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IN 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 AF-20 Agriculture/Forestry to AF-10)
Agriculture/Forestry Small Holding; Taking an Exception to) Ordinance 794
Goals 3 & 4, Docket PAZ-02-06, Tax Lots 3205-200 and -300,)
Applicants Rex and Carla Butler and Barbara Reilly, and Declaring)
an Emergency)

THE BOARD OF COMMISSIONERS OF YAMHILL COUNTY, OREGON (the Board) sat for the transaction of county business on Wednesday, November 22, 2006, Commissioners Leslie Lewis, Kathy George. and Mary P. Stern being present.

IT APPEARING TO THE BOARD that Rex and Carla Butler and Barbara Reilly applied for a Comprehensive Plan amendment on approximately 40 acres of property from Agriculture/Forestry Large Holding to Agriculture/Forestry Small Holding; and a zone change from AF-20 Agriculture/Forestry to AF-10 Agriculture/Forestry Small Holding.

The Yamhill County Planning Commission held a duly noticed public hearing September 7, 2006 and voted 5-1 to recommend approval. A duly noticed public hearing was held October 18, 2006, before the Yamhill County Board of Commissioners, and the Board voted 3-0 to approve the application.

NOW, THEREFORE, IT IS HEREBY ORDAINED BY THE BOARD:

The application is approved as detailed in the Findings for Approval, Exhibit "A", attached and hereby incorporated into this ordinance. A map is attached as Exhibit "B". 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.

DONE this 22nd day of November, 2006, at McMinnville, Oregon.

ATTEST

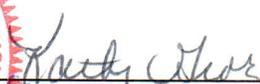
YAMHILL COUNTY BOARD OF COMMISSIONERS

JAN COLEMAN
County Clerk


Chair

LESLIE LEWIS

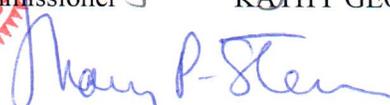
By: 
Deputy Anne Britt


Commissioner

KATHY GEORGE

APPROVED AS TO FORM:




Commissioner

MARY P. STERN

Rick Sanai, Assistant County Counsel

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Ordinance 794
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Exhibit "A"

Findings for Approval

DOCKET: PAZ-02-06

REQUEST: Approval of a Comprehensive Plan amendment on approximately 40 acres of property from Agriculture/Forestry Large Holding to Agriculture/Forestry Small Holding; a zone change from AF-20 Agriculture/Forestry to AF-10 Agriculture/Forestry Small Holding. The application requires an exception to Goals 3 and 4. (The applicant has presented arguments that an exception to Goals 3 and 4 is not necessary because the applicant believes the property qualifies as "non-resource" land.)

APPLICANT: Rex and Carla Butler and Barbara Reilly

TAX LOT: 3205-200 and -300

LOCATION: 17160 and 17220 NE Slope Lane, Newberg Oregon

CRITERIA: Sections 403, 501 and 1208 of the Yamhill County Zoning Ordinance; the Yamhill County Comprehensive Plan. OAR 660-04, Exception Process. OAR 660-12-0060 Transportation Planning Rule. A limited use overlay zone may also be applied.

A. Background Facts:

1. Property size: approximately 39.84 acres.
2. Access: Access to the subject parcels is provided by a private road, Slope Lane. Tax Lot 3205-200 abuts Mountain Top Road.
3. On-site Land Use: Each of the subject parcels are developed with a single-family dwelling. The western 20 acres is partially forested. The middle and the eastern portions appear to be open pasture land. The eastern parcel appears to have some forested and cleared areas. Both of the parcels slope down to the southeast from Mountain Top Road.
4. Surrounding Land Use: The area contains a mixture of farm, forestry and rural residential uses on parcels of approximately 4 to 40 acres. The 40-acre parcel northeast of Mountain Top Road is used as pasture for cattle. Other farm uses in the general area appear to include vineyards and Christmas trees.
5. Surrounding Zoning: Land to the north, east and west is zoned AF-20 Agriculture/Forestry Use. Land to the south is zoned both AF-20 and AF-10. The southwest corner of the subject property also touches on an area zoned AF-10.
6. Water: To be provided by an on-site well.
7. Sewage Disposal: To be provided by an on-site septic system.
8. Fire Protection: Newberg Rural Fire District
9. Soils: The applicant has submitted a soils report for both properties. The soils report discusses the

