

15 APR 30 P4:15

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)
Agriculture/Forestry Large Holding to Agriculture/Forestry Small)
Holding, and a Zoning Map Amendment from EF-40 Exclusive) Ordinance 891
Farm Use to AF-10 Agriculture/Forestry Small Holding on a 10.1-)
Acre portion of Tax Lot 3315-3800 (Applicant Michael Kelley))
Planning Docket PAZ-01-15, and Declaring an Emergency)

THE BOARD OF COMMISSIONERS OF YAMHILL COUNTY, OREGON (the Board) sat for the transaction of county business on April 30, 2015, Commissioners Allen Springer, Mary Starrett and Stan Primozych being present.

IT APPEARING TO THE BOARD that Michael Kelley has requested a plan amendment and zone change for an approximately 10.1-acre portion of Tax Lot 3315-3800 (18840 NE Williamson Road); and

IT APPEARING TO THE BOARD that this matter came before the Planning Commission for public hearing on March 5, 2015 and that the Planning Commission voted 8-0 to recommend approval of the application by the Board of Commissioners; and

IT APPEARING TO THE BOARD that this matter came before the Board on April 9, 2015 for public hearing and that, following the hearing and deliberation, the Board voted 2-0 to tentatively approve the application pending the receipt of draft findings for approval from the applicant; NOW, THEREFORE

THE BOARD ORDAINS AS FOLLOWS:

Section 1. The findings attached as Exhibit "A" and incorporated herein by reference are hereby adopted in support of this ordinance.

Section 2. The Comprehensive Plan and Zoning Maps of Yamhill County are hereby amended as specified in the attached Exhibit "B," incorporated herein by this reference, to reflect a plan designation of "Agriculture/Forestry Small Holding," and a zoning designation of "AF-10, Agriculture/Forestry Small Holding" for the approximately 10.1-acre portion of Tax Lot 3315-3800 identified on the attached Exhibit "B" map.

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Ordinance 891
Page 1

B.O. 15-119

**ORDINANCE 891
EXHIBIT A
FINDINGS IN SUPPORT OF APPROVAL**

DOCKET NO.: PAZ-01-15

REQUEST: Approval of a Comprehensive Plan amendment from Agriculture/Forestry Large Holding to Agriculture/Forestry Small Holding and a zone change from EF-40, Exclusive Farm use to AF-10, Agriculture/Forestry Small Holding on a 10.1 acre portion of Tax Lot 3315-3800. This request includes an exception to Goal 3.

APPLICANT: Michael Kelley

TAX LOT: 3315-3800

LOCATION: 18840 NE Williamson Road, Newberg

CRITERIA: Sections 402, 501, and 1208.02 of the Yamhill County Zoning Ordinance.

Yamhill County Comprehensive Plan policies I.B.1.D, I.B.1.H, II.A.1.B, Goal II.A.2 and Policy II.A.2.A

OAR 660-04, Exception process for Goal 3.

OAR 660-12-0060 Transportation Planning Rule.

I. Background Facts:

1. Property size: The parcel is 37.5 acres.
2. Access: Williamson Road.
3. On-site Land Use: The Property has a single family dwelling located in the southwest corner of the parcel, and the area surrounding the dwelling is generally forested with Douglas fir and other tree species. Applicant refers to this portion of the Property as the "Residential Area." The northern and southeastern portion of the Property contains a vineyard and additional plantable acreage. The Applicant refers to this area of the Property as the "Farm Area."
4. Surrounding Zoning and Land Use: The area to the east and west is zoned AF-10 and predominantly comprises parcels of approximately 1.5 to 6 acres in size with rural residences and wooded areas. The parcel to the north is also zoned AF-10 and is a vineyard. The two parcels bordering the subject parcel to the south are zoned AF-40. One parcel is approximately 24 acres and contains a dwelling with some vineyard and forested areas, and the other parcel is 87 acres with a dwelling and is predominately forested.

Section 3. 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 immediately.

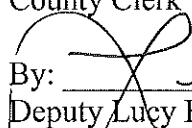
DONE this 30th day of April, 2015, at McMinnville, Oregon.

