

IN THE BOARD OF COMMISSIONERS OF THE STATE OF OREGON

93-204

FOR THE COUNTY OF YAMHILL

SITTING FOR THE TRANSACTION OF COUNTY BUSINESS

In the Matter of an Ordinance)
 Amending the Yamhill County)
 Comprehensive Plan Map and)
 Zoning Map to Change, on a)
 1 Acre Portion of Tax Lot)
 2322-4500, the Plan Map)
 Designation From "Agricultural/)
 Forestry Large Holding" to "Public") ORDINANCE 550
 and the Zone Map Designation)
 from AF-20 to PWS (Public Works/)
 Safety) to Allow Construction of a)
 Communication Tower; Docket)
 PAZ-03-93; Applicant Washington)
 County Consolidated Communications)
 Agency; and Declaring an Emergency)

THE BOARD OF COMMISSIONERS OF YAMHILL COUNTY, OREGON (the Board), sat for the transaction of county business in special session on March 31, 1993, Commissioners Debi Owens, Dennis L. Goecks, and Ted Lopuszynski being present.

WHEREAS, on February 5, 1993, the Washington County Consolidated Communications Agency ("Applicant") has applied to the Department of Planning and Development for a Comprehensive Plan Map amendment from Agricultural/Forestry Large Holding to Public and a zone map amendment from AF-20 to PWS (Public Works Safety) on the 1 acre portion of Tax Lot 2322-4500 identified on the attached Exhibit "B"; and

WHEREAS, on March 4, 1993 the Yamhill County Planning Commission held a public hearing to consider the application and thereafter voted unanimously to recommend to the Board that the Comprehensive Plan Map and Official Zoning Map be amended to grant the application; and

WHEREAS, on March 31, 1993, the Board held a public hearing on the application and voted unanimously to grant approval to the application; and

WHEREAS, the findings and conclusions attached hereto as Exhibit "A" and by this reference incorporated herein provide a justification for the approval of the application, including the taking of an exception to Statewide Land Use Planning Goal 3; and

WHEREAS, the attached Exhibit "A" demonstrates that the proposed amendment to the Yamhill County Comprehensive Plan Map and the Official Zoning Map of Yamhill County are in the best interests of the citizens of Yamhill County; NOW THEREFORE,

THE YAMHILL COUNTY BOARD OF COMMISSIONERS ORDAINS as follows:

Section 1. The Yamhill County Comprehensive Plan Map is hereby amended as specified in the attached Exhibit "B", made a part of this ordinance by reference, to reflect a plan map designation of "Public" for the 1 acre portion of Tax Lot 2322-4500 identified on Exhibit "B".

Section 2. In adopting the Plan amendment specified in Section 1, the county hereby takes an exception to Statewide Planning Goal 3.

Section 3. The Official Zoning Map of Yamhill County is hereby amended as specified in the attached Exhibit "B", to reflect a zoning designation of PWS on the 1 acre portion of Tax Lot 2322-4500 identified on Exhibit "B".

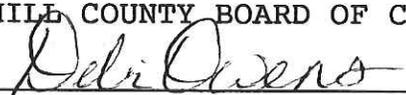
Section 4. The findings attached as Exhibit "A" and incorporated herein by this reference are adopted in support of this ordinance.

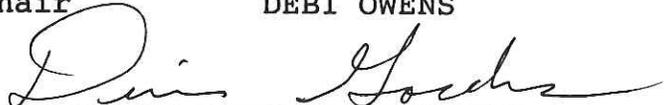
Section 5. This ordinance being necessary for the health, safety, and welfare of the citizens of Yamhill County, and an emergency having been declared to exist, is effective upon passage.

DONE at McMinnville, Oregon this 31st day of March, 1993.

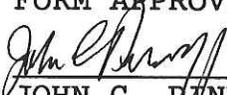
ATTES
YAMHILL COUNTY BOARD OF COMMISSIONERS
CHARLES SHERN
County Clerk
By: 
Deputy JAYNIE MITCHELL

YAMHILL COUNTY BOARD OF COMMISSIONERS


Chair DEBI OWENS


Commissioner DENNIS L. GOECKS

FORM APPROVED BY:


JOHN C. PINKSTAFF
Assistant County Counsel


Commissioner TED LOPUSZYNSKI

cc\q1u92088.002

Accepted by Yamhill County
Board of Commissioners on
3-31-93 by Board Order
93-204.

