



Oregon

Theodore R. Kubongoski, Governor

Department of Land Conservation and Development

635 Capitol Street, Suite 150

Salem, OR 97301-2540

(503) 373-0050

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www.lcd.state.or.us



NOTICE OF ADOPTED AMENDMENT

7/16/2010

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

FROM: Plan Amendment Program Specialist

SUBJECT: Yamhill County Plan Amendment  
DLCD File Number 003-10

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: Thursday, July 29, 2010

This amendment was submitted to DLCD for review 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 Acknowledgment or 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. NO LUBA Notification to the jurisdiction of an appeal by the deadline, this Plan Amendment is acknowledged.

Cc: Ken Friday, Yamhill County  
Jon Jinings, DLCD Community Services Specialist  
Katherine Daniels, DLCD Farm/Forest Specialist

<paa> YA



FORM 2

DLCD

# Notice of Adoption

In person  electronic  mailed

DATE STAMP

DEPT OF

JUL 09 2010

LAND CONSERVATION AND DEVELOPMENT  
For Office Use Only

This Form 2 must be mailed to DLCD within 5-Working Days after the Final Ordinance is signed by the public Official Designated by the jurisdiction and all other requirements of ORS 197.615 and OAR 660-018-000

Jurisdiction: **Yamhill County**

Local file number: **Z-02-10**

Date of Adoption: **6/30/10**

Date Mailed: **7/8/10**

Was a Notice of Proposed Amendment (Form 1) mailed to DLCD?  Yes  No Date: 3/11/2010

Comprehensive Plan Text Amendment

Comprehensive Plan Map Amendment

Land Use Regulation Amendment

Zoning Map Amendment

New Land Use Regulation

Other:

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

To change the zoning from EF-20 Exclusive Farm to AF-20 Agriculture/Forestry

Does the Adoption differ from proposal? No, no explanation is necessary

Plan Map Changed from:

to:

Zone Map Changed from: **EF-20 Exclusive Farm**

to: **AF-20 Agriculture/Forestry**

Location: Approximately 400 feet west of the intersection of Bell Road and Mountain Home Road, on the south side of Bell Road.

Acres Involved: **51.8**

Specify Density: Previous: **1/20 ac**

New: **1/20 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. 003-10 (18171) [16206]

Please list all affected State or Federal Agencies, Local Governments or Special Districts:

---

Local Contact: **Ken Friday**

Phone: (503) 434-7516 Extension: 3630

Address: **525 NE Fourth Street**

Fax Number: 503-434-7544

City: **McMinnville**

Zip: **97128**

E-mail Address: **fridayk@co.yamhill.or.us**

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## **ADOPTION SUBMITTAL REQUIREMENTS**

**This Form 2 must be received by DLCD no later than 5 days after the ordinance has been signed by the public official designated by the jurisdiction to sign the approved ordinance(s) per ORS 197.615 and OAR Chapter 660, Division 18**

1. This Form 2 must be submitted by local jurisdictions only (not by applicant).
2. When submitting, please print this **Form 2** on light green paper if available.
3. Send this Form 2 and **One (1) Complete Paper Copy and One (1) Electronic Digital CD** (documents and maps) of the Adopted Amendment to the address in number 6:
4. **Electronic Submittals: Form 2 – Notice of Adoption will not be accepted via email or any electronic or digital format at this time.**
5. The Adopted Materials must include the final decision signed by the official designated by the jurisdiction. The Final Decision must include approved signed ordinance(s), finding(s), exhibit(s), and any map(s).
6. **DLCD Notice of Adoption must be submitted in One (1) Complete Paper Copy and One (1) Electronic Digital CD via United States Postal Service, Common Carrier or Hand Carried to the DLCD Salem Office and stamped with the incoming date stamp.** (for submittal instructions, also see # 5)] **MAIL the PAPER COPY and CD** 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**

7. Submittal of this Notice of Adoption must include the signed ordinance(s), finding(s), exhibit(s) and any other supplementary information (see ORS 197.615 ).
8. Deadline to appeals to LUBA is calculated **twenty-one (21) days** from the receipt (postmark date) of adoption (see ORS 197.830 to 197.845 ).
9. In addition to sending the Form 2 - Notice of Adoption to DLCD, please notify persons who participated in the local hearing and requested notice of the final decision at the same time the adoption packet is mailed to DLCD (see ORS 197.615 ).
10. **Need More Copies?** You can now access these forms online at **<http://www.lcd.state.or.us/>**. You may also call the DLCD Office at (503) 373-0050; or Fax your request to: (503) 378-5518.

