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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 a Comprehensive Plan Amendment from)
Agriculture Forestry Large Holding to Agriculture Forestry)
Small Holding and Zone Change from EF-40 Exclusive)
Farm Use to AF-10 Agriculture Forestry Small Holding,) ORDINANCE 739
Taking an Exception to Goals 3 and 4, for a 37.5 acre)
Parcel at 12879 NE Dudley Road, Tax Lot R3315-3801,)
Applicants Glenn Martin and Cari L. Martin)

000343

THE BOARD OF COMMISSIONERS OF YAMHILL COUNTY, OREGON (the Board) sat for the transaction of county business on May 25, 2004, Commissioners Kathy George, Mary P. Stern, and Leslie Lewis being present.

IT APPEARING TO THE BOARD that Glenn and Cari Martin applied to the Department of Planning (Planning Docket PAZ - 01-04) for a Comprehensive Plan map amendment from Agriculture Forestry Large Holding to Agricultural Forestry Small Holding; a zone change from EF-40 Exclusive Farm Use to AF-10 Agricultural Forestry Small Holding; and an Exception to Goals 3 and 4.

IT APPEARING TO THE BOARD that the Matter was heard by the Yamhill County Planning Commission on April 1, 2004, which voted 6-0 to recommend approved of the application; the Board held a duly noticed public hearing on May 13, 2004, heard testimony and considered the evidence, deliberated and voted 3-0 to approve the application, and directed staff to prepare the necessary findings 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. A map is attached as Exhibit "B".

DONE this 25th day of May, 2004, at McMinnville, Oregon.

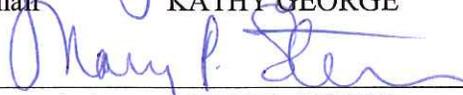
ATTEST

YAMHILL COUNTY BOARD OF COMMISSIONERS

JAN COLEMAN
County Clerk


Chair KATHY GEORGE

By: 
Deputy Carol White


Commissioner MARY P. STERN

APPROVED AS TO FORM:


Commissioner LESLIE LEWIS


Rick Sanai

EXHIBIT "A" FINDINGS FOR APPROVAL

DOCKET: PAZ-01-04

REQUEST: Approval of a Comprehensive Plan map amendment from Agriculture Forestry Large Holding to Agricultural Forestry Small Holding; a zone change from EF-40 Exclusive Farm Use to AF-10 Agriculture Forestry Small Holding; and an Exception to Goals 3 and 4.

APPLICANT: Glenn and Cari L. Martin

OWNER: Glenn and Cari L. Martin

REPRESENTATIVE: John Pinkstaff

TAX LOT: R3315-3801

LOCATION: 12879 NE Dudley Road

CRITERIA: Sections 402, 501 and 1208.02 of the Yamhill County Zoning Ordinance. Comprehensive Plan policies I.B.1.c, I.B.1.d., I.B.2.a, II.A.1.h arguably may be applicable. OAR 660-04, Exception Process. OAR 660-12-0060, Transportation Planning Rule.

A. Background Facts.

1. Property size: The parcel is 37.5 acres.
2. Access: Dudley Road. The property is also bordered on the east by Williamson Road.
3. On-site Land Use: The applicant has given a detailed description of the on site use in their application. Dudley Road runs along the bottom of a ravine that slopes down to the northeast and divides the northern third of the lot. The parcel is developed with one home site and a garage/shop building located north of Dudley Road. There is one other outbuilding located northeast of the intersection of Williamson and Dudley roads. Aside from some horses that a neighbor grazes on the property, the parcel is not presently in farm use.
4. Surrounding Land Use: The applicant has given a detailed description of the surrounding land use on page 4, item 7 of their application which is incorporated here by reference.
5. Surrounding Zoning: Zoning to the south is EF-40 Exclusive Farm use. Zoning to north, east and west is AF-10 Agriculture/Forestry Small Holding.

*Exhibit "A"
Ordinance 739
B.O.04-301*

6. Water: Provided by an on-site well.
7. Sewage Disposal: Provided by an on-site septic system.
8. Fire Protection: Newberg Rural Fire District.
9. Soils: Sheet 15 of the Yamhill County Soil Survey shows that the subject property parcel is composed of Jory soils (JrB, JrC and JrD) that are rated agriculture Class II and III. The parcel is predominately composed of high-value soils.
10. Taxes: The parcel has 21.5 acres in farm deferral. The remainder is at market value.
11. Previous Actions: A lot line adjustment was approved and completed in 1998 which resulted in the present lot configuration.
12. Floodplain: The property is not within the 100-year flood hazard area.
13. Fish and Wildlife: The property is not identified as critical fish or wildlife habitat.
14. This is an application for a comprehensive plan amendment from Exclusive Farm Use to Agriculture/Forest Small Holding (AFSH) and a zone change from EF-40 to AF-10, and for an exception to Statewide Land Use Goals 3 and 4, on a 37.5-acre parcel located on Williamson-Dudley Road west of Newberg. The applicant's intent is to prepare the property for the rural residential uses allowed in the AF-10, in keeping with the land uses enjoyed by neighboring property owners.¹ Rural residential dwellings are a permitted use in the AF-10 zone but are not allowed in the EF-40 zone. Most of the property is not now being used.

The subject property is Tax Lot R3315-3801 and is hereafter referred to as "Tax Lot 3801". Williamson Road is located about 4 miles west of Newberg on the south side of State Highway 240. At the northeast corner of Tax Lot 3801 Dudley Road branches off from Williamson, and Dudley Road bisects the parcel running east to west and Williamson Road runs north to south along the eastern boundary of the parcel. (See Vicinity Map, Exhibit 1, to the application, which is hereby incorporated into this ordinance and Findings by this reference.)

Tax Lot 3801 is currently owned by James Glenn Martin and Cari L. Martin. The site address is 12879 NE Dudley Road.

- a. Area Size: 37.5 acres.
- b. Parcels involved: 1
- c. Separate owners: 1

¹ The parcel already has one dwelling and would not qualify for another unless there is a zone change and land division. In addition, the property is not eligible for a nonfarm dwelling as currently zoned EF-40 because the soils are not predominately Class IV through VIII soils. See YCZO Section 402.03(I).

- d. Parcels developed: 1
- e. Parcels developed prior to Statewide Planning Goals (SPG):1

15. Land Use and Characteristics of Proposed Exception Area: Dudley Road is in the bottom of a ravine which runs from east to west and bisects Tax Lot 3801. On the north side of Dudley Road there is a south-facing hillside, partially wooded and partially open, which climbs from about 320 feet elevation at the bottom of the road to about 420 feet elevation at the top of the hill along the northern boundary line of the parcel, where there is a portion of a quarry. The applicants' single family residence, a detached garage/shop, and a large storm water drainage area along the road are located on this north side of Dudley Road. On the south side of Dudley Road there is an open, north-facing hillside which climbs from about 320 feet elevation at the road to about 440 feet elevation at the southern boundary of the parcel. (See Zoning Map of Surrounding Area Exhibit 2, Adjacent Area Map Exhibit 3, Aerial Photograph Exhibit 4, and Topographic Maps Exhibit 5.) (See also Site Plan for approximate location of buildings.)

There is no farming occurring on Tax Lot 3801. The applicants allow their neighbor to the west to use a portion of the open field for a few horses. The owner of Lot 3800 to the south has expressed an interest in using 5-7 acres of the southern (uphill) portions of Lot 3801 for an expansion of the existing vineyard. This shows that what little interest exists in farming this proposed exception area is limited to a small piece of the property, not the entire 37.5 acre parcel. The owner of Tax Lot 3800 believes the "major part" of the subject property is unfarmable, and they do not object to the applicant's proposed zone change and rural residential use. (See Exhibit 8.)

16. Surrounding Land Use and Zoning.

The proposed exception area is hemmed in on three sides by developed rural residential lots. Parcels to the north, east, and west are zoned AF-10 for rural residential use and parcels to the south are zoned EF-40. (See Exhibit 3.)

North. To the north is a large rural subdivision known as Chehalem Park which is zoned AF-10 and developed with rural residential dwellings on small woodlot parcels ranging from 2-10 acres on a hillside that slopes to the north and east.

West. To the west on the north side of Dudley Road is a fully developed 11-lot rural subdivision zoned AF-10 (Crestview Acres), and to the southwest on the south side of Dudley Road there are eight parcels which are zoned AF-10 and developed with rural residential dwellings on woodlot or hobby farm parcels ranging from 1-15 acres in size.

East. To the east and southeast along Williamson Road there are eight parcels zoned AF-10, between 2-5 acres, each with dwellings, and some with small farm uses.

South. To the south is a 37.5 acre parcel (Tax Lot 3800) zoned EF-40 which is south facing with a small vineyard near the top of the hill and a woodlot at the bottom of the hill. Farther to the south are larger parcels which are zoned AF-40 or EFU are either vacant or have a farm dwelling and outbuildings.

17. Water Information

There are numerous wells in this area, producing sufficient flow for domestic use. The applicants' agronomist studied well water supply in this area, considering water availability for domestic use and for crop irrigation or livestock watering. Well logs obtained from the Oregon Water Resources Department for Township 3 S, Range 3 W, Section 15 indicate there are some 85 wells in the section, permitted for domestic use, but not for irrigation or stock watering purposes. Forty-one of the wells have been dug since 1990. The agronomist's conclusion is that there appears to be no problem with water quantity in the area. (See Exhibit 12, pages 4-5 and Table 2; See also Exhibit 6.)

18. Area History

The land area now called Lots 3801 and 3800 was created in 1893 as Lots 4 and 5 of Survey CS-1309. In their original configuration, Lots 4 and 5 were both long narrow parcels which straddled both sides of Dudley Road, with their common boundary line extending in a north/south direction. In more recent times, the lots were considered a single tax lot by the county, Tax Lot 3800. (See Old Tax Lot Configuration, Exhibit 9.) In 1998, Lots 4 and 5 (Tax Lot 3800) were reconfigured by lot line adjustment (L-44-98) which changed their common boundary line from north/south to an east/west direction along topographic lines (the crest of the hill which separates the northern and the southern portions). Newly configured Tax Lot 3801 became the northern parcel which included the areas within Dudley Road (and its drainage area) and Williamson Road, and the north facing side of the hill; newly configured Tax Lot 3800 became the southern parcel separated from Dudley Road and Williamson Road, and contains the other side of the hill, with southern exposure. (See Property Line Adjustment Survey Map, Exhibit 10.) A dwelling was approved for Tax Lot 3801 in 1999. (See Exhibit 17.)