EXHIBIT "A"
Ordinance 550

DOCKET: PAZ-3-93

REQUEST: Comprehensive Plan map amendment from Agricultural/Forestry to Public and zone change from AF-20 Agriculture/Forestry to PWS Public Works/Safety to allow construction of a communication tower.

APPLICANT: Washington County Consolidated Communications Agency

TAX LOT: 2322-4500

LOCATION: Approximately one mile south of the Washington County line on the east side of Bald Peak Road.

A. Background Facts

1. **Lot Size:** The request affects about three-quarters of an acre of a one-acre parcel
2. **Access:** Bald Peak Road
3. **On-Site Land Use:** The only current use on the subject property is an existing communications tower. The request is for a second tower.
4. **Surrounding Land Use:** The property is in an area of mixed farm, forest, and rural residential use. Adjacent land on the same side of Bald Peak Road is farmed, while across the road is woodlot. Bald Peak State Park begins approximately 500 feet northwest of the site.
5. **Surrounding Zoning:** All adjacent land is zoned AF-20, except to the northwest, which is PWS (see Finding A.6). There is an area of VLDR-5 zoning about one-quarter mile northeast of the site.
6. **Explanation of Proposed Development:** A detailed background for this request is provided by the applicant. In summary, due to a conveyancing or survey error back in the early 1950's, the existing tower was erroneously constructed by Publishers Paper in 1956 outside the boundaries of the one-acre lot it was intended for. In 1974, Yamhill County, unaware of the error and based on the assumption the tower existed on the site, zoned the vacant parcel Public Works/Safety District (PWS). [At the same time the site which contained the transmission facility was zoned as Agriculture/Forestry (AF-20).]

In 1971 Washington County agreed with Publishers Paper to use the facilities and the agreement was formalized in 1982. In 1988

Times-Mirror, which had purchased from Publishers, sold the site to Washington County.

More recently, the error was discovered, and not only is the existing tower out of the PWS zone, but the proposed new facility would also be outside the zone boundary. This request is to remedy the error.

B. Oregon Administrative Rule Provisions and Analysis

1. An exception to Goal 3 and/or Goal 4, the statewide agriculture and forest goals, is required by Oregon Administrative Rule (OAR) 660-04-010 if rural land is to be Plan- and zone-designated other than exclusive farm use or forest. Approval of the requested Plan designation and zone designations, therefore must be justified through the exceptions process.

2. OAR Chapter 660, Division 4, explains the requirements for taking exceptions to statewide goals. OAR 660-04-018 outlines the options for taking exceptions. The first is to base the exception on "physical development" and/or "irrevocable commitment" of the property to nonresource use. This type of exception is intended to recognize and allow existing types of development. The second is a "reasons" exception, which allows a jurisdiction to zone property with a non-agricultural designation if there are sufficient grounds for the change. The subject request relies on a "physical development" exception.

3. The requirements for taking an exception based on physical development are in Oregon Administrative Rules (OAR) 660-04-025, and read:

"(1) A local government may adopt an exception to a goal when the land subject to the exception is physically developed to the extent that it is no longer available for uses allowed by the applicable goal.

"(2) Whether land has been physically developed with uses not allowed by the applicable goal, will depend on the situation at the site of the exception. The exact nature and extent of the areas found to be physically developed shall be clearly set forth in the justification for the exception. The specific area(s) must be shown to on a map or otherwise described and keyed to the appropriate findings of fact. The findings of fact shall identify the extent and location of the existing development on the land and can include information on structures, roads, sewer and water facilities, and utility facilities. Uses allowed by the applicable goal(s) to which the exception is being taken shall not be used to justify a physically developed exception."

4. Section 403.02.F of the zoning ordinance lists "public utility facilities necessary for public service" as a permitted use in the AF-20 zone. "Utility" is in turn defined in section 202 of the ordinance as:

"Any area of land or any structure used for the generation, storage, conversion or transfer of energy or for communication facilities, such as telephone, telegraph, radio, or television."

On its face, the use would be permitted in the AF-20 zone and this request unnecessary. However, in 1989, the Oregon Court of Appeals in McCaw Communications, Inc. v Marion County, 96 Or App 552 (1989) held, among other things:

"For a "utility facility" to be permitted ... the applicant must establish and the county must find that it is necessary to situate the facility in the agricultural zone in order for the service to be provided."

Since there is vacant PWS-zoned land adjacent to the subject site, this finding cannot be made, so the use is in fact not permitted in the AF-20 zone in this case.

