

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 Comprehensive Plan amendment from Agriculture/Forestry Large Holding to Agriculture/Forestry Small Holding; and a zone change from AF-20, Agriculture/Forestry to AF-10, Agriculture/Forestry Small Holding, Applicants Terrence and Jill Buckmaster, Tax Lot 3205-105, Planning Docket PAZ-04-10, and Declaring an Emergency Ordinance 858

THE BOARD OF COMMISSIONERS OF YAMHILL COUNTY, OREGON (the Board) sat for the transaction of county business on August 4, 2010, Commissioners Kathy George, Leslie Lewis, and Mary P. Stern being present.

IT APPEARING TO THE BOARD that Terrence and Jill Buckmaster applied for a Comprehensive Plan amendment from Agriculture/Forestry Large Holding to Agriculture/Forestry Small Holding and a zone change from AF-20, Agriculture/Forestry to AF-10, Agriculture/Forestry Small Holding, taking an Exception to Goals 3 & 4 for tax Lot 3205-105, and

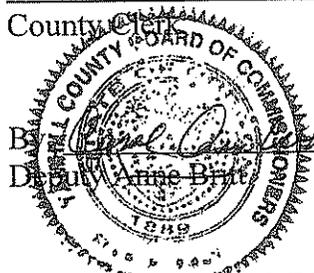
IT APPEARING TO THE BOARD that the Planning Commission heard this matter at a duly noticed public hearing on July 1, 2010 and heard from the applicant (there being no opponents), then voted unanimously to approve the application, and the Board of Commissioners heard this matter at a duly noticed public hearing July 21, 2010, and voted 2-0 to approve the application (Commissioner Stern being excused), NOW, THEREFORE,

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

DONE this 4th day of August, 2010, at McMinnville, Oregon.

ATTEST: YAMHILL COUNTY BOARD OF COMMISSIONERS

REBEKAH STERN DOLL  
County Clerk



*Kathy George*  
Chair KATHY GEORGE

*Mary P Stern*  
Commissioner MARY P. STERN

APPROVED AS TO FORM:  
*MS*

*Not Available for Signature*  
Commissioner LESLIE LEWIS

Rick Sanai  
Senior Assistant County Counsel

**DOCKET NO.:** PAZ-04-10

**REQUEST:** Approval of a Comprehensive Plan amendment from Agriculture/Forestry Large Holding to Agriculture/Forestry Small Holding; a zone change from AF-20, Agriculture/Forestry to AF-10, Agriculture/Forestry Small Holding. An exception to Goals 3 & 4 is required.

**APPLICANT:** Terrence and Jill Buckmaster

**TAX LOT:** 3205-105

**LOCATION:** 27805 NE Mountain Top Road, Newberg

**CRITERIA:** Sections 403, 501 and 1208.02 of the Yamhill County Zoning Ordinance. Section 904, Limited Use Overlay may also be applied. Comprehensive Plan policies may be applicable. OAR 660-04, Exception Process. OAR 660-12-0060 Transportation Planning Rule. The partition is subject to the Yamhill County Land Division Ordinance.

**FINDINGS:**

**A. Background Facts:**

1. Property size: 20 acres.
2. Access: Access to the subject tract is provided by Mountain Top Road, a county road.
3. On-site Land Use: The subject parcel has a barn and is being farmed for grass.
4. Surrounding Land Use: The area contains a mixture of small farm, forestry and rural residential uses on parcels of approximately 5 to 30 acres. The smaller parcels are within the existing exception areas and the larger parcels are within the resource zones. The parcels to the northwest are primarily forested with an orchard bordering the subject parcel. To the south, across Mountain Top Road, the terrain appears to steepen and contains smaller parcels with rural residences. To the east is a 20 acre parcel owned by the applicants contains a rural residence and is farmed for grass. Further to the east are two 20 acre parcels that are forested and one parcel has been approved for a rural residence. To the north is Washington County and from aerial photos appears to be primarily forested and contains numerous rural residences.
5. Surrounding Zoning: Land to the north, northwest and east is zoned AF-20, Agriculture/Forestry. The property to the south, across Mountain Top Road, and further to the west, across Neill Road, are zoned AF-10, Agriculture/Forestry.
6. Water: The applicant has indicated a well will be used. The property is located in a Groundwater Limited Area, identified by the Oregon Water Resources Department.
7. Sewage Disposal: There is no septic system on the parcel.

