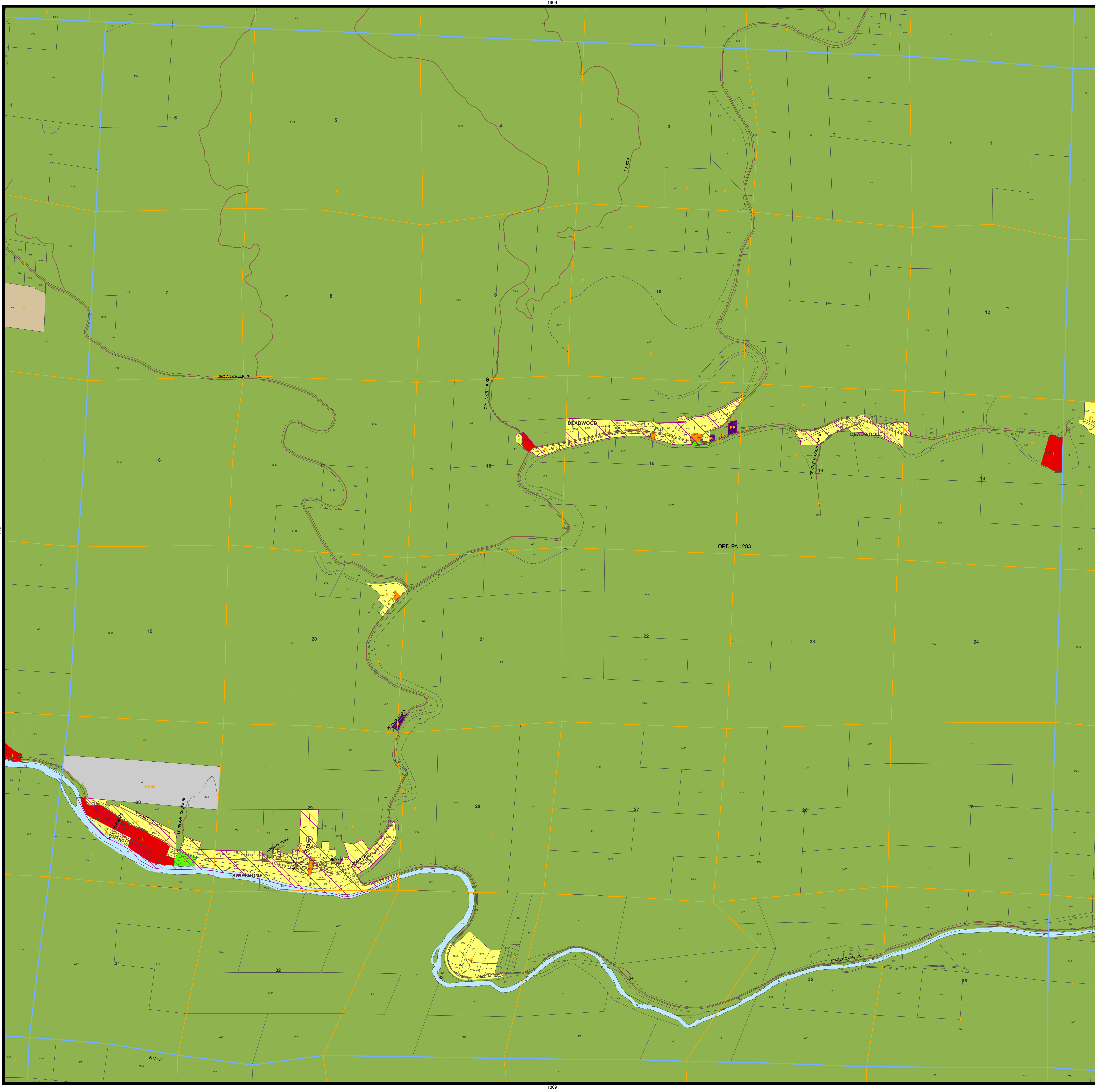


Recording Secretary for this Meeting of the Board

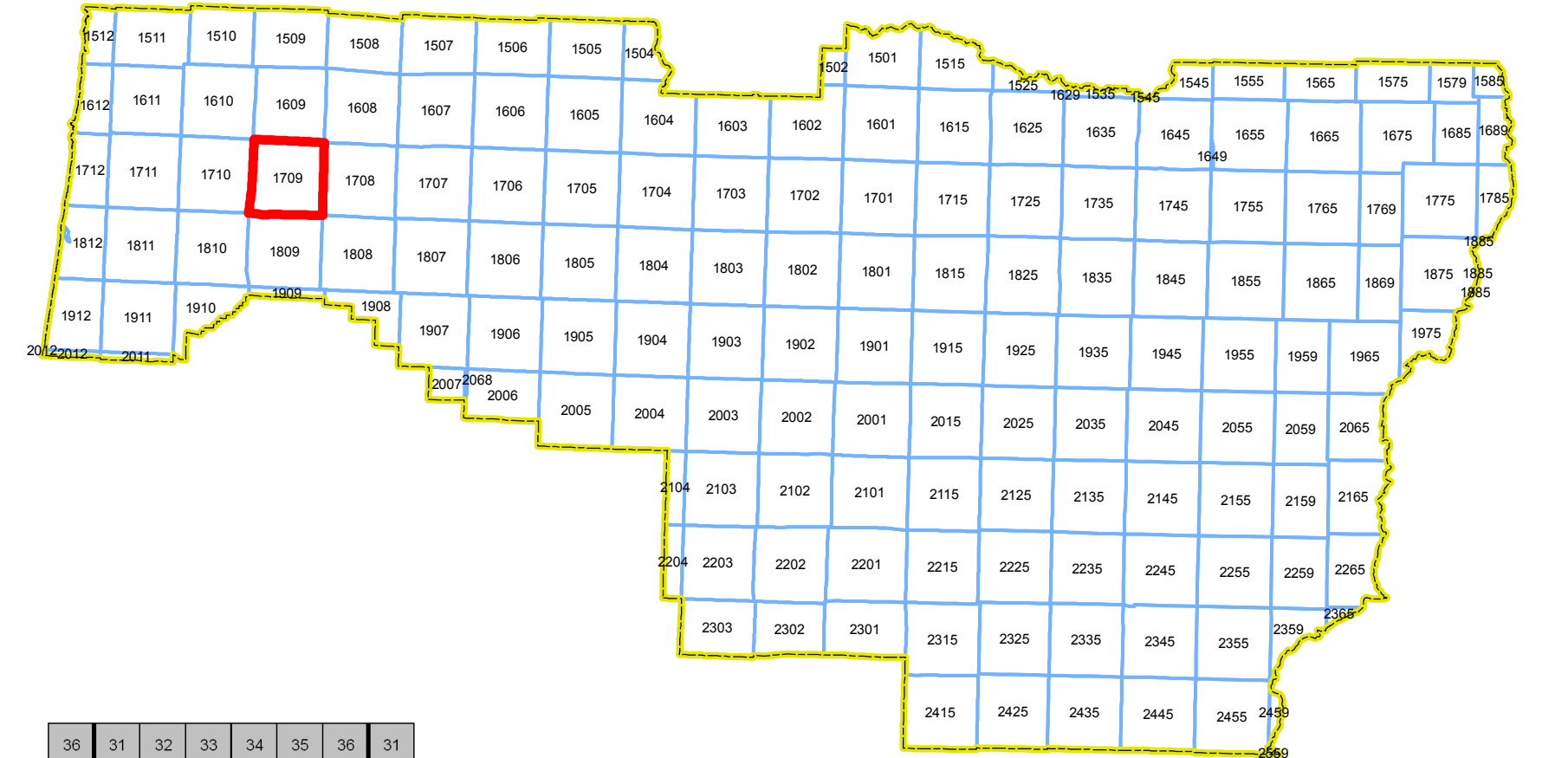
APPROVED AS TO FORM
Date 8-31-17 Lane County



OFFICE OF LEGAL COUNSEL



Township 17 South, Range 09 West



Section Legend

1	2	3	4	5	6
7	8	9	10	11	12
13	14	15	16	17	18
19	20	21	22	23	24
25	26	27	28	29	30
31	32	33	34	35	36

RCP Plan Designations

- F - Forest
- A - Agricultural
- ML - Marginal
- C - Commercial
- I - Industrial
- R - Residential
- NRES - Non Resource
- P - Parks
- AIR - Airport
- NR:CA - Natural Resource Conservation Area
- NR:M - Natural Resource : Mineral
- NR:W - Natural Resource : Wildlife
- E - Estuary
- DR - Destination Resort
- PF - Public Facility