ATTEST:

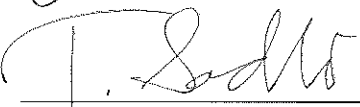
YAMHILL COUNTY BOARD OF COMMISSIONERS

BRIAN VAN BERGEN

County Clerk

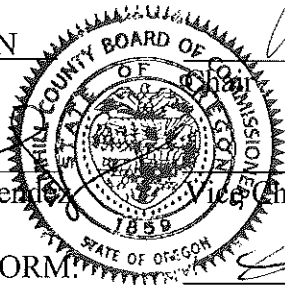
By: 

Deputy Lucy Flores Mendez

APPROVED AS TO FORM: 

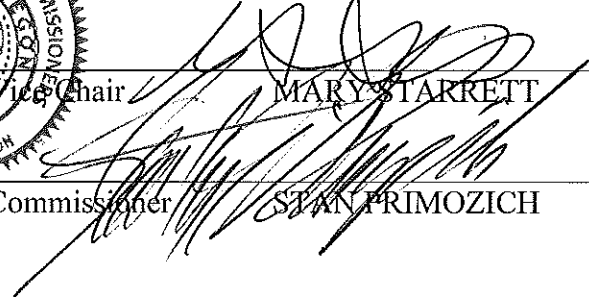
Timothy S. Sadlo

Assistant County Counsel





ALLEN SPRINGER


MARY STARRETT

Commissioner

STAN PRIMOZICH

ORDINANCE 891

Accepted by Yamhill County
Board of Commissioners on

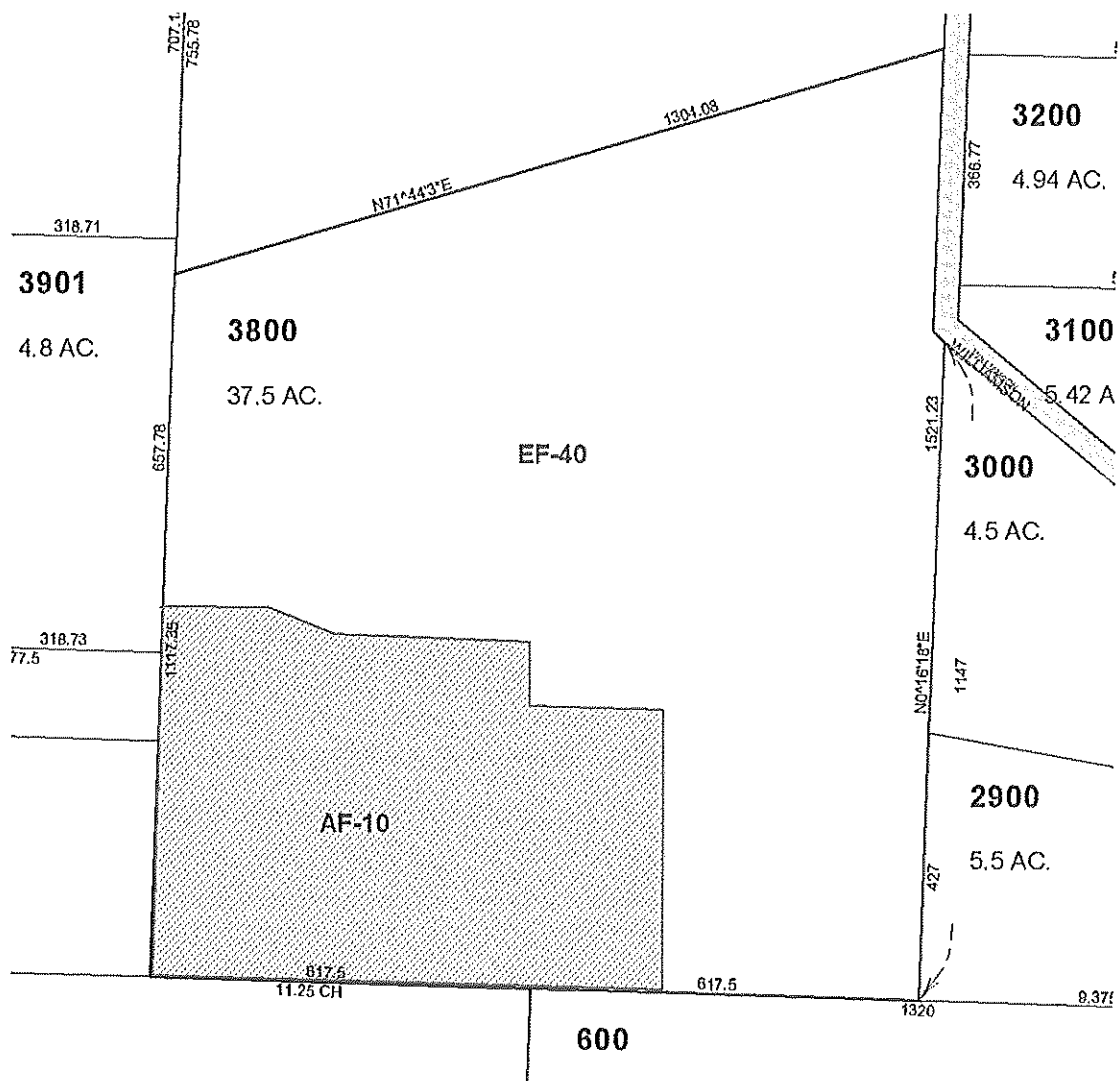
Page 2

4.30.15 by Board Order

15-119

EXHIBIT MAP FOR ORDINANCE NO. 891
 PLAN AMENDMENT AND ZONE CHANGE
 ADOPTED BY THE YAMHILL COUNTY BOARD OF COMMISSIONERS
 APRIL 30, 2015

FOR A PLAN AMENDMENT FROM
AFLH, AGRICULTURE/FORESTRY LARGE HOLDING
 TO
AFSH, AGRICULTURE/FORESTRY SMALL HOLDING
 AND A ZONE CHANGE FROM
EF-40, EXCLUSIVE FARM USE
 TO
AF-10, AGRICULTURE/FORESTRY SMALL HOLDING



CHANGE APPLIES TO A 10 ACRE PORTION OF TAX LOT 3315-3800 AS HIGHLIGHTED ABOVE. APPROXIMATE SCALE - 1 INCH = 300 FEET

B.O. 15-119

5. Water: Provided by an existing on-site well.
6. Sewage Disposal: Provided by an existing on-site septic system.
7. Fire Protection: Newberg Rural Fire District.
8. Soils: The USDA Soil Map provided by Applicant show that the Residential Area is composed mostly of Jory soils (JrD, JrE, JRF) that are rated agriculture Class III and IV and VI. The maps indicate that the majority of soils in the Farm Area are Saum-Parrett complex soil, which is considered farmland of statewide importance.
9. Taxes: The parcel has 18 acres in farm deferral, 17.5 acres in forest deferral, and two acres at market value.
10. Previous Actions: In 2004, an application for a winery was approved through Docket C-19-04/SDR-11-04. A request for removal of the property from the Yamhill County Cultural Resources Inventory was granted in 1995 through Docket LCR-1-95. Additionally, the property was reconfigured by a lot-line adjustment approved in 1998 through Docket L-44-98.
11. Floodplain: The property is not within the 100-year flood hazard area.