In 1980, the zoning on the area adjacent to Tax Lots 3800 and 3801 (which were a single tax lot at the time) was changed on three sides from Exclusive Farm Use to rural residential AF-10. This area, known as Exceptions Code Area 1.6, included 151 parcels mostly under 10 acres in size on 1,426 acres (See Exceptions Statement II, adopted April 23, 1980, Code Area 1.6, Exhibit 11.). Code Area 1.6 includes sections 13, 14, 15, 16, 22 and 23 and includes two platted residential subdivisions, Chehalem Park Subdivision to the north, and Chehalem Richlands to the east of Tax Lot 3801, and other small parcels with rural residential uses to the east and west of Tax Lot 3801. The County found commitment to rural residential use exists in sections 14 and 15 of Code Area 1.6 because of the dominance of evenly distributed small parcels and residential settlement. Id.

Tax Lots 3800 and 3801 (in their former configuration) were not included in the southern boundary of Code Area 1.6, and their exclusion appears as a small notch missing along the southern boundary of Code Area 1.6. The reason for their exclusion from Code Area 1.6 is not stated in the exceptions report. The exclusion probably stemmed from the size of Tax Lots 3801 and 3800 (which were at that time a single lot of approximately 70 acres), larger than the other parcels in Code Area 1.6. Also, the southern portions of this property south of Dudley Road resembled in character and use the expanse of orchards that spread southward. In retrospect, it now appears that a mapping error in the AF-10 zoning occurred because the portions of Tax Lots 3800 and 3801 (in their former configuration) which were north of Dudley Road were designated on the maps as within Code Area 1.6, but those portions of Tax Lots 3800 and 3801 located north of Dudley Road were excluded from the AF-10 zoning maps which were adopted to implement the exception areas identified in Code Area 1.6. (See Exhibit 11, maps.) As a result, it now is clear that the portion of Tax Lots 3800 and 3801 (in their former configuration) which were located north of Dudley Road should have been included in the AF-10 zone under Code Area 1.6. Therefore, the portion of Tax Lot 3801 (in its present configuration) north of Dudley Road should already be included in the AF-10 zone adopted under Code Area 1.6.

B. Overview of Request

1. Exception Requirements Met

The state exception requirements were written with much larger areas in mind than this proposed single-lot 37.5-acre exception area. This proposal is very simple. Approval of this proposed exception will add 37.5 acres to an existing 1,426 acres of AF-10 exception area located next door to Tax Lot 3801. The bases for a committed exception for the adjacent exception area (Code Area 1.6, adopted in 1980) are equally applicable to the subject parcel. Adding Tax Lot 3801 would increase the exception area by less than 3 per cent. See Finding A.13 The dominant land use in the area is rural residential hobby farms, with dwellings and pastures located on parcels that are generally less than ten acres.

There are two platted subdivisions adjacent to the proposed exception area that predate the Statewide Planning Goals: Chehalem Park and Crestview Acres. Both developments had houses in place prior to the adoption of the SPG in December 1974.²

² For purposes of a committed exception analysis, the county may consider lots in the adjacent exception area because those lots were created as part of the original Chehalem Park and Crestview Acres subdivisions, and were not created pursuant to the SPGs. See *DLCD v. Yamhill County*, 31 Or LUBA 488, 500 (1996) (“if findings were made that the adjacent exception areas were not created pursuant to the goals, development of those areas could be considered, under OAR 660-04-028(6)(c)(A), in determining if a committed exception were justified on the subject property.” Id. at n.15.

Changes have occurred in the surrounding area since 1980 which have rendered resource use of the parcel impracticable. Changes since 1980 include:

- (a) A mistake was made in 1980 that caused the two tax lots to straddle Dudley Road - the mistake was more obvious when both lots were affected;
- (b) Increased number of houses along Dudley and Williamson Roads³;
- (c) Improvement of Williamson and Dudley Roads;
- (d) Increased motor vehicle traffic due to (a) and (b) above (Residents of the 9 new dwellings use Dudley Road, at an estimated 9.5 vehicle trips per day per dwelling, a total of 85 trips per day); and
- (e) Reconfiguration of Tax Lots 3800 and 3801 that removed the preferable (for farm use) south facing portion of Tax Lot 3801, which gave the undeveloped parcel (Tax Lot 3800) the land with the best agricultural potential, removed from the influence of Dudley Road. The reconfiguration left the developed parcel (Lot 3801) with less productive land straddling Dudley Road.

As a result of these changes in the surrounding area, the proposed exception property has been committed to rural residential development.

This application contains the detailed analysis required by state rule for a developed and committed exception to State Planning Goal 3. See Findings C and D.1. The principal document is a crop suitability analysis that is responsive to the state rules for a committed exception. The conclusion: it is impracticable to use Tax Lot 3801 for farm use. The analysis focused on the surrounding property and considered the existing adjacent uses, existing public facilities and services (water and sewer lines, etc.), neighborhood and regional characteristics, factors that effectively separate Tax Lot 3801 from adjacent resource land and impede the practicable resource use, and a review of potential commercial or non-commercial farm use of the site in light of surrounding uses. (See Agronomic Suitability Analysis prepared by Tom Thomson of Northwest Agricultural Consulting ("the Thomson Report"), Exhibit 12.)

The other basis for an exception is that a "developed" exception may be taken for the development on Tax Lot 3801, consisting of a single family residence, a detached garage/shop, a septic system, a well, a driveway, a large water drainage area on the north side of Dudley Road, and Dudley Road itself, which is an improved county road built to ASHTO standards in

³According to county tax records, more than 30 dwellings have been built in Section 15 since 1980. Many of these dwellings are clustered along the Williamson-Dudley Road system that was improved in the early 1990s in order to better serve this rural residential neighborhood. Since 1980 there have been five dwellings built with Dudley Road addresses and five with Williamson Road addresses, four on Faircrest Drive, three on Rainbow Lane, two each on Berry Lane, Deer Haven Drive and Herring Lane. (See Exhibits 2 and 13.) Overall, as shown on Exhibit 2, 15 of the 16 lots that have frontage along Dudley Road have dwellings with access from Dudley Road. In addition, there are eight more dwellings located on Faircrest Drive (Crestview Acres) that directly feeds into Dudley. There is a similar clustering of residences along Williamson Road north of Dudley, where nine of the ten lots have dwellings. Rainbow Lane (5 dwellings), Berry Lane (3 dwellings), Deer Haven Drive (3 dwellings) and Herring Lane (2 dwellings) are short feeder roads providing access to Williamson Road north of Dudley.

the 1990s to serve houses clustered along Williamson and Dudley Roads. The Board finds that Tax Lot 3801 qualifies for a physically developed exception to Statewide Planning Goals 3 and 4.

2. Other Requirements Met

The Board finds that the applicant has satisfied the other requirements for this comprehensive plan amendment/zone change.

The application demonstrates compliance with the Transportation Planning Rule because two additional dwellings will not significantly affect a transportation facility, as required by OAR 660-012-0060.

The application, which requests a zone change to AF-10 to conform to the plan designation of AFSH (Agriculture Forestry Small Holding), satisfies the requirements under the zoning ordinance for a zone change. See, YCZO 1202.08. More specifically, the Board finds that: (a) the proposed change is consistent with the comprehensive plan policies, (b) there is a demonstrable need for the use; (c) the proposed change is compatible with surrounding uses, density and pattern of development, and changes which have occurred; (d) there are no other lands as well suited for the use due to location. Most of the subject property is not being used now. Use of the property for small resource use as provided in the AF-10 zone will be very well suited to the type of use which applicants wish to make of the property - - rural residential dwellings for homesteads of the type enjoyed by other small parcel owners in our community.

C. Applicable Criteria

To allow development for rural residential, the applicant is requesting a plan amendment and zone change for the three lots from EFU/EF-40 to AFSH/AF-10. The plan amendment and zone change will require an exception to be taken to Statewide Goals 3 and 4. Applicant proposes a "committed" exception to Statewide Goals 3 and 4. This will require compliance with the following approval criteria:

1. State Statutes and Administrative Rules

1.1 ORS 197.732 (Exceptions)

The proposed plan amendment\zone change seeks to add a 37.5-acre area to a "developed" or "irrevocably committed" exception area. A committed exception to Goal 3 is proposed under ORS 197.732, which provides in part:

"(1) A local government may adopt an exception to a goal if:

"(a) The land subject to the exception is physically developed to the extent that it is no longer available for uses allowed by the applicable goal;

"(b) The land subject to the exception is irrevocably committed as described by Land Conservation and Development Commission rule to uses not allowed by the applicable goal because existing adjacent uses and other relevant factors make uses allowed by the applicable goal impracticable;

1.2 OAR 660-004-0018 (Planning and Zoning for Exception Areas)

OAR 660-004-0018 explains the requirements for adoption of plan and zone designations for exceptions. "Physically developed" or "irrevocably committed" exceptions under OAR 660-004-0025 and 660-004-0028 are intended to recognize and allow continuation of existing types of development in the exception area. OAR 660-004-0018 provides as follows:

(2) For "physically developed" and "irrevocably committed" exceptions to goals, plan, and zone designations shall authorize a single numeric minimum lot size and shall limit uses, density, and public facilities and services to those:

(a) Which are the same as the existing land uses on the exception site; or

(b) Which meet the following requirements:

(A) The rural uses, density, and public facilities and services will maintain the land as "Rural Land" as defined by the goals and are consistent with all other applicable Goal requirements; and

(B) The rural uses, density, and public facilities and services will not commit adjacent or nearby resource land to nonresource use as defined in OAR 660-004-0028; and

(C) The rural uses, density, and public facilities and services are compatible with adjacent or nearby resource uses.

(3) Uses, density, and public facilities and services not meeting section (2) of this rule may be approved only under provisions for a reasons exception as outlined in section (4) of the rule and OAR 660-004-0020 through 660-004-0022.

1.3 OAR 660-004-0025

OAR 660-004-0025, which explains the exception requirements for land "physically developed" to other uses, provides as follows:

(1) A local government may adopt an exception to a goal when the land subject to the exception is physically developed to the extent that it is no longer available for uses allowed by the applicable goal.

