

BEFORE THE BOARD OF COMMISSIONERS OF THE STATE OF OREGON

FOR THE COUNTY OF YAMHILL

SITTING FOR THE TRANSACTION OF COUNTY BUSINESS

Approval of a Comprehensive Plan Amendment from Agriculture/Forestry)
Large Holding to Agriculture/Forestry Small Holding; a zone change from)
EF-80, Exclusive Farm use to AF-10, Agriculture/Forestry use, Taking an) Ordinance 831
Exception to Goal 3, Tax Lots 3203-100, 101, 103, & 104, Applicant)
Dennis Spath, Docket PAZ-01-08, and Declaring an Emergency)

THE BOARD OF COMMISSIONERS OF YAMHILL COUNTY, OREGON (the "Board") sat for the transaction of county business on July 30, 2008, Commissioners Mary P. Stern, Leslie Lewis and Kathy George being present.

IT APPEARING TO THE BOARD that Dennis Spath requested approval of a Comprehensive Plan amendment from Agriculture/Forestry Large Holding to Agriculture/Forestry Small Holding ; a zone change from EF-80, Exclusive Farm use to AF-10, Agriculture/Forestry use. An exception to Goal 3 is also required, and

IT APPEARING TO THE BOARD that the matter was heard at a duly noticed public hearing before the Planning Commission June 5, 2008, which voted unanimously for approval, and the matter was heard at a duly noticed public hearing July 16, 2008 before the Board, no opponents appearing, and the Board voted unanimously for approval. NOW, THEREFORE,

IT IS HEREBY ORDAINED BY THE BOARD, that the application is approved as detailed in the Findings for Approval, attached as Exhibit "A" and by this reference incorporated herein. 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 upon passage. A map is appended as Exhibit "B".

DONE this 30th day of July, 2008, at McMinnville, Oregon.

ATTEST: YAMHILL COUNTY BOARD OF COMMISSIONERS

JAN COLEMAN
County Clerk



Mary P. Stern
Chair
MARY P. STERN

By: *Anne Britt*
Deputy Anne Britt
Leslie Lewis
Commissioner
LESLIE LEWIS

APPROVED AS TO FORM: *Kathy George*
Commissioner
KATHY GEORGE

Rick Sanai
Rick Sanai, Assistant County Counsel

DOCKET NO.: PAZ-01-08

REQUEST: Approval of a Comprehensive Plan amendment from Agriculture/Forestry Large Holding to Agriculture/Forestry Small Holding; a zone change from EF-40, Exclusive Farm use to AF-10, Agriculture/Forestry use. An exception to Goals 3 and 4 is also being requested. (Note: Yamhill County has not interpreted that an exception to Goal 4, Forestry, is required since the property is within the exclusive farm use zone.)

APPLICANT: Dennis Spath

PROPERTY OWNERS: Joseph P. and Kimberly Fay, Dennis & Sheryl Spath

TAX LOTS: 3203-100, 101, 103 and 104

LOCATION: 17650 NE Leander Drive, Sherwood, Oregon 97140

CRITERIA: Sections 402, and 1208.02 of the Yamhill County Zoning Ordinance. Section 904, Limited Use Overlay may also be applied. Comprehensive Plan policies may be applicable. OAR 660-04, Exception Process. OAR 660-12-0060 Transportation Planning Rule.

FINDINGS:

A. Background Facts:

1. Property size: The four tax lots comprise approximately 77.4 acres. Although there are four tax lots, there are only two parcels by virtue of a property line adjustment applied for in 1980.
2. Access: Access to the subject tract is provided by SW Leander Drive and SW Chapman Road.
3. On-site Land Use: The on-site land use is described on page 3 in the "Thomson Report" that is part of the application, which is incorporated into these Findings by this reference.
4. Surrounding Land Use: The surrounding land use is described on pages 3 and 4 in the "Thomson Report" that is part of the application.
5. Surrounding Zoning: Property to the north is in Washington County and is zoned AF-5, a rural residential designation similar to VLDR-5 in Yamhill County. Property to the south and west is zoned VLDR 2.5. Property to the east is zoned EF-40 Exclusive Farm Use.

