

Attachment C

*October 25, 2021, Notice of Appeal
by Joy Brotherton and Janice McConahay*



Clatsop County

Community Development
800 Exchange Street, Suite 100
Astoria, Oregon 97103

Phone 503 325-8611 Fax 503 338-3606
comdev@co.clatsop.or.us www.co.clatsop.or.us

2425

NOTICE OF APPEAL

Attached is the "Procedure for Appeal" from the Clatsop County Land and Water Development and Use Code #20-03. Please read the attached information completely and follow the instructions. Also, note there is a fee that must accompany this form. If the fee is not included, the appeal is incomplete and cannot be considered. The form below is provided for your convenience.

Appellant Name: Joy Brotherton, Janice McConahay
Mail Address: 42045 Logger Ln
Phone: 503-803-7498

Email: jrb4@centurytel.net, jmcon59@gmail.com
City/State/Zip Astoria, OR 97103
Phone: _____

807180000700

Section 2.2200. Requirements of Notice of Appeal

1. An identification of the decision sought to be reviewed, including the date of decision:

File Number: #186-21-000563 Date of Decision: October 12, 2021

2. A statement of the standing of the person seeking review:

See attached statements.

3. The specific grounds relied upon for review (attach additional pages if necessary):

See attached documents and exhibits.

4. If de novo review or review by additional testimony and other evidence is requested, a statement relating the request to the factors listed in 2.2230(1). (attach additional pages if necessary):

Request to have the professional testimony from experts that were not available for the first appeal.

DocuSigned by:

Joy Brotherton

25C2EDCDA77E40C..

DocuSigned by:

Janice McConahay

D8F75C949A4E4F3...

Signature

10/25/2021

Date

**Procedures for Appeal
(Clatsop County LAWDUC #20-03)**

Initial Decision	Appeal Procedure	Fee
Type I & Type II	Director to Hearings Officer/ Planning Commission	\$250 <small>(Refunded if appellant prevails)</small>
Type IIa	Hearings Officer/Planning Commission to Board of Commissioners	\$3,170
Type III	Planning Commission to Board of Commissioners	\$3,170

No issue may be raised on appeal unless that issue was raised during the original proceedings. An issue is considered to have been raised only if the issue has been specifically identified and accompanied by statements or evidence sufficient to afford the decision maker and the parties an opportunity to respond to the issue.

Your notice of appeal must identify the decision sought to be reviewed and must set forth the specific grounds relied upon for review. The Hearings Officer or Board of Commissioners will only consider your notice of appeal in deciding to grant review and the type of review it will conduct.

Section 2.2190. Request for Review/Appeal.

1. The Hearings Officer shall hear appeals from Type I and Type II decisions of the Director.
2. The Board of Commissioners shall hear appeals of decisions of the Hearings Officer (Type IIa) and Planning Commission (Type III).
3. The affected party shall file an appeal with the Director within twelve (12) days of a final decision. At the Community Development Director’s discretion, and for good cause, an additional five days after filing an appeal may be granted to submit additional justification for the appeal. The actual appeal, however, must be filed within the twelve-day limit.
4. At its discretion, the reviewing body may, after considering the application and appeal, and finding that the facts therein stated do not warrant further hearing, summarily affirm the action and deny the appeal. The Board of Commissioners, if it believes the matter warrants review, may limit an appeal or review to a review of the record and a hearing for receipt of oral arguments regarding the record, or may accept new evidence and testimony. If new evidence is to be received, a hearing shall be conducted pursuant to this article.
5. A final decision of the Board of Commissioners may be appealed to the Land Use Board of Appeals, pursuant to ORS 197.829.

2.2200. Requirements of Notice of Appeal

A notice of appeal shall contain:

1. An identification of the decision sought to be reviewed, including the date of the decision.
2. A statement of the standing of the person seeking review.
3. The specific grounds relied upon for review.
4. If de novo review or review by additional testimony and other evidence is requested, a statement relating the request to the factors listed in Section 2.2230(1).

Section 2.2210. Review. The Board of Commissioners shall issue an order stating the scope of review to be one of the following:

1. Denying review.
2. Restricting review to the record made by the hearing body.
3. Limit review to such issues as the County Commissioners determines necessary for a proper resolution of the matter.
4. De novo hearing on the merits.

Section 2.2220. Review on the Record.

Unless otherwise provided for by the Board of Commissioners, review of the decision on appeal shall be confined to the record of the proceeding as specified in this section. The record shall include:

1. A factual report prepared by the Transportation & Development Services Director.
2. All exhibits, materials, pleadings, memoranda, stipulations and motions submitted by any party and received or considered in reaching the decision under review.
3. The transcript of the hearing, if previously prepared; otherwise, a detailed summary of the evidence, but the details need not be set forth verbatim.

Section 2.2230. Review Consisting of Additional Evidence or De Novo Review.

1. The reviewing body may hear the entire matter de novo; or it may admit additional testimony and other evidence without holding a de novo hearing if it is satisfied that the additional testimony or other evidence could not reasonably have been presented at the prior hearing. The reviewing body shall consider all of the following in making such a decision.
 - a. Prejudice to the parties.
 - b. Convenience or availability of evidence at the time of the initial hearing.
 - c. Surprise to opposing parties.
 - d. The competency, relevancy and materiality of the proposed testimony or other evidence.
2. "De novo hearing" shall mean a hearing by the reviewing body as if the action had not been previously heard and as if no decision has been rendered, except that all testimony, evidence and other material from the record of the previous consideration shall be included in the record of the review.

Section 2.2240. Review Body Decision.

1. Upon review, the review body may by order affirm, reverse or modify in whole or part a determination or requirement of the decision that is under review. When the review body modifies or renders a decision that reverses a decision of the hearing body, the review body, in its order, shall set forth its findings and state its reasons for taking the action encompassed in the order. When the review body elects to remand the matter back to the hearing body for such further consideration as it deems necessary, it shall include a statement explaining the error found to have materially affected the outcome of the original decision and the action necessary to rectify such.
2. Action by the review body shall be decided by a majority vote of its members present at the meeting at which review was made and shall be taken either at that or any subsequent meeting. The review body shall render its decision no later than sixty (60) days after the filing of the request for review.
3. The Director shall by written notice send by first class mail the decision arrived at by the Director or hearing body to the applicant, to any participant in the proceeding leading to the decision and any person, entity or organization requesting information pertaining to a final decision on the application.

Appeal: Application #186-21-000563-PLNG Dated October 12, 2021

A statement of the standing of the person seeking review, submitted by Joy Brotherton and Janice McConnahay.

Article 1

Per the Denial letter page two of the original decision dated August 13, 2021

Denial: Based solely on the following:

"Denial: Based on lack of evidence to support a determination the subject property cannot tractably be managed for farm use, by itself or in conjunction with other land pursuant to Standards Document S3.152(3)"

S3.512(3) states the following:

Section 3.512. Lot of Record Dwellings.

(3) Notwithstanding the requirements of Subsection S3.501(1)(E), a single-family dwelling may be sited on high-value farmland if:

(A) It meets the other requirements of Subsections (1) and (2);

(B) The lot or parcel is protected as high-value farmland as defined in OAR 660-033-0020(8)(a);

(C) The county determines that:

1) The lot or parcel cannot practicably be managed for farm use, by itself or in conjunction with other land, due to extraordinary circumstances inherent in the land or its physical setting that do not apply generally to other land in the vicinity.

a) For the purposes of this Section, this criterion asks whether the subject lot or parcel can be physically put to farm use without undue hardship or difficulty because of extraordinary circumstances inherent in the land or its physical setting. Neither size alone nor a parcel's limited economic potential demonstrates that a lot or parcel cannot be practicably managed for farm use.

b) Examples of "extraordinary circumstances inherent in the land or its physical setting" include very steep slopes, deep ravines, rivers, streams, roads, railroad or utility lines or other similar natural or physical barriers that by themselves or in combination separate the subject lot or parcel from adjacent agricultural land and prevent it from being practicably managed for farm use by itself or together with adjacent or nearby farms.

c) A lot or parcel that has been put to farm use despite the proximity of a natural barrier or since the placement of a physical barrier shall be presumed manageable for farm use;

As stated in our original appeal document the applicant contends that extraordinary circumstances exist that preclude the subject property from being put to farm use without undue hardship. Because the hearings officer stated in his response that he did not visit the subject property we still contend the following with additions:

Tractability of subject property:

- 1) The physical and topographic features of the subject parcel render it generally unsuitable for commercial farm use. The property includes slopes, ravines and streams which would greatly reduce the portion of the parcel that could be farmed in any manner. These characteristics are unique to this parcel because of its location and topography. As a result, a very small portion of the 4-acre subject property would be able to be practicably managed for farm use.
- 2) The only access to the property runs through the middle of the parcel which would further limit effective agricultural use of the property. There is also a small culvert that runs under the access road and eventually joins in with the small fish bearing stream that flows to Big Creek. Both Big Creek on the western boundary and the fish bearing stream on the northern boundary intersect the property and effectively isolating the subject parcel from adjacent and neighboring properties. Consequently there is not a viable option to combine with the subject parcel for farm purposes, nor is there any indicated willingness of neighboring owners to do so. Moreover, most neighboring or adjacent properties are used primarily for residential purposes.
- 3) Big Creek runs the full length of the western boarder of the property. There is a mandated 100 foot boundary of the property along the western boarder because the western boarder is in the middle of Big Creek. The area is unusable for agriculture.
- 4) The County Staff report relies heavily on the applicant's statement that the property has been used as an "established Christmas Tree Farm", though that characterization appears to have been adopted by the applicant's agent after consultation with the County planning staff (See email exchange between Kathren Rusinovich and Ian Sisson dated April 2, 2021. Applicants stated in the conditional use application the family has owned the property for many years with the hope to eventually build a home on it. They state that the property had been "forested" since the 1950's. There is no evidence or record that the property has actually been or could be used to produce commercial "cultured Christmas trees." Merely planting some trees on property is different than the "intensive cultivation methods" required to produce No. 2 or better commercial trees, or the required maintenance that would include soil cultivation and irrigation.

The location and topography of subject property, such as poor drainage, intersected ad adjoining streams and limited access are not conducive to plowing, soil cultivation and irrigation, etc required to practicably producer cultured Christmas trees. The use of the term "established Christmas Tree farm" appears to be a colloquial terms and not an accurate statement in the context of the definition used in the Standards.

- 5) The subject property has never been farmed in any way. No sheep, no cows, no Christmas Trees, no vegetables, so the two acres staff suggests and the hearings

officer agreed with, that the subject property could exceed \$10,00 in revenue from a Christmas Tree Farm without undo hardship is not true.

Planning a Christmas Tree Farm takes a lot of hard work and equipment that the applicant does not currently own and never have owned. (Please see attached Exhibit #1 OSU Christmas Tree Planning Guide) The soil in places is rocky which would make it difficult to till and there are barriers that prevent us from using it for agriculture. The fact is to prepare the property and plant the seedlings, would take approximately 5 to 10 years to mature before the first harvest, that puts us into our 80's and beyond which would truly be an undo hardship!

Typically profitable Christmas tree farms are planned on at least 10 ares so a portion can be harvested each year and replanted after each harvest so the cycle continues through the years.

- 6) Though the County staff report identified a few other properties in the vicinity that are capable of producing farm income, including a holly farm and some pasture land, the subject property is different and unique in its topography and location – it is not flat or dry to use as a pasture, etc. and the proximity of Big Creek and the other stream, and the access and abutting roads would make this particular property unsuitable for such uses.
- 7) The subject property has a steep rim around the property making it impracticable to plant Christmas Trees, or agriculture crops. This is not a continuous flat or terraced property. Also included is an areal picture of the subject property with descriptions of the barriers and slopes. (Exhibit #2) How can a person make a decision when they haven't been to the subject property to see the barriers and the condition of the slopes and tractability of the subject property.

Appeal Article 2: Agriculture Impact of Subject Property

- 1) In 2013, the subject property was harvested to help pay for our mother's medical care, the total profit, to us, from that harvest slightly over \$11K. (Exhibit #3)

Due to a lag in seedling availability it was not replanted until March of 2018. 1135 Douglas Fir, Hemlock and Western Red cedar were planted, see invoice for seedlings and contracted tree planters(Exhibit #'s 4 and 5) Pictures of the seedlings that had been planted in 2018 as suggested by the Oregon Department of Forest, indicate that the growth is minimal in reality. Many of the seedlings have not survived on the subject property.

1135 Douglas Fir, Hemlock and Western red cedar we planted by a contracted tree planting service Please note the attached documents: the 2013 tax income

statement of the \$11K, invoices for the purchase of the trees, and the planting of the trees. (Exhibit #6)

(Exhibit # 7 and 8) Compare our plantings completed in 2018 to a parcel of property in the area that was replanted in 2015 and the growth on those trees compared to the trees on the subject property. There is substantial differences.

Appeal Article 3: Historical Use

- 1) When the property was purchased by our parents in the 1950's it was an approximate 50 acre parcel. Except for the subject property and the strip of property that borders the eastern side of Big Creek from the old Highway 30 bridge to the new Highway 30 bridge was donated to Clatsop County, by our parents. Over 90% of the property was developed into residential building parcels.
- 2) Since the purchase of the subject property in 1956, the only marketable agriculture value of the property has been in 2013 and approximately \$11K was profited by us when several loads of trees were marketed. The subject property was subsequently replanted as a reforestation effort.
- 3) The subject property has only been used for family outings and camping when the weather allows. While the other acres had been sold off, it was hoped that someday a nice home site would be developed. That is why we are here.

Appeal Article 4: Conclusion:

When staff was asked to explain the reasoning behind the original denial statement applicant was told:

"This section of the code requires a determination that the subject property "cannot practicably be managed for farm use, by itself or in conjunction with other land, due to extraordinary circumstances inherent in the land or its physical setting that do not apply generally to other land in the vicinity.""

Applicant believes they have satisfied this component with the fact that the physical and topographic features of the subject parcel render it generally unsuitable for commercial farm use. In addition those barriers isolate the subject parcel from adjacent and neighboring properties. Consequently there is no indicated willingness of neighboring owners to do so. Moreover, most neighboring or adjacent properties are used primarily for residential purposes.

History tell us the impact of agricultural value, plus or minus, of the subject property to Clatsop County or to Oregon state is zero. Other than one timber harvest, the subject property has never been farmed.

And the facts are: 1) it would be undo hardship for applicant to establish a commercial Christmas Tree Farm 2) Our request for a CUP was never contested by anyone other than

the Clatsop County Planning Department. 3) This process has been arduous and a costly hardship on the applicant without clear direction. Had we begun with the information and understanding we now have we would not be appealing today.



Kathren Rusinovich <mauikate1@gmail.com>

FW: Denial

Joy Brotherton <jrb4@centurytel.net>
To: Kathren Rusinovich <mauikate1@gmail.com>

Mon, Oct 25, 2021 at 9:11 AM

I received this information from Ian this morning so I have incorporated it in my conclusions

Sent from [Mail](#) for Windows

From: Ian Sisson
Sent: Monday, October 25, 2021 8:10 AM
To: 'Joy Brotherton'
Subject: RE: Denial

Hello Joy,

The criteria in Standards Document S3.512(3) applied to your application - if you're looking for that in the LAWDUC, it is Section 3.9120(3).

This section of the code requires a determination that the subject property "cannot practicably be managed for farm use, by itself or in conjunction with other land, due to extraordinary circumstances inherent in the land or its physical setting that do not apply generally to other land in the vicinity."

The original Notice of Decision describes that there was not sufficient evidence provided in the application, or found in research done by staff, to support such a determination. Therefore, the application could not be approved.

Hopefully this helps. Respectfully,

Ian Sisson, AICP

Senior Planner | Land Use Planning Division

Clatsop County Community Development

800 Exchange Street, Suite 100

Astoria, OR 97103

503.325.8611 | Fax: 503.338.3606

From: Joy Brotherton <jrb4@centurytel.net>
Sent: Friday, October 22, 2021 4:03 PM
To: Ian Sisson <isisson@co.clatsop.or.us>
Subject: Denial

CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Hi Ian

In the first denial of the CUP was based on the following:

Denial: Based on lack of evidence to support a determination the subject property cannot tractably be managed for farm use, by itself or in conjunction with other land pursuant to Standards Document S3.152(3)

What in the world does this mean? I cannot find this language anywhere and to me the statement is contradictory in itself?

Thank you

Joy Brotherton

Sent from [Mail](#) for Windows

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APPEAL STATEMENT FOR 3186-21-000563-PLNG

We can all agree the EFU zoning requirements set forth in **(Exhibit 1)**, Oregon HB 3661 is at the very least complicated. Most EFU zoned property less than 10 acres in Clatsop County would not meet the commercial income threshold of \$80,000 or \$40,000 threshold for non commercial high valued farmland. The income threshold is an impracticable condition. At the time of the appeal The Clatsop County Planning Department revised the income threshold to \$650 per acre per year. Which is based on the standard used for non EFU zoned properties seeking a farm tax exemption. The tax exemption requirement includes farm use income for a minimum three years consecutively. The Clatsop County further justified this change with LUBA case law, Friends of Linn County V. Linn County (2001) Where Friends of Linn County appealed the extensions granted to John and Donna Warnock and within the LUBA appeal Friends of Linn County (Petitioner) contested the approved income threshold of \$10,000. The property described in 2001 LUBA appeal had a historic record of farming and other uses and was over 7.00 acres of terraced land. The subject property has no history of farming or other rural uses. It must be noted the impracticability standard of all uses established by ORS 215.705(2)(a)(C)(i) are not required to be impossible. It also should be noted identifying prime farm soil or high valued farmland the soil content is not the only determining factor **(see attached Exhibit 2)** The standard for non EFU properties was not a condition of our original application and was not applied to commercial farm use income threshold within the Clatsop County EFU zone. Upon the County revising the income threshold the property owner should have been able to address that matter prior to the first appeal.

We also contend that it is an incorrect decision to not allow construction of a dwelling on a lot of record property in an area on the lot that has been determined as impracticable. It was presented upon appeal by the Clatsop County Planning Department, page 4, there is a possibility of 1-2 acres that could be practicably farmed with an estimate of successfully planting 1,300 Christmas trees per acre at \$25.00 per tree. Based on the attached photos of the existing trees **(Exhibit 3)** it's not likely this will be a practicable result for the subject property. The property owners replanted 1135 trees and the photos represent what trees remain. Clatsop County Planning department has not presented any data related to the subject property or any other comparable property within Clatsop Counties EFU zoning that can validate the Planning Dept. determination of the income threshold for the property. The property owners contend the ability to successfully grow Christmas trees is limited. It's not possible to till rocks and living tree roots. To make the land practicable for farming would be an undo hardship. Tree roots and river rock can not be tilled. Attached you will find the OSU Christmas Tree plan. The study explains in detail management requirements to produce a profitable Christmas Tree Farm. It was a mistake in the original application the think the replanted trees could be converted to Christmas trees. The fish bearing streams along the north and west side of the property, state highway on the south side with a county road on the east side of the property, pond, a slope that exceeds 3%, lot size and current un-managed condition make commercial and noncommercial farming impracticable. We also want to reiterate the topography of the property is unique in comparison to other properties zoned EFU in the nearby area which

are predominately level without riparian setbacks to an important watershed. The impracticability may not be impossible but it does not have to be. It can also be noted the soil composition "45A" is predominately found in other zones in Clatsop County rather than the EFU zone (See attached (**Exhibit 4**) soil survey maps for Clatsop County. Originally there was a misunderstanding about preserving the replanted trees by converting at least the remaining fir tree to a Christmas tree farm, (**see email response from the planning dept, Exhibit 5**). It has been confirmed you are allowed to change the use from forestry to other uses such as building a home. However if you remove the trees you will lose the timber tax exemption. Attached you will find the letter from the Forestry Dept. (**Exhibit 6**) explaining the tree planting conditions. When the property owners logged a portion of the property in 2013 it was to pay for a medical hardship within the family. It is also noted Timber Tax exemptions do not apply to EFU tax exemptions.

Revisiting the practicability standards and farm land definitions we should be able clear up the practicability of the subject property:

- 1) Goal Three: Policy C: The County shall work with state agencies and legislators to: explore the possibility of allowing residential units on resource-zoned parcels that do not meet the minimum required lot size.

Regarding Land Use Development Dept chapter 660 Div. 33, Agricultural lands and Farm use ORS215.203 does not apply to the subject property:

- 2) The subject property located on Waterhouse Rd is not necessary to permit farm practices to be undertaken on adjacent or nearby lands.
- 3) The subject property located on Waterhouse Rd does not contribute to a commercial agricultural enterprise or contribute in a sustainable way to the area's existing agricultural economy or help maintain agricultural processors and established farm markets.
- 4) The subject property has not been used for any type of commercial agricultural enterprise nor has the property been marketed as such.
- 5) No preparation of farm products has occurred on the subject property located on Waterhouse Rd.
- 6) There has been no farm use as defined occurring on the subject property on Waterhouse Rd for the last three years.
- 7) The property description is corrected as follows: The subject property is not a profitable or established Christmas tree farm. The subject property "can not practicably be managed for farm use," within the meaning of ORS 215.705(2)(a)(C)(i) and 215.203.
- 8) Practicability of the subject property can not be compared to the un-managed holly farms in the area that no longer produce income or a level, cleared field used for grazing or hay. What is confirmed are the extraordinary circumstances inherent in the subject land and its physical setting does not apply generally to other land in the vicinity.

- 9) The property exceeds the slope specifications as listed under the soil designation 45A. It is much easier to build on a sloped property than farm a sloped predominately shaded property.
- 10) The property is located in very close proximity to the urban center of Knappa.
- 11) The small lot size makes it nearly impossible to prevent chemical fertilizer and nitrate contamination in protected surface/ground water including riparian areas.

Goal 2 development plans for the Kanppa Svensen area, as described in (Exhibit 7)

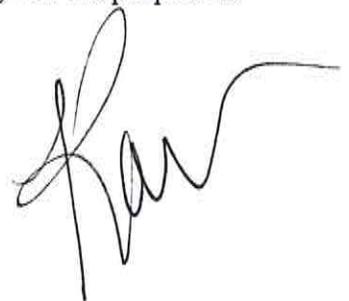
The Knappa/Svensen area is irrevocably committed to residential and commercial development for the following reasons:

Farm and Forest practices are precluded by a pattern of small lot sizes in this area.

Many farm and forest management practices are not compatible with either the number or density of residences and other non-farm, non-forest uses in this area.

The property owners agree with these findings as it directly applies to the subject property inability to be practicably farmed.

In closing information used as reference should be precisely accurate if the planning department intends to use the information as a factual comparison to the subject property. When the planning department presented information about property more than a quarter of a mile away they were referring to the only holly farms in the area, Tynkla Holly Farms identified as: 80719000800, 600, 808240000100, 807210000701, 807200000100, 200. For the record they are rural agriculture EFU properties that have not been put to commercial farming use for at least 20 years. Specifically not in the last three years. There are no holly farms actively being commercially farmed within 9 miles of the property. Another EFU zoned property identified by the planning department is 42729 Hwy 30, Astoria, OR 97103. The property owner removed a damaged manufactured home in 2019. When Covid hit in 2019 he was unable to procure a replacement structure within a year due to the Covid shut down. Clatsop County Planning Dept. has not established any exceptions or protections for property owners impacted by the Covid restrictions. The owner Tony White intends to apply for a non farm dwelling permit. It is contended including incorrect information in the appeal documents impacted the hearing officer's decision. The subject property was a home site for many years. The existing home was removed years ago. The subject property was never farmed and in 71 years the only "actual" documented income totaled \$11,000 +-. This equates to approximately \$155 per year, far below the commercial and non commercial income threshold standard for farming or timber. At no time in the past or during the real estate listing time frame has there been a request to lease or buy the property for the purpose of farming or grazing.

A handwritten signature in black ink, appearing to read 'Kan', with a long horizontal flourish extending to the right.

HOUSE BILL 3661: New Law on Land Use Planning In Oregon SEPTEMBER 1993

On August 3, 1993, Oregon's legislature passed an important new law on land use planning: House Bill 3661. Speaker of the House Larry Campbell described it as the "most positive reform of Oregon's land use system and planning since 1973." The legislation adds some new elements to the statewide planning program and revises many others. This summary outlines the bill's main provisions.

Areas Affected by HB 3661

House Bill 3661 deals mainly with rural land use. It focuses on two types of land:

- 16 million acres of agricultural land zoned Exclusive Farm Use (EFU);
- 9 million acres of forestland zoned for timber conservation.

The bill will not take land out of or add it to those zones. It will, however, change the regulations that apply there.

Effects on Farm and Forest Lands

HB 3661's main effect will be to make it easier for owners of farmland and forestland to get permits for new dwellings. The bill directs the Land Conservation and Development Commission (LCDC) to repeal rules for "small-scale resource lands" adopted in December 1992. In place of those rules, HB 3661 establishes a system for "lots of record." Owners of such lots will be exempted from many of the zoning regulations that limit residential development in farm and forest zones.

"Lot of Record"

A "lot of record" is a lot or parcel of land that retains key development rights that it had when it was created. It doesn't have to comply with certain more restrictive laws adopted after its creation. Such property is said to be "grandfathered in."

Consider, for example, a vacant forestland parcel created in 1982 that meets HB 3661's lot-of-record criteria. It retains its right to have one new dwelling even though forestland regulations applied in, say, 1990 might otherwise limit that right.

Not every lot or parcel of land in a farm or forest zone will qualify as a lot of record. Those that do must satisfy the following criteria:

- The lot or parcel was lawfully created before January 1, 1985; and
- has been owned by the same person (or relative or heir of that person) since January 1, 1985;
- has no dwelling on it;
- is not highly productive farmland or forestland;
- complies with other applicable regulations.

Where several adjoining tax lots or parcels make up a tract owned by the same person, only one house may be built on the tract.

Protecting Highly Productive Farmlands and Forestlands

HB 3661 classifies the best agricultural land as *high-value farmland*. That term encompasses all farmland with soils rated by the Soil Conservation Service as *prime, unique*, or Class I or II. It also includes certain other lands with soils good for intensive agriculture like orchards and dairies. Most high-value farmland is in the Willamette Valley.

HB 3661 classifies the best forestlands in terms of a tract's capacity to grow commercial wood fiber, measured in cubic feet per year. In western Oregon, a tract is high-quality forestland if it's capable of producing at least 5,000 cubic feet per year. In eastern Oregon, the standard is 4,000 cubic feet.

On the highly productive farmlands and forestlands described above, HB 3661's lot-of-record provisions do not apply.

Minimum Lot Size Requirements

Oregon's planning laws require counties to keep farmland and forestland from being divided into pieces too small for commercial farming or forestry. Counties do that by specifying "minimum lot sizes." Newly created parcels must have at least the number of acres specified in whatever minimum applies to them. HB 3661 sets general minimums of 80 acres for dividing farmlands and forestlands and 160 acres for rangelands. A county must apply those minimums unless it already has a lower minimum lot size that was approved by LCDC after January 1, 1987, or unless the county can justify some lower standard.

(Please see next page.)

Provisions for New Dwellings In Farm and Forest Zones

This legislation, combined with current laws and rules, provides a variety of ways for new homes to be established in farm and forest zones. The following list outlines the main ways. Those created or altered by HB 3661 are shown in italics.

New dwellings may be allowed:

- *On lots of record;*
- As "farm dwellings";
- *As "nonfarm dwellings" on high-value farmland;*
- *As "nonfarm dwellings" on other farmland in the Willamette Valley;*
- *As "nonfarm dwellings" on other farmland outside the Willamette Valley;*
- For farm help;
- Temporarily, during a medical hardship;
- *To replace existing dwellings;*
- *On large tracts of forestland (for western Oregon, at least 160 acres; for eastern, 240 acres);*
- *On large multi-tract holdings of forestland (totaling at least 200 acres in western Oregon or 320 acres in eastern Oregon);*
- *Under a "template test" for smaller tracts of forestland.*

A Response to the Smith Decision

HB 3661 responds to a recent court decision called *Smith v. Clackamas County* by amending laws on nonfarm dwellings. The amendment makes it easier to establish such dwellings in farm zones outside the Willamette Valley. It allows a nonfarm dwelling to be established on an unproductive part of a farm. Under the *Smith* ruling, a nonfarm dwelling could be approved only if a majority of soils on the whole farm were unproductive.

"Right to Farm," "Right To Forest"

Owners of homes in farm and forest zones sometimes sue farmers and foresters for carrying out routine activities necessary to grow crops or trees. For example, a homeowner might sue a farmer over the noise and dust from plowing and disking fields. Right-to-farm laws protect farmers against such litigation. HB 3661 expands right-to-farm laws and creates new right-to-forest provisions.

A Response to the Clark Decision

HB 3661 clarifies the law on appeals of local land use decisions. The bill says that LUBA (the Land Use Board of Appeals) must defer to a local government's interpretation of its own plan unless that

interpretation is inconsistent with the plan's express language, purpose, or underlying policies, or is inconsistent with state laws, goals, or rules. The legislature adopted this new standard in response to *Clark v. Jackson County*, a recent court case involving a LUBA appeal.

Marginal Lands

Laws adopted in 1983 gave counties an option to zone land under a "marginal-lands" system. Only two counties (Lane and Washington) did. HB 3661 now requires the two counties to make a choice: in EFU zones, either use the old marginal-lands system or apply the new provisions for lots of record. In forest zones, the two counties may use both systems. HB 3661 prohibits other counties from using the marginal-lands system now.

Composition of LCDC

LCDC has seven members. Current law requires that there be at least one member from each of the state's five congressional districts, and one member must be a local elected official. HB 3661 expands those requirements by calling for one member to be a county elected official and another to be a current or former city elected official.

When Plan Amendments Take Effect

A recent court decision (*Von Lubken v. Hood River County*) raised a question about the timing of amendments to local land use plans and regulations. Should such amendments take effect when they are adopted by the local government or later, after LCDC has reviewed and approved them? HB 3661 answers that question by specifying that such amendments take effect when they are adopted. But until LCDC approves an amendment, a local government must apply relevant state planning goals to any land use decision involving that amendment.

When HB 3661 Takes Effect

HB 3661 takes effect on November 4, 1993. Some parts of it will not go into effect until later, after LCDC and the counties amend their rules and ordinances to comply with the new law.

For more information . . .

For details on how this new law might affect your community or property, call your county planning department. For general information on HB 3661, contact DLCD's Salem office at the address below. Or call your nearest DLCD field representative, in Bend (388-6424), Newport (265-8869), or Portland (731-4065). □

Department of Land Conservation and Development
1175 Court Street NE, Salem OR 97310 Telephone 503 373-0050

New Laws About New Dwellings In Farm Zones

A Summary of Key Provisions From 1993's House Bill 3661

The 1993 Legislature adopted some important new legislation on land use: House Bill 3661. Much of that bill has to with review and approval of permits for new dwellings in farm zones. It revises some old laws and establishes several new "tests"—sets of criteria for approving new houses or manufactured homes in farm zones. This summary outlines the new tests and describes the revised laws for dwellings on farmland.

The Lot-of-Record Test

House Bill 3661 adds a "lot-of-record" test to Oregon's laws on farmland zoning. The idea behind this test is that the owner of a lot of record will be exempted from some regulations that would otherwise apply to his or her land. The owner may get a permit for one dwelling without having to satisfy certain zoning requirements.

Section 2 of HB 3661 defines lot of record as a lot or parcel of land that:

- was created before January 1, 1985,
- has been owned by the same person (or a relative or an heir) since then,
- has no dwelling on it, and
- is not on "high-value farmland."

A county *may* allow a new dwelling on a lot of record without applying state-mandated standards for farm or nonfarm dwellings. But HB 3661 does not *require* counties to allow dwellings on lots of record. It also does not exempt dwellings from other regulations that may apply. For example, it doesn't give a landowner the right to build a new house in a floodway, even if the proposed homesite is a lot of record.