(2) Whether land has been physically developed with uses not allowed by an applicable Goal, will depend on the situation at the site of the exception. The exact nature and extent of the areas found to be physically developed shall be clearly set forth in the justification for the exception. The specific area(s) must be shown on a map or otherwise described and keyed to the appropriate findings of fact. The findings of fact shall identify the extent and location of the existing physical development on the land and can include information on structures, roads, sewer and water facilities, and utility facilities. Uses allowed by the applicable goal(s) to which an exception is being taken shall not be used to justify a physically developed exception.

1.4 OAR 660-004-0028 (Exception for Land Irrevocably Committed to Other Uses)

This application proposes an exception to Goals 3 and 4⁴ because the subject property, while designated for Exclusive Farm Use, is irrevocably committed to rural residential use due to the nature of existing development on surrounding properties and other relevant factors discussed below.

The framework for irrevocably committed exceptions set forth in OAR 660-004-0028. OAR 660-004-0028(1) allows a local government to adopt an exception to a statewide planning goal "when the land subject to the exception is irrevocably committed to uses not allowed by the applicable goal because existing adjacent uses and other relevant factors make uses allowed by the applicable goal impracticable[.]" OAR 660-004-0028(2) requires that a committed exception determination must address certain factors, particularly the characteristics of the exception area, i.e. the subject property, characteristics of the adjacent lands, and the relationship between the exception area and adjacent lands.⁵ OAR 660-004-0028(3) requires

⁴ A Goal 4 (Forest Lands) exception is not required because the parcel is zoned Exclusive Farm Use (EF-40) and the parcel is not in predominantly forest use. However, it may be argued that some of the soils are suitable for forestry. Therefore, a Goal 4 exception will also be taken. (See Finding D.1.11.)

⁵ OAR 660-004-0028(2) provides:

"Whether land is irrevocably committed depends on the relationship between the exception area [i.e. the subject property] and the lands adjacent to it. The findings for a committed exception therefore must address the following:

- "(a) The characteristics of the exception area;
- "(b) The characteristics of the adjacent lands;

that for an exception to Goal 3 (Agricultural Lands), the local government must demonstrate that "farm uses" as defined in ORS 215.203 are impracticable in the exception area. OAR 660-004-0028(4) requires that a committed exception must be supported by findings of fact addressing all applicable factors of OAR 660-004-0028(6) and explain why those facts support the conclusion that the uses allowed by the applicable goal are impracticable in the exception area.⁶

D. Analysis.

This request for a plan amendment and zone change under Yamhill County Zoning Ordinance (YCZO), for a "developed and committed" exception under ORS 197.732(1)(c) and the implementing administrative rules, satisfies the applicable approval criteria for the reasons set forth below:

-
- "(c) The relationship between the exception area and the lands adjacent to it; and
 - "(d) The other relevant factors set forth in OAR 660-04-028(6)."

⁶ OAR 660-004-0028(6) provides, in relevant part:

"Findings of fact for a committed exception shall address the following factors:

"(a) Existing adjacent uses;

"(b) Existing public facilities and services (water and sewer lines, etc.);

"(c) Parcel size and ownership patterns of the exception area and adjacent lands:

"(A) Consideration of parcel size and ownership patterns under subsection (6)(c) of this rule shall include an analysis of how the existing development pattern came about and whether findings against the Goals were made at the time of partitioning or subdivision. 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. Resource and nonresource parcels created pursuant to the applicable goals shall not be used to justify a committed exception. * * *;

"(B) Existing parcel sizes and contiguous ownerships shall be considered together in relation to the land's actual use. For example, several contiguous undeveloped parcels (including parcels separated only by a road or highway) under one ownership shall be considered as one farm or forest operation. 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. Small parcels in separate ownerships are not likely to be irrevocably committed if they stand alone amidst larger farm or forest operations, or are buffered from such operations.

"(d) Neighborhood and regional characteristics;

"(e) Natural or man-made features or other impediments separating the exception area from adjacent resource land. * * *;

"(f) Physical development according to OAR 660-04-025; and

"(g) Other relevant factors."

In addition to a plan amendment/ zone change , this application requests an Exception to Statewide Land Use Goal 3 (Agricultural Lands) and Goal 4 (Forest Lands).

1. Irrevocably Committed. [OAR 660-004-0028 (Exception Requirements for Land Irrevocably Committed to Other Uses)

The Board finds that the application for a "irrevocably committed" exception on Tax Lot 3801 satisfies the requirements of OAR 660-004-0028 based upon factors which make uses allowed by the applicable goals impracticable, as more fully explained below. Oregon Administrative Rule 660-04-028(2)&(6) list the exception requirements for land irrevocably committed to other uses. These Rules require consideration of the following factors:

1.1 Characteristics of Exception Area {660-04-028(2)(a)}:

See Findings A.6; D.2.

From the Thomson Report:

“The subject property currently is developed with a mobile home residence and some outbuildings on the northern edge of the property. The northern property line bisects an old quarry. The property is effectively divided into three areas by Dudley and Williamson Roads. The NE Corner contains a small and steep 1.08 acre piece with a creek bed in the western half. The NW Corner contains a 9.44 acre piece on which the residence and outbuildings and associated facilities are located. This portion has a southern aspect and slopes to the south down to Dudley Road. The Southern two-thirds of the parcel has a northern aspect and an average 15% upward slope from Dudley Road at the north to the southern property line.

“The property north of Dudley Road is vegetated with trees and brush with a small sections of vacant land adjoining Dudley Road. The southern two-thirds of the property is currently fallow. The property appears to not have been recently utilized for any agricultural enterprise although aerial photographs show that the land was used as an orchard as recently as 1994.” (Exhibit 12, page 3)

Both Dudley Road and Williamson Road cross this property. Residents of the adjacent area use these roads for access. As shown on Exhibit 2, all of the lots in the vicinity to the west or southwest of Lot 3801 must use Dudley Road and cross the subject property.

1.2 Characteristics of Adjacent Lands {660-04-028(2)(b)}:

See Finding A.7.

From the Thomson Report:

“The majority of the acreage surrounding the subject property is small rural residential properties. A 1980 study of the area (Code Area 1.6 Chehalem Richland/Sunnycrest) found that the area within Sections 14 and 15 was committed to rural residential use ‘because of the

dominance of evenly distributed small parcels and residential settlement.' Taxlots 3801 and 3800 were excluded from the Code Area at the time, however the intervening 23 years have intensified the pattern of development. The area of Section 15 surrounding the subject property contains small parcels of 5 to 15 acres, excepting Tax Lot 3800 to the south. To the east, Section 14 is also highly developed with small parcels. Larger parcels occur to the south and west in Section 22/23 and Section 16, respectively. The predominate agricultural use in the smaller parcels appears to be residential or hobby farms with fenced pastures for livestock use. Some larger parcels to the southeast and northwest appear to be utilized for hay, vineyard, livestock, or grass seed production.

"The following detailed analysis is based upon the development in Section 15:

North The northern half of Section 15 has 39 parcels. Thirty-three are contained in a high density area known as Chehalem Park comprised primarily of rural residential dwellings on small parcels ranging averaging less than 5 acres, while the other six parcels are zoned AF-10 and are accessed from Highway 240. Most of the parcels have dwellings and outbuildings on them.

East Immediately to the east, there are 16 parcels zoned AF-10 which are accessed from Williamson Road. Most of these parcels have dwellings and range in size from 2.5 to 14 acres. The small farm uses consist of pasture for sheep, horses, and cattle.

South One large 37.5 acre parcels occupies the area immediately south of TL3801 and has a small vineyard on the property. Larger EFU parcels also occur in Section 22. The parcels are either vacant or may have a farm dwelling and outbuildings.

West This area is a complex grouping of six AF-10 parcels ranging in size from 1.5 to 9.7 acres in the south with an 11-lot development known as Crestview Acres in the north. The lot size in Crestview Acres ranges from 0.8 to 1.5 acres with an average of about 1 acre. Dudley Road divides the development from the AF-10 lots. Crestview Acres is strictly a residential area, while the AF-10 parcels are hobby farms." (Exhibit 12, pages 3 & 4)

1.3 Relationship between Exception Area and Adjacent Land {660-04-028(2)(c)}:

See Findings A.7; B.

From the Thomson Report:

"The use of the land in the area appears to be mainly rural residential with a myriad of parcel sizes. To the north, the parcels are smaller and residential in character while to the south the parcels are residential hobby farms. The subject property is one of the last undeveloped parcels in Section 15. Currently there is no apparent commercial agriculture enterprises occurring in Section 15 and 16, except some grapevines on Tax Lot 3800 to the south." (Exhibit 12, page 4)

The intense rural residential development on adjacent lands means more motor vehicle traffic through the proposed exception area from adjacent developed parcels with access to Dudley Road or Williamson Road. (See Footnote 4.)

The proposed exception area is similar in character to the adjacent lands that are zoned AF-10. The property has not been recently used for farm use. However, a 1992 air photo appears to show that this property previously contained an orchard. A neighbor, Teri Griffin, submitted a letter of opposition asking for verification that the parcel could not be farmed and stating that in years past the land had been successfully farmed and suggested that recent efforts to farm were deficient in process and effort; i.e. soil preparation. Griffin provided no supporting evidence. This was rebutted by the testimony from agronomist Tom Thomson and the Thomson report which indicates that farm uses including an orchard would be impracticable due to the conflicts with neighboring rural residential uses due to noise, chemical trespass (spraying up to 9 times per year) and dust (also see finding D.1.10). The applicant further explained why the property cannot be planted to an orchard by submitting a letter from Ted Zylstra (Exhibit 19). Mr. Zylstra is the farmer who removed the orchard, who indicates that the parcel had thin and shallow soil and was not a good orchard site, the prunes were old and there was no market, the walnuts had low yields, short life and limited processing availability, the hazelnuts had a low yield and the oats had a low yield. Additionally, Glenn Martin made good faith but unsuccessful efforts to farm the parcel or to lease it out (see Finding 1.10, and testimony of Glenn Martin).

1.4 Existing Adjacent Uses {660-04-028(6)(a)}:

See Findings A.7; D.1.2.