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 Approval of a Zone Change from EF-20 Exclusive Farm Use, to AF-20, Agriculture/Forestry, on Tax Lot 3210-1000, Docket Z-02-10, Applicant Mills Development Company LLC ) Ordinance 855

THE BOARD OF COMMISSIONERS OF YAMHILL COUNTY, OREGON (the Board) sat for the transaction of county business on June 30, 2010, Commissioners Kathy George, Leslie Lewis, and Mary P. Stern being present.

IT APPEARING TO THE BOARD that the Mills Development Company, LLC ("Applicant") submitted an application requesting a Zoning Map amendment from EF-20, Exclusive Farm Use, to AF-20, Agriculture/Forestry, on a 51.8 acres parcel, and

IT APPEARING TO THE BOARD that the Planning Commission heard this matter at a duly noticed public hearing on May 6, 2010 and heard from the applicants and opponents, then voted unanimously 8-0 to approve the application, and

IT APPEARING TO THE BOARD that the application was timely appealed to the Board of Commissioners, which heard this matter at a duly noticed public hearing on June 16, 2010, then voted 2-0 to approve the application, and, NOW, THEREFORE,

IT IS HEREBY ORDAINED BY THE BOARD, that the application is approved detailed in Exhibit "A," the Findings for Approval, hereby incorporated into this Ordinance by this reference. A map is appended as Exhibit "B".

DONE this 30th day of June, 2010, at McMinnville, Oregon.

ATTEST: YAMHILL COUNTY BOARD OF COMMISSIONERS

REBEKAH STERN DAVIDSON County Clerk Chair KATHY GEORGE

By Deputy Anne Britt Commissioner MARY P. STERN

APPROVED AS TO FORM Commissioner LESLIE LEWIS

Rick Sanai Senior Assistant County Counsel



**BEFORE THE BOARD OF COMMISSIONERS  
FOR YAMHILL COUNTY, OREGON**

<b>In the Matter of an Appeal of the</b>	)	
<b>Planning Commission's Approval of a</b>	)	<b>Exhibit "A"</b>
<b>Zone Change from EF-20, Exclusive Farm</b>	)	
<b>Use, to AF-20, Agriculture/Forestry, on</b>	)	<b>FINDINGS OF FACT AND</b>
<b>Tax Lot 3210-1000, containing about 51.8</b>	)	<b>CONCLUSIONS OF LAW APPROVING</b>
<b>acres, in compliance with the Yamhill</b>	)	<b>COUNTY DOCKET Z-02-10</b>
<b>County Comprehensive Plan map</b>	)	
<b>"Agriculture/Forestry Large Holding"</b>	)	
<b>designation.</b>	)	

**1. Procedural Status.**

**A. Initiation of Request.**

On March 9, 2010, Mills Development Company, LLC ("Applicant") submitted an application ("Application") requesting a Zoning Map amendment from EF-20, Exclusive Farm Use, to AF-20, Agriculture/Forestry, on approximately 51.8 acres of real property ("Property") owned by Applicant. On March 11, 2010, the County deemed the Application complete.

**B. Planning Commission Action.**

The Application was subject to review by Planning staff and then a public hearing before the Yamhill County Planning Commission ("Planning Commission").

**1. Notice of Planning Commission Public Hearing.**

On March 11, 2010, the County provided required notice of the Planning Commission public hearing to the State Department of Land Conservation and Development ("DLCD") on the DLCD form in accordance with ORS 197.610. On April 17, 2010, the City mailed notice of the public hearing for the Application to affected property owners within 750 feet of the Property in accordance with Yamhill County Zoning Ordinance ("YCZO") 1402.01 (and in excess of the statewide requirement set forth in Oregon Revised Statutes ("ORS") 197.763(2)). The notice included the required elements set forth in ORS 197.763(3). In accordance with YCZO 1402.01, the County provided published notice in the "Newberg Graphic," the newspaper of general circulation in the County, of the Planning Commission public hearing relating to the Application.

**2. County Staff Report.**

On April 29, 2010, the County Planning Department issued a staff report ("Staff Report") analyzing the Application, finding that it satisfied applicable approval criteria, and recommending that the Planning Commission approve it.

### **3. Planning Commission Hearing and Decision.**

On May 6, 2010, the Planning Commission opened a public hearing on the Application. At the commencement of the hearing, the notices under ORS 197.763 were read into the record, and Chair Garretson inquired whether any members of the Planning Commission had any conflicts of interest or *ex parte* communications to disclose. No members of the Planning Commission declared any such conflicts or communications, and no members abstained from the decision. No one challenged the jurisdiction of the Planning Commission or any of its members to decide the case.