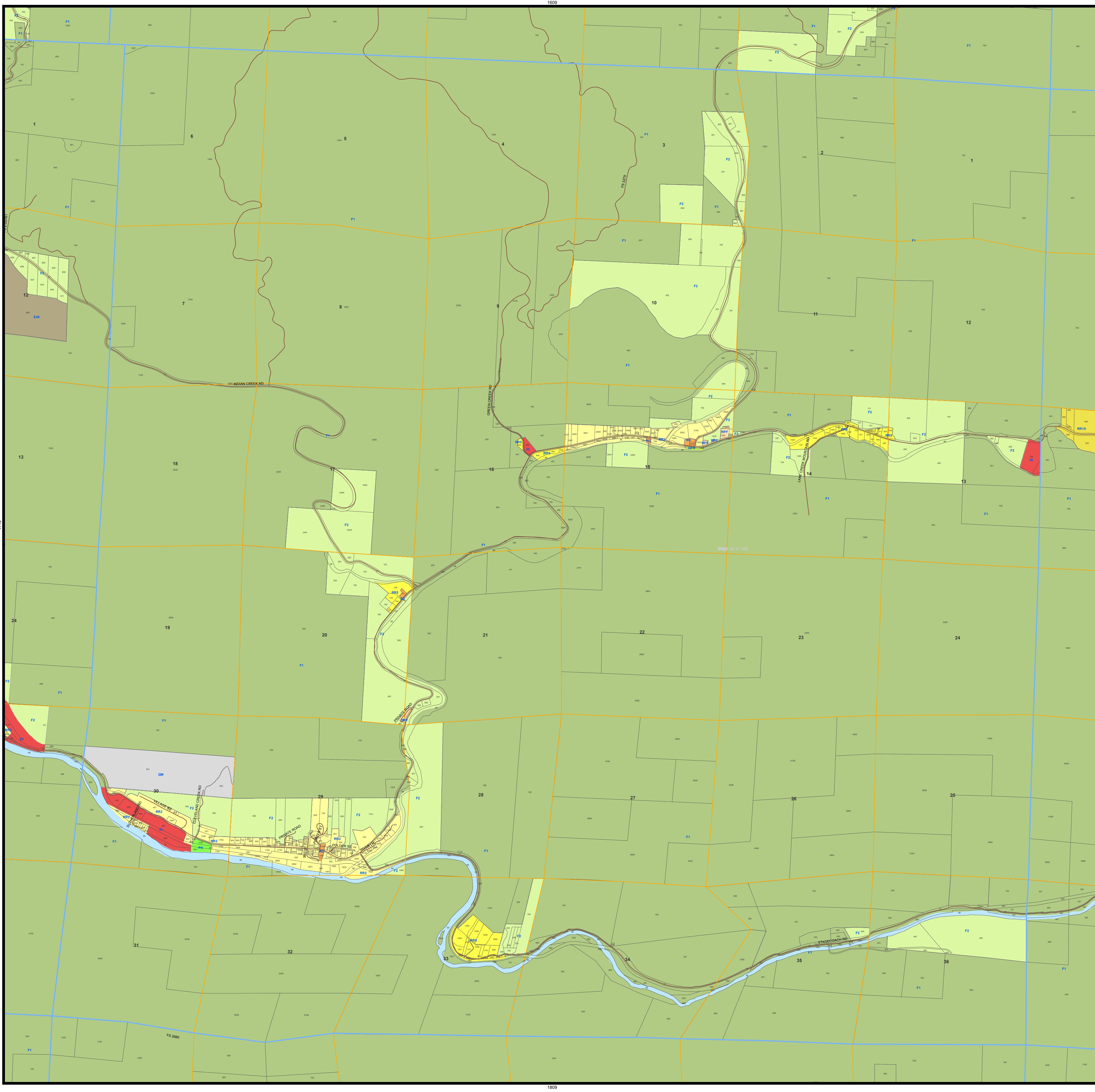
- UGB**
- City Limits**
- Communities**
 Rural
 Urban
- Township Range**
- Sections**
- Metro Plan Boundary**
- Parcels**
- Roads**
- Surface Water**

