



WASHINGTON COUNTY
Department of Land Use and Transportation
PLANNING DIVISION, SUITE #350-14
155 NORTH FIRST AVENUE
HILLSBORO, OREGON 97124-3072
Tel. (503) 846-3519 fax (503) 846-4412

CASEFILE NO.: 09-360-PA

APPLICANT:
KCL, Inc.
PO Box 489
Cornelius, OR 97113

STAFF REPORT

PROCEDURE TYPE: III

COMPREHENSIVE PLAN ELEMENT:
Rural/Natural Resource

CPO: 10

ASSESSOR MAP NO(S) & TAX LOT NO(S): 2S3 2
100

SITE SIZE: 58.2 acres

LOCATION: East of SW Brighton Lane and north of
SW Bald Peak Road

EXISTING LAND USE DISTRICT: Agriculture and
Forest District (AF-20)

REQUEST: Comprehensive Plan Amendment to change the current land use designation of Agriculture and Forest (AF-20) District to Agriculture and Forest 10 Acre (AF-10) District; requires an exception to Statewide Planning Goal 3 (Agriculture Land).

Casefile No. 09-360-PA Staff Report for the April 20, 2010 Board of County Commissioners Hearing

I. APPLICABLE REGULATIONS

- A. LCDC Statewide Planning Goals 1, 2, 3, 5, 11, 12, & 14
- B. OAR 660-004 (relating to exceptions requirements for land irrevocably committed to other uses) and 660-012-0060 (Transportation Planning Rule)
- C. Rural / Natural Resource Plan Policies: 1.p.3, 2, 6, 8, 10, 14, 17, 18, 19, 22 & 23
- D. Washington County Transportation Plan Policies 1, 2, 4, 5, 6, 10 & 19
- E. Washington County Community Development Code:
 1. Article II, Procedures
 2. Article III, Land Use Districts

Section 344	AF-20 District (Intent and Purpose)
Section 346	AF-10 District (Intent and Purpose)
 3. Article IV, Development Standards

Section 421 Flood Plain and Drainage Hazard Area Development
Section 422 Significant Natural Resources

4. Article V, Public Facilities and Services

II. AFFECTED JURISDICTIONS

Washington County Sheriff
Washington County Department of Land Use and Transportation
Washington County Department of Health and Human Services
Hillsboro School District
Washington County Fire District #2
Oregon Water Resources Department District #18 Watermaster

III. PLANNING COMMISSION RECOMMENDATION

At the March 17, 2010 hearing, the Planning Commission voted 5-3 to recommend **approval** of the request by the Board of County Commissioners (the Board). State law requires the Board to make the final decision for plan amendments on resource lands.

IV. STAFF RECOMMENDATION

Staff recommended denial of the application in the staff reports for the Planning Commission dated January 13, 2010 and March 5, 2010 because the applicant did not provide evidence demonstrating that the requirements for an irrevocably committed exception to Statewide Planning Goal 3 were met (Oregon Administrative Rule (OAR) 660-004-0028 *Exception Requirements for Land Irrevocably Committed to Other Uses*).

Based upon the evidence and findings in the applicant's submittal, the findings in this report and the evidence in opposition testimony, staff still finds that the applicant has not provided sufficient evidence to justify an irrevocably committed exception for Statewide Planning Goal 3. Therefore, staff recommends that the Board **deny** this plan amendment request.

V. OVERVIEW

The applicant is requesting an irrevocably committed exception to Statewide Planning Goal 3 (Agricultural Lands) in order to change the plan designation from the AF-20 District to the AF-10 District. Per state law, an irrevocably committed, or "committed" exception, may be granted if the provisions of OAR 660-004-0028 are met. A committed exception requires the applicant to demonstrate that adjacent uses impact the subject property in such a way that it is impracticable to conduct farm and forest practices on the site. Farm and forest are described in specific statutory (ORS) and state administrative rules (OAR).

1. Subject Property Details

- The property is 58.2 acres designated as AF-20;
- No significant natural resources are on site;
- There are no structures on the site;
- It is nonbuildable per a required restrictive covenant (Case file 84-602-M/LLA);
- Has access to SW Larkins Mill Road and SW Brighton Road;
- Has been in continuous farm deferral since 1980;
- Was used as a commercial Christmas tree farm from 1984 until 2008;

- Numerous trees from the commercial Christmas tree operation remain on site, but are not actively managed for sale;
- 100% of the soil is rated as high value soil for agricultural uses; and
- 100% of the soil is rated as woodland capability class 2o2 which has high productivity possibility and no serious limitations for timber production.

2. Adjacent Properties Details

- There are twelve adjacent AF-20 parcels;
- Eleven parcels have dwellings and nine are forested;
- Ken Leahy, the president of KCL, Inc. owns an adjacent parcel;
- Two parcels on SW Brighton Lane are currently in farm use;
- The adjacent parcels have been in existence since the 1980s; and
- Letters of opposition to this plan amendment request were submitted by the owners of five adjacent parcels

See pages 37 and 38 of this report for a figure showing plan designations of surrounding properties and a 2008 aerial photograph of the area.

3. Denial Recommendation from Staff

Staff continues to recommend denial of this application because the applicant has not satisfied the requirements of OAR 660-004-0028. To satisfy this OAR, the applicant must demonstrate that farm and forest uses on this property are impracticable. The applicant must also show a distinct correlation between the impracticability of farm and forest use and impacts from adjacent uses.

The property is 58.2 acres of high value farmland with a longstanding history of farm use, and adjacent properties are in farm or forest use. The applicant focused mostly on the site's characteristics (e.g. slope, soil, etc.) rather than the relationship between the subject site and the adjacent properties as required by OAR. Site characteristics cited by the applicant were not created nor are they influenced by adjacent residences, so they are not relevant factors.

Staff does not agree with the applicant's assertions that farm and forest uses are impracticable on the site, due particularly to the site's historic use as farm land and written testimony from adjacent property owners stating they are not opposed to continued farm use on the site. The applicant also has not demonstrated that the site cannot be used for forest uses. Staff continues to conclude that the site could be used for forest uses because adjacent properties are in forest use, the site is an abandoned Christmas tree farm and the site's soils have a high woodland productivity rating.

Staff also disagrees with the applicant's characterization of the AF-20 District, including how lands were designated as AF-20. AF-20 lands were designated as AF-10 or AF-5 by the 1973 Comprehensive Plan. An initial step in the preparation of the 1984 Rural/Natural Resource Plan examined which AF-10 and AF-5 lands met the state's new criteria for exception lands. The subject property and adjacent and nearby properties were determined to not meet the exception criteria and therefore were designated as AF-20.

Detailed findings addressing the practicality of farm and forest uses and the AF-20 District are included in Section VII of this report.

VI. BACKGROUND FINDINGS

OAR 660-004-0028

In order for a committed exception to be justified, the requirements of OAR 660-004-0028 must be met. The OAR states that whether or not a property is committed depends upon its relationship with adjacent lands. In establishing this relationship, the following four factors must be addressed. An applicant must analyze these factors and prove that their impacts render farm and forest uses on the subject property impracticable.

1. The characteristics of the exception area (the subject property);
2. The characteristics of the adjacent lands;
3. The relationship between the exception area and lands adjacent to it; and
4. Other relevant factors set forth in OAR 660-004-0028(6), including existing adjacent uses, existing public facilities and services and neighborhood characteristics.

The standards for proving committed exceptions are high. Establishing this relationship is often difficult because the mere presence of adjacent residences and the potential for neighbors complaining about commonly accepted farm and forest practices are not justifications for a committed exception. Factors such as the slope and aspect of the property, crop and timber market price fluctuations and proximity to waterways cannot be used to prove a committed exception because they are not influenced by adjacent properties.

Farm use, as defined by ORS 215.203, includes Christmas tree propagation, hay, small grains, grass crops, orchards, vineyards, and pasturing of animals for the primary purpose of obtaining a profit. Forest uses, as defined by OAR 660-033-0120 and OAR 660-006-0025(2)(a), include the harvesting of forest tree species, application of chemicals and forest road construction and maintenance. An applicant is required to provide evidence that these uses are impracticable because of impacts from adjacent uses. When evaluating a property that has a long history of farm use, an adequate demonstration of impracticability must identify recent or imminent changes affecting the subject property that, by themselves or in combination with other factors, render continued farm use impracticable. The applicant did not provide this type of information. Also, letters from adjacent property owners stating they are not opposed to continued farming of the site, including common farm practices such as application of pesticides and herbicides, refute the applicant's contention that the presence of residences on adjacent parcels makes it impracticable to farm the site.

Planning Commission Hearing

This request was initially scheduled for a January 20, 2010 Planning Commission (the Commission) hearing. The staff report for that hearing recommended denial because staff found that the applicant did not provide evidence that OAR 660-004-0028 was satisfied. In response, the applicant requested a continuance in order to compile new evidence and address the staff report findings. Testimony was not taken and the Commission continued the hearing to March 17, 2010.

Staff reviewed the supplemental information submitted by the applicant prior to the March 17 hearing, and recommended denial again because staff found OAR 660-004-0028 requirements were still not satisfied.

At the March 17 hearing, John Junkin and Veronica Smith represented the applicant and presented new information. Mr. Junkin stated the staff report was incorrect when it stated that if this property would have qualified for an exception in 1983 that it would have been designated as exception land.

He suggested that the county classified all properties with Class I-IV soil as resource land unless the property owner requested otherwise. He stated the county did not have the resources to analyze individual properties.

The applicant had three people testify about the site's impracticability to support farm uses. Mike Ricks discussed Christmas tree propagation, Mike Cropp spoke about general farm use and Bob Grimes spoke about viticulture capability.

Mr. Ricks stated the property is not suitable for agriculture because it is too steep for farm equipment to operate safely and the risk of erosion on tilled soil is high. He discussed the difficulty in spraying pesticides aerially because of the risk of illegal chemical drift and the proximity of adjacent dwellings.

Mr. Cropp testified that the property's slope make the soils highly susceptible to erosion. Chemical application on soil that may erode could wash the chemicals into nearby waterways. He also cited the proximity of adjacent residences as being in conflict with using the property for farm use.

Mr. Grimes testified that the site's elevation and aspect are not suitable for growing high quality grapes, and that market conditions require a grower to produce high quality grapes in order to make a profit. He stated it would take three to five years to eradicate the phytophthora (root rot) in the soil. He also stated the homes in the area would be affected by chemical spraying of a vineyard, and the chemicals used by the residences have the potential to harm grapes.

One adjacent property owner, Jay Melican, testified in opposition of this request on behalf of himself and the owners of another adjacent property. Mr. Melican reiterated the concerns that they included in their comment letter submitted to staff prior to the hearing. Mr. Melican stated that they have not had problems with sharing SW Larkins Mill Road with farm vehicles and equipment and they are not opposed to agricultural use of the property. He mentioned the farm and forest waiver that their properties are subject to, and they do not have complaints about any past farming practices on the property.

The Commission then began deliberations without giving staff the opportunity to respond to the testimony.

The staff report for the March 17 hearing addressed the issues raised by Mr. Ricks and Mr. Cropp since their comments were included in the February 10 application packet as Exhibits 6 and 16, respectively. Staff stated in the staff report that slope and erosion potential are considerations when soil is classified, and the property is comprised of 100% high value soil. The staff report also stated that chemical drift, from farms to residences or vice versa, is prohibited by law.