6. Water: On-site wells. The properties are located in a Groundwater Limited Area, identified by the Oregon Water Resources Department.
7. Sewage Disposal: To be provided by on-site septic systems.
8. Fire Protection: Newberg Rural Fire District.
9. Soils: According to the Yamhill County Soil Survey, the entire property contains Laurelwood Silt Loam, which has an agricultural capability of Class III and IV, and is rated as high-value farmland.
10. Taxes: Lot 100 has 37.37 acres that is receiving farm deferral with one acre at market value. Lot 101 has 16.69 acres receiving forest deferral and three acres at market value. All of Lots 103 and 104 are receiving forest deferral.
11. Previous Actions: In 1978, a partition was applied for by Ray Spath to create a 20-acre lot that is identified as Tax Lot 3203-101. In 1980, Ray Spath received approval for a farm dwelling through Farm Management Plan #44. Also in 1980, a lot line adjustment was applied for through P-1172-80 that combined together Tax Lots 3203-100 and 103, and Tax Lots 3203-101 and 104.
12. Fish and Wildlife: The property is not identified on any county adopted map as being in any critical fish or wildlife habitat.
13. Flood Hazard: FIRM Panel 410249 0185C shows that none of the property is within the flood hazard overlay zone.

B. Zone Change and Plan Amendment Provisions and Analysis

1. Approval of a request for a zone change must be based on compliance with the standards and criteria in YCZO Section 1208.02. These provisions are:
 - (A) *The proposed change is consistent with the goals, policies, and any other applicable provisions of the Comprehensive Plan.*
 - (B) *There is an existing demonstrable need for the particular uses allowed by the requested zone, considering the importance of such uses to the citizenry or the economy of the area, the existing market demand which such uses will satisfy, and the availability and location of other lands so zoned and their suitability for the uses allowed by the zone.*
 - (C) *The proposed change is appropriate considering the surrounding land uses, the density and pattern of development in the area, any changes which may have occurred in the vicinity to support the proposed amendment and the availability of*

utilities and services likely to be needed by the anticipated uses in the proposed district.

(D) *Other lands in the county already designated for the proposed uses are either unavailable or not as well-suited for the anticipated uses due to location, size, or other factors.*

(E) *The amendment is consistent with the current Oregon Administrative Rules for exceptions, if applicable.*

Applicant's proposed findings regarding compliance with YCZO 1208.02 as set forth at pages 23-31 of their application are hereby adopted and incorporated herein by reference in support of a zone change as more specifically discussed below.

2. Regarding criterion (A) above, Plan goals and policies which staff feels may be pertinent are:

Policy I.B.1.d.: No proposed rural area development shall require or substantially influence the extension of costly services and facilities normally associated with urban centers, such as municipal water supply and sanitary sewerage or power, gas and telephone services, nor shall it impose inordinate additional net costs on mobile, centralized public services, such as police and fire protection, school busing or refuse collection.

The proposed zone change does not require the extension of utilities or services to the area. Water and sewer would need to be provided by on-site systems. Other services such as electricity, telephone, sheriff and fire protection already serve the existing residents in the area.

Goal II.A.2 directs the county: 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.

Additionally, Policy II.A.2.a states: Yamhill County will continue to preserve those areas for farm use which exhibit Class I through IV soils as identified in the Capability Classification System of the U.S. Soil Conservation Service.

According to the Yamhill County Soil Survey Maps, all of the proposed exception area is composed of Laurelwood silt loam soils (LuC, LuD and LuE) Class III and IV high value farm land. The Laurelwood silt loam soils are capable of producing 160 cubic feet/acre/year of wood fiber.

The County finds that the foregoing policies are not independent approval standards, but rather aspirational, and are satisfied through approval of an exception. The goals and policies are enacted through the existing zoning, in this case the EF-40 zone. While the

soils are capable of being put to resource use, the County finds that the continued farm or forest use of the subject property is "impracticable" under OAR 660-004-0028(1).

