BEFORE THE BOARD OF COMMISSIONERS OF THE STATE OF OREGON

FOR THE COUNTY OF YAMHILL

SITTING FOR THE TRANSACTION OF COUNTY BUSINESS

In the Matter of Approval of a Zoning Map Amendment From EF-40 (Exclusive Farm Use) to AF-40 (Agriculture/ Forestry Large Holding), for Tax Lots 5435-1200, 5435-600, 5435-602, 5435-603, 5436-600 and 5436-700; Planning Docket Z-01-18; and Declaring an Emergency	)))))	Ordinance 907

THE BOARD OF COMMISSIONERS OF YAMHILL COUNTY, OREGON (the Board) sat for the transaction of county business on August 9, 2018, Commissioners Mary Starrett, Richard L. "Rick" Olson and Stan Primozich being present.

WHEREAS, Berchtold Farming LLC applied for a zone map amendment From EF-40 (Exclusive Farm Use) to AF-40 (Agriculture/Forestry Large Holding), for Tax Lots 5435-1200, 5435-600, 5435-602, 5435-603, 5436-600 and 5436-700, located in rural Amity; and

WHEREAS, the Planning Commission heard this matter at a duly noticed public hearing on May 17, 2018 and voted 3-2 to deny the application, with one abstention; and

WHEREAS, the applicant filed a timely appeal of the denial to the Board which, following a second duly noticed public hearing, voted 3-0 to accept the appeal, overturn the Planning Commission's denial, and approve the application; NOW, THEREFORE,

THE BOARD ORDAINS AS FOLLOWS:

Section 1. The appeal in this matter is accepted, the Planning Commission's decision is overturned, and the application is approved for the reasons stated in the findings attached as Exhibit "A" and incorporated into this ordinance by this reference;

Section 2. The Yamhill County Zoning Map is amended as shown in the attached Exhibit "B," incorporated into this ordinance by reference.

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Section 3. This ordinance, being necessary for the health, safety, and welfare of the citizens of Yamhill County, and an emergency having been declared to exist, is effective immediately.

DONE this 9th day of August, 2018, in McMinnville, Oregon.

ATTEST

YAMHILL COUNTY BOARD OF COMMISSIONERS

BRIAN VAN BERGEN
County Clerk

Chair MARY STARRETT

By: Carolina Rook
Deputy Carolina Rook

Commissioner RICHARD L. "RICK" OLSON

FORM APPROVED BY:

Timothy S. Sadlo
Senior Assistant County Counsel

Commissioner STAN PRIMOZICH

Ordinance 907
EXHIBIT A
Findings in Support of Approval
Planning Docket Z-01-18

DOCKET NO.: Z-01-18

REQUEST: Zoning Map amendment from EF-40, Exclusive Farm use to AF-40, Agriculture/Forestry Large Holding.

APPLICANT: Catherine A. Wright on behalf of Berchtold Farming LLC

TAX LOTS: 5435-1200, 5435-600, 5435-602, 5435-603, 5436-600, and 5436-700

LOCATION: SE Franquette Drive and SE Walnut Drive, Amity

CRITERIA: Sections 402, 403 and 1208.03 of the *Yamhill County Zoning Ordinance*. Yamhill County Comprehensive Plan Goals and Policies are also applicable.

FINDINGS:

A. Background Facts:

1. *Tract size:* 35 acres composed of seven parcels (six tax lots) established as part of the Eola Walnut Groves subdivision which was platted on May 4th, 1908.

2. *Access:* SE Franquette Drive and SE Walnut Drive.

3. *On-site Land Use:* There are six parcels that will be affected by the proposed zone change. There is a residence and accessory structure in place on Tax Lot 5435-1200. The remaining parcels are vacant and the applicant states that the parcels have a mix of forest uses and small farm and ranch uses. Tax Lots 5435-600, -602, and -603 are currently in forest tax deferral status, while parcels 5436-600 and 5436-700 are assessed at full market value, with no farm or forest tax deferrals.