Ken Friday, the County's Planning Division Manager, explained the proposal and presented the Staff Report. He noted that the entire Planning Department file was physically before the Planning Commission. With the exception of one specific provision of the Staff Report explained below, the Planning Commission did not reject any part of the Planning Department file. After the staff presentation, Michael Robinson and Seth King gave a presentation on behalf of the Applicant. Next, the Planning Commission accepted public testimony. Marni Haley, Sid Friedman, Barbara Richman, Peter Schmidt, and Barbara Schaffner appeared in opposition to the Application. After that, the Planning Commission accepted rebuttal from the Applicant and County staff. No party asked that the initial evidentiary hearing be continued or the written record held open.

At the conclusion of public testimony, the Planning Commission closed the public hearing and discussed the Application. For the Planning Commission, Commissioner Halstead made a motion, seconded by Commissioner Ehry, to approve the Application based upon the evidence and testimony presented, subject to striking the portion of Conclusion of Approval 1 in the Staff Report that states that the Application includes a request for a Comprehensive Plan map amendment. The Commission approved the motion, 8-0.

The County issued notice of the Commission's decision to parties with standing on May 7, 2010.

#### **C. Appeal.**

On May 19, 2010, Jane Bardolf filed a timely appeal of the Planning Commission's decision to the Yamhill County Board of Commissioners ("Board") within fifteen (15) days of the notice of the Commission's decision.

#### **D. Board of County Commissioners' ("Board") Decision.**

##### **1. Notice of Public Hearing.**

On May 20, 2010, the County mailed written notice of the appeal hearing before the Board to the same property owners provided notice of the initial Planning Commission hearing as well as to parties who testified at the Planning Commission hearing.

##### **2. County Staff Report.**

The County Planning staff presented the Staff Report to the Board.

### **3. Board Hearing and Decision**

On June 16, 2010, the Board opened a public hearing on the Application. Chair Stern and Commissioner Lewis were present at the hearing and constituted a quorum for the Board. Commissioner George was excused. At the commencement of the hearing, the notices under ORS 197.763 were read into the record, and Chair Stern inquired whether any members of the Board had any conflicts of interest or *ex parte* communications to disclose. Both commissioners present declared that they had visited the site in December 2009 but did not have any contact with representatives of the Applicant at that time. Further, both stated that the site visit would not prejudice their ability to be an impartial decision maker. No one challenged the jurisdiction of the Board or any of its members to decide the case.

Ken Friday, the County's Planning Division Manager, explained the proposal and presented the Staff Report. He noted that the entire Planning Department file was physically before the Board. The Board did not reject any part of the Planning Department file. After the staff presentation, Michael Robinson gave a presentation on behalf of the Applicant. Next, the Board accepted public testimony. Barbara Schaffner, Barbara Richman, Marni Haley, Jane Bardolf, Leslie Atiyeh, Sid Friedman, and Marilyn Reeves appeared in opposition to the Application. After that, the Board accepted rebuttal from the Applicant and County staff. The Applicant waived its right to submit final written argument under ORS 197.763(6)(e).

At the conclusion of public testimony, the Board closed the public hearing and discussed the Application.

During Board deliberations, Commissioner Lewis, in explaining her motion, said that the issue before the Board was an AF-20 application. She concluded that the AF-20 zone is a resource zone consistent with the Agriculture/Forestry Large Holding plan designation and implements Goals 3 and 4. She found that YCZO 1208.03 contains the relevant criteria for the map amendment. She noted that YCZO 1208.03 was, in fact, more subjective than YCZO 1208.04 and, therefore, presented slightly more difficult criteria for an applicant. Commissioner Stern noted in her deliberations that either YCZO 1208.03 or .04 could apply but that it was the applicant's choice as to which set of criteria to apply. For the Board, Commissioner Lewis made a motion, seconded by Chair Stern, to tentatively approve the Application based upon the evidence and testimony presented, subject to adoption of findings in support of the decision, which findings would be presented to the Board at its regular meeting scheduled for June 30, 2010 at 9:00a.m. The Board approved the motion, 2-0.

### **4. Record before the Board.**

The record before the Board consists of the agenda cover memorandum for Docket Z-02-10 from Ken Friday and all eight (8) attachments listed in and attached to that memorandum; the written and oral testimony presented by appellant, applicant, and other parties to the Board; and all written and oral testimony presented to and not rejected by the Board. The entire County Planning Department file was physically placed before, and not rejected by, the Board prior to the close of the record.

