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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

In the Matter of a Zoning Exchange Between Two Adjacent Properties;)
One 39.75-acre Parcel Receives a Comprehensive Plan Amendment and)
Zone Change from Forestry to Agriculture/Forestry Small Holding; a Zone)
Change from F-80 Forestry to AF-10 Agriculture/Forestry Small Holding.)
The Other 40-acre Parcel Receives a Comprehensive Plan Amendment) Ordinance 769
and Zone Change from Agriculture/Forestry Small Holding to Forestry;)
a Zone Change from AF-10 Agriculture/Forestry Small Holding to F-80)
Forestry, Taking an Exception to Goal 4, Tax Lots 5734-602 and 1800,)
Applicants David Buswell and Leonard Prier, and Declaring an Emergency)

THE BOARD OF COMMISSIONERS OF YAMHILL COUNTY, OREGON (the Board) sat for the transaction of county business at 9:00 a.m. on June 15, 2005, in Room 32 of the courthouse, Commissioners Mary P. Stern, Leslie Lewis, and Kathy George being present.

THE BOARD MAKES THE FOLLOWING FINDINGS:

- A. Messrs. David Buswell and Leonard Prier applied to make a zoning exchange between two adjacent properties of roughly equal size, as described in the caption above. The Planning Commission heard this request at a public hearing on May 5, 2005, and voted unanimously to recommend approval.
- B. At its regularly scheduled and publicly noticed June 8, 2005 formal public hearing, the Board accepted evidence and testimony from the applicant (no opponents appeared), and voted unanimously to approve the application and directed that an ordinance and findings be prepared; NOW THEREFORE,

IT IS HEREBY ORDAINED BY THE BOARD that the application is approved as detailed in the findings for approval (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 attached as Exhibit "B".

DONE this 15th day of June, 2005, 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 A. Lewis
Commissioner LESLIE LEWIS

APPROVED AS TO FORM:

Kathy George
Commissioner KATHY GEORGE

Rick Sanai
RICK SANAI, Assistant County Counsel

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Exhibit "A" - Findings for Approval, Ordinance 769

DOCKET: PAZ-01-05

REQUEST: To make a zoning exchange between two adjacent properties that are approximately equal in size. One 39.75-acre parcel would have a Comprehensive Plan amendment and zone change from Forestry to Agriculture/Forestry Small Holding; a zone change from F-80 Forestry to AF-10 Agriculture/Forestry Small Holding, taking an exception to Goal 4. The other 40-acre parcel would have a Comprehensive Plan amendment and zone change from Agriculture/Forestry Small Holding to Forestry; a zone change from AF-10 Agriculture/Forestry Small Holding to F-80 Forestry.

APPLICANTS: David Buswell and Leonard Prier

TAX LOT: 5734-602 and 1800

LOCATION: 41111 Fort Hill Road, Willamina, Oregon

CRITERIA: Sections 401, 501 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 application is made up of two separate tax lots. Tax Lot 5734-602 (Parcel A) is 39.75 acres. Tax Lot 5734-1800 (Parcel B) is 40 acres.
2. Access: Fort Hill Road, a paved county road. Parcel A is served by a private easement to Fort Hill Road. Parcel B is adjacent to Fort Hill Road.
3. On-site Land Use: The applicant has given a detailed description of the on-site use in their application. Tax Lot 5735-602 is developed with a barn and single-family dwelling. Tax Lot 5734-1800 is undeveloped. The parcels generally slope down to the north, towards Fort Hill Road.
4. Surrounding Land Use: Taken together, rural residential development is generally to the northwest and northeast of the subject properties. The rural residential uses exist on parcels of 4 to 40 acres, with most of the lots being near 10 acres in size. Property to the south is forested and is owned and managed by the Bureau of Land Management. Other land in the area is generally forested.

Findings for Ordinance 769, Docket PAZ-01-05 (Buswell)

