



Oregon

Theodore R. Kulongoski, Governor

Department of Land Conservation and Development

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NOTICE OF ADOPTED AMENDMENT

May 23, 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 009-05

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: June 6, 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
Ken Friday, Yamhill County

<paa> ya/

FORM 2

D L C D 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 17 2006

LAND CONSERVATION AND DEVELOPMENT

Jurisdiction: Yamhill County

Local File No.: PAZ-03-05
(If no number, use none)

Date of Adoption: May 10, 2006
(Must be filled in)

Date Mailed: May 16, 2006
(Date mailed or sent to DLCD)

Date the Notice of Proposed Amendment was mailed to DLCD: August 9, 2005

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 30 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."

The County approved a comprehensive plan amendment and zone change to rezone 20 acres of property from farm/forest resource land to a 10-acre rural residential zone.

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: *13945 and 13949 Pheasant Hill Road, McMinnville* Acres Involved: 20 Acres

Specified Change in Density: Current: 1dwel/80 acres Proposed: 1 dwel/10 acres

Applicable Statewide Planning Goal: 3

Is an Exception Proposed? Yes: No:

DLCD File No.: 009-05
(14592)

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.**

BEFORE THE BOARD OF COMMISSIONERS OF THE STATE OF OREGON

FOR THE COUNTY OF YAMHILL

SITTING FOR THE TRANSACTION OF COUNTY BUSINESS

In the Matter of a Comprehensive Plan Amendment from)
Exclusive Farm Use to Agriculture/Forestry Use, a Zoning)
Change From EF-80 to AF-10 on Approximately 20 Acres) ORDINANCE 786
And Taking an Exception to Statewide Planning Goal 3, for)
Tax Lot 4513-200, Applicant Wade and Patricia Miller,)
Docket PAZ-03-05, and Declaring an Emergency)

THE BOARD OF COMMISSIONERS OF YAMHILL COUNTY, OREGON (the "Board") sat for the transaction of county business on May 10, 2006, Commissioners Leslie Lewis, Kathy George and Mary P. Stern being present.

IT APPEARING TO THE BOARD that Wade and Patricia Miller applied to the Yamhill County Department of Planning (Planning Docket PAZ-03-05) for a Comprehensive Plan amendment from Exclusive Farm Use – 80 Acre Minimum to Agriculture/Forestry – 10 Acre Minimum, and a zone change from EF-80 Exclusive Farm Use to AF-10 Agriculture/Forestry and an exception to Statewide Planning Goal 3, and

IT APPEARING TO THE BOARD that the matter was heard by the Yamhill County Planning Department at a duly noticed public hearing on October 6, 2005, which voted to deny the application by a vote of 5-1; and the Board held a duly noticed public hearing December 7, 2005, which meeting was continued to May 12, 2006, at which meetings the Applicants appeared and testified. The Board received oral objections from Larry Doty, an adjacent property owner and Marilyn Reeves on behalf of Friends of Yamhill, and also received written objections to Application. After due consideration of the Application and the objections presented, the Board tentatively voted to approve the Application, NOW, THEREFORE,

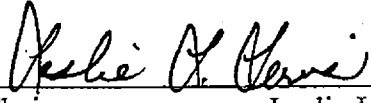
IT IS HEREBY ORDAINED BY THE BOARD, that the Application is approved as detailed in the Findings for Approval, attached as Exhibit "A" and by this reference incorporated herein. This ordinance, being necessary for the health, safety, and welfare of the citizens of Yamhill County, and an emergency having been declared to exist, is effective upon passage. A map of the area is appended as Exhibit "B".

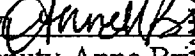
DONE this 10th day of May, 2006, at McMinnville, Oregon.

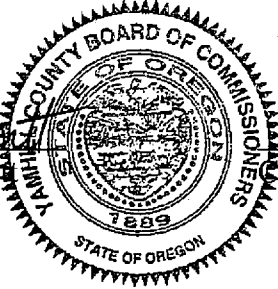
ATTEST

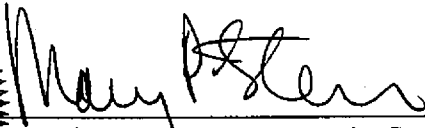
YAMHILL COUNTY BOARD OF COMMISSIONERS

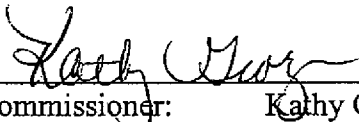
Jan Coleman
County Clerk


Chair: Leslie Lewis

By 
Deputy Anne Brink




Commissioner: Mary P. Stern


Commissioner: Kathy George

APPROVED AS TO FORM:


Rick Sanai, Assistant County Counsel

FINDINGS AND CONCLUSIONS for Ordinance 786, Exhibit "A"