Findings relating to Mr. Grimes's testimony is also found in the staff report for the March 17 hearing. Staff found that soil disease can be treated and is not a basis for permanently establishing that farm and forest uses are impracticable. The staff report also included a map of land in the area suitable for viticulture use as described in Oregon Revised Statute (ORS) 195.300. The majority of this property was included in the area of land that meets the criteria for viticulture land per ORS (see Figure 2 on page 10 of this report).

Letters of Comment

Staff has received letters in opposition of this request from owners of eleven properties, the Department of Land Conservation and Development (DLCD), the Oregon Department of Agriculture (ODA) and 1000 Friends of Oregon. These letters are summarized as follows:

- The owners of two adjacent properties submitted a joint letter and the owners of a property on SW Larkins Mill Road submitted a letter, all in opposition of this plan amendment request. Both

letters state that the property has been used as a commercial Christmas tree operation and that they are unaware of any issues that would impact the ability to farm the site. Both letters mention concerns about impacts that additional dwellings would have, especially on groundwater. These letters were submitted prior to the January 20, 2010 Planning Commission hearing.

- After the March 17, 2010 Planning Commission hearing, letters of opposition were submitted by the owners of eleven parcels. Two owners have property on SW Brighton Lane and nine own property on SW Larkins Mill Road. The letters state that the applicant's assertion that nearby residents may object to common farm practices, such as pesticide spraying is untrue. They state that they do not object to such practices. Also, the property owners state that they are not opposed to sharing their roads with farm vehicles.

Four of the eleven property owners submitted a second, more detailed letter of opposition. Three of the property owners have land adjacent to the subject property and one has property at the northern terminus of SW Brighton Road. This letter discusses the long-standing history of farm use on the subject property, their belief that the applicant's suggestion that neighbors are or would be opposed to farm uses is inaccurate and their belief that the plan amendment application did not provide evidence that the property is not farmable.

- DLCD staff submitted three letters of opposition. The first letter addresses the original application submittal, and was received prior to the January 20, 2010 Planning Commission hearing. The second letter addresses the applicant's supplemental information and was received prior to the March 17, 2010 Planning Commission hearing. The final letter reiterates DLCD's concerns and is also signed by Jim Johnson, Land Use and Water Planning Coordinator for the Oregon Department of Agriculture (ODA). Each letter asks the county to deny this request because the applicant has not provided evidence that satisfies OAR 660-004-0028.

The first letter states that the applicant has not stated how the adjacent properties and dwellings commit the subject property to nonfarm use. DLCD staff discussed the property's high value soils and the fact that slope and erosion potential are factors included in the soil classification system. Regarding Goal 4 (Forest Lands), the letter also states that a 2006 survey of privately-owned and managed woodlots in Oregon showed over 90% of the woodlot owners hold and manage less than 50 acres. DLCD states *"(t)his clearly indicates that even smaller woodlots can be practically managed."* Finally, the letter states the *"application materials furnished to us lack adequate findings to address the exception criteria in OAR 660-004-0028 (irrevocable commitment) in support of the application's conclusion that an exception to Goal 3 should be granted."*

In the second letter DLCD staff states *"...the additional material submitted by the applicant still does not demonstrate why or how adjacent development makes farm or forest use on the property impracticable."* The letter also discusses the high forest productivity rating of the property. They close with stating that the *"subject property is predominantly high-value farmland and productive forest land, falling well within the 'bright line' definitions of resource land under Goals 3 and 4, administrative rules and case law."*

The final joint letter from DLCD and ODA staff states the letter is a *"joint letter expressing our serious mutual concerns about the proposed redesignation of this property"* and again requests that the county deny this application.

- Jim Just, Farm and Forest Policy Analyst for 1000 Friends of Oregon, submitted a letter dated March 30, 2010. Mr. Just cites numerous rulings by the Oregon Land Use Board of Appeals (LUBA) to support his belief that the request does not satisfy OAR requirements. In summary, Mr.

Just states that the applicant has *"not adequately addressed nor established compliance with the 'irrevocably committed' exceptions criteria."* He discusses his disagreement with the applicant's argument that physical characteristics of the site render farm and forest use impracticable.

The initial DLCD comment letter dated January 13, 2010 and Mr. Just's letter mention the need for an exception to Goal 4 (Forest Lands) as well as Goal 3 (Agricultural Lands). The applicant is not required to provide findings for a Goal 4 exception because the AF-20 District is an exclusive farm use district. Although a Goal 4 exception is not needed, OAR 660-004-0028(3)(b) & (c) require the applicant to demonstrate that forest uses are impracticable. Therefore, the applicant must demonstrate that both farm and forest uses are impracticable to satisfy this OAR.

The findings in this report address the other issues and concerns raised by the comment letters.

VII. FINDINGS

A. Compliance with LCDC Statewide Planning Goals

LCDC Goal 2, Land Use Planning

The applicant is requesting an "irrevocably committed" exception. The relevant sections are set forth as follows:

660-004-0018

Planning and Zoning for Exception Areas

- (1) Purpose. This rule explains the requirements for adoption of plan and zone designations for exceptions. Exceptions to one goal or a portion of one goal do not relieve a jurisdiction from remaining goal requirements and do not authorize uses, densities, public facilities and services, or activities other than those recognized or justified by the applicable exception. Physically developed or irrevocably committed exceptions under OAR 660-004-0025 and 660-004-0028 are intended to recognize and allow continuation of existing types of development in the exception area. Adoption of plan and zoning provisions that would allow changes in existing types of uses, densities, or services requires the application of the standards outlined in this rule.**
- (2) For "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:
 - (a) That are the same as the existing land uses on the exception site;**
 - (b) That meet 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**
 - (B) 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******

- (C) The rural uses, density, and public facilities and services are compatible with adjacent or nearby resource uses;**
- (c) For which the uses, density, and public facilities and services are consistent with OAR 660-022-0030, "Planning and Zoning of Unincorporated Communities", if applicable, or**
- (d) That are industrial development uses, and accessory uses subordinate to the industrial development, in buildings of any size and type, provided the exception area was planned and zoned for industrial use on January 1, 2004, subject to the territorial limits and other requirements of ORS 197.713 and 197.714**

* * *

Staff Section 2(b) above is relevant to this application. Staff findings for OAR 660-004-0028 address this section.

660-004-0028

Exception Requirements for Land Irrevocably Committed to Other Uses

- (1) A local government may adopt an exception to a goal when 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:**
 - (a) A "committed exception" is an exception taken in accordance with ORS 197.732(1)(b), Goal 2, Part II(b), and with the provisions of this rule;**
 - (b) For the purposes of this rule, an "exception area" is that area of land for which a "committed exception" is taken;**
 - (c) An "applicable goal," as used in this section, is a statewide planning goal or goal requirement that would apply to the exception area if an exception were not taken.**
- (2) Whether land is irrevocably committed depends on the relationship between the exception area and the lands adjacent to it. The findings for a committed exception therefore must address the following:**
 - (a) The characteristics of the exception area;**

Applicant See pages 2 & 3 of the letter dated February 10, 2010 by John Junkin

Staff The property is 58.2 acres and was formerly a commercial Christmas tree operation. Numerous trees are still growing on the site, although they are not being managed for Christmas trees. County Assessment and Taxation records show the property has been in continuous farm deferral since 1980. Access can be taken from SW Brighton Lane and SW Larkins Mill Road. There are no significant natural resources present.

The property is subject to a restrictive covenant which renders it ineligible for a dwelling due to a condition of approval from a land use case file in 1984 (84-60-M-LLA) which involved unlawful partitioning of land in the area, including the subject property. If this plan amendment is approved, the applicant may submit a land use application to have the condition removed so that the property may be developed.

Soil Characteristics

The soil classification of a property must be discussed when analyzing its agricultural or timber production capabilities. When the county’s soils were classified for the Soil Survey of Washington County, Oregon, July, 1982 (SSWC), the slope, average annual precipitation, average frost-free period and average air temperature were considered when they were grouped into series. This property is comprised entirely of the Laurelwood series soil as shown below.

Figure 1.

<u>Soil Series</u>	<u>Capability Unit</u>	<u>High Value</u>	<u>Acres (approx.)</u>
Laurelwood silt loam, 7-12% slopes (28C)	IIE-3	Yes	36
Laurelwood silt loam, 12-20% slopes (28D)	IIIE-2	Yes	11
Laurelwood silt loam, 20-30% slopes (28E)	IVE-2	Yes	11

Per the SSWC, the Laurelwood series consists of well-drained soils found on gently sloping to very steep uplands. The series is broken down further into capability units IIE-3, IIIE-2 and IVE-2. Soils with these capability units are used for orchards, irrigated berries, small grain, pasture, hay and timber and are described as having moderate fertility.

All of the soil on site is considered to be high value farmland because of its series and capability units per ORS 215.710. Also, OAR 660-033-0020(1)(a)(A) defines agricultural land in western Oregon as those comprised predominantly of Class I-IV soils. This site is comprised entirely of Class (capability unit) II, III and IV soils as shown in Figure 1.

The property’s soil is classified as woodland suitability group 2o2. Per the SSWC, group 2o2 has high potential productivity and no serious limitations for woodland (timber) management. For woodland purposes, the soil is best suited for Douglas fir propagation. This woodland suitability group acknowledges that runoff can either be slow or rapid and that erosion may be minimal or severe. Soil classified as group 2o2 is found between 200 and 1,500 feet in elevation and on slopes ranging from 2 to 30 percent. Additional findings regarding woodland capability are found on pages 18 through 21 of this report.

The applicant submitted a soil survey performed by the URS Corporation. The summary of that soil survey states that *“(e)xamination of the site soils indicates that the subject property is predominately composed of High-Value Farmland”* and that it is consistent with the SSWC. The URS Corporation summary states *“(a)lthough these soils are High Value Farmland, the slopes associated with these soils make many farm uses, particularly those that would require aggressive manipulation of the soil, impractical due to the potential for soil erosion associated with the soil manipulation on moderately steep slopes.”* Staff again notes that slope and erosion potential is considered when the soil is classified, and the entirety of the site is high value soil.

Viticulture Land

ORS 195.300 was created in response to Measure 49 claims. Although this property is not subject to a Measure 49 claim, it does fit the description of viticulture land described in this statute as: "(I)and that is in an exclusive farm use zone and that is at an elevation between 200 and 1,000 feet above mean sea level, with an aspect between 67.5 and 292.5 degrees and a slope between zero and 15 percent, and is located within the Willamette Valley viticultural area as described in C.F.R. 9.90¹ ." Staff finds that is evidence the site is suitable for viticulture use.

Virtually all of the subject property meets the above criteria because the AF-20 designation is considered an exclusive farm use district and the elevation, slope, aspect and location of the property is consistent with the ORS definition. Figure 2 below shows viticulture land on the subject property and the immediate area.

Figure 2.



Slope

Staff analyzed the slope of the property using 2007 data from LIDAR (Light Detecting and Ranging). Approximately 32 acres, or 57% of the site, has slopes ranging from 7-11.9%. Approximately 13 acres, or 24%, of the site has slopes ranging from 12-19.9%. Approximately 9.5 acres, or 16% of the site, has slopes greater than 20%. LIDAR shows the remaining 1.5 acres to have slopes either less than 6.9% or greater than 30%.