**2. Board Findings of Fact and Conclusions of Law.**

**A. Approval of Application; Denial of Appeal.**

After consideration of the applicable law and all argument and evidence in the record, the Board finds that the Application satisfies all applicable approval criteria. Accordingly, the Board hereby denies the appeal and affirms the decision of the Planning Commission to approve the Application.

**B. Applicable Approval Criteria.**

The approval criteria for the Application include applicable provisions of the Statewide Planning Goals ("Goals"), Oregon Administrative Rules, County Comprehensive Plan ("Plan") policies, and YCZO 402, 403, and 1208.03. As explained below in more detail, the Board specifically finds that YCZO 1208.02 and YCZO 1208.04 are not approval criteria applicable to the Application. As a result, these two (2) sections cannot serve as a basis to approve or deny the Application.

**a. Plan Map Amendment not required.**

This application does not require an amendment to the acknowledged Plan because the current plan map designation of "Agriculture/Forestry Large Holding" is implemented by both the EF-20 and AF-20 zoning districts.

**b. Statewide Planning Goals and Administrative Rules satisfied.**

The Board finds that the only relevant Statewide Planning Goal raised by the opponents was Statewide Planning Goal 3, "Agriculture." The opponents did not provide argument or evidence directed to any of the other applicable Statewide Planning Goals or the administrative rules including the Transportation Planning Rule. Thus, the Board finds that the argument and evidence submitted by the Applicant demonstrating compliance with the relevant Statewide Planning Goals and administrative rules is uncontroverted.

**c. YCZO 1208.03 is satisfied.**

**i. YCZO 1208.03(A).**

The Board finds that the Application complies with the relevant Plan policies. The Board notes that pages 4 and 5 of the Staff Report and pages 3-7 of the Application narrative describe compliance with the eleven (11) relevant Plan goals and policies. The Board finds that one important policy is Plan Policy II.A.1.C., which provides that a zoning map amendment to a Mixed Use zone shall show that the parcel has a mixture of farm and forest characteristics such that neither can be exclusively applied.



**ii. YCZO 1208.03(B).**

The Board notes that an aerial photograph before it shows that the subject property is an EF-20 "island" surrounded by AF-20 and VLDR 2.5 zoning. In fact, the Board notes that Planning Commissioner Abrams noted this fact during the Planning Commission's deliberations. Further, the aerial photo before the Board shows that the subject property has mixed agriculture and forest characteristics. It is part of the large forested area that runs generally from west to east at a diagonal and crosses this property about mid-point. The Board agrees with the Applicant and finds that that is the case here. The aerial photograph and the oral and written testimony from the Applicant demonstrate that the Property has active farming and forest uses on it. The forest uses are predominant in the southern half of the Property whereas the farm uses predominate in the northern half of the Property.

The Board finds that the parcel has a mixture of farm and forest characteristics such that neither can be exclusively applied and, therefore, the AF zoning designation is appropriate. Moreover, the Board notes that, in fact, the AF-20 zoning district is appropriate for the existing or intended use of the Property. The Board makes this finding because the proposed AF-20 zone allows both agricultural and forestry uses without reducing the current minimum lot size at twenty (20) acres on the Property.

**iii. YCZO 1208.03(C).**

The Board finds that the proposed map amendment will create a site of at least 160 contiguous acres of AF-20 zoning. Exhibit 7 to the Application includes a map and table showing 219.51 contiguous AF-20 acres.

**iv. YCZO 1208.03(D).**

The Board finds that the new minimum lot size will be appropriate to maintain the existing commercial agricultural enterprise in the area. The Board notes that the AF-20 zone has the same minimum twenty (20) acre lot size as does the current EF-20 zone.

**v. YCZO 1208.03(E).**

The new minimum lot size must assure continuation of tree growing and harvesting, an opportunity for economically efficient agriculture and forest practices and conservation of forest values. The Board finds that since the AF-20 zone has exactly the same minimum lot size as does the current EF-20 zone, that these three (3) Plan goals are satisfied. The Property now has tree growing and harvesting opportunities and will continue to do so with the AF-20 zone. The Property now has the opportunity for economically efficient agriculture and forestry practices and will continue to do so with the AF-20 zone. Finally, the Property conserves forest values in the EF-20 zone and will continue to do so in the AF-20 zone.

**vi. YCZO 1208.03(F).**

The Board finds that YCZO 1208.03.F is irrelevant because this Application would not reduce the minimum lot size on the Property.

The Board also finds that the general requirements for a quasi-judicial zoning map amendment found in YCZO 1208.01 have been satisfied.

