



Oregon

Theodore R. Kulongoski, Governor

Department of Land Conservation and Development

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Salem, Oregon 97301-2524

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Second Floor/Director's Office: (503) 378-5518

Web Address: <http://www.oregon.gov/LCD>

NOTICE OF ADOPTED AMENDMENT

May 10, 2006



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

FROM: Mara Ulloa, Plan Amendment Program Specialist

SUBJECT: Yamhill County Plan Amendment
DLCD File Number 001-06

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: May 23, 2006

This amendment was submitted to DLCD for review 45 days prior to adoption. 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 THAN IT WAS MAILED TO DLCD. AS A RESULT YOUR APPEAL DEADLINE MAY BE EARLIER THAN THE ABOVE DATE SPECIFIED.**

Cc: Doug White, DLCD Community Services Specialist
Gary Fish, DLCD Regional Representative
Ron Eber, DLCD Farm/Forest Specialist
Ken Friday, Yamhill County

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FORM 2

DLCD NOTICE OF ADOPTION

DEPT OF

This form **must be mailed** to DLCD within 5 working days after the final decision
per ORS 197.610, OAR Chapter 660 - Division 18
(See reverse side for submittal requirements)

MAY 03 2006

**LAND CONSERVATION
AND DEVELOPMENT**

Jurisdiction: Yamhill County

Local File No.: PAZ-06-05
(If no number, use none)

Date of Adoption: April 27, 2006
(Must be filled in)

Date Mailed: May 2, 2006
(Date mailed or sent to DLCD)

Date the Notice of Proposed Amendment was mailed to DLCD: January 3, 2006

Comprehensive Plan Text Amendment Comprehensive Plan Map Amendment

Land Use Regulation Amendment Zoning Map Amendment

New Land Use Regulation Other: _____
(Please Specify Type of Action)

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

For a comprehensive plan amendment and zone change to rezone 60 acres of property from farm/forest resource land to a 10-acre rural residential zone.

Describe how the adopted amendment differs from the proposed amendment. If it is the same, write "Same." If you did not give notice for the proposed amendment, write "N/A."

Same

Plan Map Changed from: *Agriculture/Forestry Large Holding to Agriculture/Forestry Small Holding*

Zone Map Changed from: *EF-80 Exclusive Farm and AF-20 Agriculture/Forestry to AF-10, Agriculture/Forestry Small Holding*

Location: *32710 NE Lesley Road, Newberg* Acres Involved: 61.05 Acres

Specified Change in Density: Current: 1dwel/20 acres Proposed: 1 dwel/10 acres

Applicable Statewide Planning Goals: 3 and 4

Is an Exception Proposed? Yes: No: (Property was found to be "nonresource land")

DLCD File No.: 001-06(14917)

Did the Department of Land Conservation and Development receive a notice of Proposed

Amendment **FORTY FIVE (45) days prior to the first evidentiary hearing?** Yes: No:

If no, do the Statewide Planning Goals apply. Yes: No:

If no, did The Emergency Circumstances Require immediate adoption. Yes: No:

Affected State or Federal Agencies, Local Governments or Special Districts: _____

Local Contact: *Ken Friday* Area Code + Phone Number: *503-434-7516*

Address: *410 NE Evans Street*

City: *McMinnville, OR* Zip Code + 4: *97128*

ADOPTION SUBMITTAL REQUIREMENTS

This form **must be mailed** to DLCD **within 5 working days after the final decision**
per ORS 197.610, OAR Chapter 660 - Division 18.

