Oregon
Theodore R. Kulongoski, Governor

Department of Land Conservation and Development
635 Capitol Street, Suite 150
Salem, OR 97301-2540
(503) 373-0050
Fax (503) 378-5518
www.lcd.state.or.us

NOTICE OF ADOPTED AMENDMENT

8/5/2009

TO: Subscribers to Notice of Adopted Plan or Land Use Regulation Amendments

FROM: Plan Amendment Program Specialist

SUBJECT: Douglas County Plan Amendment
DLCD File Number 013-07R

The Department of Land Conservation and Development (DLCD) received the attached notice of adoption. A Copy of the adopted plan amendment is available for review at the DLCD office in Salem and the local government office.

Appeal Procedures*

DLCD ACKNOWLEDGMENT or DEADLINE TO APPEAL: Tuesday, August 18, 2009

This amendment was submitted to DLCD for review prior to adoption with less than the required 45-day notice. Pursuant to ORS 197.830(2)(b) only persons who participated in the local government proceedings leading to adoption of the amendment are eligible to appeal this decision to the Land Use Board of Appeals (LUBA).

If you wish to appeal, you must file a notice of intent to appeal with the Land Use Board of Appeals (LUBA) no later than 21 days from the date the decision was mailed to you by the local government. If you have questions, check with the local government to determine the appeal deadline. Copies of the notice of intent to appeal must be served upon the local government and others who received written notice of the final decision from the local government. The notice of intent to appeal must be served and filed in the form and manner prescribed by LUBA, (OAR Chapter 661, Division 10). Please call LUBA at 503-373-1265, if you have questions about appeal procedures.

*NOTE: THE APPEAL DEADLINE IS BASED UPON THE DATE THE DECISION WAS MAILED BY LOCAL GOVERNMENT. A DECISION MAY HAVE BEEN MAILED TO YOU ON A DIFFERENT DATE THAT IT WAS MAILED TO DLCD. AS A RESULT, YOUR APPEAL DEADLINE MAY BE EARLIER THAN THE ABOVE DATE SPECIFIED.

Cc: Mark Bernard, Douglas County
Doug White, DLCD Community Services Specialist

John Renz, DLCD Regional Representative

<paa> YA/l

FORM 2

DLCD
Notice of Adoption

THIS FORM **MUST BE MAILED** TO DLCD
WITHIN 5 WORKING DAYS AFTER THE FINAL DECISION
PER ORS 197.610, OAR CHAPTER 660 - DIVISION 18

☐ In person ☐ electronic ☐ mailed

DEPT OF
JUL 29 2009
LAND CONSERVATION AND DEVELOPMENT
For DLCD Use Only

Jurisdiction: **Douglas County** Local file number: **07-230A**
Date of Adoption: **7/22/2009** Date Mailed: **7/28/2009**
Was a Notice of Proposed Amendment (Form 1) mailed to DLCD? **Yes**Date: 8/31/2007

☐ Comprehensive Plan Text Amendment ☒ Comprehensive Plan Map Amendment
☐ Land Use Regulation Amendment ☒ Zoning Map Amendment
☐ New Land Use Regulation ☒ Other: Non-Resource Determination

Summarize the adopted amendment. Do not use technical terms. Do not write "See Attached".

Garden Valley Estates LLC, request for a Plan Amendment from Agriculture to Rural Residentail-5 acre and a Zone Change from Exclusive Farm Use - Grazing to Rural Residential-5 Acre, on a 259 acre parcel, together with a determination that the property is non-resource land and on information that demonstrates consistency with the County's Rural Residential 5 - Acre density.

Does the Adoption differ from proposal? Yes, Please explain below:

The original proposal contemplated an expansion of the Riversdale Rural Unincorporated Community boundary as to the southerly 99 acres of the subject property. The RUC boundary portion of the application has been separated as Planning Department file number 07-230B, which has not been heard by the local authority.

Plan Map Changed from: **AGG** to: **RR5**
Zone Map Changed from: **FG** to: **5R**
Location: **Intersection of Del Rio Road and Garden Valley Rd.** Acres Involved: **259**
Specify Density: Previous: **1 DU/160 AC** New: **1 DU/5 AC**
Applicable statewide planning goals:

1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19
☒	☒	☒	☒	☐	☐	☐	☐	☐	☒	☒	☒	☒	☒	☐	☐	☐	☐	☐

Was an Exception Adopted? ☐ YES ☒ NO
Did DLCD receive a Notice of Proposed Amendment...
45-days prior to first evidentiary hearing? ☒ **Yes** ☐ **No**
If no, do the statewide planning goals apply? ☐ **Yes** ☐ **No**
If no, did Emergency Circumstances require immediate adoption? ☐ **Yes** ☐ **No**

DLCD file No. 013-07R (16365) [15651]

DOUGLAS COUNTY

PLANNING DEPARTMENT

Room 106 • Justice Building • Douglas County Courthouse
Roseburg, Oregon 97470

Agency Coordination • Administrative • Long Range • Support Services
(541) 440-4289 • (541) 440-6266 Fax

On-Site Services (541) 440-6183
Community Services (541) 464-6443
(541) 464-6429 Fax

July 23, 2009

NOTICE

TO: Parties to the GARDEN VALLEY ESTATES LLC, remand of a request for a Comprehensive Plan Amendment from (AGG) Agriculture to (RR5) Rural Residential - 5 Acre, and Zone Change from (FG) Exclusive Farm Use - Grazing to (5R) Rural Residential - 5 Acre, based upon a Nonresource Determination on a 259 acre parcel located on Garden Valley County Road No. 6 at its intersection with Del Rio County Road No. 31C, adjacent to the Riversdale Rural Community Boundary. Planning Department File No. 07-230A.

FROM: Douglas County Planning Department

RE: Notice of Board of Commissioners Decision

This correspondence shall serve as official notice that the Douglas County Board of Commissioners, on July 22, 2009, affirmed the Planning Commission Decision and GRANTED the request as stated above.

A copy of the Board of Commissioners final action (signed on July 22, 2009) and the Planning Commission Findings of Fact and Decision (dated June 25, 2009) are attached with this notice. The file for this matter is available for public review, Monday through Friday, 8:00 a.m. to 5:00 p.m., at the Douglas County Planning Department Office, located in Room 106, Justice Building, Douglas County Courthouse, Roseburg, Oregon.