The following findings of fact and conclusions of law are hereby adopted, and are based on substantial evidence in the record in this case:

1. The Findings and Conclusions set forth in the Staff Report for the October 6, 2005, Public Hearing are hereby adopted in full, just as if they were set forth verbatim herein, except as specifically provided below. A copy of said Staff Report is attached hereto and by this reference incorporated herein.
2. The Subject Property area currently consists of one lot of 67.8 acres currently zoned Exclusive Farm Use (EF-80). The Application will divide the Subject Property in three parcels, with one parcel of 47.8 acres remaining zoned as Exclusive Farm Use (EF-80) and two parcels of ten (10) acres each, zoned Agriculture/Forestry Small Holding (AF-10).
3. The soils on the subject parcels that are to be zoned AF-10 are primarily Willakenzie silty clay loam, Dupee silt loam, Panther silty clay loam and shale rock land, with slopes between three (3) and seventy-five (75) percent. The parcel that will remain Exclusive Farm Use is primarily Carlton silt loam, and is a class IIw-4 soil.
4. The Subject Property is serviced by the McMinnville Rural Fire District, McMinnville School District and electricity is provided by City Water and Light. The Subject Property has its own water source and sewer system, and Applicant's hydrogeological expert determined that the existing water supply and stormwater management systems are sufficient to support up to four (4) residences on the Subject Property without creating a negative impact on the surrounding properties.
5. The Subject Property is bordered to the north and west by rural residential properties that are zoned VLDR 2½. The VLDR 2½ - zoned areas to the north and west consist predominantly of parcels that are less than three (3) acres in size, and most of the VLDR 2½ acre parcels are developed.
6. A portion of the area to the west of the Subject Property is the Hidden Hills Subdivision. This area was part of Exceptions Code Areas 4.2 and was found to be committed to residential development during the countywide exceptions process in 1979 and 1980. The area to the north of the Subject Property was also found to be committed to residential development during the exceptions process and was included in Code Area 4.1.
7. Additional portions of the areas to the west of the Subject Property were amended to VLDR 2½ in 1985 (Planning Docket reference PA-1-85/Z-5-85) and in 1988 (Planning Docket reference PA-/Z-5-87) and granted Statewide Planning Goal 3 exceptions as the properties were determined to be irrevocably committed to rural residential uses. These additional areas consisted of approximately 50 acres.

8. The Planning Commission and the Board of Commissioners determined that the Application does satisfy Yamhill County Zoning Ordinance Section 1208.02 in that the Application is consistent with and satisfies the Yamhill County Comprehensive Land Use Plan and the goals and policies contained therein. Specifically, the Application satisfies Goal Statement No. 2 by accommodating the demand for rural residential development at low densities and in areas which are not amenable to integrated neighborhood designs and by locating very low density residential development in areas where commitments to such uses have already been made through existing subdivision, partitioning or development. The Subject Property is bordered in its northern and western sides by property that is zoned Very Low Density Residential (VLDR – 2 1/2).
9. The Board of Commissioners also determined that the Application and the Subject Property would create a transition or buffer zone between the Exclusive Farm Use property to the south and east of the Subject Property and the Very Low Density Residential Property located to the north and west of the Subject Property. The Board of Commissioners also determined that approval of the Application would conserve and preserve the soils best used for farm use on the property that remains zoned Exclusive Farm Use and that the lesser quality soils would be committed to rural residential use.
10. The Planning Commission mistakenly determined that Oregon law prohibits application of a Statewide Planning Goal 3 exception to only a portion of an existing parcel and based its denial of the Application on this mistaken determination. The Applicants provided clarification of the status of Oregon law on the issue and the Board of Commissioners determined that the Applicants have provided adequate justification to show that a Goal 3 exception is available and appropriate for the 20 acres designated to be changed to AF-10 on the attached Exhibit "B."
11. The Planning Commission and the Board of Commissioners determined that Statewide Planning Goal 14 (Urbanization) and Oregon Administrative Rule 660-004-0040(7)(i) is not applicable as OAR 660-004-0040(7)(i) requires that any new low or parcel must be at least 10 acres in size. Applicants' intent is to create two (2) AF-10 parcels of 10 acres each, leaving one EF-80 parcel (containing 47.8 acres), which means that this Application does not implicate Statewide Planning Goal 14 or OAR 660-004-0040(7)(i).
12. In addition to the findings set forth above, the following findings support an exception to Statewide Planning Goal 3 for the two (2) 10-acre parcels proposed to be zoned as AF-10 because those parcels are irrevocably committed to rural residential uses:
 - a) The uses bordering the parcels to the west and north are entirely rural residential.
 - b) The characteristic of the neighborhood bordering the parcels to the west and north is residential.
 - c) The extension of AF-10 zoning to the two 10-acre parcels would provide a logical separation and buffer between the rural residential VLDR 2 ½ properties to the west and north and the exclusive farm use properties to the east and south.

