

IN THE BOARD OF COMMISSIONERS OF THE STATE OF OREGON  
FOR THE COUNTY OF YAMHILL  
SITTING FOR THE TRANSACTION OF COUNTY BUSINESS

In the Matter of Approval of a )  
Comprehensive Plan Amendment )  
from Agriculture/Forestry Large Holding )  
(AFLH) to Agriculture Forestry Small )  
Holding and a zone change from EF-80 ) ORDINANCE NO. 709  
Exclusive Farm Use to AF-10 Agriculture )  
Forestry Small Holding; Taking an )  
Exception to Goal 3, Applicant Nels )  
Melberg; Tax lot 2326-1400; Docket )  
PAZ-03-01; and Declaring an Emergency. )

THE BOARD OF COMMISSIONERS OF YAMHILL COUNTY, OREGON ("the Board") sat for the transaction of county business in formal session on January 10, 2002, commissioners Thomas E.E. Bunn, Robert Johnstone, and Leslie Lewis being present.

THE BOARD MAKES THE FOLLOWING FINDINGS:

- A. Applicant Nels Melberg (through representative Frank Walker and Associates) applied May 24, 2001 for a Comprehensive Plan map amendment from Agriculture Forestry Large Holding to Agriculture Forestry Small Holding; taking an exception to Goal 3, and a zone change from EF-80 Exclusive Farm Use to AF-10 Agriculture/ Forestry Small Holding for a 10 acre parcel known as Tax Lot 2326-1400.
- B. At its regular meeting on November 1, 2001, the Yamhill County Planning Commission voted 4-1 to forward this application to the Yamhill County Board of Commissioners with the recommendation it be approved.
- C. At its regular formal session on December 6, 2001, the Yamhill County Board of Commissioners held a duly noticed public hearing, heard testimony, deliberated, and voted unanimously to approve the application. NOW, THEREFORE

IT IS HEREBY ORDAINED BY THE BOARD AS FOLLOWS:

- 1. The application of Nels Melberg (through representative Frank Walker and Associates) for a Comprehensive Plan map amendment from Agriculture Forestry Large Holding to Agriculture Forestry Small Holding; taking an exception to Goal 3; and a zone change from EF-80 Exclusive Farm Use to AF-10 Agriculture/Forestry Small Holding for a 10 acre parcel known as Tax Lot 2326-1400 is hereby approved for the reasons stated in Exhibit "A", the findings for approval.

*18.0.02-27*



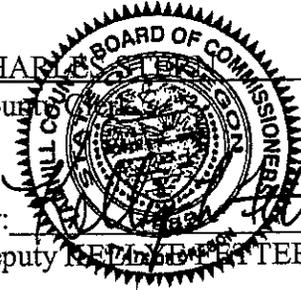
2. An emergency having been declared to exist, this Ordinance takes effect immediately.

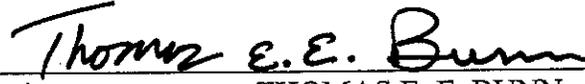
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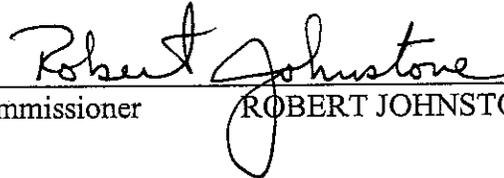
ATTEST

YAMHILL COUNTY BOARD OF COMMISSIONERS

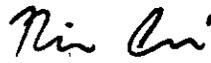
CHANCELLER  
Court Clerk  
By:   
Deputy County Clerk

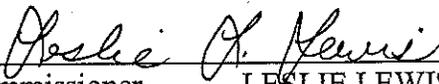


  
Chairman THOMAS E. E. BUNN

  
Commissioner ROBERT JOHNSTONE

FORM APPROVED BY:

  
Rick Sanai  
Assistant County Counsel

  
Commissioner LESLIE LEWIS



## Exhibit "A" Findings for Approval

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**DOCKET NO.:** PAZ-03-01

**REQUEST:** Approval of a Comprehensive Plan map amendment from Agriculture Forestry Large Holding to Agriculture Forestry Small Holding; a zone change from EF-80 Exclusive Farm Use to AF-10 Agriculture/Forestry Small Holding.

**APPLICANT:** Frank Walker and Associates, representing Nels Melberg

**TAX LOT:** 2326-1400

**LOCATION:** Approximately 1/4 mile west of the intersection of Ornduff and Bald Peak Road on the south side of Bald Peak Road.

**CRITERIA:** Sections 402, 501 and 1208.02 of the Yamhill County Zoning Ordinance. Comprehensive Plan policies may be applicable. OAR 660-04, Exception Process. OAR 660-12-0060 Transportation Planning Rule.