High-Value Farmland

HB 3661 defines high-value farmland as land that:

- Has soils that are predominantly *prime, unique*, Class I, or Class II (as rated by the US Soil Conservation Service—the SCS); or
- Is in the Willamette Valley and has mostly Class III and IV soil types listed in HB 3661; or
- Is outside the Willamette Valley and is used for perennial crops such as fruits, nuts, and berries; or

- Is west of the Coast Range, used "in conjunction with a dairy operation on January 1, 1993," and made up mainly of certain Class III and IV soils listed in HB 3661.

SCS soil ratings and aerial photographs showing perennial crops are available for most parts of Oregon. Deciding whether a tract is high-value thus can be done at the permit counter in most cases. County planners will not have to do extensive new research or mapping to find which lands are high-value.

Dwellings on High-Value Farmland

A hasty reading of HB 3661 might suggest that no new dwellings can be placed on high-value farmland. There are, however, several ways for a new dwelling to be approved on such land. HB 3661 did not eliminate current provisions for farm dwellings, housing for farm help, and temporary dwellings in cases of medical hardship. Such dwellings still can be approved on all types of farmland. Also, HB 3661 contains two "safety valves": the farm-use and small-tract tests.

The Farm-Use Test

Section 2(2) of the bill says one dwelling may be allowed on certain parcels of high-value farmland not suitable for farm use. For example, a small triangular parcel formed by two intersecting roads might have outstanding soils but be inaccessible to farm equipment. A dwelling could be approved there under these conditions:

- The parcel qualifies as a lot-of-record;
- It is "protected as high-value farmland";
- It "cannot practicably be managed for farm use";
- The proposed dwelling won't cause significant changes in or increased costs for farming and forestry on nearby lands;
- The proposed dwelling will not "materially alter the stability" of the land use pattern in the area.

Requests for new dwellings under this section of HB 3661 will be decided by a hearings officer from the state's Department of Agriculture.

(Please see next page.)

The Small-Tract Test

Section 2(3) allows one dwelling on a small tract of high-value farmland under these conditions:

- The tract qualifies as a lot of record;
- The tract's soils are not prime, unique, Class I, or Class II but are among the Class III and IV soils listed in the bill;
- The tract has 21 acres or less; and
- It is bordered by small tracts and tracts with dwellings on them.

What is meant by "small tracts," and how many dwellings must there be on the adjoining properties? HB 3661 answers those questions with two sets of criteria. Proposals for dwellings under the small-tract test must satisfy one or the other:

- At least 67 percent of the tract is bordered by tracts smaller than 21 acres, and at least two had houses on them on January 1, 1993; or
- At least 25 percent of the tract is bordered by tracts smaller than 21 acres, and there were at least four dwellings within a quarter of a mile of the center of the homesite tract as of January 1, 1993.

HB 3661 defines *tract* to be "one or more contiguous lots or parcels under the same ownership."

Dwellings in Farm/Forest Zones

Some counties have mixed farming and forestry zones. If a new dwelling is proposed in such a zone, does it have to satisfy farmland or forestland requirements? HB 3661 says the answer to that question depends on how the homesite property was being used on January 1, 1993. If most of the tract was in farm use, HB 3661's provisions for farmland apply. If most of the tract was in forest use, the bill's provisions for forestland apply.

Nonfarm Dwellings

A nonfarm dwelling is a dwelling "not in conjunction with farm use." It's a house whose occupants will not be engaged in commercial agriculture. For many years, Oregon's laws on Exclusive Farm Use (EFU) zoning have contained provisions for such dwellings. However, HB 3661 brings some big changes in those laws.

The new legislation establishes one set of standards for the nine Willamette Valley counties and another for the rest of the state. It also sets different standards for lots and parcels created before January 1, 1993, and those created after that date. The new standards are summarized in a matrix on the attached page.

A Variety of Provisions for Dwellings

The combination of current laws and new provisions from HB 3661 yields a total of nine ways for new dwellings to be allowed on farmland. The following list outlines the main ways. Those created or altered by HB 3661 are shown in italics:

- *On lots of record*
- As "farm dwellings"
- *On hard-to-farm parcels of high-value farmland*
- *On small tracts of high-value farmland*
- *As "nonfarm dwellings" in the nine Willamette Valley counties;*
- *As "nonfarm dwellings" in the 27 other counties;*
- For farm help;
- Temporarily, during a medical hardship;
- *To replace a dwelling.*

Eliminating Provisions for Small-Scale Resource Lands

Rules adopted by the Land Conservation and Development Commission (LCDC) in 1992 enabled counties to zone certain less productive farmlands as "small-scale resource lands" and allow dwellings there. HB 3661 calls for LCDC to repeal those rules by March 1, 1994.

Local Planning and Zoning

HB 3661 will be applied by county officials through county land use plans and ordinances. Some sections of the bill are optional, and some passages are discretionary: they say a county *may* do this or that. For example, a county may choose not to apply HB 3661's provisions for lots of record in its farm zones.

The bill takes effect on November 4, 1993. However, it will be some time before local ordinances can be amended to conform with all of the bill's new provisions.

For More Information . . .

This is a summary, not a complete statement of provisions from HB 3661. To get a copy of the complete bill (33 pages in all), call the bill distribution center in the Capitol at 503 378-8891. Also, this new legislation soon will be added to Oregon's statutes, which are available in libraries throughout the state. If you have questions about HB 3661's effects on a certain county or a particular piece of property, please contact your county planning department. □

**AN OUTLINE OF HOUSE BILL 3661'S
CRITERIA FOR NEW NONFARM DWELLINGS
IN EXCLUSIVE FARM USE (EFU) ZONES**

	WILLAMETTE VALLEY COUNTIES	OTHER COUNTIES
On parcels created before January 1, 1993:	<p><i>The proposed dwelling will . . .</i></p> <ul style="list-style-type: none"> • Not force a significant change in or significantly increase costs of farming or forestry on nearby lands; • Not "materially alter" the stability of the area's land use pattern; • Comply with "such other conditions" as the county may specify; and • Be on a parcel that is predominantly Class IV - VIII soils. 	<p><i>The proposed dwelling will . . .</i></p> <ul style="list-style-type: none"> • Not force a significant change in or significantly increase costs of farming or forestry on nearby lands; • Not "materially alter" the stability of the area's land use pattern; • Comply with "such other conditions" as the county may specify; and • Be on a parcel or portion of a parcel that's "generally unsuitable" for producing crops, livestock, or timber.
On parcels created after January 1, 1993:	<p><i>The proposed dwelling will . . .</i></p> <ul style="list-style-type: none"> • Not force a significant change in or significantly increase costs of farming or forestry on nearby lands; • Not "materially alter" the stability of the area's land use pattern; • Comply with "such other conditions" as the county may specify; <p align="center"><i>and</i></p> <p><i>The homesite parcel . . .</i></p> <ul style="list-style-type: none"> • Is not stocked with timber; • Has at least 95% of its soils rated Class VI - VIII; • Has at least 95% of its soils not capable of producing 50 cubic feet of wood fiber per acre per year; • Is no smaller than 20 acres; and • Is taken from an "originating parcel" equal to or larger than the applicable minimum lot size. 	<p><i>The proposed dwelling will . . .</i></p> <ul style="list-style-type: none"> • Not force a significant change in or significantly increase costs of farming or forestry on nearby lands; • Not "materially alter" the stability of the area's land use pattern; • Comply with "such other conditions" as the county may specify; • Be on a parcel or portion of a parcel that is "generally unsuitable" for producing crops, livestock, or timber; and • Be on a parcel created in accordance with these standards.

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RULES FOR NEW FARM DWELLINGS

March 1994

On February 18, 1994, Oregon's Land Conservation and Development Commission (LCDC) made some important revisions to its administrative rules for "farm dwellings." Those revisions took effect on March 1, 1994.

This summary describes the revised rules. Their complete text appears in Oregon Administrative Rules (OAR) 660-33-135.

What is the purpose of the farm dwelling rules?

The rules for new farm dwellings are designed to protect agricultural land in areas zoned Exclusive Farm Use (EFU). The rules serve as a kind of filter. They allow new homes for people who will operate commercial farms and ranches, but they screen out other types of housing that conflict with commercial agriculture.

What is a farm dwelling?

A farm dwelling is a house or manufactured home located on a farm (or ranch) and occupied by a farmer — a person who is "principally engaged" in activities such as planting crops or raising livestock. State law (ORS Chapter 215) refers to such houses as "dwellings customarily provided in conjunction with a farm use."

A farm dwelling is *not* just any dwelling that happens to be in an EFU zone. Rather, it is one among several types of dwellings allowed in EFU zones.

The key to distinguishing farm dwellings from other types lies in the phrase "customarily provided." For example, a farm dwelling would not customarily be built on a dry five-acre parcel that provides just enough forage for one cow. Such a parcel doesn't demand the care and attention of a resident manager. It also could not support a farm household. In other words, it is not a farm — and without a farm, there can be

no "farm dwelling." Therefore, the main issue with any request to approve a new farm dwelling is likely to be this: "Is the tract of land on which the dwelling will be placed a farm?"

What is a farm?

To be considered a farm, a tract first must be in "farm use." Oregon's land use laws define that term in ORS 215.203. The definition is quite broad. It includes almost every type of crop, orchard, and livestock production.

But just because a tract is in farm use does not mean it's a farm. Consider, for example, the five-acre parcel mentioned above. Raising cattle is a farm use, but the presence of one cow does not make the five-acre parcel a farm.

In contrast, consider a 500-acre tract with rich irrigated soils, producing hundreds of thousands of dollars of crops each year. This surely is a farm. Three main attributes distinguish it from the five-acre parcel that is not:

1. **Size** — The tract is large enough to demand the attention and labors of at least one household (the occupants of a farm dwelling). It includes enough farmland to make a significant contribution to the area's agricultural economy.
2. **Capability** — The tract has a combination of soils, water, and other features that makes it capable of producing significant amounts of crops or other farm products in the future.
3. **Income** — The tract already has produced significant amounts of agricultural products, as measured by its gross income from the sale of such products.

The rules for new farm dwellings are based on these three attributes. They enable planners to get a clear, objective answer to the question "Is this a farm, or is it merely land that is being farmed?" The table on the next page outlines the key standards and shows where they apply.

Department of Land Conservation and Development (DLCD)
1175 Court Street NE, Salem OR 97310 ☎ 503 373-0050

How do the rules work?

The state's rules for farm dwellings are applied through county land-use plans and ordinances. A person who wants to build a farm dwelling thus should contact the county planning department. The planners there will explain the rules and specify which standards apply to the tract where the dwelling is proposed.

The main issue in deciding which standards to apply is the quality of the tract's soil. If the tract is "high-value farmland," then it must satisfy the \$80,000 test. That is, a farm dwelling can be approved only if the tract has produced at least \$80,000 from gross sales of agricultural products in recent years. If the tract is not high-value farmland, then the proposal must satisfy any one of three different tests, as shown in the table below.

All counties must conform to the state's rules on farm dwellings, but they also may adopt special local provisions. The procedures and standards for farm dwellings thus vary somewhat from one county to another.

What is high-value farmland?

High-value farmland is land with exceptionally good soils. That includes soils rated as *prime*, *unique*, Class I, or Class II by the Soil Conservation Service (SCS). It also includes certain other soils listed in OAR 660-33-020(8). Most

high-value farmland is in the Willamette Valley.

To find whether a certain tract of farmland is high-value, a county planner uses data from the SCS. If a majority of land in the tract has the top-quality soils just described, then the tract is classified as high-value. A planner usually can perform the soils analysis at the permit counter, while the applicant waits.

What about other dwellings?

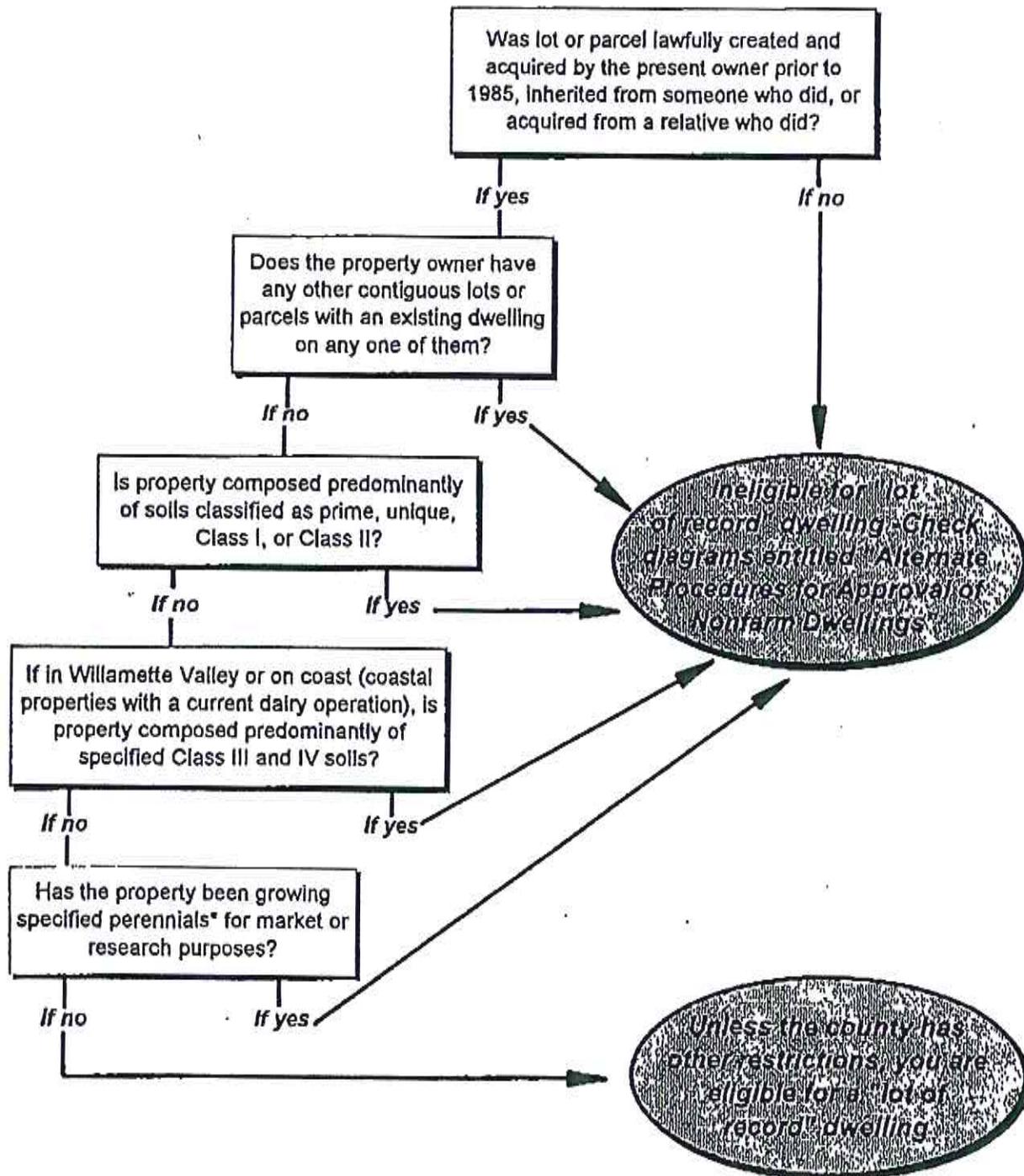
Farm dwellings are not the only type of houses allowed in EFU zones. For example, Oregon's planning laws have long provided for "nonfarm dwellings" in farm zones. With House Bill 3661, the 1993 Legislature added provisions for dwellings on "lots of record." LCDC's recent revisions to the rules for farm dwellings do not alter or eliminate any provisions from House Bill 3661 or for other types of dwellings.

For more information . . .

For more information about farm dwelling permits and procedures, contact your county planning department. For general information on Oregon's rules for planning and zoning farmland, contact DLCD's Salem office at the address shown on the preceding page. Or call your nearest DLCD field representative, in Bend (388-6424), Newport (265-8869), or Portland (731-4065). ■

STANDARDS FOR NEW FARM DWELLINGS IN EFU ZONES			
TYPE OF TEST ▼	TYPE OF FARMLAND		
	High-Value Farmland (All Counties) ▼	Farmland That Is Not High-Value	
		In Most Counties	In "Marginal Land" Counties
<i>Parcel Size</i>	—	① At least <u>160</u> acres (320 for rangeland)	—
<i>Production Capability</i>	—	X Can produce gross sales ≥ median of commercial farms	—
<i>Income</i>	\$80,000 <i>Schedule "F"</i>	② <u>\$40,000</u> or median of commercial farms	\$20,000

Do You Qualify for a "Lot of Record" Dwelling on Farmland?



*"Specified perennials" includes nursery stock, berries, fruits, nuts, Christmas trees or vineyards, but not seed crops, hay, pasture or alfalfa.

Prime Farmland List for Oregon

December 2019

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OREGON PRIME FARMLAND

NRCS Oregon has completed the review of the State prime farmland list. The current list is dated December 2019. The list replaces the previous State list dated March 2015. The 2019 list has not changed significantly since the 2015 list. Ten map units were added to the 2015 list. This is due to soil survey work in National Forests (see last page of this document for specific additions). Also, twelve map units primarily in Southwest Oregon have name changes due to update work, (see last page of this document for specific changes). No map units were deleted from the 2015 list. The 2019 State list is current with all prime farmland reports as generated for soil surveys available via Web Soil Survey 2019.

Farmland Classification

(a) Definition

The farmland classification identifies map units as prime farmland, farmland of statewide importance, farmland of local importance, or farmland of unique importance.

(b) Significance

Farmland classification identifies the location and extent of the most suitable land for producing food, feed, fiber, forage, and oilseed crops. This identification is useful in the management and maintenance of the resource base that supports the productive capacity of American agriculture.

(c) Measurement

NRCS policy and procedures on prime and unique farmlands are published in the Code of Federal Regulations 7CFR657. This regulation is reproduced in [Exhibit 622-1](#) for convenience. The website is: http://www.access.gpo.gov/nara/cfr/waisidx/99/7cfr657_99.html.

(d) Entries

Enter the numerical code for the classification of each map unit. Soils of unique, statewide, or local importance are not prime farmland. Allowable entries are numerical codes as follows:

- 1 - All areas are prime farmland.
- 2 - Prime farmland if drained.
- 3 - Prime farmland if protected from flooding or not frequently flooded during the growing season.
- 4 - Prime farmland if irrigated.
- 5 - Prime farmland if drained and either protected from flooding or not frequently flooded during the growing season.
- 6 - Prime farmland if irrigated and drained.
- 7 - Prime farmland if irrigated and either protected from flooding or not frequently flooded during the growing season.
- 8 - Prime farmland if subsoiled, completely removing the root inhibiting soil layer.
- 9 - Prime farmland if irrigated and the product of I (soil erodibility) x C (climate factor) does not exceed 60.
- 10- Prime farmland if irrigated and reclaimed of excess salts and sodium.

Prime Farmland Soils

(a) Definition

Prime farmland is land that has the best combination of physical and chemical characteristics for producing food, feed, forage, fiber, and oilseed crops and that is available for these uses. It has the combination of soil properties, growing season, and moisture supply needed to produce sustained high yields of crops in an economic manner if it is treated and managed according to acceptable farming methods. In general, prime farmland has an adequate and dependable water supply from precipitation or irrigation, a favorable temperature and growing season, an acceptable level of acidity or alkalinity, an acceptable content of salt or sodium, and few or no rocks. Its soils are permeable to water and air. Prime farmland is not excessively eroded or saturated with water for long periods of time, and it either does not flood frequently during the growing season or is protected from flooding. Users of the lists of prime farmland map units should recognize that soil properties are only one of several criteria that are necessary. Other considerations include:

(1) Land use

Prime farmland is designated independently of current land use, but it cannot be areas of water or urban or built-up land as defined for the National Resource Inventories. Map units that are complexes or associations containing components of urban land or miscellaneous areas as part of the map unit name cannot be designated as prime farmland. The soil survey memorandum of understanding determines the scale of mapping and should reflect local land use interests in designing of map units.

(2) Frequency of flooding

Some map units may include both prime farmland and land not prime farmland because of variations in flooding frequency.

(3) Irrigation

Some map units include areas that have a developed irrigation water supply that is dependable and of adequate quality and areas that do not have such a supply. In these units, only the irrigated areas meet the prime farmland criteria.

(4) Water table

Some map units include both drained and undrained areas. Only the drained areas meet the prime farmland criteria.

(5) Wind erodibility

The product of I (soil erodibility) x C (climate factor) cannot exceed 60 to meet prime farmland criteria. A map unit may be considered prime farmland in one part of a survey area but not in another where the climate factor is different.

(b) Purpose

The Natural Resources Conservation Service (NRCS) is committed to the management and maintenance of the resource base that supports the productive capacity of American agriculture. This management and maintenance includes identifying of the location and extent of the most suitable land for producing food, feed, fiber, forage, and oilseed crops. Prime farmland information may be supplemented with separate designations of soil map units that have state-wide, local, or unique importance as farmland capable of producing these crops.

(c) Code of Federal Regulations

NRCS policy and procedures on prime and unique farmlands are published in the Code of Federal Regulations 7CFR657. The content is reproduced in [Exhibit 622-1](#) for convenience. The website is: http://www.access.gpo.gov/nara/cfr/waisidx_99/7cfr657_99.html.

Final Rule, Prime and Unique Farmlands (Exhibit 622-1)

Federal Register, Volume 43, No.21, January 31, 1978.

The Code of Federal Regulations for title 7 part 657 are maintained at the following website: <http://www.gpoaccess.gov/cfr/index.html>. The January 1, 1999 version was amended on September 25, 2000 with the changes published in the Federal Register as follows: [Federal Register: September 25, 2000 (Volume 65, Number 186)]

(Rules and Regulations]

[Page 57537-57538]

From the Federal Register Online via GPO Access [wais.access.gpo.gov]

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TITLE 7--AGRICULTURE

DEPARTMENT OF AGRICULTURE

PART 657--PRIME AND UNIQUE FARMLANDS--Table of Contents

Subpart A--Important Farmlands Inventory

Section 657.1 -- Purpose

Section 657.2 -- Policy

Section 657.3 -- Applicability

Section 657.4 -- NRCS Responsibilities

Section 657.5 -- Identification of Important Farmlands

657.1 -- Purpose.

NRCS is concerned about any action that tends to impair the productive capacity of American agriculture. The Nation needs to know the extent and location of the best land for producing food, feed, fiber forage, and oilseed crops. In addition to prime and unique farmlands, farmlands that are of statewide and local importance for producing these crops also need to be identified

657.2 -- Policy.

It is NRCS policy to make and keep current an inventory of the prime farmland and unique farmland of the Nation. This inventory is to be carried out in cooperation with other interested agencies at the national, state, and local levels of government. The objective of the inventory is to identify the extent and location of important rural lands needed to produce food, feed, fiber, forage, and oilseed crops.

657.3 -- Applicability.

Inventories made under this memorandum do not constitute a designation of any land area to a specific land use. Such designations are the responsibility of appropriate local and state officials.

657.4 -- NRCS Responsibilities.

(a) State Conservationist.

Each NRCS state conservationist is to:

(1) Provide leadership for inventories of important farmlands for the state, county, or other subdivision of the state. Each is to work with the appropriate agencies of the state government and others to establish priorities for making these inventories.

(2) Identify the soil mapping units within the state that qualify as prime. In doing this, State Conservationists, in consultation with the cooperators of the National Cooperative Soil Survey, have the flexibility to make local deviation from the permeability criterion or to be more restrictive for other specific criteria in order to assure the most accurate identification of prime farmlands for a state. Each is to invite representatives of the governor's office, agencies of the state government, and others to identify farmlands of statewide importance and unique farmlands that are to be inventoried within the framework of this memorandum.

(3) Prepare a statewide list of:

(i) Soil mapping units that meet the criteria for prime farmland;

(ii) Soil mapping units that are farmlands of statewide importance if the criteria used were based on soil information; and

(iii) Specific high-value food and fiber crops that are grown and, when combined with other favorable factors, qualify lands as unique farmlands.

Copies are to be furnished to NRCS field offices and to the National Soil Survey Center. (See 7 CFR 600.2(c), 600.6.)

(4) Coordinate soil mapping units that qualify as prime farmlands with adjacent states, including Major Land Resource Area Offices (see 7 CFR 600.4, 600.7) responsible for the soil series. Since farmlands of statewide importance and unique farmlands are designated by others at the state level, the soil mapping units and areas identified need not be coordinated among states.

(5) Instruct NRCS district conservationists to arrange local review of lands identified as prime, unique, and additional farmlands of statewide importance by conservation districts and representatives of local agencies. This review is to determine if additional farmland should be identified to meet local decision making needs.

(6) Make and publish each important farmland inventory on a base map of national map accuracy at an intermediate scale of 1:50,000 or 1:100,000. State Conservationists who need base maps of other scales are to submit their requests with justification to the Chief for consideration.

657.5 Identification of important farmlands.

(a) Prime farmlands.

(1) General. Prime farmland is land that has the best combination of physical and chemical characteristics for producing food, feed, forage, fiber, and oilseed crops, and is also available for these uses (the Land could be cropland, pastureland, rangeland, forest land, or other land, but not urban built-up land or water). It has the soil quality, growing season, and moisture supply needed to economically produce sustained high yields of crops when treated and managed, including water management, according to acceptable farming methods. In general, prime farmlands have an adequate and dependable water supply from precipitation or irrigation, a favorable temperature and growing season, acceptable acidity or alkalinity, acceptable salt and sodium content, and few or no rocks. They are permeable to water and air. Prime farmlands are not excessively erodible or saturated with water for a long period of time, and they either do not flood frequently or are protected from flooding. Examples of soils that qualify as prime farmland are Palouse silt loam, 0 to 7 percent slopes; Brookston silty clay loam, drained; and Tama silty clay loam, 0 to 5 percent slopes.

(2) Specific criteria. Prime farmlands meet all the following criteria: Terms used in this section are defined in USDA publications: "Soil Taxonomy, Agriculture Handbook 436"; "Soil Survey Manual, Agriculture Handbook 18"; "Rainfall-erosion Losses From Cropland, Agriculture Handbook 282"; "Wind Erosion Forces in the United States and Their Use in Predicting Soil Loss, Agriculture Handbook 346"; and "Saline and Alkali Soils, Agriculture Handbook 60."

(i) The soils have:

(a) Aquic, udic, ustic, or xeric moisture regimes and sufficient available water capacity within a depth of 40 Inches (1 meter), or in the root zone (root zone is the part of the soil that is penetrated or can be penetrated by plant roots) if the root zone is less than 40 inches deep, to produce the commonly grown cultivated crops (cultivated crops include, but are not limited to, grain, forage, fiber, oilseed, sugar beets, sugarcane, vegetables, tobacco, orchard, vineyard, and bush fruit crops) adapted to the region in 7 or more years out of 10; or

(b) Xeric or ustic moisture regimes in which the available water capacity is limited, but the area has a developed irrigation water supply that is dependable (a dependable water supply is one in which enough water is available for irrigation in 8 out of 10 years for the crops commonly grown) and of adequate quality; or,

(c) Aridic or torric moisture regimes, and the area has a developed irrigation water supply that is dependable and of adequate quality; and,

(ii) The soils have a temperature regime that is frigid, mesic, thermic, or hyperthermic (pergelic and cryic regimes are excluded). These are soils that, at a depth of 20 inches (50 cm), have a mean annual temperature higher than 32 deg. F (0 deg. C. In addition, the mean summer temperature at this depth in soils with an O horizon is higher than 47 deg. F (8 deg. C); in soils that have no O horizon, the mean summer temperature is higher than 59 deg. F (15 deg. C); and,

(iii) The soils have a pH between 4.5 and 8.4 in all horizons within a depth of 40 inches (1 meter) or in the root zone if the root zone is less than 40 inches deep; and,

(iv) The soils either have no water table or have a water table that is maintained at a sufficient depth during the cropping season to allow cultivated crops common to the area to be grown; and,

(v) The soils can be managed so that, in all horizons within a depth of 40 inches (1 meter) or in the root zone if the root zone is less than 40 inches deep, during part of each year the conductivity of the saturation extract is less than 4 mmhos/cm and the exchangeable sodium percentage (ESP) is less than 15; and,

(vi) The soils are not flooded frequently during the growing season (less often than once in 2 years); (*thus—if the soil is occasionally flooded, protection from flooding is not required for prime farmland designation*), and,

(vii) The product of K (erodibility factor) x percent slope is less than 2.0, and the product of I (soils erodibility) x C (climatic factor) does not exceed 60; and

(viii) The soils have a permeability rate of at least 0.06 inch (0.15 cm) per hour in the upper 20 inches (50 cm) and the mean annual soil temperature at a depth of 20 inches (50 cm) is less than 59 deg. F (15 deg. C); the permeability rate is not a limiting factor if the mean annual soil temperature is 59 deg. F (15 deg. C) or higher; and,

(ix) Less than 10 percent of the surface layer (upper 6 inches) in these soils consists of rock fragments coarser than 3 inches (7.6 cm).

NRCS-Oregon has established one state criterion for prime farmland designation. The criterion sets a minimum of 70 consecutive days or more of a frost-free period. Consequently, if a soil map unit meets all of the national criteria as listed above but has a frost-free period of less than 70 days, the map unit is not designated as prime farmland.

Example: frost-free period range; 70 to 100 days = prime

frost-free period range; 50 to 90 days = not prime

Also, the "dominant condition" is used to determine Prime for each map unit.

If the map unit contains a miscellaneous major component, the map unit is not designated prime.

If the map unit contains a major component in land capability class 7, or 8, the map unit is not designated prime.

Prime Farmland Codes

- 1 - All areas are prime farmland.
- 2 - Prime farmland if drained.
- 3 - Prime farmland if protected from flooding or not frequently flooded during the growing season.
- 4 - Prime farmland if irrigated.
- 5 - Prime farmland if drained and either protected from flooding or not frequently flooded during the growing season.
- 6 - Prime farmland if irrigated and drained.
- 7 - Prime farmland if irrigated and either protected from flooding or not frequently flooded during the growing season.
- 8- Prime farmland if subsoiled, completely removing the root inhibiting soil layer.
- 9 - Prime farmland if irrigated and the product of I (soil erodibility) x C (climate factor) does not exceed 60.
- 10- Prime farmland if irrigated and reclaimed of excess salts and sodium.

The following list is a composite listing of prime farmland map units in Oregon as stored in Web Soil Survey on December 2, 2019. NOTE: Map units designated as prime farmland are not available via Web Soil Survey for the map units in the Grant County, Central, soil survey, but they are contained in the composite list. The survey areas are as follows.