This final local Decision can be appealed to the State Land Use Board of Appeals (LUBA) in Salem, Oregon, by any individual or agency who has been recognized as a party in this matter. An appeal is commenced by filing a "Notice of Intent to Appeal" not later than 21 days after the date the final local decision was made. The appeal must be filed at the LUBA office in Salem. Please consult your attorney for details. The LUBA rules can be found on the Internet at http://luba.state.or.us/

attachments

c: Board of Commissioners
Paul E. Meyer, County Counsel
Keith L. Cubic, Planning Director
Cheryl Goodhue, Planning Manager

S:BC NOTICE OF DECISION GV ESTATES REMAND.wpd

BEFORE THE BOARD OF COMMISSIONERS
OF DOUGLAS COUNTY, OREGON

DOUGLAS COUNTY OREGON
FILED

JUL 22 2009

BARBARA E. NIELSEN, COUNTY CLERK

AN ORDINANCE ADOPTING, ON REMAND, AN AMENDMENT TO THE DOUGLAS COUNTY COMPREHENSIVE PLAN MAP AND ZONING MAP BASED UPON A NONRESOURCE DETERMINATION FOR GOALS 3 AND 4, AND ON INFORMATION THAT DEMONSTRATES CONSISTENCY WITH THE COUNTY'S RURAL RESIDENTIAL 5 - ACRE DENSITY FOR GARDEN VALLEY ESTATES, LLC. PLANNING DEPARTMENT FILE NO. 07-230A.

ORDINANCE NO. 2009-07-01

RECITALS

A. GARDEN VALLEY ESTATES LLC, remand of a request for a Comprehensive Plan Map Amendment from (AGG) Agriculture to (RR5) Rural Residential - 5 Acre and a Zone Change from (FG) Exclusive Farm Use - Grazing to (5R) Rural Residential - 5 Acre, based upon a Determination that the property is non-resource land and is not subject to Agricultural (Goal 3) and Forest Land (Goal 4) Goals and on information that demonstrates consistency with the County's Rural Residential 5 - Acre density, on a 259 acre parcel to allow future division of the property at the 5R density. The property is located on Garden Valley County Road No. 6, at its intersection with Del Rio County Road No. 31C, adjacent to the Riversdale Rural Community Boundary, and is described as Tax Lot 100 in Section 21 of T26S, R6W, W.M. and Tax Lot 100 in Section 28A of T26S, R6W, W.M., Property I.D. Nos. R50854 & R51351. Planning Department File No. 07-230A. Callahan Planning Advisory Committee (PAC).

B. The Douglas County Planning Commission approved the request at a remand hearing held on May 21, 2009, and memorialized its approval in a Findings of Fact and Decision document dated June 25, 2009.

C. The Board of Commissioners considered the matter on July 22, 2009, at a hearing held pursuant to Section 6.900.2 of the Douglas County Land Use & Development Ordinance. The Board affirmed the Planning Commission decision and ordered that the request be granted.

THE DOUGLAS COUNTY BOARD OF COMMISSIONERS ORDAIN AS FOLLOWS:

SECTION ONE: The requested Comprehensive Plan Map Amendment, Zone Map Amendment and Nonresource Determination are GRANTED.

SECTION TWO: The "Findings of Fact and Order" of the Board (attached, dated July 22, 2009) and the "Findings of Fact and Decision" of the Douglas County Planning Commission (attached, dated June 25, 2009), are ADOPTED and by reference made part of this Ordinance.

DATED this 22nd day of July, 2009.

DOUGLAS COUNTY OFFICIAL RECORDS
BARBARA E. NIELSEN, COUNTY CLERK
COMMISSIONERS' JOURNAL
CJ 2009-895
07/22/2009 02:48:02 PM
2009-895

BOARD OF COUNTY COMMISSIONERS
OF DOUGLAS COUNTY, OREGON

Chair

Commissioner

Commissioner

H:\a_staff\a_cheryl\BC ORDINANCE GV ESTATES REMAND.wpd

BEFORE THE BOARD OF COMMISSIONERS
OF DOUGLAS COUNTY, OREGON

Garden Valley Estates LLC request, on remand, for a Comprehensive Plan Amendment from (AGG) Agriculture to (RR5) Rural Residential - 5 Acre and a Zone Change from (FG) Exclusive Farm Use-Grazing to (5R) Rural Residential - 5 Acre based on a Non-resource Determination, and on information that demonstrates consistency with the County's Rural Residential 5 - Acre density, on a 259 acre parcel to allow future development at the 5R density. The property is located on the north side of Garden Valley County Road No. 6, at its intersection with Del Rio County Road No. 31C, adjacent to the Riversdale Rural Community. The property is described as Tax Lot 100 in Section 21, T26S, R6W, W.M. and Tax Lot 100 in Section 28A, T26S, R6W, W.M., Property ID Nos. R50854 and R51351. PD File No. 07-230A.)	**FINDINGS OF FACT AND ORDER**

INTRODUCTION & PROCEDURAL FINDINGS

1. This matter came before the Board of County Commissioners ("the Board") at a public hearing on July 22, 2009, in Room 216 of the Douglas County Courthouse, Roseburg, Oregon, pursuant to Section 6.900.2 of the Douglas County Land Use and Development Ordinance.

2. The matter came before the Douglas County Planning Commission on remand from the Land Use Board of Appeals (LUBA). The Planning Commission held a remand hearing to consider the LUBA-sustained Assignments of Error on May 21, 2009, and approved the request.

3. The Planning Commission memorialized its decision in a Findings of Fact and Decision document dated June 25, 2009. No appeals of that Decision were filed.

4. At the Board meeting on July 22, 2009, the public hearing on this matter was opened and parties were given an opportunity to speak on the Record. The Board deliberated to affirm the Planning Commission decision at the July 22, 2009 public meeting.

FINDINGS

1. Upon considering evidence and exhibits contained in the Planning Commission Record, including the written submittals from the applicant and parties, the written Staff Report and the Findings and Decision approved by the Planning Commission on June 25, 2009, the Board finds that the applicable decision criteria, as established in the Staff Report dated May 14, 2009, have been adequately addressed by the applicant.

2. The Board finds that the relevant facts raised in this matter support the conclusions and decision reached by the Planning Commission in their Findings and Decision, dated June 25, 2009.

3. The Board adopts the Planning Commission Findings and Decision as its own.

4. The description of the property for which the amendment has been approved is as follows:

   Parcel 3 of Land Partition Plat 2005-0088, Surveyor's Records, Douglas County, Oregon.

ORDER

Based on the foregoing, it is hereby ordered by the Board of Commissioners that the Planning Commission decision is affirmed and the application is GRANTED.