Policy II.A.1.h.: No proposed rural area development shall substantially impair or conflict with the use of farm or forest land, or be justified solely or even primarily on the argument that the land is unsuitable for farming or forestry or, due to ownership, is not currently part of an economic farming or forestry enterprise.

The applicant submitted a report from Thom Thomson, ARCPACS Certified Professional Soils Scientist, to address the suitability of the property for farm use. There were a number of factors included in that report that addressed the question as to whether the parcel is suitable for farm or forestry uses. The reasons included topography, elevation, vegetation, terrain, land conditions and neighboring ownership pattern. The County finds that the arguments for the zone change are not solely or even primarily based on the argument that the land is unsuitable for farming or forestry uses. The County finds the parcel is not suitable for farm or forestry uses. Moreover, the YCCP provisions are not approval criteria but are implemented through the zoning ordinance. Those comprehensive plan policies regarding farm and forest policies are primarily intended to carry out Goals 3 and 4 and therefore are not applied when a Goal 3 and 4 exception is taken. The farm and forest policies in the Comprehensive Plan should be applied through the proposed AFSH Comprehensive Plan designation and AF-10. An Exception is taken to Goal 3 and 4 which, if approved, will allow the proposed AFSH Comp Plan and AF-10 zone change to be approved, and since the AFSH comp plan and AF-10 zone designations are consistent with the Comp Plan policies, the proposed PAZ would be consistent with the Comp Plan policies. A Plan Amendment (AFLH to AFSH) and a zone change from EF-40 to AF-10 is requested based on a committed Exception to Goals 3 and 4. The zone change is premised on approval of the Comp Plan change. If approved, the proposed AF-10 zone change must be consistent with the proposed AFSH comp plan. Therefore, when applying the Comp Plan Policies consistency requirement under 1208.02(A) it is appropriate to consider whether the proposed AF-10 zone change is consistent with the Comprehensive Plan policies which are carried out by the proposed AFSH comp plan designation. The Comprehensive Plan policies that are only carried out by the current AFLH and EF-40 would therefore not be directly applied to prohibit the PAZ since an Exception is required to taken to Goal 3 and 4 to allow the AFSH and AF-10 PAZ to be approved.

3. Regarding criterion (B), the applicant has shown and the Board finds, there is an existing demonstrable need for the particular uses allowed by the requested zone, considering the importance of such uses to the citizenry or the economy of the area, the existing market demand which such uses will satisfy, and the availability and location of other lands so zoned and their suitability for the uses allowed by the zone, as required by YCZO 1202.08(B). The applicant submitted information related to available lots within Code Area 1.3, within Yamhill County and ½ mile of the subject property. Utilizing these search parameters (near the bottom of page 28 of the application) the applicant identified no other AF-10 zoned properties. The applicant also included a letter from a local realtor. The realtor submitted a list of rural residential parcels in both Yamhill and Washington Counties. The realtor found that none of the parcels he surveyed were for sale and therefore concluded that they were not "available.". The county does not use market availability alone as a basis for a determination of need, just as one factor. The Board finds there is a need for additional AF-10 properties.

4. Regarding criterion (C), the proposed change has been shown to be appropriate considering the surrounding land uses, the density and pattern of development in the area, any changes which may have occurred in the vicinity to support the proposed amendment and the availability of utilities and services likely to be needed by the anticipated uses in the proposed district. The surrounding uses include rural residential uses in Code Area 1.3 to the south and west of the proposed exception area. In addition the subject parcel is bordered to the north by rural residential property in Washington County. The proposed change appears to be appropriate considering the existing density and pattern of development. The change which has occurred in the area is mainly the development of the nearby rural residential parcels. The property owners have both submitted letters which list their unsuccessful attempts at farming the property.

The applicant stated that the development will be served by individual on-site wells but the applicant also noted that the property is served by the Chehalem Mountain Water Company. There will be subsurface sewage disposal systems installed. The property is currently served with electrical power by PGE, and is within the Newberg Rural Fire District. Adequate roads are available to the property.

5. Regarding criterion (D), see Finding B.3.
6. Regarding the criterion (E), the OAR requirements for exceptions are addressed below.