Alsea Area	Lincoln County Area
Baker County Area	Linn County Area
Benton County	Malheur County, Northeast
Clackamas County Area	Marion County Area
Clatsop County	Morrow County Area
Columbia County	Multnomah County Area
Coos County	Polk County
Crater Lake National Park	Prineville Area
Curry County	Sherman County
Douglas County Area	Tillamook County
Gilliam County	Trout Creek-Shaniko Area
Grant County, Central	Umatilla County Area
	Umatilla National Forest
Harney County Area	Union County Area
Hood River County Area	Upper Deschutes River Area
Jackson County Area	Wallowa County Area
Josephine County	Wallowa-Whitman National Forest
Klamath County, South	Warm Springs Indian Reservation
Lake County, North	Wasco County, North
Lake County, South	Washington County
Lane County Area	Yamhill County

Map units added to the March 2015 Prime Farmland List for Oregon

- Abiqua silty clay loam 0 to 3 percent slopes, occasionally flooded (Yamhill SSA)
- Abegg gravelly loam, 2 to 7 percent slopes, high precip (Curry and Josephine SSA's)
- Abegg gravelly loam, 2 to 7 percent slopes, low precip (Jackson and Josephine SSA's)
- Abegg gravelly loam 7 to 12 percent slopes, low precip (Josephine SSA)
- Foehlin gravelly loam, 0 to 3 percent slopes, high precip, MLRA 5 (Josephine SSA)
- Foehlin gravelly loam, 0 to 3 percent slopes, warm, MLRA 5 (Douglas SSA)
- Dardry-Newbar complex, 0 to 5 percent slopes (Umatilla and Wallowa-Whitman NF SSA's)
- Meadowridge-Era complex, 1 to 12 percent slopes (Prineville SSA)
- Mippon ashy loam, 0 to 3 percent slopes (Wallowa-Whitman NF SSA)
- Tippett-Zumwalt complex, 0 to 3 percent slopes (Wallow-Whitman NF SSA)

Map units having a name change to the March 2015 Prime Farmland List for Oregon

From	TO (soil survey area name change occur)
Calimus loam, 0 to 2 percent slopes	Calimus loam, 0 to 2 percent slopes, low precip, MLRA 21 (Klamath South SSA)
Dotta sandy loam, 0 to 5 percent slopes	Dotta sandy loam, 0 to 5 percent slopes, MLRA 21 (Klamath South SSA)
Drews loam, 0 to 5 percent slopes	Drews loam 0 to 5 percent slopes, goose lake valley, northern part, MLRA 21 (Lake South SSA)
Foehlin gravelly loam, 0 to 3 percent slopes	Foehlin gravelly loam, 0 to 3 percent slopes, MLRA 5 (Douglas SSA)
Fordney loamy fine sand, 0 to 2 percent slopes	Fordney loamy fine sand, 0 to 2 percent slopes, north, MLRA 21 (Klamath South SSA)

Huberly silt loam	Huberly silt loam (Washington SSA)
Lakeview loam, 0 to 2 percent slopes	Lakeview loam, 0 to 2 percent slopes, goose lake valley area, mlra 21 (Lake South SSA)
Lakeview silty clay loam	Lakeview silty clay loam, MLRA 21 (Klamath South SSA)
Manita loam, 2 to 7 percent slopes	Manita loam, 2 to 7 percent slopes MLRA 5 (Josephine and Jackson SSA's)
Pollard loam, 2 to 7 percent slopes	Pollard loam 2 to 7 percent slopes, MLRA 5 (Jackson and Josephine SSA's)
Ruch gravelly silt loam, 2 to 7 percent slopes	Ruch gravelly silt loam, 2 to 7 percent slopes, low precip (Josephine SSA)
Selmac loam, 2 to 7 percent slopes	Selmac loam, 2 to 7 percent slopes, low precip (Josephine SSA)

Mapunit_Name	Prime Farmland Code
Abegg gravelly loam, 2 to 7 percent slopes	4
Abegg gravelly loam, 7 to 12 percent slopes	4
Abegg very gravelly sandy loam, 2 to 12 percent slopes	4
Abegg gravelly loam, 2 to 7 percent slopes, high precip	4
Abegg gravelly loam, 2 to 7 percent slopes, low precip	4
Abegg gravelly loam, 7 to 12 percent slopes, low precip	4
Abin silty clay loam, 0 to 3 percent slopes	1
Abiqua silty clay loam, 0 to 3 percent slopes	1
Abiqua silty clay loam, 3 to 5 percent slopes	1
Abiqua silty clay loam, 0 to 3 percent slopes, occasionally flooded	1
Abiqua silty clay loam, occasionally flooded, 0 to 3 percent slopes	1
Abiqua silty clay loam, rarely flooded, 0 to 3 percent slopes	1
Abiqua silty clay loam, high precipitation, 0 to 3 percent slopes	1
Abiqua silty clay loam, high precipitation, 3 to 5 percent slopes	1
Adkins fine sandy loam, 0 to 5 percent slopes	4
Adkins fine sandy loam, gravelly substratum, 0 to 5 percent slopes	4
Agency loam, 0 to 3 percent slopes	4
Agency loam, 3 to 8 percent slopes	4
Agency sandy loam, 0 to 3 percent slopes	4
Agency-Madras complex, 0 to 8 percent slopes	4
Alicel fine sandy loam, 1 to 5 percent slopes	1
Alicel loam, 1 to 5 percent slopes	1
Aloha silt loam	2
Aloha silt loam, 0 to 3 percent slopes	2
Aloha silt loam, 3 to 6 percent slopes	2
Aloha silt loam, 3 to 8 percent slopes	2
Aloha variant silt loam	2
Alsea loam, 0 to 5 percent slopes	1
Alsea loam, rarely flooded, 0 to 3 percent slopes	1
Alspaugh clay loam, 2 to 8 percent slopes	1
Amity silt loam	2
Amity silt loam, 0 to 3 percent slopes	2
Anderly silt loam, 1 to 7 percent slopes	4
Anders very fine sandy loam, 3 to 7 percent slopes	4
Applegate silt loam, 2 to 7 percent slopes	4
Athena silt loam, 1 to 7 percent slopes	1
Baker silt loam, 0 to 2 percent slopes	4
Baker silt loam, 0 to 2 percent slopes, warm	4
Baker silt loam, 2 to 7 percent slopes	4
Baker silt loam, 2 to 7 percent slopes, warm	4
Baldock silt loam	6
Baldock silt loam, 0 to 2 percent slopes	6
Balm loam, 0 to 3 percent slopes	6
Balm-Catherine complex, 0 to 3 percent slopes	6
Banning loam	1
Banning loam, 0 to 3 percent slopes	1

Mapunit_Name	Prime Farmland Code
Banning loam, 3 to 12 percent slopes	1
Barhiskey gravelly loamy sand, 0 to 3 percent slopes	4
Barhiskey variant gravelly loamy sand, 0 to 3 percent slopes	6
Barnard silt loam, 2 to 7 percent slopes	4
Barron coarse sandy loam, 0 to 7 percent slopes	4
Barron coarse sandy loam, 2 to 7 percent slopes	4
Bellpine clay loam, 3 to 12 percent slopes	1
Bellpine silt loam, 3 to 12 percent slopes	1
Bellpine silty clay loam, 3 to 12 percent slopes	1
Bellpine-Jory complex, 2 to 12 percent slopes	1
Bornstedt silt loam, 0 to 8 percent slopes	1
Boyce silt loam, 0 to 2 percent slopes	6
Boyce silty clay loam	6
Briedwell gravelly loam, 0 to 7 percent slopes	1
Briedwell silt loam, 0 to 3 percent slopes	1
Briedwell silt loam, 0 to 7 percent slopes	1
Briedwell silt loam, 0 to 3 percent slopes, low terrace	1
Buckbert ashy sandy loam, 0 to 3 percent slopes	4
Buckbert sandy loam, 0 to 3 percent slopes	4
Bully silt loam	4
Burke silt loam, 1 to 7 percent slopes	4
Burlington fine sandy loam, 0 to 8 percent slopes	1
Calimus fine sandy loam, 0 to 2 percent slopes	4
Calimus fine sandy loam, 2 to 5 percent slopes	4
Calimus loam, 0 to 2 percent slopes, low precip, MLRA 21	4
Calimus loam, 2 to 5 percent slopes	4
Calimus silt loam, 0 to 5 percent slopes	4
Canderly sandy loam, 0 to 3 percent slopes	4
Canderly sandy loam, 3 to 8 percent slopes	4
Cantala silt loam, 1 to 7 percent slopes	4
Capona loam, 0 to 2 percent slopes	4
Capona loam, 2 to 5 percent slopes	4
Carlton silt loam, 0 to 7 percent slopes	1
Cascade silt loam, 3 to 7 percent slopes	2
Cascade silt loam, 3 to 8 percent slopes	2
Catherine silt loam	4
Catherine silt loam, 0 to 2 percent slopes	4
Catherine silty clay loam	4
Cencove fine sandy loam, 0 to 2 percent slopes	4
Cencove fine sandy loam, 2 to 5 percent slopes	4
Cencove fine sandy loam, 5 to 8 percent slopes	4
Central Point loam, 0 to 3 percent slopes	1
Central Point sandy loam	1
Central Point sandy loam, 0 to 3 percent slopes	1
Chapman loam	1
Chapman loam, 0 to 3 percent slopes	1

Mapunit_Name	Prime Farmland Code
Chapman loam, high precipitation, 0 to 3 percent slopes	1
Chapman-Chehalis complex, 0 to 3 percent slopes	1
Cehalem silty clay loam, 0 to 3 percent slopes	2
Cehalem silty clay loam, 0 to 3 percent slopes, occasionally flooded	2
Cehalem silty clay loam, sedimentary, 0 to 3 percent slopes	2
Cehalem silty clay loam, volcanic, 0 to 3 percent slopes	2
Chehalis silt loam	1
Chehalis silt loam, 0 to 3 percent slopes	1
Chehalis silt loam, high precipitation, 0 to 3 percent slopes	1
Chehalis silt loam, occasional overflow	1
Chehalis silty clay loam	1
Chehalis silty clay loam, 0 to 3 percent slopes	1
Chehalis silty clay loam, occasional overflow	1
Chehalis silty clay loam, occasionally flooded	1
Chenoweth loam, 1 to 7 percent slopes	4
Cherryhill silt loam, 1 to 7 percent slopes	4
Chesnimnus gravelly loam, 0 to 3 percent slopes	4
Chesnimnus silt loam, 0 to 3 percent slopes	4
Cheval silt loam, 0 to 2 percent slopes	6
Chilcott silt loam, 2 to 5 percent slopes	4
Clackamas gravelly loam	2
Clackamas gravelly silt loam	2
Clackamas silt loam	2
Clackamas variant silt loam	1
Clawson sandy loam, 0 to 3 percent slopes	2
Clawson sandy loam, 2 to 5 percent slopes	2
Clawson sandy loam, 2 to 7 percent slopes	2
Clinefalls sandy loam, 0 to 3 percent slopes	4
Cloquato silt loam	1
Cloquato silt loam, 0 to 3 percent slopes	1
Cloquato silt loam, high precipitation, 0 to 3 percent slopes	1
Clovkamp loamy sand, 0 to 3 percent slopes	4
Clovkamp loamy sand, bedrock substratum, 0 to 3 percent slopes	4
Coburg complex, rarely and occasionally flooded, 0 to 3 percent slopes	1
Coburg silty clay loam	1
Coburg silty clay loam, 0 to 3 percent slopes	1
Coburg silty clay loam, 0 to 5 percent slopes	1
Coburg silty clay loam, flooded, 0 to 3 percent slopes	1
Coburg silty clay loam, occasionally flooded	1
Coburg silty clay loam, rarely flooded, 0 to 3 percent slopes	1
Coleman loam, 0 to 7 percent slopes	2
Condon and Valby silt loams, 1 to 7 percent slopes	4
Condon silt loam, 1 to 7 percent slopes	4
Conley silty clay loam, 0 to 2 percent slopes	6
Conley silty clay loam, 2 to 5 percent slopes	6
Conley silty clay loam, 2 to 8 percent slopes	6

Mapunit_Name	Prime Farmland Code
Cornelius and Kinton silt loams, 2 to 7 percent slopes	1
Cornelius silt loam, 3 to 8 percent slopes	1
Cornelius variant silt loam, 0 to 3 percent slopes	1
Cottrell silty clay loam, 2 to 12 percent slopes	1
Cottrell silty clay loam, 2 to 8 percent slopes	1
Coughanour silt loam, 0 to 2 percent slopes	4
Coughanour silt loam, 2 to 7 percent slopes	4
Court gravelly ashy sandy loam, 1 to 8 percent slopes	4
Court sandy loam, 1 to 8 percent slopes	4
Courtrock loam, 2 to 7 percent slopes	4
Crump muck, 0 to 1 percent slopes	6
Crump silty clay loam, drained, 0 to 1 percent slopes	4
Crump-Ozamis complex, drained, 0 to 1 percent slopes	4
Culbertson loam, 0 to 8 percent slopes	1
Cumulic Haploxerolls, 0 to 2 percent slopes *1	4
Dardry-Newbar complex, 0 to 5 percent slopes	1
Darow silty clay loam, 1 to 5 percent slopes	1
Dayville silt loam	4
Dee silt loam, 0 to 8 percent slopes	2
Defenbaugh loam, 0 to 2 percent slopes	4
Dehill fine sandy loam, 0 to 5 percent slopes	4
Deschutes ashy sandy loam, 0 to 3 percent slopes	4
Deschutes ashy sandy loam, dry, 0 to 3 percent slopes	4
Deschutes sandy loam, 0 to 3 percent slopes	4
Deschutes sandy loam, 3 to 8 percent slopes	4
Deschutes sandy loam, dry, 0 to 3 percent slopes	4
Deschutes-Houstake complex, 0 to 8 percent slopes	4
Deskamp loamy sand, 0 to 3 percent slopes	4
Deskamp loamy sand, 3 to 8 percent slopes	4
Deskamp sandy loam, 3 to 8 percent slopes	4
Deter clay loam, 0 to 2 percent slopes	4
Deter clay loam, 2 to 7 percent slopes	4
Deter loam, 0 to 5 percent slopes	4
Deter loam, low precipitation, 0 to 5 percent slopes	4
Dixon gravelly fine sandy loam, 0 to 5 percent slopes	4
Dixon gravelly fine sandy loam, alkali, 0 to 2 percent slopes	4
Dodes loam, 0 to 2 percent slopes	4
Donica gravelly loam, 0 to 5 percent slopes	4
Dotta sandy loam, 0 to 5 percent slopes, MLRA 21	4
Drews loam, 0 to 5 percent slopes, goose lake valley, northern part, MLRA 21	4
Drewsey very fine sandy loam, 1 to 5 percent slopes	4
Drewsgap loam, 0 to 5 percent slopes	4
Drybed silt loam, 0 to 8 percent slopes	4
Dryck gravelly loam, 0 to 2 percent slopes	4
Dryck loam, 0 to 2 percent slopes	4
Duart silt loam, 1 to 7 percent slopes	4

Mapunit_Name	Prime Farmland Code
Dufur silt loam, 1 to 7 percent slopes	4
Dumont gravelly clay loam, 1 to 12 percent slopes	1
Dumont gravelly loam, 2 to 12 percent slopes	1
Ellisforde silt loam, 1 to 7 percent slopes	4
Endersby fine sandy loam	4
Endersby fine sandy loam, 0 to 3 percent slopes	4
Endersby loam	4
Endersby-Hermiston complex, 0 to 3 percent slopes	4
Enko loam, 1 to 10 percent slopes	4
Enko loamy sand, 2 to 8 percent slopes	4
Enko sandy loam, 0 to 6 percent slopes	4
Enko-Catlow complex, 1 to 7 percent slopes	4
Enko-McConnel complex, 0 to 5 percent slopes	4
Era ashy loam, 0 to 3 percent slopes	4
Era ashy sandy loam, 0 to 3 percent slopes	4
Era ashy sandy loam, 3 to 8 percent slopes	4
Era sandy loam, 3 to 8 percent slopes	4
Era sandy loam, cobbly substratum, 0 to 3 percent slopes	4
Era soils, 1 to 8 percent slopes	4
Esquatzel silt loam	4
Esquatzel silt loam, 0 to 3 percent slopes	4
Evans loam	1
Evans loam, 0 to 3 percent slopes	1
Evans silt loam, 0 to 3 percent slopes	1
Falk variant fine sandy loam	4
Faloma silt loam	5
Faloma silt loam, protected	2
Foehlin gravelly loam, 0 to 3 percent slopes, MLRA 5	1
Foehlin gravelly loam, 0 to 3 percent slopes, high precip	1
Foehlin gravelly loam, 0 to 3 percent slopes, warm	1
Foehlin gravelly loam, 3 to 12 percent slopes	1
Fordney gravelly loamy sand, 0 to 5 percent slopes	4
Fordney gravelly loamy sand, 5 to 15 percent slopes	4
Fordney loamy fine sand, 0 to 2 percent slopes, north, MLRA 21	4
Fordney loamy fine sand, 2 to 20 percent slopes	4
Fordney loamy fine sand, terrace, 0 to 3 percent slopes	4
Freels silt loam, 0 to 3 percent slopes	4
Freezener gravelly loam, 1 to 12 percent slopes	1
Garbutt silt loam, 0 to 2 percent slopes	4
Garbutt silt loam, 2 to 5 percent slopes	4
Gelderman-Jory complex, 2 to 12 percent slopes	1
Gelsinger silt loam, 2 to 8 percent slopes	4
Glasgow silt loam, 2 to 7 percent slopes	4
Glide fine sandy loam, 0 to 3 percent slopes	4
Goodrich gravelly loam, 0 to 7 percent slopes	4
Goose Lake silt loam, 0 to 1 percent slopes	6

Mapunit_Name	Prime Farmland Code
Greenleaf silt loam, 0 to 2 percent slopes	4
Greenleaf silt loam, 2 to 5 percent slopes	4
Gregory silty clay loam, 0 to 3 percent slopes	2
Gurdane silty clay loam, 0 to 7 percent slopes	4
Hack loam, 0 to 3 percent slopes	4
Hack loam, 3 to 7 percent slopes	4
Harana silt loam	4
Harana silty clay loam	4
Harriman loam, 0 to 2 percent slopes	4
Harriman loam, 0 to 5 percent slopes	4
Harriman loam, 2 to 5 percent slopes	4
Harriman loamy fine sand, 0 to 2 percent slopes	4
Helvetia silt loam, 0 to 12 percent slopes	1
Helvetia silt loam, 2 to 12 percent slopes	1
Helvetia silt loam, 2 to 7 percent slopes	1
Helvetia silt loam, 3 to 8 percent slopes	1
Hermiston silt loam	4
Hermiston silt loam, 0 to 3 percent slopes	4
Hershal silt loam, 0 to 2 percent slopes	6
Hibbard silt loam, 2 to 7 percent slopes	4
Hillsboro loam, 0 to 3 percent slopes	1
Hillsboro loam, 3 to 7 percent slopes	1
Holcomb silt loam	2
Holcomb silt loam, 0 to 3 percent slopes	2
Holcomb silty clay loam	2
Holland sandy loam, cool, 2 to 7 percent slopes	4
Homehollow ashy sandy loam, 0 to 3 percent slopes	4
Hood loam, 0 to 3 percent slopes	1
Hood loam, 3 to 8 percent slopes	1
Hot Lake silt loam	4
Houstake ashy sandy loam, 0 to 3 percent slopes	4
Houstake sandy loam, 0 to 3 percent slopes	4
Houstake sandy loam, dry, 0 to 3 percent slopes	4
Houstake sandy loam, very gravelly substratum, 0 to 3 percent slopes	4
Huberly silt loam, 0 to 3 percent slopes	2
Hukill gravelly loam, 1 to 12 percent slopes	1
Hullt clay loam, 2 to 7 percent slopes	1
Hurwal silt loam, 2 to 8 percent slopes	4
Hurwal silt loam, moist, 2 to 8 percent slopes	4
Hutchinson silt loam, 2 to 7 percent slopes	4
Imbler coarse sandy loam, 1 to 5 percent slopes	4
Imbler fine sandy loam, 1 to 5 percent slopes	4
Iris silt loam, 0 to 1 percent slopes	4
Irrigon fine sandy loam, 2 to 5 percent slopes	4
Jerome sandy loam	4
Jett silt loam	4

Mapunit_Name	Prime Farmland Code
Jett silt loam, 0 to 3 percent slopes	4
Jimbo silt loam	1
Jimbo-Haflinger complex, 0 to 3 percent slopes	1
Jimbo-Haflinger complex, 0 to 5 percent slopes	1
Jory silt loam, 2 to 12 percent slopes	1
Jory silty clay loam, 2 to 12 percent slopes	1
Jory silty clay loam, 2 to 7 percent slopes	1
Jory silty clay loam, 2 to 8 percent slopes	1
Jory silty clay loam, basalt bedrock, 2 to 12 percent slopes	1
Jory silty clay loam, diabase, 2 to 12 percent slopes	1
Jory silty clay loam, sedimentary bedrock, 2 to 12 percent slopes	1
Jory silty clay loam, sediments, 2 to 12 percent slopes	1
Jory-Bellpine complex, 2 to 12 percent slopes	1
Jory-Gelderman silt loams, 2 to 12 percent slopes	1
Jory-Gelderman silty clay loams, 2 to 12 percent slopes	1
Jory-Nekia complex, 2 to 12 percent slopes	1
Josephine gravelly loam, 3 to 12 percent slopes	1
Josset loam, 0 to 2 percent slopes	4
Kerby loam	1
Kerby loam, 0 to 3 percent slopes	1
Kerby loam, wet, 0 to 3 percent slopes	2
Kimberly fine sandy loam	4
Kimberly fine sandy loam, 0 to 3 percent slopes	4
Kimberly silt loam, 0 to 3 percent slopes	4
Kinton silt loam, 3 to 8 percent slopes	1
Krebs silt loam, 2 to 5 percent slopes	4
Kubli loam, 0 to 3 percent slopes	2
Kubli loam, 3 to 7 percent slopes	2
La Grande silt loam	4
La Grande silt loam, 0 to 3 percent slopes	4
La Grande silty clay loam	4
Ladd loam, 2 to 7 percent slopes	4
LaFollette sandy loam, 0 to 3 percent slopes	4
LaFollette sandy loam, 3 to 8 percent slopes	4
Lakeview loam, 0 to 2 percent slopes, goose lake valley area, mlra, 21	4
Lakeview silty clay loam, MLRA 21	4
Lakeview silty clay loam, 0 to 2 percent slopes	4
Lakeview silty clay loam, low precipitation, 0 to 2 percent slopes	4
Langrell gravelly loam, 0 to 3 percent slopes	4
Langrell-Snow complex, 0 to 3 percent slopes	4
Latourell loam, 0 to 3 percent slopes	1
Latourell loam, 3 to 8 percent slopes	1
Latourell silt loam, 0 to 3 percent slopes	1
Latourell silt loam, 3 to 8 percent slopes	1
Laurelwood silt loam, 3 to 7 percent slopes	1
Laurelwood silt loam, 3 to 8 percent slopes	1

Mapunit_Name	Prime Farmland Code
Legler clay loam, 0 to 2 percent slopes	4
Legler silty clay loam, 0 to 3 percent slopes	4
Linslaw loam	2
Linslaw loam, 0 to 3 percent slopes	2
Linslaw loam, 3 to 8 percent slopes	2
Lostine silt loam, 0 to 3 percent slopes	4
Loupence silt loam, 0 to 2 percent slopes	6
Madras loam, 0 to 3 percent slopes	4
Madras loam, 3 to 8 percent slopes	4
Madras loam, 0 to 8 percent slopes	4
Madras loam, 1 to 12 percent slopes	4
Madras sandy loam, 0 to 3 percent slopes	4
Madras sandy loam, 3 to 8 percent slopes	4
Malabon silty clay loam	1
Malabon silty clay loam, 0 to 3 percent slopes	1
Malabon silty clay loam, flooded, 0 to 3 percent slopes	1
Malabon silty clay loam, occasionally flooded	1
Malabon silty clay loam, rarely flooded, 0 to 3 percent slopes	1
Malabon variant loam	1
Manita loam, 2 to 7 percent slopes, MLRA 5	1
Marks creek loam, 0 to 3 percent slopes	4
Matterhorn gravelly fine sandy loam, 0 to 3 percent slopes	4
Maupin loam, 0 to 5 percent slopes	4
Maupin silt loam, 0 to 8 percent slopes	4
Maupin variant loam	4
McAlpin silty clay loam	1
McAlpin silty clay loam, 0 to 3 percent slopes	1
McAlpin silty clay loam, 3 to 6 percent slopes	1
McAlpin silty clay loam, high precipitation, 0 to 3 percent slopes	1
McAlpin silty clay loam, high precipitation, 3 to 6 percent slopes	1
McAlpin silty clay loam, rarely flooded, 0 to 3 percent slopes	1
McBee silt loam	3
McBee silty clay loam *2	1
McBee silty clay loam *3	3
McBee silty clay loam, 0 to 3 percent slopes	1
McBee silty clay loam, 0 to 3 percent slopes, nonflooded	1
McBee silty clay loam, nonflooded, 0 to 3 percent slopes	1
McBee variant loam	2
McConnel cobbly sandy loam, 3 to 8 percent slopes	4
McConnel very gravelly sandy loam, 0 to 2 percent slopes	4
McConnel very gravelly sandy loam, 2 to 15 percent slopes	4
McNab clay loam, 0 to 3 percent slopes	1
Meadowridge-Era complex, 1 to 12 percent slopes	4
Medford clay loam, 0 to 7 percent slopes	1
Medford clay loam, gravelly substratum, 0 to 7 percent slopes	1
Medford silty clay loam, 0 to 3 percent slopes	1

Mapunit_Name	Prime Farmland Code
Melbourne silty clay loam, 2 to 7 percent slopes	1
Mershon silt loam, 0 to 8 percent slopes	1
Metolius ashy sandy loam, 0 to 2 percent slopes	4
Metolius sandy loam, 0 to 8 percent slopes	4
Mikkalo silt loam, 2 to 7 percent slopes	4
Minam gravelly loam, 2 to 8 percent slopes	4
Minam loam, 2 to 8 percent slopes	4
Mippon ashy loam, 0 to 3 percent slopes	4
Moag silty clay loam	5
Moag silty clay loam, protected	2
Modoc fine sandy loam, 0 to 2 percent slopes	4
Modoc fine sandy loam, 2 to 5 percent slopes	4
Mondovi silt loam, 0 to 3 percent slopes	4
Morfitt loam, 0 to 2 percent slopes	4
Morrow silt loam, 1 to 7 percent slopes	4
Multnomah loam, 0 to 3 percent slopes	1
Multnomah silt loam, 0 to 3 percent slopes	1
Multnomah silt loam, 3 to 8 percent slopes	1
Multnomah variant loam, 0 to 8 percent slopes	1
Nekia silty clay loam, 2 to 12 percent slopes	1
Nekia silty clay loam, 2 to 7 percent slopes	1
Nekia silty clay loam, 2 to 8 percent slopes	1
Newberg fine sandy loam	4
Newberg fine sandy loam, 0 to 3 percent slopes	4
Newberg fine sandy loam, high precipitation, 0 to 3 percent slopes	4
Newberg loam	4
Newberg loam, 0 to 3 percent slopes	4
Newberg loamy sand, 0 to 3 percent slopes	4
Newberg silt loam	4
Newberg silt loam, 0 to 3 percent slopes	4
Norad silt loam, 0 to 1 percent slopes	4
Norad silt loam, 0 to 2 percent slopes	4
Norad-Spangenburg complex, 0 to 2 percent slopes	4
North Powder loam, 2 to 12 percent slopes	4
North Powder loam, 2 to 15 percent slopes	4
Nyssa silt loam, 0 to 2 percent slopes	4
Nyssa silt loam, 2 to 5 percent slopes	4
Nyssa silt loam, gravel substratum, 0 to 2 percent slopes	4
Nyssa silt loam, gravel substratum, 2 to 5 percent slopes	4
Nyssa-Malheur silt loams, 0 to 2 percent slopes	4
Nyssa-Malheur silt loams, 2 to 5 percent slopes	4
Oak Grove loam, 0 to 8 percent slopes	1
Ochoco-Prineville complex 0 to 3 percent slopes	4
Ochoco-Prineville complex, 3 to 8 percent slopes	4
Olallie clay loam, 0 to 3 percent slopes	6
Olex silt loam, 0 to 5 percent slopes	4

Mapunit_Name	Prime Farmland Code
Oliphant silt loam 0 to 3 percent slopes	4
Onyx silt loam	4
Onyx silt loam, 0 to 3 percent slopes	4
Owyhee silt loam, 0 to 2 percent slopes	4
Owyhee silt loam, 2 to 5 percent slopes	4
Ozamis loam, 0 to 1 percent slopes	6
Ozamis silt loam, 0 to 1 percent slopes	6
Ozamis silty clay loam, 0 to 1 percent slopes	6
Packard gravelly loam, 0 to 5 percent slopes	1
Packard gravelly loam, flooded, 0 to 3 percent slopes	1
Palouse silt loam, 0 to 5 percent slopes	1
Palouse silt loam, 1 to 7 percent slopes	1
Parkdale loam, 0 to 8 percent slopes	1
Pedigo silt loam	4
Pedigo silt loam, 0 to 3 percent slopes	4
Pelton-Willowdale complex, 0 to 3 percent slopes	4
Pengra silt loam, 1 to 4 percent slopes	2
Pengra silt loam, 2 to 12 percent slopes	2
Phys silt loam, 1 to 5 percent slopes	4
Pilot Rock silt loam, 1 to 7 percent slopes	4
Plainview sandy loam, 0 to 3 percent slopes	4
Plainview sandy loam, 3 to 8 percent slopes	4
Poden silt loam	4
Poe fine sandy loam	4
Poe loamy fine sand	4
Pollard loam, 2 to 7 percent slopes, MLRA 5	1
Powder loam, 0 to 3 percent slopes	4
Powder silt loam	4
Powder silt loam, 0 to 2 percent slopes	4
Powder silt loam, 0 to 3 percent slopes	4
Powder silt loam, occasional overflow	4
Powell silt loam, 0 to 3 percent slopes	2
Powell silt loam, 0 to 8 percent slopes	2
Powell silt loam, 3 to 8 percent slopes	2
Powval silt loam, 0 to 3 percent slopes	4
Powval silt loam, 0 to 3 percent slopes, warm	4
Pritchard silty clay loam, 2 to 7 percent slopes	4
Prosser silt loam, 0 to 2 percent slopes	4
Prosser silt loam, 2 to 7 percent slopes	4
Quafeno loam, 0 to 3 percent slopes	1
Quafeno loam, 3 to 8 percent slopes	1
Quatama loam, 0 to 3 percent slopes	1
Quatama loam, 3 to 7 percent slopes	1
Quatama loam, 3 to 8 percent slopes	1
Quatama silt loam, 0 to 3 percent slopes	1
Quatama silt loam, 3 to 8 percent slopes	1

Mapunit_Name	Prime Farmland Code
Rafton silt loam	5
Rafton silt loam, protected	2
Rafton-Sauvie-Moag complex	5
Ramo silty clay loam, 2 to 8 percent slopes	4
Reavis silt loam, 0 to 3 percent slopes	4
Redbell silt loam, 0 to 5 percent slopes	2
Redmond ashy sandy loam, 0 to 3 percent slopes	4
Redmond sandy loam, 0 to 3 percent slopes	4
Redmount gravelly silt loam, 0 to 3 percent slopes	4
Redmount silt loam, 0 to 3 percent slopes	4
Redmount silt loam, 3 to 8 percent slopes	4
Redmount-Cheval complex, 0 to 2 percent slopes	4
Rhea silt loam, 1 to 7 percent slopes	4
Ricco silty clay loam	6
Rio King loam, 1 to 6 percent slopes	4
Ritzville silt loam, 0 to 2 percent slopes	4
Ritzville silt loam, 2 to 7 percent slopes	4
Ritzville very fine sandy loam, 2 to 7 percent slopes	4
Roloff silt loam, 0 to 2 percent slopes	4
Roloff silt loam, 2 to 7 percent slopes	4
Roseburg loam, 0 to 3 percent slopes	1
Rosehaven loam, 3 to 12 percent slopes	1
Royal fine sandy loam, 2 to 5 percent slopes	4
Royal silt loam, 0 to 3 percent slopes	4
Ruch gravelly silt loam, 2 to 7 percent slopes, low precip	1
Ruch silt loam, 2 to 7 percent slopes	1
Ruch-Selmac complex, 2 to 7 percent slopes	1
Sagehill fine sandy loam, 0 to 2 percent slopes	4
Sagehill fine sandy loam, 2 to 5 percent slopes	4
Sagehill fine sandy loam, hummocky, 2 to 5 percent slopes	4
Salem gravelly silt loam	1
Salem gravelly silt loam, 0 to 3 percent slopes	1
Salem gravelly silt loam, 0 to 7 percent slopes	1
Salem silt loam, 0 to 7 percent slopes	1
Salisbury loam, 0 to 5 percent slopes	4
Salkum silt loam, 2 to 6 percent slopes	1
Salkum silty clay loam, 2 to 6 percent slopes	1
Salkum silty clay loam, 2 to 8 percent slopes	1
Salkum silty clay loam, basin, 0 to 6 percent slopes	1
Santiam silt loam, 0 to 3 percent slopes	1
Santiam silt loam, 2 to 8 percent slopes	1
Santiam silt loam, 3 to 6 percent slopes	1
Saturn variant silt loam	1
Saum silt loam, 2 to 7 percent slopes	1
Saum silt loam, 3 to 8 percent slopes	1
Sauvie silt loam	5

