

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 the Approval of a Request)
for a Comprehensive Plan Map Amendment From)
AFLH to VLDR and a Zone Change to VLDR-5,)
and Taking an Exception to Statewide Planning)
Goals 3 and 4, on Remand from the Oregon Land)
Use Board of Appeals, Planning Docket)
PAZ-04-95, Applicant Robert Park, Tax Lots)
2315-5800, 5801 and 5804; Declaring an Emergency.)

ORDINANCE 673

THE BOARD OF COMMISSIONERS OF YAMHILL COUNTY, OREGON ("the Board") sat for the transaction of county business in formal session on July 8, 1999, Commissioners Robert Johnstone, Thomas E. E. Bunn, and Ted Lopuszynski being present.

WHEREAS, on December 15, 1995, the Board adopted Ordinance 600 which approved the application of Robert D. Park to change the comprehensive plan designation from AFLH to VLDR and a zone change to VLDR-5, and to take an exception to Statewide Planning Goals 3 and 4, Planning Docket PAZ-04-95 on an approximately 60 acre parcel known as Tax Lots 2315-5800, 5801 and 5804.; and

WHEREAS, the Department of Land Conservation and Development ("DLCD") filed a timely appeal of the Board's approval to the Oregon Land Use Board of Appeals ("LUBA") and LUBA remanded the County's approval in DLCD v. Yamhill County, ___ Or LUBA ___ (LUBA No. 96-008, August 23, 1996); and

WHEREAS, LUBA's remand found that the County had failed to properly apply state administrative rules for taking an exception; and

WHEREAS, applicant requested a remand hearing, and the Planning Director prepared a notice of public hearing and caused said notice to be mailed to those entitled to such mailing and caused said notice to be published in the newspaper of record advertising a public hearing for June 10, 1999 at 10:00 a.m. before the Board of Commissioners, which purpose was to expressly consider the criteria for taking a committed exception as discussed in LUBA's opinion; and

WHEREAS, the Board opened the public hearing on June 10, 1999 and closed the public hearing on June 10, 1999, and decided to take the matter under advisement and continued the matter to June 17, 1999 for deliberation; and

80.99-520

WHEREAS, on June 17, 1999 the Board made a preliminary determination by a vote of 2-1 (Commissioner Bunn voting no) that the application should be approved on remand and directed staff to prepare findings of fact in support of the determination that there was substantial evidence that the application met the applicable approval criteria for the plan amendment, zone change, and exception to statewide goals; Now Therefore,

THE YAMHILL COUNTY BOARD OF COMMISSIONERS ORDAINS AS FOLLOWS

Section 1. The Yamhill County Comprehensive Plan Plan and Plan Map (1974), as amended, are hereby amended as specified in the attached Exhibit "B" made part of this ordinance by reference, to reflect a plan designation of "VLDR" (Very Low Density Residential) on the parcels described and shown on Exhibit "B."

Section 2. The Official Zoning Map, as amended, is hereby amended as specified in the attached Exhibit "B" to reflect a zoning designation of "Very Low Density Residential" (VLDR-5).

Section 3. In adopting the plan amendment specified in this ordinance, the county hereby takes an exception to Statewide Planning Goals 3 and 4.

Section 4. The findings attached as Exhibit "A" and incorporated herein by reference are hereby adopted in support of this ordinance.

Section 5. Severability. All sections, subsections and paragraphs of this ordinance are severable. If any section, subsection, or paragraph is ruled invalid for any reason by the court of last resort, the other portions of this ordinance shall be unaffected.

Section 6. Emergency Clause. This ordinance being necessary for the health, safety, and welfare of the citizens of Yamhill County, and an emergency having been declared to exist, is effective upon passage.

DONE at McMinnville, Oregon this 8th day of July, 1999.