ORIGINAL ADOPTING ORDINANCE NUMBER: **ORD.PA1246**

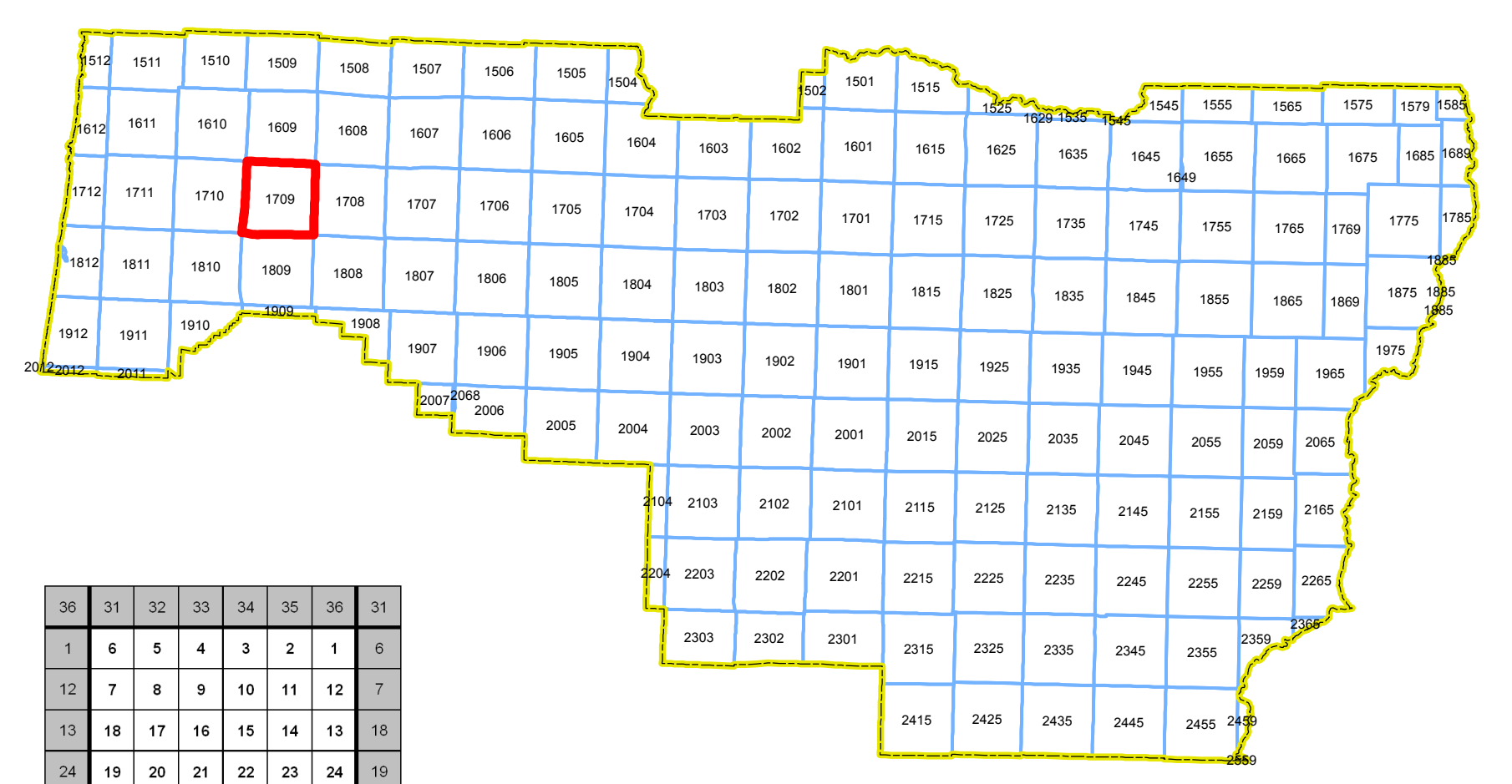
Revision	Ordinance or Order Number	Date Effective	Planning Action Number	Revision Description
1	ORD.PA1246	July 11, 2008	NA	Map Adopted
2	NA	Oct 29, 2014	NA	Soil survey data corrected under LC 144140 17-09-15-10 TL 1000 R 107
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4				
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Official Lane County Plan Map



Township 17 South, Range 09 West



Section Legend

1	6	11	16	21	26	31
2	7	12	17	22	27	32
3	8	13	18	23	28	33
4	9	14	19	24	29	34
5	10	15	20	25	30	35
6	11	16	21	26	31	36
7	12	17	22	27	32	37
8	13	18	23	28	33	38
9	14	19	24	29	34	39
10	15	20	25	30	35	40
11	16	21	26	31	36	41
12	17	22	27	32	37	42