Mapunit_Name	Prime Farmland Code
Sauvie silt loam, protected	2
Sauvie silty clay loam, protected	2
Sawtell silt loam, 0 to 8 percent slopes	1
Schrier silt loam, 2 to 8 percent slopes	4
Schrier silt loam, shaly substratum, 2 to 7 percent slopes	4
Selmac loam, 2 to 7 percent slopes, low precip	2
Sevenoaks loamy sand, 0 to 3 percent slopes	4
Shano silt loam, 2 to 7 percent slopes	4
Shefflein loam, 2 to 7 percent slopes	1
Sibold fine sandy loam, 0 to 5 percent slopes	1
Sifton gravelly loam	1
Sifton gravelly loam, occasionally flooded	1
Sifton loam	1
Silverlake silt loam, 0 to 3 percent slopes	4
Sinamox silt loam, 1 to 7 percent slopes	4
Snow silt loam	4
Snow silt loam, 0 to 3 percent slopes	4
Spangenburg complex, 0 to 2 percent slopes	4
Spangenburg silty clay loam, 0 to 1 percent slopes	4
Spangenburg silty clay loam, moist, 0 to 1 percent slopes	4
Spangenburg silty clay loam, thick surface, 0 to 2 percent slopes	4
Springwater loam, 2 to 8 percent slopes	1
Steiwer silt loam, 3 to 6 percent slopes	1
Taunton fine sandy loam, 0 to 2 percent slopes	4
Taunton fine sandy loam, 1 to 7 percent slopes	4
Taunton fine sandy loam, 2 to 5 percent slopes	4
Terrabella clay loam, 0 to 3 percent slopes	2
Tetherow sandy loam, 0 to 3 percent slopes	4
Tetherow sandy loam, 3 to 8 percent slopes	4
Thatuna silt loam, 1 to 7 percent slopes	2
Tippett-Zumwalt complex, 0 to 3 percent slopes	1
Topper silt loam, 2 to 8 percent slopes	4
Truesdale fine sandy loam, 0 to 2 percent slopes	4
Truesdale fine sandy loam, 2 to 5 percent slopes	4
Truesdale fine sandy loam, 5 to 8 percent slopes	4
Tulana mucky silty clay loam, drained, 0 to 1 percent slopes	4
Tulana silt loam	6
Tulana silt loam, sandy substratum	6
Tumalo sandy loam, 0 to 3 percent slopes	4
Tumalo sandy loam, 3 to 8 percent slopes	4
Turbyfill fine sandy loam, 0 to 2 percent slopes	4
Turbyfill fine sandy loam, 2 to 5 percent slopes	4
Tygh fine sandy loam	7
Valby silt loam, 1 to 7 percent slopes	4
Van Horn fine sandy loam, 0 to 8 percent slopes	1
Van Horn loam, 0 to 8 percent slopes	1

Mapunit_Name	Prime Farmland Code
Van Horn variant loam, 0 to 8 percent slopes	1
Veazie loam	7
Veazie loam, 0 to 3 percent slopes	7
Veazie silt loam, 0 to 3 percent slopes	4
Veneta loam, 0 to 7 percent slopes	1
Veneta loam, 0 to 12 percent slopes	1
Veneta variant silt loam, 0 to 7 percent slopes	1
Virtue silt loam, 0 to 2 percent slopes	4
Virtue silt loam, 2 to 5 percent slopes	4
Virtue silt loam, 2 to 7 percent slopes	4
Waha silt loam, 1 to 7 percent slopes	4
Waha silty clay loam, 1 to 12 percent slopes	4
Walla Walla silt loam, 1 to 7 percent slopes	4
Walla Walla silt loam, 3 to 7 percent slopes	4
Walla Walla silt loam, hardpan substratum, 1 to 7 percent slopes	4
Wamic loam, 1 to 5 percent slopes	4
Wapato silt loam	5
Wapato silty clay loam	5
Wapato silty clay loam, 0 to 3 percent slopes	5
Wapato silty clay loam, high precipitation, 0 to 3 percent slopes	5
Wapinitia silt loam, 0 to 8 percent slopes	4
Wapinitia variant silt loam, 1 to 7 percent slopes	4
Warden silt loam, 0 to 2 percent slopes	4
Warden silt loam, 2 to 5 percent slopes	4
Warden very fine sandy loam, 2 to 5 percent slopes	4
Watama silt loam, 2 to 8 percent slopes	4
Watama-Wapinitia silt loams, 0 to 5 percent slopes	4
Wato very fine sandy loam, 3 to 7 percent slopes	4
Wellsdale loam, 2 to 12 percent slopes	1
Wellsdale-Willakenzie-Dupee complex, 2 to 12 percent slopes	1
Wenas-Loupence-Cumulic Haploxerolls complex, 0 to 3 percent slopes	6
Willakenzie clay loam, 2 to 12 percent slopes	1
Willakenzie loam, 2 to 12 percent slopes	1
Willakenzie silty clay loam, 2 to 12 percent slopes	1
Willamette silt loam	1
Willamette silt loam, 0 to 3 percent slopes	1
Willamette silt loam, 3 to 7 percent slopes	1
Willamette silt loam, 3 to 8 percent slopes	1
Willamette silt loam, gravelly substratum, 0 to 3 percent slopes	1
Willamette silt loam, wet, 0 to 3 percent slopes	1
Willamette silt loam, wet, 3 to 7 percent slopes	1
Willis silt loam, 2 to 5 percent slopes	4
Willis silt loam, 2 to 7 percent slopes	4
Willowdale loam, 0 to 2 percent slopes	4
Willowdale loam, 0 to 3 percent slopes	4
Willowdale-Dryck-Fluvaquents complex, 0 to 2 percent slopes	4

Mapunit_Name	Prime Farmland Code
Wind River fine sandy loam, 0 to 8 percent slopes	4
Windygap clay loam, 2 to 12 percent slopes	1
Windygap silt loam, 2 to 12 percent slopes	1
Wingdale silt loam, 0 to 2 percent slopes	6
Wingville silt loam	4
Wingville silt loam, 0 to 2 percent slopes	4
Wolfpeak sandy loam, 3 to 12 percent slopes	1
Wollent silt loam	2
Woodburn silt loam	1
Woodburn silt loam, 0 to 3 percent slopes	1
Woodburn silt loam, 3 to 7 percent slopes	1
Woodburn silt loam, 3 to 8 percent slopes	1
Wyeast silt loam, 0 to 8 percent slopes	2
Xerolls, silty, 0 to 3 percent slopes	4
Yakima silt loam, 0 to 3 percent slopes	4
Zorravista fine sand, 0 to 5 percent slopes	4
Zorravista-Hinton complex, 0 to 8 percent slopes	4

*1 only in Baker and Union Soil Surveys

*2 only in Clackamas, Linn, Marion, and Yamhill Soil Surveys

*3 only in Lane, Polk, and Washington Soil Surveys

EXHIBIT 3















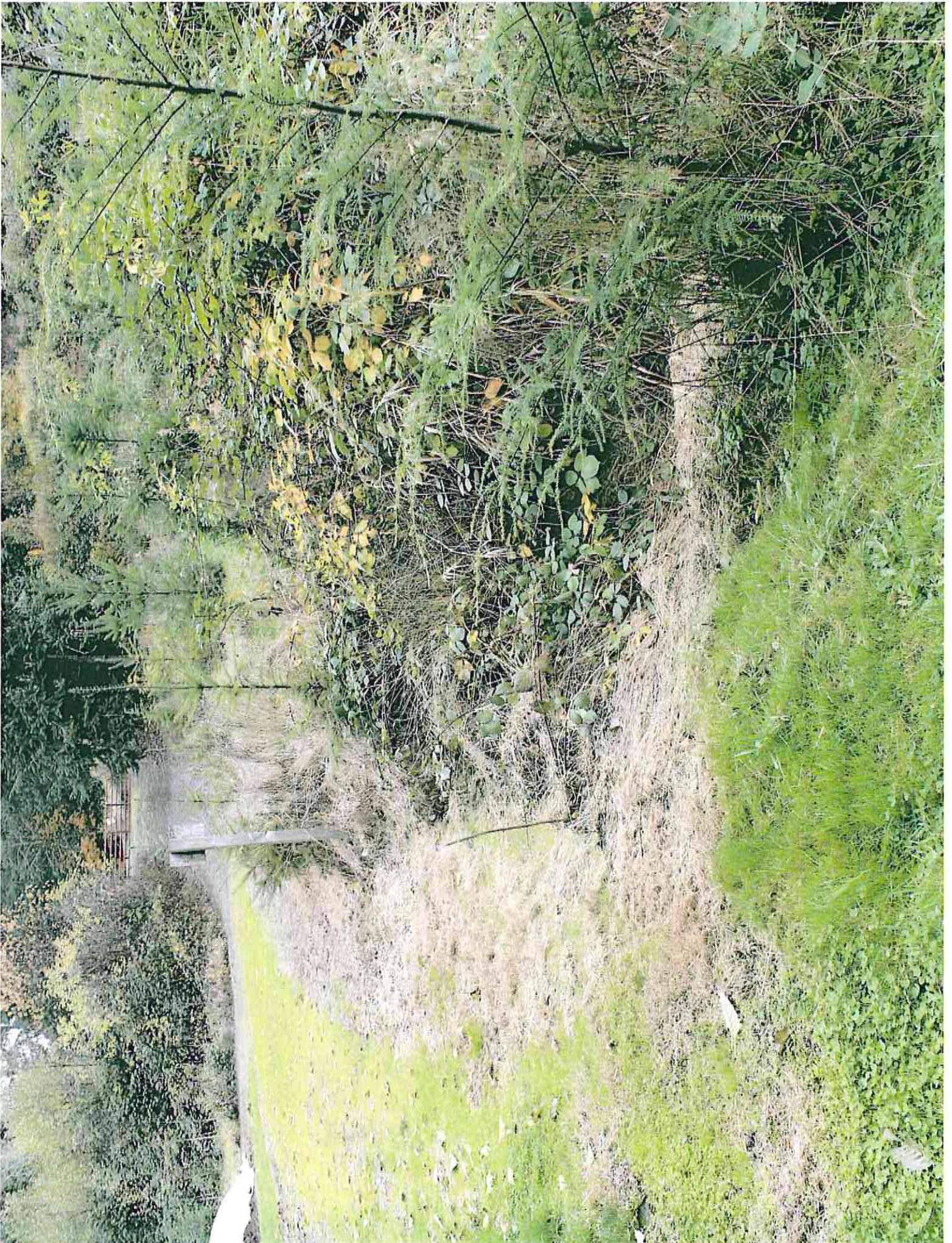


















There has been a great deal of focus on the soil composition and preserving high valued Soil for farming. However in Clatsop County the soil composition did not determine zoning. The majority of soil classified as 45A in Clatsop County are located within other zones other than EFU.

Description

Land capability classification shows, in a general way, the suitability of soils for most kinds of field crops. Crops that require special management are excluded. The soils are grouped according to their limitations for field crops, the risk of damage if they are used for crops, and the way they respond to management. The criteria used in grouping the soils do not include major and generally expensive landforming that would change slope, depth, or other characteristics of the soils, nor do they include possible but unlikely major reclamation projects. Capability classification is not a substitute for interpretations that show suitability and limitations of groups of soils for rangeland, for woodland, or for engineering purposes.

In the capability system, soils are generally grouped at three levels—capability class, subclass, and unit. Only class and subclass are included in this data set.

Capability classes, the broadest groups, are designated by the numbers 1 through 8. The numbers indicate progressively greater limitations and narrower choices for practical use. The classes are defined as follows:

Class 1 soils have few limitations that restrict their use.

Class 2 soils have moderate limitations that reduce the choice of plants or that require moderate conservation practices.

Class 3 soils have severe limitations that reduce the choice of plants or that require special conservation practices, or both.

Class 4 soils have very severe limitations that reduce the choice of plants or that require very careful management, or both.

Class 5 soils are subject to little or no erosion but have other limitations, impractical to remove, that restrict their use mainly to pasture, rangeland, forestland, or wildlife habitat.

Class 6 soils have severe limitations that make them generally unsuitable for cultivation and that restrict their use mainly to pasture, rangeland, forestland, or wildlife habitat.

Class 7 soils have very severe limitations that make them unsuitable for cultivation and that restrict their use mainly to grazing, forestland, or wildlife habitat.

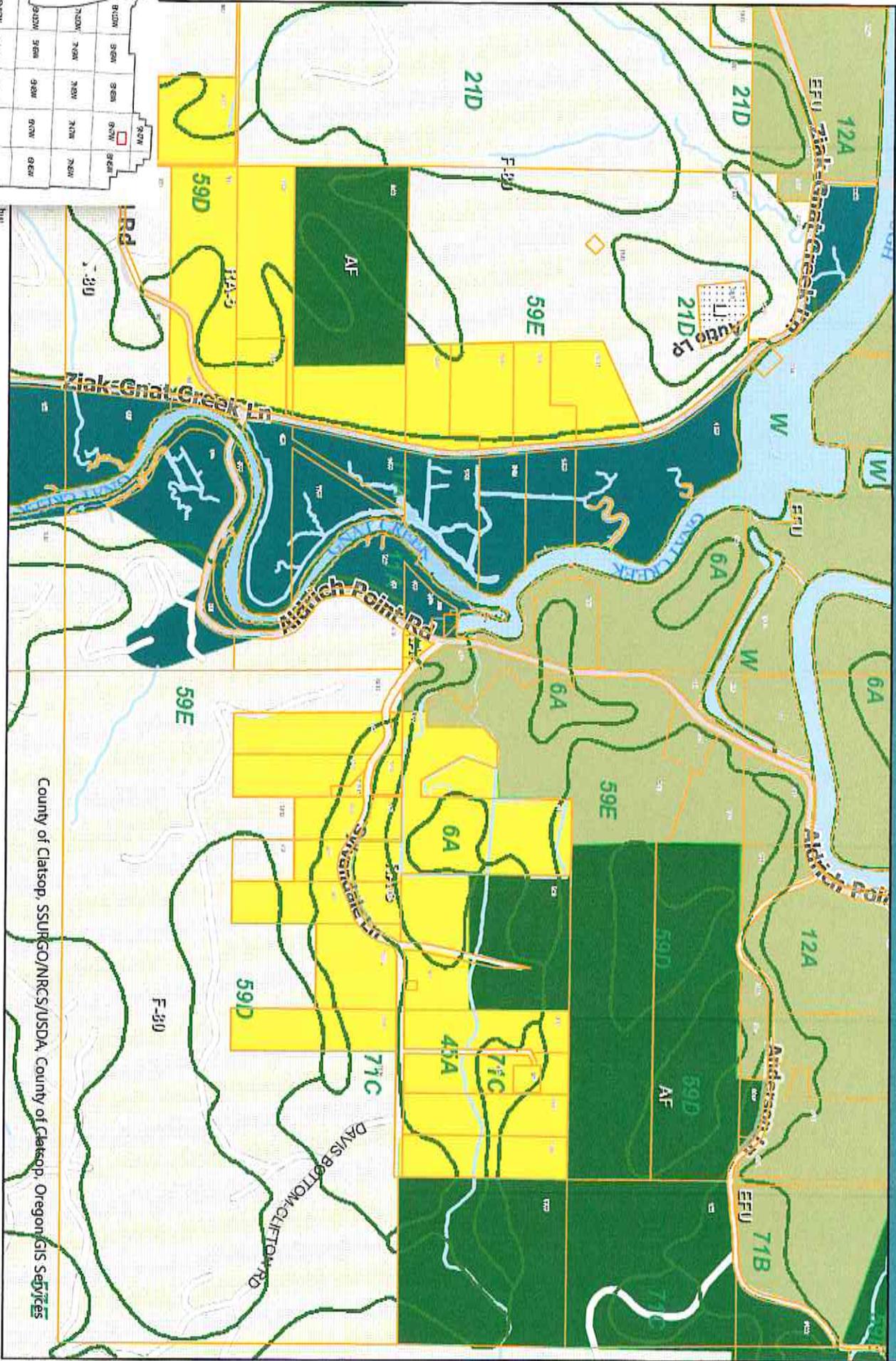
Class 8 soils and miscellaneous areas have limitations that preclude commercial plant production and that restrict their use to recreational purposes, wildlife habitat, watershed, or esthetic purposes.

Rating Options

Aggregation Method: Dominant Condition

Component Percent Cutoff: None Specified

Clatsop County Webmaps



County of Clatsop, SSURGO/NRCS/USDA, County of Clatsop, Oregon GIS Services

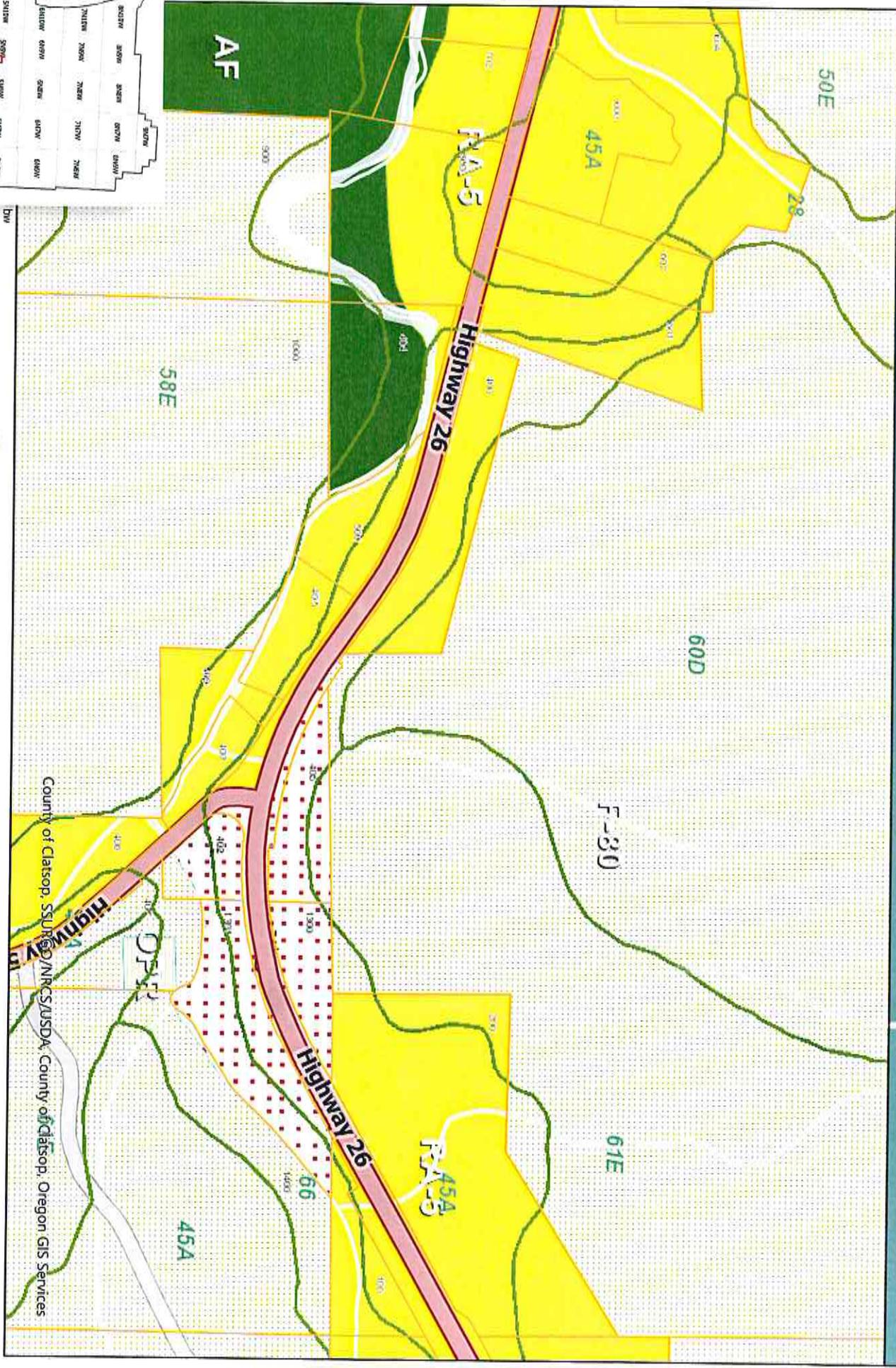
Clatsop County



This map was produced using Clatsop County GIS data. The data is maintained by Clatsop County to support its governmental activities. Clatsop County is not responsible for any map errors, possible misuse, or misinterpretation.



10/17/2021 10:45 PM



County of Clatsop, SSURGO/NRCS/USDA, County of Clatsop, Oregon GIS Services

Clatsop County

0.2



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Exhibits

Kathren Rusinovich <maukate1@gmail.com>

Waterhouse Land

Ian Sisson <isisson@co.clatsop.or.us>

Fri, Apr 2, 2021 at 4:02 PM

To: Kathren Rusinovich <maukate1@gmail.com>, MELANIE WYRWITZKE

<melwyrwitzke@hotmail.com>, Joy Brotherton <jrb4@centurytel.net>

Cc: "Foote, Hilary" <hilary.foote@state.or.us>, Julia Decker <JDecker@co.clatsop.or.us>, Gail Henrikson <ghenrikson@co.clatsop.or.us>

Ms. Rusinovich:

Please see my responses to your questions, below, in blue:

1. When will I be able to pick up a copy of the conditional use permit for the Big Creek Lodge?

I sent this over to you via email on Wednesday 3-31-21. Let me know if you did not receive it.

2. Do you have an example of an impact study that would apply to a rural residential neighborhood and what would the property owner be impacting?

Unfortunately we have not been able to find an example. Copied on this email is Hilary Foote, Farm/Forest Specialist at DLCD, who may be able to provide an example or point you in the right direction.

3. Which questions that have been answered are missing a better explanation?

Please refer to the items listed in the two incomplete letters – especially the most recent one – these are the big-ticket items. And, in general, please be sure your application narrative provides an explanation of how you have reached each of your conclusions.

4. The property has not been used in conjunction with a dairy farm. What else do you need to verify confirmation of this standard.

The subject property is predominately composed of Class II soils. The definition of "high value farmland" found in LWDUO Section 1.030 identifies land predominately composed of Class II soils as high value farmland, as does the definition found in

OAR 660-033-0020. The definition in the OAR also says *lower* classifications of soils are considered high value farmland if located on land west of the Coast Range that was used in conjunction with a dairy operation on January 1, 1993. We can ignore this section of the definition because the subject property is predominately composed of Class II soils, which already qualifies it as "high value farmland."

5. Why would you refer to 3.3.6 and 3.3.7 case law? It doesn't apply to a lot of record permits.

These section references, from LUBA Headnotes, include examples of the "stability standard" (aka cumulative impacts analysis) and the "unsuitability standard" analysis. These analyses are required for a lot of record dwelling on high-value farmland. The same analyses are also used when evaluating non-farm dwelling applications. Many of the cases referenced in Headnotes were non-farm dwelling applications.

6. Does the planning Dept want us to go back and re-submit answers to the original permit questions and Julia's clarification questions with more detailed explanation to reach the submitted conclusion?

Yes, please. As mentioned above, please be sure your application narrative provides an explanation of how you have reached each of your conclusions. In many cases, this may require factual evidence such as Assessor records for surrounding farmland and farm-zone dwellings.

7. Is their specific language missing for the application? Can you provide a list of what is missing?

Please refer to the items listed in the two incomplete letters – especially the most recent one – these are the big-ticket items. And, in general, please be sure your application narrative provides an explanation of how you have reached each of your conclusions.

8. Does it make a difference if the trees are grown for lumber or for Christmas trees?

Yes. Christmas trees are considered a farm use; trees grown for lumber would be considered a forest use.

- 9) Are you willing to provide guidance of what exactly would satisfy the counties need for approval?

I don't have guidance for you beyond the information that has been provided to date. If you still need assistance, I would encourage you to consider working with a land use consultant or attorney.

In closing, I have done as much as I can to assist you at this point. A lot of record dwelling is a very complex application type and, unfortunately, I haven't been able to find any examples of successful (or non-successful) applications of this type to share with you. If you need additional assistance at this point, it may be worth your while to work with a land use consultant or attorney.

Respectfully,

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Second Letter of Incomplete 03232021.pdf
210K



Oregon

John A. Kitzhaber, MD, Governor

exhibit 6

Department of Forestry

Astoria District
92219 Highway 202
Astoria, OR 97103
(503) 325-5451
Fax (503) 325-2756



November 7, 2012

Carol Barendse - Represented by Jay Brotherton
42045 Logger Lane
Astoria, OR 97103

RE: LAND CONVERSION TO NON-FOREST USE - Carol Barendse C/C

An operation was recently completed on unit 1 as described in the submitted Notification of Operation, number 2012-521-00478. As a result of this operation, tree stocking has been reduced below the minimum standard defined by the Oregon Forest Practice Rules.

The notification indicates that a conversion of land to a non-forest use will be made on this unit. Oregon Forest Practice Rules require that improvements to the land, as well as evidence of the intended actual use be demonstrated on the unit on or before 12/31/14.

Reforestation is required if the conversion to a non-forest use will not be made by this date. Reforestation is also required on any portion of the harvest unit not involved in the land use change. Planting on this unit may be necessary to ensure that at least 200 trees per acre are established. If necessary, planting of an acceptable tree species must be completed by 12/31/14 and seedlings must be free to grow by 12/31/18.

Sincerely,

*ALertora@ODF, Stalk,
OR. US*

Ashley M. Lertora
Ashley M. Lertora

Stewardship Forester

*Scott Howell
503 440 1871*

*Ashley M. Lertora
@Oregon.gov*

300 seedlings

*ODS ODF Private
spruce / hemlock / fir
mixture*

~~200~~ ~~300~~ / acre

Planning Area: NORTHEAST
 Goal 3 - soils: II, III, IVw and VIe.
 Goal 4 - site class: Mostly FB,
 some FA, FC and FG.

Maps:	8-7-8CC	8-7-16
	8-7-17	8-7-17B
	8-7-17C	8-7-17CD
	8-7-18	8-7-19
	8-7-19BA	8-7-19DA
	8-7-20	8-7-20AA
	8-7-20B	8-7-20BB
	8-7-21	8-7-29
	8-7-30	8-8-14
	8-8-15	8-8-16DD
	8-8-21	8-8-22A
	8-8-22B	8-8-22BA
	8-8-22C	8-8-22D
	8-8-23	8-8-24
	8-8-25	8-8-25DA
	8-8-26	8-8-26CC
	8-8-26D	8-8-27
	8-8-27B	8-8-27C
	8-8-27D	8-8-34

FINDINGS

(a) adjacent uses:

- WEST - forestry.
- SOUTH - forestry.
- EAST - forestry and agriculture.
- NORTH - forestry, agriculture and aquatic areas.

(b) public facilities and services:

- WATER - Burnside Water Association, Wickiup Water District, Knappa Water Association, Carmen Creek Water Association.
- FIRE - Knappa-Svenson-Burnside Fire District.
- ROADS - State Highway 30, various paved county roads.

(c) parcel size and ownership patterns:

This exception area consists of 835 parcels totaling 4,031.73 acres. The overall average lot size is 4.83 acres. There are 107 parcels larger than ten acres totaling 2,235.57 acres or about 55% of the total exception area. Of those parcels larger than ten acres, there are 39 lots larger than 20 acres, totaling 1,235.41 acres or about 31% of the total exception area. These larger parcels are surrounded by smaller parcels.

(d) neighborhood and regional characteristics:

There are a total of 682 residential, commercial and institutional structures in this area at an overall density of about 1 per 5.91 acres.

CONCLUSION

This area is built and irrevocably committed to residential and commercial development for the following reasons:

- Continued cost-effective delivery of existing public facilities and services depends in part on continued residential and commercial development in this area.
- Farm and forest management are precluded by a pattern of small lot sizes in this area.
- Many forest and farm management practices are not compatible with either the number or density of residences and other non-farm, non-forest uses in this area.

AEB 0001
September 2009

Christmas Tree Economics: Establishing and Producing Douglas-Fir Christmas Trees in Western Oregon

*James W. Julian, Chal Landgren, Michael C. Bondi, and
Clark F. Seavert*



Oregon State | Extension
UNIVERSITY | Service

Christmas Tree Economics: Establishing and Producing Douglas-Fir Christmas Trees in Western Oregon

James W. Julian, Chal Landgren, Michael C. Bondi and, Clark F. Seavert¹

Introduction

Nationwide Christmas tree growers harvested 17.4 million trees in 2007, down from 20.8 million in 2002 (USDA Census of Agriculture, 2007). Oregon's share was 6.9 million trees in 2007, up from 6.5 million trees in 2002. Oregon led the nation in Christmas tree production accounting for 39 percent of the 2007 volume up from 31 percent from 2002.

In 2007 Oregon's Christmas tree production and sales were as follows: acres in Christmas tree production 61,850; number of trees harvested – 6.9 million; and value of sales - \$109 million. Trees are grown in several Oregon Counties, but four; Clackamas, Marion, Polk and Benton counties produce over 80% of the states total.

Two tree species, Douglas-fir and noble fir account for over 90% of the tree sales among the various species grown. In 2007, as over the past three decades Douglas-fir accounted for the largest percentage of trees sold. In 2008, noble fir is expected to occupy that position for the first time. Noble fir has become a popular Christmas tree commanding a higher market price relative to Douglas-fir. Over the past 10

years, acreage planted to noble have increased and recently surpassed Douglas-fir.

Douglas-fir is typically a lower cost option for consumers and major markets for Oregon trees are in Southwest United States and Mexico.

Douglas-fir is widely grown and its culturing is well understood. It grows well from the Valley floor to upper elevations, is a native species in the region, and prefers well to moderately well drained soils. Planting survival in our irrigated fields is typically around 95%. The production cycle ranges in length from 5 to 7 years depending upon site, seed source, harvest size, and grower experience.

This cost of production study provides growers with a tool for financial management and decision making. It was conducted in cooperation with growers, field representatives, researchers, and farm suppliers and provides typical costs and returns to a well managed Douglas-fir Christmas tree farm in the Willamette Valley of Oregon. Growers are encouraged to substitute their own costs to get an accurate accounting of their costs.

¹ James W. Julian, Faculty Research Assistant NWREC, Aurora; Chal Landgren, Christmas Tree Specialist NWREC, Aurora; Michael C. Bondi Forestry and Christmas tree Extension faculty Clackamas Co. Oregon; Clark F. Seavert, Extension Economist NWREC, Aurora. The assistance provided by Christmas tree producers, field representatives, farm suppliers, and researchers in developing this budget is greatly appreciated.

Assumptions

In the preparation of this publication, the following assumptions were made to provide a basis for Christmas tree production analysis.