ATTEST

YAMHILL COUNTY BOARD OF COMMISSIONERS

CHARLES STERN

County Clerk

Robert Johnstone

Chairman

ROBERT JOHNSTONE

By:

Carol Ann White

Deputy

Carol Ann White

Thomas E.E. Bunn

Commissioner

THOMAS E.E. BUNN

FORM APPROVED BY:

John C. Pinkstaff

JOHN C. PINKSTAFF

Assistant County Counsel

Ted Lopuszynski

Commissioner

TED LOPUSZYNSKI

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EXHIBIT "A"

ORDINANCE 673

FINDINGS FOR APPLICATION BY
ROBERT D. PARK
PAZ-04-95

BOARD OF COUNTY COMMISSIONERS' PRELIMINARY APPROVAL: June 10, 1999
BOARD OF COUNTY COMMISSIONERS' FINAL APPROVAL: July 7, 1999
DOCKET: PAZ-04-95, Remand
REQUEST: Approval of a Comprehensive Plan map amendment from Agriculture Forestry Large Holding to Very Low Density Residential and a zone change to VLDR-5. The request includes taking an exception to Statewide Planning Goals 3 and 4.
APPLICANT: Robert Park
OWNERS: Rebecca Park Pennington, Deborah Jeffries
TAX LOT: 2315-5800, 5801 and 5804
LOCATION: On the east side of Bald Peak Road, across from Bald Peak State Park
ZONE: The zoning was AF-20, Agriculture Forestry Large Holding district at the time the application was submitted. The current zoning is EF-40, Exclusive Farm Use district.
REVIEW CRITERIA: OAR 660-04-028.

FINDINGS:

A. Background Facts:

1. Property size: Three tax lots each approximately 20 acres in size.
2. Access: Bald Peak Road.
3. On-site Land Use: The properties are on the top of Bald Peak, with slopes toward the northeast. The property was leased to a Christmas tree grower, but he has abandoned his efforts to grow Christmas trees there. There are two small forested areas. Other than an agricultural building and a small shed, the property is vacant.

4. Surrounding Land Use and Zoning: Land to the north and east consists of 5-acre lots that are being developed with residences (VLDR-5 zoning). To the west is Bald Peak State Park (PRO zoning). To the south are two 20-acre parcels zoned for resource use. There is also a water tower and several antennae in the vicinity (PWS zoning).
5. Water: The area is within the LA Water Cooperative boundary. A water line runs along Bald Peak Road and the northern property line of Tax Lot 5801.
6. Sewage Disposal: None existing. Individual on-site septic systems would be necessary.
7. Fire Protection: Newberg Rural Fire Protection District.
8. Soils: Sheet 10 of the Yamhill County Soil Survey shows that the entire area is composed of Laurelwood soils. Approximately 40 percent is LuC, with slopes of 3 to 12 percent. Another 40 percent is LuD, with slopes of 12 to 20 percent. The remaining 20 percent is LuE, with slopes of 20 to 30 percent. The soils have an agricultural capability of class III and IV, and are high-value farmland.
9. Taxes: The parcels are receiving a farm tax deferral.
10. Previous Actions: A request to rezone the area to VLDR and create a planned unit development was denied in 1981. The three lots were created through partitionings in 1981 and 1982. Each of the lots received approval for lot of record dwellings in 1994.

B. Applicable Criteria

The Board of County Commissioners ("Board") previously found Applicant had satisfied all of the applicable approval criteria in the Yamhill County Comprehensive Plan and Yamhill County Zoning Ordinance, as well as the statutes and state administrative rules pertaining to a "reasons" exception and an "irrevocably committed" exception. In the subsequent appeal by the Department of Land Conservation and Development ("DLCD"), as discussed in LUBA's opinion, DLCD challenged the Board's application of the state administrative rules. Because Applicant has conceded that a "reasons" exception is not appropriate in this case, we apply only those criteria for a "committed exception" which are discussed in LUBA's opinion. These are found in OAR 660-004-0028. We need not apply the criteria in OAR 660-004-0018 or in the county's plan or zoning ordinance, as these were not raised by DLCD in its LUBA appeal or addressed as decision criteria by LUBA in its opinion.

C. Procedural Issues.

LUBA remanded the Board's previous approval of this application in order for it to reapply the criteria in OAR 660-004-0028. The Planning Director mailed notice of the June 10, 1999 public hearing to all parties entitled to mailed notice under ORS 197.763 and caused notice to be published in the newspaper of record pursuant to the requirements of the YCZO. The notice stated that review

"will be limited to issues related to whether the parcels comply with the requirements for taking a 'committed' exception pursuant to OAR 660-04-018 and 028." (However, as noted above, we have concluded we need not apply the criteria in OAR 660-004-0018.) No party objected to the form of notice or lack of notice.