### **FINDINGS:**

#### **A. Background Facts:**

1. *Property size:* 10 acres.
2. *Access:* Access to the subject parcels is provided by Bald Peak Road, a paved County road that is along the northern property line of the subject parcel. The driveway leading to the subject property is relatively level and connects to Bald Peak Road at grade.
3. *On-site Land Use:* The subject property is currently zoned EF-80 and is contiguous with other EF-80 land with a steep southern slope. The subject parcel is the smallest EF-80 parcel found in section 26. It is also smaller than any EF-80 parcel located in section 35 to the south and is currently vacant with no history of productive use. At this time it is being abused by garbage dumping, loitering, and other illegal activities of trespassing individuals. The steep slope on the subject property buffers the farm land to the south from the rural residential land to the north. The subject property does not provide access to farming areas nor does it serve as a staging areas for agricultural activities.
4. *Topography:* The parcel is steep and rocky (Classified as stony lands according to the Soil Survey for Yamhill County Area Oregon). Measurements indicate a slope of at least 40 percent or more over significant portions of the property. The limited flat area could be used for a home site.
5. *Surrounding Land Use:* Generally, the surrounding area contains a mixture of farm, forest and rural residential uses. Properties to the east and the west have steep slopes similar to the subject parcel. These parcels are zoned EF-80 and have the same characteristics as the subject parcel. Properties to the north are rural residential. These parcels are generally 5 to 11 acres in size and most are developed with single family dwellings. The large agricultural property to the south appears to be in Christmas tree production. That parcel is approximately 400 feet lower than the subject parcel.



6. Surrounding Zoning: Zoning to the north is VLDR-5 Very Low Density Residential, south, east and west is EF-80 Exclusive Farm use.
7. Water: To be provided by on-site well.
8. Sewage Disposal: To be provided by on-site septic systems.
9. Fire Protection: Newberg Rural Fire District.
10. Soils: Sheet 9 of the Yamhill County Soil Survey shows that the subject property is composed predominantly (90%) of Stony Land (SL, no slope class is designated) and lesser amount (10%) of Jory Clay Loam (JRF, 30-60 percent slopes) both being Class VI soils, and therefore, do not meet the statutory definition of agricultural soils. The Soil Survey indicates that Stony Land Soils are low and very low in fertility. Limitations contribute to their unsuitability for cultivation and improved pasture. Douglas fir and hemlock trees can grow on these soils, but prolonged dry conditions lead to longer than normal growth cycles and low productivity. These soil conditions preclude practicable resource utilization of the parcel.
11. Taxes: Forest Deferral
12. Fish and Wildlife: The property is not identified as critical fish or wildlife habitat.
13. Alternative method to establish a dwelling on the subject property is through a non-farm dwelling process. Although the applicant has chosen the Plan amendment and Zone Change application, the soils on the property indicate that the non-farm dwelling application may be appropriate.

**B. Zone Change and Plan Amendment Provisions and Analysis**

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

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

- (D) *Other lands in the county already designated for the proposed uses are either unavailable or not as well-suited for the anticipated uses due to location, size, or other factors.*
  - (E) *The amendment is consistent with the current Oregon Administrative Rules for exceptions, if applicable.*
2. Regarding criterion (A) above, Plan goals and policies which may be pertinent are:

***Policy I.B.1.c.:*** *All proposed rural area development and facilities: ... (2) Shall not be located in any natural hazard area, such as a floodplain or area of geologic hazard, steep slope, severe drainage problems or soil limitations for building or sub-surface sewage disposal, if relevant;*

The property is not within the 100 year floodplain, as shown on FIRM 410249 0175 C. There are steep slopes, however, there appears to be adequate level area for construction of a residence on the parcel. The sanitarian stated that an approval for alternative septic system has been given.

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

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

***Policy I.B.2.a.:*** *Yamhill County will continue to recognize that the appropriate location of very low density residential development is in designated large areas where commitments to such uses have already been made through existing subdivision, partitioning, or development and by virtue of close proximity to existing urban centers; or in small, limited areas having unique scenic, locational and other suitable site qualities where the anticipated magnitude or density of development is not such as to require more than a very basic level of services, such as single local-road access, individual domestic wells and sewage-disposal systems, and possible rural fire protection.*

Though the subject property is zoned EF-80, it is physically cut off from the large productive tracts of other EF-80 land south of the subject parcel by very steep slopes of 50% to 60%, that make up the majority of the property. It appears that the zoning district boundary line in this location was not drawn according to a resource land capability or

location to an existing exception area, but by the subject property's location on the southern side of Bald Peak Road. A total of 60 VLDR-5 parcels are found in Section 26, to the north of the subject property, and range in size from 2.3 to 11.26 acres. Only five complete tax lots and portions of two others are found in the EF-20 and EF-40 zoning districts north of Bald Peak Road. Only the thin corner of the subject property has any connection with an agricultural parcel, Tax Lot 2326-500, which is across Bald Peak Road. By contrast, the subject parcel is adjacent to an Exception Code Area 1.1, excepted from Goal 3 in Exceptions Statement II (ESII) which was adopted by the Board of Commissioners April 23, 1980, and is currently zoned VLDR-5. The change of the subject property to the AF-10 zone would be consistent with the size and character of the lots to the north. It is not practicable or logical that the subject parcel be included or connected to the larger farm tracts to the south because of the slope and the soil conditions on the parcel. Utilities already serve these lots, and therefore getting power and other utilities to the subject property will be very direct and relatively simple. The homes located in the Code Area 1.1, to the north of the subject parcel, already have a full complement of services from the various utility providers, so an additional parcel could easily be accommodated here. The property is approximately five miles from Newberg urban center. The magnitude of the proposed development would be one additional home site. The subject parcel has unique scenic site qualities, looking over Newberg and expansive areas to the south. This vista is provided by the steep land that makes up the majority of this 10-acre parcel. The proposed zone change would allow a homeowner to take advantage of these qualities without removing a truly farmable parcel from the EF zoning category. The services outlined in the Comprehensive Plan provision above, including rural fire protection and road access, are available at this location.

