



# Oregon

Theodore R. Kulongoski, Governor

Department of Agriculture  
635 Capitol Street NE  
Salem, OR 97301-2532



March 17, 2010

Anne Elvers  
Washington County  
Department of Land Use and Transportation  
155 N. First Avenue, Suite 350-14  
Hillsboro, Oregon 97124-3072

Dear Anne

This document is placing comments contained in an email the Oregon Department of Agriculture (ODA) sent to you dated February 23, 2010. As requested, ODA staff has reviewed Plan Amendment Casefile No. 09-360-PA as it relates to agricultural lands and farm use. We understand that the argued legal basis for the amendments is an exception to the applicable goals on the basis that a "built and committed" exception is merited.

It is interesting to note that quite a bit of the information provided deals with the physical capability of the subject land for farm use. A "built and committed" exception, as proposed in this case, requires justification that shows 1) that the subject tract is physically developed to the extent that it is no longer available for uses allowed by the applicable goal and/or 2) that the land subject to the exception is irrevocably committed to uses not allowed by the applicable goal because existing adjacent uses and other relevant factors make uses allowed by the applicable goal impracticable. Much of the information seems to be aimed at an argument that the subject land is nonresource land.

With this said, we offer the following comments. Overall agricultural capability is a function of many factors. I would suggest to you that one of the easiest and best ways to look at the ability of a subject tract is to compare it to tracts with similar characteristics in the area. Tracts with similar physical characteristics such as slope, slope aspect other soils characteristics, parcel size, land use and surrounding land characteristics, etc. that support, have supported or could support farm use are good indicators that the subject tract could also support farm use. According to aerial photography on file Oregon Department of Agriculture (ODA) dated July 2009, there are agricultural operations in the area that may involve similar situations to the subject property. These include

orchards located to the northwest (adjacent), the west, southwest and east and hay/pasture operations to the west (adjacent) north, southwest and east (see attached aerial WACoAerial#1.pdf). With this said, comments are provided to some of the specific issues discussed in the materials provided for our review.

### **Parcel size**

Parcel size alone should not be a determinant as to the suitability of a subject tract to support farm use. While a single parcel may not be capable of supporting a commercial farm by itself, it most likely can be part of a larger farming operation composed of several parcels. It is not uncommon for farming operations to be composed of several parcels, including constituent, noncontiguous parcels, of various sizes. It is very common for farms to include parcels less than 80-acres in size, especially if available for rent or lease at fair farm market value. I know of many situations in Washington County where farmers are using parcels less than 20-acres in size as part of a larger operation. A rezone that would permit nonfarm uses would most likely render the tract to expensive, even if available, to rent or lease for farming.

### **Slope**

Slope is taken into account when a soil is rated for agricultural capability by the NRCS. Slope is a factor that determines management activities. If these management activities are limiting to the point that they are not reasonable, the soil is rated low for agricultural capability. Orchard and vineyard crops, some berry crops and Christmas trees are examples of crops that can be grown on slope lands with common management practices. These types of operations do not utilize large farm machinery and in some cases, specialized machinery is available and common that deal with slope. There are also many conservation practices that can be employed to deal with soil erosion issues on slope land. Again, look at similar lands in the area.

### **Microclimate**

It is important to note that climate related factors are taken into account when the NRCS determines the agricultural capability rating of a given soil. Wind is a factor that is discussed briefly in the materials. Specifically, the potential for drift of chemicals is discussed due to wind conditions. Please note that pesticide drift is not permitted as regulated under pesticide laws administered by ODA. Any responsible pesticide applicator will not be applying farm chemicals when wind is an issue. If drift does occur (wind or no wind), the applicator is subject to enforcement action by ODA. Slope aspect and heat related to microclimate are also common considerations. Please note the comments below relating to the use of more detailed soils analysis.

## **Existing Land Use**

It is remarked that due to the abandonment of a past Christmas tree operation and lack of management, that the trees left on-site are not suitable for sale. This may be true, but this would not preclude the clearing of the tract and replanting with new Christmas trees under new management activities, including rodent and disease control.

## **Pesticide Application**

The buffer requirements listed in the information you provided in most cases are the buffer zone requirements for aerial application. Ground application is a common alternative unless the trees are mature and closely planted; and/or the slope is exceptionally steep. In discussions with ODA Pesticides Division staff the following examples of differing aerial verses ground application buffer standards were provided:

Thionex: aerial 300 feet, ground 100 feet from rivers, natural ponds, lakes, reservoirs, marshes, estuaries and commercial fish ponds.

Brigade: aerial 150 feet, ground 25 feet from aquatic habitats (such as, but not limited to lakes, reservoirs, rivers, streams, marshes, natural ponds, estuaries and commercial fish ponds.