**C. Incorporation by Reference of Additional Argument and Evidence as Findings Supporting the Approval of the Application.**

The Board hereby incorporates within these Findings by reference, in their entirety, the Application by the Applicant dated March 9, 2010, the Staff Report, and the Applicant's May 6, June 3 (including the three (3) attached exhibits) and June 15, 2010 letters). In the event of a conflict between these incorporated documents and the Findings, these Findings shall prevail.

**D. Additional Issues Raised Before the Board.**

**1. YCZO 1208.04 is not Applicable to the Application.**

Opponents contend that YCZO 1208.04 is an approval criterion applicable to the Application and that the Application does not satisfy this criterion. In a letter to the Board dated June 3, 2010, the Applicant's representative submitted rebuttal in response to this contention as follows:

"First, YCZO 1208.03 and 1208.04 are mutually exclusive approval criteria. These sections are not both applicable to the same application. YCZO 1208.03 establishes general criteria applicable to zone changes from EFU to AF, while YCZO 1208.04 is specifically directed at certain properties. Moreover, the YCZO does not direct that one or the other apply to a particular application. Rather, the applicant has the choice of whether to have an application reviewed under YCZO 1208.03 or YCZO 1208.04. This application is subject to the provisions of YCZO 1208.03 because those are the criteria selected by the applicant. The applicant has chosen to apply YCZO 1208.03 and the Planning Commission agreed with that choice. There is no basis for the Board to find that the Planning Commission erred.

The alternative nature of these sections is demonstrated by their plain language in three (3) ways. First, both sections provide that a zone change from EFU to AF 'may be authorized' pursuant to their respective criteria. YCZO 201.01(B) states that the term 'may' is 'permissive' in nature. Thus, the County's use of the term 'may' in these sections provides the applicant the option to file and the County the option to approve the application under either set of standards. If the County had used the mandatory term 'shall,' it would have required the applicant to request approval under one or the other set of criteria. Second, the approval criteria of YCZO 1208.04 cross-reference the approval criterion in YCZO 1208.03(F). If both YCZO 1208.03 and 1208.04 applied to this application, there would be no need to include the cross-reference

to YCZO 1208.03 in YCZO 1208.04. Third, YCZO 1208.03(C) and YCZO 1208.03(E) are identical. Again, if both sections applied to the application, there would be no need to repeat this standard.

In fact, the applicant has actually subjected the application to the more rigorous of the two alternative sections. Among other things, YCZO 1208.03 requires compliance with the County's Plan and a finding that the proposed designation is appropriate for the existing or intended use of the subject property. YCZO 1208.04 does not require compliance with either of these important standards. Therefore, if the Board approves the application, the decision should actually be stronger and more consistent with the County's land use planning goals than if the applicant was requesting approval under YCZO 1208.04.

Finally, the Board can find that to the extent there is any ambiguity about which set of criteria should apply, the interpretation recommended by the Planning Director and approved by the Planning Commission is 'plausible.' The Court of Appeals of Oregon has held that the question before the Oregon Land Use Board of Appeals ("LUBA") when considering a challenge to a local government's interpretation of its own code is not whether the interpretation is correct but simply whether it passes a threshold test of plausibility. *Siporen v. City of Medford*, 231 Or App 585, 220 P3d 427 (2009), review accepted \_\_ Or \_\_ (2010). In *Siporen*, the Court determined that if an interpretation passes this threshold test, LUBA must sustain the interpretation 'even if another interpretation might be 'better' or more sensible or persuasive.' *Id.* The Board's interpretation of the YCZO as described here is plausible and will be upheld on review."

County Legal and Planning staff concurred with this assessment and offered additional testimony regarding the legislative history of YCZO 1208.04. For the reasons offered by the Applicant and set forth herein above, the Board finds that YCZO 1208.04 is not an approval criterion applicable to the application and that YCZO 1208.03 is the applicable approval criterion.

## **2. YCZO 1208.02 is not Applicable to the Application.**

Opponents also contend that YCZO 1208.02 is an approval criterion applicable to the Application and that the Application does not satisfy the requirements of this criterion. In a letter to the Board dated June 3, 2010, the Applicant's representative submitted rebuttal in response to this contention as follows:

"Next, to the extent the appellant argues that YCZO 1208.02 'Review Criteria' is relevant, the appellant is also wrong on this

point. YCZO 1208.01, 'General Requirements,' Subsection (B), provides:

'Approval for a boundary change shall include findings satisfied in the criteria in 1208.02 *or* 1208.03 as appropriate, and addressing applicable Comprehensive Plan goals and policies.' (Emphasis added.)

Thus, the YCZO is explicit that where YCZO 1208.03 applies, YCZO 1208.02 is not a relevant approval criterion. Therefore, the criteria in YCZO 1208.02.B requiring 'Demonstrable Need' is irrelevant to this application."