From the Thomson Report:

“As noted above the predominate use of the land in the area surrounding the subject property is rural residential. The main hobby farm uses appear to be small livestock, hay, and/or pasture.” (Exhibit 12, page 4)

1.5 Existing Public Facilities and Services (water and sewer lines etc){660-04-028(6)(b)}:

See Findings A.8 and A.11.

From the Thomson Report:

“This area appears to have a high degree of ground water variability. Well logs from section 15 were downloaded from Oregon Water Resources Department (see attached Well Log Data for Yamhill County). Section 15 has 87 producing wells with an average depth of 186 feet and an average yield of 27.0 gallons per minute (gpm). The yield range was 0 to 250 gpm for completed wells with only 5 wells greater than 50 gpm and 2 wells less than 5 gpm.

“Assuming that TL 3801 might be able to get the same yield as the average well for the section of 27 gpm, the following assumptions may be made. At 25 gpm and running continuously, the hypothetical well would produce 38,880 gallons per day or enough water to cover 1 acre to a depth of 1.4 inches. Based on average early (April) and late (August) season

evapotranspirational (ET) values of 0.1 and 0.4 inches per day, this average well could supply enough water to meet ET demands every 14 days in April and every 3.6 days in August. Irrigation system needs are usually based on the worst case estimate, therefore 3.6 acres would be the maximum amount of acreage this well could supply if it ran continuously to supply average ET needs. However, this would make no allowance for higher than average ET nor system breakdowns.

“Table 2 also shows that of the total number of producing wells, 10.3% (9 wells) were drilled prior to 1970, 26.4% (23 wells) between 1970-1979, 16.1% (14 wells) between 1980-1989, and 47.1% (41 wells) since 1990. All 87 of the wells are permitted for domestic use with none permitted for irrigation or livestock use. This pattern reflects the increasing density of dwellings sited in the area.

“It is interesting to note that prior to 1990 the mean flow for all producing wells was 22.5 gpm while the mean flow for all producing wells irrespective of date drilled is 28.9 gpm. One may interpret these statistics as meaning that there appears to be no problem with water quantity in the area. (Exhibit 12, pages 4-5)

1.6 Parcel Size and Ownership Patterns of Exception Area and Adjacent Land.

{660-04-028(6)(c)}

See Findings A.7, A.13, D.1.2, D.1.3, D.1.4.

(A) Parcel Size, Development and Ownership Patterns.

The proposed exception area is a single lot of 37.5 acres. Lot 3801 is adjusted from an original lot created in 1893 as part of Survey CS-1309. This property is heavily influenced by the smaller parcels and rural residential land use on adjacent lands to the west, north and east in the Code Area 1.6 exception area, adopted in 1980 and zoned AF-10. Many of the exception parcels are developed with single family dwellings.

The adjacent land to the east, west and north is the 1980 AF-10 exception Code Area 1.6. The applicant's address map of the surrounding area (Exhibit 3) includes all or part of 85 tax lots. There are dwellings on 67 of the lots. Eleven of the lots are in groups of lots owned by the same party: two owners have four lots apiece, and one owner has three lots. The majority of the lots are less than five acres in size. Forty-four of the lots are less than five acres (52 %), 18 of the lots are from five to 9.99 acres (21 %), 11 of the lots are from 10 to 14.99 acres (13 %), two lots are 15 to 19.99 acres in size (2 %) and 10 of the lots are 20 acres or larger (13 %). (See Exhibits 3 & 13.) According to the findings for Code Area 1.6, 72 lots under ten acres in size had dwellings in 1980. (Exhibit 9)

The Crestview Acres Subdivision (3 3 15CB all lots) is located adjacent to the subject property on the west. The subdivision has eleven lots, which average just over one acre in size. There is a dwelling on each lot. Each lot has a different owner.

The Chehalem Park Subdivision (3 3 15 Lots 2000 - 2304) is located due north of the subject property. This rural subdivision has 31 tax lots, which average 4.5 acres in size. There are dwellings on 19 of these lots. One party owns four of these lots (George T. Berry, Lots 2000, 2006, 2011, and 2014) and another party owns five lots (Bland and Lea Herring, Lots 2300, 2301, 2302, 2303, and 2304).

The adjacent land to the south includes several larger parcels - 37.5 acres, 87.5 acres, 24.4 acres and 40 acres, and the zoning is EF-40. (3 3 15 3800 & 3 3 22 600, 700 & 701) These tax lots are in separate ownership. All three Section 22 parcels have dwellings. These and other larger parcels to the southeast and northwest "appear to be utilized for hay, vineyard, livestock or grass seed production." There is a small vineyard on Lot 3800. (Exhibit 12)

(B) Parcels and Ownership in Relation to Actual Use.

The use of land in Section 15 is primarily rural residential, with numerous dwellings on relatively small parcels. (See Exhibit 4.) "The main hobby farm uses appear to be small livestock, hay, and/or pasture." (Exhibit 12, page 4.) These small parcels in separate ownerships were considered committed to development by the county in Code Area 1.6, with lots and dwellings clustered in a large area and along the highway. (See Finding A.13.) As shown on the Adjacent Area Map (Exhibit 3), there are dwellings on nearly 80 % of the parcels (67 of the 85) in the area surrounding the subject property. The subject property is one of the last undeveloped parcels in Section 15. In the area shown on the Adjacent Area Map, there are 74 land owners for the 85 lots, and 71 of the landowners own just one lot. (Exhibits 3 and 13)

Most of the dwellings on the parcels shown on the Adjacent Area Map are clustered along the Williamson Road and Dudley Road system, which provides access to Highway 240, which in turn serves to connect this rural area with the urban shopping centers in Newberg.

According to county tax records, more than 30 dwellings have been built in Section 15 after 1980. Many of these dwellings are located along the Williamson-Dudley Road system that was improved in the early 1990s in order to better serve this rural residential neighborhood. Since 1980 there have been five dwellings built with Dudley Road addresses and five with Williamson Road addresses, four on Faircrest Drive, three on Rainbow Lane, two each on Berry Lane, Deer Haven Drive and Herring Lane. (See Exhibits 2 and 13.) Overall, as shown on Exhibit 2, 15 of the 16 lots that have frontage along Dudley Road have dwellings with access from Dudley Road. In addition, there are eight more dwellings located on Faircrest Drive (Crestview Acres) that directly feeds into Dudley. There is a similar clustering of residences along Williamson Road north of Dudley, where nine of the ten lots have dwellings. Rainbow Lane (5 dwellings), Berry Lane (3 dwellings), Deer Haven Drive (3 dwellings) and Herring Lane (2 dwellings) are short feeder roads providing access to Williamson Road north of Dudley. (Exhibit 13)

There is no intensive farm or forest use anywhere close to the subject property. The larger parcels to the south and northwest, even if they were in active farm use, would not likely be interested in farming the subject property in conjunction with their existing plots, for the reasons discussed on pages 6 and 7 of the Thomson Report (Exhibit 12). The owner of Lot 3800 to the south has expressed an interest in using 5-7 acres of the southern (uphill) portions of Lot 3801 for an expansion of the existing vineyard. This shows that what little interest exists in farming this proposed exception area is limited to a small piece of the property, not the entire 37.5 acre parcel. The proposed AF-10 zoning would allow this type of low-key agricultural use of portions of this property, while also allowing the majority of the site to be used for rural residential purposes, in keeping with the majority of land use in the vicinity.

1.7 Neighborhood and regional characteristics {660-04-028(6)(d)}: See Finding A.7.

From the Thomson Report:

“As noted above, the main use of the area surrounding the subject property is rural residential. The subject property is essentially the bottom of a “bowl” surrounded by AF-10 and RR properties of less than 10 acres. The area is lightly wooded so most of the existing dwellings are visible from any area. As such, the area has the appearance of a neighborhood. Tax Lot 3800 to the south slopes away from this neighborhood.” (Exhibit 12, page 5; See also Exhibit 4.)

- 1.8 Natural or man-made features or other impediments separating the exception area from adjacent resource land , such as roads, water courses, utility lines, rights of way, that effectively impede practicable resource use of all or part of the exception area {660-04-028(6)(e)}:

From the Thomson Report:

“Dudley Road is the main feature of the land and the main focal point of the area. As noted above the road divides the subject property along an east-west line leaving the residence and outbuildings separated from the rest of the property. A previous routing of Dudley Road has left a large graveled drainage area in the middle of the property which is relatively unusable.” (Exhibit 12, page 5)

- 1.9 Physical development {660-04-028(6)(f)} & {660-04-025}:
See Findings A.6 and A.7.

OAR 660-04-025 requires that areas found to be physically developed shall be clearly set forth in the justification for the exception. OAR 660-04-025 further explains that “findings of fact shall identify the extent and location of the existing physical development on the land and can include information on structures, roads, sewer and water facilities, and utility facilities.”

Two public roads make considerable land use of the subject property. (See Exhibit 3.) Williamson Road enters the northeast corner of the property from the north and continues along the length of the eastern lot line. Dudley Road begins at its intersection with Williamson Road in the northeast corner of the property, then continues west across Tax Lot 3801. Dudley Road is a county road built to ASHTO standards. The land devoted to Dudley Road is bulb-shaped area that is more than 200 feet wide in places, and the right-of-way includes a graveled drainage area on the north side of the traveled road that is left over from the earlier alignment of Dudley Road.

All of the private development on the proposed exception area is located north of the Dudley Road area. The applicants’ single family residence and a detached garage/shop are located on a hill and there is a driveway from Dudley Road up hill to the dwelling area. There is no development on the land south of Dudley Road.

The existing dwelling is served with a well and a septic system on the property, and public utilities such as electricity (PGE) and telephone service are available to the property.

1.10 Other relevant factors {660-04-028(6)(g)}:

Resource Use and Soils

The most significant factor that is not considered specifically in the state rules is the lack of potential for resource use of the proposed exception area. The following analysis of the farm use potential for Lot 3801 was prepared by Northwest Agricultural Consulting (the Thomson Report), which is attached as Exhibit 12.

“A. Commercial resource use in the area is impracticable due to the following factors:To determine whether resource uses could be established on the property, the soils must be evaluated. As noted in the Thomson Report, the main soil types on this parcel are Jory and Willakenzie.