12. Fish and Wildlife: The property is not identified as critical fish or wildlife habitat.
13. Context of Land Use Application: Applicant purchased the Property approximately fifteen years ago. At the time of purchase, the Property mostly consisted of an abandoned orchard. Applicant developed a successful commercial vineyard on the Property, constructed his home, and reforested several acres surrounding the dwelling.

Applicant testified that, due to medical issues, Applicant is no longer able to maintain the vineyard on the Property. Applicant wishes to preserve the vineyard farm use of the Property, and therefore sought a buyer who would maintain the vineyard. Applicant located a prospective purchaser who owns a local winery and wishes to utilize and expand the vineyard on the Property as a supply of wine grapes for this winery. The prospective purchaser, however, does not wish to purchase the dwelling and surrounding Residential Area of the Property. Applicant, for his part, wishes to continue to reside in his existing dwelling and to preserve the surrounding forested area of the Property for erosion control, wildlife habitat and aesthetics. Applicant and the prospective purchaser therefore reached an agreement to put forward the instant land use application to the County.

Given this context, the Board finds that Applicant's proposed rezoning of the 10.1 acre Residential Area of the Property is conducive to preservation of farmland and other natural resources on the Property consistent with Oregon land use policy.

II. Zone Change and Plan Amendment Provisions and Analysis:

Approval of a request for a zone change must be based on compliance with the standards and criteria in YCZO Section 1208.02. Each of these provisions is provided below and accompanied by analysis of Applicant's compliance with the relevant standards and criteria. This section also discusses additional criteria identified in the record and explains why the Board concludes that these additional criteria are not relevant to Applicant's proposal.