County Planning staff did not identify YCZO 1208.03 as an applicable approval criterion in this matter. For the reasons offered by the Applicant and set forth hereinabove, the Board finds that YCZO 1208.02 is not an approval criterion applicable to the Application.

### **3. Existence of Pending Alternative Zone Change Application is Irrelevant.**

Opponents also argued that there is another zone change application pending for the Property. In fact, Applicant previously filed an application with the County requesting a Zoning Map amendment from EF-20 to AF-10, a Plan Map amendment from Agriculture/Forestry Large Holding to Agriculture/Forestry Small Holding, and an exception to Goal 3 for the Property. The Applicant has requested that the County hold its review of that application in abeyance, and the County has obliged. The County has not yet taken final action on that application.

The Board finds that there is no provision of state law or the YCZO that prevents two (2) alternative land use applications applying to the same property to be pending before the County at the same time. Further, the Board finds that the two alternative applications are wholly independent of one another, and each must satisfy the applicable approval criteria on its own merits. In addition, County Planning staff advised the Board that the Application was requesting a resource designation (AF-20) and that this was not a step in the direction of approving the alternative application, which requested a rural residential designation (AF-10).

Moreover, the County Attorney advised that the County could not approve the Application subject to a condition that the alternative zone change application be withdrawn. Finally, the Applicant's representative stated that the Applicant would withdraw the application currently held in abeyance in the event that the Application is approved and all appeal periods expire without the filing of an appeal. For these reasons, the Board denies the opponents' argument.

### **4. Development of "New Homes" on Farmland is Not a Relevant Issue.**

Opponents also contend that approval of the Application will authorize development of new homes on high-quality farmland. In a letter to the Board dated June 3, 2010, the Applicant's representative submitted rebuttal in response to this contention as follows:

"The Board should reject this contention for three (3) reasons. First, quality of the soil is irrelevant to the approval criteria in YCZO 1208.03 and the appellants offer no reason why it is relevant to that or any other approval criteria. Second, the applicant is not proposing, and the Board would not be approving, any development in conjunction with this application.

Third, to the extent the applicant proposes to develop the property through a future application process, appellant is incorrect in contending that this future development would be incompatible with surrounding development. In fact, this property contains six (6) 'lots of record' (as that term is defined in ORS 92.017) and has been subdivided since 1912 (Exhibit 1, Final Plat at Chehalem Hill Subdivision). Thus, the subject property has contained lots for almost 100 years, much longer than some other developed properties in the area...The developing nature of the area is depicted on Exhibit 2, which shows the surrounding zoning districts and Exhibit 3, which is an aerial photograph showing the single-family development in which many of the opponents live.

Therefore, the Board should not be persuaded by the opponents' arguments regarding impacts on farm operations."

Moreover, the Board finds that the existing EFU zoning would allow dwellings subject to certain tests. Therefore, the AF-20 zone does not introduce for the first time the possibility of dwellings on the Property. For the reasons set forth in the Applicant's testimony, the Board finds that the Application is not a request for new development and accordingly denies the opponents' argument on this issue.

##### **5. Groundwater Impacts of the Application are Irrelevant and Outside the Scope of the Board's Jurisdiction.**

Opponents expressed concern that approval of the Application would adversely affect groundwater quantity in the Chehalem Mountain area. In support of this contention, one opponent submitted a hydrograph showing water levels in the area of the Property over time. The opponent attempted to rely upon the hydrograph to explain that water levels have declined in the area (apparently as a result of increased development in the area). The Board finds that the hydrograph does not support this conclusion, because in at least two (2) instances, water levels actually rise.

Further, to the extent that the opponents are contending that approval of the Application is tantamount to approving new development, the Board denies the opponents' contention for the reasons set forth in Section 2.D.4 of this Application. Moreover, as the Applicant's representative stated on the record, even if dwellings were proposed in conjunction with the Application, each dwelling would be authorized under state law to utilize up to 15,000 gallons of groundwater per day for domestic purposes.

Finally, County Planning staff testified on the record that the Oregon Water Resources Department ("WRD") has jurisdiction over groundwater concerns, not the County. The County provided notice of the Application to WRD, and WRD did not offer any objection or comment on the Application. Thus, the Board finds that, even if the opponents had raised a legitimate issue on this point, the Board lacks jurisdiction to address it.