C. County Zone Change Provisions and Analysis

1. Section 1204 of the Yamhill County Zoning Ordinance (YCZO) states that exceptions to statewide goals are subject only to the requirements of the Oregon Administrative Rules discussed in Section B of this report. The Plan Amendment portion of this request is not subject to local review criteria.

2. The zone change portion of the subject request must comply with the standards and criteria in YCZO Section 1208.02. These provisions are:

"(a) That the proposed change is consistent with the goals, policies, and any other applicable provisions of the Comprehensive Plan.

"(b) 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.

"(c) That 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) That other lands in the county already designated for the proposed use are either unavailable or not as well-suited for the anticipated uses due to location, size, or other factors.

"(e) That the amendment is consistent with the current Oregon Administrative Rules for exceptions, if applicable."

3. The Board finds that YCZO Section 1208.02(a) is satisfied because there are no applicable Comprehensive Plan goals, policies or provisions relevant to the request.

4. The Board finds that YCZO Section 1208.02(b) is satisfied because 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.

Washington County has used the existing facility for emergency communications since 1971. Other agencies utilizing the facility include the Tualatin Fire District, Tri-Met, and the U.S. Forest Service. The transmitting facility is a vital element in Washington County's emergency communications network. Thus, the use is important to the citizenry and the economy of the area, and it will satisfy the existing market demand for such uses. There may be other available lands which are zoned to permit the use but not in this area and not as suitable for the proposed use, based on locational factors.

5. The Board finds that YCZO Section 1208.02 (c) is satisfied because 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 land uses consist of a mix of farm, forest, and residential use. The area is sparsely settled, with the nearest residence approximately 600 feet south of the site, the woodlot across the road, and the state park about 500 feet from the site. Within 1/2 mile there are all or portions of 52 tax lots, 27 of which are used for agricultural or forestry activities. The remainder are vacant, non-managed or residential uses. Agricultural activities within 1/2 mile are mainly field crops: i.e., wheat, alfalfa, hay, and cultivated pastures. There are no recent forestry operations in the immediate area.

Activities on the subject site will be limited to the transmission facility serving as a "repeater" relay station and routine maintenance and inspection. The proposed facility would require only one or two visits per month for maintenance and operation.

Activities on surrounding farm lands includes cultivation of field crops include plowing, disking, harrowing or cultipacking, application of soil amendments, herbicides, pesticides, seeding harvesting, baling and gathering of harvested materials and plowing under of some crops. Field crop operations use farm equipment such as large tractors and towed appliances, specialized equipment, and trucks. Cultivated pastures receive the same treatment except on a less than an annual basis. Livestock graze continuously and pasture areas are cleared and allowed to produce natural forbs and grasses used for forage.

Activities on surrounding forest lands indicated no recent forestry operations in the immediate area. However, it is reasonable to expect that logging will occur in the future, and practices may include road building harvest, stockpiling slash burning and removal. Equipment may include bulldozers, skidders, loaders, trucks and chainsaws.

The site is setback 80 feet from Bald Peak Road. It is surrounded by fir trees, limiting visibility from the road and serving as a buffer to the adjoining properties to the north and south. Bald Peak Road serves as a buffer to forestry and agricultural activities to the west, and hillside to the east serves to buffer the site from adjacent properties to the east. Thus the topography separates the use from surrounding resource activities. There is already one tower on the property.

Based on the historic use and activities on the site, the plan amendment and zone change: (1) will not force significant changes in accepted farm or forest practices on surrounding lands, (2) will not significantly increase the cost of accepted farm or forest practices on such lands, and (3) will not have an adverse impact on surrounding residential uses. Therefore, the proposed change is appropriate considering the factors listed in Section 1208.02(c).

6. The Board finds that YCZO Section 1208.02(d) is satisfied because other lands in the county already designated for the proposed use are either unavailable or not as well-suited for the anticipated uses due to location, size, or other factors.

The transmitting facility on the site is a vital element in Washington County's emergency communications network. By virtue of its location on the extreme southern reaches of Washington County at an elevation of 1580 feet, it is capable of transmitting emergency and other essential radio transmissions throughout Washington County. Because of these locational factors, other lands in Yamhill county which are already designated Public Works/Safety would be unsuitable fore the proposed (existing)

use(s) on the site. No other appropriately zoned tracts are similarly situated.