1. Send this Form and TWO (2) Copies of the Adopted Amendment to:
ATTENTION: PLAN AMENDMENT SPECIALIST
DEPARTMENT OF LAND CONSERVATION AND DEVELOPMENT
635 CAPITOL STREET NE, SUITE 150
SALEM, OREGON 97301-2540
2. Submit **TWO (2) copies** the adopted material, if copies are bounded please submit **TWO (2) complete copies** of documents and maps.
3. Please Note: Adopted materials must be sent to DLCD not later than **FIVE (5) working days** following the date of the final decision on the amendment.
4. Submittal of this Notice of Adoption must include the text of the amendment plus adopted findings and supplementary information.
5. The deadline to appeal will be extended if you submit this notice of adoption within five working days of the final decision. Appeals to LUBA may be filed within **TWENTY-ONE (21) days** of the date, the "Notice of Adoption" is sent to DLCD.
6. In addition to sending the "Notice of Adoption" to DLCD, you must notify persons who participated in the local hearing and requested notice of the final decision.
7. **Need More Copies?** You can copy this form on to 8-1/2x11 green paper only ; or call the DLCD Office at (503) 373-0050; or Fax your request to:(503) 378-5518; or Email your request to Larry.French@state.or.us - ATTENTION: PLAN AMENDMENT SPECIALIST.

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

Approval of a Comprehensive Plan amendment from)
Agriculture/Forestry Large Holding to Agriculture/Forestry)
Small Holding and a zone change from EF-80 Exclusive Farm)
Use and AF-20 Agriculture/Forestry to AF-10, Agricultural) Ordinance 784
Forestry Small Holding, Docket PAZ-06-05, Applicant the)
Benkendorf Associates Corporation, Tax Lots 3226-1600,)
-492, and -495, and Declaring an Emergency)

THE BOARD OF COMMISSIONERS OF YAMHILL COUNTY, OREGON (the Board) sat for the transaction of county business on Wednesday, April 26, 2006, Commissioners Leslie Lewis, Kathy George and Mary P. Stern being present.

IT APPEARING TO THE BOARD that Benkendorf Associates Corporation applied for a Comprehensive Plan amendment from Agriculture/Forestry Large Holding to Agriculture/Forestry Small Holding; a zone change from EF-80 Exclusive Farm Use and AF-20 Agriculture/Forestry to AF-10, Agricultural/Forestry Small Holding for tax lots 3226-1600, 492, 495 to rezone approximately 60 acres of property from farm/forest resource land to a 10-acre rural residential zone.

The Yamhill County Planning Commission held a duly noticed public hearing on this application on March 2, 2006 and it was recommended approval by a vote of 5 to 2. A duly noticed public hearing was held April 12, 2006, before Yamhill County Board of Commissioners and the Board voted 3-0 to approve the application.

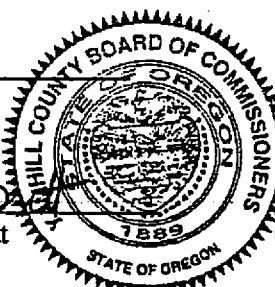
NOW, THEREFORE, IT IS HEREBY ORDAINED BY THE BOARD:

The application is approved as detailed in Exhibit A, attached and hereby incorporated into this ordinance. 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 this 26th day of April, 2006, at McMinnville, Oregon.

ATTEST YAMHILL COUNTY BOARD OF COMMISSIONERS

JAN COLEMAN
County Clerk



Leslie A. Lewis
Chair LESLIE LEWIS

By: *Deanne Britt*
Deputy Anne Britt

Kathy George
Commissioner KATHY GEORGE

APPROVED AS TO FORM:

Rick Sanai
Rick Sanai, Assistant County Counsel

Mary P. Stern
Commissioner MARY P. STERN

Findings, Exhibit "A"
Ordinance 784, Docket PAZ-06-05 (The Benkendorf Associates Corp.)

DOCKET: PAZ-06-05

REQUEST: Approval of a Comprehensive Plan amendment from Agriculture/Forestry Large Holding to Agriculture/Forestry Small Holding; a zone change from EF-80 Exclusive Farm Use and AF-20 Agriculture/Forestry to AF-10, Agricultural/Forestry Small Holding. The purpose of the application is to rezone approximately 60 acres of property from farm/forest resource land to a 10-acre rural residential zone.

APPLICANT: The Benkendorf Associates Corp.

TAX LOT: 3226-1600, 492, 495

LOCATION: 32005 NE Wilsonville Rd., Newberg, Oregon 97132 (3226-1600); 32710 NE Lesley Rd., Newberg (3226-495); and on the south side of Lesley Rd. and approximately 660' south of the intersection of Kramien Rd. and Lesley Rd.