4. *Surrounding Land Use:* The area contains a mixture of farm and forestry uses on parcels of approximately 5 to 150 acres. Farm uses conducted in the area include pasturage, grass seed and hay production, hazelnut orchards, and vineyard land. There are also a number of parcels dedicated to forest and rural residential uses.

5. *Surrounding Zoning:* The properties to the north, southeast, and east of the applicant's tract are zoned EF-40, Exclusive Farm use. The properties to the southwest are zoned AF-40, Agriculture/Forestry Large Holding District, and the properties to the west of the applicant's land is zoned EF-80, Exclusive Farm use.

6. *Water:* The applicant indicates the property is currently served by a well.

7. *Sewage Disposal:* The dwelling is served by on-site septic system.

8. *Fire Protection:* Amity Rural Fire District.

9. *Soils:* Nekia Clay Loam (NcB and NcD), both class III high-value soil types, Jory Clay Loam (JrC and JRE) class II and class III high-value farmland soils, and Yamhill Silt Loam (YaE) a class IV high-value farmland soil.

10. *Previous Zoning:* The applicant's tract has been zoned Exclusive Farm use, EF-40, since 1976. The Comprehensive Plan Designation has also remained unchanged, Agriculture/Forestry Large Holding District, AFLH.

11. *Previous Actions:* In 1977, Tax Lot 5436-700 was approved for a lot size variance to permit the establishment of a home site on a ten (10) acre parcel, Docket PV-280-77.

12. *Overlay Zones:* The applicant's tract is located in the Amity Hills/Walnut Hill Restricted Ground Water area.

B. Zone Change and Plan Amendment Provisions and Analysis

1. The decision on the requested zone change will be based on whether the request complies with the review criteria found in Section 1208.03 of the Yamhill County Zoning Ordinance, as follows:

Review Criteria for Amendments to or within Exclusive Farm Use and Agricultural/Forestry Zones

A quasi-judicial zone change to (1) amend the designation of land from Exclusive Farm Use, Agriculture/Forestry, or Forest to another of these zones, or (2) change the minimum lot size of land designated Exclusive Farm Use or Agriculture/Forestry, may be authorized, pursuant to Subsection 1208.01, provided that the request satisfies all applicable requirements of this ordinance, and also provided that the applicant demonstrates compliance with the following criteria:

A. The proposed amendment shall comply with the goals, policies, and other applicable provisions of the comprehensive plan.

Regarding criterion (A), applicable goals from the Yamhill County Comprehensive Land Use Plan, Section II.A.1, Goal reads:

> *To conserve Yamhill County's farm lands for the production of crops and livestock and to ensure that the conversion of farm land to urban use where necessary and appropriate occurs in an orderly and economical manner.*

Section II.A.2, Goal reads:

To conserve Yamhill County's soil resources in a manner reflecting their suitability for forestry, agriculture and urban development and their sustained use for the purposes designated on the county plan map.

Section II.B.1, Goal reads:

To conserve and to manage efficiently the county's forest and range resources, thereby ensuring a sustained yield of forest products, adequate grazing areas for domestic livestock, habitat for fish and wildlife, protection of forest soils and watershed, and preservation of recreational opportunities.

The entirety of the applicant's tract has been designated as Agriculture Forestry Large Holding ("AFLH") in the county's Comprehensive Plan. The applicant notes that the tract is of mixed use, with some parcels used more for open space and farm land with a smaller area of timber use while other parcels contain more timber with some open spaces, grassland, or scrub, however all of the parcels demonstrate a mix of such uses. According to the Yamhill County Soil Survey, the timber yields of the soils are 130-155 cubic feet per acre per. The minimum lot size is proposed to remain 40 acres.

2. *B. The proposed designation shall be appropriate for the existing or intended use of the property.*

Regarding criterion (B), as mentioned above, the subject tract is currently dedicated to a mix of open space, forest use, and farm use. The parcels are composed of high value farm and timber production soils consistent with neighboring parcels of similar soil types that are zoned for mixed agriculture and forestry uses, the "AF" zone. Because this application is to change the zone from one resource zone (Exclusive Farm use) to another (Agriculture/Forestry) a goal exception is not required.