- d) Incorporation of the two 10-acre parcels into AF-10 zoning would remove substandard agricultural soils from a zone requiring exclusive farm use.
 - e) Applicant Miller consulted with real estate professionals familiar with rural residential properties. The real estate professionals uniformly stated that there currently exists a need for larger acre rural residential properties such as those which could potentially be created by changing the zoning to AF-10.
13. The proposed creation of two (2) 10-acre AF-10 parcels will have a minimal impact on the transportation concerns for the immediate area and surrounding neighborhoods and therefore the Application complies with Statewide Planning Goal 12.

END.

STAFF REPORT
YAMHILL COUNTY PLANNING DEPARTMENT

HEARING DATE: October 6, 2005

DOCKET: PAZ-03-05

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 to AF-10 Agriculture/Forestry Small Holding on 30 acres of a 68.7-acre parcel. The request includes an exception to Goal 3, Agricultural Lands.

APPLICANT: Wade and Patricia Miller

REPRESENTATIVE: Jessica Cain, P.C.

TAX LOT: 4513-200

LOCATION: 13945 and 13949 NW Pheasant Hill Road, McMinnville, Oregon

CRITERIA: Sections 402, 501 and 1208 of the Yamhill County Zoning Ordinance; the Yamhill County Comprehensive Plan. Section 904, Limited Use Overlay may also be applied. OAR 660-04, Exception Process. OAR 660-12-0060 Transportation Planning Rule.

COMMENTS: **Sanitarian** - Some soils on this parcel might be hard to impossible to approve as septic sites. (This is due to soil conditions and seasonal groundwater. The sanitarian did mention that easements may also be an option.)
Public Works - We have reviewed the file and find no conflicts with our interests. Any new approaches to a county road will require review and permit process from this office.
SWCD - See September 26, 2005 letter in opposition..
Watermaster - No response to date.
McMinnville Rural Fire Dept.- Installation of draft site equipment and access to the pond may be required. Contact fire department.

EXHIBITS:

1. Application with exhibits
2. Public Notice
3. County Exhibits
4. Comments received

FINDINGS:

A. Background Facts:

1. Property size: The parcel is 68.71 acres. Only the western 30 acres of the total acreage is being requested for rezoning.
2. Access: Pheasant Hill Road. The property is also bordered on the east and south by Baker Creek Road.
3. On-site Land Use: The overall property had two dwellings that were both established prior to adoption of the statewide planning goals. These dwellings were replaced. The property has a large dwelling and outbuildings near the northwest corner of the property. The Assessor's office indicates that one of the outbuildings has an apartment. The area that has the development is not part of the proposed exception area. The 30 acres proposed for the exception and rezoning is along the western property line. Near the western middle of the subject 30-acre tract is a pond. The remainder of the property is an open field.
4. Surrounding Land Use: Property to the north and west contains rural residential homesites of between one to seven acres. The majority of the lots are two to three acres in size. Property to the south and east, across Baker Creek Road, contains large farm fields. The land to the east is owned by Maralynn Abrams who recently received approval for a claim under Measure 37 to develop the property into homesites. While she has the right to do such development, she has indicated that she intends to continue to farm the property. She has made a request for a residential subdivision but it did not include this parcel. In addition, the 78 acre parcel to the southeast of the applicant's 68 acres has an approved Measure 37 request to establish eight 5-acre lots and one 38 acre property and place dwellings on each vacant parcel.
5. Surrounding Zoning: Zoning to the north and west is VLDR 2.5. Zoning to the south and east is EF-80 Exclusive Farm use.
6. Water: To be provided by on-site wells.
7. Sewage Disposal: To be provided by on-site septic systems.
8. Fire Protection: McMinnville Rural Fire District
9. Soils: The Yamhill County Soil Survey shows that the subject property parcel is predominantly composed of Carlton, Willakenzie and Amity soils (over 70%) that are rated agriculture Class II and III. The parcel is predominantly composed of high-value

soils. Of the 30 acre subject property, approximately 4.5 acres is identified on the soils map as Class VI. Of the class VI soils, much of this area is now under the pond that was created on-site. The remainder of the 30 acres is rated as agricultural Class II and III. The majority of the soils on the 30 acres contains high-value farmland. The detailed breakdown of the soil percentages for the entire parcel is attached in Exhibit 3, County Exhibits. The location of the soils and proposed parcels is also shown on a map attached to the applicant's Exhibit A.