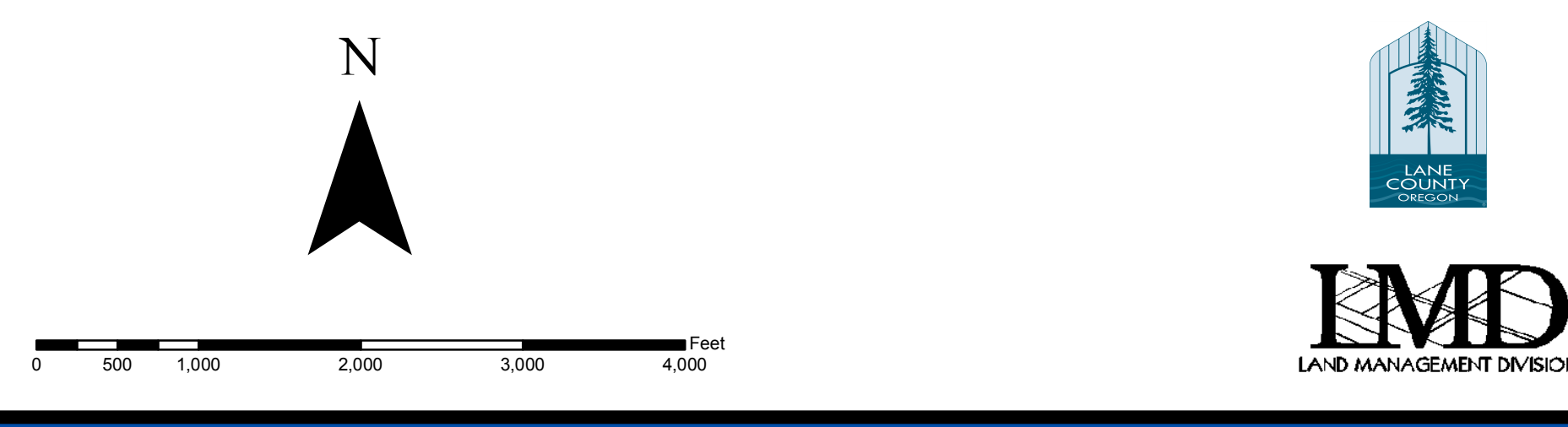
Zoning

- F1 - Non-Impacted Forest
- F2 - Impacted Forest
- E25 - Exclusive Farm Use (25 acre minimum)
- E30 - Exclusive Farm Use (30 acre minimum)
- E40 - Exclusive Farm Use (40 acre minimum)
- E60 - Exclusive Farm Use (60 acre minimum)
- ML - Marginal Lands
- RC - Rural Commercial
- RI - Rural Industrial
- LI - Light Industrial
- GI - General Industrial
- RPF - Rural Public Facility
- RR1 - Rural Residential (1 acre minimum)
- RR2 - Rural Residential (2 acre minimum)
- RR2-NRES - Non Resource (2 acre minimum)
- RR5 - Rural Residential (5 acre minimum)
- RR5-NRES - Non Resource (5 acre minimum)
- RR10 - Rural Residential (10 acre minimum)
- RR10-NRES - Non Resource (10 acre minimum)
- PR - Park and Recreation
- RPR - Rural Park and Recreation
- AO - Airport Operations
- CLWP - Clear Lake Watershed Protection Area
- NR - Natural Resource
- NE - Natural Estuary
- DR - Destination Resort
- QM - Quarry and Mining Operations
- SG - Sand, Gravel and Rock Products
- SG/CP - Sand, Gravel and Rock Products Combining Processing
- CR - Rural Commercial
- C2 - Neighborhood Commercial
- C3 - Commercial
- M2 - Light Industrial
- PF - Public Facility

- UGB - Urban Growth Boundary
- City Limits - City Limits
- Township Range - Township Range
- Sections - Sections
- Roads - Roads
- Surface Water - Surface Water

ORIGINAL ADOPTING ORDINANCE NUMBER: **ORD.PA1246**

Revision	Ordinance or Order Number	Date Effective	Planning Action Number	Revision Description
1	ORD.PA1246	July 11, 2008	NA	Map Adopted
2	NA	May 16, 2001	NA	17-00-15-11, 2401 - F1 to F2 Correction of Subsequent Error per West Three LC 16.014 (8/01)
3	NA	Oct 29, 2014	NA	Software error corrected under LC 16.014 17-00-15-11, 1000, RR2 to RR5
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Official Lane County Zoning Map

EXHIBIT C
ORDINANCE NO. PA 1355
FINDINGS OF FACT AND CONCLUSIONS OF LAW

I. PROPOSAL DESCRIPTION

A. Owner/Applicant

Agent

Weyerhaeuser Co. PO Box 9777 Federal Way, WA 98063	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

FINDING: This proposal is a request for a conformity determination to redesignate 123.43 acres of Forestland (F) to Natural Resource (NR:Mineral) and rezone the same from Nonimpacted Forest Land (F-1) to Quarry and Mine Operations (QM).

Weyerhaeuser Co. owns 132.58 acres located adjacent to the community of Swiss Home, consisting of TL 201 (Property A) and TL 200 (Property B). It has been in forest use and quarry/mining use since at least the 1960’s. A CPR project change request was approved in roughly 1982 that should have designated and zoned Property A to NR/QM. The NR/QM change was improperly mapped to Property B. This ordinance fixes that error.