“Although the soils are capable of producing many of the crops currently grown in the Willamette Valley, this parcel is not currently utilized for commercial agriculture. Although a farmer might lease the property for commercial agriculture, the primary consideration for them would be proximity to their existing operations and/or other leased parcels. A commercial farmer would not be inclined to move large farm machinery any great distance to farm 30 acres unless there was other fields in the immediate area.

“The southern portion of the subject property (approximately 27 acres) might be utilized by some farmer willing to bring commercial equipment into the area. However, when Mr. Martin attempted to find a farmer interested in leasing the land, the only farmer who responded stated that he would not be interested and thought that nobody else would either. The owner has spoken to the vineyard operator on TL 3800 who has stated that he is not interested in leasing or buying the property due to the northern aspect and slope of the land. A small portion of about 5-7 acres located on the southern property line might be employed for grape production if the slope does not increase too much to the north.

* * * * *

“One main consideration would be the conflicts which might arise, given the current character of the area immediately adjacent to the subject property, if a commercial agricultural enterprise was undertaken on the parcel. Potential conflicts might arise due to noise, chemical trespass, odors, dust, etc – all components of many farming activities. Large commercial operations need to operate on fairly tight schedules due to windows of operation dictated by weather and crop growth stage. Often this might involve performing operations early in the morning, late in the evening, or on weekends. Soil tillage operation create dust and noise, pesticide sprays create odors and make some people upset, harvest operations work long hours and create noise and dust, all of which can affect good neighbor relationships.”

* * * *

“Based upon the above observations, examples, and soils data as well as my own experience, both as a farmer and agricultural consultant, TL 3801 will most likely not be utilized for any commercial agricultural operations and due to the high density of residential properties currently surrounding the subject property, it may be the best use of the property to allow a smaller parcel size and use the created parcels to decrease development pressure on larger parcels better suited for commercial agriculture.”

“In conclusion, considering the characteristics of the subject parcel, the characteristics of adjacent lands, and the relationship between the two; it is impracticable to use the subject parcel for commercial farm use based on the factors as discussed.”

(Exhibit 12, pages 6-7)

(See also, Finding D.1.11.B for analysis of forest use on the property.)

B. Noncommercial resource uses are impracticable because of the following factors:

It is impracticable to use the parcel for commercial or noncommercial agricultural uses, particularly since the reconfiguration due to the lot line adjustment resulted in removal from the parcel of the more productive south facing land to the south.

The impracticality of using the north facing slope on the subject parcel for farming was experienced first hand by the current owner, Glenn Martin. In 1999, Mr. Martin purchased the land and about \$40,000 worth of equipment (including a tractor) for the purpose of growing crops (vineyard, hay). The goal was to plant a vineyard. The 1998 lot line adjustment (changed lots to north/south configuration) was intended to accommodate potential for vineyard. (See Exhibit 10 - The application claims the property is “ideally sited for growing grapes.”) Given that it costs \$20,000 per acre to establish a vineyard, \$5,000 per year to maintain a vineyard, and that any return in the future would be speculative because the vineyard industry is in very poor economic times, it would take at least 10 years or more before one could hope to possibly recoup the investment even if a high quality grape was successful. Ken Wright, a respected farming expert, advised against it. Wright said only a few acres of the land (Lot 3801) is useable for vineyard, and those few acres were too small an area to recoup costs for planting and maintaining a vineyard. Therefore, a reasonable person would not invest the necessary amount of time, energy and money in cultivating grapes or any other crop on the parcel for noncommercial farming because doing so would mean that they would be doing so at a loss or very little possibility of making any money doing so.

Frustrated by the vineyard news, Martin tried to plant hay, but couldn't make money with hay. Martin has been unable to even break even doing farming. He was advertised that the property

was available for lease farming, but was told by the farmer who showed up that no reasonable farmer would be interested in this land. Factors that caused problems included size, slope, spray, dust - close to houses, can't break even farming. Martin said he thought about Christmas trees, but aerial spraying would be problem; he was concerned about over spraying onto neighbor's lands.

After the failed farming attempts, Martin sold the equipment at a loss for about \$27,000 because he was losing money trying to farm the property, due to the small size of the parcel, the slopes which made it difficult to work the tractor on the hillside, and the existence of Dudley Road, a busy county road he had to cross to reach the area of cultivation.

As it was stated in the Thomson Report:

“With regard to noncommercial agricultural uses, the question then is whether the current owner or another reasonable person would consider it worthwhile to invest time, energy, and money in this property to produce livestock or crops in such a highly developed residential area. Mr. Martin bought the property with the intention of establishing a vineyard, even purchased farm equipment, but was advised by Mr. Ken Wright, a farming consultant, that the property had too few acres suitable for grape production to recoup the establishment costs in a reasonable time. Mr. Martin then attempted to produce hay on the property, but did not find the endeavor to be profitable.” (Exhibit 12, page 7)

For these reasons, it is impracticable to use the property for commercial or noncommercial agricultural uses. (See also, Finding D.1.11.B for analysis of forest use on the property.)

1.11 Farm and Forest Use

As mentioned earlier, for exceptions to Goals 3 and 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)⁷.

⁷ Uses referenced in OAR 660-033-0120 are specified in Table 1 attached to the rule. As relevant here, Table 1 merely states that propagation or harvesting of a forest product is allowed on all soil types.

OAR 660-006-0025(2)(a) reads as follows: *Forest operations or forest practices including, but not limited to, reforestation of forest land, road construction and maintenance, harvesting of a forest tree species, application of chemicals, and disposal of slash.*

A Goal 3 Exception is clearly required because of the EF-40 zoning. A Goal 4 (Forest Lands) exception is taken although it may not be required because the parcel is zoned Exclusive Farm Use (EF-40) and the parcel is not in predominantly forest use.

A. Farm Use. The Thomson Report findings clearly establish that farm use as defined in ORS 215.203 is impracticable on the subject property.

“As used in this section, "farm use" means the current employment of land for the primary purpose of obtaining a profit in money by raising, harvesting and selling crops or the feeding, breeding, management and sale of, or the produce of, livestock, poultry, fur-bearing animals or honeybees or for dairying and the sale of dairy products or any other agricultural or horticultural use or animal husbandry or any combination thereof.”

ORS 215.203(2)(a)

The key phrase in the definition is “for the primary purpose of obtaining a profit in money.” For the reasons discussed in Finding 1.10 above and the Thomson Report, obtaining a profit from this property from “farm use” is not likely. The reasons, in summary:

“In conclusion, considering the characteristics of the subject parcel, the characteristics of adjacent lands, and the relationship between the two; it is impracticable to use the subject parcel for commercial farm use based on the factors as discussed.” (Exhibit 12, page 7)

(See also Finding D.1.10.B for discussion of Martin’s farming frustrations.)

B. Forest Use. Despite the above analysis of farm use for the Goal 3 exception, it may be argued that there must be a Goal 4 exception taken because a portion of the parcel contains soils which have a forest site classification, viz., Jory soils which have a forest site class of 3c1 and Willakenzie soils with a forest site class of 2C1, which are suitable for growing douglas fir, comprise about 97% of the parcel, or about 36 of the 37.5 acres. Therefore, in the alternative, a Goal 4 Exception is taken, and the Board finds that the it is impracticable to use the subject parcel for forest use for the following reasons.

First, it is impracticable to use the subject property for forest use for the same reasons it is impracticable to use the parcel for farm use, considering the existing adjacent uses, existing public facilities and services (water and sewer lines etc), neighborhood and regional characteristics, factors that effectively separate the parcel from adjacent resource land and impede the practicable resource use of the site. (Exhibit 12)

Second, as explained above, additional dwellings can generate complaints against the sight and sounds generated by accepted forest practices, and lead to nuisance complaints against such activities as clear cutting and log hauling from neighboring properties. Although the most appropriate use of the property is for growing commercial tree species, for managed timber

operations, the increase in development means that complaints are more likely to be made against various forest practices, such as reforestation, road construction and maintenance, harvesting, application of chemicals, and disposal of slash, resulting in noise, aerial spraying, slash burning, and use of large equipment to clear, cut and buck, and haul harvested timber. Applicant's representative has discussed the effect of houses on forest operations with Jim Letourneux, a professional forester in Yamhill County, who has indicated that forest operations are experiencing frequent complaints from neighbors against the noises and impacts of accepted forest practices, such as clear-cutting. Moreover, application of chemicals and aerial spraying is likely to generate complaints from the vineyard land to the south of the subject parcel.

Applicants believe that accepted forest practices should not be hampered by such complaints, and in order to provide assurance that no nuisance claims will be made by the owner or occupant of the subject lots, applicants will agree, as a condition to the approval of an exception, to voluntarily sign an affidavit⁸ under which the owner and occupants would recognize the right of surrounding properties to engage in accepted forest practices under acknowledging a declaratory statement to be recorded in the deed and mortgage records recognizing that accepted forest practices may create inconveniences and that it is not the timber operator's responsibility to modify such practices to accommodate the owner of occupant of the property with the exception of operator's violation of state law, including the state Forest Practices Act.

1.12 Rural vs. Urban Lot Sizes:

See Finding C.1.2 {OAR 660-004-0018(2)}

If the proposed exception and plan amendment zone change is allowed, the Board must address whether the size of lots would be at an urban or rural scale. The proposed exception area would allow AF-10 zoning which has a minimum parcel size of 10 acres for newly created parcels (except in case of parcel size averaging the minimum parcel size is 5 acres) See YCZO 501.06.B.1. The subject parcel is hemmed in by parcels in Code Area 1.6 which are primarily 2-10 acres in size. If this application is approved, it would allow a total of three parcels on 37.5 acres, with each parcel being an average of at least 10 acres in size. Ten-acre parcels are considered rural not urban in scale, where they are suitable for sparse settlement, small farms, or acreage homesites with no or hardly any public services. See, 1000 Friends of Oregon v. LCDC (Curry Co.), 301 Or 447, 499 (1986). Moreover, this density is similar to the 10-acre physically developed lots in Code Area 1.6, which have been acknowledged by the Land

⁸ The affidavit would be similar to the form affidavit required under YCZO 403.08(E), acknowledging a declaratory statement to be recorded in the deed and mortgage records to recognize that accepted agricultural operations may create inconveniences and that it is not the agricultural operator's responsibility to modify such practices to accommodate the owner of occupant of the property with the exception of operator's violation of state law.