Detailed findings regarding slopes and farm use are found on pages 14 and 15 of this report.

¹ Code of Federal Regulations (C.F.R.) 9.90: The Willamette Valley viticultural area is located in the northwestern part of Oregon, and is bordered on the north by the Columbia River, on the west by the Coast Range Mountains, on the south by the Calapooya Mountains, and on the east by the Cascade Mountains, encompassing approximately 5,200 square miles (3.3 million acres).

Ground Water

The property is located within the Chehalem Mountain Limited Ground Water Area. Residential wells are allowed by right; however, the performance level (i.e. yield and pressure) cannot be guaranteed. Exempt uses include water for livestock consumption, lawn or non-commercial garden watering of not more than ½ acre and single, or group domestic purposes for no more than 15,000 gallons per day. A water right is required if more water is desired. A complete analysis of water availability is included in the Policy 6 findings on pages 25 through 29 of this report.

(b) The characteristics of the adjacent lands;

Applicant See pages 3 & 4 of the letter dated February 10, 2010 by John Junkin

Staff The adjacent lands range in size from 10 to 19 acres, and all but two are heavily forested although they are not currently managed for commercial timber production. The two parcels that are not heavily forested are in farm use. All but one adjacent property (tax lot 303) has a single-family residence. The adjacent parcels were created around 1980 and since that time, homes have been constructed on the adjacent lots. Homes were built during the 1980s, 1990s and one was constructed in 2008.

Staff disagrees with the applicant's statement that "*no clear evidence of farming (is) present*" because there are two properties across from the property on the west side of SW Brighton Lane that are currently being cultivated for agricultural use. One is 15.5 acres and the other is 19 acres. Like the subject property, these two properties have Laurelwood series 28C and 28D soils per the Soil Survey of Washington County, Oregon, July, 1982. Even if there were no commercial agricultural activities in the immediate area, it would not be relevant to the production capabilities of the subject site unless the applicant could prove otherwise.

The applicant states that the construction of single family residences on adjacent lands coupled with their "*small setbacks*"² make farming practices difficult because of buffers necessary for pesticide application. The applicant also states that proximity to an unnamed tributary of the Tualatin River located south of the property also limits pesticide use. Staff notes that with the exception of the home built in 2008, all other adjacent residences were present when Regan Brothers used the property for a Christmas tree operation from 1984 until 2008. Pesticide application is discussed in detail on pages 16 and 17 of this report.

The adjacent properties are accessed by SW Brighton Lane or SW Larkins Mill Road which are improved private roads approximately 30 feet wide. The applicant states the roads are adequate for residential use, but are "*wholly inadequate to support agricultural uses such as log trucks or farm equipment and the existence of routine residential traffic on this road.*" These roads were used by Regan Brothers commercial farm operation for over twenty years and shared with residents of the area during that time indicating that the roads are suitable to support agricultural use of the property. Adjacent property owners have stated they are not opposed to farm or forest equipment using these roads.

Staff finds the applicant has not proven that adjacent residences have impacted the property in such a way that farm and forest uses have been rendered impracticable.

(c) The relationship between the exception area and the lands adjacent to it; and

² Per CDC Section 344-9, the minimum setbacks for dwellings in the AF-20 District are: thirty (30) foot front yard, ten (10) foot side yard and twenty (20) foot rear yard.

Applicant: See pages 5 – 7 of the letter dated February 10, 2010 by John Junkin

Staff: On page 5 of Mr. Junkin's letter, he asks staff and the Planning Commission to evaluate more parcels than just the ones sharing a common boundary line, such as Exception Areas #129, #130 and #131. Exception Area #129 is approximately 900 feet south and 1,150 feet east of the property. Exception Area #130 is approximately 2,500 feet south and Exception Area #131 is approximately 1,250 feet west of the property. County staff has always considered "adjacent" to be "contiguous", or sharing a common property line, rather than "nearby" as proposed by the applicant. DLCD staff concurs with the County's interpretation as stated in the following comment from their comment letter dated March 17, 2010:

"Adjacent" has always been used synonymously with 'contiguous' in DLCD reviews of exceptions areas. In this case, parcels averaging 13 acres on three sides of a 58-acre property are not enough to commit the property because of the relatively large size of the subject property and the surrounding properties. The nearby location of the exception areas does not advance the argument for commitment of the subject property. To call the subject property committed [based upon proximity to the exception areas] would mean that all the intervening lands could also be considered committed. There are presumably many areas in the county that could be considered committed, using this reasoning."

The documentation describing the relationship between the subject property and adjacent lands submitted by the applicant focuses on two factors: farm and forest waivers offering insufficient protection to farmers and the risk of using pesticides near homes and waterways.

On page 6 of Mr. Junkin's letter, he states that a farm and forest waiver "*does not forestall or mitigate the impact of farming practices in neighboring developed committed properties.*" He also states that "*a number of farmers had concerns with farming in such close proximity to residential uses.*"

Farm and forest uses are permitted outright on property outside the Urban Growth Boundary (UGB) and unincorporated properties within the UGB. In response to the applicant's assertion that there may be conflicts, the owners of eleven properties in the immediate area submitted letters of comment stating that they do not object to common farming practices taking place on the property. Also, all dwellings outside the UGB are required to sign and record a farm and forest waiver. The farm and forest waivers state that they are a "*consent to those customarily (commonly) accepted farm or forestry practices within the vicinity of the hereinafter described property to the extent that the farm or forestry practice is allowed by County and State laws...which are intended to protect farm and forestry uses.*"

Mr. Junkin references two letters included in the application. One is from an owner of a property on SW Brighton Lane located approximately 250' southwest of the subject property, and the other is from a tenant on his property. Both are in support of the plan amendment request. The letters express concern about health risks and water contamination from the use of pesticides and herbicides on the property. Additional findings about pesticide application are found on pages 16 and 17 of this report.

The use of pesticides, herbicides, logging equipment and farm equipment in the rural area is common and to be expected; therefore, the farm and forest waiver is required in order to protect those uses from being objected to by neighbors. Washington County's rural area is a mix of farm and forest uses and residences with some areas having many residences in close proximity to farm and/or forest uses. For example, along Highway 219 there are many homes within close proximity or adjacent to farmland due to the wide variation of parcel sizes, the large number of residences and the high productivity of the soil. If agriculture and forestry practices in Washington

County were prohibited whenever they were near residences, there would be few parcels left in the county to use for those purposes. Staff is not aware of any farm or forest activities in Washington County being suspended due to complaints of nearby residents.

A key factor in determining if a property has been committed to uses other than farm and forest is to demonstrate that the adjacent properties are the reason why the commitment has occurred. It is not sufficient to argue that commonly accepted farm practices (such as spraying) would negatively affect farm uses when there are examples throughout the county of residences and farm operations coexisting. Farm and forest waivers are required specifically to address these potential conflicts.

The applicant uses farm and forest waiver insufficiency and pesticide use as factors to support their assertion that the property has been committed to uses other than farm and forest by adjacent properties. No evidence has been provided showing there are activities occurring or development present on adjacent lands that directly affect the subject parcel's ability to be used for farming or forest propagation. To the contrary, the owners of eleven parcels, including five adjacent to the property, have stated they are not opposed to continuing farming on the property, including pesticide spraying and the use of farm equipment on their shared roads.

(d) The other relevant factors set forth in OAR 660-004-0028(6).

Staff: The applicant did not provide further analysis for this section.

- (3) *Whether uses or activities allowed by an applicable goal are impracticable as that term is used in ORS 197.732(1)(b), in Goal 2, Part II(b), and in this rule shall be determined through consideration of factors set forth in this rule. Compliance with this rule shall constitute compliance with the requirements of Goal 2, Part II. 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;*

Applicant: See pages 7 – 9 of the letter dated February 10, 2010 by John Junkin.

Staff: LUBA has ruled that the "*impracticability standard is a demanding one*"³ for proving committed exceptions. The applicant's reasons for the impracticability of farm use do not fully examine the relationship between the adjacent uses and the subject property. The applicant must show that farm use is impracticable because of impacts from adjacent uses, but the applicant focuses on the physical characteristics of the site that are not impacted by the adjacent uses.

Mr. Junkin's letter and supporting exhibits address five farm uses which the applicant finds to be impracticable on the site: propagation of Christmas trees, field crops such as hay and wheat, orchards, grapes and animal husbandry. Lack of commercial irrigation rights, steep slopes, potential pesticide drift to the nearby residences and waterway, a unique microclimate and the size of the property are the common reasons stated throughout the application for the alleged impracticability. Findings addressing each of these topics are as follows:

³ Sandgren v. Clackamas County, 29 Or LUBA 454 (1995)

Parcel size

When evaluating the relevance of parcel size, it is important to note the fact that it is not uncommon for farmers to lease or own a number of parcels of varying acreage. Parcel size could be relevant if the configuration or acreage makes maneuvering machinery or accessing the site impracticable; however, this parcel's size and configuration does not prohibit it from being utilized as farm or forest land.

According to the 2007 United States Department of Agriculture (USDA) survey of Washington County agriculture, the average farm⁴ was 73 acres. Therefore, there will be many operations that are smaller as well as larger than the 58.2 acre subject property.

Policy 17, AF-20 District, of the Rural/Natural Resource Plan states that the AF-20 District properties in the southeast part of the county *"are limited for large-scale commercial farm or forest uses because of slope, parcelization and ownership patterns. There are approximately 41,582 acres, in 2,017 lots, owned by 1,691 different parties, affected by the AF-20 land use designation. These lots range from .01 acres to 265.6 acres in size, averaging 20.6 acres. In 1982, 1,075 of these lots were completely without improvements, whether houses or other structures."*

It also states: *"Respondents to a 1977 survey of "Hill Area" farmers conducted by the Washington County Planning Department represented farm operations ranging in size from 6 to 1200 acres. Typically, the operators of the smallest farms (less than 40 acres) owned most if not all of the land they farmed and that land was a contiguous piece of property. Operators of larger farm units commonly leased some of their land; in these cases, the farms were normally built of several non-contiguous blocks of land. In 1977, hill-area farmers were raising a diverse set of crops including filberts, cherries, wine grapes, grain, strawberries, vegetables and hay. These farmers were able to identify both the advantages and disadvantages to farming in the foothills of the county."*

The applicant provided letters from two farmers stating that the property is not capable of being profitable because of its size. The applicant does not address how this property is different from the many farm operations in Washington County smaller than 58 acres that have been managed successfully despite their size. Also, there is no discussion regarding the possibility of it being part of a larger scale operation that includes other parcels. Finally, the letters do not consider the fact that a single property does not have to provide the sole source of income for the owner or renter. As a result, staff does not agree with the applicant's argument that parcel size affects the practicability of farming this property.

Steep slopes

The application frequently states that the site is too steep for agriculture. As stated, around 57% of the site has a slope between 7 and 11.9%. The property measures approximately 2,800 feet in length from SW Brighton Lane to SW Larkins Mill Road. The steepest portion is located near the eastern property line.

In his comments to staff dated March 17, 2010, Jim Johnson, Land Use and Water Planning Coordinator for the Oregon Department of Agriculture (ODA) responded to these claims by stating:

⁴ The USDA Census defines a farm as an operation that grosses more than \$1,000.00 annually. Staff notes for the purposes of this survey, an operation can include numerous parcels. The USDA evaluated farms having up to three operators for this census.