DATED this 22nd day of July, 2009.

BOARD OF COUNTY COMMISSIONERS
OF DOUGLAS COUNTY, OREGON

Susan M...
Chair

Doug Robertson
Commissioner

Joe Laurance
Commissioner

H:\a_staff\a_cheryl\BC ORDER GV ESTATES REMAND.wpd

BEFORE THE DOUGLAS COUNTY PLANNING COMMISSION

The Garden Valley Estates, LLC., Planning Department File No. 07-230A, matter came before the Douglas County Planning Commission on remand on May 21, 2009, in Room 216 of the Douglas County Courthouse during their regularly scheduled meeting.

The applicant and the applicant's representative were present at the hearing.

The Planning Commissioners present at the hearing were: William Duckett, Javier Goirigolzarri, Dave Leonard, Brian Parkinson, Rich Raynor, and Cindy Simmons.

The Planning Commission takes official notice of the following:

1. The Douglas County Comprehensive Plan, including the implementing Douglas County Land Use and Development Ordinance, adopted by the Douglas County Board of Commissioners December 31, 1980, effective April 1, 1981, and as later amended, which has been acknowledged by the Land Conservation and Development Commission on December 21, 1982, and by Compliance Acknowledgment Order 83-ACK-12 dated January 18, 1983.

2. The records of the Planning Department of Douglas County concerning publication and mailing of notice.

INTRODUCTION & PROCEDURAL FINDINGS OF FACT

1. Notice of the hearing was given the applicant and parties to the matter and by publication in a newspaper of general circulation in the affected area at least 20 days prior to May 21, 2009.

2. This case comes to the Commission on remand from the Land Use Board of Appeals. On February 21, 2008, the Planning Commission approved the request of Garden Valley Estates, LLC for a plan amendment and zone change on 259 acres of property designated as (FG) Exclusive Farm Use – Grazing to (5R) Rural Residential – 5 Acre Minimum based on a nonresource determination. The Douglas County Board of Commissioners affirmed this approval on April 23, 2008. An appeal was subsequently made to the Land Use Board of Appeals by Shelley Wetherell and Robin and Gerald Wisdom, and on December 31, 2008, LUBA remanded this decision on three issues: (1) profitability; (2) use in conjunction with adjacent or nearby lands; and (3) the suitability of the property for agriculture as part of a "farm unit" consisting of a larger 590-acre ranch.

3. On April 28, 2009, Garden Valley Estates, LLC provided materials responsive to each of these issues in the form of:

    1. A professional appraisal for the subject property prepared by State Certified General Appraiser Timothy J. Cordill, OR # C000786 establishing the value of the property without any speculative value associated with possible rural residential use and any value attributable to development pressures.

2. A letter from Northwest Farm Credit services setting forth the down payment and interest rates charged for a 25-year fixed mortgage on agricultural property.

3. An amoritization schedule reflecting the annual payments on such mortgage.

4. A letter from Kurt Spencer, an area rancher and former lessee of the larger 590-acre ranch.

5. A letter from Alan R. Simonis of Golden S. Ranch, LLC, a former owner of the 590-acre ranch.

6. A Cattle Operation Budget Analysis Study of the property's cattle grazing potential produced by Stephen Caruana of Kleinfelder.

7. A soil report for the property prepared by MDS Harris and assessing the property's fertility and pH.

4. A duly noticed remand hearing was held before the Planning Commission on May 21, 2009. All qualified parties were provided the opportunity to speak. Additional evidence was provided by opponents of the application. The hearing was closed on May 21, 2009, and the Planning Commission deliberated to a decision to again approve the application.

SUBSTANTIVE FINDINGS OF FACT

Standing

1. At the remand hearing held on May 21, 2009, witness Richard Holcomb sought party status for the first time in these proceedings. Mr. Holcomb had participated in the initial evidentiary hearings on the application as a witness in support of the opponents, and had not disputed his status as a witness or sought recognition as a party prior to the remand hearing. As Mr. Holcomb had already been recognized as a witness in the prior proceedings, he was permitted the opportunity to present testimony on May 21, 2009 while the Commission took the matter of his status under advisement. Having reviewed the materials submitted by Friends of Douglas County on behalf of Mr. Holcomb and based on a legal opinion from County Counsel concerning the same, the Commission finds that LUDO section 2.200.5 controls and that it bars Mr. Holcomb from seeking party status for the first time in this remand proceeding.

2. LUDO 2.200.5 states:

   "In cases where a matter has been referred back to the Planning Commission from the Board, only those individuals or agencies who were given party status at the first evidentiary hearing on the matter shall be allowed as parties in the matter when reheard by the Commission. "

   As Mr. Holcomb was not given party status at the first evidentiary hearing, LUDO section 2.200.5 bars him from participating as a party in the remand proceedings.

3. The case law cited to the contrary by Friends of Douglas County is not to the contrary. Friends cites to the LUBA cases of *Lengkeek v. City of Tangent* and *Siporen v. City of Medford* as standing for the proposition that "Douglas County's position that only parties in the initial hearing have standing at a remand hearing is wrong as a matter of law, regardless of what the LUDO may say." However, *Lengkeek* and *Siporen* are not contrary to LUDO 2.200.5.

4. Instead, *Lengkeek* and *Siporen* address the fairly limited circumstances where a party is denied standing because they did not participate in the LUBA appeal leading to the remand. Mr. Holcomb is not a party being denied standing because he failed to participate in the LUBA appeal. Rather, Mr. Holcomb does not have party standing under LUDO 2.200.5 because he did not participate as a party in the initial evidentiary hearing.

5. Friends of Douglas County also cite to ORS 197.763(7) as requiring that Mr. Holcomb be provided party status. This provision does not speak to granting party status on remand, and does not impact LUDO 2.200.5.

Profitability

6. The Planning Commission finds that no reasonable farmer would be motivated to attempt to farm the property for the primary purpose of making a profit in money.

7. ORS 215.203(2)(a) defines "farm use" as "the current employment of land for the primary purpose of obtaining a profit in money" through a variety of specified activities. The Planning Commission found in its February 21, 2008 decision that the subject property was not suitable for farm use based, in part, on a determination that the subject property could not be profitability farmed. In so doing, it relied in part on testimony from one of the principals of the applicant, professional rancher and agronomist Brian Heinze, indicating that subject property could not be profitably managed for cattle operations based on its limited grazing season, poor quality forage, lack of water, and the expenses of managing the property.