7. The Board finds that YCZO Section 1208.02(e) is satisfied because the amendment is consistent with the current Oregon Administrative Rules for exceptions. The requested exception to Goal 3 is appropriate since the subject is physically developed to the extent that it is not longer available for uses allowed on agricultural lands by ORS Chapter 215. Publishers Paper first erected the radio transmission tower and related structure on the site in 1956. Washington County began using the Bald Peak transmitting facility for public works and emergency communications in 1971. The other users include Tualatin Fire District, Tri-Met and U.S. Forest Service. For obvious reasons, the transmitter is a vital component of Washington County's emergency communications network.

The transmitting facility is situated in the middle of the site and set back 80 feet from Bald Peak Road. It consists of a cinder block building which houses necessary electronic equipment, a liquid propane tank which fuels an emergency generator and a radio transmission tower approximately 100 feet high. There is a 8 foot high 50 x 50 feet chain link fence surrounding the entire facility. There is a staircase extending down the hill on the west side. Access to Bald Peak Road is via an easement across the adjacent property to the south.

There are no sewer or water facilities on the site. The facility does receive electric service.

As stated in Section B above, transmitting facilities are not permitted uses in the AF-20 District. YCZO 802.02(A) permits radio transmitting facilities only in areas designated PWS. The existing use on the site being used to justify physical developed exception is not allowed under the County's present land use regulation.

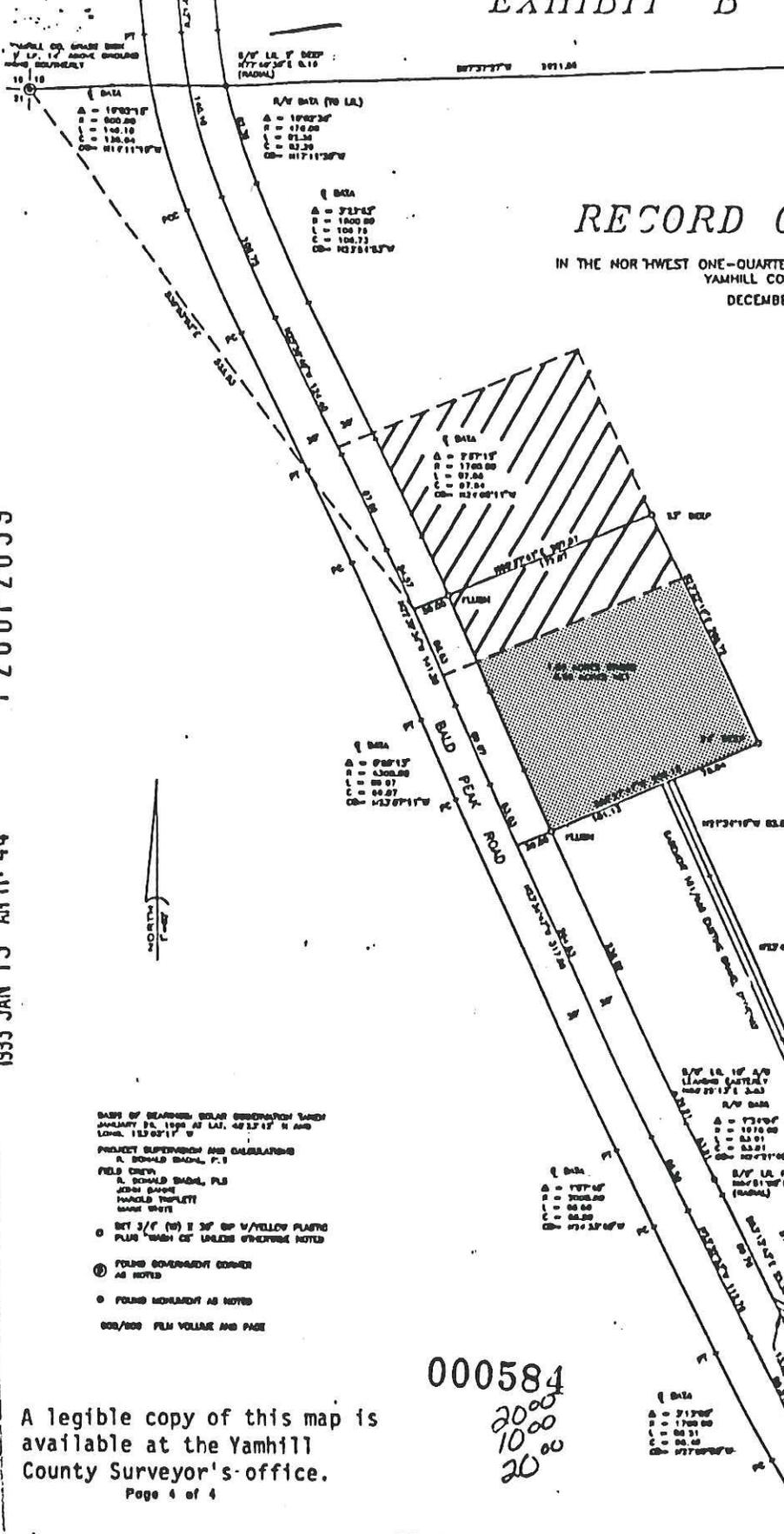
Therefore the applicant has demonstrated that the subject site is physically developed with a use not allowed by Goal 3, and that an exception is warranted.