1. Typical acreage for Christmas tree production in Oregon is 10 acres of non-irrigated land.
2. 1,500 trees are transplanted per acre (5.5' x 5.5' spacing)
3. Prices for 6 to 7 ft Douglas-fir Christmas trees are \$10.29 for Grade #1 and \$7.71 for Grade #2 per tree. Prices based upon 2005 to 2007 average prices listed by USDA National Agriculture Statistic Service.
http://www.nass.usda.gov/Statistics_by_State/Oregon/Publications/Horticulture/09_12xt.pdf; (Table 2) accessed 9/09).
Price per tree for study derived from listed average price by assuming average tree is 7ft. The price of Grade 2 trees are 25% of Grade 1 trees
4. Douglas-fir Christmas tree harvest begins in year 5 and continues through year 7 with 90 percent of planted trees harvestable.
5. All labor is hired at a rate of \$14.00 per hour, which includes worker's compensation, unemployment insurance, and other labor overhead expenses, or is paid a piece rate for some operation.
6. The machinery and equipment used in the budget reflects the typical machinery complement of a small Oregon Christmas tree farm. A detailed breakdown of machinery values is shown in Table 1. Table 2 provides estimated machinery costs from the American Society of Agricultural Engineers. Table 3 lists the estimated cost of each operation.
7. Gasoline and diesel costs per gallon are \$2.00 and \$2.50, respectively. (doubled in 2021)
8. The interest rate on operating funds is 8.5 percent and treated as a cash expense. One-half of the cash expenses are borrowed for a six-month period.
9. Machinery, housing facilities, and land are owned by the operator and assessed 8.5, 8.5, and 8 percent interest rates, respectively, as opportunity costs (a non-cash cost for the use of the asset). Land is valued at \$5,000 per acre.
10. Previous year's establishment costs are funded by the operator at a charge of 10 percent interest and are considered an opportunity cost.
11. Additional assumptions are listed for variable, fixed cash, and fixed non-cash costs in Table 4.
12. Price inflation for the time period of this study was ignored.
13. Owner management, family living, State and Federal income tax consequences are also ignored for this study.

Table 1. Machinery Cost Assumptions, Douglas-Fir Christmas Tree Production

Machine	Size	Market Value	Hours or Miles of Annual Use	Expected Life (yrs)	Salvage Value
Tractor	2 WD 35hp, Older	\$12,000	300	20	\$1,540
Fertilizer Spreader	40' Broadcast	1,500	4	15	\$144
Airblast Sprayer	300 gal	15,000	100	15	1,440
Pickup*	3/4 Ton 4X4	8,000	4,000	10	3,025
Backpack Sprayer		150	N/A	7	0
Elevator		2,000	N/A	15	192
Tree Baler		3,000	N/A	15	288
Shop/Shed	25' x 50'	25,000	N/A	35	0

* Pickup for Christmas tree production is 1/3 of total cost.

Table 2. Machinery Cost Calculations, Douglas-Fir Christmas Tree Production

Machin	Siz	--- Variable Costs ---		--- Fixed Costs ---		Tota Cost
		Fuel & Lub	Repair & Maint.	Depr. Interes	Insurance	
----- Costs per Hour -----						
Tractor	2 WD 35hp,	\$14.38	\$0.50	\$3.66	\$0.20	\$18.74
Fertilizer	40'	0.00	0.26	40.07	1.23	41.56
Airblast Sprayer	300	0.00	6.95	16.03	0.49	23.47
----- Costs per Mile -----						
Pickup*	3/4 Ton	\$0.19	\$0.15	\$0.24	\$0.08	\$0.66
----- Costs per Acre -----						
Backpack Sprayer		\$0.00	\$2.14	\$2.78	\$0.00	\$4.92
Elevato		\$0.00	\$12.05	\$21.83	\$0.00	\$33.89
Tree Baler		0.00	18.08	32.75	0.00	50.83
Shop/She	25' x	0.00	71.43	177.68	0.00	249.11

* Pickup for Christmas tree production is 1/3 of total cost.

Table 3. Estimated Cost of Each Operation with Power-Unit, Doulgas-Fir Christmas Tree Production.

Operation	Tractor	Miles per Hr	Acres per Hr	----- Machine Costs -----			
				Labor Cost per Acre	Variable Cost per Acre	Fixed Cost per Acre	Total Cost per Acre
Fertilizer Spreader	2WD 35hp	6.0	3.00	\$4.67	\$5.05	\$15.05	\$24.77
Airblast Sprayer	2WD 35hp	6.0	3.00	\$4.67	\$7.27	\$6.79	\$18.73

Table 4. Douglas-Fir Christmas Tree Production Input Assumptions for Variable, Harvest, and Fixed Costs.

	<u>Year 1</u>	<u>Year 2</u>	<u>Year 3</u>	<u>Year 4</u>
Prices per 6-7' Grade #1 Tree, (\$/Tree)	\$10.29	\$10.29	\$10.29	\$10.29
Prices per 6-7' Grade #2 Tree, (\$/Tree)	\$7.72	\$7.72	\$7.72	\$7.72
Trees Harvested (Grade #1), per Acre	0.00	0.00	0.00	0.00
Trees Harvested (Grade #2), per Acre	0.00	0.00	0.00	0.00
Cost of Labor, per Hour	\$14.00	\$14.00	\$14.00	\$14.00
Cost to Plant Trees, per Tree	\$0.30	\$0.50	\$0.00	\$0.00
Cost of Foliar Testing, per Acre	\$0.00	\$0.00	\$5.00	\$5.00
Cost of Shearing Labor, per Tree	\$0.00	\$0.00	\$0.25	\$0.35
Cost of Basal Pruning, per Tree	\$0.00	\$0.00	\$0.25	\$0.00
Cost for Tagging Trees, per Tree	\$0.00	\$0.00	\$0.00	\$0.00
Cost for Shagging, per Tree	\$0.00	\$0.00	\$0.00	\$0.00
Cost for Baling Trees (Including Twine), per Tree	\$0.00	\$0.00	\$0.00	\$0.00
Cost for Loading Trees, per Tree	\$0.00	\$0.00	\$0.00	\$0.00
Cost to Cutting Trees, per Tree	\$0.00	\$0.00	\$0.00	\$0.00
Cost of Fertilizer, per Acre	\$0.00	\$0.00	\$0.00	\$200.00
Cost of Insecticide, per Acre	\$0.00	\$0.00	\$0.00	\$20.00
Cost of Fungicide, per Acre	\$0.00	\$0.00	\$0.00	\$25.00
Cost of Herbicide, per Acre	\$25.00	\$25.00	\$25.00	\$25.00
Time for IPM Scouting, Hours	0.50	0.50	0.50	0.50
Time to Fertilize, Hand Appl., Hours	0.00	0.00	0.00	1.00
Time for Spot Herbicide Sprays, Hours	1.60	1.60	1.60	1.60
	----- Fixed Input Costs -----			
Property Taxes	\$15.00	\$15.00	\$15.00	\$15.00
Property Insurance	\$25.00	\$25.00	\$25.00	\$25.00
Land Values	\$5,000	\$5,000	\$5,000	\$5,000
Tree Cost	\$0.50	\$0.50	\$0.00	\$0.00
Gasoline Price	\$2.00	\$2.00	\$2.00	\$2.00
Diesel Fuel Price	\$2.50	\$2.50	\$2.50	\$2.50
Operating Interest Rate	8.50%	8.50%	8.50%	8.50%
Machinery Interest Rate	8.50%	8.50%	8.50%	8.50%
Land Interest Rate	8.00%	8.00%	8.00%	8.00%
Establishment Interest Rate	10.00%	10.00%	10.00%	10.00%
Overhead Charge	8.00%	8.00%	8.00%	8.00%
% of Operating Capital Borrowed	50.00%	50.00%	50.00%	50.00%
Months to Borrow Operating Capital	6.0	6.0	6.0	6.0
Planted Trees	1,500	75	0	0

Table 4. Douglas-Fir Christmas Tree Production Input Assumptions for Variable, Harvest, and Fixed Costs, (con't).

	<u>Year 5</u>	<u>Year 6</u>	<u>Year 7</u>
Prices per 6-7' Grade #1 Tree, (\$/Tree)	\$10.29	\$10.29	\$10.29
Prices per 6-7' Grade #2 Tree, (\$/Tree)	\$7.72	\$7.72	\$7.72
Trees Harvested (Grade #1), per Acre	150.00	600.00	200.00
Trees Harvested (Grade #2), per Acre	0.00	300.00	100.00
Cost of Labor, per Hour	\$14.00	\$14.00	\$14.00
Cost to Plant Trees, per Tree	\$0.00	\$0.00	\$0.00
Cost of Foliar Testing, per Acre	\$5.00	\$5.00	\$5.00
Cost of Shearing Labor, per Tree	\$0.45	\$0.50	\$0.55
Cost of Basal Pruning, per Tree	\$0.00	\$0.00	\$0.00
Cost for Tagging Trees, per Tree	\$0.30	\$0.30	\$0.30
Cost for Shagging, per Tree	\$0.75	\$0.75	\$0.75
Cost for Baling Trees (Including Twine), per Tree	\$0.85	\$0.85	\$0.85
Cost for Loading Trees, per Tree	\$0.65	\$0.65	\$0.65
Cost to Cutting Trees, per Tree	\$0.40	\$0.40	\$0.40
Cost of Fertilizer, per Acre	\$200.00	\$200.00	\$50.00
Cost of Insecticide, per Acre	\$20.00	\$20.00	\$20.00
Cost of Fungicide, per Acre	\$25.00	\$25.00	\$25.00
Cost of Herbicide, per Acre	\$25.00	\$25.00	\$25.00
Time for IPM Scouting, Hours	0.50	0.50	0.50
Time to Fertilize, Hand Appl., Hours	1.00	1.00	1.00
Time for Spot Herbicide Sprays, Hours	1.60	1.60	1.60
	----- Fixed Input Costs -----		
Property Taxes	\$15.00	\$15.00	\$15.00
Property Insurance	\$25.00	\$25.00	\$25.00
Land Values	\$5,000	\$5,000	\$5,000
Tree Cost	\$0.00	\$0.00	\$0.00
Gasoline Price	\$2.00	\$2.00	\$2.00
Diesel Fuel Price	\$2.50	\$2.50	\$2.50
Operating Interest Rate	8.50%	8.50%	8.50%
Machinery Interest Rate	8.50%	8.50%	8.50%
Land Interest Rate	8.00%	8.00%	8.00%
Establishment Interest Rate	10.00%	10.00%	10.00%
Overhead Charge	8.00%	8.00%	8.00%
% of Operating Capital Borrowed	50.00%	50.00%	50.00%
Months to Borrow Operating Capital	6.0	6.0	6.0
Planted Trees	0	0	0

Results of establishing and producing Douglas Fir Christmas trees in Western Oregon

Cash flow analysis

Table 5 contains a cash flow analysis for a 10 acre Douglas-fir Christmas tree farm. A cash flow analysis shows the cash costs required to produce Douglas-fir Christmas trees. Cash costs include labor, trees, fertilizer, chemicals, machinery repairs, fuel, lube, and oil, operating (short-term) interest, machinery and property taxes. The income, variable costs and cash fixed costs are shown for each of the four establishment years and at full production. Harvest begins in year 5 with 150 Grade 1 trees and increases to 900 trees (600 Grade 1 and 300 Grade 2) in year 6 and a final harvest of 300 trees (200 Grade 1 and 100 Grade 2) in year 7. Total variable costs are \$1,988 in the first year with an additional \$47 of cash fixed costs for a total cash cost of \$2,035 per acre.

The farm projects a positive cash flow beginning in year 6 with gross income exceeding total cash costs by \$4,155 per acre. In year 7, the farm returns sufficient gross income to pay all previous years' cash costs with a surplus \$162 over prior costs.

Figure 1 shows the major cost components in relation to total cash costs. Harvest costs are the largest cash expense representing 30 percent of the total cash costs followed by hired labor with 29 percent. Machine costs, which include fuel, oil, and repairs, are next with 9 percent. Fertilizer and chemicals and Overhead expenses are both 7 percent of the total cash costs and Christmas trees are 6 percent. The remaining cost items account for 12 percent of the total cash costs.

Economic costs and returns

Table 6 details the economic costs and returns for a Christmas tree farm. Economic costs include all the cash costs from Table 5 plus ownership costs that are either an opportunity cost to the owner or dollars borrowed from a financial institution. These ownership costs include the principal and interest payments or a return on investment to the grower, or both, for machinery, and land, and funds to pay for previous year's costs.

Gross income exceeds variable and fixed costs in Year 6 with a \$2,360 per acre return to the grower. However, in year 7 gross income is \$367 less than costs. This Christmas tree farm does not generate enough revenue to cover cumulative production costs and at the end of the production cycle has a deficit of \$8,805 per acre.

Figure 2 shows the cost components in relation to total economic costs. When all economic costs are included, interest costs are the largest component at 19 percent of total costs. This is followed by harvest and hired labor costs accounting for 18 and 17 percent, respectively. Land costs are the next largest item at 13 percent of total costs. Machine costs (fuel, oil, repairs, depreciation, and interest charges) represent 9 percent of the total costs. The remaining cost items account for 24 percent of the total economic costs.

The net projected economic returns for a 10 acre Douglas-fir Christmas tree farm are shown in Figure 3. Both the cumulative cash and economic cost and returns are represented. The projected returns for this Christmas tree farm will cover all cash costs of establishment in 7 years. With the assumptions in this study, however, this farm will not generate sufficient gross incomes to cover all economic costs. In fact, even if the owner's rate of return on invested capital is zero, this farm is \$507

short of covering production and harvest costs (Figure 4). A sensitivity analysis of the change in price necessary to make this Christmas tree farm a prudent business investment indicates profitability, under

assumed interest rates, could be achieved by increasing the Christmas tree prices by 64 percent from \$10.29 and \$7.72 to \$16.88 and \$12.66 for grade 1 and 2 trees respectfully (Figure 4).

Table 5. Cash Flow Analysis of Douglas-Fir Christmas Tree Production in Western Oregon.

	Year 1	Year 2	Year 3	Year 4	Year 5	Year 6	Year 7
Income:							
Trees Harvested (Grade #1), per Acre	0.00	0.00	0.00	0.00	150.00	600.00	200.00
Trees Harvested (Grade #2), per Acre	0.00	0.00	0.00	0.00	0.00	300.00	100.00
Prices per 6-7' Grade #1 Tree, (\$/Tree)	0.00	0.00	0.00	0.00	10.29	10.29	10.29
Prices per 6-7' Grade #2 Tree, (\$/Tree)	<u>0.00</u>	<u>0.00</u>	<u>0.00</u>	<u>0.00</u>	<u>0.00</u>	<u>7.72</u>	<u>7.72</u>
Gross Income(\$ per Acre)	0.00	0.00	0.00	0.00	1,543.50	8,489.25	2,829.75
Variable Costs:							
Field Preparation	352.00	0.00	0.00	0.00	0.00	0.00	0.00
Trees	750.00	37.50	0.00	0.00	0.00	0.00	0.00
Chemicals	8.25	8.25	8.25	53.25	53.25	53.25	8.25
Fertilizer	0.00	0.00	0.00	200.00	200.00	200.00	50.00
Hired Labor (non-harvest)	493.40	66.90	779.40	568.40	718.40	718.40	290.90
Harvest Cost	0.00	0.00	0.00	0.00	442.50	2,655.00	885.00
Equipment	138.81	138.81	138.81	158.40	188.54	188.54	168.94
Shop	71.43	71.43	71.43	71.43	71.43	71.43	71.43
Miscellaneous and Overhead	133.11	25.83	80.23	84.52	139.33	311.33	118.36
Interest: Operating Capital	<u>41.37</u>	<u>7.41</u>	<u>23.02</u>	<u>24.25</u>	<u>38.54</u>	<u>89.31</u>	<u>33.96</u>
Total Variable Costs	1,988.37	356.13	1,101.14	1,160.25	1,851.98	4,287.26	1,626.84
Gross Income minus VC	(1,988.37)	(356.13)	(1,101.14)	(1,160.25)	(308.48)	4,201.99	1,202.91
Fixed Cash Costs							
Insurance	31.97	31.97	31.97	31.97	31.97	31.97	31.97
Property Taxes	<u>15.00</u>						
Total Fixed Cash Costs	46.97	46.97	46.97	46.97	46.97	46.97	46.97
Total Cash Cost	2,035.35	403.10	1,148.11	1,207.22	1,898.95	4,334.23	1,673.81
Annual Cash Flow	(2,035.35)	(403.10)	(1,148.11)	(1,207.22)	(355.45)	4,155.02	1,155.94
Cumulative Cash Flow	(2,035.35)	(2,438.45)	(3,586.56)	(4,793.78)	(5,149.23)	(994.21)	161.73

Table 6. Economic Costs and Returns of Douglas-Fir Christmas Tree Production in Western Oregon.							
	Year 1	Year 2	Year 3	Year 4	Year 5	Year 6	Year 7
Income:							
Trees Harvested (Grade #1), per Acre	0.00	0.00	0.00	0.00	150.00	600.00	200.00
Trees Harvested (Grade #2), per Acre	0.00	0.00	0.00	0.00	0.00	300.00	100.00
Prices per 6-7' Grade #1 Tree, (\$/Tree)	0.00	0.00	0.00	0.00	10.29	10.29	10.29
Prices per 6-7' Grade #2 Tree, (\$/Tree)	<u>0.00</u>	<u>0.00</u>	<u>0.00</u>	<u>0.00</u>	<u>0.00</u>	<u>7.72</u>	<u>7.72</u>
Gross Income(\$ per Acre)	0.00	0.00	0.00	0.00	1,543.50	8,489.25	2,829.75
Variable Costs:							
Field Preparation	352.00	0.00	0.00	0.00	0.00	0.00	0.00
Trees	750.00	37.50	0.00	0.00	0.00	0.00	0.00
Chemicals	8.25	8.25	8.25	53.25	53.25	53.25	8.25
Fertilizer	0.00	0.00	0.00	200.00	200.00	200.00	50.00
Hired Labor (non-harvest)	493.40	66.90	779.40	568.40	718.40	718.40	290.90
Harvest Cost	0.00	0.00	0.00	0.00	442.50	2,655.00	885.00
Equipment	138.81	138.81	138.81	158.40	188.54	188.54	168.94
Shop	71.43	71.43	71.43	71.43	71.43	71.43	71.43
Miscellaneous and Overhead	133.11	25.83	80.23	84.52	139.33	311.33	118.36
Interest: Operating Capital	<u>41.37</u>	<u>7.41</u>	<u>23.02</u>	<u>24.25</u>	<u>38.54</u>	<u>89.31</u>	<u>33.96</u>
Total Variable Costs	1,988.37	356.13	1,101.14	1,160.25	1,851.98	4,287.26	1,626.84
Gross Income minus VC	(1,988.37)	(356.13)	(1,101.14)	(1,160.25)	(308.48)	4,201.99	1,202.91
Fixed Costs:							
Insurance	31.97	31.97	31.97	31.97	31.97	31.97	31.97
Property Taxes	15.00	15.00	15.00	15.00	15.00	15.00	15.00
Machine Costs	98.75	98.75	98.75	136.29	136.29	136.29	99.39
Shop	177.68	177.68	177.68	177.68	177.68	177.68	177.68
Land Interest Cost	400.00	400.00	400.00	400.00	400.00	400.00	400.00
Interest on Estab. Costs	<u>0.00</u>	<u>271.18</u>	<u>406.25</u>	<u>629.83</u>	<u>885.43</u>	<u>1,080.91</u>	<u>845.40</u>
Total Fixed Cost	723.40	994.58	1,129.65	1,390.76	1,646.36	1,841.85	1,569.43
Total Cost	2,711.77	1,350.71	2,230.78	2,551.01	3,498.34	6,129.11	3,196.27
Net Projected Returns	(2,711.77)	(1,350.71)	(2,230.78)	(2,551.01)	(1,954.84)	2,360.14	(366.52)
Cumulative Returns	(2,711.77)	(4,062.48)	(6,293.26)	(8,844.27)	(10,799.12)	(8,438.97)	(8,805.49)

Figure 1. Cash Costs per Acre to Produce Douglas-Fir Christmas Trees in Western Oregon, by Percent.

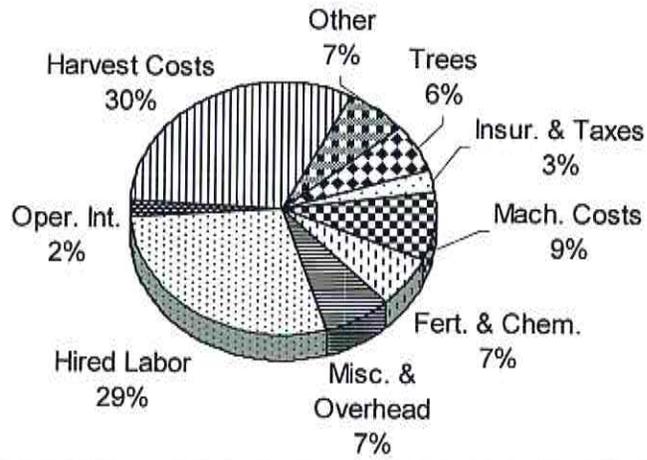


Figure 2. Economic Costs per Acre to Produce Douglas-Fir Christmas Trees in Western Oregon, by Percent.

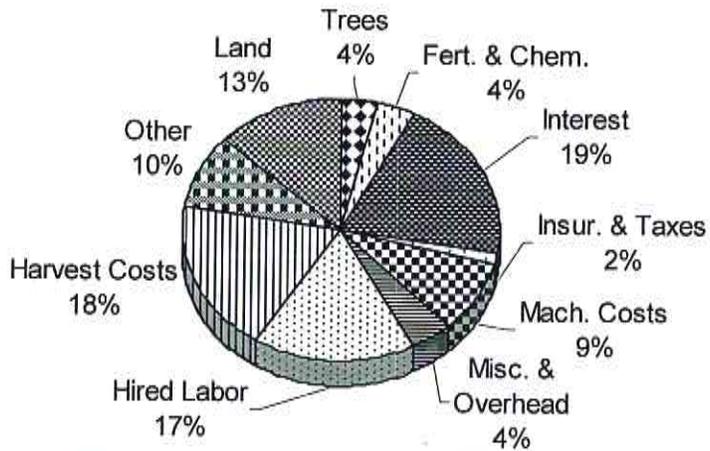


Figure 3. Comparing Cash and Economic Net Returns per Acre to Produce Douglas-Fir Christmas Trees in Western Oregon

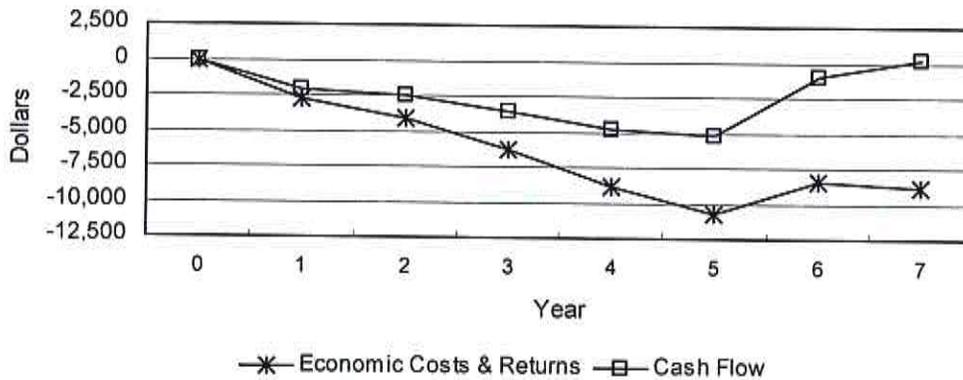
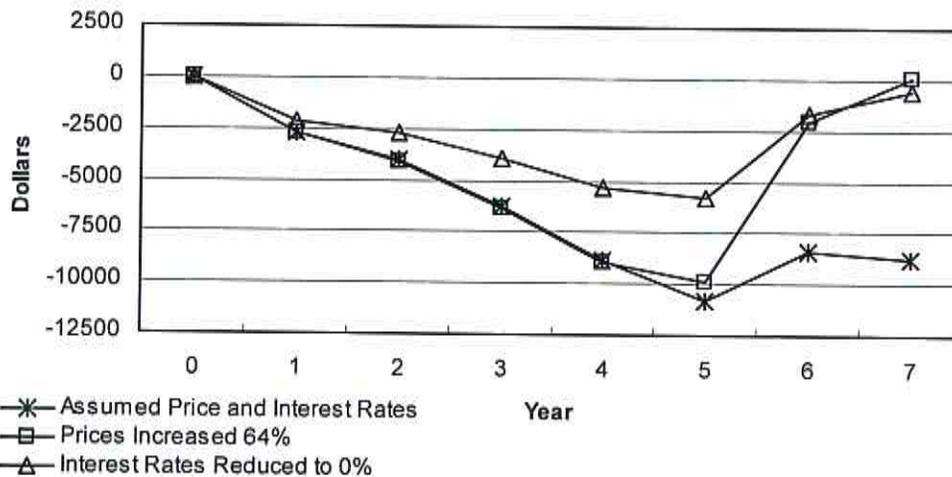


Figure 4. Projected Net Returns per Acre with Changes to Douglas-Fir Christmas Tree Prices and Interest Rates Assumed in this Study.



Discussion

Given the assumptions in this study, production of Douglas-fir Christmas trees does not appear to be a prudent investment as a significant increase in grower prices would be necessary in order for a grower to be profitable. The current low prices suggest a surplus of Douglas-fir inventory in the field. Therefore, Christmas tree growers planning new Christmas tree plantings

should consider market conditions 5 to 7 year in the future and determine to whom and how to market and sell the trees.

Current Christmas tree producers may want to consider a value added component to increase profitability. If Christmas tree growers are able to share in the value-added processes, such as U-Cut production or sales of ancillary products and or services they may be more likely to profit financially.

This cost of establishment study is meant to provide useful information to Christmas tree producers and investors who are considering planting Christmas trees. However, as with all enterprise budgets, putting your own current costs in the budget will make it more meaningful. Many tools are available to assist in budgeting such as templates from university farm management specialists and computer software programs such as "*Agricultures Profitability Tool*" (*AgProfit*TM). This program is free for download at the *Agtools*TM website www.agtools.org. Talk with your local Extension agent to find the latest in Christmas tree production tools and budget information.

Growers must not forget the importance that a particular enterprise such as a Christmas tree farm can have in the overall financial stability of the farm business.

Financial managers can recommend planting Christmas trees to improve profitability, but the financial requirements to complete the planting could jeopardize cash flows, increase the debt-to-asset ratio and diminish the solvency of the farm. There are many economic and financial considerations to review before such decisions are made. Seeking advice from university Extension and research faculty, industry representatives, or consultants can help in those decisions and keep your farm profitable and investments feasible.

APPENDIX A

Enterprise Budgets for Douglas-Fir Christmas Tree Production in Western Oregon

Table 7. Douglas-Fir Christmas Tree Production, Year 1, Economic Costs and Returns, \$/Acre

<u>VARIABLE CASH COSTS</u>	<u>Description</u>	<u>Labor</u>	<u>Machinery</u>	<u>Materials</u>	<u>Total</u>
Field Preparation, Custom		0.00	0.00	150.00	150.00
Stump Removal, Custom		0.00	0.00	200.00	200.00
Soil Test		0.00	0.00	2.00	2.00
Field layout	1.0 hour	14.00	0.00	0.00	14.00
Plant Trees		450.00	0.00	750.00	1,200.00
IPM Scouting	0.5 hours	7.00	0.00	0.00	7.00
Spot Spraying, Herbicide	1.6 hour	22.40	2.14	8.25	32.79
Pickup		0.00	136.67	0.00	136.67
Shop		0.00	0.00	71.43	71.43
Miscellaneous and Overhead		0.00	0.00	133.11	133.11
Interest: Operating Capital	6.0 mons	0.00	0.00	41.37	41.37
Total VARIABLE COSTS		493.40	138.81	1,356.16	1,988.37
 <u>FIXED COSTS</u>					
				<u>Unit</u>	<u>Total</u>
CASH Costs					
Pickup Insurance				acre	31.97
Property Taxes				acre	15.00
Total CASH fixed Costs					46.97
 NON-CASH Costs					
Machinery and Equip - Dep., Int., & Ins.				acre	2.14
Pickup - Depreciation & Interest				acre	96.60
Shop				acre	177.68
Land Interest Charge				acre	400.00
Interest on Establishment Costs				acre	0.00
Total NON-CASH fixed Costs					676.43
Total FIXED COSTS					723.40
Total of All Costs Per Acre					(2,711.77)

Table 8. Douglas-Fir Christmas Tree Production, Year 2, Economic Costs and Returns, \$/Acre

<u>VARIABLE CASH COSTS</u>	<u>Description</u>	<u>Labor</u>	<u>Machinery</u>	<u>Materials</u>	<u>Total</u>
Replant Trees		37.50	0.00	37.50	75.00
IPM Scouting	0.5 hours	7.00	0.00	0.00	7.00
Spot Spraying, Herbicide	1.6 hour	22.40	2.14	8.25	32.79
Pickup		0.00	136.67	0.00	136.67
Shop		0.00	0.00	71.43	71.43
Miscellaneous and Overhead		0.00	0.00	25.83	25.83
Interest: Operating Capital	6.0 mons	0.00	0.00	7.41	7.41
Total VARIABLE COSTS		66.90	138.81	150.42	356.13
FIXED COSTS				Unit	Total
CASH Costs					
Pickup Insurance				acre	31.97
Property Taxes				acre	15.00
Total CASH Costs					46.97
NON-CASH Costs					
Machinery and Equip - Dep., Int., & Ins.				acre	2.14
Pickup - Depreciation & Interest				acre	96.60
Shop				acre	177.68
Land Interest Charge				acre	400.00
Interest on Establishment Costs				acre	271.18
Total NON-CASH Costs					947.60
Total FIXED COSTS					994.58
Total of All Costs Per Acre					(1,350.71)

Table 9. Douglas-Fir Christmas Tree Production, Year 3, Economic Costs and Returns, \$/Acre

<u>VARIABLE CASH COSTS</u>	<u>Description</u>	<u>Labor</u>	<u>Machinery</u>	<u>Materials</u>	<u>Total</u>
IPM Scouting	0.5 hours	7.00	0.00	0.00	7.00
Foliar Testing		0.00	0.00	5.00	5.00
Spot Spraying, Herbicide	1.6 hour	22.40	2.14	8.25	32.79
Basal Pruning		375.00	0.00	0.00	375.00
Shearing		375.00	0.00	0.00	375.00
Pickup		0.00	136.67	0.00	136.67
Shop		0.00	0.00	71.43	71.43
Miscellaneous and Overhead		0.00	0.00	80.23	80.23
Interest: Operating Capital	6.0 mons	0.00	0.00	23.02	23.02
Total VARIABLE COSTS		779.40	138.81	187.93	1,106.14
<u>FIXED COSTS</u>					
					<u>Unit</u>
CASH Costs					<u>Total</u>
Pickup Insurance				acre	31.97
Property Taxes				acre	15.00
Total CASH Costs					46.97
NON-CASH Costs					
Machinery and Equip - Dep., Int., & Ins.				acre	2.14
Pickup - Depreciation & Interest				acre	96.60
Shop				acre	177.68
Land Interest Charge				acre	400.00
Interest on Establishment Costs				acre	406.25
Total NON-CASH Costs					1,082.67
Total FIXED COSTS					1,129.65
Total of All Costs Per Acre					(2,235.78)

Table 10. Douglas-Fir Christmas Tree Production, Year 4, Economic Costs and Returns, \$/Acre