1. *1208.02(A) The proposed change is consistent with the goals, policies, and any other applicable provisions of the Comprehensive Plan.*

Regarding criterion (A) above, the Board concludes that Comprehensive Plan policies I.B.1.D, and II.A.1.B , II.A.1.H, Goal II.A.2, and Policy II.A.2.a are applicable to Applicant's request. These and other policies identified in the record are discussed below.

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 Board finds that Applicant does not propose any new development or facilities on the Property other than expanded vineyard farm use. Therefore, to the extent this policy applies to Applicant's proposal, the proposal is consistent with the policy because neither the Farm Area nor the Residential Area of the Property will require additional public services. A well and septic system currently serve the existing dwelling. Other services such as electricity, telephone, and emergency services already serve the existing residents in the area. This criterion is therefore met.

Policy II.A.1.B: Yamhill County shall provide for the protection of farmland in large blocks through minimum lot sizes of 20, 40, and 80 acres, as appropriate, on the Comprehensive Plan and official zoning maps. Any proposal to reduce the minimum lot size on a farm or farm/forest parcel shall be shown to be appropriate to maintain the existing commercial agricultural enterprise in the area.

The Board concludes that this policy is applicable because Applicant proposes to reduce the size of an EF-40 zoned parcel from 37.4 acres to 27.3 acres. The Board interprets this policy to allow the reduction of EF-40 land on the Property because the rezoning is intended to preserve the Farm Area as a viable commercial agricultural enterprise. The record includes testimony the Property is more desirable as a commercial vineyard without the dwelling and surrounding Residential Area. Furthermore, Applicant testified that he is no longer able to maintain the vineyard because of his medical condition, and that the proposed buyer intends to maintain and expand the vineyard. Applicant's proposal therefore ensures the maintenance of the existing commercial agricultural enterprise on the Property and is therefore consistent with Policy II.A.1.B.

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 Board finds that Applicant's intent is to ensure continued farm use and the preservation of other natural resources on the Property. Given this intent and the fact that Applicant is not proposing any new development on the Property other than expanded farm use, the Board concludes that the rezone will not substantially impair or conflict with the current resource uses. This criterion is therefore met.

Goal II.A.2.: *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.: *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.*

The Board finds that Applicant's proposal conserves soil resources throughout the Property by preserving agricultural use in the Farm Area and the existing woodland in the Residential Area. The latter intent avoids soil erosion on the steep slopes in this part of the Property.

The USDA soil map of the Property indicates that vast majority of the soils in the Residential Area of the Property are Class VI, and therefore the Board finds that this area of the Property is not subject to Policy II.A.2.A.

According to the USDA map, the portions of the Residential Area that contain Class III and IV soils are under and immediately adjacent to the existing dwelling. The Board therefore finds that this area of the Property is not available for farm use. As a result, the Board interprets Policy II.A.2.A to be inapplicable to the Class III and IV soils in the Residential Area of the Property because Applicant cannot "continue to preserve" these areas for farm use.

For these reasons, the Board concludes that Applicant has demonstrated compliance with Goal II.A.2 and Policy II.A.2.A to the extent that these provisions of the Comprehensive Plan apply to Applicant's proposal.

The Applicant's application materials discuss an additional policy, Policy I.B.1.C.2, which provides that:

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 Board concludes that this policy is not applicable because Applicant does not propose any new development or facilities on the Property other than expanded vineyard farm use. Moreover, the Board finds that preservation of the forested Residential Area through rural residential use will help prevent erosion of the steep slopes in this area of the Property.

2. *1208.02(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.*

The Applicant is requesting AF-10 zoning for the 10.1 acre Residential Area of the Property. The remainder of the Property (the Farm Area) would remain in EFU zoning. As noted by the Friends of Yamhill County ("FYC"), Applicant must show the need for AF-10 zoning under YCZO 1208.02B because that is the change in zoning that Applicant is requesting.

Applicant states that he can no longer maintain the vineyard on the Property and that the vineyard is a more attractive farm business unit without the accompanying dwelling and Residential Area. Applicant explained that his proposed rezoning (and subsequent partition) ensures that there will be a buyer for the vineyard who will maintain the Farm Area of the Property in farm use. Testimony from the proposed buyer's attorney corroborates Applicant's statements.

Applicant further testified that the rezoning (and subsequent partition) will allow Applicant to continue to reside in the home that he has built and enjoy the land that he has stewarded for the past fifteen years.