8. Fire Protection: Newberg Rural Fire District.
9. Soils: According to the Yamhill County Soil Survey Maps, the entire parcel is composed of Class III, high-value farmland. The soil types are Laurelwood (LuC and LuD) and Nekia (NcD). The timber yield for these soil types are listed as 130 to 160 cu/ft per acre.
10. Taxes: The parcel is receiving farm deferral.
11. Previous Actions: In 2008, an application for a partition was approved, Docket P-16-08, which created the subject parcel. As part of the current application for the zone change the applicant's attorney, Eric Bossé, asserts that because the applicants noted in their 2008 partition that the proposed use of the resulting 20 acre parcel was intended for residential use and the partition approval contained conditions referring to residential uses, that "the County implied the intended residential use was allowed in its approval."
12. Floodplain: FIRM 41071C0229D, shows that the property is not within the 100-year flood hazard area.

**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 may be pertinent are:

*Policy I.B.1.d.: No proposed rural area development shall require or substantially influence the extension of costly services and facilities normally associated with urban centers, such as*

*municipal water supply and sanitary sewerage or power, gas and telephone services, nor shall it impose inordinate additional net costs on mobile, centralized public services, such as police and fire protection, school busing or refuse collection.*

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

*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* 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 Yamhill County Soil Survey Maps, the entire parcel is listed as Class III, high-value farm land and is capable of producing 130 to 160 cubic feet of wood fiber per acre per year.

*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 the land is unsuitable for farming and forestry use and is not currently part of an economic farming or forestry enterprise. The applicant submitted an affidavit with gross revenue summaries from the property owners. These items include the gross revenue from farming off of both Tax Lots 3205-104 and 105 since 2000, which range from approximately \$1,000 to \$5,000 per year. It appears the owners have been farming the 40 acre property for grass for the last 21 years.

3. Regarding criterion (B), the Board finds that 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 provided an inventory of vacant AF-10 land in Yamhill County and submitted a letter from a Broker, stating "There is a higher demand for 20 acre parcels..." The subject parcel is 20 acres. Based on substantial evidence in the record as a whole, the Board finds there is an inadequate supply of AF-10 properties.
4. Regarding criterion (C), the Board finds 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. The surrounding area includes rural residential uses in Exception Code Area 1.2 to the south and west of the

proposed exception area. The applicant has established, and the Board finds, that the surrounding lots, especially the smaller lots zoned for residential use, commit these adjacent lots to nonfarm/nonforestry uses. The Board finds that the land is irrevocably committed to rural residential uses because of a zone change that was approved to the south and the existing exception area, among other reasons. These exception areas are located south across Mountain Top Road and west across Neill Road.

Regarding the utilities likely to be needed, the application states the property will be served by a well. An on-site septic system would be required to be installed. The property is currently served with electrical power by PGE, and is within the Newberg Rural Fire District. Adequate roads are available to the property.

5. Regarding criterion (D), see Finding B.3.
6. Regarding the criterion (E), the OAR requirements for exceptions are addressed below.

No Goal 14 exception is required because the requested 10-acre minimum lot size is considered a rural use under the Goal 14 rules.

### **C. Goal Exception Provisions and Analysis**

1. Oregon Administrative Rule (OAR) 660-04 contains the requirements for taking an exception to the goals. The Board finds this application qualifies for an “irrevocably committed” exception.
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. The Board finds that 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) justify an exception. Second, the Board finds that farm and forest uses are impracticable on the proposed exception area, thereby justifying a Goal 3 exception.