“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 are 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.”

As previously stated, the soil classes for this property are considered high value due to their productivity classes. The applicant did not compare this property to others in the county with a similar slope in order to provide evidence that the slopes are too steep to be farmed. For example, the two parcels west of the property on SW Brighton Lane are planted in wheat. Their slopes are similar to the slope found on the majority of the subject property. Finally, based upon past uses of the property, staff finds that it is not too steep for continued Christmas tree propagation.

Staff finds that based upon soil classification and crop potential, the property is not too steep to be farmed.

Microclimate

As previously mentioned in this report, climate related factors are taken into account when the agricultural capability rating of a soil is determined. In the applicant's initial submittal, they provided the results of a professional soil survey concluding that the SSWC's classification of the soil is correct; therefore, it can be deduced that the property experiences a climate similar to many other locations with the same soil classification.

The SSWC describes the climate where Laurelwood soil series are found as follows:

Average annual precipitation is 45 to 60 inches, average annual air temperature is 51 to 53 degrees Fahrenheit, and the frost-free period is 165 to 210 days.

Of course, not every site consisting of Laurelwood series soil will experience identical climate conditions on a day-to-day basis, but it is expected that it will fall within the temperature and rainfall ranges described above. The applicant includes a letter from the previous owner, John Regan, who states that despite over twenty years of use as a commercial operation the property is too dry and hot for Christmas trees. However, evidence that the site consistently receives less rainfall, has a consistently higher average annual air temperature or that the site has significantly more frost-free days than other sites comprised of this soil series has not been provided. As previously mentioned, the applicant conducted an independent soil survey that concurred with the SSWC soil data for the property.

Policy 17 of the Rural/Natural Resource Plan provides the following description about the aspects of the beneficial climate of AF-20 lands:

Many respondents also listed the benefits of hill area farming that they felt were not available on the valley floor; these advantages included: longer frost-free growing period, more exposure to sunlight; earlier maturation of crops, excellent soil drainage (beneficial for filberts) and production of better flavored fruit. The elevation of the hill area lands (above 350') was noted by several farmers as being very good for fruits, as well as necessary for a crop such as wine grapes. Information from the U.S. Soil Conservation Service concerning soils found in the proposed AF-20 areas confirm what the hill-area farmers indicated: that a wide range of crops - from fruit to nut trees and berries to grain and timber – can be raised successfully above the 350' elevation.

Mr. Junkin's letter describes the site's climate as unique. He states the high elevation and the full sun exposure on the east and south facing slopes make the soil impracticable for farm use. On page 10 of this report, staff discusses the suitability of the site for a vineyard due to these very conditions per ORS 195.300.

The applicant provides statements that discuss the presence of madrone trees as an indicator that the site experiences "*exceptional dryness*" in the summer and that the presence of this tree is "*atypical*" in this part of the county. The applicant did not state how many madrones are present, their locations or their approximate ages. The *Forest Health Fact Sheet* included in the application supports Mr. Junkin's assertion that the tree is more prevalent in Jackson, Josephine and Douglas Counties, and that the tree is usually found on warm sites with shallow, rocky soil. However, the fact sheet also states that the madrone "*grows from Southern California to Vancouver Island*" and "*in every county west of the Cascades*". Also, the Laurelwood soil series on the site is not shallow or rocky. Therefore, staff does not find credible the applicant's argument that the presence of madrones signifies a unique microclimate that is not suitable for farm or forestry uses.

The application claims that aerial pesticide application on the site is a health risk because the site experiences sudden high winds from the south and east. Aerial chemical applicators are required to be licensed by the State of Oregon, and are required to refrain from aerially applying chemicals when conditions are not favorable. More information on pesticide application is found below.

Pesticide Application

Pesticide application limitations are frequently mentioned in the applicant's submittal. The applicant gives the property's proximity to residences as a reason why farm and forest uses are impracticable. Mr. Ricks's letters mention stricter Environmental Protection Agency (EPA) and ODA buffer requirements as a hindrance for Christmas tree propagation. The two letters of support mentioned previously in this report cite pesticide use on farmland as a reason why they support the plan amendment request. In order to address these claims, staff spoke with ODA staff about pesticide regulations.

Jim Johnson of ODA addressed pesticide application in his letter to staff dated March 17, 2010. He states that the Mr. Ricks's references to buffers required for pesticide application apply in most cases to aerial application, not ground application. This fact is not clearly stated in Mr. Ricks's letter. Mr. Johnson's letter provides a more detailed analysis of the pesticides used for Christmas tree propagation listed by Mr. Ricks in his letter.

ODA verified that pesticide buffers are established by the EPA and are stated on each pesticide's label; therefore, the law for application is what is shown on the label. ODA enforces these buffers. ODA also said no increases to the buffers are proposed.

The vast majority of required buffers listed on pesticide labels apply to application near water sources, such as streams, lakes, marshes, commercial fish ponds, etc. ODA informed staff that there are no mandated buffers for occupied structures for the pesticides Mr. Ricks listed, except for MSR pesticide which requires a 100' buffer. ODA staff also stated that if there are any changes to required buffers for pesticide use near water sources, the EPA, not ODA, would establish them. ODA staff said they are not aware of any EPA measures to protect surrounding nonfarm land uses by setting a generalized 200' no-spray setback as Mr. Ricks asserts.

A comparison of buffers for aerial versus ground applied pesticide using information received from the ODA is shown below:

Pesticide	Aerial Application Buffer to Water Sources	Ground Application Buffer to Water Sources	Buffer to Occupied Structures
MSR	150'	100'	100'
Thionex	300'	100'	N/A
Brigade	150'	25'	N/A
Omite	75'	50'	N/A
Lorsban	300'	50'	N/A

The subject property is approximately 180 feet from the unnamed tributary of the Tualatin River located to the southeast. ODA verified that a landowner could choose a mix of aerial and ground application in order to satisfy the required buffers, and only a small portion of the extreme southeast corner of the site would require ground application. The applicant did not address why ground application, or a combination of aerial and ground application, is not an option.

Regarding pesticide drift, ODA stated that drift or overspray of any kind is not permitted by law in Oregon. This includes chemical drift from farms to residential properties and vice versa. It is important to note that the State of Oregon requires a license for aerial spraying of pesticides. Any application of certain pesticides on agricultural land also requires a license. Licensing is required to ensure that the applicator knows how to safely and correctly apply pesticides.

Throughout rural Washington County there are residences within close proximity of land being treated with pesticides. The recordation of farm and forest waivers, proper application and strict adherence to pesticides laws enables these two land uses to coexist. Also, it is possible that the site could be used in the future for organic farming which would eliminate the need for pesticide and herbicide use.

Based on these findings, staff does not find that the applicant's assertion that pesticide drift and buffer requirements preclude this property from being used for agriculture or forest use.

Irrigation

The property is located within the Chehalem Mountain Ground Water Limited Area which has strict limitations for water usage. The applicant and the authors of the letters submitted as exhibits cite the lack of water rights as a notable reason for why agricultural uses are impracticable on the property. While the regulations are limiting, there is some flexibility for water for agriculture uses. Staff contacted the District #18 Watermaster ("the Watermaster") from the Oregon Water Resources Department for more information.

There are exempt uses that do not require water rights approval from the Watermaster. Exempt uses are:

- 1) Stock (livestock) watering
- 2) Lawn or non-commercial garden watering of not more than ½ acre

- 3) Single or group domestic purposes for no more than 15,000 gallons per day
- 4) Single industrial or commercial purposes not exceeding 5,000 gallons per day
- 5) Down hole heat exchange uses

Uses that are not exempt must be granted water rights from the Watermaster. It is highly unlikely that permanent water rights would be granted for this property due to it being in a limited ground water area; however, applications are evaluated on a case-by-case basis.

If irrigation is needed or desired, a limited license for drip irrigation may be applied for. OAR 690-340-0030 allows for a limited license for commercial drip irrigation valid for a maximum of five years. The purpose of the limited license is to allow an operator to establish a crop that under normal conditions would not require further irrigation, which is a common practice for vineyards and orchards. A limited license in the Chehalem Mountain Ground Water Limited Area requires drip or equally efficient irrigation and is limited to no more than one acre foot per acre per irrigation season. These are also evaluated on a case-by-case basis.

If a limited license for irrigation is not an option, an operator could choose to grow crops that do not require irrigation, such as Christmas trees, pasture, hay or use the site for timber propagation. Per ORS 537.545, stock watering is an exempt use, meaning there is no maximum for water used for livestock consumption. The Watermaster noted that exempt uses, such as stock watering, do not require permits, but the use must not waste water and may be subject to regulation in times of water shortage.

The application includes letters from individuals who assert that the restrictions in this ground water limited area render farm uses impracticable. However, the applicant did not address farm uses that could be employed without irrigation similar to the wheat farm operations immediately west of the site on SW Brighton Lane. Also, this ground water limited area covers approximately 104 square miles, within which there are numerous farm and forest operations, all subject to the same restrictions. There is no evidence that this property has a unique situation pertaining to water limitations.

Finally, consideration must be given to uses that may not require irrigation, such as pastures, wheat, Christmas trees and timber propagation. The applicant has not proven that the lack of irrigation is a factor contributing to the site being impracticable for farm and forest uses.

Overall, staff finds that the applicant did not adequately provide evidence that the adjacent uses render farm uses impracticable on the property.

Additional findings relating to water usage are found on pages 25 through 29 of this report.

- (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).**

Applicant: See Exhibit 11 of the application.

Staff: As previously mentioned, there are three soil capability classes on this property—IIE-3, IIIE-2 and IVE-2. The SSWC lists timber as a use appropriate for each of those capability classes. It also states that the soils belong to woodland suitability group 2o2 which has *“high potential productivity and no serious limitations for management.”* This suitability group is best suited for Douglas Fir propagation.

Like the subject property, the adjacent properties have Laurelwood series soil and belong to woodland suitability group 2o2, which means they have high potential woodland productivity and no serious limitations for management. The majority of the adjacent parcels have a dense covering of evergreen trees, and although these sites are not managed for timber production, it is evidence that the subject property is capable of supporting timber growth because it is of the same soil capability class.

The summary provided by DLCD staff regarding the site’s timber capability reads:

“The forest productivity rating of the subject property is predominately cubic foot site class III, which has a range of 120-164 cf/ac/yr [cubic feet per acre per year]. A recent LUBA case ruled that ‘(r)ural land with a wood fiber productivity of over 80 cf/ac/yr is almost certainly suitable for commercial forest use, even if there are limiting factors⁵’.”

DLCD’s assessment of the productivity rating coincides with the SSWC *Woodland Management and Productivity* rating; therefore, staff concurs with their findings.