The Board must interpret the YCZO to determine whether Applicant's situation satisfies the "demonstrable need" standard of 1208.02B. The Board interprets YCZO 1208.02B to encompass Applicant's particular situation. Applicant has shown an existing demonstrable need for AF-10 zoning in the Residential Area of his Property in order to ensure the continuity of farm use on the Property and a reasonable retirement for himself. In reaching this conclusion, the Board finds it significant that the rezoning will not lead to new residential development and will facilitate the preservation of natural resources of the Property.

As contemplated by YCZO 1208.02B, the Board finds that this interpretation fosters sustainable economic development, conservation of natural resources, and the well-being of the local citizenry. Through this interpretation, the Board does not intend to encourage rural residential development on land in agricultural use. For all of the reasons described above, this criterion is therefore met.

3. *1208.02(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.*

Surrounding lands to the north, east, and west are zoned AF-10 and are generally small size rural residential lots similar to Applicant's proposed 10.1 acre AF-10 parcel. Other than Tax Lots, 3801, 3802, and 3803, these lands are part of code area 1.6 adopted in Exceptions Statement II. The areas to the east and west are generally parcels of approximately 1.5 to 6 acres in size with rural residences and wooded areas.

Tax Lots 3801, 3802, and 3803 to the north of the Property were rezoned from EFU to AF-10 and partitioned in 2004. Lots 3801 and 3802 are now small rural residential parcels. Lot 3803, which is north-adjacent to the Farm Area of Applicant's Property, is approximately 24 acres and contains a vineyard. Applicant's proposal is consistent with the County's 2004 action on these parcels, and Applicant's request that the Farm Area of the Property remain in EFU zoning provides additional assurance that farm use will continue on the Property.

Two larger farm/forest parcels exist to the south of the Property (lots 600 and 701). The wooded area of Applicant's Property abuts forested areas of these parcels. Applicant's intent to preserve the wooded Residential Area of the Property through AF-10 zoning is consistent with the land use of these parcels, provides continuity in the landscape, and promotes conservation of natural resources.

Regarding the availability of utilities and services in the area, the parcels in the surrounding area as well as the subject parcel have on-site wells and septic systems. Other services such as electricity, telephone, sheriff, and fire protection already serve the existing residents in the area. No extension of services is anticipated to be needed for the proposed application.

For all of these reasons, the Board finds that Applicant's proposed rezoning is appropriate given the land use and development characteristics of the surrounding area. Applicant has therefore demonstrated compliance with YCZO 1208.02C.

4. *1208.02(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.*

Under Applicant's proposal, the Farm Area would continue in vineyard farm use and Applicant would continue to reside in his existing dwelling in the Residential Area of the Property. FYC asserts that the proposed rezoning is unjustified because other rural residential parcels are available for Applicant to purchase. The Board does not believe that YCZO 1208D requires Applicant to leave his home.

The Board interprets this criterion to allow Applicant's proposed rezoning because no other parcel is as well suited to Applicant's residential use given Applicant's history of stewardship of the Property and his personal attachment to his home and the surrounding land. The Board also finds it relevant that Applicant's proposal does not cause any change in the actual land use pattern of the area because Applicant is not proposing any new development on the Property. The Board therefore concludes that Applicant has satisfied this criterion.

5. *1208.02(E): The amendment is consistent with the current Oregon Administrative Rules for exceptions, if applicable.*

Regarding this criterion (E), an exception to Goal 3 is required, as addressed in Section III of these findings below.

FYC asserts that an exception to Goal 4 is also required for the County to approve Applicant's proposal. The Board concludes that Goal 4 is not applicable to the Property for two reasons. First, the County applies EFU zoning to agricultural lands pursuant to Goal 3, Forestry (F) zoning to forest lands pursuant to Goal 4, and Agricultural-Forestry Large Holding (AFLH) zoning to lands subject to both goals. This is explained in Policies II.A.1.C and II.B.1E of the County's Comprehensive Plan as follows:

Yamhill County recognizes that certain areas of the county are characterized by such a mixture of farm and forest use that the agricultural lands and forest lands goals of this Plan are both applicable. Farm and forest resources within these areas shall be protected through mixed-use zoning that recognizes both types of use. Any proposal to change the zoning designation of a parcel from a farm or forest classification to a mixed-use zone shall include a demonstration that the use of the parcel is such a mixture that neither the farm nor forest land goals can be exclusively applied.