10. Taxes: The entire parcel is receiving farm deferral.
11. Previous Actions: This property was located south of, and adjacent to Code Area 4.1, which is part of Exceptions Statement I and II. It was not included as part of this exceptions study. For much of the 1990's the previous owners, Calvin and Annette VanDerVeen would visit our office and try to see if the county would initiate a legislative action to rezone their property. In 1997 Calvin VanDerVeen finally wrote a letter to the Planning Commission requesting that they initiate the plan amendment and zone change (this is attached in the applicant's packet as Exhibit B). In his letter he referenced ". . . past county action. . ." that supported such a request. The past county action he was referring to was a plan amendment and zone change on the adjacent properties to the west. This adjacent area contained a number of property owners who joined together and applied for rezoning from AF-20 to VLDR 2.5. This adjacent property was rezoned in 1987. Mr. VanDerVeen had stated that he asked to be part of this group rezoning but was not included by the adjacent residents. In the year 2000 Mr. VanDerVeen also visited with Commissioner Tom Bunn who asked for the options related to rezoning. The responding memo is contained in County Exhibits.
12. Floodplain: The property is not within the 100-year flood hazard area.
13. Fish and Wildlife: The property is not identified as critical fish or wildlife habitat.
14. Exception Land: The property is plan designated Agriculture/Forestry Large Holding and has zoning of EF-80 Exclusive Farm Use. This is a resource zone protected under Goal 3. (Goal 3 relates to the preservation of farm land.) The applicant desires to change the plan designation and zoning to AF-10 Agriculture/Forestry Small Holding. This is a rural residential zone. While this rural residential zone allows farm uses it is not a farm zone. In order to rezone land to AF-10 an exception to Goal 3, must be taken.

B. Zone Change and Plan Amendment Provisions and Analysis

1. Approval of a request for a zone change must be based on compliance with the standards and criteria in YCZO Section 1208.02. These provisions are:

- (A) *The proposed change is consistent with the goals, policies, and any other applicable provisions of the Comprehensive Plan.*
- (B) *There is an existing demonstrable need for the particular uses allowed by the requested zone, considering the importance of such uses to the citizenry or the economy of the area, the existing market demand which such uses will satisfy, and the availability and location of other lands so zoned and their suitability for the uses allowed by the zone.*
- (C) *The proposed change is appropriate considering the surrounding land uses, the density and pattern of development in the area, any changes which may have occurred in the vicinity to support the proposed amendment and the availability of utilities and services likely to be needed by the anticipated uses in the proposed district.*
- (D) *Other lands in the county already designated for the proposed uses are either unavailable or not as well-suited for the anticipated uses due to location, size, or other factors.*
- (E) *The amendment is consistent with the current Oregon Administrative Rules for exceptions, if applicable.*

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

Goal II.A.2 directs the county: To conserve Yamhill County's soil resources in a manner reflecting their suitability for forestry, agriculture and urban development and their sustained use for the purposes designated on the county plan map.

Additionally, Policy II.A.2.a states: Yamhill County will continue to preserve those areas for farm use which exhibit Class I through IV soils as identified in the Capability Classification System of the U.S. Soil Conservation Service.

As noted above, the property is predominantly rated as having agricultural Class II and III soils, most of which are designated as high-value farmland. The property is also noted as having past farm use established. The decision-makers will need to decide whether it is more appropriate to preserve the property for farm use or allow rural residential development.

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

The property is not within the 100 year floodplain, as shown on FIRM 410249 0300 C. The property does have a mild slope but there appears to be adequate area for construction of three additional residences. The county sanitarian has indicated some concern related to soil suitability for on-site septic systems. The applicant did submit a letter from Martin G. Boatwright, P.E. that discusses some of the on-site soils and the possibility for septic systems. While Mr. Boatwright is an engineer, it is not clear whether Mr. Boatwright is a certified soil scientist. In any event, partitioning and development of the property could not occur without first obtaining on-site approval for a septic system.

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. If sewer service could not be provided by a septic system then the partitioning and development of the land would not be allowed. Other services such as electricity, telephone, sheriff and fire protection already serve the existing residents in the area.

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

The adjacent parcels to the north, were designated for rural residential use and excepted from Goal 3 in Exceptions Statement II (ESII) which was adopted by the Board of Commissioners April 23, 1980. In 1987 the adjacent property along the western border was rezoned to rural residential use. The subject property was excluded from this rezoning. If approved, the magnitude of development would be to allow three additional home-sites, along the western property line, adjacent to the existing rural residential zone. These, along with the existing residences in the area, would not require more than a very basic level of services such as local access roads and individual septic/water systems.

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

The applicant has submitted arguments that: 1) The portion of property with the desired zone change contains the poorer soils, 2) The rezoned land will remain in farm use with new owners and 3) This rezoning will provide a buffer from rural residential zoned property to farm property. The applicant should describe how the new zone will not substantially impair or conflict with neighboring farm or forest land.