The Board opened the public hearing. Chairman Johnstone asked the Board members to reveal any ex parte contacts. No Board member revealed an ex parte contact. After some discussion about whether it was appropriate or necessary during a remand proceeding, Assistant County Counsel John Pinkstaff read the oral statements required at the commencement of a public hearing by ORS 197.763(5). Associate Planner Sandy Mathewson read the notice of public hearing regarding the scope of hearing. The Planning Director had previously issued a Staff Report which was available to all parties as of June 1, 1999.

The public hearing followed the order of procedure established by the Board for public hearings. After preliminary announcements and questions, the Board asked Ms. Mathewson to present a summary of staff findings. Then Applicant, represented by Peter Livingston, presented his testimony. Mr. Livingston objected to the scope of the hearing, as set forth in the notice of public hearing and the staff report, asking that the criteria be limited to those stated in OAR 660-004-0028.

When the testimony of Applicant's representative and others supporting the application was concluded, an opportunity was provided for questions to the proponents and Applicant. Then several parties testified against the proposal and an opportunity was provided to the audience to question these parties. Following Applicant's rebuttal testimony and the presentation of comments submitted by governmental agencies, including the Oregon Parks and Recreation Department, the Department of Land Conservation and Development, and the Yamhill Soil and Water Conservation District, staff made its recommendation. The public testimony was closed without anyone making a request to continue the public hearing or to leave the record open for additional written evidence or testimony.

The Board decided to take the matter under advisement and to render a decision the following week, on June 17, 1999. Applicant submitted a letter dated June 16, 1999, which the Board accepted as "final written arguments" under ORS 197.763(6)(e), prior to making its decision on June 17, 1999.

D. Exception Requirements

1. The exception requirements for land that is irrevocably committed to other uses are found in OAR 660-04-028. The requirements are:

(1) A local government may adopt an exception to a 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.

- (2) Whether land is irrevocably committed depends on the relationship between the exception area and the lands adjacent to it. The findings for a committed exception therefore must address the following:

- (a) The characteristics of the exception area;

The subject property is on a windswept ridge which is surrounded by non-resource uses on three sides. The property is at an elevation of 1,450 to 1,600 feet. Approximately 20 percent of the property has slopes of 20-30 percent. Approximately 40 percent of the property has slopes of 12-20 percent. The balance of the property has slopes of 3 to 12 percent. The soil is identified as Laurelwood silt loam in the Natural Resource Conservation Service (NRCS) soil survey of Yamhill County. However, the soil survey states the Laurelwood series elevations range from 300 to 1,200 feet. Therefore, although the NRCS soil survey states the property is in capability classes III and IV, which is classified as "High Value Farmland" under OAR 660-033-0020(8)(c), the classification does not consider the effects of elevation on its actual utility as farmland.

The high elevation of the property results in a greater preponderance of inclement weather, including ice storms, excessive cloud cover and fog, high winds, heavier snow cover and longer duration of snow cover, and higher rainfall and wetness. As explained by Applicant, who has decades of experience as a farmer in the Midwest, and in letters from tenant farmers submitted by Applicant, the property has a short growing season due to its high elevation. Low temperatures and high winds make it impossible to count on the timely harvesting of crops. The short growing season limits the types of crops that can be grown and increases the failure risk for any type of crop grown. The soil temperatures and the air temperatures are often inadequate to allow proper blossoming or to allow maturation of crops by harvest season.

The steep slopes over a majority of the property preclude the use of many types of farm machinery, meaning that more work must be done by hand, if it can be done at all. The topography of the site is too steep to allow standard farm machinery unless the machinery has load-leveling or wheel-leveling capability. The use of specialized machinery due to steep topography increases the cost of farming at this site.

The higher rainfall often precludes timely harvesting of crops due to the inability of a farmer operator to use equipment to access the crops. The high wind speeds on the property limit the availability of helicopters for Christmas tree harvesting and for applying aerial sprays to crops. The fog which is almost inevitable at the top of Bald Peak when it is time to harvest Christmas trees is also a limiting factor for aerial equipment.