In applying EFU zoning to the Property, therefore, the County has determined that Goal 4 does not apply to the Property. This determination is consistent with state law, which provides that "lands inventoried as Goal 3 agricultural lands . . . are not required to [be] planned and zoned as forest lands." OAR 660-06-0010(1).

Second, the Board finds that the Residential Area of the Property is not suitable for commercial forest uses, and therefore concludes that the Property is not "forest land" under Goal 4. In adopting this finding, the Board accepts Michael Kelley's testimony that commercial forestry is impractical on the Property due to the size and density of the woodland area, the buffer needed to prevent impacts to Bronson Creek, and the risk of hillside erosion. This criterion is therefore met.

III. Goal Exception Provisions and Analysis:

Oregon Administrative Rule (OAR) 660-04 contains the requirements for taking an exception to the goals. The Applicant has requested a "committed" exception. 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).*

This section of the Board's decision identifies each applicable criterion for this exception and provides the Board's findings and related legal conclusions for these criteria. Following this discussion, we provide our findings and conclusions regarding the impracticability of the relevant uses under OAR 660-04-0028(1) and (3).

1. OAR 660-004-0028(2)(a): Characteristics of the exception area

In order to characterize the exception area, we must first define the exception area. The Applicant requests an exception to Goal 3 for the 10.1 acre Residential Area of the Property. Under this proposal, the remainder of the property (the Farm Area) would continue to be zoned EFU and would remain subject to Goal 3. The Applicant therefore defines the proposed exception area as the 10.1 acre Residential Area.

The Oregon Department of Land Conservation and Development ("DLCD") and FYC both argue that we must look beyond the Residential Area and effectively treat the entire Property as an exception area because the Residential Area is part of a larger "farm unit." The Board concludes that DLCD's and FYC's position is inconsistent with the plain text of DLCD rules.

DLCD's rules governing committed exceptions apply to "exception areas." OAR 660-004-0028(1)(b) states that "[f]or the purposes of this rule, an 'exception area' is that area of land for which a 'committed exception' is taken." Therefore, because Applicant is only seeking an exception (and associated rezoning) for the Residential Area of the Property, the Farm Area is not part of the "exception area" for purposes of OAR 660-004-0028.

Moreover, the Board finds that the Residential Area of the Property is not part of the same farm unit as the Farm Area of the Property. Applicant's testimony, as well as maps and soil data demonstrate that the Residential Area is physically distinct from the Farm Area. In addition, staff testified that the existing residence was not historically approved as a farm dwelling. The Board therefore concludes that is not appropriate to evaluate the Property as an integrated farm unit.

Based on Applicant's testimony, maps, and soil data, the Board finds that the Residential Area of the Property is characterized by a single family dwelling and steep, northern-facing, forested slopes with shallow soils. Bronson Creek runs through this this portion of the Property.

The Board also reiterates its finding under YCZO 1202E above that the Residential Area is not suitable for commercial forestry use due to density of the woodland area, the buffer needed to prevent impacts to the local creek, and the risk of hillside erosion. For all of these reasons, this criterion is therefore met.

2. OAR 660-004-0028(2)(b): Characteristics of the adjacent lands

As described above, the Board finds that the Farm Area of the Property adjacent to the Residential Area is currently in farm use as a vineyard. Applicant and the proposed buyer of the Farm Area intend to maintain and expand this vineyard as a supply of wine grapes for the prospective buyer's local winery. The parcel that is north-adjacent to the Farm Area (not adjacent to the Residential Area), is similarly in vineyard use, but is zoned AF-10 pursuant to a 2004 rezoning.

The Board finds that the parcels east- and west- adjacent to the Residential Area are approximately 1.5 acres to 6 acres, zoned AF-10, and include single-family residences and wooded areas.

The Board finds that the two parcels adjacent to the Property to the south, tax lots 600 and 701, are approximately 24 acres and 87 acres, respectively, and zoned as AF-40. Lot 600 includes a single-family residence and a small vineyard surrounded by a wooded area. Tax lot 701 mostly consists of a wooded area, and also contains a single family residence. For all of these reasons, this criterion is therefore met.

3. *OAR 660-004-0028(2)(c): The relationship between the exception area and the lands adjacent to it*

Based on the information described above under exception criteria (2)(a) and (b), the Board finds that the Residential Area of the Property is similar in size and rural residential character to the adjacent lands to the east and west. The woodland in the Residential Area of the Property also integrates with the AF-40 lands to the south. Applicant's intent to preserve the woodland in the Residential Area ensures a continued buffer between Applicant's existing residence and these southern properties.