8. LUBA questioned whether the expenses included debt-service payments that took into account the speculative value of the property as rural residential property rather than as agricultural land. LUBA remanded on this issue stating:

   "[R]emand is necessary for the county to adopt findings, supported by substantial evidence, that consider profitability without relying on intervenor's debt-service payments, unless and until intervenor can demonstrate that the debt-service payments reflect the fair market value of the subject property that a reasonable farmer would have taken on to purchase the subject property for farm use." *Decision*, p. 14.

9. Garden Valley Estates, LLC has provided a professional appraisal prepared by State Certified General Appraiser Timothy J. Cordill, OR # C000786. Mr. Cordill, a senior appraiser with the respected agricultural lender Northwest Farm Credit Services, included the following extraordinary assumption:

   "The value of the subject property is based on the exclusion of any speculative value as rural residential land or any value attributable to development pressures from the nearby Roseburg Urban Growth Boundary and adjacent rural unincorporated community. The value is based on the fee simple value of the subject within its current FG (Exclusive Farm Use – Grazing) zoning." *Appraisal*, p. 5.

   Based solely on the property's value as agricultural land, Mr. Cordill established the property's value at $880,000. The Planning Commission adopts this valuation as the property's value for agricultural purposes.

10. Opponents have suggested that the methodology of this report is flawed due to the difference in soil types occurring on some of the comparable properties evaluated by Mr. Cordill. However, Mr. Cordill evaluated differences in soil types and topography as part of his analysis, and expressly found in his report that some of the comparable properties considered contained superior soils. He clearly factored these considerations (together with others such as acreage, improvements, topography, etc.) in arriving at the appraised value for the property. Mr. Cordill has provided a professional appraisal that certifies that it conforms to the Uniform Standards of Professional Appraisal Practice. No expert testimony has been adduced which challenges Mr. Cordill's certification or his methodology. The Commission is satisfied that the property's value as agricultural land is the appraised value of $880,000 reflected in Mr. Cordill's professional appraisal.

11. One alternative estimate of value was provided by Mr. Holcomb in his oral testimony at the public hearing on May 21, 2009. However, Mr. Holcomb did not explain the basis for his estimate or provide any evidence to support this estimate. The Commission is not aware of any certification or expertise that Mr. Holcomb may have for assessing property values. Given these limitations, the Commission relies on the professional appraisal as the more reliable evidence.

12. Garden Valley Estates, LLC has also provided a letter from Northwest Farm Credit Services setting forth the interest rate and down payment for a 25-year fixed mortgage at 8.3% with a 35% down payment. It has also provided an amortization schedule that reflects that the annual payment on such a 25-year mortgage. In view of this evidence and the appraised value of the subject property for agricultural purposes, we find that a reasonable farmer would pay $308,000 down and annual payments of $51,109.40 for the property.

13. Opponents argued in their testimony before the Commission that an adjustable rate mortgage might yield a lower interest rate. However, no evidence was provided in support of this testimony. There is no indication what a lower interest rate might be, over what term, or that such adjustable rate mortgages are customary for this kind of agricultural land acquisition. Given this lack of evidence, the Commission chooses to rely on the rate structure provided by Northwest Farm Credit Services in assessing what a reasonable farmer would pay for the land.

14. Opponents of the proposal have argued that the property's debt-service payments should not be factored into an analysis of profitability. As LUBA notes, land costs that a reasonable farmer would pay may be appropriately considered by the County in determining profitability just as the County may appropriately consider seed costs, labor costs, and other costs of farming. As LUBA instructs, it is legally irrelevant whether a property is acquired via inheritance (with no annual debt service) or purchased the property as development speculation on a short-term, high-interest loan (with large annual debt service payments). The issue is what a reasonable farmer would pay to purchase comparable property. The Commission finds that the appraisal, interest rates and amortization schedule reflect what a reasonable farmer would pay to purchase comparable property.

15. Opponents have also argued for a lower overall valuation of the subject property based on the County's special assessment method. In particular, Ms. Wetherell argues that the subject property has an overall value of approximately $4,000 based on elements of the County's special assessment method. We find Ms. Wetherell's valuation to grossly understate the property's value. We note that assessment and taxation has significant limits imposed upon it by state law concerning how it is permitted to value property (particularly property in a special use category). While we have no doubt that assessment and taxation accurately assesses real property taxes within the confines of the law, we rely on the appraisal from Mr. Tim Cordill as the more accurate reflection of the property's value as farmland.

16. Garden Valley Estates, LLC has also provided a Cattle Operation Budget Analysis Study prepared by Stephen Caruana of Kleinfelder. Kleinfelder is nationally recognized as a leading professional services firm providing planning, engineering, scientific and management solutions to municipalities, governmental agencies, multi-national corporations and industrial concerns across the United States. Mr. Caruana is the environmental permitting and planning leader for Kleinfelder's northwest region. He is an experienced agronomist with expertise in cattle ranching throughout Oregon and the Midwest, and previously held a position with the Natural Resources Conservation Service (formerly Soil Conservation Service). Mr. Caruana's report states "In our professional judgment the subject property could not be operated profitably as a cattle ranch." The Commission adopts this report and its conclusions with regard to profitability.

17. The Cattle Operation Budget Analysis Study is based on field investigation of the property, extensive research into historical surveys on the property, past and present aerial photographs and published literature. It includes numerous livestock enterprise budgets relying on the Oregon State University Extension Service's Livestock Enterprise Budget Calculator and deriving inputs from statistical summaries of the United States Agricultural Service and current market rates. Mr. Caruana evaluates the subject property under the two types of cattle operations customary for Douglas County: (1) a year-round cow/calf operation; and (2) a seasonal stocker operation. He evaluates the property under different levels of management including high productivity models (which include fertilizing and liming the more productive soils), low productivity models (based on the property's poor to fair condition pastures), and incorporating other parcels. Mr. Caruana's budgets are very conservative, amortizing costs of equipment and liming over several years, and excluding elements of expense including the $308,000 down payment on the subject property. Even with these exclusions, Mr. Caruana's budgets reflect a substantial loss under each scenario. The range of loss per year is between $67,556.70 and $83,210.38. Based on this expert testimony and the materials set forth above, the Commission finds that no reasonable farmer would be motivated to attempt to farm the subject property for the primary purpose of making a profit in money.

18. Opponents advance a number of criticisms concerning this report, and advance alternative budgets (including a budget for sheep ranching). Neither these criticisms of the report nor the budgets prepared by opponents so undermine Mr. Caruana's professional opinion as to call into question either the budgets or his ultimate conclusion. The Commission will address opponent's criticisms and budgets separately.