**6. Approval of the Application is Consistent with Goal 3.**

Opponents also contended that approval of the Application is inconsistent with Goal 3. On this issue, the Application narrative states as follows:

"The application satisfies Goal 3 because it is a mixed agriculture/forestry zoning district implementing the Agriculture/Forestry Large Holding designation. If the [existing] EF-20 zoning district implements the map designation in compliance with statewide planning goal 3, the AF-20 zoning district also does."

County staff further testified on the record that the AF-20 zoning district is a resource designation under the YCZO that implements the "Agriculture/Forestry Large Holding" Comprehensive Plan Map designation. For these reasons, the Board finds that approval of the Application is consistent with Goal 3.

**7. Response to Other Arguments by Opponents.**

**a. The Board rejects the argument that relevant Goals and Plan policies are not satisfied by this Application and that the Application would allow single-family homes on high quality farmland.**

First, the Board finds no substantial evidence or argument why the relevant Goals are not met. As it has already noted above, the only relevant Goal raised by the opponents is Goal 3 and the Board finds, for the reasons explained herein, that the record contains substantial evidence and argument demonstrating compliance with the Goal. Moreover, the appellant's appeal statement did not describe in detail her arguments as to why Goal 3 was not satisfied.

Second, the Board also finds that relevant Plan Goals and policies are met. As noted above with respect to Goal 3, the appellant's appeal statement provided no substantial argument as to why specific Plan Goals and policies were not satisfied by the Application.

As noted above, even the EF-20 zoning district allows single family dwellings on farmland, even high value farmland, subject to tests different from forest template dwellings for the AF zoning districts.

Finally, to the extent the opponents argue that a "purpose" is required for a zone change, the Board rejects that argument. The only place that a "purpose" is required is YCZO 1208.02(B). However, as the Board found above, YCZO 1208.02 is not relevant where YCZO 1208.03 controls. The Board interprets the phrase "except as provided in Subsection 1208.03" in

YCZO 1208.02 as providing YCZO 1208.03, where it is the applicable approval criteria as the case here, does not require an applicant to demonstrate compliance with YCZO 1208.02.

**b. Additional reasons why YCZO 1208.04 does not apply.**

The Board also finds that for additional reasons, YCZO 1208.04 does not contain mandatory approval criterion for this Application. First, notwithstanding that the Mills property was one of the properties described in the 1990s zone change, the YCZO does not mandate through the use of mandatory language that such properties be subject only to YCZO 1208.04 in the event of a proposed amendment to the zoning map designation. Moreover, there is no legislative history that such was the intent of the Board at the time it enacted YCZO 1208.04. Thus, the Board agrees with both the Applicant and the Planning staff that the choice in this Application of which set of criteria to use is the applicant's, since there is no mandatory direction that either YCZO 1208.03 or 1208.04 be applied.

Additionally, the Board rejects the opponents' argument that YCZO 1208.02 applies and requires both that section and YCZO 1208.04 to apply pursuant to the language requiring that "the request satisfies all applicable requirements of this ordinance." The Board notes the use of the word "applicable" which provides it with discretion, subject to mandatory direction not found here, as to which approval criteria apply. The Board finds that "applicable requirements of this ordinance" does not include YCZO 1208.2 as explained above nor YCZO 1208.04. Moreover, the Board rejects the argument which would result in seventeen (17) applicable approval criteria contained in YCZO 1208.02-.04 being applicable. This result would be overly cumbersome, not reflect the intent of the Board and would include redundant and overlapping criteria.

Finally, the opponents have argued that it is "clear" that YCZO 1208.04 applies. The Board notes parenthetically that if that is the case, the YCZO would need to provide more mandatory or explicit direction that this section be applied. The Board notes that the opponents' argument requires it to read language into the YCZO that is not there. The Board, as is all legislative bodies, is prohibited from reading language into or out of an ordinance without following the required amendment process. The Board concludes that the fact that the YCZO does not contain such mandatory or explicit direction means that the Board intended to leave both YCZO 1208.03 and .04 as options for an EF to AF application in the hands of the Applicant. Moreover, the Board notes that YCZO 1208.03 was not amended at the time YCZO 1208.04 was and does not include mandatory or specific direction as to how it is to be applied. Thus, for these reasons and others in these findings, the Board concludes that YCZO 1208.03 is the appropriate set of approval criteria for this Application. The Board's finding is plausible and is consistent with the plain language and context of the YCZO.

The Board also relies on the legislative history provided by County Planning Division Manager, Ken Friday. He described the 1993 rezoning directed by DLCD in an appeal by 1000 Friends of Oregon. The appeal result meant that the County used the 1993 maps until 1997. Mr. Friday, who was present during the map and text amendment process, noted that YCZO 1208.03 and .04 were written separately as an option and that there was no mandatory requirement to use YCZO 1208.04 for the properties finally rezoned in 1997.