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5. Surrounding Zoning: As an aggregate parcel, zoning to the north and east is AF-10. Zoning to the south and west is F-80 Forestry.
6. Water: 5734-602 has an on-site spring. Tax Lot 5734-1800 has an on-site well. Much of the area is also served by the Grand Ronde Water System.
7. Sewage Disposal: To be provided by an on-site septic system.
8. Fire Protection: Willamina Rural Fire District. The applicant noted that there is a fire hydrant provided by Grand Ronde Water on Fort Hill Road within 100 feet of both Parcels A and B.
9. Soils: The Yamhill County Soil Survey shows that the majority of the two parcels are made up of Peavine silty clay loam (PcC and PCF). However, the applicant has submitted additional soils information.
10. Taxes: Tax Lot 5734-602 has 24.19 acres on forest deferral. Tax Lot 5734-1800 has 36 acres on forest deferral.
11. Previous Actions: In 1999 a forest template dwelling (Docket FT-05-99), was approved for David Buswell on Tax Lot 5734-602. Also in 1999, the northern 13 acres of Tax Lot 5734-602 was divided off. This 13 acres was in the AF-10 zone. Tax Lot 5734-1800 has no record of past permit activity.
12. Floodplain: FIRM 410249 0407 and 410 C, shows that these properties are not within the 100-year flood hazard area.
13. Fish and Wildlife: The property is within the Peripheral Big Game Winter Range.
14. Other Factors: This application is unique in that it is a request for an essentially equal exchange between a resource zone and a rural residential zone. Although the two owners have personal reasons for making the request, they also made compelling arguments that, based on soil capability and use, the exchange between these zones makes sense. The Board accepts and adopts these arguments, contained in the application materials, which are hereby incorporated into these Findings by this reference.

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.c.: All proposed rural area development and facilities: ... (2) Shall not be located in any natural hazard area, such as a floodplain or area of geologic hazard, steep slope, severe drainage problems or soil limitations for building or sub-surface sewage disposal, if relevant;

The property is not within the 100 year floodplain, as shown on FIRM 410249 0407 and 410 C. Both properties have some slope but the eastern property, which contains the existing AF-10 zone has a much steeper 30 to 60 percent slope. Exchanging the zoning would allow additional home-sites on a more level property and would restrict dwellings on the steeper ground.

Since the parcel is nearly ten acres and has soils that are generally good for septic systems there does not appear to be any significant limitation for sub-surface sewage disposal.

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.

Policy I.B.2.a.: Yamhill County will continue to recognize that the appropriate location of very low density residential development is in designated large areas where commitments to such uses have already been made through existing subdivision, partitioning, or development and by virtue of close proximity to existing urban centers; or in small, limited areas having unique scenic, locational and other suitable site qualities where the

anticipated magnitude or density of development is not such as to require more than a very basic level of services, such as single local-road access, individual domestic wells and sewage-disposal systems, and possible rural fire protection.

Tax Lot 5734-602 had its plan designation and zoning changed by an action by the Board of Commissioners in Exceptions Statement I in 1979. Similarly, in April of 1980, the Board of Commissioners adopted Exceptions Statement II which reaffirmed that Tax Lot 5734-1800 was to be zoned AF-10.

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.

It appears the proposed zone change would cause little interference with the use of other forest land in the vicinity. The closest forest use appears to be the 160 acres to the south owned by the Bureau of Land Management. The zoning swap would maintain the same amount of AF-10 land bordering this BLM property.

3. Regarding criterion (B), the applicant showed 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).

Traditionally, the county has looked at the amount of development in the nearby exception areas. In this case the most recent development numbers we have are from, June 25, 1999. The results are as follows:

Area	Zone	Existing Lots	Developed Lots	Vacant Lots	Potential New Lots
7.2	AF-10	137	116	21	22

These number are the most recent available. It is likely that additional development has occurred since these numbers were last updated. As mentioned previously, this application is unique in that it is to exchange nearly equal amounts of land between resource and rural residential zones. Therefore, if both portions of the request are granted it would not result in appreciable increase or decrease in either resource or rural residential land. No market study was submitted with the request. The applicant has given detailed explanations as to how the proposed zones better fit the use and desires of the owners. These are accepted and adopted by this Board.

4. Regarding criterion (C), the proposed change needs to be 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. Likely the most significant change in the area has been the construction of a dwelling on Tax Lot 5734-602.

In addition it should be noted that surrounding land uses to the north are similar small size residential lots. The application explains in detail why the two lots are more suitable for the zones they are proposing to trade with. These arguments are accepted and adopted by this Board.

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. No extension of water or sewer service is proposed in this request.

5. Regarding criterion (D), the applicant showed that 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, as required by YCZO 1202.08(D). As noted above, this request is to exchange zones. The AF-10 zone and F-80 zones are both "available" for use. However, the applicant maintains that the parcels on which the zones are applied are not as well suited for the anticipated uses, and we so find. For example, the steeper property with the better forestry soils is zoned AF-10. In addition, the land that has more property in forestry use is also zoned AF-10. Conversely, the land with the poorer forestry soils that has less land in timber production and is more level, is zoned F-80 Forestry. Changing these zones would neither increase or decrease the amount in each of these zones but would arguably allow more suitable land to be zoned for development and more suitable forest land to be kept in resource use.
6. Regarding the criterion (E), an exception to Goal 4 will be required, as addressed in Section C of these findings below.