19. In addition to the criticisms of the appraisal and evaluation of land costs (addressed separately in our findings above), Opponents advance criticisms regarding nine issues in Mr. Caruana's report:

1. variable costs;
2. fertilizer application;
3. AUM assessment;
4. average prices per animal and current costs;
5. sales Commissions;
6. operator labor;
7. machinery, equipment and vehicle costs;
8. taxes and insurance; and
9. liability insurance;

20. With regard to variable costs, the opponents point to 2006 and 2007 "CattleFax" surveys for various national market conditions, and some informal projected national averages for "cash costs per cow" for the years of 2008 and 2009 by the same company as an alternative evaluation of costs. The surveys refer to some variable costs, but there is no comprehensive description what costs are included or excluded from the analysis. For example, it is unclear to what extent, if any, land costs are factored into the analysis (although it is certain that costs associated with interest payments on land are excluded). Likewise, the 2008 and 2009 projections do not break out any particular variable costs, and do not appear to refer to a particular geographic area. Opponents do not challenge any particular cost in Mr. Caruana's report based on the CattleFax surveys. If the opponent's intent is to criticize the various items in the report on the basis of these surveys, the Commission finds that their arguments are too undeveloped to warrant consideration by the Commission.

21. Moreover, to the extent that the "CattleFax" materials provide costs that are inconsistent with Mr. Caruana's analysis, and the Commission does not see that they do, the Commission finds that Mr. Caruana's assessment of costs to ranch this property are the more reliable. In particular, the most recent CattleFax surveys provided are more than two years old and do not account for current costs. The projections for the 2008 and 2009 are currently only national averages of total costs. In the case of the 2009 projection, these costs are also necessarily based on less than half of a year's experience making them less reliable. The 2006 and 2007 surveys include some regional evaluation of costs. However, again, these costs are not separately evaluated, and, in any case, incorporate responses from the States of Washington, Wyoming, Montana, and Idaho as well as Oregon. Again, there is no basis to conclude that these outdated regional market rates represented the rates in the area even in 2006 and 2007. Lastly, the surveys at issue and projections at issue provide per head assessments of costs based on surveys prepared by a limited number of operators nationwide. These surveys do not address these per head expenses by the type or size of operation and likely are not comparable. Moreover, these surveys appear to approach the question of costs from the wrong perspective. Instead of asking what it would cost a farmer to ranch the property, these estimates evaluate how much (on average) it is costing other ranchers to run their operations. While another rancher with better property, irrigation water rights, better forage, more animals, etc. may be able to ranch his property successfully at a lower cost per head, this does not mean that all ranchers will be able to ranch at this price per head regardless of their property. Given the limitations of the CattleFax surveys, we hold that the values provided by Mr. Caruana's analysis of the costs to ranch this property are more reliable.

22. With regard to fertilizer, Ms. Wetherell criticizes Mr. Caruana's report by arguing that it fails to take into account the practice of fertilizing property via ATV. This criticism apparently arises out of the observation by Mr. Caruana that in order to achieve maximum productivity on a property a high level of management is required, including inputs that are either impossible or too unprofitable to implement. As an illustration of this concept Mr. Caruana indicated that limitations imposed by terrain made certain areas of the property only capable of fertilization from the air. Mr. Caruana is familiar with the property and its terrain from his site investigation. Ms. Wetherell has not submitted any evidence to support the view that the entire property can be fertilized via ATV. Moreover, Mr. Kennedy, a rancher opposed to the application apparently concurred with Mr. Caruana's assessment, suggesting in his own presentation that fertilizer be applied to the property via aircraft. The Commission finds that Mr. Caruana did not err by indicating that portions of the property might only be fertilized from the air.

23. With regard to AUMs, opponents criticize the report for understating available AUMs on the property. However, the Commission finds that Mr. Caruana's report identifies a reasonable range of AUM productivity, factoring in both a minimum and reasonable high-yield assessment of available AUMs on the property. Mr. Caruana takes into account published values, the property's own physical limitations and Mr. Caruana's own professional experience and judgment. This assessment includes estimates of productivity for soil types that have no published values in the NRCS, and a conservative projection of AUMs on the property which, Mr. Caruana notes, it would unlikely be able to obtain in any case. Opponents do not provide any expert testimony or make any focused argument that calls into question Mr. Caruana's methods, expertise or conclusions. The Commission finds that Mr. Caruana's assessment of potential productivity on the subject property is reliable and that opponent's criticisms do not undermine Mr, Caruana's analysis of conclusions.

24. With regard to average prices, opponents criticize Mr. Caruana for relying on an average of cattle prices over several years for determining cattle purchase and sale prices. Opponents makes no focused argument concerning why it is error to employ this method and we do not see that it does. Cattle prices can fluctuate dramatically from year to year, and unlike other expenses which can be expected to increase at a fairly predictable rate from year-to-year, may actually decrease in price from one year to the next. The Commission finds that Mr. Caruana's method is an appropriate measure for determining the long-term viability of an operation.

25. With regard to sales commissions, opponents criticize the report for including a sales commission price when some cattle in the County are sold directly to buyer without a sales commission. While it may be the case that some animals are sold direct to buyer, opponents have produced no evidence indicating that all or a majority of cattle in the Douglas County market are sold in private sales. They have also produced no evidence regarding the prices that are obtained from such sales or that they are in fact comparable to prices obtained at auction. It seems unlikely that a rancher would obtain an identical price at a private sale price in the limited Douglas County market as he would at a larger auction, and the sales commission likely represents a portion of the expanded opportunity that a seller would derive from the larger market at auction. In any case, the commission is satisfied that cattle are sold at auction and that it is reasonable to include the sales commission expense.

26. With regard to operator labor, Ms. Wetherell argues that no expense for operator labor should be included in the analysis. As set forth in LUBA's prior opinion in this case, it is appropriate for the County to consider the costs of labor in evaluating profitability. In this case, the applicant has assigned these labor costs to the operator and to a hired hand, but these expenses could just as easily have been applied to a ranch manager and hired hand, or other hired labor that would be compensated at an hourly rate. There is no challenge to the amounts charged for the labor or for the amount of labor assigned. The Commission finds that it is appropriate to include labor costs in the amount and at the rates set forth in the Caruana report.