Conservation and Development Commission as being rural rather than urban. Therefore, the Board finds that allowing one dwelling per ten acres is a rural, not an urban, scale of use.

2. OAR 660-04-0025 (Exception Requests for Land Physically Developed to Other Uses)

The Board finds that Tax Lot 3801 is physically developed to the extent that it is no longer available for uses allowed by the goal as required by OAR 660-04-0025. The nature and extent of the area found to be physically developed is described as follows.

2.1 Physically Developed: Existing Features

Structures inside the proposed exception area include a residence and a detached garage/shop building. Other development on the site includes a septic system, a well, a driveway, a large water drainage area along the north side of Dudley Road, and Dudley Road itself.

2.2 Roads

Dudley Road is a significant development that crosses the proposed exception area from east to west, and separates the site into two distinct areas. More importantly, Dudley Road allows other people in motor vehicles to use this property. Dudley Road and Williamson Roads are public roads used by an increasing number of residents. Dudley Road begins in the northeast corner of the subject property. This means that all of the traffic that uses Dudley Road drives through the proposed exception land. According to assessor records (Exhibit 13), there are at least 18 dwellings with addresses on Dudley Road, and another nine dwellings on Faircrest Drive, which feeds onto Dudley Road. According to a letter from the county's Public Works Department, a single family dwelling averages 9.57 trips per day. (Exhibit 14) At that rate, there are approximately 250 vehicle trips a day on Dudley Road, all of which must pass through the proposed exception area.

Williamson Road enters the subject property just north of Dudley Road, then continues along the eastern boundary of Tax Lot 3801. Thus all the traffic coming from Highway 240 that does not turn unto Dudley Road, must continue Williamson Road through the proposed exception area. In other words, as shown on Exhibit 3, all traffic south of Chehalem Park subdivision uses this proposed exception area. Williamson Road connects with Red Hills Road to the west, but surely a high percentage of the traffic from the developed tax lots in Section 15 and the northern portion of Section 22 uses the portion of Williamson Road that passes through the subject property, which is the most direct route to Highway 240. It is reasonable to assume that at least half of the traffic from the lots shown in the lower right quarter of the Exhibit 3 map use this portion of Williamson Road. There are dwellings with Williamson Road addresses on 33 15 Lots 2600, 2700, 2800, 2900, 3000, 3100, 3200, 3400, 3401, 3500 and 3700; and 33 22 Lots 300, 500 and 600 - - 14 dwellings. At the accepted rate of 9.57 trips per day per dwelling, that's a total of 133 trips per day. If only half of those trips use the northern section

of Williamson Road, that's another 67 trips passing through the subject property (adding to the Dudley Road traffic), for a total of 317 trips. Regardless of the exact number, that's a lot of traffic passing through the proposed exception property every day.

2.3 Sewer, Water and Utility Facilities

No sewer or water services will be required because there is an on-site well and there will be a subsurface sewage disposal system installed. The property is currently served with electrical power by PGE, and within the Newberg Rural Fire District.

2.4 Area Physically Developed

The encroaching nature of the two public roads that use the proposed exception land means the development of the surrounding area, especially south of the subject's northern property line has a significant impact on the use of the subject property. There are at least 27 residential properties that use Dudley Road (with addresses on Dudley or Faircrest). Exhibit 13

The impact has increased since the adjacent area was designated an exception area in 1980. Since 1980 there have been five dwellings built on Dudley Road (33 16 Lots 1700, 1900, 2000; 33 21 Lots 100, 105), four dwellings on Faircrest Drive (which branches off from Dudley Road), and three dwellings on Williamson Road adjacent to the subject property (33 15 Lots 2900, 3400; 33 22 Lot 600) Exhibit 13

As noted in several other places in this narrative, the subject property is in the middle of a large, long-standing rural residential development. The portion of Tax Lot 3801 north of Dudley Road is similar in size and development to numerous other parcels to the west, north and east. See Findings D.1.2 and D.1.6. As shown on the Adjacent Area Map (Exhibit 3), there are dwellings on nearly 80 % of the parcels (67 of the 85) in the area surrounding the subject property.

3. OAR 660-0012-0060 (Transportation Planning Rule)

OAR 660-0012-0060(1) provides that *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 performance standards (e.g. level of service, volume to capacity ratio, etc.) of the facility.*

The impact of two additional residential dwellings upon the roads is addressed in a memo from Bill Gille, Director Yamhill County Public Works. (See Exhibit 14.) As noted in the letter, research for traffic generated by a single-family detached housing shows an average rate of 9.57 trips per day. Therefore, two additional lots would be expected to generate approximately 19 additional trips per day. The Board finds that the proposed use will be

consistent with current traffic levels and will not significantly affect a transportation facility, and therefore satisfies OAR 660-0012-0060(1).

4. Ordinance Provisions and Analysis

4.1. YCZO section 1204 (Exceptions to Statewide Goals)

YCZO Section states that exceptions to statewide goals are subject only to the requirements of the Oregon Administrative Rules discussed above. Therefore, the Plan Amendment portion of this request is not subject to local review criteria.

4.2. YCZO section 1208.02 (Quasi-Judicial Zone Changes)

Code Area 1.6 is a reasonable *study area* for purposes of YCZO 1208.02 (B) and (D), for the following reasons.

In past decisions the County has refined what is required in terms of a study area to satisfy Section 1208.02(B) and (D). In past applications, the County has used exception areas in the vicinity of a subject property to comprise the study area required by the phrases “other lands so zoned” in Subsection B and “other lands in the County” in Subsection D. The County has interpreted these subsections to require that the study area need only contain residential land in the vicinity of the subject property. The County has also interpreted the phrase ‘other lands in the County’ to mean other property located within the County. Under the County’s interpretation, a study of other property located within the County is reasonable and a study of every possible property in the County is not required. Studying land in the vicinity of a subject property satisfies the requirement to study other lands in the County already designated for the proposed zoning and/or uses.

Based on this past interpretation, the vicinity of Lot 3801, the study area in this application, should be defined as Code Area 1.6 and other areas within one-half mile. The AF-10 exception area located south of Highway 240 covers most of Sections 14 and 15. The County intends the area along the south side of Highway 240 to be developed for low density rural residential use. (The purpose of the AF-10 district “is to provide for low density rural residential development.” YCZO Section 501.01) The subject property is located near the western edge of the east-west length of Area 1.6. Lot 3801 is a peninsula extending into Area 1.6, with AF-10 zoning to the north, west and east. The portion of Lot 3801 that is north of Williamson Road was included on the maps of Area 1.6, as discussed earlier. If Lot 3801 were included in Area 1.6, the ten-acre zoning would be closer to a straight line and the potential for conflicts with farm use would be reduced. Area 1.6 includes all of the land zoned AF-10 in Sections 14 and 15. The 1,426-acre area contains more than 150 parcels zoned AF-10, presumably intended for residential housing.

For these reasons, Area 1.6 is a reasonable study area for this application, because it contains similar properties in terms of growth, property values and proximity to amenities such as the cities of Newberg and Dundee, shopping and schools. Therefore, the Applicant will use Area 1.6 and other areas within one-half mile as the study area in the analysis of Subsections 1208.02 (B) and (D).

The Board finds that YCZO 1208.02 is satisfied for the following reasons:

1. The basis for a committed exception for the adjacent exception area (Code Area 1.6) are equally applicable to the subject parcel. (See Exhibit 11, Major Findings and Conclusions; Finding A.13.) The proposed plan amendment and zone change will add a 37.5 acre parcel to the existing exception area, Code Area 1.6, which is 1,426 acres in size. The failure to add this property to the exception area may have been the result of a mistake or an oversight in 1980 when the existing exception area was adopted. As previously explained, the portion of Tax Lot 3801 north of Dudley Road should have been included in the AF-10 zoning district. The lot could have been included in the original boundaries of Code Area 1.6 if the County had given consideration on a parcel by parcel basis to the impacts on the area which is now Tax Lot 3801, impacts which result from the presence of Dudley Road and Williamson Road, and the development on the surrounding properties. Most likely this property would have been included in the exception area if the parcel had been in its present north-facing configuration, aligned parallel to Dudley Road. The configuration in 1980 had the area north of Dudley Road in two lots, both of which contained the preferred (for agriculture) south-facing slopes. With the reconfiguration, Tax Lot 3800 to the south now contains all of the desirable south-facing slope.

Although a parcel by parcel consideration is not required under OAR 660-04-028(5), nothing prevents such a parcel by parcel analysis being used to refine the boundaries of an existing exception area. The original exception area and its AFSH/AF-10 planning and zoning has been acknowledged to be in compliance with the goals and there is no requirement that the County reevaluate the need for the AF-10 zoning which is fulfilled by Area Code 1.6. The Board finds that a minor amendment to Area Code 1.6 satisfies the same need that Area Code 1.6 fulfills because the addition of one 37.5 acre parcel to the 1,426 acre exception area constitutes a small change and will only expand the exception area by 2.6 %. Therefore, as a general matter, this limited addition to the exception area constitutes a minor amendment which is consistent with the justification for larger exception area and therefore satisfies the zone change requirements for the same reasons that adoption of the Code Area 1.6 satisfied those requirements.

2. Changes have occurred in the surrounding area since 1980 which have rendered resource use of the parcel impracticable. The most significant change has been the Dudley Road Improvement project in the early 1990s, which improved Dudley Road to ASHTO standards and enhanced access to single family residential uses along the road. The second change is the increased number of dwellings that use Dudley Road/Williamson Road for access,

and the resultant increase in traffic. The third change has been the reconfiguration of the subject property into Tax Lots 3801 and 3800, which resulted in Tax Lot 3800 having the southern exposure, best for agriculture. Newly configured Tax Lot 3801 (the subject parcel) became the northern parcel which included the areas within Dudley Road (and its drainage area) and Williamson Road, and the north facing downhill side of the hill; Tax Lot 3800 became the southern parcel separated from Dudley Road and Williamson Road, and containing the portion of the hill with the southern exposure. (See Exhibit 10; Finding A.13.)