The subject property can only be reached from lower elevation farm operations over steep, narrow, curving roads.

These observations and those that follow are based on site visits by the commissioners; the testimony of Applicant, whom we find to be an experienced farmer and a highly credible witness;

evidence submitted by Applicant, including Applicant's own summary of efforts to farm (at Record 57-58¹); recent letters from three individuals (Proctor, Pierson and Winters) who have tried and failed to farm the subject property successfully; and information provided by staff.

(b) The characteristics of the adjacent lands;

The property is bordered on two sides (north and east) by expensive single family homes. The land to the west, across a two-lane road, is occupied by Bald Peak State Park. There are also a water tower and several antennas in the vicinity on property zoned PWS, at the southwest corner of the subject property.

The land to the south is zoned AF-20. Between the subject property and the property to the south is a deep ravine and a year-round spring which flows east. Because of the ravine, which forms a natural barrier, farm equipment cannot be moved from the subject property directly to the property to the south. The only way to gain access across the lot line is by trespassing across the PWS-zoned property at the southwest corner of the subject property.

The property is bordered on the west by Bald Peak State Park, which is a "State Viewpoint." In the evening, the park is lightly patrolled, if it is patrolled at all. It is the scene of mild to serious lawlessness, including drug dealing, drinking, and subsequent "acting out." Applicant testified to specific acts of vandalism, including but not limited to, those described below.

*(c) The relationship between the exception area and the lands adjacent to it;
and*

OAR 660-004-0028(2)(c) requires consideration of the relationship between the exception area and the lands adjacent to it. We understand "adjacent" to mean "not distant" or "nearby," rather than "having a common border." However, we would draw the same conclusions concerning conflicts even if adjacent is interpreted to mean having a common border. We note that although the county has a "right to farm" ordinance, it relates only to county enforcement proceedings and provides no protection against complaints or actions brought by nearby neighbors and related to farming activities.

As LUBA pointed out in its opinion, "conflicts with rural residential development in exception areas created pursuant to the applicable goals cannot be used to justify a committed exception on the subject property." 31 Or LUBA at 501. However, LUBA noted that "If findings were made that the adjacent exception areas were not created pursuant to the goals, development in those areas could be considered, under OAR 660-004-0028(6)(c)(A), in determining if a committed exception were justified on the subject property." 31 Or LUBA at 500 n15.

¹ References to the "Record" are to the record generated in the first proceeding which resulted in the appeal to LUBA.

As the county's original decision makes clear, Record 13, only the Sunrise Peaks Estates exception, concerning the land to the north of the subject property, was taken pursuant to the application of the statewide planning goals. The land to the east was developed well before the adoption and application of the goals, and was noted as an exception area in the Yamhill County Exception Statement of 1979 (and subsequently acknowledged as such in 1979/1980). Conflicts with uses on the land to the east may be considered by the county in taking a committed exception. As explained by Applicant, those conflicts include restrictions on spraying pesticides on the subject property, due to health concerns, and also complaints from neighbors about the use of helicopters to harvest Christmas trees because of noise, dust, and wind.

LUBA commented that "the conflicts described in the [county's earlier] decision have been characterized as 'at best, make-weights' by the Court of Appeals. Prentice v. LCDC, 71 Or App 394, 403, 692 P2d 642 (1984). Although such considerations may be a factor in showing that resource use is impracticable, they are not conclusive." 31 Or LUBA at 500.

LUBA's opinion did not address and therefore did not preclude consideration of vandalism resulting from an adjacent use which is not a residential use, but which is, nevertheless, in conflict with resource use of the subject property. Furthermore, the language from Prentice quoted by LUBA was only dicta, since the Court of Appeals had concluded that there was not substantial evidence in that case to support the findings. Finally, the Court of Appeals did not include vandalism in the list of "make-weights" that it recited. Beyond noting that a contention of vandalism had been made, it said nothing about vandalism.

We understand the use of "relationship" in OAR 660-004-0028(2)(c) to include all aspects of the interaction between the proposed exception area and adjacent lands.