27. With regard to machinery, equipment and vehicle costs, opponents complain that it was error to factor in costs associated with acquiring equipment, vehicles and machinery as new. This incorrectly characterizes the report. The report does not include a $37,500 cost for a pick-up, for example. Instead, it allocates an annual expense for the operation, maintenance and repair of the machinery, equipment or vehicles. This allocation does factor in the item's value as new, but it also factors in the useful life of the items, the amount of time that that item is used in a particular operation, and its salvage value. The opponents have not provided an alternative valuation for any of the machinery, equipment or vehicles on the property. The Commission finds that it is appropriate to allocate costs to vehicles, equipment and machinery as the Mr. Caruana has.

28. Opponents also criticize the report for including a manure spreader, a livestock trailer, and a feed-grinder-mixer as equipment that they argue would not be necessary for a cattle operation. Due to the limitations of the property, cattle would be confined and fed for at least a portion of the year, warranting the use of a manure spreader. A livestock trailer would also be warranted to move animals between pastures and/or between different parcels of land comprising a single operation and would be considered separately from freight or hauling costs associated with transporting animals to the property after purchase or off the property after an auction or sale. A feed-grinder-mixer is appropriate in operations where grain is used to feed animals, and may be particularly appropriate to include in a cow/calf operation where animals rely on a feed or hay for a much greater portion of the year. In any case, the annual allocation of expenses associated with the feed-grinder-mixer are so low that this does not radically impact any of the budgets, and does not undermine the conclusions of Mr. Caruana.

29. With regard to taxes and insurance, the opponents accuse Mr. Caruana of double- counting taxes and insurance under both the overhead and "taxes and insurance" headings of the budget. As Mr. Caruana explained, however, overhead addresses real property taxes and insurance associated with the real property, while the balance of taxes and insurances (including taxes and insurance paid on vehicles, equipment, machinery, etc) are included as a separate line item. The Commission finds that it is appropriate to allocate these expenses as Mr. Caruana has.

30. With regard to liability insurance, Ms. Wetherell submitted at the hearing a copy of some insurance information for her own operation. The information reflects that Ms. Wetherell pays $471 per annum on an insurance policy. As was pointed out at the hearing, Ms. Wetherell has not indicated that her wine growing operation is sufficiently similar to ranching operations on the subject property to warrant the conclusion that a $471 policy would be appropriate for ranching activities on the subject property. In fact, a prior lessee of the larger 590-acre ranch, Mr. Kurt Spencer, submitted testimony stating that his insurance agent recommended "moving on" due to the fact that cars frequently crashed through perimeter fences allowing livestock to escape onto the nearby highway. Based on the particular attributes of the subject property, we conclude that Mr. Caruana's opinion concerning liability insurance is more reliable.

31. Opponents also attempt to challenge Mr. Caruana's budget by submitting their own alternative budgets. In particular, cattle budgets were submitted by Ms. Wetherell, Mr. Holcomb, and Mr. Kennedy, and a sheep budget was submitted by Ms. Wetherell. The Commission finds that Mr. Caruana's budgets are more reliable with regard to ranching activities on the subject property, and expressly rejects the sheep budget as having been based on an issue that has been waived.

32. With regard to Ms. Wetherell's cow/calf budget, Ms. Wetherell projects a maximum number of animals on the subject property relying on her own assessment of available AUMs and then attempts to apply a per head cost based on the "CattleFax" estimates. The Commission finds that this budgeting method is defective. The "CattleFax" estimates do not take into account operations on the property. Costs are also not separately stated in the "CattleFax" surveys (barring ready comparison) but likely do not capture all costs associated with an operation. As set forth above, these surveys assess costs from a variety of different types and sizes of operations nationwide. For example, more than 70% of all responses to the 2007 survey had more than 150 cattle in their operation. These operators would have been able to spread more of their overhead costs among individual animals than Ms. Wetherell's projected 65-79 cattle. Moreover, Ms. Wetherell projects maximum theoretical productivity on the property (well above that which is reasonably available on the property) without factoring in the limitations found by Mr. Caruana, or accounting for the added expenses associated with managing the subject property more intensively. In short, Ms. Wetherell's cow/calf operation assumes a maximum productive capacity for the property while assuming average amounts of input. The Commission finds that Ms. Wetherell's budget does not consider all inputs, limitations, and returns, is unreliable, and does not undermine Mr. Caruana's more detailed reliable assessment of operations on the property or his expert opinion.

33. Mr. Holcomb also provides an estimate for a cow/calf operation on the property. Mr. Holcomb's budget projects 50-60 cow/calf pairs and estimates costs in the amount of $375 per head. However, this estimate does not separately address costs. We believe that this is a critical shortcoming in the analysis, as Mr. Holcomb's projects a level of productivity that would require extremely intensive management of the subject property but does not appear to attribute any costs associated with managing the subject property intensively on a year-round basis. In particular, Mr. Holcomb indicates that he would manage the subject property without hay supplements. As Mr. Caruana notes and (as is reflected in the soils report from MDS Harris), significant amounts of fertilizer and lime would be necessary for any intensive management of the subject property, but these amounts do not appear to be factored in to the use of the subject property. Moreover, it is doubtful that year-round, intensive grazing would be successful on the property. Prior ranchers of the property, Mr. Simonis and Mr. Spencer noted that the short growing season for grass (and the tendency of the soil to water-log)

created a short grass growing season that that was not sustainable for even seasonal use. Mr. Simonis also noted water as a limiting factor, and indicating that the forage response to fertilizer made it unprofitable. Furthermore, Mr. Holcomb also attributes no value to the cattle that he proposes to ranch on the subject property. Mr. Holcomb explains that these animals could be moved from other portions of his operation. It might be appropriate in certain circumstances to attribute a lower cost to animals based on economies of scale (where animals are purchased at volume for a lower amount). However, attributing no value to the animals from which the rancher would expect to derive a profit substantially undermines the reliability of this estimate. On balance, we find that Mr. Holcomb's budget does not consider all inputs or expenses, does not consider all limitations on the subject property, is unreliable; and does not undermine Mr. Caruana's more detailed and reliable assessment of operations on the property or his expert opinion.

34. The Commission also notes that Mr. Holcomb proposed to lease the subject property for between \$40 and \$50 per acre. While Mr. Holcomb's budget is deficient even without considering this cost, the Commission notes that this lease payment would not reflect the property's farm value.