CONCLUSIONS: Based on the foregoing findings, the Board concludes:

1. The land is physically developed by uses not allowed by Goals 3 and 4.
2. There are no other sites available to accommodate the uses allowed by the applicable goal.
3. The amendment is consistent with the goals, policies and other applicable provisions of the Yamhill County Comprehensive Plan as required by YCZO Section 1208.02(a).

4. The request complies with the quasi-judicial zone change standards in Sections 1208.02(b) through (e) of the Yamhill County Zoning Ordinance.

cc\qlu93088.001



RECORD OF SURVEY

IN THE NORTHWEST ONE-QUARTER OF SECTION 22, T2S, R3W, W.M.
YAMHILL COUNTY, OREGON
DECEMBER 8, 1990

NARRATIVE:

ON APRIL 29, 1988, WASHINGTON COUNTY PURCHASED FROM THREE-MERSON LAND AND TRUCK CO. THROUGH A BARGAIN AND SALE DEED FILED IN THE YAMHILL COUNTY CLERK'S OFFICE, A ONE ACRE PARCEL WHICH THEY THOUGHT WAS A RABBIT TRANSMISSION TOWER ON IT. BEING REQUESTED TO SURVEY THE PARCEL AND FOUND THAT THE TOWER SITE HAD ALREADY BEEN FILED ON THE PARCEL. ON MARCH 26, 1988, PUBLISHER'S PAPER CO. PURCHASED THE PARCEL FROM THE PROCTOR THROUGH A WARRANTY DEED VOLUME 188, PAGE 218, WHICH WAS LATER SOLD TO THE THREE-MERSON LAND AND TRUCK CO. THE PROCTOR TOLD US THAT HE RECALIBRATED EACH OF THE 1980'S WHEN A TOWER CONCRETE FROM PUBLISHER'S PAPER CO. SET. RECORDS STATE AT ONE CORNER OF THE PARCEL FROM TO THE OTHER SIDE BUILT AND THAT THE TOWER WAS BUILT AT OR NEAR THE CENTER OF THE PARCEL AS HE WAS LOCATED IT. HE ALSO STATED THAT HE BECAME AWARE OF THE PROBLEMS WITH THE TOWER AT A LATER DATE. WE SEARCHED FOR THE STAKES WITHOUT SUCCESS. THE MOST LATEST CORNER FALLS IN A PLANTED FIELD. ON OCT. 18, 1971, FRED TRANE AND THOMAS PROCTOR PURCHASED FROM MR. PROCTOR THROUGH A LAND SALE CERTIFICATE VOLUME 124, PAGE 342, THE PARCEL WITH THE TOWER ON IT. IN THE DEED IT WAS THE TOWER WAS ON THE PARCEL OWNED BY PUBLISHER'S PAPER CO. WASHINGTON COUNTY COUNTY COUNCIL, BOB BLECH, AND FREDERICK WOODRUFF, BOB BLECH, IS CONTROLLED WITH REPRESENTATIVES FROM THREE-MERSON LAND AND TRUCK CO. THE DEED, MR. PROCTOR AND THE YAMHILL COUNTY PLANNING DEPARTMENT, TO EXAMINE THE PROPERTY PURCHASED FOR A ONE ACRE PARCEL WITH THE TOWER AT, OR NEAR, THE CENTER, OR LOCATED BY PARCEL AS SHOWN AND DRAWN A NEW PARCEL DESCRIPTION WHICH WILL BE USED BY A LAND DESCRIPTION.