No Goal 14 exception is required because the requested 10-acre minimum lot size is considered a rural use under the Goal 14 rules.

C. Goal Exception Provisions and Analysis

1. Oregon Administrative Rule (OAR) 660-04 contains the requirements for taking an exception to the goals. The applicant is applying for a "committed" exception.
2. OAR 660-04-028 indicates that a committed exception may be taken when land is irrevocably committed to uses not allowed by the applicable goal because existing adjacent uses and other relevant factors make uses allowed by the goal impracticable. OAR 660-04-028(3) states in part that "*It is the purpose of this rule to permit irrevocably committed exceptions where justified so as to provide flexibility in the application of broad resource protection goals. It shall not be required that local governments demonstrate that every use allowed by the applicable goal is "impossible." For exceptions to Goals 3 or 4, local governments are required to demonstrate that only the following uses or activities are impracticable:*
 - (a) Farm use as defined in ORS 215.203;
 - (b) Propagation or harvesting of a forest product as specified in OAR 660-033-0120; and
 - (c) Forest operations or forest practices as specified in OAR 660-006-0025(2)(a)."

A two-part analysis is required. First, whether land is irrevocably committed depends on the relationship between the exception area and the lands adjacent to it. Findings must address the characteristics of the exception area; the characteristics of the adjacent lands; the relationship between the exception area and the lands adjacent to it; and the other relevant factors set forth in OAR 660-04-028(6). Second, for an exception to Goal 3, findings must be made that farm and forest uses are impracticable on the proposed exception area. Applicant's proposed findings regarding a Committed Exception set forth at pages 10-23 of their application are hereby adopted and incorporated herein by reference in support of a committed exception as more specifically discussed below.

3. *Characteristics of the exception area:* The applicant's response to this criterion is on Page 11 of their application and is incorporated here by reference. Applicant filed an updated report from the broker John DeCosta at Hasson Realtors which contains an analysis under 1208.02 (B) and (D) which addresses concerns raised in the staff report dated April 3, 2008. His study area extended out 3 miles from the property to include Code Area 1.4, and it found only 3 other vacant AF-10 zoned properties beyond the ones identified in his earlier report. The letter also clarifies that his analysis looked at vacant AF-10 parcels and was not limited to properties on the market. The study concludes that there is a shortage of vacant AF-10 zoned land and therefore a need for additional AF-10 zoned land.
4. *Characteristics of the adjacent lands:* The subject land is bordered by parcels of 1 to 20 acres in size. The majority of the neighboring uses to the north, south and west are rural residential parcels of 2.5 to 10 acres. Some hobby farm uses include Christmas trees, hay, pasture and grain crops. The 20-acre parcel located to the east is zoned EF-40. This property was the subject of a Measure 37 claim. The claim was approved and that approval resulted in one single-family dwelling being constructed on the 20-acres under the land use regulations in effect in 1980, when the applicant acquired the property.
5. *The relationship between the exception area and the lands adjacent to it:* The proposed exception area is similar in character to the adjacent rural residential zones. The applicant addressed this on pages 13-15 in the application. Those findings are incorporated here by reference.
6. OAR 660-04-028(6) requires that findings for a committed exception address existing adjacent uses; existing public facilities and services (water and sewer lines, etc.); parcel size and ownership patterns of the exception area and adjacent lands; neighborhood and regional characteristics; natural or man-made features or other impediments separating the exception area from adjacent resource land; physical development; and other relevant factors. The existing uses are addressed above. Regarding public facilities and services, they are generally available in the area. Applicant testified regarding his own efforts to farm and adjoining neighbor Fay's efforts, all of which were not successful, as described in Exhibit 8. Applicant also submitted a letter from Steve Harvey, a farmer who had previously grown crops on the property, and who stated that for the most part the property was no longer economical to farm because of its small size, non-irrigated, low yields and too far away given the increases in fuel price and travel time. It is therefore impracticable to combine farming on the property with other farms in the area.
7. Regarding the "irrevocably committed" standards, OAR 660-04-028(6)(c)(A) states in part: *Past land divisions made without application of the Goals do not in themselves demonstrate irrevocable commitment of the exception area. Only if development (e.g., physical improvements such as roads and underground facilities) on the resulting parcels or other factors make unsuitable their resource use or the resource use of nearby lands can the parcels be considered to be irrevocably committed.* OAR 660-04-028(6)(c)(B) also states, in part: *The mere fact that small parcels exist does not in itself constitute*