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

The applicant has submitted a letter from a real estate broker who researched the availability of 10 acre lots in McMinnville and found only one parcel that was zoned AF-10 that was undeveloped. He does not identify this parcel but describes it as being near Brentano Lane. The letter is also unspecific as to exactly what area the search was conducted in. The letter stated there was a high demand for these homesites. Similar requests have identified the market demand and have cited the lack of property on the market to satisfy the demand. This argument was made in a similar zone-change request (to VLDR 2.5) considered by the county in 1991. This request was appealed to the Land Use Board of Appeals (LUBA). In their opinion on that case LUBA stated:

*The county explains in its findings that this existing potential for residential development on VLDR 2.5 zoned property is not 'available' to satisfy the need for rural housing on 2.5 acre lots because only a small number of VLDR 2.5 zoned properties are presently for sale. We reject that explanation. The number of VLDR 2.5 zoned properties on the market for sale at any given point in time is at best an indirect measure of the need or market demand for such properties.
(LUBA No. 91-200)*

Traditionally, the Planning Department has evaluated the existing exception areas to determine if they contain undeveloped lots with the requested zone. The most recent update to the exception area information was in June of 1999. The "Code Area" refers to specific exception areas originally studied in 1980. The results are as follows:

Code Area	Zone	Existing Lots	Developed Lots	Vacant Lots	Potential New Lots
4.1 4.2 4.3 4.4	AF-10	16	14	2	0
4.5 4.9	AF-10	27	17	10	2

The result is that the code areas closest to the subject parcel had only two vacant AF-10 properties in 1999. Code Area 4.5/4.9 is located east of McMinnville (see attached maps). In 1999 it contained 10 vacant lots and two more that could potentially be developed. Based on this information it appears that there is not an abundance of AF-10 property around McMinnville.

- Regarding criterion (C), the proposed change needs to be shown to be appropriate considering the surrounding land uses, the density and pattern of development in the area, any changes which may have occurred in the vicinity to support the proposed amendment and the availability of utilities and services likely to be needed by the anticipated uses in the proposed district. Surrounding land uses to the north and west contain rural residential homesites of one to seven acres. Larger farm parcels exist to the south and east. As noted earlier, the neighboring property to the north, was part of code area 1.6 adopted in Exceptions Statement II. In 1987 land to the west was evaluated and rezoned from farm/forest use to VLDR 2.5 Very Low Density Residential. The applicant maintains that these rural residential zones limit the use of the subject property for farm use. The application points out that the AF-10 zone could be a buffer between the VLDR 2.5 zone and the EF-80 Exclusive Farm use zone.

Regarding the availability of utilities and services in the area, the lots in the surrounding area have on-site systems for sewer and water hook-ups. Other services such as electricity, telephone, sheriff and fire protection already serve the existing residents in the area. No extension of water or sewer service is anticipated to be needed for the proposed level of development.

- Regarding criterion (D), the applicant must show that other lands in the county already designated for the proposed uses are either unavailable or not as well-suited for the anticipated uses due to location, size, or other factors, as required by YCZO 1202.08(D). The applicant's realtor submitted a letter indicating that only one other AF-10 property was available in McMinnville. As indicated above, in 1999, 12 parcels were available and 2 additional lots could potentially be created. It is likely the number of available lots is far fewer due to development over the past several years.

6. Regarding the criterion (E), an exception to Goal 3 is required, as addressed in Section C of these findings below. Since the property is zoned for Exclusive Farm use and not for Agricultural/Forestry use an exception to Goal 4 is not required.

C. Goal Exception Provisions and Analysis

1. Oregon Administrative Rule (OAR) 660-04 contains the requirements for taking an exception to the goals. On the top of page 8 of the request the applicant states that, "Applicant maintains that, pursuant to OAR 660-04-0010(1)(a), an exception to Goal 3 is not required because the AF-10 uses are permitted in an exclusive farm use (EFU) zone under ORS Chapter 215 and OAR 660 Division 033." This is incorrect. The AF-10 uses are not permitted in the exclusive farm use zone. Specifically, a dwelling is not an outright permitted use in the EF-80 zone so an exception is required.

The applicant is applying for a "physically developed and irrevocably committed" exception. The applicant addresses the "physically developed" portion of the administrative rule near the middle of page 8 of the applicant's narrative it states that,

"OAR 660-015-0000(2), Part II(a) provides that a local government may adopt an exception to a goal when *'the land subject to the exception is physically developed to the extent that it is no longer available for the uses allowed by the applicable goal.'* The proposed Comprehensive Plan amendment and zone change will remove 30 acres of the 67.8 acre parcel from the EF-80 zoning. The 30 acres removed is property that is not best suited for farming or cattle due to the soils and slope/grade of the property."