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

It appears the proposed zone change would cause little interference with the use of other farm and forest land in the vicinity. The closest farm use appears to be to the south where the property is in Christmas tree production. This use is approximately 400 feet lower in elevation than the proposed building site on the subject parcel. The remainder of the surrounding area has some farm uses which include pastures and Christmas trees, but the adjacent lots are not in intensive farm use. The applicant has persuasively argued that the property is not economically feasible for farm or forest production, but this is not the sole argument for rezoning of the property.

3. Regarding criterion (B), the applicant has shown there is an existing demonstrable need for the particular uses allowed by the requested zone, considering the importance of such uses to the citizenry or the economy of the area, the existing market demand which such uses will satisfy, and the availability and location of other lands so zoned and their suitability for the uses allowed by the zone, as required by YCZO 1202.08(B).

Traditionally, the county has looked at the amount of development in the nearby exception areas. In this case the most recent development numbers were studied for the purpose of this application. The study area took in five surrounding square miles. The results are as follows:

Area T2-R3 Section	Zone	Existing Lots	Developed Lots	Vacant Lots	Potential New Lots	% of Build-up Area
22	VLDR-5	33	23	10	0	70%
	VLDR-1	6	4	2	0	66%
23	VLDR-5	15	13	2	3	86%
25	VLDR-5	50	40	10	1	80%
26	VLDR-5	60	52	8	1	86%
27	VLDR-5	11	10	1	0	90%
<b>TOTAL</b>		<b>175</b>	<b>142</b>	<b>33</b>	<b>5</b>	<b>81%</b>

These numbers, determined from investigation of current County Tax Assessor's and county rural address maps, show that there are currently only 19% of available parcels for development. The County Tax Assessor's maps show the most recent lot creations and the county's rural address maps show the development of the parcels. No market study was submitted with the request. The applicant has given an explanation as to how the existing rural residential uses in the surrounding area would be similar or identical to the use proposed by the applicant. The applicant indicated that the 33 vacant parcels would be built out in 16.5 years if only two building permits were issued per year. Building permit data suggest the build-out rate is faster than this (*see applicant's written narrative in the application, incorporated into these Findings by this reference*). No other parcel could be found that is not part of a larger farm unit. No other parcel could be found that is 10 acres, and yet has exclusively Class VI steep soils, and which are classified as Stony Land. No other parcel could be found with steep slopes that effectively cut off a 10 acre parcel from larger farm.

- Regarding criterion (C), the application 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.

Surrounding land uses to the north are rural residential lots. Properties to the east and west are similar in character, very steep and rocky. The parcel to the east contains an old quarry site. The large agricultural parcel to the south has Christmas trees as farm use which is approximately 400 feet lower in elevation. The properties to the north are part of code area 1.1 in Exceptions Statement II. The application explains in detail why the subject parcel and use is very similar to that found in this exception area. Though the

subject property is zoned EF-80, it is physically cut off from the large tracts of EF-80 land south of the subject parcel by the steep slopes that make up the majority of the property. It appears the zoning line in this location was not drawn according to resource land capability or similar characteristics, but by the subject property's location on the southern side of Bald Peak Road, which forms the boundary. A total of 60 VLDR-5 parcels are found to the north of the subject property, and range in size from 2.3 to 11.26 acres. Only five complete tax lots and portions of two others are found in the EF-20 and EF-40 zoning districts north of Bald Peak. Staff agrees that the subject property and use is substantially the same as the neighboring rural residential property.

The main change which has occurred in the area is the development of 86% of the available parcels to residential lots. While this does not have a direct effect on the present use of the property, since the parcel was not or could be considered for some type of farm use it does support the argument for making this parcel residential.

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

5. Regarding criterion (D), the applicant has shown that other lands in the county already designated for the proposed uses are either unavailable or not as well-suited for the anticipated uses due to location, size, or other factors, as required by YCZO 1202.08(D).