irrevocable commitment. Small parcels in separate ownerships are more likely to be irrevocably committed if the parcels are developed, clustered in a large group or clustered around a road designed to serve these parcels.

The findings in the application on pages 17 and 18 detail the subdivisions that were platted prior to adoption of the statewide planning goals. These subdivisions include the Chehalem Hill Subdivision (platted in 1912), the Shannon Subdivision (platted in 1968) and the Sun Ridge Subdivision (platted in 1970). Other subdivisions have also been platted after adoption of the statewide planning goals. These do not irrevocably commit the neighboring properties to rural residential use but they are still relevant to the development pattern of the area. These include the Chehalem View Estates (platted in 1995) and Gibbs Estates (platted in 2002). The Board finds this development pattern irrevocably commits the subject property to rural residential use.

D. Goal 12 (Transportation Rule) Provisions and Analysis

1. The provisions of the Transportation Planning Rule, implementing Goal 12, must be addressed. OAR 660-12-060 contains the provisions that must be met:
 - (1) *Amendments to functional plans, acknowledged comprehensive plans, and land use regulations which 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. This shall be accomplished by either:*
 - (a) *Limiting allowed land uses to be consistent with the planned function, capacity and level of service of the transportation facility;*
 - (b) *Amending the TSP [Transportation System Plan] to provide transportation facilities adequate to support the proposed land uses consistent with the requirements of this division; or,*
 - (c) *Altering land use designations, densities, or design requirements to reduce demand for automobile travel and meet travel needs through other modes.*
 - (2) *A plan or land use regulation amendment significantly affects a transportation facility if it:*
 - (a) *Changes the functional classification of an existing or planned transportation facility;*
 - (b) *Changes standards implementing a functional classification system;*
 - (c) *Allows types or levels of land uses which would result in levels of travel or access which are inconsistent with the functional classification of a transportation facility; or*
 - (d) *Would reduce the level of service of the facility below the minimum acceptable level identified in the TSP.*

Applicant's proposed findings regarding the Transportation Planning Rule set forth at page 23 of their application are hereby adopted and incorporated herein by reference in support of a finding that the proposed will be consistent with current traffic levels and will not significantly affect a transportation facility in compliance with OAR 660-0012-0060(1).

2. Regarding (1) and (2), the Public Works Department did not voice any concerns related to the application. Approval of this application could allow five additional single-family dwellings. The average trips per day for a single-family dwelling is approximately 10.

Based on an additional 10 vehicle trips per day it appears that the proposed residential use is consistent with the identified function, capacity, and level of service of the local roads.

CONCLUSION:

1. The request is for a Comprehensive Plan amendment and zone change from Exclusive Farm use EF-40 to AF-10. The applicant is also requesting an exception to Goals 3 and 4.
2. The proposed zone change is consistent with Comprehensive Plan goals and policies.
3. An exception to Goal 3 and 4 is justified because the property is unsuitable for productive farming/forestry, and the adjacent lots and uses contribute to the area being suitable for an exception.
4. The proposed change is consistent with the zone change criteria of Section 1208.02.
5. The proposed change complies with the Transportation Planning Rule.