The applicant’s main argument for why timber propagation is impracticable is found in a letter dated January 29, 2010 from Jay Worley, Forester for Pihl Logging Company, Inc. Mr. Worley concludes that forestry use is impracticable on this property because of *“economic and social reasons.”*

Mr. Worley reiterates Mr. Ricks’s evaluation that there is root rot and soil disease on the site, and that the site must be cleared of trees, stumps and root systems to remedy these problems. He estimates the cost at around \$200,000.00 for this endeavor. Mr. Ricks states in his December 29, 2009 letter that *“these trees have not had any weed, insect or disease management in at least two years. Weed competition has reduced the tree[’]s color quality and growth vigor. Insects such as aphids and spider mites have caused permanent physical damage to these trees.”* While staff does not dispute Mr. Ricks’s evaluation of the site nor Mr. Worley’s cost estimation to return the site to its previous condition, poor management or the lack thereof and/or naturally occurring disease cycles do not permanently render a site impracticable for timber production or farm use.

Mr. Worley also asserts that the following factors render timber production impracticable: a history of seedling failure, the presence of deer, gophers and voles, competing plants, the presence of madrone trees and the negative impacts timber operations have on nearby residences.

History of Seedling Failure

Mr. Regan states in his letter dated January 28, 2010 that the first planting in 1984 failed, was replanted three times and took three years before the seedlings took hold. He stated the same problem happened again in the mid-1990s. He cites heat and lack of irrigation as factors. Mr. Regan owned the property from 1984 until 2008, continuously using the property as a Christmas tree operation. Intermittent difficulty establishing seedlings by a single operator over twenty-four

⁵ Just v. Linn County, LUBA No. 2009-068

years does not render a property with soil that is classified as having high potential for productivity impracticable for timber propagation.

It should also be noted that the SSWC rates the Laurelwood soil series on the property as having a seedling mortality rating of *slight*. The SSWC states:

Seedling mortality ratings indicate the degree that the soil affects expected mortality of planted seedlings when plant competition is not a limiting factor. The ratings are for seedlings from good planting stock that are properly planted during the proper period with sufficient moisture. A rating of "slight" indicates that the expected mortality of the planted seedlings is less than 25 percent; "moderate", 25 to 50 percent; and "severe", more than 50 percent.

Staff disagrees with the applicant's assertion that expected occurrences of seedling failure renders forest uses impracticable for this property.

Presence of Deer, Gophers and Voles and Competing Plants

According to the SSWC, the Laurelwood series soil found on the property belongs to wildlife group 3. The following are excerpts from the wildlife group 3 description in the SSWC:

This group of soils is in the fringe area of the valley, which is a transition from valley to forested hills. There is an almost equal mixture of open land and woodland. Wildlife populations are relatively stable in these habitats.

Wildlife species, both resident and seasonal, include black-tailed deer, Roosevelt elk, black bear, coyote, bobcat, raccoon, skunks, foxes, opossum, rabbits, squirrels, mice, and moles and gophers.

Mr. Worley states deer will forage on seedlings and gophers and voles would destroy root systems, and the cost to mitigate the damage would be high. Mr. Worley cites managing and mitigating scotch broom and other competing plants as a costly endeavor that plays a part in the impracticability of timber production. Staff notes that not only are these animals common to areas with Laurelwood series soils, many are present throughout both urban and rural areas of Washington County. Scotch broom and other invasive plants are also common throughout urban and rural areas of the county. Managing their presence and mitigating damages incurred by them is common practice for many homeowners, farmers and timber operations throughout the county. Therefore, staff disagrees with the assertion that invasive animals and plants permanently render farm and forest uses impracticable.

Presence of Madrone Trees

Staff has determined that the presence of madrone trees is not an indicator that farm and/or forest use is impracticable (see page 16 of this report).

Negative Impacts to Neighboring Residences

Mr. Worley states that public safety would be at risk if this property was used for timber propagation. He states the hard surface private roads (SW Brighton Lane and SW Larkins Mill Road) are too narrow and tightly curved, there are children and domestic pets in the area that could be harmed and the area is developed with large homes. It is not uncommon for farm and forestry machinery to use the same roads as residents. As previously mentioned in this report, farm and forest waivers have been recorded for each adjacent property with a dwelling and

several property owners have stated they are not opposed to the use of the roads by farm or logging equipment. Also, the presence of children, pets and large homes near timber operations is not unique to this property or others across the county.

Mr. Worley also cites noises from logging operations as having a negative impact on neighbors. He claims that early morning noise would be bothersome to neighbors and that people retaliate by interfering with production. Staff again finds that farm and forest waivers have been recorded to address the noise issue, and retaliation by neighbors does not impact the site's soil and true production capabilities.

As stated previously, many parcels that use SW Brighton Lane and SW Larkins Mill Road are forested. If or when these trees are harvested, log trucks and equipment would use the roads, and the nearby properties would experience the noise and other impacts of logging operations.

Mr. Worley cites pesticide drift from aerial spraying as being harmful to neighbors and nearby vineyards. The validity of this argument is addressed on pages 16 and 17 of this report.

Despite Mr. Worley's assertions, staff concludes that the applicant has not provided evidence that the adjacent residential uses would make timber production impracticable.

- (4) A conclusion that an exception area is irrevocably committed shall be supported by findings of fact which address all applicable factors of section (6) of this rule and by a statement of reasons explaining why the facts support the conclusion that uses allowed by the applicable goal are impracticable in the exception area.**
- (5) Findings of fact and a statement of reasons that land subject to an exception is irrevocably committed need not be prepared for each individual parcel in the exception area. Lands which are found to be irrevocably committed under this rule may include physically developed lands.**
- (6) Findings of fact for a committed exception shall address the following factors:**
 - (a) Existing adjacent uses;**
 - (b) Existing public facilities and services (water and sewer lines, etc.);**
 - (c) Parcel size and ownership patterns of the exception area and adjacent lands:**
 - (A) Consideration of parcel size and ownership patterns under subsection (6)(c) of this rule shall include an analysis of how the existing development pattern came about and whether findings against the Goals were made at the time of partitioning or subdivision. 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. Resource and nonresource parcels created pursuant to the applicable goals shall not be used to justify a committed exception. For example, the**

presence of several parcels created for nonfarm dwellings or an intensive commercial agricultural operation under the provisions of an exclusive farm use zone cannot be used to justify a committed exception for land adjoining those parcels;

Applicant: See pages 13 – 14 of Part II of the application.

Staff: The subject property and the adjacent parcels to the north were originally part of a 235 acre parcel designated as AF-10 by the 1973 Comprehensive Framework Plan. This area received approval in 1978 for ten buildable lots. This approval occurred before the county began applying the Statewide Planning Goals to land divisions on October 30, 1979. Therefore, the subject property and those adjacent properties were created without application of the Statewide Planning Goals. The adjacent properties to the south appear today as they did on a county tax map dated July 13, 1978, which indicates that they were also created without application of the Statewide Planning Goals.

Pursuant to 6(c)(A) above, land divisions on the properties adjacent to the north and south “do not in themselves demonstrate irrevocable commitment of the exception area.” This means that the mere existence of those parcels and their parcelization pattern may not be used for evidence that the subject property is committed to something other than agricultural or forestry use. Again, the applicant must provide evidence that actual activities or uses on the surrounding properties render the subject property committed to nonresource uses, not that the parcelization of the area leads to the subject property being committed. The applicant did not specifically address this subsection in the application narrative.

- (B) Existing parcel sizes and contiguous ownerships shall be considered together in relation to the land's actual use. For example, several contiguous undeveloped parcels (including parcels separated only by a road or highway) under one ownership shall be considered as one farm or forest operation. The mere fact that small parcels exist does not in itself constitute irrevocable commitment. Small parcels in separate ownerships are more likely to be irrevocably committed if the parcels are developed, clustered in a large group or clustered around a road designed to serve these parcels. Small parcels in separate ownerships are not likely to be irrevocably committed if they stand alone amidst larger farm or forest operations, or are buffered from such operations.**

Applicant: See pages 12 – 14 of Part II of the application.

Staff: As stated in (B) above, the mere fact that smaller parcels exist does not in itself constitute irrevocable commitment. LUBA has ruled that a county must provide an explanation for why residential uses that commit one resource property to residential use will not result in that same residential use committing other resource lands in the area⁶. The applicant did not address this subsection in the application narrative and has not provided evidence to justify a committed exception to Statewide Planning Goal 3 under this standard.

- (d) Neighborhood and regional characteristics;**

Applicant: See pages 12 – 14 of Part II of the application.

⁶ Gordon v. Polk County, 54 Or LUBA 351

Staff: The county evaluated all rural lands before adopting the 1984 Rural/Natural Resource Plan. Lands that qualified for exceptions were designated as non-resource lands, and those that did not qualify, such as the subject property and adjacent parcels, were designated as resource lands. Those designations remain in place today.

Numerous parcels of approximately 10 acres in size are adjacent to and near the subject property. Most of the parcels were created when they were previously designated AF-10. When the Rural/Natural Resource Plan was adopted in 1984, the county determined that those properties did not qualify for an agricultural (Goal 3) or forest (Goal 4) exception, so the AF-10 designation was changed to AF-20, an exclusive farm use designation. Those lands that were found to meet the criteria for an exception to Goals 3 and 4 were grouped into Exception Areas. The property would have been granted an exception in 1984 if the county could show that it qualified for an exception at that time.

The applicant did not address how the area or its uses have changed since 1984 to show that subject the property is now irrevocably committed to something other than agricultural or forestry use. Additional findings are also found under Policy 17.

- (e) Natural or man-made features or other impediments separating the exception area from adjacent resource land. Such features or impediments include but are not limited to roads, watercourses, utility lines, easements, or rights-of-way that effectively impede practicable resource use of all or part of the exception area;**

Staff: There are no natural or man-made features on the site that would prohibit using the site for agriculture or forest use.

- (f) Physical development according to OAR 660-004-0025; and**

Staff: There are no physical developments on the site.

- (g) Other relevant factors.**

- (7) The evidence submitted to support any committed exception shall, at a minimum, include a current map, or aerial photograph which shows the exception area and adjoining lands, and any other means needed to convey information about the factors set forth in this rule. For example, a local government may use tables, charts, summaries, or narratives to supplement the maps or photos. The applicable factors set forth in section (6) of this rule shall be shown on the map or aerial photograph.**
- (8) The requirement for a map or aerial photograph in section (7) of this rule only applies to the following committed exceptions:**
 - (a) Those adopted or amended as required by a Continuance Order dated after the effective date of section (7) of this rule; and**
 - (b) Those adopted or amended after the effective date of section (7) of this rule by a jurisdiction with an acknowledged comprehensive plan and land use regulations.**

Staff: To address (7) above, the applicant submitted current maps, aerial photographs and a narrative for this application. The staff report includes current and historic maps, an aerial photograph and written findings to address the applicant's request.

* * *

B. Compliance with the Rural/Natural Resource Plan Policies

1. Policy 1, the Planning Process, states:

It is the policy of Washington County to establish an on-going Planning Program which is a responsive legal framework for Comprehensive Planning, Community Development and Resource Conservation which accommodates changes and growth in the physical, economic and social environment, in response to the needs of the county's citizens. It is the policy of Washington County to provide the opportunity for a landowner or his/her agent to initiate quasi-judicial amendments to the Comprehensive Plan on a semi-annual basis. In addition, the Board of Commissioners, the Planning Director, or the Planning Commission may initiate the consideration of quasi-judicial map amendments at any time deemed necessary.

Applicable Implementing Strategies:

p. Require that plan map amendments meet the following criteria:

As used in the following sections a mistake means a clerical error, or a mistake in the current designation such that it probably would not have been placed on the property had the error been brought to the attention of the Board during the adoption process.