3. The Thomson Report describes additional reasons why it is impracticable to use Tax Lot 3801 for resource uses. The influence of the roads, the northern exposure of the majority of the lot and the pressure of being hemmed in on three sides by rural residential development clustered along the roads makes it impracticable to use Tax Lot 3801 for resource uses. (See Exhibit 12.). The subject property is not in close proximity to other farm fields. The area has the appearance of a residential neighborhood, because “the area is lightly wooded so most of the existing dwellings are visible from any area.” If the subject property were commercially farmed, “given the current character of the area immediately adjacent to the subject property,” . . . “[p]otential conflicts might arise due to noise, chemical trespass, odors, dust, etc - all components of many farming activities.” Farming operations can take place early in the morning, late in the evening, or on weekends, increase the chances of conflicts with the existing rural residential uses. The subject property also lacks sufficient water for irrigation. The Thomson Report concludes, “considering the characteristics of the subject property, the characteristics of adjacent lands, and the relationship between the two, it is impracticable to use the subject parcel for commercial farm use. . . .” (See Exhibit 12, pages 6-7.)

It is also impracticable to use the parcel for noncommercial farm use for the reasons explained in Finding C.1.10.B. See pages 20-23.

4. Study Area

Code Area 1.6 and other areas within one-half mile is a reasonable study area for purposes of YCZO 1208.02 (B) and (D), for the following reasons:

Section 1208.02(B) and (D) were reviewed by the Land Use Board of Appeals in *Friends of Yamhill County v. Yamhill County*, 43 Or LUBA 97 (2002). At issue was how large a study area is required by the phrases “other lands so zoned” in Subsection B and “other lands in the County” in Subsection D. The County in that case used the exception areas 1.5 and 1.8 as the study area that satisfied the required review of “other lands” in the county and so zoned.

LUBA held that the County was right:

“Although YCZO 1208.02(B) and (D) could be interpreted to require consideration of all rural residential lands, no matter where those lands are located in the county, these provisions need not be interpreted to apply so expansively. The county’s interpretation, that the study area

need only contain residential land in the “vicinity” of the subject property, is a reasonable interpretation of these provisions and within the county’s discretion under ORS 197.829(1).”

According to a footnote in that LUBA opinion, the County explained its interpretation YCZO 1208.02(B) and (D), in findings quoted in relevant part by LUBA:

“The County has previously interpreted the phrase ‘other lands in the County’ to mean other property located within the County. Under the County’s interpretation, a study of other property located within the County is reasonable and a study of every possible property in the County is not required. Studying land in the vicinity of a subject property satisfies the requirement to study other lands in the County already designated for the proposed zoning and/or uses.” Footnote 8, *Friends*.

Based on this state decision, the vicinity of Lot 3801 in this application should be defined as Code Area 1.6, the county’s AF-10 exception area located south of Highway 240 and covering most of Sections 14 and 15, and other areas within one half mile of the subject parcel. This is the area along the south side of Highway 240 that the county intends to be developed for low density rural residential use. (The purpose of the AF-10 district “is to provide for low density rural residential development.” YCZO Section 501.01) The subject property is located adjacent to the southwestern portion of the east-west length of Area 1.6. The northern part of Lot 3801, separated by Dudley Road from the rest of the lot, was included in Area 1.6 on some of the exception area exhibit maps. (Exhibit 11.) Area 1.6 includes all of the land zoned AF-10 in Sections 14 and 15. The 1,426-acre area contains more than 150 parcels zoned AF-10, presumably intended for residential housing. The area within one mile to the west and south of Lot 3801 is zoned EF-40 and AF-40 and does not contain any rural residential zoning. (See Exhibit 2 and the map in Exhibit 16.)

For these reasons, Area 1.6 and other areas within one-half mile is a reasonable study area for this application, because the exception area contains similar properties in terms of growth, property values and proximity to amenities such as the cities of Newberg and Dundee, shopping and schools. Therefore, this application will use Area 1.6 and other areas within one-half mile in the analysis of Subsections 1208.02 (B) and (D).

4.2.1. YCZO section 1208.02(A)

The Board finds that the proposed change is consistent with the goals, policies and any other applicable provisions of the Comprehensive Plan as required by YCZO 1208.02(A) for the following reasons.

The Comprehensive Plan contains the following relevant policies:

- I. URBAN GROWTH AND CHANGE AND ECONOMIC DEVELOPMENT
 - B. RURAL AREA DEVELOPMENT

*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 0175 C. The property does have a slope on part of the parcel but there appears to be adequate area for construction of two additional residences south of Dudley Road. Since the parcel that could result from an approval of a partition would average ten acres and the land has soils that are generally good for septic systems, there does not appear to be any significant limitation for subsurface 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
possibly rural fire protection.*

The parcel was originally platted in 1893. A property line adjustment was approved in 1998 to separate off the lower acreage so it could be sold as vineyard land. The adjacent parcels to the north, east and west were designated for rural residential use and excepted from Goal 3 in Exceptions Statement II (ESII) which was adopted by the Board of Commissioners April 23, 1980. The subject property and the 37.5 acres to the south (now owned by Kelly) were excluded from this rezoning, likely because at the time the two 37.5 parcels were part of a

single 75 acre tract in one ownership. If approved, the magnitude of development would be to allow two additional home-sites. These, along with the existing residents in the area, would not require more than a very basic level of services such as local access roads and individual septic/water systems.

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 made good faith, but unsuccessful attempts to either farm the property or have it leased out to a farmer (see Finding D.1.10B, and testimony of Glenn Martin). The applicant has also submitted an agronomists report which describes the land, surrounding area, and the obstacles to farming the property. The zone the applicant wishes to change the property to (AF-10) is the same as the AF-10 zone land which borders three sides of the property. The only substantial farm use nearby is a small vineyard located to the south. The owner of the vineyard, Michael Kelly who supports the application (See, Exhibit 8) states that the proposed zone change will not have any adverse effect on his operation. Thus, the proposed zone change would not substantially impair or conflict with the use of other farm land in the vicinity.

SECTION II. THE LAND AND WATER

A. AGRICULTURAL LANDS

POLICIES

a. 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.

II. FOREST LANDS

GOAL STATEMENT

1. 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. (98)

POLICIES

e. Yamhill County recognizes that areas of the county are characterized by such a mixture of farm and forest use that the agricultural lands and forest lands goals of this Plan are both applicable. Farm and forest resources within these areas shall be protected

through mixed-use zoning that recognizes both types of use. Any proposal to change the zoning designation of a parcel from a farm or forest classification to a mixed-use zone shall include a demonstration that the use of the parcel is such a mixture that neither the farm nor forest land goals can be exclusively applied. (565)

First, the Board finds that the foregoing policies are not independent approval standards, but rather aspirational and are satisfied through approval of a reasons exception and a limited use overlay zone. That these are not independent approval criteria is evident from the County's comprehensive plan which states:

** * * Goals are general directives or achievements toward which the County wishes to go in the future. Policies are more specific statements of action to move the County toward attainment of the goals. These policies are used in daily decision-making or in the development of ordinances by the County.*

Implementation of the County goals and policies can occur several ways. Many are implemented through county ordinance. Other goals and policies will apply to individual issues or proposals put forth by both private and public sectors. Still others will require action dependent upon the County's fiscal resources through time.

Where certain goals and policies conflict with others, the final decision will require a weighing of the merits in order to achieve a balanced decision. Through time, the goals and policies are guides for consistent, reasonable and balanced land use decisions. (See, Revised Comprehensive Plan, page 2.)

Second, the Board finds that these YCCP provisions are implemented through the zoning ordinance, viz. YCZO 1208.02(E) which requires application of the OAR's where applicable, and that the OAR's (Goal 3 and Goal 4 rules) address the same policy of preserving agriculture and forest lands, and therefore, the YCCP provisions are not approval criteria but are implemented through the zoning ordinance and the OAR's.

Third, the County can also find that even if any of its Agricultural and Forest Comprehensive Plan Goals and Policies were to be considered an independent approval standard, and even if these policies were not shown to be implemented through the zoning ordinance, it would nevertheless not apply in this case because an exception to Goals 3 and 4 is taken. YCZO Section 1204 provides that exceptions are subject only to the OARs and not subject to local review criteria and may be taken using the Type C procedure under YCZO section 1301. Policy II.A.2.a. is intended to carry out Goals 3 and 4. The taking of an exception to Goals 3 and 4 demonstrates compliance with the goals and therefore compliance with such a plan policy intended to carry out Goals 3 and 4. This interpretation is consistent with past practices insofar as the county has other areas of Class I through IV soils for which exceptions have been taken and acknowledged by LCDC to be in compliance with the goals. Therefore, the Board finds

that it is reasonable to interpret this policy to authorize use of such lands where an exception is taken.

4.2.2 YCZO section 1208.02(B)

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 1208.02(B), for the following reasons.

First, the demonstrable need requirement is satisfied by a finding that the subject area is "irrevocably committed" to rural residential use. (See Findings B and D.)

Second, the subject parcel fulfills a need for rural residential uses which have adequate fire protection, will not generate inordinate service demands have single local road access, individual domestic wells and sewage disposal systems. The area has agricultural limitations due to lack of irrigation potential (Exhibit 12, pages 4-5); the lack of large nearby farming areas that would be able to farm the site in conjunction with existing farming operations (Exhibit 12, page 6); and the high potential for conflicts with the well developed rural residential community that comprises the land use on three sides of the subject property.(Exhibit 12, page 6). The proposed AF-10 zoning will fit well with the rural residential development pattern that already exists in Code Area 1.6. In this case, the subject area has a high amenity value for rural residential use, and is an area where such needs can be accomplished without compromising basic County goals of urban containment and orderly urban development.

For purposes of this request for a zone change to AF-10, the County can interpret "other lands so zoned" as used in YCZO 1208.02(B), as meaning other AF-10 zoned land within the vicinity of the subject parcel, and define the vicinity as being parcels within exception Code Area 1.6 and other areas within one-half mile, for the reasons discussed above in Finding 4.2. (See Exhibit 16, map.) Considering the parcels in Code Area 1.6, 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.

First, the applicant has submitted a letter from a realtor indicating a strong market demand for 10-acre lots - - if dwellings could be built on them. (See Exhibit 15.) The applicant has surveyed the undeveloped lots in Area 1.6, and found a shortage of ten-acre sized parcels - - only four of the 21 undeveloped lots are 10 acres (or larger) in size. Most of the undeveloped lots are less than half the minimum lot size (10 acres) for the AF-10 district. In order to meet the stated purpose of the AF-10 district ("is to provide for low density rural residential development" YCZO Section 501.01), the County needs an adequate supply of ten-acre

parcels and needs to provide more parcels in this area of the ten-acre size suggested by the AF-10 zoning. Comprehensive Plan Rural Area Development Goal IB2⁹ and Policy IB2b¹⁰ support and require the ten-acre parcel size.