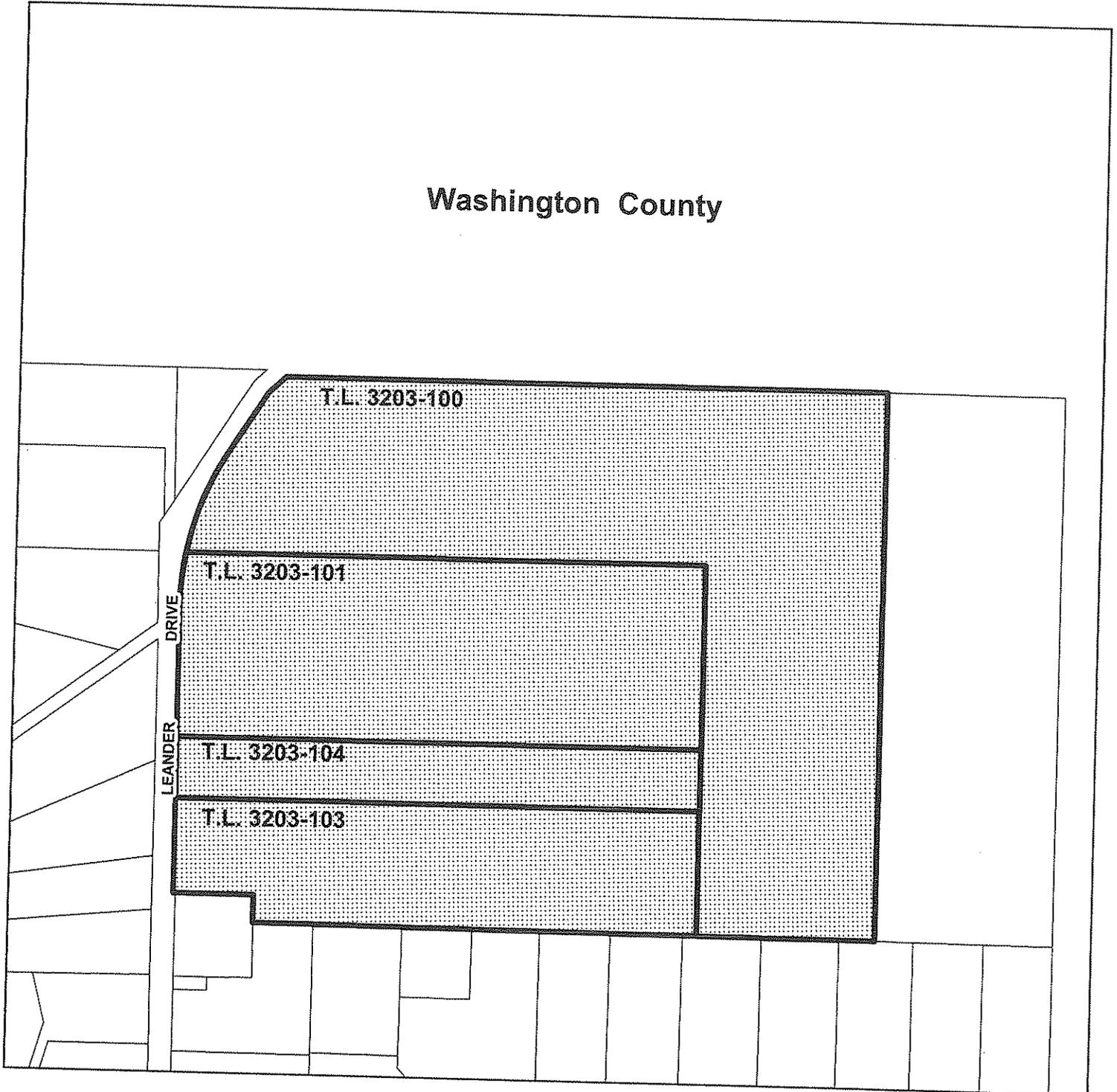
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EXHIBIT "B" FOR ORDINANCE No. 831

COMPREHENSIVE PLAN AMENDMENT FROM
AGRICULTURE/FORESTRY LARGE HOLDING TO
AGRICULTURE/FORESTRY SMALL HOLDING

ZONE CHANGE FROM EF-40 EXCLUSIVE FARM USE
TO AF-10 AGRICULTURE/FORESTRY SMALL HOLDING

Washington County



Legend

 Area Subject to Amendment



ORDINANCE No.: 831

EXHIBIT "B"

B.O. 08-526

Prepared by Yamhill County Department of Planning and Development