As stated in Finding B.3 the applicant states there are only 33 other vacant parcels in the VLDR zone in the sections adjacent to the subject parcel. It is not known whether these lots are presently in the works for being developed or if they are still available. Additionally, as indicated in the above study, 33 parcels were available and five more could potentially be created. While this is not an overwhelming number, especially considering it is from the five sections, there are other similarly zoned lots in the area. Whether these are "available" for development is not known. However, the county has tried in the past to use market availability as a measure of need for the property to be rezoned. In a similar land use request LUBA previously ruled that:

*"The number of VLDR zoned properties on the market for sale at any given point in time is at best an indirect measure of the need or market demand for such properties." (LUBA No. 91-200)*

Therefore, the county cannot use market availability alone as a basis for a determination of need. The Census information indicates that the county rural population growth was relatively slow throughout the 1980s, but has increased from 1990 to 2000. The 1990 Census reported that the rural population of Yamhill County on April 1, 1990 was 21,063. On April 1, 2000, the Census reported the Yamhill County rural population at 23,926. This is an increase of 2,863 or 13.6% over a period of 10 years. The increase in the rate and amount of development, combined with the relatively small number of existing vacant lots and an increasing population might indicate a demand and need for

additional rural residential zoned lots in this area. If the zone change is approved, one (1) dwelling would be added to the existing inventory. The subject area appears to be as well suited for residential development as the other available lots in the area.

6. Regarding the criterion (E), an exception to Goal 3 will be required, as addressed in Section C of these findings below. Since the property is in Exclusive Farm Use zoning district, the applicant does not need to address an exception to Goal 4. Since the proposed parcel will remain 10 acres in size, an exception to Goal 14 is not necessary.

### **C. Goal Exception Provisions and Analysis**

Oregon Administrative Rule (OAR) 660-04 contains the requirements for taking an exception to the goals. The applicant applied for a "reasons" exception.

#### **1. OAR 660-004-0020, Goal 2, Part II(c), Exception Requirements**

- (1) *If a jurisdiction determines there are reasons consistent with OAR 660-004-0022 to use resource lands for uses not allowed by the applicable Goal, the justification shall be set forth in the comprehensive plan as an exception.*
- (2) *The four factors in Goal 2 Part II(c) required to be addressed when taking an exception to a Goal are:*
  - (a) *"Reasons justify why the state policy embodied in the applicable goals should not apply": The exception shall set forth the facts and assumptions used as the basis for determining that a state policy embodied in a goal should not apply to specific properties or situations including the amount of land for the use being planned and why the use requires a location on resource land;*
  - (b) *"Areas which do not require a new exception cannot reasonably accommodate the use":*
    - (A) *The exception shall indicate on a map or otherwise describe the location of possible alternative areas considered for the use, which do not require a new exception. The area for which the exception is taken shall be identified;*
    - (B) *To show why the particular site is justified, it is necessary to discuss why other areas which do not require a new exception cannot reasonably accommodate the proposed use. Economic factors can be considered along with other relevant factors in determining that the use cannot reasonably be accommodated in other areas. Under the alternative factor the following questions shall be addressed:*
      - (i) *Can the proposed use be reasonably accommodated on nonresource land that would not require an exception,*

*including increasing the density of uses on nonresource land? If not, why not?*

- (ii) Can the proposed use be reasonably accommodated on resource land that is already irrevocably committed to nonresource uses, not allowed by the applicable Goal, including resource land in existing rural centers, or by increasing the density of uses on committed lands? If not, why not?*
- (iii) Can the proposed use be reasonably accommodated inside an urban growth boundary? If not, why not?*

*(C) This alternative areas standard can be met by a broad review of similar types of areas rather than a review of specific alternative sites. Initially, a local government adopting an exception need assess only whether those similar types of areas in the vicinity could not reasonably accommodate the proposed use. Site specific comparisons are not required of a local government taking an exception, unless another party to the local proceeding can describe why there are specific sites that can more reasonably accommodate the proposed use. A detailed evaluation of specific alternative sites is thus not required unless such sites are specifically described with facts to support the assertion that the sites are more reasonable by another party during the local exceptions proceeding.*

- (c) The long-term environmental, economic, social and energy consequences resulting from the use at the proposed site with measures designed to reduce adverse impacts are not significantly more adverse than would typically result from the same proposal being located in other areas requiring a Goal exception. The exception shall describe the characteristics of each alternative areas considered by the jurisdiction for which an exception might be taken, the typical advantages and disadvantages of using the area for a use not allowed by the Goal, and the typical positive and negative consequences resulting from the use at the proposed site with measures designed to reduce adverse impacts. A detailed evaluation of specific alternative sites is not required unless such sites are specifically described with facts to support the assertion that the sites have significantly fewer adverse impacts during the local exceptions proceeding. The exception shall include the reasons why the consequences of the use at the chosen site are not significantly more adverse than would typically result from the same proposal being located in areas requiring a goal exception other than the proposed site. Such reasons shall include but are not limited to, the facts used to determine which resource land is least productive; the ability to sustain resource uses near the proposed*

*use; and the long-term economic impact on the general area caused by irreversible removal of the land from the resource base. Other possible impacts include the effects of the proposed use on the water table, on the costs of improving roads and on the costs to special service districts;*

**Environmental** - The property can be improved without degrading air, land or water quality. The property is already adversely impacted by illegal dumping, illegal land scalping and significant modifications to the contours of the site. The prospective buyer, Mr. Melberg, has already cleaned up the east end of the property where large volumes of trash (including car engines) had been dumped. Any sewage disposal on the site would have to be immediately north of the eastern bench where extensive land filling and alterations have occurred. A small linear area north of the rock bench has deep soils on a level enough surface to possibly qualify for a standard septic system, otherwise, a sand filter system will have to be approved by the Yamhill County Sanitarian. Any well on the property will have to be at least 100 feet from any leach fields on the site. The wells in the area, according to available well logs, indicates the site has adequate water supply for domestic purposes. The withdrawal of water for domestic purposes (usually approximately 5,000 gallons per month) will in no way jeopardize local agricultural users. The quality of the land in this case will clearly be improved. Right now a level bench on east end of the site, comprised of reconstituted fill, will probably serve as the dwelling site. No other portion of the property is safely accessible or has enough of a level area to support a residence.