3. *Characteristics of the exception area:* The proposed exception area is 20-acres in size. While a portion of the southern boundary of one of these lots borders an exception area, the majority of the property (see finding B.4) is bordered by land zoned for Agriculture/Forestry use. The property is being used for agriculture production.

4. *Characteristics of the adjacent lands:* The subject land is bordered by parcels of 5 to 30 acres, which contains a mixture of farm and forestry uses as well as some rural residences.
5. *The relationship between the exception area and the lands adjacent to it:* The proposed exception area is similar in character to the nearby parcels in rural residential use. This level of development supports irrevocable commitment to nonfarm use.
6. The Board finds that existing adjacent uses justify an exception, including; 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. Regarding public facilities and services, they are generally available in the area. Mountain Top Road and Neill Road separates the subject parcel from the existing exception areas.
7. Regarding the “irrevocably committed” standards, OAR 660-04-028(6)(c)(A) states in part: *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.* OAR 660-04-028(6)(c)(B) also states, in part: *The mere fact that small parcels exist does not in itself constitute irrevocable commitment. Small parcels in separate ownerships are more likely to be irrevocable committed if the parcels are developed, clustered in a large group or clustered around a road designed to serve these parcels.*

The Board finds the applicant has adequately demonstrated how the surrounding area has irrevocably committed the subject parcel to rural residential use, including those developed parcels that are clustered around Mountain Top Road.

**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 Public Works Department has stated any new accesses would require a permit from their office and depending on the future use of the property a traffic impact study may be required. Approval of this application will allow a maximum of two new single-family dwellings. The average trips per day for a single-family dwelling is approximately 10. Based on a potential additional 20 vehicle trips per day it appears that the proposed residential use is consistent with the identified function, capacity, and level of service of the local roads.

#### **CONCLUSIONS:**

1. The request is for a Comprehensive Plan amendment and zone change from Agriculture/Forestry Large Holding, AF-20 to AF-10, Agriculture/Forestry Small Holding.
2. The proposed zone change is consistent with Comprehensive Plan goals and policies.
3. An exception to Goal 3 and 4 is justified because the property is unsuitable for productive farming/forestry, and the adjacent lots and uses contribute to the area being suitable for an exception.
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.

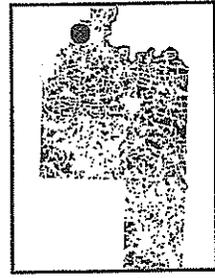
#### **DECISION**

The request by Eric Bossé representing Terence and Jill Buckmaster for a Comprehensive Plan map amendment from Agriculture Forestry Large Holding to Agriculture Forestry Small Holding; a zone change from AF-20 Agriculture/Forestry use to AF-10 Agriculture Forestry Small Holding; and an Exception to Goals 3 and 4 on Tax Lot 3205-105 is hereby approved.