C. Goal Exception Provisions and Analysis

1. Oregon Administrative Rule (OAR) 660-04 contains the requirements for taking an exception to the goals. The requires a "reasons" exception to Goal 4 for the property going from F-80 to AF-10.
2. Oregon Administrative Rule (OAR) 660-04 contains the requirements for taking goal exceptions. OAR 660-04-020 contains four factors that must be addressed when taking an exception to a goal. They are:
 - (a) *Reasons justify why the state policy embodied in the applicable goals should not apply.*
 - (b) *Areas which do not require a new exception cannot reasonably accommodate the use.*
 - (c) *The long-term environmental, economic, social and energy consequences resulting from the use at the proposed site with measures designed to reduce adverse impacts are not significantly more adverse than would typically result from the same proposal being located in other areas requiring a Goal exception.*

(d) *The proposed uses are compatible with other adjacent uses or will be so rendered through measures designed to reduce adverse impacts.*

3. Regarding factor (a), OAR 660-04-022 states that the reasons justifying why the state policy embodied in the goal should not apply include (but are not limited to) that there is a demonstrated need for the proposed use, and either: 1) a resource upon which the use is dependent can be reasonably obtained only at the exception site and the use must be located near the resource; or 2) the use has special features or qualities that necessitate its location on or near the proposed exception site. The focus for the exception is on Tax Lot 5734-602. The application contains information on why the property has special features and qualities that make it more suitable to be zoned AF-10 than F-80. These reasons are supported by a detailed soils investigation done by Joel Norgren and Andy Gallagher. The Board accepts and adopts these materials, contained in the application, which is hereby incorporated into these Findings by this reference.
4. Factor (b), is addressed in Finding B.3. One of the questions listed in OAR-660-004-0020(2)(b)(B) is whether the proposed use could reasonably be accommodated in other areas that do not require an exception. Economic factors can be considered along with other relevant factors. The relevant factor in this case is the proposal to exchange the resource F-80 zone with a similar size of rural residential land. The reasons for this exchange are detailed in the application and are incorporated here by reference.
6. Regarding factor (c), the environmental, economic, social and energy (ESEE) analysis needs to be done. First the environmental consequences. The resulting development would be up to four single family dwelling on 40 acres, similar to that of the surrounding area. Approval of the overall request would also reduce the ability to develop four homesites on an adjacent parcel. The property is on the Peripheral Big Game Winter Range. Approval of the request should have no greater impact on the environment. In fact, if better resource land ends up being preserved it should benefit both the long term environmental and economic consequences.

There are no social or energy impacts that have been identified.
7. Regarding factor (d) the proposed uses need to be compatible with other adjacent uses or be so rendered through measures designed to reduce adverse impacts. No adverse impacts to the surrounding area have been identified.