The Board also finds, based on Applicant's testimony, maps, and soil data, that the Property's soil and geography naturally divide the Property into the Residential Area and the Farm Area. The Board accepts Applicant's testimony that Applicant and the prospective purchaser of the Farm Area have reached agreements to provide an access easement to the Residential Area and to share water from the well on the Residential Area. The Board therefore concludes that the rezoning of the Property as proposed will result in harmonious use of the Residential Area and the Farm Area. For all of these reasons, this criterion is therefore met.

4. *OAR 660-004-0028(6)(a): Existing Adjacent Uses*

Regarding this criterion, the Board incorporates our findings regarding OAR 660-004-0028(2)(b). For clarity, the Board finds that west-adjacent lots 4300 and 4400 are in open space use in conjunction with the single family residence on Lot 4200. Lots 2900, 3000, and 3901 are also in rural residential use. A portion of the Lot 400 to the south is in farm use with the remainder in open space with a single family residence. Lot 701 is mostly forested land in open space and residential use. For all of these reasons, this criterion is therefore met.

5. *OAR 660-004-0028(6)(b): Existing Public Facilities and Services*

The Board finds that electricity, telephone, sheriff, and fire protection are provided to the Residential Area and surrounding properties. The Residential Area is served by an existing well and septic system. For all of these reasons, this criterion is therefore met.

6. *OAR 660-004-0028(6)(c): Parcel size and ownership patterns of the exception area and adjacent lands*

The Board incorporates its findings above regarding YCZO 1202C and OAR 660-004-0028(2)(b) and (c) above. The AF-10 zoned parcels that are adjacent to the Residential Area, as well as many other nearby parcels are part of code area 1.6 adopted under Exceptions Statement II in 1980. These lands were subdivided/partitioned before adoption of the Statewide Planning Goals, and the lands were zoned AF-10 in 1980 pursuant to a committed exception.

Although not adjacent to the Residential Area, the Board notes that Lots 3801, 3802, and 3803 were partitioned in 2004 following approval of a committed exception and associated rezoning from EFU to AF-10. Lot 3801 is adjacent to the Farm Area of the property.

The parcels adjacent to the Residential Area are generally in separate ownerships and developed with single family residences. The Board finds that this development pattern and the related road network and property boundaries make it impracticable to consolidate land for resource uses, and also to harvest the timber resources that remain on the Property. The Board further discusses impracticability below under OAR 660-06-0028(1) and (3). For all of these reasons, this criterion is therefore met.

7. *OAR 660-004-0028(6)(d): Neighborhood and regional characteristics*

The Board incorporates its findings from YCZO 1202C, OAR 660-004-0028(2)(b) and (c), and OAR 660-004-0028(6)(c) above. The Property is within the Dundee Hills winegrowing area, and there are many successful vineyards in this area. The Board finds that the success of local vineyards and wineries promotes agricultural preservation, particularly on smaller parcels where other crops are impracticable. For all of these reasons, this criterion is therefore met.

8. *OAR 660-004-0028(6)(e): Natural or man-made features or other impediments separating the exception area from adjacent resource land*

The Board incorporates its findings under OAR 660-004-0028(2)(c) above. As described in that section of this decision, the Residential Area is naturally separated from the Farm Area of the Property and the AF-40 lands to the south. Applicant's proposed use of the Residential Area will ensure non-interference with resource uses on these adjacent parcels. For all of these reasons, this criterion is therefore met.

9. *OAR 660-04-0028(6)(f): Physical development*

The Board incorporates its background findings in Part I above, as well as our findings under YCZO 1202E, OAR 660-004-0028(2)(b) and (c), and OAR 660-004-0028(6)(c). The Board further finds that the Residential Area is physically developed for rural residential use due to the existing dwelling and the character of the surrounding woodland. The Board finds that this residential development will not interfere with resource uses in the Farm Area of the Property and is also compatible with resource uses on the south-adjacent AF-40 zoned parcels. For all of these reasons, this criterion is therefore met.

10. *OAR 660-04-0028(6)(g): Other relevant factors*

The Board finds it relevant that the purpose of Applicant's proposal is to preserve and expand the existing farm use on the Property rather than to enable further non-resource development of the Property. Based on testimony from Applicant and the proposed buyer's attorney, the Board finds that rezoning of the Residential Area of the Property will make long term continued farm use on the Property more likely due to the specific characteristics of the Property and Applicant's personal situation.