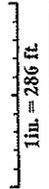
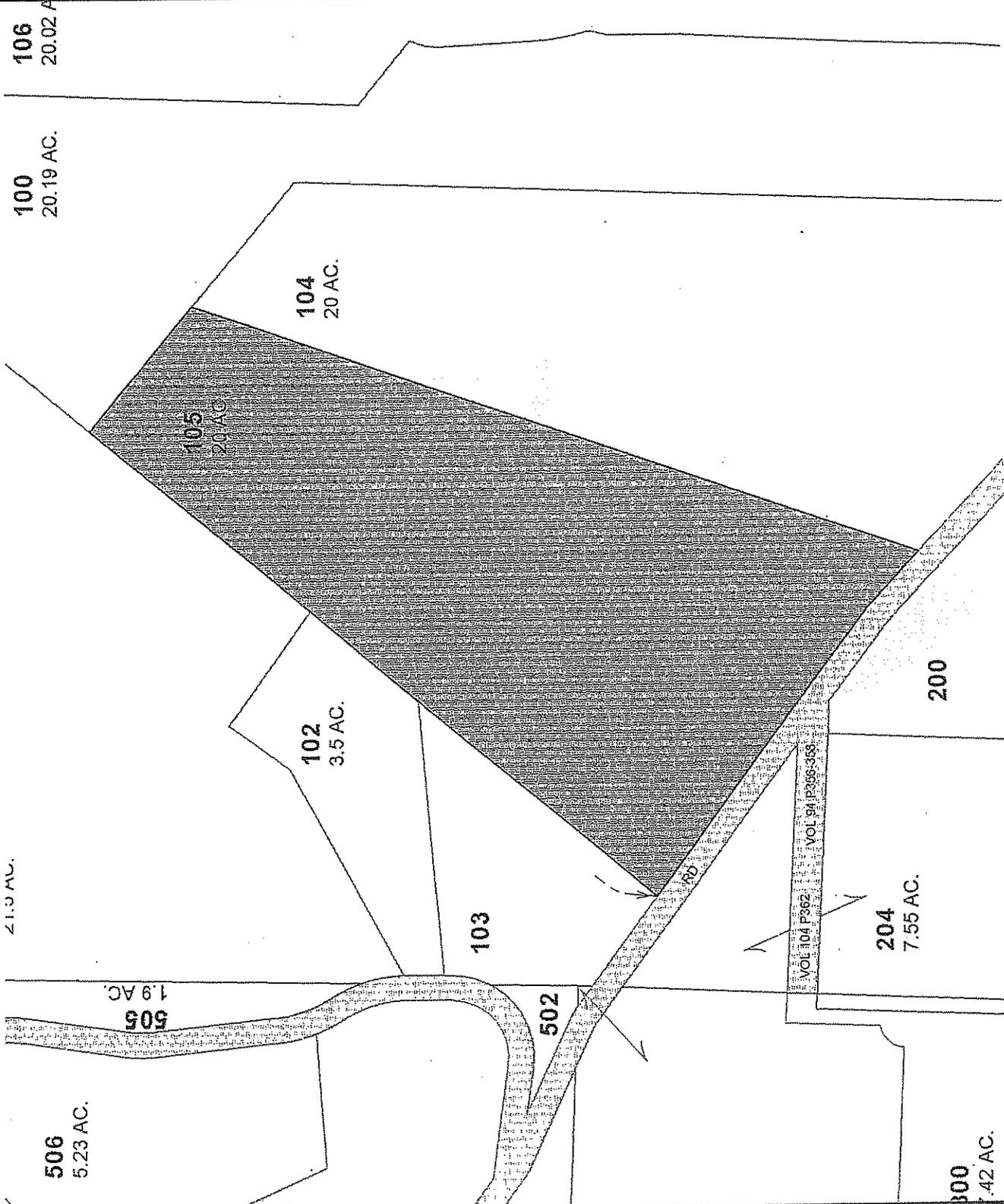
ORDINANCE 858 (BUCKMASTER) EXHIBIT B

Yamhill County Map

Tax lot polygons  
 Tax lot Number R3205 00105  
 Account Number 00154310  
 Owner TERRANCE E & JILL M BUCKMASTER  
 Situs Address 27605 NE MOUNTAIN TOP RD  
 Square Feet 0  
 Legal Acres 20  
 FCA 5506  
 Tax lot Number R3205 00105  
 FCA Code  
 Property Status Class