II. SITE AND PLANNING PROFILE

A. Location

FINDING: Map 17-09-30, Tax lot (TL) 201, hereafter referred to as the “subject property” or “property.” TL 200 is peripherally involved.

Both tax lots are lawful parcels, created by minor partitions M224-79 and M154-81. The proposed conformity determination will recognize the original error in designation and zoning. The resulting plan change and zone change do not affect the boundaries of the property, and therefore do not affect its legal status.

The subject property is approximately 123.43 acres located north of Hwy 36 just north of the rural unincorporated community of Swiss Home, off Cleveland Creek Rd.

B. Zoning

FINDING: The subject property is currently designated Forest Land (F) and zoned Nonimpacted Forest Land (F-1).

C. Site Characteristics/History

FINDING: Prior to 1979, the subject property was a single tract of land identified as TL 200. The property was roughly 120 acres and included the existing quarry. The quarry is the subject of an active DOGAMI Limited Exemption, ID No. 20-0063.

In 1979, TLs 200, 300 and 400 were subject to a partition; M224-79. Deed R988/22998 was recorded in 1979, which formally created TL 201. Sometime after, Assessment & Taxation (A&T) created a new TL 200 to the east.

In roughly 1980, the county began its first round of Comprehensive Planning. The Mineral and Aggregate Resources Working Paper was issued February of 1982. The working paper specifically called out this site (site #3) in its Appendix D as an active site.

In 1983, the subject property was proposed to be zoned F-1 on the proposed zoning maps. A CPR project change request was filed and approved to change the zoning to QM because the site is on the county's aggregate inventory. Attached to that application was a map and legal description showing TL 200 as the 120 acre configuration. In other words, during the change request, neither the county nor the applicant discovered that A&T had renumbered TL 200 to TL 201. However, it is clear by the location of the existing quarry, and the map and legal description attached to the change request that the applicant and county intended the 120 acre parcel to be QM under the change request. Unfortunately, when the request ultimately made it to the mapping department, mapping staff referred to the tax lot number and did not review the entire file. As such, the "new" TL 200 (where there has never been a quarry) was designated QM contrary to the change request approval. This application seeks to correct that mapping error.

III. CRITERIA

LCRCP GOAL 2 – POLICY 27

27. *Conformity Determinations. Lane County will annually initiate and process applications to correct identified plan or zoning designations in the RCP Official Plan and Zoning Plots resulting from the Official Plan or Zoning Plots not recognizing lawfully existing (in terms of the zoning) uses or from inconsistencies between the Official Plan and Zoning Plots. Changes to correct nonconformities shall comply with the procedures and requirements of Lane Code Chapter 12 (Comprehensive Plan), Chapter 14 (Application Review and Appeal Procedures), and Chapter 16 (Land Use & Development Code), except as provided for in 27 c. and d., below.*

- a. *Circumstances qualifying for consideration by the Board of Commissioners under the Conformity Determinations Policy may include one or more of the following:***
 - i. *Lawful, structural development existing prior to September 12, 1984, and use of the structure(s) at the time qualified as an allowable use in a developed &***

- committed zone designation other than that designated for the land on an Official Plan or Zoning Plot.*
- ii. Inappropriate Nonimpacted Forest Land (F-1, RCP) zoning designation, where criteria of RCP Forest Land Policy 15 indicate that Impacted Forest Land (F-2, RCP) zoning designation is more suitable.*
 - iii. A property was actively managed primarily as either an agricultural or forestry operation in 1984 and since, and a resource designation other than the primary use was adopted on an Official Plan or Zoning Plot in 1984.*
 - iv. Correction of a scrivener error on an adopted Official Plan or Zoning Plot.*
 - v. Correction of an incompatible split-zoning of a legal lot resulting from a survey boundary line error that was discovered after September 12, 1984.*
 - vi. Compliance by a public jurisdiction or agency with a deed restriction on public land.*
 - vii. Correction of an inconsistency between the text of an order or ordinance adopted by the Board of Commissioners and an Official Plan or Zoning diagram.*
 - viii. A circumstance other than as listed in Policy 27. a.i.-vii, above, which the Planning Commission elects to forward a favorable recommendation for consideration by the Board of Commissioners.*
- b. Conformity Determinations in the Official Plan and Zoning Plots shall not include circumstances requiring that a committed exception be taken or situations involving the designation of Marginal or Nonresource Lands.*
 - c. By September 30th of each year, property owners who believe that they have a nonconformity in the official plan or zoning of their property and who want those designations corrected shall submit to the Planning Director a completed Conformity Determination Amendment application. Within 45 days of receipt of the application, the Director shall review the application for completeness and provide the applicant with a written notice that explains why the application was accepted or not accepted. The Director shall not accept incomplete applications or applications for changes that do not qualify pursuant to one or more of the criteria of Policy 27. a i-viii above; and*
 - d. By March 31st of each year, Lane County shall conduct the first public hearings with the Lane County Planning Commission for all pending Conformity Determination Amendment applications accepted within the deadline specified in Policy 27 c., above*
 - e. To partly defray the expense in processing the Conformity Determination application, a fee shall be charged the applicant. The fee shall be established by order of the Board of County Commissioners.*