<u>VARIABLE CASH COSTS</u>	<u>Description</u>	<u>Labor</u>	<u>Machinery</u>	<u>Materials</u>	<u>Total</u>
IPM Scouting	0.5 hours	7.00	0.00	0.00	7.00
Foliar Testing		0.00	0.00	5.00	5.00
Fertilizer Appl. with Spreader	1.0 appl.	4.67	5.05	200.00	209.71
Spot Spray, Herbicide	1.6 hour	22.40	2.14	8.25	32.79
Spray, Fungicide	1.0 appl.	4.67	7.27	\$25.00	36.94
Spray, Insecticide	1.0 appl.	4.67	7.27	\$20.00	31.94
Shearing		525.00	0.00	0.00	525.00
Pickup		0.00	136.67	0.00	136.67
Shop		0.00	0.00	71.43	71.43
Miscellaneous and Overhead		0.00	0.00	84.52	84.52
Interest: Operating Capital	6.0 mons	0.00	0.00	24.25	24.25
Total VARIABLE COSTS		568.40	158.40	438.44	1,165.25
<u>FIXED COSTS</u>					
CASH Costs					<u>Unit</u>
Pickup Insurance				acre	31.97
Property Taxes				acre	15.00
Total CASH Costs					46.97
NON-CASH Costs					
Machinery and Equip - Dep., Int., & Ins.				acre	39.68
Pickup - Depreciation & Interest				acre	96.60
Shop				acre	177.68
Land Interest Charge				acre	400.00
Interest on Establishment Costs				acre	629.83
Total NON-CASH Costs					1,343.79
Total FIXED COSTS					1,390.76
Total of All Costs Per Acre					(2,556.01)

Table 11. Douglas-Fir Christmas Tree Production, Year 5, Economic Costs and Returns, \$/Acre

<u>GROSS INCOME</u>		<u>Quantity</u>	<u>Unit</u>	<u>\$/Unit</u>	<u>Total</u>	<u>Price / Tree*</u>	
Douglas-Fir Christmas Trees, Grade #1		150	Trees	10.29	1,543.50	10.29	
Total GROSS Income		150			1,543.50	10.29	
<u>VARIABLE CASH COSTS</u>		<u>Description</u>	<u>Labor</u>	<u>Machinery</u>	<u>Materials</u>	<u>Total</u>	<u>Cost/Tree*</u>
IPM Scouting	0.5 hours		7.00	0.00	0.00	7.00	0.05
Foliar Testing			0.00	0.00	5.00	5.00	0.03
Fertilizer Appl. with Spreader	1.0 appl.		4.67	5.05	200.00	209.71	1.40
Spot Spray, Herbicide	1.6 hour		22.40	2.14	8.25	32.79	0.22
Spray, Fungicide	1.0 appl.		4.67	7.27	\$25.00	36.94	0.25
Spray, Insecticide	1.0 appl.		4.67	7.27	\$20.00	31.94	0.21
Shearing			675.00	0.00	0.00	675.00	4.50
Tagging			45.00	0.00	0.00	45.00	0.30
Cut Trees			60.00	0.00	0.00	60.00	0.40
Shagging			112.50	0.00	0.00	112.50	0.75
Baling			127.50	18.08	0.00	145.58	0.97
Loading			97.50	12.05	0.00	109.55	0.73
Pickup			0.00	136.67	0.00	136.67	0.91
Shop			0.00	0.00	71.43	71.43	0.48
Miscellaneous and Overhead			0.00	0.00	134.33	134.33	0.90
Interest: Operating Capital	6.0 mons		0.00	0.00	38.54	38.54	0.26
Total VARIABLE COSTS			1,160.90	188.54	502.54	1,851.98	12.35
<u>FIXED COSTS</u>				<u>Unit</u>	<u>Total</u>	<u>Cost/Tree*</u>	
CASH Costs							
Pickup Insurance				acre	31.97	0.21	
Property Taxes				acre	15.00	0.10	
Total CASH Costs					46.97	0.31	
GROSS INCOME minus VARIABLE AND FIXED CASH COSTS					(355.45)	(2.37)	
NON-CASH Costs							
Machinery and Equip - Dep., Int., & Ins.				acre	39.68	0.26	
Pickup - Depreciation & Interest				acre	96.60	0.64	
Shop				acre	177.68	1.18	
Land Interest Charge				acre	400.00	2.67	
Interest on Establishment Costs				acre	885.43	5.90	
Total NON-CASH Costs					1,599.39	10.66	
Total FIXED COSTS					1,646.36	10.98	
Total of All Costs Per Acre					3,498.34	23.32	
Net Projected Returns					(1,954.84)	(13.03)	

* Based on trees harvested

Table 12. Douglas-Fir Christmas Tree Production, Year 6, Economic Costs and Returns, \$/Acre

<u>GROSS INCOME</u>		<u>Quantity</u>	<u>Unit</u>	<u>\$/Unit</u>	<u>Total</u>	<u>Price / Tree*</u>
Douglas-Fir Christmas Trees, Grade #1		600	Trees	10.29	6,174.00	10.29
Douglas-Fir Christmas Trees, Grade #2		300	Trees	7.72	2,315.25	7.72
Total GROSS Income		900			8,489.25	9.43
<u>VARIABLE CASH COSTS</u>	<u>Description</u>	<u>Labor</u>	<u>Machinery</u>	<u>Materials</u>	<u>Total</u>	<u>Cost/Tree*</u>
IPM Scouting	0.5 hours	7.00	0.00	0.00	7.00	0.01
Foliar Testing		0.00	0.00	5.00	5.00	0.01
Fertilizer Appl. with Spreader	1.0 appl.	4.67	5.05	200.00	209.71	0.23
Spot Spray, Herbicide	1.6 hour	22.40	2.14	8.25	32.79	0.04
Spray, Fungicide	1.0 appl.	4.67	7.27	\$25.00	36.94	0.12
Spray, Insecticide	1.0 appl.	4.67	7.27	\$20.00	31.94	0.11
Shearing		675.00	0.00	0.00	675.00	0.75
Tagging		270.00	0.00	0.00	270.00	0.30
Cut Trees		360.00	0.00	0.00	360.00	0.40
Shagging		675.00	0.00	0.00	675.00	0.75
Baling		765.00	18.08	0.00	783.08	0.87
Loading		585.00	12.05	0.00	597.05	0.66
Pickup		0.00	136.67	0.00	136.67	0.15
Shop		0.00	0.00	71.43	71.43	0.08
Miscellaneous and Overhead		0.00	0.00	311.33	311.33	0.35
Interest: Operating Capital	6.0 mons	0.00	0.00	89.31	89.31	0.10
Total VARIABLE COSTS		3,373.40	188.54	730.32	4,292.26	4.77
<u>FIXED COSTS</u>				<u>Unit</u>	<u>Total</u>	<u>Cost/Tree*</u>
CASH Costs						
Pickup Insurance				acre	31.97	0.04
Property Taxes				acre	15.00	0.02
Total CASH Costs					46.97	0.05
GROSS INCOME minus VARIABLE AND FIXED CASH COSTS					4,150.02	4.61
NON-CASH Costs						
Machinery and Equip - Dep., Int., & Ins.				acre	39.68	0.04
Pickup - Depreciation & Interest				acre	96.60	0.11
Shop				acre	177.68	0.20
Land Interest Charge				acre	400.00	0.44
Interest on Establishment Costs				acre	1,080.91	1.20
Total NON-CASH Costs					1,794.88	1.99
Total FIXED COSTS					1,841.85	2.05
Total of All Costs Per Acre					6,134.11	6.82
Net Projected Returns					2,355.14	2.62

* Based on trees harvested

Table 13. Douglas-Fir Christmas Tree Production, Year 7, Economic Costs and Returns, \$/Acre

<u>GROSS INCOME</u>						
	<u>Quantity</u>	<u>Unit</u>	<u>\$/Unit</u>	<u>Total</u>	<u>Price/Tree*</u>	
Douglas-Fir Christmas Trees, Grade #1	200	Trees	10.29	2,058.00	10.29	
Douglas-Fir Christmas Trees, Grade #2	100	Trees	7.72	771.75	7.72	
Total GROSS Income	300			2,829.75	9.43	
<u>VARIABLE CASH COSTS</u>						
<u>Description</u>		<u>Labor</u>	<u>Machinery</u>	<u>Materials</u>	<u>Total</u>	<u>Cost/Tree*</u>
IPM Scouting	0.5 hours	7.00	0.00	0.00	7.00	0.02
Foliar Testing		0.00	0.00	5.00	5.00	0.02
Fertilizer Appl. by Hand	1.0 hours	14.00	0.00	50.00	64.00	0.21
Spot Spray, Herbicide	1.6 hour	22.40	2.14	8.25	32.79	0.11
Shearing		247.50	0.00	0.00	247.50	0.83
Tagging		90.00	0.00	0.00	90.00	0.30
Cut Trees		120.00	0.00	0.00	120.00	0.40
Shagging		225.00	0.00	0.00	225.00	0.75
Baling		255.00	18.08	0.00	273.08	0.91
Loading		195.00	12.05	0.00	207.05	0.69
Pickup		0.00	136.67	0.00	136.67	0.46
Shop		0.00	0.00	71.43	71.43	0.24
Miscellaneous and Overhead		0.00	0.00	118.36	118.36	0.39
Interest: Operating Capital	6.0 mons	0.00	0.00	33.96	33.96	0.11
Total VARIABLE COSTS		1,175.90	168.94	287.00	1,631.84	5.44
<u>FIXED COSTS</u>						
			<u>Unit</u>	<u>Total</u>	<u>Cost/Tree*</u>	
<u>CASH Costs</u>						
Pickup Insurance			acre	31.97	0.11	
Property Taxes			acre	15.00	0.05	
Total CASH Costs				46.97	0.16	
GROSS INCOME minus VARIABLE AND FIXED CASH COSTS				1,150.94	3.84	
<u>NON-CASH Costs</u>						
Machinery and Equip - Dep., Int., & Ins.			acre	\$2.78	0.01	
Pickup - Depreciation & Interest			acre	96.60	0.32	
Shop			acre	177.68	0.59	
Land Interest Charge			acre	400.00	1.33	
Interest on Establishment Costs			acre	845.40	2.82	
Total NON-CASH Costs				1,522.46	5.07	
Total FIXED COSTS				1,569.43	5.23	
Total of All Costs Per Acre				3,201.27	10.67	
Net Projected Returns				(371.52)	(1.24)	

* Based on trees harvested

Replacement Swelling in an
EFU zone with 45A soil

87435 Youngs River Rd, Astoria OR
Account 50419

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General Information

Property Address 📍 87435 Youngs River Rd, Astoria OR

Legal Description 📄 Metes & Bounds

Account ID 🏠 50419

Tax Map Key 📄 [709140000403](#)

Size in Acres 📏 15.31

Property Status ✅ Active

Property Type 🏠 Real Property
Farm
Improved EFU Land

Owner Information

Owner Name 👤 Barnett Ericka

Mailing Address ✉️ P.O. Box 1267
Astoria OR 97103

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[Sign up for e-Statements](#)

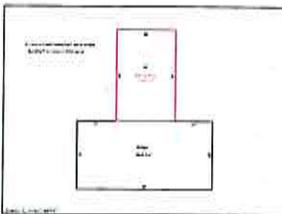
Related Properties

15722 📍 87435 Youngs River Rd, Astoria OR

50418 📍 87435 Youngs River Rd, Astoria OR

Year Built	Sq Ft	Type	Stories
2011	3234	2 Story	2.0

Floor Type	Sq Ft	Bedrooms	Bathrooms
First Floor	792	2	0
Second Floor	2442	2	2



Year	Land Value	Improvements Value	Real Market Value	Assessed Value
2021	\$191,307.00	\$419,103.00	\$610,410.00	\$235,458.00
2020	\$167,813.00	\$376,380.00	\$544,193.00	\$228,611.00
2019	\$145,924.00	\$216,379.00	\$362,303.00	\$138,733.00
2018	\$130,289.00	\$228,358.00	\$358,647.00	\$134,697.00
2017	\$146,393.00	\$212,714.00	\$359,107.00	\$130,787.00
2016	\$146,394.00	\$187,727.00	\$334,121.00	\$127,047.00
2015	\$146,393.00	\$162,795.00	\$309,188.00	\$123,356.00
2014	\$140,763.00	\$154,472.00	\$295,235.00	\$119,770.00
2013	\$140,763.00	\$138,699.00	\$279,462.00	\$116,293.00
2012	\$163,678.00	\$106,691.00	\$270,369.00	\$6,769.00
2011	\$164,285.00	\$0.00	\$164,285.00	\$6,576.00
2010	\$150,720.00	\$0.00	\$150,720.00	\$6,392.00
2009	\$157,001.00	\$0.00	\$157,001.00	\$6,210.00
2008	\$158,587.00	\$0.00	\$158,587.00	\$6,040.00
2007	\$120,142.00	\$0.00	\$120,142.00	\$5,872.00
2006	\$82,045.00	\$0.00	\$82,045.00	\$5,711.00
2005	\$78,879.00	\$0.00	\$78,879.00	\$5,553.00
2004	\$73,037.00	\$0.00	\$73,037.00	\$5,397.00
2003	\$70,910.00	\$0.00	\$70,910.00	\$5,243.00
2002	\$70,208.00	\$0.00	\$70,208.00	\$4,914.00
2001	\$69,513.00	\$0.00	\$69,513.00	\$8,827.00
2000	\$65,579.00	\$0.00	\$65,579.00	\$8,889.00

Sales Date	Instrument ID	Sale Amount
May 1, 2000	200003628	\$110,000.00

Tax Year	Total Billed	Interest	Discount	Total Due
2021	\$3,264.29	\$0.00	\$-97.93	\$3,166.36
2020	\$3,172.75	\$380.73	\$0.00	\$3,553.48
2019	\$1,923.55	\$538.57	\$0.00	\$2,462.12
2018	\$1,729.99	\$498.76	\$0.00	\$1,682.04
2017	\$1,646.95	\$0.00	\$0.00	\$0.00
2016	\$1,564.11	\$0.00	\$0.00	\$0.00
2015	\$1,540.08	\$0.00	\$0.00	\$0.00
2014	\$1,519.90	\$0.00	\$0.00	\$0.00
2013	\$2,823.86	\$0.00	\$0.00	\$0.00
2012	\$6,944.14	\$0.00	\$0.00	\$0.00
2011	\$85.13	\$0.00	\$0.00	\$0.00
2010	\$85.46	\$0.00	\$0.00	\$0.00
2009	\$82.87	\$0.00	\$0.00	\$0.00
2008	\$80.24	\$0.00	\$0.00	\$0.00
2007	\$78.54	\$0.00	\$0.00	\$0.00
2006	\$77.02	\$0.00	\$0.00	\$0.00
2005	\$70.96	\$0.00	\$0.00	\$0.00
2004	\$71.71	\$0.00	\$0.00	\$0.00
2003	\$71.19	\$0.00	\$0.00	\$0.00
2002	\$68.24	\$0.00	\$0.00	\$0.00
2001	\$124.45	\$0.00	\$0.00	\$0.00
2000	\$120.25	\$0.00	\$0.00	\$0.00

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Total Taxes Due as of October 17, 2021

Current Year Due	\$3,166.36
Past Year Due	\$7,697.64
Total Due	\$10,864.00

By clicking "Pay Your Bill" below, you agree that you have read our [Important Notes](#) regarding fees.

[Pay Your Bill](#)

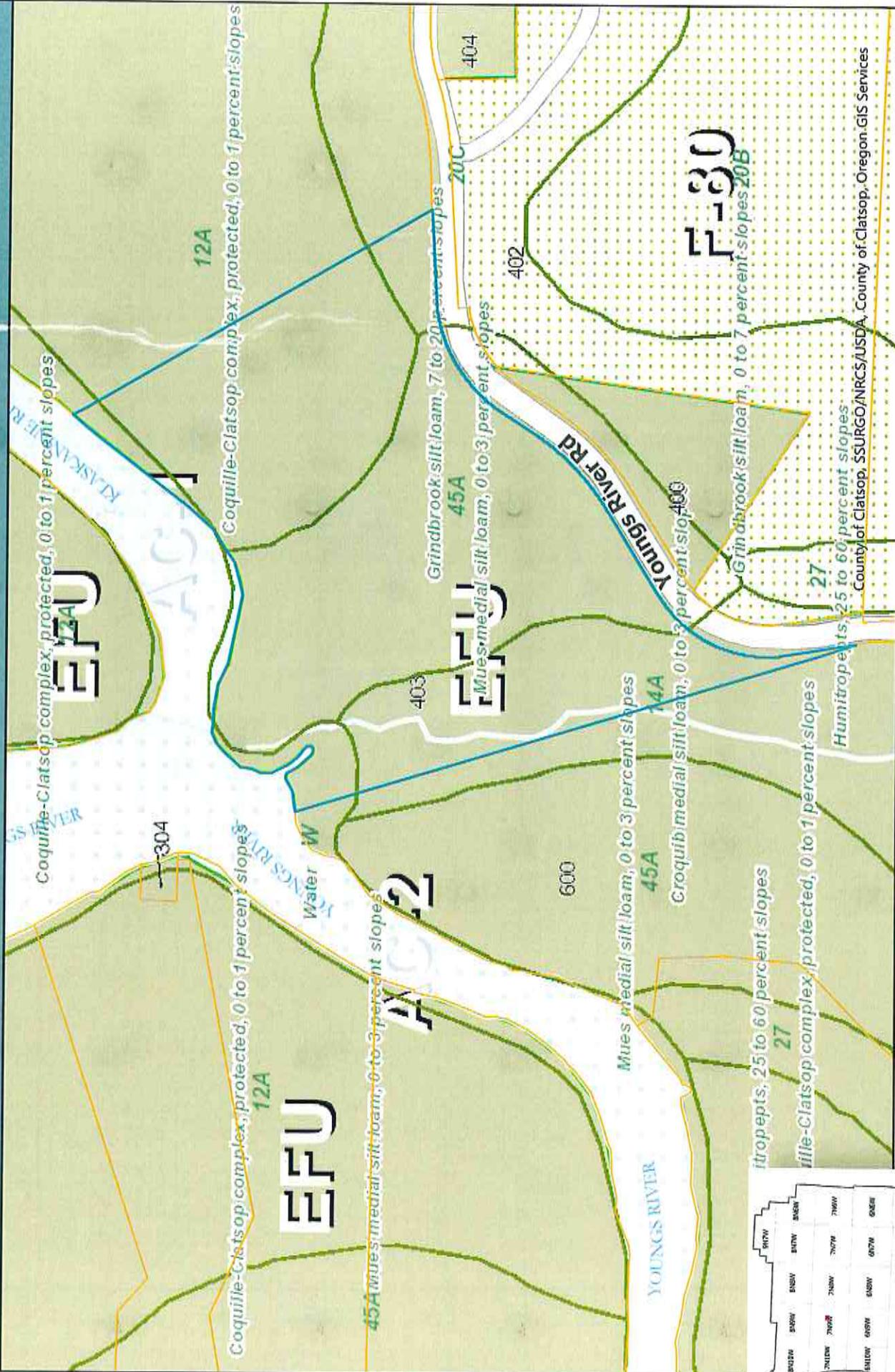
Tax Year	Receipt No	Date Posted	Amount Paid
2018	639710	September 27, 2021	\$800.00
2017	638552	June 21, 2021	\$2,506.22
2018	638552	June 21, 2021	\$1.78
2016	623635	July 13, 2020	\$913.10
2017	623635	July 13, 2020	\$36.90
2016	606556	July 29, 2019	\$1,354.24
2016	570266	October 31, 2017	\$8.83
2012	570266	October 15, 2016	\$1,662.02
2012	570266	October 15, 2016	\$1,068.05
2012	570266	October 15, 2016	\$10,002.86
2013	570266	October 15, 2016	\$4,028.69
2014	570266	October 15, 2016	\$1,925.19
2015	570266	October 15, 2016	\$1,704.35
2012	504131	August 28, 2014	\$807.07
2009	456489	August 2, 2012	\$116.01
2010	456489	August 2, 2012	\$105.98
2011	456489	August 2, 2012	\$91.95
2008	379576	May 29, 2009	\$84.53
2005	346627	January 30, 2008	\$93.66
2006	346627	January 30, 2008	\$89.34
2007	346627	January 30, 2008	\$79.59
2001	251097	May 3, 2005	\$189.16
2002	251097	May 3, 2005	\$92.81
2003	251097	May 3, 2005	\$85.43
2004	251097	May 3, 2005	\$74.58
2001	168644	January 21, 2003	\$66.19
2002	160802	November 15, 2002	\$66.19
2001	165815	November 15, 2002	\$66.19
2002	165815	November 15, 2002	\$66.19
2001	138741	March 28, 2002	\$120.72
2001	121568	November 8, 2001	\$120.72
2000	113205	August 8, 2001	\$129.87

[Annual Appraisal Report](#)

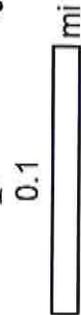
[Current Statement](#)

[Septic Info](#)

Clatsop County Webmaps



Clatsop County



This map was produced using Clatsop County GIS data. The data is maintained by Clatsop County to support its governmental activities. Clatsop County is not responsible for any map errors, possible misuse, or misinterpretation.

5025W	5035W	5045W	5055W	5065W	5075W	5085W	5095W	5105W	5115W	5125W	5135W	5145W	5155W	5165W	5175W	5185W	5195W	5205W
5215W	5225W	5235W	5245W	5255W	5265W	5275W	5285W	5295W	5305W	5315W	5325W	5335W	5345W	5355W	5365W	5375W	5385W	5395W
5405W	5415W	5425W	5435W	5445W	5455W	5465W	5475W	5485W	5495W	5505W	5515W	5525W	5535W	5545W	5555W	5565W	5575W	5585W
5595W	5605W	5615W	5625W	5635W	5645W	5655W	5665W	5675W	5685W	5695W	5705W	5715W	5725W	5735W	5745W	5755W	5765W	5775W

10/17/2021 9:19 PM

89052 Dellmoor Loop, Warrenton OR

Account 17763

[Property Details](#) [Improvements](#) [Assessments](#) [Sales History](#) [Taxes](#) [Payments](#) [Documents](#)

*Newer Construction
Built in an EFW
Zone*

General Information

Property Address  89052 Dellmoor Loop, Warrenton OR

Legal Description  Metes & Bounds

Account ID  17763

Tax Map Key  [Z1027A002200](#)

Size in Acres  1.10

Property Status Active

Property Type  Real Property
Tracts
Improved Tract Land

Owner Information

Owner Name  Ludtke Lloyd C/Rose Anna Mae

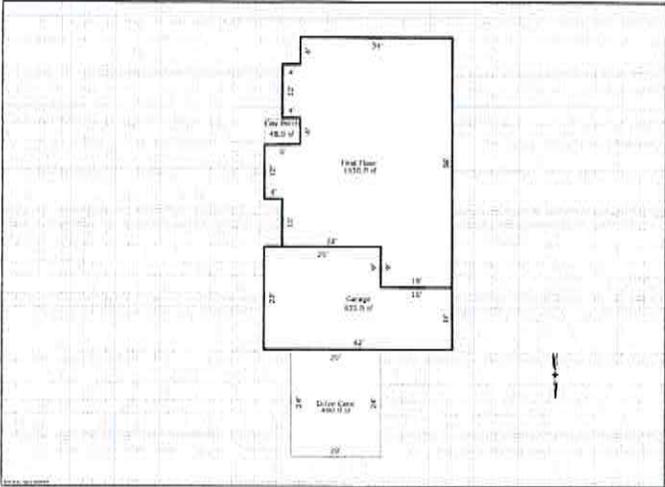
Mailing Address  89052 Dellmoor Loop
Warrenton OR 97146-7149

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Year Built	Sq Ft	Type	Stories
2013	1930	1 Story	1,2

Floor Type	Sq Ft	Bedrooms	Bathrooms
First Floor	1930	3	2



Year	Land Value	Improvements Value	Real Market Value	Assessed Value
2021	\$129,675.00	\$358,440.00	\$488,115.00	\$273,910.00
2020	\$116,824.00	\$318,981.00	\$435,805.00	\$265,933.00
2019	\$113,422.00	\$296,938.00	\$410,360.00	\$258,188.00
2018	\$103,110.00	\$276,411.00	\$379,521.00	\$250,669.00
2017	\$95,473.00	\$269,759.00	\$365,232.00	\$243,369.00
2016	\$86,793.00	\$233,779.00	\$320,572.00	\$236,282.00
2015	\$85,091.00	\$206,127.00	\$291,218.00	\$229,401.00
2014	\$82,613.00	\$218,024.00	\$300,637.00	\$222,720.00
2013	\$82,613.00	\$4,031.00	\$86,644.00	\$56,124.00
2012	\$96,062.00	\$33,292.00	\$129,354.00	\$106,654.00
2011	\$107,935.00	\$35,496.00	\$143,431.00	\$103,548.00
2010	\$110,137.00	\$43,413.00	\$153,550.00	\$100,533.00
2009	\$123,750.00	\$54,267.00	\$178,017.00	\$97,605.00
2008	\$125,000.00	\$60,376.00	\$185,376.00	\$94,763.00
2007	\$86,207.00	\$71,876.00	\$158,083.00	\$92,004.00
2006	\$68,965.00	\$64,175.00	\$133,140.00	\$89,325.00
2005	\$58,535.00	\$47,891.00	\$106,426.00	\$86,724.00
2004	\$53,214.00	\$42,257.00	\$95,471.00	\$84,199.00
2003	\$53,214.00	\$37,396.00	\$90,610.00	\$81,748.00
2002	\$53,214.00	\$36,307.00	\$89,521.00	\$79,368.00
2001	\$65,853.00	\$36,307.00	\$102,160.00	\$74,883.00
2000	\$65,853.00	\$37,048.00	\$102,901.00	\$72,703.00
1999	\$69,319.00	\$38,998.00	\$108,317.00	\$70,587.00

Sales Date

Instrument ID

Sale Amount

No sales history found

Tax Year	Total Billed	Interest	Discount	Total Due
2021	\$3,523.36	\$0.00	\$-105.70	\$3,417.66
2020	\$3,437.31	\$0.00	\$0.00	\$0.00
2019	\$3,283.85	\$0.00	\$0.00	\$0.00
2018	\$3,224.69	\$0.00	\$0.00	\$0.00
2017	\$3,107.04	\$0.00	\$0.00	\$0.00
2016	\$2,700.00	\$0.00	\$0.00	\$0.00
2015	\$2,635.14	\$0.00	\$0.00	\$0.00
2014	\$2,558.43	\$0.00	\$0.00	\$0.00
2013	\$672.52	\$0.00	\$0.00	\$0.00
2012	\$1,278.07	\$0.00	\$0.00	\$0.00
2011	\$1,256.56	\$0.00	\$0.00	\$0.00
2010	\$1,241.99	\$0.00	\$0.00	\$0.00
2009	\$1,161.04	\$0.00	\$0.00	\$0.00
2008	\$1,120.24	\$0.00	\$0.00	\$0.00
2007	\$1,089.29	\$0.00	\$0.00	\$0.00
2006	\$1,060.29	\$0.00	\$0.00	\$0.00
2005	\$1,008.79	\$0.00	\$0.00	\$0.00
2004	\$962.30	\$0.00	\$0.00	\$0.00
2003	\$923.64	\$0.00	\$0.00	\$0.00
2002	\$916.33	\$0.00	\$0.00	\$0.00
2001	\$899.26	\$0.00	\$0.00	\$0.00
2000	\$903.04	\$0.00	\$0.00	\$0.00
1999	\$811.20	\$0.00	\$0.00	\$0.00
1998	\$809.01	\$0.00	\$0.00	\$0.00
1997	\$790.73	\$0.00	\$0.00	\$0.00

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Total Taxes Due as of October 17, 2021

Current Year Due	\$3,417.66
Past Year Due	\$0.00
Total Due	\$3,417.66

By clicking "Pay Your Bill" below, you agree that you have read our [Important Notes](#) regarding fees.

[Pay Your Bill](#)

Tax Year	Receipt No	Date Posted	Amount Paid
2020	629434	November 13, 2020	\$3,334.19
2019	610802	November 4, 2019	\$3,185.33
2018	592013	November 5, 2018	\$3,127.95
2017	570664	November 2, 2017	\$3,013.83
2016	550940	November 1, 2016	\$2,619.00
2015	531209	November 9, 2015	\$2,556.09
2014	506202	October 23, 2014	\$2,481.68
2013	483292	November 4, 2013	\$652.34
2012	460499	November 1, 2012	\$1,239.73
2011	443733	November 15, 2011	\$1,218.86
2010	414049	November 9, 2010	\$1,204.73
2009	389493	November 12, 2009	\$1,126.21
2008	366727	November 14, 2008	\$1,086.63
2007	339201	November 15, 2007	\$1,056.61
2006	308461	November 15, 2006	\$1,028.48
2005	275087	November 15, 2005	\$978.53
2004	236816	November 15, 2004	\$933.43
2003	195728	November 15, 2003	\$895.93
2002	160735	November 15, 2002	\$888.84
2001	136756	February 20, 2002	\$919.25
1997	136754	September 16, 2001	\$1,254.61
1998	136754	September 16, 2001	\$1,154.18
1999	136754	September 16, 2001	\$1,027.51
2000	136754	September 16, 2001	\$999.37
2000	136754	September 16, 2001	\$152.90
2000	136754	September 16, 2001	\$271.78

[Annual Appraisal Report](#)

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*Case Law Cited in Planning
Dept Appeal + Denial.*

1 BEFORE THE LAND USE BOARD OF APPEALS

2 OF THE STATE OF OREGON

3 FRIENDS OF LINN COUNTY,

4 *Petitioner,*

5 vs.

6 LINN COUNTY,

7 *Respondent,*

8 and

9 JOHN WARNOCK and DONNA WARNOCK,

10 *Intervenors-Respondent.*

11 LUBA No. 2001-023

12 FINAL OPINION

13 AND ORDER

14 Appeal from Linn County.

15 Christopher D. Crean, Portland, filed the petition for review and argued on behalf of
16 petitioner. With him on the brief was Miller Nash, LLP.

17 No appearance by Linn County.

18 Edward F. Schultz, Albany, filed the response brief and argued on behalf of
19 intervenors-respondent. With him on the brief was Weatherford, Thompson, Ashenfelter and
20 Cowgill, PC.

21 HOLSTUN, Board Member; BRIGGS, Board Chair; BASSHAM, Board Member,
22 participated in the decision.

23 REMANDED

24 04/13/2001

25 You are entitled to judicial review of this Order. Judicial review is governed by the
26 provisions of ORS 197.850.

1
2 **NATURE OF THE DECISION**

3 Petitioner appeals a county decision granting a conditional use permit for a “lot of
4 record” dwelling on a parcel zoned for exclusive farm use (EFU).

5 **MOTION TO INTERVENE**

6 John Warnock and Donna Warnock, the applicants below, move to intervene in this
7 appeal on the side of respondent. There is no opposition to the motion, and it is allowed.

8 **REPLY BRIEF**

9 Petitioner requests permission to file a reply brief. There is no opposition to the
10 motion, and it is allowed.

11 **STANDING**

12 In this appeal, petitioner challenges a county decision that was adopted following our
13 remand in *Friends of Linn County v. Linn County*, 37 Or LUBA 297 (1999) (*Warnock I*).
14 Intervenors challenge petitioner’s standing to bring this appeal. Intervenors base their
15 standing challenge on an alleged oral agreement between petitioner and county planning staff
16 during the prior proceedings that led to the county’s earlier decision that we remanded in
17 *Warnock I*. Intervenors contend petitioner agreed not to appeal the planning commission’s
18 decision to the county board of commissioners and that one of petitioner’s members violated
19 that agreement by appealing the planning commission’s decision in *Warnock I*.¹ Petitioner
20 denies that it entered into such an agreement.

21 We have some difficulty seeing how the alleged violation of an agreement not to file
22 a local appeal during the county’s earlier proceedings could have any bearing on petitioner’s
23 standing to bring the present appeal to LUBA. In any event, we have no way of confirming
24 intervenors’ allegations and petitioner disputes them. Accordingly, petitioner’s standing is

¹According to intervenors, they learned of the alleged agreement after our decision in *Warnock I*.

1 governed solely by ORS 197.830(2).² Petitioner filed a notice of intent to appeal, and
2 intervenors do not dispute that petitioner appeared during the county’s proceedings on
3 remand. Petitioner has standing to bring this appeal.