The Comprehensive Plan also requires the County to provide enough land to accommodate “a variety of housing types in different residential environments. . .to serve the housing needs of all components of the county population.” Housing Policy IE1c¹¹ Undeveloped 10-acre properties have been generating a significant amount of interest, and a local realty said there are an overwhelming number of buyers looking for buildable pieces of rural property. This indicates a component of the county population is intensely interested in living on a ten-acre parcel in this area close to town. As the realtor wrote, “We do not have an adequate supply of small rural properties that are buildable now or for the future.” (Exhibit 15) Eleven dwellings have been built in Area 1.6 since 1999. (See Exhibit 18.)

Reading the cited Housing policy and Rural Area Development goal and policies together, the County recognized a need for rural residential housing and required zoning to accommodate that need. The Board finds there is now a shortage of ten-acre parcels needed to accommodate the housing need of a component of the county population desiring rural residential lifestyle, in the AF-10 district in the vicinity of Lot 3801, and that the proposed rezone will help alleviate that shortage.

Second, as detailed in Finding A.13, a portion of Lot 3801 was included in the maps for Code Area 1.6, and it makes sense add the property now. (See Exhibit 11.)

These findings support the conclusions that there is a demand which the proposed use will satisfy, that there is a lack of available 10-acre parcels in the vicinity and that there is a need for rural residential housing on this property.

⁹ YCCP Rural Area Goal IB2 provides:

•To accommodate the demand for rural residential development at very low densities and in areas which are not amenable to integrated neighborhood designs, provided such areas are suited to the uses intended and exhibit high amenity value, and such developments do not preempt farm or forest lands, or generate inordinate service demands on their own.

¹⁰ YCCP Rural Area Policy IB2b provides:

a. Yamhill County will continue to recognize that the appropriate location of very low density residential development is in designated small holding areas 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 possibly rural fire protection.

¹¹ YCCP Rural Area Housing Policy IE1c provides:

c. Yamhill County will provide opportunities for a variety of housing types in different residential environments, including single-family structures, conventional and modular type construction, and mobile homes to serve the housing needs of all components of the county population.

4.2.3 YCZO section 1208.02(C)

The Board finds that the requirements of YCZO 1208.02(C) are satisfied. 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. The surrounding uses include rural residential uses in Code Area 1.6 to the west, east and north of Tax Lot 3801. The subject property and the proposed use are substantially the same as the neighboring rural residential property. The fact that the parcel more closely resembles the rural residential uses in Code Area 1.6 than the EF-40 lands to the south is discussed in Finding D.3.1. The use of this 37.5 acre area for three rural residential home sites is consistent with the history and development pattern in the surrounding area. (See Findings A.6, A.13 and B.)

It is important to note that the principal reason applicants wish to have the zone changed on Tax Lot 3801 is to establish two additional rural residential dwellings. Thus, making the best use of the property for activities which are compatible with the surrounding uses will avoid the type of conflicts which have rendered the intense types of agricultural and forestry practices impractical.

No sewer or water services will be required because there is an on-site well and there will be a subsurface sewage disposal system installed. The property is currently served with electrical power by PGE, and within the Newberg Rural Fire District. Adequate roads are available to the property. (See Finding A.8, A.11, D1.5.)

4.2.4 YCZO section 1208.02(D)

The Board finds 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 1208.02(D).

As explained above, the Code Area 1.6 exception area and its AFSH/AF-10 planning and zoning was approved in 1980. Applicant has submitted evidence that there is a lack of available parcels in the County in the 5 to 10 acre range zoned for rural residential dwelling use. (See Findings A.10, B and D.1.6.) (Exhibits 17 and 18)

For purposes of this request for a zone change to AF-10, the County can interpret "other lands in the County" as used in YCZO 1208.02(D), as meaning other AF-10 zoned land within the vicinity of the subject parcel, and define the vicinity as being parcels within exception Code Area 1.6 and other areas within one-half mile, for the reasons discussed above in Finding 4.2. (See Exhibit 16 map.) Considering the parcels in Code Area 1.6, the Board finds 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.

There are 21 undeveloped parcels in Area 1.6. (See Exhibit 16, map of Area 1.6.) While all of the land in Area 1.6 is zoned AF-10, there are several factors that distinguish Lot 3801 from the other undeveloped AF-10 properties in the vicinity.

Size

The subject property, when divided as allowed in the AF-10 zone, will contain three lots of at least ten acres. The property is well suited by size to be added to the AF-10 district in this vicinity. (AF-10 minimum lot size is 10 acres. Lot 700 is .07 acres (3049 square feet) short of ten acres. Most of the parcels in Area 1.6 are smaller than 10 acres.)

The applicant has organized the 21 parcels into three size categories: comparable, too small and too large. The table is based on the reasonable assumption that a parcel can be comparable if it is from 7.5 acres to 12.5 acres. Lots that are less than 7.5 acres are considered too small, and parcels larger than 12.5 acres are considered too large. Likewise, parcels over twice the size of the minimum lot size are not considered comparable even though they could be divided in the future. A person seeking a ten-acre parcel is not likely to be satisfied with five or six acres. Fifteen of the undeveloped parcels are more suited to VLDR-5 than AF-10, eleven of them are less than five acres. Parcels half the size of the minimum lot size should not be considered comparable to full sized lots. The Board interprets "other lands" which are "available" and as well suited as excluding potential parcels which could be divided in the future. Such potential parcels do not yet constitute existing parcels which are of comparable size and which are available and therefore the Board finds that such potential parcels are not required to be considered under YCZO 1202.08(D). As shown by the County's different zoning districts, five acres is not the same as ten acres.

Location

Lot 3801 has direct access to Dudley Road and Williamson Road. None of the other undeveloped AF-10 property in the vicinity has direct access to the highway.

Lot 3801 is located among other rural residential uses. It is one of the last undeveloped parcels south of this stretch of Highway 240. (See Exhibit 2.)

Other Factors

Lot 3801 has a view to the north. The parcel slopes uphill to the south, and the likely home site is on the upper view portion of the property.

4.2.5 YCZO section 1208.02(E)

The Board finds that the application satisfies YCZO section 1208.02(E) requirement that the amendment is consistent with the OAR's for exceptions, if applicable. The OAR requirements are addressed above.

Goal 14 is not applicable and no Goal 14 exception is required because the proposed use will not require extension of urban services (sewer or water), and extension of such services will be prohibited under the LUO conditions unless a Goal 14 exception is taken. Furthermore, the 5 acre minimum lot size will be considered a rural, not an urban, use under the Goal 14 rules.

CONCLUSIONS FOR APPROVAL:

1. The request for a Comprehensive Plan amendment and zone change from Exclusive Farm Use, EF-40 to AF-10, including an exception to Goal 3 and 4.
2. The proposed zone change is consistent with Comprehensive Plan goals and policies.
3. The proposed change complies with the requirements for an exception to Goals 3 and 4. The property is unsuitable for productive farming, and the adjacent small residential lots, roads, and uses contribute to the area being irrevocably committed to residential use.
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.

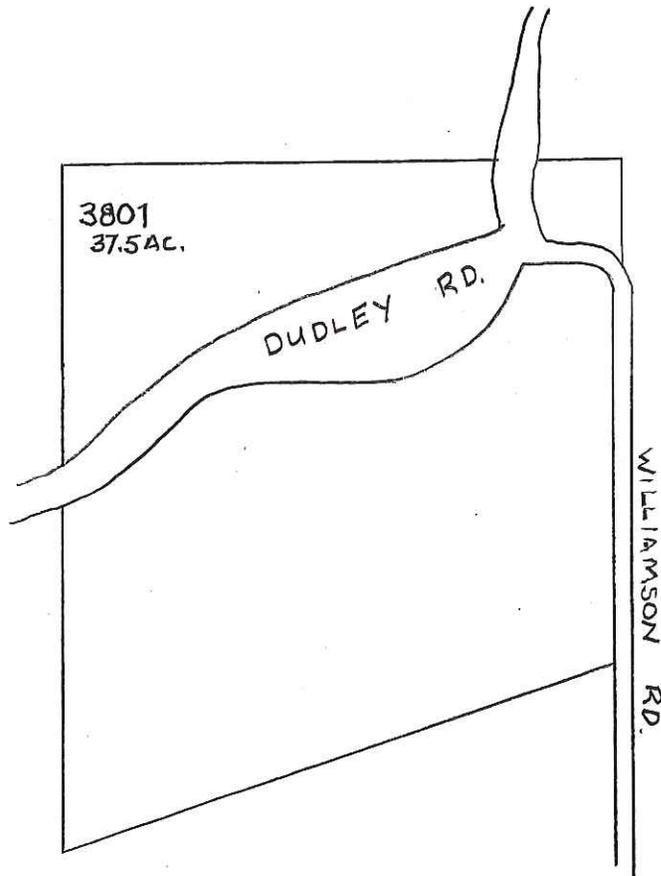
DECISION

For the foregoing reasons, the Board approves the application by the James Glenn Martin and Cari L. Martin for a plan amendment and zone change from EFU/EF-40 to AFSH/AF-10 and an exception to Statewide Land Use Planning Goals 3 and 4 for Tax Lot R3315-3801.

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EXHIBIT "B" MAP FOR ORDINANCE NO. 739
PLAN AMENDMENT AND ZONE CHANGE
ADOPTED BY THE YAMHILL COUNTY BOARD OF COMMISSIONERS
MAY 25, 2004

FOR A COMPREHENSIVE PLAN AMENDMENT FROM
AGRICULTURE/FORESTRY LARGE HOLDING TO AGRICULTURE/FORESTRY
SMALL HOLDING AND
TO CHANGE OFFICIAL ZONING MAP FROM
EF-40 EXCLUSIVE FARM USE
TO
AF-10 AGRICULTURE/FORESTRY SMALL HOLDING



CHANGE APPLIES TO TAX LOT 3315-3801 DESCRIBED ABOVE

APPROXIMATE SCALE - 1 INCH = 400 FEET

*Exhibit "B"
Ordinance 739
B.O. 04-301*