FINDING. This application falls under iv, vii and viii. Based on the above sequence of events, incorporated herein, the mistake can properly be characterized as a scrivener's error; where county mapping staff mistakenly designated and zoned the wrong piece of land NR/QM. Also, the Board approved the rezone to QM for the quarry tract, and that approval conflicts with the Plan and Zoning diagram, so vii applies, as well.

Inventory standards speak to existing quarries, and evidence in the record shows that what is now TL 200 has never been a quarry or quarry operation of any kind. Evidence supports that the quarry operation is on what is now TL 201, that what is now TL 201 used to be TL 200,

that the tax lot numbers changed around Rural Comprehensive Plan (RCP) review time, and that the CPR change request applicant and RCP review staff knew the quarry was on what is now TL 201. In short, throughout RCP review, the correct parcel was analyzed under the incorrect tax lot number. This error must be corrected

There is substantial evidence in the record that the QM designation was applied to the incorrect property. To apply the designation and zoning to the wrong property after review and approval under the CPR change request (Control No. 516) is unlawful. Once a tract of land has been reviewed and determined to be a certain designation and zoning, and approved as such, it is unlawful for the county to apply it otherwise. In this case, the CPR change request identified a 120 acre parcel with a quarry, marked the location of the quarry on the site on what is now TL 201 and provided a legal description of the quarry parcel that identified what is now TL 201. All of that evidence establishes that it is the quarry property (now TL 201) that was the subject of the CPR change.

It is unclear whether the wrong tax lot number got carried forward from the change request application or whether the Assessment and Taxation mapping simply took a long time to catch up, thus listing TL 201 as TL 200 during much of the early stages of County Comprehensive Planning Review. What is clear is that a mistake occurred.

The scrivener's error is located in several places. First and most importantly, it is located on the front page of the CPR change request where TL 200 was accidentally listed instead of TL 201, despite the exhibits, evidence, and legal description showing that the property subject to the change was in fact TL 201. This error occurred because a new tax lot number of TL 201 later got assigned to what was once TL 200.

A scrivener's error is also located on Appendix D to the working paper. Site 4 (Ord 892)(Site 3 in Working Paper) should say TL 201. As explained below, this list identifies existing significant sites. As there has never been a quarry of any kind on TL 200, and always been a quarry on TL 201, the identification of TL 200 on this list not supported.

A scrivener's error also exists in Ordinance 892, because it contains the final copy of Appendix D of the Working Paper.

The Addendum to Working Paper for Mineral and Aggregate Resources (November 1983) supports a finding of a scrivener's error. That working paper states,

Finally, to clarify the County's position on existing sites, Policy 1 should be revised as follows,

*"1. **Known** mineral resource sites within the County, which include those identified in Appendix 'D' *** shall be conserved for present and future use ***." (emphasis added)*

There has never been any aggregate use of what is now TL 200. There are no DOGAMI records, no aerial indication, no planning documents, no testimony, and no assertion that TL 200, as is, has ever been used for aggregate. As such, it was never a "known" or "existing" site and could not have been on the "D" list. Instead, this makes clear that the parcel

processed during Review was the same lot legally described on the CPR change, which has a known history of quarry use (DOGAMI records, aerial proof, land use approvals, and continued use). The addendum supports the applicant's claim that Appendix D contains a scrivener's error.

The proposal does not include an exception, marginal lands, or nonresource lands.

The applicant filed prior to September 2016 and submitted the adopted fee.

LC 16.400(6)(h)(iii)(cc) and (dd):

Plan Adoption or Amendment - General Procedures. The Rural Comprehensive Plan, or any component of such Plan, shall be adopted or amended in accordance with the following procedures:

The Board may amend or supplement the Rural Comprehensive Plan upon making the following findings:

(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.

FINDING: The proposed amendment corrects a mistake in original designation. The property was never supposed to be designated Forestland, and the existing forestland designation violates the approved land use approval.