Vandalism by persons attracted to or using Bald Peak State Park is a grave problem for Applicant. Examples of vandalism during the period Applicant (or his daughters) have owned the problem include the following:

1. A substantial old farmhouse on the property had to be demolished after vandals began to disassemble it in order to burn the wood in fires they had built in the state park and Applicant's insurance company refused to insure the house.
2. A vandal stole a new pickup truck and entered the subject property. He then drove the truck into the side of the existing barn, effectively destroying it and exposing valuable equipment stored there. Next, he drove into the other side of the barn, causing it to collapse beyond repair. He proceeded to drive around the property, destroying all of the newly planted trees in his path.
3. Applicant stored a small tractor/mower in a shed on the property, to be used for mowing the ground between rows of Christmas trees. Over two consecutive evenings, vandals disassembled the tractor and removed the battery, the seat, the steering wheel, the wheels, and the axle, leaving only a worthless piece of metal.

4. Vandals put sugar in the fuel tank of a D-4 Caterpillar tractor. The tractor was effectively "totaled," and had to be scrapped.

5. Vandals have sporadically used their four-wheel drive vehicles to tear up the ground, making it far more difficult and costly to combine the land, because the machinery cannot be allowed to run into the ruts the vandals have created.

6. Vandals "topped" the trees which were planted along Bald Peak Road.

These acts of vandalism have occurred notwithstanding Applicant's attempts to control the property. A succession of locks and chains have failed to secure the property. On one occasion vandals cut off the top foot of one of the fence posts, taking the lock and chain with them, in order to open the gate.

In its opinion, LUBA suggested that our earlier decision did "not address whether the problem of vandalism could be mitigated without taking an exception through construction of the three lot-of-record dwellings already permitted on the subject property." 31 Or LUBA at 500 n 13. Applicant testified that some of the acts of vandalism detailed above occurred notwithstanding the presence of houses located near the property line to the north, although still at some distance from the entrance to the property. Based on his testimony, we now find that the development of only 3 dwellings on 60 acres will not be sufficient to create the densities necessary to monitor the area near the state park, but that the proposed density of 12 dwellings on 60 acres will be sufficient.

In its original decision, the county relied on Goal 5 to protect the view from the state park from the impact of growing trees on the subject property. That view is not inventoried as a Goal 5 resource. Nevertheless, as noted in LUBA's opinion, 31 Or LUBA at 495, the record from the earlier proceedings demonstrates that the protection of the view is important to the continued existence of the state park. Although Applicant or a successor owner could, if they chose, cooperate with the Oregon Parks and Recreation Department to protect the view from the state park against being blocked by a wall of trees, their doing so would interfere with growing timber on the upper portion of the property. By rezoning the property and by imposing the condition stated below, we have limited the height of development and vegetation to protect the view from the park.

In short, the proximity of Bald Peak State Park creates conflicts that negatively impact the use of the property for either farm or forest use. A letter from Oregon Parks and Recreation Department characterizes the scenic viewpoint from the park as "the primary purpose for the park." Record 86. The fact that the Goal 5 resource balancing test does not apply does not eliminate the conflict. Because the conflicts between the subject property and Bald Peak State Park do not relate to residential development allowed through a goal exception, they may be considered without violating OAR 660-004-0028 or LUBA's opinion.

We conclude that any of the conflicts described above, and certainly all of them, when considered in combination, make resource use of the subject property impracticable.

- (d) *The other relevant factors set forth in OAR 660-004-0028(6).*

See below.

- (3) *Whether uses or activities allowed by an applicable goal are impracticable as that term is used in ORS 197.732(1)(b), in Goal 2, Part II(b), and in this rule shall be determined through consideration of factors set forth in this rule. Compliance with this rule shall constitute compliance with the requirements of Goal 2, Part II. It is the purpose of this rule to permit irrevocably committed exceptions where justified so as to provide flexibility in the application of broad resource protection goals. It shall not be required that local governments demonstrate that every use allowed by the applicable goal is "impossible". For exceptions to Goals 3 or 4, local governments are required to demonstrate that only the following uses or activities are impracticable:*

- (a) *Farm use as defined in ORS 215.203;*
- (b) *Propagation or harvesting of a forest product as specified in OAR 660-033-0120;² and*
- (c) *Forest operations or forest practices as specified in OAR 660-006-0025(2)(a).*

- (4) *A conclusion that an exception area is irrevocably committed shall be supported by findings of fact which address all applicable factors of section (6) of this rule and by a statement of reasons explaining why the facts support the conclusion that uses allowed by the applicable goal are impracticable in the exception area.*

* * * * *

- (6) *Findings of fact for a committed exception shall address the following factors:*
- (a) *Existing adjacent uses;*

Adjacent uses include rural residences, a park, and farm and forest land.