THE 1/4 SECTION CORNER BEING AT THE SECTION CORNER CORNER TO SECTIONS 18, 19, 20, AND 21, T2S, R3W, W.M. AND THE 1/4 SECTION CORNER BY REDWOOD HARBOR PL. IS LOCATED BY DEED 1791 OF THE ONE-QUARTER CORNER CORNER TO SECTIONS 18 AND 21, T2S, R3W, W.M. WERE LOCATED AS SHOWN IN ORDER TO ESTABLISH THE CORNER LOCATIONS OF THE PARCEL BEING IN DEED FILED 1988. THE ONE-QUARTER CORNER IS RECORDED AND ACCEPTED BY RECORDS OFFICE, YAMHILL COUNTY SURVEYOR AS THE BEST REPRESENTATION OF THE ORIGINAL GOVERNMENT LAND OFFICE CORNER. THE PRESENT ALIGNMENT OF BALD PEAK ROAD DOES NOT APPEAR TO FOLLOW AN ESTABLISHED CORNER-OF-ROAD AND BEING NEARLY 1/4 OF A MILE DOES NOT MEANING WHO IS USED TO CORNER HIS ALIGNMENT. THEREFORE, WE RECALIBRATED THE PRESENT TRAVELLED ROADWAY BY SURVEYING THE ADJACENT CONCRETE PARCEL AND CALCULATED THE BEST FIT AN STRAIGHT, OTHER BEING, INCLUDING THERE ON THE WEST SIDE OF BALD PEAK ROAD APPEAR TO FOLLOW THE TRAVELLED ROAD AS LOCATED.

THE ALIGNMENT INDICATED BY DEED VOLUME 181, PAGE 688, IS DESCRIBED AS "THE EXISTING ROAD OVER PROCTOR'S LAND" AND IS THE PRESENT ACCESS TO THE PARCEL AS SHOWN, AS THE PRESENT ON BALD PEAK ROAD IS STRIP AND UNDESIRABLE. THE ROAD, AS LOCATED FOR EXISTING ROAD, ROAD AND FOUND THAT IT VARIES IN WIDTH FROM APPROXIMATELY 8 TO 10 FEET AND HAS AN IRREGULAR ALIGNMENT, AS SHOWN.

THE NEW PARCEL, THE SURVEYOR HOLDING THE CALCULATED ALIGNMENT OF BALD PEAK ROAD, HOLDING THE REMAINS OF THE LATTERLY LINE OF THIS PARCEL, SPECIFICALLY PURCHASED BY WASHINGTON COUNTY HOLDING THE NORTH AND SOUTH LINES REPRESENTATIVE TO THE EAST, LINE, AND CARRYING 1.26 ACRES AREA.

NO ATTEMPT WAS MADE TO LOCATE ANY LINES OF OCCUPATION AS THE AGREEMENT BETWEEN THESE PARTIES SHOULD BECOME TO CLARIFY ANY FUTURE UNDISPUTED PROPERTY RIGHTS THAT MAY HAVE ACCRUED INTO FILE OR PRESCRIPTION SINCE THE ORIGINAL LAND TRANSFER.

REFERENCES:

DEED VOLUMES	SURVEYS
188/230	3111
181/208	3172
183/110	3203
	3413
	1400
FILE VOLUMES	7100
113/71	8453
212/1049	

- BASE OF BEARING: BALD COORDINATION LINE JANUARY 24, 1990 AT LAT. 4832'17" N AND LONG. 123'02"17" W
- PROJECT SUPERVISOR AND CALCULATIONS: A. DONALD BACH, P.E.
- FIELD CHECK: A. DONALD BACH, P.E.
- OTHER NOTES: JAMES BAKER, PARCELS PROPLETT, MARK WHITE
- BY 3/4 (N) 1/4 OF 1/4 YELLOW PLASTIC PLUS "WASH" OF UNLESS OTHERWISE NOTED
- FOUND GOVERNMENT CORNER AS NOTED
- FOUND MONUMENT AS NOTED
- 800/800 FILE VOLUME AND PAGE

000584
2000
1000
2000

R. CHARLES PEARSON, P.E.
REGISTERED PROFESSIONAL LAND SURVEYOR
OREGON
R. CHARLES PEARSON
JULY 21, 1974
1012
REGISTERED SURVEY SURVEYOR
124 S. FERRY AVENUE
MELBOURNE, OREGON 97126

A legible copy of this map is available at the Yamhill County Surveyor's office.
Page 4 of 4

STATE OF OREGON)
COUNTY OF YAMHILL)



I hereby certify that the foregoing was recorded in the public records by me in accordance with the laws of the State of Oregon.



AREA SUBJECT TO PLAN AMENDMENT/ZONE CHANGE REQUEST (DOCKET PAZ-3-93)

F280P2039
1993 JAN 15 AM 11:44

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