This response does not explain why the property is "physically developed" to the extent that it is no longer available for the uses allowed by the goal. The property is developed with a homesite and outbuildings near the northwest corner of the property. A small pond also exists near the western end of the property. These improvements do not develop the property to the point that it can not be used for farm use. While the on-site physical development clearly does not support an exception, the surrounding land uses may support that the property is irrevocably committed to nonresource use.

2. OAR 660-04-028 indicates that a committed exception may be taken when land is irrevocably committed to uses not allowed by the applicable goal because existing adjacent uses and other relevant factors make uses allowed by the goal impracticable. OAR 660-04-028(3) states in part that "*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; and

(c) Forest operations or forest practices as specified in OAR 660-006-0025(2)(a)."

A two-part analysis is required. First, whether land is irrevocably committed depends on the relationship between the exception area and the lands adjacent to it. Findings must address the characteristics of the exception area; the characteristics of the adjacent lands; the relationship between the exception area and the lands adjacent to it; and the other relevant factors set forth in OAR 660-04-028(6). Second, for an exception to Goal 3 (as noted, staff believes a Goal 4 exception is not required), findings must be made that farm uses are impracticable on the proposed exception area.

3. *Characteristics of the exception area:* Near the western middle of the 30-acre subject tract is a pond. The remainder of the property is an open field.
4. *Characteristics of the adjacent lands:* Property to the north and west contains rural residential uses. Farm uses exist to the south and east.
5. *The relationship between the exception area and the lands adjacent to it:* Pages 5 and 6 contain an explanation of the past relationship between the subject tract and the lands adjacent to it.
6. OAR 660-04-028(6) requires that findings for a committed exception address existing adjacent uses; existing public facilities and services (water and sewer lines, etc.); parcel size and ownership patterns of the exception area and adjacent lands; neighborhood and regional characteristics; natural or man-made features or other impediments separating the exception area from adjacent resource land; physical development; and other relevant factors. The existing uses are addressed above. Public facilities and services are generally available in the area. While this feature does not separate the subject property from nearby resource land, the property is bordered on three sides by roads. The other factors have been addressed elsewhere in this report.
7. OAR 660-04-028(6) also contains factors that must be addressed when taking an exception to a goal for land that is irrevocably committed to other uses. OAR 660-04-028(6) states:

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

(a) *Existing adjacent uses;*

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

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

(A) Consideration of parcel size and ownership patterns under subsection (6)(c) of this rule shall include an analysis of how the existing development pattern came about and whether findings against the Goals were made at the time of partitioning or subdivision. Past land divisions made without application of the Goals do not in themselves demonstrate irrevocable commitment of the exception area. Only if development (e.g., physical improvements such as roads and underground facilities) on the resulting parcels or other factors make unsuitable their resource use or the resource use of nearby lands can the parcels be considered to be irrevocably committed. Resource and nonresource parcels created pursuant to the applicable goals shall not be used to justify a committed exception. 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.

(d) *Neighborhood and regional characteristics;*

(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;*

- (f) Physical development according to OAR 660-004-0025; and*
- (g) Other relevant factors.*

8. Regarding OAR 660-04-028(6)(a) the description of the adjacent land is noted in Finding A. 4.
9. Regarding OAR 660-04-028(6)(b) the public facilities that are available are the public road and electricity. Water and sewer service would be provided by on-site systems. Other services such as police and emergency services are also generally available.
10. Regarding OAR 660-04-028(2)(c) the description of the adjacent land is found on page 4 of the applicant's submittal. The most significant change in the area is the development of the rural residential property in the surrounding area, including recent approval of two Measure 37 claims that will potentially convert exclusive farm use land to rural residential developments.
11. Regarding OAR 660-04-028(2)(d) as stated above rezoning the subject parcel to allow AF-10 zone would grant the owner the ability to develop larger rural residential parcels similar to the properties to the north and west.
12. Regarding OAR 660-04-028(2)(e) the applicant has not cited any natural or man-made features which separate the property from adjacent resource land.
13. Regarding OAR 660-04-028(2)(f) the only physical development on the site is a dwelling and outbuildings, all located in the northwest corner of the land. This type of development would not prevent the use of the property for farming operations.
14. Regarding OAR 660-04-028(2)(g) the applicant states that the AF-10 zone would provide a transition zone between the VLDR 2.5 and EF-80 zones. Further explanation is found in the application.