35. Mr. Kennedy also provided an estimate or budget purporting to show profitable operation on the property. However, he only addresses a limited number of expenses, and does not provide an accurate assessment of all inputs on the subject property. The Kennedy budget provides for a 145-animal seasonal stocker operation budget with only the following expenses: (1) cost for animals; (2) cost for fertilizer; (3) labor and equipment associated with field burning; (4) veterinary supplies; (5) the loss of two animals. This omits several expenses including costs such as hay and salt for individual animals, repairs and maintenance for vehicles, equipment and machinery, any labor, any upkeep or maintenance to the property, any land costs, any interest payments, insurance or other overhead, etc. For example, Mr. Kennedy appears to assume that he could obtain sufficient forage for seasonal grazing of the subject property by blanketing it with fertilizer from an aircraft. However, he includes no expenses associated with applying the fertilizer from the aircraft (an exceptionally costly undertaking according to Mr. Caruana's report), nor does he provide for any liming of the soil which would be necessary according to the MDS Harris report for any fertilizer response. At a practical level, Mr. Kennedy also does not assess the likelihood of a fertilizer response given the limitations of the soil and the lack of irrigation for fertilization. Mr. Simonis, a prior owner of the larger 590-acre ranch found that fertilizing did not improve forage productivity sufficient to warrant it, and also found that purchasing water was not economical. These limitations are not assessed in Mr. Kennedy's budget or estimate. On balance, the Commission finds that Mr. Kennedy's budget or estimate does not assess all inputs or expenses, does not consider all limitations of the property, is unreliable; and does not undermine Mr. Caruana's more detailed and reliable assessment of stocker operations on the property or his expert opinion.

36. Opponents also attempt to challenge the applicant's analysis of profitability based on a budget which purports to address income and expense associated with raising sheep on the subject property. Opponents have waived this issue by failing to raise it in the initial proceedings on this application and on appeal to LUBA. The County Board of Commissioners has limited the scope of issues in this remand to addressing the deficiencies that were the basis for the remand. Opponents had the opportunity to raise sheep ranching in the initial hearings on this application, and to proceed to challenge the County's findings concerning profitability on this basis at LUBA. Opponents did not do so. Instead, they focused exclusively on viticulture and the past use of the property for cattle ranching. Accordingly, this issue is waived, and provides no basis for finding that the subject property is profitable.

37. In the alternative and without waiving the foregoing paragraph, the Commission also finds that the "sheep budget" does not demonstrate that the subject property would produce a profit in money. It assumes a number of AUMs consistent with an intensive management of the subject property, but includes no expenses for intensive management of the subject property. It also includes an additional item of income associated with haying the property that is apparently in addition to the use of the property as pasture. Again, there is no assessment of intensive management practices which might support haying, nor is there an analysis of how the property is to be hayed and grazed at the same time. The budget also includes a variety of assumptions concerning income and expenses, but provides no evidence to support either income or expense. The budget excludes significant costs from its assessment including all land and labor costs, all vehicle, equipment, and machinery costs, and all costs associated with repair or maintenance of improvements on the subject property. While there is some discussion of acquisition costs for the animals, these do not appear to be factored into the budget. Thus, even if this issue had not been waived (and it has), the Commission finds that the subject property could not maintain a profitable sheep operation.

Use In Conjunction With Adjacent or Nearby Properties

38. The Planning Commission finds that the subject property is not suitable for farm use taking in account adjacent and nearby properties.

39. LUBA remanded on the use of the property in conjunction with adjacent or nearby properties to address the historic use of a 590-acre ranch property that formerly included the property, and testimony by area ranchers related to possible use of the property.

40. OAR 660-033-0030(3) provides in relevant part that:

"Nearby or adjacent land, regardless of ownership, shall be examined to the extent that a lot or parcel is either 'suitable for farm use' or 'necessary to permit farm practices to be undertaken on adjacent or nearby lands."

As the Planning Commission has found above, the property is not suitable for farm use.

41. Additionally, Garden Valley Estates, LLC submitted letters from the last lessee of the 590-acre ranch – Mr. Kurt Spencer – and the last owners of the 590-acre ranch – Mr. Alan Simonis. Both are experienced ranchers. Both concluded that the historic 590-acre ranch could not be ranched for a profit. On the basis of these letters, the Commission finds that the property is not suitable for farm use taking into account adjacent or nearby properties.

42. In particular, the Commission finds that Mr. Spencer, is a professional rancher with years of experience ranching property throughout Douglas County. Mr. Spencer runs cattle on both leased and owned property, and runs his own trucking operation. He deals in high volumes of cattle and has relationships throughout the local ranching industry. Mr. Spencer noted several conditions that made the 590-acre ranch unsuitable for production including inadequate seasonal water, a short grass season with southern slopes and shallow soils that stopped the forage growing too early. Despite his efforts at cattle rotation, purchasing water and fertilizing, Mr. Spencer was not able to make this operation work. He concludes by stating that: "I cannot imagine anyone making this ranch work in today[']s environment. It just simply does not pencil." The Commission finds that an experience rancher with the advantages of alternative pasture, large volumes of cattle, and his own trucking could not make the former 590-acre ranch function. This is compelling evidence that the property is not suitable for farm use taking into account adjacent and nearby properties.

43. Additionally, the Commission finds that the last owner of the 590-acre ranch is Alan Simonis. Mr. Simonis attempted to manage the 590-acre ranch from 1995 to 2000 in conjunction with other irrigated pasture for his purebred cattle operation. Mr. Simonis also noted that the soil on the property was a clay soil that did not drain well and became water-logged during the winter but dried out rapidly in the summer, and that the forage did poorly on the property. Due to water shortages, Mr. Simonis also attempted to manage the subject property by purchasing water from Umpqua Basin Water (a local utility) but found that the water was too expensive, and only serviced one pasture at the extreme south end of the property. Mr. Simonis made extensive efforts to improve productivity including liming the soil, but obtained no significant response. In addition, he sunk several test holes to locate water on the property, but found none. Mr. Simonis concludes that: "With all of its limitations, there was no way I could make a profit running cattle on it. Having tried for years. I don't see how anyone could make a profit ranching this property." The Commission finds that the last owner of the 590-acre ranch could not turn a profit on the subject property despite five years of attempts, alternative irrigated pasture, and attempts to fertilize and improve water resources on the property. This is compelling evidence that the property is not suitable for farm use taking into account adjacent and nearby properties.

44. Mr. Caruana's professional report also evaluates adjacent and nearby properties both within and outside the former 590-acre ranch. Mr. Caruana's budgets reflect that the addition of parcels to the property might increase the total number of animals that could be maintained, but would not generate a profit in money. In fact, the analysis identifies larger losses ranging from $72,153.72 to $83,210.38. Opponents submitted no evidence to refute these budgets or to demonstrate a profit of these adjacent or nearby properties. The Commission finds that these budgets are reliable and that they provide additional compelling evidence that the subject property cannot be used in conjunction with adjacent or nearby properties.