Goal 5 Mineral and Aggregate Resource Policy 1 states that "*Known mineral resource sites within the County, which are limited to those identified in Appendix D of the [working paper], shall be conserved for both present and future uses through the application of Plan designations* ***"

The subject site is identified on Appendix D. As such, it was required to get an NR plan designation and QM zoning under RCP Goal 5, Policy 1. The proposal implements the requirement of Policy 1. Therefore, the proposal achieves policy support from the RCP and does not conflict.

The record establishes that the proposed amendment corrects a mistake in the RCP inventory upon which RCP policies rely. Correcting a mistake that affects proper zoning is supported by the plan. Where there is support, there is no conflict. In particular, the process is supported by RCP Goal 2, Policy 27 which supports and allows conformity determinations. The proposal is also supported by RCP Goal 5, Policy 1 which requires "known" sites to be on Appendix D and requires them to be preserved. If the mistake is not corrected, the known site on TL 201 will not be preserved or protected. This would be contrary to Policy 1. RCP 5, Policy 6 requires that aggregate deposits be protected.

(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.

FINDING: The response under cc, above, establishes compliance and is incorporated herein by this reference.

LC 16.400(8):

(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 exception to Statewide Planning Goals, justifies the exception solely on the basis that the resource land is already built upon or is irrevocably committed to other uses not allowed by an applicable goal.

(ii) Major Amendment. Any Amendment that is not classified as a minor amendment.

FINDING: This is a minor plan amendment request. No Plan text is proposed to be changed; only a map change is being requested. No exception to the Statewide Planning Goals is being requested.

(b) Amendment proposals, either minor or major, may be initiated by the County or by individual application. Individual application shall be subject to a fee established by the Board and submitted pursuant to LC 14.050.

FINDING: This is a minor amendment, initiated by the owner, with payment of the application fee.

(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.

FINDING: A complete description of the proposal can be found above. The proposal requires a change to the RCP to correct an error in designation. The proposal is supported by the RCP for the reasons set out in LC 16.400(6)(h)(cc), addressed above and incorporated herein by this reference.

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

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

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

FINDING: Concurrently with this application to change the Plan Designation of the property, the applicant is seeking a zone change to QM. The proposal does not require an amendment to the TSP, WGP, Parks and Open Space Plan, SWMP, CRMP, SRDMDP, or Housing Plan. As such, this standard has been met with regard to the RCP. Specialty Plans do not apply.

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

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

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

(cc) Impact of the amendment on proximate natural resources, resource lands or resource sites, including a Statewide Planning Goal 5 "ESEE" conflict analysis where applicable;

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

(ee) For a proposed amendment to a nonresidential, nonagricultural or nonforest designation, an assessment of employment gain or loss, tax revenue impacts and public service/facility costs, as compared to equivalent factors for the existing uses to be replaced by the proposal;

(ff) For a proposed amendment to a nonresidential, nonagricultural or nonforest designation, an inventory of reasonable alternative sites now appropriately designated by the Rural Comprehensive Plan, within the jurisdictional area of the Plan and located in the general vicinity of the proposed amendment;

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

FINDING: There are no negative impacts to implementing the proposed amendment because the current designation and zoning are incorrect as a matter of law and violates RCP Goal 5 Mineral and Aggregate Policy 1, the original analysis for the site, and the approved CPR project change request. Positive impacts include making the site consistent with the RCP, as required by law.

The land use and ownership patterns of the area are largely large timber holdings and smaller Rural Residential parcels. However, this is existing quarry land with an existing quarry. There are no impacts.

The proposal corrects an error so that zoning and designation is consistent with the RCP. Forestry is an allowed used on QM land. Therefore, the proposal does not turn forestland into a quarry

This is an existing quarry site. Cleveland Creek Road access the site, and an internal road system provides further access. No additional water or sewage disposal requirements are needed.

The proposal has a positive impact on natural resources and resource lands and sites by correcting an error and placing the property in the correct RCP designation.

There are no natural hazards affecting the site.

No existing uses are being replaced by the proposal; (ee) is not applicable. The site is required by the RCP and the approved CPR project change request to be zoned as Mineral and Aggregate; as such, (ff) is not applicable. The proposed designation is a Resource designation; as such, (gg) is not applicable.

I. CONCLUSION

Based on the findings below, the conformity determination to recognize and correct an error in the original designation and zoning of the subject property, to redesignate the property from Forest (F) to Natural Resource (NR:Mineral) to correct the error, and to rezone the property from Nonimpacted Forestland (F-1) to Quarry Mining (QM) to correct the error is APPROVED.