CRITERIA: Sections 402, 403, 904 and 1208.02 of the Yamhill County Zoning Ordinance. Section 904, Limited Use Overlay may also be applied. Comprehensive Plan policies may be applicable. OAR 660-004 related to a reason's exception and 660-012-0060 Transportation Planning Rule.

Dan Smith - See letter in support.

Jennifer Smith - See letter in support.

Marty Castro - See letter in support.

Patrick and Carla Cox - See letter in support.

Hemstreet Forestry - See letter detailing forestry potential.

EXHIBITS:

A. Application with exhibits. Note: the application and all exhibits are hereby incorporated into these Findings by this reference.

FINDINGS:

Zone Change and Plan Amendment Provisions and Analysis

- i. Approval of a request for a zone change and plan amendment must be based on compliance with the standards and criteria in YCZO Section 1208.02. These provisions are:
 - (A) *The proposed change is consistent with the goals, policies, and any other applicable provisions of the Comprehensive Plan.*
 - (B) *There is an existing demonstrable need for the particular uses allowed by the requested zone, considering the importance of such uses to the citizenry or the economy of the area, the existing market demand which such uses will satisfy,*

and the availability and location of other lands so zoned and their suitability for the uses allowed by the zone.

- (C) *The proposed change is appropriate considering the surrounding land uses, the density and pattern of development in the area, any changes which may have occurred in the vicinity to support the proposed amendment and the availability of utilities and services likely to be needed by the anticipated uses in the proposed district. (D) Other lands in the county already designated for the proposed uses are either unavailable or not as well-suited for the anticipated uses due to location, size, or other factors.*
- (E) *The amendment is consistent with the current Oregon Administrative Rules for exceptions, if applicable.*

An exception is not applicable.

2. Regarding criterion (A) above, Plan goals and policies which are pertinent:

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

The property is not within the 100 year floodplain, as shown on FIRM 410249 0195 C. The property does have a significant slope but the area has no formal designation as a natural hazard due to steep slopes or geologic hazard. Since the resulting properties would average ten acres, and the land has soils that are generally good for septic systems, there does not appear to be any significant limitation for sub-surface sewage disposal.

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

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

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

The Ladd Hill Estates area is partially developed with large single-family residences on parcels above the 20-acre minimum of the AF-20 zone. The subject site is not directly adjacent to agricultural operations. The site is separated by Wilsonville Road and the change in topography and resulting slope does not permit farm practices to be integrated with the property on the west side of Wilsonville Road, which is essentially flat.

3. Regarding criterion (B) above, demonstrated need...

The existing Exception Areas with AF-10 zoning in the vicinity of the site can no longer fulfill the need they were designed to meet. Out of a total of 210 AF-10 lots in the study area, only 27 are currently undeveloped, and only 6 of which that are at least 10 acres. There is a demand for 10-acre lots, and the subject site fulfills a need for rural residential uses. The subject area has a high amenity value for rural residential use, and is an area where such needs can be met without compromising County goals of urban containment and orderly rural development.

A Market Reconnaissance commissioned by Garrette Custom Homes and prepared by Johnson Gardner, LLC determined that a "New supply of larger residential lots are again restricted to parcels presently allowing residential construction outright or conditionally within the County. The result is a return to a seriously supply constrained market based on conversations with real estate professionals in various Yamhill County markets." The researched concluded: "The inventory for both homesites and residences is well below the demand of buyers with the majority existing around Newberg and Dundee and the Lafayette-Dayton and McMinnville area."

In order to meet the stated purpose of the AF-10 district ("to provide for low density rural residential development" YCZO Section 501.01), the County needs an adequate supply of ten-acre parcels and needs to provide more parcels in this area of the ten-acre size suggested by the AF-10 zoning.

4. Regarding Criterion (C and D) above, surrounding land use patterns and other lands suited...

Structures on the site include two single-family residences and private roads. The Ladd Hill Estates area, in which the subject site is located, is partially developed with large single-family residences on parcels of at least 20 acres. This residential subdivision has full improvements, including a private paved road network and underground utilities, including electric and telephone service and water lines for the fire hydrants for fire protection.