The east end of the site is a level rock bench but it does not contribute to any type of erosional problems. The majority of the rest of the site is mantled with trees, grass and shrubs. The existing vegetative cover will be retained but hauled in soil will have to be placed over the rock bench on the east side of the site in order to reduce the starkness of the site for the property owners to have a yard area.

The land quality of this site should definitely be improved with the grading and lawn establishment plan. When the property owner is finished with the site all of the steep rocky ledges will be improved with surrounding slopes and the barren aspect of the rock bench will be gone. The environmental quality of the site will also be improved by prohibiting trash dumping.

To date the trash dumping has been of the household variety but some other refuse such as an engine block requires recycling. The property owner will clean up the site of all unsightly debris and trash through removal. The subject property does contain areas of heavier tree cover where wildlife can survive. The applicant plans to retain these areas for slope stability, windbreak, privacy, aesthetics and for wildlife preservation. These areas are inaccessible and there is no advantage in removing the valuable windbreak trees. According to the Yamhill County Comprehensive Plan, the subject property does not have any environmentally sensitive areas.

The positive environmental consequences of this application are:

- elimination of illegal trash dumping;
- restoration of ground cover to barren rocky bench;
- restoration of ground contours and removing dangerous high walls for children and wildlife;
- maintenance of windbreak trees which will reduce wind speed and keep soil from blowing;
- removal of existing refuse from the site; and
- enhanced aesthetics from regrading the site and removing unsightly high walls and refuse;

**Energy Consequences** - The applicant has submitted information indicating a net positive effect will result from the restoration of this site.

The electric power for the site can be provided by the local utility company (PGE) without any additional infrastructure. An existing 7,200 KV line provides electric power for the area and is more than adequate to provide power for one additional dwelling. The power to the proposed dwelling site can be accomplished with minimal extension of power lines which has the net effect of reducing power loss through transmission. No adverse energy impacts result from this action.

**Economic Consequences** - The subject property is essentially a barren piece of vacant land that has no history of productive use. The property is currently taxed as a vacant parcel with an assessed valuation of \$9,128. The 1999-2000 property tax was a mere \$102.48.

Under the improvement program the new assessed valuation will be approximately \$200,000. The current millage rate for that area of Yamhill County is 1.5%. The property taxes generated for the government will increase from \$102.48 to approximately \$3000.00 per year.

According to the applicant, the total amount of taxes collected will be \$89,330.63 as compared to \$3,110.00 if the property remains in the current state of near abandonment. This reflects a significant economic consequence to Yamhill County for a property where they have provided no road improvements, sewers, storm drainage or water during the site improvement process.

**Social** - The social consequences for the improvement of the site outweigh any potential negative consequences. There is no loss of farm or timber land occurring as a result of this action and there is no reduction of services such as police, fire or schools resulting from this action. An abandoned site used for illegal refuse disposal will be converted to a viable living area within a low priority retention area for agricultural use. Neighboring land owners have expressed a desire to have someone live on the site to stop illicit firearm discharges, illegal dumping, drug

dealing and late night drinking parties. A letter expressing some of these sentiments is included in the Appendices.

The net social consequence is a more positive atmosphere accomplished at no degradation to the environment and at no cost to Yamhill County and other service providers.

(d) *"The proposed uses are compatible with other adjacent uses or will be so rendered through measures designed to reduce adverse impacts." The exception shall describe how the proposed use will be rendered compatible with adjacent land uses. The exception shall demonstrate that the proposed use is situated in such a manner as to be compatible with surrounding natural resources and resource management or production practices. "Compatible" is not intended as an absolute term meaning no interference or adverse impacts of any type with adjacent uses.*

The applicant failed to justify OAR 660-004-0020, Goal 2, Part II(c), Exception Requirement (2) and all pertinent criteria within that requirement.

(3) *If the exception involves more than one area for which the reasons and circumstances are the same, the areas may be considered as a group. Each of the areas shall be identified on a map, or their location otherwise described, and keyed to the appropriate findings.*

The exception involves a single lot, therefore, OAR 660-004-0020, Goal 2, Part II(c), Exception Requirement (3) does not apply.