3. Amendments from EFU, EFC or Agriculture and Forestry-20 to Agriculture and Forestry-10 or Agriculture and Forestry-5 shall be based upon:

- A. A mistake (clerical error) in this 1983 plan; or**
- B. An Exception to the applicable LCDC Goals through the LCDC Goal 2 Exception Process (OAR Chapter 660, Division 04).**
- C. For all amendments there shall be a requirement that the applicant will record in the deed records a restrictive covenant that the occupant of the property will not object to commonly accepted farm and forest practices which may occur on adjacent lands.**

Applicant: See page 12 of Part I of the application.

Staff: The applicant is requesting an irrevocably committed exception and does not allege that there was a clerical error in the 1984 plan. Staff findings for OAR Chapter 660, Division 4 are found on pages 7 through 24 of this report. Approved plan amendments from AF-20 to AF-10 are subject to the filing of a restrictive covenant in accordance with implementing strategy p.3.C.

2. Policy 2, Citizen Involvement, states:

It is the policy of Washington County to encourage citizen participation in all phases of the planning process and to provide opportunities for continuing involvement and effective communication between citizens and their county government.

Staff: A quasi-judicial plan amendment such as this must be considered via a Type III public hearing review procedure. In accordance with Section 204-4 of the Community Development Code (CDC), notice of the Planning Commission and Board of Commissioners public hearings on this application was sent to all property owners within 1,000 feet of the subject property. This notice was sent at least 20 days prior to the first hearing (mailed December 31, 2009). Additionally, the county placed a legal notice of the hearing in *The Hillsboro Argus*, a newspaper of general circulation, at least ten days prior to the first hearing date (published January 8, 2010). As required by CDC Section 204-1.4, the applicant posted a sign on the subject property on December 19, 2009, which was within 28 days of the December 4, 2009 acceptance date. A copy of the plan amendment application was mailed to Citizen Participation Organization (CPO) 10 on December 4, 2009. Finally, the staff report was available to interested parties seven days prior to the hearing as required by CDC Section 203-6.2. Staff finds these efforts satisfy the requirements of Policy 2.

These findings for Policy 2 also pertain to Statewide Planning Goal 1, Citizen Involvement.

3. Policy 6, Water Resources, states:

It is the policy of Washington County to maintain or improve surface and ground water quality and quantity.

Applicant: See pages 13 – 16 of Part I of the application.

Staff: In the case of plan amendments, staff interprets Policy 6 to mean that, over time, development activities in Washington County should not negatively affect the quantity or quality of surface water or groundwater. The thrust of the policy is to assure that development will have a positive or neutral effect over an extended period of time, rather than being concerned with what quantity or quality of water is present at a particular point in time. Therefore, evidence of consistency with this policy should include, if possible, assessments of groundwater quantity and quality reflected over a period of time.

Opposition testimony can be rebutted by an applicant by reviewing well logs and having an “expert” such as a professional geologist or hydrologist review well logs and opposition testimony and provide an opinion on the groundwater situation. Expert testimony that draws its findings primarily from evidence in the well reports, however, can be refuted by new evidence beyond that which is contained in the well reports. Recent measurements of water depth in existing wells are probably the best new evidence that can be used to determine what the present groundwater quantity trend is in a plan amendment area. The present well water depth can be compared to the measured depth at the time the well was drilled to determine how groundwater quantity trends are affecting existing wells.

Throughout the applicant’s submittal, there are many references to irrigation limitations and the possibility of waterway and groundwater contamination due to pesticide use. Exhibits 9 and 13 of the application address Policy 6 specifically.

Applicable Implementing Strategies:

The County will:

- a. Strive to ensure adequate water supplies for all uses by:**

- 1. Encouraging water conservation programs by water users and purveyors;**

2. **Reviewing and revising existing development regulations where necessary or limiting the location or operation of new wells as a condition of development approval, considering advice and/or recommendations received from the State Water Resources Department;**
3. **Coordinating with State and Federal agencies in evaluating and monitoring ground water supplies; and**
4. **Complying with the May 17, 1974 Order of the State Engineer establishing and setting forth provisions for the Cooper Mountain-Bull Mountain Critical Ground Water Area.**
5. **Requiring applicants for quasi-judicial Plan Map Amendments to provide well reports (well logs) filed with the Water Master for all Public Lands Survey (township and range system) sections within one-half (1/2) mile of the subject site and provide an analysis of whether ground water quality and quantity within the area will be maintained or improved. The analysis should include well yields, well depth, year drilled or other data as may be required to demonstrate compliance with this policy.**

Well logs are not required for quasi-judicial plan amendments when the designation change will not result in an increase in density (i.e. EFU to EFC plan amendments).

Staff The property is located within the Chehalem Mountain Ground Water Limited Area. The Chehalem Mountain Ground Water Limited Area is subject to certain restrictions which are enforced by the Oregon Water Resources Department District #18 Watermaster. Restrictions include limiting single or group domestic purposes to no more than 15,000 gallons per day and a limit for lawn or non-commercial watering to not more than one-half of an acre. Residences are granted one well by right; however, there is no guarantee relative to the level of water output. Permits for commercial irrigation for farm use may be issued by the Watermaster; however, they are reviewed on a case-by-case basis and are not guaranteed.

As required, the applicant submitted a well log summary for all tax map sections within ½ mile of the subject property. A copy of the well log summary table is shown in Table 1 on page 27 of this report. Individual well logs are contained in the case file. Staff's review of the 57 well logs submitted by the applicant reveal 44 new wells were permitted, three wells were deepened and three wells were abandoned.

TABLE 1
Tabulated OWRD Well Log Information

Location	Time Period	Number of Wells*	Average Static Water Level	Average Withdrawal Rate (gpm)	Average Groundwater Withdrawal Depth
T2S R3W S2	1970-1980	11	184	25	302
	1981-1991	13	196	22	304
	1992-1998	6	181	45	368
	2003-Present	6	262	33	388
T2S R3W S3	1961	1	123	10	203
	1970-1980	1	2	19	10
	1981-1991	3	413	17	600
	1992-1998	1	365	50	560
	2003-Present	3	335	41	490
TS1 R3W S35	1970-1980	0	N/A	N/A	N/A
	1981-1991	1	106	51	205
	1992-1998	5	125	44	288
	2003-Present	0	N/A	N/A	N/A

* Not all well logs contain usable data, therefore the totals do not always add up.
 N/A = Not available.

Domestic wells are granted by right, but the performance level of the wells (i.e. yield and pressure) cannot be guaranteed. Also, the impact that new domestic wells may have on other wells in the area cannot be quantified at this time. There is no guarantee that the addition of five new wells will not negatively affect water quantity available for other users in the area. Finally, commercial irrigation water rights are reviewed on a case-by-case basis and approval is not guaranteed.

Water Usage

When discussing water usage in a ground water limited area, one must consider the fact that properties are evaluated individually when irrigation rights are requested. As previously mentioned, domestic wells and the other exempt uses listed for the Chehalem Mountain Ground Water Limited Area are allowed outright, but any usage above the exemption limitations, such as irrigation, requires a water right.

The applicant's representative, Veronica Smith, submitted two letters (see Exhibits 9 and 13 of the February 10, 2010 submittal) regarding water usage. Exhibit 9 discusses the difference in water usage between two years of drip irrigation for wine grapes and seven years of domestic use for five potential home sites. While staff does not question the applicant's estimations, staff does not agree with the conclusion that five permanent homes would have less impact on the aquifer than up to five years of drip irrigation in the long run. As previously mentioned, it may be possible for an operator to obtain a limited license for irrigation to establish crops. Staff argues that even five years of drip irrigation would use less water than five homes would over twenty or thirty years even with the domestic use regulations for this groundwater limited area.

Staff finds that farm uses that do not require irrigation and timber production would have the least amount of impact on wells in the area and the aquifer as a whole. Even short term irrigation allowed by a limited license or exempt stock watering would have less of an impact than five residences over an indeterminate amount of time; therefore, maintaining the AF-20 designation is the appropriate for the conservation and maintenance of the Chehalem Mountain Ground Water Limited Area.

b. Ensure adequate quality of surface water and groundwater by:

- 1. Promoting compliance with Department of Environmental Quality water quality standards;**
- 2. Promoting compliance with Department of Environmental Quality water quality standards;**
- 3. Cooperation with the Soil and Water Conservation District in the implementation of effective methods of controlling non-point sources of water pollution in agricultural areas;**
- 4. Cooperating with the Oregon State Department of Forestry in the implementation of effective methods of controlling non-point sources of water pollution in forest areas; and**
- 5. Ensuring that the establishment of subsurface sewage disposal systems (e.g., septic tanks) will not adversely affect ground water quality;**

Staff:

Septic Systems

In the event that this request is approved and dwellings are constructed on the property, the applicant would be required to obtain approval for on-site septic systems for the dwellings from the County Health Department prior to the issuance of a building permit for a new dwelling. A septic system permit will not be issued if the soils are inadequate to filter and clean wastewater. The standards for such permits comply with DEQ requirements, which are designed to ensure adequate quality of groundwater. Any grading activities (i.e. construction of a dwelling) must comply with CDC Sections 410 (Grading and Drainage), 426 (Erosion Control) and Chapter 14.12 (Grading) of the County Code.

Contamination from Pesticide Use

Detailed findings pertaining to potential pesticide application conflicts are found on pages 9 and 10 of this report. As stated, pesticide labels contain EPA approved buffers that must be maintained when applying pesticides either aerially or on the ground near water sources. These buffers are intended to protect waterways such as lakes, streams, wetland and commercial fish ponds from contamination. ODA staff asserts that overspray or drift is prohibited by state law; therefore, contamination of waterways in the area would be avoided when buffers are maintained and the applicator has been licensed by the State, as required.

Staff finds that pesticide use for farm and forest activities would not pose a danger to waterways in the area if all applicable federal and state laws are followed.

Staff finds the criteria of Implementing Strategy 6.b. can be satisfied.

- c. Protect and maintain natural stream channels wherever possible, with an emphasis on non-structural controls when modifications are necessary.**
- d. Limit the alteration of natural vegetation in riparian zones and in locations identified as significant water areas and wetlands.**

- e. Encourage property owners with land which qualifies as "designated riparian land" and defined by the 1981 Riparian Habitat Act to apply for exemption of that land from *ad valorem* taxation.**

Staff An unnamed tributary of the Tualatin River is located east of the site's eastern property line. While the tributary is not located on the subject property, a delineation of the drainageway and an inventory of wetlands may be required at the time of development to ensure that drainage and sensitive areas are not negatively affected. Compliance with Sections 421 (Flood Plain and Drainage Hazard Area Development) and 422 (Significant Natural Resources) will be required for any development; therefore, staff finds that these strategies can be satisfied.

- f. Support viable water resource projects which are proposed in the County upon review of their cost benefit analysis, alternatives, and environmental and social impacts.**

Staff There are no water resource projects proposed in the vicinity of this property.

- g. Coordinate land use actions regarding water projects with agencies and jurisdictions which may be impacted by such projects.**

Staff There are no water resource projects on the property or in the vicinity.

- h. Support measures to conserve vegetation in drainage basin watersheds as a means of controlling the release of water to downstream farm lands and urban areas.**

Staff The property is located within the Tualatin River basin watershed. As previously mentioned, any future development will be required to comply with CDC Sections 421 and 422 which address this policy, therefore, staff finds this strategy can be satisfied.