Note the limited number of suitable sites as noted in the compliance with Criterion B described above.

The Board finds that the three parcels are not resource lands for the following reasons:

Goal 3 Criteria: The subject site does not constitute agricultural land, as defined by Statewide Planning Goal 3. The following finding is in response to each portion of the definition of agricultural lands.

- **Land of predominantly Class I, II, III and IV soils as identified in the Soil Capability Classification System of the United States Soil Conservation Service**

A detailed soil investigation concluded that the parcels have a Capability Classification of 89.62% Class VI soils and 11% Class III and Class IV soils. This site is not "predominantly Class I, II, III and IV soils."

- **Soil fertility**

The site contains predominantly Class VI soils, with 42.25% of the site determined to be Stonyland. Of the 34 plots at which Stonyland was described on site, 9 were 10 inches or less to bedrock. Many of these plots also contained significant proportions of gravel and cobbles. According to the Yamhill County Soil Survey, Stonyland has low fertility and an available water capacity of 2 to 4 inches, which is insufficient to retain enough water to allow consistent plant growth. Evidence of this condition is provided by the fact that cherry trees were planted in the early 1980s but all the trees except one died. Furthermore, Douglas Fir trees have died, and the few Ponderosa Pines that have survived continue to die, as well.

- **Suitability for grazing**

Given the limited moisture-holding capacity of these soils and prevailing southerly aspects on this property, the grazing season would be limited to late winter and early spring.

- **Climatic conditions**

Due to the higher elevation of the site, the area has slightly cooler and windier weather than that of the agricultural land adjacent to Wilsonville Road.

- **Existing and future availability of water for farm irrigation purposes**

The site has no source of irrigation, since the land is too far from the Willamette River to draw river water. The existing wells and water tanks are dedicated for domestic use and fire protection, and are not suitable for irrigation purposes.

- **Existing land-use patterns**

Structures on the site include two single-family residences and private roads. The Ladd Hill Estates area, in which the subject site is located, is partially developed with large single-family residences on parcels of at least 20 acres. This residential subdivision has full improvements, including a private paved roadway network and underground utilities, including electric and telephone service and water lines for the fire hydrants. Parts of some of the lots are used for forestry production. However, these lots have better soils and different exposure.

- **Technological and energy inputs required**

The poor soil conditions on site (89.62% Class VI Soils) preclude farm use, regardless of technological or energy inputs. The Stonyland does not permit tilling the soil.

- **Accepted farming practices**

As observed in the Yamhill County Planning staff report, much of the site has slopes in excess of 20%, which hinders agricultural production. If a commercial agricultural enterprise were undertaken on the subject site, conflicts would arise with neighboring properties, given the current character of the area. Potential conflicts include the noise, chemical trespass, odors, dust, and farm traffic. For instance, aerial spraying would be difficult because chemicals exhibit a tendency to drift onto adjacent residential parcels.

- **Lands in other classes which are necessary to permit farm practices to be undertaken on adjacent or nearby lands, shall be included as agricultural land in any event**

The Ladd Hill Estates area is partially developed with large single-family residences on parcels above the 20-acre minimum of the AF-20 zone. The subject site is not directly adjacent to agricultural operations. The site is separated by Wilsonville Road and the change in topography and resulting slope does not permit farm practices to be integrated with the property on the west side of Wilsonville Road, which is essentially flat.

Goal 4 Criteria: The subject site does not constitute forest lands, as defined by Statewide Planning Goal 4. The following list provides a response to each portion of the definition of forest lands.

- **Lands which are suitable for commercial forest uses**

As observed in the Yamhill County Planning staff report, "The vast majority of this property cannot support forestry use." The investigation determined by the Capability Classification that the site has 89.62% Class VI soils and 11% Class III and Class IV soils.