(4) *For the expansion of an unincorporated community defined under OAR 660-022-0010. The exception requirements of subsections (2)(b), (c), and (d) of this rule are modified to also include the following:*

(a) *Prioritize land for expansion: First priority goes to exceptions lands in proximity to an unincorporated community boundary. Second priority goes to land designated as marginal land. Third priority goes to land designated in an acknowledged comprehensive plan for agriculture or forestry, or both. Higher priority is given to land of lower capability site class for agricultural land, or lower cubic foot site class for forest land;*

(b) *Land of lower priority described in subsection (a) of this section may be included if land of higher priority is inadequate to accommodate the use for any one of the following reasons:*

(A) *Specific types of identified land needs cannot be reasonably accommodated on higher priority land; or*

(B) *Public facilities and services cannot reasonably be provided to the higher priority area due to topographic or other physical constraints; or*

- (C) *Maximum efficiency of land uses with the unincorporated community requires inclusion of lower priority land in order to provide public facilities and services to higher priority land.*

The proposed exception does not involve the expansion of an unincorporated community, therefore, OAR 660-004-0020, Goal 2, Part II(c), Exception Requirement (4) does not apply.

2. 660-004-0022, Reasons Necessary to Justify an Exception Under Goal 2, Part II(c)

*An exception Under Goal 2, Part II(c) can be taken for any use not allowed by the applicable goal(s). The types of reasons that may or may not be used to justify certain types of uses not allowed on resource lands are set forth in the following sections of this rule:*

- (1) *For uses not specifically provided for in subsequent sections of this rule or OAR 660, division 014, the reasons shall justify why the state policy embodied in the applicable goals should not apply. Such reasons include but are not limited to the following:*
- (a) *There is a demonstrated need for the proposed use or activity, based on one or more of the requirements of Statewide Goals 3 to 19; and either*
  - (b) *A resource upon which the proposed use or activity is dependent can be reasonably obtained only at the proposed exception site and the use or activity requires a location near the resource. An exception based on this subsection must include an analysis of the market area to be served by the proposed use or activity. That analysis must demonstrate that the proposed exception site is the only one within that market area at which the resource depended upon can reasonably be obtained; or*
  - (c) *The proposed use or activity has special features or qualities that necessitate its location on or near the proposed exception site.*
- (2) *Rural Residential Development: For rural residential development the reasons cannot be based on market demand for housing, except as provided for in this section of this rule, assumed continuation of past urban and rural population distributions, or housing types and cost characteristics. A county must show why, based on the economic analysis in the plan, there are reasons for the type and density of housing planned which require this particular location on resource lands. A jurisdiction could justify an exception to allow residential development on resource land outside an urban growth boundary by determining that the rural location of the proposed residential development is necessary to satisfy the market demand for housing generated by existing or planned rural industrial, commercial, or other economic activity in the area.*

The applicant failed to justify OAR 660-004-0022, Reasons Necessary to Justify an Exception Under Goal 2, Part II(c), Criteria (1) and (2) and all pertinent criteria within that requirement.

Since the proposal does not involve the rural industrial development, the expansion of an unincorporated community, a parcel within the Willamette Greenway boundary, a water dependent use and the reduction or degradation of Natural Values of a water dependent use, the criteria (3), (4), (5), (6) and (7) do not apply.

3. **Oregon's Statewide Planning Goals & Guidelines**

The applicable Oregon land use Goals are discussed below, as well as explanations of how the characteristics of the subject property make it a candidate for an exception from each of these goals.

D. **OAR 660-010000(3), GOAL 3: AGRICULTURAL LANDS**

To preserve and maintain agricultural lands.

*Agricultural lands shall be preserved and maintained for farm use, consistent with existing and future needs for agricultural products, forest and open space and with the state's agricultural land use policy expressed in ORS 215.243 and 215.700.*

4. **USES**

*Counties may authorize farm uses and those non-farm uses defined by commission rule that will not have significant adverse effects on accepted fern or forest practices.*

5. **IMPLEMENTATION**

*Zoning applied to agricultural land shall limit uses which can have significant adverse effects on agricultural and forest land, farm and forest uses or accepted farming or forest practices. Counties shall establish minimum sizes for new lots or parcels in each agricultural land designation. The minimum parcel size established for farm uses in farmland zones shall be consistent with applicable statutes. If a county proposes a minimum lot or parcel size less than 80 acres, or 160 acres for rangeland, the minimum shall be appropriate to maintain the existing commercial agricultural enterprise within the area and meet the requirements of ORS 215.243. Counties authorized by ORS 215.316 may designate agricultural land as marginal land and allow those uses and land divisions on the designated marginal land as allowed by law. LCDC shall review and approve plan designations and revisions to land use regulations in the manner provided by ORS Chapter 197.*

Under the Soils section of the narrative, it has been demonstrated that the Stony Land (SL) and Jory (JRF) soils on the property make it unsuitable for cultivation or improved pasture. In this implementation section, Goal 3 requires that minimum parcel sizes "shall

*be appropriate to maintain the existing commercial agricultural enterprise within the area and meet the requirements of ORS 215.243."* As discussed in the Vegetation section of the narrative, the local agricultural enterprise includes the raising of grapes, grass seed, Christmas trees, and pasture. Besides the impracticability of these crops according to the Soil Survey of the Yamhill Area, the 10-acre lot size precludes this parcel's contribution to the area's commercial agricultural enterprise. This is despite its EF-80 designation. Other area parcels are smaller than the minimum lot size for the EF-80 and even EF-40 and EF-20 zones, but by their adjacency to larger parcels can contribute in a substantial way to the local farming enterprise. The subject property has been placed in a unique predicament. The steep slopes on the property physically segregate it from other EF-80 parcels to the south. In short, this small, isolated, soil-limited parcel cannot contribute in any substantial way to local agricultural operations.