D. Goal 12 (Transportation Rule) Provisions and Analysis

1. The provisions of the Transportation Planning Rule, implementing Goal 12, must be addressed. OAR 660-12-060 contains the provisions that must be met:
 - (1) *Amendments to functional plans, acknowledged comprehensive plans, and land use regulations which significantly affect a transportation facility shall assure that allowed land uses are consistent with the identified function, capacity, and level of service of the facility. This shall be accomplished by either:*
 - (a) *Limiting allowed land uses to be consistent with the planned function, capacity and level of service of the transportation facility;*

- (b) *Amending the TSP [Transportation System Plan] to provide transportation facilities adequate to support the proposed land uses consistent with the requirements of this division; or,*
 - (c) *Altering land use designations, densities, or design requirements to reduce demand for automobile travel and meet travel needs through other modes.*
 - (2) *A plan or land use regulation amendment significantly affects a transportation facility if it:*
 - (a) *Changes the functional classification of an existing or planned transportation facility;*
 - (b) *Changes standards implementing a functional classification system;*
 - (c) *Allows types or levels of land uses which would result in levels of travel or access which are inconsistent with the functional classification of a transportation facility; or*
 - (d) *Would reduce the level of service of the facility below the minimum acceptable level identified in the TSP.*
- 2. Regarding (1) and (2), the applicant submitted a letter from Tom Lancaster, P.E., that concludes that the traffic impact of the proposed zone change and three additional single family dwellings would not significantly affect the existing transportation facility. Therefore the proposed residential use is consistent with the identified function, capacity, and level of service of the local roads.

CONCLUSIONS FOR APPROVAL:

1. The request is for a Comprehensive Plan amendment and zone change from Exclusive Farm Use, EF-80 to AF-10, including an exception to Goal 3.
2. The proposed zone change is consistent with Comprehensive Plan goals and policies.
3. An exception to Goal 3 is justified because the portion of property which is requested for the zone change is unsuitable for productive farming, and the adjacent small residential lots, roads, and uses contribute to the area being irrevocably committed to residential use.
4. The proposed change is consistent with the zone change criteria of Section 1208.02.
5. The proposed change complies with the Transportation Planning Rule.

CONCLUSIONS FOR DENIAL:

1. The request is for a Comprehensive Plan amendment and zone change from Exclusive Farm Use, EF-80 to AF-10, including an exception to Goal 3.
2. There has not been adequate justification, as required by YCZO 1208.02(A), that the request satisfies the Goals and Policies of the Yamhill County Comprehensive Plan.
3. There has not been adequate justification that the request complies with the Oregon Administrative Rules for an exception to Goal 3.

RECOMMENDATION:

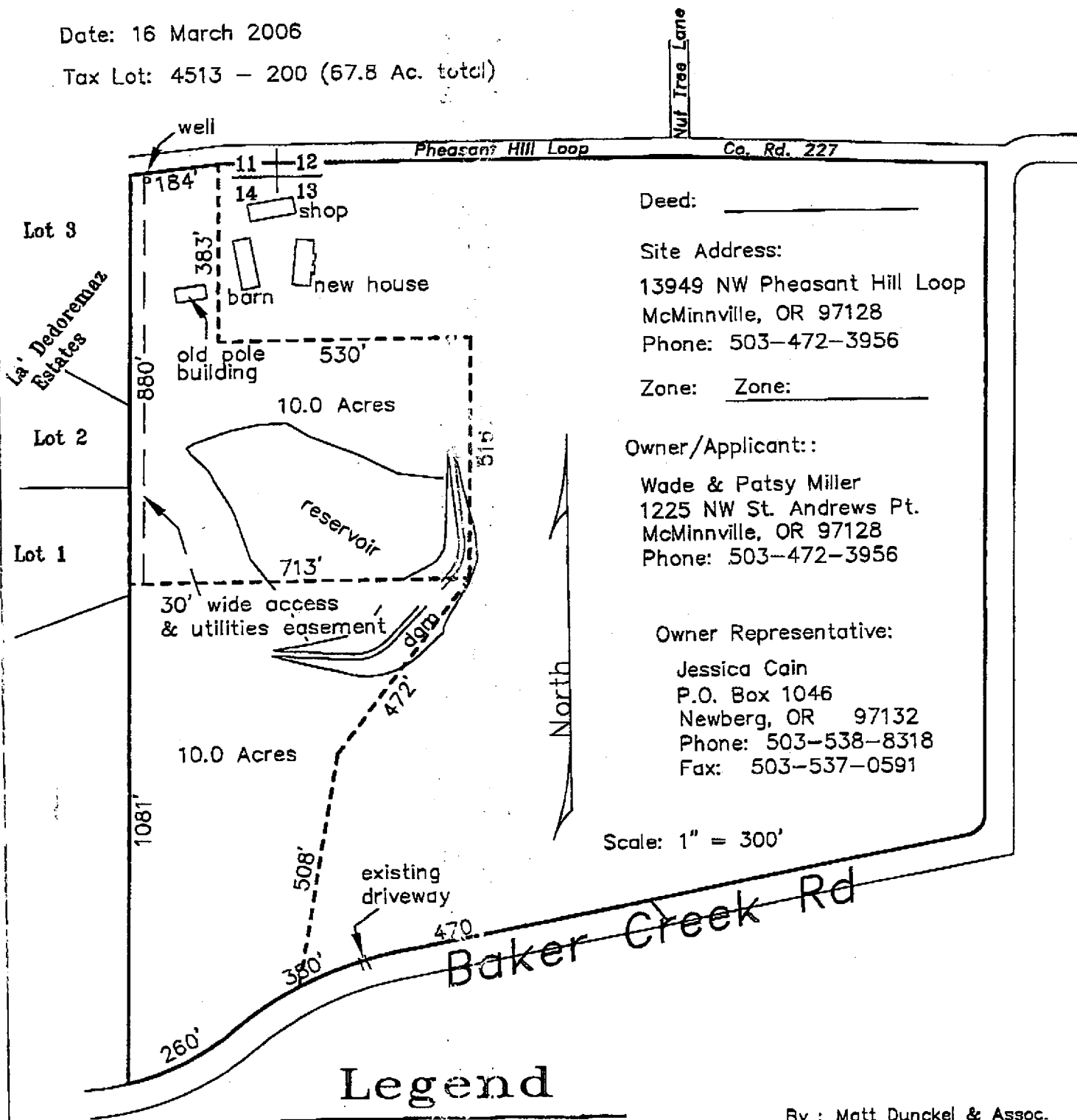
A staff recommendation will be given after the receipt of public testimony.