Exhibit "A"
Ordinance 794

agricultural capability class. The timber capability for Nekia soils are 130 cubic feet per acre per year. The timber capability for Jory soils are 155 cubic feet per acre per year.

10. Taxes: 17.1 acres of Tax Lot 200 is in forestry deferral. 14.24 acres of Tax Lot 300 is also receiving forest deferral.
11. Previous Actions: In 1990, a dwelling in conjunction with forest use was approved for Rex Butler on Tax Lot 200. In 2001, an application was made by Barbara Reilly for a dog kennel. A sequence of partitioning approvals, Dockets P-179-72, P-980-79 and P-05-86, created the subject parcel. In 1981, there was approval for a hardship dwelling, Docket C-452-81/TS-141-81.
12. Floodplain: FIRM 410249 179 C, shows that the property is not within the 100-year flood hazard area.
13. Fish and Wildlife: The property is not identified on any county adopted map as being in any critical fish or wildlife habitat.
14. Other Factors: As noted in Finding A11 above, in 1990 a dwelling in conjunction with forest use was approved for Rex Butler on Tax Lot 200. At that time in order to receive approval for a dwelling it had to be demonstrated that the dwelling was “. . . necessary in order to manage the land for a permitted forest use and that all other criteria set forth in subsection 401.06.” The following finding is from the staff report that approved the dwelling for Mr. Butler:

“The applicant has stated that he plans to replant the young trees that have died and clear the dead and damaged trees. The type of uses described by the applicant are labor-intensive and would require some heavy machinery. It is not reasonable to presume that all of the activities proposed would be able to be preformed by an off-site manager. The applicant has also indicated that he plans to fence 4.3 acres of the cleared area and use it as pasture for cattle or sheep. Although this is not a forest use, it si permitted in the AF-20 zone and should not interfere with the forestry use. This proposed use is also one that would require an on-site manager. Dwellings in conjunction with farm use may only be on parcels currently employed in agriculture, so the proposed livestock use is not adequate justification for a dwelling.”

At the time of dwelling approval the applicant indicated that both farm and forestry uses were able to be conducted on-site.

15. The property is located in a Groundwater Limited Area, identified by the Oregon Water Resources Department.

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.*

2. Regarding criterion (A) above, Plan goals and policies which 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 would 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.

The applicant has submitted a soils report which shows that 50.99% of both parcels are agricultural Class VI soils. Based on this evidence, the Board finds that the two parcels are not resource land. Near the bottom of page 1 of the supplemental application it states the subject property does not meet the first test for resource land under Goal 3 because the majority of the acreage does not consist of Class I-IV soils. 49 % of the subject land is made up of Class I-IV soils.

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 presented substantial evidence, and the Board finds, that the land is unsuitable for farming and forestry use and is not currently part of an economic farming or forestry enterprise. The application, the supplement, and accompanying materials are hereby incorporated into these findings by this reference.

3. Regarding criterion (B), the applicant showed, and the Board finds, that 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 in 14 square miles. The application concluded, and the Board finds, that there are 67 vacant, undeveloped lots in their identified study area.

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. To address this standard the applicant pointed to a “. . . pocket of seven parcels (1500, 00304, 00300, 00302, 00303, 00200, and 00202) to the south of Mountain Top Road zoned AF-20 that includes Tax Lots 200 and 300.”