6. DEFINITIONS

*Agricultural Land - The land in western Oregon is predominantly Class I, II, III and IV soils and the land in eastern Oregon is predominantly Class I, II, III, IV, V and VI soils as identified in the Soil Capability Classification System of the United States Soil Conservation Service, and other lands which are suitable for farm use taking into consideration soil fertility, suitability for grazing, climatic conditions, existing and future availability of water for farm irrigation purposes, existing land-use patterns, technological and energy inputs required, or accepted farming practices. Lands in other classes which are necessary to permit farm practices to be undertaken on adjacent or nearby lands, shall be included as agricultural land in any event. More detailed soil data to define agricultural land may be utilized by local governments if such data permits achievement of this goal. Agricultural land does not include land within acknowledged urban growth boundaries or land within acknowledged exceptions to Goals 3 or 4.*

Since both soils on the property are Class VI, they do not meet the statutory definition of Agricultural Land as outlined in the definition above. Soil fertility on the Stony Land soil is considered low and very low. This parcel is not farmed in conjunction with adjoining parcels, and is not necessary for farming operations on adjacent parcels due to soil limitations and physical segregation from the steep slopes. The ORS and the County Ordinance provide for a establishment of a dwelling on the subject property is through a non-farm dwelling process. The applicant has chosen the Plan amendment and Zone Change application instead.

**Farm Use** - is as set forth in ORS 215.203.

**High-Value Farmlands** - are areas of agricultural land defined by statute and Commission rule.

7. IMPLEMENTATION

- (1) *Non-farm uses permitted within farm use zones under ORS 215.213(2) and (3) and 215.283(2) and (3) should be minimized to allow for maximum agricultural productivity.*

This implementation criterion does not apply, because this application includes an exception to Goal 3, and not an application for a non-farm use within a farm zone.

- (2) *Extension of services, such as sewer and water supplies into rural areas should be appropriate for the needs of agriculture, farm use and non-farm uses established under ORS 215.213 and 215.283.*

This implementation criterion does not apply to sewer and water, as these services are not part of this proposal. The telephone, electricity, police and other services are already present in the area. Extending utilities to this property would be simple, for they are provided for the four adjacent properties found north of Bald

Peak Road. Garbage disposal services are also provided at this location, and could reasonably be accommodated at the subject property.

- (3) *Services that need to pass through agricultural lands should not be connected with any use that is not allowed under ORS 215.203, 215.213, and 215.283, should not be assessed as part of the farm unit and should be limited in capacity to serve specific service areas and identified needs.*

Since an exception to Goal 3 is being sought with this application, this implementation criterion does not apply.

- (4) *Forest and open space uses should be permitted on agricultural land that is being preserved for future agricultural growth. The interchange of such lands should not be subject to tax penalties.*

Since an exception to Goal 3 is being sought with this application, this implementation criterion does not apply.

**D. Goal 12 (Transportation Rule) Provisions and Analysis**

1. The provisions of the Transportation Planning Rule, implementing Goal 12, must be addressed. OAR 660-12-060 contains the provisions that must be met:

- (1) *Amendments to functional plans, acknowledged comprehensive plans, and land use regulations which significantly affect a transportation facility shall assure that allowed land uses are consistent with the identified function, capacity, and level of service of the facility. This shall be accomplished by either:*
- (a) *Limiting allowed land uses to be consistent with the planned function, capacity and level of service of the transportation facility;*
  - (b) *Amending the TSP [Transportation System Plan] to provide transportation facilities adequate to support the proposed land uses consistent with the requirements of this division; or,*
  - (c) *Altering land use designations, densities, or design requirements to reduce demand for automobile travel and meet travel needs through other modes.*
- (2) *A plan or land use regulation amendment significantly affects a transportation facility if it:*
- (a) *Changes the functional classification of an existing or planned transportation facility;*
  - (b) *Changes standards implementing a functional classification system;*

- (c) *Allows types or levels of land uses which would result in levels of travel or access which are inconsistent with the functional classification of a transportation facility; or*
- (d) *Would reduce the level of service of the facility below the minimum acceptable level identified in the TSP.*

3. The Transportation Planning Rule found in OAR 660-012 (1) states that amendments to functional plans, acknowledged comprehensive plans, and land use regulations which significantly affect the transportation facility shall assure that allowed land uses are consistent with the identified function, capacity, and performance standards of the facility.

The applicant conferred with Bill Gille, the Director of the Yamhill County Public Works Department, concerning this proposal. Mr. Gille stated that the 1999 average daily traffic on this section of Bald Peak Road was 480 vehicular trips per day. He further stated that the current level would stand at approximately 500 trips per day. Bald Peak Road currently functions at level A of service, and the addition of a single dwelling with three licensed drivers would not "significantly" affect the level of service or volume capacity.