Joel A. Norgren, Ph.D., the soils consultant, has advised that many of the Ponderosa Pines will continue to die over time as they compete for the limited moisture available in the soil. After 15 years, the pines only range in height from two to three feet and four to six feet, depending on their location, and will never be merchantable timber. These trees should be 20-30 feet in height over a 15 year time frame. Prior to planting the Ponderosa Pines, the previous owner planted Douglas Fir trees, which died, and cherry trees, only one of which has survived. The soils significantly prevent any harvestable timber yield.

Furthermore, the site's existing residences, paved roads, utilities, and structures act as impediments to the access required for a viable commercial forestry operation. These improvements act as barriers to timber production, which demand certain buffers from developed areas.

- **Adjacent or nearby lands which are necessary to permit forest operations or practices**

The site is not adjacent to extensive farm or forest operations: the site is surrounded by existing dwellings and other lots that will be developed with residences and that may support minor timber harvests in the future. Rural residences on Wilsonville Road, Lesley Road, Kramien Road, Poison Oak Lane, Blackcap Lane, and Corral Creek Road demonstrate that the surrounding area is already physically developed rather than being an area where forestry operations take place.

The area is generally zoned AF-10 and AF-20, although the flatter parcels along Wilsonville Road are zoned EF-20 and EF-80. The parcels immediately adjacent to Tax Lot 492, 495 and 1600 are zoned AF-10 and AF-20, with the exception of Tax Lot 1603, which is zoned EF-80, although the EF-80 lot is substantially smaller than the 80 acre minimum.

Out of 625.1 acres included in the immediate area, 88.31% of the area is zoned AF-20. The rest of the area is 6.64% AF-10, 3.41% EF-80, and 1.63% EF-20. Despite the 20-acre and 80-acre minimums of the zoning designations, 41% of the parcels in the neighborhood have an area less than 10 acres, and a full 72.8% of the parcels are below 20 acres.

▪ **Other forested lands that maintain soil, air, water and fish and wildlife resources**

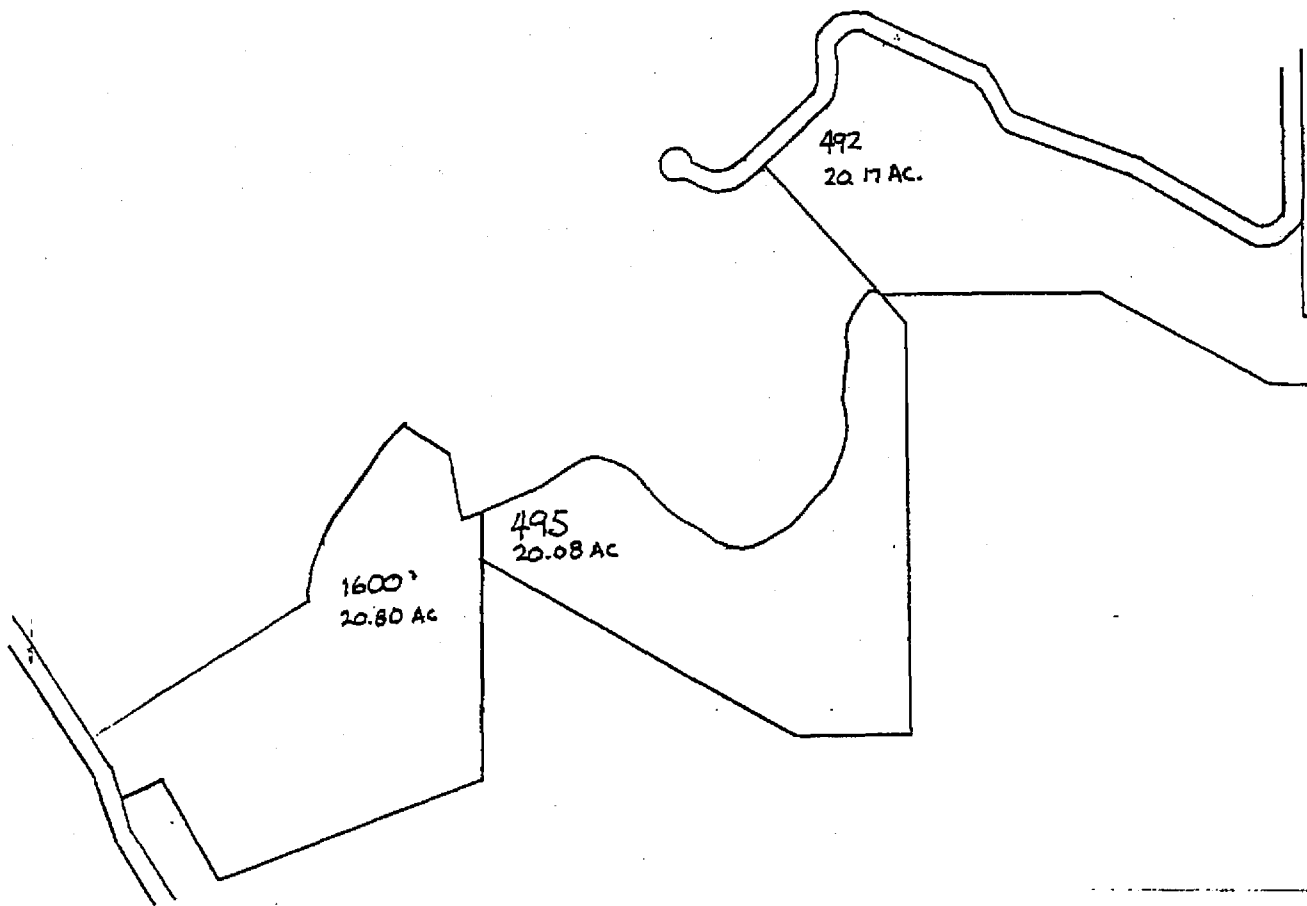
The subject site is not a critical area for maintaining overall forest natural resources. The quality of the soil on site is poor and thin (89.62% Class VI); the site does not play a role in maintaining valuable soils in the area. Similarly, since few trees are on site, the property does not contribute to maintaining air quality. No streams or rivers are located on site, and the area is not in a Critical Wildlife Habitat Area, Big Game Winter Range, or fish habitat.