5/27/2010

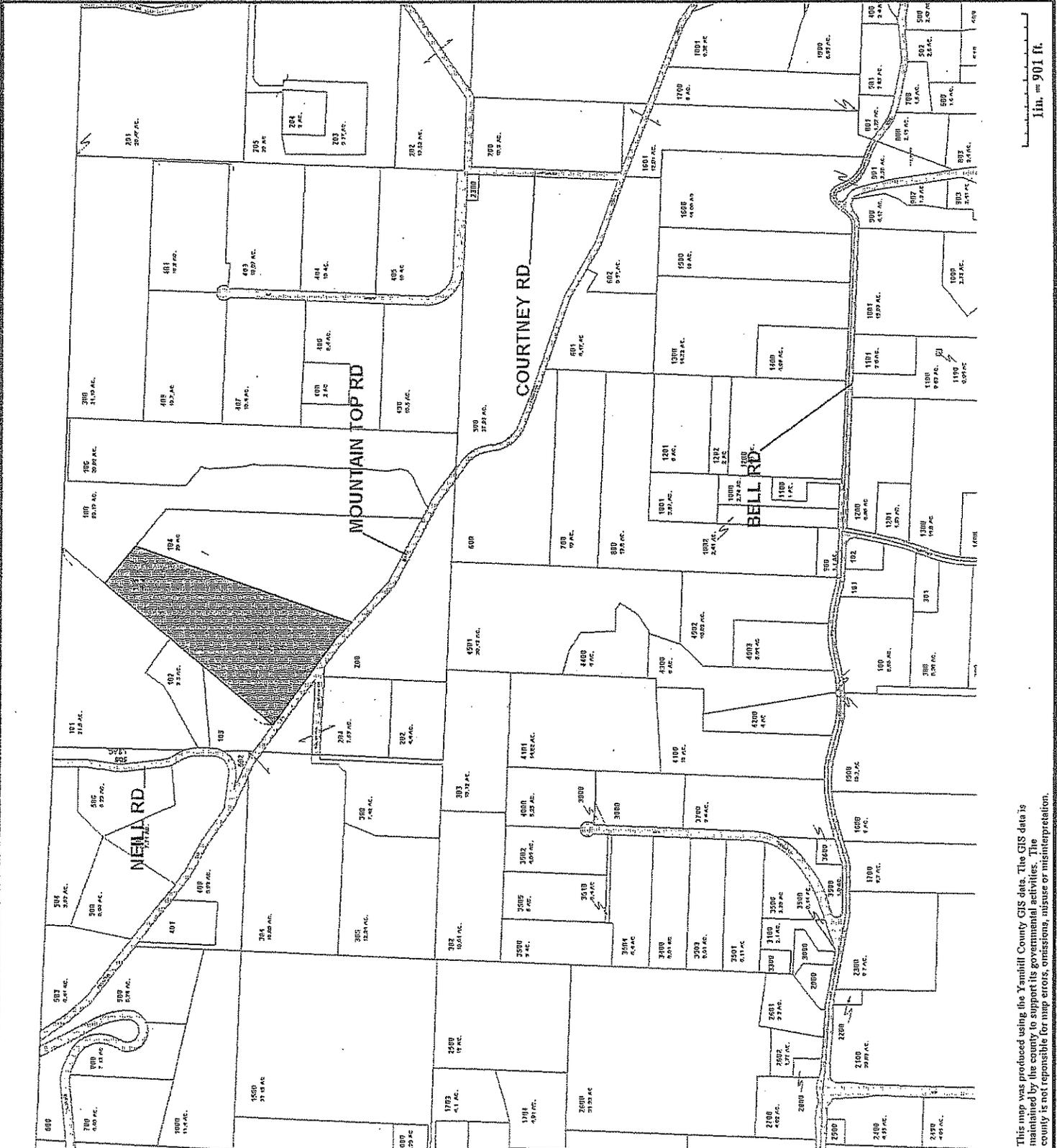


This map was produced using the Yamhill County GIS data. The GIS data is maintained by the county to support its governmental activities. The county is not responsible for map errors, omissions, misuse or misinterpretation.

# Yamhill County Map

parcel polygons  
 Tax lot Number  
 R3205 00105  
 Account Number  
 001543310  
 Owner  
 TERRANCE E & JILL M BUCKMAST...  
 Sites Address  
 27805 NE MOUNTAIN TOP RD  
 Square Feet  
 0  
 Legal Acres  
 20  
 FCA  
 5506  
 Tax lot Number  
 R3205 00105  
 FCA Code

Property Status Class



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