Testimony before the Planning Commission and Board of Commissioners indicated that the only reason the zone change is being requested is because the unstated "intended use' of the property is for additional dwellings, that the owner or applicant will seek to obtain approval for under forest template approvals that cannot be applied for under EF zoning, but can be applied for under AF zoning. The applicant's representative denied that there are current plans for new dwellings. Additionally, the Board heard evidence that the parcels may not qualify for forest template dwellings. The proposed designation is appropriate for the existing use, and for what is known from the applicant's statements as the intended use.

3. *C. The proposed amendment shall result in an area of at least 160 contiguous acres with the requested designation, including adjacent land.*

Regarding criterion (C), the subject area proposed for rezoning is approximately 35 acres. The neighboring "AF-40" zoned parcels account for approximately 45 acres while the "AF-80" zoned area is over 300 acres. The total contiguous area after the rezoning would be in excess of 350 contiguous acres zoned "AF". This is well over the 160-acres required; therefore, the request is consistent with criterion (C).

4. *D. For proposed changes within or to an Exclusive Farm Use designation, the new minimum lot size shall be appropriate to maintain the existing commercial agricultural enterprise in the area.*

Regarding criterion (D), the minimum lot size following this zone change will remain 40 acres. The owner's lots appear to be legally non-conforming parcels, at 5-acres. The proposed zone change will not affect the viability of the parcels for either farm or forest uses. The existing 40-acre minimum lot size is appropriate to maintain the existing commercial agricultural enterprise in the area. Since the minimum lot size is not changing, the request satisfies criterion (D).

5. *E. For proposed changes within or to an Agriculture/Forestry designation, the new minimum lot size shall be shown to assure:*

   1. The opportunity for economically efficient forest and agriculture practices typically occurring in the area; and

   2. The opportunity for the continuous growing and harvesting of forest tree species; and

   3. The conservation of other forest values found on forest lands.

Regarding criterion (E), the minimum lot size following the zone change will remain 40 acres. There will therefore be no impacts or changes to the viability of the use of the property for either farm or forest uses. Since the minimum lot size is not changing, the request satisfies criterion (E).

6. *F. Any amendment that would change the zone map designation to reduce the minimum lot size on property within an Exclusive Farm Use or Agriculture/Forestry district shall not be granted final approval by Yamhill County until the amendment has been considered and approved by the Land Conservation and Development Commission pursuant to ORS 215.780(2). The following rules shall apply:*

   1. Conditional approval. Following receipt of an application for a zone change as otherwise provided by this ordinance, the county shall determine whether to grant or deny the application in accordance with criteria established in this section 1208.03. If the application is granted, the county shall enter an order of conditional approval, subject to final approval by the Land Conservation and Development Commission.

   2. Referral of Order of Conditional Approval. After conditional approval by Yamhill County, the application, county findings, order of conditional approval and a request for Commission action shall be referred to the Department of Land Conservation and Development.

3. *Final Approval. An amendment conditionally approved by Yamhill County shall not take effect until the county adopts an order or ordinance authorizing final approval after receipt of written confirmation of the county's conditional approval by the Land Conservation and Development Commission.*

Regarding criterion (F), the minimum lot size before and following this zone change will be 40 acres. Since the minimum lot size is not changing, the request satisfies criterion (F).

CONCLUSIONS:

1. The request is for a zone change from EF-40, Exclusive Farm use to AF-40, Agriculture/Forestry District.

2. The proposed zone change is consistent with Comprehensive Plan goals and policies.

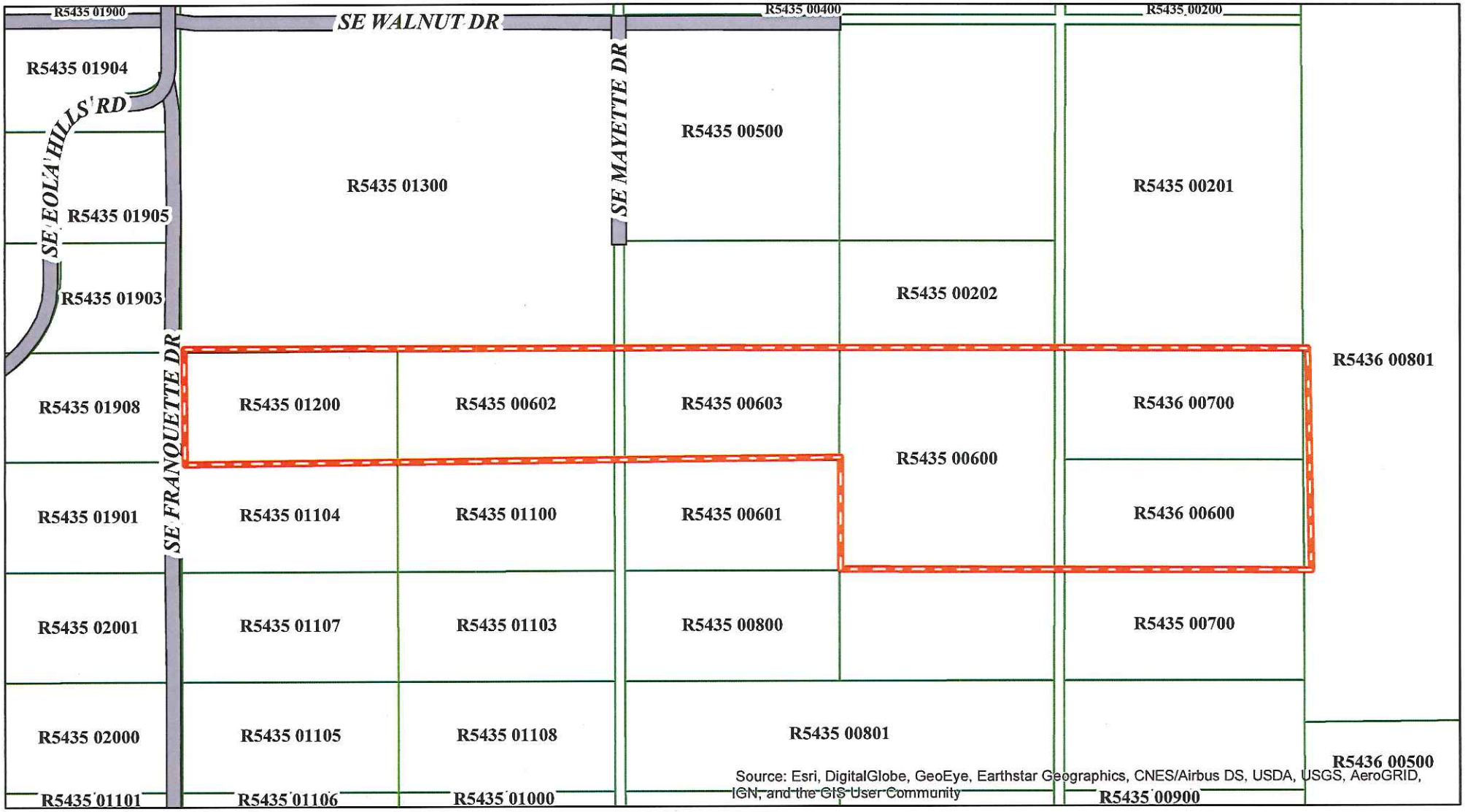
3. The zone change is appropriate in that the parcels are predominantly dedicated to a mix of farm and forest uses.

4. The proposed change is consistent with the zone change criteria of Section 1208.03.

RECOMMENDATION:

Based on the above findings and conclusions, the request for a zone change from EF-40, Exclusive Farm use zone, to AF-40, the Agriculture/Forestry District on a tract composed of seven parcels identified as Tax Lots 5435-1200, 5435-600, 5435-602, 5435-603, 5436-600, and 5436-700, is hereby approved.

EXHIBIT B - ORDINANCE 907
MAP
ZONE CHANGE FROM
EF-40, EXCLUSIVE FARM USE
TO
AF-40, AGRICULTURE/FORESTRY



CHANGE APPLIES TO TAX LOTS 5435-1200, 5435-600, 5435-602, 5435-603, 5436-600, and 5436-700 (35 ACRES) AS INDICATED ABOVE

APPROXIMATE SCALE: 1 inch = 400 feet