The Board finds that the subject site does not meet the definition of agricultural or forestry lands, as specified in the Statewide Planning Goals and applicable administrative rules. Consequently, the site does not constitute resource land.

Based on the analysis, conclusions and findings described, the Board approves the request for a Comprehensive Plan Map Amendment from Agriculture/Forestry Large Holding (AFLH) to Agriculture/Forestry Small Holding (AFSH) and a Zone Change from Agriculture/Forestry Large Holding (AF-20) to Agriculture/Forestry Small Holding (AF-10).

1. The request is for a Comprehensive Plan amendment and zone change from Agriculture/Forestry AF-20 to AF-10.
2. The proposed zone change is consistent with Comprehensive Plan goals and policies.
3. The property is justified as not being resource land due to the soils, the slope and the past attempts at farm and forestry use. For this reason, exceptions to Goals 3 and 4 are not required.
4. There is an existing, demonstrable need for the uses allowed by the requested zone considering the availability and location of other lands so zoned and their suitability for the uses allowed by the zone.
5. Other lands in the county already designated for the proposed uses are either unavailable or not as well-suited for the anticipated uses due to location, size, or other factors.
6. The proposed change is consistent with the zone change criteria of Section 1208.02.
7. The proposed change complies with the Transportation Planning Rule.

EXHIBIT MAP FOR ORDINANCE NO. 784
PLAN AMENDMENT AND ZONE CHANGE
ADOPTED BY THE YAMHILL COUNTY BOARD OF COMMISSIONERS
APRIL 26, 2006
FOR A COMPREHENSIVE PLAN AMENDMENT FROM
AGRICULTURE/FORESTRY LARGE HOLDING TO AGRICULTURE/FORESTRY
SMALL HOLDING AND
TO CHANGE OFFICIAL ZONING MAP FROM
AF-20 AGRICULTURE/FORESTRY USE
TO
AF-10 AGRICULTURE/FORESTRY SMALL HOLDING



CHANGE APPLIES TO TAX LOTS 3226-1600, 492 and 495 DESCRIBED ABOVE

APPROXIMATE SCALE - 1 INCH = 600 FEET

B.O.06-281