45. Ms. Wetherell questions the veracity of Mr. Spencer and Mr. Simonis' testimony arguing that it is not sufficiently detailed to establish that the property could not be managed profitably. The Commission find that these letters provide compelling first-hand evidence that property cannot be managed for farm use in conjunction with adjacent or nearby properties. Ms. Wetherell's speculation regarding Mr. Simonis' motive in selling is not based on any evidence in the record, and does not undermine his testimony.

46. Mr. Kennedy and Mr. Holcomb testified at the initial hearing on this matter regarding their possible interest in ranching the property. County tax records reflect that neither Mr. Kennedy nor Mr. Holcomb own property that is adjacent or nearby the property. In particular, Mr. Kennedy's ranch is at least 20 miles away from the subject property. Mr. Holcomb's ranch is at least 32 miles away. Neither of these ranches are adjacent or nearby the property, and neither Mr. Holcomb nor Mr. Kennedy dispute this evidence. The Commission finds that Mr. Kennedy and Mr. Holcomb's property is too far away to be considered as adjacent or nearby property under the Goal 3 rule, and need not be considered when determining whether the subject property is suitable for farm use taking into account adjacent or nearby properties.

47. Opponents have also suggested that the properties need not be adjacent or nearby provided that the overall operation performed by an individual rancher is sufficiently large to incorporate the parcel. We reject this argument. OAR 660-033-0030(3) provides that a local government is to take into account whether a particular property is suitable farm use when used in conjunction with adjacent or nearby <u>property</u>. It does not make allowances for more remote operators no matter how large.

48. Mr. Kennedy appears to lease nearby property that adjoins the 590-acre ranch, However, he does not address the use of property in conjunction with his activities on these other parcels. Moreover, there appears to be no historic use of this property in conjunction with the parcels that Mr. Kennedy leases. As there is neither an assessment of conjoined use by Mr. Kennedy, nor a history of conjoined use of the properties, the Commission finds that this issue is not sufficiently developed for its consideration.

49. In the alternative and without waiving any of the foregoing, to the extent that the properties to which Mr. Kennedy refers need be considered by the Commission, we find that these parcels contain soils that are mapped as equivalent to, or worse than the soils comprising the other parcels of the former 590-acre ranch. It appears that use of the Kennedy parcels in conjunction with the property would only result in increased haul costs. Based on Mr. Caruana's report of the conjoined use of the larger ownership and the experience of the ranchers that have attempted to farm 590-acre ranch, we find that the use of the property in conjunction with the other parcels identified as being ranched by Mr. Kennedy would show an equivalent annual loss.

50. Mr. Holcomb has indicated that he leases other property "a short distance" from the subject property. However, this property has not been identified, and the Commission cannot determine whether it would qualify as either adjacent or nearby property. Moreover, we do not understand Mr. Holcomb to argue that he would be ranching the subject property in conjunction with the other parcel "a short distance" from the site but only as part "the rest of [his] operation." Accordingly, we find that Mr. Holcomb's testimony regarding this other property to be too undeveloped to raise an issue concerning use in conjunction with adjacent or nearby properties.

Farm Unit

51. The Commission finds that the property is not required to be classed as agricultural land as adjacent or intermingled land within a farm unit.

52. LUBA remanded the farm unit issue based on the property's past use as part of the larger 590-acre ranch. It stated that:

> "There may be some reason why the former elements of the original farm unit cannot continue to be used jointly for a grazing and hay operation, similar to its historic use, but if so the decision and the respondents do not cite any."

53. The Commission finds that the compelling testimony by Mr. Spencer and Mr. Simonis together with the professional analysis performed by Mr. Caruana, demonstrate convincingly that the property comprising the former 590-acre ranch is not a farm unit containing the subject property. While there is some historic use of the property being managed in conjunction with the other properties to the north and east, the evidence clearly demonstrates that joint management of the 590-acre ranch for grazing and haying activities similar to its historic use is not possible. The evidence reflects that the 590-acre ranch is not suitable for farm use and has not been a single operating farm unit since at least 1995, despite repeated attempts to manage it for that purpose.

54. Each rancher of the 590 acres, despite considerable advantages (including alternative irrigated pasture, trucking companies, significant economies of scale, relationships in cattle industry) has found that ranch with its poor soils, poor forage, and lack of water is not suitable for farm use. Expensive efforts have been made in coming to this conclusion including attempts at pasture improvement, water development, and other management activities. All have failed. Goal 3 is intended to preserve large units of agricultural land as agricultural land. It is not intended to preserve as agricultural land units that are not suitable for farm use, simply because they may have been at some time in the past. Since the former 590-acre unit is not a viable farm unit, the Commission finds that the property should not be classed as agricultural land.

55. Opponents argue that the property must be considered as part of a farm unit because there is no physical impediment to its continued joint use. The Commission disagrees. The limitations on soil, water and forage within the 590-acre ranch constitute physical limitations which preclude joint farm use on that ranch. The fact that properties have been historically managed together does not make them part of a "farm unit." Physical impediments (while they may be considered) are not the only impediments to the viability of a former parcel as a "farm unit." The 590-acre ranch has not been suitable for farm use as a unit for at least 14 years. Given this lapse of time and the fact the former elements of the subject property would not be suitable for farm use if they were managed together today, the Commission finds that it is improper to consider the property as part of a "farm unit" comprising the former 590-acre ranch. Accordingly, the Commission finds that the property is not agricultural land under this standard.

DECISION

Based on the evidence received, the findings above, and the findings contained in the Staff Report, the Planning Commission hereby concludes (based on the three sub-points outlined in the remand from LUBA) that: the subject property cannot be employed in a farm use for the primary purpose of obtaining a profit in money; that it cannot be used in conjunction with other adjacent or nearby grazing lands; and, is not part of an agricultural farm unit. We hereby **APPROVE** the request for a Comprehensive Plan Amendment from (AGG) Agriculture to (RR5) Rural Residential - 5 and a concurrent Zone Change from (FG) Exclusive Farm Use - Grazing to (5R) Rural Residential - 5 Acre, based on a nonresource determination, on remand from LUBA.

Dated this 25th day of June, 2009.

DOUGLAS COUNTY PLANNING COMMISSION

By: Rich Raynor
Chairman

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