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

² This refers to a chart which does not refine the standard.

Public facilities and services include a water line running along Bald Peak Road, electricity and phone service. There is no public sewer service available to the area.

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

The three parcels, along with the two 20-acre parcels to the south, were all one parcel until being divided in the early 1980's. (The area had a 20 acre minimum lot size until 1993.) All five lots are owned individually or jointly by Deborah Jeffries and Rebecca Park Pennington, who are sisters. An exception to Goals 3 and 4 was taken in 1979/80 for the rural residential lands to the north and east. The Mel Vista Ridge Estates subdivision to the east was platted prior to the exception; the Sunrise Peaks Estates subdivision to the north was platted in 1985.

(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. For example, the presence of several parcels created for nonfarm dwellings or an intensive commercial agricultural operation under the provisions of an exclusive farm use zone cannot be used to justify a committed exception for land adjoining those parcels;

(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.

As explained above, the proposed exception area is divided into three 20-acre parcels. The adjacent properties to the north and east are zoned VLDR-5. Only the adjacent property to the north

was subdivided pursuant to an exception process involving the application of the statewide planning goals. The adjacent property to the east was developed before the adoption of the statewide planning program in 1973. The property to the south is zoned for resource use.

(d) Neighborhood and regional characteristics;

As indicated on the map at Record 138, this parcel abuts rural residential development on two sides. The map at Record 121 shows the extent to which residential development has occurred to the northwest, north and east of the property. This rural residential development pattern continues to the north, in Washington County.

(e) *Natural or man-made features or other impediments separating the exception area from adjacent resource land. Such features or impediments include but are not limited to roads, watercourses, utility lines, easements, or rights-of-way that effectively impede practicable resource use of all or part of the exception area;*

As noted above, the subject property can only be reached from lower elevation farm operations over steep, narrow, curving roads. The ravine and spring at the southern boundary of the property separates it from the resource property further south. Bald Peak State Park separates the property from resource lands to the west.

(f) *Physical development according to OAR 660-004-0025; and*

As stated in LUBA's opinion, the property is developed with a gravel road, an agricultural building, and a small shed.

(g) *Other relevant factors.*

Based on comments in the record from the Oregon Parks and Recreation Department, LUBA rejected Applicant's argument that Bald Peak State Park prevents use of the upper portion of the subject property for timber production because tall trees could impact views from the park. Those comments included the following statement: "It is incorrect to assume that if this property was rezoned to residential the problem would go away. Without an agreement for vegetative height control to maintain the state scenic viewpoint, the issue will still exist." 31 Or LUBA at 496. LUBA observed: "*In view of these comments, and in the absence of any evidence to the contrary, we agree with petitioner that the county's finding that the property is generally unsuitable for the production of timber due to a serious conflict with the state viewpoint is not supported by substantial evidence in the whole record.*" *Id.* (emphasis added). The evidence in the record supports a finding of serious conflict: as explained in Applicant's submissions, vandals have attacked the trees Applicant planted near the western boundary of the subject property because they have blocked the scenic view from the state park. Record 42. The conflict will be resolved by our approval of the proposed rezone, because Applicant has agreed to a condition, stated below, which

will finally provide protection to the state scenic viewpoint when the property is rezoned to residential.

Other relevant factors include the impracticability of resource use on the subject property itself. A Court of Appeals decision issued since LUBA's opinion in this case makes clear that the Board must consider the characteristics of the property for which the exception is sought. DLCD v. Curry County, 151 Or App 7, 947 P2d 1123, 1125 (1997).

Impracticability for Farm Use.