4 **FACTS**

5 The material facts are stated in the petition for review as follows:

6 “The subject property is a 7.80-acre parcel located in an EFU zone in Linn
7 County, Oregon. The soil on the [p]roperty is composed of predominantly (86
8 percent) type-1 high-value soils as inventoried by *the Soil Survey of Linn
9 County Area, Oregon*, July 1987, and other information provided by the U.S.
10 Soil Conservation Service. Of the 18 surrounding properties, 11 are receiving
11 farm tax deferral. Of the 11 properties receiving farm tax deferral, nine are
12 engaged in personal agricultural activities and two are engaged in commercial
13 agricultural activities. Tax lots 703 and 404, which abut the subject property
14 to the north, are owned or leased by Mr. Self and are in commercial
15 production. Tax lot 405, which abuts the subject property to the south, is
16 owned by Mr. Drake and also is in commercial production. The subject
17 property received farm use tax deferral until 1992.

18 “Intervenors purchased the property in 1969. They leased the property to a
19 commercial farmer who cut hay and grazed sheep on the property. The
20 adjacent property, which [a]pplicants sold in the early 1990s, continues to be
21 devoted to grazing. Cattle and sheep grazing and poultry production are the
22 predominant agricultural activities conducted on the surrounding lots. More
23 recently, the [a]pplicants have listed the [p]roperty for sale * * *. The
24 [a]pplicants have indicated in their plot plan that the [p]roperty is suitable for
25 hazelnut, berry, and grass production. The [p]roperty is slightly larger than
26 the median tax lot size within a quarter-mile radius.” Petition for Review 2-3
27 (record citations omitted).

28 **SECOND AND THIRD ASSIGNMENTS OF ERROR**

29 **A. Lot or Parcel Cannot Practicably be Managed for Farm Use**

30 In specified circumstances, counties are authorized by statute to approve nonfarm

²ORS 197.830(2) provides that a person has standing to appeal to LUBA, if the person:

- “(a) Filed a notice of intent to appeal the decision as provided in subsection (1) of this section; and
- “(b) Appeared before the local government, special district or state agency orally or in writing.”

1 dwellings in EFU zones. Specific provisions for nonfarm dwellings are set out at ORS
2 215.705 for certain lots that were lawfully created and acquired before 1985 (hereafter lots of
3 record). Different approval criteria must be met for lot of record dwellings, depending on
4 whether the lot of record includes high-value farmland. ORS 215.705(2) sets out criteria for
5 approval of such lot of record dwellings on parcels, such as the subject parcel, that include
6 high-value farmland. As relevant in this appeal, ORS 215.705(2)(a)(C)(i) establishes the
7 following approval criterion for such dwellings:

8 “The lot or parcel *cannot practicably be managed for farm use*, by itself or in
9 conjunction with other land, due to extraordinary circumstances inherent in
10 the land or its physical setting that do not apply generally to other land in the
11 vicinity.” (Emphasis added.)

12 The central dispute in this appeal is whether the county adequately demonstrated that the
13 subject parcel “cannot practicably be managed for farm use.” To resolve that dispute, an
14 understanding of the meaning of the operative terms is required.

15 The term “practicably” is not defined in the statutes. The dictionary definition of
16 “practicable” is as follows:

17 “[P]ossible to practice or perform : capable of being put into practice, done or
18 accomplished : Feasible[.]” *Webster’s Third New International Dictionary*,
19 1780 (unabridged ed. 1981).

20 The impracticability standard is employed in other land use planning contexts, most notably
21 as the ultimate standard for granting irrevocably committed exceptions. In that context, a
22 local government may allow uses that are not allowed by the goals, where “relevant factors
23 make uses allowed by the applicable goal impracticable[.]” OAR 660-004-0028(1). The
24 impracticability standard in that context does not require that all uses allowed by the goal
25 must be “impossible.” OAR 660-004-0028(3).³ However, the impracticability standard is a

³OAR 660-004-0028(3) provides in part:

1 demanding one. *Jackson County Citizens League v. Jackson County*, 38 Or LUBA 357, 365
2 (2000); *1000 Friends of Oregon v. Yamhill County*, 27 Or LUBA 508, 519 (1994). Farm use
3 is not “impracticable” simply because it is not easy to manage the subject property for farm
4 use and obstacles must be overcome to do so.

5 When the term “farm use” is used in ORS chapter 215, it has the meaning set out at
6 ORS 215.203. ORS 215.010(4). As relevant here, ORS 215.203 defines “farm use,” as
7 follows:

8 “[F]arm use’ means the current employment of land for the primary purpose
9 of obtaining a profit in money by raising, harvesting and selling crops or the
10 feeding, breeding, management and sale of, or the produce of, livestock,
11 poultry, fur-bearing animals or honeybees or for dairying and the sale of dairy
12 products or any other agricultural or horticultural use or animal husbandry or
13 any combination thereof. * * *”

14 As all parties recognize, the reference to “profit in money” in ORS 215.203 means “gross
15 income,” not “profit in the ordinary sense.” *1000 Friends of Oregon v. Benton County*, 32
16 Or App 413, 429, 575 P2d 651 (1978). Property that is (1) in farm use and (2) located in an
17 EFU zone qualifies for special assessment without being required to demonstrate how much
18 gross income the property has generated in the past. ORS 308A.062. Property that is (1) in
19 farm use and (2) not in an EFU zone may nevertheless qualify for special farm use
20 assessment if it is part of a farm unit that has generated specified minimum levels of gross
21 income in three of the past five years.⁴

“* * * It shall not be required that local governments demonstrate that every use allowed by
the applicable goal is ‘impossible’. For exceptions to Goals 3 and 4, local governments are
required to demonstrate that only [specified] uses or activities are impracticable[.]”

The quoted rule language was adopted in part to make it clear that not all of the many uses allowed under Goals 3 (Agricultural Lands) and 4 (Forest Lands) must be shown to be impracticable, only those uses that are specified in the rule. However, the first sentence also makes it reasonably clear that, in this context at least, the Land Conservation and Development Commission (LCDC) does not view the “impracticability” standard as imposing an “impossibility” standard.

⁴The minimum levels of gross income specified by ORS 308A.071(2)(a) are as follows:

1 In *Warnock I*, we agreed with petitioner that the county incorrectly assumed that it is
2 not “practicable” to manage the subject property “for farm use,” within the meaning of ORS
3 215.705(2)(a)(C)(i), if “commercial” farm use is impracticable. We agree with petitioner
4 that the county has committed a similar error in its decision on remand. In hopes of
5 clarifying what we thought was clear in our prior opinion, we first set out the critical
6 language from our prior decision. We then set out the critical findings adopted by the county
7 on remand. Finally, we explain why the county’s decision on remand misconstrues
8 applicable law and again must be remanded.

9 **B. Warnock I**

10 In *Warnock I*, we explained:

11 “Intervenors argue that the county could, and did, distinguish between those
12 farm activities that are incidental to the residential uses of adjoining properties
13 and those uses that have a minimum level of profitability, but are otherwise
14 not commercial. Intervenors rely on *1000 Friends of Oregon v. Yamhill*
15 *County*, 27 Or LUBA 508, 517-18 (1994) for the proposition that the county
16 could set a threshold of profitability for determining when a property is
17 properly viewed as capable of farm use.

18 “It may be that the county can establish a certain level of return for
19 determining when a parcel cannot practicably be managed for farm use.
20 However, that is not what the county did in this case. According to the
21 findings, the county relied upon evidence from *commercial* farmers as to
22 whether they would either incorporate the subject property into their current
23 farm operations, or conduct similar commercial farm operations on the subject
24 property by itself. There is evidence in the record that adjacent property
25 owners are using their property for farm use, notwithstanding the presence of
26 dwellings on the property. The county erred by not considering those farm

-
- “(A) If the farm unit consists of six acres or less, the gross income from farm use shall be at least \$650.
- “(B) If the farm unit consists of more than six acres but less than 30 acres, the gross income from farm use shall be at least equal to the product of \$100 times the number of acres and any fraction of an acre of land included.
- “(C) If the farm unit consists of 30 acres or more, the gross income from farm use shall be at least \$3,000.”

1 uses in its analysis of whether the property could practicably be managed for
2 farm use.” 37 Or LUBA at 304-05 (emphasis in original).

3 As relevant here, our prior decision did two things. First, it found that the county
4 improperly relied on the subject parcel’s unsuitability for commercial farm use in concluding
5 that the subject property “cannot practicably be managed for farm use” under ORS
6 215.705(2)(a)(C)(i).⁵ Second, our decision left open the possibility that the county might be
7 able to identify a minimum “level of return” to assist it in determining whether the subject
8 property cannot practicably be managed for farm use.⁶ *But see Lovinger v. Lane County*, 36
9 Or LUBA 1, 19, *aff’d* 161 Or App 198, 984 P2d 958 (1999) (expressing “doubt that there is
10 any definite or broadly applicable ‘threshold’ in determining whether farm uses are
11 impracticable under OAR 660-004-0028 and ORS 215.203(2)(a)”).

12 C. The County’s Decision on Remand

13 In granting the challenged conditional use permit, the county adopted the following
14 findings:

15 “The final issue before Linn County is whether or not the county should set
16 the threshold of profitability for determining when property is properly
17 viewed as capable of farm use. The invitation to undertake this task is
18 contained within the LUBA opinion * * *.

19 “In this case, the applicants urged the county to adopt a standard of \$10,000
20 per annum as the minimum gross income that would be earned on a parcel.
21 The applicants further urge the county to adopt this test as applied to only the
22 specific facts of this case. The applicants point out that this is the same test
23 that Linn County currently uses on its non-high value farmland. Friends of
24 Linn County has offered no alternative test nor advanced any credible
25 argument of why \$10,000 should not be used as the test.

26 “Linn County agrees with the applicants that \$10,000 is a fair test. Linn
27 County agrees that by definition, high value farm ground should produce

⁵We further discuss the distinction between commercial and noncommercial farm use below.

⁶We did not, as the county states in its decision and intervenors suggest in their brief, “invite” the county to attempt to set a minimum income level. We simply noted that such an approach may be open to the county if it wishes to pursue it.

1 more income on less land than low value farm ground. Linn County also
2 agrees with the applicants that because the test is adopted in a quasi-judicial
3 setting, the test must be applied only to the facts of this case. This test applies
4 only to a situation when the property is in a former rural subdivision and the
5 surrounding properties have been developed to a residential use. Under the
6 facts produced at the hearing, the only property in farm deferral that generated
7 any income was property rented for \$250 per year to Mr. Self. Mr. Self has
8 submitted evidence indicating why he does not want to use the subject
9 property, and believes the subject property should be used for residential
10 purposes as requested by the applicants.” Record 10.

11 The county apparently adopts the view that an EFU-zoned parcel that includes high-
12 value farm land and that is not capable of earning at least \$10,000 in gross annual income
13 “cannot practicably be managed for farm use,” within the meaning of ORS
14 215.705(2)(a)(C)(i) and 215.203. The county limits its decision to the facts of this case, and
15 concludes that because the subject parcel cannot satisfy the \$10,000 gross income threshold,
16 it cannot practicably be managed for farm use.⁷

17 **D. The County’s Decision Misconstrues the Applicable Law**

18 Our prior decision cites and relies on our decision in *1000 Friends of Oregon v.*
19 *Yamhill County*. That decision explains that both commercial and noncommercial farm and
20 forest uses are protected under Goals 3 and 4:

21 “[P]reservation of commercial agricultural and forest enterprise is a major
22 objective expressed in Goals 3 and 4. That objective is implemented under
23 those goals and their implementing rules, in part, by requiring that new
24 parcels be of sufficient size to continue ‘commercial’ agricultural and forest
25 enterprises. However, the clear bias under Goals 3 and 4 in favor of
26 commercial agricultural and forest enterprises does not mean the county may
27 assume that noncommercial farm and forest uses are not ‘uses allowed by the
28 applicable goal’ for which a proposed exception area’s suitability must be
29 considered in granting an exception. *DLCD v. Klamath County*, 16 Or LUBA

⁷Intervenors contend petitioner waived its right to challenge the \$10,000 threshold by failing to object to it below and further contend that the \$10,000 test was but one of many factors the county considered. The issue of imposing a \$10,000 standard was raised by intervenors late in the local proceedings. Petitioner did not waive its right to challenge the validity of that standard by failing to object to intervenors’ suggestion that the county adopt it. We also do not agree with intervenors that it is possible to ignore the county’s findings concerning the \$10,000 test and affirm the decision based on other findings. The county clearly relied on the \$10,000 test in making its decision.

1 23, 28 (1987); *DLCD v. Columbia County*, 15 Or LUBA 302, 304-05 (1987);
2 *1000 Friends of Oregon v. Douglas County*, 4 Or LUBA 24, 31-32 (1981).

3 “ORS 215.203(2) defines ‘farm use’ as ‘the current employment of land for
4 the primary purpose of obtaining a profit in money by [engaging in certain
5 listed agricultural activities].’ It may be, as respondent argues, that the county
6 has some latitude to set a threshold level of profitability for determining when
7 property is properly viewed as capable of farm use, within the meaning of
8 ORS 215.203. See *1000 Friends of Oregon v. Benton County*, 32 Or App 413,
9 428-29, 573 P2d 651 (1978); *1000 Friends of Oregon v. Douglas County*,
10 *supra* 4 Or LUBA at 32. However, we reject the county’s suggestion that it
11 may establish the level of profitability necessary to qualify as a ‘farm use,’ as
12 that term is defined by ORS 215.203, at [the] same level that would qualify a
13 farm use as a commercial agricultural enterprise. The goals protect and allow
14 farm and forest uses other than commercial agricultural and forest
15 enterprises.” 27 Or LUBA at 517-18 (citations and footnotes omitted.).

16 *1000 Friends of Oregon v. Yamhill County* makes it clear that any minimum gross
17 income level that the county may identify and apply in determining whether farm use is
18 practicable cannot be set at a level that would indicate commercial agricultural enterprise.
19 Any minimum profitability level selected by the county would have to be consistent with the
20 income generated by the county’s noncommercial farms, which are protected under Goal 3
21 and the EFU statutes. In *1000 Friends of Oregon v. Yamhill County* we cite *1000 Friends of*
22 *Oregon v. Douglas County*. In that decision, LUBA indicated that a reasonable minimum
23 threshold income level for determining whether farm use is practicable might vary in
24 different parts of the state, but we suggested that the gross income requirements for special
25 assessment of non-EFU-zoned lands “could act as a guide.” 4 Or LUBA. at 32. For a
26 7.8-acre parcel such as the subject parcel that would be \$100 per acre or \$780. See n 4.

27 The challenged decision does not specifically identify the source of the \$10,000
28 standard that the county adopted in the challenged decision. In their brief, intervenors argue
29 that the county appropriately relied on Linn County Code (LCC) 933.400, which appears to
30 have been adopted to implement OAR 660-033-0135. Assuming the county relied on LCC
31 933.400 to support its \$10,000 minimum threshold income requirement to determine whether
32 it is practicable to put the subject property to farm use, the county erred.

1 Although the figure \$10,000 is certainly mentioned in LCC 933.400 and OAR 660-
2 033-0135, we fail to see how the use of that figure in LCC 933.400 and OAR 660-033-0135
3 has any relevance in establishing a minimum threshold income level for determining whether
4 farm use is practicable. ORS 215.283(1)(f) authorizes “dwellings * * * customarily provided
5 in conjunction with farm use.” LCC 933.400 and OAR 660-033-0135 establish standards
6 that are designed to ensure that a farm is either large enough or generates sufficient income
7 to warrant an assumption that a dwelling on the farm is one that is properly viewed as
8 “customarily provided in conjunction with farm use.” It is clear from the rule that farms
9 generating \$10,000 in annual income are considered to be small commercial farms.⁸ There is
10 nothing that we can find in LCC 933.400 and OAR 660-033-0135 that provides any support
11 for the county’s conclusion that it may properly assume that farm use of a 7.8-acre EFU-
12 zoned parcel of land with high-value soils is not practicable unless it will generate \$10,000 of
13 annual gross income.

14 EFU zoning represents a significant area of overlap in the state’s property tax policies
15 and land use policies, even if the property tax and land use statutes do not constitute
16 coordinated or integrated statutory schemes.⁹ *Springer v. LCDC*, 111 Or App 262, 268-69,

⁸LCC 933.400(C) duplicates OAR 660-033-0135(5). As relevant, OAR 660-033-0135(5) provides:

“On land not identified as high-value farmland, a dwelling may be considered customarily provided in conjunction with farm use if:

“(a) The subject tract is currently employed for the farm use, as defined in ORS 215.203, that produced in the last two years or three of the last five years the lower of the following:

“(A) At least \$40,000 (1994 dollars) in gross annual income from the sale of farm products; or

“(B) Gross annual income of at least the midpoint of the median income range of gross annual sales for farms in the county with gross annual sales of \$10,000 or more according to the 1992 Census of Agriculture, Oregon[.]”

⁹In fact, although it does not appear to have any bearing in this case, the legislature in 1999 amended the property tax statutes to add a definition of farm use. Or Laws 1999, ch 314, § 3. That definition is codified at

1 826 P2d 54 (1992). We continue to believe the minimum gross income levels the legislature
2 established at ORS 308A.071(2)(a) for non-EFU-zoned parcels to qualify for special
3 assessment are the best available indication of the level of gross income that the legislature
4 believes is indicative of practicable farm use.¹⁰ *1000 Friends of Oregon v. Douglas County*,
5 4 Or LUBA at 32.

6 We recognize that ORS 308A.071(2)(a) was adopted to establish minimum levels of
7 income that are required for non-EFU-zoned property to qualify for special farm use
8 assessment, rather than as an express statement of the legislature's view of the minimum
9 gross income that is required for practicable farm use. For that reason, it is certainly possible
10 that the county could, with appropriate documentation, justify setting a minimum gross
11 income level for purposes of determining whether farm use is practicable under ORS
12 215.705(2)(a)(C)(i) that is different than the minimum gross income levels set in ORS
13 308A.071(2)(a). However, the \$10,000 level selected by the county and applied to a 7.8-acre
14 parcel in this case is so clearly inconsistent with the protection that is afforded
15 noncommercial farms under Goal 3 and the EFU zoning statutes that it would be impossible
16 to justify.

17 Because the county erred in adopting the \$10,000 gross income standard, and the
18 decision must therefore be remanded, we do not consider petitioner's evidentiary challenges
19 in detail. However, we note two arguments that petitioner advances under its evidentiary
20 challenges with which we agree.

21 In applying ORS 215.705(2)(a)(C)(i), the question is whether farm use of the subject

ORS 308A.056 and appears to be the same definition that appears at ORS 215.203 with new punctuation and nonsubstantive rephrasing.

¹⁰Although LCDC has not adopted rules to set a minimum gross income level for use in determining whether farm use is practicable under ORS 215.705(2)(a)(C)(i), or established a procedure to be followed in establishing such minimum gross income levels, its use of the \$10,000 figure in OAR 660-033-0135 makes it reasonably clear that LCDC views farms that generate \$10,000 in annual gross income as small commercial farms.

1 property is practicable, not whether the subject property has historically been put to farm use
2 or whether its similarly situated neighbors are in farm use or how much gross income farm
3 use of the subject property and neighboring properties may be generating or have generated
4 in the past. Such evidence may be relevant, and may be indicative of what the subject
5 property is capable of, but it is not necessarily determinative. Whether such evidence is
6 sufficient to constitute substantial evidence that farm use is impracticable will depend on a
7 number of factors. One of the more important factors will be whether there is evidence in the
8 record to suggest that any historical or current farm income data that the county is relying on
9 does not accurately reflect the property's capability. *See Reed v. Lane County*, 19 Or LUBA
10 276, 284 (1990) (whether a particular farmer can profitably farm a particular piece of farm
11 land at a particular time is at best indirect evidence of whether the land itself is suitable for
12 the production of farm crops and livestock).

13 We also note that under ORS 215.705(2)(a)(C)(i) a property's impracticability for
14 farm use must be "due to extraordinary circumstances inherent in the land or its physical
15 setting that do not apply generally to other land in the vicinity." In the challenged decision,
16 the county appears to rely heavily on the particular mixture of soil types on the property,
17 prior quarrying activity on the property and the separation of the subject property into three
18 terraces with different elevations, to conclude that farm use is impracticable. Petitioner cites
19 evidence that other nearby properties also have multiple soil types and are terraced. We
20 agree with petitioner that the county's findings are inadequate to demonstrate that the cited
21 factors are not shared by neighboring properties or justify a conclusion that farm use of the
22 subject property is rendered impracticable by those factors. In particular, the findings do not
23 explain what it is about the cited factors that makes farm use impracticable.¹¹

¹¹The challenged decision includes a finding that there was testimony that the mix of soils presents a "conundrum." Record 9. Intervenors cite this finding, and argue that this means there are no practical solutions to the problems presented by the unique mix of soils on the property that would allow the property to

1 The second and third assignments of error are sustained.

2 **FIRST ASSIGNMENT OF ERROR**

3 In its first assignment of error, petitioner argues the county’s erroneous application of
4 a \$10,000 minimum income standard under ORS 215.705(2)(a)(C)(i) constitutes (1)
5 improper adoption of an approval standard without following required procedures and (2)
6 erroneous application of an approval criterion that was not in existence when the application
7 was submitted. The operative term “practicable” in ORS 215.705(2)(a)(C)(i) is not defined
8 in ORS chapter 215. The county therefore has some interpretive discretion in identifying the
9 factors that it will consider in deciding whether farm use of the subject property is
10 practicable under ORS 215.705(2)(a)(C)(i). If the county wants to rely on an appropriate and
11 justified minimum gross income threshold in making its practicability determination, it may
12 do so on a case by case basis. The county need not go through a legislative process to adopt
13 a generally applicable threshold.

14 The first assignment of error is denied.

15 The county’s decision is remanded.

be put to farm use. However, intervenors do not identify where the cited testimony is located in the record, and we are unable to determine what the county meant by the reference to a conundrum.

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BEFORE THE LAND USE BOARD OF APPEALS
OF THE STATE OF OREGON

LAWRENCE W. DeBATES,)
)
Petitioner,)
)
vs.)
)
YAMHILL COUNTY,)
)
Respondent,)
)
and)
)
FRANK W. WALKER,)
)
Intervenor-Respondent.)

LUBA No. 96-100
FINAL OPINION
AND ORDER

Appeal from Yamhill County.

Charles Swindells, Portland, filed the petition for review and argued on behalf of petitioner.

John C. Pinkstaff, Assistant County Counsel, McMinnville, filed a response brief and argued on behalf of respondent.

Michael C. Robinson and Peter D. Mostow, Portland, filed a response brief and argued on behalf of intervenor-respondent.

LIVINGSTON, Referee; HANNA, Chief Referee, participated in the decision.

REMANDED 01/03/97

You are entitled to judicial review of this Order. Judicial review is governed by the provisions of ORS 197.850.

1 Opinion by Livingston.

2 **NATURE OF THE DECISION**

3 Petitioner appeals a decision of the board of county
4 commissioners approving a lot-of-record dwelling.

5 **MOTION TO INTERVENE**

6 Frank W. Walker (intervenor), the applicant below,
7 moves to intervene on the side of the respondent. There is
8 no opposition to the motion, and it is allowed.

9 **FACTS**

10 On January 8, 1996, intervenor, acting on behalf of
11 Perry and Belva Johnson (the Johnsons), applied for a lot-
12 of-record dwelling on a five-acre lot (lot 162) in the
13 county's exclusive farm use (EF-40) zone. Lot 162 is part
14 of the Eola Walnut Groves subdivision, platted in 1908,
15 which includes 230 lots, almost all of which are five acres
16 in size. Sixty-five of the lots contain residences,
17 including the majority of the lots abutting the subject
18 property. The primary agricultural use in the area is
19 orchards, and there is a large forested area to the north.
20 Lot 162 includes soils which qualify it as "high-value
21 farmland," as that term is defined in ORS 215.710.

22 From 1972 to 1995, the Johnsons owned a tract
23 consisting of lots 162, 140 (five acres) and 163 (1.48
24 acres). In November, 1995 they conveyed lots 140 and 163 to
25 separate third parties for nominal consideration. As a
26 result, there were no lots owned by the Johnsons adjacent to

1 lot 162 at the time of the application for a lot-of-record
2 dwelling on lot 162.

3 After the county planning director approved the
4 application, petitioner appealed to the county board of
5 commissioners, which affirmed the planning director's
6 decision. This appeal to LUBA followed.

7 **FIRST ASSIGNMENT OF ERROR**

8 **A. ORS 215.705¹**

9 Petitioner objects to what he views as the county's
10 circumvention of the statutory scheme limiting lot-of-record
11 dwellings. Petitioner contends the approval of a lot-of-
12 record dwelling on lot 162 violates ORS 215.705(1), which
13 provides, in relevant part:

14 "A governing body of a county or its designate may
15 allow the establishment of a single-family
16 dwelling on a lot or parcel located within a farm
17 or forest zone as set forth in this section and
18 ORS 215.710, 215.720, 215.740 and 215.750 after
19 notifying the county assessor that the governing
20 body intends to allow the dwelling. A dwelling
21 under this section may be allowed if:

22 "(a) The lot or parcel on which the dwelling will
23 be sited was lawfully created and was
24 acquired by the present owner:

25 "(A) Prior to January 1, 1985; or

¹The challenged decision applies Yamhill County Zoning Ordinance (YCZO) 403.03(G) rather than ORS 215.705. However, since YCZO 403.03(G) is a compilation of the relevant criteria in ORS 215.705(1) and (3), the parties discuss the statute and not the ordinance. We do as well. We note that the scope of our review is not subject to the limitations stated in Clark v. Jackson County, 313 Or 508, 836 P2d 710 (1992), and ORS 197.829(1). Forster v. Polk County, 115 Or App 475, 478, 839 P2d 241 (1992).

- 1 "(B) By devise or by intestate succession
2 from a person who acquired the lot or
3 parcel prior to January 1, 1985.
- 4 "(b) The tract on which the dwelling will be sited
5 does not include a dwelling.^[2]
- 6 "(c) The proposed dwelling is not prohibited by,
7 and will comply with, the requirements of the
8 acknowledged comprehensive plan and land use
9 regulations and other provisions of law.
- 10 "(d) The lot or parcel on which the dwelling will
11 be sited, if zoned for farm use, is not on
12 that high-value farmland described in
13 ORS 215.710 except as provided in subsections
14 (2) and (3) of this section.^[3]

²ORS 215.010(2) and OAR 660-33-020(10) define "tract" as "one or more contiguous lots or parcels under the same ownership."

³Because the proposed dwelling would be sited on high-value farmland, it must meet a perimeter test, as described in ORS 215.705(3), which provides:

"Notwithstanding the requirements of subsection (1)(d) of this section, a single-family dwelling not in conjunction with farm use may be sited on high-value farmland if:

"(a) It meets the other requirements of ORS 215.705 to 215.750.

"(b) The tract on which the dwelling will be sited is:

"(A) Identified in ORS 215.710 (3) or (4);

"(B) Not protected under ORS 215.710 (1); and

"(C) Twenty-one acres or less in size.

"(c) (A) The tract is bordered on at least 67 percent of its perimeter by tracts that are smaller than 21 acres, and at least two such tracts had dwellings on them on January 1, 1993; or

"(B) The tract is bordered on at least 25 percent of its perimeter by tracts that are smaller than 21 acres, and at least four dwellings existed on January 1, 1993, within one-quarter mile of the center of the subject tract. Up to two of the four dwellings may

1 ** * * * *

2 "(g) When the lot or parcel on which the dwelling
3 will be sited is part of a tract, the
4 remaining portions of the tract are
5 consolidated into a single lot or parcel when
6 the dwelling is allowed."

7 The requirement stated in ORS 215.705(1)(b) that the
8 tract on which a proposed lot-of-record dwelling is to be
9 sited not include a dwelling applies to dwellings approvable
10 under ORS 215.705(3). ORS 215.705(3)(a). This requirement
11 and the consolidation requirement in ORS 215.705(1)(g)
12 operate to prohibit approval of a lot-of-record dwelling
13 unless (1) the tract of which the lot is a part contains no
14 dwellings; and (2) all lots within the tract are
15 consolidated at the time of approval, thereby precluding a
16 second lot-of-record dwelling on the tract.
17 ORS 215.705(1)(a) establishes January 1, 1985 as the date by
18 which a lot which is to be the site of a lot-of-record
19 dwelling must have been lawfully created and acquired by
20 either the present owner or a previous owner from whom the
21 present owner acquired the lot by devise or intestate
22 succession.⁴ There is no dispute that lot 162 was lawfully

lie within the urban growth boundary, but only if
the subject tract abuts an urban growth boundary."

⁴ORS 215.705(6) contains a broad definition of "owner" that applies to
lot-of-record dwellings:

"For purposes of subsection (1)(a) of this section, "owner"
includes the wife, husband, son, daughter, mother, father,
brother, brother-in-law, sister, sister-in-law, son-in-law,
daughter-in-law, mother-in-law, father-in-law, aunt, uncle,

1 created and was acquired by its present owners prior to
2 January 1, 1985.

3 Petitioner notes that the consolidation requirement in
4 ORS 215.705(1)(g) will be ineffective in halting a
5 proliferation of lot-of-record dwellings if the requirement
6 can be avoided simply by breaking up a tract before, rather
7 than after, applying for a lot-of-record dwelling on one of
8 the lots included in the tract. Petitioner maintains that
9 permitting tract divisions without somehow limiting the
10 number of lot-of-record dwellings on the lots included in
11 the tract will frustrate the policy, stated in
12 ORS 215.700(2), to "[l]imit the future division of and the
13 siting of dwellings upon the state's more productive
14 resource land."

15 **OAR Chapter 660, Division 33**

16 OAR 660-33-020 states additional definitions for
17 purposes of implementing the requirements for agricultural
18 land. OAR 660-33-020(4) defines "Date of Creation and
19 Existence" as follows:

20 "When a lot, parcel or tract is reconfigured
21 pursuant to applicable law after November 4,
22 1993,⁵ the effect of which is to qualify a lot,
23 parcel or tract for the siting of a dwelling, the
24 date of the reconfiguration is the date of

niece, nephew, stepparent, stepchild, grandparent or grandchild
of the owner or a business entity owned by any one or
combination of these family members."

⁵November 4, 1993 is the date the lot-of-record provisions in
ORS 197.705 became effective.

1 creation or existence. Reconfigured means any
2 change in the boundary of the lot, parcel or
3 tract."

4 Petitioner contends that OAR 660-33-020(4) operates to
5 change the date of creation or existence of lot 162 for
6 purposes of ORS 215.705 and OAR 660-33-130(3), the rule that
7 directly implements ORS 215.705. Petitioner maintains that
8 when lots 140 and 163 were conveyed to third parties in
9 November 1995, the boundary of the tract that had included
10 lots 140, 162 and 163 changed. Petitioner contends that
11 under OAR 660-33-020(4), the "date of creation or existence"
12 of all three lots for purposes of ORS 197.705 must be
13 changed from 1972 to November 1995, because the
14 reconfiguration of the tract had the effect of qualifying
15 one or more of the three lots for a dwelling.⁶

16 The county and intervenor (respondents) respond that
17 OAR 660-33-020(4) does not apply to the application for a
18 lot-of-record dwelling on lot 162, because the
19 reconfiguration of the tract did not qualify lot 162 for a
20 dwelling: lot 162 was already qualified for a dwelling.
21 They note that the boundaries of lot 162 were not changed by
22 the sales of lots 140 and 163, and therefore, under OAR 660-

⁶This contention is based on the surmise that one or more of the transferees of lots 140 and 163 are related to the Johnsons in such a way that the transferees may be considered owners under ORS 215.705(6) and thus entitled to their own lot-of-record dwellings. Because the record is insufficient to permit us to confirm or reject petitioner's surmise, we are unable to address arguments based on those applications.