The Board also finds it relevant and appropriate that Applicant's proposed partition will enable the Applicant to continue to reside in his existing dwelling and to preserve the woodland area of the Property for wildlife habitat, erosion control and aesthetics.

FYC argues that the characteristics of the Property and Applicant's intent in submitting the land use application are irrelevant under the criteria for a committed exception. The Oregon Court of Appeals and LUBA, however, have rejected this argument. *See DLCD v. Curry County*, 151 Or App 7 (1997); *Friends of Linn County v. Linn County*, 38 Or LUBA 868, 876-77 (2000). The County therefore concludes that it is appropriate for the Board to consider this information.

Finally, the Board concludes that it must consider the basic purpose of DLCD's exception rules. OAR 660-04-0000 states that "[t]he intent of the exceptions process is to permit necessary flexibility in the application of the Statewide Planning Goals." This purpose is reiterated in the committed exception rules at OAR 660-04-0028(3). The Board concludes that flexibility in the application of Goal 3 is particularly appropriate here given that Applicant's proposed use of the Property furthers the purpose of Goal 3. For all of these reasons, this criterion is therefore met.

11. *OAR 660-04-0028(1) and (3): Impracticability of farming and forestry uses*

For the reasons described throughout this Part III of the Board's decision, the Board finds that farm use (ORS 215.203), propagation or harvesting of a forest product (OAR 660-033-0120) and forest operations and practices (OAR 660-006-0025(2)(a)) are all impracticable in the proposed exception area, which is the Residential Area of the Property. All of these uses would require logging of the woodland area of the Property. Based on testimony from Applicant and related evidence in the record, the Board finds that such logging is cost prohibitive, and also risks erosion onto the Property and adjacent parcels.

Furthermore, the Board finds based on local maps and other evidence in the record that access for logging is impracticable given property boundaries and the local road network built for residential use. There is no access to the wooded area of the Property except through the Farm Area and residential portions of North Williamson Road. Transportation of timber across the Property could interfere with farming practices in the Farm Area of the Property and the adjacent vineyard on Lot 3803, and also disrupt nearby residential parcels.

As described above, the Board finds that even if the Property could be practically logged, the Residential Area would not be suitable for farm use due to the steep, northern-facing slopes and shallow soils.

Finally, the Board believes that the practicability of logging the property should be viewed in the context of Applicant's proposal. Applicant's proposed rezoning will serve to preserve the natural

resources and farm use of the Property. This is a more practical and desirable outcome under state and local land use policy than logging the Property and/or risking neglect of the productive vineyard by blocking the sale of the Farm Area of the Property.

For all these reasons, the Board finds that Applicant's proposal satisfies the impracticability standard for a committed exception under OAR 660-004-0028.

IV. Goal 12 (Transportation Planning Rule) Provisions and Analysis:

1. The Transportation Planning Rule, OAR 660-12-060, provides as follows:

- (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.*

Based on findings articulated throughout this decision, the Board concludes that the Transportation Planning Rule is not applicable because the proposed rezoning will not significantly affect a transportation facility. As described above, the Applicant does not propose any new development on the Property other than expansion of the vineyard farm use. Expansion of the vineyard will not appreciably increase traffic in the local area. For all of these reasons, the Transportation Planning Rule does not apply in this case.

V. Response to Other Issues Raised

The Board agrees with FYC that OAR 660-004-0018(2)(b)(B) is applicable to Applicant's proposal. This rule requires that "[t]he rural uses, density, and public facilities and services will not commit adjacent or nearby resource land to uses not allowed by the applicable goal." The Board finds that Applicant's proposed exception will not commit other lands to uses not allowed under Goal 3 because Applicant does not propose any new development on the Property. As previously described, the purpose of Applicant's proposal is to preserve farm use and other natural resources on the Property. The exception therefore will not increase density, create new

land use uses, nor require additional public facilities or services. The Board therefore concludes that Applicant has demonstrated compliance with OAR 660-004-0018(2)(b)(B).

CONCLUSIONS:

1. The request is for a Comprehensive Plan amendment and zone change from Agriculture/Forestry Large Holding, EF-40 to Agriculture/Forestry Small Holding, AF-10, including an exception to Goal 3.
2. The proposed zone change is consistent with all applicable Comprehensive Plan goals and policies.
3. An exception to Goal 3 is justified because farming and forestry uses are impracticable in the Residential Area of the Property, 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.