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:*

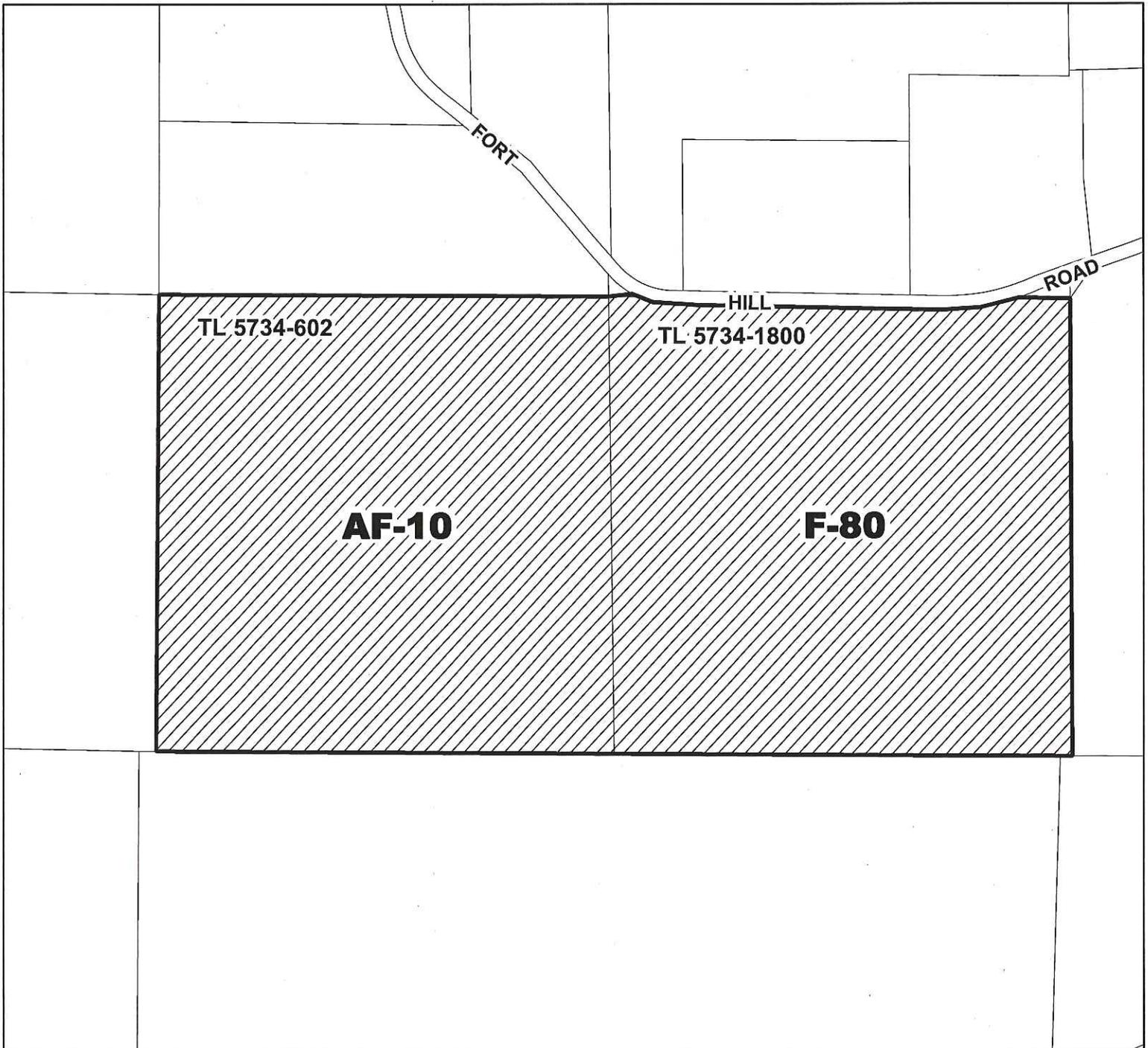
- (a) *Limiting allowed land uses to be consistent with the planned function, capacity and level of service of the transportation facility;*
 - (b) *Amending the TSP [Transportation System Plan] to provide transportation facilities adequate to support the proposed land uses consistent with the requirements 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), approval of the application would result in the same number of potential building sites that would access the same county road. Few applicants would want to exchange zoning on adjacent parcels.

CONCLUSIONS:

1. The request is for one 39.75-acre parcel to have a Comprehensive Plan amendment and zone change from Forestry to Agriculture/Forestry Small Holding; a zone change from F-80 Forestry to AF-10 Agriculture/Forestry Small Holding. The other 40-acre parcel would have a Comprehensive Plan amendment and zone change from Agriculture/Forestry Small Holding to Forestry; a zone change from AF-10 Agriculture/Forestry Small Holding to F-80 Forestry. The request includes an exception to Goal 4.
2. The proposed zone change is consistent with Comprehensive Plan goals and policies.
3. An exception to Goal 4 is justified based on a "reasons" 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.

COMP. PLAN AND ZONING EXCHANGE BETWEEN TWO ADJACENT PROPERTIES
COMPREHENSIVE PLAN AMENDMENT FROM
"AGRICULTURE/FORESTRY SMALL HOLDING" TO "COMMERCIAL FORESTRY"
ON T.L. 5734-1800 AND FROM
"COMMERCIAL FORESTRY" TO "AGRICULTURE/FORESTRY SMALL HOLDING"
ON T.L. 5734-602

ZONE CHANGE FROM "AF-10" TO "F-80" ON T.L. 5734-1800
AND FROM "F-80" TO "AF-10" ON T.L. 5734-602



Legend

-  cnty taxlots
-  Area Subject to Amendment



ORDINANCE No.: 769

B.O. 05-452

EXHIBIT "B"

DOCKET PAZ-01-05