1 33-020(4), the date of creation or existence of lot 162 was
2 not changed either. Finally, they maintain that
3 petitioner's interpretation of OAR 660-33-020(4), as it
4 involves the interrelationship between the date of creation
5 or existence of lots, parcels and tracts, conflicts with
6 ORS 215.705, because under petitioner's interpretation, the
7 sale of any part of a tract would disqualify the entire
8 tract from the siting of even one dwelling, and a
9 requirement not found in the statute is added by the rule.⁷

10 **C. Discussion**

11 We start with respondents' last argument, and examine
12 whether OAR 660-33-020(4) could have the meaning petitioner
13 advocates without violating ORS 215.705. As respondents
14 point out, agency rule-making authority is subject to
15 specific limitations. An agency cannot adopt rules that are
16 inconsistent with the applicable statute.
17 ORS 183.400(4)(b). ORS 215.304(3) restates this maxim
18 specifically with respect to the Land Conservation and
19 Development Commission (LCDC) and ORS 215.705.⁸

⁷Respondents make a supplemental argument that restricting the construction of dwellings on lots of record in reliance on petitioner's interpretation of OAR 660-33-020(4) would violate ORS 92.017, which provides that "a lot or parcel lawfully created shall remain a discrete lot or parcel." Because petitioner's interpretation of ORS 215.705, if correct, would create an exception to ORS 92.017 based on ORS 215.705, we reject respondents' argument.

⁸ORS 215.304(3) provides:

1 The petition for review does not squarely address the
2 issue of LCDC's authority to adopt a rule that requires what
3 petitioner contends OAR 660-33-020(4) requires when read
4 together with ORS 215.705 and OAR 660-33-130(3). However,
5 at oral argument, petitioner relied on Meltebeke v. Bureau
6 of Labor and Industries, 322 Or 132, 140-42, 903 P2d 351
7 (1995), which examines "the scope of a broad delegation to
8 an administrative agency for rulemaking." Id. at 142 n12.
9 We understand petitioner to contend certain statutes
10 (perhaps ORS 197.040 and ORS 197.245, which generally
11 authorize LCDC to adopt and amend goals and rules to carry
12 out ORS chapters 195, 196 and 197) provide a broad
13 delegation of the sort described in Meltebeke. See
14 Springfield Education Assn. v. School Dist., 290 Or 217,
15 223, 621 P2d 547 (1980). See also Newcomer v. Clackamas
16 County, 94 Or App 33, 37, 764 P2d 927 (1988) (LCDC may
17 refine and adopt consistent supplements to an adjudicative
18 standard); DLCD v. Polk County, ___ Or LUBA ___ (LUBA No.
19 96-036, September 10, 1996).

20 Respondents argue in essence that ORS 215.705 is
21 sufficiently precise and comprehensive that it leaves no

"Any portion of a rule inconsistent with the provisions of
ORS 197.247 (1991 Edition), 215.213, 215.214 (1991 Edition),
215.288 (1991 Edition), 215.317, 215.327 and 215.337 (1991
Edition) or 215.705 to 215.780 on March 1, 1994:

"(a) Shall not be implemented or enforced; and

"(b) Has no legal effect."

1 interstices to be filled by LCDC rules. Respondents rely on
2 the approach taken by the Court of Appeals in Lane County v.
3 LCDC, 138 Or App 635, 910 P2d 414, on reconsideration 140 Or
4 App 368, ___ P2d ___, rev allowed 324 Or 305 (1996). Lane
5 County holds that certain challenged provisions of OAR 660-
6 33-120, 660-33-130, and 660-33-135 are invalid because of
7 inconsistencies with ORS 215.213. As the Court of Appeals
8 explained, the challenged provisions are invalid because
9 "they flatly prohibit what the legislature has * * *
10 permitted." 138 Or App at 644.

11 We agree with respondents that ORS 215.705(1) and (3)
12 precisely state comprehensive criteria that govern when a
13 lot-of-record dwelling may be allowed on a lot such as lot
14 162. OAR 660-33-020(4) cannot be interpreted to prohibit
15 what the statute otherwise allows. ORS 215.705(1) states
16 specifically that it is the "governing body of a county"
17 (not LCDC) which "may allow" a lot-of-record dwelling.
18 While ORS 215.705(5) allows counties considerable discretion
19 in imposing additional restrictions on permitting lot-of-
20 record dwellings, petitioner does not contend the county has
21 done so. The challenged decision finds the proposed
22 dwelling is not prohibited by the county's comprehensive
23 plan and the YCZO. Record 5. Petitioner does not challenge
24 that finding in this assignment of error.

25 The tract comprising lots 140, 162 and 163 was
26 "reconfigured," as the term is used in OAR 660-33-020(4),

1 when lots 140 and 162 were transferred in November 1995,
2 because the boundary of the tract was changed. However, the
3 date of creation or existence of the tract has no
4 significance in this case. ORS 215.705 mentions only the
5 date of creation or existence of the lot or parcel. Lot 162
6 was lawfully created and acquired by its present owner prior
7 to January 1, 1985. At the time of application, it did not
8 include a dwelling. It therefore met the threshold
9 requirements stated in ORS 215.705(1)(a) and (b).⁹

10 Moreover, we agree with respondents that ORS 215.705
11 cannot be interpreted or supplemented by agency rule to
12 provide that the reconfiguration of the tract through the
13 sale of one or more lots extinguishes the right to build a
14 dwelling on at least one of the lots of record within the
15 original tract. Yet that is what petitioner's suggested

⁹We agree with petitioner that by failing to require that a tract proposed for a lot-of-record dwelling have been created or established and acquired by the owner by a date certain, ORS 215.705 facilitates avoidance of the consolidation requirement stated in ORS 215.705(1)(g) and, in so doing, may frustrate the policy stated in ORS 215.700. However, the Court of Appeals has described that policy broadly as "to authorize dwellings in resource zones in certain circumstances where they could not previously have been allowed." Craven v. Jackson County, 135 Or App 250, 255, 898 P2d 809, rev den 321 Or 512 (1995). ORS 215.705(1) and (3) implement the policy in ORS 215.700, and what they demand (or don't demand) is not ambiguous. If more is required to implement the policy, it is up to the legislature to amend the implementing statute. See Craven; Younger v. Jackson County, ___ Or LUBA ___ (LUBA No. 96-031, November 12, 1996), slip op 7; Parsons v. Clackamas County, ___ Or LUBA ___ (LUBA Nos. 96-039/040/041, October 30, 1996), slip op 8.

Because we find ORS 215.705 to be unambiguous, we do not reach the legislative history discussed in the briefs. See PGE v. Bureau of Labor and Industries, 317 Or 606, 611, 859 P2d 1143 (1993)

1 interpretation of OAR 660-33-020(4) would require.¹⁰

2 The first assignment of error is denied.

3 **SECOND ASSIGNMENT OF ERROR**

4 Petitioner contends the county did not apply a
5 mandatory policy (hazard policy) found at Yamhill County
6 Comprehensive Plan (YCCP) Section 1 B.1.c., which states:

7 "All proposed rural area development and
8 facilities:

9 "* * * * *

10 "2) Shall not be located in any natural hazard
11 area, such as a floodplain or area of
12 geologic hazard, steep slope, severe drainage
13 problems or soil limitations for building or
14 sub-surface sewage disposal, if relevant;

15 "* * * * *"

16 Petitioner points out that one criterion for approval of a
17 lot-of-record dwelling, stated in YCZO 402.03(G)(4), is that

18 "[t]he [lot-of-record] dwelling is not prohibited
19 by, and complies with the Comprehensive Plan and
20 other provisions of this ordinance and other
21 provisions of law, including but not limited to
22 floodplain, greenway, and airport overlay
23 restrictions."

24 **A. Application of Blondeau**

25 Relying on our opinion in Blondeau v. Clackamas County,
26 29 Or LUBA 115 (1995), respondents contend that application

¹⁰The petition for review states that simultaneous applications were made for lot-of-record dwellings on lots 140 and 163. However, those applications are not in the record, and we do not decide here how approving a lot-of-record dwelling on lot 162 would affect the other applications by the Johnsons' grantees, one of whom may claim to qualify for a lot-of-record dwelling.

1 of YCCP Section 1 B.1.c. is precluded by the adoption of
2 Oregon Laws 1993, chapter 792 (hereafter HB 3661), including
3 the lot-of-record provisions now codified in ORS 197.705,
4 after acknowledgment of YCCP Section 1 B.1.c.. In Blondeau,
5 Clackamas County denied an application for a lot-of-record
6 dwelling on the grounds that it failed to satisfy first, a
7 local zoning code requirement that a proposed nonfarm
8 dwelling be situated on land generally unsuitable for the
9 production of crops and livestock; and second, applicable
10 plan goals to preserve agricultural lands and to protect
11 agricultural lands from conflicting uses. It was clear from
12 the facts in Blondeau that Clackamas County had not
13 legislatively restricted lot-of-record dwellings, as
14 permitted by ORS 215.705(5), but had instead denied the
15 application on the basis of plan provisions intended to
16 protect agricultural land that were acknowledged before
17 HB 3661 became effective. We stated:

18 "[W]hat we must determine here is whether it is
19 consistent with ORS 215.705 to deny a lot of
20 record dwelling because of noncompliance with a
21 ZDO standard previously adopted to implement
22 ORS 215.283(3)(d) (1991)^[11] or previously adopted

¹¹ORS 215.283(3) (1991 Edition) provides, in relevant part:

"Subject to ORS 215.288, single-family residential dwellings,
not provided in conjunction with farm use, may be established,
subject to approval of the governing body or its designate in
any area zoned for exclusive farm use upon a finding that each
such proposed dwelling:

"* * * * *

1 plan policies generally requiring protection of
2 agricultural land." Id. at 122.

3 We then explained:

4 "ORS 215.705(1)(c) does not explicitly limit the
5 acknowledged plan and land use regulation
6 provisions with which lot of record dwellings must
7 comply. However, ORS 215.705(1)(c) must be
8 interpreted together with ORS 215.705(5), which
9 allows a county to adopt by ordinance certain
10 standards that would allow it to deny a lot of
11 record dwelling otherwise approvable under other
12 provisions of ORS 215.705. The standards a county
13 may adopt pursuant to ORS 215.705(5) specifically
14 include one of the former statutory standards for
15 nonfarm dwellings in an exclusive farm use zone,
16 ORS 215.283(3)(c) (1991) (does not materially
17 alter the stability of the overall land use
18 pattern of the area). ORS 215.705(5)(b). There
19 would be no need to specifically authorize the
20 adoption of such standards under ORS 215.705 if,
21 under ORS 215.705(1)(c), a county could deny a
22 proposed lot of record dwelling because it failed
23 to comply with regulations previously adopted to
24 implement ORS 215.283(3) (1991).

25 "In addition, the legislative history of HB 3661
26 * * * indicates a legislative intent that lot of
27 record dwellings not be required to comply with
28 plan and code provisions inherently inconsistent
29 with the act's intent to allow dwellings on
30 certain lots of record, even those lots composed
31 of good agricultural soils. Prior to the
32 enactment of ORS 215.705, counties' acknowledged
33 plans and regulations included provisions
34 implementing the requirement of ORS 215.283(3)(d)
35 (1991) that nonfarm dwellings not be allowed on
36 land suitable for the production of farm crops and

"(d) Is situated upon generally unsuitable land for the
production of farm crops and livestock, considering the
terrain, adverse soil or land conditions, drainage and
flooding, vegetation, location and size of the tract; and

"* * * * *"

1 livestock, and many included provisions generally
2 requiring the protection of agricultural soils.
3 If ORS 215.705(1)(c) requires lot of record
4 dwellings to comply with such criteria, then no
5 lot of record dwellings could be approved until
6 counties amend their plans and regulations to
7 reflect the provisions of ORS 215.705." Id. at
8 122-23.

9 Respondents argue that Blondeau invalidates any plan or
10 zoning code provisions that limit lot-of-record dwellings
11 unless those provisions are expressly adopted (or readopted)
12 under ORS 215.705. We disagree. Our reasoning in Blondeau
13 was expressly limited to situations where regulations or
14 plan policies adopted prior to the effective date of HB 3661
15 that were intended to protect agricultural land conflict
16 with the provisions in HB 3661 that are intended to permit
17 lot-of-record dwellings regardless of their effect on
18 agricultural land. As we noted, the underlying objective of
19 these regulations and plan policies has effectively been
20 overruled by HB 3661.

21 Blondeau establishes that if a county wishes to limit
22 lot-of-record dwellings to protect agricultural lands, it
23 cannot simply dust off its old plan policies and land use
24 regulations implementing ORS 215.283(3)(d), but must
25 legislatively adopt new policies and regulations pursuant to
26 ORS 215.705(5).¹² Id. at 123-24 n9. The holding in

¹²ORS 215.705(5) provides:

"A county may, by application of criteria adopted by ordinance,
deny approval of a dwelling allowed under this section in any

1 Blondeau does not apply to YCCP Section 1 B.1.c., which does
2 not appear to have been adopted under ORS 215.283(3) (1991
3 Edition) or any other statutory provision intended to
4 protect agricultural land. YCCP Section 1 B.1.c. is
5 directed at all development, not at nonfarm dwellings. Its
6 apparent purpose is as much to protect future development
7 from natural hazards as to protect resource lands from
8 development. Therefore, it is not superseded by
9 ORS 215.705.

10 There is another reason that YCCP Section 1 B.1.c.
11 cannot be disregarded in reliance on Blondeau. As
12 petitioner notes, YCZO 402.03(G)(4) specifically adopts as a
13 criterion for a lot-of-record dwelling that it is "not
14 prohibited by, and complies with the Comprehensive Plan and
15 other provisions of [the YCZO] and other provisions of law,
16 including but not limited to floodplain, greenway, and
17 airport overlay restrictions." Blondeau makes clear that
18 the legislative adoption of standards governing lot-of-
19 record dwellings is permitted by ORS 197.705(5). To the

area where the county determines that approval of the dwelling
would:

- "(a) Exceed the facilities and service capabilities of the
area;
- "(b) Materially alter the stability of the overall land use
pattern in the area; or
- "(c) Create conditions or circumstances that the county
determines would be contrary to the purposes or intent of
its acknowledged comprehensive plan or land use
regulations."

1 extent that standards governing development generally may
2 apply to lot-of-record dwellings, YCZO 402.03(G)(4)
3 reaffirms the applicability of those standards.

4 **B. Waiver**

5 Respondents contend that consideration of this
6 assignment of error is beyond the scope of our review under
7 ORS 197.835(3), which limits issues to those raised by any
8 participant below the local hearings body.¹³ Petitioner
9 maintains first, that several participants below did raise
10 the issues of natural hazards, drainage and sewage; and
11 second, that since the county did not give notice that YCCP
12 Section 1 B.1.c. was an applicable criterion,
13 ORS 197.835(4)(b) permits petitioner to raise new arguments
14 based on that criterion.¹⁴

15 First, if participants below did adequately raise the

¹³ORS 197.835(3) provides: "Issues shall be limited to those raised by any participant before the local hearings body as provided by ORS 197.195 or 197.763, whichever is applicable."

¹⁴ORS 197.835(4) provides, in relevant part:

"A petitioner may raise new issues to the board if:

"* * * * *

"(b) The local government failed to follow the requirements of ORS 197.763 (3)(b), in which case a petitioner may raise new issues based upon applicable criteria that were omitted from the notice. However, the board may refuse to allow new issues to be raised if it finds that the issue could have been raised before the local government; or

"* * * * *"

1 issue of the location of the subject property in a natural
2 hazard area or "area of geologic hazard, steep slope, severe
3 drainage problems or soil limitations for building or sub-
4 surface sewage disposal," then this issue is within our
5 scope of review. See Record 15, 16, 147, 156-57.

6 Second, there is no dispute that the county's notice
7 did not mention YCCP Section 1 B.1.c., or that
8 ORS 197.763(3)(b) requires such mention if indeed YCCP
9 Section 1 B.1.c. is a relevant criterion. Under
10 ORS 197.835(4)(b) a petitioner may raise new issues before
11 this Board if "[t]he local government failed to follow the
12 requirements of ORS 197.763(3)(b), in which case a
13 petitioner may raise new issues based upon applicable
14 criteria that were omitted from the notice." However,
15 ORS 197.835(4)(b) also allows this Board to "refuse to allow
16 new issues to be raised if [we find] that the issue could
17 have been raised before the local government."

18 It is possible that because the county's notice did not
19 mention YCCP Section 1 B.1.c., the participants below were
20 not informed of its existence or possible applicability. If
21 they were not so informed, they could not have raised YCCP
22 Section 1 B.1.c. with the specificity the county contends is
23 necessary to avoid waiver. Therefore, petitioner may raise
24 new issues associated with YCCP Section 1 B.1.c. before this
25 Board.

1 **C. Applicability of YCCP Section 1 B.1.c.**

2 We first address respondents' contention the challenged
3 decision contains a finding, supported by substantial
4 evidence, addressing YCCP Section 1 B.1.c. and concluding it
5 was satisfied. To support their contention, respondents
6 point to the following finding:

7 "The Board finds that the dwelling is not
8 prohibited by, and complies with the Comprehensive
9 Plan and other provisions of this ordinance and
10 other provisions of law, including but not limited
11 to floodplain, greenway, and airport overlay, as
12 required by YCZO § 1402.03G(4). The Comprehensive
13 Plan does not prohibit lot of record dwellings on
14 agricultural land. Lot of record dwellings on
15 agricultural land are allowed by state statute
16 (ORS 215.705) and administrative rule (OAR 660-33-
17 130). The property is not within the floodplain,
18 greenway or airport overlay districts. Setbacks,
19 height limitations, etc. will be enforced at the
20 time of the building permit request." Record 5.

21 Findings must (1) identify the relevant approval
22 standards, (2) set out the facts which are believed and
23 relied upon, and (3) explain how those facts lead to the
24 decision on compliance with the approval standards.
25 Sunnyside Neighborhood v. Clackamas Co. Comm., 280 Or 3, 20-
26 21, 569 P2d 1063 (1977); Heiller v. Josephine County, 23 Or
27 LUBA 551 556 (1992). Additionally, findings must address
28 and respond to specific issues, raised in the proceedings
29 below, that are relevant to compliance with applicable
30 approval standards. Hillcrest Vineyard v. Bd. of Comm.
31 Douglas Co., 45 Or App 285, 293, 608 P2d, 201 (1980);
32 Norvell v. Portland Area LGBC, 43 Or App 849, 853, 604 P2d

1 896 (1979); Skrepetos v. Jackson County, 29 Or LUBA 193, 208
2 (1995); McKenzie v. Multnomah County, 27 Or LUBA 523, 544-45
3 (1994); Heiller, supra, 23 Or LUBA at 556 (1992).

4 Assuming YCCP Section 1 B.1.c. is an applicable
5 criterion, the above-quoted finding is insufficient to
6 address it. The finding neither identifies the criterion,
7 relates it to facts believed and relied upon nor explains
8 how those facts lead to a decision on compliance with
9 approval standards. Intervenor urges us to use our
10 authority under ORS 197.829(2) and ORS 197.835(11)(b) to
11 interpret YCCP Section 1 B.1.c., make our own determination
12 that the challenged decision is correct, and, if YCCP
13 Section 1 B.1.c. applies, conclude that evidence in the
14 record supports the necessary findings.¹⁵ As we stated in
15 Marcott Holdings, Inc. v. City of Tigard, 30 Or LUBA 101,

¹⁵ORS 197.829(2) provides:

"If a local government fails to interpret a provision of its comprehensive plan or land use regulations, or if such interpretation is inadequate for review, the board may make its own determination of whether the local government decision is correct."

ORS 197.835(11)(b) provides:

"Whenever the findings are defective because of failure to recite adequate facts or legal conclusions or failure to adequately identify the standards or their relation to the facts, but the parties identify relevant evidence in the record which clearly supports the decision or a part of the decision, the board shall affirm the decision or the part of the decision supported by the record and remand the remainder to the local government, with direction indicating appropriate remedial action."

1 122-23 (1995), ORS 197.829(2) and ORS 197.835(11)(b) allow
2 us to remedy oversights and imperfections in local
3 government land use decisions. However, we need not take
4 over the responsibilities of local governments, such as the
5 interpretation of comprehensive plans and land use
6 regulations, the preparation of adequate findings and the
7 weighing of evidence. See also Squires v. City of Portland,
8 ___ Or LUBA ___ (LUBA No. 95-187, July 1, 1996), slip op 12
9 n4; Canby Quality of Life Committee v. City of Canby, 30 Or
10 LUBA 166, 173 (1995); Waugh v. Coos County, 26 Or LUBA 300,
11 306-08 (1993).

12 In the absence of a reviewable interpretation
13 concerning the applicability of YCCP Section 1 B.1.c., we
14 review to determine if it establishes approval criteria
15 pertinent to the subject application. O'Mara v. Douglas
16 County, 25 Or LUBA 25, 32, rev'd on other grounds, 121 Or
17 App 113, rev'g Court of Appeals, aff'g LUBA, 318 Or 72
18 (1993). The briefs contain extensive arguments on this
19 issue, none of which is conclusive in view of the governing
20 body's broad discretion in interpreting the applicability of
21 its plan and land use regulations. See DeBardelaben v.
22 Tillamook County, 142 Or App 319, 325, ___ P2d ___ (1996).
23 There is more than enough uncertainty concerning the
24 applicability of YCCP Section 1 B.1.c. to require we remand
25 the challenged decision to the county for an interpretation.

26 The second assignment of error is sustained.

1 The county's decision is remanded.

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FRIENDS OF LINN COUNTY V. JOHN WARNOCK AND DONNA WARNOCK, PETITIONERS.

FRIENDS OF LINN COUNTY v. John Warnock and Donna Warnock, Petitioners.

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Court of Appeals of Oregon.

**FRIENDS OF LINN COUNTY, Respondent, v. LINN COUNTY, Respondent below,
John Warnock and Donna Warnock, Petitioners.**

2001-023; A114291

Decided: October 31, 2001

Before LANDAU, Presiding Judge, and BREWER and SCHUMAN, Judges. Edward F. Schultz, Albany, argued the cause for petitioners. With him on the brief was Weatherford, Thompson, Ashenfelter & Cowgill, P.C. Christopher D. Crean argued the cause for respondent. With him on the brief was Miller Nash LLP.

Petitioners John and Donna Warnock seek review of a final decision and order of the Land Use Board of Appeals (LUBA) remanding Linn County's decision to permit the Warnocks to construct a dwelling on a parcel zoned for high-value exclusive farm use (EFU). We affirm.

The Warnocks purchased the subject property in 1969. It is a 7.8 acre parcel in Linn County that is composed primarily of high-value soil and is terraced in three levels. During the 1970s, the Warnocks leased the parcel to a commercial farmer who cut hay and grazed sheep on it. It also was used as a staging area for a nearby gravel quarry. Cattle, sheep, and poultry production are the predominant farming activities in the area.

The Warnocks applied for a permit to construct a lot of record dwelling on the parcel. Friends of Linn County (Friends) opposed the application. Linn County approved the permit application, and Friends appealed to LUBA.

LUBA remanded the decision to Linn County. LUBA concluded that the county had applied an incorrect standard in approving the application. According to LUBA, under ORS 215.705(2)(a)(C)(i), a county may approve the siting of a lot of record dwelling on high-value farmland if the county finds:

“The lot or parcel cannot practicably be managed for farm use, by itself or in conjunction with other land, due to extraordinary circumstances inherent in the land or its physical setting that do not apply generally to other land in the vicinity.”

According to LUBA, in evaluating whether the parcel could “practicably be managed for farm use,” the county improperly relied only on evidence from commercial farmers as to whether they would incorporate the parcel into their farm operations or would conduct similar commercial farm operations on the parcel. LUBA noted that there was evidence in the record of other farm use in the area that the county improperly failed to take into account.

On remand, Linn County held a public hearing. The Warnocks proposed adoption of a \$10,000 per annum minimum gross farm income test as an objective measure of whether the parcel practicably could be managed for farm use; under that test, a parcel that includes high-value farm land and is not capable of earning the minimum income threshold cannot “practicably be managed for farm use” within the meaning of ORS 215.705(2)(a)(C)(i).

The chairman of Friends also testified. Although he did not specifically refer to the minimum income test by dollar amount, he did argue that the standard was incorrect. He referred to a recent LUBA decision, *Friends of Linn County v. Linn County*, 37 Or LUBA 280 (1999), in which LUBA cautioned the county about creating a different income test for whether property can be practicably managed for farm use from the one that already exists for determining whether property qualifies for farm tax deferral. According to the chairman, the county should use the same test that is used for determining whether property qualifies for farm tax deferral, a test that is substantially below \$10,000. ORS 308A.071.

The county adopted the \$10,000 minimum annual gross income test and, finding that the Warnocks' parcel cannot satisfy that test, concluded that the parcel cannot practicably be managed for farm use.

Friends again appealed to LUBA, and LUBA again remanded to the county. LUBA first concluded that the \$10,000 minimum annual gross income was invalid. It reasoned that the test was set at a level that indicated practicability for commercial farming and failed to take into account practicability for noncommercial farming. LUBA also addressed two evidentiary matters that likely will arise on remand. First, it emphasized that, in determining practicability, the proper focus is not whether the property historically has been put to farm use or how much gross income farm use of the property has generated in the past. Although that evidence may be relevant, LUBA commented, it is not determinative. The proper focus is whether farming the land currently is practicable, which may be determined by reference to any number of factors. Second, LUBA noted that, under ORS 215.705(2)(a)(C)(i), a parcel's impracticability must be “due to

extraordinary circumstances inherent in the land or its physical setting that do not apply generally to other land in the vicinity.” It observed that the county’s decision relied heavily on the particular mixture of soil types on the Warnocks’ parcel, along with evidence of prior quarrying activity and terracing, without demonstrating that those conditions do not exist on other properties in the vicinity.

On appeal, the Warnocks first argue that LUBA erred in even considering the argument of Friends concerning the validity of the \$10,000 minimum annual gross income test of practicability. They contend that Friends waived any right to complain about the standard because it failed to object to the standard. Friends argues that its chairman raised the issue in his testimony at the public hearing. We agree. As we have noted in setting out the relevant facts, although the chairman did not mention the test by dollar amount, he specifically objected to the adoption of the test that the Warnocks had proposed to the county and cited a recent LUBA decision for the proposition that it would be unlawful to adopt any income test different from the one already in use for farm tax deferrals.

The Warnocks next contend that LUBA erred “in holding that farm use on the subject property is practicable.” Friends replies that the answer to that contention is simple: LUBA made no such holding. According to Friends, LUBA held only that the county had erred in adopting and applying the \$10,000 minimum annual gross income test and did not even address the question whether farm use on the Warnocks’ parcel is practicable. We agree with Friends. The holding that the Warnocks challenge is one that LUBA did not make.

The Warnocks argue that LUBA erred in substituting its judgment for that of the county when it disregarded evidence supporting the county’s decision, including the mix of soils, the terracing of the property, surrounding residential uses, historical attempts at farm use, gravel deposits, and the statements of neighbors that they could not put the property to noncommercial farm use. Friends again replies, correctly, that the Warnocks attack a holding that LUBA did not make. LUBA remanded the case on the ground that the county applied an incorrect legal standard.

The Warnocks contend that LUBA erred in holding that the county’s findings were inadequate to demonstrate that any impracticability was due to “extraordinary circumstances.” They begin by suggesting that it was inappropriate even to have considered the matter, as LUBA had not addressed it in the first appeal, and the issue was thereby foreclosed from further consideration. Friends contends that, once again, the Warnocks misconstrue LUBA’s opinion. It explains that, in the previous appeal, LUBA simply remanded because the county had applied an incorrect legal standard and therefore did not have occasion to reach the “extraordinary circumstances” issue; that matter was left for decision on remand. We agree with Friends. The previous LUBA opinion did not foreclose the county from making findings as to whether any impracticability was due to extraordinary circumstances, and it likewise did not foreclose the county’s findings from being addressed on appeal.

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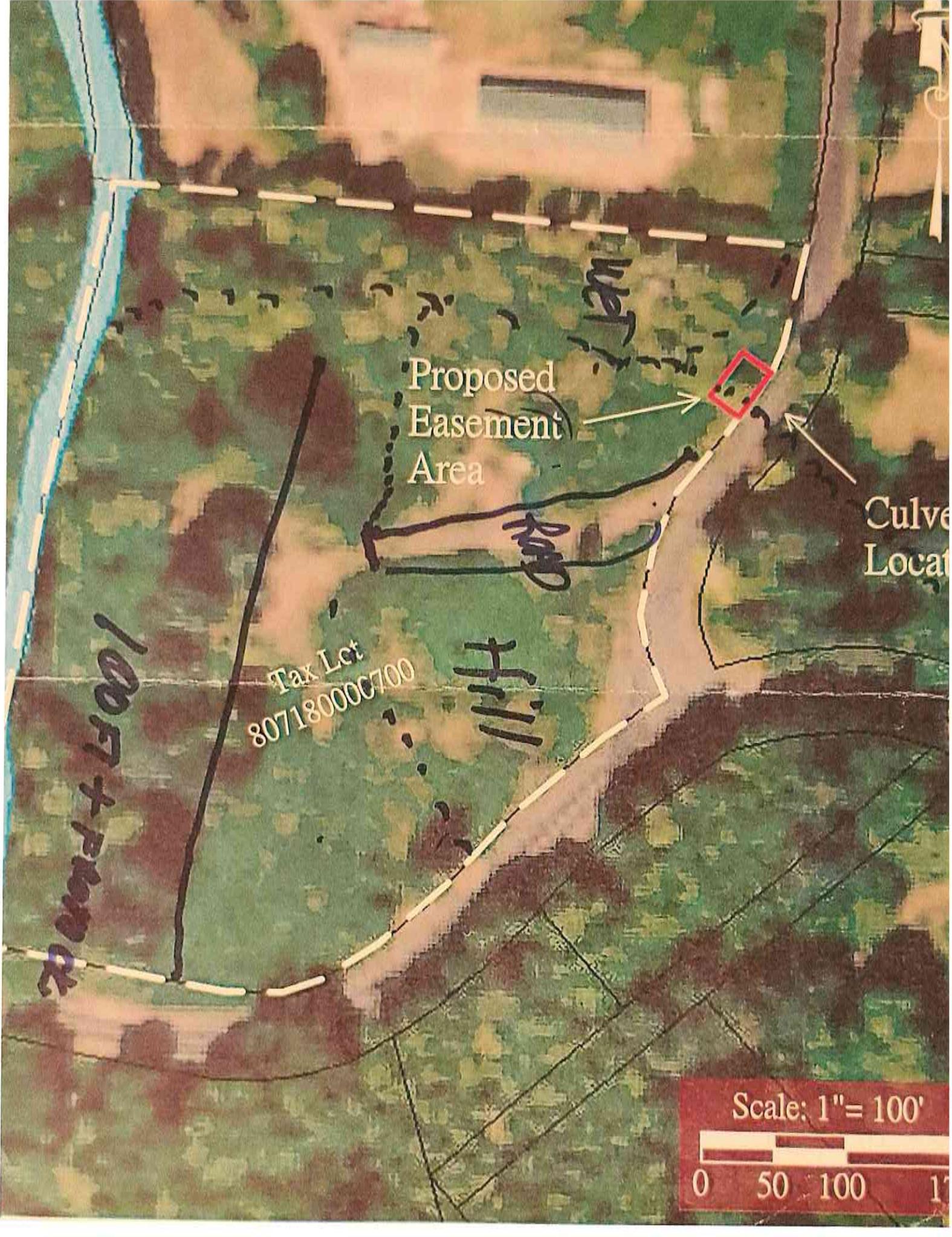
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Proposed Easement Area

Culvert Location

Tax Lot 807180000700

Hill

100 FT + Paved

Scale: 1" = 100'