The appropriate standard to be applied is not impracticability for *commercial* farm use, but impracticability for farm use as that term is used in ORS 215.203(2)(a). The findings need not address "each and every use potentially allowable under the applicable goals. * * * More general findings are sufficient, at least when no issue is raised pertaining to a particular use." 31 Or LUBA at 499 (1996).

We expressly reject the opponents' argument that simply because, under OAR 660-033-0020(8)(c), the property is High Value Farmland, exceptions to Goals 3 and 4 are unwarranted. The classification of the property as High Value Farmland means the soils are Type IV or better. It does not consider the location of the soils at an altitude not contemplated by the NRCS soil survey. As Applicant and others have testified, the altitude creates climactic problems which severely affect the land's productivity for farm use.

The subject property has a long history of crop failures, including English walnuts, prunes, livestock operations, wheat, and most recently, Christmas trees. This history includes crops rotting in the field due to inclement weather and contract farmers refusing rent-free offers to use the land because of inherent risks. Record 57-58. Applicant submitted letters from A.G. Proctor, Carl A. Pierson and Marvin Winters, which detail failed attempts to raise various crops, including Christmas trees. (The letter from Mr. Winters was written after the date that LUBA made the statement that "the subject property is presently being used to grow Christmas trees," 31 Or LUBA at 501.)

The conflicts with adjacent properties, as detailed above, also contribute to rendering the subject property impracticable for farm use.

As noted in OAR 660-004-0028(3), the farm uses specified in ORS 215.203(2)(a) need not be *impossible* to be *impracticable*. From Applicant's testimony and written submissions, and from Mr. Proctor's, Mr. Pierson's and Mr. Winters's letters, we conclude that the property cannot be used for the primary purpose of obtaining a profit in money. It is impracticable for farm use.

Impracticability for Forest Use.

OAR 660-006-0025 provides, in relevant part:

"(2) The following uses pursuant to the Forest Practices Act (ORS Chapter 527) and Goal

4 shall be allowed in forest zones:

- "(a) 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;

"* * * * *"

The financial analysis of Rick Barnes, of Barnes & Associates, submitted by Applicant, demonstrates the subject property is impracticable for forest use. As Mr. Barnes explains, if the present net value (PNV) of the subject property is calculated and discounted at seven percent, a common discount rate used for forest investments, the result is actually *minus* \$3,490 for each 20-acre parcel. Mr. Barnes' analysis is based almost entirely on characteristics of the subject property. If the impacts of vandalism from Bald Peak State Park were considered, the costs of raising timber on the property would increase, and the PNV could be expected to be further reduced.

As we stated above with respect to farm uses, the forest uses specified in OAR 660-006-0025(2)(a) need not be *impossible* to be *impracticable*. If the effect of planting trees will be to render the property effectively worthless (or less than worthless), given the time to harvest and the time value of money, it is impracticable to conduct "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."

- (7) *The evidence submitted to support any committed exception shall, at a minimum, include a current map, or aerial photograph which shows the exception area and adjoining lands, and any other means needed to convey information about the factors set forth in this rule. For example, a local government may use tables, charts, summaries, or narratives to supplement the maps or photos. The applicable factors set forth in section (6) of this rule shall be shown on the map or aerial photograph.*

This information is already in the record at Record 104-06, 113, 116-17, 137-38, 153-54, 158-60, 162, 169.

The conflicts with the state park, including view obstruction and vandalism, as detailed, also contribute to rendering the subject property impracticable for forest use. As noted in OAR 660-004-0028(3), forest uses need not be *impossible* to be *impracticable*.

DECISION:

Based on the above findings of fact and conclusions of law, the request by Applicant and the property owners for approval of a comprehensive plan map amendment from Agriculture Forestry Large Holding to Very Low Density Residential and a zone change to VLDR-5 for Tax Lots 2315-

5800, 5801 and 5804, which includes taking an exception to Statewide Planning Goals 3 and 4, is hereby approved with the following condition:

1. Applicant shall invite the participation of the Oregon Parks and Recreation Department in establishing building and development guidelines for future development on the subject property to ensure that the development of the property is visually subordinate to the landscape setting and that views from Bald Peak State Park are protected from encroachment by structures, utilities, and vegetation.

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