The applicant demonstrated that these lots, especially the smaller lots, zoned for agricultural and forestry use somehow commit these adjacent farm and forest lots to nonfarm/nonforestry uses. The application states, “Both Tax Lot 200 and 300 are adjacent to properties zoned AF-10.” Tax Lot 200 has its southernmost border adjacent to AF-10. These substandard lots irrevocably commit the subject property to rural residential use. While the Board explicitly finds and concludes that this parcel is **not** resource land, protected under Goal 3, if it were resource land, then an Exception would be justified. Thus the Board finds two conclusions which must be stated clearly:

(A) The Board explicitly finds and concludes that this parcel is **not** resource land protected by Goal 3.

(B) The Board explicitly finds that if this parcel is resource land, then an “irrevocably committed” exception to Goals 3 and 4 are justified.

Regarding the availability of utilities and services in the area, the lots in the surrounding area have on-site systems for sewer and water hook-ups. Other services such as electricity, telephone, sheriff and fire protection already serve the existing residents in the area.

5. Regarding criterion (D), see Finding B.3. correctly asserts that an exception to Goal 3 and 4 are not required when the property is found to not be resource land. The Board explicitly finds and concludes that this parcel is **not** resource land protected by Goal 3.

In Friends of Yamhill County vs. Yamhill County, LUBA No. 2004-089, it stated on Page 14 of the remand order that:

Where a local government demonstrates that property is not agricultural or forest land; i.e., not resource land, it may plan and zone that property for nonfarm or nonforest use without taking an exception. Niemi v. Clatsop County, 6 Or LUBA 147, 152 (1982). That land is not resource land is generally not a reason to take an exception to resource goals; it is generally a reason that an exception is unnecessary. Therefore, if the county is correct in concluding that the subject property is not resource land, an exception would not be required.

Jack Parcell, soil scientist, did an investigation of soils on the subject properties. The report concluded that approximately half of the subject land is composed of Class VI soils. From these reports, the properties do not satisfy this first test for agricultural land as the majority of the acreage does not contain Class I-IV soils. The applicant has demonstrated, and the Board finds, that the property is **not** resource land protected by Goal 3.

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.

3. *Characteristics of the exception area:* The proposed exception area is about 40-acres in size. It involves two parcels. While a portion of the southern boundary of one of these lots borders an exception area, the majority of the property is bordered by land zoned for Agriculture/Forestry use. The properties have been used for timber production.
4. *Characteristics of the adjacent lands:* The subject land is bordered by parcels of 4 to 40 acres which contain farm and forestry uses.
5. *The relationship between the exception area and the lands adjacent to it:* The proposed exception area is similar in character to the adjacent farm and forest lands that are zoned AF-20. The applicant maintains, and the Board finds, that neighboring parcels and development irrevocably commit the subject parcel to rural residential use. This level of development supports irrevocable commitment to nonfarm use.
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.
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 irrevocable committed if the parcels are developed, clustered in a large group or clustered around a road designed to serve these parcels.

The applicant has shown, and the Board finds, that substandard farm parcels existing to the south and that adjacent rural residential land 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.*

2. Regarding (1) and (2), the Public Works Department did not report they have any concerns related to the use. The approved use will allow a new single-family dwelling on each parcel. The average trips per day for a single-family dwelling is approximately 10. Based on an additional 20 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.

CONCLUSIONS:

- 1. The request is for a Comprehensive Plan amendment and zone change from Agriculture/Forestry AF-20 to AF-10. The applicant has proved by substantial evidence in the record as a whole that the property is not resource land under the definition of Goal 3. The Board explicitly finds and concludes that this parcel is **not** resource land protected by Goal 3.
- 2. In the alternative, The Board explicitly finds that if this parcel is resource land, then an “irrevocably committed” exception to Goals 3 and 4 are justified. 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. Farm and forest uses are impracticable on the proposed exception area.