- i. Cooperate with the Division of State Lands, State of Oregon in their review and mitigation of projects that alter water areas and wetlands under their jurisdictions.**
- j. Consistent with the recommendations of the Department of Environmental Quality, State of Oregon, and Clean Water Services, support the expansion of stormwater sampling in the Tualatin Basin and consideration of proper planning and management measures for non-point source problems.**

Staff The unnamed tributary of the Tualatin River is a *Water Areas and Wetlands and Fish and Wildlife Habitat Area* recognized by the Division of State Lands. If development occurs on the property, it will be required to comply with CDC Section 422; therefore, staff finds this strategy can be satisfied.

4. Policy 8, Natural Hazards

It is the policy of Washington County to protect life and property from natural disasters and hazards.

Applicant: See page 16 of Part I of the application.

Staff: The southeast corner of the site is near an unnamed tributary of the Tualatin River that is a Significant Natural Resource Area (*Water Areas and Wetlands, Fish and Wildlife Habitat area*) and a drainage hazard area. If future investigation finds that there is a drainage hazard area or a Significant Natural Resource Area on the site, all new development will require compliance with Sections 421 and 422 of the CDC. Staff finds this policy can be satisfied.

5. Policy 10, Fish and Wildlife Habitat

It is the policy of Washington County to protect and enhance significant fish and wildlife habitat.

Applicable Implementing Strategies:

The County will:

- a. **Establish standards with which development in areas defined as significant fish and wildlife habitat must comply, so as to assure the conservation of this habitat.**
- b. **Allow activities customarily conducted in conjunction with commercial farm and forest practices in areas designated as Fish and Wildlife Areas.**
- c. **Rely upon the Oregon Department of Forestry, through its administration of the Oregon Forest Practice Rules, to mitigate adverse impacts of commercial forestry upon fish and wildlife.**
- d. **Limit the alteration of natural vegetation in riparian zones, and in locations identified as significant water areas and wetlands thereby preserving fish and wildlife habitat.**

Applicant: See page 17 of Part I of the application.

Staff: Section 422 (Significant Natural Resources) will apply if a delineation of the property shows that there are Significant Natural Resources on the site and alterations are proposed in the *Water Areas and Wetlands, Fish and Wildlife Habitat* area. Staff finds the criterion can be satisfied.

- e. **Implement the recommendations of the Oregon Department of Fish and Wildlife Habitat Protection Plan for Washington County and to mitigate the effects of development in the Big Game Range within the EFU, EFC and AF-20 land use designations.**

Applicant: See page 17 of Part I of the application.

Staff: The subject property is not located within the Big Game Range; therefore, the Habitat Protection Plan does not apply.

6. Policy 14, Plan Designations, states:

It is the policy of Washington County to maintain distinct comprehensive plan map designations for the area outside the County's urban growth boundaries, and to provide land use regulations to implement the designations.

Applicable Implementing Strategies:

The County will:

* * *

- a. **Designate Natural Resource lands in the following manner:**

* * *

2. Lands which were zoned Agriculture and Forest-5 or 10 by the 1973 Comprehensive Framework Plan and for which an LCDC Goal 2 Exception has not been provided shall be designated Agriculture and Forest-20.

Applicant: See page 20 of Part I of the application.

Staff: The subject property was designated as AF-10 by the 1973 Comprehensive Plan. When the 1984 Rural/Natural Resource Plan was adopted, the county found that it would not qualify for an exception; therefore, the property was designated as AF-20 in accordance with 14(a)(2) above.

An initial step in the preparation of the 1984 Rural/Natural Resource Plan examined which AF-10 and AF-5 lands met the state's new criteria for exception lands. Those lands retained the AF-10 or AF-5 designations and the remaining lands were designated AF-20. Through the process to develop the 1984 Plan, the subject property and adjacent and nearby properties were determined to not meet the exception criteria and were designated AF-20.

These findings for Policy 14 also pertain to Statewide Planning Goals 3, Agricultural Lands; and 4, Forest Lands.

7. Policy 17, Agriculture and Forest-20 Land, states:

It is the policy of Washington County to designate those lands as Agriculture and Forest-20 that were zoned AF-5 and AF-10 by the 1973 Comprehensive Framework Plan and for which a Goal 2 Exception has not been provided, and in doing so strive to retain small scale and part-time agriculture and forest production. Exceptions to this policy may be allowed pursuant to the provisions of LCDC Goal 2, OAR Chapter 660 Division 04, and the applicable plan amendment criteria in Policy 1.

Applicant: See pages 29 – 31 of Part I of the application.

Staff: The summary and findings for Policy 17 states:

The lands designated AF-20 generally are those above the 350-foot elevation which were zoned AF-5 and AF-10 in the 1973 Washington County Comprehensive Framework Plan. They are foothill lands, somewhat limited for large-scale farming or forestry because of slope, existing parcelization and ownership patterns, and lack of sufficient water for irrigation purposes.

The AF-20 District was created to address mixed agriculture and forest lands, lands that had not been designated as GFU-38 or FRC-38⁷ and were also found to not qualify as exception lands. During the development of the Rural/Natural Resource Plan in the early 1980s, the county determined that 1) it wasn't viable to place today's AF-20 lands in the EFU or EFC District because the county needed to respond to Washington County Ballot Measure 11⁸, and 2) retaining these lands in the AF-5 or AF-10 Districts would allow larger parcels in farm or forest use to be partitioned into smaller parcels with limited farm or forest potential and reduce the potential to increase the intensity of farm and forest uses in these areas.

During LCDC's acknowledgement process of the county's Rural/Natural Resource Plan in the early 1980's, the county twice proposed to take an exception to Statewide Planning Goals 3 and 4 for the AF-20 District. Each time, LCDC found that lands designated AF-20 were agricultural or

⁷ These earlier districts were replaced by the EFU and EFC Districts

⁸ BM 11 was adopted by county voters in 1980

forest lands and did not meet the criteria for an exception to Goals 3 and 4. With the adoption of Senate Bill 237 (the "Marginal Lands" bill) by the 1983 State Legislature, the county addressed the issues of the proposed AF-20 District by implementing the provisions of SB 327 in the AF-20 District. The modified AF-20 District has all the properties of the EFU District with the ability for existing parcels to qualify for a dwelling as a lot of record or as "Marginal Land". Modified standards for farm dwellings were also provided for in the AF-20 District.

On page 30 of Part I of the application, the applicant states "(i)f the [c]ounty were to make an assessment of current uses, parcel sizes and current uses of lands they surveyed in 1981, it would most likely show a marked chang[ed] in viable farm activities on these hillside lands." Staff notes that although the Rural/Natural Resource Plan was adopted in 1984, the intent of each district remains the same. Also, the soil classifications, the parcel sizes and uses of surrounding parcels have remained unchanged since the adoption of the plan. As such, it is unlikely that staff would recommend any differently if a similar review were conducted today.

The applicant mentions a need for analyzing current market conditions and actual use of properties in the area (i.e. in farm/forest use or not). The applicant also states that revisiting the area would "most likely show a marked chang[ed] in viable farm activities on these hillside lands." Staff notes that land need not be in active farm or forest use for those activities to be found practicable. While market trends continuously fluctuate, a plan designation to AF-10 would allow the property to be divided and developed with homes, taking it out of agricultural use permanently.

Sections of Policy 17 (AF-20 District) that describe the AF-20 District are provided below. Staff continues to find the subject property best fits the AF-20 District rather than the AF-10 District. A complete copy of Policy 17 is included in your meeting materials.

"The lands designated AF-20 generally are those above the 350-foot elevation which were zoned AF-5 and AF-10 in the 1973 Washington County Comprehensive Framework Plan. They are foothill lands, somewhat limited for large-scale farming or forestry because of slope, existing parcelization and ownership patterns, and lack of sufficient water for irrigation purposes.

"The bulk of AF-20 lands are found in the southeast portion of the County's Rural/Natural Resource planning area, in the Chehalem Mountains. Other large blocks of AF-20 parcels are located in the foothills which rise just to the northwest of Forest Grove; the foothills running to the north of and between Banks and North Plains; and just outside the Regional Urban Growth Boundary between Farmington and Scholls Ferry Roads on the west side of Cooper Mountain. The southeast foothill lands are limited for large-scale commercial farm or forest uses because of slope, parcelization and ownership patterns. There are approximately 41,582 acres, in 2,017 lots, owned by 1,691 different parties, affected by the AF-20 land use designation. These lots range from .01 acres to 265.6 acres in size, averaging 20.6 acres. In 1982, 1,075 of these lots were completely without improvements, whether houses or other structures.

"Respondents to a 1977 survey of "Hill Area" farmers conducted by the Washington County Planning Department represented farm operators ranging in size from 6 to 1200 acres. Typically, the operators of the smallest farms (less than 40 acres) owned most if not all the land they farmed and that land was a contiguous piece of property. Operators of larger farm units commonly leased some of their land; in these cases, the farms were normally built of several non-contiguous blocks of land. In 1977, hill-area farmers were raising a diverse set of crops including filberts, cherries, wine grapes, grain, strawberries, vegetables, prunes and hay. These farmers were able to identify both advantages and disadvantages to farming in the foothills areas of the County.

"Disadvantages cited most frequently were soil erosion, slopes occasionally too steep to safely or economically cultivate or harvest using machines, lack of water for irrigation, odd-sized fields and irregular topography. Many respondents also listed benefits of hill area farming that they felt were not

available on the valley floor; these advantages included: longer frost-free growing period, more exposure to sunlight, easier maturation of crops, excellent soil drainage (beneficial for filberts) and production of better flavored fruit. The elevation of the hill area lands (above 350') was noted by several farmers as being very good for fruits, as well as necessary for a crop such as wine grapes. Information from the U.S. Soil Conservation Service concerning soils found in the proposed AF-20 areas confirm what the hill-area farmers indicated: that a wide range of crops - from fruit and nut trees and berries to grain and timber - can be raised successfully on the lands above the 350' elevation. Details of the soil types occurring on the AF-20 lands and the crops for which the soils are best suited are presented in the County's Resource Document.

"Despite the variety of farm crops and quality of foothill soils, the fact remains that the acreage required to produce these crops can be a crucial factor in making farming economically feasible on these foothill areas of mixed agriculture and forest uses. Information gathered by the Oregon State University Extension Service provides some insight into this discussion. Generally, crops with a low value per acre, such as wheat, require more acreage to be profitable than do intensive agricultural activities such as ornamental horticulture.

"The Agriculture and Forestry-20 Plan Designation recognizes the unique character of the mixed farm and forest area to which it has been applied and protects the viability of farm and forest uses in conformance with LCDC Goals 3 and 4. The AF-20 Land Use District has all of the properties of an Exclusive Farm Use District, with the ability for lands within this District to apply through a quasi-judicial land use process to qualify as Marginal Land under the provisions of Senate Bill 237."

8. Policy 18, Rural Lands, states:

It is the policy of Washington County to recognize existing development and provide lands which allow rural development in areas which are developed and/or committed to development of a rural character.

Applicant: See page 32 of Part II of the application.