Omite: aerial 75 feet, ground 50 feet from lakes, reservoirs, rivers, permanent streams, marshes or natural ponds; estuaries and commercial fish ponds. This excludes irrigation canals and waterways as well as man-made irrigation conveyance structures and impoundments, unless an exclusion contains water year-round.

Lorsban: aerial 300 feet, ground 50 feet from permanent bodies of water such as rivers, natural ponds, lakes, streams, reservoirs, marshes, estuaries, and commercial fish ponds

The label for MSR, states, do not apply within 150 (aerial) or 100 feet (ground) of an unprotected person or occupied building. Also near areas managed for wildlife or wildlife habitat, a buffer of 100 (aerial) or 50 feet (ground) must be maintained.

For the pesticides indicated above (except for MRS), there are no mandated buffer zones stated on pesticide labels which specifies a buffer near occupied structures or other structures. Please note, that faulty, careless or negligent applications are prohibited in state law, and an applicator must not allow pesticides to drift off-target.

An aerial view of the property shows little to no impact from buffer zones mandated on pesticide labels. The nearest body of water is approximately 180 feet from one corner of the field. If the landowner was to make an aerial application of Thionex or Lorsban, the owner could simply treat the one possibly impacted corner of the property by ground application. An alternative would be to use another product (see attached aerial photographs WACoAerial#1.pdf and WACoAerial#2.pdf).

In terms of EPA regulations and the potential for future regulations that may stem from the referenced court case, please note that ODA will not be establishing more buffers. There may be changes in the buffer requirements for some products applied near water, but the EPA, not ODA, will establish any such new regulation.

Finally, please note overspray or drift is not permitted under any circumstances in Oregon. We are not aware of any EPA measures to protect surrounding nonfarm land uses by setting a generalized 200-foot no-spray setback.

Should you have any questions about the use or regulation of pesticides, please feel free to contact Rose Kachadorian, ODA Pesticides and Endangered Species Specialist at (503)986-4651.

### **Irrigation**

It is a fact that the subject tract is located within the Chehalem Mountain Ground Water Limited Area. It is important to note that the limitations placed on this area do not preclude all forms of irrigation. While more traditional sprinkler irrigation is precluded, irrigation is permitted for "drip or equally efficient irrigation provided that the Director (Oregon Water Resource Department) finds the proposed use amount do not pose a threat to the groundwater resource of existing permit holders. The law further limits new irrigation use to one-acre foot per acre per year. Permits may be issued for five-years and may be extended for additional five-year periods (See OAR 690-502-0200).

Drip irrigation over the time periods available are conducive to starting up vineyard and orchard operations. In many cases, after such operations reach maturity; further or very limited irrigation is required. It is also important to note that impacts to existing (senior) water holders (whether they are agricultural or residential related) would be considered when a new permit is requested.

If you have any further questions about water restrictions, I recommend that you contact Bill Ferber, Western Region Manager, Oregon Water Resources Department (503-986-0893).

## **Soils**

I see little discussion in the materials provided for review of soils on-site. The soils are Laurelwood series, map units 28C, 28D & 28E. These soil types have agricultural capability classes IIE, IIIE and IVE respectfully. The Washington County Soil Survey remarks that these are appropriate for orchards, small grains, hay, timber and pasture with slopes of 2-12%. These soils are also known to be well suited to the production of wine grapes. If the soils are different due to microclimate or other factors, a more detailed soil analysis then what was completed by the NRCS should be done by a qualified soils professional with credentials equal to or greater NRCS soils mappers.

## **Compatibility**

The LCDC administrative rule states '(f) or "physically developed" and "irrevocably committed" exceptions to goals, residential plan and zone designations shall authorize a single numeric minimum lot size and all plan and zone designations shall limit uses, density, and public facilities and services to those:

- (1) That are the same as the existing land uses on the exception site;
- (2) That meets the following requirements:
  - (a) The rural uses, density, and public facilities and services will maintain the land as "Rural Land" as defined by the goals and are consistent with all other applicable Goal requirements; and
  - (3) The rural uses, density, and public facilities and services will not commit adjacent or nearby resource land to nonresource use as defined in OAR 660-004-0028; and
  - (4) The rural uses, density, and public facilities and services are compatible with adjacent or nearby resource uses;

There is little discussion that we found in the information that discusses impacts to area farm and forest operations. Factors 3 and 4 expressed above are important considerations to the larger agricultural land base in the area. Many of the issues discussed by the applicants would be amplified by more rural residential development. What would the cumulative impacts be to water supply for agriculture in the region? Unlike applications for irrigation use, residential wells are exempt uses and thus there would be no evaluation for injury to other water users in the area. What would be the traffic implications? What would the siting of more dwellings do to the ability to utilize certain agricultural practices?

If we can be of further assistance, please feel free to contact us.

Respectfully,

A handwritten signature in black ink that reads "James W. Johnson". The signature is written in a cursive style with a large, looping initial "J".

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C: Bill Ferber, OWRD  
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