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

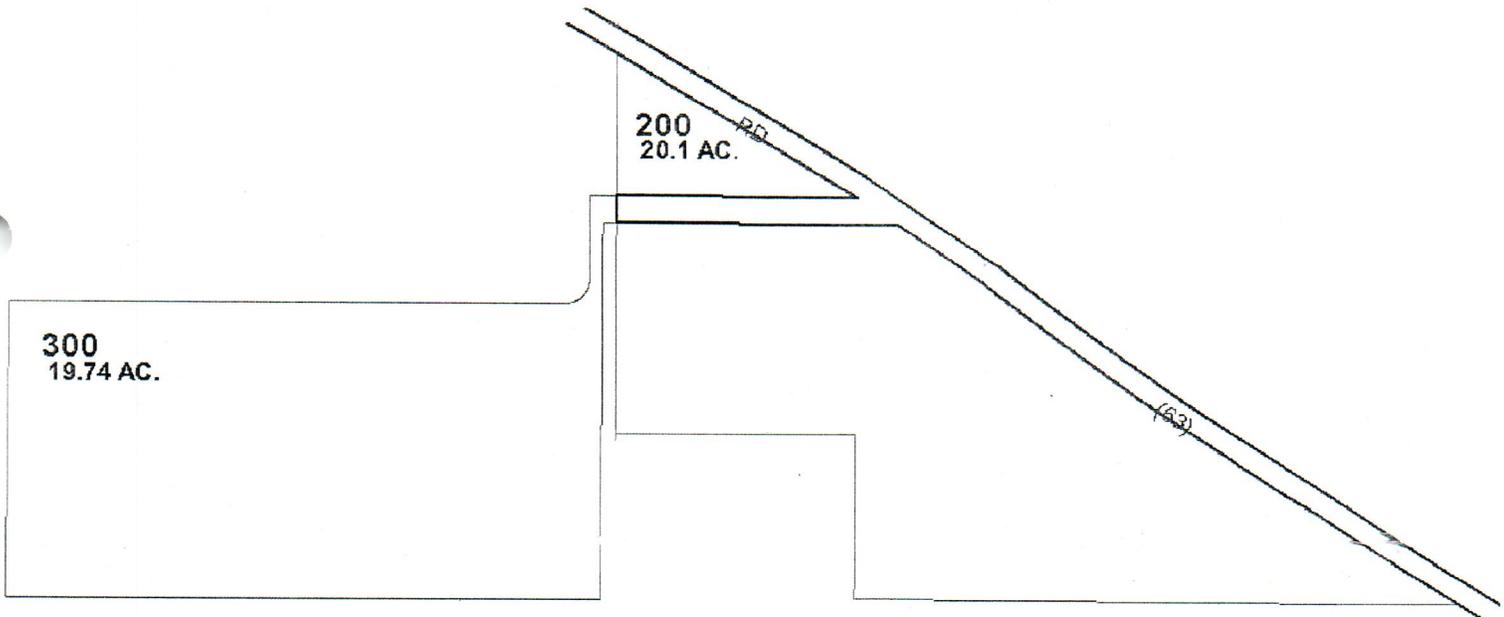
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2.0.06-942

EXHIBIT MAP FOR ORDINANCE NO. 794
PLAN AMENDMENT AND ZONE CHANGE
ADOPTED BY THE YAMHILL COUNTY BOARD OF COMMISSIONERS

November 22, 2006

FOR A COMPREHENSIVE PLAN AMENDMENT FROM
AGRICULTURE/FORESTRY LARGE HOLDING TO AGRICULTURE/FORESTRY
SMALL HOLDING AND
TO CHANGE OFFICIAL ZONING MAP FROM
AF-20 AGRICULTURE/FORESTRY USE
TO
AF-10 AGRICULTURE/FORESTRY SMALL HOLDING



CHANGE APPLIES TO TAX LOTS 3205-200 and 300 DESCRIBED ABOVE

APPROXIMATE SCALE - 1 INCH = 400 FEET

Exhibit "B"
ORDINANCE 794
B.O.06-942