**c. DLCD has not participated.**

The Board also notes that notwithstanding that the County gave required 45-day notice prior to the initial evidentiary hearing as required by ORS 197.610(1) to DLCD and the Applicant providing written notice to DLCD's Field Representative about the Application, DLCD has not participated in this hearing either in person or in writing. The Board finds that this adds to the weight of arguments in support of its finding that YCZO 1208.04 is inapplicable to this Application because DLCD has not participated with a statement that agrees with opponents.

**d. Response to assertions that additional Plan Goals and Policies apply.**

The opponents argued that additional Plan Goals and Policies apply. For the reasons described herein, the Board rejects those arguments or determines that the Plan Goals and Policies have been satisfied by substantial evidence submitted by the Applicant.

**i. "Rural Area Development," Goal 2.**

The Board finds that this Goal statement is not relevant for two (2) reasons. First, it is not a mandatory approval standard because it does not use the word "shall." Second, it is not relevant because it applies to rural residential development. The Board finds that no rural residential development is before it in this Application.

Additionally, to the extent this Goal statement describes a prohibition of "urban development," the Board finds that urban development is not proposed by this Application because it does not propose dwellings on lots less than 2.5 acres in size.

**ii. Section II Summary.**

The Board finds that this is an aspirational statement and not a mandatory approval criterion. Even if it was a mandatory approval criterion, the Board has found that the AF-20 zoning application preserves the opportunity for both agriculture and forestry use. To the extent the opponents argued that the AF-20 zoning district removes the opportunity for agricultural use of the property, they are incorrect.

**iii. Section II, Goal 1 and Policy 6.**

The Board finds that neither this Goal nor Policy is relevant. First, the Goal statement refers to "urban uses." No urban use is proposed or allowed by this Application. Second, Policy 6 is aspirational and is not a relevant approval standard for this Application.

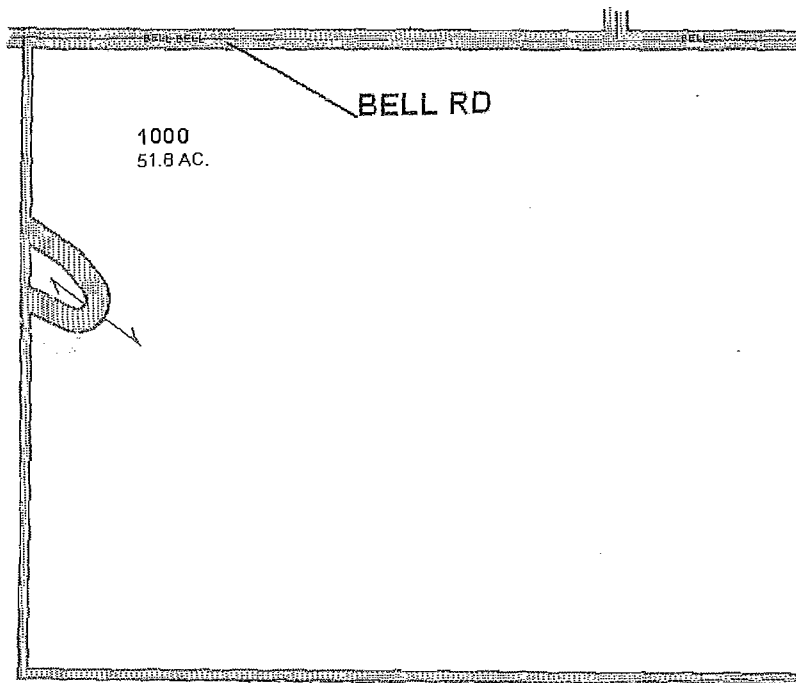
**iv. Section II, Policies 7 and 8.**

The Board finds that this policy is irrelevant because it concerns subdivisions. A subdivision is not in the Application before the Board.

The Board also finds that Policy 8 is irrelevant. The policy refers to "proposed rural area development." No rural area development is proposed by this Application.



EXHIBIT MAP FOR ORDINANCE NO. 855  
ADOPTED BY THE YAMHILL COUNTY BOARD OF COMMISSIONERS  
JUNE 30, 2010  
FOR A ZONE CHANGE FROM  
EF-20 EXCLUSIVE FARM TO AF-20 AGRICULTURE/FORESTRY



CHANGE APPLIES TO THE ABOVE PORTION OF TAX LOT 3210-1000 AS IDENTIFIED ABOVE.  
APPROXIMATE SCALE - 1 INCH = 400 FEET

*Exhibit "B"*  
*B.O. 10-370*

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