Staff: The property was designated AF-10 by the 1973 Comprehensive Framework Plan, but did not qualify for a developed or committed Goal 2 exception during the process to adopt the 1984 Rural/Natural Resource Plan. Consequently, the site was designated AF-20, consistent with Policies 14 and 17. Because the requested AF-10 designation is not a resource designation, it is necessary to take an exception to Statewide Planning Goal 3. As a result, it is necessary to address the exception provisions of OAR 660-004-0028. Staff's findings are on pages 8 through 24 of this report.

(These findings also pertain to Statewide Planning Goal 2, Land Use Planning.)

9. Policy 19, Rural Residential Development, states:

It is the policy of Washington County to allow rural housing in rural areas.

Applicant: See page 33 of Part II of the application.

Staff: The applicant is requesting an AF-10 designation which requires an exception to Goal 3. The AF-10 District has a ten acre minimum lot size and allows one dwelling per lot. Findings relating to the exception are located in the OAR 660-004-0028 findings on pages 8 through 24 of this report.

10. Policy 22, Public Facilities and Services, states:

It is the policy of Washington County to provide public facilities and service in the Rural/Natural Resource Area in a coordinated manner, at levels which support rural type development, are efficient and cost effective, and help maintain public health and safety.

Applicable Implementing Strategy:

a. Review the adequacy of the following public services and facilities in conjunction with new development.

1. Schools

2. Fire and Police Protection

Applicant: See pages 12-13 of the application.

Staff: Copies of statements of service availability from three service providers to the site are included in the applicant's submittal. These statements are from the Hillsboro School District, Washington County Fire District #2 and the Washington County Sheriff's Office. The application includes a service analysis for the school district, describing present enrollments and capacity of the district's schools that serve the site, an analysis for the fire district, describing station location, equipment availability and response times, and an analysis for the Sheriff's Office, describing adequacy of service levels.

The county is responsible under Implementing Strategy a. of Policy 22 for reviewing the adequacy of public facilities and services in conjunction with new development. The hearings officer for LCDC found in the 1988 Enforcement Order proceedings that *"(T)he County must have evidence in the record showing that the service provider is accurate in its assessment."* Staff interprets this to refer to a provider's assessment that an adequate or inadequate level of service can be provided. Without the above-described statements and analyses, staff could not conclude that all the affected service providers in the area can provide an adequate level of service to development that may occur on the subject property under the AF-10 designation, should the proposed plan amendment be approved.

Information obtained from the Hillsboro School District shows the site is located within the following school attendance areas: Farmington View Elementary School, South Meadows Middle School and Hillsboro High School. The school district noted that Farmington View Elementary is approximately three miles from the subject property, South Meadows Middle School is approximately 9 miles and Hillsboro High School is approximately 5 miles from the site. The school district states there is sufficient enrollment capacity in each school.

The site is within the service area of the Washington County Fire District #2 (WCFD #2). The applicant provided a service provider letter completed by WCFD #2, which states that the nearest fire station is six (6) miles from the property, the average response time to that area is twelve (12) minutes and there are three (3) personnel available for an initial attack on fire at the subject property. The Fire Chief also states that the "(a)ccess road off Larkins Mill will need to be upgraded" and there would be "...poor response time during snow or ice conditions." Staff notes that the comments provided by WCFD #2 are in response to there being five (5) dwellings on the property. For a plan amendment application, the applicant need not show how the proposal would meet WCFD #2's standards for access roadways because that would be done at the time of development review. The applicant need only show that adequate service can be provided to the subject property.

The Washington County Sheriff's Office has reviewed the request and has determined that its service level is adequate for emergency calls only, which is consistent with the level of service provided to all rural areas.

Based on these statements and analyses, staff finds that all the affected providers in the area have the ability to provide an adequate level of services to the subject property if the proposed plan amendment is approved. Again, WCFD #2 comments would be addressed at the time of development review. As a result, staff finds that this request complies with Policy 22.

These findings for Policy 22 also pertain to Statewide Planning Goal 11.

11. Policy 23, Transportation, states:

It is the policy of Washington County to regulate the existing transportation system and to provide for the future transportation needs of the County through the development of a Transportation Plan as an Element of the Comprehensive Plan.

Staff: See Attachment "A" of this report.

D. Washington County Transportation Plan

Applicant: See pages 13 - 17 of the application.

Staff: Findings pertaining to the County Transportation Plan and the Oregon Transportation Planning Rule are in Attachment A to this staff report, the Transportation Report for Casefile No. 09-360-PA.

These findings also pertain to Statewide Planning Goal 12, Transportation.

E. Washington County Community Development Code

1. Article III, Land Use Districts:

Section 344 Agriculture and Forest District (AF-20)

344-1 Intent and Purpose

The intent of the Exclusive Agriculture and Forest AF-20 District is to provide an exclusive farm use zone within the County which recognizes that certain lands therein may be marginal.

The purpose of the District is to allow EFU uses and parcels, and through the provisions of Section 425, to provide a process and criteria for identifying marginal lands within the District. In addition, Section 344-8 provides for special uses for lands so identified.

This AF-20 District is provided to meet Oregon statutory and administrative rule requirements.

Section 346 Agriculture and Forest District (AF-10)

346-1 Intent and Purpose

The AF-10 District is intended to retain an area's rural character and conserve the natural resources while providing for rural residential use in areas so designated by the Comprehensive Plan.

The purpose of this agricultural and forestry district is to promote agricultural and forest uses on small parcels in the rural area, while recognizing the need to retain the character and economic viability of agricultural and forest lands, as well as recognizing that existing parcelization and diverse ownerships and uses exist within the farm and forest area. Residents of rural residential tracts shall recognize that they will be subject to normal and accepted farming and forestry practices.

This District is appropriate in rural lands with steep topographic characteristics where there are limited public facilities and services.

Applicant: See pages 9 and 10 of Part II of the application.

Staff: Staff concluded that under OAR 660-004-0028, the applicant has not demonstrated that the site is irrevocably committed to a nonresource use; therefore, staff finds that the existing AF-20 designation is the appropriate designation.

These findings for the Community Development Code also pertain to Statewide Planning Goals 3 and 4.

Section 421 Flood Plain and Drainage Hazard Area Development

Staff: As previously mentioned, an unnamed tributary of the Tualatin River is located east of the eastern property line of the site and is a drainage hazard area. Delineation of any drainage hazard area pursuant to the requirements set forth in Section 421 may be required before land use approval for future development should this plan amendment be approved. Staff finds that the criteria set forth in Section 421 can likely be satisfied through a future development review process.

Section 422 Significant Natural Resources

Staff: The Rural/Natural Resource Plan designates the unnamed tributary of the Tualatin River as a *Water Areas, Wetlands and Fish and Wildlife Habitat* area. Delineation of the area may be required pursuant to the requirements of Section 422 prior to development on the site should this plan amendment be approved. Any disturbances within the significant natural resource area must adhere to the requirements of Section 422, and staff finds that the requirements can likely be satisfied through a future development review process.

VIII. SUMMARY AND CONCLUSIONS

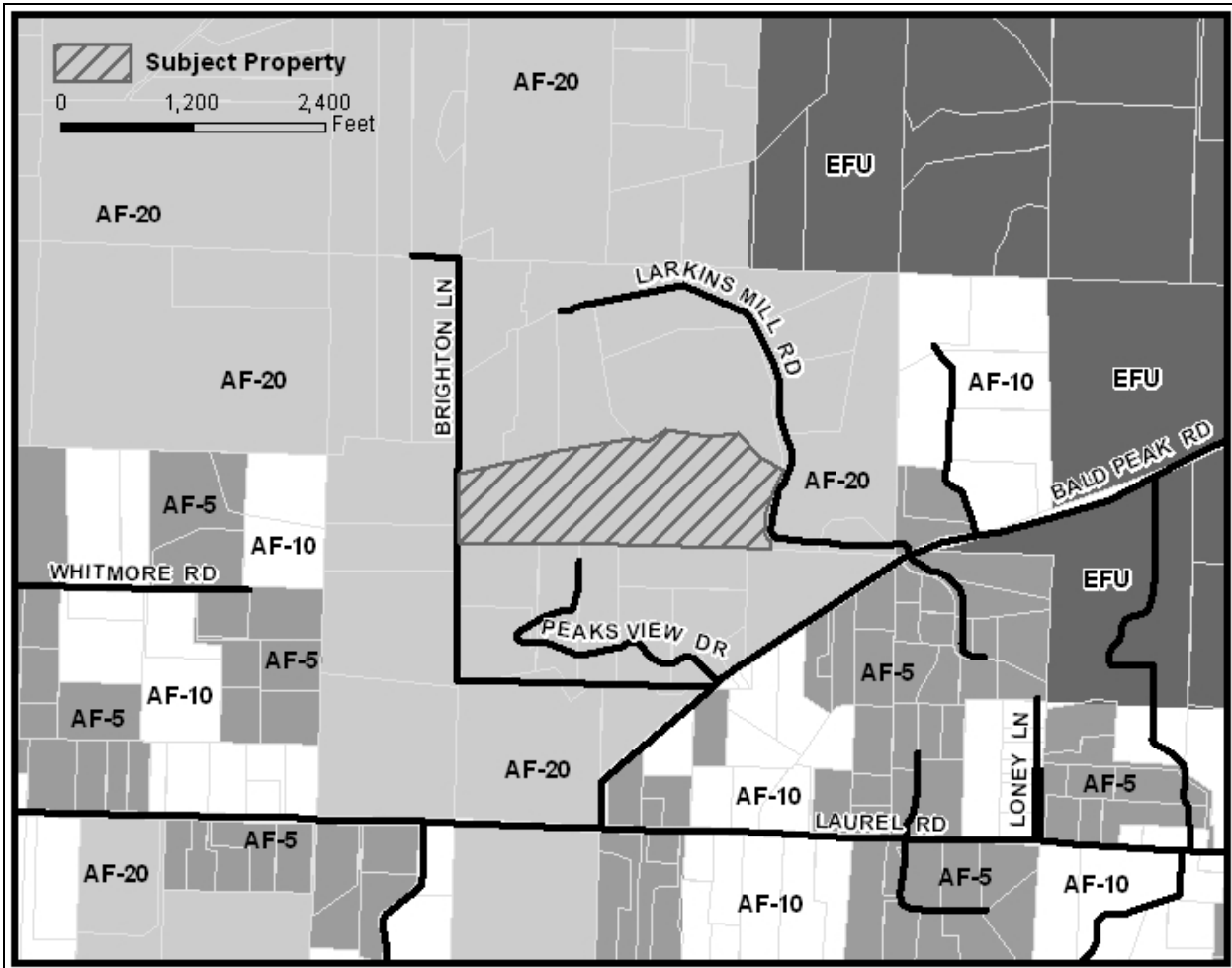
The Rural/Natural Resource Plan Element intends that exceptions to the Statewide Planning Goals be allowed when:

- (1) the subject property meets the criteria for an exception under OAR 660, Division 4; and
- (2) the proposed change from AF-20 to AF-10 conforms with applicable policies and strategies of the Rural/Natural Resource Plan and the Transportation Plan.

Staff found the applicant did not provide evidence to show that the proposal complies with the requirements for an irrevocably committed exception to Goal 3.

IX. PROPERTY & AREA INFORMATION

A. Plan Designations



B. 2008 Aerial Photograph