Map for: Wade & Patsy Miller

Location: NE 1/4 Section 14, NW 1/4 Section 13, T. 4 S., R. 5 W., WM., Yamhill County, OR

Date: 16 March 2006

Tax Lot: 4513 - 200 (67.8 Ac. total)



Deed: _____

Site Address:
 13949 NW Pheasant Hill Loop
 McMinnville, OR 97128
 Phone: 503-472-3956

Zone: Zone: _____

Owner/Applicant: :

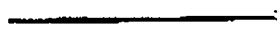


Wade & Patsy Miller
 1225 NW St. Andrews Pt.
 McMinnville, OR 97128
 Phone: 503-472-3956

Owner Representative:

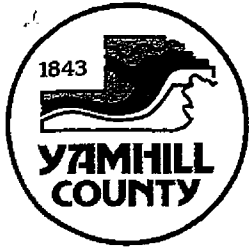
Jessica Cain
 P.O. Box 1046
 Newberg, OR 97132
 Phone: 503-538-8318
 Fax: 503-537-0591

Scale: 1" = 300'

Legend

-  = Existing property line
-  = Proposed property line
-  = easement

By : Matt Dunckel & Assoc.
 3765 Riverside Drive
 McMinnville, Oregon 97128
 Phone : 503-472-7904
 Fax: 503-472-0367
 Email: dunckel@spessart.com



BOARD OF COUNTY COMMISSIONERS

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May 11, 2006

Wade & Patricia Miller
1225 NW St Andrews Place
McMinnville, OR 97128

Jessica Cain
Gunn & Cain
Attorneys at Law
201 North Meridian
Newberg, OR 97132

RE: Planning Docket PAZ-03-05
Ordinance 786

Dear Mr. and Mrs. Miller and Ms. Cain:

At the May 10, 2006 formal session of the Board of Commissioners, the Board adopted Ordinance 786, approving a Comprehensive Plan Amendment and Zone Change on Tax Lot 413-200.

Findings in support of the Board's decision are contained in Exhibit "A" of Ordinance 786, a copy of which is enclosed. Copies may also be reviewed in the Planning Department during normal business hours. The Planning Department is located at 525 NE Fourth Street, McMinnville, Oregon.

This action constitutes a final action by Yamhill County on the application, but you should be aware that a final land use decision by a local government may be appealed to the Land Use Board of Appeals in most circumstances. An appeal must be filed within 21 days of the date the decision became final, which was May 10, 2006. A successful appeal could revoke this approval.

If you have any questions regarding the county's action, you may contact me at the phone number listed above or the Planning Department (434-7516).

Sincerely,

Leslie Lewis, Chair
Board of Commissioners

LL-CW:cw
Enclosure

cc: ✓ Planning Department & Martin Chroust-Masin
Interested parties per attached list (w/out attachment)

Notice of Decision
Planning Docket PAZ-03-05
Mailed May 12, 2006

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McMinnville, OR 97128

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Newberg, OR 97132

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Friends of Yamhill County
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Carlton, OR 97111

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McMinnville, OR 97128

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