The Yamhill County Public Works Department will be requiring an access permit to the subject property since there is no record of one with the Road Department. The existing approach does have appropriate sight distance for safe ingress and egress. The existing access is also at grade with the grade level of Bald Peak Road. The Yamhill County Public Works Department has a policy of requiring 10 feet of sight distance for each mile per hour of the posted speed limit. The driveway therefore would have a sight distance requirement of 550 feet since the speed limit is 55 miles per hour. The existing approach exceeds this standard.

This proposal does conform to the requirement relating to function and capacity, but the safety of the access will have to be evaluated by the Yamhill County Public Works Department.

**E. Goal 5 (Mineral and Aggregate Resources) Provisions and Analysis**

1. There are two quarries in the vicinity of the subject parcel. One is southeast of the subject property. The other quarry is located approximately 1/4 mile to the northwest of the subject property, and therefore our analysis will address the presence of both of these quarries.
2. The Yamhill County Comprehensive Plan contains goals and policies designed to protect mineral deposits from encroaching incompatible uses and to insure that irreparable environmental damage and safety hazards do not arise from mining and quarrying activities. The specific goals and policies are contained in Section F under Mineral and Aggregate Resources. Each goal and policy will be examined as follows:

## GOAL STATEMENT

1. *To protect mineral deposits from urban encroachment, provided that such deposits are not located on land identified for urban and rural residential development by the Comprehensive Plan and Plan Map; to ensure that all extraction of mineral resources takes place under conditions which foster compatibility with existing surrounding land uses; and to provide for the restoration of extraction sites for future agriculture, open space, recreational or other appropriate uses. (Ord. 301)*

## POLICIES

**Policy a.** *This policy requires that mineral and aggregate resources will be recognized as nonrenewable resource important to the growth and development of the county and of the surrounding region. The anticipated property owner is an excavating contractor and recognizes the value of aggregate/mineral sites to the growth and development of the county. The presence of the quarries is a benefit to the property owner, particularly since rock products can be utilized for their home site development or as a source site for nearby jobs.*

**Policy b.** *This policy requires that Yamhill County cooperate with state and federal agencies to identify lands can be utilized as mineral aggregate sources. The quarries are identified sources of mineral/aggregate in the County Comprehensive Plan. The owners agree that these sources must be preserved and protected to meet local needs for rock products.*

**Policy c.** *This policy requires that areas designated in the Comprehensive Plan for mineral resource will continue to be protected from incompatible rural and urban residential development. This proposal conforms with the intent of this policy to minimize conflict. The proposed dwelling on the subject property will be located on the east end, which is the greatest distance from the quarry site to the northwest. In addition, the proposed dwelling on the subject property is not close enough to the quarry to the northwest to be adversely affected by drilling and shooting rock at the quarry location. Under the Goal 5 Analysis completed by Yamhill County, it was concluded that the perimeter of the Newberg Quarry site with its extensive vegetation could contribute to compatibility with adjacent land uses. We recommended that the 7 acres accompanying the Newberg Quarry site be retained within the current AF-20 zone. The effect of this is that any renewed extraction at this site would require either a Zone Change to MR (Mineral Resource) or that the owners apply for a Conditional Use Permit. In essence, this means that any reactivation of this quarry would result in a public review that would address such issues as compatibility. The quarry activities, though intermittent, can be disturbing to nearby residents; however, it should be noted for the record that the area around these quarries is already parcelized and developed with homes. There are already numerous dwellings that are closer to the quarry locations than would be the dwelling on the subject property. The addition of a single house farther away would not increase incompatibility problems that may already exist.*

**Policy d.** *This policy requires that areas designated as mineral resource will continue to be protected from incompatible urban and rural residential development and other conflicting uses.* In 1980 the County Board of Commissioners approved a plan amendment that rezoned 12.19 acres from AF-20 zoning to VLDR-5 zoning (adjacent to the quarry northwest of the subject property). This adjacent tract was subsequently divided into three parcels, and ultimately these parcels were developed with dwellings. If any dwellings were going to have an adverse impact on the quarry operation, it would be these three dwellings; but the quarry site is not visible from the dwellings and is largely inactive, so incompatibility has not been a problem.

The Newberg Quarry to the southeast is already heavily screened from the subject property, and the active pit is several hundred feet away from the prospective dwelling site. The mineral resource should not be adversely affected by placing a dwelling on the subject property because of the physical distance that would separate the dwelling from the quarry pit. The proposed dwelling would be located 900 feet west of the Newberg Quarry pit and would be totally sight-obscured by topography and vegetation. Additionally, any future

A finding can be made that the dwelling on the subject property should have no adverse impact on the activities conducted on either of the quarry properties.

**Policy e.** *This policy requires that if the property has been identified as having important mineral resource that it can conflict with competing uses.* The subject parcel was not identified as having important mineral and aggregate resource. This policy does not apply.

#### CONCLUSIONS:

1. The request is for a Comprehensive Plan amendment and zone change from Exclusive Farm Use, EF-80 to AF-10, including an exception to Goal 3.
2. The application is consistent with Comprehensive Plan goals and policies.
3. The application is consistent with the zone change criteria of Section 1208.02.
4. The application complies with the Transportation Planning Rule.
5. The application complies with the Goal 5 as it relates to Mineral and Aggregate Resources.